

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Anderson County

Honorable R. Scott Sprouse, Circuit Court Judge

VOLUME II OF II

RECEIVED

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S.C. SUPREME COURT

GARVIN V. DUVALL,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-001845

APPENDIX

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JOSEPHINE WRIGHT - DIRECT BY MR. BRADLEY

1 A. This policy was dated October 9th, 1997.

2 Q. Okay. I'm going to refer you to State's Exhibit
3 Number 42 now, and this is a several page document, and we
4 won't get into every single page, but if you'll just tell us
5 what this document is by looking at the first page.

6 A. Okay. This is a copy of the policy contract that
7 was issued to Mr. Stephens. It has the insured's name, the
8 total face amount, the date of issue and the policy number.

9 Q. And from your knowledge, how much was the policy
10 amount for?

11 A. The basic policy amount was 50,000, and it also had
12 a 50,000, 15-year term writer.

13 Q. Okay. So that total would have been what?

14 A. Would have been 100,000.

15 Q. Would have been 100,000?

16 A. Correct.

17 Q. And so Ms. Moore was the beneficiary of a hundred
18 thousand dollar policy on the victim, Paul Stephens?

19 A. Correct.

20 Q. Was she ever paid on that policy --

21 A. Yes, she was.

22 Q. -- after his death?

23 A. Yes.

24 Q. And what does this document, State's Exhibit Number
25 43, represent?

JOSEPHINE WRIGHT - DIRECT BY MR. BRADLEY

1 A. Okay. This document is a settlement agreement and
2 release between Frances Moore and Liberty Life Insurance
3 Company.

4 Q. And what does this document say that's happening
5 here?

6 A. Okay. This is where Liberty Life Insurance Company
7 denies that it acted wrongfully toward the releaser and it
8 releases, really, our company intending to be legally bound --
9 well, let me read it out loud. Does not -- releaser does
10 hereby quick release and discharge Liberty Life Insurance
11 officers and successors from -- I lost my place -- in
12 interests, subsidiaries, parent corporations and assigns
13 herein collectively referred to as a release from any and all
14 claims that were or that could have been asserted in a civil
15 action filed as of the date of this agreement, and from any
16 and all claims arising from the civil suit.

17 Q. So what does she receive in exchange for this
18 release?

19 A. She received a death benefit check of 100 -- I think
20 the check was 119,000.

21 Q. I believe it says the total right there on the top
22 of paragraph 1?

23 A. Yes.

24 Q. That's the sum that she received?

25 A. Yes. So she received a total \$119,638.18. And of

JOSEPHINE WRIGHT - DIRECT BY MR. BRADLEY

1 that 100,000, 19,638 was statutory interest that is required
2 by the -- you know, that's one of those state laws, from the
3 date of death we paid interest, since that. The date of death
4 occurred in '99 and the claim was paid in 2001.

5 Q. And do you recall when she received the payment on
6 this policy?

7 A. If you go to the next -- it was -- okay, that's the
8 date. This agreement was signed on October the 5th, but
9 September 23rd, 2001.

10 Q. 2001?

11 A. Uh-huh.

12 Q. Okay. And why is this in the form of a settlement
13 agreement? Why does she get paid in that fashion?

14 You can take your seat. I'm sorry.

15 (The witness returned to the witness stand.)

16 A. Okay. Based on the claim documents that was filed
17 we had contacted -- since the death was ruled homicide we had
18 contacted the Anderson County Police Department for additional
19 information concerning getting -- you know, getting a report,
20 and at that time we were advised that Ms. Moore was a suspect
21 in the case.

22 Q. Okay.

23 A. And for -- and, you know, we kept in contact with
24 them regarding the criminal -- I mean, you know, regarding the
25 investigation and we were never furnished, you know, any

JOSEPHINE WRIGHT - CROSS BY MR. PRUITT

1 additional information and all to substantiate that. So based
2 on her attorneys and our attorneys an agreement was reached.

3 Q. So you all were withholding payment. Did she
4 threaten any action against you all for withholding payment?

5 A. There was -- in 2001, there was an insurance
6 department complaint. I mean, she filed a letter with the
7 insurance department, South Carolina Department of Insurance,
8 and saying that we were withholding payment. And shortly
9 sometime after that we received a letter from a lawyer stating
10 that, you know, she was threatening to sue us.

11 Q. You all were withholding it because she was a
12 suspect?

13 A. According to the information that we were being
14 furnished, yes, sir.

15 MR. BRADLEY: Nothing further at this time.

16 THE COURT: All right. Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. PRUITT:

19 Q. Now, Ms. Wright, it's a general principle of
20 insurance law that before a policy such as this can be issued
21 the insured must sign and approve it; is that right?

22 A. Correct.

23 Q. And if Mr. Paul Stephens wasn't willing to have his
24 mother-in-law buy and own this policy he wouldn't have signed
25 the application, would he?

JOSEPHINE WRIGHT - CROSS BY MR. PRUITT

1 A. That's correct.

2 Q. And there's nothing unusual about one person being
3 the insured and somebody else being the owner, is it?

4 A. No, sir.

5 Q. As a matter of fact, that happens a whole lot of
6 times.

7 A. Yeah, it does.

8 Q. Now, the premium on this policy was \$62.58 a month,
9 wasn't it?

10 A. I think, yes, sir.

11 Q. Would you like to look at it?

12 A. Yes, sir.

13 Q. I'll give it to you.

14 A. Okay. \$62.58 monthly. Yes.

15 Q. Now, I don't know whether you know this or not but
16 in looking up the records of this policy here did you also
17 find that Frances Moore had many other policies with Liberty
18 Life at the same time?

19 A. I can't answer that because I was -- this is what I
20 was given to, you know, come down today so.

21 Q. All right. Well, do you know whether or not the
22 agent that produced this policy was what I used to call a
23 route man?

24 A. Yes. They used to go around and -- let's see. Look
25 like this came from branch office that time. It may have been

JOSEPHINE WRIGHT - CROSS BY MR. PRUITT

1 the Clemson branch office used to have agents to go around and
2 collect premiums and deliver policies and services.

3 Q. And so back at this time that was one of Liberty
4 Life's biggest businesses, wasn't it?

5 A. Correct.

6 Q. And at that time the route man -- is that what they
7 called him?

8 A. Well, they called him --

9 Q. Debit man?

10 A. Debit agents.

11 Q. Yeah. Okay.

12 A. Back then.

13 Q. Yeah. That's not much done anymore, is it?

14 A. No, sir.

15 Q. But back then in 1997 when this was taken out the
16 debit man would come by the house once a month, or once a
17 week, or whatever time period the policy was and collect on
18 all the policies?

19 A. Correct.

20 Q. And it wouldn't be at all unusual for the debit man
21 to have 3 or 4 different people insured collecting at the same
22 house, would it?

23 A. At times, yes, sir.

24 Q. In fact, that was part of their job, to add
25 additional policies for anybody that they could add, right?

JOSEPHINE WRIGHT - CROSS BY MR. PRUITT

1 A. Correct.

2 Q. And ultimately, Liberty Life ended its investigation
3 concerning the facts of this policy and paid the policy
4 according to its terms, didn't they?

5 A. Correct.

6 MR. PRUITT: Thank you, Ms. Wright. That's all I
7 have.

8 MR. GAMBLE: I don't have anything, Your Honor.

9 THE COURT: Anything on redirect?

10 MR. BRADLEY: No, Your Honor.

11 THE COURT: All right. Thank you, ma'am. You can
12 step down. Appreciate it.

13 THE COURT: All right. Thank you.

14 Let's take 5 minutes, ladies and gentlemen. We're
15 not going to go much -- how many more witnesses do you have?

16 MR. BRADLEY: Two.

17 THE COURT: All right. We're going to do 2 more
18 then we're out of here. So take 5, 10 minutes, come back in
19 and we'll go another half hour and we'll quit. Don't discuss
20 the case yet.

21 (WHEREUPON, the jury enters the courtroom at 5:25
22 p.m., and a brief recess was taken.)

23 THE COURT: All right. You can bring them in.

24 (WHEREUPON, the jury leaves the courtroom at
25 approximately 5:35 p.m.)

JANE MILLER - DIRECT BY MR. BRADLEY

1 THE COURT: All right. Ladies and gentlemen, thank
2 you. We've got 2 more witnesses. I promise there's a little
3 method to my madness. I know we're going a little late. Just
4 so you'll know that you are not the only ones being punished,
5 my 76-year-old mother is waiting for me in Greenville for
6 dinner, and I've just gotten 4 calls from her in about 8
7 minutes. So I suspect I'll be punished worse than you will.

8 Okay. Call your next witness.

9 MR. BRADLEY: Thank you, Your Honor. May it please
10 the Court. The State calls Jane Miller.

11 THE CLERK OF COURT: Come forward to be sworn.

12 JANE KIMBERLY MILLER, after having been duly
13 sworn, testified as follows:

14 THE CLERK OF COURT: Please go around and have a
15 seat in the witness chair.

16 (The witness was seated in the witness stand.)

17 THE CLERK OF COURT: And if you'll state your full
18 name and spell your last name for the record.

19 THE WITNESS: Jane Kimberly Miller, M-i-l-l-e-r.

20 DIRECT EXAMINATION

21 BY MR. BRADLEY:

22 Q. Good afternoon, Ms. Miller. What is your
23 occupation?

24 A. Human resources and safety compliance administrator
25 for Techtronic Industries North America.

JANE MILLER - DIRECT BY MR. BRADLEY

1 Q. And where are you located?

2 A. Pickens, South Carolina.

3 Q. And what is the exact name of your employer?

4 A. Right now it's currently One World Technologies,
5 Incorporated. Before that it was O. W. T. Industries, and
6 before that Ryobi Motor Produces, Incorporated.

7 Q. And what would signify the name changes?

8 A. Corporate buyouts.

9 Q. What about in 1999; what was the name?

10 A. It was Ryobi Motor Products, Incorporated.

11 Q. What about Piedmont Die Cast; would that be part of
12 it?

13 A. That was an actual division of the company.

14 Q. At that time, in 1999?

15 A. Yes.

16 Q. And what is the nature of the business of Ryobi
17 O. W. T. One World Technologies?

18 A. They manufacture power tools, lawn and garden
19 products.

20 Q. Okay. And was that a similar business back in 1999?

21 A. I think in '99 they did a lot of the power tools,
22 handheld tools.

23 Q. And what are your duties at your job?

24 A. I maintain personnel records, attendance records. I
25 do Workers' Comp.

JANE MILLER - DIRECT BY MR. BRADLEY

1 Q. Okay. And part of those duties include overlooking
2 the records for employees?

3 A. Yes, sir.

4 Q. And responding to subpoenas?

5 A. Yes, sir.

6 Q. Okay. And the information on the records that you
7 have received of employee records, when is that information
8 obtained?

9 A. From the time they are hired throughout their tenure
10 with the company.

11 Q. How about when they come to work, they clock in and
12 clock out; is that when that information is obtained?

13 A. They clock in on a Kronos system when they come in
14 and out.

15 Q. How is it stored?

16 A. It's a computer based program that keeps all the
17 records.

18 Q. And is that kept in the ordinary course of business?

19 A. Yes, it is.

20 Q. What about their job status, job title, is that type
21 of form -- is that a form that's kept in the ordinary course
22 of business?

23 A. That is, too.

24 Q. And the information on all the forms that you keep,
25 is it accurately represented?

JANE MILLER - DIRECT BY MR. BRADLEY

1 A. Yes, sir.

2 Q. And what happens to the forms after they are
3 completed?

4 A. They are put in the employees' personnel files.

5 Q. In regards to this case, were you and your employer
6 served with a subpoena for the work records of Garvin Duvall?

7 A. Yes, sir.

8 Q. And what procedure was followed in responding to
9 that subpoena?

10 A. We pulled his personnel files from -- we have a
11 locked cage that we keep those in. We're required by federal
12 law to keep them for so long. Those records were pulled and
13 copies were made to submit to the solicitor's office.

14 Q. Okay. I'm going to show you what we have marked as
15 State's Exhibit 44, 45, 46, 47. If you'll take a look at
16 those and see if you recognize them.

17 A. Yes, sir, I do.

18 Q. How do you recognize them?

19 A. This one particular here -- well, let me start with
20 this one. This is the Kronos records where an employee
21 actually clocks in and out theirselves.

22 Q. And when you refer to what exhibit number you're
23 talking to when you mention --

24 A. It's exhibit number 45.

25 Q. Thank you very much.

JANE MILLER - DIRECT BY MR. BRADLEY

1 A. Once the Kronos keeps the records the records are
2 transferred on a weekly basis over into a mainframe, which
3 then any records where the employee may have called in or any
4 backup data goes into the mainframe, and that's exhibit 44.
5 That's what this one is.

6 Q. Okay.

7 A. Exhibit 46 is the employee's record history with the
8 company, their job titles that they held over the years.
9 Exhibit number 47 is a status form that we use that covers all
10 of their name, their address, the job they held at the time at
11 their rate of pay, any status changes that change with their
12 job.

13 Q. And do these forms, do they accurately reflect the
14 information obtained on them?

15 A. Yes, sir.

16 Q. Have they been changed or altered in any way?

17 A. No, sir.

18 MR. BRADLEY: Your Honor, at this time the State
19 moves to have these exhibits admitted into evidence.

20 THE COURT: Any objection?

21 MR. GRAHAM: No objection.

22 MR. PRUITT: No objection.

23 THE COURT: Without objection.

24 (WHEREUPON, State's Exhibit Numbers 44 through 47,
25 Documents, were admitted into evidence.)

JANE MILLER - DIRECT BY MR. BRADLEY

1 MR. BRADLEY: Permission to publish?

2 THE COURT: Yes, sir.

3 BY MR. BRADLEY:

4 Q. Ms. Miller, if you'll step down to the TV, please.

5 A. (The witness complied).

6 Q. We are going to start with exhibit 44. If you'll
7 tell us what this form says.

8 A. That's the -- once it goes into Kronos and it's
9 changed over to the mainframe that's an actual attendance
10 record that's put out for any early leaves, absences on the
11 employee.

12 Q. And what employee does this refer to?

13 A. Galvin Duvall.

14 Q. Galvin Duvall or Garvin?

15 A. Garvin Duvall. I'm sorry.

16 Q. And specifically, does this have June 30th, 1999 on
17 it?

18 A. Yes, it does.

19 Q. And what does it say? Was he absent that day?

20 A. Yes. He called in with his wife being ill.

21 Q. That was the excuse given by him?

22 A. Yes, sir.

23 Q. And that was recorded in the system?

24 A. (Nodded).

25 Q. We'll move on to State's Exhibit Number 45. I'll

JANE MILLER - DIRECT BY MR. BRADLEY

1 try to zoom this in as best I can. Down here at the bottom?

2 A. That's the Kronos record for week 6-28 through 7-4.

3 Q. And on June 30th again it shows he was out?

4 A. He was absent.

5 Q. What about July 1st?

6 A. He was there.

7 Q. So that shows what time he clocked in and clocked
8 out?

9 A. Yes, sir.

10 Q. Next exhibit is 46. This is a 2-page document.

11 I'll try to zoom back out so you can see it better. What does
12 this tell us?

13 A. This is the employee history file. It tells what
14 jobs he held there in the company.

15 Q. Okay. So what's the last date on that document, on
16 this first page?

17 A. September the 12th of '97 is when he -- on that one.

18 Q. Okay. So on page 2 it continues; is that correct?

19 A. Yes, sir.

20 Q. And what's the last date on this page?

21 A. August the 16th of '99.

22 Q. And what does that represent?

23 A. That's what job title he held on that date.

24 Q. And what job title was it?

25 A. Melt shop operator.

JANE MILLER - DIRECT BY MR. BRADLEY

1 Q. And what was entitled in that title job?

2 A. They ran the furnace and done the -- maintained it
3 and kept it going.

4 Q. Okay. And finally, document State's Exhibit Number
5 47, what is it?

6 A. That's the status form of an employee when we do any
7 changes or anything.

8 Q. And, again, direct your attention to the middle.
9 That shows his title?

10 A. He was the melt shop operator.

11 Q. You can return to your seat.

12 A. (The witness complied).

13 Q. So you stated as his duty as melt shop operator he
14 had acces to the furnaces at Ryobi?

15 A. Yes, sir.

16 Q. And, to your knowledge, are those furnaces at Ryobi,
17 are they hot enough to melt steel, particularly a firearm?

18 A. Yes, sir.

19 Q. One more. I'm going to refer you back to this
20 monthly, weekly description of his working hours. If you'll
21 step back down and take one more look at this. I apologize.

22 A. (The witness complied).

23 Q. I'll refer you to June 29th. Did he work that day,
24 the day before June 30th?

25 A. It looks like he clocked in but he doesn't have an

JANE MILLER - CROSS BY MR. GAMBLE

1 out punch.

2 MR. BRADLEY: Nothing further, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. GAMBLE:

5 Q. It was your answer that the furnace is not hot
6 enough to melt steel?

7 A. It is hot enough to melt steel.

8 Q. What temperature is it running?

9 A. The ones we had were from 1600 to 1700 degrees.

10 Q. When the call comes in and the wife is ill, is that
11 dated?

12 A. Yes, sir.

13 Q. What date? I don't mean 6-30-99. I mean, is there
14 a time when he called in?

15 A. Yes, sir.

16 Q. What time was it?

17 A. I don't know. I was not with the company at that
18 time.

19 Q. We don't have a record of that?

20 A. I don't.

21 Q. I mean, you don't have a record of that time that he
22 called to say my wife is sick?

23 A. No, sir.

24 Q. So whoever logged it in didn't put the time on it
25 and just said wife ill?

JANE MILLER - CROSS BY MR. GAMBLE

1 A. There may be records somewhere in the attendance,
2 weekly attendance thing that they do every week.

3 Q. Okay. Well, we had a fire expert here last --
4 yesterday or the day before. We had so many I don't know, but
5 he said in order to melt steel specifically with regard to a
6 gun it would take in excess of 4,000 degrees Fahrenheit?

7 A. Well, I know with this process they did mix metal in
8 with these to do the aluminum with it. So there was metal
9 mixed in with that and it was a constant temperature that was
10 melted.

11 Q. But that's not your department, is it?

12 A. No, sir.

13 MR. GAMBLE: Thank you.

14 MR. PRUITT: I don't have any questions of this
15 witness.

16 THE COURT: Any redirect?

17 MR. BRADLEY: Nothing further, Your Honor.

18 THE COURT: Thank you, ma'am. You can step down.

19 MR. BRADLEY: Can she be excused, Your Honor?

20 THE COURT: Without objection?

21 MR. PRUITT: No objection.

22 MR. GAMBLE: No objection.

23 THE COURT: No objection.

24 MR. BRADLEY: The State calls Dr. Brett Woodard.

25 DR. BRETT WOODARD, after having been duly

DR. BRETT WOODARD - DIRECT BY MR. BRADLEY

1 sworn, testified as follows:

2 THE CLERK OF COURT: Have a seat in the witness
3 chair.

4 MR. GAMBLE: Your Honor, before he starts. I am
5 more than familiar with Dr. Woodard and would stipulate to his
6 expert capacity as a forensic pathologist.

7 MR. PRUITT: I would too, Your Honor.

8 THE COURT: All right. So there's a stipulation
9 that Dr. Woodard is an expert in the field of forensic
10 pathology.

11 MR. BRADLEY: Thank you, Your Honor.

12 THE COURT: Thank you.

13 DIRECT EXAMINATION

14 BY MR. BRADLEY:

15 Q. Good afternoon, Dr. Woodard. Tell us what your
16 occupation is.

17 A. I'm a medical doctor, a pathologist by specialty
18 training.

19 Q. What exactly is a pathologist?

20 A. A pathologist is a specialty physician that studies
21 illness, disease and injury in the human body and the effects
22 that they have on the human body.

23 Q. Okay. And is there a difference between being a
24 pathologist and a forensic pathologist?

25 A. A forensic pathologist is a subspecialty in

DR. BRETT WOODARD - DIRECT BY MR. BRADLEY

1 pathology that specifically deals with injury, its combination
2 with disease or substance, the effects it may have on the
3 human body to incapacitate or produce death.

4 Q. Okay. You've been declared an expert in this field;
5 is that correct?

6 A. Yes, I have.

7 Q. Were you working in that capacity on July 1st, 1999?

8 A. Yes, I was.

9 Q. And did you perform an autopsy on the victim in this
10 case, Robert Paul Stephens?

11 A. Yes, I did.

12 Q. And what procedure is generally followed in an
13 autopsy?

14 A. The body is examined as it comes to the autopsy room
15 in whatever clothing it was clothed in to look for any type of
16 injuries, tears, defects in the clothing. Then the outside
17 surface of the body is examined to look for any defects or
18 injuries. The clothing is removed. The surfaces under the
19 clothing are examined and then the body is opened to examine
20 inside the body to evaluate any defects that were seen on the
21 outside or in the clothing, how they may have been carried
22 through to the inside of the body.

23 Q. Particular to this victim that you conducted the
24 autopsy on what are some of the general characteristics of the
25 victim?

DR. BRETT WOODARD - DIRECT BY MR. BRADLEY

1 A. He was extremely tall. He was 80 and a half inches
2 tall. That would be 5 -- excuse me, 6 foot 8 and a half
3 inches tall, about 280 pounds. He had a beard and a mustache.

4 Q. As far as the autopsy that you performed on
5 Mr. Stephens what are the general findings that you made
6 during your autopsy?

7 A. He had some bruises on his body that were the type
8 of bruises that are produced by a hand gripping the body, and
9 then he had some irregular scrapes on the surface of the body
10 that were consistent with an irregular surface such as the
11 ground or other objects either striking the body or the body
12 striking them.

13 He also had two gunshot wounds. One was in the back
14 of his head about where the hairline would be, on the back of
15 someone's head, and the other was on his right flank about a
16 little behind where the seam would be on a man's shirt in the
17 muscle area below the ribcage in the back.

18 Q. If I were to give you a diagram of the anatomical
19 male would you be able to show the jury a little bit better
20 exactly where these wounds were inflicted on Mr. Stephens?

21 A. Certainly.

22 MR. BRADLEY: Is that okay with you all?

23 MR. GAMBLE: I've seen it.

24 BY MR. BRADLEY:

25 Q. If you'll please step down, Dr. Woodard.

DR. BRETT WOODARD - DIRECT BY MR. BRADLEY

1 A. (The witness complied).

2 Q. If you'll make notation.

3 A. The gunshot wound to the back was of the right side
4 of the back of the head just into the hairline at the back of
5 the skull. The wound on his right flank was slightly on the
6 backside. This represents the ribs. It was a little below
7 the ribs on the backside of the body here (indicated).

8 Q. And with these wounds, could you point out the
9 directionality of the wounds?

10 A. Well, the wound in the back of the head went forward
11 toward the midline. It didn't cross the midline inside the
12 skull but it went forward slightly to the victim's left and
13 impacted the front of the skull almost on the midline, just a
14 hair to the right of the midline before the bullet reflected
15 back into the left side of the brain (indicated).

16 The bullet that went into the flank on the right
17 side crossed the body, just missed the kidney, hit the liver.
18 Your liver sits right in here (indicated). It crossed the
19 midline going through the whole where the esophagus enters the
20 stomach, hit the right side of the heart and then the bullet
21 ended up just to the left of the centerline but at the front
22 between the third and fourth rib. If you feel on your
23 breastplate there's a little bump there, and right below that
24 bump but off to the left.

25 Q. The trajectory of the head wound that you just

DR. BRETT WOODARD - DIRECT BY MR. BRADLEY

1 described, what is that consistent with?

2 A. That was consistent with the gun being behind the
3 individual as he was shot. It went forward and slightly in an
4 upward direction before it struck the inside of the skull and
5 ricocheted or bounced back into the left side of the head.
6 The wound on the flank went from the victim's back to victim's
7 front in a rather steep upward direction pretty much along
8 this angle sort of reflected by that line that's drawn on this
9 anatomic (indicated).

10 Q. And what is that most consistent with, the
11 trajectory of the flank wound?

12 A. Well, it would be consistent with either somebody
13 sitting or lying on the ground shooting upward, and a standing
14 person or person laying on the ground and a standing person
15 shooting down.

16 Q. Okay. When you recovered the two bullets from
17 Mr. Stephens' body what did you do with them?

18 A. I placed them into evidence tubes, identified them.
19 The bullet from the flank wound that ended up under the front
20 portion of the chest between the ribs, I identified it as
21 bullet one, and the bullet that we recovered from his brain as
22 bullet two. Placed them into separate tubes and then were
23 given to the Anderson County Sheriff's Deputies to transport
24 to SLED for examination.

25 Q. Did you note in your examinations what kind of

DR. BRETT WOODARD - DIRECT BY MR. BRADLEY

1 caliber of bullet it was?

2 A. These were medium to large caliber bullets. They
3 were copper clad lead bullets, meaning they had a copper
4 jacket around the lead projectile.

5 Q. Okay. In your expert opinion what was the cause of
6 Robert Paul Stephens' death?

7 A. The gunshot wound to his head.

8 Q. What about the gunshot wound to his back; would it
9 have been a fatal shot had it been fired alone?

10 A. Yes. It had the potential to be fatal.

11 Q. Okay. And how so?

12 A. It tore a large hole in the heart. It tore a large
13 hole in the liver. The injury to the liver would be
14 non repairable even if it had happened in the hospital
15 emergency room.

16 Q. Okay. In your expert opinion, can you tell us which
17 one of those shots came first on this victim?

18 A. The gunshot wound to the head came before the
19 gunshot wound to the flank. When the bullet entered the brain
20 it produced a great deal of bleeding, which meant that there
21 was still substantial or well-maintained blood pressure.

22 After the bullet went through the heart there would
23 be no maintained blood pressure. There would be literally one
24 squeeze of the left side of the heart. There would be no
25 resupplying it from the right side of the heart. So in order

DR. BRETT WOODARD - DIRECT BY MR. BRADLEY

1 to get that bleeding there had to be substantial blood
2 pressure, therefore the heart was intact.

3 Q. So there was blood trauma in the head. You're
4 saying that meant that the shot to the flank that pierced the
5 heart would have had to have been second; is that correct?

6 A. There was bleeding trauma, significant bleeding
7 trauma in the brain. So that shot had to occur when that
8 heart was intact.

9 Q. Okay. And, again, I believe -- just to clarify, as
10 you were pointing out on the diagram, you said that the shot
11 to the head was most consistent with the shooter standing
12 behind the victim shooting at an upward angle; is that
13 correct?

14 A. At a slight upward angle.

15 Q. And what is that most consistent with?

16 A. Someone shorter than the deceased standing somewhere
17 behind him and discharging the weapon.

18 Q. Okay. And what about the shot to the flank?

19 A. Again, if somebody was laying on the ground they
20 could be shooting up, but if somebody was standing above him
21 closer to his feet and just shot from a standing position it
22 would produce that angle.

23 Q. Okay. And in your further examinations of the body
24 did you find any stippling or gunshot residue on the back from
25 the entrance wounds?

DR. BRETT WOODARD - CROSS BY MR. PRUITT

1 A. No. There was no stippling or gunshot residue.
2 There was a shirt that covered his body. He had a t-shirt on,
3 which was sent to SLED for evaluation for range of fire. And
4 the clothing can block the other materials that come out of a
5 gun other than the bullet itself that leave signatures on the
6 skin that tell us the proximity of the gun to the individual.
7 But at the back of his head (indicated), at the hairline, that
8 would at most be partially blocked by his hair and we saw no
9 powder or stippling. So a usual handgun would be somewhere
10 between a foot and 18 inches away from the individual at the
11 time it was discharged.

12 Q. A foot and 18 inches?

13 A. Between 12 and 18 inches.

14 MR. BRADLEY: Okay. Nothing further at this time,
15 Your Honor.

16 THE COURT: All right.

17 CROSS-EXAMINATION

18 BY MR. PRUITT:

19 Q. Dr. Woodard, the bruises on the body that you were
20 talking about, were those consistent with, I believe you said
21 hand gripping?

22 A. Yes, sir, grippage injuries. Part of them showed
23 the round finger imprint and part of them were more blocky,
24 like the hand and the fingers gripping and pulling against the
25 skin (indicated).

DR. BRETT WOODARD - CROSS BY MR. GAMBLE

1 Q. Okay. And so that would be some indication of a
2 struggle or a fight?

3 A. No. They were most consistent with somebody
4 grabbing and perhaps to relocate his position after he was
5 dead or totally incapacitated.

6 Q. Moving him across the ground?

7 A. That would be correct.

8 Q. In terms of time, you indicated you thought that the
9 second shot was the one in the flank. What space of time
10 would there have been between the first shot and the second
11 shot?

12 A. Before he suffered total death from the brain injury
13 that he had he was brain dead from the first shot but his
14 heart and lungs would have continued to have worked. He could
15 have lasted in that condition for multiple minutes, half an
16 hour at the outside. That shot had to occur in that window of
17 time.

18 MR. PRUITT: That's all I have.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. GAMBLE:

22 Q. The second shot, I believe you said, was to the
23 body, the flank shot?

24 A. That's correct.

25 Q. And you sent that shirt to SLED for analysis with

DR. BRETT WOODARD - CROSS BY MR. GAMBLE

1 regard to stippling or G. S. R.?

2 A. They would look chemically at the shirt. We looked
3 at it visually and didn't see powder but there was blood
4 staining and so it's much better done by a chemical means.

5 Q. Right. And there was no stippling or tattooing on
6 the back shot of the head?

7 A. That's correct.

8 Q. You say a foot to 18 inches. In some cases I've
9 heard as much as 3 feet.

10 A. With a usual handgun it's somewhere between a foot
11 and 18 inches that the stippling and the powder both will no
12 longer be seen. With long barrelled weapons it can be out to
13 3 feet. Obviously, each handgun would have to be tested.
14 Very short barrelled handguns would be closer to a foot.
15 Longer barrelled handguns would be closer to 18 inches.

16 Q. You familiar with a 38 or a 380?

17 A. Yes.

18 Q. They short or long barrel?

19 A. Well, a 38 comes anywhere from a snub nose to an
20 8-inch barrel.

21 Q. Yes, sir. And an 8-inch barrel is a long barrel?

22 A. Right.

23 Q. And it comes everything from revolver to automatic?

24 A. That's right. Semiautomatic handgun, 380 is popular
25 today.

DR. BRETT WOODARD - CROSS BY MR. GAMBLE

1 Q. So we can't really say what the stippling tattooing
2 or G. S. R. would be from an unknown gun?

3 A. You can make generalities but you can't say
4 specifically without the gun.

5 Q. Right. Would there be if there were somebody
6 standing over this body, right next to it and firing into it?
7 Would that be close enough for tattooing and stippling?

8 A. No. That would -- using your example there with
9 your hand you would be 2, 3 feet away from the person when you
10 shot over them that way.

11 Q. But that's an assumption?

12 A. Well, I'm just -- the example you just showed.

13 MR. GAMBLE: Okay. Thanks, Dr. Woodard.

14 THE COURT: Any redirect?

15 MR. BRADLEY: No, Your Honor.

16 THE COURT: All right. Thank you, Dr. Woodard. You
17 can step down.

18 MR. BRADLEY: Can he be excused?

19 MR. GAMBLE: No objection.

20 MR. PRUITT: No objection.

21 THE COURT: Without objection. He's excused.

22 MR. BRADLEY: Your Honor, at this time the State
23 rests.

24 THE COURT: All right. Ladies and gentlemen, we're
25 going to break for today. And, again, thank you very much for

1 your patience. I'm told that my 9 o'clock is going to take
2 about 20 minutes. If you'll be in the jury room by 9:30. If
3 we're a little bit late it's because I'm late getting here,
4 and I apologize for that, but I can't do anything about the
5 meeting. We'll get started soon thereafter and keep moving.

6 Don't talk about the case. Don't read, listen to or
7 watch anything that might be publicity. Have a good night.

8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 6:05 p.m.)

10 THE COURT: All right. Tomorrow morning at 9:30
11 I'll let you make any motions, so if you want to think about
12 it tonight and get it together.

13 MR. GAMBLE: I won't be entitled to make a motion.

14 THE COURT: Well, any motions you all might want to
15 make. And I guess you can tell me what your plans are
16 tomorrow, regarding witnesses.

17 MR. GAMBLE: I have one, two, three, four potential
18 witnesses, not counting the defendant, and we haven't decided
19 on that yet. But I've talked with him briefly about it, with
20 regard to his Fifth Amendment Rights.

21 THE COURT: Okay. Yeah, and I'll question them
22 tomorrow, depending on whether or not they want to testify.
23 We'll go through all that. All right. Thanks.

24 MR. PRUITT: We'd have three or four, not including
25 the defendant.

1 THE COURT: Okay. If you know tomorrow morning
2 first thing whether or not they are going to testify I can go
3 through that colloquy and we can get it out of the way.

4 MR. GAMBLE: I'm going to knock off the archbishop
5 for Columbus, Ohio.

6 THE COURT: Thank you, as much as I was looking
7 forward to it.

8 All right. Thanks. See you all tomorrow morning.

9 (WHEREUPON, the trial of this case was recessed for
10 the day.)

11 FRIDAY, MAY 15, 2009

12 THE COURT: Before we bring them in, are there any
13 motions we need to take up?

14 MR. PRUITT: Your Honor, on behalf of Frances Moore
15 we'd move for a directed verdict. Considering all the
16 evidence in the light most favorable to the State I don't
17 believe that they've made a sufficient case to send this on to
18 the jury, especially on the conspiracy part, and don't believe
19 they have either on the murder or the possession of a firearm.

20 THE COURT: Yes, ma'am.

21 MS. HOGAN: Your Honor, if it please the Court. If
22 there's any direct or circumstantial evidence reasonably
23 tending to prove the guilt of the accused it should go to the
24 jury. We believe we've furnished plenty of evidence in this
25 case, plenty of good circumstantial evidence, Your Honor.

1 As far as the conspiracy goes, we believe we made
2 some independent evidence of the conspiracy. We've got -- we
3 know that she has a reason to conspire. We know that she and
4 Garvin were friends. We know that there was a positive I. D.
5 of her at the phone. We've got evidence in that Garvin said
6 he was calling from the pay phone.

7 So we've got them together at the pay phone. We've
8 got -- they are the ones at the pay phone in that white RAV4.
9 We've got them leaving the scene of the crime. We have
10 testimony that she wanted him dead the day of the murder from
11 an officer with the Anderson Police Department.

12 We believe that with all that taken into
13 consideration that there is enough to go forward to the jury,
14 Your Honor. We're concerned with the existence or
15 nonexistence not the weight of evidence in the case but we
16 believe that there's enough to go to the jury, Your Honor.

17 THE COURT: I understand the motion. I'm going to
18 deny the motion for directed verdict based upon the evidence
19 presented so far.

20 Mr. Gamble, any motions on your part?

21 MR. GAMBLE: I wouldn't be entitled to it, Your
22 Honor. I introduced evidence in the State's case.

23 THE COURT: All right.

24 MR. GAMBLE: You want to go into the fifth with him
25 at this time or not?

1 THE COURT: Let's wait.

2 MR. GAMBLE: Do it later?

3 THE COURT: Let's do it later.

4 MR. GAMBLE: All right.

5 THE COURT: Sorry.

6 MR. GAMBLE: I'm ready to go then.

7 THE COURT: Okay. Bring them in.

8 You're going first, right?

9 MR. GAMBLE: I'm going first.

10 THE COURT: Any objection to that?

11 MS. HOGAN: No, sir.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 10:40 a.m.)

14 THE COURT: I know you're getting tired of me
15 apologizing so I just won't do it, but I'm sorry you had to
16 sit there.

17 All right. Ladies and gentlemen, you've heard the
18 State's case. You're now going to hear from the defense.

19 Yes, sir.

20 MR. GAMBLE: I call Kim Hendrix.

21 THE CLERK OF COURT: Ms. Hendrix, if you'd come
22 forward to be sworn, please, ma'am.

23 KIMBERLY DAWN HENDRIX, after having been duly
24 sworn, testified as follows:

25 THE CLERK OF COURT: If you'll go around and have a

KIMBERLY HENDRIX - DIRECT BY MR. GAMBLE

1 seat in the witness chair, please.

2 (The witness was seated in the witness stand.)

3 THE CLERK OF COURT: If you'll state your full name
4 and spell your last name for the record, please.

5 THE WITNESS: Kimberly Dawn Hendrix, H-e-n-d-r-i-x.

6 DIRECT EXAMINATION

7 BY MR. GAMBLE:

8 Q. Kim, I know this is probably your first time in
9 court, is it?

10 A. (Nodded).

11 Q. So it's a spooky place to be on your first visit.
12 I'm getting almost used to it, and I'll just ask you questions
13 and you answer them truthfully.

14 Do you know Mr. Duvall?

15 A. Yes.

16 Q. How do you know him?

17 A. I used -- well, I met him probably about 14 years
18 ago. Him and his wife -- well, deceased wife, Brenda, they
19 took up with my son. That's their poppa. That's my kid's
20 poppa, and that was nanny.

21 Q. And your son's name is?

22 A. Brandon.

23 Q. Brandon. And Brandon had a birthday party in 1999.
24 How old was Brandon then?

25 A. That was his fourth birthday.

KIMBERLY HENDRIX - DIRECT BY MR. GAMBLE

- 1 Q. And were you in attendance at the fourth birthday of
2 Brandon ?
- 3 A. Yes, sir.
- 4 Q. And where was that held?
- 5 A. Haygood Park in Easley.
- 6 Q. In Easley at Haygood Park?
- 7 A. Uh-huh.
- 8 Q. And what time did you arrive at Haygood Park?
- 9 A. I'm not sure what time we started it.
- 10 Q. I know it's ten years ago.
- 11 A. Yeah.
- 12 Q. Was the magician--was there a magician at this
13 party?
- 14 A. Yes, sir.
- 15 Q. And what was that magician's name?
- 16 A. Well, John Stansell. He went by J. W.
- 17 Q. J. W. Stansell?
- 18 A. Uh-huh.
- 19 Q. And did he put on a show or was he just there to
20 visit with you?
- 21 A. He did a magic show.
- 22 Q. And after the magic show what, if anything, did you
23 all do?
- 24 A. We had hot dogs and we ate, and he opened presents,
25 and they played on the park -- or played in the park.

KIMBERLY HENDRIX - DIRECT BY MR. GAMBLE

- 1 Q. And were you there the whole time?
- 2 A. Yes, sir.
- 3 Q. Were you there until the party broke up?
- 4 A. Yes, sir.
- 5 Q. Did you help load up the party?
- 6 A. Yes, sir.
- 7 Q. And did you see Mr. J. W. Stansell during this time?
- 8 A. Yeah, he was there.
- 9 Q. He was there?
- 10 A. Uh-huh.
- 11 Q. Was Garvin Duvall there, too?
- 12 A. Yes, sir.
- 13 Q. At any time during this party did Mr. Duvall and
- 14 Mr. Stansell leave?
- 15 A. No.
- 16 Q. They did not?
- 17 A. No, they did not.
- 18 Q. You saw them throughout the entire party?
- 19 A. Yes, sir.
- 20 Q. Did you furnish -- you had hot dogs. Now, I'm going
- 21 to assume you had cold drinks?
- 22 A. Uh-huh.
- 23 Q. Coca-Cola, Sprite, something like that?
- 24 A. Yes.
- 25 Q. And what brought your attention to the fact that

KIMBERLY HENDRIX - CROSS BY MR. BRADLEY

1 Mr. Stansell, Reverend Dr. Stansell and Mr. Duvall were there
2 that whole time? Why do you remember that?

3 A. Well, I just know how much Brandon meant to Brenda
4 and Garvin, and he wouldn't have left anyway. I mean, because
5 we were all involved in giving the party.

6 Q. Yeah.

7 A. And he was Garvin's world.

8 Q. And they were the apple of each other's eyes?

9 A. Uh-huh.

10 Q. All right, ma'am. Now, is that about all you know
11 about this situation, was on the 27th day of June Garvin,
12 Mr. Duvall did not leave?

13 A. No.

14 Q. And go anywhere during that party?

15 A. No.

16 MR. GAMBLE: Thank you, ma'am. The State will now
17 ask you questions, I assume.

18 MR. BRADLEY: Thank you. May it please the Court?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. BRADLEY:

22 Q. Ms. Hendrix, you said you've known Mr. Duvall for 14
23 years; is that correct?

24 A. Yes.

25 Q. And during that 14 years you all have gotten to know

KIMBERLY HENDRIX - CROSS BY MR. BRADLEY

1 each other pretty well?

2 A. Yes.

3 Q. And your son, you said, they were the apple of each
4 other's eyes, they were very close?

5 A. Yes.

6 Q. So if anything were to happen to Mr. Duvall you and
7 your son would be affected tremendously; is that correct?

8 A. Yes.

9 Q. So since he means so much to you and your son you'd
10 probably be willing to do about anything to help him out; is
11 that right?

12 A. I wouldn't lie.

13 Q. Going to the birthday party on June 27th, 1999, that
14 was for your son, Brandon; is that correct?

15 A. Yes.

16 Q. And you said Mr. Stansell was there at the party; is
17 that right?

18 A. Yes.

19 Q. How many people were at the party, total?

20 A. Probably a rough estimate I'd say about 20, 25,
21 maybe.

22 Q. Would you say that's a lot of people?

23 A. Uh-huh.

24 Q. Okay. And you being the mother of the son whose
25 birthday it was, son whose birthday it was, throwing the party

KIMBERLY HENDRIX - CROSS BY MR. BRADLEY

1 I'm sure you were pretty busy during this time; is that right?

2 A. We all were.

3 Q. Getting the drinks out, getting the food out,
4 arranging the presents, making sure your son was having a good
5 time?

6 A. We had lots of hands.

7 Q. You were focussed on Brandon though. It was his
8 birthday, right?

9 A. Yes.

10 Q. Did you keep your eyes on Garvin Duvall and John
11 Stansell the whole entire time or more so on Brandon?

12 A. No.

13 Q. No what?

14 A. I mean, I didn't see him -- or watch over him the
15 whole time.

16 Q. Okay. So there was times when you didn't see him
17 and he could have slipped off?

18 A. No.

19 Q. But you didn't have your eye on him the whole time,
20 so you don't know, right?

21 A. No. I didn't have my eye on him the whole time but
22 we were all right there under a shed.

23 Q. And you said that Brandon was Garvin's world and he
24 wouldn't leave?

25 A. Uh-huh.

KIMBERLY HENDRIX - REDIRECT BY MR. GAMBLE

1 Q. But that's just a statement of your opinion of he
2 wouldn't leave; is that right? It's just an opinion. It's
3 not a fact.

4 A. I guess.

5 Q. Okay. But you would agree there was a lot of people
6 there, your son was having a good time, you were focussed on
7 your son having a good time so you did not focus on Stansell
8 and Garvin the entire time; is that right?

9 A. Not the entire time but they didn't leave. Garvin
10 did not leave.

11 Q. But if you didn't have your eye on him the whole
12 time how can you be so sure?

13 A. Because you're all right there together. There's no
14 time that he could have slipped away or been gone for any
15 period of time. The car -- his truck was parked right near
16 us. He couldn't have left. We would have seen him leave.

17 MR. BRADLEY: Nothing further, Your Honor.

18 THE COURT: Redirect?

19 MR. GAMBLE: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MR. GAMBLE:

22 Q. How many adults were at the party? I know it was
23 your son's fourth birthday but --

24 A. Mainly all the grandparents, and I'd say maybe 15,
25 if that. I mean, it has been 10 years.

SAMUEL HENDRIX - DIRECT BY MR. GAMBLE

1 Q. Yeah, I know it's been 10 years. All right. Thank
2 you, ma'am.

3 MR. PRUITT: No questions.

4 THE COURT: Thank you, ma'am. You can step down.

5 MR. GAMBLE: I call Sam Hendrix.

6 SAMUEL LEE HENDRIX, after having been duly
7 sworn, testified as follows:

8 THE CLERK OF COURT: If you'll go up and have a seat
9 in the witness chair, please, sir.

10 (The witness was seated in the witness stand.)

11 THE CLERK OF COURT: If you'll state your full name
12 and spell your last name for the record, please.

13 THE WITNESS: Samuel Lee Hendrix, H-e-n-d-r-i-x.

14 DIRECT EXAMINATION

15 BY MR. GAMBLE:

16 Q. Sam, are you related to Kim?

17 A. Not related, no. Not related. I'm married to her.

18 Q. Well, that's kind of like it.

19 A. It that related?

20 Q. Yeah. I'm going to use that on my wife.

21 [LAUGHTER]

22 Well, let's get serious now. Where were you June
23 the 27th, 1999?

24 A. Haygood Park, Easley.

25 Q. What were you doing at Haygood Park in Easley on

SAMUEL HENDRIX - DIRECT BY MR. GAMBLE

1 June the 27th, 1999?

2 A. Attending my son's birthday party.

3 Q. How old was your son?

4 A. Four years old.

5 Q. What's his name?

6 A. Brandon .

7 Q. And I believe it's been testified to that several
8 people were invited, among those was Garvin Duvall?

9 A. Yes, sir.

10 Q. Why was Garvin Duvall invited?

11 A. He was helping us with the party.

12 Q. What do you mean helping with the party?

13 A. Well, we arranged everything. We all got together
14 and took them money to go buy hot dogs and drinks and whatnot.
15 He also set up the magician show.

16 Q. Okay. That's where I was going to just then. I
17 believe the right Reverend Dr. Stansell put on the magician
18 show?

19 A. Yes, sir.

20 Q. And was that at the beginning of the party, the
21 middle or the end of the party?

22 A. I think around about middle.

23 Q. About the middle?

24 A. I would say. It's hard to really remember exactly
25 when.

SAMUEL HENDRIX - DIRECT BY MR. GAMBLE

- 1 Q. Back then was he as big as he is now?
- 2 A. A little bit smaller.
- 3 Q. He was a little bit smaller? About 50 pounds or so?
- 4 A. About 50 pounds or so, yes.
- 5 Q. And what was Garvin doing during the party?
- 6 A. He was just talking amongst us. I mean, he was
- 7 helping with drinks and just mingling.
- 8 Q. Okay. And was he there during the entire time of
- 9 this party?
- 10 A. Yes, sir.
- 11 Q. How do you know?
- 12 A. I seen him there. I would have heard his trunk
- 13 crank up if he would have left.
- 14 Q. I beg your pardon?
- 15 A. I would have heard his truck crank.
- 16 Q. You would have heard his truck crank?
- 17 A. Yes, sir. He has a pretty loud truck.
- 18 Q. Loud muffler?
- 19 A. Yes, sir.
- 20 Q. Is that the black truck?
- 21 A. Yes, sir.
- 22 Q. V-8?
- 23 A. Yes, sir, strong V-8.
- 24 Q. Strong V-8?
- 25 A. Strong V-8.

SAMUEL HENDRIX - DIRECT BY MR. GAMBLE

1 Q. So you would have heard it crank?

2 A. Yes, sir.

3 Q. Where was it parked, near the --

4 A. It was near the shed where we was at.

5 Q. And it didn't crank up?

6 A. No, sir, not until we left.

7 Q. And when did you leave?

8 A. After the party was over. I don't really remember
9 time.

10 Q. Would have been in June. Would it have been near
11 sundown?

12 A. Yes, sir, evening.

13 Q. Evening?

14 A. Evening.

15 Q. Who helped you load up the stuff when you started
16 leaving the party?

17 A. Me, Kim, Garvin, our son.

18 Q. I'm sure Brandon was a big help?

19 A. He was a little bit of a help. Just whoever else
20 pitched in a hand. I really don't recall. I remember we did
21 pile a lot of stuff in the back of Garvin's truck like the
22 coolers, the excess drinks, the decorations.

23 Q. And to your knowledge, about how many adults were
24 there? Give an estimate.

25 A. About 10 to 12 adults.

SAMUEL HENDRIX - DIRECT BY MR. GAMBLE

1 Q. Grandparents from both sides there?

2 A. No. My parents was not there, no.

3 Q. Garvin Duvall was there?

4 A. Yes, sir.

5 Q. Was his wife there, Brenda?

6 A. Yes, sir.

7 Q. Did Mr. Stansell bring his wife? I'm talking about

8 J. W.

9 A. I think his son was there. I don't recall his wife.

10 Q. Okay. Have you ever seen this book that's been
11 introduced as State's Exhibit something, 33?

12 A. No, I haven't.

13 Q. This might refresh your memory. Flip through these
14 pages. That has to do -- what does that have to do with? If
15 you open it up you can see.

16 A. Brandon's birthday party.

17 Q. Okay.

18 A. Okay. That's Jan there, isn't it?

19 Q. Sir?

20 A. Jan was there, wasn't she?

21 Q. January?

22 A. His wife. J. W.'s wife.

23 Q. Yeah.

24 [PAUSE]

25 I believe that's all of the photographs. Does that

SAMUEL HENDRIX - CROSS BY MR. BRADLEY

1 help you refresh your memory as to how many people were in
2 attendance, adults were in attendance at the party?

3 A. Yes, sir.

4 Q. About how many were there?

5 A. About 8.

6 Q. Eight?

7 A. About 8 adults.

8 Q. And so during that time did you ever miss Garvin
9 Duvall being at the party?

10 A. No, sir.

11 Q. Did you ever miss J. W. Stansell, the Reverend
12 Dr. J. W. Stansell being gone from the party?

13 A. No, sir.

14 Q. To your knowledge were Garvin Duvall and J. W.
15 Stansell both at the party during the entire duration of the
16 party?

17 A. Yes, sir, they was.

18 Q. And as you said, if he'd of cranked that truck you'd
19 of known it, wouldn't you?

20 A. Yes, sir.

21 MR. GAMBLE: Answer any questions the State wants to
22 ask you.

23 CROSS-EXAMINATION

24 BY MR. BRADLEY:

25 Q. Mr. Hendrix?

SAMUEL HENDRIX - CROSS BY MR. BRADLEY

1 A. Yes, sir.

2 Q. How well did you know Garvin?

3 A. Pretty good, became friends.

4 Q. How long have you know him?

5 A. About 14 years.

6 Q. Same amount of time?

7 A. Yes, sir.

8 Q. You pretty close to him?

9 A. We're pretty close.

10 Q. Your son is real close to him; is that right?

11 A. Yes, sir.

12 Q. And what does he call him?

13 A. Poppa.

14 Q. Again, so if anything were to happen to Garvin your
15 son would be pretty affected by it?

16 A. He would be hurt, yes.

17 Q. So you told us that you were there the entire time,
18 and you say that Garvin was there the entire time, and you say
19 Stansell was there the entire time but then basically every
20 other word in your testimony was I don't recall or I don't
21 remember. I mean, this was 10 years ago and you obviously say
22 you don't recall and don't remember a lot of things. How can
23 you be so sure about these few little things?

24 A. Well, I would have heard Garvin's truck crank up and
25 leave, and the road above the park was right there at us, to

SAMUEL HENDRIX - CROSS BY MR. BRADLEY

1 leave the park. I mean, I would have seen his truck leave and
2 I would have heard it leave.

3 Q. But you don't -- again, there's several things that
4 Mr. Gamble asked you that you said you didn't remember; is
5 that right?

6 A. That's right. I mean, it's been 10 years ago and my
7 memory is not good.

8 Q. Right. And did you ever tell anybody this
9 information you had? Have you ever come forward and told
10 anybody this? Is this the first time you've told somebody?

11 A. Yes. The first time I spoke of it, yes.

12 Q. And, again, this was your son's birthday party you
13 were at, right?

14 A. Yes, sir.

15 Q. And you were pretty focussed on him having a good
16 time, right?

17 A. I was focussed on everybody, as far as keeping track
18 of all the kids, make sure nobody was running off, make sure
19 nobody was leaving the party, make sure everybody was having a
20 good time. So, yes, I was mingling with everybody.

21 Q. How many kids were there?

22 A. About 15 kids.

23 Q. That's a lot of kids, right?

24 A. It was.

25 Q. And how were the age ranges, what were they?

SAMUEL HENDRIX - CROSS BY MR. BRADLEY

1 A. I'm not really certain. My child was 4. They was
2 all about the same age, maybe a little bit older.

3 Q. That's a lot of 4 year olds, wild rambunctious 4
4 year olds.

5 A. Yes, sir.

6 Q. Probably playing and having a good time and cutting
7 up?

8 A. Yes, sir.

9 Q. On the playground swinging, monkey bars, whatever
10 was there?

11 A. Yes, sir.

12 Q. So you were focused on keeping them in order and
13 making sure these kids didn't go anywhere; is that right?

14 A. Yes, sir.

15 Q. So you couldn't of had your eye on Garvin Duvall or
16 John Stansell the whole time; is that right?

17 A. Right.

18 MR. BRADLEY: Nothing further, Your Honor.

19 THE COURT: Redirect?

20 MR. GAMBLE: No, sir, I don't have any redirect.

21 THE COURT: Anything?

22 MR. PRUITT: No, sir. No questions.

23 THE COURT: You can step down.

24 MR. GAMBLE: Ralph Stansell.

25 BILLY RALPH STANSELL, SR., after having been

BILLY RALPH STANSELL - DIRECT BY MR. GAMBLE

1 duly sworn, testified as follows:

2 THE CLERK OF COURT: If you'll go around to the
3 witness stand and have a seat, sir.

4 (The witness was seated in the witness stand.)

5 THE CLERK OF COURT: If you'll state your full and
6 spell your last name for the record, please.

7 THE WITNESS: My name is Billy Ralph Stansell,
8 S-t-a-n-s-e-l-l, Sr.

9 DIRECT EXAMINATION

10 BY MR. GAMBLE:

11 Q. Where do you live, Mr. Stansell?

12 A. I live , Easley.

13 Q. Easley?

14 A. Yes, sir.

15 Q. And were you living there in June of 1999?

16 A. That's correct.

17 Q. Recall your attention to June the 30th, 1999. Did
18 you receive a phone call on that day from either -- let me put
19 it in another way. What's your daughter's -- was your
20 daughter's name?

21 A. My daughter was Brenda Duvall. That is my
22 stepdaughter, Peggy's daughter, my wife's daughter.

23 Q. Right. And she was married to whom?

24 A. Garvin Duvall.

25 Q. All right. Did you receive a phone call on the

BILLY RALPH STANSELL - DIRECT BY MR. GAMBLE

1 afternoon, late afternoon of the 30th of June 1999?

