

VOLUME I of III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Williamsburg County

Steven H. John, Circuit Court Judge

RECEIVED

JUN 29 2016

SC SUPREME COURT

KELVIN BOWEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002248

APPENDIX

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INDEX

INDEX	i
PRE-TRIAL HEARING TRANSCRIPT (Dated August 26, 2010)	1
PRE-TRIAL HEARING TRANSCRIPT (Dated August 30, 2010)	33
PRE-TRIAL HEARING TRANSCRIPT (Dated January 31, 2011)	68
TRIAL TRANSCRIPT (Volumes 1) (Dated January 31-February 4, 2011)	127
TRIAL TRANSCRIPT (Volume 2) (Dated January 31-February 4, 2011)	371
TRIAL TRANSCRIPT (Volume 3) (Dated January 31-February 4, 2011)	625
INDICTMENTS AND SENTENCING SHEETS	855
APPLICATION FOR POST-CONVICTION RELIEF	862
AMENDED APPLICATION FOR POST-CONVICTION RELIEF (Filed September 9, 2014)...	872
AMENDED APPLICATION FOR POST-CONVICTION RELIEF (Filed September 26, 2014).	874
RETURN AND MOTION FOR MORE DEFINITE STATEMENT	876
AMENDMENT AND SUPPLEMENTAL POST-CONVICTION RELIEF APPLICATION (Dated February 9, 2015)	884
AMENDMENT TO POST-CONVICTION RELIEF APPLICATION (Filed February 18, 2016)	886
POST CONVICTION RELIEF HEARING TRANSCRIPT (Dated July 13, 2015)	888
ORDER OF DISMISSAL	984

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG } GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
STATE,)

TRANSCRIPT OF RECORD
09-GS-45-1010

v.)

KELVIN M. BOWEN,)

DEFENDANT.)

August 26, 2010
Kingstree, South Carolina

BEFORE :

THE HONORABLE CLIFTON B. NEWMAN, JUDGE

APPEARANCES:

KIMBERLY V. BARR, ESQ.
Assistant Solicitor

W. E. JENKINSON, III, ESQ.
Attorney for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

INDEX

	Page
Motion for disclosure by Ms. Barr	3
Remarks by Mr. Jenkinson	10
Motion to quash subpoena	30

EXHIBITS**COURT'S:**

No.	Description	I.D./EVD.
1	Letters	3/3

1
2 (Court's Exhibit Number 1 was marked
3 and made a part of the record.)

4 MS. BARR: The next matter before you is
5 concerning indictment number 2009-GS-45-1010. It's
6 the State versus Kelvin Michael Bowen. Your Honor,
7 this is an indictment for murder, criminal
8 conspiracy, possession of a weapon during the
9 commission of a violent crime, and burglary in the
10 first degree. Your Honor may recall that on Tuesday
11 the co-defendant in connection with this case,
12 Mr. Ronald Mack, entered a guilty plea to murder and
13 burglary. Before you now is Mr. Kelvin Bowen.
14 Mr. Bowen is represented by Billy Jenkinson.

15 And Judge, we have an evidentiary matter.
16 And for the record, I'll give the Court a copy of
17 the indictment and a motion that the State filed on
18 July the 30th.

19 THE COURT: Let me get my clerk to come
20 in.

21 (Pause.)

22 THE COURT: Okay, Ms. Barr, you may
23 proceed.

24 MS. BARR: Thank you. Your Honor, quite
25 frankly, this is a matter that needs the Court's

1 help on. The Prosecution and the State cannot agree
2 as to whether or not the Defense should be required
3 to turn over a cell phone in the case. And Judge,
4 let me give you a little bit of a background.
5 Kenyon Dorsey was murdered in his home back in the
6 early morning hours of February — I'm sorry,
7 April 5th, 2009. Investigation in this case
8 revealed that Ronald Mack along with Kelvin Bowen,
9 Tawanda Allen, and Antonio McClary were involved in
10 conspiring to kill Kenyon, break into his home, and
11 then murdering him. We had witness statements
12 during the course of the investigation, statements
13 from people who were not involved as well as
14 statements from defendants who were involved to the
15 effect that on the night before the murder Ronald
16 Mack and Kelvin Bowen were communicating via cell
17 phone about conspiring to commit murder. One of the
18 witnesses gave a statement indicating that he was in
19 Ronald Mack's presence the night that the murder was
20 planned, that he saw Ronald Mack text messages to a
21 person that he identified as Callie. Everybody
22 including all of the defendants have identified
23 Mr. Bowen as the person being known as Callie. It's
24 a nickname apparently because he's from the state of
25 California; he has a California driver's license.

1 But in any event, people involved in the
2 crime as well as witnesses who had knowledge about
3 the crime gave statements to law enforcement that
4 Mr. Mack was texting to Mr. Bowen indicating that he
5 needed him to come down, that he -- that Ronald was
6 mad with Kenyon. Witnesses have gave statements
7 saying that text messages came in from a Callie
8 asking him, I thought that was the guy you were cool
9 with. Text messages were made by Mr. Mack
10 indicating, yeah, but not anymore, we need it taken
11 care of. Witnesses have further stated that text
12 messages came in from the person Mr. Mack identified
13 as Callie saying, do you mean gun play?

14 Judge, co-defendants' statements indicated
15 that Mr. Bowen while in Maryland loaded into a
16 vehicle a shotgun, a rifle, as well as a 9
17 millimeter handgun. He, along with Tawanda Allen,
18 drove to the State of Maryland to South Carolina,
19 picked up Ronald Mack and Antonio McClary and drove
20 to the home of Ms. Dorsey, broke into his house and
21 shot him. There was some time period that went by,
22 but shortly maybe about 46 weeks after the murder,
23 they were -- law enforcement was able to get a
24 statement indicating the involvement of all of these
25 people. Mr. Mack, Ronald Mack, Mr. Bowen, and

1 Tawanda Allen were arrested while they were living
2 in Maryland at the end of May of 2009. At the time
3 of his arrest Mr. Bowen was in possession of a
4 Samsung cell phone that was confiscated by the Anna
5 Arundel County Police Department and later
6 transmitted to Williamsburg County Sheriff's
7 Department.

8 Judge, I marked as exhibits, as a Court's
9 exhibit, some documents that are pertinent to the
10 case. Mr. Jenkinson has copies of all those
11 documents. I'll go through the record and identify
12 what they are. Judge, it appears that while
13 Mr. Bowen was incarcerated at the Florence County
14 Sheriff's Department he wrote a letter indicating, I
15 am authorizing you to release my Samsung cell phone
16 to my attorney Billy Jenkinson. Pursuant to that
17 request Mr. Jenkinson then went to the Williamsburg
18 County Detention Center on October the 13th of 2009
19 and acknowledged receipt of a Samsung cell phone.
20 On October the 19th he wrote a letter to me
21 indicating that in reviewing our Rule 5 responses he
22 saw that a cell phone was confiscated; he wanted us
23 to allow him to get the phone and have it examined.
24 Judge, I did not realize that the cell phone was
25 actually taken by Mr. Jenkinson from the jail until

1 about two months later in January of 2010. One of
2 the documents that's in the packet that you have,
3 Judge, is my letter to Mr. Jenkinson and dated
4 January the 14th, 2010, in which I advised him that
5 the detention records reflect that he took the cell
6 phone on October the 13th. I indicated to him that
7 I think it may have evidentiary value given the
8 allegation that text messages were exchanged between
9 the two co-defendants and asked him to come into the
10 investigation office of the Sheriff's Department by
11 the 21st.

12 Following receipt of my letter
13 Mr. Jenkinson and I had conversations about the
14 phone. He indicated that he wanted to take the
15 phone to Mr. Bowen who is going to want to record
16 some of the notes out of it, numbers out of it,
17 prior to turning it over to the State. Well, some
18 time went by. I wrote to Mr. Jenkinson again on
19 February 3rd. There's a letter to that effect in
20 the Court's record making a second request for the
21 cell phone. On February the 15th he wrote me back
22 indicating that he acknowledged my second letter,
23 that he spoke with his client, that his client
24 understood that I wanted the cell phone; however, he
25 wanted to have it examined one more time and make a

1 copy of the telephone numbers for his personal
2 records prior to turning it over. In that letter he
3 mentions the difficulty he's encountered in going to
4 Effingham to meet with Mr. Bowen considering the
5 distance. He also indicated in that letter that
6 Mr. Bowen was prohibited from having more than 30
7 minutes with visitors and that it was inconvenient
8 to him because his family members were coming from
9 long distance and asked if I could assist in having
10 him transferred to Williamsburg County Detention
11 Center and indicated in the letter that if I respond
12 to those issues that he would respond to my issue
13 about the phone.

14 Judge, I have attached copies of the
15 communications that he provided to that letter from
16 the Florence County Detention Center where Mr. Bowen
17 requested that he be given more than 30 minutes for
18 visitor's time, and that was denied by the detention
19 agency there. Judge, again, some time went by. I
20 kept being led to believe that I would receive the
21 phone, did not receive the phone. I sent another
22 letter June 7th, 2010 again requesting the cell
23 phone. I received a letter back in, sometime in
24 June, basically saying that, well, I've got a copy
25 of a note that reflects that the phone was activated

1 after the murder and, therefore, we believe that
2 it's not relevant and we're not turning it over.
3 And this is contrary to what I'd been led to believe
4 for about six months.

5 And so, Judge, we're at a point now where
6 we have to kind of move along with the trial of the
7 case. I have been led to believe and acted on those
8 assurances that we would get the phone. Obviously,
9 Judge, if the phone is possibly was connected with
10 the murder of Kenyon Dorsey who believe it is
11 evident to believe that Defense is required to turn
12 it over, I don't think we're required to just accept
13 their assertion that the phone was, according to
14 them, purchased after the murder. I don't see any
15 records showing the phone was purchased after the
16 murder.

17 Judge, I think I have provided in our
18 packet and I will if I have not, the subscriber
19 history that purports to relate to that phone. I
20 don't know if it's that phone or some other phone
21 that says it was activated March — strike that,
22 May 3rd, 2009. Judge, you know, that says the phone
23 was activated. It doesn't say that that particular
24 phone that Mr. Bowen was arrested with when he was
25 in Maryland. And so, Judge, we just simply take the

1 position that we have complied with the Rule 5
2 disclosures, that we have filed and served a notice
3 of reciprocal discovery. Judge, we believe that if
4 this does not fall under a Rule 5 provision that
5 concerns we sent for discovery, Judge, the very
6 least it's evidence and that it should be required
7 to be turned over to the State.

8 Quite frankly, Judge, I elected to have
9 him brought before the Court on a motion rather than
10 to issue a subpoena on a search warrant because I
11 certainly want the Court to be professional about
12 handling this matter, but we've just gotten in a
13 stalemate where it's not going anywhere.

14 THE COURT: Mr. Jenkinson?

15 MR. JENKINSON: May it please the Court,
16 Your Honor.

17 THE COURT: Yes, sir.

18 MR. JENKINSON: Let me clarify a couple of
19 issues. Basically what Ms. Barr says is not in
20 dispute; but there is a Paul Harvey version to this
21 motion, and now for the rest of the story. The rest
22 of the story is we don't have a Samsung phone. It's
23 in the possession of the State. Now I'm gonna come
24 back and address that accordingly and what we do not
25 have. What we have a Motorola phone that has Nextel

1 service. It is a second phone that you might say,
2 where are these phones, what is the story on the
3 phone. When the defendant was arrested in Maryland
4 on May 18th he had two phones, a Samsung phone and a
5 Motorola phone. The Samsung phone which is the
6 phone everybody really wants to get their hands on,
7 and us too, was in Mr. Bowen's possession back in
8 the whole month of April, okay. The Nextel phone
9 was a cheap little, you know, prepaid type phone, no
10 camera on it, just a stripped down model that he
11 had.

12 Now when he was arrested he was getting in
13 the car, or in the car. And as he was, the Samsung
14 phone got left in the car. I think it actually
15 shows up on an inventory; and if my recollection
16 serves me correctly, from the Glenn Burney Arundel,
17 Arundel County Sheriff's Department when they
18 arrested him. His personal possessions on his body
19 were put in a nice little plastic bag, his belt, his
20 brush, hairbrush, the Motorola phone, and in the
21 Williamsburg County Sheriff's Department. We had no
22 knowledge that the State didn't have the Samsung
23 phone. We thought maybe it was in that bag. I
24 went, got permission from him to get his property
25 including the Samsung phone, went to the Sheriff's

1 Department, ain't no Samsung phone in it. It's a
2 Motorola phone. And I knew about the fact that
3 there were two phones so I looked back and visited
4 with him and said, what is the deal on the second
5 phone. He said, oh, that's an old cheap phone I
6 bought, that ain't got nothing, I mean, that's my
7 personal phone but I didn't even but it until May
8 1st. So to verify that, we subpoenaed the records
9 from Nextel.

10 Now that being said, what I'd like to pass
11 up because with that information you can better
12 appreciate our legal argument, and I'll pass up the
13 original and one copy of our response to Ms. Barr's
14 motion. I have one for your clerk.

15 (Document tendered to the Court.)

16 MR. JENKINSON: Would you like to read
17 that before I go further or would you — I can tell
18 you basically what's in there.

19 THE COURT: Okay.

20 MR. JENKINSON: So what we have is a
21 phone, Motorola, not a Samsung. They got the
22 Samsung phone. Actually I went and talked to Ms.
23 Barr and I said, she's got the Samsung phone. She
24 said, no, we don't. I said, look in your records.
25 And she said, low and behold it looks like it was

1 inventories, we need to find out if the Anna Arundel
2 Sheriff's Department still got or did it stay in the
3 car when it was towed 'cause the car is gone, long
4 gone. I just found out about a week ago when we
5 were discussing this they've searched for the phone
6 and apparently it has never been found. And I will
7 represent to the Court I have never put eyes on a
8 Samsung phone, do not have in my possession a
9 Samsung phone. As a matter of fact, I got the
10 Motorola phone with me, and I don't mind the Court
11 looking at the phone and looking, verifying that the
12 phone I have is the same one on the Nextel records
13 that were purchased after the alleged crime took
14 place, weeks after the crime took place.

15 But the most important point is this, Your
16 Honor, the motion of the State is based on Rule 5
17 mutual disclosure. In our brief we have pointed out
18 on Page 3 that reciprocal exchange of information
19 and evidence takes place at particularly under Rule
20 5(b)(1)(a). That is the defendant's response to the
21 reciprocal discovery. The defendant requests
22 disclosure and upon the client's request to the
23 prosecution — the prosecution has complied — the
24 defendant on request of the prosecution shall permit
25 the prosecution to inspect and copy books, papers

1 which includes his phone, and which the defendant
2 intends to introduce as evidence in chief at the
3 trial. That is the qualifier. We don't plan on
4 introducing a phone that's a Motorola phone at
5 trial. We're not gonna use it, and as such, it's
6 exempt from Rule 5. We don't have to provide it.
7 Second reason that we don't have to provide it is,
8 it's the Fourth Amendment of the United States
9 Constitution and Article I, Section 10 of the South
10 Carolina Constitution which protects defendants and
11 persons from invasions of their privacy without a
12 search warrant. There's no search warrant.

13 For those two reasons, and particularly
14 the Rule 5 motion, we're in full compliance. We
15 don't have it. I want to represent to the Court I
16 have the phone. I got it fired up so you can look
17 at it, verify this is the number represented on the
18 records that we subpoenaed. And so, as a result, it
19 is not subject to the State's motion to compel in
20 this case of a Samsung phone which we don't have and
21 a phone which was not even owned or possessed by the
22 defendant when this crime took place.

23 THE COURT: All right, Ms. Barr.

24 MS. BARR: Judge, let me just say briefly
25 in response. First of all, if you look at my motion

1 that was filed on July the 30th I specifically
2 stated in there that the motion was being made
3 pursuant to Rule 5 or any other such rule, statute,
4 or case law that may be applicable so I'm not
5 hinging my whole motion on Rule 5. I understand
6 that Rule 5 only requires disclosure of scientific
7 documents prepared on behalf of Defense or any items
8 that they intend to introduce in evidence, and I
9 specifically used the language that I did in an
10 anticipation of that argument.

11 Second Judge, in my motion I don't mention
12 a Samsung phone or Nextel phone. Unfortunately,
13 sometimes, most times, the State's not there when
14 the murder is being committed. Only the defendants
15 know which phone was used during the course of the
16 planning of the murder. And so Judge, in my motion
17 I don't request a specific phone. I just want
18 whatever phone he got from the detention center back
19 on October the 13th, whether it's a Nextel, whether
20 it's a Motorola, whether it's a whatever, that's the
21 phone that I requested in my motion, and Judge, that
22 is the particular phone that I am requesting today.

23 And Judge, as I stated earlier, quite
24 frankly, I have prepared a subpoena, had it signed,
25 and I could have just simply served counsel with

1 this subpoena and then that would have been the end
2 of it, and we would have been arguing over a motion
3 to quash. I could have just simply served him with
4 a search warrant, have law enforcement come into his
5 office or wherever to search for the phone. Judge,
6 I just simply didn't want to do it that way. But I
7 don't think the State is allowed to just rely on the
8 representations of a defendant whose liberty is at
9 issue, who's looking at a possible sentence of life
10 imprisonment if he's convicted. Just to say, oh
11 well, you know, this phone has no evidentiary value
12 because it was activated after the murder,
13 therefore, you can't have it, Judge, if we were in
14 that position we'd certainly be at the mercy of
15 criminal defendants and certainly be in a position
16 where we couldn't prosecute cases and justice would
17 not be served by having that be an issue.

18 Your Honor, there -- it's clearly I think
19 it's undisputed that the witnesses gave statements
20 that they were using cell phones. It's clear that
21 the defendant Mr. Bowen had a cell phone on him at
22 the time he was arrested, and it's clear that his
23 cell phone was later turned over to his lawyer. And
24 Judge, we just think that given the allegations that
25 there were text messages being exchanged, that that

1 phone may very well contain evidence of a crime that
2 we're entitled to have.

3 THE COURT: All right. Mr. Jenkinson.

4 MR. JENKINSON: I understand the State's
5 consternation, but their consternation and problem
6 directed towards this defendant and this Motorola
7 phone are not well founded. They know that it's a
8 Samsung that he had back in April. They know that
9 that phone is in the possession or should be in the
10 possession of the Arundel County Sheriff's
11 Department because they had it in their possession.
12 Now what they did with it ain't my problem, but
13 maybe the search warrant ought to be served on the
14 sheriff of Arundel County in Maryland. They're the
15 folks that had it. I wanted -- I actually went to
16 the solicitor and said, I want to see that Samsung
17 phone, and she said what Samsung phone? I said,
18 look, and they went and looked in the inventory and
19 started checking in the records and low and behold
20 there was a Samsung phone as I recalled. If I'm
21 mistaken stop me. And that is the phone that we
22 both want to look at because that's the phone that
23 the defendant had in his possession during which
24 this crime took place and which, by the way Your
25 Honor, he claims alibi. He was in the state of

1 Maryland, and this phone would be very pertinent if
2 we could find it. And we want to see it as well
3 because it's important to the Defense, but we
4 haven't been able to see it. All we got is a phone
5 that was activated weeks after this crime, and it's
6 not a Samsung phone. And I think this case is about
7 a Samsung phone, not some Motorola phone.

8 MS. BARR: Judge, I disagree. The case is
9 about a cell phone that may have been used in the
10 commission of a murder. I don't — it doesn't
11 matter to me whether it's a cell phone or Nextel.
12 We don't know that he had one phone versus the other
13 on the night this murder was committed, and that's
14 my point. Mr. Jenkinson is saying that but what
15 he's saying is not evidence.

16 THE COURT: All right. In looking at the
17 Anna Arundel County police inventory report dated
18 May 18th, '09 and driver Kelvin Michael Bowen, Long
19 Beach, California. Indicated they were holding the
20 vehicle as evidence. Vehicle and inventory and
21 slash inspection, parentheses, list general contents
22 of vehicle, valuables removed, significant damage,
23 etc. Then it has T-mobile, then a Samsung cell
24 phone, black leather wallet, Nextel GPS unit, and a
25 gray Motorola cell phone. That's contained on

1 the — it's marked as Court's Exhibit Number 1 that
2 Ms. Barr has handed up to me. Now this evidence
3 that the Anna Arundel County police indicate that
4 they as part of their inventory of the vehicle, did
5 they confiscate these items or no?

6 MS. BARR: Judge, when we reviewed our
7 inventory from the Anna Arundel County, we had two
8 cell phone leather cases and one cell phone.
9 Williamsburg County only received one cell phone,
10 and I think the Samsung issue came in because
11 Mr. Bowen in his request from the Florence County
12 jail says, I want my lawyer to get the Samsung
13 phone.

14 MR. JENKINSON: That's correct, Your
15 Honor. And he thought — and he knows that was the
16 only phone. We were trying to identify where he was
17 on April 5th, and the only phone that existed on
18 April the 5th was the Samsung phone. That's why
19 it's so critical and it still is, and I'm still
20 asking, what did y'all do with the phone.

21 THE COURT: Well, I'm asking —

22 MR. JENKINSON: Any time — as a matter of
23 fact, if anybody is entitled to discovery of a phone
24 we're entitled to look at that Samsung phone, not a
25 phone that didn't even exist at the time.

1 MS. BARR: Judge, we don't know that.

2 THE COURT: Well, I mean, I guess you all
3 are maybe interested in arguing whatever you all
4 want to argue; but I'm kind of interested in getting
5 the question that I asked answered, and that is,
6 that the report says that a T mobile-Samsung cell
7 phone, black leather wallet, Nextel GPS unit, and a
8 gray mobile cell phone, that those things were made
9 as a part of the inventory of this vehicle and it's
10 placed on the inventory report. And the question is
11 whether these items were confiscated by Anna Arundel
12 police; and if they were, were they sent down here?

13 MS. BARR: Judge, we have — we have
14 the — and I'm not sure which phones Wanda Mack had.
15 Wanda Mack had a cell phone and the cell phone from
16 Mr. Bowen was taken. Wanda Mack's cell phone was
17 inventoried by law enforcement and at Wanda Mack's
18 request turned over to her mother. I'm looking for
19 my inventory sheets to find out which make and model
20 cell phone that was so if it's — I don't know if
21 that's the Samsung, but clearly the inventory report
22 has the defendant's name and Tawanda Allen. I'm
23 just trying to find out whether or not what was
24 turned over to Tawanda's mother was the Samsung.
25 And see, I've never seen the phone that Billy has so

1 I don't know whether it's, what model it is.

2 THE COURT: All right.

3 MS. BARR: Judge, Investigator Lail is
4 going to get the property receipt for Tawanda
5 Allen's mother for her phone.

6 THE COURT: While we're waiting for all of
7 that, now the evidence that the State had that
8 voluntarily relinquished to the defendant, his cell
9 phone, now the State is seeking to get it back
10 through a Rule 5 motion. Is that where we are?

11 MR. JENKINSON: I take the position that's
12 not the case. The State didn't have it in their
13 possession. They have — they have a little
14 personal belongings — when they take personal
15 belongings they put it in a bag, seal it, and say
16 this is the defendant's property, you can pick it
17 up. Well, knowing that we weren't even certain what
18 was in that bag other than my client said, I would
19 like to get my personal stuff from the jail. And
20 that, in fact, the Samsung phone — 'cause I was
21 asking him about the Samsung phone. When I got
22 discovery I said, hey, this Samsung phone will prove
23 alibi maybe if possible, you know depending upon,
24 you know, what the phone has got in it. And so he
25 said, he said, get the Samsung phone if it's there.

1 Went to — and they gave me the whole bag of stuff,
2 the leather belt, a brush, a leather — little cell
3 phone container, and this Motorola phone. Now then
4 they said, there ain't no Samsung phone, ain't no
5 Samsung phone in here. They gave me the bag; it
6 wasn't in evidence. It was in his personal
7 belongings, and I could have just got permission to
8 get his personal belongings so this wasn't in
9 evidence. As a matter of fact, it's not even on
10 that inventory he's saying. This was just stuff
11 taken off of him at the jail when they were
12 undressing him and putting him in his prison garb.
13 I can't imagine the Sheriff's Office giving me
14 evidence when — 'cause it's not evidence.

15 THE COURT: Does the State have in its
16 custody any property taken from the defendant?

17 MS. BARR: Not from his person.

18 THE COURT: Person, the automobile he was
19 in?

20 MS. BARR: Judge, I don't think any item
21 — in reviewing the records I don't think anything
22 was taken out of the automobile. As a matter of
23 fact, one of the deputies determined that there was,
24 in his opinion, nothing that appeared to be of
25 evidentiary value inside the house. There were

1 things, we take the position, that were taken from
2 defendant's residence in the case but not from his
3 vehicle. And the vehicle I believe is registered to
4 his co-defendant Tawanda Mack.

5 THE COURT: And whatever phones were taken
6 from the defendant have since been given back to the
7 defendants Ms. Mack, Mr. Bowen. They were either
8 given back to Ms. Mack or to Mr. Jenkinson?

9 MS. BARR: Yes, sir.

10 THE COURT: And you have no phones in
11 custody?

12 MS. BARR: We have a phone that belongs to
13 Ronald Mack.

14 THE COURT: To Ronald Mack?

15 MS. BARR: Yes, sir.

16 THE COURT: What kind of phone is that?

17 MS. BARR: It's an I-phone.

18 (Pause while Investigator Lail and Ms. Barr go
19 through contents of a box brought in by
20 Investigator Lail.)

21 THE COURT: What else do you have,
22 Ms. Barr.

23 MS. BARR: Judge, the — and in your
24 question I want to make sure I clarify something.
25 The property receipt form signed by Investigator

1 Lail for Kelvin Bowen, Jr., on June 4th of 2009
2 indicates that she acknowledged receipt of
3 chapstick, one golden state bandage card, one cell
4 phone carrier empty, one cell phone carrier with one
5 cell phone so that would have been in his personal
6 belongings, but it doesn't specify which particular
7 model of cell phone it was. The cell phone that was
8 turned over to Ms. Mack's, Ms. Allen's mother, was
9 it looks like an LB cell phone and that was turned
10 over 8/31/2009.

11 THE COURT: So you gave one to Ms. Mack;
12 gave one to Mr. Jenkinson, and you want it back
13 under Rule 5?

14 MS. BARR: Well, Judge, under — I don't
15 necessarily know and I probably would agree that
16 Rule 5 is not the appropriate authority; but to the
17 extent, Judge, that it is evidence that could be of
18 a crime we're entitled to have it. And again,
19 Judge, I can — I can do it by way of subpoena, I
20 can do it by way of search warrant. I didn't want
21 to handle it that way, but if I have to handle it
22 that way I suppose I can. But I certainly want to
23 do it in a manner that was less intrusive to counsel
24 as possible. Well, we're certainly not relying on
25 the authority in Rule 5 which is the reason why the

1 motion is couched the way that it was.

2 MR. JENKINSON: And I don't think in these
3 circumstances service of a subpoena or service of a
4 search warrant on a lawyer for a defendant in a
5 murder case is volitive of the attorney/client
6 privilege in the worst sort of way. If — I just
7 cannot foresee a judge issuing a search warrant
8 under those circumstances. When we stand before the
9 court saying we've got the phone, I'll show it to
10 you in-camera, show you it's the phone we're talking
11 about, show you it's a Motorola phone, show you it
12 ties in with the exact records that it was not in
13 existence of the date of the crime, and I don't know
14 what else I can do. I can't turn a Motorola phone
15 into a Samsung phone that didn't exist.

16 MS. BARR: And Judge, you know, it'd be
17 nice if counsel had turned over the phone to me as
18 he promised to me for six months we might not be
19 here. He's made representations to me that he would
20 give me the phone for six months and just up one day
21 and just decided he wasn't going to do it. I've
22 never seen the phone. He told me I'll bring it
23 over, have you take a look at it, and then he
24 changed his mind on that. But Judge, I either —

25 MR. JENKINSON: I stand by my statement.

1 I will show her — and one time we engaged in some
2 dialogue. Now I never — I said, I always have said
3 subject to my client's approval as I did in my
4 letter. I offered when I sent the cell phone
5 records down there showing that the phone I had was
6 not the phone, she said, well, how do I know that's
7 not the phone. I said — she said I'd have to look
8 at the number on it to see if it's the same thing.
9 I said I'll show you the number on the phone. And
10 I'll still do that; I'll do it right now. That it
11 matches the record showing that it didn't exist prior
12 to March the — I mean, May the 1st. I don't know
13 what else I can do other than pull out a Samsung
14 phone and I'm not that good; I'm not a magician.

15 MS. BARR: Your Honor, I'll say this and
16 I'll sit down and I'll let the Court rule on the
17 matter. But the issuance, if it need be of a search
18 warrant or subpoena for a particular item that may
19 be an item of evidence in a criminal case upon the
20 lawyer for the defendant is not volitive of
21 attorney/client privilege. Attorney/client protects
22 communications. If that were the case the defendant
23 could shoot somebody, take the gun to his lawyer's
24 office and say oh, can't get it now because I've
25 given it to my lawyer, therefore it's protected by

1 attorney/client privilege. That's clearly not the
2 case. We're not asking for anything that he may
3 have told his client, but we do believe we're
4 entitled to the phone.

5 MR. JENKINSON: I don't think it's subject
6 to subpoena, Your Honor. If I was withholding
7 something under Rule 5 that I plan to use at trial,
8 that may be a different ballgame. I'm not here to
9 argue that. This is not under Rule 5. Read Rule 5
10 says what it says. You know, if we don't plan on
11 using it at trial — and I'm representing to the
12 Court we don't plan on using it at trial — it's not
13 subject to disclosure, it's not subject to a
14 subpoena, it's not subject to anything, and it's not
15 subject to the defendant's motion before this Court.

16 THE COURT: I agree with the Defense that
17 the property would not be subject to disclosure
18 pursuant to Rule 5 because the reciprocal discovery
19 provision of Rule 5 states that the State is
20 entitled to matters which are under the custody or
21 control of possession of the defendant and which the
22 defendant intends to introduce as evidence in chief
23 at the trial. That's the clear language of Rule 5.
24 So to the extent that the State is seeking this
25 phone under Rule 5, the State is not permitted to

1 get it under Rule 5 as part of the reciprocal
2 discovery and as part of a motion to compel alleging
3 a Rule 5 violation.

4 Whether the State is entitled to get
5 evidence as a part of its continuing investigation
6 in preparation of the case for trial because it may
7 contain incriminating evidence, the question is
8 whether or not — the question is whether that is
9 really before the Court at this time.

10 MS. BARR: Yes, sir.

11 THE COURT: Or whether the Court will be
12 merely issuing an advisory opinion on that matter
13 based on what is — versus what is actually before
14 me.

15 MR. JENKINSON: I just want it to be
16 abundantly clear, I have done everything I can in my
17 power to show this Court and the Prosecution that
18 this phone, this number, was not the Samsung phone,
19 not the phone that they're looking for. And they
20 want it for evidentiary standpoint to determine the
21 whereabouts of the defendant in this case on the
22 4th, 5th, and 6th of April of 2009. This phone
23 didn't exist then, and this is a witch hunt. And
24 you know, if they come looking for my records I
25 guess I better go find a bondsman or some lawyer to

1 represent me because I am not going to turn it over
2 and violate my client's rights under the Fourth
3 Amendment and the First Amendment and due process of
4 the Fourteenth Amendment. If a trial lawyer and a
5 criminal defense lawyer in a case involving murder
6 has got to turn over his file and whatever is in it
7 to the Prosecution, I'll be glad to know about it
8 because I have — in 39 years I have never seen that
9 in writing anywhere, and I guess there's always a
10 first time for everything. But I, you know, just
11 think that would be a prosecutorial misconduct with
12 the highest court, and that's my position.

13 MS. BARR: Judge, we understand the
14 Court's ruling.

15 THE COURT: All right.

16 MS. BARR: Thank you.

17 (Pause.)

18 THE COURT: Ms. Barr and Mr. Jenkinson,
19 for the record regarding the documents introduced as
20 Court exhibits, do you want the court reporter to
21 maintain those items, or do you agree to have them
22 released?

23 MR. JENKINSON: The items from the
24 Solicitor's Office?

25 THE COURT: The copies of papers filed in

1 this case?

2 MR. JENKINSON: You mean released back to
3 the attorney?

4 MS. BARR: Released back to the attorneys
5 or do you wish to have the court reporter maintain
6 them as Court Exhibits?

7 MR. JENKINSON: For purposes of this trial
8 I assume we're going forward probably in October —

9 MS. BARR: I'm not sure.

10 MR. JENKINSON: You're not sure? I will
11 prefer they be maintained as part of the Court's
12 file.

13 MS. BARR: I would as well, Your Honor.

14 THE COURT: All right.

15 (Pause.)

16 MR. JENKINSON: Your Honor please, can I
17 be heard on another matter related to this? I just
18 got served with a subpoena, and I would move to
19 quash the subpoena. Your Honor please, I was just
20 handed a system returnable on Monday, August 30th,
21 2010 at 12:01 requiring me to turn over the same
22 cell phone that we have been discussing here to
23 Investigator Pamela Jean Lail with the Sheriff's
24 Office being — and it says, being the same phone
25 reportedly belonging to Kelvin Bowen and taken from

1 the detention center on October 13th, 2009. I
2 didn't take it, I was given the phone, but that's
3 neither here nor there. This is for the very
4 reasons that I have been articulating and stating to
5 this Court, it is not subject to a subpoena. This
6 is protected attorney/client privilege product which
7 is not relevant in this trial for the reasons we
8 have stated. We would move to quash this subpoena.
9 Further, it also is in violation of the Fourth
10 Amendment of the United States Constitution, Article
11 I, Section 10 South Carolina Constitution, Article
12 14, South Carolina United States Constitution due
13 process, for those same reasons.

14 THE COURT: Ms. Barr.

15 MS. BARR: Judge, obviously if the
16 defendant is asserting that the phone itself, the
17 production of that phone, would be violating
18 attorney/client privilege we clearly take the
19 position that that is not the case, that
20 attorney/client privilege text communications
21 between a lawyer and the defendant that a cell phone
22 would not encompass communications protected between
23 a lawyer and defendant. Judge, this is a criminal
24 case, a most serious criminal case. And Your Honor,
25 to the extent that it has information on it that may

1 be relevant in criminal case, we assert that given
2 the allegations that text messages were made by
3 Mr. Bowen and Mr. Mack, text messages were made, and
4 that the defendant had a cell phone in his
5 possession, Your Honor, we think is clearly
6 relevant. Now whether it turns out that that
7 particular phone has that information or not, that
8 remains to be seen; but clearly, Judge, it's
9 relevant on the case. We don't get around the
10 requirement to disclose it simply because you got it
11 from the client.

12 THE COURT: Well, we'll have a hearing on
13 this issue at noon on Monday.

14 MS. BARR: Thank you.

15 THE COURT: Monday at noon.

16 MR. JENKINSON: Can I have my client back
17 at that time for that hearing as well?

18 THE COURT: Monday at noon, all right.

19
20 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
STATE,)
v.)
KELVIN MICHAEL BOWEN, JR.,)
DEFENDANT.)

TRANSCRIPT OF RECORD
09-GS-45-0180
August 30, 2010
Kingstree, South Carolina

B E F O R E :

THE HONORABLE CLIFTON NEWMAN, JUDGE

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

KIMBERLY V. BARR, ESQ.
Assistant Solicitor

WILLIAM E. JENKINSON, ESQ.
Attorney for defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

I N D E X

	Page
Motion to quash	3
Remarks by Mr. McLaughlin	11
Remarks by Ms. Barr	14

E X H I B I T S**STATE'S:**

No.	Description	I.D./EVD.
1	Subpoena of 8-26-10	30/30
2	Subpoena of 11-04-09	34/34

1 THE COURT: This is concerning State versus Kelvin
2 Michael Bowen, Jr. It's a motion by Mr. Jenkinson.

3 Mr. Jenkinson, yes, sir.

4 MR. JENKINSON: Thank you, Your Honor. May it
5 please the Court, I have a formal written motion to quash
6 in this case. I have a extra copy for your clerk. I have
7 also an original and a copy of a memorandum in support of
8 our motion which we will address with the Court as well.
9 The actual subpoena is attached to our memorandum.

10 THE COURT: All right, Mr. Jenkinson.

11 MR. JENKINSON: In response to the subpoena that
12 was served upon me at the conclusion of the hearing on the
13 26th, I felt that that subpoena which would have been
14 served on me personally as attorney for the defendant
15 required not only for me to respond on behalf of the
16 defendant, but because it was served on me and it's an
17 intrusion upon the attorney/client relationship, that I
18 have documents or items seized from his file or by
19 subpoena, that I would, should be represented by counsel.
20 And to that end, I'd ask Patrick McLaughlin who is a part
21 of the strike force team of the South Carolina Defense
22 Criminal Defense lawyers, who is assigned here by that
23 association to represent me insofar as this issue relates
24 to service upon me and issues related to it. I am going
25 to argue those issues relating to my client in this

1 motion, but Mr. McLaughlin is here as special counsel to
2 address the issue that relates to the attorney/client
3 privilege as well. This is with the consent of the
4 defendant Mr. Bowen.

5 THE COURT: All right.

6 MR. JENKINSON: Now if Your Honor please, the first
7 concern I had was in looking at the factual issues which
8 are set forth in our memoranda that we argued at length to
9 you was that this subpoena seeks very generally a cell
10 phone that I obtained when I went to the Williamsburg
11 County Sheriff's Office to pick up the personal effects of
12 the defendant at the jail. This was a personal property
13 pouch, a see-thru pouch, which contained his belt, credit
14 card, cigarette lighter, two cell phone cases, and a small
15 Motorola prepaid phone. Actually I was there to hopefully
16 retrieve a Samsung phone which had great evidentiary
17 value. I wasn't expecting even to find the small phone
18 and when I talked to my client about it he said, oh,
19 that's just a little prepaid phone I bought back around
20 the first of the month of May well after this crime was
21 committed. And it's only 18 days that he had it. That
22 phone, you know, that's not the Samsung phone that I had
23 that I was, had with me, when I'm raising this alibi
24 defense and I'm in for murder now. And the technology
25 exists by taking that Samsung phone and finding out where

1 somebody is, pays off for various titles. If he was in
2 South Carolina we would know it off of that phone. Now,
3 and that's actually brought this to the solicitor's
4 attention, where is the Samsung phone. We're not here
5 about the Samsung phone, but I show you and explain that
6 because this particular phone has no evidentiary value in
7 this particular case.

8 Now when I looked at an attorney being subpoenaed
9 or receiving a subpoena, obviously in my 39 years of law I
10 have never had one served on me, nor am I even familiar
11 with another lawyer under these circumstances having one
12 served on them. Our research led us to Rule 3.8 of the
13 Rules of Professional Conduct which regulate or prescribe
14 special responsibilities of the prosecutor. This
15 Subsection 3 really is three pieces: The prosecutor,
16 three standards that are set forth, that the information
17 sought is not protected from disclosure by any applicable
18 privilege; second, the evidence sought is essential to the
19 successful completion of ongoing investigation; and third,
20 there's no feasible alternative to obtain information.
21 Now the comment I did not put in my brief to this section
22 in the South Carolina code says the prosecutor in a
23 criminal case shall not subpoena a lawyer in a grand jury
24 or other proceeding to present evidence about a past or
25 present client unless the prosecutor believes, and it goes

1 on to add, paragraph E is intended to limit the issuance
2 of a lawyer subpoena and a grand jury or other criminal
3 proceeding in those situations where there's a genuine
4 need to intrude into the client/lawyer relationship.
5 There is no South Carolina case on point. Much did I gain
6 from this particular provision was a Kansas case which is
7 almost encyclopedia in information which I'll pass up to
8 the Court in which a lawyer subpoena under Rule 3.8(e) was
9 addressed. But be that as it may, what I've tried to
10 address in our memorandum are those issues related to that
11 rule and the standards that the Court should consider in a
12 subpoena like we have before the Court. What standards
13 does this comment refer to? In case law and other
14 jurisdictions suggest first, what, what is the evidentiary
15 value being shown before the Court. This case is really
16 about the Samsung phone, not a Motorola phone. I have
17 articulated those particular arguments well in last
18 Thursday and also today. This particular phone months
19 after the defendant was arrested, they saw it having no
20 evidentiary value completely surrendered control of this
21 phone, put it as personal effects, and gave it back to
22 him. Certainly after months of investigation knowing a
23 cell phone typically can be invaluable sometimes did not
24 examine this phone, did not consider it to have any
25 evidentiary value, gave it back to us. It was not until

1 we called it to their attention looking for the Samsung
2 phone that this even became an issue. The State has
3 relinquished complete and total control and evidence in
4 the fact it has no evidentiary value.

5 Second, the prosecutor's motion to produce the
6 phone was ruled upon by the Court. Again, we're not even
7 using it in the case, our case in chief, not even subject
8 to Rule 5. Thirdly, there's no genuine need to intrude
9 upon the lawyer/client relationship and pursue obtaining
10 of a telephone of which the State has relinquished control
11 after many months of having it. Fourth, the Court should
12 not require delivery of the phone pursuant to a subpoena
13 because all this does is amount to exploratory search of
14 the phone. The Solicitor by her own admission said, well,
15 there could be some text messages on it and that's why we
16 want to look at this phone, is her statement last week in
17 this court. The standard should be probable cause. It's
18 no different than a search warrant. The probable cause
19 standard should apply here. The Fourth Amendment insures
20 that citizens are secure in their persons against
21 unreasonable searches and seizures. Under the Fourth
22 Amendment of our Constitution Article 10 Section --
23 Article 1 Section 10 of our South Carolina Constitution.
24 True, this is not a search warrant case, Your Honor, but
25 it is a case which said that should apply in limiting the

1 Solicitor in this case to receive and if they meet the
2 search warrant standard that would be a possibility that
3 the Court should consider. But here, the requirement
4 insures the application of the search warrant requirement,
5 insures that the search will be carefully tailored and
6 properly justified under the Fourth Amendment. All the
7 prosecution has offered is conclusory statements that the
8 phone purchased weeks post-crime may contain some text
9 messages of the crime which provides no basis for probable
10 cause. There's a long line of South Carolina cases in
11 which there was no probable cause found for search
12 warrants or exploratory searches and not pass Fourth
13 Amendment mustard. Our courts have refused to uphold
14 searches which rely on conclusory statements, and I will
15 call your attention to State versus Baccus, which is a
16 2006 Supreme Court case in South Carolina at 645 Southeast
17 Second 216 where a warrant affidavit showed that the
18 police lacked probable cause to search a mobile phone
19 because they were conducting exploratory search for
20 evidence. Specifically, the affidavit there stated they
21 wanted a search of the phone for all outgoing/incoming
22 calls, contact numbers, text messages, and photographs,
23 and videos which would lead to investigate any contact Mr.
24 Patel in that case may have with the victim. Here the
25 solicitor wants to examine the phone on exact same basis.

1 And under State versus Baccus cell phone case in South
2 Carolina our supreme court says, no, it does not pass
3 Fourth Amendment scrutiny.

4 Our fifth argument is that the prosecution had
5 adequate, has an adequate remedy. Not this phone, but it
6 got an adequate remedy to determine the nature of the
7 information on that Motorola phone. There's been no
8 effort shown by the Solicitor to subpoena the phone
9 records, the detailed phone records, for the use of this
10 phone which would give rise to any probable cause. These
11 phone records are available from Nextel Motorola. I have
12 provided them with everything so far that we have received
13 from them but not exhaustive months ago. All they've got
14 to do is subpoena. I'm not required to do their work for
15 them. They admittedly, the other day have one of the
16 co-defendants Ms. Mack, who is on trial now, they have her
17 phone. Well, what about her phone records? I think they
18 would be very telling about contacts and texts. How about
19 the co-defendant Mr. Mack, her son? Where is that
20 information? Haven't they obtained those phone records
21 which show a detailed itemization of every call, how many
22 minutes, and related information. None of that has
23 been -- that is what they need in this particular case,
24 not a phone. The phone doesn't help.

25 They have an adequate remedy by subpoenaing these

1 records. This remedy was available. And why this remedy
2 is so important is this, Your Honor. If this remedy is
3 available it certainly should be exhausted before the
4 Fourth Amendment rights of the defendant. The rights of
5 attorney/client privilege are invaded. They need to
6 exhaust what they need to do first before coming back to
7 court and say, Your Honor, we need this phone specifically
8 because these records show this and this phone is
9 important. That would be the appropriate action of
10 investigatory standpoint, proof standpoint. That is the
11 remedy available to them, not getting this phone. Before
12 taking this drastic step we would ask the Court to quash
13 the subpoena and make sure that these remedies are
14 exhausted.

15 Finally, again, I can find no evidence of a case in
16 South Carolina dealing with subpoenas issued to defense
17 lawyers as we have before the case -- before today.
18 There's a State versus Gonzales I'm gonna pass up. It's,
19 again, a lengthy case dealing with analysis of it. In
20 that particular case it covers all of the various
21 arguments in great detail that I've been providing the
22 Court and even more. But I think the pertinent arguments
23 that we have made before the Court today are set forth in
24 this case; I pass it up. But we would ask that before
25 issuing this subpoena in allowing the Sixth Amendment

1 rights to counsel being invaded, and that's critical, Your
2 Honor. Here's the problem we have with this. The Sixth
3 Amendment rights of Mr. Bowen are very important and
4 Mr. McLaughlin is going to touch on it because what is
5 happening, we're now spending a tremendous amount of time
6 and energy defending a subpoena with his lawyer is
7 creating a second front. It's driving a wedge between
8 attorney and client because he's wondering what's going
9 on, why is my lawyer being drug into it. You know,
10 potentially it may could even lead to my disqualifications
11 under some facts, but maybe not here today; but it is an
12 attack upon the very relationship between the two of us
13 and his Sixth Amendment rights, or certainly the State.
14 But to that end, Your Honor, we would ask that the Court
15 deny the motion -- I mean, to grant the motion to quash,
16 and I would ask the Court listen briefly as well to
17 Mr. McLaughlin's arguments on my behalf.

18 THE COURT: What you say Mr. McLaughlin?

19 MR. MCLAUGHLIN: May it please the Court, Your
20 Honor. Your Honor, as Mr. Jenkinson indicated my name is
21 Patrick McLaughlin and I'm actually a board member of
22 SCACDL in South Carolina Association Criminal Defense
23 Lawyers. And Judge, why we have gotten involved in this
24 case is that Mr. Jenkinson is, in fact, one of our
25 founding members I believe and he put this issue out on

1 our ListServe and it generated a great deal of interest by
2 lawyers all over the state given that we see it as an
3 attack on the attorney/client privilege. We immediately,
4 when I first saw it, I had concerns not only for
5 Mr. Jenkinson's current client sitting here in court
6 today, but also for all the other clients that he has in
7 his office for his other attorney who are practicing over
8 there with him. What's the next step here, Judge, if this
9 subpoena is denied? Are we gonna have a search warrant?
10 Are we gonna have officers going over here across the
11 street and going in and trying to find a phone and if
12 that's the case, Judge. That brings up a host of issues
13 that we have about the protection of the right of all
14 these other defendants.

15 I believe, Judge, that the argument on Page 7 of
16 the memorandum, argument five, really kind of calculates
17 what this is about and that is the fact that they have not
18 exhausted their remedies. And instead, they've come into
19 -- the State has come in front of the Court today and
20 asked the Court to take the drastic relief, grant the
21 drastic relief of getting between Mr. Jenkinson and his
22 client. And that -- it's gonna have a chilling affect.
23 Mr. Jenkinson is named as the defendant because that's
24 basically what he is. He's the person that has to respond
25 to this subpoena. If his client is telling him I don't

1 want you to give up that phone, they have no right to give
2 up that phone, it's -- it automatically creates a
3 adversarial relationship. And we're talking about -- my
4 understanding, don't know a lot of underlying cases, Your
5 Honor. We're talking about a murder case here. We're
6 talking about a case where this young man has to be frank
7 and candid with Mr. Jenkinson in order to for him to do
8 his job, and anything that is gonna jeopardize that is
9 gonna jeopardize his defense and is gonna jeopardize his
10 Sixth Amendment right. Judge, there's a great deal of
11 stuff that I feel I would need to put on the record and
12 get into, but only if the motion to quash is denied as far
13 as protecting us as we go down the road. The only other
14 thing I would like to bring up, Judge, but certainly I
15 would ask that the Court, that Your Honor retain exclusive
16 jurisdiction for any matters that come up after this trial
17 because obviously if something were to happen after today,
18 if the Court were to quash the motion, if there were a
19 search warrant that would solve it, we would want all
20 these issues to come up before Your Honor because you know
21 the history of the case and what we've been dealing with.

22 MR. JENKINSON: Your Honor please, I do have the
23 Kansas case I'll pass up and that's our position.

24 THE COURT: Ms. Barr.

25 MS. BARR: Judge, thank you. And may it please the

1 Court, let me just start by saying this, Judge. I think
2 the reliance by the defense on this notion of probable
3 cause and the standard that is required for the issuance
4 of a search warrant, I disagree with that. Your Honor, I
5 don't believe that the standard for an issuance of a
6 subpoena is if there's probable cause to believe that
7 evidence pertaining to a crime will be obtained. I think
8 the appropriate standard for discovery which is how this
9 subpoena falls, is whether or not the item is reasonably
10 calculated to the discoverable -- to the discovery of
11 admissible evidence. Judge, you know a lot about the
12 facts because you've taken a guilty plea in connection
13 with the case. Here's what we all agree on, prosecution
14 and the State. One, that two witnesses gave recorded
15 statements, which I provided to the Defense, indicating
16 that Ronald Mack on the night of this victim's murder was
17 in possession of a cell phone. Those two witnesses say
18 that he was texting back and forth with defendant a/k/a
19 Callie, who is we later discovered Michael Bowen, Kelvin
20 Michael Bowen. There is statements from those witnesses
21 that the defendant Mr. Bowen responded, do you need, well
22 do we need to involve gun play.

23 Judge, certainly I would have liked it if the jail
24 had not released the phone, but Judge, we are where we
25 are. It doesn't make it less relevant to the case.

1 Second Judge, we've kind of gone back and forth with this
2 issue for over six months; and quite frankly, I have
3 neither the time, nor the inclination to play these games
4 with Mr. Bowen. You know, I've heard, well, we had them
5 transferred from Florence County to Williamsburg County
6 jail, I'll think about turning over the phone; well, you
7 tell me how long SLED is gonna take to analyze the phone,
8 I'll think about turning over the phone; well, if you go
9 ahead and set my trial date I'll think about turning over
10 the phone. That's been the back and forth for the last
11 six years, Judge, I mean, six months. I also equally
12 disagree that this is an intrusion on attorney/client
13 privilege. Again, I made the argument on Thursday and
14 I'll make it again. Attorney/client privilege, my
15 understanding text communications. I think that this
16 argument that we're intruding on their attorney/client
17 relationship and we're on the slippery slope is simply
18 without merit. Judge, if you believe the Defense, a
19 criminal defendant who in this case is facing up to life
20 imprisonment if he's convicted, if the murder weapon or
21 potential murder weapon was in his possession, he could
22 simply take it to his lawyer's office, here keep this,
23 whatever you do don't give it to the State, and there's
24 nothing you could do.
25 Judge, the State has the right, if not the

1 obligation, to continuing an ongoing investigation
2 particularly on a case as serious as this as a murder
3 charge. And Judge, we don't have any other remedy
4 assuming that we're required to show that we've exhausted
5 all our remedies. We don't have any other remedies. Your
6 Honor may know based on experience with other cases, text
7 messages, if they're deleted or oftentimes if they're not
8 saved or even if they are saved, phone companies don't
9 keep them. The only time you can really know if they text
10 message exact -- is actually seen, is oftentimes by
11 looking at the phone itself. But Judge, we're talking
12 about over a year after this murder was committed. We
13 subpoenaed the cell phone records. They wouldn't show
14 text messages so we don't have any other adequate remedy
15 of law.

16 Judge, we would also submit that under Rule 38,
17 which is the rule that they cited, it allows that the only
18 way to get around this is if some applicable privilege
19 applies. Attorney/client privilege isn't applicable here.
20 I'm not interested in anything Mr. Bowen told his lawyer.
21 I'm not interested in any communication he had with his
22 lawyer. I just simply want the phone. There is no
23 question that this phone was in his possession at the time
24 he was arrested. And Judge, we take the position that
25 when we're issuing a subpoena it'd have to be by Court

1 order. The subpoena was signed by the clerk in this case,
2 and we take the position it was properly issued since it
3 was signed by the court -- by the clerk. But Judge, if
4 the phone could lead to discoverable evidence then we're
5 entitled to have it, and we're not asking for any type of
6 confidential information that was exchanged between the
7 defendant and his lawyer. Now if there are text messages
8 between Mr. Bowen and Mr. Jenkinson such that they might
9 fall into the privilege, then Your Honor has certainly the
10 opportunity to review that information in-camera to make
11 sure that we do not intrude into their attorney/client
12 relationship. Judge, we believe that in order for the
13 Court to determine that the State is not entitled to the
14 phone you basically would have to find having no evidence
15 before you other than -- not even evidence, other than
16 statements of counsel that this phone was activated after
17 the murders were committed. He in his motion says it was
18 purchased or activated -- I'm not sure which one. You can
19 purchase a phone at any point in time and terminate your
20 service and activate with another provider at any point in
21 time so I'm not exactly sure what they mean by that. But
22 Your Honor, you know, sometimes, you know, just it makes
23 you think the man don't protest too much. And Your Honor,
24 we believe that this is a criminal case. There were
25 allegations that they were made aware of when they were

1 provided with discovery responses that text messages were
2 exchanged between Mr. Mack and Mr. Bowen. Your Honor, we
3 believe that the cell phone may lead to discovery of
4 admissible evidence, and we assert it's not an intrusion
5 into attorney/client privilege and we ought to be allowed
6 to have it.

7 THE COURT: All right. Mr. Jenkinson.

8 MR. JENKINSON: Briefly, Your Honor. First,
9 Ms. Barr asserts that the probable cause standards should
10 not apply. I'm not sure what other standard should apply.
11 That's the standard that once that phone comes into
12 possession of defendant under these circumstance argues
13 attorney certainly he has an expectation of privacy and
14 Fourth Amendment attaches.

15 THE COURT: She says -- she, in effect, she's
16 saying a civil standard applies that it's, that it could
17 lead to discoverable evidence.

18 MR. JENKINSON: Anything can but it's got to be
19 some not pre-textual basis for it and that's the way I'm
20 going. She says the texting on the night of the murder
21 would be shown on the phone. Your Honor, the record in
22 this case shows that the phone in question, the Motorola
23 phone, wasn't even owned by the defendant on the night of
24 the murder. It couldn't possibly have information on it
25 if it wasn't purchased by him until 1 of May.

1 THE COURT: Let's focus on that point, Ms. Barr.
2 The -- in the response to the motion to compel filed by
3 Mr. Jenkinson he attached a subscriber history that said
4 the account was established on 5/3/2009. And all of the
5 history, subscriber history, seem to relate to effective
6 date of 5/3/2009. What do you say about that?

7 MS. BARR: Judge, I think it's interesting that
8 this was a fax that contained five pages and we've got two
9 of those five pages. Secondly, Your Honor, this does not
10 actually contain a make and model of cell phone so we
11 don't know whether or not this particular cell phone
12 that's in possession of counsel. Thirdly, Judge, a person
13 could have had -- conceivably Mr. Bowen could have had
14 this particular cell phone, used this particular cell
15 phone to text message Mr. Mack on the night of the murder.
16 Subsequent to that he could have canceled his account with
17 whatever subscriber he used, particularly if it's a
18 prepaid phone which, you know, counsel says that it was,
19 and actually reactivated that account with this provider.
20 That's not entirely out of the realm of possibility. And
21 Judge, I believe that, you know, there's a affidavit---

22 THE COURT: Just a moment. This is from Sprint.
23 It seems to refer to a fax from Sprint corporate security.
24 And how is that Sprint connected, just was Sprint to be
25 providing a service for the Motorola phone or?

1 MS. BARR: I'm sorry, Judge, I didn't hear you.

2 THE COURT: The fax just says Sprint corporate
3 security as being the top line on the subscriber history
4 above that.

5 MS. BARR: Yes, sir. You asked me how was it that

6 ---

7 THE COURT: How is Sprint connected?

8 MS. BARR: Judge, I'm not sure. I received this
9 on, I believe this looks like sometime at the end of June
10 of 2010. I'm not exactly sure.

11 THE COURT: All right. We'll go back to
12 Mr. Jenkinson. Go ahead, Mr. Jenkinson.

13 MR. JENKINSON: I don't know the corporate
14 structure. I mean, Verizon just got bought by Frontier
15 about a month ago. Nextel Sprint, I understand, is the
16 name. I'm sure Nextel probably purchased Sprint vice
17 versa. That's just the way it came. I sent a subpoena
18 for these records. And what you do, Your Honor, the
19 process is you call the company and say, tell me how I
20 subpoena. And they have a special section phone company
21 set up for it and they would put you in touch with them.
22 Then they say, okay, fax us a subpoena and mail it. And
23 you do that. We did that back in April as I recall. And
24 then we obtained a fax response. That's the way they do
25 it. And then if you want a hard copy certified court

1 record they will send it to you, but that is what they
2 sent us because we knew the critical date here according
3 to our client would have been around the first of May.
4 And that's what we got, sure enough, first of May.

5 THE COURT: All right, let me -- Ms. Barr, you say
6 that you only received a portion of page two of five
7 pages, but attached to Mr. Jenkinson's response is page --
8 his response of five pages. His total pages five and we
9 have all pages, all five pages here. What is it that you
10 do not have?

11 MS. BARR: Your Honor, may I approach the Bench and
12 see what the Court has?

13 THE COURT: All right.
14 (WHEREUPON, counsel approached the Bench for an
15 off-the-record discussion.)

16 THE COURT: We're gonna take a two minute stretch
17 break while Ms. Barr is looking and everyone is
18 conferring. We'll take about two minutes.
19 (WHEREUPON, a recess was taken from the proceedings.)

20 THE COURT: Mr. Jenkinson.

21 MR. JENKINSON: The third argument of the Solicitor
22 was that this really has nothing to do with the
23 attorney/client relationship, but it has everything to do
24 with attorney/client relationship. Here we have an
25 attorney who is directed by his client not to turn over my

1 phone. And now, the Solicitor is dictating through a
2 subpoena me to act contrary to the instruction of my
3 client. And if that doesn't touch the very heart of the
4 attorney/client relationship just in one particular in
5 driving a wedge between the attorney and client in
6 violation of the Fifth and Sixth amendment rights, I don't
7 know of any other way to state it before this Court. All
8 the statements made here are the critical issues arise
9 when the State compels production of items in violation of
10 the Fourth Amendment. They keep saying, well, search
11 warrant standard doesn't apply, but this is not an
12 ordinary subpoena. This is a subpoena directed towards
13 the attorney representing a client in a murder case. Now
14 they say, well, this is just like if he brings the murder
15 weapon to my office they can't get it. I know better than
16 that, Your Honor. The very last murder case tried in this
17 courtroom in December, we went out to the scene of the
18 murder, for whatever reason the sheriff's department
19 couldn't find the murder weapon laying right in the front
20 yard. We found the murder weapon and called the sheriff's
21 office to come get the murder weapon. I mean, you know,
22 that's you know, any lawyer knows a murder weapon is a
23 murder weapon. And that's something I'm gonna be taking
24 back to my office hiding and getting disbarred for that.
25 But a cell phone that has no evidentiary value is a

1 completely different item and goes to very heart of the
2 attorney/client relationship, goes to the very heart of
3 the Fourth Amendment. The Solicitor seems to be -- I
4 don't know whether she ever subpoenaed cell phone records
5 before or not; but a cell phone record, if there's texting
6 in fact, it would show call from this number on the phone
7 of Mr. Bowen's to one of the co-defendant's phone, when it
8 was made, how long and what duration. It wouldn't give
9 you the message, but certainly then you got a basis for
10 saying there could have been a text message and actually
11 on some instances identify them as a text message being
12 sent at that particular time. There has been no showing
13 whatsoever by the Solicitor that those facts are present
14 in this particular case. They're readily ascertainable
15 from the cell phone provider, and that -- that's a relief
16 and a remedy and a solution to the problem she's having in
17 this case. And so for those reasons we would again ask
18 the Court to quash this subpoena. I think Mr. McLaughlin
19 has one other thing he wanted to say on my behalf.

20 THE COURT: Yes, sir.

21 MR. MCLAUGHLIN: And Your Honor, I won't belabor
22 the point, but it's based on a point Mr. Jenkinson made.
23 The attorney/client privilege came up as soon as he was
24 served with the subpoena because at that point it puts
25 Mr. Jenkinson in the position of having to act directly

1 against his clients, directive his client is entitled to
2 make on his own behalf. If he was out of jail and this
3 phone was in his possession he could fight it himself. He
4 can -- he's in jail, the phone is in Mr. Jenkinson's
5 possession, he. Has directed Mr. Jenkinson to assert his
6 Fourth Amendment rights for him and the minute that he
7 gets issued a subpoena it's putting Mr. Jenkinson at odds
8 with that directive and that's where the attorney/client
9 privilege comes in. And Your Honor, that's why I'm here.
10 That's the concerns that we have.

11 THE COURT: All right. Ms. Barr.

12 MS. BARR: Judge, just quickly. Judge, I would
13 just reiterate for the Court that there's no evidence
14 before you that this particular cell phone was not used in
15 this case. There's no affidavit by Mr. Bowen. There's no
16 testimony by Mr. Bowen. Judge, in addition, it's
17 interesting because in February of 2010 Mr. Jenkinson
18 wrote a letter to me, and I made that a part of Court's
19 exhibit on the motion on Thursday. And it indicates that
20 I spoke with Mr. Bowen prior to the letter he understands
21 you want his cell phone, however he wants to examine it
22 one more time and make a copy of the cell phone numbers
23 for his personal records before turning it over to you.
24 Then he goes to proceed to tell me about how he's
25 encountered difficulty in Florence County Detention Center

1 because they only allow him 30 minutes visit as his family
2 has to come from California and Missouri and it's not
3 enough time. And the last sentence says, we have made
4 every effort to encourage the detention center in
5 Effingham to allow longer family visitations due to the
6 family issues but they flat refused, if you could respond
7 to these issues I would immediately respond in kind. So
8 Judge, this is just the defendant kind of manipulating the
9 criminal justice system.

10 And the last thing, Judge, when the Defense seeks
11 to tell the Court that we have to show that we don't have
12 any alternate means of obtaining the same information,
13 Judge, that's not what Rule 38 -- I'm sorry, Rule 3.8
14 says. Rule 3.8(e) says that a prosecutor in a criminal
15 case shall, and subsection (e) says, not subpoena a lawyer
16 in a grand jury or criminal proceeding to present
17 evidence about a past or present client. I'm not asking
18 about his client. I'm not asking information about a past
19 client. I'm subpoenaing him to turn over a phone that he
20 got from the jail that was in the possession of the
21 defendant at the time he was arrested. And Judge, you
22 have to find that I am attempting to subpoena information
23 about a past or current client before you can even get to
24 that whole notion about whether there's a feasible
25 alternative so I don't think their argument in that regard

1 is with merit.

2 THE COURT: You said you had pages two of five of
3 two pages of five pages of this submission by
4 Mr. Jenkinson showing that the phone was activated in May
5 and months after the murder and you wanted to review the
6 submission by Mr. Jenkinson. What's your position on this
7 now?

8 MS. BARR: Judge, I reviewed that and actually I
9 thought he was talking about the memorandum that he
10 submitted in court today. The only thing I had in June
11 was this letter that he responded to me when I again
12 requested the phone. But Judge, he actually attached
13 that, I believe, to the memorandum he served on Thursday
14 and I do see that in my records.

15 THE COURT: Okay.

16 MS. BARR: But Judge, I don't -- I don't see where
17 that particular submission by Sprint indicates that that
18 phone was not activated or being used or had been
19 purchased after the murder.

20 THE COURT: You're saying the, I mean, it says
21 account established 5/3/2009.

22 MS. BARR: Yes, sir.

23 THE COURT: You believe that it's the same phone
24 that was a new subscriber or new number was activated on
25 the same phone, or what are you telling me?

1 MS. BARR: Judge, I don't know and that's the
2 problem. I would submit to the Court that it could have
3 been. I mean, Mr. Jenkinson is advancing to ---

4 THE COURT: That's the point that Mr. Jenkinson --
5 could have been part, he thinks, doesn't meet the
6 constitutional mustard for the Court to make an, to order
7 evidence to be turned over and it could have been as
8 opposed to something a little stronger than that
9 considering that the record before us showed that the
10 account was established in subsequent to the murder.

11 MS. BARR: And Judge, I don't think that the
12 appropriate standard in this case that is probable cause
13 here, not when a matter comes before the Court pursuant to
14 a subpoena.

15 THE COURT: All right. And that's where the Court
16 needs the law as opposed to thoughts. Mr. Jenkinson said
17 there's nothing in South Carolina. He's given me some
18 authority from other jurisdictions. I haven't received
19 anything from the State on the issue legal authority wise.

20 MS. BARR: Judge.

21 THE COURT: Yes, go ahead.

22 MS. BARR: Your Honor, I think that it's important
23 to note that: One, if there had not been an allegation
24 cell phone calls or text messages being made on the night
25 of the murder, I think regrettably I hate to concede the

1 point I think Mr. Jenkinson might be right. I clearly
2 think it would be difficult to show how, if there's no
3 allegation of cell phone being used on the night of the
4 murder that it's not likely the turning over of this
5 particular cell phone, it's not likely to lead to
6 admissible evidence and ---

7 THE COURT: But it would appear that this cell
8 phone, at least these records have nothing do with the
9 case since it -- the account was established May 3rd,
10 2009. Does the State have any information to the contrary
11 as it relates to this account or this cell phone?

12 MS. BARR: We don't, Judge. We had been led all
13 long to believe ---

14 THE COURT: Well, and Mr. Jenkinson says you can
15 get this information if it exists by going directly to the
16 phone company as opposed to going to his files or through
17 him.

18 MS. BARR: And my response to that would be, Your
19 Honor, we don't -- that the rule doesn't require us to do
20 it. The rule doesn't require that we exhaust every other
21 remedy out there before coming here.

