

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

Honorable L. Casey Manning, Circuit Court Judge

LOUIS SANDERS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-000591

APPENDIX

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1 gunshot wounds to the head. Two shell casings were
2 recovered at the scene. The investigation is still
3 continuing at the time of autopsy. The history was
4 provided by James Reese of the Richland County
5 Coroner's Office. And the Coroner's Office also
6 authorizes the autopsy.

7 Q So two gunshot wounds and two shell casings?

8 A That's correct.

9 Q Tell this jury what you first do, what you did first
10 with Mr. Cannon?

11 A As before, he was examined and we identified evidence
12 of two gunshot wounds to his head.

13 Q Can you explain where you noted them?

14 A The first one -- and these are labeled arbitrarily as
15 one and two. It doesn't necessarily indicate the
16 firing sequence. There was a gunshot wound to the
17 right forehead, an exit wound from that injury to the
18 back of the left head, and then an additional gunshot
19 wound to the left cheek area near the mouth.

20 Q Did you bring any dowels with you? All right.

21 State's No. 97, could you please using that dowell --

22 COURT REPORTER: Excuse me. I have 97 as a
23 photograph.

24 MS. SHIPLEY: That was withdrawn. Oh, leave it
25 as ID? Okay. This would be 98 then.

1 (WHEREUPON, State's Exhibit No. 98 is marked for
2 identification.)

3 Q State's No. 98, if you could -- you just used your
4 own head -- but if you could for the benefit of this
5 jury show the approximate location of the gunshot
6 wound to the forehead and the trajectory.

7 (Witness inserts dowell into styrofoam head)

8 Q Okay. And that's one of the gunshot wounds?

9 A That's correct. It's more over here. The styrofoam
10 was a little more difficult to pierce. But this is
11 the approximate angle of trajectory for gunshot wound
12 number one. And --

13 Q Okay. I'm going to give you a marker, if you can
14 more accurately put where you believe the exit wound
15 is on the back?

16 A More in this area.

17 Q Okay. But that's the general trajectory. Is that
18 correct?

19 A That's correct.

20 Q Okay. Now, you also noted a gunshot wound number
21 two. It's listed as number two, but that's not the
22 order you're saying the gun shots were fired?

23 A No. That's the order I labeled them.

24 Q Okay. Please show the jury the trajectory of the
25 other gunshot wound you noted?

1 (Witness inserts dowell into styrofoam head)

2 A Roughly in this trajectory, that the bullet entered
3 the facial bones and lodged in the petrous ridge
4 which is a bony structure in the skull that houses
5 the bones of the inner ear.

6 Q And did you recover a bullet from that trajectory?

7 A I recovered a bullet fragment, yes.

8 Q And when you recover bullets or any evidence, who do
9 you turn it over to?

10 A It's turned over to law enforcement. In this
11 particular case the deceased's clothes as well as
12 recovered fragments were turned over to Harold
13 Bouknight of the Richland County Sheriff's Office.

14 Q Did you note any other trauma on the rest of the body
15 of Mr. Cannon?

16 A There was no other significant trauma.

17 Q I'm going to show you what's been introduced as
18 State's 31. And do you note any injuries on that, in
19 that photograph?

20 A No.

21 Q Okay. And those appear to be blood spots?

22 A Blood droplets mixed with water.

23 Q Okay. And so there is no fresh injury on this man's
24 leg?

25 A No.

1 Q Now, I believe -- if we could just talk about gunshot
2 number one in your report. And that would be the one
3 to the forehead, correct?

4 A That's correct.

5 Q Can you tell this jury when you took a closer look,
6 what did you observe about it?

7 A Gunshot wound number one is a hard contact gunshot
8 wound to the forehead. What that means is that the
9 gun was placed directly against the skin and when the
10 trigger was pulled, the entire contents of the
11 barrel, including the bullet, burning gunpowder,
12 unburned gun powder, any soot, any dirt or other
13 objects in the barrel were directly injected into the
14 wound tract.

15 When this occurs gasses that propel the bullet
16 are trapped underneath the skin. The skin expands
17 and actually rips in an irregular pattern called
18 stellate or star shaped. In addition unburned gun
19 powder and soot were deposited on the bone of the
20 skull in this area.

21 Q Okay. I'm going to show you two photographs and ask
22 you if you can identify them, please?

23 A Yes.

24 Q Okay. What are they?

25 A Excuse me. State Exhibit 13 is a close up of the

1 stellate entrance wound to the right forehead. And
2 State's Exhibit No. 14 shows a portion of the skull
3 where the bullet passed through and around the edge.
4 You can also see a black discoloration which is the
5 soot from the hard contact gunshot wound.

6 **MS. SHIPLEY:** Your Honor, at this time we would
7 offer 13 and 14, did you say?

8 **A** Yes, ma'am.

9 **MS. SHIPLEY:** Into evidence.

10 **THE COURT:** Subject to the defendant's
11 objection.

12 **MR. SECOR:** Thank you, Your Honor.

13 (WHEREUPON, State's Exhibit No. 13 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 14 is admitted
16 into evidence.)

17 **MS. SHIPLEY:** Your Honor, may Dr. Nichols step
18 down?

19 **THE COURT:** Certainly.

20 **Q** Please watch your step, sir. Dr. Nichols, can you
21 bring those photos with you and explain to the jury
22 the stellate fashion or form of his injuries?

23 **A** Okay. This is the forehead. You can see his right
24 eye here and his hairline up here. This is the
25 injury. The bullet actually entered here. And when

1 the gun was pressed tight against the skin, the
2 trigger is pulled; not only does the bullet go
3 through but anything that was in that barrel goes
4 through this wound tract.

5 The gasses which are lighter get trapped between
6 the bone itself and the skin and cause an expansion
7 causing the skin to tear in this star shaped or
8 stellate-like pattern.

9 State's Exhibit 14 shows a section of bone from
10 the skull showing the black discoloration around the
11 hole. That's the actual soot from the cartridge that
12 was fired. And this indicates that this is a hard
13 contact gunshot wound.

14 Q And, Doctor, while you are still up there with the
15 jury, I'm going to ask you, have you had an
16 opportunity to look at the rest of these photos that
17 I'm holding in my hand?

18 A Yes.

19 Q And just tell the judge and the court what exactly
20 the exhibit number is and explain what they depict to
21 the jury?

22 A Exhibit No. 7 is a lateral view or side view of an
23 x-ray taken at the time of the autopsy. And it might
24 be difficult to see, but right here where the ear
25 would be there is a light area, a dense light area.

1 That's the lead slug that was recovered from the
2 petrous ridge right in here.

3 **Q** And, Doctor, I'm going to go ahead and introduce all
4 of these into evidence.

5 **A** Okay.

6 **MS. SHIPLEY:** State's No. 16, 7, 11, 12 and 8
7 into evidence at this time, Your Honor.

8 **THE COURT:** Without objection.

9 **MR. SECOR:** No objection, Your Honor.

10 (WHEREUPON, State's Exhibit No. 7 is admitted
11 into evidence.)

12 (WHEREUPON, State's Exhibit No. 8 is admitted
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 11 is admitted
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 12 is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 16 is admitted
19 into evidence.)

20 **Q** Thank you, sir. You're welcome to publish them now.

21 **A** This view, State's No. 16, shows a frontal view. By
22 having both a side view and a frontal view, it
23 actually establishes by x-ray that the lead slug was
24 indeed in the skull. And I think you can see the
25 lead slug a little better in this view here.

1 No. 11 -- excuse me. State's Exhibit 8 is the
2 actual slug or bullet fragment removed at time of
3 autopsy. That was turned over to law enforcement.

4 State's Exhibit 12 is the back of the left head
5 showing the nature of the exit wound through the
6 scalp..

7 And State's Exhibit 11 shows the entrance wound
8 in the beard area, right here, of gunshot wound
9 number 2. And that's the one that we recovered the
10 bullet fragment from.

11 **Q** Thank you, Dr. Nichols.

12 **MS. SHIPLEY:** Your Honor, at this time we'd also
13 seek to introduce No. 98 into evidence, the styrofoam
14 head.

15 **MR. SECOR:** In regards to State's 98, Your
16 Honor, we just make a 403 objection.

17 **THE COURT:** Overruled. It's admitted.

18 (WHEREUPON, State's Exhibit No. 98 is admitted
19 into evidence.)

20 **Q** Dr. Nichols, as to the bullet that entered Mr.
21 Cannon's mouth area, the cheek, can you tell this
22 jury whether or not you saw any evidence of stippling
23 or any soot around that injury?

24 **A** No. This is categorized as what's known as a distant
25 gunshot wound. And a distant gunshot wound doesn't

1 indicate exactly how far it is. It just indicates
2 that the muzzle of the gun, the part of the gun where
3 the bullet comes out, is far enough away from the
4 skin that when the trigger is pulled, any unburned
5 gun powder, any soot, any gas is dissipated; and the
6 only thing that strikes the victim is the bullet
7 itself. As a rough estimate, and this is only a
8 rough estimate, we're dealing with approximately two
9 feet away as a minimum back to whatever the maximum
10 firing distance of that weapon is.

11 Q Are you familiar with the firing distance of
12 9-millimeters?

13 A It depends on the 9-millimeter, you know. Two feet
14 is a good minimal estimate.

15 Q And so the shot to the cheek was at a distance. More
16 than two feet?

17 A Yes.

18 Q At least two feet plus, right?

19 A Yes.

20 Q Okay. And then no question about the injury to
21 the -- the gunshot wound to the forehead being a
22 contact wound, correct?

23 A That's correct. This is what's known as an execution
24 style killing where the gun was placed trapped
25 against the head and trigger pulled. Obviously at

1 that distance the goal of the shooter is to kill the
2 victim.

3 Q And if you have a gunshot wound with a contact wound,
4 would you expect the bullet to travel through the
5 head and travel through the skull and have an exit
6 wound?

7 A Usually do. And it did in this case.

8 Q And it appears with the gunshot wound to the cheek
9 that the bone structure might have stopped that
10 bullet?

11 A The bone structure of the skull stopped the bullet.
12 It actually caused what's known as a basal skull
13 fracture which is the floor of the skull that the
14 brain sits on, this is a potentially fatal injury.
15 And what more than likely prevented this from being
16 the fatal injury is the fact that we had the hard
17 contact gunshot wound to the head which obviously
18 killed the person much quicker than the gunshot wound
19 to the cheek.

20 Q And so both gunshot wounds are fatal?

21 A Could -- the one to the cheek area is potentially
22 fatal. This one was definitely the fatal one.

23 Q I understand. I'm going to pose a hypothetical to
24 you, Doctor. Is it possible that a person who
25 received this injury to the cheek could stand for a

1 period of time, stumble and then fall?

2 **A** Yes.

3 **Q** And as a result, would blood be coming out of his
4 injury?

5 **A** Yes. Injuries to the face often bleed profusely.

6 **Q** And so if you were to note in State's No. 31 blood
7 droplets, would that be consistent with blood coming
8 out of that injury?

9 **A** You would expect that.

10 **Q** Beg the Court's indulgence. Dr. Nichols, to a
11 reasonable degree of medical certainty, do you have
12 an opinion as to the cause of death in the case of
13 Israel Cannon?

14 **A** Yes, I do.

15 **Q** And what is it?

16 **A** Israel Cannon died as a result of cerebral laceration
17 due to a contact perforating gunshot wound to the
18 head. What that means is that his brain tissue was
19 torn apart by a bullet at extremely close distance
20 that exited out of the back of the head.

21 **MS. SHIPLEY:** No further questions, Your Honor.

22 **THE COURT:** Cross examination.

23 **MR. SECOR:** Thank you, Your Honor.

24 CROSS EXAMINATION

25 **BY MR. SECOR**

1 Q Just briefly, Dr. Nichols. You said that the cause
2 of death -- and I probably won't be exact -- but
3 cerebral laceration caused by a close contact gunshot
4 wound. Is that pretty much correct?

5 A Yes, sir.

6 Q You also I think during your testimony said execution
7 style gunshot?

8 A That's correct.

9 Q So meaning the same thing when you say those two
10 terms, cerebral laceration, close contact wound would
11 be the same thing as execution style shooting?

12 A In this particular case. It can also be a suicidal
13 contact gunshot wound which would not be an execution
14 style.

15 Q But the close contact wound, that would be what you
16 would learn in your training in medical school and
17 things like that?

18 A That's correct.

19 Q Beg the Court's indulgence for just a moment. Thank
20 you, Dr. Nichols. I appreciate it. I have nothing
21 further.

22 THE COURT: Anything further?

23 MS. SHIPLEY: No, sir, Your Honor.

24 THE COURT: Thank you, Dr. Nichols.

25 MS. SHIPLEY: May he be excused, Your Honor?

1 **THE COURT:** May the witness be excused?

2 **WITNESS:** Thank you, Your Honor. You have a
3 good day.

4 **THE COURT:** Next witness.

5 **MS. SHIPLEY:** Your Honor, at this time the State
6 of South Carolina would rest its case.

7 **THE COURT:** All right. All right, ladies and
8 gentlemen. That will conclude the case on behalf of
9 the State. Now, the defendant as I indicated in my
10 opening remarks will have the opportunity to present
11 a defense but need not do so. However, there are a
12 number of legal matters I need to take up with the
13 attorneys prior to that taking place. It's now 4:00.
14 I think rather than keep you here while those
15 discussions take place I'm going to excuse you for
16 the evening.

17 Let me say this, that the remaining portion of
18 the trial will consist of the opportunity as I say
19 for the defense to present a case. The final
20 arguments of counsel and my charge to you on the law
21 of the State of South Carolina, at a minimum that
22 process will take several hours. So I think the best
23 and most efficient use of our time would be to
24 reconvene tomorrow morning at 9:30.

25 Let me just say this about tomorrow. We'll

1 conclude the case tomorrow, the trial of the case
2 tomorrow. In all likelihood we'll feed you lunch
3 tomorrow so you will not -- we'll just keep moving
4 and we'll take a break for lunch and the State or the
5 county, Ms. Scott, will graciously provide you a
6 lunch. It may not be a sumptuous lunch but it will
7 be at least enough to sustain you through the day.

8 So I'm going to ask you not to make any plans.
9 I don't know what you normally do at lunchtime. But
10 if you run errands and things of that nature, you
11 probably will not have that opportunity to do so
12 tomorrow. We'll stay here until the matter is
13 resolved.

14 So again, I'm going to excuse you now for the
15 evening. Again, don't discuss the case among
16 yourselves when you return to the jury room in the
17 morning or with anyone else over the evening hours.
18 Have a pleasant evening and we'll see you at 9:30.
19 We'll conclude the case tomorrow. Thank you very
20 much

21 (Jury out at 3:55 p.m.)

22 **THE COURT:** All right, counsel. Any motions?

23 **MR. O'NEIL:** Yes, Your Honor. I guess for the
24 record the defense at this time would move for a
25 directed verdict. Viewing the evidence in a light

1 most favorable to the State I don't believe there is
2 sufficient, either direct or substantial
3 circumstantial evidence, that a reasonable jury could
4 find Mr. Sanders guilty, I think specifically since
5 the medical examiner testified that the fatal gunshot
6 wound was a close contact wound to the head.

7 **THE COURT:** State's position.

8 **MS. SHIPLEY:** Your Honor, if you view the
9 evidence in the light most favorable to the State, we
10 have eye witnesses that witnessed a man with long
11 hair shoot the victim both times. That would be
12 Keith Eubanks. That is corroborated by Justin Green
13 and Garry Green. So there is direct evidence that he
14 is the killer in this case.

15 Also it's corroborated by the fact that he's
16 seen with Garry Green when he's dropped off at
17 Lashonda Downing's residence, putting them together,
18 and then once again together at the residence of
19 Michelle Jackson. And so the State submits that that
20 is direct evidence that the defendant committed the
21 offense of the crime of murder.

22 **THE COURT:** All right. As to the motion for
23 directed verdict, I feel the evidence goes beyond
24 that of mere conjecture or suspicion, that there is
25 evidence, either direct or circumstantial evidence or

1 some combination of both, which reasonably tends to
2 prove the guilt of the defendant or from which that
3 guilt may be logically and reasonably deduced if that
4 evidence is taken a light most favorable to the
5 State. So, Mr. O'Neil, I must respectfully deny your
6 motion for a directed verdict.

7 Now I need to know if the defendant plans to
8 testify. And before I ask that question I need to
9 advise your client of his right to remain silent. If
10 you'll have -- Mr. Sanders, if you'll stand, please.

11 Mr. Sanders, at this time I am going to explain
12 to you certain of your rights. If you do not
13 understand anything I say, please let me know. If
14 you want me to explain anything in more detail,
15 please let me know. Do you understand?

16 **MR. SANDERS:** I understand.

17 **THE COURT:** We've now reached the stage of the
18 trial where you may present your defense. You have
19 the right to claim the protections given to you by
20 the Fifth Amendment of the Constitution of the United
21 States and a similar provision of the Constitution of
22 the state of South Carolina.

23 This amendment states in part: "No person shall
24 be compelled in any criminal case to be a witness
25 against himself. This means that you cannot be

1 required to testify in this case. You have the right
2 to testify in your own behalf; however, no one can
3 make you testify. This is a personal right. No one
4 can waive this right except you.

5 If you decide to testify, you will be subject to
6 the same rules that govern any other witness and you
7 may be examined and cross examined on any relevant
8 issue in this case.

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

16 If you decide to testify, this decision on your
17 part must be freely, voluntarily and intelligently
18 made with knowledge of the protections given to you
19 by the Fifth Amendment to the Constitution and the
20 consequences of your decision to testify.

21 If you decide not to testify, I will instruct
22 the jurors that they cannot give the fact that you
23 did not testify and consideration whatsoever and that
24 there is to be absolutely no prejudice to you because
25 you did not testify.

1 It's left entirely up to you whether or not you
2 testify. You may talk with your attorney, your
3 family and friends or anyone else, but the final
4 decision will be left entirely up to you. Do you
5 understand what I have explained to you?

6 **MR. SANDERS:** Yes, sir.

7 **THE COURT:** Do you have any questions about what
8 I have explained to you?

9 **MR. SANDERS:** I do not.

10 **THE COURT:** Have you discussed with your
11 attorney whether you should or should not testify?

12 **MR. SANDERS:** Yes, sir.

13 **THE COURT:** Do you wish -- all right. I'm going
14 to ask -- I'm going to give you the opportunity to
15 once again discuss that with your attorney unless you
16 are prepared to make a decision today because we're
17 going to adjourn now until 9:30 in the morning. Do
18 you wish to consider this over the evening hours with
19 your attorney?

20 **MR. SANDERS:** No, sir.

21 **THE COURT:** All right. Do you wish to testify?

22 **MR. SANDERS:** No, sir.

23 **THE COURT:** All right. Thank you very much,
24 sir. We'll proceed at 9:30 in the morning with final
25 arguments and my charge on the law of the state of

1 South Carolina. The State will argue first; the
2 defendant will argue last. Anything further?

3 **MS. SHIPLEY:** Yes, sir. We would respectfully
4 request voluntary intoxication and evidence of flight
5 as part of your charge form.

6 **THE COURT:** I will not charge on evidence of
7 flight, cannot charge on evidence of flight.

8 **MS. SHIPLEY:** But I can argue it?

9 **THE COURT:** You can argue it, but I will not
10 charge it.

11 **MS. SHIPLEY:** And then I believe there has been
12 some evidence the defendant was drinking that night.

13 **THE COURT:** There is evidence -- I mean, there
14 is circumstantial evidence of that. I will give that
15 charge.

16 **MS. SHIPLEY:** Yes, sir. Okay.

17 **THE COURT:** Anything else in the way of a charge
18 that is requested on either behalf, on behalf of
19 either the State or the defendant?

20 **MR. O'NEIL:** Your Honor, the defense does have
21 an accuracy of eye witness factors charge. I am not
22 sure what Your Honor's standard charge is on eye
23 witness.

24 **THE COURT:** If you'll hand it up, we'll take a
25 look at it. Just give a copy to the State.

1 **MR. O'NEIL:** Your Honor, I apologize.

2 **MS. SHIPLEY:** We would respectfully --

3 **MR. O'NEIL:** I had something marked out on top
4 of it.

5 **THE COURT:** That's all right.

6 (Document handed to the Court)

7 **THE COURT:** You had something to say, Ms.
8 Shipley?

9 **MS. SHIPLEY:** Yes, sir, Your Honor. I would
10 just respectfully request the eye witness testimony
11 charge that you typically give.

12 **THE COURT:** All right. We'll look at that.
13 9:30. Thank you very much.

14 **MS. SHIPLEY:** Thank you.

15 (Whereupon, the proceedings are concluded for
16 the day, to be reconvened tomorrow morning)

17

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Friday, August 1, 2008

1
2 **THE COURT:** With regard to jury instructions,
3 Ms. Shipley, do you have any objection to the defense
4 suggested charge on eye witness accuracy? I mean,
5 it's right out of Hubbard's manual and has what they
6 say is a plethora of citations. It seems to me that
7 that's an accurate statement of the law. Number 6 is
8 a little bit confusing.

9 **MS. SHIPLEY:** Very.

10 **THE COURT:** But other than that --

11 **MS. SHIPLEY:** What about number 9, Your Honor?

12 **THE COURT:** Well, I think you can probably take
13 that out since --

14 **MS. SHIPLEY:** I think that would be appropriate.

15 **THE COURT:** -- there's no interracial --

16 **MR. O'NEIL:** Your Honor, I hate to be
17 presumptuous, but I think Ms. Bowers' identification
18 of Mr. Sanders might fit under number 9.

19 **THE COURT:** Ms. Bowers? Oh, okay. All right.
20 Well, any objection?

21 **MS. SHIPLEY:** No, Your Honor.

22 **THE COURT:** All right. Let's go with that then.
23 All right. Other than that, anything else before we
24 bring the jury from the State?

25 **MS. SHIPLEY:** No, sir, Your Honor.

1 **THE COURT:** From the defense?

2 **MS. EVERHART:** Nothing further, Your Honor.

3 **THE COURT:** Bring the jury, please.

4 (Jury in at 9:40 a.m.)

5 **THE BAILIFF:** The jury is present, Your Honor.

6 **THE COURT:** Good morning, ladies and gentlemen.
7 Did you get your sugar fix? The confusion in the
8 hall, I just wanted to explain that to you. I
9 haven't introduced to you this lady sitting to my
10 right. She is Ms. Sally Cole. She's a lawyer and my
11 law clerk and she has been with me for a year. Today
12 is her last day. So that's why we're having a little
13 cake and ice cream out there. I hate to lose her.
14 She's been an excellent law clerk. And that was what
15 was going on in the hall.

16 But fortunately for you, some of it kind of
17 spilled over in the jury room because we had too many
18 doughnuts, had to figure out something to do with
19 them. So we're ready to continue and close the case.

20 Now, are you going to announce? Do you want me
21 to announce? All right. Ladies and gentlemen, the
22 defendant has elected not to present a defense. Now,
23 as I have told you at the beginning of the trial,
24 that is his perfect right to do that, and I will
25 instruct you later today about not trying to

1 interpret that as any evidence of guilt or anything
2 like that. The burden still remains on the State to
3 prove guilt beyond a reasonable doubt, and a
4 defendant has no obligation to try to disprove that.

5 So there will be no more evidence in the case.
6 The evidence you've heard and the exhibits you've
7 seen will constitute the entire evidence in this
8 case.

9 All right. We'll now have closing arguments.
10 Ms. Shipley, you may proceed.

11 **MS. SHIPLEY:** Thank you, Your Honor. May it
12 please the Court. Ms. McDuffie, Mr. O'Neil, Ms.
13 Everhart, Mr. Secor; good morning, Ladies and
14 Gentlemen. Louis Sanders is a murderer. On June
15 3rd, 2007, while at the H&J pub he took a loaded gun
16 and fired it next to a woman's head simply because
17 she made fun of his friend's brother's car.

18 And when Duane Cannon, Israel Cannon, Duane
19 Cannon thought that his wife had been shot and killed
20 in the pub, he jumped in his car and followed the car
21 where he saw the shooter jump into and flee. And
22 when he caught up with that man he wanted to know why
23 you shot my wife. "What's up?" What does Louis
24 Sanders say to him? "This is what's up", and shoots
25 him in the face, shoots an unarmed man in the face.

1 Duane stumbled and collapsed onto the street.
2 And as he's lying there moaning and moving, still
3 alive. That man made a conscious decision to turn
4 around, walk back to the body of Duane who was
5 defenseless, unarmed, dying in the street, leans over
6 him and shoots him execution style in the forehead.
7 He is a cold-blooded murderer. Because of Louis
8 Sanders' criminal actions on June the 3rd, 2007, he
9 was charged with the crime of murder.

10 Ladies and gentlemen, my name is Vanessa
11 Shipley, and with me is Joanna McDuffie. We both
12 work at the Richland County Solicitor's Office. And
13 it's our job to present evidence in trials for jurors
14 like yourselves to decide what happened and to apply
15 what you decide happened to the law as Judge Cooper
16 will instruct it to you.

17 But because we have the burden of proof, we are
18 permitted to go over the law with you to explain how
19 different things apply. And so I'm going to begin
20 first with the charge of murder and explain what the
21 law in South Carolina is as it pertains to the crime
22 of murder.

23 Some states have different degrees of murder.
24 Not South Carolina. Murder is murder in South
25 Carolina, as it should be.

1 Section 16-3-10 of the code of South Carolina
2 laws defines murder as the unlawful killing of
3 another with malice aforethought, either express or
4 implied. Now, ladies and gentlemen, that's pretty
5 clear, killing another human being without lawful
6 excuse.

7 What does malice aforethought mean? Well,
8 that's sort of like a legal term of art. Malice is
9 defined in its popular sense conveying a meaning of
10 hatred, ill will, hostility towards another. Malice
11 is a term importing wickedness and excluding just
12 cause or excuse. It is something that springs from
13 wickedness, from depravity, from a heart devoid of
14 social duty fatally bent upon mischief.

15 Malice may be implied from the willful,
16 deliberate and intentional doing of an unlawful act
17 without just cause or excuse or from the use of a
18 deadly weapon. What is a deadly weapon? A
19 9-millimeter gun.

20 Now, malice has to be aforethought. It can't be
21 an after thought. It has to exist either right
22 before the time the trigger is pulled or while the
23 trigger is being pulled. Aforethought, whether
24 malice is express or implied, the malice must be
25 aforethought. The malice must exist in the mind of

1 the accused just before and at the time of the
2 commission of the act.

3 It is not required that malice exist for any
4 particular amount of time, but there must be a
5 combination of the previous evil intent and the act
6 producing the fatal result. Some people think about
7 premeditation. That's not the law in South Carolina.
8 You don't have to premeditate to be found guilty of
9 murder in this state. As long as you have evil will
10 towards a person at the moment you pull the trigger,
11 that is malice aforethought, ladies and gentlemen.

12 Express or implied. Well, implied, you can
13 imply or infer that someone is acting with malice by
14 simply using a deadly weapon. But you can also find
15 it from expressions, what someone says, such as what
16 Mr. Cannon said, "What's up" and what Louis Sanders
17 said, "This is what's up", shoots him in the cheek.
18 That is expressed malice. That's how we know.
19 Because you can't dissect someone's brain and know
20 what they're thinking. So you have to infer it
21 either from their actions or what they say.

22 In every case, any criminal case, the State has
23 the burden of proof and we also have to prove
24 criminal intent. Criminal intent is a mental state,
25 ladies and gentlemen. It's a conscious wrongdoing.

1 It is up to you to determine what the defendant
2 intended to do based on the circumstances shown to
3 have existed. Criminal intent can arise from action
4 or failure to act. It may arise from negligence,
5 recklessness or an indifference to duty or to
6 consequences that is considered by law to be the
7 equivalent of criminal intent.

8 So when you hear from somebody like Keith
9 Eubanks, who is the most disinterested witness in
10 this case, doesn't know anybody, says the guy with
11 long hair turned away and then returned and leaned
12 over and shot Mr. Cannon as he lie there dying,
13 ladies and gentlemen, that is proof of criminal
14 intent, conscious wrongdoing.

