

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Allendale County
Honorable Roger L. Couch, Circuit Court Judge

RECEIVED

JUN 19 2017

S.C. SUPREME COURT

MARQUIS BREELAND,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2016-002430

APPENDIX

LARA M. CAUDY
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

RUSTON NEELY
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (dated August 8-10, 2011)	1
FINAL BRIEF OF APPELLANT	269
FINAL BRIEF OF RESPONDENT	281
OPINION NO. 2013-UP-073 (Ct. App. filed February 13, 2013)	298
APPLICATION FOR POST-CONVICTION RELIEF	300
RETURN.....	307
AMENDED APPLICATION FOR POST- CONVICTION RELIEF	312
PETITIONER’S PCR HEARING BRIEF	320
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated October 21, 2015)	334
ORDER OF DISMISSAL.....	369
PLAINTIFF’S MOTION TO ALTER OR AMEND JUDGEMENT.....	377
CONSENT ORDER.....	379
INDICTMENTS	381

1 STATE OF SOUTH CAROLINA

2 COUNTY OF ALLENDALE

CIRCUIT COURT
2009-GS-03-00056 & 00057

3 STATE OF SOUTH CAROLINA,

4 -vs-

TRANSCRIPT OF RECORD

5 MARQUIS SENTEL BREELAND,
6 Defendant.

7
8 Heard on Monday, August 8, 2011

9 Tuesday, August 9, 2011

10 & Wednesday, August 10, 2011

11
12 Allendale, South Carolina

13
14 BEFORE:

15 THE HONORABLE H. WILLIAM SEALS, JR.

16
17 APPEARANCES:

18 Counsel on Behalf of the State:

19 Tameaka A. Legette, Esq.

20 Robert E. Ferguson, Jr., Esq.

21 Counsel on Behalf of the Defendant:

22 Stephen T. Plexico, Esq.

23 Cheri L. Young, RPR
24 Circuit Court Reporter
25 P O Box 1154
Aiken, SC 29802-1154

EXAMINATION INDEX

DAPHNE CONNER

DIRECT BY MR. FERGUSON 63

MARLENE LEVETTE LOVE

DIRECT BY MR. FERGUSON 67

CROSS BY MR. PLEXICO 69

JOHN LAWSON

DIRECT BY MR. PLEXICO 70

CROSS BY MR. PLEXICO 73

JOHN SULLIVAN

DIRECT BY MR. FERGUSON 74

KARL KENLEY

DIRECT BY MS. LEGETTE 77

CROSS BY MR. PLEXICO 100

REDIRECT BY MS. LEGETTE 100

ANTONIO FRAZIER

DIRECT BY MS. LEGETTE 101

CROSS BY MR. PLEXICO 105

REDIRECT BY MS. LEGETTE 107

1	PATRICIA ANN BRADLEY	
2	DIRECT BY MS. LEGETTE	108
3	CROSS BY MR. PLEXICO	110
4	RICHARD PRIESTER	
5	DIRECT BY MS. LEGETTE	113
6	CROSS BY MR. PLEXICO	116
7	REDIRECT BY MS. LEGETTE	118
8	RECROSS BY MR. PLEXICO	119
9		
10	WILLIE JAMES ELMORE	
11	DIRECT BY MS. LEGETTE	121
12	CROSS BY MR. PLEXICO	125
13	REDIRECT BY MS. LEGETTE	127
14	DWANN DEVOE	
15	DIRECT BY MS. LEGETTE	128
16	CROSS BY MR. PLEXICO	134
17	REDIRECT BY MS. LEGETTE	137
18	RECROSS BY MR. PLEXICO	138
19		
20	LATRINCY CARTER	
21	DIRECT BY MS. LEGETTE	139
22	CROSS BY MR. PLEXICO	142
23	REDIRECT BY MS. LEGETTE	144
24	RECROSS BY MR. PLEXICO	145
25		

1	MARCUS WITHERSPOON	
2	DIRECT BY MS. LEGETTE	147
3	CROSS BY MR. PLEXICO	151
4	REDIRECT BY MS. LEGETTE	161
5	RECROSS BY MR. PLEXICO	161
6		
7	RICHARD L. JOHNSON	
8	DIRECT BY MS. LEGETTE	162
9	DAVID BLACK	
10	DIRECT BY MR. FERGUSON	170
11	HAYZEN BLACK	
12	DIRECT BY MR. FERGUSON	186
13	CROSS BY MR. PLEXICO	188
14	REDIRECT BY MR. FERGUSON	189
15		
16	JANICE ROSS	
17	DIRECT BY MR. FERGUSON	189
18	CROSS BY MR. PLEXICO	201
19		
20		
21		
22		
23		
24		
25		

1	CLOSING ARGUMENTS	
2	ON BEHALF OF THE STATE	- 211
3	ON BEHALF OF THE DEFENDANT	- 225
4	CHARGE OF THE COURT	- 243
5	QUESTION FROM THE JURY	- 257
6	VERDICT OF THE JURY	- 260
7	POLLING OF THE JURY	- 261
8	SENTENCE OF THE COURT	- 267
9	CERTIFICATE OF THE COURT REPORTER	267

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

EXHIBIT INDEX

MAR / ADM

State's:

1	1	Photograph	84
2	2	Photograph	84
3	3	Photograph	84
4	4	Photograph	84
5	5	Photograph	84
6	6	Photograph	84
7	7	Photograph	84
8	8	Photograph	84
9	9	Photograph	84
10	10	Photograph	84
11	11	Photograph	84
12	12	Photograph	84
13	13	Photograph	84
14	14	Photograph	84
15	15	Photograph	84
16	16	Photograph	84
17	17	Photograph	84
18	18	Photograph	84
19	19	Photograph	84
20	20	Photograph	84
21	21	Photograph	84
22	22	Photograph	84
23	23	Photograph	84
24	24	Photograph	84
25	25	Photograph	84

1	23	Photograph	84
2	24	Photograph	84
3	25	Photograph	84
4	26	Photograph	84
5	27	Photograph	84
6	28	Photograph	84
7	29	Photograph	84
8	30	Photograph	84
9	31	Photograph	84
10	32	Photograph	84
11	33	Photograph	84
12	34	Photograph	84
13	35	Photograph	84
14	36	SLED sketch	82
15	37	SLED package containing bullet fragments	98
16	37-A	Fired cartridge case	175 178
17	37-B	Fired cartridge case	175 178
18	37-C	Fired cartridge case	175 178
19	37-D	Fired cartridge case	175 178
20	37-E	Fired bullet	175 178
21	37-F	Fired bullet fragments	175 178
22	38	CD case	99
23	39	SLED Hayzen Black chain of custody log	164
24	40	Bullet	200
25			

1	41	Photograph	189	194
2	42	Photograph	189	194
3	43	Photograph	189	194
4	44	Photograph	189	194
5	45	Photograph	189	194
6	46	Photograph	189	194
7	47	Photograph	189	194

8

9 Court's:

10	1	Note from jury		258

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

PRETRIAL MOTIONS

1 ON MONDAY, AUGUST 8, 2011 AT 11:33 A.M.:

2 THE COURT: I'm ready to receive any motions at this
3 time you might have.

4 MS. LEGETTE: Your Honor, I think the State will do
5 our motion first, and then we'll go to Mr. Plexico's
6 motion.

7 THE COURT: Okay. Ready to do it whenever you're
8 ready.

9 MS. LEGETTE: Thank you, Your Honor.

10 MR. FERGUSON: Your Honor, the first motion that we'd
11 like to have heard is the motion regarding the pretrial
12 brief that I handed Your Honor and also Mr. Plexico.

13 There was an incident that occurred about eight days
14 prior to the case that we're here to try this week. And
15 in this case Mr. Williams here was shot twice or he was
16 shot once, and two shell casings were recovered from the
17 scene.

18 The case that we're here to try this week, Your Honor,
19 they recovered four shell casings. All of those shell
20 casings were submitted to SLED for analysis and they all
21 came back with being fired from the same weapon.

22 Essentially we would like to present evidence of that
23 first shooting and the fact that those shell casings
24 matched the shell casings recovered from this particular
25 case to show the identity of the perpetrator of that

PRETRIAL MOTIONS

1 crime.

2 We've cited two cases that I think are pretty well on
3 point, Your Honor; State V Stokes, which can be found at
4 381 SC 390, and State V Cheeseboro, which is 346 SC 526.

5 In both of those cases they had two shootings. The
6 ballistics matched up, weapons and bullets from the two
7 shootings. And the Courts allowed the evidence of the
8 other shooting in the current trial to show the identity
9 of the perpetrator.

10 Those cases were upheld on appeal.

11 We feel that the facts in our case here are very
12 similar to those. And we would request a pretrial ruling
13 on the admissibility of that evidence, Your Honor.

14 THE COURT: Be glad to hear from you, Mr. Plexico.

15 MR. PLEXICO: Thank you, Your Honor.

16 That's -- the facts, I think, are what should
17 determine this, Judge.

18 If you look at -- I just got this. I'm at a little
19 bit of a disadvantage.

20 With the State V Stokes, Judge, what they found was at
21 one scene they found a bullet in a curtain and a dead
22 body. And they matched that to a bullet found on a gurney
23 in a later incident. And the Defendant was found with
24 that gun.

25 Forensics established that the bullets were actually

PRETRIAL MOTIONS

1 fired from the gun.

2 And you had a small crime scene. In the first one,
3 they were in a bedroom. The bedroom's a very small crime
4 scene. The gurney, obviously, where the person who had
5 been shot was laying. That's -- he was running at the
6 time. There was no question that that bullet, that those
7 bullets were fired from the same gun.

8 Here, what my client pled guilty to was an ABHAN, was
9 the shooting. And they gave me this transcript. And he
10 pled to an ABHAN in regards to the individual being shot.

11 The transcript is actually inaccurate factually.
12 There was no bullet recovered from Christopher Williams in
13 the prior conviction that they're trying to introduce in
14 their case in chief.

15 What -- all they have is they have a nightclub where
16 Chris Williams was at. There was an argument. It's dark
17 at the nightclub. This is nighttime. They're shooting.
18 Chris Williams runs. The bullet strikes him in the
19 shoulder, and unlike it says in the transcript, it passes
20 through his body.

21 Therefore, they don't have a bullet from the earlier
22 shooting to match up to a bullet in the later shooting
23 which they also don't have a bullet for, either.

24 Therefore, the only thing he actually pled guilty to
25 was shooting Christopher Williams. Now, not shooting

PRETRIAL MOTIONS

1 Christopher Williams with the same gun.

2 That's a huge difference because you're talking about
3 not a small bedroom where they found, in the curtains they
4 found a bullet. They matched those bullets up, fired from
5 the same gun, I believe on that case, the same .357.

6 Here you're at a nightclub. There're shootings in
7 Allendale all the time. You can, you know, you can hear
8 gunfire. I live, you know -- you can hear gunfire at
9 night. This is not unusual in Allendale. It's very
10 unfortunate, but it's a fact of life.

11 But just because they found some shell casings at the
12 club that night does not mean those are the shell casings
13 that my client fired. It could have been a revolver.

14 Now, they want the Court to assume what they cannot
15 prove at trial in order for you to grant the motion and
16 overcome the undue prejudice that's in 403-B, Judge. This
17 is an entirely different factual scenario. There aren't
18 any bullets to match up to a gun.

19 Conceding, in the murder trial today, they found four
20 shell casings near the body. But they can't match who
21 shot the shell casings at the nightclub as, to my client.
22 They can't draw that to my client aside from the fact the
23 individual was shot.

24 There were multiple shots fired at the nightclub that
25 night. There was an identity problem as far as who did

PRETRIAL MOTIONS

1 it, to start with.

2 Mr. Williams cannot, basically cannot testify that my
3 client shot him with that, this specific pistol. He can't
4 do it. What he told the police was, ask Gerald Hinn who
5 said, I don't know who did it, who wouldn't cooperate with
6 the police if he did know.

7 Therefore, they really, when it came to -- he ID'd my
8 client as the person he was arguing with. When you look
9 at the factual scenario, the fact -- these cases are not
10 on point at all. It's entirely different, Judge.

11 They simply don't have the evidence to draw the two
12 shootings together in a course that brings character into
13 issue when he hasn't testified.

14 And it's -- if it's -- the unfair prejudice of letting
15 this in just puts in the minds of the jurors that he has
16 pled guilty to having that done and firing it and striking
17 Chris Williams, which he's never done.

18 So they would have to prove, to let that in, to tie
19 the two together. And once you let that in, the
20 conviction in, to tie the two together, Judge. See
21 they're two different cases. They're entirely different.

22 They just don't have the evidence for that.

23 I don't think there's any clear and convincing
24 evidence which 404 requires, Rule 404-B requires, Judge,
25 that the bullet that hit Williams, which is non existent

PRETRIAL MOTIONS

1 because nobody has it, is the same bullet that was fired
2 from the same gun. All they have, at the nightclub they
3 found some cases. And nobody to say that it was my
4 client. They couldn't put anybody on the witness stand
5 today to say that my client fired the gun that night.

6 He was in jail so long he finally pled guilty and --

7 THE COURT: Solicitor, anything you want to respond
8 to?

9 MR. FERGUSON: Yes, Your Honor. Just briefly.

10 The 404-B standard that Mr. Plexico states, the clear
11 and convincing, there is a caveat. And it's if the
12 defendant has not been convicted of that prior crime.

13 I believe that basically he's saying that there's no
14 bullets to match. Well, there's a difference between a
15 bullet and a shell casing.

16 And you're right. The bullet went through and
17 through, in Mr. Williams' case, and they were unable to
18 recover that. So what we have are shell casings that have
19 been microscopically analyzed that match the shell casings
20 at the scene of this particular crime we're here to try
21 this week.

22 The large crime scene argument that Mr. Plexico
23 raises, this was actually a very specific part outside of
24 the club. There's a picnic table on the grounds of this
25 club. The victim was able to pinpoint exactly where this

PRETRIAL MOTIONS

1 conversation was taking place. In my conversations with
2 Mr. Williams, he can identify the Defendant as the
3 individual that shot him and what type of gun it was.

4 And these shell casings were found at the location
5 that he said all of this occurred the next day when
6 daylight was showing so they could see the bullets.

7 Your Honor, there is no gun to match up to anything
8 because the gun wasn't recovered. And so I agree that
9 there is, you know, a distinction between these two cases
10 because they had a murder weapon that they could then
11 compare to the shell casings and bullet fragments.

12 Well, we don't have that, Your Honor. And so what
13 we're seeking to do is to show that this Defendant pled
14 guilty to a crime of which evidence was, these particular
15 shell casings, of a shooting that happened eight days
16 before the murder that we're here to try this week, and
17 that those shell casings in this case were fired from the
18 same gun.

19 We're not offering it to show that the Defendant acted
20 in conformity with his bad character in this particular
21 crime. We're trying to show a logical, factual connection
22 between these two instances eight days apart.

23 THE COURT: Do you all want to come up here, please?

24 MR. FERGUSON: Yes, sir.

25 (Off-the-record discussion.)

PRETRIAL MOTIONS

1 THE COURT: For the record, I'm going to exclude the
2 casings recovered from the July 14th, 2007 incident. I'm
3 finding that its probative value is substantially
4 outweighed by the danger of unfair prejudice.

5 MR. FERGUSON: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. PLEXICO: Are you excluding it, Judge?

8 THE COURT: I'm not allowing it in.

9 MR. PLEXICO: Okay. Then, at this point, I don't have
10 anything else.

11 THE COURT: Do you have other motions, Madam
12 Solicitor?

13 MS. LEGETTE: Your Honor, Mr. Plexico filed a motion
14 to exclude the use of Mr. Breeland's moniker or nickname.
15 I sent it back to the Court. I guess Mr. Plexico should
16 be heard on his motion.

17 THE COURT: All right. Anything further for the
18 record?

19 MR. PLEXICO: Yes. Your Honor, the facts of this case
20 are that the decedent, Laurice Garvin, was found shot in
21 the road. And what -- and which is, you know, a very sad
22 scenario, but with multiple gunshot wounds.

23 They seek to try to identify my client. This is a
24 small community. My client, Marquis Breeland, there is an
25 unpleasant nickname which he certainly has never approved

PRETRIAL MOTIONS

1 of, of Roadkill for my client. That is so emotional.
2 It's just to the level of name calling. For any of their
3 witnesses to refer to my client as Roadkill is to
4 denigrate, I believe, the facts. They all know who
5 Marquis Breeland is anyway or at least they do by now.

6 And that would just be an appeal to emotion and that
7 would be an effort, in my opinion, to try to inflame the
8 jurors' emotions against my client. Judge, you know, this
9 is a fair trial. And there's no room for that.

10 THE COURT: Be glad to hear from you, Solicitor.

11 MS. LEGETTE: Thank you, Your Honor. Your Honor, the
12 State has, I've given you a pretrial brief. We cited
13 State V Tubbs and State versus Day.

14 Your Honor, courts have been -- courts have allowed
15 the usage of a nickname of a defendant by the State of
16 South Carolina in our state, but it's been for purposes of
17 proving something at issue in the trial, Your Honor.

18 And we are very aware of Mr. Plexico and
19 Mr. Breeland's, their actual usage of the name itself,
20 Your Honor, and how derogatory it may seem; however, in
21 this case at issue is identity. We're not seeking to
22 impugn his character. We're not seeking to infect the
23 trial with unfairness.

24 We're not, like the solicitor in the case of State
25 versus Tubbs where they used the name Outlaw over and over

PRETRIAL MOTIONS

1 and over and over again, Your Honor.

2 Simply in this case, Mr. Breeland's identity is at
3 issue. One of our witnesses has had several, I believe,
4 maladies, strokes. And he only knows him by the name
5 Roadkill. And simply that would be a name used to
6 identify Mr. Breeland as the person that he was talking
7 with on that day, Your Honor.

8 And we would simply ask the Court to allow us to use
9 that name to identify him. We would limit our use of the
10 name. Simply for identity. We would not seek to use it
11 at the closing argument, Your Honor, or the argument
12 phase, to infect the trial with unfairness and deny him
13 his due process rights.

14 Your Honor, we're simply asking that you let this
15 witness and other witnesses who may be able to identify
16 him through that moniker, identify him that way.

17 Thank you, Your Honor.

18 THE COURT: We will allow the State to use the term or
19 the name for identification purposes only. Furthermore,
20 unlike some of the other cases, Roadkill is not
21 necessarily a bad person. Usually it's a critter on the
22 side of the road that's been killed by a car.

23 So I don't see that being bad to start with. But if
24 you would, limit it solely to identification purposes
25 only. And, like you said, in your openings or your

PRETRIAL MOTIONS

1 closings, we don't want to use it over and over again. If
2 we have to have it for identification purposes only, I
3 would allow that.

4 MS. LEGETTE: Thank you, Your Honor.

5 THE COURT: All right. Anything further,
6 Mr. Plexico?

7 MR. PLEXICO: I would ask that she ask each lay
8 witness and place witness if they actually know my
9 client's name. If they know his name, I would ask then,
10 there would be no need to refer to him as Roadkill.

11 THE COURT: I have no problem with that.

12 MR. PLEXICO: Thank you, Your Honor. If you could
13 order that, Judge. If they already know it, why bring it
14 up is what I'm asking.

15 THE COURT: All right.

16 MS. LEGETTE: Your Honor, some of the witnesses in
17 their written statements only identify him as Roadkill.
18 And they're not able to say his name is Marquis Breeland.

19 So we will not ask all the witnesses what his name
20 is. Some of them know him as Marquis Breeland.

21 Your Honor, and those people who know him as Marquis
22 Breeland, I'll ask them: Do you know Marquis Breeland?
23 I'll ask that question, Your Honor. It may be leading, but
24 I'll ask: Do you know the Defendant? What is his real
25 name?

PRETRIAL MOTIONS

1 I'll do my best to comply with the Judge's ruling and
2 not overuse his name at all.

3 THE COURT: I'm going to allow it so long as you'll
4 stick to it for identification purposes only.

5 MS. LEGETTE: Thank you, Your Honor.

6 THE COURT: Anything further, Mr. Plexico?

7 MR. PLEXICO: I don't have anything further at this
8 time, Your Honor.

9 THE COURT: Do either of you have any voir dire,
10 special voir dire or do you want me to ask them the
11 standard?

12 MR. PLEXICO: I may, Judge. I did some and these are
13 the originals. I'll pass these up. And we do have a
14 witness list, too, Your Honor.

15 THE COURT: Does the State have a witness list?

16 MS. LEGETTE: We do, Your Honor. And we'll hand it up
17 to the Court at this time.

18 Your Honor, we don't have any other voir dire
19 questions but for your standard.

20 THE COURT: All right. Mr. Plexico, is the only
21 witness you have Mr. Breeland?

22 MR. PLEXICO: Yes. If we go that far, Judge.

23 THE COURT: Is there anything else we need to take up
24 today before we pick a jury at two?

25 MS. LEGETTE: No, Your Honor, not at this time.

SELECTION OF THE JURY

1 THE COURT: Mr. Plexico?

2 MR. PLEXICO: If you would glance over my voir dire,
3 Judge, and let me know any of those that you do not intend
4 to ask, so, if I could -- if you would give me an
5 opportunity to make an argument if you believe it's
6 necessary.

7 THE COURT: I'll do that before we pick a jury.

8 MR. PLEXICO: Thank you, Your Honor.

9 THE COURT: Anything else?

10 MS. LEGETTE: No, Your Honor, not from the State.

11 MR. PLEXICO: Nothing from the defense, Your Honor.

12 THE COURT: Anything else before lunch, anything else
13 to do?

14 MS. LEGETTE: No, Your Honor, not at this time.

15 THE COURT: We'll be back at two o'clock. Thank you.

16 MR. PLEXICO: Thank you, Your Honor.

17 (Thereafter, a lunch break was taken at 11:51 a.m. At
18 2:00 p.m., the jury was qualified. At 3:01 p.m., the
19 trial ensued as follows:)

20 THE COURT: At this time I find the jury panel
21 qualified.

22 Now members of the jury, I'm going to ask you another
23 series of questions to see if you are qualified to serve
24 on a particular case. What we're looking for is jurors
25 that can be fair and impartial, not only to the State but

SELECTION OF THE JURY

1 to the Defendant as well.

2 If any of these questions apply to you and you need to
3 respond, and remember you are under oath, and again, and
4 if you want to answer them up here, just let me know and
5 you can come up here and answer any of these questions.

