

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Sumter County

George C. James, Circuit Court Judge

JAMES KEION SPANN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2016-002135

APPENDIX

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S.C. SUPREME COURT

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
FROM THE APRIL 16, 2015 PCR HEARING (2012-CP-31-00311): PLAINTIFF'S
EXHIBIT#2 (EMAIL) AND FROM THE MARCH 30-31, 2010 Trial (2009-GS-31-0073):
STATE'S EXHIBIT #3 (911 CALL)**

STATE OF SOUTH CAROLINA
COUNTY OF LEE

COURT OF GENERAL SESSIONS
09-GS-~~31~~-73

STATE OF SOUTH CAROLINA

-vs-

JAMES KEON SPANN

:
:
:
:
:

TRANSCRIPT OF RECORD

MARCH 30 & 31, 2010
BISHOPVILLE, SOUTH CAROLINA

B E F O R E:

HONORABLE R. FERRELL COTHRAN, JR., JUDGE, AND JURY.

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

JOHN GENTRY, ASSISTANT SOLICITOR
ATTORNEY FOR THE STATE

DEBORAH BUTCHER, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DIANNE A. RUTLEDGE
CIRCUIT COURT REPORTER

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1 (TUESDAY, MARCH 30, 2010.)

2 THE COURT: MS. BUTCHER, I NEED TO TALK TO YOU ALL.

3 (A BENCH CONFERENCE WAS HELD OFF THE RECORD.)

4 THE COURT: ALL RIGHT. ARE YOU READY? I UNDERSTAND
5 THAT THE DEFENSE HAS A MOTION?

6 MS. BUTCHER: YES, YOUR HONOR. I'D LIKE TO MAKE A
7 MOTION TO COMPEL. I UNDERSTAND ONE OF THE WITNESSES IN
8 THIS CASE HAS WRITTEN MY CLIENT LETTERS WHILE HE WAS
9 INCARCERATED AT S.C.D.C., AND OFFICER STAGNER (PHONETIC)
10 FROM S.C.D.C. WAS TAKING THOSE LETTERS, AND THEY CONTAIN
11 EXCULPATORY EVIDENCE.

12 THE COURT: ALL RIGHT. WHAT SAYS THE STATE?

13 MR. GENTRY: THE STATE HAS NOT SEEN OR HEARD OF THOSE
14 LETTERS. WE DID INQUIRE OF S.C.D.C. TO CHECK HIS MAIL. I
15 DO NOT KNOW WHAT WAS TAKEN OR WHAT WAS NOT TAKEN.

16 I DO HAVE A CALL IN TO INVESTIGATOR GREER FROM
17 S.C.D.C. TO ASCERTAIN THE EXISTENCE OR NON-EXISTENCE OF
18 THIS PROPERTY.

19 THE COURT: OKAY. SO THE LETTERS ARE NOT IN THE
20 CUSTODY OF LAW ENFORCEMENT OR THE STATE IS WHAT YOU'RE
21 TELLING ME?

22 MR. GENTRY: NO. THE LETTERS ARE IN CUSTODY, I
23 UNDERSTAND, OF S.C.D.C., AS NEAR AS I CAN UNDERSTAND IT.
24 I DON'T KNOW FOR A FACT WHERE THEY ARE. I'M RELYING ON MS.
25 BUTCHER'S STATEMENTS.

1 THE COURT: OKAY. AND WHEN DID YOU FIND OUT ABOUT
2 THESE LETTERS?

3 MS. BUTCHER: LATE LAST NIGHT, YOUR HONOR.

4 THE COURT: OKAY.

5 MS. BUTCHER: AND THEN I VERIFIED THAT WITH MY CLIENT
6 THIS MORNING, AS SOON AS I GOT HERE, AND RELAYED THAT
7 INFORMATION TO MR. GENTRY.

8 THE COURT: AND THOSE LETTERS WERE WRITTEN TO YOUR
9 CLIENT?

10 MS. BUTCHER: BY THEIR EYEWITNESS, YES, YOUR HONOR.

11 THE COURT: AND DID YOUR CLIENT RECEIVE THOSE LETTERS?

12 MS. BUTCHER: HE SAW SOME, HE DID NOT READ ALL OF
13 THEM. THERE ARE NUMEROUS ONES, FROM WHAT I UNDERSTAND. WE
14 ALSO HAVE A STATEMENT FROM SOMEONE WHO DID READ THOSE
15 STATEMENTS -- READ THOSE LETTERS AS TO WHAT WAS CONTAINED
16 IN THOSE LETTERS.

17 THE COURT: WHO HAS A STATEMENT?

18 MS. BUTCHER: I HAVE A WRITTEN STATEMENT SIGNED BY
19 THAT PERSON AND WITNESSED ---

20 THE COURT: OKAY.

21 MS. BUTCHER: --- AS TO THE CONTENTS OF THOSE LETTERS.

22 THE COURT: OKAY. AND SO THOSE LETTERS WERE RECEIVED
23 BY YOUR CLIENT. DID THE DEPARTMENT OF CORRECTIONS TAKE
24 THEM FROM HIM?

25 MS. BUTCHER: YES, YOUR HONOR.

1 THE COURT: WHY DID THEY TAKE THEM?

2 MS. BUTCHER: I CANNOT ---

3 THE COURT: THAT'S NOT SOMETHING THEY NORMALLY DO IS
4 TAKE ---

5 MS. BUTCHER: PER MY CLIENT, YOUR HONOR, THEY WERE
6 TAKEN BECAUSE OF THE CONTENTS OF THE LETTERS TO BE GIVEN AS
7 TO -- HE WAS TOLD -- AND CORRECT ME IF I GET THIS WRONG --
8 THAT THE LETTERS NEEDED TO BE GIVEN TO INVESTIGATORS. AND
9 ALL LETTERS WERE TAKEN. THEY MAY HAVE BEEN LOOKING FOR
10 CERTAIN LETTERS, BUT ALL LETTERS WERE TAKEN. AND AMONG
11 THEM WERE THE ONES I'M LOOKING FOR.

12 THE COURT: ALL RIGHT. BUT YOUR CLIENT GAVE THEM TO
13 THEM OR DID THEY COME TO HIS CELL TO TAKE THEM? HOW WOULD
14 THE DEPARTMENT OF CORRECTIONS HAVE KNOWN THAT THERE WERE
15 LETTERS THAT THEY NEEDED TO GO TAKE? DID YOUR CLIENT GIVE
16 IT TO THEM OR DID THEY TAKE THEM FROM HIM?

17 (PAUSE.)

18 MS. BUTCHER: HE SAYS THEY CAME AND TOOK LETTERS. AND
19 THEY'RE BASING ON SOMETHING NEVER RECEIVED -- THAT HE
20 DOESN'T KNOW. BUT THIS WAS BACK IN JANUARY WHEN THIS
21 OCCURRED, YOUR HONOR.

22 THE COURT: BUT HOW DID THE DEPARTMENT OF CORRECTIONS
23 KNOW THAT HE HAD LETTERS THAT THEY WERE INTERESTED IN? I
24 MEAN, DID HE NOTIFY THEM OR HOW ---

25 MS. BUTCHER: I DON'T THINK HE NOTIFIED THEM. I THINK

1 -- FROM WHAT HE TOLD ME, MY IMPRESSION WAS THAT AN S.C.D.C.
2 OFFICER HAD BEEN TOLD BY INVESTIGATION TO TAKE THE LETTERS;
3 THAT'S SIMPLY MY IMPRESSION.

4 THE COURT: AND WHO IS ---

5 MS. BUTCHER: THEY WERE LOOKING FOR EVIDENCE.

6 THE COURT: I'M SORRY. WHO IS INVESTIGATION? WHEN
7 YOU SAY INVESTIGATION, LEE COUNTY SHERIFF'S DEPARTMENT?

8 MS. BUTCHER: I'M NOT SURE THAT MY CLIENT KNEW; AND
9 THAT'S WHY I SAY THAT'S MY IMPRESSION. OFFICER STAGNER
10 WITH S.C.D.C. WAS THE ONE WHO TOOK THE LETTERS.

11 THE COURT: OKAY.

12 MS. BUTCHER: AND HE GAVE MY CLIENT THE IMPRESSION
13 THEY WERE TAKEN FOR THE PURPOSE OF THE INVESTIGATION.

14 THE COURT: AND THEY WERE TAKEN BACK IN JANUARY AND
15 YOU JUST FOUND OUT ABOUT IT LAST NIGHT?

16 MS. BUTCHER: YES, YOUR HONOR. I ASKED HIM ABOUT IT,
17 BECAUSE I HEARD THAT -- BECAUSE I GOT A WRITTEN STATEMENT
18 FROM SOMEONE ELSE ABOUT THE CONTENT OF THE LETTERS AND WHO
19 HAD READ THEM, SOMEONE WHO HAD BEEN INCARCERATED WITH HIM.

20 THE COURT: OH, SO THIS WRITTEN STATEMENT YOU HAVE IS
21 FROM A FELLOW PRISONER?

22 MS. BUTCHER: IT IS.

23 THE COURT: OKAY. ALL RIGHT. WHAT'S THE STATE'S
24 POSITION?

25 MR. GENTRY: THE STATE WILL INDICATE IT DID ASK

1 INVESTIGATOR GREER OF S.C.D.C. TO CHECK THE RECORDS OF THIS
2 PARTICULAR PRISONER, THE REASON WAS THAT ONE OF THE STATE'S
3 WITNESSES, A TAMEKA WHITE I BELIEVE IT IS -- WILSON WAS THE
4 FORMER GIRL FRIEND OF THIS PARTICULAR INDIVIDUAL, SPANN.
5 SHE HAD BROKEN UP WITH HIM ABOUT A MONTH BEFORE.

6 WHEN WE LOOK BACK AT MR. SPANN'S CRIMINAL -- VISITOR'S
7 ROSTER IN S.C.D.C., SHE APPEARED ON THE VISITOR'S ROSTER AT
8 S.C.D.C.

9 SO AT THAT POINT SINCE I WAS UNABLE TO MAKE VERY GOOD
10 CONTACT -- OR NO CONTACT AT ALL WITH MS. WILSON, I INQUIRED
11 OF INVESTIGATOR GREER IF HE COULD CHECK AND SEE IF INMATE
12 SPANN HAD RECEIVED ANY LETTERS FROM HER.

13 THE BEST OF MY RECOLLECTION, INVESTIGATOR GREER TOLD
14 ME THERE WAS NO -- NO RECORD OF VISITS AT ANY RATE. AND I
15 DON'T RECALL ANYTHING ABOUT THE COMMUNICATIONS.

16 MS. BUTCHER: IF I MAY, YOUR HONOR. THE VISITS TOOK
17 PLACE AT SUMTER-LEE. I HAVE -- TO MY KNOWLEDGE, NO
18 VISITATIONS TOOK PLACE AT S.C.D.C. AND, YOUR HONOR, THE
19 THING ABOUT THIS IS THAT MS. TAMEKA WILSON'S STATEMENT IS
20 -- SHE IS THE WITNESS IN THIS CASE.

21 MR. GENTRY: NO, SHE'S NOT. SHE'S ONE OF SEVERAL
22 WITNESSES.

23 THE COURT: IS SHE PRESENT?

24 MR. GENTRY: SHE IS ON SUBPOENA. SHE'S ON STANDBY. I
25 MAY END UP NOT CALLING HER.

1 THE COURT: OKAY. SO DOES ANYBODY KNOW WHERE THESE
2 LETTERS ARE OR WHETHER THEY EXIST AND WHERE THEY ARE RIGHT
3 NOW?

4 MR. GENTRY: I DO NOT.

5 MS. BUTCHER: OUR POSITION IS THEY'RE WITH S.C.D.C.
6 AND SERGEANT STAGNER TOOK THEM.

7 THE COURT: BUT WERE THEY TAKEN -- YOU FIRST -- JUST A
8 MINUTE AGO I UNDERSTOOD YOU SAID THEY WERE TAKEN WHILE HE
9 WAS AT SUMTER-LEE?

10 MS. BUTCHER: I BELIEVE THEY WERE TAKEN AT S.C.D.C.,
11 CORRECT? YES, STAGNER IS WITH S.C.D.C.

12 THE COURT: SO WHAT ARE YOU ASKING ME TO -- AT THIS
13 POINT I ASSUME YOU THINK THEY ARE EXCULPATORY AND YOU WANT
14 COPIES OF THEM?

15 MS. BUTCHER: YES, YOUR HONOR.

16 THE COURT: AND THE STATE DOESN'T HAVE THEM IN THEIR
17 FILE RIGHT NOW?

18 MR. GENTRY: NO, SIR.

19 THE COURT: HAS ANYBODY BEEN IN CONTACT WITH WHOEVER
20 DOES HAVE THEM OR WHETHER THEY'RE IN EXISTENCE AT ALL AND
21 WHETHER THEY'RE AVAILABLE AND WHAT HAPPENS IF THEY AREN'T
22 AVAILABLE THIS WEEK? I MEAN, I'M ---

23 MS. BUTCHER: WELL, I THINK THERE SHOULD BE AN
24 EXPLANATION IF THEY EXIST AS TO WHY THEY'RE NOT. AND I
25 THINK AN EXPLORATION MOTION WOULD BE IN ORDER IF THEY'VE

1 BEEN DESTROYED. BUT AT THIS POINT I THINK IT NEEDS TO BE
2 VERIFIED THAT THEY -- THAT THEY HAD BEEN SOUGHT, THAT
3 SOMEBODY IS LOOKING FOR THEM, AND WHAT HAPPENED TO THEM.

4 THE COURT: OKAY. WHAT DO YOU SAY ABOUT THAT?

5 MR. GENTRY: I LEFT BOTH A PAGE AND A VOICE MESSAGE
6 FOR INVESTIGATOR GREER THIS MORNING WHEN I WAS FIRST
7 NOTIFIED OF THIS. I HAVE HAD NO RESPONSE FROM INVESTIGATOR
8 GREER. I WILL BE MORE THAN HAPPY TO CALL AND SEE IF
9 STAGNER IS DOWN AT TURBEVILLE.

10 MS. BUTCHER: AND, YOUR HONOR, I THINK IF I UNDERSTOOD
11 MR. GENTRY CORRECTLY, HE DID SEEK THESE EARLIER WHEN HE
12 THOUGHT MAYBE THERE WERE LETTERS BECAUSE THE YOUNG LADY WAS
13 VISITING MY CLIENT. I THINK I UNDERSTOOD THAT CORRECT?

14 MR. GENTRY: YES, MA'AM.

15 MS. BUTCHER: AND IF THAT'S TRUE, I THINK IT WAS
16 INCUMBENT UPON HIM TO GET AN ANSWER AT THAT TIME. DID
17 THESE LETTERS EXIST OR DID THEY NOT EXIST AND NOT LEAVE IT
18 HANGING. IT'S CERTAINLY NOT A FISHING EXPEDITION; THAT'S
19 SOMETHING HE BELIEVED MAY HAVE BEEN THERE, YET HE NEVER GOT
20 A DEFINITE ANSWER ONE WAY OR ANOTHER.

21 THE COURT: OKAY. THEN HOW LONG IS IT GOING TO TAKE
22 TO FIND THIS INVESTIGATOR AND WHETHER THESE LETTERS EXIST?

23 MR. GENTRY: JUDGE, I REALLY DON'T KNOW. I HAVE TO GO
24 AND CALL TURBEVILLE AND SEE IF INVESTIGATOR -- SERGEANT
25 STAGNER IS DOWN THERE AND WHAT HE HAS TO SAY ABOUT THE

1 SITUATION.

2 THE COURT: OKAY. WELL, CAN YOU GET SOMEBODY IN YOUR
3 OFFICE TO BE DOING THAT WHILE WE'RE DRAWING THIS JURY?

4 MR. GENTRY: I WILL.

5 THE COURT: AND SEE WHETHER WE CAN FIND OUT WHETHER OR
6 NOT THEY EXIST OR WHAT THE SITUATION IS.

7 OKAY. ANYTHING ELSE? ANYTHING ELSE BEFORE WE DRAW
8 THE JURY?

9 MS. BUTCHER: ONE MOMENT, YOUR HONOR.

10 (PAUSE.)

11 MS. BUTCHER: NO, YOUR HONOR.

12 THE COURT: OKAY. ANYTHING ELSE FROM THE STATE?

13 MR. GENTRY: NO, SIR.

14 THE COURT: FROM A SCHEDULING STANDPOINT, BRING THE
15 JURY BACK IN, QUALIFY THEM. AT THAT POINT YOU ALL ARE
16 READY TO DO OPENING STATEMENTS AND BEGIN. YOU'VE GOT YOUR
17 WITNESSES AVAILABLE?

18 GIVE ME AN IDEA ABOUT THE REST OF THE WEEK?

19 MR. GENTRY: JUDGE, I WOULD THINK AT THE EARLIEST WE
20 COULD BEGIN WITH OPENING STATEMENTS BASED ON THIS
21 INFORMATION THAT'S JUST UNCOVERED AND PROBABLY SOME
22 ADDITIONAL MOTIONS THE DEFENSE IS GOING TO MAKE AFTER THE
23 JURY IS SELECTED, IT IS BRING THE JURY, GET THEM SELECTED,
24 AND LET THEM GO UNTIL THIS AFTERNOON.

25 THE COURT: OKAY. ALL RIGHT. THEN, BRING US THE

1 JURY. WHEN THEY COME IN, I ASSUME YOU'RE GOING TO CALL THE
2 CASE AND GIVE ME AN INDICTMENT, RIGHT?

3 MR. GENTRY: YES, SIR, I AM.

4 THE COURT: OKAY. AND A LIST OF STATE'S WITNESSES?
5 DO YOU HAVE ANY WITNESSES?

6 MS. BUTCHER: I'LL HOLD ONTO MINE UNTIL MY CASE, YOUR
7 HONOR.

8 MR. GENTRY: WE ASK THAT WE HAVE A LIST OF THOSE
9 WITNESSES, BECAUSE THERE MIGHT BE A DISQUALIFICATION WITH
10 THE JURY. WE'D LIKE TO KNOW WHO THEY ARE RIGHT NOW.

11 THE COURT: OKAY.

12 MS. BUTCHER: YOUR HONOR, I FEEL I HAVE A RIGHT TO
13 WITHHOLD THAT UNTIL THAT TIME -- UNTIL I PRESENT MY CASE.

14 MR. GENTRY: HOW DO WE KNOW ---

15 THE COURT: HOW DO YOU KNOW WHETHER THEY'RE QUALIFIED?

16 MS. BUTCHER: YOUR HONOR ---

17 (THE JURY PANEL ENTERS THE COURTROOM.)

18 THE COURT: HOLD ON A MINUTE.

19 (PAUSE.)

20 MR. GENTRY: MAY IT PLEASE THE COURT. THE STATE CALLS
21 INDICTMENT 2009-GS-31-73, THE STATE VERSUS JAMES KEON
22 SPANN, COUNT 1, MURDER; COUNT 2, BURGLARY FIRST DEGREE;
23 COUNT 3, POSSESSION OF A WEAPON DURING A CRIME OF VIOLENCE.

24 THE COURT: OKAY. ALL RIGHT. LET ME SEE THE
25 ATTORNEYS REAL QUICK.

1 (A BENCH CONFERENCE WAS HELD IN THE PRESENCE OF THE
2 JURY PANEL BUT OUT OF THE HEARING OF THE JURY PANEL.)

3 THE COURT: LADIES AND GENTLEMEN OF THE JURY PANEL, IF
4 YOU'LL GIVE ME YOUR ATTENTION, WE'RE ABOUT TO BEGIN THE
5 TRIAL OF THE STATE VERSUS JAMES SPANN. I NEED TO KNOW IF
6 THERE'S ANY MEMBER OF THE JURY PANEL CONNECTED BY BLOOD OR
7 MARRIAGE, CLOSE PERSONAL FRIENDS, OR SOCIAL RELATIONS WITH
8 MR. SPANN? IF SO, PLEASE STAND.

9 YES, MA'AM.

10 JUROR: I WENT TO SCHOOL WITH HIM.

11 THE COURT: AND WHAT'S YOUR NAME AND NUMBER?

12 JUROR: TEMAKA ROBINSON, 111.

13 THE COURT: 111?

14 JUROR: YES, SIR.

15 THE COURT: AND YOU ATTENDED SCHOOL WITH THE
16 DEFENDANT?

17 JUROR: YES, SIR.

18 THE COURT: THE FACT THAT YOU WENT TO SCHOOL WITH HIM,
19 WOULD THAT AFFECT YOUR ABILITY TO GIVE BOTH THE STATE AND
20 THE DEFENSE A FAIR AND IMPARTIAL TRIAL?

21 JUROR: SIR?

22 THE COURT: THE FACT THAT YOU WENT TO SCHOOL WITH HIM,
23 WOULD THAT AFFECT YOUR ABILITY TO GIVE BOTH THE STATE AND
24 THIS DEFENDANT A FAIR AND IMPARTIAL TRIAL?

25 JUROR: YES, SIR.

1 THE COURT: IT WOULD?

2 JUROR: YES, SIR.

3 THE COURT: YOU DON'T THINK YOU COULD BE FAIR?

4 JUROR: NO, SIR.

5 THE COURT: OKAY. THEN I'M GOING TO EXCUSE YOU FROM
6 THIS TRIAL. HANG WITH ME, YOU MIGHT GET THE NEXT ONE. YOU
7 CAN'T GO, YOU'RE JUST NOT GOING TO BE PICKED FOR THIS
8 TRIAL. YOU'VE GOT TO STAY WITH US.

9 JUROR: MY ADOPTED MOTHER'S BROTHER WAS RELATED TO
10 THEM.

11 THE COURT: TO MR. SPANN'S FAMILY?

12 JUROR: YES.

13 THE COURT: WHAT'S YOUR NAME AND NUMBER?

14 JUROR: SANDRA BOWMAN, NO. 17.

15 THE COURT: ALL RIGHT. WOULD THAT AFFECT YOUR ABILITY
16 TO GIVE BOTH THE STATE AND THIS DEFENDANT A FAIR AND
17 IMPARTIAL TRIAL?

18 JUROR: I DON'T THINK SO.

19 THE COURT: WELL, BUT I'VE GOT TO KNOW MORE THAN THAT
20 AND YOU'RE THE ONLY ONE THAT KNOWS. I MEAN, YOU'VE GOT TO
21 TELL ME WHETHER YOU CAN LISTEN TO THE EVIDENCE AND BE FAIR
22 TO BOTH SIDES. AND IF YOU DON'T THINK YOU CAN BE FAIR,
23 THEN I NEED TO EXCUSE YOU BECAUSE I'VE GOT TO HAVE A FAIR
24 JURY.

25 JUROR: I CAN BE FAIR.

1 THE COURT: YOU THINK YOU CAN BE FAIR?

2 JUROR: YES.

3 THE COURT: OKAY. YOU CAN HAVE A SEAT, MA'AM. THANK
4 YOU.

5 THE ALLEGED VICTIM IN THIS CASE IS LINDSEY LOVELY.
6 ANY MEMBER OF THE JURY PANEL CONNECTED BY BLOOD OR
7 MARRIAGE, CLOSE PERSONAL FRIENDS, OR SOCIAL RELATIONS WITH
8 LINDSEY LOVELY? IF SO, PLEASE STAND.

9 (NO RESPONSE.)

10 THE COURT: THE POTENTIAL WITNESSES IN THIS CASE ARE
11 MARY ANN LOVELY, MELONIECE COOK, TAMEKA WILSON, VICKI
12 HALLMAN, JANICE ROSS, BENNY WEBB -- BENNY WEBB, JOHN
13 JACKSON, DAN FEENEY, DWAYNE HUGGINS, JOHN DAVIS, TAMEKA --
14 I'VE ALREADY DONE TAMEKA WILSON, MICHAEL SPANN, CLAYTON
15 PLOYDEN, AND CHANTRELL (PHONETIC) SCARBOROUGH.

16 ANY MEMBER OF THE JURY PANEL CONNECTED BY BLOOD OR
17 MARRIAGE, CLOSE PERSONAL FRIENDS, OR FAMILY RELATIONS TO
18 ANY OF THOSE POTENTIAL WITNESSES? IF SO, PLEASE STAND.

19 I'VE ALREADY DISQUALIFIED YOU, SO YOU CAN SIT DOWN.

20 YES, MA'AM.

21 JUROR: I TAUGHT LINDSEY LOVELY IN SCHOOL.

22 THE COURT: OKAY. AND WHAT'S YOUR NUMBER?

23 JUROR: 145.

24 THE COURT: AND THE FACT THAT YOU TAUGHT THE ALLEGED
25 VICTIM IN THIS CASE IN SCHOOL, WOULD THAT AFFECT YOUR

1 ABILITY TO GIVE BOTH SIDES A FAIR AND IMPARTIAL TRIAL?
2 JUROR: NO, SIR.
3 THE COURT: AND YOUR NUMBER WAS 114?
4 JUROR: 145.
5 THE COURT: 145. OKAY. THANK YOU.
6 YES, MA'AM.
7 JUROR: YES, SIR. I WORK ---
8 THE COURT: I COULDN'T HEAR YOU. SAY THAT ONE MORE
9 TIME.
10 JUROR: I GREW UP IN THE SAME TOWN WITH SOME OF THE
11 WITNESSES.
12 THE COURT: YOU GREW UP IN THE SAME TOWN WITH SOME OF
13 THE WITNESSES?
14 JUROR: YES.
15 THE COURT: WHAT'S YOUR NAME AND NUMBER, PLEASE,
16 MA'AM?
17 JUROR: MARIETTA SCARBOROUGH, NO. 120.
18 THE COURT: WOULD THAT AFFECT YOUR ABILITY TO GIVE
19 BOTH SIDES A FAIR AND IMPARTIAL TRIAL?
20 JUROR: I DON'T THINK SO.
21 THE COURT: YOU DON'T THINK YOU COULD DO THAT?
22 JUROR: ALL RIGHT. I WILL EXCUSE YOU. THANK YOU.
23 ANYONE ELSE?
24 (NO RESPONSE.)
25 THE COURT: THE ATTORNEYS IN THIS CASE, THE STATE IS

1 BEING REPRESENTED BY JOHN GENTRY. THE DEFENSE IS BEING
2 REPRESENTED BY DEBORAH BUTCHER. IS THERE ANY MEMBER OF THE
3 JURY PANEL CONNECTED BY BLOOD OR MARRIAGE, CLOSE PERSONAL
4 FRIENDS, SOCIAL RELATIONS, OR HAVE BEEN REPRESENTED BY
5 EITHER TWO OF THESE ATTORNEYS? IF SO, PLEASE STAND.

6 (NO RESPONSE.)

7 THE COURT: ANY MEMBER OF THE JURY PANEL FORMED OR
8 EXPRESSED AN OPINION ABOUT ANY OF THE MATTERS OR ISSUES
9 INVOLVED IN THIS CASE? IF SO, PLEASE STAND.

10 (NO RESPONSE.)

11 THE COURT: ANY MEMBER OF THE JURY PANEL AWARE OF ANY
12 BIAS OR PREJUDICE EITHER TOWARD THE STATE OF SOUTH CAROLINA
13 OR THIS DEFENDANT? IF SO, PLEASE STAND.

14 (NO RESPONSE.)

15 THE COURT: ANY MEMBER OF THE JURY PANEL SERVED ON THE
16 GRAND JURY HERE IN LEE COUNTY THAT HEARD THIS CASE? IF SO,
17 PLEASE STAND.

18 (NO RESPONSE.)

19 THE COURT: ANY MEMBER OF THE JURY PANEL WHO IS A
20 MEMBER OR A CONTRIBUTOR OF ANY VICTIM'S RIGHTS GROUP OR LAW
21 ENFORCEMENT GROUP, SUCH AS SADD, CAVE, OR MADD? IF SO,
22 PLEASE STAND.

23 (NO RESPONSE.)

24 THE COURT: ANY MEMBER OF THE JURY PANEL DUE TO
25 RELIGIOUS OR MORAL REASONS UNABLE TO SIT IN JUDGMENT OF

1 YOUR FELLOW MAN? IF SO, PLEASE STAND.

2 (NO RESPONSE.)

3 THE COURT: ANY MEMBER OF THE JURY PANEL KNOW ANY
4 REASON WHATSOEVER THEY CAN'T GIVE BOTH THE STATE OF SOUTH
5 CAROLINA AND THIS DEFENDANT A FAIR AND IMPARTIAL TRIAL? IF
6 SO, PLEASE STAND.

7 (NO RESPONSE.)

8 THE COURT: ANY FURTHER QUESTIONS FROM THE STATE?

9 MR. GENTRY: NO, SIR.

10 THE COURT: FROM THE DEFENSE?

11 MS. BUTCHER: NO, YOUR HONOR.

12 THE COURT: ALL RIGHT. MADAM CLERK, IF YOU'LL GIVE US
13 THE JURY. IT WILL BE 5 AND 10.

14 (THE JURY WAS EMPANELED AT 12:01 P.M.)

15 THE COURT: ARE THERE ANY MATTERS OF LAW PERTAINING TO
16 THE SELECTION OF THE JURY ON BEHALF OF THE STATE?

17 MR. GENTRY: NOT ON BEHALF OF THE STATE.

18 THE COURT: ON BEHALF OF DEFENSE?

19 MS. BUTCHER: NONE, YOUR HONOR.

20 THE COURT: OKAY. MR. SOLICITOR, WHAT DO YOU WANT ME
21 TO DO WITH THE PANEL?

22 (PAUSE.)

23 (THE JURY PANEL WAS EXCUSED.)

24 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
25 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

1 THE COURT: LADIES AND GENTLEMEN, I'VE BEEN CONFERRING
2 WITH THE ATTORNEYS IN THIS CASE. THERE ARE SOME MATTERS OF
3 LAW THAT I'VE GOT TO DEAL WITH BEFORE WE CAN ACTUALLY START
4 THE TESTIMONY IN THIS TRIAL. SO INSTEAD OF HAVING YOU BACK
5 THERE IN THAT JURY ROOM, I'M GOING TO SEND YOU TO LUNCH AND
6 WE'LL DEAL WITH THOSE MATTERS WHILE YOU'RE AT LUNCH.

7 AND I ASK YOU TO COME BACK TO THE JURY ROOM AT 2:30.
8 WHEN YOU COME IN, COME STRAIGHT TO THE JURY ROOM, AND
9 THEY'LL SHOW YOU WHERE IT IS.

10 WHEN YOU GET BACK, I'LL INSTRUCT YOU ABOUT THIS CASE
11 AND DEAL WITH MORE DETAILS. BUT RIGHT NOW, YOU'VE GOT TO
12 DECIDE THIS CASE BASED ON WHAT YOU HEAR IN THIS COURTROOM,
13 SO DON'T DISCUSS IT WITH ANYONE OVER LUNCH. DON'T READ
14 ANYTHING IF IT'S IN THE NEWSPAPER OR ANY KIND OF NEWS
15 MEDIA. YOU CAN'T EVEN DISCUSS IT AMONG YOURSELVES. AND
16 I'LL EXPLAIN ALL THAT TO YOU IN GREATER DETAIL WHEN YOU
17 COME BACK AT 2:30.

18 HAVE A NICE LUNCH, AND I'LL SEE YOU AT 2:30.

19 (THE JURY EXITS THE COURTROOM AT 12:06 P.M.)

20 THE COURT: ALL RIGHT. I'M GOING TO TAKE A 2-MINUTE
21 BREAK, AND THEN WE'LL START IN A COUPLE MINUTES AND HEAR
22 WHATEVER MOTIONS YOU'VE GOT.

23 (A RECESS WAS TAKEN.)

24 THE COURT: OKAY. I UNDERSTAND DEFENSE HAS A MOTION.

25 MS. BUTCHER: YES, YOUR HONOR. FIRST, YOUR HONOR,

1 BEFORE I -- WELL, I GUESS FIRST, YOUR HONOR, GOING BACK TO
2 MY PREVIOUS MOTION TO COMPEL. YOUR HONOR, I BELIEVE THAT
3 THE STATE NOW HAS EVIDENCE THAT THEY HAVE TAKEN SOME MAIL
4 OF FOUR INDIVIDUALS. THE ONES I'M LOOKING FOR ARE NOT
5 CONTAINED IN THE NAMES OF THE LETTERS THAT WERE TAKEN.

6 MY CLIENT STILL CONTENDS THAT THE LETTERS FROM THIS
7 ONE PARTICULAR PERSON, TAMEKA WILSON, WAS TAKEN -- WERE
8 TAKEN ALSO.

9 THE COURT: OKAY. SO THE LETTERS THAT YOU'RE
10 CONCERNED ABOUT ARE TAKEN FROM TAMEKA WILSON?

11 MS. BUTCHER: TAMEKA WILSON ARE THE ONES WE'RE LOOKING
12 FOR, YOUR HONOR.

13 THE COURT: OKAY.

14 MR. GENTRY: MY OFFICE CALLED INVESTIGATOR GRICE DOWN
15 IN TURBEVILLE. HE SAID THERE WERE SOME LETTERS THAT WERE
16 SEIZED. APPARENTLY, THEY WERE IN A PLASTIC BAG IN HIS
17 CELL. THEY WERE FROM A PERSON NAMED CARLETTA. HER MOTHER
18 IS ALSO KNOWN AS MABLE SPANN AND A PERSON NAMED YETTA
19 BURTON (PHONETIC). I HAVE NO INDICATION OF ANY TAKEN FROM
20 A TAMEKA WILSON.

21 THE COURT: OKAY. AND WHO DID YOU TALK TO THAT TOLD
22 YOU THIS?

23 MR. GENTRY: MS. THOMPSON TALKED TO INVESTIGATOR
24 GRICE.

25 THE COURT: LADELL (PHONETIC) GRICE?

1 MR. GENTRY: I ASSUME SO, SIR. IT'S 896-3147.
2 THE COURT: OKAY.
3 MR. GENTRY: AT TURBEVILLE.
4 THE COURT: ALL RIGHT. YES, MA'AM.
5 MS. BUTCHER: YOUR HONOR, THAT MAY HAVE BEEN THE ONES
6 GRICE TOOK. BUT OFFICER STAGNER WAS WHO TOOK THE ONES FROM
7 MS. WILSON. HE SAID IT WAS NOT JUST ONE TIME THAT THEY
8 WERE TAKEN.
9 THE COURT: AND WHO IS OFFICER STAGNER?
10 MS. BUTCHER: S.C.D.C.
11 THE COURT: IN TURBEVILLE?
12 MS. BUTCHER: YES, YOUR HONOR.
13 THE COURT: AND WHEN -- GIVE ME A DATE APPROPRIATE
14 WHEN THIS OCCURRED?
15 (PAUSE.)
16 MS. BUTCHER: JANUARY 29TH AND FEBRUARY 17TH.
17 THE COURT: OF 2010?
18 MS. BUTCHER: YES. YES.
19 THE COURT: ALL RIGHT.
20 MR. GENTRY: YOUR HONOR, THE NOTE MADE HERE, SERGEANT
21 STAGNER IS NOT HERE. WHETHER HE WAS NOT ON DUTY OR NO
22 LONGER WITH THE DEPARTMENT, I DO NOT KNOW. BUT
23 INVESTIGATOR GRICE IS APPARENTLY THE HEAD OF CONTRABAND
24 THERE AT TURBEVILLE. AND IF IT WAS TAKEN, SHE SHOULD HAVE
25 IT, I WOULD ASSUME.

1 MS. BUTCHER: YOUR HONOR ---

2 MR. GENTRY: AND ALSO, IF THIS IS A PARTICULAR
3 INDIVIDUAL, MS. BUTCHER CAN ALWAYS SUBPOENA MS. WILSON.

4 THE COURT: SHE'S ON BOTH OF YOU ALL'S LIST AS A
5 POTENTIAL WITNESS.

6 MS. BUTCHER: YOUR HONOR, I BELIEVE THE BURDEN IS ON
7 THE STATE TO SHOW THAT THEY ACTUALLY MADE A GOOD-FAITH
8 EFFORT TO FIND THESE LETTERS. HERE WE HAVE THE INFORMATION
9 FROM THE STATE THAT THEY THOUGHT THERE MAY HAVE BEEN
10 LETTERS, THEY NEVER REALLY FOLLOWED UP ON IT.

11 NOW THERE'S EVIDENCE THERE ARE LETTERS AND ALL THEY'VE
12 DONE IS TALK WITH ONE PERSON WHO TOOK SOME LETTERS AND NOT
13 TALKED TO THE PERSON WHO ACTUALLY TOOK THE LETTERS.

14 I BELIEVE THEY'VE FALLEN SHORT OF THEIR DUTY. YOUR
15 HONOR, I DON'T REMEMBER THE CASE, BUT I BELIEVE IT HAS COME
16 OUT THAT THIS IS A VERY HIGH DUTY UPON THE STATE TO PRODUCE
17 EXCULPATORY EVIDENCE. YOUR HONOR, THIS IS IN THE HANDS OF
18 THE STATE.

19 THE COURT: OKAY. ALL RIGHT. I UNDERSTAND -- MOVE ON
20 TO YOUR NEXT MOTIONS, AND WE CAN COME BACK TO THIS.
21 BASICALLY, THESE LETTERS AREN'T NECESSARILY IMPORTANT UNTIL
22 MS. WILSON EITHER TAKES THE STAND OR GETS TO YOUR POINT IN
23 THE CASE.

24 MS. BUTCHER: YOUR HONOR, THEY ARE IMPORTANT TO THE
25 ENTIRETY OF THIS TRIAL. THEY -- WELL, WHAT WE SAY -- WHAT

1 WE BELIEVE THEY HOLD IS INFORMATION THAT THEIR MAIN WITNESS
2 NEVER SAW IT.

3 THE COURT: I UNDERSTAND. BUT UNTIL THE MAIN WITNESS
4 GETS ON THE STAND ---

5 MS. BUTCHER: THEY'VE DECIDED NOT TO CALL THAT
6 WITNESS, YOUR HONOR ---

7 THE COURT: THEN YOU CAN CALL THAT WITNESS.

8 MS. BUTCHER: YOUR HONOR, THAT I BELIEVE WOULD BE
9 BURDEN SHIFTING.

10 THE COURT: NO, IT WOULDN'T. HOW IS THAT BURDEN
11 SHIFTING? THE STATE -- EVEN IF YOU FIND ALL THIS, THE
12 STATE DOESN'T HAVE TO CALL A WITNESS. THE STATE HAS GOT
13 THE BURDEN OF PROVING THIS CASE BEYOND A REASONABLE DOUBT.
14 AND IN THAT BURDEN, THEY CAN CALL WHATEVER WITNESSES THEY
15 WANT TO. YOU HAVE A RIGHT TO CALL ANY WITNESSES YOU WANT
16 TO. YOU DON'T HAVE TO CALL ANY.

17 BUT IF THE STATE CAN MAKE THEIR BURDEN WITHOUT CALLING
18 A WITNESS -- NOW, HAVING SAID THAT, IF THE STATE HAS IN ITS
19 POSSESSION EXCULPATORY INFORMATION, THEN CERTAINLY YOU'RE
20 ENTITLED TO IT. BUT AS FAR AS WHEN THAT EXCULPATORY
21 INFORMATION COMES IN TO PLAY IS EITHER IF THAT WITNESS
22 TAKES THE STAND IF THE STATE CALLS THAT WITNESS AND THAT
23 WITNESS WROTE LETTERS, THEN YOU HAVE A RIGHT TO LOOK AT
24 THOSE LETTERS TO CROSS EXAMINE THEM. IF THE STATE NEVER
25 CALLS THAT WITNESS, THEN IF YOU DECIDE TO PUT UP ANY

1 EVIDENCE, THEN AT THAT POINT IN THE TRIAL, THAT WOULD BE
2 IMPORTANT TO YOU.

3 MS. BUTCHER: AND, YOUR HONOR, I THINK WHEN I MAKE
4 ANOTHER MOTION, YOU MAY UNDERSTAND WHAT I'M SAYING WITH
5 THAT.

6 THE COURT: OKAY. GO AHEAD.

7 MS. BUTCHER: YOUR HONOR, MY NEXT MOTION IS TO
8 SUPPRESS ANY IDENTIFICATION OF MY CLIENT BY MS. MARY ANN
9 LOVELY. YOUR HONOR, WE BELIEVE HER IDENTIFICATION IS
10 TAINTED. SHE STATES NOT ONCE BUT TWICE THAT SHE DOESN'T
11 KNOW WHO COMMITTED THIS CRIME. SHE IS THEN TOLD THE NAME
12 OF THE PERSON AND TOLD WHO COMMITTED THE CRIME. THAT'S
13 WHEN SHE THEN SAYS, OH, THAT'S WHO DID IT.

14 YOUR HONOR, WE BELIEVE THAT HER IDENTIFICATION IS
15 TAINTED AND IS HIGHLY PREJUDICIAL, YOUR HONOR, TO BRING
16 THAT IN.

17 THE COURT: OKAY. WHAT SAY THE STATE?

18 MR. GENTRY: YES, SIR, I AGREE WHEN IT COMES IN, IT'S
19 GOING TO BE HIGHLY PREJUDICIAL. BUT I'LL TELL YOU THE
20 FURTHER PART ABOUT THIS, MS. LOVELY'S IDENTIFICATION WAS
21 MADE ON THE 9-1-1 CALL ALMOST CONTEMPORANEOUSLY AFTER THE
22 SHOOTING OCCURRED, 5 SHOTS GOING OFF IN A HOUSE TRAILER.

23 MS. LOVELY WAS ON THE PHONE ALMOST IMMEDIATELY TO
24 9-1-1. WE HAVE A TAPE OF ABOUT 10 MINUTES DURATION, WHICH
25 INDICATES THAT, YES, SHE SAW THE BOY AT THE DOOR. SHE MAY

1 NOT HAVE KNOWN HIS NAME THEN, BUT SHE KNEW HIM AS DUC,
2 D-U-C, DUC, AND SUBSEQUENTLY CONFIRMED THAT HIS NAME WAS IN
3 FACT JAMES KEON SPANN.

4 AS A MATTER OF FACT, MS. TAMEKA WILSON IS ALSO ON THE
5 SAME 9-1-1 TAPE EXCLAIMING -- SHE SAID, WHO DID THIS? AND
6 THE ANSWER WAS JAMES KEON SPANN. AND WE DECLARE -- WE
7 SUGGEST THAT BOTH OF THESE ARE EXCITED UTTERANCES THAT
8 WOULD COME IN REGARDLESS OF THE AVAILABILITY OF THE
9 WITNESS.

10 THE COURT: OKAY.

11 MS. BUTCHER: YOUR HONOR, NEVER ON THE 9-1-1 TAPE IS
12 HE IDENTIFIED AS DUC BY MS. MARY ANN LOVELY, THAT SHE KNEW
13 THAT OR HIS NAME JAMES SPANN BEFORE SHE WAS TOLD THAT BY
14 THE OTHER PERSON ON THE 9-1-1 TAPE THAT SAID IT WAS JAMES
15 KEON SPANN.

16 AND, YOUR HONOR, TO MY KNOWLEDGE NO ONE HAS EVER ASKED
17 TAMEKA WILSON WHO SAID IT WAS JAMES KEON SPANN IF SHE
18 ACTUALLY SAW HIM. SHE NEVER SAID, I SAW HIM. SHE SAID IT
19 WAS HIM, IT WAS JAMES KEON SPANN. I KNOW IT WAS HIM.
20 THAT'S NEVER BEEN QUALIFIED. IT'S BEEN TAKEN OUT OF
21 CONTEXT, AND THAT'S ONE REASON THOSE LETTERS ARE SO
22 IMPORTANT.

23 YOUR HONOR, THERE IS NO ONE TO MY KNOWLEDGE THAT HAS
24 EVER SAID, DID YOU SEE HIM? HOW FAR AWAY WAS HE? THERE'S
25 NOTHING TO BRING IN THE PERSONAL KNOWLEDGE THAT IT WAS HIM.

1 SHE HAS MADE CONTRADICTORY STATEMENTS AFTER THE FACT. YOUR
2 HONOR, I BELIEVE IT'S TAINTED. IT'S -- IT'S -- MS. MARY
3 ANN LOVELY'S IDENTIFICATION IS JUST TAINTED.

4 THE COURT: HOW IS IT TAINTED?

5 MS. BUTCHER: SHE WAS TOLD WHO DID IT.

6 THE COURT: WHO TOLD HER WHO DID IT?

7 MS. BUTCHER: THE OTHER PERSON ON THE 9-1-1 TAPE.

8 THE COURT: THIS OTHER PERSON THAT'S ON THE 9-1-1
9 TAPE, WHERE IS THAT PERSON LOCATED?

10 MS. BUTCHER: YOUR HONOR, THAT'S THE ONE THE STATE HAS
11 SUBPOENAED AND TOLD, DON'T COME UNLESS WE CALL YOU.
12 THEY'RE WANTING TO GET HER STATEMENT IN AS AN EXCITED
13 UTTERANCE, AND THAT WOULD BE OUR NEXT MOTION, YOUR HONOR.

14 THE COURT: OKAY. SO YOUR OBJECTION IS TO SUPPRESS
15 THE IDENTIFICATION BECAUSE THE IDENTIFICATION IS TAINTED?

16 MS. BUTCHER: PRIOR TO HER SAYING WHO DID IT, SHE SAID
17 TWICE, I DON'T KNOW WHO DID IT. SHE WAS ASKED DIRECTLY BY
18 LAW ENFORCEMENT, WHO DID THIS? HER RESPONSE IS, I DON'T
19 KNOW.

20 AND, AGAIN, ON THE 9-1-1 TAPE SHE SAYS, I DON'T -- I
21 DON'T KNOW, BUT THERE'S A GIRL HERE. SHE KNOWS.

22 THE COURT: OKAY. WHEN YOU SAID LAW ENFORCEMENT TOLD
23 HER WHO DID IT ---

24 MS. BUTCHER: LAW ENFORCEMENT ASKED THE OTHER --
25 TAMEKA WILSON, THE OTHER PERSON ON THE 9-1-1 TAPE WHO DID

1 THIS? I DON'T KNOW IF THEY ASKED OR SHE JUST GOT ON THE
2 PHONE AND SAID.

3 THE COURT: WHEN YOU'RE REFERRING TO LAW ENFORCEMENT,
4 ARE YOU REFERRING TO ---

5 MS. BUTCHER: 9-1-1 ---

6 THE COURT: --- THE 9-1-1 DISPATCHER?

7 MS. BUTCHER: --- DISPATCHER.

8 THE COURT: SO IT WASN'T A LAW ENFORCEMENT OFFICER,
9 IT'S THE 9-1-1 DISPATCHER THAT YOU'RE SAYING WHO DID IT?

10 MS. BUTCHER: I CALL HER LAW ENFORCEMENT BECAUSE
11 THERE'S CASE LAW THAT SAY IT'S THE EQUIVALENT.

12 THE COURT: BUT ---

13 MS. BUTCHER: BUT I'LL ---

14 THE COURT: IT WASN'T A SHOW-UP -- OKAY. THE 9-1-1
15 OPERATOR IS GOING TO ASK THEM WHO DID IT?

16 MS. BUTCHER: YES.

17 THE COURT: OKAY. SO THIS WHOLE THING IS
18 IDENTIFICATION THROUGH A 9-1-1 OPERATOR?

19 MS. BUTCHER: YES.

20 THE COURT: OKAY. AND YOU WANT TO SUPPRESS THAT
21 BECAUSE IT WAS TAINTED?

22 MS. BUTCHER: I WANT TO SUPPRESS MARY ANN LOVELY'S
23 IDENTIFICATION.

24 THE COURT: BUT BASED ON WHAT YOU TOLD ME, IT APPEARS
25 THAT SHE'S ON THE PHONE TO 9-1-1 OPERATOR. THE 9-1-1

1 OPERATOR ASKED HER, WHO DID THIS? SHE SAYS, I DON'T KNOW,
2 BUT SOMEBODY DOES. AND SO THAT WHOLE CONVERSATION IS ON
3 9-1-1?

4 MS. BUTCHER: YES, YOUR HONOR. AND I'M NOT -- YOU
5 KNOW ---

6 THE COURT: OKAY.

7 MS. BUTCHER: --- IF MS. TAMEKA WILSON WANTS TO COME
8 IN HERE AND SAY, IT WAS JAMES SPANN, THAT'S A DIFFERENT
9 STORY.

10 THE COURT: BUT LAW ENFORCEMENT DIDN'T TELL HER WHO
11 DID IT?

12 MS. BUTCHER: THE OTHER PERSON AT THE HOUSE DID.

13 THE COURT: WELL, THAT GOES TO THE WEIGHT. THE JURY
14 CAN DETERMINE WHETHER HER IDENTIFICATION WAS ACCURATE OR
15 NOT. AND IF SHE DIDN'T LOOK AT THAT DEFENDANT AND SAY --
16 YOU KNOW, SHE'S GOING BY WHAT'S ALL IS ON THE TAPE, SO THE
17 JURY CAN DETERMINE WHAT WEIGHT TO GIVE IT IF SHE KNEW WHO
18 HE WAS OR NOT, RIGHT?

19 MS. BUTCHER: WELL ---

20 THE COURT: IF THE JURY HEARD THE 9-1-1 TAPE, THEY'RE
21 GOING TO HEAR IT ALL VERSUS THIS PORTION THAT JAMES SPANN
22 DID IT.

23 MS. BUTCHER: WELL ---

24 THE COURT: RIGHT?

25 MS. BUTCHER: I -- I -- I ---

1 THE COURT: IF IT'S ADMISSIBLE ---

2 MS. BUTCHER: --- WANT TO SUPPRESS THE REST OF THE
3 9-1-1 TAPE TOO, AND ---

4 THE COURT: BECAUSE IT'S HEARSAY?

5 MS. BUTCHER: THE SECOND TIME THAT SHE SAYS, I DON'T
6 KNOW WHO DID IT, SHE'S ALSO SAYING, BUT THERE'S SOMEBODY
7 HERE THAT KNOWS. I DON'T KNOW. I DON'T THINK YOU CAN
8 SEPARATE IT ON THE TAPE, SO THAT'S HER AGAIN SAYING, I
9 DON'T KNOW.

10 THE COURT: THE JURY HEARS HER SAYING, I DON'T KNOW.
11 IT'S A SITUATION IF THE STATE WANTED TO REDACT THE TAPE AND
12 TAKE THAT PART OUT OF IT -- BUT IF THE WHOLE TAPE COMES IN
13 UNDER EXCITED UTTERANCE OR WHATEVER OTHER THEORY, THEN THE
14 JURY CAN DETERMINE WHETHER SHE REALLY KNOWS WHO DID IT OR
15 NOT OTHER THAN SOMEBODY TELLING HER THIS IS THE PERSON'S
16 NAME. RIGHT? SO IT GOES TO THE WEIGHT.

17 IT'S NOT LIKE A NORMAL SHOW-UP WHERE THE POLICE COME
18 TO THE VICTIM AND SAY, JAMES SPANN COMMITTED THIS CRIME AND
19 THE VICTIM HAD NO IDEA BEFORE THAT, AND FROM THEN ON OUT
20 THEY IDENTIFY JAMES SPANN IN A PRELIMINARY OR IN OUR COURT
21 BASED ON ---

22 MS. BUTCHER: YOUR HONOR, I DON'T SEE THE DIFFERENCE.
23 IT'S BEING SUGGESTED BY LAW ENFORCEMENT, BY ANOTHER PERSON.
24 IT'S SOMEBODY, AN OUTSIDE SOURCE SUGGESTING TO HER WHO
25 DID IT. SHE CANNOT SAY, I PERSONALLY SAW. SHE DOESN'T

1 HAVE ---

2 THE COURT: I UNDERSTAND THAT. AND THE JURY WILL HEAR
3 THAT THOUGH, AND THE JURY WILL DETERMINE WHETHER SHE'S
4 ACCURATE OR NOT, ASSUMING IT COMES IN.

5 NOW, GO TO YOUR NEXT MOTION ABOUT -- I GUESS THE
6 9-1-1 TAPE IS AN ISSUE WHETHER IT COMES IN AS AN EXCITED
7 UTTERANCE OR NOT.

8 SO WHAT'S THE STATE'S POSITION ON THAT?

9 MR. GENTRY: YOUR HONOR, THE CALL CAME IN TO DISPATCH
10 AT 11 MINUTES AFTER MIDNIGHT ON THE 7TH DAY OF APRIL OF
11 LAST YEAR. IT WAS A RESULT OF THE TELEPHONE CALL, THE
12 MOTHER -- MS. LOVELY IS CLEARLY HEARD SAY, HE JUST CAME IN.
13 HE JUST SHOT MY SON. SEND THE POLICE. SEND -- I FORGET
14 WHAT IT IS. SEND EMS. IT'S A WRENCHING TAPE.

15 THE COURT: OKAY.

16 MR. GENTRY: THE THING IS THEN DURING THE COURSE OF
17 THIS CONVERSATION AS DISPATCH IS TALKING ABOUT HER SON --
18 HER SON, BY THE WAY, IS IN THE -- IS IN HIS BEDROOM
19 BLEEDING WITH HIS PANTS HALF-WAY DOWN HIS BODY BECAUSE HE
20 WAS ENGAGED IN AN INTIMATE ACTIVITY WITH MS. TAMEKA WILSON.
21 AND SHE WAS CLAD ONLY IN A WHITE TEE SHIRT AT THE TIME.
22 SHE GETS ON -- AFTER ALL OF THE CONVERSATION WITH MS.
23 LOVELY, MS. LOVELY SAYS -- I WANT TO SAY I DON'T KNOW WHO
24 THEY ARE, BUT I KNOW WHERE THEY STAY. AND THEN SHE GOES
25 ONTO SAY THAT SOMEBODY IS HERE TO TELL YOU. AND THEN

1 TAMEKA WILSON GETS ON THE PHONE. AND THEY ASK, HOW ARE
2 YOU?

3 SHE SAYS, I'M BLEEDING. I'M SCARED. YOU COULD TELL
4 BY THE TONE OF HER VOICE THAT SHE'S SCARED. 5 GUNSHOTS
5 HAVE JUST GONE OFF IN THAT SMALL TRAILER, ALL 5 OF THEM OF
6 WHICH HIT LINDSEY LOVELY.

7 AND SHE'S THERE WHEN OFFICER JACKSON COMES IN, WHO IS
8 THE FIRST OFFICER ON THE SCENE WHO IS THERE. AND
9 APPROXIMATELY 17 MINUTES AFTER THE HOUR OR 6 MINUTES AFTER
10 THE DISPATCH CALL COMES IN, THEY'RE ALL IN THAT BEDROOM
11 AROUND LINDSEY LOVELY. LINDSEY LOVELY IS BLEEDING. AND
12 MS. WILSON IS NOT IN THE MOST CALM OF MOODS. SHE'S UPSET.
13 SHE'S SCARED. SHE JUST HAD 5 GUNSHOTS GO OFF WITHIN CLOSE
14 PROXIMITY OF HER. AND SHE'S IN FRONT OF A DEAD BODY.

15 THE COURT: WELL, AT THIS POINT, THIS STATEMENT ON THE
16 EXCITED UTTERANCE, IS THIS THE 9-1-1 TAPE OR IS THERE
17 ANOTHER STATEMENT BESIDE THE 9-1-1 TAPE?

18 MR. GENTRY: THERE ARE TWO DIFFERENT ONES. TWO
19 DIFFERENT ONES. THE SAME IS ON THE 9-1-1 TAPE. AND WHEN
20 OFFICER JACKSON GOT THERE, HE SAID, WHO DID THIS?

21 AND SHE SAID, JAMES KEON SPANN. JAMES KEON SPANN.

22 THE COURT: OKAY. SO WE'VE GOT TWO POTENTIAL
23 STATEMENTS?

24 MR. GENTRY: YES, SIR.

25 THE COURT: ONE ON THE 9-1-1 TAPE?

1 MR. GENTRY: YES, SIR.

2 THE COURT: AND THAT CAME IN AT 11 -- WHAT?

3 MR. GENTRY: 11 MINUTES AFTER MIDNIGHT ON 4/7 2009.

4 THE COURT: OKAY.

5 MR. GENTRY: THAT'S WHAT THE DISPATCH TIME WAS.

6 THE COURT: AND THAT'S WHEN SHE FIRST CALLED 9-1-1?

7 MR. GENTRY: WELL, IT'S AROUND THAT TIME. IT MAY HAVE

8 BEEN A FEW MINUTES EARLIER. IT SAYS HERE, DISPATCH AT 11

9 MINUTES AND 13 SECONDS AFTER THE HOUR.

10 THE COURT: OKAY. AND HOW LONG WAS THIS -- IS THE

11 STATE'S POSITION TO PLAY THE ENTIRE 9-1-1 TAPE?

12 MR. GENTRY: THE 9-1-1 TAPE IS ABOUT 10 MINUTES LONG,

13 YES, SIR, IT IS.

14 THE COURT: OKAY. DOES THE TAPE -- DOES THE 9-1-1

15 SYSTEM HERE BEGINS TO RECORD AS SOON AS THE FIRST RING

16 OCCURS OR WHEN THE OPERATOR PICKS UP?

17 MR. GENTRY: I THINK IT'S WHEN THE OPERATOR PICKS UP.

18 I DON'T KNOW THAT FOR A FACT.

19 THE COURT: OKAY. SO AT LEAST YOU DON'T HAVE A

20 RECORDING OF BEFORE THE OPERATOR PICKED UP?

21 MR. GENTRY: I HAVE THE RECORDING BEGINS WHEN THE

22 OPERATOR SAYS, 9-1-1, WHAT'S YOUR EMERGENCY?

23 THE COURT: AND MANY 9-1-1 SYSTEMS BEGIN RECORDING

24 BEFORE THAT. BUT A LOT OF PEOPLE DON'T KNOW THAT, AND SO

25 THEY ONLY START RECORDING WHEN THE OPERATOR GETS ON. BUT

1 MANY TIMES IT RECORDS BEFORE THAT, BUT YOU DON'T HAVE THAT
2 IN THIS SCENARIO? OKAY.

3 MR. GENTRY: OFFICER JACKSON WAS DISPATCHED AT 17
4 MINUTES AND 24 SECONDS AFTER THE HOUR AND WAS ON -- ON
5 SCENE AT 17 MINUTES AND 28 -- HE WAS ALMOST IN THE
6 VICINITY. IT SAYS 17 28.

7 THE COURT: OKAY. SO WITHIN 5 MINUTES OF THE CALL
8 COMING IN OR 6 MINUTES, HE'S AT THE SCENE?

9 MR. GENTRY: HE'S AT THE SCENE.

10 THE COURT: HOW LONG AFTER HE IS AT THE SCENE DOES
11 THIS STATEMENT THAT YOU WANT TO GET IN ---

12 MR. GENTRY: PROBABLY WITHIN 10 OR 15 -- LESS THAN 15
13 MINUTES. AND THE CASE LAW THAT I HAVE SEEN INDICATES THAT
14 UP TO 2 HOURS UNDER CERTAIN CIRCUMSTANCES WOULD ---

15 THE COURT: I'M JUST TRYING TO -- OKAY. NOW, DO YOU
16 WANT TO OFFER TESTIMONY AS TO WHETHER THE PERSON MAKING THE
17 STATEMENT WAS STILL UNDER THE EMOTIONAL ISSUES OF THE
18 SCENE?

19 MR. GENTRY: I CAN. OFFICER JACKSON IS HERE.

20 MS. BUTCHER: YOUR HONOR, I BELIEVE MY ISSUE WITH THIS
21 IS LESS OF THE STRESS, MORE THE FACT THAT SHE WAS -- NO ONE
22 EVER -- SHE HAS TO HAVE PERSONALLY IDENTIFIED -- HAD
23 PERSONAL KNOWLEDGE OF THE IDENTIFICATION. THERE'S NO
24 EVIDENCE OF THAT, OR THIS HEAR-SAY STATEMENT SHOULD COME IN
25 TO BEGIN WITH.

1 THEY NEED FOR THE STATEMENT TO FALL UNDER THE EXCITED
2 UTTERANCE, THERE ARE THREE THINGS THAT THE STATE HAS TO
3 MEET. IT'S TOTALLY THEIR BURDEN. ONE, THE OCCASION. IT
4 WAS A MURDER. TWO, THE DECLARANT HAS HAD THE OPPORTUNITY
5 TO PERSONALLY OBSERVE THE EVENT.

6 THE COURT: OKAY.

7 MS. BUTCHER: THEY, I FEEL, CANNOT MEET THEIR BURDEN
8 IN THAT AREA. CLEAR, IT MUST BE UNDER DISTRESS OR EXCITED.

9 YOUR HONOR, I BELIEVE UNDER 402 IT WOULD BE HIGHLY
10 PREJUDICIAL TO PRESENT THIS. IT PROVIDES A CONFRONTATION
11 CLAUSE, YOUR HONOR, WITHOUT ME BEING ABLE TO CROSS EXAMINE
12 THIS WITNESS. YOUR HONOR, THIS IS THE WITNESS THE STATE
13 HAS SUBPOENAED BUT THEY DON'T WANT TO BRING HER IN. THIS
14 WAS THE EX-GIRL FRIEND OF THE DEFENDANT.

15 YOUR HONOR, SHE HAS LATER MADE CONTRADICTORY
16 STATEMENTS, WHICH THE STATE KNOWS ABOUT. YOUR HONOR, I
17 BELIEVE THEY'RE BRINGING IN THE STATEMENT, WANTING THE JURY
18 TO HEAR IT AND IT BE TAKEN OUT OF CONTEXT.

19 I BELIEVE IT ALL FALLS ON THE FACT THAT SHE COULD NOT
20 PERSONALLY SAY, I SAW HIM WITH MY OWN EYES. HER STATEMENT
21 TO ANOTHER INDIVIDUAL WAS, WELL I FELT IN MY HEART IT WAS
22 HIM. THIS IS NO DIFFERENT THAN SOMEONE GOING THROUGH A
23 DIVORCE AND THERE'S SUGAR IN THE GAS TANK, WELL, I KNOW IT
24 WAS MY EX-HUSBAND. THEY DIDN'T SEE HIM, BUT THE KNOW.

25 I BELIEVE THE STATEMENT CAN BE TAKEN OUT OF CONTEXT.

1 IT WOULD BE HIGHLY PREJUDICIAL TO THE JURY.

2 YOUR HONOR, ALSO UNDER THE DAVIS CASE, WHICH IS THE
3 FOLLOW-UP TO CRAWFORD, WHICH DEFINES TESTIMONY -- WOULD
4 COME TO BE TESTIMONY OF STATEMENT. THE 9-1-1 OFFICER SAID,
5 WHO DID THIS?

6 SHE MADE THE STATEMENT, KNOWING THEY'RE USING IT FOR
7 IDENTIFICATION.

8 AND, YOUR HONOR, I DO HAVE THAT CASE PULLED. THERE'S
9 THE SUPREME COURT VERSION, BUT THE EXPLANATION IS AT THE
10 COURT OF APPEALS VERSION.

11 THE COURT: OKAY.

12 MS. BUTCHER: YOUR HONOR, AND WHAT IT DOES, YOUR
13 HONOR, IN THAT CASE, IT DISTINGUISHES BETWEEN AN EXCITED
14 UTTERANCE WHERE THERE'S A BYSTANDER MAKING A STATEMENT AND
15 BETWEEN SOMEONE ON THE 9-1-1 TAPE BEING ASKED WHO DID THIS;
16 BECOMES TESTIMONIAL, YOUR HONOR, WHICH DOES NOT FALL UNDER
17 THE HEARSAY EXCEPTION.

18 THE COURT: OKAY.

19 MS. BUTCHER: AND, YOUR HONOR, I DON'T THINK THAT
20 UNLESS THEY SHOULD HAVE TESTIMONY THAT SHE ACTUALLY SAW
21 THAT PERSON, FOR THAT REASON IT WOULD FAIL. AND ALSO THE
22 FACT IT WOULD BE TESTIMONIAL, WHICH WOULD TAKE IT OUT OF
23 THE HEARSAY EXCEPTION.

24 THE COURT: OKAY. WHAT SAYS THE STATE?

25 MR. GENTRY: THE STATE SAYS THAT HER STATEMENT WAS

1 ELICITED UNDER A STATEMENT RELATING TO A STARTLING EVENT OR
2 CONDITION MADE WHILE THE DECLARANT WAS UNDER DISTRESS OR
3 EXCITED CAUSED BY A STARTLING EVENT OR CONDITION. AS SUCH
4 IT QUALIFIES AS AN EXCEPTION TO THE HEARSAY RULE UNDER 803.
5 THE EVENTS ARE THERE.

6 THE STATEMENT MUST RELATE TO A STARTLING EVENT OR
7 CONDITION. I THINK THAT YOU WOULD AGREE THAT THE MURDER
8 AND THOSE 5 ROUNDS WENT OFF IN THE TRAILER WAS A STARTLING
9 EVENT OR CONDITION.

10 THAT STATEMENT MUST BE MADE WHILE THE DECLARANT WAS
11 UNDER DISTRESS OR EXCITEMENT. IT WAS MADE -- BOTH OF THEM
12 WERE MADE WITHIN ABOUT 20 OR 25 MINUTES OF THE EVENT
13 OCCURRING.

14 THE STRESS OR EXCITEMENT MUST BE CAUSED BY THE
15 STARTLING EVENT OR CONDITION. THAT AGAIN, IT IS A GUN WENT
16 OFF IN A CROWDED ROOM, LAYING ON THE FLOOR BLEEDING FROM
17 CHEST WOUNDS. HOW SHE COULD NOT BE UNDER THE INFLUENCE OF
18 A STARTLING EVENT ABSOLUTELY ESCAPES MY ATTENTION. AND I
19 BELIEVE THAT MS. BUTCHER WOULD AGREE THAT WAS AN EXCITED --
20 STARTLING EVENT OR CONDITION.

21 THE COURT: OKAY. NOW, IT'S TWO DIFFERENT PEOPLE, THE
22 ONE ON THE 9-1-1 TAPE IS THE MOTHER OF THE DECEASED?

23 MR. GENTRY: THE 9-1-1 TAPE ORIGINATES WITH MS.
24 LOVELY. MS. LOVELY MAKES THE PHONE CALL.

25 THE COURT: THAT'S THE MOTHER OF THE DECEASED?

1 MR. GENTRY: THAT'S THE MOTHER OF THE DECEASED.

2 THE COURT: OKAY.

3 MR. GENTRY: SHE THEN -- AFTER SHE HAS TALKED WITH
4 9-1-1 FOR A WHILE, SHE TURNS THE PHONE OVER TO TAMEKA
5 WILSON. AND TAMEKA WILSON SAYS, IT WAS JAMES KEON SPANN
6 AFTER SHE SAYS, I'M SCARED. I'M BLEEDING. I THINK I CAN
7 MAKE IT, ETCETERA, ETCETERA. SO THAT'S THE FIRST EXCITED
8 UTTERANCE.

9 THE COURT: WHERE IS OR AT LEAST THE STATE'S
10 CONTENTION, WHERE WAS THE MOTHER LOCATED WHEN THE SHOOTING
11 OCCURRED?

12 MR. GENTRY: WHEN THE SHOOTING -- ACTUAL SHOOTING
13 OCCURRED, SHE HAD SEEN DUC AT THE DOOR THROUGH THE PEEP
14 HOLE. SHE THEN HEARD A SLIDE RACK. SHE RAN TO THE BACK
15 BEDROOM WHERE LINDSEY AND TAMEKA WERE AND SAYS, THE BOY IS
16 AT THE DOOR. HE'S GOT A GUN. SHE RAN BACK TO HER BEDROOM
17 IN ORDER TO TAKE CARE OF HER SECOND SON, WHO HAS A
18 DISABILITY. SHE SAW DUC AT THE DOOR. SHE SAW HIM AT THE
19 DOOR. AS SHE WAS RUNNING BACK BY THAT DOOR ON THE WAY TO
20 HER BEDROOM, THE DOOR FLIES OPEN AND THE SHOOTING STARTS.
21 SHE HAD GONE -- AND WHAT THE STATE SAYS IS THAT LINDSAY
22 LOVELY HAD BEEN WARNED. HE WAS PULLING ON HIS PANTS. HE
23 WAS COMING DOWN THE HALLWAY WHEN THE FIRST TWO SHOTS WENT
24 OFF. THE FIRST SHOT WAS RIGHT BY THE DOOR. THE FIRST
25 CARTRIDGE CASE WAS DISCOVERED RIGHT BY THE DOORWAY. THE

1 SECOND CARTRIDGE CASE IS VERY CLOSE TO THAT. THERE'S A
2 THIRD ONE FURTHER ON DOWN. AND THERE ARE TWO MORE IN THE
3 BEDROOM ITSELF.

4 AND LINDSEY LOVELY IS DISCOVERED IN THE BEDROOM, LYING
5 ON THE FLOOR WITH HIS PANTS DOWN ABOUT THE TOP OF HIS GROIN
6 AREA WITH NO SHIRT ON. AND SHE DESCRIBES -- MS. LOVELY
7 DESCRIBES THE SITUATION, HE'S BLEEDING FROM HIS CHEST. AND
8 THEY TALK ABOUT THAT.

9 THEN MS. WILSON IS HOLDING HIS HEAD. SHE'S WEARING A
10 TEE SHIRT. SHE'S HOLDING HIS HEAD WHEN OFFICER JACKSON
11 GETS THERE.

12 THE COURT: OKAY. AND SO MS. WILSON IS PRESENT DURING
13 THE -- I MEAN ---

14 MR. GENTRY: SHE WAS IN BED WITH ---

15 THE COURT: THE DECEASED?

16 MR. GENTRY: --- LINDSEY LOVELY.

17 THE COURT: OKAY. SO SHE MAKES -- MS. WILSON MAKES A
18 STATEMENT TO THE 9-1-1 OPERATOR AS TO WHO HAD DID IT?

19 MR. GENTRY: YES, SIR.

20 THE COURT: AND THEN THERE'S A STATEMENT MADE TO LAW
21 ENFORCEMENT ---

22 MR. GENTRY: OFFICER JACKSON ARRIVES ON THE SCENE AND
23 SAYS -- AS THE FIRST OFFICER, WHO DID IT? WHO DID IT? AND
24 SHE SAYS ---

25 THE COURT: AND MS. WILSON IS THE ONE THAT MADE THAT

1 STATEMENT?

2 MR. GENTRY: YES, SIR.

3 THE COURT: OKAY. AND IT'S MADE -- ALL THESE
4 STATEMENTS -- THAT STATEMENT IS MADE IN THE BEDROOM OR IN
5 THE HOUSE?

6 MR. GENTRY: YES, SIR, RIGHT WITHIN THE HOUSE.

7 THE COURT: OKAY. DO YOU DISAGREE WITH ANY OF THOSE
8 FACTS THAT HE'S TOLD ME?

9 MS. BUTCHER: YOUR HONOR, I AGREE THAT MS. LOVELY
10 NEVER SAW HIM ENTER AND SHOOT. I AGREE THAT THERE WAS A
11 SHOOTING. I AM -- I'M SURE IT WAS STRESSFUL TIME. YOUR
12 HONOR, THAT'S NOT MY ARGUMENT. MY ARGUMENT IS BEFORE YOU
13 CAN INTRODUCE THE HEARSAY STATEMENT, YOU HAVE TO SHOW THEY
14 ACTUALLY SAW THE EVENT. THEY CAN'T DO THAT, AND THERE IS
15 TESTIMONY THAT ---

16 THE COURT: YOU ---

17 MS. BUTCHER: --- THAT SHE DIDN'T.

18 THE COURT: DO YOU THINK THE STATE -- DO YOU THINK THE
19 EXCITED UTTERANCE RULES REQUIRES THEM TO SEE THE EVENT OR
20 TO BE PRESENT AT THE EVENT?

