

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Michael Nettles, Circuit Court Judge
Appellate Case No. 2016-001779

The State,

Respondent,

v.

Shameen Coker,

Appellant.

RECORD ON APPEAL

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SC Court of Appeals

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BEAUFORT) COURT OF GENERAL SESSIONS
3 No. 01 GS 07 171; 174; 175

4 STATE OF SOUTH CAROLINA)
5)
6)

6 versus)

TRANSCRIPT OF RECORD

8 SHAMEEN COKER,
9 Defendant)

10 Beaufort, South Carolina
11 March 10-12, 2003
12)

13 B E F O R E :

14 HONORABLE JACKSON V. GREGORY, Judge, and a Jury
15)

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

17 For the State: RANDOLPH MURDAUGH, Esq.
18 Solicitor

19 For the Defendant: GENE G. HOOD, Esq.

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1 (The within matter came before the Court on March 10,
2 2003, following the roll call of the jury panel)

3 THE COURT: I want to welcome those of you who have
4 been selected to serve as jurors in this General Sessions
5 Court in Beaufort County.

6 Let me introduce myself. My name is Jackson Gregory,
7 and I am a Judge of the Circuit Court and I live here in
8 Beaufort.

9 I'm assigned by the Chief Justice of the South Carolina
10 Supreme Court to hold this term of criminal court here in
11 Beaufort.

12 This call upon your time does not come frequently, and
13 it may never again be repeated in your lifetime. It is one
14 of the obligations of citizenship and represents your contri-
15 bution to the democratic way of life.

16 It is your assurance and your guarantee that if chance
17 or design brings you into any Court of Law in any civil or
18 criminal entanglement, that your rights and liberties will be
19 protected by the same consideration and by the same standards
20 of justice that you discharge here in your duties as jurors.

21 You are being asked to perform one of the highest dut-
22 ies that can be imposed upon any citizen, and that is to sit
23 in judgment of the facts which will determine guilt or inno-
24 cence of persons charged with crimes.

25 A trial by jury is a right given to every citizen.

1 After you have been selected as a juror and been qualified
2 and taken the oath, you become the sole judges of the weight
3 to be given any evidence and the credibility of each witness.

4 Any decision agreed to by all twelve jurors reached in
5 their sound and conscientious judgment, based upon credible
6 evidence and in accordance with the Court's instructions,
7 becomes the final result in the case.

8 Ladies and gentlemen, I have certain questions to ask
9 you to determine your qualifications as a juror in this Court.
10 Each question has an important bearing upon your qualifica-
11 tion as a juror based upon the law.

12 If any juror has a response to any question, I would
13 ask that you please stand, give us your jury number, if you
14 know your jury number, and your name..

15 Ladies and gentlemen, some of the questions are quite
16 personal, and if any juror feels they would be embarrassed
17 by responding to any question, I would ask that the juror
18 please come forward, and I will confer with the juror up at
19 the bench.

20 If you have something during my questions that you may
21 need to speak to me about, if you'd please come around to
22 this side. Ms. Martinez, one of our bailiffs, will be
23 there, and I will speak to you about these matters.

24 Are each of you residents of Beaufort County? If you
25 do not now live in Beaufort County, please stand.

1 (No response from any juror)

2 If any juror is not a U. S. Citizen, please stand.

3 (No response)

4 Is there any juror that is unable to read, write, speak
5 or understand the English language, please stand.

6 (No response)

7 If there is any juror who has less than a sixth grade
8 education or its equivalent; please stand.

9 (No response)

10 Is there any juror that is incapable by reason of
11 mental or physical infirmities or illnesses to render effi-
12 cient jury service? If so, please stand.

13 (Some jurors transferred or excused due to illness)

14 Has any juror been convicted by guilty plea or by trial
15 in a State or Federal Court of record of a crime punishable by
16 imprisonment for more than one year and whose civil rights
17 have not been restored by pardon or amnesty? If so, please
18 stand.

19 (No response)

20 If any of you are in that category, come around and I
21 will speak to you in just a moment.

22 Are any of you a clerk, deputy clerk of court, con-
23 stable, sheriff, probate judge, county commissioner, magistrate
24 or other county officer, or employed within the walls of any
25 courthouse? If so, you are not eligible and please stand.

1 (Juror responding to question)

2 You have a law enforcement commission?

3 JUROR: I do, a SLED license for private security law
4 enforcement.

5 THE COURT: A private security . .

6 JUROR: A SLED license for private security.

7 THE COURT: Okay, that will not disqualify you. Your
8 name, for the record?

9 JUROR: Cliff Carnes.

10 THE COURT: Thank you. Is there any member of the
11 panel that has religious beliefs that they feel would inter-
12 fere with their service as a juror? If so, please stand.

13 (No response from juror)

14 The South Carolina General Assembly has provided certain
15 exemptions for service. An exemption does not mean you are
16 not qualified to serve, but simply means that you have a
17 right to choose not to serve.

18 Is there any member of the jury panel who is over sixty-
19 five years of age and who does not wish to serve? If so,
20 please stand.

21 (No response)

22 Is there anyone who has served as a juror in these court
23 within the last three years? In other words, during the
24 years 2001, 2002, or 2003. Magistrate's courts, city court
25 or federal court -- none of those count. Anyone who has

1 served as a juror in the past three years and wishes to be
2 excused, please stand.

3 (No response from juror)

4 Any member of the panel who has small children below the
5 age of seven years and that does not work outside of the
6 home, but stays at home with the child or children and has
7 care, custody and control of the child or children? Anyone
8 in that category who wishes to be excused, please stand.

9 (No response)

10 The Court cannot excuse a qualified juror from jury ser-
11 vices, but under compelling circumstances the Court may
12 excuse a juror from attending this term of Court, and for
13 your information this term of Court means this week, Monday
14 to Friday.

15 The normal hours are nine thirty in the morning until
16 approximately five or five thirty in the afternoon, with an
17 hour to hour and a half lunch break.

18 Is there any member of the panel who feels they have a
19 compelling personal or business reason that makes it unduly
20 burdensome for them to serve this week? If so, I would ask
21 that you please come forward and I will speak to you about
22 that.

23 (Some jurors coming forward to speak to the Court who
24 were excused or transferred)

25 THE COURT: All right, Solicitor.

1 SOLICITOR: If Your Honor please, the State is ready
2 in Indictment 2001 171, Shameen Coker, charged with murder;
3 2001 174, kidnapping; 2001 175, armed robbery.

4 THE COURT: Solicitor, do you have a list of witnesses?

5 SOLICITOR: Yes, sir, I do. I've given counsel a copy
6 of it.

7 THE COURT: Okay, ladies and gentlemen of the jury panel,
8 please give me your attention.

9 This morning we are about to begin the trial of the
10 case of the State of South Carolina versus Shameen Jamil
11 Coker, C O K E R, who is charged in three Bills of Indictment
12 by the Beaufort County Grand Jury with the charges of murder,
13 kidnapping and armed robbery.

14 The Defendant, Mr. Coker, is seated on my right with
15 his Attorney, Chief Public Defender Gene Hood, and also Pub-
16 lic Defender Douglas Borsich there.

17 If you all would please stand and face the jury panel?

18 This is the Defendant, Mr. Coker, accompanied by his
19 attorneys.

20 Thank you, you can be seated.

21 Is there any member of the jury panel related by blood
22 or connected by marriage, a close friend or business associat
23 or even an acquaintance of the Defendant, Shameen Jamil
24 Coker? If so, please stand.

25 (No response from any juror)

1 The proposed witnesses -- I'm going to read the list of
2 the witnesses, and if any of these people are in the Court I
3 would ask that you please stand when your name is called.

4 Are there any other jurors outside?

5 BAILIFF: I'm going to check now.

6 THE COURT: I'll wait on you.

7 BAILIFF: We're checking the hallways.

8 THE COURT: Is there anybody that is on the jury who is
9 not seated in the middle sections of the Courtroom? Okay.

10 Okay, I'll ask you again -- I saw people coming in. Is
11 there any member of the panel related by blood, connected by
12 marriage, or a close friend or business associate or an ac-
13 quaintance of Shameen ~~Amil~~ Coker? If so, please stand.

14 (No response from jury)

15 At this time, I'm going to read a list of the proposed
16 witnesses in this case, and if any of these people are in
17 the Courtroom, please stand and face the jury when your
18 name is called.

19 Alice Morris

20 Ronnie Manigault

21 J. B. Kinsey

22 Glenn Frasier

23 Harold Stuckey

24 Kent Young

25 Andre Brigman

1 Jeff Purdy

2 Dianne Brodie

3 SOLICITOR: If Your Honor please, that should be Brodie.

4 THE COURT: Brodie -- B R O ..

5 SOLICITOR: . . D I E.

6 THE COURT: Brodie -- Dianne Brodie

7 Dr. Erin McConnell Presnell

8 T. C. Smalls -- Officer Smalls from Hampton

9 Bob Brumley, Sheriff's Department

10 Herbert Solomon Ford

11 Dan DeFreese

12 Joseph James

13 SOLICITOR: Jones.

14 THE COURT: Excuse me. Joseph Jones.

15 Michael Curry - C U R R Y

16 A. J. Roach

17 Is there any member of the panel that is related by
18 blood, connected by marriage, a close friend or business
19 associate of any of these people?

20 If the names need further clarification, such as where
21 somebody lives or something, please let me know and I will
22 try to find out more information.

23 SOLICITOR: If Your Honor please, did you call number
24 13 on that list? I didn't hear you.

25 THE COURT: I did. Herbert Solomon Ford.

1 I believe I called that name.

2 Okay, this case is being prosecuted by Solicitor
3 Randolph Murdaugh, Third. This is Mr. Murdaugh, and also
4 with him from his office and seated at counsel table is
5 Deputy Solicitor Steve Knight.

6 The charges in this case -- the Indictments in this
7 case, three Indictments, relate to a charge that on or be-
8 tween May 19th and 20th, the Defendant Shameen Coker, with
9 malice aforethought, killed one James Dillard, Jr. --
10 D I L L A R D, by shooting him, and I think this incident
11 occurred near Yemessee.

12 Is that correct?

13 SOLICITOR: Yes, sir.

14 THE COURT: Is there any member of the panel have any
15 prior knowledge of any such incident or formed or expressed
16 an opinion with respect to the guilt or the innocence of the
17 Defendant, Shameen Coker? If so, please stand.

18 (No response from jury)

19 Are any members of the petit jury panel conscious of
20 any interest, any bias or any prejudice for or against the
21 Defendant, Shameen Coker? If so, please stand.

22 (No response)

23 Can each member of the petit jury panel give the State
24 and the Defendant a fair and impartial trial? If not, please
25 stand.

1 (No response from jury)

2 Does any member of the jury panel know of any reason
3 whatever why he or she should not serve as a juror on this
4 case? If so, please stand.

5 (No response)

6 Has any member of the jury panel had any previous bus-
7 iness or social -- or ever been represented by any of the
8 attorneys involved in this case? If so, please stand.

9 Yes, maam. Your name, please?

10 JUROR: Delores Houseman. About -- I'm guessing --
11 roughly ten years ago, our pet dog was shot by a neighbor,
12 and one of the -- who was a police officer at the time was --
13 Detective Robbins was in the case.

14 THE COURT: Would that fact have any influence upon you
15 or impact upon you if you were selected to serve as a
16 juror in this case?

17 JUROR: No, I don't think so.

18 THE COURT: Thank you for standing. You are qualified
19 to serve.

20 Anyone else?

21 (No further response from jury)

22 Does any member of the jury panel or member of their
23 immediate family -- I ask this and it's sort of over-lapping
24 -- have any connection with any of the witnesses in this
25 case, any member of the Solicitor's staff, or any Beaufort

1 County law enforcement officer, whether or not connected
2 to this case?

3 If so, please stand.

4 (No response)

5 Does any member of the panel or member of their imme-
6 diate family personally know James Dillard, Jr., of Yemassee,
7 or any member of his family or members of his family? He is
8 the person who is now deceased.

9 If so, please stand.

10 (No response)

11 Has any member of the jury panel read any newspaper
12 articles concerning this case or other matters concerning
13 Mr. Dillard or the Defendant, Shameen Coker? If so, please
14 stand.

15 (No response)

16 Has any member of the family seen any television cover-
17 age, radio broadcast about this case? If so, please stand.

18 (No response)

19 Has any member of the jury panel or member of your
20 family affiliated with or a contributor to Citizens Opposed
21 to Domestic Violence, Citizens Against Violent Crime, the
22 Guardian ad Litem Program, or other similar victims' rights
23 organizations?

24 If so, please stand.

25 (No response)

1 Has any member of the jury panel or member of their
2 immediate family ever been the victim of a violent crime?
3 If so, please stand.

4 (Jurors standing)

5 SOLICITOR: If Your Honor please, Number 7 probably
6 should not be asked.

7 THE COURT: Okay. I'm going to ask you to come around
8 and I'll talk to you up here.

9 (Juror coming forward with counsel for both sides)

10 JUROR: Trenda Rabon.

11 THE COURT: How you doing, maam?

12 JUROR: Okay. About twenty-eight years ago, my sister
13 was murdered in a bank robbery in Georgia, and it would . .

14 THE COURT: Would that affect your ability to give a
15 fair and impartial trial in this case?

16 JUROR: No.

17 THE COURT: Thank you. You're qualified. Did you get
18 her number. It's Number 258.

19 (Juror going back to seat in Courtroom)

20 (Another juror coming forward)

21 JUROR: Carol Ward. I lost my daughter by a shooting
22 in 1990.

23 THE COURT: Okay. Ms. Ward, would that have any influ-
24 ence on your ability to give both the State and the Defendant
25 a fair and impartial trial in this case?

1 JUROR: No.

2 THE COURT: Thank you. You're qualified.

3 (Juror returning to seat in Courtroom)

4 (Following colloquy between counsel and the Court at
5 the bench.)

6 THE COURT: Tell me this. Number 7 --that doesn't have
7 anything to do with this case.

8 MR. HOOD: The last trial that was used we didn't have
9 anything come out.

10 THE COURT: Nine would be the next one and I'll ask
11 that.

12 SOLICITOR: If Your Honor please, Number 13 probably
13 ought not to be asked.

14 THE COURT: That would go to a factual issue. I don't
15 ever ask that.

16 Number 14 is the same thing. I've already asked that.

17 SOLICITOR: Yes, sir.

18 THE COURT: And Number 12 -- I don't mind asking that.
19 Number 11 -- you want that one too, I guess?

20 MR. HOCD: Yes. (Counsel back to counsel tables)

21 THE COURT: Okay. Has any member of the jury panel
22 ever been employed by any civilian or military law enforce-
23 ment agency? If so, please stand.

24 JUROR: I was once employed as a teacher in the Juve-
25 nile Justice System.

1 THE COURT: Your name, please?
2 JUROR: Sandra Strange.
3 THE COURT: Would that have any influence or impact upon
4 you whatsoever in serving as a juror on this case?
5 JUROR: No, sir.
6 THE COURT: Thank you. Yes, ma'am?
7 JUROR: Probation officer in the State of Florida.
8 THE COURT: Name, please?
9 JUROR: April Adams.
10 THE COURT: Would that have any influence or impact
11 on you if you were selected to serve as a juror in this
12 case?
13 JUROR: No.
14 THE COURT: Thank you.
15 Yes, sir?
16 JUROR: I was employed by law enforcement for many
17 years.
18 THE COURT: Your name, please?
19 JUROR: Jack Willis.
20 THE COURT: Would that have any impact upon you if you
21 were selected to serve as a juror in this case?
22 JUROR: No, sir.
23 THE COURT: Thank you, sir. Has any member of the
24 jury panel ever been a witness in a criminal trial, and I'm
25 talking about -- I said a criminal trial. If so, please

1 stand.

2 Yes, sir? Of course, on your job. Anyone else?

3 (No response)

4 Is there any member of the panel who would give special
5 credence or believability to the word or the testimony of
6 a law enforcement officer simply because that person is a
7 law enforcement officer, as opposed to a regular civilian who
8 is not a law enforcement officer?

9 If so, please stand.

10 (No response from jurors)

11 Any additional questions by the State?

12 SOLICITOR: None from the State.

13 THE COURT: From the Defense?

14 MR. HOOD: No, sir.

15 THE COURT: Madam Clerk.

16 CLERK: When I call your name, would you please come
17 and stand here?

18 Number 131, James McConnell.

19 What says the State?

20 SOLICITOR: Present the juror.

21 CLERK: What says the Defense?

22 MR. HOOD: Please seat him.

23 THE COURT: Have a seat in the jury box.

24 (Juror seated)

25 MR. HOOD: Could we approach the bench, please?

1 (Conference at the bench between counsel and the Court
2 off the record)
3 THE COURT: Okay, member of the jury panel, this is
4 Miss Janice Smith. Is anybody related by blood or connected
5 by marriage, a close friend or an acquaintance of Ms. Smith?
6 If so, please stand.
7 (No response from jurors)
8 Thank you.
9 (Counsel returning to tables in Courtroom)
10 THE COURT: All right.
11 CLERK: Number 129, Joshua Matthews.
12 What says the State?
13 SOLICITOR: Present the juror.
14 CLERK: What says the Defense?
15 MR. HOOD: Please seat the juror.
16 CLERK: You can have a seat in the jury box.
17 (Juror seated)
18 CLERK: Number 17, David Bernhardt.
19 What says the State?
20 SOLICITOR: Present the juror.
21 THE COURT: What says the Defendant?
22 MR. HOOD: Please seat him.
23 CLERK: Please have a seat in the jury box.
24 (Juror seated)
25 CLERK: Number 102, Delores Houseman.

1 What says the State?
2 SOLICITOR: Present the juror.
3 CLERK: What says the Defendant?
4 MR. HOOD: Please excuse the juror.
5 CLERK: You can go back and be seated.
6 (Juror returning to seat in Courtroom)
7 CLERK: Number 86, Peter Greco.
8 What says the State?
9 SOLICITOR: Present the juror.
10 CLERK: What says the Defendant?
11 MR. HOOD: Please seat the juror.
12 THE COURT: Have a seat in the jury box.
13 (Juror seated)
14 CLERK: Number 80, Steve Gibbs.
15 What says the State?
16 SOLICITOR: Present the juror.
17 CLERK: What says the Defense?
18 MR. HOOD: Please seat the juror.
19 THE COURT: Have a seat in the jury box.
20 (Juror seated)
21 CLERK: Number 7, Ralph Bailey.
22 What says the State?
23 - SOLICITOR: Present the juror.
24 CLERK: What says the Defense?
25 MR. HOOD: Please seat the juror.

1 CLERK: Please have a seat in the jury box.
2 (Juror seated)
3 CLERK: Number 239, Jackie Willis.
4 What says the State?
5 SOLICITOR: Present the juror.
6 CLERK: What says Defense?
7 MR. HOOD: Please excuse the juror.
8 THE COURT: You can go back to your seat.
9 (Juror returning to seat in Courtroom)
10 CLERK: Number 81, Ann Gibson.
11 What says the State?
12 SOLICITOR: Present the juror.
13 CLERK: What says Defense?
14 MR. HOOD: Please seat the juror.
15 CLERK: You may have a saet in the jury box.
16 (Juror seated)
17 CLERK: Number 57, Pamela Deloach.
18 What says the State?
19 SOLICITOR: Present the juror.
20 CLERK: What says Defense?
21 MR. HOOD: Please seat the juror.
22 CLERK: Have a seat in the jury box.
23 (Juror seated)
24 CLERK: Number 254, James Ferrato.
25

1 What says the State?
2 SOLICITOR: Present the juror.
3 CLERK: What says Defense?
4 MR. HOCD: Please excuse him.
5 CLERK: You may go back to your seat.
6 (Juror returning to seat in Courtroom)
7 CLERK: Number 16, Patricia Benke.
8 What says the State?
9 SOLICITOR: Present the juror.
10 CLERK: What says Defense?
11 MR. HOOD: Please seat the juror.
12 CLERK: Have a seat in the jury box.
13 (Juror seated)
14 CLERK: Number 79, Ernest Gibbs.
15 What says the State?
16 SOLICITOR: Excuse the juror.
17 CLERK: You may go back to your seat.
18 (Juror returning to seat in Courtroom)
19 CLERK: Number 94, Robert Hess.
20 What says the State?
21 SOLICITOR: Present the juror.
22 CLERK: What says the Defense?
23 MR. HOOD: Please seat him.
24 CLERK: Have a seat in the jury box.
25 (Juror seated)

1 CLERK: Number 248, Pamela Wootten.
2 What says the State?
3 SOLICITOR: Present the juror.
4 CLERK: What says the Defense?
5 MR. HOOD: Seat the juror.
6 CLERK: You may have a seat in the jury box.
7 (Juror seated)
8 CLERK: Number 87, Gloria Green.
9 What says the State?
10 SOLICITOR: Present the juror.
11 CLERK: What says the Defense?
12 MR. HOOD: Please excuse the juror.
13 CLERK: You may return to your seat.
14 (Juror returning to seat in Courtroom)
15 CLERK: Number 177, Margaret Rhoads.
16 What says the State?
17 SOLICITOR: Present the juror.
18 CLERK: What says Defense?
19 MR. HOOD: Please seat the juror.
20 CLERK: Be seated in the jury box.
21 (Juror seated)
22 THE COURT: Give us two alternates, please, maam.
23 CLERK: Number 258, Trendera Rabon.
24 What says the State?
25 Present the juror. (BY SOLICITOR)

1 CLERK: What says Defense?
2 MR. HOOD: Please excuse her.
3 CLERK: You may go back to your seat.
4 (Juror returning to seat in Courtroom)
5 CLERK: Number 148, Donna Moore.
6 What says the State?
7 SOLICITOR: Present the juror.
8 CLERK: What says Defense?
9 MR. HOOD: Please seat her.
10 CLERK: You may have a seat in the jury box.
11 (Juror seated as first alternate)
12 CLERK: Number 174, Rene Ratliff.
13 What says the State?
14 SOLICITOR: Present the juror.
15 CLERK: What says Defense?
16 MR. HOOD: Please seat her.
17 CLERK: You may have a seat over there.
18 (Juror seated as second alternate.
19 THE COURT: Any exceptions to the selection of the
20 jury?
21 SOLICITOR: None from the State, sir.
22 CLERK: From the Defense?
23 MR. HOOD: None.
24 THE COURT: For scheduling purposes, would counsel ap-
25 proach, please?

1 (Conference at the bench between counsel and the Court
2 off the record)

3 THE COURT: Okay, members of the jury panel not selected
4 on this case, I'm going to ask you to please call in tomor-
5 row afternoon after five o'clock for a message telling you
6 when to report.

7 (Jury members not selected excused from the Courtroom)

8 THE COURT: Madam Clerk, would you please swear the
9 jury?

10 CLERK: Yes, sir.

11 (Whereupon, members of the jury were sworn by the
12 Clerk to serve as jurors)

13 THE COURT: Okay, members of the jury, I'll now give
14 you an introduction to the trial of this case.

15 This is not a substitute for the detailed instructions
16 on the law that I will give you at the close of the case,
17 and before you retire to consider your verdict.

18 This is a criminal case commenced by the State against
19 Shameen Coker. This case is based on three Indictments as
20 I told you earlier.

21 One is for murder, one for kidnapping, and the other
22 one is for armed robbery.

23 But I want you to -- the Solicitor will explain
24 these indictments to you, but I want you to distinctly under-
25 stand that the indictments are simply charges. They are

1 not evidence of the allegations contained in the indict-
2 ments.

3 The Defendant has pled not guilty to each of the in-
4 dictments, and the State therefore has the burden of proving
5 each of the essential elements of the indictments beyond a
6 reasonable doubt.

7 The purpose of the trial is to determine whether the
8 State has met this burden.

9 Your purpose as jurors is to find and determine the
10 facts. Under our system of criminal procedure, you are the
11 sole judges of the facts.

12 If at any time I should make any comment regarding the
13 facts, you are at liberty to disregard it. It is especially
14 important that you perform your duty of determining the
15 facts diligently and conscientiously, because ordinarily
16 there is no means of correcting an erroneous determination
17 of facts by a jury.

18 On the other hand, I instruct you that the law as
19 given by the Court, meaning me as the Judge, constitutes
20 the only law for your guidance.

21 It is your duty to accept it and to follow it.

22 It is your duty to follow the law as I give it to
23 you, even though you may disagree with the law.

24 You are to determine the facts from the testimony you
25 hear and the other evidence in the case in Court, and it is

1 up to you to determine the inferences you feel may properly
2 be drawn from the evidence.

3 You must not consider anything that you may hear or
4 read about the case outside of the Courtroom, whether be-
5 fore or during the trial.

6 In this regard, I instruct you that there may be media
7 coverage within the newspaper or radio or TV, and so please
8 do not allow yourself to be exposed to anything in the
9 newspaper.

10 Obviously, it is basic and fundamental that the case be
11 decided solely from the testimony and evidence sworn to
12 within this Courtroom.

13 So therefore do not allow yourself, if there should be
14 some news articles or news reports about the case.

15 Also, during the trial of this case, you must not dis-
16 cuss it with anyone, even among your fellow jurors. The
17 reason for this is that you should hear the testimony of
18 all the witnesses, the charge on the law, the arguments of
19 counsel or the attorneys, before you begin your delibera-
20 tions.

21 So while you are in your jury room with your fellow
22 jurors, do not discuss the case. Talk about sports, weather,
23 business or whatever, but do not talk about the case.

24 After it is submitted to you, you must discuss it
25 only in the jury room with your fellow jurors.

1 It is important that you keep an open mind and not
2 decide any issue in the case until the entire case has been
3 submitted to you under the instructions of the Court.

4 A couple of other things. One, I'm going to allow you
5 ladies and gentlemen to select from among yourselves the
6 Foreperson, so sometime when you are in the jury room --
7 and it doesn't have to be at any particular time. It can be
8 later this afternoon.

9 It can actually be tomorrow morning or something, but
10 select from among yourselves a Foreperson. A Foreperson
11 has got to be under oath just like everybody else, but the
12 duties of the Foreperson are to preside in the jury room and
13 be the jury spokesperson here in Court.

14 The Foreperson takes the first chair. The rest of you
15 can sit anywhere you want to, but I want to request that
16 the Alternates sit somewhere on the back row.

17 Another thing, during the trial of the case, I ask that
18 you do not take notes; that you just listen carefully, and
19 I am sure that you will do that.

20 While the case is being tried, if you can't hear a wit-
21 ness clearly or an attorney, please let me know and I will
22 make sure that you can hear and see everyone and everything
23 that's being done.

24 If at any time you need to take a break, please get my
25 attention or the bailiff's who will be seated there, and we

1 can take a break at any time.

2 So if you need to take a break, please just let us
3 know.

4 Lastly, during the trial of the case, they have Coca
5 Colas and coffee and so forth -- water and all -- in the
6 jury room for your comfort. Feel free to bring whatever
7 you wish to sip on during the trial for your comfort, so if
8 you want to bring a drink in here, please feel free to do
9 that.

10 There are some matters that we need to take up before
11 the case is tried, and we're going to actually start the
12 case at two thirty.

13 Please report back to the jury room at two thirty.

14 I've got one other thing I want to tell you too -- when
15 you come back from your lunch break or whatever, please go
16 directly to the jury room because sometimes there might be
17 witnesses out there in the hallways or something, and they
18 don't know you are on the jury, and you don't know who
19 they are.

20 I don't want there to be any interaction between the
21 jurors and possible witnesses. They might be talking about
22 something that -- about the case, so please when you report
23 back to the Courthouse, go on in the jury room and the
24 bailiffs will be there all the time.

25 As I say, we will start the case at two thirty, and

1 please report back to the jury room by that time.

2 When you leave, go back this way and they will acclimate
3 you with the jury room and tell you a few things about how
4 to get back there and so forth.

5 (Jury excused from Courtroom)

6 THE COURT: Approach the bench, please.

7 (Conference at the bench between counsel and the Court
8 off the record)

9 (Juror Pamela Deloach coming in the Courtroom)

10 THE COURT: Ms. Deloach, if you will, I want you to
11 speak -- I have to take this on the record, so if you would,
12 just -- you can have a seat, if you like.

13 Just say again what you just told me.

14 JUROR DELOACH: During a case a few years ago, a
15 friend of mine was on it -- a sexual harrassment case, and
16 the lawyer over there . . .

17 THE COURT: Mr. Borsich, I believe.

18 JUROR DELOACH: Right, and . . .

19 THE COURT: Say again what you just told me.

20 JUROR DELOACH: And they were talking about hynopsis
21 and I saw him make a coo-coo sign about one of the witnes-
22 ses, and then today when one of the witnesses was called up
23 and they said something I saw him make another sign;
24 whereas, you know, we've got another one or something.

25 Anyway, his facial expressions kind of disturb me.

1 THE COURT: Well, let me ask you this. Obviously, the
2 lawyer is not on trial.

3 JUROR DELOACH: Right.

4 THE COURT: Would that have any influence upon you,
5 maam, now that you have been selected to serve as a juror on
6 this case?

7 JUROR DELOACH: I don't think so.

8 THE COURT: Well, I want you to be clear. You know, you
9 say you don't think so. The fact is that Mr. Borsich is
10 not trying this case; Mr. Hood is. He is just sitting
11 with him for -- to assist him.

12 So I want to be real clear on this. Would that have --
13 you know, people say, well, I don't think so, but I want to
14 know in your own mind and heart, would that have any influ-
15 ence on you when you are in fact a juror on this case?

16 JUROR DELOACH: No.

17 THE COURT: You're sure?

18 JUROR DELOACH: I'm sure.

19 THE COURT: Okay. Will the attorneys approach the side
20 bar, please?

21 (Conference at the bench between counsel and the Court
22 off the record)

23 THE COURT: Ms. Deloach, how long ago was this?

24 JUROR DELOACH: It must have been seven, eight years
25 ago.

1 THE COURT: Well, let me just say this. Mr. Borsich
2 wasn't here then. He's only been here -- how long have
3 you been here, Mr. Borsich?

4 MR. BORSICH: A year and a half.

5 JUROR DELOACH: Oh, I apologize. Wrong person.

6 It has definitely been over seven years ago.

7 THE COURT: Okay. I appreciate your coming forward.
8 If you had something that was bothering you, you did exactly
9 the right thing by coming forward so we could clear the air
10 on that.

11 So you may go on and have a nice lunch.

12 (Juror Deloach excused from Courtroom)

13 THE COURT: Okay, are there any matters we need to
14 take up, non-jury matters, before we start with this case?

15 MR. HOOD: I think Solicitor Murdaugh and I discussed
16 a couple of matters and I think . . .

17 THE COURT: Would you like to go on the record with
18 them?

19 MR. HOOD: I think we have resolved them.

20 SOLICITOR: We most probably have resolved them. If
21 they come up, we can revisit it and bring it up then. I don't
22 think it's going to be a problem.

23 THE COURT: Okay. You agree with that? Is there any-
24 thing you want to bring up before the case started?

25 MR. HOOD: Nothing, Your Honor. Like he said, if it is

1 brought up -- it's an issue concerning the voluntariness of
2 the statement supposedly made, and we've been through that
3 issue at a previous trial, and I would . .
4 THE COURT: All right. So if there is nothing to take
5 up, we'll be back here at two thirty.
6 Court is in recess until two thirty.
7 SOLICITOR: One thing, sir.
8 THE COURT: Yes, sir.
9 SOLICITOR: Could I reserve the front two rows for the
10 family of the victim?
11 THE COURT: Yes, sir. The first two rows are re-
12 served for them, so the bailiffs will know. If you have
13 any problems with that, let me know and we'll take care of
14 that.
15 SOLICITOR: Thank you, sir.
16 THE COURT: Anything else?
17 SOLICITOR: No, sir.
18 THE COURT: The Court is in recess until two thirty.
19 (Court stood in recess for the lunch period and resumed
20 at 2:30 P.M.)
21 THE COURT: Bring the jury. Is the jury all present,
22 Mr. Bailiff? I'm informed that they are.
23 All right. Now that the jury is all ready, is the State
24 ready to proceed?
25 SOLICITOR: The State is, Your Honor.

1 MR. HOOD: Your Honor, I think there is one matter I'd
2 like to take up. We'd like that all the witnesses who are
3 not testifying to be removed from the Courtroom and go into
4 another room.

5 THE COURT: You are moving to sequester the witnesses
6 then?

7 MR. HOOD: Yes.

8 THE COURT: Are you talking about all the witnesses?

9 MR. HOOD: We are.

10 THE COURT: Solicitor?

11 SOLICITOR: I don't see where it makes any sense be-
12 cause -- I shouldn't say that. They have all testified be-
13 fore, but if they want them out we'll get them out.

14 THE COURT: Okay, I usually allow -- who is your first
15 witness?

16 SOLICITOR: Judge, I think my first witness will be Mr.
17 Roach, but it may be Ellis Morris. Then Ronnie Manigault.
18 Ronnie Manigault is a member of the family, and will be a
19 witness and if I understand the victims' bill of rights, he
20 can stay in the Courtroom.

21 THE COURT: Does he have knowledge about this inci-
22 dent that transpired?

23 SOLICITOR: All he knows is that on the day it occurred
24 that he saw the deceased, James Dillard, at around six
25 forty-five -- I think that's the time -- and he can testify

1 as to what he was wearing.

2 MR. HOOD: I have no objection to Mr. Manigault remain-
3 ing in the Courtroom.

4 THE COURT: All right. The other thing, do you need
5 the -- is there a particular case officer that . .

6 SOLICITOR: Mr. Brommage.

7 THE COURT: Do you need him with you?

8 SOLICITOR: Yes, sir.

9 THE COURT: I recall that he is a witness.

10 SOLICITOR: He may not be a witness this time.
11 He may not but he may be too.

12 THE COURT: Yes, sir.

13 SOLICITOR: I think I'm entitled to keep the case offi-
14 cer in the Courtroom with me.

15 THE COURT: It is certainly a matter in the Court's dis-
16 cretion, but the thing of it is, as I recall, Mr. Brommage
17 was on the stand -- it seems like two or three days -- I can't
18 remember right now what it was.

19 Under the circumstances, I don't see -- correct me if
20 I'm wrong, but his testimony has certainly been gone into in
21 detail.

22 So I'm going to allow him to be present since he is the
23 case officer to assist the Solicitor, and then sequester
24 the rest of that witnesses.

25 And I say this too, that after a witness has testified

1 and been cross examined, sequestration will end, and it
2 won't be necessary, even though they might be called back
3 at a later time. I would not continue it.

4 But all witnesses who are sequestered, let's not talk
5 about the case during sequestration, and they must not talk
6 to any of the witnesses who have previously testified.

7 (Conference at the bench between counsel and the Court
8 off the record, after which witnesses were excused from the
9 Courtroom.)

10 THE COURT: Bring the jury.

11 (Jury returned to the Courtroom)

12 THE COURT: Okay, members of the jury, Mr. Hess, Robert
13 Hess, is your Foreperson. Very good.

14 We're now ready to have the opening statements of the
15 attorneys for each side, and then we will proceed with the
16 testimony and evidence.

17 SOLICITOR: May it please the Court?

18 THE COURT: Solicitor Murdaugh.

19 SOLICITOR: Mr. Foreman and ladies and gentlemen of the
20 jury, as has been alluded to, the case that we are about to
21 begin the trial of is the State against Shameen Coker, this
22 young man seated in the blue shirt over there between Mr.
23 Hood and his associate.

24 A trial is divided into a number of parts. One part is
25 the opening statement, which is a sort of a preview of what

1 you can expect to hear during the course of the trial it-
2 self.

3 In the process of doing that, I'm going to have to tell
4 you in real vague terms -- not in vague terms, but in lay
5 language, what the offenses are and what you will look for
6 to prove those offenses.

7 The Defendant in this case is charged with three of-
8 fenses. Murder, kidnapping and armed robbery.

9 Murder, kidnapping and armed robbery.

10 Murder is defined as the unlawful killing of another
11 person with malice aforethought. In other words, unlawful
12 killing is pretty self-explanatory. Unlawful killing of
13 another person is pretty explanatory.

14 With malice aforethought -- now, malice will be defined
15 for you by the Judge, and he will give you a definition of
16 what the legal -- a legal definition of malice.

17 What it is, it really means a person doing something
18 with a wicked heart, with no social reason for doing it.

19 Aforethought means that at the time that the mortal wound
20 was inflicted you had to have in your mind intent of that,
21 that you were going to do the killing.

22 In other words, if I'm standing here and I pull a gun
23 out and shoot the bailiff, and I hadn't thought about it
24 before that, that would not be murder.

25 But if I was mad with him because he didn't bring me a

1 glass of water or for some reason -- I'm being a little
2 facetious when I say that -- but because of some reason I
3 didn't like him, and I got a gun and came back and shot and
4 killed him, it would have been in my mind ahead of time,
5 and that's what aforethought means.

6 Unlawful killing of another person with malice afore-
7 thought.

8 I had to have a reason or malice in my heart, or was mad
9 with him to cause me to do it, or malice can be implied
10 through the use of a deadly weapon.

11 In other words, if nobody can prove that I was mad with
12 him, the fact that I used a deadly weapon can create the in-
13 ference that there was malice in existence.

14 Kidnapping is exactly what you all have always heard
15 or seen on television. It is the taking of another person
16 and confining him against his will.

17 Armed robbery, the last charge, is the taking and steal-
18 ing of goods of another person through the use of a deadly
19 weapon.

20 Another example, if I came over and I took -- and the
21 bailiff had put his watch up here on the counter, and I
22 sneaked and put it in my pocket, that would be larceny.

23 If I came over and jerked it off of his arm, that would
24 be common law robbery. I used some force in doing it.

25 But if I had a weapon, a knife or a gun, and held it

1 and said, give me your watch, that would be armed robbery.
2 Taking and stealing the property of another person with the
3 use of a weapon.

4 Okay, those are the three charges that he is charged
5 with.

6 Now, the testimony -- what I'm going to do now is go
7 over with you or give you a summary of what you are going to
8 hear.

9 You are going to hear the testimony of a fellow by the
10 name of A. J. Roach, who it is alleged was a Co-defendant
11 with Shameen Coker.

12 He will tell you what happened that day, and rather
13 than me go through what his story is, I will let you all wait
14 and hear it from that witness stand.

15 I think it will be more -- you all will appreciate that
16 more.

17 You will then hear the testimony of a lady by the name
18 of Alice Morris, who worked at a Chevron station in
19 Yemassee.

20 She will testify that on May 19th of the year 2000, she
21 was a clerk in the Chevron station; that James Dillard, the
22 deceased in this case, came into her store -- I can't remem-
23 ber the time specifically, but I think it was around six
24 to six forty-five.

25 You all will hear her testimony about that, and that

1 he was known as the Budweiser man; that he was a good fel-
2 low and he came in the store about once every week or two
3 weeks, and he furnished the store -- he was a driver with
4 Budweiser, and furnished the store with Budweiser to sell.

5 That on this day, he was there and came in and bought
6 a six pack of beer. Michelob I think she will say -- I don't
7 know if -- does Budweiser sell Michelob?

8 But, anyhow, he bought a six pack of beer and left.

9 You will hear Ronnie Manigault testify that -- Ronnie
10 is James' brother in law -- that he saw him shortly thereaf-
11 ter at Jinx's Station at Yemassee. Jinx's Station used to
12 be a Citgo station. I think it still is, on the left as you
13 are going toward Barnwell.

14 And that he asked James Dillard to drive a car that be-
15 longed to his wife back to his house while he went somewhere
16 with somebody else.

17 You will then hear testimony that James Dillard dis-
18 appeared and nobody knew where he was, and the car that he
19 was driving, a red vehicle, disappeared.

20 The Missing Person's Bureau went out -- a missing person
21 bulletin went out and they began looking for him. The next
22 day, I believe it was, the 20th -- you will hear the testi-
23 mony of Mr. J. B. Kinsey, seated right back there in the wild-
24 life uniform -- that as a result of information he received,
25 he went to the Public Landing in Colleton County.

1 The Public Landing is on the Cumbee River. That he is
2 a dive expert, aqua lung, and that sort of stuff, and he
3 went down and found the vehicle. You will hear his testi-
4 mony.

5 You will then hear the testimony of Al Stuckey, who is
6 a forensic expert with SLED -- the South Carolina Law En-
7 forcement Division.

8 Mr. Stuckey will testify that the car was taken to
9 Columbia, and he did a forensic evaluation of that car.

10 He will tell you that in the trunk of that car they
11 found James Dillard's billfold, I think with a Hundred and
12 Two Dollars in it, ID cards, other things.

13 You will then hear that on the 24th day of May, some
14 five days later, a gentleman by the name of Kent Young, who
15 is the last fellow seated back there on this side, was the
16 caretaker of Buckfield Plantation, which is located in Jasper,
17 Hampton and Beaufort Counties -- that he went to check his
18 area and he saw a bunch of buzzards hanging around over in
19 the area, and saw a foul odor -- smelled a foul odor; that
20 he went over and looked and saw something that he knew --
21 he thought it was a deer, but he realized it was not a deer,
22 and he immediately called nine one one.

23 They came there. Officer Brigman, the gentleman seated
24 right here, was the first officer that got on the scene.

25 When he got there, the Shelton Police Department had

1 gotten there and taped it off with police tape.

2 He kept it until Jeff Purdy came. Jeff Purdy is going
3 to testify. He's a detective with the Beaufort Sheriff's
4 Department.

5 He will testify that he was the first detective on the
6 scene, and that when he realized that it was a body they
7 called in SLED's forensic people.

8 SLED's forensic people are people that come and inves-
9 tigate violent deaths. A lady by the name of Dianne Brodie
10 came down from Columbia, along with a girl by the name of
11 Michele Dixon, who is now at the F.B.I. Academy, and they
12 did a forensic search of the area.

13 And in that area, they found projectiles in the ground,
14 under his head, and she will testify as to manner and posi-
15 tion he was lying in.

16 They dug under his head and found some projectiles.

17 You will hear Dan DeFreeze tell you that those projec-
18 tiles were from a thirty-eight caliber and would have been
19 fired by a thirty-eight caliber gun.

20 You will then hear the testimony of a number of people,
21 among them a fellow by the name of Herbert Solomon Ford,
22 who got with -- who will testify that he got with Shameen
23 Coker and A. J. Roach later that night.

24 Herbert Solomon Ford is a person who has been convicted
25 in Federal Court and in State Court and is serving a

1 substantial sentence now, and I will get him to tell you
2 what that sentence is. I simply don't remember what it
3 was.

4 He will testify that he got with Shameen Coker and
5 A. J. Roach, and later that night that Shameen Coker told
6 him that he had shot and killed James Dillard.

7 You will hear the testimony, maybe, of a fellow by the
8 name of Jones, who will testify he was at a night club when
9 A. J. Roach and Shameen Coker were both there, and they were
10 both bragging about having offed the guy.

11 You will hear the testimony of Michael Curry, who is a
12 cousin of Shameen Coker; that Coker told him, yes, I killed
13 him; he was on his knees when I shot him.

14 That, ladies and gentlemen, basically is the testimony
15 that you all well hear in this trial.

16 In looking at you all, none of you all are old enough
17 to remember the days when they had flour sifters and it had
18 a screen at the bottom, and you turned it and let the chaff
19 stay in the screen when the flour went out, and that is what
20 in essence you all have to do.

21 You all have to sift through the evidence and you have
22 to keep what you believe to be the truth in one side and
23 let the chaff go out the other side, because you will hear
24 all kinds of stuff.

25 But it is your job to determine what the truth is in

1 this case, and from that truth you must reach a verdict.

2 Verdict is a Latin word that is derived from the word
3 veredicto, which means to speak the truth, so that is what
4 you must do.

5 You must take the facts as you find them, apply it to
6 the law as the Judge is going to give it to you, and reach
7 a verdict, a verdict that speaks the truth in this case.

8 Thank you.

9 THE COURT: Mr. Hood.

10 MR. HOOD: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. HOOD: Ladies and gentlemen, you are about to em-
13 bark in one of the most serious events probably in your
14 entire life.

15 I will assure you that this is the most serious thing
16 that ever happened to Shameen Coker, because at the end of
17 the State's case, the State is going to ask you to do some-
18 thing.

19 That something is to find Shameen Coker guilty of mur-
20 der, and perhaps of kidnapping, and perhaps of armed
21 robbery.

22 So what we're talking about here is a very, very, very
23 serious matter.

24 In serious matters, you have to be very careful about
25 how you pay attention to what goes on during the course of

1 this trial.

2 I will tell you that this is not going to be a case of
3 a smoking gun, where the State is going to come in and say,
4 well, here's the gun that fired the weapon -- the projectile
5 that killed this man, and the fingerprints of Shameen Coker
6 are on that gun.

7 They don't have that. They don't have anything like
8 that to say that Shameen Coker was anywhere near the automo-
9 bile or anything on any other item that links or that has
10 anything to do with this case.

11 They are not going to have any physical evidence at
12 all. You are going to have to rely solely upon the testi-
13 mony of witnesses.

14 And the most important thing that you are going to have
15 to do in the course of this entire trial is to judge the
16 credibility of the witnesses.

17 That's what you're here for. You are going to have to
18 determine the believability of these witnesses who testify
19 here.

20 Now, during the course of the trial -- as Solicitor
21 Randolph was telling you, there are several parts of the
22 trial.

23 Now, Mr. Coker may or may not testify. After we have
24 heard the State's case and I've had an opportunity to eval-
25 uate it, then I will decide in my opinion whether or not I

1 think he needs to present anything whatsoever, and I will
2 advise him.

3 We are under no obligation to present any testimony.
4 We don't have to prove that we're not guilty. The State
5 must prove beyond a reasonable doubt that Shameen Coker com-
6 mitted each and every one of the offenses beyond a reason-
7 able doubt.

8 And a reasonable doubt in this case depends totally
9 upon the credibility of the witnesses who testify. Please
10 listen very carefully to each one of the witnesses because
11 each one of them has a little bit of something to gain or
12 to lose or otherwise with respect to why they are here.

13 Look to the motivation of why the person says the
14 things that they say. Look at that.

15 Often I've heard -- we've talked quite a bit in the
16 Public Defender's Office about this, about public defenders,
17 which is exactly what I am, because most of the time you
18 hear, are you going to get a lawyer or a public defender.
19 Well, that makes it sound like a public defender is not a
20 lawyer, but we really are.

21 I have been one for about thirty years. I spent twenty
22 years in the United States Army Jag Corps, where we handled
23 the same type of cases. Rape, robbery, murder -- everything
24 you could possibly think of.

25 The only thing we did that was unusual was that we did

1 handle specifically military stuff. Say, someone went AWOL,
2 which none of you could get convicted of. You could be fired
3 for it, if you failed to show up for your job or something
4 like that, but not in the military.

5 The military had -- they are a little bit different, so
6 that is a little of the difference.

7 So we are in fact lawyers, and you heard about the in-
8 dictments that the Judge has said are simply pieces of
9 paper.

10 They are merely allegations, and I'm sure each of you
11 have watched the television news and also TV shows involv-
12 ing lawyers and trials an all this stuff. It gets over
13 with in an hour, and then they are finished.

14 Indictments are nothing but pieces of paper. What we
15 have is a system where we have to do like the Solicitor was
16 talking about.

17 The Grand Jury merely says usually there is some evi-
18 dence. It's not beyond a reasonable doubt, and nothing about
19 the credibility of the witnesses or anything of that nature.
20 Did somebody say he did it? Yes. That's enough proof for
21 them. Good enough.

22 Well, that's why we're here, and going back to the most
23 important thing, that is the credibility of the witnesses.

24 You, yourself, are going to have to make that decision,
25 each one of you.

1 It's who you believe and who you do not believe.
2 Thank you very much.
3 THE COURT: Solicitor.
4 SOLICITOR: Call A. J. Roach.
5 THE COURT: Come around, sir. Come right over here.
6 A. J. ROACH, being duly sworn,
7 testified as follows:
8 CLERK: Please be seated.
9 DIRECT EXAMINATION
10 BY SOLICITOR:
11 Q. Your name is A. J. Roach?
12 A. Yes, sir.
13 Q. Excuse me?
14 A. That's right.
15 Q. Please speak loudly enough so the last ladies and gen-
16 tlemen on the jury can hear everything you say clearly and
17 distinctly.
18 How old are you?
19 A. Twenty.
20 Q. Mr. Roach, are you presently housed at the Beaufort
21 County Jailhouse?
22 A. Yes.
23 Q. I believe they call it the Detention Center here, is
24 that right?
25 A. Right.

MR. ROACH ON DIRECT

- 1 Q. Yes, sir, and have you been in there since December
2 following the death of James Dillard?
- 3 A. Yes.
- 4 Q. Are you charged in the murder of James Dillard?
- 5 A. Yes.
- 6 Q. Okay. Are you going to plead guilty in this case?
- 7 A. Yes.
- 8 Q. Okay, sir, and are you going to plead guilty to man-
9 slaughter, a lesser included offense?
- 10 A. Yes.
- 11 Q. Are you going to plead guilty to kidnapping?
- 12 A. Yes.
- 13 Q. Are you going to plead guilty to armed robbery?
- 14 A. Yes.
- 15 Q. And are you going to receive a twenty-five year sen-
16 tence?
- 17 A. Yes.
- 18 Q. Okay, sir. Now, I want you to tell -- have you ever
19 been in trouble before?
- 20 A. I had a shoplifting charge in '99.
- 21 Q. Anything else?
- 22 A. No, sir.
- 23 Q. Okay, sir. I want you to tell these ladies and gen-
24 tlemen on this jury, in your own words, what happened on
25 May 19th of the year 2000?

MR. ROACH ON DIRECT

1 A. Me and a friend of mine were driving around, and we
2 decided to stop before we went home, and we went to this
3 lady's house where a lot of people go to play cards, and
4 I don't know how long we were there before I saw Shameen com-
5 ing down the street.

6 Q. Saw who?

7 A. Shameen.

8 Q. Who is Shameen?

9 A. . .

10 Q. Point out to this jury who you are talking about?

11 A. (Gesturing)

12 Q. Describe what he's wearing.

13 A. A blue shirt with a tie.

14 Q. Excuse me?

15 A. A blue shirt with a tie.

16 Q. Okay. You saw Shameen coming down the street.

17 A. That's right.

18 Q. Okay, sir.

19 A. So I waited in the yard and . .

20 Q. Did you know Shameen?

21 A. Yes, sir.

22 Q. Were you all friends?

23 A. Uh, not really.

24 Q. But you knew him right well?

25 A. Yes, sir.

MR. ROACH ON DIRECT

1 Q. Okay, sir. You waited in the yard.

2 A. I waved him in the yard and we started talking for ten
3 or fifteen minutes, and he asked me what I was going to do
4 that night.

5 Q. What time was this?

6 A. About four thirty, five o'clock. Something like that.

7 Q. Okay.

8 A. I told him I wanted to go to a club but I didn't have a
9 ride, and he told me he could get a car if I stayed at his
10 house that night.

11 So I told my friend I was riding with to go on home,
12 and I was going to stay in Yemassee, so he left.

13 Then from there we walked to his house, and we were in
14 there like five minutes. He went in the back room and came
15 back out and we walked to Chevron.

16 Q. Did you know why you went to the back room?

17 A. I guess he went to go get the gun.

18 Q. When he came out of the back room, did he have anything
19 with him?

20 A. I didn't see it at the time. I didn't see it until we
21 got to the gas station.

22 Q. Okay. Go ahead and tell me what happened.

23 A. . . .

24 Q. You all went where?

25 A. Chevron.

MR. ROACH ON DIRECT

1 Q. Is the Chevron station the station that is just -- going
2 toward Hampton, just before you get to the interstate?

3 A. Yes, sir.

4 Q. Okay, on the left?

5 A. Yes, sir.

6 Q. Okay, sir, and did you walk to the Chevron station?

7 A. Yes, sir.

8 Q. What did you do when you got there?

9 A. . . .

10 Q. Did you all talk about what you were going to do?

11 A. Yeah, when we got there, he told me he was going to
12 wait til somebody came and ask for a ride, and then take the
13 car.

14 Q. And take the car?

15 A. Yes, sir.

16 Q. Did he tell you how he was going to take the car?

17 A. He was waving the gun.

18 Q. Okay.

19 A. I told him all right, and we waited until we -- I heard
20 somebody come our way, and that's when we saw the car pull
21 up at the front of the store.

22 Then he went in the store and came back out with some
23 bags.

24 Q. Can you describe the car for me?

25 A. A red Grand Am.

MR. ROACH ON DIRECT

1 Q. I show you a photograph and ask you if you can -- show
2 you three photographs, and ask you if you can identify them?

3 A. Yes, sir. That's the car.

4 SOLICITOR: If Your Honor please, I would offer these
5 as Exhibits.

6 THE COURT: Objection?

7 MR. HOOD: I don't have any objection.

8 THE COURT: Okay. Received in evidence without objec-
9 tion.

10 (Photographs admitted in evidence without objection
11 as State's Exhibits 1, 2 and 3)

12 BY SOLICITOR:

13 Q. Again, I show you State's Exhibits Number 1, 2 and 3.
14 This is what, sir?

15 A. That's the car that I saw.

16 Q. Okay, and that's the car that who was driving?

17 A. James Dillard.

18 Q. Okay.

19 SOLICITOR: May I publish these to the jury, sir?

20 THE COURT: Yes, sir.

21 (Photographs shown to the jury)

22 BY SOLICITOR:

23 Q. Now, . . .

24 THE COURT: Excuse me one second, Solicitor. Mr.
25 Foreman and members of the jury, from time to time something

MR. ROACH ON DIRECT

1 that's been introduced in evidence will be passed around for
2 you to look at.

3 Look at it for as long as you want to, but I want you
4 to know that if it is passed around to you, as these photo-
5 graphs have been, you don't have to try to remember every-
6 thing because you will have those in your jury room with you
7 during your deliberations.

8 BY SOLICITOR:

9 Q. Did you know James Dillard?

10 A. No, sir.

11 Q. Did Shameen Coker know James Dillard?

12 A. Yes, sir.

13 Q. Okay. Did Shameen Coker talk with him?

14 A. . .

15 MR. HOOD: Your Honor, I'm going to object to this
16 line of questioning. If he wants him to tell his story,
17 that's fine, but this is leading.

18 THE COURT: Objection overruled. I don't think that's
19 leading.

20 BY SOLICITOR:

21 Q. Did Shameen Coker go up and talk with James Dillard?

22 A. When he left from in front of the store, he came around
23 the side where we were, and he asked him for a ride, yes.

24 Q. Okay. Shameen asked Dillard for a ride?

25 A. Yes.

MR. ROACH ON DIRECT

- 1 Q. Okay, what happened?
- 2 A. He told us to get in, so we got in the car.
- 3 Q. Okay.
- 4 A. I was in the front seat passenger side, and he was in
- 5 the back behind the driver.
- 6 Q. Okay, and at that point who had the gun?
- 7 A. I did.
- 8 Q. Okay, how come you had it?
- 9 A. When we got there, he explain to me what was going to
- 10 happen, and he gave me the gun.
- 11 Q. What did he explain was going to happen?
- 12 A. That we was going to take the car.
- 13 Q. Surely he told you more than that. Did he or not?
- 14 A. He just said that when somebody came, we were going to
- 15 get their car and take them out.
- 16 Q. Okay. Did you all -- did you get in the car with
- 17 James Dillard?
- 18 A. Yes, I did.
- 19 Q. And at the time you got in the car, who had the gun?
- 20 A. I did.
- 21 Q. Okay. Where did you get in the car?
- 22 A. In the front on the passenger side.
- 23 Q. Where did Shameen Coker get in the car?
- 24 A. In the back, behind the driver.
- 25 Q. What did you all then do after you got in the car and

MR. ROACH ON DIRECT

1 left the Chevron station?

2 A. Told him where we wanted to go.

3 Q. Who told him where you wanted to go?

4 A. Shameen.

5 Q. And where did he tell him you wanted to go?

6 A. No specific place. He just told him in the direction he
7 was driving.

8 Q. Okay, and did he drive in that direction?

9 A. Yes, sir.

10 Q. What happened after he started driving?

11 A. At one point he was supposed to turn down a dirt road
12 and in the middle I looked back and me and Shameen made eye
13 contact, so that's when -- the point I told him to stop.

14 Q. Okay, keep going.

15 Q. And I asked him to let me drive, and he told me no,
16 you're not; and I brandish the gun and told him to get out,
17 and when he got out on the driver's side I got out on the
18 passenger side.

19 And Shameen got out behind him and we talked about
20 what we were gonna do, and we decided to put him in the
21 trunk.

22 Q. Okay.

23 A. And he got in the trunk and I became the driver.

24 Q. How did the trunk get opened?

25 A. Either Shameen popped it or I popped it. I can't

MR. ROACH ON DIRECT

1 really remember.

2 Q. And when you say popped it, what are you talking
3 about?

4 A. There was a latch on the door.

5 Q. Inside the car?

6 A. Yes.

7 Q. Okay. A button or something that you mashed?

8 A. Like a little lever or something.

9 Q. Okay, and one of you all popped the trunk?

10 A. Yes, sir.

11 Q. What happened then?

12 A. I was driving at that point.

13 Q. When the trunk got popped, what happened?

14 A. He got in the trunk.

15 Q. Who had the gun at that time?

16 A. I got back in the car and put it in the console.

17 Q. No. At the time he got in the trunk, who had the
18 gun?

19 A. Oh, I had it.

20 Q. Okay. Did you point the gun at him?

21 A. Yes, sir.

22 Q. Told him to get in the trunk?

23 A. I told him to get out. Up to that point he was com-
24 plying.

25 Q. And did he get in the trunk?

MR. ROACH ON DIRECT

- 1 A. Yes, sir.
- 2 Q. Did somebody shut the trunk?
- 3 A. Yes, sir.
- 4 Q. Who?
- 5 A. Shameen.
- 6 Q. Okay, and what did you all do after he got in the
7 trunk?
- 8 A. Got in the car.
- 9 Q. Did he do it willingly?
- 10 A. Yes, sir.
- 11 Q. He willingly got in the trunk?
- 12 A. Man, if I had the gun and he's not trying to run, but,
13 yes, we forced him.
- 14 Q. Okay. Go ahead then. Once he got in the trunk then,
15 what did you all do?
- 16 A. I got on the driver's side and Shameen was on the pas-
17 senger side.
- 18 From that point, he was telling me where to drive.
- 19 Q. And what did you do with the gun?
- 20 A. Put it in the console.
- 21 Q. Okay, and where did he tell you to drive?
- 22 A. We went down Fanny Hill Road and cross some tracks,
23 and right before -- right when I'm about to go over the
24 tracks I seen it was getting a little dark so I put on the
25 lights on dim.

MR. ROACH ON DIRECT

1 And then we got to like this cut down a dirt road,
2 and . .

3 Q. Got what?

4 A. Got to like a little turn off little area, and we turn
5 in there.

6 Q. How come you turned in there?

7 A. It's where I was told to go.

8 Q. Okay. What happened then?

9 A. Um, Shameen grab the gun and then he got out and told
10 me to pop the trunk, and I popped it, and when he got out
11 he walked to like a little bushy area and I guess he was
12 told to get down on his knees because that's what he did.

13 Q. Who?

14 A. James Dillard.

15 Q. He got on his knees?

16 A. Yes, sir.

17 Q. Okay.

18 A. And it looked like he turned around and said something,
19 and that's when Shameen hit him in the back of the head with
20 the gun, and that caused him to lay down, and when he fell
21 there was some shots fired.

22 Q. Some shots were fired?.

23 A. Yes, sir.

24 Q. Do you know how many?

25 A. I didn't count them.

MR. ROACH ON DIRECT

- 1 Q. Okay, so what happened then?
- 2 A. He came running back to the car.
- 3 Q. Shameen?
- 4 A. Yes, sir, and he told me to drive.
- 5 Q. Okay, and . . .
- 6 A. I asked him was he dead and he say he don't know; let's
- 7 go. So I said, we need to go back and check, and this time
- 8 both of us got out.
- 9 Q. Why did you want to check?
- 10 A. To me, I -- the whole thing was senseless, but I didn't
- 11 really think that he should be left there like that and just
- 12 -- just like that.
- 13 So I told him if he was going to do it, to finish it.
- 14 Q. You told Shameen that if he was going to do it, to
- 15 finish it?
- 16 A. Yes, sir. He ought not to leave him like that.
- 17 Q. Okay, and what did you all do then?
- 18 A. He was still moaning.
- 19 Q. Who was moaning?
- 20 A. James Dillard.
- 21 Q. And what was his position at that time?
- 22 A. He was laying on his stomach.
- 23 Q. Okay, sir.
- 24 A. And that's when Shameen gave him the last shot. I
- 25 think it was in the back of the head.

MR. ROACH ON DIRECT

1 And we went back to the car and drove, you know, and
2 stopped around -- we went to Pokey after that and stopped
3 at . . .