6 In this particular case the State alleges that on or
7 about July 22nd, 2007, that a Marquis Sentel Breeland did
8 kill and murder one Laurice Garvin by means of shooting
9 him with a gun.

10 Also, Mr. Breeland has been charged with possession of
11 a weapon during a violent crime.

12 Now in regards to these matters, the Defendant has
13 pled not guilty. But I need to know if any of you have
14 seen, heard or read anything about this case, know
15 anything about this case, have you heard anything about it
16 on the street, has somebody talked to you about it, do you
17 have any knowledge whatsoever about this case, I need for
18 you to please stand.

19 Anybody? All right. I'm going to have y'all come on
20 up here.

21 (Jurors come forward.)

22 THE COURT: Give me your name.

23 THE JUROR: Paul Morse.

24 THE COURT: And your number?

25 THE JUROR: 120.

SELECTION OF THE JURY

1 THE COURT: What do you know?

2 THE JUROR: I read about it in the paper.

3 THE COURT: Okay. And that's the only source of
4 knowledge you have about this case?

5 THE JUROR: Yes.

6 THE COURT: All right. Well, taking that into
7 account, if you were selected to serve as a juror in this
8 case, could you be fair and impartial not only to the
9 State but to the defense as well?

10 THE JUROR: I believe so.

11 THE COURT: I need to know if you can or can't.

12 THE JUROR: Yes.

13 THE COURT: If you were selected to serve on a jury in
14 this case, would you be fair and impartial to both sides?

15 THE JUROR: Yes.

16 THE COURT: If you were selected to serve on this
17 case, would you keep an open mind, listen to all the
18 evidence, hear everything there is to hear in this case,
19 listen to me as the Judge and make up your mind based on
20 the law and the evidence as you see it?

21 THE JUROR: Yes.

22 THE COURT: All right. You're fine. Thank you. And
23 your name and number?

24 THE JUROR: Nina Bennett, 11.

25 THE COURT: What do you know?

SELECTION OF THE JURY

1 THE JUROR: I'm the victim advocate at the Allendale
2 Police Department. I have overheard conversations
3 regarding this case, also at the police department.

4 THE COURT: I think I'm going to excuse you from this
5 case.

6 THE JUROR: Okay. Thank you.

7 THE COURT: We're waiting on the Defendant. As soon
8 as the Defendant comes in, then we'll resume.

9 (Pause.)

10 THE COURT: If you would please stand at that table
11 right there and face the jury pool, I'd appreciate it.

12 THE DEFENDANT: (Complies.)

13 THE COURT: You may be seated.

14 Is any member of the jury panel related by blood or
15 marriage or has a close personal or social relationship
16 with the Defendant, Mr. Marquis Sentel Breeland, in this
17 case? If so, please stand.

18 All right. Let the record reflect that no one has
19 stood.

20 Ms. Legette, Mr. Ferguson, would each of you please
21 stand and introduce yourself?

22 MS. LEGETTE: Good afternoon. I'm Tameaka Legette.
23 I'm a prosecutor here in Allendale County as well as
24 Hampton, Jasper and Colleton Counties.

25 MR. FERGUSON: My name is Robbie Ferguson and I'm an

SELECTION OF THE JURY

1 assistant solicitor in those counties as well.

2 THE COURT: Is any member of the jury panel related by
3 blood or marriage or has a close personal relationship
4 with either of the solicitors in this case? If so, please
5 stand.

6 All right. No one stood.

7 Mr. Plexico -- your name and your number?

8 THE JUROR: Juror 18, David Brabham.

9 THE COURT: How does that apply to you?

10 THE JUROR: My wife and Tameaka are really good
11 friends.

12 THE COURT: Taking that into account, if you were
13 selected to serve on the jury in this case, would you be
14 fair and impartial not only to the State but the Defendant
15 as well?

16 THE JUROR: Yes, sir. I just wanted to let you know.

17 THE COURT: Would you be fair and impartial to both
18 sides if you were selected to serve as a juror in this
19 case?

20 THE JUROR: Yes, sir.

21 THE COURT: Thank you very much. Anybody else?

22 Mr. Plexico, if you would please stand and introduce
23 yourself.

24 MR. PLEXICO: I'm Stephen Plexico with the 14th
25 Circuit Defender's Office which is centered in Beaufort.

SELECTION OF THE JURY

1 I work in Allendale, Hampton and Jasper.

2 THE COURT: Thank you.

3 In this regard, is any member of the jury panel
4 related by blood or marriage or has a close personal or
5 social relationship with Mr. Plexico or have been
6 represented by him at any point in time in the past? If
7 this applies to you, please stand.

8 All right. No one stood.

9 The witnesses in this case are as follows. There's 41
10 witnesses. I'm going to read their names. I need for you
11 to listen carefully.

12 The first witness is Ktari Johnson. Iman Johnson.
13 Marlene Love. Gloria Roseborough. Richard Priester.
14 Willie Elmore. Bruce McMillan. Jennifer Barker. Anthony
15 Morrell. Willie Robinson. Latravia Harvey. Annette
16 Garvin. LaQuinton Garvin. Conneal Milledge. Shahiee
17 Flowers. Christine Singleton. Patricia Bradley. Whitney
18 Lee. Latrincy Carter. Dwann Devoe. Antonio Frazier.
19 Tyrell Breeland. Yvonne Roberts. Deputy James Freeman,
20 Allendale County Sheriff's Office. Special Agent Karl
21 Kenley with SLED. Hayzen Black, former Allendale County
22 Coroner. Dr. Janice Ross, Newberry Pathology Associates.
23 James O. Freeman, Hampton County Sheriff's Office. David
24 Black, Lexington, South Carolina. Investigator James
25 Hutto, Allendale Police Department. Chief of Police John

SELECTION OF THE JURY

1 R. Sullivan, Allendale Police Department. Special Agent
2 Richard Johnson with SLED. Special Agent Jeffrey
3 A. Crooks with SLED. James 'Rocky' Rouse, Allendale
4 Police Department. Freddie Washington, Allendale. Marcus
5 Witherspoon. Anthony Sanders. Nikki Perry with SLED.
6 John Lawson, Allendale County EMS. Daphne Conner. And
7 Lavander Dunbar.

8 In this regard, is any member of the jury panel
9 related by blood or marriage or has any close personal or
10 social relationship with any of these witnesses? If so,
11 please stand.

12 THE JUROR: Robert Sullivan is a cousin of mine.

13 THE COURT: Give me your name.

14 THE JUROR: Wallace Sullivan.

15 THE COURT: And what number, please?

16 THE JUROR: I don't know.

17 THE COURT: Who?

18 THE JUROR: Robert Sullivan, Chief of Police in
19 Allendale, cousin.

20 THE COURT: I'm going to excuse you for the purpose of
21 this trial. If you would just have a seat for now.

22 Your name and juror number?

23 THE JUROR: Erica Combs, 34. Bruce McMillan and Ktari
24 Johnson.

25 THE COURT: And who are they?

SELECTION OF THE JURY

1 THE JUROR: My first cousins.

2 THE COURT: Taking that into account, if you were
3 selected to serve on a jury in this case, would you be
4 fair and impartial not only to the State but to the
5 defense as well?

6 THE JUROR: Yes, sir.

7 THE COURT: Would you be fair and impartial to both
8 sides if you were selected as a juror?

9 THE JUROR: Yes, sir.

10 THE COURT: Thank you. You may be seated. And your
11 name and number?

12 THE JUROR: Mary Ann Devore, Juror 47. I'm related to
13 Ktari Johnson and Dwann Devoe.

14 THE COURT: Taking that into account, if you were
15 selected to serve on a jury in this case, could you be
16 fair and impartial to both sides?

17 THE JUROR: Yes.

18 THE COURT: Would you be fair and impartial to both
19 sides?

20 THE JUROR: Yes.

21 THE COURT: All right. Thank you. Your name and
22 number?

23 THE JUROR: Gardell Patterson, 130. The victim is my
24 grandson's uncle.

25 THE COURT: The victim is your grandson's uncle?

SELECTION OF THE JURY

1 THE JUROR: Yes. That's correct.

2 THE COURT: I'm going to excuse you for purposes of
3 this trial. If you would just have a seat for now.

4 THE JUROR: Ora Cave. Willie James Elmore is my
5 brother.

6 THE COURT: Who is your brother?

7 THE JUROR: Willie James Elmore.

8 THE COURT: And who is he?

9 THE JUROR: He's my brother.

10 THE COURT: I mean, is he a law enforcement officer or
11 just a witness?

12 THE JUROR: Just a witness.

13 THE COURT: Taking that into account, if you were
14 selected to serve on the jury in this case, could you be
15 fair and impartial to both sides?

16 THE JUROR: Yes.

17 THE COURT: Would you be fair and impartial to both
18 sides?

19 THE JUROR: Yes, sir.

20 THE COURT: You can be seated. Your name and number?

21 THE JUROR: Hazel Frederick, number 65.

22 THE COURT: And how does that apply to you?

23 THE JUROR: Bruce McMillan is a cousin.

24 THE COURT: Who is Lewis McMillan?

25 THE JUROR: Bruce.

SELECTION OF THE JURY

1 THE COURT: Is he a police officer?

2 THE JUROR: No. A witness.

3 THE COURT: Taking that into account, if you were
4 selected to serve on a jury in this case, could you be
5 fair and impartial to both sides?

6 THE JUROR: Yes, yes.

7 THE COURT: Would you be fair and impartial to both
8 sides?

9 THE JUROR: Yes.

10 THE COURT: All right. Thank you.

11 THE JUROR: Herbert Owens, 128.

12 THE COURT: How does that apply to you?

13 THE JUROR: My daughter, Marlene Love. She's a
14 witness.

15 THE COURT: Who?

16 THE JUROR: Marlene Love.

17 THE COURT: She's a witness?

18 THE JUROR: That's right.

19 THE COURT: If you were selected to serve on a jury in
20 this case, could you be fair and impartial to both sides?

21 THE JUROR: I don't know.

22 THE COURT: What's your answer; yes or no?

23 THE JUROR: Yes.

24 THE COURT: If you were selected to serve as a juror
25 in this case, could you be fair and impartial to both

SELECTION OF THE JURY

1 sides?

2 THE JUROR: Yes, sir.

3 THE COURT: All right. You may be seated. Thank
4 you. All right.

5 Your name and number?

6 THE JUROR: My name Mary Bethea. I'm not related to
7 them, but I know some of the witnesses.

8 THE COURT: Who are the witnesses that you know?

9 THE JUROR: I know Bruce McMillan, Marlene Love,
10 Willie James Elmore. Whole bunch of those folks.

11 THE COURT: All right. Taking that into account, if
12 you were selected to serve as a juror in this case, could
13 you be fair and impartial to the State as well as the
14 defense?

15 THE JUROR: Yes.

16 THE COURT: Would you be fair and impartial to both
17 sides?

18 THE JUROR: Yes.

19 THE COURT: All right. Thank you.

20 THE JUROR: Mable Graham. I'm related to Bruce
21 McMillan.

22 THE COURT: And your number?

23 THE JUROR: Sixty-nine.

24 THE COURT: Taking that into account, if you were
25 selected to serve as a juror in this case, could you be

SELECTION OF THE JURY

1 fair and impartial to the State and the defense?

2 THE JUROR: Yes.

3 THE COURT: Would you be fair and impartial to both
4 sides?

5 THE JUROR: Yes.

6 THE COURT: Thank you. And your name and your
7 number?

8 THE JUROR: I think my number is 173. My name is
9 James Washington. I think Freddie Washington, that's my
10 relative. And I know Bruce McMillan. I would mention
11 that I know him.

12 THE COURT: Taking that into account, if you were
13 selected to serve on the jury in this case, would you be
14 fair and impartial to both sides, the State as well as the
15 defense?

16 THE JUROR: Yes.

17 THE COURT: Would you be fair and impartial to both
18 sides?

19 THE JUROR: Yes.

20 THE COURT: Thank you very much. Anybody else?

21 Is there any member of jury panel that is related by
22 blood or marriage to any law enforcement officer? If so,
23 please stand.

24 Your name and your number.

25 THE JUROR: Darryl Young, 200. He's my cousin.

SELECTION OF THE JURY

1 THE COURT: This fellow standing right here?

2 THE JUROR: Yes, sir.

3 THE COURT: Taking that into account, if you were
4 selected to serve on a jury in this case, could you be
5 fair and impartial not only to the State but to the
6 defense as well?

7 THE JUROR: Yes, sir.

8 THE COURT: Would you be fair and impartial to both
9 sides?

10 THE JUROR: Yes, sir.

11 THE COURT: You can put that on the record.

12 THE OFFICER: Yes, sir.

13 THE COURT: Anybody else?

14 Is any member of the jury panel aware of or conscious
15 of any bias or prejudice for or against the State in this
16 case?

17 If so, please stand.

18 All right. Let the record reflect no one stood.

19 Has any member of the jury panel formed an opinion as
20 to the guilt or innocence of the Defendant, Mr. Marquis
21 Sentel Breeland, in this case? If so, please stand.

22 All right. Let the record reflect no one stood.

23 Is there any member of the jury panel who is a member
24 of or contributor to any group which has as its primary
25 concern the promotion of law enforcement or victims'

SELECTION OF THE JURY

1 rights? These groups would include, but certainly not be
2 limited to MADD, SADD or CAVE, Citizens Against Violent
3 Crimes. If so, please stand.

4 Let the record reflect no one stood.

5 Has any member of the jury panel or any member of your
6 immediate family ever been involved in a crime of personal
7 violence crime? A crime of personal violence could be
8 criminal sexual conduct, assault and battery of a high and
9 aggravated nature, assault and battery with intent to
10 kill, murder, manslaughter, kidnapping, armed robbery, et
11 cetera. These are just a few examples but with them you
12 get the idea.

13 If you or any member of your immediate family have
14 been a victim or a defendant in a crime such as these just
15 mentioned, please stand and form a line at the rail.

16 Anybody else? All right come on up.

17 (Jurors comply.)

18 THE COURT: How are you? And you are?

19 THE JUROR: Elin Greene.

20 THE COURT: And your number; do you remember?

21 THE JUROR: Seventy-one.

22 THE COURT: How does that apply to you?

23 THE JUROR: I used to work as a correction officer. I
24 was assaulted by an inmate and he got two years.

25 THE COURT: Okay. Did y'all hear that? Did you hear

SELECTION OF THE JURY

1 that, Mr. Plexico?

2 THE JUROR: I was assaulted at the correction
3 institute. This happened in 1999.

4 THE COURT: And he got two years?

5 THE JUROR: He got two years.

6 THE COURT: Taking that into account, if you were
7 selected to serve on a jury in this case, could you be
8 fair and impartial to the State?

9 THE JUROR: Yeah.

10 THE COURT: And the Defendant?

11 THE JUROR: Yes, sir.

12 THE COURT: Would you be fair and impartial to both
13 sides if you were selected to serve as a juror?

14 THE JUROR: Absolutely.

15 THE COURT: Thank you very much. I appreciate you
16 coming up.

17 THE JUROR: Thank you.

18 THE COURT: Your name and number?

19 THE JUROR: Rutana Housey, number 80.

20 THE COURT: All right. How does this apply to you?

21 THE JUROR: My cousin, two of my cousins is in jail
22 for stealing.

23 THE COURT: For what?

24 THE JUROR: Stealing.

25 THE COURT: Taking that into account, if you were

SELECTION OF THE JURY

1 selected to serve on the jury in this case, could you be
2 fair and impartial not only to the State but to the
3 Defendant as well?

4 THE JUROR: Yes, sir.

5 THE COURT: Would you be fair and impartial if
6 selected?

7 THE JUROR: Yes, sir.

8 THE COURT: Thank you. You can be seated. Your name
9 and number again?

10 THE JUROR: Mary Bethea, number 13.

11 THE COURT: How does that apply to you?

12 THE WITNESS: Well my nephew, he got killed by a
13 police officer five years ago.

14 THE COURT: All right. Taking that into account, if
15 you were selected to serve on a jury in this case, could
16 you be fair and impartial not only to the State but the
17 Defendant as well?

18 THE JUROR: Uh-huh.

19 THE COURT: You have to say yes or no.

20 THE JUROR: Yes.

21 THE COURT: Could you be fair and impartial to both
22 sides if you were selected?

23 THE JUROR: Yes.

24 THE COURT: Thank you very much. I appreciate you
25 coming forward.

SELECTION OF THE JURY

1 MS. LEGETTE: Your Honor, there's a man out there
2 who's name is Mr. Harry Deloach and I think several years
3 ago he was a victim of a car jacking. He didn't stand. I
4 think it's him. I can't be positive, but I remember his
5 face. But I think it was him. I can't be certain, and I
6 don't want to embarrass him, but I just didn't want
7 anything to come of this.

8 MR. PLEXICO: Who is it?

9 MS. LEGETTE: Harry Deloach.

10 THE COURT: Is that okay with you?

11 MR. PLEXICO: Yes, please.

12 THE COURT: Would a Harry Deloach please come
13 forward? Mr. Deloach, if you would, just come on up here
14 just one second.

15 THE JUROR: (Complies.)

16 THE COURT: How are you?

17 THE JUROR: How are you doing?

18 THE COURT: It has just been brought to my attention
19 that several years ago they think you may have been a
20 victim of a car jacking. Is that you?

21 THE JUROR: Uh-huh.

22 THE COURT: Say yes or no.

23 THE JUROR: Yes, sir.

24 THE COURT: All right. Well, taking that into account
25 since you were the victim of a crime, if you were selected

SELECTION OF THE JURY

1 to serve on a jury in this case, could you be fair and
2 impartial not only to the State but to the Defendant as
3 well?

4 THE JUROR: Yes, sir.

5 THE COURT: Would you be fair and impartial to both
6 sides --

7 THE JUROR: Yes, sir.

8 THE COURT: -- if you were selected to serve on this
9 jury?

10 THE JUROR: Yes, sir.

11 THE COURT: Thank you. Appreciate you coming
12 forward.

13 THE JUROR: All right.

14 THE COURT: Anything else?

15 MS. LEGETTE: Thank you, Your Honor. Nothing else.

16 THE COURT: Thank you. Is there any member of the
17 jury panel who knows of any reason whatsoever why they
18 could not give the parties in this case a fair and
19 impartial trial? If so, please stand.

20 Let the record reflect that no one stood.

21 Does any member of the jury panel have any religious
22 or philosophical objections to rendering judgment against
23 their fellow man? If so, please stand.

24 No one stood.

25 Has any member of the jury panel or any member of

SELECTION OF THE JURY

1 their family ever been prosecuted by the solicitor or any
2 member of the solicitor's staff, regardless of whether the
3 case was dismissed or not? If so, please stand.

4 All right. No one stood.

5 Has any member of the jury panel ever been employed by
6 any civilian or military or law enforcement agency? If
7 so, please stand.

8 All right. No one stood.

9 Has any member of the jury panel ever been a witness
10 in a criminal trial, either for the State or the defense?
11 If so, please stand.

12 All right. No one stood.

13 Is there any member of the jury panel who would give
14 special credence and weight to the testimony of a law
15 enforcement officer simply because of his position as a
16 law enforcement officer? If this applies to you, please
17 stand.

18 All right. No one stood.

19 Is there any member of the jury panel who believes
20 that a defendant must be guilty of the crime that he is
21 accused of committing or he would not have been arrested?
22 If this applies to you, please stand.

23 All right. No one stood.

24 At the end of this trial you will be instructed that
25 the Defendant is presumed to be innocent and that you must

SELECTION OF THE JURY

1 give the Defendant the benefit of this presumption of
2 innocence during the trial and into your deliberations
3 until the State has proven the Defendant guilty beyond a
4 reasonable doubt.

5 Is there any member of the jury panel who could not
6 accept and follow this instruction? If so, please stand.

7 All right. No one stood.

8 Anything further from the State?

9 MS. LEGETTE: Not from the State, Your Honor.

10 THE COURT: Anything further from the defense?

11 MR. PLEXICO: No, Your Honor.

12 THE COURT: For the record, I find the jury panel
13 qualified for this case.

14 Ms. Clerk, if you would give us 12 jurors and one
15 alternate.

16 THE CLERK: One?

17 THE COURT: One.

18 THE CLERK: Strikes are 10 and five?

19 THE COURT: Strikes are 10 and five.

20 THE CLERK: When I call your name, please come up
21 front and stand and face the jury panel -- and face the
22 State and the defense table.

23 Ms. Tawanda Harding.

24 (Thereupon, a black female juror came forward.)

25 THE CLERK: What says the State?

SELECTION OF THE JURY

1 MS. LEGETTE: Please excuse the juror from the trial
2 of this case.

3 THE CLERK: Fredricka Haynes.

4 (Thereupon, a black female juror came forward.)

5 THE CLERK: What says the State?

6 MS. LEGETTE: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. PLEXICO: Please swear the juror.

9 THE CLERK: Harry Deloach.

10 (Thereupon, a black male juror came forward.)

11 THE CLERK: What says the State?

12 MS. LEGETTE: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. PLEXICO: Please excuse the juror from the trial
15 of this case.

16 THE CLERK: Marie Salley.

17 (Thereupon, a black female came forward).

18 THE CLERK: What says the State?

19 MR. PLEXICO: What number or what name?

20 THE CLERK: Marie Salley.

21 MR. PLEXICO: Salley, okay.

22 THE CLERK: One forty-nine.

23 MS. LEGETTE: Please present the juror.

24 THE CLERK: What says the defense?

25 MR. PLEXICO: Please swear the juror.

SELECTION OF THE JURY

1 THE CLERK: Herbert Owens.

2 (Thereupon, a black male juror came forward.)

3 THE CLERK: What says the State?

4 MS. LEGETTE: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. PLEXICO: Please excuse the juror from the trial
7 of this case.

8 THE CLERK: Danny Moore.

9 (Thereupon, a white male juror came forward.)

10 THE CLERK: What says the State?

11 MS. LEGETTE: Please present the juror.

12 THE CLERK: What says the defense?

13 MR. PLEXICO: Please excuse the juror from the trial
14 of this case.

15 THE CLERK: Mary Bethea.

16 (Thereupon, a black female juror came forward.)

17 THE CLERK: What says the State?

18 MS. LEGETTE: Please excuse the juror from the trial
19 of this case.

20 THE CLERK: Brittany Mitchell.

21 (Thereupon, a black female juror came forward.)

22 THE CLERK: What says the State?

23 MS. LEGETTE: Please excuse the juror from the trial
24 of this case.

25 THE CLERK: Patricie Albany.

SELECTION OF THE JURY

(Thereupon, a black female juror came forward.)