21 MS. BUTCHER: YOUR HONOR, YOU HAVE TO HAVE A PRESENT
22 SENSE OF PERCEPTION OF IT, YOUR HONOR. AND I WOULD OFFER,
23 ONE, THE CRAWFORD, AND, TWO, THE DAVIS CASES. AND THEY --
24 THE OTHER REASON EVEN IF -- YOUR HONOR, IT'S TESTIMONIAL.
25 I DON'T THINK THERE'S AN ARGUMENT THAT THAT STATEMENT, THAT

1 IT WAS JAMES SPANN IS TESTIMONIAL.

2 IF YOU WANT ME TO HAND THESE UP, YOUR HONOR? I WILL.

3 THE COURT: OKAY. YOU CAN HAND ME WHATEVER YOU WANT
4 ME TO CONSIDER. ANYTHING ELSE?

5 MR. GENTRY: NO, SIR. I JUST GO WITH THE CASES OF THE
6 SUPREME COURT, STALLENOCKER (PHONETIC) VERSUS -- STATE
7 VERSUS STALLENOCKER, AND STATE VERSUS BENNETT IN THE
8 SUPREME COURT.

9 MS. BUTCHER: HERE THESE ARE.

10 MR. GENTRY: IS IT SUFFICIENT TO GIVE YOU THE CITE ON
11 THOSE?

12 THE COURT: YES.

13 MR. GENTRY: THE CITE ON THAT IS ---

14 THE COURT: GIVE THEM TO MY LAW CLERK.

15 ALL RIGHT.

16 MS. BUTCHER: I DO HAVE ONE MORE MOTION, YOUR HONOR.

17 THE COURT: ANYTHING ELSE?

18 MS. BUTCHER: YOUR HONOR, I DO ALSO HAVE A MOTION TO
19 SUPPRESS TESTIMONY OF THE OFFICER'S CONVERSATION WITH THE
20 DEFENDANT. MY UNDERSTANDING -- AND I'VE NEVER RECEIVED
21 THIS IN WRITING. I UNDERSTAND THIS FROM THE SOLICITOR --
22 THAT MY CLIENT MADE A STATEMENT TO THE OFFICER WHEN HE WAS
23 TALKING TO HIM ON THE PHONE. HE DIDN'T TELL HIM THAT THERE
24 WAS A MURDER. HE SAID SOMETHING ABOUT A BRAWL DOWN AT A
25 BAR, AND MY CLIENT SAID, WELL, I WANT TO SEE MY KIDS AGAIN,

1 THEN I'LL TURN MYSELF IN.

2 AND, YOUR HONOR, I BELIEVE THAT COULD BE TAKEN OUT OF
3 CONTEXT. MY CLIENT WAS OUT ON PAROLE, KNOWING HE WENT TO
4 THAT OFFICER THAT THEY SUSPECTED HIM OF A CRIME, HE'S GOING
5 TO BE BUMPED OFF PAROLE AND BE THROWN BACK IN JAIL; THAT IS
6 WHAT HE WAS TALKING ABOUT.

7 I BELIEVE TO OFFER THAT STATEMENT, YOUR HONOR, IS
8 HIGHLY PREJUDICIAL, TO BE TAKEN OUT OF CONTEXT, IS PURE
9 SPECULATION ON THE PART OF THE OFFICER AS TO WHAT HE MEANT
10 BY THAT.

11 AND THE BIG THING, YOUR HONOR, IS THE OFFICER TO MY
12 KNOWLEDGE DIDN'T TELL HIM THAT HE'D BEEN NAMED IN A MURDER.

13 I DID LOOK THROUGH THE OFFICER'S NOTES AS THEY HAVE
14 BEEN KIND ENOUGH TO PROVIDE THAT. I SAW NO WRITTEN NOTES
15 ON IT WHATSOEVER.

16 THE COURT: OKAY. SO YOUR MOTION IS TO SUPPRESS THAT
17 STATEMENT UNDER WHAT THEORY OF THE LAW?

18 MS. BUTCHER: THAT IT'S HIGHLY PREJUDICIAL AND
19 SPECULATORY AS TO WHAT THE MEANING OF THAT WOULD BE.

20 THE COURT: OKAY. BUT WE DON'T HAVE A JACKSON V.
21 DENNO ISSUE AT ALL. SO YOU AGREE HE WAS NOT IN CUSTODY.
22 THIS IS A TELEPHONE CONVERSATION?

23 MS. BUTCHER: PHONE.

24 THE COURT: OKAY. WHAT'S THE STATE'S POSITION?

25 MR. GENTRY: THE STATE'S POSITION IS ANY EVIDENCE IT

1 OFFERS IS GOING TO BE HIGHLY PREJUDICIAL TO THE DEFENDANT.
2 BUT WE AGREE, THERE IS NO JACKSON V. DENNO ISSUE. HE WAS
3 NOT IN CUSTODY. IT WAS A TELEPHONE CONVERSATION DURING THE
4 COURSE OF THE INVESTIGATION.

5 THE COURT: OKAY.

6 MS. BUTCHER: AND, YOUR HONOR, JUST TO ADD TO THAT.
7 FOR ME TO CROSS EXAMINE THAT OFFICER, I WOULD HAVE TO BRING
8 IN HIS PRIOR CONVICTION, IT WOULD HAVE BEEN A FACT THAT HE
9 WAS ON Y.O.A. TO, YOU KNOW, REALLY CROSS EXAMINE THE
10 OFFICER TO SAY: DID YOU KNOW HE WAS THAT? DID YOU KNOW
11 THAT, YOU KNOW, HE'S ACCUSED OF A CRIME? HE MAY BE TAKEN
12 INTO CUSTODY. AND CUSTODY, YOUR HONOR, VIOLATES HIS
13 PAROLE. I'D HAVE TO BRING THAT IN, YOUR HONOR.

14 MR. GENTRY: JUDGE ---

15 THE COURT: I DON'T KNOW I'D AGREE WITH THAT. BUT IF
16 YOU BRING IT IN, YOU'RE OPENING THAT DOOR.

17 MS. BUTCHER: THAT'S WHAT I'M SAYING, I COULDN'T BRING
18 IT IN; THAT WAS MY POINT. I COULD NOT BRING IT IN, SO
19 THEREFORE, I COULD NOT I FEEL FULLY QUESTION HIM OR CROSS
20 HIM ON HIS STATEMENT, BECAUSE THERE'S ANOTHER REASON HE
21 WOULD BE SAYING, YOU KNOW, I WANT TO SEE MY KIDS AGAIN.

22 THE COURT: WELL, HOW DO YOU MAKE THAT LEAP, THE FACT
23 THAT I WANT TO SEE MY KIDS AGAIN. JUST THE FACT HE'S ON
24 PAROLE OR PROBATION OR WHATEVER DOESN'T MEAN HE'S NOT GOING
25 TO GET TO SEE HIS KIDS AGAIN UNLESS HE'S COMMITTED ANOTHER

1 CRIME.

2 MS. BUTCHER: THEY ---

3 THE COURT: HE WASN'T CALLING HIS PAROLE OFFICER. HE
4 WAS CALLING INVESTIGATING A CRIME.

5 MS. BUTCHER: BUT THEY NEVER TOLD HIM HE WAS BEING
6 INVESTIGATED FOR A MURDER. AND ---

7 THE COURT: YOU THINK THEY HAVE TO TELL HIM THAT?

8 MS. BUTCHER: NO, YOUR HONOR.

9 THE COURT: ESPECIALLY IN A TELEPHONE CONVERSATION?

10 MS. BUTCHER: TO MAKE THAT STATEMENT THAT I'M NOT
11 GOING TO SEE -- THAT I WANT TO SEE MY KIDS AGAIN FIRST
12 WOULD MAKE A REASONABLE JURY BELIEVE HE'S GUILTY BECAUSE HE
13 KNOWS HE'S GOING TO BE LOCKED UP FOR THE CRIME.

14 MR. GENTRY: JUDGE, I NEVER UNDERSTOOD THAT AN
15 ACCUSATION BY A LAW ENFORCEMENT OFFICER WOULD THEN GO INTO
16 A REVOCATION OF PAROLE BY ITSELF. THERE HAS TO BE SOME
17 FACTS AND CIRCUMSTANCES THAT WOULD CAUSE IT.

18 THE COURT: WELL, THE JURY IS GOING TO KNOW HE WAS
19 LOCKED UP BECAUSE THE OFFICER WILL TESTIFY HE WAS ARRESTED.
20 A JURY UNDERSTANDS THAT WHEN YOU'RE CHARGED WITH A CRIME,
21 THEY ARREST YOU, AND LOCK YOU UP.

22 MS. BUTCHER: BUT, YOUR HONOR, THE STATEMENT --
23 THEY'RE GOING TO TRY TO USE THE STATEMENT OF MY CLIENT
24 SAYING IF I COME TO YOU, I'M GOING TO BE LOCKED UP FOR THE
25 MURDER.

1 THE COURT: WHAT IF YOUR CLIENT WOULD HAVE SAID, WELL,
2 I KNOW I KILLED HIM BUT I WANT TO SEE MY KIDS BEFORE I TURN
3 MYSELF IN?

4 MS. BUTCHER: THEN I THINK THAT'S OKAY FOR THAT TO
5 COME IN, YOUR HONOR. HE WASN'T TALKING ABOUT A MURDER. HE
6 DIDN'T KNOW ABOUT THE MURDER. THE OFFICER DIDN'T SAY, HEY,
7 WE'RE INVESTIGATING YOU FOR A MURDER. HE SAID, WE'RE
8 INVESTIGATING YOU FOR A BRAWL DOWN AT THIS BAR. HE KNOWS
9 IF HE GOES AND TALKS TO THE OFFICER ABOUT THAT AND HE'S
10 ARRESTED, HE'S GOING TO BE BACK IN JAIL. IN HIS MIND HE
11 DOESN'T KNOW IF YOU ARE ACCUSED OF A CRIME WHETHER OR NOT
12 THAT'S A VIOLATION. A LOT OF TIMES THEY ARE VIOLATED FOR
13 BEING ARRESTED.

14 THE COURT: I UNDERSTAND YOUR MOTION. AND AT THIS
15 POINT IT DOESN'T GET EXCLUDED UNDER JACKSON V. DENNO. YOUR
16 ONLY MOTION IS IT'S MORE PREJUDICIAL THAN PROBATIVE. IT
17 DOES APPEAR TO BE THAT WAY. OBVIOUSLY, IT'S PREJUDICIAL.
18 EVERYTHING THE STATE OFFERS IS PREJUDICIAL. THE QUESTION
19 IS WHETHER IT'S MORE PREJUDICIAL THAN PROBATIVE. AND AT
20 THIS POINT I CAN'T TELL THAT. NOW, MAYBE DURING THE
21 OFFICER'S TESTIMONY I MAY CHANGE MY MIND. BUT IT APPEARS
22 AT THIS POINT THAT STATEMENT COMES IN.

23 MS. BUTCHER: I BELIEVE THAT IT'S SHOWING THAT MY
24 DEFENDANT MAY HAVE SHOWN GUILT WHEN HE DIDN'T EVEN KNOW THE
25 CRIME HAD BEEN COMMITTED, AND IT'S JUST ---

1 THE COURT: OKAY. I UNDERSTAND. ALL RIGHT. WHAT
2 ELSE?

3 MS. BUTCHER: HOLD ON, YOUR HONOR.

4 (PAUSE.)

5 MS. BUTCHER: AND, YOUR HONOR, I WOULD JUST ADD TO
6 THAT, MY CLIENT KNEW HE HAD A BENCH WARRANT BECAUSE HE'D
7 NOT BEEN REPORTING. AND, ACTUALLY, THAT'S WHY HE SAID TO
8 THE INVESTIGATOR, AND THAT'S MY MISTAKE. BUT HE KNEW THERE
9 WAS A BENCH WARRANT OUT THERE. SO IF HE WENT TO THE
10 OFFICER, HE'D OBVIOUSLY BE GOING BACK, YOUR HONOR.

11 THE COURT: OKAY. ANY OTHER MOTIONS?

12 MS. BUTCHER: THAT'S IT, YOUR HONOR. THANK YOU.

13 MR. GENTRY: NOTHING FURTHER FROM THE STATE.

14 THE COURT: ALL RIGHT. THEN I WILL RESEARCH THIS OVER
15 LUNCH AND LET YOU ALL KNOW. THE JURY'S COMING BACK AT
16 2:30.

17 MR. GENTRY: YES, SIR.

18 THE COURT: WE'LL BE BACK AT 2:15.

19 MR. GENTRY: WITH THE COURT'S INDULGENCE. I DO HAVE
20 ONE WITNESS I NEED TO TAKE OUT OF ORDER.

21 THE COURT: YOU CAN CALL THEM IN ANY ORDER YOU WANT
22 TO, IT'S YOUR CASE.

23 MR. GENTRY: THANK YOU.

24 THE COURT: ALL RIGHT. I'LL SEE YOU ALL AT 2:15.

25 (COURT IS IN RECESS FOR LUNCH.)

1 (AUTOPSY PHOTO MARKED FOR IDENTIFICATION AS STATE'S
2 EXHIBIT NO. 1.)

3 (DIAGRAM OF HOUSE MARKED FOR IDENTIFICATION AS STATE'S
4 EXHIBIT NO. 2.)

5 (BLOW-UP OF STATE'S NO. 2 MARKED FOR IDENTIFICATION AS
6 STATE'S EXHIBIT NO. 2-A.)

7 (9-1-1- C.D. MARKED FOR IDENTIFICATION AS STATE'S
8 EXHIBIT NO. 3.)

9 (LARGE PHOTO OF 2 CARS MARKED FOR IDENTIFICATION AS
10 STATE'S EXHIBIT NO. 4.)

11 (LARGE PHOTO OF DOOR MARKED FOR IDENTIFICATION AS
12 STATE'S EXHIBIT NO. 5.)

13 (LARGE PHOTO OF DOOR MARKED FOR IDENTIFICATION AS
14 STATE'S EXHIBIT NO. 6.)

15 (LARGE PHOTO OF DOOR MARKED FOR IDENTIFICATION AS
16 STATE'S EXHIBIT NO. 7.)

17 (LARGE PHOTO OF DOOR MARKED FOR IDENTIFICATION AS
18 STATE'S EXHIBIT NO. 8.)

19 (LARGE PHOTO OF ROOM MARKED FOR IDENTIFICATION AS
20 STATE'S EXHIBIT NO. 9.)

21 (AUTOPSY REPORT, 6 PAGES, MARKED FOR IDENTIFICATION AS
22 STATE'S EXHIBIT NO. 10.)

23 THE COURT: OKAY. WE'RE BACK ON THE RECORD. DURING
24 THE LUNCH BREAK AND AS I WAS REVIEWING THE CASES CONCERNING
25 THE MOTIONS TO SUPPRESS THE EVIDENCE IN THIS CASE -- OF

1 COURSE, MY UNDERSTANDING SINCE THEN MOST OF THIS HAS BEEN
2 RESOLVED AND THE WITNESSES ARE AVAILABLE AND GOING TO
3 TESTIFY; THEREFORE, THE HEARSAY ISSUES DEALING WITH THE
4 9-1-1 TAPE, CRAWFORD ISSUES, AND DAVIS ISSUES HAVE BEEN
5 RESOLVED IN THAT WE'RE GOING TO HAVE LIVE WITNESSES AND
6 WE'RE NOT GOING TO HAVE THESE HEARSAY ISSUES. ISN'T THAT
7 CORRECT?

8 MR. GENTRY: AS FAR AS I KNOW, THAT'S THE WAY I
9 UNDERSTAND.

10 THE COURT: OKAY. NOW, AS FAR AS THE MOTION TO COMPEL
11 IS STILL OUTSTANDING, IT'S MY UNDERSTANDING THE STATE IS
12 STILL ATTEMPTING TO RECOVER THESE ALLEGED LETTERS THAT
13 SUPPOSEDLY BEING IN THE DEPARTMENT OF CORRECTIONS.

14 MR. GENTRY: YES, SIR, THAT'S CORRECT. WE HAVE
15 ALREADY NOTED THAT SEVERAL HAVE BEEN -- WE'VE ALREADY NOTED
16 SEVERAL FOR THE RECORD, THAT WE ARE STILL PURSUING THE ONES
17 ALLEGEDLY TAKEN SUPPOSEDLY WRITTEN BY TAMEKA.

18 THE COURT: OKAY. AND I ASSUME SHE'S AVAILABLE TO ASK
19 WHETHER IN FACT THEY EXIST. AND WE CAN DEAL WITH THAT.

20 BUT I CAN RESERVE THE RULING ON THAT UNTIL IN FACT
21 TOMORROW. MY UNDERSTANDING THE STATE DOESN'T INTEND TO
22 CALL HER THIS AFTERNOON. THEY WOULD BE IMPORTANT IF TO
23 CROSS -- IF THERE ARE EXCULPATORY ISSUES OR INCONSISTENCIES
24 IN THOSE LETTERS THAT THE DEFENSE NEEDS THEM TO CROSS
25 EXAMINE HER IF THEY IN FACT EXIST OR WHAT HAPPENED TO THEM.

1 MR. GENTRY: ALL RIGHT, SIR.

2 THE COURT: SO HOPEFULLY BY TOMORROW WE'LL BE ABLE TO
3 RESOLVE THAT ISSUE.

4 I DON'T THINK THERE'S ANY OTHER OUTSTANDING MOTION
5 THAT WE HADN'T ADDRESSED -- ARE EITHER ONE OF YOU ALL AWARE
6 OF?

7 MS. BUTCHER: NOT AT THIS TIME, YOUR HONOR.

8 THE COURT: OKAY. SO IS THE JURY HERE YET? OKAY. I
9 POSE TO BRING THE JURY IN, HAVE THE CLERK SWEAR THEM IN.
10 I'LL MAKE SOME BRIEF OPENING REMARKS, THEN YOU CAN DO
11 OPENING STATEMENTS. IS THE STATE READY TO PROCEED WITH A
12 WITNESS?

13 MR. GENTRY: YES, SIR.

14 THE COURT: OKAY. BRING US THE JURY.

15 (THE JURY RETURNS TO THE COURTROOM AT 2:47 P.M.)

16 THE COURT: YOU MAY SWEAR THE JURY.

17 (THE JURY WAS FIRST DULY SWORN AT 2:48 P.M.)

18 THE COURT: LADIES AND GENTLEMEN, WE ARE ABOUT TO
19 BEGIN THE TESTIMONY IN THIS TRIAL, AND I'M JUST GOING TO
20 MAKE SOME BRIEF OPENING REMARKS TO KIND OF EXPLAIN TO YOU
21 HOW THE TRIAL WILL BE CONDUCTED AND WHAT YOUR DUTIES ARE.

22 THIS IS THE CASE OF THE STATE VERSUS JAMES SPANN, AND
23 HE'S BEEN INDICTED IN THIS CASE FOR THE CRIMES OF MURDER,
24 BURGLARY IN THE FIRST DEGREE, AND POSSESSION OF A WEAPON
25 DURING A VIOLENT CRIME. AND TO THIS INDICTMENT HE'S

1 ENTERED A PLEA OF NOT GUILTY. THEREFORE, IT PLACES THE
2 BURDEN UPON THE STATE OF SOUTH CAROLINA TO PROVE EACH AND
3 EVERY ELEMENT OF THIS INDICTMENT BEYOND A REASONABLE DOUBT.
4 AND I WILL EXPLAIN TO YOU AT THE END OF THIS TRIAL OR THE
5 END OF THE TESTIMONY THE DEFINITION OF A REASONABLE DOUBT.

6 YOUR JOB IS SIMPLY TO LISTEN TO THE EVIDENCE IN THIS
7 CASE. AND THAT EVIDENCE WILL COME TO YOU BASICALLY IN
8 THREE FORMS. FIRST OF ALL, AND MOST OF THE TIME, IT'S
9 THROUGH SWORN TESTIMONY FROM THIS WITNESS STAND, WHERE
10 WITNESSES WILL COME UP AND BE SWORN IN UNDER OATH AND
11 TESTIFY TO YOU. THE OTHER EVIDENCE YOU MAY HEAR IS
12 EXHIBITS THAT ARE INTRODUCED INTO EVIDENCE BY THE PARTIES
13 IN THIS CASE, AS WELL AS ANY STIPULATIONS THAT ARE MADE BY
14 THE ATTORNEYS. THAT'S THE EVIDENCE YOU WILL HEAR TO MAKE
15 YOUR DETERMINATION.

16 THE STATEMENTS THAT THE ATTORNEYS MAKE TO YOU ARE NOT
17 EVIDENCE. EVEN THE QUESTIONS THAT THE ATTORNEYS ASK IS NOT
18 EVIDENCE.

19 YOU'RE TO DECIDE THIS CASE, THE FACTS FROM THIS CASE,
20 BASED ON THE EVIDENCE THAT YOU HEAR FROM THIS WITNESS STAND
21 OR THE EXHIBITS THAT HAVE BEEN INTRODUCED.

22 MY JOB IS TO RULE UPON THE ADMISSIBILITY OF THAT
23 EVIDENCE, TO DETERMINE UNDER OUR RULES WHAT EVIDENCE YOU
24 SHOULD HEAR AND WHAT EVIDENCE YOU SHOULD NOT HEAR, AND TO
25 INSTRUCT YOU ON THE LAW.

1 YOUR JOB IS TO DETERMINE WHAT THE TRUE FACTS ARE. I'M
2 NOT ALLOWED TO HAVE AN OPINION ABOUT THE FACTS. THAT IS
3 SOLELY YOUR JOB.

4 AND JUST AS I CAN'T HAVE AN OPINION ABOUT THE FACTS,
5 YOU CAN'T HAVE AN OPINION ABOUT THE LAW THAT'S DIFFERENT
6 THAN WHAT I WILL TELL YOU AT THE END OF THE TRIAL THE LAW
7 IS. YOU MUST ACCEPT THE LAW THAT I GIVE TO YOU AND APPLY
8 THE FACTS THAT YOU DETERMINE TO BE TRUE IN THIS CASE TO
9 REACH A VERDICT.

10 NOW, I NEED YOU TO PAY CLOSE ATTENTION THROUGHOUT THIS
11 TRIAL, BECAUSE IT'S VERY IMPORTANT THAT YOU GET IT RIGHT.
12 BECAUSE IF YOU MAKE A MISTAKE, IT'S VERY HARD TO CHANGE
13 THAT. NOW, IF I MAKE A MISTAKE IN THE LAW, THEN AT SOME
14 OTHER TIME AND SOME OTHER PLACE THAT WILL BE REVIEWED AND
15 POSSIBLY CORRECTED. BUT IT'S VERY DIFFICULT TO CORRECT A
16 MISTAKE OF FACT THAT A JURY MAKES.

17 SO HAVING SAID THAT, IF ANY TIME DURING -- AND I WILL
18 TRY TO STOP ABOUT EVERY HOUR, HOUR AND 15 MINUTES, HOUR AND
19 A HALF -- IT DEPENDS ON HOW THE CASE FLOWS -- TO GIVE YOU A
20 BREAK. BUT IF YOU NEED ONE QUICKER THAN THAT, JUST SIMPLY
21 RAISE YOUR HAND, BECAUSE I NEED EACH ONE OF YOU TO PAY
22 ATTENTION. AND IF YOU'RE UNCOMFORTABLE, YOU CAN'T PAY
23 ATTENTION. SO IF YOU NEED A BREAK, WE'LL STOP AND WE'LL
24 TAKE A BREAK AND START BACK WITH THE TESTIMONY.

25 NOW, THROUGHOUT THIS TRIAL, I MAY HAVE TO SEND YOU TO

1 THE JURY ROOM TO RULE UPON CERTAIN EVIDENCE OR CERTAIN
2 ADMISSIBILITY OF EVIDENCE. AND THE REASON SOME TIMES I
3 HAVE TO SEND YOU OUT IS BECAUSE SOME TIMES I HAVE TO
4 DISCUSS THE FACTS BEHIND THAT RULING WITH THE ATTORNEYS.
5 AND IT'S NOT PROPER FOR YOU TO HEAR FACTS THAT I MAY
6 DISCUSS, BECAUSE I CAN'T HAVE AN OPINION ABOUT THE FACTS.
7 SO SOME TIMES I MAY SEND YOU OUT TO RULE UPON THE LAW OR
8 RULE UPON THE EVIDENCE AND BRING YOU BACK IN.

9 WHEN I SEND YOU OUT, I'M GOING TO TELL YOU, PLEASE
10 DON'T DISCUSS THIS CASE. AND YOU MAY DECIDE, WELL, WE'VE
11 HEARD FROM THIS WITNESS AND WE'VE HEARD FROM THAT WITNESS,
12 WHY CAN'T WE TALK ABOUT AT LEAST WHAT WE THINK THOSE
13 WITNESSES HAVE SAID?

14 AND THE REASON YOU CAN'T IS BECAUSE I DON'T WANT YOU
15 -- IF ONE OF YOU GET BACK THERE AND THEORIZE ABOUT WHAT YOU
16 THINK THE EVIDENCE IN THIS CASE MEANS, THEN AT THE END OF
17 THE CASE YOU'RE GOING TO WANT TO DEFEND THAT OPINION YOU
18 HAD THE VERY FIRST DAY; AND THAT WOULDN'T BE RIGHT BECAUSE
19 I DON'T WANT YOU TO START MAKING UP YOUR MIND AND SHARING
20 YOUR OPINIONS WITH YOUR FELLOW JURORS UNTIL YOU'VE HEARD
21 ALL OF THE EVIDENCE IN THIS CASE, AS WELL AS THE LAW THAT
22 I'M GOING TO INSTRUCT YOU.

23 AND THEN AND ONLY THEN WOULD IT BE PROPER FOR YOU TO
24 DISCUSS THIS CASE.

25 LIKEWISE, IT WOULDN'T BE PROPER FOR YOU TO READ

1 ANYTHING IN THE NEWSPAPER ABOUT THIS CASE OR LOOK AT
2 ANYTHING ON THE INTERNET OR A COMPUTER OR T.V. YOU'VE GOT
3 TO DECIDE THIS CASE SOLELY ON WHAT YOU HEAR FROM THIS
4 WITNESS STAND AND NOTHING ELSE.

5 WE WON'T FINISH THIS CASE TODAY. YOU'LL GET TO GO
6 HOME TONIGHT WITH YOUR FAMILY. AND WHEN YOU GET TO GO
7 HOME, THEY'RE GOING TO SAY, WHAT WERE YOU DOING ALL DAY?

8 AND YOU CAN'T TELL THEM YET. WHEN THIS CASE IS OVER,
9 YOU CAN TELL THEM ANYTHING YOU WANT TO. BUT IF YOU GO BACK
10 AND START TELLING THEM ABOUT WHAT HAPPENED, IF THEY'RE
11 ANYTHING LIKE MY FAMILY, THEY'RE GOING TO HAVE AN OPINION
12 ABOUT WHAT YOU SHOULD DO. AND THEY AREN'T HERE AND THEIR
13 OPINION -- YOU CAN'T USE THEIR OPINION AND MAKE A DECISION.
14 YOU'VE GOT TO DECIDE BASED ON WHAT YOU HEAR IN THIS
15 COURTROOM.

16 AND IT'S IMPORTANT FOR THE STATE OF SOUTH CAROLINA AND
17 THIS DEFENDANT THAT WE ALL DO IT RIGHT. AND SO I'M ASKING
18 YOU, YOU KNOW, TO PLEASE FOLLOW MY INSTRUCTIONS AND DECIDE
19 THIS CASE BASED SOLELY ON THE EVIDENCE THAT YOU HEAR IN
20 THIS COURTROOM.

21 NOW, IN JUST A FEW MINUTES THE ATTORNEYS ARE GOING TO
22 GET UP HERE AND MAKE AN OPENING STATEMENT TO YOU. THE
23 STATE HAS THE BURDEN OF PROOF IN THIS CASE AND THEY GO
24 FIRST. AND THE OPENING STATEMENTS ARE NOT EVIDENCE. IT'S
25 SIMPLY THE LAWYERS TIME TO TELL YOU WHAT THEY THINK THE

1 EVIDENCE IS GOING TO TELL YOU IN THIS CASE, A ROAD MAP MORE
2 OR LESS OF WHERE THE EVIDENCE IS GOING.

3 AT THE END OF THE CASE THEY WILL GET UP AND MAKE A
4 CLOSING ARGUMENT TO YOU, AND THEY WILL ARGUE TO YOU AS TO
5 WHAT THEY THINK THE EVIDENCE SAYS IN THIS CASE.

6 AND I REMIND YOU, THE OPENING STATEMENT AND THE
7 CLOSING ARGUMENTS ARE NOT EVIDENCE, IT'S SIMPLY THEIR
8 OPINION.

9 AS I TOLD YOU, THE STATE WILL GO FIRST, AND THEN THE
10 DEFENSE. THE DEFENSE DOES NOT HAVE TO MAKE AN OPENING
11 STATEMENT OR PUT UP ANY EVIDENCE OR MAKE A CLOSING
12 STATEMENT BECAUSE THE BURDEN IS ON THE STATE AND THE
13 DEFENDANT DOES NOT HAVE TO PROVE HIS OR HERSELF INNOCENT OF
14 ANY CRIME.

15 BUT MOST OF THE TIME THE ATTORNEYS DO MAKE AN OPENING
16 STATEMENT. AND MOST OF THE TIME THEY MAKE A CLOSING
17 ARGUMENT. SO IF YOU PAY CLOSE ATTENTION TO THE ATTORNEYS,
18 WHEN THEY FINISH THEIR OPENING STATEMENTS, WE'LL BEGIN WITH
19 THE TESTIMONY.

20 MR. SOLICITOR.

21 OPENING STATEMENTS BY MR. GENTRY ON BEHALF OF THE STATE:

22 LADIES AND GENTLEMEN OF THE JURY, MY NAME IS JOHN
23 GENTRY. I RECENTLY RETURNED TO LEE COUNTY AFTER AN
24 EXTENDED ABSENCE FOR VARIOUS AND IN SUNDRY THINGS IN THE
25 OUTSIDE WORLD.

1 ON APRIL THE 6TH AND 7TH OF THIS PAST YEAR, 2009,
2 THERE WAS A SHOOTING AT [REDACTED] HERE IN LEE
3 COUNTY, SOUTH CAROLINA. THERE'S A 9-1-1 TAPE THAT YOU WILL
4 HEAR IN SOME DETAIL. IT WILL INDICATE THAT MARY ANN LOVELY
5 -- MS. LOVELY IS THE LADY ON THE FIRST ROW OVER THERE IN
6 THE GREEN SWEATER BY THE LADY IN THE WHITE BLOUSE, THE
7 WHITE BLAZER -- WAS REPORTING THAT HER SON HAD BEEN SHOT.
8 SHE HAD HEARD SOMEONE AT THE FRONT DOOR. SHE LOOKED AND
9 SHE SAW AN INDIVIDUAL SHE IDENTIFIED AS DUC. AND WHETHER
10 THEY SPELL IT D-U-C-C, D-U-C OR D-U-C-K, I DO NOT KNOW.
11 BUT MS. LOVELY SAID SHE RECOGNIZED HIM.

12 SHE RAN TO THE BACK TO WARN HER SON, BECAUSE SHE KNEW
13 THAT THE INDIVIDUAL AT HER FRONT DOOR WAS A FORMER BOY
14 FRIEND OF THE GIRL WHO WAS IN THE BACK ROOM WITH HER SON.
15 SO SHE RAN BACK THERE AND WARNED HIM TO GET UP. LINDSEY,
16 GET UP.

17 LINDSEY GOT UP AND WAS PULLING ON HIS PANTS AS MS.
18 LOVELY RAN BACK TO HER ROOM TO PROTECT HER OTHER SON WHO IS
19 DEVELOPMENTALLY DISABLED.

20 AS SHE RAN BY HER FRONT DOOR, THE DOOR FLUNG OPEN, AND
21 SHE HEARD SHOTS BEING FIRED. WHEN THE SHOTS STOPPED, SHE
22 WENT BACK TO CHECK ON HER SON. AND HER SON WAS LYING ON
23 THE FLOOR IN THE BEDROOM. SHE IMMEDIATELY CALLED 9-1-1,
24 AND THE DETAILS ARE ON THAT TAPE.

25 THE STATE EXPECTS TO PROVE THE PERSON WHO DID THE

1 SHOOTING AND BROKE INTO HER HOUSE THAT NIGHT WAS JAMES KEON
2 SPANN.

3 THANK YOU.

4 MS. BUTCHER: MAY IT PLEASE THE COURT.

5 THE COURT: YES, MA'AM.

6 OPENING STATEMENTS BY MS. BUTCHER ON BEHALF OF THE

7 DEFENDANT:

8 GOOD AFTERNOON, LADIES AND GENTLEMEN. MY NAME IS
9 DEBORAH BUTCHER. I AM FROM A CAMDEN LAW FIRM. I PRACTICE
10 THERE WITH MY HUSBAND, ROBERT BUTCHER. I ALSO HAVE A
11 CONTRACT WITH THE PUBLIC DEFENDER'S OFFICE OF THE THIRD
12 CIRCUIT.

13 AS A PUBLIC DEFENDER I REPRESENT THE PEOPLE OF OUR
14 STATE. I REPRESENT YOU, YOUR NEIGHBORS, FELLOW PEOPLE IN
15 YOUR COMMUNITY. TODAY I AM REPRESENTING MR. JAMES KEON
16 SPANN.

17 MR. SPANN HAS BEEN ACCUSED OF MURDER, BURGLARY,
18 POSSESSION OF A WEAPON DURING A VIOLENT CRIME. THESE ARE
19 VERY SERIOUS CHARGES.

20 LADIES AND GENTLEMEN, YOU HAVE PROBABLY THE MOST
21 IMPORTANT ROLE IN OUR JUDICIAL SYSTEM. YOU ARE THE JUDGES
22 OF THE FACTS OF THIS CASE. JUST LIKE THE JUDGE WHO WEARS A
23 BLACK ROBE, YOU MIGHT AS WELL BE JUDGES TOO. YOU ALL ARE
24 THE JUDGES OF THE FACTS.

25 YOU WILL HEAR EVIDENCE FROM THIS WITNESS STAND AS TO

1 WHAT HAPPENED. AS THE JUDGE TOLD YOU, I WASN'T THERE. THE
2 SOLICITOR WASN'T THERE. INVESTIGATORS WEREN'T THERE.
3 THAT'S WHY WE DON'T MAKE A DECISION OF WHETHER SOMEONE IS
4 GUILTY OR INNOCENT. WE PRESENT TO YOU THE FACTS OF THE
5 CASE.

6 SOME TIMES -- WE'RE ALL HUMAN. SOME TIMES WE GET
7 WRAPPED UP IN OUR CASES. SOME TIMES THE INVESTIGATORS WORK
8 THROUGH THEIR CASE. SOME TIMES SOLICITORS AND I BOTH, WE
9 HAVE OUR VIEW OF WHO WE'RE ADVOCATING FOR. YOU ALL'S ROLE
10 IS VERY SERIOUS.

11 YOU'RE GOING TO HEAR A 9-1-1 TAPE. I HAVE 6 CHILDREN.
12 WHEN I LISTENED TO IT, IT REALLY PULLED AT MY HEART. YOU
13 WILL LISTEN TO A MOTHER WATCHING HER SON PASS AWAY. THIS
14 IS WHAT YOU'VE GOT TO DO AS JURORS, YOU'VE GOT TO PUT THE
15 EMOTIONS ASIDE, LOOK AT THE FACTS.

16 SOMEONE SHOT THIS INDIVIDUAL. BUT THE FACT OF WHO DID
17 IT IS WHAT YOU ARE ASKED TO RULE ON TODAY.

18 MR. JOHN GENTRY AND I CHOSE YOU ALL BECAUSE WE BELIEVE
19 YOU ARE IMPARTIAL AND CAN DO JUST THAT. OUR SYSTEM OF
20 JUSTICE DEPENDS ON IT.

21 THREE THINGS I WANT YOU TO KEEP IN MIND AS WE GO
22 THROUGH THIS TRIAL.

23 1. THE BURDEN OF PROOF IS ON THE STATE. IT'S ALWAYS
24 ON THE STATE BECAUSE IT IS SO EASY FOR SOMEONE IN OUR
25 SOCIETY TO POINT A FINGER AND SAY, HE DID IT. SHE DID IT.

DR. ROSS - DIRECT BY MR. GENTRY

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1 AND THAT HAS TO BE PROVEN; THAT BURDEN IS ON THE STATE.

2 I'M NOT HERE TO PROVE THAT MY CLIENT DIDN'T DO
3 ANYTHING. HE'S INNOCENT. ONE OF OUR CONSTITUTIONAL RIGHTS
4 IS THAT WE ARE INNOCENT UNTIL PROVEN GUILTY. IT'S LIKE THE
5 JUDGE WEARS A BLACK ROBE. MY CLIENT WEARS A ROBE OF
6 INNOCENCE. IT'S UP TO YOU TO DECIDE WHETHER OR NOT HE'S
7 GUILTY. HE WAS ARRESTED INNOCENT. HE WAS CHARGED
8 INNOCENT. HE SITS THERE BEFORE YOU INNOCENT TODAY. YOU'RE
9 THE ONES WHO DECIDE HIS GUILT OR INNOCENCE.

10 ALSO, THE DEFENDANT, SOMEONE ACCUSED OF A CRIME, HAVE
11 THE RIGHT TO REMAIN SILENT. THEY DO NOT HAVE TO TESTIFY IN
12 A CRIME; AND THAT IS BECAUSE THEY BEAR NO BURDEN. THE
13 BURDEN IS ON THE STATE.

14 LADIES AND GENTLEMEN, I THANK YOU. ON BEHALF OF MR.
15 SPANN, I THANK YOU FOR YOUR TIME TODAY AND YOUR
16 CONCENTRATION ON THIS CASE.

17 THANK YOU.

18 MR. GENTRY: I CALL JANICE ROSS.

19 JANICE ROSS, M.D., BEING
20 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

21 CLERK: STATE YOUR FULL NAME FOR THE RECORD.

22 WITNESS: JANICE EDWARDS ROSS.

23 DIRECT EXAMINATION BY MR. GENTRY:

24 Q DR. ROSS, YOU ARE A MEDICAL DOCTOR, CURRENTLY
25 OPERATING AT NEWBERRY PATHOLOGY ASSOCIATES?

1 A YES.

2 Q AND THAT'S IN NEWBERRY, SOUTH CAROLINA?

3 A YES.

4 Q WOULD YOU DETAIL FOR THE LADIES AND GENTLEMEN OF THE
5 JURY PLEASE YOUR TRAINING AND QUALIFICATION?

6 A YES, I HAVE A BACHELOR'S DEGREE FROM THE UNIVERSITY OF
7 SOUTH CAROLINA AND MY M.D. FROM UPSTATE MEDICAL CENTER IN
8 SYRACUSE, NEW YORK. I DID FURTHER TRAINING IN THE AREA OF
9 PATHOLOGY DEALING WITH HOSPITAL WORK, WHERE WE LOOK AT
10 TISSUE UNDER THE MICROSCOPE AND DIAGNOSE TISSUES. WE LOOK
11 AT BLOOD WORK AND DIAGNOSE CERTAIN THINGS LIKE LUKEMIAS.

12 I DID FURTHER WORK IN FORENSIC PATHOLOGY WHICH DEALS
13 WITH THOSE PATHOLOGY ASSETS OF -- IN A LEGAL MATTER DOING
14 AUTOPSIES TO IDENTIFY PATTERNS OF INJURY AND DEALING WITH
15 HOMICIDES AND SUICIDES AND ACCIDENTS.

16 I'M BOARD CERTIFIED IN THREE AREAS OF PATHOLOGY
17 INCLUDING FORENSIC PATHOLOGY.

18 Q AND HOW LONG HAVE YOU BEEN DOING THIS?

19 A 33 YEARS.

20 Q AND HOW MANY AUTOPSIES WOULD YOU SAY YOU HAVE
21 CONDUCTED IN THAT PERIOD OF TIME?

22 A OVER 5,000.

23 MR. GENTRY: YOUR HONOR, WE OFFER DR. ROSS AS AN
24 EXPERT IN THE FIELD OF FORENSIC PATHOLOGY.

25 MS. BUTCHER: NO OBJECTION, YOUR HONOR.

DR. ROSS - DIRECT BY MR. GENTRY

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1 THE COURT: OKAY. I ALSO ---

2 Q DR. ROSS, ON THE 7TH OF APRIL OF THIS PAST YEAR, 2009,
3 DID YOU CONDUCT AN AUTOPSY ON A LINDSEY LOVELY?

4 A YES, I DID.

5 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
6 NO. 1. IS THAT THE INDIVIDUAL ON WHICH YOU CONDUCTED THE
7 AUTOPSY?

8 A YES, IT IS.

9 Q ALL RIGHT. NOW, WOULD YOU DETAIL FOR THE LADIES AND
10 GENTLEMEN OF THE JURY PLEASE THE DETAILS OF YOUR AUTOPSY?

11 A YES. WHEN WE DO AN AUTOPSY, WE LOOK AT THE BODY
12 EXTERNALLY TO IDENTIFY ANY INJURIES OR SIGNS OF NATURAL
13 DISEASE. AND THEN WE DO A SPECIFIC TYPE OF INTERNAL
14 EXAMINATION OF EACH ORGAN TO, AGAIN, FURTHER IDENTIFY
15 INJURIES.

16 Q ALL RIGHT. NOW, WHAT WAS YOUR -- AFTER YOU WENT
17 THROUGH THE ENTIRE PROCESS OF THIS, WHAT DID YOU FIND
18 UNUSUAL ABOUT MR. LOVELY?

19 A WE FOUND THAT HE HAD A TOTAL OF 5 GUNSHOT WOUNDS, 1 OF
20 WHICH WAS FATAL. IT WENT THROUGH FROM LEFT TO RIGHT INTO
21 THE LEFT CHEST, WENT THROUGH THE LEFT LUNG, THE HEART, AND
22 THE LIVER, AND EXITED THE BODY ON THE RIGHT SIDE. AND THAT
23 CAUSED A LOT OF HEMORRHAGE INSIDE THE BODY, CALLED
24 EXSANGUINATION, WHICH MEANS TO BLEED OUT.

25 Q HOW MANY C.C.'S OF BLOOD DID HE BLEED OUT?

1 A THERE WAS A TOTAL OF -- LET ME MAKE SURE -- 1800
2 C.C.'S IN THE LEFT CHEST, 225 C.C.'S IN THE RIGHT CHEST,
3 AND IN THE ABDOMEN WAS 200 C.C.'S. SO A TOTAL OF 2225.

4 Q HOW MUCH BLOOD DOES THE HUMAN BODY CONTAIN?

5 A ABOUT TWICE THAT.

6 Q TWICE THAT?

7 A SO THIS WAS HALF OF HIS BLOOD WAS OUT.

8 Q ALL RIGHT. COULD YOU DETAIL PLEASE WHERE THESE
9 GUNSHOT WOUNDS WERE LOCATED?

10 A YES. I'LL GO THROUGH THEM NUMERICALLY. IT DOESN'T
11 MEAN THAT'S THE ORDER THEY WERE RECEIVED. ALL THESE SHOTS
12 WERE GOING LEFT TO RIGHT. ONE WENT IN THE UPPER LEFT
13 CHEST, JUST WENT UNDER THE SKIN, AND CAME OUT THE SKIN ON
14 THE RIGHT CHEST.

15 THE ONE THAT WAS FATAL THAT I JUST DESCRIBED, WENT IN
16 THE LEFT SIDE, WENT DOWNWARD AND LEFT TO RIGHT AND CAME OUT
17 THE RIGHT SIDE.

18 THERE WAS ONE IN THE LEFT LEG THAT JUST WENT
19 UNDERNEATH THE SKIN, THE LEFT THIGH ON THE FRONT OF IT,
20 WENT UNDERNEATH THE SKIN AND CAME OUT.

21 AND THERE WAS ONE IN THE LEFT LOWER BACK THAT, AGAIN,
22 JUST WENT IN, UNDERNEATH THE SKIN, AND CAME OUT.

23 Q WAS THERE ALSO A GRAZE WOUND ON THE LEFT FOREARM?

24 A THERE'S A GRAZE WOUND, THAT'S NO. 5, ON THE LEFT
25 FOREARM.

DR. ROSS -- DIRECT BY MR. GENTRY

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1 Q NOW, I BELIEVE YOUR REPORT INDICATED THERE WAS NO
2 SOOT, POWDER STIPPLING, TATTOOING, OR MUZZLING IMPRINT.
3 WHAT DOES THAT MEAN?

4 A THAT JUST -- WHEN A GUN IS SHOT, A BULLET COMES OUT.
5 ALONG WITH IT COMES POWDER. SOME OF IT'S BURNING. AND IF
6 THAT BURNING POWDER OR THE SOOT THAT COMES OUT TOUCHES THE
7 SKIN, THEN IT LEAVES A MARK OR IT LEAVES SOOT. THAT
8 TATTOOING OR THAT POWDERING OF SOOT ONLY GOES A CERTAIN
9 DISTANCE. SO IF YOU'RE CLOSE ENOUGH FOR THAT MATERIAL TO
10 HIT YOUR SKIN, WE'LL SEE EVIDENCE OF IT. BUT IF THE GUN IS
11 FAR ENOUGH BACK WHERE THAT POWDER DOESN'T REACH THE SKIN,
12 THEN WE WON'T SEE ANYTHING.

13 IT JUST MEANS -- GIVES AN IDEA OF THE RANGE OF THE
14 SHOT, THE RANGE -- THE DISTANCE OF THE GUN -- FROM THE GUN
15 TO THE SKIN.

16 Q BASED ON THIS, DO YOU HAVE ANY IDEA WHAT THE MINIMUM
17 RANGE WOULD BE?

18 A PROBABLY AT LEAST 3 FEET, DEPENDS ON THE GUN.

19 Q OKAY. NOW, YOU INDICATED THESE WERE MEDIUM CALIBER
20 GUNSHOT WOUNDS?

21 A YES, MOST LIKELY. THEY MEASURED OUT IN THE SKIN TO BE
22 IN THE CATEGORY OF MEDIUM CALIBER.

23 Q OKAY. WOULD A MEDIUM CALIBER BE SOMETHING LIKE A 380?

24 A YES.

25 Q NOW, BASED UPON YOUR PROFESSIONAL KNOWLEDGE AND

1 EXPERIENCE, DID YOU REACH AN OPINION AS TO WHY MR. LOVELY
2 DIED?

3 A YES.

4 Q WHAT WAS THAT?

5 A THAT WAS EXSANGUINATION. AGAIN, BLEEDING OUT DUE TO
6 THE LACERATION OF THE LUNG, HEART, AND LIVER DUE TO THE
7 GUNSHOT WOUND OF THE LEFT CHEST.

8 Q ALL RIGHT. AND WAS THIS -- DID YOU CONCLUDE THIS WAS
9 AN ACCIDENT OR A HOMICIDE?

10 A HOMICIDE.

11 Q AND WHAT IS A HOMICIDE, THE DEFINITION?

12 A IT'S A LIFE TAKEN AT THE HANDS OF ANOTHER.

13 Q THIS WAS NO ACCIDENT? THIS WAS NO ACCIDENT?

14 A CORRECT.

15 MR. GENTRY: WE HAVE NO FURTHER QUESTIONS OF THIS
16 WITNESS.

17 THE COURT: OKAY.

18 CROSS EXAMINATION BY MS. BUTCHER:

19 Q HELLO, MS. ROSS (SIC).

20 A HI.

21 Q WE SPOKE ON THE PHONE ABOUT OTHER CASES IN THE PAST,
22 HAVEN'T WE?

23 A YES. YES.

24 Q NICE SEEING YOU AGAIN. DOES YOUR EXAMINATION IN ANY
25 WAY INDICATE WHO THE SHOOTER WAS?

DR. ROSS - CROSS BY MS. BUTCHER

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1 A NO.

2 Q SO THERE IS NOTHING IN YOUR EXAMINATION OR THE
3 EVIDENCE YOU'VE PRESENTED TO THE COURT TODAY THAT WOULD
4 INDICATE JAMES SPANN WAS THE SHOOTER?

5 A THERE'S NOTHING, NO.

6 MS. BUTCHER: THANK YOU. NO FURTHER QUESTIONS.

7 MR. GENTRY: I HAVE NOTHING FURTHER, YOUR HONOR. I
8 ASK THAT STATE'S EXHIBIT NO. 1 AND 10 IN THE EVIDENCE.

9 THE COURT: TELL ME WHAT 1 AND 10 IS.

10 MR. GENTRY: NO. 1 IS A PHOTOGRAPH THAT DR. ROSS HAD
11 OF THE PERSON OF WHOM SHE CONDUCTED THE AUTOPSY ON. NO. 10
12 IS HER AUTOPSY REPORT.

13 THE COURT: WHAT SAY THE DEFENSE?

14 MS. BUTCHER: YOUR HONOR, MAY WE APPROACH?

15 THE COURT: YES, MA'AM.

16 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
17 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

18 THE COURT: 1 AND 10 ARE IN WITHOUT OBJECTION.

19 (STATE'S EXHIBIT NOS. 1 AND 10 RECEIVED IN EVIDENCE.)

20 MR. GENTRY: MAY DR. ROSS BE EXCUSED, YOUR HONOR? WE
21 HAVE NO FURTHER CALL FOR HER.

22 THE COURT: ANY OBJECTION?

23 MS. BUTCHER: NO, YOUR HONOR.

24 THE COURT: THANK YOU, MA'AM.

25 (THE WITNESS LEAVES THE WITNESS STAND.)

1 MR. GENTRY: I CALL MARY ANN LOVELY TO THE STAND.

2 MARY ANN LOVELY, BEING FIRST

3 DULY SWORN, TESTIFIED AS FOLLOWS:

4 CLERK: STATE YOUR FULL NAME FOR THE RECORD.

5 WITNESS: MY NAME IS MARY ANN LOVELY.

6 DIRECT EXAMINATION BY MR. GENTRY:

7 Q MS. LOVELY, YOU'RE THE MOTHER OF LINDSEY LOVELY?

8 A YES, SIR.

9 Q LET ME SHOW YOU A PICTURE, STATE'S EXHIBIT NO. 1. IS
10 THIS A PICTURE OF YOUR SON?

11 A YES, SIR.

12 MR. GENTRY: LET THE RECORD REFLECT SHE IDENTIFIED
13 STATE'S EXHIBIT 1 AS BEING HER SON.

14 THE COURT: OKAY.

15 Q AND THAT'S YOUR SON, LINDSEY; IS THAT CORRECT?

16 A YES, SIR.

17 Q NOW, WOULD YOU TELL THE LADIES AND GENTLEMEN OF THE
18 JURY WHAT HAPPENED -- YOU WERE LIVING AT [REDACTED]
19 IN LEE COUNTY, WERE YOU NOT?

20 A YES, SIR.

21 Q AND THAT WAS ON THE NIGHT OF APRIL 6TH AND 7TH,
22 CORRECT?

23 A YES, SIR.

24 Q WOULD YOU TELL THE LADIES AND GENTLEMEN OF THE JURY
25 WHAT HAPPENED THAT NIGHT AROUND MIDNIGHT?

MS. LOVELY - DIRECT BY MR. GENTRY

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1 A WE WAS IN THE HOUSE. AND I WAS FEELING FUNNY ALL DAY.
2 AND THEN I WAS FEELING FUNNY THAT NIGHT. SO I HAD A HARD
3 TIME GOING TO SLEEP, SO I WAS IN THE MIDDLE ROOM TALKING TO
4 MELONIECE AND ELIZABETH. AND WE WAS IN THE ROOM TALKING.
5 AND I TOLD THEM, I SAID, I AIN'T SLEEP. I DON'T FEEL LIKE
6 GOING TO SLEEP. I SAID, I DON'T FEEL GOOD. I SAID, EVERY
7 TIME I FEEL LIKE THIS, I SAY SOMETHING JUST AIN'T RIGHT.

8 SO AFTER I TOLD THEM THAT, WE TALKED A LITTLE BIT
9 ABOUT OTHER THINGS. AND THEN I WENT TO LAY DOWN. I DID
10 LAY DOWN IN THE BED, BUT I COULDN'T STAY THERE SO I GOT
11 BACK UP AND WENT BACK DOWN THE HALL AGAIN. AND I WENT BACK
12 IN THE MIDDLE ROOM AGAIN AND START TALKING TO THEM AGAIN.
13 SO WE TALKED FOR A WHILE. THEN AFTER A WHILE WE FEELING
14 ALL RIGHT THEN. SO I SAID ---

15 Q WHO WERE YOU TALKING WITH?

16 A ELIZABETH AND MELONIECE. THEY CALLED MEL AND GAL.

17 Q OKAY. GO AHEAD.

18 A AND I WAS TALKING TO THEM. AND SO I TOLD THEM FOR THE
19 SECOND TIME. WELL, THIS TIME, I'M GOING TO BED.

20 AND THEY SAID, WELL, MARY, YOU NEED TO LAY DOWN
21 BECAUSE SOMETHING AIN'T RIGHT.

22 I SAID, YEAH. SO I GO LAY DOWN. BUT WHEN I WAS ON MY
23 WAY TO GET READY TO LAY DOWN AGAIN, WHEN I GOT IN MY
24 KITCHEN, I HEARD A KNOCK. SO I WENT ON IN MY ROOM. AND
25 THEN I HEAR THE KNOCK AGAIN. SO I TURN AROUND TO COME BACK

- 1 AND SEE WHO WAS AT THE DOOR. IT WAS ME AND ELIZABETH, WE
2 GOT TO THE DOOR AT THE SAME TIME. BUT SHE'S SHORT AND I'M
3 TALL. SO I PEEPED THROUGH THE HOLE IN MY DOOR AND I SAW
4 DUC AT THE DOOR.
- 5 Q WHO IS DUC?
- 6 A JAMES SPANN.
- 7 Q IS HE IN THE COURTROOM TODAY?
- 8 A YES, SIR.
- 9 Q WOULD YOU POINT HIM OUT AND SAY HIS NAME PLEASE?
- 10 A JAMES SPANN RIGHT THERE.
- 11 Q ALL RIGHT. AT THE TIME YOU LOOKED THROUGH THE WINDOW,
12 DID YOU KNOW HIM AS JAMES SPANN OR DID YOU JUST KNOW HIM AS
13 DUC?
- 14 A WHEN I LOOK THROUGH THE HOLE, I KNOW IT WAS HIM THEN,
15 BECAUSE I HAD SEEN HIM BEFORE.
- 16 Q ALL RIGHT.
- 17 A AND THEN ---
- 18 Q JUST ONE SECOND PLEASE. (PAUSE.) NOW, PLEASE TAKE A
19 LOOK AT STATE'S EXHIBIT NO. 2. THIS IS A SKETCH THAT'S
20 MADE. DO YOU RECOGNIZE THAT?
- 21 A YES, SIR.
- 22 Q AND WHAT IS THAT?
- 23 A THAT'S A SKETCH OF MY HOUSE.
- 24 Q A SKETCH OF YOUR HOUSE?
- 25 A YES, SIR.

MS. LOVELY - DIRECT BY MR. GENTRY

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1 Q DID YOU MAKE THAT OR WAS IT MADE BY A LAW ENFORCEMENT
2 OFFICER?

3 A NO. MADE BY LAW ENFORCEMENT OFFICERS.

4 Q ALL RIGHT. NOW, WOULD YOU COME DOWN HERE PLEASE,
5 MA'AM, AND SHOW THE LADIES AND GENTLEMEN OF THE JURY ---
6 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

7 MR. GENTRY: AND WE OFFER EXHIBIT 2 AT THIS TIME, YOUR
8 HONOR.

9 THE COURT: WHAT SAYS THE DEFENSE?

10 MS. BUTCHER: I DON'T HAVE ANY OBJECTION.

11 THE COURT: ALL RIGHT.

12 (STATE'S EXHIBIT NO. 2 RECEIVED IN EVIDENCE.)

13 Q 2-A IS A REPRESENTATION THAT'S AN ENLARGED VERSION OF
14 2.

15 THE COURT: ANY OBJECTION TO 2-A BEING SHOWN,
16 PUBLISHED TO THE JURY?

17 MS. BUTCHER: NONE, YOUR HONOR.

18 THE COURT: OKAY.

19 Q MS. LOVELY, TAKE A LOOK AT THIS PLEASE. AND SHOW THE
20 LADIES AND GENTLEMEN OF THE JURY WHERE THIS FRONT DOOR WAS
21 WE'RE TALKING ABOUT -- YOU WERE TALKING ABOUT?

22 A HERE.

23 Q THAT'S IT RIGHT THERE?

24 A FRONT DOOR.

25 Q THAT'S THE FRONT DOOR. AND WHAT'S THIS DOWN BELOW

- 1 THAT'S ON THE OUTSIDE?
- 2 A I HAVE A SCREEN DOOR.
- 3 Q AND ON THE OUTSIDE, THERE'S SOME STEPS THERE?
- 4 A SOME STEPS.
- 5 THE COURT: MS. LOVELY, YOU NEED TO KEEP YOUR VOICE UP
- 6 BECAUSE MY COURT REPORTER HAS GOT TO RECORD THIS. OKAY?
- 7 Q GO BACK TO YOUR SEAT.
- 8 (THE WITNESS RETURNS TO THE WITNESS STAND.)
- 9 Q SO YOU CAME TO THE FRONT DOOR AND YOU LOOKED THROUGH
- 10 THE PEEP HOLE. NOW, LET ME SHOW YOU SOME MORE PHOTOGRAPHS
- 11 HERE PLEASE, MA'AM. THIS IS EXHIBIT 4. THIS IS EXHIBIT
- 12 NO. 4, STATE'S EXHIBIT 4. DO YOU RECOGNIZE THAT?
- 13 A YES, SIR.
- 14 Q WHAT IS THAT?
- 15 A THAT'S TAMEKA AND MY CAR.
- 16 Q THAT'S YOUR CAR. YOURS IS WHICH COLOR?
- 17 A THE GREEN ONE.
- 18 Q TAMEKA'S IS?
- 19 A IT'S A WHITE ONE.
- 20 Q ALL RIGHT. NOW, THIS IS THE FRONT PORCH TO YOUR
- 21 HOUSE?
- 22 A YES, SIR.
- 23 Q AND THE LIGHT IS ON?
- 24 A YES, SIR.
- 25 Q WAS THE LIGHT ON WHEN YOU LOOKED THROUGH THE WINDOW

MS. LOVELY - DIRECT BY MR. GENTRY

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- 1 PEEP HOLE?
- 2 A YES, SIR.
- 3 Q ALL RIGHT. NOW, STATE'S EXHIBIT NO. 5, WHAT IS THAT?
- 4 A THAT'S MY FRONT DOOR.
- 5 Q THAT'S YOUR FRONT DOOR. AND WHAT IS JUST TO THE LEFT
- 6 OF YOUR FRONT DOOR?
- 7 A IT'S MY PEEP HOLE.
- 8 Q WHAT IS THIS RIGHT HERE?
- 9 A OH, THAT'S MY SCREEN DOOR.
- 10 Q AND WHAT IS THIS?
- 11 A THAT'S THE DOOR.
- 12 Q AND WHAT IS THIS RIGHT HERE?
- 13 A THAT'S THE LITTLE PEEP HOLE IN THE DOOR.
- 14 Q THAT'S WHERE YOU COULD SEE PEOPLE STANDING THERE?
- 15 A AT MY FRONT DOOR.
- 16 Q ALL RIGHT. NOW, COME DOWN PLEASE AND POINT OUT
- 17 EXACTLY WHAT HAPPENED AFTER YOU LOOKED OUT THE DOOR AND YOU
- 18 SAW DUC?
- 19 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)
- 20 A THIS IS MY FRONT DOOR. WHEN I LOOKED OUT MY DOOR AND
- 21 I SEEN HIM AT THE DOOR, I RAN BACK DOWN THE HALL TO THE
- 22 LAST ROOM WHERE MY SON SLEEP.
- 23 Q WHICH SON IS THAT?
- 24 A LINDSEY LOVELY.
- 25 Q LINDSEY LOVELY?

1 A YES, SIR.

2 Q AND THEN I -- I SAID JUST LIKE THIS BECAUSE I COULDN'T

3 REMEMBER THE NAME AT THE TIME. SO I SAID, THE BOY IS AT MY

4 DOOR.

5 AND HE SAID, WHO, MOM?

6 I SAID, THE BOY, DUC. I SAID, HE AT THE DOOR. AND I

7 SAID HE GOT A GUN.

8 Q HOW DID YOU KNOW HE HAD A GUN?

9 A BECAUSE I HEARD THROUGH THE DOOR. WHEN I PEEP THROUGH

10 THE HOLE TO LOOK AT HIM, HE LEANED BACK AND LOOKED BOTH

11 WAYS AND I SEEN THE GUN. HE WAS CLICKING THE GUN OR

12 WHATEVER THEY DO TO THE GUN TO MAKE SURE ---

13 Q COME AROUND HERE.

14 A YEAH.

15 Q WHAT ELSE THEN?

16 A AND SO I RUN UP TO THE BACK. I THOUGHT OF MY OTHER

17 SON, BECAUSE HE DISABLED. AND HE'LL COME TO NOISE. HE

18 WON'T GO FROM NOISE. SO WHEN I THOUGHT ABOUT HIM, I RAN

19 BACK UP THE HALL. AND THIS IS MY ROOM RIGHT BEHIND MY DOOR

20 -- FRONT DOOR. I RAN BACK AND I GRABBED MY SON, AND I

21 TRIED TO GET HIM -- DRAG HIM, PUT HIM UP UNDER THE BED.

22 BUT BY THE TIME I COULD GET AROUND TO THE BACK OF THE BED,

23 THE GUN FIRED. BEFORE I GOT IN THE ROOM GUN FIRE FROM

24 EVERYWHERE. BEFORE I GOT IN THE ROOM -- BY THE TIME I GOT

25 IN THE KITCHEN THE DOOR FLEW OPEN. AND DUC COMING IN THE

MS. LOVELY -- DIRECT BY MR. GENTRY

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1 DOOR AND I KEEP RUNNING. AND I GRABBED MY SON. I TRY TO
2 DRAG HIM AND PUT HIM UNDER THE BED. BUT HE DIDN'T MAKE NO
3 FUSS. I JUST COVERED DOWN BECAUSE I DIDN'T KNOW WHAT WAS
4 GOING TO HAPPEN OR WHAT -- WHAT'S WHAT. AND SO AFTER
5 EVERYTHING STOPPED, I CAME RUNNING OUT OF MY ROOM, AND I
6 SEEN LINDSEY ---

7 Q ABOUT WHERE WAS HE LAYING?

8 A HE WAS LAYING ON THE FLOOR.

9 Q COULD YOU MARK THIS ABOUT WHERE HE WAS?

10 A UH-HUH.

11 Q GO AHEAD.

12 A I SAY RIGHT ABOUT THERE.

13 Q ALL RIGHT. WHICH WAY WAS HIS HEAD?

14 A HIS HEAD WAS THIS WAY.

15 Q ALL RIGHT. OKAY. THAT'S WHERE YOU SAW YOUR SON?

16 A YES.

17 Q GO AHEAD.

18 A 2 BULLETS WAS RIGHT IN HIS CHEST AND BLOOD WAS GUSHING
19 OUT HIS SIDE.

20 Q ALL RIGHT. HAVE A SEAT.

21 (THE WITNESS RETURNS TO THE WITNESS STAND.)

22 Q HOW WAS YOUR SON DRESSED WHEN YOU SAW HIM?

23 A WHEN I RAN IN THE ROOM, HE DIDN'T HAVE NO CLOTHES ON
24 AT THAT TIME.

25 Q THAT WAS THE FIRST TIME?

- 1 A YEAH, THE FIRST TIME.
- 2 Q WHEN YOU CAME BACK AND YOU SAW ---
- 3 A WHEN I CAME BACK, HE WAS LAYING ON THE FLOOR WITH HIS
- 4 PANTS ABOUT HALF-WAY RIGHT HERE.
- 5 Q OKAY. COULD YOU STAND UP AND POINT PLEASE, MA'AM?
- 6 A HE HAD HIS PANTS ABOUT HALF-WAY RIGHT HERE, AND THEY
- 7 WASN'T FASTENED OR NOTHING. HE WAS LAYING ON THE FLOOR.
- 8 MR. GENTRY: LET THE RECORD REFLECT SHE INDICATED
- 9 ACROSS THE TOP OF THE GROIN AREA.
- 10 THE COURT: OKAY.
- 11 Q AND THEN WHAT DID YOU DO?
- 12 A AND I WAS SO NERVOUS THAT I DIDN'T REALLY KNOW WHAT TO
- 13 DO AT THE TIME, THEN I START CALLING 9-1-1 COMING UP THE
- 14 HALL. AND I WAS TELLING 9-1-1 WHAT HAPPENED.
- 15 Q AND YOU GOT THROUGH TO 9-1-1?
- 16 A YES, SIR.
- 17 Q WHEN YOU GOT THROUGH TO 9-1-1, WHAT DID YOU TELL THEM?
- 18 A I TOLD THEM DUC HAD SHOOT MY SON.
- 19 Q OKAY. I'M GETTING READY TO PLAY THIS TAPE. I WANT
- 20 YOU TO TELL THE LADIES AND GENTLEMEN OF THE JURY WHO ELSE
- 21 IS ON THIS TAPE BESIDES YOU? YOU'VE HEARD IT BEFORE, I
- 22 KNOW. WHO ELSE IS ON THE TAPE BESIDES YOURSELF?
- 23 A TAMEKA WILSON.
- 24 Q AND THE PEOPLE FROM THE 9-1-1 CENTER?
- 25 A AND THE PEOPLE FROM THE 9-1-1, YES, SIR.

MS. LOVELY - DIRECT BY MR. GENTRY

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- 1 (PAUSE.)
- 2 (9-1-1 TAPE PLAYED IN OPEN COURT.)
- 3 Q AND THAT WAS THE LAST OF YOUR DISCUSSION ON THAT
- 4 PHONE; IS THAT CORRECT?
- 5 A YES, SIR.
- 6 Q ALL RIGHT. MS. LOVELY, WHAT KIND OF LOCK DO YOU HAVE
- 7 ON YOUR DOOR?
- 8 A I GOT A REGULAR LOCK, AND A PADLOCK.
- 9 Q IT'S SORT OF A DEAD BOLT LOCK?
- 10 A YES.
- 11 Q THAT'S WHAT WE'RE TALKING ABOUT, THE TOP LOCK ON
- 12 EXHIBIT NO. 5?
- 13 A YES.
- 14 Q ALL RIGHT.
- 15 MR. GENTRY: ONE MOMENT, YOUR HONOR.
- 16 (PAUSE.)
- 17 Q MS. LOVELY, HOW DID YOU KNOW WHERE DUC LIVED?
- 18 A BECAUSE I A FRIEND OF HIS FAMILY, AND I WENT TO THEIR
- 19 HOUSE ONE TIME WITH A FAMILY MEMBER OF HIS.
- 20 Q OKAY. AND YOU KNEW THAT TAMEKA AND DUC WERE REAL
- 21 CLOSE FRIENDS?
- 22 A YES.
- 23 Q AS A MATTER OF FACT, DIDN'T YOU HAVE A CONVERSATION
- 24 WITH TAMEKA ABOUT ---
- 25 A YES, I DID.

1 Q WHAT WAS THAT CONVERSATION?

2 A WHEN SHE CAME TO MY HOUSE, I ASKED HER -- I SAID, HEY,
3 TAMEKA, HOW YOU DOING?

4 SHE SAID, FINE.

5 I WASN'T HOME AT THE TIME SHE CAME. WHEN I CAME, SHE
6 WAS THERE. SO WHEN I WALK IN THE HOUSE, I SAY, HEY,
7 TAMEKA, HOW YOU DOING?

8 SHE SAY, FINE.

9 AND THEN I ASKED HER -- I ASKED HER, I SAY, WHAT YOU
10 DOING WAY OVER HERE?

11 SHE SAY, I JUST CAME OVER HERE TO SEE LINDSEY.

12 I SAY -- THEN I SAY, DON'T YOU STILL GO WITH THAT
13 YOUNG MAN?

14 SHE TOLD ME, SHE SAID, NO, WE BEEN STOPPED GOING
15 TOGETHER.

16 I SAY, YOU SURE? BABY, BECAUSE I DON'T WANT NO
17 TROUBLE AROUND HERE LIKE THAT.

18 SHE SAY, IT AIN'T GOING TO BE NO TROUBLE BECAUSE I
19 BEEN STOPPED TALKING TO HIM.

20 MS. BUTCHER: OBJECTION TO HEARSAY, YOUR HONOR.

21 THE COURT: OKAY. SUSTAINED.

22 Q MS. LINDSEY, DID YOU HAVE ANY IDEA TO THINK THAT SHE
23 AND SPANN WERE OTHER THAN EX-BOY FRIEND/GIRL FRIEND?

24 MS. BUTCHER: OBJECTION, YOUR HONOR, SPECULATION.

25 THE COURT: I'LL SUSTAIN THE OBJECTION.

MS. LOVELY — DIRECT BY MR. GENTRY

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1 Q HOW LONG HAD YOU KNOWN HIM PERSONALLY, DUC?

2 A I BEEN KNOWING HIM FOR A WHILE, BUT NOT LIKE
3 PERSONALLY KNOW HIM. I DON'T PERSONALLY KNOW HIM MYSELF.

4 Q OKAY.

5 A MY SON KNOW HIM.

6 Q YOU KNEW HIM TO SEE HIM?

7 A YEAH, I KNOW WHEN I SEE HIM AND I HAVE SEEN HIM TALK
8 TO MY SON.

9 MR. GENTRY: YOUR HONOR, WE WOULD OFFER AT THIS POINT
10 STATE'S EXHIBIT NOS. 3, 4, AND 5.

11 THE COURT: WHAT SAY THE DEFENSE?

12 MR. GENTRY: SIR?

13 THE COURT: I'M ASKING THE DEFENSE WHAT HER POSITION
14 WAS?

15 MS. BUTCHER: I HAVE NO OBJECTION.

16 THE COURT: WHAT IS 3?

17 MR. GENTRY: 3 IS THE TAPE.

18 THE COURT: IS WHAT?

19 MR. GENTRY: THE VIDEO -- EXCUSE ME, THE DVD
20 RECORDING.

21 THE COURT: OKAY. ALL RIGHT. THEY'RE IN WITHOUT
22 OBJECTION.

23 (STATE'S EXHIBIT NOS. 3, 4, AND 5 RECEIVED IN
24 EVIDENCE.)