4 Q. Pokey is Pocotaligo?

5 A. Yes, sir.

6 Q. Go ahead.

7 A. We stopped at a gas station and got gas.

8 Q. And that was at Point South?

9 A. Point South.

10 Q. Where?

11 A. I don't remember the gas station name.

12 Q. Okay. You got gas. What did you do then?

13 A. There was another dirt road in Pocotaligo -- another
14 little turn off, and we left the car there and went back to
15 Yemassee.

16 Q. How did you all get back to Yemassee?

17 A. Caught a ride back with somebody.

18 Q. Okay, and where did you go when you got to Yemassee?

19 A. Went back to his -- to Shameen trailer.

20 Q. Okay. Before going back to the trailer, did you go any-
21 where else?

22 A. No, sir.

23 Q. You didn't go to Ridgeland?

24 A. No, sir.

25 Q. Okay. So you left the car at Pocotaligo and went to

MR. ROACH ON DIRECT

1 Shameen's house?

2 A. Yes, sir.

3 Q. What's the next thing you did?

4 A. We waited until it got later that night and we caught a
5 ride back to the car.

6 Q. We who?

7 A. Me and Shameen.

8 Q. Okay. Back to Pocotaligo to the car?

9 A. Yes, sir.

10 Q. What did you do then?

11 A. Before we got in the car, he said we need to take some
12 stuff of it. So we took the board -- they had a board in
13 the front, and we may have took the hub cap off.

14 Then we got in the car . .

15 Q. When you say a board, what are you talking about?

16 A. Like a mat in front of a car, a leather thing.

17 Q. You mean like to keep bugs from going in the front
18 end?

19 A. I guess so.

20 Q. So you took that off the car, and where did you go
21 then?

22 A. Went to pick up Herbie Ford.

23 Q. Herbie?

24 A. Yes, sir.

25 Q. Herbert Solomon Ford?

MR. ROACH ON DIRECT

- 1 A. That's his whole name, yes, sir.
- 2 Q. And where did you go to pick him up?
- 3 A. At his house.
- 4 Q. And did you pick him up?
- 5 A. Yes, sir.
- 6 Q. When you went there, did you see any other people?
- 7 A. No, sir.
- 8 Q. Okay, sir. Did you ever see any other people that
- 9 night?
- 10 A. Twice when we went to Ridgeland and . . .
- 11 Q. When you picked Herbie Ford up, you all went to
- 12 Ridgeland?
- 13 A. Yes, sir.
- 14 Q. To where?
- 15 A. To Baytree Apartments.
- 16 Q. Okay, and how long were you at Baytree?
- 17 A. Like an hour, hour and a half.
- 18 Q. Okay, sir. So what did you do after that?
- 19 A. Went back to Yemassee.
- 20 Q. And when you got to Yemassee, what did you do?
- 21 A. There is -- down the road from his house is another --
- 22 like a little -- another little dirt road where we put the
- 23 car at.
- 24 Q. You all parked the car there?
- 25 A. Yes, sir.

MR. ROACH ON DIRECT

1 Q. And the three of you went where?

2 A. Back to the trailer, Shameen's trailer.

3 Q. Okay, and how long were you in the trailer?

4 A. I can't remember.

5 Q. What did you all talk about doing, you and Shameen?

6 A. When we got back to the trailer, he left.

7 Q. And did you have a discussion with anybody about what
8 should be done with the car?

9 A. Not then.

10 Q. At a later -- what is the next thing you all did?

11 A. We went back in the car and we went to Spring Hill.

12 Q. Who?

13 A. Me, Herbie and somebody else.

14 Q. Do you know who it was?

15 A. No, sir. I can't remember.

16 Q. Okay, and you all went to Spring Hill where?

17 A. Ridgeland.

18 Q. In Jasper County?

19 A. Yes.

20 Q. What is Spring Hill?

21 A. A club.

22 Q. Okay, and how long were you all at the club?

23 A. Ten minutes. Something like that.

24 Q. What time was this?

25 A. Like one thirty, two o'clock in the morning.

MR. ROACH ON DIRECT

1 Q. And what did you do when you left Spring Hill?

2 A. Went back to Yemassee.

3 Q. Where?

4 A. To put the car back where it was down the road from
5 the trailer.

6 Q. Okay.

7 A. And went to the trailer.

8 Q. And who was in the car at this time when you went to
9 Spring Hill?

10 A. It was me, Herbie and somebody else.

11 Q. And you put the car back where it originally had been
12 hidden?

13 A. Not originally, but down the road from the trailer.

14 Q. Okay. What did you do then?

15 A. That's when we talked about what to do with the car.

16 Q. Okay, and what did you all decide to do with it?

17 A. To get rid of it.

18 Q. How did you all decide to get rid of it?

19 A. Put it in the water.

20 Q. And did you put it in some water?

21 A. Yes, sir.

22 Q. Where?

23 A. An area called Salt Catch near where I stay at.

24 Q. Are you talking about the Public Landing there in
25 Colleton County?

MR. ROACH ON DIRECT

1 A. Yes, sir.

2 Q. Where do you live?

3 A. In Jonesville.

4 Q. Is that in Colleton County?

5 A. Yes, sir.

6 Q. That would be just north of the Public Landing on High-
7 way 17A?

8 A. Yes, sir.

9 Q. Okay. Did you all take it there?

10 A. Yes, sir.

11 Q. Did you put it in the water?

12 A. Yes, sir.

13 Q. Tell the ladies and gentlemen of the jury how you
14 did that.

15 A. I put it in neutral and tried to push it but it wouldn't
16 go over the landing, so I drove it over and jumped out and
17 it went in.

18 Q. Okay. Before you put it in the water, did you do any-
19 thing to that vehicle?

20 A. I think I wiped off the steering wheel.

21 Q. Why?

22 A. Fingerprints.

23 Q. And did the car go into the water?

24 A. Yes, sir.

25 Q. Did it sink?

MR. ROACH ON DIRECT

1 A. Yes, sir.

2 Q. And could you see it?

3 A. No, sir.

4 Q. Okay, and did you catch a ride back to Yemassee?

5 A. Yes, sir.

6 Q. Who was with you?

7 A. . .

8 Q. Who was with you when you drove the car to the Public
9 Landing?

10 A. Somebody was in the car riding with me, but I can't
11 remember who it was.

12 Q. Okay. When you got -- you were in a pickup truck
13 when you left?

14 A. Yes, sir.

15 Q. Who was in the pickup truck?

16 A. A bunch of people in there.

17 Q. Tell me who they are.

18 A. I remember Chuckie -- that's the guy whose truck it
19 was, and I remember Dee, Shameen's brother, and some other
20 people.

21 Q. Dee? Is that Horry?

22 A. Yes, sir.

23 Q. Do you remember who the other people were?

24 A. No, sir. They from -- they were from Pocotaligo, and
25 I don't know them people over there.

MR. ROACH ON DIRECT

1 Q. Okay. Where did you go? Where did Chuckie take you
2 then?

3 A. Back to Shameen's trailer.

4 Q. And did you get out there?

5 A. Yes, sir.

6 Q. Did you spend the night there?

7 A. Yes, sir.

8 Q. What happened next?

9 A. Nothing.

10 Q. Did you go home?

11 A. The next day.

12 Q. That's what I'm talking about. What time did you leave
13 to go home?

14 A. Probably the next night.

15 Q. Did you drink anything that night?

16 A. Yes, sir.

17 Q. What did you drink?

18 A. I had like a beer or two and some liquor.

19 Q. Where did you get the beer from?

20 A. In the back of the car on the floor, like a six
21 pack.

22 Q. Of what kind of beer?

23 A. Michelob Light.

24 Q. And you say you drank some what?

25 A. Liquor.

MR. ROACH ON DIRECT

1 Q. What kind of liquor?

2 A. Gin.

3 Q. How much did you drink?

4 A. Not much. Like a sip or two.

5 Q. Did anybody else drink anything?

6 A. Yes, sir. Herbie drank like almost the whole bottle.

7 Q. Herbie?

8 A. Yes.

9 Q. Did Shameen drink anything?

10 A. I doubt it. He drank some beer, but he didn't drink
11 any liquor.

12 Q. He did drink some beer?

13 A. Yes, sir.

14 Q. How many beers did he drink?

15 A. One or two.

16 Q. You say that Shameen got a pistol from his house?

17 A. Yes, sir.

18 Q. Where in his house?

19 A. In his room.

20 Q. Do you know what kind of pistol it was that you all
21 had that night?

22 A. It was a chrome or silver thirty-eight, with a black
23 rubber handle with finger grooves.

24 Q. Okay, and what caliber was it?

25 A. A thirty-eight.

MR. ROACH ON DIRECT

1 Q. Okay, sir. Can you describe for me what James Dillard
2 was wearing that night?

3 A. A Budweiser shirt and some shorts.

4 Q. Stand up, please. Can you identify that?

5 A. Yes, sir.

6 Q. Talk loud, now.

7 A. Yes, sir.

8 Q. What is that?

9 A. The shirt that he had on, but I don't remember a hat.

10 Q. Did he have a Budweiser hat on?

11 A. I don't remember the hat.

12 Q. But that's the shirt he had on?

13 A. Yes, sir.

14 SOLICITOR: If Your Honor please, I would offer this
15 shirt as an exhibit.

16 THE COURT: Any objection?

17 MR. HOOD: No objection.

18 THE COURT: All right.

19 (Shirt entered in evidence without objection as State's
20 Exhibit 4).

21 BY SOLICITOR:

22 Q. You can sit back down. Thank you.

23 SOLICITOR: If Your Honor please, I have no further
24 questions.

25 Q. Please answer any questions Mr. Hood may have for you,

MR. ROACH ON DIRECT

1 please.

2 THE COURT: All right.

3 CROSS EXAMINATION

4 BY MR. HOOD:

5 Q. Now, A. J., your last name is Holmes or Roach?

6 A. Roach.

7 Q. Have you ever gone by the name of Holmes?

8 A. No, sir.

9 Q. So when people called you A. J. Holmes, that was an
10 incorrect name, is that correct?

11 A. Yes, sir.

12 Q. Why would they have done that?

13 A. No one knew my last name.

14 Q. Nobody knew your last name? Okay.

15 And this name that you mentioned, Dee, you didn't know
16 who that person was either, did you?

17 A. I didn't know his first name.

18 Q. You didn't know who he was talking about when the
19 Solicitor mentioned Horry? You don't know who that was,
20 do you?

21 A. No, sir.

22 Q. All right. You didn't even know Shameen Coker's last
23 name, did you?

24 A. No, sir.

25 Q. So you weren't friends. Is that what you're telling me?

MR. ROACH ON CROSS

1 A. No, sir.

2 Q. Now, you made several statements in this case, is
3 that correct?

4 A. Yes, sir.

5 Q. The first statement that you made when you were brought
6 in and questioned -- the first occasion now -- about where
7 were you on a certain day, and you told them that you were
8 looking for a job in Beaufort?

9 A. . .

10 Q. Is that correct -- at some burger place or something,
11 I think?

12 A. Yes, sir.

13 Q. You said you were being kicked out of Job Corps be-
14 cause of some trouble that you got into there, is that
15 correct?

16 A. Yes, sir.

17 Q. Okay. So you tell them on the first occasion when they
18 ask you about the murder of James Dillard -- isn't that what
19 they were questioning you about?

20 A. Yes, sir.

21 Q. And you told them, I don't know nothing about nothing;
22 I was looking for a job?

23 A. Yes, sir.

24 Q. Okay, but you had heard a lot of stuff on the street.
25 Didn't you tell them that?

MR. ROACH ON CROSS

1 A. Yes, sir.

2 Q. Because at that time, everybody knew what had happened
3 on the street. Isn't that correcct?

4 A. Yes, sir.

5 Q. That you came into contact with. Is that correct?

6 A. Yes, sir.

7 Q. And everybody knew where the incident occurred at,
8 how the guy was killed, his car, the color of his car, the
9 whole nine yards?

10 A. Yes, sir.

11 Q. Is that correct?

12 A. Yes, sir.

13 Q. Okay. So it was pretty common knowledge on the street
14 as to the circumstances of events involving the James
15 Dillard killing. Is that correct?

16 A. Yes, sir.

17 Q. And there was a big reward poster that was put up out
18 all over the area for information leading to the person or
19 persons who committed this crime.

20 Isn't that correct?

21 A. Yes, sir.

22 Q. Okay. Now, the first statement that you made to the
23 police where you say anything about being involved in the
24 killing of James Dillard was on December fourth of 2000.

25 Is that correct?

MR. ROACH ON CROSS

1 A. Yes, sir.

2 Q. And at that time, you were again being interviewed
3 by Detective Bromley?

4 A. I think it was Sergeant Purdy first.

5 Q. Purdy or Bromley?

6 A. I think that was later, but, yes, sir.

7 Q. But both of them were there during the time that you
8 were discussing the events, is that correct?

9 A. Yes, sir.

10 Q. At that time, you were told that Shameen Coker had
11 made a statement saying that you and Herbert Ford had taken
12 the car of James Dillard; came to his trailer and talked
13 about having killed James Dillard.

14 Isn't that correct?

15 A. Yes, sir.

16 Q. Okay, and they gave you that information and then they
17 told you they're diming you out. Isn't that correct?

18 A. Yes, sir.

19 Q. And you said, the rat is ratting me out, or something
20 to that effect. Isn't that correct?

21 A. I don't remember saying that.

22 Q. Oh, so at that time you decide to tell the story and
23 implicate Shameen Coker in this killing. Isn't that cor-
24 rect?

25 A. No, sir.

MR. ROACH ON CROSS

- 1 Q. Now, Herbert Ford -- you had known Herbert Ford for
2 sometime, hadn't you?
- 3 A. I don't know him, but I had seen him.
- 4 Q. Well, you and Herbert used to run together a little
5 bit, even after this event with James Dillard, didn't you?
- 6 A. No, sir.
- 7 Q. You never did?
- 8 A. No, sir.
- 9 Q. So you and Herbert Ford never went back to that Chevron
10 Station after the killing of James Dillard, to that same
11 Chevron Station, and attempted to car jack a woman by gun-
12 point?
- 13 A. . . .
- 14 Q. You didn't do that?
- 15 A. No, sir.
- 16 Q. Oh. Now, the gun -- what color was that gun? What did
17 the gun look like?
- 18 A. Like silver or chrome.
- 19 Q. Silver or chrome, and what color was the handle?
- 20 A. Black.
- 21 Q. Black -- well, you had it. Are you positive that's
22 what it was?
- 23 A. Yes, sir.
- 24 Q. Okay, and the first statement that you gave to the
25 police concerning this event, you indicated that you told

MR. ROACH ON CROSS

1 the dude to pop the trunk?

2 A. . .

3 Q. In other words, James Dillard. Is that correct or in-
4 correct?

5 A. I could have.

6 Q. You could have?

7 A. Yes.

8 Q. Okay. You also on the first occasion when you talked
9 to the police on the fourth when you started to tell them
10 about the story, you indicated that you and Shameen walked
11 back to Shameen's trailer but you never went inside. Is
12 that correct?

13 A. "I didn't tell them that.

14 Q. Didn't tell them that?

15 A. . .

16 Q. Okay. But you said you never saw him with a gun, is
17 that correct?

18 A. Not when he came out. I didn't see it until we got to
19 the Chevron Station.

20 Q. Okay, and he just all of a sudden pulled that gun of
21 his and said, here, you take the gun?

22 A. No, we were talking about it.

23 Q. Well, you asked him for the gun or did he give you
24 the gun?

25 A. I don't remember how it happened.

MR. ROACH ON CROSS

- 1 Q. You don't remember how it happened?
- 2 A. Not the point I got it.
- 3 Q. Well, was it loaded when you got it?
- 4 A. Yes, sir.
- 5 Q. How do you know?
- 6 A. Because he didn't have to load it when he started
- 7 shooting.
- 8 Q. Okay. Did you -- what kind of gun was it?
- 9 A. Thirty-eight. The same thirty-eight.
- 10 Q. The same thirty-eight?
- 11 A. The one I was talking about.
- 12 Q. Okay. Well, did this thirty-eight have a little
- 13 spinning thing in the middle of it?
- 14 A. You mean, was it a revolver?
- 15 Q. Yes.
- 16 A. Yes, sir.
- 17 Q. Was it a revolver?
- 18 A. Yes, sir.
- 19 Q. And when you looked down at it like that, did you see
- 20 little bullets hanging in there?
- 21 A. Yes, sir.
- 22 Q. Okay. Did you ever do that?
- 23 A. No, sir.
- 24 Q. Well, you mean, you were going to try to car jack a
- 25 guy with an empty gun?

MR. ROACH ON CROSS

- 1 A. If it were empty, yes, sir.
- 2 Q. But he was no little guy, was it?
- 3 A. No, sir.
- 4 Q. He was about six ten, wasn't he?
- 5 A. Could have been, easy.
- 6 Q. Did you tell him to get his lanky ass out of the car or
- 7 you'd shoot him in the back?
- 8 A. No, sir.
- 9 Q. You didn't tell him that?
- 10 A. No, sir.
- 11 Q. So he just agreed to get out of the car for you when you
- 12 told him to get out of the car?
- 13 A. The gun was shown at that point, so, yes, sir.
- 14 Q. And what did you tell him?
- 15 A. Get out.
- 16 Q. Get out -- well, how did you keep him from running?
- 17 A. . . .
- 18 Q. You didn't tell him I'll shoot you in the back if you
- 19 run?
- 20 A. No, sir.
- 21 Q. Okay. Which side of the car did you get out of?
- 22 A. The right hand side.
- 23 Q. So you got out on the passenger side?
- 24 A. Yes, sir.
- 25 Q. He got out on the driver's side?

MR. ROACH ON CROSS

1 A. Yes, sir.

2 Q. And he never ran?

3 A. No, sir.

4 Q. Well, how did you do the gun business? Did you hold it
5 out of the window over the hood of the car to keep it steady
6 while you were getting out of the car?

7 A. No, sir.

8 Q. So he just stood there while you got out of the car and
9 came around and Shameen gets out of the back seat of the car
10 and he comes around, and you tell him, get in the trunk?

11 A. Yes, sir.

12 Q. Okay.

13 A. I was looking at him the whole time.

14 Q. You were looking at him the whole time. Was he looking
15 at you?

16 A. Yes, sir.

17 Q. Now, in your first statement and your second statement
18 to the police -- I believe you gave another statement on
19 December 5th?

20 A. . .

21 Q. The very next day after your first one on December the
22 4th. Is that correct?

23 A. Yes, sir.

24 Q. And in that one also they played for you -- when I
25 say they, the police officers involved in this -- played for

1 you the taped testimony of Shameen Coker saying that you and Ford
2 were the two that had killed James Dillard. Is that correct?

3 A. Yes, sir.

4 Q. Okay. Now, after you get this -- have this second inter-
5 view, didn't you and -- you mentioned something about Shameen
6 knowing the dude.

7 Did he have a conversation with him?

8 A. When we were in the car, he did mention something about
9 knowing Shameen's brother but they didn't really converse.

10 Q. And isn't it true that James Dillard, according to your
11 first statement, actually got in his car and started driving
12 away, when you stepped out and waved him down?

13 A. No, sir.

14 Q. So in other words, he never moved in the car or never got
15 into the car before you guys stopped him and asked him then
16 for a ride?

17 A. I didn't wave him down. Shameen waved him down.

18 Q. Okay. So how did Shameen do it?

19 A. When he came from in front of the store and came around
20 our side, he held his hand out, and I walked to the car and
21 asked him for a ride.

22 Q. And was Dillard already in the car?

23 A. Yes, sir.

24 Q. Okay, and where did you tell him you were going?

25 A. We didn't.

MR. ROACH ON CROSS

1 Q. You didn't?

2 A. Just told him we had somewhere to go.

3 Q. Didn't mention anything about that?

4 A. We could have, but it was a while ago.

5 Q. All right. So the three of you get in the car and you
6 asked James Dillard, can I drive your car?

7 A. Yes, sir.

8 Q. And he just laughs and says, no?

9 A. Yes, sir.

10 Q. I think you ask him again, don't you?

11 A. Yes, sir.

12 Q. Okay, and he says no again, and this time you whip out
13 the gun and say, stop the car; you're going to let me drive
14 now, or something like that?

15 A. Something like that.

16 Q. Okay. Now, you said that originally this plan between
17 you and Shameen was so both of you could ride to the
18 clubs that night.

19 Is that correct?

20 A. Yes, sir.

21 Q. So Shameen and you needed a car to ride out Spring Hill
22 and to a place called The Breeze over in Hilton Head, isn't
23 that correct?

24 A. The Breeze?

25 Q. Yeah. Don't you mention The Breeze in your statement

MR. ROACH ON CROSS

- 1 to the two officers?
- 2 A. . .
- 3 Q. In the statements that you gave to them in December?
- 4 A. I don't remember mentioning The Breeze.
- 5 Q. Do you remember telling them Hilton Head?
- 6 A. I thought that was where Spring Hill was.
- 7 Q. How many clubs did you go to?
- 8 A. One.
- 9 Q. One?
- 10 A. . .
- 11 Q. Now, is this the club where the gunshots were fired from
- 12 that automobile?
- 13 A. I don't know any club where any gunshots were fired.
- 14 Q. Well, didn't you tell the two officers when they were
- 15 interviewing you that you didn't want to go back to that
- 16 club because there were gunshots and people shooting out
- 17 there?
- 18 A. Shooting at a lot of clubs.
- 19 Q. I'm sorry.
- 20 A. There's shooting at a lot of clubs that I've been to.
- 21 Q. Okay, but you didn't do any shooting that night?
- 22 A. I did? Did I?
- 23 Q. Yes, did you?
- 24 A. No, sir.
- 25 Q. Who had the gun?

MR. ROACH ON CROSS

1 A. When we went to Spring Hill Herbie had the gun.

2 Q. Herbie had the gun?

3 A. . .

4 Q. Herbie was too drunk to know what was going on, wasn't
5 he?

6 A. Yes, sir.

7 Q. All right. I believe you relate in your statement or
8 the first statement that you gave to the police that at
9 the time you were walking from this friend's house or the
10 woman's house where you were playing cards, and you got
11 to the Chevron Station, that you were pissy drunk?

12 A. . .

13 Q. Did you tell them that?

14 A. . .

15 Q. You remember telling them that?

16 A. No, sir. I was drinking.

17 Q. But you didn't tell them you were pissy drunk?

18 A. I didn't say that. I said I don't remember telling
19 them that.

20 Q. Okay, sir. So you knew what was going on?

21 A. Yes, sir.

22 Q. Okay, okay. Now, after you leave the area of the
23 killing, okay, you drive down the road and you hide the
24 car?

25 A. Yes, sir.

MR. ROACH ON CROSS

1 Q. And do you see or talk to anyone on the way to hide
2 the car?

3 A. . .

4 Q. The first time you hide the car. Okay? Immediately
5 afterward.

6 A. No, sir.

7 Q. Okay. Now, after you exited the car, what happens then?

8 A. Which time?

9 Q. The first time.

10 A. When we hide the car?

11 Q. Yes.

12 A. We caught a ride back to Yemassee.

13 Q. Okay. Did you take anything out of the car?

14 A. The keys.

15 Q. Who had the keys?

16 A. I had the keys.

17 Q. Okay. Now, Shameen had a bachelor party to go to for a
18 guy by the name of Monty, isn't that correct?

19 A. . .

20 Q. He was going there that night, isn't that correct?

21 A. I don't know anything about a bachelor party.

22 Q. Well, he went to his girlfriend's house?

23 A. That's what he said.

24 Q. You didn't hear anything about a bachelor party?

25 A. No.

MR. ROACH ON CROSS

- 1 Q. You don't remember talking to him about that?
- 2 A. I didn't talk to him about no bachelor party.
- 3 Q. Did or didn't?
- 4 A. Didn't.
- 5 Q. So after you hide the car, you get out of the car and
- 6 you take the keys, and you get out on the road and you
- 7 catch a ride with a guy?
- 8 A. Yes, sir.
- 9 Q. Who is that guy?
- 10 A. An old dude. Someone I ain't know.
- 11 Q. What kind of car was he driving?
- 12 A. I believe a Lincoln.
- 13 Q. A Lincoln?
- 14 A. . .
- 15 Q. Now, the first interview that you had with the police
- 16 on the fourth, did you tell them it was an old van -- some
- 17 dude in an old van you caught a ride with that Shameen
- 18 knew?
- 19 A. I don't remember saying a van.
- 20 Q. You don't remember saying it?
- 21 A. Not a van.
- 22 Q. A blue van, does that ring a bell?
- 23 A. No, sir. I know the Lincoln was blue.
- 24 Q. The Lincoln was blue?
- 25 A. . .

MR. ROACH ON CROSS

1 Q. Okay. Once you finished with the ride, where did they
2 drop you off at?

3 A. . .

4 Q. Wait a minute. Before that happened, after you cath --
5 in between the time that you walked from the car to the
6 time you catch a ride, do you come in contact with any
7 other people that you know?

8 A. That I know?

9 Q. Or Shameen knows or knew?

10 A. I think he's originally from Pokey, so that's possible.

11 Q. Well, did you talk to anybody?

12 A. I didn't talk to anybody. I didn't know anybody in
13 Pokey.

14 Q. Well, was it dark or was it light?

15 A. By that time, it was dark.

16 Q. It was dark. Okay. So he and you are very close to-
17 gether, aren't you?

18 A. Yes, sir.

19 Q. I mean, you aren't walking four blocks apart? You're
20 right beside each other walking down the road?

21 A. No, sir.

22 Q. How far apart are you?

23 A. Oh, yeah, yeah. We were side by side.

24 Q. Oh, so you're side by side. So when this guy comes
25 by in this blue van or Lincoln, or whatever it is, you

MR. ROACH ON CROSS

- 1 wave him down or did Shameen wave him down?
- 2 A. Shameen waved him down.
- 3 Q. Why did Shameen wave him down?
- 4 A. Because he know the dude and we needed a ride.
- 5 Q. He knew the dude and we needed a ride, and it was
- 6 dark?
- 7 A. Yes, sir.
- 8 Q. Okay. All right. So after you get in the car, do you
- 9 have any conversation with this old dude driving the car?
- 10 A. I don't.
- 11 Q. Does Shameen have any conversation with him?
- 12 A. Yes.
- 13 Q. What did he tell him?
- 14 A. That he wants a ride to Yemassee.
- 15 Q. Is that all he tells him?
- 16 A. Well, he could have told him more. I don't know.
- 17 Q. You don't know?
- 18 A. No.
- 19 Q. Where were you at?
- 20 A. Back seat.
- 21 Q. You couldn't hear what was being said?
- 22 A. I didn't particularly pay attention.
- 23 Q. So you weren't paying attention to what was going
- 24 on?
- 25 A. Not to what was being said.

MR. ROACH ON CROSS

1 Q. After you get to Yemassee, he dropped you and Shameen
2 off. Is that correct?

3 A. Yes, sir.

4 Q. Then you and Shameen walked to Shameen's trailer, is
5 that correct?

6 A. Yes, sir.

7 Q. The only time -- between the time you and Shameen get
8 dropped from the van and arrive at the trailer, do you have
9 any conversation, a ride, or anything, with anybody else?

10 A. I don't remember.

11 Q. Well, earlier you said you didn't. Are you saying now,
12 I don't remember, or, no, we didn't?

13 A. . . .

14 Q. Nobody you recognized? Let's put it that way.

15 A. No, sir.

16 Q. So you didn't recognize anybody so you must have not
17 met anybody, is that correct?

18 A. Yes, sir.

19 Q. Okay. So then when you get back to the trailer,
20 that's when Shameen and you hook up with Chuckie Simmons,
21 is that correct?

22 A. Yes, sir.

23 Q. And Chuckie has a car, is that correct?

24 A. He had a truck that night.

25 Q. He had a truck. Okay. Well, you were looking for a

1 licensed driver to drive the vehicle, weren't you?

2 A. I'd say so.

3 Q. I didn't quite hear that. What did you say?

4 A. I probably was.

5 Q. Well, did you tell the police you needed a licensed
6 driver to drive this TransAm that you were driving or this
7 Pontiac you had ripped off?

8 A. I could have, but I don't remember.

9 Q. Well, do you remember Sam Richardson? You know who Sam
10 Richardson is, don't you?

11 A. Oh, yes, sir.

12 Q. He's a friend of yours, isn't he?

13 A. He was.

14 Q. What was that?

15 A. He was.

16 Q. He was? Why isn't he a friend of yours now?

17 A. Because I'm not on the street.

18 Q. Because what?

19 A. I'm not on the street.

20 Q. So unless you're on the street, you can't be a
21 friend of his, is that correct?

22 A. I say that because I never heard from him or he never
23 came to see me.

24 Q. Did he ever say anything about you being implicated
25 in this thing?

MR. ROACH ON CROSS

- 1 A. I saw his name but I didn't pay much attention to what
2 he said.
- 3 Q. But there were a lot of people saying that you were the
4 one who had killed James Dillard. Isn't that correct?
- 5 A. I don't recall too many people saying that. It might
6 have been one or two.
- 7 Q. And one of the two of them could have been Sam Richardson,
8 is that correct?
- 9 A. It could have been.
- 10 Q. Could have been. Could have been. It could have been
11 Joseph Jones, couldn't it?
- 12 A. Yes, sir.
- 13 Q. I didn't hear that.
- 14 A. Yes, sir.
- 15 Q. Okay. Okay. Now, did you ever come into contact
16 with Joseph Jones while you had that automobile?
- 17 A. No, sir.
- 18 Q. Okay.
- 19 A. While I was driving it?
- 20 Q. Yeah.
- 21 A. No, sir.
- 22 Q. When you left the trailer, and this is perhaps the
23 time after you ditched the car and caught a ride with the
24 old dude, arrive in Yemassee, walked to Shameen's, you
25 arrive there, and then you say, we need a ride to take us:

MR. ROACH ON CROSS

1 out, Chuckie, to the Cut?

2 A. Yes, sir.

3 Q. Is that correct?

4 A. Yes, sir.

5 Q. And along with Chuckie Simmons, we have Josphe Jones
6 who rides with you, isn't that correct?

7 A. Yes, sir.

8 Q. So now we have Chuckie Simmons and we have Josphe
9 Jones, and we have Chuckie Simmons, Joseph Jones,

10 A. J. Roach, and who?

11 A. Shameen Coker.

12 Q. Not Herbie Ford, but Shameen Coker?

13 A. Yes.

14 Q. Okay. So now we have the four of you in Chuckie's
15 car, right?

16 A. . . .

17 Q. And you drive back all the way to the automobile, is
18 that correct?

19 A. That's right.

20 Q. And you tell them what you've done so they knew what
21 happened. Is that correct?

22 A. Not at that point.

23 Q. Not at that point? Didn't you tell the police that
24 you guys had talked about it and they knew James Dillard
25 had been killed when you guys had jacked his car?

MR. ROACH ON CROSS

- 1 A. Not then.
- 2 Q. Well, did they know it on the way out to the car?
- 3 A. No, sir.
- 4 Q. Well, did they know it when you arrived at the car?
- 5 A. No, sir.
- 6 Q. Well, didn't they ask you, A. J., where did you get this
7 wonderful red Pontiac from?
- 8 A. I think they did ask me that.
- 9 Q. And what did you tell them?
- 10 A. Something that wasn't the truth.
- 11 Q. Well, enlighten me. What did you tell them?
- 12 A. I don't remember, but I would never tell my cousin,
13 Joseph Jones, anything.
- 14 Q. And why is that? Because he would repeat it?
- 15 A. Yes, sir.
- 16 Q. Oh, okay, but Joseph and Chuckie are definitely in that
17 car with you with you and Horry when you drive back to get
18 the car?
- 19 A. . .
- 20 Q. Is that correct?
- 21 A. Yes, sir.
- 22 Q. Okay. Now, who drives the car when you get to the car
23 after Chuckie drops you off?
- 24 A. I do.
- 25 Q. Okay, you're driving the car, and what did you do

MR. ROACH ON CROSS

1 next? First, where is Shameen at?

2 A. With me.

3 Q. Where is he seated?

4 A. Passenger side.

5 Q. Where is Joseph Jones seated?

6 A. He went back with Chuckie.

7 Q. Where were they going back to?

8 A. I guess to Yemassee.

9 Q. Okay. Now, you and Shameen go back to the vehicle
10 supposedly to do what?

11 A. To ride around.

12 Q. Ride around? To go where?

13 A. Anywhere.

14 Q. Well, wasn't it your idea at that time, according to
15 your statement, that you wanted to go pick up Herbie,
16 supposedly?

17 A. I never wanted to go pick up Herbie. That's Shameen's
18 friend. It was not my idea.

19 Q. You didn't want to go pick up Herbie?

20 A. I didn't say that. I never said that.

21 Q. Well, . .

22 THE COURT: Where is that in the statement, counsellor?

23 MR. HOOD: I'm just asking if he said it.

24 BY MR. HOOD:

25 Q. Did you make that statement?

MR. ROACH ON CROSS

1 A. No, sir.

2 Q. Okay. So when did you pick up Herbie?

3 A. After we got in the car, we went to pick him up.

4 Q. So after you got in the car, you went to pick him up?

5 A. That's right.

6 Q. Whose idea was it to pick up Herbie?

7 A. Shameen's idea. That's his friend, not mine. It's
8 his friend.

9 Q. Okay. Did you go to Herbie's house?

10 A. Yes, sir.

11 Q. And where does Herbie live?

12 A. Not far from where we had the car.

13 Q. Okay. Who was he staying with?

14 A. I guess his mother.

15 Q. His mother?

16 A. . . .

17 Q. Now, when you arrived to pick up Herbie, was he out-
18 side, inside, or where is he?

19 A. I think he was in the house.

20 Q. Did you go inside the house and get him to come out,
21 or does Shameen go inside his house and get him to come
22 out?

23 A. He went to the door.

24 Q. He went to the door. Who went to the door?

25 A. Shameen.

MR. ROACH ON CROSS

- 1 Q. Okay, and what did Shameen do when he got to the door?
- 2 A. Told Herbie to come on.
- 3 Q. Okay.
- 4 A. I wasn't on the door step with him.
- 5 Q. Okay. Now, Herbie comes back?
- 6 A. Yes, sir.
- 7 Q. What is Herbie wearing?
- 8 A. I can't remember that.
- 9 Q. Okay. Is Herbie intoxicated or not intoxicated?
- 10 A. I don't know whether he was intoxicated then.
- 11 Q. Now, when you get into the car this time, where is
- 12 Herbie seated at?
- 13 A. In the back seat.
- 14 Q. Who is driving?
- 15 A. I am.
- 16 Q. Who is in the passenger seat?
- 17 A. I am.
- 18 Q. When does Herbie get the gun from Shameen?
- 19 A. He doesn't get the gun until we come back from
- 20 Ridgeland.
- 21 Q. Are you talking about the Baytree Apartments?
- 22 A. That's right.
- 23 Q. So after you come back from Baytree, you drop off
- 24 Shameen Coker?
- 25 A. No, sir. We went and put the car back in the cut.

MR. ROACH ON CROSS

1 Q. You went and put the car back in the cut?

2 A. Yes, down the road from Shameen's house.

3 Q. Then that's when Herbert gets the gun from Shameen?

4 A. We all go in the trailer.

5 Q. You all go in the trailer? Okay.

6 A. And we talk about what we're going to do again, be-
7 cause we still had to go somewhere and Shameen didn't want
8 to go.

9 Q. Shameen didn't want to go because he was going to
10 his girl's and this party?

11 A. He said he was going to see his girl.

12 Q. Okay. Shameen was working full time at that time,
13 wasn't he?

14 A. . .

15 Q. Working with his mother in some kind of cleaning bus-
16 iness?

17 A. He was working.

18 Q. Okay, and he was supposed to get a check that night
19 or later that afternoon from his mother for that week's work,
20 is that correct?

21 A. I have no idea.

22 Q. But you knew he was working with his mother, is that
23 correct?

24 A. Yes.

25 Q. In a business over in Hilton Head?

MR. ROACH ON CROSS

1 A. I have no idea.

2 Q. Now, so Shameen said, you guys say you want to go to
3 the club and do some more clubbing or whatever, and he says,
4 I don't want nothing to do with that; I'm going over to
5 this party and to my girl's house?

6 Is that correct?

7 A. Yes, sir.

8 Q. Okay. Now, who is in the house with you at that time?

9 A. I don't remember. It is always a few people there.

10 Q. Okay. So when does Shameen give Herbie the gun?

11 A. They go in the back room.

12 Q. They go in the back room?

13 A. Yes, sir.

14 Q. And what happens?

15 A. I guess they go to load it again or what not, and
16 when Herbie comes out I seen the gun in his pocket.

17 Q. So they go and reload it or whatever and Herbie puts
18 it in his pocket?

19 A. That's right.

20 Q. And then you and Herbie, Sam Richardson, . .

21 A. Sam Richardson did not ride with us there.

22 Q. What about Putt? Putt with you?

23 A. I don't remember.

24 Q. You don't remember. How about a guy by the name of
25 Creel -- his name is Creel something?

MR. ROACH ON CROSS

- 1 A. That's his name.
- 2 Q. He was with you, wasn't he?
- 3 A. Could have been.
- 4 Q. Could have been?
- 5 A. There was another person riding with us but I don't
- 6 know.
- 7 Q. And this is when you were going to a club over in
- 8 Spring Hill, is that correct?
- 9 A. Yes, sir.
- 10 Q. Where gunshots were fired and there was a problem, is
- 11 that correct?
- 12 A. Could have been gunshots fired.
- 13 Q. Right. Now, you went over to the Baytree Apartments,
- 14 didn't you?
- 15 A. Before Spring Hill.
- 16 Q. And you had a confrontation there with a guy there?
- 17 A. I had no confrontation.
- 18 Q. You didn't threaten to shoot anybody there?
- 19 A. No, sir.
- 20 Q. So you left there, you come back, and that's where
- 21 you and Shameen part ways, and then you take the car, as
- 22 you had the whole time, and you drive to the clubs?
- 23 A. . . .
- 24 Q. In the wee hours of the morning. Is that correct?
- 25 A. Went to the club.

MR. ROACH ON CROSS

1 Q. You were out until the wee hours, is that correct?

2 A. It was late.

3 Q. Who was driving the car?

4 A. I was.

5 Q. Now, wait a minute. Are you sure?

6 A. . .

7 Q. You sure Chuckie wasn't driving that car?

8 A. Chuckie was never in that car. I never said that,
9 and you didn't read that.

10 MR. HOOD: Indulge me just a moment, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. HOOD:

13 Q. So you didn't tell the officers that you really didn't
14 know much about the area and you didn't -- you know you
15 stopped a couple of times for gas, but Chuckie was driving,
16 so you really don't know what happened?

17 A. I never said Chuckie drove that car.

18 Q. Well, who else drove it, other than yourself?

19 A. I believe I'm the only one that drove that car.

20 Q. Okay, and you are positive that Ford got the gun,
21 the same gun as used to do the killing, from Shameen
22 Coker?

23 A. Yes, sir.

24 Q. Positive?

25 A. Yes, sir.

MR. ROACH ON CROSS

1 Q. That much you know positively?

2 A. Yes, sir.

3 Q. And it was a chrome or silver colored gun, is that
4 correct?

5 A. Yes.

6 Q. And you know what kind of gun it was because you
7 handled it a lot?

8 A. I didn't handle it a lot. I just . .

9 Q. Okay. You had it in your back pocket, you had it on
10 the console; you were waving it around at the guy and doing
11 all these things.

12 So you had it most of the time, is that correct?

13 A. No.

14 Q. All right. What did you do with the shell casings out
15 of the gun when it was fired the first time?

16 A. They were thrown out the window but I don't remember
17 if it was myself who threw it.

18 Q. They were thrown out the window. Now, that's the
19 first time I've heard this.

20 Who took the shell casings out of the gun?

21 A. I don't remember.

22 Q. But you know they were thrown out of the window?

23 A. Yes, sir.

24 Q. Well, were they thrown out the window within the
25 first twenty feet of leaving the scene of where James Dillard

1 was killed?

2 A. The first twenty feet? Yes, sir.

3 Q. Okay, and you don't know whether you took them out of
4 the gun and threw them out the window, or whether Shameen
5 took them out of the gun and he threw them out the window,
6 but they were thrown out of the window.

7 Is that correct?

8 A. Yes, sir.

9 Q. Which window were they thrown out of? The passenger
10 side or the driver's side?

11 A. I don't remember, and I don't remember when they
12 went out.

13 Q. But they went out a window, is that correct?

14 A. Yes, sir.

15 Q. You know they went out a window. All right.

16 When you were holding the gun on James Dillard and
17 telling him to get out of the car, who popped the trunk
18 latch?

19 A. I don't remember.

20 Q. Well, there are two people in the front seat of that
21 car, aren't there?

22 A. . .

23 Q. One is in the back seat. Right?

24 A. . .

25 Q. Now, somebody had to pop the trunk. Do you remem

MR. ROACH ON CROSS

- 1 telling the police, I told the dude to pop the trunk?
- 2 A. No, sir, because that was over two and a half years
- 3 ago.
- 4 Q. Do you remember telling them that?
- 5 A. I read it.
- 6 Q. So is it correct that you told the dude to pop the
- 7 trunk?
- 8 A. I don't remember exactly who popped the trunk, but
- 9 I know it was popped.
- 10 Q. Was the trunk popped before you got out of the car?
- 11 A. Yes, sir.
- 12 Q. Okay. All right, and Shameen got out of the car af-
- 13 ter you got out of the car. Isn't that correct?
- 14 A. Yes, sir.
- 15 Q. So it couldn't have been him, if he really was there
- 16 in the back seat, who popped the trunk. Is that correct?
- 17 A. No, it's not.
- 18 Q. So it was either you or the dude, James Dillard, is
- 19 that correct?
- 20 A. No, sir.
- 21 Q. Okay. Now, when you get back inside the car and you
- 22 are driving down the road, Shameen is in the passenger seat,
- 23 supposedly, and you are in the driver's seat, and you are
- 24 driving along, and Shameen all of a sudden says, stop the
- 25 car?

MR. ROACH ON CROSS

- 1 A. No.
- 2 Q. Is that correct?
- 3 A. No, sir.
- 4 Q. Well, what did he say?
- 5 A. Turn here.
- 6 Q. Turn here?
- 7 A. Yes.
- 8 Q. Okay, and after you turned here, what did he say?
- 9 A. I had to stop. I couldn't go any further.
- 10 Q. So he never said stop the car; I'm going to get the
- 11 dude out. Is that correct?
- 12 A. No, sir.
- 13 Q. Okay, so basically what happened was, you're driving
- 14 down the road, and he said take a left, and you take a
- 15 left, and boom, there's a dead end, and, therefore, you
- 16 have to stop.
- 17 He then gets out of the car, is that correct?
- 18 A. Yes, sir.
- 19 Q. After he grabs the gun off of the console, is that
- 20 correct?
- 21 A. Yes, sir.
- 22 Q. Goes to the back of the car?
- 23 A. Yes, sir.
- 24 Q. And does he tell you, A. J., pop the trunk?
- 25 A. Yes, sir, but that was the time before he got out.

MR. ROACH ON CROSS

- 1 Q. Wait a minute, wait a minute. I can't hear you. What
2 did you say?
- 3 A. Before he got out.
- 4 Q. Before he got out of the car, after he had snatched the
5 gun -- before he got out of the car, he said, pop the
6 trunk?
- 7 A. Does it really matter.
- 8 Q. Humor me a little bit, if you wouldn't mind. Help me
9 a little bit.
- 10 First or second -- what happened first?
- 11 A. . . .
- 12 Q. Did he say, pop the trunk and get out, or did he get
13 out and say, pop the trunk?
- 14 A. He said pop the trunk before he got out.
- 15 Q. Okay. Was this before or after he grabbed the gun
16 off the console?
- 17 A. I'm going to say after.
- 18 Q. After -- but he hadn't said anything to you about kill-
19 ing James Dillard?
- 20 A. No, sir.
- 21 Q. But -- and he hadn't said anything to you, period, had
22 he?
- 23 A. Not really.
- 24 Q. Because it was too short a period of time. You guys had
25 just been boom, boom, isn't that correct, within a few

MR. ROACH ON CROSS

1 feet?

2 A. Yes, sir.

3 Q. Okay, so he says either as he's getting out after he
4 snatched the gun, pop the trunk -- he jumps out and gets
5 the guy out, and how did he get out the trunk?

6 A. . .

7 Q. You're still in the car, is that correct?

8 A. Yes, sir.

9 Q. You don't get out?

10 A. Not the first time.

11 Q. Okay. So you sit there the whole time, is that cor-
12 rect?

13 A. Yes.

14 Q. And so he gets out the trunk of the car and then do
15 they walk by your side of the car or by the passenger side
16 of the car as they go in this bushy area?

17 A. The bushy area was on the right side.

18 Q. Okay.

19 A. So that . . .

20 Q. On the passenger side of the car?

21 A. No, that's . . .

22 Q. I'm sorry.

23 A. The bushy area was on the left side, on the driver's
24 side.

25 Q. So they went right by you, is that correct?

MR. ROACH ON CROSS

1 A. Yes.

2 Q. Okay, and as they were passing by you, did James Dillard
3 say anything?

4 A. Not then.

5 Q. Not then? He didn't say anything as they were passing
6 by?

7 A. No, sir.

8 Q. And did Shameen say anything to James Dillard as he
9 was escorting him into the bushes?

10 A. I assume, but he was also pointing, so I guess he
11 was telling him where to go.

12 Q. Okay, and when you say bushes, are these trees, or
13 are they just shrubs?

14 A. . .

15 Q. I mean, little small bushes?

16 A. Shrubs.

17 Q. Are they about this tall? (Gesturing)

18 A. No, sir.

19 Q. That tall? About knee length?

20 A. Yes, sir.

21 Q. So if a person were to get down on their knees in that
22 area, you'd be able to see the entire whole upper part of
23 the body. Is that correct?

24 A. At the beginning, but if they go deeper it's higher.

25 Q. Okay. So they had to go deeper in the woods?

- 1 A. It wasn't that deep.
- 2 Q. About how far would you say they went into the woods?
- 3 A. . .
- 4 Q. Tell me when I'm getting close. (Gesturing)
- 5 A. Stop.
- 6 Q. About this distance?
- 7 A. Not that far. Come up a little bit.
- 8 Q. (Walking toward witness) About this far?
- 9 A. That's about right.
- 10 Q. Okay, and at this time you hear, supposedly, Shameen
- 11 telling this dude to get down on his knees, is that correct?
- 12 A. I didn't hear that. I assumed that that's what he
- 13 did.
- 14 Q. Well, you -- and then he turns and said something to
- 15 Shameen?
- 16 A. I don't know. He turned his head.
- 17 Q. Well, I thought you said you heard him say something?
- 18 A. I never did say that.
- 19 Q. Well, when did James Dillard say something that you
- 20 just said a few minutes ago was said by Dillard, either when
- 21 he's passing the car or when he had him out there?
- 22 A. I said, when he was on his knees, he turned his head
- 23 as if to say something.
- 24 Q. As if to say something, and at that time Shameen hit him?
- 25 A. Yes, sir.

MR. ROACH ON CROSS

1 Q. And at that time, you couldn't see James Dillard at
2 all, could you?

3 A. No.

4 Q. You actually couldn't see him when he was down on his
5 knees, could you?

6 A. Yes, sir.

7 Q. You could?

8 A. Yes, sir.

9 Q. Okay. Didn't you tell the police that he had his
10 hands behind the back of his head like this?

11 A. I think so.

12 Q. Well, when did he take his hands off the back of his
13 head, before he turned around and said something, or when?

14 A. When he turned his head.

15 Q. When he turned his head. All these guys are ratting
16 on you now, is that correct?

17 A. . .

18 Q. Is that what you're saying?

19 A. I guess so.

20 Q. Herbert Ford -- Herbie.

21 A. Yes, sir.

22 Q. Richardson? Sam Richardson?

23 A. I don't recall what he said.

24 Q. Joseph Jones?

25 A. He don't know what happened.

MR. ROACH ON CROSS

1 Q. He don't know what happened? He was with you in the
2 car though, is that correct, with you and Chuckie and
3 Shameen?

4 A. That's right.

5 Q. But you had no conversation at all about the car or
6 about how you got the car, or anything like that?

7 A. He might have asked how we got the car, but I told you
8 I would never tell him.

9 Q. Okay. So you didn't tell him anything, but he was
10 definitely in that car with you. Is that correct?

11 A. In the truck with Chuckie.

12 Q. Yes.

13 A. That he was driving, yes.

14 Q. And he saw that car that you had?

15 A. No, sir.

16 Q. Now, wait a minute. I thought you said that you guys
17 actually drove up to where the car was located at?

18 A. I never told you that.

19 Q. All right. Well, let's back up.

20 How far away from the car did you get when Chuckie
21 took you and Shameen and supposedly Joseph Jones back to
22 to the car?

23 A. . . .

24 Q. How close to the car did you get?

25 A. In walking distance.

MR. ROACH ON CROSS

- 1 Q. Well, how far is walking distance?
- 2 A. About thirty yards.
- 3 Q. Now, at the time Chuckie Simmons stopped the car, and
- 4 you guys got out, you were approximately thirty yards away
- 5 from the car, is that correct?
- 6 A. Pretty close.
- 7 Q. All right.
- 8 A. But it wasn't a straight road.
- 9 Q. I'm sorry?
- 10 A. It wasn't a straight road.
- 11 Q. And you couldn't see the car, is that correct?
- 12 A. No, it was dark at that time.
- 13 Q. And you are out on a dirt road, is that correct?
- 14 A. No, sir.
- 15 Q. A paved road?
- 16 A. Yes, sir.
- 17 Q. And it's dark out there?
- 18 A. Yes.
- 19 Q. No cars, no houses, nobody around, is that correct?
- 20 A. There are houses.
- 21 Q. Where were the houses located at?
- 22 A. . .
- 23 Q. Within close distance to where you guys were?
- 24 A. At that point, yes, sir.
- 25 Q. How close was the nearest house to you?

MR. ROACH ON CROSS

1 A. From me to Mr. Murdaugh.

2 Q. Well, was it behind you or in front of you?

3 A. On the side.

4 Q. So it was immediately to the side?

5 A. Yes, sir.

6 Q. So there were lights out there?

7 A. There wasn't really lights out there. I don't think that
8 road has at that point -- at that spot in the road, I
9 don't think it had lamp posts or whatever.

10 Q. But you said it was a curved road?

11 A. . .

12 Q. You couldn't see that car that you guys had hid back
13 up there in the cut so that nobody could find it?

14 A. It was -- it's two ways to get to that spot where we
15 hid the car.

16 Q. I thought you weren't familiar with the area or you
17 didn't live in that area?

18 A. I don't, but the first time we went one way and the
19 second time we went another way.

20 There's two ways to get there.

21 Q. So when those guys stopped in the middle of the road
22 to let you and Shameen out of the car, they can't see the
23 car that you have hidden?

24 A. No, sir.

25 Q. They know you've got this guy's car?

MR. ROACH ON CROSS

1 A. Yes, sir.

2 Q. Okay. Now, the Solicitor indicated that you basically
3 cut a deal with the State, is that correct?

4 A. Yes, sir.

5 Q. And what does murder carry? Do you know?

6 A. Would you repeat the question?

7 Q. Doesn't murder -- a murder charge carry life without
8 parole, natural life?

9 A. I think so.

10 Q. But you're not going to be required to plead to
11 murder? You're going to plead to manslaughter, is that
12 correct?

13 A. Yes, sir.

14 Q. And you are going to plead to armed robbery and kidnap-
15 ping, is that correct?

16 A. Yes.

17 Q. Because that's only right, because you had the gun and
18 you told the dude to get in the trunk and the whole nine
19 yards. Is that correct?

20 A. Yes, sir.

21 Q. So -- but you're not guilty of murder because you
22 didn't have anything to do with the shooting, did you?

23 A. In my eyes . .

24 SOLICITOR: If Your Honor please, that is an incorrect
25 statement of the law, sir, and I request counsel don't do

MR. ROACH ON CROSS

1 that again. He knows that's not the law.

2 MR. HOOD: What is that?

3 THE COURT: You can't . .

4 MR. HOOD: I agree with that.

5 THE COURT: I sustain the objection because you cer-
6 tainly are aware that the hand of one is the hand of all;
7 when two or more people join together to commit a crime . .

8 MR. HOOD: Absolutely.

9 THE COURT: Okay.

10 MR. HOOD: And I'm sure he's been over that many, many
11 times.

12 THE COURT: Do you have another question to ask him?

13 MR. HOOD: I have another question.

14 THE COURT: Ask another question.

15 BY MR. HOOD:

16 Q. So what you are going to receive in return for testify-
17 ing here today against Shameen Coker is a twenty-five year
18 sentence for all of these crimes. Is that correct?

19 A. That's right.

20 Q. And that is for involuntary manslaughter, is that cor-
21 rect? I mean, voluntary manslaughter?

22 A. Yes, sir.

23 Q. Okay. I don't have any further questions.

24 REDIRECT EXAMINATION

25 BY SOLICITOR:

MR. ROACH ON REDIRECT

1 Q. I need to ask you one or two questions, please, Mr.
2 Roach.

3 Did you know who Dee was?

4 A. I know him by Dee.

5 Q. Do you know who he was?

6 A. Yes, sir.

7 Q. Who was he?

8 A. Shameen's brother.

9 Q. Talk loud now, so these people can hear you.

10 A. Shameen's brother.

11 Q. Dee is Shameen's brother. Did you all talk to any-
12 body or see anybody, you or Shameen, from the time you all
13 left the killing until you got back to Shameen's house?

14 A. No, sir.

15 Q. Okay. So you all left the place where the killing took
16 place, and you went to Point South?

17 A. Yes, sir.

18 Q. Went to Pocotaligo?

19 A. Yes, sir.

20 Q. Went to Shameen's house?

21 A. Yes, sir.

22 Q. Went back and got the car?

23 A. Yes, sir.

24 Q. Did you see anybody at that time when you picked the
25 car up before you got back to Shameen's house?

MR. ROACH ON REDIRECT

- 1 A. . . .
- 2 Q. Or wherever you went?
- 3 A. I don't know.
- 4 Q. Well, at some point you got with Herbert Solomon Ford?
- 5 A. Oh, yes, sir.
- 6 Q. Once you got with him, were there other people around
- 7 him?
- 8 A. He was in the house.
- 9 Q. Did you see any other people at any time?
- 10 A. No one that I recognized.
- 11 Q. Didn't ask you that. If I had been there, you
- 12 wouldn't have recognized me, but did you see anybody?
- 13 A. We might have passed some people driving.
- 14 Q. Did you -- did either you or Shameen stop and talk with
- 15 anybody?
- 16 A. No, sir.
- 17 Q. All right. Thank you. I have no further questions.
- 18 MR. HOOD: I have no recross.
- 19 THE COURT: You may come down.
- 20 (Witness excused from stand)
- 21 THE COURT: Approach side bar, please.
- 22 (Conference at the bench between counsel and the Court
- 23 off the record)
- 24 BAILIFF: Judge, one of the jurors requests a break.
- 25 THE COURT: Okay. You all may retire to the jury

1 room. We'll take a fifteen minute break at this time.

2 (Jury excused from Courtroom at 4:25 P.M.)

3 THE COURT: You want to see if you've got another witness
4 to put up?

5 SOLICITOR: Yes, sir.

6 THE COURT: We'll stand at ease for a few minutes.

7 (Court stood in recess until 4:36 P.M.)

8 SOLICITOR: If Your Honor please, the Exhibit that was
9 put in, the shirt which is State's Exhibit 4, it does have
10 some blood on it.

11 Do you have any objection if I get a plastic bag to
12 put it in, a transparent plastic bag?

13 THE COURT: I would think that would be a sensible
14 thing, and I was going to instruct the jury to make sure
15 they don't touch that.

16 MR. HOOD: Yes, sir.

17 THE COURT: Then we can put another tag on the plastic
18 bag, but try to get something kind of large so they can see
19 it.

20 You can do it tomorrow. Just bring a plastic bag up
21 here. You don't have to do it now.

22 You can take it and bring it back tomorrow in some
23 kind of plastic larger bag that you can see through.
24 Okay.

25 Solicitor, as far as scheduling, I understand your next

1 witness is not going to be very short and maybe we'd be
2 better off to start tomorrow?

3 SOLICITOR: Yes, sir.

4 MR. HOOD: No objection.

5 THE COURT: Okay, bring the jury.

6 SOLICITOR: Are we going to start back at nine thirty?

7 THE COURT: Nine thirty.

8 (Jury returned to the Courtroom at 4:36 P.M.)

9 THE COURT: Mr. Foreman and members of the jury, I was
10 talking with the attorneys, and the next witness is not
11 going to be a real short one, so we're going to stop for
12 today.

13 I caution you again, don't discuss the case with any-
14 one and do not allow anyone to discuss the case with you.

15 It is very important that you -- as I told you earlier,
16 and I've already been over that.

17 I was advised, I believe, by Mr. Martiniz, that we
18 have a husband and wife on the jury, and that's the first
19 time that's ever happened in my experience.

20 Anyway, I want to take this opportunity to address
21 that specifically. You should not discuss the case because
22 it is very important -- you know, if you take sides on some-
23 thing while a case is going, then you sort of have to undo
24 that, so it's important each of you sit and listen, and I
25 am sure you will, because everybody knows how important it is.

1 Wait until the end of the case and when you are told
2 to begin your deliberations.

3 I want to make sure you understand, as I told you
4 earlier, disregard radio, TV, or newspaper reports of this
5 case.

6 Do not let yourself be exposed to any of those issues,
7 and we will resume the case at nine thirty in the morning.

8 I hope you all have a nice evening, and we'll start back
9 in the morning at nine thirty.

10 Good night.

11 (Jury excused from Courtroom for the evening)

12 THE COURT: I was just told that about that -- I was
13 told about it actually the last time but I forgot about it.

14 I don't know any thing else I need to address, about
15 the husband and wife being on the jury.

16 MR. HOOD: I think you handled it perfectly.

17 SOLICITOR: I have no objection.

18 THE COURT: I think they go by different names in
19 this particular case.

20 MR. HOOD: That's correct. I knew about it. They
21 identified each other back there in the back.

22 THE COURT: Before I came in here, during roll call?

23 MR. HOOD: Correct.

24 THE COURT: So everybody was aware of it, and -- very
25 good. I did not know that but we all know it now.

1 So everybody knew about it when the jury was selected?
2 MR. HOOD: Yes, sir.
3 THE COURT: If nothing else, I'll see you in the morn-
4 ing then at nine thirty.
5 Court is adjourned until nine thirty in the morning.
6 (Court stood in recess until March 11, 2003)
7 (Other business taken up by the Court until 9:50 A.M.)
8 THE COURT: Bring the jury.
9 (Jury returned to Courtroom)
10 THE COURT: Good morning, ladies and gentlemen. Okay,
11 we'll continue. I hope everybody had a nice evening, and
12 we will continue with the case.
13 Solicitor, call your next witness.
14 SOLICITOR: Call Alice Morris.
15 ALICE MORRIS, being duly sworn,
16 testified as follows:
17 CLERK: Please be seated and state your name and
18 spell it for the Court Reporter.
19 WITNESS: Alice Morris -- A L I C E M O R R I S.
20 DIRECT EXAMINATION
21 BY SOLICITOR:
22 Q. Ms. Morris, how you doing this morning?
23 A. Fine, sir.
24 Q. Ms. Morris, where do you work?
25 A. Now?

MS. MORRIS ON DIRECT

1 Q. Yes, maam.

2 A. Dollar General in Walterboro, South Carolina.

3 Q. Prior to that, specifically on May 19th, the year
4 2000, where were you working?

5 A. I was working in Yemassee at Chevron Station.

6 Q. Okay.

7 A. Second shift.

8 Q. As you are going from the railroad tracks in downtown
9 Yemassee, toward Varnville or Hampton, where would the
10 Chevron Station be located?

11 A. Just before the Interstate. It would be on the left
12 hand side, as you're going to the Interstate.

13 Q. Okay, and what was your position at the Chevron Station
14 on that day?

15 A. Cashier.

16 Q. And were you working that afternoon?

17 A. Yes, sir.

18 Q. Okay, in that store do you have a video surveillance
19 camera?

20 A. Yes, sir.

21 Q. And was it operating?

22 A. Yes, sir.

23 Q. Do you know James Dillard, Jr., or did you know him?

24 A. Yes, sir.

25 Q. How did you know him?

MS. MORRIS ON DIRECT

1 A. Beer Man. He was one of our vendors.

2 Q. Okay. So he worked for the Budweiser people?

3 A. Budweiser. Yes, sir.

4 Q. Did you see him that day?

5 A. Yes, sir.

6 Q. And about what time was it?

7 A. I would say around six, something like that. Maybe
8 -- I've seen the video and the video has the time on it, the
9 date and what they purchased.

