

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

RECEIVED

Appeal from York County

FEB 27 2017

Honorable Brooks P. Goldsmith, Circuit Court Judge
S.C. SUPREME COURT

TERRELL A. ADDISON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001444

APPENDIX

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1 Q. Okay. Who did he say was with him?

2 A. I'm not sure.

3 Q. Did he say that it was Davorius "Bubba", that's his
4 brother, and a dude name Ben?

5 Let's take a look at your statement and see if that's
6 what he said.

7 A. All I know is what they say. I can't remember two and
8 a half years ago.

9 Q. Okay. Does that -- is that what the statement says?

10 A. Yes, that's what it say.

11 Q. It was him, Davorius, and guy name Ben from
12 Philadelphia?

13 A. (Shaking head yes).

14 Q. Is that right?

15 A. (Shaking head yes)

16 Q. You have to answer.

17 THE COURT: Verbally, sir. He's recording it.

18 A. Yes, sir.

19 BY MR. SWERLING:

20 Q. He doesn't even mention Terrell Addison in here, does
21 he?

22 A. No, sir.

23 Q. Do you know Terrell Addison?

24 A. No, sir.

25 Q. Did you know Ben Stewart?

1 A. No, sir.

2 Q. Did he tell you that he used a .380?

3 A. I'm not sure.

4 Q. Let me get you to take a look at this.

5 A. Yes, I see it right here, but I'm not sure. I can't
6 remember if he told me exactly two and a half years ago. I
7 can't remember that.

8 Q. Well, would you think your memory two and a half years
9 ago would be better than it is today?

10 A. Yes, sir.

11 Q. And he also told you he got shot with a .22?

12 A. Yes, sir.

13 Q. All right. Answer any questions that either Mr. Snow
14 has or the solicitor has. Thank you.

15 CROSS EXAMINATION BY MR. SNOW:

16 Q. Mr. Evans, you heard your wife testify, correct?

17 A. Yes, sir.

18 Q. And she didn't hear anything -- any -- my client's name
19 even mentioned in the conversation that you had, correct?

20 A. (Shaking head yes).

21 Q. He didn't say anything about that?

22 A. Yes, sir.

23 Q. Now, did you happen to hear the name Ben Stewart at
24 some point after this?

25 A. I'm not sure.

1 As far as my recollection remembering to two and a half
2 years ago, I don't remember none of this. All I know is
3 what y'all showing me on this paper and what y'all are
4 telling me.

5 Q. Okay.

6 A. As far as what was said, as far as what I remember, I
7 don't remember nothing, period.

8 Q. Well, let me ask you this.

9 I'm going to have you look at your statement and you
10 take a look at it. Let's talk about what your statement
11 says. I want you to take your time and look at it. You can
12 read it, if you want, and let's talk about what's in your
13 statement that was taken October 18th, 2006.

14 A. I see the statement, and all I could tell you --

15 Q. Well, I haven't asked you a question yet, sir. I want
16 you to read it and look at it. I'm going to ask you a
17 question.

18 In your statement --

19 A. Uh-huh.

20 Q. -- does it say anything in there about Ben Stewart
21 giving him a gun?

22 A. No, sir.

23 Q. He just said he shot the man with the .380?

24 A. Yes, sir.

25 Q. And you are not sure at what point you heard of Ben

1 Stewart's name, correct?

2 A. Correct.

3 Q. Okay. And that statement is dated October 18th, 2006?

4 A. That's right.

5 Q. Is that when you gave the statement, you said?

6 A. It say 10-18-06.

7 Q. October 10th -- October 18th, 2006?

8 A. Uh-huh.

9 Q. And you are a friend of Dontavious, is that correct?

10 A. That's right.

11 Q. Right.

12 And you have also seen him have guns, carry guns?

13 A. I ain't seen him carry guns. I just heard. I know
14 what people say.

15 Q. People say.

16 And people say he carry guns, right?

17 A. Yeah, that's what they say.

18 Q. And he's not the kind of guy that needs to borrow a
19 gun?

20 A. No.

21 Q. Thank you, sir.

22 CROSS EXAMINATION BY MR. THOMPSON:

23 Q. Now, you had said what people say, but from your
24 experience with Dontavious, what's your opinion of his
25 reputation, what you know about him?

1 A. My opinion?

2 Q. Yes.

3 A. In my opinion, Dontavious won't hurt a soul.

4 At least they are trying to hurt him. That's just my
5 opinion.

6 Q. Now, when Dontavious was talking to you that day, he
7 went off in a room with you, right?

8 A. Well, not necessarily a room. When you walk into the
9 apartment, it's the kitchen and the living room right there
10 together. We were just right there in the kitchen part.
11 It's really one open space.

12 Q. Okay. But your wife wasn't part of the conversation at
13 that point, right?

14 A. No.

15 Q. She was kind of trying to listen in from somewhere else
16 in the apartment?

17 A. Exactly.

18 Q. Okay. I'm going to give you a copy of your statement
19 again and ask you to look, because I just want to go over a
20 couple of things in it.

21 A. Okay.

22 Q. Is that it, your statement?

23 A. Yes, sir.

24 Q. And you say in this that it was between six and eight
25 in the evening when he came over?

1 A. This is what the statement says.

2 Q. Right.

3 And the statement that you realize to be true from when
4 you gave it, is that correct?

5 A. Yes, sir.

6 Q. All right. And in that statement you mentioned that
7 his brother, Davorius, that you know as "Bubba", that he was
8 with him, right?

9 A. Right.

10 Q. When the robbery occurred in Rock Hill?

11 A. Yes, sir.

12 Q. And also you say a guy named Ben, you don't know his
13 last name, but he's from Philadelphia, right?

14 A. Right.

15 Q. And his sister is Monday?

16 A. Correct.

17 Q. Do you know Monday Bishop?

18 A. No.

19 Q. Okay. Did you know Shonda upstairs in the Farmington
20 Apartments?

21 A. No, sir.

22 Q. You didn't know your wife's friend Shonda?

23 A. No, sir.

24 Q. But he didn't mention Terrell Addison, correct?

25 A. No, sir.

1 Q. Thank you.

2 MR. THOMPSON: No further questions.

3 MR. SWERLING: I have nothing further.

4 MR. SNOW: Judge?

5 RECROSS EXAMINATION BY MR. SNOW:

6 Q. Mr. Evans, you are not saying your wife is lying, are
7 you?

8 A. No. The only thing I'm saying is I don't remember
9 nothing from 2006. I don't even know if this is the same
10 statement I said or not. All I know is what y'all have
11 given me and what's right here in my face. That's all I
12 know.

13 As far as me remembering two years ago, I can't do
14 that.

15 Q. So you don't even know if you mentioned Ben's name, do
16 you?

17 A. I know I said -- I see right here say he saying he
18 mentioned Ben here, but as far as remembering him saying
19 Ben's name, no.

20 Q. You don't think your wife would testify to -- would
21 make up something on the stand, do you?

22 A. No, sir.

23 Q. And you are a friend of Mr. Dontavious?

24 A. Yes, sir.

25 Q. Dontavious Mack, right?

1 A. Yes, sir.

2 THE COURT: Anything else?

3 MR. SWERLING: No.

4 THE COURT: Thank you, sir.. You may stand down.

5 MR. SWERLING: Judge, can we just approach for a
6 second?

7 THE COURT: Yes.

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 MR. SWERLING: Excuse us one minute.

11 (Off the record).

12 (Back on the record)

13 MR. SWERLING: Judge, we are going to admit --
14 there are two statements made by Davorius Mack. One was to
15 the Hartsville Police Department, and then there was another
16 statement to the Rock Hill Police Department on October
17 18th, and we are moving to admit those. I believe it's
18 without objection, and we will put a copy in the record. I
19 just need to make sure we have a clean copy.

20 THE COURT: Do we have a number for them yet?

21 Approach just a minute.

22 (Whereupon, the lawyers approached the bench for
23 an off-the-record discussion)

24 THE COURT: All right. Those statements are
25 admitted without objection, as part of the record.

1 MR. BRACKETT: State's Exhibit No. 96 and 97 we
2 would move into evidence at this point.

3 The first statement by Davorius Mack to the
4 Hartsville Police Department, and the first statement by
5 Davorius Mack to the Rock Hill Police Department.

6 THE COURT: I thought --

7 MR. SWERLING: They are actually one wanting to
8 put them in. I have no objection.

9 MR. BRACKETT: Yes.

10 MR. SWERLING: Based upon the other discussions
11 that we have had in connection with this.

12 THE COURT: As long as the record is complete.

13 MR. BRACKETT: Yes.

14 MR. SWERLING: Judge, the other point or piece of
15 evidence is that the State and Mr. Addison stipulate that
16 there is no evidence of a .38 being fired in the BP station
17 on October 10th.

18 MR. BRACKETT: That is correct. The State accepts
19 that stipulation.

20 THE COURT: Okay. How about --

21 Counsel, do you agree with that stipulation?

22 MR. SNOW: I agree, judge.

23 THE COURT: Thank you. Anything else on that?

24 MR. SWERLING: No, sir. We would rest.

25 THE COURT: All right.

1 MR. SNOW: Your Honor, Mr. Stewart would call
2 Officer Haire. We have a few questions of the officer.

3 THE COURT: Detective Haire, you previously were
4 sworn. You continue to be sworn and under oath for your
5 testimony at this time.

6 THE WITNESS: Yes, sir.

7 THE COURT: Go ahead.

8 DIRECT EXAMINATION BY MR. SNOW:

9 Q. I wanted to get it settled.

10 As to Ben Stewart, on October of 2006, do you know how
11 old was Mr. Stewart then?

12 If you don't mind, would you look through to refresh
13 your recollection?

14 Well, I'll ask it this way. Is it fair to say that Mr.
15 Stewart was twenty years old at that time?

16 A. In 2006?

17 Q. Yes.

18 A. That's correct.

19 Q. And at some point, if you know through your
20 investigation, he was charged with, I hope I say this right,
21 carrying a pistol -- unlawful carrying of a pistol of
22 someone under twenty-one?

23 A. That's correct.

24 Q. All right. And that charge was brought about as it
25 relates to this case, isn't that correct?

1 A. Yes, sir.

2 Q. Okay. And that had to do with the allegations of
3 carrying a pistol in connection with the allegations
4 stemming from the house where Mr. Reed said he had a pistol,
5 correct?

6 A. It stems from the entire incident.

7 Q. The entire incident?

8 A. Yes.

9 Q. And the allegations were certainly had to do with Mr.
10 Reed saying he had a pistol?

11 A. Yes, sir.

12 Q. And if you know, that charge had been dismissed,
13 correct? Well, he's no longer facing that charge?

14 MR. BRACKETT: Objection, Your Honor.

15 THE COURT: Yeah, I agree.

16 Counsel, approach.

17 (Whereupon, the lawyers approached the bench for
18 an off-the-record discussion)

19 THE COURT: Mr. Foreman, ladies and gentlemen of
20 the jury, counsel has just referred to a case against Mr.
21 Stewart, Ben Stewart, the defendant, being dropped on a
22 charge of possession of a pistol by a person under
23 twenty-one.

24 After that charge was made, as it was made in any
25 number of cases in South Carolina, the South Carolina

1 Supreme Court ruled on the case that went up that the
2 particular statute under which persons were charged with
3 possession of a pistol by a person under twenty-one was
4 Unconstitutional, based on the South Carolina Constitution,
5 and it did not -- they could not do that, make a charge
6 against someone who was at least eighteen. And so that
7 charge was dismissed, based on the fact that the South
8 Carolina Supreme Court ruled that the statute under which he
9 was charged was unconstitutional.

10 That charge to Mr. Stewart, and anyone else who
11 was charged under that statute, that is possession of a
12 person under twenty-one, was dropped at that time. And
13 that's the reason it was dropped. Okay.

14 MR. SNOW: That's all that's I have, judge. Thank
15 you.

16 THE COURT: Anything else?

17 MR. BRACKETT: Nothing about this case, Detective
18 Haire, but your wife e-mailed me some questions. I'm just
19 kidding.

20 MR. BRACKETT: We have nothing.

21 THE COURT: Thank you, sir. You may stand down.

22 All right. For scheduling purposes, counsel,
23 approach just for a second.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 THE COURT: All right, Mr. Foreman, ladies and
2 gentlemen of the jury, this will conclude all of the taking
3 of testimony and evidence in the case, as far as I know. We
4 will make a final decision on that first the thing in the
5 morning when we start back, but that's the way it appears
6 right now. If that changes, we will address that the first
7 thing in the morning, but it appears we may have finished
8 all of the testimony and evidence in the case.

9 We have yet remaining final arguments of counsel
10 and my instruction to you with regard to the law that
11 applies to the issues in this case.

12 I want to -- even though you have heard all the
13 testimony and evidence in the case, you should not begin
14 discussing this case among yourselves or with anyone else
15 you might see on a break from court, including your family,
16 friends. You should not read, listen to, or watch any media
17 account of this trial, including anything that might appear
18 on the Internet about this case. And that's very important.
19 Even though you have heard all the testimony and evidence in
20 the case, you have not yet heard my instruction to you with
21 regard to the law that applies to the issues in this case,
22 so you are really not ready to start forming opinions or
23 discussing the case yet, so please keep an open mind about
24 that until you have heard my instruction to you with regard
25 to the law that applies.

1 Please have a pleasant night tonight and be back
2 in the jury room ready to go in the morning at 9:30. 9:30,
3 and we will try to get started promptly at 9:30. Have a
4 good night and we will see you then.

5 (The following takes place outside the presence of
6 the jury panel)

7 THE COURT: All right. Please bring Mr. Stewart
8 around and let me question him about his right to testify or
9 not testify.

10 BEN ROBERT STEWART, having been first duly sworn,
11 testified as follows:

12 THE COURT: Sir, for the record, you are Ben
13 Robert Stewart, is that correct?

14 DEFENDANT STEWART: Yes, sir.

15 THE COURT: Mr. Stewart, we have reached the stage
16 of your trial where you may present your defense.

17 You have the right to testify in your own behalf.
18 However, no one can make you testify.

19 In the event you have a record for any conviction
20 involving dishonesty or false statement or for a crime
21 punishable by imprisonment for more than one year and this
22 court determines that the probative value of admitting this
23 evidence outweighs its prejudicial effect to you, the
24 solicitor would be able to introduce this record for
25 impeachment purposes to attack your credibility.

1 If you elect not to take the stand, I would charge
2 the jury that they are not to give the fact that you did not
3 testify any consideration whatsoever and there is to be
4 absolutely no prejudice to you because you did not testify.

5 It is left entirely up to you whether or not you
6 testify. You may talk with your attorney, your family and
7 friends, or anyone else, but the ultimate decision is left
8 entirely up to you.

9 Do you understand that it is your decision as to
10 whether you will or will not testify in your case?

11 DEFENDANT STEWART: Yes, Your Honor.

12 THE COURT: Have you discussed with your attorney
13 the advantages and disadvantages of testifying?

14 DEFENDANT STEWART: Yes, sir, we have.

15 THE COURT: And do you wish to testify in your
16 case, sir?

17 DEFENDANT STEWART: No. No, Your Honor.

18 THE COURT: Is that your decision, sir?

19 DEFENDANT STEWART: Yes, sir.

20 THE COURT: All right. Thank you. You may return
21 to your seat.

22 MR. SNOW: Thank you, judge.

23 THE COURT: All right. Counsel, then we will
24 adjourn. I'll ask you -- if you want to take a few minutes
25 to do whatever you need to do and then meet with me in

1 chambers and let's work on the charges.

2 MR. SWERLING: Yes, sir.

3 If you want to -- should we just go ahead and
4 renew the motions at this time?

5 THE COURT: I beg your pardon. I appreciate you
6 reminding me. Yes, sir, let's do that at this time.

7 MR. SWERLING: Judge, just on behalf of Mr.
8 Addison, we would renew the motion we made at the conclusion
9 of the State's case, and we make the same statements we made
10 then and incorporate them now.

11 With the additional information about Mr.
12 Addison's testimony itself, we say it supports a directed
13 verdict motion on all those charges.

14 THE COURT: All right. Thank you, sir.

15 I will deny the motions for the same reasons that
16 I gave earlier, looking at the evidence in the light most
17 favorable to the State against whom the motion is made.

18 MR. SNOW: Judge, we would move for a directed
19 verdict in this case --

20 THE COURT: And I will deny your motion.

21 MR. SNOW: -- to all charges.

22 THE COURT: I'll deny your motion for a directed
23 verdict for the same reasons I gave earlier in the directed
24 verdict stage, looking at the evidence in the light most
25 favorable to the State.

1 All right. Thank you, gentlemen.

2 If you will meet with me. Take a few minutes, if
3 you need to, and come on back to chambers and we will start.
4 Thank you.

5 (Whereupon, proceedings were adjourned to February
6 27, 2009)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF YORK) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE) TRANSCRIPT OF RECORD
5 -vs-) 2007-GS-46-0670
6 TERRELL ANTONIO) 2007-GS-46-0671
7 ADDISON,) 2007-GS-46-0672
8) 2007-GS-46-0673
9) 2007-GS-46-0675
10) 2007-GS-46-0676
11 DEFENDANT.

12 FEBRUARY 27, 2009
13 YORK, SOUTH CAROLINA

14 (VOLUME V)

15 B E F O R E:

16 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.

17 A P P E A R A N C E S:

18 KEVIN BRACKETT, SOLICITOR
19 WILLY THOMPSON, DEPUTY SOLICITOR
20 ATTORNEYS FOR THE STATE

21 JACK SWERLING, ESQUIRE
22 ATTORNEY FOR THE DEFENDANT

23 MICHAEL R. WATTS
24 CIRCUIT COURT REPORTER
25

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF GENERAL SESSIONS
3 COUNTY OF YORK)

4 THE STATE) TRANSCRIPT OF RECORD
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6 -vs-) 2007-GS-46-2526
7) 2007-GS-46-2527
8 BEN ROBERT STEWART,) 2007-GS-46-2528
9) 2007-GS-46-2529
10 DEFENDANT. 2007-GS-46-2530
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12 2007-GS-46-2532
13 2007-GS-46-2533
14 2007-GS-46-2535

15 FEBRUARY 27, 2009
16 YORK, SOUTH CAROLINA

17
18
19 B E F O R E:

20 THE HONORABLE LEE S. ALFORD, JUDGE. ; And a Jury.
21

22 A P P E A R A N C E S:

23 KEVIN BRACKETT, SOLICITOR
24 WILLY THOMPSON, DEPUTY SOLICITOR
25 ATTORNEYS FOR THE STATE

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MICHAEL R. WATTS
CIRCUIT COURT REPORTER

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1 (PROCEEDINGS, FEBRUARY 27, 2009)

2 (Davorius Mack Statement marked as Court's Exhibit
3 No. 6 for identification)

4 THE COURT: All right, counsel, are we ready to
5 proceed now?

6 MR. SWERLING: Yes.

7 THE COURT: All right. Let me ask whether -- I
8 don't think -- I don't think Defendant Stewart needs to rest
9 before the jury. I think I told the jury yesterday that
10 that would probably take care of that. I don't think we
11 need to do that. We done that on the record, correct?

12 MR. SNOW: I don't think we have rested yet,
13 judge.

14 THE COURT: You haven't?

15 MR. SNOW: No.

16 THE COURT: Are you going to offer any evidence?

17 MR. SNOW: Nothing else from Stewart, judge.

18 THE COURT: Okay.

19 MR. SNOW: The defense rest.

20 THE COURT: Well, then I guess we will do that
21 before the jury then. I will ask if you there is anything
22 further and you can say the defense rests.

23 MR. SWERLING: If I remember, we did the motions
24 yesterday, so we don't have to renew those?

25 THE COURT: No, sir.

1 Anything else?

2 MR. BRACKETT: Not from the State, Your Honor.

3 MR. SWERLING: No, Your Honor.

4 THE COURT: Okay. All right. Does the defense
5 require the State to open on the law?

6 MR. SWERLING: No, Your Honor.

7 MR. SNOW: No, Your Honor.

8 THE COURT: All right. Have y'all decided what
9 order you are going to argue?

10 MR. SWERLING: Well, can I just confer with him
11 one second.

12 THE COURT: Sure.

13 (Off the record)

14 (Back on the record)

15 MR. SWERLING: Your Honor, I'll go first.

16 THE COURT: Okay.

17 All right. Please, ma'am, bring the jury in.

18 (The following takes place in the presence of the
19 jury panel)

20 THE COURT: Good morning, Mr. Foreman, ladies and
21 gentlemen of the jury. I hope you had a pleasant night last
22 night.

23 We are ready to resume with the trial at this time
24 and we are to that part of the trial where counsel will make
25 their final arguments to you. I ask that you listen .

1 attentively now as counsel address you in final arguments.

2 Counsel, we are ready to proceed.

3 MR. SWERLING: Thank you.

4 May it please the court?

5 THE COURT: Yes, sir, counsel.

6 MR. SWERLING: Good morning, ladies and gentlemen.

7 THE JURY: Good morning.

8 MR. SWERLING: Okay. I get to talk to y'all first
9 and you are going to hear a little bit of lawyer talk this
10 morning. We will try, of course, to keep it as short as we
11 can, but we all want to make our points to you.

12 What we are saying to you is not evidence. What
13 it is is things that we are suggesting that you ought to
14 consider, whether it's on behalf of the State or on behalf
15 of each one of the defendants, by Mr. Snow or myself. It's
16 matters of evidence or lack of evidence that we are asking
17 you to consider to support the verdict. Of course, the
18 State is going to ask you to support it one way, and we are
19 going to ask you to look at it another way, but what it
20 comes down to is this. It's going to be your view of what
21 the facts are, and it's going to be your view as to what the
22 facts are as applied to the law, because the facts are one
23 thing, but when you get the instructions from the judge in a
24 few minutes, or an hour, or so, then you are going to see
25 how those legal principles have to apply to the facts for

1 you to come up with a verdict in the case.

2 As we talked about in the beginning, you have
3 probably the most important function here in the courtroom,
4 because you are actually going to decide the facts. You are
5 going to decide the verdict. The judge will give you the
6 law. You have heard the testimony. You have seen
7 documentary evidence, and now it's going to be time to reach
8 a verdict.

9 One of the important things the judge will tell
10 you is that the verdict -- there is a number of different
11 charges; that each charge is going to have to be resolved by
12 you separately. You can have one verdict on one charge and
13 another verdict on another charge. You can have all
14 verdicts the same in all the charges and none of the
15 verdicts the same.

16 And as far as each defendant is concerned, whether
17 it's Mr. Stewart or Mr. Addison, you are going to have to
18 decide their responsibility separately as to whether they
19 are guilty or not guilty of the offense.

20 So there is going to be a number of different
21 verdict forms, a number of different verdict possibilities.
22 His Honor will instruct you about that at the conclusion of
23 the case. But what he will tell you also is that it has to
24 be a unanimous verdict. I mean, as to each count and as to
25 each defendant you will have to come up with a unanimous

1 verdict.

2 And what we are asking you to do as twelve people,
3 who are going to eventually deliberate on the case, are
4 going to go into a jury room and you are going to put all
5 your collective thoughts together, your every-day
6 experiences together, and you are going to resolve this
7 case, one way or the other.

8 Now, you are going to be given some guiding
9 principles on how to do that, but basically it's using your
10 common sense. Bring whatever good common sense that you
11 have outside the courtroom into the courtroom and applying
12 the law to the facts and resolving the case.

13 If you remember, at the beginning of the case we
14 talked about if you hesitate about something on the outside
15 of your every-day life, your business and personal affairs,
16 you know, you may or you may not do it. But in a courtroom,
17 if you hesitate, if there is a reasonable hesitation, if
18 there is a reasonable doubt as to whether or not the State
19 has offered evidence, or there is a lack of evidence as to
20 any of the elements His Honor will talk to you about, in the
21 courtroom you just can't say well, I may or may not do it.
22 In a courtroom you have to resolve doubt in favor of the
23 person accused of a crime. That's the fundamental building
24 block of our entire system of justice.

25 We submit to you, and I submit to you, that at the

1 conclusion of the case, when you hear all the arguments,
2 when you hear the law, when you got into the jury room to
3 deliberate, there is reasonable doubt in this case. There
4 is reasonable doubt that arises from the evidence, and there
5 is reasonable doubt that arises from the lack of evidence in
6 this case as to the guilt of my client, Terrell Addison.

7 Now, I want you to also understand from the
8 beginning in my opening statements I made no bones about the
9 fact that this is a tragic case. There is no question about
10 it. No one ever got up here and told you this was not a
11 terrible, terrible tragic case for the people sitting in
12 this courtroom - the friends and family of Mr. Marshall.

13 And I have never, from the beginning of this case,
14 ever disputed whether or not Terrell Addison was there. You
15 heard some evidence during the course of this trial about
16 the State attempting to prove he was there, but that
17 evidence was never challenged. And I think we told you
18 right up front that Terrell Addison was in the store. He
19 was in the store with Dontavious Mack, and Dontavious Mack
20 shot Mr. Marshall.

21 What we offered evidence about is not to try and
22 throw a smoke screen in front of you as to whether or not
23 Terrell Addison was there or not there. What we tried to do
24 is develop through the examination of the State's witnesses,
25 as well as the testimony of Terrell Addison, that he was not

1 there willingly, that he was not a willing participant in
2 this armed robbery. And obviously not being a willing
3 participant in the armed robbery and not having the intent
4 to commit the armed robbery, being under duress to go in
5 there to commit the armed robbery with Dontavious Mack, then
6 he should be found not guilty; and that the law does allow
7 under certain circumstances when you have those events come
8 together, the person should be found not guilty. I will
9 talk to you about the law about that a little bit later, but
10 His Honor is also going to talk to you about the law, but
11 it's going to be your view of the facts, how you view the
12 facts.

13 But, again, it's very important for you to
14 understand from the beginning this has not been any kind of
15 show to try and say that Terrell Addison was not there. He
16 was there. We admitted it up front. We didn't challenge
17 the print. We didn't challenge the shoes. We didn't
18 challenge the testimony about whether he was present in the
19 store or not. That has never been the issue in this case.

20 The issue is whether or not he had the intent to
21 commit an armed robbery. The issue is whether or not he was
22 forced to be there. Did he have any other reasonable
23 alternative. Were the Mack brothers dangerous people who
24 had the capability of inducing fear in someone and causing
25 them to believe that if they did not commit an act that they

1 wanted to do, that they, themselves, would be hurt and that,
2 and, therefore, there was no other reasonable alternative
3 than to go ahead and follow through with the act that they
4 wanted.

5 The one thing that I think that nobody
6 anticipated, whatever happened that night, the one thing
7 that nobody anticipated is that anybody was going to get
8 shot. That was the act solely on the part of Dontavious
9 Mack. Dontavious Mack is the only person who shot Mr.
10 Marshall.

11 If you remember the testimony is that there were
12 three .380 caliber shell casings in the store. There is no
13 evidence, by stipulation, that a .38 -- if Terrell Addison
14 even had a .38, there is no evidence that he ever fired a
15 gun. In fact, ladies and gentlemen, there is no evidence
16 that he ever pointed a gun. The only evidence that he even
17 presented a gun was the statement of Dontavious Mack, who
18 has been impeached beyond impeachment as far as his
19 credibility is concerned, because you can look at the video
20 yourselves and see that Terrell Addison was never holding a
21 gun, never had a gun in his hand, and Mr. Thompson in his
22 opening statement told you that. He told you that there was
23 no evidence that Terrell Addison ever took the gun out of
24 his pocket.

25 So you are going to have to rely on a lot of

1 testimony of Dontavious Mack and Davorius Mack. You are
2 going to have to rely on really what they said in this case
3 to decide whether or not Terrell Addison was in that store
4 voluntarily, whether he was a willing participant in that
5 crime, whether or not he was being forced to participate in
6 that crime, whether he had a choice to commit -- be in that
7 particular place at that particular time when that crime was
8 committed, and should he be held accountable; or should the
9 law, as the law says, should you come back and say under the
10 circumstances as we find them, as the circumstances we hear
11 and the evidence and applying that to the law, that Terrell
12 Addison was not a willing participant, that Terrell Addison
13 did not intend to rob, did not intend certainly to have
14 anyone killed. And we are going to explain to you, as I
15 said, the law of duress. And if you find that that existed,
16 then the law says that Terrell Addison should be found not
17 guilty.

18 We talked about a couple of other legal principles
19 at the beginning and that was the presumption of innocence.
20 The fact that even right now, even after hearing all that
21 evidence, you are going into the jury room in a few minute,
22 or an hour, or so. Until you resolve that the State has
23 proven Terrell Addison's guilt beyond a reasonable doubt and
24 stripped that cloak of innocence away, the law says he is
25 still presumed to be innocent. That presumption of

1 innocence does not disappear, until you say beyond a
2 reasonable doubt, of all twelve of you who are going to
3 deliberate, that he is guilty, that I have no hesitation, I
4 have no reasonable doubt about his involvement in this case.
5 So that's the principle is still there. I just wanted to
6 remind you of it.

7 And then we talked about the reasonable doubt at
8 the beginning of this case. The judge will explain to you
9 reasonable doubt, but generally we understand it to be is a
10 hesitation to act. It is not being convinced that the
11 evidence proves his guilt beyond a reasonable doubt, that
12 you still have a reasonable doubt in your mind from the
13 evidence, or lack of evidence, as to whether or not he's
14 responsible for the acts the State has said.

15 Those are the two fundamental principles that you
16 ever going to decide, you are going to use in that jury
17 room.

18 Now, we don't give anybody any instructions about
19 how to go ahead and deliberate on a verdict. We expect
20 twelve people to go back there, sort through the facts and
21 sort through the law and come up with a verdict in a case
22 with no experience. But, you know, it works. You go back
23 there and you will deliberate. Each one of will you be
24 heard. Each one of you will review the evidence in the
25 case. Each one of you will have a recollection of what the

1 judge tells you about the law is. And each one of you will
2 give an opinion about whether or not the State has met its
3 burden of proof or not.

4 Remember, there is no burden on a defendant to
5 prove anything. Under our system of justice the entire
6 burden is placed on the State of South Carolina, the
7 charging body. No defendant has to prove his innocence. In
8 fact, Terrell Addison did not have to take the stand
9 yesterday and be subjected to cross-examination. And had he
10 not, the judge would have instructed you that that was his
11 absolute right and that you could not consider that. It's
12 not even something that's allowed to enter into your
13 deliberations, but Terrell Addison did want to get on the
14 stand. He did want to tell you exactly what happened that
15 night, so that you could have what he said and compare that
16 to Dontavious and Davorius Mack and Reed Allen and decide
17 whether or not the State has met its burden of proof,
18 whether he's guilty or not guilty. And he got up there and
19 he told you what happened that night. And you do that. You
20 need to compare it to what the other three said. Not only
21 do you need to compare that, but you need to compare the
22 individuals.

23 You look at the three individuals who got up on
24 the stand before you, because you will have to decide the
25 credibility of the witnesses. You are going to have to

1 decide who is telling the truth and who is not telling the
2 truth. You are going to have to decide what motives they
3 have, what interests they have, what biases they have, what
4 are they going to get. Is there something that they are
5 going to receive out of the benefit of testifying? I mean,
6 Dontavious Mack clearly said "hey, I'm up here to help my
7 brother. That's what I'm here for, to help my brother."

8 Davorius said "well, you know, I'm here to get the
9 best sentence I can."

10 Reed Allen is in the same position as well.

11 So they do have a reason and a motive to shade the
12 truth.

13 Terrell Addison got up there or -- let me back up
14 a minute.

15 One of the things that I was going to ask you to
16 consider when you are weighing the credibility of the
17 people, because you are the judges of the credibility, is
18 the demeanor of the witnesses that are on the stand.

19 Now, there is a clear distinction, I suggest to
20 you, between the demeanor and the attitude of Davorius Mack,
21 Dontavious Mack, Reed Allen, and then Terrell Addison. The
22 three of them -- the first three where combative. They were
23 argumentative. They were -- I wouldn't say exactly
24 communicating very well or wanted to be there. They were
25 inconsistent with each other. They were inconsistent with

1 their own statements. In fact, when you go back, and I'm
2 going to review it for you in a little built, none of their
3 statements were consistent with each other, and none of
4 their statements were consistent with any other person that
5 was involved in the case.

6 So you have a lot of things to look at to decide
7 whether or not they are credible or not; their motive, their
8 interests, their bias, or their prejudice, to testify the
9 way they are.

10 And number two, the various statements that they
11 gave that contradicted each other and the various statements
12 that they gave that contradict the other co-defendants
13 statements as well.

14 Through all these years the one thing that I
15 always tell a jury is this: There is only one way to tell
16 the truth. The truth only comes out one way. You can't
17 give different variations and versions of the truth. The
18 truth is truth. It's a pure word. In fact, what you are
19 going to be doing at the end of this case is rendering a
20 verdict in the case. A lot of people don't realize that the
21 word veradicto is a Latin word. The word verdict comes from
22 the word veradicto, which means to speak the truth. In a
23 courtroom, what we are looking for is pure truth.

24 And so I say to you that there is only one way to
25 do it. And over the last few days, ladies and gentlemen,

1 you have been subjected to so many difference versions of
2 what happened that day, that there is only one conclusion
3 that you can come from from all those different versions,
4 and that is that someone is not telling the truth. Two
5 people are not telling the truth. Three people are not
6 telling the truth. But yet the State is asking you to rest,
7 rest on that, in deciding the fate of Terrell Addison.

8 I'm asking you, when you weigh the credibility of
9 these witnesses, when you looked at the witnesses on the
10 stand, when you hear their testimony, when you compare their
11 testimony, and you realize that it is inconsistent with each
12 other, and question yourself as to why it's inconsistent,
13 you will come to one conclusion - that they are not telling
14 the truth. That they are not telling the truth.

15 And one of the reasons that they are not telling
16 the truth, and I think one of them said it so eloquently,
17 and I can't remember whether it was Dontavious or Davorius,
18 "I'll say anything I need to say. I will testify to
19 anything that I need to do to help myself, or to help my
20 brother." I think it was Dontavious who said that.

21 Do you thing for a moment that the truth means
22 anything to Dontavious, Davorius, and Reed Allen? I suggest
23 to you it does not. I suggest to you that it does not. You
24 just look at this case from the very beginning, from the
25 very beginning, from the very first statements that were

1 made, Dontavious and Davorius do everything that they can
2 during the -- not only the first statement, but all the
3 statements, to say all of this was Terrell Addison's idea
4 and all of this was Ben Stewart's idea. The two guys that
5 you have heard the most about, about their backgrounds,
6 their reputations, their instances when they have done
7 things in the past, the two guys who are most likely to be
8 the ones organizing a robbery and committing a robbery, they
9 put it off on someone else. Does that surprise you? It
10 shouldn't. But it should suggest to you this. That if they
11 are doing everything that they can from the very beginning
12 to blame other people and put the blame on them, they are
13 not so stupid. They are street smart, because from the very
14 beginning what they were trying to do, as Davorius said, is
15 "to deflect away from me." And do you remember I asked him
16 "well, why did you say that in that statement about Terrell
17 driving the car?

18 "To deflect everybody away from me.

19 "So you were willing to lie about Terrell Addison
20 driving the car?

21 "Yes. I wanted to deflect the police away from
22 me."

23 Ladies and gentlemen, that's what you are dealing
24 with, and that's what -- you are going to have to go back in
25 that jury room and decide this case on.

1 I submit to you that the credibility alone and the
2 versions of what those individuals testified to, as
3 inconsistent as they are, in and of itself raises a serious
4 reasonable doubt which would cause a reasonable person to
5 hesitate and cause a person to say "I have a doubt. And
6 because of that doubt I cannot say beyond a reasonable doubt
7 that Terrell Addison was a willing participant in that
8 robbery." And, again, that is what we are asking you to do.

9 Now, Terrell Addison, as I said, got on the stand
10 and what did he tell you? He told you that he lived in
11 Hartsville; he moved to Rock Hill; has an extremely large
12 family still living in Hartsville; and spends a lot of his
13 time down there. Goes down there once a week or once every
14 other week. He doesn't hang around with the Mack brothers;
15 did not hang around with the Mack brothers; knew that their
16 reputation was pretty tough guys; generally stayed with his
17 family; periodically went over to Farmington Apartments and
18 saw the young lady that he was talking about, Shonda. His
19 mother would come bring him down. His mother would bring
20 him back. But on this particular weekend he didn't have a
21 ride back. He had been there since Friday and he wanted to
22 get back.

23 He was at the Farmington Apartments. The Mack
24 brothers were there hanging out, but not with him, because
25 do you remember he said he didn't want them hanging with

1 him. And a discussion came up about that they were going to
2 Charlotte and could he give -- could they give him a ride to
3 Charlotte and he would pay for their gas.

4 Now, let's go through the statements very briefly
5 to show you how a lot of what Terrell Addison says is
6 supported in the evidence that they gave in their
7 statements, because what we have in this case, which we may
8 not have in a lot of statements, we actually have the
9 written statements that are in evidence. So you are not
10 going to have to guess as to what they said. They are
11 actually here that you can look back at.

12 The trip up was uneventful until they got to
13 Lancaster, and Terrell said they started talking about
14 hitting that Domino's. And, you know, he didn't want to
15 have anything to do with it. They got into Rock Hill. He
16 told you about Dontavious kicking that alarm. He told you
17 that he was going to his brother's. He wanted to get in
18 touch with his mother and couldn't. He was going to go to
19 his brother's to see if his brother had any money that he
20 could pay them. That he didn't have any money when he came
21 back out and he told them that, and then and there is when
22 everything started to change. The mood got ugly. They, as
23 you say -- there was some I think some testimony about the
24 fact that they had come up here nothing. They had come up
25 here for blank. "You didn't have the money, you promised us

1 the money, you were going to get the money," and they got
2 angry. And there is evidence in these -- in the testimony
3 from Dontavious and Davorius that they did get angry. It's
4 not just something that Terrell Addison came up with. They
5 were mad. They were angry. It was only after he said he
6 didn't have the money that this discussion came up about
7 robbing the place in Rock Hill.

8 Now, again, they are blaming Terrell and they are
9 blaming Ben. They are once with all the ideas, but who made
10 the decision to go ahead and rob the BP station?

11 Dontavious. And at that point Terrell told you that they
12 were upset, and which has been verified by them that they
13 were upset and angry.

14 And the discussions came about that "you have to
15 go get us the money. You are going to have to go with
16 Dontavious into that store and you are going to go ahead and
17 have to help us."

18 Well, ladies and gentlemen, at that point Terrell
19 told you he was confronted with a dilemma. Is he going to
20 go ahead and go into the store with them, or is he going to
21 be subjected to serious bodily harm, or even worse? Did he
22 have a choice? Was that threat imminent? Was that threat
23 real? Was it reasonable? And I suggests to you it was.
24 Terrell thought it was. He thought it was that evening that
25 these guys were not happy with him. He didn't see that he

1 had any other place to go. They had guns. The guns --
2 obviously by that time I think there is no question he said
3 that the guns were demonstrated and shown at that time, so
4 he knew that they were armed, because now they were talking
5 about robbing a place.

6 The BP station was picked by Dontavious. And you
7 can tell from the testimony and the way Terrell described
8 it, that he wasn't even the first one that they wanted to
9 go. Dontavious wanted Ben Stewart to go, but then they
10 turned around and said "no, you are going to go. You know,
11 you are the one that didn't come up with any money. Now we
12 have got to get back to Hartsville. We don't have any money
13 to get back to Hartsville." So there was a discussion about
14 him going into there.

15 Now, we are going to go just briefly through all
16 this discussion there at that time about who got the masks
17 out of the car, where did the masks come from, where did the
18 guns come from.

19 Ladies and gentlemen, there is not one consistent
20 version of where the masks and the guns came from and who
21 had the masks and what kind of guns there were. There is
22 not a consistent version about it among any of the
23 individuals. But Terrell told you that Ben Stewart gave
24 Dontavious the .380 and Dontavious -- Davorius had the .38;
25 that they started walking towards the store. He did not

1 have a gun on him, and there is no evidence that he did,
2 other than the word of that individual that he had a gun on
3 him. But they both had guns. And, ladies and gentlemen,
4 guns in those hands, that puts you in a dangerous position.
5 You ought to be afraid. You ought to be afraid that you
6 could get shot, because as we found out just a few minutes
7 later, Dontavious Mack had no problem killing an innocent
8 man.

9 So was he capable of hurting and maybe taking the
10 life of Terrell Addison? Well, you know he was, because he
11 took the life of Ned Marshall. Had no hesitation. As a
12 matter of fact, I'll go into it briefly, he bragged about it
13 afterwards when he got back down to Hartsville. He was
14 bragging about it.

15 Now, Terrell told you he went into that store
16 reluctantly, didn't want to be there, and you look at the
17 video. I'm sure the State is going to play the video again,
18 and certainly it will be in the evidence room for you -- in
19 the jury room for you, for you to review. You look at the
20 tape. On that tape it is clear that Terrell Addison is just
21 standing there. He's not touching anything. He's not doing
22 anything. He has no weapon in his hand. He's not saying
23 anything. Again, I'll go through those statements in a
24 little bit to show you why, but that video merely
25 demonstrates that Terrell Addison is standing in that -- in

1 front of the counter when the person who is doing all of the
2 robbery, all of the control, telling Mr. Marshall where to
3 go and what to do, is Dontavious Mack.

4 I submit to you that that video supports what
5 Terrell Addison says. I submit to you that it does, because
6 if he was a willing participant in the robbery, he would
7 have been doing a lot more. He would have been assisting
8 Dontavious. He would not have been the one that they would
9 have yelled at later to say "you didn't grab the man," and
10 everybody get angry at him. The solicitor suggested
11 yesterday, well, it was a robbery and he punked out. There
12 was no evidence of that. Look at the video and see if that
13 man is a willing participant in that armed robbery.

14 When the shots rang out, when everything started
15 going down, he was out the door. And as he told you,
16 Davorius Mack was running towards the store and Dontavious
17 Mack was behind him, what was he going to do? They would
18 him to get in the car, somebody had just been shot, we are
19 going back to Hartsville. Of course, you remember the rest
20 of the story there.

21 Ladies and gentlemen, I want to go through some of
22 the statements with you briefly to show you how it supports
23 what Terrell Addison's version of what happened that night,
24 how he was unwilling, had no intent, and was forced and
25 coerced to go into that store when Dontavious Mack was

1 committing that armed robbery.

2 First of all, let me go -- let's talk about the
3 first version of what Dontavious and Davorius said to
4 anybody. Do you remember when he was at the hospital? Now
5 the State has argued, well, they were separated and really
6 couldn't get to, you know, talk. They really couldn't come
7 up with a story. Well, think about this. Davorius --
8 Dontavious is in the hospital in the emergency room. He
9 tells the police -- he comes up with a story, and it's not
10 just a simple story. It's a pretty complicated story that
11 he was over at the Farmington Apartments, I believe it was;
12 that he was near building D; that a white car, a Buick Le
13 Sabre drove by. They even had some University of South
14 Carolina tag on it, or something to that effect. He wasn't
15 quite sure. The window opened and seven to nine shots were
16 fired. That's elaborate. Not just "I was riding around and
17 somebody started shooting at me." A white car, a Buick, at
18 the D apartment -- behind the D apartments in the Farmington
19 Apartments.

20 Now, that's the version he gives the police. Of
21 course, there is no evidence of that. They go out there and
22 look. Then they talked to Davorius and they said "well, you
23 come out here. We want to talk to you about what happened.
24 Do you know what happened?"

25 He said "oh, yeah, yeah. I was with my brother.

1 We were at the Farmington Apartments. We were coming out of
2 building D, near building D, and a white Buick drove by,
3 dropped the window and started firing seven to nine shots,
4 somewhere in that range."

5 Now, isn't it -- first of all, that didn't happen.
6 Okay, we all know that. But isn't it amazing how the two of
7 them got their stories exactly together as to what did
8 happen, and what they were going to tell the police? So if
9 you don't think that these two are capable of collusion and
10 bringing their stories together, then it doesn't make any
11 sense. They did collude. They colluded at the first
12 opportunity they could and told a story that's not
13 believable.

14 Let's talk about Davorius first.

15 These statements are in evidence, so you can read
16 them. One of the statements he gave was to Hartsville
17 Police Department on October 10th about the shooting, and he
18 talks about he was at the Farmington Apartments, just like I
19 said. He gives a statement to that effect. Davorius --
20 Dontavious had already given the statement over at the
21 hospital.

22 Then on the 18th Davorius is questioned again.
23 Let's go over just a couple little things about what he
24 said. Now, this is supposed to be -- by the way, ladies and
25 gentlemen, when you talk to the police officers, it's

1 supposed to be a truthful statement. Okay. You look at the
2 statement. It's going to be in evidence.

3 On the 18th he said "a few days ago I was at my
4 girlfriend's house and Terrell came over and told me that my
5 brother Dontavious Mack had gotten shot." Now, a completely
6 different statement that was given on the 10th, but putting
7 it on Terrell again that Terrell came over to his house in
8 the morning and told him that his brother Dontavious had
9 been shot.

10 He went over to see Dontavious in the emergency
11 room and he said that he and Terrell were at the Farmington
12 Apartments when he got shot in the back and that someone in
13 a Buick had shot him. "I had heard in the past other people
14 had been shot by somebody in a white Buick, so I felt like
15 my brother was telling the truth." I mean, it doesn't get
16 any better than this. It's right here in writing what he
17 was telling everybody how he was lying to the police. Not
18 only lying about the shooting at the Farmington Apartments,
19 but Terrell Addison had nothing to do with that.

20 "I asked my brother how did he slip up and get
21 shot, and I went out and started looking for the white
22 Buick." I mean, these people are not dumb. They are pretty
23 street smart.

24 "I had never talked with him again about being
25 shot."

1 Now, do you remember when Davorius Mack got on the
2 stand and said "I have known Terrell Addison since we were
3 children," that he knew them well? Dontavious said "I
4 didn't really know him well at all. We didn't hang out."
5 So there is a little bit of a discrepancy there.

6 But Davorius says in this statement on the 18th,
7 this lifelong friend that he's had down in Hartsville, "I
8 have known Terrell about three or four months." Now, how do
9 you square that, ladies and gentlemen? Doesn't that create
10 a reasonable doubt about the credibility of this individual?

11 Well, it doesn't stop there. Let's go onto the
12 19th. Another statement the next day to police, supposedly
13 telling the truth. As a matter of fact, this is the one
14 that in his plea agreement he is saying "I'm telling the
15 truth." I mean, not only is he telling the police that, but
16 he signed a plea agreement with the State saying "this is
17 the truth."

18 "I went to start the car that was stolen that I'm
19 charged with. The color of the car is what I call a
20 champagne. The first time I saw the car was Monday, about
21 3:45 after school at the Hartsville High. I was walking
22 with a girl and Ben and Terrell pulled up and asked me where
23 my brother was." Ladies and gentlemen, this is supposed to
24 be the truth in the plea agreement.

25 Then he goes to on to say, "okay, I want to stop.

1 I want to get this right." So in the middle of the
2 statement, the police are probably calling him on this, he
3 says "I'm want to stop. I want to get this right."

4 So then he says, and he writes in this, and again
5 this is in evidence for you to look at, "Terrell was with my
6 brother in the store. Not me. I was in the car. Terrell
7 was driving the car."

8 Now, ladies and gentlemen, Terrell Addison never
9 drove the car. Never drove the car. Dontavious told you
10 that. You see, sometimes when you are trying to -- when you
11 tell a lie and you are trying to pass it off as the truth,
12 you are not going to get it all right. When you are telling
13 a lie, every time that you tell it, it's going to get a
14 little bit different, because there is nothing to go back
15 to. The back to is the truth. So what happens here is this
16 is like a stream of consciousness lying to whatever they
17 have to lie about.

18 "Terrell was driving the car." Well, you know
19 that's not true. First of all, Terrell Addison doesn't even
20 have a driver's license. Second of all, Terrell Addison was
21 never driving the car, by Dontavious', his version himself.
22 Terrell -- he drove the car the whole time. He was not
23 driving the car.

24 And then Davorius starts backing off on that
25 during his testimony about how often he was driving the car.

1 "Well, then -- "well, he only drove the car for a few
2 minutes up in Rock Hill." It still contradicts what
3 Dontavious said. You know why? Because it's a lie.

4 Then he said in this statement, continuing on,
5 "Terrell said he needed to get back home to Rock Hill."
6 Does that sound familiar? That's what Terrell Addison told
7 you.

8 Then he goes back to this. "The first time I saw
9 the car, Ben and Terrell rode up in it and Terrell was
10 driving, so I think Terrell stole the car." Now, we know
11 that's not true from his own admission when he got
12 cross-examined. He stole the car. Or, let's put it this
13 way. I can't say he stole the car, but he got the car by
14 giving crack cocaine to the owner of the car. That's what
15 he told us, or the person has had the car. He gave him
16 crack so he could use the car. He did that on Saturday,
17 which would have been the 7th. Of course, we know the car
18 wasn't stolen until the 9th, because that information has
19 been put in the record. We also know that so he couldn't
20 have had it on the 7th.

21 The story about him giving crack for it is
22 probably not true either, because on the 9th he has it, but
23 he is saying that the first time he saw the car is when
24 Terrell rode up with Ben and Terrell was driving, "so I
25 think Terrell stole the car." Completely contradicts his

1 testimony in here in court about how he got the car.

2 And, ladies and gentlemen, what's significant
3 about this is he is so willing to put this whole thing on
4 Terrell Addison, even in a statement, that he represents in
5 his plea agreement that's filed in the court is true. But
6 he says it's not true. This is not true. He's now admitted
7 it was not true.

8 "We were riding around Rock Hill. Terrell was
9 driving." Ladies and gentlemen, that's not true. It's not
10 true. Again, everything goes to Terrell. Everything goes
11 on Ben. Nothing on the Mack brothers. Nothing on Davorius
12 and Dontavious. They haven't done a thing.

13 "Terrell says let's do something." Sure. Terrell
14 says let's do something.

15 "Terrell wanted to rob Domino's." Well, you have
16 heard testimony from one of them that it was Ben Stewart
17 that wanted to rob Domino's.

18 "Terrell wanted to jack someone. Donte said we
19 are going home. You sent me here on a blank mission."
20 Again, let's put it on Terrell. Let's put it on Ben
21 about who is talking about these robberies and going to
22 commit a robbery.

23 "Terrell told him to pull in the apartments." I
24 mean, how much of this can you possibly believe, when you
25 know that most of it is not true from contradictions and

1 other testimony and contradictions in other statements.

2 Here is what he says. "Donte said to Ben you come
3 with me." That's Ben Stewart.

4 "Ben gives Donte the gun and then Terrell popped
5 the trunk." Ladies and gentlemen, you know, these are
6 little things, but little things mount up to big things. We
7 now know from the testimony that Terrell never popped the
8 trunk. Terrell never went into the trunk. Dontavious said
9 he got the stuff out of the trunk, but he is still willing
10 to put it on Terrell in this statement.

11 Now, this supports what Terrell Addison says as
12 well. "When they came out, him and Terrell were arguing.
13 Donte said you didn't grab the dude like I told you. Donte
14 said we got to get back" -- "he told us to tell everybody
15 that we got shot at Farmington and so we went to the
16 hospital in Hartsville." So the story starts merging right
17 there when they get back in the car. But it's no question
18 here, and this is supported by what Terrell Addison told
19 you, that they were mad at him, because Donte told him to
20 grab the dude and he didn't do it, and he didn't grab the
21 dude. And the reason he didn't grab the dude is because he
22 didn't want to be there in the first place.

23 He also supports what Terrell said where he says
24 "Donte says to Terrell in the car why did you not grab the
25 dude? You're the reason I got shot."

1 Well, there is another statement goes on again.
2 Fourth statement by Davorius Mack. This is what he's
3 talking about what happens after the hospital and this is
4 what I want you -- like you to listen to this, too. "After
5 the hospital Ben and Terrell got in the car." I'm sorry,
6 this is after they went to Monday Bishop's. "Ben and
7 Terrell got in the car that they drove to Rock Hill and I
8 drove Ryan's car. They followed me to Tasha's house. I
9 went in the house and I don't know where Ben and Terrell
10 went. I think they wanted to get rid of the car, but I
11 stayed at Tasha's."

12 Ladies and gentlemen, that is a lie, because as
13 you know from his developed testimony on the witness stand,
14 he had the car. He took it back to the hospital -- to the
15 hospital emergency room and he left it in the parking lot of
16 the hospital emergency room. And when he came out and saw
17 the police were there, he hopped a ride home with someone
18 else. Truthful statements? No way.

19 Then you have Dontavious. Well, none of this
20 would have happened without Dontavious Mack. Let's face
21 that. Ned Marshall would be alive and none of these boys
22 would be here in this courtroom.

23 Dontavious says after, he's, of course, originally
24 giving them this whole story about the Farmington
25 Apartments, "it wasn't a stolen car because we had the

1 keys." I mean, just a little bit -- you know, got caught
2 there a little bit, but this is what's important. "Terrell
3 asked Davorius to take him home so he could get some money.
4 He said his house is in Rock Hill and that he would get some
5 money there to pay for the ride. I told Davorius I would
6 drive because he didn't have a license." Well, he's telling
7 you who is driving the car. Davorius was the one that
8 picked him up. You look at the statement here. What's
9 important there again is that supports Terrell Addison's
10 story about going to Rock Hill. He wanted to go home. He
11 was going to pay for the gas. That was the deal, that he
12 was going to pay for the gas. They had said they were going
13 on their way to Charlotte and they would drop him off.

14 "Terrell" -- now, here is Dontavious now starting
15 to put on it Terrell. "Terrell was talking about shooting
16 out the windows of this car. Ben wanted to rob Domino's. I
17 told him no, you better not do that." They are good
18 samaritans. Dontavious Mack. "I told him no, you don't
19 want to do that." Do you believe that?

20 If you had to pick the one person in all this
21 crowd who was going to commit an armed robbery and kill
22 somebody, it would have been Dontavious Mack.

23 "Ben and Terrell were talking about jacking them
24 dudes in the Capris." Not the Mack brothers. They don't do
25 anything.

1 Now, here is real important. It's in his
2 statement. "When we were in Rock Hill, Terrell got out and
3 said he would be right back." Do you remember that? They
4 denied that they ever stopped anywhere for Terrell to go try
5 and get some money. Here he says "Terrell got out and said
6 he would be right back. He was gone a few minutes. He came
7 back and he was wearing a black jacket, black pants, and
8 black shoes."

9 Well, ladies and gentlemen, you know, there is
10 always some lies in all of Dontavious'. Maybe some of it is
11 truths. He wasn't wearing black shoes. He was wearing blue
12 and white sneakers, as you saw on the video.

13 "He came back and got -- and then so he came in.
14 He and Ben talked -- "he and Ben talked about robbing the
15 store." This is Dontavious talking now, that Terrell and
16 Ben were talking about robbing the store, not the Macks.

17 "Ben and Terrell were saying to each other come
18 on, let's do it. Then they wanted me and my brother to rob
19 a store on the way home." So, again, what he's asking you
20 to do is to believe that Ben and Terrell are the organizers
21 and leaders of the entire venture that evening and that Ben
22 and Terrell are telling them what to do. They are telling
23 the Mack brothers what to do. That's what you have to
24 believe in this case to believe that Terrell Addison is
25 guilty, that they were directing -- Ben and Terrell were

1 directing Dontavious and Davorius.

2 All right. So now he gets to where they were
3 going into the BP station. "So now it's me and Terrell.
4 Terrell said come to me. Come on with me. I was mad."
5 This is Dontavious talking. "I was mad because Terrell had
6 gotten us all the way down here and lied to us about getting
7 the money for the ride." You heard Terrell say that. This
8 is Dontavious saying that.

9 "Ben had his .380. He got it out of the trunk."
10 Well, that completely contradicts what Davorius has said and
11 Dontavious has said on the stand, "and handed it to him.
12 Terrell had a .38. He took the .38 to the store." Well,
13 first of all, let me just point out again there is no
14 evidence that there was a .38 in the store whatsoever.

15 Dontavious described that .38 as a black revolver.
16 Davorius described it on the witness stand as a gray
17 revolver with a wooden handle. Reed Allen described that
18 .38 -- or it was either a .38 or a .357, that was silver.
19 So I'm going to ask you this. How could they all be
20 describing the same gun and all three of them have a
21 different description of the gun? Dontavious says it's a
22 black .38. Davorius says it's gray with a wooden handle,
23 and Reed Allen says it's silver.

24 And what's significant about Reed Allen's
25 statement, which is what people always do with cooperating

1 witnesses and agree to testify. They always try to make
2 their story better when they get on the witness stand. The
3 good -- the interesting thing about Reed Allen is that in
4 his statement to the police that he gave back in October of
5 2006, he doesn't mention that Terrell Addison had a weapon
6 at all. It's not in the statement. You heard the
7 cross-examination yesterday. He never mentioned anything
8 about Terrell Addison having a weapon. But yet when he gets
9 on the witness stand, he's seen is discovery, and he wants
10 to make case a little bit better so he can get a better
11 deal, he goes up and he tells you that he had a .38. The
12 problem is he describes a completely different gun than
13 everybody else does, which makes him a liar as well.

14 "Went into the store. We were supposed to get the
15 money. I wasn't in my right mind." He admitted he was on
16 Ecstasy.

17 Now, here is where I think it gets interesting.
18 The person who says that Terrell and Ben were directing
19 everything and coming up with everything says "I told him to
20 go get the money." This is Dontavious speaking, and he's
21 speaking about Mr. Marshall. "I told him to go get the
22 money. I took him to the counter. I told Terrell to grab
23 the man. The man wanted to go ahead and get the money and I
24 told him no, I will get the money. I don't know why I
25 started shooting, but he shoot at me and I started shooting

1 him back. I was shooting kind of behind me. I told Terrell
2 to grab the man." He's the one giving all the orders. He's
3 the one giving all the instructions, but yet Terrell and Ben
4 are the ones that -- are the ones insisting on committing
5 the acts.

6 But this is also one of those beautiful statements
7 where you are trying to search for the truth, whether or not
8 the truth is really coming out. "I think maybe Terrell and
9 I may have swapped guns, but when we got to the store I had
10 the .380 and he had the .38." Now, let me ask you this. He
11 got all tripped up on this on the witness stand. If Terrell
12 Addison had the .38 and Ben Stewart gave Davorius -- I mean
13 Dontavious the .380, how would it have been that they would
14 have had to switch the guns? How would Dontavious have ever
15 gotten the .38? What this shows you is, ladies and
16 gentlemen, he can't remember from one minute to the next
17 what was happening out there. But it would make no sense if
18 Terrell Addison had a .38, that Dontavious would have had it
19 and would have had to switch with Terrell Addison to get the
20 .380 and give him back the .38. Think about that for a
21 minute.

22 "After they left, my brother was coming towards
23 the store." Exactly what Terrell Addison said. "I drove
24 myself to the hospital in Hartsville. The police came and I
25 told them that I got shot in Farmington. I told them I took

1 some E pills."

2 One other thing. "Terrell had two other masks. I
3 was wearing one of the masks. Terrell was wearing a
4 bandana."

5 Do you remember that whole stuff about the masks?
6 First of all, it started off with Dontavious saying "I
7 didn't see the masks." Then it started when we got on
8 cross-examination "where did the masks come from?"

9 "Well, they were in the car when I got in the car
10 in Hartsville."

11 Then we got to the situation where he in Rock Hill
12 decided to go in and steal the gloves and the masks and put
13 them in the trunk. How many different versions of the truth
14 can you possibly have? But here in the statement he is
15 saying Terrell had the masks. Again, they do everything
16 they can to put it on someone else.

17 And then you have -- we cross-examined him about
18 that letter he wrote where he said -- wrote it to Mr.
19 Thompson, that everything he had told the police in all of
20 those four -- in all of his statements, whatever statements
21 he made, was a lie; that Ben Stewart did the shooting; that
22 Ben Stewart and Terrell went in the store and did the
23 shooting; that the way he got shot was he was running up to
24 the store when Mr. Marshall started firing the gun and he
25 got shot in the back. But Ben and Terrell were the ones in

1 the store.

2 And the only reason he ever gave a statement at
3 all admitting that he was the killer in the matter was
4 because the captain had told him he wouldn't get charged
5 with murder, it was self-defense. Does that make any sense?
6 Does that appeal to your common sense?

7 Two other mentions about -- two other things I
8 would like to mention about Dontavious, to show you the
9 character of the individual that you are dealing with, him
10 and his brother, and you have heard some other things about
11 them. You heard about their prior record, about the two of
12 them assaulting someone when they were twelve years old;
13 what they have done in the jail; the escape. I'm not going
14 into that all. That you heard it all. But remember we
15 brought in here Tiyone Evans and Johnetta Evans. Well,
16 first of all, Johnetta Evans told you that that incident
17 that Dontavious denied about coming to her house and pulling
18 a gun on her and threatening her was true, that he did, and
19 she signed the warrant against him.

20 The other thing she said is that when he came in
21 the house, he showed her the .38 -- I mean, the wound that
22 he had gotten from the .380, and he also showed her and told
23 her some things about what happened and then she overheard
24 the conversation between him and Tiyone, her husband. And
25 that went sort of like this, and I'll just kind of -- the

1 way the questioning came out. This is what Donte told
2 Tiyone, overheard by Johnetta the evening he got out of
3 jail. This is the night of the 10th, the evening of the
4 10th. "Well, we went to the store in Rock Hill and robbed
5 it. We were high on Ecstasy. My brother Davorius was
6 beating the man and I got him to stop. Then we was leaving
7 the store and a man shot me in the back." And then he like
8 "I shot the finger." Do you remember it? That's the
9 evidence from the pathologist. "And the man fell to the
10 ground. Then something just told me to kill him." Does
11 that sound like the words of a mild mannered individual, or
12 a killer? It's the words of a killer. "Then something just
13 told me to kill him."

14 "Then Donte said he just turned around and started
15 shooting the man with the .380." That's your Dontavious
16 Mack. Johnetta said everybody in Hartsville is scared to
17 death of him. Everyone. He carries guns. He has a
18 reputation for violence.