15 The State has the burden, as I mentioned before,
16 the burden of proof. And in criminal cases it's
17 proof beyond a reasonable doubt. Now, a reasonable
18 doubt is another legal term because it's really up to
19 you to define what a reasonable doubt is. It's your
20 job. But there is some law in South Carolina that
21 will help you to understand what it means so that
22 you'll know that when you're in the jury room.

23 Proof beyond a reasonable doubt is proof that
24 leaves you firmly convinced of the defendant's guilt.
25 There are very few things in this world that we know

1 with absolute certainty, and in criminal cases the
2 law does not require proof that overcomes every
3 possible doubt. So you don't even have to be
4 absolutely certain, ladies and gentlemen.

5 If based on your consideration of evidence you
6 are firmly convinced of the defendant's guilt of the
7 crime charged, you must find him guilty. You have
8 taken an oath, ladies and gentlemen, to apply the
9 facts as you determine them to be and apply them to
10 the law. And if you find that that is indeed the
11 case, you must find Mr. Sanders guilty.

12 If, on the other hand, you think that there's a
13 real possibility that he's not guilty, then you must
14 give him the benefit of the doubt and find him not
15 guilty. You might doubt that the sun is going to
16 rise tomorrow. That's not a reasonable doubt.
17 That's just an example.

18 Now, how are we presenting this case to you,
19 ladies and gentlemen? How have we proven that the
20 defendant is guilty beyond a reasonable doubt? Well,
21 we've presented evidence in this case either through
22 exhibits or testimony. And some of the testimony, or
23 most of it, is direct evidence. It's what a person
24 sees, what they hear, what they smell, what they
25 taste, what they feel, what they touch. That's

1 direct evidence.

2 Circumstantial evidence is basically a chain of
3 circumstances when you link them all together leads
4 to only one possible conclusion. One example in this
5 case of circumstantial evidence are the two shell
6 casings found by Duane's body. And, lo and behold,
7 there's two gunshot wounds. Those are chains of
8 circumstances that when you link them together, it
9 leads to only one possible conclusion, that those
10 shell casings belonged to the bullet that shot and
11 killed Mr. Cannon.

12 And circumstantial evidence, I always thought
13 this before I went to school. I thought that it
14 meant, oh, they just have a circumstantial case, they
15 don't have a case. Well, it's actually not true.
16 Both are equal under the law. Circumstantial
17 evidence is just as good as direct evidence. In
18 fact, guess what? Circumstantial evidence, DNA, it's
19 DNA.

20 An example of circumstantial evidence is, let's
21 say you're going to bed at night and you look out
22 your window and the street is clear but you hear on
23 the news that it's getting ready to snow that night.
24 Well, you go to sleep and you're sleeping through the
25 night. You wake up the next morning and you look out

1 your window and there's snow everywhere. Well, you
2 didn't see it snow. You don't have direct evidence
3 that it snowed. But based on the circumstances, you
4 see snow on the ground, obviously it snowed and you
5 heard it was going to snow on the news. That's an
6 example of circumstantial evidence. And again, the
7 shell casings found by Duane's body.

8 When you are determining the testimony, the
9 credibility of the witnesses, the believability of
10 the witnesses, Judge Cooper -- and, by the way, if I
11 say anything that differs from what Judge Cooper will
12 instruct you, please don't -- I am not trying to
13 mislead you. He is the expert in the law. So apply
14 the law as he is instructing it to you.

15 But credibility of witnesses, Judge Cooper is
16 going to tell you that you have several factors that
17 you can use to determine whether or not someone is
18 being truthful on this witness stand, that once they
19 put their hand on the Bible and swear to tell the
20 truth, the whole truth and nothing but the truth, so
21 help them God, that you can bank on their testimony.

22 Now, what are factors that Judge Cooper is to
23 instruct you about? The demeanor of the witness on
24 the stand. Does that remind you of anyone's
25 testimony? Lashonda Downing? Maria Jackson? That's

1 demeanor. That's powerful evidence, ladies and
2 gentlemen, they are terrified of Louis Sanders. And
3 why? Because they saw him with a gun that night. Or
4 at least Lashonda did and her children. That's
5 demeanor, ladies and gentlemen. And that's important
6 for you to look at when a person is taking this
7 witness stand. And there is no coincidence that you
8 are seated in this box right next to this box, so you
9 can look firsthand and see their demeanor.

10 Was the witness forthright or hesitant? Mr.
11 Eubanks, when he's asked questions by both me and the
12 defense, did he hesitate in any way? Was he certain
13 of what he saw that night? Or did he hesitate to
14 answer questions? Remember his testimony.

15 Was the testimony of the witness consistent? An
16 example: Garry Green gave a statement June 7th,
17 2007, when he finally came forward and really told
18 who it was in that car, that it wasn't some guy named
19 Flash, that it was Louis Sanders, that's the third
20 guy in the car.

21 Well, ladies and gentlemen, June 18th, 2007,
22 that's when Justin Green gives a statement. They
23 were separated in jail the entire time. Justin did
24 not know what Garry had put in his statement. They
25 had no opportunity to get their stories straight.

1 None whatsoever. Because Garry was with Sanders up
2 until he was arrested or actually escorted to
3 headquarters. And their statements are consistent.

4 And believe me, ladies and gentlemen, these
5 attorneys are skilled. And had they seen anything
6 that was inconsistent between those stories, they
7 would have brought it out when they cross examined
8 the witnesses. They would have brought that out.

9 Was the testimony of the witness corroborated?
10 Ladies and gentlemen, physical evidence corroborates
11 witnesses. Physical evidence doesn't lie. For
12 instance, when you are told by Garry Green and Justin
13 Green that the Tahoe hit them and that Justin's car
14 ended up in the fence and that he had to back the car
15 up, it left tire marks.

16 And you heard from Stan Richards that when
17 whatever car was in front of the Tahoe left the car's
18 tires as it went over. That's corroboration, ladies
19 and gentlemen.

20 When the witnesses are telling you that one
21 shot, not three or four shots, one shot is fired at
22 the scene at the H&J pub; and remember Kim Bowers.
23 Said she heard like he cocked it. And you heard the
24 ballistics expert say what happens when you cock an
25 automatic pistol and it's already loaded. Well, it's

1 going to eject the live round. Lo and behold, ladies
2 and gentlemen, we have a fired cartridge at H&J and
3 an unfired. That corroborates the witnesses, ladies
4 and gentlemen.

5 Did the witness have reason to be biased or
6 prejudiced? And that simply means do they have a
7 stake in the case? You ask yourselves: What does
8 Mr. Eubanks have to gain or lose by his testimony?
9 He doesn't have a dog in this fight. These are the
10 factors that you can use when determining credibility
11 of the witnesses.

12 The State called several witnesses to the stand
13 beginning with Ms. Cannon. And Ms. Cannon told you
14 how she doesn't recall seeing the guy with the braids
15 or dreads, the guy with the long hair, the third guy
16 that jumped in the Volvo. But she told you how she
17 recognized Garry Green.

18 So, ladies and gentlemen, what does that tell
19 us? We know that the guy with the long hair was with
20 Garry Green. And Garry Green tells you he was with
21 his brother as well and Louis Sanders. There's only
22 three people involved in this case. Don't let the
23 defense confuse you. We're only here about that.
24 Three people in that black Volvo.

25 She tells you she doesn't even remember the guy

1 with the dreads. And doesn't that make sense? And
2 because she is directing her comments, making fun of
3 Justin Green driving his mama's Volvo. And that's
4 where her attention is at. But for some reason Mr.
5 Sanders takes offense that his friend of his brother
6 is being insulted by this woman and he runs up to her
7 from behind. And that's why she doesn't see him.
8 Because he came from behind her and fired the gun.

9 But what's important? She tells you how she
10 woke up and tasted gunpowder in her mouth. That's
11 direct evidence. Her eardrum, she couldn't hear for
12 a month and a half to two months because it kept
13 ringing. That's evidence, direct, that she was shot
14 by the side of her head and that it caused her to
15 pass out.

16 And Kim Goins tells you that when the man with
17 the long hair, either Geri curled, braids, whatever,
18 the guy with the shoulder length hair jumped in the
19 back seat or jumped in the Volvo that Duane saw it
20 and told Kim Goins "stay with her", thinking she'd
21 been shot and killed and how he takes off after the
22 black Volvo down Hard Scrabble Road.

23 And you also hear from Kim Bowers that she was
24 talking to Mr. Sanders in the parking lot. And while
25 I'm talking about Ms. Bowers I'm going to go ahead

1 and explain to you, because Ms. Bowers along with
2 Justin Green who did not know Louis Sanders before
3 that night, both identified him in open court. And
4 there are some things that the judge is going to
5 instruct you about what factors to determine whether
6 or not to believe their identification of Mr.
7 Sanders.

8 And these are some of the factors, ladies and
9 gentlemen. Eye witness testimony. When a person
10 identifies another person in court when they've never
11 seen them before. Opportunity to view the criminal
12 at the time of the crime.

13 Well, ladies and gentlemen, we talked to Ms.
14 Bowers about that. Tell us how long you were in the
15 club, in the pub. I was there about 15, 20 minutes.
16 I was on the dance floor. He was with me the entire
17 time on the dance floor. How close was he to you?
18 Remember I walked up to her? And she said, "Stop."
19 Two feet away. Five, ten minutes on the dance floor,
20 twenty minutes total inside of the pub.

21 And then she had an opportunity to view him
22 again outside in the parking lot. She was talking to
23 him five minutes. There was some light there. She
24 had nothing obstructing her view. She got a good
25 look at him, ladies and gentlemen.

1 She gives a description of him also. What is
2 her description? He's a black male, five-nine,
3 150 pounds to 160 pounds, medium brown skin and
4 dreads. Well, you saw Garry. He's light complected.
5 And then you saw Justin. He is dark complected. And
6 Mr. Sanders fits right inbetween. He's medium.

7 Kim Goins also tells the officers when she is
8 taken to headquarters about the description. Black
9 male, 30 to 40 years of age. Well, Justin is only 25
10 at the time. And she then goes on to describe him as
11 five-ten and 170 pounds, brown skin. Again, not
12 light skin, not dark skin; brown skin, and that he
13 had Geri curled hair.

14 And then she later comes in here and tells you
15 what she meant by the Geri braids. It was like
16 braids and it curled at the end. That's what she was
17 trying to describe to Investigator McRae.

18 You also are going to be asked to determine the
19 level of certainty when they identified Mr. Sanders.
20 Ms. Bowers tells you that on June 3rd she has no
21 problem identifying Garry Green as the guy that was
22 with the shooter that night. Okay. That's when she
23 identified Garry Green.

24 Well, ladies and gentlemen, on June 4th she is
25 shown two sets of photographic line-ups with black

1 males with dreads or braids and she doesn't identify
2 anyone with these 12 photographs. One of them I
3 believe Investigator McRae said contained a
4 photograph of Eric Sanders. So we know Eric Sanders
5 wasn't there, didn't do anything.

6 And then this one, ladies and gentlemen,
7 contains Ricardo Guilbert, the Red Robin guy with the
8 burgundy shirt, not the guy with the dreads, with the
9 white shirt and the stripe on it like Mr. Eubanks
10 described the shooter to be.

11 And then what happens, ladies and gentlemen?
12 She is then presented with another six pictures.
13 Let's see. I'm bad at math. 18 pictures? And she
14 tells the investigator, "I'm pretty sure this is the
15 person I was talking to and shot near Pam's head",
16 Pam Cannon. And she says to you on this witness
17 stand the hair looked different and I'm not going to
18 sign my name unless I'm absolutely sure. That's
19 credibility, ladies and gentlemen.

20 But in this courtroom when she sees him live,
21 not in some old photograph, black and white copy, she
22 tells you that there is no doubt in her mind that is
23 the same man she talked to on the dance floor that
24 she was in the parking lot with. That's credibility,
25 ladies and gentlemen. That's believable.

1 And then obviously the length of time. It had
2 only been four days when she identified him in the
3 line-up when she's pretty sure it's him. With Justin
4 Green, he gives a description -- or actually Garry
5 Green gives a description. Black male, five-ten, 130
6 to 140 pounds. That's the description he gives when
7 he's talking about Flash. Remember in the second
8 statement he said Flash did it. Figment of his
9 imagination because he didn't want to rat out on
10 Louis Sanders. But the description he provides:
11 Interesting, he's describing Louis Sanders.

12 Keith Eubanks tells you that it's a black male
13 with long hair. He's got a white shirt with a
14 horizontal stripe and dark baggy pants. Not a
15 burgundy shirt from Red Robin like Ricky Jacobs tells
16 you about. And guess what? Lo and behold, hold
17 Louis Sanders, black male, 36 years old, five-eight,
18 160 pounds.

19 These witnesses' descriptions of the shooter are
20 off by a matter of inches, a matter of little pounds.
21 They are describing the defendant, Louis Sanders.
22 Mr. Eubanks also tells you about 911. You all have
23 the benefit of reading the transcript. But don't
24 forget, ladies and gentlemen, this is going back with
25 you in the jury room. So play it.

1 They are running and got in like a small little
2 black car. Okay. This is early morning hours,
3 moments after the shooting. One of them kind of had
4 his hair long like a Blowout. Okay. Like a Blowout.
5 Didn't Justin Green say something about his hair
6 being permed? Regardless, it was shoulder length. I
7 just know one of them had kind of long hair because I
8 could see when he was running. Remember? Mr.
9 Eubanks said it was bouncing when he ran away.

10 When they left there was a third guy because
11 another guy was driving. Okay. So there's a third
12 one driving? Yeah. Third guy. And you heard the
13 third guy, the driver, Justin Green, never once got
14 out of the car.

15 Now, Justin Green and Garry Green didn't know
16 about Keith Eubanks when they gave their statements,
17 ladies and gentlemen. And everything that they put
18 in their statements back in June of 2007 is
19 corroborated by Mr. Eubanks who has no dog in this
20 fight.

21 Yeah. He shot the guy. At first I thought it
22 was just somebody joking. Remember? Remember Mr.
23 Eubanks telling you that on this witness stand? He
24 wasn't sure that Mr. Cannon had been shot because he
25 stumbled around a little bit after he saw the flash

1 in the hand of the guy with the long hair? And then
2 he sees Mr. Cannon drop.

3 Isn't that corroborated, ladies and gentlemen,
4 by Dr. Nichols who says that, yeah, if that first
5 shot was in the mouth, it's possible that he would
6 have stood for a little bit because it's potentially
7 fatal but it wasn't the fatal shot. And I asked him,
8 well, would this have bled right away? Oh,
9 absolutely. And it would have, therefore, dripped on
10 his leg.

11 And, by the way -- I'll get to this in more
12 detail -- this is not a fresh scrape. It's an old
13 scar and there's blood drops on it. Investigator
14 Livingston told you that, and so did Dr. Nichols.

15 "But then I seen the guy standing over
16 something. Then he shot him. And I seen the body."
17 And it was inaudible. But you take that tape back
18 there with you and you decide what it meant, what it
19 says.

20 One guy. There is no confusion in Mr. Eubanks.
21 There was one guy that fired both shots. Yeah, when
22 he's talking to Scott McDonald at 5 something in the
23 morning he is not clear over the telephone and he
24 doesn't know what he saw. So he is just
25 misinterpreting what he's telling him.

1 But Mr. Eubanks took this witness stand and told
2 you that the guy with the long haired fired both
3 shots, that they were about -- and I don't remember
4 exactly. I think he said it was like 17 seconds, 18
5 seconds between shots.

6 And everyone's perception of time is different.
7 Justin Green says it was more like five seconds. I
8 believe Garry said it was more like ten seconds. It
9 was quick, ladies and gentlemen, seconds.

10 Another witness identified the defendant.
11 Justin Green. And he told the investigators, I
12 didn't know his name. I thought it was -- only knew
13 him to be Scooter. Scooter just happens to be his
14 nickname. That's what Lashonda Downing told you.
15 That's what Anthony Smith told you.

16 And guess what, ladies and gentlemen? Scooter
17 is identified by Justin Green as the guy that got in
18 the car, the guy he was introduced to. And again his
19 opportunity to view him inside the club for 15, 20
20 minutes while they're sitting at table two to five
21 feet away from each other. And he identifies him in
22 court, ladies and gentlemen, as the guy he saw
23 standing over Duane Cannon's body after both shots.

24 What else was interesting, ladies and gentlemen?
25 Keith Eubanks talking about how Garry, the stockier

1 guy with short hair, that's Garry Green he's
2 describing. After the first shot he raised his hands
3 at the guy with long hair as if he could not believe
4 what he had just done, that he had just shot the man.

5 Does that appeal to your common sense? If he's
6 outraged at Mr. Sanders for shooting Mr. Cannon, he's
7 outraged. Why would he shoot him? Mr. Sanders fired
8 both shots. Eubanks told you that.

9 All of the evidence points to the guilt of Mr.
10 Sanders. Kim Bowers, she doesn't know Garry or
11 Justin. And guess what? She is disinterested, too.
12 She doesn't know Louis Sanders. She has nothing
13 against Louis Sanders. She doesn't know him.

14 That kind of does away with the scapegoat
15 theory, doesn't it? Because apparently the scapegoat
16 theory is that these two brothers are ganging up on
17 poor little Louis Sanders. But how do you explain
18 Kim Bowers identifying him?

19 Justin Green, he doesn't know Louis Sanders. He
20 did not know what Garry Green had told the police.
21 And his statement is consistent with Garry Green's
22 statement. They did not have time to fabricate and
23 get their stories straight. They were kept
24 separated. And their stories have not changed since
25 June the 7th and June the 18th when they were both

1 charged with murder.

2 And if you have a problem with the State going
3 forward against Garry Green for accessory after the
4 fact of murder because he lied to the police and told
5 them a guy named Flash did it, hold that against me.
6 Don't hold it against the justice we deserve for this
7 family of Duane Cannon.

8 And if you have a problem with me dismissing the
9 charge against Justin Green who works at Wachovia,
10 finished college, didn't know him; his brother is
11 trying to get him out of there, didn't want him
12 involved, hold that against me.

13 Because sometimes it's more important to
14 prosecute the person who killed another human being
15 than it is to punish someone for failing to call the
16 police. And do I think he should have called the
17 police? You're right. Absolutely he should have
18 called the police. As soon as he dropped his brother
19 off with Louis Sanders at Lashonda's house, he should
20 have called the police. But he didn't.

21 Garry Green identifying the defendant. The
22 defense told you he has no reason to be scared of
23 Louis Sanders, that he was with him all night long.
24 He was fine. Well, don't take Garry Green's word for
25 it. Take Maria Jackson's word for it, that when

1 Louis Sanders gives her that cold look Garry is just
2 standing there. He's just standing there. He's not
3 trying to defend Lashonda while Sanders is putting
4 his hands all over her and putting a gun at her.
5 Because Louis Sanders is the only man with a gun, and
6 Garry Green is not going to endanger his life
7 protecting Lashonda when Louis is acting crazy,
8 according to Maria Jackson. He is acting crazy.
9 That's fear, ladies and gentlemen.

10 And not to mention they frequent Michelle
11 Jackson's house a lot. She told you that. Don't
12 take Garry Green's word for it. Take Maria Jackson's
13 word for it. She's friends with both of them. And
14 she tells you that, yeah, Louis Sanders comes over
15 all the time. So does Garry Green. And they all
16 know, who lives here? Garry Green's family, his
17 mother and his stepfather.

18 And Garry Green himself told you that when he
19 talked to his family and they told him the word on
20 the street is already there Louis Sanders did it, he
21 felt that he could now come forward because Sanders
22 would not know it was him that told on him. That's
23 believable, ladies and gentlemen.

24 You can't get around Keith Eubanks. The
25 scapegoat theory presented to you at the beginning of

1 the case, it's flushed down the toilet when you've
2 got Kim Bowers, Justin Green, Garry Green and now
3 Keith Eubanks. Because everything these two brothers
4 say, Eubanks tells you that's true. The guy with the
5 long hair and the stocky guy with the short hair came
6 running down the street after the accident.

7 The shell casings, they match. You can't get
8 around that, ladies and gentlemen. They match. And
9 according to Mr. Collins, the shell casings that the
10 markings left when you fire a gun, a bullet through a
11 gun, it's as unique as a fingerprint.

12 Lashonda Downing tells you he had a gun, he
13 pulled it on me, he was putting his hands on me. I
14 asked her, well, did he ever ask you to be his alibi?
15 And she said he never not the chance because her
16 mother came.

17 And that's important, ladies and gentlemen. I
18 asked Investigator McRae, when is the first time that
19 you found out that Maria Jackson was at Lashonda's
20 house in the Winslow Subdivision that night? And he
21 goes, when I read Anthony Smith's statement. Anthony
22 Smith, cell mate with Louis Sanders. Yeah, he had
23 his discovery. He probably could have read it all he
24 wanted like a novel. But nowhere in that discovery,
25 not in any police report, not in anybody's statement

1 to the police was there ever any mention of Maria
2 Jackson, the grandmama, being at Lashonda's house
3 that night. You can't get around that, ladies and
4 gentlemen. McRae himself didn't know she was there.
5 And he's the lead investigator in the case.

6 And so I also wanted to make you guys clear
7 about this when I asked Sergeant McDaniels, well, did
8 you know anything about the case? No. It's not my
9 case. I just was asked to go interview this guy. He
10 didn't know anything about the case. So it's not
11 like he could have suggested to Mr. Smith that the
12 grandmama showed up at the house in Winslow
13 Subdivision that happens to belong to Lashonda
14 Downing.

15 So what does that common sense tell you? That
16 man told his roommate too much information about what
17 he was doing that night. And the police sought Smith
18 out. Smith did not seek out the police. And he's
19 not a government informant. He's not getting paid.
20 And, yes, the judge let him out on a PR bond because
21 his lawyer asked her to because he was scared his
22 client was going to get hurt after testifying against
23 Mr. Sanders in this trial.

24 Maria Jackson describes the defendant's demeanor
25 the best, that cold look. And that was her cue to

1 get her daughter and her grandbabies out of that
2 house. And her grandbabies are upset. They're
3 crying. He's got a gun, he's got a gun. They
4 wouldn't stop talking about it for weeks because it
5 traumatized them. And it obviously from the demeanor
6 of Ms. Downing traumatized her.. Those women did not
7 want to be in this courtroom. They could barely look
8 at Mr. Sanders when I asked them to identify him for
9 you. They were terrified of him. They still are.

10 Anthony Smith also tells you that the defendant
11 admitted to shooting the gun at the pub. So, ladies
12 and gentlemen, remember the circumstantial evidence
13 that I explained earlier, the chain of circumstances
14 when you link them all together leads to only one
15 reasonable conclusion?

16 If you have the gun in the parking lot of the
17 H&J pub and you have the gun when you fire the first
18 shot at Mr. Cannon's face when he's looking at you,
19 talking to you, asking you what's up; and you go,
20 "This is what's up", bam, and then you still have the
21 gun when you turn around and you see this dying man
22 on the street and you go up to him and you fire
23 another shot in his forehead execution style, and you
24 still have the gun when you go to Lashonda Downing's
25 house in Winslow, ladies and gentlemen, reasonable;

1 the defendant is the only one that had that gun that
2 night. His own statement points to his guilt.

3 You heard Garry and Justin Green tell you about
4 their advice of rights and so forth. You have to
5 decide whether or not they were duly advised of their
6 rights; and, more importantly, you have to decide
7 whether or not Mr. Sanders was duly advised of his
8 rights.

9 You heard from the officers that they told Mr.
10 Sanders -- and you're going to have this with you,
11 where he signs it and agrees to talk to the police
12 when he is arrested. And, by the way, Ladies and
13 Gentlemen, evidence of flight is evidence of guilt.
14 It's the law in South Carolina. When you hide from
15 the police when you know they're looking for you
16 because they've come to your house and told your mama
17 that the police are looking for you, we have a
18 warrant for your arrest, and when they knock on your
19 door and you don't answer; instead, you're busy
20 hiding, climbing up the stairs to your attic and
21 shutting the steps or ladder to your attic and hiding
22 and staying there quietly while the police come and
23 clear your home, evidence of flight. You're hiding.
24 You're hiding because you're guilty. And you can
25 infer that, ladies and gentlemen, by his conduct.

1 But once he is arrested with the charge of
2 murder for killing Israel Cannon, he is advised of
3 his rights. You have the form. He is asked if he's
4 had anything alcoholic to drink in the last 24 hours.
5 Five beers the night before. He had five beers,
6 hanging out partying, having drinks, just shot and
7 murdered somebody. He's on his phone joking about
8 it, about killing and taking a human life. Yeah.

9 You have to determine whether the statement he
10 gave to the police was voluntary, whether McRae
11 coerced him. Mr. McRae explained he defined coercion
12 for him, that I'm not holding a gun to your head and
13 making you talk to me. They even made sure that
14 there was only two officers in the room so he
15 wouldn't feel intimidated. But they have to have two
16 for their security, for their safety. It's up to you
17 to determine whether or not his statement was
18 voluntary. Ladies and gentlemen, it's voluntary I
19 submit to you.

20 Let's go over his statement. All right. So
21 he's arrested at noon on July 12th, 2007, at his
22 mom's house or his house, [REDACTED] Torrowood. Advised of
23 his rights at 12:45. That's all on that document.
24 Admits to being at the club and hanging with Garry
25 Green. All right. So he's putting himself with

1 Garry Green because we know that the shooter with the
2 long hair, shoulder length hair was with Garry Green.
3 All right. So he's putting himself there.

4 Denies any involvement other than that, admits
5 to being with him, with Garry Green. Does not recall
6 Justin Green. Doesn't remember him. States that he
7 was at the club until closing time and that he heard
8 three to four shots while in the parking lot. Wow.
9 Everybody else said it's just one shot. Why are you
10 lying about that?

11 States that he got a ride home from a person
12 only known to him as Twan, doesn't give the last name
13 or phone number like he did for Lashonda, his other
14 potential alibi. Twan drove him to his baby's mama's
15 house in the Winslow Subdivision. Doesn't mention
16 that Garry was with him. Well, Lashonda tells you
17 Garry was with him. They bang on her door. She was
18 upset because they were going to wake the children,
19 and it was the two of them together and that she
20 didn't see who dropped them off because Justin took
21 off.

22 He gives Lashonda Downing's name and number.
23 And there it is. I asked her is that your number
24 back in June of '07? Yep, that's it. He says he got
25 into an argument with her, doesn't submit any mention

1 of pulling a gun on her or putting his hands all over
2 her. And then he left the residence alone and walked
3 all the way to William Harden Road. He walked all
4 that way to William Harden Road. He doesn't mention
5 his mother coming to pick him up.

6 He arrives to the William Harden Road house at
7 about 8 a.m. And Ms. Jackson tells you that it was
8 more like 7 a.m. And doesn't that make sense of the
9 timeline? Sunrise is 6:13 in the morning. And we've
10 already got Maria and Lashonda calling Mr. Sanders'
11 mother to come get him, telling her she's got a gun
12 so she agrees to go get him. And Ms. Jackson tells
13 you that he got there around 7.

14 And then he left there between 12 and 1 p.m.
15 No, you didn't. Because Mr. McRae saw you looking at
16 him when he came back later that late afternoon
17 closer to 7 to pick up Garry Green for questioning.

18 At this point, yeah, Garry Green was at the
19 house on William Harden Road, too. So now all of a
20 sudden he's back with Garry Green. He admits that
21 earlier at the H&J he was hanging out with Garry
22 Green, doesn't know where Garry Green is, distancing
23 himself from Garry Green during the time of the
24 shooting. And then all of a sudden, miraculously,
25 we're back together at William Harden Road. It's no

1 coincidence, ladies and gentlemen.

2 He denies seeing Investigator McRae picking
3 Garry Green up for questioning. Garry Green told
4 Investigator McRae, that was Louis Sanders that was
5 watching you take me away.

6 Sanders denied knowing where the gun was. He
7 denied shooting the man, said, okay, when he was
8 asked, were you ever in Justin Green's car? At that
9 point, ladies and gentlemen, he's thinking, uh-oh,
10 might have left some DNA in there, maybe even a
11 fingerprint. All right. I'm going to tell them I
12 was in that car just in case.