25 MR. GENTRY: ONE MORE SECOND.

1 (PAUSE.)

2 MR. GENTRY: MS. LOVELY, PLEASE ANSWER ANY QUESTIONS

3 THAT MS. BUTCHER MAY HAVE FOR YOU.

4 CROSS EXAMINATION BY MS. BUTCHER:

5 Q MS. LOVELY, I KNOW THIS MUST BE HARD. I'M GOING TO

6 TAKE THIS DOWN.

7 NOW, YOU SAID YOU KNEW JAMES SPANN PRIOR TO THIS

8 INCIDENT?

9 A YES.

10 Q OKAY. AND YOU'RE FRIENDS WITH HIS FAMILY?

11 A NO, WE NOT -- WELL, THEY SAY HIS FAMILY. THERE'S THIS

12 GUY I KNOW, HE SAID HE WAS KIN TO HIM. I DON'T KNOW.

13 Q BUT YOU JUST TESTIFIED THAT YOU'RE FRIENDS WITH HIS

14 FAMILY?

15 A HE SAY HE WAS HIS FAMILY, YES, MA'AM, I DID SAY THAT.

16 Q I'M A LITTLE CONFUSED YOU'RE SAYING -- YOU SAID

17 BEFORE, DID YOU NOT, YOU WERE FRIENDS WITH THE FAMILY?

18 A NO. I SAID FRIEND OF SOMEONE OF THE FAMILY.

19 Q SO YOU DON'T KNOW JAMES SPANN? YOU DIDN'T NOW JAMES

20 SPANN?

21 A NO, NOT PERSONALLY. BUT I DONE SEEN HIM. I DON'T

22 PERSONALLY KNOW HIM LIKE I KNOW ANYTHING ABOUT HIM. I

23 DON'T.

24 Q OKAY. SO YOU NEVER HAD A CONVERSATION WITH HIM?

25 A NO. BUT MY SON HAVE. I HAVE BEEN WHEN HE DID, BUT I

MS. LOVELY — CROSS BY MS. BUTCHER

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1 HAVE NOT.

2 Q OKAY. I'M CONFUSED WITH YOUR TESTIMONY. YOU'VE NEVER
3 BEEN TO THEIR HOME. I UNDERSTOOD YOU TO SAY YOU'VE BEEN TO
4 THEIR HOME?

5 A I'VE BEEN TO THE BRICK HOUSE THAT THEY SUPPOSED TO BE
6 LIVING IN.

7 Q WERE YOU THERE VISITING HIS FAMILY?

8 A I WAS WITH A FRIEND. I KNOW THE GUY THAT WAS IN THE
9 CAR. AND THEY SAID TAMEKA AND THE SPANN BOY STAYED THERE.

10 Q OKAY. SO YOU DON'T ACTUALLY KNOW THE SPANNS?

11 A NO, NOT PERSONALLY, NOT ME, NO.

12 Q OKAY. AND THE SOLICITOR HAD ASKED YOU IF YOU HAD
13 KNOWN JAMES SPANN'S NAME OR JUST HIS STREET NAME PRIOR TO
14 THIS INCIDENT. AND YOU HAD ANSWERED THAT YOU KNEW JAMES
15 SPANN'S NAME, CORRECT?

16 A NO, I DIDN'T KNOW HIS REAL NAME. I KNOW HIS STREET
17 NAME OR WHATEVER NAME THEY GIVE HIM IS DUC. I HAD KNOW
18 THAT.

19 Q WHEN THE SOLICITOR ASKED YOU -- AND I WROTE IT DOWN --
20 DID YOU KNOW HIM AS DUC OR AS JAMES SPANN? WAS YOUR ANSWER
21 NOT, JAMES SPANN?

22 A YES, I GOT TO KNOW HIS NAME AFTER I FOUND OUT WHO IT
23 WAS. PERSONALLY, NO, I DID NOT KNOW HIS NAME. I KNOW HIM
24 AS DUC.

25 Q OKAY. OKAY. SO THAT WAS NOT CORRECT, WHAT YOU TOLD

- 1 THE SOLICITOR A LITTLE WHILE AGO?
- 2 A IF I SAID I KNEW HIS NAME, I WAS THINKING THAT HE WAS
- 3 ASKING ME DID I KNOW HIS NAME LIKE DUC.
- 4 Q OKAY.
- 5 A BUT AS HIS REAL NAME, NO.
- 6 Q LET ME ASK YOU. THE SOLICITOR, HE ASKED YOU AT THE
- 7 TIME OF THE INCIDENT DID YOU KNOW HIM AS DUC OR AS JAMES
- 8 SPANN? AND YOU STATED, I KNEW IT WAS JAMES SPANN. I MET
- 9 HIM BEFORE. THAT WAS NOT CORRECT, YOU DIDN'T KNOW HIM AS
- 10 JAMES SPANN SO THAT WAS NOT CORRECT WHAT YOU SAID?
- 11 A I DON'T REMEMBER HE ASKED ME THAT QUESTION.
- 12 Q OKAY. WHERE WAS THE PERSON STANDING ON THE FRONT
- 13 PORCH? AND, FIRST, HOW BIG IS YOUR FRONT PORCH?
- 14 A IT'S A BIG SIDE PORCH.
- 15 Q ALL RIGHT. I'M GOING TO APPROACH YOU. LET'S SAY
- 16 YOU'RE AT THE DOOR. TELL ME TO STOP WHEN I GET TO ABOUT
- 17 WHERE THE ENTRANCE IS?
- 18 A ABOUT RIGHT THERE.
- 19 Q OKAY. SO I'M NOT A GOOD JUDGE OF FEET. IT WAS ABOUT
- 20 THAT FAR AWAY. OKAY. WHERE IS THE PERSON ON THE FRONT
- 21 PORCH STANDING?
- 22 A HE WAS STANDING IN THE SCREEN DOOR. HE HAD THE SCREEN
- 23 DOOR OPEN, STANDING IN THE SCREEN DOOR, NEXT UP TO THE
- 24 DOOR.
- 25 Q OKAY.

MS. LOVELY — CROSS BY MS. BUTCHER

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1 MS. BUTCHER: MAY I APPROACH THE WITNESS, YOUR HONOR?

2 THE COURT: YES, MA'AM.

3 Q HERE'S THE DOOR. HERE'S THE SCREEN DOOR. HE WAS
4 ABOUT HERE?

5 A YES, MA'AM.

6 Q OKAY. DO YOU KNOW WHAT HE WAS WEARING?

7 A NO, MA'AM, I DON'T REMEMBER.

8 Q YOU DON'T REMEMBER. DO YOU RECALL WHETHER IT WAS COLD
9 OR WARM OUTSIDE?

10 A IT PROBABLY IN BETWEEN. I REALLY DON'T KNOW.

11 Q WOULD YOU SAY IT WAS 40 DEGREES? WOULD THAT BE
12 ACCURATE?

13 A HONEST TRUTH, I DON'T KNOW.

14 Q OKAY. YOU DON'T KNOW WHAT HE WAS WEARING?

15 A NO, MA'AM, I DON'T REMEMBER WHAT HE WAS WEARING.

16 Q CAN YOU DESCRIBE THE GUN HE HAD? DID YOU SEE A GUN?

17 A NO, MA'AM. I HEARD THE GUN.

18 Q OKAY. SO YOU DIDN'T ACTUALLY SEE A GUN. OKAY. SO,
19 AGAIN, HE'S STANDING ABOUT RIGHT HERE. OKAY. AND IF THIS
20 WERE THE DOOR, THE PEEP HOLE WOULD BE RIGHT AROUND IN
21 THERE?

22 A YES, MA'AM.

23 Q OKAY. HE'S STANDING RIGHT THERE. OKAY. HOW MANY
24 PEOPLE WERE THERE?

25 A HOW MANY PEOPLE WAS IN MY HOUSE THAT NIGHT?

- 1 A NO. HOW MANY PEOPLE WERE OUTSIDE?
- 2 A IT WAS JUST HIM THAT ALL I SEEN.
- 3 Q NOW, YOU STATED A MOMENT AGO THAT YOU RAN DOWN THE
- 4 HALL YELLING DUC'S HERE WITH A GUN? DUC HAS A GUN?
- 5 A I RAN DOWN THE HALL TO MY SON ROOM. I SAID THE BOY AT
- 6 THE DOOR -- BECAUSE AT THAT TIME I COULDN'T REMEMBER HIS
- 7 NAME. WHEN I REMEMBER HIS NAME, I SAID, DUC IS AT THE
- 8 DOOR. AND I SAID, HE GOT A GUN.
- 9 Q OKAY. IS THIS YOUR STATEMENT YOU WROTE?
- 10 A YES, MA'AM.
- 11 Q OKAY. THE PART THAT IS HIGHLIGHTED DESCRIBES YOU
- 12 RUNNING. WOULD YOU READ THAT PLEASE?
- 13 A (READING.) I HEARD THE GUN CLICK. I RAN DOWN THE
- 14 HALL AND YELL GET UP, THE BOY GOT A GUN. AND I RAN BACK.
- 15 Q IN YOUR WRITTEN STATEMENT YOU DIDN'T CALL HIM DUC, DID
- 16 YOU?
- 17 A MA'AM?
- 18 Q IN YOUR WRITTEN STATEMENT YOU DIDN'T CALL HIM DUC, DID
- 19 YOU? YOU REFERRED TO HIM AS THE BOY?
- 20 A YES, MA'AM, I SURE DID.
- 21 Q OKAY. MS. LOVELY, YOU -- ISN'T IT TRUE THAT YOU
- 22 DIDN'T KNOW WHO DID THIS UNTIL A NAME WAS SUGGESTED TO YOU
- 23 OR TOLD TO YOU?
- 24 A NO, MA'AM. I ALREADY KNOW WHO DID IT WHEN I SAW HIS
- 25 FACE AT MY DOOR.

MS. LOVELY - CROSS BY MS. BUTCHER

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- 1 Q 9-1-1 ASKED YOU WHO DID THIS? YOUR RESPONSE WAS NOT
2 DUC DID IT. YOUR RESPONSE WAS, I DON'T KNOW.
3 A NO, I DIDN'T SAY I DIDN'T KNOW.
4 Q LATER WHEN 9-1-1 ASKED YOU AGAIN, WHO DID THIS? YOUR
5 RESPONSE AGAIN WAS, I DON'T KNOW. BUT THE GIRL HERE DOES;
6 IS THAT CORRECT?
7 A THEY ASK ME WHAT WAS HIS NAME. THEY WANT HIS REAL
8 NAME. I TOLD THEM I DID NOT KNOW.
9 Q SO THEY ASKED YOU HIS NAME?
10 A YES.
11 Q THEY DIDN'T ASK YOU ---
12 A THEY DIDN'T ASK ME FOR A NICKNAME OR NOTHING ELSE.
13 THEY ASK WHAT HIS NAME WAS. WHICH I AIN'T LYING, I DIDN'T
14 KNOW HIS NAME.
15 Q THEY DIDN'T JUST ASK YOU, DO YOU KNOW WHO DID THIS?
16 THEY ASKED YOU -- WHEN THE OFFICER ASKED YOU -- YOU'RE
17 SAYING THEY DIDN'T SAY WHO DID THIS? THEY SAID, WHAT'S THE
18 PERSON'S NAME?
19 A THEY ASK ME DO I KNOW WHO DID THIS? AND I TOLD THE
20 POLICE, YES, I KNOW WHO DID IT. THE GUY NAME DUC ---
21 Q THAT'S WHAT ---
22 A --- BECAUSE THAT'S WHAT I KNOW HIM BY.
23 Q AND THAT'S WHAT YOU TOLD THE POLICE. OKAY.
24 MS. BUTCHER: YOUR HONOR, MAY WE APPROACH?
25 THE COURT: OKAY.

1 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
2 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

3 MS. BUTCHER: BEG THE COURT'S INDULGENCE.

4 THE COURT: YES.

5 (PAUSE.)

6 Q MS. LOVELY, I'M GOING TO PLAY AGAIN A PORTION OF THE
7 9-1-1 TAPE WHERE YOU WERE TALKING. JUST GIVE ME A MOMENT
8 TO FIND IT.

9 (PAUSE.)

10 (9-1-1 C.D. PLAYED IN OPEN COURT.)

11 Q MS. LOVELY, WHEN YOU WERE ASKED WHO SHOT YOUR SON?
12 YOUR RESPONSE WAS, I DON'T KNOW.

13 A I WAS TRYING TO SAY I DIDN'T KNOW HIS NAME. BUT I
14 KNEW WHO WAS AT MY DOOR, AND HE'S SITTING HERE.

15 Q YOU WERE TRYING TO SAY ---

16 A NO.

17 Q YOU ---

18 A I SEEN HIM AT MY DOOR.

19 (PAUSE.)

20 MS. BUTCHER: I APOLOGIZE.

21 (PAUSE.)

22 (9-1-1 C.D. PLAYED IN OPEN COURT.)

23 Q AGAIN, THEY ASK AND YOU SAID YOU DIDN'T KNOW, CORRECT?

24 A I DIDN'T KNOW HIS NAME, THAT WHAT I WAS SAYING. BUT I
25 HAD KNOW HIS FACE.

MS. LOVELY -- CROSS BY MS. BUTCHER

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1 Q OKAY. MS. LOVELY, ISN'T IT TRUE YOU DIDN'T KNOW WHO
2 IT WAS UNTIL SOMEONE ELSE TOLD YOU WHO THEY THOUGHT IT WAS?

3 A NO, MA'AM. I KNOW IT WAS HIM. I WAS -- I WAS LOOKING
4 OUT MY PEEP HOLE IN HIS FACE. I KNOW IT WAS HIM.

5 Q MS. LOVELY, ISN'T IT TRUE THAT FOR YOU TO BE ABLE TO
6 PUT THE PERSON WHO DID THIS TO YOUR SON -- TO PUT A NAME ON
7 THAT PERSON, TO IDENTIFY THEM, GIVES YOU CLOSURE?

8 A NO, MA'AM. IT AIN'T THAT. I KNOW WHAT I SEEN AT MY
9 DOOR. I'M LOOKING THROUGH THE HOLE IN MY DOOR. I'M
10 LOOKING AT THIS YOUNG MAN FACE SITTING RIGHT HERE IN THE
11 FRONT OF ME. AND I KNOW IT WAS HIM. AND NO ONE DIDN'T
12 TELL ME THIS. THIS IS WHAT I SEEN.

13 Q BUT YOU SAID YOU KNEW HIM AS DUC?

14 A YES.

15 Q WHY DIDN'T YOU TELL THE POLICE YOU KNEW HIM AS DUC?

16 A I DID TELL THE POLICE THAT. YES, I DID.

17 Q TWICE THEY ASKED WHO IT WAS AND YOU SAID, I DON'T
18 KNOW?

19 A AT THAT TIME I DIDN'T UNDERSTOOD WHAT THEY SAID. BUT
20 I KNOW WHO IT WAS AT MY DOOR.

21 Q MS. LOVELY, I'M NOT -- I KNOW YOU'VE BEEN THROUGH A
22 LOT. ONE MORE THING. YOU ALSO TESTIFIED THAT THE PERSON
23 WHO WAS THERE THAT NIGHT DROVE A BLUE CAR?

24 A I SAID A CAR HAD LOOK LIKE IT WAS BLUE. I DIDN'T
25 REALLY KNOW WHAT COLOR THE CAR WAS. I SAID IT LOOKED LIKE

- 1 IT WAS BLUE.
- 2 MS. BUTCHER: OKAY. THE COURT'S INDULGENCE.
- 3 (PAUSE.)
- 4 Q AND ALSO, ON THE 9-1-1 TAPE YOU SAID THEY. BUT YOU'VE
- 5 TESTIFIED YOU KNEW IT WAS ONLY ONE PERSON?
- 6 A YES, MA'AM. I REALIZE I HAD SAID THEY TOO. BUT, YES,
- 7 IT WAS ONE PERSON, THAT'S ALL I SEEN. I DON'T KNOW WHY I
- 8 SAY THEY. BUT I KNOW I SEEN ONE PERSON.
- 9 Q OKAY. AT THE TIME YOU'RE NOT SURE IF IT WAS ONE
- 10 PERSON OR WHAT WAS GOING ON?
- 11 A I SEEN ONE PERSON AT MY DOOR. LIKE I SAY, HE'S
- 12 SITTING HERE. AND I'M TELLING THE GOD HONEST TRUTH FROM
- 13 GOD ABOVE. I WON'T SIT HERE AND LIE TO NO ONE IN THIS
- 14 COURTROOM ABOUT SOMETHING THIS SERIOUS.
- 15 Q OKAY. AND YET YOU SAID, THEY, ON THE 9-1-1 TAPE?
- 16 A YES, MA'AM, I DID. I RECOGNIZE I DID SAY THEY.
- 17 Q AND YOU TESTIFIED TOO YOU KNEW THAT NIGHT SOMETHING
- 18 JUST WASN'T RIGHT; IS THAT RIGHT?
- 19 A I GET THAT FUNNY FEELING ALL THE TIME WHEN SOMETHING
- 20 AIN'T RIGHT.
- 21 Q YOU GET THAT FEELING?
- 22 A UH-HUH.
- 23 Q DID YOU TELL ANYBODY ELSE AFTER THIS INCIDENT THAT YOU
- 24 DID NOT SEE JAMES SPANN?
- 25 A I HAS NOT TALKED TO ANYONE ELSE AFTER THIS INCIDENT

MS. LOVELY — CROSS BY MS. BUTCHER

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- 1 ABOUT THIS SITUATION, NOT ANY OF MY FAMILY.
- 2 Q DO YOU KNOW A GENTLEMAN BY THE NAME OF MICHAEL SPANN?
- 3 A WHO?
- 4 Q MICHAEL SPANN?
- 5 A MICHAEL SPANN? I DON'T RECALL.
- 6 Q IS YOUR TESTIMONY HERE TODAY THAT YOU NEVER TOLD A
- 7 MICHAEL SPANN THAT YOU NEVER SAW JAMES SPANN ---
- 8 MR. GENTRY: OBJECTION, THE TESTIMONY IS THAT SHE
- 9 DOESN'T KNOW MICHAEL SPANN.
- 10 THE COURT: SHE CAN ANSWER THAT QUESTION.
- 11 A I DON'T KNOW WHO HE IS. I DON'T. NOT BY -- NOT BY
- 12 YOU TELLING ME HIS NAME. THEY COULD HAVE CALL HIM
- 13 SOMETHING ELSE, I DON'T KNOW.
- 14 Q AND THERE ARE A LOT OF STREET NAMES. A FRIEND,
- 15 PERHAPS, OF YOUR SON?
- 16 A I DON'T REMEMBER.
- 17 Q YOU DON'T RECALL. IS IT POSSIBLE?
- 18 A I DON'T RECALL.
- 19 Q SO YOU'RE SAYING YOU JUST DON'T RECALL IF YOU TOLD
- 20 SOMEONE THAT?
- 21 A EXCUSE ME NOW?
- 22 Q YOU'RE SAYING YOU DON'T RECALL IF YOU TOLD SOMEONE
- 23 THAT YOU NEVER SAW JAMES SPANN THAT NIGHT?
- 24 A I DIDN'T TALK TO ANYONE ABOUT THIS INCIDENT AFTER THIS
- 25 INCIDENT HAPPEN.

- 1 Q YOU'VE NEVER TALKED TO ANYONE ABOUT THIS INCIDENT?
- 2 A NOT TO MY KNOWLEDGE, I DIDN'T.
- 3 Q MS. SPANN -- I'M SORRY. MS. LOVELY, ARE YOU HERE
- 4 TELLING ME THAT YOUR SON WAS SHOT AND YOU'VE NEVER SPOKEN
- 5 TO ANYONE ABOUT THIS INCIDENT?
- 6 A MY FAMILY. I DON'T REMEMBER TELLING ANYBODY ON THE
- 7 OUTSIDE ANYTHING.
- 8 Q OKAY. WOULD THE NAME LENNY REFRESH YOUR MEMORY?
- 9 A OH, I KNOW THIS GUY NAME LENNY.
- 10 Q DO YOU KNOW THAT'S MICHAEL SPANN'S STREET NAME?
- 11 A NO.
- 12 Q AND I KNOW A LOT OF PEOPLE HAVE STREET NAMES. AND
- 13 UNLESS THEY REALLY KNOW THE PERSON, SOME TIMES THEY DON'T
- 14 KNOW THEIR REAL NAME. BUT YOU DID -- SO YOU DO KNOW A
- 15 LENNY?
- 16 A YES, I KNOW A GUY NAME LENNY.
- 17 Q OKAY. THIS WAS A FRIEND OF YOUR SON'S?
- 18 A NO. HE WAS A FRIEND OF MY NIECE, BUT I HAVE NOT
- 19 TALKED TO HIM ABOUT THE SITUATION. NO, I HAVE NOT.
- 20 Q OKAY. HOW LONG DID YOU LOOK OUT THAT PEEP HOLE?
- 21 A I DON'T RECALL HOW LONG. BUT I KNOW I BEEN THERE FOR
- 22 A MINUTE LOOKING AT HIM.
- 23 Q OKAY. WHERE WAS THE BLUE CAR PARKED?
- 24 A IT WAS PARKED ON THE OTHER SIDE OF WHERE MY BATHROOM
- 25 WINDOW AT.

MS. LOVELY -- CROSS BY MS. BUTCHER

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1 Q SO IT WASN'T IN FRONT OF THE HOUSE, AROUND THE FRONT
2 DOOR?

3 A NO.

4 Q IT WAS AROUND -- WOULD THAT BE THE BACK OF THE HOUSE?

5 A NO. IT WAS LIKE ON THE END OF THE HOUSE WHERE MY
6 BATHROOM WINDOW AT.

7 Q OKAY. WHEN DID YOU LOOK OUT YOUR WINDOW AND SEE THAT
8 BLUE CAR?

9 A AFTER I HEAR RUNNING OUT OF MY HOUSE, I RAN DOWN THE
10 HALL AND I SEEN MY SON LAYING ON THE FLOOR. I RAN BACK UP
11 AND I LOOK OUT THE DOOR TO SEE WHICH WAY HE WENT, BUT I
12 DIDN'T KNOW WHERE HE WENT SO I RAN IN MY ROOM AND LOOK OUT
13 MY BATHROOM WINDOW. AND THE CAR -- HE JUMP IN THE CAR
14 THEN.

15 Q SO YOU RAN TO CHECK ON YOUR SON AND THEN YOU RAN AWAY
16 FROM YOUR SON?

17 A YES, I DID.

18 Q OKAY. WHAT WAS THAT -- WERE YOU ABLE TO SEE WHAT HE
19 WAS WEARING? YOU SAW HIM JUMP IN THE CAR. WHAT WAS HE
20 WEARING?

21 A AT THAT TIME I CAN'T REMEMBER WHAT HE WAS WEARING.

22 MS. BUTCHER: OKAY. NO FURTHER QUESTIONS.

23 MR. GENTRY: JUST BRIEFLY, YOUR HONOR. WE WOULD LIKE
24 TO SUBMIT TO THE COURT A POLICE REPORT.

25 (VOLUNTARY STATEMENT OF MARY ANN LOVELY MARKED FOR

1 IDENTIFICATION AS STATE'S EXHIBIT NO. 11.)

2 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
3 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

4 REDIRECT EXAMINATION BY MR. GENTRY:

5 Q LET ME SHOW YOU WHAT'S BEEN MARKED AS STATE'S EXHIBIT
6 NO. 11 FOR IDENTIFICATION. DO YOU RECALL JUST A FEW
7 MINUTES AGO MS. BUTCHER ASKED YOU SOMETHING TO THE EFFECT
8 THAT I HEARD THE GUN COCK, I RAN DOWN THE HALL AND YELLED,
9 GET UP, BOY GOT A GUN?

10 A YES.

11 Q AND SHE MADE A POINT OUT OF THE FACT YOU NEVER SAID
12 DUC; IS THAT RIGHT?

13 A YES.

14 Q ALL RIGHT. AND WOULD YOU READ THE LAST PART OF THAT
15 STATEMENT TO YOURSELF?

16 A (COMPLIED.)

17 Q OKAY. NOW, THIS IS A STATEMENT. YOU EXECUTED THIS AT
18 THE SHERIFF'S OFFICE AT ABOUT 2:00 O'CLOCK IN THE MORNING?

19 A YES, SIR.

20 Q I NEED TO ASK YOU IF YOU MENTIONED THE WORD DUC IN
21 THERE. DO YOU RECALL?

22 A ABOUT TWO TIMES.

23 Q LOOK AT IT.

24 A TWO TIMES.

25 MR. GENTRY: I HAVE NOTHING FURTHER OF THIS WITNESS.

MS. LOVELY — RECROSS BY MS. BUTCHER

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1 THE COURT: OKAY.

2 MS. BUTCHER: RECROSS EXAMINATION?

3 THE COURT: MA'AM?

4 MS. BUTCHER: MAY I RECROSS, YOUR HONOR?

5 THE COURT: ON THIS PARTICULAR POINT?

6 MS. BUTCHER: YES, YOUR HONOR.

7 THE COURT: OKAY.

8 RECROSS EXAMINATION BY MS. BUTCHER:

9 Q MS. LOVELY, WHEN YOU WROTE THIS STATEMENT, IT WAS
10 AFTER SOMEONE ELSE HAD TOLD YOU WHAT HIS NAME WAS, CORRECT?

11 A NO, MA'AM. I ALREADY HAD KNEW HIS NAME.

12 Q MS. LOVELY, YOU TESTIFIED YOU DIDN'T KNOW HIS NAME
13 DURING THE 9-1-1 CALL, CORRECT?

14 A YES. NOT HIS REAL NAME BUT I KNOW HIM AS DUC.

15 Q OKAY. YOU WROTE THIS STATEMENT AFTER YOU HAD LEARNED
16 HIS NAME, CORRECT?

17 A NO, MA'AM. I ALREADY HAD KNOW HIS NAME WAS DUC.

18 MS. BUTCHER: NO FURTHER QUESTIONS.

19 THE COURT: OKAY. YOU CAN STEP DOWN. WATCH YOUR
20 STEP.

21 (THE WITNESS LEAVES THE WITNESS STAND.)

22 MR. GENTRY: IT MIGHT BE A GOOD MOMENT TO TAKE A BRIEF
23 RECESS AND GET OUR NEXT WITNESS.

24 THE COURT: ALL RIGHT. LADIES AND GENTLEMEN, WE'RE
25 GOING TO TAKE ABOUT A 15-MINUTE RECESS. I REMIND YOU,

1 PLEASE DON'T DISCUSS THIS CASE IN THE JURY ROOM. YOU CAN
2 TALK ABOUT EASTER, TALK ABOUT TURKEY SEASON OR ANYTHING
3 ELSE, JUST DON'T TALK ABOUT THIS CASE. THANK YOU.

4 (THE JURY RETIRES TO THE JURY ROOM AT 4:09 P.M.)

5 MR. GENTRY: COULD WE TAKE UP ONE ISSUE BEFORE WE
6 BREAK?

7 THE COURT: YES, JUST A MINUTE. (PAUSE.) OKAY.

8 MR. GENTRY: IT'S GOING TO BE DIFFICULT FOR ME TO
9 RELOAD AND GET EXACTLY WHERE I STOPPED MS. LOVELY ON THIS
10 DVD. I'D LIKE TO PLAY THE WHOLE TAPE OVER AGAIN. IT'S
11 ALREADY IN EVIDENCE, AND I'D LIKE TO GO TO THE PART WHERE
12 WE PICK UP AND KEEP ON GOING.

13 THE COURT: OKAY. SO WHAT YOU'RE TELLING ME, INSTEAD
14 OF TRYING TO GO THROUGH IT RIGHT NOW, YOU WANT TO PLAY THE
15 WHOLE THING FOR THE JURY WHEN WE GET BACK IN?

16 MR. GENTRY: YES, SIR.

17 THE COURT: IT'S IN EVIDENCE.

18 MS. BUTCHER: I CAN'T OBJECT.

19 THE COURT: OKAY. ALL RIGHT. ANYTHING ELSE?

20 MR. GENTRY: NO, SIR.

21 THE COURT: ALL RIGHT. WE'LL BE IN RECESS 15 MINUTES.

22 (A RECESS WAS TAKEN.)

23 MR. GENTRY: YOUR HONOR, WE'RE READY TO CALL OUR NEXT
24 WITNESS.

25 THE COURT: OKAY. HOW LONG DO YOU ANTICIPATE YOUR

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1 NEXT WITNESS BEING?

2 MR. GENTRY: I WOULD SAY SHE SHOULD BE THROUGH BEFORE
3 5:30.

4 THE COURT: OKAY.

5 MR. GENTRY: THAT'S MY GUESS.

6 THE COURT: ALL RIGHT. HANG ON A MINUTE, GIVE ME THE
7 JURY.

8 (THE JURY RETURNS TO THE COURTROOM AT 4:27 P.M.)

9 THE COURT: MR. SOLICITOR, YOU MAY CALL YOUR NEXT
10 WITNESS.

11 MR. GENTRY: TAMEKA WILSON.

12 TAMEKA WILSON, BEING FIRST
13 DULY SWORN, TESTIFIED AS FOLLOWS:

14 CLERK: STATE YOUR FULL NAME FOR THE RECORD.

15 WITNESS: TAMEKA WILSON.

16 DIRECT EXAMINATION BY MR. GENTRY:

17 Q MS. WILSON, ON THE EARLY MORNING HOURS OF APRIL THE
18 7TH OF 2009 WERE YOU PRESENT AT [REDACTED] WITH
19 LINDSEY LOVELY?

20 A YES.

21 Q I BEG YOUR PARDON?

22 A YES.

23 Q ALL RIGHT. WOULD YOU TELL ME WHAT OCCURRED THAT NIGHT
24 WITH RESPECT TO YOU AND LINDSEY BEGINNING ABOUT MIDNIGHT?

25 A ME AND LINDSEY WAS IN THE ROOM. HIS MOM CAME TO THE

- 1 DOOR STATING THAT SHE HEARD A GUN BEING COCKED AT THE DOOR.
2 WE BEGAN TO GET DRESSED. RAN TOWARD THE DOOR, THROUGH THE
3 HALLWAY. AND THEN A GUN -- THE DOOR WAS BEING KICKED IN,
4 THEREFORE, GUNSHOTS WERE FIRED.
- 5 Q OKAY. WHERE DID LINDSEY GO?
- 6 A IN THE HALLWAY ---
- 7 Q HE WENT IN THE ---
- 8 A --- TOWARDS ---
- 9 Q --- HALLWAY?
- 10 A --- THE DOOR, YES.
- 11 Q HE WAS GOING TOWARD WHERE THE DOOR WAS BEING KICKED
12 IN?
- 13 A YES, SIR.
- 14 Q HOW WAS ---
- 15 A SO WAS I. SIR?
- 16 Q HOW WAS HE DRESSED?
- 17 A WITH PANTS ON, SIR.
- 18 Q OKAY.
- 19 A GOT HIS SHORT PANTS.
- 20 Q OKAY. NOW, WHERE WERE YOU?
- 21 A BEHIND HIM.
- 22 Q BEHIND HIM?
- 23 A YES.
- 24 Q ALL RIGHT. DID YOU GET TO THE NEXT BEDROOM?
- 25 A ABOUT THERE, MAYBE SO. NOT IN THE BEDROOM, BUT LIKE

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- 1 RIGHT THERE IS PROBABLY THE FURTHEST I GOT.
- 2 Q ALL RIGHT. THIS HAS BEEN MARKED EXHIBIT NO. 2-A.
- 3 WOULD YOU COME DOWN PLEASE AND POINT TO WHERE YOU AND
- 4 LINDSEY WERE WHEN THE RUCKUS AROSE?
- 5 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)
- 6 A WHEN IT OCCURRED?
- 7 Q YES, WHEN IT STARTED.
- 8 A WE WERE IN HERE.
- 9 Q OKAY. AND THEN WHAT HAPPENED?
- 10 A GUNSHOTS.
- 11 Q WHERE DID LINDSEY GO?
- 12 A SOMEWHERE BACK DOWN HERE.
- 13 Q ALL RIGHT. HE TUMBLE BACK OVER YOU?
- 14 A YES.
- 15 Q AND YOU WERE BACK WHERE? WHAT HAPPENED THEN?
- 16 A I BEGAN ---
- 17 THE COURT: YOU'VE GOT TO KEEP YOUR VOICE UP. MY
- 18 COURT REPORTER ---
- 19 A THE GUNSHOT WAS HERE. WE GOT TO RIGHT HERE AND HE
- 20 FELL. I FELL TOO. HE PUSHED ME DOWN.
- 21 Q WHEN YOU GOT TO SEE LINDSEY AGAIN, WAS THIS ABOUT
- 22 WHERE HE WAS LAYING?
- 23 A ABOUT RIGHT THERE.
- 24 Q ABOUT RIGHT IN HERE?
- 25 A YES.

1 Q OKAY. NOW, DID YOU HEAR ANYBODY SAY, WHERE THEY AT?

2 A YES.

3 Q YOU DID. WHO SAID THAT?

4 A THE PERSON KICKING IN THE DOOR.

5 Q OKAY. AND WHO WAS THAT PERSON?

6 (THE WITNESS RETURNS TO THE WITNESS STAND.)

7 A I'M NOT SURE WHO THE PERSON WAS, SIR.

8 Q YOU'RE NOT SURE?

9 A NO. I NEVER SAW ANYBODY, SO I CAN'T BE SURE.

10 Q YOU SAID WHAT?

11 A I NEVER SAW THE PERSON THAT DID IT, SO I CANNOT SAY
12 WHO IT WAS, SIR.

13 Q ALL RIGHT. LET ME SHOW YOU THIS STATEMENT, AND READ
14 THIS PART RIGHT HERE.

15 A I KNOW WHAT THE STATEMENT SAYS.

16 Q WHAT DOES THE STATEMENT SAY?

17 A IT SAYS WHAT THEY TOLD ME TO PUT BASICALLY.

18 Q WHO TOLD YOU?

19 A YES, REALLY. BASICALLY -- OKAY. PUT IT THIS WAY.

20 BASICALLY, I TOLD THEM I BELIEVE IT COULD BE HIM. WHY?

21 BECAUSE ME AND HIM BROKE UP. ME AND HIM WENT THROUGH SOME

22 PROBLEMS. THEREFORE, THAT'S WHY WE BROKE UP. I DON'T

23 THINK ANYBODY ELSE WAS AFTER ME. SO, OF COURSE, I'M GOING

24 TO SAY THE PERSON THAT I JUST GOT IN TO A ALTERCATION WITH,

25 BASICALLY, SIR. BUT AS FAR AS ME VISUALLY SEEING SOMEONE,

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- 1 I DID NOT VISUALLY SEE SOMEONE. TO THIS DAY I WISH I DID,
2 BUT I DIDN'T.
- 3 Q ALL RIGHT. DID YOU WRITE I HEARD SOMEONE SAY JAMES
4 SPANN?
- 5 A I HEARD SOMEONE SAY -- READ THE WHOLE SENTENCE PLEASE.
- 6 Q YOU HEARD?
- 7 A I BELIEVE I HEARD HIM, YES, SIR.
- 8 Q YOU BELIEVE YOU HEARD JAMES SPANN?
- 9 A YES, I BELIEVE.
- 10 Q WHAT DID HE SAY, THIS PERSON THAT YOU BELIEVE WAS ---
- 11 A THE PERSON ---
- 12 Q --- JAMES SPANN?
- 13 A --- WASN'T SAYING TOO MUCH.
- 14 Q WHAT DO YOU BELIEVE THEY SAID?
- 15 A WHERE THEY AT? THAT'S ALL I HEARD THE PERSON SAY,
16 PERIOD. THE PERSON DID NOT SAY ANYTHING ELSE; THAT'S WHAT
17 I'M TELLING YOU, SIR.
- 18 Q OKAY. HOW MANY SHOTS DID YOU HEAR?
- 19 A MAYBE 5 -- 4 OR 5, 6 MAYBE. A LOT.
- 20 Q ALL RIGHT. AND THEN WHAT HAPPENED?
- 21 A AFTER WHAT PERIOD OF TIME? WHAT POINT ARE YOU ---
- 22 Q WHEN THE SHOOTING STOPPED?
- 23 A WHEN THE SHOOTING STOPPED?
- 24 Q YES.
- 25 A THE VICTIM'S MOM CAME RUNNING IN. SHE WAS ON THE

- 1 PHONE, THEREFORE, I WAS UNDER THE BED.
- 2 Q OKAY. AND THEN DID YOU SEE LINDSEY ON THE FLOOR?
- 3 A YES, I COULD SEE HIM FROM WHERE I WAS LAYING AT;
- 4 THAT'S ALL I COULD SEE.
- 5 Q ALL RIGHT. WHAT WAS HE DOING?
- 6 A GASPING FOR AIR, TRYING TO BREATHE.
- 7 Q WHAT DID YOU DO?
- 8 A I CAME FROM UNDER THE BED AND LET MS. MARY ANN KNOW
- 9 THAT I WAS THERE.
- 10 Q OKAY. DID YOU TRY TO COMFORT LINDSEY AT ALL?
- 11 A OF COURSE, I DID.
- 12 Q WHO IS JAMES SPANN?
- 13 A MY EX-BOY FRIEND.
- 14 Q IS THIS HIM SITTING RIGHT HERE IN THE MIDDLE OF THE
- 15 TABLE?
- 16 A YES, SIR.
- 17 Q ALL RIGHT.
- 18 MR. GENTRY: LET THE RECORD REFLECT SHE HAS CORRECTLY
- 19 IDENTIFIED JAMES SPANN.
- 20 Q IS THERE A NICKNAME OR STREET NAME HE USED?
- 21 A I CALL HIM DUC, YES, SIR.
- 22 Q LOTS OF PEOPLE CALL HIM DUC, DON'T THEY?
- 23 A MAYBE, SIR. SO, SIR, BUT THAT'S WHAT I CALL HIM, YES,
- 24 SIR.
- 25 Q OKAY. SINCE APRIL OF LAST YEAR HAVE YOU HAD ANY KIND

MS. WILSON - DIRECT BY MR. GENTRY

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- 1 OF COMMUNICATIONS AT ALL WITH DUC?
- 2 A I'VE BEEN UP THERE, YES, SIR. BUT AS FAR AS ---
- 3 Q UP WHERE?
- 4 A TO THE PRISON, TO SUMTER.
- 5 Q SUMTER/LEE?
- 6 A YES, SIR.
- 7 Q YOU HAVE NOT BEEN TO TURBEVILLE?
- 8 A NO, SIR.
- 9 Q HAVE YOU WRITTEN ANY LETTERS TO HIM ---
- 10 A NO, SIR.
- 11 Q --- AT TURBEVILLE? YOU SAID NO?
- 12 A NO.
- 13 Q OKAY. HAVE YOU CALLED HIM AT ALL AT TURBEVILLE?
- 14 A NO.
- 15 Q HAVE YOU SENT ANY MESSAGES TO HIM?
- 16 A NO.
- 17 MR. GENTRY: BEG THE COURT'S INDULGENCE.
- 18 (PAUSE.)
- 19 Q HOW LONG HAVE YOU KNOWN DUC?
- 20 A FOR A WHILE.
- 21 Q HOW MANY YEARS?
- 22 A FOR ABOUT 5 YEARS.
- 23 Q HOW LONG WERE YOU ALL AN ITEM?
- 24 A FOR ABOUT 5 YEARS ON AND OFF.
- 25 Q OKAY. HOW DID YOU HAPPEN TO COME TO VISIT LINDSEY?

- 1 A HOW DID I HAPPEN TO COME TO VISIT LINDSEY?
- 2 Q YES.
- 3 A COULD YOU BE COHERENT (SIC) BY WHAT YOU MEAN BY THAT,
- 4 SIR? HOW DID I HAPPEN TO COME VISIT HIM?
- 5 Q YES.
- 6 A WE WERE ON THE PHONE. LINDSEY CAME TO SEE ME.
- 7 THEREFORE, WE LEFT TOGETHER. I WENT TO GO SEE HIM. SIMPLE
- 8 AS THAT.
- 9 Q LINDSEY DIDN'T HAVE A DRIVER'S LICENSE, DID HE?
- 10 A SIR, I DON'T KNOW THAT. I DON'T KNOW THAT.
- 11 Q DID YOU EVER SEE HIM DRIVE AN AUTOMOBILE?
- 12 A HAVE I EVER SEEN LINDSEY DRIVE?
- 13 Q RIGHT.
- 14 A NO, SIR.
- 15 Q SO YOU CAME TO VISIT LINDSEY THE NIGHT BEFORE, DID YOU
- 16 NOT?
- 17 A YES.
- 18 Q AND YOU STAYED ---
- 19 A YES.
- 20 Q --- WITH LINDSEY THAT NIGHT?
- 21 A YES.
- 22 Q AND YOU WERE WITH HIM WHEN THE SHOOTER BROKE IN THE
- 23 HOUSE; IS THAT CORRECT?
- 24 A YES.
- 25 Q NOW, DURING THOSE 5 YEARS, I IMAGINE YOU AND DUC HAD A

MS. WILSON - DIRECT BY MR. GENTRY

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- 1 LOT OF CONVERSATIONS, DIDN'T YOU?
- 2 A OF COURSE, WE HAD CONVERSATIONS, SIR.
- 3 Q WELL, YOU TALKED TO ONE ANOTHER?
- 4 A OF COURSE, I MEAN, YES, SIR, YES.
- 5 Q SO YOU WERE QUITE FAMILIAR WITH HIS VOICE?
- 6 A WITH -- I MEAN WITH ME AND HIM BEING TOGETHER, YES,
- 7 SIR. BUT DURING THE ORDEAL THAT HAPPENED LIKE THAT, I'M
- 8 NOT EXACTLY SURE. SO IF YOU'RE COMPARING THE TWO, IT'S NO
- 9 COMPARISON.
- 10 Q I PLAYED FOR YOU THIS PARTICULAR TAPE, HAVE I NOT
- 11 ALREADY?
- 12 A YES, YOU HAVE.
- 13 Q ALL RIGHT.
- 14 A AND I EXPLAIN TO YOU LIKE I'M EXPLAIN AGAIN, SIR.
- 15 Q ALL RIGHT. I JUST WANT YOU TO TELL WHEN YOUR VOICE
- 16 COMES ON.
- 17 (9-1-1 C.D. PLAYED IN OPEN COURT.)
- 18 A THIS IS WHEN I'M ABOUT TO COME IN. AND THE REASON
- 19 BEING -- I'LL TELL YOU IN A LITTLE.
- 20 (9-1-1 C.D. CONTINUED BEING PLAYED IN OPEN COURT.)
- 21 Q AT THIS POINT, THAT IS YOUR VOICE ON THE PHONE?
- 22 A YES, IT IS.
- 23 Q THAT'S A YES?
- 24 A UH-HUH.
- 25 Q ALL RIGHT.

1 (9-1-1 C.D. CONTINUED BEING PLAYED IN OPEN COURT.)

2 Q WAS ANY LAW ENFORCEMENT OFFICERS OR POLICEMEN IN THE
3 HOUSE WHEN YOU WERE ON THAT TELEPHONE?

4 A WAS THERE ANY LAW ENFORCEMENT IN THE HOUSE?

5 Q WHILE YOU WERE ON THAT TELEPHONE?

6 A NO, THAT WAS THE CALL WHEN -- THE AMBULANCE WASN'T
7 EVEN THERE YET.

8 Q I CAN'T HEAR YOU.

9 A THE AMBULANCE WASN'T EVEN THERE YET. NO ONE WAS THERE
10 YET.

11 Q OKAY. AND THAT WAS YOUR VOICE THAT SAID JAMES KEON
12 SPANN AT LEAST FOUR TIMES ON THAT TAPE; IS THAT CORRECT?

13 A I MEAN ---

14 Q YES OR NO?

15 A YES, SIR. IF YOU ---

16 Q THANK YOU.

17 A IF YOU LISTEN TO IT, IT SAYS I BELIEVE AT FIRST. BUT
18 IF YOU KEEP ASKING ME OVER AND OVER IN A HORRIFIC ORDEAL
19 LIKE THAT, I LED TO BELIEVE. NOW IT LOOKS LIKE YOU
20 MANIPULATING AND TWISTING MY WORDS LIKE EVERYTHING I'M
21 SAYING IS MISCONSTRUED.

22 MR. GENTRY: ANSWER ANY QUESTIONS MS. BUTCHER MIGHT
23 HAVE.

24 CROSS EXAMINATION BY MS. BUTCHER:

25 Q MS. WILSON, HI. I'M DEBORAH BUTCHER. MS. WILSON, CAN

MS. WILSON - CROSS BY MS. BUTCHER

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- 1 YOU ---
- 2 A I CAN'T HEAR YOU.
- 3 Q I'M SORRY. DO YOU HAVE ANY REASON TO PROTECT JAMES
- 4 SPANN?
- 5 A I'M NOT TRYING TO PROTECT ANYBODY. ALL I'M TRYING TO
- 6 DO IS TELL WHAT I BELIEVE OR WHAT I HEARD -- WHAT I BELIEVE
- 7 I HEARD BASICALLY. I CAN'T TELL NO MORE, NO LESS.
- 8 Q IN OTHER WORDS, YOU'RE NOT UP HERE LYING TO US?
- 9 A NO, I'M NOT GOING TO LIE REGARDLESS.
- 10 Q OKAY. YOU DON'T WANT TO ---
- 11 A I MEAN, NO, I DON'T. AND I DIDN'T WANT TO BE AT THE
- 12 INCIDENT WHEN IT OCCURRED EITHER. SO THIS IS SOMETHING I
- 13 HAVE TO DO. I JUST WANT TO GET IT OVER WITH. YEAH, I WANT
- 14 JUSTICE TO BE SERVED, BUT TO WHO, I'M NOT SURE WHO, THAT'S
- 15 WHY I'M HERE.
- 16 Q IS THAT BECAUSE -- HAVE YOU TOLD LAW ENFORCEMENT PRIOR
- 17 TO BEING ON THE STAND RIGHT HERE THAT -- AND WHEN I SAY LAW
- 18 ENFORCEMENT, SOLICITOR'S OFFICE, LAW ENFORCEMENT -- THAT
- 19 YOU WEREN'T SURE IF IT WAS JAMES SPANN?
- 20 A I TOLD THEM THAT, YES. YES, MA'AM.
- 21 Q IS YOUR -- FOR LACK OF A BETTER WORD HERE -- ANGER
- 22 HERE TODAY BECAUSE YOU FEEL THE STATE ---
- 23 A I CANNOT PLEASE EVERYBODY WITHIN THE COURT; THEREFORE,
- 24 THAT'S WHERE MY ANGER IS COMING FROM TODAY, YES, MA'AM.
- 25 Q DO YOU FEEL LIKE THAT IF JAMES SPANN WERE CONVICTED,

1 IT WOULD BE WRONGLY SO?

2 A THAT'S UP TO THE 12 JURORS. ONCE AGAIN, I DO NOT
3 KNOW.

4 Q OKAY. WAS MARY ANN LOVELY ABLE TO SAY WHO DID THE
5 SHOOTING PRIOR TO YOU TELLING HER YOU FELT LIKE IT WAS
6 JAMES SPANN?

7 A YES, I HAVE RECENTLY VISIT TO SEE HER. AND ---

8 Q I'M TALKING ABOUT THAT NIGHT.

9 A THAT NIGHT?

10 Q THAT NIGHT.

11 A MA'AM, FROM THAT NIGHT WHEN SHE CAME WITHIN THE ROOM,
12 SHE TOLD ME SOMEONE WAS AT THE DOOR.. I'M NOT SURE. THE
13 ONLY TIME PERIOD WHEN I GOT THE IDEA THAT IT MAYBE WAS HIM,
14 MAYBE THAT'S WHAT EDGE ON MY BELIEF IS THE PHONE CALL.
15 THEREFORE, SHE -- SHE SAID SHE KNEW THE PERSON, I KNEW THE
16 NAME; THAT'S WHY I SAID HIS NAME IS -- HIS NAME IS -- HIS
17 NAME. YEAH, I KNOW THE NAME. YEAH, I SAID THE NAME. BUT
18 AM I SURE? DID I SEE IT? NO. ALL I CAN GO BY IS WHAT I
19 BELIEVE I HEARD. AND I WAS HYSTERICAL, YES, MA'AM.

20 Q YOU NEVER TOLD INVESTIGATORS OR ANYBODY THAT YOU
21 ACTUALLY ---

22 A NO, I NEVER DID. EVEN WHEN THEY QUESTION ME AT THE
23 HOUSE, I NEVER DID, NO, MA'AM.

24 Q YOU WEREN'T ABLE TO IDENTIFY HIM THAT NIGHT OF THE
25 INCIDENT?

MS. WILSON — REDIRECT BY MR. GENTRY

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- 1 A NOT BY SIGHT, NO, MA'AM. BY WHAT I BELIEVE. ONCE
2 AGAIN, BY WHAT I BELIEVE I HEARD, MAYBE SO. OTHER THAN
3 THAT, I DON'T KNOW WHAT YOU ALL ARE ASKING ME. I
4 UNDERSTAND THAT I HAVE TO BE HERE THROUGH THESE QUESTIONS.
5 BUT OTHER THAN THAT, NO.
- 6 Q OKAY. YOU STATED YOU DID NOT VISIT MR. SPANN WHEN HE
7 WAS IN TURBEVILLE, CORRECT?
- 8 A NO.
- 9 Q DID YOU EVER WRITE HIM LETTERS WHEN HE WAS AT
10 SUMTER/LEE?
- 11 A NO.
- 12 Q OKAY. SO YOU'VE NEVER WRITTEN MR. SPANN?
- 13 A NO.
- 14 Q BUT YOU VISITED HIM ---
- 15 A YES.
- 16 Q --- SOME IN SUMTER?
- 17 A YES, I DID.
- 18 MS. BUTCHER: BEG THE COURT'S INDULGENCE.
- 19 (PAUSE.)
- 20 MS. BUTCHER: THANK YOU VERY MUCH, THAT'S ALL.
- 21 REDIRECT EXAMINATION BY MR. GENTRY:
- 22 Q AS I UNDERSTAND YOUR TESTIMONY IN YOUR STATEMENT TO
23 MS. BUTCHER, MARY ANN LOVELY SAID DUC, AND YOU SAID JAMES
24 KEON SPANN; IS THAT CORRECT?
- 25 A SHE DID? I'M ASKING YOU LIKE I'M NOT SURE ABOUT THAT,

1 SIR. I MEAN, YOU HAVE FOOTAGE OR SOMETHING, YOU CAN PLAY
2 IT BACK AND I'LL BE HAPPY TO LET YOU KNOW THEN, SIR. BUT
3 DO I RECALL MS. MARY ANN REFERRING TO HIM AS DUC, NO, MA'AM
4 (SIC).

5 (PAUSE.)

6 MR. GENTRY: THANK YOU. NOTHING FURTHER. MAY WE
7 EXCUSE THIS WITNESS?

8 THE COURT: YOU CAN STEP DOWN.

9 (THE WITNESS LEAVES THE WITNESS STAND.)

10 MR. GENTRY: JUDGE, THIS MIGHT BE A GOOD TIME TO STOP
11 AT THIS POINT.

12 THE COURT: OKAY. LADIES AND GENTLEMEN, IT'S 5:00
13 O'CLOCK. I TRY TO GET YOU HOME AS CLOSE TO 5:00 AS I CAN.
14 WE WILL START BACK AT -- ANY PROBLEM WITH 9:30 IN THE
15 MORNING?

16 MR. GENTRY: NO, SIR, NO PROBLEM.

17 THE COURT: ALL RIGHT. WE'LL START BACK AT 9:30 IN
18 THE MORNING. AND I REMIND YOU, PLEASE DON'T DISCUSS THIS
19 CASE WHEN YOU GET HOME. WHEN THIS CASE IS OVER WITH, I'LL
20 LET YOU TALK TO ANYBODY YOU WANT TO ABOUT IT. BUT IT'S
21 IMPORTANT NOW THAT YOU KEEP IT TO YOURSELF.

22 I DON'T KNOW IF THERE'S GOING TO BE ANYTHING IN THE
23 NEWSPAPER. BUT IF THERE IS, YOU CAN'T READ IT OR ANY
24 MEDIA, ON T.V., THE INTERNET. YOU CAN'T DO ANY PRIVATE
25 RESEARCH AT HOME ON THE INTERNET ON THIS CASE. YOU'VE GOT

1 TO DECIDE THIS CASE BASED ON WHAT YOU HEAR IN THIS
2 COURTROOM.

3 THANK YOU. AND I'LL SEE YOU AT 9:30 IN THE MORNING.
4 IF YOU'LL COME STRAIGHT BACK TO THE JURY ROOM, I'LL GET YOU
5 OUT AS QUICK AS I CAN.

6 (THE JURY EXITS THE COURTROOM AT 4:54 P.M.)

7 THE COURT: ALL RIGHT. ANYTHING FURTHER?

8 MR. GENTRY: NOT AT THIS POINT, YOUR HONOR. I THINK
9 THE MOTION TO COMPEL MAY HAVE GONE BY THE BOARD.

10 THE COURT: YES.

11 MS. BUTCHER: I'LL AGREE WITH THAT.

12 THE COURT: OKAY. I'LL SEE YOU ALL AT 9:30 IN THE
13 MORNING.

14 MR. GENTRY: THANK YOU, JUDGE.

15 (COURT WAS IN RECESS.)

16 (WEDNESDAY, MARCH 31, 2010.)

17 THE COURT: THE STATE READY?

18 MR. GENTRY: YES, SIR. THE ONLY THING I WOULD LIKE TO
19 POINT OUT, I MADE IT AWARE TO MS. BUTCHER ALREADY THAT ONE
20 OF HER WITNESSES IS IN KIRKLAND R&E. KIRKLAND R&E SAYS
21 EVERYBODY THERE IS IN QUARANTINE, AND WE AREN'T GOING TO
22 HAVE HIM TRANSPORTED BECAUSE OF THAT. THERE'S AN ILLNESS
23 GOING AROUND OVER THERE.

24 MS. BUTCHER: YOUR HONOR, I DON'T THINK THAT'S A
25 PROBLEM. I DON'T ANTICIPATE US CALLING HIM ANY WAY. AND I

1 WOULD ACTUALLY -- IT'S YOUR ORDER TO TRANSPORT. I DON'T
2 THINK I CAN CALL AND SAY IGNORE THE JUDGE'S ORDER OR CAN I?

3 I THINK IT'S SOLVED ALREADY.

4 THE COURT: SO YOU'RE TELLING ME YOU'RE NOT PLANNING
5 ON CALLING THIS PERSON ANY WAY?

6 MS. BUTCHER: THAT'S CORRECT.

7 THE COURT: ALL RIGHT. THEN WE WON'T WORRY ABOUT IT
8 THEN, AND WE'LL LET THEM FIGURE OUT WHAT TO DO WITH THE
9 ORDER.

10 ALL RIGHT. OTHER THAN THAT?

11 MR. GENTRY: I ALSO WOULD LIKE TO INQUIRE WHO THE
12 THIRD PERSON AT THE DEFENSE TABLE IS THIS MORNING? I'D
13 SIMPLY LIKE TO KNOW WHO THAT PERSON IS FOR OUR INFORMATION.

14 MS. BUTCHER: YOUR HONOR, IF I MAY. JOHN, THIS IS MY
15 HUSBAND, ROBERT BUTCHER. ROBERT, THIS IS JOHN GENTRY. AND
16 I HADN'T HAD A CHANCE TO INTRODUCE HIM TO YOU.

17 MR. BUTCHER: AND, YOUR HONOR, I'M NOT MAKING AN
18 APPEARANCE. I'M JUST ---

19 THE COURT: OKAY. ANYTHING ELSE BEFORE WE GET
20 STARTED?

21 MR. GENTRY: NO, SIR.

22 MS. BUTCHER: YOUR HONOR, THERE IS ONE THING. I STILL
23 HAVE A MOTION OUT AS FAR AS STATEMENTS MADE TO THE
24 INVESTIGATOR THAT'S NOT BEEN RULED UPON.

25 THE COURT: OKAY. WELL, MY UNDERSTANDING IS IT WAS

1 MADE OVER THE TELEPHONE. SO AS FAR AS A JACKSON V. DENNO
2 HEARING IS CONCERNED, YOU KNOW, CLEARLY HE WAS NOT IN
3 CUSTODY. SO I DON'T THINK MIRANDA APPLIES IF THIS WAS MADE
4 OVER THE TELEPHONE.

5 AS FAR AS -- YOUR OTHER MOTION I GUESS WAS THAT IT WAS
6 MORE PREJUDICIAL THAN PROBATIVE.

7 IT DOESN'T APPEAR TO BE THAT WAY AT THIS POINT. I
8 DON'T KNOW. WHEN THE OFFICER TESTIFIES, I DON'T KNOW WHAT
9 THE OFFICER IS GOING TO SAY, WHAT LED UP TO IT, WHAT -- YOU
10 CAN MAKE YOUR OBJECTIONS AT THAT TIME.

11 WELL, LET ME ASK YOU THIS, MR. SOLICITOR. IS THE
12 OFFICER GOING TO BE THE NEXT WITNESS?

13 MR. GENTRY: YES, SIR.

14 THE COURT: OKAY.

15 MS. BUTCHER: AND, YOUR HONOR, PART OF MY PROBLEM IS
16 IT WAS GIVEN TO ME -- NEVER MIND. IT'S JUST MORE
17 PREJUDICIAL THAN PROBATIVE BECAUSE OF THE CONTEXT OF IT.
18 AGAIN, MY CLIENT WHEN HE MADE THAT STATEMENT HAD NO IDEA
19 THEY WERE -- HE WASN'T TOLD THAT.

20 THE COURT: AND IT DOESN'T APPEAR ON ITS FACE THAT IT
21 IS MORE PREJUDICIAL THAN PROBATIVE. YOU KNOW, THE FACT
22 THAT IT'S A STATEMENT THAT I WANT TO GO SEE MY CHILDREN OR
23 LET ME SEE MY CHILDREN FIRST -- YOU KNOW, THAT COULD MEAN
24 ANYTHING. SO THAT DOESN'T APPEAR TO ME TO BE MORE
25 PREJUDICIAL THAN PROBATIVE.

1 AND WHEN THE OFFICER TESTIFIES IF SOMETHING COMES OUT
2 THAT I DON'T KNOW ABOUT FROM A DIFFERENT SCENARIO -- BUT MY
3 UNDERSTANDING THAT'S THE ENTIRE STATEMENT?

4 MS. BUTCHER: THAT I HAVE BEEN TOLD, YOUR HONOR.

5 THE COURT: WELL, MR. SOLICITOR, WHAT IS THE ENTIRE --
6 IT WAS NEVER WRITTEN DOWN, RIGHT?

7 MR. GENTRY: NO, SIR. IT WAS NEVER TRANSCRIBED.

8 THE COURT: OKAY. SO WHAT IS THE ENTIRE STATEMENT
9 THAT THE DEFENDANT MADE?

10 MR. GENTRY: THE ONE HE MADE WE'RE TALKING ABOUT HERE?

11 THE COURT: YES, SIR. I MEAN, DID HE MAKE ANY MORE?

12 MR. GENTRY: NO, SIR, HE DID NOT.

13 THE COURT: OKAY.

14 MR. GENTRY: THERE ARE NO OTHER STATEMENTS I'M AWARE
15 OF, OTHER THAN THE ONE ON THE TELEPHONE.

16 THE COURT: AND WHAT WAS THAT STATEMENT?

17 MR. GENTRY: HE WOULD TURN HIMSELF IN, BUT HE WANTED
18 TO GO SEE HIS CHILDREN.

19 MS. BUTCHER: AND, YOUR HONOR, ONE, I THINK I'M GOING
20 TO OBJECT TO THAT BECAUSE IT WAS NOT WRITTEN DOWN AS WELL
21 AS THE PREJUDICE. AND, YOUR HONOR, AS WE DISCUSSED BEFORE,
22 HIS ONLY DEFENSE TO THAT IS THAT HE HAS OTHER WARRANTS, AND
23 A BENCH WARRANT. AND THAT BRINGS THAT IN FRONT OF THE
24 JURY.

25 THE COURT: WELL ---

1 MS. BUTCHER: THEREIN LIES THE PREJUDICE, I BELIEVE,
2 YOUR HONOR.

3 THE COURT: WAS THE OFFICER ASKING HIM TO TURN HIMSELF
4 IN?

5 MR. GENTRY: THE OFFICER WAS ASKING -- WAS TELLING HIM
6 THAT HE WANTED TO TALK TO HIM.

7 THE COURT: SO HE SAID HE ONLY WANTED TO TALK TO HIM?

8 OFFICER: THAT'S RIGHT.

9 THE COURT: SO IT WAS NEVER -- AT THE TIME OF THIS,
10 THERE WAS NEVER A WARRANT?

11 MR. GENTRY: NO, NO WARRANT.

12 THE COURT: SO THE OFFICER WAS NOT GOING TO ARREST
13 HIM?

14 MR. GENTRY: NO. THE WARRANT HAD NOT BEEN ISSUED. I
15 THINK THAT THE PARENTS OF THE DEFENDANT KNEW THAT THE
16 OFFICER WAS LOOKING FOR HIM, AND I BELIEVE THEY KNEW IN
17 WHAT CONNECTION. BUT THE OFFICER NEVER TOLD THIS DEFENDANT
18 HE WAS ABOUT TO BE ARRESTED.

19 THE COURT: OKAY. SO IT WASN'T AN ARREST SITUATION.
20 HE WANTED TO TALK TO HIM. HE CALLED HIM UP AND SAID, I
21 NEED TO TALK TO YOU.

22 AND HIS RESPONSE WAS, WELL, LET ME SEE MY CHILDREN
23 FIRST, THEN I'LL TURN MYSELF IN.

24 MR. GENTRY: AS I MENTIONED EARLIER ---

25 THE COURT: BUT THAT RESPONSE WASN'T IN -- THE OFFICER

1 DIDN'T TELL HIM, I HAVE A WARRANT FOR YOUR ARREST?

2 MR. GENTRY: NO, SIR.

3 THE COURT: OKAY. SO ---

4 MS. BUTCHER: YOUR HONOR, MY CLIENT TOLD THE OFFICER,
5 I HAVE AN OUTSTANDING WARRANT FOR MY ARREST. I MEAN,
6 THAT'S MY POINT, YOUR HONOR. IF THAT STATEMENT COMES IN TO
7 THE JURY, THEY'RE GOING TO ASSUME THAT MY CLIENT SAID THAT
8 BECAUSE HE KNEW IT WAS IN REFERENCE TO A MURDER. AND IT
9 HAD NOTHING TO DO WITH ANY MURDER. IT WAS ABOUT HIS
10 OUTSTANDING BENCH WARRANTS. AND I CAN'T DEFEND THAT
11 WITHOUT TELLING THE JURY THAT HE HAD BENCH WARRANTS.

12 THE COURT: AND WHAT WERE THE BENCH WARRANTS FOR?

13 MS. BUTCHER: HE WAS ON Y.O.A. PAROLE AT THE TIME,
14 YOUR HONOR. AND HE KNEW HE HAD BENCH WARRANTS. HE TOLD
15 THIS OFFICER HE HAD BENCH WARRANTS. THE OFFICER ---

16 THE COURT: WELL, THAT'S NOT WHAT THE OFFICER SAID.
17 YOU KNOW, I JUST ASKED HIM WHAT THE OFFICER STATEMENT WOULD
18 BE THAT HE SAID. THE ONLY THING HE SAID IS, I'LL TURN
19 MYSELF IN, LET ME SEE MY CHILDREN FIRST -- OR LET ME SEE
20 MY CHILDREN, THEN I'LL TURN MYSELF IN. THE OFFICER IS NOT
21 GOING TO SAY I'VE GOT WARRANTS -- THAT HE'S GOING TO SAY
22 I'VE GOT WARRANTS AGAINST ME.

23 MS. BUTCHER: I DON'T THINK THAT WAS THE OFFICER'S
24 STATEMENT. MY CLIENT SAYS HE TOLD THE OFFICER HE HAD
25 WARRANTS.

1 AND, YOUR HONOR, I THINK IN MY MIND THAT'S IRRELEVANT
2 ANY WAY BECAUSE IT STILL GOES BACK TO THE JURY BELIEVING MY
3 CLIENT SAID THAT IN REFERENCE TO THIS MURDER. AND THERE'S
4 NO WAY TO SAY, HEY, THAT'S NOT WHAT HE MEANT. HE WAS
5 TALKING ABOUT ANOTHER CRIME, WHICH HE'S BEEN CONVICTED OF.

6 THE COURT: YES, BUT I -- THE OFFICER CALLS HIM AND
7 SAYS, I WANT TO TALK TO HIM.

8 HE SAYS, I WANT TO SEE MY CHILDREN FIRST, AND THEN
9 I'LL TURN MYSELF IN.

10 MAYBE THEY CAN APPLY HE'LL TURN HIMSELF IN TO TALK TO
11 THE OFFICER.

12 MS. BUTCHER: YOUR HONOR, MY CLIENT ALSO TOLD ME THAT
13 HE MAY NOT HAVE -- THAT HE -- THE OFFICER TOLD HIM THERE
14 WAS A BRAWL DOWN AT THE BAR; THAT'S WHY HE WANTED TO TALK
15 TO HIM.

16 THE COURT: OKAY. SO WAS THERE A BRAWL AT THE BAR?

17 MS. BUTCHER: THEY SAID THERE WAS ON THE PRETEXT OF
18 THERE BEING ONE.

19 THE COURT: IS THE OFFICER GOING TO TESTIFY TO THAT
20 EFFECT?

21 MR. GENTRY: NO, SIR, THE OFFICER IS NOT GOING TO
22 TESTIFY TO THAT. THE OFFICER IS GOING TO TESTIFY THAT HE
23 WAS CALLING THIS INDIVIDUAL. HE OBTAINED THE CELL PHONE
24 NUMBER FROM HIS MOTHER. HE CALLED HIM AND HE WAS TRYING TO
25 LOCATE HIM, THAT HE WAS TALKING WITH HIM FOR A LONG PERIOD

1 OF TIME WHILE THEY WERE TRYING TO GET A SEARCH WARRANT OF
2 WHERE THEY THOUGHT HE WAS. AND IN THE COURSE OF THAT
3 CONVERSATION THE INDIVIDUAL SAID, WELL, I'LL TURN MYSELF IN
4 BUT FIRST I WANT TO SEE THE CHILDREN. I WANT TO SEE THE
5 CHILDREN.

6 THE COURT: OKAY.

7 MS. BUTCHER: TURN ---

8 MR. GENTRY: HE DIDN'T KNOW ANYTHING ABOUT A BRAWL.
9 THE OFFICER DIDN'T KNOW ANYTHING ABOUT THE SUMTER BENCH
10 WARRANTS.

11 MS. BUTCHER: YOUR HONOR, AND THAT'S THE PROBLEM.
12 TURN HIMSELF IN FOR WHAT? THIS OFFICER DID NOT TELL MY
13 CLIENT HE NEEDED TO TURN HIMSELF IN. WHY WOULD MY CLIENT
14 SAY, I'LL TURN MYSELF IN?

15 THE COURT: I DON'T KNOW WHY YOUR CLIENT SAID THAT.
16 HE COULD HAVE SAID, I'LL COME IN AS SOON AS -- HE'S JUST
17 QUOTING HIS EXACT WORDS. BUT I DON'T KNOW -- YOU KNOW,
18 MANY PEOPLE THINK WHEN THE POLICE WANT TO TALK TO YOU, YOU
19 TURN YOURSELF IN TO THE POLICE.

20 BUT I DON'T THINK THAT THAT'S NECESSARILY MORE
21 PREJUDICIAL THAN PROBATIVE.

22 MS. BUTCHER: YOUR HONOR, AND IF THAT'S THE CASE, I
23 BELIEVE IT SHOULD HAVE BEEN REDUCED TO WRITING AND GIVEN TO
24 ME PRIOR TO RIGHT NOW, PUTTING THE OFFICER ON THE STAND.

25 THE COURT: WAIT A MINUTE. MY UNDERSTANDING, YOU KNEW

1 ABOUT THIS ---

2 MS. BUTCHER: I DID, YOUR HONOR, BUT NOT TO THIS
3 EXTENT. I WAS -- I HAD NOT RECEIVED -- I STILL HAVEN'T
4 RECEIVED ANYTHING FULLY IN WRITING AS TO WHAT THE TESTIMONY
5 EXACTLY WAS GOING TO BE.

6 THE COURT: SO HOW DID YOU FIND OUT WHAT THE STATEMENT OF
7 YOUR CLIENT WOULD BE?

8 MS. BUTCHER: AND I TALKED TO MY CLIENT BASED ON WHAT
9 I HAD BEEN TOLD.

10 THE COURT: I UNDERSTAND.

11 MS. BUTCHER: I SAID, DID YOU HAVE A CONVERSATION WITH
12 THIS OFFICER THAT NIGHT?

13 THE COURT: I UNDERSTAND THAT. I'M NOT CONCERNED
14 ABOUT WHAT YOUR CLIENT TOLD YOU IS A RESULT OF THAT
15 CONVERSATION. HOW DID YOU FIND OUT WHAT THE SOLICITOR'S
16 OFFICE WAS ALLEGING WAS MADE BY YOUR CLIENT?

17 MS. BUTCHER: AND, YOUR HONOR, I TAKE THAT BACK. WE
18 TALKED YESTERDAY IN YOUR CHAMBERS.

19 THE COURT: OKAY.

20 MR. GENTRY: I BELIEVE ALSO AN EARLIER EMAIL
21 COMMUNICATION. I COULD CHECK THE FILE TO FIND OUT -- LAST
22 WEEK.

23 THE COURT: SO THE SOLICITOR GAVE YOU ---

24 MS. BUTCHER: HE EMAILED ME, BUT I DON'T RECALL.

25 THE COURT: OKAY. WELL, I THINK THAT THAT STATEMENT

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1 IS ADMISSIBLE. IT'S NOT MORE PREJUDICIAL THAN PROBATIVE.
2 AND BASED ON WHAT THEY'VE TOLD ME, IF THAT'S WHAT COMES
3 OUT, I THINK THAT'S ADMISSIBLE.

4 MS. BUTCHER: THANK YOU, YOUR HONOR.

5 THE COURT: OKAY. ANYTHING ELSE?

6 MR. GENTRY: NO, SIR.

7 THE COURT: ALL RIGHT. BRING US THE JURY.

8 (THE JURY RETURNS TO THE COURTROOM AT 9:50 A.M.)