22 THE COURT: All right. Mr. Jenkinson.

23 MR. JENKINSON: Your Honor, I think the rights of
24 attorney/client privilege and the Fourth Amendment and the
25 Fifth Amendment, Sixth Amendment of the United States

1 Constitution certainly outweigh the right of the Solicitor
2 to go subpoena these records from the cell phone provider.
3 I mean, that speaks for itself. The second thing is, I'm
4 looking at my subpoena that I sent to the cell phone
5 company and it was sent to them. And it said, I'm
6 requesting this, a copy of the complete cell phone records
7 for the month of April 2009 for the cell phone number
8 used by Kelvin Michael Bowen, Jr. reflecting
9 the number and time called and any other pertinent
10 information on the account. The first record they had was
11 May and I subpoenaed April. Obviously we're all
12 interested in April, and that's what my subpoena said.

13 THE COURT: All right. Your subpoena, is that a
14 part of the record in this case?

15 MR. JENKINSON: No, sir. And I will tell you, Your
16 Honor, it is just a blank subpoena with that information
17 on it. I don't have a copy of my signed one in this
18 information. I got a box of stuff, but I did not bring
19 everything with me. I just happened to find it in my
20 notebook. The Solicitor can send the same subpoena and I
21 was even looking for the address where you mail it. She
22 can call them about that information and do what they told
23 us to do which is what I've done in a number of cases. I
24 mean, that's some of the most popular evidence you get in
25 a divorce case now, get all kind of stuff from this in

1 divorce litigation. And I mean, that's just available.

2 THE COURT: May I see the copy of your subpoena
3 that you're referring to.

4 MR. JENKINSON: That's just the one in my notebook.
5 As far as I know that's the one we sent. I gave -- it was
6 indexed that way in my notebook where my assistant put it.
7 I was looking for the cover letter. Again, that -- I can
8 be glad to provide that. I wasn't interested in anything
9 in May.

10 THE COURT: Anything else in this case on this
11 issue?

12 MS. BARR: Judge, we would just like to make our
13 subpoena part of the record. And may I see?

14 THE COURT: Your subpoena to Mr. Jenkinson?

15 MS. BARR: Yes.

16 (WHEREUPON, State Exhibit No. 1, subpoena of 8-26-10, was
17 marked and made a part of the record.)

18 THE COURT: All right. What's made part of the
19 record that's not given to the Court is not considered.

20 MR. JENKINSON: Sheila actually signed it. She
21 recalled signing the subpoena in my absence and did it.
22 That's why she was looking for it.

23 THE COURT: Ms. Barr, what you made part of the
24 record you want me to consider it?

25 MS. BARR: Yes, sir.

1 THE COURT: Then I suggest you give it to me so I
2 can see it.

3 MS. BARR: Yes, sir. And Judge, I would also like
4 this subpoena to be made a part of the record. And Judge,
5 you've reviewed it. Here is my concern. The subpoena for
6 Court's access for the cell phone records for a
7 telephone number used by the defendant Kelvin Michael
8 Bowen, Jr., in the month of April 2009, Mr. Jenkinson
9 advanced to the Court there were no records in April, that
10 the phone was activated in May. But yet the subscriber
11 history for the cell phone information he's provided is
12 for a number 202580191-- I'm sorry, 0193. So maybe that's
13 why there's no record for April. But I'd like to make
14 this a copy of the record and it has not been signed by
15 the clerk which is required. And if I can make just a
16 copy of this just so I don't give his own copy to the
17 Court.

18 THE COURT: All right, Mr. Jenkinson.

19 MR. JENKINSON: I have no objection to her copying
20 it.

21 THE COURT: All right. Well, anything further on
22 this issue?

23 MS. BARR: No, sir, Judge, not from the State.

24 MR. JENKINSON: That's all we have in our motion to
25 support other than I just point out once we assert Fourth

1 Amendment privilege of right the burden shifts to the
2 State. And the burden is not on us that she argued a few
3 minutes ago. It then shifts to the State, and they have
4 not met that burden.

5 THE COURT: All right. Well, I'll take the matter
6 into consideration. I have a number of cases that have
7 been handed up I haven't had a chance to take a look at
8 and the Court to consider fully the arguments made today.
9 It's an important issue and a very serious case and a very
10 serious matter submitted to the Court for the Court's
11 consideration so I'll take the matter under advisement.
12 I'll leave the record open for any additional submissions
13 that anyone wants me to consider prior to ruling, and that
14 means I won't rule at all this week through Friday to give
15 each side an opportunity to supplement the record if you
16 want to or submit anything that you believe that I should
17 consider.

18 Regarding the retaining jurisdiction of the case, I
19 understand the expectation of the court -- of the State is
20 to try the case before the end of the year, and I believe
21 I'm assigned to hold most, if not all, of the criminal
22 court here through the end of the year. You know anyone
23 else coming, Carolyn?

24 MS. BARR: Judge James will be here the last term
25 of the year, December 6th, Your Honor.

1 THE CLERK OF COURT: Yes. You -- no one that I
2 know of according to this schedule.

3 THE COURT: I'm assigned here in December.

4 THE CLERK OF COURT: December 6th.

5 THE COURT: I believe I'm assigned throughout the
6 remainder of the year.

7 CLERK OF COURT: Yes.

8 THE COURT: But beginning the first of next year
9 I'll not assigned here so I don't want to retain
10 jurisdiction over something and I may not be the trial
11 judge.

12 MR. JENKINSON: We would like you to retain
13 jurisdiction for this issue right now.

14 THE COURT: Absolutely. On this issue, this is my
15 issue.

16 MR. JENKINSON: Well, let's suppose at 4:00 this
17 afternoon I get a search warrant served on my office by
18 some magistrate who is totally unfamiliar with the facts
19 and signs it; and you know, given the important issues
20 before this Court we would like the Court to preserve
21 jurisdiction as to any matters relating to any subsequent
22 search proceeding, subpoena proceedings before this court,
23 to preclude some issuing magistrate from jumping the gun
24 so to speak.

25 THE COURT: Yeah. Well, that's fair and I'll do so

1 and that will be -- I anticipate the case will be over by
2 the end of the year, but that will be throughout the end
3 of the year. But beginning in January I have a heavy
4 fifth circuit assignment and don't want to worry about
5 this case beyond that, beyond that time.

6 MR. JENKINSON: We're going to hope this case will
7 be long gone before December.

8 THE COURT: All right.

9 MS. BARR: Thank you, Your Honor.

10 THE COURT: Okay. Well, we'll see what's what. If
11 anyone has anything else you want me to consider I'll be
12 happy to do so.

13 (WHEREUPON, State Exhibit No. 2, subpoena of 1-04-09, was
14 marked and made a part of the record.)

15

16

17 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

18

19

20

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24

25

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA }
COUNTY OF FLORENCE }

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina,
this 27th day of December, 2011.

Frances B. Ray
FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF WILLIAMSBURG	)	
STATE OF SOUTH CAROLINA,	)	
	)	
PLAINTIFF,	)	TRANSCRIPT OF IDENTIFICATION HEARING
	)	C/A #: 2009-GS-45-00180
v.	)	
	)	
KELVIN MICHAEL BOWEN, JR.,	)	
	)	
DEFENDANT.	)	
_____	)	

WILLIAMSBURG COUNTY COURTHOUSE
Monday, January 31, 2011

BEFORE:

HONORABLE CLIFTON NEWMAN, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Kimberly Barr
Assistant Solicitor Tyler Brown
Attorneys for State of South Carolina

William E. Jenkinson, Esquire
Amanda Shuler, Esquire
Attorneys for Defendant, Kelvin Michael Bowen, Jr.

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

INDEX

	<u>PAGE</u>
Call of Case by Solicitor Barr.	3
PROFFER TESTIMONY	
Pamela Jean Lail	
Examination by Mr. Jenkinson	
Cross Examination by Ms. Barr.	15
Redirect Examination by Ms. Shuler	31
Recross Examination by Ms. Barr.	34
Redirect Examination by Ms. Shuler	37
PROFFER TESTIMONY	
Pamela Jean Lail	
Examination by Mr. Barr.	41
Cross Examination by Mr. Jenkinson	44
Certificate of Service.	59

EXHIBITS

Court's Exhibit Number 1 (Subpoena).	3
Defendant's Exhibit Number 1 (Statement)	11
Defendant's Exhibit Number 2 (Inventory Report).	20
Defendant's Exhibit Number 3 (Photo)	33

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 3

1 (Court's Exhibit Number One was marked)

2 Ms. Barr: There are a couple of pre-trial matters and
3 Judge, from the State's vantage point, we only
4 have one issue. Your Honor, back on, I believe it
5 was last Wednesday, counsel for the Defendant
6 served upon the investigating officer, Pamela
7 Jean Lail, as well as our sheriff, Michael
8 Johnson, a subpoena for their entire case file.
9 A subpoena, and I've had it marked as court's
10 exhibit number 1, was returnable for the
11 following day, three o'clock pm. Your Honor on
12 that same day, I filed and served a motion to
13 quash the subpoena. Judge, the basis of my motion
14 was that one, several grounds for my motion. One
15 was that the subpoena failed to allow sufficient
16 time for compliance as required by rules and I
17 also objected based on the fact that the subpoena
18 sought disclosure of information and documents
19 that were not otherwise discoverable pursuant to
20 Rule 5, Brady versus Maryland. I also took the
21 position that some of the information requested
22 was protected by attorney work product privilege.
23 In addition, several of the documents requested
24 are protected by the internal prosecution
25 material exception to Rule 5 and in any event,

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 4

1 most of the material has already been provided
2 pursuant to our discovery responses. Judge, I
3 made the subpoena court's exhibit. I'll hand it
4 to Your Honor and Judge, I think we're here on
5 that motion. I was served this morning with two
6 other motions filed by the defense and Your Honor
7 we're prepared to hear those as well.

8 The Court: Okay, Mr. Jenkinson?

9 Mr. Jenkinson: What we did, we served a subpoena and we got
10 the Motion to Quash and we also filed a motion
11 requiring the State to produce the same thing in the
12 subpoena. You know, the subpoena is probably moot, but
13 we really need to have the Motion as to disclosure
14 under Rule 5 and Brady addressed and all of that is in
15 our motion and Notice of Motion to Compel, which has
16 been served with the subpoena and those items are
17 covered there and the reasons why.

18 The Court: Alright.

19 Mr. Jenkinson: Are you ready to hear those motions?

20 The Court: Yes sir.

21 Mr. Jenkinson: Your Honor in our Notice of Motion to
22 Compel, do you have a copy of that?

23 The Court: Where do I get it from?

24 Mr. Jenkinson: I think the clerk. I made sure she had that
25 file with her. If she will pass that up. The first

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 5

1 item Your Honor, is we've served Rule 5 Brady motions
2 back in 2009, on June 8th to be exact. We've got, you
3 know, extensive disclosure for this. Just a
4 tremendous number of witnesses, items that were in the
5 investigative file, but in going through those files
6 in great detail the first item we learned is in the
7 incident report, on, well the first witnesses were
8 interviewed following the day of the crime or the day
9 after. What we found was, evidence in the incident
10 report of recorded statements being taken on key
11 witnesses and some of the statements had been provided
12 to us and some were not. And what we found
13 particularly was, hang on a second, Antonio McClary
14 statement that it says, see statement and that was
15 based upon an interview of him, which would have been
16 on April 7th as I recall and we would like a copy of
17 that. We have other statements, which two of Mr.
18 McClary's, which were provided for May of 2009 on the
19 same day, about an hour a part or within an hour and
20 what we don't have is the one referred to where it
21 says see attached taped statement and I have a copy of
22 that incident report, which I'll be glad to pass up as
23 far as for my motion.

24 The Court: Alright, you're referring to the co-
25 Defendant?

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 6

1 Mr. Jenkinson: It was, he was a co Defendant, yes sir.

2 The Court: And the State has provided one of his
3 statements, but not all of his statements?

4 Mr. Jenkinson: Two of his statements.

5 The Court: And there are more statements?

6 Mr. Jenkinson: I just go by what the incident report says.

7 It says they have them and that, we don't, we don't
8 have those.

9 The Court: Alright, Solicitor?

10 Ms. Barr: Judge.

11 Mr. Jenkinson: What we have Your Honor on Mr. McClary is
12 May 13th at 6:55 p.m. and May 13th at around 7:30 that
13 evening. We do not have the one referred to that is in
14 the investigative statement entered on 4-6-2009. What
15 the incident report says on 4-7-2009, myself, which
16 would be Investigator Lail, that Investigator Whack
17 met with Antonio McClary, who's advised that he had
18 recently purchased a Malibu, to talk about what all
19 occurred at the end of it, it says period. See taped
20 statement. We don't have that taped statement.

21 The Court: Ms. Barr?

22 Ms. Barr: Judge, I want to be sure I'm looking at the same
23 supplemental report that Counsel's talking about,
24 because he and I had a conference earlier this morning
25 and I thought that I explained that. Is that what we

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 7

1 were talking about this morning?

2 Mr. Jenkinson: You know, why would it appear there if the
3 officers didn't take the statements? I mean, they,
4 they, they keyed this in themselves in investigations.

5 The Court: Alright, are there additional statements of
6 this defendant?

7 Ms. Barr: Not in April and I told that to Mr. Jenkinson
8 this morning.

9 The Court: Did you want to question the officer
10 regarding that?

11 Mr. Jenkinson: No sir. I just wanted it on the record. We
12 did have a discussion, she said that it wasn't here,
13 but again, if it appears on Investigator Lail's
14 report. You know, perhaps maybe we ought to have
15 Investigator Lail explain it if she can.

16 The Court: That's what I just asked you, did you want
17 to question her concerning whether or not there is any
18 additional statements.

19 Mr. Jenkinson: That would be good. Yes, Your Honor.

20 The Court: Alright, Ms. Barr?

21 Ms. Barr: Judge, and the only thing that I wanted to inform
22 the Court, I think I would like for the Court to see
23 a copy of that supplemental, because I think that the
24 way that Counsel is informing the Court is a little
25 misleading. It says, it talks about a statement with

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 8

1 Antonio McClary and then there's a period. Then it
2 says in parenthesis, see taped statement, then it
3 talks about a statement of Ronald Mack, which has been
4 provided to Counsel. Counsel concedes he has Ronald
5 Mack's statement. But if we need to put that the
6 officer on the stand, that's fine Judge.

7 The Court: Either there is or there isn't.

8 Mr. Jenkinson: If it is, it is and if it isn't, it isn't.

9 I would just like to have a clear record that we have
10 looked at everything that we need to look through
11 attorneys in defending our client Your Honor. Just
12 raising an issue and it just needs the clarification.

13 If it exists we need it, if it doesn't exist ...

14 Ms. Barr: Well I represent to the Court that there's no
15 April 2009 statement, recorded statement of Antonio
16 McClary. If he wants to question the witness about
17 that, it's fine. There is a May 14, 2009 statement.
18 I've told Counsel about that and I've actually made a
19 copy for him, but we need to get into April 2009
20 statement, that's fine. If he wants to ask the
21 witness about it, that's fine.

22 The Court: The State says there is none, then there is
23 no need to examine ...

24 Mr. Jenkinson: And I'm certain the State is not in
25 possession of it. I just wonder whether it's something

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 9

1 between the hand off between the Sheriff's Department and
2 investigators and the Solicitor when crossed there, it's
3 all buried amongst hundreds of pages of documents and if
4 it's just a mis-entry or we don't understand that's fine.

5 The Court: Alright.

6 Mr. Jenkinson: If you want me to go ahead we can get
7 Investigator Lail if she's not here right now.

8 Ms. Barr: Judge, has he withdrawn the subpoena, the Motion
9 to Quash is now moot as I understand it? Have you
10 withdrawn the subpoena? Is my Motion to Quash now
11 moot?

12 Mr. Jenkinson: Well, I really think it is in view of this
13 motion.

14 Ms. Barr: Alright.

15 Mr. Jenkinson: Your Honor, to show you how it's confusing,
16 in looking at this statement, why it needs
17 clarification or can read it otherwise, then it goes
18 on to says myself and Investigator Whack met with
19 Quadir Wilson and Dontrey Barr and if that's the
20 statement they're referring to, Quadir Wilson's
21 statement according to discovery given to us as it was
22 on May 14th. Again this was April the 7th over a month
23 prior to that and if there are some statements taped
24 prior to that, whether it be any of these parties, we
25 think we would be entitled to it and that's why it's,

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 10

1 all we're doing is going by exactly what's in their
2 record and what they've given us and it just doesn't
3 match up.

4 The Court: Alright, any objection to him, to Mr.
5 Jenkinson questioning Investigator Lail about the
6 existence or non-existence of these statements or
7 tapes?

8 Ms. Barr: No sir.

9 The Court: Alright, Investigator Lail, if you'll come
10 forward.

11 Clerk: Place your left hand on the Bible. Do you
12 solemnly swear to tell the truth, the whole truth and
13 nothing but the truth, so help you God?

14 Investigator Lail: I do.

15 The Court: Mr. Jenkinson.

16 Mr. Jenkinson: Thank you Your Honor.

17 DIRECT EXAMINATION OF INVESTIGATOR LAIL BY MR. JENKINSON:

18 Q: Investigator Lail, you were the lead investigator in
19 this case?

20 A: That is correct.

21 Q: Now, you prepared a report, incident, incident,
22 supplemental and it's dated 4-6-2009 and I ask you if
23 this is page two of your report?

24 A: Yes sir, that is.

25 Q: Your Honor please we'd mark this as hearing exhibit

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 11

1 number 1.

2 The Court: Alright.

3 Mr. Jenkinson: Just that one page.

4 (Defendant's Exhibit Number One was marked)

5 Q: Now, I'll call your attention to what has been marked
6 as Defendant's exhibit number 1 for this hearing. That
7 is the document that we are referring to that you
8 prepared?

9 A: Yes sir.

10 Q: Now, I call your attention about two inches down on
11 the right hand margin, it says on 4-7-09, myself and
12 Investigator Whack met with Antonio McClary who
13 resides at . Do you see that?

14 A: Yes sir.

15 Q: It says, who advised that he had recently purchased a
16 Chevrolet Malibu and was driving the car on Saturday,
17 April the 4th, 2009, but the car had numerous
18 mechanical problems. McClary stated that he and his
19 friends, including Ronald Mack, had gone to the club
20 Jordan's and once they returned to Dontrey Barr's
21 residence, they did not leave. McClary stated that
22 when he got up on Sunday morning his step father told
23 him that Ronald Mack was outside and wanted to go with
24 him to church. McClary stated that he and Ronald Mack
25 went to Trinity Church that day, see taped statement.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 12

1 What taped statement were you referring to when you
2 placed that entry in your record, which is exhibit
3 number 1?

4 A: I'm reading on down.

5 Q: Sure.

6 A: I do not recall the day that myself and Investigator
7 Whack went to the residence and met with Antonio
8 McClary. I do not recall that being taped. I think
9 that according to the sentence I'm referring to
10 McClary and Dontrey Barr but I do know that there were
11 three cassettes turned in so we have to list the dates
12 on those.

13 Q: Well, I'll ask you about them. What has been provided
14 to us was a statement by them, transcribed and
15 provided to law enforcement in, in May, I think 14th
16 about six weeks later.

17 A: Yes.

18 Q: Okay, again ...

19 A: I'm sorry.

20 Q: Again, what taped statement are we talking about here?
21 Were you taping any of the statements in April, early
22 on in this investigation?

23 A: And again, it says see taped statement, we would have
24 to listen to those tapes or at least review the dates
25 on the transcribed tapes.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 13

1 Q: Now, is it possible that you perhaps did not, in the
2 process of a huge crime file, have not turned over
3 everything by mistake that law enforcement doesn't
4 have it either or the Solicitor's office doesn't have
5 it?

6 A: No sir. Everything that we had was turned over to the
7 solicitor.

8 Q: You would not have placed see taped statement in this
9 incident report had you not taped it would you?

10 A: Well, I'm certainly capable of a mistake. That's why
11 I say we need to check the transcribed statement. I
12 can say that anything that was taped, any statements,
13 regardless of who it was, it was turned over to the
14 Solicitor's office.

15 Q: I understand that. Alright, will you listen to those
16 statements and see if you can determine what you were
17 talking about in entering into this record when you
18 said see taped statement for us?

19 A: Well, as I said, anything that was taped was
20 transcribed and turned over to the Solicitor.

21 Q: Again, we'd have to listen to the tape to make sure it
22 was in fact transcribed.

23 A: The date with the transcription.

24 Q: If you would have typed and prepared this statement,
25 which is exhibit number 1, it would have been prepared

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 14

1 the same day or within a day or two of you actually
2 taking the taped statement wouldn't it?

3 A: Probably so.

4 Q: And, and your memory and recollection would certainly
5 have been a lot fresher when you made this entry than
6 it would be today?

7 A: Well, not necessarily, because if we interviewed
8 several individuals, then again, I would rely heavy on
9 the transcribed statement. And again, I can only
10 testify to any statements that were taken and
11 transcribed and turned over to the Solicitor.

12 Q: Just by way of comparison. If you look up about an
13 inch down we see where you have a taped statement of
14 Ronald Mack. You say see taped statement.

15 A: Okay.

16 Q: Do you see that?

17 A: Yes sir.

18 Q: And we've been provided that taped statement. So you
19 were in fact taping statements contemporaneous to,
20 taping the statement of Mr. Mack contemporaneous to
21 your conversations with Antonio McClary, Wilson and
22 Barr.

23 A: That's correct. Throughout the investigation, that's
24 why again, I would say that we would have to rely on
25 the tapes themselves and/or the transcribed statement.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 15

1 Q: Would you be willing to examine the taped statement
2 and the transcribed statement to make sure there have
3 been no omissions?

4 A: Oh absolutely.

5 Mr. Jenkinson: Okay, that's all I have for this witness.

6 The Court: Anything Ms. Barr?

7 Ms. Barr: Just a couple of questions Your Honor.

8 CROSS EXAMINATION OF INVESTIGATOR LAIL BY MS. BARR:

9 Q: Investigator Lail, you indicated that all of the taped
10 statements in connection with this case was turned
11 over to my office?

12 A: That's correct.

13 Q: Alright and I'm not going to have these marked as
14 exhibits, but do you recall turning over eleven
15 recordings to me? Now this is ten if my math is
16 correct. Is that ten?

17 A: That's correct.

18 Q: And of course one statement was admitted and is in the
19 possession of the Clerk of Court for the trial of
20 Tawanda Allen, is that correct?

21 A: Yes.

22 Q: So, there would have been eleven recorded statements?

23 A: Yes.

24 Q: And these recordings, is that your writing?

25 A: That is my writing.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 16

1 Ms. Barr: That's all the questions that I have Judge.

2 The Court: Alright anything further?

3 Mr. Jenkinson: Not of this witness Your Honor.

4 The Court: Alright, you can step down.

5 Mr. Jenkinson: Your Honor we would ask the Court to direct
6 the witness, in view of her testimony and in view of
7 the inconsistency here and not only the pursuit of
8 justice in getting all of the available information
9 that they made inquiry and that she may or may or may
10 not made an error and the only way to tell is to
11 determine from her records and the tape and the
12 transcript whether or not we have been provided
13 everything. Because what is provided to us by the
14 Solicitor in the State's response to Defendant Rule 5
15 is we have Ronald Mack's statement of April the 5th,
16 Ronald Mack's statement on May the 28th. We have a
17 Dontrey Barr statement of May 13th and Quadir Wilson
18 statement or May 14th, we have no other statements
19 contemporaneous with the month of April that it was
20 referred to, but yet they were taping them, because we
21 know Ronald Mack's statement was taken April 5th and we
22 got it. But yet, a few sentences later, in the same
23 report, another taped statement is referred to and we
24 get, and it does not seem to exist. It's just very
25 important because these are key eye witnesses in this

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 17

1 case that we expect to testify against the Defendant.
2 Their statement and whatever they told law enforcement
3 are very critical to the defense. And we would like
4 some direction, either from the Court, either to
5 suppress or either to require them to provide it or
6 provide us reasonable assurance that there has been
7 compliance with Rule 5 and Brady.

8 The Court: Ms. Barr?

9 Ms. Barr: Judge, the only thing that I would ask, I
10 certainly have no problem. We all make mistakes and I
11 certainly have no problem with the Court directing and
12 I'll instruct the officer to make sure that there are
13 not additional statements that may have gotten by us,
14 but Judge, as I understand Rule 5, the only thing that
15 we're required to produce in terms of statements to
16 the defense in advance of a witness testifying is the
17 Defendant's statement. The Defendant has not given a
18 statement, so we would take the position that even if
19 there were such a statement out there, somewhere out
20 there, that we're not required to, to disclose that
21 statement and produce it to the defense until that
22 witness gets on the stand and testifies.

23 Mr. Jenkinson: We would point out the relevance Your Honor
24 and the extreme importance is this, we think those
25 statements that we're seeking would show that the

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 18

1 Defendant Kelvin Bowen did not participate in this
2 crime and those statements and earlier on all of them
3 consistently said that he did not participate, they
4 made no reference to him and that would be critical to
5 our examination of this witness and proof of our case.

6 The Court: Alright, I think that if we're going to get
7 through this trial this week, we need to limit
8 arguments to arguments requested by the Court, rather
9 than voluntary exchanges between counsel. If the
10 witness gave any statements that were later
11 contradicted by the witness or any other later proven
12 to be inconsistent with an earlier statement, then all
13 of those statements must be given to the defense.

14 Ms. Barr: Yes sir.

15 The Court: And so the, if there are additional
16 statements and the witness seemed to, it said that she
17 can easily ascertain it all by looking at the
18 transcripts to confirm the dates of them all, then it
19 shouldn't be a difficult task to do over lunch. We'll
20 have the investigator review that and confirm whether
21 or not to have the statement in front of her that the
22 defense has been given all information, including all
23 statements of this witness. Alright.

24 Mr. Jenkinson: Your Honor, our second item is something
25 that you were familiar with, the cell phone records.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 19

1 What we seek is any cell phone records obtained by the
2 State for Tawanda Mack Allen, Ronald Akeem Mack,
3 Kelvin Michael Bowen in this case and our basis for
4 that is twofold. You understand our previous motions
5 about a cell phone that was owned by Mr. Bowen weeks
6 after the crime, but in the discovery material there
7 were frequent references by a number of witnesses to
8 communications between Bowen and Mack. Text messages
9 and telephone calls which should appear on their cell
10 phone records. And we make this request because in
11 the preliminary hearing held in this court, on June
12 10, 1999 or 2009, the question was asked of
13 Investigator Lail, did you obtain and this is at page
14 forty seven, any telephone records to find out the
15 existence of telephone calls that were made and
16 whether or not they were in fact made when she was
17 testifying about text messages. She said yes sir we
18 have. We have since found out in the middle of the
19 investigation Mr. Ronald Mack had two phones. We were
20 not aware of that in the beginning so we do not have
21 the records on the second line. Well, we asked for any
22 records, at this point she's testified that they had
23 them back in June. We have not received copies of
24 those records yet and we would like the cell phone
25 records as to Mack, Tawanda, his mother, and the third

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 20

1 one is based upon the Samsung T Mobile cell phone,
2 which was seized by the Anne Arundel County Police on
3 the date of arrest, which was May 18, 2009 when Mr.
4 Bowen was arrested in the vehicle was a T Mobile,
5 Samsung cell phone, which was taken into custody and
6 placed on the inventory report, which we would offer
7 as exhibit number 2 as evidence of its existence and
8 I think the Court has already recalled that there was
9 a lot of testimony at a previous hearing about this.
10 If that record, or any of those records exist or are
11 in possession of law enforcement, we would like them.

12 (Defendant's Exhibit Number 2 was marked)

13 The Court: Alright.

14 Mr. Jenkinson: Now we have gotten one cell phone record and
15 we don't exactly understand what it is but it does not
16 have anything to do with any of these parties. That
17 is our position.

18 The Court: Ms. Barr?

19 Ms. Barr: Judge, the cell phone records that were provided
20 to counsel were the cell phone records for a telephone
21 number that was given to us by defense counsel,
22 reporting to be that of Kelvin Bowen, so that's been
23 provided. We don't have cell phone records as it
24 relates to Ronald Mack. We do have a cell phone record
25 of incoming and outgoing calls on Tawanda Mack's phone

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 21

1 and we'll be happy to provide that to counsel as well.
2 And Judge, may I also, just on the previous matter,
3 please note for the record that we have given the
4 Defendant counsel an audio tape of Antonio McClary's
5 May 14, 2009 interview.

6 The Court: Anything else on that issue Mr. Jenkinson?

7 Mr. Jenkinson: No sir, just for clarification, I understand
8 that we'll be given Tawanda Mack Allen's cell phone
9 records. There are none for Ronald Akeem Mack, is that
10 what you're saying?

11 Ms. Barr: Yes sir.

12 Mr. Jenkinson: And there are none for the Samsung phone or
13 you do you have the Samsung phone that was taken into
14 custody? It shows on the Anne Arundel Police
15 inventory.

16 Ms. Barr: And Judge that, that, that issue was already
17 decided in the order. That phone was never taken into
18 custody. That phone was inventoried by the Maryland
19 Police Department, but it was never taken into
20 custody. That was just inventory as part of all the
21 items that were in the vehicle. He keeps using the
22 word taken into custody; the phone was never taken
23 into custody and that's clear in Your Honor's Order.

24 Mr. Jenkinson: May I be heard just one second?

25 The Court: Yes sir.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 22

1 Mr. Jenkinson: What you have in exhibit number 2, the
2 vehicle in question is towed to the police department
3 up there for examination. Now, I don't know anything
4 about it. They had it at the police station and
5 that's as far that I can tell you. They were seizing
6 evidence and it's listed there. You know, if they
7 don't know where it is, they don't know where it is.
8 I just wanted to make sure that it does not exist and
9 that's she's reporting to us that nobody knows where
10 it is as far as I understand.

11 The Court: Alright.

12 Mr. Jenkinson: There was a search warrant for the car as
13 well and it's listed in the search warrant, so I, I
14 don't know what else, I think the record is clear, if
15 they don't have it, they don't have it.

16 The Court: Alright, what else?

17 Mr. Jenkinson: Alright, in the second recorded statement of
18 Antonio McClary, he's drawing a diagram of the murder
19 location and where he was standing on page seventeen
20 of his statement. This diagram has never been released
21 and we would like that diagram. Where he was standing
22 is in controversy all throughout the statements and
23 this would be the best record, because it's confusing.
24 He was saying well the woods were behind me or
25 whatever and he actually drew it out for law

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 23

1 enforcement and we'd like a copy of that sketch.

2 The Court: Ms. Barr?

3 Ms. Barr: Judge, I don't know that that information is
4 necessarily discoverable under Rule 5.

5 Mr. Jenkinson: Your Honor, may I offer a little
6 clarification on it?

7 The Court: Alright.

8 Mr. Jenkinson: In, in that statement, he adamantly, Antonio
9 McClary adamantly denied going in the statement and
10 they said okay, where were you standing? And he
11 described it in various ways and they said it was
12 confusing. They said fine, just draw it out for us,
13 show us a drawing, draw it out. And that was the way
14 it was concluded. Thereafter, he gives a totally
15 contradictory statement about going in the trailer and
16 wasn't standing outside and in parts of that sketch
17 show a misrepresentation, if not indeed a lie to law
18 enforcement officers and will be used to show his
19 unreliability on the stand.

20 The Court: Anything else on that Ms. Barr?

21 Ms. Barr: No Judge.

22 The Court: Alright, well if he gave a inconsistent
23 statement then and included in the inconsistent
24 statement at some point in time drew a diagram, the
25 diagram must be produced.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 24

1 Ms. Barr: Yes sir.

2 The Court: Alright, what else you got?

3 Ms. Shuler: Your Honor may it please the Court?

4 The Court: Yes.

5 Ms. Shuler: This matter is before the Court on a evidence
6 motion and Motion to Suppress the photograph line up. That
7 motion was filed this morning and it should be a part of
8 the Court's record. Your Honor, you're probably pretty
9 familiar with the facts of this case as you've seen ...

10 The Court: You know, you say the Court's record in
11 General Sessions's court, it's not quite the same as
12 in, as in common pleas court where there's a file
13 that's given to the judge prior to a trial. Generally
14 in criminal court, you have an indictment only in the
15 file.

16 Ms. Shuler: You're probably pretty familiar with the facts
17 in this case, so I'm just going to briefly outline the
18 relevant portions of it. The Defendant, Kelvin Michael
19 Bowen has been charged with various crimes of murder,
20 first degree burglary, possession of a weapon during
21 the commission of a violent crime and criminal
22 conspiracy. Ronald Mack has pled guilty to the murder
23 of Kenyon Dorsey that occurred in Williamsburg County.
24 That murder occurred back on April 5th of 2009. The
25 crime remained unsolved for some time, but

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 25

1 approximately after six weeks after it occurred,
2 Antonio McClary gave some information to law
3 enforcement, which led to the issuance of arrest
4 warrants for Ronald Mack and Tawanda Mack Allen. There
5 was also a person of interest connected with that by
6 the name of Callie. They did not know who Callie was,
7 but Antonio McClary provided an oral description of
8 Callie. He said that this person was real tall and
9 scrawny, with Afro-peasy hair that was not low cut,
10 with brown skin. At the time that the warrants were
11 served on Ronald Mack, Ronald Mack was with Kelvin
12 Michael Bowen. Whenever they were arrested in
13 Maryland, investigator Lail called Maryland and said
14 there's a person that we're trying to identify by the
15 name of Callie, who may be with Ronald Mack. Someone
16 in Anne Arundel County, Maryland called down and said
17 there is a person with Mr. Mack. Investigator Lail
18 said send me a picture, email me a picture of both
19 persons and I will have that presented to Antonio
20 McClary and let him identify him. Antonio McClary was
21 shown two pictures. She asked him to identify first if
22 one of those pictures was Ronald Mack and then was
23 shown a second picture, a picture of Kelvin Michael
24 Bowen and she says is this the person you know to be
25 Callie? And at that point in time, he indicated that

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 26

1 yes, in fact it was, but what is important about that
2 is he was shown one single picture. It was not a part
3 of a six person line up. There were no other people
4 there for him to compare this too. It was one, single
5 picture. The Supreme Court has set a standard for the
6 admissibility of testimony concerning an out of court
7 identification and that was done in Neil versus
8 Biggers. It's a 409 United States Supreme County, 188
9 from 1972. The Court held in that case that suggestive
10 confrontations are disapproved, because they increase
11 the likelihood of mis-identification. Unnecessarily
12 suggestive confrontations are condemned because they
13 increase the chance of mis-identification. And Your
14 Honor, what might a suggestive line up be? The Court
15 has consistently held that a single person show up
16 suggestive and strongly dis-favored and in Denno,
17 which is a Supreme Court case from 1967 stated that
18 single person show ups are strongly dis-favored, now
19 absent certain circumstances the Court has said that
20 they need to be called into question and in this case,
21 this is exactly what happened. This was a single
22 person line up, he was shown one picture and asked is
23 this the person you know to be Callie? Now even if the
24 identification procedure was suggestive, it still may
25 be admissible, but the Court must look at the totality

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 27

1 of the circumstances. There are a number of factors
2 that the Court can consider. First he needs to, first
3 you should consider the opportunity of the witness to
4 view the criminal at the time of the crime, the
5 witness' degree of attention, the tendency, the
6 accuracy of the witness' prior description of the
7 criminal and the level of certainty demonstrated by
8 the witness at the confrontation and the length of
9 time between the crime and the confrontation. In this
10 case, the identification was obviously suggestive, he
11 was shown one picture surrounded by law enforcement
12 and asked whether or not this man was the person he
13 knows to be Callie. So, now the Court will need to
14 determine whether or not, based on the totality of the
15 circumstances as to whether the out of court
16 identification is admissible. Ronald Mack was well
17 known, a well known friend of the victim. He was also
18 a good friend of McClary. I think they even lived
19 together at one point in time. He had an opportunity
20 to observe Ronald Mack on a number of occasions, he
21 knew him, he was a friend. However, allegedly, Antonio
22 McClary spent about, just a few moments, if,
23 allegedly, if at all with Kelvin Michael Bowen had he
24 actually, if he had been here. Supposedly, they picked
25 these two people up and drove them out to Kenyon

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 28

1 Dorsey's house, shot Kenyon Dorsey and came back and
2 went back to Maryland. It was dark, it was two to
3 three o'clock in the morning, supposedly, Antonio
4 McClary was sitting in the front seat of the car with
5 Ronald or with Kelvin Bowen and Ronald Mack sitting in
6 the backseat of the car. He was admittedly scared
7 because supposedly, he thought they were only going
8 out there to rob this guy and then he says he sees
9 guns come out and he's worried about what he's gotten
10 himself into at this point in time. Because there was
11 a handgun that was brought out, a shot gun that was
12 brought out. His degree, his degree of attention was
13 not heightened as to what was going on. In the back,
14 he was worried about himself at that point in time.
15 McClary described Kelvin Bowen as tall, scrawny, with
16 an Afro-peasy hair and brown skinned. He got one thing
17 right, he got the height right. Kelvin Bowen is tall,
18 but also Your Honor, tall is a relative term. How tall
19 is tall? To me, everybody's tall.

20 The Court: Well, let me ask you this, you're seeking to
21 have me suppress testimony based on your argument?

22 Ms. Shuler: Yes sir, Your Honor.

23 The Court: Okay, to accept your argument as being fact
24 or what?

25 Ms. Shuler: Your Honor we can call the witnesses and

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 29

1 question the witnesses.

2 The Court: I'm just asking. You want to argue these
3 things that you're saying for me to agree with you and
4 say okay, identification suppressed. He cannot
5 identify his co Defendant.

6 Ms. Shuler: I can reference the statements that have been
7 provided and Your Honor, those would be what would be
8 admitted during the questioning of the witnesses, but
9 Mr. McClary is here and we'd be happy to question him.

10 The Court: All right. Ms. Barr?

11 Ms. Barr: Your Honor, I think clearly counsel's arguments
12 go to the weight of the evidence and not
13 admissibility. That's something that she argue to the
14 jury. Your Honor, this is not a situation where,
15 first of all, it wasn't a situation where the
16 investigator showed him a photo of the Defendant and
17 said is this the guy who was with you that night. And
18 if counsel were present during the trial of Tawanda
19 Allen, she would have heard that what happened was
20 when law enforcement in Maryland emailed Investigator
21 Lail a copy of Kelvin Bowen's photograph, Antonio
22 McClary was actually on the way out or either walking
23 into the investigation room and said where'd you get
24 a picture of Callie. That's how that happened. It
25 wasn't as if they showed him one picture and said this

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 30

1 is the guy that was with you. And Judge, when you
2 look at the factors in determining whether or not a
3 photo i.d. is admissible, first of all, we take the
4 position that this is not that type scenario, but even
5 if you say that it was, and this is not a situation
6 where a victim happened to see this Defendant for a
7 split second, this is his co Defendant. This is the
8 person who was riding in the car with him, this is the
9 person who has engaged into conversation with him,
10 this is a person who goes in a house and sees him kill
11 somebody. You know, this is somebody who clearly had
12 certainly enough opportunity to see the Defendant and
13 so, we would submit that the motion is inappropriate
14 at this time and should be denied. And also, I may
15 just supplement my argument Judge, when you look at
16 the requirement, counsel was right. When the
17 Defendant was in Maryland with Ronald Mack, they
18 didn't know who he was. He was stopped outside in the
19 yard they had enough evidence on Ronald Mack at that
20 point to take him into custody and arrest him, but not
21 this Defendant. If that identification had not been
22 made, the Defendant would have just gotten in the car
23 and just left. He's six or seven hours away in
24 Maryland. If those aren't circumstances, when you're
25 talking about a murder, I don't know what is.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 31

1 The Court: Alright.

2 Ms. Shuler: Your Honor, the admissibility of the out of
3 court identification requires a pre trial hearing to
4 determine its admissibility, so I would suggest that
5 this is absolutely appropriate for this time. With
6 that said, I'll be happy to question Investigator Lail
7 about the identification procedure.

8 The Court: Okay.

9 Ms. Shuler: If she would ...

10 The Court: She's still under oath. Come back
11 Investigator Lail.

12 DIRECT EXAMINATION OF INVESTIGATOR LAIL BY MS. SHULER:

13 Q: Investigator Lail, did you question Antonio McClary
14 on May 13, 2009?

15 A: If I recall correctly, yes ma'am.

16 Q: Did you question him twice on that day?

17 A: Yes ma'am.

18 Q: Did you get, did you tape those two questionings?
19 Those two interviews, I'm sorry.

20 A: All of the interviews that we have are transcribed and
21 turned over.

22 Q: So you have that interview transcribed?

23 A: Yes ma'am.

24 Q: I'm going to show you the second interview that was
25 conducted on that day at 7:24 pm on May 13, 2009. If

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 32

1 you'll look at page 32 please. What description did
2 Antonio McClary give you of the Defendant?

3 A: He said he's real tall and scrawny and I asked what
4 kind of hair and he said 'hair peasey, like real
5 peasey' and I said is it low cut and he said 'no,
6 Afro. Not low cut, like a Afro.

7 Q: Did he describe his skin color?

8 A: I said is he light skinned and he said brown skinned.

9 Q: Whenever you got the call from Maryland that said
10 there were, that they had arrested Ronald Mack, what
11 was the conversation like that you had with the other
12 officer?

13 A: Well, actually they called and had, if I'm not
14 mistaken, the vehicle stopped that had Ronald Mack and
15 another individual in it.

16 Q: Did you ask them at that time to send you pictures of
17 that other individual?

18 A: I did.

19 Q: And did you receive a picture of that individual?

20 A: Through email on my computer.

21 Q: Did you print that picture out?

22 A: If I'm not mistaken, I did, yes ma'am.

23 Q: Was it in color?

24 A: My printer does not print out color, so if it is in
25 color, if I produced it to the solicitor then we would

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 33

1 have gotten our administrative assistant to do that.

2 Q: I'm going to show you ...

3 Ms. Shuler: If you can mark this please, exhibit 3 for
4 identification purposes.

5 (Defendant's Exhibit Number 3 for identification)

6 Q: Is that the picture that you gave to him?

7 A: Gave to?

8 Q: To McClary.

9 A: No, I never gave him a picture.

10 Q: You never showed a picture to Antonio McClary?

11 A: You're asking me if I gave him a picture.

12 Q: I'm sorry.

13 A: I never gave him a picture. My computer is such that
14 at the back door of the investigations unit, I sit
15 exactly as I'm sitting now with my computer right
16 here. Anyone coming in the back would have access to
17 the screen and he was brought in at the same time by
18 another investigator or whomever.

19 Q: Did you show him the picture on the screen?

20 A: Did I show it to him? No, I did not. It come through
21 my email and I brought it up and as soon as I did, the
22 investigator walked through with Antonio and that's
23 when he looked at it and immediately, spontaneously
24 said where did you get a picture of Callie?'

25 Q: Can you tell, I'm going to show you this picture

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 34

1 again. From this picture that you said that was
2 emailed to you, can you tell whether he's got Afro
3 peasey hair?

4 A: No ma'am. I couldn't, he has a stocking cap on.

5 Q: Can you tell if he's tall?

6 A: Ma'am, I can only show you what was sent to me and
7 what the officer described him to be.

8 Q: Can you tell if he's scrawny?

9 A: I can only tell you what I have here.

10 Q: From that picture, does it appear as if he is tall?

11 A: There's no way for me to tell that.

12 Q: From that picture can you tell if he's scrawny?

13 A: No way for me to tell that.

14 Q: And was that the only picture that Antonio McClary
15 saw?

16 A: It was.

17 Q: Did you show him any other pictures that day?

18 A: Not that I recall. And again, to be sure, I did not
19 show him the picture. He walked in and saw the
20 picture.

21 Q: I understand, thank you.

22 Ms. Shuler: I have no further questions for her at this
23 time Your Honor.

24 The Court: Alright. Ms. Barr?

25 Ms. Barr: Yes sir.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 35CROSS EXAMINATION OF INVESTIGATOR LAIL BY MS. BARR:

1
2 Q: Investigator Lail, just a couple of follow up
3 questions if I may. Now, prior to Mr. Bowen's arrest,
4 when Antonio McClary was telling you about his
5 involvement in this case, how did he describe the
6 Defendant Kelvin Bowen's relationship to Tawanda
7 Allen? Didn't he use it that they were boyfriend and
8 girlfriend?

9 A: Well he did. He mostly referred to Callie as Ronald
10 Mack's step father.

11 Q: Step father, because he and his mom were living
12 together. Is that correct?

13 A: That's right.

14 Q: Now you later came to learn that the Defendant Mr.
15 Bowen had a California driver's license?

16 A: That's correct.

17 Q: Is that why you believe he had the nick-name of
18 Callie?

19 A: It is.

20 Q: Alright, he also had ties to Kansas. You later came to
21 believe?

22 A: Yes ma'am.

23 Q: And when you were talking with the police officers in
24 Maryland, he was actually on a stop there and what
25 they call an investigative stop if you will?

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 36

1 A: That's correct.

2 Q: Alright and so certainly, he would have access to a
3 motor vehicle. He could have just left, is that
4 correct?

5 A: That's correct.

6 Q: Now you were very clear that you did not show Antonio
7 McClary a photograph, he just happened to see it when
8 it came up onto your computer?

9 A: That is correct.

10 Q: And in addition to Antonio McClary identifying Kelvin
11 Bowen as the individual who was with him that night,
12 did Tawanda Allen also identify the Defendant Kelvin
13 Bowen as the individual who was with her that night?

14 A: Yes ma'am.

15 Q: Who participated in the murder of Kenyon Dorsey?

16 A: That's correct.

17 Q: And Ronald Mack also identified Kelvin Bowen as the
18 person who was with them that night and participated
19 in the murder of Kelvin Bowen, I mean of Kenyon
20 Dorsey?

21 A: Kenyon Dorsey, that's correct and both of them
22 referred to him as aka or what we call also known as
23 Callie.

24 Q: Both of them? Ronald Mack and Tawanda Allen.

25 Ms. Barr: That's all the questions that I have.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 37

1 The Court: Anything further of this witness?

2 Ms. Shuler: Yes sir, Your Honor.

3 RE-DIRECT EXAMINATION OF INVESTIGATOR LAIL BY MS. SHULER:

4 Q: You said that he just saw those photographs on the
5 screen, is that correct? Whenever he was walking
6 through?

7 A: He saw the one photograph because it was an email.

8 Q: I'm going to show you what's a copy from the
9 transcript from the preliminary hearing that was held
10 back on June 10, 2009 on page 42. If you will read
11 lines 17 to 23 into the record please.

12 Ms. Barr: Judge, we would have an objection. That's not a
13 question for the witness, also if she's being
14 questioned about a document, I'd like a copy of it, if
15 Your Honor, please.

16 The Court: Do you have a question you're going to ask
17 the witness?

18 Ms. Shuler: I want, I have a follow up question I want,
19 she can read it and then I'll ask her the question.

20 The Court: Well you need to ask her a question and then
21 if you have some basis to have her read something. She
22 cannot just spontaneously start reading things for us.
23 You have to preface the things in your question.

24 Ms. Shuler: Yes sir, Your Honor, if you'll read lines 17
25 thru 23.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 38

1 Ms. Barr: Same objection.

2 The Court: Read it to yourself.

3 A: I read it.

4 Q: Mr. Jenkinson asked you if you showed that picture to
5 Antonio McClary is that correct?

6 A: That's correct.

7 Q: And you responded that you did?

8 A: According to this, but again, the only time he saw it
9 was on the computer screen and it was a picture, but
10 there was not an actual photograph Polaroid type
11 picture.

12 Q: And he asked you if you showed him a photo line up and
13 you said no sir, time did not permit that. Is that
14 correct?

15 A: That's correct.

16 Ms. Shuler: That's all I have for her Your Honor.

17 The Court: Alright, anything further of this witness?

18 Ms. Barr: Not from the State Judge.

19 The Court: Alright, you can step down. Any other
20 State's witnesses?

21 Ms. Barr: Not on that issue Judge, no.

22 The Court: Any witnesses from the defense?

23 Ms. Shuler: No sir, Your Honor.

24 The Court: Alright. I find that based on the
25 circumstances the motion should be denied. There's no

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 39

1 indication of any unduly suggestive identification by
2 the State.

3 Ms. Shuler: Thank you Your Honor.

4 The Court: What's next?

5 Mr. Jenkinson: I have another Your Honor, I think we handed
6 up a motion in limine.

7 The Court: Alright.

8 Mr. Jenkinson: Do you have a copy of that?

9 The Court: Yes sir.

10 Mr. Jenkinson: First we would move in limine as to any
11 matters the State may try to bring up about any
12 previous bad conduct, criminal record or bad acts,
13 which would that to be alleged of Mr. Bowen. And the
14 State should be prohibited from discussing any bad
15 acts and criminal violations of this Defendant other
16 than those charged as being prejudicial and having no
17 probative value.

18 The Court: Alright, Ms. Barr?

19 Ms. Barr: Well, Judge, I don't know what he's referring to.
20 I mean obviously I think if there is a matter that the
21 State intends to introduce that we believe is admissible
22 under the rules, then you know, the proper procedure would
23 be to make an objection at that time. I'm not sure what
24 counsel's alluding to. If there's a specific ...

25 Mr. Jenkinson: If there's anything that's in the record of

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 40

1 any previous criminal history particularly.

2 The Court: Obviously the Defendant's character can not
3 be placed into evidence prior to him testifying.

4 Ms. Barr: Right.

5 Mr. Jenkinson: The second item Your Honor is, last week we
6 received a letter notice from the Solicitor, dated
7 January 24 and received by us on the 25th. It says Dear
8 Billy, in connection with the above matter, be advised
9 that the State intends to introduce an oral statement
10 of Kelvin Bowen to law enforcement following his
11 arrest for murder and burglary. The substance of the
12 statement made by Mr. Bowen was that that girl
13 (Tawanda Allen) and her son (Ronald Mack) should have
14 kept their mouth shut while that girl (Tawanda Allen)
15 and her son (Ronald Mack) ran their mouths too much.
16 This was just served on us last week and we would move
17 pursuant to Jackson versus Denno to exclude that
18 statement.

19 The Court: Who was it given to, the statement?

20 Ms. Barr: Investigator Lail.

21 Mr. Jenkinson: We would call Investigator Lail.

22 The Court: Alright.

23 Ms. Barr: Judge, is the motion that the statement was not
24 freely and voluntarily given?

25 Mr. Jenkinson: Yes.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 41

1 The Court: Out of court statement, the Court must conduct
2 a hearing ...

3 Ms. Barr: Yes sir.

4 The Court: ... on the statements. Come forward, you're
5 still under oath. Examination by the State.

6 EXAMINATION OF LAIL BY MS. BARR:

7 Q: Investigator Lail, of course you are an investigator
8 for the Williamsburg County Sheriff's Department
9 correct?

10 A: That's correct.

11 Q: And I'm not sure of the exact date, but some time
12 toward the end of ...

13 Mr. Jenkinson: Your Honor we would like the witness to
14 testify and not the Solicitor.

15 The Court: Don't lead the witness.

16 Q: At some point at the end of May of 2009, the Defendant
17 was brought in from Maryland to South Carolina? He was
18 extradited from Maryland to South Carolina?

19 A: That's correct.

20 Q: Okay, in connection with the murder of Kenyon Dorsey?

21 A: That's correct.

22 Q: Alright and ...

23 The Court: Turn the mic up some so we can hear, so
24 everyone can hear you loud and clear.

25 Ms. Barr: Thank you Your Honor. And prior to seeing Mr.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 42

1 Bowen, did you conduct an interrogation of Tawanda
2 Allen and Ronald Mack?

3 A: Yes, that's correct.

4 Q: Alright, and who did those individuals name as being
5 a part of the murder of Kenyon Dorsey?

6 A: Kelvin Bowen, aka Callie.

7 Q: Alright and at some point in time, after you
8 interrogated those two individuals and you did, at
9 some point did you go and interrogate or attempt to
10 interrogate Mr. Bowen?

11 A: That's correct.

12 Q: Alright, tell us about that.

13 A: He was brought from the detention center and normal
14 procedure is to Mirandize or advise the individual of
15 his rights and also advise that his statement would be
16 recorded and basically we asked if he wanted to give
17 a statement and he said no.

18 Q: Okay.

19 A: So that was the end of that and you know, I don't know
20 if I did or whomever was in the interview with me, or
21 attempted interview with me, he went on to say that
22 they just talk too much.

23 Q: And who was he referring to?

24 A: I would assume he was referring to Ronald Mack and
25 Tawanda. We told him that we had already met with them

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 43

1 and we'd already got a statement from them and we
2 wanted to also give him the opportunity to give a
3 statement and that's when he said didn't want to make
4 one.

5 Mr. Jenkinson: We would object to an assumption Your Honor.

6 Those assumptions are purely speculation and as such,
7 we would object. She's trying to speak for the
8 Defendant assuming what he was thinking.

9 The Court: Alright.

10 Mr. Jenkinson: And that is inappropriate.

11 The Court: I sustain that objection.

12 Q: Well, well, let me just do it this way Investigator
13 Lail, you told him, did you tell him who you had
14 spoken to already?

15 A: Yes.

16 Q: Okay, who did you tell him you had already gotten
17 statements from?

18 A: Tawanda Mack and Ronald Mack.

19 Q: All right. And when you, you said you advised him of
20 his rights?

21 A: Well, we didn't even get to that part really.

22 Q: Okay.

23 A: Because when he was first brought in we said Kelvin
24 we've already spoken to Tawanda Mack and Ronald Mack
25 and we, you know, would like to talk to you about what

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 44

1 has taken place and before we could even begin the
2 Miranda, he said I don't want to talk to you.

3 Q: Okay.

4 A: And he just you know, they just talk to much and
5 that's all that was said.

6 Q: Okay, but clearly the only two you were talking about
7 were Ronald Mack and Tawanda Allen?

8 A: That's the only two names that were brought up.

9 Q: And when he made the statement to you that they just
10 talk too much, or they just run their mouth too much,
11 was it, was it in response to a specific question that
12 you posed to him or was it spontaneous on its own?

13 A: No, I never asked any questions. I made the statement
14 that we had already spoken with these two individuals
15 and we'd like to give him the opportunity to give a
16 statement about the incident.

17 Q: Okay.

18 A: And then I would have gone into the Miranda.

19 Q: Right.

20 A: But there was no, it wasn't time to do that just said
21 well they just talk too much. I don't want to talk and
22 that was it.

23 Q: Okay, that's all the questions I have.

24 The Court: Mr. Jenkinson?

25 CROSS-EXAMINATION OF INVESTIGATOR LAIL BY MR. JENKINSON

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 45

1 Q: Investigator Lail, help me understand, because I think
2 I heard two different pieces of testimony here. And I
3 want to make sure we understand which one you want to
4 use. Did I understand you in the first part of your
5 testimony a minute ago that you did advise Mr. Mack of
6 his Constitutional rights before you asked him if he
7 wanted to make a statement and he said no?

8 A: No, I don't recall saying that. I said that I started
9 to read him his rights, that's normal procedure.

10 Q: You said that the second time, that's what I want to
11 clarify. The first time I heard it one way, the second
12 time I heard it just as you described it. Now which
13 one is it?

14 A: Well, I'm saying the very same thing. It is that
15 normal procedure is to ...

16 Q: I'm not talking about normal procedure. I want ...

17 Ms. Barr: Judge, I'm sorry. He needs to let the witness
18 finish her response. He shouldn't interrupt her. She's got
19 a right to finish her response.

20 The Court: No speaking objections. I didn't hear an
21 objection by the way, I just heard a speech.

22 Ms. Barr: I'm sorry. Judge, we would object to counsel
23 interrupting the witness.

24 The Court: Don't interrupt the witness.

25 A: As I said, the normal procedure would have been to

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 46

1 advise his rights, but with this particular situation,
2 with this particular person, Kelvin Bowen, Miranda was
3 not read because he immediately said I don't want to
4 talk.

5 Q: Well, did I hear you say and you tell me if I'm right
6 or wrong, I told him of his Miranda rights and I asked
7 him if he wanted to talk and he said no? Did I
8 misunderstand that?

9 A: I did not say I read him his Miranda rights.

10 Q: Okay, but he said no?

11 A: I never read him his Miranda rights, he just said I
12 don't have anything to say and that was the end of it.

13 Q: So, you didn't ask him if he wanted to talk and he
14 said no?

15 A: That was the end of it.

16 Q: Alright, then the only statement he made is what?

17 A: The only statement made was that when he first came in
18 and sat down, you know, and said we've talked with
19 Tawanda Mack and Ronald Mack and this is your
20 opportunity to give a statement if you'd like. And
21 when he sat down he said, well they talk too much.

22 Q: That's all he said? They talk too much.

23 A: Then he said I don't have anything to say, that's it.

24 Q: Okay, so you heard ...

25 A: And I didn't make anymore out of it, that was it.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 47

1 Q: You heard me read the letter from Ms. Barr to me of
2 January 24th?

3 A: I did.

4 Q: So the information in that letter about him saying
5 they should have kept their mouths shut and that girl
6 ran their mouths too much is incorrect? You're
7 standing by your testimony in court today?

8 A: I think that that's, she was not stating it verbatim
9 because it's not transcribed. It's not a statement.

10 Q: I just asked if it was a mistake the way it was put in
11 the letter?

12 A: I can only tell you what I recall him saying.

13 Q: Well, you're limiting, what you told her was what you
14 said in court today and not what's in this letter?

15 A: He said they talk too much, they run their mouths too
16 much, whatever, it was not recorded.

17 Q: Well, now you're adding to it. You said ...

18 A: Okay, then I don't know Mr. Jenkinson.

19 Q: You don't remember?

20 A: I do not remember. If you're asking verbatim, then I
21 do not, but of the essence, it was that they talk too
22 much.

23 Q: When did you tell Ms. Barr about this statement?

24 A: I do not recall that.

25 Q: Was it about a month ago?

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 48

- 1 A: That's possible.
- 2 Q: That was the information we have. Was it before
3 Christmas or after Christmas? Help us out.
- 4 A: It was probably after Christmas.
- 5 Q: Alright.
- 6 A: It was not, like I said, it was not part of the
7 transcribed statement.
- 8 Q: So that would have been January 2011 that you made
9 this statement. Now, you remember in your preliminary
10 hearing, you were testifying under oath in your
11 preliminary hearing on June the 10, 2009 and you sat
12 in that same chair and answered questions about this
13 investigation?
- 14 A: In the preliminary hearing?
- 15 Q: Yes ma'am.
- 16 A: Well that was held in Magistrate's Court.
- 17 Q: Actually, it was held in this courtroom.
- 18 A: Was it?
- 19 Q: Yes ma'am. Alright and I'll show you front page of it
20 to refresh your memory of exactly 3:55 p.m. on the 10th
21 of June in Williamsburg County courthouse okay?
- 22 A: Okay.
- 23 Q: Do you remember testifying then?
- 24 A: I remember the preliminary hearing.
- 25 Q: And you were sworn to tell the truth then?

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 49

1 A: Yes sir.

2 Q: That was only about ten or eleven or twelve days after
3 the statement was made by Kelvin Bowen to you?

4 A: That's correct.

5 Q: Now, do you remember Mr. Palmer asking you this
6 question, thank you I have a few questions. You have
7 gone into a lot of detail about statements. Are there
8 any other statements in your file from either
9 Defendants or witnesses that you have not talked
10 about. Remember he asked that question?

11 Ms. Barr: Judge, let me just object first of all and if
12 counsel's going to ask the witness about statements
13 that she made, I would certainly think I'm entitled to
14 see that.

15 The Court: I overrule the objection.

16 Q: Do you remember that question?

17 A: If it was transcribed there.

18 Q: Do you remember your response to him when he asked you
19 that. Any other statements by any parties or
20 Defendants?

21 A: And Mr. Jenkinson, I didn't consider ...

22 Q: No ma'am, I just asked you a question. Do you remember
23 your answer?

24 A: Yes sir.

25 Q: What was your answer?

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 50

1 A: That there were no other statements.

2 Ms. Barr: And Judge, again, we would object and ask that
3 the witness be allowed to answer the question.

4 Mr. Jenkinson: Judge, she can explain whatever she wants
5 to. That's all I have for this witness.

6 The Court: Alright.

7 Ms. Barr: May I see it?

8 The Court: You may step down. She said there are no
9 statements. If there's no statement, there's no
10 statement. Anything further on this issue?

11 Mr. Jenkinson: Not on that issue, no sir. We would just
12 move to suppress the statement based on the fact that
13 there's, I'm not sure what she said, my recollection,
14 Your Honor, of the testimony and certainly yours
15 prevails, there were two, two different ...

16 The Court: Okay, I don't need any argument on this issue.
17 I'm going to rule. I grant the motion and I'm going to
18 cite State versus Shuler, since you have a Shuler over
19 there. It would be an improper comment on the exercise
20 of the Defendant's right to remain silent to allow the
21 statement. So the motion to suppress is granted as to
22 the oral statement.

23 Mr. Jenkinson: We would move in limine to require the State
24 to not offer any testimony (coughing in audience) ...

25 The Court: That's the same thing. Same ruling, same

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 51

1 thing.

2 Mr. Jenkinson: Next Your Honor, we would, for purposes of

3 this motion, stipulate in this case, for the record

4 and for this trial that the victim was murdered at his

5 residence on Williamsburg County on

6 April 5, 2009 at about 2:30 am in the morning. That

7 the Defendant further stipulates to the contents of

8 the autopsy report of the fact of how many times he

9 was struck with, I think it was three nine millimeter

10 rounds and a shot gun blast. We would move that the

11 photographs of the autopsy, the crime scene, based on

12 these stipulations, are not necessary. We're

13 stipulating it was murder and a terrible crime, in his

14 own home he was sot and for those reasons we would

15 under State vs. Middleton, a 1986 case which our

16 Supreme Court stated and said in that opinion

17 (coughing)... where (coughing) ... offer to stipulate

18 to any relevant information contained in the

19 photographs, it is clear that any attempt to use those

20 photographs are purely being offered, would be offered

21 to arouse sympathy and prejudices the jury and are to

22 be excluded and we would move therefore to exclude

23 autopsy photographs, crime scene photographs showing

24 the body of the deceased. We stipulate he was sitting

25 in a chair with an IPOD in asleep when

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 52

1 The Court: Alright Ms. Barr?

2 Ms. Barr: Judge, we appreciate counsel's stipulation, but
3 the State is not required to accept stipulations by
4 counsel. State has the burden of proving each and
5 every element of the offenses charged and clearly it's
6 an attempt by the defense to try our case the way they
7 want us to try our case. And Judge, obviously crime
8 scene photos, autopsy photos are relevant to show that
9 the crimes were pre-meditated as required under the
10 murder charge and certainly Judge, we're not required
11 to stipulate to, to accept any stipulations that we
12 make, that they would make and we would ask that the
13 motion be denied.

14 Mr. Jenkinson: One word further Your Honor?

15 The Court: Yes sir.

16 Mr. Jenkinson: In State versus Middleton, the operative
17 word was that appellants counsel offered to stipulate
18 and we offer to stipulate and if they don't want to
19 accept it, but the mere fact that we're offering to
20 stipulate brings us in that rule not the State's
21 acceptance of our stipulation.

22 The Court: I deny the motion. Each photograph that the
23 State might offer has to be reviewed on the merits of
24 whether or not that photograph has any probative
25 value. In relation to this case, when compared with

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 53

1 the prejudicial effect of using that particular
2 photograph, it may be that the photograph might be
3 needed to corroborate the testimony of a co Defendant
4 or any other witness, so I deny the motion to just
5 grant a wholesale banning of photographs, based on the
6 offer of a stipulation. We'll review each photograph
7 that might be subject to question prior to them being
8 admitted.

9 Mr. Jenkinson: Could we then ask the State to show us
10 which ones they intend to rely on so we could then ask
11 the court to ...

12 The Court: Yeah, the State has to show you all exhibits
13 before they offer them.

14 Mr. Jenkinson: They've got them all, if they're going to
15 use all of them that makes our job a little easier but
16 if they going to use certain ones it would certainly
17 eliminate a prolonged ...

18 The Court: At some point you need to share with Mr.
19 Jenkinson what you plan to use so we can determine
20 whether or not there is an objection.

21 Ms. Barr: Yes sir.

22 The Court: Alright, alright, what else? What time is
23 the jury coming?

24 Ms. Barr: Two thirty Your Honor.

25 The Court: Alright, we're doing good.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 54

1 Mr. Jenkinson: The last one says the State should be
2 prohibited of introducing any evidence of the
3 Defendant, Kelvin Bowen's gang affiliation, which
4 purely would be offered for purposes of prejudicial
5 and no probative value.

6 The Court: Alright, Ms. Barr?

7 Ms. Barr: Of course Your Honor you've had the benefit of
8 the trial of one of the co Defendant's in this case
9 and accepting the guilty pleas of two other co
10 Defendants. Sorry Judge, something's in my eye.

11 The Court: Now to the folks out in the audience, no
12 talking. I need it absolutely quiet in here. Go
13 ahead.

14 Ms. Barr: Thank you Judge. We believe that the Defendant's
15 gang affiliations is probably are the motive for the
16 crimes. Judge, again you had the benefit of one trial
17 and you know that the testimony essentially will be
18 Ronald Mack contacted Kelvin Bowen and his mom and
19 said you know, listen this guy is giving me some
20 problems. We need to get it taken care of and Kelvin
21 Bowen then agrees, along with Tawanda Allen to bring
22 two guns from the State of Maryland to the State of
23 South Carolina and they break into this young man's
24 home and shoot him in the head while he's sleeping.
25 Judge, there was gang memorabilia inside the residence

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 55

1 in which one of the murder weapons was recovered and
2 we believe that the only reason that the Defendant
3 agreed to become a part of this, for which he had no
4 knowledge of the victim to begin with was because of
5 those gang affiliations and we think that's a part of
6 the motive, that's part of the elements of these
7 offenses and we believe that's something certainly the
8 jury should be entitled to hear and entitled to weigh.
9 Otherwise, we have a situation where you're trying to
10 explain why this man who has no connection at all to
11 this victim would be, agree to become a part of this
12 crime and we believe that his gang affiliations bare
13 on that issue.

14 The Court: Alright.

15 Mr. Jenkinson: No evidence found, it's nice for the
16 Solicitor to say there was gang related material
17 found; yeah, it was on the property of Mr. Mack, not
18 Kelvin Bowen. I mean let's put ownership where
19 ownership is. That's reflected in the Anne Arundel
20 County inventory. It was Ronald Mack's material, not
21 Kelvin Bowen's, where Mr. Mack lived.