13 Sanders says he was in the passenger's seat of
14 Justin Green's car earlier in the morning drinking a
15 beer. I thought you didn't remember Justin Green,
16 Mr. Sanders. Drinking a beer. I asked the DNA
17 expert, any beer bottle collected, submitted to you
18 for testing? No. I asked him, did you test any of
19 those -- oh, man, there is tons of swabs. Let me
20 show you. These are all the bottles. There is one,
21 two, three, four items collected, swabbed from the
22 mouth. I asked the DNA expert, did you test that?
23 No. Well, why not? Because he admitted to being in
24 the car.

25 So I asked him -- remember, because the defense

1 was trying to nitpick about it. So I asked him,
2 well, Dr. Barron, if someone admits to being in a car
3 and you find their DNA in the car, what does that
4 tell you? That they were in the car, he is telling
5 the truth about being in the car. So the fact that
6 that evidence was not tested doesn't disprove or
7 prove anything.

8 Also, ladies and gentlemen, while I'm talking
9 about this stuff, you heard, I believe it was
10 Mr. Secor that asked Dr. Barron concerning the hand
11 scrapings. Why didn't you test the hand scrapings?
12 And Dr. Barron goes, there was no evidence of any
13 scratching or altercation. Oh, well, what about this
14 fresh scrape on his leg? Hmm. What was he trying to
15 do with that kind of questioning? Mislead you? Dr.
16 Nichols told you that's not a fresh injury or a
17 scape. That's blood drops, consistent with it coming
18 out of Mr. Cannon's mouth while he stumbled before he
19 fell.

20 The rest of this stuff, there is no beer bottle
21 collected. He did swab all of the fired shell
22 casings and the unfired one. The results were
23 negative. What else? Oh, swabs from the Chevy
24 Tahoe. No evidence, none, that Louis Sanders opened
25 the door and yanked Mr. Cannon out. And Mr. Eubanks

1 tells you that. The guy in the SUV got out on his
2 own. And that's corroborated by Justin Green.

3 All right. So now he's saying he did not leave
4 in Justin's Volvo. Okay? Said that he left the club
5 about five minutes after the shot was fired. Well,
6 Bowers is telling you, has testified that everyone
7 scattered. Shots are fired. You're not going to
8 hang out and chill out for five minutes.

9 Sanders said that he left with Twan who drives a
10 black and gray Cutlass. Sanders denied being
11 involved in the case and he denied knowing Pamela
12 Cannon.

13 You heard that there was some evidence about
14 alcohol being consumed by Mr. Sanders that night.
15 And just out of an abundance of caution, I want you
16 all to be aware of the law. Voluntarily drinking
17 alcohol and getting drunk, voluntary intoxication
18 does not preclude one's ability to act with malice
19 aforethought and it is not a defense to the crime.

20 So when you decide to go get drunk and take a
21 gun with you to a nightclub and pick fights with
22 people or agitate people on the dance floor and you
23 decide to shoot at their head because you don't like
24 what they have to say about you or your friends,
25 you're guilty, especially when you go and shoot an

1 innocent man, defenseless man.

2 But the evidence that was analyzed, ladies and
3 gentlemen, the gunshot residue kit from the Chevy
4 Tahoe showing that Mr. Cannon was not in the car when
5 the shot was fired. The door was open. Remember?
6 And Mr. Justin Green told you that the victim was
7 standing to the side of his car door, the front
8 driver's door. So that would corroborate Mr. Justin
9 Green. There was no gunpowder residue on the
10 driver's door, the interior of the driver's door.

11 All right. The paint scrapings. More evidence
12 that corroborates Justin Green and Garry Green. The
13 damage, the right front hit the left rear of that
14 car. It's corroborated. Remember the defense was
15 asking Investigator Livingston, well, isn't it true
16 that people say that the Chevy Tahoe was being chased
17 by the Volvo? Well, ladies and gentlemen, things are
18 reported. They try to sift through everything they
19 can to get the accurate facts.

20 But we know for a fact that this car was behind
21 this car. How do we know that? Because Hue Tang,
22 the SLED expert that did the analysis, told you, it's
23 consistent. The paint is the same. You've got a top
24 coat and you've got a colored coat.

25 Also Duane Cannon had no gunpowder residue on

1 his hands. So obviously we know he didn't fire a
2 gun. But more importantly, it goes to how
3 defenseless he was. Because if you have any strength
4 while you're lying on the street bleeding and dying
5 and someone is coming back to you with a gun and
6 points it at your forehead, defensive reaction; don't
7 shoot me. He was defenseless. His arms were to his
8 sides. There was nothing he could do to defend
9 himself.

10 More physical evidence that corroborates Justin
11 and Garry Green. The tire marks that Justin Green
12 leaves behind in his Volvo, the Chevy Tahoe mark.
13 That's the Chevy Tahoe right there. And Investigator
14 Richards told you that, that this was taken after the
15 car was towed. And there is pictures, Ladies and
16 Gentlemen, of the Tahoe with that same tire mark
17 underneath the Tahoe before it was towed. So there
18 is no question that the Tahoe rolled over the tire
19 marks left by the Volvo afterwards, after the Volvo
20 left.

21 And also it's corroborated by the fact that the
22 car is found running and still in drive. Doesn't it
23 make sense that when you push a car back and you get
24 out of its way and it's still in drive and running
25 it's going to roll forward while the driver of that

1 car is lying dead in the road?

2 And also the positioning of Mr. Cannon's body.
3 That's the Chevy Tahoe in this diagram. But, ladies
4 and gentlemen, back it up and put a car length of a
5 Volvo right there, and where is Mr. Cannon's body?
6 If you push that Tahoe back and you put the Volvo
7 there, guess what? He's by his car door. More
8 corroborating evidence.

9 Ladies and gentlemen, also just to go over one
10 last thing. There is no question that these are the
11 same. The same gun fired the shots 1, 2 by Mr. Duane
12 Cannon's body, and 3 and 4 by the phone booth. 1, 2
13 and 3 are fired by the same gun and 4 is a similar
14 caliber. And that's what Dr. -- excuse me -- David
15 Collins testified to.

16 The swabs were tested that were taken from the
17 shell casings and they came back negative. This is
18 what these men looked like that day. The short,
19 stocky guy, short hair, the guy that goes -- when Mr.
20 Sanders shoots, fires the first shot according to Mr.
21 Eubanks who doesn't know them, not under this
22 scapegoat theory or plot against Mr. Sanders; and
23 Mr. Justin Green, dark complected, bald.

24 The rules of procedure, ladies and gentlemen --
25 oh, by the way, one more thing before I forget. All

1 the corroborating evidence about the stellate
2 wound -- you have the picture -- it's a contact
3 wound, according to Dr. Nichols, execution style,
4 that this would have been consistent with being the
5 first fired shot. Because doesn't that make sense?
6 If this was the first shot, Ladies and Gentlemen, Mr.
7 Cannon would have been down and there's no way that
8 blood would have been able to drip anywhere on this
9 leg, or on this leg.

10 This was shot number 1 while he's saying "What's
11 up", and Sanders says "This is what's up", bam.
12 Five, ten, seventeen seconds later this man is
13 already on the ground; the second shot. And that's
14 what Eubanks tells you. So the physical evidence on
15 Mr. Cannon is corroborated by Mr. Eubanks, what he
16 tells you he saw.

17 Look at the condition of the projectile that was
18 recovered from Mr. Cannon's brain. It's mangled.
19 But the defense is going to try to convince you that
20 this is not from a 9-millimeter, it didn't come from
21 the two shell casings that are found by this man's
22 body.

23 There is no evidence of any other shell casings
24 found at the scene. And don't forget what David
25 Collins told you, that it's consistent with being

1 fired from a 9-millimeter. But he's just a
2 ballistics expert, so I guess the defense doesn't
3 want you to believe him.

4 All right. Now I'm getting to this part. The
5 rules of procedure are that the State has the burden
6 of proof and we get to argue first. So I have to
7 anticipate what the defense attorneys are going to
8 say on closing argument because I'm not going to be
9 able to respond. So I'm going to ask you, think
10 about what I would ask or say or mention during their
11 closing. If they say something, how would I react?
12 What would the solicitor say? Okay?

13 I have to anticipate what they're going to say.
14 I can't read their minds. In a murder case there is
15 pretty much two defenses: I didn't do it, or if I
16 did it was self-defense. So they've gone with I
17 didn't do it.

18 The defense strategy is, let's confuse the jury
19 a little bit with smoke and mirrors. Let's distract
20 them from the fact that everybody describes the
21 shooter with long hair. Let's talk about braids and
22 dreads and perms and Geri curl, but let's not talk
23 about the length of the man's hair.

24 Oh, my gosh. Justin is the murderer because he
25 didn't turn left on Hard Scrabble Road after the

1 first shot was fired. Ladies and gentlemen, you
2 heard from Kim Bowers that people were scattering
3 everywhere after that shot was fired at Hard Scrabble
4 Road.

5 Keith Eubanks' statement, they told you in
6 opening that he changed his story. He told you, no,
7 I never told them that. And you look at that 911
8 call. He always said the man, one man shot him. He
9 is disinterested in this case. He has no dog in this
10 fight. He refutes their scapegoat theory: Justin
11 and Garry shot the victim. Well, no, Mr. Eubanks
12 keeps Justin in the car. He never leaves. And he's
13 got Garry going, "What? What have you done" after
14 the first shot. So we know he doesn't have a flash
15 coming out of his hand. They're both bald. They've
16 got short, shaved heads.

17 You can't believe Garry was scared of Sanders.
18 Maria Jackson, Garry was just standing there. He
19 couldn't do anything. Eubanks, the guy with short
20 hair threw up his hands like he couldn't believe that
21 the guy with long hair had just shot the man. Don't
22 forget, that man knows where Mr. Green's family
23 lives. Is it -- does it appeal to your common sense
24 that he has a legitimate basis for his fear? This
25 man knows where his family lives. But he tells you

1 once I talked to my parents and I found out that the
2 word on the street was already out, then I told them
3 so he wouldn't think it was me that told on him.

4 In the opening, no physical evidence left behind
5 by the defendant at the scene. Well, ladies and
6 gentlemen, there is no evidence that Mr. Sanders got
7 injured, so how is he going to leave any blood?
8 There was no evidence that there was any signs of
9 struggle between Mr. Cannon and Mr. Sanders, so
10 there's no hair or anything else. This man was the
11 man with the gun. The only physical evidence that he
12 leaves at the scene is his destruction, his path of
13 destruction, of taking a human's life.

14 And the two shell casings, the match, the one he
15 said he fired at the H&J pub, that's what he told
16 Anthony Smith, his cellmate. You can't match the
17 bullet to the shell casings? Again, I already
18 covered that with you. David Collins, the ballistics
19 expert, tells you that it's a mangled projectile,
20 that it's consistent with being fired from a
21 9-millimeter. The very caliber found of the shell
22 casings found by Mr. Cannon's body and at the H&J.

23 Rico, Alex, Jamal and Tracey did it. So I am
24 just going to call them the Red Robin murderers.
25 Ladies and gentlemen, they were excluded at the

1 outset of this investigation by the police. And to
2 try to sell that to you differently is an insult to
3 your intelligence.

4 Anthony Smith can't be believed because he's a
5 government informant. He's a snitch. Just ask
6 yourselves this. How would he have known about Maria
7 Jackson being at Lashonda's house? It was never
8 mentioned in any of the reports or statements that
9 Mr. Sanders had with his discovery in his cell.

10 All right. Again, trying to confuse you about
11 fresh scrapes. Oh, you know, you should have tested
12 the victim's fingernail scrapings because of that
13 fresh scrape. That's just smoke and mirrors,
14 distracting you from the facts.

15 All right. It makes no sense for Louis Sanders
16 to kill Israel Cannon. Well, at the H&J pub Louis
17 Sanders escalated the situation according to Kim
18 Bowers. She was talking to him, and the conversation
19 between Pam Cannon and Justin Green, it was between
20 them. She was making fun of his car. He escalated
21 the situation. He went up to her and fired the gun
22 by her head. And doesn't that sound familiar to what
23 Mr. Eubanks testified to? Louis Sanders, or the guy
24 he described with long hair, was the one that
25 escalated the situation there.

1 Ladies and gentlemen, it doesn't make sense.
2 This is a senseless murder. Israel Duane Cannon, his
3 life ended because of a senseless act. This family
4 will never make sense of it. The goal of the shooter
5 is to kill the victim. That bullet hole right there,
6 Dr. Clay Nichols.

7 In the beginning of this case I believe it was
8 Mr. O'Neil that defined "atonement". And I believe
9 he defined it as saying "to cover". Well, I dusted
10 off my college dictionary and I looked it up.
11 Atonement: The act of atoning, satisfaction given
12 for wrongdoing or injury. Repairing a wrong."

13 Ladies and gentlemen, I ask that you go into
14 that jury room, you apply the facts as you decide and
15 apply it to the law as Judge Cooper instructs it to
16 you and you right this wrong. This is his day of
17 atonement, ladies and gentlemen. Thank you.

18 **THE COURT:** From the defense. You may proceed.

19 **MS. EVERHART:** Thank you, Your Honor. The
20 murder of Israel Cannon is a tragedy. It is a
21 tragedy for his wife and it's a tragedy for his
22 friends and family. And it's a tragedy for the
23 citizens of Richland County. The State is right.
24 The person who murdered Israel Cannon should pay, but
25 that person is not Louis Sanders.

1 The State's told you they don't have to prove
2 motive to prove murder. They don't have to show you
3 there is any reasoning at all behind this crime. But
4 this case begs the question: Why would Louis Sanders
5 shoot at Pam Cannon? Why would Louis Sanders kill
6 Israel Cannon? It doesn't make any sense.

7 Who would have a reason to do this? Well, we
8 know that Justin had an altercation with Pam Cannon.
9 She was drunk that night. She was making fun of him.
10 She was putting him down, challenging his manhood.
11 It was Israel Cannon who smacked into his car.

12 Now, you have heard a lot of testimony this
13 week. You've heard from a lot of different
14 witnesses. You had the opportunity to hear from
15 witnesses who were there at the H&J pub that night.
16 You heard from Pam Cannon and her cousin, Kim Goins,
17 and Kim Bowers. And they all told you that night
18 they had been out having a good time. They'd been
19 out partying and drinking. This was Pam's birthday
20 celebration. They told you they had been up all day.
21 It's 4:00 in the morning by the time they're leaving
22 this club.

23 Pam got on the stand and she told you she
24 doesn't remember very much about what happened that
25 night. She remembers a couple of men. She remembers

1 talking to a guy about his mother's Volvo. She
2 doesn't remember anyone with dreads or braids. She
3 doesn't even remember someone shooting in her
4 direction. She remembers waking up and finding out
5 someone had shot at her.

6 Kim Goins took the stand and she told you that
7 there was some guy there who had shoulder length,
8 well-kept dreads. That night she talked to the
9 police. And you heard from Investigator McRae,
10 Investigator McDonald. And they indicated that she
11 said there was a guy there who had Geri curled hair
12 which is very different from braids or dreads.

13 She told you that she believed this person with
14 dreads ran up and shot next to Pam Cannon. You also
15 had an opportunity to hear from Kim Bowers. And Kim
16 Bowers told you she had had eight to ten drinks that
17 night. When we all saw her, she is a petite lady.
18 Eight to ten mixed drinks. That's a lot of alcohol.

19 She told you that she talked to a man in a club
20 that night out on the dance floor and he either had
21 dreads or some kind of twisty braids all through his
22 hair. It may have been different lengths. She said
23 this was a man who had an altercation with Pam
24 Cannon. And she believed this was the man who was
25 also outside who may have shot at Pam Cannon. She

1 didn't see him with the gun. She heard a click and a
2 shot firing. But she was certain this was the man.
3 The man from inside the club was the man outside the
4 club. This was the man she had been talking to that
5 evening.

6 Now, this week you also learned from
7 Investigator McDonald and Investigator McRae that
8 there was a man who was in the club that night who
9 talked to Kim Bowers and that was Rico Guilbert. He
10 told the police he chatted her up. He also told the
11 police he and Pam Cannon had contact that night, that
12 while she was on the dance floor she knocked his beer
13 out of his hands and her husband bought him a new
14 one.

15 We are certainly not insinuating that Rico
16 Guilbert committed this murder, but Kim Bowers was
17 certain that the man who was with her was also the
18 one in the parking lot. She can't remember. She
19 can't keep events separate because she had eight to
20 ten drinks that night.

21 The day after this occurred she was given the
22 opportunity to look at photo line-ups. She viewed
23 two photo line-ups that day. And in one of them
24 there were two men that she pointed out could
25 possibly have been involved. Three days later she

1 was given a photo line-up with Louis Sanders in it.
2 Investigator McDonald told you she went between Louis
3 Sanders and another guy. He can't remember which one
4 in the line-up. In the end she said I think it might
5 have been Louis Sanders but I can't tell you for sure
6 because of how much I had had to drink.

7 She came to court this week and she pointed at
8 Louis Sanders and she said that he was the man that
9 she was talking to that night. She was the man that
10 she thinks was involved. She couldn't remember that
11 three days after this occurred when her memory would
12 have been freshest, but now 13 months later she is
13 certain.

14 You also had the opportunity to hear from Ricky
15 Jacobs. And this is the owner of the H&J pub. He
16 has absolutely no reason to lie to you about
17 anything. He was asked by the police if he could
18 give them any names of anyone who might fit the
19 description of someone who had dreads or braids that
20 night. He thought about his regulars. He thought
21 about the people who came into the club and he
22 mentioned to them that there was this guy there in a
23 Red Robin shirt with a crowd of people from Red Robin
24 who did have braids or dreads. He told you he knows
25 Louis Sanders. Louis Sanders is a regular at his

1 club. He did not give the police Louis Sanders'
2 name. That's because the description didn't fit Mr.
3 Sanders.

4 You also had the opportunity this week to hear
5 from Justin and Garry Green. Both of these men were
6 arrested for this murder. Now, the State has
7 indicated to you that the police made further
8 investigation and at the outcome of it they decided
9 these two men should no longer have the charge of
10 murder and that's why these men were later indicted
11 with accessory after the fact.

12 For an entire year both of these men were
13 indicted on murder. Only in the last six weeks did
14 their charge become accessory after the fact. Garry
15 Green took this stand and he told you he is now
16 looking at zero to 15 years. That means as soon as
17 he enters his plea there is a chance he could walk
18 out the front doors of the courthouse a free man.

19 Justin told you that he was set to go to trial
20 this week. He was going to be right here in front of
21 you all. It was decided that his case would be
22 continued, and at that point the State offered to
23 drop his charges and he agreed to testify this week.

24 Garry told you when he was on the stand that he
25 was a liar. He told you he didn't tell the police

1 the whole truth when he met with them. He told you
2 he was scared of Louis Sanders. He and Louis Sanders
3 have been friends since high school. Even if we take
4 that as the truth, that he was frightened of Louis
5 Sanders and that Louis Sanders was with him at the
6 murder, he stayed with Louis Sanders through the rest
7 of the night and on into the next day. He was
8 nextdoor to his parent's house with Mr. Sanders and
9 he didn't think he could walk across to the next
10 yard? This man is not scared of Louis Sanders.

11 You heard from Justin as well. And he let you
12 know he did engage in an altercation with Ms. Cannon
13 in the parking lot. He let you know that he was
14 driving this vehicle that was hit by Israel Cannon.
15 He got on the stand and he told you he does not know
16 Louis Sanders.

17 He says that in the cul-de-sac after Israel
18 Cannon hit his car he looked back. His brother,
19 Garry, was on the other side of his vehicle. Louis
20 Sanders was running down the road. He looks back and
21 he sees Israel Cannon behind him facing him and then
22 shots rang out. Israel Cannon was shot in the face.
23 He was shot here and he was shot here. He was in the
24 in the back.

25 You had the opportunity to hear from eye

1 witnesses who were at that scene as well. Mr.
2 Eubanks took the stand. Mr. Eubanks did give the
3 police differing descriptions. At first he indicates
4 that he saw two men running down the road, a man with
5 the longer hair, the Blowout, shot at Mr. Cannon
6 first. That person starts to get in the vehicle and
7 the other man did the second shot.

8 He alters his statement and now says he's not
9 quite sure, that the man who did the second shot may
10 not have been the one with the short hair; it may
11 have been the one with the longer hair after all.
12 And then he testified to you that he was fairly
13 certain both shots came from the same individual.

14 You also heard this week from the investigators,
15 that there was another eye witness there that night,
16 a lady who was driving her husband home from the
17 hospital. And she told the police that when she
18 pulled up she heard arguing and looked over and saw
19 two individuals. A shot rang out. One of the
20 individuals got in his car and that's when she ran
21 into her home and heard the second shot. These
22 stories are different.

23 There was also another individual who was there
24 that night in the cul-de-sac in one of the homes, but
25 he didn't come to testify before you this week.

1 Now, there has been a lot of testimony this week
2 about hair. And that's because every single person
3 gives a different description of the person who was
4 involved with the shooting. Geri curled hair and
5 dreads are two completely different things. Rick
6 James and Bob Marley do not have the same hairstyle.
7 Twisty braids of all different lengths is different
8 from dreadlocks.

9 Justin Green told you that when he met Louis
10 Sanders for the first time his hair was permed and
11 straight and down. Mr. Eubanks said it's a Blowout.
12 Not a single person says corn rows which are very,
13 very distinctive.

14 Louis Sanders is a scapegoat. He is a scapegoat
15 for the people who were at the H&J pub that night.
16 They were drinking and they were partying and they
17 can't remember what they saw. And he's a scapegoat
18 for Garry and Justin Green. These two men were
19 charged with murder. These two men have something to
20 lose.

21 When you go back, when you deliberate about this
22 case, please keep in mind the inconsistencies in
23 people's statements. Please keep in mind that some
24 people may have something to gain or lose depending
25 on the outcome of this trial. If you do that, I am

1 confident you will come back with a verdict of not
2 guilty. Thank you.

3 **THE COURT:** Do you all want to take a short
4 break? Just keep on? Do you feel better? Okay.
5 All right, ladies and gentlemen. It now becomes my
6 responsibility to discuss with you the law of the
7 state of South Carolina as it applies to this case.

8 You have heard all the testimony in the case and
9 you'll take with you to the jury room all the
10 evidence in this case that's been introduced. You've
11 heard the argument of both the State and the
12 defendant, and I'll explain to you, as I say, the law
13 as it applies to this case.

14 Now, under our constitution and code of laws
15 only the jury can make findings of facts in this
16 case. I am not permitted to indicated to you how I
17 might feel about the facts. If I have said or done
18 anything in this case which would indicate to you
19 that I have an opinion concerning the facts of this
20 case, then you should disregard that. This jury must
21 independently weigh the evidence presented at trial
22 and render a verdict based solely on that evidence.

23 Now, the same Constitution and laws that
24 designates and makes you the finders of the facts
25 also makes me the instructor of the law. If you have

1 some idea as to what the law should be or what the
2 law ought to be and it does not agree with what I now
3 tell you the law is, you are obligated under your
4 oath to take and abandon that preconception on your
5 part and accept and apply the law precisely as I now
6 state it to you.

7 I remind you again, the fact the defendant was
8 arrested, charged and indicted in this case is not
9 evidence in this case, cannot be considered by you as
10 evidence of guilt in this case, nor does it create
11 any presumption or inference of guilt. The document
12 which I am going to let you take to the jury room
13 with you is simply the formal written instrument
14 which contains the charge made against the defendant.

15 Now, the defendant has pled not guilty to this
16 indictment, and that plea puts the burden on the
17 State to prove the defendant guilty. A person
18 charged with committing a criminal offense in South
19 Carolina is never required to prove himself or
20 herself innocent.

21 I charge you it's an important rule of law that
22 the defendant in a criminal case no matter what the
23 seriousness of the charge may be will always be
24 presumed to be innocent of the crime for which the
25 indictment was issued unless guilt has been proven

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

8 The presumption of innocence in other words is
9 not mere legal theory. It's not just a mere legal
10 phrase. It is a substantial right to which every
11 defendant is entitled unless you, the jury, are
12 satisfied from the evidence of the defendant's guilt
13 beyond a reasonable doubt.

14 What is a reasonable doubt at law? A reasonable
15 doubt is the kind of doubt that would cause a
16 reasonable person to hesitate to act. Let me read
17 this again. A reasonable doubt is the kind of doubt
18 that would cause a reasonable person to hesitate to
19 act.

20 The State has the burden of proving the
21 defendant guilty beyond a reasonable doubt. Some of
22 you may have served as jurors in civil cases where
23 you're told it's only necessary to prove a fact is
24 more likely true than not true, such as by the
25 preponderance of the evidence or greater weight of

1 the evidence. In criminal cases, however, the
2 State's proof must be more powerful than that; it
3 must be beyond a reasonable doubt.

4 Proof beyond a reasonable doubt is proof that
5 leaves you firmly convinced of the defendant's guilt.
6 Now, there are very few things in this world that we
7 know with absolute certainty, and in criminal cases
8 the law does not require proof that overcomes every
9 possible doubt. If, based on your consideration of
10 the evidence, you are firmly convinced that the
11 defendant is guilty of the crime charged, you must
12 find the defendant guilty. If, on the other hand,
13 you think there is a real possibility the defendant
14 is not guilty, you must give the defendant the
15 benefit of the doubt and find him not guilty.

16 Now, as has been stated by counsel, there are
17 two types of evidence which are generally presented
18 during a trial, direct evidence and circumstantial
19 evidence. Direct evidence is the testimony of a
20 person who claims to have actual knowledge of a fact,
21 such as an eye witness. It's evidence which
22 immediately establishes the main fact to be proved.

23 Circumstantial evidence, on the other hand, is
24 proof of a chain of facts and circumstances
25 indicating the existence of some fact. It is

1 evidence which immediately establishes what we call
2 collateral facts from which the main fact may be
3 inferred.

4 In other words, circumstantial evidence is based
5 on inference and not on personal knowledge or
6 observation, but the law makes absolutely no
7 distinction between the weight or value to be given
8 to either direct or circumstantial evidence, nor is a
9 greater degree of certainty required of
10 circumstantial evidence than of direct evidence.

11 You should weigh all the evidence in the case.
12 After weighing all the evidence if you are not
13 convinced of the guilt of the defendant beyond a
14 reasonable doubt, you must find the defendant not
15 guilty.

16 Now, necessarily you must determine the
17 credibility of witnesses who have testified in this
18 case. Credibility simply means believability. It
19 becomes your duty as jurors to analyze and evaluate
20 the evidence and determine which evidence convinces
21 you of its truth. In determining the credibility of
22 witnesses who have testified in this case you may
23 believe one witness over several witnesses or several
24 witnesses over one. You may believe a part of the
25 testimony of a witness and reject the remaining part

1 of the testimony of the same witness.

2 You may believe the testimony of another witness
3 in its entirety or reject the testimony of a witness
4 in invoice its entirety. You may consider whether
5 any witness has exhibited to you any interest, bias,
6 prejudice or other motive in this case. You may also
7 consider whether a particular witness was an
8 informant providing evidence which he may perceive
9 would be beneficial to himself, one of the
10 defendant's or to the State. You may also consider
11 the appearance and manner of the witness while on the
12 witness stand.

13 Now, an issue in this case is the identification
14 of the defendant as the person who committed the
15 crime charged. The State has the burden of proving
16 this identity beyond a reasonable doubt. You must be
17 satisfied beyond a reasonable doubt of the accuracy
18 of the identification of the defendant before you can
19 convict the defendant.

20 Identification testimony is an expression or
21 belief or impression by a witness. You must
22 determine the accuracy of the identification of the
23 defendant. You must consider the believability of
24 each identification witness in the same way as any
25 other witness. You may consider whether the witness

1 had an adequate opportunity to observe the offender
2 at the time of the offense.