THE CLERK: What says the State?

MS. LEGETTE: Please excuse the juror from the trial
of this case.

THE CLERK: Lottie Mae Aiken.

(Thereupon, a black female juror came forward.)

THE CLERK: What says the State?

MS. LEGETTE: Please present the juror.

THE CLERK: What says the defense?

MR. PLEXICO: Please swear the juror.

THE CLERK: Bennie Jones.

(Thereupon, a black male juror came forward.)

THE CLERK: What says the State?

MS. LEGETTE: Please present the juror.

THE CLERK: What says the defense?

MR. PLEXICO: Please swear the juror.

THE CLERK: Mable Graham.

(Thereupon, a black female juror came forward.)

THE CLERK: What says the State?

MS. LEGETTE: Please present the juror.

THE CLERK: What says the defense?

MR. PLEXICO: Please excuse the juror from the trial
of this case.

THE CLERK: Robbie Crumley.

(Thereupon, a black male juror came forward.)

SELECTION OF THE JURY

1 THE CLERK: What says the State?

2 MS. LEGETTE: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. PLEXICO: Excuse the juror from the trial of this
5 case.

6 THE CLERK: Devante Singleton.

7 (Thereupon, a black male juror came forward.)

8 THE CLERK: What says the State?

9 MS. LEGETTE: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. PLEXICO: Please swear the juror.

12 THE CLERK: Elin Greene.

13 (Thereupon, a white female juror came forward.)

14 THE CLERK: What says the State?

15 MS. LEGETTE: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. PLEXICO: Please excuse the juror from the trial
18 of this case.

19 THE CLERK: Bobby Elmore.

20 (Thereupon, a black male juror came forward.)

21 THE CLERK: What says the State?

22 THE COURT: Solicitor, the clerk informs me that this
23 is her brother. I don't see how that makes any difference
24 at all in the trial.

25 MS. LEGETTE: Thank you, Your Honor. Please present

SELECTION OF THE JURY

1 the juror.

2 THE CLERK: What says the defense?

3 MR. PLEXICO: Please excuse the juror from the trial
4 of this case.

5 THE CLERK: Elmore Dent.

6 (Thereupon, a black male juror came forward.)

7 THE CLERK: What says the State?

8 MS. LEGETTE: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. PLEXICO: Please swear the juror.

11 THE CLERK: Tarsem Purwal.

12 (Thereupon, an Indian male juror came forward.)

13 THE CLERK: What says the State?

14 MS. LEGETTE: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. PLEXICO: Please swear the juror.

17 THE CLERK. Paul Morse.

18 (Thereupon, a white male juror came forward.)

19 THE CLERK: What says the State?

20 MS. LEGETTE: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. PLEXICO: Please excuse the juror from the trial
23 of this case.

24 THE CLERK: Mary Devore.

25 (Thereupon, a black female juror came forward.)

SELECTION OF THE JURY

1 THE CLERK: What says the State?

2 MS. LEGETTE: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. PLEXICO: Excuse the juror from the trial of this
5 case.

6 THE CLERK: Eloise Jackson.

7 (Thereupon, a black female juror came forward.)

8 THE CLERK: What says the State?

9 MS. LEGETTE: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. PLEXICO: Please swear the juror.

12 THE CLERK: Iverson Lawton.

13 (Thereupon, a white male juror came forward.)

14 THE CLERK: What says the State?

15 MS. LEGETTE: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. PLEXICO: Please swear the juror.

18 THE CLERK: Ora Cave.

19 (Thereupon, a black female juror came forward.)

20 THE CLERK: What says the State?

21 MS. LEGETTE: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. PLEXICO: Please swear the juror.

24 THE CLERK: Kenya Williams.

25 (Thereupon, a black female juror came forward.)

1 THE CLERK: What says the State?

2 MS. LEGETTE: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. PLEXICO: Please swear the juror.

5 THE CLERK: Ashley Nix.

6 (Thereupon, a white female juror came forward.)

7 THE CLERK: What says the State?

8 MS. LEGETTE: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. PLEXICO: Please excuse the juror from the trial
11 of this case.

12 THE CLERK: Lameeka Manuel.

13 (Thereupon, a black female juror came forward.)

14 THE CLERK: What says the State?

15 MS. LEGETTE: Please present the juror.

16 MR. PLEXICO: Please swear the juror.

17 THE CLERK: Ida Aldrich.

18 (Thereupon, a black female juror came forward.)

19 THE CLERK: What says the State?

20 MS. LEGETTE: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. PLEXICO: Please swear the juror.

23 THE COURT: Are there any objections to the jury
24 process by which they were drawn; what says the State?

25 MS. LEGETTE: No, Your Honor, not from the State.

1 THE COURT: What says the defense?

2 MR. PLEXICO: None, Your Honor.

3 THE COURT: Thank you very much. The rest of the jury
4 panel is excused for the week. Is that correct,
5 Solicitor?

6 MS. LEGETTE: Yes, Your Honor.

7 THE COURT: All right. If everybody else will remain
8 seated, the rest of you are excused. Thank you.

9 (Jury panel exits courtroom at 4:02 p.m.)

10 THE COURT: All right. Members of the jury. We're
11 going to begin this case at 9:30 in the morning.

12 Now, I'm going to ask you to do a couple things for
13 me. You've heard just a little bit about this case, you
14 know who the Defendant is, you know what he's charged
15 with, and some of my questions have kind of indicated sort
16 of what's going to take place.

17 So when you leave this courtroom until you get back in
18 this courtroom and all the times during the trial, I don't
19 want you to discuss this case with anybody. Don't get on
20 the Internet and try to look it up. Don't try to find old
21 newspapers and read about it. Don't talk to your family
22 or friends about it. I want to make sure that you are not
23 influenced by anything outside of this courtroom.

24 Everything you need to make a decision in this case
25 you can get right here in this courtroom in these four

1 walls.

2 So when you get home, maybe your spouse, your children
3 or friends are going to say to you, what happened. You
4 can say, I've been selected on a jury. That's all I can
5 say. Don't talk any more among yourselves or with
6 anybody.

7 And I look forward to seeing you in the morning at
8 9:30 and we'll get to work.

9 Mr. Dent, I'm going to make you the foreman of the
10 jury. So if you would, I'm going to ask you to sit right
11 there on the end where the lady is in the purple shirt.

12 Members of the jury, you're excused until 9:30 in the
13 morning. Everybody else remain seated.

14 (Jury exits courtroom at 4:04 p.m.)

15 THE COURT: Are there any motions before we leave for
16 the day, Mr. Plexico?

17 MR. PLEXICO: I do have a motion. Under 615, Your
18 Honor, I move for sequestration of the witnesses. Your
19 Honor, a lot of this is just simply what they perceived to
20 have seen.

21 THE COURT: Solicitor, do you have any problem with
22 that?

23 MS. LEGETTE: No, Your Honor.

24 THE COURT: All right. Motion is granted. Anything
25 else before we begin in the morning, Mr. Plexico?

1 MR. PLEXICO: No, Your Honor.

2 THE COURT: Anything from the Solicitor?

3 MS. LEGETTE: No, Your Honor.

4 THE COURT: Court will be adjourned until 9:30 in the
5 morning. Thank you very much.

6 END OF DAY'S PROCEEDINGS: 4:05 P.M.

7 * *** *

8 ON TUESDAY, AUGUST 9, 2011 AT 9:41 A.M.:

9 THE COURT: Any motions before we begin this morning
10 from the Solicitor?

11 MS. LEGETTE: Not from the State, Your Honor.

12 THE COURT: From the defense?

13 MR. PLEXICO: Yes, sir, Your Honor. They intend to
14 call a Bruce McMillan who has some 1998 convictions. I've
15 asked probation and parole, they said he was revoked and
16 he -- he has '95 convictions. He was revoked in '98.

17 And my request is to be able to use his 1995
18 convictions, Judge, which are multiple: Distribution of
19 crack cocaine; he had a possession of crack cocaine at a
20 school; he had -- I guess that's within a half-mile of a
21 school; possession with intent to distribute; another
22 count of possession of crack cocaine within a half-mile of
23 a school; and then he had possession of crack cocaine with
24 intent to distribute. This is 5-22-95. He was given
25 seven years suspended upon the service of three years'

1 probation, three years -- seven years suspended upon the
2 service of three years and five years' probation.

3 Then in 1995, he was actually revoked in 1995 -- no.
4 Excuse me. In 1998 he was revoked.

5 So that would be on the cusp of the window of the time
6 he got done serving his sentence. He may very well have
7 been paroled out and then he may have had some probation
8 left or whatever.

9 I think he was revoked and terminated in '98. The
10 probation department, they can't tell me when he was
11 released from prison.

12 So my motion is, is it's so close on the 10 years and
13 it's so probative of the truthfulness, Judge, we're
14 requesting to be able to use that.

15 I don't think 10 years is a fine line to be able to
16 use it.

17 THE COURT: All right. What says the solicitor?

18 MS. LEGETTE: Your Honor, we have no objection.

19 THE COURT: All right. You can go ahead and bring out
20 the jury.

21 (Jury enters courtroom at 9:45 a.m.)

22 THE COURT: Ms. Clerk, you can go ahead and swear the
23 jury in.

24 (Jury impaneled.)

25 THE COURT: All right. Members of the jury, I want to

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 talk to you for just a few minutes and go over a few
2 things just to give you a little working knowledge as to
3 how this case will proceed and what your job is and what
4 my job is and what you can expect.

5 The first thing I want you to understand is that the
6 State of South Carolina has the burden of proof. They
7 have to prove their case beyond a reasonable doubt. The
8 Defendant does not have any burden of proof. The
9 Defendant does not have anything they have to prove.

10 The next thing I want you to understand is what is
11 your role and what is my role. You are the judge of the
12 facts in this case. I am the judge of the law.

13 What does that mean? That simply means that you
14 determine what the facts of this case are. You do that
15 alone, not me, not my clerk, not the Clerk of Court,
16 nobody in the audience. Just you.

17 Well you ask yourself, how do I determine what the
18 facts of this case are? It's very simple. You look at
19 two things. The witnesses that come up here and sit in
20 this seat and testify. You listen to them. You judge
21 their credibility. You judge their believability.

22 I want you to understand that you can believe all of
23 what a witness tells you, nothing a witness tells you, you
24 can believe part of what a witness tells you, you can
25 believe one witness against many or many witnesses against

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 one.

2 That is your job. You just use your common sense,
3 your ability to think, your ability to hear and your
4 ability to reason.

5 You will listen to what the witnesses say. That is
6 evidence. And you will examine any matters admitted into
7 the record of the case such as documents or papers or
8 pictures or weapons or anything like that.

9 Those two things are evidence. And that is how you
10 determine what the facts of this case are.

11 Now you ask yourselves: Well, what does the Judge
12 do? I am the judge of the law. I'm here on a two-role
13 basis, in my opinion. I'm here to make sure everybody
14 gets a fair trial. I don't know any of the parties, don't
15 want to know any of the parties. I'm just here to referee
16 over this case and make sure they get a fair trial.

17 Secondly, I'm the judge of the law. At the end of
18 this case I'll instruct you on the law applicable to this
19 case. I will give it to you in great detail. And I want
20 you to listen to it carefully. I want you to further
21 understand that you have to accept the law as I give it to
22 you.

23 If you have any preconceived ideas as to what you
24 think the law is or what the law ought to be and it does
25 not agree with what I tell you the law is, you must

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 abandon those preconceptions and accept the law as I give
2 it to you.

3 Furthermore, only when I tell you to begin your
4 deliberations -- and I want to emphasize that. That will
5 be at the very end of this case. At the very end will you
6 start deliberating. And when I tell you specifically to
7 begin your deliberations, you will take the facts as you
8 find them, you'll take the law as I give it to you, you'll
9 couple the two together and make a decision therefrom.
10 It's very simple.

11 I want you to further understand what the lawyers tell
12 you is not evidence. They are spokespersons. They are
13 advocates for their clients. They fight for their
14 clients.

15 Evidence again, very simple, two things; witnesses
16 that testify, and any matters admitted into the record.

17 Furthermore, I want you throughout this trial, whether
18 we finish it today or whether we finish it tomorrow, I do
19 not want you, like I told you yesterday, to undertake any
20 independent investigations. Don't read the newspaper if
21 you don't mind during this trial. Do not watch the TV
22 during the trial. Don't get on the street and start
23 asking questions. Don't get on the Internet and get on
24 your phone and try to figure things out.

25 I want you to get everything you need to make a

JUDGE'S INTRODUCTORY COMMENTS TO THE JURY

1 decision in this case right here in this courtroom in
2 these four walls. That's very, very important because I
3 want to make sure you get it according to our laws and our
4 constitution and like it's supposed to be had.

5 All right.

6 Furthermore, as I told you a few minutes ago, do not
7 begin your deliberations at any point in time until I tell
8 you to. In other words, if we take a break, if you go to
9 lunch, if we do not finish today and you go home tonight,
10 at no point in time do you begin discussing this case at
11 all.

12 And the reason I don't want you to do that is because
13 I want you to have everything you need to make up your
14 mind. And I don't want you to start making up your mind
15 prematurely.

16 In other words, the State is going to go first. They
17 get to put up their case. I want you to hear them, listen
18 to them carefully. The defense may put up a case. If
19 they put up a case, I want you to listen to the defense as
20 well.

21 Then I want you to hear from me as I instruct you on
22 the law. I want to make sure you have every ingredient
23 you need to make a decision. And only when that point
24 comes will I specifically tell the foreman and the jury to
25 begin your deliberations.

OPENING STATEMENTS BY THE STATE

1 So at any point in time we take a break, we take a
2 lunch break, you go home tonight, you might ask
3 yourselves: Well, what can I talk about? Talk about
4 sports, talk about the news, talk about the weather, talk
5 about anything you want to talk about but not this case
6 until I tell you to. Okay.

7 If at any point in time any of you need something, if
8 somebody needs a break, a lot of times I get cranked up
9 and I just go and go and go. If the lawyers tell me they
10 need a break or you tell me you need a break, if you just
11 kind of raise your hand like that, I'll know you need
12 something. And as soon as I find a moment when I can talk
13 to you, I'll take a little break. If you need something
14 to eat, something to drink, to take a smoke break, if you
15 need to stand up, if you need to use the restroom, I'll
16 make sure you're taken care of. Okay?

17 With that being said, I'll recognize the State for
18 their opening statement.

19 MS. LEGETTE: Thank you, Your Honor. May it please
20 the Court.

21 THE COURT: Yes, ma'am.

22 MS. LEGETTE: Mr. Plexico. Ladies and gentlemen.
23 Good morning.

24 THE JURY (COLLECTIVELY): Good morning.

25 MS. LEGETTE: A man's word is his bond. That's

OPENING STATEMENTS BY THE STATE

1 something that my daddy taught my brother and I from a
2 young age, that a man's word was his bond. And to prove
3 that to us, he made sure that whatever he ever told us he
4 was going to do he always did it. He kept his word.

5 Now someone or somehow, apparently, Marquis Breeland,
6 the man seated at the counsel table, learned the same
7 thing. Your word is your bond.

8 And you ask, why do I say that. I say that because
9 Marquis Breeland told someone that he was going to kill
10 Laurice Garvin. A day later Laurice Jerome Garvin was a
11 dead man, executed on the streets of the Town of Allendale
12 in a place called Kennedy Park. Robin and Fairdale
13 Streets.

14 And after Marquis Breeland killed Laurice Jerome
15 Garvin, Marquis Breeland told someone else that he did it.

16 And that's what this case is.

17 Marquis Breeland kept his word to kill, to murder,
18 Laurice Jerome Garvin.

19 Now, ladies and gentlemen, this will be a simple
20 case. You will see witnesses. You will see evidence.
21 You will hear from those witnesses. And, quite honestly,
22 you may not always like the witnesses you hear from. The
23 evidence may not always remind you of CSI.

24 But the State of South Carolina has a heavy burden.
25 We don't seek to convict innocent people. We take the

OPENING STATEMENTS BY THE DEFENSE

1 evidence and the witnesses as we find them, and bring them
2 to you for a just verdict.

3 And when all the evidence is in in this case, we'll
4 come back to you. We'll ask you to find Marquis Breeland
5 guilty of murder, for his actions when he killed Laurice
6 Jerome Garvin. And we'll ask you to find him guilty of
7 possession of a weapon during the commission of a violent
8 crime. We'll ask you to find him guilty of those two
9 things.

10 Thank you.

11 THE COURT: All right. The defense is recognized.

12 MR. PLEXICO: If it pleases the Court, Madam
13 Solicitor.

14 MS. LEGETTE: Yes, sir.

15 MR. PLEXICO: Mr. Foreperson.

16 I'm Stephen Plexico. I'm one of the public defenders
17 for the 14th Circuit which is Beaufort, Colleton,
18 Allendale, Hampton and Jasper. I'm also appointed here
19 and I lived here in Allendale for 28 years. It's nice
20 always to be in front of a jury here at home in Allendale.

21 My client has the right to every constitutional
22 guarantee that this great country gives us. Number one is
23 a fair trial. And the Judge is here to see to it that
24 that's done.

25 Number two, no matter what the government says, no

OPENING STATEMENTS BY THE DEFENSE

1 matter what, they have to have proof. They have to put
2 witnesses in this chair to testify under oath which is
3 proof, introduce exhibits which can be examined in order
4 to carry their burden.

5 Let's talk about the burden. The burden is the State
6 has to prove any defendant guilty beyond a reasonable
7 doubt. And that's a doubt for which you give a reason.
8 Obviously they have to put up evidence. Now, you're not
9 going to hear anybody say that, I saw Mr. Breeland shoot
10 this individual, this individual died of gunshot wounds
11 not at all.

12 Now, I don't believe you're going to see any forensic
13 evidence such as fingerprints or anything like that. Now,
14 the State has a heavy burden. And it's not the sadness or
15 the emotions that go into the loss of anyone which is
16 always clear. You're here to be clear headed and clear
17 thinking. They have to prove guilt beyond a reasonable
18 doubt.

19 Now he won't get another trial. Y'all are the most
20 powerful people in the most powerful position, and the
21 most powerful people over this man that's ever existed.
22 And this is the most power you'll probably ever have
23 unless you sit on another jury.

24 Now why do I say that? The Judge is the judge of the
25 law. What he says goes. Y'all are the judges of the

OPENING STATEMENTS BY THE DEFENSE

1 facts. Y'all have to determine what the facts are.

2 Now, when there's evidence that's beyond a reasonable
3 doubt, well, then jurors return a guilty verdict. But if
4 there's not evidence, not say just a suspicion such as
5 somebody said I'm going to steal a car and the car's gone
6 the next morning. Would that be enough evidence?

7 Now, if -- you have a duty here, a duty, a sworn
8 oath. They have not carried their burden -- now let's say
9 the Defendant doesn't do anything and I want to caution
10 you. We have no duty here in America to put up a
11 defense. And, now, that means the silence of the accused
12 can't even be discussed in the courtroom (sic) and you're
13 not (sic) to follow the judge's instructions that that is
14 even mentioned.

15 That's about the only known way that I can imagine
16 aside from assault that I can imagine in a jury room the
17 silence of the accused cannot even be mentioned. It can't
18 be held against him why because in this great country what
19 Hamilton and Washington and all these people got together
20 this is what they wanted and it's worked for 200 years.
21 We're not here in Allendale to change fair practice.

22 Now the Defendant has nothing to prove. The entire
23 burden is on the State. I want you to listen to their
24 evidence. And once you decide what the facts are, if you
25 say these facts add up to guilt beyond a reasonable doubt

OPENING STATEMENTS BY THE DEFENSE

1 then if you start down here and this is zero percent
2 evidence. No evidence at all. And you go all the way
3 over here. And right here is a hundred percent,
4 absolutely no doubt.

5 The State's burden is to take this all the way up to
6 where guilt beyond a reasonable doubt is. And that's a
7 long row, a long row to hoe. It's their burden, their
8 burden to come up with credible, believable evidence.

9 Now, what is credible evidence? Do you trust and
10 believe the witness? Look for things that might make you
11 distrust the witness. Be inquisitive. Be critical.

12 Think about it.

13 Now, once you make a decision on the facts based on
14 the credibility and the evidence, the believability of the
15 evidence, that factual decision, there's no appeal from
16 your factual decision.

17 Let's say the Judge makes an error of law. Okay. And
18 says well it's nighttime instead of daytime and that was
19 an issue. Well, a legal issue -- well, you can appeal a
20 legal issue. There's no appealing a jury's verdict in a
21 finding of facts.

22 Now, so that makes this decision the only factual
23 decision my client's going to get.

24 I'm asking you to follow your oath and make the State
25 carry their burden of proving anybody including my client

DAAPHNE CONNER - DIRECT

1 guilty beyond a reasonable doubt. And they have to stack
2 up that evidence to get to guilt beyond a reasonable doubt
3 before you can even think, let's say we're right here,
4 before you can even think of finding a defendant in
5 America guilty.

6 Let's say it's a little bit more than half way. This
7 isn't a car wreck case. Remember your difference between
8 criminal and civil law. Civil law. Fender bender. I run
9 into somebody in the IGA parking lot. We have a trial.
10 They decide, okay. I should have looked before I backed
11 up and hit that defendant. Mr. Plexico, pay them \$300.
12 What's the burden of proof? It's more likely than not.

13 Fifty-one percent is a little bit more than half. But
14 51, 52 percent. Well, Mr. Plexico, pay \$500 on the
15 fender-bender here in Allendale. Well, okay, that's civil
16 law.

17 This is criminal law. This isn't half way. This is
18 guilt beyond a reasonable doubt.

19 So it's not iffy. It takes a whole lot more effort.
20 Why? Because you're taking away a man's freedom and a
21 murder case is an extremely, extremely, extremely
22 important case. This is no run-of-the-mill case. Can't
23 get more serious than that.

24 Protect the constitution. Protect our way of life.
25 I'm just asking you to do this, to give this man a fair

DAPHNE CONNER - DIRECT

1 trial. This is America. Let's be good American jurors
2 and return a verdict that speaks the truth when it's
3 time.