22 The Court: Well, often when you hear testimony of gang
23 affiliations that is testimony by an expert witness
24 who's qualified to testify on the issue and also to
25 establish some relevance of that testimony to the case

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 56

1 before the Court. I'm unaware of any expert witness
2 who plans to be qualified to testify concerning gang
3 activity, so the Court has to scrutinize that
4 testimony closely in this case and I'll need to hear
5 testimony and decide the issue, based on the
6 competence of the particular witness that testified on
7 the issue, the relevance of it and the possible
8 prejudicial effect that would probative value. I
9 cannot rule on it in advance of hearing testimony, I
10 can't rule on that issue, based on guilty pleas and
11 the other trial or trials that we did. I'll just
12 caution all participants as to introducing those
13 things prior to establishing any relevant basis to do
14 so through the testimony.

15 Mr. Jenkinson: The only other thing we had mentioned before
16 are we sure there are no jurors in the courtroom?

17 The Court: Any jurors in here right now? Jury duty
18 people? Anyone other than Defendants and victims?
19 Alright, so while we have the audience's attention,
20 the jury is coming in at 2:30, what should these other
21 people who are here, why are they here at this moment
22 in time? Guilty pleas? Spectators?

23 Ms. Barr: Most of them are on the trial list. We've got
24 probably about eight guilty pleas out there that we
25 need to sign up.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 57

1 The Court: Alright.

2 Mr. Jenkinson: The Solicitor told me last week we won't
3 start until tomorrow. I just wanted to make sure when
4 we are starting.

5 The Court: No, we're starting right now. We've already
6 started.

7 Mr. Jenkinson: I know that. I'm talking about as far as
8 calling witnesses and making opening statements. I
9 just want to be prepared whenever we start.

10 The Court: We're prepared. My view is that when a jury
11 comes, when they take off from work and they come here
12 to be qualified, they need to be put to work.

13 Mr. Jenkinson: I don't mind that at all, I just ...

14 The Court: They're not to be sent back home saying come
15 back tomorrow.

16 Mr. Jenkinson: I was just told one thing and I wanted to
17 make sure of the court schedule is.

18 The Court: My schedule is to be ready to roll.

19 Mr. Jenkinson: We'll be ready to roll.

20 The Court: As soon as the jury is picked.

21 Mr. Jenkinson: Not a problem whatsoever.

22 The Court: What else do we have before we break for
23 lunch?

24 Ms. Barr: Nothing else Judge.

25 Mr. Jenkinson: We're ready to go Your Honor.

Kelvin Michael Bowen, Jr. Vs. State of South Carolina 58

1 The Court: The jury is coming in at 2:30 and we know
2 we're doing this trial. These other people who are
3 here, you said you had eight guilty pleas, who are the
4 eight guilty pleas? You want to meet and get those
5 people and then get the others when they need to come
6 back or if they need to come back Ms. Barr?

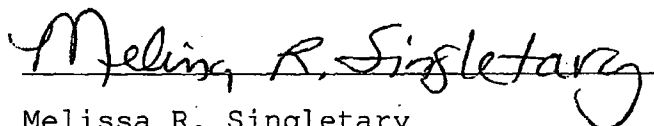
7 Ms. Barr: Yes sir, Judge.
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CERTIFICATE

This is to certify that the hearing in the matter of Kelvin Michael Bowen vs. State of South Carolina, consisting of Fifty-eight (58) pages is a true and correct transcript; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am not employed by any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 25th day of May, 2012.



Melissa R. Singletary
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: 3-5-2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

v.)

KELVIN MICHAEL BOWEN, JR.,)

DEFENDANT.)

TRANSCRIPT OF RECORD
 C/A #: 2009-GS-45-00180

VOLUME ONE

WILLIAMSBURG COUNTY COURTHOUSE
 Monday, January 31, 2011-
 February 4, 2011

BEFORE:

HONORABLE CLIFTON NEWMAN, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Kimberly Barr
 Assistant Solicitor Tyler Brown
 Attorneys for State of South Carolina

William E. Jenkinson, Esquire
 Amanda Shuler, Esquire
 Attorneys for Defendant, Kelvin Michael Bowen, Jr.

TAKEN BY MELISSA R. SINGLETARY
 CERTIFIED VERBATIM REPORTER

INDEX

	<u>PAGE</u>
Call of Case by Solicitor Barr.	14
Jury Selection (Sheet Attached).	15
Batson Motion.	34
Opening by Assistant Solicitor Kim Barr.	58
Opening by Attorney Billy Jenkinson.	62

STATE'S CASE

Annette Bradshaw	
Examination by Ms. Barr	70
No questions by Mr. Jenkinson	98
Scott Hardee	
Examination by Ms. Barr	99
Cross by Mr. Jenkinson.	124
Redirect by Ms. Barr.	132
Quadir Wilson	
Examination by Ms. Barr	133
No questions by Mr. Jenkinson	144
Dontrey Barr	
Examination by Ms. Barr	144
Cross by Mr. Jenkinson.	160
Redirect by Ms. Barr.	161
Recross by Mr. Jenkinson.	161

PROFFER TESTIMONY

Tawanda Mack Allen	
Examination by Ms. Barr	167
Ronald Mack	
Examination by Ms. Barr	170
Cross by Mr. Jenkinson.	194
Redirect by Ms. Barr.	202
Recross by Mr. Jenkinson.	208
Tawanda Mack Allen	
Examination by Ms. Barr	209
Cross by Mr. Jenkinson.	211

RECEIVED
 ATTORNEY GENERAL'S OFFICE
 2/11/13
 ADMINISTRATIVE INSTRUCTIONS
 END
 FILE
 OPEN
 HAVE
 COPIES MADE
 ROUTE TO
 ORDER
 TRANSCRIPT
 PEN RECORDS
 OTHER
 209

Debra Collins	
Examination by Ms. Barr	211
Cross by Mr. Jenkinson.	234
Redirect by Ms. Barr.	246

February 2, 2011

PROFFER TESTIMONY

Antonio McClary	
Examination by Ms. Shuler.	251
Cross by Ms. Barr.	253

Antonio McClary	
Examination by Ms. Barr.	253
Cross by Mr. Jenkinson	293
Redirect by Ms. Barr	332
Recross by Mr. Jenkinson	338

Stephen Luersen	
Examination by Ms. Barr.	339
Cross by Mr. Jenkinson	357
Redirect by Ms. Barr	376

Kelly Harding	
Examination by Ms. Barr.	382
Cross by Mr. Jenkinson	419

Suzanne Cromer	
Examination by Ms. Barr.	430
Cross by Mr. Jenkinson	446

IN CHAMBERS CONFERENCE

Lt. Jeffrey Scott	
Examination by Ms. Barr.	453
No questions by Mr. Jenkinson.	458

Joseph Cooper	
Examination by Ms. Barr.	458

Proffer Testimony

Joseph Cooper	
Examination by Mr. Jenkinson	466
Continue Examination by Ms. Barr	469

February 3, 2011

Dr. Ellen Riemer	
Examination by Ms. Barr.	474
Cross by Mr. Jenkinson	508

Justin Whack

Examination by Ms. Barr.	513
Cross by Mr. Jenkinson	531
Redirect by Ms. Barr	553
Recross by Mr. Jenkinson	555

STATE REST 3:27

DEFENDANT'S CASE

Scott Palmer

Examination by Mr. Jenkinson.	562
Cross by Ms. Barr	576
Redirect by Mr. Jenkinson	584

Kelvin Michael Bowen, III

Examination by Ms. Shuler.	587
Cross by Ms. Barr.	595

Tiffany Bowen

Examination by Ms. Shuler.	597
Cross by Ms. Barr.	613
Redirect by Ms. Shuler	627

DEFENSE CASE 5:30**February 4, 2011**

Closing by Ms. Barr.	641
Closing by Mr. Jenkinson	645
Reply Closing by Ms. Barr.	669

Verdict

Jury Polled

SENTENCE OF THE COURT	726

Certificate of Service.	730

EXHIBITS

EIGHT (8) PAGES OF RECEIPTS FOR EXHIBITS ATTACHED

Receipt for ExhibitsCase # 2009-GS-45-0180Judge Clifton NewmanPlaintiff The StatePlt's Atty Kimberly BurrDefendant Kelvin Bowen Jr.Def's Atty W. Billy Jenkins
Amanda ShulerDate Trial Started Mon Jan. 31/2011

Date Trial Ended _____

Received of Melissa R. Singleton Court Reporter for the above case, these exhibits:

- ~~ST 1~~ 1. Photograph
- ~~ST 2~~ 2. Photograph
- ~~ST 3~~ 3. Photograph
- ~~ST 4~~ 4. Photograph
- ~~ST 5~~ 5. Photograph
- ~~ST 6~~ 6. Photograph
- ~~7~~ 7. Photograph
- ~~8~~ 8. Photograph
- ~~9~~ 9. Photograph
- ~~10~~ 10. Photograph
- ~~11~~ 11. Photograph of back door
- ~~12~~ 12. Photograph of exterior residence w/ window
- ~~13~~ 13. Photograph of exterior of residence w/ exit hole
- ~~14~~ 14. Photograph of beneath deck where projectile is located
- ~~15~~ 15. Photograph of projectile under deck
- ~~16~~ 16. Photograph of deck
- ~~17~~ 17. Photograph of wood in deck indicating projectile
- ~~18~~ 18. Photograph
- ~~19~~ 19. Photograph
- ~~20~~ 20. Photograph of back door

This 4th day of February, 2011Page 1 of 7

Williamsburg County Clerk of Court

By: Paula J. Williams

Receipt for ExhibitsCase # 2009-US-45-0180Judge Clifton NewmanPlaintiff The StatePlt's Atty Kimberly BeckDefendant Kelvin Bowen Jr.Def's Atty Billy Jenkins
Amanda ShulerDate Trial Started Mon. Jan. 31, 2011

Date Trial Ended _____

Received of Melissa R. Singletary, Court Reporter for the above case, these exhibits:

1. Photograph of front door
2. Photograph
3. Photograph of inside - bedroom & living room
4. Photograph
5. Photograph
6. Photograph
7. Photograph of Kitchen Counter w/ Cartridge Case
8. Photograph
9. Photograph of Kitchen where shotgun shells located
10. Photograph of Shotgun shells
11. Photograph of victim
12. Photograph of Cartridge Case on vent
13. Photograph
14. Photograph
15. Photograph
16. Photograph
17. Photograph of Cartridge case
18. Photograph of victim's body
19. Photograph of wall showing hole by projectile
20. Photograph

This 4th day of February, 2011Page 2 of 7

Williamsburg County Clerk of Court

By: Anthony J. Williams

Receipt for ExhibitsCase # 2009-GS-45-0180Judge Clifton NewmanPlaintiff The StatePlt's Atty Kimberly EakerDefendant Kelvin Bowen, Jr.Def's Atty Billy Jenkins
Amanda ShulerDate Trial Started Monday, Jan. 31, 2011

Date Trial Ended _____

Received of Melissa K. Singletary, Court Reporter for the above case, these exhibits:

- 41. Photograph
- 42. Photograph of wall showing pellets
- 43. Photograph
- 44. Photograph
- 45. Photograph
- 46. Photograph
- 47. Photograph of license of victim
- 48. Diagram of Jaybird Avenue - Crime scene
- 49. pellets, wadding, cartridges
- 50. Bullets from autopsy & specimens
- 51. Photograph
- 52. Photograph of vehicle
- 53. Photograph of vehicle
- 54. Photograph of vehicle
- 55. Photograph of vehicle
- 56. Photograph of master bedroom
- 57. Photograph of dresser drawer
- 58. Photograph of bedroom
- 59. Photograph of shotgun under mattress
- 60. Apartment Lease Agreement

This 4th day of February, 2011Page 3 of 7

Williamsburg County Clerk of Court

By: Anthony J. Williams

Receipt for Exhibits

Case # 2009-05-45-0180Judge Clifton NewmanPlaintiff The StatePlt's Atty Kimberly FairDefendant Kelvin Bowen Jr.Def's Atty Billy Jenkins
Amanda ShulerDate Trial Started Mon. Jan 31, 2011

Date Trial Ended _____

Received of Melissa R. Singletary, Court Reporter for the above case, these exhibits:

1. Suntrust Bank
2. Copy Driver's License
3. Ed's Ltr to Kelvin Bowen dated 4-13-09
4. Driver's License Reinstatement Notice
5. ^{Cassette} Tape of Ronald Mack 5-29-09
6. Tape of Rawanda Mack Allen 5-29-09
7. Photograph of Kelvin Bowen
8. Miranda Warning of Ronald Mack 5-29-09
9. Photograph
10. Photograph
11. Photograph of Shotgun
12. Photograph of Shotgun
13. Photograph of Close up image of Shotgun
14. Photograph of nightstand
15. Photograph of Close up of a millimeter rounds
16. Photograph of Shotgun shells
17. Photograph of Shotgun shell loaded in shotgun
18. Photograph of GPS
19. Box w/ shotgun
20. Lightbill

This 4th day of February, 2011Page 4 of 7

Williamsburg County Clerk of Court

By: Christopher J. Williams

Receipt for ExhibitsCase # 2009-65-45-0180Judge Clifton NewmanPlaintiff The StatePlt's Atty Kimberly BarrDefendant Kelvin Bowen Jr.Def's Atty Amorris ShulerDate Trial Started Mon Jan 31, 2011

Date Trial Ended _____

Received of Melissa R. Singleton, Court Reporter for the above case, these exhibits:

- 10 81. Class schedule
- 10 82. Composition
- 10 83. Class schedule
- 10 84. Unfired 12 gauge shotshells from magazine of shotgun
- 10 85. 1 Phone - Photo of Ronald Mack
- 10 86. Photos
- 10 87. Photos
- 10 88. Photos
- 10 89. Photo
- 10 90. Photo
- 10 91. Photos
- 10 92. Photo
- 10 93. Photo
- 10 94. Photo
- 10 95. Photo
- 10 96. Photo
- 10 97. Photo
- 10 98. OT 102
- 10 99. Photo
- 10 100. Photo

This 4th day of February, 20 11Page 5 of 7

Williamsburg County Clerk of Court

By: Arthur F. Williams

Receipt for ExhibitsCase # 2009-GS-45-0180Judge Clifton NewmanPlaintiff The StatePlt's Atty Kimberly BarrDefendant Kelvin Bowen Jr.Def's Atty Wendell Johnson
Amanda ShulerDate Trial Started Mon, Jan 31, 2011

Date Trial Ended _____

Received of Melissa A. Singletary, Court Reporter for the above case, these exhibits:

- 100 Photo
- 101 Photo
- 102 Photo
- 103. Photo of victim's head
- 104. Photo
- 105. Photo
- 106. Photo
- 107. Photo
- 108. Photo
- 109. Photo
- 110. Photo
- 111. Photo
- 112. Document - ~~for~~ Inmate Property Release Form
- 13. _____
- 14. _____
- 15. _____
- 16. _____
- 17. _____
- 18. _____
- 19. _____
- 20. _____

This 4th day of February, 20 11Page 6 of 7

Williamsburg County Clerk of Court

By: Arthur J. Williams

Receipt for ExhibitsCase # 2009 GS-45-0180Judge Clifton NewmanPlaintiff The statePlt's Atty Kimberly BarrDefendant Kelvin Bowen, Jr.Def's Atty William B. J. Johnson
Amanda ShulerDate Trial Started Mon., Jan. 31, 2011

Date Trial Ended _____

Received of Melissa B. Singletary, Court Reporter for the above case, these exhibits:ID Δ 1. Statement by Ronald MackID Δ 2. Statement of Antonio McClaryID Δ 3. Anne Arunder Police Department Pre InventoryID Δ 4. Mtn w/ exhibitsID Δ 5. Order Granting Δ's Mtn to QuashID Δ 6. Photograph of 2 individualsID Δ 7. PhotographID Δ 8. PhotographID Δ 9. PhotographID Δ 10. PhotographID Δ 11. PhotographID Δ 12. Photograph

13. _____

14. _____

CT #1 - State's Responses to Petitioner's Rule 5 and15. Brady Motions for DisclosureCT #2 - note from jury

16. _____

17. _____

18. _____

19. _____

20. _____

This 4th day of February, 2011Page 7 of 7

Williamsburg County Clerk of Court

By: Christina J. Williams

Receipt for ExhibitsCase # 2009-65-45-0180Judge Clifton NewmanPlaintiff StatePlt's Atty Kim BARR
W. Jenkins (Billing)Defendant Kelvin Bowen, Jr.Def's Atty Amanda ShulerDate Trial Started Monday, Jan. 31, 2011

Date Trial Ended _____

Received of Melissa R. Singletary, Court Reporter for the above case, these exhibits:

- DA's 1. 1 pg. investigation page & interview by Lail
 DA's 2. Anne Arundel County Police Tow Vehicle Inventory Report
 DA's 3. Photo of Kelvin Bowen Jr.

4. _____
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This 4th day of February, 2011Page 1 of 1

Williamsburg County Clerk of Court

By: Carlynn A. Williams

HEARING

14

1 The Court: Alright, ladies and gentlemen, the
2 panel is now qualified. I want to welcome you here to this
3 weeks' term of general sessions court here in Williamsburg
4 county. General sessions court is also referred to, by
5 some, as criminal court. A court where the cases are heard
6 called by the Solicitor's office. The Solicitor for the
7 third circuit is Ernest "Chip" Finney. I understand their
8 Assistant Solicitor is Kimberly Barr. Mr. Willie
9 Jenkinson, is the Defense attorney here and Mr. LeGrand
10 Carraway, Public Defender and other folks are around,
11 including our Representative Ronnie Sabb, Cesar McKnight,
12 Darwin Harvin, also the Assistant Solicitor. We're going
13 to select a jury in a few minutes. In the first case
14 that's called for trial this week, we're going to take a
15 break of about ten minutes or so before we do the jury
16 selection in the first case. There are restrooms here,
17 located in the back area, for those of you who might need
18 to use them. We'll take a break, say fifteen minutes, and
19 we'll need you back in your seats at four o'clock for jury
20 selections in the first case. Thank you very much.

21 The Court: Okay, Mr. Solicitor, you may call your first
22 case.

23 Ms. Barr: If it please the Court Judge, at this time the
24 State calls indictment number 2009-GS-45-180. It's
25 the State versus Kelvin Bowen. Your Honor this is an

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

15

1 indictment handed down by the Grand Jury on July the
2 second, 2009. The Defendant is charged with murder,
3 burglary in the first degree, possession of a weapon
4 during the commission of a violent crime and criminal
5 conspiracy. He is being represented at trial by Mr.
6 Billy Jenkinson and the State is ready for trial.

7 The Court: Alright, ladies and gentlemen, the State has
8 called for trial the case of the State versus Kelvin
9 Michael Bowen, Jr. This is an indictment returned by
10 the Grand jury of Williamsburg county, charging him
11 with murder, burglary first degree, criminal
12 conspiracy and possession of a weapon during the
13 commission of a violent crime. He has pled not guilty
14 to this indictment, the charges in this indictment.
15 He's presumed to be not guilty of the charges
16 contained in the indictment. He cannot be found
17 guilty of any charge unless the State presents
18 evidence which convinces a jury of his guilt, beyond
19 a reasonable doubt and that's the purpose of the
20 trial. Mr. Kelvin Michael Bowen, Jr. if you will .
21 and face the jury panel and his counsel as well, and
22 counsel if you'll introduce yourselves.

23 Mr. Jenkinson: I'm Billy Jenkinson. I practice law across
24 the street at Jenkinson and Jarrett. Here with me is
25 Mandy Shuler, also practicing with us in representing

HEARING

16

1 Mr. Bowen.

2 The Court: Alright, thank you and the State is
3 represented through the Solicitor's office. If you'll
4 stand as well Ms. Barr, and introduce yourself as well
5 as anyone else you'd like to introduce.

6 Ms. Barr: Thank you Judge. Please the Court. Good
7 afternoon ladies and gentlemen. My name is Kimberly
8 Barr. I'm going to be prosecuting this particular
9 case, along with the assistance of one of our other
10 assistant solicitors, Mr. Darwin Harvin, who's
11 standing over to my left. In addition, to being
12 prosecutors, I also have a private practice law firm.
13 I practice with the law office of Ronnie Sabb, in
14 addition to Mr. Harvin, myself and Mr. Sabb, and Helen
15 McFadden.

16 The Court: Ladies and gentlemen, if any of you are a
17 friend, a relative, an associate of any of the lawyers
18 in the trial of this case, or anyone who works for
19 them or with them, please stand. Alright, we know Ms.
20 Callahan works with Mr. Jenkinson, so we know her
21 information and Ms. Harvin.

22 The Court: You're related to? And what relation are you
23 to him?

24 Ms. Harvin: Cousins.

25 The Court: First, second, fifth, sixth?

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

17

1 Ms. Harvin: I'm not sure, but we're related.
2 The Court: Okay, and would that fact effect your
3 ability to be fair and impartial juror?
4 Ms. Harvin: It won't.
5 The Court: Thank you. Yes ma'am?
6 Juror: I work at a law firm and we have several cases...
7 The Court: You work for which law firm again?
8 A: Harvin and Belk.
9 The Court: And would that fact effect your ability to
10 be a fair and impartial juror?
11 A: No.
12 The Court: And ladies and gentlemen, incidents alleged
13 in the indictment involving the death of one Kenya
14 Dorsey occurred on or about April 5, 2009 and what
15 area in the county Solicitor?
16 Ms. Barr: Your Honor, here in Kingstree on
17 The Court: On here in Kingstree.
18 Mr. Jenkinson: Your Honor, that is about five miles, I
19 think, East of Kingstree, on 261, if I'm not mistaken.
20 The Court: Five miles East of Kingstree on 261,
21 . If you know anything about this case or have
22 heard anything about this case please stand. Alright,
23 tell us who you are ma'am?
24 Juror 123: Juror 123. I don't know the young man, but
25 I know something about the case.

HEARING

18

1 The Court: Alright, and the fact that you may have
2 heard something about this case, or you know something
3 about this case, would that effect your ability to be
4 a fair and impartial juror?

5 A: No.

6 The Court: And your name again is?

7 A: Hope Wilson.

8 The Court: Alright, thank you. Yes ma'am?

9 Juror: I think we're related, but I'm not sure though.

10 The Court: And what is your name?

11 A: Shehera Presley.

12 The Court: Shehera Presley. And if you are related, how
13 close relation would you be?

14 A: I don't know Your Honor.

15 The Court: You don't know, alright. Would the fact
16 that you may be related to K.D., would that
17 fact effect your ability to be a fair and impartial
18 juror?

19 A: No sir.

20 The Court: Alright thank you Ms. Presley. Now I have
21 a number of questions to ask you and I ask that you
22 please remember ladies and gentlemen, if any question
23 applies to you, you must respond. I know it's fairly
24 simple to just sit there and say nothing, but the law
25 requires that if a question applies to you, you must

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

19

1 stand, you must respond and give us the information.
2 The purpose of the information is for the lawyers to
3 have the information in selecting a jury and the
4 information must be disclosed before you are put on a
5 jury, not after you are put on a jury. So the time to
6 respond is now if any question applies to you. Now
7 the following people may testify in this case and if
8* any of those folks are here, I need you to stand so
9 that the jury can see you. Deputy Johnny Jenkins of
10 the Sheriff's office, Investigator Willie Brown,
11 Investigator Debra Collins, Sergeant Just Whack,
12 Investigator Jean Rail, Lt. Jeffrey Scott, Susan
13 Cromer with SLED, Tyler Simmons with SLED, Vicky
14 Hallman with SLED, Scott Hardy with SLED, Dr. Ellen c.
15 Riemer, with the medical university, Investigator
16 Jodie Cooper with the Lake City Police Department,
17 officer Heather Robinson from Anne Arundel County
18 Police Department in Maryland, Detective Michael
19 Regan, Detective Susan Cromer, Detective Michael
20 Collier, Anne Arundel County Police department, Lt.
21 Darren Roach, Cpl. William Davis, Cpl. Kelly Harding,
22 Cpl. John Short and Investigator Katie Ladue, all from
23 Anne Arundel Couty Police Department. The coroner
24 Harrison McKnight, Lynette Bradshaw, Heyward Bradshaw,
25* Kendrick Mitchum, Jason Grant, Kendrick Mitchum stand

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

20

1 again. Thank you, Jason Grant, Ronald McGee, Dontrey
2 Barr, Quadir Wilson, Monica Barr, Dymon Christian,
3 Ryan Antonio Burgess, Ronald Mack, Tawanda Mack Allen,
4 Antonio McClary. Detective Steven Luersen from Anne
5 Arundel County. Not Susan, but Steven. Also, Tiffany
6 Bowen, Kelvin Bowen, III, Scott Palmer, LeGrand
7 Carraway, Andrea Kelly. Ladies and gentlemen if you
8 know any of those witnesses, if you're a friend, if
9 you're a friend, an associate, relative, of any of
10 those people who may testify, please stand. Alright if
11 you know any of those people who may testify please
12 stand. Alright, yes sir?

13 Juror #38: Mr. Cooper. Ronald McGee is second cousin.

14 The Court: Second cousin to?

15 Juror # 38: My second cousin.

16 The Court: Who? Ronald is your second cousin? And your
17 name is?

18 A: Otis Cooper.

19 The Court: Otis Cooper. The fact that your cousin may
20 testify, does that effect your ability to be fair and
21 impartial?

22 A: No sir.

23 The Court: Thank you sir. Yes ma'am?

24 A: Harris McKnight is my mother's cousin.

25 The Court: And your name is?

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

21

1 Juror #117: Patricia McGill.

2 The Court: Alright Ms. McGill and the fact that Mr.
3 McKnight may testify, does that effect your ability to
4 be fair and impartial?

5 A: No it does not.

6 The Court: Thank you.

7 Juror #143: Rosa Lee Pope. Debra Collins.

8 The Court: She is what?

9 Juror #143: Deborah Collins.

10 The Court: Alright what about her?

11 Juror # 143: Friends.

12 The Court: Friends with them. Would that fact effect
13 your ability to be fair and impartial?

14 A: Yes.

15 The Court: It would? Would the fact that you're
16 friends with them, would that convince you from being
17 fair and impartial?

18 A: No.

19 The Court: Thank you. Yes sir?

20 Juror #160: John Sauls. Ernest McGee was married to my
21 cousin.

22 The Court: Alright and would that fact effect your
23 ability to be fair and impartial?

24 A: No.

25 The Court: Thank you. Yes sir?

HEARING

22

1 Juror #55: Terenzo M. Durant.

2 The Court: Alright and what's your name?

3 Juror #55: Terenzo M. Durant.

4 The Court: Durant?

5 A: Yes sir.

6 Juror #55: I know Dymon Christian.

7 The Court: Okay and would that effect your ability to
8 be fair and impartial?

9 A: No sir.

10 The Court: Alright, thank you. Yes ma'am?

11 Juror #148: Shahara Pressley. Dorsey is my first cousin.

12* The Court: He's your first cousin?

13 A: Yes sir.

14 The Court: Alright and would that effect your ability
15 to be fair and impartial?

16 A: No.

17 The Court: Alright thank you.

18 Ms. Williams: Your name? What was that juror's name?

19 The Court: What was your name one more time?

20 A: Me?

21 The Court: Yes.

22 A: Shahara Pressley.

23 The Court: And ladies and gentlemen as I stated
24 earlier, this case involves the murder of Kenya Dorsey
25 who lived at , about five miles East

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

23

1 of Kingstree on highway, on Hemingway Highway, 261.
2 The murder took place on April 4, 2009 and having
3 heard some additional information now about this case,
4 and the parties involved, if you have heard anything
5 about this case, again, please stand. If you've heard
6 anything about this case again, please stand, even if
7 you stood before. Okay, Ms. Presley, that's good.
8* Okay, thank you. If you are a neighbor of this man,
9 of K.D. 's family including his mother, if so,
10 please stand. We have Dontrey Barr, called his name
11 as a witness, he's seventeen and his mother is Melissa
12 Barr who lives on . If you know that
13 family, please stand. Claudia McClary lives on
14 , as well as Dontrey Barr, Quadir Wilson. If
15 you know any of their families, please stand. If you
16 are close friends or acquaintance of Dymon Christian
17 of Hemingway, Darren Washington, Denzell Wedgeworth,
18 please stand. Next, yes sir?

19 Juror #55: I'm close friends with Dymon Christian.

20 The Court: Allright. Yes, sir.

21 Juror #68: Yes sir.

22 The Court: All right thank you.

23 Juror #68: I know Denzell Wedgeworth and Dontrey Barr ...

24 The Court: Alright and your name again please?

25 Juror #68: Rex Frederick.

HEARING

24

1 The Court: Would that effect your ability to be fair and
2 impartial?

3 Juror #68: No it wouldn't.

4 The Court: Allright. Now, ladies and gentlemen, if any
5 member of your immediate family or any close friend of
6 your's has ever been the victim of a violent crime, I need
7 you to stand. Violent crime being rape, robbery, murder,
8 burglary. If you or any member of your immediate family
9 has ever been a victim of any of those crimes, please
10 stand. Yes ma'am?

11 Juror #53: Patricia Dunmore. Last year my husband he was
12 murdered.

13 The Court: Alright, your husband, okay thank you ma'am.
14 And ma'am, do you think that will effect your ability to be
15 fair and impartial in this case?

16 Juror #53: I don't think it will.

17 The Court: Alright, yes ma'am?

18 Juror #62: Brenda Flowers. My uncle was murdered.

19 The Court: Your uncle? And your name please?

20 Juror #62. Brenda Flowers.

21 The Court: Alright Ms. Flowers, would that prevent you
22 from being a fair and impartial juror?

23 Juror #62: I'm not sure.

24 The Court: And ma'am would you be able to decide this
25 case based on the evidence in this case and this case

HEARING

25

1 alone?

2 Juror #62: I don't think that I could.

3 The Court: Alright, we will not consider Ms. Flowers

4 for selection of this case.

5 Ms. Williams: She's number sixty-two.

6 The Court: Yes ma'am? You may be seated Ms. Flowers.

7 The Court: And what's your name please?

8+ Juror #9: Sandra Baylor. I was a kidnap victim.

9 The Court: And Ms. Baylor would that prevent you from

10 being a fair and impartial juror in this case?

11 Juror #9: No.

12 The Court: Thank you and Ms. Presely?

13 Juror #148: Shahara Pressley. I had a car stolen.

14 The Court: Say it louder?

15 Juror #148: I had a car stolen.

16 The Court: Your car was stolen? Alright that's not

17 classified as a violent crime, but would that prevent

18 you from being a fair and impartial juror?

19 Juror #148: No.

20 The Court: Alright thank you.

21 Court Reporter: I missed her response. Did she shake

22 her head yes or no? I missed it.

23 The Court: Ms. Pressley, you said that you can be fair

24 and impartial?

25* Juror #148: Yes.

HEARING

26

1 The Court: Alright.

2 Ms. Williams: And your first name?

3 Juror #148: Shahara.

4 The Court: If any member of the jury panel or any
5 member of your immediate family has ever worked in law
6 enforcement please stand. Yes ma'am?

7 Juror #75: Carlene Gauler. My husband works for the
8 Department of Justice.

9 The Court: Alright thank you.

10 Ms. Canty: What number was she? I'm sorry.

11 Ms. Williams: Seventy-five.

12 The Court: Ladies and gentlemen as I stated to you
13 earlier the Defendant is presumed to be not guilty and
14 cannot be convicted of any crime unless the State
15 proves guilt beyond a reasonable doubt and the State
16 has the burden of proving guilt beyond a reasonable
17 doubt. If any of you cannot follow that principle of
18 law and accept and apply that principle of law, please
19 stand. Other than Ms. Gilmore, has any of you been
20 involved as a victim, a witness, of a crime that was
21 prosecuted by the Solicitor's office in this circuit
22 or any place else in South Carolina? If so, please
23 stand. No one's standing. If you know of any reason
24 why you can't give both the State and the Defendant an
25 impartial trial, please let me know at this time by

HEARING

27

1 standing. If any member of the jury panel has an
2 opinion, a prejudice, not that you have an opinion, if
3 you have a prejudice involving a person who has been
4 unfaithful to his or her spouse, if you would be
5 prejudice against a person accused of a crime, if
6 that person was unfaithful to their spouse, if so,
7 please stand. No one's standing. Ladies and
8 gentlemen, this trial is expected to last probably
9 most of this week, if not the entire week. I know
10 I've excused some of you from having to come on
11 Wednesday for doctor's appointments and certain other
12 days, if I've already told you that you will not have
13 to come on those days, that means you will not be on
14 the list of people who will be called for selection in
15 this case, but if you know of any reason why you
16 cannot or should not be selected as a juror in this
17 case, based on anything going on in your life, please
18 stand. If you did not respond to any question that I
19 asked because I was going to fast, because it didn't
20 hit you til later, if you didn't respond to any
21 question that we've asked you up til this point in
22 time, since you got here today at two thirty, that you
23 wish to now respond to, please stand. Yes sir?

24 Juror #68: Rex Fredrick. I do a jail ministry at the
25 Williamsburg county detention center. I just go in

HEARING

28

1 and teach a Bible study, so I see some inmates, but I
2 don't see all of the inmates.

3 The Court: Alright, alright will that prevent you from
4 being a fair and impartial juror Mr. Frederick isn't
5 it?

6 Juror #68: No sir.

7 The Court: Alright, anyone else? Alright anything the
8 State or Defense would like me to ask?

9 Ms. Barr: Nothing on behalf of the State Judge, thank you.

10 Mr. Jenkinson: May we approach Your Honor?

11 The Court: Yes sir. If any member of the jury panel
12* attended the funeral of K.D. , please stand.
13 If you attended K.D. 's funeral please stand. Okay,
14 no one stood. Alright, ladies and gentlemen, give the
15 clerk your attention and we will proceed.

16 Ms. Williams: Okay, just a minute. Members of the petit
17 jury, as I call your name and number please come
18 forward, please come to the front of my desk, turn
19 around, face counsel and please bring your personal
20 belongings with you. Juror number one ten, William T.
21 McCray. Turn around there sir and await further
22 instructions.

23 Ms. Barr: Please present Mr. McCray.

24 Mr. Jenkinson: Please swear Mr. McCray.

25 Ms. Williams: Please have a seat to my right Mr. McCray in

HEARING

29

1 the petit jury box. Number one sixty-four, Aaron
2 Shaw.
3 Ms. Barr: Please present Mr. Shaw.
4 Mr. Jenkinson: Please excuse Mr. Shaw from this trial.
5 Ms. Williams: You may return to your seat Mr. Shaw. Juror
6 number fifty-two, Lewis Dukes.
7 Ms. Barr: Please present Mr. Dukes.
8 Mr. Jenkinson: Please swear Mr. Dukes.
9 Ms. Williams: Have a seat in the petit jury box Mr. Dukes.
10 Number one forty-eight, Shehara Presley.
11 Ms. Barr: Please present Ms. Presley.
12 Mr. Jenkinson: Object for cause Your Honor.
13 The Court: We'll excuse Ms. Presley for cause in this
14 case.
15 Ms. Williams: You're excused Ms. Presley. Number fifty-
16 five. Torenzo Durant.
17 Ms. Barr: Please present Mr. Durant.
18 Mr. Jenkinson: Please excuse Mr. Durant.
19 Ms. Williams: You're excused Mr. Durant. Juror number
20 seven, Anthony Bailor.
21 Ms. Barr: Please present Mr. Bailor.
22 Mr. Jenkinson: Please excuse Mr. Bailor from the jury of
23 this trial.
24 Ms. Williams: You're excused Mr. Bailor. Juror number
25 twelve, Matthew Blanding.

HEARING

30

1 Ms. Barr: Please present Mr. Blanding.

2 Mr. Jenkinson: Please swear Mr. Blanding.

3 Ms. Williams: Have a seat in the petit jury box Mr.
4 Blanding. Juror number one thirty-two, Jessica
5 Nesbitt, Nesbitt.

6 Ms. Barr: Please present Ms. Nesbitt.

7 Mr. Jenkinson: Please excuse Ms. Nesbitt from the trial of
8 this case.

9 Ms. Williams: You're excused Ms. Nesbitt. Juror number
10 thirty-five, Debra Cooper.

11 Ms. Barr: Please present Ms. Cooper.

12 Mr. Jenkinson: Swear Ms. Cooper.

13 Ms. Williams: I'm sorry.

14 The Court: Swear her.

15 Ms. Williams: Have a seat in the petit jury box Ms.
16 Cooper. Number one forty-four, William Poston.

17 Ms. Barr: Please present Mr. Poston.

18 Mr. Jenkinson: Swear Mr. Poston.

19 Ms. Williams: Have a seat in the petit jury box Mr.
20 Poston. Juror number ninety-four Bedelia Jenerette.

21 Ms. Barr: Please present Ms. Jenerette.

22 Mr. Jenkinson: Swear Ms. Jenerette.

23 Ms. Williams: Have a seat in the petit jury box Ms.
24 Jenerette. Juror number eighty-two, Matthew Green.

25 Ms. Barr: Please present Mr. Green.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

31

1 Mr. Jenkinson: Swear Mr. Green.
2 Ms. Williams: Have a seat in the petit jury box. Juror
3 number 203, Rhodell Shaw.
4 Ms. Barr: Is it 203 or 202?
5 Ms. Williams: 203.
6 Ms. Barr: Rhodell Shaw. I have 203.
7 Ms. Williams: Oh I'm sorry. 203. You have 2, okay, she
8 has 203 on her list, it's 203.
9 Ms. Barr: Please present the juror.
10 Mr. Jenkinson: Please swear Ms. Shaw.
11 Ms. Williams: Have a seat in the petit jury box. Number
12 ninety-eight, Tracy Callahan.
13 Ms. Barr: Please present Ms. Callahan.
14 Mr. Jenkinson: Please excuse Ms. Callahan.
15 Ms. Williams: You're excused Ms. Callahan. Number twenty-
16 six, Russell Cannon.
17 Ms. Barr: Please present Mr. Cannon.
18 Mr. Jenkinson: Please excuse Mr. Cannon from this trial.
19 Ms. Williams: You're excused. Number eight, Helen Baylor.
20 Ms. Barr: Please present Ms. Baylor.
21 Mr. Jenkinson: Please swear Ms. Baylor.
22 Ms. Williams: Have a seat in the petit jury box. Juror
23 number seventy-five, Carlene Gauler.
24 Ms. Barr: Please present Ms. Gauler.
25 Mr. Jenkinson: Please excuse Ms. Gauler from this trial.

HEARING

32

1 Ms. Williams: You're excused. Juror number one seventy-
2 two, Kenneth Strong.

3 Ms. Barr: Please present Mr. Strong.

4 Mr. Jenkinson: Excuse Mr. Strong from this trial.

5 Ms. Williams: You're excused Mr. Strong. Juror number
6 forty-four, Eddie Davis.

7 Ms. Barr: Please present Mr. Davis.

8 Mr. Jenkinson: Please excuse Mr. Davis.

9 Ms. Williams: You're excused Mr. Davis from this trial.
10 Juror number one fifty-nine, Lauriell Royster.

11 Ms. Barr: Please present Mr. Royster.

12 Mr. Jenkinson: Please swear Mr. Royster.

13 Ms. Williams: Have a seat in the petit jury box Mr.
14 Royster. Juror number one fifty-four, Pearlie C.
15 Robinson.

16 Ms. Barr: Please present Ms. Robinson.

17 Mr. Jenkinson: Swear Ms. Robinson.

18 Ms. Williams: Have a seat in the petit jury box. Juror
19 number eighty-five, Annette Harvin.

20 Ms. Barr: I'm sorry what was the jury number?

21 Ms. Williams: Eighty-five.

22 Ms. Barr: Please present Ms. Harvin.

23 Mr. Jenkinson: Please excuse Ms. Harvin from this trial.

24 Ms. Williams: You're excused Ms. Harvin. Juror number
25 thirty-eight, Moses Cooper.

HEARING

33

1 Ms. Barr: Please present Mr. Cooper.
2 Mr. Jenkinson: Please strike for cause.
3 Mr. Barr: Your Honor, may we approach?
4 The Court: Yes. What says the State.
5 Ms. Barr: Present Mr. Cooper.
6 The Court: And the defense?
7 Mr. Jenkinson: Subject to my objection.
8 The Court: Alright.
9 Ms. Williams: Have a seat in the petit jury box Mr.
10 Cooper. The Court: Select two alternates.
11 Ms. Williams: Juror number one fifty-two, Regina Ray.
12 Ms. Barr: Please present Ms. Ray.
13 Mr. Jenkinson: Please excuse Ms. Ray from this trial.
14 Ms. Williams: You're excused. Juror number nine, Sandra
15 Baylor.
16 Ms. Barr: Please present Ms. Baylor.
17 Mr. Jenkinson: Please excuse Ms. Baylor.
18 Ms. Williams: Juror number one eighty-nine, Cynthia West.
19 Ms. Barr: Please present Ms. West.
20 Mr. Jenkinson: Please swear Ms. West.
21 Ms. Williams: Have a seat in the petit jury box. Juror
22 one seventy-nine, Carla Vereen.
23 Ms. Barr: Please present Ms. Vereen.
24 Mr. Jenkinson: Swear this juror.
25 Ms. Williams: Have a seat in the petit jury box.

HEARING

34

1 The Court: Are there any matters of law regarding the
2 jury selection?

3 Ms. Barr: Yes sir, Your Honor.

4 The Court: Mr. Jenkinson, matters of law regarding jury
5 selection?

6 Mr. Jenkinson: No sir.

7 The Court: Okay, Ms. Barr if you would come forward.

8 Ms. Barr: Yes sir.

9 The Court: I need you to go to the jury room please.
10 Do not discuss this case please. You can talk about
11 the weather or anything else, but not this case.
12 Please head this way to the jury room.

13 (Jury break was taken)

14 The Court: Ladies and gentlemen, those of you who were
15 not selected, I need you to go that way. If you all
16 will go and huddle up on the front porch. Right
17 outside there. We'll have you come back in as soon as
18 we can. Please do not discuss this.

19 (Panel excused from the courtroom)

20 The Court: Ms. Barr?

21 Ms. Barr: Your Honor, we'd make a motion pursuant to Batson
22 vs. Kentucky and in support of our motion Judge, we
23 would submit that the Defense has exercised its
24 peremptory challenge in a way such that it has
25 violated the rights of white females to serve on the

HEARING

35

1 jury. Judge, the recorded motion shows that the
2 Defense counsel struck juror number one thirty-two, a
3 white female; juror one ninety-eight, white female;
4 juror number seventy-five, white female; juror number
5 one fifty-two, a white female; juror number nine, a
6 white female. Judge, look at the first twelve jurors
7 who are seated on this panel. Your Honor, I believe
8 only one white female juror actually was seated by the
9 Defense. The only reason the two alternates who are
10 juror numbers one eighty-nine and one seventy-nine,
11 both white females, actually made it is because the
12 Defense ran out of strikes on the alternates. And so
13 Judge, we would submit that those jurors who were
14 struck are part of a protected class of individuals,
15 based on their race and their gender and we would ask
16 that the Defense provide race and gender neutral
17 reasons as to why they exercised the strikes the way
18 and in the manner that they did.

19 The Court: All right, under the case of J.E.B versus
20 Alabama and State vs. Hagler and State vs. Casey, the
21 14th Amendment of the Constitution of the United
22 States bars discrimination on a gender based
23 discrimination under the exercise of jury strikes. It
24 also requires that the Judge hold a Batson hearing
25 when members of a race gender group was struck and the

HEARING

36

1 opposing parties request a hearing. It also requires
2 that the opponent of the strike present a race gender
3^a neutral explanation for strikes. I find that it is
4 required in this case, based on the strikes exercised,
5 a hearing is required. What says the Defense? Mr.
6 Jenkinson?

7 Mr. Jenkinson: So I have the numbers correctly and my
8 understanding that twelve jurors selected, the State
9 is raising the issue as to white female number
10 seventy-five.

11 The Court: The State has raised the issue as to all
12 white female jurors struck.

13 Mr. Jenkinson: And I'm to understand the only one I wrote
14 down was seventy-five and one fifty-two and nine?

15 Ms. Barr: One thirty-two, ninety-eight, seventy-five, one
16 fifty-two and ...

17 Mr. Jenkinson: Go slow, go slow. I've got to write them
18 down.

19 Ms. Barr: One thirty-two ...

20 Mr. Jenkinson: Cause I didn't even note whether they were
21 white or whatever and I need a little help here. One
22 thirty-two?

23 Ms. Barr: Yes, it would have been apparent when they came
24 up. One thirty-two, ninety-eight, seventy-five, one
25 fifty-two and nine.

HEARING

37

1 Mr. Jenkinson: One fifty-two and nine were alternates.
2 Ms. Barr: I'm sorry?
3 Mr. Jenkinson: One fifty-two and nine were alternates.
4 Ms. Barr: Yes.
5 Mr. Jenkinson: Alright. As to one thirty-two I struck or we
6 struck one thirty-two because the spouse of one
7 thirty-two was an employee of ours at one time and I
8 fired him. He worked in our office. I can give more
9 fact and details as to why I fired him, but that would
10 be the basis. And I would say I fired him because he
11 has a drug problem. That was an issue and it was not
12 a good situation and that's the reason why we struck
13 her. Alright, number ninety-eight. Who is one
14 ninety-eight, is actually my personal banker and I
15 felt like it would create a situation with our
16 relationship and loans that are going on with my
17 family and I'm involved, it would create an awkward
18 situation for her and for me to be on the jury panel
19 and I just felt very uncomfortable. Frankly, knowing
20 my son was going to call her this week for a loan and
21 I've borrowed money from her and in fact I do our
22 financial statement right there and I didn't want to
23 put her in a situation where and put me in a situation
24 where this jury verdict putting stress on that
25 relationship personally, would create a problem

HEARING

38

1 because of our relationship.

2 The Court: Alright.

3* Mr. Jenkinson: Plus, I --- well, that's the primary reason
4 Your Honor. Plus our office represents that bank and
5 it's just, you got too much going on there and we felt
6 uncomfortable.

7 The Court: Alright.

8 Mr. Jenkinson: She is a Vice President.

9 The Court: Seventy-five.

10 Mr. Jenkinson: Number seventy-five her husband worked for
11 the prison and because of that we struck her. Because
12 of her law enforcement, her late husband's background
13 and she travels around the country working. She's not
14 employed, but it's more of a family prison situation,
15 we did not feel comfortable putting her on.

16 The Court: Alright,

17 Mr. Jenkinson: That was not an easy strike by the way.

18 The Court: Number one fifty-two?

19 Mr. Jenkinson: On the, correction, we, based on our long
20* practice here, the family background there, trouble is
21 problematic to us because of the problems they have
22 had in the past. We couldn't tell right off whether
23 she's involved in our law firm, but we saw the family
24 name and we recognized it and who she is, we felt
25 uncomfortable putting her on a jury. Your Honor,

HEARING

39

1 simply put, our note was too rough a background, too
2 many problems in the background and that was the
3 reason we struck her.

4 The Court: What kind of problems are you talking about?

5 Mr. Jenkinson: Law enforcement type problems, just issues,
6 with rough people that had a little background and we
7 just felt uncomfortable because of it. Not knowing
8 what kind of juror she would be other than where she
9 came from, we just felt uncomfortable and that was our
10 reason for the strike.

11 The Court: Okay. Is that it?

12 Mr. Jenkinson: That's it; that's all on her, yes sir.

13 The Court: Is that it for the ones you're challenging
14 Ms. Barr?

15 Ms. Barr: Judge number nine was struck.

16 The Court: Number nine?

17 Ms. Barr: Yes, yes sir.

18 The Court: Okay. The last juror struck by Mr.
19 Jenkinson was who, Ms. Barr?

20 Ms. Barr: Number nine, Your Honor.

21 Mr. Jenkinson: I spoke with one of my former legal
22 assistants in my office that knows her very well and
23 I asked her if this juror could be fair and impartial
24 in this type case and the answer was no, matter of
25 fact, we circled the answer she would not be fair and

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

41

1 struck her because of her family background, he was
2 uncomfortable with that, didn't really elaborate on
3 what he meant by that. He said something about her
4 family, not her, had some problems with law
5 enforcement and we're not even sure if it's this
6 particular juror. He said that he recognized the
7 family name. That very well may not even be that
8 particular juror's family that he's talking about and
9 he advanced his reason about having problems with law
10 enforcement, Judge, you can't just have a blanket
11 assertion. I struck this person because this person is
12 a Democrat or I struck this person because he was
13 conservative; that's insufficient to surviving that
14 challenge and we would submit that the reasons given
15 by counsel are simply a pretext and Judge, I would
16 also have the same remarks as it relates to juror
17 number nine. Based on his juror research, somebody
18 said no. Judge I would submit that, that is
19 insufficient when you look at all of the challenges
20 that he exercised as a whole. And Judge we would just
21 simply submit that mere conclusions about what you
22 think a person may be like is simply insufficient to
23 warrant the strike and we would ask it be, this
24 particular case, that we be allowed to re-pull the
25 jury.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

42

1 The Court: Alright, Mr. Jenkinson?

2 Mr. Jenkinson: Taking the fact that juror number nine said
3 no, obviously in these cases we have to rely upon
4 sources and people and information, because we know
5^a very, very few jurors and I relied upon a person,
6 again my former legal assistant as to this person and
7 again, the source of information provided to me was
8 simply no she could not be fair and impartial and I
9 would not put her on the jury and that was the only
10 basis we had and other than that, relying upon an
11 employee of my office who knew this person, well, as
12 a matter of fact and you would not want to put her on
13 a jury and that's the basis of our strike so that was
14 information we obtained. Any other than nine, that
15 was the only one?

16 The Court: Ms. Ray, family background.

17 Mr. Jenkinson: Yes and again, that's all I have other than
18 it was just the description given to me was rough
19 people, and again rely upon outside information..

20 The Court: Alright, once the State has identified the
21 protected class, then the burden shifts to the
22^a Defendant to establish race neutral reasons for the
23 strikes, the Court may consider the make up of the
24 jury in determining whether there's discriminatory
25 intent in the manner in which the jury is selected.

HEARING

43

1 The Court is required to examine the totality of the
2 facts and circumstances in the records surrounding the
3 strike. The Defendant is required to give a race
4 neutral reason. The reasons given does not have to be
5 plausible or reasonable, it simply must be a race
6 neutral explanation. The Defendant cannot seem to
7 give a pretextual reason for the strike, the Courts
8 have, in previous cases found some examples of valid
9 reasons, one of which is the acquaintance with one of
10 the Defendant's attorneys. The attorneys personal
11 knowledge of and relationship with the prospected
12 juror, the juror's attitude toward law enforcement,
13 including whether the juror would be pro law
14 enforcement, the same would exist if the juror is
15 perceived to be anti-law enforcement. The knowledge
16 of an association with the Defendant where counsel
17 indicates, will all be found to be race neutral
18 reasons. The reasons found to be invalid would be
19 when one of the Solicitor's said the juror shuck and
20 jive, were black juror's were patients of a doctor who
21 was a Defense witness where a white juror was also a
22 patient seated. The generalization of an entire
23 group, racial stereotypes and the most recent one was
24 counsel's uneasiness for a juror's deadlocks was found
25 not to be a reason. Based on the explanation given by

HEARING

44

1 Mr. Jenkinson, I find that he has presented race
2 neutral reasons for each of his strikes and the Batson
3 motion is denied. If you'll bring those jurors back
4 in.

5 Mr. Jenkinson: From a time perspective, Your Honor.

6 The Court: Yes? We're not through, but let me bring
7 those folks in here from the rain and the cold and cut them
8 lose. Alright ladies and gentlemen we had to tend to some
9 matters that had to be dealt with outside of your presence.
10 We wish you had a juror assembly room here in this
11 courthouse, but we do not. Maybe one day we'll get one,
12 but we've attended with that matter and we're through with
13* you all for this day and if you all will call after 6:00
14 tonight.

15 (Panel Excused 5:27)

16 The Court: Bring the Jury in.

17 (Jury enters court room 5:29 p.m.)

18 The Court: Alright ladies and gentlemen, you have been
19 selected to be the jury in the trial of this case and
20 we have run out of time and can't do anything else
21 today other than to get the jury selected. We're
22 going to need you back here at 9:15 tomorrow morning.
23 Anyone on this jury who cannot be on time, 9:15
24 tomorrow morning. So the time that you need to be
25 here, to leave home in enough time to be on time.

HEARING

45

1 Once you have been selected on a jury, it's very
2 important that you not have any contact with anyone
3 that may have something to do with this case. It
4 could include law enforcement officers, witnesses, or
5 anyone that may have anything to do with this case,
6 because you must decide the case sole, only based on
7 the evidence presented in the courtroom and also based
8 on the law as I will give you a lot of instructions
9 on. Also, it's important that you not engage in any
10 kind of outside research, investigation, Goggling,
11 social networking. Jurors are prohibited from
12 attempting to find out anything about a case, because
13 you must decide the case based on what's presented in
14 the courtroom and what each and every other juror has
15 also heard in the courtroom. Also, you're not, from
16 this point forward, allowed to discuss the case with
17* fellow jurors, with family members or with anyone
18 else. In addition, to all of that, when you report
19 for jury duty, you must come and go directly into the
20 jury room. That is, you cannot and should not in any
21 point in time come through the courtroom, mill around
22 in front of the courthouse, in back of the courthouse
23 or hallways. When you come, go straight into the jury
24 room. If you follow those instructions, everything
25* will be alright. We'll see you all tomorrow morning

HEARING

46

1 at 9:15.

2 (Jury exits courtroom for the evening at 5:32)

3 The Court: Before leaving for the day I want to place
4 on the record the sidebar conference concerning the
5 juror that Mr. Jenkinson wanted to strike for cause,
6 as well as the State's response as well as any other
7 information pertaining to that particular juror, juror
8 number 38.

9 Mr. Jenkinson: As to juror number thirty-eight, we ask that
10 he was struck for cause because in voir dire he responded
11 that he was a cousin to Mr. McGee, who is a witness. Well,
12 Mr. McGee is the father of Ronald Mack who is also a
13 witness, making him actually kin to two witnesses. Ronald
14 Mack is probably the lead witness for the State in this
15 case. He was a shooter, an admitted shooter of the deceased
16 in this case, he's been sentenced to forty years in prison.
17 This juror being related to him could have and may have
18 well underlying issues with his cousin being sentenced to
19 forty years and wanting to make sure that others may be
20 even implicated to get the same treatment as his family
21 relative. We just feel like given the closeness of those
22 circumstances, the violent nature of this crime and the
23 parties involved that it would be a situation where he
24 could not be fair and impartial. He may realize at some
25 point in the trial how serious involved his family members

HEARING

47

1 are and for that reason, we know how serious they are and
2 we just think he should be struck for cause for that
3 reason.

4 The Court: Alright, Ms. Barr?

5 Ms. Barr: Your Honor, Mr. Cooper stood up and inquired any
6 knowledge of any potential witnesses. The juror stood
7 up and said he knew and is related to Ronald McGee.
8 Ronald McGee was actually listed as a witness,
9 however, Ronald will be at hearing today, under
10 subpoena and I told him he was excused. He was
11 subpoenaed in the case against Tawanda Allen, as well
12 as Ronald Mack. Ronald Mack plead during the term of
13 court in which Tawanda Allen was tried and so what I
14 think what I simply did was re-did the witness list.
15 I excused him today, when I say him I mean Mr. McGee
16 and informed him and informed the Court that we do not
17 intend to call him as a witness in the trial of our
18 case. Judge, he did not respond to any inquiry saying
19 that he was related or knew Ronald Mack when deposed
20 by the Court and Judge even if he knew of his
21 relationship to Mr. McGee's son, that in and of itself
22 would not disqualify him as a juror in the case. The
23 Court asked very specific questions. I remember that
24 the last question that you asked was there any reason
25 whatsoever that you would not be a fair and impartial

HEARING

48

1 juror in this case and no one stood and so we would
2 submit that the juror obviously believed himself to be
3 --- that he could be fair and impartial during this
4 case and this is when he thought that his cousin
5 Ronald McGee was going to be a witness in the case and
6 so when he did not stand when asked whether there was
7 anything that would prevent him from rendering a fair
8 and reasonable verdict in the case, we would submit
9 that, that is enough evidence that would allow him to
10 serve if he was chosen.

11 The Court: Alright, anything else Mr. Jenkinson?

12 Mr. Jenkinson: No sir.

13 The Court: Alright. In the relationship of McGee and
14 Mack, Ronald Mack was not presented to that juror.
15 The juror was given the names and inquired as to
16 whether he knew any of those folks or he was a friend
17 or relative and he stood up only as to Mr. McGee. He
18 was not, and nor was there any request --- there was
19 a request is any panel member related by blood or
20 acquaintance to Ronald McGee who is the father of
21 Ronald Mack and that spurred him to stand. But he
22 never the less did not indicate the inability on his
23 part to be fair and impartial. Never the less we have
24 two alternate jurors and if at some point in time,
25 during the trial, there is a need to further the

HEARING

49

1* specific inquiry to that juror or if that juror gives
2 any indication, either one or the other, or both, then
3 we have alternate jurors. I find no basis to strike
4 him for cause based on the representations. Certainly
5 it appears that that juror came up after the Defense
6 had exercised all of its strikes including the strikes
7 complained of by the State and may be the Defense,
8 maybe should have saved one for that juror if they
9 didn't want him. But I find no cause to strike him
10 because the juror has the Constitutional right to
11 serve as well, particularly when a juror has indicated
12 they can be fair and impartial, but it all is subject
13 to --- prior to jury deliberations.

14 Ms. Barr: Yes, thank you Your Honor. Judge, I just have
15 one quick matter. We would move to sequester the
16 witnesses in this case. We were given notice some
17 months ago that the Defense intends to rely on the
18* Defensive alibi and it's my understanding that the
19 Defendant, in support of the alibi, the notice has
20 indicated that Mr. Carraway will have no objection
21 being in the courtroom. Mr. Palmer, who is an
22 attorney representing, or represented Antonio McClary,
23 Tawanda Mack, of course, we're not going to ask that
24 he be present in the courtroom obviously, but Ronald
25 Mack, Tiffany Bowen and Kelvin Bowen, III. Judge,

HEARING

50

1 it's my understanding that Tiffany Bowen is the wife
2 of the Defendant and she's in the courtroom, it's my
3 understanding that Kelvin Bowen, III is the son of the
4 Defendant. I have particular concerns with them given
5 that they are to be alibi witnesses for him. I have
6 concerns if they remain in the courtroom listening to
7 the trial, being able to have the benefit of all of
8 the testimony that's been presented in terms of
9 exercising, testifying to alleged alibi. In addition,
10 Judge, I'm mostly concerned with one of the alibi
11 witnesses is a minor and so we would certainly have
12 some issues with him being in the courtroom, being
13 susceptible to testimony that's being presented in
14 court and so we would move to sequester the witnesses.
15 Judge, we, of course, would expect that if the Court
16 granted, that it would be reciprocal. We would just
17 simply ask that the victim's mom, Ms. Bradshaw, as
18 well as my Chief Officer Investigator Lail be allowed
19 to remain in the courtroom.

20 The Court: Okay, Mr. Jenkinson?

21 Mr. Jenkinson: Your Honor, we see no need to sequester
22 witnesses. We looked at that issue as something
23 that's done very frequently, but in this particular
24 instance, our alibi witnesses, frankly, have nothing
25 to do with the prosecution's case in chief. They

HEARING

51

1* allege that a murder took place in Kingstree, South
2 Carolina. All of our witnesses are here to testify
3 about that murder. The alibi witnesses were not
4 present. The alibi witnesses are not going to testify
5 about the murder, they were not even present as to the
6 wife and the child in the state of South Carolina at
7 all. The first time they ever actually even came here,
8 I think, was around the 28th of May, months
9 afterwards. They're not here to testify about the
10 Prosecution of this case. Matter of fact, we've
11 already advised, we stipulate the facts surrounding
12 the murder, as far as the fact that K.D. was
13 in fact murdered, he was in fact shot, we stipulate
14 the autopsy records and so forth and so those matters
15 and the testimony of both of those witnesses have
16 nothing to do with the establishment of the alibi and
17 whereabouts of the Defendant, Kelvin Bowen being in
18 Maryland when the crime was committed and for that
19 reason we would ask that they stay here. That is his
20 wife and child. They are very interested in this
21 trial and seeing how it goes. They made special
22 arrangements to be out of school, paid to be here for
23 a week to follow the trial. Their testimony will be
24 very brief at best. As for Mr. Carraway and Mr.
25 Palmer, that deals with testimony of a couple of

HEARING

52

1 witnesses and I think Mr. McClary, Mr. Mack ,
2 particularly while they are testifying and certainly
3 they can be sequestered during the testimony of those
4 two witnesses only and I'm not even planning on having
5 them here. I just --- Mr. Carraway is subject to
6 inadvertently wandering in and out of the courtroom
7 during court. Mr. Palmer's only going to come when
8 called, so I just don't think this is a sequestering
9 case and it's just really going to do a hardship on
10 mother and child who came to see their husband and
11 their father's trial and their testimony is extremely
12 limited and has nothing to do with what took place in
13 Williamsburg County. And for that reason, we would
14 ask that they not be sequestered as to Mr. Carraway
15 and Mr. Palmer, as to witnesses that can testify,
16 about certain sequestering during that testimony.
17 They're not here to testify about the facts of the
18 case. It's purely an identification issue.

19 The Court: Ms. Barr?

20 Ms. Barr: And Judge, I would have to, as you would expect,
21 disagree with Mr. Jenkinson. First of all, he's got
22 Ronald Mack as a defense witness who will presumably
23 corroborate the whole notion of alibi and Your Honor,
24 may recall that Ronald Mack was before you and plead
25 guilty to being at the scene, having the nine

HEARING

53

1 millimeter. He also testified that the Defendant,
2 Kelvin Bowen was there and shot a shotgun at the
3 victim and there were periods of time, in which he
4 apparently gave a statement to Mr. Jenkinson, while he
5 was incarcerated in jail, denying that the Defendant
6 was there and the same thing Judge, with Tawanda
7 Allen. She is listed as a defense witness who will
8 presumably corroborate the alibi defense and Judge you
9 may recall during her trial a statement was entered
10 into evidence in which she says that the Defendant Mr.
11 Bowen was there. And so I don't think it's one of
12 these clear cut issues as to whether or not they will
13 simply testify to a limited issue. Their testimony
14 creeps over to their own alibi witnesses, including
15 the ones who are incarcerated and so Judge, we would
16 submit that it's appropriate that they be sequestered,
17 particularly this child Judge. I don't know, it looks
18 like, he's sitting next to the person I believe is
19 Mr. Bowen, he looks like he's ten or eleven years old
20 and for one I don't think it's appropriate for him to
21 be in a murder trial, but that's my own personal
22 opinion, but Judge I certainly don't believe he should
23 be allowed to sit in here and hear all of this going
24 on and certainly be susceptible to influence.

25 The Court: Well the rule applicable to this issue, Rule

HEARING

54

1 615 under the Rules of Evidence, the exclusion of
2 witnesses. It says that when requested, a party of
3 the Court may order witnesses be excluded so that they
4 cannot hear the testimony of other witnesses. In the
5 case interpreting this rule, well first they note that
6 the Federal rule requires sequestration upon the
7 request of the party, the South Carolina rule adheres
8 to prior state practice, which leads the sequestration
9 decision in the sound discretion of the trial judge.
10 There is a rule being considered, an amendment to the
11 criminal rules being considered to have South Carolina
12 follow the Federal ruling requiring sequestration upon
13 motion of any party. That rule is not currently the
14 rule in South Carolina and under State versus Simmons,
15 the party is not entitled to have witnesses
16 sequestered as a matter of right. I personally do not
17 favor automatic sequestration of witnesses because of
18 the burden that it imposes, quite often in getting
19 people in and out of the courtroom, trying to find
20 them, trying to keep them separated in the, wherever
21 they might be waiting to come in to testify. I'm
22* going to side with the defense on this issue and not
23 require sequestering of the witnesses and let the
24 skills of the lawyer control the effect of someone
25 being in the courtroom listening to the testimony.

HEARING

55

1 Ms. Barr: Yes sir.

2 The Court: Alright, let's see now. We're about through
3 for the day?

4 Ms. Barr: Yes sir.

5 The Court: Alright, 9:15 tomorrow morning.

6 The Court: Bring the jury in, please.

7 (Jury enters the Courtroom)

8 The Court: Good morning.

9 Jury: Good morning.

10 The Court: Welcome back ladies and gentlemen. If you
11 all will stand now and be sworn.

12 (Jurors sworn in by Clerk of Court)

13 The Court: Alright ladies and gentlemen, you have been
14 selected and sworn and taken an oath now to well and
15 duly try this case and render a true verdict according
16 to the evidence. So help you God. You have been
17 summoned to appear for jury duty. You've gone through
18 the jury qualifications process, you've gone through
19 the jury selection process and now you've been sworn
20 as the jury to try this case and determine whether the
21 Defendant is guilty or not guilty of murder, burglary
22 in the first degree, conspiracy, possession of a
23 weapon during a violent crime. As I indicated to you
24 yesterday, the Defendant is presumed to be not guilty.
25 He cannot be found guilty unless the State presents

HEARING

56

1 evidence which convinces each and ever juror of his
2 guilt beyond a reasonable doubt, so needless to say,
3 you play a very important, pivotal role in our process
4 because only you can decide whether the Defendant is
5 guilty or not guilty. And that is your role as
6 jurors. Therefore, it is important that you pay close
7 attention to the evidence and testimony so that at the
8 end of it you will be in a position to deliberate to
9 decide the truth of this matter. Now, just as only
10 you can decide the facts of this case and that's your
11 role as jurors to decide the facts. Just as only you
12 can decide the facts, as the trial Judge, I am the
13 sole judge of the law and you must accept as correct
14 my statement to you at this time and during the trial.
15 At the end of the trial, it will be your duty as
16 jurors to weigh the credibility of the evidence
17 presented during the trial to determine what facts
18 convince you of its truth. Now, later in the process,
19 I will appoint one of you to serve as the foreperson
20 for the jury. That person will be the spokesperson
21 presiding over the jury deliberations and completing
22 the verdict form. You must not discuss this case with
23 anyone including your fellow jurors, friends, family
24 members or anyone about this case. Please no email,
25 texting, face book or any other methods of finding out

HEARING

57

1 anything about this case. You are prohibited from
2 doing that because the case must be decided only by
3 the twelve jurors who have heard the same testimony,
4 seen the same evidence and received the same
5 instructions. Next, the Solicitor, Ms. Barr, will
6 make what's called an opening statement and, of
7 course, she will explain to you the issues in this
8 case or what she thinks is the issues and Mr.
9 Jenkinson will then have the opportunity to do the
10 same on behalf of the Defendant, though the's not
11 required to do so. I will caution you that what the
12 attorneys tell you is not evidence. It's there
13 attention or belief as to the evidence and issues.
14 The evidence will be presented from this witness
15 stand. The exhibits that may be introduced into
16 evidence as well as any stipulations and agreements
17 that may be introduced into evidence as well as any
18 stipulations or agreements that the lawyers may put on
19 the record. From time to time, it will be necessary
20 to discuss matters outside of your presence. They
21 generally take place when the lawyers come here to
22 discuss things with me. I will have you leave the
23 courtroom so we can discuss matters of law outside
24 your presence.
25 We'll proceed now with opening statements. I will do

HEARING

58

1 all I can to make sure you don't have to sit for too long.
2 We'll stand and take a stretch break. If at any point in
3 time you need a break, you think we're going for too long,
4 you just need to have a break just raise your hands and let
5 me know and we'll take a break. All right. Opening
6 statement, Ms. Barr.

