VOLUME II of III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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SC SUPREME COURT

Appeal from Williamsburg County

Steven H. John, Circuit Court Judge

KELVIN BOWEN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002248

APPENDIX

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don't know do you?

A: She couldn't have gotten the phone because we didn't request it in our request for a search warrant.

Q: Yes. But that would have been an easy exercise wouldn't it?

A: Yes.

Q: Taken about an hour or so? Right?

A: To get the phone?

Q: Yeah.

A: If it was in the initial search warrant it would have been picked up with the search warrant.

Q: She can tell us what investigation was made about this T-Mobile phone and whether or not it came to South Carolina on April 4th and 5th, 2009 in the hands of Kelvin Bowen can't she?

A: She can subpoena the request for cell tower hits, yes she can do hits and registered owner information, she sure can.

Q: Hugely important piece of evidence in a crime isn't it?

A: Yes.

Q: Since you've been in this courtroom have you heard anything about cell phone records off of that cell phone?

A: No.

Q: Thank you Detective Luersen.

The Court: Re-direct.

RE-DIRECT OF DETECTIVE LUERSEN BY MS BARR

Q: Yes sir, just a few questions if I may. I want to be clear. The particular cell phone that was noted on the pre-seizure inventory report, that cell phone remained in the vehicle?

A: It was a cell phone and a GPS, it shows there were two cell phones.

Q: Two cell phones?

A: A Samsung T-Mobile and a grey Motorola.

Q: I'm sorry and that's important. The T-Mobile and what was the second cell phone?

A: A grey Motorola cell phone.

Q: Your testimony was that no, as far as you know, pursuant to your search warrant, no cell phone was taken from that vehicle.

A: There was no cell phone taken from the vehicle.

Q: No cell phone taken from the residence?

A: No.

Q: And you said a Samsung T-Mobile phone?

A: Yes.

Q: Now, you were asked a question on cross examination about whether or not you can subpoena test records, text messages and your statement was if the cell phone company saves the messages?

A: Yes.
Q: Explain that to me.
A: You're having, I'm not sure why --- certain companies will not save text messages, although they'll save them for a certain period of time. I don't know it it's storage but some phone carriers will only save messages for a certain period of time, others will not.
Q: Now what is the date you actually got the search warrant?
A: May 19th
Q: May 19th?
A: I'm sorry, May 18th
Q: May 18, 2009?
A: Yes.
Q: Alright and were you aware --- and did you place in your search warrant the day K.D. was killed?
A: Yes.
Q: And what was that date?
A: The date was April 5, 2009.
Q: So that was the difference of some five, six weeks?
A: Yes.
Q: Now, you testified that Investigator Lail was looking for a Tawanda Allen and a Ronald Mack?
A: Yes.
Q: And you talked about a third person?

A: Yes.

Q: You didn't know the full name of that third person?

A: No.

Q: Now, do you note in any of your records or the case file, the use of the name Callie?

A: Yes.

Q: Was that the third person that was a person of interest?

A: Yes.

Q: Okay. And in your search warrant, how did you characterize the name of Callie in terms of that relationship to Tawanda Mack? Tawanda Mack Allen?

Mr. Jenkinson: Your Honor, I'm going to object. This is not proper re-direct.

The Court: The objection is overruled.

A: Your question was how did I, how did we connect Callie to Kelvin Bowen?

Q: How did you connect Callie or Kelvin Bowen to Tawanda Allen. Who was she supposed to be to him or who was he supposed to be to Ronald Mack? And let me, may I approach? Let me just kind of help.

Mr. Jenkinson: May I see what she's showing him? I'm not sure what that is. Your Honor I'm going to object to the document because that's a document not into evidence and that's a document not generated by this

witness. It's outside the scope of this trial.

The Court: Ms. Barr?

Ms. Barr: Your Honor I'm not trying to move it into evidence. It's simply that he's the chief investigator, Chief detective. I'm just asking him how his agency identified Callie. I'm not trying to admit these documents into evidence.

Mr. Jenkinson: I also object under the basis that again, none of these issues have gone into a ...

The Court: Objection is overruled.

Q: You see what I'm talking about?

The Court: You pose a question, the witness has to answer that question.

A: Officer Davis, who is one of our resource officer, he was one of the first officers to identify with this case. Mr. Mack was enrolled with his school. He was actually the first contact with the Police Department of South Carolina. We received a fax on the cover sheet that Investigator Lail had he could possibly be Tawanda's husband, Ronald's stepfather.

Q: Alright, alright. Now, I want to be clear because it was asked by you was the cell phone seized. The cell phone was not seized pursuant to search warrant?

A: No it was not.

Q: Okay thank you sir. That's all.

The Court: Anything further of this witness?

Mr. Jenkinson: I do Your Honor. They raised the issue about a second cell phone and actually I think ...

The Court: Any question for the witness?

Mr. Jenkinson: Yes sir. Was there a second cell phone?

A: There were two cell phones listed on this tow slip, yes.

Q: The second cell phone, were you aware that that cell phone was determined to be purchased on or after May 1st a month after the murder?

Ms. Barr: Your Honor, objection the questions assumes facts not in evidence.

The Court: Objection is overruled.

A: You're asking me if the cell phone ...

Q: The second cell phone. Not the Samsung, but the other cell phone that you're referring to. Not the one that was found in the Kia Sportage.

The Court: Pause. I overruled the objection. Are you withdrawing the previous question or ...

Mr. Jenkinson: No sir, I thought you overruled the objection?

The Court: I overruled the objection, so the witness can answer. That doesn't mean ask another question.

A: I'm not --- as I said repeat the question.

The Court: The witness requested you to repeat the question.

Q: The second cell phone was not a Samsung was it?

A: I don't know. The cell phone that was recovered in the vehicle. I don't know what that cell phone was. We did not take any cell phone out of the vehicle.

Q: Okay, the Sam, the phone that was in the vehicle inventory was a Samsung right?

A: A T-Mobile Samsung yes and also a grey Motorola cell phone.

Q: Alright and the grey Motorola cell phone, were you aware later that the grey Motorola cell phone, the second phone, was purchased after May 1st? Well after the crime?

A: No because we did not do any investigations on the cell phones.

Q: If that phone was purchased after May 1 it wouldn't be of any assistance whatsoever as to what occurred in April 5 and 6 in Williamsburg county would it?

A: If the phone was purchased after the crime?

Q: Yeah.

A: No it wouldn't.

Mr. Jenkinson: That's it. Thank you Your Honor.

The Court: You may step down sir. Right at one o'clock. Time to break for lunch. We're going to take one hour for lunch and I need you back in the jury room at two o'clock. You are not required to stay in the jury

room, but if you leave you need to go all the way out side the building and go wherever you want to go except mill around the hallway or in front of the Court or the courtroom. We've ordered lunch. Is it here?

Clerk: I haven't seen it.

The Court: Alright you can wait until lunch or come back after you think it's here. Break for lunch, one hour.

(Lunch Break)

The Court: Alright, are we ready to go?

Ms. Barr: Yes sir.

The Court: Alright, bring them on.

(Jury enters courtroom 2:18)

The Court: The jury is back. Next witness?

Ms. Barr: We'll call Kelly Harding.

Bailiff: Place your left hand on the Bible and raise your right hand. Do you solemnly swear or affirm that to tell the truth, the whole truth and nothing but the truth, so help you God?

Detective Harding: I do.

Bailiff: Please sit down.

DIRECT EXAMINATION OF KELLY HARDING BY MS BARR

Q: Ms. Harding, spell your name for the record please.

A: Hi, I'm Kelly Harding. I'm a Police officer, Corporal in Anne Arundel County in Anne Arundel, Maryland.

Q: Alright and how long have you been in law enforcement?

A: April of 1998, so going on, this will be my thirteenth year.

Q: And you're a certified police officer?

A: Yes I am.

Q: And you work as the same agency as Steven Luersen?

A: Yes.

Q: And ma'am, back in May of 2009 your agency assisted the Williamsburg County Police Department in the investigation of a murder involving K.D. . Is that correct?

A: Yes.

Q: What was your job assignment at that time?

A: My assignment was to help execute search and seizure warrants on , located in , .

Q: Okay and did you in fact help in the execution of that search warrant?

A: Yes I did.

Q: Now I'm going to show you what's been marked for identification purposes as State's exhibit number sixty-nine or seventy. Tell me if you recognize what's depicted in those pictures.

A: Yes, I do recognize. These are our images of the building and images of the door, the building that we had a search and seizure warrant on.

Q: At this time Judge, we would move numbers sixty-nine and seventy into evidence.

Mr. Jenkinson: Without objection to seventy or sixty-nine.

The Court: Its' been admitted.

(State's Exhibits Sixty-Nine and Seventy were entered)

Ms. Barr: Thank you Your Honor.

Q: Let me give this back to you. I'm going to publish State's sixty-nine. Can you see that from where you are?

A: Yes I can.

Q: Tell the jury, now that I've published that exhibit, what that shows.

A: That shows the outside of the building , , , .

Q: Alright and now I'm publishing State's seventy and tell us what that is.

A: That is showing the door marked clearly with a , , , that we executed the search and seizure warrant on.

Q: Okay. Now, tell us about the layout of the apartment.

A: The apartment is actually located in a community called (sp). The apartment itself, I believe is a two bedroom apartment. There's a living, dining room area and a kitchen and bathroom and I believe two bedrooms.

Q: Okay. Alright now, can you describe the contents of

the first bedroom and second bedroom. Was there a difference in the sizes or what was inside those bedrooms in terms of furnishings?

A: There was a difference. We looked in the bedrooms. One was a grown up bedroom, one was for kids based on, based on toys and the bedding. In one bedroom there were multiple beds.

Q: Like bunk beds or something?

A: Like bunk beds.

Q: Okay, go ahead.

A: And the master bed what we labeled bedroom one there was one bed.

Q: Okay, alright. And could you, did you find anything inside what you describe to be the master bedroom that would indicate who that bedroom belonged to or who slept there?

A: Yes.

Q: Okay, tell the jury about that.

A: In the master bedroom or what we refer to as bedroom one. It was clear a man and a woman were ...

Mr. Jenkinson: Objection to what is clear.

The Court: The objection is overruled.

Q: You may proceed Detective.

A: A man and a woman lived in that room. We found men's clothing and women's clothing. Men's deodorant,

women's deodorant, such things that would indicate that a woman and a man lived in that one.

Q: Alright, now I'm going to hand you what's been admitted as State's Exhibit number fifty-six. Tell me if you recognize what's in that photograph.

A: I do recognize it.

Q: Okay, tell the jury what it is.

A: This is a picture of the master bedroom that we labeled as bedroom one.

Q: And I'm going to publish fifty-six and Ms. Harding I need you to come down. Okay, now you indicated that you found men's clothing and women's clothing in the apartment?

A: Yes.

Q: Okay, alright can you tell us, let me push it up a little bit more. Can you kind of give us a general description of the items that are noted in what you call the master bedroom? You can just point.

A: Thanks. Just in this photograph alone, there's a baseball cap; there's, I believe these are house supplements like Creatine.

Q: What kind of supplements?

A: Creatine health supplements, vitamin supplements. That are generally not used by women.

Q: Okay.

A: I believe this is a picture, I'd have to see it a little bit closer ...

Q: Okay.

A: ... of deodorant. As far as just in this picture, those would be the distinguishing items.

Q: Okay, alright and I'm going to hand you what's been admitted as State's number fifty-eight and I'm going to publish it. Is that a different view of the same bedroom?

A: Yes it is.

Q: Okay now tell us the significance of the items in that particular photograph.

A: In this particular photograph, which is just another view, there's stuffed animals, in the corner over here there's laundry and the laundry basket contained both men and women's clothing and there's flowers as well as, I believe these are name tags.

Q: Alright, now, what is that there in the photograph?

A: That's a stuffed animal.

Q: Okay, alright, tell us where the door is to the residence, to that, to the bedroom.

A: This is the door, this is the doorframe and this is the door opened.

Q: Okay. Alright and as it relates to the previous exhibits, you talk about you saw a baseball cap and

what you describe as some health supplement, how would, what part of the picture would that be reflected in if the picture were large enough to include it?

A: It seems that this part of the room was the male's room and the top part of the room was the female's room.

Q: Alright, let me hand you State's fifty-seven that's been admitted I'm going to publish State's fifty-seven. Tell the ladies and gentlemen of the jury what's depicted in that photograph.

A: Okay there's an ashtray with what appears to be black and mild.

Q: Black and mild?

A: Black and mild cigars. I say Black and Mild because black and mild are specific in that area, in our area, that when you smoke them, you smoke them with a cigar mouthpiece, this white clip that's shown right here.

Q: Okay. Now as it relates to this particular exhibit, is that what you describe as the man's side of the room or the woman's side of the room?

A: This would be the night stand on the man's side.

Q: Alright, go ahead and tell us what else is in that photograph.

A: This is a picture of Bud Light. It looks like a pair of Bud Light boxer shorts.

Q: Okay.

A: Also these are t-shirts that would generally be worn by men.

Q: Okay.

A: And there is some Creatine. Creatine is generally taken by men.

Q: For what? Do you know?

A: For weight lifting; it's a dietary supplement.

Q: Okay

A: As well as there's an inhaler.

Q: As it relates to that particular photograph, where would the bed be?

A: The bed is on this side.

Q: Alright, now you were present in court when Detective Luersen testified about certain documents that contain the name Tawanda Mack Allen or Tawanda Mack and Kelvin Bowen. You were present when he testified about that?

A: Yes I was.

Q: Now as it relates to the Suntrust bank card that was admitted, was that document found inside that bedroom?

A: Yes.

Q: Alright what about the document that related to the State of Kansas reinstating Kelvin Bowen's driving privileges? Was that found in the bedroom?

A: Yes it was.

Q: Where in the bedroom?

A: The Suntrust and the Kansas City was found in this night stand.

Q: Okay, what about the letter from the ice cream company. The employment letter, where was that found?

A: That was actually found on the dresser across the room.

Q: Alright, I'm going to publish again now number fifty-eight. Is that the dresser that you're talking about that that letter was found?

A: Yes ma'am.

Q: Alright now while we have that photograph picked up, kind of tell me what those little gold items are in that photograph.

A: Those are ammunition. Those are nine millimeter ammunition.

Q: Found in the same location where the Suntrust card was?

A: Yes ma'am.

Q: Okay, alright let me let you have a seat just a moment. As part of the search warrant, you all were looking for any twelve gauge shotguns?

A: Yes.

Q: Nine millimeter handguns?

A: Yes.

Q: Shotgun shells?

A: Yes.

Q: Nine millimeter rounds?

A: Yes.

Q: And did you find any of those items that I've just described, inside the residence?

A: Why yes we did.

Q: Okay in which room did you find those items?

A: We found them in the master bedroom?

Q: Okay. Alright I'm particularly interested in this exhibit and Madam court reporter, what I'll do is keep that in the box. If you could mark that for i.d. for me. Ms. Harding I'm going to hand you what's been marked for identification purposes State's exhibit seventy-nine and ask you if you recognize this particular item?

A: Yes I do.

Q: How is it that you can recognize it?

A: Well, whenever we recover evidence ...

Ms. Barr: Don't print over there.

A: When we recover evidence, we label it ...

Q: Yes.

A: ... with our case numbers immediately and I also recognize this because there's no serial numbers.

Q: There's no serial numbers on that shotgun?

A: No.

Q: Okay, alright now where did you find this particular weapon?

A: I found that underneath the mattress on top of the box spring.

Ms. Barr: Alright, Judge at this time we move State's exhibit number seventy-nine into evidence.

The Court: What says the defense?

Mr. Jenkinson: No objection.

The Court: It's admitted.

(State's Exhibit Number 79 was entered)

Q: Alright I need you to come down from the hot seat again for me, please.

Q: You actually found that weapon?

A: Yes.

Q: Alright, and was the location of the weapon photographed before it was removed from its original location?

A: Yes.

Q: Alright, I'm going to show you what's been marked as State's fifty-nine. I think it's admitted without objection. State's number fifty-nine, do you recognize that?

A: Yes I do.

Q: Alright and let me publish it. Tell the ladies and gentlemen of the jury what that shows.

A: This is the shotgun. This is the box spring and this is me holding up the mattress so that our evidence guy

can take the photograph.

Q: Okay, as it relates to dimension and portions where would the headboard be and where would the end of the bed be?

A: This is the headboard.

Q: Okay.

A: This is the footboard and this is the night stand from the previous shots.

Q: Alright is that the same night stand in which you recovered the Suntrust card and the nine millimeter round?

A: Yes.

Q: Alright as it relates to the position of the shotgun, would it been on the side of, you presume where the woman slept or where the man slept?

A: Where the man slept.

Q: Alright, going to hand you State's exhibit seventy-one, which is for i.d. Tell me if you recognize that.

A: Yes I do.

Q: And tell me what it shows.

A: This is basically another photograph, a close up photograph of the same shotgun.

Q: Alright and let me make sure I stand corrected, I think I called the last exhibit number fifty-six and I believe it's number fifty-nine in the white is that

right?

A: Yes, fifty-nine in the white.

Q: Alright, and this is simply a closer up view of that angle?

A: Yes.

Q: Okay Judge, we would move State's exhibit number seventy-one into evidence at this time.

The Court: What says the defense?

Mr. Jenkinson: Without objection to seventy-one.

The Court: Without objection.

State's Exhibit Number 71 was entered)

Ms. Barr: Thank you Judge.

Q: Alright and for the benefit of the jury, would you please again tell us what's shown?

A: This is the shotgun, but a closer view. The shotgun in the previous one and the shotgun that was displayed here.

Q: Now I'm going to hand you what's been marked for identification purposes as State's exhibit seventy-two and ask if you recognize what's in that photograph?

A: Yes, I do recognize it.

Q: And how do you recognize it and what does it show?

A: It's a closer image of the shotgun with the closer image showing that the serial numbers have been obliterated?

Q: Okay, they've been filed off?

A: Yes.

Q: Alright, Judge we would move State's exhibit number seventy-two in at this time.

The Court: What says the defense?

Mr. Jenkinson: Okay.

The Court: It's admitted.

Q: Alright and can you show us the area in which you would expect the serial numbers to be as it relates to that weapon.

A: This, this is normally where the serial numbers would be found. This is the butt of the gun, as you can tell by the wood and normally serial numbers are found in this area.

Q: Okay.

A: You can tell by the photograph, you can't see the serial numbers at all.

Q: Is there any significance to a firearm having the serial number on it?

A: Serial numbers is how we in law enforcement can track and trace firearms. Without a serial number we can't track it or trace it.

Q: Okay. Alright I'm going to hand you State's seventy-three that's marked for i.d. Tell us [1]if you recognize

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1

it.

A: I do recognize it.

Q: And what is it?

A: It's a close up image of the shotgun showing the model, the revelation, the automatic.

Q: Okay. Alright, move to introduce at this time Judge.

Mr Jenkinson: No objection.

The Court: Alright.

Q: Explain to the jury that exhibit.

A: Revelation is the model of the shotgun and then the word shotgun is also written right here.

Q: Revelation, automatic shotgun?

A: Yes.

Q: Okay. Alright, now I'm handing you what's been marked for identification as State's number seventy-four. Tell us what's that in that photograph?

A: This is a closer photograph of the night stand. The same night stand that we showed in previous photographs that were to the left of the bed, if you're facing the bed.

Q: Okay, if you're facing the bed?

A: If you're facing the bed, to the left.

Q: To the right?

A: To the right, sorry. The same night stand on previous photographs. It's a closer picture up, it's a closer

picture of the nine millimeter rounds that were recovered, as well as, some shotgun shells.

Q: Okay.

A: We would have photographed this before we actually removed them from the drawer.

Q: Removed the ammunition from the drawer?

A: Right.

Ms. Barr: Okay. We move State's seventy-four into evidence.

Mr. Jenkinson: No objection.

The Court: In without objection.

Q: I'm going to publish seventy-four and call attention to the jurors, tell them the particulars of where the ammunition was found and identify that for them please.

A: This is a nine millimeter round, this is a nine millimeter , this is a nine millimeter, this is a nine millimeter, this is a shotgun shell and this is a shot gun shell.

Q: Okay and we see some papers up in here and I believe that you've already testified that some of the documents bearing the Defendant's name was in that same drawer?

A: Yes.

Q: Okay.

A: This appears to be an I-pod holder. Usually, the kind that only goes around your arm when you are working

out. And some miscellaneous business cards.

Q: Okay. Alright going to hand you what's been marked for identification as State's number seventy-five. You talked about earlier, photographing the nine millimeter rounds and the shotgun shells before you took them out of the drawer. Tell me about exhibit number seventy-five.

A: Seventy-five is a close up shot of all of the nine millimeter rounds together.

Q: Okay.

A: Out of the drawer.

Ms. Barr: Alright, we move State's exhibit seventy-five into evidence.

Mr. Jenkinson: No objection.

The Court: No objection into evidence.

Ms. Barr: And Judge I think, maybe to make this go smoother; it's my understanding Mr. Jenkinson doesn't have any objection to these photographs.

Mr. Jenkinson: No objection.

Ms. Barr: And Judge, for the record, he has no objection to seventy-five, seventy-six and seventy-seven.

The Court: Okay, in without objection.

(State's Exhibit Numbers Seventy-five, Seventy-Six, Seventy-Seven is entered)

Q: Alright, going to publish what's been admitted as

seventy-five. Tell the jurors about that particular photograph.

A: These are the close up, this is a close up picture of all of the ammunition that we found in the night stand. Just to simplify, we pulled out the night stand and then took a picture of it and I believe, it's ten rounds. One, two, three, ten rounds of nine millimeter.

Q: What surface is that on?

A: This is the mattress.

Q: Okay, you just simply placed it on the mattress and photographed it?

A: Yes.

Q: Is the same thing true as it relates to State's seventy-six?

A: Yes, these would have been the three shotgun shells that were found in the night stand.

Q: Okay and again on the surface of the mattress?

A: That's the mattress.

Q: Okay, now let me show you seventy-seven.

A: Okay.

Q: Alright I'm going to publish State's exhibit number seventy-seven. Tell us about that particular exhibit.

A: This particular one would have been the one, it's photographed separate because this is one that was loaded inside a weapon.

Q: Okay, you took that out or who took it out?

A: The evidence technician took it out.

Q: Alright. Now you were present in court when Detective Luersen talked about recovering what looks like to be a light bill in the name of Tawanda Allen?

A: Yes.

Q: Alright and that item was seized by you all pursuant to a search warrant?

A: Yes.

Q: Alright is that the original bill that was taken out of the apartment?

A: Yes it is.

Q: And, let me get that number. Judge we would move State's exhibit eighty in as evidence.

Mr. Jenkinson: Objection as to relevance of eighty.

The Court: Ms. Barr?

Ms. Barr: Judge, we would assert that this document, as well as other documents have been established as the co-defendant's ownership of the residence.

The Court: Let me see it.

Ms. Barr: Yes sir.

The Court: Overrule that objection.

(State's Exhibit Number Eighty was entered)

Q: And Ms. Harding you can stay right where you are. Is that the electric bill that we're talking about?

A: Yes, in Maryland, our primary gas and electric provider is known as GE.

Q: Right here?

A: Yes.

Q: And does it show the name of the co-defendant Tawanda M. Allen, as well as the address?

A: Yes it does.

Q: Alright now, did you also search the second bedroom?

A: Yes.

Q: Alright, and did you find any items, well, let me ask it this way. Did you seize any items in that second bedroom?

A: Yes we did.

Q: Okay. Tell us what you seized from that second bedroom.

A: From the second bedroom, we seized a spiral notebook and a class schedule issued to Mr. Ronald Mack.

Q: Alright now.

A: The spiral notebook and there was a composition that were together.

Q: Alright and I'm going to hand you what's been marked for i.d. as State's eighty-one and eighty-two. Are those the items that you're referring to?

A: Yes they are.

Q: Alright and those were found in the second bedroom, not the master bedroom?

A: That's correct.

Q: Judge we would move State's exhibit eighty-one and eighty-two into evidence at this time.

Mr. Jenkinson: I just object to relevance.

Ms. Barr: Let me let the Judge look at it.

The Court: Ladies and gentlemen, I'm going to have you go in your jury room for just a few minutes.

(There was a jury break 2:51)

The Court: The objection is relevance Ms. Barr.

Ms. Barr: Judge, I'm offering the exhibits to establish that the defendant, Ronald Mack, was in the second bedroom as opposed to what we consider the master bedroom, which was where the murder weapon was found.

The Court: Response Mr. Jenkinson?

Mr. Jenkinson: She's already testified she found the class schedule there, his class notebooks. I mean obviously gang related. You know, I just don't see how it's relevant to the case here. Based on the evidence and testimony presented, I mean, it's bedroom number two. I mean it's been testified to, you know, it's just identification a day later and it's just not relevant. It's just stuff that was found there and it has nothing to do with the charges in this case.

Ms. Barr: And, sorry. And Judge, we would certainly submit that the whole motive regarding why this child was shot was because Ronald Mack was a member of a gang and that's just

how they dealt with people they had disagreements with and so certainly that would corroborate the motive as we see it and corroborate his testimony regarding being in a gang.

The Court: You're going to establish that motive that you think exists through what witness or through how?

Ms. Barr: Judge, I think it's a inference in the evidence that and we can argue in closing. He's admitted that he was in a gang. I even think that Mr. McClary, if I'm not mistaken, said that he was in a gang.

The Court: Alright.

Mr. Jenkinson: And I would assert, there's no proof that these are Ronald's notebooks. There's nobody to authenticate that they are his. They were just found there. I can write anybody's name in a notebook, anybody can.

The Court: Well, I'm going to admit them over objection.

Mr. Jenkinson: Also, Your Honor, this contains a lot of stuff I haven't sat down and read and I'm not sure what, there's some writing in there.

The Court: It's all gang stuff, seems to me, but if you can, we'll take a break and let him look at it and see if you have anything else to say about it.

Mr. Jenkinson: Okay.

The Court: Alright.

(There was a Court break)

Mr. Jenkinson: After carefully examining it, and I refer to eighty-two first, there is nothing in here, other than Ronald, Ron Mack dated November 2, 2007, that's all. Then when you, it also has some inflammatory language and I particularly refer to and we don't know when it was written says that Leave da crab ass nigger in da funeral home and I don't want that kind of connotation is, but again, it's one kind of writing here and then when you compare it to the eighty-one, eighty-one has no name in it whatsoever. And the handwriting in eighty-one is completely different from the handwriting that appears in eighty-two indicating ownership possibly by others. Now, understand there's two other younger people living in this house as well and we don't know who's it is cause it's not identified. It's just remote and not relevant. I understand what their position is, but who's to say this is Ronald Mack? This appears to be two different people. I'll pass it up for the Court's examination and again, not relevant, inflammatory and perhaps prejudicial outweighing any probative value.

The Court: Ms. Barr?

Ms. Barr: Judge, clearly the particular exhibit, and I don't remember the number, that has Ronald Mack's name on it, I think that's clear in establishing that he was in

that particular bedroom as opposed to the master bedroom, or what we call is the master bedroom. I don't have any further argument as it relates to the main exhibit, particularly the one that his name is in it. I think it's clearly relevant to establish that one, that he was in a gang, which corroborates his earlier testimony and two, to establish that that was his bedroom as opposed to the master bedroom.

The Court: The State has the burden of proving conspiracy, putting the co defendants together, putting the defendants together with the murder weapon. Ronald Mack nor Mr. Bowen, neither one and they were not --- they were arrested outside, of course at this point the reference to gang type symbols and all as it relates to Ronald Mack must be weigh to, Bowen, weighed toward the probative value of the evidence and the Court certainly has to consider that and also the book that Mr. Jenkinson says is in the different handwriting and that one where the word composition is struck through leaving the word Compton, and the Court would take judicial notice that is a city in Southern California. At this point I'm going to admit number eighty-two containing Ronald Mack's name, and leave for identification at this time number eighty-one for identification purposes.

Ms. Barr: Yes sir. I've never had this happen before.

The Court: Yeah, take a three minutes stretch.

(There was a court break)

(Jury enters courtroom 3:09)

The Court: Alright the one exhibit is in, number, exhibit admitted is number ...

Ms. Barr: Eighty-two.

The Court: Eighty-two.

Q: Thank you Judge. Ms. Harding I'm going to show you what's been admitted as State's number eighty-two. Is that the notebook that you found in bedroom number two?

A: Yes it is.

Q: Alright and is there anything that is contained that is in that notebook that would identify with any of the defendants in this case?

A: Yes there are.

Q: Alright tell us about that.

A: In public school, you need a hall pass to walk through the halls. At the beginning of given a academic plan. It's a little spiral notebook and kids loose it so when they do they are still required to carry some sort of notebook and when you're granted a hall pass it's put in the notebook.

Q: Okay. And is that a hall pass for Ronald Mack?

A: Yes it is. It reads pass to guidance, with the name

Ronald Mack and then there's some sort of signature.

Q: I'm just going to publish just that part. Is that what you refer to as pass to guidance, Ron Mack?

A: Yes ma'am.

Q: Now there's also some other additional information contained within this particular exhibit. Tell us what the additional information is in that particular exhibit.

A: In the book there's a lot of writing and the writing appears to be gang writing.

Q: Okay.

A: For instance ...

Mr. Jenkinson: I'm not sure, may I see what she's referring to?

The Court: Yes.

Mr. Jenkinson: Your Honor, she is, with objection because her impressions of what somebody else wrote or whatever appears there. It speaks for itself.

The Court: Ms. Barr?

Ms. Barr: Judge, she can talk about it since it's in evidence. I'm not asking for her impressions, I'm just asking what it reads.

The Court: The objection is sustained as to foundation.

Q: The particular item that you're looking at, is that contained in the notebook that's been admitted as

State's exhibit number eighty-two?

A: Yes.

Q: And is that the same notebook containing the hall pass for Ronald Mack?

A: Yes.

Q: And you testified there is what is gang related...

Mr. Jenkinson: I'm going to object to that, because there's no basis for that, no foundation was laid for that conclusion.

The Court: Objection is sustained Ms. Barr.

Ms. Barr: Yes sir.

Q: Let me do this, Ms. Harding, let me get you to step down please and bring the exhibit with you. Now, let me publish certain relevant portions of it. Now, first of all, before doing that, do you have any familiarity as a person in law enforcement with gangs in Maryland?

A: Yes I do.

Q: And tell the Court the extent of your training or the extent of your involvement as a police officer with gangs and the information that you have about it.

A: I've been trained. I've received over forty hours of training in gang, as far as identifying gang writings, gang tattoos, gang colors, as well as interviewing gang members. I've also received training in how to investigate gangs as well as I've arrested and

successfully prosecuted numerous gang members, bloods, crypts, within Anne Arundel County for an entire relevance, the entire spectrum, every and all crime. Murder, murder for hire, robberies, possession of hand guns, drug related charges. Through my thirteen years I've had the privilege of dealing with multiple gang members and have been taught to recognize gang writing, as well as, how to investigate gangs.

Q: Alright, and ma'am when you appeared in South Carolina in the trial of Tawanda Mack Allen, did you testify regarding your experience and your training as it relates to the detection of gang writings and so forth?

A: Yes I did.

Q: Alright, now , having done that, I'm going to publish certain portions of State's exhibit number eighty-two and ask the witness ...

Mr. Jenkinson: Your Honor, I'm going to object at this point on this basis that there is no authentication as to who wrote this, the origins whatsoever.

The Court: Objection is overruled.

Ms. Barr: Now, kind of show us, first of all, have you reviewed that?

A: Yes I have.

Q: And of course, you testified and this was taken from the second bedroom?

A: Yes.

Q: Alright, based upon your training, your experience in dealing with detecting gangs and gangs activities, does this appear to be gang writing?

A: Yes it does.

Q: Alright tell us why you say that.

A: Immediately because of the word demu. Demu is associated with the Blood gang as far as one of the original members.

Q: Okay.

A: This is a star on all, the star has five points, as indicated L-O-O. What it would normally is B-L-O-O-D, blood. As well as five popping, meaning five stars, the word, you know, blood is five letters. Six dropping, it basically is saying, other members if you're not Blood, then we're out to get you and right here where the word 'crab' it's actually with a c, but if you notice the c is crossed out because one of the opposing gangs of a Blood is a Crypt, so whenever you see a c, you're suppose to cross the c out. Just as this word right here, where it says can't, the word, the 'c' is crossed out, meaning that the person writing this is associates their self with Blood, not Crypts.

Q: Okay. Let me move down a little bit. Tell us about the significance of the lower portion of that exhibit.

A: Well right here it says, 'Rep Blood', meaning, where it says Rep Blood for life. I represent Blood for life, I am with the Blood gang for life, that's who I associate with.

Q: What about here, 'Blood of Blood, flesh of flesh'?

A: 'Blood of Blood, flesh of flesh', red flags. A red flag indicates red colors, you know, red bandanas, wear red, red shirts, you know. Identify yourself by wearing red. 'Blood of Blood' means basically, if you're a Blood, then if you are a Blood, then I identify with you as well, because I am also a Blood.

Q: Okay.

A: And as well as, as, the writing continues every time there's a 'c'. Right here where it says, 'Never falling, never blocking', the 'c's are of course, crossed out. And then if you notice, whenever there's a 'b', there's kind of like a and accent, you know, because 'b', the beginning letter of 'Blood',so their kind of giving it props, so and then in this word, for instance, 'black',the 'c' is crossed out and you may notice that the 'c''s are crossed out with pitchforks. Pitchforks are also another identifying gang, not terminology, but gang symbolism. As well as here, all the 'c's are crossed out with pitchforks.

Ms. Barr: Okay. Judge at this time we offer the witness an

expert in the field of gang detection, activity and writing.

The Court: Says the defense.

Mr. Jenkinson: Based on testimony, yeah.

The Court: So admitted.

Q: Alright, now, Ms. Harding, do gang members have a code of honor, if you will?

A: Yes.

Q: As it relates to snitching, what we call snitching. Tell me, when I say snitching, what does that mean to you?

A: Snitching is when you tell on somebody.

Q: Okay. Alright and what is the, and you are, during the course of your career, of course you are familiar with the gang activities and code of honor as it relates to Bloods? I'm sorry. As it relates to your training in the background, what is the code of honor among gang members as it relates to snitching?

A: It's known, it's a well known fact that if you tell on other Blood members, that there will be a violent recourse.

Q: You mentioned that, you know, one of the ways that Blood members identified themselves, is they have on red.

A: Yes.

Q: Is that correct?

A: Yes.

Q: I'm going to hand you what's been admitted as State's sixty-seven. What color is that person's shirt?

A: Red.

Q: Is it a dark red or light red?

A: I would say bright red.

Q: Alright, you've also talked about a class schedule being found out of bedroom number two?

A: Yes.

Q: I'm going to hand you up what's been marked for identification purposes as State's eighty-three. Is that a copy of that class schedule that was taken out of bedroom number two?

A: Yes it is.

Q: Who's class schedule is that?

A: Issued to Ronald H. Mack.

Q: What's the date on it?

A: May 15th, 2009.

Q: What's the school?

A: It doesn't say the school, but I know because my child attends Anne Arundel County public school.

Q: Okay.

A: This is an example of a Anne Arundel County school ...

Q: Okay.

A: ... class schedule.

Ms. Barr: Judge, we would move State's exhibit eighty-three into evidence at this time.

The Court: Says the defense?

Mr. Jenkinson: We would like to see the original of it. We object at this time.

Ms. Barr: Judge, I don't have the original.

The Court: It's admitted over objection.

(State's Exhibit Number 83 was entered)

Q: Ms. Harding I'm going to let you stay right where you're at. I'm going to publish it, oh I'm sorry. Alright, am I pointing to Ronald H. Mack's name?

A: Yes.

Q: Ma'am?

A: Yes.

Q: And that's the date Friday, May 15th, 2009?

A: Yes.

Q: And this is the school schedule that you talked about?

A: Yes.

Q: Just a few more questions and I believe I'll be done. You told me earlier that you were looking for twelve gauge shotguns, nine millimeter handguns, shotgun shells, projectiles and nine millimeter rounds?

A: Yes.

Q: Now, did you find any handguns, shotguns, any weapons of any kind in bedroom number two?

A: No we did not.
Q: Any ammunition found in bedroom number two?
A: No ma'am.
Q: And bedroom number two was the bedroom that you found the school schedule in, as well as, the notebook?
A: Yes.
Q: Other than the notebooks and the school schedule, was anything else seized out of bedroom number two?
A: No.
Q: Was there, you know, any firearms found in any other location, other than in the master bedroom?
A: No.
Q: Any ammunition found in any other location, other than the master bedroom?
A: No.
Q: Alright, now, we talked about this issue about the cell phone. Detective Luersen testified that there were two cell phones found in the vehicle?
A: Yes.
Q: Can you explain the, what happened to those cell phones, kind of to us?
A: Yes. We have what is called a tow slip. It's not an official. The officers stopped Mr. Mack and Mr. Bowen as they were getting in the car. Before Mr. Mack and Mr. Bowen were detained and removed from the car, the

officer would have looked in and glanced in and quickly jotted down the items that were in the car that were visible.

Mr. Jenkinson: Your Honor, I'm going to object to her characterization unless she was there and saw what the officer did. She's assuming what she is stating, she was not present.

The Court: Ms. Barr.

Ms. Barr: Judge, I'll guide her in the right direction.

Q: Would it have been ...

Mr. Jenkinson: Your Honor, we ask that it be stricken.

The Court: What you're asking, you're rephrasing the question or ...

Ms. Barr: Yes sir.

The Court: Alright. The jury will disregard the last answer.

Q: Would it have been standard for officers, are they trained to note particular items in the vehicle?

A: Yes.

Q: Now when Kelvin Bowen was eventually arrested by the Anne Arundel County Police Department, did he have a cell phone in his possession?

A: Yes he did.

Q: What kind of cell phone was it?

A: I believe it was a T-Mobile.

Q: Now, Detective Luersen testified that there was a Samsung T-Mobile taken and a Motorola phone taken. Or not taken, I shouldn't say taken. He noted those two type cell phones.

A: The officer completes the tow slip noticed.

Q: Alright I understand. And Mr. Bowen had at least one cell phone in his possession when he was arrested by the police?

A: Yes.

Q: Alright let me hand you what's been marked as State's number seventy-eight.

Mr. Jenkinson: Your Honor on number seventy-eight, there's been no basis or foundation as to relevance and to this I'm going to object.

Ms. Barr: Judge, I had an agreement with counsel last week that all photographs from Maryland he'd stipulate to their admissibility and put that in writing. That was one of the Maryland photographs. I didn't think we'd have this as an issue.

Mr. Jenkinson: I did.

The Court: Alright, it's in without objection.

Q: Thank you. I'm handing you what's been ...

The Court: If that's the case then why are you admitting them through dribs and drabs as we're sitting here as opposed to just pressing on?

Ms. Barr: Well, Mr. Jenkinson said at one point, that he may or may not object to certain ones and that's why we're kind of dealing with the kind of scenario Judge.

Q: I'm going to hand you State's number seventy-eight. Tell me what that is.

A: This is a photograph of the GPS.

Q: And where did that GPS come from?

A: The Kia Sportage.

Q: Alright and what was the significance of photographing the GPS?

A: The ...

Mr. Jenkinson: I'm going to object unless she can authenticate it. Her testimony --- the photograph speaks for itself, but if she personally took the picture, we have no objection to the photograph, but I'm not, there's been no basis laid for her testimony.

The Court: Alright, Ms. Barr?

Ms. Barr: Judge my question was what was the relevance of the photograph?

The Court: The photograph is in evidence?

Ms. Barr: Yes, what was the relevance of taking the photograph?

The Court: Why did she take the photograph?

Ms. Barr: Why, yes, what was the relevance in taking it.

The Court: She can answer that question.

A: We took a picture of the GPS screen because it shows Lake City, South Carolina address.

Q: Okay, alright. And this was the GPS inside the vehicle?

A: Yes.

Ms. Barr: Beg the Court's indulgence. That's all the questions I have for Ms. Harding. Please answer anything for Mr. Jenkinson.

CROSS EXAMINATION OF DETECTIVE HARDING BY MR. JENKINSON

Q: Detective Harding a few questions about the photographs. Bedroom number one, master bedroom, you said there was men's clothing stacked in the corner, in a laundry basket. Did you lay any of them out and take a picture of them so we could identify them as such?

A: No we did not lay them out.

Q: You took some pictures of some Dove Deodorant and it's your position that Dove deodorant is men's deodorant?

A: No.

Q: That's female typically, is it not?

A: Typically.

Q: You had a picture of a baseball hat. Your photograph doesn't show what kind of baseball hat it is, does it?

A: No it doesn't.

Q: Have you ever seen a woman wear a baseball hat?

A: Yes.

Q: It's frequently done is it not?

A: Yes.

Q: Now you made a big to do about a pair of Budweiser boxer shorts. Women wear boxer shorts around the house a lot don't they?

A: I suppose.

Q: Well, we have no idea what size they are. Whether they are woman's size or a man's size, do we?

A: No.

Q: They just as well could have been women's clothes as men's clothes?

A: It's highly unlikely.

Q: Women do wear boxers and even sleep in them don't they?

A: I suppose.

Q: And women wear t-shirts at night and sleep in them don't they?

A: Yes.

Q: Now these nine millimeters shells that were found. Were you aware in this investigation that Ronald Mack had a nine millimeter weapon and fired nine millimeter shells into the head of K.D. ?

A: No.

Q: Well if he did, in fact, if that's a part of this case, Ronald Mack was living in that apartment with his mother wasn't he?

A: Yes.

Q: And that would tie him to the nine millimeter pistol that he used to kill K.D. _, wouldn't it? She can't help you answer.

Ms. Barr: Judge, objection. Move to strike counsel's comment.

The Court: The jury will disregard the comments.

Q: Ronald Mack was living there with his mother wasn't he?

A: Yes.

Q: Now, this ipod that you found in a drawer, is hooked to an iphone, is it not?

A: We did not find an ipod. We found an ipod case.

Q: Okay but that's used in connection with an iphone?

A: No.

Q: It's not?

A: An I ...

Q: ----It's used with an iphone, right?

A: No, not necessarily. That particular ipod case could be used for nanos ...

Q: It can be used with an iphone though, can't it?

A: I suppose so.

Q: And did you know that Ronald Mack had an iphone?

A: No.

Q: And if he did that would certainly explain the presence of it, wouldn't it?

A: No.

Q: This spiral notebook that you testified about, that's exhibit number eighty-two?

A: Yes sir.

Q: Nowhere in it is any reference to Kelvin Bowen is there?

A: No sir.

Q: There's no reference to Callie is there?

A: No sir.

Q: Now, you talked about Bloods and I understand it because this photograph shows Kelvin Bowen wearing a red shirt must mean he's a Blood right? Is that what you want us to think?

A: No sir.

Q: That's not what you want us to think at all is it?

A: No, just because you're wearing red does not automatically make you a Blood, no.

Q: Are you prepared to testify as a gang expert in any way, shape or form that Kelvin Bowen is a member of a Blood gang?

A: I don't know if he is.

Q: You don't know that he is do you?

A: I don't know that he's not.

Q: You have no evidence to say that he is do you?

A: I don't know him, sir.

Q: Do you have any evidence to say he is?

A: No.

Q: Now there were two cell phones found. One was the Samsung, in the car when it was towed to the police headquarters. You know that don't you?

A: I know that there were two cell phones.

Q: I'm asking you about the Samsung. I'll ask you about the second one; I don't want to confuse you. There was only one in the car?

A: Yes.

Q: That's right. And that was a Samsung?

A: No.

Q: Well, you say no. Why do you say no?

A: The only cell phone that was in the car was the grey Motorola.

Q: And that would show up on the inventory, correct?

A: No.

Q: Okay. I'm going to show you what was marked this morning with Detective Luersen to refresh your memory on the towed vehicle inventory report and ask you if it only shows only one cell phone.

A: As I explained, that's not the official report. That's a towing slip only.

Q: Okay. Well let's talk about how official it is. First it was on Anne Arundel County towed vehicle inventory form. That's one of your police department forms?

A: That is a form.

Q: And it lists everything about this case at the top., which that's important to do, fill in the blank. Right?

A: Yes.

Q: And at the bottom it says first officer, the officer signs it and then it must be approved by his supervisor you also sign it?

A: Yes.

Q: That's an official document for the record is it not?

A: It's an official document for our records. It is not however a report.

Q: It only shows one T-Mobile Samsung phone on that inventory doesn't it?

A: It shows, yes.

Q: And that was towed in the vehicle to the police station where it was impounded and the pictures were taken, correct?

A: Correct.

Q: Read what your narrative report says please ma'am.

A: That's not my narrative.

Q: Well, read what the narrative report says on Exhibit Number 3.

Ms. Barr: We object to hearsay, Judge. If that's not her report, and somebody else's statement, it's hearsay.

And I'm not sure it's in evidence.

Mr. Jenkinson: It's been testified to by a previous police officer.

The Court: You want her to read from a document that's not into evidence? Are you offering the document?

Mr. Jenkinson: Not at this time, no sir.

The Court: Let me see what you have.

Q: Let me ask this question; Do you have this document in your file, exhibit number three for identification?

A: I do have a copy of this.

Q: And that's a part of the department file?

A: Well it's part of an investigation file, yes.

Q: Right and from your investigative file, what does your narrative state about the black cell phone found that was located in the car?

Ms. Barr: Objection to hearsay Your Honor.

The Court: I'm going to overrule the objection.

Q: This is under vehicle inspection. Says list general contents of vehicle, valuables removed, significant damage, etc. what is reported there by your office?

A: You want me to read the narrative or?

Q: Yes ma'am. I want you to read that part, right there. Those three lines.

Ms. Barr: And Your Honor, we would ...

Mr. Jenkinson: I'm sorry, yeah, yeah.

Ms. Barr: At this time counsel is not asking questions.

The Court: You asked a pervious question and now you're moving to another question?

Mr. Jenkinson: Well, I'm just trying to get her to read that section.

The Court: I overruled the last objection and now you all are talking about something else. What's the question at this moment?

Mr. Jenkinson: The question at this moment was she has a report in her hand, I'm asking her to read the narrative as to what was the vehicle inventory.

The Court: Alright, you can read it silently.

A: Okay.

The Court: Now what's the question? What's the question that you have?

Mr. Jenkinson: Alright, then it doesn't state there's a T-Mobile, Samsung cell phone in that inventory?

A: Yes.

Q: It also says a black, leather wallet? Is that what it says?

A: Yes.

Q: A GPS unit

A: Yes.

Q: And a grey Motorola cell phone?

A: Yes.

Q: Okay and does it further state below that under narrative, I followed the vehicle, I followed the vehicle over to headquarters where the vehicle was secured in the FCU bay at twelve, fifty hours?

A: Yes.

Q: And that's where the photographs of the SUV were taken that are in evidence?

A: Yes.

Q: You stated in one of the photographs you saw some Creatine which is a body builder type protein supplement for body builders? It's a container in bedroom number one, do you recall that?

A: Yes I do.

Q: And Ronald Mack was eighteen years old. He could very easily be taking those kind of substances the Creatine couldn't he?

Ms. Barr: Judge, we object, Your Honor, that the question calls for facts not into evidence. There's no evidence of Ronald Mack's age.

The Court: Overrule the objection.

A: Could you repeat the question?

Q: The question is, Ronald Mack is living in that house. He's seventeen, eighteen years old. He could also be taking that Creatine substance that you saw on the dresser as well in bedroom number one?

A: It's possible.

Q: Court's indulgence please. Gangs are out there, there are more gangs other than the Bloods. There's also the Crypts. How many other type gangs are there?

A: When you say gangs are you talking about --- gangs are you talking about specifically ...

Q: What other type, I'll phrase it this way, I'm not a gang expert. Besides the Bloods, are there other gangs?

A: Yes.

Q: What are their names?

A: S13 ...

Q: How about the Crypts?

A: Yes.

Q: Now, gangs don't go together. They don't have anything to do with each other, do they?

A: That's incorrect. It's actually what they do. It's called 50/50 love and often times, because unfortunately you can't have a large criminal enterprise without dealing with the wrong, you know, other members. So often we'll find that some Crypts and some Bloods do have to do business together, because otherwise they can't sell their drugs fast enough or buy their guns fast enough. And also, as you may or may not be aware of, in Maryland, we have our own gang

called DMF, Dead Man, Incorporated. They are hired hit men for the BGF, which is the Black Gorilla Family and you may not be aware of the BGF is for black members of the jail and the DMI's are white members. The DMI works specifically for the BGF. They do all of their killings. Now that's called fifty fifty love because the DMI could not possibly have enough killings without the BGF.

Q: So the short answer is yeah they do get along sometimes?

A: Yes.

Mr. Jenkinson: Thank you ma'am. That's all I have.

The Court: Anything further?

Ms. Barr: No Your Honor.

The Court: Thank you. Next witness.

Ms. Barr: We call Suzanne Cromer.

Bailiff: Place your left hand on the Bible and raise your right hand. Do you solemnly swear or affirm to the truth, the whole truth and nothing but the truth, so help you God?

Ms. Cromer: I do.

Bailiff: Go ahead and sit down.

Ms. Barr: Your Honor, may counsel and I approach?

The Court: Yes.

(Counsel approaches bench)

DIRECT EXAMINATION OF SUZANNE CROMER BY MS BARR

Q: Ms. Cromer please state your name for the record.

A: My name is Suzanne Cromer. C-R-O-M-E-R.

Q: And tell the ladies and gentlemen of the jury where you work.

A: I'm employed by the South Carolina Law Enforcement Division, commonly known as SLED as a firearm and tool mark examiner.

Q: Okay and how long have you been there?

A: I've been with SLED since December of 1998.

Q: And give us a little information about your educational background and your training with SLED.

A: I received a Bachelor's degree from Clemson University. I did graduate work in criminal justice at the University of South Carolina. I graduated from the South Carolina Criminal Justice Academy, I have completed SLED's in-house training program for firearm and tool mark exam. That is a three to five year intense study program. It's more of an apprenticeship, if you will, where I studied under five qualified firearm examiners. We take written tests, oral tests, practical exercises. At the completion of all those tests, we take final exam that is graded upon by your training officer and the Department before we start our casework. I have taken classes through the association

of firearm and tool mark examiners. I've attended some of their annual conferences. Firearm and tool mark examiners is an international association for our profession. I take those classes through the South Carolina chapter of the international association identification. I've also taken classes through the Bureau of Alcohol, Tobacco and Firearms, commonly referred to as the ATF on serial number restoration. I'm a member of the Firearm and Tool Mark Examiners. I'm a member of the South Carolina chapter for international Association of Identification.

Q: Alright now, I'm certain with all of the qualifications you've testified as an expert witness in the courts of this state before?

A: Yes ma'am, I have.

Q: And you've been qualified as an expert witness, as well as this particular Court, but other courts?

A: Yes ma'am I have.

Q: Alright and what was the field of expertise on which you were declared an expert in?

A: I've been declared an expert witness in firearms and tool marking identification.

Ms. Barr: Alright, Your Honor, we would, due to the witnesses expert in the field of firearm and tool mark identification.

Mr. Jenkinson: If she isn't , she sure sounds like it.

The Court: Alright, so admitted.

Q: Now, you were subpoenaed to testify in this case?

A: Yes, ma'am.

Q: Your agency assisted the Williamsburg County Sheriff's Department in investigating a murder involving K.D. K.D. . Is that correct?

A: That is correct.

Q: And as a result of you participation you received certain evidence in this case?

A: That is correct.

Q: Did you receive evidence from the crime scene?

A: Yes ma'am I did.

Q: Alright and did you receive evidence from autopsy?

A: Yes ma'am I did.

Q: Alright and did you receive firearm, shotgun shells and nine millimeter rounds in this case?

A: Yes ma'am I did.

Q: Now I'm going to hand you a bunch of exhibit, so I want you to kind of go through them one by one. Let's go in chronological order. Let's start with State's forty-nine. Does that contain the SLED seal?

A: Yes ma'am and my initials right there.

Q: Let me do this. Let me take the last two --- Tell me what was contained in exhibit number forty-nine.

A: State's forty-nine contains my items nine through sixteen. Nine and ten were two fired nine millimeter cartridge cases. CCI – my items eleven and twelve, which are two fired twelve gauge Remington shotgun shells, my item thirteen, which is a fired nine millimeter bullet; my item fourteen which is bird shot pellets, most consistent with number six bird shot and items fifteen and sixteen, which are consistent with being Remington power piston marks.

Q: Okay, now what are power piston marks?

A: Power Piston is a brand name, copyrighted by Remington for a specific type of wad and a wad like this, is what is inside shot shells, like this and what it does is this little cut part is over the gun powder and then these little pellets hold your shot. Your bird shot and your buck shot.

Q: Alright now where did those items come from?

A: I received them from the Williamsburg County Sheriff's office and they were labeled different marker numbers from the scene.

Q: From the crime scene?

A: Yes ma'am.

Q: And that would be ?

A: I believe so.

Q: Okay, alright. Let me have you put those back in there

for me please.

A: And they're all still in my sealed containers with my i.d. number.

Q: What's the importance of, I'm sorry go ahead. What is the importance of the items being sealed? Having your seal numbers on them?

A: When I finish up a case, I seal it, heat seal it and then put my initials and the date that I sealed it so I can tell if someone has opened it before I looked at it again.

Q: Okay, now. Tell us about fifty.

A: Again this also has my lab number and my initials on it and it's in my sealed case. Again these containers are still sealed with my initials. These, this container, State's exhibit fifty, contains my items seventeen through twenty-two. Which were received from autopsy.

Q: Okay, what are they?

A: Items seventeen and eighteen are two fired, most consistent with nine millimeter caliber bullets.

Q: And you say they were taken from autopsy. The autopsy of who?

A: One K.D.

Q: Alright.

A: Number nineteen is another fired nine millimeter caliber CCI blazer brass fired cartridge case.

Q: Was that also taken from the autopsy of K.D. ?

A: It was brought in with the autopsy evidence.

Q: Okay.

A: And it has where it was located on the packaging.

Q: Okay, where does it have on the packaging where it's located?

A: On the packaging it says, found near and I cannot read the writing, in front of chair near t.v. set.

Q: Okay.

A: Number twenty, twenty-one and twenty-two are all Bird shot pellets, most consistent with number six.

Q: And those are also from autopsy?

A: Yes ma'am.

Q: Alright. You can put those back in there for me and I'm going to give you number fifty-one.

A: Again this is a container with my initials and my sealed tape.

Q: What's contained within State's exhibit number fifty-one?

A: These were my items thirty-two and thirty-three.

Q: Okay and what are they?

A: Thirty-two is ten unfired, nine millimeter, Ruger caliber cartridges or ammunition. There were two different brands. Four of them were CCI Blazer Brass and six of them were servian(sp) ammunition PRZVI and

I can't pronounce that.

Q: Okay.

A: And item thirty-three is four unfired, twelve gauge, two and three quarter inch shotgun shells containing number six bird shot.

Q: Alright is there any indication where those items were recovered from?

A: When I received the, first they were in this packaging, but they were also in packaging listed form Maryland.

Q: Okay, alright. Alright, I'm also going to hand you what's been marked for identification purposes as State's number eighty-four. Kind of tell us what that is.

A: State's exhibit eighty-four is four unfired, twelve gauge shot shells that I removed from the magazine from a shotgun that I received in this case.

Q: Okay. Alright, and lastly I'm going to, well, let me move to admit State's exhibit number eighty-four.

Mr. Jenkinson: No objection to eighty-four.

The Court: Alright, eighty-four is in. Let's take a few minutes break. You can go to the jury room. Please do not discuss the case.

(Jury break was taken 4:00)

The Court: Alright Mr. Jenkinson, earlier on you raised a question about Mr. Cooper as a juror. I think the State is

now used all of it's local witnesses. Is that right Ms. Barr? All of the lay witnesses from around here?

Ms. Barr: Yes sir.

The Court: Do you want me to question them about whether he knows any of those folks or related to any of them?

Mr. Jenkinson: I think, I think that would be appropriate Your Honor.

The Court: Alright, do you want to bring him in here in front of? Or do you want to speak with him in chambers or what would you like to do?

Mr. Jenkinson: Well, as much as the court reporter is here, I don't mind doing it in here.

(Outside Presence of Jury)

The Court: And do you want the Defendant in here or do you waive his right to come in here? So I can bring Mr. Cooper in and ask him just a couple of questions about who he knows.

(Mr. Cooper enters courtroom)

The Court: Mr. Cooper, I think on the beginning of the trial we asked, or I asked the jurors whether they knew any of the people, Mr. Mack, Mr. Mack's parents, Ms. Dozier, Mr. Bradshaw and any other witnesses who are from around here. I don't know whether you said you did or didn't ...

Mr. Cooper: I said, I said Ronald McGee was my second

cousin.

The Court: Ronald McGee is your second cousin and okay Mr. McGee, the State said that he might be a witness and I believe I asked you whether that will effect your ability to be fair and impartial?

Mr. Cooper: No it won't sir.

The Court: And since the trial has gone on and you have been able to now see the people testifying who are from around here, do you know any, any, any more of them? Any additional ones?

Mr. Cooper: No I didn't.

Mr. Jenkinson: Not best friends, I mean just, do you know them?

Mr. Cooper: No, I don't know them.

The Court: And any other questions you want me to ask him? Have you observed anything during the course of the trial that would effect your ability to be fair and impartial as a juror?

Mr. Cooper: Huh-uh.

The Court: Very good. Anything further from the State Ms. Barr?

Ms. Barr: Nothing from the State Your Honor.

The Court: Alright, thank you sir. Now do not discuss with the jurors what we've discussed here.

Mr. Cooper: Alright.

The Court: Thank you. Alright says the State?

Ms. Barr: Judge, I think he's still qualified.

The Court: Defense?

Mr. Jenkinson: I still have mixed concerns about his kin. If he's kin to the daddy, he's kin to the son.

The Court: Which ones the son?

Ms. Barr: Ronald Mack. I don't think he knows that Judge.

The Court: You say he's kin to McGee, testified to Ronald McGee.

Ms. Barr: Nobody has said that Ronald Mack is Ronald McGee's son. I don't think that was put into evidence. But apparently he didn't know him.

The Court: He didn't know any of them. We have two alternate. Alright, Bring him in. Were you unclear about something I may have asked you about?

A: I just want to make sure. Ronald McGee is my second cousin.

The Court: Ronald McGee?

A: Yeah, I didn't know.

The Court: Right.

A: I think I met him once. I didn't know who he was until I seen him in there. So I really don't know him.

The Court: Alright.

A: And his mother, I didn't know who his mother was, so I really don't. And I just wanted to make sure --- I

just wanted to be clear on that.

The Court: Alright.

Mr. Jenkinson: Would that keep you from being fair and impartial?

A: No, sir.

The Court: We clear about everything now?

A: Yes sir.

The Court: Okay, very good then. Thank you sir.

(Mr. Cooper exits chambers)

The Court: Mr. Jenkinson, to confirm the chambers discussion concerning the juror, Mr. Cooper, I understand that you're fine with him serving?

Mr. Jenkinson: Yes sir.

The Court: And you are as well Ms. Barr?