4 Thank you.

5 THE COURT: Solicitor, call your first witness.

6 MR. FERGUSON: The State call Daphne Conner.

7 DAPHNE CONNER, having been first duly sworn, was
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. FERGUSON:

11 Q. Good morning, Ms. Conner.

12 A. Good morning.

13 Q. Where do you live?

14 A. Allendale.

15 Q. And where exactly in Allendale do you live?

16 A. Kennedy Park.

17 Q. How long have you lived there?

18 A. Twenty-five years.

19 Q. And how old are you today?

20 A. Twenty-five.

21 Q. What were you doing on July the 22nd of 2007, in the
22 evening?

23 A. Just riding.

24 Q. Where were you riding?

25 A. Just riding through Kennedy Park.

DAPHNE CONNER - DIRECT

1 Q. And do you remember what you saw that night as you
2 were riding through Kennedy Park?

3 A. When I turned to go in I noticed a car in the edge.
4 When I got further, there was a body laying in the road.

5 Q. What kind of a car was it?

6 A. It was a long car. I don't know the name of it,
7 but --

8 Q. Was it a sedan?

9 A. -- a modern car. Four-door; yeah.

10 Q. And what else did you say you saw in the car?

11 A. A few feet away from the car was a body laying in the
12 road.

13 Q. And could you tell, could you tell the race of the
14 body in the car?

15 A. It was -- the body wasn't in the car.

16 Q. I'm sorry. Could you tell the race of the body in the
17 road?

18 A. It was a black male.

19 Q. Thank you. What did you do next?

20 A. I parked my car. I got out and I walked up and I
21 started talking to another person at the scene. And I
22 asked, did anyone call 9-1-1. And they stated that they
23 had called 9-1-1.

24 Q. What did you do after that?

25 A. I of course started talking and just kept talking.

DAPHNE CONNER - DIRECT

1 And after the cop arrived, I just walked back.

2 Q. Ms. Conner, did you ever call 9-1-1 that night?

3 A. I called 9-1-1.

4 Q. And who else was on the scene when you first saw the
5 car and the body?

6 A. When I first got there it was Ktari Johnson, her
7 niece. It was another lady, also.

8 Q. Was there any law enforcement there?

9 A. Law enforcement have not arrived on the scene when I
10 got there.

11 Q. Was there an ambulance there?

12 A. No.

13 Q. How long did it take for any of those folks to show
14 up?

15 A. It was, like, five minutes.

16 Q. Did you ever talk to law enforcement that night?

17 A. No, I didn't.

18 Q. What did you do after they got there?

19 A. After they got there, I moved my car. I parked my car
20 on the other side of the stop sign. And I just stayed and
21 I talked to Ktari for a while and then I walked, walked
22 around.

23 Q. And did you live very close to this area?

24 A. Right around the corner.

25 Q. When you left to go home, who all was at the scene at

DAPHNE CONNER - DIRECT

1 that point?

2 A. It was a lot of people. It was a crowd, so it was a
3 whole lot of people. I left, when I left the scene was
4 clearing out. Because my car was blocked in, I had to
5 wait for it to clear out. When I left it was clearing
6 out, but it was still people back there.

7 Q. And, Ms. Conner, what kind of area is Kennedy Park?

8 A. It's like a family community. Most of the people that
9 live there have family, basically.

10 Q. Do people ride around Kennedy Park a pretty good bit?

11 A. Yes.

12 Q. And why do they do that?

13 A. I guess it's like an attraction. Any time you ride
14 through Kennedy Park it's probably somebody outside,
15 somebody in the yard doing something and anyone from the
16 park just riding around.

17 MR. FERGUSON: Thank you, Ms. Conner. I have no
18 further questions for you.

19 THE WITNESS: Thank you.

20 THE COURT: Mr. Plexico?

21 MR. PLEXICO: I have no questions, Your Honor.

22 THE COURT: You may step down. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: You may call your next witness.

25 MR. FERGUSON: The State calls Marlene Levette Love.

MARLENE LEVETTE LOVE - DIRECT

1 MARLENE LEVETTE LOVE, having been duly sworn, was
2 examined and testified as follows:

3 DIRECT EXAMINATION

4 BY MR. FERGUSON:

5 Q. Good morning, Ms. Love.

6 A. Good morning.

7 Q. Where do you live?

8 A. Hampton Grove, Allendale, South Carolina.

9 Q. And where does your mother live?

10 A. Robin Street, Allendale, South Carolina.

11 Q. What were you doing back on July the 22nd of 2007, in
12 the evening?

13 A. We, my brother was home so we was over to my mom's
14 house. And at the time I was watching Murder She Wrote.

15 Q. Yes, ma'am.

16 A. And I heard pop-pow. I thought it was some
17 firecrackers and then it went pow-pow-pow. It got louder.
18 I was, like, everybody get down, get down, somebody is
19 shooting.

20 So I wait, like, maybe about two minutes and then I
21 peeped out the curtain. And I saw a car light shining on
22 a body. It was in front of a tree outside in the grass
23 part, not quite in the road but outside.

24 And when I went to go see, I saw a neighbor walking
25 around the party and then I think I called or got somebody

MARLENE LEVETTE LOVE - DIRECT

1 to call, I can't really remember, anyway, when I called
2 9-1-1 or whoever called 9-1-1, they said somebody already
3 called them.

4 Q. Yes, ma'am. Who was that neighbor you saw walking
5 down the street?

6 A. Ms. Gloria Kennedy.

7 Q. And how far from the window that you looked out was
8 the car and the body that you saw?

9 A. Probably about from here to, if you were standing
10 where that gentleman is right there.

11 Q. Thank you. And did you recognize the man laying in
12 the road?

13 A. No, I don't even know him.

14 Q. Did you ever go outside of your house and walk down to
15 the road?

16 A. Well, I went outside the front door and I got to the
17 driveway and that's when I saw Ms. -- I'm trying to think
18 of her name. It was a car stalled in front of the door.
19 She said she broke down and that's how I could see the
20 body, her light was shining on the body. I'm thinking it
21 was Johnson. I think that's her name.

22 Q. Did you ever talk to law enforcement that night?

23 A. Yes. I talked to some gentlemen from Columbia.

24 Q. Did you tell them what you saw?

25 A. Yes, I did.

MARLENE LEVETTE LOVE - CROSS

1 Q. Did you see anybody else other than the neighbor when
2 you looked out the window the first time?

3 A. No.

4 Q. And was that neighbor running away or were they just
5 kind of checking out the scene?

6 A. She was just walking, like, looking at the body, like
7 walking around, looking.

8 Q. And what kind of area is Kennedy Park?

9 A. What kind of area?

10 Q. Yes, ma'am. Is it a neighborhood?

11 A. It's a neighborhood. Like the street mama live on,
12 Robin Street. That's a busy street. That's like one of
13 the main traveling streets, that and Mill Street is the
14 main traveling street.

15 Q. A lot of people ride around Kennedy Park?

16 A. Yes, they do.

17 Q. Why do they do that?

18 A. I don't know. They just like the neighborhood, I
19 guess.

20 Q. Yes, ma'am. Thank you very much. I have no further
21 questions for you.

22 THE COURT: Mr. Plexico?

23 CROSS-EXAMINATION

24 BY MR. PLEXICO:

25 Q. Well, where two or three people live it seems like

JOHN LAWSON - DIRECT

1 that's a neighborhood too; right?

2 A. That's right.

3 MR. PLEXICO: Okay. I don't have anything further.

4 THE COURT: All right. You may step down. Thank
5 you. Call your next witness.

6 MR. FERGUSON: The State calls John Lawson.

7 JOHN LAWSON, having been duly sworn, was examined and
8 testified as follows:

9 DIRECT EXAMINATION

10 Q. Good morning, Mr. Lawson.

11 A. Good morning.

12 Q. Who do you work for?

13 A. Allendale County EMS.

14 Q. How long have you worked for them?

15 A. In a full-time capacity about 10 years.

16 Q. And were you working for Allendale County EMS back on
17 July the 22nd of 2007?

18 A. That's correct; yes, I was.

19 Q. And what did you do for EMS back then?

20 A. Actually, I worked as a paramedic on the ambulance and
21 also handled the administrative responsibilities for the
22 system.

23 Q. And with EMS, were you called out to Robin Street on
24 July the 22nd, 2007?

25 A. Yes, I was.

JOHN LAWSON - DIRECT

1 Q. And did you respond to that location?

2 A. Yes.

3 Q. And what did you see when you responded to that
4 location?

5 A. I remember or I recall the vehicle in the middle of
6 Robin Street with a male patient lying in the asphalt.
7 And the body was twisted or rotated in such a fashion that
8 we had to roll the body for assessment purposes.

9 There was several gunshot wounds noted to the victim.
10 One being to the -- one being to the head, to the temporal
11 and parietal region of the head, and the other that we
12 noticed to the clavicle, the collarbone area.

13 Q. And did you check the victim for vital signs?

14 A. Yes. Obviously the patient was not breathing. There
15 were no pulses. There was no cardiac, electrical activity
16 as far as the EKG is concerned. And there was some brain
17 matter noted from the head wound.

18 Q. Were there any attempts at resuscitation?

19 A. No.

20 Q. Now, when you performed -- when you rolled the body
21 over, what did you notice when you did that?

22 A. Well, the body was, it was twisted kind of face down
23 and the upper chest down. So we had to roll the body to
24 get to the chest to properly assess.

25 And nothing remarkable is noted in the runner report

JOHN LAWSON - DIRECT

1 here.

2 Q. Was there a good bit of blood?

3 A. Not a tremendous amount of blood. There was some
4 coagulated blood though around the head and the face on
5 the asphalt where we rolled the body over.

6 Q. What does DOA mean?

7 A. Dead on arrival.

8 Q. And is that how you classified this individual?

9 A. Yes.

10 Q. And what did you do after that determination was made?

11 A. We made every attempt we could to preserve as far as
12 the crime scene was concerned. And notified -- well, law
13 enforcement was already present with us, and they began to
14 secure the perimeter.

15 We notified the coroner. Notification was then made
16 by law enforcement to the other appropriate agencies for
17 investigation.

18 We were there for some time before we were released.

19 Q. Do you remember what time you arrived?

20 A. Yes. We got to the scene at 21:58 which would be a
21 couple minutes till 10.

22 Q. And do you remember the exact address that you
23 responded to, or the approximate address?

24 A. 239 Robin Street.

25 Q. And where is that? Is that in the Town of Allendale?

JOHN LAWSON - CROSS

1 A. It is in the Town of Allendale. If I recall
2 correctly, the address was close to the, close to the
3 Barton Road intersection of Robin Street, where Robin
4 comes onto Barton Road.

5 Q. And is that within Allendale County?

6 A. Yes, it is.

7 Q. Thank you. Mr. Lawson, I have no further questions
8 for you.

9 THE COURT: Mr. Plexico?

10 CROSS-EXAMINATION

11 BY MR. PLEXICO:

12 Q. So y'all don't show up until -- y'all don't go to a
13 scene of a shooting or where there's potential violence
14 until law enforcement's already there. That's when y'all
15 come in; is that correct?

16 A. That's correct.

17 Q. And that's your standard policy?

18 A. Yes, sir.

19 Q. That's for the safety of the EMS workers?

20 A. That's correct.

21 Q. How long does it take blood to coagulate?

22 A. I can't answer that question for you, sir.

23 Q. That's all right. I don't have anything further.

24 THE COURT: Redirect?

25 MR. FERGUSON: Nothing on redirect, Your Honor.

JOHN SULLIVAN - DIRECT

1 THE COURT: Thank you. You may step down. You may
2 call your next witness.

3 MR. FERGUSON: The State calls John Sullivan.

4 JOHN SULLIVAN, having been duly sworn, was examined
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FERGUSON:

8 Q. Good morning, Mr. Sullivan.

9 A. Good morning.

10 Q. Who do you work for?

11 A. Allendale Police Department.

12 Q. And what do you do for them?

13 A. I'm sorry?

14 Q. What do you do for them?

15 A. I'm the Chief of Allendale Police Department.

16 Q. And where were you working back on July the 22nd of
17 2007?

18 A. With the Allendale County Sheriff's Office.

19 Q. And what were you doing for the sheriff's office back
20 then?

21 A. I was assigned to oversee the operations of the
22 Allendale Police Department.

23 Q. And what were you doing specifically on that evening
24 of July the 22nd, 2007?

25 A. I got off that afternoon and I was home.

JOHN SULLIVAN - DIRECT

1 Q. And did you receive a call from dispatch later on that
2 evening?

3 A. Yes.

4 Q. And what did you do as a result of that call?

5 A. After receiving the call, I proceeded to Robin Street
6 in Allendale.

7 Q. And what did you see when you got there?

8 A. Upon my arrival, I spoke with Lieutenant Rouse which I
9 observed an ambulance, rescue EMS unit, an individual in
10 the roadway, covered, and maybe 75, 175 feet or so with
11 the car in a ditch.

12 Q. What did you do after you saw that?

13 A. After observing that and being briefed of what took
14 place, I contacted the South Carolina Law Enforcement
15 Division.

16 Q. And did the South Carolina Law Enforcement Division
17 respond that night?

18 A. Yes, sir; their crime scene unit arrived.

19 Q. And why did you contact SLED?

20 A. It is my practice when any crimes that involve serious
21 offenses such as this, that I contact SLED for an
22 investigation.

23 Q. And is that to process the scene?

24 A. And also prior to them getting there -- yes, sir.

25 That's to process the crime scene.

JOHN SULLIVAN - DIRECT

1 Q. And did y'all take any measurements to preserve the
2 scene before SLED arrived?

3 A. That's correct.

4 Q. And what were those measurements?

5 A. Upon arriving, the area was taped off and there was
6 officers present to secure the scene and keep individuals
7 from coming into that particular area.

8 Q. Did y'all let anybody other than law enforcement or
9 EMS into that crime scene?

10 A. Not to my knowledge; no, sir.

11 Q. To your knowledge, did anybody touch or move anything
12 prior to SLED's arrival that evening?

13 A. No, sir.

14 Q. Were you present at the scene, Chief Sullivan, when
15 SLED arrived?

16 A. Yes, sir.

17 Q. And what did you do once they arrived?

18 A. I spoke to the individuals, met with the crime scene
19 unit, and give them a little briefing as to what I had and
20 they took it over from there.

21 Q. By taking over, was the crime scene released to the
22 South Carolina Law Enforcement Division?

23 A. Yes.

24 Q. Okay. And where was the victim's body at this point?

25 A. It was lying in the roadway.

KARL KENLEY - DIRECT

1 Q. And it was still there when the SLED officers arrived?

2 A. Yes, sir.

3 Q. Now this address you responded to, was that in
4 Allendale County?

5 A. Yes, sir.

6 MR. FERGUSON: Thank you. Mr. Sullivan, Chief
7 Sullivan, I have no further questions for you. Thank you.

8 THE COURT: Mr. Plexico?

9 MR. PLEXICO: I don't have any questions, Your Honor.

10 THE COURT: You may step down. You can call your next
11 witness.

12 MS. LEGETTE: The State calls Agent Karl Kenley.

13 KARL KENLEY, having been duly sworn, was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 BY MS. LEGETTE:

17 Q. Good morning.

18 A. Good morning.

19 Q. Agent Kenley, please state your full name for the
20 record.

21 A. My name is Karl Kenley. That's Karl with a K. Last
22 name is K-E-N-L-E-Y.

23 Q. Agent Kenley, where do you work?

24 A. South Carolina Law Enforcement Division commonly known
25 as SLED.

KARL KENLEY - DIRECT

1 Q. And, Agent Kenley, what are your duties at SLED?

2 A. I'm a crime scene investigator. My responsibilities
3 are on a day-to-day basis to process evidence and submit
4 it to the SLED lab in Columbia. We process the evidence
5 for fingerprint evidence. We also do fingerprint
6 analysis, tire and shoe tread analysis which is inked
7 print evidence, bloodstain pattern analysis and crime
8 scene reconstruction.

9 Q. Would you please describe your training and
10 experience?

11 A. I have 20 years of law enforcement. I have a BA
12 degree in sociology, criminal justice. I have completed
13 courses in basic crime scene which is evidence collection,
14 documentation and photograph, basic crime scene
15 photography, ridge-ology, basic palm print, bloodstain
16 pattern analysis, crime scene reconstruction.

17 Again, I've also attended and have successfully
18 completed the SLED in-house training program under the
19 direct supervision of the SLED court certified senior
20 agents.

21 Q. How long have you been employed in fingerprint work?

22 A. Five years.

23 Q. Tell us, what is an inked print?

24 A. An inked print, if you look at your fingers, the
25 raised portions of skin are called ridges. An inked print

KARL KENLEY - DIRECT

1 is simply using print ink to put on someone's hand and
2 then transferring that print onto, preferably a white card
3 to basically transfer that print onto a card to make a
4 comparison.

5 A good example would be a stamp, a rubber stamp that
6 someone would use for signatures. It's the same principal
7 behind that.

8 Q. And what is a latent print?

9 A. A latent print is basically an invisible print that
10 has to be on your hands before you can actually see it,
11 it's enhanced with some chemical, whether it's white
12 powder or another type of process to actually to make the
13 print visible so you can see it. It doesn't change the
14 print, it just makes it visible to the eye so that you can
15 see.

16 Q. And how are fingerprints compared and identifications
17 perfected?

18 A. Fingerprints are unique and permanent. They start
19 developing basically around --

20 THE COURT: If you'd talk a little bit slower. The
21 acoustics are very bad in this courtroom.

22 THE WITNESS: Okay. If you look at your hands, the
23 raised portions of skin are called ridges. They start in
24 the third trimester of your life. And they stay that way
25 until you die and basically decomp, or unless you have

KARL KENLEY - DIRECT

1 them surgically removed.

2 Other than that everybody has different fingerprints.
3 No two people have been found to have the same
4 fingerprints.

5 The ridges on your fingers come in basic three types:
6 inner ridge, which is a ridge that flows and then comes to
7 a stop; a bifurcated ridge which flows and then forks into
8 two different directions and a line.

9 And those ridges and those characteristics in your
10 fingers are used if you have a known print and an unknown
11 print, use those individual characteristics in both those
12 prints to make an identification to decide if someone
13 touched or did not touch something.

14 BY MS. LEGETTE:

15 Q. Agent Kenley, have you ever been qualified as an
16 expert in latent prints in crime scene reconstruction in
17 the past?

18 A. Yes.

19 Q. Have you ever testified in court?

20 A. Yes.

21 Q. Your Honor, at this time the State would offer Agent
22 Karl Kenley as an expert in latent print examination,
23 latent print and inked print examinations.

24 THE COURT: Any objections?

25 MR. PLEXICO: I have no objection, Your Honor.

KARL KENLEY - DIRECT

1 BY MS. LEGETTE:

2 Q. Agent Kenley, were you working for SLED in July of
3 2007?

4 A. Yes.

5 Q. Did you respond to a call for investigation in
6 Allendale County?

7 A. Yes.

8 Q. And what did -- did you respond to Allendale County?

9 A. Yes, I did.

10 Q. Where did you respond?

11 A. I responded to Robinson -- Robin Street at
12 approximately 12:05 on July the 23rd, '07, myself and my
13 partner at that time. Jeff Parrott.

14 Q. And Agent Kenley, tell us what you found when you
15 arrived.

16 A. Upon my arrival, I spoke with Craig Paul who is a
17 field agent with SLED. He advised that a male victim had
18 been shot on the scene. The male victim's body was
19 located approximately 40 feet from the vehicle that was on
20 Robin Street.

21 Q. So, Agent Kenley, once you arrived you found the body,
22 you found the car?

23 A. That's correct.

24 Q. Did you do a crime scene investigation?

25 A. Yes, we did.

KARL KENLEY - DIRECT

1 Q. Okay. And during this crime scene investigation, what
2 did you do?

3 A. We started basically with a walk-through the scene,
4 basically looking for any type evidence that needed to be
5 documented and photographed and then the actual scene was
6 photographed under my direction through 360 degrees,
7 around the entire scene and then mid range and close-up of
8 any physical evidence that was located while we were
9 walking through the scene.

10 Q. And during your investigation or after your
11 investigation was a sketch created?

12 A. Correct.

13 Q. And was that sketch created by you?

14 A. It was created by me.

15 (Thereupon, State's Exhibit No. 36, SLED sketch,
16 marked for identification.)

17 BY MS. LEGETTE:

18 Q. Agent Kenley, I hand you now what's been previously
19 marked for identification as State's Exhibit 36.

20 Your Honor, may I approach?

21 THE COURT: Sure.

22 BY MS. LEGETTE:

23 Q. Please take a moment and tell me if you recognize
24 this.

25 A. Yes. This is the crime scene sketch that I prepared

KARL KENLEY - DIRECT

1 back at the office after we processed the scene.

2 Q. And, Agent Kenley, what, if anything, is found in that
3 sketch?

4 A. There is a, basically a rough sketch of the roadway
5 where the vehicle was located, where the victim was
6 located, and the physical evidence documented at the
7 scene.

8 MS. LEGETTE: Your Honor, at this time I would offer
9 into evidence State's Exhibit 36 previously marked for
10 identification.

11 THE COURT: Any objection, Mr. Plexico?

12 MR. PLEXICO: No, Your Honor.

13 MS. LEGETTE: May we publish, Your Honor?

14 THE COURT: Sure. State's Exhibit 36 into evidence
15 without objection.

16 (Thereupon, State's Exhibit No. 36, SLED sketch, was
17 received into evidence.)

18 MS. LEGETTE: Your Honor, may he come down? We have a
19 microphone.

20 THE COURT: Yes.

21 BY MS. LEGETTE:

22 Q. Okay. Remember to speak up, Agent Kenley.

23 A. Okay.

24 Q. Now, Agent Kenley, please tell us, the jury, what
25 we're looking at here.

KARL KENLEY - DIRECT

1 A. This is Robin Street which is the street I responded
2 to. This is where the victim --

3 MR. PLEXICO: May I approach, Your Honor?

4 THE WITNESS: This is where the victim's body was
5 located. This is where the car was located which was
6 approximately 140 feet from where the body was.

7 And the little triangles are actually physical
8 evidence that was documented, collected at the scene and
9 the triangles are actually shell casings from a
10 semiautomatic weapon.

11 BY MS. LEGETTE:

12 Q. Thank you. You may have a seat.

13 A. (Complies.)

14 Q. Agent Kenley, you also talked about photographs you
15 took at the crime scene; is that correct?

16 A. That's correct.

17 MS. LEGETTE: Your Honor, may I approach?

18 THE COURT: Sure.

19 MR. PLEXICO: I've reviewed these, Your Honor, and I
20 have no objections to them.

21 THE COURT: They are marked?

22 MS. LEGETTE: They are marked. State's Exhibits One
23 through 35, we offer for admission into evidence, Your
24 Honor.

25 THE COURT: State's One through 35 are in evidence

KARL KENLEY - DIRECT

1 without objection.