OPENING STATEMENTS BY MS BARR:

8 Thank you, may it please the Court? Ladies and
9 gentlemen of the jury, good morning. My name is
10 Kimberly Barr. I introduced myself to you all on
11 Monday and I want to thank you all for being here.
12 I've got some good news; I'm not going to stand up
13 here long. We recognize that your time is precious
14 and we certainly want to keep the trial of this case
15 moving. Let me just say one thing and then I'll kind
16 of talk a little bit about the case and then I'll sit
17 down. We appreciate all of the lawyers, the judges,
18 everybody in this courtroom; we appreciate the fact
19 that jury duty is a sacrifice. I'm sure of that, if
20 anybody would ask you all where would you like to be
21 the week of January 31st, I don't think anybody on this
22 jury panel would say I would love to be in General
23 Sessions court for a murder charge and we know that
24 there are a ton of other things that you'd rather be
25 doing, that you need to be doing, than here with us,

HEARING

59

1 but we appreciate the sacrifice. Now, you all may
2 recall that on yesterday, a number of jurors came up.
3 A number of jurors were not selected and let me tell
4 you what I think about that whole process. When the
5 prosecution and the defense are trying to pick a jury,
6 we just want a jury that's going to be fair. We want
7 a jury who will sit and listen to the evidence, listen
8 to the law when the Judge gives it to you, deliberate
9 firmly and faithfully and then render a verdict based
10 on everything that you've heard and often times, when
11 lawyers are making this decision on who to pick, it's
12 never a situation, I don't think, at least not for me,
13 where I say, Well, I don't like this person, I like
14 this person. I just kind of look at the person and
15 say, Do I think this person can be fair? Do I think
16 this is an intelligent juror who can listen and
17 deliberate fairly? And folks, I've got to say in this
18 case, I think that we have it right. I think that we
19 have picked a jury that is intelligent, that will
20 listen and will take the time necessary to dedicate to
21 this case. Now, I'm going to go ahead and tell you
22 about this particular case. I don't know if any of
23 you all have ever served on jury duty before. I
24 imagine that a lot of you would probably have gotten
25 some information about crimes and cases from

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

60

1 television and the tragic thing in this case is this
2 is nothing like t.v. There is no happy ending once
3 this case is concluded. A horrific, horrific murder
4 occurred in our county back in April of 2009. Four
5* people were involved in that murder. Three of those
6 people have already been convicted. There's one
7 person left to be convicted and folks we would submit
8 that after you've heard all of the evidence in the
9 case, you will be convinced that, that person is the
10 Defendant, Kelvin Bowen. Now, you're basically going
11 to hear that one of the Defendants, Ronald Mack had a
12 problem with the victim K.D. . K.D.
13* was a seventeen year old high school student at the
14 time he was killed. His mom, Annette Bradshaw is
15 seated at Prosecution's table with me. Basically, the
16 evidence in the case will establish that Ronald Mack
17 had a problem with K.D. . Ronald Mack sought
18 the assistance of his mother, Tawanda Mack Allen and
19 her boyfriend, Kelvin Bowen, as well as another
20 individual. The evidence is going to show that Mr.
21 Bowen, along with Ms. Allen, came from Maryland, drove
22* down to South Carolina with guns in their vehicle,
23 picked up Ronald Mack, along with another individual,
24 went to the victim's house, burst in this house and
25 shot him in his sleep. Folks, that's the crust of the

HEARING

61

1 case. You will have four charges to consider. One is
2 murder. Murder is the killing of another human being
3 with malice aforethought. Malice aforethought just
4 simply means it's premeditated and you mean to do it.
5 Now, this individual is also charged with burglary
6 first degree and folks, the elements of burglary first
7 degree require that the State prove that they went
8 into the house of the victim, during the night time,
9 without consent, they either had a gun or they caused
10 physical injury. This Defendant is also charged with
11 criminal conspiracy. Criminal conspiracy is when two
12 or more people get together and come up with a plan to
13 do something illegal and obviously the planning of a
14 murder is an illegal act in South Carolina. The last
15 charge for your consideration, is possession of a
16 weapon during the commission of a crime. Folks, in
17 South Carolina, if you commit a violent crime and so
18 that you know, burglary first degree is a violent
19 crime. Murder is classified as a violent crime and if
20 you do it while you possess a weapon, a firearm,
21 that's also a separate charge. So after you've heard
22 all of the evidence in the case, and you are convinced
23 that the Defendant committed the act of murder and
24 burglary in the first degree and criminal conspiracy,
25 you should also find him guilty of possession of a

HEARING

62

1 weapon during a violent crime. Now, we'll have the
2 victim's mom testify, in addition, you'll hear from
3 several of the witnesses who were there that night and
4 also some law enforcement folks who gathered some
5* evidence and will come to court and testify according
6 to their findings. Now again, I'll keep my promise to
7 you, I'm going to be quick, I'm going to sit down. I
8 thank you all again for your time, thank you all most
9 importantly, most importantly for your attention.
10 Thank you.

OPENING STATEMENTS BY MR. JENKINSON:

11
12 Mr. Jenkinson: May it please the Court Your Honor? Ms.
13 Barr?

14 Ms. Barr: Yes sir.

15 Mr. Jenkinson: Good morning ladies and gentlemen. Ms. Barr
16 said thank you for coming. I'm not going to thank you
17 for coming, you had to be here, you got summoned to be
18 here like I got to be here, but I will tell you we are
19 happy you are here, because it has been a long wait
20 for our client Kelvin Bowen to come to trial for this
21 day to arrive. We look forward to it and without a
22* jury, we wouldn't be able to try this case, so I'm not
23 going to thank you for coming, but I'm happy that
24 you're here because you didn't just happen to show up,
25 like us, you were told to be here because that's the

HEARING

63

1 way our system of justice works. I'm Billy
2 Jenkinson, I am representing along with Mandy
3 Shuler, one of our lawyers in our office across the
4 street, Kelvin Bowen. That's Kelvin sitting by Mandy.
5 Kelvin Bowen is from Maryland, he is here with his
6 wife who is, Ms. Bowen stand so they know who you are.
7 Tiffany Bowen, thank you Tiffany and his only child
8 and son Kelvin Bowen, Jr., thirteen. He looks like
9 his daddy. Kelvin Bowen is charged with murder. He
10 is charged with burglary in the first degree. He is
11 charged with possession of a weapon in a violent
12 crime. He is charged with conspiring with others, or
13 criminal conspiracy to commit this murder. I'll tell
14 you right now, he walks into this court and says I am
15 not guilty and I was not in the State of South
16 Carolina when this occurred and I'm being used and
17 that is for us to show you and unfold how this has
18 happened to you and why he is here. That's why he's
19 here. In a case, I'd like to talk a little bit more
20 about what a jury does. You've heard his Honor give
21 you an excellent explanation, Ms. Barr's tagged on,
22 but when you come here, what do you have at the
23 conclusion of this case when you go in that jury room
24 with you to help you decide a case? And it's
25 important that you listen to these things, because you

HEARING

64

1 take these things into that jury room and that's what
2 you decide on. Not something that occurred on Face
3 book as his Honor's told you, not something that you
4 saw on t.v. or something that you think it ought to
5 be, but what's been proved in a courtroom, beyond a
6 reasonable doubt. Okay, what you take in that
7 courtroom is the testimony that you hear from that
8 witness stand, so it is important to listen carefully
9 as his Honor told you. If you feel drowsy or
10 whatever, stand up. Just, just, you know you can,
11 because it's so important to listen carefully and
12 remember. Because each one of you, when you go in
13 that jury room and start talking and saying well I
14 remember this and one may say I, I don't remember it
15 that way and that's what jurors are for. To have that
16 dialogue and to seek justice and to seek truth. You
17 going to see evidence. Evidence may be photographs,
18 papers, documents, and you going to get to take that
19 into the jury room to assist you. The third thing
20 you're going to take into that jury room is the law as
21 his Honor gives you. That is the law by stating the
22 law that you take of evidence and testimony and the
23 law and put it together to arrive at a verdict. And
24 to be able to do that, you take one more thing into
25 that jury room that you brought with you today. You

HEARING

65

1 brought it yesterday and you're looking at me saying
2 okay, what you talking about? What did I bring? You
3 brought your good, common sense. That's why you're
4 here because it takes good common sense to listen,
5 look and put it to law and arrive at a verdict. So
6 that is what a jury must do in a case in order to seek
7 justice. Now, in taking these things into
8 consideration, his Honor has told you, what are some
9 of the rules of engagement here? Well, his Honor is
10 going to rule on the legal matters, but when it comes
11 down to judging what the witnesses say and the
12 importance or the lack of importance, you become the
13 judges, because you are the judges of the facts of the
14 case. So, you're determining whether or not a
15 victim's witness bring something to you, it's
16 something that is called the credibility or
17 believability of a witness. Each one of them that
18 takes the stand, you can weigh in your mind, do I
19 believe this person? You have a right to believe a
20 little bit of what that person says, a lot of what
21 that person says or you can say I'm going to disregard
22 that. It's not important in my decision. That is
23 your job in weighing it out the believability and
24 credibility of witnesses so it's very important that
25 you listen to these witnesses to make that

HEARING

66

1 determination. Now, what else are you going to be
2 hearing? How many of you been watching on t.v. and
3 see a lawyer stand up and say I object. Well, that is
4 not something that is a concern to you, because what
5 we're doing is we're objecting on legal or law matters
6 for the judge to rule on. The judge is the ruler of
7 the law in a courtroom, so those kinds of things are
8 really not important at all for you to consider.
9 That's a matter for the judge and he'll explain what
10 you need to know about those matters. Now, what is
11 this case about? I joined, with Ms. Barr and Kelvin
12 Bowen joins with Ms. Barr to say this is a horrible
13 murder. A young, seventeen year old man was killed.
14 He was shot brutally. There is no question that that
15 occurred, but what I want to caution you and his Honor
16 will tell you, you're not to decide the case based
17 upon guilt or innocence on how bad photographs may
18 look. This mother of this young man and this family
19 has lost a relative that's awful. To lose a son is
20 awful, but it's also an awful thing to be accused of
21 something that you didn't do. And that's what your
22 job is, not to be caught up in prejudice, not to be
23 caught up in sympathy, but to be caught up in justice
24 and doing what is right in a case. We admit K.D.
25 K.D. was murdered. We admit that he was shot and

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

67

1 brutally murdered, we admit those facts. As a matter
2 of fact, the people responsible for that murder have
3 already been tried or plead guilty right in this
4 courtroom, three of them. Those that are already
5 responsible have already been accountable for what has
6 occurred. So this is not a case without justice as
7 you sit here today. Now, what I found interesting and
8 how many names did you hear his Honor read yesterday
9 that were involved in this case, potential witnesses?
10 A pile of them. So who are the real actors in this
11 case and let me give you some names so you will start
12 recognizing what's going on here, because I think it's
13 important for you to understand. K.D. was
14 the young man who was murdered. His very close friend
15 was Ronald Mack, who has plead guilty to shooting him.
16 Antonio McClary has admitted to his role in this crime
17 and has pleaded guilty. Tawanda Mack, mother of
18 Ronald Mack has been tried and found guilty of her
19 role in this matter. So those are important names for
20 you to understand. Tawanda Mack, Ronald Mack.
21 Actually her names Tawanda Allen, Tawanda Mack Allen
22 and those are the important names just up front to
23 remember because as you, as it unfolds, there's going
24 to be a lot of other people involved but those are the
25 critical people who are involved in this case that you

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

68

1 need to be aware of. Now, one of the critical pieces
2 that you need to remember in this case is something
3 called reasonable doubt. How many of you have watched
4 t.v. and seen cases, well let me tell you something.
5* T.v. is not real life, but forget t.v. This is a live
6 courtroom with South Carolina law with real judges,
7 real lawyers in a case and what is the burden? His
8 Honor is going to tell you that the State of South
9 Carolina, which is the Solicitor and his offices have
10 got to prove their case beyond a reasonable doubt.
11 He'll tell you , his Honor will tell you that Kelvin
12 Bowen does not have to prove anything to you. A
13* person charged with a crime does not have to prove one
14 single thing under our law. They are innocent, he's
15 innocent as he sits there and he's innocent until he's
16 prove guilty beyond a reasonable doubt. Remember your
17 verdict in this case is not innocent or guilty. It's
18 guilty or not guilty. What not guilty means is that
19 the State has not proved a case against Mr. Bowen
20 beyond a reasonable doubt. So you're looking at me
21 and saying, okay Billy, what's this business about
22* reasonable doubt? How do we know what reasonable
23 doubt is? There's a definition for it and his Honor
24 will help you with and something that I want you to
25 keep in mind as you listen to the evidence and

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

69

1 testimony. What is a reasonable doubt is that doubt
2 that causes a reasonable person to hesitate to act.
3 In other words, if you go back in that jury room and
4 you take that evidence, that testimony and the law and
5 your common sense and your brain says, wait a minute,
6 I'm not quite sure. And you hesitate, that is your
7 common sense and your brain saying the burden of proof
8 has not been met and I must find Kelvin Bowen not
9 guilty. That's what a reasonable doubt is. So that's
10 what you're listening for and when you walk in that
11 jury room and as you listen as this trial unfolds, the
12 question you ask yourself, is it clear or is it
13 causing me to hesitate? Again, so, that is what you
14 listen for in this case, that is what we're here
15 about. Whether or not there's reasonable doubt.
16 There's no way almost, it's impossible to prove you're
17 absolutely innocent. If you could do that you wouldn't
18 even be in trial, they'd turn you loose. That's why
19 we have trials and that's why you're here to be fair,
20 impartial and to uphold your oath that you took a few
21 minutes ago. Again, I just ask you to just listen
22 carefully to this case, follow the law and pay close
23 attention. Pay close attention for the benefit of
24 the family that's lost a loved one, pay close
25 attention for the benefit to the one who says I am not

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

70

1 guilty and I did not commit this crime knowing that
2 others have pled guilty and been found guilty and
3 admitted their guilt and weigh out what these people
4 have to say. You may even hear from Antonio McClary,
5 you may hear from Ronald Mack and Tawanda Allen and
6 that's when I really want you to start weighing out
7 who you're going to believe and what you're going to
8 believe. So listen carefully, stay tuned because the
9 State gets to go first and we get to go last so I ask
10 that you stay tuned for the rest of the story and
11 listen carefully to all the testimony. Thank you.

12 The Court: Ms. Barr, your first witness.

13 Ms. Barr: At this time Your Honor, we call Annette
14 Bradshaw.

15 -WITNESS IS SWORN IN-

16 DIRECT EXAMINATION OF MS. BRADSHAW BY MS. BARR:

17 Q: Good morning Ms. Bradshaw.

18 A: Good morning.

19 Q: If you would introduce yourself to the ladies and
20 gentlemen of the jury. Tell us where you live and
21 where you work.

22 A: My name is Annette Bradshaw. I live at
23

24 Q: Alright, that's in Williamsburg county?

25 A: Yes.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

71

- 1 Q: Okay, how long have you lived at that address?
- 2 A: Some years.
- 3 Q: Okay, now Ms. Bradshaw, who lives there with you now?
- 4 A: Me and my husband.
- 5 Q: Okay your husband is Heyward Bradshaw?
- 6 A: Yes.
- 7 Q: He's in the courtroom with you?
- 8 A: Yes he is.
- 9* Q: Okay, alright now, back in April of 2009, who was
- 10 living at that address with you?
- 11 A: Just me and K.D. .
- 12 Q: Okay and K.D. is your son?
- 13 A: Yes.
- 14 Q: Alright, of course we are here because he was
- 15 murdered.
- 16 A: Right.
- 17 Q: Now, how old was K.D. at the time of his death?
- 18 A: He was seventeen years old.
- 19 Q: Alright, where did he go to school?
- 20 A: He went to Hemingway High School.
- 21 Q: Alright, and what grade was he in?
- 22 A: He was in the twelfth grade.
- 23 Q: Alright, so he would have been expected to graduate in
- 24 the next month or two?
- 25 A: Yes.

HEARING

72

- 1 Q: Now, were you working outside of the home in April of
2 2009 when this incident happened?
- 3 A: Yes.
- 4 Q: Okay, where were you working then?
- 5 A: At Nanya Plastic.
- 6 Q: Alright, what kind of work hours did you have?
- 7 A: I worked two weeks on night and two weeks on day and
8 during that time I was on night shift.
- 9 Q: Now, there's a question Ms. Bradshaw that you actually
10 do not know Mr. Bowen, do you?
- 11 A: No, I don't.
- 12 Q: Okay, but you know Ronald Mack?
- 13^a A: Yes.
- 14 Q: Alright, tell the jury how it is that you know Ronald
15 Mack?
- 16 A: The first time I met Ronald Mack he was spending the
17 night at my house whenever I came home from work
18 around 8:00. And he was there and I asked K.D. who
19 that was and he told me it was his friend Ronald Mack.
- 20 Q: Okay, as it relates to the timing of your son's death,
21 how far in advance of your son's death did you meet
22 Ronald Mack for the first time? Was it weeks or
23 months or years?
- 24 A: A week or two.
- 25 Q: A week or two? Okay, so it had been a week or two

HEARING

73

1 when K.D. was killed?

2 A: Yes.

3 Q: Alright, now you said during this time you were
4 working night shift?

5 A: Yes.

6 Q: Alright, you said you came home, what time did you get
7 home and notice that Ronald Mack had spent the night
8 at your house?

9 A: It was after eight thirty.

10 Q: In the morning?

11 A: Yes.

12 Q: Okay, were you surprised that he was there?

13 A: Yes I was.

14 Q: Alright, he didn't have your permission to ...

15 A: No he did not.

16 Q: Alright, and you let your son know that you didn't
17 appreciate him bringing him over?

18 A: Yes.

19 Q: Okay.

20 A: I did.

21 Q: So Ronald Mack would have been familiar with your work
22 hours?

23 A: Yes.

24 Q: Okay, now what type of vehicle did you drive during
25 that time?

HEARING

74

- 1 A: A 1997 Toyota Four Runner.
- 2 Q: And what color is it?
- 3 A: Green.
- 4 Q: Okay now, had Ronald Mack ever seen your vehicle?
- 5 A: Yes.
- 6 Q: Okay now, what about your son K.D. ? Did he have a
- 7 vehicle?
- 8 A: Yes.
- 9 Q: Okay, what kind of vehicle did he have?
- 10 A: He had a 2000 Lincoln LS.
- 11 Q: Okay and had Ronald Mack ever seen your son's vehicle?
- 12 A: Yes.
- 13 Q: Tell us how you felt about Ronald Mack.
- 14 A: Well, that day when I came home from work, I came home
- 15 him and K.D. , my son, was involved in basketball and
- 16 well he wasn't my husband at the time but he was
- 17 working on his car ...
- 18 Q: That's Mr. Bradshaw? Heyward Bradshaw?
- 19 A: Yes.
- 20 Q: Yes ma'am.
- 21 A: And I told him there's something that I don't trust
- 22 about Ronald.
- 23 Q: Okay, and that's a comment that you made to your
- 24 husband?
- 25 A: Yes.

HEARING

75

1 Q: And where did that come from? Just an overall sense
2 or had he done something?

3 A: No, it's just something that, you know, when I first
4 met him, sometimes you can look at a person and it's
5 just something that you don't trust about them.

6 Q: Okay. Now, the night that Ronald had spent at your
7 house, he and K.D. were getting along pretty good
8 during that time?

9 A: Yes.

10 Q: Alright, did there come a time when their relationship
11 changed?

12 A: Yes.

13 Q: Okay, tell us about that.

14 A: Well, I heard, I don't know for a fact, but I heard
15 ...

16 Mr. Jenkinson: I'm going to object to what she heard Your
17 Honor, it's hearsay.

18 Ms. Barr: And Judge, I don't know that it's offered for the
19 truth of the matter asserted.

20 The Court: Next question.

21 Q: Let me ask you this, rather than saying what you
22 heard, was there ever a point in time where your son
23 discontinued his contact with Ronald Mack?

24 A: No he didn't.

25 Q: Was there ever a point in time where he stopped taking

HEARING

76

- 1 his phone calls?
- 2 A: Yes.
- 3 Q: Okay, how far in advance of his murder did he stop
- 4 taking Ronald Mack's phone calls?
- 5 A: Not quite a month.
- 6 Q: Okay, alright now, was there, when you say he stopped
- 7 taking his phone calls, how do you know that?
- 8 A: Well, Ronald call to the house and ask to speak to
- 9 K.D. .
- 10 Q: Okay.
- 11 A: And I told K.D. , Ronald was on the phone and he said
- 12 ...
- 13 Mr. Jenkinson: I'm going to object to what he said, Your
- 14 Honor, again this ...
- 15 Ms. Barr: Judge, it's not being offered for the truth of
- 16 the ...
- 17 Mr. Jenkinson: Can I finish saying what I'm saying?
- 18 The Court: Just a moment. Let's reiterate the rules. No
- 19 argument by counsel unless requested by the Court.
- 20 The objection is sustained. I'm sorry the objection
- 21 is overruled. You may answer the question.
- 22 Q: Ma'am, I think I was asking you, you said that Mr.
- 23 Mack had called the house looking for K.D. ?
- 24 A: Yes.
- 25 Q: Alright, and you informed your son that Ronald Mack

HEARING

77

1 was on the phone?

2 A: Yes.

3 Q: Alright and he told you what?

4 A: That he didn't want to talk to him and tell him that
5 he wasn't home.

6 Q: Okay. And was that just a one time incident or were
7 there several times that your son did not want to
8 speak to Mr. Mack?

9 A: Several times.

10 Q: Let me ask you this, did K.D. have a key to your
11 house?

12 A: No.

13 Q: Okay, tell me how was he able to get back and forth
14 and in and out the house since you work at night?

15 A: He always leave the front door open.

16 Q: Okay, you would leave the front door open for him?

17 A: Yes.

18 Q: Okay, now when you said that on one particular
19 occasion when you came home and you saw that Mr. Mack
20 had spent the night, you said that you got home about
21 eight o'clock. Did you work eight to eight or seven
22 to seven?

23 A: I worked eight to eight.

24 Q: Eight pm to eight am?

25 A: Eight pm to eight am, yes.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

78

- 1 Q: Okay, so Mr. Mack would have been familiar with your
2 work schedule?
- 3 A: Yes.
- 4 Q: Alright now, let's go to that particular weekend which
5 K.D. was killed. You remember the day of the week?
- 6 A: Yes.
- 7 Q: Alright, which day of the week was it?
- 8 A: It was that Saturday.
- 9 Q: Okay, Saturday night leading up to Sunday morning?
- 10 A: Yes ma'am, yes.
- 11 Q: Okay, now what was K.D. doing that weekend?
- 12 A: It was prom, prom night at the high school.
- 13 Q: Yes ma'am.
- 14 A: And he decided he didn't want to go. He wanted to go
15 spend the day on the beach with his friends.
- 16 Q: Now, which friends did he want to go spend the day at
17 the beach with?
- 18 A: It was Kendrick and his girlfriend for one and a guy
19 names Jason Grant.
- 20 Q: Jason Grant?
- 21 A: Yes.
- 22 Q: Okay, alright. So with your permission, did he go
23 down to the beach and spend the day there?
- 24 A: Yes he did.
- 25 Q: Alright, now do you know whether or not Ronald Mack

HEARING

79

1 was anywhere near him?

2 A: No.

3 Q: Okay, you don't know or he wasn't?

4 A: He wasn't.

5 Q: Okay, alright, now, Ms. Bradshaw, you did not have any
6 weapons in your house did you?

7 A: No.

8 Q: No guns?

9 A: No.

10 Q: You had not had a gun fired inside your home prior to
11 the night that K.D. was killed?

12 A: No.

13 Q: No shotgun shells or anything like that?

14 A: No ma'am.

15 Q: Now, tell me about when K.D. returned from the
16 beach.

17 A: It was along about twelve thirty, twelve o'clock or
18 twelve thirty.

19 Q: Okay.

20 A: And he got out and came to his friend Jason.

21 Q: Okay, alright you said it was about one thirty, is
22 that am or pm?

23 A: Twelve thirty.

24 Q: Twelve thirty, I'm sorry. Am or pm? Was it twelve
25 thirty at night or in the morning?

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

80

- 1 A: It was going into Sunday morning.
- 2 Q: Okay so twelve thirty am?
- 3 A: Yes.
- 4 Q: Alright, where were you when he came back from the
5 beach?
- 6 A: Well, I was standing up at the back door looking.
- 7 Q: Okay, alright so he came into the house?
- 8 A: No, he didn't.
- 9 Q: Okay, you saw him get out the car?
- 10 A: Yes.
- 11 Q: And then go where?
- 12 A: Next door to Jason Grant's.
- 13 Q: Okay, were you within walking distance to Jason
14 Grant's house?
- 15 A: Yes.
- 16 Q: Alright, and you saw him go to Jason Grant's house?
17 Alright, tell me what happened next.
- 18 A: When he came back home it was after one thirty and I
19 got up and opened, I had left the front door open for
20 him, when he came around to the back door. When he
21 came around through back door he locked the back door
22 back and I told him, I said, K.D. you see what time
23 it is when I wake you up in the morning to go to
24 church I don't want to hear your mouth and he said
25 okay mom. So he went and take his, after he lock the

HEARING

81

1 door, he went and take his bag in the bedroom, then he
2 came back in the kitchen and he sat down and turn the
3 t.v. on and I went and got back in the bed.

4 Q: Alright, now you said that when he came back in you
5 told him that because it was so late, alright I don't
6 want to hear your mouth about getting up and going to
7 church the next day right?

8 A: Right.

9 Q: Okay, now what had you been doing during that day?

10 A: All that day I was like cleaning and cooking because
11 Sunday, I think we was going to it was a family or
12 either the --- we had a family reunion singing going
13 on and me and my mom and sisters we were already
14 talking about that so we cooked early you know and
15 then later on that night, you know, and after we had
16 everything prepared and I call them and tell them you
17 know, I had the food and everything prepared. That's
18 what all I did.

19 Q: You said cooking and cleaning. Was laundry a part of
20 your cleaning?

21 A: Yes.

22 Q: Alright, and did you have clothes in a certain
23 location in the house that you were folding up?

24 A: Yes. I took my clothes in the day before and I just
25 throw them in a chair in the bedroom.

HEARING

82

1 Q: Okay, now where, what church are you a member of?

2 A: Mount --- In Nesmith.

3 Q: Alright, so you came, you opened the door for your
4 son, he went and sat down and watched television.
5 What room in the house was he in?

6 A: He was in the kitchen.

7 Q: Okay, and you went to your bedroom?

8 A: Yes.

9 Q: Alright, do you know whether or not you locked your
10 bedroom door?

11 A: Yes I did.

12 Q: You did lock your bedroom door?

13 A: Yes.

14 Q: Is that by habit?

15 A: Yes.

16 Q: Okay, tell us Ms. Bradshaw, what is the very next
17 thing that you remembered happening?

18 A: After I went back to bed, I went to sleep. I hear a
19 noise in the hall and I thought it was a firecracker
20 and then after I got up, after the noise wake me up,
21* and after I got up, first call K.D. when I heard a
22 noise and after I call K.D. and he didn't answer me,
23 then I got up and went into the kitchen where he was
24 and then after I saw him, after I walked around the
25 corner and saw him, I thought I was like dreaming

HEARING

83

1 because he was sitting in the chair and the t.v. was
2 on. But after I reached down to turn the t.v. off I
3 saw blood on the wall and I looked at him and I
4 noticed he was shot in his head and I run to my mama's
5 house, out the back door and I left the back door
6 open. And my step father came to the door and I tell
7 him somebody just shot K.D. . And then he said you
8 lying and then he came running over there too and then
9 my mom called 9-1-1.

10 Q: Alright, you said that, and let me just kind of make
11 sure I understand everything you say. You indicated
12 that you heard noise and that's what, that is what
13 woke you up?

14 A: Yes.

15 Q: Alright, you thought it was fire crackers?

16 A: Yes.

17* Q: And you called your son's name?

18 A: Yes.

19 Q: Could you hear anybody inside your home?

20 A: Well, during the time I had called K.D. , I heard
21 something like people running out the house, you know
22 what I'm saying? Running out the house, that noise.

23 Q: The noise of footsteps?

24 A: Yes.

25u Q: Okay, alright now Ms. Bradshaw, did you see anybody

HEARING

84

1 running out of the house?

2 A: No, I didn't.

3 Q: Okay, alright and you indicated that when you went in
4 where K.D. was, you noticed that the television was
5 still on?

6 A: Yes.

7 Q: Alright, now as you approached him, when K.D. was in
8 the chair, was he facing you as you approached him or
9 did you walk up from behind him?

10 A: I walked up from behind.

11 Q: Alright, and as you're walking up from behind him,
12 could you see his face when you were behind him?

13 A: No.

14 Q: Okay, so as you're walking up from behind him, as far
15 as you know, he just looked like he was sleeping?

16 A: Yes.

17 Q: Alright, and then you went to turn the television set
18 off?

19 A: Yes.

20 Q: Alright, the television set was directly in front of
21 him?

22 A: Yes.

23 Q: Alright, and then when you turned off the television
24 set, you indicated that you noticed the blood, noticed
25 that he'd been shot?

HEARING

85

1 A: Yes.

2 Q: Now, you then ran to your mom's house?

3 A: Yes.

4 Q: What's your mother's name?

5 A: Priscilla.

6 Q: Alright, how far does your mom live from you?

7 A: I'd say from here to the street.

8 Q: From where you're sitting now to Main Street?

9 A: Yeah.

10 Q: Okay, I'm curious Ms. Bradshaw, when you were awakened
11 by what you thought to be firecrackers, did you happen
12 to notice what time it was?

13 A: It was about two twenty or twenty two when I got up
14 and opened my room door.

15 Q: When you got up and opened your room door, you have a
16 clock in your bedroom?

17 A: Yes.

18 Q: And you noticed it was about two twenty. This is a.m.
19 still right?

20 A: Yes.

21 Q: Okay, alright as you were running across to your
22 mother's house, did you see anything out of the
23 ordinary in your neighborhood?

24 A: No, when I was running, after I got off the step I
25 just kept looking behind me to make sure nobody wasn't

HEARING

86

1 behind me and I just happened to look toward the
2 highway and I saw a vehicle at the stop sign just
3 pulling off.

4 Q: Okay. Can you describe how that vehicle was pulling
5 out in terms of its speed?

6 A: Well, it was speeding and it really didn't stop. It
7 just came to the stop sign and just pulled on off
8 hearing back towards Kingstree.

9 Q: Alright, now do you recall, were you able to see the
10 make and model of the vehicle or the body type of the
11 vehicle?

12 A: No, but we got a night, got a night light up there,
13 but I know it was dark color, but I'm not sure what
14 kind.

15 Q: Okay. You know it was a dark colored vehicle?

16 A: Yes.

17 Q: Alright, do you know whether it was a Sedan, like four
18 door vehicle? Do you know whether it was an SUV? Do
19 you know whether it was a pick up truck?

20 A: It was a SUV.

21* Q: Dark colored SUV? Ma'am?

22 A: Yes.

23 Q: Okay, now were there any other vehicle around the time
24 that you had run from your house to your mother's
25 house that you noticed out there?

HEARING

87

1 A: No.

2 Q: Two thirty in the morning it was pretty quiet?

3 A: It was.

4 Q: Tell us what happened when you got to your mom's
5 house.

6 A: Well, I got to my mom's house and I told her and my
7 step father and he came over there and then my brother
8 came and then my mom and then after I got back home I
9 called my husband and I told him and he came there and
10 then I called my cousin, because he had just had
11 brought him home. I guess she started calling some of
12 her people.

13 Q: Who called the police?

14 A: My mom did.

15 Q: Okay, now you said your mother came over, when you say
16 came over, came over where?

17 A: She came over to my house.

18 Q: To your house. Did you then to back to your house?

19 A: Yes, I did.

20 Q: Okay when you went back to your house, was it before
21 or after the police arrived?

22 A: It was before the policemen was there.

23 Q: Alright, at what point in time did your mother call
24 the police?

25 A: I guess when she called 9-1-1.

HEARING

88

- 1 Q: Okay. Did she call 9-1-1 once you went over there
2 immediately or was ...
- 3 A: When I went over there to tell her K.D. was shot she
4 called 9-1-1.
- 5 Q: Right then and there?
- 6 A: Yes..
- 7 Q: Now when you went back to the house, you didn't take
8 anything out of the house or put anything in the house
9 did you?
- 10 A: No, I didn't.
- 11 Q: Ma'am, you've been a part of the proceedings in this
12 case, you've come to court every time. Is that
13 correct?
- 14 A: Yes.
- 15 Q: Alright, you were here for the trial of Tawanda Mack
16 Allen?
- 17 A: Yes.
- 18 Q: Alright, she was convicted?
- 19 A: Yes.
- 20 Q: You were here for the guilty plea of Ronald Mack?
- 21 A: Yes.
- 22 Q: And he admitted his involvement in the case?
- 23 A: Yes.
- 24 Q: Alright, did that surprise you that he admitted and
25 was part of this?

HEARING

89

1 A: No, it didn't surprise me.

2 Q: A couple more questions and then I'll let you go. At
3 some point, were you give a copy or did you see, I
4 shouldn't say copy, did you see a pink shirt that was
5 brought from the outside?

6 A: Yes.

7 Q: Alright, and who's pink shirt was that?

8 A: Mines.

9 Q: That was your pink shirt?

10 A: Yes.

11 Q: Alright. Ms. Bradshaw, let me do it this way. Judge,
12 may I approach the witness?

13 The Court: Yes.

14 Q: I'm going to hand you what's been marked for
15 identification purposes as State's exhibits one, two,
16 twenty-three, twenty-two, twenty-one and nineteen.
17 Twenty two , twenty one, twenty and nineteen and I'll
18 ask you if you recognize what's depicted in those
19 photographs? Look at each one of them and tell me if
20 you recognize what's depicted in those photographs.

21 Q: Yes..

22 Q: These are photographs of the outside of your home as
23 well as some rooms inside the residence?

24 A: Yes.

25* Mr. Jenkinson: Your Honor, please, we have no objection to

HEARING

90

1 forty one, five

2 Ms. Barr: Billy, that's not forty-one.

3 Mr. Jenkinson: I'm sorry, that was a mistake.

4* Ms. Barr: That's okay.

5 Mr. Jenkinson: This one?

6 Ms. Barr: That number.

7 Mr. Jenkinson: Nineteen, twenty, twenty one, twenty two,

8 twenty three, twenty two.

9 Ms. Barr: Your Honor, we would move at this time to admit

10 State's exhibits one, two, nineteen, twenty, twenty

11 one, twenty two, and twenty three. Do you need to see

12* them Judge?

13 The Court: Any objection to any of those photographs?

14 Mr. Jenkinson: No objection.

15 The Court: Be admitted without objection.

16 Ms. Barr: Thank you, Your Honor.

17 Q: Ms. Bradshaw, I need you to step down for just a

18 moment for me please. Come over here with me. Now,

19 tell the jury what's in that, what does that

20 particular photograph show?

21* A: That's on the back porch.

22 Q: And your house is kind of odd. You've got your house

23 numbers, you okay?

24 A: Yes.

25 Q: You have your house number on the rear of the house?

HEARING

91

- 1 A: Yes.
- 2 Q: And you're ?
- 3 A: Yes.
- 4 Q: Alright, is that the door that you went out of when
- 5 you ran to your mom's house?
- 6 A: Yes, that's the door.
- 7 Q: You left it open?
- 8* A: Yes.
- 9 Q: Okay, alright, let me call your attention to exhibit
- 10 number twenty. Is that just a different view from
- 11 that doorway at the rear of the house?
- 12 A: Yes, it's a different view.
- 13 Q: Alright, now, if we kind of look to the right or the
- 14 left, I'm sorry, of that doorway, we see what appears
- 15 to be a china cabinet in there?
- 16 A: Yes.
- 17 Q: What room is that?
- 18 A: That's the kitchen.
- 19 Q: Okay, is that the room where K.D. was killed?
- 20 A: Yes.
- 21 Q: Tell us about exhibit number twenty one.
- 22 A: That's the front door.
- 23 Q: Okay.
- 24 A: That's a different room.
- 25* Q: Alright, now was that closed when you went in there?

HEARING

92

- 1 A: Yes, it was closed.
- 2 Q: Alright, and I'm going to ask you about State's
- 3 exhibit number twenty three. Tell us the room that
- 4 that particular house, what's the room of that house
- 5 that we're looking at?
- 6 A: The room in the back, that's my bedroom.
- 7 Q: Okay.
- 8 A: And that's the living room you can see the clothes on
- 9 the chair.
- 10 Q: Alright, and you mentioned that you were doing laundry
- 11 earlier, are these the clothes that you were talking
- 12 about?
- 13 A: Yes, yes.
- 14 Q: Ms. Bradshaw, I need to show you a faraway picture of
- 15 K.D. , can you handle that?
- 16 A: Yes.
- 17 Q: I'm going to hand you what's been marked as State's
- 18 exhibit number thirty eight for identification
- 19 purposes only. Is this a view of the chair and
- 20 K.D. 's body as you saw it as you went into the
- 21 kitchen?
- 22 A: Yes.
- 23 Q: Okay, Judge we would move State's exhibit number
- 24 thirty eight into evidence.
- 25 The Court: Any objection?

HEARING

93

1 Mr. Jenkinson: No objection.

2 The Court: Admitted without objection.

3 (State's Exhibit Number 38 was entered)

4 Q: Alright, you told us earlier about the kitchen area
5 and there being some little china cabinet in the
6 kitchen area. Is this the kitchen area?

7 A: Yes it is.

8* Q: Okay and is this the view that you would have seen as
9 you went into the kitchen to turn off the television?

10 A: Yes.

11 Q: And this is the chair that your son was seated in?

12 A: Yes.

13 Q: And this is his body there, is that right?

14 A: Yes.

15 Q: And you can't see it on this particular photograph,
16 but where is the t.v. in connection with his body?

17 A: It's right in front.

18 Q: Over here?

19 A: Yeah.

20 Q: Alright. I'm going to hand you what's been marked for
21 identification purposes as State's exhibit number
22 forty nine. Is that your son's driver's license?

23 A: Yes.

24 Q: We would move State's exhibit number forty seven into
25* evidence at this time, Judge.

HEARING

94

1 Mr. Jenkinson: No objection.

2 The Court: So admitted.

3 (State's Exhibit Number 47 was entered)

4 Q: Alright, and his driver's license indicates that his
5 birthday is what?

6 A: [REDACTED]

7 Q: So he was seventeen?

8 A: Yes.

9 Ms. Barr: Alright, Billy do you have any other pictures
10 over there? Are you sure? Can you double check for me?
11 Alright Ms. Bradshaw you can take your seat.

12 Q: Ms. Bradshaw did you have any other children other
13 than K.D. ?

14 A: Yes I have two girls.

15 Q: He was your only son?

16 A: Yes he was.

17 Q: Your oldest child?

18 A: Youngest.

19 Q: Your youngest child. I don't have any other
20 questions. Do you need to take a break?

21 A: Yes ma'am.

22 Ms. Barr: Judge, may we just take a quick break for her?

23 The Court: Ladies and gentlemen, I'm going to have you go
24 to the jury room. Please do not discuss the case. Take a
25 few minutes.

HEARING

95

1 Ms. Barr: Thank you Judge.

2 (Jury takes a break at 10:46)

3 The Court: While the jury is out, of course, in Court we
4 operate under rules and procedures and Rule 18 is an
5 important rule and procedure. Section B of which says no
6 argument shall be made on objection to admissibility of
7 evidence in the conduct of trial unless specifically
8 requested by the Court. That's a rule that we are going to
9 abide by. It is startling to everyone other than the
10 lawyers that when the witness is testifying and questions
11 are asked and then all of a sudden someone starts arguing
12 about something.

13 Mr. Jenkinson: If Your Honor, please. For the record,
14 those photographs ...

15 The Court: That was for you.

16 Mr. Jenkinson: As to K.D. being murdered in his
17 home on on April 5th, as charged in the
18 indictment that he was shot with a nine millimeter round in
19 the back of the head multiple times, whatever it is. I
20 think it was three times. He was shot in his body with a
21 shotgun twice. We would stipulate to the autopsy report
22 because the factual circumstances in this case as far as
23 the murder is not in dispute. What is in dispute is
24 whether the Defendant was present in the State of South
25 Carolina ...

HEARING

96

1 The Court: Is this part of the stipulation ...

2 Mr. Jenkinson: By stipulation we're going into a great deal
3 of photographs of them being offered for prejudice and the
4 probative value because probative value is in the
5 stipulation and State vs. Milligan we argued yesterday
6 would apply and we wanted our offer on the record to avoid
7 a blanton trial and going into a lot of material that is
8 not in dispute whatsoever.

9 The Court: All right. Thank you. Ms. Barr, regarding the
10 proposed stipulation?

11 Ms. Barr: Yes, sir. Judge, I think --- we appreciate the
12 stipulation by opposing counsel. I think that the
13 photographs we are seeking to introduce and Your Honor, I
14 will give you the ones that have not been ...

15 The Court: We are in the middle of a witnesses testimony
16 and she's about to be cross-examined. I've ruled on the
17 proffer. If there are issues that need to addressed
18 concerning something that will be offered later then we can
19 talk about that later in the trial.

20 Ms. Barr: Yes, sir.

21 The Court: We have a jury coming in with this witness being
22 on the stand being cross-examined.

23 Ms. Barr: Yes, sir.

24 The Court: Bring in the jury.

25 (Jury enters the courtroom)

HEARING

97

1 (Continue Cross Examination)

2 Q: You ran out the back door. Is the back door here?

3 A: Yes.

4 Q: Alright, now, which one of these windows is to your
5 bedroom?

6 A: The double windows.

7 Q: This here?

8 A: Yes.

9 Q: Okay, alright, and which, what window is, what room is
10 this a window to?

11 A: That's also the bedroom; that's the bedroom.

12 Q: That's the bedroom?

13 A: Yes.

14 Q: Alright, and so you would have run out of here and
15 come down the steps?

16 A: Yes.

17 Q: Alright, I'm going to publish State's exhibit number
18 ten again, this is just the deck that's in the rear of
19 your home?

20 A: Yes.

21 Q: Alright what room is this a window to?

22 A: That's the kitchen.

23 Q: Alright, is this where K.D. would have been?

24 A: Yes.

25 Q: Alright, what about this particular room?

HEARING

98

1 A: The window at the kitchen sink.

2 Q: Okay, alright and so you came out this open door and
3 came down the steps here?

4 A: Yes.

5 Q: Okay and I'm going to publish number six. Do you
6 recognize that blouse in that photograph?

7 A: Yes.

8 Q: Alright, and is that your blouse?

9 A: Yes that's my sweater.

10 Q: Alright now, I'm wanting to be sure I understood. You
11 said that you would leave the front door open for
12 K.D. ?

13 A: Yes.

14 Q: Did you ever have any problems with that door?

15 A: Yes, the top lock.

16 Q: Okay, it wouldn't work, it didn't work?

17 A: It had a spring break out of it.

18 Ms. Barr: Okay, that's all of the questions that I have.

19 Please answer any questions that Mr. Jenkinson or the Court
20 may have.

21 Mr. Jenkinson: We have no questions.

22 The Court: Alright, you may step down.

23 Ms. Barr: We call Scott Hardee at his time Your Honor.

24 -WITNESS IS SWORN IN-

25 DIRECT EXAMINATION OF MR. HARDEE BY MS. BARR

HEARING

99

- 1 Q: Sir, state your name for me.
- 2 A: Leland Scott Hardee.
- 3 Q: Alright, and tell the ladies and gentlemen of the jury
- 4 where you're employed.
- 5 A: I'm employed with South Carolina Law Enforcement
- 6 Division as a crime scene agent.
- 7 Q: Now you're going to have to make sure to pull the
- 8 microphone up so we can hear you. I'm having a little
- 9 bit of trouble hearing you back here.
- 10 A: Okay, is that better?
- 11 Q: Yes sir. You work with the State Law Enforcement
- 12 Division?
- 13 A: Yes ma'am, I do.
- 14 Q: We commonly call that SLED, is that right?
- 15 A: Correct.
- 16* Q: Alright, what do you do for SLED?
- 17 A: Currently I'm employed as a crime scene analyst for
- 18 about three years.
- 19 Q: Okay, and where were you before you became employed
- 20 for SLED?
- 21 A: I was employed with the Florence Police Department.
- 22 Q: Okay, what did you do there?
- 23 A: I was a patrol officer, crime scene investigator and
- 24 a school resource officer.
- 25 Q: Alright, how long have you been in law enforcement

HEARING

100

1 now?

2 A: Eleven years this April.

3 Q: Okay and you're a certified police officer?

4 A: Yes ma'am, I am.

5 Q: Alright, now sir, back on April the 5th of 2009, were
6 you contacted to assist the Williamsburg County
7 Sheriff's office investigating the murder of K.D.

8 K.D. ?

9 A: Yes ma'am, I was.

10 Q: Alright, can you tell us what all you did to assist
11 this agency?

12 A: Once I arrived on scene, I spoke with the officers on
13 scene and got a briefing. My partner Vickie Hallman,
14 she and I processed the scene. With processing it's
15 documented and we document in the photographs and that
16 nature, then we collect the evidence, preserve the
17 evidence and then it's transported back to our
18 headquarters in Columbia.

19 Q: Allright, now when you say the scene, you're talking
20 about the home that's located at in
21 Kingstree?

22 A: Yes ma'am.

23 Q: Alright, do you recall what time it was that you
24 actually came out to the residence?

25 A: It was early morning. I would say probably close to

HEARING

101

1 four o'clock and I got there probably right at between
2 five fifteen and five thirty that morning.

3 Q: Okay and you said that one of your co workers, Vicky
4 Hallman assisted with that case?

5 A: Yes ma'am.

6 Q: Alright now, Vicky, Ms. Hallman is actually out on
7 medical leave now, isn't she?

8 A: Yes, she had back surgery.

9 Q: Tell us about the evidence that you collected in
10 connection with this case.

11 A: I collected, of course, photographed the scene. We
12 processed the front door for fingerprints.

13 Q: Okay.

14 A: We collected some shotgun shells and some nine
15 millimeter cartridge cases.

16 Q: Okay. Did you see the body of K.D. while you
17 were at the scene?

18 A: Did I what?

19* Q: Did you see the body of K.D. while you were
20 at the scene?

21 A: Yes ma'am.

22 Q: Tell us about how the body was positioned.

23 A: It was in a chair in the kitchen and like, right in
24 front of the television they hadn't right there. The
25 television was right next to the entrance that led to

HEARING

102

1 the laundry room.

2 Q: Okay.

3 A: And he was sitting up, like he'd been watching t.v.
4 and fell asleep watching t.v.

5 Q: So, and we'll get back to the evidence that you
6 gathered and collected in a moment. Let's talk about
7 the photographs. Did you take pictures of the inside,
8 as well as, the outside of the residence?

9 A: Yes ma'am, I did.

10 Q: Okay, let me have you look at these particular
11 exhibits that are marked State's three through forty
12 six and ask if you recognize what's depicted in those
13 photographs. Just look at each of them quickly. You
14 don't have to testify on each of them right now.
15 Alright, these the photographs that were taken on the
16 morning that K.D 's body was discovered?

17 A: Yes ma'am.

18 Q: And they were taken, of course, either by you or
19 certainly while you were there in your presence?

20 A: Yes ma'am.

21 Q: And do they accurately depict how the scene looked as
22 well as the body of K.D looked?

23 A: Yes ma'am, it did.

24 MS. BARR: Alright, Your Honor, for the record, we would
25 move State's exhibits three, four, five, seven, eight,

HEARING

103

1 twelve, eleven, thirteen, fourteen, fifteen, sixteen,
2* seventeen, eighteen, nineteen, I'm sorry. Eighteen, twenty
3 four, twenty five, twenty six, twenty seven, twenty eight,
4 twenty nine, thirty, thirty one, thirty two, thirty three,
5 thirty four, thirty five, thirty six, thirty seven, thirty
6 nine, forty, forty one, forty two, forty three, forty four,
7 forty five and forty six.

8 The Court: Ladies and gentlemen, we're going to take a
9 break now. We'll give y'all about fifteen minutes and
10 the jurors can leave the jury room. If someone wants
11* to smoke. One thing about jury duty, it's not
12 convenient for smokers, because there's no smoking in
13 the courtroom and we can't take a break every time
14 someone want a cigarette. We'll take a fifteen minute
15 break while we review these items and you all, all the
16 jurors can leave the court room and the jury room if
17 you want to. Who wants to smoke? Let's find that
18 out. Alright, well you can all leave the jury room,
19* but you need to be back in fifteen minutes. Just do
20 not mill around the hallway in front of the
21 courthouse. Go to one spot out there. Wherever the
22 bailiff designates and then come back in the jury
23 room. All of the others can leave. You don't have to
24 be that close to the smokers. Please do not discuss
25 the case. Okay, we're talking to the jurors only.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

104

1 Jurors only, everyone else have a seat.

2 (Jury takes a break at 11:06)

3 The Court: Back to this photograph issue. First, we'll
4 address the issue Mr. Jenkinson as to which
5 photographs you object to or if you object to all of
6* them.

7 Mr. Jenkinson: I'd like to see them, Your Honor.

8 Ms. Barr: So these are not without objection? Are these
9 without objection?

10 Mr. Jenkinson: Yeah ...

11 Ms. Barr: Billy these are?

12 Mr. Jenkinson: Your Honor. I've broke them into three
13 categories for the Court. First, Ms. Barr has in her
14 hands and she will identify now, without objection.

15 The Court: Those are in without objection?

16 Ms. Barr: If it please the Court Judge, it's numbers 43,
17 42, 39, 37, 33, 32, 3, 4, 5, 7, 8, 12, 11, 13, 14, 15,
18 16, 17, 18, 24, 25, 26, 27, 28, 29 and 30 and Judge
19 they're all out of order. I'll try to put them back
20 into order, but those are the ones.

21 The Court: They're in?

22 Mr. Jenkinson: Yes, Your Honor.

23* The Court: Admitted without objection.

24 (State's Exhibit Numbers 43, 42, 39, 37, 33, 32, 3, 4, 5,
25 7, 8, 12, 11, 13, 14, 15, 16, 17, 18, 24, 25, 26, 27, 28,

HEARING

105

1 29 and 30 are entered)

2 Ms. Barr: Thank you Judge.

3 Mr. Jenkinson: Also, previously admitted is number 38,
4 which shows and identified by Ms. Bradshaw, as the way
5 the t.v. and the location of the body, you can
6 actually see the body. Now, the second category of
7 photographs that we agree to fit within our position
8 on State versus Middleton and those having probative
9 value would be numbers 22, 23, 35, 20 and 7. These
10 all show the chair. They have obviously this witness
11 is going to testify about bullet directions, bullet
12 marks, holes in various parts of the body and these we
13 would take the position they do have probative value.
14 I'll pass those up for the Court.

15 The Court: Distinguish those ...

16 Mr. Jenkinson: As to distinguish those from the next
17 batch.

18 The Court: The one ...

19 Ms. Barr: And Judge, I'm sorry.

20 The Court: The ones, numbers 3, 20, 35, 23 and 22.

21 Mr. Jenkinson: We would have no objection to those.

22 The Court: Admitted without objection.

23 Ms. Barr: And Judge, are we sure we're talking about the
24 right exhibit numbers, because there are two exhibit
25 numbers on the back. We're using the white ...

HEARING

106

1 Mr. Jenkinson: The white exhibit numbers are what we're
2 talking about Your Honor.

3 The Court: The i.d. number is white.

4 Ms. Barr: Yes sir.

5 Court Reporter: Yes sir, they didn't want me to mark
6 over it with the old ...

7 The Court: The red number is ...

8 Court Reporter: The white ones are the ones we're
9 using.

10 The Court: The white ones are the ones we're using?

11 Court Reporter: Yes sir.

12 The Court: Okay.

13 Ms. Barr: The red ones are from the other trial Judge.

14 Court Reporter: And they didn't want me to hide them.

15 The Court: What I've been handed is exhibits numbers
16 22, 23, 27, and 35, which are admitted without
17 objection, is that right?

18 Mr. Jenkinson: Yes sir, without objection.

19 The Court: Okay.

20 (State's Exhibit Numbers 22, 23, 27 and 35 were entered)

21 Mr. Jenkinson: There are four photographs which are frontal
22 views of the body in the chair, which it's our
23 position, often no probative value, they are in
24 evidence showing his body slumped in the chair. These
25 photographs have, and our position is no probative

HEARING

107

1 value, simply being offered for purposes of prejudice
2 and they are highly prejudicial and we would object to
3 the admission of 31, 34, 35 and 36.

4 Ms. Barr: Judge, he, the court reporter has told me that
5 he's using the wrong id numbers.

6 Court Reporter: The ones you just handed me are not the
7 numbers that match up to what y'all are saying. We're
8 using the id's so it would be nobody mentioned 44 and
9 45.

10* The Court: Let me restate the numbers again.

11 Court Reporter: Yes sir.

12 The Court: It's the red?

13 Court Reporter: It's the white number; the white
14 sticker.

15 The Court: And I stated the red?

16 Court Reporter: Right.

17 The Court: Alright so, the white numbers on the back
18 are the proper numbers 46, 40, 44, 45, 44, are in
19 without objection. Mr. Jenkinson these numbers are
20 36, 35, 34, 31. Right, Ms. Barr? Alright and your
21 responses are?

22 Ms. Barr: Judge, we would take the position that the
23 photographs that are being offered at this time by the
24 State, are not unduly prejudicial. The Court, of
25 course, you know has to make probative value versus

HEARING

108

1 prejudicial effect analysis and Judge, when you look
2 at the photographs, they're not unduly gruesome. I
3 mean, it's a murder case. Obviously all of the
4 photographs of the victim's body are going to be bad
5 pictures to look at but they're certainly not
6 gruesome. They don't show any organs, they don't show
7 any unnecessary blood. Judge, I think that, clearly,
8 the photographs are relevant and they're probative to
9 determine and prove and establish the manner in which
10 this child was murdered. Also, the position of the
11 body that is important to corroborate the testimony,
12 if they are called of the co defendants, who I
13 understand, have all give statements at some point or
14 other, contradicting previous statements and so if the
15 State calls those witnesses to testify, we would
16 certainly take the position that their testimony and
17 the pictures will help to corroborate their testimony
18 as to how this person was murdered and Judge, clearly
19 we think that, when you look at some of the other
20 photographs involved in the case, and when the Court
21 did the analysis in the previous trial, there were
22 pictures that were offered that were excluded and
23 certainly Judge, we would hope that the Court would do
24 a similar analysis and allow those particular
25 photographs in.

HEARING

109

1 The Court: Okay, Mr. Jenkinson?

2 Mr. Jenkinson: Your Honor, if you please. Any photographs
3 can corroborate but the question is the balance test.
4 We would ask the Court does the probative value
5 outweigh the prejudice and we've attempted through
6 selective photographs, showing the location of the
7 body, stipulating the fact that he's dead. These are
8 awful pictures and they're only being introduced
9 because they are awful. There's nothing there that's
10 going to corroborate anybody's testimony. The only
11 testimony that could be offered by the other witnesses
12 is the fact, whether or not the Defendant Bowen was
13 present in South Carolina and at this location. And
14 that has nothing to do with these photographs, so
15 there is no probative value to these photographs as I
16 can see at the minimums, whereas the prejudice is so
17 manifestly apparent and it's not in dispute outweighs
18 that probative value and we would ask that the Court
19 now allow them into evidence.

20 The Court: Ms. Barr, you say that if the State calls
21 certain witnesses, then the photographs will be
22 relevant to corroborate the testimony, if a witness is
23 called?

24 Ms. Barr: I did say that Judge. I will tell you that we
25 know for sure that the pathologist will testify and

HEARING

110

1 obviously with regard to the injuries to the victim's
2 head and to the victim's chest, which resulted in his
3 death, those would be clearly relevant to establish
4 the manner of death and the cause of the death and
5 Judge, we would also site State versus Hayward which
6 is a 2003 Supreme Court case and it stands for the
7 proposition that notwithstanding the fact that autopsy
8 photos may be gruesome and of a gory nature, they're
9 nonetheless admissible when they reveal the true
10 nature of the attack and the jury ... and this was a
11 case involving, obviously a death penalty case, but we
12 would take the position that this kind of attack,
13 which is a heinous attack, when somebody breaks into
14 somebody's home, the true nature of that attack would
15 certainly be corroborated by the photographs and
16 should certain defense witnesses testify, I imagine
17 that Mr. Jenkinson is going to attack very heartedly
18 their credibility if they're able to establish the
19 manner in which the killing occurred, if they testify
20 and I suspect they will, then it would certainly
21 corroborate that testimony.

22 The Court: In effect, you're asking the Court for
23 hypothetical advisory ruling. You want me to rule on
24 the basis of if someone testifies. I'm not going to
25 do that. So, these are photographs that are yet to be

HEARING

111

1 ruled on to be marked for identification only at this
2 point in time, except for State's exhibit number 33,
3 which is admitted with objection.

4 Ms. Barr: Alright.

5 The Court: We will submit for identification only 31,
6 34, 35 for i.d. purposes. The ones that are admitted
7 shows the back of the chair, the probative value is --
8 - prejudicial effect is most likely to corroborate the
9 testimony of witnesses including the mother who has
10 already testified.

11 Ms. Barr: Yes sir.

12 The Court: Alright. Did we give the jury fifteen
13 minutes? Who's the clock-keeper here.

14 Court Reporter: I had them going out at 11:06, Judge.

15 The Court: Pardon me?

16 Court Reporter: I had them going out at 11:06.

17 The Court: 11:06

18 Ms. Barr: Exactly fifteen minutes.

19 The Court: Exactly fifteen minutes. We'll take a two
20 minute stretch and then press on.

21 Ms. Barr: Yes sir.

22 (There was a brief court break taken)

23 The Court: Bring in the jury.

24 (Jury enters courtroom at 11:26)

25 The Court: Okay. Ms. Barr.

HEARING

112

1 (Continuation of witnesses testimony)

2 Q: Let me get you to stand up here with me. We're going
3 to publish those in a minute. That's State exhibit 38
4 and let me get you to step over to the side. Alright,
5* can you show us what's depicted in that photograph?

6 A: Okay, that's the chair where the victim was situated
7 and it's right next to the kitchen counter, the table.

8 Q: Make sure you keep your voice up.

9 A: Oh, I'm sorry. And it, on the other side, right
10 outside of this photo is where the laundry room was,
11 which led to the back door.

12 Q: Okay.

13 A: So right there this little curio cabinet.

14 Q: Alright, I was curious about one thing in the
15 photograph, let me borrow your pointer for a second.
16 Can you tell me what that little piece is there by the
17 little gold piece by the milk jug?

18 A: That's one of the cartridge cases that I collected at
19 the scene.

20 Q: Alright, going to publish State's 36. Tell us what's
21 depicted in that particular photograph.

22* A: This would be the hat of the victim and this is the
23 wingback chair that he had been in.

24 Q: Okay, now, tell us what is going on here in that
25 particular photograph.

HEARING

113

1 A: Okay, this is going to be a shotgun blast which was
2 what caused this right here. This was pellets out of
3 the barrel.

4 Q: Okay, alright, I'm going to publish State's 7. You've
5 testified that you collected casings from the scene,
6 is that where you would have marked with number 2?

7 A: Yes ma'am.

8 Q: Okay, alright, now tell us about State's number 44.

9 A: Okay, this is a photograph showing one of the injuries
10 to the victim.

11 Q: Okay. Is that you picking up his arm or Vickie
12 Hallman?

13 A: It would have been either Vickie Hallman or Jeffrey
14 Scott.

15 Q: And Jeffrey Scott is employed where?

16 A: With Williamsburg County Sheriff's department.

17 Q: Alright, and tell us about State's exhibit number 23.

18 A: This was a photograph showing that the victim's hand
19 was still in his pocket.

20 Q: Okay.

21 A: And it just got some right here, appears to be some
22 pellets.

23 Q: Shotgun pellets?

24 A: Shotgun pellets.

25 Q: Alright, what about, does that appear to be a hole in

HEARING

114

1 the victim's, I guess it would be his left hand?

2 A: Yeah, an injury of some sort.

3 Q: Alright, and tell us about State's exhibit number 21.
4 Is that a close up version of the injury that we just
5 talked about?

6 A: Yes ma'am.

7 Q: And is this his hand in his pocket here?

8 A: Yes, this is his jeans and his tee shirt right here
9 and this would be his wrist right there.

10 Q: Okay.

11 A: Going into his jean pocket.

12 Q: Alright, and does this show the injury to the victim's
13 hand?

14 A: Yes ma'am.

15 Q: Alright. I'm going to publish State's exhibit number
16 4. Going outside of the residence, did you all
17 recover a light pink shirt outside the residence?

18 A: Yes ma'am.

19 Q: Alright, and where did you recover that shirt?

20 A: It was on the, this is right here.

21 Q: Yes sir.

22 A: It was over in this area, this section.

23 Q: Okay, so you all placed the cone there to mark where
24 you found the shirt?

25 A: It was placed by officers prior to my arrival.

HEARING

115

1 Q: You photographed what's been marked as State's 11.
2 Tell us the significance.

3 A: This is the back door, with, this is actually the
4 laundry room. This is the deck and the back door of
5 the residence.

6 Q: Yes sir.

7 A: And this, and generally, when I photograph a residence
8 I always photograph the doors.

9* Q: Okay did you see any visible signs of forced entry to
10 the rear door?

11 A: No ma'am.

12 Q: Tell us the significance of State's twelve.

13 A: Okay this is the exterior of the residence.

14 Q: Keep your voice up.

15 A: I'm sorry. This is the exterior of the residence and
16 this is the window that would have been right there
17 near where the victim's chair was, the victim was
18 located.

19 Q: Yes sir.

20 A: And this is where we photographed an exit hole coming
21 out from the house near the deck.

22 Q: You said exit hole. Where a gun was fired?

23 A: Yes ma'am. Where a projectile exited the house.

24 Q: Alright and State's exhibit thirteen showing a closer
25 view of that particular hole?

HEARING

116

- 1 A: Yes ma'am. This right here is an exit.
- 2 Q: Alright and did you find any projectiles at the scene
- 3 that would have been what you suspected if been fired
- 4 from the residence and came out of the residence?
- 5 A: Yes ma'am. There was a projectile underneath the deck.
- 6 Q: Okay, let me show you State's fourteen. Tell me what
- 7 that depicts.
- 8 A: Marker six is the, what I use to show where a
- 9 projectile was located.
- 10 Q: And does number fifteen show a closer view of that
- 11 particular projectile?
- 12 A: Yes it does.
- 13 Q: And this is under the deck?
- 14 A: Yes ma'am.
- 15 Q: Okay. Now, I'm going to show you State's seventeen.
- 16 Tell us what's in that photograph.
- 17 A: Well, this would be wood planks to the deck. This is
- 18 our tape and that would be where the projectile went
- 19 through the deck.
- 20 Q: Went through the wall of the house, through the deck
- 21 and landed underneath there?
- 22 A: Correct.
- 23 Q: Alright I'm going to show you, let's go back a little
- 24 bit. I'm going to show you State's number twenty-
- 25 seven. I asked you earlier about that little golden

HEARING

117

1 item that struck my curiosity, is that a closer view
2 of that particular picture?

3 A: Yes ma'am. This is the kitchen counter, the chair the
4 victim was in.

5 Q: Okay.

6 A: And this right here was the cartridge case that we
7 located on the scene.

8 Q: Alright and there were other projectiles found in the
9 hall, is that correct?

10 A: Yes ma'am.

11 Q: Alright, going to publish State's twenty-nine and
12 explain to the ladies and gentlemen of the jury what's
13 depicted in that photograph.

14 A: Okay, this is still in the kitchen. Closer to the
15 sink, double windows.

16 Q: Keep your voice up.

17* A: I'm sorry. The, anyway, this is the kitchen to the
18 residence. Three and four were where we located a
19 couple of shotgun shells.

20 Q: Okay, alright and I'm going to publish State's thirty.
21 Is that a closer view of that as well?

22 A: Yes ma'am. This is a, these are the two shotgun
23 shells that we found.

24 Q: Okay, tell us what is depicted in State's thirty-two.

25 A: Okay. Right here, this will be a cartridge case,

HEARING

118

- 1 located near the, near where the victim was sitting.
- 2 Q: Okay, alright. Is that the cord that was noted in
- 3 some of the other photographs by the chair?
- 4 A: It was. The cord was an extension cord.
- 5 Q: Alright and I'll publish thirty-seven. Is that also
- 6 a picture of the cord and the chair?
- 7 A: Yes ma'am.
- 8 Q: Okay, alright and there is a projectile by the cord?
- 9 A: A cartridge casing, yes.
- 10 Q: I'm sorry, yes. Alright tell us about thirty-nine.
- 11 A: This is the wall near the chair the victim was in and
- 12 this was the hole made by a projectile in the
- 13 residence.
- 14 Q: Alright I'm going to show you forty-two. Is that
- 15 here, does that appear to be one of the holes, as well
- 16 as that? And let me show you forty-three as well. I
- 17 won't publish that, just ...
- 18 A: Okay, this definitely is a shotgun pellets. This I'm
- 19 having trouble seeing.
- 20 Q: Okay. The red spots there, does that appear to be
- 21 blood?
- 22 A: Yes, suspected blood.
- 23 Q: Okay. And calling your attention back to the previous
- 24 exhibit, which is number thirty-nine. There's clearly
- 25 a hole there surrounded by blood splatter.