19 Her husband Tiyone got on the stand and he said
20 "well, you know, I don't think -- it's kind of interesting
21 how sometimes you get some things you want to hear and other
22 things you don't want hear? Do you remember Tiyone said
23 "well, I don't think Dontavious would hurt anybody." But
24 yet Dontavious just told him he had killed a man in cold
25 blood. So that doesn't make a whole lot of sense.

1 But what he did say was this, and he told you, the
2 ladies and gentlemen of the jury, number one, their
3 reputation is that they are thugs. They carry guns, they
4 being Dontavious and Davorius.

5 "We were on the way back from Charlotte." Now,
6 why is that important? Who said that the reason he got in
7 the car was because those guys were going to Charlotte and
8 they were going to drop him off in Rock Hill? Terrell
9 Addison. Here is where he says that he mentioned Charlotte,
10 where Dontavious mentioned Charlotte. "We were on our way
11 back from Charlotte and we stopped at the store. We robbed
12 the store and I killed the old man working there. The old
13 man shot me in the back and I turned around and shot him. I
14 know my first shot blew his f'in finger off. Then I
15 unloaded the rest of the shots in the MF and killed him.
16 Donte said that his brother Davorius and Mack, Davorius,
17 "Bubba" and a dude named Ben were with him and he used a
18 .380."

19 Well, what's interesting about both of those
20 statements is they never mentioned Terrell Addison, but we
21 know Terrell Addison was there. We know Terrell Addison was
22 in the store. But this just shows you that character of the
23 individuals you are dealing with that the State is asking
24 you to rely on to sustain the conviction for murder.

25 I submit to you, ladies and gentlemen, that these

1 people are not worthy of belief whatsoever.

2 Ladies and gentlemen, the judge is going to charge
3 you about certain principles of law. I'm not going to go
4 ahead and get into that, because we have gone over his
5 charge and I know what he's going to charge you on the law
6 and you are going to understand what the law is after the
7 judge concludes with his charge, but a couple of things I
8 would like to mention.

9 Number one, Terrell is charged under a theory of
10 accomplice liability. He is not charged as being the
11 shooter in the case. The theory of accomplice liability is
12 that if you are present aiding and abetting someone and as a
13 natural and probable consequence of what you do, or a
14 natural probable consequence of the act, someone is killed
15 in the commission, then the hand of one and the hand of all
16 theory comes into place and you are just as responsible.
17 That is a general principle of law, that even though you are
18 not the person who does the shooting, if you are -- if you
19 present aiding and abetting, if you are intentionally there,
20 willingly there, if you are participating in aiding and
21 abetting and providing comfort to the person, the law of the
22 hand of one, the hand of all says that all are equally
23 responsible.

24 But, remember, Terrell Addison, please remember at
25 all times, is not the one who did the shooting. We know

1 that. The only way that he can be found guilty at all is if
2 you find, as the way the judge describes to you, the law of
3 accomplice liability and whether or not he is responsible
4 under the law of accomplice liability. And he will explain
5 to you the different elements of accomplice liability and
6 what one has to show.

7 The judge will also tell you -- in addition to the
8 fact that the State has to prove that the homicide was a
9 natural and probable consequence of the acts that the
10 parties agreed to do, if you believe that Terrell Addison
11 willingly and intentionally was participating in those acts,
12 the judge will also tell you that there are certain
13 principles of law that you have to consider.

14 Mere presence at the scene of a crime is not
15 sufficient to convict someone, under any theory of the law.

16 Merely associating with people who commit a crime
17 does not provide liability for that person to be convicted
18 of a crime.

19 Even mere knowledge that someone is committing a
20 crime does not make one responsible and guilty of committing
21 the crime.

22 There are three basic principles: Mere knowledge,
23 mere presence, and mere association are not in and of itself
24 sufficient to convict someone of a crime.

25 In order to find someone guilty, the State must

1 prove beyond a reasonable doubt not only that the defendant
2 was present, that he knew of the conduct, but that he
3 provided assistance in it. Willingly provided assistance,
4 and that he had the intent to aid in the assistance of the
5 crime.

6 I believe the judge will tell that you intent,
7 criminal intent, is a necessary element of every crime.

8 There must have been a common design or intent to
9 commit the crime, and the crime must have been committed
10 pursuant to that plan with the person aiding and abetting
11 some overt act. The burden is on the State to prove all of
12 those elements.

13 The judge will tell you another principle of law,
14 which is what we are relying on in this case. The judge
15 will tell you that there is a defense known as duress or
16 coercion. If you find by a preponderance of the evidence --
17 the burden is on the defendant to prove it, but if you find
18 from a preponderance of the evidence, which is not, by the
19 way, the standard of beyond a reasonable doubt, because in a
20 preponderance of the evidence you just have to show the
21 greater weight of the evidence. And the standard of proof
22 beyond a reasonable doubt, you have to go past the
23 reasonable doubt standard before you can rely on it. The
24 preponderance of the evidence is more of a civil standard.

25 But if you find from the preponderance of the

1 evidence that the person acted under duress or coercion,
2 then that is an absolute defense to the crimes that are
3 charged in these indictments.

4 The judge will give you -- he will define coercion
5 and duress to you. But to establish that, the coercion must
6 be present, imminent, and of such a nature as to induce a
7 well grounded apprehension of death or serious bodily harm
8 if the person who is under coercion or under duress does not
9 complete the act. There must be no other reasonable way,
10 other than committing the crime, to escape the threat of
11 harm. The fear of serious bodily harm or death must be
12 reasonable.

13 Ladies and gentlemen, I submit to you that based
14 upon what you have heard about what happened that evening,
15 that Terrell Addison was coerced, that he was under duress,
16 that he was not a willing participant, that he was not
17 intentionally and willingly participating in those events.
18 And if you find that, then that is a defense to this crime,
19 or all those crimes.

20 The judge will also tell you that in determining
21 whether or not one had a reasonable fear or apprehension of
22 death or serious bodily harm, that you can consider evidence
23 about what the defendant knew about the persons who coerced
24 him, or threatened him, or caused him to act under duress.

25 You can consider whether or not that person knew

1 of their reputation in the community and whether they knew
2 of specific acts of violence committed by the person.

3 I believe he will tell you that the defendant knew
4 that the person who was threatening him had a violent
5 reputation, you may consider that in determining whether his
6 knowledge made his fear of serious bodily injury or death
7 reasonable under the circumstances.

8 Terrell Addison told you on the stand that he
9 didn't hang around with the Mack brothers and he knew of
10 their reputation. He knew they were people who carried
11 guns. He knew they were people with violent acts. Why he
12 got in that car that night, heaven only knows, but he got a
13 ride home. He decided to get in the car with him and take a
14 ride home, but that does not mean that Terrell Addison
15 adopts the acts of Dontavious and Davorius Mack. What it
16 means is that he unfortunately put himself in a position
17 when he couldn't get the money, that these two thugs, these
18 people who would not hesitate to hurt anyone, these people
19 who would not hesitate to kill anyone, told him "you're
20 going in that store with me." And Terrell went in the
21 store. Yes, he did, but he didn't go willingly.

22 And, ladies and gentlemen, I submit to you that
23 video bears out that Terrell Addison was not a willing
24 participant in that robbery.

25 If you find from the evidence that Terrell Addison

1 did go in that store acting under coercion or duress and
2 that there was no other reasonable alternative than him
3 doing what they required him to do, then the law says that
4 you must find him not guilty. You would be doing your job
5 as jurors and fulfilling your oath as jurors just like
6 anybody else would be doing when they sit in a jury box in
7 the State of South Carolina, or anywhere in the country.

8 It is a privilege to do what I do. I love
9 practicing law. I know the judge does and the solicitors
10 do. Mr. Snow does. We are here week in and week out. This
11 is what we do. This is what we love. This may be your
12 first experience ever in a courtroom, maybe your first
13 experience in criminal court, but you get to see what
14 happens in your government and your system, what goes on
15 over here. Next week we will be involved in other cases.
16 Next month we will be involved in other cases. You will go
17 on in your every-day lives doing whatever it is that you do
18 at home, or work, with your name, but today is the most
19 important day in the life of Terrell Addison. We all move
20 on, but your decision today affects him forever.

21 What I would ask you to do, ladies and gentlemen,
22 is go back in with your careful consideration to the
23 evidence in this case, or the lack of evidence. I ask you
24 to go back there and not put aside what happened that night
25 at the BP station, because it was awful, it was tragic, it

1 was unnecessary, a waste of a good human life, but put it
2 aside to the extent that you can rationally decide whether
3 or not Terrell Addison was responsible for what happened in
4 that store that night; or was Dontavious Mack, the killer,
5 the one that was responsible for what happened in the store
6 that night. That's all I can ask you to do.

7 It's a privilege appearing before you. It's
8 always, as I told you, a privilege to appear in Rock Hill.
9 I ask you to do this. This is -- jury service is not a game
10 or a contest. It's not a question in a courtroom of what
11 side wins and what side loses. That's the way our sports
12 event are. We all like winners. None of us like losers,
13 but in a courtroom it's not that way. It's not a game.
14 It's not a contest. In a courtroom everybody has to win.
15 And people win when justice is done. If your verdict speaks
16 the truth, then justice is done, then we all have won. And
17 I submit to you that in this case justice would be served,
18 we would all win, if Terrell Addison was found not guilty.
19 Thank you.

20 THE COURT: Counsel?

21 MR. SNOW: May I approach, judge, just for a
22 minute?

23 THE COURT: Yes.

24 (Whereupon, the lawyers approached the bench for
25 an off-the-record discussion)

1 THE COURT: Mr. Foreman, ladies and gentlemen of
2 the jury, some people need a break at this point, and so we
3 are going to go ahead and take a short recess and I'll allow
4 you to refresh yourselves too, but we will do that very
5 briefly. We will take about five minutes, or so, to do
6 that. So please retire to the jury room and do not begin
7 discussing this case. We are not ready yet. Thank you.

8 (The following takes place outside the presence of
9 the jury panel)

10 THE COURT: Let's just take about five minutes and
11 come back and try to get resumed.

12 (Whereupon, proceedings were recessed)

13 (Whereupon, proceedings were reconvened)

14 THE COURT: All right, counsel, ready to proceed?

15 MR. BRACKETT: The state is.

16 THE COURT: Please bring the jury back in, ma'am.

17 (The following takes place in the presence of the
18 jury panel)

19 THE COURT: Yes, sir, Mr. Snow.

20 MR. SNOW: Yes, sir. If it please the court?

21 THE COURT: Counsel.

22 MR. SNOW: Mr. Swerling, solicitors.

23 Misery loves company.

24 Ben Stewart is not guilty of any of the charges,
25 any of the hodge-podge of charges that the solicitor's

1 office charged him, that the State has charged him with.
2 Ben Stewart is not guilty, because the State has failed to
3 meet its burden of proof beyond a reasonable doubt.

4 Ben Stewart is not guilty because he simply was
5 not there, simply did not conspire with anyone, did not give
6 anyone a gun. He doesn't have an eloquent defense.

7 Members of the jury, I'll tell you, as I thought
8 about the things I wanted to say to you last night, early
9 this morning, I wanted to make sure I got everything down,
10 so I'm going to refer to my notes. I'm not as eloquent,
11 certainly not as seasoned as Mr. Swerling. Even though I
12 got the beard, the grayer beard, I'm not as eloquent as
13 these gentlemen, either of these attorneys, but it's
14 important enough that I want to make sure I get everything
15 that I wanted to say to you. So if you would just bear with
16 me, I'm going to take my time, because this is an important
17 case. It's an important case, and I will move along as
18 quickly as possible, but it's important that I give you
19 these details and these facts.

20 Thank you on behalf of Ben Stewart, first. I
21 mean, you sat here all week and you have been very patient,
22 and I have looked at the jury the entire week and everyone
23 is always paying attention. Everyone has been alert. I
24 think you realize how serious this is, and I appreciate the
25 sacrifices that you are making. You are away from your

1 family, away from your work, away from your home, and we
2 spent some long hours together. So thank you very much.

3 Let me just tell you about Ben Stewart. Now,
4 there are times during this case that certainly we wanted to
5 say things and we wanted to get up and yell and scream and
6 all that, but there are rules that we have to apply to. And
7 I'll tell you this, though. In this case Ben Stewart is the
8 person you haven't heard anything -- any -- anything about
9 violence. There is no evidence that he's involved with
10 violence. There is no evidence that he has a history of
11 carrying guns. No history of assaults. You have heard none
12 of that.

13 Now, I'm not going to go through the presumption
14 of innocence. The judge will tell you. I think Mr.
15 Swerling did a good job talking about that, but that's
16 certainly important. He has -- he's presumed to be
17 innocent.

18 The burden of proof. Mr. Swerling talked about
19 that. The burden of proof, of course, is very important as
20 well. The burden of proof is beyond all -- it's beyond a
21 reasonable doubt. Beyond a reasonable doubt. What does
22 that mean? If you hesitate to act, if you hesitate to
23 convict, I would submit to you then that you must find Mr.
24 Stewart not guilty.

25 Now, the burden of proof, that's on the State.

1 Mr. Stewart doesn't have to say a word. He doesn't have to
2 say anything. We don't have to present anything. That
3 is -- these principles, I would submit to you, are the
4 cornerstone of our system. I believe it makes our system
5 the best in the world. I believe it makes our system work.
6 And certainly these are principles that everyone is entitled
7 to, regardless of age, sex, regardless if they have hair,
8 bald, big, tall, short. Regardless if they're from
9 Pennsylvania, regardless if they are from North Carolina,
10 South Carolina, it doesn't matter. We are all entitled to
11 these principles.

12 Now, let's just talk about the story of what
13 happened here. And I'm going to go over some things and I'm
14 going to try to recite them as best I can, as I recall them.
15 Throughout this trial I tried to take notes. I don't want
16 to make a mistake. I don't want to mislead you about
17 anything that I heard or that's in evidence.

18 Now, the evidence shows that on or about October
19 10th, 2006, there were three men named Dontavious Mack,
20 Davorius Mack, and Terrell Addison. Together they robbed
21 and caused the death of Mr. Ned Marshall. Now, that's
22 what's in fact. That's who went to the BP station. That's
23 not in dispute.

24 On or about the 11th of 2006, Johnetta Evans, do
25 you remember she took the stand yesterday, and that is the

1 one who called and made a report to the police that the two
2 Mack brothers were involved with the robbery, that they were
3 involved with the shooting.

4 On October 12th, Ms. Evans gives a written
5 statement to the Rock Hill police. I believe it was
6 Detective Haire who took that report. She put everything in
7 writing.

8 October 12th -- excuse me, October 18th Mr. Mack,
9 Davorius Mack, gives another story to the police.

10 Well, let's just go back. Do you remember the
11 Mack brothers telling an elaborate story at first? They
12 tell the story about all the drive-by shooting, the getting
13 shot, the one guy had some dreadlocks, the other had a .22.
14 They go into great detail. They go into an elaborate story,
15 and this is a story that fooled the Hartsville police. They
16 spent hours going out, manpower hours, going out to this
17 crime -- this alleged crime scene. And that's when you get
18 reports -- a phone call from Ms. Wheeler, Ms. Wheeler --
19 Evans.

20 Now, on October 18th, 2006, Davorius Mack gives
21 another statement to the police. Do you remember that?
22 This story contradicts the previous statement.

23 October 19th, Dontavious, the older brother, he
24 gives another statement. He gives another statement to the
25 police. Now, this statement implicates Mr. Addison. That

1 statement contradicts the previous story still, but doesn't
2 mention Ben Stewart.

3 On October 19th, another statement from Davorius
4 Mack. This story contradicts the previous statement, but
5 doesn't mention Ben Stewart. Well, it does mention Ben
6 Stewart.

7 Now, on the 19th you notice, ten days, nine days
8 after this, the name Ben Stewart starts to rise. Before
9 that there is no mention of Ben Stewart. But the two
10 brothers start to mention his name. Now, why is that? I'm
11 not certain, but I can tell you what the evidence I think
12 shows. Ben Stewart is from where? He's from Pennsylvania.
13 He's here visiting his sister.

14 Now, on October 20th, an arrest warrant -- or on
15 or about October 20th, an arrest warrant is issued for
16 Terrell Addison. Now, by this time at some point Ben
17 Stewart has returned to Pennsylvania unaware of any
18 robberies, any warrant.

19 Now, remember this also. The Mack brothers grew
20 up in Hartsville. Terrell Addison's home is in Rock Hill,
21 but he frequents Hartsville, and that's in evidence. He
22 parties there. He spends weekends there, sometimes
23 weekdays, and we know that. And he does know these men.
24 And according to their own statements, I think he testified
25 that maybe they are cousins of some sort, so they know each

1 other.

2 Ben Stewart, on the other hand, there is no
3 connection. He doesn't even live here. He visits his
4 sister. He's here in October of 2006 visiting his sister.
5 He's here on vacation.

6 Well, from their own testimony they don't really
7 know Ben Stewart. They say that. Well, they I think Mr.
8 Addison even mentions "well, I met him the day before this
9 incident." He doesn't really know Ben Stewart. No one
10 knows Ben Stewart, because he's just here on vacation.

11 Misery loves company.

12 Let's talk about the State's case a little bit.
13 We have talked about -- Mr. Swerling went and talked about
14 all of the inconsistencies, and I think you probably are
15 tired of that, because I think you observed all the
16 inconsistencies, but I need to talk a little bit about the
17 State's case.

18 Now, their case against Mr. Stewart is kind of
19 built around the testimonies, the mountain of lies and
20 half-truths that the two brothers are telling. The Mack
21 brothers, both convicted and will serve, keep in mind,
22 lengthy sentences for the related armed robbery and murder
23 of Mr. Marshall.

24 Now, these are the brothers that concocted this
25 story, their elaborate story, remember that they took the

1 officers off the street, went down to the apartments and
2 they looked for hours. Could not find anything to comply
3 with this original story.

4 Now, let's talk about -- and I will get back to
5 the brothers in a minute, but I want to mention Mr. Addison.
6 Now, surprise witness. Not literally surprise, but
7 certainly he was here, but certainly a surprise. What did
8 the story come from? Before he was arrested, went into
9 custody, no mention of Ben Stewart. No mention of this
10 duress. Now, he testified. He went on the stand. Now, did
11 you believe him? No. Do you believe the Boy Scout act?
12 No. "Yes, sir. No, sir." Did you believe that? I don't
13 think that you did.

14 Ben's story were okay up to the point he got -- I
15 guess he had to jump on the bandwagon a little bit to tell
16 you "yeah, Ben Stewart gave Dontavious a gun."

17 Or do you remember on direct? He said -- when Mr.
18 Swerling asked him a question, he said Dontavious got out of
19 the car, went around and got the gun from Mr. Stewart. But
20 when the solicitor asked him a question, he said Mr. Stewart
21 hands the gun up to him. That's a big difference.

22 Then he also says, after I questioned him again,
23 he says no, Dontavious reaches back to get the gun in the
24 back seat to get it. Still, another inconsistency. That's
25 very important.

1 Now, do remember he also is testifying. He's
2 telling you, well, they have ridden all the way from
3 Hartsville, you hear mention of Ben Stewart. He didn't say
4 anything. He doesn't say anything. All of the sudden Ben
5 Stewart appears. Poof. He appears there, according to him,
6 a gun -- first he said the gun is in his lap. Then he said
7 the gun is not in his lap. Then he doesn't see the gun. He
8 wants to jump on the bandwagon. He sat here all this time,
9 has looked at the video, heard the evidence against him,
10 seen the evidence against him and decide "well, I have got
11 to get some of the this off me."

12 And you heard him. He testified. I asked him, I
13 said, "well, tell us, did you just make all this up?" He's
14 listened to the testimony. He has the benefit of listening
15 to testimony all week long.

16 Now, let's get back to the older brother, the
17 other Mack brother, one of the State's witnesses.
18 Davorius -- I mean Dontavious, sometimes referred to as
19 Donte. He's admitted to this offense and he's serving a lot
20 of time. I think there is no dispute about that. It's a
21 serious matter for him. Now, he's a person -- that's
22 undisputed. He's the person that physically shot Mr.
23 Marshall. And I don't think there is a heart -- there's not
24 a heart in this courtroom that doesn't go out to the
25 Marshall family, their friends, for what they are suffering.

1 That's a serious matter a terrible loss to them, but let's
2 talks about who is at fault here.

3 Now, you heard and observed Donte. He was on the
4 stand for a good little while. And I think we have already
5 talked about his inconsistencies in his statement and his
6 lies, but we've also talked about what? Him possessing
7 firearms; guns; his reputation as a thug. Even his close
8 friends said his reputation is a thug. Mr. Evans. I asked
9 Mr. Evans "is Mr. Dontavious Mack the kind of man that needs
10 to borrow a gun?" What did he say? "No", because he's
11 possessed guns. He has guns.

12 It doesn't make any sense -- I submit to you it
13 doesn't make any sense that Mr. Stewart, who has -- there is
14 no history, no mention that he's ever had guns before this
15 case. The police never told you that. They didn't say he
16 had guns, possessed guns. But Dontavious, he doesn't need
17 to borrow a gun. It's like telling Betty Crocker, you know,
18 Betty Crocker needs to borrow a bowl, a cooking bowl. He
19 doesn't need a gun. He has guns.

20 And so do you remember this is -- Dontavious is
21 also the one that's been convicted of assault of a high and
22 aggravated nature. He's also the one that you were told
23 that pulled a gun out and threatened Ms. Evans. Where did
24 that gun go? Why would he need a gun? He doesn't need a
25 gun, because he has one. He has guns, in fact, and he's

1 admitted to having guns.

2 He's the person that you see on the video that
3 goes into the BP station, well lit, bold and bad and robs
4 the place and fatally shoots Mr. Marshall. He's the person
5 that -- did he appear to be a person that needs a gun to
6 borrow a gun, or does he look like someone who handles guns
7 all the time?

8 And I also asked him -- I asked Donte, do you
9 recall? I asked him why did he tell his elaborate story to
10 the Hartsville police? And I asked him "are you trying --
11 were you trying to play them," and he said "yes."

12 Members of the jury, unfortunately he's trying to
13 play you too. He's trying to play all of us.

14 Oh, let me also mention this. He's the one also
15 that assaulted a man because this guy owed him money.

16 You bet your bottom dollar that Dontavious is in
17 misery. Nobody wants to serve time in prison, or a lengthy
18 sentence. He will never have the same opportunities that
19 you and I have here, opportunities to walk in the park, to
20 gather with our loves ones whenever we choose; to talk on
21 the phone when we choose; to go see a movie when we choose;
22 to go to the mall when we choose. That's misery, and we
23 know that misery loves company.

24 Now, he's also the person that asked "well, do
25 you -- "do you care about the waste of time for the police

1 officers, the time they wasted?" And he says "I didn't care
2 enough to think about that."

3 Let's talk about the brother. You have kind of
4 double trouble with the brother. This brother didn't think
5 enough to care, because I asked him that. He didn't think
6 enough to care. He didn't think about this elaborate story.
7 Now, he told you four different stories. He submitted four
8 difference stories in to the police. Four different
9 stories. And out of all of them, I think he mentioned Ben
10 Stewart on the third one, around the 19th that his name
11 comes up. You notice that? Friends, Mr. Evans, the
12 Dontavious, Donte start to mention? Had they been
13 conversing about this? I don't know, but they know he's in
14 Pennsylvania and they know he's going back, because that's
15 where he's from.

16 And do you remember, I asked Davorius about a knot
17 that Mr. Stewart put on his head? Now, when I asked him
18 that, he didn't deny it. He just said "what fight?" He
19 didn't say there wasn't a fight. Now, he's a tough guy, so
20 he's not going to admit that he jumped on the wrong person
21 and got a knot beside his head. He's also the person, with
22 his brother, that is at the scene of the crime. That's not
23 in dispute. He's pled guilty already. He's at the scene.
24 He tells you that.

25 Now, we need to talk about his guilty plea. Let's

1 talk about his guilty plea for a little bit. Just bear with
2 me. His guilty plea. Now, do you remember he's given two
3 other statements before that, right? These are two
4 statements that the State kind of wants you to ignore, but
5 you can't do that. You have got to take the good with the
6 bad.

7 The plea agreement only mentions two statements;
8 the 19th and the 27th. Well, do you remember the 19th? We
9 explored that. Even the story on the 19th that he has put
10 in his plea agreement went before the court and said "I'm
11 telling the truth. I swear this time." There are lies in
12 that one.

13 There are also lies in the 27th.

14 This is the two key witnesses for the State. Do
15 you remember? The two brothers that brings you double
16 trouble.

17 Now, do you remember he also testified. He
18 testified that if he knew he was going to Rock Hill, he
19 would have brought a gun with him. Well, he doesn't have to
20 look too far for a gun, does he, because his brother has a
21 gun. His brother carries guns. He also admits that he has
22 used guns before. He has seen guns before. He's fired
23 guns. He's admitted to that.

24 Now, he's also admitted -- he's been in custody
25 since the latter part of October of 2006. He came straight

1 out and said "yeah, I'm in misery." And, what, misery loves
2 company.

3 Something that I definitely want to mention to
4 you, and I know it came out in the State's case. They were
5 talking about this number, and I believe that the young
6 lady's name is Makisha or Krisha Johnson. And there is some
7 testimony that this was a woman -- at least a phone number
8 was related to her. This was a woman that Mr. Stewart had
9 some encounter with, but they tried to make her out to be
10 the girlfriend of Mr. Stewart, because -- do you know why
11 they did that? Because some -- I think it was either
12 Donte's phone or Davorius' phone called that number. I'm
13 not quite sure what that means, but -- I don't know what the
14 two brothers were doing, but they were calling this number
15 when they were in Rock Hill. No mention of Mr. Stewart's
16 phone, cell phone, calling her. No mention of that.

17 And they also mentioned that Davorius and -- one
18 of the brothers called Mr. Reed, but not Mr. Stewart's
19 phone.

20 Now, Mr. Reed is somewhat of an interesting
21 witness and he's important. He's important, because what
22 did you hear? Mr. Reed is the person that allegedly these
23 guys, the morning after, at some point -- well, I'm not sure
24 what time, they come to his house. Now, what he says that's
25 important, and you have to listen to and watch his statement

1 very carefully, and Reed -- do you remember his statement,
2 his testimony, and we talked about that and that's
3 important, because what he does say is that "well, at some
4 point that morning these guys came to my house." And I
5 asked him, I said "did they come together?" He goes "no, it
6 appears that they came separately, because they didn't come
7 in the door together," which even goes to Mr. Addison's
8 testimony. He said "yeah, Ben arrived there later. We had
9 already gotten there." Ben arrived.

10 Now, we know there is some discussion. You know,
11 that's not in dispute. There is -- there is some
12 discussion. But do you remember what he said? He said they
13 talked about Donte, Dontavious, getting shot. They never
14 mentioned anything about a robbery. No one ever mentions
15 that. In fact, I asked direct a question. He said no,
16 there was no mention of a robbery. No mention of a killing.
17 The only things he mentions is about a gun in a
18 conversation.

19 Now, even -- and he never says this gun is the
20 .380 that was involved. No connection whatsoever. But what
21 he does say -- now, this is a Tuesday morning, I believe.
22 He says "I had been drinking. I had beer and something
23 else." He's consumed something else. I'm not sure how good
24 his memory is at this point, but this is about pretty early
25 in the morning, on a Tuesday morning. He's not working.

1 He's somewhere at home, drinking early. I don't know what
2 that means.

3 And I asked him, I said "well, was there any
4 mention of a conspiracy that Ben was involved?" No mention
5 of that. No mention of anything.

6 Well, I would submit to you that Mr. Stewart was
7 twenty years of age at the time. And that as -- twenty
8 years of age at the time. And under the laws of South
9 Carolina at the time, someone under twenty-one years of age
10 could not have a firearm. Now that rule has been changed,
11 but at the time if Mr. Stewart -- if Mr. Stewart had
12 possessed a firearm, that would be illegal. But let's talk
13 about it now and move on. There is no mention whatsoever in
14 that statement, in that statement, or in his testimony that
15 Ben was involved. Ben comes later, talks about a gun. We
16 could speculate what that means, but I know one thing that
17 it doesn't mean. That statement -- that interaction doesn't
18 mean nothing about a conspiracy. No one ever mentioned that
19 while Ben was present. Ben never mentions that. You may
20 not like that, but there is nothing going on there that was
21 illegal. Certainly not illegal right now.

22 Now, this is what's interesting. You heard
23 discussions at the house. Do you remember that morning?
24 And this thing is important. This is important. Monday and
25 Val. There was discussion about Monday and Val, who is also

1 at the house. Now, that's in evidence. Mr. Reed -- Mr.
2 Reed Allen was the one that discussed -- that said that.
3 Well, again, Mr. Stewart doesn't have to prove anything, but
4 you think, though, you think that we would have heard
5 testimony from either Monday or Val. Val certainly could
6 have possibly cleared this whole thing up, but I don't think
7 there was any mention of her. Who has a resources to bring
8 her here? Who has the recourses to order her here to hear
9 what she has to say? There's not a statement from her. No
10 mention of her. That is the one person that could have
11 cleared this whole thing up involving my client, but you
12 never hear any mention of her. You better believe if she
13 had something that would have implicated my client, what do
14 you think? They would ordered her to be here. Someone
15 would have found her.

16 Now, at the beginning of the case I talked about
17 the State's hodge-podge of charges that kind of reminds me
18 of my sister's, you know, soup, stew, if you will, where she
19 would put everything in. You know, a little bit of this, a
20 little bit of that, a little bit of leftovers from here, a
21 little bit of leftovers from the refrigerator, fish, fish
22 heads and chicken feet, everything, hoping that her younger
23 siblings would enjoy it, would find something that we could
24 hold on to. Good person, but wasn't very good. Nothing
25 stuck. Hodge-podge.

1 And it's no elaborate defense, except Ben Stewart
2 wasn't there, didn't conspire, wasn't involved.

3 But it's important that I mention what is in
4 evidence and what the State does have. Now, the State can't
5 avoid this or minimize it. They have tried to, but they
6 can't do that. What does the forensic evidence show?
7 Nothing for Mr. Stewart. Nothing for Mr. Stewart. Nothing
8 for Mr. Stewart.

9 Allegedly in this -- this is the car, remember?
10 The car that we made a big deal out of. This is the car
11 that had Dontavious Mack in it, Davorius Mack, Terrell
12 Addison, and allegedly Ben Stewart. Well, what do we have?
13 The forensics does not connect Ben Stewart at all to this
14 car. Now, this is a car that was driven from Hartsville to
15 Rock Hill. While in the car, Mr. Addison testified these
16 guys were drinking, smoking. No evidence. Where is the
17 evidence? They may try to minimize it, but you can't avoid
18 that. It's a science, and that's something that we had to
19 observe. It's something sophisticated people collected.
20 Trained people with fourteen years of experience collected
21 and took to the lab, where smart people could look at this
22 stuff. It's not all -- you know, we may not be able to
23 understand, but what do they say? And they rely on this,
24 but there is no evidence.

25 Now, let's talk about -- and I'll talk a little

1 bit about the fingerprints. Now, there were several latent
2 fingerprints and palms that were taken. A match was made to
3 Davorius and Mr. Addison. No doubt about that. No
4 fingerprints to Dontavious. But, remember, he's the one
5 that had on the gloves in the store, didn't he? You saw
6 that more than once. He has on gloves. No evidence that
7 Mr. Stewart had on any gloves, is there? Uh-uh. No
8 fingerprints.

9 Now, this is allegedly the man who has been in and
10 out of the car, who has been drinking in the car, been
11 smoking in the car, has ridden in the car for hours. Now,
12 they took over twenty items that were submitted for DNA
13 matching. Ben's DNA was not matched to any items submitted.
14 Moreover, out of the items examined for Ben's DNA, Ben's DNA
15 was conclusively excluded. No question. His DNA is not in
16 the car. His DNA was not collected.

17 Now, let's talk about -- I want to make sure I get
18 this right so you understand it. However, the items
19 examined for the others DNA, there was no conclusion made
20 regarding the inclusion or exclusion of Dontavious,
21 Davorius, or Terrell. In other words, they could have been
22 a contributor, or not. Now, I don't know what that means,
23 but I know they are relevant. Does that have anything to do
24 with it? I'm not a scientist. Maybe they had something to
25 do with it, maybe not. Maybe that's why it came back

1 inconclusive. It came from somebody. But we don't even
2 need that to put them in this case. What do we have? We
3 have testimony from them. We have testimony from Mr.
4 Addison that he was there, but there is no evidence that Ben
5 Stewart was there.

6 And if that's not enough, let's talk about
7 Johnetta Evans. She told you that she heard clearly,
8 crystal clear, that when these guys were discussing the two
9 brothers, the one had brought the double trouble, that you
10 hear no mention of Ben Stewart. No mention of Ben Stewart.
11 You hear that name sometime later as part of a concocted
12 scheme. You heard that name much later, but no independent
13 person.

14 Now, let's talk about also that I think is
15 important. Do you remember Ms. Qiauna Efrid? That's the
16 lady that took her time out, that the State certainly can't
17 hide from, because she has nothing to do with this case.
18 She doesn't have a dog in this fight. She came here. She
19 put her hand up and testified, and testified truly. She
20 lives out there where the car is parked. The first thing
21 she told you, what did she hear? She heard three voices.
22 She was specific. Three voices, three car doors slam.
23 Dontavious, Davorius, Mr. Addison. No, not four, but three.
24 You have to remember this. Now, neither of you have nothing
25 to do with it.

1 She testified the next day. We asked her to come
2 back. She took her time from work and came back and she
3 testified that her window was up, that her apartment is
4 maybe ten feet from the car. Now, remember, Davorius says
5 while Mr. Addison and Dontavious were at the store, he's
6 having a discussion with Mr. Stewart. Do you remember that?
7 He testified to that. Ms. Efird says she didn't hear any
8 discussions, that she probably would have heard it. Her
9 window is three feet away -- or ten feet away. She doesn't
10 hear that. There is no discussion.

11 And the State also asked well, did you see this,
12 did you see that?

13 Well, also remember, and this is very key, that
14 they also testified that at this time Mr. Stewart is outside
15 the car running around. This concoction is made up whenever
16 to lie. But she didn't the say that, does she? No, what
17 she sees is -- what she hears is three people talking, three
18 people coming, slamming the car door. Nobody yelled "Ben,
19 get in the car." She didn't say that, but they tell you
20 that that's what happened.

21 Mr. Addison tells that you that, after he listens
22 to all week long that's what happened, after he had the
23 benefit of sitting here.

24 If that wasn't enough, Ms. Evans, she wasn't
25 enough. Ms. Warner, another witness that the State tried to

1 minimize or get around. She came here from work. She
2 testified under oath, what? She saw two people running to
3 the car and gets in the car. Yeah, two people. Nobody
4 running around yelling "Ben, get in the car." She hears two
5 voices, maybe two voices, she indicates. Not quite sure,
6 but does not say she hears four voices. Certainly doesn't
7 hear anyone say "Ben, get in the car."

8 Now, of course, the State asked her "could you see
9 in the car?

10 "No."

11 But what's important is what she saw or didn't see
12 outside the car. She didn't see anybody running around away
13 from the car, like they testified to, like double trouble
14 and now a third one. She didn't see that. Now, these are
15 witnesses that had -- they have no dog in this fight. They
16 came here to tell you the truth. Clean witnesses. DNA.
17 Clean witnesses. Can't get around that.

18 And one other question that I want -- one other
19 thing I want to mention. Do you remember when I asked Mr.
20 Addison "have you sat here and tailored your statement, your
21 testimony, to fit what you heard?" At first he said "yes."
22 Then he quickly says "no." Y'all think about that. And I'm
23 sure the solicitor will tell you what solicitor did to him
24 about his credibility. Would you believe that? No, I don't
25 think so.

1 The State has the burden in this case. These are
2 serious charges, and I'm asking you to have faith in the
3 witnesses that have no dog in this fight. Have faith in the
4 DNA. Don't rely on people who have something to gain from
5 this. It is too serious to rely on inconsistency lies,
6 people who have something to gain from this. It's too
7 serious. This will affect his liberty. That will affect
8 his liberty. I don't have to tell you how serious they are.
9 Serious. Rely on what you can rely on, what tells you. The
10 science testimony from witnesses who have nothing to do with
11 this.

12 I won't have the benefit of coming back and
13 testifying -- or talking to you again. Now, my good
14 colleagues here, they have taken note of what I have said
15 and they will have an opportunity, and there is nothing
16 wrong with that. That's fair game. They have had an
17 opportunity to listen to what I had to say and they will
18 probably come back and say "well, find a little hole." And
19 I will be sitting there wanting to get up and tell you "no,
20 no, no. Remember this and remember that." I can't do that,
21 even though I want to. We will be sitting there wanting to
22 respond. I cannot do that.

23 I'm asking you, I'm asking you -- begging you,
24 well, listen to the evidence. Trust what the evidence has
25 said, not witnesses that have something to gain from this.

1 And even Mr. Reed had a little to again. We have nothing to
2 prove. The judge will instruct you of that.

3 Misery loves company. Ben Stewart is not guilty
4 of any of these charges, these allegations. Ben Stewart is
5 not guilty, because the State has failed to meet their
6 burden beyond a reasonable doubt, the kind of doubt that
7 would cause you to scratch your collective heads to
8 hesitate. He's not guilty, because he simply wasn't there.
9 Why they picked him, I don't know, but the evidence says he
10 wasn't there. And I'm asking you to listen to the evidence,
11 believe the evidence, and listen to the judge when he tells
12 you the law.

13 Thank you so much for your time and your patience.

14 MR. BRACKETT: It's going to take me just a couple
15 of minutes to get my computer set up. Do you want to stay
16 in here, if you want, Your Honor, or if anybody needs a
17 break, we can.

18 THE COURT: It's going to take a few minutes for
19 the solicitor to set up and get his equipment going. Does
20 anybody need a short recess while we are doing that, or do
21 you want to go ahead?

22 (No response)

23 THE COURT: Raise your hand if you need a short
24 recess.

25 MR. BRACKETT: Well, let's just go.

1 THE COURT: Take your time to do what you need to
2 do, solicitor.

3 MR. BRACKETT: Yes, sir.

4 (Off the record)

5 (Back on the record)

6 MR. BRACKETT: May it please the court?

7 THE COURT: Solicitor.

8 MR. BRACKETT: Counsel.

9 MR. SWERLING: Yes.

10 MR. BRACKETT: The last thing that Ned Marshall
11 did before he died on October 10th on the floor of the BP
12 convenience store on Celanese Road in Rock Hill, the last
13 thing that he did before he laid down for the last time was
14 solve this case. The last act of Ned Marshall was to set in
15 motion a chain of events that would solve this crime.

16 You can't see it here too well. You will have
17 this picture back there. I tried showing it before.

18 Hold on just a second.

19 At about here on this picture. It's much more
20 visible in this one that you will have back in the jury
21 room.

22 This is State's Exhibit 15, is the bullet hole.
23 Mr. Marshall fired this gun and caused that Dontavious Mack
24 ran out of the store. Once that bullet hole was put into
25 Dontavious Mack's back, he had no choice but to go to the

1 hospital. And once he went to the hospital, the doctors at
2 the hospital had no choice but to call the law, because they
3 have to report shootings under these circumstances. And
4 they knew that. They knew that before they ever got back to
5 Hartsville. They knew that they would have to explain the
6 bullet hole in Dontavious Mack's back, so they concocted the
7 Farmington story. They came up with a drive-by and said
8 "that is how Dontavious Mack got shot in the back and that's
9 what we are going to tell the police in Hartsville when they
10 come to the emergency room and ask us how he got shot."

11 Now, I'm going to come back to that in a minute,
12 but what this case comes down to are two questions, because
13 really Mr. Addison's defense has resolved all of the other
14 things that we might have to prove. Was Mr. Addison even
15 there? We don't have to prove that. He's admitted he's
16 there. Was he wearing a mask? We don't have to prove that.
17 He has admitted he was. The only issue that y'all really
18 have to resolve is was Mr. Addison acting voluntarily or was
19 he under duress.

20 As far as Mr. Stewart, I said Mr. Stewart's only
21 question is was he present. And I have that in quotation
22 marks, and I have it in quotation marks for a reason,
23 because there is two ways - legal presence, and what that
24 means, and I'll explain that when I get to the law in a
25 little while; and then the present in the sense that Mr.

1 Snow argues present, in trying to say we haven't proved he
2 was even in the car, that he was even in Rock Hill that
3 night, that we have failed to prove that. I submit that we
4 have.

5 Then the only question we contend that you have to
6 decide is was he present in the sense of present at the
7 scene of the crime, such that that would make him a
8 principal, and I'll explain that in a minute, and thus
9 guilty of murder; or did he just aid the principle murderer,
10 which was Dontavious Mack? Did he just aid Mr. Mack, and,
11 therefore, is only an accessory, that he's an accessory
12 before the fact to murder and armed robbery? Because if you
13 decide he wasn't present, then you convict him of accessory,
14 if you think he aided and abetted the crime. But if you
15 think that his location there at the Northwoods Apartments
16 and providing the gun was sufficiently close to the BP to
17 count as being present at the scene of the crime, then you
18 can convict him of murder.

19 You cannot convict him of both. You cannot be
20 both present at the scene of the crime and an accessory
21 before the fact.

22 So our contention is the only thing that you have
23 to decide is was he legally present. We submit that we have
24 clearly proven that he was physically present at the car.

25 Now, how did we do that? The case for the State -

1 Dontavious, Davorius, and Reed Allen. These were the first
2 three witnesses out of the gate.

3 Let me just say something at the outset about
4 Dontavious, Davorius, and Reed Allen, particularly
5 Dontavious and Davorius, because I don't think Reed was that
6 bad. But Dontavious and Davorius, I didn't pick them to be
7 my witnesses. I didn't want to bring them into this
8 courtroom and sit them down in that witness chair. That
9 wasn't my call. I'm not the one who decided to come to Rock
10 Hill and rob the BP and shoot Mr. Marshall with Dontavious
11 and Davorius Mack. That wasn't my decision. That was Mr.
12 Addison's decision and Mr. Stewart's decision. They are the
13 ones who decided that the people you had to hear from in
14 this case were the Mack brothers. That was their call, not
15 mine. I can't help who they chose to conspire with. I'm
16 stuck with the Mack brothers too, and they're not good.

17 Everybody else. The police and the citizens. The
18 citizens are a little bit important. The police did a great
19 job, but basically this case was solved on the tip of
20 Johnetta Evans and Tiyone and the statements of Dontavious
21 and Davorius and Reed Allen.

22 Now, let's take each of these folks in turn,
23 Dontavious and Davorius, particularly.

24 Mr. Swerling and Mr. Snow did a fine job of
25 pointing out all the little inconsistencies and telling you,

1 you know, "well, you said this thing on this statement and
2 this thing on another day."

3 And Mr. Snow, "you told the police in Hartsville
4 that you were shot at Farmington, and you knew they were
5 going to go down to Farmington Apartments and waste their
6 time trying to investigate a drive-by that never happened.
7 Dontavious, shame on you. How could you do that to those
8 poor Hartsville police officers?"

9 Do you really think that Dontavious, sitting there
10 in the emergency room in Hartsville with the police officer
11 in front of him, knowing in his mind that he just shot and
12 killed a man in Rock Hill, really had a hard time? Do you
13 think he had a crisis of conscience at that moment and went
14 "I can kill a man, but I just can't lie to these police
15 officers about how this bullet ended up in my back." Of
16 course he's going to tell them that it was some bogus
17 explanation. He can't tell them the truth. And they want
18 to act like this is some big, oh, this -- "you can't trust
19 him. He lied to the Hartsville police." So what? He was
20 trying to cover his butt. Of course he lied to them.

21 He's a murderer. He's a thug. He carries guns.
22 He's a bad dude and he's in jail for the rest of his life
23 without parole. Thank God, because that's right where
24 Dontavious Mack belongs.

25 Mr. Swerling, Mr. Snow, they point out all these

1 little inconsistencies in their statements, but you know
2 what? The one thing that they couldn't do, the one thing
3 that they couldn't do? Mr. Swerling stood up here for
4 almost an hour talking about how they are trying to put it
5 on Terrell, trying to put it on Ben, the whole -- put it on
6 Terrell, put it Ben. They colluded. He and Davorius
7 colluded to put this whole thing on Terrell and Ben.

8 But the one thing that makes Dontavious' final
9 statement to the police, the one he gave to the Rock Hill
10 Police Department and is listed as State's Exhibit 3, the
11 one thing Mr. Swerling and Mr. Snow could not explain, and
12 they could come back up here -- and Mr. Snow said "I don't
13 get to come back up and respond." They can tell you all day
14 long, and they will never, ever, ever be able to explain why
15 when Dontavious finally gave it up, he put the murder weapon
16 in his hand. If he's telling a lie, don't you think that
17 Ben Stewart would have been the guy who was shooting Mr.
18 Marshall in the store? Why? If he's colluding?

19 I mean, suppose that Davorius and Donte had a
20 moment or two together and they said "all right, we got to
21 come up with a plan. The cops know about this BP thing.
22 They are about to come in and question us. What we going to
23 tell them."

24 "Okay, I got it. We will say that you went in and
25 shot them."

1 "Yeah, that works for me."

2 "Okay. You tell them that you went in and shot
3 him and I'll tell them that you went in and shot him."

4 Do you think that's what they really did? Or do
5 you think maybe they were confronted with the evidence and
6 they just gave it up? I mean, when they gave it up, they
7 told the truth, generally, about what happened. Not in
8 every specific. And is every detail corroborated between
9 Dontavious' statement and Davorius' statement? Who was
10 driving? Did they go to Tasha's apartment before they went
11 to the hospital or after they went to the hospital? Did he
12 get the bandana out of the trunk? Did his hair parted to
13 the right or to the left? Did he have a sausage biscuit or
14 was it a ham biscuit? Who cares? What difference does that
15 make? He said they went in the store and "my brother. My
16 brother killed that man."

17 Dontavious said "I went in the store. I killed
18 that man. I killed that man." He sat in this chair, in
19 this courtroom in front of you, in front of each and every
20 one of you and said "I am a murderer. I killed Ned
21 Marshall. I held the gun. I pulled the trigger. I pointed
22 it at him and I took that man's life. I did it."

23 And they said "oh, but you can't trust him. You
24 can't trust his statement in court here today. You can't
25 trust him and here is why. This is why you can't trust him,

1 because he's trying to help his brother Davorius. He's
2 going to get credit for Davorius by coming in here to
3 testify."

4 It's a fair argument. It's a fair argument, but
5 what was he getting back in October of 2006, when he made
6 the same statement to the Rock Hill Police Department? What
7 was he getting then? Nothing. No deal had been cut. He
8 had just been arrested. He just told the truth. He didn't
9 have any reason, except he wanted to unburden himself. He
10 knew it was over and he just gave it up and he put the gun
11 in his hand. He threw himself in the jackpot. And he
12 put -- Terrell was there and he put his own brother back in
13 the car. He got him mixed up in the middle of it and said
14 "I got the gun from Ben."

15 Davorius said the same thing. He put his brother
16 in the store with the gun killing the man. When he
17 testified, he said "oh, he's going to get a deal. He wants
18 a break on his charges." Of course he does. He's a human
19 being. He doesn't want to go to jail for any longer than he
20 has to. Is he going to lie to protect himself? Dah? These
21 are thugs. Yeah, he's going to lie to protect himself, but
22 they can't explain why on 19 October 2006, before he ever
23 had any deal at all, he said the same thing; "my brother
24 went in the store." He can't explain it.

25 They're not smart. Mr. Swerling says they are

1 street smart. They're not. The story about the Farmington
2 Apartments, what did you hear Lieutenant Rudick from
3 Hartsville say about that? What did he tell you? He said
4 "well, we were there about 7:30, eight o'clock in the
5 morning, just after breakfast, and we pretty much knew that
6 was crap by about twelve. We had that worked out by lunch,
7 because there was absolutely no evidence to support it."

8 They were too stupid to say it was one shot, which
9 might be believable and maybe nobody heard it. Instead they
10 had four guys leaning out of a car with semiautomatic
11 weapons and rifles and firing multiple times, should have
12 made enough racket to wake up the entire neighborhood in the
13 middle of the night. They weren't thinking. They are not
14 smart. They can't come up with a story that's believable
15 and credible and can stand the test of investigation. They
16 can't do it. They are just not that smart.

17 But this one did. This one did. On the 27th when
18 Davorius said "this is what we did with the gun. We went
19 over and we saw that guy name "Wise". I don't know what his
20 name is, but I can show you where he lives." And then at
21 that time Mr. Stewart gave the .380 over to "Wise" in a bag
22 and he put it under a bush and blah, blah, blah, and they go
23 to Hartsville and puts that in the statement on the 27th.

24 And they go and talk to Reed Allen. Reed Allen
25 didn't know they were showing up. They talked to him on the

1 27th, the same day Davorius told them where the gun was.
2 They walk in on Reed and go "hey, how are you doing? I want
3 to talk to you about something that happened three weeks
4 ago," and Reed goes "oh, my God. I'm an idiot. I'm an
5 idiot. Why did I take that gun? I'll tell you about it. I
6 got to get myself out of this. I was a fool." And then he
7 tells them the same thing that Davorius told them, that Ben
8 shows up with a plastic bag with some tape, some cloth items
9 in it, puts it under a bush, and a few days later he gives
10 it back to Ben. "Did Ben go get it? Did he go get it?"
11 Who cares. The substance of the story is what matters. The
12 substance of the story.

13 And by the way, they made a point a few minutes
14 ago, Mr. Snow did, about saying "well, why didn't they call
15 Val?" Where did they say that they were? They were at
16 Monday Bishop's apartment. Who is Monday Bishop? Monday
17 Bishop is Ben Stewart's sister and she was there too. How
18 far wouldn't she drive to come here to court?

19 MR. SWERLING: Objection. Burden shifting.

20 MR. BRACKETT: No, Your Honor, he chose to put up
21 a defense.

22 THE COURT: Overruled.

23 MR. BRACKETT: How far wouldn't she drive to come
24 here to say things didn't go down that way? She was right
25 there too.

1 Davorius Mack. Many of the same things that apply
2 to Dontavious apply to Davorius. I spoke to them
3 interchangeably. Neither one of these guys are anybody that
4 you would want for your friend. Neither one of these guys
5 are the kinds of people that you hang out with.

6 Terrell, when he was on the stand, he's talking
7 about "they are trouble. Yeah, I knew they were dangerous."
8 Everybody knows what bad guys they are. Well, trouble
9 follows them around. They carry guns. They shoot people.
10 They rob places. You know, just being around them is like
11 being around an unstable grenade. You never know when it's
12 going to go off and trouble is going to blow up on you, too,
13 so it's best to stay away from them. "They're bad news. I
14 always knew they were trouble. That's why I got a ride home
15 with them that night."

16 He admitted right up front, Davorius did, that the
17 statements that he made to the Hartsville police department
18 were flat out lies. He said that. Of course, they were.
19 They all talk about the Farmington drive-by.

20 Garbage one. Garbage two. Useless. They're
21 lies.

22 Davorius' second statement, this one here. It's
23 dated the 19th. It starts out being junk. "There was a
24 car. We were walking down the street. We were going to my
25 friend Tequila's house," this, that, and the other, blah,

1 blah, blah. "Okay, stop right now. I want to get this
2 right." He stops, literally. Read the statement. The
3 first page of it right there. He says "I stay on the block
4 until like it's about nine p.m. and I went to Natasha's at
5 222 Clarence Circle. They came," and the sentence stops
6 right in the middle. It's almost as if you are just sitting
7 there in the room with Davorius when he has that moment of
8 going, "okay, this is a load and they know it. I got to
9 tell them the truth." They literally stopped the sentence
10 right in mid type. I mean, you can see the detectives
11 going -- and as Davorius, the light goes off and he just
12 says "I'm just going to give it up."

13 And then they start the next paragraph. "Okay,
14 stop. I want to get this right," and then he just jumps
15 right into the robbery. "Terrell was with my brother in the
16 store, not me. I was in the car. Terrell was driving the
17 car. Ben was in the back." And it just goes on and he
18 gives it up, right there at the end.

19 "Donte says to Terrell in the car why did you not
20 grab the dude? You are the reason I got shot. Terrell say
21 you had already shot the dude in the hand. That's why I
22 ran. They said they didn't get no money, and I know my
23 brother didn't have any money on him at the hospital."

24 He admits right in there that his brother was the
25 shooter. That has a ring of truth to it, if you want to

1 talk about the truth, when you give up your brother. When
2 you are Dontavious and you give up yourself, that's the
3 truth. When you are saying "I'm the shooter" -- when you
4 are saying "my brother was the shooter," that is when you
5 are telling the truth.

6 Nobody has given one good explanation. There is
7 not one good reason in evidence that you can point to as to
8 why they would want to put anything on Terrell or Ben.

9 One little detail we threw in right at the end was
10 about the rim shop. Davorius' testimony. It's not in his
11 statement, but he mentions it when he's on the stand.
12 "Yeah, we stopped at a rim shop and we kicked the door
13 trying to break in and the alarm went off, so we ran."

14 And Officer Lambert said "as a matter of fact,
15 there was an alarm call at Sounds on Wheels on Cherry Road,"
16 the rim shop.

17 Reed Allen, he's the littlest guy in the entire
18 thing. I went over him a little bit. He's the smallest
19 fish in the pond. He is absolutely -- he is not in Rock
20 Hill. He has the least to lose. He did one stupid thing
21 and he immediately made it right. When the police
22 confronted him, he gave it up right away. He didn't try to
23 come out with one story. "Yes, they came over," and
24 substantially what he told is what he said on the stand.

25 I don't know why he didn't mention a .38 in

1 Terrell Addison's waistband until he got on the stand.
2 Maybe they didn't ask him when they interviewed him. All
3 they were there to talk to him about was the .380, the
4 murder weapon that they were looking for, so they could get
5 bullets to match up the bullets that they found in the
6 store. But there is no question, the consistency between
7 the statement on October 27th, 2006, and the testimony from
8 the stand. "They came to my house. They had the gun in the
9 bag and some cloth items that were in the bag. I hid it and
10 Ben Stewart came back later and got it from me."

11 There he is right there, pointing out.

12 We've heard the testimony from Detective Haire.
13 He prepared that lineup and said "do you see the other guy
14 that was in there?" So there is no question that he
15 identified Terrell Addison as being one of the people that
16 came to his apartment. The only thing that's wrong on that
17 is the day. It says 10-28, and he corrected that. That was
18 a mistake. He signed it on 10-27. The same day that he
19 signed the statement, 10-27-2006, he signed that picture of
20 Terrell Addison and says "yeah, that's the guy. I have seen
21 him around before. I recognize him. He was the one with
22 the .38 in his waistband. He was the one that came there
23 with Davorius and Ben."

24 What did the police do? Well, as I mentioned a
25 few minutes ago, this case was solved by a tipster.

1 Johnetta Evans and Tiyone Evans had talked to Dontavious
2 Mack. Remember? And Mack took the stand and said "yeah, I
3 talked to them." And they called the police.

4 And based on that, Brian Rudick calls over to the
5 York County Sheriff's Office and says "you guys got a
6 convenience store robbery shooting?" The sheriff's office
7 says "we don't, but the Rock Hill city police do." They get
8 in touch with Detective Haire and Captain Thickens and it's
9 on. They are down to Hartsville.

10 All the forensics and the interviews are
11 consistent on the important points. If they were all
12 consistent in every regard, it would almost be more
13 suspicious. If everything was right on point, everybody was
14 separated, the defendant gave the identical stories, it
15 would -- it would almost sound like the Farmington drive-by
16 story. There is going to be differences of whose -- did
17 they get the bandana out of the trunk or did they have it in
18 his pocket? I mean, these are small things. Who we went in
19 the store, that doesn't change. That is consistent. And
20 now you know it's a fact, because Dontavious, the shooter,
21 has come into the courtroom and told you "yeah, I was the
22 one guy." And Terrell Addison has come in and told you that
23 he was the other.

24 They did a thorough investigation. You saw from
25 the crime scene testimony that Mike Williams -- they

1 couldn't -- there was no evidence that they did not look for
2 in that store, but at the time they were searching through
3 that store, with the blood still on the floor and wet, they
4 didn't have any information about who did it, so they didn't
5 know what was going to be important later, but they
6 collected every single thing they could. Found multiple
7 fragments of bullets scattered throughout the store. Took
8 swabs, gathered hair, fibers. Anything at all that they
9 could find that could possibly help them solve this case
10 they were on.

11 Now, let's talk a little bit about Qiauna. Do you
12 remember, it's not ten feet away. Her apartment is -- we
13 are standing with our back to her building and this is the
14 wall that they climbed over. That's where the footprint was
15 found. And then about ten or fifteen feet past that is
16 where their car was parked. She is asleep when she hears
17 the noise. But what does she tell you? Her window was
18 open. And she talked about the trash can banger. Well, I
19 don't know who the trash can banger is, but I appreciate the
20 fact that he was out there banging on that, because you know
21 what? It makes Qiauna Efird a little more attentive that
22 night, because she thought it was the notorious trash can
23 banger coming back with a ball bat and beating on her
24 dumpster again, and she was determined to find out what it
25 was all about. Instead of just laying there going what's

1 that all about, she thought she was going to go see if she
2 could see who the trash can banger was that night, so she
3 got up out of her bed and she went to the windows in her
4 house to look and see what was causing the noise.

5 What did she say? She heard two voices coming
6 from off on one side and one voice off towards where the car
7 was. And the two voices over on the side over here, one
8 voice says "hurry up, man." The other voice says "I'm
9 shot." Then the voice over by the car says "hurry up, get
10 in the car."

11 "Hurry up, man," does that sound like somebody who
12 is under duress, or does that sound like somebody who is
13 willingly cooperating with the guy who was shot? Does that
14 sound like somebody who was being forced to do something?
15 He's telling him to hurry up. He's just as anxious to get
16 out of there as the guy who is shot. The guy who is shot is
17 lagging behind because he's shot. He doesn't know how bad
18 he's hurt. Does that sound like an uncooperative person, or
19 does that sound like somebody who was freely and voluntarily
20 joined the robbery at the time?

21 Now, without question, the best witness for the
22 State, without question, the best witness for the State was
23 Mr. Addison. He did a fine job, a wonderful job testifying,
24 and we are going to go through his testimony in detail.

25 You will recall he took the stand and basically

1 told you good guy, goes there every weekend and hangs out
2 with the family. You know, maybe meets a girl, but nothing
3 really bad. He stays away from those Mack boys, because
4 everybody knows they are trouble, but that night he decided
5 he needed a ride and they were heading that way, so he asked
6 if he could hitch a ride and said that he would give them a
7 little bit of money if they would be kind enough to take him
8 home to Rock Hill.

9 He never disputed that he was there at the store
10 that night. They act like that's something that you should
11 go "well, gosh, he is believable. He didn't dispute that.
12 You know, he could have disputed that," like that's
13 something that should enhance his credibility with y'all.
14 You know, the reason he didn't dispute that he was there was
15 because he couldn't dispute that he was there. He's got
16 those shoes on, and you will have some pictures back here.
17 I just pulled a couple of them. This is State's Exhibit 20.
18 These are blowups, photos that we printed off. They are not
19 scanned in. I don't have them blown up on the screen. They
20 are kind of blurry and fuzzy anyway because they are pulls
21 from a video, so they are not like a regular picture. But
22 State's Exhibit 20, that you haven't seen yet, is just a
23 pull of Mr. Addison and his shoes, which you will also have
24 back there, the shoes that Detective Haire saw on his feet
25 when he -- which he was kind enough to put on his feet

1 before he turned himself in at the Rock Hill Police
2 Department, and Mr. Haire went "I think I have seen those
3 shoes before." And he goes back and looks at the video and
4 goes "I'll be taking those shoes and putting them in a brown
5 bag and we will be carrying those to court and to show the
6 jury one day," because those shoes look the same. That's
7 one reason why he knew we could prove he was there.

8 The other reason why was because you heard the
9 testimony of Mike Williams, the retired forensic guy, and he
10 came in and told you "we lifted Terrell's fingerprint off
11 the car that they drove down to Rock Hill." So what's he
12 going to say? You know, how could he come in here and go "I
13 don't know these Mack guys. I just -- I don't like them. I
14 don't know them. They are bad news. They are dangerous. I
15 don't know." How can he deny, when his fingerprint is on
16 the car that the murderer drove from Hartsville to Rock
17 Hill, and the car is back in Hartsville with his fingerprint
18 on the door jamb?

19 So when he comes in here and stands up and goes
20 "he never denied that, he's a believable guy." Of course he
21 didn't deny it. If he would have done that, we would have
22 hammered him, we would have beat him like a drum with that
23 fingerprint and those shoes. He couldn't deny it.

24 Now, his testimony, I spent a good bit of time and
25 I wasn't really rough with him. I didn't get in his face.

1 I just asked some questions. And for the first five or ten
2 minutes I let him answer and say whatever he was going to
3 say. Do you recall? And then every time he tripped up and
4 he showed that he had a memory that's only about five
5 minutes long. It reminded me almost of that movie. There
6 was a movie about ten years ago, Memento. Memento movie it
7 was called. The guy couldn't remember anything for more
8 than five minutes, so he had to write it on his arm and make
9 notes, because he only had like a little short memory.

10 He couldn't remember from one minute to the next
11 what he was saying. He would say on the one hand -- and I
12 just wrote a couple of things down. I would call him on it
13 and he would try to "oh, oh, hold on. Wait a minute." He
14 would say he drove every weekend since he was ten.

15 And then I would say, "well, do you know how to
16 get to Hartsville from Rock Hill."

17 "Oh, no, I don't know how to get there. I don't
18 know how to get there."

19 And then later on he said, "oh, we took 121 up to
20 Mcbee, and then over to Lancaster, and down out of Lancaster
21 down 5." It was like "come on man. You either know the way
22 to get there or you don't."

23 Whatever was convenient that he had to say at the
24 moment is what he said, but he couldn't remember that it
25 contradicted something he had said three minutes before.

1 He talked about how the Mack brothers were the
2 devil and how bad they were. He talked about what
3 dangerous guys they were and how big of a family he has in
4 Hartsville, but he's going to get in the car in the middle
5 of the night, after midnight, with the dangerous Mack
6 brothers, people that you don't even want to be around
7 because bad things just happen around these people? He's
8 going to ride to Rock Hill with them and indebt himself to
9 them with money he doesn't have in his pocket?