3 This will be affected by things like whether the
4 witness knew the defendant before the crime took
5 place or whether the witness had a good opportunity
6 to see the person, whether the witness seemed as
7 though he was paying careful attention to what was
8 going on, whether any description given by the
9 witness was close to the way the defendant actually
10 looked, how much time had passed between the crime
11 and the first identification by that witness, whether
12 at an earlier time the witness failed to identify the
13 defendant, whether at an earlier time the witness
14 changed his mind regarding information, whether the
15 witness and the defendant are of the same or
16 different race; and, if so, whether the witness is
17 sensitive to differences among persons of another
18 race and how certain or confident the witness was to
19 any identification.

20 Once again, I instruct you the burden of proof
21 on the State extends to every element of the crime
22 charged, and this specifically includes the burden of
23 proving beyond a reasonable doubt the identity of the
24 defendant as the person who committed the crime. If,
25 after examining the testimony you have a reasonable

1 doubt as to the accuracy of that identification, you
2 must find the defendant not guilty.

3 Now, a person who has a past criminal record is
4 competent to testify during a trial. A past record
5 does not affect the ability of the witness to
6 testify. A past record may only be considered by
7 you, if at all, in determining that witness's
8 credibility or believability. Remember, you are the
9 sole judges of the facts in this case and of the
10 believability of any or all of the witnesses.

11 Now, normally an individual or a lay person
12 cannot give an opinion in court. That's reserved for
13 what we call expert witnesses. Normally when a
14 person testifies they must testify as to what they
15 saw, heard or sensed by smell or something of that
16 nature. However, there is an exception. When
17 someone is qualified because of education or
18 experience, they are permitted to give their opinion
19 in certain areas if the Court qualifies them in that
20 way. You saw several witnesses which were qualified,
21 both the DNA and the medical examiner. People like
22 that were testifying as experts.

23 Now, a statement has been introduced and is
24 alleged to have been made by the defendant. While
25 the Court has determined that the statement was

1 admissible, I instruct you that you make the ultimate
2 decision of whether or not the defendant made that
3 statement. If the defendant did make the statement,
4 you must determine whether the statement was made by
5 the defendant freely and voluntarily of his own will.
6 This means the statement was not caused by pressure
7 or fear or force or threats or coercion or by hope or
8 promise of leniency or a reward of any kind.

9 In determining whether the statement was
10 voluntary, you should consider the characteristics of
11 the defendant and the details of the questioning.
12 Some of the factors you may consider are the age of
13 the defendant, the defendant's education or lack
14 thereof, the place and length of the detention and
15 the advice or lack thereof to the defendant of his
16 Constitutional rights, including but not limited to,
17 the right to remain silent, that any statement could
18 be used against him in a court of law, to have a
19 lawyer present, that if he could not afford a lawyer
20 a lawyer would be appointed to represent him without
21 cost, that he could stop making the statement at any
22 time if he wished to do so. And you must consider
23 all the surrounding circumstances before you give any
24 weight to an alleged statement.

25 The State has the burden of proving beyond a

1 reasonable doubt that the alleged statement was
2 voluntary. If you determine that the alleged
3 statement was not the free and voluntary statement of
4 the defendant, you should not consider the statement
5 at all.

6 Now, in order to establish criminal liability,
7 what we call criminal intent is required. For
8 example, the mental state to be proven by the State
9 for some particular crime might be a specific purpose
10 or a specific intention, knowledge of certain facts
11 or recklessness.

12 Criminal intent must be proven by the State
13 beyond a reasonable doubt. Criminal intent is always
14 a matter that must be determined by the jury from the
15 circumstances surrounding the situation. There is no
16 way to prove intent to a mathematical certainty.
17 There is no way medical science can dissect a
18 person's brain and determine what the person had in
19 mind. So the law says that criminal intent may be
20 inferred from the circumstances shown to have
21 existed. This is how you make a determination of
22 whether or not the element requiring intent was
23 present.

24 It not necessary to establish intent by direct
25 or positive evidence, but intent may be established

1 by inference in the same way as any other fact, by
2 taking into consideration the acts of the parties and
3 all the facts and circumstances of the case.

4 Criminal intent is a mental state, a conscious
5 wrongdoing. It's up to you to determine what the
6 defendant intended to do based on the circumstances
7 shown to have existed at the time and place.

8 Criminal intent can arise from action or a failure to
9 act. It may arise from negligence or recklessness or
10 an indifference to duty.

11 Now, the defendant is charged with murder. The
12 State must prove beyond a reasonable doubt the
13 defendant killed another person with malice
14 aforethought. Malice is hatred, ill will or
15 hostility towards another person. It is the
16 intentional doing of a wrongful act without just
17 cause or excuse and with an intent to inflict an
18 injury or under circumstances that the law will infer
19 an evil intent.

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

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

7 Express malice is shown when a person speaks
8 words which express hatred or ill will for another or
9 when the person prepared beforehand to do the act
10 which was later accomplished. For example, lying in
11 wait for a person or any other act of preparation
12 going to show that the deed was within the
13 defendant's mind would be express malice. Malice may
14 be inferred also from conduct showing a total
15 disregard for human life.

16 Inferred malice may also arise when the deed is
17 done with a deadly weapon. A deadly weapon is any
18 article, instrument or substance which is likely to
19 cause death or great bodily harm. And whether an
20 instrument has been used as a deadly weapon depends
21 on the facts and circumstances of each case. And
22 certainly the following examples are instruments
23 which may be deadly weapons. That is a pistol or a
24 shotgun or a rifle or a dagger or a knife.

25 Now, I further instruct you that when voluntary

1 intoxication has not produced some sort of permanent
2 insanity, it's not a defense to a crime. A person
3 who voluntarily becomes intoxicated is just as
4 responsible for the acts committed while intoxicated
5 as when the person is not intoxicated.

6 Now, ladies and gentlemen, I want to emphasize
7 this fact. I instruct you and emphasize the fact
8 that this defendant did not testify is not a factor
9 to be considered by you in any way in your
10 deliberation or in your consideration on the question
11 of guilt or innocence by the defendant. It must not
12 be considered in any manner.

13 A defendant as I've stated earlier has the
14 Constitutional right to remain silent, and the
15 assertion of this right must not be considered by you
16 in your deliberations. I repeat, under your oath you
17 are to draw no conclusion whatsoever from the fact
18 that the defendant in this case did not testify. The
19 fact that this defendant did not testify should not
20 even be discussed by you in the jury room. The
21 burden of proof as I have stated to you is on the
22 State. The defendant is not required to prove his
23 innocence. The burden of proof remains on the State
24 to prove guilt beyond a reasonable doubt.

25 Now, ladies and gentlemen, I am required to

1 declare the law as I have done through these
2 instructions to help and guide you to a just and
3 lawful verdict. Whether some of these instructions
4 will apply will depend on what you find to be the
5 facts.

6 The fact that I have instructed on various
7 subjects in this case must not be taken as indicating
8 an opinion of this Court as to what you should find
9 to be the facts or which party should be entitled to
10 your verdict.

11 Your verdict must represent the considered
12 judgment of each juror. In order to return a verdict
13 it's necessary that each juror agree. In other
14 words, your verdict must be unanimous. All 12 of you
15 must agree on the verdict. Your verdict cannot be
16 based on sympathy, passion, prejudice, emotion or any
17 other consideration that's not in evidence in this
18 case.

19 Remember at all times that you are not partisans
20 favoring one person over the other or one party over
21 the other. You are judges, judges of the facts.
22 Your sole interest is to seek the truth from the
23 evidence in this case.

24 Now, ladies and gentlemen, I'm going to ask you
25 to retire to the jury room. Mr. Foreman, I'm going

1 to send with you to the jury room the indictment in
2 this case. On what we call the face or the front of
3 the indictment is a box in the bottom left-hand
4 corner. It says verdict. When the jury has reached
5 a unanimous verdict of either guilty or not guilty
6 you should fill this in, sign it and date it today
7 when the jury has completed its deliberations.

8 Now, I'm going to ask you to retire to the jury
9 room but do not begin your deliberations until you
10 receive all the evidence. We are going to check the
11 evidence. You can just relax for a few minutes
12 because it's going to take a few minutes to get all
13 the evidence in the jury room to you. But once you
14 receive all the evidence, once you receive the
15 indictment form you can begin your deliberations.

16 Now, it's my understanding that lunch has been
17 ordered. I don't know if it's here yet. But it may
18 come during the course of your deliberations. So, if
19 you will, retire to the jury room, and again don't
20 begin your deliberations. Don't even talk about the
21 case until you receive all the evidence. Thank you
22 very much.

23 (Jury out at 11:17 a.m.)

24 **THE COURT:** Mr. Crumpton, just have the
25 alternates sit out in the hall.

1 **THE BAILIFF:** Yes, sir.

2 **THE COURT:** Any exceptions to the charge from
3 the State?

4 **MS. SHIPLEY:** No, sir, Your Honor.

5 **THE COURT:** From the defense?

6 **MS. EVERHART:** No, Your Honor.

7 **THE COURT:** All right. Let's be certain that we
8 have the -- somebody.

9 **MS. SHIPLEY:** Yes, sir.

10 **THE COURT:** Do the evidence. Do your evidence
11 thing.

12 **MS. SHIPLEY:** Yes, sir.

13 (Jury deliberating at 11:27 a.m.)

14 (Whereupon, the alternates are excused)

15 **THE COURT:** Oh, did you submit a tape?

16 **MS. SHIPLEY:** Yes. It's in there.

17 **THE COURT:** Do they need a tape player?

18 **MS. SHIPLEY:** Oh. They need a tape player.

19 **THE COURT:** Yeah.

20 **MS. SHIPLEY:** Okay.

21 (WHEREUPON, Cannon's Exhibit No. 5 is marked for
22 identification.)

23 **THE COURT:** We'll stand at ease.

24 (Whereupon, a break is taken)

25 **THE COURT:** All right. The bailiff informs the

1 Court the jury has reached a verdict. The State
2 ready to receive the verdict?

3 **MS. SHIPLEY:** Yes, sir, Your Honor.

4 **THE COURT:** Defense ready to receive the
5 verdict?

6 **MS. EVERHART:** Yes, Your Honor.

7 **THE COURT:** Bring the jury, please.

8 (Jury in at 1:36 p.m.)

9 **THE BAILIFF:** The jury is present, Your Honor.

10 **THE COURT:** All right. Thank you very much.

11 Mr. Foreman, has the jury reached a verdict?

12 **FOREPERSON:** Yes, sir.

13 **THE COURT:** Would you hand it to the bailiff,
14 please.

15 (Foreman complies)

16 **THE COURT:** Mr. Clerk, publish the verdict,
17 please.

18 **THE CLERK:** Yes, Your Honor. In the state of
19 South Carolina, in the County of Richland, in the
20 Court of General Sessions, indictment number
21 2007-GS-40-6002, the State of South Carolina vs.
22 Louis Sanders, an indictment for murder, the verdict
23 is, guilty. Signed by the Foreperson on this 1st day
24 of August, 2008. Mr. Foreman, is this your verdict
25 and the verdict of the entire jury?

1 **FOREPERSON:** Yes, sir.

2 **THE CLERK:** Thank you.

3 **THE COURT:** Any desire to poll the jury?

4 **MR. O'NEIL:** Yes, Your Honor.

5 **THE COURT:** Please poll the jury, Mr. Clerk.

6 **THE CLERK:** Yes, Your Honor. Ladies and
7 gentlemen of the jury, I now have two questions to
8 ask you. The questions will be: Was this your
9 verdict, and is it still your verdict. When I call
10 out your number, please answer yes or no. Juror
11 number 223, was this your verdict?

12 **JUROR:** Yes.

13 **THE CLERK:** Is it still your verdict?

14 **JUROR:** Yes.

15 **THE CLERK:** Juror number 135, was this your
16 verdict?

17 **JUROR:** Yes.

18 **THE CLERK:** Is it still your verdict?

19 **JUROR:** Yes.

20 **THE CLERK:** Juror number 184, was this your
21 verdict?

22 **JUROR:** Yes.

23 **THE CLERK:** Is it still your verdict?

24 **JUROR:** Yes.

25 **THE COURT:** Juror number 178, was this your

1 verdict?

2 JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR: Yes.

5 THE CLERK: Juror number 68, was this your
6 verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: Juror number 121, was this your
11 verdict?

12 JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: Juror number 59, was this your
16 verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: Juror number 185, was this your
21 verdict?

22 JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: Juror number 45, was this your

1 verdict?

2 *JUROR:* Yes.

3 *THE CLERK:* Is it still your verdict?

4 *JUROR:* Yes.

5 *THE CLERK:* Juror number 90, was this your
6 verdict?

7 *JUROR:* Yes.

8 *THE CLERK:* Is it still your verdict?

9 *JUROR:* Yes.

10 *THE CLERK:* Juror number 171, is this your
11 verdict?

12 *JUROR:* Yes.

13 *THE CLERK:* Is it still your verdict?

14 *JUROR:* Yes.

15 *THE CLERK:* Juror number 225, was this your
16 verdict?

17 *JUROR:* Yes.

18 *THE CLERK:* Is it still your verdict?

19 *JUROR:* Yes.

20 *THE CLERK:* Thank you. The jury has been
21 polled, Your Honor.

22 *THE COURT:* All right. Thank you very much.
23 All right, ladies and gentlemen. Thank you very much
24 for your service in this case. Thank you very much
25 for your service this week. It's been a long week, a

1 difficult week. But these matters need to be
2 resolved, and you have assisted the court and this
3 community in resolving this matter.

4 I'm going release you now. I told you early in
5 the week that you have satisfied your jury service
6 for this year, your jury service for the next two
7 years. You have an exemption if you wish to exercise
8 those exemptions.

9 Now, let me tell you this. The process that
10 will go on from here on out is that the sentencing
11 will take place immediately following the verdict.
12 It always does here in Richland County because
13 generally speaking we've got more than we can do and
14 we really don't have time like they do on Law and
15 Order or some of the other television shows to wait
16 for sentencing. We proceed immediately to
17 sentencing.

18 I'm not going to do that for about five or ten
19 minutes because some paperwork needs to be filled out
20 and the attorneys need to sort of gather themselves
21 for the sentencing proceeding, the sentencing
22 proceeding.

23 In any event, I invite you to stay. I'm going
24 to excuse you to go back to your jury room. Those of
25 you would like to leave can leave. Those of you who

1 would like to stay and witness the sentencing
2 procedure may do that also. Once the clerk has
3 collected your badges and spoken with you for a few
4 minutes, you are welcome to come back into the
5 courtroom, as I say, in about five or ten minutes and
6 witness the actual sentencing procedure.

7 Now, if you wish to leave, certainly you can
8 leave. If anyone tries to talk to you or wants to
9 talk to you about this case, you're certainly free to
10 talk to them. If you care not to talk to them, just
11 tell people -- I don't know that anybody would even
12 want to talk to you. But they might. You're free to
13 do whatever you want to.

14 If somebody bothers you about talking to them
15 about the case, then you certainly should report that
16 to either law enforcement or me so that I can deal
17 with it. But that doesn't usually occur. But as I
18 say, many jurors want generally -- I say many --
19 jurors want to see sort of the end of the process for
20 closure, that sort of thing. But if you feel that
21 you would like to return to your business or your
22 homes, you're certainly free to do that also.

23 So with that in mind, or with that said, I want
24 to thank you for your service in this case. I told
25 you early in the week that this system can do without

1 me, this system can do without these attorneys, but
2 it can't do without you. You're such an important
3 part of the judicial system of this county and this
4 state and this nation for that matter that the system
5 can't operate without you.

6 As I told you Monday, the founders of our
7 country, this country thought it was so important,
8 the jury service and the jury system is so important
9 that they actually wrote it into the Constitution of
10 the United States. So your role is a definite vital
11 role in the administration of justice here in South
12 Carolina. And, frankly, the citizens of Richland
13 County need to thank you as well for your taking your
14 time this week to help us resolve this matter.

15 So good luck to all of you. You are now
16 dismissed. If you'll return to the jury room, the
17 clerk will meet for you just a minute after which, as
18 I say, you are certainly welcome to return to the
19 jury room and witness the sentencing procedure.
20 Thank you very much.

21 (Jury out at 1:43 p.m.)

22 **THE COURT:** All right. Counsel, any motions at
23 this time?

24 **MR. O'NEIL:** Yes, Your Honor. At this time,
25 Your Honor, respectfully, we would have a motion for

1 new trial. We would also renew all our previous
2 objections and motions, Your Honor.

3 We would ask for a new trial based on, including
4 but not limited to, our objection to the demeanor of
5 both Ms. Downing and Ms. Jackson. Their testimony
6 coupled with the fact that I think State referred to
7 the demeanor of demeanor or Ms. Downing and
8 Ms. Jackson while on the stand at least twice in her
9 closing, Your Honor.

10 And based on the admission of photos, State's
11 No. 13 and 14, and both the photo line-up
12 identifications of both Justin and Kim Bowers.

13 **THE COURT:** All right. Anything from the State?

14 **MS. SHIPLEY:** Your Honor, we just go to the same
15 argument we provided earlier, that the demeanor of
16 Ms. Downing and Ms. Jackson was unique to them and
17 only them. Clearly the jury considered all the
18 evidence, and that is not prejudicial to the
19 defendant.

20 **THE COURT:** All right. Thank you very much.
21 Well, I believe that I have no reason to change my
22 prior rulings in this case. I accept your motion.
23 However, I feel that the jury was certainly within
24 the bounds of the evidence in this case. It came to
25 a decision based on the evidence. They obviously

1 took a fair amount of time in considering the
2 evidence. And I find no reason to grant a new trial
3 in this case. So I must respectfully deny your
4 motion.

5 All right. Sentencing with take place in about
6 ten minutes. We'll stand at ease for about ten
7 minutes.

8 (Whereupon, a break is taken)

9 **THE COURT:** Counsel, approach the bench, please.
10 (Whereupon, a bench conference is had)

11 **MR. O'NEIL:** And, Your Honor, just for the
12 record, I would ask that you decline to sentence Mr.
13 Sanders under 17-25-45, the life without parole
14 statute. We'd ask you to find that statute
15 unconstitutional. Mr. Sanders does have one more
16 serious strike. This would be the second most
17 serious strike. And under 17-25-45, that would make
18 a life without parole sentence mandatory, Your Honor.

19 I think it violates Mr. Sanders' Sixth Amendment
20 rights under the separation of powers concepts,
21 particularly under the Bookert, United States Supreme
22 Court federal guideline case law, Your Honor. It
23 totally strips the Court and the prosecution of any
24 kind of discretion in this case.

25 **THE COURT:** All right, sir. Well, until our

1 state Supreme Court tells me that that's what I must
2 do, I must respectfully deny your motion.

3 **MR. O'NEIL:** Thank you, Your Honor.

4 **THE COURT:** All right. Bring your client,
5 there's.

6 **MS. SHIPLEY:** Mr. Cannon, Mr. Young. May it
7 please the Court?

8 **THE COURT:** Yes, ma'am.

9 **MS. SHIPLEY:** The defendant has an extensive
10 prior criminal history. He was convicted in 1989 of
11 assault and battery with intent to kill; in 1989,
12 strong armed robbery; 1997, assault and battery of a
13 high and aggravated nature; 1997, possession of
14 crack; in 2001, forgery; 2001, another forgery; 2001,
15 possession of a firearm by a person convicted of a
16 crime, a felony, assault with intent to kill; giving
17 false information in 2006.

18 Your Honor, because he has already been
19 convicted once in his prior criminal history of a
20 most serious violent crime, on the 15th of July he
21 was served with notice from the State of the
22 intention of seeking a sentence of life without
23 parole based on indictment number 1989-GS-40-2125
24 which is assault and battery with intent to kill.

25 Your Honor, Israel Cannon, the father of our

1 victim, Israel Duane Cannon, could like to address
2 the Court as well as Israel Cannon's brother-in-law,
3 Michael Young.

4 **THE COURT:** Yes, sir.

5 **MR. YOUNG:** Good evening. Good afternoon, Your
6 Honor. My name is Michael Young. Israel Cannon,
7 Duane, was my brother-in-law. We nicknamed him
8 Ruckus. That's just the type person he was. It has
9 been hard trying to gather words up to try to explain
10 or to address to you how important Duane was to me.

11 Right about now is football season. Duane was a
12 Cowboys fan. I was a Pittsburgh Steeler fan. So you
13 can understand that we got together a whole lot
14 during this time. I want to thank you for being able
15 to sit through this and listen to all this. Because
16 it was difficult for me. It's difficult for most
17 people to understand how something as tragic as this
18 could happen, and it was difficult for me to
19 understand in the beginning because I didn't have the
20 full story.

21 Knowing what I know now, a little of my grief, a
22 little of my pain has been eased a little bit. A lot
23 has been eased knowing the jury's verdict. I only
24 ask to close a chapter on this book for me, for my
25 family, my friends, and Ruckus. Sentence him

1 accordingly. Thank you, sir.

2 **THE COURT:** Thank you very much, sir.

3 **MR. CANNON:** Your Honor.

4 **THE COURT:** Yes, sir.

5 **MR. CANNON:** My name is Israel Cannon. I am
6 Duane's father. And Duane and I, my wife and my
7 daughter, Sarah, which is 14 years old, and Duane and
8 Sarah was just two of a kind, and they always got
9 together. Right now she is home sobbing now. She's
10 having a hard time still yet today.

11 And Duane had the bracelet that you saw on his
12 arm. She has that bracelet now. That's the only
13 memory that she have left of her brother to be with
14 her.

15 And it's just been difficult for my wife and I.
16 For the last several nights here we haven't even been
17 able to sleep, couldn't sleep. And it's just been
18 real tough. And Duane and I was -- we was real
19 close. Duane was, as you heard during some of the
20 testimonies, even when the broken bottle, Duane, he
21 was such a person; he turned right back around and
22 bought this guy a beer or whoever's it was. But
23 that's just the type person Duane was. He always
24 tried to keep -- I taught him to stay out of the bad
25 things, the disturbance and things like this. But,

1 you know, I also talked with him about a lot of
2 things. And Duane was a very good boy, very good
3 boy. He always meant good.

4 But this here, Your Honor, losing my son, I have
5 lost a great part of me. I really have. And it was
6 senseless. No reason whatsoever my son have to be
7 dead today. No reason. Your Honor, I ask for the
8 max that you can give. Thank you.

9 **THE COURT:** Thank you very much, sir. Anything
10 further?

11 **MS. SHIPLEY:** That's it from the State.

12 **THE COURT:** Ms. Everhart.

13 **MS. EVERHART:** Thank you, Your Honor. May it
14 please the Court. I know a lot of bad things have
15 been said this week during trial. But I've gotten to
16 know Mr. Sanders pretty well over the last 13 months.
17 And he is a good man and he cares about his family.
18 He has been carrying a picture of his baby girl in
19 his pocket through the entire trial.

20 I want to let the Court know that during my time
21 with him he has been nothing but respectful and
22 polite and always kind when I come to see him, very
23 intelligent man. I believe Mr. O'Neil also has
24 something he would like to say.

25 **MR. O'NEIL:** I understand the Court's is tied as

1 far as sentence. I just want to say it's a tragedy
2 for everybody involved in this situation today.

3 **THE COURT:** Mr. Sanders, do you have anything
4 you wish to say?

5 **MR. SANDERS:** No, sir.

6 **THE COURT:** Anything further from the State?

7 **MS. SHIPLEY:** No, sir.

8 **THE COURT:** From the defense?

9 **MS. EVERHART:** Nothing, Your Honor.

10 **THE COURT:** All right, Mr. Sanders. The law
11 leaves me very little choice, and I think you
12 understood that at the beginning of this trial. It
13 gives me very little discretion in this case because
14 of your prior record and this conviction. The law
15 requires that I sentence you to life without parole.

16 Therefore, the sentence of the Court is you be
17 committed to the State Department of Corrections for
18 the remainder of your natural life, life without the
19 possibility of parole. Good luck to you, sir. God
20 bless your soul.

21 **MR. SANDERS:** All right.

22 **MS. EVERHART:** Thank you.

23 **THE COURT:** Court stands adjourned.

24 (Whereupon, the proceedings are concluded)

25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 28th, 29th, 30th and 31st days of July, 2008.

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

October 3, 2008

Jenny H. Williams

Jenny H. Williams, Court Reporter

WITNESSES

INV. DON MCRAE (RCSD)

ARREST WARRANT NUMBER

1916843

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

AUG 15 2007

VERDICT

Guilty

Foreperson of Petit Jury

Date: 08/01/08

DOCKET NO. 2007-GS-40-6002

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

AUGUST TERM 2007

91

THE STATE

vs.

LOUIS SANDERS

Indictment for

MURDER

SC Code: 16-3-10

CDR Code: 0116

Class FEL/EXM(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA }
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on August 15, 2007, the Grand Jurors of Richland County present upon their oath:

MURDER

That Louis Sanders did in Richland County on or about June 3, 2007, feloniously, willfully and with malice aforethought, kill one Israel Cannon by means of gunshot wound(s) and that the said victim died as a proximate result thereof. All in violation of SC Code of Laws § 16-3-10

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


Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE*Richland*
VS.
*Louis Sanders*AKA: _____
Race: *Black* Sex: *Male* Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip _____
DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS 1105

2007 - GS - 40 - 6002

A/W#: *I916843*
Date of Offense: *6-3-07*
S.C. Code §: *16-3-10*
CDR Code #: *0 / 1 / 1 / 1 / 6*☐ CASE RESTORED
☒ SENTENCE SHEET
☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: *Murder*in violation of § *16-3-10* of the S.C. Code of Laws, bearing CDR Code # *0 / 1 / 1 / 1 / 6*☐ 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:

Michael A. Smith
Solicitor*Louis Sanders*
Defendant*[Signature]*
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of *LIFE* days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of
\$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years
and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the
State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ *✓*
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$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) \$ *3.90*
TOTAL \$ *5.00*
133.90

PTUP _____

_____ 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: *L.W.O.P.*☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probationPRESIDING JUDGE *[Signature]*Judge Code: *2 / 1 / 1 / 2 / 6*Sentence Date: *8-1-08*

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF RichlandLOUIS SANDERS 164301

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2010C P4002933
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2009 MAY 14 PM 2:22
JEANETTE W. MCBRIDE
CLERK, P. & G.S.RICHLAND COUNTY
FILEDINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE COUNTY CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence RICHLAND COUNTY JUDICIAL CENTER 1701 MAIN ST COLUMBIA S.C. 29202
3. Name(s) of co-defendant(s) (if any) JUSTIN GREEN & GARY GREEN
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-40-6002
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 1, 2008
 - (b) LIFE WITHOUT PAROLE

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (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. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEAL DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JANUARY 27, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
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: INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
BRADY VIOLATION
PROSECUTORIAL MISCONDUCT

- (a) _____
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) _____
- (b) _____
- (c) _____

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? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

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. _____ DIRECT APPEAL

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____ THE STATE OF SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____ CONVICTION CONFIRM

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

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?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

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) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? ✓
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? ✓
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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. CAMILLE EVERHART, DEON O'NEIL, CASEY SECOR
- ii. TRICIA BLANCHETTE
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. CAMILLE EVERHART, DEON O'NEIL (ANI) CASEY SECOR (TRIAL LAWYER)
- ii. TRICIA BLANCHETTE (APPELLATE LAWYER)
- iii. _____

19. State clearly the relief you seek in filing this application:

NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of)

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.

Lain Sanders

SWORN to and subscribed before me this 30
day of April, 2010.

Doreen Smith (L.S.)
Notary Public

My Commission Expires: 1/5/2015

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

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.

Louis Sanders
LOUIS SANDERS
Applicant

SWORN or affirmed to and subscribed before me this

30 day of April, 2010.

Debra J. [Signature]
Notary Public

My Commission Expires: 11-4-2015

RICHLAND COUNTY
FILED
2010 MAY -4 PM 2:22
JEANNETTE W. MCBRIDE
C.C.R. & G.S.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)	
)	
)	2010-CP-400-2933
SANDERS Louis , #164301)	
)	
Applicant,)	
)	
v.)	RETURN
)	
State of South Carolina,)	
)	
Respondent.)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed May 4 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was represented by Camille Everhart, Esquire. The Applicant was convicted following a jury trial on August 1 2008, with the Honorable G. Thomas Cooper, Jr.. The Applicant was indicted for and/or convicted of: Murder - 2007-GS-40-6002. According to the South Carolina Department of Corrections (SCDC), the Applicant is serving a LIFE sentence for "Murder."