Ms. Barr: Yes sir, Judge.

The Court: Alright, please bring the jury. Mr. Cooper, if you'll take that seat, I'm appointing you to sit as the foreperson of the jury. As a foreperson you'll serve as a spokesperson for the jury, preside over the jury deliberations and complete the verdict form representing the unanimous verdict of the jury. Okay?

Ms. Barr: Please the Court?

The Court: Yes.

CONTINUATION OF TESTIMONY:

Q: Now, Ms. Cromer what I last asked you, we were talking

about exhibit number eighty-four which were four shot gun shells that you took out of the magazine of another exhibit in the case?

A: Yes ma'am.

Q: Alright, now, I'm going to had you what's been admitted as State's exhibit number seventy-nine and ask you if you recognize that picture. Do you need to stand up?

A: First off, this box has evidence tape with my date and my initials on it.

Q: Do you remember opening that box in a previous trial or being here and testifying in a previous trial with Tawanda Allen?

A: Yes ma'am.

Q: Alright, please proceed.

A: Inside I'm going to stand up if you don't mind.

Q: Okay.

A: I'm checking by sight and by feel to make sure it's unloaded.

Q: Okay.

A: This is what I labeled as my item number thirty-one. I scribed on it my lab number, my i.d. number and my initials on the barrel and the loading port

Q: And what is it?

A: This is a universal model, revelation 2071, twelve gauge semi automatic shotgun.

Q: Okay. Alright and do your records reflect where that item came from or originated?

A: It originated from Maryland.

Q: Okay, alright, now what is the serial number on that?

A: A serial number has been obliterated on this gun.

Q: That means, what does that mean obliterated?

A: That means that when you look at it, you can see that someone intentionally gauged or scratched out the numbers.

Q: Now, did you conduct an analysis in this case as it relates to that firearm and what's been admitted as State's exhibit number forty-nine, fifty and I believe fifty-one?

A: Yes, when I receive a firearm in a case, what I do is, I take two pages of notes then what I do is I look at what fired evidence I have received in this case. This case it was a twelve gauge Remington shot shells with the number six bird shot and what I do is I shoot. If I don't have that exact ammunition, I shoot similar ammunition in it, so I can see how well the spiral and marks the shot shells. So after I take it to the range and shoot it, I get the shot shells that I know have been fired, I take them back to my computer. Comparison microscope, we have eye pieces that look sort of like binoculars and it allows you to look at

two things side by side and compares them. That's what I do and then once I look at ones I have knowingly shot against each other, then I move to my evidence and once I did that, then I render my conclusion. I have another firearm's examiner come back to agree withe my conclusion and then I issue a report.

Q: Okay, alright. Tell us about your analysis as it relates to those items in evidence.

A: I compared this, the test fires from this shotgun to the two fired shot shells that I received from the scene.

Q: From the scene of the murder?

A: Yes ma'am.

Q: Okay.

A: And I concluded in my experience and training that those two shot shells were fired by this firearm.

Q: Alright, let me be clear. Take out of exhibit number forty-nine, if you will, the particular item that you tested and concluded was fired by that particular gun.

A: My item eleven and twelve in my expert opinion were fired by this firearm.

Q: Okay, thank you ma'am. Now, as it relates to the nine millimeter projectile, were you ever given, or do you know if any nine millimeter hand gun was recovered by law enforcement in connection with this crime?

A: No I did not receive a nine millimeter.

Q: The shot shells that you reviewed and received in there was consistent with what would be associated in using that shotgun?

A: They were the correct caliber, correct length for use in this firearm and they were consistent with the unfired rounds that I received.

Q: Okay, now, what about your item number thirty-two? Did you have any opinion as to those ten unfired caliber cartridge and whether or not they were the correct caliber for use in a nine millimeter hand gun?

A: Yes, the ten, unfired, nine millimeter caliber cartridges that I received are correct for the use in a nine millimeter firearm.

Q: Okay and again when you talk about the ten cartridges those are the ten unfired ones that came from evidence?

A: Yes, ma'am.

Q: And was the shotgun, was it in working order?

A: Yes ma'am. It did have, the stock is cracked and the (coughing) is cracked.

Q: What about bird shot pellets? Were you able to perform an analysis on them?

A: No ma'am. I can tell you what they're most consistent with but what number of bird shot they are most consistent with.

Q: Okay.

A: But since ya'll seen that wading, that plastic wading ... since the pellets are inside this wadding, when it's going down the barrel of the gun, the actual pellets never come in contact with the inside of the barrel, so they would not have any markings that we would need for identification purposes.

Q: Alright. Now, can you show me the exhibit that relate to the fired shotguns that were taken from the crime scene?

A: Those are all consistent with parts of a ammunition component of a shotgun.

Q: And I'll have to concede with Mr. Jenkinson, I'm not an expert as it relates to firearms. Tell me what exactly you call these so I can use the correct terminology.

A: I call this a fired shot shell.

Q: Okay, step down for me. This would have been the fired shot shell located at the scene?

A: Yes ma'am.

Q: Alright and what's the brand name and size on those shot shells?

A: These are Remington and they are twelve gauges and they are two and three quarter length.

Q: And those were the ones taken from the crime scene?

A: Yes ma'am.

Q: Alright, now I'm going to hand you what's been entered as State's eighty-four. Tell the jury, remind them again what those are. Hold it up so all of them can see.

A: These are Remington, unfired shot shells, twelve gauge, two and three quarter loaded with one ounce per shot.

Q: In terms of size, were they the same as the ones that were recovered from the scene?

A: Yes ma'am.

Q: Now of course you don't know any of the parties involved, i.e. the Defendant or victim?

A: No ma'am I do not.

Q: And the opinions that you've rendered in connection with the testimony are to a reasonable degree of scientific certainty?

A: Yes ma'am.

Q: Okay. Please answer any questions that Mr. Jenkinson may have. Thank you

Re-CROSS EXAMINATION OF MS. CROMER BY MR JENKINSON

Q: Ms. Cromer, do you have a shot gun?

A: Yes I do.

Q: What kind?

A: It's an old double barrel shotgun.

Q: Have you ever owned a Remington?

A: No sir, I haven't. I was issued a Remington 870.

Q: Okay SLED they issued a Remington shotgun? That's the preferred one for law enforcement?

A: Correct.

Q: Remington is probably one of the largest manufacture's of shotguns in the world?

A: It's one of the most.

Q: And likewise, they manufacture lots of shotgun shells? Twelve gauge type?

A: That's correct.

Q: Matter of fact, about a block and a half from here to Ricky Burrows hardware store and True Value we could probably buy Remington twelve gauge shotgun shells, just like the ones you have there and found, right in the store now?

A: You can probably buy them at any sporting goods store or Walmart.

Q: Matter of fact they're in the store across from us now?

A: Yes sir.

Q: So there's nothing special about those shotgun shells?

A: Just that they were, or happened to be the same or consistent in ---

Q: Well, they're really the same because they're all made by Remington right?

A: That's correct.

Q: Okay, that makes them consistent, right?

A: That is correct.

Q: And you can probably find nine millimeter rounds, slugs, just like you have there in hundreds, if not thousands of homes up and down the Eastern seaboard?

A: Yes. The CCI in Blazer Brass is pretty much a new thing. It hasn't been around very much and the **Servian** ammunition we don't, we don't see a good bit of it at work.

Q: But it's still, that's nothing rare and unusual at all?

A: No sir.

Q: And you weren't really able to, this shotgun you can say just, it was consistent with twelve gauge Remington bird shot?

A: No, I can say that those two fired shot shells came from this firearm.

Q: Okay, okay and you found, now when this shotgun was examined for fingerprints, was any of Kelvin Bowen's fingerprints found on it?

A: I don't examine for fingerprints. I just do the firearms.

Q: Okay, well fingerprints on a murder weapon are very important, wouldn't you think, from law enforcement standpoint?

A: Like I said, I am not a fire, a fingerprint examiner ...

Q: I'm not asking you

A: ...I'm a firearm examiner.

Q: I'm just asking you just as a , as a, you certainly a certified police officer aren't you?

A: Yes sir.

Q: And you go to the police academy?

A: I did.

Q: And ya'll learn about fingerprints?

A: Yes we do.

Q: Probably spent a lot of time about it?

A: Yes we do.

Q: And you don't have to be a certified prints examiner to know that fingerprints in a criminal investigation is very important do you?

A: They can be and I also know that they're not found very often on firearms.

Q: Okay. But it can be found?

A: They can be found.

Q: If you look for them?

A: You have to look.

Q: But if you don't look, you can't find them?

A: That's right.

Q: Shotgun shells and bullets that are found can also be checked for fingerprints?

A: Shotgun shells yes. Are you talking about fired bullet

or a unfired piece of ammunition?

Q: Well, one of those nine millimeter rounds that you have right there, non fired.

A: Non fired? Yes they can be checked.

Q: They can be checked for fingerprints?

A: Yes sir they ..

Q: ... and that way we know who's been handling them?

A: That's correct.

Q: And that would tell us a lot if we were in a criminal investigation in a murder case, wouldn't it?

A: Probably so.

Q: And it would be very important if the deceased was shot with a nine millimeter round?

A: Yes sir.

Q: And if they weren't checked for fingerprints, we'll never know will we?

A: I don't know.

Q: Good law enforcement investigation is very, very critical in a case, isn't it?

A: Yes sir.

Q: And if you leave stuff out, and you don't do a proper investigation, you can have wrong results in a case, can't you?

A: I don't know. I don't deal with the investigative side. I just get the firearms into evidence, do what

I have to do with it and send it back.

Q: I'm not talking about that. I'm talking about you being a certified police officer who's gone to the academy. You learned from investigation, if it's not done properly, you can have a awful result?

A: Yes sir.

Q: And wrong, you can have the wrong person charged with a crime?

A: I'm sure you could.

Q: And innocent people could get convicted wrongfully, couldn't they?

A: I'm sure that can happen.

Mr. Jenkinson: Thank you.

RE-DIRECT OF MS. CROMER BY MS BARR

Q: Just a follow up, Judge, if I may. Ms. Cromer, you testified that fingerprints are not found very often on firearms. Tell us why you made that statement.

A: I made that statement just because in the firearms department, they want anything. If they want it swabbed for DNA or if they want fingerprints, it has to go there first because I handle it, I shoot it. If they check it down for prints, mine would be all over it and just knowing from looking at reports that have firearms that have gone to the latent print section before they have come to me, it just doesn't happen

very often.

Q: That's all the questions I have. Thank you ma'am.

The Court: Anything further?

RE-CROSS OF MS. CROMER BY MR JENKINSON

Q: So your fingerprints would be found on a shotgun, if they fired a shotgun before you?

A: Probably because, oops sorry, excuse me. After I've fired it, when you're firing it, you're causing an extreme heat which can ruin the moisture that's needed for firing, for fingerprints. I handled it a lot since I fired it, so my fingerprints would be all over it.

Q: Thank you ma'am.

The Court: Anything further?

Ms. Barr: Judge, let me get those exhibit if I can. We call Lt. Jeffrey Scott.

Bailiff: Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth, so help you God?

Lt. Scott: I do.

Bailiff: Okay.

DIRECT EXAMINATION OF LT. SCOTT BY MS BARR

Q: Sir state your name for me.

A: Lt. Jeffrey Scott from the Williamsburg county Sheriff's Department.

Q: Okay you're a certified police officer?

A: Yes I am.

Q: How long have you been employed as a police officer?

A: Since 1996, so right on fifteen years.

Q: Alright, I've got just a few short questions that I need to ask you. Did you go out to the scene of back on April the 5, 2009?

A: Yes I did.

Q: Of course, your agency was assisted by SLED?

A: Yes it was.

Q: Alright, now, did you go into the residence and actually see the deceased K.D. ?

A: Yes I did.

Q: Did you go to various rooms throughout the house?

A: Yes I did.

Q: Now, I'm going to hand you what's been marked as State's number forty-eight.

Mr. Jenkinson: No objection to forty-eight.

Q: And Lt. Scott, just one time, come down off the witness stand for me. I'm going to have you look at this first.

A: Okay.

Q: Are you familiar with that diagram?

A: Yes I am.

Q: Alright it was drafted by Scott Hardee of SLED?

A: Yes it was.

Q: Alright, let me publish it please. Alright. Sir this diagram, we always say it's not to scale. Is that fair to say?

A: That's true.

Q: Alright is this the rear porch of the residence of ?

A: Yes.

Q: Alright and that would be depicted in some of the photographs that we previously had admitted?

A: Can I see the photographs?

Q: Yes sir. You hold this.

A: Okay.

Q: I'm going to publish State's exhibit number ten. I'm just going to put it over there just for right now. That's the rear of the residence?

A: Yes.

Q: A little deck?

A: Yes.

Q: Okay.

The Court: You're blocking the jurors.

Q: I'm sorry, let me put that back up so they can see. I'm going to publish State's number ten. Is that the rear of the residence?

A: Yes.

Q: Okay and that's the deck area?

A: That's the deck area, yes ma'am.

Q: Now I'm going to go back to the State's exhibit number forty-eight, the diagram. Is that the number six, is that the little deck area that we're talking about?

A: Yes, in the rear.

Q: Alright, so here where the numbers one and two are marked and three and four, in that area, kind of tell me, first of all, what's the significance of the number six there?

A: The number six, you might have heard earlier, from earlier testimony, this is the location, underneath the porch area, where a projectile was located and it was marked for marker number six.

Q: Okay, now tell us about the significance of number one, two, three and four.

A: One and two are significant because this is where shell casings were located for, such as nine millimeter shell casings. Three and four are where shotgun shells were located and they're indicated by the number, placard number three, four, one, two.

Q: Okay and just to be kind of clear, this is, would be the little stove area that we saw in some of the earlier pictures?

A: Yes.

Q: Okay. Alright so in that particular photograph then,

would that be the chair where the victim was sleeping?

A: Yes, this would be the chair and this would be a little t.v. area that you would probably see in some of those earlier photographs that were shown.

Q: Okay, alright. Now, you indicated that you went in the house. Tell me what is this particular area here that I'm pointing at?

A: This is the master bedroom, right here with a bathroom adjoining it. And this is kind of like the living room or living room area, t.v. area and this is the master bedroom.

Q: Okay, what about all these other rooms down here?

A: Alright as you come down the hall to the right, as you come out of the living room area, see the kitchen straight across from you. It's kind of like an open airway. A little wall, you can see into the kitchen. You take a right down the hall. These are other smaller bedrooms, like looked like some on the right side, as you went down the hall, that were unoccupied. And this is another bedroom.

Q: I'm going to show you what's been admitted as State's number twenty-three. I'm going to publish that. Does that appear to be the opening to the master bedroom?

A: Yes it is. If you're coming from the doorway into the living area or where they watched t.v. to the left will

be the opening to the master bedroom area.

Q: Okay. Alright, sir, you can take a seat, thank you. Alright, couple of quick questions. Was Annette Bradshaw's Toyota Four Runner at the residence when you all got there?

A: Not that I know of.

Q: You don't remember seeing the green Four Runner?

A: I don't remember.

Q: Alright and you all didn't take any guns out of the house did you?

A: No.

Q: Did you take any drugs out of the house?

A: No.

Ms Barr: Alright, that's all of the questions that I have sir, thank you. Please answer any questions Mr. Jenkinson has.

Mr. Jenkinson: No questions from the defense.

The Court: Thank you.

Ms. Barr: We call Mr. Joseph Cooper.

Bailiff: Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. Cooper: I do.

Bailiff: Okay.

DIRECT EXAMINATION OF JOSEPH COOPER BY MS BARR

Q: Sir state your full name for me.

A: Lt. Investigator Joseph Cooper.

Q: Alright and sir, tell me where you're employed?

A: Say it again?

Q: Tell me where you're employed?

A: I'm employed by the Lake City police department.

Q: Alright, and what do you do there?

A: Now I'm working in the capacity as an investigator. I investigate narcotics and gangs. I'm assigned to several different task forces with the State and also the Federal Government has now decided to the Florence County Sheriff's Office drug unit also with the Florence County Sheriff's Office Drug Task Force.

Q: Okay. Now, sir at some point in April fo 2009, did your agency arrest a Ronald Mack?

A: Yes we did.

Q: Alright and it is the same Ronald Mack that was charged in connection with the murder in our case?

A: Yes it is.

Q: And at that time, did you all talk to him about his gang related activities?

A: Yes we did.

Q: Alright, don't tell me what he said, but did he volunteer information to you about gang related activity?

A: Yes he did.

Q: Alright, at that time, did he have a cell phone in his possession?

A: Yes he did.

Q: What type of cell phone was it?

A: The phone that was taken was a newer model that just came out a iphone or I four or something like that.

Q: Alright did your agency seize that item?

A: Yes we did.

Q: Alright I'm going to hand you what's been marked for identification purposes as State's exhibit number eighty-five. Can you tell me, is that the phone that you took from Mr. Ronald Mack?

A: This is the phone.

Q: Alright and where has that phone been kept since the date that you took it from Mr. Mack?

A: In my custody in the evidence room.

Q: It never left you?

A: No ma'am.

Q: You brought it with you today to court?

A: Yes ma'am I did.

Ms. Barr: Judge we would move State's exhibit number eighty-five into evidence.

Mr. Jenkinson: Several matters, Your Honor, outside of the presence of the jury.

The Court: Alright, ladies and gentlemen, I need you to step out.

(Jury leaves the courtroom 4:49)

Mr. Jenkinson: The name of this officer, the witness, we have never been aware of this phone and we've never seen anything about it in any of the discovery provided to us. We don't even know what it is and we don't know when it was seized. We just know nothing about it. It hasn't been authenticated and as a matter of fact, the other witness is talking or testifying on the day of the murder, Ronald Mack had an iphone. Beyond that we know nothing. We've just never seen it in any discovery whatsoever. We would object to the introduction of this phone or any information about it. Not disclosed.

The Court: Ms. Barr?

Ms. Barr: Your Honor, first of all, I don't know that there's any requirement that this witness' name be given in advance to the defense. He was placed on the witness list. Moreover, Judge on October the 12th in 2009, I served the defense with my Rule 5 and Brady disclosures and item number fifty-nine says color photograph and physical evidence available for your inspection. I've never gotten any request for any inspection of any physical evidence, Judge, we would

like to have this marked as a Court's exhibit. Certainly if they wanted to know all the particular items that are being introduced, they had the opportunity to do so.

Mr. Jenkinson: Judge, we have gotten hundreds of photographs and they were provided to us in discovery and if there was some photographs that were not provided to us, it certainly doesn't indicate, nobody put us on notice of what that is when they're giving us hundreds of photographs. Not only the ones that are in evidence today, the ones that have not been introduced, autopsy photographs, we're photographed to death and this was not disclosed to us. That puts us on or nothing, it says color photographs and physical evidence available for your inspection. We asked to see and we were shown the shotgun and we were shown all of these items but this was never even disclosed, other than that very scenic item number fifty-nine and it just says color photographs and physical evidence available for your inspection and we did. We actually went to, I'm not sure, we saw the evidence whether it was in the Solicitor's office or the sheriff's office. We've made a diligent examination of each one of those as you can tell by our preparation in this trial. We've had absolutely no way we could have known that

they would have a phone and color photographs, which were not being referred to. They gave us a disk of it and none of this was included in what they gave us.

The Court: Alright Ms. Barr?

Ms. Barr: Judge, there was never any such meeting at the Solicitor's office or any place else for the defendant to view the evidence. The physical evidence is, I believe it to be the shotgun, obviously the projectiles, the shotgun shells, as well as anything that you can touch. We don't submit that photographs are part of physical evidence and certainly Judge, if there was an opportunity to view any physical evidence that we would use and they had that opportunity. I think the first time that the shotgun and the projectiles was seen in connection with this case was through the trial.

The Court: Anything else?

Mr. Jenkinson: We have seen every piece of evidence that has been introduced in this trial and we have examined it and we've even talked to other lawyers who've looked at it. I can't tell you what we haven't done. We've looked at SLED reports about it, but to come up and say this puts us on notice of this particular phone, doesn't say Ronald Mack's phone, it doesn't say anything. It doesn't even say it's a phone. It says

color photographs and physical evidence. You know, we're here about justice and that's what Brady versus Maryland and Rule 5 requires and we're not able to effectively represent our client, we're entitled to this disclosure and this evidence should be excluded. We were not put on notice of it.

The Court: The officer has testified that the item was confiscated from the co defendant Ronald Mack. There's been a great deal of testimony concerning Mr. Ronald Mack's using an iphone. This witness was disclosed as a witness on the State's proposed witness list stated to the jury. He is listed as number 12. I do not find any Rule 5 violation. I do not find any basis to exclude the evidence based on failure of giving the defense an opportunity to view it. There has been no showing by the defense that the State willfully hid this. The State says physical evidence was available for inspection and that shifts, puts it on the defense to arrange to go see what evidence is in the officers possession. I deny the motion to exclude the exhibit. All right. Let's bring the jury in.

Mr. Jenkinson: Can we be heard a little bit further because again we haven't had a chance to discuss this. We don't even know when it was seized.

The Court: Are they still in the jury room?

Bailiff: Yes, sir.

The Court: Hold them a second. Go ahead Mr. Jenkinson.

Mr. Jenkinson: Well, there has been no ground work laid in the introduction. We don't know when it was seized from Ronald Mack. Five years ago, ten years ago. There's no basis of relevance and it sounds like it has extreme prejudice or they wouldn't be pulling it up under this surprise manner unless it has prejudice involved in it and there's been no evidence of any probative value shown to lay the proper ground.

The Court: Ms. Barr.

Mr. Jenkinson: And secondly if the court is going to let it in, I'd like to see what it is.

The Court: Is that the same phone that other witnesses have previously identified?

Ms. Barr: It is.

The Court: I inquired as to whether or not you were going to have it marked for identification purposes. That was yesterday or the day before. Concerning when was it confiscated. You testified a few minutes ago when you arrested Mr. Mack and got the phone from him?

A: Yes, I did, Your Honor. If you need a specific date I can get it for you. This was 4-07-2008.

Mr. Jenkinson: What was the date, I'm sorry.

The Court: April 7, 2009.

Mr. Jenkinson: It's not being marked for identification?

The Court: It's being offered into evidence.

Mr. Jenkinson: I know. Again, can we look at it. We're at least entitled to look at evidence before it comes in to see what the court is ruling on?

The Court: Yes, sir. There it is.

Ms. Barr: Judge, we would ask that the witness be instructed not to smash any buttons, we don't want anything being accidently deleted.

Mr. Jenkinson: We just want to cut it on.

Ms. Barr: Can we ask the witness to do it, Judge?

The Court: All right. Give it to the witness.

Ms. Barr: We've got the witness here and of course the jury is not here. He's going to be asking questions and we ask that it be on the record.

The Court: Alright, Mr. Jenkinson?

PROFFER TESTIMONY OF MR. COOPER BY MR. JENKINSON:

Q: This phone has been in your possession since you arrested Ronald Mack?

A: Yes sir.

Q: And where do you live?

A: My residence is Florence County sir.

Q: And this phone has been in Florence county ever since ...

A: No sir. As I stated earlier I have a evidence room

inside by office at the Lake City Police Department.

Q: Alright it's been in Florence county ever since this case, you made the arrest in this case?

A: Yes sir.

Q: So it wasn't even in Williamsburg county?

A: No sir, the arrest was in Lake City. I don't work for Williamsburg County.

Q: I understand that. Why did you arrest him?

A: Gun violation, simple possession of marijuana.

Q: Where at?

A: Lake City.

Q: On what date?

A: 4-7-2009, approximately 5:30 pm. That's his photo and that's his booking number and the ticket number also.

Q: None of this has been provided in discovery to the defense has it? None of these booking records, none of this arrest reports?

A: I don't know exactly what you have sir that you are referring to. I know this is what was asked of me and this is what we have in our records.

Q: Show me what you plan on testifying about on the phone.

Ms. Barr: Judge?

The Court: Well, Ms. Barr, why don't you tell us what -- - Mr. Jenkinson's objection is based on discover. What are you planning to get out of this witness?

Ms. Barr: Just that there was an iphone in the co-defendant's possession and I'll also ask him about contents with contacts, I'm sorry, within that particular phone.

The Court: And who is the contacts on the phone do you want him to talk about?

Ms. Barr: Several. Several of the people who have testified as witnesses and the identity of some other people that have testified. That would corroborate Dontrey Barr's testimony and Antonio McClary.

The Court: And how about the defendant's contact information?

Ms. Barr: No sir.

Mr. Jenkinson: So there's no contact information with the defendant? Is that what I'm to understand?

The Court: Is the defendant's contact information in it?

Ms. Barr: Not that I know of Judge.

Mr. Jenkinson: Can I look at the pictures?

The Court: Can you look at the pictures?

Mr. Jenkinson: Yes sir, on the phone.

(INAUDIBLE)

Court Reporter: Do you want what you're saying on the record, Judge? Because I can't hear them.

The Court: No. Mr. Jenkinson, have you had a chance to inspect what's on the phone?

Mr. Jenkinson: We have and after looking at it Your Honor, we now further take the position that it's not relevant.

The Court: What's the relevance, Ms. Barr?

Ms. Barr: Your Honor, it corroborates the testimony of Dontrey Barr and Antonio McClary. I'm trying to remember whether or not Quadir Wilson also testified about Ronald Mack having a phone. It's particularly relevant in light of the fact that Ronald Mack was arrested two days and had this phone in his possession, two days after the murder of K.D. . Also, Judge, there are contact information in there that relates to some key witnesses in this case and we would think that obviously that information would corroborate that it was Ronald Mack's phone and two that he had familiarity with some of the key players in this case including the victim.

Mr. Jenkinson: Have at it.

The Court: Alright, bring the jury in.

(Jury enters the Courtroom)

The Court: The exhibit is in. Your next witness.

Ms. Barr: Next witness or next question?

The Court: Next question.

Ms. Barr: Thank you Judge.

Q: Now, this particular phone you have indicated was taken

from the person of Ronald Mack back in April of 2007, is that right?

A: Yes ma'am.

Q: Alright what particular, specific date was the phone taken?

A: April 7, 2009. It was April 7, 2009.

Q: I'm sorry, April 7, 2009.

A: Yes ma'am.

Q: So that would have been two days after K.D. was killed?

A: Yes ma'am.

Q: Alright now, you were subpoenaed to testify in this case and bring the phone with you, is that right?

A: Yes ma'am.

Q: Alright and while you were in my office, did you go through the phone?

A: Yes I did.

Q: Alright, did you see contact information for somebody called Dymon?

A: Yes, I did.

Q: Did you see contact information for somebody called K.D. ?

A: Yes, I did.

Q: Did you see contact information for somebody called Droop?

A: Yes, I did.

Q: Okay, now I'm curious. Did you see any contact information in the phone for Callie?

A: No, I did not.

Q: What about Kelvin Bowen?

A: No, I did not.

Q: What about a Tawanda Allen?

A: No, I did not.

Q: Alright, did you see anything for mom even?

A: No, I did not.

Q: No contact for mom or Callie or Kelvin Bowen?

A: No.

Q: Okay, what about incoming calls?

A: None.

Q: Pardon?

A: None. No incoming calls.

Q: No incoming calls? Alright. What about text messages?

A: Text messages that's on there appear to stop on the 7th, the day of his arrest.

Q: Okay, alright, did you see any text messages at all for April the 5th, 2009? Were there any text messages on the phone?

A: Not that I can recall?

Q: Not for that day. Can you look back to make sure?

A: Yes ma'am. Looking at the iphone in my possession there

are only four on here and they were April 7,2009.

Q: Okay. Alright, that's all the questions that I have. Thank you Lieutenant.

CROSS EXAMINATION OF LT. COOPER BY MS. SHULER

Q: Investigator, may I see the phone? Did you bring up those text messages you just referred to? What are the dates of those text messages?

A: April the 7th, 2009.

Q: And how many are there?

A: Four.

Q: Are there text messages from any other date, other than April the 7th?

A: None showing; none that I can recover from this phone.

Q: Have you obtained any cell phone records on that phone?

A: No, I did not.

Q: Have you subpoenaed any records at all?

A: No I have not on this phone.

Q: Would it be uncommon for somebody to, it would not be uncommon for somebody to delete the text messages on their phone would it?

A: You said would it be uncommon?

Q: It would not be uncommon for somebody to delete the text messages on their phone, would it?

A: Could be.

Ms. Shuler: No further questions.

The Court: Anything further?

Ms. Barr: Not from the State Judge.

The Court: Thank you; you may step down. Alright ladies and gentlemen, I think that's it for this day. Tomorrow we'll need you back at 11, 11 a.m. tomorrow morning. Eleven a.m. tomorrow morning.

(Jury excused for the evening)

The Court: Alright anything else before we leave?

Ms. Barr: No sir, not from the State.

Mr. Jenkinson: I'd like to have a conference about tomorrow.

The Court: All right.

(Court adjourned for the evening)

February 3, 2011

The Court: Anything before the jury comes in?

Ms. Barr: Your Honor, we have a couple of photographs that the defense counsel has stipulated to their disability as they're related to the autopsy and Judge we want to have those marked right quick. I'll go ahead and show you while the Court Reporter is getting ready. And Your Honor we have several photographs that they've objected to and I don't know how you want to handle it in terms of marking them as the witness testifies and dealing with the objections as they come at that time or if you want to do it now.

The Court: Mr. Jenkinson?

Mr. Jenkinson: First of all no objection to that, no objection to those. Your Honor, we would again offer to stipulate as to autopsy records and testimony about K.D. _ shot and autopsy records we would object to photographs ...

Court Reporter: Your Honor, eighty-six through 91 are in. Photos.

The Court: Yes. Ms. Barr?

Ms. Barr: Judge, we would take the position that under State vs. Holder, 2009 State Supreme Court case, in that case it was a murder case in which photographs of a child's anus and internal organs were held admissible during the trial of the case. The Supreme Court held that in order for Court to exclude those photographs the Court has to find that they constitute, not just prejudice, but it has to be unfair prejudice such to an extent that it would create an undo tendency to suggest a decision from the jury based on the improper basis commonly known as an emotional one and the Court also went on to hold that although the photographs were graphic. The facts in this case were graphic as the facts in this case are graphic. There was no suggestion about the photographs and their admission intended to suggest to the jury that they needed to base their decision on improper motive and also Judge,

the pathologist testified that the photographs will help her to explain the direction of the bullets, the injury to the victim often times the pathologist testified they used legal terms that the juror would not be well versed in and jurors tend to understand things better when they see them, rather than just hearing someone testify and certainly those photographs would tend to corroborate the pathologist testimony and so we would ask that the pictures be admitted.

The Court: Mr. Jenkinson?

Mr. Jenkinson: May I respond, Your Honor?

The Court: Yes sir?

Mr. Jenkinson: The case sited by Ms. Barr is distinguishable and that is the one that was articulating Middleton. In Middleton there was a stipulation about all of the facts in dispute. About the murder, about the autopsy records, which precluded the admission of the photographs. That was not the case as cited by Ms. Barr. That case did not distinguish it from Middleton. I'm sure if Middleton was overruled we would have heard that. Secondly, in this particular case, there's actual photographs from the crime scene showing everything about bullet entries, there's no question and it's uncontradicted that in all the testimony that the deceased met his death as the result of three

bullet wounds in the back of his head while he was sitting in a chair sleeping in front of the t.v. and he also got shot twice with a shotgun blast. That's not in dispute. We also have pictures of sticks going through the chair, showing the projectory. We have the uncontradicted testimony of the officers as to those identical facts and very lay language where we can understand all of which is supported by photographs already in evidence. There's nothing to be learned from really an autopsy, other than A, K.D s dead, B, K.D was shot three times with bullets in his head and he was also shot twice with a shot gun blast and he's deceased. None of that is in dispute. And the only remaining purpose of those photographs would be to show prejudice by emotions, by just simply trying to shock the jury into arriving at a verdict, as opposed to adding any probative value as pointed out in Middleton. For those reason we would ask that they be excluded for the same reasons the Court has excluded a number of photographs. Whatever the pathologist has to say is not in dispute. It is stipulated.

The Court: The most recent case, and I think it was just last month when the Supreme Court had to deal with the issue of photographs is the Torrez case in which the Court cautioned the State concerning the use of

photographs and stretching the outer limits of things in order to seek a conviction through the improper use of photographs. I'm not inclined to admit these photographs based on the arguments I've heard at this point. I'll defer ruling until I hear testimony and decide each issue as offered.

Ms. Barr: Yes sir.

The Court: Have these marked for identification.

-JURY ENTERS-

The Court: Good morning.

Jury: Good morning.

The Court: Ladies and gentlemen, the court reporter and I had to go to Bishopville this morning for court, which delayed our starting court here. We are ready to go now?

Ms. Barr: Thank you Judge. We call Dr. Ellen Riemer.

Bailiff: Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth, so help you God?

Dr. Riemer: I do.

Bailiff: Have a seat in the witness stand.

DIRECT EXAMINATION OF DR. RIEMER BY MS. BARR:

Q: Ma'am, let me get you to state your full name please.

A: It's Dr. Ellen Riemer.

Q: Okay and Dr. Riemer, you were subpoenaed to testify in

this case?

A: Yes.

Q: Alright, please ma'am, introduce yourself to the ladies and the gentlemen of the jury. Tell us where you work and what you do for a living and give us a little bit of information about your background, your training, education and so forth.

Q: Okay. I'm currently employed as a forensic pathologist at the Medical University of South Carolina in Charleston, South Carolina where I have been working for two years and prior to that I worked as a forensic pathologist for six years at Wake Forest University Baptist Medical Center in Winston-Salem, North Carolina. And prior to that I worked for two years in Baltimore, Maryland where I did ... body sub-specialty, fellowship training in forensic pathology at the office of chief medical examiner for the state of Maryland, which is in Baltimore and also an additional year specialty training in cardiovascular and pulmonary pathology, which is heart and lung disease at the Johns Hopkins University School of Medicine and prior to that I did my general training in pathology at the Columbia University College of Physicians and Surgeons in New York and that's where I was for four years and before that I graduated from medical school with an M.D.

degree and prior to that I graduated from college, so I've been to school and training for many years.

Q: Alright, and have you had occasion to testify as an expert witness in the state courts for South Carolina or any other state?

A: Yes.

Q: Okay, how many times have you testified as an expert witness?

A: Approximately sixty times, more or less.

Q: And what was your field of expertise?

A: Forensic pathology.

Q: And Judge, we would at this time, tender Dr. Riemer as an expert in the field of forensic pathology.

Mr. Jenkinson: Yeah, please we have Dr. Riemer's written report which would stipulates her qualifications as an expert.

The Court: Ladies and gentlemen, this witness is an expert witness in the field of forensic pathologist. Although the Rules of Evidence ordinarily do not allow witnesses to offer opinions, except in a limited circumstances. A different rule applies to expert witnesses who are witnesses, who by virtue of their education, training and experience have some expert knowledge in their particular field in which they are qualified and they are able offer opinions in their

area of expertise. Assuming the testimony, otherwise complies with the rules of evidence, this witness is an expert in forensic pathology. You may proceed.

Ms. Barr: Thank you Your Honor.

Q: Doctor, kind of explain to us what is meant by the field of pathology and specifically the substantial field of forensic pathology.

A: Well, pathology is a sub-specialty of medicine just like surgery or internal medicine or gynecology. So that when physicians graduate from medical school and of course you can't do everything in this world, so most people chose some area in which they want to concentrate and I chose pathology, which is the field where physicians examine tissues in order to diagnose diseases, or injuries as whatever may be present on the body, so it's not just limited to doing autopsies, which is what the people think most pathologist do, but there are pathologist that also, a large number of pathologist, who evaluate biopsies from patients, so if anybody has ever had like a breast biopsy, or a prostate biopsy because there was some abnormality that there was suspicion of and maybe it was cancer or not. Those pieces of tissue bone actually took pathologist, who evaluate the tissue --- Usually they apply certain tests to determine what the correct diagnosis is and

then the patient is treated based on that diagnosis. Forensic pathology in particular, doesn't focus on diagnosis of disease processed, but is the field with which pathologist have responsibility and expertise in evaluating injuries that are present on the body and frequently do full autopsies, in order to determine the cause and manner of death of an individual.

Q: Okay, now you've used the term quite frequently "autopsy", tell me how an autopsy is performed and specifically what it is designed to determine.

A: An autopsy is basically a specialized surgical procedure that begins with a thorough external examination of a person who is deceased and with documentation of any abnormalities like injuries or other abnormalities that may exist on the body and after thorough evaluation of the external, of the findings of the external examination, an internal examination is performed in which every organ, every internal organ in the body is looked out carefully for signs of injury or disease processes and if all of this information, the forensic pathologists are able to determine the cause and manner of death.

Q: Okay and of course, as part of your responsibilities, back on April 6th of 2009, you received the body of K.D. _?

A: Yes.

Q: And your job, of course, would have been to perform an autopsy?

A: Yes, which I did.

Q: Alright, can you describe the condition of the body when you first received it?

A: If it's okay, I'm just going to pull out my autopsy report.

Q: Okay

A: Okay, when I received this body of K.D. _ _ in my autopsy room, I observed that he was a well developed, well nourished adult, black male. And he appeared compatible with the age of seventeen years, which is the age I was told he was and he was wearing some clothes and he was wearing a necklace and a hat and there were, was blood on the body, that indicated that a significant injury had occurred. Injury or injuries and there, otherwise there wasn't anything particularly remarkable about the external appearance except that he had suffered injuries and was covered with blood.

Q: Alright, did he have shirt and jeans on as well?

A: Yes.

Q: Alright now, at some point, did you remove his clothing so that you could begin the autopsy process?

A: Yes.

Q: Once you removed his clothing, did you see any evidence of any injuries that he had sustained?

A: Yes.

Q: Okay, alright now before you start talking about that, I'm going to hand you what's already been admitted as State's exhibit number thirty-one and this is photograph of the victim's body at the scene of the crime. Let me let you look at that right quick. Now, when looking at that particular photograph that's in evidence, does it appear that the victim is injured in some way?

A: Yes.

Q: Just looking at that particular photograph, can you tell me what the nature of his injuries are?

A: Not exactly.

Q: Okay, alright. Let me show you what's been admitted as State's thirty-six. Does that appear, can you tell, just from that picture, the nature of the injuries to the victim and what caused them?

A: Well I can actually see the little bullet hole on the cap, but I don't see ...

Q: On the victim's cap?

A: On the cap, yes. Sorry.

Q: Yes, alright.

A: But I don't see, I don't' see, I can't evaluate all the

injuries.

Q: Okay what about State's exhibit number forty which has been admitted as evidence?

A: Well, this doesn't show me any injuries. It just shows some defect in the chair.

Q: Okay. Alright, what about State's exhibit number forty-one, which is in evidence?

A: That also shows the defect in the chair, but it doesn't display injury to his body except his left lower leg. It doesn't look abnormal.

Q: Okay. What about State's forty-five, which is in evidence?

A: That shows some injury to the right forearm.

Q: Okay.

A: And also an injury to the left, third finger.

Q: Alright, can you tell from that particular photograph whether the victim had any injury to his chest or his abdomen.

A: No, it doesn't display any of those.

Q: Can you tell from that photograph whether the victim had an injury to his head?

A: No, because the head is not displayed.

Q: Alright, tell me same thing as it relates to exhibit forty six, which is in evidence.

A: This is a picture of the left hand which shows the

gunshot wound to the left hand.

Q: Alright, can you tell whether or not the victim sustained any injury to the chest or abdomen in that?

A: No.

Q: What about his face and his head in that photograph?

A: No I can not.

Q: Alright now, same thing as it relates to exhibit forty-four, which is in evidence.

A: This is a photograph of the decedent's forearm from a different angle and I can see a little bit of blood on his shirt, but I can not tell from where that blood is coming.

Q: Okay, now one quick question. You said the decedent; make sure you tell the jurors what is meant by that when you say decedent.

A: The decedent is the dead individual.

Q: So can you tell from this photograph whether the victim had any injuries to his chest, abdomen or to his head?

A: No I can not.

Q: Now, let's go back to the point in which you received the body of K.D. and you removed his clothing. Tell me about the evidence and injuries that you observed at that point.

A: Well, I observed that he had two gunshot wounds to the head. He actually had two entries to the wound and an

exit wound on the left jaw and another entrance wound on the left, the front of the left shoulder area. In addition to that, I observed that there appeared to be a shotgun wound that was extending across the front of the body from the left eye and going down the front of the body to the right hip and then also hitting the right forearm along it's path.

Q: Alright, now ma'am, at some point during the course of your autopsy, someone from either SLED or Williamsburg County Sheriff's office took photographs of K.D. 's body?

A: Yes.

Q: Alright and you indicated that it appeared from his body that he'd been shot with a handgun, a nine millimeter handgun, as well as a shotgun?

A: Yes, however by the external examination I could not tell the caliber of the gun ...

Q: I understand.

A: ... that was involved, because I would need to actually need to look at the bullets and I was not able to recover those until I did the internal examination.

Q: Alright ma'am, as it relates to your testimony today, why is it important for you to have the body of the victim photographed? Why is that helpful?

A: Because it helps illustrate the findings that are

described in an autopsy report and a lot of anatomic landmarks are evident on photographs which are clearly just describing by measurements in the head and it amplifies the findings that I've depicted in the autopsy report.

Q: Alright, ma'am, I'm going to show you what's been marked fro identification purposes as State's exhibit number ninety-three and ask if you recognize what's depicted in that particular photograph?

A: Yes, this is a photograph of K.D _ 's body as he lay on the autopsy table, before he was unclothed by me.

Q: Does that particular photograph corroborate your findings as it relates to the victim apparently being the victim of a gunshot, a shotgun wound?

A: Yes.

Q: Okay, how does it do that?

A: Because I can see a path of shotgun pellet injuries on the right side of the abdomen and extending up to the lower chest until where his tee shirt is still covering up his chest.

Q: And will the photograph help illustrate to the jury the path of the shotgun pallets, as well as the extent of injury to the victim from that particular weapon.

A: It shows part of the injury; it doesn't show the entire

injury from that weapon.

Q: Are there other pictures that were taken that show all of the injuries as it relates to the shotgun?

A: Yes.

Q: Judge, we would move State's exhibit number ninety-three into evidence.

Mr. Jenkinson: Your Honor, we will object.

The Court: For identification purposes only.

Ms. Barr: Judge my motion was denied?

The Court: Yes.

Q: Okay, alright, I'm going to show you State's exhibit number ninety-four and ask you to tell me what's depicted in that particular photograph. Well, let me do this, let me give you ninety-four, ninety-five, ninety-six, ninety seven and ask you if you recognize those particular exhibits.

A: Yes.

Q: Alright, tell me what they show.

A: Two of the photographs, I'll tell you what numbers.

Q: Now, they're marked twice, so make sure when you talk about the particular exhibit number you use the white tag, rather than the red tag.

A: Okay.

Q: Alright.

A: State's exhibit, it looks like ninety-four and ninety-

five.

Q: Yes ma'am.

A: Show entrance gunshot wounds on the top of the decedent's head, of his head.

Q: Okay.

A: And one this is after his hat, his hat is peeled away so you can half way see that. And this is actually of his hair and then exhibit number ninety-six shows a closer up of one of the entrance gunshot wounds to the right, to the central part of the head over the hairline and this exhibit it's hard to see exactly what this shows, but it does show a small, it does show an entrance gunshot wound to the right area.

Q: Alright, do those photographs help you in describing the pathway of the bullets into the head of K.D. K.D. ?

A: They help to describe the entrance locations.

Q: Okay, alright. Judge we would move State's exhibits ninety-four through ninety-six, am I right? Ninety-four through ninety-seven.

Mr. Jenkinson: Objection those are the same as we objected earlier.

The Court: Sustain the objection.

Q: Judge, can she see them so she can testify ...

The Court: Yes.

Q: Let me start with ninety-three; kind of describe for the jurors what ninety-three shows and what I may need you to do is kind of stand up and kind of show the injury as it relates to the shotgun. Just kind of using ...

A: You mean on my body? Okay.

Q: Make sure the pictures are turned in toward you.

A: Okay, if somebody has a problem hearing me, just ask me to speak louder.

Q: Don't let them see it.

A: Yes ma'am. This first picture that was just handed to me, shows it's, it's the side of his body as he's lying down on the autopsy table, right side and I can see that there are, there are shotgun pellet wounds extending from here down to the right hip and then I can't see above that because there's still a tee shirt on. And I also see some blood coming out of his right ear.

Q: Okay. Let me get that particular exhibit. Tell us about number ninety-four.

A: Okay, number ninety-four is a photograph of the top of, the top of the decedent's head looking from the right, okay, so it's kind of a shot looking from here and I can see that there's an entrance wound about over here and another ...

Q: Now when you say 'here', tell me for the record, what you're referring to.

A: Alright, like toward the front top of the scalp.

Q: Okay.

A: Okay, like over beyond the hairline, like one inch or so into the hairline. Okay, and then there's another entrance, gunshot wound around here.

Q: Now tell, for the record.

A: Which is on the right side of the head, not far above the ear.

Q: Okay, alright, tell us about number ninety-five. Let me get that and give it to the court reporter. Thank you.

A: So, this photograph, I guess it's ninety-five, shows just the same entrance, gunshot wounds. I just described one at the top, front of the head; on the hairline and the other one to the right, above the ear. Also on the hair, but it's a closer up picture.

Q: Okay, alright and was that ninety-five or ninety-six?

A: Ninety-five.

Q: Alright. Tell us about number ninety-six.

A: Okay, ninety-six is a close up of the entrance, gunshot wound in the top of the head that's about one inch beyond the hair line. Beyond the front of the hairline.

Q: That's simply a closer up view of what you just described in an earlier photo?

A: Yes.

Q: They are not two separate injuries to the top of the head?

A: No.

Q: Just one to the top of the head and one to the side?

A: That's correct.

Q: Tell us about number ninety-seven.

A: And ninety-seven is a closer up view of the entrance, gunshot wound that's on the right side of the head, above the right ear.

Q: Alright. You can take a seat, although I may need you to stand back up again.

A: Okay.

Q: Let me hand you what's been marked for identification purposes that the State submitted, number ninety-eight, ninety-nine, one hundred and one oh one and tell me if you recognize what's depicted in those photographs.

A: Yes.

Q: Okay. I guess let's start at ninety-eight.

A: Okay, ninety-eight shows an exit wound from one of those gunshot wounds.

Q: Okay.

A: And at this point, because I have not yet done an

internal exam, when I took this photograph, I could not tell whether it was the entrance wound to the top of the head or to the right side of the head that exited the left jaw. But this photograph, number ninety-eight, shows the exit, an exit wound from one of those entrance, gunshot wounds.

Q: Okay.

A: And it's on kind of the left lower jaw area.

Q: Alright and number ninety-nine?

A: And ninety-nine is a photograph of the pellet shotgun wounds that are streaming across the front of the decedent's body from the left side to the right hip and this is after he had been disrobed, so I can see the injuries on the abdomen.

Q: Okay, and number, I think we're on one hundred.

A: One hundred shows the shotgun pellet wounds on the, again on the right side of the abdomen, extending from about the mid chest to the right hip and this photograph just shows it from like, you know, the camera at a different angle. It's not from this right side, but it's taken from the top, like above the decedent as he's lying on the table. And I can also see some injuries that appear connected with those injuries and those are on the left side of the upper chest.

Q: Alright, now what about 101?

A: 101 shows some shotgun pellet injuries to the right forearm, which were a result of the pellets continuing beyond the right hip, while the decedent's arm was next to his right hip. So they kind of scraped the surface of the right arm as well, in addition to going across the abdomen.

Q: Alright.

Ms. Barr: Judge we would move State's ninety-eight through 101.

The Court: Mr. Jenkinson?

Mr. Jenkinson: Judge, likewise ...

The Court: Sustain the objection.

Q: Now Dr. Riemer, this time I'm going to hand you what's been admitted, not admitted, what's been marked for identification purposes as State's exhibit number one oh two, one oh three, one oh four, one oh five, one oh six, one oh seven and one oh eight. You can hold those for just a moment. Let me ask you, first of all, the previous exhibits were photographs of the victim before he was cleaned up so to speak, is that right?

A: Some of them were.

Q: Okay.

A: And some of them, that's correct.

Q: Okay, this shows blood and so forth to the victim?

A: Yes, except this one doesn't really show that much blood.

Q: And I just want to make sure these previous exhibits, ninety-eight through one oh one, do they also show the body of the victim before he was cleaned up? It's the term I used.

A: Yes.

Q: Okay. Now, once you all get a body in at MUSC in the state that it's presented, what do you all do to the body? And when I say clean it up, kind of tell the jurors what you do to help clean the body up and what's the reason for that.

A: Well, when there's a lot of blood on the skin and surrounding injuries, sometimes, frequently it's not easy to tell what kind of an injury it is. And so I take a rag and I have my assistant and you just put some cold water on it and wipe off the blood that may have accumulated on the skin wherever it is and then those injuries are not covered up by a bunch of bleeding and so I can see the injuries very clearly and then I'm able to describe them better.

Q: Alright now, as it relates to the victim's hair, the victim sort of had long hair that appeared to be in corn rows of some type?

A: Yes.

Q: Now, how do you extract the bullets and tell the extent of the injury in the entrance into the head when he's got all the hair there?

A: Just like, like a lot of blood on the skin may obscure an injury that's within that blood, that bloody area, when there's a lot of hair, it may be very difficult to see the characteristics of a gunshot wound and to see if there is any close range fire or contact wound fire and for that reason, we, and also I want to get accurate measurements of these wounds. I will take a disposable razor and actually shave the margins of the gunshot wounds to make sure I can tell with certainty which is an entrance and which is an exit. And so that helps clarify and to make sure that I'm not missing anything. I don't shave the entire head out of respect for the decedent and the family. Just so much as is necessary so I can evaluate the injuries accurately.

Q: Alright, now as it relates to the third group of photographs that I gave you; it starts with exhibit number one oh two, is that correct? The last group?

A: This?

Q: Yes.

A: It's like one oh two.

Q: One oh two.

A: One oh two to one oh eight.

Q: Okay, alright now are those photographs of the victim's injuries once the body's in the clean state?

A: Yes, after I've already wiped all of the blood that's accumulated on the body and wiped it off so I can see skin, injuries to the skin clearly.

Q: Alright now, in those particular photographs, first of all, you talk about there being an external examination of the victim's body and you said you did an internal examination of the victim's body. Is that right?

A: Yes.

Q: Alright, kind of tell the jurors how you go about doing an internal examination of a victim's body.

A: Well, after a thorough, external examination in which I evaluate all of the injuries that are present externally, I do an internal examination, which entails from the neck down, it entails making a central incision through the skin and muscle of the chest and abdomen and then I, after removing the chest plate, I can take out all of the organs in the chest and abdomen and see if they suffered any injuries that were related to the injuries that I observed externally or perhaps maybe some other injuries or other abnormalities in any internal organs. For instance, in order for me to determine the cause of death, I need to rule out all other causes as well. And when I evaluate internal exam

of the head, when there are apparent gunshot wounds and shotgun wound around the left eye and a gunshot wounds to the head, it makes it a possibility that the gunshot caused some injury that may be significant or otherwise to the brain and in order to do that, without mutilating the body before the funeral, but I need to be through, there's an incision in the back of the scalp and then the scalp is carefully peeled toward the face and then the skull, the top of the skull is removed and that allows me access to the brain and other cranial contents within the skull. And I remove the brain and evaluate its weight, as well as, any injuries that are present and when there are defects in the brain I can see the exact pathway of different bullets. For instance, that may have gone through the brain.

Q: And ma'am, as it relates to other vital organs in K.D. 's body, like the lungs and the heart, you would have done that same type of internal examination?

A: Yes, I evaluate every internal organ.

Q: Alright and you all, sometimes you all photograph internal organs of the body? You actually photograph that sometimes?

A: Not frequently. Infrequently, only if it's extremely important. I don't frequently photograph internal

organs for the reason that, you know, most individuals, other than the physicians don't really know what the difference between a normal and abnormal organ would look like.

Q: Okay.

A: They don't really know what, you know, and I can document these things without taking photographs. So sometimes I do and sometimes I don't.

Q: And you certainly, you don't have any photographs that you're intending to talk about as it relates to the internal examination of K.D. ?

A: No, I don't believe that I took any of those.

Q: Okay, alright now as it relates to exhibits number one oh two through one oh eight, tell me what's significant about those particular photographs.

A: Okay, well all of these photographs show the injuries that he sustained with increased clarity and that's because I already wiped the blood off; the blood that had accumulated on his skin that's no longer there, so I can see the outlines of the injuries and I can also see the head, the areas that I shaved around the entrance wounds, so those are depicted clearly and that's it.

Q: Okay, would those photographs of the cleaned up state of K.D. s body help you to explain to the jury your

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 THREE

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

testimony, your findings and your conclusions?

A: They show, yes, they show the external injuries.

Q: Those photographs will be helpful in allowing the jury to see why you came to the conclusions that you did?

A: Yes.

Q: Alright, Judge as it relates to exhibits number one oh two and one oh eight, may counsel and I approach the bench?

(COUNSEL APPROACHES BENCH)

Ms. Barr: Your Honor, at this time we would move State's exhibits, one oh two, one oh three, one oh four, one oh five, one oh six, one of seven and one oh eight into evidence.

Mr. Jenkinson: Objection.

The Court: The objection is sustained to all the photographs, except for one oh three.

Q: Dr. Riemer, let me get you to step down from the witness chair please. Let me figure out how this works. Thank you. Come over here by me please. You can leave your purse there, we'll take good care of it. Alright you stand over there so that the jury can see clearly 103, this is a top view of the head of K.D. ?

A: Yes, it's a view from the top like toward the right of the head. So you can see this is his right eye, this is the top of his nose, so we're taking the photograph

from the top and this is his right ear over here and then that's a left shoulder and a right shoulder and it's illustrates the location of the entrance wounds.

Q: Now, you talked about earlier how there was what appeared to be injuries from shotgun pellets so forth on his, near his eye. Can you see that injury from that photograph?

A: I said there was shotgun pellet entrances.

Q: I understand, I'm sorry. Can you see those injuries to the eye and face in that particular photo?

A: No, because the left eye is not displayed in the photograph.

Q: Alright, alright now tell us the significance of that particular, well first of all, is that an injury?

A: Yes, that's a gunshot wound; that's an entrance gunshot wound on the top of his head.

Q: Alright and tell us about this particular exhibit, I mean this injury.

A: This injury, above the right ear, is another entrance gunshot wound and that's to the right side.

Q: Alright now you told me earlier that when you simply looked at the body and you did the internal examination, you were not able to determine just from the external examination which gunshot wound actually, which injury actually caused the exit here near the

chin or the neck. Were you able to determine after you did the internal examination?

A: Yes.

Q: Alright, tell us about that please.

A: Well, after I did the internal examination, or while I was doing the internal examination, and evaluating the brain and the skull it was, I was able to determine the pathways of these perspective bullets through the brain. I was able to complete that this bullet, this is the one above the right ear, traversed, went across the brain and his head and exited in the lower, the left side of the jaw.

Q: Where did it continue from that point? Did it continue to go back into the victim's body?

A: Yes, so this was after the bullet actually exited the left jaw, it did not continue to the air or to the floor, it actually went into, and I'll have to demonstrate on my own body. After it exited the left jaw, it went into the front of the left shoulder from back here and then went into the left side of the chest where it injured the left lung and the heart.

Q: Alright, you can have a seat. Now were you able to view a couple of the crime scene photographs of the victim sitting in the chair?

A: I did.

Q: Okay, now you talked about the pathway or the projectory of the bullets to the top of the head, was the pathway and projectory of those bullets consistent with someone, the shooter, standing over the victim at the time he was shot?

A: Yes.

Q: Alright I'm going to hand you, at this time, what's been admitted as State's exhibit numbers eighty-six, eighty-seven, eighty-eight and eighty-nine, ninety, ninety-one and ask if you recognize what's depicted in those photographs and I may have to get you to stand back up again for me.

A: These are photographs of the, looks like the skull --- path. However, it's very hard to see, however I can actually visualize the defects in this path.

Q: Now when you say the defects, you're talking about the holes?

A: The holes, the holes that correspond to the injuries to the head.

Q: Alright, come on down here.

A: And there's another couple of more.

Q: Alright we'll talk about that as we go along.

A: Alright.

Q: Bring those with you please Doctor Riemer. Can I get you to stand back here? Alright we're going to publish

State's exhibit eighty-six. Is that the ball cap you're talking about?

A: Yes.

Q: Alright take your pointer for me. You said it's kind of difficult to see because the cap was black, did you see the defects, or what you call the defects, what I call the holes, in that particular photograph that corresponds with the injury to his head?

A: Yes, it looks like this is one of the holes in the cap that corresponds to one of the injuries in the head.

Q: Do you see the other one in that photograph?

A: Yeah, I think it's hard for me to tell. I'm not even sure if I can see it. I can't see it clearly; it looks like it may be over here, so there's actually the two entrance gunshot wounds on the head and so this would be the one to the top and this would be the one to above right here.

Q: I'm going to show you eighty-seven, I'll publish it, what appears to be a hole in the cap as it relates to that particular exhibit.

A: Yes, I do.

Q: Well, let me do this ...

A: Yeah, it looks like it's up there. It looks like it's up-side-down. So this is the one of the holes in the hat.

Q: Alright tell us about ...

A: This is the bullet that I recovered from the left chest cavity of K.D and this is the bullet that after it went through the right side of his head, above the right ear, and went through the brain and then exited the left jaw and then went back into the chest, right beyond the left shoulder, it injured the heart and lung and then terminated, it was ended its path in the chest, left chest cavity around the lung.

Q: Why is the number one there? What is that suppose to tell us?

A: Oh, it's the first bullet that I recovered from the body.

Q: Alright and this is of that same bullet?

A: Yes, this is from the under side, so based of the bullet --- This is the second bullet that I recovered from the body and it actually, I recovered it in the sinuses, which are all those inner spaces that help us to breathe and when they're all clogged up with mucous we feel terrible and get sinusitis and colds, but that was on the left side of the fact and inside the face, behind the cheek and that was the bullet that went to the top of the head.

Q: Alright now what is the significance of the number, characters FA09185?

A: That's the unique identifying number of K.D. , so even though he is a human being, an individual with human qualities when he comes into the morgue, he gets assigned a unique identifying number so that any documents that I have, whether it be photographs or my report, all have that number on there. So, let's say a photograph ended in the wrong place, I can always, this is from this particular autopsy.

Q: What does 09 represent?

A: It is the, FA means Forensic Autopsy and 09 is 2009, so this was the 185th person deceased to have been autopsies --- in USC in the year 2009.

Q: And with what we have admitted as State's exhibit number ninety-one.

A: Yes, this is the different view of the bullet recovered from the left side.

Q: Thank you ma'am; you may be seated. Now, in your report ... In your report you talk about an injury to the victim's left eye. Can you tell us a little bit about that particular injury?

A: Yes. There's an injury starting at the left eye, near the left orbital region. The tissues around the eyes that show injuries from shotgun, the shotgun pellets to the left eye and go down the --- direction.