10 Q. And I show you an item and ask you if you can identify
11 that?

12 A. Yes, sir. It's one of the Easy Shop's video tapes.
13 We have three per shift. They are dated by days, Monday,
14 Tuesday, Wednesday, Thursday, Friday, and we record over
15 them a week later.

16 Q. Okay, and is that a videotape of while James Dillard
17 was in the store that day?

18 A. Yes, sir. It says second shift, which is what I worked,
19 yes, sir.

20 SOLICITOR: If Your Honor please, I would offer this
21 as an exhibit.

22 MR. HOOD: No objection.

23 THE COURT: Okay, it's received in evidence without ob-
24 jection.

25 (Videotape entered in evidence without objection as

MS. MORRIS ON DIRECT

1 State's Exhibit Number 5)

2 SOLICITOR: And with the Court's permission, I would
3 like to play it.

4 THE COURT: Yes, sir.

5 (Videotape being shown to jury)

6 BY SOLICITOR:

7 Q. I'll put it as close to the jury as I can.

8 THE COURT: Don't get it too close.

9 Q. Ms. Morris, if you will come right over here and you
10 need to get where you will not be between -- back up just a
11 little bit.

12 Who is that there?

13 A. That is me.

14 Q. And the fellow on the other side?

15 A. A customer.

16 Q. Okay, and just explain to the jury as we go along what's
17 happening, and talk loud enough so that everyone can hear
18 you.

19 A. You can see the date and time, and in a little bit
20 you will see what's rung up.

21 I'm heading toward the back room right now, and this is
22 a split screen. This is the forward section and this is
23 the back.

24 Q. And what time is it?

25 A. It's six twenty-seven.

MS. MORRIS ON DIRECT

1 Q. In the afternoon?

2 A. In the evening.

3 Q. Okay.

4 A. That's Beer Man. Mr. Dillard. That alarm is telling
5 me someone's pumping gas. Someone is coming in the door.

6 Q. Who is that?

7 A. A customer.

8 Q. You can see what was rung up, how much it is, and the
9 date.

10 Q. And that gentleman is . .

11 A. Beer Man, and he has Michelob Beer and orange juice.

12 (Sound of persons speaking to each other on tape)

13 Q. Was that the last time you saw him?

14 A. Yes, sir.

15 Q. Okay.

16 A. (Witness returning to stand)

17 Q. Ms. Morris, I think the film showed the last time
18 that Mr. Dillard was in that store was what time?

19 A. Six thirty-two.

20 Q. Okay. Did you ever see him after that?

21 A. No, sir.

22 Q. And on what basis did he come into your store?

23 A. I'm a manager also. I was just filling in as a
24 cashier for her so she could go to church -- some church
25 thing.

MS. MORRIS ON DIRECT

1 I also worked there as a manager when she needed some
2 time off, so I also had taken him as a vendor to check in
3 the beer.

4 Q. How often would he come in that store?

5 A. Twice a week for beer.

6 Q. Can you describe to the ladies and gentlemen on the
7 jury something about James Dillard?

8 A. Very quiet. Very -- a very quiet man. Some vendors
9 are real boisterous, but he was not. He was kind of shy,
10 kind of quiet.

11 Q. What about his size?

12 A. He was a very big man, very tall man.

13 Q. Was he tall as I am?

14 A. Every bit, if not taller.

15 Q. And this was on what day?

16 A. Friday.

17 Q. May 19th of 2000?

18 A. Of 2000.

19 Q. Thank you, maam. Answer any questions Mr. Hood may
20 have.

21 CROSS EXAMINATION

22 BY MR. HOOD:

23 Q. Ms. Morris, how long had you been working before James
24 Dillard arrived?

25 A. Since two o'clock.

MS. MORRIS ON CROSS

1 Q. Two o'clock?

2 A. Uh hm.

3 Q. Okay, and the station that you worked out then, did
4 you have a full view of the outside parking area?

5 A. You have a full view of where the gas pumps are but not
6 around the back of the building or the side of the building
7 there.

8 There's like a little window there behind where I was
9 standing that you could see some, but not all.

10 Q. And I notice from the film there were quiet a few peo-
11 ple coming in and out of there, is that correct?

12 A. Yes, sir.

13 Q. And I believe also on the film Mr. Dillard spoke to one
14 of the individuals and said something like, what's up, son, or
15 something like that.

16 Is that correct?

17 A. I don't recollect that, sir.

18 Q. On the film, when James Dillard comes up toward the
19 counter, he speaks apparently to somebody. Did you hear
20 that?

21 A. No, sir.

22 Q. Okay. Did anybody from the Sheriff's Department or
23 anybody else ever come to you and have you look at that
24 film in its entirety, to have you see if you could identify
25 any of those people who arrived just before James Dillard

1 came in the store, and the people who were in the store who
2 exited the store after James Dillard left?

3 A. No, sir.

4 Q. So nobody ever asked you about who those people were?

5 A. No, sir.

6 Q. And it has been quite some time since this occurred,
7 is that correct?

8 A. Yes, sir.

9 Q. Okay. Now, did you see anybody outside that looked
10 strange or unusual from your view that you had from the
11 counter?

12 A. All day or just around that time?

13 Q. Around that time?

14 A. If you noticed, I was in the back bagging ice. I really
15 wasn't paying attention to who was on the outside, just
16 who was coming in and who wanted gas.

17 Q. And when somebody wants gas, I noticed there was a
18 sound.

19 A. Uh hm.

20 Q. Do you then look out to see if there's somebody there?

21 A. Yes, sir.

22 Q. And so you did on occasion look out to see if there
23 was anybody in the area?

24 A. Yes, sir.

25 Q. And how long had you been working there at that particular

1 location?

2 A. At that --on that day?

3 Q. No, the entire period of time.

4 A. I've worked for Bradley Moore for fifteen years. Off and
5 on, I've been there maybe once a week.

6 Q. A lot of people who patronize this particular Chevron
7 Station are local people?

8 A. Yes, sir.

9 Q. And over that period of time you've come to know quite
10 a few people who live in that area?

11 A. Yes, sir.

12 Q. But nobody ever came to you and asked you to look at
13 that film immediately after this to determine who these peo-
14 ple were that were coming in to get ice and speaking to
15 you and walking out?

16 A. Someone did come in and ask me if I had remembered
17 the Beer Man. There are two beer men on that videotape,
18 and I do remember that, because one of them was Mr. Dillard
19 who was real tall, and the other one is a shorter man.

20 So . . .

21 Q. Was he in the store at the same time?

22 A. No, sir.

23 Q. As Mr. Dillard?

24 A. No. The other man was way after dark.

25 Q. Way after dark?

MS. MORRIS ON CROSS

1 A. Uh hm.

2 Q. Okay. Now, on that film where it said the time and
3 this, that and the other, was it light outside?

4 A. Yes, sir.

5 Q. Do you recall approximately what time of the evening
6 it was dark?

7 A. Around seven thirty, quarter to eight.

8 Q. But did you watch James Dillard as he exited the
9 store?

10 A. You mean, when he left the building or when he left
11 the parking lot?

12 Q. When he left where -- he was standing in front of
13 you and went out the door?

14 A. Uh hm.

15 Q. Did you see him get in a car?

16 A. No, sir.

17 Q. Did you see his car?

18 A. It was on this side of the building and was parked --
19 their parking is kind of peculiar. If you are a local
20 person, a lot of local people park on this side where it is
21 just that window.

22 If you are a tourist or non-local, you usually drive
23 straight in, and there is only four parking spots in the
24 front, and there's more on the side.

25 You can see the first two cars, but you can't see after

MS. MORRIS ON CROSS

1 that.

2 Q. Did you see him get into his car?

3 A. No, sir.

4 Q. I don't have any further questions.

5 SOLICITOR: You may come down, Ms. Morris. May Ms. Morris
6 be excused?

7 THE COURT: Without objection, I assume.

8 MR. HOOD: Yes.

9 (Witness excused from Courtroom)

10 SOLICITOR: Call Ronnie Manigault.

11 RONNIE MANIGAULT, being duly
12 sworn, testified as follows:

13 CLERK: Be seated, and state your name and spell it
14 for the Court Reporter.

15 WITNESS: It's Ronnie Manigault. R O N N I E
16 M A N I G A U L T.

17 DIRECT EXAMINATION

18 BY SOLICITOR:

19 Q. Ronnie, where do you live?

20 A. Yemassee, South Carolina.

21 Q. Okay. Did you know James Dillard?

22 A. Yes.

23 Q. How did you know him?

24 A. Brother in law.

25 Q. So you married his . . .

1 A. Sister.

2 Q. . . sister.

3 A. Aretha.

4 Q. Aretha -- okay, sir, and how long have you known James?

5 A. Since '94.

6 Q. Since '94?

7 A. Yes.

8 Q. So you had known him approximately six years at the
9 time of his death?

10 A. Yes, sir.

11 Q. Okay, sir. Can you tell me a little bit about James
12 Dillard?

13 A. James had three kids and a wife. He was about six
14 nine, two hundred and seventy pounds. A jokey fellow, real
15 fun.

16 Q. Had he ever been in any trouble?

17 A. No, sir, never.

18 Q. Okay, sir. Did you have an occasion to see him on May
19 19th?

20 A. Yes, after he got off from work he came over to my
21 house and we sit down and talk, and I ask him if he had want
22 to go to the store and get some batteries and that was around
23 four thirty to five thirty.

24 We went to the grocery store to get the batteries,
25 and I met a friend of mine up there, so we started talking,

1 and he wanted some drums from my job.

2 So I asked James if he would drive the car back home
3 for me because I was going . .

4 Q. Whose car was it, sir?

5 A. It was my car. Because I was getting ready to go to
6 my job, and James said okay.

7 Q. I show you three pictures that have been marked State's
8 Exhibit Number 1, 2 and 3, and ask you if you can identify
9 those pictures, sir?

10 A. Yes, a Grand Am, '93.

11 Q. Is that the one you and James were in that day?

12 A. Yes.

13 Q. Okay, sir, and go ahead. You said you talked to a
14 friend of yours?

15 A. Yes.

16 Q. And what happened then?

17 A. As we was talking, James was talking and laughing with
18 us, and I asked James if he would drive the car back home
19 because it would be a good while before I get back home,
20 and he said, okay, and I told him to get the batteries and
21 put it in the remote for the satellite player until I get
22 back home.

23 Q. Okay, sir. Now, where did you live?

24 A. Baytree.

25 Q. Okay, sir. Where is that?

MR. MANIGAULT ON DIRECT

1 A. It's between . .

2 Q. You've got Simon Jinx's store where you all were at

3 . .

4 A. Yes.

5 Q. . . and the Chevron Station. Tell these ladies and
6 gentlemen where your house is in relation to those two
7 places?

8 A. It is between Jinx's grocery and Chevron. It's in the
9 middle.

10 Q. Okay.

11 A. If you would leave the grocery, you would have to go
12 back toward the Chevron to get to my house.

13 Q. Okay. And can you tell the ladies and gentlemen on
14 the jury what he was wearing that day?

15 A. A white and grey Budweiser shirt, charcoal grey shorts
16 and black Budweiser sneakers.

17 Q. Did he have a cap on?

18 A. Yes, he always wear a cap because he had like knots back
19 of his head, so he kept a cap on.

20 Q. I show you State's Exhibit Number 4, and ask if you
21 recognize this, sir?

22 A. Yes, sir, the Budweiser shirt he had on.

23 Q. This is the shirt he had on that day?

24 A. Yes.

25 Q. And is there a name tag on that shirt?

MR. MANIGAULT ON DIRECT

1 A. Yes.

2 Q. And what does it say?

3 A. James Dillard.

4 Q. All right. Pretty big shirt, isn't it?

5 A. Yes. He was two hundred and seventy pounds.

6 Q. Okay, sir, and what time was it that you last saw
7 James?

8 A. Between five thirty and six.

9 Q. Okay, sir. Was anybody with you other than you at
10 that time?

11 A. No. Just James.

12 Q. Okay. Showing you State's Exhibits Number 1, 2 and 3,
13 I ask you if that is the condition that the car was in
14 on the date that you last saw it?

15 A. No, sir.

16 Q. What is the difference?

17 A. The hub cap on the passenger back side is missing. On
18 the front of the car was a license plate with a red rose and
19 it had a hood mask on the hood.

20 Q. And are those on the car when it is depicted here?

21 A. No, it's not on the car.

22 Q. Okay, sir. Thank you, sir. Answer any questions that Mr
23 Hood may have for you.

24 CROSS EXAMINATION

25 BY MR. HOOD:

1 Q. Just a couple of questions to clarify something. On
2 this particular day, James Dillard was not married? Isn't
3 that correct?

4 A. He always was married. He came down from St. Louis
5 to get a house, to bring his three kids and his wife down
6 here.

7 Q. But they had not arrived down here?

8 A. No, they was coming in July. He was purchasing a
9 house in Yemassee.

10 Q. Thank you.

11 SOLICITOR: You may come down.

12 (Witness excused from stand)

13 SOLICITOR: Call J. B. Kinsey.

14 J. B. KINSEY, JR., being duly
15 sworn, testified as follows:

16 CLERK: Please be seated and state your name for the
17 record, please.

18 WITNESS: My name is James Benjamin Kinsey, Jr.

19 DIRECT EXAMINATION

20 BY SOLICITOR:

21 Q. Mr. Kinsey, by whom are you employed?

22 A. South Carolina Department of Natural Resources.

23 Q. Okay, and how long have you been with them?

24 A. I was hired April 2nd of 1986.

25 Q. Okay, sir, and as a part of -- what are your duties

MR. KINSEY ON DIRECT

1 with the . .

2 A. Besides regular game warden, and I assume everybody knows
3 what that is, I am a member of . .

4 Q. A conservation officer now, though, aren't you?

5 A. I'm a game warden.

6 Q. Okay.

7 A. I'm a member of our AIR Team, Aquatics Investigation and
8 Recovery.

9 Q. What does the AIR Team do?

10 A. We dive, scuba dive with scuba gear, and we work boat-
11 ing accidents. We recover stolen goods, murder weapons,
12 drowning victims, and I've been doing that since July of
13 '89.

14 Q. Okay, sir. I ask you whether or not on May 20th of
15 the year 2000, you were employed with the Wildlife Depart-
16 ment?

17 A. Yes, sir.

18 Q. Okay, sir, and did you have a call to go anywhere to
19 do anything?

20 A. Yes, sir. I received a call from Sergeant Johnny Spell
21 that possibly a boater had bumped into an object that they
22 thought may have been an automobile at the Public Boat Land-
23 ing in Colleton County on the Cumbee River.

24 Q. Okay, sir, and did you go there?

25 A. Yes, sir, I did.

MR. KINSEY ON DIRECT

1 Q. And that is the Public Landing in Colleton County?

2 A. Yes.

3 Q. Okay, sir, and where is Public Landing?

4 A. It is located just before you get to Yemassee on the
5 Cumbee River.

6 Q. Okay.

7 A. Off of Highway 21.

8 Q. North, southeast or west of Yemassee?

9 A. That would be north of Yemassee.

10 Q. Okay, sir, and what did you do when you got there?

11 A. When I got there, of course, I suited up in my scuba
12 gear and went down and dove on the vehicle. Then

13 I got the tag number off the back. I surfaced and I gave
14 the tag number to Officer Spell who was standing on the
15 hill.

16 Q. Okay, sir.

17 A. I then went back down and went around the car. I
18 saw on the driver's side the window was down. I noticed
19 the keys in it, and it appeared to be in gear.

20 I did not see anything -- at this time, I'm looking
21 for possibly a body. I did not see any body or victim in
22 the vehicle, and then it's been my experience that if there
23 is going to be anything around the vehicle, whether there's
24 been a murder or a suicide, it's going to be within like a
25 thirty foot radius of the vehicle.

MR. KINSEY ON DIRECT

1 So I did a sweep approximately thirty feet around the
2 vehicle.

3 The visability was about six feet.

4 Q. And did you find anything other than the vehicle?

5 A. I didn't find anything other than the vehicle.

6 Q. Okay, sir, and did you come out then onto the shore?

7 A. I came out onto the shore at that time, yes.

8 Q. Was the car pulled out by a wrecker?

9 A. Yes. I went back in and attached the cable to the
10 rear of the vehicle on the driver's side, and the tow truck
11 pulled the vehicle out.

12 Q. Was the vehicle entered into in any way?

13 A. No, sir.

14 Q. I show you State's Exhibits 1, 2 and 3, and ask you if
15 you can identify these?

16 A. Yes, sir. That appears to be the vehicle that we re-
17 moved from the Cumbee River.

18 Q. Okay, sir. Thank you, sir.

19 Thank you, Mr. Kinsey. Answer any questions that Mr.
20 Hood may have for you.

21 MR. HOOD: I have no questions.

22 SOLICITOR: You may come down. May Mr. Kinsey be ex-
23 cused?

24 THE COURT: Without objection, the witness is excused.

25 (Witness excused from Courtroom)

1 SOLICITOR: Is Mr. Al Stuckey here? Kent Young.

2 KENT YOUNG, being duly sworn,
3 testified as follows:

4 CLERK: Please be seated and state your name for the
5 Court, please.

6 WITNESS: Kent Young.

7 DIRECT EXAMINATION

8 BY MR. YOUNG:

9 Q. Mr. Young, where do you live, sir?

10 A. Near Pocotaligo.

11 Q. And what do you do for a living?

12 A. I manage Buckfield Plantation.

13 Q. Okay, sir. On the 25th day of May of the year 2000,
14 did you have occasion to be anywhere on Buckfield Planta-
15 tion?

16 A. Yes, sir.

17 Q. And where were you?

18 A. I was checking some of the property, some of our
19 fields, to see how wet they were. Also, at the McPherson
20 ville Road.

21 Q. Okay, sir, and what did you observe that day?

22 A. As I drove up to the gate, we have a recess entry
23 there. I drove up, had to stop; got out to open up the gate,
24 and noticed this foul smell and a lot of . .

25 Q. I'm sorry. I couldn't understand what you said.

MR. YOUNG ON DIRECT

1 A. I said, as I drove up to the gate and got out to open
2 the gate, I noticed a foul smell and buzzards in the area
3 of the woods right behind me.

4 Q. Okay, sir.

5 A. And I walked back there and looked through the bushes,
6 and I noticed a body. I expected to find a deer that had
7 been hit along the highway.

8 Q. Did you go over to the body?

9 A. No, I never went past the bushes.

10 Q. Okay, sir, and what did you then do?

11 A. I went back to the house and called nine one one; I
12 met a first responder. This was Sheldon Fire Department.
13 I met them at the Pocotaligo curb, and led them up to the
14 location.

15 Q. And did they tape off that area?

16 A. Yes.

17 Q. And did anybody go in it until Officer Brigman and
18 Jeff Purdy get there?

19 A. No, sir.

20 Q. Okay, sir. I ask you to look at this photograph and
21 tell me whether or not you can identify it?

22 A. That is the entry and a picture out toward McPherson-
23 ville Road.

24 Q. Okay.

25 SOLICITOR: If Your Honor please, I would offer this

MR. YOUNG ON DIRECT

1 as an exhibit.

2 MR. HOOD: No objection.

3 (Photograph entered in evidence without objection as
4 State's Exhibit 6)

5 SOLICITOR: May I get him to come down.

6 BY SOLICITOR:

7 Q. If you will come down, and may I do this on both ends
8 of the jury?

9 A. (Leaving stand and approaching jury box)

10 Q. Mr. Young, if you will, orient the jurors as to what
11 we are -- what you are talking about here?

12 A. This is the gate and . .

13 THE COURT: Sir, would you speak loud enough -- get to
14 the microphone so the Court Reporter can hear you and every-
15 body else, of course.

16 Q. Speak up.

17 A. This is the cable gate, and this must be my truck
18 parked here.

19 You're actually standing here in the picture looking
20 back toward the McPhersonville Road. This is a private dirt
21 road.

22 Q. Okay, sir. McPhersonville Road would be where all these
23 people are?

24 A. Where everybody is standing, yes.

25 Q. Can you tell me where the body was in relation to that

MR. YOUNG ON DIRECT

1 road?

2 A. It was just off to the right hand side of where every-
3 body is standing.

4 Q. As you are facing the picture, to the right -- it would
5 be in this area?

6 A. It would be over back here, kind of behind my truck.

7 Q. Okay, sir. So over in this area?

8 A. Yes, sir.

9 Q. Go ahead and tell them the same thing, sir.

10 A. This is the cable gate, and you can see the line
11 across there. My truck. People are standing right there
12 near the McPhersonville Road, and the body would be located
13 just off to the right hand side of the picture. Kind of
14 behind that truck.

15 Q. So somewhere in this area?

16 A. Yeah, . . .

17 Q. Near where my finger is?

18 A. . . but right out near the road.

19 Q. Thank you, sir. You can take the stand.

20 A. (Witness resuming witness stand)

21 Q. Thank you, sir. Answer any questions Mr. Hood may have,
22 please.

23 CROSS EXAMINATION

24 BY MR. HOOD:

25 Q. Mr. Young, you indicated you saw buzzards and smelled

MR. YOUNG ON CROSS

1 something that smelled foul, is that correct?

2 A. Yes, sir.

3 Q. And at the time you first knew where the location of
4 what you thought was a deer, could you see that particular
5 person or . . .

6 A. You actually had to bend over to look underneath the
7 shrubbery a little bit, to see.

8 Q. So if you were standing -- how far would you say you
9 were from the person before you recognized that it was any-
10 thing?

11 A. Thirty or forty feet.

12 Q. So you could see thirty or forty feet into this area?

13 A. Uh hm.

14 Q. But you had to stoop down and look through the bushes
15 or something?

16 A. Correct.

17 Q. Okay. When you say thirty or forty feet, let me know
18 when I get thirty or forty feet?

19 A. Walking back, you're going to be back close to the
20 deputy there.

21 Q. About here?

22 A. Yes, sir. Maybe just a tad further.

23 Q. Okay. But you couldn't see clearly into there without
24 maneuvering around?

25 A. Yes, sir.

MR. YOUNG ON CROSS.

1 Q. Thank you.

2 SOLICITOR: Thank you, sir. You may come down.

3 May Mr. Young be excused.

4 MR. HOOD: Without objection.

5 THE COURT: Without objection.

6 (Witness excused from Courtroom)

7 SOLICITOR: Call Al Stuckey.

8 AL STUCKEY, being duly sworn,
9 testified as follows:

10 CLERK: Please be seated and state your full name and
11 spell it for the Reporter, please.

12 WITNESS: Al Stuckey -- S T U C K E Y.

13 DIRECT EXAMINATION

14 BY SOLICITOR:

15 Q. Mr. Stuckey, by whom are you employed?

16 A. I'm employed with the South Carolina Law Enforcement
17 Division, known as SLED.

18 Q. And how long have you been with them?

19 A. Approximately six years now.

20 Q. Okay, sir. What is your job with SLED?

21 A. I am employed as a Special Agent assigned to the
22 latent print crime scene department.

23 Q. Okay, sir, and what does the latent print crime scene
24 department encompass?

25 A. Basically we have two job descriptions. One is a field

MR. STUCKEY ON DIRECT

1 function, in that we respond to crime scenes throughout the
2 State to process crime scenes for forensic evidence, to
3 assist local, state and federal authorities with investi-
4 gations of crimes.

5 Our second job duty is a lab function, in that we pro-
6 cess items for impression evidence, such as latent finger-
7 prints, footwear, tire tread and blood splatter interpreta-
8 tions.

9 Beyond that, we do crime scene reconstruction, from pic-
10 tures and things like that when they are brought in to the
11 lab from an agency that we assist.

12 Q. What did you do to make you able to do those jobs,
13 sir?

14 A. Basically in the latent print crime scene department,
15 we go through a two year training program under a ten year
16 Court-qualified examiner.

17 Beyond that, we attend numerous classes with the South
18 Carolina Criminal Justice Academy, and the International
19 Association for Identification, which is a forensic body
20 that oversees latent fingerprint evidence and other impres-
21 sion evidence.

22 Q. Did you do that?

23 A. I have been through that, yes, sir.

24 Q. Now, I ask you whether or not on the 25th or 26th of
25 May, you had an occasioan to make an examination of the car

MR. STUCKEY ON DIRECT

1 depicted in State's Exhibits 1, 2 and 3?

2 A. Actually it was on May 23rd of 2000.

3 Q. May 23rd. Okay, sir. And where did you do that?

4 A. I processed the vehicle in our SLED vehicle processing
5 area at the forensic services laboratory in Columbia, South
6 Carolina.

7 Q. And did Deputy Sheriff Glenn Frasier come up with that
8 vehicle?

9 A. Yes, sir, he did.

10 Q. Okay, sir. Now, can you tell the ladies and gentlemen
11 what you observed when you -- what you did to the car and
12 what you found?

13 A. Well, we observed that the car was wet when we got it.
14 There was standing water in the passenger compartment of
15 the car.

16 So I let it dry out for a little while before I actually
17 did the processing.

18 Beyond that, I had a technician from our evidence
19 processing area process the vehicle for trace evidence and
20 DNA evidence.

21 After that, I processed the vehicle for latent finger-
22 prints.

23 Q. Okay, sir, and did you find any fingerprints?

24 A. Yes, sir, I did.

25 Q. And how many did you find?

MR. STUCKEY ON DIRECT

1 A. I made six latent lifts off of the vehicle itself,
2 and then I collected numerous items from the vehicle.

3 From those items, . .

4 Q. Let's stay with the fingerprints for just a minute.

5 A. Yes, sir.

6 Q. Did you examine just a piece of the vehicle, or did you
7 examine the entire vehicle for fingerprints?

8 A. The entire vehicle.

9 Q. Okay, sir, and you found six?

10 A. Yes, sir. I made six latent lifts off of the ve-
11 hicle.

12 Q. Okay, sir. Were those latent prints capable of being
13 compared to anything?

14 A. Two of them were, yes, sir.

15 Q. Okay, sir, and the other four were not?

16 A. No.

17 Q. How come you couldn't do those?

18 A. They were of insufficient value for identification.

19 Q. Okay, sir. Did you test those against a number of
20 other people?

21 A. Yes, sir, I did.

22 Q. Or compare them with known prints of a bunch of peo-
23 ple?

24 A. Yes, sir, I did.

25 Q. And did you match anybody?

MR. STUCKEY ON DIRECT

1 A. No, sir, I have not.

2 Q. Okay. Now, did you also go through the various parts
3 of that vehicle?

4 A. Yes, sir, I did.

5 Q. And did you look in the trunk area?

6 A. Yes, sir, I did.

7 Q. And I ask you, did you find anything there?

8 A. Well, we found numerous items within the trunk of the
9 vehicle, including a wallet. It was contained inside that
10 trunk.

11 Q. Okay, sir. I show you an item and ask you if you can
12 identify that?

13 A. Yes, sir. That is a photograph of the trunk of the
14 car we processed and the items that were contained therein.

15 SOLICITOR: If Your Honor please, I would offer this
16 as an exhibit.

17 MR. HOOD: No objection.

18 THE COURT: All right.

19 (Photograph entered in evidence without objection as
20 State's Exhibit 7)

21 BY SOLICITOR:

22 Q. You say State's Exhibit Number 7 is a picture of what?

23 A. It's a picture of the trunk compartment of the Pontiac
24 Grand Am that I processed.

25 Q. Okay, sir.

MR. STUCKEY ON DIRECT

1 A. This is a photograph of a blue plastic bag and the
2 wallet that was contained within that bag.

3 Q. What number is that?

4 A. This is State's Exhibit 8.

5 SOLICITOR: If Your Honor please, I would offer that
6 as an exhibit.

7 MR. HOOD: No objection.

8 (Photograph of blue plastic bag and wallet admitted in
9 evidence without objection as State's Exhibit 8)

10 BY SOLICITOR:

11 Q. And that contains the wallet -- does that show the
12 wallet in that blue bag?

13 A. Yes, sir.

14 Q. Okay, sir. I show you another photograph and ask you
15 to identify it.

16 A. This is State's Exhibit Number 9, and these are the
17 items that were contained within that wallet.

18 Q. Okay, sir.

19 SOLICITOR: If Your Honor please, I would offer this
20 as an exhibit.

21 MR. HOOD: No objection.

22 (Photograph of items from wallet admitted in evidence
23 as State's Exhibit 9 without objection)

24 BY SOLICITOR:

25 Q. I show you one last photograph, sir.

MR. STUCKEY ON DIRECT

1 A. State's Exhibit Number 10 is a photograph of the --
2 of a South Carolina identification card, and it bore the
3 name James Dillard, Jr.

4 SOLICITOR: Offer that as an exhibit.

5 MR. HOOD: No objection.

6 THE COURT: State's Exhibit 10.

7 (Photo of ID card entered in evidence without objection
8 as State's Exhibit 10)

9 BY SOLICITOR:

10 Q. Let me ask you a question, and I don't know much about
11 what I'm talking about, but does the fact that the car was
12 under water affect the ability to lift latent prints?

13 A. Yes. It would hinder the ability to life latent
14 fingerprints by a great deal.

15 Q. The two prints that you found that were identifiable
16 but you couldn't find anybody to compare them to, where were
17 they located?

18 A. I believe one was from the outside driver's side win-
19 dow, and the other was from the driver's side outside re-
20 window.

21 Q. Is there any way you can tell when those prints were
22 put there, before it went in the water, after it went in
23 the water?

24 A. No, sir, no way to tell.

25 Q. Thank you, sir. Answer any questions Mr. Hood may

MR. STUCKEY ON DIRECT

1 have for you.

2 CROSS EXAMINATION

3 BY MR. HOOD:

4 Q. I only have a few. You found those prints on the 23rd
5 of May, 2000?

6 A. That's correct.

7 Q. And did you notify the local law enforcement people
8 who were investigating the crime that you had lifted prints
9 from the car?

10 A. I notified them via my official report that went to
11 the investigator.

12 Q. Okay, and when did you receive any known prints of in-
13 dividuals suspected of being involved in this crime to match
14 against those prints that you had -- all six and the -- I
15 guess the two?

16 A. I received two cards on June 12th of 2000. Beyond
17 that, I received two more cards on June 14th, 2000.

18 On June 15th of 2000 -- August 28th of 2002 -- August
19 29th of 2002.

20 I did a comparison on August 7th of 2002.

21 Q. Now, did you ever examine the prints of Shameen Coker
22 against the prints that you have there with you?

23 A. Yes, sir, I did.

24 Q. And when did you examine those prints?

25 A. On August 7th, 2002.

MR. STUCKEY ON CROSS

1 Q. Of 2002 -- August 7th, 2002.

2 And those prints did not match the prints of Shameen
3 Coker?

4 A. No, sir, they did not.

5 Q. Okay, thank you.

6 REDIRECT EXAMINATION

7 BY SOLICITOR:

8 Q. Did you compare the prints, known prints, of A. J.
9 Roach to the two prints you have?

10 A. Yes, sir.

11 Q. Did -- what did the comparison show?

12 A. They were negative also.

13 Q. I have no further questions.

14 MR. HOOD: I have one other question.

15 RECROSS EXAMINATION

16 BY MR. HOOD:

17 Q. When did you examine the prints of A. J. Roach against
18 the prints you have?

19 A. August 7th, 2002.

20 Q. Thank you.

21 SOLICITOR: You may come down. May Mr. Stuckey be ex-
22 cused?

23 MR. HOOD: No objection.

24 (Witness excused from Courtroom)

25 SOLICITOR: Andre Brigman.

1 ANDRE BRIGMAN, being duly sworn,
2 testified as follows:

3 CLERK: Please be seated. State your name and spell
4 it for the Reporter.

5 WITNESS: Andre Brigman, B R I G M A N.

6 DIRECT EXAMINATION

7 BY SOLICITOR:

8 Q. Mr. Brigman, by whom are you employed?

9 A. Beaufort County Sheriff's Office.

10 Q. And how long have you been employed with them?

11 A. About seven and a half years.

12 Q. Okay, sir. Were you so employed on May 25th, 2000?

13 A. Yes, sir.

14 Q. Okay, sir. Did you have a -- receive a radio message
15 to go to anywhere in Beaufort County?

16 A. Yes, sir.

17 Q. And where was that?

18 A. Off McPhersonville Road in reference to a found body.

19 Q. Excuse me.

20 A. Off the McPhersonville Road, in reference to a found
21 body.

22 Q. Okay, sir, and did you -- what time did you arrive
23 there, sir?

24 A. I don't remember the exact time, but once I arrived the
25 Sheldon Fire Department and Mr. Young was already on the

MR. BRIGMAN ON DIRECT

1 scene.

2 Q. Had anything been done to the scene?

3 A. The Fire Department had already secured the scene by
4 putting up police tape, and they were outside of the crime
5 scene when I got there.

6 Q. And did you remain there until a detective with the
7 Beaufort County Sheriff's Department got there?

8 A. Yes, sir.

9 Q. And who was that? Do you remember?

10 A. If I remember, Detective Purdy and also Detective
11 Arvello.

12 Q. Okay, sir, and did you then turn the scene over to
13 them?

14 A. Yes.

15 Q. Thank you, sir. Answer any questions Mr. Hood might
16 have.

17 MR. HOOD: I have no questions.

18 SOLICITOR: You may come down. May Mr. Brigman be ex-
19 cused?

20 MR. HOOD: Without objection.

21 THE COURT: Yes, sir.

22 (Witness excused from Courtroom)

23 SOLICITOR: Call Jeff Purdy.

24 JEFF PURDY, being duly sworn,
25 testified as follows:

1 CLERK: Please be seated. State your full name and spell
2 your last name.

3 WITNESS: Jeffrey Purdy.

4 DIRECT EXAMINATION

5 BY SOLICITOR:

6 Q. Mr. Purdy, by whom are you employed?

7 A. I'm with the Beaufort County Sheriff's Office.

8 Q. And you've been there how long?

9 A. Approximately nine and a half years.

10 Q. Okay, sir, and in what capacity do you work with them?

11 A. Right now, I'm on the investigations unit, criminal
12 investigations.

13 Q. Okay, sir, and on May 25th of 2000, were you a detec-
14 tive?

15 A. Yes, sir.

16 Q. Did you have an occasion to go anywhere in Beaufort
17 County that day?

18 A. Yes, I did.

19 Q. Okay, and where did you go?

20 A. May 24th?

21 Q. May 24th.

22 A. On May 24th, I had the opportunity to go out to
23 McPhersonville Road to a death scene, which resulted in the
24 murder investigation with James Dillard, Jr.

25 Q. Okay, sir. When you got there, Mr. Purdy, was Officer

MR. PURDY ON DIRECT

1 Brigman there?

2 A. Yes, sir, he sure was.

3 Q. Had the scene been cordoned off?

4 A. Yes, he did. He had taped the crime scene off and
5 briefed me on what he had done and what he had found out
6 there.

7 He showed me a photo of what he had found. At that
8 point, I just decided there was no reason for me to enter
9 the crime scene.

10 So I made sure the crime scene was maintained secure,
11 and we contacted SLED, the South Carolina Law Enforcement
12 Division.

13 Q. And did they send out a forensic crime scene crew?

14 A. They sent down Dianne Bodie and Michele Dixon, two of
15 their crime scene technicians.

16 Q. I ask you -- the place where the body was, can you
17 tell me what county it was in?

18 A. James Dillard's body was in Beaufort County off of the
19 McPhersonville Road.

20 Q. Okay, sir. I show you a map, Mr. Purdy, and ask you
21 if you can identify it?

22 A. Yes, I can.

23 Q. What is it?

24 A. This is a map that I had Sammie, one of the women that
25 work for the Beaufort County Emergency Management System --

MR. PURDY ON DIRECT

1 I had Sammie make this map for me.

2 It's a map of Beaufort County. The area of McPherson-
3 ville Road -- how close it is to Jasper County and Hampton
4 County.

5 SOLICITOR: If Your Honor please, I would offer this
6 as an exhibit.

7 MR. HOOD: No objection.

8 THE COURT: All right.

9 (Map entered in evidence without objection as State's
10 Exhibit 11)

11 BY SOLICITOR:

12 Q. Mr. Purdy, could you take this map and orient the
13 jurors where we're talking about?

14 A. Yes.

15 SOLICITOR: May I bring him before the jury, and may I
16 again use both ends of the jury box.

17 (Witness leaving stand and approaching jury box)

18 Q. If you will, sir, tell me where the body was found,
19 sir?

20 A. This right here is McPhersonville Road. Probably in
21 the area around here.

22 Q. How about put an X mark where it was found.

23 A. Right in there.

24 Q. Okay, sir.

25 A. This right here is a railroad track, and as you come

MR. PURDY ON DIRECT

1 from Yemassee -- this is McPherson Road, a dirt road, and
2 railroad tracks. This divides Beaufort County from Hampton
3 County. McPhersonville Road.

4 This is the river that comes all the way down here,
5 and there's a little ridge, and that ridge is the Beaufort
6 County line.

7 This is Jasper and this is Hampton, and this is Beaufort
8 County.

9 Q. Where would the Chevron Station be?

10 A. Right here, I think.

11 Q. Put a C by Chevron.

12 A. Okay, sir.

13 Q. And this little area right here would be what, sir?

14 A. This would be the intersection of 17 and 17 A. This
15 is 17 going down to Beaufort.

16 That would take you to Hampton County.

17 Q. Okay, sir. Thank you, sir.

18 Again, show me where the body was located?

19 A. We recovered James Dillard, Jr.'s body right here.

20 Q. You put an X mark there?

21 A. Yes, sir.

22 Q. Okay.

23 A. This is McPhersonville Road, a dirt road, and 17 to
24 the railroad tracks which this is the county line. This
25 is the river that goes on down, and this river divides Jasper

MR. PURDY ON DIRECT

1 and Beaufort County.

2 Q. And Jinx's Grocery would be located where?

3 A. I believe right here.

4 Q. Okay, sir, and the Chevron Station . .

5 A. You keep going toward the Interstate, and the Chevron
6 is on the left.

7 Q. Thank you. You may have a seat back up there.

8 A. (Witness resuming stand)

9 Q. Did I ask you whether or not the place where the body
10 was found was located in Beaufort County?

11 A. I believe you did, and it is in Beaufort County. Yes,
12 sir.

13 Q. Thank you, sir. Answer any questions Mr. Hood may
14 have for you.

15 A. Yes, sir.

16 MR. HOOD: No questions.

17 THE COURT: You may come down.

18 (Witness excused from stand)

19 SOLICITOR: Call Dianne Bodie.

20 DIANNE BODIE, being duly sworn,
21 testified as follows:

22 CLERK: Please be seated, and state your full name,
23 please.

24 WITNESS: My name is Dianne Watts Bodie, B O D I E.

25 DIRECT EXAMINATION

MS. BODIE ON DIRECT

1 BY SOLICITOR:

2 Q. Ms. Bodie, by whom are you employed?

3 A. I'm employed by the South Carolina Law Enforcement
4 Division, commonly known as SLED.

5 Q. And in what capacity are you employed?

6 A. I am from the latent print crime scene unit, and I
7 serve as a Special Agent in that unit.

8 Q. And what training do you have to do crime scene and
9 latent prints?

10 A. I have over three thousand hours in the fingerprint
11 field, as well as fifteen hundred hours more in other re-
12 lated areas of crime scene processing, crime scene investi-
13 gation, footwear, tire tread, blood splatter, and fingerprint
14 analysis.

15 Q. Now, when you say so many hours, does that mean -- what
16 does that mean?

17 A. That is actual instructual training, hands-on type
18 training.

19 Q. Okay. How long have you been with SLED?

20 A. For twenty-four years.

21 Q. And how long in crime scene and latent prints?

22 A. I've been in latent print crime scene unit for eight
23 years.

24 Q. Did you have an occasion to come to Beaufort County on
25 the 24th day of May of 2000?

MS. BODIE ON DIRECT

1 A. Yes, sir, I did.

2 Q. And were you and another agent -- did you all come
3 as a dual . .

4 A. Normally, we travel in pairs, yes, sir. Two of us will
5 process scenes.

6 Q. Was Michele Dixon with you on that day?

7 A. Yes, sir. Agent Dixon responded with me.

8 Q. Okay, and today is Agent Dixon available for Court?

9 A. No, sir, she is not.

10 Q. Okay, and I believe she's in school?

11 A. She just recently graduated from the F.B.I. Academy.

12 Q. Okay, and she no longer works with SLED?

13 A. No, sir. She does not.

14 Q. Okay. Tell me where you went when you came to Beaufort
15 County?

16 A. We responded one point four miles down McPhersonville
17 Road.

18 Q. And tell the ladies and gentlemen of the jury what you
19 found when you responded there?

20 A. We found a victim's body in the woods.

21 Q. Okay, and can you describe for them what you saw and
22 what you did?

23 A. The body of the victim was pretty badly decomposed,
24 and lying in the woods, according to the notes. He was lying
25 on his stomach with his right hand under this area and his

MS. BODIE ON DIRECT

1 left hand reached out to the left.

2 There was heavy decomposition to the skull and the
3 shoulder area.

4 At that time, we documented the scene and took the photo-
5 graphy, and then we used a metal detector to run over the
6 area of the woods in hopes to locate -- trying to locate
7 additional evidence, such as cartridge casings or bullet
8 fragments. Things like that.

9 We didn't at that time, and we had the body removed,
10 and then Agent Dixon and myself went through the decomposi-
11 tion on the ground, just kind of raking through it, trying
12 -- putting it on a tarp, and trying to find possible frag-
13 ments or something.

14 At that time, we did, and we collected that, as well
15 as a shirt and a hat that were located on the ground with
16 a small piece of candy inside and a coin.

17 Q. And what?

18 A. A coin.

19 Q. I show you three photographs, one of which is marked as
20 State's Exhibit Number 6, and ask you if you can identify
21 that?

22 A. . .

23 Q. Who took that?

24 A. I took the pictures at the scene.

25 Q. Okay, and what is that a photograph of?

MS. BODIE ON DIRECT

1 A. This would represent the crime scene area that is roped
2 off with crime scene tape.

3 At the bottom of the photograph I know in the pictures
4 I took we stamp our crime scene photographs with our SLED
5 lab number, which is stamped on the bottom, SLED L zero zero
6 5561 which represents this crime scene number.

7 Q. And I show you two additional photographs, and ask you
8 what they are?

9 A. These represent the same crime scene area, and I recog-
10 nize the vehicle that I drive, as well as the vehicle that
11 Agent Dixon drives, as well as the SLED lab number stamped
12 at the bottom.

13 SOLICITOR: If Your Honor please, I would offer these
14 two as Exhibits.

15 MR. HOOD: No objection.

16 SOLICITOR: That would be 12 and 13, sir.

17 THE COURT: All right.

18 (Photographs admitted into evidence without objection
19 as State's Exhibits 12 and 13)

20 BY SOLICITOR:

21 Q. Now, can you tell -- show me on one of these photo-
22 graphs, or more than one, the general location of the body?

23 A. The body is located approximately, according to my
24 notes, about fifty feet into the woods off of this side
25 road here where the Suburban is parked.

MS. BODIE ON DIRECT

1 Q. Okay. Put your finger generally in the area you are
2 talking about?

3 A. Here.

4 Q. Okay. Now, you said that you saw some clothing out
5 there?

6 A. Yes, sir. In the same vicinity of the body were a hat
7 and a shirt.

8 Q. Okay. I show you a photograph and ask you if you can
9 identify that?

10 A. Yes, sir. As I stated before, this is a photograph I
11 took that day of that crime scene, in reference to the lab
12 number stamped on the bottom of the photograph.

13 This is the shirt and there is the cap lying next to
14 it.

15 Q. Okay, and was this photograph taken before anything
16 was moved?

17 A. Yes, sir. We always document what we find when we ar-
18 rive on the scene.

19 Q. I show you State's Exhibit Number 4 and ask you if you
20 can identify this?

21 A. It's the same as the shirt in the photograph.

22 Q. Is this the shirt you all found out there?

23 A. If I could see the item it was packaged in, I could
24 verify that.

25 When we collect items of clothing, we put them in a

MS. BODIE ON DIRECT

1 paper bag and write on there what we had collected.

2 I stated, Beaufort County Sheriff's Office, body in
3 woods; one Budweiser baseball cap, one Budweiser uniform
4 shirt, as well as a Starburst candy and a cologne -- a per-
5 sonal cologne.

6 I collected it on 5 24 2000 at one fifteen P.M., and
7 I have noted shirt inside out. Outer portion dirty under-
8 neath.

9 Q. And inside that bag, can you identify what that is?

10 A. Yes, sir, that's the baseball cap I collected.

11 Q. Okay.

12 SOLICITOR: If Your Honor please, I would offer the
13 photograph of the shirt and cap, as well as the cap itself.

14 MR. HOOD: No objection.

15 THE COURT: Without objection.

16 (Photograph of hat and shirt, and the hat, entered in
17 evidence without objection as State's Exhibits 14 and 15.

18 BY SOLICITOR:

19 Q. Is this the cap that was found out there?

20 A. Yes.

21 SOLICITOR: If Your Honor please, I'm going to place
22 this in a plastic bag.

23 Q. I notice you put plastic gloves on. Why?

24 A. . .

25 Q. Shouldn't I touch that?

MS. BODIE ON DIRECT

1 A. That's up to you. This cap has the lab number L zero
2 zero 5561. This is the lab number on the photographs from
3 the scene.

4 Q. State's Exhibit 14 is what?

5 A. This is the shirt and hat I collected that day at the
6 crime scene in the woods off of McPhersonville Road.

7 Q. Thank you, maam. Now, you stated that you found cer-
8 tain things underneath the body, is that correct?

9 A. Yes, sir. We found three fragments underneath the body
10 in the actual decomposition area which is right underneath
11 where the body was lying.

12 Q. Okay. I show you three items and ask you if you can iden-
13 tify these?

14 A. This is State's Exhibit . .

15 Q. No, don't refer to that, please maam.

16 A. This is one jacket found under the victim with the
17 date of 5 24 2000. The lab number is L zero zero 5561, and
18 our item nine.

19 SOLICITOR: If Your Honor please, I would offer that
20 as an exhibit.

21 MR. HOOD: No objection.

22 (Bullet fragment entered in evidence without objection
23 as State's Exhibit 16)

24 BY SOLICITOR:

25 Q. Now, contained in this item is a little tin box and

MS. BODIE ON DIRECT

1 there is a plastic bag with something in it. What is that?

2 A. This would be what was collected underneath the victim.

3 Q. Okay.

4 A. Which . .

5 Q. Go ahead.

6 A. We sent that to firearms and to a firearms examiner to
7 examine.

8 Q. Okay, and grab another one.

9 A. This is a container with one jacket found under the
10 victim on 5 24 2000. Our lab number L zero zero 5561, and
11 our item 10.

12 SOLICITOR: If Your Honor please, I would offer that
13 as an exhibit.

14 MR. HOOD: No objection.

15 (Fragment in case entered in evidence without objec-
16 tion as State's Exhibit 17)

17 BY SOLICITOR:

18 Q. And located in there also is a little plastic bag with
19 something in it?

20 A. Yes, sir. That is another item we found located in
21 the decomposition area.

22 Q. And what is that?

23 A. It looks like part of the bullet. We gave that to
24 firearms for them to examine.

25 Q. And the other little box you have there?

MS. BODIE ON DIRECT

1 A. This states, one projectile found under victim, May 24,
2 2000, and our lab number L zero zero 5561, our item number
3 11.

4 SOLICITOR: If Your Honor please, I offer this as an
5 exhibit.

6 MR. HOOD: No objection.

7 (Projectile in case entered in evidence without objec-
8 tion as State's Exhibit 18)

9 BY SOLICITOR:

10 Q. And located inside of it is another item?

11 A. Yes, sir. The same type item. Possibly a fragmented
12 bullet, that we collected and sent to firearms for examina-
13 tion.

14 It was found underneath the victim's body.

15 Q. Can you tell where these were found underneath the body
16 from your notes?

17 A. . .

18 Q. What I'm asking, was it under the head, was it under
19 the feet, or was it under some other part of the body?

20 A. Well, I have in my notes that it was in the decomposi-
21 tion from the head to the shoulder area. The upper torso
22 area, and that's where we were actually digging through the
23 decomposition to locate these items.

24 Q. So it would have been the head and shoulder area?

25 A. Yes, sir.

MS. BODIE ON DIRECT

1 Q. Okay. Thank you, maam. Just one more question.

2 I realize this has been a little more than two years
3 ago, but can you describe for the jury the area where the
4 body was found, insofar as being wooded, grown up?

5 A. Well, I have stated in my notes that there was heavy
6 foliage and from the clearing area to the back where the
7 body was located, it was pretty foliage, and we didn't see
8 any signs of broken branches or disturbances where someone
9 would not have possible walked into the woods.

10 The place where the body was located at the crime scene
11 is somewhat of an open area, and near where the victim's feet
12 were there were some broken foliage, but we didn't notice
13 that, walking back into the area.

14 Q. Was there any mark around the body, such as if it
15 had been drug in there?

16 A. No, sir.

17 Q. Thank you, maam. Just one minute, please. Thank you.
18 Answer any questions Mr. Hood may have, please.

19 CROSS EXAMINATION

20 BY MR. HOOD:

21 Q. Ms. Brodie, I believe you indicated that from the road,
22 the dirt road, into the woods, you measured that off. Is
23 that correct?

24 A. Yes, sir, it was measured.

25 Q. And from the road, could you see the location of the

1 body without any problem?

2 A. I don't recall seeing the body from the road.

3 Q. And you measured it off as being fifty-what feet?

4 A. Approximately fifty feet.

5 Q. From where you were standing when you arrived, you
6 couldn't see the body itself?

7 A. I don't recall seeing the body, no.

8 Q. Now, when you go to a crime scene, are you there look-
9 ing for all kinds of evidence surrounding the area where the
10 body is located?

11 A. Yes, sir, I am.

12 Q. And is one of your duties or a part of your investiga-
13 tion is you look for footprint impressions?

14 A. Yes, sir.

15 Q. And in the area where we were talking about, did you
16 find any footprint impressions?

17 A. Sir, according to my notes, I said that the crime scene
18 was secured. The dirt road was heavily traveled. Dirt road
19 running near wood line was dirt and gravel; there was no
20 foot wear or tire tread observed at the area where we were.

21 Q. Now, did you observe the end of this road?

22 A. . .

23 Q. Does it dead end or anything of that nature, the dirt
24 road that you found the body off of?

25 A. Are you referring to McPhersonville Road?

MS.BODIE ON CROSS

1 Q. Well, the road that you were on where the tape was lo-
2 cated and the body was located, what is that road out there?

3 A. Where the tape was was on the edge of McPhersonville
4 Road.

5 Q. Okay.

6 A. There was a small -- we actually made a left off of
7 McPhersonville Road. There was a small side road, and a
8 little rope fence or something where we went into for the
9 body.

10 This was the taped area we were processing, and we
11 worked from there to where the woods were.

12 Q. So there was another road off of McPherson Road, also
13 a dirt road. Is that . .

14 A. The only thing I know is there is a small path off
15 of McPhersonville Road.

16 Q. Was it wide enough to get a car through?

17 A. Yes, sir.

18 Q. And when you went into that area, could you drive
19 straight down that path, or would you have to back out of
20 that path and get back on McPherson Road in order to go
21 forward?

22 A. From what I recall, I may have made a U-turn on that
23 path and gone back out.

24 Q. Okay. Did you examine any of those areas for latent foot-
25 prints or tire prints?

MS. BODIE ON CROSS

1 A. When we arrived at the scene, it was secured, and we
2 did not see any in the general area that we were. I don't
3 know what was done previous to our arrival, but the area
4 that was roped off we looked at for tires and foot wear evi-
5 dence.

6 We did -- like I said, by the area where we were work-
7 ing was dirt and gravel and heavy foliage to walk into the
8 woods.

9 Q. But you didn't find any footprints at all?

10 A. No, sir.

11 Q. Thank you.

12 SOLICITOR: You finished?

13 MR. HOOD: Yes, I have no further questions.

14 SOLICITOR: You can come down. If Your Honor please,
15 can Ms. Bodie be excused?

16 MR. HOOD: No objection.

17 THE COURT: All right.

18 (Witness excused)

19 THE COURT: I think we've been here about an hour and
20 a half. We'll take a little break at this time before we go
21 forward.

22 Members of the jury, we'll take a short recess. You
23 may retire to your jury room.

24 (Jury excused from Courtroom)

25 (Court stood in recess for brief period and resumed)

1 THE COURT: Thank you. Be seated. Are you ready to
2 proceed?

3 SOLICITOR: State is.

4 MR. HOOD: Yes, sir.

5 THE COURT: I understand the photographs for some
6 reason got misplaced. I mean, I'm aware that they are.

7 MR. HOOD: Did the jury take them back?

8 THE COURT: I don't know, but we'll see.

9 (Jury returned to Courtroom)

10 THE COURT: Okay, very good. The photographs that were
11 being passed around, did they get all the way around? Did
12 everybody see them?

13 Okay. Call your next witness.

14 SOLICITOR: Dr. Erin McConnell Presnell.

15 DR. ERIN MCCONNELL PRESNELL,
16 being duly sworn, testified as follows:

17 CLERK: Please be seated. State your name and spell it
18 for the Court Reporter, please.

19 WITNESS: My name is Susan Erin Presnell, P R E S
20 N E L L.

21 DIRECT EXAMINATION

22 BY SOLICITOR:

23 Q. And what do you do for a living?

24 A. I'm a forensic pathologist.

25 Q. Doctor, where did you -- are you a doctor?

DR. PRESNELL ON DIRECT

1 A. Yes.

2 Q. Licensed in South Carolina?

3 A. Yes. A forensic pathologist licensed in South
4 Carolina.

5 Q. Where did you go to get your undergraduate schooling?

6 A. I did all my schooling in South Carolina. I had a
7 B.S. from Clemson University, and then went to medical
8 school at M.U.S.C. in Charleston.

9 I did my pathology residency there at M.U.S.C. and
10 then did my specialized training at M.U.S.C. in forensics,
11 and then was hired on staff at M.U.S.C.

12 Q. Okay. Doctor, when did you finish Clemson?

13 A. I graduated from Clemson in 1989.

14 Q. And medical school?

15 A. Medical school in '93.

16 Q. And you did your forensic residency where?

17 A. Lastly is a pathology residency. I did a general path-
18 ology residency first. I did that at M.U.S.C. It's a
19 five year program --from '93 to '98, and then I did my
20 speciality in forensics in 1998 and 1999.

21 Q. Doctor, tell the ladies and gentlemen of the jury what
22 a pathologist is?

23 A. Most pathologists don't really do a whole lot of
24 autopsies. Most of them -- pathology is the diagnosis of
25 disease.

DR. PRESNELL ON DIRECT

1 So if a family physician or a surgeon takes out or
2 removes something, does a biopsy or pap smear or something
3 like that -- anything that is tissue from a human being
4 will go to a pathologist.

5 A pathologist will look at it under a microscope and
6 diagnose the disease. You have cancer; you don't have
7 cancer.

8 You have an infection; you have a tumor and he got it
9 all out -- that type of thing.

10 A forensic pathologist is a subspecialty of that
11 where instead of just looking at a piece of tissue, you
12 look at the whole body, and we're not just interpreting a
13 disease process, but also we are interpreting trauma as well.

14 Q. Okay. Doctor, as a forensic pathologist, do you do
15 autopsies?

16 A. Yes, as a forensic pathologist, that is my primary re-
17 sponsibility.

18 Q. Okay. Do you know how many autopsies you have done?

19 A. Over a thousand.

20 Q. Okay, and have you testified in Court about any of
21 them?

22 A. Yes, I have.

23 Q. And have you been qualified as an expert witness in
24 the Courts of South Carolina or any other courts?

25 A. In South Carolina, yes.

DR. PRESNELL ON DIRECT

1 SOLICITOR: If Your Honor please, I would offer her as
2 an expert in forensic pathology.

3 MR. HOOD: No objection.

4 THE COURT: All right.

5 BY SOLICITOR:

6 Q. Doctor, I ask you whether or not -- let me ask you
7 a few questions first.

8 You say that you are now on staff with M.U.S.C.?

9 A. I am a faculty member at M.U.S.C. in the Department of
10 Pathology.

11 Q. M.U.S.C. is . . .

12 A. The Medical University of South Carolina in Charleston.

13 Q. And by being on staff, what does that mean?

14 A. I have officially completed my training period and I
15 function autonomously and, of course, you take boards
16 and certify and what not, but they have hired me as a
17 pathologist, an autonomous forensic pathologist.

18 Q. Okay. I ask you if you were a forensic pathologist on
19 the 25th day of May of 2000?

20 A. Yes, I was.

21 Q. Did you have an occasion to examine the dead body of
22 James Dillard, Jr.?

23 A. Yes, sir.

24 Q. Okay, and was that on the 25th?

25 A. Yes, that was about eight thirty in the morning on

1 the 25th.

2 Q. Okay. Can you tell the ladies and gentlemen of the
3 jury what you observed when you did the autopsy?

4 A. Well, the coroner referred the body to us and they
5 transferred it to our autopsy facility in Charleston.

6 In this case, Mr. Dillard was decomposing pretty
7 severely around the head and neck area. He had a lot of skin
8 slippage, and, of course, this kind of comes into play when
9 we are trying to determine injuries.

10 It does hamper the interpretation of injuries, but,
11 anyhow, he was decomposing, and there were maggots as well
12 as beetles consuming the tissue as well.

13 When we looked at him, he was clothed in a pair of
14 shorts and a pair of underwear and a pair of socks and dark
15 tennis shoes.

16 Looking at him for injuries, most of his head area was
17 skeletonized, but he did have a gunshot wound to the top
18 left of his head.

19 The bullet went in through the skull, causing skull
20 fractures, and we recovered the bullet inside of his head in
21 what remained of the brain tissue.

22 It was partially liquified at that point, but the bul-
23 let, along with the jacket that was kind of separated from
24 it, was recovered from inside the head.

25 Looking at the rest of the body, he did -- what we do

DR. PRESNELL ON DIRECT

1 when we're trying to evaluate a decomposing body like that
2 is look for any area of the body that had a defect in it.

3 Like I said, the head area was partially skeletonized
4 and a lot of the tissue was gone in the upper chest area.

5 What we did was to do x-rays, looking for any projec-
6 tiles that would show up on x-ray, such as a bullet, and
7 we saw the one in the head and we did the rest of the body,
8 because he did have other areas where either buzzards or
9 some other animal activity had eaten away the skin.

10 There were no completely intact bullets anywhere else.
11 We did find though in the left leg a gunshot wound, an
12 entrance and an exit wound, in the upper left thigh in the
13 front, that had -- we verified it as a gunshot wound because
14 we found a little piece of lead fragment that had broken
15 off from the bullet and remained behind.

16 So now we had two definitive gunshot wounds, one to
17 the left head and one to the left thigh.

18 There was also two other holes in the left thigh, in
19 the back, toward the knee area, that connected, and it could
20 possibly be a gunshot wound.

21 The problem that comes in with a decomposing body is
22 that maggots will eat tissue and can cause little circular
23 defects, and it may hamper -- it may mimic a gunshot
24 wound.

25 X-raying that area did not show any radiopaque objects

DR. PRESNELL ON DIRECT

1 left behind, any little tiny fragments or anything, but
2 it doesn't necessarily have to.

3 We have two different gunshot wounds now, one to the
4 head and one to the thigh, and one possible.

5 The one other area that we kind of spent a lot of time
6 trying to evaluate was a hole in the lower chest area -- the
7 lower left chest area.

8 The problem with that wound is -- well, first of all,
9 we had the one hole and we don't have an exit hole.

10 Supposing, potentially, this could be a gunshot wound.
11 We have an entrance hole. We don't have an exit hole, and
12 the x-ray doesn't show a projectile.

13 All right. So we say, okay, let's look at the organs
14 and if there are any damaged areas in there that a bullet
15 may have gone through.

16 Well, the heart and the lungs were gone because of
17 the animal activity. So we couldn't evaluate that to see
18 if there was a wound or not.

19 So as far as that is concerned, we can't classify that
20 as a -- like I said, there was the skeletonization up front
21 so it could have exited and not remained with the body and
22 us not see a hole.

23 So our final conclusion -- well, ~~what~~ we put on our
24 report were the two definitive gunshot wounds, one probable,
25 and an undecided. The cause of death was the gunshot wound

DR. PRESNELL ON DIRECT

1 to the head.

2 Q. Okay, and that was my next question. Do you have a
3 professional medical opinion as to what caused his death?

4 A. The gunshot wound that was in the brain.

5 Q. Now, you testified that you removed something from his
6 head?

7 A. Right. We moved the projectile from his head.

8 Q. May I show you an item and ask if you can identify
9 that?

10 A. This is -- well, what we recovered from the head was
11 a metal bullet and a jacket that was separated from the
12 bullet, and a piece of fragment of the bullet.