2 (Thereupon, State's Exhibits No. 1 through 35,
3 photographs, were received into evidence.)

4 BY MS. LEGETTE:

5 Q. Agent Kenley, I ask you to please review State's
6 Exhibits One through 35 and tell me if you recognize
7 those, please.

8 A. Yes. These are some of the photographs that were
9 taken at the scene that night.

10 Q. Are they true and accurate reflections of the scene as
11 you saw it on July the 22nd, 2007 or 23rd, 2007?

12 A. Yes, they were.

13 MS. LEGETTE: Your Honor, at this time we'd ask that
14 State's Exhibits One through 35 be published to the jury.

15 THE COURT: Sure.

16 BY MS. LEGETTE:

17 Q. Thank you. And we have a computer screen to show them
18 on.

19 Agent Kenley, can you come down, please?

20 A. (Complying.)

21 Q. Agent Kenley, tell us, what are we seeing in this
22 photograph?

23 A. That's --

24 Q. I'm sorry. State's Exhibit One.

25 A. State's One is just a general paragraph of the general

KARL KENLEY - DIRECT

1 area when we first started processing the crime scene.

2 Q. And tell us, what are we looking at in State's Exhibit
3 Number Two?

4 A. This is a shot of the vehicle. Again, just a general
5 shot of the vehicle that was at the scene.

6 Q. And State's Exhibit Number Three, what are we seeing
7 there?

8 A. The same shot as the first one. It's just a closer
9 shot of the vehicle where it came to rest.

10 Q. Can you tell what kind of vehicle this is?

11 A. It's a Ford, Grand Marquis.

12 Q. What are we looking at in State's Exhibit Number Four?

13 A. Again, that is a rear shot of the vehicle again,
14 taking this photograph to capture the license tag.

15 Q. And in State's Exhibit Number Five?

16 A. Again, just a shot of the vehicle from a different
17 perspective.

18 Q. State's Exhibit Number Six, what are we seeing in this
19 photograph?

20 A. That's a photograph of the gear shift. It was in the
21 drive position. And we just wanted to document that's how
22 the vehicle was when we found it.

23 Q. So, what did that tell you as a crime scene

24 reconstructionist? An expert in crime scene

25 reconstruction, what does that tell you about this

KARL KENLEY - DIRECT

1 vehicle?

2 A. Basically that it ended in the drive position which
3 means that at some point it was in drive when this
4 incident started and that's how it basically ended. It
5 was never put in park.

6 Q. Now, State's Exhibit Number, I believe, Seven?

7 A. Yes.

8 Q. State's Exhibit Number Seven, what are we seeing here?

9 A. Again, it's the same shot, just a closer-up shot, just
10 to get a better idea where the needle is. It's in the
11 drive position.

12 Q. And State's Exhibit Number Eight, what are we looking
13 at here?

14 A. This is a general scene photograph, going around 360
15 degrees, walking closer to the crime scene itself as you
16 take the photographs.

17 Q. And what are we looking at in this particular area
18 right here?

19 A. That's where the victim's body was located and that's
20 how we found him when we arrived.

21 Q. And what relationship is this body to that vehicle we
22 saw earlier?

23 A. In this photograph, the vehicle would actually be in
24 this direction.

25 Q. In that direction?

KARL KENLEY - DIRECT

1 A. Yes.

2 Q. Okay. And you say that the vehicle was 140 feet away?

3 A. Approximately 140 feet; correct.

4 Q. Now State's Exhibit Number Eight, I believe?

5 A. Just, again, Number Nine. State's Exhibit Number Nine
6 is another general photograph again showing where the
7 victim's body was.

8 Q. Now, we're going to go to State's Exhibit Number 10.

9 A. Again, same photograph. It's just a closer up.
10 Again, starting out mid range and then move in closer as
11 you approach the scene.

12 Q. State's Exhibit Number 11?

13 A. Again, another general photograph. And in these
14 photographs you can see some of the physical evidence
15 starting to come into the picture.

16 Q. And moving onto State's Exhibit Number 12. What are
17 we seeing in this photograph?

18 A. That's just a shot of the actual intersection to give
19 you an idea of where you were on a particular scene.

20 Q. And is this particular intersection, Robin and
21 Fairdale Streets, are they close to where the victim's
22 body is?

23 A. Yes.

24 Q. Now, are these onlookers standing down here?

25 A. Yes.

KARL KENLEY - DIRECT

1 Q. Now, State's Exhibit Number 12?

2 A. The yellow markers were placed by myself and my
3 partner. And that's to identify the physical evidence
4 that were on the scene.

5 We -- the CD case and the glasses were visible but the
6 cartridge cases were so small, that someone, I think
7 possibly from the sheriff's department, had put these
8 little yellow markers out so that you could see them so
9 who got there first and also so we would not actually walk
10 on them before we saw them and photographed them.

11 Q. State's Exhibit Number --

12 A. Fourteen.

13 Q. -- Fourteen. What are we looking at in this?

14 A. Fifteen.

15 Q. Fifteen. Okay.

16 A. State's 15. This is basically a close-up shot after
17 we take generals with the markers in place and then we
18 take close-ups to actually identify the actual evidence
19 with a marker.

20 Q. And what are we looking at in this?

21 A. That's the cartridge case from a semiautomatic weapon.

22 Q. And did you collect that cartridge casing --

23 A. Yes.

24 Q. -- during your investigation?

25 A. Yes.

KARL KENLEY - DIRECT

1 Q. Now, State's Exhibit Number 16?

2 A. It's actually another marker, another separate item of
3 evidence with a marker which is number two. And it was
4 also photographed.

5 Q. And State's Exhibit Number 17?

6 A. Same thing. Number three, it was marked as number
7 three and collected.

8 Q. And State's Exhibit Number 18?

9 A. Same for number four. The fourth cartridge case was
10 photographed and collected.

11 Q. So, you collected four cartridge casings by this
12 time?

13 A. Correct.

14 Q. Now State's Exhibit Number 19?

15 A. That's the CD case that was also near the victim's
16 body. It was photographed and collected.

17 Q. Now with regards to State's Exhibits Number 16, 17, 18
18 and 19, those cartridge casings, did you at some point
19 take latent prints off of those or try?

20 A. Yes. They were taken back to the lab and processed by
21 myself.

22 Q. And were you able to get any fingerprints?

23 A. Yes.

24 Q. Were you able to pull fingerprints off the --

25 A. I'm sorry. The cartridge cases, no.

KARL KENLEY - DIRECT

1 Q. Okay. Moving onto State's Exhibit, I believe, Number
2 20?

3 A. These were the sunglasses that were there, again, at
4 the scene that were photographed with marker six and
5 collected.

6 Q. State's Exhibit 21?

7 A. A general photograph with the markers in place before
8 anything is moved or collected.

9 Q. Are we seeing -- is this Fairdale and Robin Street
10 right here in that area?

11 A. That's correct.

12 Q. And State's Exhibit Number 22?

13 A. This is the ID that was in the victim's, I think it
14 was his back pocket. It was taken out and photographed on
15 the scene.

16 Q. Does that say Laurice Jerome Garvin?

17 A. Yes, it does.

18 Q. State's Exhibit Number 23, what are we seeing in that
19 photograph?

20 A. That is a photograph of the vehicle standing outside
21 of the driver's side window, basically looking down behind
22 the driver's side seat and the back passenger seat.

23 Q. State's Exhibit Number 24, what are we seeing in that
24 picture?

25 A. That is the rear driver's side, bench part of the

KARL KENLEY - DIRECT

1 seat. The part that you sit on, actually, the edge.

2 Q. And what does that appear to be to you?

3 A. That is a projectile or a fired bullet.

4 Q. Now moving onto State's Exhibit 25?

5 A. That's a closer shot of the previous exhibit, just a
6 closer view of the bullet hole and the fired bullet.

7 Q. State's Exhibit 26?

8 A. This is a photograph taken, again, standing outside of
9 the driver's side window. And the piece of wood is
10 basically a wooden dowel rod that is used to track the
11 path of what we thought was the bullet hole and use to see
12 where that bullet ended up.

13 Q. Moving onto State's 27?

14 A. Again just a shot looking directly at the wood dowel
15 rod and the direction it was traveling into the back of
16 the seat. This is the driver's side, driver's seat.

17 Q. And State's Exhibit Number 28?

18 A. Again, the same photograph just a different angle, to
19 give you an idea, again, the track of where it entered the
20 seat.

21 Q. State's Exhibit 29?

22 A. Standing back a little further from the window giving
23 you an idea of where the picture was taken from, and also
24 the angle of the seat and where the projectile went into
25 the seat.

KARL KENLEY - DIRECT

1 Q. Okay. State's Exhibit Number 30?

2 A. Again, the same perspective just from a different
3 distance.

4 Q. And State's Exhibit 31?

5 A. That's actually a picture taken standing in the back
6 glass looking at where that dowel rod went into the seat
7 and where it came out, the backside.

8 Q. State's Exhibit 32?

9 A. Again taken from the back glass from a higher angle.
10 Again, letting you see that the dowel rod went into the
11 front of the seat and came out the back.

12 Q. Thirty-three?

13 A. And that's the end of the seat, if you're looking from
14 the back glass, showing you where the track of the
15 projectile, where we thought it went, went directly into
16 the back seat.

17 Q. Okay. Agent Kenley, at this point I want to talk to
18 you about the angle of this bullet going into the seat.
19 And at this point it goes into that seat right there?

20 A. That's correct.

21 Q. So based on your expertise as a crime scene
22 reconstructionist, what may have happened in this
23 particular instance?

24 A. Based on the angle of the seat, what we found, that
25 the seat was in an inclined position meaning the person

KARL KENLEY - DIRECT

1 driving possibly was driving in that position. And he was
2 shot while he was in that position because this dowel rod
3 and the hole in the seat correspond with the wounds that
4 we saw on the right side of his chest.

5 Q. So where would a person have been standing to
6 potentially shoot him in that location?

7 A. They would've had to be standing outside of the
8 driver's side window.

9 Q. Did you find that the driver's side window was dropped
10 down or was the glass shattered?

11 A. No. It was down. It was in the down position when we
12 arrived.

13 Q. Okay. So in your opinion, where would the person have
14 been standing as far as -- pretend I'm sitting in the car,
15 I'm driving the car. And I guess -- well, I'm sitting in
16 the car. I'm the driver and I'm reclined like this
17 (demonstrating).

18 A. They would have had to have been standing somewhere in
19 this position.

20 Q. Would they be right handed?

21 A. Right handed or left handed.

22 Q. All right.

23 A. All right.

24 Q. And moving on now to our next exhibit. I believe it's
25 State's Exhibit 36? 33?

KARL KENLEY - DIRECT

1 A. Thirty-four.

2 Q. Thirty-four?

3 A. Thirty-four.

4 Q. Thirty-four. Okay.

5 A. Again, this is a close-up shot of where the dowel rod
6 pointed to in the back passenger seat, driver's seat, and
7 it pointed to where the fired bullet ended up after it
8 traveled through the front seat.

9 Q. Okay. And State's Exhibit Number 35?

10 A. That's the hole in the seat after the projectile or
11 the fired bullet was removed.

12 Q. So you collected the fired bullet?

13 A. Yes.

14 Q. All right. Thank you. You can have a seat.

15 A. (Complying.)

16 Q. Agent Kenley, I want to talk to you now about the
17 entire crime scene itself.

18 A. Okay.

19 Q. You have now photographed the car itself. You
20 photographed the casings. You photographed the body.
21 What are you able to tell us about this crime scene and
22 what actually occurred at this crime scene?

23 A. Based on the position of the body and the car and the
24 physical evidence and in particular the cartridge casings,
25 a shooting took place at or near where the cartridge

KARL KENLEY - DIRECT

1 casings were recovered.

2 The victim was able to get out of the vehicle at that
3 point. And, apparently, because there was no blood found
4 in the car, he had not started bleeding or his clothing
5 absorbed any of the blood before he was able to get out of
6 the car.

7 And the fact that we found the car in the drive
8 position meant that he got out without trying to stop the
9 car or anything, basically, possibly, in my opinion,
10 trying to get away from the shooter.

11 And after he got out of the vehicle, he was shot at
12 least three more times. But at least one of the shots
13 took place while he was inside of the vehicle.

14 Q. Now, Agent Kenley, you talked earlier about attempting
15 to get prints off of those shell casings?

16 A. Correct.

17 Q. And you were not able to get prints off those shell
18 casings?

19 A. That's correct.

20 Q. Talk to us about -- you said you were an expert in
21 taking fingerprints. Talk to us about how easy it is or
22 how difficult it is to get a print.

23 A. Fingerprints are 90 percent -- 98 percent water. And
24 the way that a print is developed in the first place, you
25 first have to have something on your hand that's going to

KARL KENLEY - DIRECT

1 transfer those ridges onto that object that's touched.

2 If a person works, let's say in masonry, their ridges
3 are going to be somewhat disturbed. They're not destroyed
4 but disturbed. So they may not leave an identifiable
5 print on an object that they touch.

6 In warmer climates like here in the South if your
7 hands are real sweaty you can leave an impression but it's
8 more of a smudge as opposed to an identifiable print. Or,
9 possibly up North where it's real cold and dry, if your
10 hands are real dry, you're going to touch something but
11 still not leave an identifiable print.

12 In five years I've only developed a fingerprint off a
13 cartridge case one time and that's because it was in
14 training and I actually put it there myself so I knew
15 where it was. I had to moisten my hands, touch the oily
16 parts of my face in order to make sure the conditions were
17 just right so I could remove that print.

18 Q. So in other words, it's very difficult to get a latent
19 print off of an object?

20 A. Yes.

21 Q. Agent Kenley, you said you took or you collected
22 evidence at the crime scene. Did you bring it here with
23 you or into the courtroom with you today?

24 A. It's here.

25 Q. It's here. Beg the Court's indulgence. (Pause.)

KARL KENLEY - DIRECT

1 Okay. Agent Kenley, you also collected some other
2 items from the car?

3 A. That's correct.

4 Q. What did you collect from the car also?

5 A. There were fired bullet fragments.

6 Q. And where were they located?

7 A. In the front passenger seat.

8 Q. Agent Kenley, I hand you now what's been previously
9 marked as State's Exhibit 37. Please take a moment and
10 tell me if you recognize this package.

11 A. This is the packaging that the items of evidence that
12 was collected, was packaged and it still actually has my
13 initials and the date that it was on the scene.

14 Q. And have they been altered in any way?

15 A. No. It's only been opened by a firearms examiner with
16 his initials and tape's on it.

17 Q. Are they pretty much in the same condition as when you
18 packaged them originally in July 2007?

19 A. Yes.

20 MS. LEGETTE: At this time, Your Honor, I would move
21 for admission into evidence State's Exhibit Number 37.

22 THE COURT: Any objection?

23 MR. PLEXICO: No, Your Honor.

24 THE COURT: State's 37 into evidence without
25 objection.

KARL KENLEY - DIRECT

1 (Thereupon, State's Exhibit No. 37, SLED package
2 containing bullet fragments, was received into evidence.)

3 BY MS. LEGETTE:

4 Q. Begging the Court's indulgence. (Pause.)

5 Agent Kenley, I hand you now what's been previously
6 marked as State's Exhibit Number 38. Take a moment and
7 tell me if you recognize this.

8 A. Yes. This is the packaging for the CD case.

9 Q. Okay. And did you collect that item?

10 A. Yes.

11 Q. And is it in substantially the same condition today as
12 it was when you collected it on July 2007?

13 A. Yes.

14 Q. Has it been altered in any way?

15 A. No.

16 MS. LEGETTE: At this time, Your Honor, I would move
17 for admission into evidence as State's Exhibit Number 38.

18 THE COURT: Any objection?

19 MR. PLEXICO: Yes, Your Honor. I don't believe
20 there's any evidentiary value at all in a CD. And there's
21 none testified to, and there's no evidentiary value and so
22 I object.

23 THE COURT: Overruled. State's Number 38 in evidence.

24 MS. LEGETTE: Thank you, Your Honor.

25 (Thereupon, State's Exhibit No. 38, CD case, was

KARL KENLEY - REDIRECT

1 received into evidence.)

2 MS. LEGETTE: I have no further questions. Answer any
3 questions from Mr. Plexico, please.

4 THE COURT: Mr. Plexico?

5 CROSS-EXAMINATION

6 BY MR. PLEXICO:

7 Q. How are you today?

8 A. Just fine.

9 Q. You said you did fingerprint, evidence collection,
10 bloodstain pattern analysis. What else did you say you
11 did?

12 A. Tire and shoe tread which is imprint evidence,
13 basically comparing a known tire tread or a shoe tread to
14 an unknown.

15 Q. Did you do a gunshot residue test on Mr. Garvin?

16 A. No.

17 Q. Okay. Who would have done that?

18 A. I don't think one was conducted.

19 Q. Okay.

20 MR. PLEXICO: I don't have anything, I don't
21 believe -- I don't have anything further, Your Honor.

22 THE COURT: Anything further, Solicitor?

23 MS. LEGETTE: Just one, Your Honor.

24 REDIRECT EXAMINATION

25 BY MS. LEGETTE:

ANTONIO FRAZIER - DIRECT

1 Q. Agent Kenley, did you find a gun in that car?

2 A. No.

3 MS. LEGETTE: No further questions, Your Honor.

4 THE COURT: You can step down. Thank you. Call your
5 next witness.

6 MS. LEGETTE: The State calls Antonio Frazier. Your
7 Honor, may he be excused?

8 THE COURT: Any objection, Mr. Plexico?

9 MR. PLEXICO: No, Your Honor.

10 MS. LEGETTE: Your Honor, we'd also ask that our
11 previous witnesses, the EMS, Mr. John Lawson, Ms. Daphne
12 Conner, Ms. Marlene Love, we ask that they all be excused
13 as well.

14 THE COURT: Any objection, Mr. Plexico?

15 MR. PLEXICO: Yes, sir. No objections to that.

16 MS. LEGETTE: Your Honor, we also ask that Mr. Robert
17 Sullivan be excused as well.

18 THE COURT: Any objection?

19 MR. PLEXICO: No objections, Judge.

20 ANTONIO FRAZIER, having been duly sworn, was examined
21 and testified as follows:

22 DIRECT EXAMINATION

23 Q. Good morning, Mr. Frazier.

24 A. Good morning.

25 Q. I'm going to need you to speak up so the jurors can

ANTONIO FRAZIER - DIRECT

1 hear you and the Judge and the court reporter. Okay?

2 A. (Nods head.)

3 Q. You have to say yes or no.

4 A. Yes, ma'am.

5 Q. Very good. Mr. Frazier, where are you from, sir?

6 A. Allendale.

7 Q. All right. You've lived here all your life?

8 A. Yeah, you can say that. Yes, ma'am.

9 Q. Now did you know Laurice Garvin?

10 A. Yes, ma'am.

11 Q. Okay. And how long would you say you'd known him?

12 A. I'd say I had knew of him but I knew him, like, a
13 couple months. I had known him for a further while. I
14 known him for a good while.

15 Q. So you had known him for a while?

16 A. Yes, ma'am.

17 Q. And where was he from?

18 A. Allendale.

19 Q. Okay. Did you see him on July 22nd, 2007?

20 A. Yes, ma'am.

21 Q. Where did you see him?

22 A. It was me, him, his brother Lee, and his cousin Greg
23 and Teal Lewis. We was together.

24 Q. I'm sorry. You have to speak up because I think the
25 court reporter probably didn't hear that part.

ANTONIO FRAZIER - DIRECT

1 A. Me, Teal, Greg and his cousin -- his brother Lee. And
2 we was together that day. We was outside. We was
3 drinking and stuff like that.

4 Q. Where were y'all out?

5 A. Teal house. My girlfriend house.

6 Q. And did you see his car?

7 A. Yes, ma'am.

8 Q. Mr. Frazier, I'm going to hand you now what's been
9 previously entered into evidence as State's Exhibit Number
10 Five. I want you to take a moment and tell me if you
11 recognize this.

12 May I approach, Your Honor?

13 THE COURT: Sure.

14 THE WITNESS: Yes. That was the car he been driving.

15 BY MS. LEGETTE:

16 Q. So that's Mr. Garvin's car?

17 A. Yeah.

18 Q. Let the record reflect that the witness has identified
19 the vehicle as being that of Laurice Jerome Garvin.

20 Now you said that you and Mr. Garvin had been hanging
21 out together?

22 A. Yes. We was sitting there laughing, joking that
23 afternoon, that day.

24 Q. Okay. Now, at some point did he leave your house?

25 A. Yeah. Him and his brother, he said he had to go. He

ANTONIO FRAZIER - DIRECT

1 had to carry his brother home across the tracks. And he
2 was, like, he got talking to -- he had told me and Teal
3 that.

4 Q. So did you happen to see him again?

5 A. Yeah. He had rode back past. He went down like
6 towards, like going towards Barton Road, going towards
7 Fairfax way. I reckon he went through Bells and then he
8 came back through like five minutes later. Rode back by.
9 He blew the horn at us.

10 And after that the next time I seen him he was dead,
11 next time I seen him after that. That was the next time I
12 seen him.

13 Q. Okay. Mr. Frazier, so you said he passed by?

14 A. He passed back came pass my way, going towards IGA and
15 then and then we heard probably, like, five gunshots, four
16 or five gunshots. Me and Teal and Gregory we had got down
17 and then this young lady came to the apartments said we,
18 somebody had got shot.

19 And so we rode through -- we got in Greg car and went
20 around the corner. He was, he was laying in the road.
21 His car was in the ditch, like parked in the ditch. It
22 was still running at that time if I ain't mistaken.

23 Q. So you said you heard gunshots?

24 A. Yes, ma'am.

25 Q. Did they sound close?

ANTONIO FRAZIER - CROSS

1 A. Yes, ma'am, because we were, like, standing right
2 there on the corner. We got down. We thought somebody
3 was shooting at us. So we got down.