2 A. That's when we was sitting on the front porch, yes,
3 sir.

4 Q. Who called you?

5 A. Didn't call me, but my wife was taking a message. I
6 was just -- you know, we had it on speaker phone and I was on
7 the other end of it on the front porch rocking, and they had
8 told about what happened.

9 Q. To?

10 A. Peggy, my wife, my deceased wife.

11 Q. Right. Now, Brenda, Peggy's daughter, is deceased,
12 isn't she?

13 A. Yes.

14 Q. Died in '06?

15 A. Sir?

16 Q. Died in 2006?

17 A. I think so, yes, sir.

18 Q. Your wife died about 2 months ago, I believe?

19 A. Yes, sir.

20 Q. Is that correct?

21 A. Yes, sir.

22 Q. So did you learn from that phone call that someone
23 had been killed?

24 A. Yes, sir.

25 Q. And was that someone a Mr. Stephens, Paul Stephens?

BILLY RALPH STANSELL - DIRECT BY MR. GAMBLE

1 A. Yes, sir. They had said Paul had been murdered.

2 That's all I recall from what was said.

3 Q. Before that phone call did you have an occasion to
4 see Brenda and Garvin Duvall?

5 A. Yes. I do a lot of mission work overseas and I
6 take --

7 Q. What kind of mission work?

8 A. A lot of mission work.

9 Q. What kind of mission?

10 A. Pardon?

11 Q. What mission?

12 A. Volunteer mission, building chapels in foreign
13 countries. And I always come home early and spend a little
14 time with my family. It was about 2 o'clock when I came in
15 and we was on the front porch, all of us, my wife, Peggy,
16 Brenda and Garvin Duvall. And they left about somewhere
17 around 4:30, and they are the ones that called back and told
18 us what happened. They was on the front porch supposedly when
19 this happened.

20 Q. Let me clear one more thing. I know your last name
21 is Stansell. Are you any relation to J. W., the Reverend
22 J. W. Stansell, Junior?

23 A. Definitely not. Thank the Lord.

24 Q. Thank you, sir. And what church is it that you go
25 on these mission trips with?

BILLY RALPH STANSELL - DIRECT BY MR. GAMBLE

1 A. Different churches, but Brushy Creek Baptist is one
2 we usually do, my church.

3 Q. Is that the one that just burned?

4 A. No, sir, that was in Greer. Taylors, rather.

5 Q. All right. And where were you going on this mission
6 trip?

7 A. To Brazil.

8 Q. Brazil?

9 A. Yes, sir.

10 Q. What part, do you know?

11 A. I'm not sure. We always land in San Paulo and we go
12 to different places. My 54th trip, so I don't remember all of
13 them.

14 Q. Fifty-four mission trips?

15 A. Yes, sir, to Brazil only.

16 Q. And what's your occupation?

17 A. I'm a builder, building 40 years. I'm semi-retired
18 now.

19 Q. All right, sir. Now, is there any doubt whatsoever
20 in your mind that you, your wife, Brenda Duvall and Garvin
21 Duvall were sitting on your front porch on June 30th, 1999?

22 A. I swear before God they was there, and I wouldn't
23 lie for nobody because all liars will not enter into Heaven,
24 and I'm going to Heaven, and it ain't going to be long either,
25 as old as I am.

BILLY RALPH STANSELL - CROSS BY MS. HOGAN

1 Q. You ain't old as I am. All right, sir. And you
2 knew it was that date because Brenda called back and talked to
3 your wife?

4 A. That is true, sir.

5 MR. GAMBLE: All right. Thank you. Answer any
6 questions the State has.

7 THE COURT: Yes, ma'am.

8 CROSS-EXAMINATION

9 BY MS. HOGAN:

10 Q. Mr. Stansell?

11 A. Yes, ma'am.

12 Q. Where were you working back in 1999?

13 A. The exact place, I'm not sure. I do little jobs all
14 over Dacusville and Easley, and I'm not sure of the exact spot
15 I was at that day, but I always spend some time, like I say,
16 before I go on a mission trip in the afternoon with my family,
17 and we usually rock on the front porch. That's what old
18 people do.

19 Q. Okay. And you can't remember exactly where you were
20 working in 1999 but you can remember exactly what you were
21 doing on June 30th 1999?

22 A. That is true because I know where I was at, on the
23 front porch, yeah.

24 Q. But you can't remember where you were working that
25 day?

BILLY RALPH STANSELL - CROSS BY MS. HOGAN

1 A. No, because I work all over the place.

2 Q. Okay. So isn't it true that you worked that day --

3 A. Yes. That is true. I work every day almost.

4 Q. You worked that day. And did you work until 4:30
5 that day?

6 A. No. I worked until about 2 o'clock. I came home
7 about 2 o'clock because I spend time with my family before I
8 go on a mission trip, the last couple of days before I go. So
9 we was sitting on the front porch.

10 Q. Okay. Isn't it true that your wife, Peggy, and
11 daughter, Brenda, said that you got home later that day?

12 A. I don't know what they said. I got home later that
13 day --

14 Q. About 4:30?

15 A. It was around 2 o'clock when I got home.

16 Q. Okay. But they said that you got home later that
17 day.

18 A. I don't know what they said.

19 Q. Okay.

20 A. They are not here to answer that. I wish they was
21 and then I wouldn't be here.

22 Q. Okay. Have you spoken to anybody about this before
23 today?

24 A. No. No.

25 Q. You never spoke to law enforcement to tell them

BILLY RALPH STANSELL - CROSS BY MS. HOGAN

1 this?

2 A. No. They come by and left a card. They wouldn't
3 even talk to me, so I don't know.

4 Q. But you didn't feel like you needed to go to them --

5 A. No, uh-uh.

6 Q. -- with this important thing, that you had this
7 alibi for Mr. Duvall? You didn't feel like it was --

8 A. I didn't have no alibi. I didn't need one because I
9 wasn't a witness. My wife was a witness at that time.

10 Q. Right.

11 A. She's deceased now and I'm trying to fill in her
12 shoes.

13 Q. Right. Right. But three alibis are better than
14 two. So you didn't feel like you needed to go to the
15 detectives and tell them --

16 A. No, because I don't like courtrooms. Most of the
17 time I'm standing in front of the Judge. If you check my past
18 you'll find that out. Since 1981 I'm standing before the main
19 judge, and that's Christ, my savior, and my words is my bond.
20 But back then I was sorry as J. W. was, probably, but I don't
21 look back to that. I look to the future.

22 Q. Okay.

23 A. But you can check my record from 1981.

24 Q. Okay. I don't need to do that.

25 A. And my word is my bond.

BILLY RALPH STANSELL - CROSS BY MS. HOGAN

1 Q. Okay. So when Mr. Duvall got arrested in 2006 you
2 didn't feel like you needed to go speak to investigators then
3 either?

4 A. No. I was waiting for them to come see me but sorry
5 to say they didn't. They left a card in the door. That's
6 about all they did.

7 Q. Okay. And when they left the card in the door did
8 you call the number that they had provided you?

9 A. No.

10 Q. So after they tried to contact you, you didn't try
11 to get back in contact with them?

12 A. No.

13 Q. Okay. To tell that you had this alibi witness
14 for --

15 A. No, I wasn't stepping up forward because if they
16 wanted to see me they knew where I lived.

17 Q. I'm curious about the record you're referring to
18 from 1981. What are you referring to?

19 A. 1981 I made it right with the Lord, my savior.

20 Q. Uh-huh.

21 A. He come into my heart, and I live for him. And
22 anybody knows me now knows that he's my savior.

23 Q. And you did that in 1981? That's what you're
24 referring to?

25 A. 1981. April the 5th, as a matter of fact, because

BILLY RALPH STANSELL - REDIRECT BY MR. GAMBLE

1 it cost me a lung for God to get my attention.

2 MS. HOGAN: Okay. Nothing further, Your Honor.

3 THE COURT: Anything?

4 REDIRECT-EXAMINATION

5 BY MR. GAMBLE:

6 Q. Mr. Stansell, she was asking you about your job in
7 1999. You are self employed?

8 A. Yes, sir.

9 Q. And you do work for many people?

10 A. Many people, yes, sir.

11 Q. So 10 years ago you don't know who these people
12 were, do you?

13 A. I doubt if I could -- I could bring them up
14 somewhere but it would be among 10 or 15 people because I do a
15 lot of smaller jobs for people.

16 Q. Yes, sir, patios, that kind of thing?

17 A. Yes, sir.

18 Q. Decks?

19 A. Yes, sir.

20 MR. GAMBLE: All right. Thank you.

21 MR. PRUITT: No questions.

22 THE COURT: All right, sir. You can step down.

23 Thank you.

24 MR. GAMBLE: The Duvall defense rests, Your Honor.

25 THE COURT: All right. Ladies and gentlemen, I need

1 to send you out of the courtroom for about 10 minutes. Please
2 don't discuss the case, and I'll bring you back in in a few
3 minutes.

4 (WHEREUPON, the jury leaves the courtroom at
5 approximately 11:11 a.m.)

6 MR. GAMBLE: Your Honor, I discussed with --

7 THE COURT: Come on up, Mr. Duvall.

8 MR. GAMBLE: I have discussed with my client,
9 Mr. Duvall, his rights under the 5th Amendment to testify or
10 not to testify. I've advised him that by saying he's not
11 guilty has put the burden of proof on to the State and that we
12 have presented the witnesses that were alibi witnesses, as
13 well as you might say supporting witnesses with regard to
14 Stansell's claim that he went off with him, and it's his
15 decision along with my advice not to take the stand and to
16 leave it as not guilty as you've saw it.

17 THE COURT: Mr. Duvall, if you would, I need to
18 swear you in.

19 GARVIN DUVALL, after having been duly sworn,
20 testified as follows:

21 THE COURT: Now, at this point in the trial you have
22 a right to testify; do you understand that?

23 DEFENDANT DUVALL: Yes, sir.

24 THE COURT: You understand the 5th Amendment
25 provided that you can't be compelled to testify against

1 yourself?

2 DEFENDANT DUVALL: Yes, sir.

3 THE COURT: Your lawyer is telling me that you all
4 talked about it. Do you have any questions for your lawyer
5 now?

6 DEFENDANT DUVALL: No, sir.

7 THE COURT: Do you understand that you have to make
8 this decision yourself, freely and voluntarily?

9 DEFENDANT DUVALL: Yes, sir.

10 THE COURT: All right. Do you understand that if
11 you did testify you'd be subject to cross-examination? If you
12 don't testify I'll instruct the jury that they can't hold that
13 against you; do you understand that?

14 DEFENDANT DUVALL: Yes, sir.

15 THE COURT: Do you have any questions for me at this
16 time?

17 DEFENDANT DUVALL: No, sir.

18 THE COURT: Anything else?

19 MR. GAMBLE: No, sir.

20 THE COURT: Okay. Thank you, sir.

21 You can bring them back in.

22 (WHEREUPON, the jury enters the courtroom at
23 approximately 11:18 p.m.)

24 THE COURT: Ladies and gentlemen, you've heard the
25 testimony that you're going to hear in the defense of

NATHAN MOORE - DIRECT BY MR. PRUITT

1 Mr. Duvall. Now we'll move to Ms. Moore.

2 Yes, sir.

3 MR. PRUITT: I call Nathan Moore to the stand.

4 THE CLERK OF COURT: Mr. Moore, if you would come
5 around and be sworn, please.

6 NATHAN EDDIE MOORE, after having been duly
7 sworn, testified as follows:

8 THE CLERK OF COURT: Go right up there and have a
9 seat in the witness chair.

10 (The witness was seated in the witness stand.)

11 THE CLERK OF COURT: If you'll state your full name
12 and spell your last name for the record.

13 THE WITNESS: Nathan Eddie Moore, M-o-o-r-e.

14 DIRECT EXAMINATION

15 BY MR. PRUITT:

16 Q. All right. Mr. Moore, now, you got a soft voice so
17 you're going to have to speak up so these ladies and gentlemen
18 on the jury can hear you.

19 A. All right.

20 Q. They probably can hear me. I've been accused of
21 having a loud voice, but you're going to have to speak up.

22 A. Okay.

23 Q. Now, tell the ladies and gentlemen of the jury how
24 you are related to Frances Moore.

25 A. Frances Moore is my wife.

NATHAN MOORE - DIRECT BY MR. PRUITT

1 Q. And how long have you all been married?

2 A. We've been married 40 years.

3 Q. All right, sir. How long have you -- where do you
4 presently live?

5 A. We live at . That's the old
6 Greenville Highway coming from Easley into Liberty.

7 Q. All right, sir. And how long have you lived at that
8 location?

9 A. Over 20 years.

10 Q. Yes, sir. Now, at that location does Debra Stephens
11 -- how are you related to Debra Stephens?

12 A. Debra Stephens is my stepdaughter.

13 Q. All right. And where does she live, at this time?

14 A. She lives right next door.

15 Q. All right. Does she live in a mobile home that's
16 next door?

17 A. That's right.

18 Q. All right. Now, where was she living back in June
19 of 1999?

20 A. June of 1999 she was at the trailer. She was living
21 at the trailer.

22 Q. Right next door?

23 A. Yeah, right next door.

24 Q. Now, do you recall the day of June 30, 1999?

25 A. Yes, I do.

NATHAN MOORE - DIRECT BY MR. PRUITT

1 Q. How is it that you're able to recall that day?

2 A. It was a special day. I got off work. I went to --
3 had to go to work, you know, and that was the day Paul
4 Stephens died.

5 Q. Okay. Now your voice is getting low.

6 A. I'm sorry.

7 Q. You're going to have to speak up.

8 Now, Mr. Moore, if you would, tell me where you were
9 working on June 30th, 1999.

10 A. I was working at Blair Mills.

11 Q. All right. And what shift were you on?

12 A. I was on the second shift.

13 Q. And what were the hours of the second shift at Blair
14 Mills?

15 A. Was from 3 o'clock until 11 o'clock.

16 Q. All right. Now, taking you back to that day, what's
17 the first thing that you remember happening on that day after
18 you got up, or whatever?

19 A. Well, after I got up and got dressed for work, and I
20 just -- I had to leave. I had a timeline. I knew how long it
21 took me to drive it and all that. So my wife was fixing my
22 lunch and everything and I was ready, you know. She knew
23 exactly what time I had to leave to get there.

24 Q. All right. Now, is your wife, Frances Moore, the
25 one that's seated at the center table here?

NATHAN MOORE - DIRECT BY MR. PRUITT

1 A. Certainly is.

2 Q. So was that day like any other day that you were
3 going to work?

4 A. Yes. Yes, it was, like any day.

5 Q. So tell me what you remember about where Frances
6 was, starting whenever you first remember her that day.

7 A. Well, I work the second shift, so I got a habit of
8 sleeping late, late. Later than average.

9 Q. All right. What time did you get up, as best you
10 recall?

11 A. About 11 o'clock.

12 Q. All right. And what happened next that day?

13 A. Well, I ate. I always get up hungry. I ate. And I
14 had to be to work at 3:00 so I took my shower and started
15 getting ready for work, and she started fixing my lunch.

16 Q. All right. Where had Frances and Debra been that
17 day?

18 A. I don't recall. I don't recall.

19 Q. Okay. When did you leave to go to work?

20 A. I left about 25 minutes after 2:00, or 30 minutes
21 after. Something like that.

22 Q. And was Frances Moore there with you at that time?

23 A. Yes, she was.

24 Q. And preceding the time that you left to go to work
25 what had Frances been doing?

NATHAN MOORE - DIRECT BY MR. PRUITT

1 A. She had just been cleaning up the house and
2 straightening up, being a good housewife.

3 Q. All right. Now, was that the last time that you saw
4 her before you went to work?

5 A. Yeah.

6 Q. At 2:30?

7 A. Yes. Yes.

8 Q. What happened next that day? What's your next
9 remembrance of that day?

10 A. Well, I was at work. I was a mechanic. And I was
11 sitting in the shop with the shift supervisor. We were
12 talking. The phone rang and my wife was upset. She was
13 crying. She told me to -- she said you better come home,
14 Nathan, something terrible is wrong -- has went wrong, and not
15 to drive fast, you know, because it wouldn't do any good to
16 drive fast, but just to come home. Said I need you here at
17 home with me.

18 Q. And about what time was that?

19 A. That was about 5:30ish, 6 o'clock. Something like
20 that.

21 Q. And as a result of that phone call what did you do?

22 A. Well, just so happened I was sitting in the shop
23 with my supervisor, and she is a lady supervisor. She
24 overheard me telling my wife that I wouldn't drive fast, you
25 know. I'd drive safe, you know, and I'd come home. And I

NATHAN MOORE - DIRECT BY MR. PRUITT

1 told him -- or her, and she said, I overheard your part of it
2 and something bad is wrong, or happened at home so you go
3 punch out and you go on home, and you drive careful and take
4 it easy and don't get hurt yourself.

5 Q. All right. So as a result of this phone call you
6 left and returned to your home?

7 A. Yes.

8 Q. And when you got home who was there?

9 A. My wife, and my daughter, and my grandson.

10 Q. Is your grandson Skylar?

11 A. Yes. Skylar is my grandson.

12 Q. Is he the child of Paul Stephens and Debra Stephens?

13 A. Yes, he is.

14 Q. All right. And when you arrived home approximately
15 what time was it?

16 A. It was about 5:30, 6 o'clock.

17 Q. And what did you learn when you arrived home?

18 A. After I got my wife and daughter settled down from
19 crying they had told me that Paul had been shot.

20 Q. All right, sir. Now, what size man was Paul
21 Stephens?

22 A. He was a very large man. He was very tall. He was
23 big all over. He was, I think 6-8, barefooted, and weighed
24 250 pounds or more.

25 Q. All right, sir. Now, are you familiar with your

NATHAN MOORE - DIRECT BY MR. PRUITT

1 wife's -- Frances' size?

2 A. Am I familiar with? Yes.

3 Q. About how tall is she?

4 A. She's about 5-5, 5-4. Something like that.

5 Q. And is she the same size today, more or less, as she
6 was back in 1999?

7 A. No, she's gained just a little weight since then.
8 Just a little (indicated).

9 Q. I don't believe I would have said that.

10 [LAUGHTER]

11 All right. Well, as long as you've gotten into
12 that, how old are you?

13 A. How old am I?

14 Q. Yes, sir.

15 A. Sixty-six.

16 Q. And how old is your wife?

17 A. Uh-oh. Now you got me into a bind. No. She's 60
18 -- I believe she's going to be 62.

19 Q. She'll be 62 on her birthday?

20 A. Yeah, her birthday in May.

21 Q. All right, sir. Now, during the time that -- do you
22 remember where Paul Stephens -- do you remember the general
23 time frame when Paul Stephens and Debra Stephens were living
24 next door to your house there in the trailer?

25 A. Yes.

NATHAN MOORE - DIRECT BY MR. PRUITT

1 Q. All right. Now, did you have any opportunity to see
2 Paul Stephens and your wife, Frances Moore, interact with each
3 other?

4 A. Yes.

5 Q. All right. What could you tell about their
6 relationship to each other?

7 A. Well, when all three of them got together doing
8 something or some kind of project or whatever the case might
9 be it had to be done Paul's way. I mean, he was a demanding
10 person. You know, he was demanding.

11 Q. All right. Did you ever notice any fear of Paul
12 toward Frances?

13 A. No. No.

14 Q. Now, do you remember at some point in time when Paul
15 and Debra separated?

16 A. Yes.

17 Q. All right. Do you remember a time after they
18 separated when they got back together?

19 A. Yes, I remember that.

20 Q. All right. Were they back together in June of 1999?

21 A. Yeah. Yes.

22 MR. PRUITT: Okay. Answer any questions the State
23 may have.

24 CROSS-EXAMINATION

25 BY MR. BRADLEY:

NATHAN MOORE - CROSS BY MR. BRADLEY

1 Q. Mr. Moore, you say you've been married to Frances
2 for 40 years; is that right?

3 A. Forty years.

4 Q. That's a long time, isn't it?

5 A. Yeah. Never been separated for anything.

6 Q. How would you describe your marriage?

7 A. About the best it could be.

8 Q. The best it could be. You all been friends and
9 partners for a long time, haven't you?

10 A. Yes.

11 Q. You'd hate to see for her to go away; is that right?

12 A. Beg your pardon?

13 Q. You would hate to see her go away; is that right?

14 A. Oh, definitely.

15 Q. So you'd be willing to do about anything to keep her
16 from going away; is that right?

17 A. Yeah, just about.

18 Q. You would do anything?

19 A. Except lie.

20 Q. Did you ever talk to law enforcement about this
21 information you've told us today back in 1999?

22 A. No. Actually, I've been left out of the picture
23 completely. I've only been talked with by a Pickens County
24 officer up there and he was just asking me -- they had
25 searched our house and tore it all to pieces, slung stuff

NATHAN MOORE - CROSS BY MR. BRADLEY

1 everywhere trying to found a weapon, some kind of weapon. I
2 believe officers said it was a 308 or whatever. And that one
3 officer just talked to me and talked to Skylar, because Skylar
4 was like, I say was 5, just 5 years old, you know.

5 Q. So this information that you've told us today you
6 never came forward and told anybody. You said you've been
7 left out of the loop, left out of the picture but, I mean, if
8 you have this vital information why wouldn't you come out and
9 share it back then?

10 A. Sir, I misunderstood.

11 Q. If you had this vital information why wouldn't you
12 come out and share it back then? You said you were left out
13 of the loop but it looks like you could have gone to them; is
14 that right?

15 A. If I had anything. I didn't have any information.

16 Q. So you don't know exactly what your wife did on June
17 30th, 1999 after you went to work?

18 A. Yes, I know exactly what she did. Yes, I know
19 exactly what she did.

20 Q. How do you know? You just said you don't have any
21 information. How do you know what she did if you don't have
22 any information? You were at work. You weren't with her; is
23 that right?

24 A. Yeah, I was at work and I wasn't with her.

25 Q. So you don't know what she did after you left for

NATHAN MOORE - CROSS BY MR. BRADLEY

1 work; is that right?

2 A. I've been married to her 40 years. I trust her.

3 Q. But you weren't with her, were you?

4 A. No, I wasn't with her. I was at work.

5 Q. And what time did you leave for work? I believe you
6 said it was --

7 A. 5:30ish.

8 Q. No, when you left for work. You said it was about
9 2:25, somewhere in there.

10 A. Oh, when I left for work. I'm sorry. I
11 misunderstood you. Yes.

12 Q. You left for work about 2:25. And she was there at
13 your house fixing you lunch; is that right?

14 A. What's that?

15 Q. She was fixing you lunch around that time before you
16 left for work?

17 A. I'm sorry. I still haven't understood you. I'm a
18 little bit hard of hearing.

19 Q. I'll get a little bit closer. I apologize. You
20 said you left for work about 2:25 that day; is that right?

21 A. Right.

22 Q. And she was there at the house?

23 A. Yes.

24 Q. When you left for work?

25 A. Yes.

NATHAN MOORE - CROSS BY MR. BRADLEY

1 Q. But then after 2:25 you really don't know where she
2 was, do you?

3 A. No. She usually if she's going to be going
4 somewhere or something -- she did tell me she was going to get
5 groceries, and which nothing unusual about a housewife going
6 to get groceries for the house. I said okay.

7 Q. I'm curious about something you said in your direct
8 testimony. When you were asked how you remembered June 30th,
9 1999 was it your testimony that it was a special day because
10 Paul Stephens died?

11 A. No, it was a bad day because Paul Stephens died.

12 Q. But you said it was a special day for some reason.

13 A. Well, it wasn't a special day. It was an unusual
14 day. He was my brother-in-law, you know, and him dying.

15 Q. He was your brother-in-law or your son-in-law?

16 A. I mean my son-in-law.

17 Q. I believe it was also your testimony that you don't
18 remember where your wife was the morning of June 30th, 1999
19 either, do you? You don't know where she was before you got
20 up for work, do you?

21 A. She was usually in there cleaning up the house.

22 Q. But I believe you testified you didn't remember
23 where she was that morning; is that correct?

24 A. Well, I mean, I didn't know which room she was in
25 and all that type thing but she was at home.

NATHAN MOORE - CROSS BY MR. BRADLEY

1 Q. She was at home that morning?

2 A. Yes.

3 Q. Is it not true that she went to the Anderson City
4 Police Department that morning with your daughter, your
5 stepdaughter?

6 A. Well, that's after I got up, yeah. Yes.

7 Q. But you just said she was at home.

8 A. Well, while I was asleep she was at home but I was
9 just getting up and they had to go to the police department.

10 Q. It's been 10 years ago, hadn't it?

11 A. Huh?

12 Q. It's been 10 years ago all this happened; is that
13 right?

14 A. Yeah.

15 Q. It's a long time, huh?

16 A. A very long time.

17 Q. Having a tough time remembering things, huh?

18 A. Yeah. When you start wanting to go down to the
19 minute, yeah.

20 Q. How close were you and Paul?

21 A. How close? We were friends. He was my son-in-law.

22 MR. BRADLEY: Nothing further, Your Honor.

23 THE COURT: Anything?

24 MR. PRUITT: (Shook head).

25 THE COURT: All right. Thank you, sir. You can

1 step down.

2 MR. PRUITT: We call Shirley Wrenn to the stand.

3 SHIRLEY WRENN, after having been duly sworn,
4 testified as follows:

5 THE CLERK OF COURT: Go up and have a seat in the
6 witness chair, please.

7 MR. BRADLEY: Your Honor, I'll have to object to
8 this witness being called at this time. We were never
9 furnished with her name as a witness. At the beginning of the
10 trial he made no mention of her being a witness either.

11 THE COURT: All right. Ladies and gentlemen, I need
12 to send you out for just a few minutes. This will not be a
13 long wait.

14 (WHEREUPON, the jury leaves the courtroom at
15 approximately 11:43 a.m.)

16 THE COURT: Yes, sir?

17 MR. BRADLEY: Again, I would just object to this
18 witness being called at this time. We have no idea who she
19 is. She was never furnished to us as a possible witness or
20 did he make mention of it at the beginning of the trial that
21 she could possibly be a witness. Mr. Pruitt, I believe, only
22 mentioned Debra Stephens, Nathan Moore and Skylar at the
23 time, Skylar , and we have no idea who this is, Your
24 Honor.

25 THE COURT: Yes, sir?

1 MR. PRUITT: Your Honor, under the discovery rules,
2 which I believe he's talking about, I would only be required
3 to furnish names and witnesses of alibi witnesses, if I were
4 intending to call those.

5 Ms. Wrenn and the next witness, Kacie Whitfield, are
6 relatives of Frances Moore and are going to be presented to
7 tell about their relationship with the family and their
8 ability to observe the demeanor of Frances and Paul. This
9 would be in contrast to the testimony that was presented by
10 three of the State's witnesses over our objection that Paul
11 had said that if he ever got killed Frances should be
12 investigated.

13 They were not present on the day of the event and
14 will not be testifying as to alibi. So I hadn't really
15 planned on calling them when this trial started but you can't
16 figure everything in advance.

17 THE COURT: Okay.

18 MR. BRADLEY: Your Honor, since she was not
19 mentioned at the beginning of the trial to the jury panel they
20 were not polled about their knowledge of her. There may as
21 well be somebody on this jury that knows her in some form or
22 fashion. We would at least like to know that, and also have
23 her information so we could possibly obtain prior record of
24 criminal histories, if there is any.

25 THE COURT: All right. Well, I think they are

1 entitled to the information to see if there's a prior record.
2 Why don't you -- I don't want to do it in open court. Just
3 write it down and let you do what you got to do.

4 MR. PRUITT: And while he's checking, let's have him
5 check the next one, too.

6 THE COURT: What I think I'll do is bring the jury
7 back in and just ask them the names. Go through that to make
8 sure there's not a problem. What are the names of the
9 witnesses that we'll have?

10 MR. PRUITT: The witness that's on the stand is
11 Shirley Wrenn, W-r-e-n-n, and Kacie Whitfield. And that's
12 Kacie over there on the front row.

13 THE COURT: All right, ma'am. Step down for just a
14 minute and I'll bring you back up in just a second. So
15 Shirley Wrenn and Kacie Whitfield?

16 MR. PRUITT: Yes, sir. Your Honor, if I would have
17 known Your Honor was going to let in that testimony I would
18 have said something about it.

19 THE COURT: That's all right. I mean, you know,
20 this stuff comes up. Like you said, you can't anticipate
21 everything.

22 Yeah, bring them back in.

23 (WHEREUPON, the jury enters the courtroom at
24 approximately 11:48 a.m.)

25 THE COURT: Ladies and gentlemen, we've got an issue

SHIRLEY WRENN - DIRECT BY MR. PRUITT

1 that's come up that's not unusual but I need to poll you on
2 this. There are two witnesses that may testify that were not
3 on the original witness list. There's a Shirley Wrenn and a
4 Kacie Whitfield. Do any of you have any close business or
5 personal relationship or are you related by blood or marriage
6 to Shirley Wrenn or Kacie Whitfield?

7 (There was no response.)

8 THE COURT: And I'm asking all the jury and no
9 one --

10 Do any of you know them whatsoever?

11 (There was no response.)

12 THE COURT: Okay. Thank you.

13 Your objection is noted. You can call them.

14 Come on back up. I'm sorry about that, Ms. Wrenn.

15 DIRECT EXAMINATION

16 BY MR. PRUITT:

17 Q. Ms. Wrenn, tell me where you live.

18 A. , Greenville, South
19 Carolina. Now I do.

20 Q. And I notice that you are shaking a little bit; why
21 is that?

22 A. I had a stroke, and I have torticollis, a disease in
23 my neck which makes my head shake.

24 Q. I thought maybe it was because you were nervous of
25 me asking you questions.

SHIRLEY WRENN - DIRECT BY MR. PRUITT

1 A. No.

2 Q. How are you related to Frances Moore?

3 A. She's my sister.

4 Q. All right. And is she your younger sister, or older
5 sister, or what?

6 A. Middle.

7 Q. Middle sister. Okay. Now, I want to take you back
8 to June of 1999. Where were you living at that time?

9 A. In Georgia.

10 Q. All right. And previous to June of 1999 did you
11 have occasion to visit in the home of your sister, Frances
12 Moore?

13 A. Yeah. I would come home about every two weeks and
14 I'd go up to Frances' and I'd spend the night. And I just get
15 homesick and I'd come home.

16 Q. Over what time period did you -- how long did you
17 stay on an average visit?

18 A. Sometimes two days, sometimes three.

19 Q. All right. And would you usually stay at Frances'
20 house?

21 A. Yeah, because we would go down and visit my two
22 children, she would go with me.

23 Q. All right. Now, starting approximately when and
24 ending in June of '99, when did this type of visits start more
25 or less? How long had you been doing that?

SHIRLEY WRENN - DIRECT BY MR. PRUITT

9 Q. Debra and Paul were in the trailer?

11 Q. Next to Frances' house?

13 Q. Well, in these visits that you made to your sister
14 did you ever have occasion to be around Frances and Paul
15 Stephens together?

22 Q. Did you ever notice any fear of Paul Stephens
23 directed against Frances Moore?

25 Q. What size man was Paul Stephens?

SHIRLEY WRENN - CROSS BY MS. HOGAN

1 A. Oh, my God. Paul was big. I mean big. I could
2 have probably walked under his arm.

3 Q. All right. And how tall are you?

4 A. I'm probably about 5-5 and a half. I got on heels
5 that makes me look a little higher.

6 Q. Did you ever hear a cross word between Paul Stephens
7 and Frances Moore?

8 A. No, sir. No.

9 MR. PRUITT: Answer any questions the State might
10 have.

11 CROSS-EXAMINATION

12 BY MS. HOGAN:

13 Q. Ms. Wrenn, so you are Ms. Moore's sister?

14 A. Uh-huh.

15 Q. Are you the baby sister or the older?

16 A. I'm in the middle.

17 Q. Oh, you're in the middle. Is she the older or the
18 younger?

19 A. She's the baby.

20 Q. Oh, she's the baby. Okay. Okay. And you would
21 visit her about every couple of weeks?

22 A. Yeah.

23 Q. For a couple days at a time?

24 A. Sometimes I'd stay two nights, sometimes I might
25 stay three --

SHIRLEY WRENN - CROSS BY MS. HOGAN

1 Q. Okay.

2 A. -- because.

3 Q. And it was to visit your family?

4 A. Yeah. We would go down. She would go with me to
5 visit my kids.

6 Q. So the reason you were coming was to visit and be
7 with your family?

8 A. Yeah.

9 Q. Not necessarily their house, okay. So when you
10 weren't here then you weren't with them?

11 A. No. Uh-uh.

12 Q. Right. Okay. So when you were around everybody
13 was --

14 A. They was fine.

15 Q. Just fine as you could see that --

16 A. Paul was always -- he was always nice to me, and
17 when he come in the house and I'd come in he always hugged my
18 neck, told me he loved me. And he always called Frances
19 momma, and they was just -- they always joked and carried on
20 with something all the time. I mean, it was just somebody
21 laughing all the time.

22 Q. But there were a lot of times you weren't there?

23 A. That's true. Yeah.

24 Q. So you don't know what was going on when you weren't
25 there?

SHIRLEY WRENN - CROSS BY MS. HOGAN

1 A. That's true.

2 Q. Okay. And you're not real good with dates so you
3 don't remember exactly when this was?

4 A. No, I'm sorry, I can't because --

5 Q. This could have been years before that?

6 A. -- I had a stroke and I just can't.

7 Q. Okay.

8 A. I can't remember a lot of dates.

9 Q. Okay. So the relationship that you're talking about
10 could have been well before Paul's death?

11 A. Yeah. I went to her house before Paul's death.

12 Q. Right.

13 A. Yeah.

14 Q. Okay.

15 A. Then after that happened I went too, to be with
16 them.

17 MS. HOGAN: Nothing further from the State, Your
18 Honor. Thank you.

19 THE COURT: Anything on redirect?

20 MR. PRUITT: No more questions, Your Honor.

21 THE COURT: You can step down.

22 MR. PRUITT: I call Kacie Whitfield.

23 KACIE CHRISTINA WHITFIELD, after having been
24 duly sworn, testified as follows:

25 THE CLERK OF COURT: If you'll have a seat right

KACIE WHITFIELD - DIRECT BY MR. PRUITT

1 there in the witness chair.

2 (The witness was seated in the witness stand.)

3 THE CLERK OF COURT: If you'll please state your
4 full name and spell your last name for the record.

5 THE WITNESS: Kacie Christina Whitfield,
6 W-h-i-t-f-i-e-l-d.

7 DIRECT EXAMINATION

8 BY MR. PRUITT:

9 Q. Ms. Whitfield, where do you live?

10 A. At , Greenville.

11 Q. And how are you related to Frances Moore?

12 A. She's my great aunt.

13 Q. Now, I want to take you back to June of 1999. Do
14 you recall when Paul Stephens was killed?

15 A. I do.

16 Q. All right. Starting at that point and going
17 backwards in time, tell the ladies and gentlemen of the jury
18 when and at what frequency you visited in Frances Moore's
19 home.

20 A. Well, when Skylar was born in of '94 I would
21 stay with Debra and Paul for -- in the trailer on the
22 weekends, and then after I got out of school I stayed at their
23 home the whole summer, of that summer after he was born. That
24 was in '94.

25 Q. All right. And what were you doing?

KACIE WHITFIELD - DIRECT BY MR. PRUITT

1 A. Just helping them with the baby. Just being --
2 wanted to be around the baby.

3 Q. All right. And how close is Debra's and Paul's or
4 was Debra and Paul's mobile home to Frances' house?

5 A. Right beside each other.

6 Q. All right. Now, after that year that Skylar was
7 born did you continue with your visits in Frances' home and/or
8 Debra Stephens' home?

9 A. Uh-huh.

10 Q. And about what type of frequency?

11 A. Not as often. Of course, I become a teenager and
12 did other things. Maybe a couple times a month.

13 Q. All right. And when you would visit there a couple
14 times a month did you have the opportunity to observe Frances
15 Moore and Paul Stephens interacting?

16 A. Uh-huh.

17 Q. All right. What did you observe about their
18 relationship with each other?

19 A. It was a normal relationship. They got along great.
20 I mean, nothing out of the ordinary.

21 Q. Okay. Do you ever recall observing any fear or
22 hostility between them?

23 A. No.

24 Q. What size man was Paul Stephens?

25 A. Very big man.

KACIE WHITFIELD - CROSS BY MS. HOGAN

1 MR. PRUITT: All right. That's all the questions I
2 have of this witness.

3 CROSS-EXAMINATION

4 BY MS. HOGAN:

5 Q. Ms. Whitfield, so you stayed with Paul and Debra a
6 lot during the summer of 1994?

7 A. Uh-huh.

8 Q. But then towards 1999 you saw them less and less --

9 A. Uh-huh.

10 Q. -- the older you got?

11 So you saw them maybe a couple months -- I mean,
12 maybe a couple times a month?

13 A. Right.

14 Q. Okay. So you weren't with them all the time?

15 A. No, not all the time.

16 Q. From what you could see everything seemed fine?

17 A. Uh-huh.

18 Q. But you weren't around at other times so other
19 things could have been going on that you don't know about?

20 A. Yeah.

21 MS. HOGAN: Nothing further, Your Honor.

22 THE COURT: Any redirect?

23 MR. PRUITT: No redirect.

24 THE COURT: All right. You can step down. Thank
25 you.

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 MR. PRUITT: We call Debra Stephens to the stand.

2 DEBRA STEPHENS, after having been duly sworn,
3 testified as follows:

4 THE CLERK OF COURT: Go right there and have a seat
5 in the witness chair, please.

6 (The witness was seated on the witness stand.)

7 THE CLERK OF COURT: If you'll state your full name
8 and spell your last name for the record, please, ma'am.

9 THE WITNESS: Debra Cheryl Stephens,
10 S-t-e-p-h-e-n-s.

11 DIRECT EXAMINATION

12 BY MR. PRUITT:

13 Q. All right, Debra. You have a slight voice too so
14 you're going to have to speak up.

15 A. Okay.

16 Q. Where do you live?

17 A. At , Liberty.

18 Q. All right. And how close is that to Frances Moore's
19 house?

20 A. Right next door. It's basically in the same fenced
21 yard.

22 Q. Okay. And how are you related to Frances Moore?

23 A. That's my mother.

24 Q. All right. Now, tell me how long have you lived in
25 that mobile home next to Frances' house?

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 A. Approximately 17 years. Something like that.

2 Q. Now, when did you and Paul Stephens get married?

3 A. We got married in '93 -- '93.

4 Q. All right. And when you got married in '93 did you
5 move into that mobile home next to your mother?

6 A. Actually, it was one that I had before me and him
7 married that was located in Easley off of Popeville Road in
8 Easley, and me and him moved it to that piece of property
9 beside the house.

10 Q. So you moved the mobile home over there next to your
11 mother?

12 A. Yes.

13 Q. Now, tell me, were you present at the birthday party
14 that Garvin Duvall and the Hendrix' gave for Brandon?

15 A. Yes, I was.

16 Q. And were you present to watch the show presented by
17 the archbishop, Mr. Stansell?

18 A. Yes, I was.

19 Q. Now, tell me, have you had a chance to look at this
20 or look at copies of the pictures that are in what's been
21 marked as State's Exhibit Number 33?

22 A. I don't believe so.

23 Q. Well, take a look. Did you look at some pictures
24 with me yesterday?

25 A. Oh, yes, I did.

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 Q. Look through those pictures and see if you can find
2 for me the ones that you're in.

3 A. Okay.

4 It's about like 13.

5 Q. About 13 of them?

6 A. Uh-huh.

7 Q. Okay. Well, how about pull out a couple of them --
8 first of all, before you do that, let me ask you a few other
9 questions and maybe you won't have to move but once. Was your
10 son, Skylar, at this same birthday party?

11 A. Yes.

12 Q. Now, when you were there did you stay at the
13 birthday party the whole time?

14 A. Yes.

15 Q. All right. Toward the end of the party where were
16 you and who were you talking to?

17 A. As they said earlier, the picnic tables were kind of
18 under a shed. So right behind the shed is where people parked
19 their cars, and there's a wall, like I guess it's a rock or
20 brick wall that runs down, then they have a play area over
21 here (indicated). And me and Kim, which is Brandon's
22 mother --

23 Q. That's Kim Hendrix we heard from earlier today?

24 A. Yes, sir. And me and her were out so we could watch
25 the kids on the playground. They wasn't actually still under

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 the shed eating or anything. They had already finished
2 eating. So we were out there so we could watch them on the
3 playground.

4 Q. All right. Were you also there as people started to
5 leave?

6 A. Yes. Yes, we were.

7 Q. Okay. Now, pick out a picture that shows the wall
8 where people were parking that you can show to the ladies and
9 gentlemen of the jury.

10 A. Okay.

11 There's one with the playground (indicated).

12 Q. Just pull the pictures out you want me to show them
13 then I'll let you explain it.

14 MR. GAMBLE: They won't come out.

15 Q. All right. If you would, step over here where you
16 can look at the monitor.

17 A. (The witness complied).

18 Q. And tell me or tell the ladies and gentlemen of the
19 jury what that picture shows. And you can use the pointer
20 here if you like.

21 A. Okay.

22 Q. Now speak up.

23 A. Okay. This here, this here is the shed (indicated).
24 This is where the picnic tables were (indicated). This, of
25 course, by the rock wall. I was call rock, maybe brick wall

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 that I was talking about and it runs all the way around the
2 park pretty much, say halfway, and some of the cars park on
3 towards this end, and the play area is around this way
4 (indicated).

5 Q. All right. This next picture here, does it -- what
6 does it show?

7 A. It shows also where the wall, it just keeps running
8 out.

9 Q. And this picture right here, what does it show?

10 A. This -- okay. This one here is the -- okay, you
11 talking about the top one? This is at the end of the shed.

12 Q. Right.

13 A. Which will be down on the far end like this way
14 (indicated) because this shed kind of ran this way (indicate).
15 And that's where the magic act, and they also had like a
16 little fire pit there, which we didn't use that.

17 Q. And how about this one?

18 A. Okay. This one is the fire pit and the magic thing
19 was on this side over here (indicated). And running this way,
20 this is the playground over here (indicated) and the wall
21 continues to go on around this way (indicated).

22 Q. All right. I see a car parked there.

23 A. Uh-huh.

24 Q. Where is it parked in relation to the wall?

25 A. Just the wall runs like right in front of it.

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 Q. All right. Go ahead and have a seat back at the
2 witness stand.

3 A. (The witness complied).

4 Q. Now, Debra, while you were there at the party and
5 after the magic show did you ever see Garvin Duvall and the
6 archbishop, Stansell, leave together?

7 A. No.

8 Q. Now, I know you couldn't have watched everybody at
9 the whole time but how can you say that you -- that they never
10 left anywhere together?

11 A. Well, for one, his truck was one of the first
12 vehicles parked.

13 Q. Whose truck?

14 A. Mr. Duvall's. And it had loud mufflers on it. It
15 was a loud truck, and it was parked close, one of the first
16 few cars that were parked there. So it would have had to --
17 to get out of the park area would have had to come past where
18 we were talking.

19 Q. Okay.

20 A. And even if we were under the shed it was parked
21 like right behind the shed area.

22 Q. All right. Now, tell me, if you can, how big a man
23 Paul Stephens was.

24 A. Paul was a big guy. He was about 6-8, weighed about
25 285, 290, something like that.

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 Q. Was he afraid of Frances Moore?

2 A. No, I didn't know too many people Paul was afraid
3 of.

4 Q. Now, I want to take you back to June 30th, 1999. Do
5 you remember that day?

6 A. Yes, I do.

7 Q. Where was Paul Stephens living on that day?

8 A. At my house.

9 Q. At your house?

10 A. Yes.

11 Q. Had you all attempted some type of reconciliation?

12 A. Yes, we had.

13 Q. Approximately how long had he been living back with
14 you?

15 A. Not very long, maybe a few days at this time. We
16 tried to reconcile a couple of times, a couple of different
17 times.

18 Q. Now, tell me what happened on that day starting with
19 the time that you got up.

20 A. Okay. I got up, I got dressed. Like I said -- or
21 it was said earlier, that me and my mother were going to
22 Anderson City Police Department. We left around 9:30, got
23 there 10:00, a little after maybe. We stayed there doing
24 numerous things and talking to different people, Mr. Hawkins,
25 of course, and different people. We left there --

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 Q. Okay. Let's wait a minute. We're going too fast.
2 Did you talk to this Greg Hawkins that was on the stand
3 yesterday?

4 A. Yes. I talked to Greg Hawkins yesterday. I mean, I
5 didn't talk to him yesterday. I talked to him on the day
6 here.

7 Q. And what were you all talking about?

8 A. We were taking about some checks that had been
9 forged and concerning the checkbook that had been stolen, and
10 some signatures that had been forged.

11 Q. All right. And how long were you and your mother
12 down there at the Anderson City Police Department?

13 A. A while, maybe three, four hours.

14 Q. All right. Now, approximately what time did you and
15 your mother leave the Anderson City Police Department?

16 A. I'm not exactly sure on the time we left. I would
17 assume between 1:30 and a quarter to 2:00 because of the time
18 we got home.

19 Q. All right. Now, what happened when you got back to
20 your home and Frances' home?

21 A. Well, first off, all the way home she was talking
22 about rushing in so she could fix my dad's dinner for work.
23 And we got home and I guess she went in and fixed his lunch,
24 and I went to the trailer.

25 Q. So did you get home before Nathan Moore left to go

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 to work?

2 A. Oh, yeah.

3 Q. Now, but anyway, you separated from your mother at
4 that time and went over to your house?

5 A. Yes.

6 Q. All right. Who was there at your house at that
7 time?

8 A. Paul and Skylar had just --

9 Q. All right. And do you know what Paul and Skylar had
10 been doing earlier that day?

11 A. They had went to the Waffle House to eat.

12 Q. All right. And what happened? What happened next?

13 A. Paul had -- I'm not sure if he had used the phone or
14 had maybe phoned a beeper, or he'd called someone on phone. I
15 was in the back of the trailer, the back bathroom but I could
16 hear him on the phone or making some kind of calls.

17 The phone rang back, he answered it, which he
18 normally did when it rang. I guess that happened a couple
19 times. And he comes into the bathroom where I'm at cleaning
20 the bathroom at the time, and Skylar is right behind him, and
21 he says he's got to run somewhere, he'll be back shortly.

22 Q. And how is it that you remember this?

23 A. Well, for one, Skylar was crying because he wanted
24 to go, and if it was someplace that Skylar wasn't supposed to
25 go Paul would usually tell him that he's got to go to work and

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 that he couldn't go. And so I told Skylar to come on, that me
2 and him would go outside and play in the yard.

3 Q. Okay. And approximately how long after receiving
4 these phone calls or several phone calls, how long was it
5 before Paul left?

6 A. Oh, just a couple minutes.

7 Q. Okay. And what did you and Skylar do?

8 A. We went directly outside.

9 Q. All right. What were you doing out there?

10 A. Oh, we just played out in the yard. We played on
11 the swing. He had one of those -- the big jungle gym type
12 swings out behind my mom's house.

13 Q. So the jungle gym is out behind Frances' house and
14 not behind yours?

15 A. Yes.

16 Q. All right. Now, did you see your mother, Frances,
17 at or about this time?

18 A. I'm not sure if she was already gone. I'm not
19 really sure if she was already gone. I knew she was going to
20 the grocery store but I'm not sure if she had already gone. I
21 knew she was kind of concerned about Skylar wanting to go with
22 her and she didn't want to tell him no. So I'm not sure if
23 she was gone or not. I'm assuming she was because I don't
24 remember him crying to go.

25 Q. All right. Now, when is the next time that you saw

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 your mother, Frances Moore?

2 A. About somewhere after -- I'm going to say maybe 20
3 after 3:00, 15 after 3:00, 3:30. Something like that.

4 Q. All right. And how is it that you remember that?

5 A. Well, to be honest, when she pulled up she had
6 groceries in the car and I helped her get the groceries in,
7 and we happened to look on the receipt and I saw the receipt
8 time. And so, I mean, I actually know that she was earlier
9 than what I remember her getting home but.

10 Q. Well, did you help her bring the groceries into the
11 house?

12 A. Yes, sir.

13 Q. All right. And were there -- when you and your
14 mother were at the City of Anderson talking to Greg Hawkins
15 were there any groceries in the car?

16 A. No. No, sir.

17 Q. Did you all stop anywhere between the City of
18 Anderson at the Anderson Police Department and you all's
19 residences when you left the city police department?

20 A. No, sir.

21 Q. And when your mother got back to her house, which is
22 right next to your house, there were groceries in the car?

23 A. Yes.

24 Q. Now, tell me what happened -- what happened next
25 that day?

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 A. We just went on normal. Me and Skylar continued to
2 play. We were kind of in and out of the house, in and out of
3 her house, at that time. And then just very shortly after the
4 -- I believe it was the coroner and a deputy pulled up in my
5 driveway.

6 Q. All right. And is that when you learned about
7 Paul's death?

8 A. Yes, it is.

9 Q. Well, how did that affect you?

10 A. Very bad. Real shocked.

11 Q. How did it affect Frances?

12 A. Very bad as well. Very shocked.

13 Q. Okay. Now, approximately when did someone call
14 Nathan to alert him to these events?

15 A. Yes. I believe my mother did. I believe --

16 Q. As a result did he show up home later?

17 A. Yes.

18 Q. Now, do you recall any police coming to talk to you
19 or your mother about the circumstances surrounding Paul's
20 death?

21 A. On that day after they had came out and give us the
22 news they were leaving, and where her house is and my trailer
23 is she's got like an atrium and you can see straight down the
24 sidewalk, which is to my driveway, and it dawned on me that I
25 had not been in the trailer since he had left and that he had

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 been on the phone and answered the phone. So I told them
2 about that and asked them --

3 Q. Told who that?

4 A. The officer that had came out to tell us that he had
5 been killed, and they asked -- they asked if I minded if they
6 went in, and I said, of course not. You know, maybe we could
7 check the caller I. D. and see if we could find out where the
8 calls come from or who he tried to call.

9 Q. And did they take you up on that?

10 A. Yes, they did.

11 Q. Now, I'd like to show you this document here, and
12 tell me if you can identify it.

13 A. Yes, I can.

14 Q. All right. What is that?

15 A. This was the grocery receipt that my mom brought
16 back from the grocery store.

17 Q. And how is it that it came into your possession?

18 A. After they had came and told us of Paul's death
19 naturally we were all still kind of shocked. And so the next
20 day when they came out they were asking everybody's
21 whereabouts and everything, and it dawned on me about her
22 having a grocery store receipt. And we looked for it to see
23 what time was on it for them, and we -- actually, I found it
24 in her purse.

25 Q. All right. And so you found it the day afterwards

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 in her purse. And would you look at the items on it and tell
2 me if you can identify any of those items as being the ones
3 that you saw in the back of her car.

4 A. Yes, I can.

5 Q. What were some of the items?

6 A. The main ones were -- would be the case of peas and
7 the case of butter beans because we hated lifting the cases.
8 The others were cheese balls, Skylar's favorite, and apple
9 pies for my dad's lunch, and I guess just other cleaning
10 stuff.

11 Q. Now, what is the date on that receipt?

12 A. 6-30 of '99.

13 Q. And what is the time on it?

14 A. 3:04 p.m.

15 MR. PRUITT: Your Honor, we'd move to introduce this
16 receipt into evidence.

17 THE COURT: Any objection?

18 MR. BRADLEY: No objection.

19 THE COURT: All right. Without objection.

20 (WHEREUPON, Defendant Moore's Exhibit Number 1, a
21 Receipt, was marked and admitted into evidence.)

22 MR. PRUITT: Your Honor, I'd like to show this to
23 the jury.

24 THE COURT: All right.

25 BY MR. PRUITT:

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 Q. Debra, would you step down here and identify where
2 the date is on this receipt.

3 (The witness stepped down from the witness stand.)

4 A. The date is at the top, right up under the items
5 list.

6 Q. All right. And what date does it show?

7 A. 6-30 of '99.

8 Q. And how about the time? Can you point out for the
9 jury where the time is indicated.

10 A. Yes. It's the 3:04 p.m. on right-hand side, bottom.

11 Q. All right. Have a seat back in the stand.

12 A. (The witness complied).

13 Q. Now, Debra, are you familiar with your mother's age?

14 A. Yes.

15 Q. How old is she?

16 A. She was born in '47. So that would make her 62.

17 Well, let's see.

18 Q. All right. And how about her physical dimensions.

19 Are you familiar with that?

20 A. She's about 5-1 and a half, maybe 5-2. About the
21 same height as me.

22 Q. And I don't want to get you in trouble but how much
23 would you say that she weighs?

24 A. Maybe 180.

25 Q. Okay. Now, is her size today the same, or more or

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 less the same as it was back in June of '99?

2 A. Yes.

3 Q. Now, are you familiar with your mother's propensity
4 to buy insurance?

5 A. Oh, yeah.

6 Q. Would you tell us about that.

7 A. Yeah. I always seemed to think she over-insures.
8 She -- I'm not real sure what you called it yesterday, the
9 people that come around every week.

10 Q. Debit men?

11 A. There you go. They came around and ever since I was
12 just a small kid I remember them coming around and collecting
13 and her taking out more policies. I don't know if a lot of
14 them were just added on policies she already had. I do know
15 she has quite a number of policies.

16 Q. All right. Did she have any policies on you?

17 A. Oh, yeah.

18 Q. Did you know that she had -- did she have policies
19 on Skylar?

20 A. Yes.

21 Q. Did she have policies on Paul?

22 A. Yes.

23 Q. You'll have to say yes or no.

24 A. Yes. Yes.

25 Q. Now, the State presented into evidence yesterday an

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 application signed by Paul Stephens allowing for a policy to
2 be taken out on his name. This is State's Exhibit Number 41.
3 I'll show that to you.

4 Do you recognize Paul Stephens' signature at the
5 bottom?

6 A. Yes, I do. I was there, as a matter of fact.

7 Q. You were there when that was taken out?

8 A. Yes.

9 Q. Now, was Paul Stephens afraid of Frances Moore at
10 this time?

11 A. No.

12 Q. Do you ever recall your former 6-foot-8 husband
13 being afraid of Frances?

14 A. No, never.

15 Q. I'd like for you to take a look at a series of
16 insurance policy sheets and declaration pages and tell me if
17 you can recognize these. Just look at them in general to
18 start with.