13 This is labeled with the autopsy number and it says,
14 bullet fragment and jacket.

15 Q. And are there two little plastic bags inside of that
16 container?

17 A. There are two plastic bags inside the container. One con-
18 tains the jacket that was recovered in his head, and one con-
19 tains the bullet and the little fragment that was recovered
20 from the brain.

21 Q. Okay, and did you remove those from his head?

22 A. Yes, I did.

23 Q. Okay. Now, I notice . .

24 SOLICITOR: If Your Honor please, I would offer this
25 as State's Exhibit 19.

DR. PRESNELL ON DIRECT

1 MR. HOOD: No objection.

2 (Items taken at autopsy entered in evidence without
3 objection as State's Exhibit 19)

4 BY SOLICITOR:

5 Q. Now, I notice that on this container it has a name?

6 A. On the container is the name of James Dillard. It was
7 misspelled there, but it should be James Dillard.

8 Q. Okay. It also has a number under it?

9 A. Our autopsy number.

10 Q. And what is the autopsy number?

11 A. That is FA for forensic autopsy, zero zero for the year
12 2000, dash 307.

13 Q. Okay, and is that -- do that coincide with the autopsy
14 on James Dillard, Jr.?

15 A. Yes, sir, it does.

16 Q. Okay. I also notice on there it is showing your name
17 on there as Dr. McConnell?

18 A. Yeah. I was McConnell in the year 2000 and I got
19 married and changed over. I didn't do the hyphenating. It
20 is not McConnell Presnell. It's just Dr. Presnell.

21 Q. Okay. Thank you, maam. Answer any questions that
22 Mr. Hood may have.

23 CROSS EXAMINATION

24 BY MR. HOOD:

25 Q. Dr. Presnell, you mentioned the name on there was

DR. PRESNELL ON CROSS

1 Dillon or something?

2 A. Yes, it was put in the computer as Dillon when we
3 originally did the autopsy.

4 Q. And you had never had any contact or any other type
5 of relationship with a James Dillard, Jr., prior to this,
6 is that correct?

7 A. No.

8 Q. So you didn't know who it was?

9 A. Right, at the time.

10 Q. Okay. Now, you indicated that there was a bullet hole
11 to the left head area.

12 A. Right. The top left head.

13 Q. Could you tell anything about the angle of entry as
14 far as the projectile was concerned?

15 A. What we try to do is -- when we do recover a bullet,
16 we try to discern a pathway and help us do an angle, and
17 when we do the angle we have the person standing in an ana-
18 tomic position, which means palms straight out to the side,
19 looking forward, which obviously in life people don't stand
20 like that.

21 And so it's taken with a grain of salt. Now, in this
22 case, there was also decomposing and his brain was liqui-
23 fying.

24 So we find the bullet from this area and there is
25 movement there. It doesn't necessarily stay in the exact

1 area where we recovered it from.

2 We have it going down, back and to the right, and
3 that is an angle that it could have been. That's why I said
4 it could be taken with a grain of salt.

5 Q. Well, could you tell from the position of the angle you
6 are talking about whether the person was shot from the
7 rear or from the front?

8 A. No, if I can't -- if I can't definitively say what
9 the angle is, it's hard to say which way the bullet was
10 coming, whether it was from the front or from the back.

11 I will comment that I described what they call bevel-
12 ling, which is a skull change that you get when the bullet
13 goes through the skull -- through the skull bone.

14 And I saw some bevelling kind of close to the front
15 of the wound, and the bevelling can possibly be either as
16 a result of the trauma of the bullet separating like that,
17 or it could be because it was more of a shallow angle.

18 I don't know what in this particular case would have
19 caused this bevelling, but it does tend to suggest that the
20 bullet was going a little more forward than the backward
21 location that we recovered it from.

22 Again, I don't have a specific trajectory, so I can't
23 tell anatomically by looking at the body which way the
24 bullet came from.

25 Q. Now, can you also describe any bruising that you found

DR. PRESNELL ON CROSS

1 on the body?

2 A. His discompositional changes really obscured any
3 other findings on him. He was kind of a green-reddish
4 color, so I didn't appreciate any bruising.

5 Q. Now, was there any tissue on the skull -- hair or
6 things of that nature on the skull?

7 A. Most of the area of the skull was gone. I'd have to
8 look at pictures to be specific, but most of the tissue from
9 the head area was gone.

10 Q. Okay. Thank you.

11 REDIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. Doctor, let me ask you one question. How long -- in
14 view of the decomposition, can you tell the ladies and
15 gentlemen of the jury with any degree of medical certainty
16 how long that body had been dead?

17 A. Once they reach this state of decomposition, it is
18 more of do our findings support investigator findings. We
19 were told that he was last seen on the 19th of May, and his
20 changes support that.

21 Could it have been six days or four days? Yeah, it
22 could have, but what we do with our information is support
23 or review the investigative findings.

24 Q. Thank you, maam. I have no further questions.

25 MR. HOOD: I have no further questions.

1 SOLICITOR: May the Doctor be excused?
2 THE COURT: Yes, sir, if there is no objection.
3 (No objection was heard, and the witness was excused
4 by the Court)
5 SOLICITOR: Call Dan DeFreese.
6 DAN DeFREESE, being duly sworn,
7 testified as follows:
8 CLERK: Please have a seat and state your name and
9 spell it for the Court.
10 WITNESS: My name is Frank Dan DeFreese, D E capital F
11 R E E S E.
12 DIRECT EXAMINATION
13 BY SOLICITOR:
14 Q. Mr. DeFreese, by whom are you employed?
15 A. The South Carolina Law Enforcement Division.
16 Q. And in what capacity?
17 A. I'm a criminalist assigned to the SLED forensic labor-
18 atory in Columbia, and within the forensic laboratory I
19 work for the unit where we identify firearm and tool mark
20 evidence.
21 Q. Okay, sir, and how long have you been with SLED?
22 A. Since 1967.
23 Q. Okay, sir, and how long have you been in firearm
24 identification?
25 A. The majority of that time, with the exception of about

1 a six year period of time when I was doing mostly manage-
2 ment. I have been in the firearms department the rest of
3 the time.

4 Q. Okay, sir. I ask you whether or not you have had an
5 opportunity to examine State's Exhibits 16, 17 and 18, and
6 19?

7 A. Yes, sir, I have.

8 Q. Okay, sir, and can you tell me what those objects are?

9 A. Yes, sir. State's Exhibit 16 is a fired copper
10 alloy jacketed bullet with a lead core. It is a jacketed
11 hollow point bullet of a type made by the Federal Company,
12 and known as a hydrashok -- H Y D R A S H O K.

13 It is -- its diameter is consistent with that of a
14 thirty-eight special caliber bullet, and its weight is con-
15 sistent with a thirty-eight special caliber loading of a
16 Federal hydrashok bullet, which can be fired either in a
17 thirty-eight special caliber firearm or it can also be safely
18 fired in a three fifty-seven Magnum caliber firearm.

19 The majority of thirty-eight special and three fifty-
20 seven Magnum caliber firearms are revolvers.

21 Q. That's 16?

22 A. Yes.

23 Q. Okay.

24 A. State's Exhibit 17 is the outer copper alloy bullet
25 jacket without the core. Normally in a bullet of the

MR. DeFREESE ON DIRECT

1 Federal hydrashok jacketed hollow point variety, the in-
2 terior of the bullet will be composed of relatively soft lead.
3 The exterior of the bullet will be a copper alloy cup that
4 is formed around the lead.

5 In this case, the lead is missing, but the jacket is
6 consistent with thirty-eight special caliber -- essentially
7 the same results for it as for State's Exhibit 16.

8 State's Exhibit 18 contains only the lead core portion
9 of a bullet. It is also a Federal hydrashok lead core,
10 which is unique and it has a tapered post that is inside
11 the hollow point cavity, which is present on State's Ex-
12 hibit 18.

13 This is consistent with the kind of lead core that
14 would be in a thirty-eight special or something approximately
15 that size.

16 State's Exhibit 19 contains several objects, one of
17 which is a bullet jacket fragment. The other is a bullet
18 core fragment.

19 The bullet jacket fragment essentially has the same
20 result as the other items. It is approximately the same
21 diameter as a thirty-eight special. It is consistent with
22 a thirty-eight special, and all of these are consistent
23 in their construction with Federal hydrashok brand ammuni-
24 tion.

25 Q. That was my question. Sixteen, 17 and 18 were

MR. DeFREESE ON DIRECT

1 identified as being found in the ground under the body.

2 A. Yes.

3 Q. And 19 from the head of the victim, James Dillard,
4 Jr.

5 Are each and every one of those consistent with a Fed-
6 eral hydrashok thirty-eight caliber round?

7 A. Yes.

8 Q. Thank you, sir.

9 CROSS EXAMINATION

10 BY MR. HOOD:

11 Q. Now, Mr. DeFreese, I believe you indicated that we're
12 talking about several different types of weapons that
13 could have fired that round.

14 Is that correct?

15 A. Yes, sir. There are a number of different brands of
16 firearms that have the general rifling characteristics. I
17 didn't mention when the Solicitor was talking to me that
18 some of these specimens have rifling impressions remaining on
19 them.

20 In this case, where they are present there are six
21 lands and grooves with left hand twist.

22 The most popular gun, being a Colt, but there are a
23 number of other firearms which also use six land and groove
24 left hand twist rifles.

25 Q. Okay, and we're talking about literally thousands and

MR. DeFREESE ON CROSS

1 thousands of weapons that could have fired these rounds?

2 A. Oh, yes.

3 Q. Thank you.

4 SOLICITOR: You may come down. May Mr. DeFreese be
5 excused?

6 MR. HOOD: Yes, sir.

7 THE COURT: Without objection.

8 (Witness excused by the Court)

9 SOLICITOR: If Your Honor please, may we approach the
10 bench?

11 (Conference at the bench between counsel and the
12 Court off the record)

13 THE COURT: Okay. Mr. Foreman, members of the jury,
14 due to the scheduling of witnesses, we're going to take our
15 lunch break now which suits me fine, and I presume it suits
16 everyone else.

17 We will -- it's now twelve o'clock, and we will come
18 back at one thirty to continue the case. One thirty.

19 I hope you all have a nice lunch.

20 (Jury excused for the lunch recess)

21 THE COURT: Court is in recess until one thirty.

22 (Court stood in recess until 1:30 P.M.)

23 THE COURT: Ready to proceed, Solicitor.

24 SOLICITOR: If Your Honor please, I'm still waiting
25 on Herbert Solomon Ford.

1 They are making a call right now to see where he
2 is.

3 THE COURT: Mr. Bailiff, please advise the jury we
4 are still waiting on the next witness.

5 SOLICITOR: They told me twenty minutes ago he was
6 in Point South headed in this direction, so . .

7 THE COURT: Having just gotten stuck in traffic out on
8 21 between here and 170 -- you can't get through there
9 in twenty minutes.

10 SOLICITOR: They are calling right now, sir.

11 This is the prisoner I had asked Ridgeland to have
12 him here at eleven o'clock -- the prison system to have
13 him here, and when we adjourned I found out they had then
14 called over there -- no, we called and they said they did
15 not have a car to bring him in.

16 They certainly could have called and told us that
17 sometime earlier.

18 THE COURT: Did you say Ridgeland or Ridgeville?

19 SOLICITOR: Ridgeland.

20 (Further discussion between counsel and the Court
21 concerning transportation of prisoners)

22 THE COURT: Bring the jury.

23 (Jury returned to the Courtroom)

24 THE COURT: Members of the jury, the reason for the
25 delay is kind of a combination of things.

1 Anyway, the next witness is an inmate over at the State
2 Prison over in Ridgeland. They were supposed to have him
3 over here at eleven, and they for some reason couldn't do
4 it, so they had to go get him, and then, of course, as many
5 of you know, there is a tie up in traffic. They had a wreck
6 at the Hess Station right up Highway 21 between here and
7 170.

8 So they've been sitting out there in traffic, but we
9 are now ready to proceed.

10 Solicitor?

11 SOLICITOR: Call Herbert Solomon Ford.

12 THE COURT: Come around, sir.

13 HERBERT SOLOMON FORD, being duly
14 sworn, testified as follows:

15 CLERK: Please have a seat and state your full name.

16 WITNESS: My name is Herbert Ford.

17 DIRECT EXAMINATION

18 BY SOLICITOR:

19 Q. Mr. Ford, are you presently incarcerated in the prison
20 system of South Carolina?

21 A. Yes, sir.

22 Q. And why are you incarcerated in the prison system of
23 South Carolina?

24 A. A carjacking charge.

25 Q. And how much time did you get for that?

MR. FORD ON DIRECT

1 A. Eighteen years.

2 Q. Was that in Federal or State Court?

3 A. Well, the State is five years and the Federal eighteen.

4 Q. Okay, sir. Do you know Shameen Coker?

5 A. Yes, sir.

6 Q. And when did you get sentenced?

7 A. It was around 2001 -- the end of 2001.

8 Q. The end of 2001?

9 A. Yes, sir.

10 Q. Prior to that, where did you live?

11 A. I was staying with Shameen for a while and back and
12 forth with my mom.

13 Q. And where does your mom live?

14 A. Pocotaligo.

15 Q. Okay. Did you know Shameen Coker?

16 A. Yes, sir.

17 Q. Okay. Do you remember the date May 19th of the year
18 2000, when James Dillard, Jr., was killed?

19 A. Yes, sir.

20 Q. Did you have an occasion to see Shameen Coker that
21 night?

22 A. Yes, sir.

23 Q. Did you have -- how did you happen to come to see him?

24 A. I was at the trailer -- at his trailer.

25 Q. And he came to the trailer?

MR. FORD ON DIRECT

1 A. Yes, sir.

2 Q. How did he get there?

3 A. Him and A. J. Holmes came to the trailer. I think they
4 was driving a car.

5 Q. Do you remember what kind of car it was?

6 A. Not as far as details.

7 Q. You remember what color it was?

8 A. . .

9 Q. Do you remember what color it was?

10 A. I'm trying to be sure. I think it was red -- red
11 and black. Red and black.

12 Q. Okay.

13 A. Red and black.

14 Q. I show you three pictures and ask you if you can iden-
15 tify those pictures?

16 A. Yes, sir.

17 Q. And what are those pictures?

18 A. The car that they had.

19 Q. And those are State's Exhibits 1, 2 and 3. Right?

20 A. Yes.

21 Q. Okay. Now, Mr. Ford, where did you -- at the trailer,
22 what happened when they got to the trailer?

23 A. A. J. and Shameen came in and it was me and a couple
24 more fellows at the trailer already. A. J. and Shameen came
25 in and we start talking, and Shameen got in the shower and

1 then we left.

2 Q. Okay. Where did you go?

3 A. I can't really remember.

4 Q. You all rode somewhere?

5 A. Yes, sir.

6 Q. Did at any time, either at the trailer or while you
7 all were riding around, Shameen tell you anything about
8 what had happened earlier that night?

9 A. Well, not in full detail, but, yes, sir.

10 Q. Okay, sir. Tell us what he told you.

11 A. When he and A. J. came back to the trailer, like we
12 just started talking and, in street-words, like they got a
13 car and they did -- they shot somebody and what not.

14 Q. Who was telling you this?

15 A. Shameen.

16 Q. Okay. He said they did what now?

17 A. They had got a car and they had shot someone.

18 Q. Okay. Did he tell you who had done the shooting?

19 A. No, sir.

20 Q. Did he tell you anything about anything that had hap-
21 pened to him?

22 A. No, sir.

23 [REDACTED]

24 [REDACTED]

25 A. Not that particular night.

MR. FORD ON DIRECT

1 Q. Did he talk to you later about that?

2 A. How do you mean?

3

4

5 A. . .

6 Q. Or in a gang?

7 A. They was saying that he had got . .

8 Q. Don't tell me they. Tell me who you're talking about?

9

10

11 A. Yes, sir.

12 Q. What does OG mean?

13 A. Original gangster to my knowledge.

14 Q. Original gangster?

15 A. Yes, sir.

16

17

18 Q. What gang -- do you know whether he was a member of a
19 gang?

20 A. Yes, sir.

21 Q. And what gang was he a member of?

22

23 Q. F O L K S?

24 A. Yes, sir.

25 Q. And where was that gang located?

MR. FORD ON DIRECT

1 A. To my knowledge, it all originated in Scotland.

2 Q. And was there a branch down in this area?

3 A. Like a little hood thing. Like around the neighbor-
4 hood.

5 Q. What neighborhood?

6 A. Yemassee, Pokey.

7 Q. Pocotaligo?

8 A. Yes, sir.

11 A. Yes, sir.

12 Q. Were you a member of the Folk Gang?

13 A. Yes, sir.

14 Q. Was A. J. Roach a member of it?

15 A. Yes, sir.

16 Q. Mr. Ford, can you indicate for the jury, the members
17 of this jury, who it is you were talking about when you say
18 Shameen Coker?

19 A. Yes, sir.

20 Q. Where is he?

21 A. Right there. (Witness Gesturing)

22 Q. You've pointed to your right?

23 A. Yes, sir.

24 Q. Describe what he's wearing?

25 A. A white shirt.

MR. FORD ON DIRECT

1 Q. A black fellow between the two white fellows?

2 A. Yes, sir.

3 Q. Okay. Answer any questions that Mr. Hood may have for
4 you, please.

5 CROSS EXAMINATION

6 BY MR. HOOD:

7 Q. Mr. Ford, this carjacking charge that you have here,
8 was that the one in Pocotaligo where you took the guy's truck
9 and his boat and kidnapped him and shot him a couple of
10 times?

11 A. Yes, sir.

12 Q. And they charged you with assault and battery with intent t
13 kill; kidnapping and what else?

14 A. Carjacking.

15 Q. Carjacking, robbery -- armed robbery?

16 A. No, sir.

17 Q. They didn't charge you with any of that stuff?

18 A. No, sir.

19 Q. Well, what exactly did you plead guilty to?

20 A. Carjacking.

21 Q. Carjacking? What happened to the assault and battery
22 with intent to kill charge?

23 A. . . .

24 Q. It just went away?

25 A. I guess not. I have carjacking and intent to kill

MR. FORD ON CROSS

1 for Federal. Carjacking and intent to kill for Federal and
2 a carjacking for State.

3 Q. But that was a mail person that you shot, is that cor-
4 rect?

5 A. Yes, sir.

6 Q. Taking his car?

7 A. Yes, sir.

8 Q. Now, you also made a statement to the F.B.I., did you
9 not?

10 A. Yes, sir.

11 Q. And that involved another attempted carjacking in
12 Yemassee, isn't that correct?

13 A. Yes, sir.

14 Q. And that particular carjacking was at the Chevron Sta-
15 tion in Yemassee right off of 95?

16 A. Yes, sir.

17 Q. And that is the same Chevron Station that James Dillard
18 supposedly was at just prior to him being killed supposedly?

19 A. Yes, sir.

20 Q. Okay, and that carjacking that happened, it happened
21 less than a month after James Dillard's disappearance, is
22 that correct?

23 A. Yes, sir.

24 Q. And at that particular incident, you and another guy by
25 the name of -- who?

MR. FORD ON CROSS

1 A. Which one?

2 Q. At the Chevron Station.

3 A. A. J.

4 Q. A. J. who?

5 A. Holmes, I think it was.

6 Q. Well, was it Roach or Holmes?

7 A. They say Holmes but I thought it was Roach.

8 Q. Roach -- and you and A. J. Roach approached a woman who
9 was coming back to her car after she had been inside this
10 Chevron Station, isn't that correct?

11 A. Yes, sir.

12 Q. And you both had a gun on her . .

13 SOLICITOR: If Your Honor please, I have a matter to take
14 up outside the presence of the jury.

15 THE COURT: Okay. Mr. Foreman and members of the
16 jury, we have a matter that needs to be taken up outside of
17 your presence.

18 Please retire to your jury room, and we'll get back
19 to you as soon as we can.

20 (Jury excused from Courtroom)

21 SOLICITOR: If Your Honor please, I object to the line
22 of questioning whereby he talks about something that somebody
23 has not been charged with nor convicted of.

24 MR. HOOD: What I'm talking about is an incident in-
25 volving A. J. Roach, the same individual who testified here

1 earlier yesterday concerning the events of this, and at
2 that time he denied being present when this -- with this
3 individual at that Chevron Station in an effort to attempt
4 to carjack a woman.

5 That is the same incident to which is he testifying
6 to.

7 THE COURT: Okay, so you are actually impeaching A. J.
8 Roach's testimony because of the fact of what he is testify-
9 ing to?

10 MR. HOOD: Absolutely.

11 THE COURT: On those grounds, that is admissible, isn't
12 it?

13 I can't remember that testimony.

14 SOLICITOR: I can't remember that testimony either, if
15 Your Honor please.

16 Excuse me. I think he was asked that. I apologize.

17 THE COURT: So on those grounds, I think you are
18 correct, that it is.

19 You may bring the jury back.

20 (Jury returned to Courtroom)

21 THE COURT: You may continue, Mr. Hood.

22 (Testimony of Mr. Ford continued)

23 CROSS EXAMINATION CONTINUED

24 BY MR. HOOD:

25 Q. And as this woman exited the Chevron Station there and

MR. FORD ON CROSS

1 came toward her car, she was approached by you and A. J.
2 Roach, is that correct?

3 A. No, sir. She didn't went in the store. She was by the
4 pay phone.

5 Q. Okay, she was by the pay phone?

6 A. Yes, sir.

7 Q. And she came back from the pay phone and that's when
8 you and Roach approached her?

9 A. Yes, sir.

10 Q. And you both had guns, is that correct?

11 A. No, sir.

12 Q. Who had guns?

13 A. -Argenie.

14 Q. A. J. Roach?

15 A. Yes.

16 Q. And he told the woman to get in the car, is that
17 correct?

18 A. I really couldn't hear what he was saying because he
19 was talking low at the time.

20 Q. Didn't you tell the woman, yeah, get in the car?

21 A. Yes, sir.

22 Q. Okay. She apparently panicked and started screaming and
23 hollaring and ran. Isn't that correct?

24 A. Yes, sir.

25 Q. Scared you guys, and you guys left also. Isn't that

1 correct?

2 A. Yes, sir.

3 Q. Now, Shameen Coker made a statement to the Sheriff's
4 Department that you and Angenie Roach arrived at his trailer
5 driving a red Pontiac, the same Pontiac we're talking about
6 here, with a black bra on it, and that you were bragging
7 about having taken a guy's car and killed him.

8 Isn't that correct?

9 A. Not as I know of, sir.

10 Q. He never made a statement to that effect about you?

11 A. Not as I know of.

12 Q. Not as you know of?

13 A. . .

14 Q. But your story is that he arrived at the trailer with
15 A. J. Roach in the same red Pontiac?

16 A. Yes, sir.

17 Q. Now, you don't remember -- you gave several statements
18 to the Sheriff's Department, isn't that correct?

19 A. Yes, sir.

20 Q. Particularly to Officer Bromley and some other offi-
21 cers, is that correct -- Officer Purdy?

22 A. Yes, sir.

23 Q. Do you ever remember them telling you that Shameen
24 Coker had dined you out?

25 A. Not as I remember.

MR. FORD ON CROSS

1 Q. So you don't remember?

2 A. . . .

3 Q. I don't have any further questions.

4 SOLICITOR: I have no further questions. You may come
5 down, sir.

6 (Witness excused from the stand)

7 SOLICITOR: Call Michael Curry.

8 MICHAEL CURRY, being duly
9 sworn, testified as follows:

10 SOLICITOR: Do you have any objection to the last wit-
11 ness being excused?

12 MR. HOOD: No objection.

13 THE COURT: Witness is excused without objection.

14 CLERK: Please be seated and state your name, and
15 spell it for the Court.

16 WITNESS: Michael Curry.

17 DIRECT EXAMINATION

18 BY SOLICITOR:

19 Q. Michael, how old are you?

20 A. Nineteen.

21 Q. Where do you live?

22 A. Pocotaligo.

23 Q. Do you know Shameen Coker?

24 A. Yes, sir.

25 Q. How do you know him?

MR. CURRY ON DIRECT

- 1 A. Him and uncle was like . . .
- 2 Q. Are you kin to him?
- 3 A. Yes, sir.
- 4 Q. Mike, look at me, please. Are you kin to Jameen
- 5 Coker?
- 6 A. . .
- 7 Q. Look at me.
- 8 A. Yes, sir.
- 9 Q. Okay. Did you talk to Shameen Coker on the night
- 10 that James Dillard was killed?
- 11 A. Yes, sir.
- 12 Q. Where did you talk with him?
- 13 A. Pocotaligo.
- 14 Q. Whereabouts in Pocotaligo?
- 15 A. (inaudible)
- 16 Q. What did he tell you?
- 17 A. He said, I shot somebody.
- 18 Q. Did he say who he shot?
- 19 A. Yes, sir.
- 20 Q. Who?
- 21 A. James.
- 22 Q. Shot James?
- 23 A. Yes, sir.
- 24 Q. Now, Michael, . . .
- 25 A. Yes, sir.

MR. CURRY ON DIRECT

1 Q. Did you come to the law enforcement officers right
2 before Christmas to tell them something?

3 A. Yes, sir.

4 Q. And did you go to the jail house and did you talk with
5 Shameen Coker?

6 A. Yes, sir.

7 Q. Why did you go to the jail house to talk to Shameen
8 Coker?

9 A. Because somebody asked me to.

10 Q. I'm sorry. I can't hear you.

11 A. Because somebody asked me to.

12 Q. Asked you to do what?

13 A. To go out to the place.

14 Q. To what place?

15 A. To the detective office.

16 Q. Did you go to the detective's office?

17 A. Yes, sir.

18 Q. Did you tell them something?

19 A. Yes, sir.

20 Q. Why did you tell them what you told them?

21 A. . .

22 Q. The truth now, Michael.

23 A. . .

24 Q. Why did you do it?

25 A. . .

MR. CURRY ON DIRECT

- 1 Q. Look at me, Michael. Why did you do it?
- 2 A. . .
- 3 Q. Look at me. Why did you do it?
- 4 A. Because his mother ask me to.
- 5 Q. To do what?
- 6 A. . .
- 7 Q. Look at me, please.
- 8 A. . .
- 9 Q. Keep looking at me.
- 10 A. . .
- 11 Q. What did she ask you to do?
- 12 A. To go and -- to go and lie for him.
- 13 Q. What did she tell you to say?
- 14 A. Say during the time of the shooting he was to his
- 15 baby mother house.
- 16 Q. That at the time of the shooting, he was at his
- 17 baby's mother's house?
- 18 A. Yes, sir.
- 19 Q. Okay. Did you go tell the officer that?
- 20 A. No, sir.
- 21 Q. Huh?
- 22 A. No, sir.
- 23 Q. You didn't talk to Detective Purdy here?
- 24 A. Yes, sir.
- 25 Q. What did you tell him?

MR. CURRY ON DIRECT

1 A. . .

2 Q. Look at me, Michael. What did you tell Detective
3 Purdy?

4 A. . .

5 Q. Look at me, Michael. What did you tell -- look at me.
6 What did you tell Detective Purdy?

7 A. . .

8 Q. Do you remember?

9 A. No, sir.

10 Q. Did you tell him that he was not -- that he was at
11 his baby's mother's house that night?

12 A. Yes, sir.

13 Q. Okay. When you told him that, did Detective Purdy
14 say you can go to jail for lying?

15 A. Yes, sir.

16 Q. As a result of it, did you tell him the truth?

17 A. Yes, sir.

18 Q. And what is the truth?

19 A. . .

20 Q. Look at me, Michael. What is the truth?

21 A. He wasn't at the baby mother house.

22 Q. And where was he?

23 A. Pocotaligo.

24 Q. And what did he tell you in Pocotaligo?

25 A. It was like I shot somebody.

MR. CURRY ON DIRECT

1 Q. Thank you, sir. Answer any questions Mr. Hood may
2 have.

3 CROSS EXAMINATION

4 BY MR. HOOD:

5 Q. Michael, I'm going to come over here in this direc-
6 tion so we can talk.

7 A. . .

8 SOLICITOR: I can't hear you, Mr. Hood.

9 Q. I'm going to come over in this direction. Okay? Now,
10 Michael, you went to the Sheriff's Department. Isn't that
11 correct?

12 A. Yes.

13 Q. And you went there to give a statement to the detec-
14 tive, is that correct?

15 A. Correct.

16 Q. And the detective that you were talking to was Detective
17 Purdy, isn't that correct?

18 A. Correct.

19 Q. And the statement that you made was that you were at
20 the trailer playing cards with Shameen and some other guys
21 when Angenie Roach and Herbert Ford arrived in that red
22 Pontiac, isn't that correct, with the black bra?

23 A. Correct.

24 Q. After you made that statement to Sergeant Purdy, he
25 told you that was a lie, isn't that correct?

MR. CURRY ON CROSS

1 A. Right.

2 Q. And that he already knew that Shameen Coker had done
3 the killing. Isn't that correct?

4 A. Correct.

5 Q. And that you were lying when you said that Angenie
6 Roach told you that he, Angenie, had killed James Dillard.

7 Isn't that correct?

8 A. Correct.

9 Q. Now, after you went through this back and forth with
10 the detective, he told you that you could go to prison
11 for the statement that you were going to make about having
12 -- being at the trailer playing cards when Roach arrived
13 with Ford. Is that correct?

14 A. Correct.

15 Q. And he even showed you in the book how you were going
16 to go to prison for certain crimes, isn't that correct?

17 A. Correct.

18 Q. And you at that time were told that Shameen Coker
19 was the one who did the killing of James Dillard, isn't that
20 that correct?

21 A. Correct.

22 Q. And after they advised you that you were going to go
23 to prison for lying, you changed your story, didn't you?

24 A. Yes, sir.

25 Q. And after you changed your story, you changed your

MR. CURRY ON CROSS

1 story to Shameen Coker told me that he shot James, isn't
2 that correct?

3 A. Correct.

4 Q. Now, Michael, you testified at an earlier hearing in
5 this case, didn't you?

6 A. Right.

7 Q. And you didn't want to testify, did you?

8 A. No, sir.

9 Q. But you were subpoenaed to testify in that case at
10 that hearing, weren't you?

11 A. Yes, sir.

12 Q. And you were subpoenaed again today to testify in this
13 case, isn't that correct?

14 A. Correct.

15 Q. Now, prior to your testimony or your statement that you
16 gave at a previous hearing, you had a conversation with the
17 same detective who took the original statement from you,
18 Officer Purdy. Isn't that correct?

19 A. Yes, sir.

20 Q. And Officer Purdy told you that you better stick to
21 your last statement, isn't that correct?

22 A. Correct.

23 Q. Okay. Or what?

24 A. I would go to jail.

25 Q. You were going to go to jail. You failed to show up

MR. CURRY ON CROSS

1 one day for that hearing, isn't that correct?

2 A. Correct.

3 Q. And the police picked you up and put you in jail over
4 here, didn't they?

5 A. Correct.

6 Q. And you don't want to go back to jail, do you?

7 A. No, sir.

8 Q. So in order for you to stay out of jail, you have to
9 testify that Shameen Coker told you that he shot James, isn't
10 that correct?

11 A. Correct.

12 Q. I have no further questions.

13 REDIRECT EXAMINATION

14 BY SOLICITOR:

15 Q. And why do you have to testify that Shameen told you
16 that he shot James Dillard?

17 A. . .

18 Q. Look at me.

19 A. . .

20 Q. Do you remember me talking with you?

21 A. Yes, sir.

22 Q. What did I tell you to come in this Courtroom and do?

23 A. Tell the truth.

24 Q. Huh?

25 A. Tell the truth.

MR. CURRY ON REDIRECT

1 Q. Okay. Telling the truth now, what did Shameen tell
2 you, if anything?

3 A. He told me he shot James.

4 Q. Is that the truth?

5 A. Yes, sir.

6 Q. Why did you go to the officer to start off with?

7 A. Because his mother ask me to.

8 Q. Huh?

9 A. Because his mother ask me to.

10 MR. HOOD: Objection.

11 THE COURT: The objection is noted but overruled.

12 BY SOLICITOR:

13 Q. His mother asked you to go tell them what you told Mr.
14 Purdy?

15 A. Yes, sir.

16 Q. And was what you told Mr. Purdy the truth?

17 A. Yes, sir.

18 Q. When you told Mr. Purdy that A. J. told you he shot
19 James, was that the truth?

20 A. No, sir.

21 Q. Huh?

22 A. No, sir.

23 Q. What is the truth?

24 A. Shameen shot him.

25 Q. Thank you, sir.

1 MR. HOOD: I don't have any further questions.
2 THE COURT: You can come down.
3 SOLICITOR: May Mr. Curry be excused?
4 MR. HOOD: No objection.
5 THE COURT: Without objection.
6 (Witness excused)
7 SOLICITOR: With that, the State rests, sir.
8 THE COURT: Mr. Foreman, members of the jury, the State
9 has rested. There are some matters of law that must be
10 taken up at this time.
11 Please retire to the jury room and we will be back to
12 you as soon as we can.
13 (Jury excused from Courtroom)
14 THE COURT: Are there any motions?
15 MR. HOOD: Your Honor, at this time we would make a
16 motion for directed verdict on all charges.
17 Even taking the evidence in the light most favorable
18 to the State, I believe they have failed to prove quite a
19 few matters concerning the elements of the
20 offenses in this case.
21 There was circumstantial evidence . . .
22 THE COURT: There was some pretty direct evidence.
23 Mr. Roach testified he saw him do it.
24 MR. HOOD: That's my motion, Your Honor.
25 THE COURT: Well, thank you. Taking the evidence in

1 the light most favorable to the State, as I'm required to
2 do at this time, I find there is adequate testimony and evi-
3 dence to go to the jury on all three charges; that is,
4 murder, armed robbery and kidnapping.

5 So the motions are denied.

6 Anything else?

7 MR. HOOD: Your Honor, at this time we would like for
8 you to advise Shameen of his rights concerning testifying or
9 not testifying.

10 THE COURT: Okay, Mr. Coker. Do you wish to take the
11 stand and testify in your own defense in this case?

12 DEFENDANT: No, sir.

13 THE COURT: That's a no?

14 Okay, speak up.

15 Have you had a chance to discuss your decision not to
16 testify with your attorney, Mr. Hood?

17 DEFENDANT: Yes.

18 THE COURT: And you understand that you have a consti-
19 tutional right to testify?

20 DEFENDANT: Yes, sir.

21 THE COURT: Are you now exercising your constitutional
22 right to remain silent?

23 DEFENDANT: Yes.

24 THE COURT: All right. How much education do you
25 have?

1 DEFENDANT: Tenth grade. (Difficult to hear)

2 THE COURT: Are you today under the influence of any

3 medication or alcohol?

4 DEFENDANT: No.

5 THE COURT: Okay. I now ask you and your attorney

6 whether or not you would like me to -- excuse me. If

7 you would like me to charge the jury that they may not

8 consider the fact that you did not take the stand and

9 testify -- that you exercised your right not to testify,

10 and they may not discuss this or consider this in their de-

11 liberations?

12 Would you like me to read that charge?

13 MR. HOOD: Yes, Your Honor.

14 THE COURT: I understand the recent case of Atkins or

15 something where they say to not use the word failure, and

16 you make a motion on that, so I will charge them that.

17 Okay. I find -- is there anything else you would

18 like to say about those matters? Anything you would like

19 to say about whether you want to testify or not testify? Anythir

20 you'd like to ask me?

21 DEFENDANT: No.

22 THE COURT: You have had plenty of time and adequate

23 time to discuss this with your lawyer?

24 DEFENDANT: Yes, sir.

25 THE COURT: Okay, I find that the Defendant has freely,

1 knowingly and voluntarily exercised his right to remain
2 silent, and in accordance with the Defendant's wishes I will
3 charge the jury that they must not hold his -- that he is
4 exercising his right not to testify and they should not hold
5 this against him during deliberations.

6 Okay, you can be seated.

7 MR. HOOD: With that, Your Honor, the Defense rests.

8 THE COURT: Okay.

9 MR. HOOD: We would renew our motion for directed
10 verdict.

11 THE COURT: Let's bring the jury back in so you can
12 rest before them.

13 MR. HOOD: I just did that so I could go ahead and
14 renew my motion.

15 THE COURT: I understand. For the same reasons I just
16 gave, I feel there is adequate testimony for there to be a
17 jury issue on all three charges.

18 I don't see why we can't go forward and finish this
19 case, with the arguments. Are you ready to go forward?

20 MR. HOOD: I am.

21 SOLICITOR: I'd like to take a break though.

22 THE COURT: I'm going to give you a break. We'll take
23 a recess and come back and do the arguments and charge, is
24 what I'm contemplating.

25 MR. HOOD: Are we going to send them out to deliberate

1 tonight?

2 THE COURT: We'll have to if we charge. It's going
3 to take a while.

4 I'm not so sure we wouldn't be better off bringing
5 them back tomorrow. What do you think?

6 SOLICITOR: I'm at your disposal.

7 THE COURT: It's three o'clock and it won't get to
8 the jury -- charge and arguments will take a while.
9 Of course, these are very serious charges.

10 I believe we might be better off to stop now and come
11 back tomorrow.

12 MR. HOOD: I would prefer doing it all at one time,
13 either today or tomorrow.

14 THE COURT: Oh, I'm going to do it all at one time.

15 MR. HOOD: I just don't like to send them out at five
16 o'clock and have a problem.

17 THE COURT: I think I'll bring them back in and tell
18 them that, and tell them we'll do arguments and charge at one
19 time and have deliberations, and when they come in in the
20 morning we'll go ahead and have that.

21 (Further discussion between counsel and the
22 Court concerning scheduling)

23 THE COURT: Please bring the jury in.

24 (Jury returned to Courtroom)

25 THE COURT: Okay, the State has rested.

1 Mr. Hood?

2 MR. HOOD: Your Honor, at this time the Defense would
3 rest.

4 THE COURT: Okay. Mr. Foreman and members of the jury,
5 both sides have rested, so that concludes the testimony and
6 evidence portion of the trial.

7 What remains are the final arguments or summations of
8 the attorneys, the charge on the law, and your deliberations.

9 Because of the hours, traditionally we do not split up
10 the arguments and the charge, so if we go forward, and I
11 anticipate that will take about two hours, I want to be
12 able to at least start the -- have all the arguments, the
13 charge, and your deliberations continuously, so that you
14 can do that.

15 I don't think it is fair to have some of it today
16 and some of it tomorrow.

17 With that in mind, we're going to stop today and then
18 resume again tomorrow morning at nine thirty, and when you
19 come in tomorrow morning we will -- the bailiffs will get
20 your lunch orders so when we finish all that prior to lunch
21 you will have your lunch while you are deliberating. Then
22 you will be able to work continuously as long as it takes
23 to reach a verdict in this case.

24 As I told you yesterday, do not discuss the case with
25 anyone, do not allow anyone to discuss it with you, and make

1 sure you do not read any newspaper accounts of it or TV
2 accounts if there are any.

3 With that, you are excused. Please report back to the
4 jury room at nine thirty. Have a nice evening.

5 (Jury excused from the Courtroom, after the follow
6 colloquy with the Court)

7 JUROR: Excuse me, Your Honor. Before we leave the
8 Courtroom, could I ask a question?

9 THE COURT: Yes, sir.

10 JUROR: During our deliberations tomorrow, will we be
11 sequestered if we cannot reach a verdict?

12 THE COURT: Well, you will probably not be sequestered.
13 That is only usually in death penalty cases.

14 JUROR: Okay.

15 THE COURT: I think you will -- I would anticipate you
16 will start deliberations at something like eleven o'clock
17 in the morning, so you'll have a long time to do it, but I
18 would not be concerned about that.

19 If I had been concerned about that, obviously I would
20 have told you to bring clothes.

21 JUROR: Thank you.

22 (All jurors out of Courtroom)

23 THE COURT: Any objection to what I just told him?

24 SOLICITOR: Not from the State.

25 MR. HOOD: No objection.

1 THE COURT: Okay. Anything else we can do other than
2 -- I don't know that we need to be on the record, but I want
3 to go over the charges with you

4 SOLICITOR: Yes, sir.

5 THE COURT: We can go back on the record on that in the
6 morning. Anything else?

7 SOLICITOR: Not that I'm aware of.

8 THE COURT: Then in this case we will resume on the
9 record in the morning at nine thirty.

10 (Court stood in recess as to this matter until March
11 12, 2003, at 9:45 A.M.)

12 THE COURT: Good morning, are we ready to proceed?

13 SOLICITOR: State is.

14 MR. HOOD: Yes, sir.

15 THE COURT: Bring the jury.

16 (Jury returned to Courtroom)

17 THE COURT: Good morning, Mr. Foreman and ladies and
18 gentlemen of the jury.

19 As I told you yesterday, we are now ready for the f
20 arguments or summations of the attorneys.

21 After that, I will charge you the law, and then you
22 can begin your deliberations.

23 Solicitor?

24 SOLICITOR: May it please the Court?

25 THE COURT: Yes, sir.

1 SOLICITOR: Mr. Foreman and ladies and gentlemen of
2 the jury, as I told you at the beginning, the State is trying
3 Mr. Coker on three offenses, murder, kidnapping and armed
4 robbery.

5 His Honor will charge you the details of the law fol-
6 lowing these jury arguments, and let me tell you, a jury
7 argument is exactly that. It is the point at which we
8 present our side of the case.

9 I will talk to you and then Mr. Hood will talk to you,
10 and Your Honor will charge you on the law.

11 One of the things that he will charge you is that, as I
12 told you in the beginning, you all have to determine what
13 the truth is.

14 In that regard, we don't ask jurors to take out of
15 their minds everything that they have learned during the
16 rest of their life. We ask you to bring your life exper-
17 iences in with you, in order to determine what you believe
18 in this case.

19 You must judge the credibility of the witnesses, the
20 believability of the witnesses, and in that regard you have a
21 right to believe all of what a witness said, or none of what a
22 witness said, or you have a right to believe a part of what
23 a witness said and disbelieve a part.

24 You can believe one witness as against ten, or ten
25 witnesses as against one.

1 It is your duty to determine what the truth is, and you
2 use your experiences in your life. You can take into consid-
3 eration the appearance and demeanor of the witness, what
4 you observed of the witness while they were on the wit-
5 ness stand.

6 You use your good, common sense as you do in your every-
7 day lives.

8 You have to find out what the truth is and base your
9 decision on the evidence in the case. You have to go through
10 all of it and determine the truth, and base your decision
11 on that.

12 Nobody can tell the members of this jury what the facts
13 are. You have to determine that, ladies and gentlemen. Just
14 as you can't tell the Judge and I can't tell the Judge what
15 the law is, you must take the law as the Judge charges it.
16 That is his responsibility, just as your responsibility is
17 to find the truth.

18 Now, murder is the unlawful killing of another person
19 with malice aforethought.

20 Malice is defined as an evil spirit, doing something
21 with a wicked heart.

22 One kind of malice is express malice and there is also
23 implied or inferred malice. Express malice is where a person
24 says, I hate you; I'm going to kill you. There is also im-
25 plied malice. Implied malice or inferred malice is where,

1 if you take into account and consideration all of the cir-
2 cumstances, or if I used a deadly weapon, you can say there
3 is implied malice in existence.

4 The law does not say that malice has to be in your mind
5 at any length of time prior to the killing itself, but only
6 at the time of the killing you have to have that malice.

7 Kidnapping is exactly what you all hear about on tele-
8 vision, and you will hear the Judge give you a bunch of legal
9 terms, enveigle, confine, and all kinds of stuff, but what
10 it means is that you take somebody and detain them against
11 their will. That is kidnapping.

12 If he was taken from the car against his will, that is
13 kidnapping.

14 Armed robbery is taking the personal property of
15 another person against his will through the use of force.

16 It's as simple as that.

17 Now, there are two other concepts of the law that His
18 Honor will charge you. The felony murder rule -- if a
19 person is committing a crime, even if it was not intended
20 to be a murder -- if by way of example, I steal your car,
21 and in the process of stealing your car I kill you, that is
22 still a murder.

23 That is the felony murder rule. You are guilty of
24 murder. You can imply malice from the fact that I stole your
25 car.

1 A most important rule of law is the rule that the hand
2 of one is the hand of all. If two people enter into an
3 agreement to do a crime, everybody that is involved in that
4 crime is responsible for every act that each of the people
5 committed.

6 Mr. Foreman and ladies and gentlemen of the jury, if you
7 and I decide we're going to rob somebody and you stand out on
8 the street to serve as a lookout, and I take the gun out
9 and shoot someone. Even though you didn't have the gun
10 and you didn't shoot anyone, because the agreement was
11 that you were going to be the lookout, you are as guilty as
12 I am.

13 If two people in the process of the murder or process
14 of a crime get together, then everything that the other one
15 does in the process of that crime -- each and every one of
16 them are responsible for the act of the others. The hand of
17 one is the hand of all.

18 Now, there is no question in this case that a murder
19 was committed. We know the man was shot several times and
20 we are unable to authenticate his injuries, the number of
21 times he was shot, because of the decomposition of the
22 body.

23 We know he was shot once in the head. That's what the
24 pathologist said, and that that shot was to the back of the
25 left side of the head, going slightly forward, if I recall,

1 and she could tell that not because of the path of the bul-
2 let through the brain, because the brain had liquified, but
3 because of a bevilled edge, if you will remember her testi-
4 mony.

5 Because of a bevilled edge that showed that it was
6 going slightly forward.

7 There is no question that the man was killed. Some-
8 body is guilty of murder.

9 Kidnapping -- there is no question but that there was
10 a kidnapping. You've got a car that was taken from the
11 man who had the ignition key. Mr. Manigault gave it to
12 him earlier that afternoon and asked him to take it back
13 to the house.

14 We know that when that car was found by law enforce-
15 ment and they pulled it out of the Public Landing--we know
16 James Dillard's pocketbook was inside that car.

17 We know it was James Dillard's because the officer
18 took photographs of his ID card. So we know that he was in
19 that car.

20 Armed robbery -- we know that the car was stolen, and
21 obviously it was stolen because they tried to hide it later,
22 and they wouldn't have tried to hide it unless it was
23 stolen.

24 We know from A. J. Roach that a gun was used to steal
25 that car, so there is no question of that.

1 It appears to me, and I've been doing this for a
2 long time, that the issue is who did it, and that appears
3 to be the only issue.

4 Did A. J. Roach do it or did Shameen Coker do it?

5 As I told you, in regard to the law, the hand of one
6 is the hand of all. If Shameen Coker didn't do the shoot-
7 ing, there is no question but that he and A. J. Roach got
8 together and got together for the ungodly purpose of going
9 for a ride in a pretty car, and for no other reason.

10 And they both did go and ride in that car. The only
11 person that knew James Dillard was Shameen Coker. You all
12 heard that testimony.

13 They conspired together to take a car, and they got
14 the car, and they, one or the other, took him out of that
15 car and put him in the trunk.

16 They took him further down the road and they took him
17 out of that trunk, one or the other of them, and they took
18 him off into the woods, and they killed him.

19 Now, if that's true, that either one of them killed
20 him, then each and every one of them is as guilty as the
21 other one is in this offense.

22 But let's look at the facts. Let's look at who -- at
23 who killed him.

24 You know, I would have loved to have brought to you all
25 today a videotape that was taken out there in those woods in

1 that isolated area, that shows the person walking him and
2 putting the gun to his head and shooting him, but I don't
3 have that.

4 When you travel with the devil, you have to go to hell
5 to get the witnesses, and I'm not implying that he's the
6 devil. That's a decision you all have to make.

7 What I'm saying to you is that because of who they are,
8 I don't have the Baptist preacher, or Methodist minister, to
9 come in Court and testify.

10 I've got to take people that they run with to come in
11 and tell you all what happened, and to do that, I have to
12 take A. J. Roach, who is a Co-defendant. I have to take
13 Herbert Solomon Ford, who is confined in the prison system.
14 I have to take Michael Curry, who is not the brightest light
15 in the sky, to tell you who did it.

16 But let's look at their testimony for just a minute.
17 A. J. Roach has pleaded guilty. He is getting a twenty-
18 five year sentence to tell the truth.

19 If he didn't tell the truth, why would he tell you,
20 Mr. Foreman and ladies and gentlemen -- why wouldn't he tell
21 you, I never put my hand on the gun, ladies and gentlemen; I
22 was just there?

23 We had made an agreement to steal this car. I didn't
24 know anything about a murder. I didn't have the gun.

25 But let me tell you something. He didn't do that. He

1 told you that he had the gun and he put it on James Dillard:
2 that they put him in the trunk.

3 He told you that he laid the gun on the console of the
4 car; that Shameen Coker got the gun and walked him out into
5 the woods and put him on his knees and shot him, execution-
6 style.

7 He hit him in the back of the head and he fell forward,
8 and he shot him several times.

9 He then told you that I told Shameen -- I said, did you
10 kill him? He said, I'm not sure, so he said, well, we got
11 to be sure; go back in the woods and shoot him again. And,
12 bless God, he went in there and shot him, and that was the
13 shot, ladies and gentlemen, that the pathologist told you
14 about.

15 He would have isolated himself from having anything
16 involved with that gun.

17 They asked him, well, how did you know the gun was
18 loaded, and remember what he said? He said, well, when he
19 pulled the trigger it went off.

20 A. J. Roach has nothing to gain or lose by telling you
21 the truth. Nor does Solomon Ford. Nothing to gain or lose
22 by coming in and telling you the truth.

23 Look at Solomon Ford. Look at his testimony. What did
24 he tell you?

25 ~~is, among other things, the part of a~~

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[REDACTED]

Then Michael Curry -- he said his mother told me --
In August of this past year, I think it was, that A. J. said
I shot him; that Shameen was with his baby's momma at the
time the killing took place.

I said, was that the truth, and he said no. His mother
told me to go and lie, and I went and told the lie.

You heard it. Shameen told me I just shot a man; I
shot James.

On cross examination, he said all kinds of stuff, and
I asked him again, I said, Michael -- the entire time he was
on the witness stand he was like this, (gesturing) and
I'd have to make him look at me. Look at me, look at me,
Michael.

And he'd look over at me and go right back down again.
The boy is scared to death. He's not real bright and he's
scared to death.

He told you all the truth. Remember, I asked him --

1 I said, what did I tell you to do when you walked in this
2 Courtroom, and remember his answer? Tell the truth. I
3 told him to tell you the truth, and he did. He said that
4 Shameen told him he shot James.

5 I could take you through each bit of testimony of
6 each witness, but you remember it. It was consistent, each
7 witness, with the other.

8 [REDACTED]
9 [REDACTED] They stole a car and kidnapped James Dillard,
10 who worked as a Budweiser delivery man, who has never been
11 in trouble in his entire life, but who had a pretty car.

12 That day he was driving a pretty car, and we wanted to
13 go -- we wanted to go to the nightclubs that night, [REDACTED]

14 [REDACTED]
15 [REDACTED] You heard Mr.
16 Manigault's testimony.

17 The only thing that will speak the truth in this case,
18 ladies and gentlemen, will be a verdict of guilty of murder,
19 in that he pulled the trigger or that he conspired with
20 another and still would be guilty of another -- guilty of
21 murder.

22 We ask that you bring back a verdict of guilty of
23 murder, guilty of kidnapping and guilty of armed robbery
24 against Shameen Coker.

25 Thank you.

1 THE COURT: Mr. Hood?

2 (Whereupon, the closing statement of Mr. Hood in behalf
3 of the Defendant was made. There ~~were~~ no objections made by
4 the State during the closing statement of the Defense.)

5 (Conference at the bench between counsel and the
6 Court off the record)

7 THE COURT: Mr. Foreman and ladies and gentlemen of the
8 jury, the State of South Carolina charges the Defendant,
9 Shameen Coker, with the offenses of murder, kidnapping and
10 armed robbery.

11 Each indictment, as I just told you, charges a separ-
12 ate and distinct offense.

13 You must decide each indictment separately from the
14 evidence and the law that applies to that offense, and unin-
15 fluenced by your decision as to any other indictment.

16 The Defendant may be convicted or freed on any or
17 all of the offenses charged, and you will be asked to write
18 a separate verdict of guilty or not guilty as to each in-
19 dictment.

20 The Defendant has pled not guilty to each of the in-
21 dictments, and that plea puts the burden on the State to
22 prove the Defendant guilty.

23 A person charged with committing a criminal offense
24 in South Carolina is never required to prove himself inno-
25 cent.

1 I charge you that it is an important rule of law that
2 a Defendant in a criminal trial, no matter what the serious-
3 ness of the charges may be, will always be presumed to
4 be innocent of the crimes for which the indictment was issued,
5 unless guilt has been proven by evidence satisfying you
6 of that guilt beyond a reasonable doubt.

7 This presumption of innocence does not end when you
8 begin your deliberations, but it accompanies the Defendant
9 throughout the trial until you reach a verdict of guilt
10 based upon evidence that satisfies you of that guilt be-
11 yond a reasonable doubt.

12 The presumption of innocence is like a robe of right-
13 eousness placed about the shoulders of a Defendant and it
14 remains with the Defendant until it has been stripped
15 from the Defendant by evidence satisfying you of the Defen-
16 dant's guilt beyond a reasonable doubt.

17 The presumption of innocence is not a mere legal
18 theory. It is not just a legal phrase, but it is a sub-
19 stantial right to which every Defendant is entitled,
20 unless you, the jury, are satisfied from the evidence of
21 the Defendant's guilt beyond a reasonable doubt.

22 Members of the jury, under the law of South Carolina,
23 you are the sole judges of the evidence presented in
24 this trial.

25 As a Judge, I am not allowed to suggest to you any

1 opinion that I may have regarding the facts or the evi-
2 dence presented.

3 If you have gotten any inference whatsoever regard-
4 ing any of the facts of the case from anything that I
5 may have said during the trial, you are required to
6 disregard those inferences.

7 You, the jury, are the sole judges of the facts of
8 the case and the credibility of the witnesses, and the
9 weight to be given the testimony and evidence presented
10 to you.

11 In determining the facts, you have -- in determining
12 the credibility of any witness, you have the right to take
13 into consideration the interest of the witness, the bias
14 of the witness, and the demeanor of the witness upon the
15 stand.

16 As a jury, you have a right to believe one witness
17 against several, several against one, or you may believe
18 a portion of a witness' testimony and disbelieve another
19 portion.

20 While you consider these matters, always bear in
21 mind that you should give the Defendant the benefit of
22 every reasonable doubt.

23 You have heard the testimony of expert witnesses in
24 this case. An expert -- this is a person who has special
25 knowledge, education or experience in their particular

1 field.

2 You should consider expert testimony in the same man-
3 ner as you do any other testimony, and you may give it
4 such weight as you believe it deserves, when considered
5 with all the other evidence in the case.

6 The Defendant in this case has not testified. This
7 is a constitutional right. It is not a circumstance that
8 you can take in consideration or even allow to enter into
9 your discussions in your jury room.

10 Under the Constitution of South Carolina and the
11 Constitution of the United States, it is his constitutional
12 right not to testify.

13 The burden of proof is upon the State of South Carolina
14 to establish his guilt by competent evidence beyond a rea-
15 sonable doubt.

16 The fact that the Defendant did not take the stand
17 and testify in his own behalf does not create any infer-
18 ences against him.

19 The jury must not permit that fact to weigh in the
20 slightest degree against this Defendant, nor should this
21 fact enter into your discussions or deliberations in the
22 jury room.

23 As the Judge, the law of South Carolina makes me the
24 sole instructor of the facts, and I will instruct you on
25 the law that you are to apply to the facts as you determine

1 them to be.

2 You are required to accept the law as I give it to
3 you, and you may not reject the law because you may dis-
4 agree with it or wish it were otherwise or for any other
5 reason.

6 I cannot tell you what the facts of the case are, and
7 you are required to apply the law as I give it to you.

8 As I told you earlier, one of the indictments charges
9 the Defendant with murder, and, of course, you will have
10 the indictments in the jury room with you as you will also
11 have all the evidence and exhibits.

12 As I told you, the Defendant is charged with murder,
13 and the State must prove beyond a reasonable doubt that
14 the Defendant killed another person with malice aforethought.

15 Malice must exist in the mind of the Defendant just
16 before and at the time that the act is committed.

17 Therefore, there must be a combination of the previous
18 evil intent and the act.

19 Malice aforethought may be expressed or inferred.
20 These terms express or inferred do not mean different
21 kinds of malice, but merely the manner in which malice may
22 be shown to exist; that is, either by direct evidence
23 or by inference from the facts and circumstances which are
24 proven.

25 Express malice is shown when a person speaks words

1 which express hatred or ill will for another, or when a
2 person is prepared beforehand to do the act which was
3 later accomplished.

4 For example, lying in wait for a person or any other
5 act or preparation going to show that the deed was within
6 the Defendant's mind would be express malice.

7 Malice may be inferred from conduct showing a total
8 disregard for human life. Inferred malice may also arise
9 when the deed is done with a deadly weapon.

10 A deadly weapon is any article, instrument or substance
11 which is likely to cause death or great bodily harm.

12 Whether an instrument has been used as a deadly
13 weapon depends on the facts and circumstances of each
14 case.

15 The following are examples of deadly weapons: Pistol,
16 shotgun, rifle, a dagger, knife, metal knuckles, and,
17 of course, there are others.

18 I also charge you, members of the jury, that if one
19 intentionally kills another during the commission of a
20 felony, this inference of malice may arise.

21 If facts are proven beyond a reasonable doubt to raise
22 an inference of malice to your satisfaction, this infer-
23 ence will simply be an evidentiary fact to be taken into
24 consideration by you, along with all other evidence in the
25 case, and you may give it such weight as you decide it

1 should receive.

2 A second indictment charges the Defendant with the
3 offense of armed robbery.

4 In order to prove this offense, the State must first
5 prove beyond a reasonable doubt that the Defendant took
6 property, personal property, from the person or presence
7 of another person.

8 Property is within the presence of a person if it is
9 within the person's reach, inspection, observation or
10 control, so that the person could, if not overcome by vio-
11 lence, or prevented by fear, keep possession of the
12 property.

13 The State must also prove beyond a reasonable doubt
14 that the Defendant carried the property away, intending
15 to permanently deprive the owner of the property, and to
16 keep the property for the Defendant's own use.

17 The slightest removal of the property or the complete
18 possession of the property, even for an instant, by the De-
19 fendant is sufficient to show a taking and carrying away
20 of the property.

21 The taking and carrying away of the property must have
22 been done with violence or putting the owner of the prop-
23 erty in fear of violence.

24 Finally, the State must prove beyond a reasonable
25 doubt that the Defendant was armed with a deadly weapon

1 during the robbery.

2 I have previously defined for you what constitutes a
3 deadly weapon under our law.

4 A third indictment charges the Defendant with kidnap-
5 ping. The State must prove beyond a reasonable doubt that
6 the Defendant knowingly and unlawfully seized, confined,
7 enveigled, decoyed, kidnapped, abducted or carried away
8 another person, without authority of the law.

9 To do a thing unlawfully is to do it wilfully, against
10 the law.

11 Knowingly means with knowledge; consciously, not
12 accidentally.

13 To seize means to take suddenly or forcibly.

14 Confine means to limit, restrict or enclose within
15 bounds, imprison or shut or keep in.

16 Enveigle means to lure, entice or lead astray by
17 false representations, promises or other deceitful means.

18 Decoy means to lure, and by decoy means to use some-
19 thing to entice a person into a trap.

20 Kidnap is to remove that person against his will by
21 unlawful force or by fraud.

22 Abduct means to carry off secretly or by force for an
23 illegal purpose.

24 To carry away means to remove.

25 The State does not have to prove the Defendant did all

1 of these things. Instead, if you find beyond a reason-
2 able doubt that the Defendant did any of these things, you
3 may find the Defendant guilty of kidnapping.

4 Something that is done without authority of law is
5 something which the law does not sanction, permit or allow,
6 condone or provide justification for.

7 The kidnapping does not have to be for any personal
8 or monetary gain or for any illegal purpose, but it may be
9 for any reason whatsoever.

10 Members of the jury, I charge you that if a crime is
11 committed by two or more persons who are acting together
12 in committing a crime, the act of one is the act of all.

13 A person who joins with another to accomplish an illegal
14 purpose is criminally responsible for everything done by
15 the other person which occurs as a natural consequence of
16 the acts done in carrying out the common plan and purpose.

17 For example, two people may be guilty of killing
18 another person when only one of the two had a gun and there
19 was only one bullet, and only one of the two fired the shot
20 that caused the death.

21 If two or more persons are committing an act together,
22 assisting each other in committing this act, the act of
23 one is the act of all.

24 As is sometimes said, the hand of one is the hand of
25 all.

1 Prior knowledge that a crime is going to be committed
2 without more is not sufficient to make a person guilty of
3 that crime.