Q: Okay, what is the extent of that injury to the eye?

Mr. Jenkinson: Object to this line of questioning.

The Court: Go ahead.

Mr. Jenkinson: Relevance.

Ms. Barr: Your Honor, it is tied to a specific weapon ...

The Court: Objection is overruled.

Q: The extent of the injury to the eye?

A: I saw shotgun pellets actually going through the left eye and go down the --- direction ...

Q: Now, when you all do the internal examination and the external examination, you all are trying to determine the cause of death, is that correct?

A: Yes.

Q: And you determined in your expertise in your examination of K.D. what the cause of his death was?

A: Yes.

Q: Alright, tell the jury what was the cause of the death of K.D. ?

A: K.D. died of multiple gunshot wounds.

Q: Alright and you all have different classifications of death in South Carolina, is that correct?

A: Yes.

Q: Alright tell us about the classifications of death?

A: Well, any time an individual dies, you need to classify it as either a natural death or a homicide, suicide or

an accident. In cases that we can not tell, we call them undetermined.

Q: And tell us about how you classified K.D. s death?

A: I classified K.D. death as a homicide because these were fatal injuries conflicted by others.

Q: Okay, alright, now ma'am, all of the opinions that you have rendered in this courtroom today, they are to a reasonable of medical certainty?

A: Yes.

Q: Thank you ma'am. Please answer the questions of Mr. Jenkinson.

CROSS EXAMINATION OF DR. RIEMER BY MR. JENKINSON:

Q: Just a couple of questions. Nothing in your examination, nothing in your two hours of testimony has ever said that the defendant in this case, Kelvin Bowen, had anything to do with murder of K.D. . Is that a fair statement?

A: That's correct.

Q: Are you aware that the three people who did participate in this trial, in this event, pled guilty or one of them, or two of them pled guilty and one has been tried and found guilty?

A: I'm not aware of the circumstances, no.

Q: No further questions.

The Court: Anything further?

Ms. Barr: No sir Judge.

The Court: Alright thank you. You may step down.

Dr. Riemer: Thank you very much.

The Court: The witness is excused

Ms. Barr: Thank you ma'am.

The Court: Next witness.

Ms. Barr: We call Justin Whack.

Mr. Jenkinson: Judge, can we just take a short break?

The Court: Yes sir.

Mr. Jenkinson: It's been a couple of hours.

The Court: Yes sir. Ladies and gentlemen, I'm going to have you go to the jury room for a few minutes and then press on a little bit.

(JURY EXITS THE COURTROOM)

Mr. Jenkinson: One of our experts is in Santee and I told him to hold off because it looked like it was going to be two o'clock. Some indication from the Solicitor, yesterday it was two witnesses, now she says, I'm just trying to figure out when to get my witnesses.

Ms. Barr: Judge I think ...

The Court: You can't give them appointments to come to court ...

Mr. Jenkinson: I know that, I know that John, but he's an hour, an hour plus away.

The Court: It's Thursday afternoon. They got to come on at this point, wherever they are, if they're going to be witnesses. You might have to wait five, ten, fifteen or an hour or two hours or whatever, but when we're ready for them, we're ready for them.

Ms. Barr: Your Honor, just very quickly Judge. As it relates to what's been marked for i.d. is State's exhibit one hundred and one oh eight. Judge, we would ask the court, in light of the fact that the firearms expert from SLED testified that the firearm that was recovered from the defendant's bedroom was the firearm that fired the shots that, the shotgun shells that were recovered from the crime scene, we would submit that those particular photographs would show the shotgun pellet wounds to the body of the deceased are more appropriate and more relevant to establish that, that gun created that injury. So Judge, we would just ask the Court to reconsider its ruling denying the admission of those particular exhibits.

The Court: Mr. Jenkinson?

Mr. Jenkinson: Your Honor, I'm sure the Solicitor isn't intentionally mis-speaking. They said they removed them from his bedroom. There has been no showing ever that this was his bedroom. It shows some men's items, just two or three. A baseball cap, which would be male

or female, some Budweiser underwear, could be male or female, some deodorant, which was female upon closer examination and three pieces of paper that did live in that bedroom. But the physical presence of the defendant in that bedroom has not been established that he lived there, other than three pieces of paper. You know, I've asked, you know, where was his toothbrush? You know? A few other things like that would indicate living, you say that he lived there, the Solicitor's idea, there has been no proof that he lived there and for that reason, that is not present and it is no question that the shotgun was found there, but there's no proof that he owned that shotgun, there's not even any proof that he spent the night in that bed.

The Court: Alright. Well, sometimes in the attempt to engage in overkill you lose credibility as to everything you're seeking to get and I think that the State, in this case, in seeking to admit twenty-five, thirty, however number of pictures involved is clearly excessive and perhaps led to the Court over looking specific ones that might perhaps should be admissible, but that's the way it goes. The, speaking earlier about the Torres case, trying to get the specific language from the court and this is December 2010 and the Torres decision says we strongly encourage our

Solicitor's to refrain from pushing the envelope on admissibility in order to gain a victory, which in all likelihood is already assured, because of other substantial evidence in the case. Of course, not referencing anything to assume that any victory is assured, but the courts, court further went on to talk about the growing concerns this court regarding the efforts of the State to excessively admit photographs that are not essential to proving material elements in the case. I do find however, that number one hundred, which along with the other one already admitted, should be admitted. Reconsidered on that particular photograph.

Ms. Barr: Thank you.

The Court: One hundred. The ruling stays. What says as to number 108.

Ms. Barr: Thank you Your Honor.

Court Reporter: These two are in?

Ms. Barr: No, this one is not in. This one is not, this one is.

Ms. Shuler: What two photograph numbers were those?

Ms. Barr: One hundred and 108.

Court Reporter: The one that's in is one hundred. The one that's in is one hundred and 108 is for i.d. This one's in, this one's out.

Ms. Shuler: Thank you.

The Court: Bring the jury.

(Jury Enters Courtroom)

Bailiff: Do you solemnly swear or affirm to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. Whack: I do.

DIRECT EXAMINATION OF INVESTIGATOR WHACK BY MS. BARR:

Q: Please state your full name for the record.

A: Justin Whack.

Q: Okay and sir tell us where you're employed.

A: Williamsburg county sheriff's office.

Q: Are you a certified police officer?

A: That's correct.

Q: How long have you been with the Sheriff's department?

A: Since 2001.

Q: Now, you assisted, or was a part of the investigation surrounding K.D. in 2009, is that correct?

A: That's correct.

Q: Now the address where the murder occurred, was it in Williamsburg county?

A: Yes it is.

Q: Alright, what time did you all get the 911 call?

A: The call came in around two thirty a.m.

Q: And how long did it take for the deputy to arrive at

the scene?

A: Approximately fourteen minutes.

Q: Alright, you actually went out to the residence where the victim was killed?

A: That's correct.

Q: Did you go inside the residence and in various rooms?

A: Yes I did.

Q: Alright I'm going to hand you what's been admitted as State's exhibit number one oh nine, one ten and one eleven. Does this photograph, or these photographs of the residence of Annette Bradshaw?

A: Yes they are.

Q: Alright, can I get you to step down off the witness stand for me? I'm going to publish State's exhibit 111. Tell, using the pointer, tell the jury what's that a view from and what's depicted in that photograph?

A: This will be the master bedroom of the residence.

Q: Okay.

A: The front door.

Q: Just make sure you show them.

A: I'm sorry. The front door would be back over to this side. This is the living room area.

Q: Okay.

A: Like I say, this is the master bedroom this is the wall that separates the master bedroom and the kitchen area.

Q: So as it relates to the dimensions, where were the victim's body have been on that kitchen ...

A: It would have been over in the kitchen area back off to the right.

Q: Tell us about State's number 110?

A: This is the hallway of the residence that leads to a bathroom and three other rooms. Three more bedrooms.

Q: Okay. State's number one oh nine, is that a closer view of the angle that you just described?

A: That's correct.

Q: So that, the opening there would be the opening for the back bedroom?

A: That's correct, this is a bedroom.

Q: Alright lead us in on the opposite where what's called the master bedroom was?

A: On the opposite side.

Q: Alright and you, you can stand right there. You were able to see the victim's body?

A: Yes.

Q: Alright, I'm going to hand you what's been admitted as State's exhibit number one hundred. You all recovered certain ammunition projectiles from the scene?

A: That's correct.

Q: Shotgun shells, fired shotgun shells?

A: That's correct.

Q: And that resulted form the shotgun wound?

A: Yes it is.

Q: I'm going to publish State's exhibit number 100. Does it show the shotgun shell wounds?

A: Yes.

Q: Alright did you also see ...

A: That's correct.

Q: Alright you can take a seat sir. Of course at some point during the investigation, you all developed a suspect and you arrested Antonio McClary?

A: That's correct.

Q: How old was Antonio at the time it happened?

A: Nineteen.

Q: Alright nineteen years old. How old was Ronald Mack?

A: Ronald Mack was seventeen.

Q: Alright, how old was Tawanda Allen?

A: She was thirty-six.

Q: Alright and how old was Kelvin Bowen at the time?

A: Thirty-one.

Q: Alright and what is the address for the information that you had as it related to his address as listed on his identification?

A: Kelvin Bowen?

Q: Yes.

Mr. Jenkinson: I object.

The Court: Ms. Barr?

Ms. Barr: I think one of the identifications was in evidence.

Mr. Jenkinson: I object ...

Ms. Barr: Judge, I'll withdraw the question. Sir I'm going to hand you what's been admitted as State's exhibit number sixty-two. What is the city and state upon which Mr. Bowen was issued an identification card?

A: , California.

Q: Alright. Now during the course of your investigation, you heard certain people talk about cell phones?

A: That's correct.

Q: Alright, did you all attempt by search warrant or subpoena to get cell phone records as they are related to some of the players involved?

A: Yes ma'am.

Q: Were you successful in terms of text messaging and so forth?

A: The text messaging we weren't able to get.

Q: And what type of phone ...

Mr. Jenkinson: I object to that question, Your Honor, that's hearsay and should be stricken.

The Court: The objection is sustained.

Mr. Jenkinson: Move to strike that Your Honor.

The Court: Yes sir.

Q: Alright, what types of phones were these involved? Are these regular cell phones where people have accounts when you pay, like to Verizon or ATT& T every month?

A: They were. One of them was a Verizon phone, ATT&T and some of them were actual contract phones and some of them were not.

Q: Now when they, if they're not contract phones, what kind of phones would you call them?

A: Prepays.

Q: The prepaid phones?

A: Correct.

Q: Now sir you've been with the Sheriff's department how long?

A: Since 2001.

Q: Alright are you familiar with the jail records there?

A: Yes.

Q: Okay and at my request, did you go and get certain copies of jail records relating to Kelvin Bowen in this case?

A: Yes I did.

Q: Okay I'm going to hand you what's been marked for identification purposes as State's exhibit number one twelve, asking you if you recognize that particular document.

A: Yes, I do.

Q: Alright, how is it that you recognize it? Is it a form only associated with the Williamsburg County Detention Center.

A: Yes it is.

Q: What type of form is it?

A: It's an inmate property release form.

Q: A property release form?

A: That's correct.

Q: Alright and what is the date on that particular exhibit?

A: The date on the letter is September 28th.

Q: Okay.

A: And the date on the release form is October 10, 2009.

Q: Alright, why is it important to keep documents of that type information?

A: So when an inmate claims that his property was destroyed or stolen or something like of that nature, we have documentation to go back to and say hey, you know, you requested that we give this to such and such person.

Q: Okay, alright and was a request made by Mr. Bowen to give property to somebody?

A: Yes it was.

Q: Alright what was the request by Mr. Bowen? To give what item to who?

A: It was to give ...

Q: Speak up and make sure the microphone.

A: It says please give my attorney, W. Jenkinson, my cell phone, Samsung model.

Q: Okay and is it signed by Kelvin Bowen?

A: Yes it is.

Q: Alright now, and the date on that?

A: September 28, 2009.

Q: Alright and at some point, did Mr. Jenkinson come to the jail and pick up that item?

A: Yes he did.

Mr. Jenkinson: Your Honor, I object to this kind of testimony.

The Court: Basis for the objection?

Mr. Jenkinson: Now, I'm going to have to be a witness.

The Court: Okay.

Mr. Jenkinson: This testimony is ...

The Court: Is there a fact that's an issue or subject to dispute?

Mr. Jenkinson: Pardon me, I'm sorry?

The Court: Is that a disputed issue?

Mr. Jenkinson: Yes sir.

The Court: I overrule the objection.

Ms. Barr: Yes sir, thank you Your Honor.

Q: Investigator Whack tell me what item was released to

whom on what day.

A: It says that a Samsung model cell phone was released to W. Jenkinson.

Q: Are you, okay, what date did Mr. Jenkinson pick up a cell phone?

A: October 13th, 2009.

Q: Alright and he would have gotten a cell phone from the jail?

A: That's correct.

Q: Alright, Judge we would move State's exhibit number, I think it's one twelve, into evidence at this time.

Mr. Jenkinson: Over our objection.

The Court: Exhibit Number 112 is in.

Ms. Barr: Thank you, Judge.

The Court: It's admitted.

Ms. Barr: Sgt. Whack let me get her to mark that please.

(State's Exhibit Number 112 was entered)

Q: Now are you, would you have been the officer that released the cell phone to W. E. Jenkinson?

A: Yes I am.

Q: He's the very able lawyer that's sitting with the defendant, is that correct?

A: Yes, that's correct.

Q: And he's represented him throughout these proceedings?

A: That's correct.

Q: Alright now, since the date that the cell phone was released to Mr. Jenkinson, have you all been able to get that phone back?

A: No ma'am, not to my knowledge.

Q: Alright, now one other, one last question, if I may. Investigator Collins, Lt. Collins testified about interviewing Ronald Mack in connection with the case, I think back on May 28th of 2009?

A: Okay.

Q: Does that sound right?

A: That sounds alright.

Q: Do you have a transcript of that taped interview?

A: Yes I do.

Q: Were you there when that was being recorded?

A: Yes I was.

Q: Now we heard a male's voice on that tape and before I ask you this, were you in the courtroom when part of that tape was played?

A: No ma'am, I wasn't.

Q: Do you dispute that the male's voice, not the defendant's voice, but the male voice from the sheriff's department is your voice?

A: I don't dispute that.

Q: Alright. Judge we would move to publish certain, relevant portions of un-played Ronald Mack's statement

that's in evidence.

The Court: Alright.

Mr. Jenkinson: We object Your Honor. The State had that opportunity and has taken advantage of that opportunity to play and include the portion.

The Court: Ladies and gentlemen, we'll break for lunch now. Please go to the jury room and return at two thirty.

(Jury exits courtroom for Lunch Break)

The Court: Alright what would you want to play for the jury now?

Ms. Barr: The part where it left off. I'm not going to re-play anything else.

The Court: How long is that?

Ms. Barr: Ten minutes at the most.

The Court: And what's on it? What else do you want them to hear?

Ms. Barr: Do we have another copy of the transcript to give the judge?

The Court: Do you know what you want them to hear or you just want to play it?

Ms. Barr: Yes Judge, I know what I want them to hear.

The Court: That's the question, what do you want them to hear?

Ms. Barr: Yes sir.

The Court: What else?

Ms. Barr: Will you hand your copy, Sgt. Whack to the judge? Judge, I think based on reading the transcript, we stopped the tape on page twenty-three, somewhere around line fifteen and Judge we would like to play it through the approximately page twenty-six. I'm sorry, page twenty-seven, line twelve.

The Court: So you want the jury to hear that the defendant might be on the run out of California and came to be in a gang, where he was living in Maryland?

Ms. Barr: Yes sir.

Mr. Jenkinson: Which page is that on Your Honor?

The Court: The bottom of twenty-four.

Mr. Jenkinson: Twenty-four?

The Court: Bottom of twenty-four.

Mr. Jenkinson: That's already been played Your Honor. It just, they played through twenty-seven.

Ms. Barr: It has not been Judge. As a matter of fact, Lt. Collins testified and Mr. Jenkinson was clear that I stopped on page twenty-three at line fifteen, because the last thing I played was Ronald Mack stating we either go to jail or we die or we either we're going to end up having riches and everything.

Mr. Jenkinson: And what you want, what was Your Honor referring to? What page was that on?

The Court: Twenty-four, the bottom of twenty-four and the top of twenty-five.

Mr. Jenkinson: That is simply being offered for prejudice and probative value. This is not a gang murder. There's no gang activity, there's nothing in furtherance of gang activity. There's just purely being offered to prejudice with saying he was at one time in his life he is a crypt, but again, we can't cross examine him and I can't cross examine about it, whatever circumstanced, because this is a tape and we're being denied our rights under the fifth and sixth amendment; sixth the confront, fourteenth to due process.

The Court: So the ruling of the Court is this, she can play the tape, but you have to read back or turn the tape down around beginning around line fourteen or so on the bottom of --- the last thing that he can play, that you wanted to play is my gang originated out of California.

Mr. Jenkinson: What we'd like to do is start at line thirteen, where the question was is Jason in San Diego? Then that is the response that goes all the way through and we would ask that thirteen ...

The Court: No, she can play down to the first word on nineteen as my gang originated out of California, you can even, I mean, you can, in fact you can play the

entire answer to thirteen, but you must stop before number twenty-four and so I'm striking lines twenty-four, twenty-five and then on page twenty-five, the continuity starts on lines fourteen, how long has your mother dated Callie? Got it?

Ms. Barr: Yes sir.

The Court: If you inadvertently play any of the other then we have to pause we have to manage the volume. We're going to break until two-thirty.

-BREAK-

The Court: Mr. Jenkinson you were asking about a copy of a motion that you filed?

Ms. Barr: We found it Your Honor.

Mr. Jenkinson: Twenty-four, Your Honor.

The Court: Okay. You're going to stop on what page again?

Ms. Barr: Judge I think you said what page am I going to stop at?

The Court: Yeah, where you going to stop at?

Ms. Barr: I think you instructed me to stop at page twenty-four, line twenty-three.

The Court: Yeah, and then after you start it back, where do you press play after that to the end or?

Ms. Barr: No sir, I don't think I'll play to the end.

The Court: Do you know when or at what point you plan to stop it after that?

Ms. Barr: Page Twenty four. I don't see me going beyond that.

The Court: Twenty five, you're not?

Ms. Barr: Yes sir and Judge we would simply just place on the record that the particular exhibit has already been entered into evidence and we would, the State takes the position that we're entitled to play more of it, but we understand the Court's ruling.

The Court: What, what exhibit is into evidence?

Ms. Barr: The recorded statement of Ronald Mack.

Mr. Jenkinson: I don't have it. I have it as being introduced into exhibits.

Court Reporter: It's number sixty.

Mr. Jenkinson: Your Honor it's only playing partially. Now how we're going to handle that because I was unaware that that tape was in.

Court Reporter: No, you agreed.

Mr. Jenkinson: Okay if it's in. When they played it I assumed they were going to play the tape, but they only played part of the tape and now it is in we would ask that it not be sent to the jury room. If they want to hear it, then they have to hear it in open court and only that portion that's been in evidence. They can't go in there and listen to the whole tape.

Ms. Barr: And that's a problem Judge. The whole tape is in

evidence and the tape is like any other exhibit. We can chose to use part of it. Some of it or none of it. And that therein creates problems because the entire tape is in evidence. So we take the position that we can ...

Mr. Jenkinson: It was over our objection at that particular time Your Honor. We did not --- we objected to the tape and we objected to that whole line of testimony so now in view of the position of the Solicitor wanting the whole tape going when they only played half, we would then object to the unused portion because it defeats what the Court has ruled as admissible.

The Court: The jury can listen to any of the tape, but it will be in the courtroom and it will be in the basis on what they are allowed to here.

Mr. Jenkinson: Thank you.

The Court: Alright, let's bring the jury in.

(Jury enters courtroom)

Ms. Barr: It please the Court, Your Honor?

The Court: Yes.

DIRECT EXAMINATION OF SGT. WHACK BY MS. BARR:

Q: Sgt. Whack, I think when we broke, I was talking with you about the taped statement of Ronald Mack, do you remember me asking you about that?

A: Yes ma'am.

Q: And I think at that time I moved to publish a portion of that statement. I'm going to do that at this time. And Judge, based on the Court's ruling, I'll stop it at a point in time that's I've been instructed to do so.

(TAPED STATEMENT OF RONALD MACK IS PLAYED)

Mr. Jenkinson: Your Honor, characterization that it was court ordered that she stop there, so ...

The Court: Alright.

Q: Alright, now sir I'm going to ask you one or two more follow up questions and I think I'll be done. At some point, were you notified that Tiffany Bowen maybe a witness to this case?

A: Yes.

Q: Okay. Did you make an attempt to contact Ms. Bowen to interview her?

A: I did.

Q: And did you actually have a conversation with Ms. Bowen?

A: Yes ma'am.

Q: Alright, tell me what you asked her.

A: I ...

Mr. Jenkinson: Your Honor, I object on the basis of hearsay.

Ms. Barr: It's his statement Judge.

The Court: Pardon me?

Ms. Barr: It's his statement; he can testify about what he

said I would assume.

The Court: Objection overruled.

Q: Tell me what you asked of her.

A: I asked her what was testified to in reference to this case?

Q: Alright and what was her response?

Mr. Jenkinson: Objection. Hearsay.

The Court: Ms. Barr?

Ms. Barr: Judge, it's not being offered except for truth of the matter it serves, we take the position it's not hearsay.

The Court: Well what's the point of it?

Ms. Barr: Your Honor, may we approach briefly? Yes sir, yes sir. Let me back up for a minute Sergeant Whack did you identify yourself to her?

A: Yes I did.

Q: You tell her where you work for?

A: Yes I did.

Q: And you told her you were calling about Kelvin Bowen's case?

A: That's correct.

Q: Did she agree to talk to you or did she refuse to talk to you? Don't tell me what she said, just tell me whether she agree to talk to you or ...

The Court: Overrule the objection.

Q: Did she agree to talk to you or did she refuse to talk to you?

A: She refused.

Q: That's all the questions that I have.

CROSS EXAMINATION OF MR. WHACK BY JENKINSON:

Q: Mr. Whack, let's just start where you left off. You ever heard the expression, do you agree to tell the whole truth and nothing but the truth?

A: Yes I have.

Q: Have you just told us the whole truth in this case so far?

A: Yes I have.

Q: Well did you tell us when you called Tiffany Bowen to talk to her?

A: No, sir.

Q: Didn't bother to tell us it was Friday afternoon, just a few days ago when she was getting ready to get in a car and come to South Carolina, did you?

Ms. Barr: Objection Your Honor. The question assumes facts that are not in evidence. We don't know where she was.

The Court: The objection is sustained.

Q: You called her this past Friday afternoon?

A: Yes sir.

Q: She had never seen you before in her life?

A: I guess not. I'd never seen her before.

Q: You'd never seen her before and she has never seen you before?

A: Not that I'm aware of.

Q: And anybody can say I'm a Sheriff's deputy from Williamsburg county over a telephone can't they?

A: Yes sir.

Q: In fact, Ms. Bowen said, officer if you want to talk to me, you can talk to me Monday, I'll be glad to talk with you, Mr. Jenkinson, in your presence and you can ask me whatever you want to ask. She told you that twice didn't she?

A: It wasn't exactly like that.

Q: But she told you she'd meet with you on Monday and talk with you didn't she?

A: She said that she would be here Monday to answer any questions.

Q: And on Monday did you ask her any questions?

A: I didn't see her Monday.

Q: Did you walk up to her and ask her any questions Monday?

A: No sir.

Q: Did you walk up Tuesday?

A: No sir.

Q: Did you walk up Wednesday?

A: No sir.

Q: Did you walk up this morning?

A: No sir.

Q: Did you walk up to her anytime up until you took the stand today?

A: No sir.

Q: You saw her stand up in court and identify herself on Monday?

A: That's correct.

Q: And you didn't make any attempt, cause all you wanted to do was take the stand so you could tell us she was not cooperating. That's the only reason you even called her Friday afternoon, isn't it?

A: No sir.

Q: Well you certainly had Monday, Tuesday, Wednesday and half a day Thursday to talk to her if you wanted to in the courtroom, didn't you? Live and in person. With a uniform on and proper identification.

A: Yes sir.

Q: Now, I want to understand something about the two cell phones. I'm going to show you what is exhibit a hundred and twelve that was introduced through you and it says to whom it may concern. Please give my attorney W. E. Jenkinson, III my cell phone, Samsung model to my attorney. He has my authorization to get custody of it. And that was back on September 28th,

2009. You remember that?

A: Yes sir.

Q: Was the Samsung phone ever given to me on that day or any day since?

A: According to ...

Q: Sir?

A: According to this paper you received it on October 13th?

Q: Where does it say on the second page anywhere where I got a Samsung telephone?

A: It doesn't say that but there's the explanation.

Q: Well it doesn't say that does it?

A: No sir, because I was informed that you brought this letter to the jail from, because he was in Abraham at the time.

Q: Correct, but it doesn't say I got the telephone does it?

A: Not on that form.

Q: Well, you don't want the jury to think that I have been hiding this cell phone, this Samsung cell phone from anybody from this day forward, do you?

A: Well, that's why I didn't attach that form, that's why I didn't attach that sheet that's handwritten to that inmate property sheet.

Q: So you're accusing me of hiding ...

Ms. Barr: Judge, I'm sorry, objection. He's interrupting

the witness.

The Court: Objection sustained. Let him finish the answer sir.

Q: Were you back in court ...

The Court: Just a moment Mr. Jenkinson.

Mr. Jenkinson: Oh I'm sorry, sustained? Is that what you're trying to do?

The Court: Just a moment. He's answering your question.

A: They attached, that hand written sheet to the inmate property sheet because Mr. Bowen wasn't there at our detention center to sign our sheet for you to get the form. You presented our jail with that form while the hand written note sheet requesting the Samsung phone to us. In turn, they got you to sign our sheet with his name at the top because you're his attorney and one of our C.O's witnessed you signing the form and receiving his property.

Q: Doesn't say I got the Samsung phone, does it?

A: On our sheet it does, but the paper you have your client statement on that piece of paper.

Q: Were you back in court on August 30, 2010 when we were trying to find the Samsung phone?

A: Not sure.

Q: You weren't? You weren't in the same courtroom when we were trying to get the Samsung phone and had been

asking for cell phone records?

Ms. Barr: Judge, we would object to this question, the question calls for hearsay.

The Court: The objection is overruled, continue.

A: I'm not sure Your Honor.

Q: Well, let me refresh your recollection. There were two Samsung, there were two phones in Mr. Bowen's possession when he was arrested. You heard that testified to yesterday.

A: No sir, I didn't hear it.

Q: Well, I'm going to tell you he had two phones; a Samsung phone and he had a second telephone.

Ms. Barr: Objection, counsel is testifying.

The Court: Objection sustained.

Q: Well, did you know he had a Sprint Nextel greyish white phone?

A: I'm not aware.

Q: Okay, did you know he had a Samsung phone?

A: Yes from the processing.

Q: Alright, I'm a show you a motion that was filed in connection with this phone back in August 26, 2010. You see that?

A: Yes.

Q: And who's name appears there?

Ms. Barr: Objection, hearsay Your Honor.

Q: Okay and there was a hearing held on this very matter by the Honorable Clifford Newman, you recognize his name, don't you?

A: Yes sir.

Q: And this is his. Okay and I want to show you page two of the top of the page and you can read it to yourself the first time.

(Witness reads)

Q: Were you in court yesterday when the detective testified that the Samsung cell phone was last seen in the Kia Sportage?

A: No sir, I wasn't.

Q: Or Antonio Dorsey or Dontrey Barr who saw it or Mr. Wilson who saw it. He would certainly be able to verify it hadn't he?

A: Possibly.

Q: Well, they would come from the cell phone company wouldn't it?

A: Yes sir.

Q: Okay. Alright, all you know we haven't seen any of that yet have we?

A: Not that I'm aware of.

Q: Not in three and half days.

A: Not that I'm aware of.

Q: For that matter we haven't seen any evidence since Mr.

Bowen was arrested either, have we?

A: No.

Q: About twenty-two months ago. Twenty months ago. Now, Dontrey Wilson and Dontrey Barr gave you statements, didn't they?

A: Yes sir, I believe they did.

Q: They could, they have never been able to identify Mr. Bowen as Callie have they?

A: Not to my knowledge.

Q: When Ronald Mack gave you the statements, you were there for every statement he gave, weren't you?

A: I believe I was.

Q: Sir?

A: I believe I was.

Q: Well do you know? There was three. One the day of the crime and two on the thirteenth of May and then a fourth one on the twenty eighth of May.

A: I'm not sure. You'd have to check the statements to see.

Q: You don't remember?

A: Sir?

Q: You don't remember?

A: I can't say that I was there for every one of them. I would have to check the statements to see.

Q: Do you remember the first statement they gave that

Mack, Ronald Mack and Antonio McClary requesting separately?

A: We always question them separate, we don't ...

Q: You always question witnesses separately to make sure they're telling the same story, aren't they?

A: To make sure that there's, that each story is original ...

Q: But you don't let them listen to each other, so and then you can compare if the stories are the same, right?

A: No sir.

Q: You don't do that? Well you questioned those two separately, didn't you?

A: Yes sir.

Q: Okay. And they gave consistent statements back in April, didn't they?

A: I would have to read their statements to see.

Q: Okay. Well, I'm a help you out. I'm a hand you, this is the incident report. Y'all actually write out everything, don't you, that occurs in an investigation?

A: Yes sir.

Q: But I'm a show you your incident report entries of 04-06-2009. Is that what I have here?

A: Yes sir.

Q: And do you see where at two pm Mr. McGee arrives with

his son Ronald Mack and gave a statement?

A: Okay.

Q: And then you met with Antonio McClary who lives out at --- and he gave you a statement? That's correct? That's what I say separate and then also Dontrey Barr was questioned and Mr. McClary was questioned. Do you see all that?

A: Yes sir.

Q: And what was the entry date after you left Mr. Barr's residence all statements appear to be consistent. Is that what it says?

A: Yes sir.

Q: That means all of them are telling the same story, separately, right?

A: Yes sir.

Q: Nobody ever said Kelvin Bowen had anything to do with this case, did they?

A: Not at that time.

Q: And let's go forward as late as the thirteenth and including the thirteenth in the statements given by Mr. Mack and a portion that was played, he never, ever said Kelvin Bowen is Callie, did he?

A: In his statement

The Court: Respond to the question.

Q: That's my question. He never, ever said that Kelvin

Bowen was Callie, did he?

A: He said Kelvin, his mom's fiancee.

Q: Kevin is what he said. Kevin, K-E-V-I-N. You remember that?

A: I don't know. I mean I can't say he said Kelvin or Kevin. We understood it to be Kelvin.

Q: Want me to show it to you?

A: Yeah.

Ms. Barr: And Your Honor, we would object to hearsay if he's going to ask him questions about a transcript, obviously tape is the best.

Mr. Jenkinson: Your Honor please, when the tape was played for Investigator Collins. she had the transcript, she had the transcript and she said is this a true and correct transcript at the time.

Mr. Jenkinson: That it was not introduced into evidence.

The Court: Go ahead and find it.

Q: Let me show you Mr. Mack's statement give on May twenty eight.

A: Alright.

Q: At 2:09 pm.

A: Okay.

Q: See it?

A: Yes.

Q: What is Callie's real name? What did he say?

A: He said Callie name Kelvin.
Q: Spell it.
A: K-E-V-I-N
Q: Okay, that is not Kelvin, is it?
A: That's what the transcript says.
Q: He did not, that is not, Kevin is not Kelvin, is it?
A: No sir.
Q: You knew somebody real well by the name of Kelvin right in your own office building, didn't you?
A: Yes sir.
Q: What's his name?
A: Kelvin Washington.
Q: Your sheriff. And if he'd a called the sheriff's name, you'd a known that, wouldn't you?
A: Yes sir.
Q: You remember him saying that only Ronald Mack, I'm sorry Antonio Dorsey only said Ronald Mack wore gloves into the crime scene. Remember that?
A: Say that again.
Q: That only Ronald Mack wore gloves into the crime scene, you remember that?
A: I don't right off.
Q: You wouldn't doubt that would you?
A: I can't confirm it either.
Q: You want to see that one too?

A: Sure.

Q: Okay. You remember Antonio McClary giving you a statement on May thirteenth 2009, six seven twenty-four, second statement?

A: Let me see.

Q: Remember that?

A: Yes.

Q: You were standing right there weren't you? Or sitting right there.

A: Yes sir.

Q: Do you remember, you asked the question, did they have gloves on or anything and what did he say?

A: I think Ronald did.

Q: And what did you say?

A: Ronald did.

Q: And what did he say?

A: I think Ronald did.

Q: He didn't say anything about anybody else having gloves, did he?

A: No sir.

Q: Because if you don't have gloves on you leave fingerprints.

A: That's true.

Q: Is there any fingerprints of Kelvin Bowen found at the crime scene?

A: I'm not aware of any.
Q: You're not aware of it are you?
A: I'm not.
Q: Now, Antonio McClary referred to Callie as Ronald Mack ...
A: Step father, I believe.
Q: Never calling a boyfriend. He said he's a step father of Ronald Mack, right?
A: That's correct.
Q: Nowhere is it written, or nowhere is it shown that Kelvin Bowen is his step father, is there?
A: No sir.
Q: How many step fathers does Mr. Mack have?
A: Oh I don't know.
Q: More than one isn't it?
A: I don't know.
Q: Well, his mama's name is Tawanda Mack Allen isn't it? That's more than, if you've got a Mack and an Allen that's at least two. He's got one real daddy and at least one step daddy.
A: Okay.
Q: Have you made any investigation into the two step fathers as to whether or not they fit the description and could in fact, be this person identified as Callie?
A: No sir.

Q: Didn't bother to check did you?

A: Is Mack her maiden name or is that her?

Q: I don't know. You're the investigator. Have you made any inquiries?

A: I know of her guess it'd be her ex husband, James Allen.

Q: But she's been married more than once.

A: Oh I don't know how many times she's been married.

Q: That would fit the description of step father wouldn't it?

A: Mr. Allen would, yes.

Q: And Kelvin Bowen wouldn't fit the description of step father would he?

A: It all depends on what he's been told.

Q: Well if they're not married he couldn't be his step father could it?

A: He may have been told they're married.

Q: Do you remember Antonio McClary giving you a drawing as to where he stood outside of the residence while the shooting took place?

A: I don't remember. I remember him telling me, saying where he was, but the drawing, I don't recall the drawing.

Q: I'm a show you page seventeen of that statement, okay? Question; and tell me where y'all got on the gravel

road and draw it on this paper and talk at the same time. How did y'all go in the house. I'm a make a diagram and this is going to be, and then there's a diagram.

Ms. Barr: Judge, may I inquire counsel as to which statement he's referring to and which page?

Mr. Jenkinson: It was done on May 13th, 7:24, the second one.

Ms. Barr: Thank you sir.

Mr. Jenkinson: It's called the confession.

A: No sir.

Q: He never, meaning Antonio McClary, never told you he went inside the house in this confession statement, did he?

A: No sir.

Q: If he didn't go inside the house, he can't tell us who shot or fired the shots that killed K.D. , can he?

A: Not in that statement he didn't.

Q: Well, did you believe his statement?

The Court: Objection. This is irrelevant to what he believes. Next question.

Mr. Jenkinson: Yes sir. When you questioned Ronald Mack, did he try to pin the murder, that he admitted doing, on a guy named Tom Tom and one named Bam from Hemingway?

A: Seems like I do remember him mentioning those others.

Q: Now, you investigated of course, and talked with Tom Tom and Bam to find out if they were involved?

A: I don't remember. I don't know if we ever figured out what their real names were.

Q: Did anybody make any investigation in it, to it?

A: Certainly did.

Q: Who did? I haven't seen any notes; I'd just like to see something or hear something that somebody did check out a murder suspect or two.

Ms. Barr: Objection Judge, counsel is testifying.

The Court: Objection sustained to all counsel making random statements.

Q: On the 28th of May you got a statement from Ronald Mack and Tawanda Allen, remember that?

A: Yes sir.

Q: And do you recall right before the statement, let me ask, Ronald Mack and his mother were taken over to the sheriff's office for these statements, weren't they?

A: Correct.

Q: You took them, didn't you?

A: I think I did.

Q: And they were together when you were with, when they were with you, weren't they?

A: I don't think so.

Q: Do you remember them talking and between themselves and having a conversation about what they were going to say?

A: I don't recall.

Q: Do you recall his mama telling him to make something up, but make sure that it's relating to the story?

A: No sir.

Q: To put Kelvin in it?

A: No sir.

Q: You don't remember that?

A: I don't remember that.

Q: But right after that they would have, they did get a recorded statement. Right?

A: Like I say, I don't remember them talking about that.

Q: Were you present when Antonio McClary identified the photograph on the computer?

A: Yes sir.

Q: He was taken over to see a lineup?

A: No sir, I think he was being brought over for an interview.

Q: He was taken over for an interview?

A: Yes sir.

Q: And also to look at a photograph?

A: No sir, we brought him over for interview.

Q: Okay so, so he had no idea he was going to look at a

photograph?

A: That's correct; not to my, not to my knowledge.

Q: Okay. But he only saw one photograph?

A: He saw one when she was downloading the email.

Q: Okay, Antonio McClary's description of Callie, do you remember that in his statement?

A: No sir.

Q: You were present on May 13 and 7:24 pm for the second confession statement of Mr. McClary weren't you? Sir?

A: Am I on the transcript?

Q: I'll let you look at it.

A: Yes.

Q: And do you remember Investigator Lail asking Mr. McClary, what does Callie look like? Do you remember that question?

A: Yes sir.

Q: And what did he say?

A: He had told him he's scrawny.

Q: What kind of hair?

A: Peezy like, real peezy.

Q: Is that low cut?

A: No, absolutely not.

Q: Not low cut like an Afro. In other words, he's got a full Afro?

A: He didn't say that; he just said peezy.

Q: Well it's not low cut, right?

A: That's what he said.

Q: Alright, that was a complete description, well I take it back, there's one. Is he light skinned or not? It said, what does it say?

A: Brown skinned.

Q: Okay, other than that, there was no description given by Mr. McClary, was there?

A: Just ...

Q: That was the complete description.

A: Yes sir.

Q: That was all he knew, wasn't it?

A: Yes sir.

Q: When you saw Ronald Mack, I'm sorry, when you saw Mr. Bowen for the first time when he was brought to South Carolina on the 28th, he didn't fit that description, did he?

A: Partially.

Q: Well he was tall.

A: Yes sir.

Q: He's not scrawny, is he?

A: Yeah he is.

Q: Sir?

A: Yes he is.

Q: And, well, depends on who you call, want to call

scrawny right?
A: That's right.
Q: He's got a mustache and had one then.
A: I'm not sure whether he had one then or not.
Q: Well I'll help you with the computer picture. Do you remember State's exhibit number 67?
A: Yes.
Q: That's the one that K. identified him by?
A: That's Mr. McClary.
Q: I mean Mr. McClary, I'm sorry. Antonio McClary.
A: Yes sir.
Q: That's the one he identified him by?
A: Yes sir.
Q: And how tall is he in that picture?
A: Can't tell.
Q: Can't tell can you?
A: Not by the picture, no sir.
Q: How scrawny is he in that picture? Don't look like he's scrawny does it?
A: Well ...
Q: Got a mustache doesn't he?
A: Yes sir.
Q: Did he tell you anything about a mustache?
A: No sir.
Q: That's pretty prominent, isn't it?

A: I suppose.
Q: Did he tell you anything about a scar along his jaw line that he identified while he was in court?
A: No sir.
Q: None of those ...
A: I don't know what he testified to in court.
Q: Well, none of those, virtually none of this photograph matches the description he gave you in that sworn statement does it?
A: It's not a full body photo.
Q: He identified him from the photo?
A: Well, he recognized him from the photo.
Q: I understand that. Is there anything from his description that fits this photo?
A: Brown skin. I guess you could say he's scrawny.
Q: You don't know that though do you?
A: Not just by the photo.
Q: And he wasn't shown but one photo.
A: Well he wasn't shown that. He happened to come in to the room when it was being downloaded.
Q: He stumbled into the room?
A: He was brought into the room by the police.
Q: Just walking around looking at computers?
A: Well in a way, yes.
Q: He went over there to look at that picture didn't he?

A: No sir.

Q: Y'all brought him over there to look at that picture?

A: No sir.

Q: He just happened to see it?

A: Yes sir.

Q: Okay. Thank you sir.

The Court: Any re-direction?

Ms. Barr: Very brief Judge.

RE-DIRECT OF SERGEANT WHACK BY MS BARR:

Q: Sergeant Whack, would you agree or disagree with the characterization of Callie being tall?

A: Yes.

Q: Alright and the gentleman who was arrested and brought from Maryland, Mr. Bowen, is he tall to you?

A: Yes.

Q: Is he scrawny to you?

A: Yes.

Q: Is he brown skinned to you?

A: Yes.

Q: Now, this whole notion about Kelvin versus Kevin, your former sheriff, our former sheriff of Williamsburg county was named Kelvin Washington, or is named Kelvin Washington?

A: That's correct.

Q: You've heard him called Kevin before?

A: Yes.

Q: People mispronounce that word all the time?

A: That's correct.

Q: Now when you called Ms. Bowen, where did you call her from?

A: From here at the courthouse.

Q: The courthouse? Right?

A: That's correct.

Q: And when you asked her why you were calling, what did she say?

A: She said that she'd be here on Monday to----her attorney advised her to tell us that she'd be here on Monday to answer any questions.

Q: Her attorney?

Mr. Jenkinson: Wait a minute, don't interrupt him. I want to hear what he's got to say.

Q: I'm sorry, please continue.

A: She said that her attorney advised her to tell us that she could answer any questions on Monday.

Q: Did she say who her attorney was?

A: No ma'am, she didn't.

Q: Now, one quick question. Mr. Jenkinson asked you have you collected any evidence against Kelvin Bowen in the twenty two months since he was arrested. Remember him asking you that question?

A: Yes.

Q: Did you in fact, collect any evidence on Mr. Kelvin Bowen since he been arrested?

A: Yes we did.

Q: Is this part of that evidence this shot gun?

A: Yes ma'am.

Q: That's all the questions I have.

The Court: Anything further?

RE-CROSS OF MR. WHACK BY MR. JENKINSON:

Q: Did you ever find any fingerprints on that shotgun?

A: No sir, I didn't personally.

Q: Did you ever find any documents indicating his ownership of that shotgun?

A: No sir, the serial numbers were ...

MR. JENKINSON: Nothing further.

A: ... scratched off.

The Court: You may step down. Next witness?

Ms. Barr: Judge that's the State's case. The State will rest.

The Court: Alright, ladies and gentlemen the State has rested. Please go to the jury room and do not discuss the case.

(Jury exits courtroom)

The Court: Matters of law.

Ms. Barr: None on behalf of the State Judge.

Ms. Shuler: Your Honor, at this time the Defense would move for a directed verdict. The State has failed to produce any competent evidence that would tend to prove each and every element of the crime beyond a reasonable doubt. It is your, the Judge must grant the motion where circumstantial evidence merely raises a suspicion of guilt and we would assert that there's only a suspicion of guilt in this case; there's not competent evidence to suggest that Mr. Bowen was in South Carolina in the time that the murder, had any connection to South Carolina at the time of the murder, had any connection with anybody at the time of the murder. Ronald Mack testified that the first time he had ever met Mr. Bowen was in May of 2009, which was well after K.D had been murdered. He said the first time he ever laid eyes on him was the day before Mother's Day in May of 2009. Whenever he and his, whenever Kelvin Bowen and his mother came down to South Carolina to pick him up and carry him back to Maryland. Antonio McClary's description does not fit the description, does not fit what Mr. Bowen looks like and nobody has identified him positively as being the individual who has been alleged to have committed these crimes. Multiple witnesses have given multiple statements on various occasions; Mr. McClary has given

at least four statements that we know of. Mr. Mack has given two. They have interviewed multiple people on multiple occasions with different stories. There's a failure of competent evidence to tend to suggest the Defendant's guilty in this case. No fingerprints on the gun, nothing linking him to the gun, other than, other than the fact that it was in the room of his girlfriend's house. It's mere presence is insufficient, does not connect him directly to the crime. So we would suggest that the Court grant the directed verdict in this case. Your Honor, I would also add that there was nothing to suggest that Kelvin Bowen ever spent the night in Tawanda Allen's home. No toothbrush, no clothing, no shoes, no razor, no hairbrush.

The Court: Rule 19 provides that in ruling on a motion for directed verdict, the Court shall consider only the existence or non existence of the evidence and not it's weight. There is evidence in the record that the Defendant killed Mr. K.D. and the Defendant, along with Mr. Mack, they both shot him after breaking into the house, further evidence that this was planned sometime beforehand and that they were all armed with various weapons when the murder was committed. If the jury is to believe that evidence, then the Defendant will most likely be found guilty and therefore, I deny

your motion for directed verdict.

Ms. Shuler: Thank you Your Honor.

The Court: Anything else before we proceed with the Defense?

Mr. Jenkinson: I'd just like about two or three minutes to re-group if we could take a break.

The Court: Do you want me to question Mr. Bowen as to his right to testify or not to testify?

Mr. Jenkinson: Yes sir. He has chosen not to testify.

The Court: Alright, we would like to examine him on the record regarding that before the jury comes back. Mr. Bowen at this time I'm going to explain to you certain of your rights. If you do not understand anything that I said, please let me know and I will explain it further. Do you understand?

A: Yes sir.

The Court: We have reached the stage of the trial where you have the right to present your defense and you have the right to claim the protections by the 5th Amendment to the Constitution of the United States. This amendment states, in part, no person shall be compelled in any criminal case, to be a witness against themself. This means that you cannot be required to testify in this case. No one can, you do have the right to testify, but you cannot be compelled to testify. No

one can make you testify. This is a personal right and no one can waive this right but you. If you decide to testify, you'll be subject to the same rules that govern other witnesses who have taken the stand and you may be examined or cross examined on any relevant issue in this case. In addition, if you have any convictions involving dishonesty or false statements or crimes punishable by imprisonment for more than one year and I determine that the quote is value of admitting this evidence outweighs its prejudicial effect to you, the State then would be able to introduce your record to attack your credibility. If you decide to testify, this decision on your part, must be freely, voluntarily and intelligently made. The full knowledge of the protections given you by the 5th amendment, as well as the consequences of your decision to testify. If you decide not to testify, I will instruct the jury that they can not give the fact that you did not testify any consideration whatsoever in their determination of whether you're guilty or not guilty. And that there is to be absolutely no prejudice to you because you did not testify. It is left entirely up to you whether or not you testify. You may talk with your lawyer, Mr. Jenkinson, Ms. Shuler, family, friends or anyone else you'd like to talk to, but the final decision is left

entirely up to you. Do you understand what I've explained?

A: Yes sir.

The Court: Do you have any questions about that?

A: You said I can talk to my family?

The Court: You can talk to your family.

A: So I can speak to my wife?

The Court: You can speak to your wife and they'll arrange to have you do that in just a minute. But you have discussed, have you discussed with your lawyer whether or not you should testify?

A: I can talk to him again to right?

The Court: You can talk with him again as well.

A: Alright.

The Court: So you want to confer with your lawyer and your wife before deciding whether you should testify?

A: Yes sir.

The Court: Alright, we'll take a break.

(Court break was taken)

The Court: Mr. Bowen have you had enough time to decide whether or not you're going to testify?

A: Yes sir.

The Court: Are you going to testify?

A: No sir.

The Court: Alright anything else on this?

Mr. Jenkinson: No sir.

The Court: Alright thank you. Alright, ready for the jury?

Mr. Jenkinson: Yes sir.

The Court: Bring them on.

(Jury enters the Courtroom)

The Court: How's the jury doing?

A: Doing alright.

The Court: Doing alright?

A: Yes sir.

The Court: Okay. You've heard the State's case; it's now the defenses turn.

Mr. Jenkinson: May it please the Court?

The Court: Yes sir.

Mr. Jenkinson: First order of business Your Honor, we would move into evidence exhibit marked for identification as Defense exhibit number 3 which is the Anne Arundel County police tow vehicle form. Next we would move into evidence Defendant's exhibit number 2, the statement of Antonio McClary.

(Defendant's Exhibit Number One was entered)

Ms. Barr: We object to that one.

The Court: Mr. Jenkinson?

Mr. Jenkinson: It was authenticated by Mr McClary as what was prepared and presented to him.

The Court: The objection is sustained.

Mr. Jenkinson: The third item is Defense exhibit number 1, the identification which Ronald Mack signed and authenticated by Mr. Mack.

Ms. Barr: Objection, hearsay. And Your Honor, also we are not sure that that exhibit is properly authenticated.

The Court: He's testified to by who?

Mr. Jenkinson: Mr. Mack. He authenticated and said he signed, that was his signature and that was his statement he provided.

Ms. Barr: Judge, we would simply take the position it's an out of court statement offered --- There is not any applicable hearsay rule that applies and therefore it should be excluded as hearsay.

The Court: Sustain the objection at this time.

Mr. Jenkinson: I call Mr. Scott Palmer.

-WITNESS IS SWORN IN-

DIRECT EXAMINATION OF SCOTT PALMER BY MR. JENKINSON:

Q: You Scott Palmer?

A: I am.

Q: Mr. Palmer tell the jury where you live.

A: I live in Charleston, South Carolina.

Q: You practice law?

A: I do.

Q: How long have you been licensed to practice law?

A: I'm in my 23rd year.

Q: And where is your office located?

A: I actually have two offices; one is in Santee, South Carolina and the other is in Ridgeville, South Carolina.

Q: How long have you been practicing in the state of South Carolina?

A: Since August of 1988.

Q: Does your practice include representing criminal defendants?

A: It does sir.

Q: Have you represented clients in Williamsburg county?

A: I have; not that many, but I have on occasion, yes.

Q: Where did you go to law school?

A: University of South Carolina.

Q: And what year did you graduate?

A: 1988.

Q: Are you a member of the South Carolina bar association?

A: I am.

Q: And you're familiar with the ethical rules that govern lawyers in court and in representing clients?

A: I am.

Q: Antonio McClary, do you know him?

A: Yes.

Q: Did you represent him?

A: Actually I represented him on several different matters.

Q: You've known him some time?

A: I have indeed.

Q: Did you have the occasion to represent him in criminal charges for murder, for possession of a weapon during a violent crime and burglary first in Williamsburg county, South Carolina?

A: That's correct.

Q: What did, what did, tell the jury what was the nature of those charges and what incident occurred out of which he was charged.

A: Well he was alleged to have been involved in the case that we're here about. The murder of a guy named K.D. .

Q: K.D. ?

A: Yes.

Q: And did you represent him throughout until that case was disposed of?

A: Yes.

Q: How was the case disposed of? By trial or by pleading?

A: He pled guilty.

Q: He pled guilty when?

A: I don't know. It was in 2010 sometime. I believe it was probably about six months ago.

Q: Back in October?
A: October, yeah.
Q: And that was in this courtroom?
A: Yes.
Q: And before Judge Newman?
A: It was.
Q: And you were his lawyer of record at that time?
A: I was.
Q: When those charges were brought before this court, would he plea guilty to murder?
A: You know, I'm going to have to look in the file, but I believe it was a reduced charge, but, you know, there's a lot of cases since then, so I believe, well, there was a plea negotiation, so ...
Q: There was negotiations with whom?
A: With the Solicitor's office.
Q: And as a result, did he plea guilty to burglary second?
A: Again, I don't know if the burglary was dropped or if that was part of the plea deal.
Q: If I show you the transcript, would that refresh your recollection?
A: Yes and I would go with whatever that said.
Q: I'll ask you if this is copy of the transcript of the guilty plea on October 14, 2010 of Antonio McClary?
A: Yes that is.

Q: I call your attention to the first two pages. You may want to glance at it to refresh your memory.

A: Okay, yeah, looks like he pled to second degree murder and that looks like the only charge on here. It looks like he pled to second degree and that was it.

Q: Alright then what was he charged with at the beginning of the plea?

A: First degree and then there were some other charges. I think it was ...

Q: The murder charge.

A: A burglary first and some weapons charges I think were in there.

Q: Was that a negotiated plea with the Solicitor?

A: It was.

Q: And was the murder charge dropped?

A: The first degree was ...

Q: And there was ...

A: ... dropped.

Q: ... one murder charge against him in the ultimate plea was there?

A: Right.

Q: First degree burglary, was it dropped?

A: I believe it was, yes.

Q: And he only pled to second degree?

A: Right.

Q: That carries up to fifteen years?

A: Right.

Q: Did he get a fifteen year sentence?

A: No.

Q: What did he get?

A: I think he got twelve.

Q: In the plea negotiations with the Solicitor, was there any discussions with the Solicitor about his testifying at this trial with K.D. ?

A: I can't say that that was a condition of the plea. It was probably brought up and I know when I talked to McClary, when we were discussing the plea, I told him that if he would probably be asked to testify in any of these other charges on any other defendants that went to trial, that he would be expected to testify.

Q: And he agreed to do that?

A: He did.

Q: And as a result, his, he only pled guilty to twelve years?

A: Yeah, I don't know if it was as a result, but he understood that when he pled that if any of the other cases came to trial that he would be called to testify.

Q: Let's go back; did you receive, did you request from the Solicitor's office what we call Rule 5 or Grady Motion Discovery on his behalf?

A: Yes.

Q: Did you receive his statements that he had given law enforcement in April and two in May of 2009?

A: Yeah, as I recall, they were in the form of a transcript of a recording. There may have been some other written statements that he prepared, but the main statements were transcripts, transcribed recordings.

Q: Now, do you recall asking for a preliminary hearing before this Court to determine whether or not there was probably cause?

A: Yes.

Q: When was that hearing held?

A: That was earlier in 2010. I believe it was May or June ...

Q: June the 10th, does that sound ...

A: (No response).

Q: Tell us what time the preliminary hearing was supposed to begin.

A: I think we were called to appear maybe mid day, maybe right after lunch and there was some other proceeding going on in an unrelated case, so it was quite a way.

Q: Where was McClary and the other Defendants sitting from mid day until the time of the preliminary hearing?

A: They were over in this area.

Q: All sitting together?

A: I believe they were, yeah.
Q: And the preliminary hearing took place around four pm?
A: That sounds right, yeah.
Q: That was before one of our local Magistrates?
A: That's correct.
Q: After that hearing, was there a meeting in the grand jury room of the lawyers and the Defendants?
A: Yeah, there was, they had all the Defendants staged up in the room up here and there was obviously law enforcement there and then I think I was there, you were there sir, and Mr. Fender who represented one of the other Defendants was also there.
Q: Who was that?
A: Legrand Fender.
Q: Carroway? The public defender?
A: I'm sorry. I know someone named Legrand Fender.
Q: Is that him right there?
A: Mr. Carraway, of course, yes.
Q: Yes, okay. He was in, the lawyers were present?
A: Yes.
Q: Was Mr. McClary present with you in this meeting?
A: Yeah, and McClary and I were standing in the far corner of the room, standing up, talking about his case.
Q: Okay and at one point in time did we sit around the table together?

A: Yes, you came over and asked us to sit at the table ...

Q: Let me ask this, was Mr. Bowen present?

A: Yes.

Q: And was Ronald Mack present? Mr. Carraway's prisoner? Uh, client?

A: Yes.

Q: And you and your client?

A: Yes.

Q: So there was three lawyers and three parties in this case?

A: Right.

Q: Tell us what happened.

A: Well, you approached me and asked if you could ask my client a question. Naturally, I wanted to know what the question was, because often in cases co Defendants may have conflicting interests and you told me you just wanted to ask one simple question. Now, as I recall, Mr. Bowen had not made any statements in the case, especially any that incriminated my client, so we sat at the table and you asked him, you asked Mr. McClary, I was right next to him, ready to stop you if you went past what you told me you were going to do, and you asked him a simple question. You asked him to look across the table at Mr. Bowen and said, is this the guy they call Callie? And my client said, Mr. McClary said

no, that's not him. Callie's different; he's tall, taller, much taller. He's got some piercings and, in his face I think he said and he's got an Afro hairstyle and Mr. Bowen didn't have any of those. Of course, Bowen was sitting down, so I couldn't tell how tall he was, but I looked across and he didn't have an Afro and he didn't have any earrings or nose rings or whatever other piercings one might have. He didn't have any.

Q: Anything else happen?

A: Excuse me?

Q: Did anything else happen?

A: Um

Q: Let me ask you this, were you surprised that that developed?

A: I'm not, I wouldn't say, I wouldn't call it surprised and I'll tell you why I'm saying that. I was relatively new in the case, and after a while you don't get surprised by a lot of things in these cases, but I was a little puzzled that, you know, that he said that, but the way he reacted and the way he said it, I mean, I was pretty much convinced that he didn't believe that that was the guy.

Q: Was he asked to sign a written statement confirming that later?

A: Yeah, you had talked to me right after that. I said

well, if you prepare one, I'll present it to him. You did that and emailed it to me and we came back to court some time after that, it wasn't too long for a bond hearing and at that point, on that occasion, I had the statement with me and asked him if he would sign it, if he wanted to sign it and he said he did not want to sign it.

Q: Okay, now let me back up to that meeting. And I take you back to June the 10th and ask you if you recognize what has been marked for identification as Defendant's exhibit number 1?

A: I believe I have this particular statement in my file and it was provided as a result of the discovery motion that I served on the, oh no, I'm sorry. I'm mistaken. This is a statement that I actually notarized.

Q: Whose statement is it?

A: Ronald Mack's. Yeah, there's my signature and my printed name below it in my handwriting.

Q: On what day?

A: Well it's ...

Q: If you look above your signature, what date did you notarize it?

A: Actually it's not dated. It says June 2009, but the actual day is left blank.

Q: Let me, okay. Okay, now do you recall that this was

the same day that we were back in the room with your client on the 10th when this was signed?

A: Yeah, that statement you had that already prepared, and the only reason I signed it is just to notarize Mr. Mack's signature, because I'm a Notary and I was, and you asked me to notarize it.

Q: Okay.

A: So I observed him sign it and ...

Q: Did you observe him put an initial on each page?

A: Yeah and I ...

Q: And then ...

A: ... I saw him initial the pages.

Q: Did he and Mr. Carraway get a copy of this statement on the same time we signed it?

A: I think, I can't really remember that.

Q: Okay, Your Honor we would now offer this statement.

Ms. Barr: Judge, would object same grounds. It's still hearsay.

The Court: Counsel approach. Mr. Jenkinson I notice in the statement that you are offering into evidence and the State has objected to on page twelve, Mr. Mack said that you received a warrant from Florence county charging with assault and battery and intent to kill. Kelvin Bowen and Tawanda Allen shot the victim James Allen. That they drove from Maryland to Florence in January 2009 to an apartment on

and found him and killed him; found him and shot him, but didn't kill him. I just want to be certain that you have considered it and you are aware that his also implicates your client in another shooting in South Carolina, specifically Florence county.

Mr. Jenkinson: I didn't recall that, but at the time we did put both statements together.

The Court: Well this is an exhibit that you've offered into evidence and the State has objected to.