HEARING

119

1 A: That photo shows the location of the blood.

2 Q: Alright, you can take your seat now sir. Now, sir as
3 part of your duties you would have collected the
4 projectiles from the scene?

5 A: Yes I would.

6 Q: And you would have packaged them in some sort, some
7 form of packaging until it was ready for analyst, is
8 that correct?

9 A: Yes ma'am.

10 Q: Alright I'm going to have these particular exhibits
11 marked for identification purposes. Now, before I
12 show you these pictures, tell me what all you
13 collected from the scene.

14 A: As I stated previously, I collected a series of
15 photographs, we collected gunshot residue kits for
16 fingerprints, postmortem fingerprints of the victim
17 and also prints we collected from print cards from the
18 front door to the residence. We collected or took
19 custody of the victim's mother's nightgown, the two
20 additional gun shot residue kits and of course the
21 shotgun shells and the cartridge cases and the
22 projectile.

23 Q: Okay. Now, you mentioned something about some
24 fingerprint card?

25 A: Generally, what we do, when I say we, I mean SLED

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

120

- 1 agents that are assigned to the crime scene, we
2 collect a set of prints, postmortem prints. In this
3 case, the victim's fingerprints.
- 4 Q: Okay. Alright, what was the purpose obtaining the
5 shot gun shell projectiles from the scene?
- 6 A: That is evidence that pertained to the nature of the
7 crime and they would be sent to the firearms
8 department or analysis.
- 9 Q: Okay. Let me show you what's been marked as State's
10 exhibit number forty-nine and State's exhibit number
11 fifty. Can you tell whether or not these particular
12 items are related to this investigation?
- 13 A: Yes ma'am, this has the lab number 09-04627, the
14 Williamsburg Sheriff's department which is their
15 agency case number. That was exhibit fifty.
- 16 Q: Alright, what about forty-nine?
- 17 A: Forty-nine, also has a lab number 09-04267 of the
18 Williamsburg county sheriff's department and their
19 case number 2843.
- 20 Q: Now Agent Hardy, let me have you look at the log of
21* evidence as it relates to SLED and see whether or not
22 this is the lab number that is assigned to these two
23 exhibits.
- 24 A: Yes on the top of this page is 09-04267.
- 25 Q: And for the record, tell us which particular exhibit

HEARING

121

- 1 number you're opening up.
- 2 A: I'll open exhibit fifty.
- 3 Q: Alright.
- 4 A: Okay.
- 5 Q: Alright, do you recognize what was in that envelope?
- 6 A: Well, yes this is a bullet ...
- 7 Q: Okay, alright.
- 8 A: Apparently this is the bullet from the autopsy and
9 specimen.
- 10 Q: Can you tell if these particulars items have been
11 analyzed by SLED?
- 12 A: Yes, they have our lab number.
- 13 Q: That's okay. Tell me if you recognize any of the
14 items that you removed from that particular exhibit.
- 15 A: Okay the first one that's marked with the same lab
16 number. These were the pellets that were recovered at
17 the scene and also has Vickie Hallman's initials.
- 18 Q: Yes sir. If you can tell us about the next one.
- 19 A: The next one is going to be the same lab number, a
20 swap from the chair.
- 21 Q: Okay at , is that correct?
- 22 A: Yes ma'am.
- 23 Q: Alright.
- 24 A: The item number sixteen, same lab number, wading.
- 25* Q: Yes sir.

HEARING

122

- 1 A: Is going to be from the chair.
- 2 Q: Okay.
- 3 A: This one is number ten, marked the same lab number.
- 4 Q: Yes sir.
- 5 A: It's going to be the cartridge case.
- 6 Q: Okay..
- 7 A: Number nine same lab number the cartridge case and it
- 8 has my initials on it.
- 9 Q: Yes sir.
- 10 A: Number eleven is going to be three shotshells
- 11 Q: Taken from the scene and marked?
- 12 A: Yes ma'am.
- 13 Q: Yes sir.
- 14 A: And number twelve, same lab number is going to be the
- 15 twelve gauge.
- 16 Q: Alright.
- 17 A: Number thirteen, same lab number is going to be the
- 18 projectile that was identified in number six on the
- 19 back porch and it's going to be swabs.
- 20 Q: All of these items were collected by you or at your
- 21 direction from the home of Annette Bradshaw and K.D.
- 22 K.D. ?
- 23 A: Yes ma'am.
- 24 Ms. Barr: Judge we would move State's exhibit number
- 25 forty-nine, including the items of evidence therein, into

HEARING

123

1 evidence at this time.

2 Mr. Jenkinson: We have no objection.

3 The Court: They are admitted.

4 (State's Exhibit Number 49 was entered)

5 Q: Okay, I'm going to hand you what's been marked for
6 identification purposes as State's exhibit number
7 fifty-one.

8 A: Yes ma'am. This also appears to be evidence from this
9 case.

10 Q: And how do you know that?

11 A: The lab number has been assigned along with
12 Williamsburg County Sheriff's Department agency case
13 number.

14 Q: Now, will you open it for me? Okay, and what items
15 are enclosed in that particular exhibit?

16 A: We have an evidence envelope that is from Anne Arundel
17 Police Department.

18 Q: The items that are contained in that particular
19 exhibit, those also went to SLED for analysis as far
20 as you know?

21 A: Yes ma'am, it's got our lab number on it.

22 Q: And let's just be clear. The items that you're
23 talking about now, as well as the items that you
24 talked about you didn't perform analysis on those?

25 A: No ma'am.

HEARING

124

1 Q: Your part of your job is just to collect the evidence,
2 is that correct?

3 A: Yes.

4 Q: Alright let me get those back in there.

5 A: I got it.

6 Q: Thank you Agent Hardy. That's all the questions that
7 I have. Please answer any questions from Mr.
8 Jenkinson or the Court may have for you.

9 A: Yes ma'am.

10 The Court: Mr. Jenkinson.

11 CROSS EXAMINATION OF AGENT HARDEE BY MR. JENKINSON

12 Q: Mr. Hardee, you are an investigator and you collect
13 evidence of the crime scene?

14 A: Yes sir.

15 Q: When you collect evidence in a crime scene, you look
16 for anything to connect people with the crime that may
17 be charged with the crime ultimately?

18 A: Yes sir.

19 Q: In this particular case, you're collecting evidence at
20 a crime scene to determine whether or not Kelvin
21 Bowen, who is seated over here, was in fact at this
22 crime scene where you were located?

23 A: My primary purpose is to collect the evidence so that
24 a suspect can be developed. I have no idea who the
25 suspect could be at the time.

HEARING

125

1 Q: I understand, but it's Kelvin Bowen that's on trial?

2 A: Yes.

3 Q: And you're here testifying about a murder that
4 occurred and you went there on April 5th, 2009?

5 A: Yes sir.

6 Q: K.D.

7 A: Right.

8 Q: He's on trial for that.

9 A: True.

10 Q: And as you sit there, you investigated and spent hours
11 there checking on things, didn't you?

12 A: Yes sir.

13 Q: Did you find a single fingerprint to tie Kelvin Bowen
14 to the scene?

15 A: No sir.

16 Q: Did you find a single footprint to tie Kelvin Bowen to
17 the scene?

18 A: No sir.

19 Q: Did you find any DNA of his on scene that would tie
20 him there?

21 Ms. Barr: I object to that line of questioning. He just
22 testified that he didn't perform any analysis so he's
23 not competent to answer that question. So my
24 objection would be the witness is not competent to
25 answer that question.

HEARING

126

1 Mr. Jenkinson: Did you sustain that or what? Do you want
2 to hear me on that?

3 The Court: Yes sir.

4 Mr. Jenkinson: Well ...

5 The Court: A speaking objection, so a speaking argument to
6 the speaking objection, if you would like.

7 Mr. Jenkinson: I would just like to say this is a cross
8 examination of the crime scene investigation and I'm
9 just trying to determine what he found.

10 The Court: Objection is overruled.

11 Q: Did you find a single piece of DNA to tie Kelvin Bowen
12 to this scene?

13 A: No sir, I didn't. I'm not a DNA analysis and I'm also
14 not a fingerprint analysis. What I collected would
15 have been sent to someone else for analysis.

16 Q: Did you collect DNA that may have been his?

17 A: I did collect, well, Vickie did collect some
18 fingerprints.

19 Q: Okay and as you sit here today, and that was twenty
20 some odd months ago when this occurred. Today are you
21 aware of any evidence collected at the scene that were
22 Kelvin Bowen's?

23 A: No, sir.

24 Q: Did you find any property on the scene that you can
25 sit here today and say belonged to Kelvin Bowen?

HEARING

127

1 A: No, sir.

2 Q: I'm not a hunter but I want to ask you. I'm looking
3 at exhibit #51, these bullets that you've bought, you
4 didn't testify about those did you?

5 A: Just that they were collected from Maryland and they
6 have our lab number on them.

7 Q: And the shell casings that you found, the shotgun
8* shell casings ...

9 A: They were at the scene?

10 Q: Do you own a shotgun?

11 A: Yes, sir.

12 Q: Is that something that you routinely, buy shotgun
13 shells and hunt?

14 A: I don't hunt anymore but I occasionally shoot like
15 skeet.

16 Q: I'm showing you a Remington shell casing out of
17* exhibit number 49, okay. Ace Hardware about two
18 blocks from here sales shot gun shells. Is it very
19 likely that I could go around to Ace Hardware here in
20 Kingstree and buy that identical 12 gauge shotgun
21 shell that looks exactly like that by Remington?

22 A: It's possible.

23 Q: This is not an uncommon shell is it?

24 A: Not to my knowledge I've assume a lot of stores sell
25* them.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

128

1 Q: Have you ever shot a twelve gauge shotgun shell that
2 looked like that?

3 A: Yes, sir.

4 Q: When you're collecting evidence what are you looking
5 for, evidence of a crime?

6 A: Correct.

7 Q: If you would have found a cell phone at a crime scene,
8 would you collect that?

9 A: Yes, if it is no ones in the home. If it belongs
10 there it wouldn't be evidence of a crime.

11 Q: If it didn't belong in the home and it's a strange
12 cell phone laying there, would you collect it?

13 A: Yes, sir.

14 Q: Why is it important to collect a cell phone?

15 A: It can provide information. A contact list. Get the
16 number to find out, get the serial number to find out
17 who it belongs to, who it's registered to.

18 Q: If you wanted to collect information on my cell phone
19 and I had a T-Mobile cell phone, as a crime scene
20 investigator could you contact T-Mobile and say you
21 got Billy Jenkinson's cell phone number and I'd like
22 to subpoena his records.

23 A: That would go outside the scope of my responsibility
24 but it could go to another department and then they
25 could go and take whatever action they needed to get

HEARING

129

1 the information.

2 Q: Is that something routinely done at SLED

3 A: I can't testify to that.

4 Q: You've never done that?

5 A: No, I've never done that.

6 Q: But that's a tool that you use?

7 A: Yes, it's a tool that SLED has used.

8 Q: Have you ever seen cell phone records?

9 A: Just my own.

10 Q: That's what I say. Every month, you get one.

11 A: Yes.

12 Q: And if you made a call at 11:58 on February 1st and you
13 talked to somebody off of your cell phone that would
14 show up on your phone record wouldn't it?

15 A: Yes, sir.

16 Q: And it would show the number you called?

17 A: Yes, sir.

18 Q: And if you sent me a text message right now on your
19 phone to me, it would also show up on your phone,
20 wouldn't it?

21 A: Yes, sir.

22 Q: And it's available from telephone companies, isn't it?

23 A: Yes.

24 Q: It would show up on my phone and you would know that
25 I made a phone call from that location?

HEARING

130

- 1 A: Yes, sir.
- 2 Q: There's other information that is available as well
- 3 from cell phone companies about cell phones, isn't it
- 4 in an investigation, right?
- 5 A: Again, that's out of my scope. I can't testify to
- 6 everything they can get from a cell phone.
- 7 Q: And if Kelvin Bowen would have been talking on the
- 8 cell phone that night to one of these co-Defendants,
- 9 that information could be accessed on his cell phone
- 10 records, couldn't it?
- 11 A: I guess so.
- 12 Q: You couldn't say one way or the other?
- 13 A: No.
- 14 Q: It should show up on his phone bill, shouldn't it?
- 15 A: It should.
- 16 Q: Just like yours and mine. Now, I'm going to show you
- 17 what has been marked for identification as Exhibit
- 18 Number 48 from the State, did you prepare that?
- 19 A: Yes, sir.
- 20 Q: What is that?
- 21 A: This is a crime scene diagram of the victims
- 22 residence.
- 23 Q: Did you determine in your investigation which bedroom
- 24 Ms. Bradshaw was in?
- 25 A: No.

HEARING

131

1 Q: So you don't know?

2 A: She wasn't at the residence when I was there, so I
3 don't know what room she was in at the time.

4 Q: If she was staying in the bedroom adjacent to a
5 bathroom. There is only one of those that fits that
6 description.

7 A: Yes, sir.

8 Q: Do you see that?

9 A: Yes, sir.

10 Q: And that's back on the back corner by a deck as shown
11 on your description.

12 A: Yes, sir.

13 Q: Now, looking at that, in terms of a straight line
14 through a wall, how far would Ms. Bradshaw have been
15 from where the actual shooting occurred?

16 A: I can't, I couldn't tell you.

17 Q: Further than me to you?

18 A: Yes.

19 Q: Further than that?

20 A: Through the wall, since this is not to scale I can't
21 make that determination.

22 Q: Okay. I'm just saying from a straight line ...

23 A: From here it still looks like it's further.

24 Q: Not a whole lot further than me to you?

25 A: No, sir.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

132

1 Q: Did you collect any fingerprints from Ms. Bradshaw's
2 bedroom?

3 A: No, sir.

4 Q: Did you attempt particularly to collect any
5 fingerprints from her light switch?

6 A: No, sir.

7 Q: Did you determine whether or not the light on the
8 light switch in her bedroom cut on a light or was it
9 burned out or inoperable?

10 A: No, sir.

11 Q: You did not.

12 Mr. Jenkinson: Thank you Agent Hardee.

13 The Court: Ms. Barr.

14 Ms. Barr: Just one question.

15 AGENT HARDEE - REDIRECT BY MS. BARR:

16 Q: Agent Hardee, are you familiar with the window of
17 opportunity in which a person trying to subpoena text
18 messages has to actually get those text messages?

19 A: No, ma'am.

20 Q: You're not sure how much time it would have to take to
21* get it, how soon you would have to request it?

22 A: Correct.

23 Q: Okay. Did you know that these individuals charged
24 with the murder were arrested six weeks after the
25 murder happened?

HEARING

133

1 A: No, ma'am, I didn't know when they were arrested.

2 Q: Would that surprise you if I told you they were
3 arrested six weeks later?

4 A: Yeah, actually.

5 Ms. Barr: That's all the questions, I have. Thank
6 you.

7 Witness: Thank you.

8 The Court: Ms. Barr, call your next witness.

9 Ms. Barr: Quadir Wilson.

10 Bailiff: Place your left hand on the Bible and raise your
11 right hand. Do you solemnly swear that the evidence
12 and testimony you will give this Court and jury will
13 be the truth, the whole truth and nothing but the
14 truth, so help you God?

15 A: I do.

16 Bailiff: Have a seat please.

17 EXAMINATION OF MR. QUADIR WILSON BY MS. BARR:

18 Q: Mr. Wilson, you were subpoenaed to testify in this
19 case?

20 A: Yes.

21 Q: Do you know Ronald Mack?

22 A: Yes.

23 Q: How is it that you know Ronald Mack?

24 A: We stayed in the neighborhood and we were close
25* friends and we went to school together.

HEARING

134

- 1 Q: What about K.D. ?
- 2 A: I knew him from senior high.
- 3 Q: You said you and Ronald use to go to school together?
- 4 A: Yes.
- 5 Q: You understand why you were subpoenaed in this case,
- 6 right?
- 7 A: Yes.
- 8 Q: Did you see Ronald Mack, the weekend that K.D. was
- 9 murdered?
- 10 A: It was at the club.
- 11 Q: Ya'll went to Club Jordan that Saturday?
- 12 A: Yes.
- 13 Q: Where is Club Jordan?
- 14 A: On Highway 52?
- 15 Q: All right. You went to Club Jordan with Ronald?
- 16 A: Yes.
- 17 Q: And who else?
- 18 A: And Antonio ...
- 19 Q: McClary?
- 20 A: Yes.
- 21 Q: And Dontrey Barr?
- 22 A: Yes.
- 23 Q: What time did you all get to the nightclub?
- 24 A: Probably about nine or ten o'clock.
- 25 Q: What time did you all leave?

HEARING

135

- 1 A: I'd say probably like 1:30.
- 2 Q: Why did you all leave then?
- 3 A: The call was about to end.
- 4 Q: Now, who all did you go to the club with?
- 5 A: We all went together.
- 6 Q: When you say we, who are you talking about?
- 7 A: Tony, Dontrey, Ron ...
- 8* Q: You all were together?
- 9 A: Yes.
- 10 Q: Did you all leave together?
- 11 A: No. Ronnie and Dontrey left at a different time and
- 12 then Antonio came back and pick me up. Then we went
- 13 back.
- 14 Q: When Ronald was at the club, what kind of mood was he
- 15 in?
- 16* A: He seemed like something was bothering him.
- 17 Q: Why would you say that?
- 18 A: He'd be on his cell phone and he'd seem like kind of
- 19 mad.
- 20 Q: Mad?
- 21 A: Yeah.
- 22 Q: What about Antonio McClary, what kind of mood was
- 23 Antonio in?
- 24 A: Antonio was always happen. That's was him.
- 25 Q: Now, what was Ronald doing at the club, what was he

HEARING

136

1 doing while he was there?

2 A: He was playing pool.

3 Q: He was on his phone.

4 A: Yeah, we was playing pool and he was on his phone.

5 Q: When you say he was on the phone, who are you talking
6 about?

7 A: Ronald.

8 Q: Ronald?

9 A: Yeah, Ronald Mack, yeah.

10 Q: Did you all discuss K.D. that night?

11 A: He told me that they had had a argument.

12* Mr. Jenkinson: Objection. I object to what he said,
13 Your Honor.

14 The Court: Objection is sustained.

15 Q: Did Ronald Mack tell you any intentions that he had
16 towards K.D. ?

17 Mr. Jenkinson: Objection.

18 The Court: The basis for the objection.

19 Mr. Jenkinson: Hearsay, Your Honor.

20* Ms. Barr: We take the position under 803 it is a
21 statement, the state of mind, emotion, physical condition
22 such as intent ...

23 Mr. Jenkinson: Your Honor, Rule 803 is known as
24 excited utterance. This would not constitute any kind of
25 excited utterance. It would lead to an impression for

HEARING

137

1 somebody to testify as to what somebodies intentions were,
2 which is hearsay.

3 The Court: I overrule the objection.

4 Q: So, you're saying they argued earlier that day. What
5 did Ronald Mack tell you as to his intentions towards
6 K.D. ?

7 A: That I'm going to get him.

8 Q: He said what ...

9 Mr. Jenkinson: Object to that statement.

10 The Court: Objection is overruled.

11 Q: Mr. Wilson, I can barely hear you, he said what?

12 A: He said I'm going to get him but I didn't know what he
13 meant when he said it like that.

14 Q: He said he was going to get him?

15 A: Yes.

16 Q: Did he tell you what he meant by that?

17 A: No.

18 Q: Did he seem to be happy or angry or what kind of mood
19 was he in when he made that statement, I'm going to
20 get him?

21 A: He was angry.

22 Q: What did you all do when you left that club?

23 A: We went to Dontrey's house.

24 Q: Is Dontrey seated in the courtroom today?

25 A: Yes.

HEARING

138

- 1 Q: Can you show us who he is?
- 2 A: The fellow with the yellow shirt on.
- 3 Q: You all went back to his house and what happened at
4 that point?
- 5 A: We was talking and then Dontrey said he was going to
6 go to sleep. That's when Ronald and Antonio left.
- 7 Q: They left how were they dressed?
- 8 A: They had changed clothes.
- 9 Q: They had changed clothes from the ones they were
10 wearing at the club?
- 11 A: Yes.
- 12 Q: What did they change into?
- 13 A: Darker clothes.
- 14 Q: They changed into dark clothes?
- 15 A: Yeah.
- 16 Q: About what time was it when they left?
- 17 A: I'd say about fifteen minutes after we got there. I'd
18 say fifteen minutes after we got to Dontrey's house.
- 19 Q: Again, what time was it?
- 20 A: Somewhere between 1:45 and 2:15; yeah.
- 21 Q: Do you know where K.D. was living at the time?
- 22 A: No, I never knew where K.D. was living.
- 23 Q: Do you know where is?
- 24 A: No.
- 25 Q: You said you all went to Dontrey's house, where does

HEARING

139

1 Dontrey live?

2 A: At the time he was staying in Aynors.

3 Q: Did you ask them where they were going?

4 Mr. Jenkinson: Your Honor, I would object as to the
5 hearsay.

6 The Court: Objection is overruled.

7 Q: So?

8 A: Yes, I asked them.

9 Q: What was the response?

10 A: Don't worry about it.

11 Q: Who told you that?

12 A: Ronald told me that.

13 Q: Even at that point, Mr. Wilson, you kind of suspected
14 this was not a good situation?

15 A: Yes.

16 Q: Were Ronald and Antonio kind of talking to each other?

17 A: I mean we all was talking to each other but I can't
18 really say what all they was talking about.

19 Q: Was there a point in time where they all went off just
20 the two of them on their own to talk?

21 A: Sometimes.

22 Q: When they told you that they were leaving and they
23 told you don't worry about it, what did you say to
24 them?

25 A: I said ya'll don't do nothing stupid.

HEARING

140

- 1 Q: You told them don't do nothing stupid?
- 2 A: Yes.
- 3 Q: When was the next time you saw Ronald Mack or Antonio
- 4 McClary?
- 5 A: I can't really say.
- 6 Q: Was it that same night. Could it have been that
- 7 morning?
- 8 A: Yeah.
- 9 Q: How did you see Ronald or Antonio, did they come back
- 10 to the house?
- 11 A: They came back to the house.
- 12 Q: Who came back to the house?
- 13 A: Antonio and Ronald.
- 14 Q: What time was it that they came back to the house?
- 15 A: I can't say.
- 16 Q: Was it still dark outside?
- 17 A: Yes, it was still dark.
- 18 Q: What did Ronald do when he got back to your house?
- 19 A: He just walked in.
- 20 Q: What did they say when they came back?
- 21 A: They didn't say much. They just walked in.
- 22 Q: What did you say?
- 23 A: I hope you all didn't do nothing stupid.
- 24 Q: What did he say?
- 25 A: We done it, what's done is done.

HEARING

141

1 Q: How did they leave your house?

2 A: They was walking, I believe they was walking. They
3 went out the door, I don't believe anyone pulled up.

4 Q: Did Ronald do anything with his hands when he got
5 back?

6 A: He washed his hands.

7 Q: With what.

8 A: With soap and bleach.

9 Q: When Ronald came back he washed his hands with soap
10 and bleach, right?

11 A: Yes.

12 Q: How long did Ronald and Antonio stay?

13 A: I can't really say because I wasn't looking at the
14 time.

15 Q: Now, did they have the same clothes on that they had
16 when they left?

17 A: Yes.

18 Q: When Antonio and Ronald came back to your house, did
19 they keep on those same clothes or did they change the
20 clothes?

21 A: I don't think they changed their clothes when they
22 came back. I'm not sure.

23 Q: Do you know what happened to the clothes that they
24 were wearing when they left?

25 A: No, I don't know what happened to them.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

142

- 1 Q: When did you find out, when was it confirmed for you
2 that K.D. had, in fact, been murdered?
- 3 A: I was at church and I got a text that K.D. was
4 murdered.
- 5 Q: What did you think when you got that?
- 6 A: About Ronald.
- 7 Q: Is Tawanda Mack Allen, who is that?
- 8 A: Ronald's mother.
- 9 Q: Ronald's mother?
- 10 A: Yes.
- 11 Q: Have you ever met here before?
- 12* A: I met her one time but it wasn't like actually meet
13 her, I saw her when her and Ronald was talking.
- 14 Q: Where was she living in April of 2009?
- 15 A: I believe in Maryland.
- 16 Q: Have you ever heard the name Callie before?
- 17 Mr. Jenkinson: Objection as to what he heard, Your
18 Honor. Hearsay.
- 19 The Court: Ms. Barr.
- 20 Ms. Barr: Judge, it's not a statement being offered
21 for the truth of the matter. I'm just asking if he's heard
22 the name.
- 23 The Court: Objection is overruled.
- 24 A: Yes.
- 25 Q: You've heard that name before?

HEARING

143

1 A: Yes.

2 Q: Before K.D. was murdered?

3 A: Yes.

4 Mr. Jenkinson: Same objection, Your Honor.

5 The Court: Overruled.

6 Mr. Jenkinson: ... move to strike.

7 Q: Where did you hear that name from?

8 A: Ronald.

9 Q: Who was Callie?

10 Mr. Jenkinson: Objection. As to his knowledge.

11 The Court: Objection is sustained.

12 Q: Now, let me ask you, Mr. Wilson, when you received the

13 text while you were in church that K.D. had been

14 shot, the question is why didn't you go to the police

15 and tell them what you knew?

16 A: I figured if Ronald would do that to K.D. , he might

17 would do the same to me.

18 Mr. Jenkinson: Objection, Your Honor.

19 The Court: I didn't hear it. Sir, restate your

20 answer.

21 A: I said if he would have did it to K.D. , he might

22 have would of did it to me.

23 The Court: Objection is overruled.

24 Q: You were concerned for your safety?

25 A: Yes.

HEARING

144

1 Q: But at some point you actually did give a statement to
2 law enforcement?

3 A: Yes.

4 Q: And you told them what you knew?

5 A: Yes.

6 Ms. Barr: That's all the questions, I have. Please
7 answer any questions that Mr. Jenkinson may have for you.

8 Mr. Jenkinson: I have no questions of this witness.

9 The Court: Okay. You may step down. Next witness.

10 Ms. Barr: We call Dontrey Barr.

11 Bailiff: Place your left hand on the Bible and raise your
12 right hand. Do you solemnly swear that the evidence and
13 testimony you will give this Court and jury will be the
14 truth, the whole truth and nothing but the truth, so help
15 you God?

16 A: I do.

17 Bailiff: Have a seat please.

18 DIRECT EXAMINATION OF DONTREY BARR BY MS BARR:

19 Q: Good afternoon Mr. Barr.

20 A: Good afternoon.

21 Q: Now you came a long way to be here today didn't you?

22 A: Yes I did.

23 Q: Alright, tell me first of all state your full name.

24 A: My name is Dontrey Terrell Barr.

25 Q: And where did you come from to be here today?

HEARING

145

- 1 A: Georgia.
- 2 Q: Alright, you're in the Army?
- 3 A: Yes ma'am.
- 4 Q: How long have you been enrolled in the Army?
- 5 A: Seven months.
- 6 Q: Alright and is Williamsburg county home for you?
- 7 A: Yes ma'am.
- 8 Q: Okay, alright now you were subpoenaed to testify in
- 9 this case, is that right?
- 10 A: Yes ma'am.
- 11 Q: Alright and sir, did you know the victim K.D.
- 12 K.D. ?
- 13 A: Yes, I knew him.
- 14 Q: Alright and sir did you know one of the defendants,
- 15 Ronald Mack?
- 16 A: Yes, I knew him too.
- 17 Q: And how did, how is it that you knew Mr. Mack?
- 18 A: We were friends from school.
- 19 Q: Okay, you know him from school or the neighborhood or
- 20 what?
- 21 A: Both.
- 22 Q: Okay, alright. Mr. Barr did you see Ronald Mack
- 23 during the weekend that K.D. was killed?
- 24 A: Yes ma'am, I did.
- 25 Q: Okay tell me what you all were doing that weekend.

HEARING

146

- 1 A: That we went to Club Jordan and at his girlfriend's
2 house.
- 3* Q: Who's girlfriend's house?
- 4 A: Ronald's girlfriend.
- 5 Q: What's Ronald's girl name?
- 6 A: Dymon.
- 7 Q: Dymon? Okay.
- 8 A: He told me to come pick him up the next day anytime,
9 so we came back and picked him up and he was walking
10 and we passed by him, we recognized him so we turned
11 around to pick him up. He got in the car and he got
12 in the back with me.
- 13 Q: Alright, slow down for me. You say you came to pick
14 him up the next day. So would this be Saturday, April
15 the 4th?
- 16 A: Yes ma'am.
- 17 Q: Okay, where'd you pick him up at?
- 18 A: In the Hemingway area.
- 19 Q: Alright, about what time?
- 20 A: It would be 9:00.
- 21 Q: Now had you ever met Ronald Mack's mother?
- 22 A: One time before.
- 23 Q: Alright, where does she live?
- 24 A: Maryland.
- 25 Q: She lives in Maryland? Alright, now how is it that

HEARING

147

1 Ronald was living down here and his mom was in
2 Maryland?

3 A: He was living with his father.

4 Q: His father, okay. And his father lives in
5 Williamsburg county?

6 A: Yes ma'am.

7 Q: Alright, now tell me about what time it was that you
8 picked him up.

9 A: It was 9:00, before ten.

10 Q: That night?

11 A: Yes ma'am.

12 Q: Okay, were you with anybody?

13 A: Me, Quadir and Antonio.

14 Q: Quadir Wilson, the young man who just testified?

15 A: Yes ma'am.

16 Q: And tell me, is that who you call, is that Antonio
17 McClary?

18 A: Yes, ma'am.

19 Q: And what happened when you picked Ronald Mack up?

20 A: He got in the back with me and we got like, further
21 down the road and he was doing text messages.

22 Q: Okay, who was in the backseat with you?

23 A: It was just me and him.

24 Q: You said you and him; who are you talking about?

25 A: Me and Ronald.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

148

- 1 Q: Okay. Alright, now, who was driving the vehicle?
- 2 A: Antonio.
- 3 Q: What kind of mood was Ronald Mack in?
- 4 A: He seemed like something was bothering him.
- 5 Q: Okay, what about Antonio? What kind of mood was he
- 6 in?
- 7 A: Regular. Nothing was going on seem like to me.
- 8 Q: Alright, what type of phone did Ronald Mack have?
- 9 A: He had an iphone.
- 10 Q: Sir?
- 11 A: An iphone.
- 12 Q: Was he working anywhere?
- 13 A: He worked at his dad's store.
- 14 Q: Alright and you indicated that he had shown you some
- 15 text messages?
- 16 A: Yes ma'am.
- 17 Q: Okay, alright and why was he showing you the text
- 18 messages?
- 19 A: We were friends.
- 20 Q: Sir.
- 21 A: We were friends and he felt like he showed me some.
- 22 Q: Okay, alright and what did, did you actually see him
- 23 texting somebody?
- 24 A: No I didn't.
- 25 Q: Okay, did you see any incoming text messages?

HEARING

149

1 A: Yes ma'am.

2 Q: Okay, alright and you don't, you 're not sure when the
3 text messages were sent?

4 A: No ma'am.

5 Q: Okay. Did he say to you who had text message using
6 his phone, whether it was him or somebody else?

7 A: Not really ...

8 Mr. Jenkinson: Your Honor, may we be heard on this issue?
9 We do have an objection.

10 The Court: Alright, ladies and gentlemen we'll have you
11 go to the jury room. Please do not discuss the case.

12 (Jury exits Courtroom)

13 The Court: Yes sir?

14 Mr. Jenkinson: There's about to be solicited from this
15 witness information about the text messages. He read
16 the text message, he can say what he read, but what
17 he's going to go further was, is identify that as
18 being sent by a person named Callie, which is only
19 information given to him by another, which would be
20 hearsay. Our objection is to the identity of the
21 sender, because all it was was a text message without
22 any identity and we want to make sure that the
23 inadmissible, hearsay portion, that he's going to
24 testify to appears in this statement that he provided
25 law enforcement. It's hearsay, but the actual, what

HEARING

150

1 he read is not hearsay and we object to him using the
2 identity of the sender.

3 The Court: Alright Ms. Barr?

4 Ms. Barr: Judge, if he, if counsel doesn't object to him
5 saying what he saw, then that may solve a lot of our
6 problems, Judge, as it relates to the identity. He
7 saw something on the phone that relates to the
8 identity, that's clearly admissible. That's not to
9 say that necessarily that this defendant is Callie,
10 just that somebody who Ronald Mack identified on his
11 phone as Callie was the one that was sending him
12 messages and I think at some point, later of course,
13 we'll have to establish that the person who was termed
14 to be Callie was the defendant, but in terms of just
15 doing it that way, clearly is admissible as a
16 statement against co conspirators.

17 The Court: What did you say?

18 A: When we came back, when we was in the backseat, his
19 phone say the name of Callie and saying what up and
20 then Callie text back and said what's up? He was like
21 K.D. gonna get it, you talking about your friend the
22 one you have beef with and Ronald text back and said
23 yeah. He said you talking two, three, four, five in
24 the morning and he text back and say yeah, okay I'm on
25 my way.

HEARING

151

1 The Court: Alright. Sir did you see that yourself?

2 A: Yes sir.

3 The Court: Alright he said that's what he saw.

4 Mr. Jenkinson: That's what he read but ...

5 The Court: He said he saw the text was from ...

6 A: Callie.

7 The Court: Callie. They went back and forth when the
8 text came in and he saw who the texts were from. Is
9 that right?

10 A: Yes sir.

11 The Court: What's the objection again?

12 Mr. Jenkinson: My objection is he was told by Ronald as
13 opposed to what he actually saw.

14 The Court: Alright I think the question is what did you
15 see on the text?

16 Ms. Barr: Yes sir, it was.

17 The Court: Alright, let's bring the jury in you can go
18 ahead and get them.

19 (Jury enters courtroom at 12:31)

20 The Court: Ms. Barr.

21 Ms. Barr: Yes, thank you.

22 Q: Mr. Barr, you indicated that at some point when you
23 and Antonio and Quadir picked up Ronald Mack in
24 Hemingway, that you sat in the back seat with Ronald
25 Mack?

HEARING

152

- 1 A: Yes ma'am.
- 2* Q: And he showed you his cell phone?
- 3 A: Yes ma'am.
- 4 Q: And you say that you saw some text messages?
- 5 A: Yes ma'am.
- 6 Q: He shared that information with you?
- 7 A: Yes ma'am.
- 8 Q: And tell me what the text messages said, what you saw.
- 9 Not what somebody told you, but what you saw with your
- 10* own eyes.
- 11 A: On the phone it shows at the top it said Callie
- 12 Q: Okay, slow down for a minute. Based on what you saw
- 13 in his phone, you saw that he was conversing with
- 14 someone he called Callie?
- 15 A: Yes ma'am that was the name.
- 16 Q: Okay, that was the name saved in the phone right?
- 17 A: Yes.
- 18 Q: Okay tell me what the test messages said that you saw.
- 19* A: Ronald sent a message that said what's up and then
- 20 Callie sent a text message back and said what's up and
- 21 then Ronald texted back and said K.D. .
- 22 Q: Wait a minute, say that again.
- 23 A: Ronald text back and said K.D. . got it good.
- 24 Q: Okay.
- 25 A: The dude Callie asked said, what you ...

HEARING

153

1 Q: Take your time.

2 A: Yes ma'am. Then he text back, he said the --- he said
3 yeah and he said then Callie text back and said you
4 talking gun play.

5 Q: You talking what?

6 A: Gun play.

7 Q: Gun play.

8 A: Yes ma'am.

9 Q: And then Ronald text back and say yeah and then the
10 dude Callie text back and said two, three, four or
11 five in the morning? He said yeah; he said I'm on my
12 way and he text back again and he said delete these
13 text messages.

14 Q: Okay, so the person who was sending the text to
15 Ronald, who was saved in his phone as Callie said
16 delete these text messages?

17 A: Yes ma'am.

18 Q: Alright and did Ronald, in fact, delete those text
19 messages?

20 A: Yes ma'am.

21 Q: While you were sitting in the back seat with him?

22 A: Yes ma'am.

23 Q: Now, when you saw the text messages that he said what
24 he wanted to do to K.D. , you knew who he was talking
25 about, being K.D. ?

HEARING

154

- 1 A: Yes ma'am.
- 2 Q: Okay, alright. Tell me what happened after you saw
3 the text messages and after Ronald deleted them.
- 4 A: We just kept going down the road until we got to
5 Kingstree. I never even talked to him about it. I
6 was like, I was like, it was over something dumb, but
7 I didn't think that it would go that far.
- 8 Q: You didn't think he was serious?
- 9 A: Yeah, yes ma'am.
- 10* Q: Alright, where did you all go once you picked Ronald
11 up?
- 12 A: We went straight to Club Jordan.
- 13 Q: Alright, and how long did you stay there?
- 14 A: We left there at 1:00.
- 15 Q: Okay. Alright, now why did you all leave at one? Why
16 you didn't stay later?
- 17 A: I had a curfew.
- 18 Q: You had to get home?
- 19 A: Yes ma'am.
- 20 Q: You had to be home by one and one was your curfew?
- 21 A: Yes ma'am.
- 22 Q: Okay, alright, how long do you, how far do you live
23 from Club Jordan?
- 24 A: I live like three minutes from it.
- 25 Q: Okay, alright. And when you left Club Jordan, who was

HEARING

155

- 1 with you?
- 2 A: It was me, Antonio and Ronald.
- 3 Q: Okay. When ya'll got to your house, what happened?
- 4 A: Me and Ronald got out the car.
- 5 Q: Okay, you and Ronald went into the house?
- 6 A: Yes ma'am.
- 7 Q: Okay, then what happened?
- 8 A: I pulled up this program on the computer called Lie to
- 9 Me and I laid down and he laid down. I was in the
- 10 chair and he was in the floor and we was watching t.v.
- 11 Q: You pulled up a what on the computer?
- 12 A: It's a t.v. show.
- 13 Q: And it's called what?
- 14² A: Lie to Me.
- 15 Q: Lie to Me?
- 16 A: Yes.
- 17 Q: Okay, alright. So you were watching a t.v. show on the
- 18 computer?
- 19 A: Yes ma'am.
- 20 Q: And Ronald was doing what now?
- 21 A: He was laying on the floor.
- 22⁴ Q: Okay, alright, now what happened next?
- 23 A: We were watching t.v. about two o'clock ...
- 24 Q: Okay and then what happened when Antonio and Quadir
- 25 came back?

HEARING

156

- 1 A: We was sitting and talking for a minute and Ronald got
2 up and changed clothes and Antonio switched clothes
3 and they left.
- 4 Q: Now your voice is lowering a little bit. When Quadir
5 and Antonio came back, who changed clothes?
- 6 A: Ronald changed clothes and Antonio switched clothes.
- 7 Q: Okay, they changed from what to what?
- 8 A: Ronald had on some black and silver pants and a white
9 tee shirt, into like grey pants and some red shoes and
10 a red shirt.
- 11 Q: Okay. What about Antonio?
- 12 A: He changed into black pants.
- 13 Q: Okay, alright, where did they go?
- 14 A: I'm not sure where they said they was going.
- 15 Q: Where did they say they were going?
- 16 A: He told me he was going home.
- 17 Mr. Jenkinson: Objection to what he said, hearsay.
- 18* The Court: Ms. Barr?
- 19 Ms. Barr: Judge we would submit that it falls under the
20 exception that relates to plan, intent and state of
21 mind.
- 22 The Court: Objection is overruled.
- 23 Q: Sorry sir. Tell me where he said he was going.
- 24 A: Antonio said he was going home and Ronald said he was
25 going for a walk.

HEARING

157

- 1 Q: Said he was going for a walk?
- 2 A: Yeah.
- 3 Q: Alright, do you know how it was that they left your
- 4 home?
- 5 A: I assumed walking.
- 6 Q: Okay, they left out of the front door and you didn't
- 7 see anything after that?
- 8 A: No ma'am.
- 9 Q: Okay, alright. Did the two of them, at some point,
- 10 later return to your home?
- 11 A: Yes.
- 12 Q: Okay, about what time would you say it that it was
- 13 when they left?
- 14 A: It was like before two o'clock.
- 15 Q: Okay, alright and what time was it when they came
- 16 back?
- 17 A: Probably like twenty minutes later.
- 18 Q: Twenty minutes later? Do you think it was just that
- 19 short a period of time?
- 20 A: Fifteen or twenty minutes.
- 21 Q: Okay, alright and did you know where K.D. lived at
- 22 the time?
- 23 A: No, I didn't.
- 24 Q: Okay, do you know where is?
- 25 A: No, I didn't.

HEARING

158

- 1 Q: Okay. Now when they came back, tell the ladies and
2 gentlemen of the jury what happened when they got
3 back.
- 4 A: They came back, Ronald sat in the chair and Antonio
5 came in for a quick second and he just left and Ronald
6 was sitting up in the chair and I told him I hope you
7 didn't do nothing stupid and he said what's done is
8 done. I know you hear those sirens.
- 9 Q: He said I know you hear those sirens?
- 10* A: Yes ma'am.
- 11 Q: What kind of sirens was he talking about?
- 12 A: I guess police or ambulance.
- 13 Q: You heard those sirens?
- 14 A: Yes ma'am.
- 15 Q: Okay and did you hear the sirens pretty quickly after
16 he got back to the house?
- 17 A: He said it.
- 18* Q: Okay, alright, now he said that I know you heard those
19 sirens and what else?
- 20 A: Before he said that h e said what's done is done.
- 21 Q: Okay. Did you know what he was talking about when he
22 said it?
- 23 A: I guess what he was saying earlier in text messages.
- 24 Q: Now, Dontrey let me ask you, at any point in time that
25 night, did you ever see a gun in the possession of

HEARING

159

1 Ronald Mack?

2 A: No I didn't.

3 Q: At any point in time that night, did you ever see a
4 gun in the possession of Antonio McClary?

5 A: No I didn't.

6 Q: Alright. Now Mr. Barr at some point, did you and your
7 mother give a statement to law enforcement?

8 A: Yes we did.

9 Q: And you told them pretty much the same thing that you
10 testified to before this jury?

11 A: Yes ma'am.

12 Q: Alright and so my question to you is going to be the
13 same as it was to Mr. Wilson, having this information,
14 why didn't you immediately go to law enforcement and
15 tell them what you knew?

16 A: I was in fear for my life.

17 Q: You were in fear for your life?

18 A: Yes ma'am.

19 Q: Did you actually go up on your own to talk to law
20 enforcement or did they come to you and request a
21 statement?

22 A: They came to me and requested a statement.

23 Q: Okay and that was the statement that you gave on May
24 3rd, May 13th of 2009?

25 A: Yes ma'am.

HEARING

160

1 Q: This is five or six weeks after K.D. had been
2 killed?

3 A: Yes ma'am.

4 Ms. Barr: Alright young man, that's all the questions that
5 I have for you. Please answer the questions that Mr.
6 Jenkinson will have for you.

7 CROSS EXAMINATION OF MR. BARR BY MR. JENKINSON

8 Q: Mr. Barr?

9 A: Yes sir.

10 Q: Were you present in court yesterday?

11 A: No, I wasn't.

12 Q: Do you see this man right here?

13 A: Yes sir.

14 Q: Never seen him before in your life?

15 A: I've seen him at a preliminary hearing.

16 Q: At a preliminary hearing?

17 A: Yes sir.

18* Q: That was back on June the 10th, 2009?

19 A: Yes sir.

20 Q: That's the only time you've ever seen him, those two
21 occasions, in your life?

22 A: Yes sir.

23 Q: And he's identified as Kelvin Bowen?

24 A: Yes sir.

25 Mr. Jenkinson: I have nothing further.

HEARING

161

1 The Court: Anything else?

2 Ms. Barr: Just a quick follow up, Judge, if I may.

3 RE-DIRECT BY MS. BARR

4 Q: Mr. Barr now you and I are not related right?

5 A: No ma'am.

6 Q: Okay, you were asked whether or not you had ever seen
7 Kelvin Bowen before; this defendant. And you said you
8 had not.

9 A: Other than the hearing.

10 Q: Okay. And you did not see Tawanda Mack Allen that
11 night either did you?

12 A: No ma'am.

13 Q: You did not see anything that happened at the
14 residence of K.D. that night did you?

15 A: No ma'am.

16 Ms. Barr: Alright, thank you sir.

17 RE-CROSS BY MR. JENKINSON

18 Q: The first time you ever saw Kelvin Bowen was in court
19 on June the 10th, 2009, months after this crime?

20 A: Yes sir.

21 The Court: Thank you sir. You may have a seat. Ladies
22 and gentlemen, we're going to break for lunch now and
23 start back at two o'clock. Please do not discuss the
24 case and be back in the jury room at two o'clock.
25 Jury only, jury only, please sit down.

HEARING

162

1 (Jury take lunch break 12:45)

2 The Court: Any other matters before we break for lunch?

3 Ms. Barr: No sir, Judge. Nothing from the State Judge.

4 Mr. Jenkinson: Don't think so. Only other thing we're
5 missing is the sketch that we asked for.

6 The Court: Alright, we're in recess.

7 (Lunch break)

8 (Back on the record 2:13)

9 The Court: Alright, none of the issues or questions and
10 objections to this point seem to involve statements of
11 by Mr. Mack or Ms. Allen, who are co-defendants and
12 who are likewise charged with conspiracy along with
13 this defendant and I want to hear what anyone has to
14 say regarding the co-conspirators exception to the
15 hearsay rule. Ms. Barr.

16 Ms. Barr: Judge, we would take the position that under the
17 applicable rule of evidence that statements made by
18 co-conspirators in furtherance of the conspiracy are
19 admissible.

20 The Court: Those statements made, must be statements
21 made to the co-conspirator or to a third party? It's
22 the same rule, if the same statements are made to a
23 third party.

24 Mr. Jenkinson: I'd like to know what rule.

25 Ms. Barr: 801(d).

HEARING

163

1 Court Reporter: Did you say 801(d)?

2 Ms. Barr: Yes, and 801(d2).

3 The Court: 801(d)?

4 Ms. Barr: Yes sir, d.

5* The Court: A statement by the co-conspirator to the
6 party during the course in furtherance of the
7 conspiracy.

8 Ms. Barr: Yes sir.

9 The Court: And ...

10 Mr. Jenkinson: Can I comment on that?

11 The Court: Yes sir.

12 Mr. Jenkinson: Mr. Mack, statements by a conspirator on the
13 stand about what Mr. Mack said, as far as they relate
14 to Mr. Mack, would fall within that rule, but it's
15 double hearsay when Mr. Mack has said something about
16 that third party. That, that takes it outside 801 and
17 then becomes double hearsay. In other words, it's not
18 the statement. It's a statement by Mr. Mack. Mr.
19 Mack said I killed him, for example, would fall within
20 that rule, but Mr. Mack said I saw somebody else kill
21 him and that becomes double hearsay because he's
22 talking about something that he, that somebody else
23 said to him or something out, further out, in other
24 words, he can testify about what Mr. Mack said, what
25 Mr. Mack did himself. That's within the rule, but

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

164

1 what Mr. Mack starts double hearsaying about other
2 people, then that becomes hearsay.

3 The Court: The Solicitor asked the witness a question
4 about what did Mr. Mack say and Mr. Mack said I'm
5 going to take care of him, made a statement_or gave a
6 inference that Mr. Mack was going to kill K.D
7 or do him in or whatever. I think those are
8 statements that you are objecting to.

9* Mr. Jenkinson: I was Your Honor.

10 The Court: The statement by the co-conspirator.

11 Mr. Jenkinson: I was objecting to what Mr. Mack said Callie
12 said. I mean, is where I was headed.

13 The Court: And I think I sustained that objection.

14 Mr. Jenkinson: Yes sir.

15 The Court: Alright, now I'll just say in reference,
16 I'm not sure of the basis under which Ms. Barr argued
17 that --- I can't recall which rule you cited. Whether
18 you argued hearsay exception or I think you were
19 arguing Rule 803. 803(3) statements of state of mind,
20 intent and all of that and you know, I think the basis
21 for, for, for overruling the objection and I didn't
22 state the basis, but the basis it may well have
23 applied to both but in the number of instances in
24 which I overrule an objection, actually based on the
25 statement of a co-conspirator and not based on

HEARING

165

1 necessarily on Mr. Mack's intent. I wanted to clear
2 the record as far as that's concerned. I'm sure your
3 mind has gone beyond that, Ms. Barr, I just wanted to
4 clear the record.

5 Ms. Barr: Yes sir, Judge.

6 The Court: Alright, thank you. Alright, now I've just
7 been shown some photographs that were marked for
8 identification. State's exhibits, again, numbers
9 fifty-two through fifty-nine, I think.

10 Ms. Barr: And Judge, there is the matter that we need to
11 take up outside the jury's presence as it relates to
12 the next witness.

13 The Court: Alright.

14 Ms. Barr: Ms. Mack. Ms. Allen.

15 The Court: Who is your next witness?

16 Ms. Barr: Ms. Allen, Tawanda Allen.

17 The Court: Okay.

18 Mr. Jenkinson: We do not object to fifty-two, fifty-three,
19 fifty-four, fifty-five, fifty-six, fifty-eight, fifty-
20 nine and fifty-seven.

21 The Court: They are admitted without objection.

22 (State's Exhibit Numbers fifty-two, fifty-three, fifty-
23 four, fifty-five, fifty-six, fifty-eight, fifty-nine and
24 fifty-seven were entered)

25 Mr. Jenkinson: Seventeen, twenty-five, sixty-five which is

HEARING

166

1 a new statute enacted in June which allows the
2 reduction in sentence for and we would ask the State
3 to disclose whether or not there has been any written
4 or oral communication with this witness, Tawanda Mack,
5 Ronald Mack, Antonio Dorsey, which would involve the
6 reduction of their sentence from their testimony
7 today.

8 Ms. Barr: Antonio McClary? There have been no such
9 negotiations at all.

10 Mr. Jenkinson: With none of those three?

11 Ms. Barr: No sir, none.

12 MMr. Jenkinson: No discussion at all?

13 Ms. Barr: No sir.

14 Mr. Jenkinson: There's no discussion about their testimony
15 and you helping them for the State?

16 Ms. Barr: No sir.

17* The Court: Mr. Jenkinson, you said the statute that was
18 adopted?

19 Mr. Jenkinson: Yes sir. Seventeen, twenty-five, sixty-five.

20 Mr. Barr: Judge, I think we're probably required to
21 disclose that under Brady, but there have been no such
22 discussions.

23 Mr. Jenkinson: It's like rule 35 in the Federal court.

24 The Court: Yes sir. I was in the meeting that proposed
25 the Rule, but of course, otherwise, the court's ---

HEARING

167

1 after ten days or whatever the new trial period. I
2 didn't realize that it had actually been adopted.

3 Mr. Jenkinson: I think maybe some defendants might realize
4 it and that's why we want to understand whether or not
5 they may be prejudice ...

6 The Court: I'll take your word for it. Alright, are
7 we ready for the jury?

8 Ms. Barr: Judge, the next witness has an issue regarding
9 the testimony that we need to take up, I think,
10 outside of the presence of the jury.

11 The Court: Alright.

12 Ms. Barr: She's out in the hallway.

13 The Court: Alright. Do you want her to come in?

14 Ms. Barr: Yes sir, please.

15 Bailiff: Place your left hand on the Bible and raise your
16 right hand. Do you solemnly swear to tell the truth,
17 the whole truth and nothing but the truth, so help you
18 God?

19 A: I do.

20 PROFFER TESTIMONY OF MS. ALLEN BY MS. BARR

21* Ms. Barr: Ma'am, let me get you to state your full name.

22 A: Tawanda Mack Allen.

23 Q: And did you have an issue regarding your testifying in
24 this case today?

25 A: Yes, being that my attorney is not here. I would not

HEARING

168

1 like to answer.

2 Ms. Barr: Judge, I think that's the substance of what her
3 situation is. Your Honor, obviously, we would take
4 the position that the defendant has been convicted;
5 she no longer has the right to remain silent or the
6 right to counsel. I don't believe that she filed an
7 appeal, so we would ask that she be permitted to
8 testify in the absence of a lawyer. I think we did
9 attempt to get a hold of Mr. Barr and we were
10 unsuccessful.

11 The Court: Who's her attorney?

12 Ms. Barr: Verdell Barr.

13 Mr. Jenkinson: May I be heard on this as well?

14 The Court: Yes sir.

15 Mr. Jenkinson: As I understand it, she stood trial and was
16 convicted and I would assume that she now has a
17 pending agreement and if she did not testify at the
18 trial, she's never testified before and because of
19 that, if she won her appeal, then what she's says
20 today could be used against her in a subsequent re-
21 trial and ...

22 The Court: Ms. Barr says there's no appeal.

23 Ms. Barr: I have not been served with a Notice of Appeal.

24 The Court: In any event, where is Mr. Barr? The issue
25 of an order for Mr. Barr to appear. Have you been in

HEARING

169

1 touch with Mr. Barr?

2 Ms. Allen: Not since I been in.

3 The Court: Did you tell him you were coming?

4 Ms. Allen: I didn't know I was coming myself.

5 Ms. Barr: Judge, apparently, Investigator Collins is
6 telling me that there is a problem with the phone
7 lines and when we attempted to contact Mr. Barr the
8 phone lines were down.

9 The Court: It's right down the street.

10 Ms. Barr: Yes sir.

11 Investigator Collins: There was a bad wreck this morning.

12 The Court: Mr. Barr is right down there, you got any
13 walkers?

14 Ms. Barr: I think Investigator Collins is going to go help
15 us with that Judge. Judge, might I inquire if
16 the witness as to whether or not she's filed?

17 The Court: Yes you may.

18 Ms. Barr: Ms. Allen, have you filed an appeal from your
19 conviction?

20 A: Yes I have.

21* Q: When did you get it served?

22 A: When they took me to SCDC and my attorney came.

23 Q: Did your, did you, did your attorney sign some
24 paperwork?

25 A: Yes ma'am, I' signed something.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

170

1 The Court: Alright, Ms. Allen. Do you have another
2 witness Ms. Barr?

3 Ms. Barr: Judge we'll call Mr. Mack.

4 The Court: Alright, bring the jury.

5 (Jury enters courtroom at 2:32)

6 The Court: The jury is back. Call your next witness
7 please.

8 Ms. Barr: I call Ronald Mack.

9 The Court: Ronald Mack. Come around here Mr. Mack.

10 Bailiff: Place your left hand on the Bible, raise your
11 right hand. Do you solemnly swear to tell the truth,
12 the whole truth and nothing but the truth so help you
13 God?

14 A: Yes ma'am.

15 Bailiff: Okay, step right there.

16 DIRECT EXAMINATION OF RONALD MACK BY MS BARR

17 Q: Sir, state your full name for the record.

18 A: Ronald Mack.

19 Q: And how old are you Mr. Mack?

20 A: Nineteen.

21 Q: You need to make sure you speak up. Do you know
22 Kelvin Bowen?

23 A: Yes ma'am.

24 Q: Alright and did you see your mother leaving the
25 courtroom a few minutes ago?

HEARING

171

1 A: No ma'am.

2 Q: You didn't see your mother?

3 The Court: Just a moment, Ms. Barr.

4 The Court: Okay Ms. Barr.

5 Q: Sir you have on a South Carolina Department of
6 Corrections jumpsuit, is that correct?

7 A: Yes ma'am.

8 Q: You need to make sure you speak up nice and clear.

9 A: Yes ma'am.

10 Q: Alright you are currently serving a fifty year
11 sentence in the department of corrections?

12 A: Yes ma'am.

13 Q: Alright and you're serving a fifty year sentence
14 because you pled guilty to murder?

15 A: Yes ma'am.

16 Q: The murder of K.D. ?

17 A: Yes ma'am.

18 Q: Alright now, do you recall being in court during the
19 latter part of August of 2010, right?

20 A: Yes.

21 Q: Alright, and during that time is when you actually
22 entered your guilty plea, is that correct?

23 A: That's right.

24 Q: And I was the Prosecutor assigned to that case?

25 A: Yes ma'am.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

172

1 Q: Do you recall coming and standing before Judge Newman
2 and testifying in connection with your guilty plea?

3 A: Yes ma'am.

4 Q: And at some point later that week, you also testified
5 in the trial against your mother, right?

6 A: Yes ma'am.

7 Q: And that time I was also the Prosecutor assigned to
8 that case, correct?

9 A: Yes ma'am.

10 Q: And Judge we would ask at this time that we be allowed
11 to lead or treat the witness as hostile, given that
12 he's a party opponent.

13 The Court: Mr. Jenkinson?

14 Mr. Jenkinson: Your Honor, based upon his previous
15 testimony, and I would think ...

16 The Court: Legal basis for the --- Do you object or?

17 Mr. Jenkinson: I object.

18 The Court: Alright and the legal basis for the objection.

19 The legal basis not factual.

20 Mr. Jenkinson: He's not a party opponent. His case has
21 been deposed of.

22 Ms. Barr? Judge we would of course cite 611(c) and it talks
23 about a party calls a hostile witness, an adverse witness
24 where it is identified with an adverse party and Judge,
25 clearly he was a defendant and I prosecuted him and I

HEARING

173

1 prosecuted his mother ...

2 The Court: Legal response not factual.

3 Ms. Barr: Yes sir, Judge, we would take the position that
4 he has been named as a witness for the defense, and
5 therefore, I prosecuted him, and therefore he is an
6 adverse party ...

7^a The Court: Proceed with questions. I will rule by a
8 question by question basis if there is an objection.

9 Mr. Jenkinson: We not calling him as a witness.

10 Ms. Barr: I'm sorry?

11 Mr. Jenkinson: We are not calling him as a witness.

12 Ms. Barr: Judge, he's in their notice of alibi.

13 The Court: Question the witness.

14 QUESTIONING OF MR. MACK BY MS BARR

15 Q: Mr. Mack, you testified during the course of your
16 guilty plea that you and K.D. had been friends at
17 one point, is that right?

18 A: Yes ma'am.

19 Q: Alright and you testified that back on April the 4th of
20 2009 ...

21 Mr. Jenkinson: Objection, leading.

22 The Court: Objection sustained.

23 Q: Tell me what you told the Court when you pled guilty
24 as to the murder surrounding K.D.

25 A: I can't remember.

HEARING

174

- 1 Q: You can't remember?
- 2 A: No ma'am.
- 3 Q: Alright, how about tell me what you told law
4 enforcement back on May the 28th of 2009 when you gave
5 your statement.
- 6 A: I can't remember that either.
- 7 Q: Don't remember? Alright. Now is there something today
8 that effects your memory?
- 9 A: No ma'am.
- 10 Q: Have you had any accidents or any illnesses since
11 August that would prohibit you from remembering your
12* testimony just four or five months ago?
- 13 A: No ma'am.
- 14 Q: You're looking over there?
- 15 A: No ma'am.
- 16 Q: You're not looking over there? Well let me ask, let
17 me see if this refreshes your memory. Do you remember
18 when I was in this courtroom cross examining you?
19 Sir?
- 20* A: Yes ma'am.
- 21 Q: Do you remember when I showed you this shotgun?
- 22 A: Yes ma'am.
- 23 Q: You remembered that didn't you?
- 24 A: Yes ma'am.
- 25 Q: This was the shotgun I showed you back in August?

HEARING

175

1 A: Yes ma'am.

2 Q: What do you call it?

3 A: A shotgun.

4 Q: You got a nick name for it though, don't you? A
5 special nickname?

6 A: No ma'am.

7 Q: How do you remember this shotgun? This is the one
8 that was used to help kill K.D. ?

9 A: No ma'am.

10 Q: This wasn't the shotgun you used?

11 A: No ma'am.

12 Q: You don't have any memory of telling the judge and a
13 separate jury that this shotgun was used to help kill
14 K.D. ?

15 A: No ma'am.

16 Q: Are you saying it didn't happen or you just don't
17* remember?

18 A: I can't remember it.

19 Q: Can't remember. Alright. Now, do you remember
20 telling law enforcement and telling this judge and
21 another jury that Kelvin Bowen had the shotgun?

22 A: No ma'am.

23 Q: Do you remember telling this judge and another jury
24 that you called Kelvin Bowen and asked him and your
25* mom to bring these guns from Maryland to kill K.D. ?

HEARING

176

1 A: No ma'am.

2 Mr. Jenkinson: Objection, leading. Not a hostile witness.

3 Ms. Barr: Judge, permission to treat the witness as
4 hostile?

5 The Court: Ladies and gentlemen I'm going to have you
6 go to the jury room, while we discuss a matter outside
7 your presence. Please do not discuss this case.

8 (Jury exits courtroom 2:42)

9 The Court: We'll take a few minutes recess.

10 Ms. Barr: Yes sir.

11 -RECESS-

12 The Court: Mr. Jenkinson raised the question as to the
13 State as to whether any offers had been make to any
14 defendant based on this newly enacted law, 17-25-65
15 called reduction of sentence for substantial
16 assistance to the State and that was enacted and
17 became effective on June 2, 2010. It gives the
18 defendant one year to file for a reduction of sentence
19 if that person provides substantial assistance in
20 investigating or prosecuting another person and the
21 State makes the motion giving the Court the
22* information as to what assistance has been provided so
23 that is a, that's in fact, I was on the committee that
24 proposed the rule and I wasn't aware that that
25 particular rule had passed. I double checked that.

HEARING

177

1 That's number one and then secondly, Ms. Barr indicated
2 that she was unaware of an appeal by Ms. Allen and I
3 have the court's file from the clerk's office, showing
4 that Mr. Barr, Verdell Barr filed a Notice of Appeal
5 on September the 10th, September 13th, 2010 provided a
6 cc to Kimberly Barr, Solicitor. The issue now before
7 us is this defendant, first of all Mr. Barr is now in
8 court and he has explained that because of the wreck
9 down the street he was unable to get properly dressed
10 to come to court, but never the less Ms. Allen was on
11 the stand and says she didn't want to testify without
12 her lawyer present. Mr. Barr is now present, we
13 switched witnesses and now Mr. Mack is on the stand.
14 We took a break based on legal objection from Mr.
15 Jenkinson to his testimony.

16 Mr. Jenkinson: My objection was to leading. There's no
17 basis or ground laid for hostility.

18 The Court: Alright, Ms. Barr is arguing response to
19 that, Ms. Barr?

20 Ms. Barr: Judge, we were arguing rule 611©) and also
21 certainly and Judge if you have a witness that's
22 testified in the court as to one matter, four or five
23 months earlier and is now claiming a lack of memory as
24 to those matters, I think that's certainly sufficient
25 grounds, standing alone, to then treat him as a

HEARING

178

1 hostile witness.

2 The Court: Alright I find that, Mr. Jenkinson?

3 Mr. Jenkinson: The basis of that hostility would be a
4 transcript of record on which she could examine and that
5 would be the basis of laying the ground work for this
6 hostility rather than her just saying otherwise.

7 The Court: I find that the under 611©) where it says
8 that leading questions should not be used under direct
9 examination except as making necessary to develop the
10 witnesses testimony when a party calls a hostile
11 witness, an adverse party or a witness identified with
12 an adverse party, interrogation may be leading
13 questions. I find that this witness isn't being ---
14 since he was charged as a co defendant of murder,
15 criminal conspiracy, burglary first degree that he is
16 a party. At the very least he is identified with the
17 adverse party, meaning identified with Mr. Bowen and
18 the State can proceed with some leading questions.
19 Alright, bring the jury.

20 (Jury enters courtroom 3:19)

21 The Court: Alright, the jury is back and Mr. Mack. Mr.
22 Mack you're still under oath. You may proceed.

23 Q: Mr. Mack you seem to have a difficult time earlier
24 remembering certain things. Let me see if I can help
25 you out a little bit. Do you remember killing K.D. ?

HEARING

179

1 Do you remember that part?

2 A: Yes ma'am.

3 Q: Do you remember Kelvin Bowen being there with you?

4 A: No ma'am.

5 Q: You don't remember him being there with you?

6 A: No ma'am.

7 Q: Do you remember texting him, asking him to come down
8 and bring some guns?

9 A: No ma'am.

10 Q: Alright, do you remember calling Kelvin Bowen Callie,
11 do you remember that?

12 A: No ma'am.

13 Q: You don't remember any of that? Alright, let me ask
14 you this now, you gave a taped confession to law
15 enforcement back on May the twenty-eighth of 2009, is
16 that right?

17 A: Yes ma'am.

18 Q: Sir?

19 A: I gave a statement, yes ma'am.

20 Q: To the police officers right?

21 A: Yes ma'am.

22 Q: But you don't know if it would be called a confession
23 or not?

24 A: I wouldn't call it that.

25 Q: You wouldn't call it a confession?

HEARING

180

- 1 A: No ma'am.
- 2 Q: Okay, when you were arrested, you were initially
- 3 arrested in Maryland, right?
- 4 A: Yes ma'am.
- 5 Q: I need you to speak up for me. You were arrested in
- 6 Maryland?
- 7 A: Yes ma'am.
- 8 Q: Alright and Kelvin Bowen was arrested with you?
- 9 A: Yes ma'am.
- 10 Q: And your mom, Tawanda Mack Allen was also arrested, is
- 11 that right?
- 12 A: Yes ma'am.
- 13 Q: And you and Callie were driving your mom's car, right?
- 14 A: Yes ma'am.
- 15 Q: Alright and was, who was driving, you or Callie?
- 16 A: He was.
- 17 Q: Alright and you all were pulled over by the police
- 18* there, right?
- 19 A: Yes ma'am.
- 20 Q: Okay and they all came out and arrested you?
- 21 A: Yes ma'am.
- 22 Q: Alright you, your mom and Mr. Bowen were later
- 23 extradited to South Carolina, is that right?
- 24 A: Yes ma'am.
- 25 Q: And that would have been towards the end of May of

HEARING

181

1 2009, is that right?

2 A: That's right.

3 Q: Okay now you said you remember giving a statement, but
4 you wouldn't call it a confession.

5 A: Yes ma'am.

6 Q: Is that your testimony?

7 A: Yes ma'am.

8 Q: Alright and you remember saying in your statement to
9 law enforcement that you texted Kelvin?

10 A: No ma'am.

11 Q: Alright do you remember saying that Callie's real name
12 is Kelvin?

13 A: No ma'am.

14 Q: Alright, speak up now so we can hear you.

15 A: No ma'am.

16 Q: Alright, do you remember saying that Callie was your
17 mom's fiance?

18 A: No ma'am.

19 Q: Okay do you remember saying that your mom and Callie
20 had been dating since December of 2008?

21 A: No ma'am

22 Q: If you said that, would that be true that they were
23 dating since December of 2008?

24 A: Since January I think.

25 Q: Oh, so your memory's getting a little better now?

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

182

1 Now, let's see what else we can see if you can
2 remember.

3 A: Alright.

4 Q: Do you remember saying on the night that you planned
5 K.D. 's murder that you called Callie?

6 A: No ma'am.

7 Q: Do you remember saying that you told Callie that you
8 wanted to kill K.D. ?

9 A: No ma'am.

10 Q: Do you remember saying to law enforcement that you,
11 your mom and Callie met around two o'clock in the
12 morning?