9 THE COURT: MR. SOLICITOR, YOU MAY CALL YOUR NEXT
10 WITNESS.

11 MR. GENTRY: YES, SIR. THE STATE CALLS BENNY WEBB.

12 BENNY L. WEBB, BEING FIRST

13 DULY SWORN, TESTIFIED AS FOLLOWS:

14 CLERK: STATE YOUR FULL NAME FOR THE RECORD.

15 WITNESS: BENNY L. WEBB.

16 DIRECT EXAMINATION BY MR. GENTRY:

17 Q MR. WEBB, YOU RECENTLY RETIRED FROM THE LEE COUNTY
18 SHERIFF'S OFFICE; IS THAT CORRECT?

19 A THAT'S CORRECT.

20 Q WHEN WAS THAT DATE?

21 A JULY 2ND OR 3RD OF 2009.

22 Q ALL RIGHT. WHAT WAS YOUR POSITION WITHIN THE
23 DEPARTMENT AT THAT TIME?

24 A I WAS A CRIMINAL INVESTIGATOR.

25 Q DID YOU HAVE OCCASION TO GO TO [REDACTED] IN

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1 THE EARLY MORNING HOURS OF THE 7TH OF APRIL OF 2009?

2 A YES, I DID.

3 Q IN WHAT CAPACITY DID YOU GO THERE?

4 A I WAS CALLED BY DISPATCH AND SAID THAT THERE HAD BEEN

5 A SHOOTING AT [REDACTED] AND THAT THEY WERE

6 REQUESTING AN INVESTIGATOR. AND I WAS THE INVESTIGATOR ON

7 CALL ON THAT PARTICULAR NIGHT. SO I PROCEEDED TO 12

8 STACKLEY TO INVESTIGATE THE SHOOTING THAT OCCURRED.

9 Q WHAT DID YOU SEE WHEN YOU ARRIVED?

10 A WELL, AS I WAS IN ROUTE TO BISHOPVILLE ON HIGHWAY 15,

11 I MET THE AMBULANCE COMING GOING TOWARD SUMTER, SO I

12 PROCEEDED ON TO STACKLEY. AND WHEN I GOT THERE, THERE WAS

13 SEVERAL PEOPLE IN THE YARD. DEPUTY JACKSON WAS THERE,

14 DEPUTY FEENEY WAS THERE. BUT THE HOUSE WHERE THE TAPE HAD

15 BEEN LINED UP, IT WAS PRETTY MUCH EMPTY. SO I WENT INTO

16 THE HOUSE AFTER BEING SIGNED IN BY DEPUTY JACKSON, AND I

17 KIND OF DID AN OVERVIEW OF THE SCENERY OR THE SCENE OF THE

18 INCIDENT.

19 Q OKAY. NOW, THIS HOUSE YOU WENT INTO, THAT WAS THE

20 HOUSE OF MARY ANN LOVELY?

21 A THAT'S CORRECT. THAT'S CORRECT.

22 Q AND YOU SAID THAT LINDSEY LOVELY HAD ALREADY BEEN

23 REMOVED FROM THE SCENE BY THE TIME YOU GOT THERE?

24 A THAT'S CORRECT.

25 Q NOW, WHEN YOU GOT THIS FEEL, WHAT DID YOU DO AFTER YOU

1 TALKED TO THE DEPUTIES WHO WERE ON THE SCENE?

2 A WELL ---

3 MS. BUTCHER: YOUR HONOR, I OBJECT TO LEADING
4 QUESTIONS..

5 THE COURT: OKAY. MR. SOLICITOR, LET HIM TESTIFY.
6 YOU JUST ASK THE QUESTIONS.

7 MR. GENTRY: ALL RIGHT.

8 Q WHAT DID YOU DO AFTER YOU GOT -- AFTER YOU TALKED TO
9 THEM?

10 A WELL, AS IN ALL INVESTIGATIONS, YOU WANT TO FIND OUT
11 WHAT IS GOING ON. YOU WANT TO KIND OF SEE THE LAY OF THE
12 LAND. YOU WANT TO FIND OUT THE WHO, WHAT, WHERE, HOW,
13 WHEN, AND WHY.

14 SO AFTER TALKING WITH DEPUTY JACKSON AND GOING INTO
15 THE HOUSE AND SORT OF LOOKING AT THE OUT LAY, I FOUND OUT
16 WHO WERE THE VICTIMS -- WHO THE VICTIM WAS AND WHO WAS SOME
17 OF THE RELATIVES OR PEOPLE THAT LIVED IN THE HOUSE.

18 AND AT THAT TIME I DISCOVERED THAT THE VICTIM WAS
19 LINDSEY LOVELY. AND HIS MOTHER, MS. MARY ANN LOVELY, ALSO
20 STAYED IN THE HOUSE.

21 I ALSO FOUND OUT THAT THERE WERE OTHER RELATIVES THAT
22 WERE THERE DURING THE INCIDENT.

23 SO WHAT I DID WAS TRY TO PIECE TOGETHER WHO THE
24 INDIVIDUALS WERE AND SO I COULD TALK WITH THEM ON THE SCENE
25 AND THEN EVENTUALLY GET THEM IN A MORE STERILE OR

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1 CONVENIENT ENVIRONMENT TO DO A FULL DEPTH INTERVIEW.

2 Q AND SHORTLY THEREAFTER DID YOU TAKE A STATEMENT FROM
3 PEOPLE YOU FELT WERE INVOLVED IN THIS?

4 A THAT'S CORRECT. I INTERVIEWED THEM AS CUSTOMARY. I
5 INTERVIEW THEM. I GET THE BASICS. AND THEN THEY WRITE THE
6 STATEMENTS. BUT I DID -- I DID INTERVIEW THEM AND THEN THE
7 STATEMENTS WERE WRITTEN IN THEIR OWN HANDWRITING IN ORDER
8 FOR THEM TO SAY THAT THEY GAVE THE STATEMENT AND THAT I DID
9 NOT WRITE THE STATEMENT FOR THEM, BUT I DID INTERVIEW THEM.
10 AND THEY PRETTY MUCH PUT TO THE PAPER WHAT WE HAD TALKED
11 ABOUT.

12 Q OKAY. NOW, AS A RESULT OF THIS INVESTIGATION, DID YOU
13 IDENTIFY A SUSPECT IN THIS CASE?

14 A YES. YES, I DID.

15 Q WHO WAS THE SUSPECT?

16 A THE SUSPECT THAT WAS IDENTIFIED AT FIRST WAS
17 IDENTIFIED AS DUC. AND THEN, OF COURSE, WE NEEDED TO FIND
18 OUT WHO DUC WAS. AND THEN LATER ON WE FOUND OUT THAT DUC
19 WAS THE SUSPECT HERE TODAY.

20 Q OKAY. WILL YOU POINT HIM OUT FOR US PLEASE?

21 A HE'S SITTING ON THE END OF THIS TABLE WITH A BLACK
22 SUIT ON, AND LOOK LIKE A BEIGE AND BROWN SHIRT.

23 MR. GENTRY: LET THE RECORD REFLECT THAT THE WITNESS
24 HAS IDENTIFIED THE DEFENDANT, JAMES KEON SPANN.

25 Q NOW, WHAT DID YOU DO AFTER YOU IDENTIFIED HIM AS THE

1 SUSPECT?

2 A WELL, AFTER WE IDENTIFIED -- AFTER WE IDENTIFIED HIM
3 AS A SUSPECT, I WENT ON AND DID KIND OF, AGAIN, A LOOK AT
4 THE HOUSE. I GOT WITH DEPUTY REDDICK AND WE TRANSPORTED
5 THE WITNESSES DOWN TO THE LEE COUNTY DETENTION CENTER. AND
6 THEN WE PUT THEM IN DIFFERENT ROOMS. AND THEN AT THAT
7 POINT WE STARTED TAKING STATEMENTS.

8 I TOOK THREE. AND WHEN I SAY, TOOK, I DID THE
9 INTERVIEW, AND THEN THEY WROTE THE STATEMENT.

10 AND DEPUTY PATRICK HICKMAN TOOK ONE.

11 SO BY THE TIME WE TOOK THE STATEMENTS, IT WAS CLEAR
12 THAT THIS GENTLEMAN THAT WENT BY THE NAME DUC WAS JAMES
13 KEON SPANN.

14 Q AND WHAT DID YOU DO AS A RESULT OF THAT?

15 A AS A RESULT OF THAT, WE TOOK THE WRITTEN STATEMENT.
16 WE KNEW AT THAT TIME THAT WE HAD ENOUGH PROBABLE CAUSE TO
17 START LOOKING FOR HIM. SO WHAT I DID IS I WENT AND FOUND
18 OUT WHERE HE LIVED. MY UNDERSTANDING IS THAT HE WAS LIVING
19 AT THE CURRENT TIME AT A RESIDENT (SIC) ON CREED STREET IN
20 SUMTER, BUT THAT HIS PARENTS LIVED IN THE ST. CHARLES AREA.

21 SO WE RODE DOWN -- WELL, I GOT THE TELEPHONE NUMBER,
22 AND I CALLED THE MOTHER, TALKED WITH THE MOTHER, AND TOLD
23 HER THAT I NEEDED TO TALK WITH JAMES SPANN AND WAS HE
24 THERE.

25 AND SHE SAID, NO.

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1 I ADDITIONALLY ASKED HER WHEN THE LAST HE HAD BEEN
2 THERE.

3 AND SHE SAID, HE HAD BEEN THERE EARLIER ---

4 MS. BUTCHER: OBJECTION, YOUR HONOR. HEARSAY.

5 MR. GENTRY: NOT OFFERED FOR THE PROOF OF THE MATTER.

6 MS. BUTCHER: YOUR HONOR, IT IS HEARSAY.

7 THE COURT: I'LL SUSTAIN THE OBJECTION.

8 MR. GENTRY: ALL RIGHT.

9 Q DID YOU OBTAIN THE TELEPHONE NUMBER FOR MR. SPANN?

10 A THAT'S CORRECT. I OBTAINED HIS CELL TELEPHONE NUMBER
11 FROM HIS MOTHER.

12 Q WHAT DID YOU DO AFTER YOU OBTAINED THAT CELL PHONE
13 NUMBER?

14 A I ATTEMPTED TO CALL HIM SEVERAL TIMES. I DID NOT GET
15 AN ANSWER AT FIRST, BUT EVENTUALLY I GOT MR. SPANN ON THE
16 PHONE. WE HAD A VERY PLEASANT CONVERSATION. WE TALKED.
17 AND THEN I TOLD HIM, I SAID, MR. SPANN, I NEED TO TALK WITH
18 YOU.

19 AND HE SAID, WHAT DO YOU WANT TO TALK TO ME ABOUT?

20 I SAID, I WANT TO TALK TO YOU ABOUT SOME THINGS THAT
21 TOOK PLACE TONIGHT.

22 AND HE SAID, WHAT WERE THEY?

23 I NEVER TOLD HIM BECAUSE AS AN INVESTIGATOR IF YOU'RE
24 TRYING TO GET SOMEONE WHO HAS POTENTIALLY BEEN CHARGED WITH
25 SOMETHING -- IF YOU TRY TO GET THEM IN, YOU'RE NOT GOING TO

1 TELL THEM ALL THE DETAILS.

2 SO WE TALKED ABOUT AN HOUR. AND I TRIED TO GET HIM TO
3 TALK TO ME, TO COME IN TO ME. I TOLD HIM, WE ALL MAKE
4 MISTAKES. YOU KNOW, ALL THE BASIC STUFF THAT YOU TELL
5 PEOPLE, TRYING TO GAIN THEIR CONFIDENCE.

6 SO EVENTUALLY HE TOLD ME THAT I WILL TURN MYSELF IN,
7 BUT I WANT TO GO SEE MY CHILDREN WHO I THOUGHT I REMEMBER A
8 CONVERSATION THAT THEY LIVED IN PEPPER RIDGE APARTMENTS IN
9 THE CITY OF BISHOPVILLE.

10 MS. BUTCHER: OBJECTION, YOUR HONOR.

11 THE COURT: OKAY. I WILL OVERRULE YOUR OBJECTION.

12 Q OKAY. NOW, DID HE EVER TURN HIMSELF IN THAT NIGHT OR
13 THAT MORNING?

14 A NO. AGAIN, I STAYED ON THE PHONE WITH HIM, AND AT
15 THAT TIME DANA WINGATE AND REDDICK -- DEPUTY REDDICK WENT
16 TO WHERE HE TOLD ME -- HE TOLD ME HE WAS AT HIS MOTHER'S
17 HOUSE IN ST. CHARLES. SO I STAYED ON THE PHONE WITH HIM.
18 I HAD ONE PHONE TALKING TO HIM, THE OTHER PHONE I WAS
19 TALKING TO DANA WINGATE. AND I WAS TRYING TO KEEP HIM ON
20 THE LINE UNTIL THEY COULD GET TO ST. CHARLES TO THE
21 MOTHER'S HOUSE.

22 AND WE STAYED ON THE LINE. I STAYED WITH HIM. I
23 PLEADED WITH HIM. I ACTED LIKE A FATHER TO HIM, TELLING
24 HIM, YOU KNOW, SON, THIS IS WHAT YOU NEED TO DO.

25 AND WHEN DANA AND THOSE TOLD ME THEY WERE THERE, ALL

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1 OF A SUDDEN THE PHONE HUNG UP, THEY WENT TO THE HOUSE, AND
2 HE WAS NOT THERE.

3 Q DID HE -- WHEN DID HE TURN HIMSELF IN?

4 A HE DIDN'T TURN HIMSELF IN.

5 Q WHEN WAS HE APPREHENDED?

6 A MAYBE 2, 3 WEEKS LATER BY THE SUMTER COUNTY SHERIFF'S
7 DEPARTMENT UP IN DALZELL, SOUTH CAROLINA.

8 Q LET ME ASK YOU THIS, WHICH I FORGOT TO DO EARLIER.

9 HOW LONG HAVE YOU SERVED IN LAW ENFORCEMENT?

10 A 28 YEARS.

11 Q OKAY. AND YOU SERVED IN HOW MANY DIFFERENT
12 CAPACITIES?

13 A I WAS A DEPUTY WITH THE SUMTER COUNTY SHERIFF'S
14 DEPARTMENT. I WAS A AGENT WITH THE SOUTH CAROLINA ABC
15 COMMISSION. I WAS A SENIOR AGENT WITH THE STATE LAW
16 ENFORCEMENT DIVISION. I WAS CHIEF OF POLICE IN THE CITY OF
17 LANCASTER. AND LASTLY, I WAS AN INVESTIGATOR WITH THE LEE
18 COUNTY SHERIFF'S DEPARTMENT.

19 Q AND ALL THIS TIME YOU'VE BEEN A CERTIFIED LAW
20 ENFORCEMENT OFFICER IN THE STATE OF SOUTH CAROLINA?

21 A BEEN A CERTIFIED LAW ENFORCEMENT OFFICER IN THE STATE
22 OF SOUTH CAROLINA FOR ALL THOSE YEARS.

23 Q JUST ONE SECOND PLEASE.

24 (PAUSE.)

25 MR. GENTRY: ANSWER ANY QUESTIONS MS. BUTCHER MAY HAVE

1 PLEASE.

2 WITNESS: YES, SIR.

3 MR. GENTRY: OH, I'M SORRY. I HAVE ONE FINAL QUESTION

4 -- WITH THE COURT'S INDULGENCE.

5 THE COURT: YES, SIR.

6 Q WAS THE FIREARM EVER RECOVERED IN THIS CASE?

7 A WE DID NOT RECOVER ANY FIREARM.

8 MR. GENTRY: OKAY.

9 CROSS EXAMINATION BY MS. BUTCHER:

10 Q GOOD MORNING, INVESTIGATOR WEBB. HOW ARE YOU?

11 A GOOD MORNING. AND I'M FINE. HOW ARE YOU.

12 Q A BIG RESPONSIBILITY BEING AN INVESTIGATOR, ISN'T IT,
13 WOULDN'T YOU SAY?

14 A WELL, IT'S A BIG RESPONSIBILITY TO BE IN ANY ASPECT OF
15 LAW ENFORCEMENT.

16 Q YOU HAVE DUTIES TO THE PEOPLE TO SERVE AND PROTECT,
17 CORRECT?

18 A THAT'S CORRECT.

19 Q OKAY. THAT DUTY GOES BOTH TO THE VICTIM OF A CRIME
20 AND TO THE ACCUSED ---

21 A THAT'S CORRECT.

22 Q --- CORRECT? YOU TAKE YOUR JOB SERIOUSLY?

23 A I AM SORRY, WOULD YOU REPEAT THAT?

24 Q YOU TAKE YOUR JOB SERIOUSLY?

25 A YES, FOR 28 YEARS I DID.

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1 Q OKAY. YOU TRY AND INVESTIGATE ALL OF THE EVIDENCE?

2 A I TRY TO INVESTIGATE ALL OF THE EVIDENCE THAT IS BOTH
3 INCULPATORY AND EXCULPATORY RELATING TO THE DEFENDANT AND
4 TO THE VICTIM.

5 Q DO YOU TRY AND BE ACCURATE?

6 A YES.

7 Q WERE YOU THE INVESTIGATOR WHO TOLD TAMEKA WILSON TO
8 CHANGE HER TESTIMONY IN THE WRITTEN STATEMENT?

9 A IN 28 YEARS I'VE NEVER TOLD ANYONE TO CHANGE THEIR
10 STATEMENT IN A WRITTEN STATEMENT, AND I DID NOT DO IT IN
11 THIS INSTANCE, AND NEVER WILL.

12 Q WHO WAS THE INVESTIGATOR THAT TOLD ---

13 MR. GENTRY: OBJECTION.

14 Q --- HER TO DO THAT?

15 MR. GENTRY: OBJECTION. THERE'S NO EVIDENCE
16 WHATSOEVER OF THIS.

17 MS. BUTCHER: YOUR HONOR, I BELIEVE WE HAVE TAMEKA
18 WILSON'S TESTIMONY AS EVIDENCE.

19 THE COURT: YOU ALL APPROACH.

20 (A BENCH CONFERENCE WAS HELD OFF THE RECORD IN THE
21 PRESENCE OF THE JURY, BUT OUT OF THE HEARING OF THE JURY.)

22 Q DID YOU TAKE TAMEKA WILSON'S TESTIMONY? WERE YOU THE
23 ONE WHO DISCUSSED HER STATEMENT WITH HER ---

24 A YES.

25 Q --- BEFORE SHE WROTE IT DOWN?

- 1 A YES, I DID.
- 2 Q DID YOU HELP TELL HER WHAT TO WRITE IN THAT STATEMENT?
- 3 A NO.
- 4 Q WHEN DID MS. MARY ANN LOVELY TELL YOU THAT THE KILLER
- 5 WAS DRIVING A BLUE CAR?
- 6 A SHE DIDN'T TELL ME THAT THE KILLER WAS DRIVING A BLUE
- 7 CAR. SHE TOLD ME THAT A BLUE CAR LEFT THEIR RESIDENT (SIC)
- 8 AFTER DUC HAD CAME IN THE HOUSE. AND AFTER SHE SAW DUC AT
- 9 THE DOOR RACKING THE GUN AND THAT SHOTS WERE FIRED. BUT
- 10 SHE NEVER SAID ---
- 11 MS. BUTCHER: OBJECTION, YOUR HONOR.
- 12 THE COURT: WHAT?
- 13 MS. BUTCHER: NEVER MIND.
- 14 Q DID YOU LOOK FOR SOMEBODY DRIVING A BLUE CAR?
- 15 A YES, WE DID, WE LOOKED FOR A BLUE CAR WHEN WE WENT TO
- 16 CREED STREET, WHEN WE WENT TO WHERE HIS UNCLE LIVE WHO HAD
- 17 JUST GOTTEN OUT OF A FACILITY. I TALKED WITH HIS UNCLE AND
- 18 WANTED TO KNOW IF HE HAD A BLUE CAR. HE DIDN'T. SO, YES,
- 19 WE LOOKED FOR A BLUE CAR. WE TOLD SUMTER SHERIFF'S
- 20 DEPARTMENT ABOUT A BLUE CAR. WE SENT -- I THINK WE SENT A
- 21 BOLO OUT ABOUT A POSSIBLE BLUE CAR. BUT BECAUSE WE DIDN'T
- 22 HAVE A LICENSE TAG NUMBER, YOU KNOW, THERE ARE PLENTY OF
- 23 BLUE CARS IN THE STATE OF SOUTH CAROLINA.
- 24 Q NOW, YOU WERE THE INVESTIGATOR OVER THIS CASE THE
- 25 ENTIRE TIME, CORRECT?

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1 A I WAS THE INVESTIGATOR ON CALL. AND WITH THE LEE
2 COUNTY SHERIFF'S DEPARTMENT, WE PRETTY MUCH WORK AS A TEAM,
3 THE INVESTIGATORS. BUT I WAS THE INVESTIGATOR THAT WAS ON
4 CALL AND THE LEAD INVESTIGATOR AS IT RELATES TO THIS --
5 THIS PARTICULAR INCIDENT. BUT THERE WERE OTHER
6 INVESTIGATORS.

7 Q BUT YOU WERE THE LEAD INVESTIGATOR?

8 A YES, I WAS THE LEAD.

9 Q AND WHAT I'M GETTING AT, THE ENTIRE TIME NO ONE TOOK
10 OVER AS LEAD INVESTIGATOR?

11 A THAT'S CORRECT, I WAS THE LEAD INVESTIGATOR. THAT'S
12 CORRECT.

13 Q OKAY. WOULD YOU PLEASE NAME ALL OF THE PEOPLE THAT
14 WERE THERE AT THE TIME OF THE INCIDENT?

15 A I DON'T -- I DON'T KNOW ALL THE NAMES, BUT THERE WAS
16 MS. -- MS. LOVELY WAS THERE, MS. WILSON WAS THERE. THERE
17 WAS A YOUNG LADY, AND I'VE GOTTEN HER STATEMENT, BUT I
18 CAN'T REMEMBER HER NAME. SHE HAD JUST CAME DOWN FROM NEW
19 JERSEY, TALL, FAIR COMPLEXION, FEMALE. MS. LOVELY'S SON
20 THAT IS CHALLENGED. THERE WAS ANOTHER YOUNG LADY -- AND,
21 AGAIN, I DON'T REMEMBER THE NAME RIGHT OFFHAND, BUT SHE WAS
22 A VERY -- SHE'S IN THE COURTROOM, SHORT -- SHORT IN
23 STATURE, BECAUSE SHE CAME DOWN TO THE STATION. AND I THINK
24 THERE WAS ONE OTHER PERSON, BUT I DON'T REMEMBER WHO THAT
25 PERSON WAS. I KNOW ONE OF THEM NAME WAS MS. COOK.

1 Q OKAY. IS THAT THE ONLY PERSON YOU DIDN'T REMEMBER OR
2 IS THAT AN ADDITIONAL PERSON?

3 A NO. IT WAS MS. COOK.

4 Q OKAY. SO ABOUT 6 PEOPLE?

5 A ABOUT 6 PEOPLE THERE, THAT'S CORRECT. NOW, REMEMBER,
6 WHEN I GOT THERE, NOW THE HOUSE WAS EMPTY. SO I'M ONLY
7 GOING -- I'M RECREATING WHAT WAS TOLD TO ME AFTERWARD. SO
8 THERE WAS NO ONE IN THE HOUSE WHEN I GOT THERE.

9 Q OKAY. WHY WAS THE HOUSE PRETTY MUCH EMPTY?

10 A BECAUSE YOU HAVE A CRIME SCENE.

11 Q A CRIME SCENE?

12 A YOU HAVE A CRIME SCENE.

13 Q SO THAT THE OFFICERS CAN BASICALLY ---

14 A RIGHT. YOU HAD A CRIME SCENE.

15 Q OKAY. NOW, COULD YOU PLEASE TELL THE COURT WHAT
16 PHYSICAL -- PHYSICAL EVIDENCE YOU FOUND THAT CONNECTS JAMES
17 SPANN WITH THIS CRIME?

18 A WE DIDN'T FIND ANY PHYSICAL EVIDENCE. BUT THE
19 EVIDENCE THAT WE FOUND WERE TESTIMONIAL EVIDENCE.

20 Q YOU DIDN'T FIND A GUN. DIDN'T FIND FINGERPRINTS.
21 DID YOU TRY TO TAKE TRACKS WITH THE TIRES OF THE CAR OR
22 ANYTHING LIKE THAT, ANY FORENSIC EVIDENCE WHATSOEVER THAT
23 WOULD HAVE BEEN AROUND THE TRAILER?

24 A THAT WOULD HAVE BEEN DONE BY THE SLED CRIME SCENE
25 TEAM.

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1 Q AND THAT EVIDENCE WOULD COME BACK TO YOU AS THE LEAD
2 INVESTIGATOR, CORRECT?

3 A THE RESULTS OF THE EVIDENCE WOULD COME BACK TO ME.

4 Q WAS ANY OF THAT DONE?

5 A YES.

6 Q OKAY. DNA?

7 A I DON'T -- I DON'T REMEMBER DNA BEING DONE. BUT I
8 REMEMBER SHELL CASINGS BEING COLLECTED, THAT THEY WERE
9 FIRED BY THE BALLISTIC PEOPLE AT SLED. AND THERE WAS A
10 POTENTIAL TYPE OF GUNS THAT WERE -- COULD HAVE BEEN USED.

11 Q I'M SORRY. SAY THAT AGAIN?

12 A THERE WERE POTENTIAL GUNS THAT WERE SENT TO ME BY THE
13 BALLISTIC PEOPLE AT SLED THAT COULD HAVE BEEN USED TO FIRE
14 THOSE SHELL CASINGS THAT WERE FOUND ON THE SCENE.

15 Q OKAY. WHERE DID YOU GET THESE GUNS?

16 A THEY'RE FIRED BY SLED. SLED HAS A VARIETY OF GUNS,
17 HUNDREDS OF GUNS THAT THEY USE IN TESTING TO DETERMINE WHAT
18 TYPE OF GUN COULD FIRE THAT TYPE OF ROUND. SO THOSE GUNS
19 AT SLED.

20 Q OKAY. THE SHELL CASINGS THEMSELVES, DON'T THEY
21 INDICATE THE TYPE OF GUN OR -- OKAY. THEY TESTED THEM
22 TRYING TO FIGURE OUT WHAT KIND OF GUN FIRED THEM?

23 A THE SHELL CASINGS CAN INDICATE A VARIETY OF GUNS, NOT
24 JUST ONE SPECIFIC GUN.

25 Q BUT YOU ALL WEREN'T ABLE TO DETERMINE ANY OF THAT?

1 A WE -- YES, WE GOT A LIST OF WEAPONS THAT COULD HAVE
2 BEEN USED.

3 Q YOU WEREN'T ABLE TO DETERMINE WHAT GUN WAS USED?

4 A NO. NO, BECAUSE WE DIDN'T HAVE THE GUN.

5 Q OKAY. OKAY.

6 MS. BUTCHER: BEG THE COURT'S INDULGENCE.

7 (PAUSE.)

8 Q WHO IS ELIZABETH?

9 A SAY THAT AGAIN?

10 Q WHO IS ELIZABETH?

11 A WHAT'S THE LAST NAME?

12 Q I DON'T KNOW THE LAST NAME, BUT SHE -- IT WAS
13 TESTIFIED THAT SHE WAS AT THE DOOR ALONG WITH MARY ANN
14 LOVELY.

15 MR. GENTRY: EXCUSE ME. I DON'T RECALL HAVING
16 PRODUCED A WITNESS NAMED ELIZABETH ON THE STAND.

17 MS. BUTCHER: YOUR HONOR, MS. LOVELY TESTIFIED THAT
18 ELIZABETH WAS AT THE DOOR WITH HER.

19 MR. GENTRY: THAT'S A DIFFERENT THING FROM ELIZABETH
20 TESTIFYING.

21 MS. BUTCHER: YOUR HONOR, MY QUESTION ---

22 THE COURT: I DON'T THINK SHE ASKED ABOUT ELIZABETH
23 TESTIFYING.

24 MS. BUTCHER: I JUST WANT TO KNOW WHO SHE IS.

25 THE COURT: SHE SAID IT WAS TESTIFIED TO THAT

MR. WEBB -- CROSS BY MS. BUTCHER

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1 ELIZABETH WAS AT THE DOOR. HE CAN ANSWER THAT QUESTION IF
2 HE KNOWS.

3 A I DON'T KNOW ANY ELIZABETH. I REMEMBER TESTIMONY THAT
4 MS. LOVELY SAID THAT THERE WERE SEVERAL FRIENDS AT THE
5 HOUSE. BUT I DON'T -- I DON'T REMEMBER SPECIFICALLY AN
6 ELIZABETH.

7 Q DO YOU NOT REMEMBER MARY ANN LOVELY TESTIFYING TO IT
8 OR DO YOU NOT REMEMBER ELIZABETH THROUGHOUT YOUR
9 INVESTIGATION?

10 A NO. I REMEMBER THE TESTIMONY THAT THERE WERE FRIENDS
11 AT THE HOUSE, BUT I DON'T REMEMBER ANYBODY SAYING
12 ELIZABETH.

13 Q OKAY. MARY ANN LOVELY TESTIFIED THAT ELIZABETH WAS AT
14 THE DOOR WITH HER -- LET ME ASK YOU THIS. YOU DON'T RECALL
15 ANY ELIZABETH WHATSOEVER AS BEING PART OF THAT HOUSE --
16 ANYONE AT THAT HOUSE?

17 A NO. I HAVE TO LOOK AT MY NOTES AND SEE IF THERE WAS
18 AN ELIZABETH THAT WE GOT A STATEMENT FROM. BUT, NO, I
19 DON'T RECALL ANY ELIZABETH AT THAT HOUSE.

20 Q OKAY. SO YOU DON'T RECALL QUITE A FEW THINGS. YOU
21 AREN'T REALLY SURE HERE ON THE STAND, TESTIFYING TO THAT
22 JURY IN THIS CASE REALLY WHO WAS THERE. AREN'T THESE
23 THINGS THAT YOU NEED TO BE PREPARED TO PRESENT TO THE JURY?

24 A MS. LOVELY WAS THERE. MS. WILSON WAS THERE. MS.
25 LOVELY'S OTHER SON WAS THERE. AS I INDICATED EARLIER,

1 THERE WAS ANOTHER YOUNG LADY THERE THAT WE DID NOT GET A
2 STATEMENT FROM NEW JERSEY THAT WAS IRRELEVANT BECAUSE SHE
3 DIDN'T KNOW ANYTHING. AND THE NAME THAT I GAVE YOU AT THE
4 END WAS ALSO THERE.

5 BUT, AGAIN, WHEN I GOT THERE THE HOUSE WAS EMPTY. THE
6 2 INDIVIDUALS THAT WERE IMPORTANT TO ME WAS THE 2
7 INDIVIDUALS THAT IDENTIFIED JAMES KEON SPANN AS THE PERSON
8 WHO SHOT AND KILLED MR. LOVELY. THE OTHER ONES BECAME
9 IRRELEVANT.

10 Q ISN'T IT TRUE THAT ONE OF THE PEOPLE TOLD YOU SHE
11 DIDN'T SEE HIM, SHE ONLY BELIEVED IT MAY HAVE BEEN HIM?

12 A ONE OF THOSE PEOPLE TOLD ME THAT SHE WAS BEHIND AND
13 SHE HEARD THE VOICE OF A PERSON THAT SHE HAD BEEN WITH FOR
14 YEARS. AND THOSE WERE THE ONLY THINGS THAT WERE IMPORTANT.

15 Q I NOTICE THAT WHEN YOU WERE ON DIRECT EXAMINATION THAT
16 YOUR TESTIMONY STOPPED AT THE NIGHT OF THE INCIDENT. DID
17 YOUR INVESTIGATION STOP THERE?

18 A NO. I THINK MY INVESTIGATION WENT ON UNTIL -- AND
19 IT'S GOING ON NOW WHILE ON THE STAND. INVESTIGATIONS DON'T
20 STOP UNTIL THERE'S A FINAL ADJUDICATION. SO IT'S STILL --
21 IT'S ONGOING. BECAUSE I STILL THINK THERE COULD POSSIBLY
22 BE A CONSPIRATOR OUT THERE IF THE TESTIMONY THAT HE JUMP IN

23 A ---

24 MS. BUTCHER: YOUR HONOR, OBJECTION. SPECULATION.

25 THE COURT: HE HAD A RIGHT TO EXPLAIN HIS ANSWER. YOU

MR. WEBB - CROSS BY MS. BUTCHER

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1 ASKED ABOUT WHEN HIS INVESTIGATION STOPPED.

2 Q CONTINUE.

3 A THE INVESTIGATION CONTINUES BECAUSE IF THE TESTIMONY
4 THAT HE GOT IN A BLUE CAR -- I FEEL THAT THERE'S A CO-
5 CONSPIRATOR OUT THERE OR AT LEAST SOMEONE WHO WAS AN
6 ACCESSOR (PHONETIC). SO THE INVESTIGATION CONTINUES.

7 Q YOU SEEM TO BE SMILING A LOT, MR. WEBB. IS THIS FUNNY
8 TO YOU?

9 A NO. I'M HAPPY. I'M HAPPY BECAUSE I'M RETIRED. I'M
10 HAPPY BECAUSE WE ARE FINALLY GETTING A CASE TO COURT THAT
11 NEEDS TO BE ADJUDICATED. AND I'M A FRIENDLY PERSON.

12 Q MR. WEBB, DID YOU WHEN YOU WERE ON THE PHONE WITH
13 JAMES SPANN, DID YOU TELL HIM THERE HAD BEEN A MURDER?

14 A NO, I DID NOT.

15 Q IS IT POLICY OF LEE COUNTY THAT YOU CALL A SUSPECT AND
16 THEY DO NOT COME IN TO TALK TO YOU, THAT PROVES THEY'RE
17 GUILTY?

18 A A POLICY? I DON'T UNDERSTAND THE QUESTION.

19 Q YOUR INVESTIGATION -- YOU SAID THAT AT THAT POINT YOU
20 HAD PROBABLE CAUSE. YOU FOUND NOTHING FURTHER TO SAY THAT
21 JAMES SPANN COMMITTED THIS CRIME, HAVE YOU?

22 A THE IDENTIFICATION BY MS. MARY ANN LOVELY AND THE
23 SUBSEQUENT IDENTIFICATION BY MS. WILSON WAS ALL I NEEDED
24 FOR PROBABLE CAUSE THAT THIS INDIVIDUAL WHO THEY KNEW
25 PERSONALLY AND INTIMATELY WAS THE PERSON THAT COMMITTED OR

1 COULD HAVE COMMITTED THIS CRIME. AND THAT IS PROBABLE
2 CAUSE.

3 Q YOU FOUND NOTHING FARTHER, HAVE YOU, NO BULLETS, NO
4 GUNS -- EXCUSE ME, NO GUN OR NO BULLETS EITHER FOR THAT
5 MATTER. NO FINGERPRINTS, NO DNA, ANYTHING PHYSICALLY
6 CONNECTING MR. SPANN WITH THIS CRIME, HAVE YOU?

7 A I FOUND EYEWITNESS IDENTIFICATION.

8 Q PHYSICALLY CONNECTING MR. SPANN WITH THIS CRIME?

9 A EYEWITNESS IDENTIFICATION.

10 Q PHYSICAL? NOT VERBAL, PHYSICAL?

11 A WELL, EYEWITNESS IS NOT VERBAL, THEY SAW.

12 Q WHEN YOU WERE ON THE PHONE WITH MY CLIENT THAT NIGHT,
13 DID YOU TELL HIM THERE HAD BEEN A DRUG DEAL AND A FIGHT AT
14 ONE OF THE BARS?

15 A NO, I DID NOT.

16 Q DID YOU TELL HIM THERE HAD BEEN A MURDER? DID YOU
17 TELL HIM THERE HAD BEEN ANY CRIME THAT HE WAS SUSPECTED OF?

18 A I TOLD HIM I WANTED TO TALK WITH HIM ABOUT A INCIDENT
19 THAT HAD HAPPEN THAT NIGHT, AND THAT HE NEEDED TO COME IN,
20 AND THAT HE WOULD BE TREATED WITH RESPECT. AND I TREATED
21 HIM AS I TREAT MOST PEOPLE, RESPECTFUL, BECAUSE I WANTED
22 HIM TO COME IN TO HEAR HIS VERSION OF WHAT -- WHAT
23 HAPPENED, AS PART OF THE INVESTIGATION.

24 MS. BUTCHER: NO FURTHER QUESTIONS.

25 THE COURT: JUST BRIEFLY, YOUR HONOR.

MR. WEBB -- REDIRECT BY MR. GENTRY

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1 REDIRECT EXAMINATION BY MR. GENTRY:

2 Q INVESTIGATOR WEBB, I BELIEVE YOU SAID LATER ON THE
3 SLED CRIME SCENE WAS CALLED IN?

4 A THAT'S CORRECT.

5 Q WHY IS SLED CRIME SCENE CALLED IN?

6 A BECAUSE THEY WERE EXPERTS AT THINGS LIKE TIRE
7 IMPRESSIONS. THEY'RE EXPERT AT THINGS LIKE GATHERING
8 EVIDENCE AND GETTING THEM ANALYZED; THAT'S WHAT THEY DO ON
9 A DAY-TO-DAY BASIS. WHEREAS WE'RE MORE GENERAL AS
10 INVESTIGATORS IN A SMALL ENVIRONMENT. THEY'RE MORE
11 PROFESSIONALS AND THEY ARE MORE ATUNE TO DOING THESE
12 SPECIFIC TYPE THINGS. SO IT'S ALWAYS GOOD TO HAVE THEM
13 COME IN SO YOU CAN HAVE THAT EXPERTISE.

14 Q WHEN YOU ARRIVED, DID YOU DO AN INITIAL WALK THROUGH?

15 A I DID. I DID.

16 Q DID YOU SEE ANYTHING THAT WAS OBVIOUS THAT STOOD OUT?

17 A YES. YES, I DID.

18 Q WHAT WAS THAT?

19 A I SAW ABOUT 5 SHELL CASINGS. IN THE BACK BEDROOM I
20 SAW A POOL OF -- A POOL OF -- POOL OF BLOOD ON THE FLOOR IN
21 THAT BACK BEDROOM. I SAW WHERE BULLETS HAD GONE THROUGH
22 THE WALL AS YOU WALK DOWN THE HALL. ALL THOSE THINGS WERE
23 VERY, VERY VISIBLE WHEN I WALKED IN THE HOUSE.

24 Q WELL, DID YOU HAVE ANY IDEA AT THAT POINT WHAT CALIBER
25 PISTOL WAS INVOLVED?

1 A NOT -- NOT CALIBER PISTOL.

2 MS. BUTCHER: OBJECTION, YOUR HONOR. THAT WOULD BE

3 SPECULATION.

4 MR. GENTRY: I ASKED HIM IF HE HAD ANY IDEA.

5 MS. BUTCHER: WHICH WOULD BE SPECULATION.

6 MR. GENTRY: AND HE ANSWERS THE QUESTION YES OR NO.

7 THE COURT: I'LL ALLOW THE QUESTION.

8 A I DIDN'T HAVE ANY IDEA WHAT CALIBER PISTOL, BUT I KNEW

9 WHAT ROUNDS -- WHAT TYPE OF ROUNDS WHEN WE PICKED UP THE

10 ROUNDS.

11 Q OKAY. NOW, YOU'RE FAMILIAR WITH REVOLVERS AND

12 AUTOMATICS?

13 A THAT'S CORRECT.

14 Q WHAT KIND OF A PISTOL WOULD HAVE BEEN USED BASED ON

15 WHAT YOU SAW AT THE SCENE?

16 A A SEMI-AUTOMATIC.

17 Q AND YOU LEFT THE ACTUAL CRIME SCENE PROCESSING TO

18 SLED?

19 A THAT'S CORRECT. THAT'S CORRECT.

20 MR. GENTRY: OKAY. I HAVE NO FURTHER QUESTIONS.

21 THE COURT: OKAY.

22 RECROSS EXAMINATION BY MS. BUTCHER:

23 Q ALL OF THESE THINGS YOU SAW, THE BLOOD, THE SHELL

24 CASINGS, NONE OF THAT TOLD YOU WHO COMMITTED THIS CRIME,

25 DID IT?

MS. HALLMAN — DIRECT BY MR. GENTRY

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1 A JUST THE TWO INDIVIDUALS WHO IDENTIFIED ---

2 Q THAT ---

3 A --- JAMES KEON SPANN.

4 Q SO WOULD YOU ANSWER THE QUESTION?

5 A COULD YOU REPEAT THE QUESTION?

6 Q THE THINGS YOU SAW, THE BLOOD, THE SHELL CASINGS, THE
7 BLUE CAR, NONE OF THAT ---

8 MR. GENTRY: OBJECTION, YOUR HONOR. THE SCOPE OF
9 MY ---

10 MS. BUTCHER: AND I WITHDRAW THAT, YOUR HONOR.

11 THE COURT: OKAY.

12 Q THE THINGS I MENTIONED, OTHER THAN THE CAR, NONE OF
13 THIS TOLD YOU WHO COMMITTED THIS CRIME, DID IT?

14 A NONE OF THOSE THINGS TOLD ME THAT.

15 MS. BUTCHER: THANK YOU.

16 THE COURT: THANK YOU. YOU CAN STEP DOWN.

17 (THE WITNESS LEAVES THE WITNESS STAND.)

18 MR. GENTRY: WE CALL VICKI HALLMAN.

19 VICKI HALLMAN, BEING FIRST

20 DULY SWORN, TESTIFIED AS FOLLOWS:

21 CLERK: STATE YOUR FULL NAME FOR THE RECORD.

22 WITNESS: VICKI HALLMAN.

23 DIRECT EXAMINATION BY MR. GENTRY:

24 Q MS. HALLMAN, HOW ARE YOU EMPLOYED?

25 A I'M EMPLOYED AS A SPECIAL AGENT IN THE LATENT PRINTS

1 CRIME SCENE UNIT AT THE SOUTH CAROLINA LAW ENFORCEMENT
2 DIVISION, WHICH IS ALSO KNOWN AS SLED.

3 Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

4 A I'VE BEEN IN LAW ENFORCEMENT FOR A TOTAL OF 19 YEARS.

5 Q AND HOW LONG HAVE YOU BEEN A SLED AGENT?

6 A I'VE BEEN AT SLED FOR 6 YEARS.

7 Q ARE YOU A CERTIFIED LAW ENFORCEMENT OFFICER IN THE
8 STATE OF SOUTH CAROLINA?

9 A YES, SIR, I AM.

10 Q HOW LONG HAVE YOU BEEN CERTIFIED?

11 A I ACTUALLY RECEIVED MY CERTIFICATION FROM THE SOUTH
12 CAROLINA CRIMINAL JUSTICE ACADEMY IN 1992.

13 Q HAVE YOU BEEN PREVIOUSLY DESIGNATED AS AN EXPERT
14 WITNESS IN VARIOUS FIELDS IN THE COURTS OF THIS STATE?

15 A YES, SIR, I HAVE.

16 Q IN WHAT FIELDS?

17 A I'VE BEEN QUALIFIED AS AN EXPERT IN THE AREA OF CRIME
18 SCENE PROCESSING AND RECONSTRUCTION, LATENT PRINT
19 PROCESSING, AND COMPARISON, FOOTWEAR AND TIRE TREAD
20 COMPARISON, AND BLOOD STAIN PATTERN ANALYSIS.

21 Q WHAT KIND OF TRAINING AND EDUCATION DO YOU HAVE TO
22 PERFORM THESE CERTIFICATIONS?

23 A I ACTUALLY HAVE A FOUR-YEAR DEGREE FROM THE UNIVERSITY
24 OF SOUTH CAROLINA, IT'S A BACHELOR OF ARTS. I HAVE A
25 MASTERS OF CRIMINAL JUSTICE. I ATTEND TRAINING THROUGHOUT

MS. HALLMAN - DIRECT BY MR. GENTRY

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1 THE COURSE OF THE YEAR IN ALL OF THOSE AREAS THAT I'M
2 QUALIFIED AS AN EXPERT IN. I ALSO COMPLETED AN INTENSE
3 TWO-YEAR TRAINING PROGRAM WITHIN THE SLED CRIME SCENE UNIT
4 IN THOSE SPECIFIC AREAS WITH OTHER COURT-QUALIFIED
5 EXAMINERS. AND I ALSO COMPLETE YEARLY PROFICIENCIES IN ALL
6 THE AREAS THAT I HOLD EXPERTISE IN.

7 MR. GENTRY: YOUR HONOR, I MOVE TO OFFER THIS LADY AS
8 AN EXPERT IN THE FIELDS SHE MENTIONED.

9 THE COURT: WHAT SAYS THE DEFENSE?

10 MS. BUTCHER: YOUR HONOR, I DON'T THINK SHE'S LISTED
11 ANYTHING THAT ACTUALLY MAKES HER AN EXPERT IN THIS
12 SITUATION. IT'S ALL CONCLUSORY.

13 THE COURT: MR. SOLICITOR, SPECIFICALLY, WHAT DO YOU
14 WANT HER QUALIFIED AS AN EXPERT IN THIS TRIAL ON?

15 MR. GENTRY: CRIME SCENE INVESTIGATION AND
16 FINGERPRINTS -- AND INCLUDING RECONSTRUCTION AND
17 FINGERPRINTS.

18 THE COURT: CRIME SCENE, FINGERPRINT, AND WHAT?

19 MR. GENTRY: THAT'S IT. CRIME SCENE -- INCLUDING
20 RECONSTRUCTION OF A CRIME SCENE AND FINGERPRINTS.

21 THE COURT: I WILL FIND THAT SHE'S AN EXPERT IN THE
22 FIELD OF CRIME SCENE INVESTIGATION AND FINGERPRINT
23 ANALYSIS.

24 MR. GENTRY: OKAY. THE RECONSTRUCTION PORTION, YOUR
25 HONOR, THAT'S INCLUDED IN CRIME SCENE INVESTIGATION?

1 THE COURT: YES, I MEAN I ASSUME AT A NORMAL CRIME
2 SCENE -- I DON'T KNOW AS FAR AS GIVING HER OPINION ABOUT
3 RECONSTRUCTION. I DON'T KNOW WHERE YOU'RE GOING WITH THIS
4 TESTIMONY. BUT, CERTAINLY IF IN DEALING WITH EVALUATING A
5 CRIME SCENE AND WHAT A CRIME SCENE TELLS HER, SHE'S
6 CERTAINLY QUALIFIED TO DO THAT.

7 MR. GENTRY: THAT WILL BE FINE.

8 Q HOW DID YOU GET TO [REDACTED] IN LEE COUNTY ON
9 THE EARLY MORNING HOURS OF THE 7TH OF APRIL 2009?

10 A OUR SLED OPERATIONS, WHICH IS A 24-HOUR 365 DAY
11 FACILITY, ACTUALLY CALLED ME AND I WAS ACTUALLY THE CRIME
12 SCENE PERSON ON CALL FOR THAT WEEK -- CALLED ME AND ADVISED
13 ME THAT WE HAD RECEIVED A REQUEST FOR OUR SERVICES ON A
14 DEATH INVESTIGATION IN LEE COUNTY.

15 Q WHAT DID YOU DO THEN?

16 A I WAS ACTUALLY GIVEN A CONTACT PERSON FOR THE LEE
17 COUNTY SHERIFF'S DEPARTMENT. AND IT'S MY PERSONAL
18 PREFERENCE TO GO AHEAD AND CALL THAT PERSON AND TO GET AN
19 IDEA AS TO WHAT THEY WANT US TO DO, TO MAKE SURE I HAVE ALL
20 THE PROPER EQUIPMENT IN MY VEHICLE AND I DON'T NEED TO STOP
21 BY HEADQUARTERS FOR ANYTHING.

22 I TALKED TO MAJOR DANNY SIMON ON THE PHONE, WHO
23 BRIEFED ME THAT THERE HAD BEEN A HOME INVASION AND A
24 SHOOTING AND ONE PERSON WAS DECEASED. AND AT THAT POINT I
25 RESPONDED DOWN HERE ALONG WITH ANOTHER CRIME SCENE AGENT.

MS. HALLMAN — DIRECT BY MR. GENTRY

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1 Q OKAY. ONCE YOU ARRIVED AT THE CRIME SCENE, ABOUT WHAT
2 TIME DID YOU GET THERE ROUGHLY?

3 A I GOT THE CALL AT APPROXIMATELY 2:00 A.M., AND I
4 ARRIVED AT APPROXIMATELY -- I BELIEVE IT WAS ABOUT 3:20 IN
5 THE MORNING.

6 Q WHAT DID YOU DO ONCE YOU ARRIVED?

7 A I LIKE TO BE BRIEFED BY THE LOCAL AGENCY TO SEE IF ANY
8 OTHER INFORMATION HAS CHANGED SINCE THE PHONE CALL. SO I
9 WAS BRIEFED BY MAJOR SIMON, WHO WAS ACTUALLY ON THE SCENE,
10 AND BASICALLY TOLD WHAT INFORMATION THEY KNEW AT THAT POINT
11 IN TIME.

12 I COMPLETED A WALK-THROUGH OF THE CRIME SCENE,
13 BASICALLY JUST LOOKING TO SEE WHAT I SAW THAT LOOKED OUT OF
14 PLACE OR OUT OF THE ORDINARY. AND THEN WE GO IN AND WE
15 TAKE PHOTOGRAPHS BEFORE ANYTHING IS MOVED OR ANYTHING --
16 ANY PROCESSING HAS BEGUN.

17 Q NOW, THE PHOTOGRAPHS YOU TOOK, LET ME SHOW YOU
18 EXHIBITS 6, 7, 8, AND 9 -- 6, 7, 8, AND 9. LET ME ALSO
19 HAND YOU SOME PHOTOGRAPHS MS. LOVELY HAD PREVIOUSLY
20 IDENTIFIED, EXHIBITS 4 AND 5. AND I ASK CAN YOU ALSO
21 IDENTIFY THOSE?

22 A YES, SIR, I CAN.

23 Q WHAT ARE THOSE?

24 A THESE WOULD BE JUST A COUPLE OF THE MANY PHOTOS WE
25 ACTUALLY TOOK AT THIS CRIME SCENE.

1 Q OKAY. WOULD YOU START OFF AT THE BEGINNING PLEASE AND
2 IDENTIFY THOSE?

3 A OKAY. LET ME PUT THEM BACK IN ORDER. ONE OF THE
4 FIRST THINGS THAT WE PHOTOGRAPH IS THE OUTSIDE GENERAL
5 SCENE OF -- IN THIS CASE IT WAS A RESIDENCE, SO WE WOULD
6 HAVE ACTUALLY WALKED AROUND THE HOME AND PHOTOGRAPHED THE
7 TOTAL EXTERIOR. STATE'S EXHIBIT NO. 4 IS A PHOTOGRAPH OF
8 BASICALLY THE FRONT OF THE MOBILE HOME, AND IT ALSO SHOWS
9 TWO VEHICLES THAT WERE ACTUALLY IN THE YARD.

10 Q WOULD YOU STEP ---

11 MR. GENTRY: --- YOUR HONOR, PERMISSION FOR HER STEP
12 DOWN AND SHOW THESE EXHIBITS TO THE JURY?

13 THE COURT: SO 4 AND 5 ARE IN EVIDENCE?

14 MR. GENTRY: YES, THEY ARE.

15 THE COURT: OKAY.

16 (THE WITNESS STEPS DOWN FROM THE WITNESS STAND.)

17 A THIS ONE IS BASICALLY JUST A GENERAL OUTDOOR
18 PHOTOGRAPH THAT SHOWS THE VEHICLES THAT WERE PARKED IN
19 THE YARD AND ALSO THE FRONT DOOR.

20 Q OKAY.

21 A NO. 5, STATE'S EXHIBIT 5 IS BASICALLY JUST A PICTURE
22 OF THE FRONT DOOR AND HOW WE SAW IT ONCE WE ARRIVED ON THE
23 SCENE.

24 MR. GENTRY: OKAY. YOUR HONOR, 6, 7, AND 8 ARE THE
25 ONES I HAD MOVED. I HEARD NO OBJECTION FROM DEFENSE.

MS. HALLMAN — DIRECT BY MR. GENTRY

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1 MS. BUTCHER: NO OBJECTION.

2 THE COURT: OKAY. SO 6, 7, AND 8 -- 6, 7, 8, AND 9
3 ARE IN WITHOUT OBJECTION?

4 MR. GENTRY: YES, SIR.

5 (STATE'S EXHIBIT NOS. 6, 7, 8, AND 9 RECEIVED IN
6 EVIDENCE.)

7 A STATE'S EXHIBIT NO. 6 -- WHEN I EXAMINED THE DOOR, THE
8 FRONT DOOR OF THE RESIDENCE -- WHICH, THE KICKING DOOR AS I
9 CALL IT -- THERE APPEARED TO BE SOME TYPE OF DIRT OR DIRTY
10 AREA CLOSE TO THE TWO DOOR KNOBS. SO I WOULD PAY SPECIAL
11 ATTENTION TO THAT AND WE TOOK A SPECIFIC PHOTOGRAPH OF A
12 LITTLE MORE CLOSE-UP OF THAT AREA.

13 Q OKAY.

14 A PHOTOGRAPH 7, WE WERE TOLD THAT THERE WAS A FORCED
15 ENTRY INVOLVED. SO ONE OF THE THINGS WE USUALLY DO IF WE
16 THINK THERE IS A BURGLARY OR A FORCED ENTRY IS WE ACTUALLY
17 TAKE PICTURES OF THE SIDES OF THE DOORS SO THAT YOU CAN SEE
18 IF THERE'S ANY DAMAGE TO THE LOCK AREA. SO THIS WOULD BE
19 THE ACTUAL PHOTOGRAPH OF THE DOOR ITSELF.

20 AND THEN WITH STATE'S EXHIBIT NO. 8, THIS WOULD
21 ACTUALLY BE THE DOOR JAM THAT CORRESPONDS WITH THAT.

22 Q OKAY. AND YOU'RE SHOWING DAMAGE?

23 A ON THE TOP LOCK HERE -- AND I THINK I'VE GOT IT RIGHT.
24 THAT ACTUALLY DOES APPEAR TO BE SOME TYPE OF PRY MARK OR
25 DAMAGE TO THIS TOP LOCK. IT'S NOT STRAIGHT LIKE YOU WOULD

- 1 NORMALLY EXPECT TO SEE.
- 2 Q OKAY. AND NO. 9?
- 3 A NO. 9 IS A PHOTOGRAPH THAT WAS TAKEN IN THE BEDROOM
- 4 WHERE WE WERE TOLD THAT MR. LOVELY ACTUALLY PASSED AWAY.
- 5 IT ACTUALLY HAS MARKERS 5 AND 6, WHICH WE ADDED TO THE
- 6 SCENE. AND THOSE INDICATE LOCATIONS OF CARTRIDGE CASES
- 7 THAT WE LOCATED.
- 8 Q OKAY. THANK YOU, MA'AM. AND YOU ALSO MADE A SKETCH
- 9 OF THE HOME, DID YOU NOT?
- 10 A YES, I DID.
- 11 Q AND THAT'S THE ONES THAT WERE PREVIOUSLY ADMITTED AS
- 12 EXHIBIT 2?
- 13 A YES, SIR.
- 14 Q ALL RIGHT. AND EXHIBIT 2-A IS A BLOW-UP OF 2. YOU
- 15 INDICATED THAT WHEN YOU WALKED THROUGH, YOU IDENTIFIED
- 16 CERTAIN THINGS AND THEN YOU CAME BACK AND MARKED THEM.
- 17 NOW, THERE'S A SUB-SCRIPT HERE ON THIS EXHIBIT WHICH
- 18 INDICATES LOCATIONS AND WHAT WAS FOUND. COULD YOU TELL THE
- 19 LADIES AND GENTLEMEN WHAT WAS FOUND AND WHERE?
- 20 A WHEN I LOCATE EVIDENCE WHICH YOU SEE IN THAT ONE
- 21 PHOTOGRAPH IN STATE'S EXHIBIT NO. 9, I USE NUMBER MARKERS
- 22 TO INDICATE WHERE I LOCATE THINGS. AND WHAT WE DID WHEN WE
- 23 WENT IN THE RESIDENCE IS WE USED OUR MARKER NUMBERS TO
- 24 INDICATE PLACES THAT WE FOUND EVIDENCE.
- 25 THIS IS THE FRONT DOOR OF THE RESIDENCE. AS YOU WENT

MS. HALLMAN -- DIRECT BY MR. GENTRY

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1 IN THERE'S ACTUALLY THE FIRST CARTRIDGE CASE THAT WAS
2 LOCATED IS RIGHT HERE BESIDE LIKE A LITTLE NIGHT STAND OR
3 AN END TABLE. IT'S ACTUALLY -- IT'S HEAD STAMPED AS A CBC-
4 380 CARTRIDGE CASE.

5 MARKER NO. 2 IS ACTUALLY ON TOP OF THE END TABLE, AND
6 THERE'S ACTUALLY -- I BELIEVE THERE WAS AN ARTIFICIAL PLANT
7 THERE ALSO. AND THE CARTRIDGE CASE IS KIND OF TUCKED
8 UNDERNEATH THAT. WE INDICATED THAT WITH MARKER 2. AND IT
9 IS HEAD STAMPED CCI-380.

10 AS YOU TRAVEL DOWN THE HALLWAY MARKER 3 INDICATES
11 ANOTHER CARTRIDGE CASE, AND IT WAS HEAD STAMPED RP-380.

12 IN THIS AREA AS YOU TRAVEL FARTHER DOWN THE HALLWAY,
13 ACTUALLY LOCATED A BULLET, WHICH IS WHAT'S FIRED OUT OF THE
14 CARTRIDGE CASE. IT'S A SEPARATE PART. IT'S MARKED WITH
15 MARKER NO. 4.

16 AND THEN THE 2 THAT YOU ACTUALLY SAW IN THE PHOTOGRAPH
17 5 AND 6 ARE LOCATED IN THIS BEDROOM IN FRONT OF LIKE A
18 CHEST OF DRAWERS OR A DRESSER. THEY'RE MARKED WITH MARKERS
19 5 AND 6. AND BOTH OF THOSE WERE HEAD STAMPED CPI-380.

20 Q ALL RIGHT. NOW, WHAT DOES THIS TELL YOU IF ANYTHING
21 ABOUT THE KIND OF WEAPON THAT WAS USED IN THIS CRIME?

22 A IT HAD TO BE A .380 CALIBER HANDGUN.

23 Q ALL RIGHT. AND WAS IT A REVOLVER OR A HANDGUN?

24 A I WOULD SAY IN THIS CASE THAT IT IS DEFINITELY AN
25 AUTOMATIC. IF IT WOULD HAVE BEEN A REVOLVER, THE CARTRIDGE

1 CASES WOULD NOT HAVE BEEN LEFT BEHIND.

2 Q WHAT DOES THIS TELL YOU WITH RESPECT TO WHEN THE SHOTS
3 WERE FIRED?

4 A WITH THE LOCATIONS THAT I'M GIVEN, I WOULD SAY THAT
5 THE SHOOTING STARTED ALMOST IMMEDIATELY AS THE SUSPECT
6 ENTERED THE RESIDENCE.

7 Q OKAY. AND CONTINUED ON?

8 A YES, SIR. IT WENT IN AND AT SOME POINT IN TIME THE
9 SUSPECT ACTUALLY EVEN ENDS UP IN THIS VERY BACK BEDROOM
10 WHERE MR. LOVELY IS FOUND, BECAUSE THERE ARE 2 CARTRIDGE
11 CASES LOCATED THERE.

12 Q WELL, NOW DOES A SEMI-AUTOMATIC -- I BELIEVE IT WOULD
13 BE A SEMI-AUTOMATIC PISTOL, CORRECT?

14 A YES, SIR.

15 Q NOW, HOW IS A CARTRIDGE CASE EJECTED FROM A SEMI-
16 AUTOMATIC PISTOL?

17 A ON A SEMI-AUTOMATIC IF YOU'RE FAMILIAR WITH HANDGUNS
18 -- ESPECIALLY WHAT LAW ENFORCEMENT CARRIES, WHICH IS A
19 GLOCK, THERE'S A SLIDE ON THE TOP. AND WHEN THE SLIDE GOES
20 BACK, THE EMPTY CARTRIDGE HAS TO COME OUT BEFORE A NEW
21 CARTRIDGE CAN -- OR A NEW -- EXCUSE ME, A NEW CARTRIDGE CAN
22 COME UP IN. SO THE OLD ONE IS ACTUALLY EJECTED OUT OF THE
23 GUN -- OR THE USED ONE IS.

24 Q OKAY. AND THE USED ONE, WHICH DIRECTION DOES IT TAKE?

25 A IT DEPENDS. SOME GUNS THEY EJECT ON THE RIGHT. SOME

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1 EJECT ON THE LEFT. AND THEN YOU ALSO HAVE TO CONSIDER
2 WHETHER OR NOT THERE'S ANYTHING IN THE GENERAL AREA THAT'S
3 ACTUALLY GOING TO CAUSE IT TO HIT SOMETHING AND GO
4 SOMEWHERE ELSE.

5 Q OKAY. NOW, WHEN YOU TOOK THESE CARTRIDGE CASES, WHAT
6 DID YOU DO TO THEM?

7 A I ACTUALLY IDENTIFIED THEM ON THE SCENE BY WHAT THEY
8 WERE HEAD STAMPED. I ACTUALLY COLLECT THEM. WE WRAP THEM
9 IN A LITTLE TISSUE, AND THEY GO IN A TIN. AND I TOOK THEM
10 BACK TO THE LABORATORY AND ACTUALLY PROCESSED THEM FOR
11 LATENT FINGERPRINTS.

12 Q WERE ANYTHING DISCOVERED ON THESE CASES?

13 A NO, SIR.

14 Q OKAY. IS THAT UNUSUAL?

15 A NO, IT'S NOT.

16 Q WHY IS THAT?

17 A FINGERPRINTS CONSIST MAINLY OF MOISTURE. AND BECAUSE
18 OF THE HEAT THAT'S REQUIRED IN ORDER FOR THE POWDER AND THE
19 BULLET TO ACTUALLY COME OUT OF THE GUN, A LOT OF THAT
20 MOISTURE IS EVAPORATED, SO USUALLY THERE ARE NOT LATENTS
21 LEFT BEHIND ON CARTRIDGE CASES.

22 Q OKAY. WITH RESPECT TO THE FRONT DOOR, DID YOU DO ANY
23 TESTS ON THAT FRONT DOOR?

24 A YES, SIR. ONE OF THE THINGS WE USUALLY DO IF WE THINK
25 THERE'S A FOOTWEAR IMPRESSION SOMEWHERE IS WE USE WHAT'S

1 CALLED OBLIQUE LIGHTING. AND BASICALLY WHAT THAT MEANS IS
2 I BASICALLY CARRY A FLASHLIGHT WITH ME ON ALL MY CRIME
3 SCENES. INSTEAD IF THIS WOULD BE THE FRONT OF THE DOOR,
4 INSTEAD OF SHINING THE FLASHLIGHT DIRECTLY ONTO THE DOOR,
5 I'M GOING TO HOLD MY FLASHLIGHT TO THE BOTTOM; AND THAT'S
6 GOING TO -- THE LIGHT'S GOING TO SHINE UP AND IT'S GOING TO
7 GIVE ME A BETTER IDEA IF THERE'S SOMETHING THERE.

8 IN THIS CASE I USED WHAT'S CALLED A JELL LIFTER ON
9 THAT DIRT AREA. BUT BECAUSE THE DOOR IS HEAVILY TEXTURED,
10 THERE WAS NOT ENOUGH OF AN IMPRESSION LEFT BEHIND FOR ME TO
11 DO ANY TYPE OF COMPARISON.

12 Q OKAY. NOW, DID YOU TAKE ANY OTHER -- ATTEMPT TO LIFT
13 ANY FINGERPRINTS FROM ANY OTHER AREA OF THE TRAILER?

14 A I ATTEMPTED ALSO FOR FINGERPRINTS ON THE DOOR KNOB IN
15 CASE THE SUSPECT MAY HAVE TOUCHED THE DOOR KNOB.

16 Q OKAY. DID YOU FIND ANYTHING?

17 A NO, SIR, I DID NOT.

18 Q OKAY. THANK YOU.

19 (THE WITNESS RETURNS TO THE WITNESS STAND.)

20 Q I BELIEVE YOU LATER RETURNED TO THE SCENE AGAIN, DID
21 YOU NOT?

22 A YES, SIR, LATER THAT AFTERNOON AFTER THE AUTOPSY HAD
23 BEEN COMPLETED, I RECEIVED ANOTHER CALL FROM MAJOR SIMON
24 WHO ADVISED THAT ALL THE GUNSHOT WOUNDS THAT THE VICTIM HAD
25 RECEIVED WERE WHAT WE CALL PENETRATING -- OR EXCUSE ME,

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1 PERFORATING INSTEAD OF PENETRATING. AND WHEN WE USE THE
2 WORD PERFORATING, WE MEAN THAT THERE'S AN ENTRANCE AND AN
3 EXIT. SO THERE WERE SOME BULLETS THAT WE DID NOT OR WERE
4 NOT ABLE TO LOCATE AT THE INITIAL TIME AT THE SCENE.

5 Q OKAY. DID YOU ACTUALLY LOCATE ANY MORE BULLETS WHILE
6 YOU WERE THERE ON THE SECOND TRIP?

7 A NO, SIR. WE WENT BACK A SECOND DAY. THEY SECURED
8 ANOTHER SEARCH WARRANT AND WE ACTUALLY PULLED THE CARPET UP
9 IN THAT BACK BEDROOM. BUT WE WERE UNABLE TO LOCATE ANY
10 OTHER BULLETS.

11 Q WERE THERE ANY HOLES IN THE WALLS OF THE TRAILER THAT
12 WOULD INDICATE PERHAPS A BULLET EXITED THERE?

13 A YES, SIR, THERE WERE SEVERAL AREAS THAT APPEARED A
14 BULLET HAD EXITED OUT OF THE HOME.

15 Q OKAY. DID YOU HAVE ANY LUCK IN LOCATING THOSE
16 BULLETS?

17 A NO, SIR. WE ACTUALLY -- WE CARRY METAL DETECTORS. WE
18 ACTUALLY USED A METAL DETECTOR TO SEE IF -- BECAUSE THE
19 BULLET WOULD HAVE BEEN SLOWED DOWN BY EXITING THROUGH ALL
20 THOSE AREAS, IF MAYBE IT WAS LYING AROUND ON THE GROUND
21 SOMEWHERE.

22 THERE WAS ALSO ANOTHER EMPTY MOBILE HOME WITHIN THAT
23 AREA. AND WE ACTUALLY SEARCHED THERE IF THERE WAS AN AREA
24 THAT APPEARED TO BE DAMAGED.

25 Q OKAY. WITHOUT ANY FIREARM TO COMPARE IT TO, PRESENCE

1 OR ABSENCE OF A BULLET WOULDN'T EVEN MAKE THAT MUCH
2 DIFFERENCE?

3 A I DO KNOW THAT OUR FIREARMS DEPARTMENT SOME TIMES CAN
4 TELL WHETHER OR NOT CARTRIDGE CASES OR BULLETS WERE FIRED
5 FROM THE SAME GUN.

6 Q OKAY. WAS THAT DONE IN THIS CASE?

7 A I BELIEVE IT WAS BUT I'M NOT 100 PERCENT, BECAUSE
8 THAT'S DONE BY A DIFFERENT DEPARTMENT.

9 MR. GENTRY: THANK YOU VERY MUCH. ANSWER ANY
10 QUESTIONS THE DEFENSE MAY HAVE.

11 CROSS EXAMINATION BY MS. BUTCHER:

12 Q THERE WERE THREE TYPES OF AMMO?

13 A THREE DIFFERENT BRANDS. I BELIEVE THERE WERE THREE,
14 YES, MA'AM.

15 Q OKAY. THERE'S NO WAY TO CONNECT -- THERE COULD HAVE
16 BEEN THREE DIFFERENT GUNS? I MEAN, THERE'S NO WAY TO SAY
17 WHAT GUN FIRED THESE BULLETS?

18 A ACTUALLY, OUR FIREARMS DEPARTMENT WOULD HAVE BEEN ABLE
19 -- OR WOULD BE ABLE TO TELL WHETHER OR NOT FOR THE MOST
20 PART THE CARTRIDGES WERE FIRED FROM THE SAME GUN.

21 Q WERE THEY ALL FIRED FROM THE SAME GUN?

22 A I DON'T HAVE ANY IDEA. I DID NOT DO THE FIREARMS
23 EXAMINATION. I'M NOT QUALIFIED TO DO A FIREARMS
24 EXAMINATION.

25 Q OKAY. OKAY. IN LIGHT OF ALL YOUR EXPERTISE,

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1 SPECIALIZATION, YOUR INVESTIGATION, ANY OF THIS EVIDENCE
2 CONNECT JAMES SPANN TO THIS CRIME?

3 A NO, MA'AM.

4 MS. BUTCHER: THANK YOU.

5 MR. GENTRY: YOU CAN STEP DOWN. THANK YOU.

6 (THE WITNESS LEAVES THE WITNESS STAND.)

7 MR. GENTRY: I WANT TO MAKE SURE ALL THE STATE'S
8 PHOTOGRAPHS ARE IN AND ARE ADMITTED. I BELIEVE THAT'S 1
9 THROUGH 10. 1 THROUGH 10.

10 THE COURT: IS THAT CORRECT, MADAM COURT REPORTER? DO
11 YOU HAVE ANYTHING THAT'S BEEN MARKED FOR IDENTIFICATION
12 THAT'S NOT IN EVIDENCE?

13 REPORTER: 1 THROUGH 10 ARE IN.

14 THE COURT: EVERYTHING IS IN. ALL RIGHT.

15 MR. GENTRY: I BELIEVE 11 I DIDN'T OFFER IT.

16 THE COURT: ALL RIGHT.

17 MR. GENTRY: ALL RIGHT. THE STATE RESTS.

18 THE COURT: OKAY. LADIES AND GENTLEMEN, IT'S A GOOD
19 TIME TO TAKE A BREAK ANY WAY. I'M GOING TO SEND YOU TO THE
20 JURY ROOM. I'VE GOT SOME MATTERS OF LAW I NEED TO DEAL
21 WITH. I'LL GET YOU BACK OUT JUST AS QUICK AS I CAN.

22 PLEASE DON'T DISCUSS THIS CASE YET. AND I DON'T KNOW.
23 THIS MAY TAKE 10 MINUTES OR 15 MINUTES. IT MAY TAKE LONGER
24 THAN THAT. I'LL GET YOU BACK OUT JUST AS QUICK AS I CAN.
25 THANK YOU.

1 (THE JURY RETIRES TO THE JURY ROOM AT 10:38 A.M.)