10 Let's -- at some point I stopped calling him on
11 it, and this is really -- this is -- ladies and gentlemen,
12 out of his own mouth he's hung himself. We are going to
13 step through this, but when we are done, I think you will
14 agree there is no question as what he's saying cannot be
15 right. No question at all.

16 First of all, his times are wrong. He said that
17 he met up with them, first he said twelve, but then he said
18 eleven earlier, so we weren't really sure when they left out
19 of Hartsville, but let's just assume, because I asked him
20 "did you have a watch? Did you have a cell phone? Was
21 there any way that you could know the times," and he said
22 no. He so no watch, no cell phone. He wasn't really sure
23 of the time. We will give him the benefit of the doubt, but
24 he said that it was around 2:00, 2:30. If that they left
25 out of there at eleven. It take two hours. They got here

1 at one. If they left out of there at twelve and it takes
2 two hours, they got here at two. It wasn't long afterwards
3 that they got here that they went to the rim shop. But
4 Brian Lambert, the officer who testified, said they got the
5 call at about 4:09. So his time is off two hours there.

6 He said they rode around Rock Hill for about an
7 hour and a half. Which even if they got here at two, that
8 puts it at about 3:30, but we know that Mr. Marshall wasn't
9 shot until about 4:30. So he's off by an hour there. We
10 don't really know where they were or what they were up to,
11 and who cares who was driving? Who cares? What difference
12 does that make?

13 He says he calls his momma, but he couldn't get an
14 answer. You got to remember now, he's just innocent Terrell
15 Addison. He's just a Boy Scout on his way home and he
16 hasn't done anything wrong and he doesn't want to be around
17 these Mack brothers any longer than he has to. Now all he
18 has to do is find the fifty dollars he owes them so he can
19 part ways and head on back to his wholesome life.

20 He calls his momma, he says. Only one problem
21 with that. He said he didn't have a cell phone. The only
22 cell phone we know of in the car was Dontavious Mack's cell
23 phone. We have those records. Right here. And we know all
24 the calls that were made from that phone the late morning,
25 late evening of the 9th, early morning of the 10th,

1 throughout the time period in question, and there is only
2 one telephone call that was made in an 803 area code,
3 because, you see, Hartsville is over there close to the
4 coast and they're in the 843 area code. So every other
5 phone call that was made is 843, except one, 6769.
6 That phone call was made at 12:46 a.m.. Well, that would be
7 about the time he would be looking for his momma, maybe, to
8 find that fifty dollars. So maybe that's his momma. That's
9 the phone call that he's talking about, except for one small
10 problem. Do you remember the officer from the detention
11 center who came up and testified to the record of his
12 visitors who he had on his call list? Number five, Scottia
13 Haile. Relationship? Friend. She lives over on Swinging
14 Tree Lane in York, and there is the phone number, -6769.
15 -6769. That's not his momma's phone number. He never
16 called his momma. He just made that up. No evidence of a
17 phone call to his momma at all.

18 Now, he's with the dangerous Mack brothers. He
19 owes them money he doesn't have. He stops, he comes up
20 Cherry Road after the rim shop job that doesn't work. The
21 alarm has gone off, so they run down Cherry Road right there
22 where Celanese runs into Cherry. Right there near is a Home
23 Depot there and a Zaxby's and some other stuff. They turn
24 left down Celanese and they go down. About two miles, or
25 so, on the right is an apartment complex called Heather

1 Heights, and that's where his brother is staying with his
2 brother's girlfriend. He says "well, hold on just a minute.
3 Pull into Heather Heights. I'm going to go see my brother."
4 He says he stays there for twenty to thirty minutes with his
5 brother and can't find fifty dollars, so he goes back down
6 to the car.

7 Does any of this make sense? You are scared of
8 these guys. They're dangerous. You owe them money. You
9 don't have the money. Your brother says he doesn't have the
10 money. Do you think that he could have come up with another
11 plan besides going downstairs and getting in the car with
12 them? "Do you think your brother could have maybe helped
13 you out a little bit? Would you have called the police?
14 Would you have tried to call your momma? Would you have
15 said open up the back window, I'm going to drop out and run
16 through the woods"? Didn't do any of that. Probably didn't
17 even stop and see his brother at the Heather Heights
18 apartments. I submit to you that that probably never
19 happened.

20 He said because of that, right after that is when
21 they forced him to rob the store. They run up Celanese
22 Road. It's only about a mile or two up Celanese before you
23 get to the Northwoods Apartments on the right there. They
24 pull into the Northwoods Apartments, which if you are
25 familiar is actually down in a little bit of a dip to the

1 right, but it's a good bit up from before you get to the BP,
2 but you pull in there, and you will have this map back
3 there. It's an aerial shot that shows -- this is State's
4 Exhibit 70 and it shows the relationship and the distance.
5 Here is Northwoods. This is Celanese. There is the BP.
6 And this is where Ms. Efird said she saw their car parked
7 right there. You will have State's 70 back there with you.

8 He said they forced him to rob the store. Pulled
9 into Northwoods Apartments. He said it was only a few steps
10 to get from where they parked.

11 Again, there was some business of who had the
12 guns. Did he give it to him? Did he reach across? You
13 know, this is a smoke screen and distraction. What do you
14 think they are going to remember about that two and a half
15 years later? Do you fully expect them to have total recall
16 of every single silly detail of whether he reached across
17 him to get the gun? Did he get the bandana out of the
18 trunk? Did he get the gun out of the trunk? Who cares?
19 Ned Marshall is dead. Somebody shot him. There was a gun
20 in there, a .380 that was fired several times that took his
21 life. Went right through his aorta. That much we know is
22 true. That much is not in dispute. These other little
23 things that they want to distract you with of
24 inconsistencies that they are trying to make matter don't
25 matter at all.

1 One thing that does, though, is that he definitely
2 testified that it was only a few steps and it only took him
3 ten to fifteen seconds to get from where they were to the
4 BP, he and Dontavious, running together. You have got the
5 testimony. It's a four hundred yard distance. More than
6 four hundred yards. And when you look at it --

7 Pay attention to this. They're over in this
8 parking lot here. There is one, two, three buildings and a
9 giant field in between where they are and where they are
10 going. No way that you can see from here through these
11 buildings as to what's going on at the BP.

12 He says Dontavious had a .380. He recognized it
13 as a .380. Apparently Davorius and Dontavious aren't the
14 only people familiar with guns.

15 Ten to fifteen seconds to get to the BP. There is
16 the map right there that shows it being four hundred yards.

17 And I'll show you this. This is the route that
18 they figured they took, based on the evidence that they
19 found, and they measured that off to be 1,225 feet, which is
20 twenty-five feet father than four hundred yards.

21 Now, what did they say happened when they got
22 there? Terrell says that they go to the back of the store
23 and that Dontavious takes him -- he is here. Dontavious
24 walks him around this corner. And down a little bit
25 further, you see where the windows start here, and there is

1 the door there? On the other side there is windows and the
2 door. You will have photographs of the store. You will see
3 there is another door, and that's the door on this side over
4 here that Terrell came in. This is the door Dontavious came
5 in, but he leaves him right over here. And then Dontavious
6 runs back around the store and his instructions are "you
7 wait here," wearing that dark hoodie and baseball hat under
8 this brightly lit canopy right here with the giant
9 fluorescent lights in the middle of the night. "You stand
10 there with your hoodie up and your mask on your face in the
11 bright light and wait for me to come around the other side
12 of the store. And let's hope that nobody drives by and
13 wonders just what in the world is a guy doing standing
14 outside under the bright light of the BP with a bandana
15 across his nose." But all that aside, that's Terrell's
16 story. He's going to stand over on the other side of the BP
17 right there, waiting until he sees Dontavious come running
18 in. And when he sees Dontavious running in, that's his cue
19 to run in himself from the other side. "We'll take him from
20 both sides."

21 And I asked him specifically, "when you went in
22 the store, did you go straight in the door to the position
23 we see you at on the video?

24 "Yes.

25 "You didn't stop anywhere? You didn't linger in

1 the door? You didn't stand at the door for any period of
2 time? You went straight there?

3 "Yes, I did."

4 All right. Why is that important? Well, we will
5 get to that in a second.

6 One thing I do want you to note, and you will have
7 this back there, you heard the testimony of Mike Williams.
8 This is crime scene tape right here. And the crime scene
9 tape runs all the way around. That's a police car there.
10 And it runs right over here to that light pole, but it's
11 tied off of, Mike Williams said, right in front of these two
12 public pay telephones that are located about, oh, maybe
13 thirty feet, or so, from the side of the building. These
14 two accessible public pay phones that are right there at the
15 edge of the parking lot, thirty feet from where our friend,
16 Mr. Addison, is standing with his hoodie on, but nothing
17 that he could do to stop this thing from going down. Then
18 right over there are the public telephones. You will have
19 the photographs back there to see.

20 He's waiting for Dontavious to go back around
21 there. He went straight in the store. He didn't stand in
22 the store.

23 Now, in order to understand what the significance
24 of the pay phones and what I'm about to go through next is
25 I'm going to stop for a second and tell you a little bit

1 about duress. I know Mr. Swerling did, but, in short -- and
2 you will hear this from the judge. He's the judge of the
3 law. Y'all are the judge of the facts. You decide what
4 actually happened. He tells you what the law is and you
5 decide whether -- based on what you believe happened,
6 whether either of these gentlemen are guilty of any crime.

7 But he's going to tell you what duress is, and
8 he's going to say basically that duress is coercion that's
9 going to reasonably put a person in fear of imminent danger
10 of death or serious injury, and that that person has no
11 other option but to commit the crime. And that's important,
12 because the law says if you have a choice, if there is any
13 other action that you could take, other than to commit the
14 crime, you must do it. You can't say you were under duress
15 if you have something else you could do to avoid doing that,
16 to get away, to avoid committing the crime, because the law
17 requires you not to commit the crime, if you can do that.
18 So it's not duress if you had an alternative course of
19 action and you failed to take it.

20 And that this must be proved to you -- we have the
21 burden of proof. You are going to hear a lot about that,
22 and you have heard a lot about it already, but this is one
23 thing in the case that we don't have to prove. We don't
24 prove that there wasn't duress. They have to prove that
25 there was. They have to prove it by a preponderance of the

1 evidence.

2 So let's take a look, and I'm going to do this
3 real quick out of my power point, and show you -- and do you
4 see that? Let me back it up just a second.

5 Okay. The door is opening. 4:58:15 roughly he's
6 at the door and should have been visible to Mr. Addison,
7 who, under his testimony, is on the other side. Basically
8 if this camera was me and those are my eyes looking at that
9 door, Mr. Addison was several feet behind me through another
10 door out into the breezeway of the convenience store.
11 4:58:15 is when you first see him at that door.

12 4:58:43 is when you first see Mr. Addison.

13 Now, that's a difference of twenty-eight seconds.
14 Twenty-eight seconds from when we first saw Dontavious Mack
15 at the door there. That doesn't count the time that it took
16 Dontavious Mack to run around the store to get to that door.
17 All that time, twenty-eight seconds. Let's just forget
18 about the time that it took him to run around the store. We
19 will just cancel that out and say twenty-eight seconds that
20 Terrell Addison, by his own testimony and the indisputable
21 evidence of this tape, has standing on the other side of
22 that convenience store by himself, this eighteen year old
23 kid who used to be a running back when he was in high
24 school. How far do you think he could have run in
25 twenty-eight seconds? Do you think that he could have made

1 it to the Harris Teeter and said "my God, there is a robbery
2 going down across the street. Call the police right now."

3 The law doesn't require him to be a hero and risk
4 his life by maybe going to those pay phones. He could have
5 done that. They were right there in front of him. They're
6 clearly visible to him. He could have done that, but
7 maybe -- just assuming that he was under duress for a
8 second, maybe at that point he would have been, "well, what
9 if Dontavious looks out the window and sees me on the phone?
10 He could come out and come after me." Okay, he doesn't have
11 to be a hero, but he does have to run. He does have to
12 avail himself of the other alternative, which is to get out
13 of there, to find another way besides helping Dontavious rob
14 Ned Marshall. Go get help. The Harris Teeter, open
15 twenty-four hours a day, sitting right across the street.
16 This eighteen year old running back had twenty-eight seconds
17 to go find help as he stood there waiting to go in the store
18 and do his part.

19 And I don't care. I don't care if he stood there
20 and wandered back and forth, whether he laid hands on Ned
21 Marshall that night or not. What do you think his presence
22 in that store meant to Ned Marshall, standing there, wearing
23 his dark hat with his blue bandana? That was one more
24 person that Ned Marshall had to worry about. One more
25 person that he didn't know as to whether he meant him harm

1 or not. He was working together with Dontavious Mack to rob
2 that store. And I assure you, with his heart pounding in
3 his chest and his mouth dry, Ned Marshall took no comfort
4 from the fact that Terrell Addison was standing there with
5 his hoodie and his blue hat and his bandana across his nose.

6 Whether he had a gun or not, you can't see in the
7 video. It's not that clear. It's not like the videos that
8 you take at home. But if he had his hand in his pocket,
9 what do you think Ned made of that? Does he know what he's
10 got? He knows he's there and part of the deal, because he's
11 wearing a mask. He was in the middle of it up to his
12 eyeballs.

13 If that isn't enough, let me show you one more. I
14 want you to take a look at this. A full length shot. There
15 is Terrell. Dontavious is behind the counter. And there
16 goes Mr. Marshall, shot in the legs, probably falling down
17 on the ground. Now, where is Mr. Terrell Addison? He's at
18 the door.

19 According to Mr. Swerling, he got out of there the
20 first sign of trouble, because he didn't really want any
21 part of this in the first place, because he's an upstanding
22 citizen and a good guy.

23 Let's watch what this good guy does. What's he
24 doing? Is he running? Is he running? He ain't running.
25 He's going nowhere. Nobody is standing next to him right

1 now while he's holding the door open for his buddy
2 Dontavious, who is running out of the store. Forced to do
3 this?

4 Twenty-eight seconds. That's how long Terrell
5 Addison had. Twenty-eight seconds he had to avoid going
6 into the store and participating in the robbery.
7 Twenty-eight seconds to do what the law required him to do,
8 to run to get help, to not participate in this.

9 He knew where he was. As a matter of fact, what
10 did he testify? His momma lives over on Berryhill. It's
11 the street that runs off of Evanport, which runs off of
12 Indian Hook. Right? He knows exactly where he's at.

13 His brother, supposedly, according to his own
14 testimony, whether you believe this or not, is just a mile
15 and a half or two up the street at the Heather Heights
16 Apartments.

17 She works a good job, your mom does. She works at
18 Wells Fargo and makes a good living. Works Monday through
19 Friday, the day shift. She's probably home asleep that
20 night, wouldn't you think? Do you think that she could
21 have, do you think that she would have, do you think that
22 she would have found fifty dollars that night if he had
23 showed up at the door at two o'clock or three o'clock in the
24 morning and said "I got these crazy guys outside. I owe
25 them fifty dollars, or they are going to kill me or make me

1 rob a store if I don't find fifty dollars, momma." Do you
2 think that she would have found it? He didn't do that,
3 though. He didn't do that, because, ladies and gentlemen,
4 he was right where he wanted to be, right in the thick of
5 the action.

6 What else did he say? He ran out the door. And
7 you saw on the video he held it open for nine seconds. And
8 why couldn't he run? Well, he said "Davorius was right
9 there. If I go out the door" -- "oh, there is Davorius.
10 Got nowhere to go. Got the devil behind me and the deep
11 blue sea in front of me. I'm between a rock and a hard
12 place. I still got to do what they got to say, I mean,
13 because I'm under duress and they are armed and dangerous."

14 He says -- he told me that Davorius was maybe from
15 me to the witness stand. You can use your best
16 recollection, but it wasn't far. Ten, twenty feet. He says
17 he was just past the pumps. There is pumps there and pumps
18 there. You pick whichever one you believe you want. I
19 don't care. It doesn't matter whether he was right there or
20 right there. I think under a fair reading of it, he had to
21 be about right there, because the door is right there, and
22 that's the closer pump. So that's where Davorius, the
23 deadly, dangerous Davorius Mack is standing, armed and ready
24 to do him harm, standing right there. No choice but to run,
25 so they run. They shoot straight down there, all three of

1 them, Davorius up front, Dontavious in the back, both of
2 them got guns.

3 All of that sounds compelling, believable, but for
4 one small problem. That is the car wash. That's the hill.
5 And step down lower and you will see on this again, there is
6 the BP. This is this big field here that they're running
7 across, and this is the road right here. We are looking
8 back up towards from this road here towards the BP. They
9 run down here. And what did the forensic people tell you
10 they found on that road? Shoe prints. Now, we got Davorius
11 in front, we got Terrell in the middle, and Dontavious in
12 the back, and they are running through what must have been a
13 wet field, because they got mud on their shoes. And when
14 they get to that freshly laid blacktop, the mud comes off
15 and leaves a print, that you have seen the pictures of and
16 you heard tell of. You heard expert testimony about what it
17 all means, except for one small problem. One set of tracks
18 and two sets of tracks.

19 So one of two things is true. Either Terrell
20 isn't telling the truth about Davorius being there, or
21 Davorius really is the devil, because he don't even leave
22 footprints. One of those two has to be true. I submit it's
23 the former and Davorius was never at the BP. He didn't make
24 it that far. One, two sets of footprints. Two guys.
25 Dontavious and Terrell. That, ladies and gentlemen, I

1 submit is the nail in the coffin of Terrell Addison.

2 There is absolutely no question. Irrefutable.

3 He's got twenty-eight seconds on the other side. He should
4 have, could have run, didn't run. And here you have got no
5 question in your mind, there is only two sets of footprints
6 there. By his testimony there should be three.

7 Ben Stewart. Poor Ben Stewart. Poor, poor Ben
8 Stewart. Everybody says Ben was there, even his
9 co-defendant at trial here. Even Terrell Addison, who
10 obviously isn't that bright and accomplished a liar, even
11 Terrell Addison sat down and thought about it and said "ah,
12 I would like to help old Ben out and say he wasn't there.
13 Nobody will believe me if I try to sell that story to the
14 jury." Even he realized that he had to put Ben Stewart
15 there at the car handing the gun over. Everybody says that
16 he was there - Dontavious, Davorius. Reed Allen says he had
17 the gun. He gave to it him later on, and now at trial his
18 co-defendant, Terrell Addison, takes the stand and
19 testifies, "yeah, Ben Stewart was there."

20 Johnetta Evans said Donte said nothing about Ben,
21 but Tiyone said that Donte mentioned Ben. And, of course, I
22 submit to you when Dontavious was talking to Tiyone in
23 Hartsville, he was bragging about this. He said that
24 Davorius was the one who did the robbery with him and was
25 beating on the man and that he had to pull him off of the

1 man and then he shot him. You have got the video. You know
2 that's not true. And you heard from everybody. Even
3 Terrell admits that Davorius wasn't in the store. We know
4 that it was Terrell. So that story is a complete lie. He's
5 just puffing to Tiyone to try to make himself look tough and
6 he decides to throw a bone to his brother to make him look
7 tough too.

8 Mr. Snow said "there is no forensic evidence to
9 show that Mr. Stewart was in that car at all - no DNA, no
10 fingerprints, no fibers, no hair, nothing to show that Ben
11 Stewart was in that car." Well, guess what, there is no
12 forensic evidence to show that Dontavious was in that car.
13 No DNA, no fingerprints, no hair fiber, nothing to show that
14 he was in there. Yet nobody disagrees that Dontavious was
15 in that car. No doubt he was in that car, and he was in
16 that car and bleeding. He had a bullet hole in his back,
17 and we didn't find any of his blood in there. None of his
18 DNA. No DNA of Dontavious found in that car. No
19 fingerprints of Dontavious.

20 What did the officer say about fingerprints? It
21 doesn't work like it does on CSI. There is no magic dust
22 that you could flip it over the crime scene and make the
23 killer's name appear. It doesn't work that way. You don't
24 always leave a fingerprint every time that you touch
25 something. Sometimes, and especially inside the car, that's

1 the hardest place to find a fingerprint. It is frequent,
2 more often than not, I believe Detective Williams testified,
3 that you do not find fingerprints more frequently. So I
4 submit to you just because they didn't find anything in
5 there does not mean that Ben Stewart was not in the car.
6 The only question about that is whether he's a principal or
7 an accessory.

8 What's accessory before the fact? You are an
9 accessory before the fact of any crime if you aid, counsel,
10 assist, abet, and encourage someone else to go and commit
11 the crime, and then that person goes out and actually
12 commits the crime that you knew that they were going to do
13 and that you aided them in doing. If you do that and you
14 are not present at the scene of the crime, then you are an
15 accessory before the fact of whatever crime it was.

16 Grand larceny, stealing a car, if I give you a
17 shimmy and a key and I say "this is the key to so and so's
18 car. He lives across town here. Here is the key. Here is
19 the shimmy. You can open up the door" and dah, dah, dah,
20 use the key and it's the valet key, start it right up and
21 drive it back here. The guy appears with the car. You are
22 an accessory before the fact to grand larceny, because you
23 weren't present at the car when he actually stole it.

24 Now, the question here -- and when we say present,
25 there is two types.

1 Actual presence. I am actually present in this
2 courtroom.

3 There is constructive possession (sic), which
4 means you are not physically at the location, but you are so
5 close by and your actions and what you have done and being
6 that close by, that it is virtually as if you were there.
7 That's called constructive possession (sic).

8 And that's going to be the decision that you
9 really have to make about that.

10 Truly was Ben Stewart an accessory before the fact
11 or was he present at the BP under the theory of constructive
12 presence? Was he so close at four hundred yards away? He
13 handed them the gun that they used to kill Ned Marshall.
14 Was he so close, that that amounts to constructive presence
15 at the scene, and that's your decision.

16 I venture no position. I'm not going to try to
17 push you one way or the other. You guys work that out.
18 That's something that you have to decide. It's close. It
19 could go either way and I leave that up to you.

20 Again, this is essentially it. Principal aiding
21 and abetting. That's why Terrell is only charged with
22 murder. He's not charged with accessory before the fact,
23 because there is no question he was in the store. He's a
24 principal to it. He is present in the store aiding and
25 abetting during the commission of a crime. He's a

1 principal.

2 Do you think that Ben Stewart's presence four
3 hundred yards away amounts to presence in the store, or is
4 he an accessory?

5 You are going to hear about the hand of one,
6 accomplice liability or vicarious liability. It's another
7 legal concept.

8 The hand of one is the hand of all. A crime is
9 committed by two or more people acting together towards a
10 common criminal purpose. The act of one is the act of all.
11 The hand of one is the hand of all. In other words, it's no
12 defense to say "I'm not the guy who pulled the trigger that
13 killed Ned Marshall." If you were an active participant in
14 the underlying crime to the felony of armed robbery and
15 during the course of that armed robbery somebody dies, you
16 kill somebody, you are just as guilty as the guy who pulled
17 that trigger, whether your hand is on the gun or not.

18 You have heard much talk about reasonable doubt.
19 There is no magic formula. I wish there was. I wish you
20 could define reasonable doubt to a mathematical certainty,
21 but you can't. Nobody can assign a percentage to it and say
22 you have got to be eighty-seven percent sure and ninety-two
23 percent sure. There is not -- it's not that kind of a
24 theory.

25 Reasonable doubt, you are going to hear, is the

1 kind of doubt that leaves you firmly convinced of the
2 defendant's guilt.

3 You have heard everything. You have seen the
4 evidence. You saw -- you saw them standing over there by
5 himself for twenty-eight seconds, even under his theory.
6 You saw the two tracks leading away, where there should have
7 been three, if he was telling the truth. I think you firmly
8 believe it. I'll try to make sure that you -- you know, you
9 don't understand that you -- don't get confused about --
10 again, we can't prove anything beyond all doubt. We would
11 have to have video cameras set up everywhere filming at all
12 times and show you. You just don't have that. You don't
13 have it. It's impossible to prove anything beyond all
14 doubt. All you can do is ask yourself am I firmly
15 convinced? Does this evidence leave me firmly convinced of
16 the guilt of Ben Stewart and the guilt of Terrell Addison?

17 This hesitate to act business? You know, I
18 stopped and got a cup of coffee on my way here today, and
19 I'm trying to loseweight. We all are. I'm standing there
20 and go, huh, do I want to use the skim milk or do I want to
21 use the Half and Half? Well, that didn't mean I have a
22 reasonable doubt about whether I wanted a cup of coffee. I
23 hesitated. I chose the Half and Half. I admit that. I did
24 it. But that's not the kind of hesitation we are talking
25 about. Everybody hesitates when making an important

1 decision. You do it during an important decision. They put
2 chairs in that jury room for a reason - to sit down and
3 deliberate and think about the evidence, and you decide what
4 does this evidence convince me of, and am I convinced by
5 this evidence, and I submit there is no question.

6 Mr. Marshall showed up for work that day at about
7 three in the morning. He opens the door. He walks in and
8 locks it behind him and goes about the business of trying to
9 set the store up and get it ready for the day's business.
10 He walks in and there is his card. He was name at the top.
11 They told you his nickname was -- Mr. Corn testified
12 everybody knew him by "Pie", all the customers, everybody
13 that came in the store. He clocked in at 3:04.

14 This case is important. It's important for the
15 defense. Their liberty is at stake. There is no question
16 about that.

17 We have the burden of proof, and I submit to you
18 that we have carried it. A big tragedy was done on October
19 the 10th, 2006, and it continues to reverberate through the
20 lobby of these people who sat patiently in this courtroom
21 Monday, Tuesday, Wednesday, Thursday, and now today, as they
22 sit waiting for justice, justice to be done for their loss,
23 and this case is important for them too.

24 I submit to you, ladies and gentlemen, Ned
25 Marshall's life was taken by these two men for less than

1 five dollars. He died on the floor of the BP that morning
2 for less than five dollars. They didn't get out of there
3 with anything.

4 And it's hard to stand in judgment of another man,
5 but justice must be served and truth must be spoken and
6 people have to answer for what they have done. These men,
7 they have done a terrible thing. A terrible thing. They
8 have taken a good man, removed him from this community.
9 They have torn this family and these good people up, and
10 justice must be done.

11 I ask you to find them guilty.

12 Find Terrell Addison guilty of murder. He's a
13 murderer. Just like Dontavious, he knew what he was doing.
14 He made his choices, and now he's got to pay.

15 Find Ben Stewart guilty either as a murderer or an
16 accessory before the fact of murder. He made his choice.
17 He didn't care when he gave that .380 over to Dontavious
18 whether or not somebody was going to die from a bullet that
19 was in the cartridge that night, but somebody did, and the
20 time has come to pay. Find these men guilty. Thank you.

21 THE COURT: Madam Clerk, if you would cut the
22 lights on, please.

23 Mr. Foreman, ladies and gentlemen of the jury,
24 that concludes the final arguments of counsel. It's time
25 for me to instruct you with regard to the law that applies

1 to the issues in this case.

2 We have been quite awhile with the arguments, and
3 my instruction on the law is probably going to be close to
4 an hour in length, so would you like to take a short break
5 before we do that? If you need a break, raise your hand.
6 Raise your hand. Some do. I want you to be able to listen
7 carefully to this instruction, so I'm going to go ahead and
8 take -- we will take about five minutes, and please refresh
9 yourselves when you break and we will come back in and
10 start.

11 (The following takes place outside the presence of
12 the jury panel)

13 THE COURT: Let's take about five quick minutes at
14 this time.

15 (Whereupon, proceedings were recessed)

16 (Whereupon, proceedings were reconvened)

17 MR. BRACKETT: Your Honor, we have got a redacted
18 copy. Where we have the entire thing photocopied. State's
19 Exhibit 4, it's got a redaction in there regarding the
20 reference in there that we wanted out. And we will take the
21 real State's Exhibit 4, the original version to have blue
22 ink on it, and return that to the court reporter, it's not
23 to go back to the jury.

24 THE COURT: No, that will be a court exhibit at
25 that point.

1 MR. BRACKETT: State's Exhibit 4, the original
2 copy with the blue ink is also marked as Court's Exhibit 6
3 and it's put aside and it won't go back to the jury.

4 THE COURT: Okay. Counsel, ready to proceed?

5 MR. BRACKETT: The State is ready.

6 MR. SWERLING: Yes, sir.

7 THE COURT: Mr. Williams, stick your head out the
8 door and tell everybody that wants to be in here during the
9 charge to come in not. I'm going to let the door open or
10 close. Nobody is going in or coming out during the charge.

11 THE BAILIFF: Yes, sir, Your Honor.

12 THE COURT: Mr. Snow, when the jury comes in, we
13 had not told them that Mr. Stewart had rested his case, and
14 so I'm simply going to mention that and have you confirm
15 that, that we did that before we started arguments. I will
16 let them know that.

17 THE BAILIFF: Your Honor, no one is outside.

18 THE COURT: All right. Then somebody be at the
19 door and make sure no one goes out or comes in during the
20 charge.

21 THE BAILIFF: Yes, sir.

22 THE COURT: Thank you.

23 Please bring the jury in.

24 (The following takes place in the presence of the
25 jury panel)

1 THE COURT: All right. Mr. Foreman, ladies and
2 gentlemen of the jury, before we started final arguments,
3 counsel -- or the defendant, Ben Robert Stewart, had rested
4 its case. I don't think that was done in your presence, but
5 counsel -- Mr. Snow, is that correct? Mr. Stewart had
6 rested his case, is that correct?

7 MR. SNOW: That's correct.

8 THE COURT: Thank you.

9 (Whereupon, at 1:40 p.m., the Court gave the jury
10 panel their jury instructions)

11 THE COURT: Now, Mr. Foreman, ladies and gentlemen
12 of the jury, it's now time for me to charge you, that is to
13 say instruct you, with regard to the law that applies to the
14 issues in this case.

15 In this case the State charges Terrell Antonio
16 Addison with several offenses. They charge him with the
17 offense of murder, also armed robbery, kidnapping,
18 possession of firearm during the commission of a violent
19 crime, and criminal conspiracy.

20 They also charge the defendant Ben Robert Stewart
21 with several offenses. They charge him with the offense of
22 murder, accessory before the fact to murder, armed robbery,
23 accessory before the fact to armed robbery, kidnapping,
24 accessory before the fact to kidnapping. And they also
25 charge him with accessory after the fact to armed robbery,

1 kidnappings and murder, and/or murder. And they charge him
2 with criminal conspiracy and also with possession of a
3 firearm during the commission of a violent crime.

4 Now, to these charges each defendant has pled not
5 guilty, which then places upon the State the burden of
6 proving the defendant guilty of each of these charges beyond
7 a reasonable doubt.

8 I charge you that a person charged with committing
9 a criminal offense in South Carolina is never required to
10 prove himself innocent.

11 I charge you that it is a vital important rule of
12 law that a defendant in a criminal trial, no matter how
13 great or serious may be the offense for which he's charged
14 must always be presumed innocent, until his guilt has been
15 proved beyond a reasonable doubt.

16 This presumption of innocence remains with the
17 defendant at all times throughout the trial and is only
18 removed when, and if, the State has proved guilt beyond a
19 reasonable doubt. For it is your solemn duty, ladies and
20 gentlemen, if not clearly convinced of guilt beyond every
21 reasonable doubt, to the contrary, to find a defendant not
22 guilty.

23 Now, Mr. Foreman, ladies and gentlemen of the
24 jury, in this case the defendant, Ben Robert Stewart, has
25 chosen not to testify in his case.

1 I instruct you and emphasize to you that the fact
2 that a defendant does not testify in his own behalf in a
3 criminal trial is not a factor to be considered by you in
4 any way in your deliberation. You must not consider the
5 fact that the defendant has chosen not to testify when you
6 determine the guilt or innocence of the defendant. It must
7 not be considered by you in any manner whatsoever, either
8 against or for the defendant.

9 A defendant has the Constitutional Right to remain
10 silent. The assertion of that Constitutional Right cannot
11 and must not be considered by you in your deliberations.

12 Under your oath then you are to reach no inference
13 and draw no conclusion whatsoever from the fact that this
14 defendant did not testify. The fact that he did not testify
15 should not even be discussed in your jury room.

16 The burden of proof, as I have stated to you is
17 upon the State. It is not the burden of the accused to
18 prove his innocence. The burden of proof remains upon the
19 State to prove guilt beyond a reasonable doubt.

20 Again, I emphasize the fact that a defendant did
21 not testify is not a factor to be considered by you in
22 determining the guilt or innocence of the defendant or in
23 any other aspect of your deliberations.

24 So the State has the burden of proving each
25 defendant guilty beyond a reasonable doubt.

1 What is a reasonable doubt? Now, some of you may
2 have served as jurors in civil cases, where you were told it
3 was only necessary to prove a fact is more likely true than
4 not, such as by the greater weight or preponderance of the
5 evidence. However, in criminal cases, the State's proof
6 must be more powerful than that. It must be beyond a
7 reasonable doubt.

8 Ladies and gentlemen, proof beyond a reasonable
9 doubt is proof that leaves you firmly convinced of the
10 defendant's guilt.

11 There are very few things in this world that we
12 know with absolute certainty, and in criminal cases the law
13 does not require proof that overcomes every possible doubt.

14 A reasonable doubt may also be described as the
15 kind of doubt that would cause a reasonable person to
16 hesitate to act.

17 If you have such a doubt as to the guilt of a
18 defendant, then he would be entitled to a verdict of not
19 guilty.

20 Reasonable doubt may arise from evidence which is
21 in the case, or from the absence or lack of evidence in the
22 case.

23 If, based on your consideration of the evidence,
24 you are firmly convinced that a defendant is guilty of the
25 crime charged, you must find him guilty.

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

4 You alone must make the determination of whether
5 or not reasonable doubt exists as to the guilt of a
6 defendant.

7 Mr. Foreman, ladies and gentlemen of the jury,
8 there are two types of evidence which are generally
9 presented during a trial: Direct evidence and
10 circumstantial evidence.

11 Direct evidence is the testimony of a person who
12 asserts or claims to have actual knowledge of a fact, such
13 as an eyewitness.

14 Circumstantial evidence is proof of a chain of
15 facts and circumstances indicating the existence of a fact.

16 The law makes absolutely no distinction between
17 the weight or value to be given to either direct or
18 circumstantial evidence, nor is a greater degree of
19 certainty required of circumstantial evidence than of direct
20 evidence.

21 You should weigh all the evidence in the case.
22 After weighing all the evidence, if you are not convinced of
23 the guilt of a defendant beyond a reasonable doubt, you must
24 find the defendant not guilty.

25 Mr. Foreman, ladies and gentlemen of the jury, you

1 have heard the testimony of a witness who has special
2 knowledge, skill, or -- really witnesses who have special
3 knowledge, skill, experience, training or education in a
4 particular field, who have given opinions in that field as
5 to matters in which they are skilled.

6 In determining the weight to be given such
7 opinions, you should consider the qualifications and
8 credibility of the expert witnesses and the reasons given
9 for their opinion. You are not bound by such opinions.
10 Give to them the weight, if any, you deem them entitled.

11 Mr. Foreman, ladies and gentlemen of the jury,
12 under the Constitution of South Carolina you are the finders
13 of the facts in this case. I do not have the right to pass
14 upon the facts, or even to express any opinion I might have
15 as to the facts, nor, may I suggest in any way what I may
16 think about the guilt or innocence of a defendant. You
17 should form no opinion in that regard from anything that I
18 may have said or any ruling I have made during the course of
19 the trial.

20 As the sole judges of the facts in this case you
21 are also necessarily the sole judges of the credibility or
22 believability of each of the witnesses that have testified
23 during the course of the trial.

24 Now, there are a number of factors which you may
25 consider in arriving at your assessment as to a particular

1 witness' credibility or believability. Some factors I'm
2 going to list for you, and should you think of other factors
3 that you believe also ought to be considered when you go
4 back into the jury room on the question of credibility, then
5 you should consider those factors as well, but you may
6 consider the demeanor of the witness from the witness stand.
7 What was that witness' manner of appearance? Was the
8 witness straightforward in answering questions or hesitant
9 in responding to questions? Simply put, do you believe the
10 witness was telling the truth or not telling the truth?

11 Do you believe that the witness knew of what that
12 witness testified or did not know of what that witness
13 testified?

14 You may consider whether or not the testimony of a
15 witness is consistent or inconsistent with that witness' own
16 testimony or with other evidence or testimony presented
17 during the course of the trial.

18 You may also consider how the witness came to know
19 the facts to which he or she testified.

20 You may consider the opportunity that a witness
21 had to observe or hear; that is, to perceive the existence
22 of a fact by means of their senses.

23 You may also consider whether or not a witness is
24 biased or prejudiced. That simply means do you find that a
25 particular witness had some reason to come into court and

1 testify one way or another to help or hurt one side or the
2 other?

3 You may also consider whether or not the testimony
4 of a witness was strengthened or weakened by other testimony
5 or other evidence presented during the course of the trial.

6 Now you as the finders of the facts in this case
7 and you as the judges of the credibility or believability of
8 each of the witnesses that have testified may believe as
9 much or as little of what a witness testifies to as you deem
10 appropriate.

11 You may believe all of what a witness says, you
12 may believe none of what a witness says, or you may believe
13 only part of what a witness says.

14 You may believe one witness as against several, or
15 several as against one.

16 Whatever your good judgment and common sense tells
17 you is the most believable testimony is the testimony that
18 you should accept, and reject that testimony which you find
19 not to be credible or believable.

20 Mr. Foreman, ladies and gentlemen of the jury, the
21 same Constitution that makes you the finders of facts in
22 this case makes me the sole and only instructor in the law.
23 You must accept as correct the law that I charge and apply
24 to the law the evidence as you find it and reach your
25 verdict. Put aside any conceptions you may have had as to

1 the law before coming here today, and accept the law as I
2 instruct it to be.

3 You, for purposes of your duty as jurors today,
4 should not be concerned about what the law ought to be, but
5 what I charge you the law is now in this state.

6 Mr. Foreman, ladies and gentlemen of the jury, I
7 charge you with regard to criminal intent. Criminal intent
8 is a necessary element of each crime that must be proved by
9 the State beyond a reasonable doubt.

10 Criminal intent is always a matter that must be
11 determined by the jury from the circumstances surrounding
12 the situation.

13 There is no way to prove intent to a mathematical
14 certainty. There is no way medical science can dissect a
15 person's brain and determine what he had in mind, so the law
16 says that criminal intent may be inferred from the
17 circumstances shown to have existed. This is how the jury
18 makes a determination of whether or not the element
19 requiring intent was present.

20 Criminal intent is a state of mind, which operated
21 jointly with an act is the commission of a crime. Criminal
22 intent is a mental state, a conscious wrongdoing.

23 So it is up to you, the jury, to determine what a
24 defendant intended to do, based on the circumstances shown
25 to have existed.

1 I tell you that the State must prove criminal
2 intent beyond a reasonable doubt, just as the State must
3 prove every element of the offense by a reasonable doubt.

4 It is not necessary to establish intent by direct
5 and positive evidence, but intent may be established by
6 inference, in the same way as any other fact, by taking into
7 consideration the acts of the parties and all of the facts
8 and circumstances of the case.

9 While the State may prove motive, it is
10 unnecessary that the State do so. However, the State must
11 prove intent.

12 Mr. Foreman, ladies and gentlemen of the jury,
13 there has been some testimony concerning possible sentences
14 with regard to some of the witnesses who have testified. I
15 instruct you that possible punishment is not a matter for
16 your concern. The only reason the witnesses were allowed to
17 be asked about possible punishment is with regard to how it
18 might affect their credibility with regard to motive or
19 bias, and that's the only reason they were allowed to ask
20 about possible punishment, but you are not concerned about
21 possible punishment. That's a matter for the court to
22 determine.

23 Your concern is with guilt or innocence. You must
24 decide whether the State has proven the elements of each of
25 these criminal offenses beyond a reasonable doubt. And

1 therefore, the guilt or innocence, that's your only concern
2 in this case.

3 I'm going to charge you with regard to specific
4 cases with which the defendants are charged in this case.
5 You are not going to have these instructions written down
6 for you back in the jury room, so you are going to have to
7 call on your collective memories as to what I instruct you
8 the law is.

9 However, once you begin your deliberations, if you
10 are confused about some of it, or all of it, for that
11 matter, if you need to be re-instructed on anything
12 regarding the law, if you will let the bailiff know through
13 a message, then I'll bring you back out and recharge you or
14 reinstruct you on anything that you are not sure about, but
15 what I would ask you to do at this time is to listen
16 carefully as I go through these offenses.

17 First of all I'm going to charge you with regard
18 to murder.

19 Murder is the willful felonious killing of a human
20 being by another human being with malice aforethought, that
21 malice being either express malice or inferred malice.

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

1 infer an evil intent.

2 Malice aforethought may be expressed or inferred.
3 These terms express or inferred do not mean different kinds
4 of malice, but merely the manner in which malice may be
5 shown to exists; that is, by direct evidence or by inference
6 from the facts and circumstances which are proved.

7 Express malice is shown when a person speaks words
8 which express hatred or ill will for another, or when the
9 person prepared beforehand to do the act which was later
10 accomplished. For example, lying in wait for a person, or
11 any other acts of preparation going to show that the deed
12 was within the defendant's mind would be express malice.

13 Malice is said to be expressed where there is
14 manifested a violent, deliberate, intention unlawfully to
15 take away the life of another human being.

16 Now, malice is inferred where one intentionally --
17 or may be inferred where one intentionally and deliberately
18 does an unlawful act which he or she then knows to be wrong
19 and in violation of his duty to another and where no excuse
20 or legal provocation appears and when the circumstances
21 attending a killing show an abandoned heart, a malignant
22 heart, fatally bent upon mischief.

23 Malice may be inferred from conduct showing a
24 total disregard for human life.

25 Inferred malice may also arise when the deed is

1 done with a deadly weapon.

2 A deadly weapon is any article, instrument, or
3 substance which is likely to cause death or great bodily
4 harm.

5 The following are examples of instruments which
6 may be deadly weapons: A pistol, a shotgun, a rifle, a
7 knife, a slingshot, metal knuckles, a razor, gasoline,
8 firebomb, etcetera.

9 If facts are proved beyond a reasonable doubt
10 sufficient to raise an inference of malice to your
11 satisfaction, this would simply be an evidentiary fact, to
12 be taken into consideration by you, the jury, along with
13 other evidence in the case, and you may give it such weight
14 as you find it should receive.

15 You, as jurors, are free to accept or reject this
16 permissive inference, depending on your view of the facts.
17 In other words, if such conduct results directly in the
18 death of another and if such conduct was so culpable and
19 inexcusable, so aggravated and grossly reckless as to show
20 an active intentional disregard of the consequences of human
21 life, thus denoting a malignant spirit, a heart devoid of
22 social duty and fatally bent on mischief, inference of
23 malice may arise.

24 Furthermore, it is not just carelessness, not mere
25 recklessness, or a passive indifference to the safety of the

1 others. This conduct, when it shows a deliberate and
2 intentional design to so use or employ or handle a deadly
3 weapon or dangerous instrumentality, so as to endanger the
4 life of another or of others, without just cause or excuse,
5 may be sufficient to raise this inference.

6 However, it is for you, the jury, to decide beyond
7 a reasonable doubt whether upon all the facts and
8 circumstances of this case the alleged use of a deadly
9 weapon demonstrated such an intentional disregard for human
10 life that malice may be inferred from the use of a deadly
11 weapon. And is for you, the jury, to decide what weight
12 should be given this fact.

13 And it will be observed, ladies and gentlemen,
14 that there must be malice aforethought.

15 While the law does not require that malice shall
16 exists for any particular length of time before the
17 commission of the act, it must be a forethought. There must
18 be a combination of the previous evil intent and the act
19 producing the fatal result.

20 If the evidence should show under what
21 circumstances the fatal injury was inflicted, then you, the
22 jury, would have to determine whether under such
23 circumstances the act was malicious.

24 The law says if one intentionally kills another
25 during the commission of a felony, the inference of malice

1 may arise.

2 The facts, if proved beyond a reasonable doubt
3 sufficient to raise an inference of malice to your
4 satisfaction, this inference again would be simply an
5 evidentiary fact to be taken into consideration by you, the
6 jury, along with the other evidence in the case, and you may
7 give it such weight as you determine it should receive.

8 I'll talk to you now as to armed robbery. What is
9 armed robbery?

10 The crime of armed robbery includes all the
11 elements of larceny and robbery.

12 First, I will explain to you what is meant by
13 larceny and then robbery and then armed robbery.

14 What is larceny?

15 I charge you that there are four elements which
16 must be present and established beyond a reasonable doubt to
17 make out the crime of larceny. These four elements are as
18 follows:

19 One, is that there was a taking.

20 Two, that the taking was of the personal property.

21 Third, that after being taken, the property was
22 carried away.

23 Fourth, that the taking and carrying away of the
24 property was done with the intent to steal.

25 Now, what is robbery?

1 Robbery includes each of the four elements I have
2 just explained.

3 In addition to these four elements, two other
4 elements are necessary to make out the crime of robbery.
5 Those elements are that the property must be taken from the
6 person of another or in his presence, and that the taking
7 and carrying away of the property must have been
8 accomplished by placing the other person in fear by violence
9 or threats of violence so as to make that person surrender
10 the property without their consent and against their will.

11 Therefore, the crime of armed robbery includes all
12 the elements of larceny and robbery.

13 In order to make out the crime of armed robbery,
14 however, an additional element must be proved. The robbery
15 must have been committed while armed with a deadly weapon.
16 The person committing the robbery must have had or used a
17 deadly weapon which he obtained possession of the property
18 or placed one possessing the property in fear in order to
19 obtain the property.

20 Section 16-11-330(a) of the South Carolina Code of
21 Laws, 1976, as amended, provides that a person convicted of
22 the crime of robbery while armed with a pistol, dirk,
23 slingshot, metal knuckles, razor, or other deadly weapon
24 commits an armed robbery.

25 Now, I charge you with regard to the offense of

1 kidnapping. What is kidnapping?

2 Each defendant has been charged by the State with
3 the offense of kidnapping.

4 Section 16-3-910 of the South Carolina Code of
5 Laws, 1976, as amended, provides as follows:

6 Whoever shall unlawfully seize, confine, inveigle,
7 decoy, kidnap, abduct, or carry away any other person by any
8 means whatsoever without authority of law shall be guilty of
9 kidnapping.

10 The State must prove to you beyond a reasonable
11 doubt that Ned Marshall was unlawfully seized, confined,
12 decoyed, kidnapped, abducted, or carried away by a defendant
13 by some means and without authority of law before you can
14 return a verdict of guilty as to the offense of kidnapping.

15 If the State fails to prove to you beyond a
16 reasonable doubt that the defendant committed the offense of
17 kidnapping, then you must find the defendant not guilty.

18 Each of the elements of kidnapping must be proved
19 by the State beyond a reasonable doubt before a verdict of
20 guilty can be returned.

21 The elements are, again, there must be some act or
22 conduct on the part of the kidnapper which results in
23 taking, carrying away, seizure or detention of the victim.

24 The taking, carrying away, seizure or detention
25 must have been accomplished without any lawful warrant or

1 authority before; that is, it must have been unlawful.

2 And then the taking, carrying away, seizure or
3 detention must have been accomplished by force and against
4 the will of the victim. In other words, the victim must not
5 have consented in a legally valid manner.

6 While the use of physical force or violence would
7 satisfy this requirement, such physical force or violence is
8 not essential to the commission of the crime of kidnapping.
9 For kidnapping it is sufficient that a threat is used, if it
10 of sufficient force to put an ordinarily prudent person in
11 fear of his or her personal safety.

12 I charge you now with regard to the offense of
13 possession of a firearm or knife during the commission -- or
14 excuse me, firearm during the commission of a violent crime.

15 The defendants in this case are also charged with
16 possession of a firearm during the commission of a violent
17 crime.

18 Section 16-23-490 of the South Carolina Code of
19 Laws, states as follows: If a person is in possession of a
20 firearm, or visibly displays a firearm, during the
21 commission of a violent crime and is convicted of committing
22 or attempting to commit a violent crime as defined in
23 Section 16-1-60 of the South Carolina Code, 1976, as
24 amended, he is guilty of this offense.

25 Now, Section 16-1-60 of the South Carolina Code

1 provides a statutory list of violent crimes in South
2 Carolina to include the crimes of murder, armed robbery,
3 kidnapping, accessory before the fact of murder, accessory
4 before the fact of armed robbery, and accessory before the
5 fact of kidnapping.

6 You may not consider the charge of possession of a
7 firearm during the commission of a violent crime, unless you
8 first find the defendant guilty of either murder, armed
9 robbery, kidnapping, or accessory before the fact of murder,
10 armed robbery or kidnapping.

11 If you do not find a defendant guilty of at least
12 one of those charges, then you would find him not guilty on
13 this charge and would not consider it in your deliberations.

14 In other words, a defendant must be found guilty
15 of a violent crime and the State must have proved that the
16 defendant was in position of a firearm during the commission
17 of a violent crime, in this case either murder, armed
18 robbery, kidnapping, or accessory before the fact to one of
19 those three offenses before you may find the defendant
20 guilty of this charge.

21 Now, in this case Ben Robert Stewart is charged
22 with the offense of accessory before the fact, accessory
23 before the fact to murder, armed robbery, and also to
24 kidnapping.

25 I instruct you now with regard to that charge.

1 There are three elements that must be proved by the State
2 beyond a reasonable doubt in order to justify the conviction
3 of the defendant as an accessory before the fact.

4 The State must prove that the defendant advised,
5 agreed, urged, or in some way aided or abetted some other
6 person to commit the offense.

7 Two, the defendant was not present when the
8 offense was committed.

9 And third, some principal actually committed the
10 crime.

11 The State must prove the principal is guilty or
12 the accessory may not be convicted.

13 An accessory before the fact is one who, though
14 not the chief factor in the offense nor present at its
15 performance, is in some way concerned with it before the
16 fact. One who is absent at the time of the offense, yet
17 agreed, advised, urged, or in some way aided or abetted
18 another person to commit the crime.

19 An accessory before the fact is one who was not
20 present actually or constructively at the time when a felony
21 was committed, but who agreed, advised, urged, or in some
22 way aided or abetted another to commit it and he is equally
23 guilty with the principal.

24 Now, Mr. Foreman, ladies and gentlemen of the
25 jury, there are two methods of being present, and -- well,

1 I'll get into that more in a minute.

2 Let me explain to you what aid means. Aid means
3 to help, promote the course, or accomplishment of, to give
4 support to, or to give assistance to.

5 Abet means to encourage or appear to favor or
6 support.

7 In order to render one guilty as an accessory
8 before the fact, he must have had the requisite criminal
9 intent. Such person must have the same intent as the
10 principal. However, since he need not necessarily have
11 intended the particular crime committed by the principal, an
12 accessory is liable for any criminal act which in the
13 ordinary course of things was the natural or probable
14 consequence of the crime that he procured, advised, aided,
15 or abetted another to commit.

16 The fact that the crime is not committed in a
17 particular way designated by the procurer or conspirator
18 does not prevent him from being liable as an accessory
19 before the fact.

20 The concept of an accessory before the fact has
21 been held to presuppose some prearrangement with respect to
22 the commission of the crime in question.

23 The mere fact that a person with knowledge that
24 another intends to commit a crime, acquiesces in its
25 commission, will not, provided he does nothing to procure,

1 aid, or abet the bringing about the commission of the crime,
2 render him an accessory before the fact.

3 The mere fact that the defendant had knowledge of
4 an intended crime on the part of another and conceal the
5 same or failed to prevent it would not render the defendant
6 an accessory before the fact.

7 Now, I instruct you with regard to accessory after
8 the fact.

9 An accessory after the fact is one who is knowing
10 a felony to have been committed receives, relieves,
11 comforts, or assists the felon.

12 Three elements must be proved by the State beyond
13 a reasonable doubt before the defendant may be found guilty
14 of accessory after the fact.

15 First, a felony or crime has been completed; that
16 is to say, fully accomplished or performed.

17 Second, the defendant must have knowledge that the
18 principal committed the felony.

19 And third, the defendant must harbor, aid, or
20 assist the principal with the intention of aiding the
21 principal to escape detection or arrest.

22 Absence from the scene of the crime is not an
23 element of the offense of accessory after the fact.

24 Mere presence at the scene does not preclude you
25 from finding the defendant guilty as an accessory after the

1 fact, but a defendant became involved after commission of
2 the substantive offense.

3 It is possible for one to have been present at the
4 scene of the crime and subsequently, or thereafter, to
5 become an accessory after the fact.

6 If you find the defendant was merely present at
7 the scene of the crime and did not participate in the crime,
8 but became involved after the commission of the crime, you
9 may find the defendant guilty of being an accessory after
10 the fact.

11 An accessory after the fact is one who knows that
12 the principal has committed a completed felony and assists
13 him with the intention of facilitating his escape from
14 arrest, conviction, or punishment. Although the actions of
15 the person who is charged with being an accessory after the
16 fact may have aided or assisted the principal to escape
17 detection or arrest, this is not sufficient in itself to
18 find the defendant guilty of accessory after the fact.

19 In addition to this, the State must prove that the
20 defendant acted with the intention or purpose of assisting
21 or aiding the principal to escape detection or arrest.
22 Thus, if a person is charged with being an accessory after
23 the fact did not intend that his action, aid, and assists
24 the principal to escape detection or arrest, then he's not
25 an accessory after the fact, even though his acts, in fact,

1 may have resulted in aiding or assisting the felon to escape
2 detection or arrest.

3 In order to render a person guilty as an accessory
4 after the fact, he must have had actual knowledge at the
5 time he aided or assisted the principal that the principal
6 had committed the felony. It is sufficient if the defendant
7 had reasonable grounds to believe that the offender
8 committed a felony. Assistance must have been rendered with
9 the intent to enable the felon to escape detection or
10 apprehension.

11 Mere acts of caring which relieve or comfort a
12 felon, but do not hinder his apprehension and conviction,
13 nor aid in his escape, will not render one as an accessory
14 after the fact.

15 Mere silence as to one's knowledge of the crime
16 with no intent to aid the felon, or mere failure to inform
17 law enforcement does not make one an accessory after the
18 fact.

19 There must be some affirmative act tending toward
20 concealment of the commission of the crime or refusal to
21 give information to the commission of the crime when it is
22 sought by the officials of the person having such knowledge.

23 Denial of knowledge of a crime when questioned by
24 a law enforcement would not render the person an accessory
25 after the fact.

1 It is not necessary that there should have been
2 any formal criminal charge against a felon in order to
3 render one who furnished him assistance as an accessory
4 after the fact.

5 It is not necessary that the aid furnished be
6 effective to enable the felon to escape all or part of his
7 punishment.

8 The defendants are also charged with the crime of
9 criminal conspiracy.

10 The crime of conspiracy is a combination between
11 two, or more, persons for the purpose of accomplishing
12 either a criminal or unlawful object by whatever means, or
13 an object, which is neither criminal nor unlawful, by
14 criminal or unlawful means.

15 If two, or more, persons agree to unite in a
16 common purpose to commit a criminal act, they conspire.

17 A conspiracy is a combination between two, or
18 more, persons to do an unlawful act, or to do a lawful act
19 by criminal or unlawful means.

20 I charge you that there can be no conspiracy when
21 one individual acts by and for himself only.

22 To become a party to a conspiracy, a person must
23 combine with someone else to affect the object of the
24 conspiracy by the means agreed upon. A common design or
25 plan is essential to the charge of conspiracy.

1 To establish conspiracy, it is necessary, first,
2 that an agreement to commit the offense alleged in the
3 indictment be established.

4 What is required for an agreement? It's a shared
5 single criminal objective, not just similar or parallel
6 objective between similarly situated people. What is needed
7 is proof that they intended to act together for their shared
8 mutual benefit within the scope of the conspiracy charge.

9 The State must prove further that one, or more, of
10 the parties engaged in the agreement committed some act to
11 affect the object of the conspiracy as alleged in the
12 indictment.

13 Although the offense of conspiracy may be complete
14 without proof of an overt act, such acts may nevertheless be
15 shown, since from them an inference may be drawn as to the
16 existence and object of the conspiracy.

17 To constitute conspiracy it is not necessary that
18 two, or more, persons meet and enter into an express or
19 formal agreement to do an unlawful act, or that they should
20 directly by words or in writing unite between themselves as
21 to what unlawful object is to be, or what the details of the
22 plan are, or by what means that an unlawful combination is
23 to be made effective.

24 It is sufficient if two, or more, persons in any
25 manner, or through any contrivance, positively or tacitly

1 come to a mutual understanding to accomplish a common and
2 unlawful design. In other words, when an unlawful end is
3 sought to be affected, when two, or more, persons get
4 together for the common purpose of accomplishing that end
5 and work together in any way in furtherance of the unlawful
6 scheme, each of those persons becomes a member of the
7 conspiracy.

8 Success or failure of a conspiracy is immaterial,
9 but before any person can be found guilty of the charge of
10 conspiracy, it must appear beyond a reasonable doubt that
11 the conspiracy was formed and that the particular person was
12 an active party to it.

13 Although the offense of conspiracy may be
14 committed without proof of overt acts, such acts again may
15 nevertheless be shown.

16 Here the conspiracy itself constitutes the
17 offense, and it must appear from the evidence beyond a
18 reasonable doubt before a defendant may be convicted that he
19 was a party to the conspiracy.

20 The mere fact that the defendant named may be
21 engaged in the performance, if any, of the acts charged in
22 the indictment, such as overt acts, it is not of sufficient
23 evidence to convict him of conspiracy. You may not convict
24 the defendant of conspiracy on that fact alone, but it is
25 necessary to show that the defendant was a party to the

1 conspiracy, an unlawful agreement, before he is guilty of
2 conspiracy.

3 The evidence and proof of the conspiracy may be
4 circumstantial.

5 The terms overt acts, as I have used, means an act
6 committed by one, or more, of the conspirators as alleged in
7 the indictment.

8 Now, mere presence or mere association is not
9 enough to prove conspiracy. Two, or more, persons must come
10 to an understanding to accomplish an unlawful design.

11 I charge you, ladies and gentlemen, that the State
12 of South Carolina is required to prove all the material and
13 essential allegations of this charge beyond a reasonable
14 doubt before you can find a defendant guilty of criminal
15 conspiracy.

16 Mr. Foreman, ladies and gentlemen of the jury, the
17 defendant, Terrell Antonio Addison, has raised in this case
18 the defense of coercion or duress.

19 What is coercion or duress?

20 Coercion or duress is when a person makes another
21 person commit a crime against someone else's person or
22 property by the threat of immediate physical violence.

23 The coercion or duress must be present -- excuse
24 me, must be present, imminent, and the type -- let me start
25 over with that paragraph.

1 The coercion or duress must be present, imminent,
2 and of the type to create a well-grounded fear of death or
3 serious bodily harm if the act is not done. The fear of
4 injury must be reasonable.

5 Coercion or duress is not a defense if there is
6 any reasonable way, other than committing the crime, for the
7 defendant to escape the threat of harm.

8 If you find the defendant was -- if you find the
9 defendant committed the crime under duress, you must find
10 the defendant not guilty.

11 The defendant has the burden of proving he acted
12 under duress or coercion by a preponderance of the evidence.

13 In order to determine if the defendant's
14 appreciation was -- well, excuse me, apprehension was well
15 grounded and his fear of death or serious bodily injury were
16 reasonable, you may consider evidence of what the defendant
17 knew about the person, or persons, he alleges coerced him.
18 You may consider if he knew of their reputation for violence
19 in the community and whether he knew of specific acts of
20 violence committed by this person, or persons.

21 I charge you that if a defendant knew that the
22 person who was allegedly threatening him had a violent
23 reputation or had committed violence acts, you may consider
24 whether this knowledge made the defendant's alleged fear of
25 serious bodily injury or death reasonable under the facts

1 and circumstances of this case.

2 Mr. Foreman, ladies and gentlemen of the jury,
3 again I'm going to charge you now with regard to accomplice
4 liability. It's not easy to understand, but, again, please
5 listen carefully as I go through that.

6 If two or more persons combine together to commit
7 an unlawful act, such as robbery, and in the execution of
8 that criminal act a homicide is committed by one of the
9 actors as a probable or natural consequence of the acts done
10 in pursuance of the common design, all present participating
11 in the unlawful taking are as guilty as the one who
12 committed the fatal act.

13 The common purpose may not have been to kill and
14 murder, but if it was unlawful, as, for instance, to break
15 in and steal, and in the execution of this common purpose a
16 homicide is committed by one as a probable or natural
17 consequence of the acts done in pursuance of the common
18 design, then all present participating in the unlawful
19 common design are as guilty as the slayer.

20 If a crime is committed by two, or more, people
21 who are acting together in committing a crime, the act of
22 one is the act of all.

23 A person who joins with another to accomplish an
24 illegal purpose is criminally responsible for everything
25 done by the other person which occurs as a natural and

1 probable consequence of the act done in carrying out the
2 common plan and purpose.

3 For example, two people can be guilty of killing
4 another person when only one of the two had a gun, there was
5 only one bullet, and only one of the two fired the shot that
6 caused the death.

7 If two, or more, people are together, acting
8 together, assisting each other in committing the offense,
9 the act of one is the act of all; or as it is sometimes
10 said, the hand of one is the hand of all.

11 I charge you further that mere presence with
12 another person or persons who are engaged in criminal
13 conduct with a person or persons who subsequently engage in
14 criminal conduct is not sufficient to show an intent to aid
15 that conduct.

16 Similarly, the mere fact that a defendant may have
17 associated with such person, or persons, does not
18 necessarily establish proof of an intent to aid criminal
19 conduct by such person, or persons.

20 Mere knowledge that another person, or persons,
21 intend to engage or engaged in criminal conduct is not
22 sufficient to show an intent to aid that conduct.

23 In order to show that defendant is guilty, the
24 State must prove two things beyond a reasonable doubt.

25 First, that the defendant knew of the illegal

1 conduct.

2 And second, that the defendant affirmatively
3 provided aid to assist in the commission of the crime with
4 the intent that the act would assist the commission of
5 crime.

6 In order to show the defendant is guilty, the
7 State must prove beyond a reasonable doubt not only that the
8 defendant was present, but also that the defendant knew of
9 the illegal conduct and that the defendant provided aid to
10 assist the commission of the crime with the intent that the
11 aid would assist the commission of the crime.