13 A: No ma'am.

14 Q: Okay do you remember saying that Antonio McClary was
15 with you?

16 A: No ma'am.

17 Q: Do you remember saying that your mom was driving?

18 A: No ma'am.

19 Q: Your mom, for the record, is now Tawanda Mack Allen
20 right?

21 A: That's right.

22 Q: Alright do you remember saying that they came down in
23 a Kia Sportage vehicle?

24 A: No ma'am.

25 Q: Did your mom own a Kia Sportage?

1 A: She did.

2 Q: I'm going to show you what's been marked for
3 identification and I understand that there's no
4 objection, State's exhibit sixty, sixty-two, sixty-
5 three, sixty-one. This is your mom's car isn't it?

6 A: Yes, ma'am.

7 Q: Green, Kia Sportage right?

8 A: Yes, ma'am.

9 Q: And it's the car that you and Callie were arrested in
10 when ya'll were in Maryland right?

11 A: Yes ma'am.

12 Q: You remember that part?

13 A: Yes, ma'am.

14 Q: Okay. And that's the car they were driving when they
15 came down to South Carolina on April 4th and the 5th
16 right? Of 2009? You don't remember that either?

17 A: No, ma'am.

18 Q: Okay, do you remember telling law enforcement that
19 Callie had guns in the back?

20 A: No, ma'am.

21 Q: Sir?

22 A: No, ma'am.

23 Q: Do you remember telling law enforcement that ...
24 Mr. Jenkinson: I'm a, I'm a object.

25 The Court: The objection is overruled.

HEARING

184

- 1 Q: Sir do you remember saying, telling law enforcement
2 that Callie had the shotgun?
- 3 A: No, ma'am.
- 4 Q: Remember telling you had the nine?
- 5 A: No, ma'am.
- 6 Q: Okay, do you remember telling law enforcement all
7 three of ya'll went in the house?
- 8 A: No ma'am.
- 9 Q: So you don't remember telling law enforcement that
10 you, Callie and Antonio went in the house?
- 11 A: No ma'am.
- 12 Q: Alright do you remember saying, telling law
13 enforcement that K.D. was sleeping?
- 14* A: No ma'am.
- 15 Q: Do you remember telling that you let out three rounds
16 in his head?
- 17 A: No ma'am.
- 18 Q: You remember doing it though, right?
- 19 A: No ma'am.
- 20 Q: You don't remember that part either? Okay. You
21 remembered when they asked you whether or not you were
22 aware that his mom was in the house, you remember that
23 question?
- 24 A: No ma'am.
- 25 Q: Okay and you remember saying that you wasn't going to

HEARING

185

1* leave any live witnesses?

2 A: No ma'am.

3 Q: Do you remember telling them that you didn't realize
4 she was in the house?

5 A: No ma'am.

6 Q: Now, when you were testifying in the previous trial,
7 do you remember telling me, when I asked you, what
8 would you have done if you realized she was in the
9 house and you would have killed her to? Do you
10 remember testifying to that?

11 A: No ma'am.

12 Q: Do you remember testifying or telling law enforcement
13 that the only thing that bothered you about this whole
14 case was that you got your mom dragged into this?

15 A: No ma'am.

16 Q: Do you remember telling them that you were part of a
17 gang?

18* A: No ma'am.

19 Q: Do you remember telling them that being in a gang
20 there is three things you live by?

21 A: No ma'am.

22 Mr. Jenkinson: Objection.

23 The Court: The question is to this defendant?

24 Ms. Barr: That was my understanding, it was, Judge, may we
25 approach?

HEARING

186

1 The Court: Yeah. The objection is overruled. Ladies
2 and gentlemen, I just want to reiterate to you, as
3 I've said before the testimony comes from the witness
4 stand. Statements by the lawyers or questions by the
5 lawyers is not evidence. The evidence is what comes
6 from the witness stands, through witnesses and
7 exhibit. You may proceed.

8 Q: Now, sir, I think the last question that I asked you
9 was, do you remember telling law enforcement that
10 homies in a gang live by three rules. Do you remember
11 that?

12 A: No ma'am.

13 Q: Sir?

14 A: No ma'am.

15 Q: You don't remember telling them that you were in a
16 gang you either go to jail ...

17 Mr. Jenkinson: I object. She's asked the question. He
18 said he does not remember it. There's no basis for the
19 question, no relevance.

20 The Court: The objection is sustained.

21 Q: Sir, during the time that K.D. was murdered, you
22 were in fact, in a gang, weren't you?

23 A: Yes ma'am.

24 Q: Alright, are you still in a gang?

25 A: No ma'am.

HEARING

187

- 1 Q: You got out?
- 2 A: Yes ma'am.
- 3 Q: Since you been in prison?
- 4 A: No ma'am.
- 5 Q: When did you get out?
- 6 A: Before I got locked up.
- 7 Q: Before you got locked up. At what point in time,
- 8 after K.D. was murdered, did you go back to
- 9* Maryland?
- 10 A: May.
- 11 Q: Sir?
- 12 A: May.
- 13 Q: When in May? You went to Maryland and you actually
- 14 enrolled in school there?
- 15 A: Yes ma'am.
- 16 Q: And that's actually where the police found you, right?
- 17* A: Where.
- 18 Q: You were at school. Didn't they come get you out of
- 19 school?
- 20 A: Yes.
- 21 Q: Did you have a pass or anything in your room to
- 22 suggest that you had been enrolled in school?
- 23 Notebooks, books or anything like that?
- 24 A: No ma'am.
- 25 Q: Now, one of the things about being in a gang is, you

HEARING

188

1 don't snitch, right?

2 A: Yes ma'am.

3 Q: Huh?

4 A: I guess.

5 Q: You guess? You know.

6 Mr. Jenkinson: Objection Your Honor.

7 The Court: Yes sir? Your objection is overruled. The

8 objection is sustained as to questioning argumentative.

9 Ms. Barr: Yes sir, yes sir. Mr. Mack, you know that if

10 you're in a gang, you don't snitch on people,

11 certainly not to the police, right?

12 A: I guess.

13th Q: And, as a matter of fact, the only reason why you gave

14 a statement is because your mother told you to tell

15 the truth, right?

16 A: I can't remember.

17 Q: Can't remember that part either?

18 A: No.

19 Q: Tell me, what made you believe that Mr. Bowen would

20 come down here and help you kill somebody?

21 A: He didn't.

22 Q: What made you comfortable enough to ask him to do

23 that?

24 A: I never asked him.

25 Q: Sir?

HEARING

189

- 1 A: I never asked him.
- 2 Q: Are you testifying that you never asked him or you
3 don't remember asking him?
- 4 A: I didn't ask him.
- 5 Q: Where was he living at the time?
- 6 A: In Maryland.
- 7 Q: With your mom?
- 8 A: (No response)
- 9 Q: You don't have to think about it, I mean, just tell
10 the truth, was he living with your mom?
- 11 A: I don't know.
- 12 Q: Was he staying with your mom from time to time?
- 13 A: I guess.
- 14 Q: Sharing a bed with her?
- 15 A: I guess.
- 16 Q: Well, I mean you were living there, was he staying in
17* the house over night?
- 18 A: No.
- 19 Q: Wait a minute, I thought you told me that he was
20 sharing a bed with her? That's not true. Which is
21 true?
- 22 A: I told you.
- 23 Q: He didn't spend the night with your mom on occasion?
24 At her apartment in Maryland?
- 25* A: Not to my knowledge.

HEARING

190

- 1 Q: Well how did you and he get together in a car that day
2 when the police came out? He didn't spend the night
3 at the house the night before?
- 4 A: No.
- 5 Q: No, okay. Is his wife here? Where did his wife go?
6 Would you recognize her if you saw her?
- 7 A: No.
- 8 Q: Did you know he was married?
- 9 A: No.
- 10 Q: You didn't know he was married?
- 11 A: No.
- 12 Q: Sir, when you were picked up in Maryland in May, you
13 indicated that Kelvin Bowen was with you. Right?
- 14 A: Yes ma'am.
- 15 Q: And did the law enforcement officers take a picture of
16 you and Kelvin Bowen? Remember that?
- 17 A: Yes.
- 18 Q: Okay, I'm going to hand you what's been marked for
19 identification purposes, State's exhibit number sixty-
20 seven. Is this how Mr. Bowen appeared on the date
21* that you and he were arrested?
- 22 A: Yes ma'am.
- 23 Q: That's him, right?
- 24 A: Yes ma'am.
- 25 Q: Okay, Judge we would move State's exhibit number

HEARING

191

1 sixty-seven into evidence.

2 The Court: Any objection?

3 Mr. Jenkinson: Without objection.

4 The Court: In without objection.

5 Ms. Barr: Move to publish.

6 The Court: You may publish.

7 Q: What happened to the nine millimeter?

8 A: I don't know.

9 Q: You don't know? What did Callie do with the shotgun?

10 A: I don't know.

11 Q: Sir?

12 A: I don't know.

13 Q: Where is he from, by the way?

14 A: California.

15 Q: California, what do you call him?

16 A: Kelvin.

17 Q: Huh?

18 A: Kelvin.

19 Q: You don't call him Callie?

20 A: No.

21 Q: Alright, let me, let me do this. Let me hand you a
22 copy of your statement to law enforcement dated May
23 28, 2009 at 2:09 p.m. I call your attention to page
24 six, line twenty.

25 Mr. Jenkinson: Your Honor, I object to the Solicitor

HEARING

192

1 calling Mr. Bowen Callie. Not one person has
2 identified him as Callie. She's the only one.

3 The Court: The objection is overruled.

4* Q: Sir, I'm asking this, and I don't mean to offend you,
5 but I just to know, you can read, right?

6 A: Yes ma'am.

7 Q: Alright, I call your attention to line twenty. Law
8 enforcement asked you who did you call and your
9 response was what?

10 Mr. Jenkinson: Your Honor, object to ...

11 Q: Page six.

12* Mr. Jenkinson: ... the examination upon the statement.
13 It has not been authenticated. She has not laid the
14 groundwork.

15 The Court: Alright, the objection is sustained.

16 Q: Sir do you recall making this statement to law
17 enforcement? Is that your name? Ronald Hazeem Mack?

18 A: Yes ma'am.

19 Q: That's you?

20 A: Yes ma'am.

21* Q: Date of birth [REDACTED]

22 A: Yes ma'am.

23 Q: Last four of your social is [REDACTED]?

24 A: Yes ma'am.

25 Q: Alright, now indicates that you were present with

HEARING

193

1 Investigator Lail, Investigator Whack and Lt. Collins.
2 Those two ladies sitting at the prosecution table.
3 You remember meeting with them right?

4 A: Yes.

5 Q: Do you remember them pulling out a little tape player,
6 kind of like the court reporter has now?

7 A: No.

8 Q: You don't remember them doing that?

9 A: No.

10 Q: Alright, do you remember them going over your rights
11 and you have the right to remain silent and right to
12 have an attorney and all that? Do you remember that?

13 A: No ma'am.

14 Q: You don't remember that? Do you remember telling them
15 that Callie's real name was Kelvin?

16 A: No ma'am.

17 Q: If I showed you this particular transcript, page six,
18 line twenty, do you dispute that you told them that
19 Callie's real name was Kelvin?

20 A: Yes ma'am.

21 Q: Do you dispute that? Are you saying you didn't say
22 that?

23 A: Yes ma'am.

24 Q: So you deny that?

25 A: Yes ma'am.

HEARING

194

1 Q: Okay. Judge that's all I have.

2 The Court: Mr. Jenkinson?

3* CROSS EXAMINATION OF MR. MACK BY MR. JENKINSON

4 Q: Mr. Mack, just a few questions. You've seen me before
5 haven't you?

6 A: Yes sir.

7 Q: You actually saw me for the first time on June the 9th,
8 2009?

9 A: Yes sir.

10 Q: And you met with me and your lawyer and Ernest
11 Goldstein(sp), the investigator and your lawyer,
12 LeGrand Carraway, do you remember that meeting?

13 A: Yes sir.

14 Q: And I asked you if you would give us a statement about
15 this case, did I not?

16 A: Yes sir.

17 Q: And was that statement recorded with your permission?

18 A: Yes sir.

19 Q: Was that statement recorded in the presence of your
20⁴ lawyer, Mr. Carraway, whose sitting right there?

21 A: Yes sir.

22 Q: And in that statement, we asked you where you were and
23 you were incarcerated in the Williamsburg county jail,
24 weren't you?

25 A: Yes sir.

HEARING

195

1 Q: And all of us, and I asked you did you mind answering
2 my questions, do you remember that?

3 A: Yes, sir.

4 Q: Did you have any discussion before this statement with
5 me, ever in your life?

6 A: No sir.

7 Q: In this statement, you told us you were arrested on
8 May 18th, a Monday?

9 A: Yes sir.

10 Q: And I asked you about your mother and you told us she
11 was Tawanda Allen and lived on in

12 , ?

13 A: Yes sir.

14 Q: Is that the truth?

15 A: Yes sir.

16 Q: And I want to ask you a little more about this
17 statement. I actually, brought, typed up and brought
18 it to you on June the 10th, matter of fact, back in the
19 grand jury room, did I not? When we had the
20 preliminary hearing?

21 A: Yes sir.

22 Q: Was your lawyer present at that time?

23 A: Yes sir.

24 Q: Did you read and I'm going to show you the original,
25 is this the original statement you signed and

HEARING

196

1 initialed every single page?

2 A: Yes sir.

3 Q: I want to show you certificate page where it says I

4 Ronald Mack have given the above statement freely and

5 voluntarily and it is true and correct. Is that your

6 signature?

7 A: Yes sir.

8 Q: The dates left blank, but the, it's notarized on 10-

9 10. Did you see the Notary Public there?

10 A: Yes sir.

11* Q: And his name is, what's his name right there?

12 A: Scott Palmer.

13 Q: And Mr. Palmer was one of the lawyers representing

14 Antonio Dorsey, was he not?

15 A: Yes sir.

16 Q: Antonio Dorsey was in the room, wasn't he?

17 A: Yes sir.

18 Q: Antonio Dorsey was in the room?

19_a Ms. Barr: It's not Dorsey.

20 Q: And you read this statement with your lawyer and your

21 lawyer read it over before you signed it, didn't he?

22 A: Yes sir.

23 Q: And you knew this was a very, very important

24 statement, did you not?

25 A: Yes sir.

HEARING

197

1 Q: Did you give it freely and voluntarily with advice and
2 consent of your attorney?

3 A: Yes sir.

4 Q: Did anybody make you any promises for doing this?

5 A: No sir.

6 Q: When you gave this statement on June the 9th, was
7 Kelvin Bowen present?

8 A: No sir.

9 Q: In this statement you gave on page four, I asked you
10 about Kelvin Bowen, that man sitting right there, did
11 I not?

12 A: Yes sir.

13 Q: And I asked you the first time in your whole life that
14 you've laid eyes on him and you said Mother's day
15* weekend in Kingstree.

16 A: Yes sir.

17 Q: That's in May?

18 A: Yes sir.

19 Q: First time you'd ever seen him in your life?

20 A: Yes sir.

21 Q: He and your mother did come to South Carolina on that
22 occasion to pick you up and take you back to Maryland.

23_a A: Yes sir.

24 Q: Drove straight down and took you back.

25 A: Yes sir.

HEARING

198

1 Q: You asked your mother to come pick you up did you?
2 A: Yes sir.
3 Q: I asked you if you'd given a statement to law
4 enforcement officers, do you remember that?
5 A: Yes sir.
6 Q: Were you ever shown a copy of that statement?
7 A: No sir.
8 Q: Was your lawyer present when the statement was taken?
9 A: No sir.
10 Q: Didi you ever sign the statement?
11 A: No sir.
12 Q: Did you ever swear it to be the truth?
13 A: No sir.
14 Q: And that was the statement that Ms. Barr was just
15 asking you about a few minutes ago?
16 A: Yes sir.
17 Q: And that statement was on Thursday, May 28th? Right?
18 A: Yes sir.
19 Q: And in that, I asked you a question, did you have a
20 conversation with your mother before you gave the
21 statement?
22 A: Yes sir.
23 Q: And did you have a conversation with your mother?
24 A: Yes sir.
25 Q: You and K.D. and your mama were charged with

HEARING

199

1 the murder of, I'm sorry, your mother, you and Antonio
2 McClary were charged with the murder of K.D.

3 A: Yes sir.

4 Q: I asked you in the statement if the statement that you
5 gave law enforcement was true as to Kelvin Bowen, do
6 you remember me asking you that?

7 A: Yes sir.

8 Q: And what did you say?

9 A: Said it wasn't true.

10 Q: Said it wasn't true, was it? And that was an
11 important statement in your affidavit, wasn't it?

12 A: Yes, sir.

13 The Court: You need to speak louder Mr. Mack.

14 Q: That is your sworn statement?

15 A: Yes sir.

16 Q: Mark it for identification. Mark it as defendant's
17 number one for identification.

18 **(Defendant's Number One was marked for identification)**

19 Q: Now, on April 5th, you also spoke with law enforcement
20 officers.

21 A: Yes sir.

22 Q: That was right after the death of K.D. ?

23* A: Yes sir.

24 Q: I believe you spoke with Investigator Lail who's right
25 here.

HEARING

200

1 A: Yes sir.

2 Q: Gave her a statement.

3 A: Yes sir.

4 Q: You told her you didn't have anything to do with that

5 crime, didn't you?

6 A: Yes sir.

7 Q: You also told her that you and K.D. had some

8 difficulties.

9 A: Yes sir.

10 Q: But he was your friend?

11 A: Yes sir.

12 Q: But you'd pled guilty to his murder?

13 A: No sir.

14 Q: You did not plead guilty to his murder?

15 A: I did.

16 Q: You did plead guilty, because you are, in fact,

17 guilty.

18 A: Yes sir.

19 Q: Is the gentlemen, the man seated by Mandy Shuler,

20 which we identified Kelvin Bowen, was he present on

21 April 4th or 5th 2009 and commit the murder, or

22 participate in any way in South Carolina?

23 A: No sir.

24 Q: Speak loud so these ladies can hear you in the very

25 back.

HEARING

201

- 1 A: No sir.
- 2 Q: We've heard a lot about Callie; Is Kelvin Bowen
- 3 Callie?
- 4 A: No, sir.
- 5* Q: He is not Callie is he?
- 6 A: No sir.
- 7 Q: He was your mama's girlfriend, I mean boyfriend at one
- 8 time?
- 9 A: Yes sir.
- 10 Q: Your mother was with you the night of this crime.
- 11 A: Yes sir.
- 12 Q: And Antonio Dorsey was. I'm sorry, Antonio McClary
- 13 was.
- 14 A: Yes sir.
- 15 Q: And those are the ones who were present?
- 16 A: Yes sir.
- 17 Q: And Kelvin Bowen was not present?
- 18 A: No sir.
- 19 Q: You never saw him in your life, other, until Mother's
- 20 day weekend in May?
- 21 A: Yes sir.
- 22* Q: And he happened to be with you when you were arrested?
- 23 A: Yes sir.
- 24 Q: Those law enforcement officers didn't even know who he
- 25 was?

HEARING

202

1 A: No sir.

2 Q: They weren't even looking for him, were they?

3 A: No sir.

4 Q: Thank you sir.

5 The Court: Ms. Barr?

6 RE-DIRECT OF MR. MACK BY MS BARR

7 Q: Mr. Mack, did your memory suddenly become better when
8 Mr. Jenkinson was asking you the questions?

9* A: No ma'am.

10 Q: Because I thought you were telling me all before you
11 couldn't remember anything. Do you remember stuff
12 now?

13 A: No ma'am.

14 Q: Well, when Mr. Jenkinson asked you about whether or
15 not Kelvin Bowen was present in South Carolina, you
16 said emphatically no, right?

17 A: Yes ma'am.

18 Q: But when I asked you what all happened with the
19 murder, you didn't remember, right?

20 A: No ma'am.

21 Q: Now, when Mr. Jenkinson came out to the jail and gave
22 you that recorded statement, he said that you had
23 given his client a note, didn't he?

24 A: No ma'am.

25 Q: Well, now didn't you just say that this statement that

HEARING

203

1 Mr. Jenkinson handed you, you testified about was the
2 truth, the whole truth and nothing but the truth? Did
3 you even read it?

4 A: Yes ma'am.

5 Q: When did you read it? When did you read this
6 statement?

7 A: Last week.

8 Q: You read it last week. Who gave it to you?

9 A: I got a copy.

10 Q: From where?

11 A: Mr. Jenkinson.

12 Q: Mr. Jenkinson gave it to you last week.

13 A: No.

14 Q: When did he first give it to you?

15 A: June the 10th.

16 Q: Why were you reading it last week? How did you, why
17 were you reading it last week? You were getting
18 ready?

19 A: I read it last week.

20 Q: Alright now.

21 The Court: Pull that mic closer to you.

22 Q: Since you read the statement last week and you signed
23 it and you reviewed it, you would certainly agree with
24 me on page two of the statement, it's noted that
25 Kelvin Michael Bowen received a note from you in the

HEARING

204

- 1 last several days. I mean, you'd at least agree with
2 that, right?
- 3 A: According to them.
- 4 Q: You wrote your friend a letter?
- 5 A: That's right.
- 6 Q: Mr. Bowen. Right?
- 7 A: Yes ma'am.
- 8 Q: And basically, what you looked at, is you basically
9 confessed to the crime, right?
- 10 A: Yes ma'am.
- 11 Q: And at this point, I mean, you knew you were going
12 away for a long time, right?
- 13 A: Yeah.
- 14 Q: Wasn't a whole lot you could do about that, was there?
- 15 A: No ma'am.
- 16 Q: And you are currently in the department of corrections
17 for fifty years, right?
- 18 A: Yes ma'am.
- 19 Q: So, you have nothing to lose by standing here trying
20 to help your friend out today, do you?
- 21 A: That's right.
- 22 Q: I mean fifty years is fifty years. Even if you commit
23 perjury, that's not going to be a big deal to you, is
24 it?
- 25 A: Yes ma'am.

- 1 Q: It's going to be a big deal?
- 2 A: Yes ma'am.
- 3 Q: The truth means something to you?
- 4* A: Yes ma'am.
- 5 Q: Do you remember when we brought you out here and we
- 6 put your hand on the Bible?
- 7 A: Yes ma'am.
- 8 Q: That mean something to you?
- 9 A: Yes ma'am.
- 10 Q: Did you also put your hand on this very same Bible, in
- 11 this very same courtroom in August of 2010?
- 12 A: Is that the same Bible?
- 13 Q: Yeah, you were right here, before that same judge,
- 14 right?
- 15 A: Yes ma'am.
- 16 Q: And you had your lawyer, Mr. Carraway, sitting up in
- 17 here with you, right?
- 18 A: Yes ma'am.
- 19 Q: And you swore to tell the truth then, right?
- 20 A: Yes ma'am.
- 21* Q: And you pled guilty to murdering K.D. right?
- 22 A: Yes ma'am.
- 23 Q: And during the course of your guilty plea, you said
- 24 your mom was there, Antonio was there and Callie,
- 25 Kelvin Bowen was there. You said that when you pled

HEARING

206

- 1 guilty, didn't you?
- 2 A: I didn't say that.
- 3 Q: Didn't say that when you pled guilty?
- 4 A: No ma'am.
- 5 Q: What about when you sat on the stand and you testified
- 6 for your mom? Do you remember doing that? Sitting in
- 7 that exact same chair?
- 8 A: Yes ma'am.
- 9 Q: Do you remember swearing on the exact same Bible?
- 10 A: Yes ma'am.
- 11 Q: In front of this exact same judge?
- 12 A: Yes ma'am.
- 13 Q: Do you remember saying then, identify the shotgun, do
- 14 you remember doing that?
- 15 A: Yes ma'am.
- 16 Q: Okay, your memory is getting a little better. Stay
- 17 with me. Do you remember saying that that exact same
- 18 shotgun was used by Mr. Bowen to shoot K.D. ?
- 19 A: No ma'am.
- 20 Q: You don't remember that part. How many boyfriends did
- 21 your mama have during this time in April of 2009?
- 22 A: Two.
- 23 Q: She had two? What are their names?
- 24 A: Callie and I can't remember the other one.
- 25 Q: You can't remember it? Memories bad on that issue

HEARING

207

1 too? Your mama called Kelvin Bowen Callie, didn't
2 she?

3 A: She always told me his name was Kelvin.

4 Q: Did you ever hear her statement that she gave to the
5 police?

6 A: No.

7 Q: So if I were to try to find this second boyfriend that
8 your mom had supposedly in April of 2009, where could
9 I find him?

10 A: Wherever.

11 Q: Huh?

12 A: Maryland.

13 Q: Where?

14 A: I don't know.

15 Q: Do you have an address for him?

16 A: No. Maryland.

17 Q: Can you tell me who his family is? What his mama name
18 is, daddy name is?

19 A: No.

20 Q: Have any kids?

21 A: Yeah.

22 Q: What kind of car did he drive?

23 A: A truck.

24 Q: What kind of truck?

25 A: I can't remember.

HEARING

208

1 Q: Can't remember. He ever spent the night at your mama
2 house?

3 A: Yeah.

4 Q: Don't know his name, I can't reach him. Judge, that's
5 all I have.

6 The Court: Mr. Jenkinson?

7 RE-CROSS OF MR. MACK BY MR. JENKINSON

8 Q: A minute ago, Ms. Barr asked you if you had nothing to
9 gain, you don't have nothing to gain, nothing to lose
10 by your testimony, do you?

11 A: No sir.

12 Q: All you want to do is tell the truth, that's all you
13 can do now can't you?

14 A: Yes sir.

15 Q: I can't hear you.

16 A: Yes sir.

17 Q: Nothing to gain, nothing to lose by being here, right?

18 A: Yes sir.

19 Q: You don't want to your conscience with a not guilty
20 man going to jail with you, do you?

21 A: No sir.

22 Q: Back in April, you say your mama had two boyfriends.
23 Were you up in Maryland to know who your mama was with
24 during that period of time in April and March?

25 A: No sir.

HEARING

209

1 Q: You weren't up there, were you?

2 A: No sir.

3 Q: So you don't know what your mama was up to and who she
4 was with, bottom line, do you?

5 A: No sir.

6 Q: That's all I have.

7 The Court: You may step down. Next witness.

8 Ms. Barr: Tawanda Mack Allen.

9 The Court: Let's stand before mama gets in here and let's
10 stretch a little bit. Come around here to be sworn
11 please.

12 Bailiff: Place your left hand on the Bible and raise your
13 right. Do you solemnly swear to tell the truth, the
14 whole truth and nothing but the truth, so help you
15 God?

16 A: I do.

17 Bailiff: Please step around to the witness box.

18 DIRECT EXAMINATION OF TAWANDA MACK ALLEN BY MS. BARR

19 Q: Ms. Allen, would you state your full name for me?

20 A: Tawanda Mack Allen.

21 Q: Ms. Allen, you are the mother of Ronald Mack?

22 A: Yes ma'am.

23 Q: And you are currently in the department of
24 corrections, is that correct?

25 A: Yes ma'am.

HEARING

210

1 Q: Alright and you are serving a forty-five year
2 sentence, based on your conviction, related to the
3 murder of K.D. ?

4 A: Yes ma'am.

5 Q: Who is Tiffany Bowen?

6 A: I have been advised by my attorney not to testify in
7 this case.

8 Q: Are you going to exercise your right to remain silent?

9 A: Yes ma'am.

10 Q: As it relates to all the questions concerning the
11 identity of Callie, the relationship that you have to
12 Kelvin Bowen and the murder of K.D. . It is
13 your wish to exercise your right to remain silent?

14 A: Yes ma'am.

15 Q: And you're going to refuse to answer any questions in
16 connection with those subject matters?

17 A: Yes ma'am.

18 Ms. Barr: Judge, that's all the questions that I have for
19 her.

20 The Court: Alright, Mr. Jenkinson?

21 CROSS EXAMINATION OF MS. MACK BY MR. JENKINSON

22 Q: Ms. Allen you are represented by Mr. Verdell Barr who
23 is seated over here?

24 A: Yes sir.

25 Q: And he's been your lawyer through out?

HEARING

211

1 A: Yes sir.

2 Q: And you're acting under his advice?

3* A: Yes sir.

4 Mr. Jenkinson: No further questions..

5 The Court: Alright, you can step down. Your next
6 witness.

7 Ms. Barr: I call Lt. Deborah Collins

8 Bailiff: Place your left hand on the Bible and raise your
9 right. Do you solemnly swear to tell the truth, the
10 whole truth and nothing but the truth, so help you
11 God?

12 A: I do.

13 DIRECT EXAMINATION OF LT. COLLINS BY MS. BARR

14 Q: Ma'am, let me get you to state your full name for the
15 record.

16 A: Deborah McElveen Collins.

17 Q: Alright and Ms. Collins will you tell us where you're
18 employed?

19 A: Williamsburg county sheriff's department.

20 Q: And what do you do there?

21 A: I'm the Lieutenant over investigation.

22 Q: Alright. Now, I hate to ask you this question,
23 because it might give away your age, but at the risk
24 of offending you, how long have you been a law
25 enforcement officer?

HEARING

212

1 A: Thirty-one years.

2 Q: And can you tell us what your day to day
3 responsibilities are in investigations?

4 A: I assign cases to the investigator that works under
5 me, like burglaries, murder, armed robberies, any
6 criminal cases that the first officers, the uniformed
7 officers go out and work and they need some assistance
8 and passed on to me and I'll assign it to an
9 investigator for follow up.

10 Q: Alright and ma'am, you had an opportunity, over the
11 years, I imagine, to investigate a number of homicide
12 cases?

13 A: Yes ma'am.

14 Q: Alright and you, as a part of your responsibilities,
15 did you participate in the investigation of the murder
16 of K.D. ?

17 A: Yes.

18 Q: Alright, you went to the scene?

19 A: Yes ma'am.

20 Q: You interviewed witnesses?

21 A: Yes.

22 Q: Alright, you sat in on interviews of witnesses?

23 A: Yes.

24 Q: Alright, now at some point in May of 2009, your agency
25 had an arrest warrant issued against Tawanda Mack

HEARING

213

- 1 Allen, is that correct?
- 2 A: Yes.
- 3 Q: And she was charged in connect to the death of K.D.
- 4 K.D. ?
- 5 A: Correct.
- 6 Q: Alright and your agency also charged Antonio McClary,
- 7 Ronald Mack and Kelvin Bowen?
- 8 A: Yes ma'am.
- 9 Q: Alright anyone else charged in connection with the
- 10 death of K.D. ?
- 11* A: No.
- 12 Q: Alright, now you all made arrangements to extradite
- 13 Mr. Bowen, Ms. Allen and Mr. Mack from Maryland?
- 14 A: Yes.
- 15 Q: Alright and you actually send deputies up to Maryland
- 16 and have them transported back to South Carolina?
- 17 A: Yes ma'am.
- 18 Q: Alright now, on May the 28th of 2009, did you all
- 19 conduct an interrogation of Tawanda Mack Allen?
- 20 A: Yes.
- 21 Q: And was your interrogation of her recorded?
- 22 A: Yes it was.
- 23 Q: Alright and which other members of your office was
- 24 present during that interrogation?
- 25 A: Investigator Whack and Investigator Lail.

HEARING

214

1 Q: Alright, where did that interview take place?

2 A: At the sheriff's office.

3 Q: Now, on t.v. we hear about Miranda warnings and you
4 know, we've seen some officers read from a card. Can
5 you explain to the jurors what is meant by Miranda
6 warnings?

7 A: Prior to taking a statement from anyone that is under
8 arrest or a suspect, we advise them of their Miranda
9 Rights. Advise them that they have the right to talk
10 to us and they have the right to have an attorney
11 present with them. We actually have a form that we
12 read it from. We give them a copy to go along with
13 that and after reading it we get them to sign it.

14 Q: Alright now, one of the things that you would advise
15 Ms. Allen of, at the time, was she had the right to
16 have a lawyer present before you interviewed her?

17 A: Yes.

18 Q: Alright, did she waive that right?

19 A: She waived that right.

20 Q: Did she waive all of her Miranda rights?

21 A: Yes, she also was advised that if she couldn't afford
22 an attorney, one would be appointed to represent her.

23 Q: And she said she didn't want to do all that. She was
24 willing to give a statement?

25 A: Yes ma'am.

HEARING

215

1 Q: Alright now, let me ask you a few questions
2* surrounding that statement, just so I can kind of lay
3 the framework. Now, when you all gave her that
4 statement or when she gave the statement, it was just
5 the, I guess the four of you all in the room?

6 A: Yes.

7 Q: Okay. Alright, was that statement recorded?

8 A: Yes it was.

9 Q: Alright, I'm going to hand you what's been marked for
10 identification purposes as State's exhibit number
11 sixty-six and I'm going to hand it to you and ask you
12 if you recognize that.

13 A: Yes.

14 Q: And tell the jury what that is.

15 A: It's a taped statement from Tawanda Allen Mack.

16 Q: Alright.

17 A: Dated on 5-28-09.

18 Q: Alright, now Lt. Collins, were you present in the
19* courtroom during the trial of Tawanda Mack Allen?

20 A: Yes.

21 Q: Alright, did you hear this tape being played during
22 that trial?

23 A: Yes.

24 Q: And does it accurately reflect the extent of the
25 interrogation of Tawanda Allen Mack back on May the

HEARING

216

1 28th, 2009?

2 A: Yes it did.

3 Q: Alright has this cassette tape been in the custody of
4 the clerk of court since Tawanda's trial?

5 A: Yes.

6th Q: And as far as you know, there have been no changes and
7 no deletions at all to this recording?

8 A: I don't think so; I haven't heard.

9 Q: Does it appear to bare an id number from the clerk's
10 office?

11 A: Yes.

12 Q: Alright, Judge we would move State's exhibit number
13 sixty-six into evidence at this time.

14 The Court: What says the defense?

15 Mr. Jenkinson: Your Honor, may we be heard outside of the
16 presence of the jury as to this matter?

17 The Court: Yes sir. Do you object or?

18 Mr. Jenkinson: I do object.

19 The Court: Alright, ladies and gentlemen, I'll have you
20 go to the jury room. Please do not discuss the case.

21 (Jury exits courtroom)

22 The Court: Yes sir Mr. Jenkinson?

23 Mr. Jenkinson: Several stages for this statements not
24 being admissible; first, it is hearsay, because it is
25 being offered for the truth of the matter asserted.

HEARING

217

1 It's an out of court statement and as such, it is
2 hearsay. And the person who allegedly gave this
3 statement is not even available to testify because of
4 the fifth amendment and what this is is an attempt to
5 put in hearsay, an out of court statement. It is not
6 signed, it is not authenticated as far as her
7 statement being given. She didn't even acknowledge
8 that the statement was given, so first is
9 objectionable as hearsay. Second, it's objectionable
10* because it is not a statement given in --- conspiracy,
11 so it does not --- third, it violates Mr. Bowen's
12 sixth amendment to confront his accused, the person
13 accusing him. He can't confront the tape, he can't
14 ask questions of the tape and he has no way under the
15 sixth amendment to confront this witness. The witness
16 has chosen the fifth amendment. He can't confront some
17 taped statement. The statement itself never
18* implicated Kelvin Bowen in the crime. He talks about
19 a man named Callie, but it never says that Callie is
20 Kelvin Bowen.

21 The Court: That part is a jury issue; whether Callie is
22 Kelvin Bowen.

23 Mr. Jenkinson: Yes and there's been no direct evidence of
24 that, uncontroverted evidence placed in the records of
25 evidence.

HEARING

218

1 The Court: It's a jury issue on that particular point,
2 because Mr. Barr, the witness or the witness
3 beforehand, one of the two, Mr. Wilson, either one of
4 them said that Callie was the mama's boyfriend. So,
5 that point I do not agree with you on, that limited
6 point.

7 Ms. Barr: Judge, there are several grounds on which this is
8 an exception to the hearsay rule; the first being that
9 it's an admission by the defendant, who, by Ms. Allen,
10 who is a co-defendant, or was a co-defendant to Mr.
11 Bowen, it is a statement made by the defendant that we
12 would submit to the court is a co conspirator. Mr.
13 Bowen, Mr. McClary and Mr. Mack and therefore the
14 statements made by the co conspirators, we would
15 submit to the court are in furtherance of that
16 conspiracy. Judge, also we would ask the court to
17 find that Ms. Allen is exempted from testifying on the
18 grounds of she's asserting her fifth amendment
19 privilege against self incrimination and therefore she
20 is an unavailable witness. Judge, as such, under rule
21 804, we would submit that the statement of Ms. Allen
22 regarding her involvement and the involvement of her
23 co-conspirators are admissible as a statement against
24 penal interest.

25 The Court: What do you say about that Mr. Jenkinson?

HEARING

219

1 Mr. Jenkinson: Well, I say this Your Honor, it's not a
2 statement against penal interest. She's already
3 been, you know, there's nothing more that can happen
4 to her. She's already gotten her sentence, she's
5 already been tried. There is nothing in the
6 furtherance of a conspiracy in giving a statement to
7 the police about what happened. That is not a
8 furtherance of the conspiracy. What she, that has
9 nothing to do with the conspiracy. That's her own
10 statement, allegedly, but even more importantly Your
11 Honor, and I come back to this and it has not been
12 addressed. We can't confront and cross examine this
13 tape. We are being denied the fundamental sixth
14 amendment right under the South Carolina, I mean the
15 United States Constitution and that fundamental
16 guaranteed under the South Carolina Constitution, that
17 we have a right to cross examine a witness. She is,
18 refused to testify live and now they want put a
19 statement in the court that we can't cross examine.

20 The Court: Alright, I agree with you on that point Mr.
21 Jenkinson. I think there are confrontation issues.
22 If she takes the fifth, she's unavailable, which means
23 that the defendant does not have the opportunity to
24 confront her and I believe that includes the admission
25 of that tape. And I sustain the objection.

HEARING

220

1 Ms. Barr: Well, Judge, I guess while we're outside the
2 presence of the jury, we need to address the issue of
3 Mr. Mack's statement as well. And Judge we would
4 assert to the court that we're allowed to impeach Mr.
5 Mack with a prior inconsistent statement. And he has
6 basically, made himself unavailable, by claiming that
7 he doesn't remember all this stuff.

8 The Court: Alright, Mr. Jenkinson?

9 Mr. Jenkinson: Your Honor, I rely on Rule 18, subsection
10 (a) matter after the court has ruled the matter and
11 this court has ruled.

12 The Court: I think she must be talking about additional
13 evidence regarding Mr. Mack. I've sided with you on
14 the ...

15 Mr. Jenkinson: Oh yeah, I'm sorry.

16 The Court: Regarding the mother.

17 Mr. Jenkinson: I didn't, I didn't, I didn't quite
18 understand.

19 The Court: She said she also wants to put the tape that
20 Mr. Mack gave ...

21 Mr. Jenkinson: It would be the same objection now, because
22 it should have been played during his testimony and
23 not re-hashed at this point where we can't confront
24 the tape and again, we would raise our sixth amendment
25 right to confront this tape. It was not put up in

HEARING

221

1 this case when it should have been and now the
2 Solicitor, she's trying to go back and supplement the
3 record with a tape that should have been introduced if
4 it was going to be used, during his testimony.

5 Mr. Barr: Judge, may I respond?

6 The Court: Yes ma'am.

7 Ms. Barr: Judge, he has claimed a lack of memory as to even
8 making the tape. I don't think that he's heard the
9^a tape, so I don't know how we could introduce it in the
10 course of his testimony, but he doesn't even remember
11 making it, he certainly can't authenticate it.

12 The Court: Well I'm not exactly sure what tape you're
13 talking about and all of that, but we had some issues
14 involving attempting to impeach a witness with
15 evidence without first presenting the evidence to the
16 witness to agree or disagree what the ...

17 Ms. Barr: Your Honor may I?

18 The Court: Yes ma'am.

19 Ms. Barr: Briefly. Judge, and that was the reason why I
20 went line by line and asked Mr. Mack if he remembered
21 saying he texted Callie; did he remember saying that
22 he called Callie; did he remember saying that he
23 killed K.D. did he remember saying that he and his
24 mom and Callie were suppose to meet at two. I asked
25 him a series of, to my count, eighteen questions as to

HEARING

222

1 whether or not he remembered saying these particular
2 things and his response was no, he did not remember
3 and Your Honor, Rule 613 says that, 613 (b) says that
4 if a witness does not admit that he made the prior
5 inconsistent statement, evidence of such statement is
6 admissible and Judge, he denied remembered even making
7 those statements and that's why it's so important, Mr.
8 Jenkinson objected saying I was leading, but it was so
9 important for me to ask him those very specific
10 questions because I needed to be able to impeach him
11 at a later point.

12 The Court: Alright, what about that Mr. Jenkinson?

13 Mr. Jenkinson: Your Honor, again, there was never a proffer
14 of this statement. What should have been done, during
15 the testimony of the witness, it wasn't proffered, he
16 wasn't confronted, it was not presented to him to
17 testify yes or no I gave this statement. Yes or no
18 and he was not offered in evidence during his
19 testimony. To come back and bootstrap it on now when
20 we can't cross examine the witness about the statement
21 that was proffered to him, if he said, if it was
22 played then, again, violates our right to confront a
23 witness which is now a tape.

24 The Court: Alright, State versus Sierra says that only
25 if the witness denies, that the, sorry, Rule 613

HEARING

223

1 requires the impeachment prior consistent statement as
2 far as laying the foundation for the question by
3 advising the witness of the substance prior to the
4 statement. Time and place it is given , the person to
5 whom it was made and only if the witness denies having
6 made the prior inconsistent statement the evidence is
7 admissible. There is a requirement to explain it,
8 deny it or admit it. Ms. Barr your contention is?

9 Ms. Barr: Judge, that the defendant Ronald Mack, when
10 questioned by me about giving the statement to
11 Investigator Lail, Investigator Collins and I
12 specifically remember pointing out those individuals
13 to him, when I questioned him as to the statement
14 being made on May the 28th , 2009 and Judge I even
15 remember handing him a copy of the transcript, trying
16 to get his attention to page six of the transcript and
17 he kept saying I don't remember, I don't know, I don't
18 remember, I don't know. So, the notion that counsel
19 is trying to advance that that was never proffered
20 before him, you know, we couldn't have been listening
21 to the same witness. He repeatedly said I don't
22 remember, I don't remember, I don't remember. And I
23 made a point when I re-directed him to ask him whether
24 or not his memory was suddenly refreshed on cross
25 examination and clearly Judge, Rule 13, 613 allows us

HEARING

224

1 to impeach Mr. Mack with a prior inconsistent
2 statement.

3 The Court: It does not have to be through the same
4 witness, it can be through a separate witness.

5 Ms. Barr: Absolutely, absolutely Judge.

6 The Court: Alright I agree with the State on that and
7 I do allow it.

8 Ms. Barr: Thank you.

9 The Court: Under Rule 613.

10 Ms. Barr: Judge can I just ...

11 Mr. Jenkinson: Judge, I know I can't argue, but I never
12 had a chance to address 613 at all.

13 The Court: Yes sir, you can. Yes sir 613?

14 Mr. Jenkinson: Your Honor, the case that you cited Rule 613
15 addresses the consent of circumstances of a witness
16 testifying under oath, on the stand and once that
17 witness leaves the stand and comes back later, 613
18 doesn't apply. That is completely taken outside the
19 parameters and context of 613 in the case you said.
20 That rule applies when the witness is on the stand and
21 he's cross examined about it. That's when it is
22 played because then we allowed to cross examine him
23 about it and now we can't cross examine him about it,
24 because it was never offered we never cross examined
25 him about it. You've been precluded from confronting

HEARING

225

1 him about this statement. I had lots of cross
2 examination for him about the statement if it was
3 going to be used, but when it wasn't used, I didn't go
4 into it. I don't, you don't, you don't cross examine
5 about something that isn't before this witness and now
6 we're precluded from cross examining him because now
7 we got a tape that's going to be played for the jury
8 and we can't do anything and that violates the
9 confrontation clause of the United States
10 Constitution, Article 6.

11 Ms. Barr: Your Honor, if I could please just say something.

12 The Court: Yes ma'am.

13 Ms. Barr: Your Honor, the right to confrontation does not
14 say that the defendant has to confront the witness.
15 The right to confrontation says the defendant has the
16 opportunity to confront the witness; he did. He cross
17 examined Mr. Mack about the statement, as a matter of
18 fact, he went down to the jail and got his statement
19 he said didn't you give a statement to law
20 enforcement, that statement wasn't true, he asked Mr.
21 Mack about that, all on the stand. So he's now,
22 because he elected not to ask him specifics about the
23 May 28th statement now he's saying I didn't have the
24 opportunity to cross examine; he did.

25 The Court: Well having presided over the trial where

HEARING

226

1 Mr. Mack testified in the guilty plea in which he
2 admitted his involvement and also the involvement of
3 Mr. Bowen and having heard his testimony today denying
4 ever giving that testimony or saying various things he
5 clearly said and also considering that Mr. Jenkinson
6 had the opportunity to go and get his own statement
7 from the defendant also considering the State versus
8 Miller which says that when a witness then attempts to
9 avoid the admission by saying I don't remember the
10 State is able to impeach, I'm going to allow the State
11 to impeach Mr. Mack through his statement, prior
12 statement and also have Mr. Mack made available for
13 further testimony should Mr. Jenkinson elect to cross
14 examination.

15 Ms. Barr: Thank you Your Honor.

16 The Court: Further confrontation.

17 Mr. Jenkinson: I just think that the sixth amendment right
18 is more operative than a rule or case of law in this
19 particular instance and we all of this has been taken
20 out of context has not, it's now being taken through
21 this witness and I can't even cross examine him about
22 it. What can I cross examine her about what she
23 heard?

24 The Court: You'll be able to cross examine Mr. Mack if
25 you want to. Is he still around? Just keep him at

HEARING

227

1 the county jail until the trial is over. In the event
2 Mr. Jenkinson wants to confront him further.

3 Mr. Jenkinson: Well ...

4 The Court: That's the ruling of the court. What else
5 do we have while the juries out?

6 Ms. Barr: Nothing else Judge.

7 The Court: Alright, bring the jury.

8 Mr. Jenkinson: Could we have just a bathroom break before?

9 The Court: Alright give the public two minutes.

10 (There was a court break)

11 The Court: You may proceed.

12 Ms. Barr: May it please the Court.

13 CONTINUE EXAMINATION OF LT. COLLINS BY MS BARR

14 Q: Lt. Collins, I was asking you when we sent the jury
15 out about a taped statement of Tawanda Allen. Now I am
16 not permitted to ask you questions about her
17 statement, but I would like to ask you about Ronald
18 Mack. You were in court today when he testified
19 right?

20 A: Yes.

21 Q: Okay and ma'am were you also in court when he
22 testified during his mother's trial in August?

23 A: Yes.

24 Q: Alright and you were in court when he pled guilty that
25 same week?

HEARING

228

1 A: Yes.

2 Q: Alright now was his testimony here today substantially
3 different than what the statement was that he gave you
4 and Investigator Lail.

5 A: Yes it was totally different.

6 Q: Okay, alright now, you took a statement of Tawanda
7 Allen on May the 28th of 2009. Did you also take a
8 statement of Ronald Mack that same day?

9 A: Yes ma'am.

10 Q: Alright and I'm not going to mark this as an exhibit,
11 but I just kind of wanted to lay a foundation of the
12 facts. Is that a copy of the transcript from Mr.
13 Mack's statement to law enforcement?

14 A: Yes it is.

15 Q: Alright and it was given May 28th at 2:09 pm?

16 A: Yes.

17 Q: Alright and who all was present during the course of
18 this statement?

19 A: Investigator Whack, Investigator Lail and myself.

20 Q: Okay along with Ronald Mack?

21 A: Ronald Mack.

22 Q: Okay, alright and did you also advise him of the same
23 Miranda warnings that you gave to his mother?

24 A: Yes.

25 Q: And to kind of further your testimony in that regard,

HEARING

229

1 did you actually have him sign a form waiving his
2 rights?

3 A: Yes.

4 Q: Alright, tell me what that form says and what you all
5 would have advised him of at that time.

6 A: At the top of it, it says Miranda warning and it has
7 the date, which was 5-28-09, place, Williamsburg
8 county sheriff's department, time, 2:09 pm and it says
9 the Constitution requires that we or I inform you that
10 you have the right to remain silent. Anything you say
11 can and will be used against you in a court of law.
12 You have the right to talk to a lawyer and have him
13 present while you are being questioned. If you cannot
14 afford hire an attorney, one will be appointed to
15 represent you before your questioning if you wish.
16 You can decide at any time to exercise these rights
17 and not answer any question or make any statements.
18 Do you understand each of these rights I have
19 explained to you? His answer was yes and he put his
20 initial RM before his answer.

21 Ms. Barr: Okay. Alright Judge, we would ask to have this
22 marked a State's number sixty-eight and admitted into
23 evidence as the Miranda waiver form.

24 The Court: Says the defense?

25 Mr. Jenkinson: I don't object.

HEARING

230

1 The Court: Admitted without objection.

2 (State's Exhibit Number 68 was admitted)

3* Q: Alright and I'm also going to hand you what's been
4 marked for identification purposes State's number
5 sixty-five and ask if you recognize that particular
6 exhibit.

7 A: Yes.

8 Q: Alright, tell the jury what it is.

9 A: It's a taped statement, dated on 05-28-09 from Ronald
10 Mack.

11 Q: Alright is this the same taped statement that you talk
12 about earlier that was done on May the 28th of 2009?

13 A: Yes.

14 Q: At 2:09 pm?

15 A: Yes it is.

16 Q: Alright and is this an accurate recording of the
17 statements made by the deputies at the sheriff's
18 department, along with Ronald Mack that day?

19 A: Yes.

20* Q: Alright and you prepared to play the tape that day?

21 A: Yes.

22 Ms. Barr: Judge, we would move State's exhibit number
23 sixty-five into evidence at this time.

24 Mr. Jenkinson: We would object on the reasons that were
25 previously articulated to the court.

HEARING

231

1 The Court: Admitted over objection.

2 (State's Exhibit Number 65 was admitted)

3 Q: Thank you Your Honor. Alright, Investigator Collins,
4 what I'm going to do is, so that the court reporter is
5 not taking down the tape as it's playing and your
6 statements as well, I'm just going to withhold asking
7* any questions until I stop the tape. Fair enough?

8 A: Yes ma'am.

9 (RONALD MACK'S TAPED STATEMENT IS PLAYED)

10 Mr. Jenkinson: Your Honor, please, one further matter.

11 (RONALD MACK'S TAPED STATEMENT WAS PAUSED)

12 The Court: Alright, yes sir?

13 Mr. Jenkinson: May we approach?

14 (Counsel approaches bench)

15 The Court: Ladies and Gentlemen, I want to caution you.

16 What this evidence is being used for is impeachment
17 purposes only as it relates to Mr. Mack and his
18 testimony and not the truth contained therein, but for
19 impeachment purposes only as it relates to that
20 witnesses testimony. You may proceed.

21 Ms. Barr: Yes sir, thank you Your Honor.

22 (RONALD MACK'S TAPE STATEMENT WAS PLAYED)

23 Q: Investigator Collins, you've had another opportunity,
24* of course, to listen to the taped statement of Ronald
25 Mack, is that correct?

HEARING

232

- 1 A: Yeah.
- 2 Q: Alright, now when I had asked you earlier whether or
- 3 not his testimony today, whether or not his testimony
- 4 today was consistent with what he told law
- 5 enforcement, you answered that it was substantially
- 6 different.
- 7 A: Right.
- 8 Q: Did he implicate himself, his mom, and Kelvin Bowen
- 9 during his plea?
- 10 A: Yes, he did.
- 11 Q: Alright, what about when he testified in his mother's
- 12 trial? Did he implicate those three people?
- 13 A: Yes, he did.
- 14 Q: During his mama's trial?
- 15 A: Yes.
- 16 Q: Was his testimony consistent with his statement that
- 17 he gave to you back on May 28 of 09?
- 18 A: During his mother's trial?
- 19 Q: Yes.
- 20 A: Yeah.
- 21 Q: Inconsistent with what he testified today in court?
- 22 A: Yes, he was different today.
- 23 Q: Now, there was a part of his statement that I need to
- 24 ask you about, you all, as a part of interviewing
- 25 witnesses, you are all just kind of gathering facts

1. about a case. Is that right?

2 A: Yes ma'am.

3 Q: Alright and there was a part in his statement that I
4 was curious about, he said that Antonio thought that
5 he was going there to rob K.D. and he asked you
6 about the warrants. Do you remember that part of his
7 statement about the warrant for attempted robbery or
8 armed robbery?

9 A: Yes, I asked him did he have any question about the
10 warrants and he had a question about the armed robbery
11 warrant.

12 Q: Okay and his response was no we never went there to
13 rob, we just went there to kill?

14 A: Correct.

15 Q: Do you have a copy, copy of the transcript of that
16 statement?

17 A: No ma'am.

18 Q: I'm a hand that to you. Now, you of course, had the
19 benefit of actually being in the room with Mr. Mack
20 when he gave you this statement. If you go with me to
21 page six, you asked him, what's Callie's real name.

22 A: Can you tell me what line you're talking about?

23 Q: Twenty-two and twenty-three, yes ma'am. Do you
24 remember somebody in the room asking him that
25 question?

HEARING

234

1 A: Yes ma'am.

2 Q: What was his response?

3 A: Kelvin.

4 Q: Okay, now, we heard a couple of different voices on
5 there. Male voice that we heard was from who?

6 A: Investigator Whack.

7 Q: Alright, we heard your voice there and we had another
8 female's voice. Who was that other female?

9 A: Investigator Lail.

10 Q: Okay, the young lady sitting here?

11 A: Yes.

12 Q: How far would Dontrey Barr have been from where the
13 victim was killed?

14 A: I would say approximately seven to eight miles.

15 Q: Think you could make it there in ten minutes?

16 A: Yes.

17 Q: Okay, that's all the questions I have Lt. Collins,
18 please answer any questions from Mr. Jenkinson.

19 CROSS EXAMINATION OF LT. COLLINS BY MR. JENKINSON:

20 Q: Investigator Collins, I was listening to the statement
21 and I was following along with the transcript of the
22 statement that you have in front of you. Do you have
23 it in your lap? How many pages are in it?

24 A: Thirty-seven.

25 Q: Well, while I was listening to the tape a few minutes

HEARING

235

1 ago, I heard it cut off, about page what?

2 A: I would have to ask you because I wasn't going along
3 with the transcript and page. Tell me what page it
4 is.

5 Q: You was talking about what bothers him ...

6 A: What page are you on?

7 Q: Twenty-three.

8 A: What line sir?

9 Q: Fifteen. Read nine through fifteen. That was the last
10 response I heard on page twenty-three.

11 A: You want me to start with the question at number five
12 or you want me to start with the answer?

13 Q: That was a, this tape that we listened to stopped on
14 page twenty-three of the statement, did it not?

15 A: No.

16 Q: You saying it did not? You saying it went through the
17 entire length of the statement?

18 A: Yes sir.

19 Q: The statement played, was it stopped?

20 A: I stopped the tape.

21 Q: On page twenty-three?

22 A: I'm not sure what page it is.

23 Q: It was not complete? Can we find it where it was last
24 question on there?

25 Ms. Barr: You have to fast forward.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

236

1 Mr. Jenkinson: I want to know, I wasn't expecting it to
2 stop and I don't know how to operate it and I don't
3 know where.

4 Ms. Barr: Just fast forward.

5 Mr. Jenkinson: No, I don't have to fast forward it, I just
6 want to cut it on and find out what the next question
7 is, so we can identify where it stopped.

8 Ms. Barr: If you, you're free to fast forward it Mr.
9 Jenkinson. It's in evidence, you're free to ...

10 Mr. Jenkinson: She, but I don't know how to operate it,
11 would you kindly just turn it on for me?

12 Ms. Barr: Let me show you. I don't know where, how far you
13 want to go with this.

14 Mr. Jenkinson: I just, let it, I don't want to fast forward
15 it. I just want to stop where you stopped. I want
16 this to be, I want you to start it where you stopped
17 it.

18* The Court: Push play.

19 Ms. Barr: It's at the beginning Judge, it rewound. It's at
20 the beginning. That's why I told him he could fast
21 forward it.

22 Q: You were, you read the statement, the written
23 statement, have you not?

24 A: Yes sir.

25 Q: And if I was following along and stopped on twenty-

HEARING

237

1 three, you don't deny on page twenty-three that's
2 where this tape stopped a few minutes ago?

3 A: I don't know, because I wasn't going along with the
4 transcript. I don't know exactly at what point it
5 stopped.

6 Q: Were you listening to the tape?

7 A: Yes sir.

8 Q: Well turn to page twenty-three. You got page twenty-
9 three?

10 A: Yes sir.

11 Q: I want you to look at line eighteen to the bottom of
12 that page and the next page. Do you hear anything on
13 that tape from that point on?

14 A: Give me a minute. No sir.

15 Q: You did not did you?

16 A: The tape stopped.

17 Q: The tape stopped?

18 A: The tape didn't stop during the taped statement. Ms.
19 Barr cut the tape off before it finished playing.

20 Q: The tape that we, that the jury was listening to,
21 stopped in the middle of page twenty-three?

22 A: I didn't hear from line seventeen on down, so I would
23 agree with you that it did stop on page twenty-three.

24 Q: Okay. So we didn't hear page twenty-four?

25 A: If it stopped on page twenty-three, no sir.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

238

1 Q: Twenty-five and we didn't hear it right on up through
2 page thirty-seven, the last page, did we?
3 A: No sir.
4 Q: So we didn't hear the full tape and the full statement
5 of it, did we?
6 A: I didn't play the tape.
7 Q: No, I'm just asking you what we heard.
8 A: No sir.
9* Q: And I want you to turn to the last line on page
10 thirty-seven and tell the jury what happened to the
11 statement.
12 A: The last line says tape ran out.
13 Q: Tape ran out. So we don't know what happened after
14 the tape ran out do we?
15 A: That would have been the end of our statement. If
16 not, we would have had a second tape.
17 Q: It does not say, do you have a second tape?
18* A: No sir.
19 Q: It doesn't say it was the end of the statement.
20 A: It just says tape ran out.
21 Q: And he's answering a statement and it says yes, but it
22 wasn't no robbery or nothing it was just that and it's
23 cut off on that last page. Isn't that what it says?
24 A: On line four it says I was just trying to like,
25 basically kill him ...

HEARING

239

1 Q: No ma'am, I didn't ask you that question. I asked you
2 if the last sentence stops in mid sentence and it
3 doesn't, and there's nothing further on that page?

4 A: If I recall, it was basically at the end of his
5 statement and he was like trying to explain that there
6 was no robbery, because a robbery warrant was served
7 on him and he was just explaining that he went there
8 to kill him, not rob him and like you said, it says
9 the tape ran out.

10 Q: The tape ran out, so we don't know what happened after
11 tape ran out on the tape machine do we?

12 A: There's nothing on there where it ran out.

13 Q: I know it and so if he continued to give a statement
14 and was asked questions, we don't, just let me finish
15 my question, then you can answer it all you want.

16 A: Yes sir.

17 Q: We can't hear what he said after the tape ran out can
18 we?

19 A: We didn't ask him anything else, he was just talking.

20 Q: Does the, does the tape indicate that the questioning
21 stopped?

22 A: No sir.

23 Q: And we don't know because it doesn't appear on this
24 statement does it?

25 Ms. Barr: Judge, I'm going to object. That question has

HEARING

240

1* been asked and answered repeatedly.

2 The Court: Overrule the objection.

3 Q: You understand the question?

4 A: I answered the question. Are you going to ask again?

5 Q: Yes ma'am, I said we don't know what he said on the
6 tape because it ran out and we don't know what else he
7 told you that day do we? Because it wasn't recorded.

8 A: No sir, there was nothing else.

9* Q: We have to assume there was nothing that because the
10 tape ran out, right?

11 A: Yes sir, it ran out when he said that he went there to
12 kill him, not rob him and that's when the tape says
13 tape ran out..

14 Q: Okay, now let's go back to the first statement that he
15 gave you, back in April.

16 A: I'd have to see a copy of it to see.

17 Q: Well you weren't present?

18 A: I would like to look at the statement that you are
19 questioning me about.

20 Ms. Barr: Your Honor, to the extent that Counsel seeks to
21 asks questions about the first statement, we would
22 object to hearsay. We object on hearsay grounds.

23 The Court: Alright. Let's stand for a minute. The
24 objection is overruled.

25 Mr. Jenkinson: Thank you Your Honor.

HEARING

241

1 Q: There was a detailed statement given by Mack back on
2 April 5th, was there not?

3 A: Yes sir.

4 Q: You weren't present for that statement?

5* A: It says Investigator Lail and Investigator Whack. I
6 was not there.

7 Q: So you weren't in that statement. So we don't know,
8 you weren't there so you can't testify about what you
9 didn't hear. Have you read it?

10 A: I don't think I have. Not recently.

11 Q: So you did not, you did not read it in preparation for
12 the questions you were asking on May 28th?

13 A: No sir. I was, that's when the murder first happened.
14 When Investigator Whack and them started to talk and
15 interview people and that was one of the statements I
16 was not involved in.

17 Q: But you were one of the lead investigators on it?

18 A: I'm in charge of investigations and Investigator Lail
19 is the lead investigator.

20 Q: This lady sitting right here.

21 A: Yes sir.

22 Q: She can tell us about it, right?

23 A: Yes sir, she took the statement.

24 Q: Now, let's go back to May 28th, this statement you
25 heard. This fella Ronald Mack told you that he and

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

242

- 1 K.D. were robbing people right?
- 2 A: Yes sir.
- 3 Q: That he and K.D. were dope dealers?
- 4 A: He wanted us to believe that he was a dope dealer and
- 5 a thug. That's what he pretend to be.
- 6 Q: So he was lying in his statement on the 28th to you?
- 7 Is that what you're telling us?
- 8 A: About being a drug dealer?
- 9 Q: Yes.
- 10 A: I wouldn't doubt if he was a drug dealer, but I don't,
- 11 I've never heard of anybody they robbed.
- 12 Q: Well, in it he said he and K.D. robbed
- 13 people, didn't he? Rob dealers and were dealing in
- 14 drugs?
- 15 A: That's what he said.
- 16 Q: So, what you're telling us, you believe what you want
- 17* to believe in this statement, but other things, the
- 18 rest of it, it's a lie?
- 19 A: I did not say that. I said he's a want to be drug
- 20 dealer.
- 21 Q: Okay, both of them were gang members, meaning K.D.
- 22 K.D. and Ronald Mack?
- 23 A: I don't know whether K.D. was a drug, a gang member
- 24 or not. I don't know that.
- 25* Q: Well, if you believe what your witness says in this

HEARING

243

1 statement, he must be right?

2 A: Not necessarily.

3 Q: Okay. So you don't believe that either?

4 A: I believe part of what he said and some of it I did
5 not.

6 Q: Okay, so this statement we've heard, you're telling us
7 you believe some of it, you don't believe some of it,
8 the rest of it, we don't hear?

9 A: I don't believe about them going around robbing drug
10 dealers.

11 Q: It happens, doesn't it?

12 A: Yes sir.

13 Q: And if you believe in his statement and believe what
14 he says, then it happened right?

15 A: I believe what he said that Callie assisted him in
16 murdering K.D.

17 Q: Yeah, you pick out what you want to believe?

18 A: That's true.

19 Q: And he didn't say, he said Callie?

20 A: Callie.

21 Q: Callie, alright, now, in this statement, you've
22 mentioned a few minutes ago, he identified his wife's,
23 his mother's boyfriend and Kevin, right? K-E-V-I-N?

24 A: He said Callie and Investigator Whack asked him what
25 was his real name, he said Kevin.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

244

- 1 Q: Kevin. And that guys name, sitting by Mandy Shuler
2 over there ain't named Kevin is it?
- 3 A: His name is Kelvin Bowen.
- 4 Q: His name is Kelvin, right?
- 5 A: They both sound the same.
- 6 Q: Well, the Sheriff of Williamsburg county, during this
7 particular time, name was Kelvin, was it not?
- 8* A: His name is Kevin.
- 9 Q: Pardon?
- 10 A: Kevin Washington.
- 11 Q: Kelvin Washington, that's spelled Kelvin, right?
- 12 A: People spell their name different.
- 13 Q: I understand that, but Kelvin Bowen and the Sheriff
14 spell their name the same way, right?
- 15 A: Yes.
- 16* Q: Well, they're pronounced the same way, Kelvin, right?
- 17 A: That's exactly what I said, you pronounce the name the
18 same way and people spell it different.
- 19 Q: Alright and Kevin and Kelvin is two different names,
20 isn't it?
- 21 A: Callie and Kelvin Bowen is the same person.
- 22 Q: No ma'am, I didn't ask you that. I said Kevin and
23 Kelvin are two different names aren't they?
- 24 A: They're spelled different. I don't know whether
25* people pronounce it the same.

HEARING

245

1 Q: No ma'am. Listen to what I'm saying. The name Kelvin
2 and Kevin are two different names aren't they?

3 A: They're spelled differently.

4 Q: They spell differently and they're pronounced
5 differently aren't they?

6 A: Yes.

7 Q: And we know, have understood that Tawanda Mack had two
8 boyfriends when all this was going on?

9 A: She only talked about one with us.

10 Q: I know that, but Mr. Mack's talking about two, right?

11 A: That's the first I heard that, today.

12 Q: You don't know what to believe out of this guy do you?

13 A: I believe that they killed K.D. , him and Mr.
14 Bowen.

15 Q: Did you ever hear the name Kelvin Bowen anywhere in
16 this statement about what we heard and about what we
17 didn't hear? Kelvin Bowen, have you ever heard that
18 name in there?

19 A: No sir, it was ...

20 Q: Never said was it?

21 A: No, it was Callie.

22 Q: Did you ever have Ronald Mack, you had them both at
23 the jail at the same time, didn't you?

24 A: At one point, yes.

25 Q: Did you ever take him over to his cell and say is this

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)

COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
v.)
KELVIN MICHAEL BOWEN, JR.,)
DEFENDANT.)