4 Mere knowledge that another person is going to commit
5 a crime, even if the Defendant is present when the crime
6 is committed, is not sufficient to convict the Defendant
7 as a principal.

8 Guilt of a principal is shown by actual or constructive
9 presence at a scene as a result of a prior arrangement.
10 Therefore, a finding of a prior arrangement, plan or common
11 scheme is necessary for a finding of guilt as a principal.

12 The State must prove beyond a reasonable doubt by
13 competent evidence the theory of the hand of one is the
14 hand of all.

15 A principal in a crime is one who either actually com-
16 mits the crime or who is present, aiding, abetting or
17 assisting in committing the crime.

18 When a person does an act in the presence of and with
19 assistance of another, the act is done by both.

20 Where two or more, acting with a common plan or
21 intent, are present at the commission of a crime, it does
22 not matter who actually commits the crime. All are guilty.

23 The hand of one is the hand of all.

24 Presence at the commission of a crime means to be
25 sufficiently near to aid and abet and assist in the

1 commission of a crime.

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

5 Intent is also a necessary element, for there must
6 have been a common design or intent to commit the crime,
7 and the crime must have been committed pursuant thereto,
8 with the person aiding and abetting by some overt act.

9 Intent means intending the result which actually oc-
10 curred. Not accidentally or involuntarily.

11 Intent may be shown by acts and conduct of the Defen-
12 dant and other circumstances from which you may naturally
13 and reasonably infer intent.

14 The State must prove these elements beyond a reasonable
15 doubt.

16 Ladies and gentlemen, there are two types of evidence
17 which are generally presented to you in a trial, direct
18 evidence and circumstantial evidence.

19 Direct evidence is the testimony of a person who as-
20 serts or claims to have actual knowledge of an event,
21 such as an eyewitness.

22 Circumstantial evidence is proof of a chain of facts
23 and circumstances indicating the existence of a fact.

24 The law makes absolutely no distinction between the
25 weight or the value to be given to either direct or to

1 circumstantial evidence, nor is a greater degree of cer-
2 tainty required of circumstantial evidence than of direct
3 evidence.

4 You should weigh all the evidence in the case. After
5 weighing all the evidence, if you are not convinced of the
6 guilt of the Defendant beyond a reasonable doubt, you must
7 find the Defendant not guilty.

8 As fair and impartial jurors, you are sworn to impar-
9 tially try and determine the facts of this case. When you
10 comply with your oath, no one will have a right to criticize
11 your verdict, and you will have discharged your duties as
12 jurors.

13 You must not be influenced by any opinions about the
14 case which you may have heard on the outside. You must
15 decide this case on the testimony that you have heard from
16 sworn witnesses, along with the other evidence that was
17 adduced in the trial.

18 There are two verdicts which you may find as to each
19 of these indictments. One is guilty and one is not
20 guilty.

21 There is no significance whatsoever to the order in
22 which I state these possible verdicts to you. It is simply
23 that one must be stated first.

24 Your verdict must be a unanimous one; that is, it must
25 be the verdict of each and every one of you.

1 Mr. Foreman, when the jury agrees on a unanimous ver-
2 dict as to any or all of the indictments, it will be your
3 duty to write it on the back where the word verdict is
4 printed there.

5 There are several lines and a place for your signature
6 to go on each indictment.

7 During your deliberations, members of the jury, if you
8 need to communicate with the Court, please write a note and
9 give it to one of the bailiff and they will bring it in
10 here, and we'll come back and discuss that.

11 In other words, do not -- if you have any questions
12 regarding your deliberations, do not discuss it with the
13 bailiff, but write a note and we will come back in here to
14 discuss it.

15 On the other hand, you may, of course, speak to the
16 bailiff if you have personal needs.

17 Are there any exceptions or additions to my charge
18 from either side, or do you need a side bar?

19 MR. HOOD: May we approach?

20 (Conference at the bench between counsel and the
21 Court off the record)

22 THE COURT: Anything else?

23 MR. HOOD: No, sir.

24 THE COURT: A couple of things. One, the attorney
25 said I left out something out of my charge. I think I

1 did not, but I'll go back and charge it a little bit anyway.

2 Is there anything else on that tape other than the --
3 what was that?

4 SOLICITOR: You're talking about Ms. Morris' tape?

5 THE COURT: Yes, sir.

6 SOLICITOR: That is a portion of the whole tape.
7 Nothing else is on it that relates to this case.

8 THE COURT: Okay. Since it has other information on
9 it, if you wish to look at that tape, please write a note
10 and we'll come back in here or if the parties agree I
11 will let the TV be brought in to you and operated by one
12 of the bailiffs.

13 But we'll work that out if you want to view the tape
14 again.

15 If you do, just write a note and we'll make arrange-
16 ments for it, because all the other evidence you will have
17 in the jury room with you.

18 But since there's other matters on that tape, not
19 related to this trial, I'm going to make sure when you
20 view it, you view the part that is in evidence.

21 Members of the jury, in determining the facts, you
22 must necessarily pass upon the force and effect of the testi-
23 mony of the witnesses who have testified in this case.

24 It is for you to say what weight should be given to
25 testimony of each witness. It is for you to say what

1 force and effect you give each witness' testimony, and to
2 determine that portion of the witness' testimony you believe
3 and that portion you do not believe.

4 In determining the force and effect or the credibility
5 of any witness, you have a right to take into consideration
6 the interest of the witness, the bias of the witness, and
7 the demeanor of the witness upon the stand.

8 As a jury, you have a right to believe one witness
9 against several and several as against one, and you may
10 believe a portion of the witness' testimony and disbelieve
11 another portion.

12 I tell you again that you are the sole judges of the
13 facts in this case, and it is for you to say what force and
14 effect you give the testimony of any witness.

15 While you consider these matters, always bear in mind
16 that you should give the Defendant the benefit of every
17 reasonable doubt.

18 Okay, it is now almost eleven o'clock, and we've got
19 the lunch orders.

20 To the two alternates, this will conclude your ser-
21 vices on the case. I understand that when they did the
22 lunch, they sent for some for you, and if you would like
23 to stay here while the deliberations on a verdict are going
24 on and get your lunch, feel free to do that. You don't
25 have to. You are excused.

1 If you left anything in the jury room, the bailiff will
2 get that to you.

3 The rest of you -- as soon as the evidence and the
4 indictments are brought in to you, you then may begin
5 your deliberations. It is now in your hand, and we will
6 await further word from you.

7 You may retire at this time..

8 (Jury excused from Courtroom at 10:58 A.M.)

9 (The Court speaking to the alternates before they are
10 excused)

11 THE COURT: There are no exceptions or additions from the
12 State?

13 SOLICITOR: Nothing from the State.

14 THE COURT: Then we're at ease.

15 (Jury given exhibits and instructed to commence delib-
16 erations at 11:04 A.M.)

17 (Court stood in recess as to this case until 11:20
18 A.M.)

19 THE COURT: Okay, we have a message. Almost as soon
20 as they went in there, they wrote this. Request Coker's
21 statement. Request transcript regarding the entire case.

22 So we need to -- his statement was not introduced
23 into evidence, so I will let them know that it wasn't
24 introduced into evidence and our rules don't allow for
25 any discussion of anything not in evidence.

1 They will have to decide the case based upon the testi-
2 mony and the evidence presented, and as to the transcript
3 it is not available, but if they have something they
4 wish to be replayed we can do that.

5 SOLICITOR: That's fine with the State.

6 MR. HOOD: It's fine with me, Your Honor, but I think
7 -- I was simply going to say that the physical paper work
8 or the tape of Shameen Coker was not presented in evidence,
9 and that's fine.

10 But I think they can consider the evidence that was
11 given by A. J. Roach about hearing a tape of his state-
12 ment and things of that nature.

13 That is evidence.

14 THE COURT: No question about that, but all I'm going
15 to say is that the physical, actual statement was not intro-
16 duced into evidence.

17 Is it a written statement?

18 SOLICITOR: An oral statement that was transcribed.

19 THE COURT: Well, anyway, they can't consider it. I'm
20 just going to say any statement that was not -- other than
21 -- they will have to decide the case from the testimony and
22 evidence presented and the physical evidence.

23 MR. HOOD: What they have.

24 THE COURT: And from the evidence testified to from
25 the stand.

1 MR. HOOD: Yes, sir.

2 THE COURT: And other evidence introduced in the
3 trial.

4 So I'm not going to comment -- I appreciate that and
5 I will make sure I don't interject something about a state-
6 ment that is not in evidence.

7 SOLICITOR: It is the State's opinion that you should
8 tell them that they have to decide based upon the evidence
9 from that witness stand and the physical evidence that was
10 introduced.

11 Nothing else.

12 THE COURT: That's right, and I wanted to clarify that
13 so I don't inadvertently say something that I should not
14 about a statement.

15 Okay, bring the jury.

16 (Jury returned to Courtroom at 11:24 A.M.)

17 THE COURT: Okay, Mr. Foreman and members of the jury.
18 I have your message, which is that first you request Coker's
19 statement.

20 Our rules are such that you must decide the case upon
21 the testimony, the sworn testimony from witnesses, and
22 other evidence introduced at trial.

23 So I can't -- there isn't anything else I can give
24 you.

25 Okay, the second part of it is that you request a

1 of the testimony of the entire trial.

2 That is not available with the technology that we
3 have. However, Ms. Cummings, the Court Reporter, has
4 everything recorded, so she can -- it can be played back.

5 Anything -- any portions of the trial that you need
6 that you have questions about, any testimony -- if you wish
7 anybody's testimony to be replayed for you, we can do that.

8 If you have such a request, I can tell you it will take
9 just as long to play it back the second time as it did the
10 first time.

11 So if you would, whatever you want is solely within
12 your discretion, but I would say if you can be specific about
13 what person's testimony you wish, then we'll be glad to
14 make that available to you.

15 Do you have some other question?

16 (Jury members speaking among themselves)

17 FOREMAN: The part of the transcript dealing with when
18 A. J. was on the stand.

19 THE COURT: You want his testimony to be played?

20 FOREMAN: Yes, sir. Do you play it in here or do we
21 play it . .

22 THE COURT: We play it right here, so just bear with
23 us.

24 You want Mr. Roach's testimony replayed?

25 FOREMAN: Yes, sir.

1 THE COURT: All right.

2 (Whereupon, the testimony of witness A. J. Roach was
3 played for the jury by the Reporter)

4 THE COURT: That's all you want?

5 FOREMAN: Yes, sir.

6 THE COURT: Let us know if you need anything further.

7 (Jury returned to jury room to continue their
8 deliberations)

9 (Court stood in recess as to this case until 2:46
10 P.M.)

11 THE COURT: I have received notice that there is a
12 verdict in this case, and I'll tell you this. No matter
13 what the verdict is, if anybody feels like they're not going
14 to be able to restrain yourselves and they're going to
15 have to shout for jury or sadness, they better go outside
16 the Courtroom and let someone bring them the news.

17 If anybody wants to leave, now is the time to do it.

18 Law enforcement, if there is any disturbance, take
19 them right straight over there and then I'll have a hearing
20 whenever I get to it, and it might be next week.

21 Bring them in.

22 (Jury returned to Courtroom at 2:49 P.M.)

23 THE COURT: All right.

24 CLERK: Mr. Foreman, have you reached a verdict?

25 FOREMAN: Yes, we have.

1 CLERK: Please hand it to the bailiff.
2 (Verdicts given to the bailiff and then exhibited
3 to the Court)
4 THE COURT: Madam Clerk, please publish the verdicts.
5 CLERK: 2001 GS 7 171, the State of South Carolina
6 versus Shaheen Coker, for murder.
7 We, the jury, find the Defendant guilty.
8 2001 GS 7 175, the State of South Carolina versus
9 Shameen Coker, for armed robbery.
10 We, the jury, find the Defendant guilty.
11 2001 GS 7 174, the State of South Carolina versus
12 Shameen Coker, for kidnapping.
13 We, the jury, find the Defendant guilty.
14 Signed by the Foreman. Mr. Foreman, is this your
15 verdict?
16 FOREMAN: It is.
17 CLERK: If all agree, please raise your right hands.
18 (All jurors raising their right hand)
19 THE COURT: Anything further from the State?
20 SOLICITOR: If Your Honor please, I would like to address
21 the Court before the jury leaves. Would now be an appropriate
22 time?
23 THE COURT: Not now.
24 SOLICITOR: Okay, sir. Anything further from the
25 Defendant?

1 MR. HOOD: Your Honor, I'd like the jury to be polled.

2 (Whereupon, each juror was polled individually by the
3 Clerk, who asked if this was their verdict and was it still
4 their verdict. Each juror answered in the affirmative to
5 both questions)

6 THE COURT: Okay, the jury has been polled. Anything
7 else?

8 MR. HOOD: No, sir.

9 THE COURT: Solicitor?

10 SOLICITOR: If Your Honor please, I would like to tell
11 the Court that prior to putting A. J. Roach up as a witness
12 in this case, and I only learned last Sunday -- last Sunday
13 a week ago -- that he was going to be a witness, with him
14 being a Co-defendant, I required that he be polygraphed.
15 In other words, a lie detector test run.

16 The questions were asked of him -- of course, a lie
17 detector test is not sufficiently scientifically reliable to
18 be used in Court, but it is an investigative tool and it is
19 a safeguard for my office.

20 I required that he be asked the question, did Shameen
21 Coker shoot James Dillard, Jr., and his answer was yes,
22 and it showed that he was telling the truth.

23 I tell the Court that for the benefit of the jurors
24 because this was a difficult case.

25 As I said, to try the devil you've got to go to hell

1 to get the witnesses, and probably -- I would have preferred
2 to have better witnesses than I had, but I wanted the jury
3 to understand that it happened.

4 THE COURT: Anything further?

5 MR. HOOD: Nothing at this time.

6 THE COURT: Okay, Mr. Foreman and members of the jury,
7 this Court is interested in how the verdict was reached and
8 not what the verdict is.

9 I'm satisfied that you gave both the State and the
10 Defendant a fair and impartial trial.

11 You, of course, did not volunteer to serve on this
12 panel, and, having been called, you have met your responsi-
13 bilities to the County and the State of South Carolina for
14 the services you have rendered.

15 Having rendered your duty in accordance with your con-
16 science, you have no one to answer to.

17 This concludes your service on this case.

18 (Whereupon, jury was excused by the Court)

19 THE COURT: All right, anything further from the
20 State?

21 SOLICITOR: If Your Honor please, I am informed that
22 the sister of the deceased would like to address the Court
23 before sentencing.

24 THE COURT: First, I would ask you about any prior
25 record.

1 SOLICITOR: There is some Magistrate Court stuff but
2 nothing of significance.

3 THE COURT: Okay. Please come around.

4 MR. HOOD: Your Honor, I have a motion I'd like to make
5 at this time.

6 THE COURT: I'll let you make your motion then. Have
7 a seat.

8 We'll get to you in a minute.

9 MR. HOOD: That's a motion for a new trial at this time,
10 Your Honor.

11 I believe that based on the evidence in the case as a
12 whole that it was not sufficient for the finding that the
13 jury found.

14 THE COURT: Okay. I'm not sure but I thought that
15 motion was done after sentencing, but you can make it then
16 too, if you like.

17 In any event, taking the testimony in the light most
18 favorable to the State, I think there is plenty of adequate
19 testimony as to the guilt of the Defendant in these cases,
20 based upon the eye witness testimony.

21 The credibility of the witnesses, of course, is for the
22 jury and not for this Court.

23 But there was plenty of testimony that the Defendant
24 was guilty of the crimes charged, and on which to support
25 that verdict.

1 So that motion will be denied.

2 MR. HOOD: Thank you.

3 THE COURT: Ms. Smith, you may come around now.

4 SOLICITOR: If Your Honor please, this is Janet Smith,
5 the sister of the deceased, James Dillard, Jr.

6 MS. SMITH: Your Honor, I am asking one thing of you
7 today, and that is to hand down punishment that would fit
8 the crime.

9 Shameen Coker knew my brother, James Dillard. Shameen
10 Coker knew James since he himself was a small boy.

11 My brother was a good person, loved by man. I'm sur-
12 prised this Courtroom isn't packed with supporters, but this
13 act has affected the family greatly.

14 My mother and father are present here today. My father
15 -- you can see he is not the same man that he was prior to
16 the murder.

17 He was vibrant and talkative. Matter of fact, that
18 is where James got his sense of humor from, but after the
19 murder he is quiet and he went into deep depression. He
20 was placed on Prozac to help bring him around.

21 My brother, Your Honor, had not one, not two, but
22 three children whom he loved dearly and support ed. As a
23 matter of fact, they were going to move from Missouri to
24 South Carolina in July to be with their father.

25 This murder has affected from the oldest member of

1 our family to the youngest.

2 I have a son who was at the time of the murder three
3 years old and in pre-school. In February of last year he
4 went on a field trip and they were asked to send their mothers
5 Valentine's Day cards in the mail. I showed up at the mailbox
6 and I pulled out my Valentine's Day card my four year son
7 at the time had sent me, and I said to my son, I said, oh,
8 look at my card.

9 He said, yeah, mommie; said that's my Valentine's Day
10 card I sent you, and I said, oh, that's sweet, and then I
11 opened the card and I saw a big figure of a person on the
12 back of the card.

13 And I looked at him and said, who is this, daddy? And he
14 said, no, mommy. That's Uncle Junior. He said, look at
15 him. He has a broke eye and a broke leg. Four years old,
16 and that's what he remembers of his uncle.

17 Your Honor, I ask that you show Shameen Coker no mercy.
18 He showed my brother, whom he knew, no mercy, as he begged
19 and pleaded for his life.

20 He had seven long months after the murder to go to some
21 law enforcement agency and tell someone something, as we
22 looked and waited and wondered who and why.

23 We walked among this young man. We walked among his
24 family. These are people we know, not strangers.

25 This type of thing you hear is usually drug related, but

1 none of that happened here.

2 My brother died doing Shameen Coker a favor, and I
3 therefore ask you to in turn give him the sentence that will
4 fit the crime.

5 Thank you.

6 THE COURT: Thank you, Ms. Smith.

7 Solicitor, anything else?

8 SOLICITOR: Nothing further, sir.

9 MR. HOOD: Your Honor, you know most of the information
10 about Shameen.

11 THE COURT: I believe I've heard it twice.

12 MR. HOOD: Right, Your Honor. At the first trial and
13 this trial.

14 I'm not going to belabor that particular matter with
15 the Court. I just wanted you to know that his mother has
16 been supporting him this entire period of time, and she has
17 been present for every minute of this case on both occasions.

18 She has be in close communication with me on a weekly
19 basis concerning the welfare of her son, Shameen, and I
20 have had an opportunity to spend a lot of time with Shameen
21 and have grown to know Shameen.

22 And I'm not here to obviously make any statements
23 about the verdict or anything of that nature, but I know
24 that Shameen has always been what I felt to be very forth-
25 right with me.

1 I have been able to communicate with him without any
2 problem whatsoever.

3 He does have one child, and I'm sure you recall that
4 particular incident from the bond hearing.

5 THE COURT: About the child.

6 MR. HOOD: That's correct, Your Honor. He was out on
7 bond for a period of time, if I recall correctly, right
8 after the first trial.

9 He was working at the time this occurred with his
10 mother. He has always worked with his mother.

11 He had two jobs apparently when he was released on
12 bond sometime last year, and he continued that employment
13 up until the time he was re-incarcerated.

14 So it's not as if he is a person who does not at least
15 go out and make an effort to improve himself.

16 As you heard, he finished the eleventh grade in high
17 school and he's lived in the area all of his life. He has
18 some brothers who live in the area, and he has a very
19 close family who lives in the area also.

20 As I say, they have been in contact with me ever since
21 this matter arose a couple of years ago and I first started
22 handling this case.

23 Shameen may have a few words he would like to say,
24 and I will offer him at this time.

25 DEFENDANT: Your Honor, I'm sorry for what you have

1 to go through, to the family.

2 I never knew your brother. I just seen him ever once
3 in a while. I'm sorry for what he had to go through, and
4 even though they found me guilty of it, I ain't the one that
5 did it.

6 I pray -- you know what I'm saying -- I pray for every-
7 body that has been hurt, and I will pray for those involved
8 in the verdict.

9 I will try my best to live on this earth with that ver-
10 dict.

11 MR. HOOD: His mother is here but she doesn't wish to
12 say anything.

13 THE COURT: Okay. The kidnapping, since that was
14 encompassed within the murder, there is no sentence on
15 that.

16 Well, I certainly share Ms. Smith's sentiments and to
17 all the family. My sympathy is with you, and I am
18 satisfied in my own mind that this young man is guilty of
19 this.

20 I think this is a terrible thing when young people
21 reach a point where they are so enamored with the glory of
22 these gangs and so forth that they would do such a horrible
23 thing.

24 And they throw away not only Mr. Dillard's life and
25 his family, and disrupt that, but his own life. You would

1 think he would realize what doing this would do to his own
2 family, if not your family, and the whole community of
3 Yemassee and Pocotaligo and all those.

4 Now, it's difficult for me to sentence a young per-
5 son like this for such a long time.

6 The sentence of the Court in Indictment 171 which is
7 the murder is that the Defendant, Shameen Coker, be commit-
8 ted to the State Department of Corrections for a time
9 of thirty years.

10 In Indictment 175 which is the armed robbery, the sen-
11 tence of the Court is that the Defendant, Shameen Coker, be
12 committed to the State Department of Corrections for a term
13 of fifteen years, and this is consecutive.

14 So, therefore, you have thirty years plus I believe
15 eighty-five percent of the fifteen. You'll be way up into
16 your sixties, or into your sixties before you're out, if you
17 live that long.

18 I only give you that break for one thing, that you don't
19 have a significant record and you are only twenty years old
20 now.

21 DEFENDANT: Yes, sir.

22 THE COURT: I thought about last night whether I'd give
23 you just a life imprisonment, but the forty years is a long
24 time, especially for someone as young as you are.

25 Good luck to you, and good luck to the Dillard Family

1 as well.

2 _____END OF TRANSCRIPT OF RECORD_____

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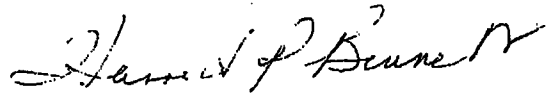
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CERTIFICATE

I, HARRIET P. BENNETT, Official Court Reporter for the Ninth Judicial Circuit of South Carolina, do hereby certify that the foregoing transcript was prepared from the records of Ronda Cummings, to the best of my ability, having been heard on March 10-12, 2003, in the Court of General Sessions for Beaufort County.

FURTHER, I certify that I am neither of kin or counsel to any party to this action, nor do I have any interest in the outcome of the same.



DATED:

June 26, 2003

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS

THE STATE

-vs-

SHAMEEN COKER

TRANSCRIPT OF RECORD

MARCH 18, 2003
BEAUFORT, SOUTH CAROLINA

BEFORE:

THE HONORABLE JACKSON V. GREGORY, JUDGE

APPEARANCES:

RANDOLPH MURDAUGH, III, SOLICITOR
ATTORNEY FOR THE STATE

DOUGLAS G. BORSICH, ASSISTANT PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

DONNA HARTLEY
CIRCUIT COURT REPORTER

EXHIBITS

NO.	DESCRIPTION	ID.	EV.
C-1	Transcript of August 5, 2002, hearing	11	

1 MR. MURDAUGH: Your Honor, please, there're also two motions
2 in the Shameen Coker case that I received this morning. I have just
3 talked with Janet Smith, who is the sister of the deceased, James Dillard,
4 and she is in agreement with me, I think, that we ought to go on and hear
5 them this morning.

6 THE COURT: Understood Mr. Hood is ill?

7 MR. BORSICH: I'm gone appear on behalf of Mr. Hood, Your
8 Honor.

9 THE COURT: Oh, okay, yes, sir.

10 MR. BORSICH: He's not well.

11 THE COURT: Okay, how about the defendant? Is his presence
12 needed?

13 MR. BORSICH: I'm gone waive his presence, Your Honor. As I
14 understand it, he's already been transferred. From the Beaufort County
15 Detention Center to R and E.

16 THE COURT: Okay.

17 Okay, y'all welcome to stand there but you might want to just have
18 a seat while we argue this. I don't know if you want to but you're welcome
19 to stand there, I mean.

20 Okay. Go ahead, Mr. Borsich.

21 MR. BORSICH: Thank you, Thank you, Your Honor.

22 May it please The Court.

23 THE COURT: One other thing I want other state for the record
24 before we get to it.

25 We had a conversation about it. It was -- came to my attention that

1 there had been a Blair hearing in this case - not your case. Shameen
2 Coker's case - prior to the first trial that resulted in a hung jury.

3 I had - Would you go back and get that off my desk. It's just in a
4 little plastic thing. It's about four sheets.

5 I had that - So happen, Miss Hartley, who was not the court
6 reporter last week, but she transcribed that. For me and for The Court.
7 And I wanted to bring it to everyone's attention that there had been a Blair
8 hearing prior - as required, prior to the first trial.

9 MR. BORSICH: Thank you, Your Honor.

10 THE COURT: And is there anything else on that?

11 And I have the copy of it and can make this a Court's Exhibit today,
12 since this would be part of it, I think might be appropriate.

13 What do you say, Solicitor?

14 MR. MURDAUGH: That would suit State, sir.

15 THE COURT: And, and there is - And there was nothing else, no
16 other subsequent order for examination.

17 MR. BORSICH: That's correct, Your Honor.

18 THE COURT: Okay. Go ahead.

19 MR. BORSICH: May it please The Court.

20 Your Honor will recall this case tried last week. Of course, Mr.
21 Coker was found guilty. Your Honor sentenced to thirty years on, murder
22 of fifteen year, consecutive armed robbery.

23
24 The first motion I'd like to address is a motion for a new trial.

25 THE COURT: Excuse me. Could you speak a little louder so they

1 can hear you out – Go ahead.

2 MR. BORSICH: Motion for a new trial in that I believe Your Honor
3 erred in denying the defendant's motion for a directed verdict because,
4 while Mr. Dillard was killed, there was no testimony in the trial that the
5 person that was found in the woods, the deceased person, was Mr.
6 Dillard. There was testimony that the fellow that was in the Seven-Eleven,
7 the Starvin' Marvin, whatever the convenience store was, indeed was Mr.
8 Dillard.

9 There was testimony that Mr. Dillard was a great person, that he
10 was the beer man, what have you. But there's no testimony from any
11 witness, whether it be a family member or otherwise —

12 THE COURT: In other words, what you're saying, there was no
13 dental records or anything like that? No DNA or anything?

14 MR. BORSICH: That's correct.

15 THE COURT: I don't think that's required because there's a chain
16 of events that the lady knew him. At the store. Mr. Roach testified and
17 put the rest of the story together leading to his being shot so there is
18 certainly — Might not be any direct evict but there's very strong
19 circumstantial evidence.

20 So I mean I would think that if — I've forgotten whether it was
21 Rhode Island or Delaware where the guy took the person outside, put
22 them in a cooler, you know, and killed them but there's no body. If you
23 burn somebody up in a house or something, it's murder and if it's
24 testimony about the murder, that's sufficient.

25 MR. BORSICH: Secondly, Your Honor — Thank you.

1 Secondly, The State failed to prove jurisdiction of the armed
2 robbery. I don't believe there's any testimony regarding where the armed
3 robbery took place.

4 THE COURT: In Beaufort County.

5 MR. BORSICH: That's correct.

6 And as you know, armed robbery is not a continuing offense. Once
7 the armed – the application or carrying away of property has taken place,
8 crime is over. There was no testimony or evidence that the armed
9 robbery took place in Beaufort County.

10 As a matter of fact, as Your Honor knows, the Citco or Chevron
11 station is actually, I believe, in Hampton County.

12 THE COURT: Well, I do recall Detective Purdy pointed out exactly
13 which county and place where the body was found. I don't believe
14 anybody else was asked which one and, of course —

15 MR. BORSICH: That's correct.

16 THE COURT: — in Yemassee, it can be in Jasper or Hampton or
17 Colleton, I presume.

18 What do you say to that, Solicitor? That's a pretty tough point.

19 MR. MURDAUGH: If Your Honor please.

20 The point where the armed robbery took place is where they took
21 him out of the car, took him in the woods and shot him and took the car.
22 That was at the point where the body was found and body was found in
23 Beaufort County.

24 THE COURT: Okay. So the fact is, is you could say they – the
25 armed robbery took – there're two separate ones because they didn't take

1 the car; they carried him with them. But when they took the car away from
2 him the —

3 MR. MURDAUGH: Was in Beaufort County.

4 THE COURT: That certainly was in Beaufort so it's a different.

5 MR. BORSICH: Your Honor, if I might.

6 Defense would contend that the armed robbery took place when
7 Mr. Roach - testified in this - pulled a gun on Mr. Dillard, said, I'm gone
8 drive this car. He did that without Mr. Dillard's permission. And against
9 his will. With a gun. Undisputed by The State's witness.

10 They put him in the trunk, whether you believe —

11 THE COURT: Well, there's no question that that was an armed
12 robbery.

13 MR. BORSICH: That's correct, and it's not a continuing offend. I
14 mean —

15 THE COURT: But is there any reason you can't have a second
16 armed robbery of the same goods?

17 MR. BORSICH: How, how can it be a second armed robbery?

18 THE COURT: Well.

19 MR. BORSICH: He's -- Mr. Roach pulled a gun on him said, I'm
20 driving this car. Get in the trunk. That's the kidnaping.

21 And they kidnaped him until they drove him to the woods and shot
22 him.

23 THE COURT: In other words —

24 MR. BORSICH: Armed robbery was over. They already had —

25 THE COURT: They had possession of it so you couldn't have the

1 armed robbery.

2 MR. BORSICH: Let's, let's — A hypothetical to you. Let's take out
3 the fact that Mr. Dillard was in the car. In the trunk. They had — The
4 defendants, codefendants would have possession of the vehicle. That
5 would be the armed robbery.

6 Only thing that's added is that Mr. Dillard is in the trunk, which is
7 the kidnaping. And the kidnaping ended —

8 THE COURT: That's a very interesting point.

9 MR. BORSICH: — when they killed Mr. Dillard.

10 THE COURT: But anyway, it's conceded by The State that the
11 point where they took possession of the car, there is no testimony saying
12 that was in Beaufort County.

13 MR. MURDAUGH: No, sir. Don't, don't know

14 THE COURT: Well, I mean —

15 MR. MURDAUGH: There is no testimony.

16 THE COURT: — there is no testimony. So there is no jurisdiction
17 at that time.

18 MR. MURDAUGH: Now, Your Honor, please, let me say this.
19 They did not take the car. With the intent to convert to their own use.
20 Until the point where he was killed.

21 Up until that point they had kidnaped him.

22 MR. BORSICH: And, and that's the point —

23 MR. MURDAUGH: And if they had let him go and given him his
24 car back, before they killed him, there would've been no armed robbery.

25 MR. BORSICH: I don't believe that's correct, Your Honor.

1 THE COURT: Well —

2 MR. BORSICH: They took —

3 THE COURT: — I don't know what — Obviously my word on this
4 particular issue will not be the last word. And either way, I feel like that it
5 would be subject to being appealed by this. If I rule with you. By
6 defendant if I rule with The State.

7 Very unique factual situation. And — But I feel comfortable that,
8 that based upon what — the solicitor's argument, that the — with the unique
9 — the unique facts of this situation, that the armed — that the — that there is
10 adequate testimony, although I think you got a very strong argument.

11 MR. BORSICH: Well, Your Honor, the solicitor's conceded that
12 there was no testimony as to where this took place and, as you know —

13 THE COURT: No, I'm — everybody agrees that the only possible
14 armed robbery was what happened at the scene of the murder. When
15 they got him — Where he got out of the car. When they took him out the
16 car.

17 MR. BORSICH: The armed robbery took place when they took
18 over the car. They took that car wherever they wanted.

19 THE COURT: Well, I mean that's giving your client the benefit of
20 the doubt on the other one, as to — because The State's position is that
21 they know that there is no testimony giving jurisdiction in Beaufort County
22 where he — where they first pulled the gun on him. That there is no
23 testimony in the record as to that.

24 So it's a very concise legal issue as to whether or not this is — the
25 second one was an armed robbery or not. Or, or a continuation of the

1 armed robbery because he was in possession of the car. He was still part
2 of the car even though he wasn't in complete control of it till they marched
3 him out of it and killed him.

4 MR. BORSICH: Well, they drove it. Part of armed robbery is
5 using property as you see fit. They drove that car wherever they want.
6 They didn't drive it where Mr. Dillard wanted it. He had no say-so over
7 that car.

8 THE COURT: Well, of course, it could be that the armed robbery,
9 these particular, unusual events, might be a continuing offense.

10 MR. BORSICH: At that point he was kidnaped, Your Honor. They
11 put him in the trunk, then they kidnaped him.

12 THE COURT: Well, nothing wrong with being two things.

13 I'm gone deny your motion.

14 MR. MURDAUGH: Your Honor, please, in regard to the motion for
15 the *directed verdict, a new trial, I think it was, in addition to everything*
16 *that you stated, it was also the fact that the car that was -- that they stole*
17 *was the car that belonged to James Dillard's sister. It was testified by*
18 *Ronnie Manigo that he had given it to James Dillard and they had stolen*
19 *it, which was also add other fact to the circumstantial evidence.*

20 THE COURT: Okay.

21 All right, I want -- Miss Young, this is the transcript of that Blair
22 hearing. Would you show that to the attorneys before we make that an
23 exhibit.

24 MR. MURDAUGH: I'm fine with it.

25 THE COURT: I see Mr. Borsich. You fine with it?

1 MR. BORSICH: Yes, sir.

2 THE COURT: Okay.

3 We'll give it to the court reporter. Then that is a court's exhibit in
4 the previous trial. So that it's in the . . .

5 (Transcript of August 5, 2002, hearing marked as Court's Exhibit
6 1.)

7 MR. BORSICH: If I might, Your Honor, just for the record, there's
8 a motion also to reconsider the sentence and my argument would be the
9 same, along the same lines, that there was no —

10 THE COURT: For the armed robbery.

11 MR. BORSICH: — testimony regarding the armed robbery. And
12 The Court didn't have jurisdiction regarding it.

13 THE COURT: Okay. Well, I certainly have jurisdiction to
14 reconsider the sentence.

15 MR. BORSICH: I'm asking you to dismiss the armed robbery, is
16 what I'm asking.

17 THE COURT: Okay.

18 Well, that'll be denied.

19 MR. MURDAUGH: I don't mind you reconsidering the sentence
20 and giving him forty-five years for the murder and . . .

21 — END OF REQUESTED TRANSCRIPT OF RECORD —
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23
24
25

1 I the undersigned Donna Hartley, Official Court Reporter for the
2 Fourteenth Judicial Circuit of the State of South Carolina, do hereby
3 certify that the foregoing is a true, accurate and complete transcript of
4 record of all the proceedings had and evidence introduced in the trial of
5 the captioned case, relative to appeal, in the circuit court for Beaufort
6 County, South Carolina on the eighteenth day of March, 2003.

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

9 November 28, 2003

10 
11 Court Reporter
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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

COURT OF GENERAL SESSIONS

THE STATE

-VS-

SHAMEEN COKER

TRANSCRIPT OF RECORD

MARCH 21, 2003
BEAUFORT, SOUTH CAROLINA

BEFORE:

THE HONORABLE JACKSON V. GREGORY, JUDGE

APPEARANCES:

ANGELA MCCALL TANNER, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

GENE G. HOOD, PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

DONNA HARTLEY
CIRCUIT COURT REPORTER

EXHIBITS

NO EXHIBITS INTRODUCED

1 THE COURT: Okay.

2 Okay, this is The State versus Shameen Coker?

3 MR. HOOD: Yes, Your Honor.

4 I previously — At the end of the trial of this particular case, which we
5 had last week, I failed to request that you give Shameen Coker credit for
6 the jail time he had prior to and awaiting his trial last week. And I'd like for
7 you to do that at this time.

8 We have — I have the printout from the jail and I calculated the time
9 as being two years and eight days.

10 THE COURT: Total?

11 MR. HOOD: That is correct, Your Honor.

12 THE COURT: Okay.

13 All right, I find that he is entitled to jail time, time served of two
14 years and eight days.

15 And I'll put that on the sentencing sheet.

16 — END OF REQUESTED TRANSCRIPT OF RECORD —

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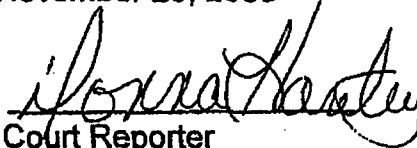
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25

1 I the undersigned Donna Hartley, Official Court Reporter for the
2 Fourteenth Judicial Circuit of the State of South Carolina, do hereby
3 certify that the foregoing is a true, accurate and complete transcript of
4 record of all the proceedings had and evidence introduced in the trial of
5 the captioned case, relative to appeal, in the circuit court for Beaufort
6 County, South Carolina on the twenty-first day of March, 2003.

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

9 November 28, 2003

10 
11 Court Reporter

STATE OF SOUTH CAROLINA)

County of Beaufort)

IN THE COURT OF COMMON PLEAS

05-CP-07-1215

Shameen Coker)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

05 JUL -1 AM 11:28
CLERK OF COURT
BEAUFORT, S.C.**INSTRUCTIONS B 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 Corr. Inst. 990 Wisacky Hwy. Bishopville S.C.
S.C. 29010
2. Name and location of Court which imposed sentence Beaufort County Court of common pleas, S.C.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) Ind. # 06S07-0171 MURDER;

- (b) Ind. #01GS07-0174 Kidnapping;
 (c) Ind., # 01GS07-0175; Armed Robbery

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) imposed on 3-12-03 Murder - 30 years;
 (b) Kidnapping became a murder = no sentenceing;
 (c) impose on 3-12--03 sentence to 15 years - armed

6. ^{robbery} Check whether a finding of guilty was made:

- (a) after a plea of guilty no
 (b) after a plea of not guilty yes
 (c) after a plea of nolo contendere no

7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes

8. If you answered Ayes@ to (7), list:

(a) the name of each Court to which you appealed:

- i. S.C, Ct. of Appeals
 ii. _____
 iii. _____

(b) the result in each such Court to which you appealed:

- i. Affirmed
 ii. _____
 iii. _____

(c) the date of each such result:

- i. unknown
 ii. _____
 iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
 ii. _____
 iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

- (a) _____

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Subject matter jurisdiction;
- (b) Violations of due process of law, and equal protections;
- (c) Ineffective assistance of counsel ;
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attachments of claims;
- (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? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

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. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

Vacation of Sentence, New Trial, Re-Sentencing

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of BEAUFORT)

VERIFICATION

I, SHAMEEN COKER, 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.

Shameen Coker
Shameen Coker

SWORN to and subscribed before me this 30
day of June, 2005.

Barbara Richardson (L.S.)
Notary Public

My Commission Expires: OCT 28, 2012

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

I, SHAMEEN COKER, 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.

Shameen Coker
Applicant

SWORN or affirmed to and subscribed before me this

30 day of June, 2005.

Barbara Richardson
Notary Public

My Commission Expires: Oct 28 2012

CLAIM ONE

TRIAL COUNSEL WAS INEFFECTIVE ASSISTANCE OF COUNSEL WHEN FAILING TO MAKE MOTION TO QUASH THE INDICTMENT BASED UPON THE FAILURE OF THE GRAND JURY TO ENCLUDE THE TIME AND PLACE OF DEATH AND ESSENTIAL ELEMENT OF MURDER IN THE INDICTMENT: FOR FAILING TO PROPERLY INVESTIGATE THE LAW ON MURDER, FAILURE TO DISCOVER INSUFFICIENCY WITHIN INDICTMENT AND FAILURE TO MAKE MOTION IN A TIMELY MANNOR, IN VIOLATION OF THE APPLICANT'S SIXTH AMENDMENT RIGHT.

Petitioner alleges that his conviction and sentence for murder must be vacated because the indictment failed to allege the essential elements of murder as required by S.C. Code §17-19-30(1985). The applicant contends that in order to properly charge and accused with the crime of murder, an indictment must allege the time and place of the assault upon the deceased and the time and place of the death of the deceased. Thus, the petitioner contends that the indictment does not satisfy the notice requirements of subject matter jurisdiction set forth in the S.C. Constitution and statutes and counsel failed to properly raise a motion to quash the indictment based upon the indictments because he had not researched the law on indictments and did not properly apprise himself of petitioner's due process rights to quash the insufficient indictment which would have provided a means of redress for the faulty indictment.

The indictment did not provide the proper notice requirements and the court would have quashed the indictment based upon subject matter jurisdiction. At the time, the court would have not had subject matter jurisdiction to hear the case due to the faulty indictment. South Carolina Section §17-19-20 states:

"Every indictment for murder shall be deemed and adjudged sufficient and good in law which, in addition to setting forth the time and place, together with a plain statement, divested of all useless phraseology, of the manner in which the death of the deceased was caused, charges that the defendant did feloniously, willfully and of his malice aforethought kill and murder the deceased."

This statute is consistent with statutes enacted in 1880 and amended in 1887. S.C. Code Ann. §17-19-30 (History);.

In State v. Platt, 154 S.C. 1, 151 S.E. 206 (1930, and also in State v. Rector, 158, S.C. 212, 155 S.C. 2d 385 stating, "[W]e went fully into the necessity of alleging and proving the place of death of the person alleged to have been murdered." Rector, 155 S.E. 385 at 387.

It was stated in State v. Blakeney, 33 S.C. 111, 11 S.E. 637 (1890) "It can hardly be necessary to cite authority to the fact that (sic) is absolutely essential in an indictment ... that the place of death of the party killed should be alleged therein and that, if the absence of such allegation, such indictment is fatally defective and should be quashed on motion made, and ... such a defective indictment is beyond the reach of amendment." aBlakleney, 11 jS.E. 637 at 637-638. A matter so vital as the place and time of death of the party killed is absolutely necessary to be alleged in a jurisdictional point of view and must be passed upon by the grand jury in accordance with the constitutional rights of the accused. Platt, 151 S.E. 206 at 211; Blakeney supra. thus, the court rightly determined that this matter was jurisdictional in nature. The Platt concluded, after "a somewhat exhaustive research," that no decision of the court for at leasts a third of a century tends to modify or weaken the holdings made in Blakeney.

The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiency apprises the defendant of what he must be prepared to meet. Browning v. State, 320 S.C. 366, 465 S.E. 2d 358 (1995). The indictment here alleged that an assault occurred, which allegation also asserts the time and place of the actual assault. However, the indictment in question fails as to the second element of composite crime of murder set forth in Rector, it fails to allege the time or place of death of the

VACATED
RECEIVED

Joseph is comprised of the time and place of the composite crime of murder, including both the time and place of the death of the victim. This requirement was met in Joseph indictment but not in the present case. As to where the victim died and as to the time the victim died, the indictment is silent.

Furthermore, Justice Pleicones' concurring opinion gives credence to the courts decision as it cites Rector for the proposition that "[the] purpose of the 1887 revisions to criminal procedure, which include the statute currently codified at S.C. Ann. §17-19-30, was to simplify indictments". Id at 6.

As the supreme Court concluded in Blakeney and affirmed in both Rector and Platt, "Under ... the act of 1887, much of the useless phraseology which characterised indictments in former times may be dispensed with, and omissions of mere forms may be cured by amendment, but this act ... neither dispensed with essential allegations, nor has it attempted to cure their omission by allowing amendments to that end...[A] matter so vital as the place of the death of the party killed which is absolutely necessary to be alleged in a jurisdiction point of view...must be passed upon by the grand jury in accordance with the constitutional rights of the accused." Blakeney, *supra* at 638. (Note that in Joseph case, the indictment contained not only the time and place of the assault, but also the time and place of the death that proximately resulted from the act alleged; Additionally, the citation of the murder statute in the indictment, as was done in State v. Owens, 346 S.C. 637, 552 S.E. 2d 745 (2001), is not sufficient to cure the omission of the essential time/date allegations of the place of murder. In Owens, the inclusion of the statute cured the omission of a term included within the statutory definition of murder; however, the statutory definition could never cover the case specific allegations of time and place).

While "we cannot expect criminal lawyers to be seers, but we must demand that they at least apprise themselves of the applicable law and provide their clients with a reasonable accurate description of it. " See Ostrander v. Green, 46 F. 2d 427, 355 (4th cir. 1995).

It is evident that before an attorney can make sound decisions they must first fully investigate all the facts of the case, applicable law, potential defenses, and consult with experts relevant to the case. This standard applies to both trial and in making intelligent decisions concerning preservation of claims for future appellant reasons. Courts across the nation view investigations of the facts and law to be one of counsel's primary and most important duties, because without such, intelligent decisions cannot be made. Counsel was found ineffective for failure to investigate, failed to prepare and failed to provide defendant a viable defense., See Stevens v. Johnson, 575 F. Supp. 881 (E.D. N.C. 4th Cir. 1983).

In the instant case, trial counsel's conduct in failing to make motion to quash indictment 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, at 2064 (1984).

In considering the error prong of Strickland, the court must avoid viewing the actions and decisions by the attorney in hindsight. Counsel's decisions must be viewed in light of the circumstances at the time of the decisions was made.

In accordance with the facts and law in this case trial counsel prejudiced the applicant and altered the outcome of the trial and failed to apply applicable law as to subject matter jurisdiction when he failed to make motion to quash the indictment at trial and before the swearing in of the jury.

At the least counsel should have made motion to preserve issue for appeal. See Burney don Green v. State, cite as 338 S.C. 428, 527 S.E. 2d 98.

THEREFORE, Applicants sentence should be vacated and applicant released.

CLAIM TWO

APPELLANT'S CONVICTION AND SENTENCE IS UNCONSTITUTIONALLY APPLIED IN THAT THE APPLICATION OF THE PROVISIONS OF 1996 ACT 83, BILL R136, H3096, THAT IS UNCONSTITUTIONAL ACT, IN THAT THE GENERAL ASSEMBLY EXCEEDED ITS CONSTITUTIONAL AUTHORITY IN VIOLATION OF S.C. CONSTITUTION ART. III, §17 AND ART. XII, §2, ART. I, §§2 & 3 AND THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

Appellant is being denied his constitutionally guaranteed right to S.C. const. Art. 12, §2 of entitlements to rehabilitation education, and treatment in multiple violations of his rights of the procedural and substantive due process clause and equal protections clauses of the Fourteenth, the Fifth Amendment, and the Sixth Amendment and Art. I, §10, cl. 2 of the United States Constitution.

Appellant was sentenced under the provisions of Act 83, Bill 3096 being charged with Murder §16-3-20 receiving 30 years; Kidnapping §16-3-910 included with murder sentence; Armed Robbery §16-11-330 receiving 15 year sentence.

Act 83, Bill R136, H3096, is unconstitutional, and extinguishes the benefits of S.C. Const. Article 12, §2.

The Title (Prelude) of the Act 83 does not list amendments to provisions under which the petitioner was sentenced under and violates Art. III, §17, which mandates that, "every Act or subject, and that subject shall be expressed in the Title" Thus, the statute that petitioner was sentenced under is a unconstitutional statute.

The above cited Codes of Laws of South Carolina that petitioner was sentenced is listed as a violent crime. §9 of Act. No. 83, eff. Jan. 1, 1996, §16-1-60 is refered to throughout the South Carolina Code of Laws to exclude appellant's offense from any and all rehabilitative programs. There just is not any rehabilitative programs for Petitioner's crime.

Because of S.C. Constitution under Art. 12, §2 mandates all prisoners be rehabilitated, and there is no rehabilitation...

programs for appellant for rehabilitation and labels petitioner a violent offender, the 1995-96 ACT 83 is unconstitutional and void upon three grounds:

- 1 It violates S C Const. Art. 12, §2
2. It failes to give notice of changes in punishments for crime, in violation of S.C Const Art. III, §178; and
3. It relates to more than one subject in violation of S.C Const. Art. III, §17

ACT 83 was initially designed to address the singular subject of "truth in sentencing" law. However, the Bill deals with at least (9) nine separate subjects involving both civil and criminal topics. The Bill addressed such diverse subjects as the basic duties of magistrates, and law enforcement officers duties of Departmental Directors, the publication on the sale of products produced by inmates the duties of probation agents so as to include community supervision among their duties, distributing drugs within the proximity of a school, to make it unlawful to excavate or salvage certain sunken war ships where it is believed human remains. that in fact creates a new crime, that has nothing to reconcile these various subjects is unavailing.

The three objectioves of ART III §17 requiring that each act relating to one subject are:

- 1 Apprise the members of the General Assembly of the contents of an ACT by reading the Title
- 2 Prevent legislature log rolling, and
3. Inform the people of the state of the matters with which the General Assembly concerns itself

See Deloach v Scheper, 188 S C 21, 198 S E 409 (1938), Arthur v. Johnson 185 S C. 324 194 S.E 151 (937). southern Power Co. v. Walker, 98 S C 84, 71 S E 32 (1911).

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For the State to erroneously say the connection of the provisions of ACT 83 satisfies the Single Subject Rules strains credulity. Furthermore that these topics might fit within the broad subject of "government matters" is not compelling, as the S C legislature is not allowed to use such sweeping and vague Bill to united unrelated measures, for such would render S C const Art III §17 meaningless.

The Court is duty-bound under the Constitution to ensure that the legislature refrains from the practice of bringing together into one Bill subjects in this nature, and having no necessary connection with a veiw to combine in their favor advocates of all.

The second and equally important purpose of the single subject clause is to facilitate the enactment of Bills through a legislative process that is orderly and informed. By limiting each Bill to a single subject each legislator can better understand and more intelligently debate the issues presented by a Bill, as required by our constitution. And, prevents passing of logrolling unrelated subjects into the Bill to secure needed votes. The dual purpose of the Single Subject Clause, therefore promotes direct confrontation and informed discussion of legislative issues submitted for enactment.

Act 83, Bill 2096, concerning "Truth-in Sentencing" purported to put truth-in sentencing by increasing the time certain violent offenders must serve before release (so called 85% law), extinguishing parole eligibility for applicant's offenses and even extinguishing parole eligibility for charges of murder and other crimes, and required natural life for conviction of certain crimes 2nd offenses and other combined of (3) three convictions (so called 2 and 3 strike laws) and no parole laws and other laws of which includes the petitioner's sentencing statute and provisions, that violates the S C. Const. Art 12 §2

The Senate passed ACT 83 as originally drafted. However,

Pg. 15

when sent to the House of Representatives where the Bill was altered substantially, the house incorporated riders to the Act that were unrelated to its intended purpose contrary to prohibitions of the Single Subject Clause of S C Const Art III §17 That clearly states that only one "subject" can be placed in a Bill being passed The House introduced other subject matter that was inconsistent to the original nature of the Bill, being "Truth-in-Sentencing".

These matters include:

1. Amended §22-3-550 of the magistrates duties and jurisdiction over minor offenses, so as to revise magistrates authority and clarify their duties;
- 2 Amended §24-3-410 relating to the prohibition on the sale of products by inmates;
3. Amended §24 21 220 relating to the duties of the Department Director, so as to include community supervision among his duties.
- 4 Amended §24 21 220 relating to the duties of Probation Agents so as to include community supervision among their duties
- 5 Amended §24 21 200 relating to violation citations of probation agents, so as to extend citations to community
6. Amended §24 23 220 relating to payments of assessments imposes as a condition of supervision upon release from prison, so as to further provide for the manner in which such payments be deposited;
- 7 Amended §44 53 445 relating to distribution of controlled substances within proximity of a school so as to make this a separate criminal offense;
- 8 Added §54-7 815 so as to make it unlawful to excavate or salvage certain warships where it is believed human remains are contained and to provide penalties for violations
- 9 Amended §16-25 70 as amended relating to warrantless arrests so as to further provide for arrests to provide

for the manner in which law enforcement officers shall evaluate and make arrest involving complaints of domestic or family violence and to provide for certain immunity from liability for law enforcement officers acting under this Section; to create a committee to study mandatory minimum sentences

10 Amended §24-3-10 relating to the penitentiary at Columbia being the General prison for the State;

11 and §24-13 340 relating to court-ordered evaluations of defendants for certain purposes

As a result of this multifaceted expansion, the House renamed the Bill "An Act to Amend the Code of Laws of South Carolina (1976)", Amended Named Acts, with the aforementioned Amendments in place, the House passed the Bill, and returned it to the Senate for further approval

Although the Senate subsequently debated the Amended Bill, its discussion addressed only the Truth-in-Sentencing provisions. Absent from debates were any discussions of provisions and other amendments. Nevertheless, the Senate passed the Bill in its amended form. Senate Bill 3096 was subsequently passed into law absent the signature of Governor Beasley on June 7, 1995

Recently in In The People of the State of Illinois v. Reedy v. Wilson No 85191 85297 (Jan 22, 1999) (1999 WL 23253 (ILL) in case one defendant was sentenced pursuant to "Truth-in-Sentencing" provisions, which limited amount of good time credit he could receive. In case number two, defendant was also sentenced pursuant to "Truth-In-Sentencing" provisions. The Supreme Court of Illinois consolidated the appeal and held that :

(1) Defendants sentenced under the Truth-in-Sentencing provisions on direct appeal, ---and;

(2) Public Act through Truth-in Sentencing provisions which were enacted violated single subject rule of State Constitution and was unconstitutional in its entirety. Even though this case is not precedent value in South

Carolina, its findings and reasoning are persuasive

ACT 83 is violative of S C. Const. Art. III, §17 single Subject Clause than was the Bill declared unconstitutional in the above cited Illinois case the Bill dealt with only approximately (5) different subjects whereas ACT 83 deals with approximately (11) eleven various subjects

It appears that the most cited case that addressed S C Const Art. III, §17 is Colonial Life & Acc Ins Co V South Carolina Tax Commissions 103 S C 2d 908 223 S C 129 (S C 1958) In Co.onia the Legislature adopted a license tax upon investment income and affixed the law, the Appropriations Bill The Court found the law to be in violation of Art. III, §17. The standard for determining the sufficiency of the information in the title is

. the title of the act need not be a complete index of its contents and the constitutional mandate is satisfied where the title states the general subject and the provisions in the body of the act are germane thereto and provide the means, methods and instrumentalities for the accomplishment of the general purpose See Colonial, 103 S E 2d at 1916, 223 S C at 145

As noted the title Act 83 did not even mention the changes in punishment for the statute applicant is sentenced under

"Every Act of resolution having force of law shall be related to but one subject, and that subject shall be expressed in the title "

S C Constitution Art III §17

"The subjects of these amendments are expressed in the titles of each Act the question becomes whether each act relates to only one subject Maner v Maner, 296 S E 2d 553, 536 (S C 1982)

As shown above Act 83 does not relate to just one subject and the Act underwent a substantial metamorphosis before its final

enactment. Which may explain the confusion that is created when the title of the Act goes on to specifically include amendments "such as" to the Burglary Statute as well as others which including "DEFINING 'LIFE and to ELIMINATE PAROLE FOR THE COMMISSION OF THE CRIME"

See also State v Fields, 46 S E 771 68 S C 148 (S C 1904) whereas our Supreme Court reversed the lower court and conviction, declaring second clause of the Act unconstitutional thereof, of "An Act to Amend the Criminal Law by providing for the punishment of abortion " Holding. " great care should be observed in seeing that the title does cover the provisions of the act."

Therefore, as title of a Bill/Act must give notice so as not to mislead members of the Legislature and Public, the title and summary cannot cure a violation of the Bill with contents of unrelated subjects and more than one subject, or that the title and summary fails to give proper notice of contents and true charges thereof

A proper analysis of Act 83, the substantial metamorphosis it underwent in the House of Representatives, and precedents of South Carolina Supreme Court, shows that the Act clearly violates Art. III, §17 of the South Carolina Constitution and is Void as an Unconstitutional Law. In additions to the foregoing reasons that show the General Assembly exceeded its constitutional authority and the said 1995 96 ACT 83 violated S C Const. Art 12 §2 of S.C Constitution.

Therefore being the statutes under which petitioner was sentenced are unconstitutional and void, the trial court lacked jurisdiction to impose sentence and the trial trial violated petitioners sixth amendment right to effective assistance of counsel when failing to bring this subject matter jurisdiction claim prior to the swearing in of the jury at trial "An unconstitutional law is void and is not law a conviction under it is not merely erroneous, but it is illegal and void and cannot be a legal cause of imprisonment " Ex Parte Hollman 79 S C 9 60 S.E 19 (1908 Accord Herrera v Commonwealth 483

S.E. 2d 492, 494 (Va. 1997).

INEFFECTIVE ASSISTANCE OF COUNSEL &
OTHER CLAIMS TO BE CONSIDERD ON
POST CONVICTION RELIEF:

1. During the entire opening statement by the Solicitor. Solicitor testified as to facts of the case offering a bias opinion prior to any testimony being given. See page 42 specifically.

Trial counsel failed to object and to highly prejudicial remarks made by prosecutor during the opening arguments, depriving applicant of a fair trial and constituted ineffective counsel;

2. The Solicitor's improper and prejudicial remarks in closing statements prejudice the applicant and provided cause for jurors to receive inflammatory remarks that the applicant was a DEVIL; was used to show a bad character. Counsel failed to object to these remarks was ineffective counsel. See pages 229 line 4 through line 9. Failure of counsel to object prejudice applicant before the jury during closing remarks. See *U.S. v. Wolf*, 787 F.2d 1094 (7th Cir. 1986). See also, *Weygandt v. Ducharme*, 774 F.2d 1491 (9th Cir. 1985); *Seehan v. State of Iowa*, 37 F.3d 389 (8th Cir. 1994).

3. Solicitor vouched for Witness before the Jury. See page 230 line 20 through 22. The prosecutor's misconduct for acting both as witness and prosecutor was so egregious and prejudicial that it deprives applicant of a fair trial and undermined the confidence in the outcome of the trial; See *Walker v. Davis*, 840 F.2d 834 (11th Cir. 1988).

4. Trial counsel failure to object and make motions as to the above claims of ineffective counsel and warrants reliefs in these

matters before the court.

WHEREFORE, for the reasons set forth herein Appellant's sentence must be vacated and he be released from his unconstitutional confinement.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

05-CP-07-1215

Shameen Coker, 00291587,

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the Application for Post-Conviction Relief filed July 1, 2005, 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 Beaufort County. The Applicant was indicted at the February, 2001, term of the Court of General Sessions for Beaufort County for Armed Robbery (01-GS-07-0175), Kidnapping (01-GS-07-0174), and Murder (01-GS-07-0171). He was represented by Gene G. Hood, Esquire. On March 10, 2003, the Applicant proceeded to trial after which he was found guilty of Murder, Armed Robbery, and Kidnapping. He was sentenced by the Honorable Jackson V. Gregory, to confinement for a period of thirty (30) years for murder, which also encompassed the kidnapping charge, and fifteen (15) years for the armed robbery. The sentences are to run consecutive.

A timely Notice of Appeal was filed on Applicant's behalf. An Anders brief was filed by Aileen P. Clare, Esquire of the Appellate Defender's office on April 14, 2004. The South Carolina

Court of Appeals affirmed Applicant's conviction and sentence. State v. Coker, Op. No. 04-UP-528 (S.C. Ct. App. filed October 20, 2004).

Attached herewith and incorporated herein by reference are the records of the Beaufort County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Subject matter jurisdiction
2. Violations of due process of law, and equal protections
3. Ineffective assistance of counsel

III.

Respondent submits that the first ground be summarily dismissed as being without merit. The Applicant has claimed that the trial court lacked subject matter jurisdiction due to defects in his indictment. Defects in the indictment do not affect subject matter jurisdiction. *See State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005); U.S. v. Cotton, 535 U.S. 625, 122 S.Ct. 1781 (2002). The indictment is a notice document, and any challenges to its sufficiency must be made in accordance with S.C. Code Ann. § 17-19-90 (2003). *See also* S.C. Code § 17-19-20 (2003). Subject matter jurisdiction is the power of a court to hear a particular class of cases, and it has nothing to do with the indictment document. *See Gentry, supra*; Dove v. Gold Kist, Inc., 314 S.C. 235, 442 S.E.2d 598 (1994).

In post-conviction relief, an Applicant wishing to raise challenges to the sufficiency of an indictment must do so in the context of ineffective assistance of counsel, basically alleging that his

trial counsel failed to properly move to quash the indictment in accordance with S.C. Code Ann. § 17-19-90 (2003). A claim of this nature is subject to the procedural bars in the Uniform Post-Conviction Procedure Act – notably the statute of limitations and successiveness. *See* S.C. Code §§ 17-27-45 and -90 (2003).

An Applicant may still challenge the subject matter jurisdiction of the trial court, and such a claim is one that may be raised at any time. *See Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001), *overruled in part by Gentry, supra*. However, “[c]ircuit courts obviously have subject matter jurisdiction to try criminal matters.” *Gentry, supra*. Thus, the Applicant must present evidence that his case is of some class over which the circuit court does not have the authority to preside. The Applicant’s conviction involved a criminal charge in General Sessions Court. Thus, the circuit court had subject matter jurisdiction.