19 [PAUSE]

20 A. Yes, I can.

21 Q. What are all those documents there?

22 A. Different insurance policies. Some of them cancer
23 policies.

24 Q. All right. Are all these policies from the same
25 debit man that came by?

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 A. I believe so. I believe they were all with the same
2 company.

3 Q. And --

4 A. They had changed debit man. We had the same debit
5 guy for like 20 something years and then he passed away, and
6 then they changed him.

7 Q. Sent you a new guy?

8 A. Yeah, a couple of new guys.

9 MR. PRUITT: All right. And, Your Honor, we'd offer
10 into evidence as a group a number of insurance policies kept
11 and maintained on various people.

12 THE COURT: Any objection?

13 MR. BRADLEY: No objection.

14 THE COURT: Without objection.

15 (WHEREUPON, Defendant Moore's Exhibit Number 2,
16 Insurance Policies, were marked and admitted into evidence.)
17 BY MR. PRUITT:

18 Q. All right, Debra. Tell me, have you ever been in
19 any trouble with the law?

20 A. Yes, I have.

21 Q. What kind of trouble have you been in?

22 A. The fraud, for one. The fraud that --

23 Q. The fraudulent checks we heard about yesterday?

24 A. Yes.

25 Q. Now, prior to marrying Paul Stephens did you have

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 any trouble with the law?

2 A. No, I had not.

3 Q. I know that you and Paul at some point in time
4 separated. When did you all separate the last time before his
5 death more or less?

6 A. We had separated several months before that. He had
7 went to stay with his sister, and I believe he had got kicked
8 out from staying with his sister. Then he went to stay with
9 his cousin, Elaine, and Kenny, and for what reasons, there was
10 something going on there, and he couldn't stay there anymore.
11 So he came back and I couldn't put my son's daddy on the
12 street so.

13 Q. Speak up now.

14 A. And I let him come back.

15 Q. Well, at any point in time did you ever file for a
16 divorce?

17 A. Yes.

18 Q. All right. Did you all ever actually get divorced?

19 A. Yes.

20 Q. At the time of his death were you all divorced at
21 this time?

22 A. Yes, we were.

23 Q. And despite the fact that you were technically
24 divorced you let him move back in?

25 A. Yes. We had been divorced actually almost a year.

DEBRA STEPHENS - DIRECT BY MR. PRUITT

1 Q. At the time of your divorce what did he do in regard
2 to Skylar?

3 A. Paul at one time had -- I gave him the car, the
4 vehicle, and that's when he had moved out. And I'm not real
5 sure if he was living with his girlfriend at this time or who
6 he was living with, and he kept -- he didn't want to pay any
7 child support. I didn't have any problem with that, that he
8 didn't want to pay any child support. This was during the
9 divorce.

10 So right before we divorced him and Kenny Erwin,
11 which was his cousin's husband, Paul had called me and told me
12 that he would relinquish all his rights to Skylar for \$2,000
13 and the white Dodge Colt.

14 Q. And did he relinquish his rights to Skylar?

15 A. Yes, he did. We had some papers drawn up at a
16 lawyers office and went to the -- I think then it was the
17 American Federal, which would be Suntrust now, bank, and he
18 initialled each page. And he had actually had a ring on that
19 said dad, and he took it off and threw it across the bank at
20 that time.

21 Q. All right. Nonetheless, you still let him see
22 Skylar and take Skylar out?

23 A. For a few months I didn't let him have any contact
24 with him, and then I seen that it was hurting Skylar. And
25 Skylar had asked about seeing his dad and I did agree to let

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 him see his dad, yes. .

2 MR. PRUITT: Answer any questions the State might
3 have.

4 CROSS-EXAMINATION

5 BY MR. BRADLEY:

6 Q. Ms. Stephens, you just answered a question
7 Mr. Pruitt asked you if you had some trouble with the law.
8 You said yeah, it was the forgery we talked about yesterday,
9 but it's true you were convicted of shoplifting in 1997; is
10 that right?

11 A. In 1997? I didn't remember that.

12 Q. It's true you were convicted for another count of
13 shoplifting in 1997; is that correct?

14 A. Yeah, me and Paul were together then. Yes.

15 Q. Is it true you were convicted of another count of
16 shoplifting in 1997; is that correct?

17 A. Yes. He asked me if I had been in any trouble
18 before me and Paul were married, and I said no.

19 Q. Right. But you just said when he asked you about
20 being in trouble with the law you just mentioned the forgery.

21 A. No, I said numerous.

22 Q. Well, we're getting there. It's true you were
23 convicted of breaking into motor vehicles in 1998; is that
24 correct?

25 A. With Paul, yes.

DEBRA STEPHENS - CROSS BY MR. BRADLEY

- 1 Q. Receiving stolen goods in '98?
- 2 A. Yes, sir.
- 3 Q. About 7 counts of receiving stolen goods; is that
- 4 correct?
- 5 A. I'm not sure.
- 6 Q. How about petty larceny in 1997?
- 7 A. That was -- we had both pled guilty.
- 8 Q. Just yes or no.
- 9 A. Yes.
- 10 Q. Shoplifting in 1997, yes or no?
- 11 A. Oh, yes.
- 12 Q. Breaking in motor vehicle, petty larceny, receiving
- 13 stolen goods in '99?
- 14 A. Like I said, me and Paul --
- 15 Q. Just yes or no, ma'am.
- 16 A. Yes.
- 17 Q. Forgery, 1, 2, 3 counts in '99?
- 18 A. Yes.
- 19 Q. Possession of meth in 2007?
- 20 A. Yes.
- 21 Q. That's quite a history, isn't it, Ms. Stephens?
- 22 A. Yes, it is. One I'm not proud of.
- 23 Q. That's a lot of crimes involving dishonesty, isn't
- 24 it?
- 25 A. Yes, it is.

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 Q. Ms. Stephens, how close are you with your mother?

2 A. We're very close.

3 Q. How close?

4 A. We're very close.

5 Q. Very close. And you'd probably do anything in the
6 world for her, wouldn't you?

7 A. If you're asking if I'd lie for her, no.

8 Q. Just asking, you'd do anything to help her out,
9 wouldn't you?

10 A. Other than lie under oath, no.

11 Q. You wouldn't want to see anything happen to her, her
12 go away. You wouldn't want to see that, would you?

13 A. I wouldn't want to see anybody go away.

14 Q. But you would do what you could to help her out from
15 going away, right?

16 A. Except for lying under oath.

17 Q. All right. It's true that you and Paul had your
18 differences, had your problems throughout your all's marriage;
19 is that right?

20 A. Yes.

21 Q. And you all separated, got back together, separated,
22 finally divorced, I believe it was in '98; is that right?

23 A. Something like that, '97, '98.

24 Q. And this little story that you just told us about
25 Paul relinquishing his rights, when did that occur again?

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 A. His father came to the lawyer's office to see. He
2 didn't believe when I had told him of that. He didn't believe
3 that. So he met us at Mr. Cantrell's office in Easley.

4 Q. I'm just asking you when you said Paul did this.
5 When did that occur?

6 A. We were divorced. Probably just a couple months
7 before our divorce was final, which would have been maybe
8 March, April, something like that because we were divorced, I
9 think, in June.

10 Q. And your mother knew all this stuff was going on
11 between you and Paul?

12 A. Yeah. I mean, she was -- what I had told her.

13 Q. I'm sure she wasn't too happy about any of that
14 stuff, was she?

15 A. Oh, I mean, there wasn't a whole lot she could do
16 about it, it was my life, I mean.

17 Q. But you are her daughter, her grandson was involved.
18 I'm sure she wouldn't have been too happy about all this stuff
19 you're saying Paul did and the problems you all had.

20 A. Oh, no, she fussed at me a lot.

21 Q. But you're trying to paint a picture of you all
22 being a big happy, loving family but you all had all these
23 problems.

24 A. What do you mean?

25 Q. Is that right? You all had problems, a lot of them.

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 A. Me and Paul?

2 Q. Yes.

3 A. Yes, according to the law we did.

4 Q. Let's go to that morning of June 30th, 1999. You
5 said you got to the Anderson Police Department with your
6 mother about 10:00 a.m.; is that right?

7 A. Somewhere around in there, yes, sir.

8 Q. You talked to Lieutenant Hawkins?

9 A. Yes.

10 Q. And that's when you confessed to some forgeries; is
11 that right?

12 A. Yes.

13 Q. And you had said Paul got you involved in those?

14 A. Yes. There were some other people involved, too.

15 Q. Your mother became upset because of that fact?

16 A. That I had done those, yes.

17 Q. And that Paul had gotten you involved?

18 A. Not so much that as it was just that I had done
19 those.

20 Q. Did you hear her say she was going to kill that son
21 of a bitch?

22 A. No, I did not. I heard her say she had raised me
23 better than that.

24 Q. You said you all talked for how long?

25 A. Let's see. We got there a little after 10:00, and

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 it was close to 1:30.

2 Q. 1:30 when you all left?

3 A. Uh-huh.

4 Q. I believe Lieutenant Hawkins testified that you
5 signed your statement at 12:07 p.m.; is that right? Does that
6 sound about right?

7 A. I'm not sure about that.

8 Q. If you signed your statement 12:07 p.m. why did you
9 all stay for another hour and 30 minutes?

10 A. Like I said, I'm not sure of that, I signed it at
11 that time. I mean, I'm sure we wouldn't have stayed any
12 longer than we had to.

13 Q. But you are saying today that you all left there
14 about 1:30, 1:45 and somewhere in between there?

15 A. To the best of my collections.

16 Q. How long of a drive is it from Anderson City Police
17 Department back to you all's house?

18 A. Thirty, 40 minutes, depending on traffic.

19 Q. It's a pretty good drive, isn't it?

20 A. Depending on traffic.

21 Q. I want to show you what's been admitted into
22 evidence, State's Exhibit Number 35 and 36. You said that
23 when you all got home from the police department Paul and
24 Skylar weren't there, right?

25 A. No, they were there.

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 Q. They were there?

2 A. Uh-huh.

3 Q. Did you tell Detective Garrett back in '99 they got
4 there after you got home?

5 A. I'm not positive about that. That's an awful long
6 time ago.

7 Q. But you're trying to make us think you're so sure
8 today but it's an awful long time ago; is that right?

9 A. Well, I mean, either way it was like 10 minutes.

10 Q. So you are not sure if he was there when you got
11 there, or got there after you got home?

12 A. It was so close that I couldn't remember the
13 difference.

14 Q. Showing you again State's Exhibit Number 35. These
15 are the phone records for your number.

16 A. Okay.

17 Q. -0442. If you'll take a look. If you'll step
18 down here and look at the TV.

19 A. (The witness complied).

20 Q. Ms. Stephens, I don't know if you were here
21 yesterday when the phone records custodian testified, but he
22 testified these were in military time. Would you agree with
23 that?

24 A. I believe I heard him say that, yes.

25 Q. And this is representing June 30th, the calls made

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 to or from your number on June 30th. Do you agree with that?

2 A. Okay. Where is the to and --

3 THE COURT: Ma'am, you've got to really speak up.

4 She's got to take everything down.

5 A. Okay.

6 Q. Up here at the top, this column that I'm pointing at
7 right here.

8 A. Okay.

9 Q. That's the calling number, and this is the called
10 number.

11 A. Okay. So it's calling out from my number there?

12 Q. This is the one dialing, this is the one that
13 received the call --

14 A. Okay.

15 Q. -- on the second column.

16 Going back down here, military time 13:36 would be
17 1:36; isn't that right?

18 A. Yes.

19 Q. Is that your number, -0442?

20 A. Yes.

21 Q. -4908 is your mother's number, isn't it?

22 A. Yes.

23 Q. So you were calling your mother at 1:36?

24 A. That doesn't necessarily mean I was calling her.

25 Paul could have called her, called up there to the house.

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 Q. But you just said it was so close a while ago
2 that --

3 A. I don't know that they didn't leave again.

4 Q. Well, somebody -- is it true that when you met with
5 Detective Garrett back in '99 you told him that the 1:36 call
6 to 4908 had to be you?

7 A. I don't recall that.

8 Q. You can have a seat.

9 A. (The witness complied).

10 Q. So after you say you got home from the Anderson
11 Police Department your mom fixed your stepdad some lunch. He
12 got off to work, then right around there is when you went and
13 saw Paul and Skylar again; is that right?

14 A. No. That's when me and Skylar went outside to play.

15 Q. But you were seeing Paul during that time frame
16 right? Correct?

17 A. Ask the question again. I didn't understand.

18 Q. After he left for work you testified that Paul and
19 Skylar were at the trailer. You got to the trailer a little
20 bit after he left for work; is that right?

21 A. After my dad had left for work?

22 Q. Your stepdad.

23 A. (There was no response).

24 Q. What I'm asking is when was it that you saw Paul in
25 the trailer prior to him leaving, before you found out that he

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 had been murdered?

2 A. Between probably 2:30 and something to 3:00, I
3 guess.

4 Q. And you said he received -- you heard the phone ring
5 a few times, thereafter?

6 A. During the time he was there, yes.

7 Q. Your phone records show that you had 3 phone calls
8 coming in, 2:52, 2:53 and 2:57. You agree with that?

9 A. I have no clue. I mean, I know that. I've seen
10 them on paper but.

11 Q. Is that what State's Exhibit Number 35 says right
12 there?

13 A. Yes, sir.

14 Q. Your phone was being called from -9149 at 2:52,
15 2:53 and 2:57?

16 A. Yes.

17 Q. And you said Paul received around 3 phone calls
18 around that time and then shortly thereafter he came to tell
19 you he had to leave, and left within a couple minutes; is that
20 right?

21 A. Uh-huh.

22 Q. Okay. So he was out the door right after this last
23 phone call, is what you are telling us?

24 A. I don't know if it was the last one but it was one
25 of them.

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 Q. Okay. And you said at this point you think your mom
2 had already left for the grocery store; is that right?

3 A. Like I said, I'm really not sure.

4 Q. You don't know where she was?

5 A. I mean, well, she had to be at the grocery store,
6 she came back with the groceries.

7 Q. You weren't with her, were you?

8 A. No, I was not.

9 Q. So you didn't go into the grocery store, did you?

10 A. No, I didn't not.

11 Q. You didn't see her buy those items on that receipt,
12 did you?

13 A. No, I did not.

14 Q. Let's talk about that receipt. Where is it? Do you
15 have it?

16 Defense Exhibit Number 1, let's look at that again.
17 Anywhere on that exhibit say that's Frances Moore's receipt?

18 A. No.

19 Q. No identifying information saying that Frances Moore
20 was the one that bought those items on that date at that
21 store, at that time. Nothing says that, does it?

22 A. I've never seen too many receipts say a name, no.

23 Q. You've never seen a receipt that has your personal
24 information on it after you've paid for items at a store?

25 A. If you use a credit card or something I guess it

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 would.

2 Q. Exactly. If you use a credit card your information
3 would be on there. What was used on that day? Cash, wasn't
4 it?

5 A. Yes.

6 Q. So that receipt really doesn't tell us who did
7 anything, right?

8 A. No, but they knew exactly what our family liked.

9 Q. Liquid soap, Spray'n Wash, bowl fresh, sweet pees,
10 butter beans, cheese balls, apple pies. There's not a lot of
11 stuff, right? There's not a lot of stuff, is it?

12 A. Nope.

13 Q. But yet it was so much so, in your opinion, that you
14 had to go out and help your mom bring it back in from her car?

15 A. Yeah. I mean, when she pulled in and she said she'd
16 been to the grocery store I just walked over and grabbed a
17 couple bags, or a bag.

18 Q. And you said that when you found out Paul had been
19 murdered you went and grabbed this receipt out of your mom's
20 purse and kept it; is that right?

21 A. No. I didn't go do it exactly right after that, no.

22 Q. So you're saying you've had this receipt all the way
23 since 1999; is that right?

24 A. Yes.

25 Q. And you never thought it was important to give it to

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 law enforcement?

2 A. Yeah. They had opportunities to have that receipt.

3 Q. But you never gave it to them?

4 A. Yes, I believe I did.

5 Q. So you are saying if it had been given to law
6 enforcement it would have been part of the investigation?

7 A. It should have been.

8 Q. But you've been holding onto this receipt for 10
9 years that has no identifying information for your mom?

10 A. There have been copies of that receipt made and
11 given to the police department.

12 Q. But you've held on to it for 10 years just in case,
13 right?

14 A. No, not --

15 Q. Why would you keep a cash receipt for just some
16 apple pies, cheese balls and liquid soap for 10 years?

17 A. Well, because the very next day we were being
18 investigated for a murder.

19 Q. I believe on there it says the time was 3:04 p.m.;
20 is that right?

21 A. Yes, it was.

22 Q. What kind of car does your mom drive?

23 A. She drives a Toyota.

24 Q. What color is it?

25 A. White.

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 Q. The make?

2 A. Toyota.

3 Q. Model, I mean.

4 A. RAV.

5 Q. RAV4?

6 A. RAV4, uh-huh.

7 Q. I'm showing you State's Exhibit 27, 26, 25 and 24.

8 Is that your mom's car?

9 A. Yes, it is.

10 Q. That's her white Toyota RAV4?

11 A. Yes, it is.

12 Q. I'm showing you State's Exhibit Number 1.

13 A. I know this one is. I know the tag on the front.

14 Q. Is that your mom's picture, in that photo lineup?

15 A. Which?

16 Q. Number 5.

17 A. Yes.

18 Q. That is your mom's picture?

19 A. Yes.

20 Q. All right. She was identified in her car at the pay

21 phone at Anderson Meats and Groceries right at 3 o'clock on

22 June 30th, 1999; is that right?

23 A. Yes, I believe so, somewhere around 3:00.

24 Q. If she was identified as being over there at

25 3 o'clock how in the world could she get to Save-a-Lot in

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 Easley and have checked out by 3:04 p.m.?

2 A. How could she get from where again?

3 Q. Anderson Meat and Groceries, where she was
4 identified as being at the pay phone, how could she get from
5 there to Sav-a-Lot in Easley, shopped, have gone through the
6 check-out line and paid by 3:04?

7 A. I have no clue, unless it was not her at Anderson
8 Meat.

9 Q. But you weren't with her at the grocery store, you
10 didn't see her go in, you didn't see her actually buy these
11 items, right?

12 A. I just know she had the groceries when she came
13 back.

14 Q. And that receipt doesn't really tell us that your
15 mom was the one that bought the groceries either, does it?

16 A. No.

17 Q. I believe you were asked several times how big your
18 husband was; is that right?

19 A. Yes.

20 Q. How big was he again?

21 A. Was 6-8, I believe about 290, 300 pounds. Something
22 like that.

23 Q. How big is your mom?

24 A. She's about 5-1, 5-2. She weighs maybe 180 pounds.

25 Q. So Paul was a lot bigger than her. That's what

DEBRA STEPHENS - CROSS BY MR. BRADLEY

1 we're saying here, right?

2 A. Yes.

3 Q. Would you agree that it wouldn't matter how big you
4 were if you were shot from behind?

5 A. Say that one more time.

6 Q. It wouldn't matter how big of a man you were if you
7 were shot from behind, would it? Would you agree with that
8 assessment?

9 A. Well, not necessarily. I guess it would just depend
10 on where you were shot or.

11 Q. Exactly. From behind, you didn't see it coming.

12 A. Yeah. Well I mean, if it was --

13 Q. It wouldn't matter how big he was, would it?

14 A. I would think it would have to be --

15 Q. Just yes or no. It wouldn't matter, would it, how
16 big he was if he didn't see the shot coming?

17 A. No.

18 Q. Your mom had a hundred thousand dollar life
19 insurance policy on Paul Stephens; is that right?

20 A. A hundred or it was 50.

21 Q. A hundred thousand?

22 A. Fifty to a hundred thousand. I'm not real sure.

23 Q. She received a check for close to \$120,000 after he
24 died; is that right?

25 A. Yes, I believe so.

DEBRA STEPHENS - REDIRECT BY MR. PRUITT

1 Q. She collected quite a bit of money from him being
2 killed; is that right?

3 A. Yes, sir.

4 Q. \$120,000, that's a lot of money, isn't it?

5 A. Yes.

6 Q. Can you tell me what you all did shortly after Paul
7 was killed on June 30th, 1999. Didn't you all got to Myrtle
8 Beach for a big family trip; is that right?

9 A. No, it wasn't for a big family trip. It was to get
10 away from the media, and I had not actually told Skylar yet
11 that his dad was dead. I was trying to figure out the best
12 way to do that, and we went away for a couple days to do that.
13 It was no family vacation by no means.

14 Q. How long were you all gone?

15 A. Three, 4 days. Something like that.

16 MR. BRADLEY: Nothing further, Your Honor.

17 THE COURT: Anything on redirect?

18 REDIRECT EXAMINATION

19 BY MR. PRUITT:

20 Q. Debra, the food represented by the receipt, are any
21 of those items multiple items?

22 A. Yes. The pies were. It was a case of peas, which
23 have 12 of those.

24 Q. Twelve what?

25 A. Cans.

DEBRA STEPHENS - REDIRECT BY MR. PRUITT

1 Q. Twelve cans?

2 A. Uh-huh. And then it was 12 cans of butter beans,
3 looks like 2 cans of cheese balls?

4 Q. So it's a lot of groceries?

5 A. Yeah. There were like 4 pies. Things that we eat
6 like every week.

7 MR. PRUITT: That's all.

8 THE COURT: All right. Thank you, ma'am. You can
9 step down.

10 MR. GAMBLE: I have no questions.

11 THE COURT: All right.

12 MR. PRUITT: Your Honor, may we approach?

13 THE COURT: Yeah, come over here.

14 (WHEREUPON, a bench conference was had.)

15 THE COURT: Ladies and gentlemen, I'm going to send
16 you to lunch but we'll only go only for an hour and 10 minutes
17 today. As I said, there may be a little method to my madness.

18 If you will not discuss the case. If anybody
19 approaches you on the street or talks to you, please let me
20 know. I'll see you at 2:15. Thank you.

21 (WHEREUPON, the jury leaves the courtroom at
22 approximately 1:06 p.m.)

23 THE COURT: You all do what you got to do at lunch.
24 We'll start back right after 2:00.

25 (WHEREUPON, a lunch break was taken.)

1 THE COURT: All right. You had a chance to talk
2 with your client?

3 MR. PRUITT: Yes, sir.

4 THE COURT: Made a decision?

5 MR. PRUITT: She's not going to testify.

6 THE COURT: She's not going to testify.

7 All right. Ma'am, if you would come up.

8 FRANCES MOORE, after having been duly sworn,
9 testified as follows:

10 THE COURT: You understand -- you can put your hand
11 down. We've reached that point in the trial where you have to
12 determine whether or not you're going to testify; do you
13 understand that?

14 DEFENDANT MOORE: Yes, sir.

15 THE COURT: Have you talked to your lawyer about
16 that decision?

17 DEFENDANT MOORE: (Shook head).

18 THE COURT: Do you need to talk to him about it?

19 DEFENDANT MOORE: No.

20 THE COURT: Do you understand that you can't be
21 compelled to testify? The Fifth Amendment says that you
22 cannot be compelled to testify in court, especially if you
23 testify against yourself; do you understand that?

24 DEFENDANT MOORE: Uh-huh.

25 THE COURT: If you do testify the State can

1 cross-examine you on past criminal history involving
2 dishonesty or any crime that carries with it a penalty of one
3 year or more. If you don't testify the jury will be
4 instructed that the fact that you didn't testify can't be held
5 against you; do you understand that?

6 DEFENDANT MOORE: Yes, sir.

7 THE COURT: Do you need to talk to your lawyer at
8 all about this decision?

9 DEFENDANT MOORE: No, sir.

10 THE COURT: And what have you decided to do?

11 DEFENDANT MOORE: Not testify.

12 THE COURT: All right. And is that your decision
13 freely and voluntarily made?

14 DEFENDANT MOORE: Yes, sir.

15 THE COURT: All right. Mr. Pruitt, anything you
16 need to ask her?

17 MR. PRUITT: Did we have a conference right after
18 court adjourned where we talked about whether or not you
19 wanted to testify, out there in that conference room?

20 THE COURT: You can answer him.

21 DEFENDANT MOORE: Huh?

22 MR. PRUITT: Did we have a conference out there --

23 DEFENDANT MOORE: Oh, yeah.

24 MR. PRUITT: And did we discuss whether or not you
25 were going to testify?

1 DEFENDANT MOORE: Yeah.

2 MR. PRUITT: And did I tell you that I thought that
3 it was up to you but I recommended you not?

4 DEFENDANT MOORE: Yeah.

5 THE COURT: Are you in accord with that?

6 DEFENDANT MOORE: Uh-huh, yes.

7 THE COURT: Even though your lawyer has suggested or
8 recommended that you not testify the decision has to be yours;
9 do you understand that?

10 DEFENDANT MOORE: Yes, sir.

11 THE COURT: And so you're telling me that you do not
12 wish to testify today?

13 DEFENDANT MOORE: Yes, sir.

14 THE COURT: All right. Thank you.

15 All right. Are there any more witnesses? You have
16 one more?

17 MR. PRUITT: The defense rests.

18 THE COURT: All right. Are you going to have
19 anything in rebuttal?

20 MS. HOGAN: Yes, sir. We've got two rebuttal
21 witnesses, Your Honor.

22 THE COURT: Any motions? Anything we need to take
23 up before we bring them back in?

24 MS. HOGAN: No, sir, Your Honor.

25 THE COURT: All right. You can bring them back in.

1 Did you all look at the charge?

2 MS. HOGAN: Yes, sir.

3 MR. PRUITT: I don't see a problem with it.

4 THE COURT: We'll go over it. I just wanted to make
5 sure you had it.

6 (WHEREUPON, the jury enters the courtroom at
7 approximately 2:30 p.m.)

8 THE COURT: All right. Ladies and gentlemen, I hope
9 you had a good lunch. You've heard all the testimony that
10 you're going to hear in defense of Ms. Moore. The State now
11 has rebuttal testimony that they'll put before you. That
12 means that we're quickly reaching the end of the testimony,
13 and at some point this afternoon I'm going to give you the
14 charge and we'll get this matter moving.

15 But please pay attention. I appreciate your
16 patience so far. I'm assuming nobody bothered you at lunch
17 today. So thanks again.

18 All right. Call your next witness.

19 MS. HOGAN: Your Honor, if it pleases the Court.
20 The State calls Janet Stansell.

21 JANET ELAINE STANSELL, after having been duly
22 sworn, testified as follows:

23 THE CLERK OF COURT: Go around, have a seat in the
24 witness chair, please.

25 (The witness was seated in the witness stand.)

1 THE CLERK OF COURT: If you'll state your full name
2 and spell your last name for the record.

3 THE WITNESS: Janet Elaine Stansell,
4 S-t-a-n-s-e-l-l.

5 DIRECT EXAMINATION

6 BY MS. HOGAN:

7 Q. Ms. Stansell, who are you married to?

8 A. J. W. Stansell.

9 Q. Who testified a couple of days ago?

10 A. Yes, ma'am.

11 Q. I'm going to draw your attention to the birthday
12 party, Brandon's birthday party that we've talked a lot about
13 this week that happened on June 27th, 1999. Were you present
14 at that birthday party?

15 A. I was.

16 Q. And you were present, and also Garvin and your
17 husband were there as well?

18 A. Yes, ma'am.

19 Q. Did you ever see Garvin leave that birthday party
20 that day?

21 A. I seen him and J. W. leave together.

22 Q. Okay. And how did you know that they left together?
23 How do you remember that?

24 A. Because J. W. came up to me, told me that they were
25 going for a ride.

JANET STANSELL - CROSS BY MR. GAMBLE

1 Q. Do you know how long they were gone?

2 A. No, ma'am.

3 Q. Do you remember them coming back?

4 A. Yes, ma'am.

5 Q. And what do you remember about them coming back?

6 A. I remember seeing the truck drive up, and I remember
7 seeing them sitting in the truck.

8 MS. HOGAN: Nothing further from the State, Your
9 Honor.

10 THE COURT: Mr. Gamble?

11 CROSS-EXAMINATION

12 BY MR. GAMBLE:

13 Q. What time did they leave?

14 A. I have no idea, sir.

15 Q. What time did they come back?

16 A. I have no idea, sir.

17 Q. What kind of car did they leave in?

18 A. A black truck.

19 Q. How much noise did it make?

20 A. I don't know, just a little bit of noise. I don't
21 know. Trucks make noise.

22 Q. Everybody there said it was a loud muffler and made
23 a roaring noise. Did you hear that?

24 A. Yes, sir. I hear a lot of trucks make noise.

25 Q. I'm talking about the black truck.

JANET STANSELL - CROSS BY MR. PRUITT

1 A. Yes. I heard the black truck making a racket.

2 Q. And how long was it gone?

3 A. I have no idea, sir.

4 Q. Was it toward the end of the party, toward the
5 middle of the party or toward the beginning of the party?

6 A. I would say it was close to the end of the party.

7 Q. Close to the end when all the stuff was being
8 served?

9 A. Yes, sir, I would say so.

10 Q. When the hot dogs were being served?

11 A. I don't remember that, sir.

12 Q. Who was there?

13 A. A lot of the people were there. I remember Garvin's
14 wife being there. I remember Brandon's parents being there,
15 and I remember seeing Debra Stephens there.

16 Q. Yeah. They all said that they didn't leave. You
17 saw somebody leave that they didn't see leave?

18 A. I saw Garvin and J. W. leave.

19 MR. GAMBLE: Okay. All right.

20 THE COURT: Is that all?

21 MR. GAMBLE: That's all.

22 THE COURT: Mr. Pruitt?

23 CROSS-EXAMINATION

24 BY MR. PRUITT:

25 Q. Janet, are you a member of the Celtic Anabaptist

JANET STANSELL - CROSS BY MR. PRUITT

1 Church?

2 A. I don't remember. I guess I am. I have been.

3 Q. Okay. Are you a member of the Universal Life
4 Church?

5 A. I have been.

6 Q. Are you a member of the Reformed Catholic Church?

7 A. I have been.

8 Q. Are you an ordained minister, also?

9 A. No, sir.

10 Q. What do you do for a living?

11 A. I work at a convenience store.

12 Q. And what does Mr. Stansell do for a living, other
13 than preach?

14 A. That's it. It's full time.

15 Q. Does he still do magic tricks?

16 A. No, sir.

17 Q. Who have you talked to today about your testimony
18 prior to getting on the stand?

19 A. Nobody, but he just told me that -- my husband told
20 me that he received a phone call that I needed to be down here
21 as soon as possible, because I was at work when the phone call
22 came in.

23 Q. And did he tell you that the State had requested
24 your presence?

25 A. Yes, sir.

JANET STANSELL - REDIRECT BY MS. HOGAN

1 Q. And did you talk to any of the lawyers representing
2 the State prior to your testimony today?

3 A. I talked to Ms. Lauren.

4 Q. Today?

5 A. Yes, sir.

6 Q. And did she go over your testimony with you?

7 A. Yes, sir.

8 Q. You hadn't previously given any type of statement in
9 this case, have you?

10 A. No, sir, I have not.

11 MR. PRUITT: That's all I have.

12 THE COURT: Anything on redirect?

13 REDIRECT EXAMINATION

14 BY MS. HOGAN:

15 Q. Ms. Stansell, were you aware earlier this week that
16 you could have potentially been a rebuttal witness?

17 A. Yes, ma'am.

18 MS. HOGAN: Thank you. Nothing further.

19 THE COURT: You can step down. Thank you, ma'am.

20 Is she under subpoena?

21 MS. HOGAN: No, sir.

22 MR. BRADLEY: Your Honor, the State calls Detective
23 Garrett back to the stand.

24 THE COURT: Detective Garrett, you're still under
25 oath.

RUSTY GARRETT - DIRECT BY MR. BRADLEY

DIRECT EXAMINATION

1

2 BY MR. BRADLEY:

3 Q. Detective Garrett, did you ever meet with Debra
4 Stephens regarding the investigation of this case?

5 A. Yes, I did.

6 Q. And when was that?

7 A. I met with her on several different occasions. One,
8 the first initial time, was, I believe, somewhere around July
9 the 6th.

10 Q. Okay. And did she tell you anything about a phone
11 call from her house to the Moore's house at 1:40 p.m. on June
12 30th, 1999?

13 MR. GAMBLE: Objection, Your Honor. That would be
14 hearsay as to my client.

15 THE COURT: Yes, sir. As to his client only?

16 MR. GAMBLE: No.

17 THE COURT: He's alleging it's hearsay.

18 MR. BRADLEY: Yes, Your Honor. I believe that she
19 opened the door when she was talking about how she may not be
20 able to remember what she told Detective Garrett when they
21 interviewed her back in 1999, regarding the phone call.

22 MR. GAMBLE: That doesn't affect my client, Your
23 Honor. It's hearsay as to my client.

24 THE COURT: Yeah, I think it is. Sustained.

25 MR. BRADLEY: Okay.

RUSTY GARRETT - DIRECT BY MR. BRADLEY

1 BY MR. BRADLEY:

2 Q. Did she ever tell you about the story about
3 Sav-a-Lot?

4 MR. GAMBLE: Objection, Your Honor.

5 THE COURT: Well, he can ask the question. I mean,
6 I'm not sure he can answer it but he can ask the question if
7 she told him the story. Whether or not he can tell us the
8 story is doubtful but go ahead.

9 BY MR. BRADLEY:

10 Q. Did she ever tell you the story about Sav-a-Lot?

11 A. She mentioned that there was a grocery store.

12 Q. Did you ever ask for any receipt that they might
13 have?

14 A. Yes, I did.

15 Q. And were you ever given any receipt?

16 A. No. On several different occasions I spoke with
17 Debra and asked for that receipt and she never produced it.

18 Q. Detective Garrett, I'm showing you Defendant's
19 Exhibit Number 1. Have you ever seen that?

20 A. I have not.

21 Q. Was any other detective that was involved with this
22 case given that receipt?

23 A. No.

24 Q. Did you ever go to the Sav-a-Lot store in Easley?

25 A. Yes, I did.

RUSTY GARRETT - CROSS BY MR. PRUITT

1 Q. And what did you do when you went there?

2 A. I asked for videotapes for the day of June the 30th,
3 1999.

4 Q. Did they have videotapes?

5 A. They did not have videotapes of that day.

6 Q. Did you do anything else when you went there?

7 A. I spoke with the manager and several of the cashiers
8 to try to obtain information. It was very generic interviews
9 trying to gather information. Could not gather any
10 information from them, by that time. It had been two to three
11 weeks and they just didn't have any information to give.

12 Q. So people that you spoke to, no one there remembered
13 or anything about seeing Frances Moore at the Sav-a-Lot on
14 June 30th, 1999?

15 MR. PRUITT: Objection. That's leading and it's
16 asking for hearsay.

17 THE COURT: Yeah. Sustained.

18 MR. BRADLEY: Nothing further, Your Honor.

19 THE COURT: Who's first?

20 CROSS-EXAMINATION

21 BY MR. PRUITT:

22 Q. You didn't hesitate to use the subpoena power of the
23 State and the search warrant power of the State to search
24 Debra's house, did you?

25 A. I don't ever recall searching Debra Stephens' house.

RUSTY GARRETT - CROSS BY MR. PRUITT

1 Q. Well, you didn't execute any search warrant to get
2 any receipt, did you?

3 A. No.

4 MR. PRUITT: That's all I have.

5 THE COURT: Any questions?

6 (There was no response.)

7 MR. BRADLEY: May he be excused, Your Honor?

8 THE COURT: Yes, sir. Thank you, Detective.

9 Without objection, he's excused.

10 MR. BRADLEY: We have nothing further, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, the
12 State has rested. I'm going to send you out for a few
13 minutes. I need to talk to the attorneys about scheduling.
14 Basically you've heard all the testimony you're going to hear.
15 We're going to figure out how much time we have this
16 afternoon. My intention is to move forward this afternoon.

17 I only have really two options. That is to continue
18 this afternoon and into the evening, or bring you back
19 tomorrow or Sunday. I realize none of them are convenient for
20 you. They are really not convenient for anybody, but absent
21 some real problem I think we're just going to keep going. And
22 if that does cause a problem with you, as I said earlier on
23 Tuesday, don't get mad at the lawyers, get mad at me.

24 All right. If you would, go back. Don't begin your
25 deliberations. If anybody needs to go outside now would be a

1 real good time to do it.

2 (WHEREUPON, the jury leaves the courtroom at
3 approximately 2:45 p.m.)

4 THE COURT: All right. Have you had a chance to go
5 through the charge?

6 MR. BRADLEY: Yes, Your Honor.

7 THE COURT: It was pretty straightforward.

8 MR. BRADLEY: We have no objection to it.

9 MR. PRUITT: I don't find anything in there
10 objectionable.

11 MR. GAMBLE: My scribe went through it.

12 THE COURT: You have a scribe?

13 MR. PERKINS: No objection, Your Honor.

14 THE COURT: All right. Any motions, anything we
15 need to take up before we bring them in and charge them?

16 MR. GAMBLE: How about closing arguments?

17 THE COURT: Well, we're going to do that but I
18 mean --

19 MR. GAMBLE: No, I don't have anything.

20 THE COURT: What I'm asking you is are you all ready
21 to do your closing arguments?

22 MR. BRADLEY: Yes, Your Honor.

23 THE COURT: Take about 10, 15 minutes. I'm going to
24 let them --

25 MR. GAMBLE: Smoke.

1 THE COURT: -- smoke and do whatever they got to do
2 because they'll be sitting. How long do you think your
3 closings will be, just generally?

4 MR. GAMBLE: Me?

5 THE COURT: I know yours will be short.

6 [LAUGHTER]

7 MR. PRUITT: I would say in the neighborhood of 30
8 minutes.

9 MR. BRADLEY: Similar amount of time. And I would
10 say, Your Honor, that I don't intend on getting up twice to do
11 the law then the facts. I just plan on doing them all at once
12 at the end.

13 THE COURT: All right. Take a break. We'll bring
14 you back in and get it moving.

15 (WHEREUPON, a brief recess was taken.)

16 THE COURT: Okay. Everybody ready for closing? So
17 that we don't have a disagreement, does everybody agree on how
18 we're going to close, because it might get a little confusing?
19 How do you intend to do it, what order?

20 MR. GAMBLE: Calhoun is going to go first. I'm
21 going to do second, and the State can open on the law or
22 close, if they want to.

23 MR. BRADLEY: I've already decided to do it all at
24 once at the end, Your Honor.

25 THE COURT: At the end. So Calhoun, Robert,

1 Matthew.

2 MR. GAMBLE: Is that okay with you, Calhoun?

3 MR. PRUITT: Fine with me.

4 THE COURT: All right. You can bring them in.

5 (WHEREUPON, the jury enters the courtroom at
6 approximately 3:08 p.m.)

7 THE COURT: All right. Ladies and gentlemen, you've
8 heard all the testimony that you're going to hear in this
9 case. It's now time for the parties' attorneys to give you
10 their closing arguments. As I told you at the beginning of
11 the trial, closing arguments are not evidence and shouldn't be
12 considered as such but they are an opportunity for the lawyers
13 to argue their case and try to convince you to their way of
14 thinking.

15 After the closing arguments have been given,
16 depending on the distance or the amount of time that they take
17 up, we may have to take one more short break because my charge
18 is rather long, and the only time in my past that I've ever
19 read verbatim from a 35-page book was when I was trying to get
20 my children to go to sleep, and I can't have you go to sleep.
21 So I may let you stretch before I charge you. Then after the
22 jury charge you'll get this case to begin your deliberations.

23 And again, I just want to say for the 50th time,
24 thank you for your patience. And I've been watching you.
25 Thank you for listening so well.

1 All right. Yes, sir.

2 MR. PRUITT: May it please the Court.

3 Ladies and gentlemen of the jury, it's a privilege
4 for me to be here to represent Frances Moore, and I appreciate
5 very much your kind attention to the facts in this case
6 because this is an important day for Frances Moore, and we
7 take it very seriously.

8 Now, sometimes I get emotional in trials and I
9 object, and that's just something lawyers have to do. I hope
10 that if I've done something that you thought was objectionable
11 or not nice that you won't blame it on Frances. Blame it on
12 me. But that's just the way I am.

13 To get to the facts of this case though, which is
14 why we're here, I want to start off with some things and
15 remind you of some things that I believe are uncontroverted,
16 things that the State has put up and things that have been
17 corroborated by the defense in this case, and I've taken the
18 liberty of writing some of these down so we can talk about it.
19 And I want to start off -- and this is what I'm going to call
20 a timeline, because there's been a lot been said in this case
21 about times and people.

22 Now, before I go any further you are the ones that
23 are the judges of the facts, and you heard the people testify
24 from that chair. And I'm not going to misquote anybody's
25 testimony but it's what you heard and not what I said. So

1 this is the way that I've been writing it down as we've been
2 going along, but you'll be the one to remember the things that
3 you heard have transpired.

4 So let's start off that day in June of 1999. Now,
5 you know, that's a long time for everybody to remember
6 anything, and I suspect that nobody in this case would
7 remember anything except for it was the day of the tragic
8 death of Paul Stephens, but they've -- all the witnesses have
9 done their best to tell you what they recall.

10 Now, let's start off with the State's witness. You
11 remember the State's witness. That's the Officer Greg Hawkins
12 who testified one day this week. He said that he had Debra
13 and Frances down at city hall to talk to them about the
14 checkbook that had been stolen by Paul, and Debra was accused
15 of signing the name to it.

16 Now, we don't necessarily -- we don't condone that
17 type of conduct but this isn't what Frances and Debra said.
18 This is what the Anderson City Police said.

19 Now, he said that 12:07 was when Debra signed some
20 type of confession. And I asked and he pulled it out and
21 looked at it and it said 12:07, okay. And he said yeah, they
22 stayed around for a little while longer. We were kind of
23 talking about how he was going to -- he was going to come try
24 to come talk to Paul and maybe arrange for Debra to turn
25 herself in on this stuff. And so he opined that they probably

1 left about 12:30, about 15 or 20 minutes or so after the 12:07
2 confession.

3 Now, Debra said she thought they left closer to
4 1:30. So I'm not asking you to take my version or the other
5 version but it's undisputed that somewhere between 12:30 and
6 1:30 that Frances Moore was at the police department in
7 Downtown Anderson, just a few blocks from here.

8 And it's undisputed that thereafter they drive to
9 Liberty, and even the officers that I asked agreed with me
10 that from here to just outside of Liberty at the home of
11 Frances and Debra takes about 30 or 40 minutes. Most of us
12 know that route anyway.

13 It's undisputed and not been contested that Nathan
14 Moore, Frances' husband, left for work at or about 2:30. He
15 said maybe 2:25, 2:30. It was an ordinary day for him. He
16 was going to work to work on his second shift at Blair Mills,
17 and Frances had fixed his lunch.

18 Now, the next set of phone calls -- now, this is
19 what the State has put in. They've put in this set of phone
20 calls that were calls made to Debra's residence. That's not
21 things that I put into evidence. That's stuff that they put
22 into evidence, 3 phone calls.

23 We had the man up here from the phone company and,
24 you know, he said that each phone call they rounded to the
25 nearest minute, etcetera. And so the last phone call started

1 at 2:57, and we don't know exactly when it ended but it would
2 have ended at or about 3 o'clock. I didn't put a time down
3 for that because nobody can say that that's exactly when it
4 happened but we know it was at that time. So as a result of
5 some phone calls Paul Stephens leaves the house where he was
6 with Debra and Sky.

7 Now, the next thing that I think is pretty well
8 uncontradicted is that we got Josh Addis clocks in to his work
9 at Anderson Meats. And after he clocks in he comes out to
10 help Josh Anderson load, some kind of order into Mr. Anderson,
11 Senior's or his daddy's truck some order that they'd sold, and
12 they are noticing these individuals at the phone booth.

13 Now, we spent a good bit of time with him and both
14 of them indicated that they watched or they saw these people
15 out here for 10 minutes.

16 Now, it gets more interesting than that. You might
17 recall the testimony of Mr. -- of the fireman. What was his
18 name? That was Pelham. Yeah, Pelham Medlock. And I asked
19 him, well, says, you know, when the fire trucks got there they
20 extinguished the car pretty fast. How long was the time of
21 that fire? How long in terms of time would it take from the
22 time it started to get hot enough to leave the damage that he
23 spent so much time showing us about, all of these and busting
24 out glass or glass folding in? It was a pretty hot fire.

25 And it was his opinion as an expert, and His Honor

1 qualified him as expert in fires, and now what he said -- it's
2 your memory not mine. So I trust your memory. He said that
3 that fire was at least 10 to 15 minutes old, and maybe up to
4 45 minutes.

5 Now, so, you know, that's not a definite time that I
6 can put down here. So 10 to 15 minutes if you back up from
7 the time that the fire department arrives at 3:31, you back up
8 15 minutes, that's 3:16. If you take the median time between
9 10 minutes or 15 minutes, and 45 minutes it would be about
10 3:16. Of course, we also have the call to the fire department
11 by whoever called it in at 3:27. They have their records.
12 They are in charge of writing that stuff down. They write
13 down when they got the call, they write down when they arrive.

14 Now, the reason why these times are in order and the
15 reason why they are important is there's no way that this
16 crime could have occurred in the fashion and in the theory of
17 the State. There's no way for any individuals to leave
18 Anderson Meats and get down a mile and a half or 2 miles away,
19 2 or 3 minutes away to this scene, commit these crimes, set a
20 car on fire and get gone before the fire department arrives.
21 That's their theory.

22 You know, their star witness, the reverend
23 archbishop, Mr. Stansell, said in his testimony that he was
24 told that the deceased received a call and left where he was
25 to go to the scene. Won't fly. Can't do it. It's not enough

1 time. Liberty Highway out there is a busy road. Baugh Road
2 out there is a busy road. It can't have happened like they
3 have presented it.

4 It's physically not possible for any people that
5 allegedly were at any Anderson Meats telephone booth to leave
6 there and commit this crime in the time between the time that
7 they left and the time that the fire department arrived. The
8 time of the fire itself makes that not possible.

9 Now, there's some other points that I want to make
10 that have different ideas relative to this. And I'm going to
11 go over some of these with you now, and like I've told you
12 before it's my -- you know, I've been taking notes up here too
13 and you all haven't had the luxury of notes, but you all are
14 the judges and if you remember it different from what I say
15 it's what you remember that counts.

16 Now, let's talk about some of those people that have
17 testified, and you can relax because I'm not going to go and
18 recite to you everybody's testimony but I am going to hit some
19 highpoints to see if you remember it the way I remember it,
20 and we'll start off with Josh Anderson.

21 You know, he was canvassed by the police, as well as
22 Josh Addis, and they found out from him that he'd seen some
23 people there at the phone booth, and then a couple weeks later
24 they show up with these photo I. D.'s. And when you get the
25 photo I. D.'s back in the jury room and look at them I don't

1 think that they treated Frances very well in those photo
2 I. D.'s. You'll see that there's only two women in there that
3 had short black hair and the rest of them had long black hair,
4 and they really don't look at all alike.

5 Now, he says that he didn't do that, that he sent it
6 off to SLED. Well, we don't know what criteria he gave to
7 SLED. We don't know -- he said they didn't have any way to
8 put in height, weight and stuff, but I don't think it is a
9 very good layout.

10 And Josh Anderson, he's not in any way
11 unintelligent. He knew what they'd come back for. He knew
12 what they were coming and bringing these photos for. I don't
13 think that the I. D. that he made is fair. I don't think it's
14 fair when you look at the lineup sheet.

15 And I'd like to point out to you that even though
16 his friend or co-worker, Josh Addis, was there -- and as a
17 matter of fact, Josh was afraid that these people were after
18 him because he cut in front of them in his hurry to get to
19 work. He couldn't make any I. D.'s. But he was there at the
20 same place, the same time as the rest of them. And, of
21 course, at this point in time they don't know, they don't
22 attach any significance to two people using the telephone.

23 You know, it's real interesting to me that there's a
24 specialty tag on the pictures of Frances' car that says
25 something like baby, grandbaby and me, or something. You'll

1 see it in the pictures. None of them noticed anything like
2 that, any specialty tag. So I don't think that the photo
3 I. D., the alleged photo I. D. is fair.

4 Now, you know, Aaron Powers, he was the one that
5 called in on his mobile phone, I guess, to talk about the
6 fire, and although he said it was 3:16 in his testimony I
7 think we can probably all agree that the records kept at the
8 firehouse would be more accurate because he wasn't taking
9 notes either. But as you recall, when he got there, and he
10 arrived just a minute or two before the fire department, or
11 maybe they got there about the same time, he said that fire,
12 that car was too hot to touch. So it was fully engulfed at
13 this time.

14 Now, Pete Rogers saw an individual running away from
15 the scene and I believe getting into some type of red or red
16 and white pick up. I don't know why they haven't pursued
17 that. I don't know why they've gone to a lot of trouble to
18 get a lot of evidence. But they got the telephone calls
19 coming into Debra and Paul's house but why didn't they get the
20 calls that emanated from Anderson Meats? I don't know why
21 they didn't do that. There's lots of unanswered, undone
22 things in this case.

23 And, of course, that all goes back to the cardinal
24 principle of law that every one of us is presumed innocent
25 until that presumption of innocence is stripped away beyond a

1 reasonable doubt by the State taking that mantle of innocence
2 away. So it's up to them to gather evidence. It's never up
3 to an accused to prove themselves innocent.

4 There's lots of stuff they could have done. They
5 didn't take any scraping of fingernails to see if there's any
6 material in there indicative of a struggle or any type of a
7 fight. Now, Paul Stephens by all accounts was a big man, 6
8 foot 8 and 275, 300 pounds. I think it would be difficult for
9 anybody to manhandle him.

10 Now, let's see. Greg Hawkins was the police officer
11 who heard Frances Moore, after her daughter had said that Paul
12 had made her do this, get mad and cuss him out.

13 Let's see. I've got this diabolical plan hatched
14 out to where I'm going to commit this heinous murder and I've,
15 you know, got it all planned to where we can do this, and do
16 that and an hour before I'm going to say that in front of the
17 Anderson City Police Department? Well, that falls under too
18 good to be true for the State.

19 Nobody would do that if they had this planned,
20 hatched, this heinous plan hatched in their mind. They'd
21 probably be at home working on it, not meeting the city
22 police. So that's not believable that this plan was in place
23 by anyone in this trial at that time.

24 Now, Garland Major, I asked him. I said, well, you
25 went through a lot of trouble to get the tag -- to go up to

1 Ms. Moore's house and get her tag number but you never looked
2 to see how many Toyota RAV4s, white in color are in South
3 Carolina. This is not an unpopular car. They don't bother to
4 do that. It doesn't suit them.

5 See, they get hung up on something, they get excited
6 they got this thing all solved then they just stop and they
7 don't go forward with any of their other leads.

8 Of course, now we're 10 years later and miraculously
9 after Brenda Duvall dies and after the archbishop preaches her
10 funeral then, only then after keeping it to himself after 7
11 years does he come forward with this story. Now, I can't
12 explain -- I can't explain his testimony.

13 The Judge will tell you that you are the judges of
14 the facts and the credibility of witnesses and that you have
15 the right to believe all of what a witness says or none of
16 what a witness says, or anywhere in between.

17 I wouldn't believe and I don't think it's reasonable
18 for anybody to believe anything that the reverend archbishop,
19 Stansell, said. He just as well of admitted to you that he
20 told the truth when it suited him and didn't bother with it
21 when it didn't. He comes before you and says, oh, no, now
22 that I'm here testifying I don't believe in any of those evil
23 things that the Ku Klux Klan believes in. It's just a social
24 club for me or whatever.

25 Okay. So he joins an organization that he doesn't

1 believe in but when he has to testify he didn't want to make
2 it sound like that he's got evil in his heart because he's now
3 a preacher and so he didn't tell the truth then. He didn't
4 tell the truth when he was preaching Brenda's funeral.

5 Okay. Well, you know, if I was harboring this evil
6 secret in my heart I'd of believed I would have passed that
7 job to someone else, rather than get up and make a mockery to
8 the people that are there. He didn't tell the truth then. It
9 didn't suit him. Didn't tell the truth when he signed the
10 petition for Garvin to get into the Masons..

11 I think that his story is fantastic and
12 unbelievable. I don't think it makes sense. I can't tell you
13 -- the only thing I can tell you is that somehow or another in
14 his twisted mind he's gotten obsessed like some of these
15 people that stalk celebrities, cold case and being the one to
16 solve the crime. So you're the one that has to place a value
17 upon the testimony, if any, of someone who's admitted that he
18 tells the truth when it suits him.

19 Now, His Honor will tell you a lot about the law.
20 And he'll certainly tell you it's no burden or obligation of
21 Frances Moore to prove herself innocent. And when you think
22 about it, it's hard to prove a negative, you know, unless you
23 -- well, it might be easier today. You know, everybody has
24 got G. P. S. cell phones. Maybe you could track somebody and
25 see where they went. I don't know. But that didn't exist ten

1 years ago. If it did exist then nobody knew it existed.

2 But in any event, it would be very hard for any of
3 us to go back and prove, if we needed to, just exactly what
4 happened 10 years ago. So the ability to prove things that
5 happened 10 years ago are certainly impaired by the passing of
6 time. So when the archbishop decided to wait 7 years before
7 releasing this evil from his heart it put Frances Moore at a
8 disadvantage because she didn't have any ability to go back
9 and gather up anything, find just the -- like Rusty Garrett
10 testified, he couldn't find the cashier at the Sav-a-Lot. She
11 couldn't either. It's been too long. Who would remember that
12 unless somebody jumped on it right away and got that
13 information.

14 So the facts in this case do not fit the theory
15 that's been presented by the State. The physical evidence,
16 the things that are uncontroverted don't allow that to work.

17 So I'm telling you that the Judge will instruct you
18 that all the defendants in this State are presumed to be
19 innocent and that burden -- that presumption of evidence stays
20 with them until the State proves them guilty beyond a
21 reasonable doubt, and that's to each and every element of the
22 crime. Not only beyond a reasonable doubt but to the
23 satisfaction of each and every one of them. Not 10 to 2, not
24 5 to 7, all 12 must agree that they have proven a defendant
25 guilty beyond a reasonable doubt before you would be entitled

1 to bring back a guilty verdict.