TRANSCRIPT OF RECORD
C/A #: 2009-GS-45-00180

VOLUME TWO

WILLIAMSBURG COUNTY COURTHOUSE
Monday, January 31, 2011-
February 4, 2011

BEFORE:

HONORABLE CLIFTON NEWMAN, PRESIDING JUDGE.

APPEARANCES:

Assistant Solicitor Kimberly Barr
Assistant Solicitor Tyler Brown
Attorneys for State of South Carolina

William E. Jenkinson, Esquire
Amanda Shuler, Esquire
Attorneys for Defendant, Kelvin Michael Bowen, Jr.

TAKEN BY MELISSA R. SINGLETARY
CERTIFIED VERBATIM REPORTER

1 Callie?

2 A: No.

3 Q: Never did. To this day, he's never done it has he?

4 A: No sir.

5 Mr. Jenkinson: No further questions.

6 The Court: Ms. Barr?

7 Ms. Barr: Judge, just a brief follow up, if I may.

8 RE DIRECT EXAMINATION OF LT. COLLINS BY MS. BARR:

9 Q: Lt. Collins, you testified that you believed what Mr.
10 Mack told you in his recorded statement as it relates
11 to the actual carrying out of the murder of K.D.
12 K.D. ?

13 A: Yes.

14 Q: Alright, was his testimony consistent with the crime
15 scene?

16 Mr. Jenkinson: Your Honor, that's pitting witnesses.

17 The Court: Improper re-direct. Sustained objection for
18 that reason.

19 Q: Did you see evidence that the victim, K.D. was shot
20 with a shotgun?

21 A: Yes.

22 Mr. Jenkinson: Objection. Not proper cross.

23 The Court: Sustain the objection.

24 Q: Now, you said that you never took Ronald Mack and
25 pointed him in the direction of the Defendant Kelvin

HEARING

247

1 Bowen. You said that you've never done that?

2 A: No.

3 Q: Alright, now you also testified that during the trial
4 of the case, you were here when Mr. Mack plead guilty
5 and you were here when he testified in his mother's
6 case?

7 A: Yes.

8 Q: Were you also here when he was shown this photograph
9 and identified him as Callie?

10 A: In court, yes.

11 Q: Alright that's all I have. Thank you.

12 Mr. Jenkinson: Your Honor, that's, objection. Objection, he
13 never said that's Callie. He said that's a picture of
14 Kelvin Bowen.

15 The Court: The jury heard the testimony and the will
16 recollect the testimony. Anything further from this
17 witness?

18 Ms. Barr: Not from the State Your Honor.

19 The Court: You may step down. Your next witness?

20 Ms. Barr: Your Honor, our folks were in court today and
21 they asked me about four thirty were we going to be
22 able to get to them today and I told them no, so I
23 sent them back to the hotel in Florence.

24 The Court: Alright.

25 Ms. Barr: Judge, we'd ask you to recess for today.

HEARING

248

1 The Court: Time to quit?

2 Ms. Barr: Yes please sir.

3 The Court: Alright, we'll quit for the day and start
4 back at 9:15 tomorrow morning. Please do not discuss
5 the case with anyone.

6 (Jury exits the courtroom for the evening)

7* The Court: Alright anything else before we leave for
8 this day?

9 Ms. Barr: Nothing from the State Judge.

10 The Court: Alright, 9:15. Mr. Jenkinson anything else
11 on behalf of the Defendants?

12 Mr. Jenkinson: Your Honor, in regard to what you said
13 about Mr. Mack. I know the Court's offering me the
14 opportunity to recall him to the stand, but I'm not
15 inclined to do that because that address to the jury that
16 we have a burden of putting him back on the stand and the
17 burden of proof is something and for that reason, we would
18 not want to call him.

19 The Court: Alright, Mr. Jenkinson doesn't want him, so
20 you can take him back to wherever he came from.

21 Ms. Barr: Thank you Your Honor.

22 (Wednesday, February 3, 2011 The State vs. Kelvin Bowen,
23 Jr.)

24* Ms. Barr: Good-morning, Judge. Your Honor, I just have one
25 matter. I think that what has been marked for State

HEARING

249

1 identification purposes only as State's Exhibit Number
2 fifty-one is the items that were taken from the scene of
3 the crime. I believe that Mr. Jenkinson has indicated to
4 me that he has no objection as to chain of custody or as to
5 this exhibit being entered.

6 Mr. Jenkinson: No objection to Exhibit 51.

7 The Court: All right. Bring the jury in.

8 (Jury enters court room 9:56)

9 The Court: Good morning. Ms. Barr, call your next witness.

10 Ms. Barr: We call Antonio McClary.

11* Mr. Jenkinson: Your Honor, it appears, once the witness is
12 in the courtroom there is a matter that we would like heard
13 off the record. I don't know who she will call next.

14 The Court: All right. Ladies and Gentlemen, if you all
15 would go to your jury room, please.

16 (Jury exits that courtroom 9:56)

17 Mr. Jenkinson: The Motion will be argued by Ms. Shuler.

18 The Court: All right. Mister, come right here and stand in
19 front of the Bible and be sworn.

20 Clerk: Place your left hand on the Bible, raise your right
21 hand. Do you solemnly swear or affirm to tell the whole
22 truth and nothing but the truth so help you God?

23 Mr. McClary: Yes.

24 Clerk: Step around to the witness box.

25 (Witness complies)

HEARING

250

1 The Court: All right.

2 Ms. Shuler: Thank you, Honor. May it please the Court.

3 Pursuant to Kigleo(sp) vs. The United States, the defense
4 would like to get on the record as to the plea agreement
5 that was made with the Defendant.

6 The Court: All right. Ms. Barr.

7 Ms. Barr: Judge, there was, I shouldn't say plea agreement.

8 The Defendant plead guilty to burglary and I think he is
9 serving a 12 year sentence.

10 Ms. Shuler: Your Honor, there was a negotiated plea of 12
11 years. There was some sort of agreement that come to
12 between the defense and the prosecution in this case. All
13 of that ...

14 The Court: Are you stating that as a fact or questioning it
15 or ...

16 Ms. Shuler: I'm stating it as a fact.

17 The Court: Based on?

18 Ms. Shuler: Based on the guilty plea that was put on the
19 record. He had a negotiated sentence of 12 years. That as
20 put on the record back --- if your Honor would please I
21 could question that Defendant on that.

22 Ms. Barr: I don't necessarily --- I'm sorry, may I be
23 heard?

24 The Court: Yes.

25 Ms. Barr: Judge, I don't know if it's necessary for him to

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

251

1 have been put on the stand and asked that. I mean, I was
2 the one who handled the plea. There were no negotiations
3 in terms of things being offered to him. He plead guilty
4 to burglary and received a 12 year sentence. There was
5 nothing offered to him or his lawyer in exchange for that
6 plea. She can ask him about that, but that's ...

7 The Court: You can ask him some questions if you want to.

8 Proffer Testimony - Mr. McClary - Examination by Ms.

9 Shuler:

10 Q: Good morning, Mr. McClary.

11 A: Good morning.

12 Q: You were charged in this case with murder, burglary
13 first, possession of a weapon during a violent crime
14 and criminal conspiracy, is that correct?

15 A: Yes.

16 Q: You were represented by Mr. Palmer?

17 A: Yes.

18 Q: You worked out an agreement with the Solicitor's
19 office, did you not?

20 A: Yeah.

21 Q: What were the contents of that agreement?

22 A: Second degree burglary. I got a 12 year sentence.

23 Q: Did she ask you if you would testify against Mr.
24 Bowen?

25 A: No. After I plead then.

- 1 Q: She asked you after you all agreed to the 12 years
2 whether you would testify against him?
- 3 A: Yes.
- 4 Q: Did she offer you anything in return for that
5 testimony?
- 6 A: No, she did not.
- 7 Q: Did you discuss your testimony with her?
- 8 A: Yes.
- 9 Q: When did you discuss your testimony?
- 10 A: At the plea.
- 11 Q: Did your attorney, Mr. Palmer, advise you that you
12 would be eligible for reduction in sentence if you
13 were to cooperate with the prosecution?
- 14 A: No, he did not.
- 15 Q: What date did you plea?
- 16 A: Excuse me.
- 17 Q: Do you remember the date that you plead guilty?
- 18 A: I don't know the date.
- 19 Q: Would that be on or about October 14, 2010?
- 20 A: Yes.
- 21 Q: And it's your testimony here today that nobody has
22 told you, you would be eligible for reduction in
23 sentence for cooperation with the State?
- 24 A: No. Not one has taken that. No one has told me.
- 25 Ms. Shuler: I have no other questions, Your Honor.

HEARING

253

1 The Court: All right. Anything from the State?

2 Mr. McClary - Cross by Ms. Barr:

3 Q: Sir, when you testified that I discussed your
4 testimony with you, that was about two days ago,
5 right?

6 A: Yes.

7 Ms. Barr: Thank you.

8 The Court: Anything else?

9 Ms. Shuler: Nothing else, Your Honor.

10 The Court: All right. Bring in the jury.

11 (Jury enters the Courtroom)

12 The Court: All right. The jury is back, the witness
13 has been sworn, you may proceed.

14 Ms. Barr: If it please the Court, Your Honor.

15 EXAMINATION OF MR. MCCLARY BY MS BARR:

16 Q: Mr. McClary state your full name.

17 A: Antonio McClary.

18 Q: I appreciate you moving the microphone up and I need
19 you to continue to do that so that everyone can hear
20 what you're saying, okay?

21 A: Alright.

22 Q: Sir, you have on a prison uniform?

23 A: Yes ma'am.

24 Q: And you are currently incarcerated in the South
25 Carolina Department of Corrections, is that right?

- 1 A: Yes.
- 2 Q: Alright, you pled guilty to the burglary of K.D.
- 3 K.D. 's residence?
- 4 A: Yes.
- 5 Q: And you pled guilty back on October 14, 15 of 2010?
- 6 A: Yes.
- 7 Q: You had a lawyer with you at that time?
- 8 A: Excused me?
- 9 Q: Did you have a lawyer with you at that time?
- 10 A: Yes.
- 11 Q: Alright as a part of your guilty plea, did you tell
- 12 the Court your involvement in the burglary and the
- 13 subsequent murder of K.D.
- 14 A: Yes.
- 15 Q: Now, Mr. McClary now you came here and you put your
- 16 hand on the Bible and the clerk swore you in. Do you
- 17 remember that?
- 18 A: Yes.
- 19 Q: You understand that you have to tell the truth today?
- 20 A: Yes.
- 21 Q: Did you also put your hand on the Bible when you pled
- 22 guilty back in October?
- 23 A: Yes I did.
- 24 Q: You remember pleading guilty before this judge or
- 25 another judge?

HEARING

255

- 1 A: Yes.
- 2 Q: Alright, did you tell the truth then when you put your
- 3 hand on the Bible?
- 4 A: Yes I did.
- 5 Q: Now let me get a little bit of background information
- 6 from you. Don't tell me your address, but did you
- 7 grow up in Williamsburg county?
- 8 A: Yes.
- 9 Q: Did you have brothers or sisters?
- 10 A: One sister.
- 11 Q: Okay, how old are you?
- 12 A: Twenty.
- 13 Q: Okay. Now do you, are you known by a nickname?
- 14 A: Yes.
- 15 Q: What's your nickname?
- 16 A: Droopy.
- 17 Q: Droopy?
- 18 A: Yes.
- 19 Q: Who, all your friends and your family members call you
- 20 Droopy?
- 21 A: Yes.
- 22 Q: Okay. Now are you a little nervous here today in
- 23 court?
- 24 A: Yes, ma'am.
- 25 Q: Okay, alright. Now, it's okay to be nervous. If you

HEARING

256

1 need to take a break or whatever you just let me know
2 okay?

3 A: Alright.

4 Q: The only thing we require is that you tell the truth.

5 A: Yes ma'am.

6 Q: Alright we heard evidence on yesterday from Ronald
7 Mack that you had been in an accident, is that true?

8 A: Yes.

9 Q: Alright, was it a serious accident?

10 A: Yes it was.

11 Q: Matter of fact, you were in a coma for about a month,
12 right?

13 A: Yes.

14 Q: Had a broken neck?

15 A: Yes.

16 Q: Okay and as a result of that accident, does it kind of
17 affect your mannerisms and how you speak and so forth?

18 A: Yes a little bit.

19 Q: Okay. Now I notice that when you testified ...

20 Mr. Jenkinson: Objection. She's leading.

21 The Court: Don't lead the witness.

22 Ms. Barr: I'm not going to lead him.

23 Q: I notice when you testified, on occasion, you were
24 kind of smiling a little bit. Is that just, tell me
25 why you do that. Is that on purpose or what?

HEARING

257

- 1 A: Well I have like my nerves they getting worse, it how
2 my emotions ...
- 3 Q: You're not smiling or laughing because you think any
4 of this is funny?
- 5 A: No, I'm not.
- 6 Q: Now sir, how long have you known Ronald Mack?
- 7 A: I'd say for about, I'd say about four years. Four
8 some years, four years.
- 9* Q: Did you go to school with him?
- 10 A: Yes, yes.
- 11 Q: Alright and you knew the victim K.D. ?
- 12 A: Yes.
- 13 Q: Okay now, what I want to do is just simply take you to
14 the weekend that K.D. was murdered, okay? Were you
15 with Ronald Mack that weekend?
- 16 A: Yes I was.
- 17* Q: Tell us what you all did that weekend.
- 18 A: Starting from?
- 19 Q: Starting from that Friday and Saturday.
- 20 A: Friday. Okay, Friday Ronald wanted me to take him to
21 his girlfriend's house.
- 22 Q: What's his girlfriend's name?
- 23 A: Dymon.
- 24 Q: Okay.
- 25 A: And I told him alright. He told me he could offer me

HEARING

258

1 some gas money and I told him alright, so, you know,
2 while we was on the way on 261, on the way going
3 toward Hemingway, he talked to me about his problems
4 with K.D.

5 Mr. Jenkinson: Objection to hearsay.

6 The Court: The objection is overruled.

7 Q: Go ahead sir, you can continue to answer.

8 A: He was talking about his problems with K.D. and what
9 not and I told him, I asked him what was going on and
10 everything and he told me that K.D. had owed him
11 some money and like I was like, I was like, well, what
12 you going to do about it? And he told me, he said he
13* ain't know right then, he ain't know. I said well
14 just give him time to get you the money. He said he
15 done give him plenty of time. He had sat at day on the
16 money or whatnot. I told him not to worry about it,
17 you know, just tell me how much and I'll pay for it in
18 his place.

19 Q: You offered to give Ronald Mack whatever money that he
20 claimed K.D. owed him?

21* A: Yes.

22 Q: Okay. At some point, did the conversation between you
23 and Mr. Mack take on a different kind of tone?

24 A: Actually, no it didn't. I mean, it was like, you
25 know, like, he was really serious. He act serious down

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

259

1 with it. He say he had to talk to his home, well his
2 mama boyfriend about it.

3 Q: Okay.

4 A: He said he had to talk to him about it, you know.

5 Mr. Jenkinson: Objection to that conversation.
6 That's third party hearsay.

7 Ms. Barr: Judge, it's the statement of a co-
8 conspirator in furtherance of the conspiracy.

9 The Court: Objection is overruled.

10 Q: Don't tell me what Ronald said that his mother's
11 boyfriend said, okay?

12 A: All right.

13 Q: Just what Ronald said. Did he say what he intended to
14 do to K.D.

15 A: No, he didn't. All he said was I intend to go to his
16 house. That's all he said.

17* Q: Alright. Now is this that Friday or is this that
18 Saturday?

19 A: That Friday.

20 Q: Alright, tell me what happened that Saturday.

21 A: Saturday, we went over to the house, well first we were
22 at a club. We was out at the Club Jordan and what not,
23 having some fun.

24 Q: Okay, now. Okay. Slow down for just a second. When
25 you say we were at Club Jordan, who are you talking

HEARING

260

1 about? Who are the we that you are talking about?

2 A: Me, myself, Ronald, Dontrey ...

3 Q: Dontrey Barr?

4 A: Yes and Quadir Wilson.

5 Q: Okay, now how did you all get to Club Jordan?

6 A: I drove.

7 Q: You have a vehicle?

8 A: Yes.

9 Q: Alright, okay. How long did you all stay at Club
10 Jordan?

11 A: Dontrey Barr and Ronald Mack stayed until one o'clock.

12 Q: Okay.

13 A: And then cause Dontrey had a curfew of when he had to
14 be home, so I had to go drop, I had drop him and Ronald
15 just wanted to ride, so well wanted to go to Dontrey
16 house as well, so I dropped him and Dontrey off at
17 Dontrey's house.

18 Q: Alright. Tell me as you were in the club with Ronald,
19 did you have any conversations with him about K.D.

20 A: Well, it was I told him just chill out, calm down, come
21 just chill out. I told him to calm down, come sit
22 down. He was just walking in and out of the club, you
23 know, on the phone, walking out, walking out and he was
24 just stress out. I tell him to come chill out and
25 leave that along. I told him I'll handle this.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

261

- 1 Q: Alright, then what happened?
- 2 A: Then, you know, then after I had dropped them off I
- 3 went back to the club and picked up Quadir Wilson and
- 4 his home girl we had dropped her off.
- 5 Q: Who was his home girl?
- 6 A: I can't even remember.
- 7 Q: Alright, now were you drinking at the time?
- 8 A: Yes.
- 9 Q: Okay, were you doing any drugs?
- 10 A: No.
- 11 Q: Okay, go ahead and continue.
- 12 A: So I dropped him off over there at the Apartments and
- 13 then kept on going. I asked Quadir if he wanted to go
- 14 and he said no he had to come home he had to retire for
- 15 the night.
- 16 Q: Okay.
- 17 A: And so I took him on back, we all went to Dontrey
- 18 house.
- 19 Q: Okay.
- 20 A: So, we walked in the house and I saw Ronald was getting
- 21 ready and whatnot, you know, and I said, before we ride
- 22 to Dontrey house and I had stopped by the store and I
- 23 got somebody that hang out by the store to go in the
- 24 store and, you know ...
- 25* Q: Alcohol?

HEARING

262

- 1 A: Yes. After that we went to Dontrey house. So, we
2 standing there, drinking, drinking and drinking. I
3 asked Ronald what he been doing, where he was getting
4* ready to go and he said, he told me he was going out
5 there and handle his business.
- 6 Q: When he said go out there and handle his business, go
7 out where?
- 8 A: To K.D. house.
- 9 Q: Okay, alright tell the jury what happened next.
- 10 A: And then, I told him, I said why you, I asked him why
11 he going to go out there and he said cause and you
12* know, cause he calling him making threats and
13 everything and, you know, so I was like, I'm going to
14 come with you and he was like, you sure about this, you
15 sure about this droop? He call me droop.
- 16 Q: He called you Droop?
- 17 A: Droop. Yeah.
- 18 Q: Okay.
- 19 A: He like you sure about this, you sure. I'm sure, I'm
20 sure, I'm sure.
- 21* Q: Now why did you want to go along?
- 22 A: Because I didn't believe he would go through all that
23 just for that reason.
- 24 Q: You thought he was playing?
- 25 A: Yeah.

HEARING

263

- 1 Q: Alright, now did you change your clothes to go out with
2 him?
- 3 A: Yes, I did
- 4 Q: Okay, alright. Did Ronald Mack change his clothes?
- 5 A: Yes.
- 6 Q: Okay and how did you all get from Dontrey Barr's house
7 to where K.D. was?
- 8 A: His mother and, his mother and his mother boyfriend
9 pulled up.
- 10 Q: Okay. Now, first of all, let me ask you this. What
11 time was it when the mother and the boyfriend came to
12 the house to get you all?
- 13 A: I'd say had to be about two, two, two forty.
- 14 Q: In the morning?
- 15 A: Yes.
- 16 Q: Your Honor, may I approach the witness?
- 17 The Court: You may.
- 18 Q: May I approach? Mr. McClary I'm going to hand you
19 what's been admitted as State's exhibit number 52. Is
20 that the vehicle, does that look like the vehicle that
21 you all were riding in that night?
- 22 A: Yes.
- 23 Q: A Kia?
- 24 A: Yes.
- 25 Q: Do you know how it was that Ronald Mack's mom and her

HEARING

264

1 boyfriend knew to come you all up at Dontrey Barr's
2 house?

3 A: Yes.

4 Q: How do you, how did they know that?

5 A: Ronald had called them off his cell, off the phone.

6 Q: Okay, what kind of phone did he have?

7 A: A I-phone.

8 Q: Alright, so tell me what happened. Did you all, first
9 of all, when you all walked out of Dontrey Barr's
10 house, did you have a gun?

11 A: No.

12 Q: Did Ronald Mack have a gun?

13 A: No.

14 Q: When you walked out of the house did Quadir Wilson go
15 with you?

16 A: I'm sorry?

17 Q: Did Ronald, I'm sorry, did Dontrey Barr go with you?

18 A: No.

19 Q: Tell me what happened when you walked out of his house.

20 A: When we walked out of the house, we approached going to
21 the vehicle. His mama's boyfriend apparently come out
22 the vehicle and he was like, Ronald had talked to him
23 like my boy Droopy said he coming.

24 Q: Okay, slow down for me. When you all walked to the
25 vehicle, who was in the driver's seat?

HEARING

265

- 1 A: Ms. Tawanda.
- 2 Q: Tawanda Mack Allen?
- 3 A: Yes.
- 4 Q: Alright, and where was Callie?
- 5 A: He was in the passenger seat.
- 6 Q: Alright and so, when you walked to the vehicle, what
- 7 seat did you get into?
- 8 A: The front seat.
- 9 Q: With Ms. Allen?
- 10 A: Yes.
- 11 Q: And what seat did Ronald get into?
- 12 A: The back seat.
- 13 Q: Okay, with Mr. --- with Callie?
- 14 A: Yes.
- 15 Q: And tell me what happened again as you went there. You
- 16 said Ronald Mack said --- introduced you to his mother
- 17 and her boyfriend?
- 18 A: Yes.
- 19 Q: Alright, go ahead.
- 20 A: And then he was like, Callie was like he going to come
- 21 with us and he looked at me and size me up and
- 22 everything.
- 23 Q: Who looked at you?
- 24 A: Callie did.
- 25 Q: Like how, what do you mean sized you up?

HEARING

266

- 1 A: Looked like, basically mean mugging.
- 2 Q: Like what?
- 3* A: Mean mugging, you know, like mug shot.
- 4 Q: Mean mugging?
- 5 A: Yeah, you know. He like sized me up.
- 6 Q: Okay, alright. Did he express any concerns about you
- 7 being there?
- 8 A: His facial expressions was what he looking like can we
- 9 trust him and you know, stuff like that.
- 10 Q: Now did Ronald Mack provide any assurances to Callie
- 11 that it was okay to bring you along?
- 12 A: Yeah, Ronald Mack told him, he good, he good, he good,
- 13 you know.
- 14 Q: Meaning you?
- 15 A: He was going to use me to kick down the door because I
- 16 use to, he said I use to break down houses and I can
- 17 kick down the door.
- 18 Q: Alright so Ronald Mack told Callie that he could use
- 19 you to break down the door?
- 20* A: Yes.
- 21 Q: Alright. Now tell me what happened as you got in the
- 22 car and you all were going to K.D. house.
- 23 A: Okay, we got in the car, we in the car and we were all
- 24 listening to all black.
- 25 Q: Ya'll went all black?

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

267

1 A: No we ain't went all black. We was listening to this
2 song, this song titled all black.

3 Q: Oh, okay.

4 A: And, you know, listening and I was drinking and then,
5 you know what I'm saying, we was clubbing and whatnot.
6 My mind wasn't for that frame. My mind was still set
7* for the club, you know, set for clubbing, you know my
8 mind was still set for clubbing. So, you know, he said
9 we was going out to the --- and I turned around in the
10 front seat shaking my head then it hit me that we
11 really about to go down there and so I turned around
12 and try and convince Callie that, you know, try to let
13 him know that I had money, that I pay for it I got the
14 money to pay for whatever to stop all this. I turned
15 around and I noticed they started loading guns up.

16 Q: Now, who started throwing guns up?

17 A: Callie.

18 Q: And who else?

19 A: Ronald.

20 Q: Okay. What kind of guns were being loaded up?

21 A: There was shotgun and it was a nine.

22 Q: Nine millimeter?

23 A: Yes.

24 Q: Alright who had the shotgun and who had the nine
25 millimeter?

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

268

- 1 A: Callie had the shotgun and Ronald had the nine
2 millimeter.
- 3 Q: Does this appear to be the shotgun that Callie had that
4 night?
- 5 A: Yes.
- 6 Q: Did you hear the conversation between Callie and Ronald
7 Mack while you were in front of them?
- 8 A: No I didn't.
- 9 Q: Okay. You turned around, you said you saw Callie in
10 the back seat with the shot gun and Ronald Mack with
11 the nine millimeter?
- 12 A: Yes.
- 13 Q: How long did it take ya'll to get from Dontrey's house
14 to K.D. house?
- 15 A: I'd say about ten, fifteen minutes.
- 16 Q: Okay, tell me what happened once you all got there.
- 17 A: Okay, when we got there Ronald and Callie got out of
18 the vehicle.
- 19 Q: Did they have the guns with them when they got out?
- 20 A: Yes.
- 21 Q: Who had which gun when they got out the vehicle?
- 22 A: Callie had the shotgun and Ronald had the nine
23 millimeter and then Ronald was like you ready Droop,
24 come on Droop, you ready. Then I got out and while we
25 was approaching the house I said, I said, look we only

HEARING

269

- 1 come here for one person, one person only because I saw
2 those vehicles, I saw vehicles. First, I asked Ronald,
3 who's there, who's there. And he said oh that K.D.
4 mother's car it's getting fixed, his mother is at work.
5 Q: Wait a minute, Ronald thought K.D. mom was at work?
6 A: Yes.
7 Q: Did ya'll see a Toyota Four Runner in the yard?
8 A: There was, I can't remember now what that was.
9 Q: Okay, that's fine. Okay.
10 A: So, you know, we was approaching, I said, I said we
11 came for one person and one person only. If anybody
12 else in that house I swear to God ya'll going to have
13 to kill me too because we only come for one person.
14 Q: Okay.
15* A: And you know, I started saying our Father prayer as we
16 approached the house and everything.
17 Q: You started doing what?
18 A: Praying. Saying Our Father's Prayer, you know.
19 Q: Okay.
20 A: Then starting approaching the house and Ronald and
21 Callie got up on the porch and they was like come on
22 droop, come on. At first I didn't want to go up on the
23 porch. First I didn't want to go on the porch, then,
24 you know, I was like, you know, man it's three o'clock
25 in the morning. He like try the door knob and see if

HEARING

270

1 the doors unlocked.

2* Q: Okay.

3 A: Come to find out it was unlocked.

4 Q: The door was unlocked?

5 A: Yeah.

6 Q: Okay. Let me ask you something, who turned the
7 doorknob to see if it was unlocked?

8 A: Ronald.

9 Q: Was he wearing gloves?

10 A: I think so. Matter of fact him and Callie had them on.

11 Q: Both of them had on gloves?

12 A: Yeah.

13 Q: Okay, alright. Now they turned the door knob, the
14 doorknob was unlocked, then tell the jurors what
15 happened next.

16 A: Then next we all went into the building; we all went
17 into the house and then Callie went to the left into
18 what looked like the master bedroom and Ronald had went
19 to make a right and went down a hallway and I was
20 still, I was still walking and I noticed on the chair
21 it as some clothes on a chair and clothes was on a
22 chair, so I grabbed a shirt and put it across my face
23 so no one wouldn't recognize me and whatnot. Then,
24 when I grabbed that shirt and put it over my face, or
25 whatnot I went walking around the house. And matter of

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

271

1 fact, I wasn't far behind Ronald in the hallway, you
2 know, and once he got, once I got in the hallway I was
3 like I couldn't see, I couldn't see, I couldn't see, I
4 couldn't see nothing in the hallway like, it was really
5 completely dark, you know, and I really couldn't see.
6 So, you know, I had waited til he come up so I started
7 backing up into the kitchen like, you know, then I was
8 like dude what are you doing? What are you doing, what
9 are you doing? And stuff like that and he was like,
10 yeah I can't find him, I can't find him.
11 Q: Who said I can't find him, I can't find him?
12 A: Ronald.
13 Q: Alright now, when he was telling you this, did he have
14 a gun?
15 A: Yes, he had a nine millimeter in his hand.
16 Q: All right. When Callie went, you said, in the
17 direction of what you thought to be the master bedroom,
18 did he have a gun?
19 A: Yes.
20 Q: He had a shotgun?
21 A: Yes.
22 Q: Okay go ahead. Take us from where Ronald was saying I
23 can't find him, I can't find him.
24 A: He was saying, okay, Ronald was like I can't find him,
25 I can't find him. Then I looked at Ronald, I looked at

HEARING

272

1 Ronald like let's be for real. Like come on now, I'm
2 saying. I turned and then I pointed right at him
3 sitting in the chair and he going to act surprise and
4 had a really surprising look.

5 Q: Who did?

6 A: Ronald did.

7 Q: Okay you pointed at who sitting in the chair?

8 A: K.D.

9 Q: Alright, was he awake or was he asleep?

10 A: He was asleep.

11 Q: Was he sitting in front of the t.v.?

12 A: Yes.

13 Q: Okay, alright. What happened next?

14 A: Then that when Ronald went in front of him and then
15 Callie came around with the shotgun and he asked was
16 that him.

17 Q: Who asked was that him?

18 A: Callie asked was that him.

19 Q: Who did he ask that of?

20 A: He asked Ronald was that him.

21 Q: Okay.

22 A: And then, you know, like, he said I guess they didn't
23 want to wake him up so ...

24 Q: You guess they didn't want to wake him up?

25 A: Yes.

HEARING

273

- 1 Q: Okay.
- 2 A: So then that's when shots was fired, the first shot was
- 3 fired by Ronald.
- 4 Q: Okay.
- 5 A: Then after a while in the shooting, I can't remember
- 6 how many shots there was that he fired. Then Callie
- 7 came up and started shooting, shot the shotgun and I
- 8 can't remember how many times he shot the shotgun at
- 9 him as well. Then ask me, Callie asked me if I wanted
- 10 to shoot and I thought, well, I was like, no and I
- 11 walked out, I walked out of that house and I was like
- 12 no. Then, you know, I walking, taking my slow time
- 13 going down to the vehicle my mind twisted and they
- 14* jumping off the porch, straight off the porch, running
- 15 fast, Droop come on, Droop come on, Droop come on,
- 16 shouting come on Droop, come on Droop.
- 17 Q: Telling you to come on?
- 18 A: Yes, so I started running.
- 19 Q: Okay. Now while all of this was going on, where was
- 20 Tawanda Allen?
- 21 A: She was in the vehicle.
- 22* Q: What was she doing in the vehicle?
- 23 A: I mean, I guess she was being ready. Had the car
- 24 cranked, had the car cranked.
- 25 Q: Okay. She was in the driver's seat still?

HEARING

274

1* A: Yes.

2 Q: At any point in time, did you touch either the nine
3 millimeter or the shotgun?

4 A: No.

5 Q: Now, let me ask you some questions. You mentioned that
6 you took something, a shirt or something and wrapped it
7 around your face so nobody could see you.

8 A: Yes.

9 Q: And it was on the pile of clothes that was inside the
10 house?

11 A: Yes.

12 Q: Does that look like the shirt that you took?

13 A: Yes.

14 Q: Alright, I'm going to refer to what has been admitted
15 as States' exhibit number six. You've testified that
16 that's the shirt that you took?

17 A: Yes.

18 Q: Now, it appears that it's on a brown surface in that
19 photograph, what happened to that shirt? Did you take
20 it outside of the residence?

21 A: Yes.

22 Q: Okay, did you drop it?

23 A: Yes.

24 Q: Okay. Alright, I'm going to show you what's been
25 admitted as State's exhibit number seven. Can you tell

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

275

1 me whether that's the front entrance of the house that
2 you all went into or is that the back entrance?

3 A: That's that house, that's the part we went in

4 Q: Alright. Can you tell me, what's depicted in State's
5* exhibit number ten?

6 A: That's the side we went in.

7 Q: So you all went in the front door?

8 A: Yes.

9 Q: I'm going to publish State's exhibit number seven. Mr.
10 McClary, is it your testimony that you all went in
11 through this particular door?

12 A: Yes.

13 Q: Alright and there does seem to be a porch area there.
14 Is that what you talked about Callie and Ronald Mack
15 jumping off of?

16 A: Yes.

17 Q: Okay. I'm going to publish what's been admitted
18 as State's exhibit number twenty-six. Do you recognize
19 that room?

20 A: In the picture?

21 Q: Yes.

22 A: Yes.

23 Q: In this photograph, would K.D. have been somewhere
24 back here? Or can you tell?

25 A: No, I can't really tell.

HEARING

276

- 1 Q: Alright let me show you another one. Publish what's
2 been admitted as State's twenty-five. Can you see the
3 t.v. there?
- 4 A: Yes.
- 5 Q: Do you see a little chair in the corner?
- 6 A: Yes.
- 7 Q: Is that where K.D. would have been?
- 8 A: Yes, he was sitting right there.
- 9 Q: Okay. I'm going to hand you what's been marked for
10 identification purposes, State's exhibit number thirty-
11 one. Is this the position of the chair and K.D.
12 K.D. 's body once he was shot?
- 13 A: Yes.
- 14 Q: Judge, we would move State's thirty-one in at this
15 time.
- 16 The Court: What say the defense?
- 17 Mr. Jenkinson: Objection Your Honor. I was under the
18 impression that we had ruled on this?
- 19 (Counsels approach Bench)
- 20 The Court: Thirty-One is admitted over objection.
21 (State's Exhibit Number Thirty-One was admitted)
- 22 Q: Sir, I'm going to publish what's been admitted as
23 State's thirty-one. Is that how K.D. was when you
24 all came in the house and after he was murdered?
- 25 A: I don't know. I didn't see him after the shooting. I

HEARING

277

1 ain't saw the body. I was standing behind the chair he
2 was sitting in. So, I never, I haven't seen the body
3 at all since the shooting. I haven't saw the body at
4 all.

5 Q: When you looked at the pictures, is this the position
6 of the chair and the position of the body, when you all
7 entered the residence.

8 A: Yes.

9 Q: Okay, when you entered the residence, and he was in the
10 chair before the shooting, did he look like he was
11 injured in any way?

12 A: No he was sitting up. He was like sitting like
13 straight up.

14* Q: Okay, alright, tell me what happened when you all got
15 back in the car.

16 A: Ronald got into --- he was sitting in the front seat
17 and me and Callie was sitting, Callie and I was sitting
18 in the back seat and Callie was behind Ms. Tawanda and
19 I was behind Ronald.

20 Q: Let me ask you this; was the car running when you all
21 got in?

22 A: Yes.

23 Q: Tawanda was ready to go?

24 A: Yes.

25 Q: Alright, tell me what happened when you all got in the

HEARING

278

1 car.

2 A: We got, okay we dragged out, pull out, you know and we
3 hit 261 starting back towards ...

4 Q: Slow down for me. When ya'll got back in the car and
5 ya'll were pulling off, how was Tawanda driving? Was
6 she driving slow? In a hurry?

7 A: Fast. Like in a hurry, yes. Fast. She was going
8 fast.

9 Q: Okay, slow down a second for me.

10 A: Okay.

11 Q: Where she was parked, was it in front of the house?

12 A: No, she was parked like, on the, on the rocky road it's
13 like ahead of K.D. house road, you know, she backed
14 in and had the car facing like she about to go, like
15 she getting ready to go.

16 Q: Alright, let me show you what has been admitted as
17 State's Forty-five. Is this kind of like the dirt road
18 that you're talking about?

19 A: Yes.

20 Q: That she was parked?

21 A: Yes.

22 Q: I'm going to publish what's been admitted as State's
23 four. And again Mr. McClary, that's the dirt road that
24 you were talking about that Ms. Allen was parked?

25 A: Yes.

HEARING

279

- 1 Q: Okay, alright. You got in the front seat with Tawanda
2 and, I'm sorry, Ronald got in the front seat with
3 Tawanda and you were in the back seat with Callie.
4 Tell me what happened then.
- 5 A: And we start going down 261 coming towards --- coming
6 back towards Kingstree and Ronald had a conversation up
7 front as if she had just picked him up from school, you
8 know, like a regular conversation. She wasn't talking
9 about nothing that was concerning what went on like
10 that. She just was asking him how was his grandmother
11 and all that.
- 12 Q: She asked him how was his grandmother and how was ...
- 13 A: Yeah.
- 14 Q: And talking about school?
- 15 A: How was her, how was, how was her mother and
16 grandmother, asked how she was doing and, you know,
17 then asked him about school work and school and
18 everything and like when he feel like coming and moving
19 in with her, you know.
- 20 Q: Okay, now what was going on in the backseat while you
21 and Callie were back there?
- 22* A: While I was in the backseat, I was looking out, I was
23 looking out my window. At first I was looking out the
24 right side, looking out my window and then you know,
25 something just, you know that feeling like somebody's

HEARING

280

1* looking at you, just came over me and I looked over and
2 I noticed Callie was looking at me like straight, like
3 mean mugging me, like looking at me like, he ain't know
4 whether he can trust me or not, you know.

5 Q: He gave you that same look.

6 A: Yeah, basically, that same look like from the get go.
7 He ain't know if he can trust me or not. And, you
8 know, then I had turned my head back to look out the
9 window then I noticed just like a little reflection,
10 look like a little reflection, you know, in the window
11 at night time you can see yourself and well you know
12 that's how it feel. And I thought, I looked at the
13 reflection and I'm like, you know, it can't be what I
14 think it is. And I had just looked back over at Callie
15 and then you know, I just look down and look down and
16 eased my head back over and he had the nine millimeter
17 point --- he had nine millimeters sitting there, just
18 sitting in his lap and he's steady looking at me like
19 he was waiting on me to say something, you know.

20 Q: How was the nine millimeter? How did he have it? Was
21 it pointing in a certain direction? Did he have it in
22 his ...

23 A: Yeah, it was pointing towards me. You know, but it was
24 like sitting in his lap, like trying to cover it up,
25 like trying to hide it. You know, like trying to hide

HEARING

281

- 1 it or whatever so I wouldn't see it or whatnot, you
2 know.
- 3 Q: Okay.
- 4 A: But I caught a glimpse of it.
- 5* Q: And he was still staring at you?
- 6 A: Yes. He, yeah, he was still staring at me.
- 7 Q: Okay, alright. Then what happened?
- 8 A: Then she dropped us off at Dontrey Barr's house and you
9 know, I mean, after that, you know, they left, you
10 know, they say their goodbyes and Ronald gave his
11 mother a hug, you know.
- 12 Q: Ronald gave his mother a hug?
- 13* A: Yes.
- 14 The Court: You got a question for him?
- 15 Ms. Barr: Sorry Judge, it's withdrawn.
- 16 Q: What happened after he gave his mother a hug?
- 17 A: You know they kiss and they said their goodbyes and
18 Callie got into the front seat, you know and they had
19 left.
- 20 Q: What happened to the nine millimeter and the shotgun
21 when you and Ronald was dropped off?
- 22 A: The shotgun and the nine millimeter they started
23 wrapping, they had already wrapped the shotgun up, they
24 already had wrapped it up by the time we got ...
- 25 Q: When you say they who are you talking about?

HEARING

282

- 1 A: Ronald and whatnot. Ronald and Callie, you know,
2 already had the shotgun wrapped up by the time I, by
3 the time I even got in the vehicle and whatnot.
4 Already had that, you know, wrapped up real fast, so
5 the nine millimeter that came out when we came out,
6 when we got dropped off at Dontrey's house, the nine
7 millimeter came out with Callie, you know, saying my
8 assumption was right and he had wrapped that up and put
9 it in the back of the KIA truck.
- 10 Q: The nine millimeter?
- 11 A: Yes.
- 12 Q: Okay, so Ronald didn't take the nine millimeter with
13 him when he came back in the house?
- 14 A: No.
- 15 Q: Nor the shotgun?
- 16 A: No.
- 17 Q: And I can imagine that it probably seemed like a long
18 time, but how long do you think it took to get in and
19 out? To get in K.D. house, kill him and get out?
20 Less than five minutes?
- 21 A: Less than five minutes, yes.
- 22 Q: Did you know his mother was in the house?
- 23 A: Well, at the time I had an idea. I really did,
24 honestly I really had an idea.
- 25 Q: Okay.

HEARING

283

- 1 A: Just because from they way Callie had come back out of
2 the master bedroom with a shotgun like he had already
3 had, you know point it at somebody. And you know, then
4 on our way coming back, on our way coming back from
5 Kenya house the police had already on their way there.
- 6 Q: The police, I'm sorry. The police were already on
7 their way when ya'll left K.D. house?
- 8 A: Yes ...
- 9 Q: That quick?
- 10 Q: ... the police were already on their way , that fast.
- 11 Q: What did that mean to you that the police were there
12 that fast?
- 13* A: Someone was in that house. Someone else, somebody was
14 in that house.
- 15 Q: Okay, were there ever any conversations between you and
16 Ronald or you and Ronald and Callie and Tawanda Allen
17 about not telling what happened?
- 18 A: There was only the conversation between me and Ronald
19 saying ...
- 20 Q: What was the conversation?
- 21 A: Ronald told me that if I tell what happened, you know,
22 don't say how I was with him, along with Ronald and
23 Callie, you know, just say basically, just put the
24 blame completely on him.
- 25 Q: On Ronald?

HEARING

284

1 A: Yeah on Ronald.

2 Q: Alright, so he didn't want you to implicate yourself or
3 Callie, just if you had to tell, just tell what Ronald
4 did?

5 A: Yeah, yeah.

6 Q: Now, at some point in the day or two after the murder,
7 you were contacted by law enforcement, is that right?

8 A: Yes.

9 Q: They wanted to interview you concerning your knowledge
10 of the killing of K.D.

11 A: Yes, that's right.

12 Q: They took a statement from you?

13 A: Yes.

14 Q: Now, in that initial statement, you denied knowing
15 anything about what happened to K.D.

16 A: I certainly did.

17 Q: Why?

18 A: Because I was scared, you know, I mean, I was like ---
19 I was scared because I saw what could possibly happen
20 or whatnot, you know and how fast, how fast it can
21 happen.

22 Q: And the reality is, Antonio, also in addition to being
23 scared, you didn't want to get yourself in trouble?

24 A: Pretty much, yes.

25 Q: Now, they came back at some point in May and re-

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

285

1 interviewed you.

2 A: Yes.

3 Q: Is that right?

4* A: Yes.

5 Q: And during that time, you told them ...

6 Mr. Jenkinson: Your Honor, that's leading.

7 Ms. Barr: Well, okay ...

8 The Court: The objection is sustained to continuous
9 leading of the witness.

10 Q: When they interviewed you again in May of 2009, did you
11 tell them about ...

12 Mr. Jenkinson: Your Honor, again. She's leading.

13 Q: What did you tell them about your involvement, Ronald
14 Mack's involvement, Tawanda Allen's involvement and
15 Callie's involvement in the murder?

16 A: I told them, first, I told on myself. I told them
17 Ronald and Callie went in the house and his mother
18 picked us up, his mother picked us up at Dontrey's
19 house and we went to they house and killed him, came
20 back, you know, like that. Then they went back to
21 Maryland or something like that. He said he was moving
22 --- he said he was moving and his mother done change
23 his school and everything.

24 Q: Who said that?

25 A: Ronald did.

HEARING

286

1 Q: Alright. Now, when they asked you in that second
2 interview as to whether or not you went in the house,
3 how did you respond to that question?

4 A: Well, at first --- well, I just told them I ain't went
5 in that house. I just told them I didn't went in the
6 house.

7 Q: Okay so you lied at that time?

8* A: Yes.

9 Q: Now during the course of that second interview, that
10 took place at the Sheriff's office?

11 A: Yes it did.

12 Q: And you spoke with Investigator Lail?

13 A: Yes.

14 Q: And I believe maybe Investigator Black or Lt. Collins,
15 there, there were some other deputies that were inside
16 the room at the time?

17 A: Yes.

18 Q: Now, and you probably understood that once you gave a
19 statement, you were going to be arrested?

20 A: Well yes.

21 Q: Alright at some point did you have an opportunity to
22 observe Investigator Lail's computer?

23 A: Yes.

24 Q: Alright. Tell me the significance of that.

25* A: Well, after I said, they came and pick me up from the

HEARING

287

1 County Jail right across the street. They told me they
2 had some more questions to ask me or whatnot and then
3 I was like all right, you know. They took me over
4 there to the, across the street to the Sheriff's
5 station, to the Sheriff's station and I walked in and
6 then, you know, I was like, ya'll, I was like, I said
7 out loud, ya'll already got Callie. I said ya'll
8 already got Callie and they looked at me like and said
9 you know this guy right here. The guy was on the
10 computer. I thought that they had already had him and
11 then they told me they didn't have him.

12* Q: Okay. So, when you walked into the Sheriff's office,
13 when they brought you over from the jail, you saw
14 Investigator Lail's computer?

15 A: Yes.

16 Q: And on that computer you saw a picture of an
17 individual?

18 A: Yes.

19 Q: And you identified that individual to Investigator
20* Collins as who?

21 Mr. Jenkinson: I'm going to object to the leading of the
22 witness.

23 The Court: Objection is sustained.

24 Ms. Barr: Judge, I asked him did he identify that person as
25 who. That's not leading.

HEARING

288

1 The Court: I heard what you asked him.

2 Ms. Barr: Who was the person who you identified on the
3 computer?

4 A: Callie.

5 Q: Now I'm going to show you what's been admitted as
6 State's exhibit number sixty-seven. Is that the
7 photograph that was on Investigator Lail's computer
8 when you walked in?

9 A: Yes.

10 Q: Is that the individual you identified as Callie?

11 A: Yes.

12 Q: Have you been to court in connection with this case a
13 number of times since your arrest?

14 Mr. Jenkinson: Your Honor, note our objection to
15 identification.

16 A: It was ...

17 Ms. Barr: Hold on, hold on.

18 The Court: Objection overruled.

19 Q: Have you been up to this courthouse a couple of times
20 for bond hearings and preliminary hearing and guilty
21 pleas and all that?

22 A: Yes.

23 Q: And during those occasions, have you also had an
24 opportunity to see the person you identified as
25 Callie?

HEARING

289

1 A: Yes.

2 Q: All right and the person who you saw in court, was he

3 one of your co-defendants?

4 A: Yes.

5 Q: And is that person Kelvin Michael Bowen?

6 A: Yes he is.

7 Q: That young man seated over there by Ms. Shuler?

8 A: Yes.

9 Mr. Jenkinson: Objection to the in-court identification.____

10 The Court: The objection is sustained as to the leading

11 of the witness.

12 Mr. Jenkinson: Move that that response be stricken.

13 The Court: The response is stricken based on the court

14 sustaining the objection.

15 Ms. Barr: Well, let me ask you this way. Mr. McClary, do you

16 see the person who was with you that night, who shot K.D.

17 K.D. with a shotgun in this courtroom?

18 Mr. Jenkinson: Objection to that question.

19 The Court: The objection is overruled.

20 A: Yes.

21 Q: Can you point him out to us?

22 A: Right there. Sitting down.

23 Q: Next to the lawyer Ms. Shuler?

24 A: Yes.

25 Q: Any doubt in your mind?

HEARING

290

1 A: No doubt. There's no doubt.

2 Q: How long did you have to observe him between the time
3 they picked ya'll up at Dontrey's house until they
4 dropped you all back off at Dontrey's house?

5 A: Oh man, I'd say the same time he was sizing me up when
6 he first got there, the same time I was sizing him up

7* Q: Let me ask you about the notion of him sizing you up.
8 Do you recall coming to court at some time during a
9 preliminary hearing?

10 A: Yes.

11 Q: And who all was in court with you in terms of your co-
12 defendants at the time you came for that preliminary
13 hearing?

14 A: It was me, Ms. Tawanda, Ronald and Callie.

15 Q: Alright, did you all have lawyers with you there as
16 well?

17 A: Yes we did.

18 Q: And at some point later, did you all leave the
19 courtroom and go in the back?

20 A: Yes.

21 Q: All of the defendants?

22 A: Yes.

23 Q: What about the lawyers, were they there too?

24* A: Yes they were.

25 Q: Now, at some point in time when you all went in the

HEARING

291

- 1 back, Mr. Jenkinson was in the back with you?
- 2 A: Yes.
- 3 Q: Did there come a time when Mr. Jenkinson asked you a
4 question?
- 5 A: Yes.
- 6 Q: What did he ask you?
- 7 A: He asked me to sign this paper saying that Callie or
8 Mr. Bowen wasn't there at the time.
- 9 Q: Mr. McClary, does this appear to be the paper that
10 you're talking about?
- 11 A: Yes. That's it. He wanted me to sign it.
- 12 Q: And I'll ask you about that in a little bit. Did he
13 also ask you to look at Mr. Bowen to see if you could
14 identify him?
- 15 A: Yes.
- 16 Q: And how far was Mr. Bowen from you at the time Mr.
17 Jenkinson asked you to do that?
- 18 A: Let's see, I was sitting there and Mr. Bowen was right
19 here.
- 20 Q: As close as I am to you right now?
- 21 A: No here.
- 22 Q: Maybe here?
- 23 A: Yeah, right there.
- 24 Q: Alright. And when you looked at him, was he looking at
25 you?

HEARING

292

1 A: Yeah, I mean, yeah. With that same intimidating look
2 he had trying to intimidate me or whatever, you know.

3 Q: Okay. Did you sign the paper that Mr. Jenkinson wanted
4 you to sign saying Mr. Bowen wasn't there?

5 A: No I didn't, no.

6 Q: Now, do you remember me showing you this picture that's
7 been admitted as State's sixty-seven when you pled
8 guilty?

9 A: The picture seem like it was in black and white then.

10 Q: Alright, was that a picture of the person you called,
11 identified as Callie?

12 A: Yes.

13 Q: And when you pled guilty before this Court, did you
14 identify that person in that picture as Callie?

15* A: Yes, I did.

16 Q: Now, sir, did I or anyone from the Sheriff's department
17 promise you anything to get you to testify here today?

18 A: No.

19 Q: Did anybody threaten you or force you to testify today?

20 A: No.

21 Q: Have your answers been truthful?

22 A: Yes.

23* Ms. Barr: Beg the Court's indulgence.

24 Q: You mentioned that Ronald was talking on the iphone?

25 A: Yes.

HEARING

293

1 Q: Is this similar to the iphone that Ronald Mack had?

2 A: Yes it is.

3 Q: It looks like the same one?

4 A: Yes.

5 Ms. Barr: Mr. McClary, please answer any questions that
6 Mr. Jenkinson or the Court may have for you.

7 A: Alright.

8 The Court: Is that item in evidence or for identification?

9 Ms. Barr: No sir, no sir.

10 The Court: Cross examination, Mr. Jenkinson.

11 Mr. Jenkinson: Your Honor, may we ...

12 The Court: Alright, we'll take about five minutes or
13 so. Go to your jury room please and do not discuss this
14 case.

15 (Jury Break at 10:53)

16 The Court: Bring them on.

17 (Jury enters courtroom at 11:06)

18 CROSS EXAMINATION OR MR. MCCLARY BY MR. JENKINSON

19 Q: Good morning Mr. McClary. We've met twice haven't we?

20 A: Yes, yes we did.

21 Q: We met on June the tenth when we had your preliminary
22 hearing in this courtroom, didn't we?

23 A: Yes.

24 Q: And you were with your lawyer that entire time that
25 day, weren't you?

HEARING

294

- 1 A: Yes.
- 2 Q: That's Scott Palmer, a lawyer from Santee?
- 3 A: Yes.
- 4 Q: And the second time you saw me was at a bond hearing,
- 5 here in the courtroom?
- 6 A: Yes.
- 7 Q: And both occasions we met at the back with your lawyer?
- 8 A: Yes.
- 9 Q: And your lawyer was present anytime I talked to you?
- 10 A: Yes he was.
- 11 Q: Now, I want to take you back, if you will, first, the
- 12 last time you were in the court was back in October of
- 13 2010. That's when you pled guilty?
- 14 A: Yes.
- 15 Q: And you remember that?
- 16 A: Yes.
- 17 Q: You came into this courtroom that day, charged with
- 18 murder, weren't you?
- 19 A: Yes.
- 20 Q: You came --- you were charged with murder back in May
- 21 2010, right?
- 22 A: Yes.
- 23 Q: Charged with first degree burglary?
- 24 A: Yes.
- 25 Q: You were also charges with possession of a weapon

HEARING

295

- 1 during a violent crime?
- 2* A: Yes.
- 3 Q: And before you came in the court to plead guilty,
- 4 Ronald Mack had already pled guilty?
- 5 A: Yes.
- 6 Q: Forty, and he got fifty years?
- 7 A: Yes.
- 8 Q: And after that, in his mother's trial, you did not
- 9 testify?
- 10* A: Yes.
- 11 Q: You did testify?
- 12 A: No, I did not.
- 13 Q: Okay. And his mother received a sentence of forty-five
- 14 years?
- 15 A: Yes.
- 16 Q: Was she tried before you or after you?
- 17 A: I think it was before me.
- 18 Q: Before you?
- 19* A: Yes.
- 20 Q: So, by this time, you knew you were walking, you were
- 21 looking at forty-five, fifty years, weren't you?
- 22 A: Yes.
- 23 Q: And you and your lawyer made a deal to save you, right?
- 24 A: A plea.
- 25 Q: You made a deal with the Solicitor, didn't you?

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

296

- 1 A: To plea, yes.
- 2 Q: And you had the murder charge, just went away didn't
- 3 it?
- 4 A: Yes.
- 5 Q: The burglary first charge just magically disappeared
- 6* didn't it?
- 7 A: Yes.
- 8 Q: And all of a sudden, you were only charged with
- 9 burglary second, which carries half the time of
- 10 burglary first, weren't you?
- 11 A: Yes.
- 12 Q: And low and behold, you ended up with twelve years,
- 13 instead of the fifteen that you could have got?
- 14* A: Yes.
- 15 Q: Twelve years is a lot less than forty-five or fifty,
- 16 isn't it?
- 17 A: Yes.
- 18 Q: A man will do a lot to get a sentence reduced from
- 19 forty-five to fifty years down to twelve years,
- 20 wouldn't he?
- 21 A: Yeah.
- 22 Q: And in that plea and in those negotiations, you agreed
- 23 to come and testify against Kelvin Bowen, didn't you?
- 24 A: No.
- 25 Q: It was discussed, wasn't it?

HEARING

297

- 1 A: Not until after I signed the plea.
- 2 Q: Well, I'm going to ask you about it. I'm going to show
- 3 you a copy of the transcript of your guilty plea on
- 4 October fourteenth, okay?
- 5 Ms. Barr: Judge, we would have an objection to that.
- 6 The Court: What's your objection?
- 7 Ms. Barr: The transcript purports to be the transcript of
- 8 the plea, but the witness cannot authenticate it?
- 9 Mr. Jenkinson: Well, I'm just asking if he recalls it.
- 10 Ms. Barr: Your Honor, in addition we would ask that if he's
- 11 going to question the witness about it that we be given a
- 12 copy of it.
- 13 Q: Do you recall in that plea, when you pled guilty the
- 14 question being asked, were you going to testify in the
- 15 other trial, which this is the only trial? Do you
- 16 remember that?
- 17 A: The question being asked?
- 18 Q: You remember that being asked?
- 19 A: The question being asked, yes.
- 20 Q: And do you recall Ms. Barr saying, Judge, we want him
- 21 to do that?
- 22 A: No.
- 23 Q: You don't remember that?
- 24 A: No, after I signed the plea? After I made the agreement
- 25 the judge --- I remember those questions being asked

HEARING

298

1 afterwards.

2 Q: And I'm referring to page eleven toward the beginning.

3 Ms. Barr: Judge, same objection.

4 The Court: You object to him ...

5 Q: You recall that statement being made about him
6 testifying in the other trial.

7 The Court: Just a moment, Mr. Jenkinson.

8 Ms. Barr: Judge, we would object. The witness can't
9 authenticate the court's transcript, but also if he's
10 questioning him about it, we think that we're entitled
11 to a copy.

12 The Court: Do you have a copy?

13 Mr. Jenkinson: I can show it to her right now.

14 The Court: There is no obligation to provide the State
15 with a copy. You may proceed.

16 Q: Now, do you recall a statement being made by Ms. Barr,
17 Judge, we want him to do that? Testify in the trial.
18 Do you remember that?

19 A: Yes.

20 Q: And that's why you're here today, right?

21 A: Yes.

22 Q: And as a result for that, you were sentenced to twelve
23 years and not forty-five to fifty years?

24 A: No, that's not a result of that, that was just a
25 voluntary to come. There was no agreement. I had no

HEARING

299

- 1 agreement. We had no agreement. That was voluntary.
2 I chose to do because I had already signed the plea.
3 My lawyer told me that ...
- 4 Q: I'm not asking what your lawyer told you. You signed
5 the plea when you came in only to burglary second,
6 right?
- 7 A: Yes.
- 8 Q: The deal had been made before you came to court right?
- 9 A: Yes.
- 10 Q: And that's why you're here today?
- 11 A: Yes.
- 12 Q: Now, I've been listening carefully to your testimony
13 today, because this is, how many times have you told,
14 or been investigated and asked to tell the story about
15 K.D. 's death?
- 16 A: I'd say multiple times.
- 17 Q: Speak a little louder; I can't quite hear you.
- 18 A: I would say multiple times. I would say probably about
19 four or five times.
- 20 Q: Four or five times?
- 21 A: Yeah.
- 22 Q: Okay, and the first time was back on April 5th, 2009,
23 the very day he was killed, remember that?
- 24 A: Yes, yes.
- 25 Q: And law enforcement came to see you on that day,

HEARING

300

1 particularly Investigator Lail. You remember this lady
2 right here?

3 A: Yes.

4 Q: She's been the lead investigator in all of this hasn't
5 she?

6 A: Yes.

7 Q: Now, you lied to law enforcement that day, didn't you?

8 A: Yes, I did.

9 Q: And never, on that first occasion, on April 5th, did
10 you mention the name Callie, did you?

11 A: No.

12 Q: Now, on May 13th 2009 at six fifty-five pm you gave
13 another statement to Ms. Lail and officer Justin Whack,
14 investigator Whack, right?

15 A: Yes.

16 Q: And that statement was recorded, was it not?

17 A: Yes, it was.

18 Q: How many lies did you tell this time?

19 A: I told one more.

20 Q: You told a number of them didn't you?

21 A: Yes.

22 Q: And you never mentioned Ronald, I mean never mentioned
23 Kelvin Bowen's name, did you?

24 A: No.

25 Q: Now, in that second statement, you started telling

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

301

1 about the trip to Hemingway. Remember going over there
2 on Saturday the 4th to pick up Ronald Mack at his
3 girlfriend's house?

4 A: Yes.

5 Q: Ya'll went over there around, what about eight, about
6 nine o'clock at night?

7 A: Yes.

8 Q: And that's when you picked him up?

9 A: Yes.

10 Q: And during that occasion, you brought him home. You
11 were drunk and throwing up.

12 A: No.

13 Q: You were stopping on the road throwing up weren't you?

14 A: Yes.

15 Q: But you'd been drinking?

16 A: Yes.

17 Q: But you, the throwing up from drinking, that wasn't
18 from drinking is what you telling me?

19 A: I mean, no, it is from drinking, but I'm saying I
20 wasn't like --- I only stopped one time.

21 Q: And you had been worried about Ronald Mack and K.D.
22 K.D. , hadn't you?

23 A: Yes.

24 Q: They had been robbing people?

25 A: No.

HEARING

302

1 Q: Well there was a lot of money between them that you
2 were worried about right?

3 A: Well, if you want to say a lot.

4* Q: So, what were they dealing in drugs?

5 A: Yes.

6 Q: They'd been dealing in drugs, right?

7 A: Yes.

8 Q: And one wasn't coming up with their share of the money
9 from the drug deals right?

10 A: Yes.

11 Q: And they were also gang member?

12* A: Yes.

13 Q: And that was the people you were hanging around with?

14 A: Yes.

15 Q: And as I recall, you also, in this statement, brought
16 up the fact that there was a conversation between
17 Ronald Mack wanting his mama to come to South Carolina
18 to tend business that night?

19 A: Yes.

20 Q: And that was at nine-thirty?

21* A: Yes.

22 Q: And as a result of that phone call, they came to South
23 Carolina at nine-thirty?

24 A: Yes.

25 Q: And that's when they left Maryland right?

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

303

- 1 A: Yes.
- 2 Q: So, because of that phone call you heard, apparently
- 3 Tawanda Mack and her boyfriend, step father, or
- 4 somebody, a male came down here, sometime after nine-
- 5 thirty that night from Maryland?
- 6 A: Yes.
- 7 Q: Alright, now. In your statement that you gave at six
- 8 thirty-four that evening, you were accused of lying
- 9 weren't you?
- 10 A: What do you mean?
- 11 Ms. Barr: I'm sorry Judge. I'm sorry. May I, I didn't hear
- 12 the statement that counselor is referring to. May I
- 13 hear that?
- 14 Mr. Jenkinson: I'll be glad to make it clear. The statement
- 15 at six-fifty-five.
- 16 Ms. Barr: I'm sorry, I thought you said six thirty-five, I'm
- 17 sorry.
- 18 Mr. Jenkinson: On may 13th. You were accused of lying in
- 19 that statement, weren't you?
- 20 A: Yes.
- 21 Q: Do you remember officer Whack asking you this question
- 22 in that statement, You can be a witness and cooperate
- 23 with the State or you can end up getting charged with
- 24 accessory after the fact of murder, which carries the
- 25 same thing as murder charge. So what he gets, you going

HEARING

304

1 to get. That's why I was at your house Sunday. Do you
2 remember him telling you that?

3 A: Yes.

4 Q: They were threatening to charge you if you didn't give
5 them a story right?

6 A: Yes.

7 Q: You got scared didn't you?

8 A: Yes.

9 Q: Well they -- they cut the recorder off, didn't they?

10 A: Not to my knowledge.

11 Q: And twenty-seven minutes later, they cut it on and you
12 gave a second statement at seven twenty-four.

13 A: Yes.

14 Q: You remember the time lapse?

15 A: Yes.

16 Q: They were talking to you during that period of time,
17 weren't they?

18 A: Yes.

19 Q: And that wasn't recorded was it?

20 A: No, it wasn't.

21 Q: They were putting big time pressure on you, weren't
22 they?

23 A: Well, no.

24 Q: They weren't?

25 A: Not really big time pressure, but they was talking to

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

305

1 me.

2 Q: Caused you to tell another story didn't it?

3 A: True, yes.

4 Q: Told a few more lies too didn't you?

5 A: Not as many as I did the very first time the second

6 time.

7 Q: So you lied a lot before and you were lying a little

8 bit now, this time?

9 A: Well, this time the only part I lied about was entering

10 the house. I stated that I did not enter the house.

11 Q: Now, I want to understand a few things that you've

12 been talking about this morning, because even today,

13 it's different from your May statement isn't it?

14 A: You know how sometimes you can't say exactly what's

15* been said but it's the same thing.

16 Q: You told us in a few minutes, several times, as a

17 matter of fact, every single occasion today under oath,

18 you said that Ronald Mack and this person Callie was

19 identified as Tawanda's boyfriend?

20 A: Yes.

21 Q: That's what you're telling us today?

22 A: Yes.

23* Q: Because if Mr. Bowen is her girlfriend, or her

24 boyfriend, then that sounds better than the truth

25 doesn't it?

HEARING

306

- 1 A: Say it again.
- 2* Q: You're willing to say whatever's necessary to make your
3 testimony believable aren't you?
- 4 A: Yes, when it's the truth, yes.
- 5 Q: I'm going to ask you about that, because in your
6 statement, on seven twenty-four p.m. that was the
7 second statement where you confessed, isn't it?
- 8 A: Yes.
- 9 Q: Do You remember that? The second statement in May;
10 that's when you confessed. That's when you started
11 telling the truth isn't it?
- 12 A: Yes.
- 13 Q: And you stand by that statement don't you?
- 14 A: Yes.
- 15 Q: Alright, I have a few questions to ask you about it.
- 16 A: Alright.
- 17 Q: Do you recall, do you recall being asked by one of the
18 officers, Who is Callie? and your answer was, Kelvin.
19 Do you remember that?
- 20 A: Yes.
- 21 Q: And then Investigator Whack asked you, and who is that?
22 Do you remember that?
- 23 A: Yes.
- 24 Q And what did you say?
- 25 A: I told him I had no idea, I guess it was his mama's

HEARING

307

1 boyfriend.

2 Q: Boyfriend? That's what you said?

3 A: Yes.

4 Q: Now, if you're wrong about that and you didn't testify

5 to that, then you're wrong today right?

6* A: Yes.

7 Q: If you said something else back in May.

8 A: Yes.

9 Q: Other than boyfriend, you were right back in May

10 weren't you? And you're wrong today?

11 A: No.

12 Q: Well, I want to show you your statement. I'm asking

13 you if you recall, you said who is that and your answer

14* was that is his step father?

15 A: Yes.

16 Q: Do you remember that?

17 A: Yes.

18 Q: Look at it.

19 A: Yes.

20 Q: See?

21 A: Yes.

22 Q: Now, anywhere in there did you say it was her

23 boyfriend?

24 A: No.

25 Q: A step father?

HEARING

308

1 A: Yes.

2 Q: You understand the difference between a boyfriend and
3 a step father?

4 A: Pretty much.

5 Q: A step father means somebody married to Tawanda Mack
6 Allen right?

7 A: Yes.

8 Q: Was Kelvin Bowen ever married to her?

9 A: I don't live with Kelvin Bowen, so I don't know.

10 Q: Alright.

11 A: Put it like this, that stepfather also defines
12 relationships, you know that's her boyfriend, step
13 father either way they in a relationship together,
14 okay.

15 Q: But if Ronald Mack told you that was a step father,
16 that means one of her husbands. She had a number of
17 them, didn't she?

18 A: Actually, Ronald didn't tell me that was his
19 stepfather. Ronald did not state that was his
20 stepfather. He told me that that was his mother's
21 boyfriend during that time and by being around officers
22 and whatnot, you know, at that time I might have said
23 that's his stepfather.