IV.

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 trial 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. *Butler, 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, Id.*

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, Id. 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).

V.

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.

VI.

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

VII.

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

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

September 22, 2005.

STATE OF SOUTH CAROLINA

)

) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

841

2005-CP-07-1215

Shameen Coker,

Applicant,

vs

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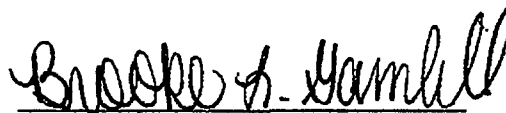
State of South Carolina,

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

William G. Jenkins, Jr., Esquire
 Jenkins Law Firm
 P.O. Drawer 6855
 Hilton Head Island, SC 29938

DATED this 22nd day of September, 2005.


Brooke L. Gambill, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2005-CP-1215

SHAMEEN COKER,

Applicant,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

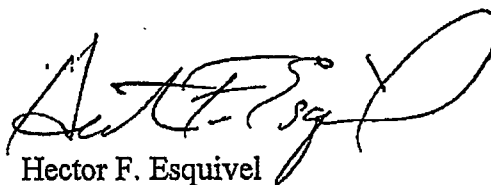
**SUPPLEMENT TO PLAINTIFF'S
APPLICATION FOR
POST-CONVICTION RELIEF**

The Applicant, supplementing his claim based on ineffective assistance of counsel, would respectfully show this Court:

1. That trial counsel failed to verify the prosecutions claims that the Applicant committed the alleged crimes in order to advance rank in the "Folks" gang. Trial counsel failed to introduce any evidence regarding the "Folks" gang and how its members advance rank. These statements were highly prejudicial to the Applicant and would have further undermined the credibility of the witnesses' gang related testimony.
2. The Applicant is informed and believes that members of the "Folks" gang do not advance rank by committing crimes but rather through memorization and learning of "Folks" gang "knowledge" consisting of history, rules and other miscellaneous information. The Applicant intends to submit Affidavit testimony in support of this claim pursuant to §17-27-80 of the South Carolina Code of Laws.

COPY

JENKINS & ESQUIVEL, P.A.

A handwritten signature in black ink, appearing to read 'Hector F. Esquivel', written over a horizontal line.

Hector F. Esquivel
Attorney for the Applicant
Post Office Box 6855
Hilton Head Island, SC 29938
843-785-8800

Hilton Head Island, South Carolina
March 14, 2006

State of South Carolina) In the Court of Common Pleas
 County of Beaufort) Fourteenth Judicial Circuit

Shameen Coker,

Applicant,

vs.

Case No. 05-CP-07-1215

State of South Carolina,

Respondent.

TRANSCRIPT OF RECORD

April 17, 2008

Beaufort, South Carolina

B E F O R E:

The Hon. Michael G. Nettles, Judge

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

Hector F. Esquivel, Esq.
 Attorney for the Applicant

Matthew J. Friedman, Esq.
 Assistant Attorney General
 Attorney for the State

Brenda Cooley
 Circuit Court Reporter

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E X H I B I T S

(There were no exhibits.)

1 (On Thursday, April 17, 2008, the
2 applicant being present with counsel, the hearing
3 convenes at approximately 9:40 a.m., and the
4 following proceedings were had:)

5 THE COURT: Mr. Friedman, you may call
6 your next case.

7 MR. FRIEDMAN: Your Honor, the first case
8 is Shameen Coker, docket number 2005-CP-07-1215.

9 THE COURT: The name again?

10 MR. FRIEDMAN: Shameen Coker.

11 THE COURT: Okay.

12 MR. FRIEDMAN: Your Honor, Mr. Coker was
13 originally indicted for armed robbery and kidnapping
14 and murder. He proceeded at trial and was convicted
15 of each offense. He was sentenced to confinement
16 for thirty years for murder and fifteen years for
17 armed robbery. Those are to run consecutively.

18 At this time, I'll turn it over to
19 Mr. Esquivel.

20 MR. ESQUIVEL: Good morning, Your Honor.
21 May it please the Court.

22 THE COURT: Yes, sir.

23 MR. ESQUIVEL: The only additional thing
24 there, Your Honor, is that the kidnapping -- that I
25 would add is that the kidnapping was merged into the

1 murder when he was sentenced.

2 THE COURT: Very good.

3 MR. ESQUIVEL: It's our contention here
4 this morning, Your Honor, that there was -- that
* 5 Mr. Hood was ineffective as Mr. Coker's counsel
6 based on his failure to move to quash the indictment
7 for murder which Mr. Coker alleges was insufficient
8 in that it did not specifically mention the time and
9 the place of the murder; also, in that he failed to
10 object to the solicitor's references to Mr. Coker as
11 "the devil" in closing arguments.

12 Mr. Coker further alleges that Mr. Hood
13 was ineffective for failing to object when Mr. --
14 during Solicitor Murdaugh's opening when he was
15 telling the jury what they were going to hear.
16 Mr. Coker alleges that was inappropriate testimony
17 by the solicitor.

* 18 And, lastly, Mr. Coker is maintaining
19 that Mr. Hood's failure to object or sufficiently
20 cross-examine witnesses about the motive to the
21 murder, being an advance in a gang, was ineffective
22 assistance of counsel, that he should have
23 cross-examined the witnesses and put up testimony
24 that would have shown that you don't advance
25 membership in this Folks Gang that he was alleged to

1 be a part of by killing somebody.

2 Those are the issues, Your Honor.

3 THE COURT: All right. Very good. I'll
4 be glad to hear from you with regard to any
5 witnesses to support these allegations.

6 MR. ESQUIVEL: Yes, sir. We call
7 Mr. Coker.

8 THE COURT: Mr. Coker, you may come
9 forward. I'm going to ask if you could come forward
10 and place your left hand on the *Bible*.

11 He might need some help with it, with the
12 paper.

13 Place your left hand on the *Bible* and
14 raise your right hand as I administer the oath.

15 SHAMEEN COKER,
16 being first duly sworn by the Court, is examined and
17 testifies as follows:

18 THE COURT: All right. You may come up
19 and have a seat in the witness chair.

20 DIRECT EXAMINATION

21 BY MR. ESQUIVEL:

22 Q. And you are Shameen Coker?

23 A. Yes, sir.

24 Q. And, Mr. Coker, the attorney that represented
25 you in the trial of this case was Gene Hood?

1 A. Yes, sir.

2 Q. Do you recall when you first spoke to
3 Mr. Hood?

4 A. At the day of the preliminary hearing.

5 Q. Do you recall approximately how long after you
6 were initially arrested that the preliminary hearing
7 was held?

8 A. I think that was in February, to be exact.

9 Q. Okay. What was in February?

10 A. I think the preliminary hearing.

11 Q. And when were you arrested?

12 A. In December.

13 Q. And December of what -- December of what year?

14 A. December 2000.

15 Q. Okay. And the preliminary hearing was in
16 February 2001?

17 A. Yes.

18 Q. Now, did you discuss your case in depth with
19 Mr. Hood?

20 A. Yes.

21 Q. Do you remember approximately how many times
22 you spoke with Mr. Hood?

23 A. I spoke with Mr. Hood a good many times.

24 Q. You have requested relief from your conviction
25 here in this civil action that you filed. Do you

1 understand that if you were to prevail here today
2 that the remedy that you would be given is for you
3 to have a new trial? Do you understand that?

4 A. Yes.

5 Q. Okay. What are the basics, what are the basic
6 points that you want to make to the Court for the
7 ineffective assistance of counsel claim?

8 A. He failed to object from the comments,
9 Mr. Hood, where Solicitor Murdaugh claimed, said.
10 So ineffective assistance of counsel. Subject
11 matter jurisdiction, that the indictment number only
12 states the time of death of the deceased and...

13 Q. What we can do, Mr. Coker, is I'll take you
14 through them one by one.

15 A. Uh-huh.

16 Q. With regard to the indictment, what
17 specifically is it about the indictment that you're
18 alleging fails to have sufficiently alleged the time
19 and the place?

20 A. All right. In subject matter jurisdiction,
21 17-19-30, they say the indictment has got to be --
22 well, every indictment must -- "Every indictment for
23 murder shall be deemed and adjudged sufficient and
24 good in law which, in addition to setting forth the
25 time and place, together with a plain statement."

1 It never sets -- it never sets a time and
2 place of death or an assault or where the deceased
3 been dead at -- had died at.

4 Q. Now, the indictment reads for the murder
5 indictment that Shameen Jamil (phonetic) Coker did
6 in Beaufort County between May 19th and 20th
7 feloniously, willfully, and with malice aforethought
8 kill one James Dillard, Jr., by means of shooting
9 him and that said James Dillard did die in Beaufort
10 County as a proximate result thereof on or about the
11 19th of May.

12 Now, is it your allegation that by them simply
13 saying "Beaufort County" that that isn't specific
14 enough?

15 A. No. No. No. No, sir. Where at in Beaufort
16 County? I don't know where at in Beaufort County.

17 Q. Okay.

18 A. But in the warrant it says -- it has where at
19 in Beaufort County, and the prosecutor's summary
20 says the same thing, but on the indictment it don't.

21 Q. Okay. So it's your allegation then that the
22 indictment should have given the exact street
23 address?

24 A. Or where it happened at, yes.

25 Q. Okay. Did you ever review the indictment with

1 Mr. Hood?

2 A. No, sir.

3 Q. Did Mr. Hood ever bring to your attention any
4 potential defects in the indictment?

5 A. No, sir.

6 Q. During the closing argument of Solicitor
7 Murdaugh, did you have any discussion with Mr. Hood
8 when Mr. Murdaugh was making a reference about "when
9 you travel with the devil, you have to go to hell to
10 get the witnesses"? Did you ever have any
11 discussion with Mr. Hood at the moment that those
12 remarks were being made?

13 A. No, sir.

14 Q. And I'm referring to the transcript, page 229,
15 lines four through six, which read: "When you
16 travel with the devil, you have to go to hell to get
17 the witnesses. And I'm not implying that he's the
18 devil. That's a decision y'all have to make."

19 At the moment that you heard that, did you
20 find that objectionable?

21 A. Yes.

22 Q. Did you tell Mr. Hood that?

23 A. No, sir. I didn't think he was going to
24 object to it anyway.

25 Q. And on page 230 of the transcript, line 20

1 through 22, the testimony -- or the solicitor said
2 that "A.J. Roach has nothing to gain or lose by
3 telling you the truth."

4 And you had a problem with that statement, as
5 well. Could you tell me what the issue with that
6 statement was?

7 A. The solicitor telling -- well, telling the
8 jury that's the truth. It's on them to believe
9 that's the truth, now. I mean, saying, it's on them
10 to say it's the truth. He's saying it's the truth.
11 Basically he's saying -- putting encourage on them,
12 saying whatever he say is the truth.

13 THE COURT: What was the name of that
14 witness?

15 MR. ESQUIVEL: That's the solicitor, Your
16 Honor. This isn't ---

17 THE COURT: I know. Was he making
18 reference to a witness ---

19 MR. ESQUIVEL: Yes, sir.

20 THE COURT: --- that had nothing to gain?

21 MR. ESQUIVEL: Yes, sir.

22 THE COURT: Who was the witness?

23 MR. ESQUIVEL: A.J. Roach. He was a
24 codefendant prior who had pled out.

25 THE WITNESS: He pled to twenty-five.

1 THE COURT: If I understood it correctly,
2 he said something to the effect that he had nothing
3 to gain or lose by his testimony?

4 MR. ESQUIVEL: He says: "A.J. Roach has
5 nothing to gain or lose by telling you the truth."

6 And I believe what Mr. Coker's allegation
7 is, is that it's inappropriate for the solicitor to
8 imply that a witness is telling the truth, because
9 that's for the jury to decide whether or not they're
10 telling the truth, and there should have been an
11 objection made at that point. Because when you have
12 someone like the solicitor telling the jury
13 something, they may put undue weight on his comments
14 as to the veracity of the testimony of the witness
15 against Mr. Coker.

16 BY MR. ESQUIVEL:

17 Q. Now, there was testimony, Mr. Coker, about
18 advancing rank in a gang. Do you know how to
19 advance rank in the Folks Gang?

20 A. How to advance? How to advance, you do not go
21 around harming people. It's getting -- it's
22 basically reading and getting and attaining
23 knowledge about yourself. That's it.

24 Q. Did you ever have any discussions with
25 Mr. Hood about how one would attain the rank of

1 O.G.?

2 A. No.

3 Q. What is O.G. rank?

4 A. It's supposed to be an original gangster.

5 Q. And on pages 230 to 231 of the transcript
6 is -- and, again, in the solicitor's closing, he's
7 talking about -- about you being part of the Folks
8 Gang. And, again, did you have any discussion when
9 A.J. Roach was testifying about you being a member
10 of the Folks Gang or -- or wanting to achieve
11 O.G. rank?

12 A. Repeat that?

13 Q. Did you have any discussion with Mr. Hood when
14 Mr. Roach was testifying about how to achieve
15 O.G. rank in this Folks Gang?

16 A. No, sir.

17 Q. Are there any other complaints you have
18 against Mr. Hood that we haven't addressed?

19 A. Hm. No, sir.

20 Q. Is there anything else that you want to tell
21 the Court here this morning?

22 A. No, sir.

23 MR. ESQUIVEL: Those are all the
24 questions I have. Please answer any questions
25 Mr. Friedman has.

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION

3 BY MR. FRIEDMAN:

4 Q. Mr. Coker, when you reviewed the indictments,
5 did you understand what charges you were being
6 charged with?

7 A. I know the indictment said murder, kidnapping,
8 and armed robbery.

9 Q. So you had notice of what the charges were?

10 A. Yes.

11 MR. FRIEDMAN: That's all the questions I
12 have.

13 THE COURT: Any redirect?

14 MR. ESQUIVEL: Nothing further,
15 Your Honor.

16 THE COURT: Very good.

17 You may step down. Thank you, Mr. Coker.
18 (The witness is excused from the witness
19 stand.)

20 MR. ESQUIVEL: Your Honor, we have no
21 further witnesses.

22 (The applicant rests.)

23 THE COURT: Mr. Friedman.

24 MR. FRIEDMAN: Your Honor, the state
25 would call Mr. Hood to the stand.

1 THE COURT: Mr. Hood, if you'd come
2 forward and place your left hand on the *Bible* and
3 raise your right hand so the clerk can administer
4 the oath.

5 THE COURT REPORTER: The clerk's not
6 here.

7 THE COURT: I'm sorry.

8 GENE G. HOOD, ESQ.,
9 being first duly sworn by the Court, is examined and
10 testifies further as follows:

11 THE COURT: If you'd come and have a seat
12 in the witness chair.

13 DIRECT EXAMINATION

14 BY MR. FRIEDMAN:

15 Q. Mr. Hood, how long have you been practicing
16 law?

17 A. Since 1973. I think it's about 35 or 36
18 years.

19 Q. And how much of that time has been in criminal
20 law?

21 A. About 30-something.

22 Q. Did you discuss the elements of the charges
23 and what the state was required to prove?

24 A. Shameen and I discussed, yes, all of the
25 charges, all of the various matters concerning

1 defenses and things of that nature.

2 Q. Did you discuss the facts of the case?

3 A. Yes.

4 Q. Did you discuss possible defenses?

5 A. Yes.

6 Q. Did you believe the applicant was properly
7 indicted?

8 A. I didn't see anything wrong with the
9 indictment to be perfectly honest with you.

10 The body was discovered out in a wooded area
11 in Beaufort County. There wasn't a street or a
12 house, you know, something to identify exactly where
13 it was located at.

14 Matter of fact, there was some concern about
15 whether or not it was even in Beaufort County until
16 we had the maps and pulled everything out and we
17 determined that it was in fact -- the body was in
18 fact in Beaufort County and not Colleton County.

19 Q. Did you have ample time to prepare for the
20 trial?

21 A. We did. Matter of fact, we tried this case
22 twice. The first trial resulted in a mistrial, a
23 hung jury, and then several months later we tried
24 the case again. I forgot exactly for how long it
25 was, but Mr. Coker was out on bond for a period of

1 time after the first trial. And then we -- I think
2 it was about -- I want to say about six or seven
3 months later we did it again. I mean, we tried the
4 case again.

5 Q. Did you think the solicitor's comments during
6 his opening and closing statements were prejudicial?

7 A. I guess I didn't -- I didn't think so.

8 And, you know, when you're in the course of a
9 trial and things of that nature, you know, sometimes
10 you want to let certain things take place because
11 you want to use that to your advantage later on, in
12 other words, use it against your opponent.

13 And so there are some -- some things you don't
14 object to just simply because it helps you rather
15 than hurts you, or at least you think that later on
16 you might be able to use it to your advantage.

17 Q. Did you think the solicitor was vouching for
18 the credibility of any of the witnesses?

19 A. No. I mean, when he said he had to go and get
20 them from hell or wherever, you know, I mean, that
21 pretty much describes his witnesses, you know? You
22 say that they aren't good people, you know? I mean,
23 so I felt it was just the opposite and used that
24 basically in my arguments, also.

25 Q. And why didn't you cross-examine any of the

1 witnesses about the Folks Gang?

2 A. I wanted to stay away from that, and it wasn't
3 really in my opinion relevant to the case
4 whatsoever. I mean, this question, the real issue
5 in the case, was who shot and killed this
6 individual. And, you know -- and that was the real
7 issue in the case.

8 Q. Would you say that was part of your trial
9 strategy to avoid any further discussion about the
10 Folks Gang?

11 A. That's correct.

12 MR. FRIEDMAN: I have nothing further,
13 Your Honor.

14 THE WITNESS: My -- my client did have
15 some -- some tattoos on his arm which kind of
16 disturbed me. It was the Pocotaligo Thugs or
17 something of that nature, and I was -- I wanted to
18 stay away from that as much as possible.

19 CROSS EXAMINATION

20 BY MR. ESQUIVEL:

21 Q. I have a couple questions, Mr. Hood. Isn't it
22 true that the incident reports list the incident
23 location as being McPhersonville Road in Yemassee,
24 South Carolina?

25 A. Yeah. It was somewhere -- it was off of that

1 road somewhere, and it -- it was in the woods.

2 The car that they jacked, hijacked from --
3 from this guy Dillard, A.J. drove the car down in a
4 wooded area through this road that you're talking
5 about.

6 They pulled off and -- and took Dillard out of
7 the car and then took him up into the woods. And
8 apparently that's where he, you know, shot and
9 killed him, at least that was my opinion.

10 Now, Roach obviously had a different
11 statement. But next time around, he said it was
12 Shameen that took him up into the woods and, you
13 know, did the shooting.

14 So that was basically it. I guess somewhere
15 around there.

16 Q. With the incident reports referencing a
17 McPhersonville Road and on Buckfield Plantation and
18 the indictment just simply saying Beaufort County,
19 based on your knowledge of the requirements of
20 indictments and the notice requirement, do you
21 believe that the reference to just Beaufort County
22 in general is sufficient when you have specific
23 information telling you that it occurred on
24 McPhersonville Road?

25 A. Well, yes, I thought it was sufficient because

1 we had already discussed that, exactly where it had
2 happened at, and we knew that it was on McPherson --
3 off of McPhersonville, but exactly where off of
4 McPherson was the real issue.

5 Again, we were concerned more about whether or
6 not it was in Beaufort County. Because if it had
7 turned out that it was in Hampton or Colleton
8 County, I forget which one it was now, but, you
9 know, obviously Beaufort County would have no
10 jurisdiction. So we would have had jurisdiction
11 over the -- perhaps the kidnapping and the -- and
12 the armed robbery, but then the actual killing would
13 have taken place in another county.

14 But as it turned out, it was in Beaufort
15 County, that particular location.

16 Q. With regards to the notice, apparently you
17 received an indictment, and in the preliminary
18 hearing you were able to discuss in great detail
19 with the investigating officer where it actually
20 took place?

21 A. That's correct. That's correct.

22 Q. And you also actually took place -- took part
23 in a full blown trial where all of that was
24 discussed?

25 A. That is correct.

1 Q. And so you feel as though you were on notice
2 as to who was killed and where they were killed?

3 A. Absolutely. Matter of fact, I went out to
4 that location because I wanted to get a look at it
5 to get a good feel for what people were saying about
6 how this happened and -- and things of that nature,
7 and what road you took and, you know, all this kind
8 of stuff.

9 Q. Regardless of the results, you knew what the
10 accusations were ---

11 A. Absolutely.

12 Q. --- and to prepare for?

13 A. That is correct.

14 Q. With regard to the gang references, Mr. Hood,
15 you had a situation here where A.J. Roach was
16 accusing Shameen and Shameen was saying it was A.J.
17 Is that correct?

18 A. That is correct.

19 Q. Wouldn't it tend to go to Mr. Coker's favor
20 if it were established that A.J. -- the motive that
21 A.J. gave for Shameen, that the motive that
22 A.J. alleges Shameen used or that his motive for
23 killing Mr. Dillard was in fact false? That's kind
24 of a confusing question. I can try to repeat that a
25 little better for you.

1 A. There was some talk about a -- a gang. This
2 was no gang. These were a bunch of kids out there
3 doing all kinds of crazy things.

4 If you'll notice from the transcript,
5 A.J. Roach, I questioned him on -- cross-examined
6 him on the fact that just after this incident
7 involving Dillard in which Dillard was -- his car
8 was -- he was picked up at this particular
9 convenience store and -- you know, and put in the
10 trunk and all this other kind of -- asked for a ride
11 and whatever, you know, took him down the road and
12 then put him in the trunk.

13 But just after this incident occurred and the
14 killing occurred, A.J. Roach and the other guy who
15 testified, I think his name was Ford if I remember
16 correctly, Ford and A.J. Roach went back to that
17 same convenience store and tried to pull the same
18 type of armed robbery and carjacking, more or less,
19 involving a woman who just happened to be a Marine.
20 And she got away and she -- she pulled her own gun
21 or something, if I recall correctly.

22 But it was the same scenario, which shows that
23 Roach was the one that -- so gangs, you know, I
24 mean -- I mean, my client had this stuff on his arm
25 and things of that nature, but, you know, I just

1 took it as -- you know, there was nothing -- we
2 never could find anything anywhere as to any
3 seriousness of any allegations that there was a gang
4 of -- of people that were involved, you know, in
5 this particular group or whatever. It was not --
6 not material to me.

7 Q. When Mr. Roach is testifying -- this is on
8 page 196 and 197 of the transcript -- that Shameen
9 had said he had got the O.G. rank, essentially
10 wouldn't that be giving the jury the motive for
11 Shameen to have killed -- allegedly killed
12 Mr. Dillard to achieve an O.G. rank?

13 A. If you believed there was such a thing, I
14 guess you could.

15 Q. And if there was no real gang activity, why
16 didn't you object when the solicitor was talking
17 about the -- about how Shameen had done this to
18 achieve an O.G. rank?

19 A. Again, there was -- I wanted to stay away from
20 the issue. But the fact was that it made his -- it
21 made his case look worse, by him alleging that what
22 this person is saying about my client did it because
23 of some mythical O.G. or whatever in the world that
24 is. You know, sometimes they call it "O gangster,"
25 an original gangster, you know.

1 So there was a lot of confusion in that
2 particular area, and I -- I just didn't see where it
3 was -- it didn't hurt me. I certainly tried to use
4 it to my advantage.

5 MR. ESQUIVEL: Those are all the
6 questions I have, Mr. Hood. Thank you.

7 THE COURT: Mr. Esquivel, let me ask you.
8 I think you mentioned, number one, that it's your
9 contention that he should have objected to it. Of
10 course, trial counsel indicates that he did not
11 because of trial strategy.

12 I think there was some mention in passing
13 that he should have proven that that isn't how you
14 achieve on O.G. rank. How would you go about doing
15 that?

16 MR. ESQUIVEL: Potentially, again --
17 well, potentially by asking Mr. Coker. And
18 admittedly that's trial strategy if you want to put
19 him on the stand or not. Potentially by examining
20 Mr. Coker on it or seeking perhaps expert testimony.

21 THE COURT: Do you think that might have
22 -- from a strategic standpoint, would there be
23 anything wrong with him making him reveal the
24 tattoos on his arm?

25 I assume he did not take the stand?

1 THE WITNESS: He did not.

2 MR. ESQUIVEL: No. No.

3 THE COURT: What if -- if you start
4 getting into the issue of gangs, then you make him
5 roll up his sleeves, where are -- where are the
6 tattoos on his body?

7 MR. ESQUIVEL: Where are the tattoos?

8 (The applicant indicates.)

9 THE COURT: On the forearm?

10 MR. ESQUIVEL: On the foreman.

11 THE COURT: So if you put him up there to
12 do that, doesn't that really not only -- it sort of
13 substantiates what they're saying, that there was
14 gang activity?

15 MR. ESQUIVEL: And the gang activity
16 isn't the real -- the real issue that we're going
17 that -- not denying that there's gang activity, you
18 know, and admittedly that doesn't sound good, but
19 what we're dealing with is a murder case,
20 kidnapping, and armed robbery.

21 And to allow a witness to testify as to
22 how somebody would advance rank in a gang, thereby
23 providing the jury with his motive why he did this
24 or allegedly did this, would be inappropriate
25 without any kind of substantiation for how somebody

1 actually advances rank in this -- in this gang.

2 THE COURT: Wouldn't that be something
3 perhaps that you could argue, that they're -- that
4 they're putting this up as a motive, but there's no
5 way to substantiate that? How would you
6 substantiate that?

7 MR. ESQUIVEL: I believe I'd bring in an
8 expert. Presumably there are gang experts out
9 there, I spoke to a couple, but apparently there's
10 not anything that -- you know, they can't specify as
11 to local factions. There could have been some
12 expert testimony perhaps or there could have been
13 some -- some objections about laying some kind of
14 foundation for actually how these -- how these
15 organizations work.

16 THE COURT: Right.

17 MR. ESQUIVEL: I mean, I don't know if
18 they follow Robert's Rules of Order or how they --
19 how they -- you know, how they function exactly, but
20 if there was some kind of testimony ---

21 THE COURT: I would bet it's not Robert's
22 Rules of Order.

23 MR. ESQUIVEL: Probably not. But if
24 there was some kind of testimony that were put into
25 evidence saying that's not in fact how they advance

1 rank, that may have been -- gone to Mr. Coker's
2 benefit.

3 THE COURT: Thank you. You may proceed.

4 MR. ESQUIVEL: I have nothing further.

5 THE COURT: You may step down. Thank
6 you.

7 MR. HOOD: Your Honor, may I be excused?
8 I have court downstairs.

9 THE COURT: Any objection to Mr. Hood
10 being excused?

11 MR. ESQUIVEL: None. None from the
12 plaintiff/petitioner, Judge.

13 THE COURT: You may be excused.

14 (The witness is excused from the witness
15 stand.)

16 THE COURT: Anything further from
17 anybody?

18 MR. FRIEDMAN: No, Your Honor.

19 (The respondent rests.)

20 THE COURT: Anything further from the
21 applicant?

22 MR. ESQUIVEL: Nothing further.

23 THE COURT: Okay. Well, we're going to
24 take about a ten-minute recess, and I'm going to
25 take a look at a few things in the record right now,

1 and I'm going to take this matter under advisement.

2 And, Mr. Coker, I'm going to send a
3 memorandum to the Attorney General's Office and your
4 lawyer, letting them know what my decision is, but I
5 want to take just a brief moment to look at a few
6 things right now, but I'm going to take the matter
7 under advisement in the next week or so.

8 Good luck to you.

9 We'll stand at ease for ten minutes.

10 MR. ESQUIVEL: Thank you, Your Honor.

11 (Whereupon, the hearing is concluded at
12 approximately 10:12 a.m.)

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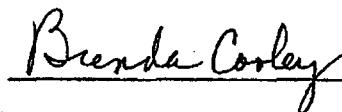
25

1 CERTIFICATE OF THE COURT REPORTER
2

3 I, the undersigned, Brenda Cooley, Court
4 Reporter for the Ninth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the
6 foregoing is a true and accurate transcript of
7 record of the proceedings had and the evidence
8 introduced in the hearing of the captioned case,
9 pages 3 through 27, inclusive, relative to appeal,
10 in the Court of Common Pleas for Beaufort County,
11 Beaufort, South Carolina, on the 17th day of April
12 2008.

13 I do further certify that I am neither of
14 kin, counsel, nor interest to any party hereto.
15
16
17

18 September 11, 2008

19 
20 _____
21 Brenda Cooley
22 Circuit Court Reporter
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2005CP0701215

Shameen Coker vs. State Of South Carolina

CHECK ONE:

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☒ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a),
SCRPC (Vol. Nonsuit); ☒ Rule 43(k), SCRPC (Settled); ☐ Other:
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Order of Dismissal

Dated at Beaufort, South Carolina, this 13th day of May, 2008.

Court Reporter:

s/ M. G. Nettles

PRESIDING JUDGE - Michael G Nettles

This judgment was entered on the 16th day of May, 2008, and a copy mailed first class this 2nd day of June, 2008, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Melissa Kilby, Deputy Clerk

SCRPC APP-24/FORM 4

Elizabeth M. Smith - Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Shameen Coker, #291587

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2005-CP-07-1215

ORDER OF DISMISSAL

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

2008 MAY 16 PM 2:52

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 1, 2005 and supplemented March 14, 2006. The Respondent made its Return on September 22, 2005. An evidentiary hearing into the matter was convened on April 17, 2008 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by Hector F. Esquivel, Esquire. Matthew J. Friedman of the South Carolina Attorney General's Office represented the Respondent.

The Applicant and Gene Hood, trial counsel, testified at the hearing. This Court had before it the trial transcript, the records of the Beaufort County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the application and supplemental application for post-conviction relief, the Respondent's Return thereto, the Court of Appeals opinion dismissing the direct appeal, and the Remittitur dated November 22, 2004.

PROCEDURAL HISTORY

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Beaufort County Clerk of Court. The Applicant was indicted at the February 2001 term of the Beaufort

County Grand Jury for murder (01-GS-07-171), kidnapping (01-GS-07-174), and armed robbery (01-GS-07-175). Gene Hood, Esquire, represented him. On March 10, 2003, the Applicant proceeded to trial after which he was found guilty as charged. The Honorable Jackson V. Gregory sentenced him to confinement for thirty (30) years for murder, which also encompassed the kidnapping conviction, and fifteen (15) years for armed robbery. The sentences were to run consecutively.

The Applicant filed a Notice of Appeal. The Court of Appeals dismissed the appeal. State v. Coker, Op. No. 2004-UP-528 (S.C. Ct. App. filed October 20, 2004). The Remittitur was issued on November 22, 2004.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel in that trial counsel
 - a. Failed to move to quash the indictment for murder, which failed to state time and place.
 - b. Failed to object to remarks made during Solicitor's closing argument.
 - c. Failed to cross-examine witnesses about the "Folks" gang or object to witness testimony concerning the gang.

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 and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms and (2) that he was prejudiced by his counsel’s ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006).

The Applicant was convicted of murder, kidnapping, and armed robbery. The circumstances surrounding the incident involved the Applicant and a co-defendant asking the victim for a ride at a gas station, pulling a gun on the victim and forcing him into the trunk, and the Applicant then shot the victim from close range.

Applicant alleged that counsel was ineffective for failing to move to quash the indictment for murder. He contends that the trial court lacked subject matter jurisdiction because the murder indictment does not state the time and place that the offense occurred. Applicant contends that an indictment that merely states “Beaufort County” as the place of the offense is insufficient. Trial counsel testified that he believed the Applicant was properly indicted, and he did not see any basis to challenge the indictments. Counsel testified that the victim’s body was located in the woods so there was no specific address to include in the indictment.

This Court finds that the allegations related to the insufficiency of the indictment are without merit. This Court finds that Applicant fully understood the nature of the charges against

him. “[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.” State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (S.C. Ct. App. 2007) (citations omitted). Tumbleston establishes that an indictment is a notice document. Here, there is no question that the Applicant and trial counsel had adequate notice of the charges and ample time to prepare a defense. In fact, the case was tried twice, and the first trial resulted in a hung jury. The fact that the indictment did not contain a specific address as to where the victim’s body was located does not invalidate the indictment. Discovery material specifically set forth where the body was found. Moreover, trial counsel went to the crime scene to further investigate the matter. The Applicant and trial counsel were on notice to who was killed and where the offense occurred. To the extent that Applicant raises the allegation of lack of subject matter jurisdiction, this Court finds that, under Gentry v. State, 363 S.C. 93, 610 S.E.2d 494 (2005), defects in the indictment do not affect subject matter jurisdiction.

Applicant contends that trial counsel was ineffective for failing to object to comments made during the Solicitor’s closing argument. Specifically, the Solicitor stated that “[w]hen you travel with the devil, you have to go to hell to get the witnesses, and I’m not implying that he’s the devil.” (Trans. p. 229, lines 4-6). Applicant testified that he did not discuss the Solicitor’s comments with trial counsel, and he did not tell counsel that he found the comments to be objectionable. Trial counsel testified that he did not believe the Solicitor’s comments were prejudicial. Counsel did not believe the Solicitor was vouching for the witnesses. In fact, counsel believed the Solicitor was calling the character of the witnesses into question.

This Court finds that counsel’s decision not to object to the Solicitor’s comments was well within the sound discretion of counsel’s trial strategy. The remark acknowledged that the

State's witnesses were of questionable character and was not intended as a derogatory comment towards the Applicant. This Court finds that the Solicitor's remarks during his closing argument were not prejudicial.

Applicant alleged that counsel was ineffective in failing to cross-examine witnesses about the "Folks" gang, in which it is undisputed that Applicant was a member. Applicant also contended that witness testimony about the gang was prejudicial, and he asserts that counsel should have objected to the testimony. Applicant testified that Folks members advance rank by gaining knowledge of the gang's history and rules rather than by hurting people. Trial counsel testified that part of his trial strategy was to take the focus off of the Folks gang. Trial counsel advised Applicant not to testify at trial, in large part because he wanted to avoid more discussion of the gang. Counsel also testified that Applicant has gang insignia tattooed on his forearm.

This Court finds that counsel's decisions to not object to testimony about the Folks gang and to not cross-examine the witnesses about the gang were well within the sound discretion of counsel's trial strategy. It was a reasonable decision to take the focus off the gang activity, especially in light of the fact that Applicant has gang insignia tattooed on his forearm.

This Court finds that trial counsel is a criminal trial practitioner with extensive experience in the trial of serious offenses. Trial counsel conferred with the Applicant on numerous occasions. Counsel and the Applicant discussed the facts of the case, the elements of the charges and what the State was required to prove, and possible defenses. Counsel fully investigated the crime scene in preparation for developing a defense, and counsel had ample time to prepare for trial.

Accordingly, with respect to the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. The Applicant has failed to

prove the first prong of the Strickland test, specifically that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier, 351 S.C. at 389, 570 S.E.2d at 174. Therefore, this Court finds that trial counsel was not ineffective for failing to object to the sufficiency of the indictments, failing to object to the Solicitor's remarks during his closing argument, or failing to object to testimony regarding the Folks gang.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty

(30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 227 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13 day of May, 2008.


The Honorable Michael G. Nettles
Presiding Judge
14th Judicial Circuit

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Shameen Coker,

Appellant.

Appeal From Beaufort County
Perry M. Buckner, Circuit Court Judge

Unpublished Opinion No. 2004-UP-528
Submitted October 1, 2004 – Filed October 20, 2004

APPEAL DISMISSED

Assistant Appellate Defender Aileen P. Clare, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Donald J. Zelenka, all of Columbia; and Solicitor Randolph Murdaugh, III, for Respondent.

PER CURIAM: Shameen Coker appeals his convictions for murder, kidnapping, and armed robbery. The trial judge sentenced Coker to thirty years imprisonment for murder and a consecutive sentence of fifteen years imprisonment for armed robbery.

Pursuant to Anders v. California, 386 U.S. 738 (1967), counsel for Coker attached to the final brief a petition to be relieved as counsel, stating she had reviewed the record and concluded Coker's appeal is without legal merit sufficient to warrant a new trial. Coker filed a separate pro se response.

After a thorough review of the record pursuant to Anders and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's petition to be relieved.

APPEAL DISMISSED.¹

STILWELL, BEATTY, and SHORT, JJ., concur.

¹ Because oral argument would not aid the court in resolving the issues on appeal, we decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County

Perry M. Buckner, Circuit Court Judge

: THE STATE,

RESPONDENT,

V.

SHAMEEN COKER,

APPELLANT

FINAL ~~ANDERS~~ BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court lack jurisdiction to try appellant for armed robbery in Beaufort County, when the robbery occurred in Hampton County?

STATEMENT OF THE CASE

Beaufort County grand jurors indicted appellant for murder, kidnapping, and armed robbery. Appellant stood trial during the March 2003 term of the Beaufort County Court of General Sessions before the Honorable Jackson V. Gregory and a jury. The jury found appellant guilty as charged, and he was sentenced to consecutive terms of confinement of thirty years for murder and fifteen years for armed robbery.

This appeal follows.

ARGUMENT

Did the trial court lack jurisdiction to try appellant for armed robbery in Beaufort County, when the robbery occurred in Hampton County?

Appellant and his co-defendant, A.J. Roach, were accused of kidnapping James Dillard, Jr., taking his car, and killing him. The alleged events began at a convenience store in Hampton County. Mr. Roach testified that he and appellant approached Mr. Dillard with a gun and forcibly took possession of his car. They drove, with Mr. Dillard in the trunk, to Beaufort County, where they killed him. They later disposed of the car. ROA p. 51, line 11 - p. 73, line 11.

After sentencing, appellant moved for a new trial on the basis that the court lacked jurisdiction to try him for armed robbery in Beaufort County, when the taking occurred in Hampton County. The state agreed that the events started in Hampton County but argued that jurisdiction and venue were proper. The court denied appellant's motion. ROA p. 270, line 1 - p. 274, line 13. This ruling was error.

Armed robbery is robbery committed while armed with a deadly weapon or while representing one's self to be so armed. S.C. Code § 16-11-330. Robbery is the felonious or unlawful taking of money, goods, or other personal property from the person of another or in his presence by violence or intimidation. State v. Bland, 318 S.C. 315, 457 S.E.2d 611 (1995). Since the salient element of robbery is taking, a robbery should be complete at the moment the victim is deprived of custody or control of his property. In appellant's case, the taking occurred at the Hampton County convenience store, where the state alleged that Mr. Roach and appellant took control of Mr. Dillard's car.

Under the South Carolina Constitution, "No person may be held to answer for any crime [other than magistrate offenses] unless on a presentment or indictment of a grand jury in the county where the crime has been committed." S.C. Const, art. I, § 11. The place where the crime was committed must be sufficiently alleged in the indictment so as to lay jurisdiction in the court and inform the accused of the county in which he is charged. State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991).

Appellant was improperly indicted and tried in Beaufort County for a robbery that occurred, if at all, in Hampton County. His conviction for armed robbery should be vacated.¹

¹But See Wray v. State, 288 S.C. 474, 343 S.E.2d 617 (1986) (where defendant steals goods in one county and brings them to another county, he may be indicted in either place), overruled on other grounds by State v. Brisbon, 323 S.C. 324, 474 S.E.2d 433 (1996) (right to be tried in county where offense occurred is not jurisdictional; where acts essential to offense are committed in different counties, venue is proper in either), accord State v. Williams, 321 S.C. 327, 468 S.E.2d 626 (1996).

CONCLUSION

For the foregoing reasons, appellant's conviction for armed robbery should be vacated.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Aileen P. Clare", written over a horizontal line.

Aileen P. Clare
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

April 14, 2004

IN THE COURT OF APPEALS

Appeal from Beaufort CountyPerry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAMEEN COKER,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Shameen Coker states:

1. She is Assistant Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Perry M. Buckner, which was held on 3/10-12 & 3/18/03, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Shameen Coker.

Respectfully submitted,

Aileen P. Clare
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

April 14, 2004

8

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

April 14, 2004

A handwritten signature in cursive script, appearing to read "Aileen P. Clare", written over a horizontal line.

Aileen P. Clare
Assistant Appellate Defender

S. C. Office of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, SC 29201
(803) 734-1330
Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Beaufort County
Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

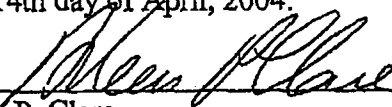
SHAMEEN COKER,

APPELLANT

CERTIFICATE OF SERVICE

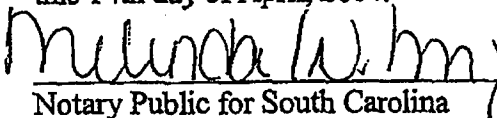
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire this 14th day of April, 2004.

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant and Record on Appeal in the above referenced case has been served upon Shameen Coker, #291587 at Lee Correctional Institution this 14th day of April, 2004.


Aileen P. Clare
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of April, 2004.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: November 16, 2008

WITNESSES

Robert Bromage

Roper

Elizabeth M. Smith
Elizabeth M. Smith - Clerk of Court
Beaufort County, SC

ARREST WARRANT #:

F167542

Arrested on December 07, 2000

ACTION OF GRAND JURY

True Bill

Foreman:

Jammi Dumas
Grand Jury

VERDICT

Guilty

Foreman:

Robert Roper
Petit Jury

Date: *3/12/03*

281 359
DOCKET #: 01GS07-0171

THE STATE OF SOUTH CAROLINA
County of Beaufort

COURT OF GENERAL SESSIONS

Term: February, 2001

THE STATE

vs.

Shameen Jamile Coker

INDICTMENT FOR

0116

MURDER

16-3-20

STATE OF SOUTH CAROLINA)
County of Beaufort)

INDICTMENT #01GS07-0171

At a Court of General Sessions, convened on February 12, 2001,
the Grand Jurors of Beaufort County present upon their oath:

COUNT:

MURDER
16-3-20

That Shameen Jamile Coker did in Beaufort County between May 19 and 20,
2000, feloniously, wilfully and with malice aforethought, kill one James
Dillard, Jr. by means of shooting him and that the said James Dillard, Jr. did
die in Beaufort County as a proximate result thereof on or about the ~~19th~~ 19th
day of May, 2000.

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

SOLICITOR

Russell M. Mendenhall

BEAUFORT COUNTY SC
ENTERED BY CLERK - CLERK OF COURT

Collected - A Fine Copy

ANDERS RESPONSE BRIEF

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ATTORNEY GENERAL'S OFFICE
RECEIVED 6-16-04

ADMINISTRATIVE INSTRUCTIONS

FILE _____ OPEN _____ END _____

HAVE _____ COPIES MADE _____

ROUTE TO _____

ORDER: _____ TRANSCRIPT _____

PEN RECORDS _____ CLERK RECORDS _____

OTHER: _____

RESPONDENT: _____

Appeal from Beaufort County

Perry M. Buckner, Circuit Court Judge

THE STATE,

V.

SHAMEEN COKER,

APPELLANT

PRO SE BRIEF OF APPELLANT

SHAMEEN COKER, #291587
PRO SE APPELLANT

LEE CORRECTIONAL INSTITUTION
SUMTER NORTH, ROOM: 1257
990 WISACKY HWY
BISHOPVILLE, S C 29010

PRO SE APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying appellant's motion for a direct verdict, when a co-defendant had pleaded guilty and was convicted of the alleged offenses?

STATEMENT OF THE CASE

Beaufort County grand jurors indicted appellant for murder, kidnapping, and armed robbery. Appellant stood trial during the March 2003 term of the Beaufort County Court of General Sessions before the Honorable Jackson V. Gregory and a jury. The jury found appellant guilty as charged, and he was sentenced to consecutive terms of confinement of thirty years for murder and fifteen years for armed robbery.

This appeal follows:

ARGUMENT

Did the trial court err in denying appellant's motion for a direct verdict, when a co-defendant had pleaded guilty and was convicted of the alleged offenses?

Appellant and his co-defendant, A.J. Roach, were accused of Kidnapping James Dillard, Jr., taking his car, and killing him. Co-defendant A.J. Roach pleaded guilty to the charges and received a twenty-five (25) year sentence. Tr.p. 52 lines 8 through 15.

Appellant's trial counsel requested a motion for a direct verdict based on the insufficiency of evidence and the motion was denied; Tr.p 215 lines 15 through 25. Trial counsel latter renewed the motion for a direct verdict and the motion was again denied. Tr.p. 218 lines 9 through 17.

Applicant contends that the trial judge erred in denying his motion for a direct verdict because the evidence only raised a suspicion of guilt; the state's case was based entirely on circumstantial evidence. The state did not prove that appellant committed any of the offenses alleged against him.

Pursuant to Rule 19 (a) of South Carolina Rules of Criminal Procedures, states as follows:

On motion of the defendant or on its own motion, the court shall direct a verdict in the defendant's favor on any offense charged in the indictment after the evidence on either side is

closed, if there is failure of competent evidence tending to prove the charge in the indictment. In ruling on the motion, the trial judge shall consider only the existence or non-existence of the evidence and not its weight.

This section of rule 19 which is entitled "Grounds for Motions" does not require that the defendant state with specificity the grounds of the motion for the verdict. It is unlike its counterpart in the South Carolina Rules of Civil Procedures, Rule 50, which mandates that the motion for a direct verdict in a civil case shall state the specific grounds therefore. The fact that such specificity is not required by rule 19 demonstrates that a motion challenging the sufficiency of the evidence is adequate to raise and preserve the issue. The rule itself states the grounds for a direct verdict in a criminal case: a failure of competent evidence tending to prove the charge. Whenever a motion for a direct verdict is made, the sufficiency of the states case is the very issue before the court.

When a motion for a direct verdict is made in a criminal case where the state relies exclusively on circumstantial evidence, the lower court is concerned with the existence or nonexistence of evidence, not with its weight. State V. Mitchell, 535 S.E.2d 126 (S.C. 2000); State V. Martin, 533 S.E.2d 572 (S.C. 2000), and State V. Littlejohn, 89 S.E.2d 924, 926 (1955).

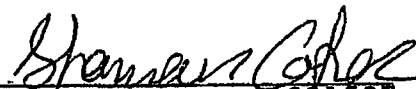
The state did not prove that appellant was guilty of the offenses alleged against him. Appellant's co-defendant pleaded

guilty to the crime and received a twenty-five (25) year sentence.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and remanded back to the Court of General Session's for a direct verdict.

RESPECTFULLY SUBMITTED,


SHAMEEN COKER, #291587
PRO SE APPELLANT

THIS 2 DAY OF June 2004.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Beaufort County

Michael G. Nettles, Circuit Court Judge

SHAMEEN COKER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI

M. CELIA ROBINSON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR PETITIONER.

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ISSUES PRESENTED

1. Did the PCR judge err in denying relief where trial counsel was ineffective in failing to object to the solicitor's referring to petitioner as "the devil" in his closing argument?
2. Did the PCR judge err in denying relief where trial counsel provided ineffective assistance of counsel by failing to object to the State's introduction of irrelevant testimony as to the Folks gang and, having allowed the gang evidence to be introduced against petitioner, by failing to cross-examine the State's witness or to present defense evidence to contradict the erroneous indication that a member of the Folks gang advances through murder?
3. Did the PCR judge err in denying relief where trial counsel was ineffective in failing to make a motion to quash the indictment for murder which failed to state the time and place of the alleged murder with sufficient specificity to provide the notice required by Section 17-19-30?

STATEMENT

Shameen Coker, petitioner, was indicted by the Beaufort County Grand Jury for armed robbery, kidnapping, and murder. In 2002, petitioner's case proceeded to a mistrial when the jury was unable to reach a unanimous verdict. On March 10, 2003, again petitioner proceeded to trial before the Honorable Jackson V. Gregory and a jury. Upon the jury's finding petitioner guilty as charged, he was sentenced to confinement for thirty years for murder and fifteen years for armed robbery with the sentences to be served consecutively. The judge imposed no sentence for kidnapping because he found that the kidnapping was encompassed within the murder.

After a hearing held on March 18, 2003, the trial judge denied defense motions for new trial and for reconsideration of the sentence. After a further hearing on March 21, 2003, Judge Gregory ordered that petitioner be given credit for two years and eight days time served. The Court of Appeals dismissed petitioner's direct appeal by unpublished opinion. State v. Coker, Op. No. 2004-UP-528 (S.C.Ct.App. filed October 20, 2004).

On July 1, 2005, petitioner filed an application for Post-Conviction Relief (PCR). The Respondent made its Return on September 22, 2005. Petitioner filed a supplement to his application on March 14, 2006. On April 17, 2008, an evidentiary hearing was held before the Honorable Michael G. Nettles. On May 13, 2008, Judge Nettles issued his Order of Dismissal.

ARGUMENT

- I. **The PCR judge erred in denying relief where trial counsel was ineffective in failing to object and to make a motion for mistrial where the solicitor referred to petitioner as “the devil” in his closing argument.**

In a PCR proceeding, the burden is on the applicant to prove the allegations in his application. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). The appellate court will uphold the findings of the PCR court if there is any evidence of probative value to support them. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). However, if no probative evidence supports these findings, the Court will not uphold the findings of the PCR court. Jackson v. State, 355 S.C. 568, 570, 586 S.E.2d 562, 563 (2003). Furthermore, the reviewing court will reverse the PCR court's decision when it is controlled by an error of law. Pierce v. State, 338 S.C. 139, 145, 526 S.E.2d 222, 225 (2000).

Where ineffective assistance of counsel is alleged, 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, 669, 104 S.Ct. 2052, 80 L.Ed.2d 674, (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). As to allegations of ineffective assistance of counsel, the applicant must show his counsel's performance fell below an objective standard of reasonableness, and but for counsel's errors, there is a reasonable probability the result at trial would have been different. Strickland supra; Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases.

When trial counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel. Ingle v. State, 348 S.C. 467, 560

S.E.2d 401 (2002); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). The validity of counsel's stated strategy is reviewed under "an objective standard of reasonableness." Ingle, 348 S.C. at 470, 560 S.E.2d at 402; Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (S.C. 2008). The reviewing court has an obligation to ensure that any supposed strategy by trial counsel is reasonable and employed only where trial counsel had first conducted the necessary investigation of the facts and the law in order to reach an independent strategy decision. A valid strategy cannot be found when the professed strategy is invalid under an objective standard of reasonableness. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1995).

A solicitor's closing argument must not appeal to the personal biases of the jurors nor be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences thereto. Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (S.C.,2004); State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996); Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (S.C.1998). Here, during the State's closing argument, the solicitor indicated that he wished he could have presented the jury with a videotape of the crime but that he had no such proof. The solicitor then continued his argument, indicating,

When you travel with the devil, you have to go to hell to get the witnesses. And I'm not implying that he's the devil. That's a decision y'all have to make.

(App. p. 229, lines 1-6). Trial counsel raised no objection to this argument.

Petitioner argued at PCR that his attorney was ineffective in failing to object to the solicitor's referring to the defendant as "the devil." Petitioner testified that he did not tell his attorney that he found the solicitor's comment objectionable; he explained, "I didn't think he was going to object to it anyway." (App. p. 318).

Trial counsel testified that he guessed that he did not think the solicitor's referring to the defendant as "the devil" during argument was unfairly prejudicial or objectionable during trial. (App. p. 325, lines 5-7). Trial counsel explained, "And, you know, when you're in the course of a trial and things of that nature, you know, sometimes you want to let certain things take place because you want to use that to your advantage later on, in other words, use it against your opponent. And so there are some - - some things you don't object to just simply because it helps you rather than hurts you, or at least you think that later on you might be able to use it to your advantage." (App. p. 325, lines 8-16). However, trial counsel did not explain how it could conceivably have operated to the advantage of the defense for the solicitor to tell the jury that the defendant was "the devil." In fact, other than his vague indication that he sometimes finds it helpful to forgo objecting and to then turn the solicitor's seemingly harmful argument to his advantage, trial counsel provided no explanation and he gave no example of how, in this particular case, he could have turned the solicitor's casting the defendant in the role of "the devil" to the advantage of the defense.

The PCR judge did not find that the solicitor's "devil" comment was unobjectionable. Instead, the PCR judge found that trial counsel decided not to object as a matter of counsel's trial strategy. The PCR judge further found that the remark was not unfairly prejudicial to the defense. The PCR judge found that the solicitor's commentary "was not intended as a derogatory comment towards the applicant." (App. p. 343). To the contrary, the plain meaning of the solicitor's reference was to the State's having to go to hell to acquire witnesses who knew *petitioner* and could testify against *him*. Thus, in the solicitor's phrase, the accused defendant was unquestionably "the devil." The devil is not generally seen as a person of good character. There is no support in the

record for the PCR judge's finding that the solicitor did not intend his reference to "the devil" to refer to the accused defendant and no support for the finding that the solicitor did not intend his devil reference to constitute a derogatory comment. Likewise, there is no support in the record for the PCR judge's finding that trial counsel's failure to object was a deliberate decision made in the exercise of a valid, objectively reasonable trial strategy.

The PCR judge erred in failing to find that trial counsel's failure to object to the solicitor's reference to petitioner as "the devil" constituted ineffective assistance of counsel which prejudiced the defense and reasonably may have altered the result.

II. The PCR judge erred in denying relief where trial counsel provided ineffective assistance of counsel by failing to object to the State's introduction of irrelevant testimony as to the Folks gang and, having allowed the gang evidence to be introduced against petitioner, by failing to cross-examine the State's witness or to present defense evidence to contradict the erroneous indication that a member of the Folks gang advances through murder.

"In a criminal case, the State cannot attack the character of the defendant unless the defendant herself first places her character in issue. State v. McElveen, 280 S.C. 325, 313 S.E.2d 298 (1984); State v. Swords, 279 S.C. 554, 309 S.E.2d 750 (1983); State v. Gamble, 247 S.C. 214, 146 S.E.2d 709 (1966). Further, evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person. State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987)." Trial counsel's failure to object to improperly admitted character evidence is a substantive ground for a claim of ineffective assistance of counsel Mitchell v. State, 298 S.C. 186, 188-189, 379 S.E.2d 123, 125 (S.C. 1989).

Petitioner testified at PCR that a member of the Folks gang advances in rank by “reading and getting and attaining information about yourself” and the history and founding of the gang. (App. p. 321). He testified that a Folks gang member does not advance in rank by harming people. (App. p. 320, lines 20-23). Petitioner testified that the rank of O.G. stands for “original gangster.” However, petitioner testified that his trial counsel never discussed the Folks gang or how one advanced in that gang with him. Petitioner complained that his trial attorney was ineffective in failing to object to the State’s presentation of testimony regarding the Folks Gang and, further, that once his attorney had allowed the gang testimony to be presented without objection, his attorney was further ineffective in failing to present testimony on direct or cross-examination so as to contradict the State’s false testimony as to the mode of advancement in the Folks gang.

At trial, Herbert Soloman Ford testified that petitioner was a member of the Folks gang. (App. p. 197-198). Ford testified, “Shameen had said that he had got a OG rank.” (App. p. 197). Ford explained that, to him, the OG rank means that you shot a person. (App. p. 197, lines 16-17).

Trial counsel testified that he intentionally did not cross-examine the State’s witnesses regarding membership or advancement in the Folks gang. He explained, “I wanted to stay away from that, and it wasn’t really in my opinion relevant to the case whatsoever.” (App. p. 326). Given that it was trial counsel’s opinion that the evidence regarding the Folks gang was not at all relevant, it is difficult to conceive of a reasonable explanation for his failure to raise any objection to the State’s eliciting testimony regarding the Folks Gang from the State’s witness.

The PCR judge noted that it was trial counsel’s strategy to try to take the focus off the gang and that trial counsel had advised petitioner not to testify at trial “in large part because he wanted to avoid more discussion of the Folks gang.” The PCR judge found, “this Court finds that counsel’s

decision to not object to testimony about the Folks gang and to not cross-examine the witnesses about the gang were well within the sound discretion of counsel's trial strategy. It was a reasonable decision to take the focus off the gang activity, especially in light of the fact that Applicant has gang insignia tattooed on his forearm." (App. p. 343). The PCR judge erred in finding that trial counsel offered an objectively valid strategic reason not to object to testimony or to counter the testimony regarding the Folks gang. Where it was counsel's stated opinion that petitioner's gang affiliation was in no way relevant to the charges against him and where it was also counsel's opinion that evidence as to gangs or as to petitioner's gang affiliation would be highly prejudicial to the defense, it was not objectively reasonable for trial counsel to withhold his objection to the irrelevant gang testimony as presented by the State. Instead, trial counsel's failure to object to the State's gang testimony constituted a departure from counsel's stated strategy of attempting to keep gang evidence away from petitioner's jury.

Trial counsel testified that the gang issue was "not material," because, in his opinion, there was no real gang activity involved in this case. (App. p. 331, lines 1-6). PCR counsel asked trial counsel why, if it was his opinion that there was no real gang involvement in this case, he failed to object to the State's presentation of testimony regarding the Folks gang. Trial counsel testified, "Again, there was - - I wanted to stay away from the issue. But the fact was that it made his - - it made his case look worse, by him allegeing that what this person is saying about my client did it because of some mythical O.G. or whatever in the world that is. You know, sometimes they call it 'O gangster,' an original gangster, you know. So there was a lot of confusion in that particular area, and I - - I just didn't see where it was - - it didn't hurt me. I certainly tried to use it to my advantage." (App. p. 331, line 19-p. 332, line 4). Trial counsel's confusing explanation of his

supposed “strategy” should have supported a finding that any such strategy was objectively unreasonable. See Bruno v. State 347 S.C. 446, 451, 556 S.E.2d 393, 395 (S.C.2001)(“Although the PCR court found there was a valid strategy for the failure to object, we note that counsel in the instant case gave absolutely no explanation for his failure to object.”)

In addition, once trial counsel had ineffectively allowed the State to freely present testimony as to the Folks gang, as to petitioner’s membership in the Folks gang, and as to the mode of advancement in the Folks gang, it was objectively unreasonable for counsel not to cross-examine the State’s witnesses and not to present defense evidence contradicting the State’s false theory as to advancement in the Folks gang. Again even assuming that trial counsel’s failure to counter the State’s evidence as to the Folks gang was the result of a deliberate decision, such a decision was not objectively reasonable. At that point, once the State had presented testimony asserting that petitioner was a member of the Folks gang, that a member of the Folks gang advances through killing, and that petitioner killed the victim in this case with the goal of advancing in the Folks gang, it was far too late for counsel to do his client any good by trying to avoid any *further* reference to the gang. Instead, at that point in the trial, the only reasonable course open to defense counsel was to make an attempt to counter and contradict the State’s faulty evidence as to the Folks gang.

The PCR judge erred in finding that trial counsel’s failure to object to the State’s entering in evidence testimony regarding petitioner’s membership in the Folks gang and testimony alleging that petitioner committed this homicide for the purpose of satisfying the Folks gang’s requirement for advancement through murder was the result of a valid trial strategy. The PCR judge further erred in finding that trial counsel had offered an objectively valid strategic reason for his failure to contradict the State’s theory as to advancement in the Folks’ gang and as to petitioner’s supposed motive

through cross-examination or through the presentation of defense testimony. Under the circumstances, trial counsel's supposed strategy was not objectively reasonable; therefore, the PCR judge erred in failing to find that trial counsel's representation fell below the professional standard and that petitioner was prejudiced by counsel's failure to provide effective assistance of counsel.

III. The PCR judge erred in denying relief where trial counsel was ineffective in failing to make a motion to quash the indictment for murder which failed to state the time and place of the alleged murder with sufficient specificity to provide the notice required by Section 17-19-30.

Petitioner argued that the murder indictment in his case did not set out a time or a place of death. The indictment issued reads:

That Shameen Jamile Coker did in Beaufort County between May 19 and 20, 2000, feloniously, willfully, and with malice aforethought kill one James Dillard, Jr., by means of shooting him and that said James Dillard, Jr. did die in Beaufort County as a proximate result thereof on or about the 19th day of May 2000.

(App. p. 360). Petitioner argued that the indictment's identification of the place of the alleged murder as "Beaufort County" was plainly insufficient to place him on notice as to where in the county this murder was alleged to have taken place. Petitioner pointed out that the arrest warrant and the solicitor's summary both specifically identified a precise location but that the indictment identified only the county of Beaufort. (App. p. 317, lines 12-24). Trial counsel testified at PCR that he saw nothing wrong with the indictment. (App. p. 324, lines 8-9).

South Carolina statute, Section 17-19-30, sets out the minimum requirements for a sufficient murder indictment:

Every indictment for murder shall be deemed and adjudged sufficient and good in law which, in addition to setting forth the time and place, together with a plain statement, divested of all useless phraseology,

of the manner in which the death of the deceased was caused, charges that the defendant did feloniously, willfully and of his malice aforethought kill and murder the deceased.