12 Intent is also a necessary element, for there must
13 have been a common design or intent to commit the crime and
14 the crime must have been committed pursuant to that plan
15 with the person aiding and abetting by some overt act.

16 The burden is on the State to prove every element
17 of the crime charged, including intent.

18 Now, prior knowledge that a crime is going to be
19 committed, without more, is not sufficient to make a person
20 guilty of that crime.

21 Mere knowledge that another person is going to
22 commit a crime, even if the defendant is present when the
23 crime was committed, is not sufficient to convict the
24 defendant as a principal.

25 Guilt as a principal is shown by actual or

1 constructive presence at the scene as a result of prior
2 arrangement. Therefore, a finding of a prior arranged plan
3 or common scheme is necessary for a finding of guilt as a
4 principal.

5 The State must prove beyond a reasonable doubt by
6 competent evidence the theory of the hand of one is the hand
7 of all.

8 A principal in a crime is one who either actually
9 commits the crime or who is present, aiding, abetting, or
10 assisting in committing the crime.

11 When a person does an act in the presence of and
12 with the assistance of another, the act is done by both.

13 Where two or more, acting with a common plan or
14 intent, are present at the commission of a crime, it does
15 not matter who actually commits a crime. All are guilty.
16 The hand of one is the hand of all.

17 Now, Mr. Foreman, ladies and gentlemen of the
18 jury, I charge you that presence may be in one of two ways.

19 In addition to actual presence, the law recognizes
20 constructive presence.

21 Constructive presence is defined as -- and it may
22 be predicated of a person who, though not on the very spot
23 where the crime was committed, was near enough to be counted
24 by the -- excuse me, counted present by the law who is
25 actively cooperating with another who is actually present.

1 Present at the commission of a crime means to be
2 sufficiently near to aid and abet and assist in the
3 commission of the crime. However, mere presence at the
4 scene of a crime is not sufficient to convict one as a
5 principal on the theory of aiding and abetting.

6 Intent is also a necessary element, for there must
7 have been a common design or intent to commit the crime, and
8 the crime must have been committed pursuant thereto with the
9 person aiding and abetting by some overt act.

10 Intent means intending the result which actually
11 occurs. Not accidentally or involuntary.

12 Intent may be shown by acts and conducts of the
13 defendant and other circumstances from which you may
14 naturally and reasonably infer intent.

15 The State must prove these elements beyond a
16 reasonable doubt.

17 Mr. Foreman, ladies and gentlemen of the jury,
18 mere presence is not enough, and the defendant cannot be
19 found guilty on any charge solely because he was merely
20 present at the scene of a crime.

21 To be found guilty, a person must personally
22 commit the crime, or be present at the scene and
23 intentionally take a role in the commission of the crime.

24 Mr. Foreman, ladies and gentlemen of the jury,
25 there are two defendants in this case. Each is charged with

1 several offenses. Whatever verdict that you find, it does
2 not have to be same as to both defendants. You can take
3 each -- you take each defendant, consider the evidence as to
4 him and write your verdict in accordance and in conformity
5 with the evidence in the case and the instructions I have
6 given you and will give you hereafter.

7 Where more than one person is charged with a
8 crime, if the evidence warrants it, you may convict one and
9 acquit the other; or you may acquit both; or you may convict
10 both. It would depend upon your view of the testimony and
11 evidence which you alone are to pass upon.

12 Mr. Foreman, ladies and gentlemen of the jury,
13 there are multiple charges against each defendant in this
14 case. They are not to be prejudiced by the fact that there
15 are several counts against them today. You are to consider
16 each charge separately. Consider the evidence separately
17 for each offense. Therefore, if the evidence warrants it,
18 you may convict a defendant on all counts, on one and not
19 the others, and so on, or you can find a defendant not
20 guilty on all counts. You arrive at your verdict of guilty
21 or not guilty for each charge alleged in this case.

22 Now, Mr. Foreman, ladies and gentlemen of the
23 jury, nothing that I may have said or done during the course
24 of this trial has been in any way intended to express or
25 suggest a view of the case, an opinion as to the facts, the

1 weight of the evidence, or the credibility of the witnesses.
2 If any of my actions or words have seemed to so indicate,
3 you will disregard such. Form your own opinion as to these
4 matters.

5 You have been selected as fair and impartial
6 jurors, sworn to impartially try and determine the facts of
7 this case. And when you have complied with your oath to do
8 so, then no one will have a right to criticize your verdict
9 and you will have fully discharged your duty as jurors.

10 You are to decide this case according to the
11 testimony you have heard from the lips of the sworn
12 witnesses, along with other evidence introduced during the
13 course of the trial.

14 I charge you that as jurors you must decide the
15 issues in this proceeding without bias and without prejudice
16 to any party. You cannot allow yourself to be governed by
17 sympathy, by prejudice, by passion, by public opinion, or
18 any other arbitrary factor. Both the State and each
19 defendant has the right to expect that each of you will
20 carefully and impartially consider all of the evidence in
21 the case and you will follow the law as I have explained it
22 to you.

23 Mr. Foreman, ladies and gentlemen of the jury,
24 whatever your verdict in this case is, it must be your
25 unanimous verdict. All twelve jurors must agree on the

1 verdict, which the foreperson would be authorized to write
2 on each of the charges against each of the defendants.

3 Now, Mr. Foreman, I charge you that once you begin
4 your deliberations, that you maintain some order in those
5 deliberations, that all who wish to participate and to be
6 heard in those deliberations be allowed to do so.

7 If for any reason any members of the jury panel
8 take a break from deliberations, all should take a break.
9 By that I mean all twelve jurors should be present and
10 deliberating when deliberations are going on.

11 Now, when you go back to your jury room, all of
12 the exhibits that have been admitted into evidence would be
13 brought back to you for you further to consider and examine.

14 If there is something that can't be played and is
15 part of an exhibit, we cannot provide that back to you, we
16 will bring you -- upon your request we can bring you back
17 out in the courtroom and play it back in here, if you don't
18 have the ability to do it in the jury room, or upon your
19 request we can do that.

20 Now, Mr. Foreman, I have prepared for your use in
21 the jury room a verdict form for each of the charges against
22 each of the defendants in this case.

23 Now, as to the defendant Terrell Antonio Addison,
24 I want to go through the charges against him on the verdict
25 forms.

1 First, on the charge of murder, there are two
2 possible verdicts which appear on the verdict form. They
3 are as follows:

4 "We, the jury, find the defendant Terrell Antonio
5 Addison guilty of murder."

6 Second possible verdict which appears on the
7 verdict form is "we, the jury, find the defendant Terrell
8 Antonio Addison not guilty."

9 The second one is as to armed robbery, and the
10 possible verdicts appear in the same order.

11 As to kidnapping, they appear in the same order.

12 As to possession of a firearm during the
13 commission a violent crime, they appear in the same order.

14 And on the criminal conspiracy charge, they appear
15 in the same order.

16 As to the defendant Ben Robert Stewart, there are
17 additional charges with regard to Mr. Stewart. I'll go
18 through those verdict forms.

19 First as to murder, there are two possible
20 verdicts which appear on the verdict form.

21 The first reads as follows: "We, the jury, find
22 the defendant Ben Robert Stewart guilty of murder."

23 The second possible verdict, "we, the jury, find
24 the defendant Ben Robert Stewart not guilty."

25 Now, there is same form but -- the verdict -- the

1 possible verdicts appear in the same order on accessory
2 before the fact to murder.

3 Armed robbery.

4 Accessory before the fact to armed robbery.

5 Kidnapping.

6 Accessory before the fact to kidnapping.

7 Accessory after the fact to armed robbery
8 kidnapping and/or murder.

9 Criminal conspiracy.

10 And possession of a firearm during the commission
11 of a violent crime.

12 Now, the order in which the possible verdicts
13 appear on the verdict form means absolutely nothing and you
14 should infer nothing from it. I have to prepare the verdict
15 forms in some order. I do it the same way every time, but
16 the order in which the possible verdicts appear on the
17 verdict form means nothing. Again, you should infer nothing
18 from it.

19 What you should do, Mr. Foreman, as to each of
20 these charges against each of the defendants, you should
21 deliberate and consider them separately.

22 Once the jury has reached a unanimous verdict as
23 to each of these charges, you will simply then go to the
24 verdict form on that charge, find the verdict which the jury
25 has unanimously agreed upon. You will simply then put a

1 checkmark by a blank beside that particular verdict. Sign
2 your name on the line above the word foreperson's signature.
3 Date it.

4 Once you have done that to all of the charges,
5 then you will simply knock on the door, let the bailiff know
6 that you have reached a verdict and I will bring you back
7 out to receive those verdicts.

8 Now, as to -- I'll explain it further with regard
9 to Mr. Stewart. You are instructed to consider the
10 principal charge first, that is to say, murder, armed
11 robbery, and kidnapping, and determine whether or not the
12 State had proven the elements of each of those offenses
13 beyond a reasonable doubt.

14 If you find the defendant guilty on those charges,
15 then you would not consider or make any finding on the
16 accessory both before the fact of those charges, nor on
17 accessory after the fact to those charges.

18 If you consider the principal charge of murder,
19 armed robbery, and kidnapping, and you find the defendant
20 not guilty on those three charges, then you would go next to
21 the charges of accessory before the fact and accessory after
22 the fact and consider those.

23 Now, again, you wouldn't consider the accessories,
24 before or after the fact to these charges, if you find the
25 defendant guilty, Mr. Stewart, on these principal charges.

1 If you find him not guilty on these three
2 principal charges, then you would go to the accessory
3 charge.

4 If you find him guilty on those charges, you would
5 not even consider or make any finding on the accessory
6 charges, before or after the fact.

7 But if you find him not guilty on those charges,
8 then you would consider the accessory before and after the
9 fact and make a finding as to each of those charges, whether
10 the State had proven the elements of those offenses beyond a
11 reasonable doubt.

12 Again, if you have any question about that, once
13 you begin deliberations, upon your request send me a note
14 out and I can bring you back out and clarify anything you
15 want me to clarify.

16 We have taken the liberty of ordering lunch for
17 you. I hope you like pizza, because that's about the only
18 thing we can get in fairly short order. We have already
19 ordered it. Hopefully -- it may be here by the time that
20 you get back to the jury room. I hope it is. If it's not,
21 it will be here very shortly, if it's not already here. We
22 ordered it when I started my instructions, so it -- we were
23 trying to make sure it's hot for you whenever we started
24 deliberating.

25 I'm going to ask you, if you will, at this time to

1 retire to the jury room, but do not yet begin your
2 deliberations. I have to give counsel an opportunity to
3 request additional instructions on the law. If additional
4 instructions are requested and I deem them necessary, I will
5 bring you back out and give you those additional
6 instructions. It follows then that we should make sure that
7 all instructions are complete before you would begin
8 deliberations.

9 If no other instructions are necessary, I will
10 send to you by means of the bailiff the verdict forms, the
11 exhibits that have been admitted into evidence for your
12 consideration, and instructions to begin deliberating.
13 Please do not begin deliberating until you get that
14 instruction.

15 Now, I'm going to ask you, if you will, at this
16 time to retire to the jury room, all except the alternates.
17 At this time I'll ask the alternates not to go into the jury
18 room, but wait just outside the courtroom door for further
19 instructions.

20 Oh, one other thing. Let me tell you this
21 additional fact. My clerk just reminded me. If you are
22 deliberating on these charges and you became divided and you
23 send the court a note out telling me that you are divided,
24 please do not tell me how you are divided. I do not want
25 numbers, in other words. If you are divided, you can tell

1 me that, but please do not give me the manner in which you
2 are divided, if you will. I do not want to know that.
3 Okay.

4 Thank you. Please retire to the jury room.

5 (Whereupon, at 2:35 p.m., the jury retired to the
6 jury room, awaiting instructions to begin deliberations)

7 THE COURT: Exceptions or requests for additional
8 charges, from the State?

9 MR. BRACKETT: No exceptions or additions from the
10 State.

11 THE COURT: From the Defendant Addison?

12 MR. SWERLING: No, Your Honor.

13 THE COURT: From the defendant Mr. Stewart?

14 MR. SNOW: None, Your Honor.

15 THE COURT: Good. Gentlemen, would you check the
16 exhibits and make sure that only those that were admitted
17 into evidence go back to the jury.

18 MR. BRACKETT: Yes, sir.

19 (Off the record)

20 (Back on the record)

21 (Whereupon, at 2:43 p.m., the jury was instructed
22 to begin deliberations)

23 THE COURT: We will have to have somebody stay
24 with them, though. Let's take them -- we will take the two
25 alternates down to the other jury room and leave them in

1 here so they can take them their food and they will stay
2 there while the jury is deliberating in case we have a
3 problem, so that's what we will do. I guess we will need
4 somebody to stay down there, out the door with them. All
5 right. After we -- we may use somebody from the security to
6 be able to that maybe.

7 All right. If you will --

8 THE CLERK: I'll take them down and I'll --

9 THE COURT: Well, bring them in and let me tell
10 them what we are doing so they don't get confused.

11 (Whereupon, the alternate jurors were brought into
12 the courtroom)

13 THE COURT: You all stand just right there.

14 Let me tell you what we are going to do.

15 As it turned out, we made it all the way through
16 the trial without an emergency developing with regard to one
17 of the first twelve jurors chosen. So at this point it will
18 not be necessary for you to participate in deliberations to
19 help reach a verdict. However, because this has been a week
20 long trial, we want to keep you here in the event we still
21 have a problem with one of the jurors and we had to
22 substitute somebody in. And so what we are going to do is
23 put you in a separate room, separate jury room, by
24 yourselves and give you some food for lunch and just ask you
25 to stay in there until we notify you. And we will have

1 somebody out there, a bailiff, if you need something or
2 somebody, if you need something in there. But that's what
3 we are going to do. So the bailiff will show you the way
4 down there. We will bring you some food, and if you will
5 just hang out there until we tell you different. Okay?
6 Thank you.

7 (Whereupon, the alternate jurors were taken out of
8 the courtroom)

9 THE COURT: All right. Counsel, we will be
10 adjourned. If you want to go get something to eat or
11 something, if you will just leave a cell phone or something
12 where we can get back in touch with you.

13 (Whereupon, at 2:45 p.m., proceedings adjourned,
14 pending the verdict of the jury panel)

15 (Whereupon, at 3:55 p.m., proceedings were
16 reconvened)

17 THE COURT: All right, bring the jury in.

18 (Whereupon, at 3:57 p.m., the jury returned to the
19 courtroom)

20 THE COURT: Mr. Foreman, ladies and gentlemen of
21 the jury, of course I had your original note asking for Reed
22 Allen's written statement, and it was not admitted into
23 evidence. I sent you note back in a sentence saying it was
24 not admitted into evidence and couldn't provide it to you at
25 this point.

1 You then asked could we have a transcript of Reed
2 Allen's testimony. And we don't have that transcribed in
3 written form at this point. It would have to be
4 transcribed, but what we can do is replay it for you,
5 whatever portion, or all of it for that matter, that you
6 want. And we are going to replay it for you. The court
7 reporter has a recording. He can replay the testimony. But
8 I believe his testimony is probably an hour or so in length.

9 Is there any particular portion that you are
10 interested in, or are you -- would you like to have it all
11 played back for?

12 JURY FOREMAN: I think mostly the part about the
13 handing over of the gun, the question --

14 THE COURT: What about if we start where -- I
15 believe the testimony will be that started at on direct
16 examination where they arrived at the house, where some of
17 them arrived at the house. Is that where?

18 JURY FOREMAN: Yes.

19 THE COURT: Go from there.

20 JURY FOREMAN: Yes.

21 THE COURT: That would be okay.

22 Let's replay that portion then.

23 (Whereupon, the court reporter replayed the
24 requested testimony to the jury panel)

25 THE COURT: If you need -- whatever you want to

1 play. If you want to stop, we can stop it and see if that's
2 enough.

3 JURY FOREMAN: Okay.

4 THE COURT: Is that good?

5 JURY FOREMAN: Yes, thank you.

6 THE COURT: Any more?

7 JURY FOREMAN: No.

8 THE COURT: Thank you. Please then, if you will,
9 retire back to the jury room and resume deliberating)

10 (Whereupon, at 4:12 p.m., the jury panel returned
11 to the jury room to continue deliberations)

12 THE COURT: All right. We will make this a court
13 exhibit.

14 (Jury Note marked as Court's Exhibit No. 7 for
15 identification).

16 All right, we will be at ease.

17 MR. SNOW: Judge, may we approach?

18 THE COURT: Yes.

19 (Whereupon, the lawyers approached the bench for
20 an off-the-record discussion)

21 THE COURT: Okay, Mr. Snow.

22 MR. SNOW: Your Honor, I'm going to -- my
23 client -- on behalf of my client I'm going to object to just
24 hearing that portion of the playback, judge. We feel that
25 it's necessary for the jury to hear the entire testimony and

1 certainly the cross-examination. They only get a portion of
2 the State's version, not necessarily our version, so I would
3 have to object to that, judge.

4 THE COURT: Well, your objection is noted for the
5 record.

6 The problem is I'm not the one who determines what
7 they want to hear. They are. They heard all the testimony
8 from the beginning during the trial. And this is -- they
9 have requested me to replay -- they wanted something
10 replayed back. I didn't know what they were looking for.
11 You didn't know what they were looking for, and we started
12 playing it. I planned to play it all the way through until
13 they until they didn't want to hear it any more. They are
14 the one that decided they didn't need to hear any more.
15 They heard what they needed to hear. They have already
16 heard it all before, okay, and they wanted it played back.
17 I mean, I can't tell what to listen to, and I'm not going
18 to -- if they tell me they heard what they wanted to hear,
19 they don't want to -- they don't need to hear any more, then
20 it's not up to me to say no, you are going to listen to all
21 of it. Now -- I mean, that's just the way it is. They
22 heard it all during the trial. And if they say -- they
23 heard whatever it is they want to hear. I'm not going to
24 make them listen to more than they want to hear. Okay. If
25 they request to hear more, I will be glad to play it for

1 them. Nothing I can do about that. They decide what they
2 want to hear.

3 MR. SNOW: Thank you, judge.

4 THE COURT: All right.

5 (Whereupon, at 4:15 p.m., proceedings were
6 recessed, pending the verdict of the jury panel)

7 (Whereupon, at 5:14 p.m., proceedings were
8 reconvened)

9 THE COURT: Counsel, I think I'm going to
10 reinstruct them on criminal conspiracy at this point,
11 and then we can talk just a little bit more about the other
12 request.

13 All right.

14 (Whereupon, at 5:15 p.m., the jury panel returned
15 to the courtroom)

16 THE COURT: Mr. Foreman, ladies and gentlemen of
17 the jury, I have a couple of notes from you. One was a
18 question concerning possession of a firearm during the
19 commission of a violent crime. I have not responded to that
20 yet. I'm still looking at it, and I have got your other
21 note out while I was doing that.

22 JURY FOREMAN: Okay.

23 THE COURT: Pardon me?

24 JURY FOREMAN: Okay.

25 THE COURT: I'm going to address your second

1 question at this point, and then I will address the other
2 one as soon as I have had a chance to look at it.

3 But with regard to the criminal conspiracy that
4 you requested, can I reinstruct you with regard to criminal
5 conspiracy, is that right?

6 JURY FOREMAN: Yes, sir.

7 THE COURT: I'm going to do that at this time,
8 reinstruct you just as I did before.

9 With regard to criminal conspiracy, the crime of
10 conspiracy is a combination between two, or more, persons
11 for the purpose of accomplishing either a criminal or
12 unlawful object by whatever means, or an object which is
13 neither criminal nor unlawful by criminal or unlawful means.

14 If two, or more, persons agree to unite in a
15 common purpose to commit a criminal act, they conspire.

16 A conspiracy is a combination between two, or
17 more, persons to do an unlawful act, or to do a lawful act
18 by criminal or unlawful means.

19 I charge you that there can be no conspiracy when
20 one individual acts by and for himself only.

21 To become a party to a conspiracy, a person must
22 combine with someone else to affect the object of conspiracy
23 by the means agreed upon.

24 A common design or plan is essential to the charge
25 of conspiracy.

1 To establish conspiracy, it is necessary first
2 that an agreement to commit the offense alleged in the
3 indictment be established.

4 What is required for an agreement is shared single
5 criminal objective. Not similar or parallel objectives
6 between similarly situated people. What is needed is proof
7 that they intended to act together for their shared mutual
8 benefit within the scope of the conspiracy charge.

9 The State must prove further that one, or more, of
10 the parties engaged in the agreement committed some act to
11 affect the object of the conspiracy as alleged in the
12 indictment.

13 Although the offense of conspiracy may be complete
14 without proof of an overt act, such acts may, nevertheless,
15 be shown, since from them an inference may be drawn as to
16 the existence and object of the conspiracy.

17 To constitute a conspiracy, it is not necessary
18 that two, or more, persons meet and enter into an expressed
19 or formal agreement to do an unlawful act, or that they
20 should directly, by words or in writing, unite between
21 themselves as what the unlawful object is to be or what the
22 details of the plan are or by what means the unlawful
23 combination is to be made effective.

24 It is sufficient if two, or more, persons in any
25 manner or through any contrivance positively or tacitly come

1 to a mutual understanding to accomplish a common and
2 unlawful design.

3 In other words, when an unlawful end is sought to
4 be affected and two, or more, persons get together for the
5 common purpose of accomplishing that end and work together
6 in any way in furtherance of the unlawful scheme, each of
7 those persons becomes a member of the conspiracy.

8 The success or failure of the conspiracy is
9 immaterial, but before any person can be found guilty of the
10 charge of conspiracy, it must appear beyond a reasonable
11 doubt that the conspiracy was formed and that the particular
12 person was an active party to it.

13 Although the offense of conspiracy may be
14 committed without proof of overt acts, such acts may,
15 nevertheless, be shown.

16 Here the conspiracy itself constitutes the offense
17 and it must appear from the evidence beyond a reasonable
18 doubt before the defendant may be convicted that he was a
19 party to the conspiracy.

20 The mere fact that the defendant named may be
21 engaged in the performance of any of the acts charged in the
22 indictment, such as overt acts, is not sufficient evidence
23 to convict him of a conspiracy. You may not convict the
24 defendant of conspiracy on that fact alone, but it is
25 necessary to show that the defendant was a party to the

1 conspiracy to an unlawful agreement before he is guilty of
2 conspiracy. The evidence and proof of the conspiracy may be
3 circumstantial.

4 The term overt acts, as I have used it, means an
5 act committed by one, or more, of the conspirators as
6 alleged in the indictment.

7 Mere presence or mere association is not enough to
8 prove conspiracy. Two, or more, persons must come to an
9 understanding to accomplish an unlawful design.

10 I charge you, ladies and gentlemen, the State of
11 South Carolina is required to prove all the material and
12 essential allegations of this charge beyond a reasonable
13 doubt before you can find the defendant guilty of
14 conspiracy.

15 All right. Thank you.

16 Please, if you will retire back jury room and
17 resume deliberations.

18 I'll try to get you an answer to your question on
19 the other shortly. Thank you.

20 (Whereupon, at 5:21 p.m., the jury panel returned
21 to the jury room to continue deliberations)

22 THE COURT: We will make this a court exhibit. I
23 don't know the -- I'll tell you what. Let's make this one
24 first and then that one second, please.

25 (Jury Note marked as Court's Exhibit No. 8 for

1 identification)

2 (Jury Note marked as Court's Exhibit No. 9 for
3 identification)

4 THE COURT: Meet with me in just a minute and we
5 will discuss it a little bit further. I want to give some
6 more thought to it.

7 (Whereupon, at 5:22 p.m., proceedings were
8 recessed, pending the verdict of the jury panel)

9 (Whereupon, at 5:41 p.m., proceedings were
10 reconvened)

11 THE COURT: All right, counsel, I had a question
12 now for the jury, which states as follows: "For the charge
13 of possession of firearm during the commission of a violent
14 crime, does the hand apply", which, okay, would be
15 accomplice liability.

16 And frankly for the record's sake, we have had a
17 lot of discussion about this and haven't found specific
18 South Carolina authority one way or the other on that issue.
19 And the solicitor was able to get the case from a different
20 jurisdiction which seems to imply that it would be, however.
21 And so the court has decided to go ahead and answer that
22 question in the affirmative, yes, realizing, of course,
23 obviously if they do convict on that charge, we still could
24 take it up at later time, if counsel wishes to do that. But
25 I understand, and I will certainly give counsel an

1 opportunity to object to my sending this reply, affirmative
2 reply, back to them..

3 MR. SWERLING: Thank you, Your Honor.

4 We would well you, I would take exception to
5 answering the question in the affirmative since -- it would
6 be my position that someone could not be guilty of
7 possessing of a weapon during a violent crime under
8 accomplice liability theory, hand of one hand of all. It
9 would have to be under an actual or constructive possession
10 theory, because it's a personal -- it's a possession issue.
11 So I guess when I say personal, it's a possession issue, so
12 I'll leave it there.

13 THE COURT: Okay, Mr. Snow?

14 MR. SNOW: Yes, Mr. Stewart would join in that
15 motion and an objection to it.

16 THE COURT: Let me say this to you. I realize
17 part of my thinking about this is that there are facts on
18 the record certainly which would support a finding of either
19 actual or constructive possession, depending upon which
20 defendant we are talking about. There is facts on the
21 record which would support that.

22 But the court -- although I instructed the jury on
23 constructive presence, I didn't instruct them on
24 constructive possession. Nevertheless, I think there are
25 facts on the record that not -- that depend upon which

1 defendant -- well, really for both defendants. There is
2 testimony and evidence on the record which would establish
3 actual possession by each of them, and also constructive
4 possession by each of them. So -- so, you know, there is
5 evidence on the record to support that, in any event, if
6 that's what's required, but I understand your position and
7 we got that on the record and we will see what happens.

8 But I'm going to send this back to the jury. This
9 is Court Exhibit No. 8.

10 MR. SWERLING: And it simply says yes, Your Honor?

11 THE COURT: Yes, and I signed it.

12 MR. BRACKETT: Thank you, Your Honor.

13 (Whereupon, at 5:45 p.m., proceedings were
14 recessed, pending the verdict of the jury panel)

15 (Whereupon, at 6:00 p.m., proceedings were
16 reconvened)

17 MR. SWERLING: Judge, can we approach one second?

18 THE COURT: Yes, sir.

19 (Whereupon, the lawyers approached the bench for
20 an off-the-record discussion)

21 THE COURT: All right, ladies and gentlemen that
22 are in the courtroom, we have a verdict in these cases. I
23 don't have no idea what the verdicts are, but -- and we are
24 going to bring the jury out and receive those verdicts.
25 Whatever the verdicts are, we are going to respect those

1 verdicts.

2 When the verdicts are read, please do not display
3 any emotions here in the courtroom, outward emotions, if you
4 will. If you need to do that, please wait until you get
5 outside of the courthouse to do that. We need to respect
6 the jury's verdict, and I cannot allow anyone to have any
7 kind of emotional display here in the courtroom, so please
8 do not do that, whatever the verdicts may be. All right.

9 Thank you. Please bring the jury in.

10 (Whereupon, at 6:04 p.m., the jury panel returned
11 to the courtroom to report its verdict)

12 THE COURT: Mr. Foreman, have you and the jury
13 reached a unanimous verdict in these cases?

14 JURY FOREMAN: Yes, we have.

15 THE COURT: Would you please hand the verdict
16 forms up to the bailiff?

17 All right, the clerk will please publish the
18 verdicts.

19 THE CLERK: The State of South Carolina versus
20 Terrell Antonio Addison, with indictment 2007-GS-46-00671
21 for murder, we, the jury, find the defendant Terrell Antonio
22 Addison guilty of murder.

23 Signed by the foreperson this day.

24 In 2007-GS-46-00672, we, the jury, find the
25 defendant Terrell Antonio Addison guilty of armed robbery.

1 Signed by the foreperson this day.

2 2007-GS-46-00676 for kidnapping, we, the jury,
3 find the defendant Terrell Antonio Addison guilty of
4 kidnapping.

5 2007-GS-46-00670 for criminal conspiracy, we, the
6 jury, find the defendant Terrell Antonio Addison guilty of
7 criminal conspiracy.

8 Signed by the foreperson this day.

9 2007-GS-46-00673, possession of a firearm during
10 the commission of a violent crime, we, the jury, find the
11 defendant Terrell Antonio Addison guilty of possession of a
12 firearm during the commission of a violent crime.

13 Signed by the foreperson this day.

14 The State of South Carolina versus Ben Robert
15 Stewart, with indictment number 2007-GS-46-02526, accessory
16 before the fact of murder, we, the jury, find the defendant
17 Ben Robert Stewart guilty of accessory before the fact of
18 murder.

19 Signed by the foreperson this day.

20 2007-GS-46-02528, accessory before the fact of
21 armed robbery, we, the jury, find the defendant Ben Robert
22 Stewart guilty of accessory before the fact of armed
23 robbery.

24 Signed by the foreperson this day.

25 2007-GS-46-2530, accessory before the fact of

1 kidnapping, we, the jury, find the defendant Ben Robert
2 Stewart guilty of accessory before the fact of kidnapping.

3 Signed by the foreperson this day.

4 2007-GS-46-2535, accessory after the fact of armed
5 robbery, kidnapping and murder, we, the jury, find the
6 defendant Ben Robert Stewart guilty of accessory after the
7 fact of armed robbery, kidnapping and/or murder.

8 Signed by the foreperson this day.

9 2007-GS-46-2531, criminal conspiracy, we, the
10 jury, find the defendant Ben Robert Stewart guilty of
11 criminal conspiracy.

12 Signed by the foreperson this day.

13 2007-GS-46-2532, possession of a firearm during
14 the commission of a violent crime, we, the jury, find the
15 defendant Ben Robert Stewart guilty of possession of a
16 firearm during the commission of a violent crime.

17 Signed by the foreperson this day.

18 2007-GS-46-2529, kidnapping, we, the jury, find
19 the defendant Ben Robert Stewart not guilty.

20 Signed by the foreperson this day.

21 2007-GS-46-2527, armed robbery, we, the jury,
22 find the defendant Ben Robert Stewart not guilty.

23 Signed by the foreperson this day.

24 2007-GS-46-2525, murder, we, the jury, find the
25 defendant Ben Robert Stewart not guilty.

1 Signed by the foreperson this day.

2 If this so be your verdicts, so say you all by
3 raising your right hand.

4 Let the record show all affirmed.

5 THE COURT: Any questions of the jury panel from
6 the State?

7 MR. BRACKETT: None from the State, Your Honor.

8 MR. SWERLING: Yes, sir.

9 THE COURT: From the defendant?

10 MR. SWERLING: Yes, sir, we would ask for a
11 polling.

12 THE COURT: All right. The clerk will please poll
13 the jury.

14 THE CLERK: If you all could please stand.

15 Number 187, Terry Rolla, is this your verdict?

16 JUROR NUMBER 187: Yes, it is.

17 THE CLERK: Is it still your verdict?

18 JUROR NUMBER 187: Yes, it is.

19 THE CLERK: You can have a seat.

20 Number 39, Elizabeth Carlisle, is this your
21 verdict?

22 JUROR NUMBER 39: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR NUMBER 39: Yes.

25 THE CLERK: You can have a seat.

1 No. 215, Mary Thompson, is this your verdict?

2 JUROR NUMBER 215: Yes.

3 THE CLERK: Is this still your verdict?

4 JUROR NUMBER 215: Yes.

5 THE CLERK: Number 140, Mary McClure, is this your
6 verdict?

7 JUROR NUMBER 140, yes.

8 THE CLERK: Is this still your verdict?

9 JUROR NUMBER 140: Yes.

10 THE CLERK: Number 175, Thomas Rawling, is this
11 your verdict?

12 JUROR NUMBER 175: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR NUMBER 175: Yes.

15 THE CLERK: Number 12, Elouise Baldwin, is this
16 your verdict?

17 JUROR NUMBER 12: Yes.

18 THE CLERK: And is this still your verdict?

19 JUROR NUMBER 12: Yes.

20 THE CLERK: Number 51, Noel Cruz, is this your
21 verdict?

22 JUROR NUMBER 51: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR NUMBER 51: Yes.

25 THE CLERK: Number 108, Patricia Jackson, is this

1 your verdict?

2 JUROR NUMBER 108: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR NUMBER 108: Yes.

5 THE CLERK: Number 29, Henrietta Brown, is this
6 your verdict?

7 JUROR NUMBER 29: Yes.

8 THE CLERK: Is this still your verdict?

9 JUROR NUMBER 29: Yes.

10 THE CLERK: Number 23, Mary Boatwright, is this
11 your verdict?

12 JUROR NUMBER 23: Yes.

13 THE CLERK: Is this still your verdict?

14 JUROR NUMBER 23: Yes.

15 THE CLERK: Number 73, James Fox, is this your
16 verdict?

17 JUROR NUMBER 73: Yes.

18 THE CLERK: Is this still your verdict?

19 JUROR NUMBER 73: Yes.

20 THE CLERK: Number 94, Debra Hess, is this your
21 verdict?

22 JUROR NUMBER 94: Yes.

23 THE CLERK: Is this still your verdict?

24 JUROR NUMBER 94: Yes.

25 THE CLERK: Thank you.

1 THE COURT: Any other questions of the jury panel?

2 MR. SWERLING: No, sir.

3 THE COURT: All right.

4 Mr. Foreman, ladies and gentlemen of the jury
5 panel, this will conclude your services in this case. It
6 will also, or course, conclude your services for the week.

7 I would like to take this opportunity to thank you
8 for your service this week. We certainly understand your
9 being here all week and the many hours that we have worked
10 this week, that it required you to be away from your work,
11 your jobs, your family, and other things that you feel are
12 important for you to be doing, and we do not take that
13 sacrifice for granted. We certainly appreciate your being
14 here and the sacrifices that you have made this week to help
15 make our justice some work. We appreciate that very much.

16 I think I told you at the beginning of the week
17 that those who serve on a jury this week would find out how
18 important the jury function is and really how difficult a
19 jury's decision is in these cases. I'm sure you appreciate
20 that now. But, again, I want to thank you very much for
21 your service. We deeply appreciate your service and
22 sacrifice. You are free to go at this time.

23 A check will be put in the mail for your service
24 this week in due course. In a very short time a check will
25 be put in the mail for your service this week as jurors.

1 And, again, you are free to go at this time, all except the
2 foreperson. Sir, I'll need to get you to come up and sign
3 off on the indictments themselves for us, if you will.
4 Everyone else is free to go.

5 Now, does anybody need anything for your employer
6 to show that you required to be here this week, or you have
7 your jury summons? Anything that you need other than that
8 to show that you were required to be here this week?

9 (No response)

10 THE COURT: So we can get it. All right.

11 Now, I'm going to ask -- well, it's still a little
12 bit light outside, so I think you will be all right, as far
13 as the parking lot is concerned. Does anybody feel like
14 they need somebody to accompany them out to the parking lot?
15 We have several men here as well.

16 All right. Thank you. You are free to go at this
17 time. Again thank you very much.

18 (Whereupon, at 6:13 p.m., the jury panel was
19 discharged)

20 THE COURT: The alternates can go. I certainly
21 want to thank the alternates for your service this week.
22 Thank you very much.

23 Counsel, I will be glad to hear you with regard to
24 any motions that you might wish to make at this time.

25 MR. SWERLING: Judge, on behalf of Mr. Addison, we

1 would respectfully move for a motion for new trial based on
2 all the motions and objections that we made during the
3 course of the trial, as well as the motion we made at the
4 conclusion of the State's case and at the conclusion of all
5 the evidence.

6 And as well, Your Honor, we would ask the court to
7 consider setting aside the verdict on the possession of the
8 weapon during a violent crime, based upon the objection we
9 made to the charge at the time.

10 THE COURT: All right. Thank you, sir.

11 Of course, your motion is noted for the record and
12 the court would deny those motions for the same reasons I
13 gave earlier. I feel that the verdicts are supported by the
14 evidence -- the jury verdict is supported by the evidence in
15 the case.

16 Insofar as the possession of a weapon during the
17 commission of a violent crime, I will take that issue under
18 advisement and rule in that a little later after I have had
19 a chance to do some research.

20 Mr. Snow?

21 MR. SNOW: Judge, we too would ask for a motion
22 for a new trial on this case, judge. Certainly, as you
23 know, we are -- all objections relative to any of the
24 information that came in subsequent to -- during the trial,
25 as well as after the trial, any information relative to

1 testimony or a replay. We would ask that, as well as the
2 motion to set aside the possession of a firearm in the
3 commission of a crime.

4 THE COURT: As to the motion for to set aside the
5 verdict in the possession of a weapon during the commission
6 of a violent crime, I will take that under advisement and
7 rule on it a little later, after I have had a chance to
8 study that particular one.

9 As to the other issues, let me address
10 specifically the issue with regard to playing back testimony
11 for the jury. I want to be sure the record is clear on
12 this. I had note from the jury which requested that certain
13 testimony be played back. That of Reed Allen. And we
14 weren't sure what they wanted. We thought they didn't want
15 the identification testimony, so I think we skipped over
16 that, and then we started. And I asked them did they want
17 to start at the time some persons arrived at his house that
18 night. And I think that's beginning where it was with
19 regard to the weapons, and they said yes, that's where they
20 wanted to start, and so that's where we started. And I
21 think we played a little bit of it and that's where they
22 wanted it to start.

23 I was sitting here prepared to go as long as they
24 wanted to, insofar as testimony is concerned, but they made
25 signs that they didn't need to hear any more. They heard

1 what they needed to hear. Therefore, of course, I'm not
2 going to say -- they heard what they needed to hear on the
3 replay. They heard it the first time. And if they heard
4 what they wanted to hear on the replay, then I'm not going to
5 make them sit here and replay something that they don't need
6 or don't want. Okay?

7 And I can certainly understand why a defendant who
8 feels that some more of that testimony might be more
9 favorable to him, we would want to hear it all, but that was
10 not my decision. That was the jury's decision.

11 If I was instructing them on the law that applies,
12 I might very well give them more law than what they have
13 actually requested, if I deem it necessary or it's necessary
14 to do it in fairness, but that's not my course on replaying
15 testimony. That's the jury's decision. They wanted to hear
16 all, part, or whatever they want, but that's what we did.

17 Okay, so I'm going to deny your motion on that and
18 I'm going to deny your other motions for new trial based on
19 the same reasons I gave earlier. I'm denying them.

20 Yes, sir, solicitor.

21 MR. BRACKETT: And on that one issue, of course,
22 Your Honor, the other concern from the State's perspective
23 would be that since they are dealing with you directly, if
24 you were to go ahead and play some additional testimony, I
25 think that the jury might reasonably conclude that you

1 particularly wanted them to hear that and it might be a
2 comment on the evidence from the court, perceived as a
3 comment on the evidence from the court.

4 THE COURT: That's certainly possible. Once they
5 all said they didn't need to hear any more, I think it's
6 incumbent upon me then to stop and let them resume their
7 deliberations. All right. The record I think is clear on
8 that position.

9 Okay, anything else? Any other motions you wish
10 to make?

11 MR. SWERLING: Not at this time, Your Honor.

12 THE COURT: I'll give you a few minutes to get
13 yourselves together before we do anything with regard to
14 sentencing.

15 MR. SNOW: May we approach?

16 THE COURT: Yes, sir.

17 (Whereupon, the lawyers approached the bench for
18 an off-the-record discussion)

19 MR. SWERLING: Judge, could we step out for a few
20 minutes?

21 THE COURT: Yes, sir.

22 We will be at ease for a few minutes.

23 (Whereupon, proceedings were recessed)

24 (Whereupon, proceedings were reconvened).

25 MR. SWERLING: Judge, these are some letters that

1 they asked me to pass up. A couple from e-mails.

2 (Off the record)

3 (Back on the record)

4 THE COURT: Solicitor?

5 MR. BRACKETT: If it please the court, Your Honor,
6 as it appears that the defendant's have their family up here
7 already, maybe we will let them go first, and we can have
8 the -- some family and friends of the victim in the
9 courtroom. Only a couple of them will come up, but since
10 they have already got their folks up here, maybe we will let
11 them go first.

12 THE COURT: That's fine.

13 Mr. Swerling, you say something for Mr. Addison
14 first, please.

15 MR. SWERLING: That would be fine, Your Honor.

16 Judge, of course, you have heard a little bit
17 about Mr. Addison regarding his testimony. He's twenty.
18 He's going to be twenty-one years of age in April.

19 His mom is Fran Kennedy and his dad is Darryl
20 Kennedy. His mother works at Wells Fargo and his father
21 works at Frito Lay. Actually Darryl is his stepdad, but he
22 has raised him since like five years of age. His biological
23 father is Gary Addison, who has been here during the course
24 of the week. He's from Hartsville and works for the City of
25 Hartsville.

1 Judge, they would like to address you briefly, and
2 then I can just give you a little bit of summary of what I
3 would like to present as well.

4 This is first is Fran and Darryl Kennedy, his
5 parents, Your Honor.

6 THE COURT: Okay. All right. Please proceed.

7 FRAN KENNEDY: Judge, to everyone in the courtroom
8 on behalf of my son. First of all to the family, we have
9 been thinking about the family as well from day one as long
10 as -- and thinking about Terrell and all that has happened.
11 So we -- you know, we're sorry to y'all, as well as our son.

12 I would like to ask the judge to please have mercy
13 on my son. He came to jail at seventeen, eighteen years
14 old, just as a young boy. Yes, he's made mistakes. So have
15 we all, but he's a good kid. I raised him well. I know I
16 did, and I put things into him where he has a big heart. He
17 has a big heart. He just sometimes finds himself, you know,
18 in the wrong place at the wrong time. And I just ask you to
19 look at the fact that he can be rehabilitated. I know he
20 can, because I know the things that's gone on in his life,
21 that if he had gotten the necessary help, he wouldn't -- he
22 probably wouldn't be in the courtroom today, because he
23 wouldn't ask no one for a ride without knowing, you know,
24 about them and knowing that, you know, was safe to do so.
25 So I ask you to have mercy on him. And, you know, if you

1 can, give him a chance to be rehabilitated.

2 THE COURT: Thank you, ma'am.

3 Yes, sir.

4 DARRYL KENNEDY: Your Honor, I want to repeat what
5 my wife said to the Marshall family. We are sorry. We are
6 sorry on behalf of Terrell. I just want you guys to know
7 that. I feel your pain. I have been feeling it for two and
8 a half years. And I just pray to God that your whole family
9 could have some closure for this situation.

10 And, judge, I just, you know, reiterate what my
11 wife said. Once again, I just, you know, ask you to please,
12 you know, have some mercy on Terrell. Like my wife said, we
13 have done the best we can to raise him, and we just ask that
14 you would have mercy on him, please.

15 THE COURT: Thank you, sir.

16 MR. SWERLING: Judge, I think we have one person,
17 a friend from neighborhood.

18 If you would step forward and identify yourself
19 for the court reporter.

20 STACY LOWERY: My name is Stacy Lowery. My
21 address is

22 Terrell was very much an active part of our
23 neighborhood. I'm here on behalf of the neighborhood, the
24 community. I have watched him sit with my four year old and
25 help her to learn. I have got a seventeen year old

1 daughter. I could count on him to walk her home from
2 baby-sitting so she wouldn't be alone in the neighborhood.

3 He's been nothing but a stand-up guy. I am an
4 overwhelmingly over-protective mother. He would have been
5 nowhere near my two daughters if I didn't have faith in him.
6 There is not a doubt in my mind that he can come out and be
7 a successful productive part of society. I know it. I do.
8 He has helped me do yard work. He has helped me start my
9 car. And not just me, but other members of the
10 neighborhood. Well liked, well respected, a good kid.

11 At seventeen years old, you are not growing --
12 done growing yet. You know, you are not even done growing
13 yet. I realize that that was a huge mistake, but I don't
14 think at seventeen years old, not even done growing, still
15 of a high school age, that you can be held accountable for
16 the rest of your life for any kind of mistake or matters, no
17 matter how huge this is.

18 I know that he meant something to my family. I
19 know that there are other families in the community liked
20 him too. I'm not here as friend. I'm here as a neighbor,
21 as someone who believes in him and knows that he can make
22 something of himself. And I strongly feel the longer he is
23 away from us, those odds are going down. They will work
24 against him. I would like to see him get his education. I
25 would like to see him be somebody. The longer he's away

1 from the people who love him, the less likely that is to
2 happen, and I think you know that too. Thank you for
3 letting me speak.

4 THE COURT: Yes, ma'am.

5 MR. SWERLING: All right.

6 Judge, just briefly. I think we brought out the
7 fact he went to Northwestern High School, Seldon Middle
8 School, Ebinezer Elementary School and West Hartsville
9 Elementary. His church is the Greater Life Ministry.

10 When I started representing Terrell and got a lot
11 of his background, judge, and we got quite a bit of medical
12 records, what appears to me and what I think the court -- I
13 would like the court to know, not as an excuse, but in the
14 way of mitigation, is that Terrell, from a very early age,
15 suffered with a lot of emotional problems. He starting --
16 and I think -- I would like to point out the fact that I
17 think the Kennedys did about everything they could do. I
18 just kind of want to give you a little history. This is not
19 just something that we are bringing up tonight. This has
20 been a lifelong kind of problem.

21 Back in 2003, he was admitted to Three Rivers in
22 Columbia. His parents put him in there because he was
23 having some emotional issues. He continued with counseling,
24 with Dr. Julius Meyer at Carolina counseling Center after
25 that.

1 He was admitted -- his parents admitted him to
2 in-patient treatment at Presbyterian Hospital. He was
3 treated by Dr. Steven Sutherland, again, for these emotional
4 issues that he was confronting, these demons that he had and
5 things that he was -- I'm sure did not want to have, but
6 they were there.

7 All during these different treatments he was
8 getting medicines, such as Adderall, Risperdal, Depakote,
9 Wellbutrin, of ever them significant type of prescriptions
10 for the problems that he was having.

11 He also had outpatient treatment by Dr. Barrar at
12 the Providence Behavioral Health Center.

13 He was -- his parents admitted him again in
14 September of 2003, back at Three Rivers, with Dr.
15 Schnackenburg. I spoke with Dr. Schnackenburg, as well as
16 some of these other medical providers about some of the
17 problems that he was having.

18 He also continued with treatment up until 2004,
19 with Dr. Kelly Hobgood over at Catawba Mental Health Center,
20 who I also spoke with, and counseling -- he was being
21 counseled by Dr. Sanders.

22 So, judge, just to let you know, a real effort was
23 made by the parents to help him deal with his emotional
24 problems, and unfortunately the emotional problems are still
25 there. He's still having to deal with these demons, and I

1 think they have affected Terrell throughout his life, and
2 will continue to affect him until they get him some control
3 and someone is able to deal with the issues that he has.

4 He has tried to work throughout. Back in 2000 to
5 2005, he worked at a car wash. He wasn't trying to get a
6 free ride. In 1999, he was working at O'Shay's Domestic
7 Services on and off until 2005. And then I think he told
8 you during his testimony in 2006, he was working at DSMI
9 loading furniture on trucks.

10 Judge, we put those character letters that you
11 have been able to look at, people -- different people who
12 have wanted to speak on Terrell's behalf who could not be
13 here.

14 Judge, with respect to his prior history, you did
15 hear about the -- there was a juvenile conviction or
16 adjudication at the age of fifteen. It involved a school
17 teacher, and he was given six months probation and one
18 twenty-four hour weekend at the Moss Judicial Center.

19 And he also was charged, in 2003, with possession
20 of marijuana. And he was court ordered at that time for an
21 evaluation at DJJ as a result of that.

22 So, judge, I think what you have before you is you
23 have a young man who had some issues he had to deal with.
24 He unfortunately has found himself on October 10th in a very
25 bad position and a very tragic result came about as a result

1 of that.

2 Judge, I would remind you and ask you to consider
3 that on the video, and I think Mr. Brackett made a good
4 point during his closing, that the fact that he was in the
5 store was intimidating and threatening to Mr. Marshall, and
6 I'm not minimizing that, but I would ask the court to
7 consider the fact that Dontavious Mack was the one that did
8 the shooting and killed him. And from the video it appears
9 that Mr. Addison, at least, did not draw a weapon, did not
10 have a weapon and did not try to assault Mr. Marshall or
11 take anything from Mr. Marshall.

12 So, while on the one hand it does not excuse his
13 guilt under the law as the jury has found it, I would ask
14 you to consider that in mitigation when you impose sentence.

15 THE COURT: All right, sir. Thank you.

16 Mr. Addison, is there anything that you wish to
17 say to the court?

18 DEFENDANT ADDISON: I just want to say I'm sorry
19 to the family. I really am sorry. I mean, I wanted really
20 to say something to the family, that while I'm here -- you
21 know, my testimony, the circumstances, and I wanted to say
22 sorry, and I hope you all are blessed. I'm sorry. Thank
23 you.

24 THE COURT: Now, as to Mr. Stewart then.

25 Please give your name for the record.

1 TONYA CARROWAY: My name is Tonya Carroway.

2 Ben is my cousin and we're from Hartsville, South
3 Carolina, and we want to give our condolences to the family.
4 And, you know, God bless you.

5 We know that -- we are sorry about what happened,
6 but we want to ask mercy, God's mercy and your mercy and the
7 mercy -- you know, just have mercy, not only on Ben, but on
8 all of them, because they are kids.

9 And I know that you had a loss, but, you know,
10 just keep going on and on and on. We all are suffering
11 right now. We all hurt right now. All of us are hurting.
12 You are hurting and we are hurting. Someone was taken away
13 from you, and now we have got somebody standing here, you
14 know, and it keep going on and on, and it's not going to
15 bring back, you know, what happened, but it don't stop our
16 love. We love you and we are sorry, but, you know, it can't
17 bring him back. And we just -- I just want you to know that
18 we love you. We are very sorry for what happened and we
19 just want your mercy, the court's mercy upon both of these
20 children, because they are children, but they are yet still
21 alive. And their lives -- their whole lives, you know,
22 don't need to be taken away from them. They wasn't the one
23 that pulled the trigger. It wasn't even proven that some
24 was there. You know, they don't have no proof of that, you
25 know, he was there. But somebody else pulled the trigger

1 and now he's standing here, you know, for his life. And
2 right now his life is -- you know, could be taken away and
3 it wasn't proven. And we are just asking the mercy of the
4 court, the same as they love theirs, we love him, and we
5 just ask you to have mercy.

6 THE COURT: Thank you, ma'am.

7 MR. SNOW: May it please the court, Your Honor,
8 for the record Kenneth Snow for the defendant.

9 Your Honor, this is certainly and indeed a sad day
10 for this county. It's certainly it's a sad day for my
11 client.

12 He's certainly -- I talked to him about
13 mitigation, Your Honor. My client didn't want to speak
14 about these -- his past. He's had troubles. He certainly
15 has reasons that he could cite for some of his issues, but
16 he is certainly one of the brightest clients I have ever
17 dealt with. He has confronted all the challenges he's had
18 in this system with certainly dignity. He has been a man
19 throughout this whole process. He has never said anything,
20 any ill will about the family. He has never had any ill
21 will about the system. He understands that the solicitors
22 had a job to do. The only thing he wanted to do was
23 certainly go through this process, as he's entitled to,
24 judge.

25 The only thing he would tell me about himself

1 personally is that he had a daughter and that he loved her
2 very much, and that he had a family that he loved very much,
3 and he was in pain for them. Not for himself, but in pain
4 for them.

5 I don't think anyone, any of these young men
6 anticipated what happened to Mr. Marshall, and it's
7 certainly a sad day for the family, and all of our hearts go
8 out to the family, but he's told me that he was willing to
9 accept whatever responsibility -- whatever consequences
10 that's brought to him.

11 I know this is, again, a sad day for him.
12 Certainly it's a sad day for all of us. And certainly I
13 know this is not a pleasure for the court, but this is part
14 of our system and this is part of what we go through and we
15 accept those consequences, judge.

16 So I would ask the court to consider, of course,
17 my client's position in this matter, and I would ask
18 certainly that the court to understand the facts as the jury
19 has determined them, and I would ask the court to consider
20 all that he has also been through and his family will go
21 through as mitigation, judge.

22 THE COURT: Thank you, counsel.

23 Mr. Stewart, anything that you wish to say to the
24 court?

25 DEFENDANT STEWART: Just -- I just -- I just

1 wished that we wouldn't be wasting everybody's time coming
2 out here and coming to court.

3 Like Terrell was explaining, I'm sorry for the
4 loss of Mr. Marshall, to your family, and if I could do
5 anything to help it out, I wish I could help the family on
6 behalf of Mr. Marshall, because I know how it is when
7 someone dies and you can't get them back. And just like
8 y'all want justice, like that's normal for anyone, they want
9 justice for their family. And I just wish I could do
10 something that makes their family feel better.

11 And I'm sorry for my family, for bringing my
12 family out here and putting them through this embarrassment,
13 for going through trial, because my mother raised me as --
14 my momma raised me good.

15 And I'm sorry for putting an embarrassment on my
16 sister and my family that came down here from Philadelphia
17 to South Carolina for me, but this is nonsense.

18 I'm just sorry for the judge, that you had to sit
19 up there and sentence us for things like this. That's it.

20 THE COURT: Thank you, sir.

21 Solicitor?

22 MR. BRACKETT: If it please the court, Your Honor,
23 as I indicated, there are members from the Marshall family
24 that are present in the courtroom and would like to
25 approach.

1 MR. SWERLING: Judge, would you like us to step
2 back over here?

3 THE COURT: Yes.

4 MR. BRACKETT: Mr. Ned Marshall wishes to address
5 the court. He is the son of the victim Ned Marshall. And
6 with him is his mother, the wife of Ned Marshall.

7 NED MARSHALL: The first thing I would like to say
8 is since I got to hear from the moms here, is that I'm with
9 my mom right now. My heart goes out to these mothers having
10 to be a part of this. I know that I have been with my mom
11 since she called me -- well, actually the coroner called me
12 and woke me up at six o'clock on October the 10th. I want
13 to say it was about six o'clock, and she told me her name.
14 And I said -- it was Ms. Sabrina Gast. And I said "have you
15 talked to my mom?" She said "I'm here with your mom right
16 now, son, but I need you to come down to Rock Hill. She's
17 not -- she's not able to speak." And she's asked me to
18 speak today, Your Honor, and I'm going to try my best to say
19 what we have talked about.

20 I -- I want to say that I have heard some
21 information regarding this case. My dad -- my dad died in
22 this -- in this situation. He got off one shot. And I
23 just -- I don't know, I just keep thinking about what if he
24 hadn't of gotten that shot off, if he hadn't have been able
25 to, as he was laying there dying get that shot off? Would

1 we be here today? Would there be justice? Would we have
2 ever known who did it? For ten days we didn't know
3 anything.

4 Now I have got -- I have met the Mack brothers and
5 I have been here before for them and I have had to forgive
6 them. It was a process that I went through to forgive them,
7 and the family is -- different family members, I'm speaking
8 on behalf of all of us. We are at different places right
9 now, but we wanted justice for the Mack brothers.

10 And I wanted to say that we've had a cost put on
11 us. We are victims. We have had to pay the ultimate price.
12 Dad is gone. I can't go visit him. I can't talk to him.
13 She's alone. She's lost forty-three pounds since October
14 the 10th, 2006. She's alone.

15 When I had my wife's pants hemmed this week, the
16 man that hems her pants, hemmed her pants, I told him why I
17 was here and I needed to get something done to help my wife,
18 because we didn't know how long the trial would go, and he
19 said "I know your mom." He said "she comes in here
20 sometimes and usually spends about an hour and a half." And
21 I just realized how effected she's been by this. She will
22 drop clothes off to be altered and stay an hour and a half.
23 Her soul mate is gone. Forty-nine years they were married.
24 I'm fifty. My dad was twenty-one years old when I was born.
25 I was close to him.

1 We have waited twenty-eight months for closure.
2 Twenty-eight months for closure. I pray that the family on
3 their side will have some closure. I pray that all these
4 people behind us that have supported us, some friends and
5 family, have some closure.

6 But I got to say that I -- there's points in the
7 trial that I didn't know that there was going to be justice.
8 I didn't know that I truly had the faith to believe in
9 justice. We had to trust this jury with this and they have
10 spoken. And we, as a family, collectively, have been with a
11 lot of unknowns out there. We didn't know for a long time
12 where certain people in this case were. We had to wait a
13 long time for certain people to be located and so forth. We
14 have had a lot of opportunity to lose faith. And throughout
15 it all, the law enforcement people -- I want to thank
16 everybody - the solicitor's office, the detectives, the --
17 all the law enforcement people that have given their time
18 and their expertise to try to bring justice to this case.

19 I want to speak on behalf of our family that we
20 don't have hatred in our heart, but we want justice. And I
21 feel like we got a little closure today. And my heart goes
22 out to their families.

23 We can't go visit my dad. I can't show him my
24 grandson, his first great-grandson. Every Thanksgiving and
25 every Christmas there is a place there where he would have

1 been.

2 And I keep thinking, as I hear these young men
3 talking, I wish so much as they drove around, I wish one of
4 them had just said "let's don't do this." Let's turn back
5 now. We can't turn back time. We are -- we have had to
6 pay. My dad was basically given a death sentence. And I
7 know these guys aren't up for that.

8 But on behalf of my mom, I think I have addressed
9 everything that I felt like I needed to do that we talked
10 about, and I trusted the law enforcement and this court and
11 everybody associated with it to get us to this point. And
12 there was times in these last five days where I have had to
13 sit there and I -- I didn't know what to think. I just had
14 to have faith. Faith is believing in things that you can't
15 see. And I have faith that whatever you do will be right.
16 I have gotten this far through this system and we will get
17 closure through this system. Thank you.

18 THE COURT: Thank you.

19 MR. BRACKETT: Your Honor, Mr. Thompson has the
20 criminal histories for both of the defendants.

21 MR. THOMPSON: Mr. Addison, Your Honor, to get a
22 full kind of picture of his background, he does have some
23 things that are juvenile that he went through arbitration to
24 get for acts against property, disturbing schools, and that
25 was in 2002.

1 In 2003, he did have a threatening the life of a
2 teacher. This was a female school teacher who was fifty-two
3 years old and who -- she escorted him from the class for
4 disturbing it, where he threatened to shoot her with a gun.

5 And also in 2003, that same day, he was charged
6 and convicted of disturbing schools out of that same event.

7 Later in 2003, charged and convicted of possession
8 of marijuana. So he also has marijuana convictions.

9 And then 2006, a marijuana conviction as an adult.

10 And then we come to the crime we have today, and I
11 would like to point out to the court, as the defense so
12 amply pointed out on some of the co-defendants, he hasn't
13 been a model person down in the detention center. This is
14 someone who has caused many disturbances, and I won't go
15 over the minor ones, but there are many.

16 On April 5th of '07, he was written up for
17 threatening another inmate.

18 And in the same month, a little bit later,
19 destruction of property.

20 On June 11th of '07, he was written up with
21 another inmate for an assault on an inmate. He was written
22 up, him and a guy name Smarr, at that point was written up
23 because when they popped the cell doors to another inmate,
24 the two of them ran into that cell, slammed the door behind
25 them and began to beat him. They had to pull them out of

1 that cell, and the victim in that case, the other inmate,
2 was bleeding from the mouth when they --

3 MR. SWERLING: Judge, I'm not sure it's
4 appropriate for him to bring in matters that are not matters
5 of conviction when a defendant is facing sentence.

6 THE COURT: Well, I think they are matters the
7 court can consider appropriate for considerations, and I'll
8 allow it.

9 Continue.

10 MR. THOMPSON: On August of '07, he was placed in
11 a restraint chair for repeatedly kicking the door without
12 stopping, even after being told many times.

13 Later that same month flooding his cell.

14 And then I believe a day after that, that same
15 month, once again, flooding his cell and then yelling
16 threats to officers, "you know, come here and see what you
17 get. I got something for you. You just put your hands on
18 me." They ended up having to send a team in to extract him
19 from the cell, where he had to be dry stunned with a taser
20 to make him comply.

21 December of '07, threatening another inmate.

22 There is other small things and I won't touch
23 those, but it kind of gives you an idea of the things that
24 he's had in the time that he's been in our detention center.
25 He hasn't been the model person. He hasn't been the kind

1 and good person that some people I think would have the
2 court to believe.

3 As to Ben Stewart, Your Honor, it gets even worse.

4 His juvenile record from Philadelphia, Your Honor,
5 shows in 2001, he was convicted of a drug offense.

6 In 2003, he was convicted of possession of an
7 instrument of crime and robbery.

8 Then when he -- as an adult here in the Carolinas
9 he was on bond for a failure to stop for a blue light when
10 this event would have happened. It was pending in
11 Hartsville at the time.

12 After he fled from our state, when warrants were
13 issued for his arrest, law enforcement repeatedly contacted
14 his family to try and find out where he was and repeatedly
15 received no one knew where Ben Stewart was. Even contacting
16 people in Philadelphia, no one knew where Ben Stewart was.
17 But Ben Stewart was caught in Philadelphia on January 27th,
18 2007. And he wasn't caught because of this warrant. He was
19 caught because he car jacked someone there, and he has now
20 been convicted of that.

21 On February 12th of 2008, he entered a guilty plea
22 and was convicted of robbery, threatening immediate serious
23 injury, and with robbery of a motor vehicle.

24 The fact pattern of that case, Your Honor, he was
25 by himself. He once again had a pistol, and very likely the

1 same pistol that he may have had during this crime. He
2 approached two women, one sixty-five and one in her fifties,
3 or around fifty. He asked a cigarette of one of them. When
4 one handed a cigarette to the other, he then demanded money.
5 He jumped into the car when she tried to let her friend back
6 into the car. He jumped into it, put the gun to their head,
7 threatening them at that time, and, according to the witness
8 statement, said "give me your fucking money," and they said
9 they didn't have any money. He said "well, get out of the
10 fucking car." And then they tried to get out with taking
11 the keys with them. He jumped out and took the keys back
12 from her, putting a gun to her head, saying "give me the
13 fucking keys or I'll blow your head off." This is the type
14 of person we are dealing with in Ben Stewart. He acted on
15 his own to be violent. And his prior convictions for
16 robbery, and this conviction for robbery here, and then the
17 convictions today show what kind of person Ben Stewart is.