24 Q: Let me ask you again, that's his stepfather and his
25 step dad and what did you answer? His stepfather?

HEARING

309

- 1 A: Yes.
- 2 Q: Two times in a row, you called him stepfather and
3 stepfather is not a boyfriend is it? And a boyfriend's
4 not a stepfather?
- 5 A: It started off as a boyfriend.
- 6 Q: You understand this case is about identification of a
7 person, right?
- 8 A: Of course.
- 9 Q: And he wasn't being identified there correctly, was
10 he?
- 11 A: His picture was around me. So, I mean ...
- 12 Q: I'm going to come back to that picture in a minute, I
13 promise you, we're going to talk about it.
- 14 * Ms. Barr: I'm sorry, I object to counsel interrupting the
15 witness.
- 16 The Court: Don't interrupt the witness.
- 17 Q: Now, again later in the same interview, you were asked
18 again, do you recall, do you know the step dad as
19 Callie?
- 20 A: Yes.
- 21 Q: And you said Callie, that's all I know.
- 22* A: Yes.
- 23 Q: That's all you knew; step dad and Callie?
- 24 A: Yes.
- 25 Q: A few minutes ago, Ms. Barr was asking you about going

HEARING

310

1 into the house.

2 A: Yes.

3 Q: And she asked you if anybody had on gloves?

4 A: Yes.

5 Q: And what did you say?

6 A: I said, I said yeah both of them had on gloves.

7 Q: That's what you said?

8 A: Yeah.

9* Q: Do you remember Investigator Whack asking you in your

10 second recorded statement back in May, did they have on

11 gloves or anything?

12 A: No, I do not.

13 Q: Do you remember that?

14 A: No.

15 Q: I'll show you the question. Do you remember that?

16 A: Yes.

17* Q: And do you remember your response?

18 A: Ronald did.

19 Q: Ronald did.

20 A: Yes.

21 Q: Because somebody without gloves would leave

22 fingerprints, wouldn't they?

23 A: Pretty much.

24 Q: And it didn't sound good if this fella Callie, didn't

25 have on gloves would it?

HEARING

311

- 1 A: Pretty much.
- 2 Q: Makes a better story to tell if he had on gloves.
- 3 That's why they didn't fingerprints right?
- 4 A: Yes.
- 5 Q: But back in May when you were asked this question, did
- 6 they have on gloves, what was your answer?
- 7 A: I don't know, Ronald did.
- 8 Q: Ronald did, not Callie?
- 9 A: Yes.
- 10 Q: So, today we've gone from boyfriend, to boyfriend from
- 11 step dad back in May right?
- 12 A: Uh-huh.
- 13 Q: And back in May we've gone from one pair of gloves to
- 14 two people wearing gloves, I mean one person wearing
- 15 gloves, to two today.
- 16 A: Uh-huh.
- 17 The Court: Use words not uh-huh.
- 18 A: Yes.
- 19 Q: Now, in the second recorded, May confession. That's
- 20 where you confessed and told the truth didn't you?
- 21 A: Yes.
- 22 Q: And you were asked by Investigator Laill this lady right
- 23 here?
- 24 A: Yes.
- 25 Q: She asked you what did Callie look like. Do you

HEARING

312

1 remember that?

2 A: Yes.

3 Q: And did you tell them the truth on that occasion?

4 A: I told them if I see him again I'll recognize him right
5 off the top.

6 Q: Well your recollection of what he looked like would
7 have certainly been better in May than it would be
8 later right? It was fresh in your mind in May right,
9 May 2009?

10 A: Yes.

11 Q: Right?

12 A: Yes.

13 Q: Now, what did you tell Investigator Lail what Callie
14 looked like back on May 13th 2009?

15 A: I can't remember quite the description that I gave her.

16 Q: What was the description?

17 A: I'm saying like I can't remember the exact description
18 that I gave.

19 Q: Tell me what you think you said.

20 A: Okay, I said like he was tall, real tall. He had hair,
21 he had hair, matter of fact I think I said he had Afro
22 hair and kind of built, like muscular like. Let's see,
23 that's about, that's about as much as I know.

24 Q: Heavy muscular guy?

25 A: Yeah, kind of muscular.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

313

1 Q: Cause that's the way he looks today doesn't he?
2 A: Pretty much the same.
3 Q: A muscular guy?
4 A: Yes.
5 Q: Tall, muscular guy and had hair. He had an Afro didn't
6 he?
7 A: Yeah.
8 Q: That means a lot of hair?
9 A: Yeah.
10 Q: Now, I want to show you page thirty-two, line one where
11 Investigator Lail asked you that question. This is the
12 first time you've given a description of that guy
13 Callie that we're looking for, right?
14 A: Yeah.
15 Q: You remember the question, what does Callie look like?
16 A: He's tall.
17 Q: And what did you say?
18 A: He's real tall and scrawny with kind of hair ...
19 Q: Let me stop you right there. Real tall and scrawny?
20 A: Yeah.
21 Q: You said nothing about a tall, scrawny person is a
22 little person, isn't it?
23 A: Yeah.
24 Q: And this guy that you know to be Mr. Bowen is a
25 muscular guy?.

HEARING

314

1 A: Yeah.

2 Q: And what else? It says question, do you remember what
3 kind of hair?

4 A: Hair, peezy, like fro, peezy.

5 Q: And is it low cut and you said what?

6 A: No, Afro peezy.

7 Q: Afro peezy. Meaning he had an Afro, a bushed out hair
8 cut? Longer hair?

9 A: Yeah, yes.

10 Q: And that's all that you, that was the only description
11 you gave of this guy that you had spent some time with
12 and showed you a weapon who was a step dad of Ronald's.

13 A: Basically, yes.

14 Q: And he went by the name of Callie?

15 A: Yes. I don't remember the exact description but I told
16 them that he kinda looked like my home boy, he was
17 built like my home boy structure. Still skinny but
18 also muscular skinny.

19 Q: You didn't remember and tell that description to these
20 officers back on May 13th almost two years ago?

21 A: Actually, I told, I told them that how he was kinda
22 like scrawny but he was skinny like.

23 Q: Show me where on this statement that appears. That's a
24 recorded statement of what you said.

25 A: I mean yeah, that's what I'm saying.

HEARING

315

1 Q: It ain't in there is it?

2 A: No, it's not.

3 Q: You, you knew that because you saw him on two occasions
4 after he was arrested here, I'm talking about Kelvin
5 Bowen.

6 A: Yes.

7 Q: I'm talking about Callie, not Kelvin Bowen, okay? Do
8 you understand that?

9 A: Callie, right.

10 Q: Now, that was on the 13th. The evening of the 13th.
11 You were arrested and charged with murder, and a lot of
12 charges after you gave that statement weren't you?

13 A: Yes.

14 Q: You got the wagon loaded up on you cause you were
15 guilty of those things, weren't you?

16 A: Yes.

17 Q: And you were taken over to the Williamsburg county
18 sheriff's office and shown a picture weren't you?

19 A: Yes.

20 Q: It was a picture on a computer screen?

21 A: Yes.

22 Q: And I wrote this down when you said it and tell me if
23 I'm wrong. Lail said this is the guy right here on the
24 computer. You remember her saying that?

25 A: No.

HEARING

316

1 Q: You didn't tell us all that a few minutes ago?

2 A: No.

3 Q: Who said those words?

4 A: I don't know. I walked in and I said yo, ya'll got
5 Callie? I said ya'll got Callie, ya'll got Callie?
6 That's all I said cause as soon as I walked in the
7 picture was posted right there on the computer screen
8 as soon as I walk in. As soon as I walk in. Ya'll got
9 Callie?

10 Q: Alright, you walked over there to identify a picture
11 on a computer didn't you?

12 A: Yea.

13 Q: They told you that they wanted you to look at a picture
14 on a computer?

15 A: No.

16 Q: A picture?

17 A: No not a picture. They wanted me to look at pictures to
18 see if I could pick, they told me it was like nine of
19 them. They said it was going to be pictured.

20 Q: You went to see a lineup, but you didn't get to see a
21 lineup?

22 A: No, I did not.

23 Q: So, when you got there, there was only one picture?

24 A: Yes.

25 Q: And they wanted you to call out Callie, somebody named

HEARING

317

1 Callie didn't they?

2* A: Yeah, they did. As soon as I walked in I told them
3 that the picture was right there. That's when I
4 announced real loud, ya'll already got Callie, ya'll
5 already got Callie.

6 Q: Now, you asked if they had him locked up and they said,
7 you remember saying a few minutes ago, we do not have
8 him yet?

9 A: Yes and then that's when my mouth was shut like.

10 Q: You were scared because they didn't even have him
11 arrested?

12 A: Pretty much, yeah.

13 Q: They didn't tell you he was arrested when this picture,
14 which is exhibit sixty-seven, was taken?

15 A: No, they didn't tell me that he was arrested.

16 Q: Alright, I want you to look at this picture and I'm
17 going to ask you some questions about this picture. Do
18 you see an Afro-peezy haircut there?

19* A: I mean no.

20 Q: Have you ever seen an Afro-peezy hair cut on Kelvin
21 Bowen since you've see him?

22 A: Yeah, of course I seen him with a afro-pezy haircut.

23 Q: When, I'm talking about since this picture was taken?

24 A: Since that picture was taken?

25 Q: Yeah, the times you've seen him in court. Has he ever

HEARING

318

1 had an Afro-peezy haircut?

2 A: No.

3 Q: He's got a moustache. He had a, you see? You didn't
4 never describe anybody with a moustache.

5 A: I looked out my eye like that.

6* Q: You didn't, you were sitting right by him and you
7 didn't see that Callie had a moustache?

8 A: Of course, no I didn't say that.

9 Q: You didn't tell the officers that when you were
10 describing Callie did you?

11 A: No, I didn't.

12 Q: This picture, how tall is this person in the picture?

13 A: Tall.

14 Q: You can tell he's tall by looking at the picture?

15 A: I can tell from him standing up.

16 Q: No, I'm talking about this picture you saw. You
17 identified him, is he tall in this picture?

18 A: No, I mean that's a picture, how do you know, come on.

19 Q: Well is that a scrawny man in this picture?

20 A: No.

21 Q: You told the officers, five days before that Callie was
22 tall and scrawny didn't you?

23* A: Yes.

24 Q: And that's nobody scrawny is it?

25 A: No.

HEARING

319

1 Q: That's nobody with an Afro-peezy haircut is it?
2 A: No.
3 Q: That's a guy with a moustache isn't it?
4 A: Yeah.
5 Q: And it was the only picture you were shown?
6 A: Yeah.
7 Q: And you were in deep trouble and you had to come up
8 with something didn't you?
9 A: No.
10 Q: Now ...
11 A: Since I already had confessed, come cleaned with it.
12 Might as well confess with everybody too.
13 Q: Okay. Now, let's go forward to June the 10th, 2009,
14 remember the preliminary hearing? You, Tawanda Mack
15 Allen, Ronald Mack, Kelvin Bowen were brought over here
16 and ya'll sat in the second, third, fourth seats, right
17 there weren't you?
18 A: Yeah.
19 Q: You sat right there?
20 A: Yes..
21 Q: And you were brought over about one o'clock weren't
22 you?
23 A: Yes.
24 Q: And you sat there until your preliminary hearing
25 started at three fifty-five or five minutes to four,

HEARING

320

1 didn't you?

2 A: Yes.

3 Q: Your lawyer was here the whole time?

4 A: Yes.

5 Q: Now, after it, and we've been at your preliminary
6 hearing. We sat right over here at this table didn't
7 we?

8 A: Yes.

9 Q: And you sat right by Kelvin Bowen the whole time didn't
10 you?

11 A: At that table.

12 Q: Yeah.

13 A: No, I wasn't right by him there was somebody in between
14 us.

15 Q: Okay, who?

16 A: It was either, I don't know either my lawyer or I know
17 somebody was sitting there separating us.

18 Q: We all were sitting right there together?

19 A: Yeah.

20 Q: And that went on for about an hour didn't it?

21 A: Yes.

22 Q: Then after the preliminary hearing, we went back in the
23 grand jury room. The lawyers and everybody got together
24 to figure out what we were going to do, didn't we?

25 A: Yes.

HEARING

321

1 Q: I was sitting at the end of the table right?
2 A: Uh-huh.
3 Q: Remember that?
4 A: Yes.
5 Q: You were sitting right next to me, remember that?
6 A: No, I wasn't sitting right next to you.
7 Q: Well your lawyer and you were sitting to my lefthand
8 side, weren't you?
9 A: Who was that?
10 Q: Scott Palmer.
11 A: No, actually we was on your right hand side.
12 Q: Okay. Now, that's the right hand side, you facing me?
13 A: That's, yeah, from how the table was turned, it was on
14 the right hand side.
15 Q: Yeah.
16 A: We were between, our backs were facing the windows.
17 Q: Yeah. And LeGrand Carraway, another lawyer, was
18 sitting at the table wasn't he?
19 A: Yes.
20 Q: He was Ronald Mack's lawyer wasn't he?
21 A: Yes.
22 Q: And I was Mr. Bowen's lawyer?
23 A: Yes.
24 Q: And we heard a lot of testimony about Callie in that
25 preliminary hearing didn't we? Remember that?

HEARING

322

1 A: Yes.

2 Q: And you remember me looking at you and saying ...

3 The Court: Just a moment, Mr. Jenkinson and Ms. Barr.

4 (Counsels approach bench)

5 Q: Do you remember being asked a question, who is that?

6 Meaning Kelvin Bowen? Do you remember being asked that
7 question?

8 A: On what day?

9 Q: Sir?

10 A: On what day?

11 Q: On the tenth? That meeting we've been talking about.

12 A: That meeting right here.

13 Q: Right. You remember being asked that question?

14 A: Yes.

15 Q: In front of your lawyer?

16 A: Yes.

17 Q: In front of every, all us sitting at the table?

18 A: Yes.

19 Q: Do you remember what you said?

20 A: Yes.

21 Q: What did you say?

22 A: I said that I don't know if he had an Afro and then ---
23 I said I don't know he had a Afro, I said he had hair
24 then.

25 Q: Did you remember saying, I don't know that dude.?

HEARING

323

1 A: I don't know him?

2 Q: Yeah.

3 A: Yeah.

4 Q: And you remember being asked if that was Callie and

5 what your response was?

6 A: Yes, I said I don't know.

7 Q: You said you don't know?

8* A: Yes.

9 Q: You don't recall saying that's not Callie?

10 A: No.

11 Q: Do you recall being asked what Callie looked like in

12 that meeting?

13 A: What Callie looked like? No, I was, yeah, I was asked

14 --- I did say that's not Callie. I stated that's not

15 Callie.

16 Q: That's not Callie?

17 A: Yeah.

18 Q: And we're talking about the Callie that committed the

19 murder?

20 A: Yes.

21 Q: And were you asked to tell us what Callie looked like

22 then?

23 A: I don't know.

24 Q: Do you remember saying that Callie was six seven or six

25* eight? A real tall guy?

HEARING

324

- 1 A: He was tall, yeah.
- 2 Q: You remember saying that?
- 3 A: Yeah.
- 4 Q: And he was slender built, remember that?
- 5 A: Yes.
- 6 Q: Had an Afro haircut?
- 7 A: Yes.
- 8 Q: Remember that?
- 9 A: Yes.
- 10 Q: And did Kelvin Bowen have an Afro haircut?
- 11 A: No. It's easy to get a haircut.
- 12 Q: Okay, had a, still had a moustache didn't he? Didn't
- 13 he?
- 14 A: Yeah.
- 15 Q: And do you remember this. Do you remember saying he
- 16 had pierced ears and piercings on his face?
- 17 A: I don't know about piercing on his face.
- 18 Q: Piercing in his ears and piercing on his face, do you
- 19 remember saying that?
- 20 A: No.
- 21 Q: Do you remember the pierced ear?
- 22 A: Yes.
- 23 Q: Okay. Do you recall saying I've never seen this guy
- 24 Bowen before in my life?
- 25 A: Yes.

HEARING

325

- 1 Q: All this was right in front of your lawyer?
- 2 A: Yes.
- 3 Q: Everybody around the table was going, What's going on
- 4 here? do you remember that? The lawyers? Mr.
- 5 Carraway, even your own lawyer?
- 6 A: Yes.
- 7 Q: Do you recall being asked if you would sign a statement
- 8 if it was prepared of what went on, on the tenth? Do
- 9 recall being asked to sign a statement, if it was
- 10 prepared, and did you say you would sign a statement if
- 11 it was prepared on?
- 12 A: No.
- 13 Q: You did?
- 14 A: I said no.
- 15 Q: You said no?
- 16 A: I said no.
- 17 Q: Well, about two weeks later, there was a bond hearing
- 18 here. Remember? You got out on bond and do you
- 19 remember the statement being brought to you by your
- 20 lawyer ...
- 21 A: Yes.
- 22 Q: And asked you to sign it?
- 23 A: Yes.
- 24 Q: And you wouldn't sign it?
- 25 A: Yes.

HEARING

326

1 Q: And then later that day he came to you again and asked
2 you again to sign it.

3 A: Yes.

4 Q: Do you think your lawyer would ask you to sign
5 something incorrect?

6 Ms. Barr: Objection, Judge that's an improper question.

7 The Court: Objection sustained.

8 Q: But you wouldn't sign it?

9 A: No, I wouldn't sign it.

10 Q: Let me ask you, you were given a copy of the statement
11* weren't you?

12 A: Yes.

13 Q: I'm asking you if this is a copy of the statement that
14 you were given?

15 A: Yes.

16 Q: That's a copy of it?

17 A: Yeah.

18 Q: And that's a copy of what went on on June the tenth up
19 in the grand jury room, isn't it?

20 A: Yes.

21 Mr. Jenkinson: Mark it for identification.

22 Q: Mr. Bowen in that, that occasion that was the first
23 time that you had seen him on June the tenth wasn't it?

24 A: No.

25 Q: Pardon?

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

327

- 1 A: No.
- 2 Q: You had seen him? Well the first time that you had
- 3 seen him at the jail?
- 4 A: At jail?
- 5 Q: In the jail.
- 6 A: Yeah, that was the first time I saw him at the jail
- 7 house, yeah.
- 8 Q: First time you had the chance to talk with him?
- 9 A: Yeah.
- 10 Q: Was the tenth?
- 11 A: No.
- 12 Q: In the jail, first time you had to talk with him.
- 13 A: Yes.
- 14 Q: He never threatened you in this courtroom did he?
- 15 A: No.
- 16 Q: Never threatened you at any of these meetings that we
- 17 had, did he?
- 18 A: No.
- 19 Q: You, everybody had on shackles didn't they?
- 20 A: Yes.
- 21 Q: And were handcuffed; nothing he could have done to you?
- 22 A: You don't know that.
- 23 Q: He was totally handcuffed and nobody, he has never
- 24 threatened you has he?
- 25 A: No, never has threatened.

HEARING

328

1 Mr. Jenkinson: Court's indulgence.

2 Q: Now, up until today, when Ms. Barr asked you to
3 identify Kelvin Bowen, you have never been asked by law
4 enforcement to identify him in person have you?

5 A: In person, no.

6 Q: Never have.

7 A: No.

8 Q: Not until today.

9 A: As a matter of fact, it was that same day of the
10 preliminary hearing, there was an officer that asked
11 me, they asked me, you know, who was all in the room.
12 They asked me was that him, was that Callie. I said
13 yeah, and I said yeah, and I told them that. They did
14 ask me that. I can't remember the officers name, but
15 ... I identified him the same way I can identify him.

16 Q: You can't remember his name can you?

17 A: The officer's name, no, because, I mean, the same way
18 I can identify Bowen as Callie, I can identify the
19 officers the same way I can identify him. I can
20 identify the officers.

21 Q: But again, you can't tell us who that was?

22 A: No I can't tell you their name.

23 Q: But the Solicitor, nor any of these investigators have
24 ever asked you to identify him live and in person have
25 they? Not until today.

HEARING

329

- 1 A: No, I'm telling you, I'm telling you that day, you
2 know, they were like they talk to him as he was going
3 back to --- as we was going to the room is his name
4 Callie, is his name Callie., I told them, I told them
5 yeah that's Callie right there in front of me.
- 6 Q: Has that ever been recorded or written?
- 7 A: No, it wasn't recorded or written, no.
- 8 Q: Now, let me ask you another question. Did this fella
9 Callie have any scars on his face?
- 10 A: Not to my knowledge, no.
- 11 Q: Now, Your Honor, please I would like to ask Mr. Bowen
12 to come around cause I want him to look for those
13 piercings on his face and verify that.
- 14 Ms. Barr: Judge, I'm going to object to that.
- 15 Mr. Jenkinson: This is on an identification case.
- 16 The Court: I understand what you're asking. What do you
17 want to do now?
- 18 Mr. Jenkinson: I simply want Mr. Bowen to walk around here,
19 close where he can see and ask if he sees any evidence
20 of any piercings.
- 21 The Court: You can do that.
- 22 Q: Mr. Bowen, come around. Close. Now turn to the side.
23 Do you see the evidence of the pierced ears?
- 24 A: No.
- 25 Q: Do you see any evidence of any piercings of his face?

HEARING

330

1 A: No.

2 Q: Do you see the moustache?

3 A: Yeah, I see the moustache.

4 Q: Just like the ones in the photographs?

5 A: Yeah.

6 Q: Now, turn again. You see the scar down his jaw-line
7 here?

8 A: Yes.

9 Q: And you've never seen that before?

10 A: No.

11 Q: But this is a prominent scar across his jaw, about six
12 or eight inches, right? On the right side?

13 A: Yes.

14 Q: Do you remember, again, back to your guilty plea here
15 in the courtroom? That was the first time, last
16 October, you admitted going in this house and
17 participating in this crime in the house wasn't it?

18 Ms. Barr: Objection; asked and answered.

19 The Court: Objection sustained.

20 Q: Do you recall testifying in your guilty plea that you
21 actually located K.D. and pointed him out to
22 Ronald so he could shoot him?

23 A: Yes.

24 Q: Is that a no?

25 A: I said yes.

HEARING

331

1 Q: Yes, you actually pointed him out so he could kill him
2 didn't you?
3 A: Yes.
4 Q: Ms. Barr asked you about this car wreck. You have a
5* brain injury?
6 A: Yes.
7 Q: And it has effected your memory, has it not?
8 A: Somewhat, yes. Yes.
9 Q: It has effected your memory?
10 A: Yes.
11 Q: And your recollection of things, has it not?
12 A: No it has not.
13* Q: It does not?
14 A: No.
15 Q: How long were you in intensive care with your brain
16 injury?
17 A: They said about a month.
18 Q: How many?
19 A: I said about a month, almost a month.
20 Q: How long were you in the hospital?
21 A: About a month and a half.
22* Q: And what year was that?
23 A: '07.
24 Q: That would have been two years before this?
25 A: Yes.

HEARING

332

1 Mr. Jenkinson: That's all I have.

2 The Court: Re-direct.

3 RE-DIRECT EXAMINATION OF MR. MCCLARY BY MS BARR

4 Q: Mr. McClary, are you okay? Do you need a break?

5 A: No ma'am.

6 Q: Okay, now, how did you feel when Mr. Jenkinson had Mr.
7 Bowen come up and stand right in front of you today?

8 A: Intimidated.

9 Q: You felt intimidated?

10 A: Yes.

11 Q: Okay, now that you have had an up close and personal
12 view of Mr. Bowen in court and in the presence of this
13 jury, has that changed your testimony in any regards?

14 A: No it hasn't.

15 Q: Is that man who came up here and stood in front of you
16 for ten or so seconds the same man that went into the
17 house of K.D. and shot him with a shotgun?

18 A: Yes.

19 Q: Any doubt in your mind today?

20 A: No ma'am.

21 Q: Now you talked about the, your accident and how you
22 have some brain damage as a result of that accident two
23 years earlier. Do you remember when Mr. Jenkinson
24 asking you about that?

25 A: Yes.

HEARING

333

- 1 Q: And he asked you about whether or not the accident
2 effected your memory?
- 3 A: Yes.
- 4 Q: Did it effect your memory as it relates to the events
5 that happened on the night that K.D. was murdered?
- 6 A: No.
- 7 Q: Do you remember that free and clear?
- 8 A: Yes.
- 9 Q: I mean clearly?
- 10 A: Yes.
- 11 Q: Did, now, did you go on after that to get your G.E.D or
12 to get your diploma or anything like that?
- 13 A: I got my G.E.D.
- 14 Q: You did get your G.E.D?
- 15 A: Yeah.
- 16 Q: Mr. Jenkinson also asked you on cross-examination that
17 when you were in court for the preliminary hearing, was
18 that the first time that you had saw or spoke to Kelvin
19 Bowen and you said no. You remember that question?
- 20 A: Yes.
- 21 Q: When was the time you saw and spoke to Kelvin Bowen?
- 22 A: The night of the incident.
- 23 Q: The night of the murder?
- 24 A: Yes.
- 25 Q: And you were also asked whether or not your memory, as

HEARING

334

1 far as the incident is concerned, was fresher in May of
2 2009 when you gave the statement versus today. Is the
3 incident still fresh in your mind today?

4 A: Yes it is.

5 Q: As you testified?

6 A: Yes.

7 Q: Now the picture that you were shown in court that's
8 been admitted as State's number sixty-seven, of Kelvin
9 Bowen, you were asked a lot of questions about when
10 this picture was taken. Do you actually know when this
11 picture was taken?

12 A: No, I do not.

13 Q: So you don't know whether it was taken the day you were
14 arrested, months earlier or days after?

15 A: No.

16 Q: Okay and how much time went by between the time K.D.
17 was killed and the time you gave the May 13th statement
18 and confessed?

19 A: A few weeks.

20 Q: Couple few weeks?

21 A: Yes a few weeks.

22 Q: Okay. In this picture of Kelvin Bowen and marked as
23 States Sixty-seven, can you even see what type hair
24 style he has in that photograph?

25 A: No.

HEARING

335

1 Q: Now, you said that you saw that picture of May 13th on
2 an officer's computer?

3 A: Yes.

4 Q: And you talked about the first time you saw Mr. Bowen
5 in court was when? Sometime in June?

6 A: Yes.

7 Q: I think you said June 10th?

8 A: Yes.

9 Q: So that was a month after you gave your statement
10 still?

11 A: Yes.

12* Q: I think your comment was, How easy is it to get a
13 haircut?

14 Mr. Jenkinson: Your Honor, I'm going to object to, as to
15 the testimony.

16 The Court: You cannot testify Solicitor.

17 Ms. Barr: Yes sir.

18 Q: One last question. Mr. Jenkinson asked you about your
19 May 13, 2009 statement at 6:55 pm. Do you remember him
20 asking you about that?

21 A: Yes.

22 Q: And as I understand it, he asked you whether or not you
23 had ever even mentioned Callie's name in that statement
24 at 6:55pm. Do you remember him asking you that
25 question?

HEARING

336

1 A: Yes.

2 Q: Now, I'm going to call your attention to page thirteen
3 of that particular transcript.

4 Mr. Jenkinson: Your Honor, objection as to the manner that
5 that is being presented is suggestive. She can ask the
6 question if you recall something, but as far as showing
7 him what he said would ...

8 The Court: Ms. Barr.

9 Ms. Barr: Judge, if I may, I can ask him if this is a
10 transcript of his statement. I'll ask another question.

11 The Court: Alright.

12 Q: Sir, is this a copy of the transcript of your statement
13 on May 13, 2009?

14 A: Yes.

15 Q: And what time was that statement given?

16 A: 6:55pm

17 Q: And is that as far as you recollect, the time to be as
18 well?

19 A: Yes.

20 Q: And if I will, let me just have you read page thirteen,
21 lines one through ten and see if that refreshes your
22 memory.

23 Mr. Jenkinson: Objection, Your Honor, just reading a
24 statement.

25 Ms. Barr: Read it to yourself. I think that will solve it

HEARING

337

1 Judge.

2 Mr. Jenkinson: You cannot publish it. You can ask if he

3 recalls what he said, but you cannot publish it.

4 The Court: Alright, proceed.

5 Q: Sir, let me have you read to yourself lines one through

6 ten and ask you if that refreshes your memory as to

7 this issue of when did Callie's name come up?

8 Mr. Jenkinson: What page are you on?

9 Ms. Barr: Thirteen.

10 Q: Having read that, does it refresh your memory?

11 A: Um, yes. Yes, it does.

12 Q: And, did you in fact, call Callie's name in that

13 particular statement?

14 A: No, I just said Callie.

15 Q: You just called, you just called him Callie?

16 A: Yeah.

17 Q: You didn't say Kelvin Bowen, you just said Callie?

18 A: Yeah.

19 Q: Now, did you know his legal name at that time?

20 A: No, I did not.

21 Q: Did you tell the police that you didn't know his legal

22 name at that time?

23 A: Yes I did.

24 Q: That's all the questions I have.

25 The Court: Anything further?

HEARING

338

RECROSS EXAMINATION OF MR. MCCLARY BY MR. JENKINSON:

1 Q: Is that first statement on May the 15th, the one in
2 which you told all the lies?
3

4 Ms. Barr: Your Honor it's not May 15th.

5 Mr. Jenkinson: I'm sorry, May 13, May 13.

6 Q: The statement you just read from. Is that when you
7 told all the lies?

8 A: No, not all the lies.

9 Q: You didn't tell any lies in that one?

10 A: Yes, I told some lies on that.

11 Q: I'm sorry I couldn't hear.

12 A: Yes, I told some lies.

13 Q: You did tell some lies in that one?

14 A: Yes.

15 Q: Okay, that is the one where you lied?

16 A: Yes.

17 Mr. Jenkinson: No further questions.

18 The Court: You can step down. Next witness?

19 Ms. Barr: We call Detective Luersen.

20 Bailiff: Do you solemnly swear or affirm to tell the truth,
21 the whole truth and nothing but the truth, so help you
22 God?

23 Detective Luersen: Yes.

24 Bailiff: Okay, step right over there to the witness stand.

25 Ms. Barr: Detective Luersen, let me get you to state your

HEARING

339

1 full name for us please.

2* A: Detective Steven Luersen.

3 DIRECT EXAMINATION OF DETECTIVE LUERSEN BY MS BARR

4 Q: Alright and tell us where you're employed.

5 A: I work at the Anne Arundel County Police Department,
6 which is in Anne Arundel County, Maryland.

7 Q: What is it that you do there?

8 A: I'm a detective, assigned to criminal investigation.

9 Q: You're a certified law enforcement officer?

10a A: Yes, I am.

11 Q: How long have you been a detective?

12 A: I've been a detective on and off for nine years.

13 Q: Give us a general idea of what you do from day to day
14 at the Anne Arundel County Police Department.

15 A: As a detective my current assignment is to conduct any
16 follow up investigations and commercial robberies ...

17 Q: Alright, now, sir you were subpoenaed to testify in
18 this case?

19* A: Yes.

20 Q: Alright and you and one of your officers drove from
21 Maryland?

22 A: Yes.

23 Q: How long did it take you to drive from Maryland to
24 South Carolina?

25 A: A little over six hours.

HEARING

340

1 Q: Okay. Alright, back in May of 2009, did you assist the
2 Williamsburg County Sheriff's Department in an
3 investigation involving the death of K.D. ?

4 A: Yes I did.

5 Q: Tell the ladies and gentlemen of the jury what
6 assistance you provided to law enforcement.

7 A: Our uniformed personnel, they made an arrest of two
8 subjects. I was asked to prepare a search warrant for
9 an apartment and vehicle.

10 Q: Now, you went to a magistrate or some judge in Anne
11 Arundel County and received a search warrant?

12 A: That's right, I went to a Circuit Court Judge.

13 Q: Okay and it allowed you to search what?

14 A: The apartment and the vehicle.

15 Q: Okay, describe the apartment and describe the vehicle.

16 A: May I refer to my notes to give you a better
17 description?

18 Q: Sure, absolutely.

19 A: I obtained one search warrant for both items. The
20 vehicle was a 2006 Kia, Sportage, blue in color. Had
21 a Maryland registration of . It had a VIN
22 number of, VIN identification of .

23 The vehicle was located in a parking lot on

24 . The vehicle was towed from the apartment complex
25 to our police department headquarters and secured into

HEARING

341

1* a storage shed for evidence processing. Police
2 personnel also followed that vehicle from the
3 address to the department for processing.

4 Q: Okay, hold on for just a second. I'm going to hand you
5 what's been admitted as State's exhibits fifty-three,
6 fifty-four and fifty-five. Are those photographs of
7 the subject vehicle from which you were able to get a
8 search warrant?

9 A: Yes it is.

10 Q: Alright, now, you indicated that the vehicle was seized
11 from the parking lot of and where is
12 that apartment complex located?

13 A: The apartment complex is located in ,
14 .

15 Q: Alright and who was the, that particular vehicle
16 registered to?

17 A: It was registered to a Ms. Allen. Tawanda Allen.

18* Q: Okay, alright now, you talked about the apartment
19 complex. What, I'm assuming, like here, there were
20 several apartments within the complex?

21 A: Yes there were.

22 Q: Alright and your search warrant allowed you to search
23 which particular apartment at ?

24 A:

25 Q: ?

HEARING

342

1 A: Yes.

2 Q: Okay now prior to actually executing the search
3 warrant, were you all able to determine who was the
4 official lessor of the apartment? Who leased the
5 apartment?

6 A: It was determined it was leased in Tawanda Mack's name.
7 Tawanda Mack Allen.

8* Q: Did you all recover a copy of that lease pursuant to
9 your search warrant?

10 A: Yes, we did.

11 Q: Alright let me hand you what's been marked for
12 identification purposes as States number sixty. Is
13 that a copy of the apartment lease?

14 A: Yes it is.

15 Q: Alright, and did you get that from the landlord at the
16 apartment complex?

17 A: I did not get this from the landlord, but it was
18 recovered by case personnel.

19 Q: Was that later turned over to the Williamsburg County
20 police department?

21 A: Yes it was.

22 Ms. Barr: Judge, we would move Exhibit number sixty into
23 evidence at this time.

24 The Court: What says the defense?

25* Mr. Jenkinson: Can I look at it? No objection to number

HEARING

343

1 sixty.

2 The Court: Without objection.

3 (State's Exhibit Number 60 was entered)

4 Q: Detective Luersen, let me ask you a couple of questions
5 about this exhibit. What is the date of that lease?

6 A: Fifteenth of September, 2007.

7 Q: Alright and the person leasing the apartment would have
8 been who?

9 A: Tawanda Allen.

10 Q: Alright and what is the address that's located on the
11 lease? In terms of the apartment that's being leased.

12 A: as in , building known as

13
14 Q: Okay and was this the same address that you all
15 executed a search warrant on that day?

16 A: That's correct, it was.

17 Q: Alright sir, can you see that from where you are? If
18 you cannot you can come on down. Is that better?

19 A: That's better.

20 Q: Alright, can you tell me where the date on that lease
21 can be found?

22 A: Sure, it's right up here across the top. Fifteen day
23 of September, 2007.

24 Q: Alright and can you tell me the address for the
25 apartment that's being rented.

HEARING

344

1 A: Sure, it's in this area here. , the
2 building known as

3 Q: Alright. As it relates to the tenant, can you tell me
4 the name and show the jurors where the name of the
5 tenant would be?

6 A: It's signed down here. I can read that as Tawanda
7* Allen.

8 Q: Alright, thank you sir. You can take a seat. Now,
9 when you secured the search warrant from the judge in
10 Maryland, what were you specifically allowed to take
11 pursuant to that search warrant?

12 A: My search warrant requested any and all nine millimeter
13 hand guns, any and all twelve gauge shotguns, any and
14 all nine millimeter shot casings, any and all twelve
15 gauge shotgun shells, any and all nine millimeter
16 twelve gauge projectiles, any and all twelve gauge
17 ammunition, any and all nine millimeter ammunition, any
18 and all clothing that may contain blood, swabs for
19 gunshot residue. Any and all receipts showing the
20 purchase of a firearm or ammunition. Any and all
21 holsters. Any paperwork showing possessory interest in
22 the name of Tawanda Mack Allen. Any and all paperwork
23 showing , . Any and all
24* paperwork in the name of Kelvin Bowen, Jr.

25 Q: Okay, alright and only those things that are named in

HEARING

345

1 a search warrant are the things that you're allowed to
2 seize?

3 A: That's correct.

4 Q: Alright, now, let's kind of go through that list.
5 Pursuant to search warrant, you were allowed to seize
6 if you found, a nine millimeter hand gun. Is that
7 right?

8 A: That's correct?

9 Q: Did you find any nine millimeter handguns in the
10 residence?

11* A: No we didn't.

12 Q: Alright, you were allowed in the search warrant to
13 seize if you found any twelve gauge shotguns?

14 A: Yes.

15 Q: Did you find any twelve gauge shotguns in the
16 residence?

17 A: Yes, we did.

18 Q: Did you seize the twelve gauge shotgun in the
19 residence?

20 A: Yes.

21 Q: Was the twelve gauge shotgun turned over to law
22 enforcement in Williamsburg county?

23 A: Yes it was.

24 Q: Alright, you were also allowed in the search warrant to
25 seize any nine millimeter shell casings?

HEARING

346

- 1 A: Yes.
- 2 Q: Did you find any of those in the residence?
- 3 A: We did not find shell casings. Nine millimeter shell
- 4 casings.
- 5 Q: Now, were you able to find, pursuant to your search
- 6 warrant, any twelve gauge shotgun shells?
- 7 A: Yes we did.
- 8 Q: Alright, did you seize those?
- 9 A: Yes we did.
- 10 Q: Alright, did you turn those over to law enforcement?
- 11 A: Yes they were.
- 12 Q: Okay did you find in the apartment any nine millimeter
- 13 or twelve gauge projectiles?
- 14 A: Not projectiles.
- 15 Q: Okay, when you say not projectiles, are you qualifying
- 16 your answer?
- 17 A: We found rounds, unfired ammunition.
- 18 Q: Alright what about shotgun shells?
- 19 A: Yes we did.
- 20 Q: You also were allowed to seize any receipts for the
- 21 purchase of any firearms or holsters?
- 22 A: Yes.
- 23 Q: Did you find any of those in the apartment?
- 24 A: No, we did not.
- 25 Q: Okay you were also allowed under the search warrant, to

HEARING

347

1 seize all paperwork in the name of Tawanda Allen,
2 Kelvin Bowen and Wanda Mack?
3 A: Yes.
4 Q: In the apartment right?
5 A: Yes.
6 Q: Did you find any paperwork inside the apartment of
7 Tawanda Mack?
8 A: Yes.
9 Q: With Tawanda Mack's name on it?
10 A: Yes we did.
11 Q: Alright. What specifically, I can't find the exhibit.
12 What specifically did you find with Tawanda Mack
13 Allen's name on it? And I believe, to kind of help you,
14 I'm looking at your inventory, evidence inventory.
15 A: We found some paperwork of the District Court of
16 Maryland regarding the apartment on Pay
17 Rent Landlord's Application. Tawanda Allen's name was
18 on that.
19 Q: Okay did you seize that?
20 A: We seized that.
21 Q: Did you turn it over to law enforcement of Williamsburg
22 County?
23 A: Yes we did.
24 Q: Alright, did you find any paperwork in the house baring
25 the name of Ronald Mack?

HEARING

348

1 A: Yes we did.

2 Q: Alright, and what did you find baring the name of
3 Ronald Mack. Well, let me strike that. Did you find
4 school material baring the name of Ronald Mack?

5 A: Yes.

6 Q: Did you seize those items?

7 A: Yes we did.

8 Q: And turned them over to law enforcement in Williamsburg
9 County?

10 A: Yes.

11 Q: Alright, now particularly interested in knowing if you
12 all found any paperwork inside the residence that bared
13 the name of Kelvin Bowen?

14 A: We found several pieces of paperwork.

15 Q: Alright, I'm going to, well, let me, before I hand them
16 to you, did you seize those items?

17 A: Yes we did.

18 Q: Did you at some point, turn them over to either
19 Williamsburg County Law Enforcement or the Clerk of
20 Court for Williamsburg County?

21 A: Yes we did.

22 Q: Alright, I'm going to hand you , first of all, what's
23 been marked for identification purposes as State's
24 exhibit number sixty-one and for the purposes of this
25 court, I need you to look at the item numbers on the

HEARING

349

1* white tab rather than the red tab. Tell me if you
2 recognize that particular item?

3 A: Yes I do.

4 Q: And how is it that you recognize it?

5 A: It was recovered at the apartment. It's a receipt,
6 paperwork from Suntrust Bank addressed to Kelvin Bowen.

7 Q: Okay what address is listed for that particular item?

8 A: , Maryland.

9 Q: And is that the apartment and complex or the actual
10 apartment that you all searched that day?

11 A: Yes it is.

12 Q: And is that the actual, original document that was
13 taken out of that apartment?

14 A: Yes it is.

15 Ms. Barr: Judge, we would move exhibit number sixty-one into
16 evidence at this time.

17 The Court: What says the defense?

18* Mr. Jenkinson: No objection.

19 The Court: Submitted without objection.

20 (State's Exhibit Number 61 was entered)

21 Q: Sir, I'm going to publish what's been admitted as
22 State's number sixty-one. Is that the item that you
23 just held in your hand and identified as being from
24 Suntrust Bank?

25 A: Yes it is.

HEARING

350

1 Q: And it indicates that the addressee is Kelvin Bowen at
2 , , at , .

3 A: Yes.

4 Q: Now, were you actually there when this was found? When
5 this particular item was found or were you simply there
6 when it was taken out of the apartment?

7 A: I was there when it was taken out of the apartment.

8 Q: Okay. Alright, I'm going to hand you what's been
9 marked for identification purposes as State's exhibit
10 number sixty-three. I'll ask you if you recognize
11 that?

12 A: Yes I do.

13 Q: How is it that you recognize it?

14 A: It is recovered during the search warrant.

15 Q: Okay and what is it?

16 A: It is a, a congratulations letter from Eady's Ice
17 Cream.

18 Q: Okay. It's a congratulation for employment letter?

19 A: Yes it is.

20 Q: What's the date on it?

21 A: The date is April 13, 2009.

22 Q: And who is the letter addressed to?

23 A: It's to Kelvin Bowen.

24 Q: Okay and what address?

25 A: , ,

HEARING

351

1 Q: Alright and you seized that and at some point turned
2 that over to either Williamsburg County Law Enforcement
3 or Clerk of Court's office?

4 A: Yes.

5 Q: Alright, now, quick question about the ice cream
6 company. Did you all help or arrest or take into
7 custody Tawanda Allen and Ronald Mack?

8 A: Our agency took Ronald Mack in custody, another agency
9 took Tawanda Mack Allen in custody. Howard(sp) County
10 Police Department.

11 Q: Why did that county take her into custody? Where was
12 she at when they took her into custody?

13 A: She was working at that same location ice cream
14 company.

15 Q: She worked at the ice cream company?

16 A: Yes.

17* Q: Alright I'm going to publish what's been admitted as
18 States' number sixty-three. Is, is that the letter
19 that I just handed you Detective Luersen?

20 A: Yes it is.

21 Q: Dated 4/13/2009 from Dreyer's Ice Cream company to
22 Kelvin Bowen?

23 A: Yes.

24 Q: At the address that you searched?

25* A: Yes.

HEARING

352

1 Q: I'm going to hand you what's been marked for
2 identification purpose as State's sixty-four and tell
3 me if you recognize that.

4* A: Yes I do.

5 Q: Alright, tell the court what it is and how you you
6 recognize it.

7 A: It's a State Department of Revenue paperwork driver's
8 license and reinstatement notice to Kelvin Michael
9 Bowen, Jr.

10 Q: And is there a date on it?

11 A: There is. It's May 4, 2009.

12 Q: Alright and was that seized from the residence from
13 which you had the search warrant?

14 A: Yes it was.

15 Q: Okay. Was it turned over to law enforcement for
16 Williamsburg County?

17 A: Yes it was.

18 Ms. Barr: Judge we would move State' exhibit number sixty-
19 four in at this time.

20 Mr. Jenkinson: No objection.

21* The Court: It's admitted.

22 (State's Exhibit Number 64 was entered)

23 Q: Publish exhibits sixty-four. Alright sir, what I have
24 put on the projection screen and placed next to the
25 jury, is that the item that you just testified about?

HEARING

353

1 A: Yes it is.

2 Q: Dated May 4, 2009?

3 A: That's correct.

4 Q: Addressed to Kelvin Michael Bowen, Jr.?

5 A: Yes it is at

6 Q: , ?

7 A: Yes.

8 Q: Okay now Kelvin Michael Bowen, Jr, was he one of the

9 individuals, on of the three individuals who were taken

10 into custody on the day the search warrant was

11 executed?

12 A: Yes he was.

13 Q: Alright I'm going to hand you State's sixty-two. Tell

14 me if you recognize that.

15 A: I recognize it.

16 Q: Alright, and how is it that you recognize it?

17 A: It's a California identification card for Mr. Bowen and

18 a Maryland driver's license for Ms. Allen.

19 Ms. Barr: Judge, we would move State's exhibit sixty-two

20 into evidence.

21 The Court: What says the defense? Any objection?

22 Mr. Jenkinson: No objection.

23 The Court: Without objection.

24 (State's Exhibit Number 62 was entered)

25 Q: Okay. Sir I'm going to publish State's sixty-two. Is

HEARING

354

1 this particular exhibit that you just testified to in
2 terms of the identification of Ms. Allen and Mr. Bowen?

3 A: Yes.

4 Q: Indicating that he had a California identification
5 card?

6 A: Yes, actually looking a little closer it may have been
7 a driver's license. I know the top one is a Maryland
8 driver's license. It's an identification card. I
9 don't know if it's a driver's license.

10 Q: Okay. Alright well let me bring it up to you just so
11 we can be clear about that point.

12 A: Yes it is an identification card.

13 Q: Thank you. Now, who all was with you carrying out the
14 search of that particular residence?

15 A: Myself, Detective Harding. She was my partner at the
16 time.

17 Q: I'm sorry Detective?

18 A: Detective Kelly Harding.

19 Q: Is she the young lady who's seated all the way in the
20* back?

21 A: She sure is.

22 Q: Alright.

23 A: We had Sergeant Richard ...

24 Q: Okay.

25 A: He was the sergeant that was on scene.

HEARING

355

- 1 Q: Okay.
- 2 A: We had a corporal and Hardy, they work in the
3 speciality unit and we also had a evidence technician.
4 Her name is Katie Ladue. She was assigned to evidence.
- 5 Q: Now Katie Ladue was part of your team that day. Is she
6 here in court?
- 7* A: No she's not.
- 8 Q: Okay, she have a medical reason for not being here
9 today?
- 10 A: Yes she did.
- 11 Q: Did you appear along with Ms. Ladue and Ms. Harding at
12 the trial for the State versus Tawanda Allen?
- 13 A: Yes.
- 14 Q: Now, was Ms. Harding present when the shotgun shells
15 were recovered?
- 16 A: Yes.
- 17 Q: Was she present when the nine millimeter rounds were
18 recovered?
- 19 A: Yes.
- 20 Q: Was she present when the shotgun was recovered?
- 21 A: Yes.
- 22 Q: Was she present when photographs of the residence were
23 taken?
- 24* A: Yes.
- 25 Q: Was she present when those particular exhibits that I

HEARING

356

1 just published to the jury were taken into evidence?

2 A: Yes.

3 Q: Now you all talked about the search of the vehicle.

4 Did you all take any items out of the vehicle?

5 A: No, we did not.

6 Q: Were there any items in the vehicle that were recovered
7 under your search warrant?

8 A: Can you ask that again.

9 Q: Yes sir. You indicated that there were items that you
10 saw in the vehicle?

11 A: Yes.

12 Q: And you indicated that nothing was taken out of the
13 vehicle, is that right?

14 A: Yes.

15 Q: So, I'm assuming that there were no ...

16 Mr. Jenkinson: Objection to assuming.

17 The Court: Objection sustained.

18 Q: Tell me if there were any guns in the vehicle?

19 A: No there were not.

20 Q: Was there any ammunition in the vehicle?

21 A: No.

22 Q: Any bloody clothes in the vehicle?

23 A: No.

24 Q: Any receipts for the purchase of a gun in the vehicle?

25 A: No.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

357

1 Q: Where exactly was Mr. Bowen and Mr. Mack when they were
2 taken into custody?

3 A: Uniformed officers observed them getting into the
4 vehicle. Mr. Bowen was getting into the driver's seat.
5 Mr. Mack was getting into the passengers seat.

6 Q: And where was the vehicle at the time that Mr. Bowen
7 was getting into the driver's seat and Mr. Mack was
8 getting in the passenger's seat?

9 A: It was parked in the parking lot of the apartment
10 complex; it was actually parked in front of building
11 412.

12 Ms. Barr: Beg the Court's indulgence.

13 Q: Thank you. While I have you on the stand. Sir, does
14 this appear to be the shotgun that was taken from the
15 residence located at , ?

16 A: Yes.

17 Ms. Barr: That's all the questions I have Your Honor.

18 The Court: Cross examination.

19 Mr. Jenkinson: Yes sir.

20 CROSS EXAMINATION OF DETECTIVE LUERSEN BY MR. JENKINSON

21 Q: Is that your name Luersen?

22 A: Yes.

23 Q: I want to make sure that I have that down correctly.
24 Does, do you, on occasion, use the internet map
25 services to determine distances and locations such as

HEARING

358

1 Google maps or something like Mapquest?

2 A: Yes.

3 Q: And is that something you law enforcement generally
4 relies on?

5 A: Yes.

6 Q: And you find it to be accurate?

7 A: It will give you a ball park.

8 Q: Yes sir.

9 A: The problem I have with Google is sometimes it will
10 take you not the fastest route and it will give you the
11 general idea of the distance.

12 Q: And if you can take Google and Netflix and Mapquest and
13 check them and they should be, that's a good way to
14 double check them, isn't it?

15 A: Google and Netflix?

16 Q: I said this, you can go to Google maps ...

17 A: Okay.

18 Q: And you can go to Mapquest and you can check them
19 against each other and usually they're very close
20 aren't they?

21 A: I use Mapquest, is what I normally use.

22 Q: Okay. Now, you, she asked you about driving time from
23 Glen Burnie, Maryland down to South Carolina.

24 A: Yes.

25 Q: And I'm particularly interested in the driving time

HEARING

359

- 1 from , . That would be from
2 where Tawanda Mack lived?
- 3 A: Yes.
- 4 Q: To Kingstree.
- 5 A: Yes.
- 6 Q: Okay and it takes you six hours?
- 7 A: Yes.
- 8 Q: Or more.
- 9 A: That's right.
- 10 Q: In fact it could be eight hours, couldn't it? To drive
11 from above Washington, DC down to Kingstree, takes
12 about eight hours doesn't it?
- 13 A: No, we, well we, we drove, we drove from Millersville
14 to Florence.
- 15 Q: Okay.
- 16 A: And it took us six hours. Millersville from the
17 apartment complex is not even ten minutes from the
18 apartment complex, so I don't know how much longer it
19 would take to get to Kingstree ...
- 20 Q: Just ... we printed off on our computer over there and
21 when you said that. We got Mapquest and we got Google
22 just to see how many miles it was from down to
23 . Now, you didn't check it on your odometer
24 did you?
- 25 Ms. Barr: Judge, we, first of all Judge, we would object to

HEARING

360

1 testimony rewarding what a Google search might show.
2 We think that's hearsay.

3 The Court: Objection is overruled.

4 Q: You didn't check your odometer to check the mileage
5 down here did you?

6 A: Uh, no I didn't.

7 Q: Alright and based on both Google maps and Mapquest,
8 approximately how many, well what are the mileages from
9 down to ?

10 A: Google maps show that as four hundred, eighty-nine
11 miles.

12 Q: Yes.

13 A: And Mapquest shows four hundred and ninety miles.

14 Q: Wow, that's a mile a part.

15 A: Yes.

16 Q: That's pretty close isn't it?

17 A: Yes.

18 Q: And the driving time from Glen Burnie, Maryland down to
19 Kingstree?

20 Ms. Barr: Judge I object, Your Honor.

21 The Court: It's not the same objection. This objection is
22 sustained. Objection sustained.

23 Q: Okay, but you do rely on that?

24 A: Yes.

25 Q: Okay and it would be fair to say that eight hours plus

HEARING

361

1 would be the driving time from Glen Burnie, Maryland
2 down to Kingstree wouldn't it?

3 Ms. Barr: Objection, asked and answered.

4 Mr. Jenkinson: It's cross examination, Your Honor.

5 The Court: State the question please.

6 Q: I said if, I said based on what you know, it wouldn't
7 surprise you at all if it took eight hours to drive
8 from above Washington, DC down to Kingstree, driving
9 time, would it?

10 The Court: He can answer.

11 A: I don't know how long it would take to drive to
12 Kingstree, because we didn't try that. I do know that
13 my personal experience in researching for this trip,
14 Mapquest told me it was going to be a seven hour trip;
15 seven hours and maybe four minutes.

16 Q: Okay, so you ...

17 A: And we did it in six hours, a little over six hours.

18 Q: That's what you rely on. Now, if it's from
19 , and this address of ,
20 using what you usually rely on, and you done Mapquest
21 for this, how far is it, if you know?

22 A: I wouldn't know ...

23 Q: Using Mapquest, how long does it take to drive?

24 A: I don't know how long it's going to take to drive; I
25 know that, that from our headquarters

HEARING

362

1 building which is the address that I put in, it's not
2 even ten minutes away. The problem I have is I can't
3 tell you because I drove to Florence.

4 Q: You wouldn't deny that Mapquest calls it over eight
5 hours?

6 Mr. Barr: Objection Judge, that's hearsay.

7 The Court: Objection sustained.

8 Q: Alright, exhibit number sixty is the apartment lease
9 agreement?

10 A: Yes.

11 Q: This apartment lease agreement actually, they require
12 you to say who lives there, don't they?

13 A: Can I see what you have. Tawanda Allen ...

14 Q: Those are the occupants?

15 A: Yes.

16 Q: Nothing about Kelvin Bowen on this is there?

17 A: No, there's not.

18 Q: Now, you identified the shotgun?

19 A: Yes.

20 Q: You checked it for fingerprints didn't you?

21 A: We didn't.

22 Q: You did not?

23 A: No, we did not.

24 Q: Well, if Kelvin Bowen's fingerprints would have been on
25 that shotgun, we would know whether or not he was a

HEARING

363

1 participant in this crime wouldn't we?

2 A: Or he just didn't --- we just did not do any processing
3 for this weapon. We recovered and packaged and forward
4 to South Carolina in our investigation.

5 Q: Routinely, as a detective you check for fingerprints
6 though don't you?

7 A: Yes.

8 Q: And if it's a murder weapon suspected, you would
9 certainly check for finger prints wouldn't you?

10 A: If, if we believed there was a reason to have
11 fingerprints on it, yes we would check for prints.

12 Q: And there were no fingerprints, you did not try to take
13 any fingerprints off this weapon when it was in your
14 possession?

15 A: We, at the request we did not process any evidence that
16 was recovered. We packaged it and turned it over to
17 them.

18 Q: Well, if there were fingerprints on it, the packaging
19 itself would in transit, could rub off fingerprints
20 couldn't it?

21 A: I don't have the expertise to tell you that however the
22 item was packaged would possibly degrade fingerprints.
23 Our technicians are trained to package.

24 Q: How long have you been a detective?

25 A: I've been a detective, on and off, for nine years.

HEARING

364

1 Q: And would it be safe to say that for nine years you've
2 been working with fingerprints in your investigations?

3 A: Yes I have.

4 Q: And you took no fingerprints from an alleged murder
5 weapon while it was in your possession?

6 A: That's correct.

7 Q: Did you check the ammunition that you found, the
8 bullets and the shotgun shells for fingerprints?

9 A: No we didn't.

10 Q: If Kelvin Bowen would have had anything to do with
11 these items, it certainly could have proved it at that
12 point couldn't you? If an investigation as to
13 fingerprints would have taken place?

14 A: Once again, we did not do any processing of anything,
15 any of the evidence items for South Carolina. It was
16 just packaged and forwarded to them for processing.

17 Q: On the eighteenth, I'm sorry. It was the eighteenth of
18 May was when you, all this, you got the first call from
19 Detective, Investigator Lail right here, the lead
20 investigator?

21 A: Yes.

22 Q: And all of this action taken was at her request?

23 A: Yes.

24 Q: And as a result of her phone call, Kelvin Bowen was
25 detained?

HEARING

365

- 1 A: Yes.
- 2 Q: Put in custody?
- 3 A: Yes.
- 4 Q: But you never were given the name of Kelvin Bowen by
- 5 Investigator Lail were you?
- 6 A: No.
- 7 Q: Matter of fact, when Kelvin Bowen shows up you didn't
- 8 know what to do with him did you?
- 9 A: Yes, he was, a uniformed personnel stopped him they had
- 10 no information of him being involved in this.
- 11 Q: No information whatsoever?
- 12 A: The only information that they had was that there would
- 13 be a third person that they had a positive
- 14 identification on.
- 15 Q: But, who is this guy Kelvin Bowen? There was no
- 16 warrant for him was there? Nobody called his name did
- 17 they?
- 18 A: No.
- 19 Q: Now, these two id's that you put up together like they
- 20* were together. They weren't found in the apartment
- 21 were they?
- 22 A: No.
- 23 Q: They were not found together?
- 24 A: No.
- 25 Q: They just happened to be copied on the same piece of

HEARING

366

- 1 paper?
- 2 A: That's correct.
- 3 Q: And you did not recover the id's did you?
- 4 A: That's correct.
- 5 Q: So you don't know where these id's came from?
- 6 A: No, sir.
- 7 Q: And yet you just identified them as id's.
- 8 A: That's correct, they are id's.
- 9 Q: From off these copies?
- 10 A: Yes.
- 11 Q: You've never seen them before other than these copies?
- 12 A: That's correct.
- 13 Q: Now, you actually did an evidence inventory. You write
- 14 every single thing down don't you?
- 15 A: Yes.
- 16 Q: That's what you testified about. You keep a record of
- 17 it and sign it?
- 18 A: Yes.
- 19 Q: Now, the Kia Sportage vehicle likewise was seized.
- 20 A: Yes.
- 21 Q: Do you have the record in your file from the seizure of
- 22 the Kia Sportage?
- 23 A: Yes.
- 24 Q: You actually saw the Kia Sportage?
- 25 A: Yes.

HEARING

367

- 1 Q: Now, tell the jury if you will, what happened to the
2 Kia Sportage on the eighteenth of May 2009. This will
3 refresh your recollection when I hand you this piece of
4 paper. Does this help you out? Is that a copy of
5 something from your file?
- 6 A: Yes it is.
- 7 Q: And you're familiar with that aren't you?
- 8 A: I am. Yes.
- 9 Q: And that is the information about the Kia Sportage and
10 what happened to it on April 18th, is it not?
- 11 A: Yes.
- 12 Q: It says supervisor; that's not your signature is it?
- 13 A: No.
- 14 Q: I couldn't tell from the writing. What happened to the
15 driver on this report, based on the report, of the Kia
16 Sportage?
- 17 A: The driver was arrested.
- 18 Q: And that was Kelvin Bowen?
- 19 A: Yes, driver arrested.
- 20 Q: Is that Kelvin Bowen?
- 21 A: Yes.
- 22 Q: Okay, what else happened to the vehicle?
- 23 A: Vehicle towed by the tow company.
- 24 Q: Okay, what else happened?
- 25 A: Followed the vehicle to headquarters to security.

HEARING

368

1 Q: So Anne Arundel County police actually seized the
2 vehicle and took it to headquarters?

3 A: Yes we did.

4 Q: And the photograph of the Kia Sportage in evidence,
5 which is shown in exhibits fifty-three, fifty-four and
6 fifty-five, I'm going to show you, is that the Kia
7 Sportage vehicle?

8 A: Yes it is.

9 Q: And that is in your custody?

10 A: Yes.

11 Q: Ya'll lock it up?

12 A: Yes.

13 Q: Cause that's evidence, is it not?

14 A: Yes.

15 Q: And whatever is in it is evidence, is it not?

16 A: Yes.

17 Q: And what you're seeking is evidence of a crime?

18 A: Yes.

19 Q: Now, what else, you took an inventory of the vehicle
20 just like you inventoried the apartment, did you not?

21 A: Yes.

22 Q: What did the Anne Arundel Police find in that vehicle?
23 The Kia Sportage that you had locked up on the
24 eighteenth?

25 A: You talking about when the vehicle was towed from the

HEARING

369

1 lot or ...

2* Q: Was it inventoried?

3 A: Yes, we do an inventory when we tow a vehicle, we

4 always do an inventory.

5 Q: No, no, I'm talking about your report. Say what I'm

6 asking you about.

7 A: I didn't take any items from the vehicle on my search

8 warrant.

9 Q: Do you still have the piece of paper I handed you?

10* A: I do.

11 Q: Okay, well let me identify that as a copy of what's in

12 your file. That's an original, that's a copy of the

13 original?

14 A: Yes.

15 Q: Mark this for identification. Now, again, Detective

16 Luersen, I'm showing you what has been marked as

17 Defendant's exhibit number five for identification as

18 the Anne Arundel ...

19 Court Reporter: That's three.

20 Q: I'm sorry. What has been marked as Defendant's

21 exhibit for identification number three of the Anne

22 Arundel County Police, vehicle inventory report, right?

23 A: Yes.

24 Q: So what your office is doing is towing in and then go

25 over it very carefully looking for evidence?

HEARING

370

1 A: No, they don't.

2 Q: Well, they inventory it don't they?

3 A: This is just a pre-towing inventory. This officer did
4 a pre-inventory before it's towed.

5 Q: Well, does it say pre-inventory on it anywhere?

6 A: I know it's pre-inventory because this is what the
7 officers are required to do when they tow a vehicle.
8 It's done in the event of having a tow company take
9 something out a vehicle that they're not suppose to,
10 pre-inventory. That's why I was asking you if you were
11 referring to at the parking lot or at headquarters
12 processing there.

13 Q: Well, let me ask you this. When you took it in to your
14* police headquarters ...

15 A: Yes.

16 Q: ... and secured it, were these items located in the
17 vehicle?

18 A: We located ...

19 Q: No, I'm talking about the items that are listed. A T-
20 Mobile Samsung cell phone?

21 A: We located --- let me see if I can find it.

22* Q: I'll call your attention to the middle of the, two
23 thirds of the way down on that exhibit that I just
24 handed you.

25 A: Yes.

HEARING

371

- 1 Q: I point it out right here. Under the report
- 2 A: Yes.
- 3 Q: Okay? What items were inventoried in the vehicle which
- 4 was, I showed you in the pictures, was a Kia Sportage,
- 5 what was it?
- 6 A: The items inventoried, you're referring to the pre-
- 7 towing right?
- 8 Q: Yeah, what was it?
- 9 A: Pre-towing was a T-Mobile Samsung, black leather
- 10 * wallet, a GPS and grey Motorola cell phone.
- 11 Q: Okay, now a GPS unit, if it was used to come to
- 12 Kingstree, that information would be located within the
- 13 software of that GPS unit wouldn't it?
- 14 A: Yes.
- 15 Q: And you could call it right back up?
- 16 A: Yes.
- 17 Q: And you could find out if that Kia Sportage with that
- 18* GPS unit came to Kingstree, South Carolina couldn't
- 19 you?
- 20 A: The GPS unit was portable ...
- 21 Q: Yes.
- 22 A: So I could tell you that it was in there, but it was
- 23 portable and could be moved from car to car.
- 24 Q: Potentially a very valuable piece of evidence because
- 25 if it came to Kingstree, wouldn't it?

HEARING

372

1 A: Yes.

2 Q: Alright, if the Samsung T-Mobile cell phone was, it
3 could have been owned by Kelvin Bowen cause he was in
4 the car when he was arrested right?

5 A: Yes.

6 Q: So if that was his phone and it was seized, a cell
7 phone can be tested immediately to determine where it's
8 been in the last month or two can't it?

9 A: Yes.

10 Q: Matter of fact, you can take, and you've done this with
11 cell phones before in your business, as a detective.

12 A: Yes.

13 Q: That's a valuable piece of information, right?

14 A: Yes.

15 Q: It tells you text messages, if in fact text messages
16 were being sent?

17 A: Yes.

18 Q: And it can be used as evidence of a crime if somebody
19 is texting saying they going to kill somebody, you
20 could have found out if that phone would have been
21 analyzed.

22 A: If the cell company saved the text messages.

23 Q: You routinely subpoena cell phone records from T-Mobile
24 and every cell phone provider in the country don't you?

25 A: Yes.

THIRD JUDICIAL CIRCUIT

(803) 436-2153

HEARING

373

1 Q: That's so important isn't it?

2 A: Yes.

3 Q: It's critical in a criminal investigation to seize that
4 phone and find out where it's been?

5 A: Yes.

6 Q: And if that phone as been to South Carolina, matter of
7 fact, if it was being used on the way to South Carolina
8 on the 4th and 5th of April of 2009, you would know it
9 in a flash by getting those records wouldn't you?

10 A: Yes.

11 Q: Matter of fact you could follow it down I-95 or however
12 it came because it would be pinging off the towers and
13 you could say, oh my goodness there it goes, right to
14 Kingstree, South Carolina and whoever had that cell
15 phone, we would know where it went, right?

16 A: Right.

17 Q: And if that and if he had that information we would be
18 able to know where that phone went and if it was Kelvin
19 Bowen's phone we would know as well wouldn't we?

20 A: It's Richard Kelvin Bowen's.

21 Q: Sad part is that cell phone was just thrown away by
22 ya'll wasn't it?

23 A: We didn't throw the phone away.

24 Q: Well, you just disregarded, you didn't, you didn't send
25 it to Kingstree did you?

HEARING

374

1 A: We didn't request it in the search warrant. We didn't
2 request the cell phone or the GPS unit in the search
3 warrant request.

4* Q: You sent a copy down to Investigator Lail, didn't you?

5 A: A copy of the?

6 Q: In this report.

7 A: Yes I did.

8 Q: And she didn't call you up and say give me that cell
9 phone, we need it because we're investigating some text
10 messages?

11 A: I don't know if Investigator Lail had a copy of that
12 tow slip at the time that this was going on. That was
13 completed by a patrol officer who followed the vehicle
14 and probably turned it in after his shift. I don't know
15 if she would have gotten the information. She might
16 have asked ...

17 Q: She wanted you to impound that vehicle didn't she?

18 A: Yes.

19 Q: And she wanted evidence out of that vehicle didn't she?

20 A: Yes.

21* Q: Do we know whether or not Investigator Lail in fact,
22 checked that telephone out? The black Samsung, T-
23 Mobile, Samsung cell phone on this inventory?

24 A: I don't know.

25 Q: She could have gotten that phone couldn't she? You