2 Now, His Honor will charge you that -- of course,
3 there's been the defenses of what we call alibi here. Alibi
4 just simply means that I wasn't there. I was somewhere else.
5 I couldn't have done this because I was somewhere else and the
6 time is not right, or something like that. So that's what an
7 alibi generally means.

8 Now, it's not up to the defendant to prove the alibi
9 conversely. It's up to the State to disprove it. It's up to
10 them to satisfy you beyond a reasonable doubt that that's not
11 true because there is no burden whatsoever upon the defendant
12 in a case like this.

13 There will be an issue, of course, of some
14 identification. It's up to the State to prove that any
15 identification that was made was beyond a reasonable doubt.
16 Now, that will be up to you to also consider because that's an
17 element in this case.

18 Now, when you retire after you've heard the other
19 arguments and you've heard His Honor give you the charge I
20 think that you'll come to the conclusion that they haven't
21 proven their case beyond a reasonable doubt.

22 There will be things in your heart that cause you to
23 attach a doubt to some of the things that the State has tried
24 to prove, and pursuant to your oath if you find that doubt
25 living in your heart you're under a duty to come back with a

1 verdict of not guilty for Frances Moore, and I would ask that
2 you do that. Thank you..

3 THE COURT: Yes, sir.

4 MR. GAMBLE: Please the Court, Judge.

5 Friend and allies one time asked me. He said, You
6 practice what you're going to say. I said, No, if I did I'd
7 forget it if I tried to write it down. So if I forget
8 something it's because I'm getting to that place where -- age,
9 where you do forget things. I hope I don't.

10 A reliable witness is one that you can rely upon
11 what they tell you. A reliable witness was Aaron Powers, a
12 man driving down the road not expecting to see anything and
13 sees a fire burning, stops, sees that the car is on fire, and
14 I think he called in the fire department.

15 The next man that I know that's reliable was Pete
16 Rogers. That's probably the most reliable man in this whole
17 trial. He's going down near Walker-McElmoyle Fire Department
18 and gets the call on his in-car radio, he's a volunteer
19 fireman, turns his car around heads back. Gets back up to the
20 place where the fire is and what does he see? He sees a man,
21 sleeveless undershirt running, running away from the fire,
22 running out from the scene, jumping in the passenger side of a
23 white Dodge pick-up truck and off they go.

24 We don't know who it is, don't know anything about
25 them. But I think Pete Rogers was honest in what he saw and

1 told you what he saw. A man about 6 feet tall, weighed less
2 than 200 pounds leaving the scene, rapidly.

3 We learned also that Ken Blakely, who was with
4 C. I. D., went out and he found a 380 shell. A 380 is an
5 automatic weapon, generally speaking. And in order for the
6 shell to be on the ground it would have to come from an
7 automatic weapon.

8 Now, those of you who aren't familiar with an
9 automatic weapon it expels the shell out to the side whereas a
10 revolver keeps the shell inside the revolver part. You would
11 only have a shell falling onto the ground by an automatic
12 weapon. Okay. We know that this man was shot with a 38
13 because the doctor dug it out of him.

14 The next reliable witness or two, the Joshes. They
15 are not really reliable because one was in a hurry to get to
16 work and once he got to work they were loading a Jeep. One
17 says a person he saw had on glasses, one said the person he
18 saw did not have on glasses.

19 One said it was a two to three day growth of beard
20 on the man, the other said that he just didn't notice, and
21 that the man had on long pants, and somebody said there was
22 some kind of shorts involved. I don't know. They didn't
23 identify anybody that I'm concerned with in this trial, so I
24 didn't look to them.

25 A reliable witness, in my opinion, is Ralph

1 Stansell, a hardworking construction man that knows he was
2 sitting on his front porch on the 30th day of July -- June,
3 rather, talking with his wife, his daughter and his son-in-law
4 from 2:00, or thereabout, until 4:00 or 4:30.

5 What caused your attention to this, Mr. Stansell?

6 By the way, no relation to the archbishop. He made that
7 perfectly clear. I remember it because I was going to Brazil
8 on a missionary trip to build a chapel and I got together, got
9 off early and I got with my family to sit and be with them for
10 a while before I left to go to Brazil. That's reasonable.
11 That's believable. That's reliable.

12 Now, let's go to the party where this started on the
13 day of June 1999. On that day that Ku Klux Klanning,
14 some kind of Catholic, Anabaptist Evangelist, and whatever
15 else it takes to get recognition of some kind, says he left
16 this party and went with Garvin Duvall and Garvin told him of
17 the plans to go off this guy for 2,000 bucks.

18 In the first place, it doesn't make sense. If I'm
19 going to pay somebody \$2,000 to off somebody I ain't going
20 with them. I don't want to be around them. I'm going to be
21 somewhere else, and I'm going to make sure that there's other
22 people there that know me so they can say yeah, he was there.
23 He wasn't over there at the killing grounds. He was over here
24 at the airport watching the air show. We saw him there.

25 Anyway, Debra Stephens, Kim Hendrix, Sam Hendrix are

1 reliable witnesses that had no ax to grind, no meat to throw
2 out, nothing to do but they said this man never -- Garvin
3 Duvall never left that party, never went off with the
4 archbishop, never did anything with him, and they knew because
5 he had a loud muffler on his car and he was parked right there
6 next to the wall at the Haygood Center.

7 Now, what does the archbishop get out of it?
8 Personal aggrandizement. I watch Cold Case. I broke the
9 case. I broke a cold case. I'm the archbishop. I'm the
10 grand dragon of the Ku Klux Klan. I'm the bishop of a Celtic
11 Anabaptist Church. I am the great. I am boosting myself. I
12 am the head of the Lighthouse Ministry. I can go to the
13 penitentiary and tell them I put men here. I, I, I, I'm good.
14 I'm great. I'm the greatest. I'm the top. I want notoriety.
15 I want to be published. That's the only reason, pure greed.
16 I want it.

17 I couldn't of asked for a better answer from Ralph
18 Stansell if I'd of paid him, if I'd of got him to say it. How
19 do you recall? Well, in 1981, April 5th, as a matter of fact,
20 I gave my soul to the Lord. And that's the only bad thing
21 that they could say, I guess. I don't think it's bad. He
22 said he wouldn't lie for anybody, and I believe him. I
23 believe him when he said Garvin Duvall was at his house from
24 2:00 until 6:00.

25 Hendrix, yeah. They were at the party and they

1 didn't see him leave. The only person that you can rely on in
2 order to bring a conviction back is that bale of cotton that
3 was sitting there telling you he was the archbishop, the grand
4 dragon, the bishop, the head preacher, the evangelist or the
5 Baptist, and I don't know what he is. I have no idea. But
6 you have to believe what he says in order to convict in this
7 case, and I really don't believe that he is reliable. I just
8 can't believe it.

9 Thank you for your attention. And I can assure you
10 I'd rather be anywhere else than here on a Friday afternoon.
11 So I appreciate your being here, too. Thank you.

12 MR. BRADLEY: May it please the Court?

13 THE COURT: Yes, sir.

14 MR. BRADLEY: Ladies and gentlemen of the jury, I
15 appreciate your service this week. I know it's been a long
16 week. And I know as everybody else has said, you'd rather be
17 anywhere else but here right now. But we thank you for your
18 service, and your patience, and your attentiveness while all
19 the evidence have been presented.

20 Now, it's my job, the State, to go back through all
21 that evidence, through the law to make sure you understand
22 that the State has carried its burden.

23 Now, at the beginning of this trial my partner, she
24 told you that it's the State's burden to prove to you, all of
25 you beyond a reasonable doubt that the defendants committed

1 the crimes charged. She told you it was a burden that we
2 welcomed, and I'm telling you and I'm submitting to you that
3 it's a burden that we carry.

4 I want to talk to you a little bit more about what
5 beyond a reasonable doubt means. Beyond a reasonable doubt
6 does not mean beyond all doubt. There are very few things in
7 life that we know with absolute certainty and the law does not
8 require the State to provide proof that overcomes every
9 possible doubt.

10 A reasonable doubt is the kind of doubt that would
11 cause a reasonable person to hesitate to act. Please don't
12 confuse a hesitation to act with carefully considering the
13 evidence. The State asks that you do carefully consider the
14 evidence when you go back to the jury room.

15 Beyond a reasonable doubt means that you as a jury
16 are firmly convinced of the defendants' guilt based upon all
17 the evidence presented to you, firmly convinced of their guilt
18 of the crimes charged. Now, what are those crimes charged
19 again? We have murder, conspiracy to commit murder,
20 possession of a firearm during the commission of a violent
21 crime, for both of them.

22 The elements of those crimes, again, for murder was
23 a killing of a person with malice aforethought. Malice
24 aforethought. Malice has been defined as the wrongful intent
25 to injure another and indicates a wicked or depraved spirit

1 intent on doing wrong. Malice can be either express or
2 implied. It can be implied by the use of a deadly weapon.

3 Although malice must be aforethought there's no
4 requirement that it must exist for any appreciable amount of
5 time before the commission of the act. It may be conceived at
6 the very moment the assault occurs.

7 The elements of possession of a firearm during the
8 commission of a violent crime, just like my partner told you,
9 is just like it sounds, the use of a firearm during the
10 commission of a violent crime, like murder is.

11 Then we have conspiracy to commit murder. The
12 elements of that again are a combination between two or more
13 persons for the purpose of accomplishing a criminal, unlawful
14 objective. In this case, murder.

15 Now, I submit to you the State has proven to you
16 beyond a reasonable doubt the defendant's guilt in this case
17 for the crimes charged with the overwhelming amount of
18 evidence we have presented to you that you have heard and seen
19 throughout this trial.

20 As my partner told you, again, at the beginning of
21 this trial, there's two types of evidence. There's direct and
22 there's circumstantial evidence. Direct, the law describes
23 direct evidence as testimony from a witness who actually saw,
24 heard, touched, tasted something. Furthermore, direct
25 evidence can be in the form of fingerprints, D. N. A.,

1 videotape.

2 Then there's circumstantial evidence.

3 Circumstantial evidence is described as indirect evidence, or
4 it can be a proof of a chain of facts indicating the existence
5 of a fact. The law makes no distinction between the two and
6 one is not better than the other. You can convict on
7 circumstantial evidence alone.

8 And there's an illustration that I like to use to
9 further explain the difference between the two. For direct
10 evidence, if there was windows in this courtroom and it was
11 raining outside you could see that it was raining. That would
12 be direct evidence of the rain. But since, like we are in
13 this courtroom right now, there's no windows. You couldn't
14 see outside. But if you saw someone walk in with an umbrella
15 that was wet, with a rain jacket on that was wet you could
16 deduce from those facts that you had seen that it was raining
17 outside. That's circumstantial evidence. It's a proof, it's
18 a chain of facts proving the existence of a fact.

19 Now, as you have seen and the State doesn't hide
20 behind the fact that there's not a lot of direct evidence in
21 this case. We know there's no fingerprints, we know there's
22 no D. N. A. That's why we didn't put it up for you. But
23 there is a lot of circumstantial evidence in this case.

24 As evidence showed, the plan all along was to
25 destroy any physical evidence that may be left at the scene.

1 So don't let these two defendants get away with murder because
2 they carried out a plan to cover their tracks and get rid of
3 any forensic evidence.

4 As I said, there's plenty of evidence in this case
5 that all comes together by connecting the dots to form the big
6 picture, like putting a puzzle together. The evidence is
7 clear and overwhelming. It's a chain of facts. And I would
8 like to go through that chain of facts in the order in which
9 they happened in timeline fashion.

10 Now, as Mr. Pruitt did, I've prepared a timeline for
11 you. As you might expect, mine is a little bit different than
12 his, and I'd like to put that up at this time.

13 Months and weeks leading up to the death of Paul
14 Stephens he expressed to his family and friends his fear of
15 the defendant, Frances Moore. He told them. He told Kenny
16 Erwin, Elaine Erwin and Rita Woods, three different people on
17 different occasions, multiple times that he was afraid of her.
18 That if I'm ever found shot in the head, my car burned have
19 her investigated. That was his fear.

20 On June 27th, 1999 at a child's birthday party in
21 which John Stansell was performing a magic show he was there
22 with Garvin Duvall. They go for a ride in the truck, and
23 Duvall reveals to Stansell that the victim planned to rat out
24 the defendant. Duvall says Moore wants the victim dead.
25 She's willing to pay \$2,000 for someone to kill him.

1 When Stansell asked him, well, he's your friend, why
2 would you do something like that; Duvall said, business is
3 business. Duvall shows -- he tells him about his plan on how
4 he's going to do it. He tells him he's going to lure him out
5 to meet him, shoot the victim and then burn the victim's car
6 to destroy any evidence. He even shows John Stansell a gun he
7 had been provided. Mr. Stansell said in his opinion it was a
8 380 automatic. He knew what they looked like. He used to own
9 one.

10 The next thing we have is June 30th, the day of the
11 murder. Beginning that morning at 10:00 a.m., between 10:00
12 a.m. and 12:15 p.m., Frances Moore and Debra Stephens were at
13 the Anderson City Police Department. Lieutenant Hawkins had
14 questioned Debra Stephens for over 2 hours and she finally
15 confessed to some unrelated forgery charges.

16 She told her mother, she told Lieutenant Hawkins
17 that Paul had gotten her involved in it. And at this stage
18 Lieutenant Hawkins said that Frances Moore became visibly
19 upset and said in his presence I'm going to kill that son of a
20 bitch, referring to the victim. This threat given just hours
21 before the victim, Paul Stephens, was found shot to death.

22 The next thing we have, some time between 2:45 and
23 2:50 that day Josh Addis pulls up to the stop sign on Ruhamah
24 Road. Across from him sitting in front of the crime scene
25 where Paul Stephens' body would later be found shot to death

1 and his car burned is a white RAV4 sitting on the opposite
2 side of the road facing him, just sitting there.

3 He says he sees the car start up, come to the stop
4 sign, he says straight across from him. He pulls out in front
5 of them, travels up to Anderson Meats and Grocery where he
6 works. The white RAV4 follows him up there.

7 He says that there was a white female driving, there
8 was a white male passenger. And then he says when he parks at
9 Anderson Meats and Grocery he gets out and goes into work to
10 clock in. And what does he see? He sees the white male jump
11 out of the car and go straight to the pay phone to start using
12 it.

13 Next you have Josh Anderson. First let's talk about
14 the phone calls. As soon as Josh Addis pulls into the parking
15 lot at Anderson Meats and Grocery he said it had taken him
16 about 2 minutes to make the drive -- it had been between 2:45,
17 2:50 when he saw the white RAV4 on Baugh Road.

18 So taking the 10 minutes to make the drive would
19 have been about 2:52 that would have put him getting into the
20 parking lot, and the white male in the white RAV4 jumped out
21 and began using the pay phone at the exact same time. That's
22 the first time we have a phone call being made from the
23 Anderson Meats pay phone to Debra Stephens' number where the
24 victim also lived. That's what the first recorded call was.

25 Then the next recorded call, 2:53, made by the same

1 white male, white female that was in the white Toyota RAV4 to
2 the number listed to Debra Stephens. At 2:54 Josh Addis
3 clocks into work. He testified that after he clocked into
4 work he walked outside with Josh Anderson, also an employee of
5 Anderson Meats and Grocery.

6 And they gave approximations of their times between
7 5 minutes, 10 minutes because they told you it had been 10
8 years since this happened. And I believe the defense is
9 trying to stretch it out to always use the furthest length
10 maximum such time ranges, but it doesn't always have to be the
11 maximum length of time ranges.

12 As they said, just a few minutes after he clocks in
13 they come back outside and what do they see? Both of them
14 still see the white female and white male using the pay phone
15 at Anderson Meats in the white RAV4.

16 At 2:57 another call was made. This time, as the
17 phone records show, the call was a little bit longer, almost 2
18 minutes 29. Anywhere between 2 minutes 29 seconds and 1
19 minute 30 seconds. And I submit to you that's when they
20 talked to Paul Stephens. They finally got him on the phone
21 and told him to meet them on Baugh Road.

22 The next thing we have is Josh Anderson says that
23 yeah, he came back out with Josh Addis, and what did he see?
24 He saw the white male -- the same white female, white male in
25 the Toyota RAV4 using the pay phone. And Anderson later

1 identifies that white female as Frances Moore. He was
2 confident about his selection. He told you the reasons why he
3 picked her out, same jaw line, mole on her face, hair as
4 driving a white RAV4.

5 And then when he was shown the photo lineup of the
6 males he didn't positively identify anybody, but he pointed to
7 number 3 and said that kind of looks like him, number 3 stands
8 out to me. Garvin Duvall was portrayed in picture number 3.

9 Now, Josh Addis did not positively identify the
10 white male or the white female. The State does not deny that,
11 but what did he tell you? He didn't look at either one of
12 them in the face. So he wouldn't be able to.

13 He was shy back then, introverted. I can't remember
14 all the exact words he used but that's what he said. He
15 wasn't really paying attention to their faces. He just knew
16 that they had followed him up very closely from the Baugh Road
17 location to Anderson Meats. He got out and went inside but
18 knew that they were there. It was a white male and white
19 female in a white RAV4.

20 Josh Anderson said he did. He looked at their
21 faces. More importantly he looked -- he paid close attention
22 to the white female and he confidently said it's Frances Moore
23 when he selected her out of the photographic lineup.

24 Shortly after 3:00 p.m. Josh Anderson says he sees
25 Frances Moore, who he had picked out as being the white

1 female, and the white male get back into the white RAV4 and
2 drive back towards Anderson, leaving Anderson Meats and
3 Groceries back towards Anderson, which is in the same
4 direction as the Baugh Road crime scene.

5 As testimony occurred, it would take 2 minutes to
6 get from there to the crime scene. So somewhere in the
7 vicinity after 3 o'clock Frances Moore and Garvin Duvall left
8 Anderson Meats and Grocery heading back to Baugh Road crime
9 scene to wait on Paul Stephens.

10 The next is just an approximation that I've placed
11 up here. Between 3:10 and 3:27 Paul Stephens is murdered, his
12 car is set on fire.

13 Based upon the testimony and phone records, you had
14 Detective Garrett to testify that when he drove the route from
15 the victim's home to the crime scene it took him 7.1 miles, 11
16 minutes, 27 seconds, and that was going the posted speed
17 limit. Had he driven a little bit faster he said no doubt in
18 his mind he could have made it in less than 10 minutes.

19 The phone records say the last call was 2:57. It
20 lasted about 2 and a half minutes. That would place Paul
21 Stephens leaving his house a little after 3 o'clock. Making
22 the trip to the crime scene on Baugh Road it would have been
23 right around 3:10 p.m., or a little before or a little after.
24 So somewhere in that time frame he's shot in the back of the
25 head and in his back, and his car is set on fire.

1 The testimony of Pelham Medlock, the arson
2 investigator, said the damage done to the car when it was
3 found by the firemen and after it had been put out, that time
4 frame of the amount of damage done would have had to have
5 occurred between just minutes or 45 minutes on the long end.

6 There's 17 minutes from the time Paul could have
7 arrived -- would have arrived at the crime scene and between
8 when the 911 call was placed and it was first discovered by
9 Aaron Powers and Billy West. Now, it's not on here, but
10 getting into this time frame right here between 3 o'clock,
11 2:30, 3 o'clock (indicated).

12 Now, I want to remind you that it's the State's
13 burden to prove to you beyond a reasonable doubt, again, of
14 the defendant's guilt. It's a burden that we welcome but
15 whenever the defense puts up witnesses you as a jury should
16 weigh their credibility as you would weigh the State's
17 witnesses, and I want you to think about the witnesses they
18 did put up.

19 They put up close family and close friends. I want
20 you to think about the biases and motives they would have to
21 testify. I asked all of them that I cross-examined, you're
22 pretty close to them, aren't you; you wouldn't want to see
23 anything bad happen to them. They all said yes. They have a
24 bias and motive to be here today. I want you to think about
25 that when you're considering their credibility and their

1 truthfulness when they're testifying to you.

2 Now, going back to this time frame. The Moore
3 defense would have you believe she was at the Sav-a-Lot
4 grocery store in Easley, South Carolina because of a
5 10-year-old cash receipt that has no identifying features on
6 it, none. It was a cash receipt that just had a few items on
7 it and nothing that directly links it to Frances Moore.

8 They tried to tell you this through Debra Stephens,
9 who admits she wasn't at the grocery store, she wasn't with
10 Frances Moore. And she admitted that it had no identifying
11 features on it tying it directly to her mother and that she
12 doesn't know for sure her mother was at the store. She told
13 you that. She admitted she didn't know for sure, even though
14 that's what she was trying to testify to about the receipt.

15 When considering that think about the eyewitness who
16 did know for sure and confidently picked her out of a photo
17 lineup as being the one using the pay phone at 2:52, 2:53 and
18 2:57. Josh Anderson sees a white female in a white RAV4 who
19 he says confidently was Frances Moore, driving the exact same
20 type of vehicle that's registered to Frances Moore 's name.
21 It's not one big coincidence.

22 And the Duvall defense would have you believe that
23 Duvall was sitting on his father-in-law's porch at some time
24 between 2:30 and 3:00 p.m. that day, Mr. Billy Ralph Stansell,
25 who never told anybody that until today.

1 When we asked him why didn't you tell law
2 enforcement this if you knew your son-in-law was sitting with
3 you at this time even after he had been questioned for murder?
4 Why didn't you come forward and tell anybody this? Well, he
5 said he didn't feel like he needed to.

6 He said that law enforcement brought a card and
7 placed it at his door. He could have easily called if this
8 was information that he had, but he didn't tell anybody this
9 until today. And, again, consider bias and motives for coming
10 in and testifying.

11 All right. At 3:27 Powers and West discover a
12 burning vehicle on Baugh road and they call 911. Aaron Powers
13 said as soon as the firemen started showing up they left.

14 Pete Rogers testified he was the first one on the
15 scene around 3:30 p.m. before the tankers got there, and he
16 sees people on the scene leaving. He said he sees someone
17 running away from the scene, and that was Aaron Powers. Aaron
18 Powers had just testified that he was there and left when the
19 firemen started showing up.

20 At 3:31 the first fire engine arrives on the Baugh
21 Road location of the burning vehicle, and 3:33 the second
22 engine shows up.

23 Around 3:40 another volunteer fireman, Bobby
24 Mullikin, said he discovered the body of Paul Stephens laying
25 just a few feet behind this burning vehicle after they were

1 starting to search around the car. He had been shot in the
2 back of the head, shot in the back. He didn't touch the body.
3 He backed away and secured the crime scene.

4 Forensics showed up. Deputy Miller arrived first on
5 the scene to secure the scene. Investigators and forensic
6 investigators showed up to collect evidence at the scene.

7 The very next day Dr. Woodard conducts his autopsy.
8 He confirmed that Paul Stephens died as a result of 2 gunshot
9 wounds with either of them having been fatal if fired alone.

10 He testified that according to his analysis and
11 report that the first shot would have had to have been the
12 shot to the back of the head because of the blood trauma found
13 there. He said that if the shot to the back flank area had
14 been the first shot there would have been no blood pressure in
15 the heart to cause that blood trauma in the head. So in his
16 opinion, his expert opinion, the first shot would have had to
17 have been the one at the back of the head.

18 He also said that the victim was a very tall man, 6
19 foot 8, and the trajectory of the bullet would of had to have
20 been someone shorter than him pointing the gun upward. And
21 that the second -- the trajectory of the second bullet was
22 most consistent with someone standing over him as he was
23 already on the ground on his stomach and close to his feet
24 firing the second shot.

25 This forensic analysis given by Dr. Woodard

1 corroborates and matches the way John Stansell told you Garvin
2 Duvall said he killed Paul Stephens. Was Duvall bragging
3 about his kill or had his conscious got the better of him
4 because he had killed on of his best friends?

5 Whatever the reason, he confessed to John Stansell
6 that he carried out -- planned, carried out the execution of
7 Paul Stephens on June 30th, 1999. And this occurred -- he
8 confessed this to John Stansell just weeks after it occurred
9 in July 1999.

10 And what did he tell him? Let's go over that
11 confession. He says he went to Anderson Meats and Grocery
12 that day. He says he called Paul Stephens to lure him out to
13 Baugh Road. He said when Paul got there to Baugh Road Paul
14 got out of his car, started walking down the trail, and that's
15 when he pulled out the gun and shot him in the back of the
16 head. Then he claims he set the car on fire to destroy any
17 evidence. Then he claimed that he took the murder weapon to
18 his place of employment and burned it in the furnace. This
19 was the confession of Duvall, the killer.

20 I submit to you that even though this was a
21 confession of Duvall all the other evidence in this case
22 corroborates, proves to you beyond a reasonable doubt that
23 Frances Moore was with Duvall that day, June 30th, 1999.

24 And, again, I know I'm going to repeat myself, and I
25 apologize, but it's important to repeat myself because all

1 these things that are inner connected, they connect like
2 connecting the dots.

3 Again, the other evidence that corroborates Frances
4 Moore was with Garvin Duvall was the testimony of Josh Addis.
5 He sees a white RAV4 pull out from the very scene that Paul
6 Stephens would be found shot and killed and his car set on
7 fire. He says he sees him about 2:50. Paul Stephens' car is
8 found at 3:27, just minutes before he's found dead. The white
9 RAV4, the same type of vehicle Frances Moore drives is seen
10 leaving the crime scene.

11 He comes up to Anderson Meats. He says he sees them
12 get out, the white male, white female get out using the pay
13 phone. Garvin Duvall confesses to John Stansell he went to
14 Anderson Meats and called Paul Stephens from the Anderson
15 Meats pay phone to lure him out. We have a white male and
16 white female at the pay phone.

17 The call records confirm at 2:52, 2:53, 2:57 calls
18 were made to the residence where Paul Stephens lived and they
19 were answered, 2:57 being the longest.

20 Josh Anderson, his testimony also corroborates this.
21 He proves that Frances Moore was with Duvall the day that --
22 and carried out these actions. That's how Duvall confessed
23 them to Stansell.

24 Josh Anderson says he sees a white female and a
25 white male in a white RAV4. Again, the same exact vehicle

1 registered to Frances Moore, using the pay phone, the pay
2 phone Garvin Duvall confessed to Stansell he used to call Paul
3 Stephens to lure him out and kill him.

4 And Josh Anderson confidently picked Frances Moore
5 out of that lineup. Said yes, that's the one. Confident she
6 was the one I saw using the pay phone and driving the Toyota
7 white RAV4.

8 Josh Anderson further testified that they left. The
9 white male and white female in the white RAV4 left the scene
10 and came back down towards Anderson, towards the crime scene
11 area. That matches how Duvall confessed it to Stansell.

12 They called him to lure him out, so they went back
13 to wait for him. Again, the time frame would have been they
14 talked to him about 3 o'clock, he left his house, made it
15 there by 3:10, between 3:10 and 3:15, and then they shot and
16 killed him.

17 I submit to you, all of that evidence proves to you
18 that Frances Moore was with Garvin Duvall on the day he says
19 he confessed -- I'm sorry, the day that he confessed to
20 killing Paul Stephens to John Stansell.

21 And under the law that the Judge will instruct you
22 further in a little while, South Carolina law states that the
23 hand of one is the hand of all. That principle states that
24 one who joins with another to accomplish an illegal purpose is
25 liable criminally for everything done by his confederate

1 incidental to the execution of the common design and purpose.
2 The common design and purpose in this case being the murder of
3 Paul Stephens.

4 The law further states that if two or more people
5 are acting together or substantially acting together,
6 assisting each other in the commission of the offense the law
7 says under those circumstances that the act of one is the act
8 of all, the hand of one is the hand of all.

9 Frances Moore had made good on her declaration
10 earlier that day. Just hours before Paul Stephens was found
11 shot and killed she's overheard saying I'm going to kill that
12 son of a bitch. That's exactly what she made sure happen.

13 This plan for murder had not begun just that day
14 though. It had occurred, the events that started the motion,
15 several days before then. As you heard John Stansell testify,
16 on June 27th Garvin Duvall already had a plan, had a plan of
17 how he was going to lure him out, shoot him, and burn his car.
18 That's exactly what ended up happening.

19 He said that Frances wanted him dead. She was going
20 to pay for someone to do it and he planned on doing it.
21 Business was business. Garvin even pulled out the gun to show
22 Stansell again. He said, in his opinion, it was a 380
23 automatic.

24 Ken Whitler, SLED agent, said yes, the bullets I
25 pulled out of -- the bullets I tested that came out of Paul

1 Stephens' body were consistent with 380 auto ammunition.

2 Why had it gotten to this point, that murder was the
3 plan for Garvin Duvall and Frances Moore? According to
4 Duvall's confession to Stansell, Paul Stephens was Anderson
5 County's biggest rat.

6 You heard Detective Major say yes, Paul Stephens was
7 giving information to Pickens County. That was happening.
8 Business was business for Garvin. He was going to rat him
9 out, business was business. It didn't matter if it was a
10 close friend to him.

11 Frances had just witnessed her daughter confess to a
12 crime and became visibly upset and threatened to kill Paul in
13 front of a police officer. Furthermore, Moore was the
14 beneficiary of a hundred thousand dollar life insurance
15 policy. She stood to collect quite a bit of money should Paul
16 Stephens be killed.

17 And Duvall, as he told Stansell, he was planning on
18 getting paid. Duvall said he gained \$2,000 to carry out the
19 murder of Paul Stephens.

20 Now, the defenses would have you think John Stansell
21 is not a very good witness. They questioned him extensively
22 about his religious associations, the association with the Ku
23 Klux Klan, other choices, bad choices that he's made, and he
24 admitted to all of them. He didn't try to deny any of them.
25 In fact, he came out and admitted to them, most of them on

1 direct. He went ahead and told you. He was ashamed of his
2 past. He went through a rough time in his life, and he
3 admitted to that.

4 And the defense wants you to think that he's lying.
5 But why would he lie? He has no reason to lie. He never said
6 he and Garvin got into an argument, a falling out when he came
7 forward in 2006. In fact, he told you to this day he still
8 has no ill will in his heart towards Duvall. He still loves
9 him like a brother. He's known him since 1993. They were
10 close friends, and he has no reason to lie.

11 And what did he tell you about why he finally came
12 forward? He said he had been carrying this burden for 7
13 years. It was affecting his health, he couldn't sleep. He
14 was feeling guilty. He just couldn't carry it anymore, and he
15 finally knew someone had to know the truth.

16 And he said he had been carrying it for 7 years
17 because he was afraid of Garvin Duvall, of the retaliation on
18 him, on his family. Someone just confessed to him that they
19 had killed one of his best friends. He knew that if he was
20 going to rat him out just like Duvall said Paul Stephens was
21 the same plan could be held for him.

22 He was afraid of the retaliation, and that's why he
23 didn't come forward. But finally he had to. He knew he had
24 carried the burden too long and he felt guilty and someone had
25 to know the truth about the murder of Paul Stephens.

1 And he doesn't deny that he stayed close to Duvall
2 after he came forward, after Duvall gave him the confession in
3 1999. He doesn't deny that he submitted his name for the
4 Masons. So why did he tell you he did that? To stay in his
5 good graces. Again, he was scared of the man, scared of
6 retaliation.

7 Now, I want you to think about it. The things that
8 he testified Duvall said to him are corroborated by other
9 evidence in this case. It's not just what he's telling you.
10 There's other evidence that corroborates exactly what he told
11 you, and I'm about to show you that, such as the fact from
12 Duvall's confession to Stansell.

13 Stansell says this happened -- first conversation
14 occurred at the birthday party on June 27th, 1999. Tells him
15 he wants -- Moore wants the victim dead, wants him to kill
16 him, and he plans on killing him. The photographs of the
17 birthday party place them together on that date.

18 The next thing, Duvall shows the gun to Stansell
19 that he plans to use on the victim. Stansell says it looks
20 like a 380 auto or 9 millimeter. Agent Whitler confirmed the
21 bullets that killed the victim are consistent with 380 ammo.

22 The next thing, Duvall says he used the phone at
23 Anderson Meats to call the victim at Debra's house and tell
24 the victim to meet him at Baugh Road. The phone records show
25 that and confirm that. Three calls were made from Anderson

1 Meats pay phone to Debra Stephens' number on the same day.

2 Also confirming that, Josh Addis seen the white RAV4
3 pulling away from the Baugh Road location following him to
4 Anderson Meats. The white female driver and the white male
5 passenger get out to use the pay phone. Josh Anderson's
6 testimony also corroborates that. There's more, being the
7 white female using the pay phone and driving the white RAV4.

8 He also sees Moore and the white male leave in the
9 white RAV4 and drive back towards the Baugh Road location.
10 The records show Frances Moore owns a white Toyota RAV4.

11 Next, Stansell says that Duvall confessed to him
12 that when Paul arrived he got out of his car and begin walking
13 down a trail behind the car. When you get back to the jury
14 room I want you to look at the pictures of the trail behind
15 the car. The crime scene photos match this trail. The
16 description of how Stansell told it is how Duvall confessed to
17 him.

18 The next -- and not only that, Dr. Woodard's autopsy
19 says that the victim, yes, was shot first in the back of the
20 head, just like Duvall said he did. He shot him in the back
21 of the head. That was the first shot. That's what he told
22 John Stansell. That's what the autopsy confirms.

23 Duvall states that he set victim's car on fire to
24 destroy any evidence. Medlock, Pelham Medlock, the arson
25 investigator, confirmed that incendiary fire caused by an

1 accelerant was set in the passenger compartment of the
2 vehicle. It wasn't a malfunction of the car. It was a human
3 intervention fire set by an accelerant.

4 Duvall states he disposed the murder weapon at the
5 furnace at work at Ryobi. Jane Miller came up here and
6 testified. She confirmed Duvall did work there. His job was
7 melt shop operator. It was his duty to feed the furnace.
8 Confirmed that the furnace was hot enough to melt the gun.

9 Court records also show Duvall did not work on June
10 30th, 1999 when Paul Stephens was murdered but did return to
11 work on July 1st, 1999, in which he had an opportunity to put
12 the gun in the furnace.

13 Again, all of these details corroborated by all of
14 this other evidence should firmly convince you that John
15 Stansell is not lying about what Garvin Duvall confessed to
16 him. It was the confession of a killer, straight out of
17 Duvall's mouth.

18 This murder was carefully thought out and planned by
19 Frances Moore and Garvin Duvall. The evidence is clear and
20 overwhelming proving that to you. Don't allow yourself to be
21 distracted from the basic facts, and those facts prove each
22 and every one of these elements.

23 All the elements of the crime were met, the elements
24 for murder, the elements for conspiracy to commit murder, the
25 elements for possession of a firearm during the commission of

1 a violent crime. All those elements are met. All this
2 evidence proves that to you. They are both guilty.

3 And, again, I know I repeated myself a lot through
4 this. All this evidence connects. You can't mention one
5 without mentioning the other. It all corroborates. It all
6 comes together. It's like connecting the dots for the big
7 picture, and that big picture is that the State has proven to
8 you beyond a reasonable doubt that these two defendants,
9 Frances Moore and Garvin Duvall, are guilty of the murder of
10 Paul Stephens, for conspiring to commit the murder of Paul
11 Stephens, and for possession of firearm during the commission
12 of a violent crime, which was the murder of Paul Stephens.

13 Thank you very much.

14 THE COURT: All right. Ladies and gentlemen, I'm
15 going to send you out for the last time. I will just tell you
16 that the charge is going to take a little while. So if you
17 need to smoke now is the time. Once you begin deliberating
18 it's going to be very difficult to let you out to smoke. So
19 any of you that have to smoke now is the time.

20 As soon as you get back we'll bring you back in.
21 I'll charge you, and then we'll send you back to begin your
22 deliberations.

23 (WHEREUPON, the jury leaves the courtroom at
24 approximately 4:30 p.m.)

25 THE COURT: Okay. Everybody take a break. Be right

1 back.

2 (WHEREUPON, a brief recess was taken.)

3 THE COURT: Okay. Everybody ready?

4 MR. GAMBLE: Ready.

5 THE COURT: Mr. Pruitt, you ready? Mr. Pruitt, you
6 ready?

7 MR. PRUITT: Yes, sir. I'm sorry.

8 THE COURT: You ready?

9 MR. BRADLEY: Yes, Your Honor.

10 THE COURT: All right. You can bring them in.

11 (WHEREUPON, the jury enters the courtroom at
12 approximately 4:55 p.m.)

13 THE COURT: Thank you, Mr. Graham.

14 All right. Ladies and gentlemen, you very patiently
15 listened all week to testimony, to the opening arguments and
16 the closing arguments. It's now my obligation to charge you
17 with the law as it applies to this case.

18 As I said, I have to literally read this to you
19 verbatim. I apologize for that. If at any point during the
20 course of this jury charge you need a break for any reason
21 raise your hand. It should take 20 to 25 minutes for me to
22 read this. I'll do my best not to read too fast.

23 You will not have the charge with you in the jury
24 room but as I'll explain to you at the end of the charge if
25 you need me to re-charge or expound on anything, Mr. Foreman,

1 you'll send out a note to that affect once you begin your
2 deliberations.

3 First, let me repeat to you something that I've
4 already done twice. Frances Moore and Garvin V. Duvall have
5 been indicted. The fact that they have been indicted in this
6 case should not be considered by you at all. You'll actually
7 have the indictments in the jury room with you. Please
8 understand, as I told you earlier, that indictments literally
9 are just the mechanism by which these cases start. They are
10 pieces of paper. They contain the charges.

11 And, in fact, Mr. Foreman, I'll explain to you at
12 the end of this charge you'll actually write the verdict on
13 the indictment.

14 But please don't discuss the fact that the
15 indictment has been issued. They have pled not guilty, and
16 I'll explain a little bit more about that later, but there's
17 no presumption or inference of guilt in this case. You should
18 not believe that because there has been an indictment that
19 these parties are anything other than not guilty until you
20 decide that they are not guilty.

21 Now, ladies and gentlemen, I charge you that the
22 indictments in this case allege several different offenses
23 against the defendants. The charges are an indictment for
24 murder, an indictment for criminal conspiracy, an indictment
25 for possession of a firearm during the commission of a violent

1 crime.

2 Each indictment charges a separate and distinct
3 offense. You must decide each indictment separately on the
4 evidence and the law applicable to it uninfluenced by your
5 decision on any other indictment. The defendant may be
6 convicted or acquitted on any or all of the offenses charges.
7 You'll be asked to write a separate verdict or guilty form, or
8 not guilty on each indictment. And as I said, I'll explain
9 that to you in a little bit.

10 I charge you that there are two defendants in this
11 case, each of whom is charged with murder, criminal conspiracy
12 and possession of a firearm during the commission of a violent
13 crime. The case of each defendant and the evidence and the
14 law concerning that defendant should be considered separately
15 and individually. Your verdict does not have to be the same
16 for both defendants.

17 The fact that you may find one defendant guilty or
18 not guilty should not control your verdict as to the other
19 defendant. Where more than one person is charged with a crime
20 if the evidence warrants it you may convict one and acquit the
21 other, or you may acquit both, or you may convict both. It
22 will depend upon your view of the testimony and the evidence.

23 You must take each defendant and consider the
24 evidence as to that defendant and my instructions to you on
25 the law and then reach a verdict. You will then write a

1 separate verdict of guilty or not guilty for each individual
2 defendant.

3 Now, ladies and gentlemen, as I told you at the
4 beginning of the trial, you and I have very different roles
5 during the course of this trial. You have to determine what
6 the facts are. You do that by listening to the witnesses who
7 testify, by reviewing the evidence.

8 Anything that was admitted into evidence will be
9 with you in the deliberation room. And you have to determine,
10 based upon the credibility or believability of witnesses, what
11 the facts are and then you have to apply this law as I'm
12 giving it to you to those facts.

13 If for any reason you think that during the course
14 of the trial I have an opinion about the truth or falsity of a
15 fact disregard it. As I said earlier, my opinion about facts
16 should mean nothing to you.

17 You have to determine what the facts are, I have to
18 determine what the law is. You take the law as I give it to
19 you. You determine the facts as you find them to be and then
20 you reach a verdict. So please disregard anything I've done
21 to make you feel otherwise.

22 Now, ladies and gentlemen, I charge you the
23 defendants have pled not guilty to each indictment, and that
24 plea puts the burden on the State to prove the defendant
25 guilty. A person charged with a criminal offense in South

1 Carolina is never required to prove themselves innocent.

2 I charge you it's an important rule of law that the
3 defendant in a criminal matter, no matter what the seriousness
4 of the charge may be, will always be presumed to be innocent
5 of the crime for which the indictment was issued unless guilt
6 has been proven by evidence satisfying you of that guilt
7 beyond a reasonable doubt.

8 This presumption of innocence does not end when you
9 begin your deliberations but it accompanies the defendant
10 throughout the trial until you reach a verdict of guilt based
11 on evidence satisfying you of that guilt beyond a reasonable
12 doubt.

13 As I've said, the presumption of innocence is like a
14 robe of righteousness that was placed upon these defendants
15 prior to the trial. That robe of righteousness has continued
16 over their shoulders during the trial.

17 When you go back to your room to begin your
18 deliberations they will still have that robe of righteousness
19 on them. It will only be removed by you if you determine that
20 the State has met its burden of proof.

21 I charge you that the presumption of innocence is
22 not a mere legal theory. It's not just a legal phrase. It's
23 a substantial right to which we are all entitled to under the
24 constitution, and you must be satisfied from the evidence of
25 the defendant's guilt beyond a reasonable doubt. A reasonable

1 doubt is the kind of doubt that would cause a reasonable
2 person to hesitate to act. The State has the burden of
3 proving the defendant guilty beyond a reasonable doubt.

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

10 Proof beyond a reasonable doubt is proof that leaves
11 you firmly convinced of the defendant's guilt. As was said
12 during one of the closings, there's very few things in this
13 world we know with absolute certainty, and in criminal cases
14 the law does not require proof that overcomes every doubt or
15 every possible doubt.

16 If based on your consideration of the evidence you
17 are firmly convinced that the defendant is guilty of the crime
18 charged you must find the defendant guilty. If on the other
19 hand you think there's a real possibility that the defendant
20 is not guilty you must give the defendant the benefit of the
21 doubt and find him or her not guilty.

22 Now, ladies and gentlemen, as is also said during
23 the closing arguments there are two types of evidence which
24 are generally presented during a trial. There's direct
25 evidence and there's circumstantial evidence.

1 Direct evidence is the testimony of a person who
2 claims to have actual knowledge of a fact, such as an
3 eyewitness. It's evidence that which immediately establishes
4 the main fact to be proved.

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

11 The law makes absolutely no distinction between the
12 weight or value to be given to either direct or circumstantial
13 evidence, nor is a greater degree of certainty required of
14 circumstantial evidence than of direct evidence.

15 You should weigh all of the evidence in this case
16 and after weighing all of the evidence if you're not convinced
17 of the guilt of the defendants beyond a reasonable doubt then
18 you must find the defendants not guilty.

19 Now, necessarily as a part of your job you have to
20 determine the credibility of witnesses. As I told you
21 earlier, credibility under the law simply means believability.
22 You have to determine based upon your observations of the
23 witnesses, based upon any potential bias that that witness may
24 have or prejudice that witness may have whether or not the
25 witness is telling the truth.

1 You can observe the demeanor of the witness, look at
2 how they seem to know the information that they testify to. I
3 can't tell you whether or not you -- or how you determine
4 believability but each of you individually and as a group will
5 have to determine whether or not a witness was credible.

6 You may take part of a witness' testimony and
7 believe it and disregard the remainder of it. You can believe
8 all that one witness tells you and disregard all the other
9 witnesses. That's something that you'll have to decide
10 together once you begin your deliberation.

11 Now, ladies and gentlemen, I charge you that the
12 rules of evidence in South Carolina ordinarily do not permit
13 witnesses to testify to opinions or conclusions. An exception
14 to this rule exists for witnesses that we call in the law
15 expert witnesses, and an expert witness was someone who I
16 determined was an expert based upon their background and told
17 you at the time -- or the lawyers made a motion for that
18 person to be admitted as an expert, and I admitted them.

19 A witness who by education and experience has become
20 expert in some art, science, profession or calling may state
21 an opinion as to relevant and material matter in which the
22 witness claims to be an expert, and he may also state the
23 reasons for that opinion. You should consider an expert
24 opinion received in evidence in this case, and like all the
25 other evidence, give it the weight you think that it deserves.

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

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

10 Ladies and gentlemen, I charge you that in South
11 Carolina if a crime is committed by two or more people who
12 are acting together in committing a crime the act of one is
13 the act of all.

14 A person who joins with another to commit an
15 unlawful act is criminally responsible for everything done by
16 the other person which happens as a probable and natural
17 consequence of the acts done in carrying out the common plan
18 and purpose. For example, two people can be guilty of killing
19 another person when only one of the two had a gun, there was
20 only one bullet and only one of the two fired the shot that
21 caused the death.

22 If two or more people are together, acting together,
23 assisting each other in committing the offense the act of one
24 is the act of all; or as sometimes said, the hand of one is
25 the hand of all.

1 Prior knowledge that a crime is going to be
2 committed without more is not sufficient to make a person
3 guilty of this crime. Mere knowledge that another person is
4 going to commit a crime, even if the defendant is present when
5 the crime is committed, is not sufficient to convict the
6 defendant as a principal guilt -- or as a principal.

7 Guilt as a principal is shown by actual or
8 constructive presence at the scene as a result of prior
9 arrangement; therefore, a finding of a prior arranged plan or
10 common scheme is necessary for a finding of guilt as a
11 principal. The State must prove beyond a reasonable doubt by
12 competent evidence the theory of the hand of one is the hand
13 of all.

14 A principal in a crime is one who either actually
15 commits the crime or was present aiding, abetting or assisting
16 in committing the crime. When a person does an act in the
17 presence of and with the assistance of another the act is done
18 by both. Where two or more acting with a common plan or
19 intent are present at the commission of a crime it does not
20 matter who actually commits the crime. All are guilty. The
21 hand of one is the hand of all.

22 Present at the commission of a crime means to be
23 sufficiently near to, to aid and abet and assist in the
24 commission of the crime; however, mere presence at the scene
25 of a crime is not sufficient to convict one as a principal on

1 the theory of aiding and abetting.

2 Intent is also a necessary element. For there must
3 have been a common design or intent to commit the crime and
4 the crime must have been committed pursuant thereto with the
5 person aiding and abetting by some overt act.

6 Intent means intending the result which actually
7 occurs. Not accidentally or involuntarily. Intent may be
8 shown by acts and conduct of the defendant and other
9 circumstances from which you may naturally and reasonably
10 infer intent. The State must prove these elements beyond a
11 reasonable doubt.

12 Now, ladies and gentlemen, I charge you the
13 defendants in this case are charged with murder. The State
14 must prove beyond a reasonable doubt that the defendants
15 killed another person with malice aforethought.

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

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

1 Malice aforethought may be expressed or inferred.
2 These terms express and infer do not mean different kinds of
3 malice but merely the manner in which malice may be shown to
4 exist. That is either by direct evidence or by inference from
5 the facts and circumstances which were proved.

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

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

15 A deadly weapon is any article, instrument or
16 substance which is likely to cause death or great bodily harm.
17 Whether an instrument has been used as a deadly weapon depends
18 on the facts and circumstances in each case. A gun may be a
19 deadly weapon even if it's not operating.

20 Ladies and gentlemen, I further charge you that the
21 defendants are charged with conspiracy. The State must prove
22 beyond a reasonable doubt that the defendant combined with one
23 or more persons for the purpose of committing an unlawful act
24 or for committing a lawful act by unlawful means. There must
25 be a mutual understanding, agreement or common intention and

1 plan.

2 Mere passive knowledge of or consent to the criminal
3 conduct of another is not enough to make a person a
4 conspirator. There must be a guilty knowledge and a
5 participation. Similarly, the mere fact that the defendant
6 may have associated with another person or met with another
7 person and discussed common aims and interests does not
8 necessarily establish proof of the existence of a conspiracy,
9 or that the defendant was involved in the conspiracy.

10 On the other hand, I charge you that it's not
11 necessary that the agreement be a formal one, that it be in
12 writing, that the persons hold a meeting or expressly state
13 the terms of the common plan, or that the agreement be stated
14 in words between them.

15 The agreement of a criminal conspiracy may come into
16 being through an implied mutual understanding. The willful,
17 intentional and knowing adoption by two or more persons of a
18 common plan is sufficient.

19 An overt act needs to be shown to establish a
20 conspiracy. A conspiracy may be shown by circumstantial
21 evidence in the conduct of the parties.

22 In order to convict the defendant of the conspiracy
23 the State must prove beyond a reasonable doubt not only that
24 the defendant knew of the unlawful conduct but that the
25 defendant agreed to combine with the other person or persons

1 for the purpose of accomplishing the unlawful conduct.

2 I charge you further that the defendants are each
3 charged with possession of a weapon during the commission of
4 or attempt to commit a violent crime. The State must prove
5 beyond a reasonable doubt that the defendants were in
6 possession of a firearm or visibly displayed what appeared to
7 be a firearm during the commission of a violent crime.

8 A firearm means any machine gun, automatic rifle,
9 revolver, pistol or any weapon which will -- is designated to
10 or may be readily converted to expel a projectile.

11 In order to find the defendant guilty of possession
12 of a weapon during the commission of a violent crime you must
13 first find the defendant guilty of either committing a violent
14 crime or attempting to commit a violent crime. I charge you
15 that in this State murder is a violent crime.

16 Now, ladies and gentlemen, I charge you and I
17 instruct you and emphasize that the fact that the defendant
18 did not testify is not a factor to be considered by you in any
19 way in your deliberations and in your consideration of the
20 question of guilt or the innocence of the defendant. It must
21 not be considered by you in any manner whatsoever.

22 A defendant has the constitutional right to remain
23 silent, and the assertion of this right must not be considered
24 by you in your deliberations. I repeat. Under your oath you
25 are to draw no conclusions whatsoever from the fact that the

1 defendants in this case did not testify. The fact that these
2 defendants did not testify should not even be discussed in the
3 jury room.

4 The burden of proof, as I've stated to you, is on
5 the State. The defendant is not required to prove his or her
6 innocence. The burden of proof remains on the State to prove
7 guilt beyond a reasonable doubt.

8 Now, ladies and gentlemen, I charge you that an
9 issue in this case is the identification of the defendants as
10 the people who committed the crime charged. The State has the
11 burden of proving identity beyond a reasonable doubt. You
12 must be satisfied beyond a reasonable doubt of the accuracy of
13 the identification of the defendant before you may convict the
14 defendant.

15 Identification testimony is an expression of belief
16 or impression by a witness. You must determine the accuracy
17 of the identification of the defendant. You must consider the
18 believability of each identification witness in the same way
19 as any other witness.

20 You may consider whether the witness had an adequate
21 opportunity to observe the offender at the time of the
22 offense. This will be affected by things like how long or how
23 short a time was available, how far or close the defendant was
24 and the witness was, the lighting conditions, and whether the
25 witness had the chance to see or know the person in the past.

1 Once again, I instruct you that the burden of proof
2 on the State extends to every element of the crime charged,
3 and this specifically includes the burden of proving beyond a
4 reasonable doubt the identity of the defendant as the person
5 who committed the crime. If after examining the testimony you
6 have a reasonable doubt as to the accuracy of the
7 identification you may find the defendant not guilty.

8 I charge you in South Carolina mere presence at the
9 scene is not sufficient to prove someone guilty of a crime. A
10 defendant's presence where a crime is being committed or mere
11 association with a person who commits a crime does not make a
12 defendant an accomplice or an aider or abetter of the person
13 committing the crime. The burden is on the State to prove
14 every element of the crime charged.

15 If you find after reviewing all the evidence that
16 the State has proved that the defendant was only present at
17 the scene of the crime and that they have not proved beyond a
18 reasonable doubt any other participation in the crime then you
19 must find the defendant not guilty. The law is that proof at
20 the scene of being at the scene is not sufficient to find
21 someone guilty.

22 Ladies and gentlemen, I charge you that in order to
23 establish criminal liability criminal intent is required. For
24 example, mental state required to be proven by the State for a
25 particular crime might be purpose, intent, knowledge,

1 reckless, or criminal negligence. Criminal intent must be
2 proven by the State beyond a reasonable doubt.

3 Criminal intent is always a matter that must be
4 determined by the jury from the circumstances surrounding the
5 situation. There's no way to prove intent to a mathematical
6 certainty. There's no way for medical science to dissect a
7 person's brain to determine what that person had in mind. So
8 the law says that criminal intent may be inferred from the
9 circumstances shown to have existed. This is how you make a
10 determination of whether or not the element requiring intent
11 was present.

12 It's not necessary to establish criminal intent by
13 direct and positive evidence but intent may be established by
14 inference in the same way as any other fact by taking into
15 consideration the acts of the parties and all the facts and
16 circumstances of the case.

17 Criminal intent is a mental state, a conscious
18 wrongdoing. It is up to you to determine what the defendant
19 intended to do based on the circumstances shown to have
20 existed.

21 Ladies and gentlemen, the defendant has raised the
22 defense of alibi. The law in South Carolina is that in order
23 to establish an alibi it must be shown that the defendant was
24 at another specified place at the time the crime was committed
25 and that it was therefore impossible for the defendant to have

1 been at the scene of the crime. Mere denial of the presence
2 at the scene of a crime does not constitute an alibi.

3 There is no burden on the defendant to prove an
4 alibi. The burden is on the State to prove beyond a
5 reasonable doubt that the defendant was actually present at
6 the scene of the crime, actually participated in it and was
7 not somewhere else. In other words, the State has the burden
8 of disproving the defendant's alibi defense.

9 Now, ladies and gentlemen, when you begin your
10 deliberations you're going to have the indictments. You'll
11 have all the evidence. You won't, as I said, have this
12 charge.

13 If you have a question during the course of your
14 deliberations, Mr. Foreman, write that question on a sheet of
15 paper, sign it and date it and also put the time. Knock on
16 the door and they'll bring it to me.