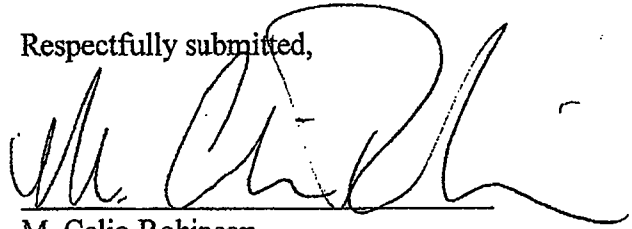
§ 17-19-30 (1976). An indictment is sufficient if the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, the defendant to know what he is called upon to answer, and if an acquittal or a conviction thereon may be pleaded as a bar to any subsequent prosecution. State v. Owens, 293 S.C. 161, 165, 359 S.E.2d 275, 277 (S.C. 1987). Here, where the indictment failed to specifically identify a time for the alleged murder and where the indictment identified only a county and not a particular location, the indictment was fatally deficient and trial counsel provided ineffective assistance in failing to object or to make a motion to quash the indictment prior to trial.

The PCR judge erred in denying relief on this ground.

CONCLUSION

For the forgoing reasons, the PCR judge's denial of relief should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'M. Celia Robinson', written over a horizontal line.

M. Celia Robinson
Appellate Defender

ATTORNEY FOR PETITIONER

This 16th day of March, 2009.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal From Beaufort County
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

2005-CP-07-1215

SHAMEEN COKER,

Petitioner,

vs.

STATE OF SOUTH CAROLINA,

Respondent.

RETURN TO PETITION FOR WRIT OF CERTIORARI

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

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ATTORNEYS FOR RESPONDENT

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ISSUES PRESENTED

- I. Did the PCR court properly find that trial counsel was not ineffective for failing to object or move for a mistrial when the solicitor referred to Petitioner as "the devil" in his closing statement?
- II. Did the PCR court properly find that trial counsel was not ineffective for failing to object to the State's introduction of testimony about the Folks gang and failing to cross-examine the State's witnesses regarding the Folks gang?
- III. Did the PCR court properly find that trial counsel was not ineffective for failing to move to quash the murder indictment that failed to state the specific time and place of the alleged murder?

STATEMENT OF THE CASE

For purposes of this Return, the Respondent agrees with Petitioner's Statement of the Case.

STANDARD OF REVIEW

The proper standard of review of a post-conviction relief evidentiary hearing is whether "any evidence of probative value" exists to sustain the post-conviction relief judge's findings. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). In a post-conviction relief proceeding, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

ARGUMENT

I. The PCR court properly found that trial counsel was not ineffective for failing to object or move for a mistrial when the solicitor referred to Petitioner as "the devil" in his closing statement.

In a post-conviction relief action, the applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance 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.

Petitioner asserts that the PCR court erred in finding that trial counsel was not ineffective for failing to object or move for a mistrial when the solicitor referred to Petitioner as "the devil" in his closing statement. During his closing argument, the solicitor made the following comment regarding the State's witnesses: "When you travel with the devil, you have to go to hell to get the witnesses, and I'm not implying that he's the devil. That's a decision you all have to make." (App. P. 229, lines 4-6). Respondent submits that the PCR court properly dismissed this allegation.

At the PCR hearing, trial counsel testified that that he did not believe the Solicitor's comments were prejudicial. (App. P. 325, lines 5-16). Counsel did not believe the solicitor was vouching for the witnesses. In fact, counsel believed the solicitor was calling the character of his own witnesses into question. (App. P. 325, lines 17-24). The remark acknowledged that the State's witnesses were of questionable character and was not intended as a derogatory comment towards the Petitioner. Trial counsel contended that there are "some things you don't object to just simply because it helps you rather than hurts you, or at least you think later on you might be able to use it to your advantage." (App. p. 325, lines 13-16).

There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in a case. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). Where trial counsel articulates a valid reason for employing a certain trial strategy, such conduct will not be deemed ineffective assistance of counsel. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Counsel's strategy will be reviewed under "an objective standard of reasonableness." Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002).

The PCR court properly found that counsel's decision not to object to the solicitor's comments was well within the sound discretion of counsel's trial strategy. Respondent submits that the solicitor's comments were not inflammatory, as his statement damaged the credibility of the State's witnesses and the solicitor even stated, "I'm not implying that [Petitioner's] the devil." Trial counsel did not find the comments prejudicial, and he did not see the need to object when the solicitor was admitting that his witnesses were not credible.

The PCR court properly found that Petitioner failed to meet both prongs of Strickland. Because the evidence supports the PCR court's finding, the Respondent respectfully submits that the Petition for Writ of Certiorari should be denied.

II. **The PCR court properly found that trial counsel was not ineffective for failing to object to the State's introduction of testimony about the Folks gang and failing to cross-examine the State's witnesses regarding the Folks gang.**

Petitioner alleges that trial counsel was ineffective in failing to cross-examine witnesses about the "Folks" gang, in which it is undisputed that Petitioner was a member. Petitioner also contends that witness testimony about the gang was prejudicial, and he asserts that trial counsel should have objected to the testimony. At the PCR hearing, Petitioner testified that Folks members advance rank by gaining knowledge of the gang's history and rules rather than by hurting people. (App. p. 320, lines 17-23).

Trial counsel testified that part of his trial strategy was to take the focus off of the Folks gang. (App. p. 326, lines 8-11). Trial counsel advised Petitioner not to testify at trial, in large part because he wanted to avoid more discussion of the gang. Counsel also testified that Petitioner has gang insignia tattooed on his forearm. (App. p. 326, lines 14-18). Trial counsel

testified that the gang testimony was not relevant to who shot and killed the victim. (App. p. 325, line 25 – p. 326, line 7).

Respondent submits that counsel articulated a valid reason for employing his particular trial strategy. He did not want to bring any more attention to the gang issue by objecting to the testimony. Counsel advised Petitioner not to testify, in part because he did not want Petitioner to be cross-examined about his gang activities or his tattoos. Petitioner has failed to demonstrate any prejudice that resulted from counsel's failure to object. If counsel had objected, it would have brought more attention to the testimony and would have made it look like Petitioner was trying to hide something.

Because the evidence supports the PCR court's finding, the Respondent respectfully submits that the Petition for Writ of Certiorari should be denied.

III. The PCR court properly found that counsel was not ineffective for failing to move to quash the murder indictment that failed to state the specific time and place of the alleged murder.

Petitioner alleges that counsel was ineffective for failing to move to quash the indictment for murder. He contends that the trial court lacked subject matter jurisdiction because the murder indictment does not state the specific time and place that the offense occurred. Petitioner asserts that an indictment that merely states "Beaufort County" as the place of the offense is insufficient.

Trial counsel testified that he believed the Petitioner was properly indicted, and he did not see any basis to challenge the indictments. (App. p. 324, lines 6-18). Counsel testified that the victim's body was located in the woods so there was no specific address to include in the indictment, but they confirmed that the incident location was in Beaufort County. (App. p. 326, line 21 – p. 328, line 15).

Respondent submits that the PCR court properly found that Petitioner's allegations related to the insufficiency of the indictment are without merit. The record reflects that Petitioner fully understood the nature of the charges against him. "[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (S.C. Ct. App. 2007) (citations omitted). Tumbleston establishes that an indictment is a notice document. Here, there is no question that the Petitioner and trial counsel had adequate notice of the charges and ample time to prepare a defense. In fact, the case was tried twice, and the first trial resulted in a hung jury. The fact that the indictment did not contain a specific address as to where the victim's body was located does not invalidate the indictment. Discovery material specifically set forth where the body was found. Moreover, trial counsel went to the crime scene to further investigate the matter. Trial counsel was more concerned with confirming that the incident occurred in Beaufort County, and through his investigation he confirmed that it did. The Petitioner and trial counsel were on notice to who was killed and where the offense occurred. To the extent that Petitioner raises the allegation of lack of subject matter jurisdiction, this Court finds that, under Gentry v. State, 363 S.C. 93, 610 S.E.2d 494 (2005), defects in the indictment do not affect subject matter jurisdiction.

Because the evidence supports the PCR court's finding, the Respondent respectfully submits that the Petition for Writ of Certiorari should be denied.

CONCLUSION

For the foregoing reasons, the State submits that the Petition should be denied.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: *Matthew J. Friedman*
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-3737

June 29, 2009.

The South Carolina Court of Appeals

Shameen Coker,

Petitioner,

v.

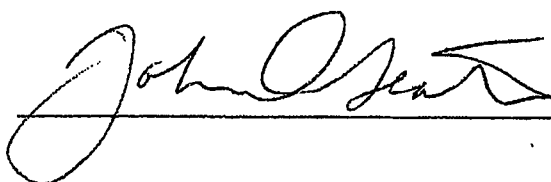
State of South Carolina,

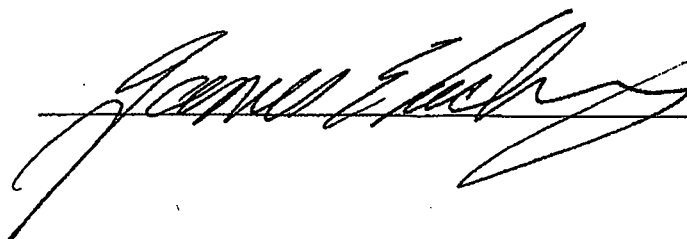
Respondent.

ORDER

This matter is before the Court on a petition for a writ of certiorari. The petition for a writ of certiorari is denied.

 J.

 J.

 J.

Columbia, South Carolina

FILED
Feb. 10, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT) DOCKET NO.: 2001-GS-07-171, 174, 175

State of South Carolina,)
Plaintiff,)
v.)
Shameen Coker,)
Defendant,)

MOTION PURSUANT TO
RULE 29(b), SCRCrimP

2016 MAR -2 PM 12:45
JERRI ANN ROSENEA
BEAUFORT COUNTY, S.C.
CLERK OF COURT

COMES NOW Defendant, through his undersigned attorney, and moves before this Court based upon after discovered evidence pursuant to Rule 29(b), SCRCrimP, for a new trial. Defendant submits that the exculpatory information contained in the Affidavits of Otis Harris and Arjanal C. Roach, which are attached, amount to after discovered evidence under Rule 29(b), SCRCrimP, and State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999). Defendant has also submitted an Affidavit in support of his claim of after discovered evidence. See State v. DeAngelis, 256 S.C. 364, 371, 182 S.E.2d 732, 735 (1971)

PROCEDURAL HISTORY

During the February 2001 term of the Beaufort County Grand Jury, Defendant was indicted on for murder (Indictment No.: 2001-GS-07-171), kidnapping (2001-GS-07-174) and armed robbery (2001-GS-07-175). On March 10, 2003, Defendant appeared in front of the Honorable Jackson V. Gregory and a jury at the Beaufort County Courthouse for trial. Defendant was represented by Gene Hood, Esquire, and the State was represented by Randolph Murdaugh, Assistant Solicitor. On March 12, 2003, Defendant was found guilty as indicted on all charges. The Honorable Jackson V. Gregory sentenced Defendant to a term of thirty (30) years for murder, which encompassed the kidnapping conviction, and a consecutive term of fifteen (15) years for armed robbery.

A timely direct appeal was filed and perfected by Aileen P. Claire, Appellate Defender. On October 20, 2004, the South Carolina Court of Appeals issued a dismissal. State v. Coker, Op. No. 2004-UP-528 (S.C. Ct. App. filed October 20, 2004). The Remittitur was issued on November 22, 2004.

On July 1, 2005, Defendant filed a timely Application for Post Conviction Relief, which was supplemented on March 14, 2006. The State filed a Return on September 22, 2005. On April 17, 2008, an evidentiary hearing was held in front of the Honorable Michael G. Nettles at the Beaufort County Courthouse. On May 13, 2008, an Order of Dismissal was issued. A timely appeal was filed and perfected by M. Celia Robinson, Appellate Defender, which was dismissed.

APPLICABLE LAW

By way of this Motion, Defendant is alleging after discovered evidence that warrants a new trial. To prevail on this claim a defendant "must show that the after-discovered evidence: 1) is such that it would probably change the result if a new trial were granted; 2) has been discovered since the trial; 3) could not in the exercise of due diligence been discovered prior to trial; 4) is material; and 5) is not merely cumulative or impeaching." State v. Spann, 334 S.C. 618, 619, 513 S.E.2d 98, 99 (1999) (citing State v. Prince, 316 S.C. 57, 447 S.E.2d 177 (1993); See Hayden v. State, 278 S.C. 610, 299 S.E.2d 854 (1983)).

In State v. DeAngelis, 256 S.C. 364, 371, 182 S.E.2d 732, 735 (1971), the South Carolina Supreme Court upheld the denial of a motion for a new trial. The Court reasoned:

As is heretofore stated, the appellant did not file his own affidavit setting forth the after-discovered evidence and the facts to which the witnesses will testify. It is essential to the consideration of a motion for a new trial based on after-discovered evidence that such motion shall be supported by an affidavit of the accused himself. Unless a valid and sufficient reason for the omission to file such an affidavit is shown, the affidavit of the accused must show that he did not know of the existence of such evidence at the time of the trial and that he used due diligence to discover such evidence, or that he could not have discovered it by the exercise of due diligence. An affidavit of the appellant's counsel showing these matters is not sufficient. 24 C.J.S. Criminal Law § 1484c, page 286. Chilton v. Commonwealth, 170 Ky. 491, 186 S.W. 191 (Ky. Ct. App. 1916). Nothaf v. State, 91 Tex. Cr. R. 378, 239 S.W. 215, 23 A.L.R. 1374 (Tex. Crim. App. 1922).

The South Carolina Supreme Court has made the role of this Court clear in handling motions made pursuant to Rule 29(b), SCRCrimP. The decision whether to grant a new trial rests within the sound discretion of the trial court, and the appellate court will not disturb the trial court's decision absent an abuse of discretion. State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007); State v. Simmons, 279 S.C. 165, 166, 303 S.E.2d 857, 858 (1983). In State v. Mercer, 381 S.C. 149, 166-67, 672 S.E.2d 556, 565 (2009), the South Carolina Supreme Court has held:

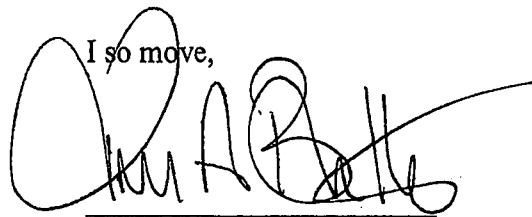
In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977) (noting that the determination of whether new evidence is credible for purposes of a new trial motion rests with the trial court); State v. Deese, 266 S.C. 534, 538, 225 S.E.2d 175, 176 (1976) (noting that the trial court is tasked with assessing the new evidence in a motion for a new trial); State v. Pierce, 263 S.C. 23, 33, 207 S.E.2d 414, 419 (1974) (quoting State v. Mayfield, 235 S.C. 11, 34-35, 109 S.E.2d 716, 729 (1959)) ("The credibility of newly-discovered evidence offered in support of a motion for a new trial is a matter for determination by the circuit judge to whom it is offered. In him, not this court, resides the power to weigh such evidence; and his judgment thereabout will not be disturbed except for error of law or abuse of discretion."). On review, we may not make our own findings of fact. The deferential standard of review constrains us to affirm the trial court if reasonably supported by the evidence.

ARGUMENT

Turning to the Affidavit of Harris, Defendant submits that the information contained therein was not known to him prior to and/or during trial. He further submits that the information has only been recently discovered due to Harris approaching Defendant's brother (Willie Frazier) at their mutual place of employment with this previously unknown information and offering to provide an Affidavit. The Affidavit of Harris is material in that it exculpates Defendant, incriminates Roach, and reveals that Harris, a law enforcement officer, provided this information to another Deputy (Sammy White) and such information was not disclosed to Defendant.

CONCLUSION

For the above stated reasons, Defendant would respectfully request that this conduct an evidentiary hearing and grant a new trial.

I so move,


Tricia A. Blanchette
Attorney for Defendant
Post Office Box 12725
Columbia, South Carolina 29211
(803) 988-0008

February 29, 2016
Columbia, SC

As a threshold matter, Defendant asks this Court to perform the gatekeeper role described above and hold a hearing to properly make a credibility assessment as to the testimonial evidence offered in support of Defendant's motion for a new trial. See Affidavit of Roach, Harris and Defendant.

Secondly, Defendant submits that the Affidavit of Roach amounts to a recantation of the State's leading witness and supports the defense theory advanced at trial that Roach was lying about Defendant's involvement. Defendant submits that the Affidavit of Roach is material and is not merely cumulative or impeaching due to the role Roach's testimony played in Defendant's conviction. Without the testimony of Roach, Defendant submits that his conviction would not stand. The importance of Roach's trial testimony against Defendant is best demonstrated by a full review of the trial transcript, but the following must be noted:

1. Roach was the only witness that provided a full narrative of the events leading up to the victim's death and placed Defendant as the person that both knew the victim, directed him where to take the victim and killed the victim.
2. The jury asked to have Roach's testimony replayed before reaching a guilty verdict.
3. Roach did not testify in the first trial that resulted in a hung jury.

Defendant submits that it is clear that the information contained in the Affidavit of Roach was not known at the time of trial as he was thoroughly cross-examined and failed to provide the exculpatory information contained in the Affidavit. Defendant further submits that this evidence was newly discovered as is addressed in Defendant's Affidavit.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT	)	DOCKET NO.: 2001-GS-07-171, 174, 175
	)	
State of South Carolina	)	
Plaintiff,	)	
v.	)	
	)	AFFIDAVIT
Shameen Coker,	)	
Defendant.	)	

PERSONALLY appeared before me, Ajanae Roach, who being duly sworn, deposes and says:

My name is Ajanae Roach and I am currently serving twenty-five years for voluntary manslaughter, kidnapping, and armed robbery. This is a statement conceived of, and written by me, under no duress or pressure of any kind. I was promised nothing, nor do I wish anything but forgiveness from the wronged parties. Twelve years ago I perjured myself in the trial of Shameen Coker when I implicated him in activities that he neither wanted nor took an active role in.

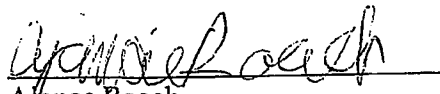
On May 19, 2000, me and Shameen Coker did cross paths and agree to hang out that night. In hindsight, that may have been the worst decision he ever made. He didn't know it at the time, but I was concealing a pistol on my person and was anxious to brandish it, if nothing else. After leaving Shameen's trailer, where we went so that he could change clothes, we then went to a gas station down the road from his trailer, a Chevron, if I am not mistaken. At this point we had no destination, nor means of reaching one if we did. We just stood around talking until this red Grand Am pulled up and an exceptionally tall man, whom I later came to know as James Dillard, stepped out and nodded at Shameen with familiarity before going into the gas station, and returning moments later. To this day, I don't know what made me do it, but upon his return I asked

him if he could give Shameen and I a ride. After assuring him that we didn't intend on taking him out of his way, a surprised Shameen and I got inside the car.

As we were riding, I asked Mr. Dillard to let me drive. Jokingly, at first. He took it lightly because he laughed a little himself. It was at this point when I brandished the weapon. I had no idea why I did it then, and I still haven't a clue now, but I remember thinking that there was no backing out at that point, even though everything that had transpired was spur of the moment. Still holding the pistol, I made Mr. Dillard pull over, pop the trunk, and get inside of it. Shameen was still in the back seat, stunned into silence. I got behind the wheel, making Shameen get in the front passenger seat. I drove to this dirt road that I knew of that had little traffic. I had no clue what I was going to do.

I pulled over just off the side of the dirt road and went to get Mr. Dillard out of the trunk, still at gun point, and led him to the edge of a wooded area. I then shot and killed Mr. Dillard, and ran back to the car in a near panic. After I sped away, neither Shameen nor I said a word. He did tell me to take him to his son's mother's house, which I did. That was the end of Shameen Coker's night with me.

Contrary to my testimony, Shameen Coker did not take part in any felonious activity while in my company on the night of May 19, 2000. At the time, I was consumed with anger and feelings of betrayal, so I erroneously took it out on Shameen Coker. I regret that I waited twelve years before I emerged with the truth but, again, I ask forgiveness from Shameen Coker, his family, and the entire judicial system for misleading them.


Ajanae Roach

SWORN TO before me, this 17th
day of December, 2015.

Debbi L. McCorkay (L.S.)
Notary Public for South Carolina
My Commission Expires: July 10, 2024

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF GENERAL SESSIONS
DOCKET NO.: 2001-GS-07-171, 174, 175

State of South Carolina)
Plaintiff,)
v.)

Shameen Coker,)
Defendant.)

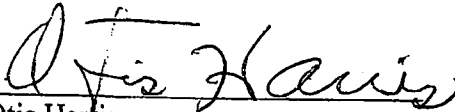
AFFIDAVIT

PERSONALLY appeared before me, Otis Harris, who being duly sworn, deposes and says:

A statement was made to me by Herbert Ford. At the time, he was a teenager of seventeen years old. I, Otis Harris, never asked him any questions. He volunteered this statement to me. At the time, I was a Deputy Sheriff.

Ford stated that he was not going down by himself. He started calling names, and I told him I did not want to hear it. He said he did not care, and that he was still going to tell me. What he said was: "They have the wrong person for the killing of James Dillard." I believe the name he told me was AJ Roach. I told another Deputy, Sammy White, about it. Sammy White is now deceased.

Sammy White said everything was under control and that they had arrested someone. I then went about my regular duties. That is all I know about what was said to me.


Otis Harris

SWORN TO before me, this 11th
day of January, 2018 *WKA*

Josephine Anderson

(L.S.)
Notary Public for South Carolina
My Commission Expires: 02/17/2021

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF GENERAL SESSIONS
DOCKET NO.: 2001-GS-07-171, 174, 175

State of South Carolina,)
Plaintiff,)

v.)

AFFIDAVIT

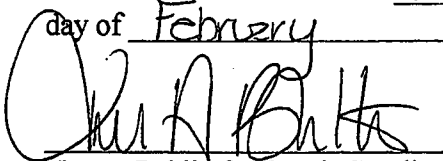
Shameen Coker,)
Defendant,)
_____)

PERSONALLY appeared before me, Shameen Coker, who being duly sworn, deposes and says:

1. I am the Defendant in the above captioned case.
2. I affirm that evidence contained in the Affidavit of Ajanae Roach and Otis Harris was not known to me at the time of my trial or any post conviction filings.
3. I affirm that I have exercised all possible due diligence to obtain this evidence via Affidavit and that this evidence has been discovered within the last year.
4. I submit that I would have wanted Otis Harris called as a witness at my trial and the information contained in the Affidavit of Ajanae Roach would have changed the outcome of my trial.


Shameen Coker

SWORN TO before me this 11
day of February, 2016.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 4/12/2016

STATE OF SOUTH CAROLINA
FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF GENERAL SESSIONS
CASE NUMBERS 2001-GS-07-00171
2001-GS-07-00174, 2001-GS-07-00175

STATE OF SOUTH CAROLINA

PLAINTIFF

VERSUS

ORIGINAL

JULY 11, 2016

TRANSCRIPT OF HEARING

BEAUFORT, SOUTH CAROLINA

SHAMEEN COKER

DEFENDANT

B E F O R E:

HON. MICHAEL G. NETTLES, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF THE STATE:

HON. BRIAN HOLLEN
ASSISTANT SOLICITOR
FOURTEENTH JUDICIAL CIRCUIT
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SHAMEEN COKER:

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EXHIBITS

No exhibits were admitted.

1 BEGINNING 12:17 P.M.

2 BY THE COURT:

3 SOLICITOR HOLLEN: Your Honor, the State calls
4 Shameen Coker. And your Honor, and just for the record,
5 Mr. Coker is coming before you on Indictment 2001-GS-07-
6 00171, 00174, and 00175. He was tried and convicted of
7 those three charges, murder, kidnaping, and armed
8 robbery, in 2003. This is the defendant's motion for a
9 new trial, under Rule 29(b). And my understanding is,
10 we're just going to call one brief witness, and then,
11 re-convene.

12 THE COURT: Yes, ma'am. You're recognized.

13 MS. BLANCHETTE: May it please the Court, your
14 Honor? Tricia Blanchette, on behalf of Shameen Coker.
15 I understand, as the State indicted, that your Honor's
16 agreeable to hearing one brief witness that does have a
17 doctor's appointment this afternoon. So, at this time,
18 I would call Otis Harris to the stand.

19 THE COURT: Yes. Yes, ma'am.

20 MS. BLANCHETTE: Mr. Harris.

21 THE COURT: Mr. Harris, please come forward. And I
22 ask, if you could, to place -- come forward right here,
23 and place your left hand on the Bible and raise -- place
24 your left hand on the Bible, and raise your right hand
25 as the clerk administers the oath, please, sir.

1 MADAM CLERK: Do you solemnly swear or affirm to
2 truthfully answer all questions asked of you by this
3 court, so help you God?

4 OTIS HARRIS: I do.

5 THE COURT: Is that a yes?

6 OTIS HARRIS: Yes.

7 THE COURT: Very good.

8 BAILIFF: Come around here, sir.

9 THE COURT: Come around. I'm going to ask you to
10 have a seat in this witness chair. Pull up real close
11 to that microphone.

12 BAILIFF: Be careful of the steps, sir.

13 THE COURT: Speak loudly, clearly, and slowly, in
14 order that we can hear everything that you have to say.
15 Let's start with --

16 BAILIFF: Just move this -- move this to where it
17 was comfortable for you, okay?

18 OTIS HARRIS: I understand.

19 THE COURT: Let's start with your full name.

20 OTIS HARRIS: Name Otis Harris.

21 THE COURT: All right, Mr. Harris. Yes, ma'am,
22 you're recognized.

23 MS. BLANCHETTE: Your Honor, may I approach the
24 witness?

25 THE COURT: Yes.

1 OTIS HARRIS, DIRECT EXAMINATION

2 BY MS. BLANCHETTE:

3 Q Mr. Harris, I'm going to hand you a copy of an
4 affidavit that was attached to the motion we filed in
5 this case. And the date on that, I believe, is January
6 11, 2016. Do you recognize that affidavit?

7 A Yes, I do.

8 Q Okay. And is that your signature on that
9 affidavit?

10 A Yes, it is.

11 Q Okay. I want to briefly ask you some questions
12 about the information contained in that affidavit. What
13 is your current occupation?

14 A Well, I'm a retired police officer.

15 Q Okay. And when you were a police officer, what
16 force were you with, or what department?

17 A Hampton Sheriff's Department.

18 Q Okay. And does this affidavit speak to an incident
19 that occurred when you were with the Hampton County
20 Sheriff's Department?

21 A Yes.

22 Q Okay. And in this affidavit, you reference an
23 encounter with a Herbert Ford. Do you recall how you
24 came in contact with Herbert Ford?

25 A We had a warrant on him. I picked him up and

1 arrested him.

2 Q Okay. And were you familiar with Mr. Ford prior to
3 that day you arrested him?

4 A Yes, I was.

5 Q And how was it that you were familiar with him?

6 A I knew it was a warrant out on him.

7 Q Okay.

8 A It was a warrant out on him, and I was driving by
9 the gas station, and I seen him. I heard there was a
10 robbery there.

11 Q And so, you executed that warrant on him. Is that
12 correct?

13 A Well, I picked him up to arrest him. At the same
14 time, I got the warrant for robbery.

15 Q And once you arrested him, where did you take him?

16 A To the precinct.

17 Q Okay.

18 A To the Sheriff's Department.

19 Q And did he make some comments to you that you
20 detailed in this affidavit after you arrested him?

21 A Yes, he did. He was a little angry, and he told me
22 that I -- I didn't bring up the conversation, but he had
23 asked me what -- what was happening with this Coker guy.
24 I said, *I don't know*. He said, *well, they arrested the*
25 *wrong man*.

1 Q Okay. And once he -- once you got that information
2 from Mr. Ford, did you tell anybody else about it?

3 A I -- I think I did, but I don't remember who I
4 spoke to about it.

5 Q Okay. And if it refreshes your memory, here in
6 your affidavit, you say Deputy Sammy White. Do you
7 recall telling him about it?

8 A Yes, I remember telling him about it.

9 Q Okay.

10 A At the precinct, yes.

11 Q Okay. And what was your understanding from your
12 conversation with Deputy Sammy White as to this case
13 involving Mr. Coker?

14 A Mr. Ford started telling me about -- about what had
15 happened, and I told him I didn't want to hear it. So,
16 he said he was going to tell me, anyway. And he said
17 that they have the wrong man arrested.

18 Q Okay. And you gave that information, then, to
19 Deputy Sammy White. Is that correct?

20 A I hesitated on it for awhile, and then, I seen --
21 he was my commander at the time. He was a sergeant, and
22 I told him about what had happened. So, he said I don't
23 have to worry about it, because they got the rested --
24 they had arrested the guy, already.

25 Q Okay. And did you ever hear anything further on

1 the case?

2 A No, I never heard nothing more about it.

3 Q And were you aware that Mr. Ford actually was
4 called as a State's witness in the trial of Shameen
5 Coker in 2003?

6 A Yes.

7 Q You knew that he was called as a witness at trial?

8 A I knew it. Yes, ma'am, I did know it.

9 Q Okay. Did anybody from Mr. Coker's defense team
10 ever contact you and ask you about your arrest of Mr.
11 Ford?

12 A No.

13 MS. BLANCHETTE: Your Honor, if I could just beg
14 the Court's indulgence one moment.

15 BY MS. BLANCHETTE:

16 Q. And just to be clear, Mr. Harris, you affirm or
17 agree with everything contained in this affidavit?
18 You've reviewed it, that you signed your name to, you
19 agree to this affidavit?

20 A Yes.

21 MS. BLANCHETTE: Your Honor, I have no further
22 questions.

23 THE COURT: Cross-examination.

24 SOLICITOR HOLLEN: Thank you, your Honor.

25 OTIS HARRIS, CROSS-EXAMINATION

1 BY SOLICITOR HOLLEN:

2 Q How are you, Mr. Harris? Mr. Harris, where are you
3 from, originally? Where were you born?

4 A I was born -- where I was born? Macon, Georgia.

5 Q Macon, Georgia. And where do you live now?

6 A Yemassee, South Carolina.

7 Q Yemassee. Okay. And how about Mr. Coker, the
8 defendant, where is he from?

9 A Far as I know, he's from Yemassee, Early Branch
10 over there.

11 Q He's from Yemassee?

12 A Um-hmm.

13 Q Do you know some of his family?

14 A Recently, yes, I do.

15 Q And what is your relationship with his brother? Do
16 you know a gentleman named Willie Frasier?

17 A Yes, I do, um-hmm.

18 Q And how do you know him?

19 A At the school, I was working with him.

20 Q Okay. And what is his relationship to Mr. Coker?

21 A Far as I know, it's his brother.

22 Q It's his brother?

23 A Um-hmm.

24 Q Okay. All right. Let's go back to this statement,
25 Mr. Harris. When was this statement given to you by Mr.

1 Ford?

2 A I don't know what date it was, but it was on a
3 Saturday, I know that.

4 Q What year was it? Was it before the trial of this
5 case?

6 A It was after the trial I --

7 Q It was after the trial of this case?

8 A I arrested him first, once; then, I arrested him
9 again.

10 Q So, the statement that he gave you was after this
11 trial?

12 A Yes.

13 Q Mr. Harris, do you know how long Mr. Coker was in
14 the Department of Corrections?

15 A No.

16 Q Would it -- are you certain it was after the trial
17 of this case? When were you with the Hampton County
18 Sheriff's Office?

19 A It was around '02 or '03, somewhere in there.

20 Q Say that again for me? How long were you with
21 them? Do you remember the years you were with Hampton
22 County?

23 A From -- I worked with them for about -- about eight
24 years, I'd say.

25 Q And what years were those? Do you remember?

1 A The year was 2 -- 2 -- 2 -- 2001, somewhere in
2 there, up until 2006.

3 Q Okay. And do you remember about when -- about how
4 long after the trial of this case that statement was
5 given to you?

6 A No, I don't, sir. No, I did not.

7 Q If I told you that Mr. Ford was sentenced to
8 prison, and he was sentenced to eighteen years in 2001,
9 would that ring a bell for you?

10 A No.

11 Q So, you didn't -- so you arrested Mr. Ford, and
12 some time after the trial of this case -- do you
13 remember when the trial of this case was?

14 A No, I don't. I arrested -- I remember I arrested
15 him after the case. I don't know when it was, what
16 month or year it was. I can't remember right now, sir.

17 Q Okay. You said that he was, in your affidavit, you
18 said that he was seventeen at the time. Does that ring
19 a bell? That was your sworn affidavit.

20 A I didn't say how old he was in the aff -- that I
21 can remember.

22 Q Take -- excuse me, Mr. Harris. Take a look at the
23 -- do you have a copy of that affidavit up there with
24 you?

25 A No.

1 SOLICITOR HOLLEN: Your Honor, may I approach?

2 THE COURT: Sure.

3 BY SOLICITOR HOLLEN:

4 Q Can you read that first couple of statements. Oh,
5 you got a copy right there.

6 A There it is, right there.

7 Q It says Mr. Ford was seventeen at the time. Is
8 that right?

9 A Well, sir, I have to say, he had to be after
10 seventeen, because he was arrested at the time. He was
11 -- had been in jail at the time I picked him up.

12 Q Okay. But in your -- in your affidavit, it says he
13 was a teenager of seventeen, and you swore that
14 everything in that affidavit was correct, right?

15 A I guess, so, sir. Far as I can say.

16 Q I'm just -- I -- this is a very important
17 statement, so I want to make sure that we're as clear as
18 possible on when it was given.

19 A Um-hmm.

20 Q Now, you don't remember when it was given. You
21 think it was after the trial of this case. Right?

22 A It had to be after the trial for me to know that he
23 had got hisself in trouble, sir, at that time. It's
24 been a long time.

25 Q I'm just here -- all I'm trying to figure out, it

1 says he was seventeen here. And this trial was in 2003.

2 Is that -- does that ring a bell?

3 A Sir, like I told you before, I don't know exactly
4 what year it was I can remember [sic].

5 Q Okay. Where is Mr. Ford now?

6 A He's -- he's deceased, sir.

7 Q Mr. Ford is deceased. Okay. And where is Mr.
8 White now?

9 A Mr. White is deceased.

10 Q Okay. So, the person who gave you this statement
11 and the person that you told about it are both deceased,
12 right?

13 A Yes.

14 Q Okay. Now, are you -- you are aware -- you said
15 you're aware that Mr. Ford testified for the State,
16 right? in this case?

17 A No, I didn't say that, sir. I just said what he
18 told me, that he was there.

19 Q Now, Ms. Blanchette asked you earlier if you were
20 aware that he testified for the State in this case, and
21 you said yes. Right?

22 A I'm getting confused here, sir. I don't remember
23 that. All right?

24 Q Okay. Mr. Harris, did you tell anybody about this
25 between the time you were told and when you made the

1 defendant aware of that statement?

2 A I can't remember, sir. I just can't remember.

3 Q You don't --

4 A I can't put it together. No.

5 Q You don't remember if you told anybody about this?

6 A Maybe I told Sammy White about it.

7 Q You told Sammy White.

8 A Um-hmm.

9 Q But other than Sammy White, did you tell anybody
10 else about this statement?

11 A Later on, I think I did.

12 Q And who was that?

13 A Some of the kids that hung around me. So, it might
14 have been his mother, or it might have been his brother,
15 or one of the two.

16 Q The defendant's mother or brother?

17 A It could have -- somebody could have asked me about
18 it, and I could have --

19 Q And do you remember when that was?

20 A No, I don't, sir.

21 Q Okay. Was it round about five years ago? Ten
22 years ago?

23 A Oh, yeah. It was about five or six years ago or
24 something.

25 Q Five or six years ago, you told --

1 A Maybe. Or something like that. Um-hmm.

2 Q Five or six years ago, you told the defendant's
3 family about this?

4 A No, I didn't tell the family. I just spoke --
5 somebody spoke -- sir, I really -- I don't remember
6 exactly when it was, because I didn't pay it no mind.

7 Q Okay. And Mr. Ford, you said, said that you got
8 the wrong guy for killing James Dillard. Did he tell
9 you a name?

10 A No, didn't say I got the wrong guy. He had said
11 that he -- that -- that the Sheriff's Department has the
12 wrong guy.

13 Q That's what he told you?

14 A Yes.

15 Q Okay. And did he give you a name of the person
16 that actually did it?

17 A He did call somebody's name. Roach?

18 Q Roach? Okay. Can you look at your statement
19 there. You said you believed the name he told you was
20 A.J. Roach.

21 Q That's the only one he could tell me, sir. I think
22 that's what it was at the time. It was like I say, I
23 don't remember the case, because it wasn't my case.

24 Q Right. But you -- you knew this -- you're saying
25 it was after the trial. You knew it shortly after the

1 trial, right?

2 A I didn't say shortly. I'm just saying what I --
3 after I picked him up and arrest -- taking him to jail,
4 he told me this, and I told him I didn't want to hear
5 it.

6 Q Okay. Now, Mr. Harris, do you know how many times
7 Mr. Ford was interviewed in regards to this case?

8 A No, I don't.

9 Q Do you know what his testimony at trial was under
10 oath?

11 A No, I don't, sir.

12 Q Okay. Mr. Harris, let me ask you this. That whole
13 group of people you're sitting with back there, those --
14 that is your family? That is Mr. Coker's family?

15 A Far as I know, the ones I do know are Mr. Coker's
16 family there.

17 Q Mr. Coker's family. Okay.

18 A Um-hmm.

19 Q Okay. And why did you wait so long before coming
20 forward and telling anybody about this statement?

21 A I didn't wait on nothing, sir.

22 Q I'm sorry?

23 A I didn't wait on nothing. This has happened a long
24 time ago, and I had told someone back then that they
25 said they had the wrong guy, and that's what I had

1 heard, that they had the wrong guy. Mr. -- Mr. Ford had
2 told me that in the car taking him to jail that day.

3 Q Okay. And when -- when did you -- I'm just trying
4 to get this clear, Mr. Harris, because I want to make
5 sure we're all on the same page. When did you tell the
6 defendant's family, or who did you contact when you came
7 forward with this information?

8 A I didn't -- I didn't look for nobody to tell them,
9 so I didn't contact. The conversation might have come
10 up. In the conversation, I spoke of it. I do remember
11 I was speaking to somebody about it, but I don't know.

12 Q Did you tell Mr. Frasier, Mr. Coker's brother? Is
13 that who you told about this?

14 A No, I did not. I don't remember telling him.

15 Q Well, how did the defendant find out that you heard
16 this statement from Mr. Ford?

17 A I really don't know, but I was -- I told somebody
18 what he had told me.

19 Q Okay. When was that?

20 A The day I picked him up to take him to jail, sir.

21 Q Right. But when did you tell somebody that he gave
22 that statement to you?

23 A Later on, after that. I don't know exactly what
24 day it was or when it was.

25 Q This is important, now. When -- was it -- I'm

1 going to ask you again. Was it five years ago? Was it
2 ten years ago? Was it last year? What? I mean?

3 A It was quite a while back, sir.

4 Q It was quite a while back.

5 A Um-hmm.

6 Q And who did you tell? This information got to the
7 defendant somehow. I'm just trying to figure out how it
8 got to him.

9 A Might have been talking to one of the guys standing
10 around. I don't know exactly when I told -- I told
11 Sammy White a long time ago before then.

12 Q Right. I understand that.

13 A Um-hmm.

14 Q Did you -- you worked with the defendant's brother,
15 right?

16 A Not at that time.

17 Q No, no, no. But you do or did recently work with
18 the defendant's brother.

19 A Yes. Recently, yeah.

20 Q And is he the one that you told about this?

21 A No, no, because I didn't even talk to him in -- I
22 just spoke to him --

23 Q All right.

24 COURT REPORTER: I'm sorry. I didn't even talk to
25 him; I just spoke?

1 A I spoke to him and just kept walking away.

2 Q So, Mr. Harris, why did you wait so long to come
3 forward with this?

4 A Why did I wait?

5 Q Yeah.

6 A Well, someone had asked me about what had really
7 happened, and I told them what we was talking about, you
8 know. Somebody was speaking about it, and I told
9 someone about what had happened, what was told to me.

10 Q Okay. But you don't remember where that -- when
11 that was or who you told? Is that right?

12 A No, I don't. I don't remember who I told that.

13 Q Okay. All right.

14 SOLICITOR HOLLEN: Court's indulgence, your Honor.

15 THE COURT: Any re-direct?

16 MS. BLANCHETTE: Very briefly, your Honor.

17 THE COURT: Yes, ma'am.

18 OTIS HARRIS, RE-DIRECT EXAMINATION

19 BY MS. BLANCHETTE:

20 Q Mr. Harris, prior to me showing you the transcript
21 this morning, and showing you where Mr. Ford had
22 testified against Mr. Coker, were you aware about what
23 happened in the trial of Mr. Coker?

24 A No, I don't remember no more -- no more than what I
25 heard afterward, you know, the trial.

1 Q Okay. So, I showed you this morning that Mr. Ford
2 had testified in that trial, but did you know that
3 before I showed you that transcript this morning?

4 A No, I did not.

5 Q Okay. And just -- and the question the State
6 repeatedly kept asking you, do you work with Willie
7 Frasier? Do you work at the same school as Mr. Frasier?

8 A For the last three or four years, yes.

9 Q Okay. And do you recall having a conversation with
10 him about his brother Shameen Coker's case?

11 A No, I don't.

12 Q Okay. And you don't recall that being what led you
13 to giving an affidavit recently?

14 A No, it did not.

15 Q Okay. So, you don't -- you don't have a memory of
16 that right now?

17 A No, I don't.

18 Q Okay. And when you speak about the two cases, were
19 you actually speaking about the fact that Mr. Ford had
20 two car-jacking cases?

21 A Well, he had one robbery, and it's -- you know, a
22 Marine female. He robbed her. And he had -- I caught
23 him in a car, was smoking cigarettes, you know,
24 marijuana cigarettes.

25 Q And so, when he gave you this statement regarding

1 the case involving Mr. Coker and Mr. Roach, was that
2 after his first case, or was that after Mr. Coker had
3 been convicted?

4 A No, he told me this after Mr. Coker had been
5 convicted.

6 Q Okay. I just wanted to be clear.

7 A He -- he spoke about it. He was trying to tell me
8 about it, and I didn't want to hear it.

9 Q Okay.

10 MS. BLANCHETTE: Your Honor, if I could beg the
11 Court's indulgence.

12 Your Honor, I have no further questions.

13 THE COURT: All right. We'll stand at ease until
14 2:00 o'clock.

15 MS. BLANCHETTE: Thank you, your Honor.

16 SOLICITOR HOLLEN: Thank you, your Honor.

17 THE COURT: We'll hear arguments and summary at the
18 conclusion of the testimony.

19 SOLICITOR HOLLEN: Yes, sir.

20 THE COURT: All right, we'll stand at ease until
21 2:00 o'clock.

22 OFF THE RECORD 12:37 P.M.

23 BACK ON THE RECORD 2:11 P.M.

24 BAILIFF: Court is now back in session.

25 THE COURT: Please be seated. Yes, ma'am. You're

1 recognized.

2 MS. BLANCHETTE: Thank you, your Honor. If my
3 client can come around, I just --

4 THE COURT: Yes, sir, please come around. I'm
5 going to ask you if you could, come right in front of
6 the *Bible* here, and place your left hand on the *Bible*,
7 and raise your right hand while the clerk administers
8 the oath.

9 MS. BLANCHETTE: Oh, I'm sorry, your Honor. I
10 intend to call him last. I was just going to have him
11 join me at the table, as he has before.

12 THE COURT: Oh. You can have a seat over there,
13 and we'll receive your testimony later.

14 MR. COKER: Yes, sir.

15 MS. BLANCHETTE: Thank you, your Honor. My next
16 witness would actually be Ajanae Roach.

17 THE COURT: Mr. Roach? Sir, if you would please
18 come forward and place your left hand on the *Bible*, and
19 raise your right hand as the clerk administers the oath.

20 MADAM CLERK: Do you solemnly swear or affirm to
21 truthfully answer all questions asked of you by this
22 court, so help you God?

23 AJANAE ROACH: I do.

24 THE COURT: I'm going to ask, if you could, please
25 come forward and have a seat in the witness chair. I'm

1 going to ask you to pull real close to that microphone.
2 Speak loudly, clearly, and slowly. We want to be able
3 to hear everything that you have to say. And we're
4 going to ask that you start with your full name, please.

5 AJANAE ROACH: Ajanae Roach.

6 THE COURT: Spell it.

7 AJANAE ROACH: A/j/a/n/a/e, Roach, R/o/a/c/h.

8 THE COURT: Very good. Yes, ma'am.

9 AJANAE ROACH, DIRECT EXAMINATION

10 BY MS. BLANCHETTE:

11 Q And Mr. Roach, do you go by the name A.J. Roach?

12 A I used to, yes.

13 Q Okay. I will call you Mr. Roach, so I don't
14 butcher your first name, then.

15 A That's fine.

16 Q Mr. Roach, let me take you back to July of last
17 year. Do you recall meeting with Pete Skidmore, who is
18 a private investigator employed by Shameen Coker,
19 meeting with him and giving him a statement?

20 A I do.

21 Q Okay. And that was a handwritten statement you
22 prepared and given to him?

23 A Yes, it was.

24 Q Okay. And do you recall after that time receiving
25 a typed-up affidavit that contained the information in

1 your handwritten statement?

2 A Yes.

3 Q And do you recall signing that affidavit?

4 A Yes, ma'am.

5 Q Okay.

6 MS. BLANCHETTE: Your Honor, may I approach the
7 witness?

8 THE COURT: You may.

9 BY MS. BLANCHETTE:

10 Q Mr. Roach, I'm going to show you the motion that
11 was filed in March of this year on behalf of Mr. Coker.
12 If you could just look at these two pages here, and see
13 if you recognize those, please. Do you recognize that?

14 A Yes.

15 Q And is that your signature on the second page
16 there?

17 A Yes.

18 Q Okay. And that is, in fact, your affidavit. Is
19 that correct?

20 A Yes.

21 Q Now, Mr. Roach, this morning I briefly spoke with
22 you and let you know that, if you needed to speak with
23 an attorney, that we can make an attorney available to
24 you. Do you need to speak with an attorney before I ask
25 you any questions about your affidavit or involvement in

1 this case?

2 A No, I do not.

3 MS. BLANCHETTE: Your Honor, at this time, I didn't
4 know if you would like to proceed with questioning him
5 on that matter?

6 THE COURT: I think that's sufficient. If he's in
7 a position to testify concerning these matters, I think
8 he should. Go ahead.

9 MS. BLANCHETTE: Thank you, your Honor.

10 BY MS. BLANCHETTE:

11 Q Mr. Roach, just briefly I would ask -- well, let me
12 do it this way. If you wouldn't mind starting with the
13 line here that says, *my name is*, and just read us your
14 affidavit. And then, I'll ask you to affirm the
15 information contained in it.

16 A The entire?

17 Q Yes, your affidavit that you would like the Court
18 to consider, the information contained therein.

19 A *My name is Ajanae Roach, and I am currently*
20 *serving twenty-five years for voluntary*
21 *manslaughter, kidnaping, and armed robbery.*
22 *This is a statement conceived of and written*
23 *by me, under no duress or pressure of any*
24 *kind. I was promised nothing, nor do I wish*
25 *anything but forgiveness from the wronged*

1 parties.

2 Twelve years ago, I perjured myself in
3 the trial of Shameen Coker when I implicated
4 him in activities that he neither wanted, nor
5 took an active role in.

6 On May 19, 2000, me and Shameen Coker
7 did cross paths -- on May 19th, of the year
8 2000, me and Shameen Coker did cross paths
9 and agree to hang out that night. In hindsight,
10 that may have been the worst decision he ever
11 made. He didn't know it at the time, but I
12 was concealing a pistol on my person, and was
13 anxious to brandish it, if nothing else.

14 After leaving Shameen's trailer, where
15 we went so that he could change clothes, we
16 then went to a gas station down the road
17 from his trailer, a Chevron, if I'm not
18 mistaken. At this point, we had no
19 destination, no means of reaching one if
20 we did. We just stood around talking until
21 this red Grand Am pulled up, and an
22 exceptionally tall man, whom I later came
23 to know as James Dillard, stepped out and
24 nodded at Shameen with familiarity before
25 going into the gas station and returning

1 moments later.

2 To this day, I don't know what made me
3 do it, but upon his return, I asked him if
4 he could give Shameen and I a ride. After
5 assuring him that we didn't intend on taking
6 him out of his way, a surprise Shameen and
7 I got inside the car. As we were riding, I
8 asked Mr. Dillard to let me drive, jokingly
9 at first. He took it lightly, because he
10 laughed a little himself. It was at this
11 point when I brandished the weapon. I had no
12 idea why I did it then, and I still haven't
13 a clue now, but I remember thinking that
14 there was no backing out at that point, even
15 though everything that had transpired was spur
16 of the moment. Still holding the pistol, I
17 made Mr. Dillard pull over, pop the trunk,
18 and get inside of it. Shameen was still in
19 the back seat, stunned into silence. I got
20 behind the wheel, making Shameen get in the
21 front-passenger seat.

22 I drove to this dirt road that I knew of
23 that had little traffic. I had no clue what
24 I was going to do. I pulled over, just off
25 the side of the dirt road, and went to get

1 Mr. Dillard out of the trunk, still at
2 gunpoint, and led him to the edge of a wooded
3 area. I then shot and killed Mr. Dillard, and
4 ran back to the car in near panic. After I
5 sped away, neither Shameen nor I said a word.
6 He did tell me to take him to his son's mother's
7 house, which I did. That was the end of Shameen
8 Coker's night with me.

9 Contrary to my testimony, Shameen Coker
10 did not take part in any felonious activity
11 while in the -- while my company on the night
12 of May 19, 2000. At the time, I was consumed
13 with anger and feelings of betrayal, so I
14 erroneously took it out on Shameen Coker.
15 I regret that I waited twelve years before I
16 emerged with the truth, but again, I have
17 forgiveness from Shameen Coker, his family,
18 and the entire judicial system for misleading
19 them.

20 Q And Mr. Roach, do you affirm the information in
21 that affidavit to be the truth?

22 A I do.

23 Q Let me ask you some questions and take you back to
24 the time of your arrest. Do you recall that you were
25 arrested after Mr. Coker was arrested?

1 A Do I recall if it was?

2 Q Yes. Do you recall being arrested after he had
3 been arrested and given statements in the case?

4 A I can't really remember who got arrested first, per
5 se.

6 Q Okay.

7 A I can't -- I can't -- I can't remember who was it
8 -- who it was got arrested first.

9 Q Okay. When you talked to law enforcement, was part
10 of the information they gave you that he was implicating
11 you in this crime?

12 A Yes, it was.

13 Q Okay. And did that lead you to the information
14 that you provided to law enforcement in your testimony
15 at trial?

16 A As far as the things that he was saying? I'm just
17 asking these questions to clarify exactly what you're
18 asking me. Are you asking me that the statement that
19 they supposedly read was the information that I used to
20 turn around and implicate him?

21 MS. BLANCHETTE: I'll clarify my question, your
22 Honor, since I can't answer his question.

23 BY MS. BLANCHETTE:

24 Q Mr. Roach, I'll just ask you a better question.
25 Okay?

1 A Okay.

2 Q When you spoke to law enforcement -- and let me
3 actually start here. Did you give multiple statements
4 to law enforcement, and then, end up testifying for the
5 State at trial?

6 A I did.

7 Q Okay. When you gave those statements implicating
8 or saying that Mr. Coker was involved, differently than
9 you're saying today, had you been told that he had said
10 that you were the shooter in this case and involved in
11 this case?

12 A I was.

13 Q Okay. And did that play a part in you saying that
14 he was the shooter?

15 A It did.

16 Q Okay. Now, I'm going to take you through some of
17 what you testified to at trial.

18 MS. BLANCHETTE: Your Honor, I do have a copy of
19 the trial transcript. May I approach the witness?

20 THE COURT: Yes.

21 MS. BLANCHETTE: And I will turn this to Page 54,
22 to you -- for you. And you already said you recall
23 testifying at this trial. Is that correct?

24 A I do.

25 Q Okay.

1 MS. BLANCHETTE: And your Honor, I have a copy for
2 you, as well, if you'd like that.

3 THE COURT: Yes. What page are we referring to?

4 MS. BLANCHETTE: Your Honor, I'm beginning on Page
5 54, approximately at Line 8.

6 THE COURT: Okay.

7 MS. BLANCHETTE: And I will just be paraphrasing,
8 not re-reading the testimony word for word.

9 BY MS. BLANCHETTE:

10 Q Mr. Roach, do you recall testifying that Mr. Coker
11 got a gun and walked to the Chevron that night; that he
12 was the one that had the gun?

13 A I do.

14 Q Is that the truth?

15 A No, it was not.

16 Q If you turn to Page 55, beginning at approximately
17 Line 10. Do you recall testifying that you all talked
18 about the plan to rob a person, to get a ride and to
19 take a car?

20 A I do.

21 Q Do you recall testifying to that?

22 A I do.

23 Q And is that the truth?

24 A No, it was not.

25 Q I will direct you next to Page 59. On that page,

1 you testified to a number of things. I'll summarize,
2 and please review the page before answering. On that
3 page, you testified that Mr. Coker was the one that told
4 the victim where to go, that you all were driving down
5 the road. Based upon a look, you made some type of eye
6 contact, and you decided to tell the victim to stop.
7 You brandished the gun. He got out. You decided to put
8 him in the trunk. Someone popped the trunk, and the
9 victim got in the trunk. You've testified today that it
10 was your decision alone to brandish the weapon. So, was
11 it the truth that Mr. Coker was part of that decision to
12 brandish the weapon in the car?

13 A No, it was not.

14 Q On Page 61, if you could turn there. You testified
15 to two things: that the defendant was the one who shut
16 the trunk and put the victim in the trunk; and that the
17 victim -- I'm sorry -- the defendant was the one telling
18 you where to drive. Was that truthful testimony?

19 A No.

20 Q If you turn over to Page 62, beginning at
21 approximately Line 9. You testified that Mr. Coker told
22 you where to stop. He made you pop the trunk. The
23 victim was taken away, and Mr. Coker was the one who
24 shot him. Was that truthful testimony?

25 A No, it was not.

1 Q You testified, if you would turn over to Page 63,
2 that Mr. Coker came back and told you to drive; you
3 recommended that he go back and shoot the victim again.
4 The testimony about Mr. Coker telling you where to drive
5 and to leave the scene, was that truthful testimony?

6 A No, it was not.

7 Q And if you could flip over to Page 68, please.
8 Beginning on Line 16. You testified that it was a
9 decision of all of you to put the car or dispose of the
10 car in the water. Was Mr. Coker involved in that
11 decision?

12 A No, he was not.

13 Q And then, finally, if you could turn to Page 100
14 for me. At that point, you'd been asked some questions
15 about Herbie. And who is Herbie? Do you know? What
16 his full name is?

17 A I -- Herbert Ford.

18 Q Okay. And on Page 100, you testify that the
19 defendant got rid of the gun by giving it to Herbie. Is
20 that correct? Or is that truthful testimony?

21 A No, it was not.

22 Q Now, in this case, the victim had disappeared on
23 March 19th of 2000, and the body was later discovered on
24 March 24th of 2000. And so, time passed until you were
25 actually arrested in this case. Is that correct?

1 A Yes, it was.

2 Q Okay. And had you initially been talking to law
3 enforcement; and then, they kind of brushed off the tip
4 they had been given; and then, they circled back months
5 later?

6 A Yes.

7 Q Okay. And when they first made interaction with
8 you on November 30th, do you recall if they arrested
9 you, or did they let you go, and you were supposed to
10 meet up with them again later?

11 A November 30th?

12 Q Um-hmm.

13 A They never arrested me.

14 Q Okay.

15 A They asked me to come in and speak to them.

16 Q Okay. So, if Mr. Coker was already being
17 interviewed by law enforcement and under arrest on
18 November 30th, he would have been arrested first. Is
19 that correct?

20 A If what you said is true, then, yes.

21 Q Now, Mr. Roach, this is a unique situation here.
22 You testified for the State at trial. You're coming
23 forward today with this information, saying that
24 testimony was not the truth. One thing that you
25 addressed very briefly in your affidavit is that you

1 waited twelve years to come forward with this
2 information. Why did you wait? Why are you just coming
3 forward today?

4 A Because at the time, I was a very angry person, and
5 I was dealing with issues of -- of hurt and feelings of
6 betrayal, and I just tried to bring everybody around me
7 down with me, because I knew that I was going down. And
8 it took -- it took some time, and it took some
9 meditation, and it took coura [sic] in order to be able
10 to let those negative feelings go and to have some --
11 certain people speak to me and let me know that things
12 that I had done were wrong. So, I went about trying to
13 right my wrongs, and it took me some time to try to
14 figure out how, exactly, to go about doing so.

15 Q And as part of that, did you decide to make it
16 known to Mr. Coker that you wanted to come forward with
17 this information?

18 A Yes, but it -- that still was a process, because me
19 and Mr. Coker share a mutual cousin. And I used to
20 speak to her, and I used to just talk around the issue a
21 lot. And then, I finally just said something, and she
22 was like, well, if that's the case, then, you need to do
23 something about it.

24 Q And is that when you agreed to meet with Mr.
25 Skidmore in July of last year?

1 A Yes, it was.

2 Q Okay. Now, Mr. Coker, has he promised you or
3 talked with you, or told you what you needed to say here
4 today?

5 A No, he has not.

6 Q Okay. When you went and met with Pete Skidmore,
7 the private investigator that we sent to Leiber to talk
8 to you, did he make you any promises?

9 A No, he did not.

10 Q Did he tell you what to write down?

11 A No.

12 Q Okay. Did he help you in any way write down your
13 statement?

14 A No, he did not.

15 Q Okay. And we talked briefly this morning. Have I
16 promised you anything?

17 A No.

18 Q Okay. Have I advised you regarding any -- any
19 issues you may face as a result of your testimony here
20 today?

21 A No.

22 Q Whether that be criminal or other matters?

23 A No.

24 Q Okay. And are you here on your own free will and
25 accord today, beyond being transported here via

1 subpoena?

2 A Yes, I am.

3 MS. BLANCHETTE: Your Honor, if I could beg the
4 Court's indulgence just one moment.

5 BY MS. BLANCHETTE:

6 Q And just to make sure we're clear on the record, do
7 you recall when you were initially interviewed by law
8 enforcement them showing you the statement that Shameen
9 Coker had given against you?

10 A Yes.

11 Q Okay. And did that weigh in your decision to give
12 the statements that you gave?

13 A It did, heavily.

14 Q Okay.

15 MS. BLANCHETTE: Your Honor, I have no further --
16 actually, I do. I'm sorry. I apologize, your Honor.

17 BY MS. BLANCHETTE:

18 Q Did Mr. Gene Hood ever attempt to talk with you
19 before you took a state -- or took the stand for the
20 State? And Mr. Gene Hood would have been the attorney
21 for Mr. Coker.

22 A I don't think so.

23 Q Okay. Have you ever reached out to him to say, I
24 want to recant my testimony, or reach out to anybody
25 else involved in the case?

1 A To Gene Hood?

2 Q To Gene Hood or to the Solicitor's Office, to
3 anybody, prior to the motion that we're here about
4 today?

5 A No, I have not.

6 Q Okay.

7 MS. BLANCHETTE: Your Honor, I have no further
8 questions.

9 THE COURT: Cross-examination, Mr. Hollen.

10 AJANAE ROACH, CROSS-EXAMINATION

11 BY SOLICITOR HOLLEN:

12 Q Good afternoon, Mr. Roach. All right. Let's go
13 back through this just a little bit. Mr. Roach, how
14 many times were you interviewed about this case, prior
15 to testimony at trial? Do you know?

16 A I could not tell you exactly.

17 Q Do you know how many -- okay. Do you know how many
18 times Mr. Coker was interviewed about this case prior to
19 trial?

20 A I -- I don't know.

21 A Yes, ma'am.

22 Q So, when did you decide that you were going to
23 contact Mr. Coker about this testimony that you've given
24 today?

25 A You want an exact date?

1 Q No. I'm just looking for a round number.

2 A It has to been in the last -- in the last year or
3 so.

4 Q Okay.

5 A That I made the decision, but I haven't actually
6 just -- soon as I came to the decision, I didn't just go
7 out and do that. I had to put some things together
8 first.