2 THE COURT: OKAY. ALL RIGHT. ANYTHING FROM EITHER
3 SIDE?

4 MR. GENTRY: THE STATE HAS RESTED, YOUR HONOR.

5 THE COURT: OKAY.

6 MS. BUTCHER: YOUR HONOR, I'D LIKE TO MAKE A MOTION
7 FOR A DIRECTED VERDICT AT THIS POINT. YOUR HONOR, IN THE
8 LIGHT MOST FAVORABLE TO THE STATE, I BELIEVE THERE IS NOT
9 SUBSTANTIAL EVIDENCE IN THIS CASE IF IT WERE SUBMITTED TO
10 THE JURY THAT A REASONABLE JUROR COULD FIND IN FAVOR OF THE
11 STATE.

12 THE ONLY EVIDENCE IN THIS CASE ARE THE STATEMENTS BY
13 MS. MARY ANN LOVELY AND HAS BEEN TESTIFIED TO THAT HER
14 STATEMENTS WERE FED OFF OF MS. TAMEKA WILSON'S TESTIMONY OF
15 A BELIEF THAT MR. SPANN COMMITTED THIS CRIME. ALSO, MS.
16 MARY ANN LOVELY'S TESTIMONY CONTRADICTS ITSELF AND I
17 BELIEVE WAS IMPEACHED BY THE TESTIMONY OF MS. TAMEKA WILSON
18 AS TO WHETHER OR NOT SHE WAS CALLING DUC'S NAME WHEN SHE
19 RAN DOWN THE HALL.

20 YOUR HONOR, WE WOULD MOVE FOR A DIRECTED VERDICT ON
21 THOSE GROUNDS.

22 THE COURT: AND I RESPECTFULLY DENY YOUR MOTION. I
23 THINK AT THIS POINT IT'S THE EXISTENCE OF EVIDENCE AND
24 THERE IS EVIDENCE IN THIS RECORD. WHATEVER WEIGHT AND
25 CREDIBILITY THE JURY GIVES THAT EVIDENCE WOULD BE UP TO

1 THEM. BUT THERE'S AT LEAST TESTIMONY I THINK FROM THE
2 FIRST WITNESS THAT SHE IDENTIFIED HIM WHEN SHE LOOKED
3 THROUGH THE PEEP HOLE. AND, YOU KNOW, THE JURY CAN
4 DETERMINE WHETHER THOSE IDENTIFICATIONS WERE VALID OR NOT.
5 BUT I THINK THERE IS SUFFICIENT EVIDENCE FOR THIS CASE TO
6 GO TO THE JURY.

7 MS. BUTCHER: YOUR HONOR, I WOULD ALSO LIKE TO RENEW
8 MY OBJECTION TO THE INVESTIGATOR'S STATEMENTS ABOUT MY
9 CLIENT'S COMMENT OF I WANT TO SEE MY CHILDREN BEFORE I TURN
10 MYSELF IN.

11 THE COURT: AND, OF COURSE, YOU OBJECTED BEFORE HE
12 TESTIFIED. YOU OBJECTED DURING HIS TESTIMONY. AND NOW
13 YOU'RE OBJECTING. IT IS PRESERVED FOR THE RECORD.

14 MS. BUTCHER: THANK YOU, YOUR HONOR.

15 THE COURT: BUT I RESPECTFULLY DENY IT.

16 MS. BUTCHER: THANK YOU, YOUR HONOR.

17 THE COURT: ANYTHING ELSE?

18 MS. BUTCHER: THAT'S ALL, YOUR HONOR.

19 THE COURT: ALL RIGHT. WE'LL TAKE A 10 MINUTE BREAK.
20 WE'LL COME BACK. WELL ---

21 MS. BUTCHER: DO YOU WANT TO TALK TO MY CLIENT NOW?

22 THE COURT: YES, I CAN DO THAT RIGHT NOW BEFORE WE
23 TAKE A BREAK; THAT'S A GOOD IDEA.

24 MR. SPANN, IF YOU WOULD STAND UP PLEASE, SIR, AND
25 RAISE YOUR RIGHT HAND.

1 (COMPLIED.)

2 THE COURT: DO YOU SOLEMNLY SWEAR THE STATEMENTS YOU
3 GIVE ME ARE THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE
4 TRUTH SO HELP YOU GOD?

5 MR. SPANN: YES, SIR.

6 THE COURT: OKAY. YOU UNDERSTAND -- YOU CAN PUT YOUR
7 HAND DOWN. WE'VE REACHED THIS POINT IN THE TRIAL WHERE YOU
8 HAVE A RIGHT TO PUT UP EVIDENCE. YOU DO NOT HAVE TO PUT UP
9 ANY EVIDENCE. THE STATE HAS THE BURDEN OF PROVING YOU
10 GUILTY BEYOND A REASONABLE DOUBT, AND YOU'RE NOT REQUIRED
11 TO PROVE YOURSELF INNOCENT OR TO TESTIFY IN ANY WAY.

12 BUT YOU ALSO HAVE A RIGHT TO TESTIFY, AND THAT IS YOUR
13 RIGHT AND YOUR RIGHT ALONE.

14 YOU HAVE A RIGHT TO REMAIN SILENT UNDER THE
15 CONSTITUTION, AND THAT IS YOUR RIGHT.

16 YOUR LAWYER CAN ADVISE YOU AS TO HER OPINION AS TO
17 WHETHER SHE THINKS YOU SHOULD TESTIFY OR SHOULDN'T TESTIFY.
18 BUT ULTIMATELY, THAT IS YOUR DECISION.

19 IF YOU CHOSE NOT TO TESTIFY, I WILL INSTRUCT THE JURY
20 THAT YOU HAVE A RIGHT NOT TO TESTIFY, AND THEY CANNOT
21 CONSIDER THAT AGAINST YOU IN ANY WAY. THEY CAN'T EVEN
22 DISCUSS THAT IN THE JURY ROOM.

23 HOWEVER, IF YOU DO DECIDE TO TESTIFY, YOU'LL BE
24 TREATED LIKE ANY OTHER WITNESS. YOU'LL BE SUBJECT TO CROSS
25 EXAMINATION AND POSSIBLY IMPEACHMENT ON THE STAND.

1 I DO NOT KNOW WHETHER YOU HAVE A CRIMINAL RECORD OR
2 NOT. BUT IF YOU DO AND IT QUALIFIES UNDER OUR LAW, THEN
3 YOU MAY BE IMPEACHED ON THAT RECORD. AND YOUR LAWYER CAN
4 ADVISE YOU ABOUT THAT.

5 BUT DO YOU UNDERSTAND YOUR RIGHTS CONCERNING YOUR
6 ABILITY TO TESTIFY?

7 MR. SPANN: YES, SIR.

8 THE COURT: DO YOU WANT TO ASK ME ANY QUESTION
9 CONCERNING YOUR RIGHTS?

10 MR. SPANN: NO, SIR.

11 THE COURT: OKAY. THEN WE'RE GOING TO TAKE A BREAK.
12 HAVE YOU HAD ENOUGH TIME TO TALK TO YOUR LAWYER ABOUT YOU
13 WANTING TO TESTIFY OR NOT TESTIFY? AND YOU ALL CAN MAKE
14 THAT DECISION, YOU KNOW. BUT IT'S COME TO THIS POINT OF
15 THE TRIAL WHERE YOU'VE GOT TO DECIDE WHETHER YOU WANT TO
16 PUT UP ANY EVIDENCE OR NOT. BUT YOU CAN TALK TO HER OVER
17 THE BREAK. IF YOU HAVE ANY QUESTIONS, YOU CAN ASK ME.

18 I JUST WANT TO BE SURE YOU UNDERSTOOD YOU HAVE A RIGHT
19 TO TESTIFY. YOU ALSO HAVE A RIGHT TO REMAIN SILENT. IF
20 YOU CHOOSE TO REMAIN SILENT, I WILL INSTRUCT THE JURY THAT
21 THEY CANNOT HOLD THAT AGAINST YOU IN ANY WAY. DO YOU
22 UNDERSTAND THAT?

23 MR. SPANN: YES, SIR.

24 THE COURT: OKAY. ANYTHING ELSE YOU WANT ME TO TALK
25 TO HIM ABOUT?

1 MS. BUTCHER: NOTHING.

2 THE COURT: ALL RIGHT. WE'LL TAKE A 10 MINUTE BREAK.

3 AND JUST FOR SCHEDULING. I MAY NEED TO TALK TO THE
4 ATTORNEYS AND GET AN IDEA OF WHEN YOU ALL THINK THIS CASE
5 WILL END UP TO THE JURY.

6 (PAUSE.)

7 THE COURT: I'M SORRY.

8 MR. GENTRY: I HAVE NO IDEA OF THE DEFENSE CASE, YOUR
9 HONOR. SO THEREFORE, I HAVE NO IDEA OF WHAT I HAVE TO PUT
10 BACK UP.

11 THE COURT: ALL RIGHT. WE'LL TAKE A 10 MINUTE BREAK.

12 MS. BUTCHER: THANK YOU, YOUR HONOR.

13 (A RECESS WAS TAKEN.)

14 THE COURT: OKAY. MS. BUTCHER, I UNDERSTAND THAT YOU
15 DO NOT INTEND TO PUT UP ANY EVIDENCE?

16 MS. BUTCHER: THAT'S CORRECT, YOUR HONOR.

17 THE COURT: AND SO YOU'RE GOING TO REST YOUR CASE.

18 AND SO AT THIS POINT WE'LL DO CLOSING ARGUMENTS AND CHARGE.'

19 MS. BUTCHER: YES, YOUR HONOR.

20 THE COURT: AND SINCE IT'S 11:00 O'CLOCK. AS WE
21 DISCUSSED IN CHAMBERS, ONCE WE DO START THE CLOSING
22 ARGUMENT AND CHARGE, THEN WE CAN'T LET THE JURY GO TO
23 LUNCH. SO I THINK AT THIS POINT WE'LL LET THEM GO TO LUNCH
24 AND COME BACK AT 1:00 O'CLOCK AND AT THAT TIME DO CLOSING
25 ARGUMENTS AND CHARGE; IS THAT YOU ALL'S UNDERSTANDING?

1 MR. GENTRY: YES, SIR.

2 THE COURT: OKAY. ALL RIGHT. BRING ME THE JURY.

3 (THE JURY RETURNS TO THE COURTROOM AT 11:08 A.M.)

4 THE COURT: LADIES AND GENTLEMEN, YOU HAVE HEARD ALL
5 OF THE EVIDENCE THAT YOU'RE GOING TO HEAR IN THIS CASE.
6 AND NOW WE'VE REACHED THE POINT IN THE TRIAL WHERE YOU WILL
7 HEAR THE CLOSING ARGUMENTS OF THE ATTORNEYS AND THEN I WILL
8 CHARGE YOU ON THE LAW.

9 THE PROBLEM WITH THAT PROCESS, ONCE THAT STARTS, YOU
10 CAN'T LEAVE THE COURTHOUSE AND THEN YOU'LL GO BACK AND
11 DELIBERATE AND REACH A VERDICT. SO BECAUSE IT'S CLOSE TO
12 THE DINNER HOUR, WHAT I'VE DECIDED TO DO IS LET YOU GO TO
13 DINNER EARLY TODAY AND ASK YOU TO COME BACK AT 1:00
14 O'CLOCK. AND THEN THAT WAY IT WILL JUST FLOW BETTER,
15 BECAUSE ONCE WE START THAT PROCESS I CAN'T LET YOU LEAVE.

16 SO I'LL LET YOU GO TO LUNCH. IF YOU'LL BE BACK IN THE
17 JURY ROOM AT 1:00 O'CLOCK, I'LL BRING YOU BACK OUT. YOU'LL
18 HEAR THE CLOSING ARGUMENTS OF THE ATTORNEYS. I WILL CHARGE
19 YOU ON THE LAW THAT YOU ARE TO APPLY IN THIS CASE. AND
20 THEN YOU CAN GO BACK AND MAKE YOUR DECISION.

21 ONE THING I NEED FOR YOU TO DO WHEN YOU GET BACK IN
22 THE JURY ROOM BEFORE I BRING YOU OUT; IS I NEED YOU TO
23 SELECT A FOREPERSON. I'VE FOUND OUT THAT JURIES DO A WHOLE
24 LOT BETTER SELECTING THEIR OWN FOREPERSON THAN I, BECAUSE I
25 DON'T KNOW ANY OF YOU.

1 THAT FOREPERSON HAS NO GREATER VOTE THAN ANYONE ELSE.
2 I WILL INSTRUCT YOU, IT TAKES A UNANIMOUS VOTE OF ALL 12 OF
3 YOU. THE FOREPERSON WILL SIMPLY PRESIDE OVER THE
4 DELIBERATIONS IN THE JURY ROOM AND ULTIMATELY SIGN THE
5 VERDICT FORM.

6 SO WHEN YOU GET BACK IF YOU WILL DECIDE AND ELECT A
7 FOREPERSON, THEN WHEN I BRING YOU BACK OUT AT 1:00 O'CLOCK,
8 YOU TELL ME WHO THAT FOREPERSON IS. AND THAT FOREPERSON
9 NEEDS TO BE ONE OF THE 12, NOT THE ALTERNATE. THE ORIGINAL
10 12 OF YOU. SO IF YOU'LL DO THAT.

11 AND I REMIND YOU, PLEASE DO NOT DISCUSS THIS MATTER
12 OVER LUNCH. DON'T ALLOW ANYONE DISCUSS IT WITH YOU. IT'S
13 IMPORTANT YOU DECIDE THIS BASED ON WHAT YOU HEAR IN THIS
14 COURTROOM AND NOTHING ELSE, AND I'LL SEE YOU AT 1:00
15 O'CLOCK. THANK YOU.

16 (THE JURY EXITS THE COURTROOM AT 11:11 A.M.)

17 THE COURT: OKAY. WE'LL COME BACK. MY UNDERSTANDING
18 THE STATE WILL OPEN AND THE DEFENSE WILL CLOSE?

19 MR. GENTRY: YES, SIR.

20 MS. BUTCHER: YES, SIR.

21 THE COURT: THEN I'M GOING TO CHARGE THEM THE LAW. IF
22 YOU ALL HAVE ANY PARTICULAR CHARGES YOU WANT ME TO CHARGE,
23 YOU NEED TO LET ME KNOW. I WAS GOING TO DO MY STANDARD
24 CHARGE, BURGLARY, MURDER, AND POSSESSION OF A WEAPON DURING
25 A VIOLENT CRIME. AND I ALSO CHARGE THEY CANNOT CONSIDER

1 THE DEFENDANT DID NOT TESTIFY, AS WELL AS AN EXPERT CHARGE.
2 BUT EVERYTHING ELSE WILL BE PRETTY STANDARD, UNLESS YOU ALL
3 WANT TO REQUEST ANYTHING DIFFERENT.

4 ALL RIGHT. I'LL SEE YOU AT 1:00 O'CLOCK.

5 MS. BUTCHER: THANK YOU, YOUR HONOR.

6 (COURT IS IN RECESS FOR LUNCH.)

7 THE COURT: I'VE HAD MY LAW CLERK TYPE UP A PROPOSED
8 VERDICT FORM. DO YOU ALL WANT TO LOOK AT IT BEFORE I
9 SUBMIT IT TO THE JURY?

10 MR. GENTRY: NO, SIR.

11 MS. BUTCHER: IS THAT YOUR USUAL ONE?

12 THE COURT: YES. IT'S WE THE JURY UNANIMOUSLY FIND
13 THE DEFENDANT JAMES KEON SPANN GUILTY OF MURDER OR NOT
14 GUILTY OF MURDER.

15 WE UNANIMOUSLY FIND HIM GUILTY OF BURGLARY FIRST OR
16 NOT GUILTY OF BURGLARY FIRST.

17 OR GUILTY OF POSSESSION OF A WEAPON OR NOT GUILTY OF
18 POSSESSION OF A WEAPON DURING A VIOLENT CRIME.

19 OF COURSE, I WILL INSTRUCT THEM THAT IF THEY DON'T
20 FIND HIM GUILTY OF ONE OR TWO OR BOTH, THEN THEY CAN'T FIND
21 HIM GUILTY OF THREE. HE HAS TO BE GUILTY OF A VIOLENT
22 CRIME BEFORE HE CAN BE GUILTY OF POSSESSION OF A WEAPON
23 DURING THE COMMISSION OF A VIOLENT CRIME.

24 OKAY. ANYTHING BEFORE I BRING THE JURY IN?

25 MR. GENTRY: NOT FROM THE STATE, YOUR HONOR.

1 MS. BUTCHER: NO, YOUR HONOR.

2 THE COURT: ALL RIGHT. BRING ME THE JURY IF THEY'RE
3 READY TO COME, IF THEY'VE ELECTED A FOREPERSON.

4 (THE JURY RETURNS TO THE COURTROOM AT 1:05 P.M.)

5 THE COURT: MY UNDERSTANDING, YOU ALL HAVE SELECTED A
6 FOREPERSON; IS THAT RIGHT?

7 JUROR: YES.

8 THE COURT: OKAY. GOOD. THANK YOU. IF YOU ALL WILL
9 PAY CLOSE ATTENTION TO THE ATTORNEYS, THEY WILL NOW GIVE
10 YOU THEIR CLOSING ARGUMENTS, AND I WILL CHARGE YOU ON THE
11 LAW.

12 MR. SOLICITOR.

13 MR. GENTRY: THANK YOU, YOUR HONOR.

14 CLOSING ARGUMENTS BY MR. GENTRY ON BEHALF OF THE STATE:

15 LADIES AND GENTLEMEN OF THE JURY, THANK YOU VERY MUCH
16 FOR YOUR ATTENTION OVER THE LAST, OH, I GUESS DAY OR SO.
17 WE'VE HAD SOME INTERESTING TESTIMONY AND SOME INTERESTING
18 TIMES, AND I KNOW SOME HEART-WRENCHING TIMES.

19 BUT LET'S START OUT WITH THE KNOWN FACTS. WE KNOW
20 THAT LINDSEY LOVELY IS DEAD. WE KNOW THAT FOR A FACT.

21 WE KNOW HE WAS SHOT 5 TIMES. 5 TIMES.

22 WE KNOW HE DIED OF BLOOD LOSS. HE BLED OUT
23 INTERNALLY.

24 WE KNOW IT WAS A HOMICIDE. IT WAS A MURDER, THAT'S
25 THE COMMON WORD FOR IT, MURDER.

1 THE PERSON WHO SHOT HIM OBVIOUSLY HAD A FIREARM.
2 CAN'T HARDLY SHOOT SOMEBODY WITHOUT A GUN. THE PERSON WHO
3 SHOT HIM BROKE OPEN THE FRONT DOOR OF MARY ANN LOVELY'S
4 TRAILER AT [REDACTED] HERE IN LEE COUNTY AND CAME
5 IN SHOOTING. AND THIS WAS IN THE NIGHTTIME. IT WAS A
6 LITTLE BIT PAST MIDNIGHT ON THE 7TH OF APRIL OF THIS PAST
7 YEAR.

8 AT THE TIME LINDSEY LOVELY WAS IN THE COMPANY OF
9 TAMEKA WILSON.

10 WE ALSO KNOW THAT THE PERSON WITH THE STREET NAME OR
11 NICKNAME DUC, IS JAMES KEON SPANN.

12 WE KNOW THOSE FOR FACTS.

13 NOW, THE TESTIMONY IS SOMETHING ELSE. AND I'M GOING
14 TO TELL YOU HOW I RECALL THE TESTIMONY UNFOLD AND WHY I
15 THINK ALL THE EVIDENCE POINTS TO THAT JAMES KEON SPANN AS
16 BEING THE SHOOTER.

17 MY RECOLLECTION MAY DIFFER FROM YOUR RECOLLECTION.
18 IT'S YOUR RECOLLECTION THAT COUNTS, AND THAT'S WHAT THE
19 JUDGE WILL TELL YOU. IT'S NOT MY RECOLLECTION. IT'S NOT
20 MS. BUTCHER'S RECOLLECTION. IT'S YOUR RECOLLECTION.

21 HERE'S HOW IT UNFOLDS FROM MY POINT OF VIEW. MARY ANN
22 LOVELY AT AROUND MIDNIGHT, A LITTLE BIT AFTER, ON THE
23 MORNING OF APRIL THE 7TH HEARS A KNOCK AT THE DOOR. SHE
24 GOES AND SHE LOOKS THROUGH THE PEEP HOLE IN HER DOOR; AND
25 THAT'S ON ONE OF THESE EXHIBITS. A LOT OF PEOPLE HAVE

1 THOSE. SHE LOOKS THROUGH THE PEEP HOLE OF HER DOOR AND SHE
2 SEES DUC. SHE SEES DUC THERE. SO SHE'S WONDERING WHAT'S
3 GOING ON.

4 SHE'S LOOKING AT HIM THROUGH THE PEEP HOLE. SHE SEES
5 HIM BACK UP A LITTLE BIT, LOOK LEFT AND RIGHT. SHE HEARS A
6 GUN RACK -- AS YOU KNOW AN AUTOMATIC WILL DO, HEARS THAT
7 SLIDE GOES THROUGH AND COME FORWARD.

8 SHE GOES -- SHE RUNS TO THE BACK. SHE RUNS TO THE
9 BACK WHERE HER SON AND TAMEKA ARE, AND SHE SAYS -- SHE
10 HOLLERS OUT. THE BOY GOT A GUN, AND SHE RUNS BACK DOWN THE
11 HALLWAY TO PROTECT HER OTHER SON WHO IS DISABLED. AND IF
12 YOU REMEMBER THE TESTIMONY, HE WOULD RUN TO TROUBLE AS
13 OPPOSED TO RUNNING FROM TROUBLE. SO SHE'S GOING BACK TO
14 HER BEDROOM TO PROTECT HIM.

15 THIS IS THE LAYOUT OF HER HOUSE, OF THE TRAILER.
16 HERE'S THE FRONT DOOR. SHE'S RUNNING HERE, TO THE BEDROOM
17 TO TELL HER SON, THE BOY GOT A GUN. AND THEN SHE TURNS AND
18 RUNS BACK THIS WAY.

19 AS SHE RUNS BACK THIS WAY TOWARD HER BEDROOM TO WHERE
20 HER SON IS, HER OTHER SON, THE DOOR POPS OPEN AND ALL --
21 SHORTLY THEREAFTER, SHE STARTS HEARING GUNSHOTS. AND YOU
22 CAN TELL HERE THE FIRST CARTRIDGE CASE WAS FOUND JUST
23 INSIDE THE DOOR.

24 THE SECOND CARTRIDGE CASE WAS FOUND JUST CLOSE TO
25 THERE.

1 THE THIRD CARTRIDGE CASE WAS FOUND IN THE MIDDLE OF
2 THE HALLWAY.

3 THE FOURTH RIGHT HERE IS A BULLET. THE BULLET.

4 TWO MORE CARTRIDGE CASES WERE FOUND IN LINDSEY'S
5 BEDROOM.

6 SO THAT MEANS THAT WHOEVER THIS SHOOTER WAS -- I SAY
7 IT WAS DUC -- FOLLOWED HIM DOWN THE HALLWAY. BAM. BAM.
8 BAM. BAM. BAM. FIVE TIMES. HE SHOT HIM 5 TIMES. EVERY
9 TIME HE SHOT, HE HIT LINDSEY LOVELY. EVERY TIME. EVERY
10 TIME.

11 THE SHOOTING STOPS. AND MARY ANN HEARS SOMEBODY
12 HITTING THE STEPS. SHE COMES OUT -- AND, BY THE WAY,
13 YOU'LL RECALL THE TESTIMONY FROM TAMEKA. THEY WERE HERE IN
14 THE BED OR IN THE GENERAL VICINITY. AND THEY'RE ALL COMING
15 DOWN THE HALLWAY. AND THEY'RE DOWN IN THIS NECK OF THE
16 WOODS SOMEWHERE WHEN ALL THE SHOOTING STARTS. AND HE GOES
17 BACK IN HERE, AND THAT'S WHERE LINDSEY LOVELY IS FOUND,
18 RIGHT HERE IN THIS BEDROOM, LYING ON HIS BACK WITH HIS
19 PANTS ABOUT HERE ON HIS GROIN AREA, NO SHIRT, BLEEDING FROM
20 TWO CHEST WOUNDS; THAT'S WHAT MARY ANN SAYS. AND THIS IS
21 CONFIRMED BY THE DOCTOR -- THE DOCTOR'S TESTIMONY OF TWO
22 CHEST WOUNDS.

23 SHE GOES BACK INTO THIS ROOM AND SEES HIM LYING HERE
24 BLEEDING OUT, STILL BREATHING, DOESN'T SEE TAMEKA. AND
25 THEN SHE DOES THE RIGHT THING. SHE CALLS 9-1-1 ALMOST

1 IMMEDIATELY. ALMOST IMMEDIATELY THEREAFTER.

2 I HATE TO DO IT. I HATE TO PUT YOU THROUGH THIS
3 AGAIN, BUT I'M GOING TO PLAY THIS TAPE AGAIN SO YOU CAN
4 UNDERSTAND THE CIRCUMSTANCES AND FACTS.

5 AND WHAT I WANT TO CALL YOUR PARTICULAR ATTENTION TO
6 IN THIS TAPE -- I WANT YOU TO HEAR THE NUMBER OF TIMES THE
7 SHOOTER IS REFERRED TO AS -- I KNOW HIS NAME. I KNOW WHERE
8 HE LIVE. I KNOW WHERE THEY LIVE. SHE KNOWS WHO HE IS.
9 SHE CAN TELL YOU. AND THEN HOW MANY TIMES SHE CALLS --
10 TAMEKA CALLS HIS FULL NAME, JAMES KEON SPANN. JAMES KEON
11 SPANN. AND YOU CAN HEAR HER VOICE TREMBLING AND SHE SAYS
12 SHE'S SCARED. I'M SCARED. I'VE GOT BLOOD ON ME OR I'M
13 BLEEDING. I'M SCARED.

14 NOBODY ELSE THERE. NOBODY ELSE THERE BUT MARY ANN
15 LOVELY AND TAMEKA WILSON. NOBODY'S TELLING THEM WHAT TO
16 SAY. THEY'RE TELLING IT AS IT HAPPENED.

17 (9-1-1 TAPE PLAYED IN OPEN COURT.)

18 MR. GENTRY: HOW MANY TIMES? THAT'S WHO WAS HIS GIRL
19 FRIEND FOR 5 YEARS. 5 YEARS. JUST RECENTLY BROKEN UP.
20 AND YOU RECALL ALL THAT MARY ANN SAYS, SHE WAS A LITTLE BIT
21 APPREHENSIVE ABOUT THAT AND ASKED TAMEKA WAS THERE GOING TO
22 BE ANY PROBLEM?

23 OBVIOUSLY, THERE WAS. OBVIOUSLY, THERE WAS.

24 YOU'RE GOING TO HAVE THE EXHIBITS TO GO BACK. NO. 1
25 IS THE PICTURE OF LINDSEY LOVELY, IDENTIFIED BY HIS MOTHER

1 AND BY DR. ROSS.

2 2 IS THE SKETCH OF THE TRAILER THAT WAS MADE BY MS.

3 HALLMAN FROM SLED AND IDENTIFIED ALSO BY MS. LOVELY.

4 EXHIBIT 4 IS A PICTURE OF THE FRONT. AND IT WILL SHOW

5 YOU, IT WILL GIVE YOU A GOOD IDEA OF HOW BIG THAT FRONT

6 PORCH IS AT THAT HOUSE. IT WILL ALSO SHOW YOU THE DOOR AND

7 THE FACT THE LIGHT WAS ON AT THE TIME.

8 EXHIBIT 5 IS THE FRONT DOOR. IT SHOWS THE PEEP HOLE,

9 RIGHT AROUND THE KNOCKER. IT'S HARD TO SEE. MS. LOVELY

10 SAID THAT WAS THE PEEP HOLE SHE LOOKED THROUGH.

11 NO. 6 ARE THE PICTURES OF THE TWO DOOR LOCKS, BOTH THE

12 DEADBOLT AND THE REGULAR BOLT. AND YOU CAN JUST MAKE OUT A

13 SMUDGED AREA TO THE LEFT HERE. YOU RECALL MS. HALLMAN SAID

14 THEY TRIED TO DO A JELL LIFT ON THAT AREA AS WELL AS DO

15 FINGERPRINTS, BUT THEY COULDN'T FIND ANYTHING.

16 NO. 7 IS THE SIDE VIEW OF THE LOCKS.

17 NO. 8 SHOWS THE VERY TOP WHERE THAT DEADBOLT WAS

18 ENGAGED AND WHERE SOMEBODY OBVIOUSLY KICKED IT IN BECAUSE

19 THAT TOP -- I DON'T EVEN KNOW WHAT YOU CALL THAT PART, BUT

20 IT'S OBVIOUSLY DEFORMED. SOMETHING HAD TO BE APPLIED TO IT

21 TO MAKE IT THAT WAY.

22 NO. 9 IS INSIDE LINDSEY LOVELY'S ROOM. INSIDE HIS

23 ROOM. AND YOU'LL SEE NO. 5 AND NO. 6, THOSE ARE WHERE

24 CARTRIDGE CASES WERE FOUND.

25 AND YOU WILL RECALL THE TESTIMONY OF MS. HALLMAN. HAD

1 TO BE A SEMI-AUTOMATIC PISTOL BECAUSE IT WOULD NOT HAVE
2 EJECTED THE CARTRIDGES OTHERWISE -- THE CASES.

3 SO YOU CAN SEE THERE IS A TRAIL OF CARTRIDGE CASES ALL
4 THE WAY DOWN FROM JUST INSIDE THE DOOR, ALL THE WAY INTO
5 THE ROOM.

6 AND NO. 10 IS THE AUTOPSY REPORT FROM DR. ROSS.

7 NO. 2 (SIC) IS A COPY OF THE TAPE. EXCUSE ME, IT'S
8 NO. 3. NO. 3.

9 NOW, YOU KNOW, I CLAPPED MY HANDS JUST A MOMENT AGO TO
10 TRY TO SHOW YOU HOW FAST THINGS HAPPEN. AND I CAN'T JUDGE
11 THAT. THERE'S NO INSTANT REPLAY ON THIS CRIME. THERE'S
12 SIMPLY NO INSTANT REPLAY. WE CAN'T LOOK AT THIS FROM 6
13 DIFFERENT PERSPECTIVES LIKE THEY DO A TOUCHDOWN OR A MISSED
14 PASS OR AN INTERCEPTION OR WHATEVER IT IS IN PRO FOOTBALL.
15 IT HAPPENED. IT HAPPENED RIGHT THEN AND THERE. IT
16 HAPPENED FAST. IT HAPPENED FURIOUS. AND THAT 9-1-1 TAPE
17 IS THE RESULT AND SO WAS THAT.

18 THERE WILL BE PROBABLY SOMETHING MADE OF THE FACT SHE
19 SAYS SHE DIDN'T KNOW HIS NAME. WELL, DID SHE NOT KNOW HIS
20 CHRISTIAN NAME OR DID SHE NOT KNOW HIS STREET NAME? LATER
21 ON SHE TESTIFIED -- MS. LOVELY TESTIFIED SHE KNEW HIM AS
22 DUC. SHE DIDN'T SAY DUC ON THE TAPE. BUT SHE DID SAY
23 TAMEKA KNEW HIM, IT WAS TAMEKA'S EX-BOY FRIEND.

24 AND TAMEKA SAID JAMES KEON SPANN. HOW MANY TIMES?
25 HOW MANY TIMES? MULTIPLE TIMES. SHE HAD BEEN WITH THAT

1 BOY FOR 5 YEARS -- JAMES KEON SPANN FOR 5 YEARS. DON'T YOU
2 THINK SHE KNEW HIM? DON'T YOU THINK SHE KNEW HIM?

3 WHAT -- WE ALL HAVE DIFFERENT WAYS OF KNOWING PEOPLE.
4 THERE MAY BE SOMEBODY ON THE STREET OUTSIDE THAT WE HAVE
5 SEEN FOR YEARS AND THEY CALL THIS PERSON BY A GIVEN NAME.
6 IT MIGHT BE JUNIOR OR PEE DEE OR SMITTY OR DUC. WE DON'T
7 KNOW THEIR CHRISTIAN NAMES. WE DON'T KNOW THE NAME THAT
8 THEIR MOTHER GAVE THEM WHEN THEY WERE BORN, BECAUSE WE
9 AREN'T THAT CLOSE TO THEM. WE JUST SIMPLY KNOW THEM BY THE
10 NAME WE'VE ALWAYS HEARD.

11 BESIDES THIS, WHAT REASON DOES MARY ANN GOT TO LIE IN
12 THIS CASE? NOT A SINGLE ONE. NOT A SINGLE ONE.

13 NOW, HIS HONOR IS GOING TO INSTRUCT YOU AS TO
14 REASONABLE DOUBT. HE'S GOING TO TELL YOU ALL ABOUT THE
15 LEGAL DEFINITIONS OF REASONABLE DOUBT. HE'S GOING TO TELL
16 YOU ABOUT THE DEFINITIONS OF MURDER AND BURGLARY IN THE
17 FIRST DEGREE, AND HE'S GOING TO TELL YOU ABOUT POSSESSION
18 OF A WEAPON DURING A VIOLENT CRIME.

19 BUT I SUBMIT TO YOU THAT THE REAL ISSUE HERE IS NOT
20 WHETHER IT'S A BURGLARY AT NIGHT IN THE FIRST DEGREE,
21 BECAUSE WE KNOW MARY ANN LOVELY'S HOUSE WAS BROKEN INTO AT
22 A FEW MINUTES PAST MIDNIGHT ON APRIL THE 7TH OF 2009. WE
23 KNOW THAT.

24 AND WE KNOW THERE WAS AN INTENT TO COMMIT A CRIME IN
25 THERE BECAUSE WHOEVER IT WAS CAME IN THERE, CAME IN THERE

1 SHOOTING. AND YOU CAN'T BREAK INTO SOMEBODY'S HOUSE
2 SHOOTING AND THAT NOT BE A CRIME. CAN'T DO THAT.

3 SO WE KNOW WHOEVER WENT IN THERE HAD A GUN. AND
4 WE KNOW THAT WHOEVER THAT WAS, WAS TRYING TO COMMIT THE
5 CRIME OF MURDER OR BURGLARY IN THE FIRST DEGREE. WE KNOW
6 THAT.

7 BACK TO THE QUESTION. WHO DID IT? WHO DID IT? JAMES
8 KEON SPANN DID THIS. HE DID IT.

9 YOU'RE GOING TO BE THE CONSCIENCE OF THE COMMUNITY
10 HERE. YOU'RE GOING TO MAKE YOUR DECISIONS BASED ON ALL THE
11 EVIDENCE YOU HAVE HEARD.

12 WHAT I SUGGEST TO YOU, THAT NO ONE IN THIS COMMUNITY
13 SHOULD BE SUBJECTED TO WHAT MS. LOVELY WAS SUBJECTED TO.
14 AND NOBODY SHOULD BE MURDERED, BUT IT HAPPENS. AND WHEN
15 THAT HAPPENS, IT IS THE DUTY OF THE JURY TO COME BACK WITH
16 A JUST VERDICT BASED UPON THE EVIDENCE.

17 THE JUDGE WILL TELL YOU IF THERE'S A REASONABLE DOUBT.
18 AS TO THESE CRIMES, YOU MUST ACQUIT.

19 WELL, I SUGGEST TO YOU, THERE IS NO REASONABLE DOUBT.
20 ANY DOUBT YOU HAVE WOULD BE CLEARLY UNREASONABLE IN LIGHT
21 OF THE EVIDENCE. SO I URGE YOU TO COME BACK WITH A FINDING
22 OF GUILTY OF ON COUNTS AS CHARGED.

23 THANK YOU.

24 THE COURT: MS. BUTCHER.

25 MS. BUTCHER: THANK YOU, YOUR HONOR.

1 CLOSING ARGUMENTS BY MS. BUTCHER ON BEHALF OF THE
2 DEFENDANT:

3 GOOD AFTERNOON, LADIES AND GENTLEMEN. WHEN I FIRST
4 SPOKE TO YOU, I TOLD YOU AMONG OTHER THINGS HOW EASY IT IS
5 TO POINT A FINGER TO ACCUSE SOMEONE OF A CRIME.

6 I ALSO TOLD YOU THAT THE BURDEN OF PROOF IN ANY
7 CRIMINAL CASE IS ON THE STATE. IN OUR SYSTEM OF JUSTICE,
8 THAT'S A TREMENDOUS BURDEN; THAT'S BECAUSE THE BURDEN THE
9 STATE IS CARRYING IN A CRIMINAL CASE IS BEYOND A REASONABLE
10 DOUBT.

11 THIS IS A VERY HIGH BURDEN. THE REASON IT IS SO HIGH,
12 BECAUSE WE AS CITIZENS VALUE OUR FREEDOM. IT'S THE ONE
13 THING ALL MEN ARE BORN WITH, RICH OR POOR.

14 WHAT DOES REASONABLE DOUBT MEAN? IT'S BEEN DEFINED BY
15 THE UNITED STATES SUPREME COURT IN NEBRASKA VERSUS VICTOR
16 IS THAT WHICH WOULD MAKE A REASONABLE MAN HESITATE TO ACT.

17 I SUBMIT TO YOU THAT IT IS QUITE EASY TO FIND A
18 REASONABLE DOUBT IN THIS CASE. YOU FIND IT IN THE
19 TESTIMONY OF MS. MARY ANN LOVELY. SHE TOLD YOU SEVERAL
20 THINGS WHEN SHE WAS ON THE STAND. SHE TOLD YOU ONE PERSON
21 CAME INTO THAT HOUSE. THE 9-1-1 TAPE SHE SAID, THEY CAME
22 INTO THE HOUSE. SHE TOLD YOU SHE WAS GOOD FRIENDS WITH
23 JAMES SPANN'S FAMILY. THEN SHE TOLD YOU SHE DIDN'T KNOW
24 THEM.

25 WHEN THE SOLICITOR ASKED HER IF WHEN SHE LOOKED OUT OF

1 THAT PEEP HOLE, DID SHE KNOW HIM AS JAMES SPANN OR DUC?

2 SHE SAID JAMES SPANN.

3 SHE CLAIMS SHE RAN DOWN THE HALL SAYING, DUC IS AT THE
4 DOOR AND HE HAS A GUN. THEN SHE CLAIMED SHE COULDN'T
5 REMEMBER HIS NAME WHEN SHE CALLED 9-1-1; THAT'S WHY SHE
6 DIDN'T SAY IT. YET, SHE ALSO CLAIMS SHE HAD JUST SAID IT
7 WHEN SHE RAN DOWN THE HALL.

8 WHEN THE 9-1-1 OPERATOR ASKED HER WHO DID THIS, SHE
9 CLEARLY SAYS, I DON'T KNOW.

10 I COULDN'T REALLY TELL, BUT ON HERE IT DID SAY THAT
11 PRIOR TO THAT IT SOUNDED LIKE SHE MAY HAVE SAID, I KNOW WHO
12 DID IT. SHE MAY HAVE SAID, I DON'T KNOW WHO DID IT. I
13 HONESTLY COULDN'T TELL AND THAT'S FOR YOU ALL TO DECIDE. I
14 DO BELIEVE SHE LOOKED OUT AT SOMEBODY, AND THAT MAY HAVE
15 BEEN WHAT SHE MEANT IF YOU BELIEVE SHE SAYS, I KNOW WHO DID
16 IT, THAT SHE HAD A VISUAL OF HIM. BUT THEN WHEN ASKED WHO,
17 SHE SAYS, I DON'T KNOW.

18 SHE SAYS THIS NOT ONCE, BUT TWICE ON THE TAPE. SHE
19 DIDN'T SAY DUC OR A BOY THEY CALL DUC. SHE SAID, I DON'T
20 KNOW.

21 EVEN TAMEKA WILSON STATES THAT MARY ANN NEVER CALLED
22 DUC'S NAME WHEN SHE CAME DOWN THE HALL OR WHEN SHE ENTERED
23 THE ROOM TO WARN HER SON.

24 TAMEKA WILSON STATED THAT MARY ANN LOVELY NEVER
25 CLAIMED IT COULD BE JAMES SPANN OR DUC UNTIL TAMEKA HERSELF

1 SAID THAT IT WAS AND SHE HAD A FEELING THAT IT WAS HER OLD
2 BOY FRIEND.

3 TAMEKA WILSON EVEN TOLD YOU THAT MARY ANN LOVELY WAS
4 FEEDING OFF OF HER. AND TAMEKA WILSON TOLD YOU SHE WAS
5 HYSTERICAL.

6 I HAVE NO DOUBT EVERYTHING WAS VERY CONFUSING THAT
7 NIGHT, EVEN MARY ANN LOVELY. SHE JUST HAD GONE THROUGH A
8 PARENT'S WORST NIGHTMARE.

9 I HAVE 6 CHILDREN. I CAN'T EVEN IMAGINE HOW SHE FELT
10 THAT NIGHT, NOR WOULD I WANT TO.

11 I SUBMIT TO YOU THAT SHE FINDS COMFORT AND CLOSURE IN
12 PUTTING A NAME TO THE KILLER OF HER SON.

13 THE STATE HAS THE BURDEN OF PROOF, PROVING THAT THE
14 PERSON THEY ACCUSE OF A CRIME IS GUILTY BEYOND A REASONABLE
15 DOUBT. THEY ALSO HAVE THE DUTY TO EVERY CITIZEN TO PRESENT
16 ONLY -- ONLY THE TRUTH.

17 YOU HEARD TAMEKA WILSON TELL YOU HER STATEMENT WAS NOT
18 ACCURATE, BECAUSE THE INVESTIGATOR TOLD HER WHAT TO PUT IN
19 IT. SHE SAID, I TOLD HIM THAT NIGHT I ONLY HAD A FEELING;
20 THAT'S WHY SHE WAS SO FRUSTRATED.

21 EVEN AFTER ALL OF THAT, THE STATE BRINGS HER IN, PUTS
22 HER UP AS A WITNESS, AND ARGUES WITH HER WHILE SHE'S ON THE
23 STAND TRYING STILL TO CONVINCE HER THAT SHE ACTUALLY SAW
24 THE KILLER.

25 NO WONDER SHE WAS SO FRUSTRATED WHEN SHE WAS UP THERE.

1 THEY WERE NOT ABLE TO CONVINCE TAMEKA WILSON, BUT I DO
2 SUBMIT THEY WERE ABLE TO CONVINCE MARY ANN LOVELY. BUT YOU
3 HEARD HOW INCONSISTENT MARY ANN'S OWN STORY WAS.

4 AND I SUBMIT SHE'S NOT LYING. I DON'T THINK SHE'S
5 LYING. I THINK SHE TRULY BELIEVES HER STORY. IT GIVES HER
6 CLOSURE AND IT EASES THE PAIN.

7 I SUBMIT THAT WHAT SHE BELIEVES AND WHAT SHE KNOWS ARE
8 IN CONFLICT; AND THAT'S WHY HER STORY VARIES FROM STATEMENT
9 TO STATEMENT.

10 THE ONLY ACCURATE PICTURE OF WHAT HAPPENED THAT NIGHT
11 IS THE 9-1-1 TAPE BEFORE MARY ANN WAS CONVINCED AND HER
12 MEMORY TAINTED BY TAMEKA WILSON'S FEELINGS AND STATEMENTS,
13 AND THE INVESTIGATOR TOLD TAMEKA WHAT TO WRITE.

14 I DON'T THINK IT'S HARD TO IMAGINE THAT HE ALSO TOLD
15 MARY ANN LOVELY WHAT TO WRITE.

16 ON THE 9-1-1 TAPE IT SAYS VERY CLEARLY, I DON'T KNOW.
17 NOT ONCE, BUT TWICE. IF SHE HAD KNOWN, SHE WOULD HAVE SAID
18 A BOY CALLED DUC.

19 YOU ALSO NEED TO KEEP IN MIND THERE IS NO PHYSICAL
20 EVIDENCE WHATSOEVER IN THIS CASE THAT JAMES SPANN WITH THIS
21 CRIME. YOU HEARD THAT FROM BOTH OF THE EXPERTS. THEY SAID
22 NOTHING THEY'VE SHOWN YOU CONNECTS MR. SPANN TO THIS. NO
23 FINGERPRINTS. DIDN'T FIND THE GUN.

24 THE BIGGEST THING -- WELL, ONE OF THE BIGGEST THINGS I
25 FELT LIKE WAS MISSING, WHY WASN'T THERE A PHOTO LINE-UP?

1 WHY WASN'T THERE A PHOTO LINE-UP WHERE MARY ANN LOVELY
2 COULD HAVE PICKED OUT WHO SHE SAW? IT WOULDN'T HAVE BEEN
3 HARD TO GET A PICTURE. THEY KNEW WHO THEY WERE LOOKING
4 FOR. WHY WASN'T THERE A PHOTO LINE-UP SO SHE COULD HAVE
5 SAID THAT NIGHT, THAT'S THE BOY WHO WAS AT THE DOOR. WE
6 DIDN'T SEE THAT. AT LEAST, ONE WASN'T SUBMITTED.

7 WHERE WERE ELIZABETH AND, I THINK, MONIQUE? THOSE
8 WERE THE OTHER TWO PEOPLE THAT WERE THERE THAT NIGHT. YOU
9 HEARD THE INVESTIGATOR, ONE OF THEM IS IN THIS COURTROOM.
10 WHY DIDN'T WE GET THEIR STORY? DIDN'T HEAR THAT.

11 YOU KNOW, THE INVESTIGATOR DIDN'T EVEN SEEM TO KNOW
12 THE NAMES OF ALL THE PEOPLE WHO WERE THERE.

13 MS. MARY ANN LOVELY TOLD YOU ELIZABETH WAS RIGHT THERE
14 AT THE DOOR WITH HER THAT NIGHT.

15 THE INVESTIGATOR TOLD YOU HE'D NEVER BEEN TOLD
16 ELIZABETH WAS AT THE DOOR. AND I DON'T KNOW IF THAT WAS
17 WHO WAS IN THE COURTROOM OR NOT, I DON'T KNOW.

18 HERE AGAIN, MARY ANN'S STORY DOESN'T MATCH UP WITH THE
19 INVESTIGATOR OR WHOEVER ELSE. HERE HER STORY'S DIFFERENT.
20 OR DID THE INVESTIGATOR KNOW THAT WHILE TAMEKA WILSON'S
21 TESTIMONY -- HE WAS NOT ABLE TO CHANGE THE TESTIMONY OF
22 ELIZABETH OR MONIQUE?

23 I BELIEVE YOU DESERVE TO HAVE HEARD ALL THE TESTIMONY,
24 NOT JUST WHAT THEY FELT WOULD MAKE THEIR CASE.

25 I'M SURE YOU NOTICE THAT THE INVESTIGATOR'S TESTIMONY

1 WHEN HE WAS ON DIRECT WHEN THE SOLICITOR ENDED AFTER HE
2 DESCRIBED THE NIGHT OF THE INCIDENT. I SUBMIT HE BELIEVED
3 HE MADE HIS CASE BASED ON ONE, THE FEELING OF ONE PERSON,
4 THE TESTIMONY OF A DISTRAUGHT MOTHER WHO WAS FEEDING OFF OF
5 TAMEKA'S FEELINGS, AND IN FACT JAMES SPANN DID NOT COME
6 TALK TO HIM.

7 THIS IS NOT EVEN CLOSE TO FULFILLING HIS DUTY TO THE
8 CITIZENS OF LEE COUNTY.

9 A MOTHER HAD LOST HER SON. ANOTHER MAN STANDS TO LOSE
10 HIS FREEDOM. WHAT WAS HE SMILING ABOUT? I SUBMIT, NONE OF
11 THIS WAS VERY SERIOUS TO HIM. HE WOULDN'T EVEN GIVE ME A
12 STRAIGHT ANSWER. HE WAS SMILING THE WHOLE TIME.

13 LADIES AND GENTLEMEN, IF YOU WERE TO FIND MY CLIENT
14 GUILTY AND GO HOME TONIGHT AND LAY YOUR HEAD DOWN TO SLEEP
15 AND YOU HAVE TO WONDER WHETHER OR NOT HE COMMITTED THIS
16 CRIME, THEN YOU HAVE FAILED IN YOUR DUTY AS A JUROR.

17 I TRUST THAT WHEN YOU CONSIDER ALL OF THE EVIDENCE IN
18 THIS CASE AND THE LACK OF EVIDENCE, YOU WILL FIND THAT MR.
19 JAMES SPANN IS NOT GUILTY OF MURDER, BURGLARY, OR
20 POSSESSION OF A WEAPON DURING A VIOLENT CRIME.

21 IF YOU HAVE ANY DOUBTS, GO BACK, JUST TAKE -- ASK FOR
22 TESTIMONY TO BE READ BACK TO YOU. LOOK AT THE EVIDENCE.
23 IF YOU CAN'T REMEMBER THE TESTIMONY, ASK FOR IT TO BE READ
24 BACK. AND I THINK YOU'LL FIND THAT MY CLIENT IS NOT
25 GUILTY.

1 AND I THANK YOU FOR YOUR TIME ON BEHALF OF MY CLIENT.

2 CHARGE OF THE COURT:

3 ALL RIGHT. LADIES AND GENTLEMEN, IF YOU'LL GIVE ME
4 YOUR ATTENTION. YOU'VE HEARD THE EVIDENCE IN THIS CASE AND
5 YOU'VE HEARD THE ARGUMENTS OF BOTH THE STATE AND THE
6 DEFENSE. AND NOW I WILL EXPLAIN TO YOU THE LAW THAT
7 APPLIES TO THIS CASE.

8 UNDER OUR CONSTITUTION AND CODE OF LAWS ONLY THE JURY
9 CAN MAKE A FINDING OF FACTS IN THIS CASE. I AM NOT
10 PERMITTED TO INDICATE TO YOU HOW I MIGHT FEEL ABOUT THE
11 FACTS. SO IF I'VE SAID ANYTHING OR DONE ANYTHING
12 THROUGHOUT THIS TRIAL THAT YOU THINK I HAVE AN OPINION
13 ABOUT THE FACTS, YOU'RE TO DISREGARD THAT BECAUSE UNDER THE
14 LAW I'M NOT ALLOWED TO HAVE AN OPINION ABOUT THE FACTS.

15 YOU AND ONLY YOU MUST INDEPENDENTLY WEIGH THE EVIDENCE
16 IN THIS CASE AND PRESENT A VERDICT THAT SPEAKS THE TRUTH
17 SOLELY ON THE EVIDENCE THAT WAS PRESENTED IN THIS CASE.

18 AND THE SAME CONSTITUTION AND CODE OF LAWS THAT MAKES
19 YOU THE FINDER OF THE FACTS MAKES ME THE FINDER OF THE LAW.
20 SO IF YOU DIFFER, IF YOU THINK THE LAW IS DIFFERENT FROM
21 WHAT I TELL YOU THE LAW IS OR YOU HAVE A DIFFERENT OPINION
22 AS TO WHAT THE LAW OUGHT TO BE, UNDER YOUR OATH THAT YOU
23 HAVE TAKEN AS JURORS, YOU MUST GIVE UP YOUR BELIEF OF WHAT
24 THE LAW IS AND ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS
25 I NOW GIVE IT TO YOU.

1 WHEN I REFER TO THE DEFENDANT, I AM REFERRING TO MR.
2 JAMES SPANN IN THIS CASE. AND THE FACT THE DEFENDANT WAS
3 ARRESTED, CHARGED, AND INDICTED IN THIS CASE IS NOT
4 EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS
5 EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY
6 PRESUMPTION OR INFERENCE OF GUILT.

7 THE INDICTMENT IS SIMPLY A FORMAL, LEGAL INSTRUMENT
8 WHICH CONTAINS THE CHARGES OR CHARGE AGAINST A DEFENDANT.
9 IT SERVES AS THE FORMAL DOCUMENT WHICH BRINGS THIS CASE TO
10 BE PROCESSED THROUGH THE COURT SYSTEM.

11 TO THIS INDICTMENT THE DEFENDANT HAS PLED NOT GUILTY.
12 AND THAT PLEA CAST THE BURDEN UPON THE STATE OF SOUTH
13 CAROLINA TO PROVE EACH AND EVERY ELEMENT BEYOND A
14 REASONABLE DOUBT.

15 A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN
16 SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF OR
17 HERSELF INNOCENT, AND I INSTRUCT YOU AND EMPHASIZE TO YOU
18 THE FACT THAT THE DEFENDANT DID NOT TESTIFY IN THIS CASE IS
19 NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR
20 DELIBERATIONS OR GIVE ANY CONSIDERATION TO IT WHATSOEVER IN
21 THE QUESTION OF GUILT OR INNOCENCE.

22 IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER
23 WHATSOEVER. THE DEFENDANT HAS A CONSTITUTIONAL RIGHT TO
24 REMAIN SILENT. AND THE ASSERTION OF THIS RIGHT MUST NOT BE
25 CONSIDERED BY YOU IN YOUR DELIBERATIONS.

1 I REPEAT, UNDER YOUR OATH, YOU'RE TO DRAW NO
2 CONCLUSIONS WHATSOEVER FROM THE FACT THE DEFENDANT DID NOT
3 TESTIFY.

4 THE FACT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT
5 EVEN BE DISCUSSED IN THE JURY ROOM.

6 IT IS AN IMPORTANT RULE OF LAW OF THIS COUNTRY THAT A
7 DEFENDANT IN A CRIMINAL TRIAL WILL ALWAYS BE PRESUMED
8 INNOCENT OF THE CRIME FOR WHICH HE OR SHE IS INDICTED
9 UNLESS AND UNTIL HIS GUILT HAS BEEN PROVEN BY EVIDENCE THAT
10 SATISFIES YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

11 THE PRESUMPTION OF INNOCENCE IS NOT A MERE LEGAL
12 THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A
13 SUBSTANTIAL CONSTITUTIONAL RIGHT TO WHICH EVERY DEFENDANT
14 IS ENTITLED.

15 THE PRESUMPTION OF INNOCENCE ACCOMPANIES THE DEFENDANT
16 FROM THE TIME HE'S CHARGED, THROUGHOUT THE TRIAL, AND UNTIL
17 YOU REACH A VERDICT OF GUILT BASED UPON THE EVIDENCE THAT
18 SATISFIES YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

19 A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST,
20 SINCERE, CONTENTIOUS JUROR IN SEARCH OF THE TRUTH TO
21 HESITATE TO ACT.

22 PROOF BEYOND A REASONABLE DOUBT MUST THEREFORE BE
23 PROOF OF SUCH A CONVINCING CHARACTER THAT A PERSON, A
24 REASONABLE PERSON WOULD NOT HESITATE TO RELY AND ACT UPON
25 IT IN THE MOST IMPORTANT OF HIS OR HER OWN AFFAIRS.

1 PROOF BEYOND A REASONABLE DOUBT CAN ALSO BE DESCRIBED
2 AS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE
3 DEFENDANT'S GUILT.

4 THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW
5 WITH ABSOLUTE CERTAINTY. AND IN A CRIMINAL CASE THE LAW
6 DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT.
7 IF BASED UPON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE
8 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME
9 CHARGED, YOU MUST FIND HIM GUILTY.

10 IF ON THE OTHER HAND YOU THINK THERE IS A REAL
11 POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE
12 BENEFIT OF THAT DOUBT AND FIND HIM NOT GUILTY.

13 IN DETERMINING THE FACTS IN THIS CASE, YOU MUST
14 NECESSARILY PASS UPON THE CREDIBILITY, WHICH SIMPLY MEANS
15 THE BELIEVABILITY OF THE WITNESSES, AND THE WEIGHT AND
16 VALUE TO BE GIVEN TO THEIR TESTIMONY.

17 IN MAKING THIS DECISION, THERE ARE MANY THINGS THAT
18 YOU MAY CONSIDER AND TAKE INTO CONSIDERATION, SUCH AS THE
19 APPEARANCE AND THE MANNER OF THE WITNESS ON THE STAND,
20 SOMETIMES REFERRED TO AS THE DEMEANOR OF THE WITNESS. WAS
21 THE WITNESS FORTHRIGHT OR HESITANT? WAS THE WITNESS'
22 TESTIMONY CONSISTENT OR DID IT CONTAIN DISCREPANCIES? WHAT
23 WAS THE ABILITY OF THE WITNESS TO KNOW THE FACTS ABOUT
24 WHICH HE OR SHE TESTIFIED? DID THE WITNESS HAVE CAUSE OR
25 REASON TO BE BIASED AND PREJUDICED IN FAVOR OF THE

1 TESTIMONY HE OR SHE GAVE? WAS THE TESTIMONY OF THE WITNESS
2 CORROBORATED OR MADE STRONGER BY OTHER EVIDENCE AND
3 TESTIMONY OR WAS IT MADE WEAKER OR IMPEACHED BY OTHER
4 EVIDENCE AND TESTIMONY?

5 I INSTRUCT YOU THAT UNDER THE RULES OF EVIDENCE
6 ORDINARILY WITNESSES ARE NOT PERMITTED TO TESTIFY TO
7 OPINIONS OR CONCLUSIONS. AN EXCEPTION OF THIS RULE EXISTS
8 FOR WITNESSES WE CALL EXPERT WITNESSES. A WITNESS WHO BY
9 EDUCATION AND EXPERIENCE BECOME AN EXPERT IN SOME ART,
10 SCIENCE, PROFESSION, OR CALLING MAY STATE AN OPINION AS TO
11 RELEVANT AND MATERIAL MATTERS IN WHICH THE WITNESSES CLAIMS
12 TO BE AN EXPERT. THEY MAY ALSO GIVE THE REASON FOR THAT
13 OPINION.

14 YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN
15 EVIDENCE IN THIS CASE LIKE ANY OTHER EVIDENCE. GIVE IT THE
16 WEIGHT YOU THINK IT DESERVES.

17 IF YOU DECIDE AN OPINION OF AN EXPERT IS NOT BASED ON
18 SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU CONCLUDE
19 THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT
20 SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE,
21 YOU MAY DISREGARD THE OPINION IN ITS ENTIRETY.

22 AN EXPERT WITNESS' TESTIMONY IS TO BE GIVEN NO GREATER
23 WEIGHT THAN THAT OF ANY OTHER WITNESS SIMPLY BECAUSE THE
24 WITNESS IS AN EXPERT.

25 FURTHER, YOU'RE NOT REQUIRED TO ACCEPT AN EXPERT'S

1 OPINION EVEN THOUGH IT IS NOT CONTRADICTED.

2 NOW, JURORS, YOU HAVE A RIGHT TO BELIEVE A SMALL
3 PORTION OF THE WITNESS' TESTIMONY AND DISREGARD THE LARGER
4 OR VISA VERSA.

5 YOU MAY BELIEVE ALL OF A WITNESS' TESTIMONY OR NONE.

6 YOU MAY BELIEVE THE TESTIMONY OF A SINGLE WITNESS
7 AGAINST THAT OF MANY, OR THE OTHER WAY AROUND.

8 NOW, CRIMINAL INTENT IS A NECESSARY ELEMENT OF EACH
9 CRIME AND MUST BE PROVEN BEYOND A REASONABLE DOUBT.
10 CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED
11 BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE
12 SITUATION.

13 THERE'S NO WAY TO PROVE TO A MATHEMATICAL CERTAINTY
14 CRIMINAL INTENT. THERE'S NO WAY MEDICAL SCIENCE CAN
15 DISSECT A PERSON'S BRAIN AND DETERMINE WHAT HE OR SHE HAD
16 IN MIND. SO THE LAW STATES THAT CRIMINAL INTENT MAY BE
17 INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED BOTH
18 BEFORE AND AFTER THE FACT. THIS IS HOW YOU THE JURY MAKE A
19 DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING
20 INTENT WAS PRESENT.

21 CRIMINAL INTENT IS A STATE OF MIND THAT OPERATES
22 JOINTLY WITH AN ACT OR OMISSION IN THE COMMISSION OF A
23 CRIME.

24 CRIMINAL INTENT IS A MENTAL STATE OF CONSCIOUS
25 WRONGDOING. SO IT IS UP TO YOU THE JURY TO DETERMINE WHAT

1 THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES
2 SHOWN TO HAVE EXISTED.

3 AND I TELL YOU THAT CRIMINAL INTENT MUST BE PROVEN
4 BEYOND A REASONABLE DOUBT, JUST AS EVERY ELEMENT MUST BE
5 PROVEN BEYOND A REASONABLE DOUBT BY THE STATE.

6 THERE ARE TWO TYPES OF EVIDENCE THAT ARE GENERALLY
7 PRESENTED DURING THE TRIAL: DIRECT EVIDENCE AND
8 CIRCUMSTANTIAL EVIDENCE.

9 DIRECT EVIDENCE IS TESTIMONY OF A PERSON WHO ASSERTS
10 OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF SUCH A FACT, SUCH AS
11 AN EYEWITNESS.

12 CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS
13 AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. I'LL
14 GIVE YOU AN EXAMPLE. WHILE WE'RE IN HERE TRYING THIS CASE
15 AND EVERYBODY IS PAYING ATTENTION TO WHAT'S GOING ON IN
16 THIS COURTROOM AND NOT LOOKING OUTSIDE. WHEN WE CAME IN
17 THIS COURTROOM AFTER LUNCH, THE GROUND WAS DRY, THE SUN WAS
18 SHINING, EVERYTHING WAS PRETTY OUTSIDE. WHEN WE GO OUT AT
19 THE END OF THE DAY, IF THE GROUND IS COVERED IN WATER, THEN
20 YOU CAN ASSUME THAT SOME TIME DURING THE TRIAL THIS
21 AFTERNOON IT RAINED OUTSIDE.

22 IF YOU SAW IT RAIN, THAT'S DIRECT EVIDENCE.

23 BUT THE FACT WE GO OUTSIDE AND THE GROUND IS COVERED
24 IN WATER, THAT'S CIRCUMSTANTIAL EVIDENCE THAT IT RAINED
25 WHILE WE WERE IN THE TRIAL OF THIS CASE.

1 AND THE LAW MAKES ABSOLUTELY NO DISTINCTION OR WEIGHT
2 TO BE GIVEN BETWEEN DIRECT EVIDENCE AND CIRCUMSTANTIAL
3 EVIDENCE.

4 YOU ARE TO WEIGH ALL OF THE EVIDENCE IN THIS CASE, AND
5 YOU MUST BE CONVINCED BEYOND A REASONABLE DOUBT OF THE
6 DEFENDANT'S GUILT.

7 NOW, THE DEFENDANT IS CHARGED WITH MURDER. THE STATE
8 MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT
9 KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT.

10 MALICE IS HATRED, IL-WILL, OR HOSTILITY TOWARD ANOTHER
11 PERSON. IT IS THE INTENTIONAL DOING OF A WRONGFUL ACT
12 WITHOUT JUST CAUSE OR EXCUSE AND WITH THE INTENT TO INFLECT
13 AN INJURY OR CAUSE CIRCUMSTANCES UNDER THE LAW INFERRED TO
14 AS EVIL INTENT.

15 MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXIST
16 FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT
17 MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE
18 AND AT THE TIME THE ACT IS COMMITTED. THEREFORE, THERE
19 MUST BE A COMBINATION OF PREVIOUS IL-WILL OR IL-INTENT AND
20 THE ACT.

21 MALICE AFORETHOUGHT MAY BE EXPRESSED OR INFERRED.
22 THESE TERMS EXPRESSED AND INFERRED DO NOT MEAN DIFFERENT
23 KINDS OF MALICE, BUT MERELY THE MANNER IN WHICH MALICE MAY
24 BE SHOWN TO EXIST; THAT IS EITHER BY DIRECT EVIDENCE OR BY
25 INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH WERE

1 PROVEN.

2 EXPRESSED MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS
3 WHICH EXPRESS HATRED OR IL-WILL OR FOR WHEN THE PERSON
4 PREPARES BEFOREHAND TO DO AN ACT WHICH WAS LATER
5 ACCOMPLISHED. FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR
6 ANY OTHER ACT OF PREPARATION GOING TO SHOW THAT THE DEED
7 WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESSED MALICE.

8 MALICE MAY BE INFERRED FROM CONDUCT SHOWING THE TOTAL
9 DISREGARD FOR HUMAN LIFE. INFERRED MALICE MAY ALSO ARISE
10 WHEN THE DEED IS DONE WITH A DEADLY WEAPON. AND A DEADLY
11 WEAPON IS AN ARTICLE OR INSTRUMENT OR SUBSTANCE WHICH MAY
12 CAUSE DEATH OR GREAT BODILY HARM.

13 WHETHER THE INSTRUMENT HAD BEEN USED AS A DEADLY
14 WEAPON DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE.
15 THE FOLLOWING ARE EXAMPLES WHICH MAY BE DEADLY WEAPONS: A
16 PISTOL, A SHOTGUN, A KNIFE, A DIRK, A DAGGER, A SLINGSHOT,
17 METAL KNUCKLES, A RAZOR, GASOLINE, A FIRE BOMB, MOLOTOV
18 COCKTAIL, LIGHTER FLUID. A GUN MAY BE A DEADLY WEAPON EVEN
19 IF IT IS NOT OPERATING.

20 NOW, THE DEFENDANT IS ALSO CHARGED WITH BURGLARY IN
21 THE FIRST DEGREE. THE STATE MUST PROVE BEYOND A REASONABLE
22 DOUBT THAT THE DEFENDANT ENTERED A DWELLING WITHOUT
23 CONSENT.

24 A DWELLING IS ANY BUILDING OR PORTION OF A BUILDING IN
25 WHICH A PERSON ORDINARILY SLEEPS. A BUILDING CONSTRUCTED

1 AS A DWELLING THAT HAS NEVER BEEN OCCUPIED CANNOT BE
2 CONSIDERED A DWELLING FOR THE PURPOSES OF BURGLARY. BUT A
3 BUILDING IS A DWELLING EVEN IF THE RESIDENTS ARE
4 TEMPORARILY ABSENT FROM THE BUILDING.

5 IN ORDER TO PROVE THE DEFENDANT ENTERED THE DWELLING,
6 THE STATE DOES NOT HAVE TO SHOW THAT THE DEFENDANT'S ENTIRE
7 BODY ENTERED THE DWELLING. THE SMALLEST ENTRY IS
8 SUFFICIENT. IT MAY BE ANY PART OF THE BODY, SUCH AS THE
9 HAND OR FOOT, OR EVEN AN INSTRUMENT SUCH AS A HOOK OR OTHER
10 INSTRUMENT.

11 IN ADDITION, THE STATE DOES NOT HAVE TO PROVE THAT
12 FORCE WAS USED TO GAIN ENTRY. IF A PERSON ENTERS A
13 BUILDING BY USING DECEPTION, TRICK, OR MISREPRESENTATION TO
14 GET CONSENT TO ENTER, THIS IS ENTRY WITHOUT CONSENT.

15 NEXT, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT
16 THAT THE DEFENDANT INTENDED TO COMMIT A CRIME, EITHER A
17 FELONY OR A MISDEMEANOR, AT THE TIME OF THE ENTRY.

18 THE MERE ENTRY INTO A DWELLING WITHOUT CONSENT IS NOT
19 BURGLARY. IF THE INTENT TO COMMIT A CRIME IS FORMED AFTER
20 THE ENTRY, IT IS NOT BURGLARY.

21 ON THE OTHER HAND, IF THE DEFENDANT INTENDED TO COMMIT
22 A CRIME AT THE TIME OF THE ENTRY, IT IS BURGLARY EVEN IF
23 THE INTENT WAS ABANDONED AFTER THE ENTRY. IT DOES NOT
24 MATTER THAT THE INTENDED CRIME WAS NOT COMPLETED.

25 INTENT MAY BE SHOWN BY ACTS AND CONDUCTS OF THE

1 DEFENDANT AND OTHER CIRCUMSTANCES FROM WHICH YOU MAY
2 NATURALLY AND REASONABLY INFER INTENT.

3 FINALLY, THE STATE MUST PROVE BEYOND A REASONABLE
4 DOUBT THAT WHEN ENTERING OR WHILE IN THE DWELLING OR WHEN
5 FLEEING, THE DEFENDANT OR ACCOMPLICE WAS ARMED WITH A
6 DEADLY WEAPON OR EXPLOSIVE.

7 A DEADLY WEAPON IS ANY INSTRUMENT OR SUBSTANCE WHICH
8 IS LIKELY TO CAUSE DEATH OR GREAT BODILY HARM.

9 WHETHER AN INSTRUMENT HAS BEEN USED AS A DEADLY WEAPON
10 DEPENDS ON THE FACTS AND CIRCUMSTANCES OF EACH CASE; OR THE
11 STATE MUST PROVE WHEN ENTERING OR WHILE ENTERING A DWELLING
12 OR WHILE FLEEING FROM A DWELLING THE DEFENDANT OR
13 ACCOMPLICE CAUSED PHYSICAL INJURY TO ANYONE NOT
14 PARTICIPATING IN THE CRIME; OR WHEN ENTERING OR WHILE
15 ENTERING THE DWELLING OR WHILE FLEEING FROM THE DWELLING
16 THE DEFENDANT OR AN ACCOMPLICE USED OR THREATENED TO USE A
17 DANGEROUS OBJECT; OR WHEN ENTERING OR WHILE ENTERING A
18 DWELLING OR WHILE FLEEING FROM A DWELLING A DEFENDANT OR
19 AN ACCOMPLICE DISPLAYED WHAT WAS OR APPEARED TO BE A KNIFE,
20 A PISTOL, REVOLVER, RIFLE, SHOTGUN, MACHINE GUN, OR OTHER
21 FIREARM; OR THAT THE DEFENDANT ENTERED OR REMAINED IN THE
22 DWELLING IN THE NIGHTTIME.

23 THE NIGHTTIME IS THE PERIOD BETWEEN SUNSET AND SUNRISE
24 WHICH THERE IS NOT ENOUGH LIGHT TO RECOGNIZE A PERSON'S
25 FACE EXCEPT BY ARTIFICIAL LIGHT OR MOONLIGHT.

1 SO ON BURGLARY FIRST THE STATE MUST PROVE ONE OF THOSE
2 ELEMENTS THAT I JUST GAVE YOU. THEY DID NOT HAVE TO PROVE
3 ALL OF THEM. THEY HAVE TO PROVE THAT ONE OF THOSE ELEMENTS
4 EXISTED -- ONE OF THOSE CIRCUMSTANCES EXISTED TO MAKE IT
5 BURGLARY FIRST.

6 THE DEFENDANT IS ALSO CHARGED WITH POSSESSION OF A
7 WEAPON DURING THE COMMISSION OR ATTEMPT TO COMMIT A VIOLENT
8 CRIME. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT
9 THE DEFENDANT POSSESSED A FIREARM OR VISIBLY DISPLAYED WHAT
10 APPEARED TO BE A FIREARM DURING THE COMMISSION OF A VIOLENT
11 CRIME.

12 A FIREARM MEANS ANY MACHINE GUN, AUTOMATIC RIFLE,
13 REVOLVER, PISTOL, OR ANY WEAPON WHICH WILL OR IS DESIGNED
14 TO OR BE READILY CONVERTED TO EXPEL A PROJECTILE.