17 There are some questions that I can answer. There
18 are some questions that I cannot answer. What I'll do is I'll
19 bring you back in here and I'll look at you and say I can't
20 answer that question, or I'll answer the question.

21 Your verdict must be unanimous. That is you must
22 all agree. And as I said earlier, I want to make myself very
23 clear, each of these indictments and each of these defendants
24 needs to be addressed separately. And if there's a question
25 -- I think it will be clear to you once you get back there and

1 actually see the indictments.

2 Mr. Foreman, on the back of each indictment under
3 the word true bill there's a word that says verdict. Once
4 you've reached a verdict on that indictment write the verdict
5 in there, guilty or not guilty. Sign your name to it and put
6 the date. Once you've reached a verdict on each and every one
7 of these you will have finished your deliberations.

8 And I want to note that on two of the indictments,
9 the indictment for murder and possession of a firearm during
10 the commission of a violent crime, are two separate charges on
11 one indictment. So you'll have to draw a line, and again, I
12 think that will be clear. If it's not, express what your
13 question is and I'll come out and do my best to help you.

14 I know it's late and I know you've been here all
15 week. We've had an option, quite frankly, earlier of stopping
16 the trial and coming back tomorrow, and I made the decision
17 that I'll speak to you when you finish your deliberations to
18 continue tonight rather than to come back tomorrow or Sunday.

19 We'll do something about supper in a few minutes,
20 but I'm going to let you go back now.

21 Each lawyer has the opportunity to ask me to charge
22 something different. If I read something incorrectly they
23 have the opportunity to ask me to re-charge something, or if
24 something wasn't clear. So I am going to give them a moment
25 to do that.

1 If I decide not to re-charge the law, in a few
2 minutes you'll have these indictments and all the evidence
3 delivered back to you, and at that point you can finally begin
4 your deliberations. If on the other hand there's something
5 that needs to be altered or changed or clarified I'll bring
6 you back in and do it.

7 So go back, wait for the indictments or wait for the
8 opportunity to come back and listen to me some more.

9 Mr. Graham, if you'd keep the alternates out in the
10 hall I'd appreciate it.

11 (WHEREUPON, the jury leaves the courtroom at
12 approximately 5:21 p.m.)

13 THE COURT: All right. Any alterations by the
14 State?

15 MR. BRADLEY: No, Your Honor.

16 MR. PRUITT: None, sir.

17 MR. GAMBLE: None.

18 THE COURT: That's a first.

19 All right. You better look at the evidence and make
20 sure you all agree on what goes back to them.

21 I'll say this, I know it's been a difficult case for
22 everybody and I thought everybody did a good job despite
23 disagreement with rulings, and you did a good job.

24 MR. PRUITT: Your Honor, we've already looked at the
25 evidence.

1 THE COURT: Everybody, right? Here's the
2 indictments. You can take them back.

3 (WHEREUPON, the jurors were instructed to begin
4 their deliberations at approximately 5:23 p.m., and court was
5 in recess while awaiting a verdict from the jury.)

6 (The following occurred at approximately 7:00 p.m.)

7 THE COURT: All right. We got two questions. The
8 first question is -- and this is exactly the way they wrote
9 it; is one hand, all hands apply to the possession of firearms
10 during a violent crime. And then underneath that it says
11 criminal conspiracy explain.

12 I think what they are asking me is does hand of one
13 hand of all apply to the possession of firearm during a
14 violent crime. I think the answer to that is yes, but I think
15 the answer is no on criminal conspiracy.

16 And then the other question is; for dinner could we
17 please have pizza; two cheese pizzas, three hamburger pizzas,
18 and seven pepperoni pizzas.

19 All right. Does anybody disagree on the answer to
20 that; hand of one, hand of all does apply to possession of a
21 firearm but does not apply to criminal conspiracy?

22 MR. BRADLEY: No objection.

23 THE COURT: In as much as criminal conspiracy. And
24 I'll probably read that first paragraph, that you have to
25 prove beyond a reasonable doubt that the defendants combined

1 with one or more persons for the purposes of committing a
2 lawful act.

3 Any objection to me doing that?

4 MR. GAMBLE: No. Fine with me.

5 MR. PRUITT: No objection.

6 THE COURT: You can bring them in.

7 (WHEREUPON, the jury enters the courtroom at
8 approximately 7:03 p.m.)

9 THE COURT: Mr. Foreman, what I'm going to do is
10 read these questions, then I may re-word them and ask you if
11 this is what you meant.

12 The first question; is one hand, all hands apply to
13 the possession of a firearm during a violent crime.

14 I think what you are asking me; does the theory of
15 one hand, all hands apply to the possession of firearm during
16 a violent crime. Is that the question?

17 THE FOREMAN: Yes, sir.

18 THE COURT: The answer to that is yes.

19 Then underneath you've got criminal conspiracy,
20 explain.

21 I'm assuming the question is does the hand of one,
22 hand of all apply to criminal conspiracy. Is that the
23 question?

24 THE FOREMAN: Yes, sir.

25 THE COURT: The answer to that is no. I want to

1 remind you just in a short, short thing, and I'll be happy if
2 you need at some point in the future to re-charge the entire
3 criminal conspiracy. But basically I charge you that the
4 State must prove in a conspiracy case beyond a reasonable
5 doubt that the defendant combined with one or more persons for
6 the purpose of committing a lawful act or -- excuse me, an
7 unlawful act, or committing a lawful act by unlawful means.

8 That's the short definition of conspiracy. But by
9 its very definition I think you probably picked up on the
10 issue, and that is the hand of one, hand of all doesn't apply
11 to criminal conspiracy.

12 Now, the second part of your question; for dinner
13 could we please have pizza.

14 And we had a little discussion here because it says
15 cheese two, hamburger three, pepperoni seven. I'm assuming
16 you don't want twelve pizzas.

17 THE FOREMAN: No.

18 THE COURT: Here's the problem with pizza. The
19 problem with pizza is that we don't have any pizza service
20 that will allow us to charge it, which is what the clerk's
21 office has to do for various reasons.

22 We do have Chick-fil-A, we do have Georgia's.

23 Who else do we have, Cathy? Is that it?

24 THE CLERK OF COURT: Possibly Grace's Sandwich Shop.

25 THE COURT: Grace's Sandwich Shop.

1 MR. GAMBLE: They are closed, I think, at night.

2 THE COURT: They are closed. You've been up here
3 all week. If you want pizza I'll figure a way to get you
4 pizza. I'll buy you pizza. But assuming what you want there
5 is pizza, a cheese pizza enough for two people, hamburger
6 enough for three, and pepperoni enough for seven. You don't
7 want twelve pizzas?

8 THE FOREMAN: No, sir.

9 THE COURT: I got you. So you want more pepperoni
10 than hamburger, and more hamburger than cheese?

11 THE FOREMAN: I mean, they may settle for one of the
12 others, too. I'm not sure.

13 THE COURT: Chick-fil-A is fine? If Chick-fil-A is
14 what you want that's quite frankly the easiest for us to do,
15 but again, you've been here all week. I'm going to do what
16 you want.

17 THE FOREMAN: Chick-fil-A is fine.

18 THE COURT: Okay. You sure?

19 THE FOREMAN: Yes, sir.

20 THE COURT: Okay. We'll send somebody back in just
21 a minute to take your order, then we'll send somebody to get
22 it. Quite frankly, Chick-fil-A is quicker, too. Sometimes
23 with the pizza we've had trouble in the past.

24 All right. If you need me to charge anything else
25 or explain anything else this is exactly the way to do it, and

1 I'll be happy to read the entire charge to you or I'll read a
2 portion of it. Whatever you need me to do.

3 Go back and start deliberating and we'll have
4 somebody take an order.

5 (WHEREUPON, the jury leaves the courtroom at
6 approximately 7:07 p.m.)

7 THE COURT: I would have bought them pizza but I
8 think they'd rather have Chick-fil-A.

9 Okay. I'll let you know.

10 We'll make this an exhibit.

11 (WHEREUPON, Court's Exhibit Number 2, a Note From
12 the Jury, was marked and made a part of the record.)

13 (WHEREUPON, court was in recess while awaiting a
14 verdict from the jury.)

15 (The following occurred at approximately 8:25 p.m.)

16 THE COURT: The question is; can we have J. W.
17 Stansell's testimony. Obviously, they can't have it. I can
18 bring them in and ask them if they want to hear the testimony
19 again. It's about two hours.

20 You know, I've got two options. I can tell them
21 that they can hear it if that's what they want, or I can ask
22 them if there's a portion of it that they want to hear. Now,
23 you know, that creates a little bit of a problem.

24 You object to that, right, or do you?

25 MR. PRUITT: Depends on which portion.

1 THE COURT: Well, yeah, depending on which portion.
2 You know, I can -- I mean, it may be when they find out they
3 can't have it that they don't want to hear it. They may be
4 looking for something in particular. But if they want to hear
5 the whole thing I'll give them that option. And I'll ask them
6 if they can narrow it down then I'll make a decision, because
7 I may be making a decision before I need to.

8 Bring them in.

9 (WHEREUPON, the jury enters the courtroom at
10 approximately 8:28 p.m.)

11 THE COURT: All right. Mr. Foreman, the question is
12 can we have J. W. Stansell's testimony; is that correct?

13 THE FOREMAN: Yes, sir.

14 THE COURT: All right. We don't have it in written
15 form. You can listen to the testimony again, or if you
16 believe that you can narrow it down to some portion that you
17 want to hear I can make a decision on that.

18 I'm not telling you that I can let you hear only a
19 portion, but we do not have written testimony. It would be by
20 tape, and quite frankly, I have to make a decision about
21 whether I can let you hear only a portion.

22 So what I need you to do is go back and then decide
23 whether or not you wish to hear any or all of his testimony
24 again, but it is not in written form, if that was your
25 question. So go back and if you need me to do something else

1 like play the whole thing I'll be happy to do it. Just let me
2 know. You did this exactly right though.

3 Have you gotten your food yet?

4 THE FOREMAN: Do you know how long the whole thing
5 is?

6 THE COURT: Oh, you mean the tape? About two and
7 half hours.

8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 8:30 p.m.)

10 THE COURT: The State vs. Carlson says that I can
11 let them listen to a portion of it. It's in my discretion.
12 So you can put that blue book up.

13 [LAUGHTER]

14 (WHEREUPON, Court's Exhibit Number 3, a Note From
15 the Jury, was marked and made a part of the record.)

16 (WHEREUPON, a brief recess was taken.)

17 THE COURT: Okay. The question is they want to hear
18 the State portion of J. W. Stansell, which would be the
19 direct, and then they want to hear the full testimony of
20 Randolph Stansell, Sr.

21 So the State portion would be, what, about a half
22 hour long, 20 minutes, the direct? Then Ralph Stansell, Sr.,
23 is not that long. Okay.

24 MR. GAMBLE: I recognize it's discretionary but for
25 the record I would object to just playing one portion of the

1 testimony.

2 MR. PRUITT: I would object also, the same grounds.

3 THE COURT: Okay. Overruled. We'll do it. You can
4 bring them in.

5 (WHEREUPON, Court's Exhibit Number 4, a Note From
6 the Jury, was marked and made a part of the record.)

7 (WHEREUPON, the jury enters the courtroom at
8 approximately 8:49 p.m.)

9 THE COURT: All right. Ladies and gentlemen, my
10 understanding is you want to hear the State portion of J. W.
11 Stansell, which would be the direct examination; is that
12 correct?

13 THE FOREMAN: Yes, sir.

14 THE COURT: And then the full testimony of Ralph
15 Stansell, Sr.; is that correct?

16 THE FOREMAN: Yes, sir.

17 THE COURT: All right. We've got the direct of
18 J. W. Stansell cued up.

19 (WHEREUPON, the requested testimony was played for
20 the jury.)

21 THE COURT: All right. That was the direct of J. W.
22 Stansell. Then you've got Ralph Stansell, Sr. The full
23 testimony of Ralph Stansell, Sr.; is that correct?

24 THE FOREMAN: Yes, sir.

25 THE COURT: All right.

1 (WHEREUPON, the requested testimony was played for
2 the jury.)

3 THE COURT: All right. Ladies and gentlemen, the
4 food is back there. What I'm going to do is we'll have the
5 food delivered to you. Keep deliberating while you eat. At
6 some point after you eat I know the smokers might be climbing
7 the wall. I'll let you go smoke but, you know, we've got to
8 make it kind of quick. We'll have to have somebody,
9 obviously, walk with you.

10 Eat, continue to deliberate, then we'll take a break
11 for you to smoke.

12 (WHEREUPON, the jury leaves the courtroom at
13 approximately 9:36 p.m.)

14 THE COURT: Okay. Keep waiting.

15 (WHEREUPON, court was in recess while awaiting a
16 verdict from the jury.)

17 (The following occurred at approximately 10:30 p.m.)

18 THE COURT: They've got a verdict. Let me just say
19 before they bring the jury in that no matter what the verdict
20 is, obviously, there's a lot of emotion involved in this case.
21 I just need to tell you as straight as I can tell you, I'm not
22 going to stand for any outburst or noise at all.

23 If there's any noise or outburst or comments or
24 anything like that that's going to be contempt of court and
25 it's not good. It's late. I know everybody is tired.

1 Everybody just keep yourselves together.

2 Okay. You can bring them in.

3 (WHEREUPON, the jury enters the courtroom at
4 approximately 10:32 p.m.)

5 THE COURT: All right. Mr. Foreman, I understand
6 you have a verdict?

7 THE FOREMAN: Yes, sir.

8 THE COURT: If you would hand it to Mr. Graham.

9 All right. You can publish them.

10 THE CLERK OF COURT: Case 2007-GS-04-1343, the State
11 vs. Frances J. Moore, indictment for criminal conspiracy, the
12 verdict is guilty; 2007-GS-04-1342, the State vs. Frances J.
13 Moore, count 1, indictment for murder, the verdict is guilty;
14 as to count 2, possession of a firearm during the commission
15 of a violent crime, the verdict is guilty.

16 2007-GS-04-1218, the State vs. Garvin V. Duvall, as
17 to count 1, indictment for murder, the verdict is guilty; as
18 to count 2, possession of a firearm during the commission of a
19 violent crime, the verdict is guilty; 2007-GS-04-1219, the
20 State vs. Garvin V. Duvall, indictment for criminal
21 conspiracy, the verdict of the jury is guilty.

22 Mr. Foreman, ladies and gentlemen of the jury, if
23 these are your verdicts would you please indicate by raising
24 your right hands.

25 (The jury indicated by raising their hands.)

1 THE CLERK OF COURT: All hands raised, the verdicts
2 of the jury, Your Honor.

3 THE COURT: All right. Ladies and gentlemen,
4 publically I want to thank you for your service. I have to
5 send you back to the jury room one last time. If a few
6 minutes I'll be back to talk to you privately. But if you
7 would go back one more time.

8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 10:35 p.m.)

10 THE COURT: Do you want me to retain jurisdiction
11 and give you some time to do posttrial motions, or are you
12 ready now? It's up to you. I mean, if you want time to think
13 about it and let it distill I don't have a problem with that,
14 since it's so late, but I'll do whatever you want to do.
15 That's for your benefit not mine.

16 MR. PRUITT: Your Honor, we'd appreciate a little
17 time.

18 THE COURT: Any objection to that?

19 MR. GAMBLE: No objection.

20 THE COURT: All right. I'll give you 10 days and
21 then we'll just have to reconvene at some point, but I'll
22 retain jurisdiction.

23 Any objection to that from the State?

24 MR. BRADLEY: No objection.

25 THE COURT: Normally what I will do, I'm going to go

1 back there and talk to them like I do, let them ask me any
2 questions since they are officially relieved. I'll also give
3 them the opportunity to come back and see the sentencing.

4 Okay. Do you got the sentencing sheets and all
5 that?

6 MR. BRADLEY: Yes, Your Honor.

7 MS. HOGAN: Yes, sir.

8 THE COURT: Is there an objection to giving them
9 time? You had a funny look on your face.

10 MS. HOGAN: No, sir.

11 MR. BRADLEY: We just wanted to make sure that you
12 were going to sentence tonight.

13 THE COURT: Oh, yeah. Yeah, I have to.

14 All right. Get all that stuff ready and I'll go
15 back and talk to them and I'll be back.

16 (WHEREUPON, a brief recess was taken.)

17 THE COURT: Just for the record, 10 days to file
18 posttrial motions and I'll retain jurisdiction of the case
19 pending those motions.

20 All right. Yes, sir?

21 MR. BRADLEY: Which one would you like to do first,
22 Your Honor?

23 THE COURT: It doesn't matter. Why don't we do
24 Mr. Duvall first.

25 MR. BRADLEY: Mr. Duvall.

1 THE COURT: Come on up, Mr. Duvall.

2 All right. Now, the murder carries a sentence of 30
3 years to life; is that correct?

4 MR. BRADLEY: That's correct, Your Honor.

5 THE COURT: And the conspiracy would be 15 years to
6 life?

7 MR. BRADLEY: It would be the 5 years, the
8 conspiracy charge, Your Honor.

9 THE COURT: Five?

10 MR. BRADLEY: Yes, sir.

11 THE COURT: And the weapons charge, what's it carry?

12 MR. BRADLEY: Five years.

13 THE COURT: And 5 on the conspiracy. You all sure
14 about that?

15 MS. HOGAN: Yes, sir. It's just regular criminal
16 conspiracy.

17 THE COURT: All right.

18 MR. BRADLEY: Thank you, Your Honor. May it please
19 the Court. The State would ask for a sentence commensurate
20 with the jury's decision, the defendant's prior record, and
21 with Your Honor's knowledge that Mr. Duvall executed one of
22 his best friends over \$2,000 and because he had been giving
23 information to law enforcement. That's what the evidence
24 showed, Your Honor, and the State would ask for a sentence
25 commensurate with that. I'd like to read his prior record.

1 THE COURT: All right.

2 MR. BRADLEY: In 1985, failure to -- some driving
3 offenses; 2003, receiving stolen goods; a fraudulent check in
4 2006.

5 The victim's family would like to speak at the
6 appropriate time, Your Honor.

7 THE COURT: All right. Let's hear from them now
8 then I'll hear from Mr. Gamble.

9 If you would, give us your name for the record.

10 VICTIM'S FAMILY MEMBER: My name is Robert Stephens.

11 THE COURT: Yes, sir.

12 VICTIM'S FAMILY MEMBER: Your Honor, from the family
13 of Robert Paul Stephens who lost his life June the 30th of
14 1999, I am Robert Stephens, the father of Paul. Here with me
15 is his sister, Tammy Payne, along with the other family
16 members. I would like to let the Court know that in my
17 opinion Paul's life started to end the day he met this family.

18 On June 30th of 1999 a major loss was endured when
19 Paul lost his life. A father and mother lost his son. His
20 mother, Janice, lost her battle with cancer and was not able
21 to live to see this day. Janice struggled to live for this
22 day. My sister lost a brother.

23 Most of all, the grandmother of Paul's son, Skylar,
24 took it on her own to take the father of her grandson away
25 from Skylar forever, and I am sure did not tell the truth to

1 the young man as to what happened to his dad. I can only hope
2 that in time Skylar will come to grips with what this family
3 has taken from him.

4 Your Honor, I am not going to continue to tell you
5 all the people's name that suffered a great loss when Paul was
6 murdered. Frances Moore and Garvin Duvall has enjoyed freedom
7 for 10 years since they committed this crime. It is time for
8 them to pay for taking the life of Paul Stephens and taking
9 him away from his family.

10 I ask you to sentence them to the max allowed by
11 law. It's such a shame that in the State of South Carolina
12 the same treatment as Paul received cannot be administered by
13 the Court of this State to both Frances Moore and Garvin
14 Duvall; I mean in death.

15 Your Honor, thanks for your time, and the family of
16 Paul hopes you will see that justice is done. Thank you, Your
17 Honor.

18 THE COURT: All right. Thank you.

19 Anything, ma'am?

20 (There was no response.)

21 THE COURT: All right. Thank you.

22 Yes, sir.

23 MR. GAMBLE: I don't have anything? Your Honor.

24 THE COURT: Nothing?

25 All right. Mr. Duvall, anything you want to tell

1 me?

2 DEFENDANT DUVALL: Sir, I did not do this.

3 THE COURT: All right. How old are you?

4 DEFENDANT DUVALL: I'm 50.

5 THE COURT: Fifty. All right. Mr. Duvall, the jury
6 has found you guilty. It's up to me to sentence you. The
7 sentence for murder is 30 years. That's to run consecutive
8 with the sentence for possession of a weapon, which would be 5
9 years, and also to run consecutive with the sentence for
10 conspiracy, which would be an additional 5. So that would be
11 for a total of 40. All right. You understand? You need to
12 talk to your lawyer about your rights to appeal, okay?

13 MR. GAMBLE: I already have, Your Honor.

14 THE COURT: Okay. Thank you.

15 MR. BRADLEY: Frances Moore.

16 THE COURT: All right. Yes, sir?

17 MR. BRADLEY: Thank you, Your Honor. May it please
18 the Court. Again, the State would ask for a sentence
19 commensurate with the jury's decision and the defendant's
20 prior record. She has a petty larceny from 1981; a possession
21 of controlled substance in 1999; and shoplifting in 2000.

22 And, again, the State feels that Ms. Moore is
23 equally responsible for this murder. As the evidence that
24 Your Honor got to see before it was excluded she pulled the
25 second -- she pulled the trigger on the second shot. She

1 stood over him as he was already down on the ground.

2 THE COURT: Yes, sir. Mr. Pruitt, anything you want
3 to tell me?

4 MR. PRUITT: No, sir, Your Honor.

5 THE COURT: All right. Ms. Moore, anything you want
6 to say?

7 DEFENDANT MOORE: No, sir.

8 THE COURT: How old are you, Ms. Moore?

9 DEFENDANT MOORE: I'll be 62 on the 27th.

10 THE COURT: All right. The jury has found you
11 guilty of 3 charges and it's up to me to sentence you. On the
12 charge of murder the sentence is 30 years. That's to run
13 consecutive with the weapons charge, which is 5 years, and
14 also 5 years on the conspiracy charge. The reason it's not a
15 maximum is based upon your age, otherwise it would probably be
16 life, to be honest with you.

17 Okay. Thank you.

18 MR. BRADLEY: Is that consecutive or just --

19 THE COURT: Consecutive.

20 MR. BRADLEY: Okay. So that would be a total of 40?

21 THE COURT: Total of 40.

22 (WHEREUPON, the trial of this case was concluded.)

23 Tuesday, June 16, 2009

24 THE COURT: Okay. Who wants to go first?

25 MR. PRUITT: Your Honor, if it please the Court. On

1 behalf of Frances Moore I'm making a motion for a new trial
2 upon all of the counts of the indictment or indictments upon
3 the following grounds: That His Honor erred in admitting the
4 confession of a co-defendant; that His Honor erred in the
5 admission of the confession of a co-defendant even with
6 curative or limiting instructions; that His Honor erred in the
7 admission of out-of-court statement made by the victims and
8 third parties concerning both his fear of the defendant,
9 Frances Moore, and the reason for said fear; in allowing the
10 cross-examination of J. W. Stansell by co-defendant, Garvin
11 Duvall's counsel, which had the effect of putting into
12 evidence those parts of Duvall's confession which the Court
13 had ruled inadmissible as to Frances Moore.

14 Your Honor, we've talked about some of these things
15 before in this trial. And at the appropriate time I believe
16 motions were made relative to these matters.

17 Starting with the confrontation rights, the right to
18 confront witnesses in the United States and South Carolina
19 Constitution, the United States Supreme Court in *Brunton vs.*
20 *United States*, 391 U. S. 123, 1968 was the start of a long
21 line of cases that the United States Supreme Court held that a
22 co-defendant's confession that implicated the defendant at a
23 joint trial constituted prejudicial error even though the
24 Court gave clear concise and understandable instruction that
25 the confession could only be used against the defendant and

1 must be disregarded with respect to the other defendant.

2 Some of the things that -- and, of course, we have
3 the South Carolina case of State V. Anders, which we believe
4 is very, very clear on this point.

5 Now, some of the things that later cases have
6 determined that a court should consider in determining whether
7 the right to confront witnesses clauses have been violated
8 and, of course, also the rules against hearsay and whether or
9 not such a statement is admissible as hearsay, some of the
10 things that a court ought to consider would be the difficulty
11 for the jury in separating the evidence and considering only
12 the evidence competent against each defendant in determining
13 his or her separate guilt or innocence.

14 The fact that the -- in this case, neither defendant
15 took the stand. Well, of course, you never know what a
16 particular defendant is going to do. I dare say that I didn't
17 know what my defendant was going to do until the time when it
18 came to make that decision, and I'm certain that Mr. Gamble
19 didn't have that decision etched in concrete before it became
20 time for him to make it, all of which gets back to the point
21 that we'd like to make concerning the right to confront
22 witnesses. Of course, if the co-defendant had taken the stand
23 then whatever statement that he was alleged to have made to
24 the Reverend J. W. Stansell could have been explored by
25 cross-examination in great detail.

1 So we have two points to that particular admission
2 of evidence. Number one, should it have been denied all
3 together given the fact that the State was pursuing a joint
4 trial; and number two, what is the effect of not having the
5 co-defendant testify in as far as it limits the other
6 co-defendant in being able to confront the accuser, who by his
7 words presented by hearsay they are unable to do so.

8 So, Your Honor, the Court, of course, did not have
9 the benefit of the full State's case when its made it
10 preliminary rulings, nor the benefit of whether either
11 co-defendant would testify at the time that the objections
12 were made at the presentation of that evidence.

13 Further, and it's a complication of the trial, is
14 that the fact that co-counsel through his cross-examination
15 of the Reverend J. W. Stansell was able to emphasize and bring
16 out points of that testimony that might otherwise not been
17 admissible of which the defendant, Frances Moore, had no
18 control.

19 Your Honor, I would, in addition to that, I would
20 point out that only a very small portion of the alleged
21 confession made to J. W. Stansell could arguably have been
22 made in furtherance of the conspiracy, and Your Honor
23 separated those two as you might recall at trial.

24 Well, given the fact that except for that brief
25 little statement there, which occurred prior to the crime, the

1 rest of the evidence in the case was by all admission
2 circumstantial. Not that circumstantial is not fine evidence
3 in an appropriate case but it has the effect of magnifying the
4 gravity of the admission of a co-defendant and enhancing that
5 particular evidence. In fact, of course, they would work
6 together.

7 So with the exclusion of the testimony of J. W.
8 Stansell from the case against Frances Moore we feel that they
9 would have been limited to basically the circumstantial
10 evidence and in Ms. Moore's case the probative value of it
11 greatly outweighed the jury's ability to be able to separate
12 what was admissible against her versus what was admissible
13 against Garvin, despite Your Honor's best efforts at telling
14 the jury that they could only consider certain facets against
15 the defendant who had made the statement.

16 So, Your Honor, in this particular case it has a
17 rather unique set of circumstances in that there is no other
18 direct evidence. We think that the admission of that
19 testimony was very prejudicial and deprived Ms. Moore of her
20 right to confront witnesses, which is the basis, of course,
21 for the hearsay rule and the protections given by the South
22 Carolina and United States Constitution.

23 Further, Your Honor, and we explored this
24 previously, we believe that the Court's allowing evidence of
25 the victim saying that he was afraid of Frances Moore has a

1 likewise effect. Your Honor admitted both the statement that
2 he was afraid, which would be an exception to the hearsay rule
3 as being a present sense impression of the victim.

4 The reason that he was afraid is what we objected to
5 because, again, we have no way to confront that witness'
6 testimony and we think that that's clearly inadmissible under
7 State V. Garcia and State V. Holmes, which we've previously
8 cited. So based upon the reasons cited herein we ask that the
9 Court grant Frances Moore a new trial in the case.

10 THE COURT: All right. And I would assume you're
11 also incorporating a motion that my curative instructions were
12 insufficient?

13 MR. PRUITT: Yes, sir.

14 THE COURT: Yeah. I assumed that was part of it.
15 Yes, sir?

16 MR. BRADLEY: May it please the Court, Your Honor.
17 The State's reply is that no errors of law were made during
18 the course of the trial. Your Honor gave limiting
19 instructions on the evidence that was admitted as to Ms. Moore
20 versus Mr. Duvall. The evidence in the record supports Your
21 Honor's rulings.

22 The statement given by J. W. Stansell during
23 testimony that Duvall confessed to him prior to the murder,
24 Your Honor allowed that to come in under the furtherance of
25 the conspiracy and the statement thereafter was excluded.

1 At the time Mr. Gamble cross-examined J. W. Stansell
2 in regards to that statement after the murder, Mr. Pruitt made
3 no objection to that evidence at the time. I believe the
4 State was the only party that made an objection to that coming
5 in to follow Your Honor's ruling. Mr. Pruitt made no
6 objection at the time for that cross-examination to be
7 allowed.

8 Furthermore, in regards to the admission of the
9 hearsay statements made by the victim of his fear of the
10 defendant, Moore, Your Honor, the State argued at the time
11 under State vs. Garcia that the statement was his fear and not
12 was the basis of his fear.

13 And I believe Your Honor gave us another case where
14 they allowed them to expound upon it a little further. And
15 under State vs. Garcia the Court allowed that fear to come in
16 of the defendant. And, again, the State renewed its position
17 that the fact that he was afraid that he was going to be found
18 shot in the head, his car set on fire was his fear and not why
19 he was afraid of the defendant.

20 Again, Your Honor, there's competent evidence -- the
21 State would argue there's competent evidence to sustain a
22 conviction. I believe the law states that the basis of an
23 argument where there's no evidence to support a conviction,
24 but here there's -- the State would say that there's plenty of
25 evidence to support the conviction that was given over the

1 course of the trial, and when there is sufficient evidence,
2 competent evidence Your Honor is not supposed to reach into
3 the jury room and substitute his judgment for the judgment of
4 the jury. And, Your Honor, the State would ask you
5 respectfully follow your rulings that you made throughout the
6 course of trial. Thank you.

7 THE COURT: Okay. Well, in regard to this motion,
8 I'm not as concerned about the Garcia issue, and I understand
9 that somebody may tell me I was wrong. I didn't take the
10 issue of the right of confrontation lightly, and it worried me
11 then. It worries me now. And I think it potentially is a
12 real issue.

13 I'm going to deny your motions but I think you're
14 protected on every issue. But I'm going to deny your motion.

15 Yes, sir?

16 MR. GAMBLE: Please the Court, Your Honor. As Your
17 Honor well knows you have the right within your discretion to
18 grant a new trial if you so choose. And to give background on
19 that that what we're looking at is circumstantial evidence
20 that must be substantial throughout, and this circumstantial
21 evidence we had in this case was not substantial.

22 There is no evidence whatever that my client,
23 Mr. Duvall, was anywhere near when this incident arose on the
24 day of June the 30th. There was testimony that he was not
25 anywhere near and that has not been refuted by any competent

1 testimony. As a matter of fact, the alibi witness, Mr. Ralph
2 Stansell, said he was at his house all that afternoon at the
3 time the incident should have happened, and that was around
4 3 o'clock, as near as we can figure.

5 However, the only cross-examination on that point
6 was you mean you waited 10 years to come forward with this?
7 Well, that's not fair because J. W. Stansell waited 7 years
8 for his testimony to come forward and probably 10 and 3 more
9 after that.

10 So the circumstantial evidence was not substantial,
11 and it has to be by the statute, and it has to exclude any
12 other reasonable hypothesis. The other reasonable hypothesis
13 is that my client was at the home of Ralph Stansell at the
14 time this happened.

15 There was also testimony that 2 people that were at
16 the birthday party which was on the 30th of June -- 27th of
17 June, said that my client did not ever leave that party. They
18 knew that because of the loud mufflers and fact they saw him
19 there. So there was no circumstantial evidence that was
20 substantial to substantiate the statement of J. W. Stansell.
21 It's just not there.

22 The suspicion is not enough to send this on forward.
23 He was never identified anywhere near the scene, never put
24 there. No evidence of any kind was ever deduced or induced to
25 bring him into that area. There was testimony, I believe, of

1 one witness of a fat neck guy, but that's not identification.

2 So I would move for a new trial on those bases.

3 THE COURT: All right.

4 MS. HOGAN: Your Honor, if it pleases the Court. We

5 do believe that there was substantial evidence in this case.

6 Although it might be circumstantial there was a lot of

7 evidence that we put up in this case.

8 As to the alibi witness for that day, it's up to the

9 jury to determine the credibility of the witnesses.

10 Obviously, the jury didn't believe what he was saying.

11 We put up other evidence this led them to believe

12 that Mr. Duvall was at the crime scene that day and that he

13 was guilty of murder, Your Honor. Also, the same thing with

14 the birthday party. They put up witnesses that the two never

15 left, Mr. Duvall and Mr. Stansell never left the birthday

16 party, but we put up a witness that says that they did leave

17 the birthday party.

18 We believe that there is plenty of competent

19 evidence to sustain the jury's verdict in this case. And

20 that's it. Thank you.

21 THE COURT: Okay. All right. Well, again, I mean,

22 it's not something I take lightly, and I've looked through

23 this prior to the hearing. I'm going to deny your motion but

24 I think you're protected on all issues. I assume -- I know

25 you all have requested a transcript; is that right?

1 MR. PRUITT: Not yet, Your Honor. We will.

2 THE COURT: You haven't. Okay.

3 MR. GAMBLE: Your Honor, out of an abundance of
4 caution I already filed notice of intent. What I'll do now in
5 light of this hearing is re-file that notice of intent and
6 request, of course, the transcript, and that will be done this
7 week, notice of intent to appeal. And I will pull off the
8 notice that I have now and include this in that motion.

9 THE COURT: Okay. And have you filed or are you
10 waiting for today to file your notice?

11 MR. PRUITT: I'm waiting for today.

12 THE COURT: Okay. Well, and just housekeeping wise
13 I know that she's got a lot of cases she's typing so I'd say
14 the earlier you request it the better.

15 All right. Thank you all.

16 (WHEREUPON, the hearing was concluded.)

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1 C E R T I F I C A T E

2
3 I, Sharon L. Vizer-Hanks, Official Court Reporter
4 for the 10th Judicial Circuit of the State of South Carolina,
5 do hereby certify that the foregoing is a true, accurate and
6 complete transcript of record of all the proceedings had and
7 the evidence introduced in the trial of the captioned case in
8 Circuit Court on the 14th and 15th day of May 2009, and the
9 16th day of June 2009.

10 I do further certify that I am neither of kin,
11 counsel nor have an interest to any party hereto.

12
13 December 1, 2009

14 
15 SHARON L. VIZER-HANKS

16 CIRCUIT COURT REPORTER
17
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25

STATE OF SOUTH CAROLINA

COUNTY OF **ANDERSON****A TRUE COPY**

FORM 5

SEP 26 2013

Richard A. Huley
CLERK OF COURT

IN THE COURT OF COMMON PLEAS

2013-CP-04-02174

Garvin Duvall, #334729

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Lee Correctional Institution, Bishopville, SC.
2. Name and location of Court which imposed sentence General Session, Anderson Cty
3. Name(s) of co-defendant(s) (if any) Frances Moore
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a)	<u>2007-GS-04-1218</u>
(b)	<u>2007-GS-04-1219</u>
(c)	
5. The date upon which sentence was imposed and the terms of the sentence:

(a)	<u>May 15, 2009</u>	<u>30 years</u>	<u>Murder</u>
(b)	<u>May 15, 2009</u>	<u>5 years</u>	<u>Possession of a Firearm</u>

 FILED CLERK'S OFFICE
 ANDERSON SC
 2013 SEP 26 PM 3 52
 COMMON PLEAS AND
 GENERAL SESSIONS

Revised 3/2003

- (c) May 15, 2009, 5 years Criminal Conspiracy All Consecutive
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X X X _____
- (c) after a plea of nolo contendere _____
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. Anderson Cty. Court of General Sessions _____
- ii. South Carolina Court of Appeals _____
- iii. South Carolina Supreme Court _____
- (b) the result in each such Court to which you appealed:
- i. Denied Rehearing _____
- ii. Direct Appeal Dismissed _____
- iii. _____
- (c) the date of each such result:
- i. June 16, 2009 Rehearing _____
- ii. February 29, 2012 Direct Appeal (Rehearing Denied) _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unknown -- STATE vs DUVALL, Unpublished Op. No: 2012-UP-132 _____
- ii. (S.C. Ct. of Appeals, February 29, 2012) Rehearing Denied by Ct. _____
- iii. of Appeals on March 29, 2012. Petition for Writ of Certiorari to _____
the Court of Appeals, September 5 2013. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel. (Counsel failed to file for
 (b) severance). Counsel failed to object to limited curative
 (c) instruction. Right to a fair trial. Due Process
11. State concisely and in the same order the facts which support each of the grounds set out in (10): Applicant was tired in a joint jury trial exposing him to prejudicial testimony from 3 adverse witnesses, (SEE BRIEF)
 (a) Counsel failed to make a contemporaneous objection to preserve issue of
 (c) the 3 witnesses testifying to hearsay within hearsay. (SEE: Brief
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? YES
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. _____
 ii. N/A
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. N/A
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. N/A
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. **N/A**
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. **Unknown**
- ii. _____
- iii. _____
- iv. _____
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?
- YES**
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. **Testimony of 3 prosecution witnesses**
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. **Direct Appeal**
- ii. _____
- iii. _____
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) **Appeals Court refused to hear grounds, citing that the issue had not**
- (b) **been preserved by objection.**
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? NO
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Robert Gamble & Matthew Perkins, Public Defenders, Anderson County
- ii. Public Defenders Office
- iii. Robert M. Dudek, Office of Appellate Defense, for South Carolina
- (b) the proceedings at which each such attorney represented you:
- i. Trial and Motion for rehearing
- ii. Direct Appeal and Writ of Certiorari
- iii. _____
19. State clearly the relief you seek in filing this application: _____
- Conviction and sentence vacated for a new trial.
20. Are you now under sentence from any other court that you have not challenged?
- NO

2013- CP - 04 - 02174

STATE OF SOUTH CAROLINA)

County of **ANDERSON**)

VERIFICATION

I, , 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.

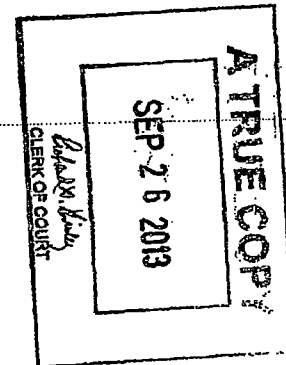
Garvin Duvall
GARVIN DUVAL, #334729

SWORN to and subscribed before me this 25
day of Sept, 2013.

Debra Jones (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED CLERK'S OFFICE
ANDERSON SC
2013 SEP 26 PM 3 53
COMMON PLEAS AND
GENERAL SESSIONS



APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

2013-CP-04-02174

I, , 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.

Garvin V Duvall

Applicant

GARVIN DUVALL, #334729

SWORN or affirmed to and subscribed before me this

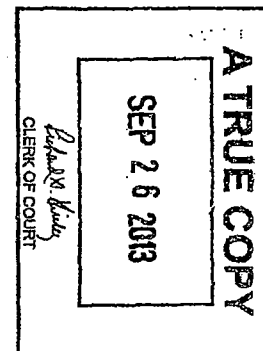
25 day of Sept., 2013.

Debra Jones

Notary Public

My Commission Expires: 11-4-2015

FILED CLERK'S OFFICE
ANDERSON SC
2013 SEP 26 PM 3 53
COMMON PLEAS AND
GENERAL SESSIONS



APPLICANT'S ATTACHMENT TO POST-CONVICTION

GARLAND MAJOR

Transcripts page 92. lines 16 to 24:

- Q. From whom did you get a description of Gravin Duvall before July 13th or July 12th.
- A. As far as the acquaintances I referred to or?
- Q. You said you got a description of Garvin Duvall from someone and that's what you used to notify SLED. Who did you get that description from?
- A. I can't tell you exactly. We talked to several acquaintances. I don't know which or which ones said that fits Gravin Duvall.

PAGE 93:

- Q. Well how did you know that Gravin Duvall was normally seen with Frances Moore?
- A. Well like I told you, Sir we would ask her acquaintances which male was there, a male that was kind of big, kind of tall, with brown hair, that would be with her, and they said she hung around with Brenda and Garvin Duvall.
- Q. Who is they?
- A. Again Sir, I can't tell you specifically which ones.
- Q. Do you have notes?
- A. THERE WAS NO RESPONSE

PAGE 93, line 24:

- Q. Do you have notes?
- A. Not with me. I do have notes, yes Sir.

Mr. Gamble to the Court:

I think it's an integral part of the case and I would therefore move for a MIS-TRIAL for failure to comply with my request for discovery on the part of the State and/or their dominion.

Detective Major: There still no evidence.

Mr. Gamble was ineffective assistance of counsel. When Garland Major on page 102, lines 22-23:

The way I took it, you asked me if I took notes and the (noise made) my mistake. At that time Mr. Gamble should have objected and asked for a Direct Verdict. There was "NO" notes on Garvin Duvall and there was no evidence on Garvin Duvall whatsoever.

JOHN STANDSELL, on page 461.

Lyle 404 B. Character.

4. But when we come back we stopped at Pigeon Forge. It was late and we went into a Krystal Burger and the place was packed. And as I was putting my you know was kind of a centerpiece between the ordering line and the dining room and I got my hands full and Garvin came up and he patted me and I mean patted me all the way down to my ankles and there was a whole line of people. There was one woman grabbed her little girl's eyes and there was a dining room full of people.

You know it was very embarrassing and you know at first it kind of made me mad because of where he done it at.

But then you know we laughed and I said hey bud. You know I don't get mad, I get even, you know.

John Standsell has a personal vendetta against Garvin Duvall. He said that on page 461, at line 17:

He said that, I don't get mad, I get even you.

Ineffective assistance of counsel at that time, Mr. Gamble failed to object at that time and ask for John Standsell to be impeached. That was prejudicial to Garvin Duvall.

John Standsell, he is the only witness for the State against Garvin Duvall. in that is hearsay. Look at hearsay Rule 803. 403.

This 25 day of Sep. 9-25, 2013.

Garvin Duvall
Garvin Duvall, # 334729
APPELLANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	FOR THE TENTH JUDICIAL CIRCUIT
	)	
Garvin Duvall,	)	C.A. No. 2013-CP-04-2174
S.C.D.C. No. 334728,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Appointment of counsel has been requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

Respondent, making its Return to the Application for Post-Conviction Relief filed September 26, 2013, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. In April 2007, the Anderson County Grand Jury indicted Applicant for Murder and Possession of a Weapon during the Commission of a Violent Crime (2007-GS-04-1218) and Criminal Conspiracy (2007-GS-04-1219). Robert Gamble, Esq. and Matthew Perkins, Esq., represented Applicant. On May 15, 2009, Applicant proceeded to trial before the Honorable J. Cordell Maddox, Jr., and a jury. The jury found Applicant guilty as indicted. Judge Maddox sentenced Applicant to concurrent sentences of thirty (30) years and five (5) years for Murder and Possession of a Weapon during the Commission of a Violent Crime. Judge Maddox also sentenced Applicant to a sentence of five (5) years for criminal conspiracy to run consecutively.

A timely notice of appeal was filed on Applicant's behalf. Robert M. Dudek, Esq., of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals

affirmed Applicant's conviction on February 16, 2012. State v. Duvall, Op. No. 2012-UP-132 (S.C. Ct. App. filed February 29, 2012). Petition for a Writ of Certiorari was denied on September 5, 2013.

II.

In his Application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
 - a. "Counsel failed to file for severance"
 - b. "Counsel Failed to object to limited curative instruction."
2. "Due process violations"
 - a. "Right to a fair trial"

Respondent denies Applicant is entitled to relief on any of these claims, and demands strict proof thereof. Any claims not specifically enumerated in the Application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRCR.

Attached to this Return and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject conviction(s), Applicant's records from the South Carolina Department of Corrections, the trial transcript, and Applicant's appellate records. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. 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, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges

ineffective assistance of counsel as a ground for relief, the applicant must prove "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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The court strongly presumes that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove trial counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial 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. at 117-18, 386 S.E.2d at 625.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

In the event Applicant alleges independent claims of due process violations, he fails to set forth with specificity any facts supporting his claim that he was denied due process of law. The Uniform Post-Conviction Procedure Act requires that the applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In a post-conviction relief application, the applicant must make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) ("It is, therefore, incumbent upon the applicant to make at least a *prima facie* showing entitling him to relief." (citing Babb v. State, 240 S.C. 235, 125 S.E.2d 467 (1962); Crosby v. State, 241 S.C. 40, 126 S.E.2d 843 (1962); Tillman v. Manning, 241 S.C. 221, 127 S.E.2d 721 (1962); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965))).

Since Applicant has failed to make even a *prima facie* showing, Respondent would submit this allegation should be dismissed pursuant to Rule 12(b)(6), SCRCP, for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. In the alternative, Respondent would submit Applicant should be required to provide a more definite statement pursuant to Rule 12(e), SCRCP, because this allegation is so vague and ambiguous Respondent cannot reasonably be required to frame a response.

V.

Respondent denies each and every allegation not hereinbefore expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its return, Respondent requests an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

WALT WHITMIRE
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

June 18th, 2015

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

GARVIN DUVALL, #334729

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

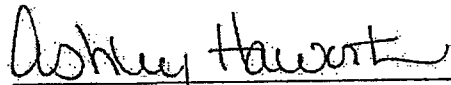
2013-CP-04-2174

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. Hugh Wingo Welborn, Esquire
 PO Box 173
 Anderson, SC 29622

DATED this 19th day of June, 2015.


 Ashley Haworth, Legal Assistant
 For Respondent

Hugh W. Welborn

Attorney at Law
Post Office Box 173
913 Carolina Circle
Anderson, South Carolina 29622

Office Telephone:
(864) 226-5787
Fax:
(864) 224-3738

E-mail address:
hughwelborn@bellsouth.net

July 2, 2015

Walt Whitmire
Assistant to Attorney General
P. O. Box 11549
Columbia, South Carolina 29211-1549

In RE: Garvin Duvall #334729 vs. State of South Carolina
Case #: 2013-CP-04-2174

Dear Walt:

In connection with the foregoing matter, my client, Mr. Duvall wishes to amend his post-conviction relief application to incorporate the claim of "actual innocence" and if the credibility of the witness, Mr. Stansell, is truly exposed.

Thank you for your prompt assistance in this matter.

With best regards,



Hugh W. Welborn

HWW/sba

cc: Client

1 State of South Carolina
2 County of Anderson In the Court of Common Pleas
3
4 Garvin Duvall,)
5 Applicant,) 2013-CP-04-02174
6 -vs-) June 8, 2016
7 The State of South Carolina,)
8 Respondent.) Transcript of Record
9 _____)

10

11

B E F O R E:

12

The Honorable R. Scott Sprouse, Judge

13

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

15 Hugh W. Welborn, Esquire
Attorney for Applicant

16

17 Johanna C. Valenzuela, Esquire
Attorney for Respondent

18

19

20

21

Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

22

23

24

25

Garvin Duvall v. The State of South Carolina 2013-CP-04-02174

I N D E X

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E x h i b i t s

For the Applicant:

Marked	Description	I.D.	Admitted
1	Outline by Applicant	9	9

For the Respondent:

Marked	Description	I.D.	Admitted
	None offered.		

Garvin Duvall v. The State of South Carolina 2013-CP-04-02174

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 10:16 a.m.)

4 THE COURT: Let's go on the record.

5 Ms. Valenzuela, would you call the case, please,
6 ma'am.

7 MS. VALENZUELA: Yes, Your Honor. This is the
8 case of Garvin Duvall vs. The State of South Carolina,
9 case number 2013-CP-04-2174.

10 Mr. Duvall filed an application for postconviction
11 relief on September 26th of 2013. Mr. Duvall is
12 currently confined at the Department of Corrections,
13 and this is because he was indicted in April 2007 for
14 murder and possession of a weapon during the commission
15 of a violent crime and criminal conspiracy.

16 He was represented at the time by Robert Gamble
17 and Matthew Perkins. On May 15th of 2009, the
18 applicant proceeded to trial before Judge Maddox and a
19 jury -- and the jury ended up finding the applicant
20 guilty as indicted, and Judge Maddox sentenced the
21 defendant to concurrent sentences of 30 years and
22 five years for murder and possession of a weapon during
23 the commission of a violent crime, and he also
24 sentenced applicant to a sentence of five years for
25 criminal conspiracy to run consecutively.

Garvin Duvall - Direct
Garvin Duvall v. The State of South Carolina 2013-CP-04-02174

1 A timely notice of appeal was filed on the
2 applicant's behalf. He was represented by the Office
3 of Appellate Defense, and the court of appeals affirmed
4 applicant's conviction on February 16th of 2012. A
5 petition for writ was denied on September 5th of 2013.

6 In his current application, in his original
7 application, the applicant alleged that counsel failed
8 to file for severance, counsel failed to object to a
9 limited curative instruction, and there was a due
10 process violation because he did not have a right to a
11 fair trial.

12 Additionally, the applicant has filed or has sent
13 amendments to the attorney general's office through his
14 counsel, Hugh Welborn. Mr. Welborn is present in the
15 courtroom, and I will allow Mr. Welborn to summarize
16 the full extent of the allegations in this PCR.

17 THE COURT: Thank you, Ms. Valenzuela.

18 Mr. Welborn.

19 MR. WELBORN: May it please the court. Your
20 Honor, in addition to what is labeled in his original
21 complaint, my client is also alleging that there was a
22 failure of defense counsel to move for severance of
23 this trial. There were two defendants leading to
24 confusing testimony, according to allegations by my
25 client.

Garvin Duvall - Direct
Garvin Duvall v. The State of South Carolina 2013-CP-04-02174

1 He also alleges that there is a second issue that
2 we move should be amended, that there was a shifting of
3 burden of proof in regards to the malice, and I shall
4 go into that more with my client on the stand.

5 There was also an allegation that there should
6 have been a curative instruction regarding some hearsay
7 statements in this particular trial. And as a final
8 amendment, that my client is actually innocent because
9 he has an alibi and counsel failed to request an alibi
10 instruction. Those are the additions to the complaint.

11 THE COURT: Okay. All right. Thank you,
12 Mr. Welborn. Call your first witness.

13 MR. WELBORN: Please the court, we'd call
14 Mr. Duvall to the stand.

15 THE DEFENDANT: Your Honor, I also have you a copy
16 and the lawyer a copy of my paperwork and stuff.

17 GARVIN DUVALL,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. WELBORN:

21 Q Mr. Duvall, can you hear me from here, sir?

22 A Yes, sir.

23 Q If you can't for some reason or I don't talk where
24 you can understand, let me know because the court
25 reporter has to record this. Okay?

Garvin Duvall - Direct
Garvin Duvall v. The State of South Carolina 2013-CP-04-02174

1 A Yes, sir.

2 Q Now, we -- you and I -- have corresponded and
3 talked over the phone and mailed things back and forth
4 to each other. Did I state your amendments correctly,
5 Mr. Duvall?

6 A Yes, sir.

7 Q Now, do you have in front of you a transcript or
8 do you need me to hand the transcript to you, sir?

9 A My transcript is over there, sir. I got my PCR
10 arguments here, yes, sir.

11 Q All right. You have that in front of you; is that
12 correct?

13 A Yes, sir.

14 Q All right. I'm going to ask you some questions,
15 Mr. Duvall, and you are under oath.

16 Now, you, first of all, allege that your client
17 (sic) failed to move for a severance of these hearings.
18 Now, I have stated before for the court's
19 understanding, you were tried along with a codefendant,
20 a Mrs. Moore, and both of y'all were convicted of
21 similar crimes, I believe murder; is that correct?

22 A Yes, sir.

23 Q And this murder allegedly happened around ten
24 years earlier; is that correct?

25 A Yes, sir.

Garvin Duvall - Direct
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1 Q And at your trial, you have alleged that there
2 should have been a severance in that your attorneys did
3 not move for that severance. I think that there's some
4 transcript information showing that your attorney,
5 Mr. Gamble, said, "Well, that's up to the State to move
6 to do that." But I want to hear you tell the court,
7 and if you would, give the court references of where
8 that would be in a transcript so that the court can
9 look at it if it needs to.

10 A Okay.

11 Q Let's talk about the severance. Go ahead.

12 A When Mr. Gamble said that --

13 Q I'm going to ask you, sir, because you have that
14 in front of you.

15 A Yes, sir.

16 Q You have alleged your attorneys, either Mr. Gamble
17 or Mr. Perkins or both, failed to move to separate
18 these cases or for a severance, is what that's called.

19 A Yes, sir.

20 Q I would like for you to tell the court how that
21 has prejudiced your case and why it should have been
22 done by your attorneys.

23 A Okay. The trial court, on numerous occasions, how
24 it prejudiced me. Okay. If counsel would have moved
25 for petition to the trial court prior to trial for

1 severance and the court granted the petition, the
2 testimony of these three State's witnesses would have
3 been unduly prejudiced and inadmissible in applicant's
4 trial pursuant to the rules of evidence, and there lies
5 a reasonable probability the outcome of the trial would
6 have been different.

7 Q Let's talk about how it would have been different.
8 You just said that if you would have had a severance,
9 there would have been a different outcome. Tell the
10 court how you would have had a different outcome.

11 A Well, the witness -- the outcome of the trial
12 would have been different because the only thing they
13 had was circumstantial evidence.

14 Q Circumstantial evidence?

15 A Yes, sir.

16 Q Now, I'm going to ask you, have you presented to
17 me a packet, the same information I'm going over right
18 now, a typed-up packet including transcript pages for
19 the court to be able to look at and follow along? Have
20 you done that, sir?

21 A Yes, sir, I did.

22 Q And I handed a copy to opposing counsel; is that
23 correct?

24 A Yes, sir.

25 Q Now, I'm holding in my hand what you gave me. Is

Garvin Duvall - Direct
Garvin Duvall v. The State of South Carolina 2013-CP-04-02174

1 this the information you're wanting the court to be
2 able to follow along with or review later?

3 A Yes, sir.

4 MR. WELBORN: Your Honor, I would ask, with
5 opposing counsel's permission, that I be able to hand
6 that to the court. It has transcript pages and things
7 that I'm going over.