18 So I bring that to the attention of the court,
19 because that is very disconcerting to the State and we feel
20 he's someone who should not be released.

21 MR. BRACKETT: Your Honor, you have heard a great
22 deal about the defendants. And, of course, in the trial of
23 a case you learn a lot more than you do just from reading
24 the facts at a guilty plea, for example. A lot more detail
25 comes out that you're unaware of. A great number of things

1 that we learned from Mr. Terrell Addison's testimony.

2 One thing that we haven't really touched on is a
3 little bit more about Mr. Marshall, and I just want to say a
4 few words, because it has struck me, and it certainly did
5 around the time and throughout the trial of this case, or
6 throughout the life of this case as it's been in the office,
7 there has never been a few weeks that went by that somebody
8 didn't ask me about this case. There are so many people in
9 York County, and Rock Hill particularly, who knew Mr.
10 Marshall, who had nothing but glowing things to say about
11 what a fine man he was; how many of them knew him just from
12 being at the BP; how many people told me that they went to
13 that store just because of Mr. Marshall; how he had certain
14 habits and mannerisms when they came through. He would
15 always ask them -- he would be working a crossword puzzle
16 and he would say "I need a five-letter word for." Everybody
17 knew him and he was just a stellar citizen, just a fine,
18 fine man taken from the community. And I think it's fitting
19 and proper to consider those qualities and characteristics
20 that he had.

21 And, of course, you heard from his son, and I have
22 no doubt, because I have dealt with his family for the last
23 two and a half years. This has just devastated them.
24 It's -- it's -- that's an understatement, particularly
25 Sandra. She's just been absolutely devastated by the loss

1 of her husband. I lack the eloquence to sufficiently
2 apprise the court on the magnitude of the loss to Sandra of
3 her beloved husband.

4 Clearly this is a terrible crime, what happened,
5 and I take nothing away from what the family said. There
6 are losers on both sides of the aisle. They're always are.
7 This courtroom is awash in tears of the family of Ben
8 Stewart, the family of Terrell Addison, and the Marshall
9 family. And the people that are responsible for all of
10 those tears are Mr. Stewart and Mr. Addison. Their
11 decisions that they made, they are the architect of the
12 misfortune and the sadness of their families and the
13 Marshall families.

14 And I know Dontavious Mack was the triggerman, and
15 I certainly respect the implications that come with that.
16 However, the law is the law and the hand of one is the hand
17 of all, and these people did combine, conspire, and
18 confederate to commit the terrible crime that brings us here
19 now. And there is no question that a terrible sentence is
20 appropriate in the circumstances such as these, and we would
21 ask the court to impose a sentence on Mr. Stewart,
22 particularly Mr. Stewart with his record. He has an eight
23 to sixteen year sentence from Pennsylvania. We don't think
24 that he should be getting credit for the time that he has
25 here in South Carolina while he does his time in

1 Pennsylvania. Those are separate crimes. He menaced two
2 different victims with a gun and he shouldn't be getting
3 credit. He should have stayed on this sentence while he
4 serves that sentence. In other words, we would ask for
5 consecutive sentencing for Mr. Stewart, consecutive to the
6 sentences currently imposed in the State of Pennsylvania.

7 We trust the court will impose the sentence in its
8 wisdom that does justice in this case.

9 THE COURT: All right. Thank you, sir.

10 All right, bring the defendants around, please.

11 MR. SWERLING: Judge, if I could just add one
12 thing?

13 THE COURT: Yes, sir.

14 MR. SWERLING: As far as the charge, though, I
15 just wouldn't want the court to get the impression that he
16 actually had a weapon when he threatened the teacher. It
17 was more in the abstract about a weapon that he would, but
18 there was no when involved, as far as I understand the
19 records.

20 THE COURT: Okay.

21 Well, let me say before sentencing, this is, of
22 course, the most difficult part of a judge's job is having
23 to impose sentences, particularly stiff sentences and
24 long-term sentences, particularly with young people, but
25 that's part of the job and the most difficult part of my

1 job.

2 My sympathies go out, of course, to the family of
3 Ned Marshall. And I can see -- you know, we have been going
4 through this for awhile now. I went through bond hearings.
5 I sentenced the shooter in this case to a life sentence,
6 which I think was appropriate, and I have been involved in
7 it. Honestly, just coming into court these several times
8 that I have been here, I have seen what devastation it's had
9 on the family. I can see it just in the times that they
10 have been in here. My sympathies go out to you and your
11 loss. I know -- I'm sure Mr. Marshall was a fine man, based
12 on everything Mr. Brackett said. And anything else I have
13 heard about him, I'm sure he was a fine man.

14 And my heart goes out also to the family. I know
15 it's very difficult. My sympathies always go out more to
16 the family of a defendant who has willingly been involved in
17 the crime. Families have to pay the price for it as well
18 and you have my sympathies as well.

19 Be that as it may, justice has to be done in these
20 cases, or nobody has a faith in the justice system. And
21 so --

22 And let point out that in giving these sentences,
23 I think the appropriate sentence was given to the shooter,
24 especially given the facts and circumstances of the case of
25 life without parole. I think that was an appropriate

1 sentence. He will never get out of prison. But I believe
2 these two young men deserve a little less than that. I
3 believe they deserve a long sentence, given the facts as I
4 heard them in this case. Nevertheless -- and I'm going to
5 sentence them the way I think is appropriate.

6 I would point out to everyone, including the
7 families, these are no-parole offenses, which means that
8 they basically are going to serve the sentences that they
9 are getting. And so -- but given their age and their
10 involvement in this and what they did, I'm taking that into
11 consideration as well.

12 And I might say I didn't believe any of their
13 stories. I think they were all working together. It might
14 not start out that way when we left Hartsville, but I think
15 by the time they got in Rock Hill they were looking for a
16 place to say rob and steal. They rode around here two or
17 three hours doing that, and I think that's clear to me. I
18 think they were all in cahoots and working together. I
19 don't have any doubts about that.

20 All this business about duress and coercion and
21 that, I don't believe any of that stuff at all. Certainly
22 the jury didn't believe it, and that's the most important
23 thing, because they found them guilty and didn't buy that
24 defense.

25 In any event, in case number 2007-GS-46-671,

1 Terrell Antonio Addison, having been found guilty by a jury
2 of murder, the sentence of the court is he be committed to
3 the State Department of Corrections for a determinate term
4 of thirty years. He's given credit for any jail time he has
5 served.

6 In case number 2007-GS-46-672, Terrell Antonio
7 Addison, having been found guilty by a jury of armed
8 robbery, the sentence of the court is to be committed to the
9 State Department of Corrections for a determinate term of
10 ten years. This sentence to run consecutive to the sentence
11 on the murder charge. He's given credit for time served.

12 Case number 2007-GS-46-676, Terrell Antonio
13 Addison, having pled -- having been found guilty by a jury
14 of kidnapping, the sentence of the court is to be committed
15 to the State Department of Corrections for a determinate
16 term of ten years. This sentence is to run concurrent, and
17 he's given credit for time served.

18 Case number 2007-GS-46-673, Terrell Antonio
19 Addison, having been found guilty by a jury of possession of
20 a firearm during a violent crime, the sentence of the court
21 is to be committed to the State Department of Corrections
22 for a determinate term of five years. This sentence is
23 concurrent. He's given credit for time served.

24 Case number 2007-GS-46-670, Terrell Antonio
25 Addison, having been found guilty by a jury of criminal

1 conspiracy, the sentence of the court is to be committed to
2 the State Department of Corrections for a determinate term
3 of five years. This sentence is concurrent. He's given
4 credit for time served.

5 As to Ben Robert Stewart. In case number
6 2007-GS-46-2526, Ben Robert Stewart, having been found
7 guilty by a jury of accessory before the fact to murder, the
8 sentence of the court is to be committed to the State
9 Department of Corrections for a determinate term of thirty
10 years. This sentence to run consecutive to the sentence he
11 is now serving in Pennsylvania, which I understand is eight
12 to, what?

13 MR. BRACKETT: Eight to sixteen years.

14 THE COURT: At any rate, this will run consecutive
15 to that and he will serve this sentence when he finishes
16 serving that sentence. He's also given credit for time
17 served.

18 Case number 2007-GS-46-2535, Ben Robert Stewart,
19 having been found guilty by a jury of accessory after the
20 fact to murder, armed robbery and kidnapping, the sentence
21 of the court on this charge is to be committed to the State
22 Department of Corrections for a determinate term of ten
23 years. This sentence is concurrent. He's given credit for
24 time served.

25 Case number 2007-GS-46-2528, Ben Robert Stewart,

1 having been found guilty by a jury of accessory before the
2 fact to armed robbery, the sentence of the court is to be
3 committed to the State Department of Corrections for a
4 determinate term of twenty years. This sentence is to run
5 concurrent and he's given credit for time served.

6 Case number 2007-GS-46-2530, Ben Robert Stewart,
7 having been found guilty by a jury of accessory before the
8 fact of kidnapping, the sentence of the court is to be
9 committed to the State Department of Corrections for a
10 determinate term of ten years. This sentence is concurrent.
11 He's given credit for time served.

12 Case number 2007-GS-46-2531, Ben Robert Stewart,
13 having been found guilty by a jury of criminal conspiracy,
14 the sentence of the court is to be committed to the State
15 Department of Corrections for a determinate term of five
16 years. This sentence is to run concurrent. He's given
17 credit for time served.

18 In case number 2007-GS-46-2532, Ben Robert
19 Stewart, having been found guilty by a jury of possession of
20 a weapon during the commission of a violent crime, the
21 sentence of the court is to be committed to the State
22 Department of Corrections for a determinate term of five
23 years. This sentence to run concurrent, and he's given
24 credit for time served.

25 MR. BRACKETT: Thank you, Your Honor.

1 MR. SWERLING: Thank you.

2 THE COURT: I was just going to ask that, as I
3 usually do in these kind of cases, maybe if we can have the
4 families of the victims and the defendant to leave
5 separately, if you wish to do that.

6 If the family of the victim wish to leave, leave
7 first. If you want to go ahead and leave now, you can do
8 that.

9 MR. BRACKETT: Thank you, Your Honor.

10 MR. THOMPSON: Thank you, Your Honor.

11 MR. SWERLING: Thank you, Your Honor.

12 (END OF REQUESTED TRANSCRIPT OF RECORD)

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CERTIFICATE

I, the undersigned, Michael R. Watts, Official Court Reporter for the Sixteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for YORK County, South Carolina, on the 23rd, 24th, 25th, 26th, 27th days of February, 2009.

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

AUGUST 12, 2009



Michael R. Watts
Circuit Court Reporter

2013 CP-46-3278

FORM 5

1247

STATE OF SOUTH CAROLINA

FILED-RECEIVED

COUNTY OF YORK

2013 DEC - 30 PM 1:29

IN THE COURT OF COMMON PLEAS

DAVID HAMILTON

TERRELL ANTONIO ADDISON, #333413 C.C.P. & G.S.
Full name and prison number (if any) of Applicant YORK COUNTY, SC

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210
2. Name and location of Court which imposed sentence York County Court of General Sessions, Moss Justice Center, 1675 York Highway, York, SC 29745
3. Name(s) of co-defendant(s) (if any) Dontavious Mack, Davorious Mack, Ben Stewart
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-46-670 (criminal conspiracy), 671 (murder), 672 (armed robbery)
 - (b) 2007-GS-46-673 (possession of firearm during the comission of a violent crime)
 - (c) 2007-GS-46-676 (kidnapping)
5. The date upon which sentence was imposed and the terms of the sentence:

Revised 3/2003

- (a) February 27, 2009: 5 years concurrent, 30 years, 10 years consecutive,
 - (b) 5 years concurrent, 10 years concurrent
 - (c) N/A
6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty N/A
 - (b) after a plea of not guilty X
 - (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals.
 - ii. N/A
 - iii. N/A
 - (b) the result in each such Court to which you appealed:
 - i. Appeal dismissed.
 - ii. N/A
 - iii. N/A
 - (c) the date of each such result:
 - i. December 12, 2012
 - ii. N/A
 - iii. N/A
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Unpub. Op. No. 2012-UP-655
 - ii. N/A
 - iii. N/A
9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) N/A
 - (b) N/A
 - (c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of trial counsel.
 - (b) Ineffective assistance of appellate counsel.
 - (c) N/A
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failure to properly prepare Applicant prior to trial.
 - (b) Failure to call witnesses and utilize evidence.
 - (c) Failure to raise all meritorious issues on appeal.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
 - (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
 - (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. N/A
 - iii. N/A
 - iv. N/A
 - (c) the disposition thereof:
 - i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

(b) the proceedings in which each ground was raised:

i. N/A

ii. N/A

iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) PCR is the proper forum.

(b) N/A

- (c) N/A
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? N/A
 - (b) your trial, if any? Yes.
 - (c) your sentencing? Yes.
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes.
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Jack Swerling, 1720 Main Street, #301, Columbia, SC 29201
 - ii. Joseph L. Savitz, III, 1330 Lady Street, Suite 401, Columbia, SC 29201
 - iii. N/A
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial & sentencing.
 - ii. Direct appeal.
 - iii. N/A
19. State clearly the relief you seek in filing this application:
A new trial.
20. Are you now under sentence from any other court that you have not challenged?
No.

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Terrell Antonio Addison, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Terrell Addison

SWORN to and subscribed before me this 20th
day of November, 2013.

Quendia Shee Fagan (L.S.)
Notary Public

My Commission Expires: April 12, 2023

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Terrell Antonio Addison, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Terrell Addison
Applicant

SWORN or affirmed to and subscribed before me this
30th day of November, 2022.

David A. [Signature]
Notary Public

My Commission Expires: April 12, 2023

STATE OF SOUTH CAROLINA)
 COUNTY OF YORK)

Terrell A. Addison, #333413,)
 Applicant,)

v.)

State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-3728

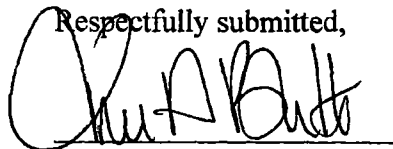
**AMENDMENT TO APPLICATION
 FOR POST CONVICTION RELIEF**

2015 OCT 12 PM 3:57
 YOUNG, SC

This matter comes before the Court pursuant to an Application for Post Conviction Relief filed on December 9, 2013. Applicant would amend his original Application by adding the following specific allegations to his original claims of ineffective assistance of trial counsel:

1. Ineffective assistance of trial counsel for failure to communicate and pursue all viable plea offers to/for Applicant and to ensure that he and his family had a full understanding of all plea offers and/or options before proceeding to trial.
2. Ineffective assistance of trial counsel for failure to utilize Applicant's mother and as a witness and records stemming from his mental health treatment in support of his defense.
3. Ineffective assistance of trial counsel for failure present witnesses to support Applicant's defense of duress and/or coercion following the trial court's ruling on the matter.
4. Ineffective assistance of trial counsel for advising Applicant to proceed to trial on a primary defense (duress/coercion) that is not cognizable on a murder charge. See State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998).
5. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

Respectfully submitted,



Tricia A. Blanchette
 Attorney for Applicant
 Post Office Box 12725
 Columbia, South Carolina 29211

October 8, 2015
 Columbia, SC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Terrell A. Addison, #333413,)
Applicant,)

2013-CP-46-3728

v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the United States Mail this 8th day of October 2015, a copy of an Amendment to Application for Post Conviction Relief, to Justin Hunter of the Attorney General's Office, at:

Office of the Attorney General
Att: Justin Hunter, Ast. AG
P.O. Box 11549
Columbia, SC 29211-1549



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

October 8, 2015

2015 OCT 12 PM 3:57
CLERK OF COURT
JUDICIAL CIRCUIT
SIXTEENTH JUDICIAL CIRCUIT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Terrell Antonio Addison, #333413,

2013-CP-46-3728

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

FILED-RECEIVED
2014 JUN 17 PM 1:32
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

In response to the post-conviction relief application filed on December 9, 2013, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. The Applicant was indicted by the February 2007 term of the York County Grand Jury for Criminal Conspiracy (2007-GS-46-0670), Murder (2007-GS-46-0671), Armed Robbery (2007-GS-46-0672), Possession of a Weapon During the Commission of a Violent Crime (2007-GS-46-0673), and Kidnapping (2007-GS-46-0676). Jack Swerling, Esquire, represented him. On February 27, 2009, the Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable Lee S. Alford sentenced the Applicant to confinement for five (5) years for Criminal Conspiracy, thirty (30) years, concurrent for Murder, ten (10) years, consecutive, for Armed Robbery, five (5) years, concurrent, for the weapons charge, and ten (10) years, concurrent, for Kidnapping.

A notice of appeal was filed and an appeal perfected pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed the Applicant's conviction and

sentence. State v. Addison, Op. No. 2012-UP-655 (filed December 12, 2012). The Remittitur was issued on January 4, 2013.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
 - a. "Failure to properly advise Applicant prior to trial"
 - b. "Failure to call witnesses and utilize evidence"
2. "Ineffective Assistance of Appellate Counsel"
 - a. "Failure to raise all meritorious issues on appeal"

Attached herewith and incorporated herein by reference are the records of the York County Clerk of Court regarding the subject conviction, the Applicant's records from the Department of Corrections, the transcript, and the opinion of the South Carolina Court of Appeals. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal

cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Second, counsel's deficient performance must have prejudiced the Applicant such that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. Id. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner must prove that counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The allegation that appellate counsel was ineffective is without merit. The Respondent contends that the Applicant's appellate counsel rendered adequate assistance and provided representation within the range of competence required by appellate attorneys. A defendant is constitutionally entitled to the effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S.

387, 105 S.Ct. 830 (1985). Where ineffective assistance of appellate counsel is alleged, the Applicant must show that appellate counsel's performance was (1) deficient; and (2) that there was prejudice from the appellate counsel's deficiency. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999). To be effective, appellate counsel must give assistance of such quality as to make appellate proceedings fair. Id. Appellate counsel must provide effective assistance but need not raise every non-frivolous issue presented by the record. Id. Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 103 S.Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test with regard to the ineffectiveness claims against appellate counsel. However, the allegation of ineffective assistance of appellate counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

V.

Each and every allegation contained within the application not hereinbefore either expressly

admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 12, 2014

1 STATE OF SOUTH CAROLINA

2 -----x

3 TERRELL ADDISON,

4 Petitioner,

5 Case No.

6 -against- 2013-CP-46-3728

7 STATE,

8 Respondent.

9 -----x

10 November 4, 2015

11 York, S.C.

12

13 B E F O R E:

14 HONORABLE BROOKS P. GOLDSMITH

15

16 A P P E A R A N C E S:

17 TRICIA BLANCHETTE, Esquire

18 Attorney for the Petitioner

19

20 JUSTIN HUNTER, Esquire

21 Attorney for the State

22

23 Aileen Butler

24 Official Court Reporter

25

		<u>I N D E X</u>			
	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
1					
2					
3	Dontavious Mack				
4	Ms. Blanchette	9			
5	Mr. Hunter		17		
6	Philip Baity				
7	Ms. Blanchette	18			
8	Mr. Hunter		21		
9	Vernon Harmon				
10	Ms. Blanchette	23			
11	Mr. Hunter		28		
12	David Gunn				
13	Ms. Blanchette	28			
14	Mr. Hunter		31		
15	Miguel Guidry				
16	Ms. Blanchette	32			
17	Mr. Hunter		35		
18	Terrell Addison				
19	Ms. Blanchette	36			
20	Mr. Hunter		46		
21	Fran Kennedy				
22	Ms. Blanchette	53		80	
23	Mr. Hunter		76		
24	Darryl Kennedy				
25	Ms. Blanchette	82			

1			<u>I N D E X</u>		
2	<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RE CROSS</u>
3	Mr. Hunter		87		
4	Jack Swerling				
5	Ms. Blanchette	88		121	
6	Mr. Hunter		114		
7	Willy Thompson				
8	Mr. Hunter	123			
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
P-1	Memorandum		25
P-2	Report		29
P-3	Report		33
P-4	Letter		39
P-5	Evaluation	67	
P-6	List of witnesses		109

1 MR. HUNTER: May it please the Court.

2 THE COURT: Certainly.

3 MR. HUNTER: This is Terrell Addison versus State
4 of South Carolina, 2013-CP-46-3728, Your Honor, he was
5 indicted February 2007 term of the York County Grand
6 Jury for criminal conspiracy, 2007-GS-46-670; murder,
7 2007-GS-46-671; armed robbery, 2007-GS-46-672;
8 possession of weapon during the commission of a violent
9 crime, 2007-GS-46-673, kidnapping 2007-GS-46-676.

10 Your Honor, he was represented at trial by the Jack
11 Swerling. On February 27, 2009 he proceeded to jury
12 trial before the Honorable Lee Alford. He was found
13 guilty of all charges as indicted.

14 Your Honor, just for the record he was -- he did
15 undergo a jury trial with a co-defendant, with Glen
16 Stewart. Your Honor, he was sentenced by Judge Alford
17 to imprisonment for five years of criminal conspiracy,
18 thirty years for murder, ten years consecutive for armed
19 robbery, five years for weapons charge and ten years for
20 kidnapping. And Your Honor, other than -- other than
21 the ten years consecutive for armed robbery he was --
22 everything else was run concurrent.

23 Your Honor, he filed a Notice of Appeal. That was
24 perfected pursuant to the Anders Brief. The Court of
25 Appeals affirmed his conviction and sentence by an

1 unpublished opinion filed December 12, 2012. The
2 remittitur was issued January 4, 2013. Your Honor, he
3 filed this current action December 9, 2013, alleging
4 ineffective assistance of counsel and ineffective
5 assistance of appellant counsel.

6 Your Honor, he is represented by Miss Tricia
7 Blanchette. She did file an amendment on or about
8 October 8th. Your Honor, he is present in the courtroom
9 today represented by Miss Blanchette. I'll turn it
10 over to her.

11 THE COURT: Miss Blanchette.

12 MS. BLANCHETTE: May it please the Court. Tricia
13 Blanchette here today on behalf of Terrell Addison.
14 Does Your Honor have a copy of the amendment that was
15 submitted on October 8th and filed on October 12th in
16 your packet?

17 THE COURT: I do.

18 MS. BLANCHETTE: Your Honor, those are the
19 allegations that we intend to go forward on today. When
20 I actually -- I prepared this afterwards I noticed there
21 were just a couple of errors or typos or additions that
22 needed to be made. I emailed the attorney general and
23 he indicated that he would have no problem with me
24 putting that on the record today. So if Your Honor
25 doesn't mind I will just go through each allegation and

1 indicate any changes that need to be made.

2 THE COURT: Okay.

3 MS. BLANCHETTE: Our first allegation is
4 ineffective assistance of trial counsel for failure to
5 communicate and pursue all viable plea offers to
6 applicant and to insure that he and his family had a
7 full understanding of all plea offers and/or options
8 before proceeding to the trial.

9 Number two, I will have -- there is and that needs
10 to be omitted it that.

11 THE COURT: I see.

12 MS. BLANCHETTE: It should read ineffective
13 assistance of trial counselor for failure to utilize
14 applicant's mother as a witness and records stemming
15 from his mental health treatment in support of his
16 defense.

17 Number three, should read as follows; in effective
18 assistance of trial counsel for failure to present
19 witnesses to support applicant's defense of duress
20 and/or coercion in camera and/or following the trial
21 court's ruling on the matter. So we are adding in
22 camera as well.

23 Number four, is ineffective assistance of trial
24 counsel for advising the applicant to proceed to trial
25 on a primary defense, duress, coercion, that is not

1 recognizable on a murder trial and we cite the State
2 versus Kelsey and essentially that is a claim of just
3 failure to present a viable defense is a simpler way to
4 state that Your Honor. And this is pursuant to Rule
5 15-B. We are calling a number of witnesses today. We
6 would move to amend, to conform to the evidence and
7 testimony presented at the evidentiary hearing. If any
8 issues pop up that we were not expecting that I do not
9 have listed here in this amendment Your Honor, we would
10 just ask that the Court would take notice of those
11 issues as they come and that those would be addressed in
12 the Final Order in this case.

13 THE COURT: Okay.

14 MS. BLANCHETTE: Your Honor, just as some kind of
15 housekeeping matters, I know we are starting kind of
16 mid-morning here. I have subpoenaed his two
17 co-defendants. I intended to call both of them first.
18 Attorney Phil Baity is here. He represented one of the
19 co-defendants. And then I have Officer Harmond who is
20 here and he does have a one o'clock mandatory training
21 he needed to get to today. I intend to call him next.
22 I have two other officers from the detention center that
23 I told that I would try to get them in as soon as
24 possible and then I will be calling my client, some of
25 his family members and then I intend to call Jack

1 Swerling as my last witness.

2 THE COURT: Okay, you may proceed.

3 MS. BLANCHETTE: Thank you, Your Honor. I would
4 Dontavious Mack to the stand.

5 DONTAVIOUS MACK, called as a witness, having
6 been duly sworn by The Clerk, was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MS. BLANCHETTE:

10 Q Would you please state your name for the record.

11 A Dontavious Mack.

12 Q Dontavious, if you would please speak into that
13 microphone so everyone can hear you.

14 A Okay.

15 Q Where are you currently incarcerated?

16 A Broad River.

17 Q And the case that you are incarcerated for was Terrell
18 Adddison one of your co-defendants?

19 A Yes, ma'am.

20 Q And how did your case get resolved; was it a trial or a
21 plea?

22 A A plea.

23 Q And in deciding to take a plea in this case what was
24 one of the factors or reasons why you took your plea?

25 A Cause I was told that my brother was offered a plea

1 procedure, and Terrell was offered a plea.

2 MR. JOHNSON: I would object to anything. It's
3 hearsay.

4 MS. BLANCHETTE: Your Honor, I can re-ask the
5 question.

6 THE COURT: All right.

7 Q What was your understanding as to the offers that
8 everyone had received if you took a plea in this case?

9 A Terrell was 14 nonviolent, my brother was 12 nonviolent
10 and Ben was 8 nonviolent.

11 Q And did that factor into your decision to take a plea
12 in this case?

13 A Yes, ma'am.

14 Q And essentially why did you take a plea?

15 A I was guilty of it and I didn't want them to be charged
16 for it.

17 Q And ultimately you ended up having to testify for the
18 State in Mr. Addison's trial, is that correct?

19 A Yes, ma'am.

20 Q And was that the outcome that you had expected?

21 A What?

22 Q Did you think that you would have to testify against
23 Mr. Addison?

24 A No, ma'am.

25 Q Could I beg the Court's indulgence one moment?

1 THE COURT: All right.

2 MS. BLANCHETTE: Your Honor, have I no further
3 questions of this witness.

4 THE COURT: Any cross examination.

5 MR. JOHNSON: Beg the Court's indulgence one
6 second Your Honor.

7 CROSS EXAMINATION

8 BY MR. JOHNSON:

9 Q Isn't it true you plead guilty to help your brother?

10 A To help all of them.

11 Q So you had this arrangement. Your testimony today is
12 you had an arrangement with the solicitor's office regarding
13 what other people would receive?

14 A Yes, sir.

15 Q Do you know who told you? Which solicitor you talked
16 to?

17 A I think it was -- what's his name. I think it was
18 Kevin Brackett or Willy Thompson. One of them.

19 MR. JOHNSON: I have nothing else, Your Honor.

20 MS. BLANCHETTE: Nothing further.

21 THE COURT: Thank you.

22 MS. BLANCHETTE: Your Honor, I would ask if the
23 State doesn't have any objection I do have Mr. Mack
24 under subpoena and ask he be allowed to return to Broad
25 River.

1 MR. HUNTER: No objection.

2 THE COURT: He may be released from his subpoena.

3 MS. BLANCHETTE: Your Honor, the next witness will
4 be Davorius Mack.

5 DAVORIUS MACK, called as a witness, having been
6 duly sworn by the clerk, was examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MS. BLANCHETTE:

10 Q Please state your name for the record?

11 A Davorius Mack.

12 Q And Mr. Mack are you currently incarcerated?

13 A Yes, ma'am.

14 Q And where are you being housed at?

15 A Lee County Correctional Institution.

16 Q And was Terrell Addison one of the co-defendants in the
17 case where that you are currently incarcerated for?

18 A Yes, ma'am.

19 Q Okay. And what was the outcome of the case for you?
20 What sentence did you receive?

21 A Let's see, ten years with consecutive one.

22 Q And do you recall back in '07 entering into a proper
23 agreement or agreeing that you would assist the State with this
24 case?

25 A Yes, ma'am.

1 Q And did you have an attorney that was representing you
2 at that time?

3 A Yes, ma'am.

4 Q And who was that?

5 A Philip Baity.

6 Q Okay,. At some point did you become upset or
7 disgruntled with how the State was treating you?

8 A Yes, ma'am.

9 Q And what did you do?

10 A I had wrote my lawyer, Mr. Philip Baity, and I wrote
11 the solicitor's office and I wanted to tell them I wanted to
12 back out of the plea and I didn't want to go forward with the
13 plea.

14 Q And as a result of that was there a meeting that
15 occurred?

16 A Yes, ma'am.

17 Q Okay, and you can't specifically say what somebody else
18 said. But what was your understanding as to the plea offers
19 that were on the table during that meeting?

20 A They had my brother at the top of the board saying he
21 was looking at 30 years or more and then Addison as far as he
22 was saying about 15 years or more, and they had me and Stewart
23 together saying 10 years and my other co-defendant, five years
24 of probation on the board.

25 Q Okay, and was it your understanding that Addison could

1 get anywhere from zero to 15 years?

2 A Yes, ma'am, something like -- they were saying like no
3 more like 15 years. I know they said 15 years and then me and
4 Stewart were going to get 10 years.

5 Q And as a result of that did you agree to continue to
6 cooperate with the State?

7 A Yes, ma'am.

8 Q Okay, and where did that meeting take place? Do you
9 remember?

10 A In the solicitor's office.

11 Q Okay, and do you remember approximately what -- what --
12 this all occurred I believe in 2006. You entered into your
13 proffer agreement in 2007. And then Terrell Addison went to
14 trial in February 2009.

15 Can you give us a timeframe as to when that meeting
16 occurred?

17 A Around October 2008.

18 Q Okay, and then after that meeting occurred you agreed
19 to continue to cooperate with the State is that correct?

20 A Yes, ma'am.

21 Q And at some point did you get notice that you were
22 going to be a witness in the trial of Terrell Addison?

23 A Yeah, like a month prior to the trial.

24 Q Okay. And at that time were you transferred as a
25 result of that?

1 A Yes, ma'am.

2 Q And where were you housed after that?

3 A York County.

4 Q And did you have any meeting with the solicitors to
5 prepare for the trial?

6 A Yes, ma'am.

7 Q And during those meetings did you feel at any time that
8 you were being told what you needed to say or coached in any
9 way?

10 A Yes, as far as helping put everything together, yes,
11 ma'am.

12 Q Okay, do you want to explain that any further?

13 A They just had me and my brother together telling us,
14 you know, letting us know what --

15 MR. HUNTER: Your Honor, I object to hearsay.

16 MS. BLANCHETTE: Your Honor, I can re-ask the
17 question.

18 THE COURT: All right.

19 Q During those meetings was it ever conveyed to you that
20 there was specific things you needed to say or anything like
21 that?

22 A Yeah. I can't recall. I know we had a meeting in the
23 back me and my brother and the solicitor. As far as everything,
24 the trial was starting and they was saying -- telling me and my
25 brother, you know --

1 MR. HUNTER: Objection. Hearsay.

2 MS. BLANCHETTE: Your Honor, I will move on.

3 THE COURT: All right.

4 Q So you were housed here in preparing for trial. When
5 you were cooperating with the State did you anticipate that you
6 would have to testify for the State against Terrell Addison?

7 A Can you give me like a --

8 Q Did you -- were you surprised when you had to testify
9 for the State against Mr. Addison? Did you think that was going
10 to be the outcome?

11 A No, ma'am. I thought all of us were going to get a plea
12 like -- I thought all of us were going to get a plea like they
13 said.

14 Q And did that factor in your decision to take your plea
15 and cooperate with the State?

16 A Yes, ma'am.

17 MS. BLANCHETTE: Your Honor, if I can beg the
18 Court's indulgence one moment.

19 THE COURT: All right.

20 MR. BLANCHETTE: Your Honor, I have no further
21 questions of THIS witness.

22 THE COURT: Cross examination.

23 MR. HUNTER: Just briefly, Your Honor.

24 CROSS EXAMINATION

25 BY MR. HUNTER:

1 Q So when you met with the solicitor's office and you
2 found out about all these other different plea deals, do you
3 know who you met with with?

4 A Willy Thompson, Kevin Brackett, my lawyer Mr. Philip
5 Baity, I'm thinking and Miss Martha. An investigator named
6 Martha. Miss Martha she was in there with us.

7 Q Okay, and you said that your impression was certain
8 years. I believe you said were asking 15 years, about. About
9 15 years. Do you know what charges those were for or was it
10 just --

11 A No, they just had us on the board because I was -- I
12 had gone through a lot and I wanted to back out of the plea and
13 I had wrote Mr. Baity and told him I wanted to back out of the
14 plea and I didn't want to go on with the plea or nothing like
15 that and they just put in the Order and had me transferred here
16 and I had meeting with him and they were telling me they wanted
17 it to be known that they are going to need me to -- just in case
18 that they need me, that, you know, they just had everything on
19 the board. Had my brother at the top. Then they had Terrell.
20 They had Stewart and they had me and Stewart and Reid at the
21 bottom of the board.

22 Q That's Reid Allen?

23 A Yes, sir.

24 Q Now, you still testified for the State against Mr.
25 Addison?

1 A Yes, sir.

2 Q Okay.

3 MR. HUNTER: I have nothing else, Your Honor.

4 MS. BLANCHETTE: Nothing further. This witness is
5 here is also understand subpoena. I would ask that he
6 be released to go back to Lee?

7 THE COURT: Motion granted. Yes, sir, you are
8 excused from your subpoena. Thank you.

9 (WITNESS EXCUSED.)

10 MS. BLANCHETTE: Your Honor, I would call attorney
11 Phil Baity to the stand.

12 PHILIP BAITY, called as a witness, having been
13 duly sworn by the clerk, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MS. BLANCHETTE:

17 Q Could you please state your name for the record?

18 A Philip Baity.

19 Q And what is your current occupation?

20 A I'm an attorney.

21 Q And how long have you been practicing law?

22 A I think 38 years.

23 Q And what is your primary area of practice?

24 A Well, it's litigation of all types. I would say about
25 a third of my practice is criminal law.

1 Q Do you recall representing Davavious Mack stemming from
2 a murder that occurred on October 10th of 2006 here in York
3 County?

4 A Yes, ma'am, I do.

5 Q And you were here present in the courtroom today when
6 Davavious Mack testified, is that correct?

7 A Yes, I was. I heard it.

8 Q Do you recall a meeting that occurred as he described
9 at the courthouse in October or November of 2008 where the State
10 explained the plea offers that were on the table for all the
11 co-defendants?

12 A I remember meeting with my client in October of 2008.
13 My time records which I was keeping for OID indicate that
14 meeting lasted four hours, or at least that's how much I charged
15 OID to meet with my client and meet with them.

16 Certainly I was focusing on the plea offer that was being
17 made to my client in exchange for his corporation with the
18 State, but I do indeed remember that, and of course the trial
19 didn't happen for another couple of months.

20 Q And do you recall Davorius at that point wavering in
21 his wanting to cooperate with the State, there being an issue as
22 that time as he explained?

23 A Davorius is a -- I don't know the word, he is a very
24 active client. Very nervous and constantly talking. Constantly
25 calling me and so forth. I know he was extremely disappointed

1 at the length of time that had passed since he initially agreed
2 to work with the State and nothing had happened. So, he did in
3 fact either call or write. I believe he called and told me he
4 wanted to back out of the agreement that he made a good while
5 prior, and he was wavering, yes.

6 Q Okay, and so the purpose of that meeting was to address
7 his wavering?

8 A Absolutely.

9 Q Okay, and you worked with him for a number of years, is
10 that correct?

11 A Yes, ma'am, I did. I think I was appointed in 06. I'm
12 not sure, but I think that's right.

13 Q And is there any reason that you would see to call into
14 question something that Davorius had told you or would be
15 willing to come and testify in Court?

16 A Davorius was not truthful when me when I first met him,
17 nor was he truthful with the police, but he -- he had an
18 epiphany at some point where he changed his mind and decided to
19 tell the truth is what he told me and was very forthcoming with
20 the details of the case and I think because of that he was an
21 excellent witness for the State.

22 After the initial meetings with him in which he told me one
23 thing or another, he was very truthful and forthcoming with me.
24 I believed that he told me the truth. I can't recall anything
25 after the initial meetings that turned out not to be true, even

1 when they were not particularly in his best interest. So I came
2 to believe in him as credible witness.

3 MS. BLANCHETTE: Your Honor, if I could beg the
4 Court's indulgence one moment.

5 THE COURT: Sure.

6 MS. BLANCHETTE: Your Honor, I have no further
7 questions of this witness.

8 MR. HUNTER: May it please the Court, Your Honor.

9 CROSS EXAMINATION

10 BY MR. HUNTER:

11 Q Mr. Baity, you heard what your former client said about
12 these different numbers, the years that were offered. Was this
13 part of his plea deal?

14 A I recall the meeting. I know it was lengthy. The plea
15 deal had already -- the proffer and so forth had been struck and
16 we were talking about whether or not we were going to go through
17 with it. I remember meeting in the room that Mr. Mack just
18 testified about, the so call war room. At least that's what i
19 call it. I remember the white board. I remember again focusing
20 on my client's deal.

21 There was some discussion about deals to the other folks,
22 but for the life of me, neither my notes nor my memory can
23 ascertain or remember anything about other deals. Now, we were
24 very much interested in his brother, Dontavious. My client was
25 very much concerned about him, and I do recall the 30 years

1 being mentioned about concerning his brother. The other
2 defendants I have no recollection whatsoever. Was it discussed,
3 was it not, I honestly can not remember.

4 Q And so his plea deal wasn't contingent on anybody else
5 receiving a certain amount of years, is that correct?

6 A I don't recall that being a feature of it all, no, sir.

7 Q And was he coached by the State on how to answer his
8 questions?

9 A The meeting as I said in October was for four hours and
10 then the day before -- excuse me, I believe the Friday before
11 and the days of trial I pretty much had full days up here. So
12 there was a lot of sitting around waiting, but there was some
13 meetings with the solicitor to discuss his testimony. I don't
14 recall it being that we need you to say this or we need you to
15 say that. I think it was more or less, all right, now your
16 statement says this. Is that true? Just basically getting the
17 facts straight.

18 Q And were you present during all these meetings?

19 A I think I was. Did they meet with him outside of my
20 presence, I don't recall giving them permission to do that, but
21 quite frankly, my client was so cooperative I wouldn't sit here
22 and rule it out.

23 Q Are you aware of any incident that he met outside?

24 A No, sir, I am not.

25 MR. HUNTER: Beg the Court's indulgence one

1 second.

2 No further questions.

3 THE COURT: Redirect?

4 MS. BLANCHETTE: I have no further questions for
5 this witness.

6 THE COURT: Thank you, you may step down.

7 MR. BAITY: Thank you, Your Honor.

8 MS. BLANCHETTE: Attorney Baity is also here under
9 subpoena. I would ask that he be released.

10 THE COURT: Without objection you are excused.

11 MR. BAITY: Thank you, Judge.

12 MS. BLANCHETTE: Your Honor, I would call Sergeant
13 Harmon to the stand.

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

17 DIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q Please state your name for the record?

20 A Vernon Harmon.

21 Q And did I get your title, correct, is it sergeant?

22 A Lieutenant.

23 Q Lieutenant Harmon, I apologize. Lieutenant Harmon, I
24 am going to take you back to 2006.

25 MS. BLANCHETTE: Your Honor, may I approach the

1 witness?

2 THE COURT: You may.

3 Q And I will ask if you can identify this packet of
4 documents that I am handing you there.

5 A Yes, ma'am. This is memo to at the time Lieutenant
6 Harin (phonetics) who was over our detective division, along
7 with my general session's court case summary that was submitted.

8 Q Okay, and who is this regarding?

9 A Dontavious Mack.

10 Q And these are documents that you prepared, is that
11 correct?

12 A I did, yes, ma'am.

13 MS. BLANCHETTE: Your Honor, at this time I would
14 move this Rock Hill Police Department packet of
15 document as Applicant's number one.

16 MR. HUNTER: Your Honor, just for one second if I
17 could look at it one last time.

18 THE COURT: Sure.

19 MR. HUNTER: Your Honor, I would object to
20 anything that he did not personally prepare. Several of
21 these documents were reports by other officers.

22 MS. BLANCHETTE: Your Honor, this packet of
23 materials was actually contained in Jack Swerling's
24 file. I had turned it over to the State prior to today.
25 I can ask further questions but it's my understanding

1 these were documents prepared by Lieutenant Harmon.

2 MR. HUNTER: Your Honor, in addition we contend a
3 lot of this is hearsay. If she wants -- I understand it
4 is part of Jack's file, but I don't believe things that
5 weren't prepared by Lieutenant Harmon can get in through
6 him.

7 THE WITNESS: What's in this packet I did do. Just
8 with these four documents. I don't know about the rest
9 of the case. This is dealing with an escape charge that
10 we made on Mr. Mack, these four individual pieces.

11 MR. HUNTER: Which one was I looking at it?

12 MS. BLANCHETTE: It's just four pages.

13 MR. HUNTER: Okay, I apologize.

14 Thank you lieutenant for straightening them out.

15 THE WITNESS: It consists, counselor, of a memo, a
16 report, general session's report.

17 MR. HUNTER: Excellent. That is fine. I
18 withdraw my objection on that.

19 THE COURT: It will be admitted without objection.

20 (Petitioner's Exhibit One, memorandum, received in
21 evidence as of this date.)

22 MS. BLANCHETTE: Your Honor, would you like a
23 copy?

24 THE COURT: Please.

25 (WHEREUPON, a document was handed to the court.)

1 BY MS. BLANCHETTE CONT'D:

2 Q Lieutenant Harmon, this refers to an escape charge that
3 you were involved in regarding Davorius Mack, is that correct?

4 A Yes, counselor.

5 Q Okay. Do you recall ever being contacted by Jack
6 Swerling or anyone from his office regarding this matter?

7 A No, ma'am.

8 Q Okay. And if you would have received a subpoena to
9 come to court to testify about these documents back in February
10 2009 would you have complied?

11 A I would have complied because it would have been
12 against the department orders not to be here, yes, counselor.

13 Q Okay, and I just want to ask you a specific question
14 here. At the very first page where it says memorandum, was do
15 you report that Davorius Mack had yelled out at y'all?

16 A After we located what we located in his cell, he yelled
17 out to us that y'all are just mad because we killed the dude.
18 Yes.

19 Q Okay, and was he cooperative with you all during this
20 incident?

21 A No.

22 Q And what was the result of when you went to his cell?
23 If you just want to talk us through it what happened that will
24 be fine.

25 A At the time I was a sergeant of the city jail in Rock

1 Hill and we had been doing jail checks basically and our Clerk
2 of Court had heard some strange noises and every time we walked
3 by the cell it would seem like some inmates were by the wall and
4 they would move. So when I went in and did a cell inspection
5 and located an cinderblock that had been -- they had taken the
6 plastic spoons and removed the mortar from the cinderblock and
7 they would put the cinderblock back in as the correction
8 officers were making their rounds. So it would look like that
9 the cinderblock was still in the wall. So basically what was
10 going on is they were removing the mortar from the cinderblocks
11 as quick as they can and they were taking the mortar, the sand
12 mortar and putting it into the toilet and flushing it and
13 putting it behind the toilet.

14 Q And when this was discovered do you recall how Davorius
15 Mack reacted to you?

16 A He was not happy and he denied it, but that's about all
17 I can remember. You know, he didn't have any type of physical
18 aggression, he just said he didn't have anything to do with it.

19 Q Okay, but he did make the comment that you already
20 testified to?

21 A Yes, he did, he did make that comment.

22 MS. BLANCHETTE: Your Honor, if I can beg the
23 Court's indulgence.

24 Your Honor, I have no further questions of this
25 witness.

1 THE COURT: Cross examination.

2 CROSS EXAMINATION

3 BY MR. HUNTER:

4 Q Lieutenant Harmon, did you have any involvement in the
5 trial of this case?

6 A No counsel, I did not.

7 MR. HUNTER: Nothing further, Your Honor.

8 THE COURT: Thank you.

9 MS. BLANCHETTE: Yes, and he's also under
10 subpoena.

11 THE COURT: You're excused from your subpoena.

12 THE WITNESS: Thank you.

13 MS. BLANCHETTE: Your Honor, I would call Officer
14 Gunn to the stand.

15 DAVID H. GUNN, called as a witness, having been
16 duly sworn by the clerk, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MS. BLANCHETTE:

20 Q Could you please state your name for the record?

21 A David H. Gunn, Jr.

22 Q And what is your proper title?

23 A I'm lead booking officer, rank of corporal.

24 Q All right. Corporal Gunn, where do you currently work?

25 A At the York County Detention Center.

1 Q And did you work there back in 2007?

2 A Correct.

3 MS. BLANCHETTE: Your Honor, may I approach the
4 witness?

5 THE COURT: You may.

6 Q Could you please identify this document for the record?

7 A Yes, this is an administrative separation disciplinary
8 action report.

9 Q And who is the individual, the inmate, listed on this?

10 A Davorius Montraze Mack.

11 Q And what is the date?

12 A The date is February the 7th, 2007.

13 MS. BLANCHETTE: For the record, Your Honor, this
14 is a one-page document just one sided, and I would
15 move this in as applicant's number two at this time.

16 MR. HUNTER: No objection.

17 THE COURT: Motion granted.

18 MS. BLANCHETTE: Your Honor, I have a copy for the
19 court.

20 (Applicant's Exhibit Two, Report, received in
21 evidence as of this date.)

22 Q And if you could just read to us the information
23 contained in your report here.

24 A "On the above date and time inmate Mack, Davorius was
25 out in the max dayroom area using the telephone for a ten minute

1 phone call that was approved by Lieutenant McMillan earlier
2 earlier in the day. Officer Meeks and Hubbard let inmate Mack
3 out at approximately 1607 hours. Officer Meeks and Gunn entered
4 the unit at approximately 1627 and advised the inmate that his
5 time was up and he needed to go back to his cell. The inmate
6 then became more verbal and passive resistive towards Officer
7 Meeks and Gunn. Officer Gunn then asked inmate Mack to go back
8 to his cell. Inmate Mack then stated if you put your hands on
9 me I'll smack you in the mouth, you bitch ass nigger."

10 Q Do you recall --

11 A Officer Gunn --

12 Q Oh, I'm sorry

13 Q I am sorry. I apologize. Keep going.

14 A "Officer Gunn and Meeks left the day room area and
15 called the supervisor's office, Lieutenant McMillan, Sergeant
16 Brown and Guidry. Officers Tucker and Sibley responded to the
17 unit. Inmate Mack was place back in his cell with no further
18 disturbance."

19 Q And do you recall this incident with Davorius Mack?

20 A I do.

21 Q Do you recall being contacted ever by Jack Swerling or
22 anyone from his office regarding this incident?

23 A No, ma'am, I do not recall that.

24 Q Do you recall receiving a subpoena to testify at the
25 trial Terrell Addison on or around February 23, 2009?

1 A I believe I may have been contacted at some point, but
2 I was never remanded or asked to come to court. I don't recall.

3 Q Okay, and if you were asked to come to court to testify
4 regarding this incident would you have been willing to do that?

5 A Yes, ma'am,.

6 MS. BLANCHETTE: Your Honor, if I could beg the
7 Court's indulgence one moment.

8 THE COURT: Certainly.

9 MS. BLANCHETTE: Your Honor, I have no further
10 questions of this witness.

11 MR. HUNTER: Very quickly.

12 THE COURT: Certainly.

13 CROSS EXAMINATION

14 BY MR. HUNTER:

15 Q Officer, were you in any way involved in Terrell
16 Addison's case?

17 A I'm sorry, repeat.

18 Q Were you in any way involved in Terrell Addison's case?

19 A No.

20 Q Okay.

21 MR. HUNTER: That's all, Your Honor.

22 THE COURT: Thank you, officer, you may step down
23 and you are excused from your subpoena.

24 MS. BLANCHETTE: Thank you, Your Honor.

25 Your Honor, I would call Officer Guidry,

1 G-u-i-d-r-y.

2 MIGUEL GUIDRY, called as a witness, having been
3 duly sworn by the clerk, was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 BY MS. BLANCHETTE:

7 Q Could you please state your name for the record?

8 A Miguel Guidry.

9 Q And where are you currently employed?

10 A York County Detention Center.

11 Q And what is your title there?

12 A I am field training officer.

13 Q Okay. I will call you Officer Guidry and I apologize
14 if I say your last name wrong.

15 MS. BLANCHETTE: Your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18 Q Officer Guidry, could you identify this three-page,
19 two-sided document for the record please?

20 A It is incident infraction report I wrote.

21 Q Okay, and what is the date on these reports?

22 A It looks like January 1, 2007.

23 Q Okay. And who is the individual, the inmate involved
24 in these reports?

25 A Davorius Mack.

1 MS. BLANCHETTE: Your Honor, at this time I would
2 move this three-page, two-sided York County Detention
3 Center Report document in as applicant's number three.

4 MR. HUNTER: Without objection.

5 THE COURT: Motion granted.

6 (Applicant's Exhibit Three, Report, received in
7 evidence as of this date.)

8 MS. BLANCHETTE: Here is a copy for Your Honor.

9 Q Officer Guidry, what was the charge that these reports
10 relate to?

11 A Threatening, making threats.

12 Q And essentially what occurred between yourself and
13 Devorious Mack that lead to these reports? And if you're more
14 comfortable reading the narrative that will be fine.

15 A "On Friday, January 5th, 2007, this reporting officer
16 was working housing unit-A. This reporting officer witnessed
17 inmate Mack pass some clothing items under his inmate Wells,
18 cell number 20. When this Reporting Officer, Assisting Booking
19 Officer Goodman, Transportation Officer Howley and Officer
20 Chapman arrived at inmate Mack's cell door he refused to place
21 his hands outside the flap so we could apply the handcuffs.
22 This reporting officer drew his tazer and stated to inmate Mack
23 to place his hands outside his flap. Inmate Mack stated "If you
24 shoot me with that motherfucker I will kill you." This
25 reporting officer then told inmate Mack to place his hands

1 outside his flap. Inmate Mack then complied. While he complied
2 inmate Mack continued threatening the reporting officer stating
3 "You shoot me, you are a dead motherfucker. I will put a hit out
4 on your ass."

5 This reporting officer then removed inmates Mack's property
6 and placed him on minimum standards.

7 Q And do you recall that incident with Davorius Mack?

8 A It is a long time ago, no, ma'am.

9 Q But would you stand by what is written in your report?

10 A Yes, ma'am, I would.

11 Q Do you recall ever being contacted by Jack Swerling, an
12 attorney representing Terrell Addison or anyone on his behalf
13 regarding this incident?

14 A No, ma'am.

15 Q Do you recall receiving a subpoena or any notice of the
16 trial on February 23rd of 2009 of Terrell Addison here in York
17 County?

18 A No, ma'am.

19 Q All right. Were you called as witness in February 2009
20 regarding this incident report?

21 A Not to my knowledge, no, ma'am.

22 Q If you would have received a subpoena and been asked to
23 come to court like you did today to testify about this incident
24 report would you have been willing to do that?

25 A Yes, ma'am.

1 MS. BLANCHETTE: Your Honor, I have no further
2 questions of this witness.

3 THE COURT: Cross examination.

4 CROSS EXAMINATION

5 BY MR. HUNTER:

6 A Officer, were you in any way involved in Terrell
7 Addison's case?

8 A No, sir.

9 MR. HUNTER: No further questions.

10 THE COURT: Thank you, officer, you may step down
11 and you are excused from your subpoena.

12 MS. BLANCHETTE: Your Honor, may I approach
13 regarding scheduling matters.

14 THE COURT: Certainly.

15 (WHEREUPON, an off the record discussion was held.)

16 MS. BLANCHETTE: I call Terrell Addison to the
17 stand.

18 TERRELL ADDISON, called as a witness, having been
19 duly sworn by the clerk, was examined and testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MS. BLANCHETTE:

23 Q You state your name on the record, please.

24 A Terrell Addison.

25 Q Okay, and Terrell you are soft speaker then I am so

1 please make you project your voice or get closer to that
2 microphone, okay. Everybody needs to be able to hear you today,
3 okay.

4 We are here today on PCR application that you file in 2013
5 in York County. Do you recall filing that PCR application?

6 A Yes.

7 Q And make you say yes or no and again say it loud enough
8 so we can hear you, okay?

9 A Yes.

10 Q And in that application what is the relief you are
11 asking the Court to give you?

12 A Just new trial.

13 Q Okay. And you and I have meet countless times
14 preparing for today, and I have explained to you that there is a
15 risk in asking for a new trial. Essentially if the Court gives
16 you a new trial Terrell that means you are put back in the
17 position you were before you were convicted. Knowing that do
18 you still want to go forward with your PCR application today?

19 A Yes.

20 Q Okay. Now, in February of 2009 you were called to
21 trial regarding the murder of James E. known as Ned Marshall
22 that occurred on October 10th of 2006.

23 Who was the attorney that represented you at that trial?

24 A Jack Swerling.

25 Q And did you have co-defendants in this case?

1 A Yes.

2 Q And was one your co-defendants actually called to trial
3 with you?

4 A Yes.

5 Q And who did you go to trial with? Which one of your
6 co-defendants?

7 A Ben Stewart.

8 Q Okay. And Terrall we talked a lot. I know you can
9 talk louder than that

10 A Ben Stewart.

11 Q Okay. You are not going to get in trouble for being
12 too loud here, okay?

13 A All right.

14 Q Now, leading up to your trial about how long did Jack
15 Swerling represent you? Do you remember?

16 A Repeat that more one time. I didn't hear you.

17 Q How long did Jack Swerling represent you before you
18 went to trial in 2009? Did he represent you for a good bit
19 leadug up to trial?

20 A A few. Times, I mean, it wasn't that many times.

21 Q You may have misunderstood my question. How many times
22 did you meet with Jack Swerling leading up to your trial?

23 A About two or three times.

24 Q Okay. During those two or three meetings did you ever
25 discuss a plea offer that the state was giving you in your case?

1 A It was a plea discussed but it wasn't -- it was a
2 longer, bigger plea then what they were talking about.

3 Q So when you are headed to trial what did Jack Serling
4 tell you what was on the table as far as a plea? Did he tell
5 you there was number on the table right before your trial?

6 A Yeah, he told me it was -- first he told me it was 30
7 then they switched it to 20.

8 Q Did you ever hear anything, Terrell, conveyed to you?
9 Did he tell you about a plea offer to less then 20 years?

10 A No, he never told me.

11 Q Would you have been willing to accept or consider a
12 plea offer to less then 20 years?

13 A Yes.

14 Q If Jack Swerling would have told you there was plea on
15 the table for zero to 15 and that it could possibly even be
16 non-violent would you have been willing to accept that plea in
17 this case?

18 A Yes.

19 Q Now, at the beginning of your very lengthy transcript
20 there is a motion hearing held, and let me show you what has
21 been previously marked at your trial as Courts Exhibit Four.

22 Can you identify what that is Terrell?

23 A Yes.

24 Q Okay, and what is it?

25 A I had a situation. My family had wrote a letter to the

1 judge because I was feeling like I wasn't being represented
2 right. I feel like that everybody was just, you know, going
3 against me and I wanted to relieve him from my case.

4 Q And there was actually a hearing held about that, is
5 that right, where you asked for Jack Swerling to no longer be
6 your attorney?

7 A Back.

8 Q Okay, say that again. Was there a hearing held?

9 A Yeah, in the back.

10 Q So you also met in the back, and was that in the
11 judge's chambers.

12 A No, it was -- it was -- I mean, it as back there. I
13 know there was a judge there but I don't know.

14 Q And what was your understanding, could you relieve Jack
15 Swerling?

16 A He told me if I relieved him then I would have to
17 represent myself.

18 Q Okay.

19 MS. BLANCHETTE: Your Honor, at this time I would
20 move the letter dated 2-23 of '09 that was previously
21 marked as Court's Exhibit Number Four as Applicant's
22 Number Four, I believe.

23 MR. HUNTER: I have no objection.

24 THE COURT: All right, motion granted.

25 (Applicant's Exhibit Four, Letter, received in

1 evidence as of this date.)

2 Q And Terrell, you may have answered this question, but
3 why did you not want to go forward with Jack Swerling as your
4 attorney?

5 A Because I feel like that they were working among each
6 other with the situation and had I know that he wasn't arguing
7 the situation with the case. I feel like he wasn't putting
8 enough -- you know what I mean. He really was trying to just
9 make me take a plea, thirty-year plea. That's what it really
10 was and I feel like -- I mean, I didn't do nothing to receive
11 that much time and --

12 Q Go ahead.

13 A And I just felt bad about the situation, you know what
14 I am saying.

15 Q Did you want to take the stand and testify at your
16 trial?

17 A No.

18 Q Did you feel like you were prepared to testify to take
19 the stand?

20 A No.

21 Q Were you surprised when you were asked questions about
22 Ben Stewart's involvement when you were on the stand?

23 A Yes.

24 Q And essentially the questions that were asked of you
25 required you to explain that Ben Stewart what he was guilty of.

1 Did you expect that to happen?

2 A No.

3 Q How did that come to be that you had to testify about
4 Ben Stewart's involvement?

5 A It was like -- it was like it just needed -- he feel
6 like that would be the best thing cause they feel like that they
7 would -- you know I mean, say that I was -- you know what I
8 mean, hiding something or lying about something. They feel like
9 that is the best thing I should do. So something like that.

10 Q Did you feel like you were put on the stand to prove
11 that Ben Stewart was guilty?

12 A Put on the stand to --

13 Q I will repeat my question, Terrell. Do you feel they
14 put you up on the stand to show that Ben Stewart was guilty too?

15 A Yeah.

16 Q Was it your decision and did you communicate with your
17 attorney about going forward on a primary defense of duress or
18 coercion in this case? Who made that decision?

19 A Jack Swerling. My lawyer.

20 Q And what did he tell you about that defense?

21 A Nothing.

22 Q Were you ever told that its been found in South
23 Carolina that that isn't a complete defense to murder?

24 A No, he never told that.

25 Q Did he tell you that you would have to take the stand

1 to prove that defense?

2 A Yeah.

3 Q Now, you have been present in the courtroom all day
4 today during your PCR hearing, is that correct?

5 A Yes, ma'am.

6 Q Did you try to raise a concern to your attorney that
7 the Mack brothers were being coached by the State and required
8 to say certain things against you?

9 A Repeat that again.

10 Q Did you tell Jack Swerling that you thought the State
11 was trying to coach or get the mack brothers to say certain
12 things against you?

13 A Yes.

14 Q What did you tell him about that Terrell?

15 A I told them that I feel like everybody was just working
16 among together because I feel they was in Court -- they was in
17 county a whole month, a month and some change before I even went
18 to trial so I already knew it was something going on. That I
19 mean it don't take that long to get one story together. That's
20 what I told him.

21 There's only one way to tell the truth. So that's what I
22 told him.

23 Q Now Terrell, you just heard testimony from three
24 officers regarding incidents with Davorius Mack that happened at
25 the detention center. Would you have wanted Jack Swerling to

1 look into those matters and bring them to the Court's attention
2 or to the jury's attention if possibly during your trial?

3 A Yes.

4 Q Essentially were you trying to show that the Mack
5 brothers had a reputation for being very scary and threatening
6 individuals, is that correct?

7 A Yes.

8 Q And do you think the testimony of the officers that we
9 gave today would have helped show that?

10 A Yes.

11 Q Okay. So you would have wanted all three of them
12 called at your trial either in front of judge or in front of the
13 jury?

14 A Yes.

15 Q Okay. And essentially your defense was that the Mack
16 brothers forced you to do this and that's what you testified to
17 at trial, is that correct?

18 A They was saying like threatening things, like words,
19 like because something I had owed them.

20 Q And you explained all that during your trial testimony
21 and you stand by your trial testimony is that right Terrell?

22 A Yes.

23 Q Now, during your trial testimony at the very beginning
24 -- it's on page 852 -- Jack Swerling begins asking you about a
25 diagnosis you have for ADHD and medication that you take

1 regarding that and the State objected to that and said it wasn't
2 relevant. Did you know that you were going to have to testify
3 about your ADHD or attempt to testify about it?

4 A No, I didn't have no clue.

5 Q Okay. And Terrell you also have a very lengthy history
6 for being treated for mental health issues, yes or no?

7 A Yes.

8 Q Okay. Did you think that you or someone else was going
9 to be able to testify to that and explain how that factored in
10 to you feeling like you were threatened or forced to do this?

11 MR. HUNTER: Your Honor, I would object to counsel
12 leading. I know there is some leeway, but this is kind
13 of getting like testimony here.

14 THE COURT: Say it one more time. I couldn't
15 understand you.

16 MR. HUNTER: I would just object to the strong
17 leading. I know there is some leeway, but as far as the
18 just the length of the questions and to what is in his
19 state of mind is coming out of her mouth.

20 THE COURT: Overruled.

21 MS. BLANCHETTE: And Your Honor, may rephrase or
22 repeat it for him.

23 Q Mr. Addison, did you think you or someone else would
24 testify about your mental health history during your trial?

25 A I thought maybe it would be somebody else, you know

1 would be able to testify for me. I thought -- I mean, somebody
2 that know me or somebody -- somebody could help me cause ---

3 Q And had you you actually meet with Doctor Donna
4 Schwarts-Watts prior to trial?

5 A Yes.

6 Q Okay, and what was your understanding as to whether or
7 not she would be used at your trial?

8 Q My lawyer he was like she is not going to be able to
9 be used in my court -- in the trial,

10 MR. HUNTER: I didn't hear what he said.

11 A Said that she would never be able to be used in court.

12 Q Beside the brief mention that you had ADHD, did anyone
13 ever talk about your mental health or behavior or health issues
14 during your trial?

15 A No.

16 Q Would you have wanted someone, either a professional or
17 your mother or someone that you knew you to address that?