15 A KNIFE MEANS AN INSTRUMENT OR TOOL WITH A SHARP
16 CUTTING BLADE WHETHER OR NOT FASTENED TO A HANDLE WHICH CAN
17 BE USED TO INFLICT A CUT, SLASH, OR WOUND.

18 IN ORDER TO FIND THE DEFENDANT GUILTY OF POSSESSION OF
19 A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME, YOU MUST
20 FIRST FIND THE DEFENDANT WAS GUILTY OF COMMITTING A VIOLENT
21 CRIME OR ATTEMPTING TO COMMIT A VIOLENT CRIME. AND I
22 INSTRUCT YOU THAT THE CRIMES OF MURDER AND/OR BURGLARY ARE
23 BOTH VIOLENT CRIMES.

24 NOW, LADIES AND GENTLEMEN, YOU ARE NOT PARTISANS OF
25 THE STATE OF SOUTH CAROLINA OR THIS DEFENDANT. YOU DON'T

1 SERVE AS JURORS TO REWARD YOUR FRIENDS OR PUNISH YOUR
2 ENEMIES. OBVIOUSLY, THAT PERVERTED SYSTEM OF JUSTICE
3 WOULDN'T BE TOLERATED.

4 YOU HAVE BEEN SELECTED BY BOTH THE STATE AND THIS
5 DEFENDANT AS FAIR AND IMPARTIAL JURORS. IT IS YOUR DUTY
6 THEN BY YOUR JOINT DELIBERATION TO DETERMINE THE TRUTH IN
7 THIS CASE, GIVING TO THIS DEFENDANT THE BENEFIT OF EVERY
8 REASONABLE DOUBT ON EACH AND EVERY ISSUE. AND THEN TO THE
9 FACTS WHICH YOU DETERMINE TO BE TRUE, YOU SHOULD TAKE AND
10 APPLY THE LAW WHICH I HAVE GIVEN YOU AND ARRIVE AT A
11 VERDICT WHICH SPEAKS THE TRUTH IN THIS CASE.

12 AND WHEN YOU HAVE ACCOMPLISHED THIS, YOU WOULD HAVE
13 SATISFIED YOUR OATH AND RESPONSIBILITY AS JURORS AND
14 DISCHARGED YOUR DUTIES TO THIS COURT.

15 NOW, MR. FOREMAN, I'VE HAD MY LAW CLERK PREPARE A
16 VERDICT FORM IN THIS CASE. AND IT'S SIMPLY THE CAPTION OF
17 THE CASE AND THE CASE NUMBER AT THE TOP. AND THEN IT SAYS:
18 JURY VERDICT. AND THEN IT HAS THE POSSIBLE OPTIONS THAT
19 YOU ALL HAVE. IN THE ORDER THAT IT PUT THESE IN, YOU
20 SHOULD MAKE NO INFERENCE FROM AT ALL. WE SIMPLY HAD TO PUT
21 THEM IN SOME ORDER.

22 THE FIRST OPTION IS: WE THE JURY UNANIMOUSLY FIND THE
23 DEFENDANT JAMES KEON SPANN GUILTY OF MURDER OR NOT GUILTY
24 OF MURDER.

25 NUMBER TWO: WE THE JURY UNANIMOUSLY FIND THE

1 DEFENDANT JAMES KEON SPANN GUILTY OF BURGLARY IN THE FIRST
2 DEGREE OR NOT GUILTY OF BURGLARY IN THE FIRST DEGREE.

3 NUMBER THREE: WE THE JURY UNANIMOUSLY FIND THE
4 DEFENDANT JAMES KEON SPANN GUILTY OF POSSESSION OF A WEAPON
5 DURING THE COMMISSION OF A VIOLENT CRIME OR NOT GUILTY OF
6 POSSESSION OF A WEAPON DURING A VIOLENT CRIME.

7 WHEN YOU ALL HAVE REACHED A VERDICT, WHEN IT'S A
8 UNANIMOUS VERDICT, THEN YOU ARE TO CHECK THE APPROPRIATE
9 BOX THAT YOU ALL HAVE REACHED, SIGN YOUR NAME TO THE BACK,
10 DATE IT, AND KNOCK ON THE DOOR, AND WE'LL BRING YOU OUT AND
11 RECEIVE YOUR VERDICT.

12 NOW, BASED ON YOUR DELIBERATION IF YOU FIND THE
13 DEFENDANT NOT GUILTY OF ONE AND/OR TWO, YOU'RE NOT TO GO TO
14 THREE, BECAUSE HE COULD NOT BE GUILTY OF POSSESSION OF A
15 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME IF HE'S NOT
16 GUILTY OF A VIOLENT CRIME. SO IF YOU FIND HIM NOT GUILTY
17 OF MURDER AND NOT GUILTY OF BURGLARY, THEN YOU'RE NOT EVEN
18 TO GO TO THREE.

19 BUT IF YOU FIND HIM GUILTY OF ONE OR BOTH OF THE TWO
20 COUNTS, THEN YOU CAN CONSIDER THREE, WHETHER HE POSSESSED A
21 WEAPON DURING THE COMMISSION OF A VIOLENT CRIME.

22 NOW, I'M GOING TO SEND YOU BACK TO THE JURY ROOM IN A
23 MINUTE. BUT I HAVE TO TALK TO THE LAWYERS, TO BE SURE I
24 HAVEN'T LEFT ANYTHING OUT OF THE CHARGE. IF I'VE LEFT
25 SOMETHING OUT, I'LL BRING YOU BACK OUT AND RECHARGE YOU.

1 IF I HAVE NOT LEFT ANYTHING OUT, THEN I WILL SEND THIS
2 VERDICT FORM IN TO THE JURY ROOM ALONG WITH THE EVIDENCE.
3 WHEN YOU GET THAT, THAT WILL BE YOUR TIME TO BEGIN YOUR
4 DELIBERATION.

5 NOW, WHILE YOU'RE DELIBERATING IF ANY OF YOU HAVE TO
6 BE EXCUSED, IF YOU GET UP AND GO TO THE REST ROOM OR LEAVE
7 THAT ROOM, YOU'VE GOT TO STOP YOUR DELIBERATION. AND YOU
8 CAN'T TALK ABOUT THIS CASE UNTIL ALL 12 OF YOU ARE IN THE
9 ROOM. SO IF SOMEBODY HAS TO BE EXCUSED, JUST STOP TALKING
10 ABOUT IT. WHEN THEY COME BACK, CONTINUE YOUR DELIBERATION
11 UNTIL YOU REACH A VERDICT.

12 AND I INSTRUCT YOU, YOUR VERDICT MUST BE UNANIMOUS,
13 WHICH MEANS ALL 12 OF YOU MUST AGREE. AND THEN YOU WILL
14 SIGN THE VERDICT FORM AND KNOCK ON THE DOOR AND WE'LL BRING
15 YOU BACK OUT AND RECEIVE THAT VERDICT.

16 MR. ALTERNATE, YOU NEED TO STAY WITH ME. EVERYBODY
17 ELSE CAN GO TO THE JURY ROOM. AND I'LL EITHER SEND THE
18 STUFF IN FOR YOU TO BEGIN YOUR DELIBERATION OR I'LL BRING
19 YOU BACK OUT AND ADD SOME MORE TO MY CHARGE.

20 (THE JURY RETIRES TO THE JURY ROOM AT 2:05 P.M.)

21 THE COURT: ANY EXCEPTION OR DELETION ON BEHALF OF THE
22 STATE?

23 MR. GENTRY: NO, SIR.

24 THE COURT: ON BEHALF OF THE DEFENSE?

25 MS. BUTCHER: NONE, YOUR HONOR.

1 THE COURT: OKAY. IF YOU ALL GET -- BOTH ATTORNEYS
2 CHECK WITH THE COURT REPORTER TO BE SURE ALL THE EVIDENCE
3 IS TOGETHER AND WE'LL SEND IT IN.

4 (THE ALTERNATE JUROR WAS EXCUSED.)

5 (THE EXHIBITS AND VERDICT FORM WERE SENT TO THE JURY
6 TO BEGIN DELIBERATIONS AT 2:07 P.M.)

7 THE COURT: WE'LL BE IN RECESS ABOUT 10 MINUTES.

8 (COURT IS AT EASE AWAITING A VERDICT OF THE JURY.)

9 THE COURT: LADIES AND GENTLEMEN, I UNDERSTAND WE HAVE
10 A VERDICT. NONE OF US KNOW WHAT THAT VERDICT IS. I
11 UNDERSTAND THAT THIS HAS BEEN AN EMOTIONAL CASE FOR A LOT
12 OF PEOPLE. IF YOU DO NOT THINK YOU CAN CONTROL YOURSELF
13 WHEN THAT VERDICT IS READ, YOU NEED TO LEAVE NOW, BECAUSE I
14 WON'T HAVE ANY OUTBURSTS IN THIS COURTROOM. SO IF YOU
15 CAN'T HANDLE YOURSELF, YOU NEED TO GET UP AND LEAVE NOW.

16 ALL RIGHT. BRING ME THE JURY.

17 (THE JURY RETURNS TO THE COURTROOM AT 2:56 P.M.)

18 THE COURT: MR. FOREMAN, HAVE YOU ALL REACHED A
19 VERDICT?

20 FOREMAN: YES, WE HAVE, YOUR HONOR.

21 THE COURT: IS IT A UNANIMOUS VERDICT?

22 FOREMAN: YES, IT IS, YOUR HONOR.

23 THE COURT: ALL RIGHT. IF YOU WILL PASS IT UP PLEASE,
24 SIR.

25 (PAUSE.)

1 THE COURT: ALL RIGHT. YOU MAY PUBLISH THE VERDICT:

2 VERDICT OF THE JURY:

3 CLERK: STATE OF SOUTH CAROLINA VERSUS JAMES KEON

4 SPANN. WE THE JURY UNANIMOUSLY FIND THE DEFENDANT JAMES
5 KEON SPANN GUILTY OF MURDER.

6 WE THE JURY UNANIMOUSLY FIND THE DEFENDANT JAMES KEON
7 SPANN GUILTY OF BURGLARY IN THE FIRST DEGREE.

8 AND WE THE JURY UNANIMOUSLY FIND THE DEFENDANT JAMES
9 KEON SPANN GUILTY OF POSSESSION OF A WEAPON DURING A
10 VIOLENT CRIME.

11 THE COURT: ANYTHING FURTHER FROM THE STATE?

12 MS. BUTCHER: I WOULD LIKE THEM POLLED.

13 MR. GENTRY: NOTHING, SIR.

14 THE COURT: DEFENSE?

15 MS. BUTCHER: POLL THE JURY PLEASE, YOUR HONOR.

16 THE COURT: ALL RIGHT. MADAM CLERK, IF YOU'LL POLL
17 THE JURY.

18 CLERK: JUROR NO. 1, RUTH GILFORD, PLEASE STAND. IS
19 THIS YOUR VERDICT AND STILL YOUR VERDICT?

20 JUROR: YES.

21 CLERK: JUROR NO. 2, FREDDIE CLYBURN. IS THIS YOUR
22 VERDICT AND STILL YOUR VERDICT?

23 JUROR: YES, MA'AM.

24 CLERK: JUROR NO. 3, CHRISTOPHER HICKMAN. IS THIS
25 YOUR VERDICT AND STILL YOUR VERDICT?

1 JUROR: YES, MA'AM.
2 CLERK: JUROR NO. 4, PATRICIA SLATER. IS THIS YOUR
3 VERDICT AND STILL YOUR VERDICT?
4 JUROR: YES.
5 CLERK: JUROR NO. 5, PORTIA SMITH. IS THIS YOUR
6 VERDICT AND STILL YOUR VERDICT?
7 JUROR: YES, IT IS.
8 CLERK: JUROR NO. 6, JOSHUA BAKER. IS THIS YOUR
9 VERDICT AND STILL YOUR VERDICT?
10 JUROR: YES.
11 CLERK: JUROR NO. 7, ARTHUR MCCLAIN. IS THIS YOUR
12 VERDICT AND STILL YOUR VERDICT?
13 JUROR: YES.
14 CLERK: JUROR NO. 8, REBECCA HAYDEN. IS THIS YOUR
15 VERDICT AND STILL YOUR VERDICT?
16 JUROR: YES.
17 CLERK: JUROR NO. 9, FELICIA WILLIAMS. IS THIS YOUR
18 VERDICT AND STILL YOUR VERDICT?
19 JUROR: YES.
20 CLERK: JUROR NO. 10, ELTON BEASLEY. IS THIS YOUR
21 VERDICT AND STILL YOUR VERDICT?
22 JUROR: YES, IT IS.
23 CLERK: JUROR NO. 11, GLORIA MOSES. IS THIS YOUR
24 VERDICT AND STILL YOUR VERDICT?
25 JUROR: YES.

1 CLERK: JUROR NO. 12, SUSAN FARMER. IS THIS YOUR
2 VERDICT AND STILL YOUR VERDICT?

3 JUROR: YES, IT IS.

4 CLERK: YOU MAY BE SEATED.

5 THE COURT: ANYTHING FURTHER AS FAR AS THE JURY IS
6 CONCERNED?

7 MS. BUTCHER: NO, YOUR HONOR.

8 (THE JURY WAS EXCUSED.)

9 THE COURT: ANYTHING ELSE? ANY REASON WHY WE
10 SHOULDN'T PASS SENTENCE THIS AFTERNOON?

11 MR. GENTRY: YES, SIR. I'M PREPARED.

12 THE COURT: OKAY.

13 MS. BUTCHER: YOUR HONOR, I WOULD LIKE TO MAKE A
14 MOTION FOR A NEW TRIAL.

15 THE COURT: OKAY.

16 MS. BUTCHER: I BELIEVE THE STATEMENTS OF THE
17 INVESTIGATOR WERE PREJUDICIAL UNDER 403. I BELIEVE THEY
18 SHOULD NOT HAVE COME IN. HIS ONLY DEFENSE WOULD HAVE BEEN
19 TO BRING OUT THAT HE WAS WANTED UNDER A BENCH WARRANT. AND
20 THAT WOULD VIOLATE HIS FIFTH AMENDMENT RIGHT, YOUR HONOR.

21 THE COURT: OKAY. AND I RESPECTFULLY DENY. I THINK
22 THE JURY MADE THEIR DECISIONS. THERE'S SUFFICIENT EVIDENCE
23 IN THIS RECORD TO SUPPORT THAT. I DO NOT FEEL THAT
24 INTRODUCTION OF THAT EVIDENCE WAS MORE PREJUDICIAL THAN
25 PROBATIVE OR VIOLATED 403.

1 MS. BUTCHER: THANK YOU.

2 THE COURT: OKAY. ALL RIGHT. DO YOU WANT TO COME
3 AROUND?

4 MR. GENTRY: YES, SIR. COULD I HAVE 3 OR 4 MINUTES?
5 (PAUSE.)

6 THE COURT: ALL RIGHT. YES, SIR. ANYTHING ELSE THE
7 STATE WANTS TO TELL ME?

8 MR. GENTRY: YES, SIR. MR. SPANN WAS ARRESTED ON 8/04
9 2000 CHARGED WITH ARMED ROBBERY, SUBSEQUENTLY CONVICTED
10 WITH SEVERAL OTHER CHARGES IN 2002, GIVEN A YOUTHFUL
11 OFFENDER NOT TO EXCEED 6 YEARS. THAT WAS A CONSOLIDATED
12 CHARGE WITH A BURGLARY SECOND DEGREE, 09/29/01. AND ALSO A
13 GRAND LARCENY 10/06 2001. ALL THOSE CHARGES WERE
14 CONSOLIDATED IN TO ONE SENTENCE.

15 HE ALSO HAS A MARIJUANA CHARGE WHICH GOES BACK TO 2/04
16 2002; THAT WAS A MAGISTRATE'S LEVEL OFFENSE.

17 HE HAD A PAROLE REVOCATION IN 4/18 2005.

18 THERE WAS A RECKLESS DRIVING CHARGE AND POSSESSION OF
19 MARIJUANA SECOND OFFENSE IN 2008.

20 AND THERE WAS A PAROLE REVOCATION AGAIN IN 2007 -- I
21 BELIEVE I MENTIONED THAT.

22 THE COURT: WHAT WAS THAT FOR?

23 MR. GENTRY: IT DOESN'T INDICATE WHAT THE REVOCATION
24 WAS FOR, BUT HE WAS BACK TO Y.O.A.

25 AND THAT'S HIS RECORD.

1 THE COURT: SO HE'S GOT AN ARMED ROBBERY CONVICTION.
2 THIS MAKES ---

3 MR. GENTRY: NO, SIR. THE ARMED ROBBERY WAS DROPPED
4 DOWN TO STRONG ARM ROBBERY.

5 THE COURT: OKAY.

6 MR. GENTRY: AND IN CONJUNCTION WITH SEVERAL OTHER
7 CHARGES, WHICH WERE BURGLARY SECOND OFFENSE AND A GRAND
8 LARCENY OFFENSE, FOR WHICH HE RECEIVED A Y.O.A. SENTENCE.
9 HE WAS REVOKED ON THAT.

10 THE COURT: OKAY. ANYTHING ELSE?

11 (PAUSE.)

12 MR. GENTRY: MS. LOVELY WOULD LIKE TO ADDRESS THE
13 COURT.

14 THE COURT: YES, MA'AM.

15 MS. LOVELY: THE ONLY I'D LIKE TO SAY IS MY SON WAS A
16 VERY SPECIAL PERSON. AND HE WAS JUST LIKE MY FATHER. WE
17 ALWAYS DO THINGS TOGETHER.

18 THE COURT: THANK YOU, MA'AM.

19 MR. GENTRY: THE STATE ASKS FOR THE MAXIMUM AUTHORIZED
20 BY LAW BASED UPON THE RECORD AND THE NATURE OF THE
21 OFFENSES.

22 THE COURT: OKAY. YES, MA'AM.

23 MS. BUTCHER: THANK YOU, YOUR HONOR. YOUR HONOR, MR.
24 SPANN IS 26 YEARS OLD. HE HAS HIS GED. HE'S ALSO A
25 STUDENT AT THE AMERICAN SENTINEL UNIVERSITY, STUDYING TO

1 GET HIS DEGREE IN BUSINESS MANAGEMENT. HE ALSO DOES
2 CONSTRUCTION.

3 YOUR HONOR, HE MAINTAINS HIS INNOCENCE IN THIS
4 SITUATION, YOUR HONOR.

5 ALSO, HE HAS THREE YOUNG CHILDREN WITH MS. CARLETTA
6 THOMAS. HIS MOTHER MABLE SPANN IS HERE, AND HIS YOUNGER
7 BROTHER WILLIAM SPANN.

8 YOUR HONOR, EACH OF THESE INDIVIDUALS WOULD LIKE TO
9 SPEAK.

10 I DON'T THINK -- STILL DO NOT THINK THE EVIDENCE
11 WARRANTED THE VERDICT IN THIS CASE, THOUGH I KNOW THAT'S
12 BEEN RESOLVED. AND LIKE I SAY, HE DOES MAINTAIN HIS
13 INNOCENCE, YOUR HONOR.

14 WE WOULD ASK FOR A MINIMUM SENTENCE. LIKE I SAID,
15 HE'S 26 YEARS OLD. AND EVEN THE MINIMUM, HE WOULD BE
16 SUBSTANTIALLY OLDER IF HE WERE TO GET OUT.

17 THE COURT: OKAY. YES.

18 MOTHER: YES -- I DON'T -- I DON'T THINK MY SON DID
19 IT. I DEFINITELY DON'T.

20 THE COURT: I UNDERSTAND. BUT THE JURY HAS SPOKEN.

21 MOTHER: YES.

22 THE COURT: ANYBODY ELSE?

23 (PAUSE.)

24 MS. BUTCHER: YOUR HONOR, MY CLIENT WOULD LIKE TO
25 ADDRESS THE COURT.

1 THE COURT: YES, SIR.

2 MR. SPANN: EXCUSE ME, I WOULD LIKE TO ADDRESS THE
3 COURT. I KNOW I DIDN'T COMMIT THIS CRIME. I DIDN'T KNOW
4 -- KNOW THESE PEOPLE LIVE AT THAT POINT IN TIME. I DIDN'T
5 KNOW THAT UNTIL I GOT A WARRANT.

6 SO, YOU KNOW WHAT I'M SAYING, I UNDERSTAND THAT THE
7 JURY FOUND ME -- FOUND ME GUILTY OF THE CHARGE, BUT ALL IN
8 ALL, I NEVER WAS ON NO PERSON -- PERSONAL LEVEL, DIDN'T
9 KNOW WHERE THESE PEOPLE LIVE AT, DIDN'T KNOW THESE PEOPLE
10 PERSONALLY AT ALL, LIKE.

11 YEAH, I -- I -- I WILL SAY I SAW AND MET THESE PEOPLE
12 IN FEBRUARY OF '08. OTHER THAN THAT, THIS PERSON SAY SHE
13 KNOW ME. THIS PERSON AIN'T NEVER KNOW ME. THIS PERSON
14 FROM MY UNDERSTANDING SAY SOMETHING ABOUT -- TOLD THE
15 SOLICITOR SHE SAW A TATOO ON MY ARM THAT SAY DUC ON THE
16 WRONG ARM, AS A MATTER OF FACT.

17 I MEAN, LIKE I SAY, I UNDERSTAND THAT I BEEN FOUND
18 GUILTY. BUT I KNOW I'M NOT GUILTY OF THIS CHARGE. I KNOW
19 I AIN'T GOING TO STOP TRYING TO FIGHT THE CHARGE UNTIL I
20 COME HOME.

21 THAT'S ALL I'D LIKE TO SAY.

22 THE COURT: ALL RIGHT, SIR. WELL, THE JURY HAS SPOKEN
23 AND THEY FOUND YOU GUILTY OF MURDER. AND THE FACTS OF THIS
24 CASE, CAME TO THE HOUSE, KICKED THE DOOR IN, WENT IN
25 WITHOUT SAYING A WORD AND SHOT A MAN FIVE TIMES.

1 SENTENCE OF THE COURT:

2 SO ON THE CHARGE OF MURDER, THE SENTENCE OF THE COURT
3 IS YOU ARE COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS
4 FOR AND DURING YOUR NATURAL LIFE.

5 ON BURGLARY FIRST, IT'S LIFE IMPRISONMENT, TO RUN
6 CONCURRENT.

7 AND POSSESSION OF A WEAPON DURING A VIOLENT CRIME IS
8 5 YEARS TO RUN CONCURRENT.

9 MS. BUTCHER: THANK YOU, YOUR HONOR.

10 --- END OF TRANSCRIPT OF RECORD ---

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1 I, THE UNDERSIGNED DIANNE A. RUTLEDGE, OFFICIAL COURT
2 REPORTER FOR THE FIFTH JUDICIAL CIRCUIT OF THE STATE OF
3 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
4 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THE RECORD OF THE
5 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
6 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT
7 FOR LEE COUNTY, SOUTH CAROLINA ON THE 30TH AND 31ST DAYS OF
8 MARCH 2010.

9 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
10 COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

11

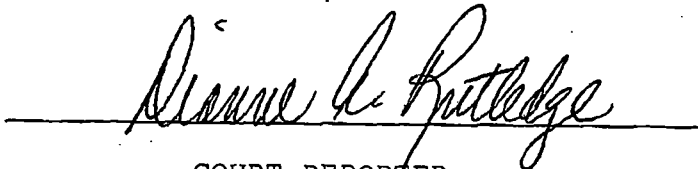
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JULY 28, 2010

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COURT REPORTER

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lee County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES KEION SPANN,

APPELLANT

FINAL BRIEF OF APPELLANT

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Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

Did the trial court err in admitting Investigator Benny Webb's testimony of his telephone conversation with Spann which was unfairly prejudicial in violation of Rule 403, SCRE, where the investigator told Spann he needed to talk to him, and Spann said he would turn himself in but wanted to see his kids first which made Spann appear to be guilty when Spann was referring to the outstanding bench warrants for his parole violation, and the investigator was referring to the murder?

STATEMENT OF THE CASE

On June 11, 2009, the Lee County Grand Jury indicted James Keion Spann on the charges of murder, burglary first degree, and possession of a firearm during a crime of violence. On March 30 – 31, 2010, Spann proceeded to trial before the Honorable R. Ferrell Cothran, Jr., and a jury. He was represented by Deborah Butcher, and the state was represented by John Gentry, Assistant Solicitor. The jury returned verdicts of guilty on all charges as indicted. Judge Cothran sentenced Spann to life without parole (LWOP), on the murder; LWOP on the burglary first degree, and five years on the possession of a firearm during a crime of violence. Spann's attorney filed a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in admitting Investigator Benny Webb's testimony of his telephone conversation with Spann which was unfairly prejudicial in violation of Rule 403, SCRE, where the investigator told Spann he needed to talk to him, and Spann said he would turn himself in but wanted to see his kids first which made Spann appear to be guilty when Spann was referring to the outstanding bench warrants for his parole violation, and the investigator was referring to the murder.

James Spann and Tameka Wilson were in a romantic relationship for approximately five years. At the time of this incident on April 7, 2009, Spann and Wilson had recently ended the relationship, and Wilson began seeing Lindsey Lovely. R. 50, ll. 12 – 25; R. 51, ll. 1 – 25; R. 52, ll. 1 – 25; R. 29, ll. 1 – 25.

On April 7, 2009, Wilson was spending the night at Lovely's house which was a trailer that he shared with his mother and disabled brother. R. 24, ll. 20 – 25; R. 25, ll. 1 – 25. Around midnight, Ms. Mary Ann Lovely, Lindsay's mother, heard a knock at the door.

When she looked through the peep hole, her testimony was that she saw the boy "Duc" whom she later learned was Spann's nickname as she did not know his real name but only knew him as "Duc." She heard a gun click. She then ran down the hall yelling to Lindsey that the boy had a gun. She ran to her disabled son's room to protect him as she did not know what was going to happen. R. 19 – R. 21 R. 24, ll. 1 – 25; R. 25, ll. 1 – 25.

The door flew open and gunshots started. When it was over, Ms. Lovely found her son, Lindsey, lying in the floor with two bullets in his chest and blood gushing from his side. She called 911. Ms. Lovely and Tameka talked with 911. R. 25, ll. 22 – 25; R. 26, ll. 1 – 25; R. 27, ll. 1 – 25.

Tameka Wilson testified that she and Lindsey were in his room when his mother came to the door saying she heard a gun being cocked at the door. She and Lindsey began to dress and ran towards the door when the door was kicked in, and gunshots were fired. R. 45, ll. 11 – 25; R. 46, ll. 1 – 25; R. 47, ll. 1 – 25.

Tameka gave a statement to police that she believed the shooter was her ex-boyfriend, James Spann, because they had been through problems before they broke up, and had been in an altercation. At trial, however, she testified that she was not sure who the shooter was as she never saw the person. R. 47, ll. 1 – 25; R. 49, ll. 1 – 25; R. 50, ll. 1 – 25.

The pathologist testified that Lindsey Lovely had five gunshots in his body, but only one shot was fatal. That shot pierced his lung, heart, and liver, and he died from bleeding out. R. 14, ll. 1 – 25.

In a pretrial motion, defense counsel asked the trial judge to suppress the testimony of Investigator Benny Webb that concerned his telephone conversation with Spann where the investigator called Spann and told him they needed to talk. Spann told Investigator Webb that he wanted to see his kids again, and then he would turn himself in. However, the investigator did not tell Spann about the murder. R. 2 ll. 17 – 25; R. 3, ll. 1.

Defense counsel argued that Spann was out on parole, and that was what Spann was talking about. Counsel argued that the statement could easily be taken out of context, and therefore was highly prejudicial. R. 3, ll. 1 – 25. Counsel said a reasonable jury would believe he was guilty once he said he wanted to see his kids again as it sounded as though he knew he was going to be locked up for a crime. R. 5, ll. 1 – 25.

Counsel said that in order to cross examine the investigator about Spann's statement, she would have to bring in Spann's prior convictions which would also be highly

prejudicial. In addition, there were no notes written about the statement. R. 3, ll. 1 – 25; R. 4, ll. 1 – 25. Counsel told the judge that Spann knew he had a bench warrant out for him because he had not been reporting for YOA parole. The judge ruled that at that point, the statement would be admitted, but he would research and make a ruling later. R. 6, ll. 1 – 25; R. 7, ll. 1 – 25.

Before Investigator Webb testified, defense counsel asked the judge for a ruling on her motion to suppress the testimony concerning the statement Spann made to the investigator on the telephone. The judge ruled that Miranda did not apply as Spann was not in custody. He said he did not think it was more prejudicial than probative. Defense counsel explained again that the statement was not written. The judge ruled after arguments that the statement was admissible as it was not more prejudicial than probative. R. 61 – R. 67.

During the trial Investigator Benny Webb testified that once Spann was developed as a suspect, he obtained Spann's cell number from Spann's mother and called Spann. Investigator Webb's testimony was that he told Spann he needed to talk to him about "some things that took place." Spann asked what they were, but Investigator Webb did not tell him because he was trying to get Spann to come in. R. 69 – 72; R. 84, ll. 1 – 25.

Investigator Webb said he talked to Spann about an hour and told him "all the magic stuff that you tell people, trying to gain their confidence." R. 72, ll. 1 – 5. The investigator said that Spann told him he would turn himself in, but he wanted to see his children first. Defense counsel objected at that point which the judge overruled. R. 72, ll. 6 – 24.

On cross examination, Investigator Webb admitted there was no physical evidence connecting Spann to the incident. R. 78, ll. 1 – 25.

At the close of the state's case, defense counsel moved for a directed verdict which the judge denied. Counsel renewed her objection to Investigator Webb's testimony about Spann's statement to him. The judge told her that her objection was preserved. R. 102, ll. 1 – 25; R. 103, ll. 1 – 25.

At the end of the trial, defense counsel made a motion for a new trial based on the prejudice under Rule 403, SCRE, of the investigator's testimony about Spann's statements to him. R. 136, ll. 1 – 25.

Rule 403, SCRE, provides:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

The admission or exclusion of testimonial evidence falls within the sound discretion of the trial court, whose decision will not be disturbed on appeal absent abuse resulting in prejudice. State v. Holder, 382 S.C. 278, 676 S.E.2d 690 (2009). Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis. State v. Elders, 386 S.C. 474, 688 S.E.2d 857 (Ct. App. 2010); citing State v. Gilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998).

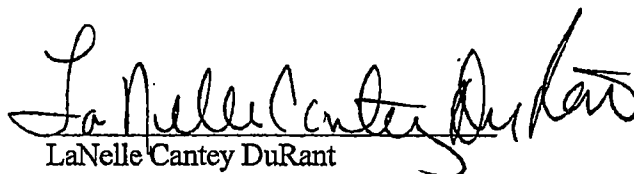
The trial judge should have suppressed Investigator Webb's testimony regarding Spann's statement to him as it was unfairly prejudicial. The investigator said he did not tell Spann he was a suspect in a murder case. Spann's statement would cause a reasonable jury to think that this was an admission of guilt when Spann was referring to the bench warrants issued for him. Spann was also prejudiced because defense counsel could not question the

investigator without harming her own client because Spann's prior convictions would have to come in order to explain Spann's statement.

CONCLUSION

Based on the above, Spann's convictions and sentences should be reversed, and the case remanded for a new trial.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of August, 2011.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lee County

R. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

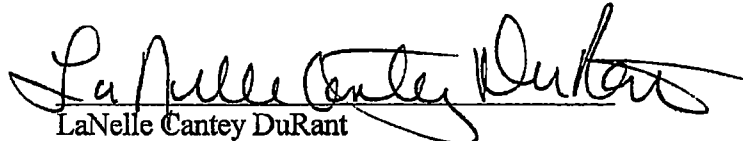
V.

JAMES KEION SPANN,

APPELLANT

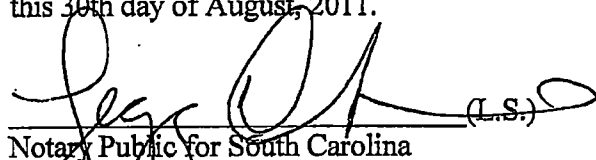
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 30th day of August, 2011.


LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of August, 2011.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal From Lee County
The Honorable H. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

JAMES KEON SPANN,

Appellant.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

Did the trial court err in admitting Investigator Webb's testimony of his telephone conversation with Spann which was unfairly prejudicial in violation of Rule 403, SCRE, where the investigator told Spann he needed to talk to him, and Spann said he would turn himself in but wanted to see his kids first which made Spann appear to be guilty when Spann was referring to the outstanding bench warrants for his parole violations, and the investigator was referring to the murder?

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge abuse his discretion by allowing the State to introduce Spann's statement to Investigator Webb, in response to Investigator Webb's request to speak to Spann "about some things that took place tonight," that he would turn himself in but that he wanted to go see his children first, where this evidence was relevant to showing his efforts to elude arrest by lying about his then-current location and whether he would speak to police, Spann did not object to the remaining portions of the State's evidence of his flight from capture, and the probative value of the challenged evidence was not substantially outweighed by its prejudicial effect?

STATEMENT OF THE CASE

Appellant, James Keon Spann (Spann) is currently confined in the Lee Correctional Institution of the South Carolina Department of Corrections. The Lee County Grand Jury indicted Spann in June 2009 for murder, burglary in the first degree and possession of a weapon during a crime of violence. (09-GS-31-73). The charges arose from the shooting death of Lindsay Lovely on April 7, 2009. Deborah J. Butcher, Esquire, represented him in the trial court.

On March 30-31, 2010, Spann received a jury trial before the Honorable H. Ferrell Cothran, Jr. The jury convicted him of all three charges. Judge Cothran imposed a sentence of life imprisonment for murder and concurrent sentences of life imprisonment for burglary in the first degree and five years imprisonment for possession of a weapon during a crime of violence.

A timely notice of appeal was served and filed. This appeal follows.

ARGUMENT

The trial judge did not abuse his discretion by allowing the State to introduce Spann's statement to Investigator Webb, in response to Investigator Webb's request to speak to Spann "about some things that took place tonight," that he would turn himself in but that he wanted to go see his children first, where this evidence was relevant to showing his efforts to elude arrest by lying about his then-current location and whether he would speak to police, Spann did not object to the remaining portions of the State's evidence of his flight from capture, and the probative value of the challenged evidence was not substantially outweighed by its prejudicial effect.

Appellant Spann argues that the trial judge erred by allowing the State to introduce Spann's statement to Investigator Webb, in response to Investigator Webb's request to speak to Spann "about some things that took place tonight," that he would turn himself in but that he wanted to go see his children first. He contends that the probative value of this statement was substantially outweighed by its prejudicial effect, under Rule 403, SCRE, since the evidence created an inference of his guilt for murder but it supposedly did not reflect his alleged subjective intent in making the statement: his anticipation that he would be arrested for outstanding bench warrants for violating his parole on Y.O.A. sentences. Respondent submits that this argument is without merit and that the trial judge properly exercised his discretion because this evidence was relevant to showing his efforts to elude arrest by lying about his then-current location and whether he would speak to police, Spann did not object to the remaining portions of the State's evidence of his flight from capture, and the probative value of the challenged evidence was not substantially outweighed by its prejudicial effect.

A. How issue developed at trial.

1. Spann's pretrial motion to suppress.

Spann's counsel moved pretrial to suppress the testimony of a statement that Spann made to an officer in a telephone conversation. Allegedly, the officer did not tell Spann that "there was a murder. He said something about a brawl down at a bar, and [Spann] said, well, I want to see my kids again, then I'll turn myself in.[']" R. p. 2, l. 16-p. 3, l. 1. Counsel argued that Spann's statement

"could be taken out of context" because he was out on parole at the time and he knew that if police suspected him of a crime, he would "be bumped off of parole and thrown back in jail." R. p. 3, ll. 2-6.

Counsel asserted that "to offer that statement, . . . is highly prejudicial, to be taken out of context, is pure speculation on the part of the officer as to what he meant by that." Counsel stressed that "the big thing . . . is the officer . . . didn't tell him that he'd been named in a murder." Also, she noted that the officer's notes did not reflect that Spann had been advised of the murder charge. R. p. 3, ll. 7-19.

In response, the State observed that any evidence it presented would be prejudicial to the defendant. However, there was no need for a *Jackson v. Denno*, 378 U.S. 368 (1964), hearing, since Spann was not in custody. Rather, this was a phone call during the investigation. R. p. 3, l. 25-p. 4, l. 4.

Defense counsel contended that adequate cross-examination of the officer would require her to elicit Spann's prior convictions and discover whether the officer knew that custody on this charge would violate his parole. When the trial judge noted that she would potentially "open the door" to evidence of Spann's prior convictions, counsel stated that this was her point. She could not fully question the witness about Spann's statement without eliciting the other convictions because the was reason for him to make the statement, other than his guilt of murder. R. p. 4, ll. 6-21.

The trial judge, however, asked how she "ma[d]e that leap." He correctly noted that "the fact he's on parole or probation . . . doesn't mean he's not going to get to see his kids again unless he's committed another crime." The trial judge also observed that Spann was not speaking to his parole officer. Although counsel pointed out that the officer never told Spann that he was being investigated for murder, she conceded that there was no such notice requirement. R. p. 4, l. 22-p. 5, l. 8.

In response to counsel's assertion that the introduction of the statement would cause "a reasonable jury to believe he's guilty because he knows he's going to be locked up for the crime," the Solicitor stated that "an accusation by a law enforcement officer," alone, does not result in parole revocation. Rather, facts and circumstances would have to justify revocation. Also, the trial judge observed that "the jury is going to know he was locked up because the officer will testify he was arrested. A jury understands that when you're charged with a crime, they arrest you, and lock you up." **R. p. 5, ll. 10-21.**

Counsel agreed that if Spann had said that "I know I killed him, but I want to see my kids before I turn myself in," the State would properly be allowed to introduce the statement but she argued that Spann was not referencing the murder and "[h]e didn't even know about the murder." Also, the officer did not inform him of the murder. Rather, the officer supposedly told him that he was being investigated for a brawl at a bar. Spann knew that he was going back to jail if he was arrested on the charge stemming from the brawl. **R. p. 6, ll. 1-13.**

The trial judge stated that he understood that counsel was arguing that the statement was more prejudicial than probative. However, he indicated that "at this point I can't tell that. Now, maybe during the testimony I may change my mind. But it appears at this point that statement comes in." Trial counsel indicated that Spann told her that he made the statement because he knew that there were outstanding bench warrants for not reporting to his parole officer. The trial judge stated that he would research the issue over the lunch break and let the parties know his ruling. **R. p. 6, l. 14-p. 7, l. 15.**

2. Renewal of his suppression motion.

Immediately before Inv. Webb testified, Spann's attorney again broached the motion to suppress. Once again, she asserted that Spann's statement to Inv. Webb was "more prejudicial than

probative because of the context of it" because Spann was unaware of the murder when he made the statement. **R. p. 59, ll. 22-24; p. 60, ll. 15-19.** The trial judge, again, noted that the statement did not appear to be more prejudicial than probative "at this point." However, he did not know to what the officer would testify and he told counsel that she could "make your objections at that time. He further observed that the statement "let me see my children first" did not, on its face, appear to be more prejudicial than probative and he observed that this statement "could mean anything." **R. p. 59, l. 25-p. 60, l. 10; p. 60, l. 20-p. 61, l. 3.**

In response to the trial judge's inquiry, the State explained that the statement "he would turn himself in, but he wanted to see his children" had not been transcribed and that it was the only statement made by Spann. Also, the officer had told Spann that the officer wanted to talk to him, there was no arrest warrant at that time and the officer was not going to arrest him. The Assistant Solicitor stated that "I think that the parents of the defendant knew that the officer was looking for him and I believe they knew in what connection. But the officer never told this defendant he was about to be arrested." **R. p. 61, ll. 5-18; p. 62, l. 3-p. 63, l. 2.**

Trial counsel indicated that Spann told the officer that he had outstanding bench warrants for his arrest. She explained that he had received a Y.O.A. probationary sentence and the bench warrants related to that. Therefore, the statement at issue would be misleading because it was made as the result of the warrants and as admission of guilt to the murder. When the trial judge noted that this was not what the officer would testify to, counsel admitted that this was what Span had told her. **R. p. 63, ll. 4-25.**

However, counsel reiterated her contention that, if the statement was introduced, it would be impossible for her to explain what Spann had meant by this statement without introducing evidence of the other crimes. Counsel also represented that Spann told her that the officer had said that he

wanted to talk with Spann about a brawl at a bar, but that this was a pretext to talk to him. R. p. 64, ll. 1-18.

The State indicated that the officer would not testify about a brawl. Rather, he obtained Spann's cell phone number from Spann's number. The officer called Spann in an effort to locate him. During a long conversation, while officers attempted to get a search warrant for Spann's location, Spann made the statement that "I'll turn myself in but first I want to see the children. The officer did not know anything about either a brawl or the bench warrants. R. p. 64, l. 19-p. 65, l. 10.

Trial counsel reiterated that the problem was that the officer did not know why Spann said that he would turn himself in and she noted that the officer did not ask him to do so. The trial judge stated that he did not know why Spann made the statement, but he observed that "many people think that when the police want to talk to you, you turn yourself in to the police." Thus, he did not think that the statement was "necessarily more prejudicial than probative." R. p. 65, ll. 11- 21.

At that point, counsel claimed that "if that's the case, I believe it should have been reduced to writing and given to me prior to right now, [immediately before the State put] the officer on the stand." When pressed by the trial judge about the accuracy of this representation, however, she eventually admitted that this had been disclosed the previous day in chambers. Also, when the Assistant Solicitor pointed out that it was actually disclosed in an earlier e-mail and said that he would locate that e-mail in his file, counsel admitted that she had received an e-mail but claimed that "I don't recall." R. p. 65, l. 22-p. 66, l. 24.

The trial judge ruled that the statement was admissible. He found that the statement was not more prejudicial than probative. R. p. 66, l. 25-p. 67, l. 3.

3. Inv. Webb's testimony.

In part, Benny Webb testified that on April 6-7, 2009, he was a criminal investigator with the

Lee County Sheriff's Office.¹ In the early morning hours of April 7, 2009, he went to the Lee County residence of Mary Ann Lovely, where the victim, Lindsay Lovely (her son), had been shot.² After conducting a preliminary investigation at the scene and taking statements from the persons who were in the home when the shooting occurred, the Sheriff's Office developed the name of "Duc" as a potential suspect. Further investigation revealed that Duc was Spann. **R. p. 67, l. 12-p. 70, l. 13.**

Inv. Webb's understanding was that Spann lived in Sumter, but that "his parents lived in the St. Charles area." So, he called Spann's mother, and told her that he needed to speak to Spann. When he asked if Spann was there, the mother said he was not. However, she provided Spann's cell phone number to Inv. Webb. After several unanswered calls, Spann eventually answered the phone and Inv. Webb had a lengthy but "very pleasant conversation" with him. **R. p. 70, l. 15-p. 71, l. 16.**

Inv. Webb told Spann that "I want to talk to you about some *things that took place tonight*." **R. p. 71, ll. 19-21** (emphasis added). Although Inv. Webb did not tell Spann the specifics that he wanted to discuss because he thought this might cause Spann not to surrender, he tried for an hour to persuade Spann to surrender and talk to him. "So eventually he told me that I will turn myself in, but I want to see my children." **R. p. 71, l. 22-p. 72, l. 7.**

However, Spann did not voluntarily turn himself in that night or at any point before his arrest. In their conversation, Spann had claimed that he was then at his parents' house. Unbeknownst to him, Inv. Webb had sent two officers to that house and Inv. Webb was on a different phone with one of the officers while he was talking to Spann. When those officers informed Inv. Webb that they had reached the residence of Spann's family, "all of a sudden the phone hung up, they went to the house,

¹ He had only recently retired from the Sheriff's Office. **R. p. 67, ll. 17-19.**

² Emergency personnel had taken the victim to the hospital and Inv. Webb passed the ambulance on his way to Ms. Lovely's residence. **Supp. R. p. 2, ll. 10-24.**

and he as not there.” He was finally arrested, by the Sumter County Sheriff’s Department, two or three weeks later. **R. p. 72, l. 12-p. 73, l. 7.**

4. Spann’s renewed motions.

Spann renewed his objection to introduction of his statement at the close of all evidence and he moved for a new trial based on the trial judge’s ruling. Both motions were denied. **R. p. 103, l. 7-15; p. 136, ll. 13-25.**

B. Discussion.

Respondent submits that there was no error. “The admission or exclusion of evidence is a matter within the sound discretion of the trial court and absent clear abuse, will not be disturbed on appeal.” *Gambell v. Int’l. Paper Realty Corp.*, 323 S.C. 367, 373, 474 S.E.2d 438, 441 (1996). To warrant reversal, an Appellant “must show both the error of the ruling and resulting prejudice.” *Recco Paper & Label Co. v. Barfield*, 312 S.C. 214, 216, 439 S.E.2d 838, 840 (1994); *State v. Hamilton*, 344 S.C. 344, 353, 543 S.E.2d 586, 591 (Ct. App. 2001). Relevant evidence is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; *State v. Shuler*, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003); *State v. Martin*, 347 S.C. 522, 533, 556 S.E.2d 706, 712 (Ct. App. 2001).

“Unfair prejudice means an undue tendency to suggest a decision on an improper basis.” *State v. Owens*, 346 S.C. 637, 666, 552 S.E.2d 745, 760 (2001), *overruled on other grounds*, *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). “An appellate court reviews Rule 403 rulings pursuant to an abuse of discretion standard and gives great deference to the trial court.” *Lee v. Bunch*,

373 S.C. 654, 658, 647 S.E.2d 197, 199 (2007). "A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances." *State v. Adams*, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App.2003). *See also State v. Holland*, 385 S.C. 159, 171-72, 682 S.E.2d 898, 904 (Ct.App.2009) (this Court gives "great deference to the trial court's judgment" under Rule 403 and that the "trial court's determination should be reversed only in exceptional circumstances").

In the present case, Spann has not shown an abuse of discretion under Rule 403. To constitute "unfair prejudice" under Rule 403, there must be "an undue tendency to suggest a decision on an improper basis," *Owens*, 346 S.C. at 666, 552 S.E.2d at 760, but there was none in this case. Spann continues to claim on appeal that Inv. Webb's testimony was prejudicial because it permitted jurors to infer guilt for murder when he, supposedly, had a different, and undisclosed, subjective intent in making the statement: his anticipation that he would be arrested for outstanding bench warrants for violating his parole on Y.O.A. sentences.

Although his admission did permit, in itself, an inference of guilt for murder, his motion to suppress ignores the obvious: the challenged portion of Inv. Webb's testimony was not being offered to prove the truth of the matter asserted - *i.e.*, that he would turn himself in after he saw his children - because he never voluntarily surrendered. Rather, it was offered merely part of the State's evidence showing of Spann's efforts to elude capture. Any suggestion that the State relied upon Spann's statement to establish guilt, apart from the remaining portions of Inv. Webb's testimony, simply ignores the record.

As this Court explained in *State v. Walker*, 366 S.C. 643, 654-55, 623 S.E.2d 122, 127-28 (Ct.App. 2005): relief.

Flight from prosecution is admissible as evidence of guilt. *State v. Crawford*, 362

S.C. 627, 608 S.E.2d 886 (Ct.App.2005); *State v. Pagan*, 357 S.C. 132, 591 S.E.2d 646 (Ct.App.2004), cert. granted (Oct. 5, 2005)[, reversed, 369 S.C. 201, 631 S.E.2d 262 (2006) (finding testimony not admissible as evidence of flight)]; *State v. Al-Amin*, 353 S.C. 405, 578 S.E.2d 32 (Ct.App.2003); see also *State v. Ballenger*, 322 S.C. 196, 200, 470 S.E.2d 851, 854 (1996) (stating flight is "at least some evidence" of defendant's guilt); *State v. Freely*, 105 S.C. 243, 89 S.E. 643 (1916) (declaring the flight of one charged with crime has always been held to be some evidence tending to prove fault). Likewise, evidence of flight has been held to comprise proof and signify evidence of defendant's guilty knowledge and intent. See *State v. Beckham*, 334 S.C. 302, 513 S.E.2d 606 (1999); *Town of Hartsville v. Munger*, 93 S.C. 527, 77 S.E. 219 (1913); *Pagan*, 357 S.C. 132, 591 S.E.2d 646; *State v. Brownlee*, 318 S.C. 34, 455 S.E.2d 704 (Ct.App.1995); see also *State v. Thompson*, 278 S.C. 1, 292 S.E.2d 581 (1982) (finding evidence of flight admissible to show guilty knowledge, intent, and that defendant sought to avoid apprehension), overruled on other grounds by *State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); *State v. Grant*, 275 S.C. 404, 407, 272 S.E.2d 169, 171 (1980) ("[A]ttempts to run away have always been regarded as some evidence of guilty knowledge and intent.") (internal quotation marks omitted); *State v. Davis*, 354 S.C. 348, 580 S.E.2d 778 (Ct.App.2003) (noting that circumstances of defendant's flight from police after the attempted traffic stop allowed reasonable inference of guilty conduct). Unexplained flight is admissible as indicating consciousness of guilt, for it is not as likely that one who is blameless and conscious of that fact would flee. See *Crawford*, 362 S.C. at 635, 608 S.E.2d at 890; *State v. Williams*, 350 S.C. 172, 564 S.E.2d 688 (Ct.App.2002).

Flight or evasion of arrest is an issue for the jury to consider. See *Beckham*, 334 S.C. at 315, 513 S.E.2d at 612; *State v. Turnage*, 107 S.C. 473, 93 S.E. 182 (1917). "In South Carolina, we recognize that evidence of flight [is] proper. We also recognize that it is oftentimes appropriate for counsel to argue to the jury the inferences growing out of flight." *State v. Byers*, 277 S.C. 176, 177-78, 284 S.E.2d 360, 361 (1981) (internal quotations omitted); see also *Grant*, 275 S.C. at 408, 272 S.E.2d at 171 (stating that while a jury charge on flight as evidence of guilt is improper, admission of evidence and argument by counsel concerning it are allowed). The critical factor to the admissibility of evidence of flight is whether the totality of the evidence creates an inference that the defendant had knowledge that he was being sought by the authorities. *Beckham*, 334 S.C. at 315, 513 S.E.2d at 612; *Crawford*, 362 S.C. at 636, 608 S.E.2d at 891. It is sufficient that circumstances justify an inference that the accused's actions were motivated as a result of his belief that police officers were aware of his wrongdoing and were seeking him for that purpose. *Crawford*, 362 S.C. at 636, 608 S.E.2d at 891.

Spann's statement is very probative on his efforts to avoid arrest, since he unquestionably lied to Inv. Webb about his then-current location, and he never surrendered until the Sumter

authorities apprehended him two or three weeks later. Moreover, his claim of an undisclosed reason for the statement is nothing more than a red herring because, as discussed, Spann's statement was made after Inv. Webb told him that "I want to talk to you about some *things that took place tonight*." R. p. 71, ll. 19-21 (emphasis added). Obviously, the warrants for his probation violation did not occur that night.

Further and to the extent that his statement was truly motivated by fear of arrest on the bench warrants issued for his probation violation, he had the opportunity to testify about the supposedly "real" reason for making the challenged comment. He failed to exercise this constitutional right and he cannot complain on appeal. See *Fitzpatrick v. United States*, 178 U.S. 304, 315 (1990) ("While no inference of guilt can be drawn from [the defendant's] refusal to avail himself of the privilege of testifying, he has no right to set forth to the jury all the facts which tend in his favor without laying himself open to cross-examination upon those facts"); cf. *Brown v. United States*, 356 U.S. 148, 154-55 (1958) (when a defendant takes the stand in his own behalf, he does so as any other witness, and may be cross-examined as to the facts in issue and for the purpose of impeaching his credibility).

Finally, Respondent submits that any plausible error in introduction of Spann's statement that he would turn himself in but he wanted to see his children first was harmless beyond a reasonable doubt. "Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial." *State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991); see also *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result"). Here, Spann cannot show how the supposed error effected the result of his trial for several reasons. First and as

discussed, the statement was not offered because the prosecution wanted the jury to accept it as truthful. Instead, it was part of a strong proof of his efforts to avoid prosecution for a murder he committed only hours earlier. Second, the prosecution did not make any reference to Spann's statement, whatsoever, in closing argument. **R. pp. 104-12.**

Third, there was overwhelming evidence of guilt, apart from Spann's statement to Inv. Webb. In addition to evidence that he lied to Inv. Webb about his then current whereabouts, the victim's mother provided an eyewitness account of how Spann, whom she only knew by the street name "Duc," knocked on her door shortly after midnight on April 7th and, when Mrs. Lovely looked through the peephole, she saw Spann loading his weapon. She also testified about her efforts to warn her son, the victim, who was in bed with Tameka Wilson; his response to her warning; her efforts to take her other, developmentally disabled son to safety; and how Spann kicked her front door in, broke both a lock and a deadbolt, entered her home and she heard him repeatedly shoot the victim. She likewise testified that she called 911 and identified the perpetrator as "Duc." Wilson, Spann's former girlfriend for more than five years and the source of Spann's rage, was present and participated in the 911 call.³ **R. p. 19, l. 7-p. 21, l. 15; p. 23, ll. 9-p. 30, l. 18; State's Ex. 3.**

On direct examination, she identified Spann at least three times as the person whom she had seen that morning. **R. p. 21, ll 3-15; p. 25, l. 2-p. p. 26, l. 2; p. 27, ll. 17-18.** In spite of Spann's decision to challenge her identification of him, she did not waiver on cross-examination and she repeatedly identified him time and again. *See* **R. p. 31, l. 5-p. 42, l. 21.** Also, her description of the shooting was circumstantially corroborated by the areas where various shell casings were located, and the testimony of the SLED crime scene reconstructionist. One was found just inside the

³ Mrs. Lovely had previously asked Wilson whether Wilson's prior relationship with Spann might cause a problem, but Wilson assured her that it would not. **R. p. 28, l. 20-p. 29, l. 13.**

doorway, other shell casings were found in the hallway leading to the victim's bedroom and two were found in his bedroom. **R. p. 85, l.14-Supp. R. p. 1, l. 16; p. 91, l. 1-p. 96, l. 11; State's Exs. 5-9.**

The State also presented Tameka Wilson, Spann's former girlfriend. Wilson testified that she had dated Spann for roughly five years "on and off" but that they were not dating at the time of the shooting. **R. p. 50, ll. 20-21; p. 51, l. 19-p. 44, l. 24.**

Wilson testified that she was staying at the Lovely's house with Lindsay on the morning of the 7th, when Mrs. Lovely came into the room and said that she had heard a gun being cocked at the door. Lindsay, who was wearing his shorts, got up to investigate; and Wilson followed him. She heard the door being kicked in and the perpetrator say "where they at." (Sic). Although she claimed that she did not know who had said this, she testified that she "believe[d]" that Spann had said it, since they had recently broken up and had an "altercation." She then heard the shots and the victim fell back on her. She also testified that she never saw the shooter. **R. p. 45, l. 12-p. 50, l. 11.**

Unfortunately, Wilson had not been as forthcoming with the truth about the events of April 7th as she had prior to trial, apparently because of her continued affection for Spann. The State impeached her with evidence that she visited Spann while he was housed at Lee Correctional Institution (**R. p. 50, l. 25-p. 51, l. 6**); and that, despite her supposed uncertainty about whether or not she had heard Spann's voice, she had dated him for over five years and was obviously familiar with his voice. **R. p. 52, l. 25-p. 53, l. 9.** The State also impeached her with a recording of the 911 call (**State's Ex. 3**) and her statement to law enforcement. In the statement, she said she had heard Spann ask, "where they at" (sic), but she claimed that her statement said what the officers told her to say. **R. p. 48, ll. 13-p. 49, l. 17.** However, she identified her voice on the 911 call and she reluctantly admitted that she had identified Spann as the shooter at least four times during the call. **R. p. 53, l.**

10-p. 54, l. 15.

In light of this evidence, the introduction of Spann's statement that he would turn himself in but wanted to see his children first was harmless because it could not reasonably have affected the result of the trial." *Sherard*, 303 S.C. at 175, 399 S.E.2d at 596.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

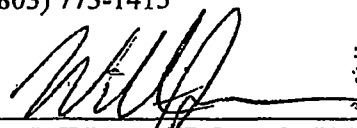
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By: 

WILLIAM EDGAR SALTER, III
ATTORNEYS FOR RESPONDENT

September 6, 2011.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Lee County
The Honorable H. Ferrell Cothran, Jr., Circuit Court Judge

THE STATE,

Respondent,

vs.

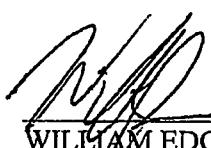
JAMES KEON SPANN,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 6th day of September, 2011.


WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

ATTORNEY FOR RESPONDENT

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal From Lee County
The Honorable H. Ferrell Cothran, Jr., Circuit Court Judge**

THE STATE,

Respondent,

vs.

JAMES KEON SPANN,

Appellant.

CERTIFICATE OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via United States mail, first class, postage prepaid to his attorney of record, LaNelle Cantey DuRant, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, South Carolina 29201.

I further certify that all parties required by Rule to be served have been served.

This 6th day of September, 2011.

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SEP 06 2011

SC Court of Appeals



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

James Keion Spann, Appellant.

Appeal From Lee County
R. Ferrell Cothran, Jr., Circuit Court Judge

Unpublished Opinion No. 2012-UP-207
Submitted March 1, 2012 – Filed March 28, 2012

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of Columbia,
for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, Assistant Deputy Attorney
General Donald J. Zelenka, and Senior Assistant Attorney
General William Edgar Salter, III, all of Columbia; and
Solicitor Ernest A. Finney, III, of Sumter, for Respondent.

PER CURIAM: James Keion Spann appeals his convictions of murder, first-degree burglary, and possession of a weapon during a violent crime, arguing the trial court erred in admitting his statement because it was unfairly prejudicial as it made him appear guilty, although he was referring to an outstanding bench warrant and not to murder. We affirm [1] pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." (citations omitted)); State v. Martucci, 380 S.C. 232, 251, 669 S.E.2d 598, 608 (Ct. App. 2008) ("Relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice." (citing Rule 403, SCRE)); State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003) (noting the appellate court's obligation to give great deference to the trial court's decision regarding the comparative probative value and prejudicial effect of evidence, a decision which should be reversed only in exceptional circumstances).

AFFIRMED.

WILLIAMS, THOMAS, and LOCKEMY, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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April 13, 2012

REMITTITUR

The Honorable James I. Davis
123 S Main St
PO Box 387
Bishopville, SC 29010-0387

Re: The State v. Spann, James
2009-GS-31-00073

Dear Mr. Davis:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

The exhibits being returned are: State's Exhibit #3 (911 CD), State's Exhibit #5 through 9 (Crime scene photographs). Please sign attached copy of this letter and return to acknowledge receipt of these items.

Sincerely,

Renee S. Johnson
Case Specialist II

VAK
JAK/rj

cc: Appellate Defender Lanelle Canty Durant
Senior Deputy Attorney General William E. Salter, III
Ernest A. Finney, III

Receipt Acknowledgement:

Name: _____ Date: _____

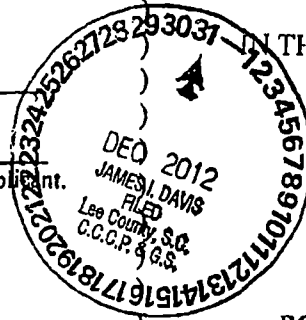
FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF LEEJames Kevin Spann
Full name and prison number (if any) of Applicant.

v.

State of South Carolina



IN THE COURT OF COMMON PLEAS

12 - CP-31-311

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee C.I., Bishopville, S.C.
2. Name and location of Court which imposed sentence Lee County, Bishopville SC
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-31-73; Count 1, murder
 - (b) Count 3, Possession of a weapon during a crime of violence
 - (c) Count 2, Burglary First Degree
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) March 21, 2010; Count 1, Life without parole; Count 2, Life to run concurrent; Count 3, 5 years to run concurrent

SC Attorney General
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Revised 3/2003

JAN - 9 2013

Referred to PCR /dm

Answered _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. The Court of Appeals affirmed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. March 28 2012 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Rule 220(b)(1), SCACR; State v. Pagan, 369 S.C. 201, 208,
- ii. 631 S.E.2d 262, 265 (2006); State v. Martucci, 669 S.E.2d 598,
- iii. 608 (Ct. App. 2008); Rule 403, SCRE; State v. Adema, 580 S.E.2d 785, 794
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) trial court error in admitting unfair and prejudicial testimony
 (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 page 3(a)
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
 (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? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. direct appeal from conviction
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. South Carolina Court of Appeals; Columbia, S.C.
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. Affirmed
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. March 28, 2012
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Rule 220(b)(1), SCACR; State v. Pagan, 631 S.E.2d
- ii. 262 (2006); State v. Martucci, 669 S.E.2d 598 (Ct.
- iii. App. 2008); Rule 403 SCRE; State v. Adams, 580 S.E.2d
- iv. 785 (Ct. App. 2003)
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. trial court error in admitting prejudicial testimony
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. direct appeal to S.C. Court of Appeals
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? 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? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. James P. Saversance, Jr. P.O. Box 610 Bishopville SC 29010
 - ii. Behorah J. Butcher. P.O. Box 610 Camden SC 29021
 - iii. LaNelle Cantey Roberts. P.O. Box 11589 Columbia SC 29111
- (b) the proceedings at which each such attorney represented you:
- i. James P. Saversance Jr at my arraignment
 - ii. Behorah J Butcher at Trial and Sentencing
 - iii. LaNelle Cantey Roberts at on my appeal

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

Att Reliefs: Reversal of convictions and sentences; Remand for new trial

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

No

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 27
day of December, 2012

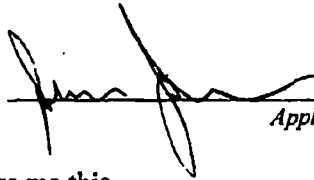
Mamie Wilson (L.S.)
Notary Public

My Commission Expires: 3/8/2020

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

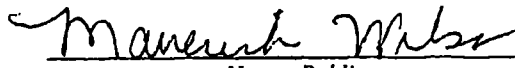
I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this
27 day of December, 2012.



Notary Public

My Commission Expires: 3/8/2020

10.(a)(1) The State Did Not Produce Any Physical Evidence

11.(a)(1) The State failed its statutory requirement to present physical evidence sufficient to establish the offense of murder pursuant to the mandated elements of S.C. Code §16-3-10. In regard to the testimony of Applicant's girlfriend, at the time involved in an illicit affair, there would exist a silent element of common law marriage being violated, especially when... 'the intent isn't intentionally upon the cheater or a desolate bride (enticing).'

10.(a)(2) The Pathologist Reports Did Not State Applicant As The Assailant

11.(a)(2) The Pathologist did not name Applicant as the perpetrator of the alleged offense of murder. In accord with the Rules of Court, the Pathologist/Expert Report, testimony, must corroborate evidence in chief at a trial, pursuant to Rules 801, 802, 803 and 701, 702, 703 under the Rules of Court.

10.(a)(3) The Court Violated Applicant's Rights Under The U.S. Constitution To Be Free From Double Jeopardy

11.(a)(3) The trial court committed error by placing Applicant in double jeopardy by the act of charging Applicant with a violation of S.C. Code §16-3-10 and Code

§16-8-210, which is defined as: possession of a weapon during a violent crime. As Code §16-3-10 includes as an element the use of a weapon, the additional charge of §16-8-210 can be deemed duplicitous, and an infringement of double jeopardy protection. Also in the indictment Applicant is wrongly charged with Code §16-23-440(a), which represents a statutory sentencing enhancement scheme, and does not effectively address or legislate subject matter relating to possession of a weapon. This establishes error in the proceeding regarding the charge and the resulting unconstitutional sentence imposed on Applicant.

10.(a)(4) The State Did Not Present Material Facts Or Supporting Case Law To Establish The Identity Of The Offender

11.(a)(4) The State failed to provide and present any material fact of evidence or supporting case law to prove beyond reasonable doubt the identity of the assailant in the crime charged against Applicant. There exists in the record of the proceeding mere allegations of the identity of the offender, based solely on testimony given as presumption and speculation. In Sumner v. Mata, 455 U.S. 591, 102 S.Ct. 1303, 71 L.Ed.2d 480 (1982), it was determined, "Whether an eye-witness testimony/identification is sufficient is a mixed question of law and fact." Where there is

no law, the law fails in proof. By reason that the law was never given to Applicant, Applicants proceeding was rendered bereft of law. As the Law given by Moses instructs to obey the Father, this Law was given only to the Israelites; see: Exodus, Chapter 20 and Leviticus, Chapter 11. An Israelite wasn't permitted to eat a rabbit because of their dietary laws, but an American can get a conjecture of the method. In Applicants trial the mixed question of law was not solved for the purpose of establishing the elements of murder, and the trial transcript clearly reveals that no conclusion to this mixed question was obtained, as it was never brought to the attention of the jury; *supra*.

10.(a)(5) The Order Of The Lower Court, As Well As The States Return And Answer, Is Not In Compliance With Applicable State Law

11.(a)(5) The lower court/appeal court, to include the motion for a new trial in the Third Judicial Circuit, did not observe or apply correct law to Applicants case. No case law was cited in answer/response to Applicants arguments, and the prevailing rules were not followed as directed in Bruitt v. State, 423 S.E.2d 127 (1992).

10.(a)(6) The Investigators Statement In Applicants Trial Served As An Implied Allegation Of Guilt, Which Prejudiced Applicants Trial Beyond Recovery

11.(a)(6) The Statement given by Investigator Webb at Applicants trial, divulging conversation from the Investigators questioning of Applicant BEFORE Applicant was read his Miranda rights, unfairly prejudiced Applicant before the jury, resulting in a violation of Applicants U.S.C.A. 5th Amendment right to a fair and impartial trial. Applicant was entitled to have an attorney present before being questioned, and the fact that he did not establishes a Miranda violation. The fruit of this poisonous tree infected the jury when the Investigator testified to the conversation before the jury, implying Applicants guilt and thereby tainting the juries perception of Applicants innocence or guilt. Applicants innocuous statement that he would turn himself in but he wanted to see his kids first was harmless on its face, but the State used the statement as a tactical advantage to sway the jury. Because prejudice can be presumed from the response of a reasonable juror, the statement should not have been allowed to be presented to the jury; the statement should have been correctly and properly ruled inadmissible as evidence.

10.(a)(7) Expert Testimony Did Not Prove Identity

11.(a)(7) Expert testimony by the State did not prove the identity of the Offender. Neither testimony nor evidence presented by the State at Applicants trial established proof beyond doubt that Applicant was the shooter, as alleged in the States indictment. As Applicants identity was not proven, Applicant offers the supporting case law of State v. Jones, 681 S.E.2d 580, where it was decided that identity must be proven, that blood SLED tests will not suffice because they are not 100% irrefutable. Also, DNA testing has established two (2) different characteristics; State v. Taylor, 508 S.E.2d 870.

10.(a)(8) Ineffective Assistance Of Trial Counsel

① —

11.(a)(8) Applicants trial counsel was ineffective in all aspects. Counsel failed to subpoena witnesses and experts to establish a defense, rather than relying on the States theory, tests, and investigations. Counsel failed to take the necessary steps to secure independent investigation and present findings from same to the jury. Counsel failed to impeach a critical State witness upon motive to lie because the victim was the witnesses son. The testimony of State witness Mary Ann Lovely, as to what she allegedly saw, should have been challenged by Applicants counsel.

Counsel failed to timely and properly move for a mistrial based on a prejudiced, biased jury when it became known to counsel that juror Christopher Hickman had a brother, Andre Hickman, who was romantically involved with the victims mother, Mary Ann Lonely; see EXHIBIT #1, where Cassey Morgan wrote a statement that she saw Andre Hickman and Mary Ann Lonely kissing and being affectionate at local social clubs in Bishopville. This revelation goes to character evidence, stands to introduce and show possible prejudice against Applicant, and provides a cause of action for Applicant in his constitutional claim to the U.S.C.A. 5th Amendment protection to be tried by a fair and impartial jury venire; State v. Hurd, 480 S.E.2d 94 (1996).

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEE	)	FOR THE THIRD JUDICIAL CIRCUIT

	)	2012-CP-31-311

James Keion Spann, #286321,	)	

Applicant,	)	

v.	)	RETURN

State of South Carolina,	)	

Respondent.	)	

In response to the post-conviction relief application filed December 31 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Lee County. The Applicant was true bill indicted during the June 2009 term of the Lee County Grand Jury for murder; burglary-first degree; and Possession of a firearm during a crime of violence (2009-GS-31-73). Applicant was represented by Deborah Butcher, Esquire. Applicant proceeded to a jury trial and was found guilty. On March 31, 2010, the Honorable R. Ferrell Cothran sentenced Applicant to life without parole for murder, life imprisonment for burglary-first degree, and five years imprisonment for possession of a weapon during a violent crime; with all sentences running concurrently.

A timely notice of appeal was filed and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Spann, Op. No. 2012-UP-207 (S.C. Ct. App. filed April 28, 2012). The Remittitur was issued April 13, 2012.

Attached herewith and incorporated herein are the records of the Lee County Clerk of Court regarding the subject conviction(s), 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. "The state did not produce any physical evidence."
 - a. "the state failed its statutory requirement to present physical evidence sufficient to establish the offense of murder pursuant to the mandated elements of S.C. Code § 16-3-10. In regards to the testimony of Applicants girlfriend, at the time involved in an illicit affair, there would exist a silent element of common law marriage being violated, especially when... 'the intent isn't intentionally upon the charter or a desolate bring (inciting).'"
2. "The Pathologist report did not state applicant as the assailant."
 - a. "The Pathologist did no name Applicant as the perpetrator of the alleged offense of murder. In accord with the Rule of Court, the Pathologist /expert report, testimony, must corroborate evidence in chief at a trial, pursuant to Rules 801, 802, 803 and 701, 702, 703 under the Rules of Court."
3. "The court violated Applicants rights under the US constitution to be free from double jeopardy."
 - a. "The trial court committed error by placing applicant in double jeopardy by the act of charging Applicant with a violation of S.C> Code § 16-3-10 and Code §16-8-210, which is defined as: possession of a weapon during a violent crime. As Code §16-3-10 includes as an element the use of a weapon, the additional charge of §16-23-440(a), which wrongly charged with code §16-23-440(A), which represents a statutory sentencing enhancement scheme and does not effectively address or legislate subject matter relating to possession of a weapon. This establishes error in the proceeding regarding the charge and the resulting unconstitutional sentence imposed on applicant."
4. "The state did not present material facts or supporting case law to establish the identity of the offender."
 - a. "The state failed to provide and present any material fact of evidence or supporting case law to prove beyond reasonable doubt to the identity of the assailant in the crime charged against

Applicant. There exists in the record of the proceeding mere allegations of the identity of the offender, based solely on testimony given as presumption and speculation. In Summer v. Mata, 455 U.S. 591, 102 S.Ct. 1303, 71 L.E.2d 480(1982), it was determined 'whether an eye witness testimony/identification is sufficient is a mixed question of law and fact.' Where there is no law, the law fails in proof. By reason that the law was never given to Applicant, Applicants proceeding was rendered berfet (sic) of law. As the law given by Moses instructs to obey the father, this law was given only the Israelites; see: Exodus Chapter 20 and Leniticus (sic), Chapter 11...."