9 Q Okay. And how did you go about contacting Mr.
10 Coker about the testimony you've given today?

11 A We have a mutual cousin.

12 Q So, you did it through that cousin?

13 A Yes.

14 Q And what is that cousin's name?

15 A Keisha Jones.

16 Q Keisha Jones. Okay. Mr. Roach, when are you
17 scheduled to be released from prison?

18 A 2022.

19 Q How about Mr. Coker? When's he scheduled to be
20 released from prison?

21 A I cannot tell you exactly.

22 Q Do you know what his sentence was?

23 A Forty-five years.

24 Q Okay. And when was the trial of this case?

25 A 2003.

1 Q Okay. So, if I told you, oh, I don't know, like
2 2045, would that sound right?

3 A I believe so.

4 Q Okay. And you said earlier, certain -- it took
5 certain people speaking to you for you to change your
6 mind and come out with this testimony. Who were those
7 people?

8 A A lot of the chaplains that I've been talking to,
9 and a couple of Bible study groups that I've been going
10 to. Because it seemed like that a lot of the
11 conversations were surrounding honesty and the truth.

12 Q Okay.

13 A And they must have saw that it kept bothering me,
14 because I would walk out at first.

15 Q All right. Let's talk about Herbert Ford. Do you
16 know where Herbert Ford is?

17 A Deceased.

18 Q He's deceased. Okay. And he was -- was with you
19 on the night of this incident for a little while, wasn't
20 he? Mr. Ford? Do you recall?

21 A Yes.

22 Q He was with you?

23 A Yes.

24 Q Okay. And who was Mr. Ford's friend? Is he your
25 friend, or is he Mr. Coker's friend?

1 A He would be more so Mr. Coker's friend.

2 Q So, in fact, you told deputies around the time that
3 this happened that you didn't really know him, and that
4 it was Shameen's idea to get him. Is that right?

5 A That's what I said.

6 Q Okay. Is that the truth? Is that still the truth?

7 A In the sense to where I didn't really know him. I
8 knew him, but it was not my idea to go pick him up.

9 Q Okay. Do you have any idea why Mr. Ford would make
10 up a story and implicate his friend, when you, who are
11 now saying you are the shooter, were right there, and he
12 could have just testified against you and told the
13 truth?

14 A I can't tell you that.

15 MS. BLANCHETTE: Your Honor, I object to that on
16 speculation.

17 THE COURT: Excuse me just one second. I'll
18 sustain.

19 BY SOLICITOR HOLLEN:

20 Q Mr. Roach, where did the gun come from?

21 A I had it.

22 Q Where did it come from, though?

23 A I bought it.

24 Q You bought it where?

25 A I bought it from somebody.

1 Q And before, you told them that Mr. Coker stole it
2 from a cleaning job on Hilton Head, right?

3 A I told them that I had no recollection of saying
4 that.

5 Q Okay. So, is it your testimony today that Mr.
6 Coker never had the gun that killed James Dillard?

7 A That is.

8 Q Mr. Roach, are you aware that Mr. Coker took
9 Sheriff's deputies to a gun that was hidden in the
10 woods?

11 A I am.

12 Q Was that the murder weapon?

13 A I believe they did tests on that weapon.

14 Q Um-hmm.

15 A And they concluded that it was a gun of that
16 caliber.

17 Q Okay.

18 A They could not tell conclusively that it was the
19 murder weapon.

20 Q All right. And do you know what else was found in
21 the bag with that .38 caliber pistol?

22 A No, I do not.

23 Q What if I told you there was a purple bandana in
24 the bag? Would that mean anything to you?

25 A It brings back memories.

1 Q Does it?

2 A Yes.

3 Q Why does it bring back memories?

4 A Because I remember at the time that I was part of a
5 gang.

6 Q Okay. And what is the significance of a purple
7 bandana?

8 A Then?

9 Q Yeah.

10 A It meant that you might -- it -- to them, to us, it
11 meant that you killed somebody.

12 Q Okay. And who had the purple bandana on the night
13 of this murder?

14 A Nobody.

15 Q Nobody had a purple bandana?

16 A Nobody.

17 Q Do you recall testimony from Mr. Ford that Mr.
18 Coker was the one carrying around a purple bandana?

19 A I remember him saying that, but he -- if you look
20 at it, it wasn't that night that he said that he had
21 that.

22 Q Okay. What is -- what is O.G. status?

23 A It would be hard for me to exactly put it into
24 words.

25 Q In that O.G. status signified by the purple

1 bandana?

2 A Not necessarily.

3 Q Not necessarily? Well, can you explain it to us as
4 best you can.

5 A Okay. If you were running a business --

6 MS. BLANCHETTE: Your Honor, I would object as to
7 foundation for him being able to explain --

8 THE COURT: I'll allow him to ask.

9 MS. BLANCHETTE: -- O.G. status.

10 THE COURT: I'll allow him to ask.

11 BY SOLICITOR HOLLEN:

12 A If it was a business, the O.G. would be the
13 equivalent of a CEO of a company.

14 Q Okay. Does that have any significance with
15 murdering somebody?

16 A At the time, we were saying that, if you had killed
17 somebody, then you would immediately be that.

18 Q And did Mr. Ford testify that Mr. Coker was the one
19 walking around that night, bragging about getting his
20 O.G. status?

21 A I believe I just told you that, from my reading of
22 the -- his statements, that he never said that he had a
23 purple bandana on that night.

24 Q Okay. All right. Mr. Roach, so it's your
25 testimony today, yesterday said that you did the

1 driving; that Mr. Coker never knew what was going on; he
2 never said anything. So, where was he when you
3 apparently shot and killed Mr. Dillard?

4 A Still in the back seat of the car.

5 Q Okay. So, did he ever get out of the car when you
6 shot Mr. Dillard?

7 A When I shot him? No.

8 Q Um-hmm. So, does it make any sense that he would
9 tell law enforcement that he was standing next to you
10 when you fired that shot?

11 A No.

12 Q Do you remember where he was?

13 A Where who was?

14 Q Where Mr. Coker was when you shot Mr. Dillard.

15 A I just told you, he was in the back seat of the
16 car.

17 Q He never got out of the car.

18 A No, he did not.

19 Q Okay. So, did you -- tell me about when you shot
20 Mr. Dillard. Just, you know, tell me what happened.
21 Tell me how many times you shot him. Tell me where you
22 were.

23 A At what point do you want me to start?

24 Q How about right before you shoot him?

25 A I told him to get on his knees.

1 Q Okay.

2 A I grabbed the gun.

3 Q Um-hmm.

4 A And I hit him in the back of the head.

5 Q Okay.

6 A That caused him to lay forward, and then, I just
7 started blindly shooting.

8 Q And how many times did you shoot him?

9 A Apparen -- approximately four times.

10 Q Four times. Okay. And at that point, did you
11 leave?

12 A I walked away.

13 Q You walked away. And did you ever go back again?

14 A I did turn around and go right back.

15 Q And --

16 A When I heard moaning.

17 Q And what did you do?

18 A I went back and shot -- I emptied -- finished -- it
19 was a six-shot gun.

20 Q Um-hmm.

21 A And I finished shooting the gun. And I finished --
22 it was two -- approximately two shots left.

23 Q Okay. So, do you remember this pretty vividly? Do
24 you remember this, everything that happened?

25 A If I would tell you I remember everything, I would

1 by lying.

2 Q Okay.

3 A But I can remember most of the pertinent parts.

4 Q Mr. Roach, how long were you and Mr. Coker housed
5 together in the Department of Corrections? Do you
6 recall?

7 A Never longer than maybe a month.

8 Q So, you and Mr. Coker were not housed together at
9 Lee Correctional Institute for five years from 2008 to
10 2013?

11 A Yes and no.

12 Q Okay. Explain that to me.

13 A Because for one, that the institution that you're
14 talking about has two separate yards. You have a north
15 and a south yard. And the majority of the times, I was
16 on one yard, and he was on the other yard. And then,
17 from that time frame that you spoke on, from 2008 to
18 2013, I was on what they call SMU.

19 Q. And what's that?

20 A It's like a solitary confinement. For that entire
21 time, from July of 2008, 'til February of 2013.

22 Q Okay. So, did you see him every once in awhile?

23 A We were in the same dorm for maybe a month.

24 Q Okay.

25 A But we were never in the habit of really just

1 speaking.

2 Q All right. So, you didn't talk to him at all
3 during that time?

4 A We were never in the habit of speaking. Yeah, I
5 spoke to him.

6 Q Okay.

7 A But we weren't in the habit of just everyday
8 acquaintances.

9 Q All right. And was he angry with you?

10 A I wouldn't know. I know I was angry with him.

11 Q You were angry with him?

12 A Still.

13 Q For? For what?

14 A At the time, I was still going through the anger
15 issues.

16 Q But it was just shortly after this that you decided
17 to change your story, right?

18 A If you talking about when we were together?

19 Q Um-hmm.

20 A This was 2008-ish.

21 Q Okay.

22 A Before I went to solitary, that was the last time
23 that I saw him.

24 Q I gotcha. And do you know about when that was?

25 A I went to lockup, or solitary, in July of 2008.

1 The last time I saw him might have been three or four
2 months before that.

3 Q All right. Mr. Roach, in all the times that you
4 were interviewed about this case by law enforcement, and
5 then, when you testified, have you ever said anything
6 about you being the shooter before today, except on that
7 affidavit?

8 A No, I have not.

9 Q Do you know how many times your story changed when
10 you were interviewed?

11 A Probably none.

12 Q You'd be right. Now, the weapon you had, that .38
13 caliber, what did it look like? Do you remember what
14 color the handle was?

15 A Black.

16 Q Was a black handle. Okay. And what did you do
17 with it after the shooting?

18 A I threw it away.

19 Q You threw it away where? Did you keep it for a
20 little while, or did you have it with you, or did you
21 get rid of it that night?

22 A I got rid with it -- I got rid of it about two days
23 later.

24 Q Two days later.

25 A Yeah.

1 Q And where did you get rid of it?

2 A I just threw it in the dumpster.

3 Q You threw it in a dumpster? Where was that?

4 A On the other side of my county. In Colleton
5 County.

6 Q Okay. So, you -- what side of Colleton County?

7 A The -- like, I stay on the side closest to Hampton
8 County borderline, and I threw it away on the side
9 closer to Orangeburg County line.

10 Q Okay.

11 A That'd be going through Smoaks Ruffin area.

12 Q All right. And you never told anybody that,
13 either, did you?

14 A Of course not.

15 Q Do you have any contact with Mr. Coker's family?

16 A No, I do not. Other than the cousin that we have
17 mutual, no, I do not.

18 SOLICITOR HOLLEN: Court's indulgence, your Honor.

19 Your Honor, I have no further questions.

20 THE COURT: Re-direct?

21 MS. BLANCHETTE: Very briefly, your Honor.

22 THE COURT: Yes, ma'am.

23 AJANAE ROACH, RE-DIRECT EXAMINATION

24 BY MS. BLANCHETTE:

25 Q Mr. Roach, do you still have the transcript there

1 in front of you?

2 A Yes, I do.

3 Q Do you mind turning to Page 154 of the transcript?
4 And if you look there on Page 154, Mr. Stuckey is
5 testifying on cross-examination, and he testifies that
6 the gun that the State recovered did not have the prints
7 of yourself or of Mr. Coker. Is that what you recall;
8 that they weren't able to match either of your prints to
9 the gun that they recovered?

10 A Yes.

11 MS. BLANCHETTE: Your Honor, I have no further
12 questions.

13 THE COURT: You may step down. Yes, ma'am, you may
14 call your next witness.

15 MS. BLANCHETTE: Your Honor, I would call Shameen
16 Coker to the stand.

17 THE COURT: Mr. Coker, please come forward. Place
18 your left hand on the Bible, and raise your right hand
19 as the clerk administers the oath.

20 MADAM CLERK: Do you solemnly swear or affirm to
21 truthfully answer all questions asked of you by this
22 court, so help you God?

23 MR. COKER: Yes, I do.

24 THE COURT: I ask if you'd care to have a seat in
25 the witness chair?

1 BAILIFF: Be careful of your step, sir.

2 THE COURT: Pull up real close that microphone.
3 Speak loudly, clearly, and slowly, in order we can hear
4 everything that you have to say.

5 BAILIFF: You can pull this up to wherever you want
6 it. All right?

7 MR. COKER: All right.

8 MS. BLANCHETTE: If those could remain up there?

9 THE COURT: Yes.

10 MS. BLANCHETTE: He may need them for reference,
11 your Honor.

12 SHAMEEN COKER, DIRECT EXAMINATION

13 BY MS. BLANCHETTE:

14 Q You can state your name, for the record.

15 A My name is Shameen Coker.

16 Q Mr. Coker, where are you currently incarcerated?

17 A Turbeville Correction Institution.

18 Q Okay. And what is the length of the sentence that
19 you're currently serving?

20 A I'm serving forty-five years for murder, kidnaping,
21 and armed robbery.

22 Q Okay. There in front of you, you should have the
23 motion pursuant to Rule 29(b) that was filed on your
24 behalf on March 2nd of 2016. If you could turn to the
25 last two pages of that packet there, and the second to

1 last page is entitled *Affidavit*. If you could review
2 that one-page affidavit that bears your signature.

3 A Yes, I see it.

4 Q Okay. And do you affirm the information contained
5 in that affidavit today?

6 A Yes.

7 Q Okay. Let me talk through with you just about how
8 we got to this point here today. You were tried in
9 2003. Is that correct?

10 A Yes.

11 Q And Gene Hood represented you at that time?

12 A Yes, ma'am.

13 Q Okay. And then, subsequently, you filed a PCR
14 action. Is that correct?

15 A Yes, ma'am.

16 Q Okay. And that was heard here in Beaufort County?
17 That was heard here in Beaufort County, on April 17th of
18 2008, and do you recall that that was in front of Judge
19 Nettles?

20 A Yes, it was in front of Judge Nettles.

21 Q Okay. And knowing that he heard your PCR, we
22 talked about that, and you understood that coming here
23 today and presenting this motion to him. Is that
24 correct?

25 A Yes.

1 Q Okay. And you didn't raise any issue to me
2 regarding that or any concern regarding that?

3 A No, ma'am.

4 Q Okay. Now, the PCR hearing, like I said, was in
5 2008. There was an order of dismissal issued by Judge
6 Nettles, and then, there was a timely appeal that was
7 ultimately dismissed. So, your proceedings in the State
8 court ended after 2008, after that PCR. Is that
9 correct?

10 A Yes, ma'am.

11 Q Okay. Now, let's fast-forward to today and how we
12 got here today. How was it that you got the information
13 regarding Mr. Harris?

14 A Like he said, we have a mutual cousin, and she
15 informed -- she informed my peoples --

16 Q Mr. Coker, I'm sorry, before you go on, I said Otis
17 Harris, Mr. Harris.

18 A Oh, Otis Harris?

19 Q Yes.

20 A Well, my brother -- my brother informed me that
21 Otis Harris had told him that Herbert said it wasn't me;
22 it was A.J. Roach.

23 Q And how is it that your brother would have come
24 into contact with Otis Harris?

25 A They work at Wade Hampton High School.

1 Q Okay. And obtained -- once you obtained that
2 information, what did you do?

3 A I informed you.

4 Q Okay. And as a result, did we get an affidavit
5 from Mr. Harris?

6 A Yes. We sent Pete -- Pete out to get a affidavit.

7 Q Okay. And who is Pete?

8 A Pete is the investigator that I hired.

9 Q Okay. So, you hired an investigator, Pete
10 Skidmore, to assist in getting the affidavits and
11 compiling the newly discovered evidence in this case.
12 Is that correct?

13 A Yes, ma'am.

14 Q Okay. And if you could just -- I'm not sure how
15 many pages to flip back here in this motion. I believe
16 it's about three. Do you see the -- no, I'm sorry, it
17 may just be one. Do you see the affidavit there of Mr.
18 Harris?

19 A Yes.

20 Q And does that essentially state the information
21 that you obtained; and then, we got this affidavit; and
22 then, we provided it to the Court with the motion? Is
23 that correct?

24 A Yes, ma'am.

25 Q Now, Mr. Coker, I know we're not talking in very

1 specific dates here, but the affidavit is signed in
2 January of 2016. Did you wait years? Or how long did
3 you wait 'til you got the information to me, as an
4 attorney; sought representation; and then, obtained this
5 affidavit?

6 A It been like, probably weeks, months.

7 Q Okay.

8 A Probably like one -- one or two months.

9 Q Okay. So, when you say in your affidavit you had
10 discovered this information within the last year --

11 A Yes.

12 Q -- of March of 2016. Is that correct?

13 A Yes.

14 Q Okay. Now, let's talk about Mr. Roach.

15 A All right.

16 Q The State asked him some questions about when you
17 all were both incarcerated at Lee.

18 A Um-hmm.

19 Q Do you recall being housed with him when you were
20 incarcerated at Lee?

21 A Yes. For around like -- soon as I came back from
22 my PCR hearing, they -- they moved me on his side. And
23 I'd been over there from, probably like a month,
24 probably a month and a week.

25 Q Okay. And what was your interaction with him at

1 that time?

2 A We would just say, hey, you know what I'm saying,
3 keep on going about our business.

4 Q Okay. Did you have any reason to approach him and
5 say, hey, I think it's time you come forward and tell
6 the truth; or did you have any type of interaction with
7 him of that nature?

8 A No, ma'am.

9 Q Okay. How did you obtain the information that's --
10 or how did you obtain any type of notice that he wanted
11 to give the information contained in his affidavit?

12 A Keisha told -- Keisha told my family what -- that
13 Roach wanted to make a statement, saying that, you know
14 what I'm saying, I didn't have nothing to do with it,
15 and that he was sorry.

16 Q Okay. And explain for us who Keisha is, please.

17 A Keisha is my uncle's daughter.

18 Q Okay.

19 A And that's his -- that is his mother's -- that is
20 his mother's niece. Yeah, that's his mother's niece.
21 Her grandniece.

22 Q Okay. So, you received information, essentially,
23 that Mr. Roach wanted to provide a statement in this
24 case, from your mutual relatives.

25 A Um-hmm.

1 Q And then, Pete Skidmore went out and met with him
2 in July of last year. Is that correct?

3 A Yes, ma'am.

4 Q Okay. Were you having any type of talks with
5 Keisha like that before last year?

6 A No. No, no.

7 Q Okay. Why did that not come up sooner?

8 A I don't know.

9 Q Okay. Was that something that you all ever talked
10 about?

11 A No.

12 Q Is that -- okay. And why was that subject not
13 discussed?

14 A About what, about, uh --

15 Q About, if you knew that he had lied at trial, why
16 was that never discussed with Keisha about him possibly
17 coming forward with the truth?

18 A I don't know. I never brung it towards Keisha. I
19 don't -- I don't know.

20 Q Okay. Okay. Were you ever making any attempts to
21 communicate with him and get him to come forward? Or
22 were you thinking that was something that he needed to
23 do on his own?

24 A That was something -- that was something that he
25 needed to do on his own.

1 Q Okay. And once that was communicated to you, then,
2 you hired a private investigator, and the affidavit
3 contained in the motion was obtained. Is that correct?

4 A Yes, and that's when I hired you.

5 Q And the affidavit that you provided says the
6 information that Mr. Roach gave had been discovered one
7 year prior to the motion. Was that correct?

8 A Yes, ma'am.

9 Q Okay. Now, I want to jump back to when you were
10 arrested. From what I can tell from trial and the
11 investigative reports, you were the interviews with you
12 began on December 30th of 2000. Is that correct?

13 A Repeat that. I didn't hear you.

14 Q The interviews that are in the discovery that I
15 know that you had a copy of, --

16 A Yeah.

17 Q -- the interviews that are recorded in there began
18 with you on November 30th of 2000?

19 A Yes.

20 Q Okay. And as far as you know, who was arrested
21 first? Yourself or Mr. Roach?

22 A I had got arrested first.

23 Q Okay. And did you give any type of statement to
24 law enforcement when you were arrested?

25 A Yes, I did.

1 Q Okay. And do you know what type of statement that
2 was? Was that a certain kind of statement, or done on a
3 certain form?

4 A It was a FBI Form 302.

5 Q Okay. And what did you learn about what was done
6 with that form regarding Mr. Roach?

7 A They told -- showed Roach that form, telling Roach
8 that I had -- me and Orrie [sic] have implicated him in
9 doing something.

10 Q Okay. And then, did Mr. Roach begin giving the
11 statements?

12 A Yes.

13 Q Okay. And he gave multiple statements to law
14 enforcement. Is that correct?

15 A Yes.

16 Q Okay. And those statements implicating you were
17 given after they showed him a form, where they were
18 saying you had implicated him. Is that correct?

19 A Yes.

20 Q Okay. Now, do you recall at your trial, at the
21 close of the trial -- this is on Pages 248 through 251
22 -- the jury requested your statement, and the Court had
23 to tell them that there were not statements given by you
24 admitted at trial. Do you recall them wanting to see
25 your statement?

1 A Yes.

2 Q Okay. And then, do you recall that they wanted,
3 and they did re-listen to Mr. Roach's testimony?

4 A Yes.

5 Q Okay. Now, did you have a trial prior to your
6 trial date in March of 2003?

7 A Yes, ma'am.

8 Q And what was the result of that trial?

9 A It was a hung jury, eight, four.

10 Q Okay. And in that trial, did they use the
11 testimony of Mr. Roach?

12 A No, ma'am.

13 Q So, he was not called as a witness at your trial
14 that resulted in the hung jury?

15 A No, ma'am.

16 Q Okay. And were your statements introduced at that
17 trial?

18 A Yes, ma'am.

19 Q Okay. And they weren't introduced at your
20 subsequent trial. Is that correct?

21 A Yeah -- no, it wasn't. Talking about at the trial
22 in 2003?

23 Q Yes. At your 2003 trial that resulted in a
24 conviction.

25 A No. No, ma'am.

1 Q Okay. Now, one of the issues you raised in the PCR
2 heard by Judge Nettles was that your attorney was
3 ineffective for failing to object when the State was, as
4 your allegation was, bolstering the testimony of Mr.
5 Roach during closing arguments. Do you recall raising
6 that issue?

7 A Yes, ma'am.

8 Q Okay. And why was that important for you to raise
9 in the PCR?

10 A Because he was -- he was basically saying that what
11 -- what Roach said was true.

12 Q Um-hmm.

13 A Instead of them -- instead of them -- instead of
14 him letting them decide, he kept saying it was the
15 truth; Roach testimony is the truth; you just heard the
16 truth.

17 Q So, did it appear to you that the State was really
18 hanging their hat on the words of Mr. Roach at your
19 trial, that resulted in your conviction?

20 A Yes, ma'am.

21 MS. BLANCHETTE: Your Honor, if I could beg the
22 Court's indulgence just one moment.

23 THE COURT: Yes.

24 BY MS. BLANCHETTE:

25 Q Mr. Coker, I'm just going ahead and ask the obvious

1 question. Mr. Roach testified at your trial implicating
2 you --

3 A Um-hmm.

4 Q -- in the murder of James Dillard, claiming that
5 you were the one giving him directions; you were the one
6 that did this killing; and you were the one that helped
7 dispose of the vehicle. Did you shoot and kill Mr.
8 Dillard?

9 A No, ma'am.

10 Q Who did that?

11 A Ajanae Roach.

12 Q Mr. Coker, I know that you've waited a good bit and
13 have worked hard with me on putting together this
14 motion. Is there anything else you'd like to tell the
15 Court in support of your motion asking for a new trial
16 today?

17 A Yes. Just -- just the fact that I ask you to
18 really look into the affidavit of Ajanae Roach, because,
19 due to my first trial, when they -- when he didn't
20 testify, I had a hung jury. And in that hung jury, I
21 had eight people saying that I was innocent, and four
22 only saying I was guilty. Because, in my testimony, it
23 never said that I did anything; that I participate in
24 anything; and I kept telling them that I don't want to
25 have no participation in nothing. So, by him testifying

1 in my second trial, that what gave them the edge to say
2 that I am guilty, because he's the only one gave a
3 narrative of -- of -- of -- of -- of the -- of the
4 incidents that what happened. But now, he's saying that
5 I never -- we never planned, plot, or ever participate
6 in anything. And if I would have had that at my second
7 trial, I wouldn't be here right now.

8 MS. BLANCHETTE: Your Honor, I have no further
9 questions of this witness.

10 THE COURT: Yes, sir.

11 SHAMEEN COKER, CROSS EXAMINATION

12 BY SOLICITOR HOLLEN:

13 Q All right. Mr. Coker, how many times were you
14 interviewed by law enforcement about this case?

15 A In November, twice. Three times, four times.

16 Q Four times?

17 A Um-hmm.

18 Q And I think -- I think that sounds right.

19 A Four times.

20 Q How many times did you change your story?

21 A My story basically stayed the same. Well, when my
22 first trial -- I mean, my first interview with them, it
23 was in early November, is when I told them I don't know
24 who did it. November 30th, I said, I don't know who did
25 it. They said they had somebody, somebody from Florida.

1 I just basically gave them the information that they had
2 out there.

3 Q And what was that information?

4 A That somebody with dreads did it, and this and that
5 and a third.

6 Q And was that the truth?

7 A No.

8 Q How about the second story?

9 A Hmm? The second story, and that's when I indicated
10 that -- that Ajanae did it. That he did -- did it.

11 Q All right. And where were you in that second
12 story?

13 A How you mean?

14 Q I'm sorry?

15 A What you mean?

16 Q I mean, where -- what did you tell law enforcement
17 about where you were?

18 A That was in Hampton County. I was locked up there.

19 Q What did you -- what did you tell law enforcement
20 about where you were when James Dillard was killed in
21 that second story?

22 A What do you mean? What I --

23 Q I mean, what did -- I'm just trying to figure out
24 what you told them the second time you met with them.

25 Do you recall?

- 1 A Ask -- I don't -- what are you indicating?
- 2 Q Well, let me find the date of that statement.
- 3 A Yeah.
- 4 Q This is the statement on November 30th.
- 5 A Um-hmm.
- 6 Q Do you remember telling them that A.J. had the gun,
- 7 A.J. pulled it out?
- 8 A Oh, yes.
- 9 Q Do you remember that?
- 10 A Yes.
- 11 Q Okay. And do you recall what you told them about
- 12 where you were when A.J. Roach killed Mr. Dillard?
- 13 A I was sitting in the car.
- 14 Q I don't think we got there quite yet.
- 15 A When you say he shot and killed Mr. Dillard.
- 16 Q And you said that you were sitting in the car?
- 17 A To my knowledge.
- 18 Q All right. Let's jump forward.
- 19 A All right.
- 20 Q December 8th, you were interviewed by law
- 21 enforcement again. Do you remember telling them about
- 22 where you were when the final shot was fired by A.J.
- 23 Roach?
- 24 A I told them -- I told them that I had stepped out
- 25 the car, I think.

1 Q Okay.

2 A If I didn't -- if I'm not mistaken.

3 Q And do you remember telling them where you were
4 standing?

5 A I came to the edge of the woods, and I see him
6 standing over him. Then, that's when I turned around
7 and went back to the car.

8 Q Do you recall telling them that you were standing
9 right there next to Mr. Roach when he fired?

10 A No, I don't recall that. No, I don't recall that.

11 Q Mr. Coker, this is a transcript of an interview
12 that was done on December 8th with Bob Bromage from the
13 Beaufort County Sheriff's Office; T.C., who is a
14 Sheriff's Deputy, I believe, in Hampton County. Do you
15 remember that interview?

16 A Yes.

17 Q Okay.

18 SOLICITOR HOLLEN: Your Honor, may I approach the
19 witness?

20 THE COURT: You may.

21 BY SOLICITOR HOLLEN:

22 Q Just at the bottom there, B.B. is Bob Bromage.

23 A Um-hmm.

24 Q S.C. is your name.

25 A Um-hmm.

1 Q Can you read that for us. Read that exchange.

2 A I wasn't there for the first five shots, now.

3 I wasn't.

4 How close, uh, were you during the
5 sixth shot?

6 That's when I got out the car. I was
7 close.

8 You were pretty close, were you?

9 Yes. I been right there. I seen
10 everything.

11 Q Do you remember telling him that?

12 A The edge of the woods, you can be right there and
13 see right there.

14 Q Okay. But Mr. Roach testified -- you were in here
15 for his testimony today, right? -- that you never got
16 out of the car.

17 A He didn't -- see, when they went in the woods,
18 right? At the edge of the woods, you can see in the
19 woods.

20 Q Okay.

21 A He had his back turned to me, anyway.

22 Q So, did you ever get out of the car?

23 A I got out the car, but he didn't see me get out the
24 car.

25 Q So --

1 A It was in the woods.

2 Q Right.

3 A Um-hmm.

4 Q And you say you were standing right there, right?
5 So, I take it --

6 A I'm not -- no, not right there. Right -- he was
7 standing over him, no, I wasn't.

8 Q So, you said, I see everything.

9 A Yeah. You could have seen everything from the edge
10 of the woods.

11 Q So, --

12 A If you -- if you -- if you would have seen where --
13 listened to the whole tape, that's what I told them.

14 Q That you were standing by the edge of the woods?

15 A Yes.

16 Q So, did you get out of the car, or did you not get
17 out of the car?

18 A I told you, yes.

19 Q You did get out of the car. Okay. Mr. Coker, who
20 was the one that knew James Dillard.

21 A I had knew James Dillard, like, I seen him around
22 Yemassee, because I'm from Yemassee.

23 Q Right. And did he know your brother?

24 A Yes.

25 Q And so, you kind of knew him, didn't you?

- 1 A Naw. Not really. He just knew my brother.
- 2 Q He knew your brother, but he knew who you were?
- 3 A Well, he was like, ain't you Aaron brother? I'm
- 4 like, yes.
- 5 Q Okay.
- 6 A After we had got in --
- 7 Q Did Mr. --
- 8 A Oh.
- 9 Q I'm sorry, go ahead.
- 10 A That was after we had got in the car.
- 11 Q Okay. And did Mr. Roach know Mr. Dillard at all?
- 12 A You could say he did, because we all from, you know
- 13 what I'm saying, being Yemassee, every -- Yemassee's not
- 14 big.
- 15 Q No, it's not. You're right. All right. At what
- 16 point did Herbert Ford meet up with you guys on that
- 17 night?
- 18 A Right after the -- I think right after the
- 19 incident, if I'm not mistaken.
- 20 Q And where did you meet up with him?
- 21 A Ajanae went to his house.
- 22 Q Ajanae went to his house?
- 23 A Yes.
- 24 Q At whose direction did he go to his house?
- 25 A At whose direction?

1 Q Yeah. Did you tell him to go and pick up Herbert?

2 A Not to my -- not that I recall.

3 Q Did Mr. Roach know Herbert Ford?

4 A Yes.

5 Q And how did he know him?

6 A We all used to chill together. Everybody used to
7 be at my house.

8 Q Now, you and Mr. Ford were friends, right?

9 A Yes.

10 Q Do you know of any reason Mr. Ford would lie under
11 oath and implicate you in this, when Mr. Roach did it?

12 A No. I don't understand why would he. But if -- if
13 what he told Otis Harris, it would have came out. Then,
14 you would have known that he says Ajanae Roach first.

15 Q Okay. Mr. Coker, tell me -- tell me what happened
16 on that night. Give me your version of the events.

17 A The whole event?

18 Q Sure. Where did the gun come from?

19 A I don't know. Ajanae had the gun on him.

20 Q He had it. So, you never took the gun out of a
21 house on Hilton Head?

22 A No.

23 Q Okay. And do you remember what the gun looked
24 like?

25 A The gun he had?

1 Q Yeah.

2 A Yes.

3 Q What did it look like?

4 A It was a black gun.

5 Q What kind of gun was it?

6 A A .38.

7 Q Was it a revolver or a semi-automatic?

8 A Revolver.

9 Q Okay. And did you ever handle the gun?

10 A No.

11 Q You never re-loaded the gun for him?

12 A No.

13 Q Do you recall telling Bob Bromage with the Beaufort
14 County Sheriff's Office that you re-loaded the gun for
15 him?

16 A No, I didn't. I never said that. I know I never
17 said that.

18 SOLICITOR HOLLEN: Your Honor, may I approach?

19 THE COURT: You may.

20 BY SOLICITOR HOLLEN:

21 Q Where did the shells come from when you re-loaded
22 the gun? Do you know?

23 A No.

24 Q What happened to the gun when the murder was done?

25 A Ajanae kept it with him.

1 Q Okay.

2 A Because I got out the car.

3 Q All right. Read that exchange right there for me.

4 A Which one?

5 Q The one right there that's highlighted.

6 A What happened to the gun? Where was --
7 where was the gun?

8 He gave me some bullets out of his
9 pocket.

10 Why would he do that?

11 I re-loaded -- I re-loaded the gun
12 back for -- I re-loaded the gun back.

13 I don't remember --

14 Q Do you recall saying that?

15 A No, I don't recall saying that. I don't recall.

16 Q Mr. Coker, when are you scheduled to get out?

17 A 2045.

18 Q And are all your PCR, all your -- basically all
19 your other courses have expired, haven't they?

20 A Yes.

21 Q This your last chance, right?

22 A Yes.

23 Q Okay.

24 SOLICITOR HOLLEN: Court's indulgence, your Honor.

25 All right. Your Honor, I have no further

1 questions.

2 THE COURT: Any re-direct?

3 MS. BLANCHETTE: Very briefly, your Honor.

4 THE COURT: Okay.

5 SHAMEEN COKER, RE-DIRECT EXAMINATION

6 BY MS. BLANCHETTE:

7 Q Mr. Coker, did you testify at your trial in 2003?

8 A No, ma'am.

9 Q Okay. And so, the statements that the State's
10 referring to today, those would just be from interviews
11 that were supposedly done by law enforcement?

12 A Yes, ma'am.

13 Q Okay. And you have never testified under oath --
14 or I'm sorry, you didn't testify under oath at that 2003
15 trial, regarding the information that the State was
16 asking you about today.

17 A No, ma'am.

18 MS. BLANCHETTE: Your Honor, I have no further
19 questions.

20 THE COURT: You may step down. Any further
21 witnesses from anybody?

22 MS. BLANCHETTE: Your Honor, I do not intend to
23 call any further witnesses.

24 SOLICITOR HOLLEN: I have none, your Honor.

25 ARGUMENT:

1 THE COURT: I'll be glad to hear arguments from
2 both sides.

3 MS. BLANCHETTE: Your Honor, I will be brief, and
4 if you have any questions, I'll be happy to answer
5 those. I understand you have our written motion, so I'm
6 not going to just sit here and read it to you.

7 THE COURT: Right.

8 MS. BLANCHETTE: I'm just going to address some
9 case law that goes along with this, and then, expand a
10 little bit upon the argument that is here in the motion.
11 I've also provided you a copy of the appendix to review,
12 and then, I have a copy of each case that's part of our
13 primary argument for your Honor's review, as well. I've
14 provided a copy of each of those cases that's not
15 included in the motion to the Solicitor's Office, as
16 well, so that they would have those.

17 Very briefly, your Honor, there are five prongs
18 when we're dealing with newly discovered evidence.
19 Those are found in both *Hayden versus State* and *State*
20 *versus Spann*, one being a PCR case, one being a Rule 29
21 case. Those are the -- to prevail on this claim, we
22 must show that the after-discovered evidence is such
23 that it would probably change the result if a new trial
24 were granted; has been discovered since the trial; could
25 not have in the exercise --

1 THE COURT: Let me ask you something.

2 MS. BLANCHETTE: Yes.

3 THE COURT: Just out of pure ignorance.

4 MS. BLANCHETTE: Um-hmm.

5 THE COURT: Typically, this after-discovered
6 evidence is, quite often, handled in a post-conviction
7 relief hearing. Why is -- I'm sure that, apparently,
8 the law allows you to do that, but what specific statute
9 or case allows you to bring up a 29 motion after a PCR
10 has been exhausted?

11 MS. BLANCHETTE: Your Honor, and I sometimes give
12 too long an answer, so please let me know if I get
13 distracted at all in my answer. I'd first referred to
14 the statute itself that says a motion for a new trial
15 based on after-discovered evidence must be made within
16 one year after the date of actual discovery of the
17 evidence, which we have done here, or after the date
18 when the evidence could have been discovered by the
19 exercise of reasonable diligence. The statute, nor any
20 case as interpreting the statute that I'm aware of, says
21 that such action can't be filed after the completion of
22 a PCR action. We just have to show that, in the
23 exercise of due diligence, it couldn't have been
24 discovered and raised at that PCR; that it actually has
25 been discovered within this last year.

1 *State versus Spann* is the Rule 29 case where it was
2 handled in criminal court, where we have the five
3 factors, and I have provided a copy of that to your
4 Honor. And then, *Hayden versus State* is a PCR case. I
5 also -- I did not provide this, but I'm happy to give
6 the cite.

7 In 2014, I handled *Jamison versus State*, that went
8 all the way up to the Supreme Court. In that case, my
9 prior law partner, Tommy Thomas and I, brought an action
10 alleging newly discovered evidence in the PCR forum. We
11 won that in the Circuit Court in front of Judge Keesley.
12 And one interesting thing that came up is the exact
13 question, essentially, that your Honor has asked me in
14 both oral arguments.

15 THE COURT: It sounds like a good question.

16 MS. BLANCHETTE: It's a very good question. And it
17 was proposed even by our current Chief Justice to me.
18 Essentially, asking why we didn't go the route of a 29
19 in that case, and I will be honest. When clients now
20 come to me and present the issue of newly discovered
21 evidence, I weigh it. And based upon my experience in
22 *Jamison* and a couple of paragraphs in there, some of the
23 questions fielded to me by Justice Kittridge -- kind of,
24 my test is -- and I'm not saying your Honor needs to
25 adopt this. I just refer to this case -- is, if it's an

1 issue of newly discovered evidence of ineffective
2 assistance of counsel, it's -- I pursue that in a PCR
3 forum. When it's strictly newly discovered evidence
4 relating to the trial itself, not involving ineffective
5 assistance, such as, we're not alleging that Mr. Hood
6 should have discovered this prior to trial, then the 29,
7 in my opinion, is the proper route. So, that's why we
8 filed that, and I do hope that it came across in his
9 testimony and his affidavit that this information wasn't
10 known at the time of the PCR handled by your Honor.

11 Did I appropriately answer your question, or go on
12 a rabbit trail?

13 THE COURT: That's what I wanted to hear. I knew
14 there was -- I anticipated that was the law. I just
15 wanted to hear it.

16 MS. BLANCHETTE: And your Honor, in the motion, I
17 cite to *State versus D'Angelo*, which came to my
18 attention as part of the *Jamison* case. It deals with
19 *Rule 29s* and this issue of newly discovered evidence. I
20 quote a long section from *D'Angelo* in the motion, so I
21 just wanted to add to that with some supplemental
22 argument.

23 In *D'Angelo*, the State -- essentially, something
24 that I believe the State would argue, the Court said:

25 *The courts do not look with favor upon*

1 *applications for new trials on the ground*
2 *of after-discovered evidence, as there must*
3 *be an end to litigation in any case.*

4 *However, there are cases that motions of this*
5 *character should be entertained and granted*
6 *in order that wrongs be remedied.*

7 And what I'd submit to you is, if you look at the
8 opinion in *State versus D'Angelo*, this is that type of
9 case that falls into that where we have a co-defendant
10 coming and saying that he recants his trial testimony,
11 which was -- contributed greatly in this case. If you
12 review the transcript, I think it's very apparent to the
13 conviction of Mr. Coker.

14 Also, I cite to *State versus Mercer* in the written
15 motion. *State versus Mercer* is a great case. It's very
16 on point for Rule 29 motions. It's kind of my guiding
17 point when I file these. And there, it essentially says
18 that your Honor is the gatekeeper, and that's why we
19 appreciate you hearing the testimony today, considering
20 these affidavits. It says:

21 *The credibility of newly discovered*
22 *evidence offered in support of a motion for*
23 *a new trial is a matter of determination by*
24 *the circuit court judge to whom it is offered.*
25 Which is your Honor.

1 In him, not the appellate court, resides
2 the power to weigh such evidence, and his
3 judgment thereby will not be disturbed,
4 except for an error of law or an abuse of
5 discretion.

6 They go on in that case to talk about credibility,
7 and I think this is very instructive. The Court says:

8 We are sensitive to the notion that
9 a mere finding of a witness's lack of
10 credibility does not complete the analysis,
11 because a witness may lack persuasive
12 credibility, and still create a reasonable
13 doubt. This sensitivity forms part of our
14 consideration.

15 And they go on to discuss the testimony that's
16 offered in the Mercer case. So, I'd like for you to
17 view the testimony today, in -- according to the test
18 they set forth in Mercer, whether or not it would create
19 a reasonable doubt if a new trial was granted in this
20 case.

21 The final two cases that I will bring up, one is
22 Johnson versus Cato. It was an interesting case
23 procedurally. It was a stay of execution, in front of
24 the South Carolina Supreme Court. The Court heard it in
25 their original jurisdiction, and they were assessing the

1 credibility of a witness that had come forward in that
2 case, a witness/co-defendant.

3 Now, Chief Justice Pleicones gave a very
4 interesting dissent in that case, and I will just
5 reference a couple of the things that he discussed. He
6 said:

7 *In my opinion, we need not be convinced*
8 *as an absolute matter of truth of the new*
9 *evidence before granting a new trial. We*
10 *need only find the new evidence worthy of*
11 *belief.*

12 He went on to quote *Arizona versus Fulminante*, that
13 says:

14 *Our system of justice reveres the*
15 *probative value of confessions. To act with*
16 *the words of the United States Supreme Court,*
17 *a confession is like no other evidence. Indeed,*
18 *the defendant's own confession is probably*
19 *the most probative and damaging evidence that*
20 *can be admitted against him. The admissions*
21 *of a defendant come from the actor himself,*
22 *the most knowledgeable and unimpeachable*
23 *source of information about his past conduct.*
24 *Certainly, confessions can have profound*
25 *impact on the jury, so much so that we may*

1 *justifiably doubt its ability to put them*
2 *out of its mind, even if told to do so.*

3 What we have today here -- and I'm just focusing
4 more on the confession or the recantation of Mr. Roach,
5 we also would like for you to factor in the testimony
6 given by Mr. Harris -- is a confession that Justice
7 Pleicones is discussing here, and that the United States
8 Supreme Court is discussing. It's our position that, if
9 a new trial was granted, the jury would not be able to
10 get out of their mind the fact that he -- the
11 information that he gave here today.

12 And then, finally, I've provided your Honor a copy
13 of *Newsome versus the United States*. It comes out of
14 the Fifth Circuit. And there, they were, again, looking
15 at testimony and determining the weight that a jury may
16 give it, and if a new trial should be granted. And I'll
17 just read you one sentence from that case. It says:

18 *Every practicable precaution should be*
19 *taken to ensure that the verdict really*
20 *speaks the truth. For, if it does not, an*
21 *innocent man may go imprisoned for years.*

22 Here, we would submit to you that, based upon the
23 information, the testimony we have provided today, and
24 the affidavits and the information in the motion, the
25 verdict does not speak the truth. As is stated in the

1 motion, Mr. Roach was the only witness that provided a
2 full narrative of the events leading up to the victim's
3 death, and placed the defendant as the person that both
4 knew the victim, directed him where to take the victim
5 and kill the victim, all of which has been recanted
6 today.

7 As I already mentioned through questioning, the
8 jury asked to have Roach's testimony re-played before
9 reaching their guilty verdict, and they asked about my
10 client's statement. And as my client testified to, Mr.
11 Roach did not testify in the first trial that resulted
12 in a hung jury.

13 Also, in turning to Mr. Harris's testimony, on the
14 last page of the motion, I summarized the importance of
15 that. And I would submit to you it's this. It attacks
16 the testimony provided by Mr. Ford, who also decided to
17 implicate Mr. Coker. Therefore, we have both of the,
18 essentially, testifying co-defendants. That testimony
19 being erased by what we provided here today. It's not
20 merely impeachable. As one of the prongs say, it can't
21 be merely cumulative or impeachable. We would say this
22 is testimony and information that would have turned the
23 case on its head, and as a result, an innocent man is in
24 prison, and we ask that you give our motion great
25 consideration, your Honor.

1 THE COURT: Mr. Hollen?

2 SOLICITOR HOLLEN: Thank you, your Honor. I'm just
3 going to kind of take this in order. I don't know that
4 the law is really at issue here. I think it's clear,
5 based upon the case law as it stands, that, if this
6 testimony is credible, that maybe we would have a legal
7 issue.

8 But I want to start with Mr. Harris, first of all,
9 who is -- his testimony is saying that he was told,
10 after the trial of Mr. Coker, which was in 2003, that,
11 when he picked up Mr. Ford, he was told that they had
12 the wrong guy, and that A.J. Roach was the shooter.
13 Well, he said it was after the trial. He was pretty
14 clear on that. It's simply not possible. If this
15 statement even exists, it was made before the trial of
16 Mr. Coker, because Mr. Ford was sentenced on July 31st
17 of 2001, to eighteen years in federal prison for car-
18 jacking. There's no way he could have been out of
19 federal prison to make that statement to Mr. Harris
20 between 2003 and, I think he said, 2005 when he was
21 still with the Hampton County Sheriff's Office.

22 THE COURT: What do you think about the statements
23 made here by the co-defendant, this gentleman right
24 here, who's essentially confessed to murder?

25 SOLICITOR HOLLEN: Well, your Honor, it's awfully

1 convenient, considering the fact that he's already pled
2 to voluntary manslaughter, kidnaping, and armed robbery,
3 and knows that we can't try him again. He's scheduled
4 to get out in six years. Whereas, his co-defendant, Mr.
5 Coker, is scheduled to get out in 2045.

6 The statements he made on the stand today directly
7 contradict what Mr. Coker himself said to law
8 enforcement after he was arrested. Was he in the car?
9 Was he out of the car? He's basically saying that he
10 had no idea what was going on.

11 I just think, your Honor, especially in light of
12 the case of *State v Harris*, which is a Court of Appeals
13 case from 2011, and the Court of Appeals specifically
14 says in that case -- and I'm happy to provide your
15 Honor with it, I've already provided the Defense a copy
16 -- that recantation of testimony ordinarily is
17 unreliable and should be subjected to the closest
18 scrutiny when offered as grounds for a new trial.

19 Your Honor, Mr. Coker told five different stories
20 to law enforcement during the investigation of this
21 trial. The truth doesn't change. Mr. Roach gave one
22 story, and it was consistent the entire time. Mr.
23 Coker's own statements directly contradict what Mr.
24 Roach said on the stand today, and I'd ask you to take
25 that into account. There's no question that, as the

1 Defense suggested, you are the gatekeeper. It's your
2 job to determine the credibility of these witnesses, and
3 just think about who we have and what they've testified
4 to today, thirteen years after the fact. It's just not
5 believable, your Honor.

6 It wasn't just Mr. Roach. Mr. Ford, who, I would
7 contend, never actually gave that statement, and if he
8 did, it happened before trial. And he then took the
9 stand, under oath, and gave a directly contradictory
10 story. He also told law enforcement several times that
11 Mr. Coker was the one that was bragging about getting
12 his O.G. status that day and that he was the shooter.
13 So, this statement that was given by a deceased person;
14 and then, told to a deceased person. We have one person
15 that knows if that statement was actually made, and that
16 was Otis Harris. And it's just awfully convenient that
17 the two people that were involved are not here to say
18 whether or not that was the truth.

19 I just think, in light of everything, your Honor,
20 you need to take a careful look at the trial transcript,
21 look at the testimony we've heard here today, and
22 whether or not you actually believe it's the truth.
23 There are just too many red flags, in my opinion, but
24 that's a decision for your Honor to make, and I think
25 the law's clear, no matter what you decide. It's within

1 your discretion, so.

2 THE COURT: All right. I'm going to ask both of
3 you to prepare proposed orders. I'm going to take the
4 opportunity to review all these cases, and my -- is this
5 my copy of the transcript?

6 MS. BLANCHETTE: It is, your Honor.

7 THE COURT: I'd like to review that before I make a
8 decision, and -- and how long do each of you need to
9 submit a proposed order?

10 MS. BLANCHETTE: Your Honor, if thirty days
11 wouldn't be too much, I'm just in court the next two
12 days in different counties. So, I know it would
13 probably be a week before I could get started, if that
14 would be okay?

15 THE COURT: Thirty days? That suit you?

16 SOLICITOR HOLLEN: That's more than enough time;
17 your Honor.

18 THE COURT: Very good. Thirty days it will be.
19 Thirty days from today's date.

20 SOLICITOR HOLLEN: Thank you, sir.

21 THE COURT: By that time, I will have had an
22 opportunity to review the trial transcript, all of the
23 cases, and contemplate it a little bit.

24 MS. BLANCHETTE: And your Honor, there also may be
25 another copy of this at your office in Florence, because

1 I had originally sent one there. If your law clerk
2 would need one to review, there may be another.

3 THE COURT: This is quite all right. It's fine. I
4 might use this one.

5 MS. BLANCHETTE: Okay.

6 THE COURT: Okay. And I'm going to be here for the
7 balance of the calendar year, so send the order in hard
8 copy to the clerk's office, my attention, with a self-
9 addressed, stamped envelop. Mr. Hollen, you can hand me
10 yours.

11 SOLICITOR HOLLEN: Yes, your Honor.

12 MS. BLANCHETTE: I will mail mine, your Honor.

13 THE COURT: Very good.

14 MS. BLANCHETTE: Thank you very much. I appreciate
15 it.

16 THE COURT: Good luck to you.

END PROCEEDING 3:21 P.M.

CERTIFICATE OF REPORTER

JULY 11, 2016 TRANSCRIPT OF HEARING

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

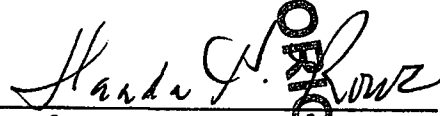
I, Wanda H. Rowe, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing July 11, 2016 Transcript of Hearing is a true, accurate, and complete record of the proceedings had on said date, in the case of State of South Carolina versus Shameen Coker, Beaufort County, Court of General Sessions, Case Numbers 2001-GS-07-00171, 2001-GS-07-00174, and 2001-GS-07-00175; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This certificate of reporter contains my original signature and is attached to the original of this transcript requested by hon. Tricia A. Blanchette.

PURSUANT TO SCACR 607, REQUESTS FOR COPIES OF THIS TRANSCRIPT MUST BE MADE TO THE COURT REPORTER.

UNAUTHORIZED COPYING/EMAILING IS PROHIBITED.

Witness my signature November 6, 2016.


Wanda H. Rowe, CVR-M
Official Court Reporter

ORIGINAL

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF BEAUFORT) INDICTMENT NOS 2001-GS-07171,174,175

2016 AUG 12 PM 3:27
STATE OF SOUTH CAROLINA)
BEAUFORT COUNTY, S.C.)
CLERK OF COURT)

v.)

Shameen Coker)

Defendant.)
_____)

ORDER DENYING DEFENDANT'S
MOTION FOR A NEW TRIAL
PURSUANT TO RULE 29(b)

This matter comes before the Court pursuant to the Defendant's Motion for a new trial based upon after-discovered evidence under Rule 29(b) SCRCrimP. After consideration of the case law cited by both parties and of the evidence presented, the Court hereby **DENIES** the Defendant's motion based on the following.

FACTS

On May 19, 2000, James Dillard disappeared from a Citgo gas station in Yemassee, South Carolina. The following day, his vehicle was found submerged at a public boat ramp in Colleton County, South Carolina. His body was found in a wooded area in Beaufort County, South Carolina on May 24, 2000. An autopsy determined that he had been killed by a .38 caliber handgun.

Defendant Shameen Coker was charged with Murder, Kidnapping, and Armed Robbery and proceeded to trial on March 10, 2003. The Co-Defendant in this case, Ajanae Roach, testified at Defendant's trial that he was with the Defendant on the night of the murder and was present when the Defendant forced James Dillard into the woods and shot him multiple times.

On March 12, 2003, the Defendant was found guilty of Murder, Kidnapping, and Armed Robbery under the above numbered indictments. He was sentenced to thirty years for murder

and kidnapping, and fifteen years for Armed Robbery to run consecutively. Ajanae Roach pled guilty to Voluntary Manslaughter, Kidnapping, and Armed Robbery and was sentenced to twenty-five years. A timely appeal was filed and perfected by Aileen P. Clare, Appellate Defender and dismissed by the South Carolina Court of Appeals on October 20, 2004. The Remittitur was issued on November 22, 2004.

The Defendant filed a timely appeal for Post-Conviction Relief on July 1, 2005 which was supplemented on March 14, 2006. The State filed a Return on September 22, 2005 and an evidentiary hearing was held before this Court on April 17, 2008. An order of dismissal was issued on May 13, 2008. The Defendant then filed a motion for a new trial pursuant to after-discovered evidence on March 2, 2016.

LAW AND ANALYSIS

In order to prevail in a motion for a new trial based on after-discovered a defendant “must show the after-discovered evidence: (1) is such that it would probably change the result if a new trial were granted; (2) has been discovered since the trial; (3) could not in the exercise of due diligence have been discovered prior to the trial; (4) is material; and (5) is not merely cumulative or impeaching. State v. Spann, 334 S.C. 618, 619-620, 513 S.E.2d 98, 99, (1999). The decision of whether to grant a new trial rests within the sound discretion of the trial court and the appellate court will not disturb the trial court’s decision absent an abuse of discretion. State v. Johnson, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007).

Beyond the Spann factors outlined above, the South Carolina Supreme Court held in State v. Mercer, 381 S.C. 149, 166-167, 672 S.E.2d 556, 565, (2009):

In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment. State v. Porter, 269 S.C. 618, 621, 239 S.E.2d 641, 643 (1977) (noting that the determination of whether new evidence is credible for purposes of a new trial motion rests with the trial court); State v. Deese, 266 S.C. 534, 538, [167] 225

S.E.2d 175, 176 (1976) (noting that the trial court is tasked with assessing the new evidence in a motion for a new trial); State v. Pierce, 263 S.C. 23, 33, 207 S.E.2d 414, 419 (1974) (quoting State v. Mayfield, 235 S.C. 11, 34-35, 109 S.E.2d 716, 729 (1959)) ("The credibility of newly-discovered evidence offered in support of a motion for a new trial is a matter for determination by the circuit judge to whom it is offered. In him, not this court, resides the power to weigh such evidence; and his judgment thereabout will not be disturbed except for error of law or abuse of discretion."). On review, we may not make our own findings of fact. The deferential standard of review constrains us to affirm the trial court if reasonably supported by the evidence.

South Carolina Courts have held on numerous occasions that "[r]ecantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial." Porter, 269 S.C. at 621, 239 S.E.2d at 643 (quoting State v. Mayfield, 235 S.C. 11, 34-35, 109 S.E.2d 716, 729 (1959)). State v. Harris, 391 S.C. 539, 545, 706 S.E.2d 526, 529 (S.C. Ct. App. 2011).

In support of his motion, the Defendant submitted affidavits from himself, Co-Defendant Ajanae Roach, and former Hampton County Sheriff's Deputy Otis Harris. They each testified at an evidentiary hearing on July 11, 2016.

The Defendant first presented testimony from Otis Harris. Mr. Harris did not testify during the trial in 2003, so his testimony is the only truly "after-discovered evidence" to support this motion. Mr. Harris avers that after the trial of this case, a critical witness named Herbert Ford told him "they have the wrong person for the killing of James Dillard." Mr. Harris' affidavit states that he "believe[s] the name he told me was AJ Roach." He also says that he told another Deputy named Sammy White about this statement, but for unknown reasons waited thirteen years before mentioning it to anyone else. In January 2016, Mr. Harris says he mentioned this statement to the Defendant's brother, Willie Frazier, with whom Mr. Harris now works.

During the hearing, Mr. Harris said numerous times that Mr. Ford made this statement sometime after the Defendant was found guilty at trial. When asked for a more precise time, he stated it must have been after the trial in March 2003 and before he left the Hampton County Sheriff's Office sometime in 2005. Mr. Ford, however, testified at the trial of this case that he was serving eighteen years in federal prison on a carjacking charge and began serving that sentence at the end of 2001. Therefore, he could not have been arrested and made the statement in question between 2003 and 2005 as Mr. Harris claims. The statement is also in direct contradiction with Mr. Ford's testimony at trial. When called as a witness, Mr. Ford testified that on the night of the murder the Defendant had a .38 caliber revolver and he was bragging about "getting his OG status," which Mr. Ford understood to mean he had murdered someone. It is also significant that both Herbert Ford and Sammy White are deceased and cannot validate Mr. Harris' testimony.

Given the circumstances surrounding the alleged statement, the court does not find Mr. Harris' testimony credible. Mr. Ford could not have made the statement during the time period claimed by Mr. Harris and his testimony at trial directly contradicted what Mr. Harris claims was said. Furthermore, Mr. Harris' decision to wait thirteen years before informing anyone of the statement and doing so only after all other parties are deceased is extremely suspicious and calls into question the truthfulness of his testimony.

If taken at face value, Mr. Roach's testimony may meet the factors as enumerated by Spann and necessitate the grant of a new trial. However, this Court is also required to assess the credibility of the testimonial evidence offered by the Defendant in support of his motion.

For a myriad of reasons, this court does not find the testimony of Ajanae Roach credible. In each of his interviews with law enforcement leading up to the Defendant's trial, Mr. Roach

identified the Defendant as the individual who shot and killed James Dillard. His testimony in that trial was consistent with each of his prior statements. In 2003, Mr. Roach testified that on the night of the murder he walked with the Defendant to the Citgo gas station in Yemassee where they saw the Victim, James Dillard. Mr. Dillard knew the Defendant's brother and agreed to give both Defendants a ride. Mr. Roach admitted that he pulled out the gun, told the Victim to pull over, and forced him to get into the trunk of the car. It was at this time that the Defendant told Mr. Roach that they needed to kill Mr. Dillard since he knew him and could identify him. The Defendant told Mr. Roach to drive to an isolated area where the Defendant removed Mr. Dillard from the trunk and executed him.

During the evidentiary hearing, Mr. Roach recanted the vast majority of his prior testimony and stated he was the one that killed Mr. Dillard, not the Defendant. His affidavit further states that the Defendant was an innocent bystander who had no idea what Mr. Roach was going to do and never got out of the car during the murder. However, Mr. Roach's recent testimony is inconsistent with even the Defendant's own statements to law enforcement.

During cross-examination at the evidentiary hearing, the Defendant admitted that he lied to investigators when he denied any knowledge of the murder during his initial interview. He also admitted that in subsequent interviews he changed his story multiple times, each time admitting more culpability in the crime. He finally told investigators that he was not only present when Mr. Roach shot and killed James Dillard, but standing right next to him.

Mr. Roach's recent testimony that the Defendant never exited the vehicle while he killed the victim clearly contradicts the Defendant's own admissions and casts substantial doubt on the validity of his testimony. When questioned about this during the evidentiary hearing, Mr. Roach was unable to answer why the Defendant would have admitted to officers he was present for the

murder if he never exited the vehicle. He then changed his story and said he could not remember where the Defendant was when the final shot was fired.

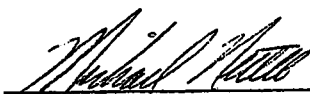
During the evidentiary hearing, the Defendant first denied that he told investigators he saw Mr. Roach fire the shot that killed Mr. Dillard. When confronted with his prior statement, he again changed his story. He said that he did, in fact, get out of the car but he stayed in close proximity to the vehicle. He also stated that the victim was close to the road when he was killed so he was able to see everything that was happening from where he stood near the car. This contradicts testimony from the trial that showed the victim's body was found behind a row of bushes and trees approximately 50 feet from the road and not visible from where the car was parked.

As noted above, our courts have frequently stated that recantation testimony is ordinarily unreliable and should be subjected to the "closest scrutiny" when offered as ground for a new trial. Porter, 269 S.C. at 621. The recantation of testimony here is not simply a third-party witness, but a Co-Defendant who is attempting to absolve the Defendant of any responsibility in the crime for which he has been convicted. Mr. Roach is also obviously aware that he cannot be tried for the murder of James Dillard since he has already pled guilty for his involvement. He is scheduled to be released in six years and has nothing to lose in now taking full responsibility for the murder. The Defendant, on the other hand, has thirty years left on his sentence and all of his other remedies have been exhausted.

CONCLUSION

After assessing all the evidence, this Court finds that the circumstances surrounding the recantation of Ajanae Roach and the testimony of Otis Harris are unreliable. For the foregoing reasons, the Defendant's motion for a new trial pursuant to Rule 29(b) SCRCrimP is **DENIED**.

AND IT IS SO ORDERED.


The Honorable Michael Nettles
Chief Administrative Judge
14th Judicial Circuit

August 12, 2016
Beaufort, South Carolina

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APR 26 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Michael Nettles, Circuit Court Judge

Appellate Case No. 2016-001779

The State,

Respondent,

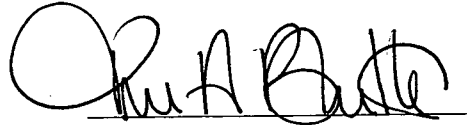
v.

Shameen Coker,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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April 26 2017

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