Mr. Jenkinson: Well, I will withdraw at this time.

The Court: If you're going to withdraw it, then you need to withdraw it in the presence of the jury.

Mr. Jenkinson: Can I consult with my partner for just one second?

The Court: Alright. What's your position Ms. Barr? Mr. Jenkinson do you wish to withdraw your request ...

Mr. Jenkinson: Yes sir.

The Court: ... your exhibit. The State's position?

Mr. Jenkinson: Yes sir.

Ms. Barr: Judge I don't have any objection to that.

The Court: Alright bring the jury back.

(Jury enters courtroom)

Mr. Jenkinson: What number is that Your Honor?

The Court: Page twelve.

Mr. Jenkinson: I mean what number?

The Court: The exhibit number is Defense exhibit number ...

Court Reporter: One. It's one.

The Court: Mr. Jenkinson?

Mr. Jenkinson: We withdraw that exhibit.

The Court: Alright, ladies and gentlemen of the jury Mr. Jenkinson has elected to withdraw his request to have the statement of Ronald Mack, dated June 2009 at this time. You may proceed.

Q: Now, that's all the questions that we have at this time.

CROSS EXAMINATION OF PALMER BY MS. BARR:

Q: Good afternoon Mr. Palmer.

A: Good afternoon.

Q: I imagine you probably don't like being on that hot seat.

Mr. Jenkinson: Wait a minute, I'm sorry Your Honor. I do have one more question to ask him.

The Court: Yes sir?

CONTINUE EXAMINATION BY MR. JENKINSON:

Q: I'm going to show you what has been marked as Defendant's exhibit number 2 and ask you if that is a statement that was prepared of the conversation with Mr. McClary back in the grand jury room that you described to us?

A: This is the statement, yes.

Q: And did you find it accurate and a true representation of what took place in the grand jury room?

A: Fretty much, yes.

Q: And did you have any problems about having it signed by your client based on the wording?

A: I had no problems presenting it to him to see if he wanted to sign it.

Q: That an accurate of what took place though?

A: I believe it is, yes.

Q: We move as Defense exhibit number 2.

Ms. Barr: Your Honor, we would object under Rule 613, being Mr. McClary has admitted the main statement and therefore astringent evidence of that statement is not admissible.

The Court: Objection sustained.

Mr. Jenkinson: Answer any questions they have.

CROSS EXAMINATION OF MR. PALMER BY MS. BARR:

Q: Mr. Palmer, you testified earlier that you were relatively new to the case back in June of 2009?

A: That's right.

Q: Alright and if Mr. McClary was arrested in the middle of May of 2009, the case would have been about a month old?

A: Right.

Q: Alright and in June of 2009, when you appeared at the preliminary hearing, of course you had not been, at

that time, seen all of the evidence in connection with the case?

A: That's correct.

Q: You had not reviewed any pictures, any incident reports?

A: Right.

Q: Any statements?

A: Right.

Q: And you knew, quite frankly, very little about the facts of the case, at that time. Would that be fair?

A: Yeah, other than what McClary had related to me.

Q: Alright, now when you were at that preliminary hearing, all of the lawyers and all of the defendants were seated at that table over there?

A: That's right.

Q: Close, fair to say that you all were kind of close and huddled together because of limited space?

A: We were.

Q: Okay and following that preliminary hearing, you all went into a room in the back in the courthouse?

A: Right, that's correct.

Q: And of course, all of the defendants and all of the lawyers were back there too right?

A: That's right.

Q: And Mr. McClary certainly did not volunteer to you or

to Mr. Jenkinson any identifying or identification information about Mr. Bowen did he? He didn't volunteer that on his own did he?

A: No, we were in the corner discussing his case.

Q: Right and Mr. Jenkinson is the one who actually came to you and asked permission to talk to your client, right?

A: Right and then he invited us to be seated at the table with the other defendants and the other counsel.

Q: And at that time certainly, sir, there was nothing improper about Mr. Jenkinson asking your client a question with your permission, right?

A: Right.

Q: Now, the entire time that Mr. Jenkinson was talking with you and talking with your client, Mr. Bowen was just a few feet away from Mr. McClary wasn't he?

A: He was across e table from him.

Q: About as short a distance as you and I are now?

A: Well I think it was closer than that. It was ...

Q: Maybe about right here?

A: ... tables maybe three feet wide.

Q: Okay, and the entire time that Mr. Jenkinson was asking you a question, asking your lawyer question, Mr. Bowen was staring your client down wasn't he?

A: He was looking at him yes.

Q: Alright now, Mr. Jenkinson asked you, curiously, at

some point in time he prepared a statement for your client to sign.

A: Right.

Q: You remember him asking you that?

A: Yes.

Q: And he presented that type written statement to you?

A: He first emailed it to me.

Q: Okay, alright and you said that you had no problem presenting it to your client and let your client make the decision as to whether or not he wanted to sign it?

A: Yes, that's correct.

Q: Alright and you testified that you presented the statement prepared by Mr. Jenkinson to your client, Mr. McClary right?

A: Actually I did that on two different occasions.

Q: Alright and you testify that he did not want to sign it, right?

A: That's right.

Q: And you were, at that time, kind of confused as to why he wouldn't want to sign it?

A: I wouldn't call it confused. I, you know, I, it was the kind of thing that, you know, I presented it to him and I said you don't have to sign this.

Q: Yeah.

A: Nobody can force you to sign it. It has to be your

voluntary act and I'm just going to leave it up to you. You've already made the statement, the written statement just memorializes what you said. If you want to sign it, fine, you know, that's fine with me too.

Q: What did he say when you presented it to him to sign?

A: He said I'm not going to sign it.

Q: Why?

A: He said because it's not the truth.

Q: What else? He said he's kind of scared of that guy didn't he?

A: Well he didn't say at the first time when I came back from the bond hearing.

Q: Okay.

A: He just said he didn't want to sign it.

Q: Said it wasn't the truth?

A: Right he said it wasn't the truth and the other time I presented it to him was actually in the jail.

Q: Yes sir.

A: I had gone to see him, not for that specific purpose, but when I went to see him and meet with him, about his case, I had the statement with me.

Q: Okay.

A: And said, you know, here's this statement. Have you decided to change your mind about signing it? And he said no, I don't want to sign it.

Q: Alright.

A: And he never did sign it.

Q: And during that second time that he presented the statement was when he told you I'm scared of that guy.

A: Right.

Q: And when he said I'm scared of that guy, he was talking about Kelvin Bowen?

A: Well he didn't say that name.

Q: Well that's who you all were talking about right? In terms of that not being the one that was with me that night, you all were talking about Kelvin Bowen right?

A: Yeah, that was the subject in the statement, he just didn't say the exact name.

Q: Now, as any good defense attorney may be, which you clearly are.

A: Thank you.

Q: Absolutely, you deserve it. You want to negotiate, try to negotiate the best possible deal for your client, right?

A: That's right.

Q: And by the time Antonio McClary pled guilty, of course, you had seen the evidence in the case, right?

A: That's right.

Q: You reviewed the statements?

A: Right.

Q: The incident reports?
A: Right.
Q: The SLED reports?
A: Right.
Q: Photographs?
A: Correct.
Q: And you basically, as part of your representation of him, wanted to try to get him as little time as you could possibly get.
A: That's correct.
Q: Now you have had, during the course of your career, to actually write out formal plea agreements with clients ...
A: Oh yeah.
Q: ... with clients and with the State or with the Prosecutor?
A: Sure, yes.
Q: And in those plea agreements, you spell out your client is going to do this for the State and in return for that the State is going to do is for your client, right?
A: Correct.
Q: There was no such agreement in this case, was there?
A: No.
Q: And Mr. McClary was not made a condition of his plea

that he testify for the State?

A: No.

Q: Alright and you certainly, having reviewed all of the evidence in the case, you didn't have any reason to believe that he was a shooter?

A: There was no evidence he even had a weapon.

Q: No evidence that he even had a weapon?

A: No and there were some other factors that I think were persuasive in getting the plea agreement that he got.

Q: You viewed him as less responsible then some of the other co defendants, is that fair to say?

A: Yeah, he was among the youngest and there was no evidence he ever had a weapon. It was, you know, not really certain whether or not he even entered the dwelling. Now ultimately he admitted to entering the dwelling, but those were some facts that we talked about.

Q: And he admitted to entering the dwelling during the course of his plea when he put his hand on the Bible back in October?

A: That's correct.

Q: And you stood right next to him when you entered that plea?

A: That's right.

Q: Mr. Palmer, thank you so much for helping us.

The Court: Mr. Jenkinson?

Mr. Jenkinson: Yes sir.

RE DIRECT EXAMINATION OF PALMER BY JENKINSON:

Q: In Mr. McClary's plea, did you learn for the first time from the words of his own mouth, he did go inside and participate in this crime?

A: Well, if I can just comment on that, the answer is yes, but to explain that answer, you know, I've learned over the years that it's important when you're dealing with a criminal defendant whether or not to plea guilty. I always emphasis a couple of things. Number one is, I never push anybody to plead guilty. I might make a recommendation, but I do stress the importance of if you decide to plea guilty, it's fundamental that you realize that you should be prepared to admit that you did what you're pleading guilty to. I think we've all been there, the client decides to take a deal and then gets up there and says well I didn't really do it, I just wanted the deal. Of course the plea won't be accepted. So, in that sense I knew he was going to admit what he was charged with or what he had agreed to plea to, however, having said that, there were some facts that came out in his testimony, when he was pleading, he hadn't told me. Specifically, I'm referring to the fact that he admitted entering the

dwelling, but he went on to say that he had disguised his face with some type of mask. I believe he said it was a tee shirt. He had covered his face so he wouldn't be recognized. I wasn't aware of that fact and I don't think it was in any of the statements, so in that sense, yeah, he did say some things that I wasn't expecting.

Q: Did you hear him say for the first time that he went in the house and I saw him, meaning K.D. , sitting in the chair and I pointed right at him. In other words, he identified him for the shooter?

A: Yes.

Q: First time you learned that too.

A: I think that's the first time I heard him say that. Now, there were some information in the case that maybe there was some allegations by someone else. Witnesses or co defendants that that's what happened. That set of facts, in and of itself wasn't a surprise to me, because it had been alleged by someone else. But yeah, he said at for the first time at the guilty plea proceedings.

Q: He never admitted holding a shotgun and being the shooter of the shotgun?

A: No. He never admitted that.

Q: Are you aware and do you advise their clients under the

new act that passed in June which would had been before this plea that he's eligible for a sentence reduction if he cooperates with the State?

A: We did discuss that, yes.

Q: You did discuss at with him?

A: Yes.

Q: And that is a possibility; you may file that motion for him?

A: It's possible, yes.

Q: Which would reduce his sentence even further for his testimony?

A: Yeah, I honestly don't think it's likely that he would get that under the circumstances, but it is something that's available.

Q: You didn't think he was going to get twelve years either, did you?

A: Well, I knew he was, I knew that would be the recommendation after I had negotiated the plea with the Solicitor.

Q: When you started the negotiations you had no idea it would be reduced down to twelve years, did you?

A: The original plea offer entailed a higher sentence.

Q: No further question.

The Court: Anything further?

Ms. Barr: Not from the State Judge.

The Court: Thank you sir.

Mr. Palmer: Thank you Your Honor.

The Court: Next witness. Next witness.

Ms. Shuler: The defense calls Kelvin Michael Bowen, III.

-WITNESS IS SWORN IN-

DIRECT EXAMINATION OF MR. BOWEN BY SHULER:

Q: Good afternoon. Can you tell everybody in the courtroom your name?

A: My name is Kelvin Michael Bowen, III.

Q: I'm going to ask you to speak up real loud into the microphone, so put it up closer to your mouth.

A: Okay.

Q: What do people call you? Do you have a nickname?

A: Yes.

Q: What's that nickname?

A: KB.

Q: Is it okay if I call you KB?

A: Yes.

Q: Did you come down here and put your hand on the Bible?

A: Yes ma'am.

Q: Did you swear to tell the truth?

A: Yes ma'am.

Q: Do you know what the truth is?

A: Yes.

Q: What is the truth?

A: The truth is being honest and not telling a lie.
Q: Do you know what a lie is?
A: Yes.
Q: What's a lie?
A: A lie is when you dishonest and not telling the truth.
Q: Do you know why we're in court here today?
A: Yes.
Q: Why are we here?
A: Because of my dad's case.
Q: And are you here to tell the truth today?
A: Yes.
Q: Are you in school?
A: Yes.
Q: What grade are you in?
A: The eighth.
Q: Are you a good student?
A: Yes.
Q: KB what kind of things do you do for fun?
A: Sports.
Q: What kind of sports?
A: Football and basketball.
Q: What position do you play?
A: Defensive lineman.
Q: Is at in football?
A: Yes.

Q: You don't play any other position?
A: No.
Q: If you're not playing sports, what kind of things do you do with your friends?
A: Play video games.
Q: What kind of video games?
A: Sports.
Q: I'm going to ask you about the weekend of April 3rd, 4th and 5th of 2009.
A: Okay.
Q: Do you remember that weekend?
A: Yes.
Q: Why do you remember that weekend?
A: Because the 4th was a Saturday and it was my cousin, Denay birday.
Q: Who's your cousin Denay?
A: My cousin Denay is my mom's cousin and is my cousin too and she lives in Texas.
Q: What's Denay's last name?
A: Holmes.
Q: Where does she live in Texas?
A: In Austin.
Q: And you said it was her birthday?
A: Yes.
Q: Did you talk to Denay at day?

A: Yes.
Q: When did you talk to her?
A: Around eight thirty, nine o'clock.
Q: Did anybody else talk to her at day too?
A: Yes.
Q: Who talked to Denay?
A: My mom and my dad. Well we all did, we talked from a speaker phone.
Q: Why did y'all call her?
A: Because it was her birthday.
Q: Did you call to wish her a happy birthday?
A: Yes.
Q: Did y'all sing happy birthday to her on the phone?
A: Yes.
Q: When's your birthday?
A:
Q: Did your mom and dad give you something the weekend of April 3rd, 4 and 5 of 2009?
A: Yes.
Q: Do you remember what they gave you?
A: Yes.
Q: What did they give you?
A: They gave me an electronic basketball court.
Q: What does at look like?
A: It's one back board with two rims on it and it's two

nets on e side and a net at e bottom, so when you shoot it and it goes in, it comes back out to you so you can shoot it again.

Q: Is at a big piece of equipment?

A: Yes.

Q: Where is at?

A: In my room.

Q: Did you get at present early?

A: Yes.

Q: Do you know why you got it early?

A: No, not really.

Q: But do you remember getting it early?

A: Yes.

Q: Did you and your dad put at together?

A: Yes.

Q: What day did ya'll put at together?

A: Saturday.

Q: Do you remember what date at was?

A: The 4.

Q: When did you start putting it together?

A: When my dad got home around two o'clock after we finished cleaning up.

Q: Where was your mom at at time?

A: At e hair dresser.

Q: Were your dad and you at home alone?

A: Yes.
Q: Did ya'll play at game after you put it together?
A: Yes.
Q: Did it take you a long time to put it together?
A: Yes.
Q: About how long did it take you to put it together?
A: About an hour because we kept having to find little pieces.
Q: Did it have a lot of nuts and bolts?
A: Yes.
Q: How long did ya'll play it after you got done putting it together?
A: Yes.
Q: How long did ya'll play it?
A: About an hour or so.
Q: Did ya'll do anything after you played your electronic basketball game?
A: Yes.
Q: What did ya'll do?
A: We watched t.v.
Q: How long did ya'll watch t.v.?
A: We watched t.v. until we sung happy birthday to my cousin.
Q: Did you do anything after you sang happy birthday to your cousin?

A: Yes.
Q: What did you do?
A: Me and my dad played video games.
Q: How long did you play video games?
A: Until I fell asleep.
Q: What time did you fall asleep?
A: I don't remember, but I ink it was around two o'clock.
Q: Do you normally stay up late on the weekend and play video games with your dad?
A: Yes.
Q: Was your dad with you all day long on Saturday?
A: Yes.
Q: Whenever you went to bed was he there?
A: I think so.
Q: Whenever you woke up e next day, was he there?
A: Yes.
Q: On Sunday he was there?
A: Yes.
Q: What did ya'll do on Sunday?
A: My dad got me and my mom up and he cooked breakfast.
Q: What did he cook for you all?
A: He made waffles, bacon and eggs.
Q: Beg the Court's indulgence. Did you speak to anyone about your testifying today?
A: My dad's lawyers.

Q: Did you speak to your mom?
A: Yes.
Q: And you spoke to me?
A: Yes.
Q: Did I tell you what to say?
A: No.
Q: Did your mama tell you what to say?
A: No.
Q: Are you telling the truth today?
A: Yes.
Q: Anything other than the truth?
A: No.
Q: And nobody told you what to say today did they?
A: No ma'am.
Q: If you will ask any, answer any questions that, did you discuss your testifying today with your mom back whenever your dad was arrested?
A: Can you repeat the question?
Q: Did you talk to your mama about your testifying today whenever your dad was arrested back in May of 2009?
A: Yes.
Q: Did she tell you what to say then?
A: No.
Q: If you will, ask, answer any questions that Ms. Barr may pose to you.

CROSS EXAMINATION OF BOWEN BY BARR:

Q: Young man, I've just got a couple of questions, is it okay if I call you KB as well?

A: Yes.

Q: Okay, now you go to school in Prince George County?

A: Yes.

Q: So you're missing school this week?

A: Yes.

Q: Okay, you and your mom, how did ya'll get down here to South Carolina this week. Ya'll drove?

A: Yes.

Q: It took you what about seven hours to get down here?

A: No, eight.

Q: Eight hours to come down to Kingstree?

A: Yes.

Q: Okay now you said your cousin Denay, her birthday is when?

A: .

Q: Okay. KB you know Tawanda Allen don't you? You've seen her before?

A: No.

Q: She never brought her kids by your house?

A: No.

Q: Are you sure?

A: Yes.

Q: She's never picked you up?

A: No.

Q: Now your mom and your dad didn't live together during this time did they?

A: Yes.

Q: How long had they been married?

A: I'm thirteen so I'm guessing thirteen years.

Q: They had separated at some point in 2008?

A: No.

Q: Had they ever separated?

A: No.

Q: Your dad had a girlfriend?

A: Not that I know of.

Q: Are you testifying that your dad spent every night the thirteen years that he lived with your mom, married to your mom ...

Ms. Shuler: Objection Your Honor. Your Honor, may we approach?

The Court: I guess you want an answer as well huh? Oh you don't want an answer?

Ms. Shuler: I would like an answer. May I approach Your Honor?

The Court: Sure.

The Court: State the question Ms. Barr.

Q: Yes sir. KB, are you testifying that your dad and your

mom spent every night together that they were married, are you saying that?

A: Yes.

Q: Every single night they were married they were living, they were, they had spent the night at her house? That's what you're telling us?

A: My dad stayed with us.

Q: Okay that's all I have Your Honor. Well I'm sorry Judge. A quick question. Your dad is from California?

A: Yes.

Q: They call him Callie sometimes?

A: No.

Q: Alright, that's all I have.

Ms. Shuler: I have no further questions.

e Court: Step down. Next witness.

Ms. Shuler: The defense calls Tiffany Bowen.

-WITNESS IS SWORN IN-

DIRECT EXAMINATION OF TIFFANY BOWEN BY SHULER:

Q: Tiffany will you state your full name for the court?

A: Tiffany Monique Bowen.

Q: I'm going to ask you to speak up real loud into the microphone.

A: Tiffany Monique Bowen.

Q: Thank you Tiffany. How old are you?

A: Thirty two.

Q: Do you work?

A: Yes.

Q: Where do you work?

A: At Keiser which is a health insurance company. I'm a lead member service representative which means when people call in about their insurance I verify benefits, whether or not they have prescription coverage, how much it cost to go to the doctor, how much it is for surgery, things of that nature.

Q: How long have you been there?

A: Four and a half months.

Q: Prior to working at Keiser where did you work?

A: I worked at a company called Atcom Worldwide, which is an international company.

Q: How long were you there?

A: Two and a half years.

Q: Why did you leave that company?

A: For better benefits and better pay.

Q: Are you married?

A: Yes.

Q: To whom are you married?

A: Kelvin Michael Bowen, Jr.

Q: Is he here today?

A: Yes ma'am.

Q: Is he the defendant in this case?

A: Yes ma'am.
Q: How long have you been married to Kelvin?
A: For thirteen years.
Q: Do you guys have any children?
A: Yes ma'am.
Q: How many children do you have?
A: One.
Q: What's his name?
A: Kelvin Michael Bowen, Jr., I mean Kelvin Michael Bowen, III.
Q: Was he the young man that testified prior to you testifying now?
A: Yes.
Q: What do you guys call Kelvin Michael Bowen, III?
A: KB.
Q: When is KB's birthday?
A: .
Q: Do you and your husband have a good relationship?
A: We use to.
Q: What happened in your marriage around about April or May of 2009?
A: I noticed that he started putting passwords on his phone, so I couldn't look at it if I wanted to go to his phone to play a game I couldn't go on to it. He started having conversations, if I walked into the room

he would walk out of the room, things of that nature.

Q: Did that make you think that he was seeing somebody else?

A: Yes.

Q: Did you find out if he was seeing somebody else?

A: Yes.

Q: Who was that person?

A: Tawanda Mack Allen.

Q: How did that make you feel?

A: I was hurt and betrayed. I felt betrayed.

Q: Did ya'll ever argue about Tawanda?

A: Yes ma'am.

Q: Did your husband have a number of cell phones?

A: My husband had two cell phones.

Q: Why did he have two cell phones?

A: Well the first cell phone he had was a t-mobile Samsung phone, which is a contract phone that he does have a bill on, that he did have a bill on. He just didn't pay the bill on it, so then he didn't have a phone for a period of time. And then in May he purchased a Razor Boost Mobile cell phone.

Q: I'm going to ask you about the weekend of April 3rd, 4th and 5th of 2009. What happened that weekend?

A: Well, he just got back from California.

Q: When you say he, who is he?

A: My husband, Kelvin, Jr. Okay, so he just got back from California. He left March 22nd to go to his cousin's birthday party. She was having it in California. He arrived back April 1st. When I came home from work, he was there. We talked, he showed me pictures, I unpacked, I cooked dinner and that's our routine because he was unemployed at the time. He had recently left Wal-Mart. So when I go to work he stays at home. He helps my son with his homework so when I come home he has meat laid out for me. So, I cook. That's just our routine.

Q: On Friday, April 3rd, did anything significant happen at your house or was it just a regular day?

A: Just a regular day.

Q: What about Saturday, April 4? What did you do that day?

A: I got up and went to my hairdresser appointment. I have a regular appointment at ten a.m. every Saturday.

Q: Whenever you left the house, was Kelvin and your son at home?

A: Yes ma'am.

Q: Whenever, what time did you get back from your hair appointment?

A: It was about two thirty in the afternoon.

Q: Whenever you came back from your hair appointment, what

did you discover had happened in your house?

A: That he had given my son his basketball court early.

Q: Did y'all discuss giving that to him early?

A: No ma'am.

Q: Why did your husband give that to him early?

A: Because he wanted to play with it.

Q: Did ya'll do anything later on that afternoon as a family?

A: We just watched t.v. I cooked dinner while they were finishing watching t.v. About eight thirty or nine thirty at night. I called my cousin Denay and wished her a happy birthday. I was originally supposed to go to Texas for her birthday party, but I was sick, so I didn't go.

Q: What did that conversation between you and Denay entail?

A: We called her, I called her on my phone, on speaker ...

Q: When you say we, I want you to tell everybody's name.

A: Me, my son and my husband called her on speaker phone and we sang happy birthday to her before she left to go to the party.

Q: What happened Mother's Day weekend of 2009 if you recall?

A: That Friday me and him got into an argument. Me and Kelvin, Jr. got into an argument regarding Tawanda. He

left that Friday and he, I talked to him again Mother's Day, which was that Sunday and he told me he would be home and I spent the majority of the day at the cemetery because at was the first year since my mom had passed that I had to have a Mother's Day without her.

Q: Did he come back home on Sunday?

A: Yes ma'am. He came back late that night.

Q: Do you recall what occurred the following weekend?

A: The following weekend, again we argued about Tawanda. I told him that, you know, you got a choice to make. I can't keep going back and forth with letting you know, keep seeing her and she's calling you, I can't deal with that. So he left that night. He told me don't worry about it, he was going to end the relationship with her and that we were going to go ahead and go to marriage counseling.

Q: When was the next time that you talked to your husband?

A: Well that would have been Sunday night when he called back to say that he was on his way home and that everything was going to be okay. Well then after that, I didn't talk to him. I stayed up late for him. He never returned home and the next time I heard from him was Tuesday morning.

Q: What did you find out whenever he had called you that Tuesday morning?

A: He called me and told me that he had been arrested.
Q: What was your response?
A: Arrested for what?
Q: And did he tell you, did you find out what he had been arrested for?
A: Yes, he had told me that he was arrested for murder.
Q: Whenever he told you that, what did you say?
A: When? When did this take place? Who did you murder? What is this? How could you have done this? You know, when.
Q: Did he tell you when this allegedly happened?
A: Yes he said this happened either that Saturday April 4 into early Saturday, I mean Sunday morning.
Q: Whenever he told you the dates, what did you say?
A: I said you couldn't have been there because you had been home all that weekend.
Q: What type of haircut does your husband have?
A: I call it a cezar. He keeps it low cut.
Q: Does he have an Afro haircut?
A: No, he's never had an Afro haircut. He doesn't like hair.
Q: Have you ever seen him with braids?
A: No ma'am.
Q: Have you ever heard anybody call him the name Callie?
A: No ma'am.

Q: You said a few moments ago that the Samsung phone was turned off.

A: Correct.

Q: Do you remember what day that was turned off?

A: The billing cycle would have been April 9, so we were to pay the bill by April 19, but we didn't.

Q: I'm going show you what has been marked as, for identifications purposes as Defendant's exhibit 6 and I ask you do you recognize that photograph?

A: Yes ma'am.

Ms. Shuler: Your Honor, at is time I would move this photograph into evidence.

Ms. Barr: Judge we would object on the grounds of relevance.

The Court: Do you have some foundation of relevance you want to state before you question the witness?

Ms. Shuler: Yes sir Your Honor.

Q: I asked you a few moments ago, what type of hair cut your husband has and what did you tell me?

A: It's a low cut cezar.

Ms. Shuler: And Your Honor, I would now move this photograph into evidence.

(Defendant's Exhibit Number Six was admitted)

Q: I'm going to show you this, what has been marked as Defendant's exhibit, for identification purposes as Defendant's exhibit number 6.

A: Okay.

Q: Is that a photograph of your husband?

A: Yes ma'am.

Q: When was at photograph taken?

A: This was taken in March when he went back to California to go to his cousin's birthday party.

Q: March of what year?

A: '09.

Q: Is that an accurate representation of what your husband looked like in March of 2009?

A: Yes ma'am.

Ms. Shuler: Your Honor, I would move at is time to have at photograph placed into evidence.

The Court: What says the State?

Ms. Barr: Without objection Judge.

The Court: Submitted without objection.

Ms. Shuler: Thank you.

Q: Tiffany I'm going to ask you to step down if you don't mind, or can you see the t.v. from where you are?

A: Yes ma'am.

Q: Is that a photograph of your husband?

A: Yes ma'am.

Q: Is that an accurate representation of what he looked like in March of 2009?

A: Yes ma'am.

Q: Does he have an Afro haircut in that photograph?

A: No ma'am he does not.

Q: I'm going to show you what's been marked for identification purposes as defendants exhibit number 7. I'm going to ask you if you recognize that photograph?

A: Yes ma'am.

Q: Is that a photograph of your husband?

A: Yes ma'am.

Q: When was that photograph taken?

A: It was taken in 2008.

Q: Is that an accurate representation of what your husband looked like in April 2008?

A: I can't say that was April 2008, but it was 2008.

Q: Is that an accurate representation of what your husband looked like in 2008?

A: Yes.

Ms. Shuler: Your Honor I would move to have this photograph placed into evidence.

Ms. Barr: Judge, that's without objection.

e Court: Okay.

Q: Tiffany do you recognize that photograph?

A: Yes ma'am.

Q: Is that an accurate representation of what your husband looked like in 2008?

A: Yes ma'am.

Q: Does your husband have an Afro haircut in that picture?

A: No.

Q: Does he have braids?

A: No ma'am.

Q: I'm going to show you what's been marked for identification purposes only as Defendant's exhibit number 8. Do you recognize that photograph?

A: Yes ma'am.

Q: Is that a photograph of your husband?

A: Yes ma'am.

Q: When was that photograph taken?

A: This was taken in the summer of '08.

Ms. Shuler: At this time I would move Defendant's exhibit number 8 into evidence.

Ms. Barr: No objection Your Honor.

The Court: Without objection.

(Defendant's Exhibit Number Eight was admitted)

Q: I can't, Your Honor, may I ...

The Court: You can give it to the jury.

Q: ... give it to the jury?

The Court: And the jury will have it in the jury room, it's in evidence.

Q: Tiffany, did your husband have a Afro haircut in that picture?

A: No ma'am.

Q: Does he have braids in that picture?

A: No ma'am.

Q: I'm going to show you Defendant's exhibit number, what's been marked for identification purposes only Defendant's exhibits 11 and 12. Do you recognize those photographs?

A: Yes ma'am.

Q: When were those pictures taken?

A: These pictures were all taken March of 2009 in California at his cousin's birthday party.

Q: Is that an accurate representation of what your husband looked like in March of 2009?

A: Yes.

Ms. Shuler: At this time I would move those photographs into evidence as well.

Ms. Barr: Judge these are without objection.

The Court: In without objection.

(Defendants Exhibit Numbers 11 and 12 were admitted)

Q: Tiffany, does your husband have an Afro haircut in any of these pictures?

A: No ma'am, he does not.

Q: Does he have braids?

A: No ma'am he does not.

Q: Does he have facial hair in those pictures?

A: Yes ma'am.

Q: Does he have a mustache in the other picture that I showed you?

A: Yes ma'am.

Q: I'm going to show you Defendant's, what's been marked for identification purposes as Defendant's exhibits 9 and 10. I'll ask you if you recognize these photographs?

A: Yes ma'am.

Q: When were those pictures taken?

A: In the beginning of November.

Q: Which ones?

A: The, number 10 and number 9 was taken in the beginning of November.

Ms. Shuler: I move Defendant's exhibits 9 and 10 into evidence.

Ms. Barr: Let me see them please. No objection.

The Court: Without objection.

(Defendant's Exhibit Numbers nine and ten were admitted)

Q: Did your husband have an Afro haircut in these pictures?

A: No ma'am.

Q: Does he have braids?

A: No.

Q: Does he have facial hair?

A: Yes.

Ms. Shuler: Beg the Court's indulgence.

Q: On Friday, did you receive a telephone call from an officer by the name of Justin Whack?

A: I received a phone call, but I can't recall if his name was Justin Whack.

Q: Did you know who had called you?

A: No ma'am.

Q: Did you know what agency they were wi?

A: I ink he said he worked with the court, but I wasn't sure who he was.

Q: Had you ever spoken to this person before?

A: No ma'am.

Q: What did you tell him whenever he called?

A: He asked me my name, he asked me if he could ask me a couple of questions, he asked me to verify my address that I stay at. I gave him the address. He asked me some questions about the court case and I told him that I was more than willing to speak with him on Monday when I arrived into Kingstree with my husband's lawyer.

Q: Has he tried to speak to you at any time since that phone call?

A: No ma'am.

Q: Would you have discussed anything that he had to discuss with you?

A: Yes ma'am, in the presence of Mr. Jenkinson.

Q: Tiffany, if you had any idea, or any doubt in your mind that your husband was not with you on April 3rd, 4 and 5 of 2009, would you of come here today?

A: No ma'am.

Q: Would you have put your child on the witness stand?

A: No ma'am.

Q: Are you telling the truth today?

A: The God's honest truth.

Q: Did you speak with anyone about your testimony on the stand today?

A: Yes ma'am.

Q: Who'd you speak with?

A: You and Mr. Jenkinson and my husband.

Q: Did anybody told you what to say?

A: No ma'am.

Q: Did I tell you what to say?

A: No ma'am.

Q: Did Mr. Jenkinson tell you what to say?

A: No ma'am.

Q: I have no further questions. If you will, answer any questions that Ms. Barr may have for you.

The Court: Ms. Barr?

Ms. Barr: Thank you Your Honor.

CROSS EXAMINATION OF MS. BOWEN BY MS. BARR:

Q: Ms. Bowen let me ask you about some of those defense exhibits if I may.

A: Okay.

Q: I'm sorry, ma'am may I see those please? Right there. Ma'am I'm going to hand you what's been admitted as State's exhibit numbers 11 and 12. You said these pictures were taken in March of 2009?

A: Yes.

Q: Alright so that would have been like a month, as you understand it now, before the murder of K.D. ?

A: It would have been a week or so. The picture was taken March the 8th of 2009.

Q: And that's Tawanda Allen in that picture isn't it?

A: Unfortunately it is.

Q: Not you?

A: No.

Q: So if this is not you in the picture, how do you know when it was taken?

A: Because those are the pictures that were taken after the birthday party.

Q: I thought I understood you to say when Ms. Shuler was asking you questions that this was you and your husband?

A: No ma'am, I never said that that was me with my husband. She asked me if I recognize the photo and I

said yes.

Q: Well you said just now that's when he brought the picture back, but you actually don't know when it was taken, do you?

A: The birthday party was March 28 2009.

Q: I understand when the birthday party was, but you don't know when he took that picture with Tawanda Allen, do you?

A: That's from, the pictures that he brought back.

Q: He took her to California?

A: I don't know if he took her but she went.

Q: Now, when did you find out that your husband was having an affair with Ms. Allen?

A: I started to suspect in March, at the end of March, but it wasn't confirmed until I saw those pictures in April.

Q: And in addition to your husband using the phone outside your presence and doing some other things like that, he was also showing you signs that he was cheating on you before then?

A: No ma'am.

Q: No?

A: No.

Q: Well wasn't he staying out from the house at night?

A: He would go out on weekends.

Q: Yeah.

A: That doesn't mean he's cheating. He has friends he can go out to the club, he could be anywhere.

Q: I understand that, but wasn't he staying away from the house? Regardless of where he was, there were times that he was staying away from your house during the weekend, right?

A: Yes.

Q: Contrary to what your son said, right?

A: Yes, he was staying, when you say staying out do you mean going out and not coming back until 4 or 5 o'clock in the morning or do you mean staying out the whole night?

Q: Staying out the whole night. There were times when he was doing that because he was cheating on you?

A: Yes.

Q: And ma'am I'm going to show you, publish what's been admitted as State's exhibit number 67. Can you see that from over there?

A: I can see it, but I can't read it.

Q: That's a letter dated April the 13 of 2009, isn't it?

A: Yes.

Q: That's a letter addressed to your husband, Kelvin Bowen right?

A: Correct.

Q: And the address that it's given to is ; , , right?

A: Yes ma'am it is.

Q: And you didn't live at that address did you?

A: No ma'am.

Q: And have you reviewed this document?

A: No ma'am.

Q: Okay, would it surprise you to know that this is a letter congratulating him on getting a job?

A: No it wouldn't surprise me.

Q: And it wouldn't surprise you to know at Tawanda Allen was working at is company?

A: No.

Q: Okay, wouldn't surprise you to know that she would help get her man get a job?

A: That's not her man, but okay.

Q: Well, I understand that, that's fair enough.

Ms. Shuler: Objection Your Honor, if, if, I would appreciate it if ...

The Court: I heard you object. What did you not appreciate?

Ms. Shuler: If Ms. Barr would not interrupt my client. I'm sorry, my client's wife.

The Court: Okay, thank you. Don't interrupt the witness.

Ms. Barr: Yes sir Judge. Mr. Bowen, I shouldn't say her man. She got Mr. Bowen a job, the defendant.

A: Correct.

Q: Now, you said that when Sergeant Whack from the Sheriff's Department called you last week, he asked you for your address?

A: Correct.

Q: And you wouldn't give that information to him?

A: No, I did give him my address.

Q: Where did you tell him you lived?

A: At .

Q: Where is that?

A: , .

Q: How long have you lived at that address?

A: Three or four years.

Q: Off and on have you always live there?

A: No, I always lived there.

Q: Now, when you found out that your husband had been arrested for murder, you came down to visit him didn't you?

A: Correct.

Q: And you came to see him at the jail, right over here, right?

A: The first time I visited him?

Q: Yeah.

A: No, the first time I visited him he was at Anne Arundel County.

Q: Okay, no I mean down here in South Carolina.

A: Oh yes.

Q: The first time you came down to visit him while he was in our jail, this was May 30th, 2009, is that right?

A: Yes.

Q: Okay alright. And the jail has pretty strict procedures in terms of signing in and when you go see an inmate, right?

A: Yeah.

Q: And you came down here and you had to sign in when you went to go see your husband right?

A: Correct.

Q: Alright and you signed a log dated May 30, 2009, Tiffany Bowen.

Ms. Shuler: Objection Your Honor.

The Court: What's your objection?

Ms. Shuler: I have not seen that document.

Ms. Barr: I'm not offering it into evidence at this time.

The Court: The objection is overruled.

Q: This is your name Tiffany Bowen, this is your writing right?

A: Correct.

Q: You came to see him May 30, 2009?

A: Correct.

Q: You identified yourself as the wife?

A: Correct.

Q: And you said that the inmate you came to see was Kelvin Bowen?

A: Correct.

Q: You said you always lived at in , right?

A: Correct.

Q: But yet you put down here that you lived at , in , ?

A: No that's my driver's license address. That's my father's house.

Q: Somebody took this down, they got that information from you?

A: I showed him my driver's license.

Q: Now what about this cell phone number, telephone number? Where'd they get that from? You gave them that right?

A: Which number are you referring to?

Q: That particular cell phone. You gave them that information?

A: Yes.

Q: Now, during the time that your husband was creeping around with Tawanda, he was lying to you?

A: Yes ma'am.

Q: He's a liar right?

A: You could say that.

Q: There's a part of him that you did not know about in April and May of 2009, right?

A: Yes.

Q: Part of him that he kept hidden from you, right?

A: Yes ma'am.

Q: Stuff, he did stuff that he didn't want you to know about?

A: Correct.

Q: Now, your husband, during this time, liked to lift weights?

A: No ma'am.

Q: Never lifted weights?

A: He has lifted weights but not at this time.

Q: And sometimes he takes protein to help build muscle right?

A: No ma'am I've never seen him take anything.

Q: You've never seen him do that? Is that something that he did that you didn't know about? Is that possible?

A: It's possible.

Q: Now, did you and your husband ever argue about any of the other activities that he did that you didn't approve of?

A: What other activities?

Q: I'm sorry, where are the photos? I'm going to hand you what's been admitted as State's exhibit number 12. This is a photograph with him and Tawanda, is that right?

A: Correct.

Q: He's got a tattoo on his arm?

A: I guess so.

Q: Alright State's exhibit number 6, he has tattoos on his arm? And in addition to having tattoos on his arm, he's got tattoos all over his body doesn't he?

A: Yes.

Ms. Shuler: Objection Your Honor. May we approach on is matter? The basis of the objection is relevance.

The Court: Objection is overruled.

Q: He's got tattoos all over his body doesn't he?

A: Yes ma'am.

Q: You all never had an argument about kinds of tattoos he has on his body?

A: No ma'am, because that's his body.

Q: He's got tattoos with gang insignia on his body, doesn't he?

Ms. Shuler: Objection Your Honor, relevance? And may we be heard on that outside the presence of the jury?

The Court: Ladies and gentlemen, I'll have you go to the jury room.

(Jury exits courtroom)

Ms. Shuler: Last night at approximately nine o'clock, law enforcement officers went to, particularly the gentleman from Lake City went to Effingham jail, approached our client and said, "You've got to let us take pictures of the tattoos on your body." Solicitor Barr has said, "We need those pictures and either you let us take those pictures or we going to hold you down on the ground, two officers are going to hold you down and we going to take those pictures ourselves. He said, "I want to speak to my lawyer". He attempted to contact Mr. Jenkinson at nine o'clock last night to no avail. They said, "You going to give them to us or we going to pin you down". And at that point in time, he had no choice, because if he didn't, they were going to rip off his clothes and take those pictures and hold him down. Your Honor, first of all, any sort of evidence as to the tattoos on his body is hearsay. It is markings on his body, what those markings mean, anything along those lines, is hearsay. It is testimony on the nature and is now a court statement made for court used for the truth of the matter asserted. Secondly, this is a violation of the Rules of Professional Conduct Rule 4.2. The lawyer's Rules of Professional Conduct, the communication with a

person represented by counsel. Solicitor Barr sent this officer to get these pictures. She knew he was represented. She didn't tell us that she was going to do this, did not give us time to prepare for this and here we are in the middle of trial, and she didn't obtain a court order. Pursuant to the State versus Simmons, it's a Court of Appeals case, 384 SC 145. Protects an individual against the fourth amendment, protects them against unreasonable searches and seizures, which is guaranteed by the four amendment. She had the opportunity to get that information, she would have had to come to you for a court order. First, establishing probable cause. Second there must be a clear indication that relevant material evidence will be found. And, third, the method used to secure it is safe and reliable. Your Honor, there has been absolutely no testimony that would suggests that Mr. Bowen is in a gang. Nobody has said he is in a gang. In fact, you excluded that testimony that was on the tape from Mr. Mack. The evidence of him being in a gang, is extremely prejudicial and any ...

The Court: There's a lot of evidence that he's in a gang. The question is whether it's relevant to the murder in this case.

Ms. Shuler: Absolutely. There is no ...

The Court: Thank you for agreeing, but what's your point?

Ms. Shuler: Right. The motive in this case has been testified to by Antonio McClary, the motive is money. There has been no way linking ...

The Court: What's your point? You wanted the jury to go out to tell me something. You've told me they've took his picture. What else.

Ms. Shuler: We would object to the pictures. We would object to any showing ...

The Court: But she hasn't offered any pictures.

Ms. Shuler: Your Honor.

The Court: You objected to -- the question was you have a tattoo on you, it says gang on your chest or on your body and you objected.

Ms. Shuler: Your Honor, she has a number of pictures that she showed us earlier today that she intends on producing and ...

The Court: Alright I'm going to let you and Mr. Jenkinson confer while we take a break and then we'll come back.

(There was a court break taken)

The Court: Alright, anything further?

Ms. Shuler: Yes sir, Your Honor. The Solicitor gained this evidence through, its tainted. She gained it through illegal activity. She had no court order. This was against

his fourth, fifth, sixth and fourteenth amendment rights.

The Court: All right. Thank you. What sayeth the State?

Ms. Barr: Judge, I haven't, I didn't offer the pictures. I just asked the witness about the tattoos on her husband.

The Court: Alright.

Ms. Shuler: Your Honor, any sort of evidence that refers to gang related material on his body, although it may be relevant, relevance, it's not, probative value of that does not outweigh the prejudicial value of that.

The Court: Alright.

Ms. Barr: Your Honor, we had an expert, a person who was qualified as an expert on yesterday regarding gang activity, gang writings, gang signs, their code of ethics, if you will and Judge we believe evidence that the Defendant is a member of a gang is entirely appropriate because it sort of corroborates one, we believe a part of the motive and his participation in the crime and number two it corroborates the testimony of Ms. Harding who was qualified as an expert witness in gang activities and gang writings.

The Court: That corroborates his participation in what way?

Ms. Barr: To the extent that we have Ronald Mack who is an admitted gang member testifying that he contacted the Defendant who agreed, with no questions asked, to come

down and bring him guns and help him kill somebody. Judge, quite frankly that's just not something the average person ought to do and so it's important for the jury to understand the mentality of gang members so they understand why this Defendant became involved in killing somebody that he didn't even know.

The Court: I sustain the objection.

Ms. Shuler: Thank you, Your Honor.

The Court: Bring the jury.

(Jury enters courtroom 5:27 p.m.)

The Court: The objection is sustained. Next question.

CONTINUATION OF CROSS EXAMINATION OF MS. BOWEN BY MS. BARR:

Q: Ma'am you testified about the photograph that's admitted as State's twelve. The picture that he took with Tawanda and we talked about that particular photograph you can see a tattoo on his arm and you know about it because you have seen it.

A: Can I see the picture again. There's two tattoos on his arms.

Q: What's that a tattoo of?

A: My name.

Q: Okay. What about the other arm you talked about?

A: I can't see. I can only see a piece of it.

Q: I mean, you know it though, because you've seen him obviously with no shirt on.

A: Well, I haven't see him in twenty months with no shirt on.

Q: You said something interesting. You said that the cell phone was turned off April the 9th?

A: Right.

Q: 2009?

A: Right.

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

The Court: Anything further?

Ms. Bowen - Recross Examination by Ms. Shuler:

Q: Where did your husband keep his toothbrush?

A: In my bathroom.

Q: Where did he keep his shoes?

A: In the closet.

The Court: This is improper redirect.

Ms. Shuler: I have no further questions, Your Honor.

The Court: You may step down. Next witness.

Mr. Jenkinson: That is the defense case.

The Court: All right. Ladies and gentlemen, you have heard the defenses case. Any reply by the State?

Ms. Barr: Yes, sir.

The Court: Call your witness.

Ms. Barr: Your Honor, can Mr. Jenkinson and I approach very briefly?

(Counsels approach bench)

Ms. Barr: Judge, no other evidence.

The Court: Alright ladies and gentlemen, you have heard all of the evidence in this case. I'm going to let you go now until tomorrow morning at 9:15. You will come in, no 9:30 tomorrow morning, when you come in at 9:30 it will be time for closing arguments. I'll give you the charge on the law and you will deliberate. Tomorrow morning. What time did we say?

Jury: 9:30.

The Court: 9:30.

(Jury excused for the evening 5:31 p.m.)

The Court: Any additional matters of law?

Ms. Barr: None from the State Judge.

Mr. Jenkinson: Your Honor we do have a motion. Just one moment.

The Court: Yes sir.

Mr. Jenkinson: Your Honor, on behalf of the Defendant, we move for a directed verdict at this time. There's been a failure of any, well there's been a failure by the State to produce any competent evidence of the Defendant's guilt taking into consideration all of the evidence and testimony presented. There were three people on the planet tat put the Defendant Kelvin Bowen in South Carolina in the early morning hours on the 5th

of April 2009. Those are Tawanda Allen, she did not testify. That is Ronald Mack and he testified at length in court that Kelvin Bowen, Bowen who's name was never called, was never in South Carolina. He referred to somebody named Callie. There's not, the only person in the court room that has called the Defendant Bowen Callie is the Prosecutor and she probably done it two dozen times in the course of the trial. The only identification Antonio McClary provided was there was a step daddy by the name of Kelvin, Kelvin, Kevin, not Kelvin, who he identified as being Callie. He identified Callie as being a tall, scrawny person. A person who had an Afro hair cut, a person who had brown skin. When we saw the only photograph, which we had asked the Court to rule previously as inadmissible because if the only photograph showing about a week later, when shown that photograph in court he can say, this person, I can't tell if they got a Afro haircut, or it doesn't appear to be. This person I can't tell whether he's tall and scrawny or not, you know. He never would say whether he had brown skin or not. But yet, he says that's him. Well it's the same person who later testified that he did make a statement in front of his lawyers and others that Kelvin Bowen was not the Callie who appeared in Kingstree. So, he is

the only person who identifies the Defendant in this case. Possibly, remotely by a different name, by improper description and more and if anything in the law, as we all know, an eye witness description is probably the worst type evidence, testimony anybody can give. It's been evident in the testimony in this case. He in no way, shape or form resembles him in name, in description, in appearance. We've got multiple pictures showing he's never had anything but a close hair cut. Prior to the offense and after the offense.

We have a failure of any competent evidence, whatsoever. All of the other attempted evidence, there's been no proof that he was living with Tawanda Allen. No proof to his living, there's not one person on the planet who's come in this courtroom and said he's ever spent the night there. There's not one person who's ever seen him inside that apartment. There's not one person who said they found his personal belongings there, other than a baseball hat, which they didn't say it was his. It could have been a males and Ronald Mack, by the way was living in the apartment at the time with his mother. An eighteen or nineteen year old who has confessed to murder and his role in this case. And he's been sentenced in this case. There was some underwear, which anybody could have worn. There

guilty.

e Court: Well, it sort of sounds like a jury argument and maybe the jury will buy the argument, but it's not for the Court to weigh the evidence. There is evidence that if believed by the jury, would clearly show that the Defendant is guilty and I deny the motion. Anything else regarding the requested jury charges?

Mr. Jenkinson: Yes sir. We will bring the actual one but I know the court has them. First, we would want a charge about the non testifying Defendant. Under our rules, the Ervin charge, the standard Ervin charge that I think the court uses that he is not required to testify and as a matter of fact under our law he does not have to testify that the Defendant does not have any burden of proof ...

The Court: I told you I would tell them. I will tell the jury that.

Mr. Jenkinson: Yes sir. Charge the usual reasonable doubt that I explained to the jury in my opening argument and the definition of a reasonable doubt. A doubt which would cause a reasonable person to hesitate to act.

The Court: Alright. From the State?

Ms. Barr: Judge, we don't have any extraordinary request. Just your standard request about the elements of defense and Judge we would request hand of one, hand of

all. The standard ones, Judge, we don't have any special requests.

The Court: Allright. We're shutting down.

(Court adjourned for the evening)

The Court: Good morning. Request to charge?

Ms. Barr: Judge we would just ask the Court to charge constructive possession.

The Court: Constructive possession.

Ms. Barr: Yes sir.

The Court: Of what?

Ms. Barr: In this case we're concerned about the shotgun. It actually wasn't found in actual possession of the Defendant, but the State intends to offer it as constructive possession.

The Court: In relation to what charge?

Ms. Barr: Possession of a Weapon During the Commission of a Violent Crime. Pending that the murder weapon was found inside of the bedroom that we believe he shared with Tawanda Allen.

The Court: So the charge is possession during the commission of crime not months later.

Ms. Bar: Yes.

The Court: It's not a constructive possession charge case. I'm not going to charge that. Yes ma'am, Ms. Shuler?

Ms. Shuler: The Defense would like a charge on the confession by co-defendant, the non testifying Defendant charge, reasonable doubt charge, circumstantial evidence charge and alibi charge that I passed up Your Honor. All of those were taken from Judge Ervin's book.

The Court: Okay, them individually now. The first one you said is what?

Ms. Shuler: The confession by co-defendant.

The Court: Confession by a co-defendant. What says the State?

Ms. Barr: Judge on the second paragraph on that particular proposed charge I'll object to, because I think it contemplates where co-defendants are tried together. And so that's clearly not a situation that we have here.

The Court: They deleted the second paragraph.

Ms. Barr: Okay, alright Judge. And Your Honor, there was, the only confession that was admitted in the trial of the case, was the taped confession of Ronald Mack and Your Honor instructed the jury that they could only consider that for impeachment purposes, so we would think that the first paragraph is therefore obsolete, it's moot at this point and we would object to that.

The Court: All right. Ms. Shuler.

Ms. Shuler: We would just like the point reiterated that it shouldn't have been for impeachment purposes only and to be construed as to that Defendant only.

The Court: Alright I'm going to think on that for a minute and move to the next one.

Ms. Shuler: The next one will be the non testifying defendant charge. We would just ask that the jury be instructed that they cannot consider his lack of testimony against him that he has to offer the evidence to - pursuant to the fifth amendment of the constitution and that that cannot be discussed in the jury room.

The Court: Alright, I have a charge for that. It's not this, but I have a charge that I give in every case where the Defendant does not testify. That they have the Constitutional right to remain silent and it can not be held against them or used against them in any way.

Ms. Shuler: We also have a reasonable doubt charge as well that the State has to prove each and every element beyond a reasonable doubt.

The Court: Alright, not a problem.

Ms. Shuler: And reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act.

The Court: That will be the very first one that he mentioned Ervin's book, of course, he retired from the bench in about 1995 or 96 or something and I don't use his charge book as a basis for the charge. This very first charge, do you have a case authority for it? Because I'm going to say, you want me to tell the jury that they cannot consider any confession that any of the co-defendants made against this Defendant. So are you telling me that where Mr. Antonio McClary said that this Defendant committed the crime, for the jury not to consider that? Or where Mr. Mack said in his recorded statement that is Defendant committed the crime but the jury is not to consider that? I'm trying to interpret what you're asking me to tell the jury.

Ms. Shuler: Whenever Ronald Mack's statement was played Your Honor gave a limiting instruction at that time, that that was to be used as impeachment evidence only. We would just ask that be reiterated.

The Court: What do you want me to tell them?

Ms. Shuler: I've provided the name of the case at that time and I can find it again.

The Court: Alright we can. Ms. Barr what's your position on all is?

Ms. Barr: Judge, I think that, of course, Your Honor has already given an instruction to the jury that the recorded statement of Ronald Mack can only be

considered by them for impeachment purposes only and we would object to the proposed charge number one in it's entirety.

The Court: I can certainly understand that if a person confesses to committing a crime, says I confess, I did the crime then that cannot be used as evidence that someone else committed the crime, but if the statement is that we committed the crime, then how can I tell the jury or why should I tell the jury that they cannot use that evidence against the co-defendant. So that's what I'm trying to get a handle on. I don't, if there is some case that kind of clearly talks about it, then I'd like to look at it. I'm not disagreeing with you, I just don't have a handle on what you want me to do.

Ms. Shuler: Case sited as State v. Chaffee 285SC21.

The Court: Alright.

Ms. Shuler: And that has been overruled on other grounds.

The Court: Alright, 1984. Well, that case is so, I mean it's 1984 and my computer doesn't pick up cases that long, that old. But let's see what you have here as far as structure. Must not and cannot consider any confession that a co-defendant makes, a co-defendant made against any other defendant. You will consider any confession only as to the person making it. I'll tell the jury that, I guess it's a principle of law.

Ms. Barr: And Judge, I think that that was prior to US v.

Bruton who had issues of non testifying co-defendants confession being used against person at trial and I don't think that's applicable here. And we all know you can't have a confession admitted against a defendant, a confession of a non testifying defendant against a defendant and so that law might have been applicable then, but we take the position it's not applicable now.

The Court: Well you could be right. I mean the case, the line they drew through is, it says Chaffey and Ferrell, which suggests that there were two defendants in trial at that time.

Ms. Barr: Yes sir.

The Court: Let me just take a break and look it up as opposed to attempting to wing it. Any other comments?

Ms. Shuler: None Your Honor.

The Court: Let me just take, let's take a break because it is important.

(There was a court break taken)

The Court: Alright Ms. Shuler any other thoughts?

Ms. Shuler: Your Honor we would be -- it's our argument that the statement being offered for impeachment purposes only is consistent with that principle of law.

The Court: Alright. The question at this point is whether the other people are co-defendants. They were all charged together, but they're not co-defendants in

a trial and that's where the Bruton issue came up. But where the one defendant or both defendants charges are now disposed of, they're simply witnesses and their testimony stands along for the jury to believe or not to believe. I'm going to charge the jury on prior inconsistent statements, but they may use the evidence of the earlier contradictory statements to determine the truth of the statements that they are currently making. But I'm not going to charge that they are to not consider the testimony of witnesses who said we committed the crime. Particularly where they are charged with conspiracy and the statements can be used under the rules concerning co-conspirators, statements of the co-conspirator can be used against them. A co-conspirator is made in furtherance of the conspiracy, so what I'm going to charge is prior inconsistent statement. Alright, anything else?

Ms. Barr: Not from the State Your Honor.

The Court: Alright, bring them on.

The Court: Are you going to start Ms. Barr?

Ms. Barr: Yes sir.

(Jury enters courtroom at 10:25)

The Court: Alright the jury is here, good morning.

Jury: Good morning.

The Court: Day number 5. Ladies and gentlemen, you've

heard all of the testimony, you've received all of the evidence. It is now time to hear arguments from lawyers, first from the State, Ms. Barr.

CLOSING ARGUMENTS BY MS. BARR:

Thank you, Your Honor. Ladies and gentlemen, good morning. I'm going to start today like I started on Tuesday with thanking you. And when I say that, Mr. Jenkinson, Ms. Shuler, that's probably the only thing we're going to agree about in the whole trial, but folks this has been an extreme sacrifice. I'm sure that the facts that occurred in this case are kind of difficult to listen to, but I am satisfied that we picked an attentive jury, we picked an intelligent jury and I, Mr. Jenkinson, Ms. Shuler and I we all feel we picked a jury who will be fair and deliberate earnestly in this case.

Now, the way that our system works, I get the chance to do an opening statement and tell you a little bit about the law and I get to sit down. Mr. Jenkinson then gets to get back up and he'll get up and he'll do a statement and he'll talk about why you should find his client not guilty. And because the State bares the burden of proof, ultimately, I get a second bite into the apple, so to speak, so I get to stand back up and talk to you all again before you hear the charges from the Judge. Now, I'm going to be very brief right now, I'll be a little longer later on, but I'll be brief right now and I'll just kind of tell you what the

charges that are available for your consideration.

First, is the murder charge. You all remember on Tuesday I told you about murder? Murder is the unlawful killing of another with malice aforethought? The judge is basically going to tell you under that murder charge, we have to establish that the Defendant took the life of another human being. With malice aforethought means that it was premeditated, it was planned in other words and there was an intent to do harm or kill the victim. He's also charged with Burglary in the First Degree and let me tell you what the elements are for Burglary in the First Degree. One, you have to prove that he went into the dwelling, somebody's home. We clearly established through testimony in the case that he went into the home of Annette Bradshaw. Two, we have to show that he went in without consent. He didn't have anybody's permission when he went into the house. Three, we have to show that there is some aggravating factor in connection with that burglary that makes it a more serious burglary than saying he broke in somebody's shed. We've got a couple of different aggravating factors in the case. One aggravating factor is it happened during the night time. There is something about being, a Defendant breaking into someone's home at night, because at night is when most folks are relaxed, most of us are asleep at two o'clock in the morning and so you're, at some point, unaware and not on your guard and it makes it, makes you more vulnerable when someone

breaks in your house. A second aggravating factor that you all can consider, if you find that he did these things and you should find him guilty of Burglary in the First Degree, is that when he entered the dwelling, when he entered the home of Ms. Bradshaw and K.D. , he had a deadly weapon. A firearm, such as the shotgun that you've seen in evidence, is a deadly weapon. There is also a third aggravating factor that you can consider that makes this burglary a heightened burglary and it's the fact that he caused physical injury or harm, i.e. he killed somebody, inside the residence and that person was not a party to his crimes. So if you find either one or all of those aggravating factors existed in this case, you will find the Defendant committed those, you should find him guilty of Burglary in the First Degree. The third charge that you have to consider is what we call Possession of a Weapon During the Commission of a Violent Crime. The judge is going to tell you when all the lawyers sit down, murder is a violent crime in South Carolina. Burglary in First Degree is a violent crime in South Carolina. We've already said the shotgun is a deadly weapon, so if you find that he committed the burglary, he committed the murder and he had the weapon, then you should also find him guilty of possession of a weapon during a violent crime. The last charge that you all have to consider in the indictment is criminal conspiracy and folks, criminal conspiracy is where two or more people, they

make a plan to do something or to get something or to accomplish something by unlawful means or to commit an unlawful act and certainly the planning of a murder and a burglary are unlawful acts in South Carolina and so if you find and believe the testimony of Mr. Mack and the testimony of Dontrey Barr where he's talking about, he testified that Ronald Mack showed him the text messages on his phone. Where he was text messaging Callie. I need some help down here. I need to take care of K.D. and there was further testimony, that's the dude you're cool with? He said yeah. There was all these text messages going back and for. You mean gunplay? If you find --- that is where the criminal conspiracy was committed. He didn't have to do anything else. When he basically agreed to come to South Carolina and bring those guns at the behest of Mr. Mack, he committed and he completed the crime of criminal conspiracy and folks we ask you that the conclusion of all of the arguments and at the conclusion of the Judge's instructions to you and at the conclusions of your deliberations, we ask that you turn a guilty verdict on all four counts. Thank you all for your attention.