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject conviction(s), the

Applicant's records from the Department of Corrections, the Applicant's trial transcript, and [if applicable] the Applicant's appellate records.

II.

The Applicant interprets each of the Applicant's allegations as a claim of ineffective assistance of counsel.

III.

The Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant

decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

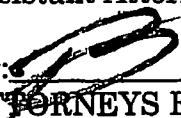
The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Nicole Singletary, Esquire regarding when the hearing should be set.¹

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
bpetrano@scag.gov

July 19, 2010

¹ See: <http://www.scattorneygeneral.com/inside/pcr.html> for current and archived PCR rosters.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2010-CP-400-2933

Louis Sanders, 164301

Applicant,

vs

State of South Carolina,

Respondent.

)
)
)
) 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 in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Nicloe L. Singletary, Esquire
4511 Main Street
Columbia, South Carolina 29203

DATED this 20th day of July, 2010.



Jean R. Indriago, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA) IN COMMON
2 COUNTY OF RICHLAND) COURT
3)
4 LOUIS SANDERS,)
5) TRANSCRIPT
6 -V-) OF
7) RECORD
8 STATE OF SOUTH CAROLINA,) 2010-CP-40-0567
9 DEFENDANT.)

10

11 APRIL 21, 2012

12 RICHLAND, SOUTH CAROLINA

13

14 B-E-F-O-R-E:

15 HONORABLE CASEY L. MANNING, JUDGE;

16

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

18 FOR THE PLAINTIFF:

19 NICOLE SIMPSON, ESQ.

20 FOR THE DEFENDANT:

21 BRIAN PETRANO, ESQ.

22

23

24

25

1	I-N-D-E-X	
2		PG.
3	EXAMINATION OF LOUIS SANDERS:	
4	DIRECT BY MS. SIMPSON	5
5	CROSS BY MR. PETRANO	36
6	EXAMINATION OF CASEY SECOR:	
7	DIRECT BY MS. SIMPSON	47
8	CROSS BY MR. PETRANO	53
9	EXAMINATION OF CAMILLE GUTHRIE:	
10	DIRECT BY MR. PETRANO	57
11	CROSS BY MS. SIMPSON	76
12	REDIRECT BY MR. PETRANO	91
13	CERTIFICATE OF REPORTER:	96
14		
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1 (The following proceedings were held on
2 April 21, 2012.)

3 MR. PETRANO: May it please the Court?

4 THE COURT: Yes, sir.

5 MR. PETRANO: Your Honor, the State calls the PCR
6 of Louis Sanders. It's Docket Number 2010-CP-40-0567.
7 Mr. Sanders was true billed and indicted at the August 2007
8 term of the Richland County Grand Jury for murder. He
9 proceeded to jury trial July 28th, 2008 before Judge Cooper.
10 And after a five-day trial, he was convicted of murder by
11 the jury. He was sentenced to life imprisonment without the
12 possibility of parole.

13 Notice of appeal was filed on Mr. Sanders's behalf
14 by Tricia Blanchette and an Ander's Brief was submitted by
15 order filed January 27th, 2010. The South Carolina Court of
16 appeals granted Ms. Blanchette's motion to be relieved and
17 dismissed the appeal. The remitterer was issued
18 February 12th, 2010. The current PCR application was filed
19 May 14th, 2010. Mr. Sanders's trial counsel, Camille
20 Guthrie, is in the courtroom prepared to testify today.
21 Ms. Blanchette, appellate counsel, is not here today. As
22 Your Honor knows, she's out on maternity leave, but the
23 State is prepared to go forward on ineffective assistance of
24 appellate counsel today at this time.

25 Mr. Sanders is represented by Nichole Simpson,

Louis Sanders Direct by Ms. Simpson

1 Your Honor.

2 THE COURT: Yes, Ms. Simpson.

3 MS. SIMPSON: Thank you, Your Honor. If it
4 pleases the Court. Your Honor, at this time, we would call
5 Louis Sanders to the stand.

6 THE COURT: All right. Now, I see where
7 Mr. O'Neal is listed as trial counsel or second chair or
8 something?

9 MR. PETRANO: He did serve second chair, Your
10 Honor, and I think we're prepared to go forward without his
11 testimony.

12 THE COURT: Is that fair enough, Ms. Simpson?

13 MS. SIMPSON: Yes, sir, Your Honor.

14 THE COURT: All right.

15 MS. SIMPSON: Casey Secor was actually on the
16 case, also, and we would actually be calling him.

17 THE COURT: Come around, sir.

18 Louis Sanders?

19 MR. SANDERS: Yes, sir.

20 THE COURT: Please your left hand on the Bible,
21 Mr. Sanders, and raise your right hand.

22 THEREUPON,

23 LOUIS SANDERS,

24 after having been duly sworn, testified as follows:

25 THE COURT: All right. Please take a seat. Tell

Louis Sanders Direct by Ms. Simpson

1 us your full name and spell your last name for record,
2 Mr. Sanders.

3 MR. SANDERS: You said spell my last name?

4 THE COURT: Beg -- yeah.

5 MR. SANDERS: Louis Sanders, S-A-N-D-E-R-S.

6 THE COURT: Mr. Sanders, I'm going to ask you to
7 speak up so I can hear you. I can't hear very well.

8 MR. SANDERS: All right. Louis Sanders,
9 S-A-N-D-E-R-S.

10 THE COURT: All right, Ms. Simpson.

11 MS. SIMPSON: Thank you, Your Honor. If it
12 pleases the Court.

13 DIRECT EXAMINATION

14 BY MS. SIMPSON:

15 Q Mr. Sanders, where are you currently housed at this
16 particular time?

17 A Lee Correctional Institution.

18 Q And you were actually convicted here in Richland County
19 of a murder charge, correct?

20 A Yes, ma'am.

21 Q And who were your trial counselors?

22 A At the time, it was Camille Everhart, but I think her
23 name has changed now.

24 THE COURT: Once again, Mr. Sanders, you've got to
25 speak a little bit louder than that, sir.

Louis Sanders Direct by Ms. Simpson

1 MR. SANDERS: Camille Everhart. Mr. Secor, and --
2 what is his name?

3 THE COURT: Deion O'Neal.

4 BY MS. SIMPSON:

5 Q Deion O'Neal.

6 A Deion O'Neal.

7 Q And at the time that you actually were represented by
8 Ms. Guthrie, about how many times would you say that
9 she actually came to meet you in reference to your
10 case?

11 A I can't give a number. I don't know exactly.

12 Q Could you estimate it?

13 A Five, six, I'm not sure.

14 Q Okay. And in the times that she actually came to see
15 you, where were you housed at at the time?

16 A The Alvin S. Glenn Detention Center.

17 Q Okay. And would you estimate for the Court the
18 duration of these meetings that you had with Ms.
19 Guthrie?

20 A I'm going to guess that the longest was, maybe, about a
21 hour.

22 Q Okay.

23 A So it would range from -- it would range anyway from 20
24 minutes to an hour, I would say.

25 Q Okay. And when you actually would meet with

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1 Ms. Guthrie, what were some of the conversations that
2 you would actually have as it relates to your case?

3 A Well, coming from me, I was constantly telling her
4 that, you know what I'm saying, I was not guilty of the
5 crime. And she was, basically, telling me that, you
6 know what I'm saying, she's doing -- she's going
7 over -- she's coming down here to inform me of what was
8 going on with my case and the progress that she was
9 making as far as from the reports that was given by the
10 officers.

11 Q Okay. Now, was there a private investigator that
12 actually was on your case, hired by Ms. Guthrie?

13 A I believe so. I just don't know their name, though.

14 Q Okay. Now, that private investigator, did they come
15 down to the jail and actually discuss the case with
16 you?

17 A I think they talked with me once. It was dealing with
18 a witness called Ms. Capel. I believe it was -- I
19 think it was Ms. Capel, I'm not sure.

20 Q Okay. And you brought about Ms. Capel's name, at any
21 point while you were having your discussions with
22 Ms. Guthrie, did you give her a list of witnesses that
23 you wanted her to talk to on your behalf?

24 A Yes, ma'am.

25 Q Okay. And what would be the name of the witnesses that

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1 you actually wanted her to get in contact with?

2 A Actually, Ms. Capel was one of them and my younger
3 brother.

4 Q Okay. And what's your younger brother's name?

5 A Donte Sanders.

6 Q Was there anyone else that you asked her to get in
7 contact with in the defense of your case?

8 A Another guy named Twan.

9 Q Okay. And let's talk about Ms. Capel real quick. Why
10 did you want Ms. Guthrie to get in contact with
11 Ms. Capel?

12 A Because she gave a verbal statement to the
13 investigators because she actually -- she didn't
14 actually see who fired the weapon, but she was actually
15 a witness as to what happened.

16 Q Okay. And when you say what happened, what are you
17 referring to?

18 A The -- the murder that took place.

19 Q Okay. And are you referring to the crime scene where
20 the murder took place?

21 A Yes, ma'am.

22 Q Or are you referring to the club where an incident
23 happened prior to the alleged -- prior to the murder?

24 A No, huh-uh. The actual crime scene.

25 Q Okay. And so is it your opinion that Ms. Capel would

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1 have actually assist in the defense of your actual
2 trial?

3 A Yes, ma'am.

4 Q Okay. And what information would have been elicited
5 from Ms. Capel?

6 A The fact that -- because during my --

7 MR. PETRANO: Your Honor, I think that's
8 speculative. If she's here to testify --

9 THE COURT: You're absolutely right, but this is
10 nonjury. I'm going to let him proffer the information.

11 MS. SIMPSON: Okay.

12 THE COURT: Go ahead.

13 MS. SIMPSON: Thank you, Your Honor.

14 THE COURT: Over your objection.

15 MR. PETRANO: Thank you, Your Honor.

16 BY MS. SIMPSON:

17 Q You just want me to give you the verbal statement that
18 she gave to the investigator?

19 THE COURT: Well, do you have it?

20 MS. SIMPSON: Yes.

21 BY MS. SIMPSON:

22 Q Well, the question --

23 THE COURT: Just say what you want to say.

24 THE WITNESS: Okay. Well, Ms. Capel, she said
25 that she was coming from the emergency room with her

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1 husband. And in the process, she had saw where it was a car
2 accident. So she said she noticed two individuals who was
3 arguing over what appeared to be that particular car
4 accident. So she said she turned around and she was walking
5 off --

6 THE COURT: Wait. Time out.

7 (Pause.)

8 THE COURT: Go ahead.

9 MS. SIMPSON: Yes, Your Honor.

10 THE WITNESS: So she was saying that she witnessed
11 two individuals that was arguing. And she said she went to
12 walk off, and when she walked off, she said she heard a
13 shot. She heard a shot fired. So she turned around, she
14 seen the victim falling to the ground and a dark-skinned
15 black male get into a dark in color car. So then at this
16 time, she went into the house, and she was calling 911, and
17 that's when she heard the second shot. And at that point
18 right there, the reason why I said that it would assist me
19 because for the simple fact they're saying that this
20 individual, the dark-skinned individual, never got up out of
21 his vehicle. And they saying that it was three or four
22 people --

23 THE COURT: They who?

24 THE WITNESS: Oh, okay. According to the incident
25 report, they said that there was three or four people that

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1 -- three people that was involved with this incident. She
2 said that it was only one specific -- one person that she
3 saw at the time when this shot was fired, which did not fit
4 the description of me. And this was, basically, a part of
5 the prosecutor's ending statement as far as dealing with my
6 complexion because I was the only medium brown-skinned
7 individual that was supposed to be involved with this case.
8 And so this was the point that they was pushing as far as
9 with the medium brown-skinned individual. However, Ms.
10 Capel say she saw a dark-skinned black male get into this
11 vehicle.

12 THE COURT: All right.

13 MR. PETRANO: And, Your Honor, just for purposes
14 of the record, I just want to renew my objection to hearsay.
15 If she's here to testify that's fine, or if there's an
16 investigative report he wants to introduce that shows that's
17 what was said, that's fine, but --

18 THE COURT: I'm considering this as a proffer.

19 MR. PETRANO: And I -- okay. I'm sorry.

20 THE COURT: All right.

21 MR. PETRANO: Thank you, Your Honor.

22 THE COURT: Go ahead.

23 MR. SANDERS: What does that mean?

24 THE COURT: That's just another hurdle to
25 overcome, but go ahead for right now.

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1 BY MS. SIMPSON:

2 Q Now, let's go back to what you were talking about a few
3 minutes ago. Now, when you were initially arrested for
4 this murder, were you the only individual that was
5 arrested?

6 A Oh, no, ma'am.

7 Q Who else was arrested?

8 A Two brothers, Gary Green and Justin Green.

9 Q Okay. And those are the two individuals that you were
10 referring to a few minutes ago that Ms. Capel would
11 have identified?

12 A No. She just said that she seen two individuals and
13 that one individual would fit the description of the
14 younger brother.

15 Q And what's the younger brother's name?

16 A Justin Green.

17 Q Okay. Now, when you went to trial, did you go to trial
18 with your codefendants, Justin Green and Gary Green?

19 A No, ma'am.

20 Q Okay. What actually happened at -- on the first day of
21 your trial?

22 A Oh, I was scheduled to go to trial, so when I got into
23 the courtroom and I was sitting down, I was thinking I
24 was going to go proceed with my trial, but then they --
25 I think they said it was a severance, meaning -- I

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1 guess that means that they was going to try us
2 differently. But I was under the impression that I was
3 fixing to go to trial at that point in time there.

4 Q Okay. And so what happened? There was a severance
5 hearing, correct?

6 A There was a severance hearing. He was given a -- he
7 was given a continuance, and my case proceeded to
8 trial.

9 Q So let me -- is it correct that what you just said was
10 on the first day of your trial, you were actually
11 slated to go to the trial with your codefendant,
12 correct?

13 A Yes.

14 Q Mr. Green. But there was a severance hearing that was
15 actually held, correct?

16 A Yes, ma'am.

17 Q And at that point, Mr. Green's case was actually
18 severed from your case?

19 A Yes, ma'am.

20 Q And his attorney was actually given a continuance in
21 that matter?

22 A Yes, ma'am.

23 Q Now, at some point during your trial, did Mr. Green
24 actually testify?

25 A Yes, ma'am.

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1 Q Okay. And -- and which Mr. Green actually testified?

2 A Both of them.

3 Q But which Mr. Green actually had their trial severed
4 and continued?

5 A Justin Green.

6 Q And that was Justin Green?

7 A Yes, ma'am.

8 Q And he actually testified for the State at trial?

9 A Yes, ma'am.

10 Q And you -- some of the allegations that you have made
11 is that your actual trial attorney did not object to
12 his testimony?

13 A No, ma'am.

14 Q And what are the specific issues you have as it relates
15 to the severance motion and your trial --

16 THE COURT: I'm sorry?

17 MS. SIMPSON: Your Honor.

18 THE COURT: Just back up a little bit.

19 MS. SIMPSON: Okay.

20 THE COURT: He answered the question, but I think
21 it was in the opposite. Ask that again. He said no, but I
22 think he meant yes. But ask the last question again. I
23 didn't quite understand where he was going.

24 BY MS. SIMPSON:

25 Q Gary Green actually testified --

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1 A Justin.

2 Q Justin Green actually testified -- well, both of them
3 testified at your trial?

4 A Yes, ma'am.

5 Q But Justin Green was the Green that -- was the Green
6 that actually got their trial severed, correct?

7 A Yes, ma'am.

8 Q Okay. And at your trial, Justin Green actually
9 testified?

10 A Yes, ma'am.

11 Q And he testified for the State?

12 A Yes, ma'am.

13 Q And when he testified for the State, what actually
14 happened? Give us a synopsis of what he actually told
15 the actual jury.

16 A He said that I was the one that fired the weapon.

17 Q Okay. And your allegations here in this PCR is that
18 your trial attorney actually failed to object to his
19 testimony?

20 A Yes, ma'am.

21 Q And what issues do you have as it relates to your trial
22 attorney failing to object to Justin Green's actual
23 testimony?

24 A (There was no response.)

25 Q You felt that your trial attorney should actually

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1 object to Mr. Green's testimony, correct?

2 A Yes, ma'am.

3 Q Okay. Why do you feel that your trial attorney should
4 have done?

5 A I feel like she should have objected to his testimony
6 based upon the fact that prior to me -- just when I get
7 in the courtroom, it's turned over to my lawyer at this
8 time right here. That for his testimony, all his
9 charges was being dismissed. Now, it's true that I was
10 aware that he had wrote a statement. It was true that
11 I felt like that he would come and testify at my trial.
12 But at the time, I wasn't aware that they was giving
13 him a deal for his testimony. And at that time right
14 there, I felt like, you know, my lawyer didn't have an
15 opportunity to prepare a defense for the fact that it
16 was promised testimony. She was only prepared to go to
17 trial with what was said in his statements and the fact
18 that it was probable that he would testify.

19 Q So didn't you also bring up some allegations as it
20 relates to Mr. Green not being properly impeached by
21 your trial attorney?

22 A Yes, ma'am.

23 Q And what information do you believe that your trial
24 attorney had at her disposal that she did not use to
25 impeach Mr. Green, Justin Green?

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1 A That particular point right there dealing with the
2 promised testimony. Because 10 days prior to my trial
3 released -- they supposed to, at least, disclose this
4 type of information to my lawyer. Now, even though
5 they did disclose it, they disclosed it right then. I
6 mean, she had an opportunity to ask the question, which
7 she did; however, he replied by saying no, it was not.
8 But it was clearly stated on the record that for his
9 testimony his charges would be dismissed. I mean, I
10 could go to the transcript if I need to.

11 THE COURT: It's a part of the record.

12 MS. SIMPSON: Yes.

13 MR. SANDERS: It's a part of the record, okay.

14 BY MS. SIMPSON:

15 Q And so it's your understanding that Justin Green who
16 was initially charged with murder along with you at the
17 time of you all's arrest?

18 A Yes, ma'am.

19 Q Was his murder charges were dismissed in exchange for
20 his testimony against you?

21 A Yes, ma'am.

22 Q Okay.. Now, let's go back to some of the witnesses.

23 We -- we talked about Ms. Capel. But let's talk about
24 the witness that you actually said -- another witness
25 that you said that you actually wanted your attorney to

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1 actually call to the witness stand in your defense, and
2 that was someone by the name of Twan. And what -- why
3 didn't your attorney, in your opinion, call Twan to the
4 witness stand?

5 A Because at the time, she couldn't find him because he
6 had -- he had got killed.

7 Q Okay.

8 THE COURT: He was dead at the time of trial?

9 MR. SANDERS: At the time of trial, yeah, he was
10 already dead.

11 THE COURT: Well, it's kind of hard. Well --

12 MR. SANDERS: What I'm saying is --

13 THE COURT: It's old testimony stuff, it's going
14 to be hard to call the witness. Go ahead.

15 BY MS. SIMPSON:

16 Q But at the time, you actually told your trial attorney,
17 Ms. Guthrie, about Twan, was he alive?

18 A Oh, yes, ma'am. He was still alive then.

19 Q Okay. So she did have an opportunity -- or there was
20 an opportunity for Twan to be interviewed?

21 A Yes, ma'am.

22 Q Prior to him dying?

23 A Yes, ma'am.

24 Q Okay. Now, you actually stated that you wanted your
25 younger brother to be called as a witness. Did he

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1 testify at your trial?

2 A No, ma'am.

3 Q Okay. What information -- in your opinion, how would
4 your brother's testimony actually aid in your defense?

5 A Because they found -- they found a gun case that had a
6 serial number that matched the serial number of a 9
7 millimeter, which was the suspected murder weapon in
8 this case and they traced it all the way back to
9 Indianian to a pawnshop. Which had my brother came to
10 testify, he would have been able to testify that that
11 was his gun case as well as his gun.

12 Q Now, was your brother willing to come and testify?

13 A Yes, ma'am.

14 Q And in your -- in your knowledge, was he ever contacted
15 by Ms. Guthrie?

16 A No, ma'am.

17 Q What about Ms. Guthrie's investigator?

18 A No, ma'am.

19 Q So it would be your testify that she failed to
20 investigate that key issue in your case?

21 A Yes, ma'am.

22 Q And in your trial -- or in your case, the murder weapon
23 was never recovered?

24 A No, ma'am.

25 Q Okay. And, also, there was the mother of your child.

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- 1 What's the mother of your child's name?
- 2 A Lashonda Downing.
- 3 Q Okay. And isn't it true that you actually wanted to
- 4 utilize the defense of alibi in this case?
- 5 A Yes, ma'am.
- 6 Q Okay. Now, at your trial, did you all utilize the
- 7 defense of alibi?
- 8 A No, ma'am.
- 9 Q Okay. And what would have been your testimony at trial
- 10 if you were to testify as to your whereabouts at the
- 11 time of this murder?
- 12 A I was at my daughter's mom's house at the time.
- 13 Q And what's her name?
- 14 A Lashonda Downing.
- 15 Q And that's the person that you wanted to testify to
- 16 your alibi?
- 17 A Yes, ma'am.
- 18 Q And did your attorney give notice to the State of an
- 19 alibi defense?
- 20 A Not to my knowledge.
- 21 Q Okay. Did you and your attorney discuss the strategy
- 22 and the benefits or the disadvantage of utilizing an
- 23 alibi defense?
- 24 A No, ma'am.
- 25 Q Okay. Why did you all decide not to use an alibi

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1 defense in your personal opinion?

2 A Because she advised me that if I testified at my trial,
3 then my prior record could be used against me.

4 Q Well -- and we'll get to that, but as it relates to
5 Ms -- your -- the mother of your child, Ms. Downing?

6 A Oh, because of the time frame.

7 Q And what do you mean by the time frame?

8 A Well, they was saying because she couldn't give, like,
9 a specific time that the alibi couldn't be used because
10 they would say that okay, yeah, you was here at this
11 time right here, but you still could have had the
12 opportunity to commit this crime and then go here.

13 Q Okay. But Ms. Downing was ready and available to
14 testify to the fact that you were with her on the night
15 that this murder actually occurred?

16 A Yes, ma'am.

17 Q Okay. Now, you mentioned a few minutes ago that you
18 didn't testify because of the fact that you were
19 advised by Ms. Guthrie that your prior record would
20 come in?

21 A Yes, ma'am.

22 Q Tell the Court a little bit about those conversations
23 as it relates to your decision to testify or not to
24 testify?

25 A It was more or less on a level of -- you know, because

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1 I wanted to testify because I wanted to say my
2 whereabouts concerning this crime when it took place,
3 but she just -- she told me now, she said, you know, if
4 you do get on the stand and testify, you aware of your
5 past record and it could be brought up against you.
6 And she just didn't want that to happen.

7 Q Okay. When you say that she just didn't want that to
8 happen, you understand that it's your decision to take
9 the witness stand or not to take the witness stand?

10 A Yes, ma'am.

11 Q So did you voluntarily make a decision not to testify?

12 A No. My decision was based upon the advice of my
13 lawyer.

14 Q Okay. Now, did she tell you that -- did you all look
15 over your past record?

16 A Yes, she already -- I mean, she knew what was on my
17 past record, but we didn't just sit there and go over
18 it.

19 Q And that's my question. Did you and Ms. Guthrie go
20 over your past record?

21 A Not to that extent.

22 Q Okay. Not to what extent?

23 A To, like, everything that was on my record. I mean, it
24 was just -- it was like a certain crime that I had
25 committed, I think it was like in '89 or '88 that she

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1 said that would definitely be brought up at my trial
2 had I took the -- had I took the stand.

3 Q So it's your testimony that Ms. Guthrie told you that a
4 specific crime would most definitely be utilized
5 against you if you were to testify?

6 A It would be brought up at my trial, yes, ma'am.

7 Q Meaning that it would be used against you at your
8 trial?

9 A I mean, yeah, I guess if you say it like that, yeah.

10 Q Okay. Well, when you say that she says that it would
11 be brought up at your trial --

12 A It would be brought to the attention of the jury.

13 Q Okay. Now, did she tell you that -- that the judge,
14 ultimately, makes the decision as to whether or not a
15 crime is actually -- can be used for impeachment
16 purposes?

17 A No, ma'am.

18 Q She just told you that it would just be automatically
19 brought up?

20 A Yes, ma'am, because it's my prior record.

21 Q Okay. And automatically brought up by who?

22 A The prosecutor.

23 Q Okay. She did not tell -- Ms. Guthrie did not tell you
24 that there were some things in place that she could
25 make arguments to try to keep that prior record out?

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1 A No. We never discussed that.

2 Q So is it your testimony that based on the advice that
3 Ms. Guthrie gave you on your prior record that you
4 decided not to testify?

5 A Yes, ma'am.

6 Q Okay. Now, let's go into some other specific
7 allegations that you actually have as it relates to
8 your trial counsel. You actually -- you actually
9 brought to my attention that there was some testimony
10 that was elicited at trial by a Kimberly Bowers?

11 A Yes, ma'am.

12 Q Who was actually a witness for the State?

13 A Yes, ma'am.

14 Q Okay. And Ms. Bowers actually gave some testimony at
15 trial that differed in front of the jury -- in the
16 presence of the jury versus when the -- when the jury
17 was actually not in the courtroom; is that correct?

18 A Yes, ma'am.

19 Q Okay. Now, could you tell the Court why you feel that
20 it is important to bring this up at your PCR?

21 A Okay. Dealing with Kimberly Bowers, she identified me
22 as the individual that fired a weapon at this club.

23 And at this club, they went and they got a shell casing
24 and then they went to the actual crime scene and got a
25 shell casing. And the ballistics showed that the two

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1 shell casings came from the same gun. Now, with her
2 testimony, she specifically states that she never saw a
3 gun --

4 Q Okay. And let me stop you really quick because we had
5 several -- numerous testimony -- conversations about
6 this.

7 A Uh-hum.

8 Q Now, be very specific for the Court when you're talking
9 to whether or not Ms. Bower is testifying in front of
10 the jury or when Ms. Bowers is testifying in an
11 in-camera hearing, which is known as a Neal v. Biggers.

12 A Okay. This testimony that I'm about to say right now,
13 it was done in the presence of the jury. She
14 specifically states that she never saw a weapon, and
15 that she never saw who shot the weapon. However, she
16 was still allowed to identify me as the individual that
17 fired this weapon. And I felt like my lawyer should
18 have challenged this testimony given by her during the
19 Neal v. Biggers hearing. It was never at no time
20 brought up concerning whether or not she saw me with a
21 gun or whether or not she seen anyone with a gun.

22 And in results from the in-camera hearing that was
23 not present of the jury where the jury did not hear
24 this, they allowed her to identify me in court, but she
25 never saw a weapon, and she never saw who shot the

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1 weapon. And my lawyer failed to properly challenge
2 this during the in-camera hearing, which allowed her to
3 be able to do this in-court identification.

4 And it was -- it was at a crucial point because it
5 was detrimental because for the simple fact that put
6 the murder weapon in my hand. If you never saw me
7 shoot a weapon, and you never saw a gun period, then
8 how could you possibly say that I'm the individual that
9 fired this weapon? And through the ballistics, it was
10 shown that he came -- whoever fired this gun at this
11 club had this murder weapon in their hand because of
12 the shell casings that was found at the scene of the
13 crime. And she never saw anyone with a gun based upon
14 her testimony.

15 Q And -- and this is important for several different
16 reasons, but your testimony is that this witness,
17 Ms. Bowers, who on the -- who on the stand pretty much
18 stated that she couldn't identify you because she had
19 had too much to drink on that night actually changes
20 her testimony?

21 A Basically, yeah.

22 Q And because of the fact that she actually changed her
23 testimony and she was not properly impeached by your
24 trial attorney, that, therefore, placed you at the
25 scene of the crime?