8 THE COURT: Any objection?

9 MS. VALENZUELA: No.

10 THE COURT: All right. That will be admitted
11 without objection.

12 Do you want to go ahead and mark it as an exhibit?

13 (WHEREUPON, Applicant's Exhibit Number 1
14 was marked for identification.)

15 (WHEREUPON, Applicant's Exhibit Number 1 was
16 admitted into evidence.)

17 BY MR. WELBORN:

18 Q Let's talk about what you say -- you may have
19 already spoken about it -- is what you called your
20 first particular. Is that where you've asked for a
21 severance and you didn't get that severance?

22 A No, sir. No, I didn't get the severance.

23 Q But that is what you've labeled the first
24 particular; is that correct?

25 A Yes, sir.

1 Q And you feel that you should have been tried
2 separately from Mrs. Moore; is that correct?

3 A Yes, sir.

4 Q Now, I'm going to ask you for purposes of moving
5 this trial along -- we call that judicial economy --
6 have you placed in that packet typed up the transcript
7 pages along with the actual transcript so the court can
8 now or at a later time review that, sir?

9 A Yes, sir.

10 Q Now, is there anything in particular I've not
11 asked you about that first allegation since you got the
12 evidence? I don't want to bore the court by reading it
13 on to the record, but is there anything in addition to
14 that on the severance that you want the court to know
15 about?

16 A Yes, sir. When the judge said we shouldn't have
17 been tried together on numerous occasions. Judge
18 Maddox said that.

19 Q And you've got that in there. The transcript
20 shows several times where Judge Maddox expressed his
21 concerns about trying them together; is that correct?

22 A That's correct, sir.

23 Q Now, your lawyer has heard this and yet they did
24 not request a severance; is that correct?

25 A That's correct, sir.

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Garvin Duvall v. The State of South Carolina 2013-CP-04-02174

1 Q Thank you.

2 I'm going to move to your next allegation. And
3 you feel, by the way, that you're prejudiced by the
4 court not severing that; is that correct?

5 A I didn't hear you, sir.

6 Q Do you feel you were prejudiced, you could have
7 had a different outcome, if your lawyers had had the
8 case severed and you had been tried separately; is that
9 correct?

10 A That's correct, yes, sir.

11 Q And that would be because of the circumstantial
12 evidence only; is that correct?

13 A Yes, sir.

14 Q Thank you.

15 Now, you've also alleged as your second allegation
16 that there was a shifting of burden of proof regarding
17 malice. And you've got some typed information
18 including the transcript lines in there. And tell the
19 judge in particular why you think there is a shifting
20 of the burden of proof in this particular allegation.

21 A Okay. My lawyer should have objected. He should
22 have objected because -- okay. See, the first jury
23 charge of malice is confusing and prejudiced where
24 applicant has evidence of an alibi.

25 Q Stop right there. You have evidence of an alibi?

Garvin Duvall - Direct
Garvin Duvall v. The State of South Carolina 2013-CP-04-02174

- 1 A Yes, sir.
- 2 Q And what was that alibi? You were someplace else?
- 3 A Yes, sir, I was.
- 4 Q Did you tell your lawyers that?
- 5 A Yes, sir, I did.
- 6 Q And because you had this alleged alibi, that was
- 7 not presented as an alibi; is that correct?
- 8 A Well, not in this, but he was a witness in court
- 9 for me, yes, sir.
- 10 Q We'll get to your alibi in a little bit.
- 11 A Okay.
- 12 Q But relating to your second allegation about
- 13 burden of proof --
- 14 A Okay.
- 15 Q -- I interrupted you. Tell the court how it got
- 16 shifted, the burden.
- 17 A Okay. Alibi, transcript 551, lines 12 through 19
- 18 and transcript 653, lines 25 through page 654, line
- 19 four, counsel closing arguments. However error in
- 20 charging that malice may be inferred when the deed is
- 21 done with a deadly weapon cannot be considered harmless
- 22 given the fact the only evidence against applicant was,
- 23 at most, circumstantial and hearsay. It is entirely
- 24 considerable that the only evidence of malice in the
- 25 entire case is the use of a weapon which was never tied

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1 to applicant.

2 The permissive inference charge considering the
3 use of a deadly weapon may remain a correct statement
4 of law when the only issue presented to the jury is
5 whether the defendant committed murder. In applicant's
6 case there was evidence expressing the alibi;
7 therefore, the malice instruction shifted the burden of
8 proof upon the defense to prove otherwise -- to prove
9 otherwise. The judge shall not -- South
10 Carolina Constitution, Article V, Section 12, judges
11 shall not charge jurors with respect to matters of fact
12 but shall declare the law.

13 Q Let me interrupt here so the court can follow
14 along. All of that is in this packet and you read it
15 almost word for word; is that correct?

16 A Yes, sir.

17 Q Is there anything in addition to that -- and thank
18 you, by the way. This is very helpful. Is there
19 anything in addition to that on that second particular,
20 as you call it, that you think the court needs to be
21 aware of?

22 A Yes, sir. The prejudice.

23 Q You were prejudiced by a wrong jury instruction;
24 would that be your allegation?

25 A Yes, sir. Yes, sir.

1 Q And it shifted the burden?

2 A Shifted the burden of proof, yes, sir.

3 Q Thank you.

4 Now, let's go to your third one. And you have
5 alleged that your lawyer failed to make an objection to
6 the sufficiency of a curative charge regarding your
7 codefendant and you, or in the alternative, your lawyer
8 should have moved for a mistrial; is that correct?

9 A Yes, sir.

10 Q Have you got the trial transcript pages as well as
11 the case listed there?

12 A Yes, sir, I do.

13 Q Now, you've alleged on this third allegation that
14 that issue was not preserved for appellate review, and
15 your judge accepted -- your lawyer accepted the judge's
16 ruling but did not contemporaneously make an additional
17 objection to the sufficiency of the curative charge; is
18 that correct?

19 A Yes, sir. Yes, sir, that's correct.

20 Q And the curative charge should have been what?

21 A The curative charge, okay. He should have
22 objected to the curative instruction charge and asked
23 for a mistrial.

24 Q Now, what do you mean by a curative charge?

25 A Okay.

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1 Q What was that charge that you're objecting to or
2 you think should have been objected to?

3 A Relative to the three State's witnesses' hearsay
4 testimony from Kenneth Erwin, Elaine Erwin, and Rita
5 Woods.

6 Q Those are hearsay statements; is that correct?

7 A Yes, sir, hearsay against Frances Moore, but it
8 prejudiced me, yes, sir.

9 Q Okay. And all of that, again, is in your packet
10 for the judge to review more thoroughly; is that
11 correct, sir?

12 A Yes, sir. It's there.

13 Q All right. Let's look at your last allegation,
14 Mr. Duvall. You allege that you were actually innocent
15 because you had an alibi. Did you tell your lawyers
16 that you had an alibi, you were someplace else at the
17 time?

18 A Yes, sir. I most certainly did, yes, sir.

19 Q And did they ever allude to that fact or allege
20 that there should have been an instruction on the
21 alibi?

22 A Yes, sir. There should have been an instruction
23 on alibi. I had an alibi witness in the court to
24 testify for me, yes, sir.

25 Q You did have an alibi witness testify for you?

1 A Yes, sir.

2 Q And your lawyers made no request for that
3 instruction to the jury?

4 A No, sir.

5 Q Now, do you think you were prejudiced by that?

6 A Yes, sir.

7 Q How were you prejudiced?

8 A Okay. I was prejudiced because the error was not
9 harmless beyond a reasonable doubt when defense witness
10 testified applicant was at his home at the time of the
11 crime, and applicant's claim of actual innocence.

12 Q Now, Mr. Duvall, I've moved fairly quickly through
13 this, but I want to, first of all, thank you. This is
14 very helpful to the court and to everyone. Here's my
15 question: Is there -- I don't want you to leave here
16 feeling you haven't had your time and your day in court
17 with these.

18 Is there anything in addition to what I've said
19 and what's right here that you think is important for
20 the court to hear about your case?

21 A Yes, sir. I did not have a fair trial. The
22 evidence, all that evidence, was against Ms. Frances
23 Moore. Nothing was against me. Which I didn't do the
24 crime. There's no evidence whatsoever against me in
25 court. I did not have a fair trial, and I would like

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1 to have a chance to have a fair trial.

2 Q All right. We've handed forward everything you
3 gave to me to opposing counsel, to the court. You have
4 said what you wanted to say, and I think you have said
5 that's all that you needed to add; is that correct,
6 sir?

7 A Yes, sir. And Judge Maddox said numerous times he
8 couldn't see why we were there, both there together, in
9 trial.

10 Q And you've got that --

11 A And he failed to object and ask for a severance,
12 yes, sir.

13 Q And you've got those pages in those packets and
14 the lines of the transcript so the judge can look at
15 those; is that correct?

16 A That's correct, sir.

17 Q Thank you so much, Mr. Duvall. Answer anything
18 the court or opposing counsel may have.

19 A Yes, sir.

20 THE COURT: All right.

21 Ms. Valenzuela.

22 MS. VALENZUELA: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. VALENZUELA:

25 Q Mr. Duvall, did the attorney for your codefendant

1 request a motion to sever?

2 A No, ma'am, he did not.

3 Q So neither defense attorney felt that they needed
4 to move to sever the case?

5 A That's right.

6 Q Okay. And in your case, you actually had a friend
7 who you had confessed the murder to, correct?

8 A No, ma'am.

9 Q The allegations of the State were that you had
10 confessed to killing this person to your friend, the
11 pastor?

12 A No, ma'am. I did not say that. He said that I
13 told him that I done the crime.

14 Q And that was testified to at trial?

15 A Yes, ma'am.

16 Q About you. There was testimony that you --

17 A Just one man, yes, ma'am.

18 Q -- had confessed to the crime?

19 A Yes, ma'am. But I didn't do the crime, and I did
20 not tell nobody nothing that I had -- I was at my
21 mother and father-in-law's house. I did not do the
22 crime.

23 Q And do you remember that there was a long time
24 where you were talking to the judge before the jury
25 came in, before the jury was selected at the start of

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1 your trial?

2 A Ma'am, I didn't hear you.

3 Q Do you remember how, before the jury was selected,
4 you and your attorney and your codefendant and their
5 attorney spoke to the judge for a long time about the
6 preacher's testimony?

7 A Yes, ma'am.

8 Q Okay. And do you remember that your codefendant
9 had very large concerns about the pastor's testimony
10 and how it would implicate her in the murder as well?

11 A That's right.

12 Q And the focus seemed to be on your codefendant and
13 how that witness would affect your codefendant versus
14 you, correct?

15 A Yes, ma'am.

16 Q Now, I'm turning to your second point where you
17 claim that the burden was shifted with the charge of
18 malice.

19 A Okay. Okay.

20 Q Mr. Duvall, what evidence did you present at trial
21 through your attorney about mitigation?

22 A I don't understand "mitigation."

23 Q Okay. What evidence did you present at trial
24 through your attorney that the murder of the victim was
25 excused in any way?

1 A Excused? You talking about what evidence I had?

2 Q Yes. Did you ever claim that you killed the
3 victim out of self-defense?

4 A No, ma'am. I did not kill the victim.

5 Q Okay. So your strategy or the entire trial
6 strategy was that you had not killed the victim, not
7 that your killing of the victim was justified?

8 A Ma'am, I didn't have -- I was in Pickens County.
9 The crime happened in Anderson County. I was there
10 from 2 o'clock at my mother and father-in-law's house,
11 Ralph Stansell and Peggy Stansell. And my wife, Peggy
12 Duvall, was there from 2 o'clock until 4:30, and the
13 crime happened around 3 o'clock, and I don't know who
14 killed my friend Paul Stephens, no, ma'am.

15 Q So your strategy and your position in trial was
16 never that you were involved with the murder and that
17 it was justified; it was rather that you were never
18 there and not involved at all, correct?

19 A That's right. I never was there, and I was not
20 involved in that, no.

21 Q And the victim in this case was killed by two
22 shots to the back, correct?

23 A That's what they said in court. I don't know.

24 Q And the victim in this case, after being shot, had
25 his car set on fire, correct?

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1 A I heard that in court, yes, ma'am.

2 Q Mr. Duvall, I'm turning to your third point where
3 you're arguing that your attorneys should have moved
4 for a mistrial based on the curative instruction for
5 not preserving his objection on hearsay.

6 A Yes, ma'am.

7 Q And do you remember after the hearsay statement --
8 well, actually, let me back up. This issue was taken
9 up on appeal, correct?

10 A Yes, ma'am, it was, but he did not object to the
11 limited curative instruction. That's why my appeal got
12 dismissed.

13 Q And you had an appellate attorney represent you in
14 that case on appeal?

15 A Yes, ma'am.

16 Q Okay. And did you read the papers that were filed
17 in that case and discuss the case with that appellate
18 attorney?

19 A At the time -- at the time I went through it and
20 all, and he told me what he was going to do, yes,
21 ma'am.

22 Q And when you were in trial, do you remember that
23 your attorney did object whenever the witnesses
24 testified to something that he thought was hearsay?

25 A He objected as far as hearsay, but he did not

1 object to the limited curative instructions to the
2 jury. Prejudiced against me.

3 Q And when those witnesses testified, do you
4 remember that right around the time of their testimony,
5 the judge would look at the jury and explain to the
6 jury and remind them, "I again remind you that this
7 witness can only be used for the codefendant and not
8 to" -- to find your guilt?

9 A Yes, ma'am.

10 Q You do remember that?

11 A I remember the judge giving them a limited
12 curative instruction, to the jury.

13 Q After every single witness testified, he reminded
14 the jury that they were to limit their application of
15 the witness' testimony to your codefendant and not
16 apply it to your guilt at all?

17 A That's true. And my lawyer did not object to
18 that. He should have objected.

19 Q Your codefendant's attorney brought up an
20 objection at the end of trial regarding hearsay?

21 A Ma'am, say that again, please.

22 Q Codefendant's attorney?

23 A Yes, ma'am. He said that hearsay evidence from
24 John Stansell against Frances Moore and all that
25 hearsay evidence against her.

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1 Q Okay. And do you remember the judge saying that
2 he had reviewed it, he had reviewed the case and he was
3 not going to change his mind on the hearsay objections?

4 A He said that. I think he said that. I'm not
5 really sure, but --

6 Q And there was excessive thought process laid out
7 throughout the transcript of the judge's ruling on the
8 hearsay objections?

9 A The judge did rule because they were arguing back
10 and forth so many times. My codefendant objected to so
11 many stuff, and my lawyer objected to some stuff, too.
12 But what I'm saying is that I should have had a
13 severance of the trial, separate trial, because the
14 evidence fell on her that fell on me, and that's the
15 reason I didn't have a fair trial. The trial
16 prejudiced me.

17 Q I'm turning to your fourth point of your alibi
18 claiming that you should have had an alibi charge.

19 A Yes, ma'am.

20 Q And you stated to your attorney a moment ago that
21 you had an alibi witness?

22 A Yes, ma'am, I did.

23 Q Who was your alibi witness?

24 A Billy Ralph Stansell.

25 Q And who is Mr. Stansell? What was he employed as?

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1 What he did put himself out as?

2 A He was a contractor. He was a contractor. He
3 built add-ons to houses and stuff like that, and also
4 he does missionary work. He go all over the world
5 building chapels and churches on a missionary basis.

6 Q And what did Mr. Stansell testify to in terms of
7 your alibi?

8 A He said I was at his home. I got it right here.
9 This is what he said. He said, Billy Stansell,
10 transcript 551, on page 12 -- I mean line 12, "I
11 volunteer mission, building chapels in foreign
12 countries. And I always come home early and spend a
13 little time with my family. It was about 2 o'clock
14 when I came in, and we was all on the front porch, all
15 of us, my wife, Peggy, Brenda and Garvin Duvall. And
16 they left somewhere around 4:30, and they are the ones
17 that called back and told us that what happened. They
18 was on the front porch supposedly when this happened."

19 Q At the time of your trial, where was your wife?

20 A Where was my wife?

21 Q Yes. At the time of your trial, where was your
22 wife?

23 A She was passed away, ma'am.

24 Q And she had passed away approximately how long
25 before your trial?

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1 A She passed away 2006, February 10th.

2 Q In fact, did your wife pass away before you were
3 even charged with these crimes?

4 A Yes, ma'am.

5 Q And so your attorney would not have been able to
6 speak with your wife?

7 A No, ma'am. But Garland Majors took a statement
8 from my wife back in 1999, and he pulled that up. He
9 says also he reviewed Brenda Duvall's statement given
10 in 1999 to Investigator Garland Majors at which time
11 was the lead investigator of the crime. Referred to
12 transcript 376, line 23 through 25.

13 MS. VALENZUELA: Your Honor, may I beg the court's
14 indulgence for a moment?

15 THE COURT: Yes, ma'am.

16 MS. VALENZUELA: Thank you, Your Honor.

17 No further questions for this witness.

18 THE COURT: Any redirect, Mr. Welborn?

19 MR. WELBORN: No.

20 THE COURT: Thank you, Mr. Duvall. You can step
21 down.

22 THE WITNESS: Thank you, sir. Thank you.

23 THE COURT: Call your next witness.

24 MR. WELBORN: That's our case, Your Honor.

25 THE COURT: Okay.

1 THE COURT: Ms. Valenzuela.

2 MS. VALENZUELA: Your Honor, the State calls
3 Mr. Robert Gamble to the stand.

4 ROBERT GAMBLE,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MS. VALENZUELA:

8 Q Mr. Gamble, will you please state your full name
9 for the record.

10 A Robert Gamble.

11 Q Mr. Gamble, what were you formerly employed as?

12 A Public defender for Anderson County from 1984
13 until 2011, I think it was.

14 Q Okay. So with the public defender's office you
15 were actively involved in criminal defense throughout
16 your entire time?

17 A Yes.

18 Q And do you remember representing the applicant?

19 A Yes, I do.

20 Q Okay. And approximately how many times do you
21 remember meeting with the applicant prior to trial?

22 A Numerous occasions. I was trying to see -- let me
23 get my old man glasses on. Let me back that up. He
24 was originally interviewed by my office but then he
25 hired Jack Lynn of Greenville as his attorney, and we

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1 did not have the case until right before the trial was
2 to come about, and we interviewed him initially on
3 November 16th of 2006. Then again on 2/12 of '09 we
4 made some motions in there back in '06 and '07, but
5 then Jack Lynn came in and did the preliminary hearing
6 and a few other odds and ends in there and had an
7 investigator working with him on it.

8 Q So you were involved in this case in some way or
9 another for numerous years?

10 A Yes.

11 Q Okay. And did you feel prepared when y'all went
12 into trial?

13 A Yes.

14 Q Now, let's start with the first allegation that
15 the applicant is making where he's arguing that you
16 should have moved to sever. Why didn't you move to
17 sever?

18 A I didn't have a basis to sever. The codefendant
19 had not made any statement or given any indication that
20 she was involved in this murder. My client,
21 Mr. Duvall, had given a statement to a supposed
22 preacher, and that was the State's case, basically. So
23 having -- we didn't have a basis to sever, and the lady
24 did have a basis to sever.

25 Q And, in fact, in the pretrial motions, you

1 remember there was a significant period of time before
2 the jury was selected where the codefendant's attorney
3 argued about that preacher and how that preacher's
4 statements were going to possibly implicate her?

5 A Yes.

6 Q Okay. And at that time the court asked if anybody
7 was going to move to sever before the jury was
8 selected, and both you and codefendant's counsel
9 indicated that you were not going to move to sever?

10 A Right. My thinking on that was, if you want it,
11 is that his statement was going to kill us by the
12 preacher, and that her nonstatement would help us out
13 because they didn't have any evidence really against
14 her except for the statement by my client to the
15 supposed preacher.

16 Q So your strategy, if I'm restating this
17 correctly -- if I'm restating it incorrectly, please
18 let me know. Your strategy was that you were going to
19 take this preacher who claimed that he had been
20 confessed to, rip him to shreds to show that he was
21 lying, and then the codefendant, who the preacher was
22 also going to implicate in some way, her silence would
23 also support that the preacher was lying and,
24 therefore, if the jury believed that, they would find
25 both not guilty?

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1 A Right.

2 Q So, actually, having the codefendant in the trial
3 with you was helpful to your client's case?

4 A I thought it would have been helpful to have her,
5 yes. It evidently wasn't. And we weren't helpful to
6 her either. But it was not up to me, I don't think, to
7 sever. I think it was up to her and her lawyer to
8 sever, the codefendant's lawyer.

9 Q And you believed that it was up to the
10 codefendant's lawyer to sever because you end up
11 having -- in order to move to sever and win that
12 motion, you have to show that there's some sort of
13 adverse prejudice to the client, to the defendant, that
14 will harm them in measurable ways if they go forward
15 together?

16 A That's correct. That's correct.

17 Q You did not think you were going to be able to
18 prove that as to your client because, instead, strategy
19 suggested it would be helpful to have her as part of
20 the case?

21 A Yes.

22 Q Now, is there anything else that you want to say
23 on that first point before I move on to the second
24 point?

25 A No.

1 Q So moving on to the second one, he argues that you
2 aided in shifting the burden by not objecting to the
3 malice charge. Do you remember when this case was
4 brought to trial?

5 A I know it was -- hang on.

6 Q Actually, let me -- if I can strike that question.
7 Let me rephrase that question.

8 Y'all proceeded to trial in May of 2009?

9 A Right.

10 Q Okay. And in May of 2009 -- now, the applicant's
11 application that he's handed up to the judge or his
12 amendments cite a *Belcher* case. And that case came out
13 after this trial, correct?

14 A That's correct.

15 Q And in the -- are you familiar at all with the
16 *Belcher* case?

17 A I've read the *Belcher* case, and I, frankly, don't
18 think it applied in this case.

19 Q Okay.

20 A The *Belcher* case had to do with self-defense and
21 the use of a weapon in self-defense. This one was not
22 anything -- there was no evidence at all of
23 self-defense in this case.

24 Q Okay. And so that's very helpful. There was no
25 evidence that y'all presented or that was part of the

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1 case to present on mitigation, correct?

2 A No. And there was nothing that the State
3 presented that would indicate mitigation.

4 Q And your strategy in working with your client was
5 to claim that he hadn't done it at all, not that he was
6 justified in shooting this person?

7 A Right.

8 Q And at the time you had no indication that you
9 should object to a malice charge even if there had been
10 evidence in the record that that would have suggested
11 that there was mitigation or justification for this
12 murder?

13 A The law at that time was use of a deadly weapon is
14 indicative of malice aforethought.

15 Q Is there anything else you want to say on that
16 second point?

17 A No.

18 Q Okay. So moving on to the applicant's third point
19 where you should have moved for a mistrial or objected
20 to the curative charge and asked for a mistrial on the
21 judge's ruling on the hearsay objection, and do you
22 remember objecting whenever the witnesses testified to
23 hearsay on the basis of hearsay?

24 A I did.

25 Q Okay. And do you remember that the judge actually

1 did give a curative instruction after those witnesses
2 spoke?

3 A He did.

4 Q And that curative instruction was limiting the
5 application of that witness' testimony to the
6 codefendant --

7 A That's true.

8 Q -- and not to your own client?

9 A That's correct.

10 Q And did you feel like you had preserved the issue
11 with the actions that you had taken?

12 A I thought I had. There was a jumble in the law at
13 that time where you had to make a notice of attempt to
14 appeal, I think, when you're ruled against. And I
15 never understood that. I thought the objection was
16 sufficient to preserve the issue.

17 Q And do you remember Judge Maddox addressing the
18 hearsay objections at the end of the trial as well?

19 A Yes.

20 Q Okay. And having everything before him, he still
21 did not change his decision on the curative
22 instruction -- on the curative instructions and the
23 hearsay rulings?

24 A No, it didn't change it.

25 Q Is there anything else you want to say on that

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1 point, Mr. Gamble?

2 A No.

3 Q Okay. So as to the fourth point of alibi, can you
4 talk to us a little bit about your client's claim that
5 he had an alibi witness?

6 A The only alibi that I was familiar with was his
7 wife's statement to the detective back after this --
8 when this first started. But she was deceased, and if
9 we put up any argument at all, then the defense would
10 have lost the last argument to the jury, and I felt
11 like the last argument was stronger or should have been
12 stronger than the actual testimony that he was
13 somewhere else because we couldn't really prove that
14 point. And we would lose last argument if I put up any
15 evidence at all.

16 Q And I think the history of this case is important
17 for the court to consider. This murder had actually
18 happened approximately ten years before this case was
19 taken to trial, correct?

20 A That's correct.

21 Q And so when you were defending Mr. Duvall, you
22 were actually trying to address allegations that
23 stemmed back ten years where, as you just indicated,
24 you had witnesses in between those ten years who had
25 died, who had passed away, and you weren't able to

1 speak with?

2 A That's correct.

3 Q And, in fact, in your opening argument, you
4 pointed out to the jury that it had been a significant
5 amount of time and how tricky it is to put forth an
6 alibi by defense whenever you don't have a clear-cut
7 time and witnesses to talk to?

8 A I'll take the transcript's word because I don't
9 remember openings that I've given right after I've
10 given them. I don't remember exactly what I said.

11 Q You let them flow right out of your head.

12 And do you remember this contractor that
13 Mr. Duvall references?

14 A J.W. Stansell, Jr., I think was his name. I have
15 a note on my file about that, but that's all I know
16 right there.

17 Q Okay. Is there any -- did you have any concerns
18 with his credibility or reasons why you didn't think
19 that he would appear credible to the jury?

20 A Well, my problem was that I had the statement from
21 his wife given to the officers that he was with her at
22 that time, at the time of the killing. And then
23 Stansell says he was with them at the time of the
24 killing, so.

25 THE DEFENDANT: It was all together.

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1 BY MS. VALENZUELA:

2 Q We used a lot of pronouns there, so can we back up
3 a little?

4 When you say you had his statement to the police
5 that he was with his wife, who is the "he" in that
6 statement?

7 A I meant the wife's statement to the police.

8 Q And when you say "the wife," you mean Mr. Duvall's
9 wife?

10 A Mr. Duvall's wife.

11 Q So you were dealing with a statement from
12 Mr. Duvall's wife that said that at the time it was
13 just Mr. Duvall and his wife?

14 A I think that's correct.

15 Q And then you would have had to battle that if you
16 had tried to present a different witness who said that
17 a different witness was with your client during that
18 same time?

19 A That and lose final argument. Because if I put up
20 any evidence at all, you lose it.

21 Q Is there anything that you want to say on that
22 last point?

23 A No.

24 MS. VALENZUELA: Your Honor, may I have just a
25 moment?

1 THE COURT: Yes, ma'am.

2 MS. VALENZUELA: Your Honor, no further questions
3 for this witness.

4 THE COURT: Mr. Welborn.

5 MR. WELBORN: Briefly.

6 CROSS-EXAMINATION

7 BY MR. WELBORN:

8 Q Mr. Gamble, didn't my client tell you that,
9 regarding his alibi, there were more people on his
10 front porch than just his wife that could have verified
11 his alibi?

12 A I think that's correct.

13 Q Is there any reason why you would not have used
14 them except for losing the last argument to the jury?
15 To prove his alibi, is what I'm trying to say.

16 A I don't remember. I don't know why right now what
17 my reasoning was for not putting up Stansell. That's
18 the question, I think.

19 Q Yes, sir.

20 A Okay. I don't remember.

21 Q Thank you. That's all I have.

22 REDIRECT EXAMINATION

23 BY MS. VALENZUELA:

24 Q Mr. Gamble, and I'm sorry for -- I was trying to
25 find this. Do you have a copy of the transcript in

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1 front of you --

2 MS. VALENZUELA: Actually, I would note for the
3 record, Your Honor, that applicant has handed up
4 specific pages of the transcript.

5 Q And in looking at page 697 of the transcript, I'm
6 looking at page 697, but I'm looking at it, and it
7 should be the same but -- I'm trying to make sure that
8 I'm not getting the different defendants because on
9 page 696 and 697 of the transcript, there is an alibi
10 charge. The defendant has raised the defense of alibi.
11 The law of this state is, et cetera, as follows.
12 There's no burden on the defendant to prove an alibi.
13 So that goes from page 696 to 697.

14 A Yes.

15 Q Thank you, Mr. Gamble.

16 MS. VALENZUELA: No further questions from the
17 State.

18 MR. WELBORN: Nothing further.

19 THE COURT: All right.

20 Thank you, Mr. Gamble.

21 MS. VALENZUELA: Your Honor, the State calls Matt
22 Perkins to the stand.

23 MATTHEW ALLEN PERKINS,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 DIRECT EXAMINATION

1 BY MS. VALENZUELA:

2 Q Mr. Perkins, if you will state your full name for
3 the record.

4 A Matthew Allen Perkins.

5 Q And, Mr. Perkins, where were you employed at the
6 time when you participated in this criminal defense?

7 A I had just been brought into the Anderson County
8 Public Defender's Office as a contract attorney.

9 Q Okay. And you represented the applicant along
10 with Mr. Gamble?

11 A I did.

12 Q And were you present at the trial?

13 A I was.

14 Q And you participated in strategic discussions with
15 Mr. Gamble on this case?

16 A Somewhat, yes, ma'am.

17 Q And did you have a discussion with Mr. Gamble
18 where y'all -- and to the extent the applicant was
19 involved on the strategy for motion to sever?

20 A Limited, but yes.

21 Q Okay. And what was the thought process behind
22 whether to move for a motion to sever or not?

23 A That, and if I remember correctly, the main reason
24 a motion to sever was brought up was because
25 codefendant's counsel objected to any testimony on

Matthew Allen Perkins - Direct
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1 behalf -- from J.W. Stansell with regards to anything
2 that was said during the -- I believe it was a birthday
3 party. Because at that point we had -- we hadn't
4 decided yet, but it was becoming fairly evident that we
5 were not going to put Mr. Duvall on the stand, which
6 would have made anything Mr. Stansell said with regards
7 to that as hearsay.

8 Q And Mr. Stansell, is he the pastor in this case
9 who Mr. Duvall confessed the murder to?

10 A The supposed pastor, yes, ma'am.

11 Q And this man who claimed to be a pastor said that
12 Mr. Duvall had confessed to him. And when Mr. Duvall
13 confessed to him, Mr. Duvall claimed that he did it
14 along with his codefendant?

15 A I believe that's correct. That was in his
16 statement prior to trial, which is why Mr. Pruitt, the
17 codefendant's counsel, that's why that issue was
18 brought up.

19 Q So the codefendant's counsel focused a significant
20 amount of time saying that the pastor's supposed
21 getting of this confession from Mr. Duvall, the
22 portions that would affect his client were going to be
23 prejudicial?

24 A Yes.

25 Q Okay. And was there any way that you were going

1 to be able to keep out the pastor's testimony from the
2 trial against your own client?

3 A Not that I'm aware of because Mr. Duvall was
4 available to testify to rebut that testimony.

5 Q Okay. Now, you heard the other three allegations.
6 Were you involved in any of the strategic discussions
7 with those as to the malice issue or the objection to
8 the hearsay or the alibi?

9 A Not very much, no, ma'am.

10 Q Okay. Thank you.

11 Please answer any questions opposing counsel has.

12 MR. WELBORN: No questions.

13 THE COURT: Okay.

14 Thank you, Mr. Perkins. You can step down.

15 Anything further?

16 MS. VALENZUELA: Just argument, if you're ready to
17 hear that, Your Honor.

18 THE COURT: Let me hear from you, Ms. Valenzuela,
19 and then I'll give Mr. Welborn the last word.

20 MS. VALENZUELA: Yes, Your Honor.

21 So there is case law on motion to sever and what
22 you would have to present. You heard testimony here
23 today that it was a strategic decision on both counsel
24 who represented the applicant at the time not to move
25 to sever. As they entered into that trial, they

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1 thought the best thing that they could do for their
2 client was impeach the supposed pastor, make it seem
3 like that confession was never made, and if the
4 codefendant continued her silence and had nothing to
5 present, it would really move to enforce that this
6 pastor was making this up.

7 Additionally, they had time working in their favor
8 because it had been ten years, and this supposed pastor
9 had come forward with this confession six years after
10 it had been made. So they really thought that was
11 where their strategic decisions needed to focus. And,
12 in fact, looking at the transcript, the court will also
13 be able to see that this was very clearly conveyed. It
14 was open that this was a strategic decision so it's not
15 in hindsight. You can see that that strategy was
16 playing out at that time as well so there was no basis
17 to move for a motion to sever. Of course, in
18 hindsight, people can have different views, but that is
19 not where the court is supposed to look at this from
20 the position of postconviction relief.

21 Additionally, on the second point of failure to
22 object to a curative instruction regarding hearsay, the
23 attorneys in the case, certainly Mr. Gamble, testified
24 that he definitely thought that he had handled that
25 issue, that he had preserved it. He objected after

1 every single time and, additionally, there was a
2 curative instruction. But most importantly, the
3 briefings in this case can aid the court in a decision
4 of whether there's any prejudice anyway. So even if
5 you agree that Mr. Gamble should have objected at the
6 end to the curative instruction so that he could have
7 preserved the issue for appeal, which is what the court
8 of appeals ended up finding, that it wasn't preserved
9 for appeal. If you were to look at the briefings, you
10 would see that there is high deference given to a trial
11 judge in decisions of -- similar evidentiary decisions
12 on what they find to be hearsay or not hearsay.

13 So even if he had preserved the issue and it had
14 gone up on appeal, it is very unlikely, one, because of
15 the deference given to a trial judge in making a
16 determination of hearsay, and then, two, because there
17 were such specific curative instructions given after
18 every single witness' testimony that that witness'
19 testimony was supposed to be limited to one defendant
20 and not the other defendant to the benefit of
21 Mr. Duvall, a court of appeals reviewing that would not
22 have found that that case needed to be overturned for
23 that reason and, therefore, there's no prejudice
24 established from that point.

25 The third point is that there was a failure to

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1 request -- I'm sorry, that he shifted the burden by
2 proving the charge of malice. And I may have confused
3 those two in terms of the order, Your Honor. But the
4 malice charge, the case law on that is very clear.
5 With all candor to the court, I do want to point out
6 that after *Belcher* -- I realize the applicant wouldn't
7 know this -- there was a recent case that was released
8 by the supreme court dealing with a similar issue in
9 *Gibson v. State*, Opinion 27636, that deals with it, but
10 both cases are consistent that when it comes to that
11 jury charge, there has to be something else in order to
12 overturn it. So was there something else that claimed
13 that he was justified in doing that.

14 The cases before the court for the *Gibson* case,
15 the one case where it's two people claiming that they
16 ended up having to shoot someone else and that they
17 weren't trying to shoot that person. Here the victim
18 died by two shots to the back and his car was set on
19 fire. So certainly there are factual reasons in the
20 record that would have supported malice. But in
21 addition to that, the applicant himself agrees that his
22 strategy was never that he shot him with justification,
23 was that he shot him not at all. So it wouldn't have
24 even been appropriate had the attorney had the ability
25 to see into the future as to what the case law coming

1 down from the court would be.

2 And then, finally, there's an argument that he
3 failed to request an alibi instruction, but that alibi
4 instruction was given in the course so, of course, that
5 was done and there is no prejudice presented there.
6 And the attorneys -- Mr. Gamble testified at length as
7 to what his different strategic reasons were for
8 emphasizing the alibi and the frustrations that he had
9 dealing with the fact that the applicant's wife was
10 dead and not present at the time and had given a
11 statement that limited where the applicant was supposed
12 to be at the time of the murder.

13 So we would ask the court respectfully to deny
14 this PCR application.

15 THE COURT: Thank you.

16 Mr. Welborn.

17 MR. WELBORN: Please the court. Your Honor, I
18 first of all want to thank my client for that fine memo
19 he has given to all of us. That sums everything up. I
20 can't do it any better. I'd ask the court to review
21 that. I'm sure this court will. I'll ask the court to
22 take it all under advisement unless the court feels it
23 already has all it needs. And that is our position. I
24 can't sum it up any better. Thank you.

25 THE COURT: Thank you, Mr. Welborn.

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1 There is a lot of material here, and Mr. Duvall
2 has submitted a very thorough memorandum with specific
3 excerpts from the transcript. I want to take some time
4 to read that, so I'm going to take this under
5 advisement and I will inform the attorneys of my
6 decision.

7 MR. WELBORN: Thank you, Your Honor.

8 MS. VALENZUELA: Thank you, Your Honor.

9 (WHEREUPON, the hearing ended at 10:41 a.m.)

10 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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Garvin Duvall v. The State of South Carolina , 2013-CP-04-02174

Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter
for the Tenth Judicial Circuit of the State of South
Carolina, do hereby certify that the foregoing is a
true, accurate, and complete transcript of record of a
portion of the proceedings had and evidence introduced
in the trial of the captioned case, relative to appeal,
in the Circuit Court for Anderson County, South
Carolina, on the 8th day of June 2016.

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

December 8, 2016


Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

INEFFECTIVE ASSISTANCE OF COUNSELGARVIN DUVAL -vs- STATE OF SOUTH CAROLINA

CASE NO: 2013-CP-04-02174

Applicant was denied the right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and the corresponding provisions of the South Carolina Constitution, in the following particulars:

FIRST PARTICULAR

When applicant's counsel (Mr. Gamble) failed to move for a severance, prior to trial, enabling his client (applicant) to have a fair and un-prejudicial trial, before an untainted jury.

The state's case against applicant was based upon circumstantial evidence. There was absolutely no physical evidence linking applicant to the crime; nor any evidence linking applicant as a co-conspirator to defendant F. Moore; and,

The testimony of the following three (3) state witnesses had an extreme prejudicial effect upon applicant:

KENNETH ERWIN testified that the decedent told him: "... "IF HE WAS EVER FOUND SHOT AND HIS CAR CAUGHT ON FIRE TO HAVE HIS MOTHER-IN-LAW INVESTIGATED." Tr. 295, lines 15-18.

NELLIE ELAINE ERWIN testified the decedent told her and her husband: "... "IF HE WAS EVER FOUND, BEEN SHOT OR HIS CAR BEEN CAUGHT ON FIRE TO HAVE HER INVESTIGATED, FRANCES [Moore]. Tr. 300, lines 8-10.



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RITE WOODS testified that the decedent told her that Moore "WAS CAPABLE OF ANYTHING, AND THAT IF HE WAS EVER -- HE WAS EVER FOUND DEAD, SHOT, SHOT IN THE HEAD AND HIS CAR WAS BURNED THAT SHE HAD SOMETHING -- THAT SHE DID IT, SHE HAD SOMETHING TO DO WITH IT." Tr. 306, lines 10-14.

ALSO REVIEW: Applicant's INITIAL APPEAL BRIEF, page 9 and 10.

The trial court on numerous occasions expressed sincere concern as to why both defendants are being tried together. Despite this concern, applicant's counsel failed, prior to trial, to petition the trial court for a SEVERANCE, so applicant could be tried only upon facts relevant to his charges; ... This testimony was hearsay evidence against defendant Moore; however, the trial court allowed this evidence to come before the jury which rendered a verdict against applicant. The prejudicial effect of such hearsay testimony far outweighed its probative value in applicant's case.

In addition to the above, applicant asserts there lies a reasonable probability that counsel's stewardship was so deploring, due to a possible conflict of interest arising between the two defense counsel's trial strategy, resulting from both defendant's having been tried together.

*** * * PREJUDICE * * ***

If counsel would have petitioned the trial court, prior to trial, for a severance, and the court granted the petition, the testimony of these three state witnesses would have been unduly prejudicial (inadmissible) in applicant's trial, pursuant to the Rules of Evidence; and there lies a reasonable probability the outcome of the trial would have been different.

KENNETH ERWIN - DIRECT BY MR. BRADLEY.

1 A. Debra.

2 Q. What was Debra's last name?

3 A. Debra Stephens. She was a Moore.

4 Q. And do you know the defendant, Frances Moore?

5 A. Yes, sir.

6 Q. How do you know her?

7 A. It was his mother-in-law.

8 Q. Okay. And what was her relationship with the
9 victim, Paul Stephens?

10 A. Do what now?

11 Q. What was her relationship?

12 A. That was his mother-in-law.

13 Q. And how would you have described their relationship?

14 A. It wasn't too good of a relationship.

15 Q. Okay. And what, if anything, did Paul tell you
16 about Frances Moore prior to his death?

17 A. If he was ever found shot and his car caught on fire
18 to have his mother-in-law investigated.

19 Q. And how would he act when he would say this to you?

20 A. He was afraid. Like he was afraid.

21 Q. Did he say this to you more than once?

22 A. Yes, sir.

23 Q. How many times?

24 A. Probably 12 or more times.

25 Q. And when was this when he told you?

1 Q. And did you know the defendant, Frances Moore?

2 A. I knowed her through his wife, Debra.

3 Q. And what was her relationship like with Paul?

4 A. I don't think they got along that much. I think he
5 was kind of afraid of her.

6 Q. What, if anything, did he say to you about Frances
7 Moore?

8 A. He told me and my husband if he was ever found, been
9 shot or his car been caught on fire to have her investigated,
10 Frances.

11 Q. How would he act when he was telling you this?

12 A. Very afraid.

13 Q. Did he say this -- how many times did he say this to
14 you?

15 A. Several times.

16 Q. And when was this?

17 A. It was from the time he moved in with us, really.

18 Q. Up until?

19 A. Up until his death.

20 Q. And so when he left your home where did he go?

21 A. He went back to live with Debra at her home.

22 Q. And did you know the reason why he went back to live
23 with her?

24 A. He said he wanted -- he told me he wanted to be with
25 his son.

1 standing over us. And he's a big guy, and he just jumped, and
2 asked her what she was doing there. She said, you know how
3 easy it would have been for me to kill both of you.

4 MR. PRUITT: Objection, Your Honor.

5 THE COURT: Yeah. Sustained.

6 BY MR. BRADLEY:

7 Q. What, if anything, did Paul Stephens tell you
8 directly regarding Frances Moore?

9 A. He told me he was scared of her, always afraid of
10 her. You know, just anything could happen. She was capable
11 of anything, and that if he was ever -- he was ever found
12 dead, shot, shot in the head and his car was burned that she
13 had something -- that she did it, she had something to do with
14 it.

15 Q. How would he act when he would tell you this?

16 A. He was very shaky, very nervous, and trying to make
17 sure that what he was saying that I was believing him, that it
18 was so, it was true. He said she was capable of doing that.

19 Q. Did he say this to you more than once?

20 A. Uh-huh.

21 Q. How many times?

22 A. A lot because they were getting in the arguments,
23 you know, on the phone or whatever, and he would say, Oh, my
24 God. And he would, like, look out the window, she might be
25 out the window. It was just -- it was unnatural.

Transcript of Record Volume 1-2-2007GS041

1219. 2007 GS-04 13421343

The Honorable J. Cordell Maddox Judge and Jury

Tr. pages.

p. 36:24-25. The Court: I think its going to be a mess to try, since we're doing them together,

p. 37:13. The Court: I know. I'm not so sure these 14. people should be tried together but that's not my decision.

p. 37:7-10. The Court: I mean this is the problem doing them together, you know a jury instruction telling them to disregard the testimony as to one defendant I have a lot of concern with.

p. 434. 4-10 The Court: let me tell you this problem I've got Eventually in a case like this where you're trying two defendants its almost impossible. At some point one defendants right to Confrontation is going to Run-head on in to one defendants right to have rules of evidence adhered to in regard to Hearsay and it is a chinese puzzle there no way to make a decision that is a hundred percent right.

p. 433 Look at it Line 16 The Court:
Thus our problem.

Pages

Transcript of Record Volume 1-2. 2007-GS-04 1218-1219

2007 GS-04 1342-1343

The Honorable J. Cordell Maddox Judge and Jury.

- p. 435 1820 The Court: I don't mind complex,
It's impossible that I don't like,
And this is why I can't figure out
why they are both here today,
- p. 436 13. The Court All Right. well I mean
I'm in sort of the impossible position
of weighing different defendants
rights which is really where I
shouldn't have to be here.

word, line for line, everything in it and prove each and every word is a lie, and I will put that statement in or try to in order to get it to a jury to see what kind of man they are dealing with.

THE COURT: Well, then that would take the issue of whether or not the State can admit it out of my hands, wouldn't it?

MR. GAMBLE: As to my client.

THE COURT: As to your client.

MR. PRUITT: It wouldn't take it out to my client, Your Honor.

THE COURT: Well, the rule is obviously, you know, it's applicable to -- all right. Well, here's what I'm going to do. I'm going to -- and I'm sure that I'll regret this, but I think that under the law what I've got to do is grant your motion as to the first part but not as to the second part, which is what you're saying. That's what you're saying, the first part, second part?

MS. HOGAN: That the statement made before the murder in furtherance of the conspiracy can come in.

THE COURT: Right, but not the statements afterwards.

MS. HOGAN: Not the statements she made afterwards.

THE COURT: I think it's going to be a mess to try, since we're doing them together, but I think that's what the

1 law is.

2 What I'm going to need you to do is go through while
3 we're on a break and divide them up, if you don't mind, so
4 we're clear when we get back what portion you're going to use,
5 what you consider first part and second part.

6 Yes, sir?

7 MR. GAMBLE: I want a real clarification on that,
8 Your Honor. I want to see what --

9 THE COURT: Yeah, that's what I'm saying. I think
10 that's the best way to do it.

11 MR. GAMBLE: Because you may be interfering with my
12 defense in doing that.

13 THE COURT: I know. I'm not so sure these people
14 should be tried together but that's not my decision. If you
15 would, get it in writing so they can look at it. I'm going to
16 go grab some lunch. I'll come back and I may have to modify
17 my ruling based on that. Okay?

18 I assume that's the only motion you have?

19 MR. PRUITT: Yes, sir. That's the only motion I
20 have.

21 THE COURT: Okay. All right. Thanks.

22 (WHEREUPON, a lunch break was taken.)

23 THE COURT: Have you all had a chance to look at the
24 statements, the revision of the statements?

25 MR. PRUITT: We haven't seen anything.

1 admitted as to one defendant in joint trial and does not have
2 to be admitted to the other one, and Your Honor can give an
3 instruction to the jury as to that, that evidence can be
4 admitted to one defendant and not the other.

5 MR. GAMBLE: Prejudicial effect far outweighs the
6 probative in this situation.

7 THE COURT: I mean, this is the problem doing them
8 together. You know, a jury instruction telling them to
9 disregard the testimony as to one defendant I have a lot of
10 concern with.

11 All right. What I'm going to do -- and let me just
12 point out that what I'm really looking for here is some
13 guidance from the Supreme Court on whether or not the
14 testimony can be that he was afraid of being shot and burned,
15 and whether or not that is a fear or that's a reason for fear.

16 And just to let you know, there is a case, The State
17 vs. Weston, which was heard in 2006. It's 625 S.E.2d 641,
18 that deals with Garcia and whether the colloquy was a little
19 bit more than just I'm afraid.

20 So what I'm going to do is I'm going to let him
21 testify. I'm going to let him testify as to the fear and the
22 fear of being shot and burned. Nothing further. I understand
23 that that's the kind of thing that the Supreme Court look at
24 it and say that I've gone too far by four words, but based
25 upon The State vs. Weston it looks like they've allowed people

1 You can step down.

2 Let's take a break. I'll be right back.

3 (WHEREUPON, a brief recess was taken.)

4 THE COURT: Let me tell you the problem I've got.

5 Eventually in a case like this where you're trying two
6 defendants it's almost impossible. At some point one
7 defendant's right to confrontation is going to run-head on
8 into one defendant's right to have rules of evidence adhered
9 to in regard to hearsay, and it is a Chinese puzzle. There's
10 no way to make a decision that is a hundred percent right.

11 What is you all's position on it?

12 MS. HOGAN: Your Honor, our position is that unlike
13 Holmes in this case the State has not introduced any evidence
14 that has implicated Frances Moore in any of the statements
15 that we're talking about so far. Mr. Stansell's testimony in
16 no way has referred to her so far at that point.

17 THE COURT: But only because I've kept it out as a
18 violation of the hearsay rule.

19 MS. HOGAN: Right. Right. At the time when they
20 knew that this was going to come up they made no severance
21 motion to take care of this. If they were going to use this
22 as some type of motion to make a mistrial then they should
23 have made this motion in the beginning.

24 They knew that potentially there could have been an
25 antagonistic defenses here. They are going to be pointing

1 Q. Did he tell you that Frances Moore was with him?

2 MS. HOGAN: Your Honor, we object at this time.

3 THE COURT: What's your objection?

4 MS. HOGAN: We went into this with --

5 THE COURT: All right. Ladies and gentlemen, I'm
6 going to send you out for a few minutes. Please don't discuss
7 the case.

8 (WHEREUPON, the jury leaves the courtroom at
9 approximately 2:55 p.m.)

10 THE COURT: All right. Yes, ma'am, what's the
11 objection?

12 MS. HOGAN: Your Honor, if it pleases the Court. I
13 believe Mr. Gamble is going to get into the redacted version
14 as to Ms. Moore. Mr. Stansell knew that he was not supposed
15 to get into it with me and we believe that --

16 THE COURT: Thus our problem.

17 MS. HOGAN: Yes, sir.

18 THE COURT: With trying to do that.

19 MR. GAMBLE: I asked as the argument grew three
20 times when I asked was I bound by that. I was told no.

21 MR. PRUITT: And, Your Honor, I object for him
22 answering that question insofar as it implicates Ms. Moore.

23 THE COURT: See, what bothers me about this is
24 Tuesday morning we knew this was coming, and I can only hint
25 so much. Let's take a break. Let me figure out where to go.

1 fingers at each other, I'm assuming. I'm not sure. These
2 antagonistic defenses aren't even enough for a severance. I
3 mean, so why would it be enough for them to be able to get a
4 mistrial at this point.

5 We feel like we've done everything to prevent a
6 mistrial, to go forward with the trial. We feel like for a
7 mistrial there has to be some kind of manifested necessity for
8 it to be done and we don't feel like that's true in this case.
9 We feel like there can be a curing instruction to the jury,
10 and we feel like we've done what we needed --

11 THE COURT: And what would the curing instruction
12 be, that Mr. Gamble is getting ready to cross-examine the
13 witness on testimony that I've ruled inadmissible in the
14 State's case, please disregard it in that vain but you may
15 take -- be cognisant of it in cross-exam?

16 MS. HOGAN: I understand the complexity of the
17 issue, Your Honor. I just don't feel like --

18 THE COURT: I don't mind complex. It's impossible
19 that I don't like. And this is why I can't figured out why
20 they are both here today.

21 MS. HOGAN: The State felt like the best way, the
22 most efficient way in justice is to do it together, Your
23 Honor, and they never made a motion to sever. I mean, the
24 State felt like this was the most appropriate way to go
25 forward and that if they -- now they are going to introduce

1 something to be able -- they are introducing something to
2 create a mistrial.

3 THE COURT: Anything? I mean, I know what I'm going
4 to do. I'll just be glad to hear from you.

5 MR. PRUITT: Your Honor, we did what we could at the
6 start of this trial to eliminate this problem. You know, it's
7 their call as to how to prosecute their case, and if they
8 wanted to put them together then they should have left this
9 testimony out.

10 THE COURT: Anything?

11 MR. GAMBLE: At the start Tuesday I said it's up to
12 them to move for a severance.

13 THE COURT: All right. Well, I mean, I'm in sort of
14 the impossible position of weighing different defendants'
15 rights, which is really where I shouldn't have to be here, but
16 I'm going to allow him to question him on it. I'm having to
17 weigh the right of confrontation against the rules of evidence
18 in regard to hearsay.

19 And I'm going to take the motion for mistrial under
20 advisement depending on what comes out in the next hour or so.
21 That literally is the only way I know to take care of it, at
22 this point. But I do think this should have been anticipated,
23 as I've said since Tuesday, because this is where everybody
24 knew we were going to be, and it's a problem.

25 All right. I'll allow you to question him on it,

SECOND PARTICULAR

When counsel failed to object to a jury charge on "Malice" that unconstitutionally shifted the burden of proof upon the defense.

The trial judge instructed the jury that: MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE. INFERRED MALICE MAY ALSO ARISE WHEN THE DEED IS DONE WITH A DEADLY WEAPON. Tr. 691, lines 12-14.

The above jury charge on "malice" is confusing and prejudicial where applicant presented evidence of an alibi (Tr. 551, lines 12-19) and (Tr. 653, line 25 thru page 654, line 4, Counsel's closing argument).

However, the error, relevant to applicant, charge that malice may be inferred when the deed is done with a deadly weapon cannot be considered harmless; given the fact the only evidence against applicant was at-most circumstantial and hearsay. It is entirely conceivable that the only evidence of malice in the entire case was the use of a weapon, which was "never" tied to applicant.

The permissive inference charge concerning the use of a deadly weapon may remain a correct statement of law where the only issue presented to the jury is whether the defendant committed murder.

IN APPLICANT'S CASE: there was evidence presented of an abili; therefore, the malice instruction shifted the burden of proof upon the defense to prove otherwise.

S.C. Const. Art V, section 12. (judges shall not charge juries in respect to matters of fact, but shall declare the law).

Also Review: STATE -vs- BELCHER, 685 S.E.2d. 802 (2009).

MALICE

1 Malice aforethought may be expressed or inferred.
2 These terms express and infer do not mean different kinds of
3 malice but merely the manner in which malice may be shown to
4 exist. That is either by direct evidence or by inference from
5 the facts and circumstances which were proved.

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

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

15 A deadly weapon is any article, instrument or
16 substance which is likely to cause death or great bodily harm.
17 Whether an instrument has been used as a deadly weapon depends
18 on the facts and circumstances in each case. A gun may be a
19 deadly weapon even if it's not operating.

20 Ladies and gentlemen, I further charge you that the
21 defendants are charged with conspiracy. The State must prove
22 beyond a reasonable doubt that the defendant combined with one
23 or more persons for the purpose of committing an unlawful act
24 or for committing a lawful act by unlawful means. There must
25 be a mutual understanding, agreement or common intention and

Alibi

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BILLY RALPH STANSELL - DIRECT BY MR. GAMBLE

1 A. Yes, sir. They had said Paul had been murdered.
2 That's all I recall from what was said.

3 Q. Before that phone call did you have an occasion to
4 see Brenda and Garvin Duvall?

5 A. Yes. I do a lot of mission work overseas and I
6 take --

7 Q. What kind of mission work?

8 A. A lot of mission work.

9 Q. What kind of mission?

10 A. Pardon?

11 Q. What mission?

12 A. Volunteer mission, building chapels in foreign
13 countries. And I always come home early and spend a little
14 time with my family. It was about 2 o'clock when I came in
15 and we was on the front porch, all of us, my wife, Peggy,
16 Brenda and Garvin Duvall. And they left about somewhere
17 around 4:30, and they are the ones that called back and told
18 us what happened. They was on the front porch supposedly when
19 this happened.