5. "The Order of the lower court as well as the States return and answer is not in compliance with applicable state law."
 - a. "The lower court/appeal; court, to include the motion for a new trial in the third judicial circuit, did not observe or apply correct law to Applicants case. No case law was cited in answer/response to applicants arguments and the prevailing rules were not followed as directed in Pruitt v. State, 423 S.E.2d 127 (1992)."
6. "The investigators statement in applicants trial served as an implied allegation of guilt, which prejudiced applicants trial beyond recovery."
 - a. "The statement given by investigator Webb at applicants trial, divulging conversation from the investigator questioning of applicant BEFORE applicant was read his Miranda rights, unfairly prejudice applicant before the jury..."
7. "Expert testimony did not prove identity"
 - a. "Expert testimony by state did not prove the identity of the offender. Neither testimony nor evidence presented by the State at applicants trial established proof beyond a reasonable doubt that applicant was the shooter as alleged in the states indictment..."
8. Ineffective Assistance of Counsel
 - a. "Applicants trial counsel was ineffective in all aspects."
 - b. "Counsel failed to subpoena witnesses and experts to establish a defense, rather than relying on the State theory, tests, and investigations."
 - c. "Counsel failed to take the necessary steps to secure independent investigation and present findings from some to the jury."
 - d. "Counsel failed to impeach a critical State witness upon motive to lie because the victim was the witnesses son."
 - e. "The testimony of the State witness Mary Ann Lovely, as to what allegedly saw, should have been challenged by applicants counsel."
 - f. "Counsel failed to timely and properly move for a mistrial based on a prejudicial, biased jury when it became known to counsel that juror Christopher Hickman had a brother, Andre Hickman, who was involved with the victim's mother."

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, SCRCPP.

III.

The Respondent submits that the first, second, third, fourth, fifth, sixth, and seventh allegation should be summarily dismissed for failure to state a claim cognizable under the Post-Conviction Procedure Act, S.C. Code Ann. § 17-27-10 to -160. An Applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20 (1976).

Even if the facts alleged by the Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. The allegations presented by Applicant raises direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (1985). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C.

417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Therefore, the Court should summarily dismiss the above stated allegations in Applicant's application for post-conviction relief.

IV.

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 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.

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).

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
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

June 28, 2013

STATE OF SOUTH CAROLINA

COUNTY OF LEE

JAMES KEION SPANN, 286321,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-31-311

AFFIDAVIT OF SERVICE BY MAIL

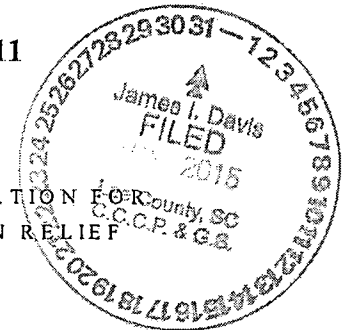
1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Kenya Miller, Esquire
Miller Lawrence, LLC
Post Office Box 2046
Lancaster, SC 29721**

DATED this 28th day of June, 2013.


Caroline Kaiser, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEE	)	THIRD JUDICIAL CIRCUIT
	)	
James Keion Spann, 286321	)	2012-CP-31-311
	)	
Applicant.	)	
	)	
v.	)	AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
State of South Carolina,	)	
	)	
Respondent.	)	
-----	)	



NOW COMES THE DEFENDANT, by and through his undersigned attorney,

Bertila Boyd, Esquire, and amends his application for post-conviction relief as follows:

I.

Pursuant to S.C. Code Ann. §17-27-20 (2003), the applicant's state and federal rights to due process of law, ineffective assistance of trial counsel, and after discovered evidence, the Applicant's conviction must be reversed and vacated.

II.

The Applicant concedes to and incorporates the State's recitation of procedural history as included in the State's Return in Paragraph I.

III.

The Applicant maintains his previous allegation of ineffective assistance of trial counsel on the basis that: (1) trial counsel failed to present favorable witnesses; (2) trial counsel failed to investigate critical evidence and the Applicant's defense when preparing for trial; and (3) trial counsel and appellate counsel failed to appeal the denial of Applicant's Motion for a New Trial. *See Bannister v. State*, 333 S. C. 298, 509 S.E.2d

807 (1998); *Glover v. State*, 318 S.C. 606, 503 S.E.2d 486 (1998). Specifically, trial counsel failed to call witnesses for the Defendant that would have provided an alibi for the Defendant at the time of the murder in question and trial counsel failed to properly investigate allegations of juror misconduct.

Additionally, the Applicant asserts that trial Counsel was ineffective for failing to strike two (2) jurors who lied under oath to the Court during voir dire as to (1) whether they were familiar with the facts of the case and (2) whether they knew or were personal friends of the victim and/or the family of the victim. The failure to strike said jurors prejudiced the Defendant and counsel's actions were ineffective assistance. *See Magazine v. State*, 361 S.C. 610, S.E.2d 761, S.C., (2004) *citing Wilcher v. State*, 863 So.2d 719, 754-55 (Miss. 2003).

Trial Counsel maintained in her Motion for A New Trial that "there is no question as to whether due diligence could have prevented these jurors from being selected for the jury..." (p.15) Additionally, Trial Counsel maintained that the Court asked "Are you, *any member of your family*, or any close personal friend friends with or acquainted with the following persons..." (p. 5) [emphasis added] Both allegations are untrue. The Court did not question jurors as to whether any member of their family was associated with any of the parties. This should have been included as part of voir dire and if it was not included, Trial Counsel should have submitted voir dire to address any relationship that potential juror's may have had with the alleged victim and his family. As a result of Trial Counsel's failure to do so, she was unable to ascertain that the jurors had bias against the Defendant and she was therefore ineffective as counsel.

While trial Counsel made a Motion for New Trial and the Motion was denied on the record, there is no signed Order denying the Counsel's Motion. Furthermore, trial Counsel failed to appeal the denial and it was not addressed in Appellant Counsel's brief.

IV.

The Applicant also incorporates allegations of ineffective assistance of Appellate Counsel on the basis that Appellate Counsel failed to appeal the denial of Applicant's Motion for New Trial. While Appellate Counsel filed an Appeal she did not address the denial of Applicant's Motion for a New Trial in Appellant's brief.

V.

Each and every allegation contained within the State's Return not herein expressly admitted is denied.

VI.

WHEREFORE, having fully set forth his claims, the Applicant requests that his conviction be reversed and vacated.

Respectfully submitted,



BERTILA IVANE DELORA-BOYD, ESQUIRE
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POST OFFICE BOX 211472
COLUMBIA, SOUTH CAROLINA 29221
Ph.: (803) 556-6509 / Fax: (864) 751-5336

1

2 State of South Carolina

3

4 County of Lee

5

6 James Keion Spann,
PlaintiffPCR Hearing
2012-CP-31-00311

7

8 vs.

9 The State of South Carolina,
DefendantsApril 16, 2015
Sumter, S.C.

10

11

12

13

14 Before the Honorable George C. James, Jr. Judge.

15

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

17 Ms. Bertila Boyd-Bostic
Attorney for Plaintiff

18

19 Mr. Daniel F. Gourley,
Attorney for the State

20

Margaret T. Sullivan,
Court Reporter

21

22

23

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25

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1 THE COURT: This is James Keion Spann.

2 Case Number is 2012-CP-31-311. MS. Boyd, you are
3 prepared to go forward?

4 MS. BOYD-BOSTIC: Yes, Your Honor.

5 THE COURT: Mr. Gourley, are you prepared
6 to go forward?

7 MR. GOURLEY: Yes, Your Honor.

8 THE COURT: Ms. Boyd, you can either tell
9 me a little bit about what you want to present, I'll
10 leave that up to you. Or you can just call your
11 first witness.

12 MS. BOYD-BOSTIC: Your Honor, I will give
13 you a brief overview. Basically the basis the Mr.
14 Spann's request for a PCR, is the ground that he had
15 an alibi defense that was never presented at trial.

16 Additionally, there was new discovered
17 after his conviction regarding two jurors that
18 actually sat at his trial that had a relationship
19 with the alleged victim and his family. And they
20 did not disclose that information to the court
21 during voir dire. Consequently trial counsel is
22 unable to strike those jurors who had actually sat
23 on the jury that convicted Mr. Spann. Additionally,
24 trial counsel made a motion for a new trial upon
25 discovering the information, but that motion was

1 denied. At which point It was not appealed by trial
2 counsel, and it was not raised in direct appeal by
3 appellate counsel either.

4 THE COURT: So the motion for a new trial
5 was made concerning the jurors. That motion was
6 denied, but appellant counsel did not cite it as
7 grounds for the appeal?

8 MS. BOYD-BOSTIC: Yes, Your Honor.

9 THE COURT: So that's an appellant
10 ineffective assistance claim?

11 MS. BOYD-BOSTIC: Yes, Your Honor. In
12 addition to the trial counsel's claim as well.

13 THE COURT: All right.

14 MS. BOYD-BOSTIC: Your Honor, I would call
15 Mr. John Davis to the stand, please.

16 THE COURT: Mr. Davis, come right on up
17 here and I will swear you in okay. You can walk
18 around to the witness chair and put your left hand
19 on the bible. Raise your right hand.

20 John Thomas Davis, Jr., being first duly
21 sworn, testified as follows:

22 Direct Examination by Ms. Boyd-Bostic:

23 Q. Would you please state your full name for
24 the record, please and spell it.

25 A. John Thomas Davis, Jr.

Investigator Davis-Direct by Boyd-Bostic

1 Q. And, Mr. Davis, what is your occupation?

2 A. I am a currently private investigator.

3 Q. How long have you been employed as a
4 private investigator?

5 A. Well additionally, I was an officer with
6 the Sumter County Sheriff's Office. I was an
7 investigator with the sheriff's office. I took an
8 early retirement in 2001, and went in to business
9 for myself. And I have been in business since that
10 time.

11 Q. And during your time as a private
12 investigator, have you ever done any work for the
13 attorney Deborah Butcher?

14 A. Yes, I have.

15 Q. Was this case involving Mr. Spann one of
16 those cases?

17 A. It was.

18 Q. And what do you recall about your
19 investigation from that time?

20 A. Just generally?

21 Q. Just generally.

22 A. Okay. The initial case involved a
23 shooting that had occurred in Lee County. Mr. Spann
24 was accused of shooting I believe it was a Lindsey
25 Lovely. There were a few people in the house, which

Investigator Davis-Direct by Boyd-Bostic

1 was a Tomeka Wilson, which was with Mr. Lovely. And
2 Mary Ann Lovely was in the house. And I think there
3 was a Melanose, it may have been Cook in the house.
4 And Mary Lovely had stated that she heard a knock on
5 the door, and looked out the peep hole in the door,
6 and said that Duck was standing outside.

7 And there were a series of knocks, and the
8 door was kicked in. Lindsey Lovely and Tomeka
9 Wilson got up from their room, and he was headed
10 down the hall when he was shot. There seemed to be
11 some confusion on whether or not there was really an
12 identification made, and whether Mary Ann Lovely
13 would have been able to identify Duck as James
14 Spann. And the other question to me was the fact
15 that Tomeka Wilson apparently did not see James
16 Spann. She thought she had heard -- she thought it
17 was his voice that she heard. There were a series
18 of descriptions of the shooter and somebody, but not
19 necessarily a statement that it was James Spann.

20 Also there -- see if I remember now. Now
21 also what stands out to me about the case is the
22 accusations that some of the jurors actually were
23 acquaintances of the victim's family.

24 Q. And breaking that down a little bit a few
25 things that you said that Mary Ann Lovely stated

Investigator Davis-Direct by Boyd-Bostic

1 that she actually didn't -- that she didn't see
2 anything. Or she heard something when it happened.
3 Who did she make that statement to? Did she ever
4 tell you that?

5 A. I am sorry, I didn't understand.

6 Q. Did she make that statement to you? You
7 said she made that statement. These are things that
8 the victim's mother told you directly, or you got
9 that from a third party?

10 A. I got that from other parties.

11 Q. Did you ever speak to the victim's mom,
12 directly?

13 A. Give me one moment, please. I don't
14 recall speaking to her directly.

15 Q. Do you have a copy of your investigative
16 report?

17 A. Yes.

18 Q. On that second page, It looks like the
19 first full paragraph on there. It says Mary Ann
20 Lovely.

21 A. That was from a statement that she had
22 made to law enforcement.

23 Q. So that was made to you directly.

24 A. Right.

25 Q. Following up with that, you said there

Investigator Davis-Direct by Boyd-Bostic

1 were several individuals in the house. Did you
2 speak to any of those individuals?

3 A. No.

4 Q. And you spoke to Mr. Spann after the
5 incident occurred?

6 A. I spoke with....

7 Q. Mr. Spann.

8 A. Yes, yes.

9 Q. And when you spoke with Mr. Spann, did he
10 ever inform you of an alibi for the time that they
11 said the crime occurred?

12 A. I believe he said he had been with his
13 brother during that time.

14 Q. So he denied committing the crime to you.

15 A. Correct.

16 Q. And he also told you that he was
17 elsewhere.

18 A. Correct.

19 Q. And when he told you that information did
20 you follow up on his alibi defense that he gave?

21 A. Excuse me one moment. Do you have the
22 brother's name? I was looking for it here. I
23 might.

24 Q. You met with William Spann according to
25 the notes you gave me.

Investigator Davis-Direct by Boyd-Bostic

1 A. I don't right now, I don't recall.

2 Q. If you can't locate it, that's fine.

3 A. I don't recall whether I actually spoke to
4 his brother or not.

5 THE COURT: If you know that he did, you
6 can point it out to him, and he can take it from
7 there.

8 A. It's been a couple of years ago.

9 Q. We can move on from that. The point, I
10 actually want to steer you in a different direction.
11 After you spoke to Mr. James Spann, and he told you
12 that he was with his brother and cousin and that
13 sort of thing, do you remember going to Kirkland
14 Correctional Institute?

15 A. Yes, I do.

16 Q. And what were you doing there?

17 A. Interviewing Michael Spann, I believe his
18 name was, who provided some information.

19 Q. I believe Mr. Spann was at Trenton. You
20 interviewed someone at Kirkland also. I believe
21 Mr. McLeod was at Kirkland.

22 A. Yeah, I did.

23 Q. That's on page 4 of your report.

24 A. Yes, Clayton Plowden.

25 Q. Yes, sir. And you spoke to Mr. Clayton

Investigator Davis-Direct by Boyd-Bostic

1 Plowden. And what did you get from that interview.

2 A. He provided a written statement in which
3 he said that James Spann was in Sumter the night of
4 the murder. And basically, that was substance of
5 his statement; that James was in Sumter.

6 Q. And you interviewed Mr. Michael Spann
7 also.

8 A. Correct.

9 Q. And what did you get from your interview
10 with Mr. Michael Spann?

11 A. Would you like me to read the statement?

12 Q. Sure.

13 A. My name is Michael Antwaine Spann, and I
14 am currently incarcerated at Trenton Correctional
15 Institution. I am 24 years of age. And I am
16 Lynchburg, South Carolina. I recently moved to
17 Bishopville, South Carolina with my wife Geneva
18 Bryant Spann, and our daughter Maleka Spann. I grew
19 up in the Lee County area around the people that are
20 involved in this case, which are James K. Spann and
21 Lindsey Lovely. I've attended schools with them
22 both at some time in our lives. I know Lindsey from
23 being a part of the neighborhood crip gang that hung
24 around in the St. Mark area at Bishopville. I knew
25 Duck also known as James, because we have the same

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1 last name.

2 So since we were young, everybody calls us
3 cousins. I used to be part of the bloods in Lee
4 County, and when I was -- I can respect both sides,
5 crips and bloods. That's how me and Lindsey became
6 good friends, because I was one of the only bloods
7 that could go to this area alone, and not catch
8 problems. Around the time this situation happened,
9 I had just got out of some trouble similar to this
10 one. So when it occurred, everyone was calling my
11 phone asking me did I shoot someone else, because
12 they got a person on the news. They are looking for
13 the name Spann for a murder.

14 It wasn't until later that day I found out
15 the guy I know as Lindsey had been shot and killed.
16 I found out through a female that I used to sleep
17 with, whose name is Amy Peoples which is I think
18 Lindsey's first cousin. All she said was Bliddy,
19 which is my street name, Lindsey got shot down, and
20 we think it was your cousin, Duck, because old girl
21 was there. Referring to Meka, his old girl. So I
22 was like, are you sure, and she said she was there.

23 The whole time after the murder during the
24 setting up the funeral, I was around Lindsey's
25 family daily. Just after my help I needed over --

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1 offering help, I asked a few people like Lindsey's
2 mother Mary Ann if she saw my cousin Duck shoot her
3 son. And her response no, Mike, I was in my room
4 asleep, and I barely even remember -- or I barely
5 even heard gunshots until they came bawling on the
6 door saying Lindsey got shot.

7 Q. You can stop there. Now in regards to
8 that, were you at Mr. Spann's trial?

9 A. Yes I was.

10 Q. Was Mr. Plowden present at the trial?

11 A. I don't honestly recall.

12 Q. Do you know if Mr. Spann's was at the
13 trial?

14 A. Yes.

15 THE COURT: Which Mr. Spann?

16 Q. Mr. Michael Spann. The one that gave the
17 statement.

18 A. I don't recall.

19 Q. Were either of them called as witnesses?

20 A. I don't recall. That's been some time
21 ago.

22 Q. So during the portion of the trial that
23 you observed, do you remember Attorney Butcher ever
24 presenting any alibi defense on Mr. James Spann's
25 behalf?

Investigator Davis-Direct by Boyd-Bostic

1 A. No, I don't recall any.

2 Q. You also as part of your investigation,
3 reviewed the evidence that was given to attorney
4 Butcher during discovery, correct?

5 A. Yes.

6 Q. So you reviewed the the medical records,
7 the investigative report and fingerprints samples,
8 blood analysis, all those things, correct?

9 A. Correct.

10 Q. From that information, were you able to
11 identify anyone as the party responsible for the
12 shooting?

13 A. No, there no physical evidence to
14 identify the shooter.

15 Q. So the -- what was the evidence offered
16 then that Mr. Spann, given, that showed Mr. Spann
17 was the person that did the shooting?

18 A. The only evidence I recall hearing was
19 that Tomeka Wilson felt like she heard James Spann
20 speaking. And Mary Ann -- the gist of it, Mary
21 Ann, could identify him, but that was questionable
22 at best, whether she could really identify him or
23 not.

24 Q. And did you speak with Ms. Wilson during
25 your investigation?

Investigator Davis-Cross by Gourley

1 A. One moment. Yes, I did.

2 Q. And when you spoke with her, did she ever
3 give you a different version of the story?

4 A. She, all she could tell me is that felt
5 like it was James Spann. She couldn't identify him.
6 She didn't even tell me that it was his voice. She
7 as uncertain at that time. But she said she felt
8 like it was him.

9 MS. BOYD-BOSTIC: Thank you, Mr. Davis.
10 No further questions.

11 THE COURT: Mr. Gourley.

12 MR. GOURLEY: Thank you, Your Honor.

13 Cross Examination by Mr. Gourley:

14 Q. Did you provide your investigation reports
15 and everything like that, did you turn that over to
16 Ms. Butcher?

17 A. Yes, I did.

18 Q. So she had everything that you had.

19 A. Everything except my personal notes.

20 Q. So she was aware of all the witnesses and
21 their statements and so forth.

22 A. As far as I know, correct.

23 Q. Just a minute ago you said that
24 Ms. Lovely's identification of Mr. Spann was
25 questionable at best?

Investigator Davis-Cross by Gourley

1 A. Correct.

2 Q. Did you -- during your investigation, did
3 you come to know what Mr. Spann's was nicknamed as,
4 or known on the street as?

5 A. Duck.

6 Q. And did not Ms. Lovely identify the person
7 that she saw through the peep hole twice as Duck?

8 A. That was the part that was questionable to
9 me whether she actually looked through that peep
10 hole, or whether she was in bed asleep at that time.

11 Q. Well during her trial testimony she said
12 she looked through the peep hole, and saw Duck
13 standing out the door, correct?

14 A. At trial she did.

15 MR. GOURLEY: I beg the court's
16 indulgence, Your Honor.

17 THE COURT: Is there cross examination in
18 the transcript that Ms. Butcher brought that up, the
19 sleeping issue to the witness?

20 MR. GOURLEY: Yes, Your Honor. Page 76,
21 Is Ms. Lovely's started to cross, she actually
22 questioned Ms. Lovely if she actually knew James
23 Spann's name as Duck. Whether she stated it on the
24 911 tape, her whereabouts in the trailer, and so
25 forth.

Investigator Davis-Cross by Gourley

1 MS. BOYD-BOSTIC: Your Honor, I don't
2 think there question about her sleeping that was
3 ever -- that was ever brought up regarding her --
4 the discrepancy in her statement.

5 MR. GOURLEY: I may stand corrected, Your
6 Honor.

7 THE COURT: I'll read that. The page
8 number is a good place to start.

9 MR. GOURLEY: Yes, sir.

10 THE COURT: Go ahead, Mr. Gourley.

11 MR. GOURLEY: Thank you, Your Honor.

12 Q. And you stated Tomeka Wilson stated that
13 she felt it was James Spann, via his voice. Is that
14 how she identified him?

15 A. She couldn't even identify the voice when
16 I talked to her. She just said that she felt like
17 it was him.

18 Q. Just based on their past relationship.

19 A. Correct.

20 MR. GOURLEY: Your Honor, I don't have any
21 other questions.

22 THE COURT: Redirect?

23 Redirect Examination by Ms. Boyd:

24 Q. I'm sorry, I don't think I asked you.

25 What was Ms. Wilson's relationship, past

Investigator Davis-Cross by Gourley

1 relationship with Mr. Spann?

2 A. Then boyfriend and girlfriend, is my
3 understanding.

4 THE COURT: Ms. Wilson is Tomeka?

5 MS. BOYD-BOSTIC: Tomeka Wilson, yes, Your
6 Honor.

7 THE COURT: And which Mr. Spann?

8 MS. BOYD-BOSTIC: Mr. James Spann.

9 THE COURT: So your information was that
10 Tomeka Wilson had been the past girlfriend of the
11 defendant?

12 A. Correct.

13 MS. BOYD-BOSTIC: That was it, Your Honor.

14 THE COURT: Anything else, Mr. Gourley?

15 MR. GOURLEY: No, Your Honor.

16 THE COURT: Thank you, Mr. Davis, you can
17 step down. Would you like for him to stay or be
18 excused?

19 MS. BOYD-BOSTIC-BOSTIC: He can be
20 excused, Your Honor.

21 THE COURT: Do you object?

22 MR. GOURLEY: No, Your Honor.

23 THE COURT: Mr. Davis, you can stay if
24 you would like.

25 A. Thank you.

Investigator Davis-Cross by Gourley

1 THE COURT: Next witness.

2 MS. BOYD-BOSTIC: Your Honor, I call
3 attorney Deborah Butcher to the stand.

4 Deborah Butcher, being first duly
5 sworn, testified as follows:

6 Direct Examination by Ms. Boyd-Bostic:

7 Q. Would you state your name, please.

8 A. Deborah Butcher.

9 Q. And, Ms. Butcher, what is your occupation?

10 A. I'm an attorney.

11 Q. And how long have you been an attorney?

12 A. Since 05.

13 Q. Ms. Butcher, did you represent Mr. James
14 Keion Spann in his trial in 2010?

15 A. I did.

16 Q. And where were you employed at that time?

17 A. I was in private practice, and had a
18 contract with the public defender's office and
19 handled Lee County and -- well I had a contract with
20 the public defender's office.

21 Q. And how long had you been an attorney at
22 that point?

23 A. 5 years.

24 Q. And what was your case load like?

25 A. I had criminal, family, civil cases.

Deborah Butcher-Direct by Boyd-Bostic

1 Q. Did you do predominantly one area over the
2 other, or just evenly across the board?

3 A. And at that time, I may have done
4 predominantly criminal.

5 Q. And for Mr. Spann's trial how much time
6 would you say you spent in preparation?

7 A. Hours. To be honest, typical if we're
8 going to trial, I mean you, 30, 40 hours.

9 Q. And during that time, about how many times
10 will you say you met with Mr. Spann?

11 A. I'm sorry, it's been so long.

12 Q. You're fine.

13 A. Probably at least 6. But more probably
14 more.

15 Q. Okay. Do you recall, and have had an
16 opportunity to look at the transcript from the
17 trial?

18 A. I did, but it's been several months. The
19 first one was supposed to come up. Yeah, I glanced
20 through it.

21 Q. Okay, well let's start with the alibi
22 witnesses. Now you heard attorney Davis' testimony.
23 Do you remember Mr. Spann telling you about an alibi
24 defense?

25 A. Yes, and I actually, Mr. Davis, spoke to

Deborah Butcher-Direct by Boyd-Bostic

1 them. I spoke to, I can't remember who I called.
2 But what it came down to when I spoke with the
3 people concerning this, it wasn't a solid alibi.
4 There would have been time, even if he was with them
5 part of the time, I don't think they could lock down
6 the time James was with them, to say he could not
7 have been at the time.

8 Q. So it wasn't your opinion that the
9 witnesses could testify that Mr. Spann was with them
10 at the time of the alleged murder.

11 A. Correct.

12 Q. Do you remember providing Solicitor John
13 Gentry with a letter of three witnesses, that you
14 wanted to have testify? May I approach, Your Honor?

15 THE COURT: Yes.

16 Q. Is that was your handwriting?

17 A. Yeah, it is.

18 Q. Could you read that for me please?

19 A. I do not know if this is to John Gentry or
20 to John Davis. It says: Dear John, the following
21 three individuals will testify that James Spann was
22 with them on Bowman Road in Sumter at the time of
23 the murder.

24 Q. And then three names under that.

25 A. Michael Spann, Shontrell Scarborough and

Deborah Butcher-Direct by Boyd-Bostic

1 Clayton Plowden.

2 Q. And that letter I actually got from the
3 solicitor's file.

4 A. Okay.

5 Q. Yes, ma'am. Do remember writing that
6 letter?

7 A. No, I don't.

8 Q. But that is your handwriting.

9 A. Yeah, I'm sure I wrote it.

10 Q. And it says that they would testify that
11 Mr. Spann was with them at the time of the murder,
12 correct?

13 A. Correct.

14 Q. So in that letter you didn't indicate that
15 you had any doubt as to the time line, correct?

16 A. Well at that time I probably had not
17 investigated more. As soon as I get alibi witness,
18 I will talk to them. And it's in the alibi. There
19 are times when I haven't investigated as well. I
20 mean I try to, because I certainly want to make sure
21 do before I give it the solicitor in case there's
22 something against me or against my client.

23 Q. So you're saying at the time you wrote
24 that letter, you hadn't investigated.

25 A. I cannot remember. I don't know if they

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1 came over and then I spoke with them, and it wasn't
2 as good as I thought. i just cannot remember. But
3 I do know that If I had had a good alibi witness, I
4 would have wanted them to testify.

5 Q. So that's not the letter that you provided
6 to the solicitor. I believe it was the date of the
7 trial.

8 A. If it was, I cannot remember when I
9 provided it. But if was -- if I were there and I
10 spoke with them and then didn't feel like they were
11 good witnesses, I would not have called them. I
12 can't even remember if these people were brought
13 over, or to be honest with you.

14 Q. Do you have a copy of the transcript with
15 you?

16 A. Yes, I do.

17 Q. Do you remember speaking with Mr. Plowden
18 prior to the trial?

19 A. I don't remember exactly, I am sorry.

20 MS. BOYD-BOSTIC: Court's indulgence, Your
21 Honor.

22 THE COURT: Okay.

23 Q. Would you turn to page 105 in the
24 transcript?

25 A. Okay.

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1 Q. Do you see line 18 on the bottom? Would
2 you read that portion for me, please?

3 A. Mr. Gentry: Yes, sir, the only thing I
4 would like to point out, I made it aware to
5 Ms. Butcher already, that one of her witnesses is in
6 Kirkland R & E. Kirkland R & E says everyone there
7 is in quarantine. We aren't going to have him
8 transported because of that. There's an illness
9 going around over there.

10 THE COURT: If you are going to read it,
11 slow down for the court reporter.

12 A. I apologize. There's an illness going
13 around over there. Ms. Butcher: Your Honor, I
14 don't think this is a problem. I don't anticipate
15 us calling him anyway. And I would actually, it's
16 your order to transport. I don't think I can call
17 and say, ignore the judge's order. Can I? I think
18 it's solved already.

19 Q. And then the court.

20 A. So you're telling me you're not planning
21 on calling this person anyway. That's correct.

22 Q. So the person that was in Kirkland R & E,
23 was that Mr. Plowden? And if you look on your
24 letter that I gave you earlier. You have beside
25 Mr. Kirkland's name, Mr. Plowden's name, Kirkland.

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1 A. I was trying to look in the transcript to
2 see who he was talking about. I mean I have
3 Kirkland by there on this letter.

4 Q. So you don't recall that. You don't
5 recall that interaction either.

6 A. No, I'm sorry, I just didn't.

7 Q. But there was a witness that you were
8 apparently planning to call at one point and then
9 decided not to, correct?

10 A. And that's probably why I made -- I don't
11 it's -- yeah.

12 Q. So I mean in that situation if it was an
13 alibi witness, and this is a case based on eye
14 witness testimony, would not that not have been an
15 appropriate time to request a continuance?

16 A. Certainly if I felt like he was a good
17 alibi witness, I would have. Certainly.

18 Q. You still maintain you didn't think he was
19 a valid alibi witness.

20 A. That was part of the problem in this case;
21 is that, I could not verify the alibi witnesses that
22 they could state that he was with them at the time
23 of the incident.

24 Q. Yet your note to the solicitor said that
25 they would testify to that.

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1 A. That is. But if I had still felt that
2 way, I would have definitely.

3 Q. Okay. Let's move on to Mr. Michael Spann.
4 Do you remember speaking with Mr. Michael Spann?

5 A. I don't recall.

6 Q. Do you recognize that document? Is that
7 your handwriting?

8 A. It is my handwriting, and these appear to
9 be my notes. I am trying to see what they're from.

10 Q. Could you read for me the highlighted
11 portion in blue, please?

12 A. Michael Spann has heard statements of
13 witness that say they did not see anything.

14 Q. And the second page.

15 A. James Spann says Mary Ann said he saw --
16 she saw nothing. Get tape from prelim.

17 Q. So you did in fact speak with Mr. Michael
18 Spann and Investigator Davis also spoke with him as
19 well as Mr. Plowden.

20 A. I do not recall if I actually with Michael
21 Spann or if this was what somebody else told.

22 Q. So your notes are not from your actual
23 conversation. They're from things that third
24 parties tell you?

25 A. Often. They're ideas, their thoughts,

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1 they're things I need to follow up on.

2 Q. Did you also speak with Mr. James Spann's
3 family.

4 A. Yes.

5 Q. And did you give you a time line for
6 Mr. James Spann's whereabouts on the date of the
7 incident?

8 A. I don't recall. I do recall with the
9 people I spoke with, there was nothing definite that
10 could say that he could not have been at the
11 incident at the time.

12 Q. Okay. So again, the statement that you
13 wrote that said you definitely had these three
14 witnesses that were willing to testify that he was
15 with them at the time of murder.

16 MR. GOURLEY: Your Honor, this is asked
17 and answered multiple times.

18 THE COURT: Overruled.

19 Q. This statement, you are saying that the
20 statement is incorrect, or your analysis is
21 incorrect? I'm just trying to get a clarification.

22 A. I cannot recall when I gave this to John.
23 I don't know if this was prior to my going into more
24 detail with these people. It would have certainly
25 been given, you know, prior to trial. I just do not

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1 recall. What I do recall is that I didn't have a
2 good alibi witness that could testify where he was
3 at the time of the incident.

4 Q. So in a case, if you do not have a good
5 alibi witnesses, do you still subpoena them for
6 trial?

7 A. No, I would have -- I don't know if I sent
8 the subpoena and then I wasn't as sure. I just
9 cannot remember the time line of when this was
10 given.

11 Q. That's not my question. I'm just asking
12 about you're process in general. Let's you
13 investigate an alibi defense.

14 A. Yes.

15 Q. You said you don't think the defense is
16 viable. At that point do you still send subpoenas?
17 Do you still have these parties present---

18 A. No.

19 Q. ---at the trial? Was Mr. Plowden, Clayton
20 Plowden, who was in Kirkland, was he subpoenaed for
21 the trial?

22 A. I do not recall.

23 Q. You read from the transcript. You had him
24 subpoenaed, did you not? And you decided not to
25 call him. So by your own statement, you thought it

Deborah Butcher-Direct by Boyd-Bostic

1 was a viable witness for an alibi.

2 A. If you will give me a second to read.

3 THE COURT: Page 105?

4 A. Yes, I don't see where I sent a subpoena.

5 This could have been where I asked John to bring

6 somebody over.

7 Q. Whether you subpoena them or request them
8 to brought over, you are still requesting them to be
9 there as witnesses, correct?

10 A. Correct.

11 Q. So the difference for you is just the
12 document. So the subpoena means you think they are
13 viable versus an actual request just to bring them
14 over. That means they're not--

15 A. What I'm -- there's, what I'm saying is, I
16 don't know when I requested John to bring them
17 over---

18 Q. Yes, ma'am.

19 A. ---prior to trial.

20 Q. My question, I guess, I'm sorry if
21 I'm confusing you. My question is from the
22 transcript, this is during the actual trial. You
23 have clearly alerted the State that you are planning
24 to call Mr. Plowden who was institutionalized at
25 Kirkland, as a witness. One of witnesses that you

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1 then also wrote a letter to the solicitor saying was
2 an alibi witness for Mr. Spann. And you then
3 proceeded not to call him. You said it was because
4 it was not a viable defense.

5 My question is, if you do think that
6 witnesses are viable as alibi witnesses or witnesses
7 in general, do you then still subpoena them? Notify
8 the state of witnesses, and or request them to be
9 present at trial, or actually have them present in
10 the courtroom? That's a general question. Not for
11 this case specially.

12 A. If I don't think it's a good witness, I'm
13 not going to call them. What I'm simply saying; is
14 that, my recollection is that I didn't have any good
15 witnesses to present to the court. I may have
16 thought this was a good witness, and then in the
17 interim realized they weren't. I am sorry I don't
18 have a better recollection.

19 THE COURT: Is the question this? Why
20 would you arrange for transport if you thought he
21 was a bad witness.

22 MS. BOYD-BOSTIC-BOSTIC: Yes, sir, Your
23 Honor.

24 THE COURT: Is that the question? I think
25 that's the question.

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1 A. And my answer is, I would assume at the
2 time that I make arrangements, I thought he was a
3 good witness. And then I may have learned that I
4 didn't feel that he was. What I remember is going
5 in to trial. I'd wished I had had alibi witnesses
6 that were good. But I didn't feel like any of them
7 were -- could really state where he was at the time.
8 Just because Mr. Spann was in Sumter or wherever it
9 was that they said he was that night. I think when
10 I spoke further what I recall is he still had time
11 to go by where the incident occurred.

12 Q. So Mr. Plowden you're saying was not a
13 viable witness. What about Mr. Michael Spann? Was
14 he present in the courtroom on that day under
15 subpoena?

16 A. I do not recall. What I did not have was
17 somebody say was during these hours he was with me,
18 so he could not have been at the incident. I would
19 not want somebody there with a hole in that, to
20 basically to be able to call as an alibi, and the
21 State be able to show that my client could have been
22 there.

23 Q. Outside of the alibi defense, did you
24 present any defense on Mr. James Spann's behalf, as
25 far as location or alternative theory to the

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1 solicitor's case?

2 A. The only defense I saw in this case, it
3 wasn't him, is what he had held to. Unfortunately
4 the mother of the victim was very adamant at trial
5 that it was Mr. Spann. I even had the girlfriend
6 during her testimony, state that the mother was
7 going off of what she -- her statements that she
8 thought it was James Spann's voice.

9 Q. And that's what the girlfriend said at
10 trial?

11 A. Yes. It was something that she was going
12 off of what I was saying. I recall the girlfriend
13 being very angry about being there. She was
14 definitely not a friendly witness.

15 Q. Would you turn to page 94 of the
16 transcript for me. Would you read lines 1 through 9
17 for me, please.

18 THE COURT: And read them slowly, please.
19 And this is direct examination by the solicitor, so
20 the record will show that. And it's of Ms. Wilson,
21 is that correct, Mr. Boyd?

22 MS. BOYD-BOSTIC-BOSTIC: Yes, Your Honor,
23 it is.

24 A. Okay now, did you hear anyone say where
25 they at. Yes. You did. Who said that. The

Deborah Butcher-Direct by Boyd-Bostic

1 person kicking in the door. Okay who was that
2 person. Witness turns from the witness stand, I am
3 not sure who the person was, sir. I am not sure.

4 THE COURT: No, you're not sure.

5 A. You're not sure. No, I never saw anybody
6 so I can't be sure. You said what. I never saw the
7 person that did it, so I cannot say who it was, sir.

8 Q. So on the stand Ms. Wilson says herself
9 she never saw who it was and She wasn't sure,
10 correct?

11 A. That's what that appears, yes.

12 Q. So Ms. Wilson was the one of eye
13 witnesses, correct?

14 A. This is the girl -- I'm sorry, this is
15 girlfriend.

16 Q. Yes, ma'am.

17 A. I just want to make sure. Yes, she never
18 saw him.

19 Q. And as I asked Investigator Davis, was
20 there any physical evidence that placed Mr. Spann at
21 the crime scene? Any fingerprints? Shoe prints.
22 Nothing, just eye witness identification.

23 A. Correct.

24 Q. So an alibi witness or alibi defense would
25 have possibly changed the outcome of this---

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1 A. Yes,---

2 Q. ---case.

3 A. ---if I had a good one, it would have been
4 very important.

5 Q. Let's talk about the motion for a new
6 trial. Can you tell me how that motion came about?
7 How did you end up filing a motion for a new trial?

8 A. After the trial I can't remember if it was
9 John or someone, somehow it came to my attention
10 that two of the people in the jury knew the
11 Lovely's. I went and spoke with those people. I
12 went to their house.

13 THE COURT: When you say those people,
14 could you explain who those people are?

15 A. The people on the jury. I do not recall
16 their names. I remember it as I recall being a male
17 and a female. I went to their home and talked to
18 them. We did a motion for a new trial. And at that
19 hearing, and hang on. These -- the people I
20 think -- they said that they, that the people I went
21 to their home and spoke with them, they told me that
22 they knew that some of the other jurors I think it
23 was, was friends with the Lovely's and would be able
24 to testify.

25 Q. So the people you went to their home and

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1 spoke to, the Morgan's, Casey Morgan and her
2 husband. Is that who you are referring to?

3 A. I can't recall their names.

4 THE COURT: I am confused. You just
5 established with the witness whether or not the
6 people she went and talked to were in fact jurors or
7 were in fact people who were on the jury, who knew
8 other jurors who may know the Lovely's. Because I'm
9 a little lost.

10 MS. BOYD-BOSTIC: Yes, Your Honor, that's
11 what we're trying to figure out.

12 Q. When you say the people's home you went
13 to, were those the individuals that gave you the
14 statements, Mr. and Ms. Morgan?

15 A. The people---

16 THE COURT: If you have the statements,
17 please show them to her.

18 A. Yeah, thank you. Yes, I Casey---

19 Q. You want to talk -- these are the people
20 that you went to their homes?

21 A. Yes.

22 Q. The Morgan's?

23 A. Yes.

24 Q. Were they the jurors?

25 THE COURT: Were these introduced -- wait.

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1 Were these introduced at the new trial hearing?

2 MS. BOYD-BOSTIC: Yes, Your Honor.

3 THE COURT: If they were, let's just mark
4 them as an exhibit. And then if she reads them into
5 the record, then I can also have copy later.
6 Because I won't be able to follow all this reading
7 as well as I can if it's in the record. Like the
8 transcript is.

9 MS. BOYD-BOSTIC: Yes, Your Honor.

10 THE COURT: Mark those please.

11 (Motion for a New Trial marked Plaintiff's
12 Exhibit No. 1 into evidence.)

13 Q. Ms. Butcher, you spoke with a Mr. and Ms.
14 Morgan, correct?

15 A. Yes.

16 Q. And they were not jurors in Mr. Spann's
17 trial.

18 A. No.

19 Q. Who were they?

20 A. They were two individuals that stated
21 that, can I refresh my memory and read this please?

22 THE COURT: Read over those.

23 A. That I guess they came forward and
24 informed me that people in the jury were well
25 acquainted with the victim, the victim's family. I

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1 think there's even a statement in here where Casey
2 Morgan says that an Andre Hickman and Mary Ann
3 Lovely were involved romantically.

4 Q. And that was the basis of your motion for
5 a new trial?

6 A. Yes.

7 Q. And what was the result of that motion?

8 A. It was denied.

9 Q. And when did you make that motion?

10 A. Very shortly after the trial.

11 Q. It was after the trial?

12 A. Well yes, the information didn't come to
13 me until after the trial.

14 Q. And was there ever an order prepared from
15 that hearing?

16 A. I don't know if it was a written order or
17 a rule from the bench.

18 Q. Did you appeal that order?

19 A. I did not, that I recall.

20 Q. Do you know if that order was ever
21 appealed by anyone?

22 A. I don't. I am not sure.

23 Q. Did you have the opportunity to speak with
24 appellate counsel for Mr. James Spann?

25 A. If they do the appeal, unless they contact

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1 me, I don't typically speak with them.

2 MS. BOYD-BOSTIC-BOSTIC: Court's

3 indulgence, Your Honor.

4 Q. Ms. Butcher, on the basis of that motion,
5 you obviously thought Mr. Spann should have been
6 granted a new trial, correct?

7 A. Correct.

8 Q. And why did you believe that?

9 A. I believed that based on the affidavits of
10 the Morgan's.

11 Q. And so it was your opinion from your
12 investigation that the jurors intentionally
13 concealed that they knew the victim and the victim's
14 family, correct?

15 A. At that point when I got the affidavits
16 from the Morgan's, yes. I believe the testimony at
17 that hearing didn't reveal that.

18 Q. So was their testimony at the hearing
19 different from the statements that they gave you?

20 A. That's what I was looking. As I recall
21 it was. I am trying to look at the transcript to
22 refresh my memory. Do you know what page that is
23 on?

24 Q. I believe Ms. McKenzie Morgan, I'm sorry,
25 Mr., sorry, McKenzie Morgan, it looks like around

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1 page 30. You were doing your direct.

2 THE COURT: May I ask a question while you
3 all are looking for that. Does the trial transcript
4 have jury selection in it. Where is it?

5 MR. GOURLEY: Judge, it---

6 MS. BOYD-BOSTIC: I do not know if that
7 was recorded.

8 MR. GOURLEY: It was. It starts I think
9 on page 13, Your Honor. Let me double check with
10 that.

11 THE COURT: Go ahead, I interrupted you.
12 I just want to make sure that the voir dire
13 questions reflect any connections with the victim's
14 family. Your last question of the witness was
15 trying to find the testimony of the one of the
16 Morgan's at the new trial hearing? Or was it the
17 testimony of one of the juror's at the new trial
18 hearing?

19 MS. BOYD-BOSTIC: The testimony of one of
20 the Morgan's, Your Honor.

21 THE COURT: Okay.

22 Q. So Ms. Butcher it looks like you did the
23 the direct examination of Ms. Casey Morgan, and then
24 you called Mr. McKenzie Morgan, which is the
25 husband. My question was a follow up o your

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1 statement. You said when you received a statement
2 you thought that he was warranted a new trial. I am
3 trying to try to ascertain why you're saying you
4 changed your mind. If that's what you're saying.

5 A. I didn't change my mind. We lost the
6 hearing, I believe it was based on the testimony of
7 my witnesses, or the Morgan's.

8 Q. So prior to the hearing you believed he
9 deserved a new trial. After the hearing, were you
10 still of the same opinion?

11 A. Not based on -- as I recall the testimony
12 of the Morgan's and I think Mr. Hickman as well, did
13 not reflect the affidavits. So I was trying to
14 read.

15 Q. I guess once you finish reading, I have a
16 follow up question for you.

17 A. And I believe Felicia Williams was one of
18 the jurors.

19 Q. Yes, ma'am.

20 A. And this is on 28. Are you familiar, and
21 questioning McKenzie Morgan. Are you familiar with
22 Felicia Williams. Yes, I am. Do you know
23 Ms. Felicia Williams was personal friends with the
24 Lovely's. Answer: Not personal, but I know she
25 knew them. Question: How would she have known

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1 them. How do you -- how do you know she knows them.

2 Answer: She stays a block away on the next street

3 over. Question: Did you ever see them socializing

4 together. Answer: No. Question: So you're only

5 making an assumption as far as Ms. Williams knowing

6 the Lovely's. Correct.

7 Q. And so you're saying that's different from

8 the statements that you have given.

9 A. Well actually I think the bulk of these

10 affidavits went -- was a relation to a Hickman. In

11 the affidavit of McKenzie Morgan, she says that I

12 know Felicia Williams. She lives a block from the

13 Lovely's. I think she knows them, but I am not

14 certain. I also know other relatives of Christopher

15 who live on Stackling Circle. Which I don't think

16 that's very different in direction with---

17 Q. Yeah, so the information that you had---

18 A. ---Ms. Williams.

19 Q. ---in the affidavit is actually what your

20 witnesses testified to then, correct?

21 A. That's only in relation to Felicia

22 Williams.

23 Q. So they're statements don't mention, you

24 were reading the portion about Felicia Williams.

25 Their statements don't actually mention Felicia

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1 Williams at all. Is that what you're saying?

2 A. There is one paragraph about Felicia
3 Williams.

4 Q. And that mirrors the testimony that they
5 gave.

6 A. Correct. I think the bulk of it is---

7 Q. So my question with what you are saying
8 is---

9 THE COURT: Let her finish.

10 Q. ----what you are saying is different.

11 THE COURT: Wait, wait. Let's stop. Let
12 her finish her answer.

13 MS. BOYD-BOSTIC: Yes, Your Honor.

14 THE COURT: And then you can ask your next
15 question. Because the court reporter is probably
16 going to go nuts, okay.

17 MS. BOYD-BOSTIC: Yes, Your Honor.

18 A. These affidavits the bulk of them speak
19 about a Hickman who was in a romantic relationship
20 with Mary Ann Lovely.

21 Q. Yes, ma'am. But your statement was that
22 their testimony was different from the affidavits.
23 I am asking you specifically about what was
24 different. That's what I was asking you.

25 A. I haven't been able to find the testimony

Deborah Butcher-Direct by Boyd-Bostic

1 about Mr. Hickman yet in the transcript. That's
2 what I was looking for to refresh my memory.

3 THE COURT: Let's take a couple of minutes
4 and her find that.

5 A. If you can point it out if you know where
6 it is.

7 THE COURT: It's on page, you called him
8 Christopher Williams in the transcript. It starts
9 around page 28. At the bottom, do you know
10 Christopher Hickman. And this is the testimony of
11 McKenzie Morgan. I don't know about Casey.

12 A. And when I read that yes, at the bottom of
13 page 29, It's asked, would you know a Christopher
14 Hickman and Lindsey Lovely. Well that's with
15 Lindsey Lovely, were friends. Page 31 line 25,
16 would you have any knowledge of a relationship
17 between Andre Hickman and Mary Ann Lovely. No.
18 Okay. Did you ever visit the Lovely's. No. Ever
19 visit the Hickman's. Yeah, I mean, I've been at
20 the Lovely's house, but just brief, you know, just
21 pulling up there and dropping somebody off. Was
22 Chris ever there when you were there at the
23 Lovely's. Yeah. Who would you talk to. Do you
24 know who he was talking to. Quite a few people. I
25 know Lindsey might have been in the crowd. Okay.

Deborah Butcher-Direct by Boyd-Bostic

1 And his, I'm sorry.

2 Q. Go ahead.

3 A. I'm done.

4 Q. So I didn't understand. Are you saying
5 that portion is different?

6 A. Yeah, he doesn't state that he was, you
7 know, really there at the Lovely's or had seen them
8 romantically involved.

9 Q. Would you read Mr. McKenzie Morgan's
10 statement that I gave you, please.

11 THE COURT: Do you want her to read it
12 into the record, or read it to herself?

13 MS. BOYD-BOSTIC: To herself. Thank Your
14 Honor.

15 A. Okay.

16 Q. You still maintain that statement is
17 different from the testimony?

18 A. Yeah, I mean the statements at trial, she
19 doesn't seem to have any strong knowledge of a
20 relationship.

21 Q. That's Mr. Morgan. That's McKenzie.

22 A. Right.

23 Q. And that's a he, not a she. That would
24 make her sound like the same person.

25 A. It says McKenzie Morgan at the top of what

Deborah Butcher-Direct by Boyd-Bostic

1 I'm looking at in the transcript.

2 Q. Yes, ma'am, that's a he. That's the
3 middle part.

4 A. This is a statement from McKenzie Morgan.

5 Q. Yes, ma'am.

6 A. Yes.

7 Q. And so you're saying that's different from
8 the testimony that he gave.

9 A. I believe so, yes.

10 Q. Could you turn to page 15 of the trial
11 transcript for me, please. Could you read line 5
12 through 8 for me?

13 A. The alleged victim in this case is Lindsey
14 Lovely. Any member of the jury panel connected by
15 blood, marriage or close personal friends or social
16 relations with Lindsey Lovely. If so please stand.

17 Q. In regards to the voir dire, did you
18 submit any suggested voir dire questions?

19 A. Probab -- I do not recall. I usually
20 would, you know, victims of violent crimes and
21 things of that nature.

22 Q. So that's pretty standard language for
23 that type of question, correct?

24 A. Yes.

25 Q. And in regards to that, that's the

Deborah Butcher-Direct by Boyd-Bostic

1 question that you claim the jurors failed to answer
2 honestly, correct?

3 A. When I made the motion, yes.

4 Q. Okay. And you said the court denied
5 early. Do you remember the court's basis for that?

6 THE COURT: It's in the transcript. The
7 basis for the ruling was that there no intention of
8 concealment. That's on page, page 58.

9 Q. And again in regards to that rule, you
10 didn't appeal that ruling though, correct?

11 A. No.

12 MS. BOYD-BOSTIC-BOSTIC: No further
13 questions, Your Honor.

14 THE COURT: Mr. Gourley.

15 MR. GOURLEY: Thank you, Your Honor.

16 THE COURT: Would somebody tell me, the
17 case was obviously appealed.

18 MR. GOURLEY: Yes, Your Honor.

19 THE COURT: Was this a ground in the
20 appeal?

21 MR. GOURLEY: It was not a ground in the
22 appeal, but the notice of appeal was filed after
23 this motion was done.

24 THE COURT: You can go ahead and question
25 the witness.

Deborah Butcher-Cross by Gourley

1 Cross Examination by Mr. Gourley:

2 Q. Ms. Butcher, you filed a notice of appeal
3 after in this case, correct?

4 A. I believe I did.

5 Q. Do you recall when?

6 A. If I did, it would have been within the
7 time frame it was appealed. Sometimes I do it,
8 sometimes they. And I just honestly cannot
9 remember.

10 Q. Well obviously a notice of an appeal
11 couldn't have been taken until this motion had been
12 resolved, correct?

13 A. Correct.

14 Q. So obviously this motion would have been a
15 part of the appellant review,---

16 A. Yeah.

17 Q. ---correct? In fact so you did
18 essentially appeal this motion, as well as the
19 trial, correct?

20 A. Correct.

21 Q. And we'll go ahead and stick with the
22 jurors. Christopher Hickman and Felicia Williams
23 also testified at this motion for a new trial,
24 correct?

25 A. Yes.

Deborah Butcher-Cross by Gourley

1 Q. And let's go, turn to page 48 in the juror
2 transcript. And that is Christopher Hickman for the
3 record, Your Honor.

4 THE COURT: Okay.

5 Q. And Ms. Butcher, Christopher Hickman, when
6 he was questioned by Judge Cothran, stated that he
7 did have not any social relations with either
8 Lindsey Lovely or the victim in this case. Or
9 Lindsey Lovely was the victim in this case. Lindsey
10 Lovely, correct?

11 A. As I recall, yes.

12 Q. Or his grandmother, Mary Ann Lovely.

13 A. As I recall.

14 Q. And wasn't social acquaintances. Didn't
15 ever ride around in a vehicle. Didn't ever go to
16 their house or any sort of thing like that, correct?

17 A. Correct.

18 Q. Now that was different than what was
19 alleged by your two witnesses, the Morgan's.

20 A. Correct.

21 Q. And then also Felicia Williams testified
22 as well, stating that she didn't have close social
23 relations; didn't really know or maybe knew of them,
24 but wasn't really familiar with them, correct?

25 A. Correct.

Deborah Butcher-Cross by Gourley

1 Q. And that again was different than the
2 Morgan's testified to, correct?

3 A. Correct.

4 Q. And ultimately you raised the motion for a
5 new trial based off the affidavits of the Morgan's,
6 right?

7 A. Correct.

8 Q. And after the testimony of both Hickman
9 and Felicia Williams, Judge Cothran decided that
10 they did not intentionally conceal any information.
11 And Mr. Spann did not have a bias jury.

12 A. Correct.

13 Q. And then you at that point and time, you
14 at some point, filed a notice of appeal in a timely
15 fashion.

16 A. Correct.

17 Q. Regarding the alibi witnesses, Ms. Boyd
18 handed you up a letter that we assume was written to
19 the solicitor. You don't tip your hat to the
20 solicitor in stating that you don't have an air
21 tight alibi, do you?

22 A. No.

23 Q. So when you said that the following
24 individuals would be testifying that James Spann was
25 with them on Bowman Road, you certainly don't want

Deborah Butcher-Cross by Gourley

1 to tell the solicitor they may not be certain that
2 he was with them, correct?

3 A. Correct.

4 Q. And you obviously investigated these
5 witnesses.

6 A. Correct.

7 Q. And you made the determination after an
8 investigation that they were not going to be
9 credible alibi witnesses.

10 A. Correct.

11 Q. And in regards to your defense strategy in
12 this case, you stated that it was questionable
13 whether Ms. Lovely actually identified Mr. Spann as
14 Duck, correct?

15 A. It was -- yeah, it was very questionable.
16 I tried to bring that out to the jury. She was so
17 emotional and so adamant, that she saw him and
18 recognized him, and knew who it was through the
19 people.

20 Q. Correct. And in all actuality you were
21 attempting to argue that she only got James Spann's
22 name or Duck from his girlfriend or prior
23 girlfriend, Tomeka Wilson, correct?

24 A. Yes, and I believe the girlfriend actually
25 said at trial that she felt that the mother of the

Deborah Butcher-Cross by Gourley

1 victim was going off of what -- of her assumption of
2 what she said, thinking it was James Spann. But the
3 jury still found the mother very credible.

4 MR. GOURLEY: I beg the court's
5 indulgence, Your Honor.

6 THE COURT: Yes, Sir.

7 Q. And in fact, Tomeka Wilson never said or
8 told investigators who it was, correct? That's what
9 you were trying to argue at trial page 102 and 103.

10 A. Page what?

11 Q. Page 102 starting at line 20.

12 THE COURT: Page what?

13 MR. GOURLEY: Page 102, Your Honor. Line
14 20. It may be potentially before that. It's kind
15 of a line basis.

16 THE COURT: You all are going to have to
17 tell me.

18 MR. GOURLEY: Yes, Your Honor. Tomeka
19 Wilson, it was alleged when allegedly Mr. Spann
20 broke into the trailer, Ms. Lovely was Id.'d, or saw
21 somebody cock a gun through her peep hole at her
22 door. She ran running down the hall.

23 THE COURT: Mary Ann.

24 MR. GOURLEY: Mary Ann Lovely. Yes, Your
25 Honor. Mary Ann Lovely ran running through the

Deborah Butcher-Cross by Gourley

1 hall. Tomeka Wilson and Mr. Lovely, the deceased,
2 were in the bedroom together. She started screaming
3 that the boy, did not identify Mr. Spann at that
4 time, was here with the gun. She then exited the
5 room, and ran down the hall to her special needs
6 child who apparently had run to the noise and
7 commotion. Got on top of him, at which point,
8 allegedly Mr. Spann came in the door and Ms. Wilson
9 ID.'d Mr. Spann, via his voice, but not by sight,
10 correct?

11 A. Yes.

12 Q. And if I said anything wrong, please
13 correct me.

14 A. No, that's -- yeah, that was. And I just
15 recall the girlfriend being very hostile at the
16 trial.

17 MR. GOURLEY: Your Honor, I don't have any
18 other questions.

19 THE COURT: Hostile to who?

20 A. Me for questioning her for one.

21 THE COURT: Redirect?

22 MS. BOYD-BOSTIC-BOSTIC: Very briefly,
23 Your Honor.

24 Redirect Examination by Ms. Boyd:

25 Q. I believe Mr. Gourley asked you if you

Deborah Butcher-Redirect by Boyd

1 investigated the alibi witnesses. When did you
2 conduct that investigation?

3 A. My -- I had John speak with them. I know
4 I made phone calls. And I know I spoke, I cannot
5 remember exactly who I spoke with, if it was Michael
6 Spann or what. I just recall that they could not be
7 definite that James Spann was with them at the time
8 of the incidents. And as I recall whatever they
9 were telling me, it give him the opportunity to be
10 the incident location.

11 Q. What time did the incident take place?

12 A. I don't recall. I am sorry I did not look
13 at that. I did not print up the warrants. Anybody
14 have that information?

15 THE COURT: Do you know, Ms. Boyd?

16 MS. BOYD-BOSTIC-BOSTIC: Actually 12:09.

17 THE COURT: Why don't you just, you can
18 lead her. I will allow you to lead her.

19 Q. Just moving from that, what date was
20 Mr. Spann's trial? And that's part of the trial
21 transcript.

22 A. March 30th and 31st, is that correct?

23 Q. Yes. So this statement from Investigator
24 Davis, what date was that taken?

25 A. It's at the top right there.

Deborah Butcher-Redirect by Boyd

1 Q. Yes.

2 A. 3/29/10, is that correct.

3 Q. Yes, ma'am. And this one from Mr. Spann,
4 what date was taken?

5 A. 3/29/10.

6 Q. So a day before Mr. Spann's trial?

7 A. Can I read these?

8 Q. The statements? I don't need you to read
9 them. I just wanted to know the dates. I'm asking
10 about the time line. Also you made reference to the
11 e-mails in the top. Could you tell me if that's
12 your e-mail, please?

13 A. Yes, this is my e-mail.

14 Q. And who is that e-mail to?

15 THE COURT: Why don't you just ahead and
16 lead her. If you are going to use it, let's mark
17 it. Because, you know, when I'm listening to this,
18 I'm -- if it's not in evidence, I am not seeing it.

19 A. This was to John Gentry. And I'm sorry.

20 THE COURT: Let's mark it as the next
21 numbered exhibit. And I'd like to have a extra copy
22 of it. And it's an e-mail to John Gentry dated
23 what? What is it dated?

24 A. March 28th 2010.

25 (E-mail to John Gentry marked Plaintiff's

Deborah Butcher-Redirect by Boyd

1 Exhibit No. 2 into evidence.)

2 Q. What does that e-mail say?

3 A. It per Paul: Shontrell knows nothing
4 about this case.

5 Q. That's the solicitor's notes. What do
6 your notes say?

7 A. Dear John, Shontrell Scarborough has
8 stated that James Spann was with him in Sumter
9 during the time of the murder from 11 to 12:30 on
10 Bowman Drive. We are trying to track him down to
11 subpoena him.

12 THE COURT: Is Shontrell a male?

13 MS. BOYD-BOSTIC-BOSTIC: Shontrell
14 Scarborough, yes, Your Honor, is a male.

15 THE COURT: Shontrell is a male.

16 Q. Shontrell, Yes, Your Honor. And
17 Mr. Scarborough is one of the alibi witnesses that
18 was on the original letter, correct.

19 A. Yes.

20 Q. And that e-mail was dated two days before
21 trial, correct?

22 A. It is.

23 Q. And that e-mail states that he would
24 testify to specific time of 11 to 12:30 p.m.,
25 correct?

Deborah Butcher-Redirect by Boyd

1 A. Yes, but I do not know if I later found
2 out that wasn't very accurate, or if we couldn't
3 find him. I just don't remember.

4 Q. But it does note a specific time frame
5 from 11---

6 A. This one, yes.

7 Q. ---to 12:30. Correct?

8 THE COURT: 11 to 12:30 p.m.?

9 A. A.M.

10 Q. Correct? A.M., correct?

11 A. Uh-Huh. (Affirmative.) Yes.

12 Q. And the alleged crime took place at
13 12:09 a.m. in a different city, correct?

14 A. I don't recall, but if you say that I'm
15 sure it's correct.

16 MS. BOYD-BOSTIC: No further questions,
17 Your Honor.

18 THE COURT: Is that in evidence?

19 MS. BOYD-BOSTIC-BOSTIC: Yes, Your Honor.

20 THE COURT: Any objection?

21 MR. GOURLEY: No, Your Honor.

22 THE COURT: You can question the witness,
23 Mr. Gourley.

24 CROSS EXAMINATION by Mr. Gourley:

25 Q. Ms. Butcher, just to be clear, you are

Deborah Butcher-Recross by Gourley

1 aware of Mr. Scarborough and all the other alibi
2 witnesses, Mr. Plowden and Mr. Michael Spann, right?

3 A. Correct.

4 Q. And you had attempted to subpoena them,
5 maybe subpoena them, maybe brought them to court.

6 It's 5 years later. You just don't recall.

7 A. Exactly, I'm sorry.

8 Q. Okay. And that's no problem. But prior
9 to Mr. Spann's, James Spann's trial, you were aware
10 of these witnesses.

11 A. Yes.

12 Q. And after investigating them, looking into
13 them, you may not recall specifically what you
14 were -- you know, what your discussions were with
15 them, but you made the strategic decision not to
16 call these witnesses, correct?

17 A. That's correct. And if I felt like they
18 would have been beneficial to my client, I would
19 have made a motion for a continuance or something,
20 if I couldn't find somebody at the time of the
21 trial.

22 Q. Certainly. And you had already put on
23 notice to Mr. Gentry, the solicitor, in the case,
24 that you had a potential alibis.

25 A. Yes.

Deborah Butcher-Recross by Gourley

1 Q. And certainly things evolve during the
2 course of investigation and leading up to trial.
3 Maybe some things don't all add up as you expected.

4 A. Yeah, as I recall. John Davis was there
5 at trial. He was still investigating up through
6 trial basically.

7 Q. And those statements that Ms. Boyd just
8 referred to was actually the day before trial,
9 correct?

10 A. This, the e-mail?

11 Q. The statements of I believe Michael Spann.

12 A. She didn't let me read them. So I don't
13 even know what they said, but yes they were dated
14 then.

15 Q. I believe those dates were March 29th
16 2010.

17 A. Yeah.

18 MR. GOURLEY: No further questions. Thank
19 you, Your Honor.

20 THE COURT: Hand me the e-mail please.
21 You can step down. Next witness.

22 MS. BOYD-BOSTIC: Court's indulgence, Your
23 Honor.

24 THE COURT: Yes, ma'am. Ms. Butcher,
25 before you step down. Whose handwriting is on the

Deborah Butcher-Recross by Gourley

1 e-mail? Per Paul: Shontrell knows nothing about
2 this case.

3 A. Can I look at it again, I'm sorry. I
4 didn't.

5 THE COURT: Well I guess, if it's yours,
6 tell me it's yours. If it's not, tell me if you
7 know whose it is.

8 A. I don't believe that it's -- Your Honor,
9 I'll be honest with you, I don't recall writing it.
10 It's similar to my handwriting, but it's not. Like
11 I look at this, and I recognize this as mine.

12 THE COURT: Ms. Boyd, I'm asking her if
13 she knows whose handwriting that is.

14 MS. BOYD-BOSTIC: I got that from the
15 solicitor's file. I believe it was his location. I
16 would have to verify that with him.

17 THE COURT: Well Paul, most people would
18 know that that's Mr. Fata, I assume, who is also an
19 assistant solicitor there. What I was asking her if
20 she knew whose handwriting that was.

21 MS. BOYD-BOSTIC: Yeah, I believe that's
22 Solicitor Gentry's handwriting. But I got that from
23 the solicitor's file. But I can't....

24 A. I don't think it's mine.

25 THE COURT: Just hand it back to me,

Mabel Spann-Direct by Boyd-Bostic

1 please. You can step down. Next witness.

2 MS. BOYD-BOSTIC: I'd like to call Ms.

3 Mabel Spann to the stand, please.

4 THE COURT: Mabel?

5 MS. BOYD-BOSTIC: Yes.

6 Mabel Spann, being first duly sworn,
7 testified as follows.

8 DIRECT EXAMINATION by Ms. Boyd-Bostic

9 Q. Ms. Spann, what is your relationship to
10 Mr. James Spann?

11 A. I am his mother.

12 Q. Were you present for Mr. Spann's trial?

13 A. Yes.

14 Q. Were you involved in Mr. Spann's case at
15 all? Did you have any contact with his attorney
16 regarding his case?

17 A. Yes.

18 Q. Were you aware of any witnesses that were
19 available to testify for Mr. Spann's trial?

20 A. Yes.

21 Q. Well who are those witnesses?

22 A. Clayton Plowden and Michael Spann.
23 Shontrell Scarborough.

24 Q. And during Mr. Spann's trial, do you know
25 if those witnesses were actually present in the

Mabel Spann-Direct by Boyd-Bostic

1 courtroom?

2 A. Well Michael Spann was there in the back,
3 because me and his girlfriend was sitting side by
4 side. And she said, Michael in the back, I don't
5 know why they don't call him. And Shontrell
6 Scarborough was there. But his ride, he had to
7 leave. But they didn't never call him. And
8 Clayton, they was waiting on him. He was waiting
9 on them to come, but they never got him, pick him
10 up.

11 Q. And where would they be picking
12 Mr. Plowden up from? Where was he?

13 A. I want to call it Richland Place. I'm not
14 sure.

15 Q. So he was incarcerated at the time?

16 A. Uh-huh. (Affirmative.)

17 MS. BOYD-BOSTIC-BOSTIC: That's it, Your
18 Honor. No further questions.

19 THE COURT: Mr. Gourley.

20 MR. GOURLEY: I have no questions, Your
21 Honor.

22 THE COURT: Thank you, Ms. Spann, you can
23 step down.

24 MS. BOYD-BOSTIC: That's it, Your Honor.

25 THE COURT: Mr. Gourley, any witnesses?

1 MR. GOURLEY: I don't have any witnesses,
2 Your Honor.

3 THE COURT: Ms. Boyd, I will be glad to
4 hear from you as far as your argument is concerned.
5 First that all, let me ask you this. Was the issue
6 about new trial a ground for appeal?

7 MS. BOYD-BOSTIC-BOSTIC: It was not a
8 ground in the direct appeal, Your Honor.

9 THE COURT: Okay.

10 MS. BOYD-BOSTIC: Your Honor, basically
11 Mr. Spann's argument is that he should be granted a
12 new trial based on the fact that the jurors
13 concealed information during voir dire. Clearly the
14 court asked of them if they were of any social
15 relationship with the alleged victim or his mother.
16 Whether it was reason or not, that wasn't part of
17 the voir dire questioning, so the answers that they
18 gave were untruthful. So the court denied that
19 motion. That motion for whatever reason was not
20 appealed by Ms. Butcher or appellate counsel. Being
21 that this case was one that was decided basically on
22 very shaky eye witness testimony as conceded to by
23 all parties that testified.

24 An alibi defense would have been great for
25 Mr. Spann and possibly could have changed the

1 outcome.

2 THE COURT: Where are Mr. Spann and
3 Mr. Scarborough and Mr. Plowden today?

4 MS. BOYD-BOSTIC: Mr. Plowden was unable
5 to here. He relocated. I was able to get in touch
6 with him. He recently started a new job, and could
7 not miss any dates for that. He would have lost his
8 job at that point. Mr. Spann I have not been able
9 to locate. With that, Your Honor, however...

10 THE COURT: How about Mr. Scarborough?

11 MS. BOYD-BOSTIC-BOSTIC: Mr. Scarborough
12 is the one that has new job. Mr. Plowden was
13 supposed to be present. I am not sure where
14 Mr. Plowden is.

15 THE COURT: Did you subpoena him? Ma'am?

16 MS. BOYD-BOSTIC: Apparently Ms. Spann
17 said that she spoke to Mr. Plowden. He had the time
18 messed up. He thought it was this afternoon, so he
19 is not present. No, Your Honor, I did not subpoena
20 Mr. Plowden. He appeared voluntarily so.

21 THE COURT: Who was -- was Mr. Spann in
22 prison at the time? Because I heard he was at---

23 MS. BOYD-BOSTIC-BOSTIC: Mr. Spann was in
24 prison at one point, I believe. But he was
25 transported to the court to testify. That's why I

1 believe he was being held in the back.

2 THE COURT: In the back.

3 MS. BOYD-BOSTIC: As Ms. Spann was saying.

4 THE COURT: What was he in prison for?

5 MS. BOYD-BOSTIC-BOSTIC: Parole violation

6 I believe, Your Honor.

7 THE COURT: Parole violation for what?

8 MS. BOYD-BOSTIC-BOSTIC: Under YOA? That

9 I am not sure. My client believes it was a parole
10 violation under YOA, Your Honor.

11 THE COURT: So he had a criminal
12 conviction.

13 MS. BOYD-BOSTIC-BOSTIC: Yes, Your Honor.

14 THE COURT: How about Clayton Plowden?
15 Where was he housed at the time?

16 MS. BOYD-BOSTIC-BOSTIC: He was at
17 Kirkland R & E, if I am not mistaken.

18 THE COURT: What was he in prison for?

19 MS. BOYD-BOSTIC-BOSTIC: I think his was
20 forgery, I believe. He had a forgery charge of some
21 sort. Based on the notations from the solicitor's
22 office that I had.

23 THE COURT: Okay.

24 MS. BOYD-BOSTIC: Again, Your Honor,
25 basically the basis is going to be the juror issue

1 and the alibi witnesses. Again this was a case
2 decided purely on eye witness testimony where it was
3 alleged eye witness identification. Likewise, the
4 alibi testimony could have raised a reasonable doubt
5 as to veracity and the credibility with respect to
6 those witnesses.

7 THE COURT: Well wouldn't I have to hear
8 from the alibi witnesses in this hearing?

9 MS. BOYD-BOSTIC-BOSTIC: Normally they
10 have to be present, Your Honor, but they can also --
11 their testimony can also be established by other
12 corroborating evidence which we have presented
13 through Investigator Davis, Attorney Butcher
14 herself, as well as, information from Mr. Spann's
15 mother stating that the witnesses were actually
16 present at the date of the trial and available to
17 testify.