4 And then, like, two or three minutes later this young
5 lady came through, said somebody got shot.

6 Q. I'll take that from you.

7 A. All right.

8 Q. Thank you, sir. Mr. Frazier, do you know a man named
9 Marquis Breeland?

10 A. Yes, ma'am.

11 Q. How long have you known Mr. Breeland?

12 A. Just about all my life.

13 Q. Okay. Did y'all go to school together?

14 A. Yes, ma'am.

15 Q. Okay. Is he present in court today?

16 A. Yes, ma'am.

17 Q. Would you point him out, please?

18 A. He's sitting right there.

19 Q. Let the record reflect the witness has indicated the
20 Defendant, Mr. Marquis Breeland.

21 Thank you, Mr. Frazier. Answer any questions from the
22 defense, please.

23 THE COURT: Mr. Plexico?

24 CROSS-EXAMINATION

25 BY MR. PLEXICO:

ANTONIO FRAZIER - CROSS

1 Q. Now, you knew Laurice Garvin?

2 A. Yes, sir.

3 Q. Knew him pretty well?

4 A. I knew him from like, that's Teal cousin, Teal and
5 Greg cousin. That's how I knew him.

6 Q. He hung out with, like, Shahiee Flowers; is that
7 right? They were really close?

8 A. I wouldn't know. Like I said, he just come by and
9 talked to me. It was Teal cousin. I don't know him,
10 really know him.

11 Q. And so you only knew him a few months?

12 A. I knew -- yes, sir.

13 Q. So you didn't know him really well at all; right?

14 A. Yeah. If you can say it like that, yeah.

15 Q. I'm asking you.

16 A. Yeah. You could say that. I just admitted it was
17 Teal cousin. That's how I was introduced to him.

18 Q. So you didn't, you weren't with him on a regular
19 basis, didn't have dinner at his house, didn't spend
20 afternoons with him or anything like that?

21 A. He just come by and, like chill and drink with us
22 sometimes.

23 Q. Okay. But just over a couple months?

24 A. Yeah.

25 Q. So you didn't know him well enough to know any

ANTONIO FRAZIER - REDIRECT

1 problems in his life or anything like that; correct?

2 Y'all just had a good time?

3 A. Yeah. We just had a good time.

4 Q. All right. Were the police there by the time you got
5 there?

6 A. No, sir. The police wasn't there.

7 Q. How many people had gathered around by then?

8 A. I ain't really seen nobody. We had rode past. Like I
9 said it was me, Greg, Teal. We was riding past. He was
10 lying in the road so we went and told his mama. That was
11 Greg first cousin, I think, if I ain't mistaken. It was
12 Greg and Teal's cousin so we went and told his mama and
13 his mama rode up to the scene.

14 Q. You said there was nobody there at the time?

15 A. I ain't seen them. I seen a police officer pulling up
16 after we was leaving. He was coming down the road and we
17 was going to tell his mother.

18 MR. PLEXICO: I don't have anything else.

19 MS. LEGETTE: Briefly, Your Honor.

20 REDIRECT EXAMINATION

21 BY MS. LEGETTE:

22 Q. Mr. Frazier, did you know whether or not Mr. Garvin
23 had a beef with Mr. Breeland?

24 A. No, not as I knew.

25 MS. LEGETTE: Thank you. No further questions.

PATRICIA ANN BRADLEY - DIRECT

1 THE COURT: You may step down. Call your next
2 witness.

3 MS. LEGETTE: The State calls Patricia Bradley.

4 PATRICIA ANN BRADLEY, having been duly sworn, was
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. LEGETTE:

8 Q. Good morning, ma'am.

9 A. Morning.

10 Q. What's your full name, please?

11 A. Patricia Ann Bradley.

12 Q. Ms. Bradley?

13 A. Bradley. Yes.

14 Q. Can you spell the last name?

15 A. B-R-A-D-L-E-Y.

16 Q. Ms. Bradley, I'm going to need for you to speak up so
17 that my court reporter, the Judge and the jury can hear
18 you. Okay?

19 A. Okay.

20 Q. Thank you, ma'am. Ms. Bradley, where do you live?

21 A. I live on Perry Street, Allendale, South Carolina.

22 Q. Okay. Ms. Bradley, do you know a man named Marquis
23 Breeland?

24 A. Yes.

25 Q. Do you see him in court today?

PATRICIA ANN BRADLEY - DIRECT

1 A. Yes.

2 Q. Can you point him out, please?

3 A. (Complying.)

4 Q. Let the record reflect the witness has indicated the
5 Defendant, Marquis Breeland.

6 Now, Ms. Bradley, you live in Allendale County;
7 correct?

8 A. Yes.

9 Q. Do you remember back in July of 2007, in Allendale
10 County; do you remember that night?

11 A. Yes.

12 Q. Do you remember seeing -- well, let's talk about it.
13 July 22nd, 2007. Did you go to Kennedy Park or Robin
14 Street that night?

15 A. Yes. I was riding through that area.

16 Q. Did you see anybody?

17 A. Yes. I seen some dudes on the corner.

18 Q. Dudes on the corner?

19 A. Yes.

20 Q. Who did you see?

21 A. Marquis and, I guess, Liberace. They were on the
22 corner.

23 Q. They were on the corner of Robin Street?

24 A. Yes.

25 Q. So you said Marquis, the man over there that you

PATRICIA ANN BRADLEY - CROSS

1 pointed out earlier?

2 A. Yes.

3 Q. And another man named Liberace were on that street?

4 A. Yes.

5 Q. Okay.

6 MS. LEGETTE: Begging the Court's indulgence.

7 (Pause.)

8 Thank you, Ms. Bradley. I have no further questions.

9 Answer any questions from Mr. Plexico.

10 THE COURT: Mr. Plexico?

11 MR. PLEXICO: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. PLEXICO:

14 Q. How are you today?

15 A. I'm fine.

16 Q. Great. You did -- you gave a statement; correct?

17 A. Yes.

18 Q. Do you know Mark Bradley?

19 A. Who?

20 Q. Mark Bradley. Is mark a short man?

21 A. Mark?

22 Q. Mark Bradley?

23 A. Bradley?

24 Q. Yes.

25 A. (Shakes head.)

PATRICIA ANN BRADLEY - CROSS

1 Q. Do you know him?

2 A. (Shakes head); no.

3 Q. Okay. All right. You gave a statement and didn't you
4 say that you saw Mr. Breeland, Anthony Sanders, who -- is
5 that correct?

6 A. Yes.

7 Q. Okay. Ricky Brandt; correct?

8 A. Ricky Brandt? No.

9 Q. May I approach the witness?

10 THE COURT: Sure.

11 BY MR. PLEXICO:

12 Q. (Handing document to witness.) Could you read over
13 that, please?

14 A. I see it.

15 Q. Have you read that?

16 A. Uh-huh.

17 Q. Ma'am -- may I approach and retrieve?

18 THE COURT: Sure.

19 MR. PLEXICO: Thank you.

20 BY MR. PLEXICO:

21 Q. So you talked with an investigator in regards to this
22 matter; correct?

23 A. Yeah.

24 Q. You said that you saw Mr. Breeland, Anthony Sanders,
25 Ricky Brandt there; correct?

PATRICIA ANN BRADLEY - CROSS

1 A. They were all on the corner, yes.

2 Q. All right. And also at least another short black
3 male, you said. And you said you didn't know who he was;
4 correct?

5 A. Well, it's been a while ago but, yes, I remember.

6 Q. Okay. That's what you told them at the time?

7 A. Yes.

8 Q. Now I know it's been a while back. Now, could there
9 have been other people standing around the corner, too?

10 A. Yes.

11 Q. And it's not uncommon at all for people to stand
12 around that corner because you kind of get to see who's
13 going and who's coming and you might see your friends
14 driving up and down the road; right?

15 A. That's true.

16 Q. So there were a lot of people hanging out at that
17 corner on a regular basis?

18 A. Yes.

19 Q. Okay. So there's nothing unusual about hanging out on
20 that corner?

21 A. Yes.

22 Q. And that's a very public place; correct?

23 A. Yeah.

24 Q. All right. And you didn't see anybody doing anything
25 wrong or doing anything criminal or illegal?

RICHARD PRIESTER - DIRECT

1 A. No.

2 Q. It was just another normal day --

3 A. Normal day.

4 Q. -- on that corner; is that correct?

5 A. Yes.

6 MR. PLEXICO: I don't have anything else.

7 THE COURT: Solicitor, anything else?

8 MS. LEGETTE: No, Your Honor.

9 THE COURT: Thank you. You may step down.

10 THE WITNESS: Okay.

11 THE COURT: You may call your next witness.

12 MS. LEGETTE: Your Honor, at this time may we
13 approach, please?

14 THE COURT: Sure.

15 (Off-the-record discussion.)

16 MS. LEGETTE: The State calls Richard Priester.

17 RICHARD PRIESTER, having been duly sworn, was examined
18 and testified as follows:

19 DIRECT EXAMINATION

20 BY MS. LEGETTE:

21 Q. Good morning, Mr. Priester.

22 A. Hey.

23 Q. Mr. Priester, I'm going to need you to speak up.

24 A. Fine.

25 Q. How are you doing, sir?

RICHARD PRIESTER - DIRECT

- 1 A. Doing all right.
- 2 Q. Good, good. We all need to be able to hear you.
- 3 Okay?
- 4 A. All right.
- 5 Q. So spell your last name for us.
- 6 A. P-R-I-E-S-T-E-R.
- 7 Q. Thank you, sir. Mr. Priester, where do you live?
- 8 A. Robin Street in Kennedy Park.
- 9 Q. You live in Kennedy Park?
- 10 A. In Allendale.
- 11 Q. All right. And how long have you lived in Kennedy
- 12 Park, would you say?
- 13 A. I'd say about a year now.
- 14 Q. About a year now. Okay. All right. Now,
- 15 Mr. Priester, I want to turn your mind or your attention
- 16 back to July 22nd, 2007. Do you recall that night?
- 17 A. Yes.
- 18 Q. Is that a yes?
- 19 A. Yes, ma'am.
- 20 Q. Okay. Where were you on that night?
- 21 A. I was at Gloria Jean house.
- 22 Q. Okay.
- 23 A. Kennedy.
- 24 Q. Gloria Jean Kennedy?
- 25 A. At Kennedy Park.

RICHARD PRIESTER - DIRECT

1 Q. And what were you doing at Gloria Jean Kennedy's
2 house?

3 A. We were sitting in her kitchen eating supper at that
4 point in time.

5 Q. Okay. And were any kids around?

6 A. Yeah. Outside.

7 Q. So what were the kids doing; do you know?

8 A. Well, the little boy was shooting firecrackers at that
9 time.

10 Q. So, at some point did he come back inside?

11 A. Yes, ma'am.

12 Q. So after -- y'all were eating dinner. What were you
13 all eating?

14 A. Butter beans and fried chicken.

15 Q. Okay. So y'all were eating dinner. Did anything
16 strange happen?

17 A. Yeah. At that time then we heard a gunshot.

18 Q. Okay. How many gunshots would you say you heard?

19 A. I heard one. And then I ran to the door and then I
20 seen like the young dude car riding by slowly. Her
21 daughter came inside and that's when we seen this young
22 man laying on the side, in the road.

23 Q. Now did you go outside at some point?

24 A. No.

25 Q. So what did you next see?

RICHARD PRIESTER - CROSS

1 A. That's all I seen. That day I seen the three dudes
2 running through the path.

3 Q. So you saw three dudes running through a path?

4 A. Yeah, two tall one short.

5 Q. When you say tall, what do you mean by tall?

6 A. Just a little taller than me. I'm five-six.

7 Q. So taller than you?

8 A. Yeah.

9 Q. So you saw three dudes running through a path and they
10 were tall?

11 A. Two tall ones, one short one.

12 Q. Okay. Mr. Priester, did you recognize these three
13 dudes you saw?

14 A. No, ma'am.

15 MS. LEGETTE: I have no further questions. Answer any
16 questions from Mr. Plexico.

17 THE COURT: Mr. Plexico?

18 MR. PLEXICO: Court's indulgence, Your Honor.

19 (Pause.)

20 CROSS-EXAMINATION

21 BY MR. PLEXICO:

22 Q. You don't know who those three people were; correct?

23 A. No.

24 Q. And you gave a statement earlier; right?

25 A. Yeah.

RICHARD PRIESTER - CROSS

- 1 Q. And you said you saw three people before the shooting;
2 is that correct?
- 3 A. Yeah. Two tall, one short one.
- 4 Q. And you didn't meet -- all right. So you didn't see
5 anybody after the shooting; correct?
- 6 A. No.
- 7 Q. So I want to be clear on that.
- 8 A. (Nods head.)
- 9 Q. You saw people earlier?
- 10 A. Yeah.
- 11 Q. And you're five-six, you said?
- 12 A. Yeah.
- 13 Q. And they were slightly taller than you?
- 14 A. Yeah.
- 15 Q. So five-eight?
- 16 A. Two tall ones and one short one.
- 17 Q. So two tall ones like five-eight, slightly taller than
18 you?
- 19 A. I'm five-six.
- 20 Q. Okay. Could you stand up? Could you come down here
21 and stand?
- 22 A. (Complying.)
- 23 Q. So, you're five-six?
- 24 A. Five-six.
- 25 Q. And they were slightly taller than you?

RICHARD PRIESTER - REDIRECT

1 A. Yes, sir.

2 Q. Okay.

3 MR. PLEXICO: I don't have anything further.

4 THE COURT: Anything further, Solicitor?

5 REDIRECT EXAMINATION

6 BY MS. LEGETTE:

7 Q. Mr. Priester, you talked about these three black males
8 in the path?

9 A. Uh-huh.

10 Q. Okay. Now, let's clarify here. Were they walking
11 back and forth while you were outside?

12 A. No. The three dudes was running through the path.

13 Q. And they were running through the path, at what point?

14 A. Pinewood, through the path.

15 Q. When were they walking through the path?

16 A. Running.

17 Q. Running through the path?

18 A. Yeah.

19 Q. When was that; before or after the shooting?

20 A. Right after I seen -- I mean, like right after I seen
21 the car.

22 Q. Right after you saw the car, you saw them running
23 through the path?

24 A. Through the path.

25 Q. Okay. And tall, you don't know how tall they were; do

RICHARD PRIESTER - RECROSS

1 you?

2 A. No.

3 Q. They were running through the path?

4 A. Yes, ma'am.

5 Q. So you couldn't tell if they were five-eight or
6 six-one or six-two?

7 A. Only thing I knew, they were tall.

8 Q. They were tall.

9 A. Two tall, one short.

10 Q. And they were running through the path --

11 A. Yeah.

12 Q. -- after you saw the car go by?

13 A. Yeah.

14 MS. LEGETTE: I have no further questions.

15 THE COURT: Mr. Plexico?

16 MR. PLEXICO: Thank you.

17 RECROSS-EXAMINATION

18 BY MR. PLEXICO:

19 Q. I don't want anybody to be confused. When you heard
20 the gunshots, okay?

21 A. Uh-huh.

22 Q. You got up and looked outside; correct?

23 A. Correct.

24 Q. And you didn't see anybody then; correct?

25 A. No.

RICHARD PRIESTER - RECROSS

1 Q. So, sometime before the gunshots, before you sat down
2 to eat; correct?

3 A. Again -- we had already eaten already.

4 Q. Okay. Before the gunshots, sometime before the
5 gunshots when you were outside that day, you noticed three
6 guys running toward, I believe you said Pinewood Park; is
7 that correct?

8 A. Huh?

9 Q. Pinewood Apartments. That was -- right? Is that
10 right? Do you want me to rephrase that?

11 A. Yeah.

12 Q. I'm sorry. Before you had dinner, before you ate, you
13 were apparently outside --

14 A. No.

15 Q. -- and saw --

16 A. No.

17 Q. This is after you ate?

18 A. I was inside the kitchen eating.

19 Q. So you're inside the kitchen eating.

20 A. The kids were outside. The kids was outside shooting
21 firecrackers. The kids was outside the house. And after
22 they came inside after the gunshot -- the young man rode
23 down the road. They ride slow. I ran to the door.

24 And there's -- the daughter, she saw the subject
25 laying in the road. I seen three fellows running through

WILLIE JAMES ELMORE - DIRECT

1 the path.

2 Q. That's when you saw three fellows running through the
3 path?

4 A. Through the path.

5 Q. You still don't know who they was?

6 A. I don't know who they was.

7 MR. PLEXICO: Okay. I don't have anything further.

8 THE COURT: Anything further, Solicitor?

9 MS. LEGETTE: No, nothing further, Your Honor.

10 THE COURT: You may step down. Call your next
11 witness.

12 MS. LEGETTE: Willie James Elmore.

13 WILLIE JAMES ELMORE, having been duly sworn, was
14 examined and testified as follows.

15 DIRECT EXAMINATION

16 BY MS. LEGETTE:

17 Q. Hey, Mr. Willie James.

18 A. How are you doing?

19 Q. Fine. How are you doing, sir?

20 A. All right.

21 Q. Good. Good. Mr. Willie James, where do you live?

22 A. Allendale, South Carolina.

23 Q. Okay. Do you know the young man seated over there at
24 the table with Mr. Plexico?

25 A. Yeah.

WILLIE JAMES ELMORE - DIRECT

1 Q. Do you know his real name?

2 A. I don't know his real name. I knew him real good
3 though.

4 Q. You knew him real good?

5 A. Yeah.

6 Q. What would you say his name is? What do you call him?

7 A. Roadkill.

8 Q. Okay. All right. Mr. Willie James, do you remember
9 back in July of 2007?

10 A. Yeah.

11 Q. Okay. Were you with the young man seated over there,
12 Mr. Roadkill?

13 A. Yeah.

14 Q. Okay. Can you tell us what happened when y'all were
15 together?

16 A. We was standing there talking and all of a sudden he
17 say he going to kill that dude. I say don't you shoot
18 him. That won't be right. Take us over here. That's
19 all.

20 Q. Okay. Why did you tell him don't shoot him?

21 A. I knew people around here and that why he don't need
22 to be shooting them.

23 Q. So did he do anything to make you think he was going
24 to shoot him?

25 A. No.

WILLIE JAMES ELMORE - DIRECT

1 Q. Okay. Did he pull out anything?

2 A. He pulled out a gun or something on him, but I
3 couldn't see, he had something with him that day. I'm
4 like behind him.

5 Q. So you say he pulled out a gun?

6 A. Yeah.

7 Q. Did he say anything?

8 A. No.

9 Q. Okay. Do you remember telling officers, Officer
10 Johnson that he said he was going to kill him?

11 MR. PLEXICO: I object, Your Honor. That's leading.

12 MS. LEGETTE: Your Honor --

13 THE COURT: Sustained. Rephrase.

14 MR. PLEXICO: Move to strike that, too, Judge, on the
15 record.

16 BY MS. LEGETTE:

17 Q. Mr. Willie James, do you remember giving a statement
18 to Mr., Agent Johnson, right here, where you said -- and
19 this is under Rule 613-B, Your Honor.

20 Do you remember giving a statement to Agent Johnson
21 back in July of 2007 or, not to Agent Johnson but to a
22 SLED agent in 2007 where you told him that Roadkill said
23 he was going to kill Laurice Garvin?

24 A. Yeah.

25 Q. Do you remember saying that?

WILLIE JAMES ELMORE - DIRECT

1 A. But he only, he only put that, I think now, he only
2 went on by his own business.

3 Q. Who Roadkill or the other guy?

4 A. The other boy.

5 Q. The other boy. So did he pass by that day?

6 A. Yeah.

7 Q. And that's when the young man pulled out the gun?

8 A. Yeah.

9 Q. Is that when he said he was going to kill him?

10 A. He said I'm going to kill him but, you know, when he
11 say that, you know, you know, you say something you don't
12 mean but you don't mean it like that.

13 Q. But he did say he was going to kill him?

14 A. Yeah.

15 Q. Okay. And, you know Mr. -- you know the young man
16 over there very well; don't you?

17 A. Yeah.

18 Q. How long would you say you've known him?

19 A. All his life. I know him all of my life, I think.

20 Q. So a long time?

21 A. Yeah.

22 Q. Okay. All right. Begging the Court's indulgence.

23 (Pause.) Now, Mr. Elmore, you told him, don't do it
24 over here; didn't you?

25 A. Yeah.

WILLIE JAMES ELMORE - CROSS

1 MS. LEGETTE: Okay. No further questions. Answer any
2 questions from the defense.

3 THE COURT: Mr. Plexico?

4 CROSS-EXAMINATION

5 BY MR. PLEXICO:

6 Q. This has been quite a while back; correct?

7 A. Yeah.

8 Q. All right. Now, you didn't actually see him when
9 y'all -- you were talking to him. This is really brief, a
10 short period of time you were talking to him about when
11 this happened, you're talking about?

12 A. Uh-huh.

13 Q. Okay. You didn't actually see him with a gun; isn't
14 that the truth?

15 A. No, I didn't really see it. I didn't see the gun on
16 him. I know he, well, he pulled out something though.

17 Q. Okay. Did you just say that you did not -- just yes
18 or no, so I understand. I don't understand.

19 Did you see -- when you were having the conversation
20 you talked with the solicitor, Ms. Legette, about it, at
21 that time, he did not have a gun; right?

22 A. Again, when you talking about now?

23 Q. Okay. You just testified that he made some offhand
24 comments that, I'm going to kill somebody.

25 A. That's what he said.

WILLIE JAMES ELMORE - CROSS

1 Q. That's what he said. But you didn't actually see with
2 your own eyes, you didn't actually see a gun in his hand?

3 A. No.

4 Q. Is that true?

5 A. Yeah.

6 Q. That's true, you did not see a gun?

7 A. No.

8 Q. I want to be clear.

9 A. No.

10 Q. So he did not have a gun at the time; correct?

11 A. Yeah.

12 Q. All right. Now, Court's indulgence, please. (Pause.)

13 And, this was just an offhand comment and he didn't
14 look serious and you didn't think he was serious?

15 A. I didn't think he was serious.

16 Q. Okay. But you didn't think he was serious; correct?

17 A. No.

18 Q. That's what you thought?

19 A. Uh-huh. I thought that.

20 Q. You thought he was not serious?

21 A. I thought that. I thought that now.

22 Q. Okay. Court's indulgence, please. (Pause.)

23 And after Mr. Garvin's death, you talked to my client;
24 correct? And he said he didn't kill anybody. He was --
25 he didn't know what was -- he didn't know who killed him;

WILLIE JAMES ELMORE - REDIRECT

1 right?