20 Q. Let me clear one more thing. I know your last name
21 is Stansell. Are you any relation to J. W., the Reverend
22 J. W. Stansell, Junior?

23 A. Definitely not. Thank the Lord.

24 Q. Thank you, sir. And what church is it that you go
25 on these mission trips with?

1 told you what he saw. A man about 6 feet tall, weighed less
2 than 200 pounds leaving the scene, rapidly.

3 We learned also that Ken Blakely, who was with
4 C. I. D., went out and he found a 380 shell. A 380 is an
5 automatic weapon, generally speaking. And in order for the
6 shell to be on the ground it would have to come from an
7 automatic weapon.

8 Now, those of you who aren't familiar with an
9 automatic weapon it expels the shell out to the side whereas a
10 revolver keeps the shell inside the revolver part. You would
11 only have a shell falling onto the ground by an automatic
12 weapon. Okay. We know that this man was shot with a 38
13 because the doctor dug it out of him.

14 The next reliable witness or two, the Joshes. They
15 are not really reliable because one was in a hurry to get to
16 work and once he got to work they were loading a Jeep. One
17 says a person he saw had on glasses, one said the person he
18 saw did not have on glasses.

19 One said it was a two to three day growth of beard
20 on the man, the other said that he just didn't notice, and
21 that the man had on long pants, and somebody said there was
22 some kind of shorts involved. I don't know. They didn't
23 identify anybody that I'm concerned with in this trial, so I
24 didn't look to them.

25 A reliable witness, in my opinion, is Ralph

1 Stansell, a hardworking construction man that knows he was
2 sitting on his front porch on the 30th day of July -- June,
3 rather, talking with his wife, his daughter and his son-in-law
4 from 2:00, or thereabout, until 4:00 or 4:30.

5 What caused your attention to this, Mr. Stansell?

6 By the way, no relation to the archbishop. He made that
7 perfectly clear. I remember it because I was going to Brazil
8 on a missionary trip to build a chapel and I got together, got
9 off early and I got with my family to sit and be with them for
10 a while before I left to go to Brazil. That's reasonable.
11 That's believable. That's reliable.

12 Now, let's go to the party where this started on the
13 27th day of June 1999. On that day that Ku Klux Klanning,
14 some kind of Catholic, Anabaptist Evangelist, and whatever
15 else it takes to get recognition of some kind, says he left
16 this party and went with Garvin Duvall and Garvin told him of
17 the plans to go off this guy for 2,000 bucks.

18 In the first place, it doesn't make sense. If I'm
19 going to pay somebody \$2,000 to off somebody I ain't going
20 with them. I don't want to be around them. I'm going to be
21 somewhere else, and I'm going to make sure that there's other
22 people there that know me so they can say yeah, he was there.
23 He wasn't over there at the killing grounds. He was over here
24 at the airport watching the air show. We saw him there.

25 Anyway, Debra Stephens, Kim Hendrix, Sam Hendrix are

Navigation

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

The State, Respondent,

v.

Johnny Rufus Belcher, Appellant.

**Appeal From Laurens County
William P. Keesley, Circuit Court Judge**

**Opinion No. 26729
Heard May 14, 2009 – October 12, 2009**

REVERSED AND REMANDED

C. Rauch Wise, of Greenwood, and James
E. Bryan, Jr., of Laurens, for Appellant.

Attorney General Henry Dargan McMaster,
Chief Deputy Attorney General John W.
McIntosh, Assistant Deputy Attorney General
Donald J. Zelenka, Senior Assistant Attorney
General William Edgar Salter, III, of
Columbia, and Solicitor Jerry W. Peace, of
Greenwood, for Respondent.

JUSTICE KITTREDGE: Appellant Johnny Rufus Belcher was convicted of murder and possession of a firearm during the commission of a violent crime following the shooting of his cousin, Fred Suber. The jury was charged with the offenses of murder and voluntary manslaughter, as well as self-defense. Of special significance was the jury instruction that permits an inference of malice from the use of a deadly weapon.

It has long been the practice for trial courts in South Carolina, as sanctioned by this Court, to charge juries in any murder prosecution that the jury may infer malice from the use of a deadly weapon. We granted Belcher's petition to argue against this precedent. Having carefully scrutinized the historical antecedents to this permissive inference, we hold today that a jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide. We therefore reverse Belcher's convictions and remand for a new trial.

I.

Fred Suber was shot and killed during a cookout with family and friends. Those in attendance included Suber's ex-girlfriend and Haniel Brown, whom Suber believed was the father of his ex-girlfriend's child. Suber confronted Brown and an argument ensued. Belcher interceded.

The testimony presented at trial revealed conflicting versions of the event. The State's view tended to show that after Belcher confronted Suber, Belcher retrieved a gun from Brown and, with no justification or excuse, fatally shot Suber. Conversely, Belcher presented evidence that after the confrontation between Suber and Brown was seemingly resolved, Suber without provocation confronted him (Belcher) with a gun. Belcher fled to Brown's truck where he retrieved a gun from Brown and fired it at Suber while he (Suber) was approaching, gun in hand.

The jury was instructed that "malice may be inferred by the use of a deadly weapon" and convicted Belcher of murder and the related firearm charge. This direct appeal is before us pursuant to Rule 204(b), SCACR, certification.

II.

A.

Because the evidence presented a jury question on self-defense, Belcher asserts it was error to charge the jury that it may infer malice from the use of a deadly weapon. We agree.

The trial court charged the jury, in part, as follows:

Murder is the unlawful killing of another person with malice aforethought either expressed or inferred. . . . Malice can . . . be inferred from facts and circumstances that are proven by the State. Malice may be inferred by the use of a deadly weapon. But these inferences are evidentiary only and may be considered by you along with all the other evidence and given such weight, if any, as you determine that they should receive.

The charge given by the trial court has heretofore been considered textbook. Yet when confronted with Belcher's challenge, the learned and experienced trial court judge expressed "concern about [the charge] rising to a charge on the facts."

Where a jury is asked to consider a lesser included offense of murder or a defense,

Belcher asserts the permissive inference charge violates our common law and our constitutional prohibition against charging juries on the facts.[1] We elect to decide this appeal solely under the common law. Relying on Belcher's common law challenge, we conclude that our modern day usage of this jury charge has strayed from this Court's original jurisprudence.

B.

We begin by reviewing the progression of the jury charge in this state.[2]

We begin with *State v. Hopkins*, 15 S.C. 153 (1881). Hopkins was convicted of murder. He pled accident, and objected to the following "use of a deadly weapon" implied malice instruction: "In every case of intentional homicide the presumption of malice arises, and the fact of killing intentionally by the use of a deadly weapon being shown in any case, the burden of proof is thereby imposed upon the defendant to rebut such presumption, unless the facts and circumstances shown in the testimony in behalf of the [S]tate incidentally rebut it." [3] *Id.* at 156. Under the circumstances, the charge was error, and Hopkins was granted a new trial.

Hopkins cited to the rule that "[t]here is no doubt whatever of the isolated proposition that the law presumes malice from the mere fact of homicide, but there are cases as made by the proof to which the rule is inapplicable." The Court explained that, "[w]hen all the circumstances of the case are fully proved there is no room for presumption. The question becomes one of fact for the jury, under the general principle that he who affirms must prove, and that every man is presumed innocent until the contrary appears." *Id.* at 156-57 (citing *State v. Coleman*, 6 S.C. 185 (1875)). *Hopkins* then quoted at length from *Coleman*:

This presumption is not applicable when the facts and circumstances attending the homicide are disclosed in evidence so as to draw a conclusion of malice or want of malice, as one fact, from the evidence. Presumptions of this class are intended as substitutes in the absence of direct proof, and are in their nature indirect and constructive. The best evidence of the state of mind attending any act is what was said and done by the person whose motive is sought for. The motive that impels to the taking of human life is no exception to this rule, and the importance of the consequences that depend on the accurate ascertainment of its nature in such cases, affords the strongest ground for limiting indirect and constructive proofs to the narrow grounds within which they belong. It appears, from the record before us, that the proofs embraced a statement of the origin of the difficulty between the parties; their conduct towards each other down to the time of the killing, and, to some extent, the subsequent conduct of the prisoner. When the evidence is of such a character, it must be presumed to be sufficient to enable the jury to draw from it a conclusion of fact one way or the other. Under such circumstances there was no necessity, and, therefore, no propriety in resorting to any general presumption arising by operation of law. When the circumstances preceding and attending an act of this character are full, as in the present case, the prisoner is entitled to the benefit of any doubt that may arise, and cannot be deprived of such benefit by any presumption of guilt arising by operation of law from the naked fact of homicide. A charge may be erroneous, although the

propositions of which it is composed may severally be conformable to recognized authority, if in its scope and bearing in the case it was likely to lead to a misconception of the law.

Id. at 157-58 (quoting *Coleman*, 6 S.C. at 186-87).

We next review the case of *State v. Levelle*, 34 S.C. 120, 13 S.E. 319 (1891), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 69 n.5, 406 S.E.2d 315, 328 n.5 (1991). Levelle killed his wife and was convicted of murder. He appealed on several grounds, including a challenge to the State's requested jury instruction that "malice will be inferred from the use of a deadly weapon." Although that precise charge was not given, the Court addressed the issue, noting:

[E]ven if it be assumed that the judge must be regarded as adopting the language used in the solicitor's ninth request, quoted above, we still think there was no error. In 2 Bish. Crim. Law[] § 680, it is said: "As general doctrine, subject, we shall see, to some qualification, the malice of murder is conclusively inferred from the unlawful use of a deadly weapon, resulting in death." And to the same effect, see 3 Greenl. Ev. §§ 145, 147. This doctrine has also been recognized in this state. See *State v. Toohey*, [2 Rice Dig. 105 (1819)]; *State v. Ferguson*, [20 S.C.L. (2 Hill) 619 (1835)]; *State v. Smith*, [33 S.C.L. (2 Strob.) 77 (1847)]. It is true that the inference of malice drawn from the use of a deadly weapon may be rebutted by testimony, but, in the absence of any such testimony, malice may be and is inferred from the use of a deadly weapon causing death.

Levelle, 34 S.C. at 127, 13 S.E. at 320 (emphasis added).

Levelle's reliance on section 680 of 2 *Bishop Criminal Law*, a criminal law treatise, is instructive but not entirely complete. It is our view that *Levelle* considered and incorporated the referenced "qualification" when it concluded that, "[i]t is true that the inference of malice drawn from the use of a deadly weapon *may be rebutted by testimony, but, in the absence of any such testimony*, malice may be and is inferred from the use of a deadly weapon causing death." *Id.* at 127, 13 S.E. at 320 (emphasis added). The recognition that some facts will not permit the inference of malice from the use of a deadly weapon lies at the heart of the qualification.

More specifically, Bishop's criminal law treatise ties the qualification to the proposition that malice is inferred from the "unlawful use of a deadly weapon." The malice inference would, therefore, have no place where the use of a deadly weapon was "lawful." As we shall see, the significant import of the qualifying term "lawful" was effectively abandoned in our subsequent decisions.

Levelle never expanded upon the "in the absence of any such testimony [rebutting malice]" qualification, perhaps because it was not necessary to the disposition of the appeal. We are persuaded, though, that this qualification relates to homicide prosecutions where the evidence shows the death may have been something less than murder—that is, mitigated, excused or justified. Our belief is supported by *Hopkins* and a comment in the section in Bishop's treatise immediately following the one cited in *Levelle*:

If there is to be a rigid rule of law on the subject, it is reasonable to hold, that, where one uses a deadly weapon *without justification*, he evinces a disregard for human life and safety amounting to "malice."

2 Joel Prentiss Bishop, Commentaries of the Criminal Law § 681 (6th ed. 1877) (emphasis added).

Beyond the support we find in *Hopkins*, our imputation of section 681 of Bishop's treatise into the meaning of *Levelle's* qualifying language is further supported by the case of *State v. Jackson*, 36 S.C. 487, 15 S.E. 559 (1892). *Jackson* affirmed a murder conviction where "there was not a shadow of testimony tending to show any excuse or provocation for firing the fatal shot which resulted in the instant death of the [victim]." *Id.* at 490, 15 S.E. at 560. The Court approvingly noted that "[t]he proof tends to show that the killing was done with a deadly weapon, and, under such circumstances, the law implies malice, and the killing would be murder, *unless there were some circumstances of justification or excuse in the case.*" *Id.* at 490, 15 S.E. at 561 (emphasis added).

We pause here, for we view the approach to the "use of a deadly weapon" implied malice charge as seemingly settled law from *Hopkins* and the *Levelle-Jackson* qualification. This Court, however, then began a slow, and at first an almost imperceptible, retreat, as *State v. Byrd* illustrates. 72 S.C. 104, 51 S.E. 542 (1905).

In *Byrd*, this Court, in reviewing the jury instruction stated that: "The use of a deadly weapon presumes malice, *but the presumption may be rebutted.* So, after all, it is left for the jury to say, from all the facts and circumstances, whether the killing was done with malice, or not." *Id.* at 110, 51 S.E. at 544 (emphasis added). Relying on *Levelle* and *Jackson*, the *Byrd* Court found no error associated with the jury charge: "This was in exact accordance with the law" *Id.* at 110, 51 S.E. at 544. *Byrd* references *Levelle* and *Jackson*, yet approved of the charge even with evidence of mitigation.

The Court never expressly confronted the contradiction of inviting a jury to infer malice from the use of a deadly weapon where evidence was presented that would reduce, mitigate, excuse or justify the homicide, which was the core feature of *Hopkins*. In fact, whatever vestige remained of the *Levelle-Jackson* qualification was unceremoniously abandoned in two cases from 1920.

The first case is *State v. Hardin*, 114 S.C. 280, 103 S.E. 557 (1920). *Hardin* was indicted for murder. He pled self-defense and was convicted of manslaughter. *Hardin* presented the same argument Belcher advances. The jury in *Hardin* was charged that "malice may be implied from the use of a deadly weapon." *Hardin* excepted as follows:

The error is that his honor had no right to instruct the jury that they might infer malice from the mere fact of killing with a weapon calculated to do serious bodily harm or to take life, for the reason that this is a charge on the facts contrary to the Constitution, in that it undertakes to intimate to and instruct the jury what facts in the case are evidence of malice.

It was also error, in that after all the evidence is out, the presumption of malice from the use of a deadly weapon fades from the case, and the jury must find malice, if at all, from the evidence, without any aid from the court as to what

weight should be attached to killing with a deadly weapon, or what inference they may draw from such.

Id. at 290, 103 S.E. at 560.

Without discussion, the *Hardin* Court rejected the challenge to the jury instruction: "The exceptions are all overruled, being without merit." *Id.* at 295, 103 S.E. at 561.

The second case from 1920 is *State v. Wilson*, 115 S.C. 248, 105 S.E. 341 (1920). Wilson claimed the killing was accidental but was convicted of murder. The jury was charged that "[m]alice may be implied from the intentional use of a deadly weapon." *Id.* at 249, 105 S.E. 341. Significantly, the trial court omitted the qualifying words "without just cause or excuse[.]" to which Wilson excepted. *Id.* at 249, 105 S.E. 341. Notwithstanding the absence of the language "without just cause or excuse[.]" *Wilson* held the "presiding judge [] delivered a full, clear, and able charge." *Id.* at 249, 105 S.E. 341.

Hardin's summary approval of the charge that malice may be presumed in any homicide from the use of a deadly weapon, coupled with *Wilson's* approval of omitting the language "without just cause or excuse[.]" marked the end of the *Levelle-Jackson* qualification.

Subsequently, in the case of *State v. Fuller*, 229 S.C. 439, 93 S.E.2d 463 (1956), an extensive malice charge was upheld that included the instruction "that implied malice is presumed from the use of a deadly weapon . . . "[4] *Id.* at 445, 93 S.E.2d at 467. This portion of the malice charge was not central to *Fuller's* appeal, for *Fuller's* appeal focused on the purported lack of malice due to his deficient mental state.

After *Fuller*, no reported decisions addressed this charge until the case of *State v. Lee*, 255 S.C. 309, 178 S.E.2d 652 (1971). In *Lee*, this Court noted that, "the use of a deadly weapon implies malice." *Id.* at 318, 178 S.E.2d at 656. To support this statement of law, *Lee* cited to *Byrd*, discussed *supra*.

On the heels of *Lee*, we come to *State v. Maxey*, 262 S.C. 504, 205 S.E.2d 841 (1974) and *State v. Alford*, 264 S.C. 26, 212 S.E.2d 252 (1975). *Maxey* and *Alford* upheld the "use of a deadly weapon" implied malice instruction where self-defense was submitted to the jury. *Maxey*, 262 S.C. at 507-08, 205 S.E.2d at 842; *Alford*, 264 S.C. at 34, 212 S.E.2d at 255. In fact, part of the charge in *Alford* was "[t]he State could just prove that the act was done with a deadly weapon and stop right there and malice would have been proven." *Alford*, 264 S.C. at 34, 212 S.E.2d at 255. The *Alford* Court found no error.

Thus, with this Court's continuing imprimatur, by the 1970s, juries were routinely charged in any murder prosecution involving a deadly weapon that "malice is presumed from the use of a deadly weapon." The critical observation is that the charge was proper even where evidence was presented that would reduce, mitigate, excuse or justify the killing.

C.

The law, of course, today speaks in terms of "permissive inferences," not "presumptions." This transition resulted from the United States Supreme Court's pronouncement that the Due Process Clause of the Fourteenth Amendment is violated when a jury charge creates

a mandatory presumption and impermissibly shifts the burden of proof to the defendant. See *Sandstrom v. Montana*, 442 U.S. 510, 524 (1979) (holding that "burden-shifting presumption[s]" or "conclusive presumption[s]" deprive a defendant of the "due process of law" and are therefore unconstitutional); *Mullaney v. Wilbur*, 421 U.S. 684, 703-04 (1975) (holding that the "Due Process Clause" forbids a state from placing the burden on the accused to prove his actions reduced the crime from "murder to manslaughter").

Following *Sandstrom* and its progeny, this Court followed suit. In *State v. Mattison*, 276 S.C. 235, 238, 277 S.E.2d 598, 600 (1981), we stated that an "appropriate instruction on implied malice would deal with the evidentiary nature of the presumption and that the implication does not require the jury to infer malice but only permits it."

Mattison, however, expressed no reluctance with the underlying premise that malice is inferred from the use of a deadly weapon. The jury in *Mattison* was charged: "[T]he law says that if one intentionally kills another with a deadly weapon, the implication of malice arises. In other words, the law implies malice from the use of a deadly weapon." *Id.* at 237, 277 S.E.2d at 599-600. As discussed more fully below, the transparent error in the use of the word "intentional" is that self-defense involves an intentional act.

Two years later, in *State v. Elmore*, 279 S.C. 417, 308 S.E.2d 781 (1983), *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 69 n.5, 406 S.E.2d 315, 328 n.5 (1991), this Court again addressed the challenged jury instruction in light of the burden shifting jurisprudence of the United States Supreme Court. The instruction used in *Elmore's* trial was held to have been a mandatory presumption, rather than a permissive inference, and therefore unconstitutional. The *Elmore* Court went on to set forth a jury charge it felt comported with the Due Process Clause.

The law says if one intentionally kills another with a deadly weapon, the implication of malice may arise. If facts[] are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive.

Id. at 421, 308 S.E.2d at 784. The Court noted that "only slight deviations from this charge will be tolerated." *Id.* at 421, 308 S.E.2d at 784. *Elmore* articulated the contemporary jury charge, until today.

D.

In examining the legal proposition in a homicide prosecution that an inference of malice may arise from the use of a deadly weapon, we are unable to harmonize the earlier writings of this Court with our modern jurisprudence.

One appellate court has described this jury charge as a "half-truth." *Glenn v. State*, 511 A.2d 1110, 1126 (Md. Ct. Spec. App. 1986). In discussing its meaning behind this observation, *Glenn* notes that malice includes the absence of justification, excuse and mitigation.[5] *Glenn*, 511 A.2d at 1122. When malice is viewed in light of these component parts, it becomes clear that inferring malice from the use of a deadly weapon is indeed only a "half-truth." The absence of justification, excuse or mitigation cannot be

inferred from the use of a deadly weapon standing alone. Other facts and evidence (or the absence of other facts and evidence) are required for the fulfillment of these component parts.

The burden shifting present in our earlier cases aside, the holding of *Hopkins* and the qualification set forth in *Levelle* and *Jackson* hew more closely to what we believe is the proper application of the charge than that expressed in *Byrd*, *Wilson*, *Hardin*, *Fuller*, *Lee*, *Maxey*, *Alford*, *Mattison* and *Elmore*.

Under our policy-making role in the common law, we hold that the "use of a deadly weapon" implied malice instruction has no place in a murder (or assault and battery with intent to kill[6]) prosecution where evidence is presented that would reduce, mitigate, excuse or justify the killing (or the alleged assault and battery with intent to kill).

The use of the term "intentional" is instructive. Say, for example, a homicide occurs by the use of a deadly weapon under circumstances warranting a self-defense instruction. The killing would be intentional, yet under our currently sanctioned charge, the jury would be permitted to find malice merely because "if one intentionally kills another with a deadly weapon, the implication of malice may arise." *Elmore*, 279 S.C. at 421, 308 S.E.2d at 784. That highlights the "half-truth" nature of the charge. [7]

E.

We do not reach our decision lightly. The State understandably urges this Court to honor what has been treated as a settled fixture in our criminal law. The able trial judge diligently prepared the charge in faithful adherence to our precedent. Moreover, the trial court charged the jury that the "killing has to be unlawful" and that "[t]here has to be a deliberate and intentional design to use or employ or handle a deadly weapon so as to endanger the life of another without just cause or excuse." Thus, while we acknowledge the State's argument, we are firmly convinced that instructing a jury that "malice may be inferred by the use of a deadly weapon" is confusing and prejudicial where evidence is presented that would reduce, mitigate, excuse or justify the homicide. A jury charge is no place for purposeful ambiguity.

F.

Errors, including erroneous jury instructions, are subject to harmless error analysis. See *Lowry v. State*, 376 S.C. 499, 510-11, 657 S.E.2d 760, 766 (2008). In many murder prosecutions, as Belcher concedes, there will be overwhelming evidence of malice apart from the use of a deadly weapon.[8] Here, however, the error in charging that malice may be inferred by the use of a deadly weapon cannot be considered harmless. Evidence of self-defense was presented, thereby highlighting the prejudice resulting from the charge. It is entirely conceivable that the only evidence of malice was Belcher's use of a handgun. We need go no further than saying we cannot conclude the error was harmless beyond a reasonable doubt.

III.

Today we return to the rationale underlying *Hopkins*, *Levelle* and *Jackson* and hold that where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or

assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon.[9] The — permissive inference charge concerning the use of a deadly weapon remains a correct statement of the law where the only issue presented to the jury is whether the defendant has committed murder (or assault and battery with intent to kill).

Because our decision represents a clear break from our modern precedent, today's ruling is effective in this case and for all cases which are pending on direct review or not yet final where the issue is preserved.[10] *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987) ("hold [ing] that a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases . . . pending on direct review or not yet final"); *Harris v. State*, 543 S.E.2d 716, 717-18 (Ga. 2001) (reversing a murder conviction and overruling precedent that had approved inference of intent to kill from use of a deadly weapon and applying the new rule "to all cases in the 'pipeline'—i.e., cases which are pending on direct review or not yet final"). Our ruling, however, will not apply to convictions challenged on post-conviction relief. See generally *Teague v. Lane*, 489 U.S. 288 (1989). We reverse and remand for a new trial.[11]

REVERSED AND REMANDED.

TOAL, C.J., WALLER, PLEICONES and BEATTY, JJ., concur.

[1] S.C. Const art. V, § 21 ("Judges shall not charge juries in respect to matters of fact, but shall declare the law.").

[2] We have selected a series of cases which represent our jurisprudence in this area.

[3] In reviewing this dated precedent, we note that the law then imposed the burden of proving various defenses (self-defense, for example) on the defendant. Under modern jurisprudence, burden shifting is not permitted. For this reason, we analyze this older precedent in light of prevailing law that forbids burden shifting.

[4] The complete portion of this charge was: "I charge you that implied malice is presumed from the use of a deadly weapon, or from the wilful, deliberate and intentional doing of an unlawful act without just cause or excuse." The language may appear to incorporate the *Levelle-Jackson* qualification, but the use of the disjunctive term "or" maintains the "use of a deadly weapon" inference as a standalone, independent statement of the law.

[5] Under South Carolina law, "[m]alice is a legal term implying wickedness and excluding a just cause or excuse. The term malice indicates a formed purpose and design to do a wrongful act under the circumstances that exclude any legal right to do it." *State v. Fennell*, 340 S.C. 266, 275 n.2, 531 S.E.2d 512, 517 n.2 (2000); see also *State v. McDaniel*, 68 S.C. 304, 312, 47 S.E. 384, 387 (1904) (same). "It is something which springs from wickedness, from depravity, from a heart devoid of social duty and fatally bent on mischief." *Arnold v. State*, 309 S.C. 157, 163, 420 S.E.2d 834, 837 (1992); see also *Singletary v. State*, 281 S.C. 444, 446, 316 S.E.2d 369, 370 (1984) (same); *State v. Kinard*, 373 S.C. 500, 504, 646 S.E.2d 168, 170 (Cl. App. 2007) (same).

*

[6] Because the crime of assault and battery with intent to kill requires malice, our holding today applies to ABWIK. *State v. Wilds*, 355 S.C. 269, 275, 584 S.E.2d 138, 141 (Ct. App. 2003).

[7] Today's decision does not stand alone. Other states that have addressed this issue have rejected the charge under similar circumstances. *E.g.*, *Farris v. Commonwealth*, 77 Ky. 362 (Ky. 1878) (noting that when "there is evidence before the jury from which they might conclude that the killing was done in necessary self-defense or in the sudden heat of passion, such an instruction may be fatally misleading"); *Glenn v. State*, 511 A.2d 1110, 1126-28 (Md. Ct. Spec. App. 1986) (reversing a conviction for "assault with intent to murder" by recognizing that the jury charge only speaks to the "intent [that] may be inferred" from the use of a deadly weapon, but that the charge is misleading because it does not address whether the "intent was unexcused or unjustified or [whether] the intent was unmitigated"); *Erwin v. State*, 29 Ohio St. 186, 191 (Ohio 1876) ("[W]here the attending circumstances [of the killing] are shown in detail, some of which tend to disprove the presence of malice or purpose to kill, it is misleading and erroneous to charge a jury that in such a case the law raises a presumption of malice and intent to kill from the isolated fact that death was caused by the use of a deadly weapon."); *State v. Jenkins*, 443 S.E.2d 244, 252 (W. Va. 1994) ("[I]t is erroneous in a first degree murder case to instruct the jury that if the defendant killed the deceased with the use of a deadly weapon, then intent, malice, willfulness, deliberation, and premeditation may be inferred from that fact, where there is evidence that the defendant's actions were based on some legal excuse, justification, or provocation."). For a discussion surrounding the history of this charge, see Bruce A. Antkowiak, *The Art of Malice*, 60 Rutgers L. Rev. 435 (2008).

[8] "In many, if not most, murder cases the [inferred malice from the use of a deadly weapon] charge will be harmless, even if couched in terms of a presumption. . . . Obviously[,] when a defendant walks into the store [and] shoots and robs the clerk, a charge that the jury may infer malice is not prejudicial to the defendant." (Brief of Appellant 9).

[9] The standard implied malice charge remains valid, as does the general permissive inference instruction: "If facts, are proved beyond a reasonable doubt, sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case, and you may give it such weight as you determine it should receive." In addition, we neither restrict the State from arguing to the jury for a finding of malice from the use of a deadly weapon, nor restrict a defendant from arguing the absence of malice or the presence of reasonable doubt in this regard. It is axiomatic that some matters appropriate for jury argument are not proper for charging. "Do jurors need the court's permission to infer something? The answer is, of course not." *State v. Wilds*, 355 S.C. 269, 275, 584 S.E.2d 138, 141 (Ct. App. 2003); Rutgers L. Rev. 435, 470 (2008).

[10] The decision today overrules in part considerable precedent of this Court and the *State v. Wilds* decision. We overrule all cases involving a homicide or a charge of assault and battery with intent to kill that (1) instructed that malice may be inferred from the use of a deadly weapon; and (2) evidence was presented that, if believed, would have reduced, mitigated, or excused the homicide or charged ABWIK. We overrule all such cases only insofar as they meet these criteria. The *State v. Wilds* decision remains the law of the State of South Carolina. *State v.*

Reese, 370 S.C. 31, 633 S.E.2d 898 (2006); *State v. Norris*, 285 S.C. 86, 328 S.E.2d 339 (1985); *State v. Griffin*, 277 S.C. 193, 285 S.E.2d 631 (1981); *State v. Mattison*, 276 S.C. 235, 277 S.E.2d 598 (1981); *State v. Arnold*, 266 S.C. 153, 221 S.E.2d 867 (1976); *State v. Alford*, 264 S.C. 26, 212 S.E.2d 252 (1975); *State v. Maxey*, 262 S.C. 504, 205 S.E.2d 841 (1974); *State v. Martin*, 216 S.C. 129, 57 S.E.2d 55 (1949); *State v. Deas*, 202 S.C. 9, 23 S.E.2d 820 (1943); *State v. Martin*, 149 S.C. 464, 147 S.E. 606 (1929); *State v. Cleland*, 148 S.C. 86, 145 S.E. 628 (1928); *State v. Strickland*, 147 S.C. 514, 145 S.E. 404 (1928); *State v. Wilson*, 115 S.C. 248, 105 S.E. 341 (1920); *State v. Hardin*, 114 S.C. 280, 103 S.E. 557 (1920); *State v. Hollis*, 108 S.C. 442, 95 S.E. 74 (1918); *State v. Jones*, 101 S.C. 111, 95 S.E. 239 (1915); *State v. Crosby*, 88 S.C. 98, 70 S.E. 440 (1911); *State v. Owens*, 79 S.C. 125, 60 S.E. 305 (1908); *State v. Byrd*, 72 S.C. 104, 51 S.E. 542 (1905); *State v. Foster*, 66 S.C. 469, 45 S.E. 1 (1903); *State v. Taylor*, 56 S.C. 360, 34 S.E. 939 (1900); *State v. Petsch*, 43 S.C. 132, 20 S.E. 993 (1895); *State v. Symmes*, 40 S.C. 383, 19 S.E. 16 (1894); *State v. McIntosh*, 40 S.C. 349, 18 S.E. 1033 (1894); *State v. Ballington*, 346 S.C. 262, 551 S.E.2d 280 (Ct. App. 2001); *State v. McLemore*, 310 S.C. 91, 425 S.E.2d 752 (Ct. App. 1992).

[11] Belcher's successful challenge to this jury charge requires the Court to reverse his convictions and remand for a new trial. We therefore decline to reach Belcher's remaining appellate issues. See *Hughes v. State*, 367 S.C. 389, 408-09, 626 S.E.2d 805, 815 (2006) (noting that appellate court need not reach remaining issues on appeal when addressed issue is dispositive).

THIRD PARTICULAR

RELEVANT TO THE THREE STATE WITNESSES HEARSAY TESTIMONY
(Kenneth Erwin; Nellie Elaine Erwin and Rita Woods)

When counsel failed to make an additional contemporaneously objection to the sufficiency of the curative charge or move for a mistrial.

REVIEW: STATE -vs- GEORGE, 476 S.E.2d 903 (S.C. Supreme Court 1996).

* * * PREJUDICE * * *

The issue was not preserved for appellate review when counsel accepted the judge's ruling and did not contemporaneously make an additional objection to the sufficiency of the curative charge.

NOTE:... this played a major role in my appeal being dismissed, because he failed to properly preserve the matter for appellate review.

CURATIVE INSTRUCTION

476 S.E.2d 903 (1996)

The STATE, Respondent,
v.
Ricky GEORGE, Appellant.

No. 24491.

Supreme Court of South Carolina.

Heard February 6, 1996.

Decided September 3, 1996.

Rehearing Denied October 4, 1996.

906 *906 Senior Assistant Appellate Defender Wanda H. Haite, of S.C. Office of Appellate Defense, of Columbia; and William Isaac Diggs, of Myrtle Beach, for Appellant.

Attorney General Charles Molony Condon, Assistant Deputy Attorney General Donald J. Zelenka, both of Columbia; and Solicitor Ralph J. Wilson, of Conway, for Respondent.

BURNETT, Justice:

The victim in this case, James S. Stanley, owned and operated a convenience store in Horry County. On the evening of August 8, 1992, Stanley was murdered while working at his store. Appellant along with Samuel Christian and David Wayne Graham were charged with murder, conspiracy to commit murder, and armed robbery. Appellant was convicted as charged and sentenced to death.^[1] We affirm in part and remand in part.

I. VOIR DIRE ISSUES**A. Statutory Excusals**

907 Prior to jury selection, three women with young children, Ms. Brown, Ms. Huggins, and Ms. Smith, were excused from jury service pursuant to the "childcare" exemption as provided in S.C. Code Ann. § 14-7-860 *907 (Supp. 1995).^[2] Brown requested excusal stating that her husband worked at night and that she was the primary caretaker for three children (one was three years of age). Huggins requested excusal because she had the sole duty to care for her five-year-old child. Smith requested excusal because she was the caretaker for her two-year-old daughter. Appellant contends that these statutory excusals violated his right to a venire pool that reflected a fair cross-section of the community. We disagree.

In *Duren v. Missouri*,^[3] the United States Supreme Court determined that a Missouri statute providing an automatic exemption from jury service for any woman requesting not to serve violated the Sixth Amendment fair cross-section requirement. Nevertheless, the Court also recognized that "a State may have an important interest in assuring that those members of the family responsible for the care of children are available to do so. An exemption appropriately tailored to this interest would, we think, survive a fair-cross-section challenge." 439 U.S. at 370, 99 S.Ct. at 671, 58 L.Ed.2d at 590.

Section 14-7-860 provides the presiding judge with the authority to excuse women with "childcare" responsibilities when (1) the woman desires to be excused from jury duty; (2) she has a child under the age of seven; (3) she has legal custody of the child and the duty to care for the child; and (4) she presents the court with facts warranting her excusal. Because § 14-7-860 is carefully tailored to the important interest of caring for children and does not automatically exclude any woman requesting not to serve, it survives a cross-section challenge. Moreover, in this matter, the facts established that the excused women qualified for the "childcare" exemption.

Next, Appellant argues that the judge erred in excusing Ms. Alston for "good cause" under § 14-7-860. Alston requested excusal stating that she cared for her mother of seventy years who had cancer, who required frequent medicating, and whose mind was bad. Because Appellant failed to object to her excusal, this argument is not preserved for appellate review. *State v. Torrence*, 305 S.C. 45, 408 S.E.2d 315 (1991) (a contemporaneous objection on proper grounds is required to preserve an error for appellate review); *State v. Williams*, 303 S.C. 410, 401 S.E.2d 168 (1991) (issues not raised to and ruled on by the trial court are not preserved for appeal).

Mr. J. Martin, a nineteen-year-old high school student, requested postponement of jury service to a date that did not conflict with school pursuant to S.C. Code Ann. § 14-7-845 (Supp. 1995). Appellant contends that the granting of this request for excusal was improper. We have previously held that the trial judge has the discretion to exclude prospective jurors for educational conflicts. *State v. South*, 285 S.C. 529, 331 S.E.2d 775, cert. denied, 474 U.S. 888, 106 S.Ct. 209, 88 L.Ed.2d 178 (1985). We therefore find no error in Martin's excusal.

B. Excusals for Death Penalty Views

Appellant asserts that neither Ms. Whitaker nor Ms. G. Martin were emphatically opposed to recommending a sentence of death, and it was error for the trial court to disqualify them. We disagree.

908 A venireperson must be excused only if her opinions would prevent or substantially impair the performance of her duties as a juror in accordance with

her oath and instructions. Wainwright v. Witt, 469 U.S. 412, 105 S.Ct. 844, 83 L.Ed.2d 841 (1985); State v. Green, 301 S.C. 347, 392 S.E.2d 157, cert. denied, 498 U.S. 881, 111 S.Ct. 229, 112 L.Ed.2d 183 (1990). The determination of whether a juror is qualified to serve on a death penalty case is within the "908 sole discretion of the trial judge and is not reviewable on appeal unless wholly unsupported by the evidence. State v. Davis, 309 S.C. 326, 422 S.E.2d 133 (1992), cert. denied, 508 U.S. 915, 113 S.Ct. 2355, 124 L.Ed.2d 263 (1993). When reviewing the trial court's qualification or disqualification of prospective jurors, the responses of the challenged jurors must be examined in light of the entire voir dire. State v. Green, *supra*.

Although Whitaker stated that she would have no problem determining that someone was guilty of murder, she repeatedly asserted that she did not think she could ever vote for or sign her name to a verdict sentencing someone to death. She also asserted that she could follow the law if it did not require imposition of the death penalty. As to Martin's qualification, several times during voir dire she declared that she did not think she could sign a form recommending the death penalty.

Our review of the record confirms that it would have been extremely difficult for Whitaker or Martin to impose a capital sentence. Accordingly, because the evidence supports their excusal, we find no error in so doing.

In addition, Appellant argued to the trial court, as he does on appeal, that the Solicitor unconstitutionally struck Ms. Adamson, a black female, based upon his personal opinion that she could not impose a capital sentence. Appellant maintains that the Solicitor did not present a race-neutral explanation for the use of his peremptory strike and, therefore, the burden of proof under Batson v. Kentucky⁴³ was not satisfied. We disagree.

A solicitor may exercise his peremptory challenges for any non-racially discriminatory reason. Batson, *supra*. We have previously held where, as here, a solicitor perceives that a person will have a problem imposing the death penalty, he may exercise a peremptory challenge against the juror. State v. Green, *supra*.

At first blush, Adamson's responses qualified her under Wainwright v. Witt, *supra*. Nevertheless, the Solicitor was a friend of Adamson, and based upon his personal knowledge of her beliefs and background, he concluded that she would be unable to fairly consider the death penalty. During a Batson hearing the Solicitor explained, "This has absolutely nothing to do with the race of this juror. I think the world of this juror. She is one of my friends. But she will not give the death penalty. I have no doubt in my mind about that." The trial judge determined that the Solicitor was entitled to strike Adamson for the reasons stated.

After careful review of the Solicitor's explanation for striking Adamson, we conclude that it was race-neutral and constitutional.

C. Qualification of Juror Watkins

Appellant contends the trial judge erred in qualifying Mr. Watkins after he stated that he could not sign his name to a life sentence form. We disagree.

Initially, Watkins stated that if an aggravating circumstance was found, he could not sign his name to a life sentence verdict. However, when the judge further inquired as to his ability to serve, he answered as follows:

Q: Now, I need to know this: Are you willing to listen to those instructions and to consider evidence which would warrant a life imprisonment, not necessarily do it, but are you willing to consider it, or are you telling me that once somebody is convicted of murder, you would always vote for the imposition of death? I need to know that.

909 A: No, I wouldn't because of that. I think I could listen to all the reasons and everything before I put down the punishment.

Q: You're telling me that you could put the punishment down for death, but equally, if you felt it warranted, even though convicted of murder, you could give him life imprisonment?

A: Yes. Yes, I do.

In addition, later during voir dire Watkins confirmed that he could give a life sentence even if an aggravating circumstance was unanimously found.

Although Watkins' responses are somewhat inconsistent, we conclude that he had the ability to perform the duties required of a juror and render a verdict of life or death in accordance with his oath and instructions. Wainwright v. Witt, *supra*; State v. Green, *supra*.

D. Qualification of Juror Walker

Appellant maintains that Ms. Walker, who was married to an Horry County police officer, should have been disqualified for cause. We disagree.

According to S.C. Code Ann. § 14-7-820 (Supp. 1995), county officers are ineligible to be jurors. However, Walker was not a county employee, and her marriage to a police officer did not automatically disqualify her. State v. Dingle, 273 S.C. 278, 306 S.E.2d 223 (1983) (a juror is not automatically disqualified because of her relationship by blood or marriage to a police officer). Moreover, because Walker did not live in South Carolina nor was her husband employed as a police officer in Horry County at the time this crime was committed, she had no prior information concerning this matter. Accordingly, we find no error in her qualification.

E. Qualification of Juror Crislip

Mr. Crislip indicated that before he could impose the death penalty, the homicide would have to be "very brutal" or "unjustifiable". If not, he stated that a

sentence of life imprisonment would be appropriate. Appellant argues that Crisp misunderstood the law by believing that a defendant was required to present evidence justifying the murder before a life sentence could be imposed. Therefore, Appellant maintains that Crisp was erroneously qualified because he could not follow the judge's instructions within the meaning of *Wainwright v. Witt*, *supra*.

We have carefully reviewed Crisp's responses and conclude that he clarified his initial response by repeatedly indicating he understood that Appellant was not required to nor did he have a right to introduce mitigating evidence to establish justification for the murder. In addition, Crisp repeatedly stated that when determining the appropriate sentence, he would consider all of the options and would vote based upon the characteristics of the defendant and the circumstances of the crime. Hence, after receiving a thorough explanation of the law, Crisp confirmed that he understood it and that he would follow it. Accordingly, we find no error in qualifying Crisp.

II. MOTION TO QUASH THE INDICTMENT

Appellant contends that the indictment in this case was issued by a grand jury from which black persons were excluded. In fact, he alleges that no black jurors had served on the grand jury in Horry County for four years. He therefore argues that because blacks were substantially underrepresented on the grand jury, an equal protection violation occurred, and the judge erred in denying his motion to quash the indictment.

Grand juries in South Carolina are selected as follows: Each county receives a list of individuals who reside within that county, who are over eighteen years of age, who hold a South Carolina driver's license or identification card, and who are United States citizens. This list is merged with the county list of registered voters to establish the roll of eligible jurors for that county. S.C. Code Ann. § 14-7-130 (Supp. 1995). The grand jury venire is then selected from these eligible jurors pursuant to S.C. Code Ann. §§ 14-7-1510 to -1570 (Supp. 1995). The names of eligible jurors are placed in a jury box from which a pool of fifty potential grand jurors are randomly drawn.⁹¹⁰ On the first day of the term of court of general sessions for the calendar year, the presiding judge qualifies these potential grand jurors. The names of the qualified jurors are then placed in a container from which twelve are randomly chosen to serve as grand jurors. These twelve jurors serve together with six grand jurors held over from the previous year.

The systematic exclusion of blacks in the selection of grand jurors violates the Fourteenth Amendment Equal Protection Clause. *Vasquez v. Hillery*, 474 U.S. 264, 106 S.Ct. 617, 88 L.Ed.2d 589 (1985). In *Castaneda v. Partida*,⁹¹¹ the United States Supreme Court outlined the following test to be utilized when a defendant makes a grand jury discrimination claim:

[I]n order to show that an equal protection violation has occurred in the context of grand jury selection, the defendant must show that the procedure employed resulted in substantial underrepresentation of his race or of the identifiable group to which he belongs. The first step is to establish that the group is one that is a recognizable, distinct class, singled out for different treatment under the laws, as written or as applied. ... Next, the degree of underrepresentation must be proved, by comparing the proportion of the group in the total population to the proportion called to serve as grand jurors, over a significant period of time. ... Finally, ... a selection procedure that is susceptible of abuse or is not racially neutral supports the presumption of discrimination raised by the statistical showing. ... Once the defendant has shown substantial underrepresentation of his group, he has made out a prima facie case of discriminatory purpose, and the burden then shifts to the State to rebut that case.

430 U.S. 482, 494-95, 97 S.Ct. 1272, 1280, 51 L.Ed.2d 498, 510-11 (1977).

Although the record contains no statistical evidence to support Appellant's claim that blacks had been systematically or deliberately excluded, it appears that blacks were underrepresented on the grand jury in this matter. The record does establish that the trial court denied Appellant's request for a separate hearing to present data pertaining to the disqualification of individual grand jurors in Horry County during the four-year time period. We therefore conclude that Appellant was denied the opportunity as outlined in *Castaneda v. Partida*, *supra*, to provide statistical comparing the proportion of blacks in Horry County to the proportion called to serve as grand jurors over the four-year time period. Without this data, a determination as to whether a presumption of discrimination occurred could not be made.

We are unable from the record before us to determine whether a prima facie claim of discriminatory purpose existed which would have shifted the burden to the State to rebut Appellant's claim that the procedure employed in selecting grand jurors in Horry County resulted in an equal protection violation. Accordingly, we remand this issue to the circuit court for a factual inquiry as to Appellant's grand jury discrimination claim. Upon remand, the circuit court shall conduct a full hearing following the standard enunciated in *Castaneda v. Partida*, *supra*, and issue its order pursuant to Rule 52, SCRPC.

III. GUILT PHASE ISSUES

Appellant first contends that police officers took a statement from him on August 10, 1992, in violation of his Sixth Amendment right to counsel and, therefore, the judge erred in admitting it during trial. Appellant next asserts that the judge erred in determining "911 that probable cause existed to arrest him without a warrant and, therefore, his August 10th statement and the fruits therefrom (a gun, Stanley's wallet, and a red bandanna) should not have been admitted at trial. Lastly, Appellant argues that the State brought his character into evidence prematurely by suggesting that he was involved in prior acts involving drug dealing.

A. Admission of the August 10th Statement

The Sixth Amendment right to counsel attaches when adversarial judicial proceedings have been initiated and at all critical stages. Compare *Brewer v. Williams*, 430 U.S. 387, 97 S.Ct. 1232, 51 L.Ed.2d 424 (1977) with *Michigan v. Jackson*, 475 U.S. 825, 106 S.Ct. 1404, 89 L.Ed.2d 831 (1986). Hence, the right to counsel in judicial proceedings is distinguished from the First Amendment *Miranda-Edwards* right to speak with counsel upon request in a

custodial setting. *McNeil v. Wisconsin*, 501 U.S. 171, 111 S.Ct. 2204, 115 L.Ed.2d 158 (1991); *State v. Wilder*, 306 S.C. 535, 413 S.E.2d 323 (1991). Accordingly, the Sixth Amendment right does not attach simply because the defendant has been arrested or because the investigation has focused on him. *Hoffa v. United States*, 385 U.S. 293, 87 S.Ct. 408, 17 L.Ed.2d 374 (1966). Further, the U.S. Supreme Court has indicated that the Sixth Amendment right attaches only "post-indictment", at least in the questioning/statement area. See *Michigan v. Harvey*, 494 U.S. 344, 110 S.Ct. 1176, 108 L.Ed.2d 293 (1990).

Appellant was arrested on August 10, 1992. After being read his *Miranda* rights from a form, he signed it indicating that he understood his rights and that he intended to waive each of them, and specifically, his right to have counsel present. Appellant then confessed to shooting Stanley, and further indicated to the police that he would help them find evidence relevant to the homicide. Because Appellant had not been indicted on August 10th when the statement was taken, he was in a custodial setting, judicial proceedings had not been initiated and, therefore, his Sixth Amendment right to counsel had not attached.

As to his Fifth Amendment right to have counsel assist in his interrogation, the record clearly indicates that Appellant waived this right by not requesting counsel and by signing the *Miranda* form. Accordingly, the trial court properly admitted the statement made on August 10th, as well as any fruits obtained from it.

B. Probable Cause

Probable cause for a warrantless arrest exists when the circumstances within the arresting officer's knowledge are sufficient to lead a reasonable person to believe that a crime has been committed by the person being arrested. *State v. Moultrie*, 316 S.C. 547, 451 S.E.2d 34 (Cl.App.1994). Whether probable cause exists depends upon the totality of the circumstances surrounding the information at the officers' disposal. *Id.* Where the officers have probable cause to arrest, a confession obtained after warrantless entry into the suspect's home is not inadmissible under the exclusionary rule. *New York v. Harris*, 495 U.S. 14, 110 S.Ct. 1640, 109 L.Ed.2d 13 (1990).

In this case, the accomplices were in custody and revealed to police officers that the triggerman, Appellant, was free. The arresting officer explained to the judge that he would not have been able to secure a magistrate's signature on an arrest warrant until the following day. Because Appellant was a non-resident in the area and had no family ties to the community, the police considered him to be a flight risk.

When considering these circumstances, along with the fact that the underlying crime was murder and that Appellant may have been armed, we conclude that probable cause for a warrantless arrest existed. Accordingly, Appellant's August 10th statement as well as any fruits therefrom were admissible.

C. Admission of Character Evidence

- 912 If the trial judge sustains a timely objection to testimony and gives the jury a "912 curative instruction to disregard the testimony, the error is deemed to be cured. *State v. Craig*, 287 S.C. 282, 227 S.E.2d 306 (1976); *State v. Morris*, 307 S.C. 480, 415 S.E.2d 819 (Cl.App.1991). No issue is preserved for appellate review if the objecting party accepts the judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge or move for a mistrial. *Id.*

Appellant called Mr. Broothers to present evidence that he was acting under the duress and dominance of Christian and Graham. Broothers testified that prior to Stanley's murder, he and Appellant were walking to a grocery store when Graham drove up beside them. Graham jumped from the vehicle, and fired one gunshot in the air and one by Appellant's foot. Graham then threatened Appellant that if he didn't pay the debt money by the following week, Graham would f--- him up. During cross-examination of Broothers, the State asked him if Appellant was involved in the drug business. Counsel for Appellant objected and moved for a mistrial asserting that the State brought Appellant's character into evidence prematurely by suggesting that he was involved in a prior bad act. The judge denied the motion for a mistrial and gave the following curative instruction.

THE COURT: ... you have heard some vague reference to some possible drug dealing. I tell you now as strongly as I can, I want you to dismiss all of that testimony from your minds. It has no bearing whatsoever on the guilt or innocence of this defendant who's charged with murder, armed robbery, and conspiracy to commit murder. You must disregard that testimony in its direct and cross-examination stage. It's got nothing to do with it. You will not permit that statement from this witness even to enter into your deliberations as to the innocence of [sic] guilt of this defendant upon the three charges for which he stands indicted.

Appellant did not contemporaneously object to the sufficiency of the curative charge or move for a mistrial. Therefore, this issue is not preserved. Moreover, Appellant's possible drug dealing was merely suggested and no testimony was presented concerning such behavior. We conclude that the judge's instruction to disregard statements suggesting Appellant's involvement with drugs sufficiently cured any alleged error.

IV. PENALTY PHASE ISSUES

A. Admission of the August 13th Statement

After Appellant's arrest, police officers took a statement from him on August 13, 1992, which was received into evidence as character evidence during the penalty phase. On appeal, Appellant contends that this statement was taken in violation of his Sixth Amendment right to counsel and, therefore, it was error to admit it. We disagree.

Counsel was appointed to represent Appellant in the Stanley murder matter on August 12, 1992. On August 13th after Appellant was read his *Miranda*

rights and properly executed the acknowledgement and waiver of rights forms, police officers interrogated him concerning an unrelated crime in Clarendon County.¹²¹ A *Jackson v. Denno*¹²² hearing was held during the penalty phase of trial, after which the judge concluded that Appellant's August 13th statement was admissible because (1) it was given freely and voluntarily in compliance with *Miranda*, (2) the police officers had no knowledge that counsel had been appointed for Appellant in the Stanley matter, and (3) the August 13th interrogation concerned an incident unrelated to Stanley's murder.

913 Appellant maintains that because counsel was appointed for him on August 12th for the Stanley matter, the judge erred in admitting his uncounseled August 13th statement. The circumstances surrounding the admission of '913 the August 13th statement are analogous to the circumstances surrounding the admission of the August 10th statement as previously discussed. On August 13th, Appellant had not been indicted, he was in a custodial setting, and no judicial proceedings had been initiated against him. Therefore, his Sixth Amendment right to counsel had not attached. Moreover, the Sixth Amendment right to counsel is offense-specific. Accordingly, the mere fact that counsel was appointed in the Stanley matter, did not invoke the Sixth Amendment relating to a different matter. See *McNeil v. Wisconsin*, *supra*; *State v. Wilder*, *supra*. Thus, even if Appellant had invoked his Sixth Amendment right in the Stanley matter, it would not have been invoked for the Clarendon County incident.

As to Appellant's Fifth Amendment right to counsel, the record establishes that Appellant waived this right on August 13th by not requesting counsel and by signing the *Miranda* form. Accordingly, we find no error in admitting Appellant's August 13th statement as character evidence during the sentencing phase of trial.

B. Evidence of Appellant's Involvement in a Prior Offense

During the penalty phase, Appellant contended that the evidence concerning his involvement in a separate armed robbery in Clarendon County should be reviewed under a clear and convincing test. The judge rejected this contention after concluding that the evidence in question was being presented as character evidence rather than as evidence of a statutory aggravating circumstance.

In *State v. Middleton*,¹²³ we held that the jury is *not* required to find clear and convincing proof of other crimes when such are introduced to show character. Moreover, the admission of testimony that a defendant has attempted a similar crime as that for which he is on trial is proper because such testimony indicates a defendant's individual characteristics and predisposition to commit similar crimes. *State v. Green*, *supra*; *State v. Stewart*, 283 S.C. 104, 320 S.E.2d 447 (1984). Nevertheless, because these crimes may not be used to prove statutory aggravating circumstances, the judge must properly limit the jury's consideration of these offenses to evidence of the appellant's characteristics as they may bear logical relevance to the crime. *Id.*

At trial, counsel for Appellant agreed with the judge when he ruled that the type of character evidence in question was clearly admissible under proper instruction from the court. The judge instructed the jury as follows:

... The State has presented to you for your information facts concerning the defendant's alleged prior and subsequent crimes. You must remember that previous or earlier convictions, or subsequent crimes, or alleged crimes are not and may not be used as proof of statutory aggravating circumstances. They cannot be used for that. The previous or subsequent allegations of crimes may only be considered by you in reference to the character of the defendant and for no other purpose. The defendant is on trial for his life and it is important that you have for your consideration all pertinent information about him. This evidence may be considered by you and given whatever weight, if any, that you feel it is entitled to.