18 THE COURT: Well you did. And there was
19 no objection to the summaries of what they said.
20 The e-mail 2 days before trial, Shontrell
21 Scarborough has the defendant at Bowman Drive from
22 11:00 p.m. 12:30 a.m. And Ms. Butcher wasn't sure
23 why she didn't call him. She doesn't recall if she
24 couldn't find him, or if it turned out that his
25 testimony or story didn't pan out.

1 MS. BOYD-BOSTIC-BOSTIC: Yes, Your Honor.

2 THE COURT: Mr. Gourley, how am I supposed
3 to know? All we know is that she didn't call him,
4 but this is what he told her he was going to say:

5 MR. GOURLEY: Right, Your Honor. And I
6 would simply rely on the fact that Ms. Butcher said
7 had she had credible alibis, she would have called
8 them. It's the burden is on Ms. Boyd and Mr. Spann
9 to present those alibis so that you do know.

10 THE COURT: But -- okay. And
11 Mr. Scarborough, where does he work?

12 MS. BOYD-BOSTIC: He has a new job. It's
13 in Georgia. Apparently it travels a lot. I wrote
14 down the name of the company somewhere, Your Honor.
15 I am not sure.

16 THE COURT: And so he is out of state
17 working. And he lives out of state too?

18 MS. BOYD-BOSTIC-BOSTIC: Yes, Your Honor.

19 THE COURT: Mr. Gourley, I'll come back to
20 you, Ms. Boyd. Mr. Gourley, why didn't appellate
21 counsel appeal this juror issue?

22 MR. GOURLEY: Your Honor, of course
23 appellate counsel is not required to appeal every or
24 preserve the issue, Your Honor.

25 THE COURT: Isn't this meritorious? The

1 voir dire question was, anybody on the jury panel
2 related by blood or marriage, close personal friends
3 or social relations.

4 MR. GOURLEY: Right.

5 THE COURT: They both said, or
6 especially Mr. Hickman said he was a social
7 acquaintance. Well no, he said do you have social
8 relations with him. And he said no. But the gist
9 of what he said is that he knew him.

10 MR. GOURLEY: Correct, Your Honor. And I
11 would just submit to the court that---

12 THE COURT: If I was picking a jury, I
13 sure would want to know that.

14 MR. GOURLEY: Correct, Your Honor. And
15 again, Your Honor, I would just submit to the court
16 that it was an unintentional disclosure, and it
17 didn't prejudice Mr. Spann by the fact that it
18 wasn't disclosed. Obviously Ms. Butcher did
19 everything properly when she found out about this
20 information.

21 THE COURT: Then why wasn't it appealed?

22 MR. GOURLEY: Your Honor, I would just
23 submit---

24 THE COURT: We know from -- we don't have
25 any testimony from appellant counsel. We don't know

1 whether or not he didn't know about it, or whether
2 or not he knew about it and just disregarded it.
3 Usually they throw in everything.

4 MR. GOURLEY: Correct, Your Honor. And I
5 would just submit to the court that appellant
6 counsel obviously had more -- I don't know who
7 appellate counsel was at this point and time.
8 Ms. Durant had it before. Could have reviewed it
9 and and determined that it wasn't the best issue to
10 present to the court. Your Honor, and the appellant
11 has to show that this would have been a meritorious
12 issue on appeal, and it would have required a
13 reversal in order to meet her burden of ineffective
14 assistance of appellant counsel.

15 I would submit, Your Honor, I have a
16 couple of cases to hand up. And I have provided
17 Ms. Boyd with the honest issue upon a potential
18 disclosure, Your Honor, in State v. Coxum. It
19 states it's a recent Supreme Court case, dealing
20 with the unintentional disclosure of the jurors.
21 Your Honor, it states the defendant has to show that
22 they was some -- that they were prejudiced by the
23 undisclosure of this juror. And, Your Honor, I
24 would submit to the court that there was no
25 prejudice.

1 THE COURT: Well would you want somebody
2 on your jury that knew the victim and had been to
3 their house before?

4 MR. GOURLEY: No, Your Honor. But again,
5 I guess I would just disagree with the
6 interpretation of Mr. Hickman's and Ms. Williams'
7 testimony. They said they may have known them.
8 They didn't have any close relationship with them.
9 They weren't riding around in their car. They
10 weren't at their house. They weren't dating.

11 THE COURT: But they knew them.

12 MR. GOURLEY: Correct, Your Honor.

13 MS. BOYD-BOSTIC-BOSTIC: And, Your Honor,
14 I would argue, those cases deal with jury
15 concealment as a mistrial, in regards to a mistrial.
16 So that's regarding the pendency of the actual
17 trial. This information was discovered after the
18 trial, after he had been already convicted and
19 sentenced. Therefore, I would argue those cases do
20 not apply Mr. Spann's present case.

21 THE COURT: Do you have any cases that
22 apply to situations like this?

23 MS. BOYD-BOSTIC: I do have the case
24 citation, Your Honor. I did not print out the
25 actual cases. But the standard that---

1 THE COURT: What is the name of it?

2 MS. BOYD-BOSTIC-BOSTIC: Strickland of
3 course, Your Honor. And then Grooms v. Solem, would
4 be 923, F.2d., 88. And that's in 8th Circuit Court.
5 Our courts themselves have not dealt specifically
6 with the issue of whether or not trial counsel has
7 to call the alibi witnesses to rely on---

8 THE COURT: No, I'm not talking about the
9 alibi witnesses, I'm talking about the jurors.

10 MS. BOYD-BOSTIC-BOSTIC: Just the juror
11 information. Your Honor, Magazine v. State, 606,
12 S.C. 2d. 761.

13 THE COURT: 606 S.C. 2d. what?

14 MS. BOYD-BOSTIC-BOSTIC: 761.

15 THE COURT: And that's Magazine.

16 MS. BOYD-BOSTIC-BOSTIC: Yes, Your Honor.
17 Just like magazine. And that case basically talks
18 about how the parties have to establish -- through
19 the judge, the parties have the right to question
20 the jurors on voir dire examination. Not only for
21 the purposes of showing the grounds for the
22 challenge and call, but also within reasonable
23 limits to elicit such facts as will enable them
24 intelligently to exercise their right of peremptory
25 challenge, which is shown in the motion, which is

1 part of the court's record. Mr. Spann---

2 THE COURT: But is Magazine a case that
3 deals with a concealment by a jury?

4 MS. BOYD-BOSTIC-BOSTIC: Not specifically,
5 Your Honor.

6 THE COURT: Just talks about---

7 MS. BOYD-BOSTIC: That's dealing with the
8 challenges of voir dire, which was part of the issue
9 of the concealment.

10 THE COURT: And that other one, the
11 federal case, is an alibi case.

12 MS. BOYD-BOSTIC-BOSTIC: Dealing with the
13 alibi witnesses, yes, Your Honor.

14 THE COURT: What does that case say?

15 MS. BOYD-BOSTIC: That case is dealing
16 with what the 4th Circuit has determined to be a
17 deficient performance as far as, an attorney's
18 failure to present available exculpatory evidence.
19 And that is ordinarily deficient unless some
20 fulgent, tactical or other consideration justified.
21 Which as the court was inquiring, Mr. Spann would
22 argue that Attorney Butcher has not presented such
23 tactical decision.

24 THE COURT: What is the cogent decision
25 she's related?. All she said today was, I didn't

1 know why I didn't call him, but it must have been
2 that I couldn't find him, or that his testimony
3 wasn't going to pan out. How is that cogent?

4 MR. GOURLEY: Well, Your Honor, under the
5 case law today, I think it was State v. Walker that
6 just came down from the Supreme Court. And I
7 apologize, Your Honor, I don't have a copy of it.
8 But basically as long as counsel research looked
9 into the alibis and then made the strategic
10 decision not to call the alibis, that is sufficient
11 to then place on the burden on applicant to then
12 present those alibis, and show that that decision
13 not to call those alibis, would constitute
14 ineffective assistance of counsel.

15 I would submit to the court that
16 Ms. Butcher clearly investigated into these
17 witnesses based off of her notes, notations and
18 statements by the Investigator Davis. Made the
19 strategic decision not to call the alibi witnesses.

20 THE COURT: But we don't know what the
21 strategic decision was based on.

22 MR. GOURLEY: And, Your Honor, I submit to
23 the court that we don't have to know that strategic
24 decision based on the fact she just investigated
25 into the alibi witnesses. I would submit to the

1 court that that's enough to pass the bar in
2 Strickland v. Washington. We presume that counsel
3 rendered, you know, proper representations. The
4 burden is on the applicant to show that her
5 representation was deficient.

6 Your Honor, also just very briefly going
7 back to the juror, Your Honor, I forgot to hand up
8 State v. Jones, which says that the mere fact that a
9 person is a friend or acquaintance of the deceased,
10 does not render him an incompetent juror. That's
11 cited in State v.---

12 THE COURT: I understand that. It doesn't
13 make them incompetent.

14 MR. GOURLEY: Correct, Your Honor. And
15 the trial court---

16 THE COURT: But it does make a difference
17 on whether or not Joe Blow lawyer is going to strike
18 them.

19 MR. GOURLEY: Correct, Your Honor.

20 THE COURT: Nobody has explained to me how
21 many strikes she had left when the jurors were
22 summoned. Whether or not she used all her strikes.
23 And nobody, I'll guess I'll have to find that in---

24 MS. BOYD-BOSTIC-BOSTIC: That information
25 is in record in the direct portion. I'm sorry, Your

1 Honor.

2 THE COURT: Ma'am?

3 MS. BOYD-BOSTIC: It is the case in the
4 motion as part of the -- it's been marked as one of
5 the exhibits.

6 THE COURT: So I'll have to hunt through
7 this and find it. So your argument is the alibi
8 witnesses should have been called. The testimony
9 would been helpful. I'm not so sure about people
10 who are in and out of prison. I'm not sure whether
11 or not it would help the defendant to say yeah, I
12 associate with all these criminals, and they're
13 going to say I was with them.

14 It might not be a good idea. Yeah, I was
15 a crips, and he was a blood. And we get along.
16 And I'm one of the few that gets along. That
17 doesn't sound too good either. I think that was
18 Michael Spann. Is that right?

19 MS. BOYD-BOSTIC-BOSTIC: That was part of
20 his statement, Your Honor. Yes. I read the
21 statement.

22 THE COURT: Would you want him sitting up
23 there, and he's a blood, I'm a crip. We get along.
24 And I figured I---

25 MS. BOYD-BOSTIC-BOSTIC: That potential

1 aspect, No, Your Honor. But then coupled together,
2 would have been enough again to attack the veracity
3 and credibility of the two already shady eye
4 witnesses that were there.

5 THE COURT: So a gang member who says the
6 defendant, my friend, was with me.

7 MS. BOYD-BOSTIC-BOSTIC: If a person
8 commits a crime, Your Honor, and they serve their
9 time or are serving their sentence, that does not
10 necessarily -- that doesn't effect their credibility
11 as a witness directly. They could still be
12 rehabilitated as a purpose of the judicial system,
13 Your Honor.

14 THE COURT: Well I'll think about holding
15 the record open. I may want to hear from Mr.
16 Scarborough. It might be an usual thing to do.
17 I'm not so sure that Mr. Spann and Mr. Plowden would
18 have been horribly -- would have been horribly wise
19 to call a convicted criminals who he is hanging
20 around with at midnight.

21 MS. BOYD-BOSTIC: And that may be, Your
22 Honor. But our issue with that would be that
23 Attorney Butcher never presented that as an
24 argument. That would be as her basis for doing it.
25 It's her -- she has not presented.

1 THE COURT: You are right about that. She
2 didn't say that. You are right, so I'll disregard
3 that. But I guess it would have made a difference
4 to me. But what have made a difference to me makes
5 no difference. Great presentation. I appreciate
6 it.

7 MS. BOYD-BOSTIC: Thank you, Your Honor.

8 THE COURT: I'll let you know whether I'll
9 leave the record open on that.

10 MS. BOYD-BOSTIC: Thank you, Your Honor.

11 --End of Requested Transcript of Record--

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in Common Pleas Nonjury Court on April 16, 2015, in Sumter County, Sumter, South Carolina.

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

1-6-17
DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/21

1 THE STATE OF SOUTH CAROLINA

2 County of Sumter

3

4 James Keion Spann,
5 Plaintiff

PCR Hearing
2012-CP-31-00331

6

Vs.

7

The State of South Carolina,
8 Defendants

9

April 26, 2016
Sumter, S.C.

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Before the Honorable George C. James, Jr.,

13

Judge.

14

15

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

16

Ms. Bertila I.D. Boyd-Bostic,
Attorney for Plaintiff

17

18

Ms. Julie A. Coleman
Attorney for Defendants

19

20

Margaret T. Sullivan,
Court Reporter

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	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
1	Clayton Plowden				
2	by Ms. Boyd-Bostic	4			
	by Ms. Coleman		11		
3	by The Court		13		
	Michael Spann				
4	by Ms. Boyd-Bostic	14			
	by Ms. Coleman		21		
5	by The Court		21		
	Closing Argument				
6	by Ms. Boyd-Bostic		24, 28		
	by Ms. Coleman		25		
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1 THE COURT: This is James Keion Spann,
2 Applicant, versus the State of South Carolina
3 respondent. The PCR matter 2012-CP-31-311. I trust
4 that in the general scheme of things, no one will
5 object to the hearing being held in Sumter, because
6 all of the PCR's in this circuit are held in Sumter.
7 Any objection from the State?

8 MS. COLEMAN: No objection, Your Honor.

9 THE COURT: From the applicant?

10 MS. BOYD-BOSTIC: None, Your Honor.

11 MS. COLEMAN: And I would, Your Honor, if
12 I may, I would like to object just for the record to
13 the transcript being reopened, the testimony being
14 reopened. Because pursuant to Bannister v. State,
15 which I have a copy of here. If I may approach.
16 Which says that the burden is on the applicant to
17 present their alibi witnesses at the hearing. And
18 the State's failure to object to testimony presented
19 by another witness in place of these alibi
20 witnesses, was not sufficient to meet the burden.

21 THE COURT: Thank you. Ms. Boyd, I held
22 the record -- or I left record open, or I'm
23 reopening the record, to be more accurate, for you
24 to present the testimony of the three purported
25 witnesses that the trial attorney did not call, is

Clayton Plowden-Direct by Boyd-Bostic

1 that correct? Is that your understanding?

2 MS. BOYD-BOSTIC: Yes, Your Honor. But
3 there are only two present. The third one cannot be
4 located. So we have Mr. Michael Spann and
5 Mr. Clayton Plowden.

6 THE COURT: Well who would you like to
7 call first? And just for the record the third one
8 was?

9 MS. BOYD-BOSTIC: Shontrell Scarborough.
10 We can't locate him. We call Clayton Plowden first.

11 THE COURT: Come on up, please, sir.

12 Clayton Plowden, being first duly
13 sworn, testified as follows:

14 THE CLERK: State your full name and spell
15 your last name for the record.

16 A. Clayton Antonio Plowden. P-L-O-W-D-E-N.

17 DIRECT EXAMINATION by Ms. Boyd-Bostic

18 Q. Mr. Plowden, where do you reside?

19 A. [REDACTED].

20 Q. And where is that, here in Sumter?

21 A. No, Mayesville.

22 Q. In Mayesville. How long have you resided
23 at that address?

24 A. Probably about 15, 16 years.

25 Q. So you were living there around the time

Clayton Plowden-Direct by Boyd-Bostic

1 of the original trial that Mr. Spann had?

2 A. Unfortunately I was incarcerated.

3 Q. And where you incarcerated at that time?

4 A. At Kirkland.

5 Q. And what were you incarcerated for?

6 A. Forgery under \$5,000.

7 Q. And how long did you spend in prison for
8 that?

9 A. About a year. A year.

10 Q. So while you in prison, did you meet with
11 Attorney Butcher at any point?

12 A. No.

13 Q. Did you meet with her investigator
14 Mr. Davis?

15 A. Yes.

16 Q. And when did you meet with him?

17 A. I couldn't even remember. I'd probably
18 been in Kirkland probably about a week or two before
19 he came.

20 Q. Do you remember giving a statement to
21 Mr. Davis?

22 A. Yes.

23 Q. And what was your statement about?

24 A. About Mr. Spann.

25 MS. BOYD-BOSTIC: May I approach the

Clayton Plowden-Direct by Boyd-Bostic

1 witness, Your Honor?

2 THE COURT: Yes, ma'am.

3 Q. Mr. Plowden, do you recognize that
4 statement?

5 A. Yes.

6 Q. Is that the statement that you were
7 referring to that you gave to Investigator Davis?

8 A. Yes.

9 Q. And what date is on that statement?

10 A. The 29th.

11 Q. Of what?

12 A. March 2010. I got sentenced, I think it
13 was, the 8th of March, 2010.

14 THE COURT: For the forgery?

15 A. For the forgery. So that's probably been
16 about two weeks, three weeks somewhere around in
17 there.

18 Q. At that point, Mr. Spann had not gone to
19 trial yet, correct?

20 A. No.

21 Q. So you had communication with someone that
22 was working on his case?

23 A. Yes.

24 Q. And they knew how to get in contact with
25 you.

Clayton Plowden-Direct by Boyd-Bostic

1 A. Yes.

2 Q. And they actually investigated and spoke
3 to you about the case, correct?

4 A. Yes, ma'am.

5 Q. And would you mind telling us what that
6 statement says, please.

7 A. Read it word for word or just?

8 Q. Yes, you can read it out loud.

9 A. I Clayton Plowden and James Spann and
10 Daniel was hanging out on Bowman Drive drinking and
11 just hanging out. I don't remember the time, but it
12 was late that night, and Danielle went in the house.
13 The next day I seen James two days later, and they
14 said he had killed someone. The next day later, I
15 seen on the news said James had killed someone.
16 That's not his character to do something like that.
17 And before the news, we was together on Bowman.
18 Basically, well basically all the night we was
19 together. He is my first cousin James. That night
20 was the last night we hang out on Bowman. Say
21 Shontrell and Shawn. Then he asked me to---

22 Q. So in that statement you said Shawn that
23 you mentioned earlier, you said that's Shontrell
24 Scarborough.

25 A. Yes, Shawn.

Clayton Plowden-Direct by Boyd-Bostic

1 Q. And so per that statement, it's your
2 testimony today that you were with Mr. Spann at the
3 time of the alleged incident?

4 A. Yeah.

5 Q. So you told all this to Investigator
6 Davis?

7 A. Yes, ma'am.

8 Q. Did you ever speak to Attorney Butcher
9 herself?

10 A. No.

11 Q. Did you speak with Attorney, Investigator
12 Davis, other than that one time?

13 A. No, just that one time.

14 Q. Do you remember when Mr. Spann's trial was
15 held?

16 A. It had to have been in April, because I
17 just had got two robberies. So it had to have been
18 April.

19 Q. Were you transported to Mr. Spann's trial?

20 A. No.

21 Q. Do you know if you were ever subpoenaed to
22 appear at that trial?

23 A. Not to my knowledge. I never got, because
24 usually when you're in prison, you get a subpoena.
25 They bring you up to the mail room. You've got to

Clayton Plowden-Direct by Boyd-Bostic

1 sign off on a letter. I never got that.

2 Q. Now let's go back to the night in
3 question. The night that you are talking about in
4 that statement. Do you remember the details of that
5 night?

6 A. To be honest, we was just out hanging out,
7 drinking gin and smoking marijuana, to be honest.

8 Q. And when you say we again, just for
9 clarification, who are referring to?

10 A. Me, Shontrell and Danielle and James.

11 Q. And this was in Sumter?

12 A. Yes.

13 Q. And in your statement you said you
14 couldn't remember what time it was, but it late.
15 What do you mean by that?

16 A. Probably about one. Yeah, it been real
17 late, because everything was basically closed around
18 that area.

19 THE COURT: 1 a.m.?

20 A. Yeah, probably about 1:00 a.m. Because we
21 had needed some cigarettes and the Young's gas
22 station closes around 12 something at the time. So
23 the only place we could go to get cigarettes was
24 Gate's. And nobody wanted to walk to Gate's to get
25 no cigarettes. Because they're complaining about

Clayton Plowden-Direct by Boyd-Bostic

1 gas. Everybody was complaining about gas.

2 Q. So around about 12 to 1, you all went to
3 look for cigarettes.

4 A. No, we just stood there.

5 Q. You just stood there.

6 A. Yeah.

7 Q. Now prior to meeting to get cigarettes,
8 were you all together before that as well?

9 A. Yeah.

10 Q. So how long do you think you were together
11 before you would have went looking for the
12 cigarettes, you think?

13 A. Probably about 10, 10 something. But it
14 had got dark, because it wasn't -- it been dark but
15 it wasn't late as, I'm saying when we ran out of
16 cigarettes.

17 Q. So just to make sure we get the time line
18 again, so you're saying from 10:00 p.m. until about
19 1 a.m. you all were together in Sumter?

20 A. Yeah, probably later than that.

21 Q. And again you told all this to the
22 investigator?

23 A. Yes, ma'am.

24 Q. Before you were incarcerated, did you ever
25 attempt to contact Attorney Butcher at her office?

Clayton Plowden-Cross by Coleman

1 A. No.

2 Q. Did she ever attempt to contact you that
3 you're aware of?

4 A. No, ma'am. I've had the same phone number
5 for years, the same home phone, with the same
6 address. So it never changed. And Ms. Butcher has
7 been my attorney in the past too.

8 Q. So you were familiar with Ms. Butcher
9 outside of this case.

10 A. Yes.

11 THE COURT: Was she your attorney before
12 this, or after this?

13 A. Before this.

14 THE COURT: When you say this, I mean the
15 trial.

16 A. Yes, before the trial.

17 MS. BOYD-BOSTIC: No further questions
18 Your, Honor.

19 THE COURT: Cross.

20 MS. COLEMAN: Yes, Your Honor.

21 MS. COLEMAN: May it Please the Court.

22 THE COURT: Yes, ma'am.

23 Cross Examination by Ms. Coleman:

24 Q. Good afternoon, how are you?

25 A. I'm doing all right.

Clayton Plowden-Cross by Coleman

1 Q. I've just got a couple of questions for
2 you. You've said that about the time span you gave
3 was about 10 p.m. to 1 a.m., is that correct?

4 A. Yeah.

5 Q. Yes.

6 A. Probably later than that.

7 Q. Do you remember ever telling this to the
8 police office or to the investigator? Telling them
9 those specific times?

10 A. No, I just said it been late and later.

11 Q. So it was not in your statement 10:00 p.m.
12 until 1:00 a.m., is that correct? It just says late
13 at night?

14 A. Yeah, right.

15 Q. Also you testified that you were drinking
16 and smoking marijuana, correct?

17 A. Yes, ma'am.

18 Q. Is it possible that your recollection on
19 that evening might be a little hazy because you were
20 under the influence of alcohol or marijuana? Is
21 that a possibility?

22 A. I don't think so.

23 Q. Have you ever been -- have you ever smoked
24 marijuana before this event? Or drank before this
25 event?

Clayton Plowden-Cross by Coleman

1 A. Before that night?

2 Q. Yes.

3 A. Yes.

4 Q. Is it true that sometimes maybe you might
5 not remember things clearly after drinking a lot or
6 smoking?

7 A. It never happened to me personally.

8 MS. COLEMAN: I beg the court's
9 indulgence. No further questions. Thank you very
10 much.

11 THE COURT: Redirect?

12 MS. BOYD-BOSTIC: No, Your Honor.

13 THE COURT: Any objection to me asking a
14 question or two from the State?

15 MS. COLEMAN: No objection.

16 THE COURT: Mr. Plowden, Bowman Drive in
17 Sumter, tell us where that is?

18 A. It's in the Crosswell area off of
19 Lafayette Drive.

20 THE COURT: How far is that from
21 Bishopville?

22 A. It's about 15, 20 minutes, something like
23 that.

24 THE COURT: So Bowman Drive is right off
25 of Lafayette, correct?

Michael Spann-Direct by Boyd-Bostic

1 A. Yes, sir.

2 THE COURT: And then you get on 15, head
3 down or head up 15 North to Bishopville.

4 A. Yes.

5 THE COURT: Is that right? Any follow up
6 to that?

7 MS. BOYD-BOSTIC: No, Your Honor.

8 THE COURT: Anything from the State?

9 MS. COLEMAN: No, Your Honor.

10 THE COURT: Thank you, sir. You can step
11 down.

12 THE COURT: Next witness.

13 MS. BOYD-BOSTIC: May we approach, Your
14 Honor?

15 THE COURT: Yes, Ma'am.

16 MS. BOYD-BOSTIC: Your Honor, I would call
17 Michael Spann.

18 Michael Spann, being first duly sworn,
19 testified as follows:

20 THE CLERK: State your full name and spell
21 your last name for the record.

22 A. Michael Antwoine Spann. S-P-A-N-N.

23 DIRECT EXAMINATION by Ms. Boyd-Bostic:

24 Q. Mr. Spann, how are you?

25 A. Fine and you?

Michael Spann-Direct by Boyd-Bostic

1 Q. Doing well, thank you. I just want to ask
2 you a couple of questions. You are familiar with
3 Mr. James Spann, correct?

4 A. Yes, ma'am.

5 Q. And what is your relationship with
6 Mr. Spann?

7 A. Well we are like distant cousins.

8 Q. Like distant cousins? What do you mean by
9 that?

10 A. Like we share the same last name. But we
11 don't, you know how you have that cousin that you
12 don't know how it all family, you know.

13 Q. Okay. So you've known Mr. Spann for a
14 long time?

15 A. Yes, ma'am, since I was a child.

16 Q. And are you also familiar with Mr. Lindsey
17 Lovely and his family?

18 A. Yes, ma'am.

19 Q. And how are familiar with him?

20 A. Well I was friend of his and family.
21 Everybody like, I get along with both of them. His
22 family and my family, everybody knew each other.
23 Small town.

24 Q. And are you familiar with why Mr. Spann is
25 incarcerated currently?

Michael Spann-Direct by Boyd-Bostic

1 A. Yes, ma'am.

2 Q. And what is your knowledge concerning that
3 event?

4 A. Well, I used to deal with Lindsey's niece.
5 No, his cousin, Amy Peoples. And I had some
6 dealings with his mother, Mary Ann Peoples. So it's
7 like, I was there like after the situation. A few
8 times I'd say probably about 10 times I've been
9 there. And they basically just put me in the
10 situation. And they talked about the case a lot.
11 Even though I didn't ask about it, it's just, you
12 know how people talk. And they basically told me --
13 they just told me everything that happened that
14 night from their perspective.

15 Q. Now in regards to that, did you speak with
16 an attorney, Deborah Butcher?

17 A. Yes, ma'am.

18 Q. Mr. Spann's attorney, you did?

19 A. Yes, ma'am.

20 Q. And did you speak with her investigator,
21 Mr. Davis as well?

22 A. Yes.

23 Q. And do you recall giving a written
24 statement to them?

25 A. Yes, ma'am.

Michael Spann-Direct by Boyd-Bostic

1 Q. And in that statement, what information
2 did you gave to Investigator Davis and Attorney
3 Butcher? What did you tell them?

4 A. I just told them what Mary Ann and the
5 girl Christine Cole told me. They told me that on
6 the night that what happened to her son, she just
7 said, she was so scared, the only thing they heard
8 was, they thought they heard somebody around the
9 house. And she said she heard a loud noise. And
10 she was too scared to come out of her room, and she
11 heard gunshots. And she waited almost about
12 5 minutes before she left out of her room. When she
13 came out of the room, she saw her son laying on the
14 floor, dead. Or she assumed he was dead.

15 Q. So she never told you that she saw
16 Mr. Spann at the home.

17 A. No, she told me she saw a car pulling off.

18 Q. But she never identified the alleged
19 perpetrator. She never told you who the shooter.

20 A. No, she said she never saw anybody. All
21 of them said they were scared. Said they were all
22 so scared they ain't wanted to see. She said she
23 never saw anybody. She heard a noise. She heard a
24 loud banging, and she heard gunshots. And she
25 waited almost 5 minutes before she moved. Said when

Michael Spann-Direct by Boyd-Bostic

1 they left out and came around there, he was laying
2 on the floor.

3 Q. Now about what time was she telling you
4 this, sir? Was this immediately after---

5 A. Probably.

6 Q. ---the incident happened? Was it a year
7 later, some months?

8 A. No it was probably like a week or two
9 later.

10 Q. And you said they repeatedly told you
11 about what happened?

12 A. Yeah.

13 Q. And that was the story they gave every
14 time?

15 A. Every time.

16 Q. And you related that information to
17 Attorney Butcher?

18 A. Yes, ma'am.

19 Q. And what happened with that, did you
20 testify in Mr. Spann's trial?

21 A. No, Ms. Butcher told me that she would
22 contact me when it was time for me, when they needed
23 me in court. And I told her -- she asked me would
24 me would I come to court, and I said yes, I don't
25 mind. I told her I didn't want to be in the middle

Michael Spann-Direct by Boyd-Bostic

1 of it, but I didn't mind because I wanted to do the
2 right thing. She said, okay, we will be in contact
3 with you. I never heard anything else.

4 Q. And how many times did you speak Attorney
5 Butcher you would say?

6 A. Really twice, because the time that she
7 came to see me, and then she ended up representing
8 me on a case. And when she came to see me about my
9 case, I asked her about the situation again. She
10 said no, we're still going to contact you.

11 THE COURT: What was representing you for?

12 A. It was in Lee County. I think it was
13 the -- she was doing like my preliminary hearing. I
14 was facing a murder case, and she was about to do my
15 preliminary hearing. Then my family hired, they
16 hired Will Wheeler to handle the case.

17 THE COURT: I see. In this you said that
18 she was representing you before, Mr. Spann's trial.

19 A. Yes.

20 THE COURT: Go ahead.

21 Q. Is there anything else regarding that
22 incident that you would like for the court to know?

23 A. No, basically I just wanted to state my --
24 state whatever was telling me. Like I said, I
25 didn't want to be in the middle of it. But once

Michael Spann-Direct by Boyd-Bostic

1 they told me, I had no other choice but to let it
2 go, because it was on my conscious. And I felt like
3 after I heard that, because I did hear it. Like
4 from, you know how people talk. So I heard that
5 they said that they saw him. And I said, that's
6 what made me put myself into. Because I was like
7 there's no way that they said they saw him.
8 Because they told me they never saw anybody. They
9 was too scared. So I was like, man, I just can't
10 sit here and not say anything.

11 Q. When you said you don't want to be in the
12 middle of it, what do you mean by that?

13 A. Because I have no problems with either
14 side. Like I said, me and him I've known since I've
15 been little. And I talk to them every day on the
16 streets also. Even if they were sitting in here,
17 and I had the tell them this in their face, I would
18 have to tell them that. Because I feel like you're
19 putting me in the middle of it when you told me
20 about it.

21 Q. So then why are you here testifying today?

22 A. Just to clear the air. Just to let them
23 know that they lied basically. In that they didn't
24 tell the court what they told me. They told me
25 something different.

Michael Spann-Cross by Coleman

1 MS. BOYD-BOSTIC: Thank you. No further
2 questions, Your Honor.

3 THE COURT: All right cross.

4 MS. COLEMAN: Yes, Your Honor.

5 Cross Examination by Ms. Coleman:

6 Q. Good afternoon, how are you?

7 A. Fine, ma'am.

8 Q. Just a couple of questions for you. I
9 believe you wrote in the statement that you gave to
10 the investigator, you said you had a street name,
11 and I can't, is it Blitz, is that what you
12 testified?

13 A. Yes, ma'am.

14 THE COURT: What is it?

15 A. Blity.

16 Q. Blity.

17 THE COURT: How do you spell that?

18 A. B-L-I-T-Y.

19 Q. Yes. Do you go by any other street names.

20 A. No, ma'am.

21 Q. Just Blity. Okay. And you were at the
22 trial, correct?

23 A. No.

24 Q. No, you never came.

25 A. They never came and got me.

Michael Spann-Cross by Coleman

1 MS. COLEMAN: No further questions.

2 THE COURT: Any objection to me asking a
3 questions or two?

4 MS. COLEMAN: No objection, Your Honor.

5 MS. BOYD-BOSTIC: No, Your Honor.

6 THE COURT: Did Ms. Lovely, did Ms. Lovely
7 ever tell you, I'm talking about Mary Ann Lovely,
8 ever tell you that she only heard a voice and
9 identified the voice as being James Keion Spann? Or
10 did she tell you she saw others? Let me back up.

11 Did you understand Ms. Lovely to testify
12 that she saw Mr. Spann before the shooting, or that
13 she heard a voice that she identified as his?

14 A. She didn't even say a voice. She told me
15 she just heard noises. And everybody in the house
16 told her after the situation was over, that it could
17 have been him. That's what she told. Because I
18 asked her. Because she thought, she said is James
19 your cousin. I was like, why do you ask me that.
20 Because you all have got the same last name. And I
21 was like, yeah, we're something like cousins. And
22 she was like, well I was scared to death. I ain't
23 going to tell you no lie. She said I never saw
24 anybody. I was scared to even move out my room.

25 THE COURT: Did she ever tell you she

Michael Spann-Cross by Coleman

1 heard his voice---

2 A. No.

3 THE COURT: ---that night?

4 A. No, sir. She said she heard noises around
5 the trailer.

6 THE COURT: And what are you in prison for
7 now?

8 A. Me, armed robbery.

9 THE COURT: And where were you sentenced?

10 A. Here.

11 THE COURT: In Sumter?

12 A. Yes, sir, in my absence.

13 THE COURT: Any follow up?

14 MS. BOYD-BOSTIC: No, Your Honor.

15 THE COURT: Anything from the State?

16 MS. COLEMAN: No, Your Honor.

17 THE COURT: Thank you, sir. You may step
18 down.

19 THE COURT: Any additional witnesses?

20 MS. BOYD-BOSTIC: None, Your Honor.

21 THE COURT: Any witnesses for the State?

22 MS. COLEMAN: The State has no witnesses.

23 THE COURT: Any argument for the

24 applicant?

25 MS. BOYD-BOSTIC: Your Honor, we would

Michael Spann-Cross by Coleman

1 just reiterate the remaining argument that the court
2 has not ruled on that Attorney Butcher had and would
3 need to investigate any potential alibi witnesses.
4 As well as obviously Mr. Spann was a potential
5 witness that could have disputed the eye witness
6 identification. In this case there was actual
7 physical evidence. I presume that they recovered
8 shell casings. Two very excited and frightened eye
9 witnesses that said they made this identification
10 based on a voice. Well one of the witnesses claimed
11 she had never meet Mr. Spann. She didn't know him.

12 At trial the other witness that was
13 actually the one that originally identified
14 Mr. Spann as being the perpetrator, changed her
15 story a few times, and said she wasn't involved.
16 She actually never saw anyone. She just sat with
17 him.

18 THE COURT: Who?

19 MS. BOYD-BOSTIC: Ms. Wilson. Tomeka
20 Wilson.

21 THE COURT: What did she say at the trial?

22 MS. BOYD-BOSTIC: That was the young lady
23 that was Mr. Lindsey Lovely at the time. At trial
24 she stated that she actually never saw Mr. Spann and
25 that she wasn't sure if it was him. She just

1 thought that it could have been him because she was
2 there, and because of the situation. She actually
3 changed her version of the story a few times.
4 Additionally as I stated, there is no physical
5 evidence in this case. And our courts have
6 previously held, you know, alibi witnesses are
7 exactly the type of evidence necessary to refute
8 such circumstantial evidence where there is no
9 physical evidence for the court to consider.

10 Again, there were no fingerprints. There
11 was no gun recovered. The only thing that tied
12 Mr. Spann to any of this happening, was the fact
13 that he had a previous relationship with this young
14 lady, who at the time of this incident alleged, oh,
15 I think a heard Duck. So that is the onely reason
16 that Mr. Spann was involved in this. And it appears
17 from the record, if you look at all the pleadings,
18 the transcript and testimony from Investigator Webb,
19 the investigation simply stopped at Mr. Spann.
20 There was no other -- there were no other suspects
21 that were interviewed. No one else was even ruled
22 out. It was simply Mr. Spann from the beginning.

23 THE COURT: Ms. Coleman, any response?

24 MS. COLEMAN: Yes, Your Honor. The State
25 would just argue that these witnesses were weak

1 witnesses. They could have been, at least,
2 Mr. Plowden, who was the only alibi witness in this
3 case, could have been impeached with his prior
4 record. He was currently at the time of the trial,
5 as you know, was incarcerated at Kirkland for
6 forgery. He could have been easily impeached with
7 that. And evidence of testimony shows Ms. Butcher
8 knew about both of these witnesses, and obviously
9 made a conscious decision not to use them at trial.

10 It even says in the trial transcript that
11 she -- that Mr. Plowden was unable to come out of
12 Kirkland because they were under quarantine. But
13 that was okay, because she didn't plan to use him
14 anyway. She clearly had a strategy not of to do
15 that. The defense didn't put up a case at all.
16 They had no witnesses. So it's the State's
17 contention that she consciously did this for the
18 strategy of having the last say for closing
19 argument.

20 THE COURT: Is that -- you will have a
21 chance to respond. My notes from the PCR, the first
22 phase of this PCR, was that she and her investigator
23 spoke to the alibi witnesses, but she decided that
24 because of their relationship to the applicant and
25 their prior criminal record, they would not good

1 witnesses to put up at trial even though they were
2 available. My recollection is, one of the witnesses
3 she didn't recall whether she talked to him or not.
4 Which witness was it that was present at the trial,
5 but had to leave because his ride was leaving? Was
6 that Mr. Scarborough? It probably would have to
7 be.

8 MS. BOYD-BOSTIC: It seems like it would
9 be based on this, Your Honor.

10 THE COURT: Because the other two were in
11 prison.

12 MS. BOYD-BOSTIC: Incarcerated at the time
13 the trial was going on.

14 THE COURT: Go ahead, Ms. Coleman, any
15 additional statements?

16 MS. COLEMAN: And again, we're in kind of
17 a strange situation, because I was not present at
18 the first hearing, and I don't have the transcript
19 from that, so I'm not sure what arguments were made.
20 But the State would just agree with everything that
21 trial counsel testified to. She clearly had a
22 strategy. She did this intentionally. She chose
23 not to use them because she thought they were weak
24 witnesses for whatever reason. So the State would
25 contend that trial counsel was not ineffective and

1 different people, including Mr. Spann's younger
2 brother. Starting at the time line thing, I saw him
3 at the home, and he left around this time.

4 THE COURT: What time was murder?

5 MS. BOYD-BOSTIC: At 12:09 a.m. But yeah,
6 so she could have established a time line. Those
7 witnesses should have been presented at least to the
8 jury for them to at least look at the testimony and
9 the credibility. But she didn't put up any sort of
10 defense.

11 THE COURT: Anything else?

12 MS. COLEMAN: The State would like to
13 respectfully request that the record be left open
14 for the testimony of Ms. Deborah Butcher in the
15 case, in order to elaborate more on her trial
16 strategy.

17 THE COURT: I will look back and see who
18 the court reporter was, and perhaps obtain that
19 information that way. Anything else?

20 MS. BOYD-BOSTIC: No, Your Honor.

21 THE COURT: Thank you all for coming back
22 on such relatively short notice. And I will explain
23 the reasons for some of my delay in these things, is
24 the week that I had these PCR's, I had numerous ones
25 that had been continued numerous times, and several

1 lengthy murder trials that I had to read trans --
2 and still am reading transcripts in.

3 So I didn't want anybody to think that
4 I've been sitting here doing nothing. It's I think
5 my responsibility not just to off the cuff, to rule
6 on these things. I think they deserve an honest
7 look. So that's why it's taking so long. Thank
8 you.

9 --End of Requested Transcript of Record--

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C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in Common Pleas Nonjury Court on April 26, 2016, in Sumter County, Sumter, South Carolina.

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

1-16-17
DATE

Margaret T. Sullivan
COURT REPORTER

My Commission expires: 9/7/21

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER

THIRD JUDICIAL CIRCUIT

James Keion Spann,
S.C.D.C. No. 2863212012-CP-43-00311³¹

Applicant

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL
(with prejudice)**

Certified as a True Copy

James T. Davis
Clerk Court of Common Pleas
and General Sessions, 3rd
County, South Carolina

This matter comes before the Court by way of an application for post-conviction relief (PCR) from James Keion Spann (the Applicant), which was filed on December 31, 2012. Respondent's Return is dated June 28, 2013. A hearing into the matter was convened on April 16, 2015, at the Sumter County Judicial Center. The Applicant was present and represented by Bertila I. Boyd, Esquire. Daniel Gourley, Esquire, appeared on behalf of the Respondent. John T. Davis, Jr., an investigator hired by the Applicant's trial counsel, testified. Deborah Butcher, Esquire, the Applicant's trial counsel, testified. After this hearing, the court left the record open to hear the testimony of Clayton Antonio Plowden and Michael Spann. The hearing reconvened on April 26, 2016, over the Respondent's objection. Mr. Gourley and Julie Coleman, Esquire, appeared for the Respondent. Mr. Plowden and Mr. Spann testified.

The court has had the opportunity to review the record in its entirety and has considered the testimony presented at the post-conviction relief hearings. The court notes that counsel for both parties were very well-prepared and very ably presented the issues to the court. Upon careful consideration of the facts, arguments, and record, the court concludes the Applicant has not satisfied his burden of establishing his allegations of ineffective assistance of counsel.

PROCEDURAL HISTORY

The Applicant is currently incarcerated in the South Carolina Department of Corrections pursuant to the Lee County Clerk of Court's orders of commitment. The Lee County Grand Jury indicted the Applicant for murder, burglary in the first degree, and possession of a weapon during the commission of a violent crime (2009-GS-31-00073). Attorney Butcher represented the Applicant.

After the State called the case to trial, the Applicant was found guilty of all three offenses. On March 31, 2010, the Honorable R. Ferrell Cothran, Jr., sentenced the Applicant to life without the possibility of parole on the murder and burglary counts and to a term of 5 years for possession of a weapon during the commission of a violent crime. All sentences are being served concurrently.

A notice of appeal was filed at the South Carolina Court of Appeals. LaNelle Cantey Durant, Esquire of the South Carolina Commission on Indigent Defense, Division of Appellate Defense perfected the appeal. The Court of Appeals affirmed the Applicant's convictions and sentences. *State v. Spann*, Op. No. 2012-UP-207 (S.C. Ct. App. filed March 28, 2012). The Remittitur was issued on April 13, 2012. The application for post-conviction relief, which forms the basis for this order, followed.

PROCEDURAL STANDARD

The Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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 on as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 669 (1984).



The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under this prong, the court reviews counsel's performance by its "reasonableness under professional norms." *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). The second prong requires a showing that counsel's deficient performance prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.*, at 117, 386 S.E.2d at 625.

ISSUES PRESENTED

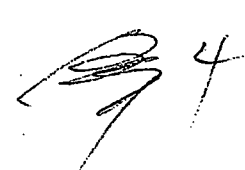
In his amended application, the Applicant sets forth three grounds for relief: (1) trial counsel failed to present favorable witnesses; (2) trial counsel failed to investigate critical evidence and the Applicant's defense when preparing for trial; and (3) trial counsel and appellate counsel failed to appeal the denial of the Applicant's motion for a new trial. Specifically, the Applicant claims in his amended application that trial counsel failed to call certain witnesses who would have provided an alibi defense for the Applicant and that trial counsel failed to properly investigate allegations of juror misconduct. The Applicant also submits in his amended application that trial counsel should have submitted more detailed *voir dire* concerning whether any prospective juror had "any relationship" with the victim and his family.

The allegations pertaining to trial counsel's failure to call witnesses concern witnesses identified as Clayton Antonio Plowden ("Plowden"), Michael Spann ("Michael Spann"), and Shontrell Scarborough ("Scarborough"). When the hearing was reconvened on April 26, 2016, only Plowden and Michael Spann appeared to testify. The court therefore cannot consider the purported testimony of Scarborough.

Testimony of Clayton Plowden and Michael Spann

The State contends that the court should not have allowed the record to remain open to take the testimony of Michael Spann and Plowden. The court disagrees and concludes that it exercised proper discretion in reconvening the hearing. The original reason for leaving the record open was that at the first PCR hearing, trial counsel testified without objection as to what the two absent witnesses would have testified to if they had been called at trial. The court originally (and mistakenly) concluded that the State's failure to object to trial counsel's testimony of what witnesses Michael Spann and Clayton Plowden would have testified to relieved the applicant's burden of producing their testimony in accordance with the rules of evidence. In light of the holding in *Bannister v. State*, 333 S.C. 298, 509 S.E.2d 807 (1998), the court was mistaken in so concluding. If the court had ruled in the Applicant's favor without hearing Michael Spann's and Plowden's testimony, that would have been error. The court left the record open to hear their testimony and evaluate it for credibility and relevance purposes. Even though the court was incorrect in its initial conclusion that the testimony had essentially been presented through trial counsel's PCR testimony, the court still had the discretion to leave the record open.

Since Plowden's testimony and Spann's testimony are now in the record, the court will address their testimony and counsel's performance in relation to the factors announced in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052 (1984). First, the Applicant must establish by the greater weight of the evidence that counsel's performance did not rise to the level of prevailing professional norms. Second, the Applicant must establish that as a result of counsel's deficient performance, there is a reasonable probability that the outcome of the trial would have been different. A "reasonable probability" in this context is "a probability sufficient to undermine confidence in the outcome." 466 U.S. at 694. The *Strickland* Court observed:



[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct. A convicted defendant making a claim of ineffective assistance must identify the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment. The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance. In making that determination, the court should keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case. At the same time, the court should recognize that counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Strickland*, 466 U.S. at 690.

The parties have consistently referred to witnesses Plowden, Scarborough, and Michael Spann as alibi witnesses. As noted above, the court cannot consider Scarborough's purported testimony since he did not testify at the PCR hearing; therefore, the category of his testimony is irrelevant. Plowden would have been an alibi witness if called at trial. Michael Spann was not an alibi witness; the scope of his testimony would have been in the form of offering extrinsic evidence of a prior inconsistent statement allegedly made to him by Mary Ann Lovely.

The court will review the PCR testimony of Plowden and Michael Spann below. Before doing so, the court will review case law concerning the requirement that trial counsel articulate a valid strategic reason for doing or not doing certain things during the course of a criminal trial. The articulation of a valid trial strategy is relevant to the first *Strickland* prong, i.e., whether trial counsel's performance rose to the level of accepted professional norms. If trial counsel's decision to do something or not do something was the result of the exercise of a valid trial strategy, then a PCR applicant cannot satisfy the first *Strickland* prong. Our appellate courts have recognized that trial counsel must articulate a valid trial strategy during the PCR proceedings. In *Smith v. State*, 386 S.C. 562, 689 SE2d 629 (2010), trial counsel failed to object to inadmissible hearsay and to

testimony that bolstered the credibility of a child victim of CSC. Trial counsel gave no reason for not objecting. The Supreme Court stated the well-settled rule that courts should be wary of second-guessing counsel's trial tactics, and that where counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel. However, the court stated "[t]he presumption of adequate representation based on a valid trial strategy disappears when trial counsel acknowledged there was no trial strategy in mind" when he failed to object to the inadmissible testimony. 386 S.C. at 568 (emphasis in original).

In *Bruno v. State*, 347 S.C. 446, 556 S.E. 2d 393 (2001), trial counsel did not object to a prosecution witness's testimony that the witness took a polygraph exam. During the PCR proceeding, trial counsel gave absolutely no reason for failing to object. The PCR court still found there was a valid trial strategy not to object. However, the Supreme Court held that because there was no evidence in the PCR record to support the finding that the failure to object was trial counsel's valid strategic decision, the PCR court's finding of a valid strategic reason could not be upheld.

In *Gilchrist v. State*, 350 S.C. 221, 565 S.E. 2d 281 (2002), trial counsel failed to object to a comment made by the solicitor during his opening statement. Trial counsel testified at the PCR hearing that it was his strategy to not object but "never articulated any strategy at all." 350 S.C. at 228, fn. 2. The PCR court found there was a valid strategic reason for not objecting. The Supreme Court reversed the denial of the application, holding that a blanket statement by trial counsel that he employed "strategy" does not automatically insulate trial counsel from being found ineffective. The Court found that since no strategy was articulated, there was no evidence to support the PCR judge's finding that there was a valid strategic reason for trial counsel's failure to object.



In *Weik v. State*, 409 S.C. 214, 761 SE 2d 757 (2014), the Supreme Court reviewed a death sentence rendered by a jury after trial counsel failed to pursue mitigation evidence during the sentencing phase. The PCR court ruled that the failure to pursue mitigation evidence was a valid strategy. The Supreme Court reversed, holding that there was no evidence that trial counsel made any reasoned, strategic decisions as to which mitigation witnesses would testify and holding that the PCR court's invocation of the "strategic decision" doctrine to justify trial counsel's failure to pursue mitigation evidence "resembles more a post-hoc rationalization of counsel's conduct rather than an accurate description of [counsel's] deliberations ..." 409 S.C at 236.

The import of these cases is that even though someone on the sidelines of a PCR proceeding might, after the fact, be able to pinpoint several very good strategic reasons for doing or not doing something, trial counsel must articulate the strategic reasons. Neither the PCR court nor the Attorney General can pluck possible strategic reasons from the realm of possibilities and employ them to conclude or argue that the first *Strickland* prong has not been satisfied.¹ In other words, an unarticulated strategy is not to be considered by the PCR court.

Failure to Call Plowden and Michael Spann to Testify

Clayton Antonio Plowden

Plowden did not testify at trial. At the reconvened PCR hearing, Plowden testified that before trial, he met with the investigator retained by trial counsel. He gave a statement to the investigator on March 29, 2010. At the time of trial, he was incarcerated at Broad River Correctional Institution. He testified that before and during the murder occurred in Bishopville, he and the Applicant were smoking marijuana and drinking gin together in Sumter on Bowman

¹ The court notes that sometimes appellate courts seem to search for possibly valid strategic reasons for counsel's actions. For example, in *Smith v. State*, *supra*, the Supreme Court observed, "[m]oreover, we can discern no defensible basis for trial counsel's failure to challenge the forensic interviewer's objectionable testimony." 386 S.C. at 568. However, the rule seems to be that trial must articulate a strategy before the strategy can be reviewed by the PCR court.

Drive thirty minutes away from the murder scene. He said they were together from approximately 10:00 p.m. and 1:00 a.m. He testified he never talked to trial counsel about this case. He testified that trial counsel had represented him in a criminal matter before the applicant's trial.

The trial transcript reveals that Plowden was incarcerated at Kirkland R & E at the time of trial and that trial counsel knew this. Kirkland was under quarantine at the time trial because of an illness spreading around that facility. When the assistant solicitor noted that fact to the trial judge, trial counsel stated that she did not anticipate calling Plowden as a witness anyway. During the PCR hearing, trial counsel gave no concrete reason for not asking for a continuance or for special dispensation to have him transported in spite of the quarantine. Trial counsel testified that she could not recall why she did not ask for a continuance but further testified that if she had felt like he was a good alibi witness, she would have moved for a continuance. She testified she could not "verify" the alibi witnesses, and that even though she had notified the solicitor of the purported alibi witnesses, that did not mean she would definitely have them testify. She testified that "[w]hat I do recall is that I don't have a good alibi witness that could testify where he was at the time of the incident." She further attempted to explain that even though she may have subpoenaed the witnesses for trial, that doesn't mean she was absolutely intending to call them to the witness stand. This was certainly a reasonable approach but does not end the inquiry.

Plowden testified at the reconvened PCR hearing. I find his credibility at the PCR hearing was suspect. He was incarcerated at the time of trial following a forgery conviction. Forgery is a crime of dishonesty. His incarceration and conviction would have certainly been made known to the jury. Also, the substance of his testimony, i.e., that he and the Applicant were smoking marijuana and drinking gin from 10:00 p.m. through 1:00 a.m., would certainly not have put the Applicant in a good light. Plowden's credibility could have easily been called into question on the

issue of his sobriety and whether he could accurately recall his time with the Applicant. Trial counsel's explanation for not calling him to testify at trial, while not specifically articulated, was that she simply did not feel he was a good alibi witness. All in all, trial counsel's decision not to call him to testify at trial was a valid strategy and the strategy was sufficiently articulated by trial counsel.

Michael Spann

Though he has been categorized by the parties as an alibi witness, he was not an alibi witness. The sole purpose of his testimony would have been to complete the impeachment of Mary Ann Lovely with a prior inconsistent statement. Before addressing his PCR testimony, the court will review the eyewitness evidence presented by the State at trial.

Tameka Wilson (Tameka) was a trial witness. She was the immediate former girlfriend of the Applicant and was spending the night with the victim in his bedroom when the killer broke through the front door, entered the dwelling, and shot the victim. Soon after the murder, Tameka gave a statement to law enforcement and stated that when the assailant entered the home, she thought she heard the applicant ask "[W]here they at?" This could imply that whoever entered the home was looking for the victim and Tameka.

Mary Ann Lovely, the victim's mother, called 911 after the shooting. At some point, Tameka spoke to the operator and the operator asked her who shot the victim. Tameka stated the name "James Keion Spann" four times. However, at trial, Tameka testified that she actually told the operator that she only said "I believe" it was James Keion Spann who shot the victim.

Tameka testified that she could not identify "by sight" who shot the victim. She testified that Mary Ann Lovely came to the bedroom door and said that she heard a gun being cocked at the front door. Tameka testified she and the victim began to get dressed and ran down the hallway

toward the front door. She testified at trial that someone kicked the door in and said "Where they at?", but she testified she did not know if the applicant was the one who said that and that she never saw anybody. She testified that she told law enforcement that "I believe it could be [the Applicant]" because she and the applicant had just broken up and "went through some problems" and that "I don't think anybody else was after me ... So, of course, I'm going to say the person that I just got into an altercation with" (Tr., pp. 94-95). She testified that the police told her what to say in her statement. The only testimony she gave that was helpful to the State was that she "believed" she heard the applicant make the statement "Where they at?" She testified that she was told by law enforcement what to say in her statement. The totality of Tameka's trial testimony was a recantation of what was in her statement to law enforcement and a denial of knowledge as to who shot the victim.

The foregoing left Mary Ann Lovely as the sole eyewitness against the Applicant. Because Tameka Wilson recanted, Ms. Lovely's credibility was obviously an important issue. Ms. Lovely is the victim's mother. She testified at trial that she heard noise at the front door, looked through the peephole, saw the Applicant, and heard a gun being cocked. She testified she ran to the victim's bedroom door and told him "that boy" was at the door with a gun. She testified she ran to her other son's room and lay down on top of him so he would not get hurt. She did not see the shooting itself. She placed the 911 call to ask for an ambulance. The 911 operator asked her if she knew who shot the victim, and she replied "I don't know." At trial, she explained that she did not know the Applicant's real name, just his nickname, "Duc" (presumably pronounced "duck") and that is why she told the 911 operator she didn't know who shot her son. Trial counsel cross-examined her extensively on her saying to the 911 operator that she did not know who shot her son.



On cross-examination at trial, trial counsel asked Ms. Lovely if she knew Michael Spann. The trial transcript reflects that she replied she did not know anyone by that name, but did eventually acknowledge she knew someone identified as "Lenny". The trial transcript reflects that name, but it must be noted that Michael Spann testified at the reconvened PCR hearing that his street name was "Blity" (pronounced "blitty"). The court concludes that the similar sounding enunciations of "Lenny" and "Blity" are indicative of the same person, i.e., Michael Spann. Counsel asked Ms. Lovely if she had ever told "Lenny" that she heard noise at the front door and then heard gunshots but was too scared to come out of her bedroom and that she never saw anything other than a car pulling away from the house after the shooting. Ms. Lovely replied that she has never talked to anyone about the shooting and that she told "Lenny" no such thing.

The foregoing exchange was a partial use of Rule 613, SCRE, which addresses the admissibility of extrinsic evidence of a prior inconsistent statement of a witness. Rule 613 provides that extrinsic evidence of a prior inconsistent statement is not admissible unless the witness is advised of the substance of the alleged statement, the time and place it was allegedly made, and the person to whom the statement was allegedly made. Also, the witness must be given the opportunity to explain or deny the statement; if the witness does not admit making the statement, extrinsic evidence of the statement is admissible. In the instant case, trial counsel's cross-examination laid a foundation for the admission of a prior inconsistent statement. The witness to be called to complete the impeachment was Michael Spann, aka "Lenny" or "Blity".

Again, Michael Spann did not testify at trial. He testified at the reconvened PCR hearing that he is a distant cousin of the applicant and that he knew the victim, Lindsey Lovely. Spann testified that he also knew Mary Ann Lovely and that Ms. Lovely told him (before trial) that she heard loud banging at the front door, that she was too scared to go to the door, heard gunshots in

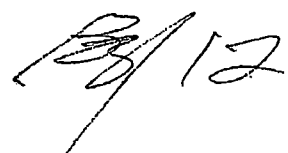


the house, came out of her room, saw the victim on the floor in the hall, went to a window, and saw a car pulling away. Michael Spann's testimony, if deemed credible by the jury, could have placed Ms. Lovely's credibility in doubt.

Mr. Spann testified that he told trial counsel and her investigator all of the foregoing and that trial counsel told him she would contact him when it was time for trial. Trial counsel could have called Michael Spann as a witness to complete the impeachment as permitted by Rule 613, but trial counsel did not do so. Trial counsel articulated no reason whatsoever for not calling him to testify. She incorrectly lumped him into the category of "alibi witnesses" and explained that she did not think any of the alibi witnesses would be helpful.

The Attorney General contends trial counsel's decision not to call Spann to testify was a valid trial strategy. However, as noted above, trial counsel must articulate what her strategy was before the strategy can be argued as valid. As noted in *Smith, supra*, the presumption of adequate representation disappears when trial counsel articulates no strategy, and under *Bruno* and *Gilchrist*, this court cannot base a finding of the exercise of valid strategy on evidence that is not in the record. To do so would be to engage in "a post-hoc rationalization of trial counsel's conduct rather than an accurate description of [counsel's] deliberations..." *Weik v State, supra*.

The court must therefore conclude that the Applicant has satisfied the first *Strickland* prong that trial counsel's decision not to call Michael Spann to complete the impeachment of Ms. Lovely fell below accepted professional norms. The court so concludes even though many valid reasons might have existed for not calling Michael Spann to testify. Such valid reasons, if they had been articulated, could have been (1) Michael Spann was formerly a member of the Blood gang and the jury may have found him not credible for that reason, (2) Michael Spann was in prison at the time of trial and this would have been made known to the jury; his record (though unspecified) could



have been introduced to adversely impact his credibility, (3) one eyewitness (Tameka) had recanted, and that left only one remaining eyewitness, Ms. Lovely, who sounded hysterical and somewhat confused in the 911 recording as to who shot her son--- one could reasonably conclude that the State's case was already weak and that there was enough reasonable doubt for the jury, and there was no need to risk calling a convict to attempt to impeach the victim's mother with a prior inconsistent statement.

Again, however, the court cannot consider these or any other unarticulated strategic reasons for not calling Michael Spann to testify. Therefore, the court must conclude that the Applicant has satisfied the first *Strickland* prong.

Prejudice

Since the Applicant has satisfied the first *Strickland* prong as to trial counsel's failure to call Michael Spann to testify, the court will consider the prejudice prong, i.e., whether there is a reasonable probability that but for trial counsel's failure to call Michael Spann to testify, the result of the trial would have been different. Simply put, if Michael Spann had been called to testify, is there a reasonable probability that the jury would have concluded there was a reasonable doubt as to Ms. Lovely's identification of the Applicant as the person who shot the victim, and therefore would have concluded there was a reasonable doubt as to the Applicant's guilt?

The question of prejudice in this case is close. However, after exhaustive reading of the trial transcript and after careful review of the PCR testimony, the court concludes that there is not a reasonable probability that the outcome of the trial would have been different if Michael Spann had been called to testify. His credibility would have been too suspect; he was an admitted former gang member, had a criminal record, was incarcerated at the time of trial, and is also related in some way to the Applicant, and while he also claimed to have known the victim for many years,

Michael Spann had also known the Applicant for many years. The court concludes that Michael Spann's testimony would have been too tainted for a jury to have found him credible and there is therefore not a reasonable probability that the jury would have found the Applicant not guilty.

Insufficient Voir Dire

The Applicant submits in his amended application that trial counsel should have requested more detailed *voir dire* from the trial judge as to any prospective juror's relationship with the victim or anyone in the victim's family. The trial judge asked the jury panel whether anyone was "connected by blood or marriage, close personal friends, or social relations" with the victim. The trial judge asked whether any juror was "connected by blood or marriage, close personal friends, or family relations" to any prospective witnesses.

The Applicant claims that with regard to jurors Christopher Hickman and Felicia Williams, a more detailed question would have caused them to disclose certain things they did not disclose. Neither juror stood in response to these questions. Their "failure" to respond was addressed in a hearing convened after the Applicant moved for a new trial on the ground of juror misconduct. Both jurors testified at the hearing. Mr. Hickman testified he knew Lindsey Lovely but that they were not close friends. He also testified that he knew the Applicant but that he had "never been around him." He testified that he had no social relations with either the Applicant or the victim and that he would "[j]ust see them on the street and go about my business." A witness at the new trial hearing testified that she had seen Hickman and the victim riding around in an automobile together, but Hickman testified he had never ridden in an automobile with the victim. Juror Hickman cited their age differences (Hickman was 35) and stated "I don't mess with a young boy like that." He denied ever attending parties with the victim and said he did not know where he lived. He testified he did not attend the victim's funeral.

Concerning Ms. Lovely, juror Hickman testified that he thought "she lived in the trailer park" but had never been in her home, although he may have walked by her home.

Juror Felicia Williams testified that she did not know the Applicant. She testified she did not know the victim but she had seen him before. She said she was not a close friend and had never been in a social setting with him. She did not know where the victim or Ms. Lovely lived. She stated she had never interacted with them at all and did not go to the victim's funeral.

The court concludes that even if a more specific *voir dire* question had been asked of the jury panel, neither juror Hickman nor juror Williams would have been compelled to respond. The gist of Hickman's testimony was that he knew who the victim was but had no relationship at all with him. Ms. Williams' testimony was that she had seen the victim before but did not know him and that she had never interacted with Ms. Lovely. The Applicant has not met his burden of proving either *Strickland* prong on this issue.

Ineffective Assistance of Appellate Counsel

On the juror *voir dire* issue, the Applicant alternatively claims appellate counsel was ineffective for failing to argue on appeal the denial of his new trial motion. The Applicant's new trial motion was based on the ground that jurors Hickman and Williams failed to disclose they were acquainted with the victim or the victim's mother, or both. The court has reviewed the transcript of the new trial motion hearing and the transcript of jury selection. The court concludes that the trial judge's conclusion that there was no intentional concealment by either juror would not have been disturbed on appeal.

As noted above, the *voir dire* question relating to potential witnesses (the relevant one being Mary Ann Lovely) that was asked by the trial judge was whether any jurors were "connected by blood or marriage, close personal friends, or family relations to any of those potential



witnesses." With regard to the victim, the trial judge asked if any juror was "connected by blood or marriage, close personal friends, or social relations with Lindsey Lovely". Neither juror Hickman nor juror Williams stood in response to these questions.

In his new trial motion, the Applicant contended there was evidence that juror Hickman and the victim were good friends and that they had been seen riding around with each other and that Hickman frequently visited the victim's home. Evidence was presented at the new trial motion hearing that these two jurors, especially juror Hickman, knew the victim and Ms. Lovely. However, the trial judge obviously considered all the evidence that was presented and ruled that neither juror concealed any information or failed to respond truthfully to *voir dire* questions. Again, the specific question was whether any juror was related by blood or marriage, was a close personal friend or social relation with the victim or any witness. The record certainly supports the trial judge's ruling that there was no "intentional failure to respond appropriately to my questions."

Appellate counsel was not ineffective for not raising the issue of intentional concealment on appeal because there was no chance an appellate court would have reversed the conviction on this issue. In *State v. Woods*, 345 S.C. 583, 550 S.E.2d 282 (2001), the Supreme Court discussed the issue of intentional and unintentional concealment of *voir dire* information by a juror and stated:

When a juror conceals information inquired into during *voir dire*, a new trial is required only when the court finds the juror intentionally concealed the information, and that the information concealed would have supported a challenge for cause or would have been a material factor in the use of the party's peremptory challenges. *Thompson v. O'Rourke*, 288 S.C. 13, 15, 339 S.E.2d 505, 506 (1986). Where a juror, without justification, fails to disclose a relationship, it may be inferred, nothing to the contrary appearing, that the juror is not impartial. On the other hand, where the failure to disclose is innocent, no such inference may be drawn. *State v. Savage*, 306 S.C. 5, 409 S.E.2d 809 (Ct.App.1991). 345 S.C. at 587-88.

In the instant case, the record supports the trial judge's ruling that there was no concealment by either juror. Appellate counsel had no reason to raise this issue on appeal because the issue had no merit. Even if appellate counsel had raised the issue, there is not a reasonable probability that the conviction would have been reversed and a new trial ordered.

Conclusion

For the foregoing reasons, the application for post-conviction relief is denied. The Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this order to secure the appropriate appellate review. See Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

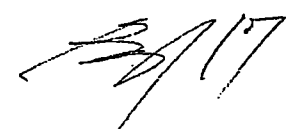
It is therefore

ORDERED the application for post-conviction relief is denied and dismissed with prejudice. It is further

ORDERED that the Applicant shall remain in the custody of the South Carolina Department of Corrections.

September 29, 2016


George C. James, Jr.
Circuit Judge



WITNESSES

LEE COUNTY SHERIFF'S OFFICE

Investigator Benny Webb

ARREST WARRANT NUMBER

F799979 (1); F799978 (2); No Warrant (3)

D/A: 04/07/09

ACTION OF GRAND JURY

True Bill

[Signature]

person of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-31- 73

The State of South Carolina

County of LEE

COURT OF GENERAL SESSIONS

JUNE TERM 2009

THE STATE

vs.

JAMES KEION SPANN

Indictment for

**MURDER
BURGLARY (FIRST DEGREE)
POSSESSION OF A FIREARM DURING
A CRIME OF VIOLENCE**

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEE)

INDICTMENT FOR
 MURDER
 BURGLARY (FIRST DEGREE)
 POSSESSION OF A FIREARM DURING A CRIME
 OF VIOLENCE

At a Court of General Sessions, convened on June 11, 2009, the Grand Jurors of
 LEE County present upon their oath:

COUNT ONE - MURDER

That JAMES KEION SPANN did in Lee County on or about April 7, 2009, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one LINDSAY LOVELY by means of shooting him with a handgun, and that the said LINDSAY LOVELY did die as a proximate result thereof.

COUNT TWO - BURGLARY (FIRST DEGREE)

That JAMES KEION SPANN did in Lee County on or about April 7, 2009, enter the dwelling of MARY ANN LOVELY without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime, in violation of Section 16-11-311, South Carolina Code of Laws (1976), as amended.

COUNT THREE - POSSESSION OF A FIREARM DURING A CRIME OF VIOLENCE

That JAMES KEION SPANN in Lee County on or about April 7, 2009, was in possession of and did visibly display a firearm during the commission of a violent crime as defined in Section 16-1-60, to-wit: a handgun, in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

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

C. Kelly Jackson

 SCLJ CR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

INDICTMENT/CASE#: 2009-GS-31-0073

STATE

VS.

JAMES K. SPANN

AW#: F799978

AKA:

Date of Offense: April 07, 2009

Race: Black

Sex: Male

Age:

S.C. Code §: 16-03-0010, 0020

DOB: [REDACTED]

SS#: [REDACTED]

CDR Code #: 0116

Address: [REDACTED] Mayesville, SC 29104

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: MURDERin violation of § 16-03-010 of the S.C. Code of Laws, bearing CDR Code # 01 11 116
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45
w/minor 1st or Lewd Act)
The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

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 life without parole days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

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

Payment Terms: _____

☐ set by SCDPPPS

_____ days/hours Public Service Employment

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5%)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§56-5-2895 (DUI Assessment)	\$12	\$
§35.13 (Public Def/Prob)	\$500	\$
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§50-21-114(BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	\$	\$ 3.90
§90.11 TP (SCJA Surcharge)	\$5	\$ 5.00
TOTAL		\$133.90

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: _____

Sentence Date: _____

Court Reporter: Dianne Rutledge

382

STATE OF SOUTH CAROLINA

COUNTY OF

STATE

VS.

JAMES K. SPANN

AKA:

Race: Black

Sex: Male

Age: .

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED] Mayesville, SC 29104

DL#

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-GS-31-0073

A/W#: F799979

Date of Offense: April 07, 2009

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Burglary First Degreein violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 0101719☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS (GSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

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 life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*, the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

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

_____ days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§35.13 (Public Def/Prob) \$500 \$ _____

§73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§50-21-114(BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ 3.90§90.11 TR (SCJA Surcharge) \$5 \$ 5.00TOTAL \$ 123.90James D. Davis
Clerk of Court Deputy Clerk

Court Reporter:

Dianne Butledge

PRESIDING JUDGE

Judge Code:

Sentence Date:

2 1 1 4 1 4

3-31-10

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF

INDICTMENT/CASE#: 2009-GS-31-0073

STATE

VS.

JAMES K. SPANN

A/W#: No Warrant

AKA:

Date of Offense: April 07, 2009

Race: Black

Sex: Male

Age:

S.C. Code §: 16-23-04900549

DOB: [REDACTED]

SS#: [REDACTED]

CDR Code #: 0116

Address: [REDACTED] Mayesville, SC 29104

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADSTO: Rest upon Violent Crimein violation of § _____ of the S.C. Code of Laws, bearing CDR Code # 0151419☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant Initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

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 of ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ Ordered

PTUP

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

_____ days/hours Public Service Employment

Payment Terms:

☐ set by SCDPPPS

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Recipient:

*Fine:

\$14-1-206 (Assessments 107.5%)

\$14-1-211(A)(1) (Conv. Surcharge)

\$14-1-211(A)(2) (DUI Surcharge)

\$58-1-286 (DUI Breath Test)

\$58-5-2995 (DUI Assessment)

\$35.13 (Public Def/Prob)

\$73.3, 1B TP (Law Enforce. Funding)

\$33.7, 1B TP (Drug Court Surcharge)

\$50-21-114 (BUI Breath Test Fee)

\$58-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

\$90.11 TP (SCCJA Surcharge)

TOTAL

\$	
\$	
\$100	\$100.00
\$100	\$100.00
\$25	\$25.00
\$12	\$12.00
\$500	\$500.00
\$25	\$25.00
\$100	\$100.00
\$60	\$60.00
\$40/ea	\$40.00
\$5	\$5.00
\$	\$733.90

Clerk of Court/ Deputy Clerk

Court Reporter:

PRESIDING JUDGE

Judge Code:

Sentence Date:

3-31-10