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- 1 A It don't necessarily place me at the scene of the
2 crime, but it does place the murder weapon in my hand.
- 3 Q Okay. And if it places the murder weapon in your hand,
4 you, therefore, have to be at the scene of the crime?
- 5 A Yes, ma'am.
- 6 Q Okay. And at the actual trial, there was actually a
7 State's witness, David Collins. He's the ballistics
8 expert?
- 9 A Yes, ma'am.
- 10 Q And you actually did not get the actual firearms report
11 until about 10 days before the trial?
- 12 A I believe so.
- 13 Q Okay. So would it be your opinion that because you
14 didn't get the firearms report until 10 days prior to
15 your trial, did your attorney have adequate time to
16 actually hire an expert to review the information?
- 17 A I don't think that she did.
- 18 Q So pretty much at your trial, based on Ms. Bowers
19 testimony and her putting the murder weapon in your
20 hand, and with David Collins actually testifying at the
21 trial that the shell casings that were recovered at the
22 club were the same shell casings that were recovered at
23 the cul-de-sac where this murder occurred --
- 24 A Uh-huh.
- 25 Q -- actually placed you as being the person who shot the

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1 victim in this case?

2 A Yes, ma'am.

3 Q And it's your testimony that your -- because your
4 attorney did not adequately question the -- Ms. Bowers,
5 and did not get a firearms expert that you were
6 actually prejudiced by that?

7 A Yes, ma'am.

8 Q And in what way would you say that you were actually
9 prejudiced by the inaction of your attorney at trial?

10 A Because she was allowed to say that I fired this
11 weapon, and it was shown and proven that this weapon
12 was the murder weapon based upon the shell casing that
13 was found at this club where she saying that I shot at,
14 and the shell casing that was found at the scene of
15 this crime.

16 Q So is it your opinion that you were convicted based on
17 this testimony and pretty much this testimony alone?

18 A Basically.

19 Q That's a yes or no?

20 A Yes, ma'am.

21 Q Okay. Now, there's some other allegations that you
22 have actually made as it relates to your attorney, your
23 trial attorney. It's your opinion that you were not
24 given all of the discovery in the case; is that
25 correct?

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1 A Yes, ma'am.

2 Q And could you actually tell the Court what do you mean
3 when you say you were actually not given all of the
4 discovery in the case?

5 A Dealing with the fact that with Justin and the promised
6 testimony because it was like the day of the trial that
7 that was disclosed. And my lawyer could have used that
8 to impeach him based upon his testimony that he was
9 giving because the jury never at no time was aware that
10 he was given a deal for his testimony because this was
11 never said in front of the jury. They never -- they
12 never knew that he was so much -- I would say had a
13 personal interest as far as his liberty because when we
14 were first arrested, it was the hand of one hand of all
15 charge, which they were arrested first, and then they
16 called my name and brought me into the case.

17 So now at this time right here, it was disclosed
18 to my lawyer at trial for their testimony -- for his
19 particular testimony that his charges would be
20 dismissed. And they had a hearing that was done prior
21 to my trial that discloses all of this information and
22 which it is in my transcript and it is specifically
23 stating that, you know, if you testify, your charges
24 will be dismissed, but you have to testify in order for
25 your charges to be dismissed. And this was never

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1 disclosed to my lawyer. And that falls up under the
2 Brady violation because it was never disclosed to me in
3 a properly manner of time.

4 Q Okay. Let's -- actually, let me ask you a couple of
5 questions. In your meetings with your attorney because
6 you actually brought up the issue about Ms. Caples's
7 testimony that she saw a dark-skinned gentleman, did
8 you and your attorney ever talk about going on the
9 theory of mistaken identity?

10 A No, we never did that.

11 Q Okay. Did you and your attorney ever talk about going
12 on the theory that you were just merely present?

13 A No, we didn't.

14 Q Did you and your attorney ever discuss trial strategy
15 as it relates to third party guilt?

16 A No, ma'am.

17 Q So did you all ever talk about self-defense?

18 A No, ma'am.

19 Q What theory were you and your trial attorney going to
20 trial on?

21 A It wasn't really no defense at all.

22 Q So you and your trial attorney never talked about any
23 defenses?

24 A No, ma'am.

25 Q Based on the fact that it's your testimony that you had

Louis Sanders Direct by Ms. Simpson

1 an alibi witness?

2 A Yes, ma'am.

3 Q It's your testimony that at the time you were actually
4 arrested three other -- two other individuals were
5 arrested with you?

6 A Yes, ma'am, but not at the same exact time, though.

7 Q Yes. Not at the same exact time, but all three of you
8 all were charged with murder initially?

9 A Yes, ma'am.

10 Q And you're actually saying that you met with your
11 attorney four to five times?

12 A It could have been more, but yeah, around about that
13 much.

14 Q So when did you and your trial attorney discuss
15 preparations for trial?

16 A It wasn't -- I can't call it preparation because it
17 was -- it was not like it was some type of defense
18 being -- you know, it was no defense being placed up.
19 It was just basically the trial was based upon I guess
20 final arguments, I mean.

21 Q And why do you say the trial was based on final
22 arguments?

23 A Because it was never a strategy that was placed out
24 there. It was never a defense ever placed on my
25 behalf.

Louis Sanders Direct by Ms. Simpson

1 Q Okay. And my question is very specific, my question is
2 did you and Ms. Guthrie ever talk about defenses for
3 trial?

4 A No, ma'am.

5 Q What did you and Ms. Guthrie do to prepare for trial in
6 these meetings that you had?

7 A She just, basically, just let me know what was going on
8 with the -- the police report, and what was being said
9 in the police reports. I mean, that's basically it.

10 Q So is it your testimony that what you all were doing
11 was reviewing the discovery?

12 A Yes, ma'am.

13 Q Okay. And in reviewing the discovery, did you all go
14 over some possible testimony that may be elicited at
15 trial?

16 A No, ma'am.

17 Q Okay. So when you were -- when your trial started on
18 that Monday, what did you feel that you and your trial
19 attorney was going to do to defend your case?

20 A I really wasn't sure to be honest with you.

21 Q Okay.

22 A I really wasn't.

23 Q Now, you had Mr. O'Neal on your case, also, Deon
24 O'Neal?

25 A Yes, ma'am.

Louis Sanders Direct by Ms. Simpson

1 Q Did you ever talk to him about trial strategies and
2 defenses?

3 A He was -- these were things that was not discussed
4 between us. They came up there, and we went over the
5 motion that was presented during my case, but how they
6 was going to defend it or the strategies or whatever
7 was not revealed to me.

8 Q What about Mr. Secor? Did he ever come to the jail to
9 meet you?

10 A No, ma'am.

11 Q Okay. Did he ever go into any defenses or strategies
12 with you as it relates to your trial?

13 A No, ma'am.

14 Q And let's go back, at what point -- and we kind of
15 addressed this earlier. At what point did you make the
16 decision not to testify? Was it the week of the trial
17 or was it prior to the trial?

18 A It was prior to the trial.

19 Q How -- how long prior to the trial would you say you
20 made that decision?

21 A Maybe, two months, three months.

22 Q Okay. And how long were you actually in the county
23 jail prior to you actually going to trial?

24 A Like 14 months.

25 Q Okay.

Louis Sanders Direct by Ms. Simpson

1 MS. SIMPSON: Beg the Court's indulgence, Your
2 Honor.

3 BY MS. SIMPSON:

4 Q Now, let me ask you a question, we talked about an
5 investigator that was on your case that was hired by
6 Ms. Guthrie earlier.

7 A Uh-huh.

8 Q Now, where this murder actually occurred, it was in a
9 neighborhood?

10 A Yes, ma'am.

11 Q Now, did you -- to your personal knowledge, did this
12 investigator ever go out to that neighborhood and speak
13 to anyone in that neighborhood and get any statements?

14 A I don't know. I really don't know.

15 Q Did ever see any -- any documents -- were any documents
16 provided to you that this investigator had generated?

17 A No, ma'am.

18 Q Okay. Did you ever discuss any information that this
19 investigator actually found out as relates to your case
20 with your trial attorney?

21 A No, ma'am.

22 Q Now, do you think that Ms. Guthrie did everything that
23 she could do in representing you on this case?

24 A No, ma'am.

25 Q Okay. And what do you feel that she did not do?

Louis Sanders cross by Mr. Petrano

1 A I feel like she didn't do a proper independent
2 investigation. I feel like she didn't properly
3 challenge the witnesses and their testimony when they
4 presented at trial.

5 Q And do you feel -- and because of the way that you --
6 because of what you feel that she failed to do, how do
7 you feel that you were prejudiced?

8 A I think I stated this one time before, based upon the
9 testimony of the -- of Ms. Bowers, her testimony would
10 place the murder weapon in my hand, which she never
11 even saw a weapon at all and my lawyer failed to
12 properly challenge that. And Ms. Capel, she could have
13 came to court to testify to what she actually seen that
14 night and it would have deferred the jury as far as
15 like the skin complexion because that was the main part
16 of the case because there was nothing else in my case
17 other than the complexion of my skin.

18 Q So to wrap all of that up, are you saying that you feel
19 that you were convicted based on the performance of
20 Ms. Guthrie?

21 A Yes, ma'am.

22 MS. SIMPSON: Your Honor, I have no further
23 questions at this time.

24 THE COURT: All right. Mr. Petrano.

25 MR. PETRANO: May it please the Court, Your Honor.

Louis Sanders cross by Mr. Petrano

1 CROSS-EXAMINATION

2 BY MR. PETRANO:

3 Q Mr. Sanders, I will be real brief with you on this.

4 You gave the name Twan to Ms. Guthrie to look into as a
5 part of her investigation --

6 A Yes, ma'am -- yes, sir.

7 Q -- on the charges? Do you have a last name for Twan?

8 A No, sir.

9 Q Do you have a phone number for Twan?

10 A No, I did not.

11 Q An address where Twan lived?

12 A No, I did not.

13 Q What kind of car Twan drove, what he looked like?

14 A Oh, yeah. I gave the car, and I told her exactly where
15 she can go find him at because he was a frequent at
16 this club. I mean, so it wouldn't have been like he
17 would have been hard to actually find him if you just
18 would have just went there.

19 Q Okay. So Ms. Guthrie needed to go to this club one
20 night and just hang out there until she met a guy named
21 Twan?

22 A I mean, I'm not going to say go to the club and hang
23 out, but, you know, the only thing she had to do is
24 just go there and once she located him -- he already
25 knew who I was. And the only thing she had to do was

Louis Sanders cross by Mr. Petrano

1 just to ask, you know, I'm coming to talk to you
2 concerning Mr. Sanders.

3 Q Okay. So she just needed to go to the club and ask
4 around for Twan and she would have gotten him?

5 A (The witness nodded head.)

6 Q Okay. That's what you want. I wanted to make sure I
7 got that right. As far as your right to testify, the
8 judge advised you of your right to testify, kind of
9 went over that with you after the State rested at the
10 end of trial, right?

11 A Yes, sir.

12 Q Okay. And just for the Court's -- I just point your
13 attention to transcript Page 1018 where that happens.

14 And during that portion, you told the Court that
15 you didn't want to testify, right?

16 A Yes, sir.

17 Q Okay. And the Court specifically on Page 1018 says,
18 It's entirely left up to you whether or not you
19 testify. And he said do you understand what I've
20 explained to you, and you say you did and you said you
21 didn't want to take the stand, right?

22 A Yes, sir.

23 Q Okay. So you told the judge right there you knew it
24 was entirely your decision, and you didn't want to
25 testify?

Louis Sanders cross by Mr. Petrano

1 A Yeah. But my decision not to testify was based upon
2 the advice of me lawyer.

3 Q Okay. So it wasn't your decision then, it was your
4 lawyer's decision?

5 A Based upon the advice of my lawyer.

6 Q Okay. Your lawyer wasn't going to end up in jail at
7 the end of this thing if you convicted, though, right?

8 A No, they did not, but my lawyer -- well, the lawyer,
9 she knew law and I didn't.

10 Q Okay. Now, in terms Lashonda Downing, she is the
11 mother of your child; is that right?

12 A Yes, sir.

13 Q Okay. You wanted her to be called as an alibi in your
14 behalf at trial, correct?

15 A Yes, sir.

16 Q Okay. And you gave that name to Ms. Guthrie and asked
17 her to investigate, right?

18 A Yes, sir.

19 Q Okay. Now, Ms. Downing did testify at trial, right?

20 A Yes, she did.

21 Q Okay, she testified on the State's behalf, not on your
22 behalf, right?

23 A Yes, sir.

24 Q And she provided some pretty damaging testimony, would
25 that be fair to say?

Louis Sanders cross by Mr. Petrano

1 A Concerning what?

2 Q Concerning seeing you with a gun that night after the
3 shooting?

4 A But that's irrelevant to the crime in which I was on
5 trial for.

6 Q Okay. But she -- I'm just -- and I'm just asking you a
7 question, yes or no. She testified that she saw you
8 with a gun at her house that night after the shooting?

9 A She did.

10 Q Okay. And that you were with Gary Green, who was one
11 of the other people who was alleged to have been in the
12 car that night?

13 A She did.

14 Q Okay. And that's who you wanted to come testify on
15 your behalf as an alibi, the State's witness that saw
16 you with the gun?

17 A I wanted them to know that's where I was at at the time
18 of the crime. So she could have come and testified.
19 And she did testify that I was at the house.

20 Q Ms. Downing isn't here to testify today, is she?

21 A Well, I mean, I was just bringing it up because you
22 did.

23 Q And I was just asking you that she's not here to
24 testify and say she would provide you an alibi or
25 anything like that, right? To your knowledge, she's

Louis Sanders cross by Mr. Petrano

1 not in the courtroom? She's not here to testify?

2 A No, she's not.

3 Q Okay. Now, as far as Kim Bowers and her testimony, Kim
4 Bowers did -- there was a lot of testimony elicited
5 from your attorney about not only Kim Bowers, but a lot
6 of these eyewitnesses about how much alcohol was
7 consumed that night by them, right?

8 A Yes, sir.

9 Q Okay. And a lot of them -- all of them readily
10 admitted they had been drinking. Some of them readily
11 admitted they couldn't remember much from that night
12 because they had been drinking?

13 A Yes, sir.

14 Q Okay. And in Kim Bowers's testimony, specifically, she
15 said that -- and I will bring your attention to Page
16 273 where the solicitor asked if she remembered seeing
17 a gun, and she testified that she remembered hearing a
18 gun click, right?

19 A Yeah, I think that's what she said.

20 Q It was at that point in time that she remembered --
21 that she recalled seeing you standing there when she
22 heard that gun click, right?

23 A No, sir.

24 Q That wasn't what she said?

25 A No, she never said that she saw me. She never said

Louis Sanders cross by Mr. Petrano

1 that she saw me. She said that she was --

2 Q That she saw the same -- I apologize. You may
3 continue.

4 A Okay. Oh, she never identified me. She said she was
5 pretty sure, that's according to the lineup. But as
6 far as being at the club, she specifically stated on
7 the stand that she can't recall because of how much she
8 had to drink.

9 Q Okay. But that testimony about her not being sure
10 about the photo lineup, that was all right in front of
11 the jury. That wasn't during an in-camera hearing,
12 right?

13 A Exactly.

14 Q Okay. So the jury was well aware that she wasn't able
15 to pick you out of a photo lineup?

16 A Yes, sir.

17 Q Okay. The firearms trace report that you complained
18 of, Ms. Guthrie didn't receive that until just right
19 before trial?

20 A I'm not sure exactly when it was.

21 Q Okay. But there was a motion made for a continuance
22 based on that at the beginning of trial, right?

23 A I think it was, yeah.

24 Q Okay. And she argued that she didn't have sufficient
25 notice of it, and the Court denied that motion?

Louis Sanders cross by Mr. Petrano

- 1 A Yes, they did.
- 2 Q Okay. And as far as this mistaken identity, you said
- 3 that was a defense you never discussed with Ms.
- 4 Guthrie?
- 5 A No, we never discussed that.
- 6 Q Okay. And throughout the entire trial, five days of
- 7 it, is it fair to say there was a lot of testimony
- 8 elicited not only about the alcohol use, but about what
- 9 kind of hair the defendant was alleged to have, dreads
- 10 or cornrows or slicked back hair, wasn't there a lot of
- 11 testimony elicited by her about that?
- 12 A Yes, sir.
- 13 Q All right. Wouldn't that be a mistaken identify
- 14 defense is she's trying to pick apart the
- 15 identification of who the shooter was?
- 16 A I think that's more or less of what the prosecutor was
- 17 presenting as far as like the hairstyles and stuff like
- 18 that, I think they was basically talking about that.
- 19 Q Okay. That wasn't to trying to pick apart the identity
- 20 or enter a mistaken identification defense?
- 21 A I'm not understanding -- I don't understand that
- 22 question right there. Because I'm just telling you
- 23 that that's what the prosecutor was doing. Now, my
- 24 lawyer didn't do all of that.
- 25 Q This information about Justin Green having his --

Louis Sanders cross by Mr. Petrano

1 having the charges dropped, that was specifically
2 mentioned by Ms. Guthrie in opening statements, wasn't
3 it?

4 A I can't recall the opening statements. I don't think
5 that she said anything about his charges being
6 dismissed in opening statements, though.

7 Q You don't think she said anything about that?

8 A No, I can't recall that.

9 Q Okay. And I don't know if you've got a copy of your
10 transcript up there with you, but if you don't, I would
11 just point the court's attention to Page 212 during
12 opening statements. And I will just read, if the Court
13 will allow me to, Pages 18 through 23 where the opening
14 statement says, Today, he will testify today, talking
15 about Justin Green. In exchange for his testimony, the
16 State has agreed to dismiss every single charge of
17 Justin Green. The same person that they had indicted
18 for murder. Justin Green is using Louis Sanders as a
19 personal scapegoat. If that's what the transcript
20 reflects, then you would concede, I mean, by the
21 language in the transcript that clearly was said right
22 in front of the jury that his charges were being
23 dismissed, right?

24 A Yeah.

25 Q Okay.

Louis Sanders cross by Mr. Petrano

1 MR. PETRANO: Beg the Court's indulgence for one
2 minute, Your Honor.

3 THE COURT: Yes, sir.

4 MR. PETRANO: I think that's all I have, Your
5 Honor. Thank you.

6 THE COURT: All right. Anything to redirect
7 examination?

8 MS. SIMPSON: Just briefly, Your Honor.

9 REDIRECT EXAMINATION

10 BY MS. SIMPSON:

11 Q Opposing counsel asked you whether or not you felt that
12 Ms. Guthrie was to go to this club and actually find
13 Twan?

14 A Uh-huh.

15 Q Okay. And you stated that Twan actually frequents this
16 establishment?

17 A Yes, ma'am.

18 Q And you were fully aware of the owner of this
19 establishment, correct?

20 A Yes, sir.

21 Q And --

22 A -- I mean, yes, ma'am.

23 Q And that was Ricky Jacobs?

24 A Yes, ma'am.

25 Q Okay. And didn't you also tell Ms. Guthrie that she

Louis Sanders cross by Mr. Petrano

1 could actually get in contact with Ricky Jacobs and
2 Ricky Jacobs could actually give her the information
3 for Twan?

4 A I think I briefly said something to her about that.

5 Q And that wasn't done?

6 A No, ma'am.

7 Q And opposing counsel just actually asked you about the
8 fact that there were questions asked about the
9 individual who actually shot the gun at the club,
10 whether or not they had dreads in their hair, or
11 whether or not they had cornrows in their hair. How
12 was your hair on that night?

13 A I had cornrows in my hair.

14 Q Okay. And did you and Ms. Guthrie or your other two
15 counselors ever discuss whether or not the basis of
16 their defense was going to be the -- whether or not you
17 had cornrows versus the way Justin Green's hair was on
18 that night and/or the way Gary Green's hair was on that
19 night?

20 A No, ma'am.

21 Q Okay. So when you said that they had -- no one had
22 ever talked to you about mistaken identity, that was a
23 true statement?

24 A Yes, ma'am.

25 MS. SIMPSON: I have no further questions.

Louis Sanders cross by Mr. Petrano

1 THE COURT: Anything further?

2 MR. PETRANO: No, Your Honor.

3 THE COURT: All right. You may step down, sir.

4 Anything further from the applicant?

5 MS. SIMPSON: Yes, Your Honor. At this time, we
6 would actually call Mr. Secor.

7 THE COURT: It's Secor.

8 MS. SIMPSON: Secor. Thank you.

9 THE COURT: All right. Let's take a little break
10 first.

11 MS. SIMPSON: Okay.

12 (Whereupon, a short recess was held.)

13 THE COURT: All right. Mr. Secor, you ready?

14 THE WITNESS: Yes, sir.

15 THEREUPON,

16 CASEY SECOR,

17 after having been duly sworn, testified as follows:

18 THE COURT: All right, sir. Please take a seat.

19 Tell us your full name, and spell your last name for the
20 record.

21 THE WITNESS: Casey Secor, S-E-C-O-R.

22 THE COURT: Yes, ma'am.

23 MS. SIMPSON: Thank you, Your Honor. May it
24 please the Court.

25 DIRECT EXAMINATION

Cacey Secor Direct by Ms. Simpson

1 BY MS. SIMPSON:

2 Q Mr. Secor, you were actually one of the attorneys on
3 Louis Sanders's case?

4 A Yes, ma'am.

5 Q And could you tell the Court when you actually became
6 involved with his case?

7 A I have -- I have absolutely no idea. I don't think it
8 was very long before the trial. I was his third chair
9 attorney. I was very new to the public defender's
10 office. And I think in large part, my role was more to
11 just get exposed to the experience of trial, which I
12 never had before. I don't -- I think that -- I believe
13 that may have been the first trial I ever sat in on a
14 trial.

15 Q Okay, so Mr. Louis -- Mr. Sanders's trial was, in your
16 opinion, the first trial that you were actually a party
17 to?

18 A I may -- I think I tried a DUI before then, but I
19 believe that it may have been the first general
20 sessions case that I ever sat on --

21 Q Okay.

22 A -- in trial.

23 Q And one of your responsibilities as it relates to
24 Mr. Sanders's case was actually to cross-examine Clay
25 Nichols?

Cacey Secor Direct by Ms. Simpson

- 1 A It was.
- 2 Q And at trial, Dr. Nichols actually did a demonstration
3 for the jury?
- 4 A That's correct.
- 5 Q Is that correct?
- 6 A Yes, ma'am.
- 7 Q And that demonstration actually consisted of a plastic
8 head figure, correct?
- 9 A Styrofoam.
- 10 Q A styrofoam head figure, correct?
- 11 A Yes, ma'am.
- 12 Q And what did he actually do with that styrofoam head
13 figure?
- 14 A In order to demonstrate to the jury the trajectory of
15 the bullet that struck the victim in the face, Dr.
16 Nichols inserted a long wooden dowel through the face
17 of the styrofoam form. And it was my opinion at the
18 time that he was doing it in a very intentionally
19 inflammatory manner that I thought was inappropriate.
20 I did not object, but I specifically recall hearing
21 Mr. Sanders whisper to me to object, and at the time, I
22 didn't object. And the honest reason for why I didn't
23 object to that is because I couldn't think of what the
24 proper objection would have been. And that's something
25 that, quite frankly, that I'm a little bit ashamed of.

Cacey Secor Direct by Ms. Simpson

1 But I did not object, and that's the reason why that
2 issue is not preserved for Mr. Sanders's benefit on
3 appeal.

4 Q And it would be your testimony that this was very
5 damning to Mr. Sanders?

6 A I mean, it was -- it was done in a manner that I
7 believe was intended to evoke horror and disgust. And
8 the look on Dr. Nichols's face at the time he was doing
9 it, it seemed to me extremely unnecessary. I don't
10 know why somebody needs a doctor to explain a bullet
11 killed somebody by hitting them in the face.

12 Q And that was my next question. My next question was,
13 was it an issue at trial whether or not the victim died
14 from a gunshot wound?

15 A I believe the victim was shot twice. Once at a
16 distance at somewhere around 30 yards or so. And I
17 believe a second time at what I believe was described
18 by Dr. Nichols at point blank range.

19 Q So is it your opinion that this actual demonstration
20 was not necessary?

21 A There was no dispute what killed the victim.

22 Q Okay. And what was some of your other roles as it
23 relates to being a third chair on Mr. Sanders's case?

24 A To be honest with you, I'm not really sure. I don't --
25 I think I may have cross-examined one or two other

Cacey Secor Direct by Ms. Simpson

1 witnesses. I believe I may have cross-examined Justin
2 Green or his father. I didn't get a transcript of the
3 trial beforehand so I haven't had a chance to look
4 through what I actually did, but I think I may have
5 cross-examined one or two other people.

6 Q Could you tell this Court what were the trial
7 strategies that you all had in defending Mr. Green's
8 case [sic]?

9 A My recollection is that it was a debate about whether
10 Mr. Sanders was present at all, and if he was present,
11 whether he was the person that shot the victim.

12 Q Okay. Did you all -- do you think at this time there
13 were any other strategies that you all could have
14 actually spoken to Mr. Sanders about?

15 A In thinking about the case based on the experience that
16 I've gained since the time of this trial, I think it
17 would have been important to address a potential claim
18 of self-defense. My recollection of the facts of the
19 case is that the victim's vehicle was pursuing the
20 vehicle that apparently was occupied the Green brothers
21 and Mr. Sanders and that the victim's vehicle actually
22 struck the other vehicle from behind. Then when both
23 were stopped, that the victim got out of his vehicle
24 and was then shot. And those are the facts that I
25 believe existed in the discovery in the police reports.

Cacey Secor Direct by Ms. Simpson

1 And if I were trying a case now, I think it would be
2 very important to address the issue of self-defense.

3 MR. PETRANO: Your Honor, I'm going to object to
4 that. With all due respect to Mr. Secor, that's all based
5 on hindsight. Hindsight isn't something we take into
6 account in a PCR. I mean, that's all saying based on the
7 facts from what I remember back then, this is what I would
8 do now. That's all just hindsight. So I would object to
9 that testimony being relevant in any way to this PCR.

10 THE COURT: All right. Go ahead.

11 BY MS. SIMPSON:

12 Q Well, let he rephrase my question. When you actually
13 reviewed the discovery --

14 A Uh-huh.

15 Q -- did you see a viable defense of self-defense at the
16 time you reviewed the discovery leading up to the
17 trial?

18 A I do remember thinking that we could make a straight
19 face argument that the victim's vehicle chasing the
20 vehicle that Mr. Sanders and the Green brothers were
21 apparently in and then striking it from behind was
22 arguably an assault and battery with intent to kill
23 from a legal perspective.

24 Q And based on you feeling that way at the time of the
25 trial, you felt that Mr. Sanders could use the defense

Casey Secor Direct by Ms. Simpson

1 of self-defense because of the assault with intent to
2 kill that the victim -- according to the discovery
3 actually facilitated against Mr. Sanders?

4 A Arguably, yes, self-self and defense of others.

5 Q Okay. And did you and your co-counsel talk about that?

6 A I do not remember. I have no recollection of
7 conversations about those issues now.

8 Q And did you all talk about -- and we're still going in
9 line of the whole -- you thinking at the time that you
10 could use the viable defense of self-defense, did you
11 all think about at the charge conference talking to the
12 judge about a charge of self-defense?

13 A. I have no recollection of having done so.

14 Q Okay. Because what you are referring to -- the facts
15 that you are referring to about the actual victim's car
16 hitting the car that was Mr. Sanders occupied, that was
17 actually on the record, that information came out at
18 trial?

19 A If my member serves, that was definitely a part of the
20 facts of the case presented by the State.

21 MR. PETRANO: Your Honor, I think the record would
22 speak for itself in that regard. I would disagree with
23 that, but I would just say the record speaks for itself.

24 THE COURT: Thank you, sir.

25 BY MS. SIMPSON:

Casey Secor Direct by Ms. Simpson

1 Q And just one last question, how many meetings did you
2 have with your co-counsels in preparation for Mr.
3 Sanders's charge?

4 A I have no idea how many meetings. The other two
5 attorneys on the case had -- my understanding is that
6 the other two attorneys were on the case longer than I
7 was and my assumption was that they met. I personally
8 don't recall a team meeting that I was involved in with
9 the other two attorneys.

10 Q And just one last follow-up question, so on the day
11 this trial occurred, did you feel confident starting
12 this trial in defending Mr. Sanders?