Mr. Jenkinson: May it please The Court Your Honor? Ms. Barr.

The Court: Yes sir.

Ms. Barr: Yes, sir.

CLOSING ARGUMENTS BY MR. JENKINSON:

Mr. Foreman, ladies and gentlemen, good morning. It's

been a long week and it's been a tiresome week, but it's been an important week. And you've now had the opportunity to hear that evidence and that testimony from the witness stand. You've been looking and listening carefully to what the evidence and testimony is. I find this is very important in a case over the last thirty nine and a half years of doing this and I know I look much younger than that. You wouldn't think I'm quite that old. But you know, what I found out being in a courtroom is this. It's important to listen to what you hear. Sometimes, and a lots of times, it's just as important as to what you don't hear in a courtroom. Because when you don't hear something that's your common sense saying it wasn't proved. If you don't hear it, you can't imagine it and if you don't hear it, it wasn't proved in a courtroom and as His Honor told you Tuesday morning, first thing, you must decide this case on what you see and hear in this courtroom. Not on what you don't hear. Not on what a suspicion may be. Not on what you think it could be, but only on what you heard and saw in a courtroom. Now what am I talking about? I'm talking about failure of proof. If I told you that I had five things in my hand and I only showed you four of them, would you say Billy Jenkinson, you ain't got five things in your hand? Because you didn't show me but four of them and that's what I'm talking about. I failed to prove something to you. And the State, Ms. Barr and these officers must prove their case to you and if they fail to

prove that case to you, then it is your duty and your common sense and the law to bring back a verdict of not guilty. So I'm going to be talking a lot about what you didn't hear in this courtroom. And then I'm going to be talking about what you did hear in this courtroom, because it is important, because you have the ability to believe, hear and weigh out justice and a true verdict in this case and that verdict again, must be on the testimony, the evidence you see and the law. But it also must be on the lack of evidence that you didn't see in a case. Because if you don't see it, it didn't happen or it must not be so. Now, in a case, any case, anybody who sits in the same seat that Kelvin Bowen is sitting in, is innocent; he's innocent right now. And he's only, only guilty when you go back in that jury room, weigh it out and you say there has been proof beyond a reasonable doubt, under our law, that he's guilty. You can't go back in there and say, well wait a minute, I'm not sure. I'm hesitating. I got doubts. Because that's your good sense and our law saying bring back a verdict of not guilty. And all I'm saying in these things is I want to make sure when you go back that you understand these things. For three and half days we sat and listened to the Prosecution's case. For about an hour and half you listened to our case and if you go by a time clock on who put up the longest case, Kelvin Bowen loses, but that's not our law. What His Honor will tell you he doesn't even have to put up any proof. He doesn't

have to testify, because the burden of proof is only on the State. Kelvin Bowen has no burden to prove, none, zero, no burden. He don't have to prove anything, say anything or do anything. It's solely upon the State to prove a case beyond a reasonable doubt. Now, Kelvin Bowen did not testify and you say oh he didn't testify, he must be guilty. That's not our law, that's not our law. His Honor will tell you that under our Constitution and law a person does not have to testify. You can't override the Constitution of this United States, because that is a law and a matter of fact, he will tell you, you can't assume anything. You can't even discuss it in the jury room. To prevent that from happening. Because if you sit there and your mind is saying, well he didn't testify, he must be guilty, then you are violating the law yourself. You are violating your oath, don't do that. Follow what you heard and saw in The Court of law. Do as His Honor tells you. These laws have been in place since 18, 1787. A lot longer that we've been here and they've guided our country and served our system well, because it protects innocent people from going to prison. How bad would it be, how bad would it be to find somebody guilty when they were not? How bad would that be? Now, in this case, Kelvin Bowen has come into court and said I have an alibi. That means I was not in South Carolina when this occurred and he put that up through two witnesses that I'm going to talk about in a few minutes. Because he wanted you, through these witnesses,

to know where he was. He says I was not in South Carolina by this defense on April 4 and 5 when this crime was committed. The law of this state places no burden on Kelvin Bowen to prove that defense. Remember he doesn't have to prove anything? A law allows him to put that defense up. Actually the burden is on the State to prove he was here. Okay, so, that becomes an important consideration. This case is really simple. There is no question, ladies and gentlemen, that K.D. was murdered, there's no question that the people that murdered him, a lot of them are in prison today, where they belong. There's no question that he was shot in his own home, and that's why we have never questioned the fact that he was murdered. We didn't have any questions, you didn't see me ask any questions about it. We never disputed that. What we have only disputed in this case was that Kelvin Bowen wasn't there. Everything else that happened to K.D. that night is true. You saw me yesterday, I didn't ask any questions of that pathologist. The lady who did the autopsy. I don't even see why we had to sit here almost two hours and listen to it, because we admit that K.D. was shot by those bullets and shot by a shotgun. We admit that. We admit that he was shot with this shotgun. That's not what this case is about. K.D. K.D. is dead and the people that killed him ought to be held accountable, but the people who didn't do it don't need to go to prison either and that's the only thing this case

is simply about. The only question you got to ask yourself has it been proved beyond a reasonable doubt that Kelvin Bowen was in South Carolina? Was it proved to you beyond a reasonable doubt that he was present and did this crime. That's all. That's the only question you got to say. It's not a question about how many times he was shot or whether that was the shotgun or whether all these pictures of his trailer and all that's true. That's true. Let's don't get confused by all this evidence. And you say well why did we have to listen to that? I don't know. Because all the Solicitor really had was some bad pictures of a young man who was killed. All that is done, is to get your sympathy, to get your blood up and say somebody got a pay and it might got to be you. Don't let that happen, don't let that happen. The only case, and we could have tried this case in a day, the question is, was Kelvin Bowen here that night? That man there. I'm not talking about a Callie, I'm not talking about somebody with Tawanda, I'm not talking about who the real Callie is. I'm talking about this man right here. That's the questions that I want you to focus on. Now, so I want to talk a little bit first about proof you didn't hear, because when you don't hear something, like I promised to have five marbles in my hand and I only showed you four and you say you ain't proved it. So what didn't you hear in this courtroom, from this stand that would cause you to hesitate to act? Number one, let's don't ever forget that the burden

of proof is on the State. I'm a little bit older than ya'll, but I read Dick Tracey in the funny papers when I was growing up. It was about a police officer. He had a watch and you could, it was like a computer that we have today. Who'd a known fifty years ago that Dick Tracey would have had a watch that's almost like our phones today that you can see people and do stuff? Magic watch, and he was a police officer. And so when you're growing up, then we ran into things like CSI and things like that. We got a pretty good idea of how you prove cases now. DNA, fingerprints, footprints, tire tracks, all kinds of things to put people at a crime. I asked over and over, do we have a single fingerprint to tie Kelvin Bowen to this crime. On that shotgun? Anywhere out at the house? On one of these bullets? On a doorknob? Anywhere, no. Not because they were wiped off; they didn't look for them. Have you ever heard a police officer not checking a weapon when they find it, they always picking it up with pencils and handling it real careful and wrap it up in something and take it and dust it for fingerprint. People in grammar school know that. Why wasn't that done in this case? That would have proved whoever handled that shotgun was the person who fired it. No fingerprints, no tire tracks, none whatsoever. Nobody even bothered to look and yet he's supposedly the shooter of the shotgun. Now, they say you know cell phones are almost magic for law enforcement. It's a great tool for divorce lawyers. The first thing you do is subpoena the wife

or the husband's phone records to find out who you been calling and that's where you find out who the boyfriend is. And then you check it for pictures and you check it for text messages and you look at the phone and you examine it. And if you don't do that, you can send it off to a laboratory and they can forensically go into it, open it up and find out all kinds of stuff. Even better yet, you just send to Farmer's Telephone or whoever your provider is and send them a subpoena and they just get the monthly records, because everybody gets a cell phone bill and it tells you who you call, the number you called, what date you called, what time you called, how long you talked and they even have records of where the cell phone tower was, they call pinging off of it. If you're talking in Kingstree, you're pinging off the Kingstree tower. If you calling to North Carolina, you pinging off a tower, if you're riding down I-95 and make five calls, you pinging off different, they can track you right down I-95 off of these cell phone records. All of them and do we have any cell phone that were important in this case? Oh my gosh. We got to see one right here in the courtroom. Kevin Mack's, I mean Ronald Mack's. The guy who was the trigger man on the nine millimeter who's getting phone calls from Callie. No records on that phone, but check his phone bill; the incoming calls, outgoing, did you do that? No. Duh. Well, you know that Kelvin Bowen had a cell, a phone, you lost that Samsung phone, but you don't have to have the

phone. All you got to do is just go to T Mobile, right on the record and say T Mobile, this guy lives up here in Maryland, give us his records for April. Who's he calling? And they say a big spill about whether or not text records, text records existed or not. Well, I can tell you this, they sure got a record of who he called, because they sent him a bill for it. They didn't bother to get it. That would prove whether or not he did it and remember he, they have got to prove their case and is this regular law enforcement, criminal investigation. Where is it? Where is Tawanda Allen's cell phone record? Didn't bother to check, oh my gosh. And they want to send a man to prison for that? Oh so they say, well Kelvin Bowen was living, this is what Ms. Barr says, Kelvin Bowen is living with Tawanda Allen. He lived in her apartment, she said it. You cannot, lawyers can not be witnesses. Did you hear a single witness from this stand say he was living there? No. Now, you found two detectives who said, well we found a baseball hat. Who's baseball hat was it? Don't know, but it's a baseball hat. Okay. Do women wear baseball hats? Yeah. But that's proof he was living there? Oh but wait a minute, we found some Budweiser boxer shorts and a Budweiser tee shirt. Oh my gosh, women don't drink Budweiser and they don't wear tee shirts and they don't wear boxer shorts. Give me a break. Oh well we found some Dove deodorant. My wife uses it, but I don't. I use men's deodorant. Oh well, wait a minute he

had some clothes of his there. Okay, show me a picture of them. Show me a picture of a closet with the clothes hanging in it or something. Show me, show me his toothbrush with DNA on it. Show me his razor, show me his shaving cream, show me his hairbrush. Show me something to show the man lived there. Show me one witness who said he lived there. Not one. You know, did you hear a single witness say they even saw him inside is apartment? Not one. Not one single person sat here and said we saw him at at apartment. Yeah, we did see him out front getting in a car, but we never saw him inside of a apartment. And then they want you to say well wait a minute. We found three pieces of paper with his address on it though. Well, three pieces of paper lived there, but not Kelvin Bowen. Yeah, it has the address. Tawanda Mack could have done that. Who did it? We don't know. It was just there. And that has him living there? That's proof beyond a reasonable doubt? Not one single person said he lived there, not one single item of his personal belongings were found there, but he's supposed to be living there? Now was he going with Tawanda Allen? Yep, ain't no question. But where were they meeting and where were they going and what were they doing? I don't know. A lot of people go out with women and go to motels and off and go places. I don't know. But you know, it's so important for him to be living there with that shotgun, under the mattress. Now who's going to sleep on top of a shotgun on a mattress?

Number one, it's uncomfortable and number two who's going to live and sleep on top of a mattress? It just don't make good common sense. Tawanda Allen did because she's guilty. That was her bed. Now, Quadir Wilson, Dontrey Barr testified. Neither one of these witnesses ever said that's Callie. Neither one of these witnesses ever said that's the guy we saw, but they did say they saw Ronald Mack's Iphone at, right here, and there were incoming messages and texts on it. Have we seen anything on it? This exhibit number 85? No. And they've had it for twenty months. Twenty one months since this crime, in their possession and did not test this phone for those messages to prove that this man, Kelvin Bowen is Callie. Ain't done it yet. Matter of fact, we tried to go into it and saw there's no evidence that those text messages ever occurred on this phone. They can say well they were deleted, well fine. Show me the bills then. Show me something, where's the proof? That's the proof that Kelvin Bowen, he didn't do it. Right there, that's the proof, because if it did, it would be connected to his phone. We don't have one phone message, one record to show his phone ever talked to this phone and this phone was recovered on the 7th of April, two days after, three days after the crime. Actually two days after the crime. You know, one witness I never heard say a word, this witness is the lead investigator in this case that handled the whole file. Handled everything; the phones, the records, was in charge of all these things.

I kept saying where is Investigator Lail? Why isn't she testifying? Why isn't the lead investigator testifying in this case? Unless she's got some information they don't want you to ask about. Silence, not a word. She ain't got nothing to say. She can't prove anything. Don't you know, if the lead investigator in this case had evidence and testimony that Kelvin Bowen was Callie and did the shooting, she'd be up there singing like a bird? Nope, not a word. Total silence. What you didn't hear in this courtroom. Now, what, who did you hear a lot about in this courtroom committing this crime? Ronald Mack. We heard enough evidence and testimony to put him in jail for at least forty five years and guess what. He is in jail, where he belongs, for forty five years, because he is the confessed, pled guilty, murderer in this case. His mama is Tawanda Mack Allen, in prison for fifty years for her participation in this crime. Neither one of those two people walked into court and said there's Callie. Never heard it. Now, all of these are reasonable doubts, what you didn't hear. Let's talk a little bit about what you did hear. What proof was presented that Kelvin Bowen now, I ain't talking about Callie, I ain't talking about anybody else, but this man sitting over here came down to Kingstree and killed this young man? Yeah, I called him a young man, but I also called him just an old, you know, he's seventeen years old. What proof? Antonio McClary is the only person out of three that has walked in

this courtroom and said yeah that's Callie. Now I got some questions to ask you that I want you to go back in this room, this jury room and I want to ask you to go back, cause your job is to weigh the credibility and the believability of Antonio McClary. Why would Antonio McClary all of sudden, for the first time in history. Now, I understand he confessed on May the 13th 2009. That was twenty two months ago or twenty one months ago, he confessed. Twenty one months went by, because I asked the question of one of the investigators, Investigator Collins, I said in twenty something months, have you ever taken one of these witnesses, and taken, cause this man been sitting in jail all that time, Kelvin Bowen. Have you ever taken him over to his jail cell and said who is that guy right there? Who's that? No picture, I'm talking about who is this guy? Is this Callie or not? And they waited until two days ago and you say why is that important? It's important for this reason. Back on April the 7th, when they took the first statement of Antonio McClary, he didn't say one word about Callie, he didn't say anything about Kelvin Bowen, he didn't know. He lied. Lied. May the 13th , first statement, he said I don't know. I didn't have anything to do with it? He lied. Then they put pressure on him and he confessed and that's what we call the confession statement. He said that he saw some text messages. We ain't seen the text messages; we know nothing about any. There's no phone connecting with a person named Callie. On this statement,

he said we asked, well who's Callie? And he said Callie is Ronald's step father. Okay. His step father. Well that's interesting because Ronald has several step fathers. Okay, thank you. Now, he asked him that twice, two different times in that statement and he said step father. He said that Callie showed up at Dontrey Barr's house at two o'clock in the morning and Callie's there. Okay. Well, what's the rest of the story? He said, well that day, earlier, I got a call from Ronald Mack and he was over at his girlfriend Dymon's in Hemingway and we went over there and picked him up about nine o'clock that night. And riding back in the car, we were looking at these text messages from Callie, saying Callie would you come down here? And he wanted gunplay, remember that word? He was up in Baltimore, Maryland. That's what they said between nine and nine thirty. At two o'clock he shows up in Kingstree? What he have a helicopter? Nine to nine thirty, let's just say it's nine o'clock, let's just say. Ten, eleven, twelve, one, two, five hours? Four hundred and eighty nine miles? Riding down the highway with all these weapons, shotguns, waiting for the Highway Patrol to stop them. I don't think so. Could you get here from above Washington, DC on I-95 to Kingstree in five hours? I don't think so. Yeah, could have a helicopter. Yeah, if there's nobody on I-95 and he drove a hundred miles an hour, maybe, I don't know. It just doesn't fit. Now I'm going to come back to it in just a few minutes, because we got

something that does fit to that time. An eight hour drive from above Washington, DC, almost to Baltimore down here. You can't drive to Richmond in five hours. Or if you can, you can drive to Richmond in five hours, but not from Baltimore, Maryland between nine and nine thirty and get here at two o'clock. That ain't going to happen. Something is strange and I'll come back to that. Now, he said in his confession statement, they went in the house; I didn't go into the house. Well, how did he know even Callie went in the house and shot anybody? Of course, you know, we'll leave that one alone, but guess what? He comes up later at his plea of guilty and says he did go in the house. Well, what is the biggest reason that he gave he knows Callie? What's the first thing a law enforcement officer going to ask you about a strange person? Alright you saw this man come in your house or rob you, what did he look like? Tell us what this man looked like and here's what he said about Callie. He said Callie was real tall and scrawny; he had Afro peezy hair, not low cut, it was like an Afro; and he had brown skin. Okay. Not light skin, not dark skin, but brown skin. So, then two or three days later, he just happens to be over in the Sheriff's office, or taken over there, you know, to look at a picture and they only show him one picture. And I ask him and I held it up and I said tell me how tall he is in is picture. He said this is Callie now. How tall is he? He said well you can't tell. I said tell me how about his

afro haircut in at picture? He got a do-rag on. He could have it braided down real tight, I guess, but you know, ain't no afro. That, I said, well is he scrawny looking? He don't look scrawny in that picture. Well is that brown skin and he said well yeah, that's brown skin. What's brown skin and what's dark skin and what's light skin? You be the judge. Look around is courtroom. You see any brown skins here or there? Or dark skins? I don't know, I mean that's just thought to something, it is what it is. I'm not going to argue about that. That is suppose, he described in his confession exactly what we know to describe. No. And why is that so important? Now that's a good question. Why would he say that? The man is already confessed; he said I am in deep trouble, I'm going to prison, I got to get out as light as I can. I got to start helping out, I got to start cooperating so I can get me a light sentence. I don't want to be like the rest of them dudes. I ain't going to, ain't going to claim I had no weapon, I ain't going to do nothing and they going to believe me, cause I'm going to put the hand on somebody so they can put them in prison. Well we get to the 10th of June in this statement and you heard his lawyer yesterday. We ask him, is man Callie? And he looked at him and said no, at ain't Callie. So, what's Callie look like? Well he's a real tall dude with an afro and oh by the way he had piercings in his ear and his face. Rough looking and I'm sitting right in front of Kelvin Bowen and his lawyer. No

law enforcement, just the lawyers. That's scary when you're a lawyer and you know your client is charged with murder and the person who's supposed to be identifying him says it ain't so. Yeah, we wanted the statement bad, but two weeks later he changed his mind and said oh it's not true. Because he thought about that thing and he said you know if I go and tell that law enforcement I ain't going to get that light sentence. I'm a help them out. So he goes to his guilty plea and says let's cut a deal. I don't want no forty five years, I don't want no fifty years. I'll come testify, I'll put the finger on the man; let me off light, like in twelve years and that's what he got. And you saw what he did yesterday, saving, or day before yesterday, saving his own skin. I brought Kelvin Bowen right here; I wanted him to get a good look and he sat right in the car with him and he saw him. I said did you see the moustache on the man? The mustache is pretty big. You can remember a moustache. Whether or not a person has a Afro and a moustache. He never remembered the moustache on the man and he's had it. I said do you remember the scar down his jaw? Six or eight inches long? He said yeah, I see the scar, but I don't remember no scar. These are things you remember people by. Just didn't happen. Ronald Mack, the shooter, the bad guy confessed. Told law enforcement he did it, pled guilty, got fifty years. Testified in his own mama's trial, against his own mama, saying she participated. Mama gets forty five years. I want

to talk to your common sense a minute. Would you come in that courtroom to testify against your own mama and look at this man and say he's not Callie, if you wasn't telling the truth? Would you lie on your mama? Or would you tell the truth for your mama? Or would you even testify or would you lie for your mama? And wouldn't lie for this man in court either and today we asked is that Callie over there? He said that is not Callie. That is not Callie and if he told the truth in testifying against his own mama, is he testifying the truth here? I ask you, is that human nature? God knows we all love our mamas. He testified against his own mama, but he didn't testify, he testified honestly in this court. Would he be doing such a thing if it wasn't true. That speaks more to the truth and the credibility than anything I've heard in this court. Now, he also said his mama had two boyfriends. Who's that other boyfriend? He didn't know, he said I just know my mama had two boyfriends. I wasn't living up there then, back in April. In his taped statement he said, they were talking about Kevin and Kelvin, two different names completely. Yeah, they close. Kelvin Washington was Sheriff of the county. Kelvin Bowen sits over there. There a lot of Kevins around, but that's a different name. He was never taken and asked and shown Callie, identified as Callie the whole time he was in jail. Tawanda Mack Allen, mother of Ronald Mack, found guilty, serving fifty years. She didn't testify, she didn't put her finger on him either. I

want to go back to the cell phones for just a minute. The last Samsung T Mobile cell phone heard from ... tried to get it. I had permission, because we didn't know what happened to it. We were trying to find that cell phone. The last, according to Detective Luersen, the last it was seen or heard was this day. What they did with it, we don't know. Apparently, it was towed off, sold, the car was sold, we don't know; it just disappeared, gone. But the records aren't and those records, if law enforcement had gotten them, I doubt if we would be her today. Law enforcement must prove their case, just like foot prints, fingerprints, DNA and checking out all of the potential killers and you say wait a minute. Who are the potential other killers here? Well, Ronald Mack mentioned two names; A fellow by the name of Bam and a fella by the name of Tom Tom from Hemingway. I asked Officer Justin Whack yesterday, did you check those two guys out? Well somebody may have. I said oh, Investigator Lail would've check that I ain't heard anything from Investigator Lail about it. He had at least two step fathers. Surely they went and interviewed the two step fathers and found out if any of them were tall and scrawny and had an afro or some piercings in their face. Nope, didn't bother to do that either. What is going on? We'll never know, because they didn't bother to ask. In this case, His Honor is going to charge you that this case also has circumstantial evidence. There's two kinds of evidence; Direct evidence is what you

see in this court. Here's direct evidence right here; testimony from the State, but circumstantial evidence is also important, but there are rules involving circumstantial evidence. Where a person actually sees a crime, that's direct. Circumstantial evidence means proof of some other fact or facts which taken together collectively prove the existence of a particular fact. Before you can convict Kelvin Bowen on some circumstantial evidence, the circumstantial evidence must measure up to our law and that measurement is this, not only must the circumstances be proved, but they must point conclusively to the guilt of the accused, conclusively. Must wholly be perfectly consistent with the other. They also must absolutely be inconsistent with any other theory. Every circumstance relied upon by the State must be proven by tests of strict proof. They must be consistent and taken together must reduce to a reasonable and moral certainty that the Defendant, and no one else committed the crime, or the Defendant didn't commit the crime. All presumptions are in favor of the innocent, so circumstantial evidence is very strict and you got to be very careful. Now, what are the circumstantial evidence in this case? That Kelvin Bowen lived in that apartment because of these three pieces of paper. That's what they want you to say, well this equals him living there, but nobody's ever seen him there. No clothes, no nothing. His physical presence out in front of the apartment would be, they say that's circumstantial

evidence, well it is, but that don't prove anything. They say his i.d. card shows he's from California, so he must be Callie. Everybody who lives in the state of California must be Callie. If you're from California, you're names gotta be Callie. That's what Ms. Barr wants you to think. That's all they got is an i.d. card. It don't say his name is Callie on it. His name says its Kelvin Bowen, grew up in, I think, Long Beach California. But that don't make him Callie. You know, what really happened, who is Callie? That's a good question. That's what I kept wondering over and over in my mind, because we don't know. We have to rely on what law enforcement did. Who is Callie? We know, but we ain't sure of who Callie is but we know that they have the burden of proving it and we know he's a guy with a Afro haircut. Now, this picture was taken in March 2009, about a week or two before this crime was committed. Do you see an Afro haircut anywhere? Now, no. Do you see a Afro haircut in any of these pictures taken prior to the crime? Do you see one in this picture? You can carry those back with you and I want you to look at them. Do you see one in this picture? See one in this picture? See one in this picture? You see somebody with a moustache in this picture. Why are these pictures important? Because it ain't Callie. We know that Callie was a step father based on every single statement. We know that there are step fathers who were never interviewed. We know that there's two guys by the name of Bam Bam and Tom

who Ronald Mack said were responsible. We don't know, because they were never interviewed. We know that there's no way at Kelvin Bowen could have got to Kingstree, South Carolina from Glen Burnie, Maryland in five hours. What does that tell us? The real Callie lives closer than five hours. The real Callie may be right here in South Carolina. The real Callie may be around Kingstree or Williamsburg County. Because we know he couldn't have gotten here in five hours. We do know those things. None of this fits Kelvin Bowen, none of it. Not the description, not the time frame, not the hair, not the moustache, none of is. You know what I found unusual, is alibi defense, we put up Tiffany Bowen yesterday and her son. And an alibi defense, what you need to know is this, okay, why do you remember that day in question? How do you remember it? Because it was two years, almost two years since that crime. Well, her husband wasn't arrested two years ago. A few weeks after he, this crime was committed, he was arrested and the first words out of her mouth, you couldn't have committed that crime. You were with me. That was right back after you got back from California on a trip. That was when you put together our son's birthday present, because you wanted to play with it. You spent that weekend at home with us, the whole weekend. We called my cousin and sang happy birthday to her. You couldn't have committed this crime. And you heard young KB. You judge their credibility and their believability. A wife trying to

keep her family together, yeah he's got a girlfriend and if he's guilty of something, then yeah, he's guilty of having a girlfriend. He's guilty of being at the wrong place at the wrong time and messing with another woman. He's guilty of that. But don't let that say he was in, bring him to South Carolina when there's no proof of it. He's guilty of hanging around a cynical, bad, evil woman, yeah he's guilty of that, but not guilty of this crime. It bothered me when Justin Whack took the stand, because there's a lot of things about this case that bothered me and he said, I tried, I called Tiffany Bowen on Friday and asked her if she would answer my questions and she wouldn't answer. Wait a minute, that ain't what happened. And I walked right here and I said, Officer Whack, you put your hand on this Bible to tell the truth and nothing but the truth, the whole truth didn't you? Yeah. I said but you didn't tell us the whole truth, did you? Oh yeah I did. I said well why don't you tell the jury the rest of that conversation? Well what are you talking about? I said well, didn't she say she would be glad to talk to you on Monday and tell you what she was going to say? Well yeah, she said that she wanted you there. Yeah. I said well you didn't have a problem with that did you? No. I said she didn't know who you were, you said you were a deputy and she said, she cooperated and said she'd meet with you on Monday in person. That's a lot better than talking on the phone isn't it? Yeah. Well sure you talk to her on Monday. No.

Tuesday maybe? Wednesday? Thursday? No. He just did that to try to, so he could sit on the stand and talk bad about this lady because that's all you can do. If he didn't believe her, he'd been on her like a bee after honey on Monday, Tuesday, Wednesday, asking her. But never ask her a question, never, never. Who you going to believe? Somebody that wants to tell you part of the truth or the whole truth? You know, you're sitting there and you're troubled. You been sitting here for four days, well five and you say I've been sitting here listening about a horrible murder that this man's supposed to have committed. You feel like, well gosh, I've seen all this stuff, maybe I need to find somebody guilty sitting here all this time. Don't fall into that trap. Don't fall into that trap. This is a system of justice, not how many documents and exhibits you put in or how many witnesses you put on the witness stand, it don't matter. It's about justice and the truth. And proving somebody guilty beyond a reasonable doubt. So what is your verdict going to say Mr. Foreman and ladies and gentlemen? What should your verdict say? It says not guilty. You're not saying you're finding him innocent. What you're saying is the State has not proved a case beyond a reasonable doubt. You've not proved your case, that's what your verdict says. But it says more. It says you have convicted Tawanda Allen, Ronald Mack and Antonio McClary. Three people who admitted their guilt and have been proved guilty beyond a reasonable

doubt. But in this instance, there's not a complete case, there's not complete evidence. Many important facts have not been checked out that should have been checked out. Your verdict does not say stop investigating this case. Your verdict says law enforcement, go out and finish your job. Go find these step fathers, go find these other witnesses and finish your job. You still have a right to convict people of this crime. That's what your verdict says. Your verdict says seek the truth. Do justice. Go out and investigate these step fathers. It says we can not put someone in prison for such a weak identification, by a bunch of people who are proven murderers. We can not put someone and find someone guilty based upon the evidence and testimony and the law of this state as we have seen and heard it in this courtroom. We can not bring back a verdict on what we have not heard. We can not bring back a verdict on suspicion. We can only bring back a verdict that seeks justice. I couldn't thank you for being here Monday, but I can thank you today. Not for being here, but on behalf of Kelvin Bowen, his wife, Tiffany and young KB. I want to thank you for listening. I want to thank you for hard work and doing your job. And doing what the law requires and finding justice. Thank you.

The Court: We'll take a break now ladies and gentlemen. Please go to the jury room. Please do not discuss the case.

(Jury exits court room for break 11:25)

The Court: Alright, we'll take about seven minutes.

(Court break)

The Court: Yes sir?

Mr. Jenkinson: Your Honor, I would just ask The Court to make sure the Solicitor proceeds with caution as to any gang related activities in her argument. We ask to make sure that's not included in the arguments.

The Court: Alright, bring the jury.

(Jury enters courtroom 11:39)

The Court: Ms. Barr?

REPLY CLOSING STATEMENT BY MS BARR:

Folks if I can have about thirty minutes of your time and your attention again and then I'm going to sit down and you all will have the most important job and that's to render a decision. I feel for you, because it's tough, but we know that you all will do the right thing in this case. Ultimately, while Mr. Jenkinson and I may disagree on what the right thing is in this case, ultimately, both of us want you to do what's right and what's just. This week has been a little weird for me. My oldest niece and her husband, they have been trying to have a baby for the longest and on Monday, I am very proud to say, they gave birth to a little baby girl and it was ironic because she was born about two o'clock in the afternoon. About the same time that we were picking this jury on a case in which another mother

lost her child's life and it made me, at that time, I think, probably appreciate the sanctity of life more so an I ever have in my career. She's a little, tiny thing, she's less than five pounds, she's still in the neo-natal unit, but she's fighting and it makes you realize how very, very precious life is. When I think about life and death, you know, we have words for what it means when you lose somebody special. If you lose a spouse, you're considered a widow or widower. If a child lose a parent, that child is considered an orphan, but you know what, there are no words in the English language to describe what you are when you lose your child, because there are no words for that. That's, I've been told, the most horrible fate that you can suffer. And it's particularly horrible in this case because Annette Bradshaw lost her child in the most horrible way. I'm telling you that, Annette doesn't want you to feel sorry for her. That's not why I tell you that. I tell you that because Annette wants you to render justice. That's all she seeks when she comes in the Courtroom. K.D. was seventeen years old when he was murdered. It was in April of 2009, probably about a month or two away from graduating from high school, had his whole future ahead of him and I'm going to address the whole notion of him being in a gang obviously, because it's evidence that

you heard and I'm sure it's on your minds and I'm sure you're probably going to talk about it when you get back there. You know, when I was coming up, I'm not going to tell you how long that was ago but when I was coming up, we had little gangs in our high school, or we thought they were gangs. They were really more like clicks. Basically people got together, they wore the same kind of clothes, they all ate lunch together, you know, they walked places together. Didn't harm anybody, but you know, they call that a gang. And if in fact, if in fact, K.D. kind of lost his way as a young man and got involved with Ronald Mack and his crew and all that, for a moment lost his way, to me that's particularly as it relates to Ronald Mack, makes it so important for us to realize as parents, as adults, the level of influence that we have on our children. We have an incredible impact and influence on children. You know, when Ronald Mack contacted his mom and contacted Callie, and let's be clear, Callie is not some phantom person out there in the sky at we just, out in space somewhere that we don't know who it is. We know who Callie is. Callie is Kelvin Bowen sitting right there. Don't be fooled, that's Callie. As sure as I'm standing here, that's Callie over there. When he contacted them, and said listen, I'm having a problem with Kenyan. I need some help, I need y'all to

come out and help me. It didn't dawn on Tawanda Allen or Kelvin Bowen, man what's the problem? You having a problem with K.D. you come on up here with us, you come stay with us in Maryland. That was not, to me now, that would have been the typical response of an adult. That wasn't his response. What do you need, gunplay? And was more an willing, ready and able to put all that expensive gas in that truck and drive with Tawanda Allen all the way from Maryland to South Carolina to kill somebody he didn't even know. You know, when I think about K.D. when I think about K.D. I wonder whether or not, if in fact, this child was caught up in some kind of gang, whether he realized that wait a minute, Ronald Mack is into some heavy stuff. Maybe he ought, I need to pull back from this. Maybe that's why him and K.D. him and Ronald Mack wasn't getting along in the week before he got murdered. Maybe he pulled back from them and really, really y'all? If K.D. was this big time gangster, like Ronald Mack wants to be, why was there no evidence of any guns in his bedroom? Police went up and down that house, went in and out the bedroom, no evidence of guns, of drugs taken out his bedroom, no rolls of money taken out his bedroom. There was no evidence at he had any drugs in his system when they did the autopsy. So I wonder whether or not if it is true, at some point,

because remember, his mom said, alright now you can come in here at one thirty in e morning if you want to, you better be ready to get up and go to church in e morning. I wonder at some point, did he say, wait a minute, I've got to pull back out of is. If in fact, is what Ronald Mack says. Now, what's kind of scary about is case is e precise nature in which is murder was carried out. I tell you, I mean I've prosecuted probably thirty, forty murder cases. This is just unbelievable. These folks out of Maryland? They're not like anybody we know. They're not like us. I mean they just, they got a different mind set. I mean just, a completely different mind set. They carry out this murder, in and out in five minutes. They're in and out that child's house in five minutes and on the way back to Maryland and it doesn't bother any of them. They go on with their lives. Ronald Mack moves up there, goes to school there. Tawanda goes back to work, Kelvin Bowen gets his license back, Tawanda gets Kelvin a job where she working. I mean they just carrying on with their lives. And it's absolutely amazing to me, but people please don't be naive about what's out there in the world. Evil is out there in the world and this Defendant, the act that he committed was evil personified. Now, Mr. Jenkinson was right about one thing; when Ronald got in court he testified, of course

Mr. Jenkinson wasn't here during the trial and I was, but when Ronald Mack testified in his mother's case, he threw her under the bus. Yeah she drove down there, yeah Callie had the guns, yeah she waited outside in the car while we went in the house and I put three in him and Callie put five shotguns shells. Said all that when he pled guilty, said all that when he testified in her trial. You have to ask yourself the question folks, what is it about this Defendant and his relationship with Ronald Mack that would inspire such loyalty from Ronald Mack? Yeah, you, Mr. Jenkinson's right. He testified against his own mama, but when he gets on that stand, I don't remember. I don't remember. When he come in this courtroom, he eyeballing his buddy over there. I don't remember, I don't remember. But now when Mr. Jenkinson started asking him questions, yeah, I remember that part. Oh his memory got a whole lot better. Because he ought he was helping him. You see, Ronald Mack knows, I'm doing my time, I'm doing my fifty years, ain't nothing else can happen to me, I can get up here and lie, I can purger myself all day long, nothing else is going to happen to me. And Judge row three, four more years on me for perjury? I don't care. My mama's sitting up in the Department of Corrections, she doing her time; nothing else can happen to her. He's not going to hurt

him, but folks, if he can help him, he's going to try to help him and that's exactly what Ronald Mack did. And you have to realize as jurors, that you can't, you can't always answer the question why. There's some things we're just not going to know the answer to. I mean, when I got this case, y'all had it for five days, I've had it for almost two years and I tried one defendant in court, two other defendants pled guilty and I still can't understand it. I still can't understand it, but the beauty about the criminal justice system is that this judge is not going to lay that burden at your feet. Nobody's going to sit up there and when you come back, and render your verdict, nobody's going to come up and say well, now you got to tell me why. Explain to me if you going to convict this man. Madam Solicitor explain to me why he would want to kill this child. There are some things that people do in this world you can never explain. I think about that case with Scott Peterson, out of California where the guy was having the affair and killed his pregnant wife. And I ask myself, why would he do that? I mean, hasn't he heard of divorce? I mean, why would you do that? Some things you just can't answer. The only thing you have to answer, is did he kill him. You don't have to answer why. Because folks, there's never a reason to justify what this Defendant did. I think

in terms of the viciousness of this murder, if I can be grateful about anything, it's probably simply one thing. I'm grateful that K.D. probably did not know what hit him. I'm grateful that, despite the fact he was surrounded by evil and malice and violence, none the less, he was still surrounded by the love of his mother who was simply a few feet away from him. And I'm grateful that, although the sounds of nine millimeter handgun, sounds of a shotgun was blasted all around him, all those sounds, the last sound that he remembered was the words of his loving mother. You see, K.D. , unfortunately, he was going to die that night. That was his time. There was nothing that anybody could do and these people, they didn't come all the way down here from Maryland for nothing, they were going to kill the boy. I mean, if they had come to the house and firmly convinced and ten people were at the house, they would just sit and wait until ten people left and they would have come in and they would have killed him. What is so ironic about that, his mother was not supposed to be there, because Ronald knew she worked midnight shift. Ronald knew that. He waited, that's why he came when he did. But it just so happened, for whatever reason, that child was meant to die that night, and despite the fact that she was supposed to be at work, his mom was meant to be there.

And perhaps because it was already predetermined that he was going to die that night, maybe, you know, her only role in all of this was to be the last one to talk to him. To be the one to find him, his body. To be the one to see the dark SUV running from the house and the one to call the police. Maybe that's, maybe that's just how it was meant to be. You know, you can't explain it. It's just that's how it is. Even despite what he's done, I still, as I stand here, pray to the good Lord in Heaven that Kelvin Bowen never has to suffer the kind of pain that he inflicted on this family. I pray that never happens. You know, often times, people are not who they present themselves to be. People aren't who they appear. People put on masks for people. Mr. Bowen was very successful for a while in putting on a mask to his wife. Lied about where he was going and who he was with and you know, I can tell you now, you can put a Defendant on a shiny suit and some nice, shiny shoes, you can change what he looks like on the outside all day long, but you not going to change the fact that on the inside he's a skilled, cold-blooded, cold-hearted killer. The only difference is today he's a skillful, cold-blooded, cold-hearted killer with a nice suit on. You can come into this courtroom and parade the wife up. You saw on Monday morning how Mr. Jenkinson, or Monday afternoon

Mr. Jenkinson said, oh Tiffany stand up, stand up. Kelvin Bowen, III stand up, stand up so the jury, you can parade them in this courtroom all day long, it's still doesn't change the fact that they are the wife and the son of a skilled, cold-blooded, cold-hearted killer. You know, the time to be the proud papa and the loving husband is when you laying up in Tawanda Allen's bed. You know, now that you on trial for murder, don't try to play a proud papa and a loving husband now. You know, when I think about the proud papa, loving husband, and I think about Tiffany Bowen's statement, you know, something hit me when she testified yesterday. She said that when her husband was arrested in Anne Arundel, Maryland, right after he was arrested, he called her and I think she said he called her first. I may be mistaken on that, but he called her very shortly after his arrest and Ms. Shuler asked, well what did he say? And she said well he told me that he was arrested and I said arrested for what? And he said arrested for murder and her exact words were who did you murder? That's just how she said it, who did you murder? Now, if my husband call me from jail, saying at he was arrested for murder, I'd say, for what? Oh my God, are you serious? But her reaction is as cool as a cucumber, who'd you murder? You know that testimony and her reaction is very

telling, very telling. Because she knows her husband a whole lot better than we do. And she also mentioned that she asked him, well what was the date? And she said, no I know that couldn't be it because you were home with me on that date. And I thought about it and I said wait a minute now. Now mind you all of this is happening pretty quickly. We didn't have a warrant on Kelvin Bowen until after Antonio McClary came over to the jail and saw his picture on the computer. We just knew him as Callie, we didn't have a government name for him so to speak. And so after Antonio made that identification, then the Sheriff's department would have had to go on over to a Magistrate, type up a warrant, have the warrant signed by the Magistrate, have it notarized, but it hadn't been served yet. So how did Callie know the date unless he was in South Carolina and committed the murder? They remembered the date so much because they had to remember the date so much. Now, how many of us, realistically, if I was to throw out a date, November 16, 2010, unless that's an anniversary or birthday of some significance, how you going to remember that? You remembered that because you have to remember that because you want to spring your husband. That's why she remembers it so well. When you talk about these quote unquote alibi witnesses and folks, when that little boy got up on the stand and

I said, you know, I mean what do you do with a thirteen year old? But when the wife gets up and I said well, I mean, Kelvin Bowen wasn't spending every night with you. He was staying out all the time wasn't he? Well yeah. I mean, even your own son said, you know that's a contradiction to even your own son's statement wouldn't it? Yeah, I guess. But they want you to believe the alibis. And all of this notion about, you know, Justin Whack calling Ms. Bowen on Friday and trying to talk to her. When she goes in and says, well no, you know, I didn't mean it that way, I just said I'll talk to you on Monday with my husband's lawyer. To me, if you have the truth on your side, if you're telling the truth, why do you need a lawyer around when you're telling the truth? I mean, if your husband's charged with murder, folks that's some pretty powerful evidence to come in and say, no I know he didn't do it, because he was with me when it happened. When she had that telephone conversation, supposedly when she says well, you know, I know you didn't do it because you were with me. You don't think a wife would have been on the phone down to the Sheriff's department of Williamsburg County saying, y'all got the wrong man. I don't know what y'all got going on, but y'all got the wrong man. My husband wasn't there, I'm proof. Listen, I'm proof he was not there, I can show you. I

can show you the phone records where we were on a call to my whoever it was in Texas.

Mr. Jenkinson: Your Honor, burden is shifting.

The Court: Objection is overruled.

Ms. Barr: No, they save it. Save it for court, because if she gives a statement to law enforcement, law enforcement is going to start going back, well let me see. You say this, let me go interview this person to confirm that or contradict it. Or if you say this let me go talk to this person to confirm that or contradict it. She didn't want to give them the opportunity to do that. She wanted to answer his questions in the presence of Kelvin Bowen's lawyer, because she didn't want to deviate from the script. And without the lawyer being there, she might deviate from the script. But these are the people we're suppose to believe. Let's talk about Antonio McClary's testimony. Here's why you can believe Antonio McClary. Let me, before I tell you at, let me just say is, did Antonio McClary get less time than Tawanda Allen and Ronald Mack? Yes. To some of you, does the idea that he got less time than the other two, does that kind of leave you with heartburn? If it does, that's fair. If you have a problem that he got less time than some of the other people. Please take that out on me and not on justice and not on this woman who seeks justice for her son.

Quite frankly, I'll tell you that, did I want him to testify? Sure I did. Absolutely, I'm guilty, I wanted him to testify. He's an eye witness to a murder in a case I'm prosecuting. If Donald Duck was an eye witness to the case I'm prosecuting, I would want Donald Duck to testify. Yes, I sure do. Was there ever a point when I sat down with his lawyer and I said listen, you know, you tell Antonio to say A, B and C and I'll give Antonio X, Y and Z? No. His lawyer came up and said that. Yes Ms. Barr wanted him to come into court and testify, because I just wanted him to tell the truth, whatever it was. I also wanted Tawanda Allen to testify, because I called her as a witness in my case. Now, Tawanda gets up and she asserts her fifth Amendment privilege not to incriminate herself. I respect that, that's her right. Did I want Ronald Mack to testify? Sure I did, absolutely, I'm guilty. He was an eye witness to the murder, I wanted him to testify in my case. I called him again, he got in here, looked at his buddy and all of a sudden he gets amnesia. But now, the reason why you can believe Antonio McClary folks, is quite simple. Everything Antonio McClary said can be corroborated. Everything. You look at the crime scene photos, you recollect his testimony in everything is a hundred percent consistent. He talked about the vehicle being a dark

Kia. Well, low and behold we find Kelvin Bowen and Ronald Mack in a dark Kia. He talked about Ronald Mack's mom being Tawanda. Low and behold, we pick up Kelvin Bowen and Ronald Mack and their in Tawanda's car in Maryland. He talked about nobody forced entry into the house, they just happened, much to their surprise, to open the door and it was unlocked. That's consistent with the photos that show no forced entry. He talked about going down to the house, in the bedrooms, didn't see Ronald Mack, K.D. initially. Saw him in the chair sleeping. Absolutely, one hundred percent consistent and corroborated by the crime scene photos showing his body sitting up in the chair. Talked about him being shot by a nine millimeter handgun. Said at Ronald Mack did it. Absolutely consistent. Ronald Mack pled guilty to shooting with a nine millimeter, we know that it was a nine millimeter, because of the autopsy and the SLED experts testimony. We know that he was also shot with a shotgun, because that's, again, consistent with the SLED testimony and the autopsy report. Now, Antonio's no saint. Now, don't get me wrong, but folks, he said some things in this courtroom once he put his hand on the Bible that really made him look kind of bad. He didn't have to admit it. You know, he went in there and he said, I went in and I didn't want my face to be

seen, but I, and I grabbed some clothes off the chair and look in the pictures and what do we see? The clothes sitting on a chair. And he says he put some kind of shirt around his face. What do we see in the crime scene photos? The lane in which that Kia was parked, right there on the ground, that same shirt that he wrapped around his face. And folks, he even got up and said, yeah, I pointed him out, I said there he is. He didn't have to admit that if it wasn't true. Why would he? Why would he volunteer that if it were not true? The problem that the defense has is that Antonio McClary is too credible and y'all that little dog and pony show. When they bring Mr. Bowen over here. I want you to get real close, real close. Y'all that's the same part of that intimidation that started in the back seat of that car that night. It's the same part of the intimidation that continued when they were in court, after that preliminary hearing and he continued to carry it on when that young man was up on that witness stand. I'm going to tell y'all, I'm going to be just as honest and just as candid as I'm standing right here. If I were an eye witness, and I saw Kelvin Bowen do to K.D. or do to somebody else what he did to K.D. , I would get up here and somebody brought him said ma'am, Ms. Barr, is that the guy that you saw shoot the victim? I'd say no too. I sure

would. No, you know what, matter of fact, I would just, I would make it a little bit worse, I'd say no the person who shot him was five foot two and light skinned and curly hair and three hundred, I'd make it just a complete opposite of who he was. Antonio McClary knows what Kelvin Bowen is capable of. He saw it for himself and Kelvin Bowen did not have an ax to grind against that victim. He was only doing what Ronald Mack asked him to do. And you mean to tell me Antonio McClary, who is basically, the only thing standing between Kelvin Bowen and his freedom, doesn't have reason to be afraid of him? Do we, are we really surprised that he was afraid and intimidated by him? I remembered very vividly his testimony. He said, you know, you know how you get that feeling that somebody's watching you? And I was sitting in the back seat of the car and I had my head leaning against the windshield and I saw this reflection and I turned around and he called it mean mugging. Said Callie was sitting there just looking at me, had the nine millimeter pointed at me. And he's back there in that little small room back there and they three feet apart and his lawyer come over and say, is that the one who was with you that night? And we really expect him to get up and say, yeah, sure enough, that was him. And he got to walk back over to the jail with him? Are we

surprised? But you know what? Why you can believe Antonio McClary? When his lawyer presented him that statement, he read that statement and said, no, I ain't signing that. Said Mr. Palmer, I'm not going to sign that, because that's not the truth. He came back and presented him the same statement two weeks later. You want to sign it now? No. No, that's not true. That's not what happened. And by this time the lawyer's like, well he's confused. He said well, Antonio why did you tell me that? Man I'm scared of that guy. Antonio said at he was with Mr. Bowen, I think he said fifteen or twenty minutes that night. Now, you all had the ability to observe Mr. Bowen for about maybe thirty seconds when he came up and stood up. Is that a face you forget? You saw that face, right here for thirty, forty five seconds and then I let you observe him for another fifteen more minutes. You have a conversation with him. You hear him talk. You think you're going to forget that face? I wouldn't. Their problem is, he won't forget it. He's not like Ronald Mack. He won't forget it. Mr. Bowen's problem is he made two mistakes. Two very fatal mistakes. His first mistake was trusting Ronald Mack. See Ronald Mack was a little seventeen year old hothead. I don't know if he's wrapped up in the gang like at, you know, maybe he needed to get his first kill in and I guess you get

points for getting a kill in or whatever. But see, when he, Mr. Bowen made the mistake of trusting Ronald Mack, Ronald Mack's a little young kid. A little young punk in my view. And he ran his mouth too much. It wasn't enough for him to do is. He, he wanted people to know. Oh I'm so bad, I'm so tough, I'm such a gangster. He wanted somebody else to know he did it. That's why he showed Dontrey Barr those test messages. You know now, I love the way my good friend Mr. Jenkinson kind of spun that text message thing. He said that they sent the text message at nine o'clock. Well that's not exactly true. The evidence said Dontrey Barr saw the text messages at nine o'clock and he saw the whole line of them, which meant they were sent earlier. And so this notion about them being sent at nine o'clock and therefore it would have been five hours between the time they were sent and the time that the murder was committed, that's not true. We know that the text messages were sent much earlier. That's just what time Dontrey Barr saw them, but see Ronald Mack wanted an audience. He wanted people to respect him or fear him, I'm not sure which. But he wanted an audience and so he had to try to play bad and show Dontrey Barr the text messages, but that wasn't enough for him. He didn't just want to show somebody text messages, he wanted somebody to see what he was capable of. So

that's why he invited Antonio McClary along. And you remember in his statement he kept saying, Tony didn't even believe me. You know, he had a accident a couple of years, he kind of off. He, you know, thought I was playing. He didn't think I was serious. You know, Antonio didn't really do nothing, he just came, he just came and saw what I did. People like that, you can't be feared or respected unless people know that you just is bad or is cold-hearted or whatever. So that's why Antonio McClary was brought into is. That was Bowen's first mistake. His second mistake was not following his first instinct. When he came and picked up Antonio McClary and Ronald Mack, he knew something wasn't right abut that; he knew something wasn't right about that. You see, he's a little older, he's a little more savvy. He knows probably, that you know, when you going to do something like that, you don't bring in new people. You don't add, you know, people at the last minute on something like this. I mean, we're not talking about me selling a crack rock to somebody. We talking about killing somebody and Antonio McClary was right. The entire time he was looking at him, sizing him up, like can I trust you. The entire time and I bet he was wondering, I don't know about this, I don't know about this. He did not follow his first instinct which was to not let Antonio McClary go and that was his fatal

flaw, because ultimately, ultimately Antonio McClary did tell the police and did tell on him. And that's why he's sitting up in the courtroom today. Those were his two biggest mistakes. Now, when you think about Ronald Mack's statement to the police and you couple that along with Antonio McClary's statement to the police you have to really ask yourself a question. Well, gee why would Ronald Mack say that Callie was Kelvin Bowen, the man who was living with his mama? Why would he say that if it weren't true? Now this is his buddy. This is his home boy. Why would you pull this guy's name and face out the sky out of everybody else in the entire world that you could blame it on? Why would you do it if it wasn't true? There's been no motive of any reason that Ronald Mack had to lie. If anything, there's been a motive of a reason he had to try to protect him at this point. Why would Antonio McClary pull his picture out of everybody else's picture in the entire world if he wasn't the one participating in this crime? There was no motive for them to lie. Couple more points, then I'm going to sit down. When you look at this case, don't fall for the old defense lawyers tricks. You know, one of the things that we learn when we go to these seminars and I've seen as a prosecutor. Defense lawyers, they hammer that you day in and day out, oh you didn't have

this, you don't have the CSI stuff, you don't have this, you don't have that. Therefore, the State can't convict beyond a reasonable doubt, you got to find them not guilty. See the defense wants you to fall for that notion where you don't see the forest for the trees. They want to sit there and tell you, well you don't have this, you don't have this, you don't have this. Now I want to ask you something as precise and skilled as this man is, smart enough to tell Ronald Mack to delete his text messages, smart enough to wear gloves, smart enough to come in the middle of the night. Do you really think he's going to leave fingerprints on the gun? I mean, do you really think that? A serial number filed off shotgun, you really think he's stupid, now all of a sudden he's stupid? Huh-uh, huh-uh. Don't fall for that old defense lawyers trick. You have all of the evidence that you need in this case. There is nothing else out there. And don't be fooled at their, you know, we got some innocent man sitting up in this courtroom. Low and behold we don't want to send a innocent man to prison. This man is anything, is anything but innocent. You know, Mr. Jenkinson went over there and pointed at Investigator Lail. Oh, oh, oh, she's silent. State didn't call her as a witness. Oh well, I didn't call her as a witness. I didn't call the ambulance people that came to pick up Kenyan's

body, I didn't call the driver of the car that took the evidence from MUSC at the autopsy and took it to SLED, didn't call the officer from Maryland who stopped Kelvin Bowen and Ronald Mack. I didn't call any of those people. Let's say I did. Now, of course we would still be here till next week, but let's just say I called everybody that knew anything about this case. The reality is you wouldn't know any more then, than you know right now. Then facts simply are what they are. We know that this Defendant was involved because, I'm not quite sure what the defense is it was three people involved in the murder? And not four or is it some other fourth person who we don't know about? But what we do know, for sure, is that Ronald Mack and Antonio McClary didn't have a gun. If they had a gun, they wouldn't have needed to call Tawanda and they wouldn't have needed to call Kelvin. Why would you have them come all the way down here when you got access to firearms? They didn't, so their job was to bring the firearms. And folks, these little three pieces of paper that Mr. Jenkinson talked about, that just magically appeared in Tawanda Allen's apartment, now I'm going to ask you something. That letter is dated April 13th, 2009. That's Kelvin Bowen, this defendant, with her address, but he wasn't living there. Now, here's the problem I have with that. They

don't want him living there, because they know the murder weapon was found there. So that's why they got to try to remove him from that apartment. You know, it's okay if he, you know, come there, but they, we don't want him inside the house and we certainly don't want him living there? Why in the world would you have your address, where you get the job going to the house you're not staying that? Now, the wife says she, you know, he stayed there all the time. That was his home with her. Now, I can understand if you got a credit card bill at maybe got some hotel receipts on it that you don't want the wife to see and you may have that going to the girlfriends' house. I get that. That's a job, a letter saying congratulations, you got a job. Certainly it's a good thing for a man to have a job. That's something you want to share with your wife right? It's okay to have that letter going to your house. There is a second exhibit somewhere in here. State of Kansas. Department of Revenue. Kelvin Michael Bowen, Jr. Same address where the murder weapon was found. Got his license back. You get your license back, surely that's something you can send to your house. He did send that to his house. He sent that to the house he was living in. That's the house he was living in with Tawanda Mack. And folks, when you talk about the level of proof, I submit to you we got the best

evidence. We got an eye witness testimony, eye witness who saw him shoot K.D. with the shotgun and we have forensics. We have evidence that the murder weapon was found under his mattress on his side of the bed. That is the best evidence. The last thing Mr. Jenkinson and I are going to agree about. The people who killed K.D. ought to go to jail. I couldn't agree with him more than that. Three of them who were involved have gone to jail and there's one more that needs to go. And to me he's the worst one of them all. He was so smart that it, it's almost scary. You know, he had that Samsung cell phone than he was arrested y'all. I'm sure when they took him into jail, he had a bunch of stuff with him. He probably would have had his wallet, his clothes, his shoes, all that. Presumably his wallet would have had cash in it, valuable stuff. Credit cards, social security cards, id's. Folks, here is the proof that he knew he was guilty. Out of all the valuable stuff that was in his personal belongings, all the stuff that he got arrested with, the only thing, the only thing that he was worried about getting out of the hands of law enforcement and getting into the hands of his lawyer was that Samsung telephone. Now you know, you sitting up in jail, you got money in your wallet, you want money to use the canteen. You got credit cards, you

want to make sure your family members get your credit cards so nobody else is using them. He wasn't worried about any of that. Please give my Samsung telephone to my lawyer. Because he didn't want you all to see what was on that phone. He leaves this state, he comes to our state, commits a murder in our county. That's his way of doing justice. Mr. Foreman, ladies and gentlemen of the jury, you all show him our way of doing justice. Sir, please take this pen, you render justice in this case. Each and everyone of you and you find him guilty. Thank you all.

The Court: Let's stand for a moment.