18 A Yes.

19 Q Okay.

20 MS. BLANCHETTE: Your Honor, if I could beg the
21 Court's indulgence for just one moment?

22 THE COURT: Certainly.

23 Q Terrell, as I indicated we met a number of times and
24 prepared for today. This is your one chance to come in the
25 courtroom, explain to the Court your allegations that we have

1 gone over and why you are saying Jack Swerling was ineffective
2 and why you should be given a new trial.

3 Is there anything else you would like to tell the Court
4 today that is related to your allegation?

5 A I just feel like with the situation -- with the
6 situation with Ben Stewart, I just feel like that it would have
7 been like with a better situation if I went and testified on him
8 with the situation. And I feel like it would have been a better
9 situation if they wouldn't have got my co-defendants in and
10 coerced them or whatever to -- to come testify on me and that's
11 it.

12 MS. BLANCHETTE: Your Honor, I have no further
13 questions of this witness.

14 THE COURT: All right, cross examination.

15 MR. HUNTER: May it please the Court.

16 CROSS EXAMINATION

17 BY MR. HUNTER:

18 Q Mr. Addison, you said as far as plea deals went you
19 said there was discussion -- not too much -- something about 30
20 years and then 20 and that you were never aware of anything less
21 than 20. So you were never offered anything less than 20 as far
22 as you know?

23 A No, sir, I wasn't.

24 Q Now, did you ever try to fire him prior to trial?

25 A Yes.

1 Q Prior to the hearing?

2 A Before trial, yes, sir. It was a hearing.

3 Q You stuck with him?

4 A Yeah, because they said I would have to represent
5 myself.

6 Q Okay. And you do recall telling the judge I want him
7 to represent me?

8 A Yes, sir, because I had to represent myself yes. Yes,
9 sir.

10 Q Now, you said that you felt like I guess the attorneys
11 were working together. I believe you said working among each
12 other. Did you ever tell this to the judge? Did you ever tell
13 anybody that you thought something fishy was going on.

14 A I didn't get a chance too.

15 Q You had the whole trial -- I think five days, you never
16 said anything?

17 A No, sir.

18 Q Okay. Now you are saying now that you did not want to
19 take the stand to testify, is that correct?

20 A No, then I didn't want to take the stand.

21 Q At the time?

22 A Yes, sir.

23 Q Do you remember the judge going over with you the
24 advantageous and disadvantages of testifying, whether you
25 discussed that with your attorney?

1 A I then told him I didn't want to take the stand. We
2 made that decision at the last minute.

3 Q Do you remember the judge saying, "Do you wish to
4 testify?" Answer, "Yes, sir. Is that your decision?" You
5 answered, "My decision." Do you remember going over that with
6 the judge?

7 A No, sir.

8 MR. HUNTER: May I approach, Your Honor?

9 THE COURT: Certainly.

10 Q If this will refresh your recollection. Looking at
11 line 13 -- 13 through 16?

12 A Thirteen?

13 Q The lines, 13 through 16. Do you recall that
14 testimony?

15 A During court, yes, sir.

16 Q Okay. So you recall telling the judge take that it was
17 your decision?

18 A At that point in time, yes, sir.

19 Q Okay. Now, as far as the defense -- I may have
20 misheard. Did you not want to go forward on the defense of
21 duress?

22 A I never made a decision to go on it period. That's
23 what he told me was the case and I thought it was a case. I
24 didn't know.

25 Q Okay, and did you have any other defenses in mind?

1 A I just had one way. Not say anything at all.

2 Q So did you assist Mr. Swerling in coming up with a
3 defense strategy?

4 A Yes, but he was suppose to be my attorney and try to,
5 you know ---

6 Q But did you help him out? Did you give him any leads,
7 any alibis, anything like that?

8 A No, I just stayed with one story. The truth. That's
9 it.

10 Q Okay, and it seemed that most of your testimony had to
11 do with the Mack brothers' and the reputation and how you were
12 threatened by them; is that correct? Is that in general
13 something that you testified to?

14 A Yeah.

15 Q Okay, and that essentially all goes towards the duress
16 defense and the fact that you thought you were coerced into
17 going into BP that day?

18 A Yes.

19 Q Was that the main theory of your case?

20 A What?

21 Q Was that the main theory of your case that you were
22 threatened into going into the BP with Dontavious?

23 A Yes.

24 Q Okay. Now, as far as the -- some of the offenses I
25 believe that were from the a -- about Dontavious and some of his

1 actions at the detention center, you said that you would have
2 liked that to be brought up in the court, is that correct?

3 A Yes, sir.

4 Q I believe it was his escape -- his attempted escape and
5 his malicious injury to property. You wished that would have
6 been brought up to the court?

7 A Yes, sir.

8 Q Do you recall during I believe -- I am sorry if I
9 misspoke and said Dontavious.

10 Do you recall when you were in Davorius Mack's direct
11 examination by the solicitor? Do you recall this taking place,
12 "Can you tell me what charges in this case you plead guilty to?
13 Accessory after the fact of murder, accessory after the fact of
14 armed robbery, criminal conspiracy to arm robbery, attempted
15 escape, possession of stolen vehicle and malicious injury to
16 property?

17 A Can you repeat that for me, sir?

18 Q I will let you read it real quick. Look at page this
19 is 332. Very bottom, last line.

20 (Document handed to witness.)

21 Does that your recollection and that line and this line?

22 A Okay.

23 Q You don't have to read it out loud. Do you remember
24 that happening?

25 A Yeah, I am reading it. What all did you ask me?

1 Q Do you recall that testimony being taken, being given?

2 A About Davorius.

3 Q Yes.

4 A I remember it but I don't remember it until I'm looking
5 at it now.

6 Q That is okay. I will move on.

7 A Yes, sir.

8 Q Regarding --

9 MR. HUNTER: One second Your Honor.

10 Q Now regarding your mental health, Doctor Schwartz-Watts
11 and the evaluation she did, I believe you stated you became
12 aware -- or that Jack told you that it couldn't be used or it
13 was not able to be used in the hearing. Did he tell you -- were
14 you ever made aware why?

15 A He just told me that she didn't want to testify and
16 then he said he didn't want her to.

17 Q Okay.

18 MR. HUNTER: Beg the Court's indulgence one
19 moment. I directed him to the wrong page earlier.
20 May I approach?

21 THE COURT: Sure.

22 (Document handed to the witness.)

23 Q Do you recall Mr. Swerling asking Davorius about his
24 attempted escape and malicious injury to property charge?

25 A No.

1 Q The one that you said you wished had been brought
2 before the court. Do you recall Mr. Swerling going over that?

3 A No, sir.

4 Q If I could just refresh your recollection?

5 A I talked about it but he didn't really go in details
6 about it.

7 Q If you could just look at this and see if it rings a
8 bell. This is page 399. This would be 13 to 23.

9 A Yeah, he talked about it. Yeah, like I said he didn't
10 really -- I mean --

11 Q But he did ask him about it?

12 A -- make an issue about it. That's what I meant to say.

13 Q Okay. Now again, other than the fact that you felt you
14 were threatened to go in there to the BP that day did you
15 provide Mr. Swerling with any other information, an alibi, just
16 anything else that would help him to defend you in court?

17 A No, I just told the truth. That's it.

18 Q Okay. And you met with him how many times?

19 A What do you mean? All together?

20 Q Before trial?

21 A All together about nine times, eight times, all
22 together. Yeah, that's about it. About eight times.

23 MR. HUNTER: That's all I have Your Honor.

24 MS. BLANCHETTE: Your Honor, I have nothing on
25 redirect.

1 THE COURT: Thank you, you may step down. Another
2 witness to call?

3 MS. Blanchette: I can. May be my longish
4 witness. It is up to Your Honor.

5 Mr. Hunter, any problem going to lunch now?

6 MR. HUNTER: That is fine with me, Your Honor.

7 THE COURT: We will take a one-hour lunch break.
8 The Court is in recess until 1:30.

9 MS. BLANCHETTE: Thank you, Your Honor.

10 (WHEREUPON, court was in recess.)

11 THE COURT: Call you next witness.

12 MS. BLANCHETTE: Your Honor, I would call Fran
13 Kennedy to the stand.

14 FRAN KENNEDY, called as a witness, having been duly
15 sworn by The Clerk, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q Please state your name for the record.

20 A Frandelin (phonetics) Kennedy.

21 Q And Mrs. Kennedy how is it that you know Terrell
22 Addison?

23 A He's my son.

24 Q And being his mother, do you understand that you are
25 here today to only tell the truth?

1 A Yes. Yes.

2 Q Okay. And you are not here just to say things to try
3 and help out son, is that correct?

4 A Correct.

5 Q Okay. Now who was the person that retained Jack
6 Swerling to represent your son in this case?

7 A That was me.

8 Q And do you remember approximately when you retained
9 Jack Swerling?

10 A I went in to see him. Well, I actually paid him, you
11 know, I think his first payment October -- let me get it right
12 because I'm not good with dates -- 2007. But I went in to see
13 him a couple months prior to that.

14 Q And did you have several meetings with Jack Swerling?
15 Did you have interaction with him while he was representing your
16 son?

17 A Minimum interactions.

18 Q Okay. Do you remember how many times you met with him
19 at his office?

20 A One time I think at the office.

21 Q Okay.

22 A Well, I went in to make payments. But I only really --
23 twice. Twice. One time at the office and then one time some
24 place else I think. Me and my husband and him we met when we
25 were discussing some of the case.

1 Q Okay. But were you available if there was anything he
2 needed to discuss regarding your son's case?

3 A Yes.

4 Q And were you his primary contact person regarding your
5 son's case?

6 A Yes.

7 Q Now, from the time that you retained his services in
8 October of 2007 until the trial of February 2009 did you have
9 any concerns regarding the quality of representation your son
10 was receiving?

11 A Well, when I would speak to my son he wasn't, you know,
12 really getting a lot of visits from Jack.

13 Q And was that something that concerned you?

14 A Yes.

15 Q Okay. Did you ever attempt to address that with Mr.
16 Swerling?

17 A Yes. He said -- well, he said when he did get out here
18 some time it be a while before he did get out here, but when he
19 did get out here that he would come by, and you know, he would
20 go by and see Terrell but ---

21 Q Now in your communications with Mr. Swerling about your
22 son's case, did he ever inform you of any plea offers that had
23 been offered in your son's case?

24 A I remember him calling me about a month or so before we
25 actually came out here for the plea itself. But he called me

1 and he was bringing to my attention he was bringing me some good
2 news saying that it could possibly be something on the table as
3 a plea for Terrell. And you know, he also stated that the
4 family, you know, they said that they realized that Terrell did
5 not try to hurt their loved one. And then he said it was
6 basically going to be -- he didn't make a promise, but he did
7 say to me that that they were looking at some pleas and he was
8 saying a non-violent crime. So, you know, we started talking
9 about the number of years that would carry and he said zero to
10 15 years and he said calling it could be like manslaughter.
11 That's what I remember.

12 Q And after that phone conversation did you convey that
13 information to Terrell?

14 A Yes, I did.

15 Q I called my mother which she is deceased now. I called
16 my husband, I called my sister, but I got her son so I spoke
17 with my nephew and then I called -- I went on the floor and
18 spoke with my co-worker Ardrey Page?

19 Q And why were you telling them this information? What
20 was your reaction to that?

21 A Because I was very excited. I mean, it went from, you
22 know, possibly 30 years down to -- you know, possibly he could
23 get something better. I mean when I discussed it with Jack he
24 said, you know, he couldn't make any promises about anything.
25 He just said may be seven to ten years depending on, you know,

1 good behavior. Seven to ten years depending on I guess what the
2 judge would decide because I wanted to know why couldn't they
3 have a jury trial versus a judge because I wanted it to be fair.
4 I wanted really, you know, to have a fair chance. And he said
5 he wasn't totally sure but he thought it would be a judge would
6 make the decision.

7 Q Let's fast forward right before the trial in February
8 of 2009. Did you have a conversation with Jack Swerling
9 regarding any plea offers right before the trial and what did he
10 tell you was the only offer on the table at that point?

11 A At that point it was a 20-year plea.

12 Q Did you have some question as to what had happened to
13 the other plea offer?

14 A Yes, I did ask Jack about it and he said that he didn't
15 know anything about -- he don't remember anything, you know,
16 about talking to them about that, about a plea, and I told him
17 you did. You talked to me because you called me at my job and
18 that's when, you know, told everybody else. So I know you did
19 but he said he don't remember.

20 Q What conversations or what was communicated to you and
21 just what your understanding was as to Jack Swerling's advice as
22 to whether or not your son should take the 20-year plea offer at
23 the time of trial?

24 A He thought like that was a good plea and didn't feel
25 the same.

1 MR. HUNTER: Who is he?

2 THE WITNESS: Jack Swerling felt like that was I
3 good plea.

4 MR. HUNTER: Thank you.

5 A And I didn't feel the same.

6 Q And explain what you were thinking?

7 A Well, I was thinking, you know, that my son was there.
8 He admitted being there and he was part of it but, you know, the
9 role that he played in it and the fact that he said the family
10 felt like my son did not try to harm their loved one, I felt
11 like they should have made him a better offer. And I explained
12 that to Jack and Jack said that was all that, you know, that was
13 all he could get. That was it. And he felt like that was fair
14 and that was a good plea.

15 MS. BLANCHETTE: Your Honor, may I approach the
16 witness?

17 THE COURT: You certainly may.

18 Q Mrs. Kennedy, I will show you what has been previously
19 marked as Applicant's number four. Do you recognize that
20 letter?

21 A Yes.

22 Q Okay. And is that letter in fact signed or typed
23 signed by you and your husband?

24 A Yes.

25 Q Okay. And just read over for us, what does that letter

1 say.

2 A Okay. "Dear Judge", well 2-23-09. "Dear Judge, the
3 defendant, Terrell Addison, does not feel that he has been
4 adequately represented. There are facts in the case that were
5 not disclosed until today. He is requesting time to get
6 adequate counseling. Sincerely yours, Mr. And Mrs. Darrell
7 Kennedy.

8 Q And I understand that it has now been -- if I do my
9 math right -- six and a half years ago. But do you remember
10 what your thought process was in preparing and submitting that
11 letter on behalf of your son?

12 A Well, it came as a result of, you know, of basically
13 talking to Terrell about the plea. The plea of 30 years and
14 then it went to 20 years and Terrell did not want to plead and
15 he felt that Jack didn't spend enough time with him. Jack
16 didn't come visit him enough and spend enough time with him to
17 work on the case for the case to be workable.

18 He just felt like if he came to court and at that time that,
19 you know, he was going to lose the case. Automatically lose the
20 case. So he asked me would I find him a lawyer and I told him
21 that I would. And I told him if that's what he felt and he
22 didn't feel good about, you know, coming to court with Jack. He
23 didn't feel like he had a chance. I would find a lawyer and I
24 did.

25 Q And so you found another lawyer to represent him?

1 A Yes, I did.

2 Q And who is that?

3 A I can't think of his name now. I knew you were going
4 to ask me that. It's been so long.

5 Q If you can't remember that's fine, but the court --

6 A I think I told you. In the beginning though, I think I
7 told you.

8 Q That is perfectly fine, but the court ruled that he
9 either needed to go forward with Jack Swerling or by himself, is
10 that correct?

11 A Yes, he called me and told me he was called into a room
12 and the judge explained to him that if he, you know, if he
13 didn't use Jack he would have to represent himself.

14 Q So you didn't go forward then with retaining that other
15 lawyer?

16 A Right, because of what the judge said.

17 Q Okay, I will take back from you.

18 Was anything explained to you about the primary defense that
19 was put forth at your son's trial of duress or coercion? Did
20 Jack Swerling ever explain to you why that was going to be a
21 primary defense and essentially what that entailed?

22 A Well, when we first started talking about it my husband
23 and I was explaining to Jack, you know, some of the things that
24 Terrell has gone through with his life with his mental history
25 and things that would cause certain things that could possibly

1 happen with Terrell because of what he was dealing with
2 mentally. So we were telling him, you know, what we thought
3 about it and then we came up -- he came up with the duress but
4 he was saying that wasn't a case in the beginning. So -- I
5 mean, I wasn't certain how he was going to go about it. I mean,
6 I really was -- I really wasn't pleased or felt good about any
7 of it because I really didn't know how he was headed. No more
8 than if he couldn't do the duress I wasn't certain what he was
9 going to do and then with the last minute he came and he said we
10 was going to do the duress. So I was kind of shock about the
11 duress at that time once he told me we couldn't do it. It
12 wasn't a case.

13 Q So you were shocked then that was the defense at trial?

14 A Yes. I was shocked -- well, I found out right before
15 trial. I found out right before trial because he now told me in
16 the beginning that if he did duress that Terrell would have to
17 testify. So I really didn't want Terrell to testify. Terrell
18 didn't want to testify and, you know, for all the reasons with
19 the mental history we didn't want him up on the stand. And so,
20 we really -- so I really at that point I didn't know exactly how
21 he was going to go, but I think he had a visit or two with the
22 Terrell and then the decision was made and, you know, so that's
23 how we went forward.

24 MS. BLANCHETTE: Your Honor, may I approach the
25 witness.

1 THE COURT: Certainly.

2 Q Mrs. Kennedy, I am going to hand you the transcript and
3 I will be at page 1221 of the transcript. I will just hand this
4 to you for your reference. This is during the sentencing
5 portion of your son's trial and in a minute I am going to ask
6 you some specific questions of what Jack Swerling says during
7 the sentencing portion. But just to be clear you indicated
8 today that you explained in detail to Mr. Swerling that your son
9 had had mental health and behavior health issues throughout his
10 life, is that correct?

11 A That's correct.

12 Q And I will just take you through what Mr. Swerling said
13 here in sentencing. But did you think that was a matter that
14 was going to be addressed during the course of the trial?
15 Something that the jury would hear about?

16 A Yes, I did. That's what I was pushing. That's what I
17 was hoping for.

18 Q And did that happen? Did the jury ever hear anything
19 about your son's mental health or behavioral health issues?

20 A No, they did not.

21 Q And I already pointed out when Terrell was on the stand
22 he asked Terrell very briefly if he had been treated for ADHD,
23 but would you have been capable to testify further about that
24 issue?

25 A Yes.

1 Q Okay, and if Jack Swerling would have told you hey, I
2 need to you take the stand and testify about this or explain
3 this to the jury is that something you would have been willing
4 to do?

5 A Yes.

6 Q Okay. Let me just take you through some of the things
7 that he points out here and then I will kind of ask you to just
8 give us a little bit of a narrative about the issues that your
9 son encountered throughout his life. He talks about here in
10 2003 he was admitted -- this is the bottom page of 1221 -- to
11 Three Rivers because of some emotional issues. He had
12 counseling with Doctor Julius Minors at Carolina Counseling
13 Center. He also had inpatient treatment at Presbyterian
14 Hospital and he was treated by Doctor Steven Sutherland. He
15 stated that he was on medicine such as Adderall, Risperdal,
16 Sethacote (phonetics) Wellbutrin -- if I said all those
17 correctly. He talks about outpatient treatment by Doctor Behr
18 at Providence Behavioral Health Center, and then he again talks
19 about further treatment at Three Rivers with a Doctor
20 Schenkenberg. And he continues on to 1222 about treatment
21 through 2004 with a Doctor Kelly Hobgood over Catawba Mental
22 Health Center and then also mentions a Doctor Sanders.

23 Mrs. Kennedy, your obviously his mother, can you just kind of
24 give a narrative of what was it was like for Terrell growing up
25 as far as his mental health and behavioral health issues?

1 A It was a very sad life for Terrell, but he would -- he
2 would, you know, try to make the best of it and he would walk
3 around happy on the outside but very depressed on the inside and
4 he didn't understand why because even as little kid he would ask
5 us questions why felt like that. Why he would always wind up
6 getting in trouble. Why people don't like him. And it was just
7 a sad situation for a little boy to have to be raised up to go
8 through but he was born with something that, you know, that
9 attention deficient disorder and the ADD, but his was like
10 severe. He was always moving. He was always hyper. He was
11 always getting into something. And so he went from a little
12 boy, to a middle age, to a young adult, to a man, and he's been
13 dealing with that all his years. He has been in and out
14 hospitals. People have been giving me all kinds of diagnosis.
15 And, you know, then they'll send me home and then they'll send
16 some medicine home. He was from one medicine to another. From
17 Ritalin, to -- you know, psychosis medicine. All the strong
18 different medicines that he was taking. But then in the end a
19 lot of times people would say they didn't want to place a proper
20 diagnosis on that because they definitely couldn't because they
21 wasn't raising him. They didn't know everything that was going
22 on with him and so some people would say us one thing and then I
23 go to another doctor and they say something else.

24 MR. HUNTER: Your Honor, if I could object.

25 Unless we have specific records saying these things as

1 to what doctors have been saying, and I just don't see
2 that's substantiated.

3 MS. BLANCHETTE: Your Honor, I asked her what was
4 the information that she gave to Mr. Swerling and I
5 assume this is essentially verbatim what she would have
6 told him.

7 THE COURT: I will overrule the objection. Go
8 ahead.

9 A And so from, you know, his whole life was from doctor
10 to doctor not -- you know, with one diagnosis to another. So
11 what we basically was trying to do was get him a placement, some
12 in-house placement where he could have a therapeutic, you know,
13 setting plus get the counseling, plus get his education. And,
14 you know, that never happened.

15 Q And throughout the time that he was in school were
16 there a number of behavioral issues that evidenced themselves
17 and resulted in charges and different things being brought
18 against him?

19 A Yes. One issue was the fire alarm. He pulled the fire
20 alarm. He's a little boy and he didn't know. He just pulled
21 the fire alarm because he wanted to see what was going to happen
22 because another student had pulled the fire alarm. So he's a
23 very impressionable child. If somebody else was to do something
24 or impress upon him to do something he would do it some times,
25 and so it would get him into trouble that was to me should have

1 been more treated on his level. On his level of mentality he
2 hadn't been tested. They knew he was borderline dysfunctional.
3 That was proven. That's in these records. And he -- you know,
4 so it went from that and then it went to, you know, once they
5 kept suspending him, throwing him out of school so he was being
6 around, walking around getting into things a lot. So the next
7 thing was marijuana. He had a little piece of marijuana. Okay,
8 they throw him out of school for that. They just kept
9 continuing to throw him out of school and they decided that once
10 he went to court for these things to put him in a facility that
11 where -- a boys home -- where all these impressionable things
12 were around.

13 He picked up everything that was going around in the boys
14 home and brought that home to us when he left the boys home. So
15 I say that to say this. We was trying to get him in a
16 therapeutic place where he wouldn't be allowed to pick up all
17 kind of things from people and then get his education, get the
18 proper medicine he is suppose to be getting, get his proper
19 counseling and that would have been -- that would have been the
20 move to do but we never -- all these years we never could make
21 that happen after all these hospital stays.

22 Q And do you recall in 2003 being part of a psycho-social
23 evaluation that the Department of Juvenile Justice did on your
24 son?

25 A Yes.

1 Q Okay.

2 MS. BLANCHETTE: If I could beg the Court's
3 indulgence one moment.

4 Your Honor, may I approach the witness?

5 THE COURT: Yes.

6 Q Miss Addison, can you identify this document that I am
7 handing up to you?

8 A Miss Kennedy.

9 Q I'm sorry, Miss Kennedy, I apologize. And you can flip
10 through the whole document if you like.

11 Is that something you seen before today?

12 A Yeah, some of the stuff. I can't remember all of this
13 verbatim, but you know, some of it. Yeah,.

14 MS. BLANCHETTE: Your Honor, this is the report
15 from psycho/social evaluation that was done. At this
16 time I would like to mark it for ID purposes as
17 Applicant's Number Five.

18 THE COURT: For identification.

19 (Applicant's Exhibit Five, evaluation, marked for
20 identification as of this date.)

21 Q And in 2003 do you recall being interviewed and giving
22 information regarding your son regarding this psycho/social
23 evaluation that was done through DJJ?

24 A Yes.

25 Q And specifically these page numbers; first one is

1 marked as 436, and it says relevant history at the bottom and it
2 gives information that Mrs. Kennedy provided. Would that be
3 yourself?

4 A Yes.

5 Q And have you had the opportunity today and before today
6 to review that information contained in this report?

7 A Yes.

8 Q Okay, and do you agree with what it states there? That
9 that's information that you provided regarding Terrell?

10 A I mean, this was a long time ago. However, it sounds
11 like pretty close to what I would have said.

12 Q And it indicates here that there is a family history on
13 his father's side of mental health issues, is that correct?

14 A Well, when I got down to that part, yes, you can go
15 from there.

16 Q So is that correct, that there is --

17 A Yes.

18 Q -- as far as your knowledge there's a mental health
19 history on his side?

20 A There were signs, some from the younger children. Yes,
21 some of his cousins.

22 Q And then if you could turn to what has been handwritten
23 marked as page 442, and it extends through page 444. It is
24 entitled peer relations and school/job functioning. Have you
25 had an opportunity to review this prior to today?

1 A Yes, I looked over this.

2 Q And do you recall giving that information regarding
3 Terrell?

4 A Yes.

5 Q And any and all of the information that you gave that
6 is contained in this report you would have been willing to
7 discuss with Jack Swerling and if needed testify to in the
8 courtroom, is that correct?

9 A Yes.

10 Q Let me ask yo a little bit about information that you
11 would have shared with Mr. Swerling. How was your son's peer
12 relations? How did he kind of act with a crowd of peers?

13 A He got along with some people if they identified with
14 each other. If they showed him that they cared about him and he
15 cared about them he would have no problems with them. It's just
16 that meeting different people with different personalities a lot
17 of times he didn't know how to deal with people and most of all
18 people didn't know how to deal with him.

19 Q Was your son a leader or follower?

20 A He was more of a follower.

21 Q Did you find him to be easily persuaded by others?

22 A Yes, he was. Yes, he was.

23 Q Now, in Jack Swerling comments at sentencing he makes a
24 reference to demons. That your son had some demòns. Did that
25 cause a reaction for you when you heard him state that?

1 A Yeah, when I read this I had a problem with it because
2 I never told anyone my son had demons.

3 Q Did you agree with that assertion that your son had
4 demons?

5 A No, I do not agree with that. You know if he had
6 demons I wouldn't have had to be going to all these
7 psychiatrists. I could have prayed the demons off him. He had
8 disabilities.

9 Q And sitting through his trial were those disabilities
10 ever addressed prior to sentencing?

11 A No, I tried and I spoke with Jack about that and he
12 told me that he couldn't do it. It wouldn't work. That's what
13 I kept hearing it wouldn't work.

14 Q But you recall at trial when he very briefly asked
15 Terrell about ADHD and nothing further was stated, is that
16 correct?

17 A Right. He had to approach the bench and the line of
18 questioning changed at that point.

19 MS. BLANCHETTE: Your Honor, if I could beg the
20 Court's indulgence just one moment.

21 THE COURT: All right.

22 Q Now throughout his life you had indicated Terrell had
23 been on medication?

24 A Yes, correct?

25 Q Did something change when he turned 17 years old as far

1 as his medications went?

2 A He was no longer on medications.

3 Q And why was that?

4 A Because they told him that he could make the decision,
5 which was the authority that he could make the decisions and
6 mental health at 17 whether or not to continue with medication,
7 and you know, he was tired of taking it. He got tired of taking
8 it. He got tired of the way it made him felt and so he was not
9 on medication at the time. He thought he was running his life
10 at that time which I should have been running his life because I
11 ran his life up prior to that point and things just don't change
12 overnight where you can just come off your medication.

13 Q Was that ever addressed at your son's trial that he had
14 been off his medication?

15 A No.

16 Q Is that something you would have wanted Jack Swerling
17 to address as something you brought to his attention?

18 A Yes, everything about his mental health I wanted him to
19 bring in to the case.

20 Q Did Jack Swerling ever prepare you to testify at your
21 son's trial?

22 A No. I don't think I ever was considered.

23 Q Would you have been willing to testify?

24 A Yes, I would have.

25 Q Okay. You sat through the trial and you saw your son's

1 testimony, is that correct?

2 A Yes.

3 Q You indicated previously you were concerned about him
4 testifying. Did those concerns come to fruition or did you kind
5 of see those concerns play out when Terrell was on the stand?

6 A Yes, two times, then and today.

7 Q Please explain.

8 A The way he answered his questions. The way he was
9 moving. I could tell he was trying to focus in on the questions
10 and probably wasn't understanding half it. And just, you know,
11 being able to focus and, you know, and communicate back to you
12 exactly what you were asking him.

13 If he is in a focus, that state he can kind of listen to you
14 and then turn around and answer you, but if he's not and anxiety
15 kicks in all these people in the courtroom today I just knew he
16 wasn't going to be able to give you exactly what you were asking
17 because of that. If he was not in front of all these people
18 then he would have gave you exactly what you were asking for.
19 It's as if he can't concentrate as well and I don't if he didn't
20 take his medicines. I don't know what happened today, but I
21 could tell because the things that he has told me he didn't even
22 answer you today in that way.

23 Q Did you see evidence of that at the trial?

24 A Yes, I did.

25 Q And how so?

1 A Same thing. Memory -- you know, couldn't remember
2 things that he wanted to say. That he meant to say he didn't
3 say them. He said them to me, but he couldn't remember to say
4 them in in front of all these people. I think anxiety kicks in
5 and it just depends on what kind of medicines he was on or what
6 kind of night he had, or what kind of day he had. He probably
7 was anxious and all these things played a role in him testifying
8 so we didn't want him to have to testify.

9 Q Now, in your conversations with Jack Swerling did you
10 ever tell him about information you had received from one of his
11 co-defendant's mother?

12 A Yes, I did.

13 Q And what was the information that you gave Mr.
14 Swerling?

15 A Monica told me, I had --

16 MR. HUNTER: Objection, judge hearsay.

17 MS. BLANCHETTE: I can rephrase my question Your
18 Honor.

19 THE COURT: All right. I'll sustain the
20 objection.

21 Q Did you have a conversations with any of the
22 co-defendants' mothers prior to trial?

23 A Yes.

24 Q And whose mother was that?

25 A That's was the Mack boys' mother.

1 Q And what is her name?

2 A Monica.

3 Q After having that conversation did you give information
4 to Jack Swerling?

5 A Yes.

6 Q And without saying verbatim what she said. You can't
7 say what she said. What did you tell Jack Swerling was your
8 understanding of your conversation with Monica?

9 A I told Jack that Monica said that her son told her that
10 he was going to do this last one.

11 MR. HUNTER: Objection.

12 THE COURT: I will sustain the objection.

13 Q Without stating what Monica say, did you give Jack
14 Swerling information that you got from that phone call?

15 A Yes, I did.

16 Q And did you think it was helpful to the case?

17 A Yes, I did.

18 Q And without stating verbatim what she said, what did
19 you tell him that was helpful to the case?

20 A That her son was going to do his last one.

21 Q And what did that mean? What did you explain to him
22 that meant?

23 A He was going to do his last robbing.

24 Q And was anything conveyed to you about your son being
25 an active participate in that last robbery?

1 A No, because she and her son was the only two people at
2 the house that morning.

3 MS. BLANCHETTE: If I could just beg the Court's
4 indulgence one moment.

5 THE COURT: All right.

6 Q Did you think that information that you had given him
7 from Monica would be -- that he would question the Mack brothers
8 about that at trial?

9 A I would have thought that would have happened.

10 Q Miss Kennedy, I believe we met about twice at this
11 point and talked about your son's case. You understand the
12 allegations that we are bringing forward today. Is there
13 anything else that you would like to tell the Court in support
14 of your son's allegations.

15 A Well, I just would like for his mental history to be
16 implemented into this case because I think it's fair and it is
17 his life and it has been his life. And I think his mental
18 capacity made the difference in whether he did something or did
19 not do something and by him being impressible as he is with his
20 disabilities I just wish -- I want this to play more of a role
21 of it. I would ask the Court to look at these things when they
22 make the decision for Terrell.

23 Q And is that something that you felt like you had
24 communicated to Jack Swerling that you thought that was a
25 primary part of this case?

1 A Yes, I did, but it was always a no go. They are not
2 going to accept it. It is not going to work. So, I mean, I
3 didn't know what else to do.

4 MS. BLANCHETTE: Your Honor, I have no further
5 questions of this witness.

6 THE COURT: Cross examination.

7 MR. HUNTER: May it please the Court, Your Honor.

8 CROSS EXAMINATION

9 BY MR. HUNTER:

10 Q Miss Kennedy, do you remember on Terrell's direct
11 examination when he was on the stand, do you remember Mr.
12 Swerling asking about his ADHD medicine?

13 A Asking about ADHD medicine?

14 Q Asking him about when he stopped taking his medicine?

15 A Yes, sir.

16 Q Do you remember them talking about it?

17 A Yes.

18 Q Okay, so he did -- you agree that he did try and raise
19 that?

20 A Well, when he started talking about that it wasn't in
21 front of the jury.

22 MS. BLANCHETTE: Your Honor, if the State could
23 just give us a reference.

24 MR. HUNTER: I am looking.

25 A It was said two times.

1 Q I am looking at page 853, essentially line six through
2 ten, where Mr. Swerling asked, "When did you stop taking
3 medicine for the ADHD?" Answer, "Right when I was like 16."
4 Question, "Does it effect you now?" Solicitor Brackett, "If if
5 pleases the Court -- "

6 A Okay, yeah, I remember that.

7 Q So you tried to raise it and the State objected and the
8 objection was sustained and he wasn't allowed to go into it but
9 he did try, is that correct?

10 A Yes, he did.

11 Q Okay. I just wanted to make sure.

12 All right. Now, with your meetings did you met with Mr.
13 Swerling with Terrell at the same time --

14 A No.

15 Q I mean together. So you don't specifically know
16 exactly what Jack -- Mr. Swerling conveyed to your son other
17 then what your son told you?

18 A About what?

19 Q About anything that Mr. Swerling told your son, you
20 weren't present when any of that was happening?

21 A Only when we were talking about the plea.

22 Q Okay, so when you were talking about the plea. Okay.
23 And you were aware they were meeting without your presence, that
24 Mr. Swerling and your son were meeting. I don't know how many
25 times, but they did met pretrial and go over pleas, defenses,

1 the case in general, even though you weren't there?

2 A I know they met.

3 Q Okay. Just making sure. Now, did you ever talk to the
4 solicitor in this case? Did they ever try to contact you?

5 A No.

6 Q Okay. So as far as the actual plea deals you are not
7 exactly sure what the solicitor said regarding the plea deals?

8 A No, I only know what Jack said to me.

9 Q Okay. And Jack did tell you that he couldn't promise
10 you anything as far as sentence goes, correct?

11 A Right.

12 Q Now, I think you had an issue with Mr. Swerling not
13 explaining to you the duress defense, or what all that would
14 entail. Did I hear you correctly?

15 A No. I didn't say he didn't explain it to me. I said
16 he said it was not an acceptable case, a defense at first. Then
17 he came back and they decided I guess by seeing Terrell and
18 talking to Terrell they decided -- he decided to do the duress.

19 Q Okay.

20 A You know, I didn't know why it was one minute it wasn't
21 acceptable and then it was acceptable.

22 Q Okay, but you are aware that he talked to your son
23 about this?

24 A He spoke to my son about it, yes.

25 Q Okay.

1 THE COURT: Beg the Court's indulgence just one
2 second.

3 Q As far as your son's case goes. I mean, were you
4 active helping Jack out, or helping Mr. Swerling out with some
5 defense theories? Aside from the mental history were you aware
6 of anything that might help him in this case? Aside from the
7 mental history, were you aware of anything else that might help
8 him in this case?

9 A Anything like what?

10 Q Anything at all? Anything to help his defense?

11 MS. BLANCHETTE: Your Honor, I object. I think it
12 is outside of her area of expertise to ask her what
13 defenses were available in this case?

14 MR. HUNTER: Well, I guess my point is that she is
15 he's talking about her role meeting with Jack, meeting
16 with Mr. Swerling, not being privy to this information,
17 hearing this information, and I guess my point is how
18 active was she in this defense. I will move on.

19 THE COURT: Okay.

20 Q Did you talk to your son about testifying?

21 A Yes, right before the trial he called me and told me he
22 was going to have to testify.

23 Q Okay. And did it seem to you that that would be
24 against his will?

25 A Well, as I can recall it he was really upset about

1 having to testify. He said he really didn't want to testify
2 because, you know, his testimony could cause someone's life to
3 be taken. That's the way he kind of described it to me.

4 Q But it was ultimately his decision, right?

5 A Well, at that point he had to go along with his lawyer,
6 whatever he and his lawyer decided at that point because he was
7 already told he couldn't get another representation.

8 Q Okay.

9 MR. HUNTER: That's all I have.

10 THE COURT: Redirect.

11 MS. BLANCHETTE: Very briefly, Your Honor.

12 REDIRECT EXAMINATION

13 BY MS. BLANCHETTE:

14 Q Miss Kennedy, when you just said that he was upset by
15 testifying he was going to taking someone else's life. Who were
16 you referring to?

17 A Ben Stewart.

18 Q So was upset because essentially he was going to have
19 to testify against his co-defendant that was being jointly tried
20 with him?

21 A Yes.

22 MR. HUNTER: Your Honor, objection. I am sorry is
23 this what he told her?

24 MS. BLANCHETTE: I'm just referencing what she
25 just testified to during his cross examination. I think

1 it is proper redirect in that regard, Your Honor.

2 MR. HUNTER: It was a question about what's in his
3 mind. I don't think we ever talked about him testifying
4 against a co-defendant.

5 MS. BLANCHETTE: Your Honor, that's what she just
6 testified too.

7 THE COURT: That's what she just said. I will
8 overrule the objection.

9 Q Your free to respond.

10 A Repeat the question, please.

11 Q And it will probably be a different question, so bare
12 with me.

13 You had said when you are saying that he was upset he would
14 have to take somebody else's life that referred to co-defendant
15 Ben Stewart?

16 A Yes.

17 Q So it was your understanding that he was upset that he
18 was going to have to testify eventually against Ben Stewart that
19 he was being jointly tried with?

20 A Yes.

21 MS. BLANCHETTE: Your Honor, I have no further
22 questions.

23 MR. HUNTER: And I apologize, Your Honor, I wasn't
24 aware who she was talking about. That's all I have.

25 THE COURT: Thank you, ma'am. You may step down.

1 You may call your next witness.

2 MS. BLANCHETTE: Your Honor, I call Darryl Kennedy
3 to the stand.

4 DARRYL KENNEDY, called as a witness, having been
5 duly sworn by The Clerk, was examined and testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MS. BLANCHETTE:

9 Q Please state your name for the record?

10 A Darryl Kennedy.

11 Q And how is it that know Terrell Addison seated here
12 beside me?

13 A He's my son.

14 Q And you are married to his mother, is that correct?

15 A Yes.

16 Q Okay, and is he or natural son or is he your stepson?

17 A He's my step son.

18 Q And how long have you had that relationship with
19 Terrell? How have you been in his life?

20 A Since he was five years old.

21 Q All right. Now, you heard your wife testify about her
22 interactions with Jack Swerling. Did you actually go to Jack's
23 office with her?

24 A I did accompany my wife down to Jack's office one time.

25 Q And during your meeting with him did you ask him about

1 a certain defense and whether or not that would be used in
2 Terrell's case?

3 A Well, I recollect during the meeting that we had with
4 Jack based on some of the statements that Dontavious made I told
5 Jack at that time I felt that Terrell was coerced in the
6 situation that happened that night.

7 Q And do you recall what his response was to you?

8 A He told me that coercion wasn't an acceptable defense
9 for a murder trial.

10 Q So what was your reaction when that appeared to be the
11 primary defense at his trial?

12 A Well, at the time Jack and I we had some kind of back
13 and forth about it. I was stating to him that it may not be an
14 acceptable defense but in my opinion based on the statement that
15 Dontavious made that's what happened.

16 Q So then let's fast forward to February 2009. You sat
17 through the trial, is that correct?

18 A I did.

19 Q What was your reaction when that was the defense?

20 A Well, I was surprised.

21 Q And why were you surprised?

22 A Well, I thought we were kind of dead in the water
23 because he said that wasn't an acceptable defense and I didn't
24 know where we were going to go with it, but as the trial
25 progressed that seemed like that was the direction we were

1 heading.

2 Q And who was essentially the person who was put on the
3 stand to support that defense. Who was the primary person that
4 Jack Swerling called as a witness?

5 A Repeat that please.

6 Q Who was essentially the only person, or the primary
7 person that Jack Swerling called at that trial to support the
8 defense?

9 A Well, he told me at the beginning that if he went with
10 the coercion defense that Terrell would have to testify.

11 Q And is that what happened Terrell had to testify?

12 A Yes.

13 Q You were in the courtroom how did Terrell's testimony
14 come off to you?

15 A Honestly I didn't think he did very well.

16 Q And why is that?

17 A Well, because like he displayed today he was kind of
18 like vague in his responses. Not sure how to answer the
19 questions. Not really understanding what was being asked.
20 Things of that nature.

21 Q Now your wife took the stand earlier and she explained
22 that at a point prior to trial she had a phone conversation with
23 Jack Swerling and as a result she became very excited about a
24 potential plea offer. Did she convey that information to you
25 after that phone call?

1 A She did.

2 Q And what was your understanding as to the plea offer
3 that could be on the table?

4 A He said that it -- she told me -- Fran told me that
5 Jack told her that it could be anywhere from zero to 15 years,
6 but like she said he couldn't make any promises.

7 Q What resulted when you all later spoke with Mr.
8 Swerling about that potential offer?

9 A Well, actually after we met with Jack down in his
10 office we actually met at a restaurant near Rock Hill,
11 Applebees, and that's when he started saying that he recommended
12 we take a plea deal of 20 years.

13 Q And did you ask what happened to zero to 15 or
14 potentially plea offer for less time?

15 A I don't remember, you know, asking him, you know what
16 happened. He was just essentially saying that, you know, that's
17 the best that we can do with it.

18 MS. BLANCHETTE: Your Honor, may I approach the
19 witness?

20 THE COURT: Sure.

21 Q Mr. Kennedy, I am going to show you a letter that has
22 been previously marked as Applicant's number four.

23 Do you recall writing that letter?

24 A I do.

25 Q Okay, and in that letter you expressed concern with the

1 representation that Jack Swerling was offering to Terrell. Why
2 did you write that letter to the Court?

3 A Collectively it was Terrell's, you know, feeling
4 uncomfortable with it. Not feeling he had met with Jack enough
5 to prepare for it and basically he just felt like he spent a lot
6 of time getting him to plead as opposed to a lot of time trying
7 to prepare the case.

8 Q And was the change in the plea offer part of your
9 concern that was the basis for that letter?

10 A Yeah, that was part of it but again, Terrell didn't
11 feel comfortable going forward with it and even though my wife
12 and I was kind of trying to pay the fee it was ultimately his
13 life and his decision.

14 Q Are you familiar with Terrell's mental health and
15 behaviorial history?

16 A I am.

17 Q And did you -- was it your understanding that that
18 would be addressed or be part of his trial?

19 A Honestly I was -- you know, thinking that it would but
20 I didn't know how it would play out until it was actually
21 playing out.

22 Q And as you were sitting in trial and saw that
23 information in full was not given to the jury was that something
24 that you think the jury should have known about?

25 A Yes.

1 Q Why?

2 A Because I think I essentially it would have given them
3 some idea of, you know, how he could have ended up in such a
4 situation.

5 Q Mr. Kennedy, we've spoken once in preparation for
6 today. Is there anything else that you like to tell the Court
7 regarding Terrell's allegations that you have knowledge about in
8 this case?

9 A You know, honestly I've been part of his life a long
10 time. I know Terrell has been through a lot not just, you know,
11 in the last ten years but, you know, prior to that and I am just
12 hoping moving forward from today that things have been displayed
13 today could play a part in helping him get a fair chance at a
14 trial.

15 MS. BLANCHETTE: Your Honor, I have no further
16 questions of this witness.

17 THE COURT: Cross examination.

18 MR. HUNTER: Just briefly Your Honor.

19 CROSS EXAMINATION

20 BY MR. HUNTER:

21 Q Mr. Kennedy, did Mr. Swerling ever promise a certain
22 sentence to you?

23 A As I stated earlier, no, he did not.

24 Q Okay, and as far as the plea offer is a concerned you
25 never talked to the State about any of that stuff, did you?

1 A Did not.

2 Q Okay.

3 MR. HUNTER: I don't have anything else.

4 THE COURT: All right, thank you, sir. You may
5 step down.

6 MS. BLANCHETTE: Your Honor, my final witness that
7 I call to the stand is Jack Swerling. Is there any way
8 I could get a brief break before I call him to the
9 stand.

10 THE COURT: We will take a five minute recess.

11 MR. SHELDON: Thank you, Your Honor.

12 (WHEREUPON, there was a recess.)

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

15 MS. BLANCHETTE: Your Honor, I would call attorney
16 Jack Swerling to the stand.

17 JACK SWERLING, called as a witness, having been
18 duly sworn by the clerk, was examined and testified as
19 follows:

20 DIRECT EXAMINATION

21 BY MS. BLANCHETTE:

22 Q Please state your name for the the record.

23 Q Jack Swerling.

24 Q And Mr. Swerling, what is your current occupation?

25 A I am a lawyer.

1 Q And how long have you been practicing law in the State
2 of South Carolina?

3 A Since 1973.

4 Q And what is the primary focus of your practice?

5 A Criminal.

6 Q Do you recall representing Terrell Addison in the case
7 we have been discussing today?

8 A I do.

9 Q And I am just going to jump right through our
10 allegations. First of all there is an allegation regarding a
11 plea offer that wasn't either properly communicated or
12 communicated at all to Mr. Addison. You heard the testimony
13 today from the Mack brothers and Mr. Baity and my client's
14 family members about a potential plea offer of zero to 15 years.
15 Do you recall anything regarding that?

16 A That never happened.

17 Q Do you recall ever having a phone conversation with
18 Fran Kennedy about a possible plea offer?

19 A Let me be very clear. We never got an offer of zero to
20 15 years and I never communicated that to anyone. The State
21 offered us going in some time outside of the trial 30 years on a
22 murder charge. As the trial got closer I believe my
23 conversations with Mr. Thompson and it may have been a week or
24 two before the trial, the State offered 20 years on a
25 manslaughter charge. That was the offer communicated to them.

1 When I communicated that offer to them and it was in different
2 places. I suggested that we make a counter offer and they would
3 not let me make a counter offer and they told me -- Terrell told
4 me the most he would take would be five years which I went back
5 to Mr. Thompson and told him that and they rejected that. And I
6 do have some -- I feel like my notes would be more reflective, a
7 little bit more than some of what has been happening here.
8 Okay, since this is seven years ago or eight years ago, I would
9 like to refer to my notes.

10 Q Please go ahead.

11 A This is on January 28, 2009. I met we Mrs. Kennedy and
12 Terrell's father this afternoon. We reviewed the case against
13 Terrell and the offer by the solicitor and the fact that we have
14 to accept it now or it would be withdrawn. I spoke with them
15 about the charge and the penalties and the probably of success.
16 I told them about Tora Brawley not being able to help and Donna
17 possibly helping but I was concerned it was not going to be
18 sufficient. Tora Brawley was a neuropsychologist that I
19 retained in the case and she told me that under no circumstances
20 could Terrell be coerced into anything. She felt like he could
21 be easily led into things, but not be coerced. He was very
22 street wise and she didn't feel that was possible.

23 Donna Watts later on told me that she could not testify to
24 coercion in the case. She felt like he was somebody that could
25 be easily led based on his mental history. I think Mrs. Kennedy

1 said he was a follower, but that would have meant him being
2 someone who could be easily led to do what he was accused of
3 doing and that would be something inconsistent with the defense
4 of coercion.

5 I talked about witnesses against him. The problems in the
6 defenses in that he had the times and said that he was not there
7 and at times he went in to the store because he was in fear of
8 his life or coerced. This was like a pig-pong match between
9 Terrell and I and the family. We talked about alibi which was
10 obviously would have been perjury testimony. And at one point
11 -- at various times he said he had an alibi and at various times
12 he was talking about coercion. So it was a pig-pong match back
13 forth about that.

14 I read them -- back to my memo. I talked about the fact
15 that they there were really no witnesses to say that he did not
16 go to the store and the problem with the coercion defense it
17 contradicts what your witnesses have said. I read them a jury
18 charge about what we would have to show for coercion. A jury
19 charge. I told them the coercion defense was not particularly
20 good because the jury would have to believe that he had no other
21 choice but to go into that store and with Dontavious rob it. I
22 explained the hand of one hand of all conspiracy and those kinds
23 of principals. I also explained the fact that the only way he
24 could come out of a trial in a good way is to be completely
25 found not guilty by a jury of 12 and that was not likely. While

1 I conceded to the mother and father there may be a couple of
2 jurors who might understand about the fear and coercion but the
3 majority of the jurors would not understand that especially in
4 this particular type of case where there is an armed robbery
5 murder.

6 We talked about how bad the boys were, meaning the Mack
7 boys, and what they had said in their statements. Dontavious of
8 course gave the better statement for Terrell in several respects
9 regarding fear, reprisal and coercion. But the State was not
10 going to call him. At that point that's what we thought they
11 weren't going to call him, and neither could we because his
12 testimony was unfavorable to us as a whole.

13 I also talked about the fact that the only way to make out a
14 defense of coercion would be for Terrell to testify because who
15 else is going to testify about his coercion. And I did not
16 think that Terrell would make a good witness. The solicitor
17 would cross examine him on any issue regarding coercion and fear
18 and I did not think that Terrell would hold up under that. We
19 talked about change of venue and I told him that change of venue
20 is not often granted and this case is several years. An
21 experience I had with the McCallen (phonetics) trial up here in
22 York County was that the jurors were not well read in the
23 newspaper -- did not read the newspaper much which carried most
24 of the story. Did not watch a lot of TV. The jury in the
25 McCallen case could be seated with all the publicity within that

1 and the people did not see the publicity in connection with that
2 or form an opinion that would be difficult to show that in
3 Terrell's case. But I explained the process about a change of
4 venue.

5 Most of the questions by the mother and father had to do
6 with problems as a youth. His emotional problems and how easily
7 he would have been persuaded to go in and do that crime. Of
8 course that was inconsistent with the defense of coercion. I
9 asked whether or not they were saying he would be persuaded or
10 he was in fear and then they came back to the fear respect a
11 said that while someone else might not be afraid Terrell would
12 be afraid. This contradicts what Tora Brawley said because she
13 said she didn't feel like anybody could coerce Terrell into
14 that.

15 We then had another discussion on February 3rd and one of
16 these meetings Willy Thompson whose the deputy solicitor set up
17 a meeting so that the parents and I could talk with Terrell
18 together. I'm not sure if this is one but we will get to
19 that -- because rather than thinking about what everybody is
20 talking about I got notes. I told them on February 3, 2009 this
21 was with Terrell. There was no plea as given -- I don't know
22 what that means. Murder 30. So it was still murder 30 on
23 February third. We discussed two strategies that he wasn't
24 there, which is what he was saying at that time, or coercion
25 which is what the parents were saying.

1 Q Now, I am going to could stop you there with a
2 question. You are saying that Terrell was putting forth a
3 potential alibi defense?

4 A That's correct.

5 Q And the family was pushing coercion, but based upon
6 your experience what did you see as a defense in this case?

7 A Well, it certainly wasn't going to be alibi. And I'm
8 curious what you thought the defense should be because you've
9 been raising this issue.

10 Q No, I asked. Mr. Swerling, I don't think I can answer
11 your question. What I asked was with your experience and in
12 taking this case and preparing it for trial what did you see to
13 be the defense in this case?

14 A Well, I needed to come up with a novel theory and my
15 novel theory was that this was I eventually developed this in to
16 what I thought was coercion defense, that since he was not the
17 shooter, and his defense was that he was coerced into going
18 there and the video showed that he did not do the shooting, we
19 had of course Dontavious and his brother saying what they were
20 saying. That what I would raise is coercion as to the crime of
21 armed robbery and conspiracy and that the murder was not a
22 reasonable, foreseeable consequence of the coercion of being
23 pushed into the store and being made to go into the store. And
24 so since he was not the principal in the case I thought that we
25 could at least get a jury charge on that issue because I was

1 concentrating on the murder and -- the armed robbery and the
2 conspiracy, and in fact Judge Alford agreed with me and gave a
3 coercion charge which I think answers everybody's question as to
4 whether or not that was a decent defense or not because the
5 judge agreed to give the charge and the jury was charged with
6 that.

7 We also talked about mere presence, mere association, mere
8 knowledge and that was part of it as well. So I tried to carve
9 out a little niche out of the law of duress and coercion that
10 would be acceptable to the Court in giving a charge and and
11 possibly get the jury to agree that Terrell was forced into
12 going in to the store but because -- and there was another
13 factor. The shooting didn't take place until Terrell got out of
14 the store. So that was another factor we argued about and I
15 think if you look at the my final argument and the judge's
16 charge and the jury it would be clear to me what your defense
17 was.

18 Q And Mr. Swerling I actually prepared a number of sites
19 to give you --

20 A Well, I still have more to go.

21 Q I have another question.

22 A Well, I'm still going.

23 Q Okay.

24 A Give my answer to your previous question and I like to
25 be able to answer that.

1 Another occasion that we met was on February 7th, and this
2 is still may be -- I think the trial started on the 23rd may be
3 something like that. Monday we arranged for the Kennedy's to go
4 see Terrell. Tuesday I went up spoke to Mr. Kennedy. Said they
5 could met me. Initially said yes, then called back and said
6 Mrs. Kennedy said no, she didn't want to met me. I said I was
7 going anyway. I met with Terrell and I met with Willy Thompson.
8 I called Mr. "K" and just like I told Terrell we needed to get
9 an answer to the State by the end of the week and that was as to
10 the offer that was being made. Terrell did not call back and
11 neither did the Kennedy's.

12 On Wednesday I sent a letter to both of them stressing the
13 urgency of the decision, that being Terrell and the Kennedys.
14 On Thursday I decided to go up and see him again to make a
15 counteroffer to the States voluntary manslaughter instead of
16 murder. I invited the Kennedeys to come. On Friday meeting
17 with Willy Thompson, I made a counteroffer to the voluntary
18 manslaughter of 30. I made the offer of voluntary manslaughter
19 30. I think that's what that says. I'm not sure. We met in
20 the holding cell in the courtroom; the parents, Terrell, Kelly
21 and I. Kelly being my paralegal over there. Mrs. Kennedy said
22 my letters were unprofessional and no explanation. Said all I
23 was trying to do was stress the urgency of the situation and
24 they had to make a decision. So I'm not sure it said make
25 counter offer -- oh, I know what that is. We were meeting and I

1 wanted them to make -- I wanted to make a counter offer to the
2 voluntary manslaughter of 30. We discussed the exposure and
3 possible outcome. I suggested making a counteroffer of 15
4 years. This is where the 15 comes from. I suggested making a
5 counter offer of 15 years, a maximum up to 20, an accessory
6 after the fact or some other combination. This was rejected by
7 them. The father said nothing. The mother did not understand
8 why defendant had to pay such a great price. He has problems.
9 Was pushed into it. Something about rehabilitated. I agreed
10 all of that, but explained the possibility and probabilities and
11 realities.

12 The defendant wanted a suspended sentence, probation.
13 Finally he and his mom agreed that he would agree to no more
14 than five years. That was it. Then we discussed the case.
15 Mrs. Kennedy said we were not ready. I said I was and if we
16 weren't it was because they would not -- or the defendant would
17 not make a trial decision. Would not name any witnesses. We
18 discussed alibi which was perjury and we discussed coercion.
19 Told them how I would handle both. I am talking about the
20 ethical issues. Told them I did not think the defendant would
21 make a good witness. Will not answer direct questions. Talked
22 about witnesses -- and this is what he would not answer
23 directly; witnesses, did you have a gun, did you go with the
24 guys on the robbery. Mrs. Kennedy interrupted each time to
25 answer and make excuses. For example, he really hadn't decided

1 on a defense. I said he had to and she could answer for him on
2 the witness stand. Witnesses -- every time I asked for
3 witnesses he would tell me to ask his mother. Whenever I asked
4 his mother she told me to ask him.

5 Today she said she did not understand what kind of witnesses
6 I was looking for. Only discussion we ever had about witnesses
7 was with respect to the Mack brothers in Hartsville. Never
8 discussed alibi witnesses because there are none. Defendant
9 admitted he never gave me a list. Had some excuses as before.
10 Didn't know if they would come or how they would get to appear.
11 Finally wrote down several -- decided on coercion defense. Went
12 back and spoke with Willy and Kevin Brackett. Told them about
13 the five or more years. They said no. Said no counteroffer.
14 We were too far apart. Went back and told the defendant no
15 counteroffer by him either. Went back and told the parents.
16 Asked about brother helping find some of these folks, as well.
17 The mother, brother had real attitude. How will this help?
18 What will this do for the defendant? No one comprehended the
19 gravity of the situation. The defendant was in the store in an
20 armed robbery attempt. The victim was shot and kill. The hand
21 of one is the hand of all.

22 On February 23rd, the trial was beginning that day. We did
23 jury qualifications. The defendant and I met for some time.
24 Kevin and Willy offered 20 years. I recommended that. Reviewed
25 the facts and the problems of the law related to coercion. And

1 of course that is my job as you understand Miss Blanchette, to
2 explain the problems with the various defenses. He said he
3 wanted to go to trial. I met with his family and of course
4 these are one of the meetings they don't remember I guess. I
5 met with his family and two friends. I outlined the facts and
6 the problems with the law of coercion and duress in a homicide.
7 Kelly my paralegal was present at the time. I went back to talk
8 to Terrell and I still said 20 years. He said he will change
9 his story if he had to.

10 I arranged a meeting with the mom and dad with Terrell.
11 Terrell kept saying he wanted to go to trial but was looking to
12 them for advice. Neither of them would tell them what they
13 thought was best. I urged them to do so so he would have some
14 guidance. I went so far as to say I would tell my own friends
15 or family, even my own son, that under the facts of the case 20
16 years was best without a doubt. Terrell said he would go with
17 alibi. Mother said you tell the truth. We went in the judge's
18 chambers and I had Terrell put on the record he wanted me to
19 continue since he had said he wanted to fire me. In chambers he
20 said he wanted me to continue with the case.

21 So, that's the history of the offers.

22 Q Thank you. Now, I will just ask you some follow up
23 questions to all those notes you just recited for us. Your.

24 MS. BLANCHETTE: Your Honor, may I approach the
25 witness?

1 THE COURT: Sure.

2 Q Mr. Swerling, this is just a copy of the Indictment I
3 received from the Clerk of Court's office. Would you agree that
4 the Indictment says did kill and not he along with others as you
5 would typically see in a --

6 A Hand of one is the hand of all.

7 Q Does it say he along with others, sir, or does it say
8 did kill?

9 A The hand of one is the hand of all.

10 Q Could you please answer my question?

11 A You could read it.

12 MS. BLANCHETTE: Your Honor, could you instruct
13 the witness to answer my question.

14 THE COURT: Mr. Swerling, please answer the
15 question.

16 A Yes, it doesn't say that, but the hand of one, hand of
17 all is part of that.

18 Q Now, you made several references to the coercion and
19 duress defense. On page 187, lines two through four Dontavious
20 Mack testified that Terrell Addison had a 38 caliber weapon with
21 him. On page 339 beginning on line ten through page 340, line
22 18, Davarious Mack testified that Terrell Addison having a 38 in
23 the car, and then on page 346 lines six through seven he goes on
24 to explain that he took it into the store with him.

25 Now, I assume you're familiar with State versus Rasha Bell if

1 you were explaining to him the problems with this defense and in
2 that case they found that duress as Rasha Bell had conceded it
3 was not a defense to murder and they explained that the rational
4 of the defense of duress is that the only means of avoiding
5 greater harm is for the defendant to engage in a legal conduct
6 resulting in a lesser harm, he should not be held criminally
7 liable for the illegal conduct. So you had explained in your
8 answer you referenced how you were trying to work in kind of
9 carve out an exception.

10 A Correct.

11 Q How was it that you were going to be able to do that
12 when the co-defendants were testifying that he was armed?

13 A Well, I was taking a very limited approach to the
14 coercion and duress being as to going in, not being a principal
15 in this case, because on the video there was no evidence that he
16 had a gun. On the video there was no evidence he was in the
17 store, I believe, if I remember correctly at the time the shot
18 was fired. On the video he did not go behind the counter and
19 rob the gentleman. On the video he did not hold the gentleman.
20 So I was hoping that the jury with the charge would at less find
21 that he acted under duress and coercion and with mere presence
22 and mere association and mere knowledge give a chance of finding
23 him not guilty. As you know as I said before alibi was not
24 possible in this case.

25 Q And the major factor in that would be the video from

1 this case, is that correct?

2 A Major factor of what?

3 Q Why, alibi was not a viable defense?

4 A No, Mr. Addison admitted being in the store. His hand
5 print was on the car.

6 Q And there was a video that potentially had him in the
7 store, is that correct?

8 A Correct, and alibi would be, as you know under alibi,
9 that would be perjured testimony which I could not participate
10 in and I certainly explained that, so it was not a viable
11 defense..

12 Q And on page 1241 right before sentencing Mr. Addison
13 son the judge made the comment that he didn't believe any of the
14 of the duress or coercion?

15 A Who didn't believe?

16 Q That the judge didn't believe?

17 A I mean, I can't question Judge Alford as to whether he
18 believed it or not. Apparently the jury didn't either, but the
19 judge gave the charge, and your saying here that we weren't even
20 entitled to the charge but the judge felt we were.

21 Q And was your hope in presenting that defense that the
22 jury would see it solely as a defense and exonerate him on all
23 the charges but murder, or hoping that it would extend also to
24 the murder?

25 A Well, obviously if he acted in coercion or duress as to

1 going in to the armed robbery and entering the store, then that
2 would also follow that he should not be convicted of murder as
3 not being a natural and probably consequence of what he was
4 forced to do.

5 Q Now, as part of your explanation throughout the case
6 and arguments with the Court about this defense, there was a
7 lengthy motion -- it is pages 230 through 259 of the record --
8 where you are essentially asking the Court and making arguments
9 that some times teetered on the edge of a self-defense argument.
10 But the judge said about being able to go into the misconduct
11 and character of the Macks to be able to establish your defense
12 of duress and coercion. I believe you have been in the
13 courtroom all day today and contained in the file that you gave
14 me were the reports of each of the officers I called today.