13 A I didn't, but, I mean, you know, I never felt confident
14 walking into a courtroom.

15 Q Did you feel effective?

16 A No.

17 MS. SIMPSON: Okay. I have no further questions.

18 THE COURT: All right.

19 CROSS-EXAMINATION

20 BY MR. PETRANO:

21 Q Mr. Secor?

22 A Yes, sir.

23 Q Discovery and testimony that was presented throughout
24 the trial, didn't it show that Mr. Sanders wasn't even
25 in the car at the time it got struck by the victim's

Casey Secor Direct by Ms. Simpson

1 car? He had already been let out of the car and was
2 walking behind it at the time the car got struck; isn't
3 that right?

4 A I remember something about the car stopping and
5 somebody getting out, but I can't remember whether the
6 testimony established who it was that got out of the
7 car. You may be right, I can't remember.

8 Q All right. And there was an eyewitness that testified,
9 a Mr. Keith Eubanks, that testified at trial and he
10 was -- do you recall that, an eyewitness that was
11 looking at a house nearby and saw this transpire?

12 A The name rings a bell, but I can't remember what he
13 testified to.

14 MR. PETRANO: Eubanks, and just for the Court's
15 purposes, his testimony starts on Page 331.

16 THE COURT: All right.

17 BY MR. PETRANO:

18 Q. , And you recall his testimony and a 911 call that he
19 made reflecting he had seen two men let out of the car
20 walking behind it at the time the victim's car struck
21 the defendant's car?

22 A I think I do remember that, yes, sir.

23 Q Okay. And if the testimony does reflect that Mr.
24 Sanders wasn't even in the car at the time it struck
25 the victim's car, would that be pretty damaging to the

Casey Secor Direct by Ms. Simpson

1 self-defense theory based on the fact that this car had
2 run into the car?

3 A If it could have been established that he was
4 definitely one of the people that had gotten out of the
5 car, but I don't think Mr. Eubanks knew who got out of
6 the car, did he?

7 Q And the record will speak for itself in that regard,
8 but if it were established or if the jury were to
9 believe that, would you agree it would be damaging to a
10 self-defense theory if he wasn't even in the car at the
11 time it was struck?

12 A Certainly, not to his self-defense, but other theories.

13 Q Okay. Throughout your involvement in this case and in
14 trial when you were cross-examining, did Ms. Guthrie or
15 Mr. O'Neal ever leave the courtroom, ever let you
16 handle these things without their supervision, without
17 them sitting in the courtroom and watching you?

18 A. Not that I recall.

19 Q Okay.

20 MR. PETRANO: Beg the Court's indulgence for one
21 moment, Your Honor.

22 THE COURT: Yes, sir.

23 BY MR. PETRANO:

24 Q The testimony by the expert in pathology, Clay Nichols,
25 you feel that was the testimony single-handed in this

Camille Guthrie Direct by Mr. Petrano

1 five-day trial that got Mr. Sanders convicted in this
2 matter?

3 A No, sir.

4 Q Okay. There was some pretty substantial witness
5 testimony, evidence presented that would point to his
6 guilt in this matter, correct?

7 A Well, I mean, there was somebody else charged with the
8 same crime that took the stand and said that Mr.
9 Sanders was the one that pulled the trigger, so I'm
10 sure that was pretty damaging from the perspective of
11 the jury.

12 MR. PETRANO: That's all the questions I have.

13 THE COURT: Anything on redirect?

14 MS. SIMPSON: None, Your Honor.

15 THE COURT: Thank you, Mr. Secor. You want to be
16 excused?

17 MR. SECOR: I would love to.

18 THE COURT: Nobody wants Mr. Secor to stay?

19 MS. SIMPSON: No, Your Honor.

20 MR. PETRANO: I'm fine.

21 THE COURT: Thank you, Mr. Secor.

22 THE WITNESS: Thank you.

23 THE COURT: Call your next witness.

24 MS. SIMPSON: Your Honor, at this time, we have no
25 further witnesses.

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1 THE COURT: All right.

2 MR. PETRANO: Your Honor, at this time, the State
3 would call Ms. Camille Guthrie. I hope I'm saying that
4 correctly.

5 THE COURT: Everhart.

6 THEREUPON,

7 CAMILLE GUTHRIE,
8 after having been duly sworn, testified as follows:

9 THE COURT: Please tell us your full name and
10 spell your last name for the record.

11 THE WITNESS: Camille Everhart Guthrie, last name
12 G-U-T-H-R-I-E.

13 THE COURT: So you got married since the old days?

14 THE WITNESS: Well, actually, I was married at the
15 public defender's office, I just went by my married name.

16 THE COURT: Okay. All right. You changed your
17 name?

18 THE WITNESS: Yes, changed my name.

19 THE COURT: All right. Thank you.

20 MR. PETRANO: May it please the Court, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. PETRANO:

23 Q Ms. Guthrie, do you recall your involvement in Mr.
24 Sanders's case?

25 A Yes, I do.

Camille Guthrie Direct by Mr. Petrano

1 Q Okay. And how did you become involved with the case?

2 A. I was assigned the case while at the public defender's
3 office.

4 Q Okay. Have you had a chance to look over the files
5 from your representation of Mr. Sanders prior to coming
6 to court today?

7 A Yes, I have.

8 Q Okay. And you served as lead counsel on this case for
9 Mr. Sanders?

10 A Yes.

11 Q Deon O'Neal and Casey Secor, as the record reflects,
12 sat as second chair and third chair?

13 A Yes.

14 Q Do you remember meeting with Mr. Sanders to discuss the
15 charges he was facing?

16 A. Yes, I do. I keep fairly detailed notes. Just being
17 at the public defender's office, you represent a lot of
18 people and lot of times, you have clients grieve you.
19 So I reviewed my notes. I have 11 pages of typed,
20 single-spaced notes from this case. And it looks like
21 I met with Mr. Sanders nine times in the 13 months I
22 represented him. Some of those took place at the jail
23 and some did take place in holding here at the
24 courthouse.

25 Q Okay. Were you present and privy to any of those

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- 1 meetings that would have been done with Mr. Sanders if
2 Mr. O'Neal or Mr. Secor had meetings with Mr. Sanders?
- 3 A Yes, I reviewed my notes and I believe prior to trial,
4 Deon, Mr. O'Neal and I went down and spent, according
5 to my notes, about two hours talking with Mr. Sanders
6 right before trial. And I do not believe Mr. Secor
7 ever met with him. He was third chair. He had not
8 been in trial before, I believe, and he had a couple of
9 sort of -- kind of witnesses, so we were giving him a
10 chance to kind of cut his teeth on those witnesses. So
11 he did not actually meet with Mr. Sanders.
- 12 Q Okay. And during your meetings with him, did you have
13 a chance to review the indictments outlining the
14 charges he was facing?
- 15 A Yes.
- 16 Q Okay. Did you have a chance to review his
17 Constitutional rights with him?
- 18 A Yes.
- 19 Q Were you able to discuss the potential sentence he was
20 facing under the indictment?
- 21 A Yes.
- 22 Q Okay. What about his prior criminal history, was that
23 something you were able to review with him?
- 24 A We did, and that was included in the discovery, which
25 he also had with him.

Camille Guthrie Direct by Mr. Petrano

1 Q All right. Do you recall any charges that he might
2 have had in his criminal history that gave you concern?

3 A I recall that he did have a prior record. I do not
4 recall what the prior record was.

5 Q Okay. At some point in time, you were actually
6 notified the State would be seeking life without parole
7 on these charges; is that correct?

8 A Yes.

9 Q Okay. Do you have any idea when you were served with
10 that notice?

11 A I -- one second and I will review my notes. On the
12 15th of July of '08, he was transported for LWOP
13 service. And that was before Judge Childs.

14 Q Okay. And were you able to discuss that with
15 Mr. Sanders?

16 A. Yes, I was.

17 Q Was he aware that if he got convicted that was a real
18 possibility he would be sentenced to life without
19 parole?

20 A Yes, he was aware.

21 Q Were you able to discuss Mr. Sanders's version of the
22 facts during your meetings with him?

23 A Yes, we did discuss his version of the facts.

24 Mr. Sanders never admitted guilt in this case. As a
25 matter of fact, our discussions revolved around the

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1 fact that he was not actually in the car with Justin
2 and Gary Green that night. He was in the car that
3 night, but he did not leave with the Green brothers.
4 And later that night, he did show up to his
5 girlfriend's house. I do believe he showed up there
6 with Gary Green, but he left with some man named Twan.
7 We were not able to locate Twan.

8 Q Through your meetings, were you able to discuss what
9 his expectations of your representation were, what he
10 hoped to get out of this, where he hoped to go with it?

11 A Well, obviously, his hope was that we would either win
12 at trial or the charges would be dismissed.

13 Q Okay. And do you remember making a discovery motion on
14 his behalf?

15 A Yes.

16 Q And you remember seeing that discovery file?

17 A. Yes.

18 Q. Is that something you were able to review with him in
19 your meetings?

20 A Yes, we reviewed it several times. I believe it came
21 in pieces, so we discussed different parts at different
22 times. He, ultimately, requested a copy of his
23 discovery, which I provided for him down at the jail.

24 Q You recall in noteworthy items that were included in
25 there, things that you really wanted to follow up

Camille Guthrie Direct by Mr. Petrano

1 investigation in, anything that was troubling to you?

2 A When I met with him and handed him his discovery, I did
3 ask him to go through it very carefully and if there
4 were any people he believed could be a witness for him
5 to provide me with their name and contact information.
6 He did tell me that he left with a gentleman named
7 Twan. He did not know his name or address how I could
8 get in touch with him. I did provide that information
9 to the investigators we hired on the case, David Byrd
10 and Elizabeth Cook. They were not able to locate Twan.
11 I am not sure if they asked the bar owner, but I know
12 they talked to the bar under. I'm not sure if that was
13 one of the questions they asked the bar owner.

14 Also, I did want to speak with Lashonda, his
15 girlfriend at the time, and wanted to provide contact
16 information to my investigators. My client did not
17 want me to speak with her initially. He wanted to talk
18 with her first. Then he said he would get me that
19 information. Ultimately, of course, my investigators
20 could get her contact information, but those were the
21 two main witnesses.

22 Q Okay. Did Mr. Sanders ever ask you to get in touch
23 with his brother regarding the gun case that was found?

24 A I believe we talked about his brother. He and, I
25 believe, his brother and mother resided at the same

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1 home, so the gun case and the gun cleaning kit were in
2 the home they all were in. So, technically, Mr.
3 Sanders did have access to the gun. I believe it was
4 just trial strategy that we did not call his brother,
5 simply because Mr. Sanders could have had access to the
6 gun case and the gun cleaning kit that were in the
7 home.

8 Q Okay. I'm jumping a little bit ahead of myself, but
9 you ended up not presenting any evidence on the
10 defendant's behalf, correct?

11 A No, we did not.

12 Q And by doing so, you preserved last closing argument?

13 A. Yes.

14 Q Had you presented his brother as a witness, that would
15 have lost last closing argument for you?

16 A. Yes.

17 Q That was maybe part of your decision or was that
18 something you factored into your decision whether to
19 call him?

20 A Definitely factored into calling him.

21 Q All right. Based on your review of the discovery and
22 your discussions with Mr. Sanders and your
23 investigation, were you able to start formulating an
24 opinion on the State's ability to prove his guilt
25 beyond a reasonable doubt?

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1 A Yes.

2 Q And just initially, what was kind of your thoughts
3 on -- was it an uphill climb? What were your thoughts
4 based on that?

5 A I felt like they had a good chance of proving guilt
6 only because we didn't have an alibi defense, we
7 couldn't locate Twan and his girlfriend did not give
8 favorable information to the police, so I didn't feel
9 like we could call her. So, basically, we had a period
10 of time where we could not place Mr. Sanders, so we
11 couldn't do alibi. Unfortunately, I felt like we had a
12 good chance of losing.

13 Q Okay. And Lashonda Downing, the mother of his
14 children, actually did testify at trial?

15 A. Yes, she did.

16 Q And she testified on the State's behalf?

17 A Yes.

18 Q How would you characterize her testimony that was
19 presented at trial regarding Mr. Sanders?

20 A Absolutely devastating. And I do believe we made a
21 motion for a mistrial after she testified. She came in
22 hysterical. She would not meet his eyes. And, quite
23 honestly, she was so hysterical and upset that I do not
24 feel I effectively cross-examined her because it was
25 borderline do I come across like a complete you know

Camille Guthrie Direct by Mr. Petrano

1 what while attacking this woman who's hysterical. So
2 we did make a motion after that.

3 Q Okay. So suffice it to say she wasn't going to testify
4 as an alibi witness for Mr. Sanders?

5 A No, no.

6 Q Were you able to go through some of the statements that
7 were given by witnesses and parties involved as part of
8 the discovery file?

9 A Yes.

10 Q Okay. And were you able to try to kind of go through
11 and highlight some inconsistencies throughout those
12 statements?

13 A Yes.

14 Q And that was something you planned to present at trial?

15 A Yes.

16 Q Okay. Were you ever able to go out to the scene of
17 shooting, the pub or this cul-de-sac where it happened?

18 A I did not go out to the pub. I had driven by the pub
19 several time in the past. And I did not go out to the
20 cul-de-sac. We did have photographs taken by the
21 investigators of the cul-de-sac.

22 Q Did you ever consider any experts, private experts on
23 your behalf to go over any discovery material and
24 testify at trial?

25 A Well, I did hire the private investigators, but I did

Camille Guthrie Direct by Mr. Petrano

1 not feel it warranted a separate ballistic expert or a
2 crime scene expert per se.

3 Q Okay. So you all chose not to do that based on your
4 review of the evidence?

5 A Yes.

6 Q All right. Based on your review of the discovery and
7 your independent investigation of the facts, were you
8 able to start developing defense theories that could be
9 used at trial?

10 A Yes.

11 Q Okay. And was Mr. Sanders able to start helping you
12 develop those defense theories?

13 A Yes.

14 Q All right. Would it be fair to say the parties
15 directly involved in the H & J Pub portion of this all
16 pretty much confirmed that they had been drinking that
17 night?

18 A Yes.

19 Q There was alcohol involved?

20 A Yes.

21 Q Okay. Was that something you planned to use at trial
22 to call identification into question?

23 A Yes. We pointed out several times to the different
24 individuals testifying that they were inebriated or had
25 had several drinks that night. I do believe several of

Camille Guthrie Direct by Mr. Petrano

1 them admitted to being intoxicated.

2 Q All right. What about the calling identification of
3 Mr. Sanders into question, is that a pretty big trial
4 strategy you developed?

5 A Yes, it was.

6 Q Okay. And I think there's a lot of testimony in the
7 record throughout the trial about different hairstyles,
8 is that something you recall?

9 A Exactly. Mr. Sanders had cornrows. Not a single
10 eyewitness that testified at trial described a
11 gentleman shooter that had cornrows. We received
12 dreads, twists, braids, blow out, Jheri curl, but not a
13 single person said cornrows. So a large portion of our
14 defense focused on the fact that not a single person
15 could accurately describe Mr. Sanders's hairstyle.

16 Q Okay. So calling the identification into question was
17 a big part of your trial strategy?

18 A Yes.

19 Q Okay. What about impeachment of witness, is that
20 something you discussed with Mr. Sanders in preparation
21 for trial?

22 A I don't know that we specifically sat down and I used
23 the word impeachment, but I talked about how they can
24 take the stand and we would cross-examine them.

25 Q Okay. Any other defense strategies you remember going

Camille Guthrie Direct by Mr. Petrano

1 over that maybe you either were or weren't using?

2 A I cannot recall.

3 Q Okay. What about self-defense, is that something you
4 looked into, something you thought warranted of the
5 facts?

6 A. Self-defense was never an option because my client
7 argued that he was not at the scene of the shooting, so
8 we could not argue self-defense.

9 Q Okay. What about did you discuss any preparations with
10 Mr. Sanders about what he should do to be prepared for
11 trial, what he should do about the way, you know, when
12 he appears at trial that he should do that might help
13 him?

14 A Actually, I asked him if he would come with his hair in
15 cornrows since that was the hairstyle he had that night
16 and that was the hairstyle that he normally wore. Now,
17 I cannot recall if he actually did wear cornrows for
18 the day of trial, but I remember the conversation
19 because he was very upset about the idea of having
20 another gentleman at the jail braid his hair in
21 cornrows. But I did think it would be important for
22 him to come with the same hairstyle so all the members
23 of the jury could see the exact hairstyle he had that
24 night, how different it looked from dreads, twists,
25 braids, blow out, et cetera.

Camille Guthrie Direct by Mr. Petrano

1 Q And that was centered around his mistaken
2 identification theory?

3 A Yes.

4 Q Okay. At the beginning of trial, you made a motion for
5 severance of the case between Mr. Sanders and Justin
6 Green, correct?

7 A. Yes.

8 Q And, ultimately, they were severed?

9 A. Yes.

10 Q And at some point in time after that, Justin Green's
11 charges were dropped against him for his testimony?

12 A Yes.

13 Q Do you recall how you found out about that or when you
14 found out that would be happening?

15 A I do not recall. But I do believe Mr. O'Neal did point
16 that out to the jury in his opening statement.

17 Q And I might have misstated that in one of my questions
18 saying you had stated that. In fact, Deon O'Neal was
19 the one that did the opening and mentioned that?

20 A Yes.

21 Q Needless to say, there were a lot of pretrial motions
22 made as well, is that your recollection?

23 A. Yes.

24 Q Okay. Your did request a continuance based on the
25 firearms trace summary report?

Camille Guthrie Direct by Mr. Petrano

1 A Yes. I felt that that was very important that we be
2 given continuance on that. According to this report,
3 which was handed to me the Thursday before trial, a
4 gun -- the gun that went to the gun case located in
5 Mr. Sanders's mother's home was sold at a pawnshop, I
6 believe, in Indiana. My impression from talking with
7 the State was they were going to attempt to argue that
8 either Mr. Sanders somehow had this gun that had been
9 sold in Indiana, or that's the reason the gun couldn't
10 be found because it had been sold in Indiana.

11 I immediately turned the information over to my
12 investigator. She contacted the gun owner who still
13 had the gun. So the gun that went to the gun case in
14 Mr. Sanders's home actually was in Indiana and had been
15 since before the crime occurred. We purchased him a
16 plane ticket to come down so he could testify at trial,
17 but the day after we purchased the ticket, his mother
18 called me hysterical, it was a Saturday. And she was
19 like, absolutely not. I'm not allowing my son to come
20 testify. He's going to get locked up for this murder.
21 Therefore, we made the motion for continuance just so
22 we could get him down to testify and the motion was
23 denied.

24 Q That motion was denied. And upon making that motion,
25 was that something that you preserved for appeal?

Camille Guthrie Direct by Mr. Petrano

1 A I believe we did, yes.

2 Q Now, the first three witnesses that testified at trial,
3 were Pam Cannon and her two -- the friends that were
4 out with her that night. Do you their testimony?

5 A I have a copy of the trial transcript in front of me,
6 but I do not recall their specific testimony without
7 looking at it.

8 Q Their consumption of alcohol that night, that was
9 something that was brought out through
10 cross-examination?

11 A Yes.

12 Q And Kim Bowers's identification of Mr. Sanders in court
13 and out of court were issues that you objected to on
14 the record?

15 A Yes. And I do think it was damning. She did identify
16 him in the courtroom when she had not previously. She
17 said it was almost like when she saw him, she just knew
18 that was the guy who had been at the scene. We did
19 point that out. Also, pointed out, I believe, she had
20 eight to 10 drinks that night. She admitted she was
21 inebriated. And, also, she was shown photo lineups, I
22 want to say twice, so she had picked out three separate
23 individuals who she believed was the shooter. And we
24 pointed all that out at trial.

25 Q Okay. And, in fact, there was an in-camera hearing

Camille Guthrie Direct by Mr. Petrano

1 held on her in and out of court identification of
2 Mr. Sanders?

3 A Yes.

4 Q And, ultimately, the judge ruled that was admissible?

5 A Yes.

6 MR. PETRANO: And I just direct the Court's
7 attention to Page 304 in the record, Your Honor.

8 BY MR. PETRANO:

9 Q. Now, Keith Eubanks testified. Do you recall his role
10 in this trial?

11 A I believe he was a witness who resided in the
12 cul-de-sac, but I cannot recall his specific testimony.

13 Q Okay. Do you recall on cross-examination trying to
14 bring out some inconsistencies and the description
15 based on how he had described the shooter?

16 A I can't recall it, but I can certainly look over it.

17 Q Okay.

18 MR. PETRANO: Beg the Court's indulgence for just
19 a moment.

20 THE COURT: Yes, sir.

21 BY MR. PETRANO:

22 Q. Do you recall discussing with Mr. Sanders his right to
23 either testify or not testify at trial?

24 A. Yes. I mean, I remember telling him he could choose to
25 testify or not testify. I am sure I pointed out that

Camille Guthrie Direct by Mr. Petrano

1 he did have a prior record and that potentially that
2 could be used against him if he testified. I do not
3 believe I specifically said the judge would you,
4 ultimately rule on that.

5 Q. Okay. The Court after the State rested did also advise
6 him of those rights, correct?

7 A. Yes.

8 Q. Okay. Do you feel he made a voluntary, intelligent
9 decision not to take the stand at that point?

10 A. I do. But I believe, as he testified, he did it on my
11 advice. Obviously, he did look to me for legal advice
12 and I told him I would prefer that he not testify, but
13 it was his right to do whatever he wanted.

14 Q. Regarding Dr. Clay Nichols's testimony, Mr. Secor just
15 testified, do you remember anything abnormal, anything
16 that struck you as objectionable during that testimony
17 that you remember?

18 A. As a matter of fact, I didn't even remember that there
19 was a foam head used. After Mr. Secor testified, now I
20 have a vague recollection. But I do not remember
21 anything standing out to me and I didn't write anything
22 in my notes.

23 Q. Okay. In taking on these new people from the public
24 defender's office, is that something you've done
25 before, had second chair, third chair with you?

Camille Guthrie Direct by Mr. Petrano

1 A Normally, if you have a smaller trial, you would want
2 to get them involved as the second chair. If you have
3 a larger trial, like a murder, you would take on a
4 third seat, give them a couple of witnesses, possibly,
5 just so they can get into the courtroom and have an
6 opportunity to work on a murder trial.

7 Q. And during their participation in trial, is there any
8 reason that you wouldn't step in if you felt that maybe
9 they were doing something incorrect or something needed
10 to be objected to?

11 A No, I mean, we always turn to each other and give each
12 other advice as we're going along. I thought Mr. Secor
13 did an amazing job for his first trial.

14 Q But there's nothing especially overwhelming in that
15 sense that you think you should have objected to?

16 A No.

17 Q Okay. And you did the closing arguments in this case?

18 A. Yes, I did.

19 Q Okay. What was your strategy in that closing argument,
20 if you can remember, during your preparations?

21 A I think a large part of it focused on pointing out the
22 inconsistencies, especially in regard to the hairstyle.

23 Q Okay. And that was kind of mentioning how all these
24 different witnesses had said he had a different
25 hairstyle during the entire course of the trial?

Camille Guthrie Cross by Ms. Simpson

1 A. Yes.

2 Q And you decided not to present any evidence on Mr.
3 Sanders's behalf?

4 A No, we did not present any.

5 Q Is that something you discussed with him?

6 A We did.

7 Q Was he on board with that at the time?

8 A I don't -- looking back, I'm not sure that we discussed
9 specific details of the matter of we don't have an
10 alibi witness to put up, you can or cannot take the
11 stand, things of that nature. But I don't know that I
12 spoke to him in legalese, so to speak.

13 Q Okay. After the jury returned with the verdict, there
14 was some post-trial motions made, do you recall those?

15 A I do not, but I could review the record.

16 Q After the end of this trial, did you ever have the
17 opportunity to discuss any appeal issues with --

18 A No, I did not.

19 MR. PETRANO: I believe that's all I have, Your
20 Honor.

21 THE COURT: Anything on cross?

22 MS. SIMPSON: Yes, Your Honor.

23 THE COURT: All right.

24 CROSS-EXAMINATION

25 BY MS. SIMPSON:

Camille Guthrie Cross by Ms. Simpson

1 Q Ms. Guthrie, you testified a few minutes ago and you
2 stated that you felt that the State had a strong case
3 against Mr. Sanders; is that correct?

4 A. Yes.

5 Q Okay. And you feel that way even though it was also
6 your testimony that one of the State witnesses Keith
7 Eubanks had inconsistent testimony as it relates to who
8 the shooter was and their hair appearance?

9 A. Yes.

10 Q Okay.

11 A My personal opinion is that they had a strong case even
12 though there were discrepancies, and, of course, we
13 tried to point out all of those discrepancies.

14 Q Okay. And that's one thing that I want to point out
15 with whether or not deciding to put up a defense in
16 this case. Because it's been the testimony elicited
17 that the young lady -- the three young ladies who were
18 actually at this bar where the initial shooting
19 occurred, I mean, all these people were drunk?

20 A. Exactly.

21 Q Right. And you have Ms. Bowers, who actually did the
22 in-court identification of my client, who on three
23 previous occasions picked out three other individuals
24 as the shooter?

25 A Yes.

Camille Guthrie Cross by Ms. Simpson

- 1 Q And that prior to his trial, she had never said that
2 Mr. Sanders was the shooter?
- 3 A. Right.
- 4 Q But on the day of Mr. Sanders's trial when she actually
5 testified, she said oh, yeah, it's definitely
6 Mr. Sanders?
- 7 A Yes.
- 8 Q And that's the fourth person that she said was the
9 shooter of the victim?
- 10 A Yes.
- 11 Q Her credibility had to be very shaky?
- 12 A I believe so, and I tried to point that out to the
13 jury.
- 14 Q Okay.
- 15 A I pointed out that she was intoxicated, that she had
16 picked out numerous individuals.
- 17 Q And, I mean, you also have Ricky Jacobs, the owners of
18 the bar, who actually points away from the guilt of my
19 client and says that the shooter on that night had a
20 Red Robin shirt?
- 21 A Yes.
- 22 Q And all that came out at the trial?
- 23 A Yes. There was a gentleman and he had, I believe,
24 dreads --
- 25 Q Uh-huh.

Camille Guthrie Cross by Ms. Simpson

1 A -- the gentleman from Red Robin that was there at the
2 establishment that night.

3 Q And you just testified that at trial there was no
4 witnesses that ever said that the shooter had cornrows
5 in their hair?

6 A. Exactly.

7 Q And Mr. Sanders had cornrows in his head?

8 A. Yes.

9 Q So, I mean, there's a whole lot of stuff that's
10 pointing away from the guilt of Mr. Sanders?

11 A There is. I think it would have -- if I had had an
12 alibi, a really strong alibi, if I had some way to
13 place him somewhere else, that would have really helped
14 our case. But we just didn't, except for Twan and we
15 were not able to locate Twan. I don't know his name or
16 where he lives.

17 Q Okay. And you were aware at the time that Ricky Jacobs
18 was the owner of this club?

19 A Yes.

20 Q And you were aware of the fact that Mr. Sanders
21 actually told you that Twan frequented this club?

22 A. Yes.

23 Q And did you pass that information on to your private
24 investigators?

25 A. I feel sure I did. Obviously, I can't say with

Camille Guthrie Cross by Ms. Simpson

1 100 percent certainty that I definitely did that, but
2 I'm sure I gave that information along with all the
3 other information I had. I do know they did not give
4 me anything back saying we found Twan.

5 Q Okay. And let me just ask your opinion on this and
6 then I'll get to the specifics of the question.
7 Typically, when an attorney makes a motion to continue
8 --

9 A Uh-huh.

10 Q -- a trial or a case, they make that motion to continue
11 because they're not fully prepared to go forward,
12 correct?

13 A Yes.

14 Q And in this case, you made a motion to continue?

15 A Yes, I did.

16 Q So would it be accurate to say that you were not
17 prepared to go to trial in Mr. Sanders's case?

18 A. Not in regard to the new evidence we received about the
19 firearms report. We had a witness that we could call
20 that we were not allowed to bring down. We purchased
21 the plane ticket, but we couldn't get him without a
22 subpoena and we didn't. We had been given the
23 information on Thursday, located him by Friday, the
24 trial was Monday.