2 A. I did.

3 Q. My client told you he didn't kill anybody; right?

4 A. I'm not sure. He be stand up to me.

5 Q. Is that yes or no? My client said he didn't kill
6 Laurice Garvin; right?

7 A. I believe him.

8 Q. And you believed him?

9 A. Yeah.

10 MR. PLEXICO: Okay. All right. I don't have anything
11 further.

12 THE COURT: Solicitor?

13 REDIRECT EXAMINATION

14 BY MS. LEGETTE:

15 Q. Mr. Willie James, now, you said you saw the young man,
16 Roadkill, pull out something?

17 A. Yeah.

18 Q. Okay. Now, you said you told him, don't do it over
19 here?

20 A. Yeah.

21 Q. Okay. So you thought he might do something?

22 A. Yeah, I thought so.

23 MS. LEGETTE: Okay. Thank you. I have no further
24 questions.

25 THE COURT: Mr. Plexico?

DWANN DEVOE - DIRECT

1 MR. PLEXICO: I don't have anything further.

2 THE COURT: All right. You may step down. Call your
3 next witness.

4 MS. LEGETTE: Dwann Devoe.

5 DWANN DEVOE, having been duly sworn, was examined and
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MS. LEGETTE:

9 Q. Good morning, Mr. Devoe. Good morning, sir.

10 A. Good morning.

11 Q. Okay. Mr. Devoe, spell your last name for us,
12 please.

13 A. D-E-V-O-E.

14 Q. Mr. Devoe, I'm going to need you to speak up so the
15 judge, the court reporter and our jury can hear what you
16 have to say.

17 A. D-E-V-O-E.

18 Q. Thank you, Mr. Devoe. Where are you from?

19 A. Allendale.

20 Q. And lived here all your life?

21 A. Yes, ma'am.

22 Q. Do you know the young man sitting over there by
23 Mr. Plexico?

24 A. Yes, ma'am.

25 Q. Do you know his real name?

DWANN DEVOE - DIRECT

1 A. Yes, ma'am.

2 Q. What's his name?

3 A. Marquis Breeland.

4 Q. How long have you known him, would you say?

5 A. I was in the school with him. I know him from like,
6 coming up, raised around each other.

7 Q. Okay. All right. So Mr. Devoe, I want to take your
8 mind back to July of 2007, back to Kennedy Park. Do you
9 remember that night?

10 A. Yes, ma'am.

11 Q. Okay. What were you doing that night?

12 A. Well, that night, well, me and Latrincy was home at my
13 house.

14 Q. Latrincy. What's his last name?

15 A. Latrincy Carter. And then we left the house and rode
16 uptown. And then we rode through Kennedy Park community.
17 And as we was turning in, it was Marquis Breeland and
18 Anthony Sanders was running towards the stop sign.

19 They flagged us down and we gave them a ride, like, a
20 few streets down. And that's when they got out the car.
21 And they just ran off. And we turned up the street and
22 went around and that's when we saw the sirens and lights
23 on the other road.

24 Q. Now you said that they were running toward y'all?

25 A. Yeah. From when you turn into Kennedy Park that's,

DWANN DEVOE - DIRECT

1 you're coming off -- that's Gum Street. Ain't it?

2 Q. I'm afraid I don't live in Allendale.

3 A. Coming down from where you turn into Kennedy Park, in
4 the first group right there in the left-hand side. I
5 don't know the name of the street, but that's the street
6 they were coming off of.

7 Q. So they were running?

8 A. They were running towards Allendale. They stopped us
9 said just give us a ride down the road. We gave them a
10 ride a few streets down.

11 Q. So how were they acting when they got in the car?

12 A. It was like, well, you know, they was running. So
13 they was basically, mostly out of breath a little bit.
14 And it was really dark anyway when they was stopping us.
15 So that's why we really stopped. And that's when they got
16 in the car.

17 Q. Okay. So were they acting nervous?

18 MR. PLEXICO: Objection, Your Honor. That's leading,
19 Your Honor.

20 THE COURT: Sustained.

21 BY MS. LEGETTE:

22 Q. So what happened when you, as y'all rode around? Did
23 anything happen in the car?

24 A. In the car with us?

25 Q. Yes.

DWANN DEVOE - DIRECT

- 1 A. With them two or just me and Trincy?
- 2 Q. Yes. With everybody. You and the two of them.
- 3 A. No, ma'am.
- 4 Q. So at some point they got out?
- 5 A. Ma'am?
- 6 Q. At some point they got out of the car?
- 7 A. Yes, ma'am.
- 8 Q. And what did they do when they got out of the car?
- 9 A. After we left them out, they just ran off.
- 10 Q. So they just ran away?
- 11 A. Yes. We turned the next street.
- 12 Q. Okay. Now why were you in Kennedy Park?
- 13 A. We was just riding around to see what was going on,
- 14 really. Just being nosey.
- 15 Q. Nosey about what?
- 16 A. Just see what was going on. Somebody said somebody
- 17 got killed, really, so that's why.
- 18 Q. So you were going to Kennedy Park?
- 19 A. Yes, ma'am.
- 20 Q. And so would you say that Mr. Breeland and his
- 21 companion were leaving Kennedy Park?
- 22 A. Well, I wouldn't say leaving. They just was coming
- 23 down the street. And that's when they flagged us and
- 24 asked us to give them a ride down the road. So that's
- 25 what we did.

DWANN DEVOE - DIRECT

1 Q. So they were leaving the area where the dead man was?
2 Where were they going? I'm sorry.

3 A. They was coming off the same street.

4 Q. Okay. And y'all took them away from where the dead
5 man's body was?

6 A. A few streets down, yeah.

7 Q. Okay. Begging the Court's indulgence. (Pause.)

8 Mr. Devoe, did Mr. Breeland say anything while y'all
9 were in the car together?

10 MR. PLEXICO: I didn't hear the question. I'm sorry.
11 I didn't hear the question, Your Honor. I'm sorry.

12 BY MS. LEGETTE:

13 Q. Did Mr. Breeland say anything while y'all were in the
14 car together?

15 A. No, ma'am; not that I can remember of.

16 Q. Have you had any contact with Mr. Breeland since that
17 night?

18 A. The night of the murder?

19 Q. No. Have you had any contact with Mr. Breeland since
20 the night of -- the night Mr. Garvin was killed?

21 A. No.

22 Q. No, you haven't?

23 A. (Shakes head.)

24 Q. Begging the Court's indulgence. (Pause.)

25 Mr. Devoe, do you remember telling Agent Johnson that

DWANN DEVOE - DIRECT

1 Mr. Breeland sent you a note that --

2 MR. PLEXICO: I object, Your Honor. That, that's
3 leading. I would ask for a hearing in regards to this
4 particular matter, Your Honor, and out of the presence of
5 the jury.

6 THE COURT: The two of you come on up here, if you
7 would.

8 (Off-the-record discussion.)

9 THE COURT: Members of the jury, we've been going for
10 about two hours. We're going to take about a 15- or
11 20-minute break.

12 Like I told you earlier, do not discuss the case at
13 all. You can talk about anything else you want to talk
14 about, but not this case. We'll be back with you shortly
15 and we'll continue on from there.

16 Everybody else remain seated until the jury is taken
17 to the jury room.

18 (Jury exits courtroom at 11:30 a.m.)

19 THE COURT: Mr. Devoe, remember you are on the witness
20 stand. I would ask that you stay right where you are and
21 not talk to anybody. All right?

22 THE WITNESS: Yes, sir.

23 THE COURT: You make sure he complies with that.

24 THE OFFICER: Yes, sir.

25 THE COURT: All right. We'll be at ease for 15

DWANN DEVOE - CROSS

1 minutes.

2 (Jury enters courtroom at 11:54 a.m.)

3 THE COURT: Solicitor, you may continue.

4 MS. LEGETTE: Thank you. Mr. Devoe, I have no further
5 questions. Answer any questions from Mr. Plexico,
6 please.

7 THE COURT: Mr. Plexico?

8 MR. PLEXICO: Thank you.

9 CROSS-EXAMINATION

10 BY MR. PLEXICO:

11 Q. You gave a statement earlier; correct? Right?

12 A. Sir?

13 Q. You gave a statement earlier; correct?

14 A. Yes, sir.

15 Q. And you weren't driving the vehicle; correct?

16 A. No, sir.

17 Q. Is that correct; you were not driving the vehicle?

18 A. No, sir.

19 Q. Who was driving the vehicle?

20 A. Latrincy Carter.

21 Q. Latrincy Carter. Now, didn't they actually ask for a
22 ride to the Morrell's house?

23 A. To the who?

24 Q. The Morrell's house?

25 A. They didn't say where they was going. They just give

DWANN DEVOE - CROSS

1 them a ride down the street.

2 Q. Okay. And is that where the Morrells live?

3 A. The Morrells stay in the back of Kennedy Park. We
4 dropped them off, like, it's two or three streets down
5 from where we dropped them off at.

6 Q. Okay. But it's an easy walk there; right?

7 A. Yeah. You could say that.

8 Q. So that was convenient for them; correct? If they
9 were going to the Morrell's, they were closer to the
10 Morrell's?

11 A. Yes, sir.

12 Q. Okay. All right.

13 Now -- and people stopping others in Allendale is not
14 at all unusual to give them a ride. You see people out
15 doing this a lot, trying to get a ride, right, that's not
16 an unusual thing. Don't have a car, a lot of people
17 around, there's nothing unusual to give somebody you know
18 a ride?

19 A. No, sir.

20 Q. Is that right?

21 A. Yes, sir.

22 Q. Right?

23 A. (Nods head.)

24 Q. You said yes?

25 A. (Nods head.)

DWANN DEVOE - CROSS

1 Q. Okay. All right. You -- and there was a
2 conversation, it was said that Laurice Garvin had been
3 shot; right?

4 A. Say it again.

5 Q. There was a conversation and it was said that Laurice
6 Garvin had been shot; is that right?

7 A. Who that was said by?

8 Q. They said they didn't know anything about it; isn't
9 that right?

10 A. I don't recall that.

11 Q. But you don't recall a conversation at all?

12 A. No, sir.

13 MR. PLEXICO: May I approach the witness?

14 THE COURT: Sure.

15 BY MR. PLEXICO:

16 Q. Is this your handwriting?

17 A. Yes, sir.

18 Q. Would you read the last four lines?

19 A. (Reviewing document). I see what you're saying.

20 Q. Okay. So you told -- when the investigators, that
21 they said they didn't know anything about it, when asked?

22 A. Yes, sir.

23 Q. Right?

24 A. Yes, sir.

25 Q. All right. I don't have anything further.

DWANN DEVOE - REDIRECT

1 THE COURT: Anything further solicitor?

2 MS. LEGETTE: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. LEGETTE:

5 Q. Mr. Devoe, referring to that same statement
6 Mr. Plexico just refreshed you about, or could you read
7 the last -- I'm sorry. May I approach, Your Honor?

8 THE COURT: Yes.

9 BY MS. LEGETTE:

10 Q. Can you read the last line?

11 MR. PLEXICO: Your Honor, that's -- I don't believe
12 that's proper. She needs to ask a question where the last
13 line would be relevant.

14 THE COURT: Sustained.

15 BY MS. LEGETTE:

16 Q. Mr. Devoe, I asked you earlier about the way
17 Mr. Breeland and his companion acted; do you remember?

18 A. Yes, ma'am.

19 Q. You said you didn't know whether they were acting
20 nervous; do you remember?

21 A. Yes, ma'am. I did say that.

22 Q. Okay. But in your statement do you remember making a
23 statement, Mr. Plexico just showed you, I just showed
24 you.

25 A. Yes, ma'am. Do you know how long ago I wrote that

DWANN DEVOE - RECROSS

1 statement?

2 Q. I understand, Mr. Devoe, it's been a long time. I'm
3 not trying to upset you, but do you remember writing the
4 statement?

5 A. Yeah, I remember writing the statement but I'm saying
6 it was like '07 since I wrote them statements. And I
7 ain't seem them since.

8 Q. Yes, sir. But so were they acting like they were
9 nervous?

10 A. At the time they were, but at the same time they were
11 panicking too, because they was running at that same time,
12 too.

13 Q. Yes, sir. So you said in your statement they were
14 acting really nervous; right?

15 A. Yes, ma'am.

16 Q. And in that same statement you also said they jumped
17 out and ran?

18 A. Yeah.

19 Q. Okay. Nothing further.

20 RECROSS-EXAMINATION

21 BY MR. PLEXICO:

22 Q. So they just might have been out of breath or they
23 might have been nervous?

24 A. Say again.

25 Q. They might have just been out of breath or they might

LATRINCY CARTER - DIRECT

1 have been nervous, you really don't know on reflection;
2 right?

3 A. Yeah, you could really say that, too.

4 Q. You don't know where they were going or what was going
5 on; correct?

6 A. No. All I know they was running down the road from
7 where the scene was and we dropped them down the road and
8 they jumped out of the car and they just left out.

9 MR. PLEXICO: Okay. I don't have anything further.

10 THE COURT: You may step down. Do you have any other
11 witnesses?

12 MS. LEGETTE: Yes, Your Honor. Latrincy Carter.

13 LATRINCY CARTER, having been duly sworn, was examined
14 and testified as follows:

15 DIRECT EXAMINATION

16 BY MS. LEGETTE:

17 Q. Good morning, Mr. Carter. Good morning.

18 A. How are you doing?

19 Q. Fine. Now, Mr. Carter, I'm going to need you to speak
20 up. Okay?

21 A. Yeah.

22 Q. You go to basketball games?

23 A. No, ma'am.

24 Q. You go to football games.

25 A. Yes, ma'am.

LATRINCY CARTER - DIRECT

1 Q. Are you a fan? You cheer? I need you to speak like
2 you be cheering, okay. You do that for me; okay?

3 Because I need the Judge to hear you. I need the court
4 reporter to hear you and the jury to hear you. Okay?

5 A. Yes, ma'am.

6 Q. Mr. Carter, spell your last name?

7 A. C-A-R-T-E-R.

8 Q. Thank you, sir. Mr. Carter, where are you from?

9 A. Allendale.

10 Q. Okay. And, Mr. Carter, where do you live now?

11 A. Allendale.

12 Q. Now, Mr. Carter, do you know a man named Marquis
13 Breeland?

14 A. Yes, ma'am.

15 Q. I need you to say yes or no.

16 A. Yes, ma'am.

17 Q. Is he present in court today?

18 A. (Nods head.)

19 Q. I need you to say yes or no.

20 A. Yes.

21 Q. Could you point him out for me, please?

22 A. Right there.

23 Q. Let the record reflect the witness has indicated the
24 Defendant, Mr. Marquis Breeland.

25 Now, Mr. Carter, I want to turn your attention to July

LATRINCY CARTER - DIRECT

1 2007 in Kennedy Park. Do you remember that night?

2 A. Yes, ma'am.

3 Q. Were you with Dwann Devoe that night?

4 A. Yes.

5 Q. Tell me, what did y'all do that night?

6 A. I went to my Aunt Mary house and Dwann was like Ktari
7 Johnson said somebody just got killed, let's ride out
8 there. So we rode out to Kennedy Park. While I'm turning
9 into Kennedy Park, Roadkill -- I mean, Marquis Breeland,
10 and Anthony Sanders, and hollering at the car so I
11 stopped.

12 Q. Okay.

13 A. And I was like, they was like, give me a ride. I'm
14 going towards, to see Laurice. He was like, I ain't going
15 that way. I was like, well, I'm going that way. And I
16 dropped them off at Morrell house and me and Dwann went
17 over to Kennedy.

18 Q. So you gave them a ride?

19 A. Yes, ma'am.

20 Q. And while you were in the car you told them you were
21 going that direction?

22 A. Yes, ma'am.

23 Q. And their response was?

24 A. That they ain't going there. I told them that where
25 I'm going at, so I dropped them off.

LATRINCY CARTER - CROSS

1 Q. And you went on to the scene?

2 A. Yes, ma'am.

3 Q. Okay. I have no further questions. Answer any
4 questions from Mr. Plexico, please.

5 THE COURT: Mr. Plexico?

6 CROSS-EXAMINATION

7 BY MR. PLEXICO:

8 Q. Now when you picked them up, they just flagged -- you
9 saw them, they were standing there and they flagged you
10 down?

11 A. No. They were coming from -- when I turned in they
12 must have been coming from -- they were hollering stop,
13 stop, stop. So I stopped. I didn't really know who it
14 was.

15 Q. Okay.

16 A. So they got in, asked for a ride.

17 Q. They asked for the ride to the Morrell's?

18 A. What you say?

19 Q. To the Morrell's house?

20 A. Yes, sir.

21 Q. Okay. You remember that. All right. Now, when
22 there's trouble and there's shooting generally in
23 Allendale, don't people just get away; isn't that --

24 MS. LEGETTE: Objection, Your Honor.

25 MR. PLEXICO: -- generally what happens?

LATRINCY CARTER - CROSS

1 THE COURT: Sustained.

2 BY MR. PLEXICO:

3 Q. All right. Would there be any reason -- this was
4 after the danger was over that you are going down there;
5 right? So this was a substantial period of time after the
6 shooting; right?

7 A. Uh-huh.

8 Q. What, 30 minutes later?

9 A. I guess so.

10 Q. Okay. All right. So you picked them up 30 minutes
11 later and took them to the Morrell's house. That's
12 Mr. Breeland, my client; right?

13 A. Yeah.

14 Q. And from -- and it's just a short distance to the
15 shooting; correct?

16 A. Yes, sir.

17 Q. All right. It didn't take you a minute to get there?
18 Thirty seconds?

19 A. To get to where?

20 Q. To where the shooting scene was after you dropped them
21 off. About a minute?

22 A. About a minute.

23 Q. Okay. And you're driving 30 miles an hour, the speed
24 limit?

25 A. I guess so; yes, sir.

LATRINCY CARTER - REDIRECT

1 Q. So you didn't go a half-mile farther?

2 A. Go half a mile. What do you mean?

3 Q. From where you dropped them off to the scene, to the
4 shooting scene, thereabouts?

5 A. Yeah. Half a mile, I guess.

6 Q. Okay. All right. And you can go a whole lot farther
7 than a half-mile in 30 minutes if you're running; right?

8 MS. LEGETTE: Objection.

9 MR. PLEXICO: Or if you're walking? I'm asking him
10 from his personal experience --

11 THE COURT: Overruled.

12 MR. PLEXICO: -- what he can do.

13 THE WITNESS: Say again.

14 BY MR. PLEXICO:

15 Q. In a whole hour or a half an hour, you can go a whole
16 lot farther than a half a mile; can't you?

17 A. I guess so, yeah.

18 Q. You can; right?

19 A. I guess so, yeah.

20 Q. Okay. All right. I don't have anything further.

21 THE COURT: Solicitor?

22 MS. LEGETTE: Briefly.

23 REDIRECT EXAMINATION

24 BY MS. LEGETTE:

25 Q. Mr. Carter, do you know what time Mr. Garvin got shot?

LATRINCY CARTER - RECROSS

1 A. No, ma'am.

2 Q. That's a no?

3 A. (Shakes head.)

4 Q. So you don't know how long it was between when you
5 saw, between the shooting and Mr. Breeland and Mr. Sanders
6 asking for a ride?

7 A. I don't know what time it was.

8 MS. LEGETTE: Thank you. No further questions.

9 THE COURT: Mr. Plexico?

10 MR. PLEXICO: Yes. Briefly.

11 RECROSS-EXAMINATION

12 BY MR. PLEXICO:

13 Q. All right, sir. From the time you heard about the
14 shooting you couldn't go to the shooting scene unless you
15 heard about it; correct?

16 A. Yes, sir.

17 Q. So once you heard about it, wasn't it about a half-
18 hour by the time you heard about it by the time you got
19 there?

20 A. It could have been about a half-hour; I don't know.

21 Q. Okay. You believe it was around a half an hour, give
22 or take a few minutes? This includes picking the boys up
23 and dropping them off at the Morrell's house. From the
24 time you heard about the shooting to the time you got
25 there, including picking the boys up and dropping them off

1 at the Morrell's, was that about a half-hour for you to
2 get there?

3 A. No, it was faster than that.

4 Q. It was that?

5 A. It got to be faster than that.

6 Q. All right. Twenty minutes? Fifteen?

7 A. Ten or 15 minutes.

8 Q. Okay. All right. Thank you.

9 THE COURT: Anything further, Solicitor?

10 MS. LEGETTE: No, Your Honor.

11 THE COURT: You may step down.

12 Members of the jury, we're going to take a lunch break
13 until 1:30. As I told you before, do not discuss the case
14 among yourselves or with anybody and do not investigate
15 the case in any manner whatsoever.

16 You're excused until 1:30. Everybody else remain
17 seated.

18 (Jury exits courtroom at 12:07 p.m.)

19 THE COURT: Recess until 1:30.

20 MS. LEGETTE: Thank you, Your Honor.

21 (Thereafter, the lunch break was taken at 12:08 p.m.,
22 until at 1:42 p.m., when the trial resumed as follows:)

23 THE COURT: Go ahead and bring in the jury.

24 (Jury enters courtroom at 1:43 p.m.)

25 THE COURT: Solicitor, call your next witness.

MARCUS WITHERSPOON - DIRECT

1 MS. LEGETTE: Thank you, Your Honor. The State calls
2 Marcus Witherspoon.

3 MARCUS WITHERSPOON, having been duly sworn, was
4 examined and testified as follows:

5 MS. LEGETTE: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. LEGETTE:

8 Q. Good afternoon, Mr. Witherspoon.

9 A. How are you?

10 Q. I need you to speak up, please, so that the court
11 reporter can hear what you're saying and the jury as
12 well. Okay?