JUDGE'S CHARGE TO JURY:

Mr. Foreman and members of the jury, you've heard the testimony and evidence and arguments of the State and the Defendant. I will now explain to you the law that applies to this case. Under the Constitution, and laws of South Carolina, you are the finders of the facts in this case. I do not have a right to pass upon them or express any opinion that I might have as to them. This is a matter soley for you, the jury, to determine. As jurors then, it is your duty to determine the effect, value the weight and the truth of the evidence presented during this trial. You are also the judges, the sole judges of the credibility. That is the believability of the witnesses who have testified in

this case. And the evidence in this case. In passing upon credibility, you may take into consideration many things such as the demeanor or the manner of the witness while testifying, whether a witnesses' testimony was contradicted on the one hand or supported and corroborated on the other hand. You may believe a small portion of a witnesses' testimony and disregard the larger or vice versa. You may believe one witness against many or many against one. All these things you will consider, bearing in mind that you should give the Defendant the benefit of any reasonable doubt. It becomes your duty as jurors to analyze and to evaluate the evidence and determine that evidence which convinces you of its truth. There has been evidence presented that the witnesses have made prior statements which are not consistent when the witnesses present testimony. You may use this evidence to decide whether to believe the witness. You may also use evidence of the earlier contradictory statements to determine the truth of those statements. It is up to you to decide whether to believe the earlier statements or the testimony given in trial. If a witness has shown to have knowingly testified untruthfully, concerning any material matter, then you may consider this in determining whether to trust the witnesses' testimony as to other matters. You may reject all of the

testimony of that witness or give all or part of the testimony you think it deserves. I instruct you and emphasis that the fact that the Defendant did not testify is not a factor to be considered by you in determining, not to be considered. I instruct you and emphasis that the fact that the Defendant did not testify, it is not a factor to be considered by you in any way in your deliberations and in your consideration on the question of guilt or innocence of the Defendant. It must not be considered by you in any manner whatsoever. The Defendant has the Constitutional right to remain silent. And the assertion of this light must not be considered by you in your deliberations and I repeat, under your oath, you are to draw no conclusions whatsoever from the fact that the Defendant in this case did not testify. The fact that this Defendant did not testify, should not even be discussed in the jury room. The burden of proof, as I have stated to you, is on the State. The Ddfendant is not required to prove his innocence. The burden of proof remains on the State to prove guilt beyond a reasonable doubt. There are two types of evidence that are generally presented during a trial; direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eye witness evidence which immediately establishes

a main fact to be proved. Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law makes no absolutely no distinction between the weight or value to be given either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case. After weighing all of the evidence, if you are not convinced of the Defendant's guilt beyond a reasonable doubt, then you must find the Defendant not guilty. As a trial judge, it is my responsibility to preside over the trial of this case and I also have the duty to rule upon or pass upon the admissibility of the evidence offered during this trial. You are to consider only the testimony which has been presented from this witness stand, together with any exhibits which have been made a part of the record in this case or any stipulations that counsel made into the record. I have the additional duty to charge you the law applicable to this case and as the presiding judge, I am the sole judge of the law in this case. It is your duty as jurors to accept and apply

the law as I now state it to you and then reach your verdict. Finally, I charge you with this regard that you should not be concerned with what you think the law ought to be, but what I charge you the law is. Now the fact that the Defendant was arrested, charged and indicted in this case, is not evidence and can not be considered by you as evidence of guilt in this case. Nor does it present any presumption of inference of guilt. This indictment is simply the formal written instrument which contains the charges made against the Defendant. The indictment is the formal document by which this case was brought into this court. The Defendant has pled not guilty to each charge in this indictment. And that plea puts the burden on the State to prove the Defendant guilty. The person charged with committing a criminal offense in South Carolina is never required to prove himself innocent. I charge you that it is an important rule of the law that the Defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to be not guilty of the crime of which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt. This presumption of innocence does not end when you begin your deliberations, but it accompanies the Defendant throughout the trial. Until

you've reached a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant, which remains with the Defendant until it has been stripped from the Defendant by evidence satisfying you of that guilt beyond a reasonable doubt. The presumption of innocence is not merely a theory, it's not just a legal phrase. It is a substantial right to which every defendant is entitled unless you the jury are satisfied of the Defendant's guilt beyond a reasonable doubt. The State must prove the Defendant guilty beyond a reasonable doubt, so what is a reasonable doubt of law? A reasonable doubt is a doubt which makes a honest, sincere, concientenous juror in search of the truth to hesitate to act. Proof beyond a reasonable doubt must therefore be proof of such a convincing character that a reasonable person would not hesitate to rely and act upon it in the most important of his or her own affairs. Proof beyond a reasonable doubt can also be described as proof that leaves you firmly convinced of the defendant's guilt. Now, there are very few things in this world that we know with absolute certainty and in criminal cases, the law does not require proof that overcomes every possible doubt. If based on your consideration of the evidence, you are

firmly convinced that the Defendant is guilty, then you must find him guilty. If, on the other hand, you think there's a real possibility that he is not guilty, you must then give him the benefit of the doubt and find him not guilty. This indictment in this case, or the indictment in this case alleges several different offenses against the Defendant. The charges of murder, burglary first degree, conspiracy and possession of a weapon during the commission of a violent crime. Each indictment charges a separate and distinct offense. You must decide each indictment separately on the evidence and the law applicable to it uninfluenced by your decision as to any other indictment. The Defendant may be convicted or acquitted on any or all of the offenses charged. You will be asked to write a separate verdict Mr. Foreman, of guilty or not guilty on each charge, on each indictment. The Defendant is charged with murder. The State must prove beyond a reasonable doubt that the Defendant killed a person with malice aforethought. Malice is hatred, ill will or hostility towards another person. It is the intentional doing of a wrongful act without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent. Malice aforethought does not require that the malice exist for any particular time before the act is

committed. But malice must exist in the mind of the Defendant just before and at the time that the act is committed. Therefore, there must be a combination of the previous evil intent and the act. Malice aforethought may be expressed or inferred. These terms, expressed and inferred, do not mean different kinds of malice, but merely the manner in which malice may be shown to exist. That is either by direct evidence or by inference from the facts and circumstances which are proved. Express malice is shown when a person speaks words which express hatred or ill will or when the person prepared beforehand to do the act which was later accomplished. For example, lying in await for a person or any other acts of preparation going to show that the deed was within the Defendant's mind would be express malice. Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also rise when the deed is done with a deadly weapon. A deadly weapon is any article, instrument or substance which is likely to cause death or great bodily harm. Whether an instrument has been used as a deadly weapon depends on the facts and circumstances of each case. The Defendant is charged with burglary, with first degree burglary. The State must prove beyond a reasonable doubt that the Defendant entered a dwelling without consent. A

dwelling is any building or portion of a building in which a person ordinarily sleeps. In order to prove that Defendant entered the dwelling, the State does not have to show that the Defendant's entire body entered the dwelling. The smallest entry is sufficient. In addition, the State does not have to prove that force was used to gain entry. Next, the State must prove beyond a reasonable doubt that the Defendant intended to commit a crime, either a felony or a misdemeanor at the time of the entry. Mere entry into a dwelling without consent is not burglary. If the intent to commit the crime was formed after the entry, it is not a burglary. Intent may be shown by acts and conduct of the Defendant and other circumstance in which you may naturally and reasonably infer intent. Finally, the State must prove beyond a reasonable doubt that while entering the dwelling or when fleeing, the Defendant or an accomplice was armed with a deadly weapon and deadly weapon is any instrument which is likely to cause death or great bodily harm. Secondly, when entering or while in the dwelling or while fleeing or the Defendant or an accomplice cause physical injury to anyone not participating in the crime. And third while entering or in the dwelling or while fleeing the Defendant or an accomplice used or threatened to use a dangerous object. Fourth, while entering, while in the dwelling

or while fleeing, the Defendant or an accomplice displayed what was or appeared to be a pistol, rifle or other firearm. Finally, five, the Defendant entered or remained in the dwelling in the nighttime. Nighttime is the period between sunset and sunrise, during which there is not enough daylight to recognize a person's face, except by artificial light or moonlight, the Defendant is charged with conspiracy to commit a murder and burglary in the first degree. The State must prove beyond a reasonable doubt that the Defendant, combined with one or more persons, for the purpose of committing an unlawful act or by committing the lawful act by unlawful means. There must be a mutual understanding, agreement or common intention in plan. A mere passive knowledge of or consent to the criminal conduct of another is not enough to make a person a conspirator. There must be guilty knowledge and participation. Similarly, the mere fact that the Defendant may have associated with another person or met with another person and discussed common names and interests, does not necessarily establish proof of the existence of a conspiracy or that the Defendant was involved in a conspiracy. On the other hand, it is not necessary that the agreement be a formal one, that it be in writing, that the person hold a meeting or express or state the terms of a common plan or that the agreement

is stated in the words between them. The agreement of a criminal conspiracy may come into being through an implied, mutual understanding. The willful intention and intentional and knowing and adoption of two or more persons of a common plan is sufficient. A conspiracy may be shown by circumstantial evidence and the conduct of the parties. In order to convict the Defendant of conspiracy, the State must prove beyond a reasonable doubt, not only that the Defendant knew of the unlawful conduct, but that the Defendant agreed to combine with other persons for the purpose of accomplishing the unlawful conduct. The Defendant is charged with possession of a weapon during the commission of a violent crime. The State must prove beyond a reasonable doubt that the Defendant was in possession of a firearm or visibly displayed what appeared to be a firearm, during the commission of a violent crime. A firearm means any weapon which will, designed to or may be readily converted to expel a projectile. In order for the Defendant to be guilty of possession of a weapon during the commission of a violent crime, you must first find the Defendant guilty of either committing a violent crime or attempting to commit a violent crime. Murder and first degree burglary are both violent crimes. Mr. Foreman and members of the jury, the crime was committed by two or more people who

are acting together in committing a crime, the act of one, is the hand of all. A person who joins with another to commit an unlawful act is criminally responsible for everying done by the other person, which happened as a probable or natural consequence of the acts done in carrying out the common plan and purpose. For example, two people can be guilty of killing another person when only one of the two had a gun. There is only one bullet and only one of the two fired the shot that caused the death. If two or more people are together or acting together, assisting each other in committing the offense, the act of one is the act of all or as it is sometimes said, the hand of one is the hand of all. Prior knowledge that a crime is going to be committed without knowing is not sufficient to make a person guilty of that crime. The mere knowledge that another person is going to commit a crime, even if the Defendant is present when the crime is committed, is not sufficient to convict a Defendant as a principle. Guilt as a principle is shown by actual or constructive presence at the scene as a result of prior arrangement. Therefore, a finding of a prior arranged plan or common scheme is necessary for a finding of guilt as a principle. The State must prove beyond a reasonable doubt by competent evidence and theory of the hand of one is the hand of all. The

principle in a crime, is one who either actually commits the crime or who is present, aiding and abetting or assisting in committing the crime. When a person does an act in the presence of and with the assistance of another, the act is done by both. Where two or more are acting with a common plan or intent are present at the commission of a crime, it does not matter who actually commits the crime, all are guilty. The hand of one is the hand of all. Present at the scene of the crime, means to be sufficiently near, to aid and abet and assist in the commission of a crime. However, mere presence at the scene of a crime is not sufficient to convict one as a principle in theory of aiding and abetting. Intent is also a necessary element, so there must have been a common design or intent to commit the crime or crimes and the crime upon must have been committed pursuant thereto a person aiding and abetting by some overt act. The intent means, intending the result which actually occurs. Not accidentally or involuntarily. Intent may be shown by acts of the conduct of the Defendant and other circumstances in which you make naturally and reasonably infer intent. The State must prove these elements beyond a reasonable doubt. Mr. Foreman and members of the jury, an issue in this case is the identification of the Defendant of a person who

committed the crime charged. The State has the burden of proving identity beyond a reasonable doubt. You must be satisfied, beyond a reasonable doubt of the accuracy of the identification of the Defendant before you may convict the Defendant. Identification testimony is an expression or impression by a witness. You must determine the accuracy of the identification of the Defendant. You must consider the believability of each identification witness in the same way as any other witness. You may consider whether the witness had an adequate opportunity to observe the Defendant at the time of the offense. This will be effected by things like how long or short a time has been, how far or close the witness was, the lighting, whether the witness had the chance to see the person or know the person in the past. Once again, I instruct you the burden of proof is on the State. The burden of proof extends to every element of the crime charged and specifically includes the burden of proving beyond a reasonable doubt, the identity of the Defendant as the person who committed the crime. If after examining the testimony, you have a reasonable doubt as to the accuracy of the identification, you must find the Defendant not guilty. The Defendant has raised the defense of alibi. In order to establish an alibi, it must be shown that the Defendant was at another

specified place at that time the crime or crimes was committed and that it was therefore impossible for the Defendant to have been at the scene of the crime. Mere denial of presence at the scene of the crime does not constitute an alibi. There's no burden on e Defendant to prove an alibi. The burden is on the State to prove beyond a reasonable doubt that the Defendant was actually present at the scene of the crime, actually participated in it and was not somewhere else. In other words, the State has the burden of disproving the Defendant's alibi defense. Mr. Foreman and members of the jury, you have been selected by both State and the Defendant to be fair and impartial jurors. It is your duty then in your joint deliberations to determine the truth in is case, giving the Defendant the benefit of every reasonably doubt on each and every issue. From the facts that you determine to be true, you take and apply the law which I have just given to you and thus arrive at a verdict which speaks the truth of this case. I've told you the standards you have to apply when the charges are murder, first degree burglary, conspiracy and possession of a weapon during the commission of a violent crime. I will give you a copy of these instructions in written form. During your deliberations you may refer to the instructions to guide your decision making. You must consider the

instructions as a whole and not follow some and ignore others. Please return the instruction to the Court at the time the verdict is rendered. You have heard the evidence and now you have heard the law. Whatever your verdict as to each charge Mr. Foreman, you will indicate by checking guilty or not guilty on the verdict form. You will have a verdict form that has all four charges, check verdict guilty or not guilty as to each charge. There is no significance in the order in which I state these possible verdicts. Simply one must be stated first. You will then sign the verdict form and date it Mr. Foreman. Remember that although the foreperson is the only juror who signs this verdict, it's not his alone. The verdict has to be a unanimous verdict as to each charge. Mr. Foreman you are not authorized to write nor sign the verdict until all of you have agreed as to what the verdict should be. Ladies and gentlemen, I'm going to send you to your jury room, but do not begin to discuss the case until you have received a copy of this jury charge, the verdict form and the exhibits. Once you receive these things, that will be your signal to begin your deliberations. We've ordered lunch for you and we have three or four smokers, I'm thinking about you all. So before you begin your deliberations, I'll give you a three minutes, take about ten puffs or whatever and

then you'll come back to the jury room but then you'll have food back there because we have ordered lunch. So, once you begin your deliberations you must deliberate with everyone present and participating until you've reached a verdict. Once you have received the, once you have had the chance, for those of you who smoke, to get your foot and once you receive the exhibits, the verdict form and a copy of these charges, that would be your signal to begin your deliberations. The entire time I've said you can't talk about this case. Once you begin your deliberations you can talk all you want, that's your time. Once you begin your deliberations you will deliberate until you have reached a verdict, at which time you will knock on the door, advise e bailiff and we will bring you out to receive your verdict. Now we've selected fourteen jurors, but only twelve can participate in the deliberations. The reason we select additional jurors, is so that in the event that something would happen to the first twelve of you, we will have extras, since we must have twelve. But since the first twelve of you everyone seems to be in good shape, if you're not in good shape let me know you can not participate in deliberation let me know. Everyone seems to be fine and in good shape so that means after the, except for getting lunch, these two jurors, madame bailiff?

Except for getting lunch for these two jurors out of the jury room, the twelve other jurors will go to the jury room and you all will remain with us, so please go to the jury room at this time.

Clerk: The last two picked or the two ...

The Court: The last two.

Bailiff: The two alternates.

The Court: You all may not participate in the deliberations, only the first twelve. So, if y'all will now go to the jury room and madame clerk let them, everyone else stay put, let those jurors who want to smoke get that smoke, get the lunch and then wait for these things before beginning your deliberations. Thank you very much.

(Jury exits courtroom 1:02 p.m.)

The Court: Alright are there any additions or corrections to the charge?

Ms. Barr: Not from the State Judge.

Mr. Jenkinson: None from the defense Your Honor.

The Court: Alright, if you all would review the exhibits and make sure they're all straight.

(Exhibits viewed and confirmed)

The Court: Now, let's talk to the alternates and let them go.

(Alternate jurors excused)

The Court: I have received a note from the jury. It says we

the jury request to hear exhibit 65, we request to hear the section of the tape where Ronald Mack identified Callie. Mr. Jenkinson?

Mr. Jenkinson: Your Honor, please. We've identified that portion and agreed --- in doing so, Your Honor, this case came into evidence purely for purposes of impeachment only, not for consideration by the jury as to whether or not his testimony was truthful to be used against the Defendant. It was to be used against the testifying witness as to impeachment him. And under the case of State versus Miller, 262 SC 369, we would ask, and that's the case we sited that gave a curity of cur charge when it was read. We would like for the jury to be reminded of what is evidence is, because apparently, it's become crucial as far as testimony goes and not what with whether or not he should be impeached by it, but they are using this evidence in order to determine guilt or innocense of the Defendant. So we would ask that the taped first should not be played, because it's being asked for out of context and in violation of your instructions during the trial.

The Court: Ms. Barr?

Ms. Barr: Judge, I think counsel presumes what the purpose in which the jury requests to hear the tape. Whether it's to consider whether or not Mr. Mack was being truthful, we don't know that. Whether it's to consider

whether or not Mr. Mack properly identified the Defendant, that's going to be on his guilt or innocence, we don't know that. The Court gave a limited instruction before the tape was played. The Court gave that same instruction concerning how that testimony is to be used by the jury when you gave jury charges and we think that's appropriate and to deny allowing them to hear it once it's in evidence, we would think that's improper.

The Court: The Court gave it's instruction based on what had been presented during trial at the time the item was offered into evidence. Since that time, the Defendant's cross examination of Mr. Mack in which Mr. Mack was presented a statement by Mr. Jenkinson, his testimony contradicting his earlier statement. Of course, I'm not positive of the exact sequence of it all, but the gist of it all is that the entire testimony in the trial is now, it's all been done. The jury has requested to listen to this evidence for whatever reason. It's the jury's case at this point. We're going to play the tape, based on what they requested and after they have been given that, then they will go back to deliberate and given no further instructions limiting, or otherwise concerning the evidence.

Mr. Jenkinson: Just for the record may we proffer what our

next motion would be that we would ask the court to do?

The Court: Yes sir.

Mr. Jenkinson: We would then, based on this same case, and I'm reading directly from it. The record shows the trial judge admitted the note then questioned solely for the purpose of impeaching the witness. The trial judge upon his motion request of both the state and appellant charged the jury that the note had been admitted only for the purpose of contradicting the witness. The witness then could not be considered as evidence against the appellant. We would ask the Court to do exactly what the Supreme done.

The Court: Alright. Your request has been noted. Bring the jury. Do you have it cued to that part?

Ms. Barr: Yes sir, Judge.

(Jury enters courtroom 3:03 p.m.)

The Court: Foreman and ladies and gentlemen of the jury, you have requested to hear portions of exhibit number 65 and we will play that now please.

(Taped Statement of Ronald Mack played for jury)

The Court: Do you want it to continue to play?

Foreperson: No, sir.

The Court: Alright thank you.

(Jury exits courtroom to continue deliberations 3:05)

The Court: Any additional exceptions to what has been

presented to the jury?

Ms. Barr: None from the State Your Honor.

Mr. Jenkinson: None other than those stated.

The Court: Alright. We'll be at ease, waiting for the jury.

(Break on this case waiting for jury)

The Court: For record purposes, as far as the sequence. I do understand that the tape of Mr. Mack was played after he got off the stand through another witness. I wanted to be sure that sequence is clearly stated on the record, but it does not change my ruling in any way as to giving any further instructions to the jury. Alright.

(Jury verdict reached 3:23)

(Jury returns to court room 3:24)

The Court: Have you reached a verdict?

Foreman: Yes we have Your Honor.

The Court: Was it unanimous?

Foreman: Yes sir.

The Court: Alright, thank you. You may be seated. The Defendant will stand. And you may publish the verdict.

Clerk: The State versus Kelvin Michael Bowen, Jr. We the jury, by unanimous consent, find the Defendant Kelvin Michael Bowen, Jr. as to the charge of murder, guilty. As to the charge of first degree, guilty. As to the charge of criminal conspiracy, guilty. As to the

charge of possession of a weapon during the commission of a violent crime, guilty.

The Court: The second one again was?

Clerk: The second one was as to the charge of first degree burglary.

The Court: You didn't say that.

Clerk: Oh I'm sorry. If these are your verdicts, so say you all. Please let it be known by raising your right hands. Okay.

The Court: Okay, the verdict appears to be unanimous. Is there any request to individually poll the jurors? Mr. Jenkinson?

Mr. Jenkinson: Yes sir we would ask that the jury be polled.

The Court: Will you call them individually Madam Clerk?

Clerk: William T. McCrea, were those your verdicts and are those still your verdicts?

A: Yes ma'am.

Clerk: Louis Dukes, were those your verdicts and are those still your verdicts?

A: Yes ma'am.

Clerk: Matthew Blanding, were those your verdicts and are those still your verdicts?

A: Yes ma'am.

Clerk: Debra Cooper, were those your verdicts and are those still your verdicts?

A: Yes ma'am.

Clerk: William Poston, were those your verdicts and are those still your verdicts?

A: Yes.

Clerk: Bedelia Jenerette, were those your verdicts and are those still your verdicts?

A: Yes.

Clerk: Mathew Green, were those your verdicts and are those still your verdicts?

A: Yes.

Clerk: Rodell Shaw, were those your verdicts and are those still your verdicts?

A: Yes.

Clerk: Helen Baylor, were those your verdicts and are those still your verdicts?

A: Yes ma'am.

Clerk: Lauriell Royster, are those your verdicts and are those still your verdicts?

A: Yes.

Clerk: Pearlie Robinson, were those your verdicts and are those still your verdicts?

A: Yes ma'am.

Clerk: Moses Cooper, were those your verdicts and are those still your verdicts?

A: Yes ma'am.

Clerk: That completes the polling.

The Court: Alright the verdict appears to be unanimous.

Once again, ladies and gentlemen, I want to thank you for your services in this case. Any post trial motions Mr. Jenkinson?

Mr. Jenkinson: I do have post trial motions.

The Court: Yes sir.

Mr. Jenkinson: On behalf of the Defendant, we move for a motion for a new trial under, procedure Rule 29 a judgment. Sitting as the thirteen jury Your Honor, you have the duty to see that justice is done and may grant a new trial if convinced the facts necessitate a new trial. The State has failed to produce evidence to support a conviction, therefore a new trial is warranted. There is insufficient evidence to suggest Mr. Bowen committed this crime, for the reasons that have been stated before in our closing arguments. Mr. Bowen was in Maryland at the time of this crime. Our further grounds for a new trial are that the Court did not suppress or sustain our objection to the identification procedure, the lineup, photo lineup, which was unduly suggestive. There was competent evidence to suggest that the procedure was unduly suggestive and the Sheriff's department intentionally showed only one photograph and that single photograph solicited an improper identification of the Defendant. Next, The Court admitted some gruesome pictures of the Defendant at the crime scene over our objection. The

Defendant stipulated to the murder, and according to State versus Middleton, the photographs should have been excluded. The photographs were admitted to elicit the sympathy of the jury and not for another purpose. Next, Your Honor allowed testimony on hearsay evidence about text messages that the Solicitor alleges was in furtherance of the conspiracy, however, the text messages could not be authenticated and were hearsay for which there was no exception. Next the notebook which was admitted of Ronald Mack that contained gang related writings. There was nothing offered to authenticate the notebook. The notebook's not relevant, it's hearsay evidence and does not fall within the exceptions of hearsay rules of prejudicial and far outweigh the probative value. The Court allowed the State to introduce the Iphone of co-defendant Ronald Mack. Nothing on the phone connected the Defendant with the crime. The telephone was not relevant, did not contain evidence of the crime, was not produced by the trial. It was clearly a violation of Rule 5 in the Rules of Procedure in the case of Brady vs. Maryland. Again, the autopsy photographs were likewise admitted. Again, our argument is the State versus Middleton. We argued yesterday those photographs should be excluded. They are admitted to elicit sympathy of the jury. The Court allowed the tape of Ronald Mack to be played for

impeachment purposes during the testimony of Investigator Collins of the Sheriff's Department. The person on the tape was Ronald Mack. Ronald Mack testified in the trial and the tape was not used to impeach him during his testimony. It was played by a witness at a later point in the trial. It was an improper impeachment that they allowed the witness to testify two times. Ronald Mack. It violated the Defendant's Sixth Amendment Rights to confront the witness. It violated his rights of due process under the Fourteen Amendment. The United States Constitution and the South Carolina Constitution. We would further argue that the Solicitor, over our objection, was allowed in her closing argument to suggest that the Defendant should prove his innocence through telephone records. Finally, our motion in the request to play the Ronald Mack tape. We asked for a limited structure to that portion of Ronald Mack's tape could only be played for purposes of, well first we objected to it because, based on State versus Miller, 263SC069 and secondly if the court ruled that it could be heard that it would be heard only with the limited structure, that that tape could only be used for purposes of impeachment and not be considered against the Defendant. That is paraphrasing what I've heard and those are the grounds for our request for a new trial.

The Court: Do you wish to respond Ms. Barr?

Ms. Barr: Your Honor, as it relates to the grounds for a new trial concerning the admission of certain evidence, Judge I don't have all of the grounds stated by Mr. Jenkinson. I remember him talking about the admission of the cell phone, The Court allowed admission of the cell phone of Ronald Mack that was seized by the Lake City Police Department because it corroborated testimony from Dontrey Barr that he had an iphone so we believe that's the basis for the admission. As it relates to the text messages, Dontrey Barr talking about seeing the text messages. It's my recollection that counsel did not object to him testifying if he saw them and so I believe that evidence came in uncontradicted. As it relates to the evidence of alibi obviously Judge, that was a credibility issue, that was a question of fact from the jury. They heard from our witnesses, they heard from the defense witnesses and they chose to believe ours, so that's solely within their providence to do so. Your Honor, as it relates to the admission of the autopsy photos, there were many, many photos that we sought to introduce that we, that were not introduced. The Court made an analysis as to whether or not probative value of those autopsy photos and I believe we only got in maybe two or three, but you obviously made an analysis as to whether or not

the probative value was outweighed by the prejudicial effect and so we would submit that the admission of the autopsy photos was proper. The tape of Ronald Mack was properly introduced because it contradicted a prior inconsistent statement that he doesn't remember making and under Rule 613, astringent evidence of a prior inconsistent statement and the witness doesn't admit to making the inconsistent statement it allows it to come in. Your Honor the gang writings that was found in Ronald Mack's room were submitted into evidence because his name was associated with the notebook and he testified that he was a member of a gang. So, we view that evidence as being properly admissible. In my closing argument I did not try intend to shift the burden when the Defendant does put up some evidence then I'm allowed to argue why other evidence wasn't put up. Also, the Court gave what we view to be appropriate and substantial instructions regarding the impeachment value that's to be associated with Ronald Mack's recorded statements and for those reasons we would respectfully request that the defense motion be denied.

The Court: Alright, the Court respectfully denies the motion, under Rule 29. The question as to whether or not the Defendant is guilty or not guilty is for the jury to determine and I support the jury's verdict one hundred

percent and find that the evidence of guilt is overwhelming and that justice, as far as the jury's verdict has been done. The State has proven each and every element of every offense beyond a reasonable doubt and each and every juror has been satisfied that the State met that burden. Regarding the request to suppress the photographs the defense claims that the officer's suggested to the Defendant, suggested to Mr. Antonio McClary who to pick, that's not supported by the evidence. The evidence presented during the trial said that they were downloading a picture that came from Maryland. Mr. McClary spotted the picture and then said, do y'all have Callie? That wasn't a part of any line up procedure or any type of trickery by law enforcement it was beneficial that it occurred at that time, as far as the State's case. The manner in which that happened, it gave them an opportunity to identify Mr. Bowen. As far as the gruesome pictures, the Court applied the analysis that the Supreme the Court most recently in December of 2011, outlined in State's versus Torres. In which the Court clearly indicated were photographs serve to corroborate testimony, it's not an abuse discretion to admit it and it fully outlined the limitations that should be placed on the Solicitor pushing the envelope on admissibility in order to gain the victory in a case. In this case, the State had seemingly a hundred pictures, so and this Court went through those photographs and limited the State's photographs, did not, definitely seem very gruesome

photographs because it was a horrific scene and the Court did not allow the jury to see those photographs because so that they might not or would not be influenced by the photographs as opposed to the evidence and the court in the Torres case went, considered the fact that the Judge would not allow horrific photographs and photographs were screened. The photographs seen by the jury in this case, were limited to the gunshot wounds which would indicate and corroborate Mr. Mack's testimony that he came up and shot him in the head while he was in the chair and that Mr. Bowen then didn't finish him off, because he was already dead, but just shot him again with a shotgun and the pictures corroborated that and had evidentiary value. Further regarding the text messages that Mr. Barr saw, corroborated testimony offered during the trial by both Mr. Mack and Mr. Barr and I do not find hearsay there. Regarding the notebook, of course, the State offered two notebooks. Both of which contained extensive writings that seem to indicate gang affiliation of the Defendant. Also, Mr. Mack's mother and Mr. Bowen and the Court limited the introduction to the one notebook which had Mr. Mack's name in it. The police officer testified that, her daughter attended the same school and she knew the hall pass that Mr. Mack was given indicated the fact that he was there and lived there, was living there. The State would have to put Ms. Allen and Mr. Bowen and Mr. Mack together and that evidence helped to put them together. Not out in the

parking lot where they were arrested, but inside the residence where the second murder weapon and evidence of the first murder weapon what they confiscated. Regarding the iphone, the Court took a recess to give Mr. Jenkinson every opportunity that he might desire to look at the iphone that was confiscated that belonged to Mr. Mack. The iphone was confiscated by Mr. Mack, from Mr. Mack, two days after this murder by Lake City police department after he was arrested on a drug charge. The Court found that that had evidentiary value and that any problems with the State not having previously shown that to Mr. Jenkinson was cured by giving him an opportunity to inspect it, which the State previously did in responding to his Rule 5 motion. Regarding the tape that was introduced to impeach Mr. Mack. The Court gave the jury a limited instruction prior to their beginning their deliberation, but once the jury began this deliberation after the Court had given a full instruction of the law, the Court did not consider it necessary to give or proper to give further limiting instruction concerning that request by the jury, because, it would call upon the Court would speculate as to why the jury might want to listen to that bit of evidence. Rule 608 regarding evidence and bias shows that any case that bias, prejudice or any motive to misrepresent would be shown to impeach the witness. The tape that was requested by the jury, Mr. Mack made reference to calling his homeboy Callie and that Callie was his mother's financé. All

of that could be considered by the jury for impeachment purposes and their request to listen to the jury to determine which statement they should believe whether prior inconsistent statements, whether they should believe the testimony at trial versus the State's exhibit to law enforcement. In summary the evidence of guilt is overwhelming. The jury has found the Defendant guilty and I deny any motion to change the jury's verdict.

Now, ladies and gentlemen, once you have decided someone to be guilty, then it's my duty, obligation and responsibility to sentence the person. You have found Mr. Bowen guilty and we will do sentencing at this time. You have no role in sentencing, but you're welcome to stay if you want to. Bring the Defendant forward.

(Defendant comes forward with counsel)

SENTENCING OF KELVIN MICHAEL BOWEN, JR.

Ms. Barr: Your Honor, please the Court. Of course, my comments will be very limited. Judge, you've had the benefit of hearing the facts many times over during the course of guilty pleas of Antonio McClary and Ronald Mack and of course you were the presiding judge in the State versus Tawanda Allen and so there is no need to bellinger the point as it relates to facts. I would just note briefly, for the record Judge, the Defendant was charged in California for armed robbery and assault in the first degree. He was convicted of grand theft involving vehicles and, Your Honor, that was in

1996. He was also charged with false imprisonment and battery by a prison. He was convicted of attempted theft and resisting arrest in 1996 and I believe that was in Kansas Judge. In addition, Judge, and probably most importantly he along with Tawanda Allen have charges pending against them out of Florence county that relate to a shooting of Tawanda Allen's ex-husband and Judge after Ms. Allen and Mr. Mack were arrested, for the charges stemming from this case, Tawanda Allen gave a statement indicating that in January of 2009, which would have been three months before the murder of K.D. _, Ms. Allen had an argument with her ex-husband about money and she told the Defendant that she had had that argument and he asked her, 'what do you want me to do? Do you want me to kill him?' and she says, 'no, I don't want you to kill him. I just want you to make him hurt or make him suffer' or words to that effect. The Defendant, along with Ms. Mack drove from Maryland, South Carolina ...

The Court: From where?

Ms. Barr: I'm sorry from Maryland to South Carolina. The ex-husband, I think his name is James Allen was living in some apartment complex in Florence. The Defendant then went into the apartment or whatever he was living and pretended to be looking for someone else and the victim in that case answered the door and said, 'no, that's not me' and 'nobody by that name lives here'. According to Ms. Allen, he comes back out to the car, sees Ms. Allen and Mr. Allen's son in

the vehicle and recognizes the resemblance between the man who answered the door and the child and says, 'oh that must be him', went back in and shot him in the leg with a nine millimeter, by the way. Thankfully, he survived and the Defendant is in the Florence County Detention Center in connection with that charge as well as this charge. And Judge, what we always believed was that the Defendant was a member of a gang which was the reason why he was more than happy to accommodate Mr. Mack's request. There were statements made by Mr. Mack that the Defendant was not a Blood, but a member of the Crypts and it was interesting that he said that on the recording, because Ms. Harding that was qualified as an expert in gang writings and gang activities, testified that Bloods and Crypts, as we may commonly believe, don't necessarily dislike each other. That, you know, when they have mutual interests they get along fine. And that's exactly what Ronald Mack said on his tape recorded statement. A lot of people think Bloods and Crypts don't get along. But, Judge, earlier in the week, while Mr. Bowen was being dressed for court, one of the Deputies noticed that he was just covered in tattoos and some of the tattoos that he had on his body, when I said covered I mean neck to ankle. Some of the tattoos that he had on his body say things like "In Murder we Trust", "Pimp for Life". I had some of the photographs reviewed by law enforcement and he described some of the tattoos on him as being related to the Crypts so

certainly Judge we believed that this is the reason why he was willing to help Ronald Mack out of his situation.

The Court: All right. Mr. Jenkinson.

Mr. Jenkinson: If, Your Honor, please. You have heard the facts on the mother and son. They have been found guilty at ths point. That's about all we can say, Your Honor. You have to impose a sentence.

The Court: Mr. Bowen, anything you'd like to say?

Mr. Bowen: I have no comment, Your Honor.

The Court: All right. Ms. Bradshaw, would you like to say anything?

Ms. Bradshaw: No, sir.

The Court: Anything else, Ms. Barr?

Ms. Barr: No sir.

The Court: For the sentence of murder the sentence is ninety-nine (99) years, burglary thirty (30) years, criminal conspiracy five (5) years and possession of a weapon during a violent crime five (5) years. All sentences will run consecutively to each other.

Mr. Jenkinson: Thank you, Your Honor.

CERTIFICATE

This is to certify that the hearing in the matter of State of South Carolina vs. Kelvin Michael Bowen, Jr., consisting of Seven Hundred Twenty-Nine (529) 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 24th day of August, 2011.

Melissa R. Singletary
Certified Court Reporter

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

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WITNESSES

SHERIFF'S OFFICE

Pamela Lail

ARREST WARRANT NUMBER

M060828–M060834, M060847–M060849, M060853–M060856, M060836, M060843 & M060850

D/A: 9/11/08

ACTION OF GRAND JURY

True Bill

Sara J. Huggins

Foreperson of Grand Jury

Date: 7/2/09

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2009-GS-45- 180

The State of South Carolina

County of WILLIAMSBURG

COURT OF GENERAL SESSIONS

JULY TERM 2009

THE STATE

vs.

RONALD HAKEEM MACK

KELVIN MICHAEL BOWEN, JR.

ANTONIO LAVELLE MCCLARY

TAWANDA MACK ALLEN

Indictment for

MURDER, BURGLARY – FIRST DEGREE, CONSPIRACY AND POSSESSION OF A WEAPON DURING VIOLENT CRIME

C. KELLY JACKSON, SOLICITOR

CAROLYN E. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

09 JUL -2 AM 1:36

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

MURDER, BURGLARY – FIRST DEGREE, CONSPIRACY AND POSSESSION OF A WEAPON DURING VIOLENT CRIME

At a Court of General Sessions, convened on July 6, 2009, the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE – MURDER

That **RONALD HAKEEM MACK, KELVIN MICHAEL BOWEN, JR., ANTONIO LAVELLE MCCLARY** and **TAWANDA MACK ALLEN**, did in Williamsburg County on or about April 5, 2009, feloniously, wilfully and with malice aforethought, kill one K.D. by means of shooting the victim multiple times, and that the said victim did die as a proximate result thereof, in violation of Code Section 16-3-10, Code of Laws of South Carolina (1976), as amended.

COUNT TWO - BURGLARY – FIRST DEGREE

That **RONALD HAKEEM MACK, KELVIN MICHAEL BOWEN, JR., ANTONIO LAVELLE MCCLARY** and **TAWANDA MACK ALLEN**, did in Williamsburg County on or about April 5, 2009, enter the dwelling of the victim without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling "in the nighttime" and while armed with a deadly weapon" and caused physical injury to person who was not a participant in the crime, in violation of Code Section 16-11-311, South Carolina Code of Laws (1976), as amended.

FILED
09 JUL -2 AM 1:36
CAROLYN E. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

A CERTIFIED TRUE COPY
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

SHARON W. STAGGERS
WILLIAMSBURG COUNTY SC
CLERK OF COURT

COUNT THREE – CONSPIRACY

That **RONALD HAKEEM MACK, KELVIN MICHAEL BOWEN, JR., ANTONIO LAVELLE MCCLARY** and **TAWANDA MACK ALLEN,** did in Williamsburg County on or about April 5, 2009, violate Section 16-17-410 of the Code of Laws of South Carolina (1976), as amended, in that the did unite, combine, conspire, confederate and/or agree with each other for the purpose of committing the crime of Murder and Burglary in the First Degree.

COUNT FOUR - POSSESSION OF A WEAPON DURING VIOLENT CRIME

That **RONALD HAKEEM MACK** and **KELVIN MICHAEL BOWEN, JR.** did in Williamsburg County on or about April 5, 2009, possess or visibly display a firearm during the commission or attempted commission of a violent crime, in violation of Code Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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

FILED
09 JUL -2 AM 11:
CAROLYN F. WILLIAMS
CLERK OF COURT
KINGSTREE, S.C.

C. Kelly Jackson
SOLICITOR

A CERTIFIED TRUE COPY
Sharon W. Staggers
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

SHARON W. STAGGERS
WILLIAMSBURG COUNTY SC
CLERK OF COURT

858

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF WILLIAMSBURG)
) INDICTMENT/CASE#: 2009-GS-45-0180
STATE VS.)
KELVIN M. BOWEN, JR.) A/W#: M060853
AKA:) Date of Offense: April 05, 2009
Race: Black Sex: Male Age:) S.C. Code §: 16-03-0010, 0020
DOB: [redacted] SS#: [redacted]) CDR Code #: 0116
Address:)
) SENTENCE SHEET
DL# SID#)

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder
in violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0 1 1 1 1 6
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____(Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor SC Bar # 8443 Defendant W. E. Jenkinson, III Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections**, ☐ **County Detention Center**, for a determinate term of 99 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Count 2

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

PURSUANT TO 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred,** ☐ **Defendant Waives Hearing,** ☐ **Ordered** PTUP
Total: $_____ plus 20% fee: $_____ _____ days/hours Public Service Employment
Payment Terms: Obtain GED ☐
☐ Set by SCDPPPS Attend Voc. Rehab. or Job Corp.
Recipient: May Serve W/E beginning
Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $_____ beginning _____
$_____ paid to Public Defender Fund
Other:

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$18	$
§56-1-286 (DUI Breath Test)	$25	$
§47.12 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14/1/213 (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
§90.7 (SCCJA Surcharge)	$5	$
3% to County (if paid in installments)		$
TOTAL		$

A CERTIFIED TRUE COPY
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Carolyn F. Williams
Clerk of Court/ Deputy Clerk
Court Reporter: Melissa Singletary

PRESIDING JUDGE C. Newman
Judge Code: 2127
Sentence Date: 2 / 4 / 2011

SCCA/217 (06/2009)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS 859
COUNTY OF WILLIAMSBURG)
STATE VS.) INDICTMENT/CASE#: 2009-GS-45-0180

KELVIN M. BOWEN, JR.) A/W#: M060854
AKA:) Date of Offense: April 05, 2009
Race: Black Sex: Male Age:) S.C. Code §: 16-11-0311
DOB: [redacted] SS#: [redacted]) CDR Code #: 0079

Address:)

DL# SID#) SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Burglary in the First Degree
in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0 1 0 1 7 1 9

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____(Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections**, ☐ **County Detention Center**,

for a determinate term of 30 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years

and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus

costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Count one

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

PURSUANT TO 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ **Deferred,** ☐ **Defendant Waives Hearing,** ☐ **Ordered**
Total: $_____ plus 20% fee: $_____
Payment Terms:
☐ Set by SCDPPPS
Recipient:

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§47.12 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14/1/213 (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
§90.7 (SCCJA Surcharge)	$5	$
3% to County (if paid in installments)		$
TOTAL		$

A CERTIFIED TRUE COPY
SHARON W. STASKEY
CLERK OF COURT
WILLIAMSBURG COUNTY

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐ _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $_____ beginning _____
$_____ paid to Public Defender Fund
Other

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Carolyn F. Williams
Clerk of Court/ Deputy Clerk
Court Reporter: Melissa Singletary

PRESIDING JUDGE
Judge Code:
Sentence Date: 2/14/2011

860

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG)
STATE VS.)
KELVIN M. BOWEN, JR.)
AKA:)
Race: Black Sex: Male Age:)
DOB: [redacted] SS#: [redacted])
Address:)
DL# SID#)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-45-0180

A/W#: M060855
Date of Offense: April 05, 2009
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Possession of Weapon During Violent Crime
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 0 1 5 1 4 1 9
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____(Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST:

Kimberly V. Parr 8443 _____ W.E. Jenkinson, III
Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus
costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South
Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Count one

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

PURSUANT TO 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered PTUP _____
Total: $_____ plus 20% fee: $_____ _____ days/hours Public Service Employment
Payment Terms: A CERTIFIED TRUE COPY Obtain GED ☐ _____
☐ Set by SCDPPPS SHARON W. STAGGERS Attend Voc. Rehab. or Job Corp. _____
Recipient: Sharon W. Staggers WILLIAMSBURG May serve W/E beginning _____
*Fine: $ COUNTY SC Substance Abuse Counseling ☐
§14-1-206 (Assessments 107.5%) $ SHARON W. STAGGERS Random Drug/Alcohol Testing ☐
§14-1-211(A)(1) (Conv. Surcharge) $100 $ CLERK OF COURT Fine may be pd. in equal, consecutive weekly/monthly
§14-1-211(A)(2) (DUI Surcharge) $100 $ WILLIAMSBURG COUNTY pmts. of $ _____ beginning _____
§56-5-2995 (DUI Assessment) $12 $ CLERK OF COURT $ _____ paid to Public Defender Fund
§56-1-286 (DUI Breath Test) $25 $
§47.12 (Public Def/Prob) $500 $ Other:
§14-1-212 (Law Enforce. Funding) $25 $
§14/1/213 (Drug Court Surcharge) $100 $
§50-21-114(BUI Breath Test Fee) $50 $
§56-5-2942(J) (Vehicle Assessment) $40/ea $
§90.7 (SCCJA Surcharge) $5 $
3% to County (if paid in installments) $
TOTAL $

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

Carolyn F. Williams
Clerk of Court/Deputy Clerk

Court Reporter: Melissa Singletary

PRESIDING JUDGE C. Newman
Judge Code: 11127
Sentence Date: 2 1 4 1 2011

SCCA/217 (06/2009)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF WILLIAMSBURG)
) INDICTMENT/CASE#: 2009-GS-45-0180
STATE VS.)
KELVIN M. BOWEN, JR.) A/W#: KVB [redacted] NO WARRANT
AKA:) Date of Offense: April 05, 2009
Race: Black Sex:Male Age:) S.C. Code §: [redacted] 16-17-410 KVB
DOB: [redacted] SS#: [redacted]) CDR Code #: [redacted] KVB 0049
Address:)
) SENTENCE SHEET
DL# SID#)

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Criminal Conspiracy

in violation of §: 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0 1 0 1 4 1 9

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____(Defendant initial)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State:
ATTEST:

Kimberly V. Parr 8443 _____ W. E. Jenkinson, III
Solicitor SC Bar # Defendant Attorney for Defendant / SC Bar #

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections**, ☐ **County Detention Center**, for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years and/or to pay a fine of $_____; provided that upon the service of _____ days/months/years and/or payment of $_____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: Count one

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

PURSUANT TO 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ **RESTITUTION:** ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered PTUP _____
Total: $_____ plus 20% fee: $_____ _____ days/hours Public Service Employment
Payment Terms: Obtain GED ☐ _____
☐ Set by SCDPPPS Attend Voc. Rehab. or Job Corp. _____
Recipient: May serve W/E beginning _____
Substance Abuse Counseling ☐
Random Drug/Alcohol Testing ☐
Fine may be pd. in equal, consecutive weekly/monthly pmts. of $_____ beginning _____
_____ paid to Public Defender Fund

*Fine:		$
§14-1-206 (Assessments 107.5%)		$
§14-1-211(A)(1) (Conv. Surcharge)	$100	$
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§56-5-2995 (DUI Assessment)	$12	$
§56-1-286 (DUI Breath Test)	$25	$
§47.12 (Public Def/Prob)	$500	$
§14-1-212 (Law Enforce. Funding)	$25	$
§14/1/213 (Drug Court Surcharge)	$100	$
§50-21-114(BUI Breath Test Fee)	$50	$
§56-5-2942(J) (Vehicle Assessment)	$40/ea	$
§90.7 (SCCJA Surcharge)	$5	$
3% to County (if paid in installments)		$
TOTAL		$

Other:

☐ Appointed PD or appointed other counsel, §47.12 requires $500 be paid to Clerk during probation.

CERTIFIED TRUE COPY
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

Caroline F. Williams
Clerk of Court/Deputy Clerk

Court Reporter: Melissa Singletary

PRESIDING JUDGE: [signature] 2127
Judge Code:
Sentence Date: 2 1 4 1 2011

SCCA/217 (06/2009)

14 CP45 117

FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG)
Kelvin Michael Bowen, #344725)
Full name and prison number (if any) of Applicant)

SHARON W. STAGGERS WILLIAMSBURG COUNTY SC CLERK OF COURT

A CERTIFIED TRUE COPY
State of South Carolina Sharon W. Staggers)
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2014 APR -4 AM 8:05

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention South Carolina Dept. of Corrections; Lieber Corr. Inst.
2. Name and location of Court which imposed sentence Williamsburg Cnty. Court of General Sessions; Hon. Clifton Newman, presiding judge; and a jury.
3. Name(s) of co-defendant(s) (if any) Ronald Hakeem Mack; Tawanda Mack Allen; and Antonio Lavelle McClary.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
   (a) 2009-GS-45-00180; Murder, Burglary-First Degree, Conspiracy
   (b) and Possession of a Weapon During Violent Crime
   (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
   (a) February 4th, 2011; Murder - ninety-nine (99) years;
   (b) 02/04/11; Burglary-First Degree - thirty (30) years;
   02/04/11; Conspiracy - five (5) years

Revised 3/2003

(c) 02/04/11; Possession of a Weapon During a Violent Crime; five (5) years; all sentences are consecutive to each other.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty N/A

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere N/A

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii.

iii.

(b) the result in each such Court to which you appealed:

i. Convictions and Sentences Affirmed

ii.

iii.

(c) the date of each such result:

i. December 11, 2013

ii.

iii.

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion No. 2013-UP-452

ii.

iii.

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b)

(c)

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective Assistance of Appellate Counsel

(b) _____

(c) _____

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

(a) See attached pages 3A and 3B

(b) Applicant specifically reserves the right to amend or

(c) supplement the statement of grounds and the facts in support thereof.

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

10. (a) Ineffective Assistance of Appellate Counsel

11. (a) Supporting Facts: Applicant was denied the right to effective assistance of appellate counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, §§ 3 and 14 of the South Carolina Constitution - during his direct appeal of his conviction and sentences for murder; Burglary - First Degree; Conspiracy, and Possession of a Weapon During a Violent Crime.

Appellate counsel Susan Hackett's performance during his direct appeal was both unreasonable and prejudicial. Strickland v. Washington, 466 U.S. 668 (1984); Evitts v. Lucey, 469 U.S. 387 (1985). Hackett's acts or omissions including, but not limited to, the following:

(i) Specifically, Hackett failed to raise and brief the issue that Applicant's Sixth and Fourteenth Amendment rights to a trial by an impartial jury was violated by the presence of a biased and partial juror because the trial court erred in refusing to remove juror for cause. Morgan v. Illinois, 504 U.S. 719 (1992); Irvin v. Dowd, 366 U.S. 717 (1961);

(ii) Hackett failed to raise and brief the issue that Applicant's constitutional right to confrontation under the Sixth Amendment was violated when the prosecution, over Applicant's objection, introduced the inculpatory statement of a non-testifying co-defendant who had previously been tried and sentenced in a separate trial and, who had invoked her Fifth Amendment right to remain silent, to impeach another testifying co-defendant's testimony. Lee v. Illinois, 476 U.S. 530 (1986); Lilly v. Virginia, 527 U.S. 116, (1999); Gray v. Maryland, 523 U.S. 185 (1998);

(iii) Hackett failed to raise and brief the issue that the trial court abused its decretion in allowing previously suppressed statement of a non-testifying co-defendant, who had previously invoked her Fifth Amendment right to remain silent, to impeach another testifying co-defendant's testimony, in violation of Applicant's Sixth and Fourteenth Amendment rights to a fair trial and, due process of law.

(iv) Hackett failed to raise and brief the issue that Applicant was denied due process of law in violation of the Fifth, Sixth and Fourteenth Amendments to the United States Constitution when the prosecutor failed to disclose, until the middle of Applicant's trial, to the defense, material exculpatory evidence. Brady v. Maryland, 373 U.S. 83 (1963).

Attached page 3A

11.(g)(v) Hackett failed to raise and brief the issue that the trial court abused its discretion when it allowed the State to improperly admit evidence of a general criminal intent by the inference of gang activity, when neither gang activity was not an allegation against Applicant nor any evidence that Applicant was a gang member and only worked to prejudice Applicant, creating an inference of guilt from bad character, in violation of Applicant's Sixth and Fourteenth Amendment to a fair trial and due process of law.

11.(g)(vi) Hackett failed to raise and brief the issue that Assistant Solicitor Kimberly Barr ordered that Applicant's person be searched and his person be stripped and photographed without a warrant or court order in violation of Applicant's right to be free from unreasonable invasions of privacy in violation of South Carolina Constitution, Article 1, §10 and due process, §3, and the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution to be free from warrantless, illegal and unlawful searches and seizures and being forced to strip and his body art photographed without a search warrant or court order.

11.(g)(vii) Hackett failed to raise and brief the issue that prosecutorial misconduct permeated Applicant's trial and, denied him a fair trial and due process of law in violation of the Fifth, Sixth and Fourteenth Amendments.

Applicant specifically reserves the right to amend or supplement the statement of grounds and the facts in support thereof on which he bases his allegation that he is being held unlawfully in violation of the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article 1, §§3, 10 and 14 of the South Carolina Constitution.

Attached page 3B

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Issues could not be presented on direct appeal.

(b) Appellate counsel failed to raise of direct appeal.

(c) _____

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

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you: William E. Jenkinson, III, Esq., and Amanda Shuler, Esq., Jenkinson, Jarrett & Kellahan, P.A. P.O. Drawer

i. 699 Kingstree, S.C. 29556

ii. Susan B. Hackett, Appellate Defender, S.C. Comm. on Indigent Defense

iii. Division of Appellate Defense P.O. Box 11589 Columbia, S.C. 29211-1589

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

i. trial and sentencing

ii. direct appeal

iii.

19. State clearly the relief you seek in filing this application: Convictions and sentences vacated, or, reversed and remanded with instructions for new trial and any other relief the Court deems just and proper.

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

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of DORCHESTER)

I, Kelvin Michael Bowen, #344725, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

x Kelvin M. Bowen

SWORN to and subscribed before me this 19th day of February, 2014.

Lurlean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

14 CP45 117

FILED
2014 MAR -4 AM 8:05
CLERK OF COURT
WILLIAMSBURG S.C.

Kelvin Michael Bowen #344725
Lieber Corr. Inst. Ashley A-50
P.O. Box 205
Ridgeville, S.C. 29472-0205

February 19, 2014

Hon. Carolyn F. Williams
Clerk of Court for
Williamsburg County
Williamsburg County Courthouse
125 W. Main Street
Kingstree, S.C. 29556

Re: Filing - Application for Post-Conviction Relief

Dear Ms. Williams,

Enclosed for filing with your Office, please find the original and one (1) copy of my pro se application for Post-Conviction Relief.

Please file the original with your Office and clock-stamp the copy and return to me in the enclosed self addressed stamped envelope.

Also, please be advised that I am an indigent prisoner and that the Lieber CI mailroom will not put additional postage on the SASE. Please return the copy [clock-stamped] if possible.

I thank you in advance for your assistance in this matter. With kind regards, I am

Sincerely Yours,
Kelvin M. Bowen
Kelvin M. Bowen

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

I, Kelvin Michael Bowen, #344725, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Kelvin M. Bowen
Applicant

SWORN or affirmed to and subscribed before me this 19th day of February, 2014.

Lyndrean Bryant
Notary Public

My Commission Expires: May 26, 2020

FILED
2014 MAR -4 AM 8:06

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
COUNTY OF WILLIAMSBURG	)	DOCKET NO.: 2014-CP-45-0117
KELVIN MICHAEL BOWEN, JR., 344725 Applicant	)	AMENDED APPLICATION FOR POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA Respondent,	)	

FILED
2015 SEP -9 PM 4:20
SHARON W. STAGGERS
CLERK OF COURT
KINGSTREE, S.C.

The Applicant through undersigned Counsel wishes to Amend and file this Memorandum of Law in Support of his Post Conviction Application filed on July 29, 2014.

A. That the conviction and the sentence was in violation of the Constitution of the United States and the South Carolina Constitution.

B. That the Court was without jurisdiction to impose sentence.

C. That there exist evidence of material facts not presented and heard that requires vacating of conviction and sentence in the interest of justice.

D. Applicant was denied the right to effective assistance of counsel, guaranteed by the Sixth and Fourteenth Amendments to the U. S. Constitution and the Constitution of South Carolina.

E. Counsel failed to adequately investigate the facts and circumstances surrounding the death of the victim. Trial Counsel's failure to conduct such an investigation deprived the Jury of critical information relevant to an accurate assessment of Applicant's guilt or innocence.

F. Ineffective assistance of Trial Counsel.

G. Trial Counsel failed to object on all possible grounds to inflammatory and irrelevant Evidence presented by the solicitor.

H. Applicant's due process was violated.

I. Applicant has newly discovered evidence that tends to prove his actual innocence.

J. Prosecutorial misconduct.

K. Applicant asserts due to the violation of the United States Constitution Amendments, this action is subject to relief.

L. Trial Judge abuse of discretion

M. Applicant was denied his Sixth Amendment and Fourteenth Amendment right to a fair trial and due process.

N. Ineffective assistance of Direct Appeal Counsel.

Applicant secure this relief pursuant to South Carolina code of laws, section 17-27-20(a). This action should be amended as a right to petition any claim within this Post Conviction Relief.

RESPECTFULLY SUBMITTED ON BEHALF OF

APPLICANT, Kelvin Bowen

Charles T. Brooks, III
Attorney for Applicant
309 Broad Street
Post office Box 3512
Sumter, South Carolina, 29150
(803) 418-5708

September 3, 2014

STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
COUNTY OF WILLIAMSBURG	)	DOCKET NO.: 2014-CP-45-0117
KELVIN MICHAEL BOWEN, JR., 344725	)	
Applicant	)	AMENDED APPLICATION FOR POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA	)	
Respondent.	)	

FILED
2014 SEP 26 AM 9:40
SHARON M. STAGGERS
CLERK OF COURT
KINGSTREE, S.C.

The Applicant through undersigned Counsel wishes to Amend and file this Memorandum of Law in Support of his Post Conviction Application filed on July 29, 2014 to include:

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

Applicant's Direct Appeal Counsel did not raise and brief the fact that Judge Newman abused his discretion in his trial by allowing the State, over his objection, to use the State's witness, a Lt. Deborah Collins, to play a recorded statement of co-defendant Ronald Mack, who pled guilty to the crimes months prior to Applicant's trial taken on May 28, 2009, after state's witness Mr. Mack already testified two witnesses prior to Ms. Collins admitting that he made the statement. See trial transcript page 198, line 3-18. This violates applicant's Sixth and Fourteenth Amendment rights. See State v Bottom, 260 S. C. 187, 194, 195, S.E. 2d 116, 118 (1973). ("When a witness must admit unequivocally that a prior inconsistent statement has been made by him, he has thereby impeached himself and further evidence is unnecessary and inadmissible.) 98 C.J.S witnesses 727 (2002) stating admission must be unequivocal.

Judge Newman further abused his discretion when making the decision to admit the inadmissible evidence of the May 28, 2009, statement from co-defendant, Ronald Mack. Judge Newman states "well having presided over the trial where Mr. Mack testified in the guilty plea in which he admitted his involvement and also the involvement of Mr. B owen", see trial transcript page 226, line 103. You will see that the Judge used prior knowledge from a different trial, information that the jury is unaware of, to make a decision in Applicant's trial.

This is not a harmless error, due to the fact that when the Judge erred in allowing this inadmissible error, Judge Newman told the jury, "I want to caution you what this evidence is being used for is impeachment purposes only, as it relates to Mr. Mack and his testimony and not the truth contained therein, but for impeachment purposes only as it relates to that witnesses testimony." Those were his instructions when he allowed them to hear the May 28, 2009, recorded statement from Mr. Mack. See trial transcript page 231, line 15-20.

The prejudice resulting from the Judge's abuse of discretion was that over Applicant's objection, Trial Judge erred by allowing, at the jury's request during deliberation to hear Mr. Mack's recorded statement from May 28, 2009. The jury clearly wanted to hear the tape for the truth contained therein. The jury note stated "We the jury request to hear exhibit 65 (which is the May 28, 2009, recorded statement of Mr. Mack identified Callie"). See trial transcript page 711, line 26 ending at trial transcript page 712, line 1-2.

In the statement Mr. Mack does state that Applicant helped him commit this crime, however, on June 9, 2009, Mr. Mack gave Applicant's trial attorney a recorded statement stating that he lied in the May 28, 2009 statement and that his mother told him to put Applicant's name in it. The affidavit was notarized as well stating that Applicant had nothing to do with this crime.

RESPECTFULLY SUBMITTED ON BEHALF OF

APPLICANT, Kelvin Bowen

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September 18, 2014

STATE OF SOUTH CAROLINA COUNTY OF WILLIAMSBURG	)	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT
Kelvin Michael Bowen, Jr., #344725, Applicant, v. State of South Carolina, Respondent.	)	2014-CP-45-117 **RETURN AND MOTION FOR A MORE DEFINITE STATEMENT**

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 4, 2014[1], amended on September 9, 2014, and September 26, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true bill indicted at the July 2009 term of the Williamsburg County Grand Jury for murder, burglary—first degree, conspiracy, and possession of a weapon during a violent crime (2009-GS-45-180). William E. Jenkinson, III, Esquire, and Amanda Shuler, Esquire, represented Applicant. Applicant proceeded to a jury trial and was convicted as indicted. The Honorable Clifton Newman sentenced Applicant to ninety-nine year term of imprisonment for murder, a thirty year term of imprisonment for burglary—first degree, five year term of imprisonment for possession of a weapon during violent crime, and five year term of imprisonment for criminal conspiracy with all charges running consecutively.

[1] This application for post-conviction relief was received by Respondent on July 11, 2014.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Bowen, 2013-UP-452 (Filed December 11, 2013). The Remittitur was issued on December 30, 2013.