15 A Yes, ma'am.

16 Q Is there any reason you didn't call those officers en
17 camera when the judge indicated to you at one point that he
18 wasn't just going to allow in police reports as hearsay. Is
19 there any reason why you didn't call those three officers?

20 A Absolutely, absolutely. First of all, I have subpoenas
21 here for all three of the witnesses you called. Okay. So the
22 fact that they said they didn't receive a subpoena is sort of
23 inconsistent with what we have in your file. There is a
24 subpoena for each one of them. And, Kelly, my paralegal made a
25 chart. We have all the reports from the detention center.

1 Q Correct, and I just acknowledged that I received those
2 reports from your office?

3 A Correct. We made the chart here about these are the
4 witnesses, potential witnesses in the case, and all the
5 correctional officers that you called today and you referred to
6 they are all listed here and we have all of of their mobile
7 numbers and they were asked on the letter with the subpoena to
8 call Kelly or my office to let them know we got the subpoena and
9 they would be on standby. I do not call police officers or
10 correctional officers unless I have to. So to the best of my
11 recollection based on this they were subpoenaed. We had their
12 mobile numbers and they would have been called had we needed to.
13 The fact is though Miss Blanchette, we didn't need to. And I
14 will refer you to the transcript here. On page 399, this was my
15 cross examination of Davorious Mack. "You plead guilty to
16 possession of stolen vehicle, correct?" Answer, "Yes, sir. And
17 attempted escape and malicious injury to property, correct?
18 Yes, sir. Where did you attempt to escape from? Rock Hill City
19 Jail. After you were arrested on this charge? Yes, sir."
20 Question, "So you did you tried to escape as well? Answer,
21 "Tore bricks out of the wall." Question, "And you plead guilty
22 to that?" Answer, "Yes, sir." Now you are looking at a total I
23 think we computed about fifty years. So first one of the
24 incidents you talked about I did ask him about it on cross
25 examination.

1 Q But is it fair to say Mr. Swerling that everything the
2 officer testified to today did not come in such as the comments
3 Mr. Mack made to him during the course of that escape?

4 A I am telling you what in --

5 Q What was that?

6 A I am telling you what I did and if you let me finish I
7 will go on.

8 Q I apologize. If you let me know if I interrupted
9 before I ask question?

10 A "I have a couple more questions Mr. Mack, on January
11 5th did you at the York County Jail over here tell Officer
12 Guidry that's who you called, if you shoot me with that "MF" I
13 will kill you and you shoot me you are a dead MF". I will put a
14 hit on your ass. Did you tell him that?" Answer, "Yes, sir.
15 And on January 5th did you -- I am sorry, on February 7, 2007,
16 did you tell Officer Gunn that you were going to smack him?
17 Answer, "Yes, sir." So I believe all three of the incidents
18 that you were talking about we were able to develop on cross
19 examination.

20 Now, the officers would have been important if they denied
21 this conduct but they didn't deny it, and so as a cross
22 examiner, someone who has been cross examining people for 42
23 years I made a decision not to call the officers because we
24 already got out the evidence I wanted to get out without calling
25 them as witnesses.

1 Q Would you concede though that on page 1010 you called
2 Officer Hare to testify about an incident, a pistol charge that
3 you had already elicited testimony on cross examine about?

4 A I don't have 1010. Where is it?

5 Miss Blanchette, I don't mean to correct you, but I didn't
6 call Officer Hare.

7 Q I apologize. Officer Hare was called by the
8 co-defendants' attorney about a charge that one of the Macks had
9 already testified too?

10 A Right, but that's not me though.

11 Q Okay.

12 A I don't call police officers unless I have too.

13 Q So that would be your reasoning for not calling the
14 officers?

15 A My reasoning was that I got on cross examination what I
16 needed to and, you know, the cross examination with respect to
17 both Dontavious and Davorious I would submit to you is
18 pre-textbook cross examination. They had given multiple
19 statements. They had written letters to the solicitor. They
20 were inconsistent with each other and each of their statements
21 was inconsistent with the one before. And if you look at the
22 transcript in the case I was able to point out all the
23 inconsistencies between their statements that they made
24 themselves and inconsistent with each other. So I pride myself
25 in my cross examination. I've written articles about cross

1 examination. I wrote a chapter in Judge Anderson's book on
2 cross examination. I wrote a law review article on cross
3 examination, so I do the best that I can on cross examination
4 and I think this is example of that. I am not trying to pat
5 myself on the back, but that's the one part of the trial that I
6 really concentrate on is cross examination.

7 Q Now, regarding Mr. Addison's testimony on page 873 and
8 I am looking specifically at line eight. He's asked on direct
9 by yourself, now who had the weapons? I'm sorry, it just said
10 now who had weapon? Devarious had the 38 and Ben Stewart had
11 the 380. He has offered testimony today about the fact that he
12 was unaware that he was going to essentially have to testify
13 against Ben Stewart. How did it come to this point where he was
14 testifying about the weapon that Ben Stewart had? Was that
15 something that he was talked to about?

16 A Well, if he is going to get on the stand and tell the
17 truth he had to testify about Ben Stewart. What would you want
18 me to do. Tell him not to testify about Ben Stewart. That's
19 part of his testimony. He is implicating Ben Stewart and I tell
20 people to tell the truth.

21 Q On pages 897 through 898 during his cross examination
22 the assistant solicitor pointed out that that had never been
23 mentioned before today, anything about the duress or about
24 Stewart having a gun. So when did you discover that detail of
25 the case if you were asking him to tell the truth, when did you

1 discover that was the truth?

2 A Well, I went over Terrell's testimony with him. I have
3 numerous notes concerning the questions that I was going to ask
4 him and what we reviewed. Let me just say this to you, he
5 changed his testimony on several different occasions or what his
6 testimony was going to be, and -- but I did prepare his
7 examination, his direct testimony with him, and also potential
8 cross examination. And there are a number of notes about my
9 preparation for his testimony.

10 A So, when he told me about a particular fact I couldn't
11 possibly tell you. I do know that there were inconsistencies
12 from one setting when we met to another.

13 Ms. Blanchette: Your Honor, may I approach the
14 witness?

15 THE COURT: Certainly.

16 Q Mr. Swerling, I am going to hand over a document that
17 was turned over to my office as part of your file. Do you
18 recognize document?

19 A Yes.

20 Q What does that appear to be for the record?

21 A It looks like a witness list, at some point a potential
22 witness list.

23 MS. BLANCHETTE: Your Honor, at this time I would
24 move this as Applicant's number six.

25 MR. HUNTER: No objection.

1 THE COURT: All right, admitted without objection.

2 (Applicants Exhibit Six, witness list, received in
3 evidence as of this date.)

4 Q And I am going back here a little bit Mr. Swerling
5 because you had referenced kind of spreadsheet that you all had
6 created. Would you agree that Fran Kennedy and Darryl Kennedy
7 are both listed on that witness list that you have there in
8 front of you?

9 A Yes, that's a precaution because if I decided to call
10 them I needed to have them on the witness list if we were going
11 to give that up to the judge.

12 Q And the officers that we talked about today too do you
13 see that they are there?

14 A Of course I would have to be prepared for that if
15 defendants, the co-defendants, denied their activities in the
16 jail. And also, if you remember during my cross examination I
17 was able to bring out -- Judge Alford gave me some latitude on
18 bringing out other acts of violence on their part.

19 A So what I do I will prepare a witness list with all
20 potential witnesses on there so I don't get caught in a
21 situation where if I need to call a witness it is not on the
22 list.

23 Q Do you recall your reasoning for putting Fran Kennedy
24 on that list?

25 A As a precaution.

1 Q As a precaution for what?

2 A Well, there were several things. I remember one thing
3 was there was some testimony about going to their house that
4 night when they came to Rock Hill and I don't remember what the
5 -- and his brother's house to get some money to give Dontavious
6 and Devorius so that might have been something. I can't tell
7 you right now seven years later what the issue was going to be
8 that I would have called her on, but I can tell you it would not
9 have been about his mental health.

10 Q And that is was going to be my next question. When you
11 were -- and I'm sorry were you finished?

12 A Yes.

13 Q Okay. When Terrell was on the stand and this has
14 already been brought up, on page 852 through 853, you asked him
15 about his medication. You asked him when did you stop taking
16 the medication. The State objected because it wasn't relevant.
17 The objection was sustained and nothing further was mentioned.
18 Was that not relevant to your defense of duress and coercion?

19 A Absolutely not.

20 Q Why not?

21 A Because both Doctor Watson and Doctor Brawley both said
22 they don't think he could have been coerced. ADHD and
23 medication for ADHD would have nothing to do with whether or not
24 you were coerced or not. It might have to do with your
25 judgement, but that's not a defense in the case.

1 Q Now, neither Tora Brawley or Doctor Schwarts-Watts that
2 wasn't known to the jury that they had said that. Was there any
3 reason you didn't try to explore that issue at all?

4 A Because I decided after they objected to it that
5 possibly it was an area to avoid. And the fact was he had
6 stopped taking his medication two and a half years before and
7 when Miss Kennedy told me that on the 23rd of February I even
8 called the doctor to find out whether or not not taking that
9 medicine would in any way and -- I think it was Doctor Val --
10 let me just tell -- one of the doctors -- oh, I know what it
11 was. Doctor Hobgood at Catawba, I asked him about the
12 medication and the diagnosis and he said it would not effect his
13 ability to be cross examined. I also called Doctor Watts and
14 tracked her down. I think it was in Kansas. And asked her
15 about the ADHD and the medications and she said it would not
16 interfere with his ability to be cross examined. What it would
17 do, the fact that he wasn't taking it would have to do with him
18 trying to learn some new process. So I didn't at that point
19 when they raised that issue I said, well, where am I going with
20 this so I just decided not to pursue it because ADHD had nothing
21 to do with the defense.

22 Q But at sentencing you went through essentially a large
23 portion of his mental health history with the judge, is that
24 correct?

25 A Sure, I wanted the judge to understand what his history

1 was. But if you will remember as going through that history
2 most of that would have nothing to do with the defense in the
3 case. Go to that DJJ report who said he had oppositional
4 defiant disorder. I don't think you would have put that in
5 evidence.

6 Q And let me just ask you if you can identify this, it
7 has been previously marked just for ID, Applicant's number five?

8 A Yes.

9 Q Does that appear to be a document that came from your
10 file that you had in your possession?

11 A Yes, and as I said on page 453, diagnostic impressions,
12 oppositional defiant disorder, would never put that out in front
13 of the jury.

14 MS. BLANCHETTE: Your Honor, I would move this in
15 as Applicant's number five based on the
16 identification.

17 MR. HUNTER: No objection.

18 THE COURT: Admitted without objection.

19 MS. BLANCHETTE: Your Honor, if I can beg the
20 Court's indulgence just one moment.

21 THE COURT: Certainly.

22 Q Mr. Swerling, please correct me if I'm wrong. You
23 testified today that Mr. Addison wanted you to go with a
24 counteroffer of only five years?

25 A That's correct. It is in my notes contemporaneously

1 written.

2 Q How would it even be possible to get his charges down
3 to five years?

4 A It's not.

5 Q And is that something you explained to him?

6 A Well, the family is saying I told them zero to 15 which
7 is absolute nonsense. He came up and they came up with no more
8 than five years and I mean, obviously that wasn't going to be
9 possible.

10 Q So, when you went back to the solicitor were you able
11 to -- how did you present that to him if you knew that wasn't
12 even a possibility?

13 A I just said most he will take is five years. That's
14 what I do. My job is to go back -- whatever my client wishes I
15 convey to the solicitor. What the solicitor conveys to me I
16 convey to my client. That's my job.

17 Q When did you get notice that he would be jointly tried
18 with his co-defendant?

19 A I don't have any note. I have no idea.

20 Q Was that something you were able to actively prepare
21 for with him and his testimony for, that he would be tried with
22 his co-defendant?

23 A I'm sure that we covered in the preparation about his
24 co-defendant, but frankly Miss Blanchette, I wasn't concerned
25 about his co-defendant. Why would I be concerned about Mr.

1 Stewart. None. I had no concern for him at all. My concern
2 was for Terrell Addison.

3 MS. BLANCHETTE: Your Honor, if I could beg the
4 Court's indulgence one more moment.

5 THE COURT: Certainly.

6 MS. BLANCHETTE: Your Honor, I have no further
7 questions of this witness.

8 THE COURT: Cross examination.

9 MR. HUNTER: May it please the Court.

10 CROSS EXAMINATION

11 BY Mr. HUNTER:

12 Q Mr. Swerling, there was some testimony earlier today
13 about some plea offers that were made that seemed to be
14 contingent on other offers being made to co-defendants.

15 A Can I get some water please.

16 (WHEREUPON, the witness was handed water.)

17 Q Now, you heard testimony earlier today about plea
18 offers being made almost as a group. If this co-defendant
19 pleads then this other co-defendant will get this. Was that
20 ever a part of any discussion at all with the State?

21 A Not with me.

22 Q Okay.

23 A Actually the first time I ever heard it when I saw the
24 amended or you told me, Miss Blanchette told me what the
25 allegation was. I never heard that before.

1 Q Okay, and that's certainly not something happened in
2 your discussions with the solicitor's office?

3 A No.

4 Q Okay. Now, in your discussions with Mr. Addison for
5 the most part did he seem like he was able to understand you in
6 your discussions about the plea offers and defenses? Was he
7 perfectly -- was he able to communicate with you about his
8 defense?

9 A He was able to. We discussed as I said, coercion. We
10 discussed alibi. We discussed the hand of one hand, hand of
11 all, accomplice liability. Murder. The various different
12 levels, manslaughter. I made sure that I was satisfied that he
13 understood it. Now even though he may operate at a low
14 intellectual functioning, I have been doing this for 42 years
15 and I know what I need to do to make sure that someone
16 understands. So I take great care in explaining those things to
17 that individual.

18 Q And you certainly did that in this case?

19 A Absolutely.

20 Q Now, as far as his ability to assist in his defense, he
21 never actually did provide you with an alibi?

22 A You know, that's something I would like to talk about.
23 This went back and forth as I said between alibi and coercion
24 and duress. And of course there was no alibi, so there never
25 could be any alibi witnesses. But I asked both him and his

1 mother for witnesses and when I would ask him for the witnesses
2 he would tell me to ask his mother and when I asked his mother
3 about potential witnesses she would tell me to ask him. And I
4 just happened to go through my notes and I made just a note here
5 on August 12, 2008 which I think may have been the first time --
6 no, not the first time. It may have been the first time I met
7 with him. I'm not sure. But he told me he would get me the
8 witnesses.

9 On August 28, 2008 I was told I would get witnesses. On --
10 I said August 12th. And mother said she would get me witnesses,
11 or he told me the mother would get me witnesses, and I said
12 August 28th. Then going to October 6th and October 9th we had
13 some emails with Mrs. Kennedy about getting us witnesses.
14 February 3, 2009 we still didn't have any witnesses. On January
15 19, 2009 still didn't have any witnesses, and I was asking for
16 them. February -- did I February 6, 2009, talking about
17 witnesses. And then on February 6th after I finally pressed
18 them about it I finally got the name of some witnesses down in
19 Hartsville. I hired an investigator, Carlyle McNare who is a
20 former Captain with the Lexington County Sheriff's Department,
21 detective division, and he and I and Kelly started pursuing
22 witnesses. We went down to Hartsville. Finally was able to get
23 Miss Kennedy and some people down there to go ahead and get us
24 names of some folks. Some were cooperative, some were not. Two
25 testified at the trial.

1 We also had an expert on palm print that I had gotten. We
2 had Doctor Brawley, Doctor Schwartz-Watts. We had an expert on
3 sneakers because there was some issue about whether or not the
4 sneakers he was wearing were the sneakers being shown in the
5 video. Talked about character witnesses, but I explained to the
6 Kennedys why you couldn't really call a character witness
7 because you would be opening the door. So, I think roughly
8 there were number of people that we tried to track down and get
9 witnesses.

10 Got all of his medical records from all the different places
11 and try to speak with each person in charge at that location. I
12 don't think we were able to reach everybody but we were able to
13 reach most everybody and I spoke with them about some of the
14 issues.

15 Q Okay. As far as the medical records are concerned did
16 any of it help your defense?

17 A No, but in fact according to what Doctor Schwartz-Watts
18 who is a forensic psychiatrist said, the kind of diagnosis he
19 carried would be inconsistent with coercion defense with
20 coercion defense because it would show that he was maybe
21 functioning at a low intellect or easily persuaded or was a
22 follower but that would not be consistent with a coercion
23 defense.

24 Q Right, and this coercion/duress defense, that seemed
25 like the best option to you at the time?

1 A Well, it did and I think the proof is in pudding.
2 Judge Alford even though he said in the end he didn't buy it he
3 accepted the fact that there should be a charge on it and that's
4 the most -- and that's what I could hope for. I mean the proof
5 is there in the pudding that I got a charge on coercion. So I
6 think I developed it. I think I argued it, and it may be didn't
7 work but alibi wouldn't have worked and there were all sort of
8 ethical constraints about that. And as far as I know there is
9 no other defense. We did argue mere presence and mere
10 knowledge, mere association and that was charged as.

11 Q Right, you got a charge on that?

12 A Yes.

13 Q Now, ultimately whose decision was it to go to trial
14 that day?

15 A It was Terrell's and it was against my advice. I think
16 I read my note from -- I mean I -- how far can I go in
17 recommending something and say I would recommend that offer
18 based on the facts in the case to my son if that's the
19 situation we were in. I think I may be done that in 42 years I
20 maybe done that three times to somebody because I was so afraid
21 that he was going to be convicted and I did want him to pass up
22 the 20-year offer.

23 Q Right. And you were -- despite the fact that he chose
24 to go to trial against your advice, you were one hundred percent
25 ready to fully represent him at trial?

1 A I was ready. I think the -- again, look at the
2 transcript I think I adequately developed and effectively
3 develop a cross examination and also presented him as a witness
4 in the case and tried to impeach the witnesses against him as
5 best I could.

6 I would have liked to have the witnesses earlier, but I don't
7 think I could have asked any more times then I did for someone
8 to give me a list of witnesses.

9 Q For either the Terrell or his mom to give you that
10 list?

11 A Well, I got it on February 6th.

12 Q Okay.

13 A I got some names and we did try to pursued them. I
14 sent my investigator down -- I think it's Hartsville. I sent
15 him down there and he spent a good bit of time in Hartsville
16 trying to locate people. Eventually got some assistance from
17 Miss Kennedy and I think her mother maybe lives down there and
18 some other folks. Remember after the shooting they went back
19 down to Hartsville. They met in Hartsville. I'm thinking it's
20 Hartsville. They met in Hartsville before they went up to
21 supposedly go to Charlotte and that's how Terrell got involved
22 in the thing, that think were going to take him and drop him off
23 in Rock Hill and they were going to go on to Charlotte and after
24 the shooting they went back to Hartsville where I believe it's
25 Dontavious because I get confused between the two had been shot

1 by the victim in the case and they went to a hospital down
2 there. And then there was some activity down there in that area
3 after the -- later on that night. So we tried to go down there
4 and find people who knew Dontavious and Davorius. Let's face
5 it, they were thugs. No question about it. And I think we
6 pointed that out.

7 Q And just lastly, you've seen the allegations against
8 you. Do you think there is anything that could assist the Court
9 as far as your defense to these allegations?

10 A Unless you have a specific question, I think we spent
11 -- my office and I spent a good amount of time in working this
12 case up and getting it prepared for trial, coming up here. I
13 tried many cases up in Rock Hill, Kevin Brackett and Willy
14 Thompson can tell you that -- in York I mean, and I enjoy coming
15 up here to try cases and I have tried a fair number of murder
16 cases. In my career I've tried murder cases all over the state,
17 so I pride myself in the preparation. I will out work anybody.
18 If I have to work until 11, 12 o'clock at night for three weeks
19 straight I will, because when I get up in the courtroom I want
20 to be as good as I can be for my client. And this was
21 unfortunately a case where I thought that the 20 years in my
22 client's best interest, but I couldn't even get his parents to
23 recommend it to him.

24 MR. HUNTER: Your Honor, I don't have any further
25 questions. Thank you.

1 THE COURT: Redirect.

2 MS. BLANCHETTE: Very briefly Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. BLANCHETTE:

5 Q Do you recall at the beginning of the trial Mr. Addison
6 asked to have you relieved?

7 A I think there was two different occasions that was put
8 on the record. One was in the courtroom when after I got the
9 letter from his parents. And I do remember saying -- I do
10 remember telling them they had a chance to do that. I discussed
11 that with them earlier that they could relieve me if they wanted
12 to and Terrell decided, no, he didn't want to relieve me. So we
13 had the one conference in the judge's chambers where Terrell put
14 it on the record and then when the judge made reference to it in
15 the transcript that he had gotten a letter -- because I handed
16 him the letter that the Kennedys gave me -- I gave it to the
17 judge. And so he on the record in the courtroom examined
18 Terrell about it and Terrell said he wanted me to continue in
19 this case.

20 Q And was there any apparent breakdown in the attorney/
21 client relationship to you after that, leading up to that and
22 throughout the course of the trial?

23 A Was there any breakdown in what?

24 Q In the attorney/client relationship. He just moved to
25 relieve you that was essentially denied and then you have to go

1 forward with this trial?

2 A I got a thick skin. I mean, that's not going to effect
3 me at all. I do the best that I can every single case that I go
4 to trial with. Every single one.

5 Q I appreciate that. I was more concerned about your
6 communication with Terrell?

7 A We didn't have any problem. He and I did not have a
8 problem. The Kennedy's had a problem with me. I mean, there
9 was a couple of days there where I remember saying good morning.
10 I may even made a note that I said good morning to them and they
11 answer me, but Terrell and I didn't have a problem ever.

12 MS. BLANCHETTE: Your Honor, I have no further
13 questions of this witness.

14 MR. HUNTER: No questions.

15 THE COURT: Thank you. You may step down.

16 (WHEREUPON, the witness was excused.)

17 MS. BLANCHETTE: Your Honor, I have a couple of
18 cases to hand up at the conclusion of the case today but
19 those are the all the witnesses I intend to call.

20 THE COURT: Applicant rests?

21 MS. BLANCHETTE: That is correct, unless I need to
22 call someone in reply. I'm not sure who the State
23 intends to call or introduce but I just reserve the
24 right to rely if that is okay.

25 MR. HUNTER: If it please the Court, Your Honor,

1 the State would call Assistant Solicitor -- Deputy
2 Solicitor Willy Thompson.

3 WILLY THOMPSON, called as a witness, having been
4 duly sworn by The Clerk, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. HUNTER:

8 Q Please state your name for the record?

9 A Walter William Thompson, and I go by Willy.

10 Q Mr. Thompson, were you the primary solicitor
11 prosecuting this case?

12 A I was as I am now, Deputy solicitor at that time and
13 Solicitor Brackett tried the case with me. We were
14 co-counseling the case.

15 Q Okay. I just want to ask you a few questions about the
16 plea offers beforehand just to clear something up. This
17 discussion that has come up about seeing other people's plea
18 offers and different years that they were going to get. As far
19 as these co-defendants are concerned, did you ever -- did you
20 ever tell any of the co-defendants that if they plead another
21 co-defendant would get a certain amount of years?

22 A No, absolutely not because no one was tied in with each
23 other like that. For instance, in this case Dontavious Mack the
24 shooter in the case he plead straight up to his charge. We made
25 no deal with him other than not to seek the death penalty. So

1 when he was sentenced to life and that was one of the reasons he
2 was sentenced to life because he plead straight up to the
3 charges.

4 What precipitated his plea was the fact that the Davorius
5 had already come to cooperate and, was willing to testify against
6 his brother. So obviously we were not giving even Davorius'
7 brother a deal of any great significance as a result of Mr.
8 Mack, Davorius Mack, testifying and being willing to testify.
9 So I certainly wouldn't be giving the other co-defendants that
10 we wanted Davorius to testify regarding special treatment. He
11 was not requesting asking for special treatment for his own
12 brother, and so we were not, and we couldn't provide any because
13 he was shooter in the case. So no, we never discussed with
14 other defendants, oh, if you come and cooperate I will give
15 someone else a special deal. That wasn't the case at all.

16 As a matter of fact, that gives contrary to what the whole
17 purpose was in getting them to cooperate and to actually convict
18 the other people at trial if we had to go to trial.

19 Q And that certainly -- we talk about Dontavious and
20 Davorius -- that certainly holds true to your plea offers to Mr.
21 Addison?

22 A Yes.

23 Q And you never told anybody what Mr. Addison would be
24 receiving if they plead?

25 A No, not at all. The meeting that was referred to

1 earlier that we had with Davorius Mack that was -- you have to
2 understand Davorius Mack was the first person to plea and he had
3 a written plea agreement to what he plead to. He faced a fair
4 amount of time, around and forty years or so in the total time
5 that he faced under this plea agreement and we wouldn't even
6 promise Davorius who was cooperating with any type of sentence
7 regarding what he would get. We told him that it would be up to
8 the Judge and the Judge would consider his cooperation with the
9 State and we would be obligated to tell the judge all about his
10 cooperation. The judge would consider what he did as far as --
11 you know, cooperating that got his brother to ultimately plead
12 guilty and even if everyone plead or pled guilty in the case
13 that he would receive, you know, from the State the statement to
14 the Court that that's one of the main reasons because he was
15 willing to cooperate. So, we didn't give any special treatment
16 to other defendants because of Davorius's cooperation and when
17 we had that meeting that was at the request of Mr. Baity.
18 Davorius when he pled guilty was also sentenced to five years at
19 that time on they -- I think the malicious injury charge -- but
20 one of the charges, and so he was actually in the department of
21 corrections being housed there because our detention center has
22 a difficult time keeping everyone separated and we were asking
23 them to keep everyone separated. One thing that helps with that
24 is to get some of the defendants who are cooperating moved out.
25 So we do that occasionally on cases and we did that on this

1 case. So he was actually in the department of corrections when
2 I believe that letter was ultimately written. And so Mr. Baity
3 asked that we meet with him and basically calm him down. He
4 said he was getting kind of anxious because of the time he was
5 waiting to go to trial which is also something I need to
6 explain.

7 This happened in 2006 when the crime occurs. One of the
8 reasons it took a fair amount of time to get to trial is because
9 of the co-defendants, Ben Stewart, immediately after committing
10 the crime when he went back Hartsville, he then took off and
11 went up to where he had some relatives in Philadelphia. And
12 then in Philadelphia he committed and got arrested for a
13 carjacking and I think some other charges up there. We had to
14 wait to get him back from Philadelphia until they convicted him
15 of the carjacking. So while things move rather quickly here in
16 York County usually, they don't move very quickly in
17 Philadelphia, and so waiting for them to prosecute him is one
18 thing we wanted to do because we didn't want to have to put the
19 family through multiple trials in this case if we didn't have
20 too. So we were preparing to do one trial with whoever was left
21 at that point in time when Ben Stewart got back and at that time
22 we started working on the other defendants to see if they would
23 cooperate in any way at that point of time. So one of the
24 concerns that Mr. Mack had was why is this taking so long
25 because he seemed to have been waiting for a long time in his

1 mind, and why is he still facing so much time. Maybe as much
2 time as what anyone else might be facing. And so those were the
3 two questions that he had and that's what was discussed in that
4 meeting. We never discussed as to what other people would get
5 or what a plea offer was to anyone else, and certainly not as to
6 to his brother because at that time of that meeting his brother
7 had already been sentenced to life. We made it very clear
8 there was nothing we could do for his brother. That was it. He
9 had a life sentence and he would never leniency on that.

10 Q And could you just explain you're the plea offers you
11 made to Mr. Addison and how you conveyed them to Mr. Swerling?

12 A Sure. We had made a plea offer originally to the first
13 attorney that was on the case and if I'm most mistaken Thurmond
14 Brooker, or something like that. We sent an e-mail to him with
15 the plea offer early on.

16 When Jack became the attorney we relayed it to him as well.
17 I relayed to him I know with e-mail and one of the final things
18 I did was relay a 30-year offer to murder and the companion
19 charges to Jack by e-mail giving the trial date that we had
20 discussed because one of the things that I did with both of the
21 defense attorney, with Jack Swerling, and with Kenneth Snow was
22 to discuss when was a good time and we discussed possible trial
23 dates. We picked a trial date together where I asked is this
24 one that was I both can do and we had a fair amount of time out,
25 so they knew well in advance. This wasn't something that was a

1 surprise as to when we were doing it. They knew months in
2 advice, at least two maybe even three months in advance and
3 helped agree on that trial date. It wasn't something we argued
4 about because I didn't want continuances or anything like that
5 occurring. So I sent an e-mail to him regarding the plea offer
6 of the thirty years and giving a deadline and I believe that's
7 what he was discussing as far as trying to have an answer before
8 that deadline. And then right before the trial and if I'm not
9 mistaken I don't remember which day it would be. I think it was
10 the week before, like the Thursday or Friday before or it might
11 may even been the Monday of trial, but right at the time of
12 trial we did come back at one point and offer a 20-year sentence
13 to Mr. Swerling and to the defendant, Mr. Addison, if they would
14 take it at that period time. But that was a very short window
15 and I know Mr. Swerling told us he was going to advise his
16 client to take it and he went and had the meetings with him. I
17 think he even assisted in getting a meeting set up so he could
18 have some family members there and he came back disappointed
19 that they would not accept it.

20 Q Okay, and just to be clear from some earlier testimony
21 there was never an offer of zero to 15?

22 A No, never.

23 Q The only offers that came were the 30 and then the 20
24 ultimately.

25 Q One last question as far as the Mack brothers did you

1 ever tell them what to say during their testimony coach them
2 them how they should answer the judge questions?

3 A Absolutely not. There has never been a time I coached
4 any witness on what to say. I simply told them I want them to
5 tell the truth and then I asked them about their statements.
6 They had both given statements. I asked them -- we went over
7 them. I asked them if there was anything they wanted to change
8 they felt wasn't quite true, or wasn't represented correctly.
9 If there was anything in addition and then I said look you -- as
10 I explain to every witness and as I explained to them, I said
11 you were the guys who were there. You know what happened. I
12 need to you honest and I need you to tell me what happened. If
13 you are not honest you are going to be found out either by me or
14 the defense and then your help doesn't really help. I said so
15 you have to be honest. You have to tell the truth and is there
16 anything else I need to know. So I even added in you tell me.
17 I leave it very open ended, but we do kind of go over and I said
18 look, I am going to ask you about this. What happened here.
19 Who did what? What did you say? What did he say? It's all
20 open ended. I never drive the conversation in a way that I
21 demand that they say something or I even suggest that they say
22 something.

23 Q Okay. So you kind of went over areas that you would
24 ask about and just general questions but not specific answers
25 they should give?

1 A Right, and in particular -- let me straighten this out
2 as to Davorius Mack he was the only one who we had made any sort
3 of deal to cooperate. So he was the one that I had actually
4 spent more time with his attorney present and going over what
5 his testimony was and what he said happened, and then asking
6 questions you learn more things about the cases. Things go on
7 and other witnesses tell you other things. As to Dontavious we
8 never made a deal with Dontavious as to testifying. One of the
9 things that as a prosecutor made this case a little even usual
10 for us was that Dontavious after he had been sentenced to life,
11 even though he had filed appeals ended up being willing to
12 actually testify knowing there was nothing we could do for him,
13 and made that very clear to Dontavious and it was brought to us
14 as I recall Davorius had talked to his mother who had in turn
15 talked to Dontavious and apparently there had been some back and
16 forth between then, mother and son, each one, and so it was
17 actually Davorius that mentioned to us that he thought
18 Dontavious would actually be willing to testify. So that's when
19 we did the steps that we needed to contact Dontavious and find
20 out from him just before trial really if he was willing to
21 testify and to explain to him there is nothing we could do to
22 help him and he understood that. And he said that and he said
23 that he hoped that may be the judge would take into
24 consideration his testifying when he sentenced his brother.

25 MR. HUNTER: I don't have any further questions.

1 Thank you, Your Honor.

2 MS. BLANCHETTE: No questions, Your Honor.

3 THE COURT: Thank you. You may step down.

4 You may call your next witness.

5 MR. HUNTER: That is the State's case, Your
6 Honor.

7 THE COURT: Anything in reply?

8 MS. BLANCHETTE: No, Your Honor.

9 THE COURT: You wanted to hand up something?

10 MS. BLANCHETTE: I do, Your Honor. I have four
11 cases. I will just put the names on the record very
12 briefly. I have State versus Rosha Valdo, that I
13 reference during my questioning of Mr. Swerling. State
14 verus Kelsey. Davie versus State which touches on the
15 issue of plea offers. And then Judge versus State, it
16 was overruled regarding the prejudice analysis that was
17 conducted in the case, but it speaks to ineffective
18 assistance during plea negotiations and plea offers. So
19 I understand that it has been overruled on other
20 grounds.

21 Thank you, Your Honor.

22 THE COURT: Thank you. Are you all ready to argue
23 now or do you need a break, Ms. Blanchette.

24 MS. BLANCHETTE: Your Honor, I typically keep my
25 argument very brief. I just submit to the Court. I

1 don't have a detailed argument prepared so I'm happy to
2 just give you a brief summary at this moment if that's
3 okay.

4 THE COURT: Okay, you may.

5 MS. BLANCHETTE: Your Honor, what I would like to
6 submit is you heard lengthy testimony today. It's a
7 very lengthy record I handed up some cases, we put up
8 witness to support our allegations. Obviously the State
9 has put witness to refute our allegations. That is all
10 for the Court to exercise in his discretion, weigh
11 credibility and make determinations.

12 If there is any questions the Court has of me I
13 would be happy to answer that. If there anything that
14 the Court in reviewing the records that he would like
15 for me to submit I would happy to do that, but I rest
16 upon the record at this point.

17 THE COURT: All right. Thank you, and for the
18 State.

19 MR. HUNTER: Your Honor, the State would ask that
20 you deny these allegations. We think the lengthy trial
21 record is pretty clear and also the record made today.

22 Your Honor, the State feels like any issues
23 regarding the plea offers were certainly hashed out in a
24 pretty detailed manner by the solicitor and by Mr.
25 Swerling. Your Honor, I will just keep it short. We

1 feel that nothing Mr. Swerling did rose to ineffective
2 assistance. Specifically, I guess regarding the duress
3 defense, Your Honor, there was no prejudice because it
4 was in fact charged to the jury, and anything else
5 that's alleged to be ineffective we feel like that no
6 prejudice resulted.

7 Thank you.

8 THE COURT: All right. All the attorneys know the
9 burden in this case is upon the applicant to prove the
10 allegations. I find that the applicant has failed to
11 meet the burden of proof on those matters. Each of the
12 matters raised by the applicant I think have been
13 addressed to my satisfaction, addressed clearly to my
14 satisfaction by the State. Specifically the issue about
15 plea offers, specifically -- and most specifically about
16 the issue of his trial strategy, defense counsel's trial
17 strategy concerning the mental health issues, and
18 concerning the issue of duress. For all of those
19 reasons I am going to deny applicant's motion and ask
20 the Attorney General to prepare an Order.

21 Anything else?

22 MS. BLANCHETTE: No, Your Honor. Thank you. If I
23 could just have a moment before they take him back just
24 to explain what the Court has said.

25 THE DEPUTY: We put him back in the holding cell.

1 THE COURT: Will that work.

2 MS. BLANCHETTE: That's fine.

3 * * * *

4 (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 16TH 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 York County, South Carolina, on the 4th day of November, 2015.

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

September 9, 2016

Aileen Butler

**MEMORANDUM**Holding Area

TO: Les Herring
FROM: Sergeant Harmon
DATE: 10-23-06
RE: Davorious Mack

On 10-23-06, at 1141. Davorious Mack yelled out his cell that ya'll are just mad because we killed the dude.

EXHIBIT

App 1 11-4-15
A.B.

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Rock Hill Police Department
GENERAL SESSIONS COURT CASE SUMMARY

Defendant(s): Mack-Davorius
Brice-David Lamont

Offense Date: October 19th, 2006

Date of Arrest: 10-20-06

Charge(s): Attempted Escape / G-900050, G-900049.
Malicious Damage to Property / G-900052, G-900054

Victim(s): City of Rock Hill, SC

Witness(s): Harmon-Vernon
Nichols-Cissy
Davis-Lutricia
Anderson-Diane
120 East Black Street
Rock Hill, SC 29730
1-803-329-7267

Officers Involved: Harmon-VT
McCarley-M
120 East Black Street
Rock Hill, SC 29730
1-803-329-7267

Chain of Evidence:

Case Agent: Harmon-VT

Narrative

On October 19th, 2006 at approximately 5:45pm, Officer Harmon was asked to do a cell inspection by Correction Officer Nichols, in cell 6. Due to strange noises coming from this cell after our jail checks were being done. Diane Anderson of the Rock Hill city court also alerted the jail of strange noises coming from the back wall. Officer Harmon opened the cell door and entered and could smell concrete dust in the cell. Officer Harmon noticed this dust all over the floor, and on Mr. Mack's hands. Further inspection of this cell revealed that the toilet had been pulled from the wall, and a steel plate had been removed from the access panel opening to the toilet and this plate was lying on the floor next to the toilet. At this time Officer Harmon noticed

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that mortar had been removed from around a cinder block in this cell. Officer Harmon was able to take the cinder block out, remove it and place it back in the wall at will. All of this was done in an effort to hide it from Corrections Officers as they passed by doing their jail checks. When defendants Mr. Brice and Mr. Mack were placed into this cell this cinder block was in place, the toilet was on the wall and the steel plate was attached to the toilet. An inspection of this cell had taken place on 10-18-06, and there was nothing wrong with it at this time. The steel plate was used to scrap away the mortar from around the cinder block. Both defendants had General Session charges pending and were waiting to be transferred to the Moss Justice Center. Both defendants blamed each other for this incident. Officer Harmon had passed by this cell approximately 4 times that afternoon and noticed that Mr. Brice was always looking out of the cell and down the hall, and Mr. Mack was near this wall by the toilet. Approximate cost in fixing the damage they caused is estimated at this time to be at 1,300.00 US dollars. Officer McCarley observed the damage and helped in searching these inmates before placing them in another cell.

Mr. David Brice is a black male, who is 508 and weighs approximately 160 pounds. He was wearing a blue shirt and blue jeans.

Mr. Mack is a black male, who is 508, and weighs approximately 150 pounds. He was wearing an orange prison uniform.

ROCK HILL POLICE DEPARTMENT ADDRESS: 120 EAST BLACK STREET ROCK HILL SC 29730- PHONE#:(803)329-7200
 AGENCY I.D. INCIDENT REPORT

SC0460300

0610201170

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EVENT	INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
	1. ATTEMPTED ESCAPE		☒ YES ☐ NO	☐ YES ☐ NO	JAIL/PRISON		☐ Individual ☐ Business ☐ Financial Inst. ☐ Government ☐ Relig. Org. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police CP
	2. MALICIOUS DAMAGE TO CITY PROPERTY \$1000		☒ YES ☐ NO	☐ YES ☐ NO	JAIL/PRISON		
VICTIM NO. 1	INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE	WEAPON TYPE	
	120 EAST BLACK STREET ROCK HILL SC				29730-	NONE	
	INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	REPORT DATE/TIME	REPORT TIME
SUBJECT NO. 1	10/19/2006		17:45	10/20/2006	13:47	10/19/2006	17:45
	COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE
	HARMON, VERNON T						
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.		
120 EAST BLACK STREET		ROCK HILL	SC	29730-	6		
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.
CITY OF ROCK HILL							
HEIGHT		WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		
ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.		
ROCK HILL		SC	29730-	6			
VICTIM INJURY (VICT. 1) ☐ YES ☐ NO ☐ EXPLAIN—		COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO ☐					
VICTIM (NO. 1) USING ALCOHOL: ☐ YES ☐ NO ☐ UNK ☐		DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE					
TWO-HAND VEH. ☐		ONE-HAND VEH. ☐		DETECTIVE/PLAINT. ☐		OTHER ☐ ALONE ☐ ASSISTED ☐	
SUBJECT		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH.
MACK, DAVORIOUS		B	M	17	N		
FURNITURE		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.					
WARRANT		ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO.
ARREST		HARTSVILLE		SC	29550-	6	
JAIL		SUBJECT (NO. 1) USING ALCOHOL: ☐ YES ☐ NO ☐ UNK ☐		ARRESTED NEAR OFFENSE SCENE: ☐ YES ☐ NO ☐		DATE/TIME OF OFFENSE	
SUMMONS		DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE		TOTAL ARRESTED 2		DATE/TIME OF ARREST	
ARREST		0610201170		On October 19th, 2006 at approximately 5:45pm, Officer Harmon conducted a cell inspection in cell number 6. Davorius Mack (suspect 1), and David Brice (suspect 2), were being housed in this cell. At this time Officer Harmon noticed concrete dust all over the cell, and against the wall near the toilet. The Toilet had been pulled off of the wall and a steel plate was laying near the toilet. Officer Harmon also noticed that the cinder block had no mortar around it and could be moved out of the wall, once it was moved Officer Harmon could see through to the fire wall. At this point Officer Harmon advised both suspect 1 and 2 that they would now be charged with Attempted Escape and Malicious Damage To Property. Approximate cost to fix this damage is estimated at 1300.00 US dollars. Davorius Mack (suspect 1) was charged with Attempted Escape and Malicious Damage to Property. Warrants G-900050 and G-900052 were served on suspect number 1. David L. Brice (SUSPECT 2), was also charged with Attempted Escape and Malicious Damage to Property. Warrants G-900049 and G-900054, were served on suspect number 2.			
JURISDICTION OF THEFT		LAW ENFORCEMENT AGENCY		JURISDICTION OF RECOVERY			
LAW ENFORCEMENT AGENCY		LAW ENFORCEMENT AGENCY					
PROPERTY EST.	TYPE (GROUP)	STRUCTURES ...					TOTAL VALUE
	STOLEN	\$0.00					\$0.00
	DAMAGED	\$1,300.00					\$1,300.00
ADMINISTRATIVE	BURNED	\$0.00					\$0.00
	RECOVERED	\$0.00					\$0.00
	SEIZED	\$0.00					\$0.00
SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE ☐ ADM. CLOSED ☐		ARRESTED UNDER 18 ☐ EXCLEAR UNDER 18 ☐	
YES ☐ NO ☐		YES ☐ NO ☐		UNFOUNDED ☐		ARRESTED 18 AND OVER ☐ EXCLEAR 18 AND OVER ☐	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH, 2. ☐ NO PROSECUTION, 3. ☐ EXTRACTION DENIED, 4. ☐ VICTIM DECLINES COOPERATION, 5. ☐ JUVENILE-NO CUSTODY							
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
HARMON, V T		10/19/2006 17:45	03681	LD Harmon		10/19/06	7055
MCCARLEY, CLAUDE "MAC"		10/19/2006 18:00	0812	FOLLOWUP INVESTIGATION ☐ YES ☐ NO ☐		OFFICER	

1400

ROCK HILL POLICE DEPARTMENT ADDRESS: 120 EAST BLACK STREET ROCK HILL SC 29730- PHONE#:(803)329-7200

279

INCIDENT REPORT
ADDITIONAL VEHICLES

STATUS	VYR	Make	Model	Style	Color	Lic/Lis	VIN

INCIDENT REPORT
ADDITIONAL PROPERTY

TYPE	STATUS	VALUE	QTY	PROPERTY DESCRIPTION	MAKE	MODEL	SERIAL #
33	4	\$1,300...		Government Building			

AGENCY ID

SC0460300

CASE NUMBER

0810201170

ROCK HILL POLICE DEPARTMENT ADDRESS: 120 EAST BLACK STREET ROCK HILL SC 29730- PHONEN:(803)329-7200

INCIDENT REPORT
ADDITIONAL OTHERS

SCD480300

0610201170

PERSON TYPE S2	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	PAGE	SEX	AGE	D.O.B.	ETH
	BRICE, DAVID LAMONT				1	2	3	J	B	M	31		N
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE			
508				160	BL	BR	ROCK HILL	SC	29730...	6			
VIOLENCE INJURY ☐ YES ☐ NO ☐ EXPLAIN--													
COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO ☐													
VICTIM USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE													
PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	PAGE	SEX	AGE	D.O.B.	ETH
					1	2	3						
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE			
VIOLENCE INJURY ☐ YES ☐ NO ☐ EXPLAIN--													
COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO ☐													
VICTIM USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE													
PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	PAGE	SEX	AGE	D.O.B.	ETH
					1	2	3						
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE			
VIOLENCE INJURY ☐ YES ☐ NO ☐ EXPLAIN--													
COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO ☐													
VICTIM USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE													
PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	PAGE	SEX	AGE	D.O.B.	ETH
					1	2	3						
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE			
VIOLENCE INJURY ☐ YES ☐ NO ☐ EXPLAIN--													
COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO ☐													
VICTIM USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE													
PERSON TYPE	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	PAGE	SEX	AGE	D.O.B.	ETH
					1	2	3						
	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE		EVENING PHONE			
VIOLENCE INJURY ☐ YES ☐ NO ☐ EXPLAIN--													
COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO ☐													
VICTIM USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ DRUGS: ☐ YES ☐ NO ☐ UNK ☐ TYPE													

ROCK HILL POLICE DEPARTMENT

PROPERTY / EVIDENCE INVENTORY

PAGE 1 OF 1

INCIDENT TYPE <u>Attempted Burglary</u>		PROPERTY: HOLD ☒ RELEASE ☐ DESTROY ☐		CASE NO. <u>0610201170</u>	
DATE <u>10-30-06</u>	PERSON RECEIVED FROM: <u>Mark Danner</u>	STATUS: COURT ☒ FOUND ☐		WARRANT/TICKET NO. <u>6 90050, 6 90054, 6 90057</u>	
VICTIM/OWNER <u>City of Rock Hill</u>				COURT DATE:	

SUSPECT(S)	LOG NO.

TIME SEIZED	SEIZING OFFICER	ITEM NO.	ITEM SEIZED - DESCRIPTION, MODEL, SERIAL NO., COLOR, ETC.	LOCATION FOUND	BIN #
1030	HAYMON V	1	12" steel plate	12" steel plate	
1030	HAYMON V	2	6 point studs	6 point studs	

VEHICLE MAKE	MODEL	VIN NO.	YEAR	TAG NO.	COLOR	TOWED BY

PLACE INTO EVIDENCE BY <u>VT Haymon</u>	BADGE NO. <u>324</u>	EVIDENCE ROOM OFFICER	BADGE NO.	DATE	TIME

I HEREBY CERTIFY THAT THE ABOVE AND/OR ATTACHED LISTS REPRESENT ALL PROPERTY TAKEN FROM MY POSSESSION AND THAT I HAVE RECEIVED A COPY OF THIS REPORT

ITEM NO.	FROM	TO	DATE/TIME	ITEM NO.	FROM	TO	DATE/TIME

OF THE ITEM(S) LISTED ABOVE, LIST THE ITEMS REQUESTED TO BE PROCESSED, AND/OR SENT TO SLED FOR ANALYSIS: (MULTIPLE ITEM NUMBERS REQUESTING SAME PROCESS, LIST ALL ITEM NUMBERS TO EACH PROCESSING REQUEST)	
ITEM NUMBER(S)	TYPE OF PROCESSING REQUESTED:
ITEM NUMBER(S)	TYPE OF PROCESSING REQUESTED:

DISTRIBUTION: WHITE AND CANARY - EVIDENCE ROOM WITH PROPERTY PINK - OFFICER/OWNER BLUE - DEFENDANT/OWNER

1402

745

1403

BOOKING REPORT											
DATE/TIME OF ARREST				CASE NUMBER							
PERSONAL DATA											
DEFENDANT NAME (LAST, FIRST, MIDDLE)						AGE	SEX	DATE OF BIRTH		MCCIC (V)	
M. L. DAVIS						21	M	10-22-60		1006 5-760	
GE	ETH	HGT	WGT	HAIR	EYES	SOCIAL SECURITY #		VISIBLE SCARS, MARKS, TATTOOS		ID NUMBER	
W	N	508	150	BL	BR					1006 5-760	
ADDRESS (NUMBER AND STREET)						CITY	STATE	ZIP CODE	RESIDENT	PHONE NUMBER	
						Hartsville	SC	27500	YES		
LIAS						PLACE OF BIRTH	DRIVERS LICENSE NUMBER		STATE		
						Hartsville SC					
EMPLOYER/OCCUPATION						NEXT OF KIN	RELATION	ADDRESS (CITY AND STATE)		PHONE NUMBER	
None						M. L. Davis	Mother	Hartsville SC			
BOOKING OFFICER'S NAME						NUMBER	ARRESTING OFFICER	AGENCY	OFFENSE DATE	PROPERTY CONTROL	
HARMON						1001	HARMON	VT	DATE		
ARRESTEE ARMED						FULL AUTO		ESEM AUTO		ON VIEW ARREST	
☐ YES ☒ NO						☐ YES ☒ NO		☐ YES ☒ NO		☐ YES ☒ NO	
WEAPON TYPE											
ADULT DISPOSITION						JUVENILE DISPOSITION		JUVENILE JURISDICTION		JUVENILE STATE	
☐ HANDLED/RELEASED						☐ REFERRED TO OTHER AUTHORITY		☐ IN-JURISDICTION		☐ OUT-OF-STATE	
ADDITIONAL CASE NUMBERS						MORE IN REMARKS					
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YORK COUNTY DETENTION CENTER

ADMINISTRATIVE SEPARATION/
DISCIPLINARY ACTION REPORT

190 PAGE 1 OF 2 PAGES

07-DOOV67

SECTION REPORT OF INCIDENT

REASON FOR SEPARATION: (CHECK APPROPRIATE BOX)

☐ ADMINISTRATIVE SEPARATION

- ☐ AS - 1 ESCAPE RISK
☐ AS - 2 MEDICAL OBSERVATION
☐ AS - 3 PAST ADJUSTMENT RECORD
☐ AS - 4 PRE-HEARING DETENTION

- ☐ AS - 5 PROTECTIVE CUSTODY
☐ AS - 6 SELF DESTRUCTIVE/SUICIDAL
☐ AS - 7 THREAT TO ORDERLY OPERATION OR SECURITY OF FACILITY
☐ AS - 8 CRIMINAL MISCONDUCT OR PENDING INVESTIGATION

TYPE OF INFRACTION: (CHECK APPROPRIATE BOX)

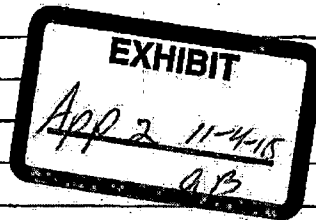
☐ CATEGORY II☐ CATEGORY III☐ CATEGORY IV

NOTE: A CATEGORY I INFRACTION REQUIRES AN INCIDENT / INFRACTION REPORT, 110001.F3

DATE 2-7-07	24 HR. CLOCK 1635	INCIDENT LOCATION HQA-MAX	INMATE'S NAME MACK, DAVORIS MONTAZZ	JACKET # 97709A

NARRATIVE: PROVIDE A COMPLETE AND DETAILED DESCRIPTION OF THE INCIDENT (WHO, WHAT, WHEN, WHERE, WHY AND HOW).

On the above date and time I/m MACK, DAVORIS WAS OUT IN THE MAX DAYROOM AREA using the telephone for a 10 minute phone call that was approved by Lt. McMillan earlier today. Ofc Meeks and Hubbard let I/m MACK out at approximately 1607 HRS. Ofc Meeks and Gurn entered the unit at approximately 1637 and advised the I/m that his time was up and he needed to go back to his cell. The I/m then became more verbal and passive resistant towards Ofc Meeks and Gurn. Ofc Gurn then asked I/m MACK to go back to his cell, I/m MACK then stated "if you put your hands on me I'll smack you in the mouth you bitch ASS nigger!" Ofc Gurn and Meeks left the dayroom area and called the supervisor's office. Lt. McMillan, Sgt Brown & Guidry, Ofc's Tucker & Sibley responded to the unit. I/m MACK WAS placed back in his cell with no further disturbance.



IF ADDITIONAL SPACE IS REQUIRED, USE PAGE 1 OF THIS FORM YCDC 110001.F4. BE SURE TO INCLUDE THE INMATE'S NAME AND JACKET # ON PAGE 2 AND SUBSEQUENT PAGES. PRINT YOUR NAME AND SIGN EACH FORM. ATTACH ANY OTHER REQUIRED REPORTS.

DOE DA Gurn
 REPORTING OFFICER'S PRINTED NAME

SI DOE DA Gurn
 REPORTING OFFICER'S SIGNATURE

YORK COUNTY DETENTION CENTER

INMATE INFRACTION REPORT

EXHIBIT

App 3 11-4-15
AM

800

07-12009012

DATE	24 HR. CLOCK	LOCATION	INMATE'S NAME	INMATE #
2/05/07	16:10	Hut/Max	Mack, Davorius Montraze	97709A
CATEGORY	SPECIFIC INFRACTIONS			
I-5	Threatening (Making Threats) ENTERED			
2				
3				

NARRATIVE On Fri, Jan 5th 2007. This Reporting Officer (RIO) was working in housing unit-A. This RIO witnessed IM Mack pass some clothing items under his door to IM Wells (Cell #20). When this RIO, ABO Gorman, T.O. Howley and Ofc. Chapman arrived at IM Macks cell door, he refused to place his hands outside his flap so we could apply the handcuffs. This RIO drew his tazer and stated to IM Mack to place his hands outside his flap. IM Mack stated "If you shoot me with that Motherfucker I

INJURIES INVOLVED?	IF YES, WHO WAS INJURED	IF YES, WHAT WAS EXTENT OF INJURY
☐ YES ☒ NO	N/A	N/A
REPORTING OFFICER	DATE	UNIT #
M. Guidry	2/05/07	904
SHIFT SUPERVISOR	DATE	UNIT #
C. McCh	1-6-07	800

NOTICE OF APPEARANCE

I, Davorius Mack, UNDERSTAND THAT I HAVE THE RIGHT TO APPEAR BEFORE THE YORK COUNTY DETENTION CENTER'S ADJUSTMENT COMMITTEE FOR THE RULES INFRACTION LISTED ABOVE. I HEREBY ENTER THE FOLLOWING PLEA:

☒ IN VIOLATION, AND WAIVE MY RIGHT TO THE ADJUSTMENT COMMITTEE HEARING AND ACCEPT THE SANCTIONS IMPOSED BY THE HEARING OFFICER. I UNDERSTAND THAT BY ENTERING A PLEA OF IN VIOLATION, THE STIPULATED PLEA SANCTIONS WILL BE:

~~RS - 30-60 days~~ SP 10-20 days
(20 days)

☐ NOT IN VIOLATION, AND WAIVE MY RIGHT TO APPEAR BEFORE THE ADJUSTMENT COMMITTEE. I UNDERSTAND THAT BY ENTERING A PLEA OF NOT IN VIOLATION, BUT FOUND IN VIOLATION THE RECOMMENDED SANCTIONS MAY BE:

RS - 30-60 days

☐ I AM NOT IN VIOLATION OF THE RULES INFRACTIONS LISTED ABOVE AND REQUEST A HEARING BEFORE THE ADJUSTMENT COMMITTEE.

INMATE SIGNATURE	DATE	SHIFT SUPERVISOR SIGNATURE	DATE
<u>Davorius Mack</u>	1-6-07	<u>C. McCh</u>	1-6-07

NOTICE TO INMATE OF CHARGES

THE ADJUSTMENT COMMITTEE HEARING WILL NOT BE HELD EARLIER THAN 48 HOURS OF THE INCIDENT DATE.

1. I () HAVE - () HAVE NOT RECEIVED A COPY OF THE VIOLATIONS AGAINST ME.
 2. I () DO - () DO NOT WANT AN INMATE REPRESENTATIVE APPOINTED.
 3. I () DO - () DO NOT WANT WITNESSES CONSIDERED FOR THE HEARING.

ACTION TAKEN PENDING HEARING

1. THIS INMATE'S HOUSING/CELL ASSIGNMENT WAS CHANGED FROM N/A TO N/A.
 2. THE INMATE'S PERSONAL INVENTORY PERMITTED TO BE MOVED? () YES () NO N/A
 IF NO, PROPERTY WAS INVENTORIED, PLACED IN INVENTORY CONTROL AND INMATE WAS RECEIPTED FOR HIS/HER PROPERTY.
 3. INMATE WAS REFERRED TO CLASSIFICATION OFFICER FOR RECLASSIFICATION. () YES () NO
 INMATE WAS RECLASSIFIED FROM _____ TO _____

INMATE SIGNATURE	DATE	SHIFT SUPERVISOR SIGNATURE	DATE
<u>Davorius Mack</u>	1-6-07	<u>C. McCh</u>	1-6-07
HEARING OFFICER SIGNATURE	DATE	SANCTIONS APPROVED/IMPOSED	DATE
<u>C. McCh</u>	1-6-07	<u>on time</u>	1-6-07

YORK COUNTY DETENTION CENTER

801

SUPPLEMENTAL EVENTS NUMBER

07-10101012

☐ ORIGINAL
REPORT☒ SUPPLEMENTAL
REPORT☐ ADDITIONAL
VICTIMS☐ ADDITIONAL
SUBJECTS☐ WITNESSES

PAGE 2 OF 2

will kill you!" This RIO then told ILM Mack to place his hands outside his flap. ILM Mack then complied. While he complied, ILM Mack continued to threaten this RIO stating "You shoot me you a dead mother fucker, I'll put a hit out on your ass". This RIO then removed ILM Mack's property and placed him on minimum standards.

NARRATIVE

ADMIN.

REPORTING OFFICER(S)

1. M. Guidry

DATE

01/05/07

UNIT #

904

SUPERVISOR APPROVAL

3. [Signature]

ADMINISTRATIVE APPROVAL

4. [Signature]

DATE

01-06-07

UNIT #

300

FOLLOW UP INVESTIGATION

☐ YES☐ NO

OFFICER

YORK COUNTY DETENTION CENTER

EVENTS REPORT

804

EVENTS NUMBER

017-15 00101015

EVENTS TYPE		EVENT LOCATION		TYPE VICTIM	
1. Threatening Others (Staff)		Hu-A / Max		☐ INDIVIDUAL ☐ STAFF MEMBER ☐ INMATE ☐ FACILITY ☐ PROPERTY ☐ OTHER	
2.					
3.		A ENTERED			
EXACT EVENT LOCATION (CELL #, CORRIDOR, HALLWAY, ETC.)		WEAPON OR CONTRABAND TYPE			
Hu-A / Max / Cell #21		N/A			
EVENT DATE 24 HR. CLOCK		DATE 24 HR. CLOCK			
01/05/07 16:10		01/05/07 16:15			
DAY OF WEEK (CIRCLE ONE)		DAY OF WEEK (CIRCLE ONE)			
SA SU MO TU WE TH (FR)		SA SU MO TU WE TH (FR)			
VICTIM #1:		VICTIM #2:			
VICTIM'S NAME (LAST, FIRST, MIDDLE)		VICTIM'S NAME (LAST, FIRST, MIDDLE)			
ADDRESS (NUMBER/STREET)		ADDRESS (NUMBER/STREET)			
CITY		CITY		STATE	
STATE		STATE			
SEX	RACE	D.O.B.	JACKET #	"HU" ASSIGNMENT	BED/CELL #
WAS HOUSING ASSIGNMENT CHANGED? ☐ YES ☐ NO		WAS HOUSING ASSIGNMENT CHANGED? ☐ YES ☐ NO			
IF YES, TO WHERE?		IF YES, TO WHERE?			
SUBJECT #1:		SUBJECT #2:			
SUBJECT'S NAME (LAST, FIRST, MIDDLE)		SUBJECT'S NAME (LAST, FIRST, MIDDLE)			
Mack, Davorius, Montraze					
ADDRESS (NUMBER/STREET)		ADDRESS (NUMBER/STREET)			
Brewer Ave.					
CITY		CITY		STATE	
Hartsville		S.C.			
SEX	RACE	D.O.B.	JACKET #	"HU" ASSIGNMENT	BED/CELL #
M	B		97709A	Hu-A	Cell #21
WAS HOUSING ASSIGNMENT CHANGED? ☐ YES ☒ NO		WAS HOUSING ASSIGNMENT CHANGED? ☐ YES ☐ NO			
IF YES, TO WHERE?		IF YES, TO WHERE?			
On Fri, Jan 5th, 2007. At approx 16:10 Hrs. This Reporting Officer (RIO) was assisting ofc. Hope in A-block. This RIO witnessed ILM Mack slide a uniform under his cell door. ILM Thompson in cell #18 who was on rec. at the time take the uniform and transfer it to cell #20 (ILM Wells). When this RIO, ABO Gorman, T.O. Howley and Ofc. Chapman arrived at ILM Mack's cell this RIO told ILM Mack to place his hands outside his flap, ILM Mack refused this RIO then drew his tazer and asked ILM Mack again to place his hands outside his flap ILM Mack stated "You shoot me motherfucker & I will kill you!!" He then complied but continued to threaten this RIO stating					
WAS ANYONE INJURED AS A RESULT OF THIS EVENT? ☐ YES ☒ NO					
IF YES, VICTIM # _____ SUBJECT # _____ OTHER ☐ SEE SUPPLEMENTAL REPORT					
WAS MEDICAL TREATMENT REQUIRED? ☐ YES ☒ NO IF YES, BY WHOM?					
TYPE OF DAMAGE: N/A					
REPORTING OFFICER(S)		DATE	UNIT #	SUPERVISOR APPROVAL	CORRECTIVE ACTION REQUIRED? ☐ YES ☒ NO
1. M. Humday		01/05/07	904	[Signature]	1-6-07 300
2.				ADMINISTRATIVE APPROVAL	
FOLLOW UP INVESTIGATION ☐ YES ☐ NO OFFICER: [Signature]					

YORK COUNTY DETENTION CENTER

805

SUPPLEMENTAL EVENTS NUMBER

0171-150101015

☐ ORIGINAL REPORT	☒ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL SUBJECTS	☐ WITNESSES	PAGE _____ OF _____

"You shoot me you are a dead motherfucker, I'll put a hit out on you" This RIO then applied the handcuffs and stripped his cell. ILM Mack was placed on minimum standards.