25 Q Okay. And is it your opinion that that actually

Camille Guthrie Cross by Ms. Simpson

1 prejudiced Mr. Sanders?

2 A I think it did because part of -- we made a motion to
3 keep the gun cleaning kit out and the gun case out and
4 that motion was denied. And the State attempted to
5 infer that the murder weapon must have been the one
6 that went to this gun case, which we knew was in
7 Indiana.

8 Q Yeah.

9 A But we couldn't get it in because we didn't have a
10 witness to put up on the stand.

11 Q Yeah. And so, I mean, that actually prejudiced him a
12 whole lot and --

13 A. I --

14 Q Oh, I'm sorry.

15 A. Oh, no, I was going to say I believe that Judge Cooper,
16 his argument was well, any nine millimeter could have
17 been in this case. And, technically, he's right, but
18 the serial on that case went to a gun that was in
19 Indiana.

20 Q Okay. And let's actually talk about some of the other
21 things that -- there was some other issues that came up
22 at trial that was far beyond your control, but they
23 did, indeed, happen at Mr. Sanders's trial. There was
24 some incidents that occurred with some of the jury
25 members?

Camille Guthrie Cross by Ms. Simpson

1 A Oh, gosh, I'm trying to remember.

2 MS. SIMPSON: If I may, Your Honor.

3 THE COURT: Go ahead, I'm not stopping you.

4 BY MS. SIMPSON:

5 Q Isn't it true that there was actually one of the
6 alternate juror numbers that actually knew one of the
7 officers by name and -- well, knew him by name and only
8 -- knew him by name and sight?

9 A That rings a bell, I can't remember now. Maybe there
10 was a case -- maybe there was a female juror member, I
11 think.

12 Q Well, that one was actually a female jury member, yes.

13 A Okay. I vaguely remember. I don't know all the
14 details.

15 Q There also was another juror number that actually knew
16 one of the investigators, Investigator McRay, and
17 actually knew Investigator McRay because Investigator
18 McRay actually came to her neighborhood and interviewed
19 her in reference to a murder?

20 A. That's right, I do recall that.

21 Q. But these witnesses were not stricken --

22 THE COURT: These jurors. These jurors.

23 MS. SIMPSON: Oh, I'm sorry.

24 BY MS. SIMPSON:

25 Q These jurors were not stricken from -- off of the jury?

Camille Guthrie Cross by Ms. Simpson

1 A No.

2 Q Now, there were some other things that were actually --
3 that happened during the voir dire of the jury. There
4 were some issues as it relates to Mr. Sanders's tattoo?

5 A. Exactly.

6 Q And there was actually a jury member that actually said
7 that they knew that if a person had tattoos that that
8 notated that they had committed a murder?

9 A Yes.

10 Q But that jury member was not taken off of the jury?

11 A. No.

12 THE COURT: Well, was she actually on the 12
13 member jury or --

14 THE WITNESS: I do not believe that person was put
15 on the jury, but I do remember the State wanted to call a
16 gang expert to testify about the tattoos and we were able to
17 keep the gang expert from testifying. But Mr. Sanders,
18 obviously, had the tattoos and it was clear that certain
19 people of the public do have preconceived notions about what
20 those tattoos could be.

21 BY MS. SIMPSON:

22 Q And the reason why I'm bringing this is up is that you
23 actually in your actual notes as it relates to the
24 actual trial list this as one of the very important
25 things that happened during the trial?

Camille Guthrie Cross by Ms. Simpson

1 A Yes.

2 Q And you actually state that the reason that you
3 strategically tried not to bring out the fact of the
4 tattoos was because you didn't want to draw any
5 attention to Mr. Sanders?

6 A. Right.

7 MR. PETRANO: Your Honor, I'm going to object to
8 this line of questioning just based on the fact this wasn't
9 an allegation that's set forth in his application
10 whatsoever.

11 THE COURT: I'm going to hear it anyway. It
12 sounds like this should have been a direct appeal, but
13 that's neither here or there.

14 Go ahead, Ms. Simpson.

15 BY MS. SIMPSON:

16 Q Now, if we take a look at the actual transcript, do you
17 remember whether or not you renewed all your pretrial
18 motions and your objections at the end of the State's
19 case?

20 A I would hope we did, but I can't remember off the top
21 of my head whether or not we did, but if you point out
22 the page number, I will --

23 Q Well, according to your notes, you actually state that
24 you did not renew all your motions or your objections
25 in the defense of Mr. Sanders.

Camille Guthrie Cross by Ms. Simpson

1 MR. PETRANO: Your Honor, I'd point your attention
2 to Page 1095 in the regard.

3 THE COURT: You get a chance -- if there's an
4 objection, you get a chance to come back behind.

5 Go ahead, Ms. Simpson.

6 BY MS. SIMPSON:

7 Q And you actually in your notes actually make mention to
8 the fact that you did not call Ms. Capel or Ms.
9 Patterson to testify as to what they saw on that night
10 in the cul-de-sac. And why did you feel that you
11 didn't need to call them even though Mr. Sanders told
12 you that they should be able to help in your defense of
13 him?

14 A. I do not remember if my investigator could not locate
15 them, but I do remember that we did not call a couple
16 of those witnesses and the State did not put them up.

17 Q But Mr. Sanders actually brought these witnesses to
18 your attention?

19 A. Well, I believe Capel was in the discovery, so I don't
20 think that was brought by his attention, but definitely
21 some of them in the discovery who I anticipated the
22 State calling and they did not.

23 Q Okay.

24 A I cannot recall why we did not call them, but,
25 definitely, I believe Ms. Capel had some information

Camille Guthrie Cross by Ms. Simpson

1 that could have helped.

2 Q Okay. And you did not call Mr. Sanders's brother to
3 the witness stand?

4 A Right.

5 Q Is there any particular reason other than losing last
6 closing that you didn't call --

7 A. Well, my belief was that since they -- the gun cleaning
8 kit and the gun case that he could have testified as
9 being the owner of, they were in the home where
10 Mr. Sanders -- my client, Mr. Sanders, Louis Sanders
11 resided, so, technically, he had access to them. So I
12 did not feel that it was necessary to put him on the
13 stand because, technically, Louis Sanders could have
14 accessed those items even though he wasn't the owner.

15 Q Okay. So that was a decision that you made on your own
16 or did you discuss that with Mr. Sanders?

17 A I cannot recall if I discussed that with Mr. Sanders or
18 not.

19 Q Okay. And you actually brought up Lashonda
20 Downing's --

21 A Yes.

22 Q -- testimony? And you stated that you felt that you
23 could not effectively cross-examine her because she was
24 so traumatized?

25 A Yes. I did not want to come across as too mean. I

Camille Guthrie Cross by Ms. Simpson

1 didn't feel like I could be forceful. I didn't want
2 the jury to see me as attacking her for fear they would
3 then think -- project that onto Mr. Sanders. So no, I
4 did not feel like I effectively cross-examined her at
5 all. She was hysterical.

6 Q And let me ask you this, Ms. Downing, she actually
7 brought up some prior bad acts in her testimony at
8 trial?

9 A And she may have, I haven't reviewed her testimony. I
10 read over this in November and I didn't read over that
11 part again for today.

12 Q No, that's fine. And I'll actually -- she actually
13 testified to the fact that Mr. Sanders on a previous
14 occasion, not that night, on a previous occasion had
15 actually pulled a gun on her and put his hands over on
16 her?

17 A Uh-huh.

18 Q That he physically attacked her?

19 A Okay, I believe you. That's sounds familiar.

20 Q Okay. Did you ever do a Lyle motion in this case to
21 keep that testimony out?

22 A No, did not.

23 Q Okay. And isn't it actually true that on --

24 MS. SIMPSON: Let the record reflect, Your Honor,
25 on Page 1049 of the transcript, Lines 13 to 16, as well as

Camille Guthrie Cross by Ms. Simpson

1 Page 1049, Lines 4 to 8.

2 BY MS. SIMPSON:

3 Q. Isn't it true that the solicitor in her closing
4 argument constantly talks about the fact that
5 Ms. Downing testified to the fact that Mr. Sanders had
6 previously pulled a gun out on her and had previously
7 physically attacked her over and over again in the
8 closing -- in the State's closing argument?

9 A Yes.

10 Q And you did not object to those prior bad acts?

11 A. No, I did not.

12 Q Okay. Now, isn't it also true on a -- I would have to
13 say an alleged prior bad act. I really don't know how
14 to characterize it, but on Page 1047, in the
15 prosecutor's closing argument, the prosecutor refers to
16 a Mr. Smith.

17 MS. SIMPSON: And, Your Honor, that's Lines 19 to
18 23.

19 BY MS. SIMPSON:

20 Q. And the prosecutor pretty much says that Mr. Smith's
21 attorney goes to the judge, the bond court judge and
22 ask for a PR bond for Mr. Smith because of the fact
23 that Mr. Smith feels that if he testifies against Mr.
24 Sanders that's he's going to end up getting hurt by
25 Mr. Sanders? It's implied that?

Camille Guthrie Cross by Ms. Simpson

1 A Which page?

2 Q It's Page 1046, Lines 19 to 23. It says, So what does
3 that common sense tell you? That man told his roommate
4 too much information about what he was doing that night
5 and -- Mr. Smith, who's Mr. Sanders roommate, and the
6 police sought Smith out. Smith did not seek out the
7 police. And he's not a government informant. He's not
8 getting paid. And yes, the judge let him out on a PR
9 bond because his lawyer asked her to because he was
10 scared his client was going to get hurt after
11 testifying against Mr. Sanders in his trial?

12 A Yes.

13 Q And you would think that that's detrimental to Mr.
14 Sanders's character?

15 A. And I can't remember if Mr. Smith mentioned that when
16 he was on the stand, but that does sound very damning.

17 Q Okay. But it was never objected to?

18 A No, I did not object to that in closing.

19 Q And as an experienced attorney, I mean, is it your
20 opinion that such statements that were made about
21 your -- Mr. Sanders's character would actually
22 prejudice him?

23 A. Yes.

24 Q And damage his case?

25 A. Yes.

Camille Guthrie Cross by Ms. Simpson

1 Q And do you think that the jury actually relied on these
2 statements?

3 A I'm not sure if they would have relied on the statement
4 in closing. Normally -- because they are instructed
5 that closing and opening statements are not evidence in
6 the trial.

7 MR. PETRANO: Your Honor, that's speculative
8 anyway, what the jury relied on or didn't rely on.

9 THE COURT: It's hard for one witness to testify
10 what somebody else is thinking.

11 MS. SIMPSON: Yes, Your Honor.

12 THE COURT: Sustained. I mean, they can testify,
13 but there's no way for them to know.

14 MS. SIMPSON: Yes, Your Honor.

15 THE COURT: All right.

16 BY MS. SIMPSON:

17 Q And if I can refer you -- and I talked about this
18 briefly earlier, but if I can refer you to Page 1047,
19 Lines 5 to 11, where the prosecutor says -- in
20 referring to Ms. Downing, she says that those women did
21 not want to be in this courtroom. They could barely
22 look at Mr. Sanders. When I asked them to identify him
23 for you, they were terrified of him?

24 A Uh-huh.

25 Q Now, do you feel that those were proper statements that

Camille Guthrie Redirect by Mr. Petrano

1 were actually made by the prosecutor in this case?

2 A Maybe not, but I swear those women were terrified. i
3 mean, their demeanor was. So no, I don't think that
4 was a proper statement by the prosecutor, but at the
5 same time, the jury, I do think, saw that from the
6 women because they were hysterical.

7 Q But statements such as the statements that I'm actually
8 reviewing with you are statements that are actually
9 improper for the prosecution to make?

10 A I --

11 Q Would you believe that?

12 A. Yes, I should have objected to that.

13 Q And it's actually inflaming the passion of the actual
14 jury?

15 A Uh-huh.

16 Q Okay.

17 MS. SIMPSON: Your Honor, beg the Court's
18 indulgence at this time.

19 THE COURT: Yes, ma'am.

20 MS. SIMPSON: Your Honor, I have no further
21 questions.

22 THE COURT: Anything on recross?

23 MR. PETRANO: Very briefly.

24 THE COURT: I meant redirect, I'm sorry.

25 MR. PETRANO: I would just point the Court's

Camille Guthrie Redirect by Mr. Petrano

1 attention to Page 1095 on the motions there at the top.

2 REDIRECT EXAMINATION

3 BY MR. PETRANO:

4 Q Ms. Guthrie, after you made the motion for a
5 continuance based on this new trace summary report that
6 was handed up after the fact and that was denied, what
7 else could you have done? I mean, is there anything
8 else you could have done to stop the trial from going
9 forward at that point?

10 A There was nothing else that I could have done, no.

11 Q So you feel you made the appropriate motion, the Court
12 ruled upon it and it was denied?

13 A Yes.

14 Q Okay. As far as the solicitor's closing about
15 Mr. Smith, the jailhouse snitch, if you will, would you
16 agree that would have been an appropriate --
17 appropriate if there was testimony brought out during
18 his -- if there was testimony brought out in that
19 regard?

20 A Well, I would definitely feel it would just be
21 reiterating what was already said.

22 Q Okay. And you would agree that closing arguments are
23 appropriately centered around any facts that were
24 brought out during the trial or things that can
25 reasonably be inferred from those facts?

Camille Guthrie Redirect by Mr. Petrano

- 1 A Yes.
- 2 Q Okay. So if it had been testified to, the solicitor
3 wouldn't be improper bring that out?
- 4 A. No, probably not.
- 5 Q Okay. Do you think your failure to object to the -- to
6 Ms. Downing's, I guess, her demeanor on the stand, do
7 you think that closing argument made any difference in
8 the outcome of the trial?
- 9 A. I don't.
- 10 Q Okay. And the jury had seen her take the stand and
11 seen her demeanor in that regard?
- 12 A Yes.
- 13 Q Okay. So the solicitor was just reiterating something
14 they had already seen?
- 15 A. Yes.
- 16 MR. PETRANO: That's all the questions I have.
- 17 THE COURT: Anything further, Ms. Simpson?
- 18 MS. SIMPSON: Your Honor, I have no questions.
- 19 THE COURT: All right. You may step down.
- 20 THE WITNESS: Thank you, Your Honor.
- 21 THE COURT: Anything further from anyone on this
22 case?
- 23 MR. PETRANO: Nothing further from the State, Your
24 Honor.
- 25 MS. SIMPSON: Your Honor, nothing but arguments.

Camille Guthrie Redirect by Mr. Petrano

1 MR. PETRANO: I would have a brief argument as
2 well.

3 THE COURT: Go ahead.

4 MR. PETRANO: Your Honor, I think the testimony
5 before this Court speaks for itself. I would strongly urge
6 the Court to review the transcript. I know it's a thousand
7 pages long. I would strongly encourage the Court to do so
8 in determining these issues. I think that Ms. Guthrie
9 plainly testified she met with him nine times, two hours the
10 last time. There was no brevity in meeting with him. She
11 investigated -- she was given the name Twan to investigate.
12 No last name, no phone number, no anything except Twan. Go
13 speak to this bar owner, he can tell you where he is. Ms.
14 Guthrie even said that she told her investigators that and
15 he spoke with the bar owner, unable to locate this Twan.
16 Apparently, he died some time after this. He's not here to
17 testify today as to what he would have said anyway, so I
18 don't think prejudice can be proved.

19 I don't know that -- I don't know that any sort of
20 allegation has been raised against Ms. Blanchette, her
21 effectiveness as appellate counsel, and I don't know if
22 that's something that's going to be raised. If it is, I'll
23 just reserve a minute to kind of make an argument on that
24 and respond to those allegations, Your Honor. I don't think
25 they've been raised at this point in time.

1 Just in closing and very briefly, Your Honor, I
2 would just urge the Court to read the transcript. The
3 record is before this Court and the State would submit that
4 it's -- they did an excellent job representing Mr. Sanders.
5 There was just too much evidence and testimony against him
6 to overcome the conviction. That's all I have. Thank you,
7 Your Honor.

8 THE COURT: Thank you.

9 Yes, Ms. Simpson.

10 MS. SIMPSON: Your Honor, clearly, it would be our
11 argument that based on -- from Ms. Guthrie's testimony
12 herself that there was a lot of testimony that was elicited
13 at trial that tended to swift away from the guilt of
14 Mr. Sanders, Your Honor. Clearly, there were very
15 prejudicial statements and testimony that was elicited at
16 the trial, which includes prior bad acts, which the actual
17 trial counsel did not address, and these things actually
18 prejudiced my client at the time. There were improper
19 statements that were actually made by the solicitor in her
20 closing argument that clearly prejudiced my client at the
21 time. I truly think that we have met the burden proving
22 ineffective assistance of counsel. I feel that we have met
23 the first prong, which that the level of care that was
24 actually given to Mr. Sanders during this trial falls way
25 below the standard. And as a result of the action and

1 inactions of trial counsel that he was prejudiced by those
2 actions and inactions, which I just explained, the prior bad
3 acts as well as failure to, in our opinion, adequately
4 investigate the case and inadequately advise Mr. Sanders
5 that he was clearly prejudiced. And as a result of the
6 actions, he was actually convicted not on the evidence, but
7 convicted on the fact that the standard of care in this case
8 was actually not met by trial counsel.

9 THE COURT: All right. Thank you both for your
10 lively presentations. I'll take everything into account and
11 let you know my decision in due course.

12 MR. PETRANO: Thank you very much, Your Honor.

13 MS. SIMPSON: Thank you, Your Honor.

14 END OF PROCEEDINGS

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1 COUNTY OF RICHLAND)

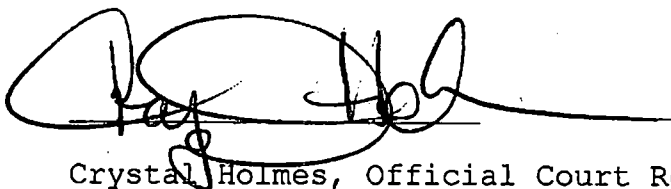
2 CERTIFICATE OF REPORTER

3 I, Crystal Holmes, hereby certify that I reported
4 the preceding case entitled Louis Sanders Vs. State of South
5 Carolina, Case No. 2010-CP-40-02933, at the Richland County
6 Courthouse, April 21, 2012.

7 I FURTHER CERTIFY that the foregoing pages 1
8 through 96 constitute a true, accurate and partial
9 transcript of said hearing.

10 I FURTHER CERTIFY that I am not employed by any of
11 the parties hereto and I have no financial interest in the
12 outcome of said case.

13 IN WITNESS WHEREOF, I have heretofore set my hand
14 and seal at Richland County on this 17th day of October,
15 2016.

16 
17 Crystal Holmes, Official Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Louis Sanders, #164301,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

2010-CP-40-02933

ORDER OF DISMISSAL

RICHLAND COUNTY
FILED
2016 MAR 16 AM 11:54
JEANETTE W. McBRIDE
C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for Post-Conviction Relief (PCR) filed May 4, 2010. An evidentiary hearing into the matter was convened on Monday, May 21, 2012, at the Richland County Courthouse. Applicant was present at the hearing with counsel, Nicole Singletary, Esquire. Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's former trial attorneys, Camille Guthrie (née Everhart), Esquire, and Casey Secor, Esquire. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, the documents related to Applicant's direct appeal and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the August 2007 term of the Richland County Grand Jury for Murder (2007-GS-40-06002). He was represented by Camille Guthrie (née Everhart), Esquire, Casey Secor, Esquire, and Deon O'Neil, Esquire, on the charge. On July 28,

2008, Applicant proceeded to jury trial before the Honorable G. Thomas Cooper, Jr., at the Richland County Courthouse. After five (5) days of trial, the jury found Applicant guilty of the charge as indicted and he was sentenced to life imprisonment without the possibility of parole.

A notice of appeal was filed and an Anders brief was submitted on Applicant's behalf by Tricia Blanchette, Esquire. By order filed January 27, 2010, the South Carolina Court of Appeals granted appellate counsel's request to be relieved and dismissed the appeal. The remittitur was issued February 12, 2010.

In the current application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Failure to Investigate and Prepare for Trial
 - b. Failure to Advise of the Ability to Impeach Witnesses at Trial; and
 - c. Failure to Advise Applicant of His Rights to Testify.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Failure to Properly Investigate and Prepare for Trial

Applicant testified he was not sure how many times counsel met with him at the jail prior to trial to discuss the charges and approaching trial, but estimated about five (5) or six (6) times. He noted the meetings ranged in length from twenty (20) minutes to the longest being about one (1) hour. During the course of those meetings, Applicant said that he told counsel he was not guilty of the charges as they were reviewing the statements included in the discovery materials.

Applicant testified counsel did hire a private investigator to assist in trial preparation, whom Applicant had the opportunity to speak with. Applicant said during that discussion, he gave the investigator the names of Ms. Caples, his younger brother (Dante Sanders) and "Twan"

as potential witnesses to investigate. Applicant testified Caples gave a verbal statement to law enforcement as an eye witness to the murder. She was coming from the emergency room with her husband when she saw two people arguing next to a car accident. Applicant alleged Caples would have been able to testify that she saw one man turn to walk away from the argument before turning and firing a shot which dropped the victim to the ground, and that the suspect then fired a second shot at victim before climbing into a dark vehicle.¹ Applicant also testified Caples would have been able to identify the individual who fled the scene after the shooting, who Applicant alleged was Justin Green.

Applicant went on to testified that counsel never located or discussed the case with "Twan" prior to trial and because Twan was killed prior to the start of trial, he was not available to testify. Applicant alleged he told counsel about Twan prior to trial and said he told counsel the owner of the club where the altercation began could direct her to Twan. He also testified he had a potential alibi defense that counsel failed to investigate as he was with his baby's mother, Lashonda Downing, on the night of the incident. Applicant noted Downing would be able to testify that he was with her at the time of the incident, thus providing an alibi defense².

Camille Guthrie, (hereafter "Counsel"), testified she was lead counsel and Deon O'Neil and Casey Secor, (hereafter "Co-Counsel") acted as second and third chairs on the case. Counsel stated Co-Counsel was assigned as third chair in order to get trial experience and did not actually meet with Applicant. Counsel testified she met with Applicant nine times in the thirteen months she represented him. Counsel testified she hired a private investigator that took pictures of the scenes and interviewed the witnesses Applicant asked them to investigate. Counsel testified they

¹ Respondent objected to this testimony on hearsay grounds. This Court allowed the testimony as to what Applicant alleges Caples would have said as trial, but notes that without Caples' testimony at the PCR hearing this Court cannot consider the alleged testimony for the truth of the matter asserted.

² Downing would testify at trial but on the State's behalf against Applicant.

could not find the witness, Twan, who Applicant claimed was an alibi witness. Counsel testified she did not hire a ballistics expert because it was not necessary. Counsel testified she did not present any evidence on Applicant's behalf as a strategic decision in order to preserve last closing argument. Counsel also testified they did not want to present Applicant's brother because his testimony would be able to connect Applicant with a gun.

Counsel testified she developed a defense for Applicant after looking at all the evidence. Counsel testified their defense centered on eye witnesses failing to properly identify Applicant, since he had cornrows and no one identified a man with cornrows at the scene. Counsel successfully moved for a severance of Applicant's trial from his co-defendant, Justin Green. Justin Green would later testify against Applicant, and Counsel testified Deon O'Neil pointed out how Justin Green's charges were dropped in light of his testimony. Counsel also moved for a continuance during pretrial motions as a result of a firearms trace summary report being presented. Counsel's motion was unsuccessful.

Based on a thorough review of the record and testimony presented, this Court finds the current allegation must be denied and dismissed. First, this Court finds counsel's performance was not deficient or objectively unreasonable in any way relating to this claim. Counsel testified she had conducted a thorough investigation and prepared for trial. As a matter of general impression, this Court finds that Applicant was not deprived of effective assistance of counsel. This Court finds counsel's testimony credible and Applicant's testimony not credible. This Court finds counsel's investigation to have been objectively reasonable and wholly sufficient. Without a doubt, "[a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation." Thompson v. Wainwright, 787 F.2d 1447, 1450 (11th Cir.1986); see also Strickland, 466 U.S. at 691, 104 S.Ct. 2052. When evaluating the

reasonableness of counsel's conduct, "the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." Id., 466 U.S. at 690, 104 S.Ct. 2052. Moreover, while the scope of a reasonable investigation depends upon a number of issues, "at a minimum, counsel has the duty to interview potential witnesses and to make an **independent** investigation of the facts and circumstances of the case." Troedel v. Wainwright, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), aff'd, 828 F.2d 670 (11th Cir.1987) (emphasis in original). Counsel conducted a reasonable and proper investigation into the witnesses Applicant hoped to have called in his defense. Accordingly, counsel was not deficient in this regard.

Further, this Court finds Applicant has failed to prove resulting prejudice from counsel's alleged deficient investigation and preparation for trial. Applicant failed to present any evidence or witness testimony to show what he claims would have been discovered had counsel conducted some further investigation. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Therefore, Applicant has failed to prove resulting prejudice. Accordingly, this allegation must be denied as Applicant has failed to meet either of the two necessary prongs for ineffectiveness under Strickland v. Washington.

Failure to Advise of the Ability to Impeach Witnesses at Trial

Applicant's also raised a claim through this action that counsel was ineffective for failing to advise him of the ability to impeach witnesses at trial. Applicant testified he did not believe Counsel used all of the available information to impeach the State's witnesses. Applicant

specifically alleges Counsel did not bring out that co-defendant's, Justin Green, charges were dropped in return for his testimony against Applicant.

Counsel testified she cross-examined all of the State's witnesses. Counsel testified she attempted to cross examine Lashanda Downing, but Downing was so hysterical at trial it was very difficult to cross effectively. Downing was a witness Applicant told Counsel could be used as an alibi witness. At trial Downing testified on the State's behalf, and was not a supportive witness for Applicant. Counsel testified she moved for a mistrial after Downing's testimony because she was so difficult to cross examine. Counsel also testified she cross-examined Kim Bowers and Keith Eubanks on the inconsistencies in their statements. Counsel stated there was an in camera hearing held on Bowers identifications of Applicant, and the Judge ruled them admissible.

This Court finds Applicant's PCR testimony outlining "his version" of the incident to be wholly not credible. Counsel testified and the record reflects the detailed cross-examination conducted on each witness. Moreover, Counsel moved for a mistrial when she did not feel she did not have the proper opportunity to cross examine Downing, which the Court denied. Therefore, this Court finds no deficiency in counsel's representation. Applicant has also failed to show any other more effective strategy in handling and impeaching these witnesses. Thus, Applicant has failed to meet his burden in proving both deficiency and prejudice.

Failure to Properly Advise Applicant of His Rights to Testify

Applicant testified he wanted to testify at trial, but Counsel advised against him doing so. Applicant testified he did not voluntarily make the decision not to testify. However, Applicant also testified he responded to the judge's questions negatively when asked if he wanted to testify.

Applicant also testified he understood the questions asked to him about his rights to testify by the Judge.

Counsel testified she believed Applicant to make a voluntary and intelligent decision not to take the stand. Counsel testified he told Applicant she would prefer if he did not testify, but that it was his right to do whatever he wanted. This Court finds counsel was not ineffective in this regard. Counsel plainly noted she believed Applicant was aware of his rights and voluntarily choose not to testify. See Brown v. State, 340 S.C. 590, 594, 533 S.E.2d 308, 310 (2000) ("A defendant's decision to testify or not must be made with knowledge of the consequences of either choice"). Therefore, this Court finds no deficiency in counsel's representation.

Having found all allegations raised by Applicant at the PCR hearing to be wholly without merit, this Court finds the current application for post-conviction relief must be denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Applicant failed to demonstrate counsels' performance was unreasonable under prevailing professional norms. Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625; Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial

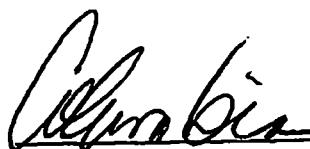
of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 7 day of March, 2016.


L. CASEY MANNING
Presiding Judge
Fifth Judicial Circuit

 South Carolina