Attached herewith and incorporated herein are the records of the Williamsburg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Appellate Counsel
    a. Appellate Counsel "failed to raise and brief the issue that Applicant's sixth and fourteenth amendment rights to a trial by an impartial jury was violated by the presence of a biased and partial juror because the trial court erred in refusing to remove juror for cause."
    b. Appellate Counsel "failed to raise and brief the issue that Applicant's constitutional right to confrontation under the Sixth Amendment was violated when the prosecution, over Applicant's objection, introduced the inculpatory statement of a non-testifying co-defendant who had previously been tried and sentenced in a separate trial and, who had invoked her fifth amendment right to remain silent, to impeach another testifying co-defendant testimony."
    c. Appellate Counsel "failed to raise and brief the issue that the trial court abused its discretion in allowing previously suppressed statement of a non-testifying co-defendant, who had previously invoked her fifth amendment right to remain silent, to impeach another testifying co-defendant's testimony in violation of Applicant's sixth and fourteenth amendment rights to a fair trial and, due process of law."
    d. Appellate Counsel "failed to raise and brief the issue that Applicant was denied due process of law in violation of the fifth, sixth, and fourteenth amendments to the united states constitution when the prosecutor failed to disclose, until the middle of Applicant's trial, to the defense, material exculpatory evidence."
    e. Appellate Counsel "failed to raise and brief the issue that the trial court abused its discretion when it allowed the state to improperly admit evidence of a general criminal intent by the inference of gang activity, when neither gang activity was not an allegation against applicant nor

any evidence that Applicant was a gang member and only worked to prejudice applicant, creating an inference of guilt from bad character, in violation of Applicant's sixth and fourteenth amendment to a fair trial and due process of law."

f. Appellate Counsel "failed to raise and brief the issue that Assistant Solicitor Kimberly Barr ordered that Applicant's person be searched and his person be stripped and photographed without a warrant or court order in violation of Applicant's right to be free from unreasonable invasions of privacy in violation of South Carolina Constitution, Article 1 § 10 and due process, § 3 and the fourth, fifth, sixth, and fourteenth amendments to the united states constitution to be free from warrantless, illegal and unlawful searches and seizures and being forced to strip and his body art photographed without a search warrant or court order."

g. Appellate Counsel "failed to raise and brief the issue that prosecutorial misconduct permeated Applicant's trial and, denied him a fair trial and due process of law in violation of the fifth, sixth, and fourteenth amendment."

Applicant filed an amendment to his application on September 9, 2014, alleging that he was being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Counsel
    a. Counsel failed to adequately investigate the facts and circumstances surrounding the death of the victim. Trial Counsel's failure to conduct such an investigation deprived the Jury of critical information relevant to an accurate assessment of the Applicant's guilt or innocence.
    b. Trial Counsel failed to object on all possible grounds to inflammatory and irrelevant evidence presented by the solicitor.
2. Due Process Violation
    a. The conviction and sentence was in violation of the Constitution of United States and South Carolina Constitution.
3. Subject matter jurisdiction
    a. Court was without jurisdiction to impose sentences.
4. Newly Discovered Evidence.
5. Prosecutorial Misconduct
6. Trial Judge abuse his discretion
7. Ineffective Assistance of Appellate Counsel.

Applicant filed a second amendment to his application on September 26, 2014, alleging that he was being held in custody unlawfully based on the following allegations:

1. Ineffective Assistance of Appellate Counsel

2. Trial Court abused his discretion.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he or she would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

In his application, Applicant alleges that he is being held in custody unlawfully based on Prosecutorial Misconduct and Prosecutorial Misconduct. However, Applicant has wholly failed to set forth any "facts which support each ground" or to explain with any specificity whatsoever, the actual scenarios/facts upon which these supposed claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added).

The Respondent submits that it would be unfair to wait until the day of the hearing to finalize the specificity of plea counsel's supposed errors. The Respondent and plea counsel are entitled to adequately prepare for the hearing; to withhold the specific grounds and amend only on the day of the hearing prejudices the Respondent and plea counsel. The Respondent respectfully submits that it is incumbent on the Applicant to amend the application and provide specifics so that adequate preparation is possible. The Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the Respondent. Rule 15(a), SCRCP.

VI.

The State submits this application should be dismissed because it raises direct appeal issues. Post-conviction relief "is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(b); see also Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("It is uniformly held that an application for post-conviction relief is not a substitute for an appeal."). Applicant alleges that the trial court abused his discretion. This is an allegation of trial court error. See State v. Wright, 304 S.C. 529, 532, 405 S.E.2d 825, 827 (1991). Applicant should

have raised this issue on his direct appeal to circuit court. His failure to do so has waived these allegations as grounds for relief. Therefore, the State requests this application be dismissed.

VII.

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

VIII.

WHEREFORE, having made its Return, the State requests Applicant provide a more definite statement on claims of Prosecutorial misconduct and Newly Discovered Evidence and that an evidentiary held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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

December 2, 2014.

STATE OF SOUTH CAROLINA COUNTY OF WILLIAMSBURG KELVIN M. BOWEN, JR., #344725, Applicant, vs. STATE OF SOUTH CAROLINA, Respondent.	IN THE COURT OF COMMON PLEAS 2014-CP-45-117 AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the **Return and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Charles T. Brooks, Esquire
Law Office of Charles T. Brooks, III
309 Broad St.
Sumter, SC 29150

DATED this 2nd day of December, 2014.

Caroline Collins, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA COUNTY OF WILLIAMSBURG	)	IN THE COMMON PLEAS COURT DOCKET NO.: 2014-CP-45-117
KEVLIN M BOWEN, JR, # 344725 Applicant, -v- STATE OF SOUTH CAROLINA Respondent,	)	AMENDMENT AND SUPPLEMENT POST-CONVICTION RELIEF APPLICATION

The Applicant, through undersigned Counsel, files this amendment and supplement to his Application for Post-Conviction Relief and would respectfully show unto the Court of Common Pleas the following:

This is an amendment and supplementation to a PCR Application submitted to this Court pursuant to the S. C. Code Ann. 17-27-10, filed with this Court on March 4, 2014, amended on September 9, 2014 and September 26, 2014. This amendment and supplementation in no way replaces the factual predicates, and argumentation in the initial PCR pleadings, thus this amendment's primary goal is to add arguments to what has been filed already.

The Applicant, in support of his Amendments and Supplements, provides the Court with the following:

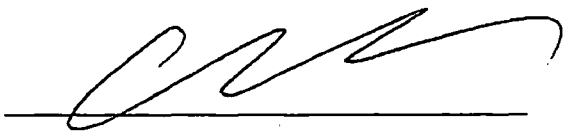
1. Applicant alleges that that the State withheld exculpatory evidence, specifically, Applicant's Samsung cell phone that was taken from him upon arrest;
2. Applicant contends that he provided his initial Defender with knowledge of this evidence in this matter, specifically an original letter sent to the Williamsburg Clerk of Court, outlining the innocence of the Applicant.

3. Applicant is informed and believes that the State misplaced or disposed of this evidence and it was not presented at trial on his behalf.

RELIEF SOUGHT

That my convictions and sentences be vacated and that Applicant be immediately released from prison pursuant to S. C. Code Ann. 17-27-80.

RESPECTFULLY SUBMITTED ON BEHALF OF APPLICANT, KELVIN M. BOWEN, JR.



Charles T. Brooks, III
Attorney for Applicant
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Sumter, South Carolina, 29150
803-418-5708

February 9, 2015

STATE OF SOUTH CAROLINA COUNTY OF WILLIAMSBURG	)	IN THE COMMON PLEAS COURT DOCKET NO.: 2014-CP-45-117
KEVLIN M BOWEN, JR, # 344725 Applicant, -v- STATE OF SOUTH CAROLINA Respondent,	)	AMENDMENT TO POST-CONVICTION RELIEF APPLICATION

2015 FEB 18 AM 10:33

The Applicant, through undersigned Counsel, files this amendment to his Application for Post-Conviction Relief and would respectfully show unto the Court of Common Pleas the following:

INEFFECTIVE ASSISTANCE OF COUNSEL

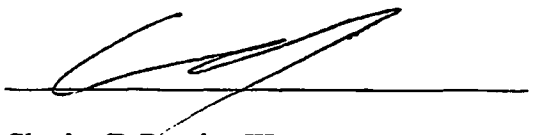
Trial Counsel was ineffective for failing to object to Solicitor Barr's vouching for the credibility of the State's witness, Antonio McClary, in her argument. (See trial transcript page 681, line 17-25 ending at trial transcript page 685, line 1-5).

Trial Counsel failed to object to comments which constitute an error of law and are inherently prejudicial. See Matthew v State, 565 S.E. 2d 766 (S.C. 2002). This is a violation of Applicant's constitutional right to a fair trial. Applicant's Sixth and Fourteenth Amendment rights were violated.

Prejudice occurred because the State's witness, Mr. McClary, was the State's key witness and his credibility was very crucial to the State's case. See Gilchrist v State, 565 S.E. 2d 281 (S.C. 2002).

Applicant respectfully requests that based on these violations he be granted a new trial.

RESPECTFULLY SUBMITTED ON BEHALF OF
APPLICANT, KELVIN M. BOWEN, JR.



Charles T. Brooks, III
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803-418-5708

February 10, 2015

State of South Carolina	)	Court of Common Pleas
	)	Third Judicial Circuit
County of Williamsburg	)	Case No. 2014-CP-45-117
	)	
Kelvin Michael Bowen Jr.,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

July 13, 2015
Sumter, South Carolina

B E F O R E:

The Honorable Steven H. John, Judge

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

Charles T. Brooks III, Esquire
Attorney for the Plaintiff

Daniel Gourley, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

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JULY 13, 2015

(WHEREAS this matter was scheduled for a post-conviction relief hearing, the applicant appeared along with his counsel of record. The hearing began at 10:43 a.m.)

THE COURT: All right. Mr. Attorney General?

MR. GOURLEY: Yes, Your Honor. This is Kelvin Bowen versus the State of South Carolina, Docket Number 2014-CP-45-117. He's presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. He was true-bill indicted at the July 2009 term of the Williamsburg County Grand Jury for murder, burglary in the first degree, conspiracy, and possession of a weapon during a violent crime. Mr. Jenkinson and Ms. Shuler represented him.

He proceeded to a jury trial and was convicted as indicted. The Honorable Clifton Newman sentenced the applicant to a 99-year term of imprisonment for murder, thirty-year term of imprisonment for burglary in the first degree, a five-year term of imprisonment for possession of a weapon during a violent crime, and a five-year term of imprisonment for conspiracy, with all charges running consecutively.

A timely notice of appeal was filed on applicant's behalf and the South Carolina Court of Appeals affirmed the applicant's conviction and sentence. A remittitur was issued

on December 30th, 2013. He filed a timely application on March 4th, 2014, alleging ineffective assistance of counsel and ineffective assistance of appellate counsel.

He filed an amendment to his application on September 9th, 2014, alleging additional claims of ineffective assistance of counsel for failing to investigate and failing to object to all possible grounds, due process violation, subject matter jurisdiction, newly discovered evidence, prosecutorial misconduct, abuse of discretion by the trial judge, and an additional claim of ineffective assistance of appellate counsel.

He filed a second amendment to his application on September 26th, 2014, alleging ineffective assistance of counsel -- of appellate counsel and again trial court abused its discretion. He filed a third amendment on February 10th, 2015, again alleging various claims of ineffective assistance of counsel.

The State filed its return on December 2nd, 2014. He is represented in this matter by Mr. Brooks, Your Honor.

THE COURT: All right. Mr. Brooks, I'll be glad to hear from you, sir.

MR. BROOKS: May it please the Court. Just by way of housekeeping, Judge --

THE COURT: Yes, sir.

MR. BROOKS: On Friday, we had filed a motion for a

continuance. I talked with my client since then. I talked with Mr. Jenkinson. We are no longer asking for that continuance, but I wanted to give you a little bit of a background.

THE COURT: Please.

MR. BROOKS: There was an issue. One of the issues that we've raised is prosecutorial misconduct or newly discovered evidence. It is a cell phone that was -- that has been -- that has -- my client, through his prior counsel, had tried to get and has never been able to get.

Judge, just for your information, the State's allegation is that my client drove from Maryland down here to Kingstree to execute -- basically kill somebody along with his codefendant. And in the route down here, he was alleged to have been texting with the codefendant about what we're going to do.

Well, when he was arrested in Maryland, they had taken two cell phones off of him, one of which was shown that he had recently purchased after the date of the murder. The other one, of course, is indicated in the Maryland booking report. That cell phone has been -- we have tried to get that cell phone for several years and, of course, when I got involved, I had tried to get it, but it looks like we're never ever going to get that cell phone based on what my client has told me.

The reason that was important and brought up in the trial

was obviously with cell phone technology if he was indeed texting, you can tell where the text -- where the phone was based on the pings. Of course, by not having the cell phone, that was never actually tested.

That basically, Judge, is kind of the root of what we're talking about.

THE COURT: Okay.

MR. BROOKS: And that's where a lot of my client's testimony, as well as Mr. Jenkinson's testimony, is going to involve.

THE COURT: All right.

MR. BROOKS: I just wanted to let you know that's why we had filed -- I had filed it as an abundance of caution, but my client said, no, we need to just go ahead and get this matter addressed, and I just wanted to bring that to Your Honor's attention.

THE COURT: All right. Very good. Mr. Bowen, is that request -- regarding the matter to be continued, do you want to withdraw that?

THE APPLICANT: Yes, sir.

THE COURT: All right. Very good. You want to proceed with your hearing; is that right, sir?

THE APPLICANT: Yes, sir.

THE COURT: All right. Very good. All right. If you're ready then, Mr. Brooks, I'll be glad for you to call your

witnesses.

MR. BROOKS: I'll call Mr. Bowen to the stand.

THE COURT: All right, sir. Please come around to be sworn, sir. When you get around, sir, if you'd put -- put your paperwork down.

THE APPLICANT: Okay.

THE COURT: Just go ahead and put your paperwork down. And if you'd face me and as best you can raise your right hand? Okay? Do you solemnly swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE APPLICANT: I do, sir.

THE COURT: Very good, sir. If you'll have a seat and then when you get situated, state your full name into the record. Okay?

THE APPLICANT: Okay.

THE COURT: Just go ahead and get situated and then state your full name.

THE APPLICANT: Kelvin Michael Bowen Jr.

THE COURT: All right. If you would, move the microphone just a little bit closer to you. All right. Go ahead. All right. Mr. Brooks, you may proceed, sir.

KELVIN BOWEN, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q: Mr. Bowen?

A: Yes, sir.

Q: Okay. You had Mr. Jenkinson represent you in your trial; is that correct?

A: Yes, sir.

Q: Now, you've raised a bunch of issues, one of which is prosecutorial misconduct. Another one is failure to investigate. Let's take us back. What -- what did the State accuse you of doing?

A: They accused me of, one, being involved in this crime. They accused me of talking and texting with Mr. Mack in route from Maryland to South Carolina --

Q: Okay.

A: -- to commit a crime.

Q: And bear in mind -- you know, I know this is what you've been living with for the past several years. The judge -- he just looked at it. So I'm going to give him some background information and I'm going to help you get that background information.

Now, you were tried in Kingstree and convicted of the offense of murder and burglary first; is that correct?

A: Yes, sir.

Q: And what the allegations stem from is you driving down here from Maryland with Tawanda?

A: Yeah. Tawanda Allen, Ronald's mother.

Q: Okay. That was Ronald Mack's mama?

A: Yes, sir.

Q: And Ronald Mack was the codefendant?

A: Yes, sir.

Q: One of the codefendants?

A: Yes, sir.

Q: Okay. You were supposedly texting on the way down here to get with him to go in and shoot and kill the victim; is that correct?

A: Yes, sir.

Q: Okay. And there was one other individual, a McClarthy? Is that how you pronounce his name?

A: Antonio McClary.

Q: Antonio McClary? Now, he testified against you at the trial. Ronald Mack did not; is that correct?

A: No. Ronald Mack did testify.

Q: He did, but he said you didn't do it?

A: Yeah. He said he lied in the beginning.

Q: Okay. All right. And the jury convicted you. Now, when the police came and got you, you were in Maryland; is that correct?

A: Yes, sir.

Q: And they detained you up there?

A: Actually, the police came to arrest Ronald Mack and his

mother.

Q: Okay.

A: I happened to just be with Ronald Mack and they said they had one more person of interest that they were looking for. So being I had a California ID and they were looking for somebody, somebody named Cali, they took a picture of me and emailed it down here to Williamsburg County to show Mr. McClary --

Q: Okay.

A: -- to see if I was the guy.

Q: Because he was the cooperating codefendant; is that correct?

A: Yes, sir.

Q: And he allegedly said you were the guy that accompanied them down here; is that correct?

A: Yes, sir.

Q: Okay. Now --

MR. BROOKS: May I approach the witness, Judge?

THE COURT: Yes, sir.

BY MR. BROOKS:

Q: Kelvin, tell me what this is?

A: All right. When -- we got arrested in Tawanda Mack's car and this is, like, a police inventory report and it has all my personal items that were seized and it says seized for evidence --

Q: That was --

A: -- by the police.

Q: That was basically a custody record of the sheriff's department up there in Maryland?

A: Anne Arundel County.

Q: Okay. When they detained you; is that correct?

A: Yes, sir.

Q: And they took an inventory of what they detained when they detained you and what they took off of your person; is that correct?

A: Yes, sir.

Q: Okay. And according to their report, what did they take off your -- your person?

A: One T-Mobile Samsung phone, a black leather wallet, and a grey Motorola cell phone.

Q: Okay. All right. And they say they took it for evidence; correct?

A: Yes, sir.

Q: Okay. You were then transported down to Williamsburg County; is that correct?

A: Yes, sir.

Q: Okay. Does it say what date they detained you? Or do you recall what date it was that they detained you?

A: I want to say May -- yeah, May 18th, 2009.

Q: Okay. Have you seen that Samsung phone since they took

it off of you?

A: No, sir.

Q: Okay. And you guys actually had hearings about the Motorola phone; is that correct?

A: Yes, sir.

Q: Where Mr. Jenkinson was representing you?

A: Yes, sir.

Q: And what became of the hearings in regards to the Motorola phone?

A: Through my attorney's -- I'm going to say investigation, he got all the records to the phone and the phone showed that -- I mean the records showed that the phone was purchased after the crime was committed.

Q: Okay. Now, has there been anything about the Samsung phone?

A: No. We actually brought up the Samsung phone and no one seems to know where the Samsung phone is.

Q: Okay. So that Samsung phone has been brought up time and time again; is that correct?

A: Yes, sir.

Q: Okay. Now, has there been anything from the Williamsburg County Sheriff's Department or the Solicitor's Office documenting that Samsung phone?

A: No, sir.

Q: All right. Now, that -- do you recall how long you had

that Samsung phone prior to being detained?

A: Probably about a year.

Q: Okay. Was it registered in your name?

A: It's a prepaid phone, sir.

Q: Okay. All right. And, Mr. Bowen, why is that phone so important in your case?

A: Well, because that's the phone I was using when they said this crime took place.

Q: Okay.

A: So they said I was talking and texting from Maryland to South Carolina, but if I had the phone I could prove that I wasn't talking and texting with nobody from Maryland to South Carolina, that I was in Maryland the whole time, even when they said the crime was committed.

Q: Okay. That's something you had talked with Mr. Jenkinson about; is that correct?

A: Yes, sir.

Q: Okay. But that phone has never materialized in order to be tested?

A: No, sir.

Q: Okay. All right. Because it's your understanding if there was some testing done, an expert could identify where the phone was in relation to when these texts went on; is that correct?

A: Yes, sir.

Q: Okay. But to date, since there's been no -- since the phone never surfaced, there's never been any type of tests done; is that correct?

A: No, sir.

Q: Okay. And is it -- is it your contention that Williamsburg County Sheriff's Department got possession of that phone?

A: Well, from my understanding, everything on this -- on this list right here that I was detained with made it to the Williamsburg Sheriff's Department except the Samsung phone.

Q: As a matter of fact, that's how the Motorola phone got down here?

A: And the wallet and two cell phone cases, but only one cell phone.

Q: Okay. So all those other things on that inventory list made it down here?

A: Yes, sir.

Q: But that Samsung phone never did?

A: No, sir.

Q: Okay. All right. And it's your contention that obviously the State has violated your rights -- that's one of your issues -- by not turning over this evidence because it may be exculpatory?

A: Yes, sir.

Q: Your contention was you never came down to South

Carolina, at least on that day?

A: No, sir.

Q: Okay. The date of the alleged crime; is that correct?

A: No, sir.

Q: And you actually had presented some alibi witnesses; is that correct?

A: Yes, sir.

Q: Okay. Now, you did also raise ineffective assistance of appellate counsel?

A: Yes, sir.

Q: Okay. And why did you raise that issue?

A: Can I have that paperwork I gave you, please?

Q: This one? Okay.

MR. BROOKS: May I approach, judge?

THE COURT: Yes, sir. Absolutely.

MR. BROOKS: Judge, while he's looking back through his notes --

THE COURT: Yes, sir.

MR. BROOKS: We would actually offer this as Applicant's Exhibit 1.

THE COURT: All right, sir.

MR. GOURLEY: Was that introduced at trial?

THE COURT: All right, sir. Have you seen it, Mr. Attorney General?

MR. GOURLEY: Very briefly, Your Honor. I was just --

was it -- was it introduced at trial? Your Honor, I --

THE COURT: Well, why don't you look at it.

MR. GOURLEY: Okay.

THE COURT: You know what it is?

MR. GOURLEY: Your Honor, I would just object to this as improper foundation. I don't think --

THE COURT: Well, let me look at it so I know what we're talking about here, please.

MR. BROOKS: Judge, to be more specific, so that you don't have to look, we're talking about down here in this area.

THE COURT: I'm going to allow it into evidence over the objection of the State.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 1, the arrest inventory, was admitted into evidence.)

MR. GOURLEY: Thank you, Your Honor.

MR. BROOKS: I'll had it back to him, Judge.

BY MR. BROOKS:

Q: Kelvin, I asked you about ineffective assistance of appellate counsel?

A: Yes, sir.

THE APPLICANT: Your Honor, I'm a mental health patient; right? So I'm on medication. I typed this up because, you know, I get flustered when I'm in the spotlight and I would just ask -- I have exhibits that I would like to present to

the Court.

THE COURT: All right. Well, show -- show them to your attorney.

(WHEREUPON, there was a pause in the proceedings.)

BY MR. BROOKS:

A: This right here. That's a copy of Mr. Jenkinson's request of Brady, the motion for discovery, and that's Exhibit A. The reason why I'm asking for this is because that's where -- that's where we received that inventory paper from and that would show that they have the Samsung phone. And this is how I'm going to bring about my Brady violation.

Q: Okay. Well, let me ask -- let me ask --

MR. BROOKS: I beg the Court's indulgence for just a moment, Your Honor.

THE COURT: Yes, sir. While -- while you're doing that, I'm going to ask Mr. Bowen a couple questions. Mr. Bowen?

THE APPLICANT: Yes, sir?

THE COURT: You said you -- you were on medication right now?

THE APPLICANT: Yes. I take it every night, sir.

THE COURT: Okay. And that's prescribed medication; is that correct?

THE APPLICANT: Yes, sir.

THE COURT: All right, sir. And tell me, what effect does that medication have on you? What -- what does it do to

you?

THE APPLICANT: Like, the side effects or why I take it?

THE COURT: No. Why are you taking it?

THE APPLICANT: Oh, because I'm mental health. I was diagnosed with PTSD.

THE COURT: Okay. And so you're taking the medication and I guess the main question is does it help you concentrate and understand what's going on or does that interfere with it in any way?

THE APPLICANT: It, like, helps me stay calm.

THE COURT: Okay.

THE APPLICANT: But the side effects of it is I get, like, nervous. I stutter.

THE COURT: Okay. And that's not a problem. Don't worry about that at all.

THE APPLICANT: Okay.

THE COURT: What I'm asking these questions about is to make sure that you know what you doing here today. There aren't any questions about that?

THE APPLICANT: No.

THE COURT: Okay.

THE APPLICANT: Yes, sir.

THE COURT: All right. So the medication doesn't prevent you from knowing what you're doing; right?

THE APPLICANT: No, sir.

THE COURT: Okay. And so that was the reason for the question is just to make sure that you don't have any issues about knowing why you're here or what's going on. You don't have any questions like that; right?

THE APPLICANT: No, sir.

THE COURT: All right. Very good. All right. Go ahead, Mr. Brooks.

MR. BROOKS: Your Honor, what he's asking about is basically a copy of Mr. Jenkinson's Rule 5 discovery motion.

THE COURT: All right, sir. Do you want to make that an exhibit?

MR. BROOKS: We can.

THE APPLICANT: Exhibit A.

THE COURT: All right, sir.

MR. BROOKS: I don't think there's any objection from the State.

MR. GOURLEY: There's no objection to that, Your Honor.

THE COURT: All right. Go ahead. Mark that and make it an exhibit then.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 2, the Rule 5/Brady motion, was admitted into evidence.)

MR. BROOKS: Thank you.

THE COURT: Thank you, sir.

MR. BROOKS: All right.

BY MR. BROOKS:

Q: Did you have anything else before I get into my other questions, Kelvin?

A: Yes, sir. I'd like to enter Exhibit B, which is the State's response to the Brady motion.

Q: Okay.

MR. BROOKS: We'd offer this as Applicant's 3, Judge.

MR. GOURLEY: No objection.

THE COURT: All right, sir. Go ahead and have it marked by the court reporter, please.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 3, the State's response to discovery motion, was admitted into evidence.)

THE COURT: All right, sir. Thank you.

BY MR. BROOKS:

A: You brought up a motion -- a motion hearing about the -- about the cell phone and I would like this to be Exhibit C, which is the transcript of August 26th, 2010, motion for discovery in dealing with disclosure arguments.

Q: Before you do that --

MR. BROOKS: Is that the transcript in there?

MR. GOURLEY: No. I don't have a copy of it.

THE COURT: All right. Very good. So go ahead.

MR. BROOKS: Okay. You don't have any problem with the transcript, do you?

MR. GOURLEY: No.

MR. BROOKS: Okay.

THE COURT: All right, sir.

MR. GOURLEY: I don't have an objection.

THE COURT: All right, sir. Very good. Go ahead and mark it, please.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 4, motion hearing transcript, was admitted into evidence.)

MR. BROOKS: Here's one for you, Judge.

THE COURT: All right, sir. Thank you.

BY MR. BROOKS:

A: Your Honor, the applicant shows by -- by the transcripts, page 3, line 1 through 25, and in that page 32, line 1 through 20, that the arguments of the State not disclosing evidence and by reviewing the State's Brady response, the State did have applicant's Samsung phone, which is exculpatory evidence, within the State's possession.

On transcripts page 6, line 20 through 23, throughout this hearing the State contends that applicant's attorney had the Samsung -- I mean had the phone. Applicant's attorney proved that the State had and still has complete possession of the Samsung phone on transcript page 10, line 14 through 23.

And I said before, Your Honor, that the Samsung phone is exculpatory evidence. It would prove that -- it would prove my innocence and it would prove the State alleges that applicant was in communication with Ronald Mack, who has pled

guilty to this crime, in route from Maryland to South Carolina talking and texting, but the State never approved this theory or conspiracy. Applicant's Samsung phone proves that applicant was not in contact with Ronald Mack the night this crime was committed.

Applicant's Samsung phone proves that applicant was not in the state of South Carolina at the time this crime was committed. In fact, he was at home in Maryland with his wife and son at the time this crime was committed. Your Honor, I'd like to put this letter for Exhibit D.

Q: This is where you gave Mr. Jenkinson permission to get the cell phone?

A: Yes, sir.

MR. GOURLEY: Your Honor, this is already part of the record; so I don't have any objection to it.

THE COURT: All right. Very good.

MR. GOURLEY: I don't know if Your Honor as a copy of it. It was in the clerk's file.

THE COURT: That's fine. Just go ahead and mark it so there's no question about it. Just go ahead and mark it.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 5, a letter, was admitted into evidence.)

MR. BROOKS: Just for information purposes, this is where my client gave his trial lawyer permission to get his cell phone.

THE COURT: Okay. Very good.

BY MR. BROOKS:

A: That's the letter from applicant to Williamsburg County Sheriff's Office requesting the Samsung phone be given to Mr. Jenkinson. Applicant's 5th, 6th, and 14th amendment rights were violated, along with due process and the right to a fair trial, when the State took possession of this exculpatory evidence, destroyed it, denying applicant a right to a fair trial. You already got this; right?

Q: Yeah, yeah.

THE COURT: All right, sir.

BY MR. BROOKS:

Q: May we go on to the next issue about appellate defense?

A: Uh-huh.

Q: About those issues that came up?

A: I'd like to bring up the identification.

Q: Okay. All right. We'll go through that. One issue you raised is about the identification?

A: Yes, sir.

Q: Identification of McClary pointing you out; is that correct?

A: Yes, sir.

Q: All right. Explain that to the Court.

A: Well, through the State's witness Mr. McClary's misidentification, Mr. Jenkinson's motion to suppress the

suggestiveness of the out-of-court identification. And I'd like that to be Exhibit F, please.

Q: Okay.

MR. GOURLEY: I have no objection, Your Honor.

THE COURT: All right. Very good.

MR. BROOKS: This would be Applicant's Number 6.

THE COURT: All right. Very good.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 6, motion to suppress identification, was admitted into evidence.)

MR. BROOKS: Just for your information purposes, Judge, this is Mr. Jenkinson's motion to suppress the identification.

THE COURT: All right. Very good. Thank you.

BY MR. BROOKS:

Q: And just for clarification, Kelvin --

A: Yes, sir.

Q: This is the identification of the codefendant, Antonio McClary, who supposedly there was a picture sent from Maryland down to Kingstree and that person, the police officer, shows it to Mr. McClary and McClary says this is Cali?

A: Yes, sir.

Q: Okay. All right.

A: Well, after Mr. Jenkinson made the motion, a hearing was held and here are the transcripts of that hearing.

Q: Okay.

MR. GOURLEY: Your Honor, I don't have an objection.

THE COURT: All right, sir. Very good.

MR. BROOKS: Judge, I believe this would be Number 7.

THE COURT: All right, sir.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 7, transcript of motion to suppress hearing, was admitted into evidence.)

MR. BROOKS: This is the identification hearing. I'm going to give you a little bit better copy, Judge. It's kind of stapled.

THE COURT: All right. Very good. Okay.

MR. BROOKS: Thank you.

THE COURT: Very good. Thank you.

MR. BROOKS: All right.

BY MR. BROOKS:

A: I would like to say pointing at the hearing transcript page 24, line 3 through 25, and in that hearing transcript page 39, line 1 through 4, it is evident that identification was arranged and unduly suggestive. Applicant was deprived due process by law. Hold on. Deprived due -- deprived due process of law by the identification procedure which is unnecessarily suggestive. See *Stovall v. Denno*. Without the State's objection, applicants enter my preliminary hearing transcripts.

Q: Okay.

A: I'm going to get to where this is going.

Q: Okay. Okay.

A: And the preliminary hearing was taken three weeks after -- after Mr. McClary's misidentification. Your Honor, throughout the preliminary hearing, page 1, line 1 through 25, and in that hearing transcript page 52, line 1 through 19, law enforcement defend their production of identification. Investigator Lail states that she showed Mr. McClary a single photo of applicant with police clearly in the background. Located in hearing transcript page 43, line 1 through 11, law enforcement continually defend the one-man, single-photo lineup of applicant that they admittedly showed to Mr. McClary.

The trial court ruled that the single-man lineup was not unduly suggestive. This was error. Single person lineups are particularly disfavored in the law. *Stovall*, 338 U.S. at 402. Practice of showing suspects singly to persons for purpose of identification and not as part of a lineup has been widely condemned. See *State v. Johnson.*

Your Honor, without -- without objection from the State, applicant enter the single one-man lineup photo -- shoot.

THE COURT: It's all right, sir.

BY MR. BROOKS:

Q: Are you trying to pull out the preliminary hearing transcript now, Kelvin?

A: Yes, sir.

Q: Okay. I got a copy.

A: All right.

MR. BROOKS: We would, without objection --

MR. GOURLEY: Yes, Your Honor. No objection.

THE COURT: All right. Very good. All right. So that's Plaintiff's 8; correct?

MR. BROOKS: Yes, sir.

THE COURT: All right. The preliminary hearing transcript. All right. Very good. Go ahead.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 8, transcript of preliminary hearing, was admitted into evidence.)

BY MR. BROOKS:

A: I'd like to enter this right here. It's the one-man photo that they showed -- showed Mr. McClary.

MR. GOURLEY: Judge, I'm going to object to this. It's black-and-white. You can't really tell anything and there's some other --

THE COURT: Let me look at it and see what --

THE APPLICANT: That's the copy they gave me for my Rule 5.

THE COURT: Why don't we -- we'll mark it for -- was this at the preliminary hearing? Or is this through discovery?

MR. BROOKS: No. Through discovery.

THE COURT: All right.

THE APPLICANT: That's through discovery.

THE COURT: Why don't we -- why don't we mark it for identification and then maybe you can talk -- ask a question of it regarding the trial counsel and further.

MR. BROOKS: And Mr. Jenkinson is here. I'll probably get into a lot of that with him.

THE COURT: All right. Very good. So let's just mark it for identification at this time. All right. Thank you.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 9, a photograph, was marked for identification purposes only.)

THE COURT: All right. Thank you. And it's -- right now, it's Plaintiff's Exhibit 9 for ID only at this point in time.

MR. BROOKS: Okay.

BY MR. BROOKS:

A: Go ahead?

Q: Yes.

A: All right. What that is it's a single one-man photo the State used. In looking at that one-man photo of applicant, this is suggestive by -- by production alone. Within this photo, it clearly shows the applicant is in custody by two law enforcement steps away from applicant in full uniform.

This single-photo arrangement was clearly violating the Supreme Court ruling on production of identification to

State's witness. See *Foster v. California*, *United States v. Cruz*, and *Neil v. Biggers*.

The procedure was so unnecessarily suggestive and conducive to unrepairable mistake identification, the applicant was denied due process of law. Applicant's 5th, 6th, and 14th amendment rights were violated. This process was so highly suggestive not only was applicant's due process rights violated, but the lead investigator, Lail, who testified in the preliminary hearing, admitted showing Mr. McClary a one-photo lineup of applicant. See preliminary hearing transcript page 42, line 4 through 23.

Changed her story completely after identification hearing stating she did not show Mr. McClary a photo. Even when confronted with preliminary hearing transcripts of when she testified, Investigator Lail continued denying showing Mr. McClary a one-photo lineup of applicant, which is inconsistent with what she said at the preliminary hearing. See identification hearing transcript page 33, line 19 through 25, and then at page 34, line 1 through 20.

The United States Supreme Court states factors to be considered in evaluating the likelihood of misidentification include -- Mr. Brooks? I'm only saying this part because Mr. McClary said a description of me. He said tall, real tall, scrawny, piercings everywhere. He was shown that picture of me from chest to the top of my head.

Mr. Jenkinson asked him at the trial can you -- can you tell how tall this person is and he said no. He said the guy had peazie hair. In the picture, I have a wave cap on. So he asked me can you see, you know, what kind of hair he has? He said no. He said do he have any piercings on his face? He said no. But that's the same picture that they showed him when I was detained in Maryland and he said I'm the person that helped him. So the description of the person that he gave and the picture that he is shown are two different things.

So the Supreme Court states that the factors to be considered in evaluating the likelihood of misidentification include the opportunity of the witness to view the criminal at the time of the crime, the witness' degree of attention, the accuracy of the witness' prior description of the criminal, level of certainty demonstrated at the confrontation, and the time between the crime and the confrontation.

Applying these factors, Mr. McClary's opportunity to view. It was 2 a.m. Mr. McClary admitted that he was so drunk that he was throwing up. He was, in fact, in the front seat while Ronald and Cali were in the back. Mr. McClary admitted being scared and this was his first and last time seeing Cali, and the crime took a total of twenty minutes.

Mr. McClary's degree of attention. He was worried about his own safety and admitted to being afraid and looking out

the window.

Mr. McClary's accuracy of description. He states that Cali was tall, real tall, and scrawny with peazie afro hairstyle, not a low-cut, with piercings on his face. In the photo of applicant, the photo was taken from the top of applicant's chest to the top of his head. Admittedly by Investigator Lail, one cannot tell the height of applicant in the photo, nor his hairstyle. The applicant is wearing a wave cap. The applicant has a -- has a low haircut. Applicant is 217 pounds in the photo, nowhere near scrawny, very muscular build. The applicant has no piercings on his face.

And the level of certainty. With his freedom at stake and being only shown one picture, how can Mr. McClary guess wrong?

And the time the crime took. The crime took place on April 5th, 2009, at 2 a.m. for about twenty minutes. Mr. McClary saw Cali for the first and last time, and the confrontation was May 18th, 2009, forty-three days later.

With Mr. -- with Investigator Lail's contradicted production of the single-photo arrangement, along with Mr. McClary's contradicting and misidentification of applicant, Judge Newman was contrary to the United States -- my fault -- to the Supreme Court's ruling on identification injury as he abused his discretion by applying an unreasonable application in denying applicant's motion to suppress the out-of-court

identification, as well as the in-court identification. See *William v. Taylor* and *State versus Jenning*, stating an abuse of discretion occurs when a trial court's ruling is based on an error of law and when grounded in factual conclusion is without evidentiary support.

In this case, Mr. McClary was only -- was the only State's witness to misidentify -- misidentify applicant and for his testimony he received twelve years nonviolent for second-degree -- for second-degree murder instead of -- I mean second-degree burglary instead of the initial charge of murder, first-degree burglary, possession of a weapon, and conspiracy.

This is the May 13th, 2009, statement of Mr. McClary taken at 6:55 p.m., and there's no mention of applicant at all.

Q: Is this -- is this statement taken --

A: The -- the -- the police --

Q: Okay.

A: -- interviewed him at 6:55 p.m.

Q: Is this -- is this with -- is this a question and answer typed up between him and the police?

A: Yes, sir.

Q: And you obtained that through your lawyer through discovery?

A: Yeah, through discovery.

Q: Okay. All right.

MR. GOURLEY: Your Honor, I'm just going to object. It's not a certified copy, and I don't think it's properly introduced through the applicant.

THE COURT: All right.

MR. GOURLEY: Mr. Jenkinson had a copy of that and that may be another avenue.

THE COURT: Let me see what it is, please.

MR. BROOKS: For your information, Judge, it's supposedly the transcript between the codefendant, Mr. McClary, and law enforcement.

THE COURT: All right, sir.

MR. BROOKS: I guess at this time we would ask that it be submitted for ID only.

THE COURT: All right. And then you can cover that with his trial counsel.

MR. BROOKS: Yes, sir.

THE COURT: All right. Go ahead and have that marked for identification then, please.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 10, transcript of interview, was marked for identification purposes only.)

THE COURT: Thank you, sir.

MR. BROOKS: All right.

BY MR. BROOKS:

A: Mr. Brooks, I have another statement from Mr. McClary

taken on the same day, May 13th, at 7:24.

Q: Okay. Who was that statement given to?

A: It was given to Investigator Lail.

Q: Okay. And how did you get that statement?

A: When we filed a Brady motion, they --

Q: Did you get it through Mr. Jenkinson as your trial lawyer?

A: Yes, sir.

Q: Okay.

MR. GOURLEY: Your Honor, I'm going to have the same objection to that. And just for the record, Your Honor, the identification issue was addressed on appeal and was affirmed.

THE COURT: Well, I appreciate that, but that's -- can come with your --

MR. BROOKS: That's the same --

THE COURT: -- arguments or questions.

MR. GOURLEY: Yes, sir.

THE COURT: So just have that marked for ID next exhibit, please.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 11, statement, was marked for identification purposes only.)

MR. BROOKS: Judge, just for your information, it is the statement of Mr. McClary given to police at a different date and time.

THE APPLICANT: No. Same date.

MR. BROOKS: Same date?

THE APPLICANT: The first one was given at 6:55. That one was given at 7:24.

THE COURT: All right. Very good. Go ahead. Continue on.

BY MR. BROOKS:

A: I would like to put in my trial transcripts.

Q: The judge has got the trial transcript.

A: Oh, so I don't have to put them in then?

A: No. You don't have to. We got that.

MR. BROOKS: Am I right, Mr. Gourley?

MR. GOURLEY: Yes. That's correct.

THE COURT: That's part of the Clerk of Court's file, sir.

BY MR. BROOKS:

A: All right. Your Honor, I have an affidavit from Ms. -- from Ms. Tawanda Mack.

Q: Affidavit from Ms. Tawanda Mack?

A: Yes. And this affidavit states that -- it states unequivocally --

THE COURT: All right. Hold on. Hold on a second first. Show that to the attorney general, please.

BY MR. BROOKS:

Q: Did she testify at the trial?

A: No. She pled the Fifth, sir.

Q: Okay.

THE COURT: All right. Is she here today?

THE APPLICANT: No, sir.

MR. BROOKS: No, sir. She's incarcerated, Judge.

THE COURT: All right. All right. That's an affidavit of -- was this a defendant or codefendant?

MR. GOURLEY: Yes, Your Honor. This was the mother of Tawanda -- Ronald Mack, another codefendant.

THE COURT: All right. Very good. And she is not present here to testify; is that correct?

MR. BROOKS: That's correct. Just for information purposes, I think she testified. She pled the Fifth at the trial.

MR. GOURLEY: Correct.

THE COURT: All right. Very good. And the position of the State regarding the affidavit?

MR. GOURLEY: Your Honor, I don't think the proper foundation has been laid and it's obviously hearsay.

THE COURT: All right.

MR. GOURLEY: So I think the burden is on Mr. Brooks to bring in Ms. Allen here today to testify to it. I don't have that opportunity to cross-examine her on any kind of affidavit.

THE COURT: All right.

MR. GOURLEY: I don't believe it's properly before the

court.

THE COURT: All right. You can mark it for the record, but the Court will not consider this affidavit in that the person giving the affidavit is not present before the Court so that she could be examined, both on direct and cross-examination and potentially by the Court, and therefore I'll not allow it. It will be part of the -- part of the record.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 12, affidavit of Tawanda Mack Allen, was marked for identification purposes only.)

BY MR. BROOKS:

A: All right. We'll go to the direct appeal.

Q: Okay. I mean -- you're talking about back to my questions?

A: Yes, sir.

Q: Okay. Now, do you recall who your appellate defense lawyer was?

A: Ms. Susan Hackett.

Q: Okay. You raised --

THE COURT: And I'm sorry. Just so that I'm clear, are those -- so we can separate them out, are those all of the issues regarding the trial counsel? Is that correct, Mr. Bowen?

THE APPLICANT: I have a couple more regarding the trial counsel.

THE COURT: All right, sir. So let's deal with all the issues regarding the trial counsel before we get to appellate counsel. Okay?

THE APPLICANT: Yes, sir.

THE COURT: Let's get them all out there and then we'll deal with appellate counsel. All right?

THE APPLICANT: Okay.

BY MR. BROOKS:

A: I have -- I have a letter from Mr. Jenkinson and it's stating that I -- that I passed the polygraph.

Q: Okay. Is this before your trial?

A: Before my trial.

THE COURT: And who is the letter to, please?

THE APPLICANT: To --

MR. BROOKS: The letter is addressed to Mr. Bowen when he was incarcerated in Effingham --

THE COURT: All right, sir.

MR. BROOKS: -- at the Florence County Detention Center.

THE COURT: All right. Go ahead.

MR. GOURLEY: Your Honor, I don't have an objection.

THE COURT: All right. Just have it marked as an exhibit, please.

THE APPLICANT: Well, what it is --

THE COURT: Just a second, sir.

THE APPLICANT: Okay. My apologies.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 13, letter, was admitted into evidence.)

MR. BROOKS: Judge, for your information, this is a letter given from his trial lawyer sent to him stating that he had passed the polygraph test.

THE COURT: All right, sir. Very good. All right. Continue on.

BY MR. BROOKS:

A: All right. What that is is a December 1st, 2009, notice to applicant that applicant passed the polygraph examination of not being involved in this crime. Applicant does state that the fundamental miscarriage of justice will occur if these claims are not considered.

Applicant's trial counsel, Mr. Jenkinson, not bringing forth this strong evidence of polygraph test during trial, this error -- this error did constitute ineffective assistance of counsel.

Trial counsel, Mr. -- trial counsel was ineffective for failing to call alibi witness, Ms. Danae Newton, who would testify -- who would have testified concerning the alibi of applicant and the whereabouts of applicant at the time of the crime. Applicant was at -- was at home in Maryland with his wife and son. That on April , which is the birthday of the cousin, Ms. Danae Newton, applicant called his cousin, Ms. Danae Newton, and sung happy birthday to her with his wife and

son on speakerphone around 8:30 p.m. Ms. Danae Newton would have testified that her birthday is on .

All right. That's it for trial counsel.

Q: That's it for trial counsel? Okay.

THE COURT: All right, sir. All right. Go ahead. You may continue.

BY MR. BROOKS:

Q: Now in regards to appellate counsel, Susan Hackett, you raised several issues in regards to what she brought forth to the appellate courts; is that correct, Kelvin?

A: Yes, sir.

Q: Now, what issues do you feel she should have raised towards the appellate counsel?

A: Well, appellate counsel, Susan Hackett, was ineffective for not briefing and raising the fact that over applicant's objection the State used State's witness, Ms. Deborah Collins, to play a recorded statement of Mr. Mack taken on May 28th, 2009, after Mr. Mack already testified two witnesses before admitting that he made the statement. See trial transcript page 211, line 5 through 25, and then at trial transcript page 247, line 1 through 19.

This error during applicant's trial did violate his 6th and 14th amendment rights. See *State versus Bromax* and *State versus Bottom*.

When witness admits unequivocally that a prior

inconsistent statement has been made by him or her, he has thereby impeached himself and further evidence is unnecessary and inadmissible. See trial transcript page 198, line 3 through 13.

Judge Newman abused his discretion by allowing the recorded statement of Mr. Mack to be played after Mr. Mack had already testified two witnesses earlier admitting that he made the May 28th, 2009, statement impeaching himself. This violates applicant's 6th and 14th amendment rights. Judge Newman states, well -- hold on. Judge Newman states, quote, well, having presided over the trial where Mr. Mack testified in the guilty plea in which he admitted his involvement and also the involvement of Mr. Bowen, the judge -- end quote. The judge used prior knowledge of a different trial to make a ruling in applicant's trial. It's for trial counsel.

Q: Huh?

A: I said I'm bringing this up on trial counsel.

Q: All right. We've already raised that on trial counsel.

A: I mean --

Q: Are you trying to --

A: -- appellate counsel.

Q: Appellate counsel?

A: Yeah, appellate counsel.

Q: So let me ask you this, Kelvin. Mr. Jenkinson had objected to this; is that correct?

A: No. Mr. Jenkinson did not object to it --

Q: Okay.

A: -- at all.

Q: Okay. Okay. He did not object to it at all? Are you sure?

A: No, sir.

Q: Okay. What -- what things did he object to that you felt appellate counsel should have raised to the appellate court? Since we're talking about ineffective assistance of appellate counsel now.

A: Well, he --

Q: Let me ask you this one for me to help you out.

A: No, no, no. My apologies. He did object to them using the tape.

Q: Okay.

A: He did object to that.

Q: But your appellate counsel didn't raise it?

A: But my appellate counsel did not raise it.

Q: And that's one of your things that you're claiming against your appellate counsel; right?

A: Yes, sir.

Q: Okay. All right. What other -- do you recall anything else that he, Mr. Jenkinson, objected to that you felt appellate counsel should have raised?

A: Yes. Ms. Hackett was ineffective for not briefing and

raising the fact that over applicant's objection trial court erred by allowing the jury -- by allowing at the jury's request during deliberation to hear Mr. Mack's recorded statement from -- from May 28th, 2009.

The jury clearly wanted to hear the tape for the truth contained therein. The jury note stated we, the jury, request to hear Exhibit 65, which is the May 28th, 2009, statement of Mr. Mack. We request to hear the section of the tape where Mr. Mack identified Cali.

And this is -- it's not a harmless error because when Judge Newman erred in allowing this inadmissible evidence, he told the jury I want to caution you what this evidence is being used for is for impeachment purposes only as it relates to Mr. Mack and his testimony and not the truth contained therein, but for impeachment purposes only as it relates to the witness' testimony.

Q: Now, let me ask you this. Did Mr. Jenkinson object --

A: No.

Q: -- to Mr. Mack's testimony?

A: No. He objected to them playing the tape.

Q: Okay. But this was after Mr. Mack had --

A: Already testified.

Q: And he pled the Fifth; right?

A: No, no. He testified.

Q: What did he testify to?

A: He testified and said he lied in the May 28th statement that he made and that he lied -- that he was -- that he was told to lie by his mother.

Q: Okay. All right. And your appellate counsel did not brief that issue?

A: No, sir, she didn't.

Q: Okay. The issue about the cell phones coming up -- you recall we've already talked about them?

A: Yes, sir.

Q: Did your appellate counsel raise those issues?

A: No, sir.

Q: Okay. Now, that's one of your claims in regards to ineffective assistance of appellate counsel; correct?

A: Correct, sir.

Q: Okay. Are there any other things about appellate counsel that you want to tell the judge about?

A: Yes, I have another one. I would like to enter -- this comes from my Brady.

Q: What is this?

A: Okay. What that is is Exhibit 82. It's a spiral notebook belonging to Mr. Mack and not me.

Q: Okay.

A: And direct appeal attorney, Ms. Hackett, was ineffective for not raising and briefing the fact that Judge Newman abused his discretion by allowing the State to improperly admit that

right there, Exhibit 82, over applicant's objection, and this exhibit contains inflammatory gang writing by Mr. Mack, which had no relevance to applicant's trial.

Q: Okay.

MR. GOURLEY: Your Honor, I'm going to object to this. He says it's Exhibit Number 82. There's no exhibit sticker on this or anything or identifying marks to show.

THE COURT: All right. Tell me the number again, please.

THE APPLICANT: Exhibit Number 82.

MR. BROOKS: Exhibit Number 82.

THE COURT: 82. All right. And I'm sorry, what is it supposed to be?

MR. BROOKS: Judge, it's --

THE APPLICANT: It's a spiral notebook belonging to Mr. Mack.

THE COURT: A composition notebook?

THE APPLICANT: Yes.

MR. BROOKS: Yes, sir. It is supposed to have some gang --

THE COURT: All right. So --

MR. BROOKS: -- insignia.

THE COURT: Part of the trial transcript reflects Exhibit -- that's been presented to the Court reflects Exhibit 82, the composition notebook. So I'm going to -- I'm going to allow that into evidence over the objection of the State. Have it

marked, please.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 14, a photograph of a composition notebook, was admitted into evidence.)

MR. BROOKS: Thank you, Judge.

THE COURT: Thank you.

MR. BROOKS: All right.

BY MR. BROOKS:

A: Exhibit 82 was only used to prejudice the jury and inference of guilt from bad character. See trial transcript page 402, line 25, and then at trial transcript page 403, line 1 through 3. Solicitor, Ms. Barr, states, quote, because Ronald Mack was a member of a gang and that's just how they dealt with people they had disagreements with, and so certainly that would corroborate the motive as we see it and corroborate his, Mr. Mack's, testimony regarding being in a gang, end quote.

Again, regarding Mr. Mack and not applicant, it's improperly admitted evidence of a general criminal intent by the inference of gang activity when gang activity was not an allegation against applicant nor any evidence that applicant was a gang member and only worked to prejudice applicant's character and inference of guilt from bad character in violation of applicant's 6th and 14th amendment to a fair trial and due process.

Q: Just -- just to be clear, Kelvin --

A: Sir?

Q: Mr. Jenkinson objected to that?

A: Yes, sir.

Q: But Ms. Hackett did not raise that on appeal?

A: Yes, sir. Correct.

Q: Okay. All right. Anything else in regards to Ms. Hackett?

A: That's it, sir.

Q: Okay. We've raised issues on trial counsel. We talked about prosecutorial misconduct. We talked about appellate counsel and ineffective assistance. Is there anything we haven't covered?

A: No. That's it, sir.

Q: All right. I'm going to sit down. Mr. Gourley is going to ask you some questions. Okay?

A: Yes, sir.

THE COURT: All right. Cross-examination?

MR. GOURLEY: Thank you, Judge.

CROSS-EXAMINATION

BY MR. GOURLEY:

Q: All right. Mr. Bowen, just to be clear, your issues with trial counsel, Mr. Jenkinson and Ms. Shuler, were dealing with the identification issue; right?

A: Yes, sir. Well --

Q: Well, just give me a laundry list of what your issues were with Mr. Jenkinson real quick for the record, please? Just very briefly.

THE COURT: Do you have a list, Mr. Attorney General?

MR. GOURLEY: No, Your Honor, I do not, other than that what he's raised in his PCR application.

THE COURT: Well, why don't you just go over that list with him and ask him --

MR. GOURLEY: Yes, sir.

THE COURT: -- if he's raising those or not.

MR. GOURLEY: Yes, sir.

BY MR. GOURLEY:

Q: Mr. Bowen, are you alleging that counsel failed to adequately investigate the facts and circumstances around the death of the victim?

A: Yes, sir.

Q: Okay. What -- what about that are you saying Mr. Jenkinson did not do?

A: Okay. Trial counsel failed to adequately -- adequately investigate the facts and circumstances surrounding the death of the victim. Counsel's failure to conduct such investigation deprived the jury of critical information relevant to the accurate assessment of applicant's guilt or innocence. You can see *Wiggins v. Smith*. The investigation would have showed why the victim was murdered and that

applicant had no motive at all.

Q: Okay. So that you -- you're saying that Mr. Jenkinson should have looked into your motive or lack of motive in killing the victim in this case?

A: No. He should have looked into why the victim got killed in the first place.

Q: Okay. So Mr. Jenkinson didn't look into the motive behind the killing of the victim?

A: Correct.

Q: Okay. Now, you also alleged trial counsel failed to object on all possible grounds to inflammatory and irrelevant evidence presented by the solicitor; correct?

A: Correct.

Q: Are you still going forward on that claim?

A: Correct.

Q: Okay. And what did not -- what did Mr. Jenkinson fail to object to?

A: All right. Trial counsel was ineffective for failing to object to solicitor, Ms. Barr, vouching for the credibility of State's witness, Mr. McClary, in her argument. See trial transcript page 681, line 17 through 25, and then that trial transcript page 685, line 1 through 5, for failing to object to comments which constituted an error of law and are inherently prejudiced. See *Matthew v. State*.

Prejudice -- prejudice occurred because the State's

witness, Mr. McClary, was the State's key witness and his credibility was very crucial to the State's case. See *Gilchrist v. State*.

Q: Okay. So you said Mr. Jenkinson should have objected to the solicitor's comments during closing argument regarding the credibility of Mr. McClary?

A: Correct.

Q: Okay. Now, you've also alleged newly discovered evidence. What's your newly discovered evidence claim, Mr. Bowen?

A: That I passed the polygraph test.

Q: Okay.

A: And it should have been brought forth.

Q: Okay. And that Mr. Jenkinson should have brought forth the polygraph evidence at the trial?

A: Correct.

Q: Okay. And then we've talked about the prosecutorial misconduct, the cell phone issue; correct?

A: Correct.

Q: Okay. And you're saying that Ms. Barr had the cell phone?

A: I'm saying this. I was arrested with the phone and --

Q: And when we say the phone, we're talking about the Samsung phone and not the -- not the T-Mobile Motorola?

A: No. I was arrested with the T-Mobile Samsung phone and I

was arrested with the Motorola Samsung phone.

Q: Okay.

Q: And then all these items made it from Maryland to South Carolina, and the Samsung phone ended up missing.

Q: Okay. And you're saying Ms. Barr had possessed that Samsung phone and did not turn it over; right?

A: The State took possession of it.

Q: Okay. And then you're saying -- we've covered your issues with your ineffective assistance of counsel or appellate counsel claims; correct? You don't have a copy of the cell phone or you don't possess the cell phone, the Samsung phone; correct?

A: No, sir.

Q: You haven't been able to locate it?

A: No, sir.

Q: Okay. And you don't have copies of the cell phone records of that Samsung phone, do you?

A: It was a prepaid phone, sir.

Q: A prepaid phone? So they don't have records of that?

A: I don't know, sir.

Q: Okay. And you're alleging that that Samsung phone would have corroborated your alibi?

A: The Samsung -- if I were to have possession of the Samsung phone right now, it would prove that I was in Maryland at the time these crimes was committed and I wasn't in South

Carolina.

Q: Well, we don't know who possessed the phone; correct? Anybody could have had that phone, not just you?

A: I was in possession of it though.

Q: Okay.

A: It was my phone.

Q: And you presented the alibi defense at your trial?

A: Yes, sir.

Q: Okay. And you also testified on your behalf?

A: No, sir.

Q: Kelvin? Your son did. I'm sorry.

A: Yeah.

Q: Correct?

A: Yeah. My son testified and my wife testified.

Q: All right. Okay. And your son testified and your wife testified that you -- that y'all sung happy birthday to your cousin; right?

A: Yes, sir.

Q: Okay. So that was all elicited at trial?

THE COURT: It came out at the trial; correct?

THE APPLICANT: Sir?

THE COURT: It came out at trial; right?

THE APPLICANT: Yes, sir.

THE COURT: All right.

BY MR. GOURLEY:

Q: Okay. Mr. Bowen, how many times did you meet with Mr. Jenkinson prior to trial?

A: Numerous of times.

Q: Numerous times? And y'all obviously went over discovery and everything like that?

A: Yes, sir.

Q: And he gave you a copy of that?

A: Yes, sir.

Q: Okay. And y'all's defense at trial was the alibi; so y'all had discussions about that?

A: Yes, sir.

Q: Okay. And did you give him a list of potential witnesses to look into on your behalf?

A: Yes, sir.

Q: And who were they?

A: My wife and my son.

Q: Your wife and your son? Okay. And I think one of your issues was that Mr. Jenkinson did not call your cousin on your behalf; correct?

A: Yes, sir.

Q: Did you tell him about your cousin?

A: Yes, sir.

Q: Did you request him to call your cousin?

A: I can't really remember.

Q: Okay. And where does your cousin live?

A: Texas.

Q: Texas?

A: Yes, sir.

Q: Okay. And he's not here today, is he?

A: No, sir. She.

Q: She? I apologize. She's not here today, is she?

A: No, sir.

Q: Okay.

MR. GOURLEY: I beg the Court's indulgence, Your Honor.

THE COURT: Yes, sir.

BY MR. GOURLEY:

Q: Now, the evidence against you at trial was essentially Mr. McClary's statement against you; right? Identifying you as Cali and a codefendant in this crime; correct?

A: Yes, sir.

Q: Okay. And the State also alleged that you were carrying on an affair with Ms. Tawanda Allen; correct?

A: Yes, sir.

Q: And you were arrested with Mr. Mack at Ms. Allen's car; right?

A: Yes, sir.

Q: In Maryland?

A: Yes, sir.

Q: Okay. And the police searched Ms. Allen's apartment and found various male garments; correct?

A: Yes, sir.

Q: Which the State alleged were yours?

A: Yes, sir.

Q: Okay. And, of course, your trial counsel challenged all that and said that this wasn't yours, there was no proof, so on and so forth; right? At trial? Do you recall that?

A: Yes, sir.

Q: Okay. And they also -- the State also alleged that you went by the nickname Cali; correct?

A: Yeah. They alleged that.