REPORTING OFFICER(S) 1. Miguel Juicy	DATE 01/05/07	UNIT # 904	SUPERVISOR APPROVAL [Signature]	DATE 01-05-07	UNIT # 300
FOLLOW UP INVESTIGATION ☐ YES ☐ NO			OFFICER: [Signature]		

YORK COUNTY DETENTION CENTER

ADMINISTRATIVE SEPARATION/
DISCiplinary ACTION REPORT

802

1409

PAGE 1 OF 2 PAGES

07-D000015

SECTION I: REPORT OF INCIDENT

REASON FOR SEPARATION: (CHECK APPROPRIATE BOX)

☒ ADMINISTRATIVE SEPARATION

☐ AS - 1 ESCAPE RISK

☐ AS - 2 MEDICAL OBSERVATION

☐ AS - 3 PAST ADJUSTMENT RECORD

☐ AS - 4 PRE-HEARING DETENTION

☐ AS - 5 PROTECTIVE CUSTODY

☐ AS - 6 SELF DESTRUCTIVE/SUICIDAL

☐ AS - 7 THREAT TO ORDERLY OPERATION OR SECURITY OF FACILITY

☐ AS - 8 CRIMINAL MISCONDUCT OR PENDING INVESTIGATION

ENTERED

TYPE OF INFRACTION: (CHECK APPROPRIATE BOX)

☒ CATEGORY II

☒ CATEGORY III

☐ CATEGORY IV

NOTE: A CATEGORY I INFRACTION REQUIRES AN INCIDENT / INFRACTION REPORT, 110031.F3

DATE	24 HR. CLOCK	INCIDENT LOCATION	INMATE'S NAME	JACKET #
21/05/07	16:10	Hu-A/Max/#21	Mack, Davorius, Montreze	97709A

NARRATIVE: PROVIDE A COMPLETE AND DETAILED DESCRIPTION OF THE INCIDENT (WHO, WHAT, WHEN, WHERE, WHY AND HOW).

On Fri, Jan 5th, 2007. At approx 1610 Hrs. This Reporting Officer (RIO) was in A-block assisting Ofc. Hope due to the fact that Ofc. Gunn was on break. Earlier on in the day Jim Wells (Cell #20) was placed on minimum standards due to the incident that had occurred with Ofc. Hope. At approx 16:10 Hrs. This RIO witnessed Jim Thompson (Cell #13) who was out on rec. at the time, walk to cell #21. Jim Mack (Cell #21) slid a uniform along with some other objects under the door of his cell. Jim Thompson then transferred the items from cell #21 to cell #20. This RIO, ABO Gorman, T.O. Howley and Ofc. Chapman placed Jim Thompson back in his cell, we then stripped cell #21 (Jim Mack) and placed him on min standards. We then went back into cell #20 and removed the property. Jim Mack began cursing this RIO while we entered his cell stating that this RIO was a mother-fucker and that if this RIO used the tazer he would kill this RIO. Jim Mack is in violation of category II-3 (Other Violations Committed II-14 (Conspiring, Aiding or Abetting), III-3 (Interfering w/ staff in performance of duties) and IV-4 (Disrespect, Swearing cursing). Recommend 35 days lockdown.

ADDITIONAL SPACE IS REQUIRED, USE PAGE 1 OF THIS FORM YGDC 110001.F4. BE SURE TO INCLUDE THE INMATE'S NAME AND JACKET # ON PAGE 2 AND SUBSEQUENT PAGES. PRINT YOUR NAME AND SIGN EACH FORM. ATTACH ANY OTHER REQUIRED REPORTS.

M. Goudy
REPORTING OFFICER'S PRINTED NAME

SI [Signature]
REPORTING OFFICER'S SIGNATURE

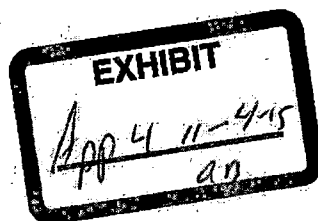
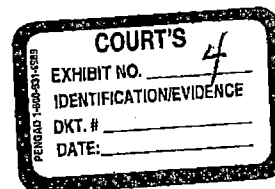
2-23-09

Dear Judge,

The Defendant Terrell Addison does not feel that he has been adequately represented; there are facts in the case that were not disclosed until today. He is requesting time to get adequate counseling.

Sincerely Yours,

Mr. and Mrs. Darryl Kennedy



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EXHIBIT
5 11-4-75
9B

432

Psychosocial Evaluation - 11/26/03
Addison, Terrell Antonio-MIS#: 277035
Page 2

File information

Psychological testing:

Wechsler Abbreviated Scale of Intelligence (WASI)
California Achievement Test (CAT)
Beery-Buktenica Developmental Test of Visual-Motor Integration (VMI)
Minnesota Multiphasic Personality Inventory - Adolescent (MMPI-A)
Jesness Inventory (JI)
Substance Abuse Subtle Screening Inventory - Adolescent, 2nd Ed. (SASSI-A2)
Patterns of Decision Making Scale (PDM)
Family-Peer Mesosystem Scale - Adolescent Version (FPMS-A)
Interpersonal Reactivity Index (IRI)

DJJ HISTORY AND SUMMARY OF CURRENT CHARGE

Terrell was Committed to the Upstate Evaluation Center on 10/28/03, after being adjudicated for the offense of Possession of Marijuana. His prior history with the Department of Juvenile Justice consists of charges of Other Acts Against Property and Disturbing School, which were initially Diverted to Arbitration on 07/30/02, and later resulted in Terrell being Placed on Auxiliary Probation, given a Suspended Commitment to R&E, a Sentenced Jail Detention, and requirement to complete Community Service Restitution in addition to Other Productive Assignments on 05/13/03. A charge of Public Disorderly Conduct was Dismissed on 06/09/03.

There was no Juvenile Petition included in Terrell's file packet regarding his charge of Possession of Marijuana, however a Police Incident Report indicates Terrell committed the offense of Possession of Marijuana, in that on 09/16/03, while on the campus of Northwestern High School in Rock Hill, South Carolina, he had in his possession a green leafy substance weighing 0.02 ounces, believed to be Marijuana. The Assistant Principal, Desmond Cato, contacted Officer A. Doster, who placed Terrell under arrest and transported him to the Law Enforcement Center. Further noted, according to Terrell's Commitment Order for Evaluation, he pled guilty to the charge of Possession of Marijuana.

JUVENILE'S ACCOUNT OF THE OFFENSE

Regarding his current charge of Possession of Marijuana, Terrell states, "A friend gave it to me to hold for him at school. I had smoked a cigarette at school, and they thought my eyes looked glazed, so they questioned and searched me and there it was." He insisted that it was only just a few flakes, it really did not amount to anything, and denied using the Marijuana himself. Terrell states his mother was angry when she found out about the behavior, told him not to ever do that again and put him on punishment.

The Police Incident Report indicates Terrell admitted to eating some of the Marijuana and giving a bag, containing a green leafy substance, to the assistant principal when questioned.

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Psychosocial Evaluation - 11/26/03
Addison, Terrell Antonio-MIS#: 277035
Page 4

Mrs. Kennedy states she and Terrell's stepfather are the primary authority figures in the home, and describe Terrell as an average teenager who unfortunately, is either always upset or depressed. She states Terrell is easily angered and argumentative, and reports for the last three years his behavior has drastically declined. Mrs. Kennedy states Terrell was initially placed on medication at age 9 and again at age 12, when he was started on new medications in an attempt to control his behavior. She states none of the medications have been effective in managing Terrell's behavior. Mrs. Kennedy states at home, the biggest problem she and Terrell's stepfather have to contend with Terrell's resistance to their authority, as he seems to have a major problem with the word "no". She states despite Terrell's unruly behavior at times, he shares a good relationship with his entire family, and a much closer relationship with his stepfather, who is sincerely concerned about Terrell's wellbeing. Mrs. Kennedy admits Terrell is sometimes verbally aggressive when upset as he uses profanity, and recalls one occasion in which Terrell told his stepfather to get out of his face, but reports he has never been physically confrontational towards her, his stepfather, or any family member.

Mrs. Kennedy attributes Terrell's negative behavior to his immaturity, mental health issues, manipulative demeanor, and difficulty understanding family rules. She states Terrell's behavior seemed worse after he started using medication, and reports Terrell has problems with short term memory as well. Mrs. Kennedy reports Terrell has difficulty simply understanding, rationalizing, or in making the connection between a response and expected behavior. She gives the example that on one occasion, Terrell's two-year-old niece, hit him on the arm after which Terrell got aggravated, started to whine, and asked her to please make his niece leave him alone, rather than just going to another area of their home. Mrs. Kennedy states Terrell was very serious, failed to understand the expected behavior of a two year old, and indeed felt like his two year old niece was picking on him. She states Terrell also lacks social skills and gets upset and depressed when people shun him because of his behavior, which is childish.

Mrs. Kennedy states Terrell also makes poor choices in friends, is easily influenced by others and often does very weird stuff for attention, which always gets him into trouble. She states Terrell does not have a curfew as he is not allowed to go anywhere without permission, and reports either she or Terrell's stepfather provide transportation for Terrell to and from approved activities. Mrs. Kennedy states Terrell is not allowed to have a lot of freedom at the present time because of his past behavior, which consisted of him going to unapproved places on the way to, or from, the places he was given permission to go. She states Terrell does not easily accept punishment until the situation at home gets ugly and results in turmoil in their home, which causes them to be stricter on Terrell. Mrs. Kennedy states Terrell's chores are to clean his room, take out the trash, and occasionally help her with her side job of cleaning condos. She states no corporal punishment is used in correcting Terrell's behavior and reports when Terrell misbehaves he is placed on restriction, which includes loss of phone privileges and confinement to their home. In addition, Terrell is required to rake the leaves, which he detests.

Mrs. Kennedy states as a family, they enjoy quality time by eating their meals together, going to football games, and attending church. She states she and her family currently attend Kay Branch

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Psychosocial Evaluation - 11/26/03
Addison, Terrell Antonio-MIS#: 277035
Page 6

Regarding a family history of mental health, substance abuse, and legal difficulties, Terrell denies knowing anyone in the family with mental health problems or alcoholism. However, he states he, his brother, and his cousins in Hartsville all have used Marijuana, but he adds he does not ever see his cousins in Hartsville and is not around them. He states he and his brother both have had difficulty with the law. As noted above, his brother is currently in prison on a gun charge and previously served time for failure to pay child support. Terrell has a cousin in Hartsville who was arrested for phone harassment.

ADOLESCENT FUNCTIONING

Behavioral Observations

During his psychological evaluation, Terrell seemed aware of his surroundings, the nature of his offense, and the time. His mood was anxious and worried and his affect was congruent. His speech was clear, generally goal-directed, and relevant. Rapport was easily established and maintained with this young man, and his eye contact was relatively good. He responded to and initiated conversation with the examiner, was polite, worked cooperatively, and appeared motivated to perform his best. It should be noted, Terrell appeared somewhat guarded in his responses, minimized his behavioral difficulties and appeared to tell the examiner that which he felt would put him in the most positive light. He was very easily distracted and seemed to have difficulties with his concentration. His thought processes seemed to be somewhat tangential, and he displayed a good deal of hyperactive activity, both verbally and physically. Therefore, test results may be a slight underestimate of his true levels of ability and not altogether reliable with respect to his behavior and history.

Relevant History

Mrs. Kennedy denies experiencing any complications during her pregnancy with Terrell or at his birth, and reports aside from Terrell's mental health issues, his growth and development since have been normal.

Mrs. Kennedy states family members with a history of substance use include Terrell, his brother Thomas, who also uses Marijuana, his birth father, who is an alcoholic, and several of Terrell's paternal family members, who abuse alcohol and drugs as well. She states family members with a history of delinquent or criminal activity include Terrell, his father, and his brother, Thomas, in addition to several of Terrell's paternal cousins, who are often disobedient. She reports one of Terrell's cousins is currently in jail for rape. Mrs. Kennedy states family members with a history of mental health issues include Terrell and most of his extended paternal family members, who in her opinion must have serious mental problems because they stay into so much trouble. She further states Terrell's father used to be very immature, and acted stupid until age 40 when he began to turn his life around.

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Psychosocial Evaluation - 11/26/03
 Addison, Terrell Antonio-MIS#: 277035
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was worrying about his brother, who was in jail. He denies appetite or sleep disturbance since stopping his medication. He said he once threatened suicide but never meant it. He frequently worries about his brother and his mother, adding, "She has been very stressed out by bills lately." He denies unusual fears or panic attacks, but says it gives him a headache to be in a crowd of people because of the noise. He denies symptoms of Posttraumatic Stress Disorder or eating disorders.

Terrell acknowledges being easily distracted, having difficulty sustaining his attention, having trouble listening, making careless mistakes, having difficulty following through with responsibilities, misplacing things, and being forgetful. He was noticeably distracted and fidgety and talked excessively throughout the evaluation. He states he leaves his seat in class, feels restless indoors and has difficulty waiting his turn, but he denies blurting out answers, being disorganized, avoiding tasks which require concentration, or interrupting and intruding on others; however, he was observed to interrupt the examiner on a number of occasions.

Regarding those behaviors associated with Oppositional Defiant Disorder, Terrell acknowledges he is easily annoyed, quick to anger, and vindictive. He states he sometimes argues with adults and refuses to do what they tell him to do, but he denies being resentful, deliberately annoying others, or blaming others for his mistakes. He says he does not lose his temper anymore, since he has stopped taking his medication.

Regarding those behaviors associated with Conduct Disorder, Terrell acknowledges punching a hole in the wall once when he was angry and stealing some money from his father when he was 3 or 4 years of age. He has other violations, as noted above in his DJJ history. He denies all other symptoms of Conduct Disorder.

Cognitive Functioning and Academic Achievement

Prior Test Results

4/24/02 Rock Hill School District #3
 CA=14-0 Grade Placement=7th

WISC-III

<i>Verbal</i>	<i>Scaled Score</i> <i>(Ave. = 10 +/- 3)</i>	<i>Performance</i>	<i>Scaled Score</i> <i>(Ave. = 10 +/- 3)</i>
Information	6	Picture Completion	9
Similarities	9	Coding	7
Arithmetic	8	Picture Arrangement	1
Vocabulary	6	Block Design	3
Comprehension	7	Object Assembly	1
Digit Span—not given			

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<i>Scale</i>	<i>IO</i>	<i>Range of Ability</i>	<i>Percentile Rank</i>
Verbal	77	Borderline	6
Performance	71	Borderline	3
Full Scale-4	72	Borderline	3

Among the verbal subtests, Terrell's scores ranged from poor to low average, which indicates significant unevenness in the development of his verbal reasoning abilities. He exhibited a weakness in his poor verbal expression and accumulated verbal ability and a strength in his low average verbal concept formation and verbal abstract reasoning. Among the performance subtests, his scores ranged from poor to low average, as well, indicating unevenness in the development of his nonverbal reasoning abilities. He exhibited poor abstract nonverbal reasoning and spatial perception, while his nonverbal analogous reasoning was low average for his age.

Terrell's academic achievement in reading and math was assessed by the CAT. His reading and math skills are significantly delayed for his age and grade placement but at the level expected given his current intellectual functioning (Reading grade equivalent = 4.6 - 6.2, Math grade equivalent = 5.6 - 7.2).

Terrell's visual-motor integration development, as measured by the VMI, is delayed for his age and slightly above the level expected given his current intellectual functioning on nonverbal tasks (VMI standard score = 82, low average range).

Behavioral/Personality Functioning

With regards to aggressive behavior, Terrell denies any homicidal ideation. He denies being verbally aggressive, but states he has gotten into several fights after moving to Rock Hill, all of which were in self-defense, and there were times when he did not fight back. He states the last fight he was in occurred at school, about a week before he went to court, when he was jumped by three or four students at his school.

Terrell states other students at his school like him, because, "I'm honest, take the blame, don't rat on others, I respect them and they respect me, and I treat them nice and they treat me nice." Terrell states he used to feel badly about himself, but now he feels good and confident he will be able to behave better in the future. He says his best quality is he is easy to get along with. If he could change one thing about himself, he states he would stop having anything to do with drugs and take his "attitude towards drugs away."

Terrell states when he is faced with difficulty, he usually asks someone for help, "Any adult there or anybody I trust, such as a counselor or principal or my whole family." With respect to his attitude towards authority, Terrell states he "don't feel that bad" about people in authority, because, "When I get 18, I don't have to listen to no more teachers or parents, but it ain't that bad, and I can do it."

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Terrell's responses on the MMPI-A indicate significant psychopathology, including symptoms typically exhibited by adolescents in inpatient settings. Youngsters, who responded similarly to him, tend to have inadequate defenses and poor stress tolerance. They feel insecure and inadequate and have substantial difficulty in modulating their feelings and expressing their emotions in appropriate ways. They have been described as depressed and anxious, exhibit deviant thought and behavior, and some experience auditory or visual hallucinations. Terrell's responses indicate he is somewhat paranoid and feels persecuted and mistreated. He acknowledges some difficulty with drug or alcohol use. These youngsters tend to have poor reality testing, deficits in impulse control, a thought disorder or psychotic thought processes, and the presence of paranoid symptomatology including hallucinations and delusions. They often have a violent temper and anger control problems, and when angry these teenagers may express their feelings directly. They report they often feel like swearing, smashing things, or starting a fight, and they frequently get into trouble for breaking or destroying things. They report having considerable problems with irritability and impatience with others. They throw temper tantrums to get their way. They are hot headed and often feel they have to yell to get their point across. They get into fights, especially when drinking, and they do not like others to hurry them or to get ahead of them in line. They tend to have negative views of themselves and do poorly in school. They are likely to yield to others' pressures, changing their minds or giving up in arguments. They tend to let other people take charge when problems have to be solved, and they do not feel they are capable of planning their own future. They become uncomfortable when others say nice things about them, and they may be confused and forgetful. As might be expected, these youngsters have numerous difficulties in school. They tend to have poor grades, a history of suspensions, truancy, negative attitudes towards teachers, and dislike school in general. Friendship is the only pleasant aspect of school reported by these teenagers, and they do not participate in school activities or sports. They believe school is a waste of time, are bored with school, and feel sleepy at school, and some of these youngsters report being afraid to go to school.

PEER RELATIONS

Mrs. Kennedy states Terrell's current friends are the same age as Terrell and seem to be good influences, especially Terrell's friends whose parents she and Terrell's stepfather know fairly well. She states Terrell is not considered a problem in the community and to her knowledge has never been involved in a gang. Mrs. Kennedy states Terrell used to participate in a couple of school sports, such as basketball and football, but was kicked off of those teams because of his failure to follow school rules, which ultimately resulted in Terrell's suspension from school on several occasions. She states Terrell may do well in a mentoring program where he is provided structure and encouragement, instead of being turned away because of his behavior. Mrs. Kennedy states Terrell has a girlfriend named Patrice, age 14, whose last name she cannot recall, and reports Terrell admits he is sexually active. She states she and Terrell's stepfather have talked with him on several occasions about sex related issues, and are aware Terrell has received sex education in school.

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his behavior and grades soon declined. Mrs. Kennedy states during the 2002-03 school year Terrell was suspended from March 2002 until the last day of school, after which a manifestation hearing was conducted and Terrell was approved for 20 home bound hours. She states she and Terrell's stepfather are very disappointed with the school system, as Terrell's homebound instruction did not take place until the summer of the 2002-03 school year. Mrs. Kennedy further states she and her husband have pleaded repeatedly with the school system to provide Terrell with self contained classes to meet his needs, but have been ignored. She states the Virtual High School Program is not mandatory and Terrell often leaves school at the end of his other classes and roams the streets. Mrs. Kennedy states Terrell has never been expelled from school as his problems are related to his behavior and reports she and her husband are in the process of pursuing placement for Terrell at John De la Howe, where they hope his educational and behavioral needs will be met.

Educational information provided by the community and obtained from Terrell's Client Assessment Form indicates Terrell attended regular classes prior to being in self-contained classes which recently started.

Terrell reports he is in ninth grade, enrolled in the virtual high school at Northwestern High School, going to school in the morning, leaving at 12:00. He says there is another person (teacher) who helps him with his English and reading, but the virtual high school is computer-based and there is really no one that answers questions or explains his work to him. He appears to dislike this situation and would prefer to be back in a regular school environment. He reports repeating fifth grade in Hartsville and then moving to Rock Hill. He says he typically makes B's and C's, "but I have been doing bad in ninth grade and have made a couple of F's this year." He reports attending school on a regular basis, without skipping school or classes. He says, if his teachers were here and could describe his behavior at school, they would say it was good and they do not have to call him down. He acknowledges he was suspended once for fighting and expelled from school in fifth grade because of continually getting into trouble. He indicates positive feelings about school, says he plans to graduate from high school, and get his masters in technology. He also would like to play sports.

COMMUNITY FUNCTIONING

Mrs. Kennedy states she and her family live in the Rock Hill city limits, in a one story, three bedroom, two bath, wood siding home, located in Berryhill Court. She states she and her family have lived in their home which is located on a cul-de-sac for three years, and describes the area where they live as safe and quiet. Mrs. Kennedy states she and her family are fairly acquainted with their neighbors, whom they speak to in passing and only know by sight. She admits she and her husband rarely socialize with their neighbors as they enjoy their privacy, but reports Terrell and his sister often hang out with the neighborhood kids. Mrs. Kennedy states she and her family have encountered no problems with their neighbors who seem pleasant and friendly, and reports she and her husband are both licensed drivers with reliable transportation. She states the nearest business to their home is a Winn Dixie grocery store less than a mile away.

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attendance and conduct, which has resulted in numerous in-school and out-of-school suspensions, in addition to a referral to Rebound Alternative School. According to his mother, Terrell has never been expelled from school and after a manifestation hearing, he was approved for 20 Homebound hours which did not take place until the summer of the 2002-03 school year.

Terrell's current intellectual functioning is estimated to be within the borderline range. This score would indicate he has significant difficulty with decision-making and problem solving skills and likely will not be able to do work on grade level. His achievement in reading and math is approximately fifth and sixth grade level, and while his academic skills are delayed for his age and grade placement, they are commensurate with his mental ability. His visual-motor integration development is low average for his age but above the level expected given his nonverbal IQ. Terrell states he is currently in a virtual school program, where he has his educational experiences via computer on an abbreviated school day, getting out at 12:00 in the afternoon.

Terrell's history is significant for separation of his parents at a young age. His mother has remarried, his father has remarried, and until very recently, he has not had any consistent relationship with his father, since he left the home when Terrell was quite young. Terrell seems anxious to paint his father as an ideal father figure who is strict, does not allow drugs or alcohol use, and has plenty of room for him at their home.

Terrell's history is significant for Attention-Deficit/Hyperactivity Disorder, behavior and mood problems, irritability, and difficulty in his interactions with his family and school. He has recently had three brief psychiatric hospitalizations to help stabilize his medication. He states he currently is not on any medication and is doing better than he was before. He is less irritable, less angry, and more able to be compliant. On the other hand, he is very hyperactive, distractible, and has difficulty with impulsivity.

Terrell does not appear to be a substance abuser at this time. However, his being caught with Marijuana and acknowledging he smokes on an occasional basis indicates this should be a focus of treatment.

Terrell appears to have an Oppositional Defiant Disorder, difficulties with anger control, anger management, and anxiety, as well as Attention-Deficit/Hyperactivity Disorder. He describes symptoms of depression and anxiety. He appears to have some insights into his behavioral difficulties, but only minimally acknowledges his responsibility. He shows no remorse for his actions, only remorse at being at UEC.

STRENGTHS

1. Likes to run track
2. Good in sports

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Rossalyn Butler, LMSW
Rossalyn Butler, LMSW
Social Worker

Sandra W. Pait, MS, Sp.
Sandra W. Pait, MS, Sp.
Psychologist III

Joyce R. Jones, LMSW
Joyce R. Jones, LMSW
Coordinator of Treatment Services

Todd Morton, Ph.D.
Todd Morton, Ph.D. *Lysa W. Pait*
Supervising Psychologist

sdc

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**SOUTH CAROLINA DEPARTMENT OF JUVENILE JUSTICE
UPSTATE EVALUATION CENTER
PSYCHIATRIC EVALUATION**

NAME: Terrell A. Addison

MIS#: 277035

DATE: 11/26/03

Referral Statement:

Terrell A. Addison was referred for psychiatric evaluation in addition to the comprehensive psychological and social work evaluations being conducted at the Upstate Evaluation Center. He was referred for psychiatric evaluation in order to screen for any serious mental illness and/or to consider whether psychotropic medications should be considered for Terrell. More in-depth information on the family and school background, intellectual and academic functioning, and personality of this juvenile can be found in the accompanying psychosocial evaluation.

Terrell states he is here on a charge of Possession of Marijuana.

Sources of Information:

Personal Interview on 11/20/03

File Information

Psychological Evaluation

Family History:

Terrell lives with his mother, his stepfather, a stepsister, age seventeen and a half-brother, age twenty. He says that his twenty-year-old brother is currently in jail. Terrell's stepfather has been in the family since Terrell was about five years old.

Terrell describes his mother and stepfather as kind and nice. He says they get along well. He says that his stepfather is strict but is fair.

Terrell sees his biological father frequently. He says he visits him on weekends. It appears that Terrell does have an ongoing relationship with his biological father.

Current Charges:

Terrell states he was holding some Marijuana for a friend and the school principal thought that Terrell looked "high" and so searched him and found the Marijuana. Terrell denies that he had smoked Marijuana at that time but says that he had smoked a cigarette. I asked about his use of Marijuana and at first he said he had only used it once or twice in his life. But later he indicated that he had used Marijuana about every three weeks and then he also indicated that even though he had begun smoking cigarettes he actually

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Psychological testing indicates that he functions in the borderline range of intelligence.

Mental Status:

He was quite defensive during the interview. He minimized any type of problem he had especially in regard to behavior. He was aware that I would be making a report and a few times he told me that I should not record information he gave me because either it was unimportant or because it was not on his record. He kept asking me how long he would be here and he seemed to feel that what he told me would have a bearing on his immediate prospects of being released. Also, he seemed intent on assuring me that all of the charges would be dropped because he was here on his first offense.

During the interview he behaved in a manner typical of someone with Attention-Deficit/Hyperactivity Disorder. He picked up papers and wanted to read them and he wanted to look in his file and he kept moving around and looking around and asking about things in the room.

Drugs:

At first he told me he had used Marijuana only two or three times. Later he said that he had used "weed" more than tobacco. He denied the use of Cocaine or other illegal drugs. He says that he tasted beer once.

Plans:

He says that he wants to play professional sports. I asked what sport and he responded football, baseball and basketball. I asked what he would do if he didn't make a professional team and he assured me that he would make it. Then he answered my question by stating that he might decide to be a chiropractor.

Response to the Upstate Evaluation Center:

He says he doesn't like it here. He says he has learned that bad behavior can lead to consequences. He assured me that he doesn't ever want to come back to this facility.

Summary:

The record indicates that he has had a history of repeated behavior problems. He tends to minimize these or to not feel that they are serious. The record does not indicate that his behavior has improved as a result of counseling or of efforts to help him understand his behavior. He obviously does not feel that he has done anything wrong.

He has been diagnosed as having Attention-Deficit/Hyperactivity Disorder. This diagnosis is most likely accurate. He has also been treated for depression and anxiety. He indicates that the treatment for depression and anxiety has not helped.

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SOCIAL SUMMARY**Date: October 24, 2003****Name: Terrell Antonio Addison****PRIOR COURT HISTORY**

<u>Date</u>	<u>Charge</u>	<u>Disposition</u>
7/30/02	Disturbing School and Interfering With a Fire Alarm	Diverted to the Arbitration Program which he completed
5/13/03	Threatening a School Official, Disturbing School	Placed on probation for six months with suspended commitment to the Reception and Evaluation Center, ordered to cooperate with counseling and Auxiliary Probation Officer, ordered ten hours of community service, Project Right Turn, twenty-four hour detention at Moss Justice Center and write a letter of apology to the teachers by Judge Henry T. Woods.
6/9/03	Public Disorderly Conduct	Dismissed per solicitor - This occurred in Darlington County.

PRESENT STATUS

Terrell is presently on probation with suspended commitment to the Reception and Evaluation Center.

FAMILY HISTORY

Mother's Name: Frandolyn Kennedy
Age: 37
Criminal History: None

Address: [REDACTED]
Employer: Wells Fargo
Fort Mill, SC

Father's Name: Gary Addison

There is no information known about him except that he lives in Darlington, SC.

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Terrell's parents have expressed a concern due to Terrell's behavior and verbal outbursts in the home, however, the Department of Juvenile Justice has no information from any of Terrell's previous hospitalizations, diagnoses, or treatment plans. The parents have reported using several counseling agencies, and many medication modules to no avail.

If Terrell is adjudicated delinquent today, the Department of Juvenile Justice recommends an Evaluation at this time. The Department of Juvenile Justice will leave its recommendations in the Court's discretion as to whether it should take place in the Evaluation Center or in the community. Terrell is under a Suspended Commitment to the Reception and Evaluation Center, however, if the Court feels that a community evaluation is more appropriate, it be done on an emergency basis.

State v. Addison
Witnesses

- Terrell Addison
- Fran Kennedy
- Darryl Kennedy
- Dept. of Juvenile Justice - Custodian
of Records
- Dr. Donna Schwartz-Watts
- Bruce Balmer
- Kelvin Hough
- Tiyone Evans
- Johnetta Evans
- Sgt. V. T. Harmon - Rock Hill PD
- Officer Miguel Guidry - York Det. Ctr.
- Officer David Gunn - "
- Officer Robert Guzmann - "
- Officer Frank Gutierrez - "
- Thomas Wilson



STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Terrell Addison,)
S.C.D.C. No. 333413,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
OF THE SEVENTH JUDICIAL CIRCUIT

2013-CP-46-3728

ORDER OF DISMISSAL

FILED-RECEIVED
2016 MAY 24 AM 8:54
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 9, 2013. Respondent made its Return on or about June 17, 2014. An evidentiary hearing into the matter was convened on November 4, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Tricia Blanchette, Esquire. Justin Hunter, Esquire, of the South Carolina Attorney General's Office represented Respondent. At the hearing, Applicant testified on his own behalf. Applicant's trial counsel, Jack Swerling, Esquire, also testified. Also testifying were Dontavious Mack; Davorius Mack; Phil Beatty, Esquire; Lieutenant Vernon Harmon; Officer David Gunn; Officer Miguel Guidry; Fran Kennedy; Darryl Kennedy; and Willy Thompson, Esquire. This Court had before it a copy of Applicant's records from the York County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's PCR Application, and Respondent's Return.

I. PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. Applicant was indicted by the February

2007 term of the York County Grand Jury for Criminal Conspiracy (2007-GS-46-0670), Murder (2007-GS-46-0671), Armed Robbery (2007-GS-46-0672), Possession of a Weapon During the Commission of a Violent Crime (2007-GS-46-0673), and Kidnapping (2007-GS-46-0676). Jack Swerling, Esquire, (hereinafter "Counsel") represented him. On February 27, 2009, Applicant proceeded to a jury trial pursuant to which he was found guilty of all charges as indicted. The Honorable Lee S. Alford sentenced Applicant to confinement for five (5) years for Criminal Conspiracy; thirty (30) years, concurrent, for Murder; ten (10) years, consecutive, for Armed Robbery; five (5) years, concurrent, for the weapons charge; and ten (10) years, concurrent, for Kidnapping.

A notice of appeal was filed and an appeal perfected pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Addison, Op. No. 2012-UP-655 (filed December 12, 2012). The Remittitur was issued on January 4, 2013.

In this PCR action, Applicant alleged he was being held unlawfully for the following reasons:

1. Ineffective assistance of trial counsel for failure to communicate and pursue all viable plea offers to/for Applicant and to ensure that he and his family had a full understanding of all plea offers and/or options before proceeding to trial.
2. Ineffective assistance of trial counsel for failure to utilize Applicant's mother as a witness and records stemming from his mental health treatment in support of his defense.
3. Ineffective assistance of trial counsel for failure present witnesses to support Applicant's defense of duress and/or coercion in camera and/or following the trial court's ruling on the matter.
4. Ineffective assistance of trial counsel for advising Applicant to proceed to trial on a primary defense (duress/coercion) that is not cognizable on a murder charge. See State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998).

5. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

II. APPLICABLE LAW

In a post-conviction relief action, the applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony

accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds Counsel's testimony to be credible and persuasive on all matters. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Ineffective Assistance of Counsel

Ineffective assistance of trial counsel for failure to communicate and pursue all viable plea offers to/for Applicant and to ensure that he and his family had a full understanding of all plea offers and/or options before proceeding to trial

Applicant presented testimony from two of his codefendants, Dontavious Mack and Davorius Mack. Dontavious Mack testified that Deputy Solicitor Thompson told him that if he pled guilty, his codefendants would receive specific sentences and that Applicant specifically would receive a fourteen year non-violent sentence. Davorius Mack testified that when he pled guilty, he thought that Applicant would receive a fifteen year sentence. Applicant also presented testimony from Davorius Mack's attorney, Phil Baity, Esquire, who testified as to Davorius Mack's plea offer and testified that he could not recall the offer being contingent on other plea offers but that he would defer to his client.

Deputy Solicitor Willy Thompson testified that the original plea offer to Applicant was a straight up plea to murder for thirty years' imprisonment. Deputy Solicitor Thompson further testified that a week before trial, the State offered Applicant to plea to voluntary manslaughter for a twenty year sentence. Deputy Solicitor Thompson testified that the State never presented

Counsel testified that the original plea offer to Applicant was a straight plea to murder for thirty years. He testified that the offer then went to twenty years for voluntary manslaughter, and that an offer for zero to fifteen years was never an option. He testified that he met with Applicant's parents in January 2009 to discuss Applicant's case and the plea offer. He testified that he talked to Applicant's parents about Applicant's case and explained to them the "hand of one is the hand of all" doctrine. Counsel testified that Applicant's parents seemed to be more concerned with Applicant's mental health. Counsel testified that he met with Applicant in early February 2009 and Applicant would not take the plea offer. He testified that he spoke to Applicant's father again in February about the case and plea offer. Counsel testified that he met with Applicant and Deputy Solicitor Thompson and made a counteroffer of pleading to a fifteen year sentence. Counsel testified that he also explained the counteroffer to Applicant's mother but she did not seem to understand it.

Counsel testified that he explained to Applicant and Applicant's parents the potential sentences Applicant faced under the plea offer and if he went to trial, and explained the likelihood of conviction if he went to trial. Counsel further testified that just before the day of trial, the State offered a plea deal for a twenty year sentence. Counsel testified that he met with Applicant and Applicant's parents again to relay this offer and it was rejected. Counsel testified that during plea negotiations Applicant wanted a five year sentence, which Counsel explained to Applicant was not possible on a murder charge. Additionally, Counsel testified that he never told Applicant or Applicant's parents about a zero to fifteen year plea offer because such an offer was never made by the State. Counsel testified that he advised Applicant that he should take the plea offer but that Applicant ultimately made the decision to proceed to trial.



Applicant testified that he met with Counsel to discuss the plea offers, testifying that the first offer was for thirty years and the next was for twenty years. He testified that he did not hear of an offer for a sentence less than twenty years. Applicant's mother, Fran Kennedy, testified that Counsel called her and told her a plea was possibly on the table but he could not make any promises. She testified that Counsel told her of a plea offer for seven to ten year sentence. She testified that the offer before trial was for twenty years and asked Counsel about the seven to ten year offer but was told by Counsel that she must not have remembered correctly. Applicant's stepfather, Darryl Kennedy testified that he met with Counsel to discuss the case and plea offers. Mr. Kennedy testified that he thought there was an offer for seven to ten years but Counsel recommended that Applicant take the twenty year offer.

This Court finds that Applicant failed to meet his burden of proving that his trial counsel was ineffective. First, this Court finds that Applicant has failed to prove that Counsel was deficient for failing to communicate and pursue all viable plea offers. To be successful on an allegation of an un conveyed plea offer, Applicant must prove: (1) trial counsel's failure to communicate the State's initial plea offer constituted deficient performance, and (2) Applicant was prejudiced by the deficient performance, or there was a reasonable probability that but for this deficient performance, he would have accepted the original plea offer. Davie v. State, 381 S.C. 601, 608, 675 S.E.2d 416, 420 (2009). This Court finds that Counsel met with Applicant many times to relay the State's plea offers that included a thirty year plea for murder and then a twenty year plea to voluntary manslaughter. This Court finds that Counsel also kept Applicant's parents well informed of these plea offers by meeting with them and communicating with them on the phone. This Court further finds Counsel's and the Deputy Solicitor's testimonies to be credible that Applicant's potential sentence was never contingent on the codefendants' pleas and



that his plea offers consisted of a thirty year plea to murder and later a twenty year plea to manslaughter – but never for a sentence less than twenty years. This Court also finds Counsel's testimony to be credible that Applicant rejected all plea offers and that it was Applicant's decision to go to trial despite Counsel's advice to take the plea. Applicant also corroborated Counsel's testimony by testifying that his original plea offer was for thirty years and later for twenty years, but not for any amount less than twenty. This Court finds that Counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court finds that he properly informed Applicant and Applicant's parents of the State's plea offers and his performance was not deficient. Furthermore, Applicant has not demonstrated that he wanted to accept either plea offer and has not reasonable probability he would have entered into any plea agreement the State offered. Davie, 381 S.C. at 608, 675 S.E.2d at 420. Therefore, he has not shown he was prejudiced by Counsel's performance regarding plea negotiations and this allegation must be dismissed.

Ineffective assistance of trial counsel for failure to utilize Applicant's mother and as a witness and records stemming from his mental health treatment in support of his defense

Applicant's mother testified that she wanted the jury to hear about Applicant's mental issues and wanted to testify at trial so she could tell the jury that Applicant had a rough upbringing with ADD and ADHD, was a follower, and easily persuaded. She testified that Applicant went to Three Rivers Behavioral Health for his ADD and ADHD and other behavioral issues and was on medication until he was seventeen years old. During the hearing, Applicant's mother and Applicant's PCR counsel went over Applicant's mental evaluation that was conducted by the Department of Mental Health prior to the trial where Applicant was found



competent to stand trial. The record reflects that Applicant was evaluated pursuant to State v. Blair¹ by the Department of Mental Health on July 18, 2007, pursuant to an order by the trial court and found competent to stand trial. See Tr. Transcript 33, ll. 4-24. The trial court made the finding that Applicant was competent to stand trial, not in need of mental health treatment, and able to assist Counsel with his defense. See Tr. Transcript 34, ll. 6-13.

Counsel testified that he did not call Applicant's mother as a witness and she was only on his witness list as a precaution. He testified that Applicant's mental health was not relevant to the trial and that ADD/ADHD did not have anything to do with this case or with Applicant's defense. Counsel further testified that he had Applicant evaluated by forensic psychiatrist Dr. Donna Schwartz-Watts who opined that he was competent to stand trial. He also testified that he further consulted Dr. Schwartz-Watts about Applicant's coercion defense wherein Dr. Schwartz-Watts found that Applicant was not likely to be coerced but rather was easily influenced. Counsel testified that he consulted Dr. Tora Brawley who also said that he was unlikely to be coerced. Counsel testified that he did not bring out Applicant's mental health history during trial because it would have been contrary to the defense's strategy and would not aid the defense.

Counsel testified that he tried to bring out Applicant's ADHD and treatment on direct examination but the State objected based on relevance and the trial court sustained the objection. See Tr. Transcript 852, l. 20 – 853, l. 9. He testified that he brought out Applicant's mental and emotional health and its history during sentencing mitigation, which is reflected in the transcript. See Tr. Transcript 1221-1224.

This Court finds that Applicant has not met his burden of demonstrating that Counsel's performance was deficient. This Court finds that Counsel pursued a strategic decision not to call Applicant's mother as a witness because she would not have aided in the defense. This Court

¹ 275 S.C. 529, 273 S.E.2d 536 (1981).

finds that Applicant's mother's testimony and Applicant's mental health records would not have aided Applicant's defense to armed robbery, criminal conspiracy, and murder, especially given the defense's strategy of asserting that Applicant was coerced into the robbery and conspiracy. Additionally, this Court finds that Counsel was not deficient because he did begin to bring up Applicant's ADHD treatment but was prevented from doing so based on a sustained relevance objection. As such, Applicant was not prejudiced by Counsel's performance because the trial court did not find such information to be relevant when Counsel attempted to present such evidence. Accordingly, this allegation must be dismissed.

Ineffective assistance of trial counsel for failure present witnesses to support Applicant's defense of duress and/or coercion in camera and/or following the trial court's ruling on the matter.

Applicant presented several witnesses who he asserts should have testified on his behalf at trial. The witnesses in question were officers who would have testified to specific incidents showing Davorius Mack's threatening character that Applicant asserts would have helped establish his duress and coercion. First, Lieutenant Vernon Harmon of the Rock Hill Police Department testified that he was not subpoenaed by Counsel to testify at trial. He testified that he would have presented to the trial court an incident report from October 19, 2006 showing Davorius Mack's attempted escape from the York County Detention Center and malicious damage to property in the York County Detention Center.

Next, Officer David Gunn, lead booking officer for York County Detention testified that he was not subpoenaed by Counsel to testify at trial. He testified that he would have presented to the trial court a disciplinary action report from the York County Detention Center showing threats made to Detention Center officers by Davorius Mack on February 7, 2007.

Officer Miguel Guidry testified that he was not subpoenaed by Counsel to testify at trial. He testified that he would have presented to the trial court a York County Detention Center



incident report and disciplinary action report from January 5, 2007 showing Davorius Mack making threats to Detention Center officers.

Counsel testified that he did subpoena Lieutenant Harmon, Officer Gunn, and Officer Guidry for trial. He testified that at the time of trial he did not need them to testify for the defense. Counsel further testified that he brought out all of Davorius Mack's incidents on cross examination. He pointed out this testimony to the Court, showing he questioned Davorius Mack about pleading guilty to attempted escape and malicious injury to property. See Tr. Transcript 33, ll. 10-23. Counsel also pointed out his testimony where he questioned Davorius Mack about threatening Officers Guidry and Gunn. See Tr. Transcript 417, ll. 15-24. Counsel testified that he generally does not call police officers unless it becomes absolutely necessary. He testified that in this case, the officers' testimonies would have been important if Davorius Mack had denied committing the offenses in question, but the officers were not needed since Davorius Mack admitted committing the offenses on cross examination.

This Court finds that Counsel's performance was not deficient in failing to call Lieutenant Harmon, Officer Gunn, and Officer Guidry to testify. This Court finds that Counsel had a valid trial strategy of bringing out these incidents from Davorius Mack on cross examination and only planning to call the officers if Davorius Mack had denied committing the offenses. The record reflects that Counsel was able to get Davorius Mack to admit the offenses in question on cross examination. As the officers' testimony would have been cumulative, this Court finds that Counsel was not deficient in failing to call the officers as witnesses. Additionally, Applicant was not prejudiced by Counsel's failure to call the officers because the testimony was brought out through admissions by Davorius Mack. Furthermore Counsel was not deficient for failing to call Applicant's parents to testify for the defense for the reasons outlined in the preceding section.



As to any other unnamed potential witnesses that Applicant alleges Counsel failed to call, this Court finds that Applicant has failed to show that any prejudice resulted because such witnesses did not testify at the PCR hearing and any testimony would be mere speculation. See Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998) (A PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial). Accordingly, this allegation must be dismissed.

Ineffective assistance of trial counsel for advising Applicant to proceed to trial on a primary defense (duress/coercion) that is not cognizable on a murder charge.

See State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998). Counsel failed to communicate with Applicant.

Applicant alleged that Counsel was deficient for proceeding on a duress/coercion defense that is not cognizable on a murder charge. Counsel testified that early on in his representation, he communicated with Applicant and Applicant's parents to develop the trial strategy. He testified that he asked Applicant and Applicant's parents for potential witnesses or alibis but they were unable to provide any helpful information. Counsel also testified that an alibi defense would not have worked because the surveillance video showed Applicant during the crime.

Counsel testified that Applicant's best option was to argue what he considered a novel theory, whereby Counsel would argue that Applicant was coerced by his codefendants into going inside the convenience store and that did not shoot a weapon but was merely present. More specifically, he testified that this strategy was to argue that Applicant was coerced into committing the conspiracy and robbery, and then he would argue that the murder was not a probable consequence of the conspiracy and that Applicant was already outside of the convenience store when the fatal shot was fired. Counsel testified that at the time of trial, this

strategy was the best strategy for Applicant, especially since no alibis or favorable witnesses were available.

Counsel testified, and the record reflects, that the trial judge charged the jury on the law of coercion and duress. See Tr. Transcript 1176, l. 16 – 1178, l. 1. The trial judge also charged the jury with mere presence and mere association in regards to the conspiracy. See Tr. Transcript 1176, ll. 8-10).

This Court finds that Applicant has failed to meet his burden of proving that Counsel was ineffective for pursuing a defense of coercion and duress. This Court finds that Counsel's defense strategy was valid under the law and his performance was under prevailing professional norms. Additionally, this Court finds that Applicant cannot show that he was prejudiced by Counsel pursuing this strategy, as evidenced by the trial judge charging the jury on the law of coercion and duress. State v. Shuler, 344 S.C. 604, 632, 545 S.E.2d 805, 819 (2001) ("The trial judge determines the law to be charged on the presentation of evidence at trial. The trial judge must charge the correct and current law of the State. If there is any evidence to support a charge, the trial judge should grant the request.") Applicant has failed to show any evidence that the result of the trial would have been different but for Counsel pursuing this defense strategy. Accordingly, this allegation must be dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

IV. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performances were unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

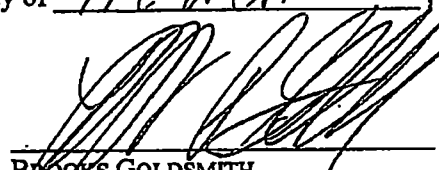
The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCR, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.



IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 2 day of March, 2016.


BROOKS GOLDSMITH
Presiding Judge
Sixteenth Judicial Circuit

 , South Carolina

FILED-RECEIVED
 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 2016 JUN -3) AM 11: 27
 COUNTY OF YORK) DOCKET NO.: 2013-CP-46-3728
 DAVID HAMILTON
 C.C.P. & G.S.
 TERRELL ADDISON, 333413)
 Applicant,)
 v.) MOTION PURSUANT TO
) RULE 59(a) & (e), SCRCP
 STATE OF SOUTH CAROLINA,)
 Respondent,)

COMES NOW Applicant, through his undersigned attorney, and requests a rehearing and/or entry of a new judgment, pursuant to Rule 59(a)(2), and/or amendment of the findings of fact and conclusions of law in the standing Order of Dismissal, pursuant to Rule 59(e), SCRCP.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post Conviction Relief filed on December 9, 2013. The State submitted a Return on or about June 17, 2014. On October 8, 2015, Applicant, through counsel, submitted an Amendment to Application for Post Conviction Relief, which added the following specific allegations:

1. Ineffective assistance of trial counsel for failure to communicate and pursue all viable plea offers to/for Applicant and to ensure that he and his family had a full understanding of all plea offers and/or options before proceeding to trial.
2. Ineffective assistance of trial counsel for failure to utilize Applicant's mother and as a witness and records stemming from his mental health treatment in support of his defense.¹
3. Ineffective assistance of trial counsel for failure present witnesses to support Applicant's defense of duress and/or coercion following the trial court's ruling on the matter.

¹ At the evidentiary hearing, Applicant's counsel requested that "and" be struck from this allegation to read "mother as a witness."

4. Ineffective assistance of trial counsel for advising Applicant to proceed to trial on a primary defense (duress/coercion) that is not cognizable on a murder charge. See State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998).²
5. Pursuant to Rule 15(b), SCRPC, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

An evidentiary hearing was convened on November 4, 2015 at the Moss Justice Center in front of the Honorable Brooks Goldsmith. The State was represented by Justin Hunter, Esquire, of the South Carolina Attorney General's Office. Applicant was present and was represented by Tricia A. Blanchette, Esquire.

At the conclusion of the hearing, the Court instructed the State to submit a proposed Order. Following the submission of a proposed Order, Applicant's counsel contacted the Court regarding concerns with the proposed Order. An Order of Dismissal was signed on March 2, 2016 and filed on May 24, 2016. Applicant's counsel received a copy of the Order via mail from the York County Clerk of Court on May 27, 2016, from which this Motion timely follows.

ARGUMENT

In Marlar v. State, 375 S.C. 407, 653 S.E.2d 266 (2007), the South Carolina Supreme Court made it clear that a post-conviction relief judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented. See also S.C. Code Ann. § 17-27-80. Therefore, Applicant would respectfully request that this Court ensure that specific findings of fact and conclusions of law are entered and that the arguments and testimony of each witness is properly addressed. Applicant would further request that this Court obtain and review the evidentiary hearing

² At the evidentiary hearing, Applicant's counsel verbally requested that the claim of "Failure to present a viable defense" be added to this allegation.

transcript, reconsider the standing Order of Dismissal, and/or rehear Applicant's case pursuant to Rule 59(a) and (e), SCRCF.

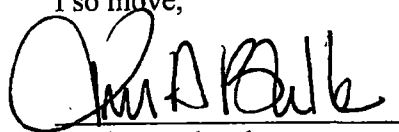
In support of the instant Motion, Applicant would submit the following:

1. The standing Order of Dismissal fails to address the verbal addition to allegation #4 (failure to present a viable defense) and in the body of the Order adds the allegation, "Counsel failed to communicate with Applicant."
2. Under the issue heading "Ineffective assistance of trial counsel for failure to utilize Applicant's mother and as a witness and records stemming from his mental health treatment in support of his defense," the testimony of Applicant regarding this allegation is not addressed.³ Applicant submits that his testimony supported this allegation and helped establish his burden of proof in conjunction with his mother's testimony and the evidence offered.
3. Under the issue heading "Ineffective assistance of trial counsel for advising Applicant to proceed to trial on a primary defense (duress/coercion) that is not cognizable on a murder charge," the testimony of Applicant, his mother and his stepfather is not addressed. Applicant submits that such testimony supported his allegation and help establish his burden of proof. Furthermore, Applicant submits that counsel's decision to pursue a "novel" defense was not grounded in the completion of an independent investigation nor was it agreed upon with Applicant. Additionally, this Court's findings stand in contrast to the testimony offered that counsel informed Applicant's family that duress and coercion were not a viable defense in the case.

For the above stated reasons and in consideration of the testimony and evidence offered at the evidentiary hearing, Applicant would respectfully request that this Court obtain and review the evidentiary hearing transcript and hold a motion hearing to allow Applicant, through counsel, to address this Court regarding the standing Order of Dismissal. Applicant would further request that this Court reconsider the standing Order of Dismissal and direct the entry of a new judgment or alter the standing Order of Dismissal to ensure that all arguments are fully addressed by this Court prior to appeal.

³ As is done previously in the Order, the "and" should be omitted.

I so move,

A handwritten signature in black ink, appearing to read "Tricia A. Blanchette", written over a horizontal line.

Tricia A. Blanchette
Attorney for Applicant
Post Office Box 12725
Columbia, South Carolina 29211

June 1, 2016
Columbia, SC

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

Terrell Addison,
S.C.D.C. No. 333413,

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS
OF THE SIXTEENTH JUDICIAL CIRCUIT

2013-CP-46-3728

RETURN TO APPLICANT'S
MOTION PURSUANT TO RULE 59(a) & (e), SCRC

FILED-RECEIVED
2016 JUN 23 PM 2:09
DAVID HAMILTON
C.S.P. & C.S.
YORK COUNTY, SC

In response to Applicant's Motion Pursuant to Rule 59(a) & (e), SCRC, dated June 1, 2016, Respondent would show this Court:

I.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed December 9, 2013. Respondent made its Return on or about June 17, 2014. An evidentiary hearing into the matter was convened on November 4, 2015, at the Moss Justice Center in York, South Carolina. Applicant was present at the hearing and represented by Tricia Blanchette, Esquire. Respondent was represented by Justin Hunter, Esquire, of the South Carolina Attorney General's Office. The Court denied relief by an order dated March 2, 2016, and filed May 24, 2016.

II.

First Respondent submits that the Final Order of Dismissal signed by Judge Brooks Goldsmith contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a) SCRC. See also McCray v. State, 305 S.C. 329,

408 S.E.2d 241 (1991). Respondent submits that this Court properly ruled on all issues and Applicant's motion should be denied

Applicant submits several grounds that he asks the Court to reconsider. First Applicant submits: "The standing Order of Dismissal fails to address the verbal addition to allegation #4 (failure to present a viable defense) and in the body of the Order adds the allegation, "Counsel failed to communicate with Applicant." Respondent contends that this does not present any new information that the PCR Court may have overlooked in making its decision. Additionally, Respondent contends that such an addition to the allegation's heading was not inappropriate as a failure to communicate was testified to by Applicant.

Next Applicant submits: "Under the issue heading 'Ineffective assistance of trial counsel for failure to utilize Applicant's mother and as a witness and records stemming from his mental health treatment in support of his defense,' the testimony of Applicant regarding this allegation is not addressed. Applicant submits that his testimony supported this allegation and helped establish his burden of proof in conjunction with his mother's testimony and the evidence offered." Respondent contends that the summary of all relevant testimony regarding this allegation was addressed in the Order.

Next Applicant submits: "Under the issue heading 'Ineffective assistance of trial counsel for advising Applicant to proceed to trial on a primary defense (duress/coercion) that is not cognizable on a murder charge,' the testimony of Applicant, his mother and his stepfather is not addressed. Applicant submits that such testimony supported his allegation and help establish his burden of proof." Respondent contends that the summary of all relevant testimony regarding this allegation was addressed in the Order. Furthermore, Respondent contends that the PCR Court properly addressed the issue of Counsel's decision to pursue a novel defense theory.

Accordingly, Respondent submits that this Court properly ruled on all issues presented at the post-conviction relief hearing and Applicant's current Motion should be denied.

III.

WHEREFORE, having made its Return to the Motion, Respondent requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

ALAN WILSON
Attorney General

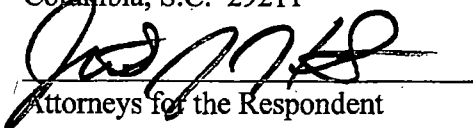
JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

JUSTIN J. HUNTER
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for the Respondent

Columbia, South Carolina
6/15, 2016

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF YORK) DOCKET NO: 2013-CP-46-3728

TERRELL ADDISON, 333413)

Applicant)

v.)

ORDER

STATE OF SOUTH CAROLINA)

Respondent)

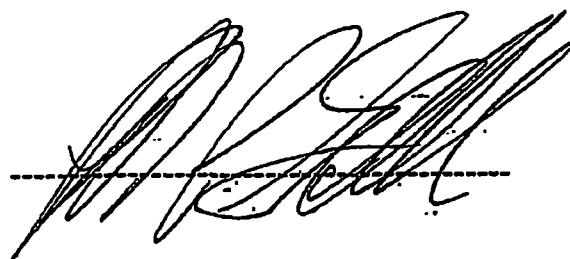
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2016 JUN 27 AM 11:19
DAVID HADDISON
C.C.O.P. #2013
YORK COUNTY, SC

THIS MATTER COMES BEFORE THE COURT, on Applicant's Motion Pursuant to Rule 59(a) &(e) , SCRPC dated June 1, 2016: This matter was decided without oral argument.

After considering the Motion I find no compelling reason to alter or amend the order of this court dated filed May 24, 2016.

IT IS THEREFORE ORDERED THAT the Motion of the Applicant dated June 1,2016 is hereby DENIED.

June 22, 2016



BROOKS P. GOLDSMITH

F-746

T-732 P0002

8036283133

COC General Sessions

01-31-17 16:27 FROM-1448

WITNESSES

RHPD / Haire

nac

ARREST WARRANT NUMBER

3900286

ACTION OF GRAND JURY

TRUE BILL

Oliver Thompson
Foreperson of Grand Jury
2-15-07

VERDICT

Guilty
Lee Rolla
Foreperson of Petit Jury
Date: 2/27/09

DOCKET NO. 2007-GS-46- *00670*

The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

FEBRUARY 15, TERM 2007

THE STATE

vs.

***TERRELL ANTONIO ADDISON**

Indictment for

*** CRIMINAL CONSPIRACY**

SC Code: 16-17-410
CDR Code:0049

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

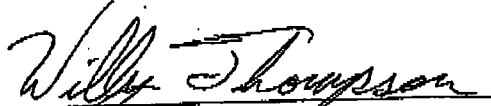
INDICTMENT

At a Court of General Sessions, convened on February 15, 2007, the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

Terrell Antonio Addison did in York County on or about October 10, 2006, willfully, knowingly, and feloniously unite, combine, conspire, confederate, agree or have tacit understanding with Dontavious Mack, Davorious Mack, and/or Ben Stewart for the purpose of committing Armed Robbery and/or Kidnapping. The crimes occurred at or near 2690 Celanese Road in Rock Hill, South Carolina, all in violation of Section 16-17-410, *Code of Laws of South Carolina, 1976*, as amended.

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


DEPUTY SOLICITOR

F-746

P0004

T-782

8036283133

COC General Sessions

FROM-

16:28

01-31-17

1450

WITNESSES

HPD / HAIRE

pac

ARREST WARRANT NUMBER

3-900340

TRUE BILL ACTION OF GRAND JURY

Olivia Hargrave
Foreperson of Grand Jury
2-15-07

VERDICT

Guilty

Henry Lee Rolle
Foreperson of Petit Jury
Date: 2/27/09

DOCKET NO. 2007-GS-46-00671

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 15, TERM 2007

THE STATE

vs.

TERRELL ANTONIO ADDISON

Indictment for

MURDER

SC Code: § 16-3-10
CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on February 15, 2007, the Grand Jurors of York County present upon their oath:

MURDER

Terrell Antonio Addison did in York County on or about October 10, 2006, feloniously, willfully and with malice aforethought, kill one James E. "Ned" Marshall by means of shooting said victim and James E. "Ned" Marshall died as a result thereof, all in violation of Section 16-3-10, *Code of Laws of South Carolina* (1976), as amended. The Murder occurred at 2690 Celanese Road in Rock Hill, South Carolina.

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


DEPUTY SOLICITOR

WITNESSES

HPD / Haire

iac

ARREST WARRANT NUMBER

900341

ACTION OF GRAND JURY

THE BILL

Oliver Nemeshegyi
Foreperson of Grand Jury

Date: 2-25-07

VERDICT

Emily Lee Ralls
Foreperson of Petit Jury

Date: 2/22/09

DOCKET NO. 2007-GS-46- **00672**

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 15, TERM 2007

THE STATE

vs.

TERRELL ANTONIO ADDISON

**Indictment for
ARMED ROBBERY**

SC Code: § 16-11-0330

CDR Code: 0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

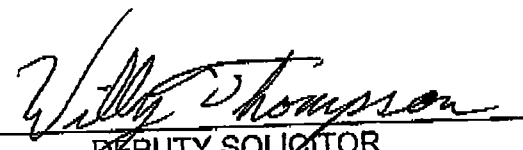
INDICTMENT

At a Court of General Sessions, convened on February 15, 2007, the Grand Jurors of York County present upon their oath:

ARMED ROBBERY

Terrell Antonio Addison did in York County on or about October 10, 2006, feloniously steal United States currency and/or other items of value from the BP Station located at 2690 Celanese Road in Rock Hill, South Carolina. Terrell Addison stole said items by means of force or intimidation by holding BP employee James E. "Ned" Marshall at gunpoint. Terrell Addison committed this robbery while armed with a deadly weapon in violation of Section 16-11-0330, *Code of Laws of South Carolina* (1976, as amended).

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


DEPUTY SOLICITOR

F-746

P0010

T-732

8036288133

COC General Sessions

01-31-17 16:30 FROM-

1454

WITNESSES

RHPD / Haire

mac

ARREST WARRANT NUMBER

G900342

ACTION OF GRAND JURY

Olivia Hampshire
Foreperson of Grand Jury

Date: 2-15-07

VERDICT

Terrell Lee Rolla
Foreperson of Petit Jury

Date: 2/27/08

DOCKET NO. 2007-GS-46- **00673**

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 15, TERM 2007

THE STATE

vs.

TERRELL ANTONIO ADDISON

Indictment for

**POSSESSION OF A FIREARM
DURING THE COMMISSION
OF A VIOLENT CRIME**

SC Code: 16-23-0490

CDR Code: 0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on February 15, 2007, the Grand Jurors of York County present upon their oath:

POSSESSION FIREARM DURING COMMISSION OF A VIOLENT CRIME

On or about October 10, 2006, Terrell Antonio Addison did in York County possess a firearm while committing one or more of the following crimes: Murder, Armed Robbery, and Kidnapping. The crimes occurred at 2690 Gelanese Road in Rock Hill SC, all in violation of Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

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


DEPUTY SOLICITOR

F-746
T-732 P0008
mac
8036283133
COC General Sessions
01-31-17 16:29 FROM-
1456

WITNESSES

RHPD / Haire

ARREST WARRANT NUMBER

Dir. Ind. Re: G-900340

ACTION OF GRAND JURY

Oliver Thompson
Foreperson of Grand Jury
2-15-07

VERDICT

switty
Terry Lee Rolla
Foreperson of Petit Jury
Date: 2/27/09

DOCKET NO. 2007-GS-46-00676

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

FEBRUARY 15, TERM 2007

THE STATE

vs.

TERRELL ANTONIO ADDISON

Indictment for

KIDNAPPING

SC Code: §16-3-910

CDR Code: 0095

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF YORK)

At a Court of General Sessions, convened on February 15, 2007, the Grand Jurors of York County present upon their oath:

KIDNAPPING

Terrell Antonio Addison did in York County on or about October 10, 2006, commit the crime of Kidnapping in violation of Section 16-3-910, *Code of Laws of South Carolina*, (1976), as amended. Terrell Antonio Addison unlawfully seized, confined, inveigled, decoyed, kidnapped, abducted or carried away James E. "Ned" Marshall without authority of law and against the victim's will and consent. Mr. Marshall was kidnapped during an armed robbery in the BP Station located at 2690 Celanese Road in Rock Hill, South Carolina.

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


DEPUTY SOLICITOR