I emphasize again these alleged offenses may not be used by you as evidence of the aggravating circumstance which the State relies on. You may, if you choose, consider this as evidence of the defendant's characteristics as they bear logical reference to the crime for which he is being charged.

914 We conclude that this instruction sufficiently informed the jury that it was not to use the evidence concerning Appellant's involvement in a separate armed robbery to establish guilt of a statutory aggravating circumstance. Consequently, Appellant has '914 failed to establish that the judge erred in not applying the clear and convincing test to this character evidence before admitting it.

C. Capital Punishment As a Deterrent

Appellant contends that information concerning the effectiveness and propriety of capital punishment as a deterrent to crime was admissible as mitigating evidence. He argues that the judge erred in not allowing Dr. Pierson to testify as an expert witness concerning the deterrent effect of capital punishment. We disagree.

The propriety of capital punishment is a matter for the legislature, not the jury. *State v. Gilbert*, 277 S.C. 63, 283 S.E.2d 179 (1981), cert. denied, 456 U.S. 984, 102 S.Ct. 2258, 72 L.Ed.2d 863 (1982). Capital punishment has been legislatively approved and after being examined by this Court, it has been found to be constitutional. *Id.* Therefore, evidence attempting to establish the effectiveness and propriety of capital punishment as an instrument of deterrence is irrelevant and should not be admitted. *State v. Plath*, 281 S.C. 1, 313 S.E.2d 619 (1984), cert. denied, 467 U.S. 1265, 104 S.Ct. 3560, 82 L.Ed.2d 882 (1994); *State v. Woomer*, 278 S.C. 488, 299 S.E.2d 317 (1982), cert. denied, 463 U.S. 1228, 103 S.Ct. 3572, 77 L.Ed.2d 1413 (1983). However, counsel for both sides may argue their respective opinions concerning the deterrent effect of capital punishment, but cannot introduce specific data to corroborate their views. *State v. Trueblood*, 301 S.C. 546, 393 S.E.2d 168 (1990), cert. denied, 498 U.S. 1074, 111 S.Ct. 800, 112 L.Ed.2d 861 (1991); *State v. Jones*, 298 S.C. 118, 378 S.E.2d 594 (1989), cert. denied, 494 U.S. 1060, 110 S.Ct. 1534, 108 L.Ed.2d 773 (1990). Moreover, the sole function of the jury during the sentencing phase of trial is to select a penalty based upon the circumstances of the crime and the characteristics of the individual defendant. *State v. Plath*, *supra*.

Mitigating circumstances are details specific to the character of the defendant on trial and/or the circumstances of the crime he committed which are considered in order to reduce the degree of his moral culpability or guilt. Because the general effect of capital punishment as a deterrent to crimes does not qualify as a mitigating circumstance, the judge correctly relied upon precedent as cited above when ruling that Dr. Pierson's testimony was inadmissible.

D. The Law of Duress

Appellant asserts that the trial judge erred in denying his request for an instruction on the law of duress as a defense to the armed robbery aggravating circumstance. However, Appellant made this request after he was found guilty and admitted to killing Stanley by shooting him. We therefore conclude that an instruction on duress as a defense after Appellant's admission would have been inappropriate.

Nevertheless, a defendant's confession containing evidence that he may have acted under the domination of his co-defendant is admissible to prove a "duress or domination" mitigating circumstance. State v. Howard, 295 S.C. 462, 369 S.E.2d 132 (1988), cert. denied, 490 U.S. 1113, 109 S.Ct. 3174, 104 L.Ed.2d 1038 (1989). Appellant informed the jury that accomplice Graham had threatened his life if he did not kill Stanley. Thus, he contends that he was acting under duress while committing the crimes. The judge instructed the jury to consider as a mitigating circumstance "that the defendant acted under duress or under the domination of another person." As a result, the jury was aware that it could consider duress as a mitigating circumstance.

E. Solicitor's Comments

- 915 Appellant relies upon the holding in State v. Johnson^[10] and maintains that his rights under the Fifth, Eighth, and Fourteenth '915 Amendments to the United States Constitution were violated when the trial judge allowed the Solicitor to make comments during the sentencing phase concerning his lack of remorse.

Because Appellant failed to object when the challenged comments were made, this issue is not preserved for appellate review. State v. Torrence, supra; State v. Williams, supra.

V. CONCLUSION

We have conducted a proportionality review pursuant to S.C.Code Ann. § 16-3-25 (1985). The sentence was not the result of passion, prejudice, or any other arbitrary factor; the evidence supports the finding of the aggravating circumstance; and the sentence is not disproportionate to that imposed in similar cases. See State v. Nance, S.C., 466 S.E.2d 349 (filed January 8, 1996) (Davis Adv.Sh. No. 1 at 5); State v. Young, 319 S.C. 33, 459 S.E.2d 84 (1995), cert. denied, U.S., 116 S.Ct. 718, 133 L.Ed.2d 671 (1996); State v. Elkins, 312 S.C. 541, 436 S.E.2d 178 (1993), cert. denied, U.S., 114 S.Ct. 1634, 128 L.Ed.2d 357 (1994).

For the foregoing reasons, we remand Appellant's grand jury discrimination issue to the circuit court for a factual inquiry pursuant to the standard enunciated in Castaneda v. Partida, supra. In all other respects the order appealed from is affirmed.

AFFIRMED IN PART; REMANDED IN PART.

FINNEY, C.J., and TOAL, MOORE and WALLER, JJ., concur.

[1] After pleading guilty, Graham received a life sentence (murder), thirty years consecutive imprisonment (armed robbery), and ten years concurrent imprisonment (conspiracy); and Christian received a life sentence (murder), fifteen years consecutive imprisonment (armed robbery), and ten years concurrent imprisonment (conspiracy).

[2] Because the issue is not presented in this case, we do not address whether the "childcare" exemption violates Equal Protection by excluding from its ambit men who, like women entitled to the exemption, care for young children.

[3] 439 U.S. 357, 99 S.Ct. 664, 58 L.Ed.2d 579 (1979).

[4] 476 U.S. 79, 106 S.Ct. 1712, 80 L.Ed.2d 89 (1986). In Purkett v. Elem, U.S., 115 S.Ct. 1769, 131 L.Ed.2d 834 (1995), the United States Supreme Court held that the proponent of the peremptory challenge need not present reasonably specific, legitimate explanations for the strike, but need only present a racially neutral explanation. In State v. Adams, S.C., 470 S.E.2d 388 (1996) (Davis Adv.Sh. No. 11 at 18), this Court adopted the standard delineated in Purkett. However, our decision in Adams does not affect the disposition of the issues in this matter.

[5] Prior to July 1, 1992, the statute provided for thirty rather than fifty potential grand jurors to be drawn.

[6] 430 U.S. 482, 97 S.Ct. 1272, 51 L.Ed.2d 486 (1977).

[7] On August 9, 1992, Appellant allegedly was involved in robbing and killing a store clerk at an Exxon gas station in Manning, South Carolina.

[8] 378 U.S. 368, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964).

[9] 295 S.C. 318, 368 S.E.2d 457 (1988).

[10] 293 S.C. 321, 360 S.E.2d 317 (1987), rev'd on other grounds in State v. Johnson, 306 S.C. 119, 410 S.E.2d 547 (1991).

FOURTH PARTICULAR

When counsel failed to request an alibi instruction, because applicant's sole theory of defense was actual innocent with an alibi.

* * * PREJUDICE * * *

Prejudice was established because the error was not "harmless [beyond a reasonable doubt]" when defense witness testified applicant was at his home at the time of the crime, and applicant's claim of actual innocence.

REVIEW: Testimony of BILLY RALPH STANDSELL, Tr. 551, lines 12-19.
- - AND - - Counsel's closing argument, Tr. page 653, line 25 thru page 654, line 4.

ALSO REVIEW: BRENDA DUVALL'S statement given in 1999, to Investigator Garland Major, at which time was the lead investigator of the crime. Referenced to in Tr. 376, lines 23-25.

- - - - -

Failed to: Request Alibi Instruction

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BILLY RALPH STANSELL - DIRECT BY MR. GAMBLE

1 A. Yes, sir. They had said Paul had been murdered.

2 That's all I recall from what was said.

3 Q. Before that phone call did you have an occasion to
4 see Brenda and Garvin Duvall?

5 A. Yes. I do a lot of mission work overseas and I
6 take --

7 Q. What kind of mission work?

8 A. A lot of mission work.

9 Q. What kind of mission?

10 A. Pardon?

11 Q. What mission?

12 A. Volunteer mission, building chapels in foreign
13 countries. And I always come home early and spend a little
14 time with my family. It was about 2 o'clock when I came in
15 and we was on the front porch, all of us, my wife, Peggy,
16 Brenda and Garvin Duvall. And they left about somewhere
17 around 4:30, and they are the ones that called back and told
18 us what happened. They was on the front porch supposedly when
19 this happened.

20 Q. Let me clear one more thing. I know your last name
21 is Stansell. Are you any relation to J. W., the Reverend
22 J. W. Stansell, Junior?

23 A. Definitely not. Thank the Lord.

24 Q. Thank you, sir. And what church is it that you go
25 on these mission trips with?

Alibi

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1 told you what he saw. A man about 6 feet tall, weighed less
2 than 200 pounds leaving the scene, rapidly.

3 We learned also that Ken Blakely, who was with
4 C. I. D., went out and he found a 380 shell. A 380 is an
5 automatic weapon, generally speaking. And in order for the
6 shell to be on the ground it would have to come from an
7 automatic weapon.

8 Now, those of you who aren't familiar with an
9 automatic weapon it expels the shell out to the side whereas a
10 revolver keeps the shell inside the revolver part. You would
11 only have a shell falling onto the ground by an automatic
12 weapon. Okay. We know that this man was shot with a 38
13 because the doctor dug it out of him.

14 The next reliable witness or two, the Joshes. They
15 are not really reliable because one was in a hurry to get to
16 work and once he got to work they were loading a Jeep. One
17 says a person he saw had on glasses, one said the person he
18 saw did not have on glasses.

19 One said it was a two to three day growth of beard
20 on the man, the other said that he just didn't notice, and
21 that the man had on long pants, and somebody said there was
22 some kind of shorts involved. I don't know. They didn't
23 identify anybody that I'm concerned with in this trial, so I
24 didn't look to them.

25 A reliable witness, in my opinion, is Ralph

Alibi

1 Stansell, a hardworking construction man that knows he was
2 sitting on his front porch on the 30th day of July -- June,
3 rather, talking with his wife, his daughter and his son-in-law
4 from 2:00, or thereabout, until 4:00 or 4:30.

5 What caused your attention to this, Mr. Stansell?

6 By the way, no relation to the archbishop. He made that
7 perfectly clear. I remember it because I was going to Brazil
8 on a missionary trip to build a chapel and I got together, got
9 off early and I got with my family to sit and be with them for
10 a while before I left to go to Brazil. That's reasonable.
11 That's believable. That's reliable.

12 Now, let's go to the party where this started on the
13 27th day of June 1999. On that day that Ku Klux Klanning,
14 some kind of Catholic, Anabaptist Evangelist, and whatever
15 else it takes to get recognition of some kind, says he left
16 this party and went with Garvin Duvall and Garvin told him of
17 the plans to go off this guy for 2,000 bucks.

18 In the first place, it doesn't make sense. If I'm
19 going to pay somebody \$2,000 to off somebody I ain't going
20 with them. I don't want to be around them. I'm going to be
21 somewhere else, and I'm going to make sure that there's other
22 people there that know me so they can say yeah, he was there.
23 He wasn't over there at the killing grounds. He was over here
24 at the airport watching the air show. We saw him there.

25 Anyway, Debra Stephens, Kim Hendrix, Sam Hendrix are

1 powder that was sent down? I don't have it. That's why I'm
2 asking.

3 A. I saw it yesterday. It's at the State's table.

4 Q. But it wasn't anything?

5 A. No. They didn't specify what it was. It just said
6 no controlled substance, no drugs. We just don't know what it
7 is.

8 Q. What was it in?

9 A. I'm not real sure, sir.

10 Q. Well, the burned out cushion looked like a bucket
11 was on top of it.

12 A. I did not go to the car. I was interviewing people,
13 the firemen and people calling 911. I didn't walk to the car.
14 So I don't know what it was in.

15 Q. Who got it out of the car?

16 A. I don't know.

17 Q. Bill Graham? You don't know?

18 A. It would either be Pelham Medlock, the investigator
19 for arson, or Ken Blakely, who did the forensics collection
20 for us.

21 Q. But Ken said he didn't.

22 A. I don't know.

23 Q. All right. Did you take a statement from Brenda
24 Duvall in 1999, in July, roughly the 17th of 1999?

25 A. I believe I did, yes, sir.

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STATE OF SOUTH CAROLINA 16 SEP -6) AM 9:28
COUNTY OF ANDERSON COMMON PLEAS AND
GENERAL SESSIONS FOR THE TENTH JUDICIAL CIRCUIT

Garvin Duvall,
S.C.D.C. No. 334728,

Applicant,

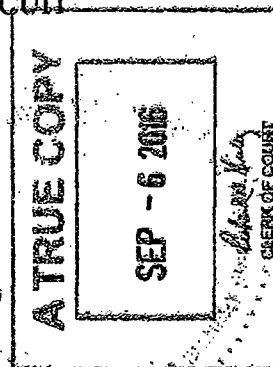
v.

State of South Carolina,

Respondent.

C.A. No. 2013-CP-04-2174

ORDER OF DISMISSAL



This matter comes before the Court by way of an application for post-conviction relief (PCR) filed September 26, 2013. Respondent made its return, and an evidentiary hearing was held on June 8, 2016, at the Anderson County Courthouse. Applicant was present and represented by Hugh W. Welborn, Esquire. Senior Assistant Deputy Attorney General Johanna C. Valenzuela represented Respondent.

Applicant and his trial counsel, Robert Gamble, Esquire, and Matthew Perkins, Esquire, testified at the hearing. The Court had before it Applicant's trial transcript, the Anderson County Clerk of Court records, Applicant's appellate records, the South Carolina Department of Corrections records, the PCR application, and the Return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. In April 2007, the Anderson County Grand Jury indicted Applicant for Murder and Possession of a Weapon during the

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Commission of a Violent Crime (2007-GS-04-1218) and Criminal Conspiracy (2007-GS-04-1219). Robert Gamble and Matthew Perkins, Esquires, represented Applicant. On May 15, 2009, Applicant proceeded to trial before the Honorable J. Cordell Maddox, Jr., and a jury. The jury found Applicant guilty as indicted. Judge Maddox sentenced Applicant to consecutive sentences of thirty years for Murder and five year sentences for Criminal Conspiracy and Possession of a Weapon during the Commission of a Violent Crime.

Applicant filed a timely notice of appeal. Robert M. Dudek, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction on February 16, 2012. State v. Duvall, Op. No. 2012-UP-132 (S.C. Ct. App. filed February 29, 2012). Petition for a Writ of Certiorari was denied on September 5, 2013.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the case law presented at the hearing, to review the record in its entirety, to hear the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Brasier v. State, 351 S.C. 383, 389, 570 S.E.2d 172, 174 (2002) (citing SCRPC 71.1(e)). Where the application alleges ineffective assistance of counsel as a

RSS

ground for relief, 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. 688 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, Counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; see Strickland v. Washington, 466 U.S. 688, 688, 692, 104 S. Ct. 2052, 2065, 2067 (1984) ("[T]he defendant must show that counsel's representation fell below an objective standard of reasonableness [and] . . . any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance under the Constitution."); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006) ("PCR applicant must prove: (1) that counsel failed to render reasonably effective assistance under prevailing professional norms; and (2) that the deficient performance prejudiced the applicant's case.").

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And "where counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Watson v. State, 370 S.C. 68, 72, 634 S.E.2d 642, 644 (2006 (citing Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992))). "Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting Strickland, 466 U.S. at 690, 104 S.Ct. 2052). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Id. (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). "Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992) (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

In his application, Applicant alleged that his trial counsel were ineffective for failing to move to sever his trial from his co-defendant, for failing to object to the Court's curative instruction, and for his failure to receive a fair trial. Prior to the hearing, Applicant's counsel submitted a letter to Respondent amending the application to include a claim of actual innocence and "if the credibility of the witness, Mr. Stansell, is truly exposed." Additionally, when the PCR hearing began, Applicant also alleged his trial counsel were ineffective for not objecting to the burden of proof being shifted through the malice instruction and for failing to request an alibi instruction.

This Court will now address each allegation of ineffective assistance of counsel:

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I. Failure to move to sever

Applicant argues his Trial Counsel should have moved to sever his trial so as to not proceed to trial with his co-defendant. Applicant agreed that his co-defendant also had not moved to sever the trial.

Trial Counsel, Robert Gamble, testified that he did not believe there was a basis to sever and, for strategic reasons, he believed keeping the trial together would be beneficial to his client.

Jointly tried criminal defendants are not entitled to separate trials as a matter of right. State v. Dennis, 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999). In order for an appellate court to reverse a conviction based on a trial court's failure to allow severance, a defendant must show prejudice. Id. "The general rule allowing joint trials applies with equal force when a defendant's severance motion is based upon the likelihood he and a co-defendant will present mutually antagonistic defenses, i.e., accuse one another of committing the crime." Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001) (citing Dennis, 337 S.C. at 281, 523 S.E.2d at 176). "A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent the jury from making a reliable judgment about a co-defendant's guilt." Id. "A proper cautionary instruction may help protect the individual rights of each defendant and ensure that no prejudice results from a joint trial." Id. (citing State v. Holland, 261 S.C. 488, 494, 201 S.E.2d 118, 121(1973)).

Neither the co-defendant nor Applicant moved to sever the trial. Trial Counsel both testified they believed it was strategically beneficial to Applicant to proceed forward with the co-defendant in this trial and to focus on discrediting the testimony of J.W. Stansell. Had Applicant proceeded forward with a trial separate from his co-defendant, he still would have had to contend

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with the very detailed confession made to J.W. Stansell. (*See infra*, Section II, summarizing J.W. Stansell's testimony.) As such, this Court finds Applicant has failed to establish ineffective assistance of counsel related to this issue or establish that he would have obtained a more favorable verdict in a separate trial.

II. Failure to Object to Curative Instruction

Applicant argues the Court of Appeals' decision from his direct appeal, finding this issue unpreserved, establishes that his counsel were ineffective and caused him prejudice.

A review of the trial transcript shows that the curative instructions made clear to the jury that the statements made as to the victim's fear were introduced only for the case of *State v. Frances Moore*. (Tr. p. 298, ll. 13-22; Tr. p. 303, ll. 12-14; Tr. p. 309, ll. 3-8.) Additionally, the Solicitor's reference to these statements in closing also only directed the jury to Frances Moore. (Tr.p. 660, ll. 13-19.)

Further, the State presented evidence in its case against Applicant that he had attempted to solicit J.W. Stansell in the murder plan. J.W. Stansell presented evidence that Applicant told him prior to the crime that there was a concern that the victim was a "rat" and was about to be arrested and turn on people he was involved with in criminal activity, including Frances Moore and that she along with some other people wanted the victim dead. (Tr. p. 390, l. 6 - p. 393, l. 14.) Applicant went on to say that France Moore was going to pay him \$2,000 to kill the victim. (*Id.*) Applicant also showed Stansell a gun that he was given to use. (Tr.p. 390-393.) Additionally, Stansell stated that the plan included the location and the intent to shoot the victim in the car and then set the car on fire to make it appear like a drug deal gone bad. (*Id.*)

Stansell also testified that he later saw Applicant in a hospital after the murder and asked

Applicant if he did it and Applicant declared that he had. (Tr.p. 397.) In this conversation, Applicant made an admission that he had lured the victim to the location, that the victim had exited the vehicle, and that Applicant then shot him in the head. (Tr. p. 397.) Applicant confirmed that he next set the car on fire. (Tr.p. 398.) Applicant stated that he disposed of the murder weapon at his work in a furnace. (Tr.p. 398-399.)

The evidence of the victim's fear of having his car burned and being shot was similar to other evidence admitted about the plan expressed by Applicant to the State's witness, Stansell, about Applicant's plan and the carrying out of the plan. The admission of the evidence from the Erwins and Rita Woods would be harmless error as cumulative toward the testimony and admissions of Applicant to Stansell.

Applicant's appellate records, to include the briefs in the direct appeal case, are before this Court. After reviewing those records and the trial transcript, the Court finds Applicant has not met his burden and established that had his counsel objected to the curative instruction, the outcome of his case would have been different.

III. Failure to object to malice instruction

Applicant claims Trial Counsel erred by not objecting to the malice instruction because the instruction impermissibly shifted the burden. To the extent Applicant relies on State v. Belcher, 385 S.C. 597, 685 S.E.2d 802 (2009), the Court notes this trial concluded prior to Belcher being decided. The South Carolina Supreme Court specifically held that Belcher did not apply in the PCR context. Belcher, 385 S.C. at 613, 685 S.E.2d at 810 ("Our ruling, however, will not apply to convictions challenged on post-conviction relief."). Further, the evidence presented in this trial was that the victim was shot in the back of the head and in the back and

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then his car was set on fire to try and cover up the crime. (Trial Tr. p. 398, ll. 22-25; pp. 469-471; 520, ll. 13-17; p. 521.) There was sufficient evidence, aside from the use of a deadly weapon, for the jury to find malice. As such, this Court does not find Trial Counsel were ineffective or that there was any prejudice due to trial counsel's failure to object to the jury charge.

IV. Failure to request alibi instruction

Applicant argues Trial Counsel should have requested an alibi instruction. The trial court did give Applicant's jury an alibi instruction. (Trial Tr. p. 696, l. 21 – p. 697, l. 8.)

This Court finds Applicant has not established Trial Counsel were ineffective and has not established prejudice.

V. Actual Innocence/Stansell Credibility

Aside from Applicant's assertions that Mr. Stansell was lying and that he is innocent, no additional evidence was presented to the Court on this issue. The Court finds Applicant has not established any reason to grant relief on this basis.

All Other Allegations

As to any additional allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial or sentencing proceedings. Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must



be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 1 day of September, 2016.

R. Scott Sprouse
Presiding Judge
Tenth Judicial Circuit

Wadulla, South Carolina.

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COMMON PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARVIN DUVALL,

APPELLANT

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT.

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STATEMENT OF ISSUES ON APPEAL

1.

Whether the court erred by allowing Kenneth Erwin to testify that the decedent told him if he was ever found shot and his car caught on fire to have co-defendant Moore investigated, since this testimony was hearsay and its probative value was substantially outweighed by its unduly prejudicial effect even if it was admissible under State v. Weston and State v. Garcia or otherwise?

2.

Whether the court erred by allowing Nellie Erwin to testify the decedent told her if he was ever found shot or his car caught on fire to have co-defendant Moore investigated, since this testimony was hearsay and its probative value was substantially outweighed by its unduly prejudicial effect even if admissible under State v. Weston and State v. Garcia, or otherwise?

3.

Whether the court erred by allowing Rita Woods to testify that the decedent stated if he was ever found shot in the head and his car was burned that the co-defendant "had something to do with it," since this hearsay testimony was inadmissible, and even if it was admissible under State v. Weston and State v. Garcia, or otherwise its a probative value was substantially outweighed by its unduly prejudicial effect?

STATEMENT OF THE CASE

The fifty-year-old appellant was indicted along with co-defendant Sixty-one-year-old Frances Moore for the offenses of murder, criminal conspiracy, and possession of a firearm during the commission of a violent crime. R. 607-610. Their joint cases were called to trial on May 12, 2009 before the Honorable J. Cordell Maddox, and a jury. Robert Gamble and Matthew Perkins represented appellant. Calhoun Pruitt represented co-defendant Moore. T. Matthew Bradley and Lauren S. Hogan were the assistant solicitors. R. 1.

On May 15, 2009 the jury found appellant and co-defendant Moore guilty on all three counts. R. 591, ll. 10 – 21. Judge Maddox sentenced appellant to thirty years imprisonment for murder, five years consecutive for conspiracy, and five years consecutive for possession of a weapon during a violent crime. R. 595, ll. 5 – 12.

Judge Maddox sentenced co-defendant Moore to thirty years imprisonment for murder, five years consecutive to the weapons charge, and five years concurrent on the conspiracy charge. R. 596, ll. 10 – 16.

This appeal follows.

STATEMENT OF FACTS

Introduction

The state's theory of the case was that co-defendant Moore paid appellant two thousand dollars to kill her daughter's decedent husband because Moore was angry with him because her daughter claimed to the police when she confessed her guilt to several forgeries that the decedent "made me do it." R. 218, ll. 6-17. The state maintained Moore and appellant were together when the decedent was shot in the back of the head and his car was set on fire on the afternoon of June 30, 1999.

This case did not go to trial until ten years later, and then only after the former Grand Dragon of the Ku Klux Klan, John Standsell, Jr., claimed appellant confessed to him that he and Moore killed the decedent. Standsell claimed he was an Archbishop with the "Reformed Catholic Church," which "would not hold the power of forgiveness of sins, that that only came through God, and we wouldn't pray to saints and would not exalt Mary as much as the Roman Catholic Church. That did change a little later, and I left." R. 302, l. 15 – 304, l. 13. Standsell also said he was ordained in the Universal Life Church, that he was Secretary of State in the Gospel Lighthouse Prison Evangelistic Group, and that he was a member of the Celtic Anabaptist Church. R. 304, l. 14 – 308, l. 20.

Relevant Facts

Prior to the testimony of Kenneth Erwin, the solicitor informed the court and attorneys that he intended to call three different witnesses who would all give the same testimony. They would each testify the decedent was afraid of Moore and that he told them "that if he was ever found shot in the head and his car burned to have Frances Moore investigated." R. 183, l. 17 – 184, l. 4.

The solicitor claimed this testimony was admissible under State v. Garcia, 334 S.C. 71, 512 S.E.2d 507 (1999) because it revealed "that was the fear. That's not the why he was afraid. That was his fear . . . and the three witnesses are going to say the same exact thing. So essentially only one would have to testify if you want to hear the actual testimony." R. 184, ll. 2 – 22.

The state then proffered Kenneth Erwin's testimony. Erwin testified his wife was the decedent's first cousin, and that "he's like a brother to me." Erwin said the decedent moved in with him and his wife for about six months before he was killed. Erwin said he thought the decedent moved because "he could no longer live with Debra [co-defendant Moore's daughter]." R. 190, l. 14 – 191, l. 12.

Erwin maintained that the decedent told him "more than twelve [times] that if he was ever found shot and his car caught on fire to have his mother-in-law investigated." R. 191, l. 13 – 192, l. 8. The judge then noted that Erwin did not say anything about the decedent being afraid of Moore during his proffer, and "that's the problem." R. 192, ll. 2 – 8. The record reflects that Erwin was in court when the judge made this statement.

The solicitor then tried to establish that Erwin was afraid of Moore. Erwin then testified that the decedent and Moore did not get along. The following then occurred on direct examination of Erwin during the proffer:

Q. When he [the decedent] would talk to you about Frances Moore how was his demeanor? How would he act?

A. He was scared of her, man.

Q. And when he was actually scared of her what would he say about her exactly?

- A. That she was capable of doing things that other people didn't understand that she could do to him.

R. 193, ll. 12 – 18.

Defense counsel Gamble objected that this testimony was hearsay with regard to appellant and that the prejudicial effect of this testimony also far outweighed its probative value. R. 195, l. 19 – 196, l. 6.

The judge ruled that the testimony was admissible under State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006). R. 195, ll. 7 – 22. The judge told defense counsel Gamble: "I'll give a curative instruction but I think we're skating pretty close to some cumulative problems here. Defense counsel Gamble responded: "You're trying to strain buttermilk after there is something that's happened to it." The judge said: "I agree with you. I think I am a strainer, too." R. 197, ll. 4 – 13.

The three witnesses then testified in order before the jury. Erwin testified that the decedent and his wife "had broke (sic) up." R. 200, ll. 11 – 24. The following then occurred on direct examination of Erwin:

- Q. And how would you have described their relationship?
- A. It wasn't too good of a relationship.
- Q. Okay. And what, if anything, did Paul tell you about Frances Moore prior to his death?
- A. If he was ever found shot and his car caught on fire to have his mother-in-law investigated.
- Q. And how would he act when he would say this to you
- A. He was afraid. Like he was afraid.
- Q. Did he say this to you more than once?

A. Yes, sir.

Q. How many times?

A. Probably 12 or more times.

R. 199, ll. 13 – 24.

On cross-examination Erwin acknowledged that decedent and Moore's daughter, Debra, only lived about twenty feet away from him in their own mobile home. The decedent and Debra had reconciled, and he had moved back home, at the time of his death.

R. 201, ll. 16 – 23.

The judge then instructed the jury that Erwin's testimony, and the testimony of the next two witnesses was admitted only in the case against co-defendant Moore "but not in their case against Garvin Duvall." R. 202, ll. 16 – 22.

Nellie Elaine Erwin was the decedent's first cousin. She said that the decedent lived with her and Kenneth Erwin for about five months. Mrs. Erwin testified the decedent told her and her husband: "If he was ever found, been shot or his car had been caught on fire to have her investigated, Frances [Moore]." Mrs. Erwin said the decedent, who was six feet eight, and weighed two hundred seventy-five pounds was "very afraid" of the diminutive Moore. R. 204, ll. 3 – 12.

Rita Woods then testified that she had met the decedent at a club with Kenneth Erwin. Woods opined that she did not think the decedent and Debra had a good relationship. Woods said that the decedent told her that Moore "was capable of anything, and that if was ever - - he was ever found dead, shot, shot in the head and his car was burned . . . that she did it, she had something to do with it." R. 210, ll. 7 – 14.

On cross-examination, Woods stated that she began dating the decedent, but the decedent moved back in with his wife about a month before he was killed. R. 211, l. 22 – 212, l. 20.

The state's other evidence consisted of John Standsell's testimony that on June 27, 1999, that he and appellant left a birthday party where Standsell had done magic tricks for the children and went for a drive. Other witnesses disputed Standsell's assertion that he left that party with appellant. R. 421; R. 428. Standsell's claim was that appellant told him during the drive that "Paul [the decedent] was Anderson County's biggest rat, and he said that Paul and he and some other people had been involved in some criminal activity and that Paul was about to get arrested and was going to turn on them, and that Frances Moore was one of the ones that was involved, and that she along with some other people wanted Paul dead. And Garvin went on to tell me that she was going to pay him \$2, 000 to kill Paul." R. 276, ll. 6-13.

Standsell maintained that appellant asked him if he wanted to kill the decedent. Standsell said he responded: "I'm no murderer." Standsell said appellant then told him "he was going to set the car on fire and was going to make it look like a drug deal gone bad, that he was going to leave some drugs at the scene. Standsell acknowledged that appellant also told him he was just joking about killing the decedent. R. 278, ll. 3 – 279, l. 8.

In addition, Standsell claimed that after the decedent was murdered on June 30, 1999, appellant admitted to him that he had killed the decedent. R. 282, l. 18 – 286, l. 7. Standsell maintained his conscience was bothering him and that he approached the police in 2006 about his alleged conversations with appellant. R. 287, l. 16 - 289, l. 8. Standsell

blamed the sexually explicit birthday card -- that he admitted was vulgar -- he sent appellant on it being a time he was "angry with God" R. 309, l. 17 - 313, l. 23.

The other circumstantial evidence was that Anderson Meats employee, Joshua Addis, who identified co-defendant Moore as the person making phone calls from a pay phone outside of Anderson Meats, which was near the murder scene, around the time of the murder at about 3:15 p.m. on June 30, 1999. R. 130, l. 1 - 151, l. 25. These calls were traced to the decedent's mobile home. R. 228, l. 5 - 249, l. 25; R. 365, l. 12 - 368, l. 1. Addis said a man who looked like appellant, but who he could not identify as appellant, was with Moore at the time. R. 130, l. 1 - 151, l. 25.

ARGUMENTS

1.

The court erred by allowing Kenneth Erwin to testify that the decedent told him if he was ever found shot and his car caught on fire to have co-defendant Moore investigated, since this testimony was hearsay and its probative value was substantially outweighed by its unduly prejudicial effect even if it was admissible under State v. Weston and State v. Garcia or otherwise.

Relevant facts

As seen, the solicitor claimed this testimony that the decedent told these three witnesses that he was afraid of Moore and that if he was found shot with his car burned that Moore needed to be investigated or that they would know Moore had killed him was admissible under State v. Garcia, 334 S.C. 71, 512 S.E.2d 507 (1999). The solicitor said that because it revealed “that was the fear. That’s not **the why** he was afraid. That was the fear . . . and the three witnesses are going to say the same exact thing. So essentially only one would have to testify if you want to hear the actual testimony.” R. 184, ll. 2 – 22. (emphasis added). Appellant submits below that this testimony overstepped the limits of State v. Garcia and State v. Weston, supra because it went beyond the fact that the decedent was afraid of Moore.

Regardless, it was so unduly prejudicial under Rule 403, SCRE, because it purported to have an unavailable witness allegedly speaking through live witnesses about what the decedent foresaw as the exact circumstances of his death, and that if he was allegedly telling these people that if he was killed in this manner then they would know Moore was the killer. Appellant was on trial for conspiring with Moore to kill the decedent, and this testimony

was extremely prejudicial to him. Defense counsel stated the judge's attempts to cure the prejudice to appellant through a curative instruction were akin to trying to strain urine out of milk, and the judge agreed. R. 195, l. 19 - 197, l 13. This record also reveals the judge was extremely bothered about how he could give a fair trial to both defendants given the unusual evidence -- the decedent's alleged statements evidence above and the alleged confession of appellant to Standsill -- in this case, and defense counsel correctly argued the state chose to try both defendants together and they bore the blame for the judge's predicament.

The solicitor was able to have Erwin testify that the decedent was afraid of Moore. R. 193, ll. 12 - 18. As seen, defense counsel Gamble objected that this testimony was hearsay with regard to appellant and that the prejudicial effect of this testimony also far outweighed its probative value. R. 195, l. 19 - 197, l 13. Erwin then repeated his highly prejudicial testimony to the jury.

Discussion

In State v. Weston, 365 S.C. 379, 625 S.E.2d 641 (2006) the Supreme Court held that testimony that Toni Franchey and Suzanne Allen which was only that the decedent was afraid of Weston was properly admitted under State v. Garcia, 334 S.C. 71, 512 S.E.2d (1999). The Court noted that the present state of the declarant's mind is admissible as an exception to hearsay rule, however, "*the reason for the declarant's state of mind is not.*" Citing United State v. Cohen, 631 F.2d 1223, 1225 (5th Cir. 1980). The Court noted this state of mind exception must be understood to limit those admissible statements to declarations of condition -- "I'm scared"-- and not--I'm scared [because] someone threatened me." State v. Garcia, 334 S.C. at 76, 512 S.E.2d at 508; State v. Weston, 376 S.C. at 287, 625 S.E.2d at 645 - 646.

Here, testimony that the decedent was allegedly afraid of co-defendant Moore also contained the decedent's alleged statement that if he was found shot in the head and his car was on fire that they would know that co-defendant Moore needed to be investigated, or they would know she committed the crime. This went beyond what the Supreme Court said was admissible in State v. Garcia and State v. Weston. Defense counsel Gamble correctly objected that even this evidence was admissible its probative value was far outweighed by its unduly prejudicial effect. See Rule 403, SCRE. See, also, State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). The testimony about the decedent saying the others would know Moore killed him if he was found shot and with his car on fire was not admissible against appellant. Appellant correctly said in advance that no curative instruction would solve this prejudice.

The judge in this case allowed the state to go beyond the Supreme Court's holding in State v. Weston and State v. Garcia. This was highly prejudicial to appellant in this circumstantial evidence case. The testimony of former Ku Klux Klan Grand Dragon John Standsell, Jr., who claimed to have been a high member of the clergy or involved in several churches or religious projects was highly questionable. See R. 282, ll. 1 – 25; R. 296, l. 1 – 308, l. 25.

As seen, Standsell testified and claimed to be a member in the reformed Catholic Church of Charleston even though the Ku Klux Klan also targeted Catholics and Jews. Standsell also would not give a straight answer when asked how he got appellant into the Masons as a person of good character if he thought appellant had been a murderer. R. 298, l. 1 – 313, l. 25. Standsell also said he had taken training in exorcism. R. 328, ll. 1 – 25. Appellant understands this Court does not weigh the credibility of the witnesses. However,

by any standard of common sense Standsell testimony had to have appeared strange to the jury. Defense counsel Gamble explained to the jury in closing:

Now, what does the archbishop get out of it? Personal aggrandizement. I watch Cold Case. I broke the case. I broke a cold case. I'm the archbishop. I'm the grand dragon of the Ku Klux Klan. I'm the bishop of a Celtic Anabaptist Church. I am the great. I am boosting myself. I am the head of the Lighthouse Ministry. I can go to the penitentiary and tell them I put men here. I, I, I, I'm good. I'm great. I'm the greatest. I'm the top. I want notoriety. I want to be published. That's the only reason, pure greed. I want it.

R. 538, ll. 7 – 24.

Defense counsel argued Standsell could not be believed. R. 539, ll. 4 – 8. In his motion for a new trial defense counsel correctly argued the circumstantial evidence in this case was not substantial. R. 603, l. 16 – 605, l. 20.

In addition the jury deliberated from 5:21 p.m. on a Friday afternoon until it rendered its verdict at 10:32 p.m. Friday evening. It struggled to reach its verdict, and it was obtained with this improper highly prejudicial evidence. The error was not harmless. See State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008).

Finally, the fact these live witnesses stated the decedent allegedly predicted the facts of his own death, and blamed it on Moore was extraordinarily prejudicial to appellant since he was indicted for conspiracy to kill the decedent with Moore. See Rule 403, SCORE. Even if this Court should hold, and appellant strongly submits it should not, that the testimony of these three witnesses came with the ambit of Garcia and Weston, it still should be excluded under Rule 403, SCORE. State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991).

2.

The court erred by allowing Nellie Erwin to testify the decedent told her if he was ever found shot or his car caught on fire to have co-defendant Moore investigated, since this testimony was hearsay and its probative value was substantially outweighed by its unduly prejudicial effect even if admissible under State v. Weston and State v. Garcia, or otherwise.

As seen, Nellie Elaine Erwin said that the decedent lived with her and Kenneth Erwin for about five months. The decedent and his wife, Debra, lived about twenty feet away in there own mobile home. They reconciled before the decedent's death.

Mrs. Erwin testified the decedent told her and her husband: "If he was ever found, been shot or his car had been caught on fire to have her investigated, Frances [Moore]." R. 204, ll. 3 – 12.

Appellant argues these issues separately to avoid any procedural problem with this brief. He attempts not to be unnecessarily repetitive in doing so.

In State v. Weston, 365 S.C. 379, 625 S.E.2d 641 (2006) the Supreme Court held that the present state of the declarant's mind is admissible as an exception to hearsay rule; however, "the reason for the declarant's state of mind is not." Citing United State v. Cohen, 631 F.2d 1223, 1225 (5th Cir. 1980). The Court noted this state of mind exception must be understood to limit those admissible statements to declarations of condition – "I'm scared" – and not – I'm scared [because] someone threatened me." State v. Garcia, 334 S.C. at 76, 512 S.E.2d at 508; State v. Weston, 376 S.C. at 287, 625 S.E.2d at 645 – 646.

Here, Mrs. Erwin's testimony that the decedent said that if he was found shot in the head and his car was on fire that they would know that co-defendant Moore needed to be

investigated. This went beyond what the Supreme Court held was admissible in State v. Garcia and State v. Weston.

Defense counsel Gamble correctly objected that even this evidence was admissible its probative value was far outweighed by its unduly prejudicial effect. See Rule 403, SCRE. See, also, State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). The judge in this case allowed the state to go beyond the Supreme Court's holding in State v. Weston and State v. Garcia. This was highly prejudicial to appellant in this circumstantial evidence case. The error was not harmless as argued above. Further, three witnesses repeating the same allegation has an extraordinarily powerful tendency to lead the jury to believe it is true than would the testimony of a single witness. Moreover, the fact these live witnesses stated the decedent allegedly predicted the facts of his own death, and blamed it on Moore was extraordinarily prejudicial to appellant since he was indicted for conspiracy to kill the decedent with Moore.

The error was not harmless. See State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008). Standsell was the state's case against appellant, and defense counsel clearly hoped the jury would see him for the aggrandizing menace that he was to society. He was unstable, and he was unreliable. Appellant also could not be identified as the man with Moore on the day the decedent was shot. Appellant should be granted a new trial.

3.

The court erred by allowing Rita Woods to testify that the decedent stated if he was ever found shot in the head and his car was burned that the co-defendant "had something to do with it," since this hearsay testimony was inadmissible, and even if it was admissible under State v. Weston and State v. Garcia, or otherwise its a probative value was substantially outweighed by its unduly prejudicial effect.

Rita Woods testified that the decedent told her that Moore "was capable of anything, and that if was ever - - he was ever found dead, shot, shot in the head and his car was burned . . . that she did it, she had something to do with it." R. 210, ll. 7 - 14.

In State v. Weston, 365 S.C. 379, 625 S.E.2d 641 (2006) the Court stated that the present state of the declarant's mind is admissible as an exception to hearsay rule, however, "the reason for the declarant's state of mind is not." *Citing United State v. Cohen*, 631 F.2d 1223, 1225 (5th Cir. 1980). The Court noted this state of mind exception must be understood to limit those admissible statements to declarations of condition - "I'm scared"- and not- I'm scared [because] someone threatened me." State v. Garcia, 334 S.C. at 76, 512 S.E.2d at 508; State v. Weston, 376 S.C. at 287, 625 S.E.2d at 645-646.

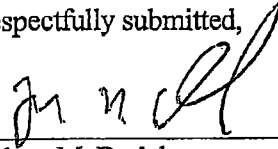
The testimony of Rita Woods also went beyond what was held permissible in Garcia and Weston. Defense counsel Gamble correctly objected that even this evidence was admissible its probative value was far outweighed by its unduly prejudicial effect. See Rule 403, SCRE. See, also, State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991). The fact these live witnesses stated the decedent allegedly predicted the facts of his own death, and blamed it on Moore was extraordinarily prejudicial to appellant since he was indicted for conspiracy to kill the decedent with Moore.

The error was not harmless. See State v. Fletcher, 379 S.C. 17, 664 S.E.2d 480 (2008). Standsell was the state's case against appellant, and defense counsel clearly hoped the jury would see him for the aggrandizing, exaggerating witness that he was in this case. Appellant also could not be identified as the man with Moore on the day the decedent was shot, and the circumstantial evidence against him was far from overwhelming.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed and this case remanded to the Anderson County Court of General Sessions for a new trial.

Respectfully submitted,



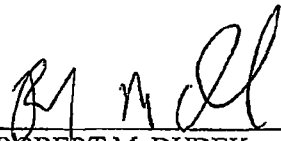
Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

This 14th day of March, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

A handwritten signature in dark ink, appearing to read "R. M. Dudek", is written over a horizontal line.

ROBERT M. DUDEK
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Anderson County

J. Cordell Maddox, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

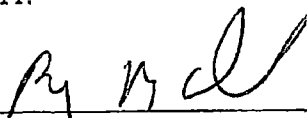
V.

GARVIN DUVALL,

APPELLANT

CERTIFICATE OF SERVICE

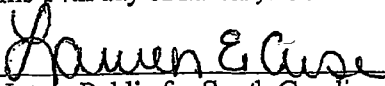
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201, this 14th day of March, 2011.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT.

SUBSCRIBED AND SWORN TO before me
this 14th day of March, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.

**SCCID**

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

March 14, 2011

Donald J. Zelenka, Esquire
Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Garvin Duvall

Dear Don:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/cms

Enclosure

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Garvin Duvall, Appellant

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-132
Heard February 16, 2012 – Filed February 29, 2012

AFFIRMED

Chief Appellate Defender Robert M. Dudek, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, and Assistant Deputy Attorney
General Donald J. Zelenka, all of Columbia, for
Respondent.

PER CURIAM: Garvin Duvall appeals his convictions for murder, conspiracy, and possession of a firearm during the commission of a violent crime. Duvall argues that statements of the decedent regarding his belief that Duvall's co-defendant was planning to shoot him or set his car on fire constituted inadmissible hearsay. Duvall also argues these statements were unfairly prejudicial and their prejudicial effect substantially outweighed their probative value. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. George, 323 S.C. 496, 510, 476 S.E.2d 903, 912 (1996) (holding that an issue is not preserved for review if the objecting party accepts the judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative instruction or move for a mistrial); State v. Wilson, 389 S.C. 579, 583, 698 S.E.2d 862, 864 (Ct. App. 2010) (holding that the law assumes a curative instruction will remedy an error and failure to object to the sufficiency of the charge renders the issue waived and unpreserved for appellate review); State v. White, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006) ("Because a trial court's curative instruction is considered to cure any error regarding improper testimony, a party must contemporaneously object to a curative instruction as insufficient or move for a mistrial to preserve an issue for review." (quoting State v. Patterson, 337 S.C. 215, 226, 522 S.E.2d 845, 850 (Ct. App. 1999))).

AFFIRMED.

FEW, C.J., PIEPER and GEATHERS, JJ., concur.

The Supreme Court of South Carolina

The State, Respondent,

v.

Garvin Duvall, Petitioner.

Appellate Case No. 2012-211998

Lower Court Case No. 2007GS041218-1219

ORDER

Petitioner seeks a writ of certiorari to review the Court of Appeals' decision in State v. Duvall, Op. No. 2012-UP-132 (S.C. Ct. App. filed Feb. 29, 2012). The petition is denied.


C.J.
FOR THE COURT

Columbia, South Carolina

September 5, 2013

cc:

The Hon. Jenny Abbott Kitchings

~~Robert Michael Dudek~~

John W. McIntosh

Alan McCrory Wilson

Donald J. Zelenka

The Hon. Richard A. Shirley

RECEIVED

SC OFFICE OF
APPELLATE DEFENSE

WITNESSES
ACSD/G. MAJOR

COURT OF GENERAL SESSIONS

THE STATE

ARREST WARRANT NO. J245755
J245757

ACTION OF GRAND JURY

TRUE BILL

APR 24 2007

Foreman of Grand Jury

Indictment for

VERDICT

Guilty / Guilty

Foreman of Petit Jury

Date:

DOCKET NO. 2007-615-04-1218

The State of South Carolina,
ANDERSON
County of

COURT OF GENERAL SESSIONS

APR 24 2007

TERM

MSM

THE STATE

GARVIN V. DUVAL

COMMITMENT

05/15/09-cmp

Indictment for

Count One - MURDER

16-3-10/16-3-20 [0116]

Count Two - POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT CRIME
16-23-490 [0549]

5-15-09

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)

INDICTMENT FOR
 Ct. One - Murder
 Ct. Two - Possession of a Firearm During
 The Commission of a Violent Crime

At a Court of General Sessions, convened on APR 24 2007,
 the Grand Jurors of ANDERSON County present upon their oath:

COUNT ONE**MURDER**

That Garvin V. Duvall did in Anderson County, South Carolina, on or about June 30, 1999 feloniously, wilfully and with malice aforethought, kill one Robert Paul Stevens by means of shooting him with a firearm and the said victim died as a proximate result thereof.

COUNT TWO**POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME**

That Garvin V. Duvall did in Anderson County, South Carolina, on or about June 30, 1999, possess a firearm during the commission of a violent crime, to wit: Murder. 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.


 SOLICITOR

WITNESSES
G. MAJOR - ACSD

DOCKET NO. 2007-65-04-1219

The State of South Carolina,
ANDERSON

County of _____

COURT OF GENERAL SESSIONS

APR 24 2007 TERM

MSM THE STATE
GARVIN V. DUVAL

ARREST WARRANT NO. _____

ACTION OF GRAND JURY

TRUE BILL

APR 24 2007

Foreman of Grand Jury _____

Foreperson

VERDICT

Guilty

Foreman of Petit Jury _____

Date: 5-15-09

COMMITMENT

05/15/09-cmp

Indictment for

CRIMINAL CONSPIRACY
16-17-0410 [0049]

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

INDICTMENT FOR

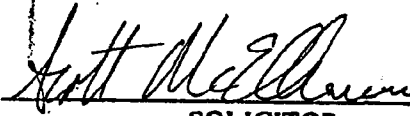
CRIMINAL CONSPIRACY
16-17-0410 [0049]

At a Court of General Sessions, convened on APR 24 2007
the Grand Jurors of ANDERSON County present upon their oath:

CRIMINAL CONSPIRACY

THAT THE DEFENDANT, GARVIN V. DUVALL, DID IN ANDERSON COUNTY,
ON OR ABOUT JUNE 30, 1999 UNLAWFULLY AND WILFULLY UNITE, COMBINE,
CONSPIRE, CONFEDERATE, AGREE AND HAVE TACIT UNDERSTANDING WITH
FRANCES J. MOORE FOR THE PURPOSE OF COMMITTING THE CRIME OF
MURDER. ALL IN VIOLATION OF 16-11-330 CODE OF LAWS OF SOUTH
CAROLINA, (1976).

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


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Anderson
 STATE VS.
Garvin V Duvall

AKA: _____
 Race: W Sex: M Age: 50
 DOB: _____ SS#: _____
 Address: _____
Easley, SC 29640
 DL#: _____ SID#: SC00511860

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS041218
 A/W#: J245755
 Date of Offense: 6/30/1999
 S.C. Code § : 16-03-0010, 0020
 CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: Murder / Murder

in violation of § 16-03-0010-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: T. Mark Brinkley 73689 Defendant Robert H. Kittle 2322 Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years,
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 5/15/09 Subpoena for Company
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
☐ set by SCDPPPS _____
 Recipient: _____
 *Fine: _____
 § 14-1-206 (Assessments 107.5 %) \$ _____
 § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
 § 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
 § 56-5-2995 (DUI Assessment) \$12 \$ _____
 § 56-1-286 (DUI Breath Test) \$25 \$ _____
 § 35.13 (Public Def/Prob) \$500 \$ _____
 § 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
 § 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____
 § 50-21-114(BUI Breath Test Fee) \$50 \$ _____
 § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 3% to County (if paid in installments) \$ _____
 § 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00
 TOTAL Cathy M. Phillips \$ 130.00
 Clerk of Court/ Deputy Clerk

PRESIDING JUDGE

Judge Code: _____

Sentence Date: 5/15/09

SCCA/217 (03/2009)

Court Reporter: Wizer - Hanks

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STATE OF SOUTH CAROLINA

COUNTY OF Anderson
STATE VS.

Garvin V Duvall

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS041218

A/W#: J245757

Date of Offense: 6/30/1999

S.C. Code § : 16-23-0490

CDR Code #: 0549

AKA:

Race: W Sex: M Age: 50

DOB: SS#:

Address: Easley, SC 29640DL#: SID#: SC00511860

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also senin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

T. Mark Bailey 73689
SC Bar#

Defendant

Robert A. Goble 2322
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 5/15/09 Substance Abuse☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ 25.00

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL

Cathy M. Phillips
Clerk of Court/ Deputy ClerkCourt Reporter: Wizer-Hanks

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE R. GobleJudge Code: 1Sentence Date: 5/15/09

SCCA/217 (03/2009)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 873

COUNTY OF Anderson
STATE VS.
Garvin V DuvallINDICTMENT/CASE#: 2007GS041219A/W#: J245756Date of Offense: 6/30/1999S.C. Code § : 16-17-0410CDR Code #: 0049

AKA: _____

Race: W Sex: M Age: 50

DOB: _____ SS#: _____

Address: _____
Easley, SC 29640DL#: _____ SID#: SC00511860

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defiin violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

1. Mark Braddy 73689
SC Bar# _____ DefendantAttorney for Defendant 2322
SC Bar# _____WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☒ CONSECUTIVE to sentence on: 5/15/09 sentence for murder☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %) _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) _____

§ 90.11 TP (SCCA Surcharge) \$5 \$ 5.00TOTAL Cathy M. Phillips \$ 130.00

Clerk of Court/ Deputy Clerk

Court Reporter: Wiger-Hanks

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE P. Halls

Judge Code: _____

Sentence Date: 5/15/09

SCCA/217 (03/2009)

ARREST WARRANT

J-245755

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ANDERSONTHE STATE
against

DUVALL, GARVIN V

Address:

EASLEY, SC 29640-0000

Phone: SSN:

Sex: M Race: W Height: Weight:DL State: SC DL#:DOB: Agency ORI#: 0400Prosecuting Agency: SHERIFF DEPT.Prosecuting Officer: MAJOR, GOffense: MURDEROffense Code: 0116
Code/Ordinance Sec. 16 3 10This warrant is **CERTIFIED FOR SERVICE** in the☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant DUVALL, GARVIN Von 11/21/06

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ANDERSONPersonally appeared before me the affiant GARLAND MAJOR/INVESTIGATIVE SGT/ACSO who
being duly sworn deposes and says that defendant DUVALL, GARVIN V
did within this county and state on or about 6/30/1999 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☐ Municipality of)
in the following particulars:DESCRIPTION OF OFFENSE: **MURDER**I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:THE DEFENANT, ALONG WITH A CO-DEFENDANT, DID WITH MALICE
AFORETHOUGHT, UNLAWFULLY KILL ROBERT PAUL STEVENS BY SHOOTING
HIM WITH A FIREARM WHILE ON BAUGH ROAD IN ANDERSON COUNTY. THE
DEFENDANT AND CO-DEFENDANT ACTED IN CONCERT TO ACCOMPLISH THE
MURDER.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of
ANDERSON

Affiant's Address

305 CHAMBERS
ANDERSON, SC 29625

Affiant's telephone

260-4427

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 6/30/1999 defendant DUVALL, GARVIN V
did violate the criminal laws of the State of South Carolina (or ordinance of☐ County/ ☐ Municipality of) as set forth below:DESCRIPTION OF OFFENSE: **MURDER**Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be
delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 10/31/2006

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge

Judge Code: 908

Judge's Address

POB 51312, 104 ANNEX WAYPIEDMONTSC 29673-0000

Judge's Telephone

295-2651Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

** CASE NUMBER 19933975

**
Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

AFFIDAVIT

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