Q: And your defense counsel challenged that nickname; right? At trial?

A: Yes, sir.

Q: Okay. And the term Cali kind of ties into all this because Mr. McClary testified that he saw on Ronald Mack's cell phone a text from Cali setting up this whole killing; right?

A: Correct.

Q: Okay. And you are from California; right?

A: Yes, sir. Can I -- this is a private investigator report.

Q: Okay.

A: And in this report -- I would like to introduce this.

Q: Well, we can do that through your counsel on redirect.

A: All right.

Q: All right.

MR. GOURLEY: I beg the Court's indulgence, Your Honor.

THE COURT: Yes, sir.

BY MR. GOURLEY:

Q: And, Mr. Mack -- I'm sorry. Excuse me. Mr. Bowen, just to be clear, y'all -- y'all went through this cell phone issue ad nauseam; right? You had a motion hearing on it before trial?

A: Yes, sir.

Q: Trial counsel brought it up during trial; correct?

A: Yes, sir.

Q: And the judge ruled the way he ruled against you; right?

A: Yes, sir.

Q: Okay. So you're not -- is there anything else that you feel your counsel could have done to obtain the cell phone?

A: The -- the State lost the cell phone.

Q: Okay. Okay. Fair enough.

MR. GOURLEY: Your Honor, I don't have any other questions. Thank you, Mr. Bowen.

THE COURT: Very good. Redirect?

MR. BROOKS: Okay. No questions.

THE COURT: All right. Let me -- let me ask you a question, Mr. Bowen. All right. In the exhibits that you have --

THE APPLICANT: Yes, sir.

THE COURT: And you mentioned the motion and the transcripts that you introduced. Show me or tell me exactly where it is that says that the State of South Carolina received the Samsung phone, not the other phone.

THE APPLICANT: Well --

THE COURT: The Samsung phone.

THE APPLICANT: Well --

THE COURT: Where is that?

THE APPLICANT: Well, Your Honor, all I can say is this. All I have is when the document that shows that the phone -- that both phones -- I was arrested with both phones.

THE COURT: Yes, sir.

THE APPLICANT: And then when I --

THE COURT: Got that.

THE APPLICANT: -- got down here to Williamsburg County, they only had one phone and two phone cases.

THE COURT: Yes, sir.

THE APPLICANT: So everything else made it down. Everything on this list I received except my Samsung phone.

THE COURT: All right, sir. So you understand my question? Do you have a document that says the State of South Carolina, whoever it was, the sheriff or the Solicitor's Office or whomever it was, received the Samsung phone from Maryland?

THE APPLICANT: No, sir.

THE COURT: That South Carolina ever had it?

THE APPLICANT: No, sir.

THE COURT: All right, sir. Thank you. Any questions on that, Mr. Brooks?

MR. BROOKS: No, sir, Judge. I understand what you're saying.

THE COURT: All right. Very good. Anything, Solicitor?

MR. GOURLEY: No, Your Honor.

THE COURT: All right, sir.

THE APPLICANT: Mr. Brooks, I --

THE COURT: Shh. Stop. Stop. Why don't you go over there and talk to him for just one second, please?

(WHEREUPON, there was a pause in the proceedings.)

MR. BROOKS: I beg the Court's indulgence for just a second, Your Honor.

THE COURT: Yes, sir. Absolutely.

(WHEREUPON, there was a pause in the proceedings.)

MR. BROOKS: Judge, just to let you know --

THE COURT: Yes, sir.

MR. BROOKS: I've talked with Mr. Gourley. We had -- we had gotten permission to hire Glen Harrell, a private investigator, in the case.

THE COURT: All right, sir.

MR. BROOKS: And my client wants to -- wants me to put in his report, a copy of the report that Mr. Harrell gave me,

gave to the AG, and I gave it to my client.

THE COURT: All right.

MR. BROOKS: And it does contain basically an itemized statement of things that Mr. Harrell did, who he spoke to. In addition, it has an affidavit from Ronald Mack -- you've heard the name Ronald Mack throughout this -- where basically, Ronald Mack says that Mr. Bowen did not do it.

THE COURT: All right, sir. All right. I'm assuming the State has an objection?

MR. GOURLEY: Yes, Your Honor. Just on authentication ground and then obviously the affidavit is not proper either. Mr. Mack needs to be here to testify to that.

THE COURT: All right, sir. Go ahead and mark it. As far as -- let me look at it real quick. Just -- all right. Go ahead and mark it for -- we'll allow it to be part of the record, but I'm not going to consider it without the testimony of the -- of the private investigator or -- and certainly cannot consider the affidavit without the testimony of Mr. Mack.

MR. BROOKS: All right.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 15, investigative report, was marked for identification purposes only.)

THE COURT: Thank you. All right. You may step down, sir.

MR. BROOKS: Your Honor, we'd call Mr. Jenkinson.

THE COURT: All right, sir. And please come around to be sworn.

THE CLERK: Raise your right hand, please. State your name.

THE WITNESS: Kenneth Jenkinson.

THE CLERK: Do you solemnly swear or affirm your testimony to the Court shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: Thank you, sir. Have a seat up there, please.

THE COURT: Gentleman, could y'all come up and talk to me for just one second?

MR. GOURLEY: Yes, Your Honor.

(WHEREUPON, a bench conference was held off the record.)

THE CLERK: State your full name and spell your last name for the record, please.

THE WITNESS: William E. Jenkinson III, J-e-n-k-i-n-s-o-n, Kingstree, South Carolina.

WILLIAM E. JENKINSON III, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q: How are you doing this morning -- well, this afternoon?

A: Fine. Just need to go to my office before too long.

Q: I gotcha. You represented Mr. Bowen in this case?

A: I did.

Q: Okay. And I'm sure you -- we've talked about it. You've got your file. You pretty much remember a great deal about this case. Is that fair to say?

A: I hope so.

Q: Okay.

A: It's been four years and a Bankers Box about three and a half to four feet long of material. I can't say that I have it all in my head, but I have a grasp of it.

Q: And I had to get that Bankers Box from you. So I do appreciate that. Now, Mr. Jenkinson, what -- can you summarize what the State's evidence was against Mr. Bowen briefly? Just in summary, what was the -- what in essence was the --

A: Are you talking about the evidence and the testimony? Or just evidence?

Q: Evidence and testimony. I'm trying to -- just for purposes of the Court, what was the things that the State had against him which obviously --

A: They had the testimony of one of the codefendants. The other codefendant did not testify nor any other witness testify against him. They had a photo lineup with one photo in it, which was problematic, as the record displays.

Q: Is that the photo we were talking about?

A: Correct.

Q: Okay.

A: They had some circumstantial evidence about him living in an apartment or not living in an apartment in Maryland. That apartment -- they found a shotgun and maybe another weapon in that apartment which they claimed he lived in. They weren't even looking for him at the time, but that was about the extent of the evidence as I recall off the top of my head.

Q: Okay. Now, you've heard us talk about the cell phone or cell phones?

A: Correct.

Q: What do you recall from that, Mr. Jenkinson?

A: Which cell phone? Because there were two cell phones instances.

Q: And then another one that came in from --

A: Right.

Q: -- Lake City that you told me about?

A: Right. But the primary one is the Samsung phone.

Q: Right.

A: The Samsung phone, as I understood it, was in in evidence bag or in a bag with a GPS, another mobile phone, and some things that they took out of a Kia Sportage. I know some of the things that came out of that Sportage got to Kingstree at the Sheriff's Department. For whatever reason, we found out

much later that the Samsung phone didn't make it.

I cannot recall whether we assumed it -- I'd even have to look at the evidence bag that it was in to see if it was recorded as being delivered to Kingstree or not. You know, suffice to say, we don't have a written document saying it was struck, but it's ironic that the other items did get to Kingstree. We don't have that evidence bag here to say whether it was in there or not or what happened to it. I just have no --

Q: Now --

A: -- information on it.

Q: If you had the Samsung phone or you had an opportunity to examine the Samsung phone, is it safe to say that you would have tried to have an expert look at it to see when these alleged text messages would have occurred and where the phone was and location and all that?

A: Absolutely. We brought that out on cross-examination of the officer and he admitted all of those things, the technology, the pinging coming south, if, in fact, that would have happened, you know, the location of the phone, the text messages that were allegedly on his phone. Those were all items that we thought were critical to the defense of the case in showing at least that phone -- you know, it's easy to say, well, somebody else could've been walking around with the phone, but phones are almost like a part of your body and I

mean that makes a mighty strong argument when somebody's phone is in Maryland and never leaves Maryland --

Q: And as a matter --

A: -- in an alibi case.

Q: And as a matter of fact, these alleged text messages that were alleged to have gone down, the State's case was that Mr. Bowen was texting him while driving from Maryland to South Carolina?

A: Correct.

Q: So they made the -- that was a critical component of their case?

A: Absolutely.

Q: So -- but there would -- they never could show a phone that had these text messages; is that correct?

A: We never found the phone, no.

Q: Now, in the trial, something came out about a phone from Lake City. What was that about?

A: An officer from Lake City showed up with a phone that belonged to Ronald Mack, and we objected on the basis that we'd never seen that phone. The solicitor, Ms. Barr, said, oh, yes, I provided it under Rule 5, and we said where? And she said, oh, it was in this item.

Now, remember, there were dozens of items. Physical evidence, photo. That was a description of an iPhone, something that was a very critical piece of evidence that they

were going to -- you know, we found it very misleading and we were stunned to even know that's what they were talking about because we had gone and looked -- physically looked at every piece of evidence they had.

Q: As a matter of fact, Mr. Jenkinson, if this was Ronald Mack's phone, perhaps if you'd have had it prior to trial and had an opportunity to examine it, you could have probably examined it to see where those texts would have allegedly gone?

A: Absolutely.

Q: And whether those texts were going to Maryland or whether or not they were going to Virginia and North Carolina and someplace in South Carolina?

A: Correct.

Q: Okay. And again, the Samsung phone never materialized?

A: No.

Q: But everything else that was taken with the Samsung phone did materialize?

A: I don't recall about the GPS because we raised that issue during the trial and I don't know whether that GPS -- whether that GPS disappeared too because that would have been a very telling piece because everybody uses a GPS that doesn't know their way to South Carolina is going to get a GPS to find somebody.

Q: And that didn't come either?

A: I don't -- we never saw it.

Q: Okay. All right. And obviously, you raised those issues in the trial?

A: Right.

Q: In regards to the identification by Mr. McClary of Cali, you raised that; is that correct?

A: Correct.

Q: And as a matter of fact, there were times where -- or instances where Mr. McClary's statements were inconsistent?

A: Correct.

Q: Okay. And those -- those are statements that he allegedly gave to law enforcement?

A: Correct.

Q: Was there also an occasion where you questioned him at a preliminary hearing or at a prior hearing?

A: I didn't -- I remember the preliminary hearing, but I didn't look at that transcript.

Q: Okay.

A: That's not a part of the record that was provided to me.

Q: Okay.

A: If that -- if that record shows I did, I did.

Q: Okay. All right. And Tawanda Mack Allen, codefendant, she testified; is that correct? She testified, but pled the Fifth?

A: I think so. Yes.

Q: Okay. Ronald testified and said Mr. Bowen didn't do it, that he had lied previously; is that correct?

A: Correct.

Q: So the only person that said that Mr. Bowen was involved was Mr. McClary, who had given inconsistent statements?

A: Correct.

Q: Okay.

MR. BROOKS: I beg the Court's indulgence for just a second, Your Honor.

THE COURT: Yes, sir.

BY MR. BROOKS:

Q: Now, let me ask you this. All of the things that -- do you recall what this is, Mr. Jenkinson?

A: Exhibit Number 10 is a transcript of a statement by Antonio McClary given to Investigator Lail on March -- May 13th that we used to examine him and find inconsistencies with.

Q: Okay. And you obtained that through the Rule 5?

A: I did.

Q: And I'm going to hand you another one. I believe that's Number 11.

A: Yeah.

Q: Was that another statement acquired through discovery of Mr. McClary?

A: Yeah. There were two separate statements at two times that evening.

Q: All right. You -- you acquired them through discovery and sent them to Mr. Bowen?

A: That's correct.

Q: Okay. And I'm going to hand you what is Number 9. Is that something you acquired through discovery as well?

A: That is the -- yes, I did.

Q: The Solicitor's Office gave you a picture purporting that to be Mr. Bowen? Is that what Mr. McClary used to ID Mr. Bowen?

A: As I recall, that was the same photo.

Q: Okay.

THE COURT: Are you moving those in the evidence at this time?

MR. BROOKS: Yes, sir, Judge.

THE COURT: All right. Any objection now?

MR. GOURLEY: No, Your Honor.

THE COURT: All right. They're all in evidence. That is 9, 10, and 11 are now in evidence.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 9, photograph, Exhibit Number 10, transcript, and Exhibit Number 11, statement, were all admitted into evidence.)

MR. BROOKS: I beg the Court's indulgence for just one second?

THE COURT: Yes, sir.

BY MR. BROOKS:

Q: Mr. Jenkinson, at the preliminary hearing and the hearing in regards to the identification and the hearings regarding the cell phone, I mean obviously you were representing him at the time; is that correct?

A: Right.

Q: Okay.

MR. BROOKS: Your Honor, I think I don't have any other questions.

THE COURT: All right. Very good. All right. Cross-examination?

MR. GOURLEY: Thank you, Your Honor. May it please the Court?

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. GOURLEY:

Q: Mr. Jenkinson, how long have you been practicing law?

A: Forty-four years.

Q: All right. And were you retained in this case?

A: I was.

Q: Okay. And how many times would you estimate that you met with Mr. Bowen prior to his trial?

A: How many times have I --

Q: Met with Mr. Bowen prior to his trial roughly?

A: Met with --

Q: The defendant --

A: Oh.

Q: -- prior to trial.

A: I don't recall. Many times.

Q: Okay. And during those meetings, did y'all have the opportunity to review the material and evidence against him?

A: Yes, I did. Except the Samsung phone.

Q: All right.

A: And the GPS.

Q: Well --

A: And the phone from Lake City that popped up.

Q: Yes, sir. And you made the appropriate objections to those issues during the course of trial?

A: Well, we -- better than that, I thought we asked for it under Brady and --

Q: Yes, sir.

A: -- Rule 5 --

Q: Yes, sir.

A: -- and we didn't get it. At least in my opinion, we didn't get it.

Q: Okay.

A: Not in a good faith disclosure or the lack of it.

Q: Okay.

A: And --

Q: And at the appropriate time at trial, you objected to the lack of the material being turned over?

A: I know I did in the first instance with the Samsung and the GPS that we raised the Brady issue. I just don't -- I'd have to go back and look at the record. Whatever the record says as to the second phone. I know we had an in-chambers objection. I know I objected to it, yes.

Q: Okay. Mr. Jenkinson, Mr. Bowen has alleged that you failed to introduce a polygraph. In your opinion, are polygraphs admissible at trial?

A: Not as my understanding of the law.

Q: Okay. Regarding -- Mr. Bowen has also alleged that you failed to object at certain points in time during the closing argument to Ms. Barr's vouching for the credibility. What's your trial strategy in dealing with closing arguments?

A: I can't tell you a trial strategy. I can just tell you I went back and looked at the record. I didn't recall it when I -- when I saw it.

Q: Okay.

A: And I went back and I read the record. I still couldn't quite grasp how that was bolstering.

Q: Okay.

A: And if that was bolstering, I was wrong.

Q: Okay.

A: But I didn't have any strategy. I just didn't at that time nor am I even certain now that that would be considered bolstering. If it is, it is. I was wrong.

Q: Certainly, you were --

A: In forty -- in forty-four years of doing this, I've been wrong a couple of times.

Q: Yes, sir. Certainly, you were paying attention during the closing arguments?

A: Right.

Q: All right. And if you felt there was anything that amounted to bolstering at that time, you would have objected to that?

A: If I thought about it, yes.

Q: Okay. You made mention of a GPS found in the Kia Sportage. Do you recall during trial, on specifically page 418, a photograph of the GPS was introduced at the trial? Do you recall that?

A: Yes.

Q: And the photograph of the GPS showed a Lake City address; correct?

A: I don't remember that, because again, we -- you know, you've got a photo, but we objected to it.

Q: Yes, sir.

A: We wanted the GPS.

Q: Yes, sir.

A: We wanted to now, you know, when did -- when did that Lake City address get punched in. Right before the photograph? When? I mean you can -- you can take all kind of

latitude with it. Unless you have an opportunity to examine it and photograph it, it ain't worth nothing in my opinion.

Q: Yes, sir.

A: As a matter of fact, it was just prejudicial to come in with a photograph. If you've got a photograph of it, it must have gotten to South Carolina for them to take a picture of it.

Q: Certainly.

A: And we never got it.

Q: Okay. And, of course, you raised your objections at the appropriate time during trial?

A: I raised it.

Q: Okay. Regarding the -- Mr. Bowen has also alleged that you failed to call his cousin. The name escapes me at the time. Nae or something?

A: The name escapes me too.

Q: Okay. What kind of investigation did you do in regards to the alibi witnesses? Do you recall?

A: Obviously, when we recognized initially alibi was our witness, I thought we explored every possible piece of alibi evidence or testimony or witnesses. I just -- you know, if that name was given to me, I just don't recall it.

Q: Okay. It was Danae Newton is who Mr. Bowen alleged you did not look into.

A: I just don't recall it.

Q: Okay.

A: Could have been. I just don't recall it.

Q: All right. Fair enough.

MR. GOURLEY: I beg the Court's indulgence, Your Honor.

THE COURT: Yes, sir.

MR. GOURLEY: Your Honor, I don't have any other questions. Thank you. Thank you, Mr. Jenkinson.

THE COURT: Any redirect?

MR. BROOKS: No, sir.

THE COURT: All right. Just one question, Mr. Jenkinson.

THE WITNESS: Yes, sir.

THE COURT: In your investigation of this matter, did you turn up any kind of written evidence that showed that the State of South Carolina, through any agent or agency, ever received the Samsung phone from Maryland?

THE WITNESS: I can't say one way or the other because I have no recollection of the evidence bag, an existence of it. I know we got -- we got that T-Mobile bag and I recall it being in an evidence bag.

THE COURT: All right.

THE WITNESS: Now, again, if -- if there was no Samsung phone and there was no bag, then we didn't have any, but I just -- I don't know whether it would have been in the same bag with the GPS or in the same bag with some other things. So I just don't know.

THE COURT: All right. Well, suffice it to say, in looking through the transcript of the record and the motions you made regarding that Samsung phone, if there had been any kind of written evidence that South Carolina received it, you'd have brought that up to Judge Newman; right? You'd have presented that to him? Say here, look. The sheriff got that phone and now it's gone. You'd have told Judge Newman that; right?

THE WITNESS: I think that would be a good idea. I can't recall one way or the other. I'm not -- you know.

THE COURT: All right. So you're just relying on what's in the transcript of the record?

THE WITNESS: Yes, sir.

THE COURT: All right. Very good. All right. Any questions, Mr. Brooks?

MR. BROOKS: No, sir.

MR. GOURLEY: No, Your Honor.

THE COURT: All right. Very good. Do you wish the witness to be excused?

MR. GOURLEY: Yes, sir.

MR. BROOKS: Yes, sir.

THE COURT: All right. You are excused. You can go back to your regular duties, sir.

THE WITNESS: Thank you, sir.

THE COURT: Thank you. All right. Mr. Brooks, further

witnesses on behalf of the applicant?

MR. BROOKS: Yes, sir. We would like to call Ms. Barr.

THE COURT: All right, sir. Please come around, please.

THE CLERK: Place you left hand on the Bible and raise your right hand. State your name, please.

THE WITNESS: Kimberly Barr.

THE CLERK: Do you solemnly swear or affirm your testimony to the Court shall be the truth, the whole truth, and nothing but the truth, so help you God?

THE WITNESS: I do.

THE CLERK: All right. You can have a seat up here, please.

THE COURT: In my assistance, ma'am, when you sat -- sit down, could you spell your first name for me, please?

THE WITNESS: Certainly, Your Honor. Kimberly. K-i-m-b-e-r-l-y.

THE COURT: Thank you. Go ahead, Mr. Brooks.

KIMBERLY BARR, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROOKS:

Q: Ms. Barr?

A: Yes, sir.

Q: How are you doing?

A: I'm great. How are you?

Q: You were the solicitor in this case; is that correct?

A: I am.

Q: Okay. And --

MR. BROOKS: Your Honor, can I have Applicant's Number 1?

THE COURT: Certainly. There's all of them right there. Why don't I just put them all right here?

MR. BROOKS: Yes, sir.

THE COURT: If you need them, you've got them.

MR. BROOKS: All right.

BY MR. BROOKS:

Q: Now, Ms. Barr, I'm going to hand you what is identified as Plaintiff's/Applicant's Number 1.

A: Okay.

Q: I believe this is an inventory that was taken from the county in Maryland when Mr. Bowen was apprehended; is that correct?

A: Yes.

Q: Okay. And I believe that made its way through Rule 5/ Brady discovery; is that correct?

A: I did turn over this particular document to defense counsel.

Q: Okay. In that document, it talks about --- it says that they -- when they apprehended him, they took two cell phones off of his person. I believe it's midway down on that page. A T-Mobile Motorola and a Samsung?

A: It says that the T-Mobile Samsung phone, a black leather wallet, a Nextar GPS unit, and a grey Motorola cell phone were inventoried from the vehicle.

Q: Okay.

A: It doesn't say that it was turned over to Anne Arundel County Police Department.

Q: All right.

A: It says that it was inventoried from the vehicle.

Q: Okay. And off that list, do you recall what the Solicitor's Office was given?

A: I remember receiving a -- well, I never received the Motorola cell phone. Mr. Jenkinson received that from the Williamsburg County Detention Center at the request of the defendant. I don't ever remember receiving a wallet. I don't know whether or not Mr. Jenkinson received the wallet as well. As a matter of fact, I don't remember as a part of the Sheriff's Department case receiving any of the documents that are -- that are listed on the inventory.

Q: Okay.

A: The GPS unit was never received, as far as my knowledge, by the Sheriff's Department. There was a photograph taken of the GPS inside the Kia Sportage vehicle that Mr. Bowen and Mr. Mack were seen in shortly before their arrest, but I don't believe the actual physical unit was ever taken into custody.

Q: Okay. The actual GPS unit?

A: Correct.

Q: Okay. Along with the Samsung phone, you don't believe that was taken into custody as well?

A: I don't have anything from the Williamsburg County Sheriff's Office that says a Samsung telephone was taken into custody by them. There is an evidence sheet of items that Investigator Pamela Lail had received from the Anne Arundel County Police Department in this case. A Samsung cell phone was not a part of that document -- not a part of those exhibits or items that were taken from the Maryland Police Department.

Q: But the Motorola was?

A: I believe it just -- I've -- I've got the document near my purse. It -- it says a cell phone. I'm not sure if it says Motorola or not.

Q: Okay.

THE COURT: You want to retrieve that?

THE WITNESS: If I can, Your Honor.

THE COURT: Yes, ma'am.

THE WITNESS: Thank you.

THE COURT: Certainly.

(WHEREUPON, there was a pause in the proceedings.)

BY MR. BROOKS:

A: I am referring to a document that is dated 6/4/09. It's a property receipt form. It's identified as property of

Kelvin Michael Bowen Jr. received from Anne Arundel County PD, Case Number 0902843. It identifies probably about ten separate items that were received from the Anne Arundel County Police Department, including a black-in-color shoes, a stocking cap, a black-in-color belt, a silver-in-color watch, a hairbrush, a lighter, Chapstick, Golden State advantage card, cell phone carrier, and in parentheses it has empty, and cell phone carrier with, in parentheses, one -- the number one -- cell phone. It is identified as being received from investigator PJ Lail. That's Pamela Jean Lail.

Q: Can I see that?

A: Yes, sir. I had the Williamsburg County Sheriff's Office to fax me that this morning. My file in the case is rather voluminous and so I asked them to fax that to my office this morning.

THE COURT: You want to make a copy of that?

MR. BROOKS: Yes.

THE COURT: And introduce it into evidence?

MR. BROOKS: Yes, sir.

THE COURT: All right. Very good. Is there somehow we can make a copy of that? Or we can -- we can mark that one and then substitute a copy, if that's -- if that's okay.

MR. BROOKS: Yes, Judge.

THE COURT: Show it -- show it to the attorney general.

MR. GOURLEY: No objection, Your Honor.

THE COURT: All right. So let's mark that and I'll allow it into -- into evidence as the Applicant's next, whatever it is, and we can substitute a copy so she can get it back.

MR. BROOKS: Number 16, judge.

THE COURT: 16. All right. Great.

MR. BROOKS: Okay.

(WHEREUPON, Plaintiff/Applicant's Exhibit Number 16, inventory, was admitted into evidence.)

BY MR. BROOKS:

Q: Ms. Barr, that -- that would have come through the Sheriff's Department and not the jail or are they one and the same?

A: Essentially one and the same.

Q: Okay. So --

A: The Sheriff's Office is housed where the jail is.

Q: Okay.

A: Yes, sir.

Q: So it's not a situation where the jail is sending out one thing that the Sheriff's Office wouldn't know about and vice versa?

A: Yes.

Q: It would all come through them? If it comes to the Solicitor's Office for you, it all comes through them together? Is that a better way to describe it?

A: Correct. When I request information from the Sheriff's

Office, whether it's from the jail, for example inmate records, I would request it through the Sheriff's Office. The Sheriff's Office runs the detention center.

Q: Okay. Did you actually inquire as to Number 1, the items inventory from Maryland and the Sheriff's Department? Did you ever inquire about, you know, why -- for instance, why on this list that you handed us up here that's now become Number 16, it has only these list of items and it doesn't say the GPS or the Samsung or the Motorola? But what was inventoried during the detention of Mr. Bowen, it does have that inventory. Did you ever inquire of anybody in the Sheriff's Department as to why this is, where is this information or where are these items, anything like that?

A: I didn't at the time. I didn't actually think about the relevance of it until the issue came up about the cell phone being turned over to Mr. Jenkinson, and that's when it piqued my interest. It wasn't important to me at the time because of, obviously, the GPS unit being listed as a part of the inventory of the vehicle.

I suppose my thinking at the time was those are just items that were being inventoried from the vehicle in the event that the owner of the vehicle alleged that something was taken out of the vehicle that was not taken. I looked at it more as an inventory. I did not become interested in it until the issue of the cell phone came into play with it being

checked out from the jail.

Q: Okay. Okay.

MR. BROOKS: I beg the Court's indulgence, Your Honor.

THE COURT: Yes, sir.

BY MR. BROOKS:

Q: Ms. Barr?

A: Yes.

Q: You do -- you do acknowledge that everything else was sent to Williamsburg County, but those two things are the only things that's on the sheet from Maryland -- and I'll give it to you again --

A: I was going to say may I see it again, please?

Q: -- so you can see it. This is the one from Maryland.

A: Yes.

Q: And this is the one that you acquired from the Sheriff's Department. You do acknowledge that between those lists the only two things missing is the GPS and the Samsung? Because even though it may not be on that list from the Sheriff's Department, you did have access to the Motorola phone? That was obviously found?

A: I never had access to the Motorola phone.

Q: Okay. But that actually -- that actually did materialize?

A: Supposedly, yes.

Q: Okay.

A: I -- I'm sorry.

Q: And also you also had access to a phone purported to be Ronald Mack's phone?

A: Correct.

Q: Okay. And --

Q: In an unrelated case.

Q: In a nonrelated case?

A: Yes.

Q: But it was used in this case?

A: Correct.

Q: Okay. And was that phone ever examined as far as the alleged text messages between Mr. Mack and Mr. Bowen?

A: It was not. And it came up incidentally during the trial. We had an investigator from the Lake City Police Department to testify regarding something unrelated to Mr. Mack, and it was during the course of the trial itself where he mentioned that on a previous traffic stop involving Ronald Mack that he had seized a cell phone from him.

And so I was not aware that that cell phone was at an issue until literally the middle of trial. And so we examined the cell phone, Mr. Jenkinson and I, during a break and it didn't have -- it didn't contain any evidentiary value as related to the murder case involving Kenyon Dorsey.

Q: Okay. So was it ever determined whether or not this phone received text messages or exchanged text messages or it

didn't?

A: My recollection is that it did not.

Q: Okay. So was there ever a phone that Mr. Mack purportedly had at the time of these messages at the time of the incident? Was that ever found?

A: To conclusively determine that he used?

Q: Right.

A: No.

Q: Okay. Okay.

A: With regard to these two items, some of the items it lists that are listed on the property form from the Williamsburg County Sheriff's Department indicating what they would have received from the Anne Arundel County, some of the items may have been seized from the apartment as opposed to the vehicle. I think maybe that accounts for the difference in the two items.

Q: Okay.

A: And the two forms.

Q: Okay.

MR. BROOKS: I beg the Court's indulgence.

THE COURT: Yes, sir.

MR. BROOKS: No other questions, Judge.

THE COURT: All right. Cross-examination?

MR. GOURLEY: Yes, Your Honor. Very briefly.

CROSS-EXAMINATION

BY MR. GOURLEY:

Q: Ms. Barr, in regards to Ronald Mack's iPhone that you briefly testified to, you stated that you had the opportunity with Mr. -- Mr. Jenkinson to examine that phone?

A: Yes.

Q: Okay.

MR. GOURLEY: And specifically, it came up through Joseph Cooper starting on page 459 of the transcript, Your Honor.

BY MR. GOURLEY:

Q: Joseph Cooper testified that there were four text messages on this iPhone dated from April 7th, 2009, but there was no information in regards to this murder; right?

A: That's my understanding. That's my recollection of the testimony.

Q: And as a matter of fact, the info contained on the iPhone only had names of Damon Barr, Kenyon, the victim in this case, and then Antonio McClary. It had no information linking Mr. Bowen as far as contacts?

A: That's my recollection of the testimony, yes.

Q: Okay. And then in regards to the Samsung cell phone -- or the Motorola cell phone, how did that materialize during the course of the trial?

A: My recollection is that I requested for the Sheriff's Department to give me an inmate list of who had been visiting any of the codefendants while they were being detained pending

trial.

Q: Okay.

A: And part of the information that I received back was a signed letter by Mr. Bowen asking that his Samsung cell phone be released to his lawyer. I don't know that initially when Mr. Bowen was arrested that it was known by law enforcement the extent of the text messages because those arrests were just made based upon the statement of Mr. McClary.

And when I became aware after having reviewed all of the statements from Ms. Tawanda Allen, from Ronald Mack, and from Mr. McClary, my curiosity was piqued as it relates to the phone, specifically that a defendant had asked that the phone be released to his lawyer. And that's how I started requesting that that phone be turned over.

Q: Okay. And in regards to the items found in the Kia Sportage, the police -- correct me if I'm wrong -- were there to search Ms. Tawanda Allen's apartment; correct?

A: They did.

Q: Okay. And when they arrived at the apartment, they stumbled upon Mr. Bowen and Mr. Mack getting into the Kia Sportage at the time; correct?

A: Correct.

Q: And the search warrant that they had for the apartment did not contain the items found in the car; correct?

A: Correct. It did not contain a request for cell phones.

It just contained a request for a shotgun which was used during the murder and a 9mm firearm which was also used in the murder. The shotgun that was used during the murder was found under a mattress in the bedroom in which Mr. Mack and -- Ms. Mack and Mr. Bowen slept.

Q: Okay. And there was obviously identifying information that linked Mr. Bowen to that apartment; right?

A: Certainly. He had mail. Mail was introduced into evidence having that address there.

Q: Okay. And then again as you stated earlier, the items listed in the Kia Sportage were more so just a pre-inventory list; correct?

A: That's my understanding, yes.

Q: Okay. And again, you never possessed those items, the Samsung cell phone or the GPS, at all?

A: Correct. Anne Arundel County did not request -- as far as I understood, they did not request pursuant to their search warrant -- search warrant any items related to a cell phone.

Q: Okay. And what is your policy in the Solicitor's Office regarding defense counsel coming to review your file? Do you have an open file policy?

A: I used to have an open file policy.

Q: Okay.

A: I don't anymore. As it relates to physical evidence though, I do have an open file policy as it relates to

physical evidence, photographs, evidence that we may use as exhibits in trial.

Q: Okay.

A: Yes.

MR. GOURLEY: No further questions. Thank you, Your Honor. Thank you, Ms. Barr.

THE WITNESS: Yes.

THE COURT: Any redirect?

MR. BROOKS: Just briefly, Judge.

REDIRECT EXAMINATION

BY MR. BROOKS:

Q: Ms. Barr, it does have on this form from Anne Arundel County, Maryland, that this was evidence?

A: It was evidence?

Q: Yeah. I may have to bring it back over here for you.

A: That's okay.

Q: Oh, you've got it already.

A: Yes. I made -- I made a copy. I believe that's the same thing that you --

Q: Okay.

A: -- may have here.

Q: It is. It is. They do mention it as being evidence, that they took these things as evidence, does it not?

A: It indicates here that -- hold the vehicle and there's an option yes or no. The box is checked yes. Then beneath that

it says reason for vehicle hold and it says evidence.

I don't see here where it indicates that the T-Mobile Samsung cell phone, the black letter wallet, the Nextar GPS unit or the Motorola cell phone are evidence per se. I just see that there is a hold on the vehicle because the vehicle was allegedly used during the murder here in South Carolina. So it indicates that the vehicle is -- is on hold because it's believed to be evidence in a crime.

Q: Okay. To your knowledge, the vehicle was examined, tested to see if there was any physical evidence or anything that could tie the car to the crime other than what Mr. McClary would have said?

A: I don't know that. I don't believe that the cell -- I'm sorry. That the SUV, the Sportage, was actually transported here to South Carolina. I know that the law enforcement officers in Maryland took photographs inside and outside the vehicle to confirm the tag. I remember seeing the picture, as Mr. Jenkinson stated, of the GPS with the location of Lake City, South Carolina, but I don't -- I don't know that their crime scene technicians there would have done any in-depth inventory of the vehicle.

Q: Okay.

MR. BROOKS: No other questions, Judge.

THE COURT: Very good. Anything else?

MR. GOURLEY: No, Your Honor.

THE COURT: All right. Do you wish the witness to be excused?

MR. GOURLEY: Yes, please.

MR. BROOKS: That's fine, judge.

THE COURT: All right. Very good.

THE WITNESS: Thank you, Your Honor.

THE COURT: You are excused, ma'am. You may go back to your regular activities.

THE WITNESS: Thank you, sir.

THE COURT: Thank you. Further witnesses on behalf of the applicant?

MR. BROOKS: No, Judge. That is the applicant's case.

THE COURT: Okay. All right. And from the State will there be witnesses?

MR. GOURLEY: Judge, if I can just have two seconds to speak with Ms. Shuler?

THE COURT: All right. Very good.

MR. GOURLEY: Thank you.

(WHEREUPON, there was a pause in the proceedings.)

MR. GOURLEY: Your Honor, the State has no -- no witnesses.

THE COURT: All right. Very good. So that would be the -- the applicant's case, along with the State relying upon its cross-examination; is that right?

MR. GOURLEY: Yes, Your Honor.

THE COURT: All right. Very good. Do you wish to make any arguments, Mr. Brooks? Anything you want to say to the Court?

MR. BROOKS: And I'll just be brief, Judge. Obviously, you've listened to all the testimony here and we put in a substantial amount of documents obviously.

And the Court has followed along to see where our critical arguments are in regards to potential exculpatory evidence, but at least having the evidence to have it tested in regards to the cell phone, whether or not -- where it is so that it could have been examined to follow the -- you know, for lack of a better word for somebody who is not as tech savvy as myself, pings and where these pings would have occurred and the text messages that obviously was a part of the State's case.

And obviously, Judge, we put in the evidence in regards to what my client's position is as far as appellate defense not raising on appeal and that sort of thing, but obviously, Judge, obviously, the number one argument we've got is in regards to this evidence and the GPS, and we think that's critical considering that this is a murder case and the State -- and we -- our position is when we say the State, that includes not only Williamsburg County. We also ask that that be broad to the people in Maryland because that was law enforcement.

So just to be brief, that's what our position is that we should be granted a new trial.

THE COURT: All right. Very good. Thank you very much. Any brief argument by the attorney general?

MR. GOURLEY: Yes, Your Honor. May it please the Court.

In regards to identification, Your Honor, as I stated earlier, it was addressed on appeal and the Court found that it was harmless error.

In regards to the allegation of the passing the polygraph that should've been introduced at trial, as I'm sure Your Honor is aware, polygraphs aren't admissible at trial.

Your Honor, in regard to the alibi, Danae Newton, Mr. Newton is not here to testify. I think the defense put up an alibi and elicited testimony that the wife and the son of Mr. Bowen all called Mr. -- Mrs. Newton to wish her a happy birthday. I think that was fully brought out at trial.

In regards to the appellate counsel issues, Your Honor, appellate counsel isn't required to raise every preserved issue. I would submit to the Court that the issue raised was a decent issue. Unfortunately, it was not a meritorious issue in Mr. Bowen's case, but again, Your Honor, appellate counsel is not required to raise every issue that is deemed preserved. Thank you.

THE COURT: All right, sir. Thank you very much. What I'm going to do is take the matter under advisement so that I

can fully review the exhibits that have been introduced and to look at some matters that the Court has made some notes on in regards to the -- the record before the Court. And I will let counsel know by email. Most likely, my law clerk will email both counsel and then ask one or the other to do a proposed order in this matter. All right?

MR. GOURLEY: Thank you, judge.

MR. BROOKS: Thank you.

THE COURT: Thank you, gentlemen. I appreciate it very much.

(WHEREUPON, the proceedings ended at 12:43 p.m.)

--- END REQUESTED TRANSCRIPT ---

State of South Carolina)
) Certificate
County of Florence)

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 95 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Williamsburg County, South Carolina, held in Sumter County, South Carolina, on the 13th day of July, 2015.

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

s/*Krystal J. Smith*

Court Reporter

Florence, South Carolina
January 22, 2016

STATE OF SOUTH CAROLINA COUNTY OF WILLIAMSBURG	)	IN THE COURT OF COMMON PLEAS FOR THE THIRD JUDICIAL CIRCUIT
Kelvin Bowen, #344725, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2014-CP-45-117 **ORDER OF DISMISSAL**

FILED SEP 15 AM 10:33

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on March 4, 2014 and amended on September 9, 2014, September 26, 2014, and February 10, 2015. Respondent made its return on December 2, 2014. An evidentiary hearing in to the matter was convened on July 13, 2015, at the Sumter County Courthouse. Applicant was present at the hearing and was represented by Charles T. Brooks, III, Esquire. Respondent was represented by Assistant Attorney General Daniel Gourley of the South Carolina Attorney General's Office.

PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Williamsburg County Clerk of Court. The Applicant was true bill indicted at the July 2009 term of the Williamsburg County Grand Jury for murder, burglary—first degree, conspiracy, and possession of a weapon during a violent crime (2009-GS-45-180). William E. Jenkinson, III, Esquire and Amanda Shuler, Esquire, represented Applicant. Applicant proceeded to a jury trial and was

convicted as indicted. The Honorable Clifton Newman sentenced Applicant to a ninety nine year term of imprisonment for murder, a thirty year term of imprisonment for burglary—first degree, a five year term of imprisonment for possession of a weapon during violent crime, and a five year term of imprisonment for criminal conspiracy with all charges running consecutively.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Bowen, 2013-UP-452 (Filed December 11, 2013). The Remittitur was issued on December 30, 2013.

ALLEGATIONS

In his current Application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Appellate Counsel
    a. Appellate Counsel "failed to raise and brief the issue that Applicant's sixth and fourteenth amendment rights to a trial by an impartial jury was violated by the presence of a biased and partial juror because the trial court erred in refusing to remove juror for cause."
    b. Appellate Counsel "failed to raise and brief the issue that Applicant's constitutional right to confrontation under the Sixth Amendment was violated when the prosecution, over Applicant's objection, introduced the inculpatory statement of a non-testifying co-defendant who had previously been tried and sentenced in a separate trial and, who had invoked her fifth amendment right to remain silent, to impeach another testifying co-defendant testimony."
    c. Appellate Counsel "failed to raise and brief the issue that the trial court abused its discretion in allowing previously suppressed statement of a non-testifying co-defendant, who had previously invoked her fifth amendment right to remain silent, to impeach another testifying co-defendant's testimony in violation of Applicant's sixth and fourteenth amendment rights to a fair trial and, due process of law."
    d. Appellate Counsel "failed to raise and brief the issue that Applicant was denied due process of law in violation of the fifth, sixth, and fourteenth amendments to the united states constitution when the prosecutor failed to disclose, until the middle of Applicant's trial, to the defense, material exculpatory evidence."

e. Appellate Counsel "failed to raise and brief the issue that the trial court abused its discretion when it allowed the state to improperly admit evidence of a general criminal intent by the inference of gang activity, when neither gang activity was not an allegation against applicant nor any evidence that Applicant was a gang member and only worked to prejudice applicant, creating an inference of guilt from bad character, in violation of Applicant's sixth and fourteenth amendment to a fair trial and due process of law."
f. Appellate Counsel "failed to raise and brief the issue that Assistant Solicitor Kimberly Barr ordered that Applicant's person be searched and his person be stripped and photographed without a warrant or court order in violation of Applicant's right to be free from unreasonable invasions of privacy in violation of South Carolina Constitution, Article 1 § 10 and due process, § 3 and the fourth, fifth, sixth, and fourteenth amendments to the united states constitution to be free from warrantless, illegal and unlawful searches and seizures and being forced to strip and his body art photographed without a search warrant or court order."
g. Appellate Counsel "failed to raise and brief the issue that prosecutorial misconduct permeated Applicant's trial and, denied him a fair trial and due process of law in violation of the fifth, sixth, and fourteenth amendment."

Applicant filed his first amendment on September 9, 2014, alleging the following allegations:

1. Ineffective Assistance of Counsel
    a. Counsel failed to adequately investigate the facts and circumstances surrounding the death of the victim. Trial Counsel's failure to conduct such an investigation deprived the Jury of critical information relevant to an accurate assessment of the Applicant's guilt or innocence.
    b. Trial Counsel failed to object on all possible grounds to inflammatory and irrelevant evidence presented by the solicitor.
2. Due Process Violation
    a. The conviction and sentence was in violation of the Constitution of United States and South Carolina Constitution.
3. Subject matter jurisdiction
    a. Court was without jurisdiction to impose sentences.
4. Newly Discovered Evidence.
5. Prosecutorial Misconduct
6. Trial Judge abuse his discretion
7. Ineffective Assistance of Appellate Counsel.

Applicant filed his second amendment on September 26, 2014, alleging the following allegations:

1. Ineffective Assistance of Appellate Counsel
2. Trial Court abused his discretion.

Applicants filed his third amendment to his application on February 10, 2015, alleging the following allegation:

1. Ineffective assistance of counsel

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Applicant also presented testimony from Billy Jenkinson, Esquire. (hereinafter "Trial Counsel") and Assistant Solicitor Kimberly Barr (hereinafter "Assistant Solicitor"). This Court also had before it a copy of the trial transcript, the Williamsburg County Clerk of Court records, Applicant's South Carolina Department of Correction records, appellate records, the PCR application, and return.

During the evidentiary hearing, Applicant stated that he met with Trial Counsel numerous times prior to trial. Applicant recalled reviewing discovery material with Trial Counsel prior to trial. Applicant recalled discussing various defenses with Trial Counsel prior to trial. Applicant testified that he was convicted of murder. Applicant stated that the State alleged that he drove down from Maryland with Twanda Allen (hereinafter "Co-Defendant Allen"). Applicant stated the State alleged that he was texting with Ronald Mack (hereinafter "Co-Defendant Mack") while driving down from Maryland. Applicant stated Anotonio McClary (hereinafter "Co-Defendant McClary") testified against him at trial. Applicant stated that he was arrested in Maryland with Co-Defendant Mack. Applicant stated that he originally was not a suspect in the crime. However, Applicant stated that he had a California identification and Co-Defendant McClary alleged that a person nicknamed "Callie" participated in the murder. Applicant stated

that the police emailed his identification photo to the Williamsburg police at which point Co-Defendant McClary identified him as "Callie."

Applicant stated that he and Co-Defendant Mack were arrested at Co-Defendant Allen's car. Applicant stated that the police did an inventory report that identified various items in the car. Specifically, Applicant noted that the pre-towing report revealed that there was a T-Mobile Samsung cell phone, black leather wallet, a GPS and grey Motorola cell phone. Applicant stated that he has not seen the Samsung cell phone. Applicant stated that they had a hearing on the Motorola cell phone and it was discovered that the Motorola cell phone was purchased after the murder occurred. Applicant stated that no one knows where the Samsung Cell phone is located. Applicant stated that the State alleged that he was using the Samsung Cell phone when the crime took place. Applicant stated that if he had the Samsung Cell phone he would be able to prove that he was not in South Carolina.

Applicant stated that it was his understanding that everything made it to the Williamsburg County Sheriff's office except for the Samsung Cell phone. Applicant recalled that Trial Counsel had a second hearing about the Samsung Cell phone. Applicant noted that he presented alibi witnesses as a defense at trial. Applicant stated that he was at home with his wife and child. Applicant stated that he called his cousin Nay Newton to wish her a happy birthday. Applicant stated Trial Counsel should have called Nay Newton as an alibi witness at trial. Applicant stated Nay Newton lives in Texas and was not present for the PCR hearing.

Applicant stated he felt the way the police allowed Co-Defendant McClary's identification of him was improper. Applicant argued that the police only showed a picture of himself to Co-Defendant McClary. Applicant stated that the single photo was suggestive.

Applicant stated he took and passed a polygraph examination on December 1, 2009. Applicant claimed that Trial Counsel should have introduced the results of the polygraph during trial.

Applicant stated Trial Counsel was ineffective for failing to object to Assistant Solicitor's closing arguments. Applicant specifically referenced page 681 lines 17-25 and page 685 line 1-5.

Applicant stated Appellate Counsel was ineffective for failing to brief the issue of whether the Trial Court erred in allowing Lt. Collins to introduce Co-Defendant's Mack statement at trial. Applicant stated Appellate Counsel was ineffective for failing to brief the issue of whether the Trial Court erred in allowing the jury to hear Co-Defendant's statement after the jury was excused for deliberation. Applicant stated Appellate Counsel was ineffective for failing to brief the issue of whether the State committed a Brady violation regarding the missing Samsung Cell phone. Applicant stated Appellate Counsel was ineffective for failing to brief the issue of whether the Trial Court erred in allowing the State to introduce exhibit #82 – Co-Defendant Mack's composition notebook.

Following Applicant's testimony, Trial Counsel was called to testify by Applicant. Trial Counsel stated that he has been practicing law for forty-four years. Trial Counsel stated that he was retained to represent Applicant at trial. Trial Counsel stated that he met with Applicant multiple times prior to trial. Trial Counsel recalled reviewing the discovery material with Applicant prior to trial. Trial Counsel stated that he recalled the information about the case. Trial Counsel stated that the State had various pieces of evidence and testimony against Applicant. Specifically, Trial Counsel noted that Co-Defendant McClary testified against Applicant at trial. Trial Counsel noted that Co-Defendant Mack and Co-Defendant Allen did not

testify against Applicant. Trial Counsel stated that he objected to the fact that Co-Defendant McClary identified Applicant via a single photo lineup. Trial Counsel stated that there was circumstantial evidence against Applicant in Co-Defendant Allen's apartment in Maryland. Trial Counsel noted that the shotgun used in the murder and a second weapon was found in Co-Defendant Allen's apartment.

Trial Counsel recalled the issue about two cell phones. Specifically, Trial Counsel stated that there was a Samsung and Motorola Cell phone. Trial Counsel stated that there was an evidence bag that listed a GPS, Motorola phone, and leather wallet. Trial Counsel stated some of the material made it to Williamsburg. Trial Counsel stated that the Samsung Cell phone did not make it to Williamsburg. Trial Counsel stated that he had no written documentation that the Samsung Cell phone was ever recovered. Trial Counsel opined that the text message and data on the Samsung Cell phone would have been crucial for the case. Trial Counsel further recalled that an officer from Lake City showed up with Co-Defendant Mack's cell phone during the course of trial. Trial Counsel stated that they raised the defense of Alibi at trial. Trial Counsel could not specifically recall whether Applicant mentioned Nay Newton as a potential alibi witness.

Following Trial Counsel testimony, Assistant Solicitor Barr was called to testify. Assistant Solicitor Barr testified that she had received a list of various items that were received from Maryland sheriff's office. Assistant Solicitor Barr stated that she did not receive a Motorola Cell Phone, she did not receive a wallet, she did not receive a Samsung Cell phone, nor did she receive a GPS. Assistant Solicitor Barr stated that the items mentioned by Applicant in the pre-tow inventory sheet were only listed for record keeping purposes so the sheriff's office knew what was in the vehicle prior to towing. Assistant Solicitor Barr stated the various items

were not important at the time the Applicant was arrested. Assistant Solicitor Barr stated there was a hold on the vehicle, because it was allegedly used in the murder.

Assistant Solicitor Barr stated that the Motorola cell phone was listed on Applicant's inmate inventory list. Assistant Solicitor Barr stated Applicant requested that the Motorola cell phone be turned over to Trial Counsel. Assistant Solicitor Barr stated the jail turned over the Motorola cell phone to Trial Counsel. Assistant Solicitor Barr stated there was a signed letter showing that Trial Counsel received the Motorola cell phone from the jail.

Assistant Solicitor Barr stated the Co-Defendant Mack's cell phone came up through a Lake City police officer. Assistant Solicitor Barr stated that she and Trial Counsel took time to review the cell phone prior to it being discussed at trial. Assistant Solicitor Barr stated the Co-Defendant Mack's IPhone was seized during a traffic stop in Lake City. Assistant Solicitor Barr stated Co-Defendant's Mack's cell phone did not contain any contact information for Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Specifically, this Court finds Trial Counsel's testimony credible and Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

1. Ineffective assistance of counsel for failing to introduce the Applicant's polygraph examination.

This Court finds Trial counsel was not ineffective for failing to introduce the Applicant's polygraph examination. This Court finds this allegation has no merit as the results of the polygraph test are inadmissible at trial. State v. Wright, 322 S.C. 253, 471 S.E.2d 700 (1996).

2. Ineffective assistance of counsel for failing to present potential alibi witness, Nay Newton.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for failing to call Nay Newton as a witness at trial is meritless. Applicant claims that Ms. Newton would have furthered corroborated his alibi defense. Specifically, Applicant claimed that he, his wife, and child, all called Ms. Newton to wish her a happy birthday. Since Ms. Newton did not testify at the PCR hearing, this court cannot consider any testimony she might have given at trial to determine whether failure to call her constitutes ineffective assistance of counsel. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (Holding the Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice).

3. Ineffective assistance of counsel for failing to properly argue a motion to suppress the single photo lineup shown to Co-Defendant McClary, where he identified Applicant as "Callie."

The Applicant seems to complain ineffective assistance on the ground that Trial Counsel failed to properly argue a motion to suppress the single photo shown to Co-Defendant's McClary's when he identified Applicant as "Callie." This Court finds Trial Counsel put forth the proper argument and objections during pre-trial and trial. Notably, this very issue was briefed and addressed by the South Carolina Court of Appeals. State v. Bowen, 2013-UP-452 (Filed December 11, 2013). The Court of Appeals affirmed Applicant's conviction and sentence,

finding the single photo was valid and any error was harmless. Based off of the foregoing this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

4. Ineffective assistance of counsel for failing to object to Assistant Solicitor Barr's closing argument.

This Court finds Applicant's allegation that he received ineffective assistance of counsel for Counsel's failure to object to Assistant Solicitor Barr's closing argument is meritless. This Court notes "closing argument serves to sharpen and clarify the issues for resolution by the trier of fact in a criminal case. For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions." State v. Mouzon, 321 S.C. 27, 31-32, 467 S.E.2d 122, 124-25 (Ct. App. 1995), aff'd, 326 S.C. 199, 485 S.E.2d 918 (1997) (citing Herring v. New York, 422 U.S. 853 (1975)). "A solicitor's closing argument must be carefully tailored so as not to appeal to the personal biases of the jury." Von Dohlen v. State, 360 S.C. 598, 609, 602 S.E.2d 738, 744 (2004). "The argument must not be calculated to arouse the jurors' passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom." Id. at 609–10, 602 S.E.2d at 744. "Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not

receive a fair trial because of the alleged improper argument." Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002). "The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id.

This Court, having reviewed the entire argument, finds it not to have been objectionable. This Court finds that Assistant Solicitor Barr made a valid argument regarding credibility. Based off of the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test – that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland – that he was prejudiced by Trial Counsel's performance.

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004), citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. See Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836. See also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

"Although it is possible to bring a successful ineffective assistance of appellate counsel claim based on failure to raise a particular issue on direct appeal, the Supreme Court has reiterated that it is 'difficult to demonstrate that counsel was incompetent.'" United States v. Mason, No. 3:06–607–CMC, 2012 WL 5845807 at *1 (D. S.C. Nov. 19, 2012) (quoting Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000)). While appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990), citing Jones v. Barnes, 463 U.S. 745 (1983). "For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . ." Jones, 463 U.S. at 754. Additionally, our Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). "'Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.'" Smith v. Robbins, 528 U.S. at 288, 120 S. Ct. at 765 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones, 463 U.S. at 753. Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not deficient performance. Griffin v. Aiken, 775 F.2d 1226, 1235 (4th Cir. 1985).

"To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's unreasonable failure to include a

particular issue on appeal, he would have prevailed on his appeal." United States v. Mason, 2012 WL 5845807 at *1 (citing Smith v. Robbins, 528 U.S. at 285-86, 120 S. Ct. at 764).

Here, appellate counsel argued Applicant's federal and state constitutional rights to due process of law were violated by the admission of a witness's identification of Applicant where the out-of-court identification process was unnecessarily suggestive and conducive to irreparable mistaken identification. See Brief of Appellant. Appellate Counsel took issue with the single photograph array identification procedure with McClary. Appellate Counsel specifically pointed out that Investigator Lail's preliminary hearing testimony directly contradicted her testimony during the suppression motion. Id. Appellate Counsel argued that the single photograph array was inherently unreliable and unduly suggestive. Id.

As an initial matter, this Court notes that appellate counsel did not testify at the PCR hearing. This Court finds that a presumption of effectiveness applies and that it is Applicant's burden to prove that appellate counsel was ineffective in failing to raise stronger issues that would have resulted in a reversal of Applicant's conviction. This Court cannot speculate as to whether appellate counsel considered raising these issues or believed they would have any merit. See Bannister v. State, 333 S.C. at 303, 509 S.E.2d at 809. Applicant alleges appellate counsel was ineffective in failing to raise four separate issues on appeal. The Court will review each in turn.

1. **Ineffective assistance of Appellate Counsel for failing to brief whether the Trial Court erred in allowing Lt. Collins to introduce Co-Defendant's Mack statement at trial due to a confrontation issue.**

Applicant alleges appellate counsel was ineffective in failing to brief whether the Trial Court erred in allowing Lt. Collins to introduce Co-Defendant's Mack statement at trial over his objection based on the confrontation clause. This Court finds this allegation without merit. This issue is not clearly stronger than the single photograph array issue raised by appellate counsel.

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an evidentiary ruling, the appellate court gives great deference to the trial judge because the reception or exclusion of evidence is a matter left largely to the sound discretion of a trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Bixby, 388 S.C. 528, 556, 698 S.E.2d 572, 587 (2010) ("[D]eference is due to the trial court's admission of the evidence."). An appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Douglas, 369 S.C. 424, 429, 632 S.E.2d 845, 847-848 (2006) ("The admission or exclusion of evidence is a matter addressed to the sound discretion of the trial court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). "An abuse of discretion occurs when the conclusions of the trial court

either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000).

If a witness makes a statement on a particular issue and then subsequently contradicts that prior statement during the witness' trial testimony, the prior contradictory statement is important evidence tending to discredit the witness' trial testimony. State v. Suber, 82 S.C. 159, 161, 63 S.E. 684, 685 (1909). As a result, a prior inconsistent statement can be admitted as evidence to impeach the declarant of the statement. See, e.g., State v. Lynn, 277 S.C. 222, 224, 284 S.E.2d 786, 788 (1981) ("If a witness admits a prior inconsistent statement, he has impeached himself, and further evidence is inadmissible."). Furthermore, such a statement can also be "admitted as substantive evidence when the declarant testifies at trial and is subject to cross-examination." State v. Stokes, 381 S.C. 390, 398-399, 673 S.E.2d 434, 438 (2009); see State v. Copeland, 278 S.C. 572, 581, 300 S.E.2d 63, 69 (1982) ("Henceforth from today, we will allow testimony of prior inconsistent statements to be used as substantive evidence when the declarant testifies at trial and is subject to cross examination. . . . We believe the adoption of this rule will more effectively aid in the discovery of the truth, and more adequately insure the freedom of the innocent and the conviction of the guilty.").

Rule 613 of the South Carolina Rules of Evidence governs issues involving the admissibility of prior inconsistent statements. State v. Carmack, 388 S.C. 190, 201, 694 S.E.2d 224, 229 (Ct. App. 2010). Pursuant to the rule, extrinsic evidence of a prior inconsistent statement is admissible if a witness – after being advised of the substance of the statement, the time and place the statement was made, and the person to whom it was made – does not admit making the statement after being given an opportunity to explain or deny it. Rule 613(b), SCRE;

see State v. Galloway, 263 S.C. 585, 591, 211 S.E.2d 885, 888 (1975) ("The requirement of notice is met when the cross-examiner advises the witness of the substance of the prior statement and the time when, the place where and the person to whom it was made.").

Furthermore, the Sixth Amendment's Confrontation Clause guarantees "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." U.S. Const. amend. VI. In Crawford v. Washington, 541 U.S. 36, 53–54 (2004), the United States Supreme Court held that testimonial hearsay statements are not admissible under the Confrontation Clause unless the declarant is unavailable to testify at trial and the accused had a prior opportunity to cross-examine the declarant. "However, the Confrontation Clause places no constraints at all on the use of the declarant's prior testimonial statements when the declarant appears for cross-examination at trial." State v. Hill, 394 S.C. 280, 291, 715 S.E.2d 368, 374–75 (Ct.App.2011) (citing State v. Stokes, 381 S.C. 390, 401, 673 S.E.2d 434, 439 (2009)). "The Confrontation Clause 'does not bar admission of a statement so long as the declarant is present at trial to defend or explain it.' " Stokes, 381 S.C. at 401, 673 S.E.2d at 439 (quoting Crawford, 541 U.S. at 59 n. 9). "The Confrontation Clause 'guarantees only an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" Id. at 401–02, 673 S.E.2d at 439–40 (quoting United States v. Owens, 484 U.S. 554, 559 (1988)). "Indeed the opponent's opportunity for cross-examination has been deemed the 'main and essential purpose of confrontation.'" Id. at 402, 673 S.E.2d at 440. Thus, it is the opportunity to cross-examine that is constitutionally protected." Id.

This Court finds the issue would not have resulted in a reversal of Applicant's conviction. It is not likely that the appellate court would have found the trial court abused his discretion by