13 A. (Nods head.)

14 Q. Mr. Witherspoon, would you spell your last name,
15 please?

16 A. W-I-T-H-E-R-S-P-O-O-N.

17 Q. Mr. Witherspoon, where are you from, sir?

18 A. Allendale.

19 Q. You lived here all your life?

20 A. Yes, ma'am.

21 Q. Are you currently living in Allendale?

22 A. Yes, ma'am.

23 Q. Mr. Witherspoon, let's get right to it. Are you --
24 have you ever been convicted of any crimes?

25 A. Yes, ma'am.

MARCUS WITHERSPOON - DIRECT

1 Q. Were you convicted of failure to stop for a blue light
2 and siren in 2001?

3 A. Yes, ma'am.

4 Q. Were you convicted of possession of cocaine in 2005?

5 A. Yes, ma'am.

6 Q. And how about shoplifting in 2002?

7 A. Yes, ma'am.

8 Q. And now, Mr. Witherspoon, are you currently like on
9 house arrest for a federal charge you pled guilty to?

10 A. Yes, ma'am.

11 Q. Is that a federal drug charge? Oh, I'm sorry.
12 Conspiracy to sell drugs?

13 A. Yes, ma'am.

14 Q. And how much time are you facing?

15 A. Ten years.

16 Q. Okay. Is it possibly any higher than that?

17 A. Life.

18 Q. Okay. All right. And you already pled guilty to
19 that?

20 A. Yes, ma'am.

21 Q. Now Mr. Witherspoon, do you want to be here today?

22 A. No, ma'am.

23 Q. Okay. So, as a part of your plea agreement, were you
24 supposed to cooperate with the State of South Carolina?

25 A. Yes, ma'am.

MARCUS WITHERSPOON - DIRECT

1 Q. So have you been promised anything for your testimony
2 for the State of South Carolina?

3 A. No, ma'am.

4 Q. So are you hoping to receive anything as part of
5 testifying for the State of South Carolina?

6 A. Yes, ma'am.

7 Q. Okay. You're hoping to receive a lighter sentence?

8 A. Yes.

9 Q. All right. Well, thank you, Mr. Witherspoon for
10 telling us all of that. I know it was difficult.

11 I want to turn your attention to Mr. Marquis
12 Breeland. Do you know Mr. Marquis Breeland?

13 A. Yes, ma'am.

14 Q. And how long have you known Mr. Marquis Breeland?

15 A. Some years.

16 Q. Some years?

17 A. Yes, ma'am.

18 Q. Are y'all friends?

19 A. Somewhat. Yes, ma'am.

20 Q. Somewhat. Hung out together?

21 A. Yes, ma'am.

22 Q. I want to turn your attention to July 22nd, 2007, or
23 July of 2007. Did you see Marquis Breeland on that night?

24 A. Yes, ma'am.

25 Q. Or somewhere around there?

MARCUS WITHERSPOON - DIRECT

1 A. Yes, ma'am.

2 Q. Is Marquis Breeland present in court today?

3 A. Yes, ma'am.

4 Q. Can you point him out, please?

5 A. Right there.

6 Q. Let the record reflect the witness has indicated the
7 Defendant, Mr. Marquis Breeland. All right.

8 Mr. Witherspoon, so you saw Mr. Breeland in July of 2007?

9 A. Yes, ma'am.

10 Q. And was that after Laurice Garvin was killed?

11 A. Yes, ma'am.

12 Q. Who was with Mr. Breeland when you saw him? Or do you
13 remember?

14 A. Freddie Washington and Antron. I can't remember his
15 last name.

16 Q. So what happened when you saw Mr. Breeland?

17 A. Well, they came to my house that night. And came out
18 on my back porch and talked to them and we just
19 conversated (sic) about the incident that had took place
20 and he basically just told me that he was the one that,
21 you know, pulled the trigger. He was the one that killed
22 him.

23 Q. You're saying he?

24 A. Mark, Mark Breeland.

25 Q. Tell me again.

MARCUS WITHERSPOON - CROSS

1 A. He said, he stated that he was the one that pulled the
2 trigger that had killed, that killed Laurice Garvin.

3 Q. So he told you he killed Laurice Garvin?

4 A. Yes, ma'am.

5 Q. Did anyone else say anything?

6 A. No, ma'am.

7 Q. So why do you think he told you?

8 A. I really can't say besides just for recognition maybe,
9 but other than that I don't know.

10 Q. So he thought highly of you?

11 A. I guess you could say that.

12 Q. And he wanted you to recognize him perhaps?

13 A. Yes, ma'am.

14 Q. Okay. Now, Mr. Witherspoon, the fact that you are
15 facing federal prison time and that you've been convicted
16 of crimes in the past, does that in any way change what
17 you heard that night?

18 A. No, ma'am.

19 Q. So what you're telling us today is true?

20 A. Yes, ma'am.

21 Q. Begging the Court's indulgence. (Pause.)

22 MS. LEGETTE: Thank you, Mr. Witherspoon. Answer any
23 questions of Mr. Plexico, please.

24 THE COURT: Mr. Plexico?

25 MR. PLEXICO: Thank you.

MARCUS WITHERSPOON - CROSS

CROSS-EXAMINATION

1
2 BY MR. PLEXICO:

3 Q. Now, sir, Mr. Witherspoon, did you sign a plea
4 agreement with Jay Richardson who's an assistant US
5 attorney and Renae Alt-Summers, an attorney for you?

6 A. Yes.

7 Q. May I approach?

8 THE COURT: Sure.

9 BY MR. PLEXICO:

10 Q. Is this your signature, Marcus Witherspoon?

11 A. Yes, sir.

12 Q. And this is your plea agreement?

13 A. Yes, sir.

14 Q. Now, let me read you Section 11 and ask you something
15 about it. Provided that the Defendant cooperates pursuant
16 to the provisions of this plea agreement, and that
17 cooperation is deemed by the government as providing
18 substantial assistance in the investigation of prosecution
19 of another person who has --

20 MS. LEGETTE: Your Honor, I would object. He's
21 publishing something that's not in evidence.

22 MR. PLEXICO: Judge, I'm just asking him a question
23 about his plea agreement.

24 THE COURT: Go ahead and ask your question.

25 BY MR. PLEXICO:

MARCUS WITHERSPOON - CROSS

1 Q. Don't you have to impress the government in order for
2 you to receive any benefit from them; isn't that the
3 truth?

4 A. I'm not sure of what you're asking about.

5 Q. Okay. Doesn't the government have to deem that you
6 have actually provided substantial assistance. If they
7 don't -- they don't deem you have -- if they don't
8 determine you have provided substantial assistance, then
9 they don't have to do anything for you; isn't that true?

10 A. I'm not sure, sir.

11 Q. Well, you signed the agreement; didn't you?

12 A. Yes, sir.

13 Q. And you're here today under the terms of this
14 agreement; correct?

15 A. Yes, sir.

16 Q. Because you want the benefit of the agreement; is that
17 true?

18 A. I guess so, yes.

19 Q. Read item number 11.

20 A. (Reviewing document.)

21 Q. Have you read it.

22 A. (Nods head). Yes, sir.

23 Q. And this says that if the cooperation is deemed by the
24 government --

25 MS. LEGETTE: Your Honor, he's still publishing

MARCUS WITHERSPOON - CROSS

1 something that's not in evidence.

2 MR. PLEXICO: Well, I'm not publishing it. I'm simply
3 asking him what the agreement is that he signed.

4 THE COURT: Go ahead and ask the question.

5 MR. PLEXICO: Okay.

6 BY MR. PLEXICO:

7 Q. Haven't you -- aren't you subject to the government
8 deeming whether or not your assistance in the prosecution
9 of another person is worthy of you getting any relief?
10 They determine how good you performed, and whether or not
11 they're going to recommend any relief; isn't that true?

12 A. I guess so, sir.

13 Q. Okay. That is the truth; isn't it, Mr. Witherspoon?

14 A. Yes, sir.

15 Q. Okay. So you have to perform really well in order to
16 get them to help you on your sentence; correct? Correct?

17 A. Yes, sir.

18 Q. Now, you were originally looking at a life sentence;
19 is this not correct?

20 A. Yes, sir.

21 Q. A mandatory life sentence?

22 A. Yes, sir.

23 Q. Is there any parole in the federal system?

24 A. I'm not sure, sir.

25 Q. Have you been told there is not?

MARCUS WITHERSPOON - CROSS

1 A. I haven't been told anything about that.

2 Q. Okay. Now, so now you've cut a deal to get a minimum
3 of 10 years up to life, still; correct?

4 A. Yes, sir.

5 Q. So it's really important to you to impress the federal
6 government, to impress the US assistant attorney, Jay
7 Richardson, that in fact you want him to give you a big
8 100, and five gold stars and a lot of big checks on your
9 performance here today, to get that sentence reduced down
10 to the lower end of what you're looking at; right?

11 A. Yes, sir.

12 Q. All right. Now, isn't it true that Laurice Garvin had
13 a lot of problems with a lot of people?

14 A. I'm not sure of that, sir.

15 Q. Okay. Well, didn't Shahiee Flowers have a lot of
16 problems with a lot of people?

17 A. I'm not sure of that either, sir.

18 Q. Weren't they friends?

19 A. I suppose so.

20 Q. Okay. Now, why would somebody you barely know, you
21 said you were sort-of-friends with my client,
22 Mr. Breeland, why would they care about impressing you?
23 Do you know that?

24 A. I guess because the type of person I was at the time,
25 sir.

MARCUS WITHERSPOON - CROSS

1 Q. Okay. Now, didn't you leave out -- let me ask you
2 something. You've got, you had a theft by shoplifting in
3 Augusta, Georgia, in 2002; correct?

4 A. Yes, sir.

5 Q. You had a failure to stop for a blue light?

6 A. Yes, sir.

7 Q. In 2002?

8 A. Yes, sir.

9 Q. Along with reckless driving in 2002?

10 A. Yes, sir.

11 Q. Also you had a possession of, was that crack in 2005?

12 A. Yes, sir.

13 Q. 2007, you had cocaine?

14 A. Yes, sir.

15 Q. So now your original charge is trafficking in cocaine?

16 A. No, sir.

17 Q. Correct? What's your original charge?

18 A. It's conspiracy.

19 Q. To trafficking cocaine?

20 A. That's part of it.

21 Q. Okay. So your original charge is conspiracy to
22 trafficking cocaine. You're looking at a mandatory life
23 sentence?

24 A. Yes, sir.

25 Q. Okay. Now, so you're saying that -- you said Antron

MARCUS WITHERSPOON - CROSS

1 came over. Who's Antron?

2 A. A guy, a guy that go by the street name of Liberace.

3 Q. All right. Now, did you -- so they came to your back
4 door?

5 A. Yes, sir.

6 Q. And you talked to them on the back porch?

7 A. For a couple minutes.

8 Q. Okay. And then they left?

9 A. Yes, sir.

10 Q. And they woke you up and you -- is that what they did?

11 A. Say again.

12 Q. They woke you up?

13 A. No, sir.

14 Q. So you went to the back door, talked to them and then
15 went back in?

16 A. Yes, sir.

17 Q. So nobody saw them coming; correct? They were at the
18 back door?

19 A. I'm not sure who saw them came but I know they came.

20 Q. And nobody saw them leave; right?

21 A. I couldn't answer that either, sir.

22 Q. Okay. Did you see anybody see them leave?

23 A. No, sir. Because, like I said, we was on our back
24 porch.

25 Q. Did you see -- anybody see them come?

MARCUS WITHERSPOON - CROSS

1 A. No, sir. I was in the house when they arrived.

2 Q. Did anybody -- nobody went outside with you; correct?

3 Your mom didn't go out there with you?

4 A. I wasn't living with my mother at the time, sir.

5 Q. Okay. So the only person who could possibly verify
6 anything that you're saying today is Marquis Witherspoon?

7 A. Yes, sir.

8 Q. And you have a lot to gain from your testimony today;
9 correct?

10 A. I don't know, sir.

11 Q. Well, you're hoping the government will deem that your
12 performance on the witness stand is worthy of a reduction
13 in your sentence; is that not true?

14 A. Yes, sir.

15 Q. Okay. So, you provided this information to SLED agent
16 Richard Johnson and David Williams after your sentencing;
17 correct?

18 A. No, sir. Before my sentencing.

19 Q. After you pled guilty --

20 A. Before.

21 Q. -- correct?

22 A. Before.

23 Q. Before?

24 A. Yes, sir.

25 Q. When did you plead guilty?

MARCUS WITHERSPOON - CROSS

1 A. I think it was in, I think it was sometime in May.

2 Q. Okay. All right. Now, so, you were interviewed May
3 3rd by them?

4 A. No, sir.

5 Q. Okay. All right. Now, you discussed this and you
6 knew, with your plea agreement when you pled guilty, you
7 were getting out of a mandatory life sentence and you were
8 going down to a minimum mandatory 10 years to serve up to
9 life; right? Correct?

10 A. No, sir.

11 Q. That was your plea agreement. You were pleading to a
12 lesser charge; correct?

13 A. Yes, sir.

14 Q. I'm correct; right?

15 A. But I was told that I was pleading to a lesser charge
16 before that --

17 Q. Okay.

18 A. -- occurred.

19 Q. And that lesser charge might still carry mandatory --
20 a life sentence, but a minimum mandatory of 10 years?

21 A. Yes, sir.

22 Q. So you're still looking at life; right? Correct?

23 A. Yes, sir; it's a possibility.

24 Q. So you want to come up with anything you can to get on
25 that lower scale from life down to the 10 years. You want

MARCUS WITHERSPOON - REDIRECT

1 to be down to the 10 years. You don't want to spend life
2 in federal prison; do you?

3 A. No, sir.

4 Q. You'd do about anything not to spend life in federal
5 prison; wouldn't you?

6 A. Well, I would tell the truth. I wouldn't just tell
7 lies to get out of a life sentence.

8 Q. Okay. But you would, you would have cocaine and do
9 all these other things?

10 A. Sir?

11 Q. You would commit all these crimes y'all -- I've asked
12 you about and you said yes you committed them; you would
13 do that?

14 A. I mean, I did that.

15 Q. But you wouldn't, you wouldn't tell a lie on somebody
16 to get out of a life sentence; would you?

17 A. No, sir. I wouldn't try to send somebody to prison
18 for the rest of their life just to get out of it myself.

19 Q. But you're in prison and you don't want to be there?

20 A. No, sir.

21 Q. You certainly didn't want to be there for life;
22 correct?

23 A. No, sir.

24 Q. And there's not a single other witness that I could
25 possibly bring into this courtroom who witnessed that

MARCUS WITHERSPOON - RECROSS

1 conversation that you claim happened. So if it never
2 happened, there's no way I could prove that it didn't
3 happen.

4 I withdraw that. I have no further questions.

5 THE COURT: Anything further?

6 MS. LEGETTE: Briefly.

REDIRECT EXAMINATION

8 BY MS. LEGETTE:

9 Q. Mr. Witherspoon?

10 A. Yes, ma'am.

11 Q. Are you here today to perform or to tell the truth?

12 A. Tell the truth.

13 Q. Mr. Witherspoon, has anyone ever told you what to say?

14 A. No, they haven't.

15 Q. So what you're telling us here is what you heard
16 Marquis Breeland tell you that night?

17 A. Yes, ma'am.

18 MS. LEGETTE: I have no further questions.

19 THE COURT: Anything further?

RECROSS-EXAMINATION

21 BY MR. PLEXICO:

22 Q. You expect the benefit today and you will be graded by
23 the federal government on your performance of your
24 testimony?

25 A. Yes, sir.

RICHARD L. JOHNSON - DIRECT

1 MR. PLEXICO: I have nothing further.

2 THE COURT: You may step down. Call your next
3 witness.

4 MS. LEGETTE: Thank you, Your Honor. May he be
5 excused, Your Honor?

6 THE COURT: Without objection?

7 MR. PLEXICO: No objection.

8 MS. LEGETTE: The State calls Special Agent Richard
9 Johnson.

10 RICHARD L. JOHNSON, having been duly sworn, was
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. LEGETTE:

14 Q. Good afternoon, sir.

15 A. Good afternoon.

16 Q. State your full name, please.

17 A. Richard L. Johnson.

18 Q. And, Mr. Johnson, where do you work, sir?

19 A. South Carolina Law Enforcement Division.

20 Q. And is that known as SLED?

21 A. SLED. Yes, ma'am.

22 Q. And how long have you worked at SLED?

23 A. A little over six years.

24 Q. Do you have any other law enforcement experience?

25 A. Yes. I worked five years with the South Carolina

RICHARD L. JOHNSON - DIRECT

1 Department of Corrections as internal affairs
2 investigator, 10 years at South Carolina State University
3 as a master sergeant.

4 Q. Okay. Tell us about your education.

5 A. I have a bachelor's degree from the University of
6 South Carolina. I'm currently in the dissertation phase
7 of my doctoral degree from the University.

8 Q. Agent Johnson, you currently work at SLED?

9 A. Yes, ma'am.

10 Q. And what are your current duties?

11 A. Conduct general investigations which include
12 homicides, white collar crimes, occasionally some drug
13 activities. Pretty much any criminal activity that local
14 sheriffs and chiefs of police deem necessary that SLED get
15 involved with.

16 Q. Okay. Now, were you working at SLED in July of 2007?

17 A. Yes, ma'am.

18 Q. Did you become involved in an investigation in
19 Allendale County at that time?

20 A. Yes, ma'am.

21 Q. Were you assisting other agents?

22 A. Yes, ma'am.

23 Q. Who were you assisting?

24 A. State Agent George Darnell and State Agent Jimmy
25 Freeman.

RICHARD L. JOHNSON - DIRECT

1 Q. At some point did you become the lead investigator in
2 that case?

3 A. That's correct. May 27th of '08.

4 Q. What were you investigating?

5 A. The murder of Laurice Garvin.

6 Q. And as part of your investigation, did you talk to
7 numerous witnesses?

8 A. Yes, ma'am.

9 Q. Beg the Court's indulgence. (Pause.)

10 Agent Johnson, at some point during your investigation
11 did you speak with former coroner Hayzen Black?

12 A. Yes, ma'am.

13 Q. And did you receive any items of evidence from
14 Mr. Hayzen Black? Do you recall receiving a bullet from
15 him?

16 A. Perhaps I have. I know I spoke with Hayzen Black or
17 ex-coroner Hayzen Black. I need to look at the chain of
18 custody or evidence log to see exactly what it was I
19 retrieved from him.

20 (Thereupon, State's Exhibit No. 39, SLED, Hayzen
21 Black's chain of custody log, was marked for
22 identification.)

23 BY MS. LEGETTE:

24 Q. I hand you now what's been marked for identification
25 only as State's Number 39. Take a moment and tell me if

RICHARD L. JOHNSON - DIRECT

1 you recognize this.

2 A. Yes, ma'am. It bears my signature.

3 Q. Okay. And what does that detail that you received?

4 A. A bullet, bullet from the coroner.

5 Q. And is that a bullet from the autopsy?

6 A. Yes, ma'am.

7 Q. And once you received that bullet from the autopsy,
8 what did you do with that bullet?

9 MR. PLEXICO: Your Honor, I'm going to object only to
10 the extent, Your Honor, that he's just reading what the
11 form says. That doesn't mean that it actually came from
12 autopsy because he wasn't at the autopsy, but I object to
13 that as being hearsay.

14 MS. LEGETTE: Your Honor, we're not seeking to admit
15 the bullet itself. We're just asking him what he did with
16 the bullet once he received it.

17 THE COURT: Overruled.

18 BY MS. LEGETTE:

19 Q. Agent Johnson, what did you do with that bullet once
20 you received it?

21 A. Submit it to SLED forensic service for examination.

22 Q. Agent Johnson, as part of your investigation, did you
23 also speak with Mr. Witherspoon in this case?

24 A. Yes, ma'am.

25 Q. Your Honor, begging the Court's indulgence?

1 THE COURT: Sure.

2 (Pause.)

3 BY MS. LEGETTE:

4 Q. Agent Johnson, I'm going to hand you now what's been
5 previously marked for identification as State's Exhibit
6 Number 40. I want you to take a moment and tell me if you
7 recognize this item, please.

8 A. Yes, ma'am.

9 Q. And what is that item?

10 A. It's the sealed package where I sealed up the evidence
11 and submitted it to SLED forensic services.

12 Q. And is that package in substantially the same
13 condition today as when you submitted it to SLED forensic
14 services?

15 A. Yes, ma'am.

16 Q. Has it been changed or altered in any way?

17 A. No, ma'am. Still bears the signature.

18 Q. Thank you, Agent Johnson. I have no further
19 questions. Answer any questions from Mr. Plexico.

20 THE COURT: Mr. Plexico?

21 MR. PLEXICO: I don't have any questions.

22 THE COURT: You may step down. Thank you. Any other
23 witnesses for the day?

24 MS. LEGETTE: No, Your Honor, not at this time. The
25 State has to take a recess, Your Honor.

1 THE COURT: All right. Do you want to start back at
2 nine or 9:30?

3 MS. LEGETTE: 9:30, Your Honor.

4 THE COURT: Members of the jury, that's all the
5 witnesses that the State has today.

6 Tomorrow they have a few more witnesses. I think we
7 will finish this case tomorrow.

8 You are hereby excused for the day. As I instructed
9 you before, do not talk about this case with anybody
10 including your family, and do not investigate the case on
11 your own.

12 Come back at 9:30 and we'll wrap this thing up
13 tomorrow. Thank you.

14 (Jury exits courtroom at 2:10 p.m.)

15 THE COURT: All right. Solicitor, who do we have for
16 tomorrow?

17 MS. LEGETTE: Your Honor, we're going to call
18 Dr. Janice Ross, Mr. Hayzen Black and Mr. David Black.

19 THE COURT: All right. Sounds good.

20 MS. LEGETTE: Thank you, Your Honor.

21 THE COURT: Mr. Plexico, anything you need to bring up
22 to the Court before --

23 MR. PLEXICO: Your Honor, I don't believe so, Judge.
24 I don't see anything, Judge.

25 THE COURT: Does your client plan to testify?

1 MR. PLEXICO: At this point, Your Honor, we do not
2 plan to testify. My client is aware that he has the right
3 to testify and that the right to testify is solely his.
4 And while I can give him advice, and those he loves, his
5 family, can give him advice, but ultimately the decision
6 to testify or not to testify he knows is his.

7 And if you want to address that matter at this point.

8 THE COURT: Let me put you under oath. Ms. Clerk?

9 (Defendant placed under oath.)

10 THE COURT: Mr. Breeland, I want you to understand
11 that when the State finishes their case that you would
12 have the opportunity to testify if you would like. You
13 can get on the stand and you can tell your side of the
14 story, you can answer any questions that your lawyer asks
15 you.

16 However, I want you to understand that if you do
17 testify that you may be questioned by the State on any and
18 all relevant issues in connection with this case.

19 Furthermore, if you have a criminal record that
20 involves crimes of dishonesty or false statements, or if
21 you have a criminal record that has crimes that involve
22 punishment of more than one year and the Court determines
23 that the probative value of admitting your criminal record
24 outweighs its prejudicial effect, then your criminal
25 record will be introduced into evidence to attack your

1 credibility.

2 Do you understand the risks of testifying?

3 THE DEFENDANT: Yes, ma'am -- I mean, yes, sir.

4 THE COURT: Have you talked with your lawyer about
5 whether or not you want to testify?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: At this point in time, what is your
8 decision?

9 THE DEFENDANT: No, sir.

10 THE COURT: You do not want to testify?

11 THE DEFENDANT: No, sir. I do not want to testify.

12 THE COURT: I'll find for the record that the
13 Defendant's decision not to testify has been made freely
14 and voluntarily, intelligently, and with the advice of
15 competent counsel.

16 Thank you very much. You may have a seat.

17 THE DEFENDANT: (Complies.)

18 MR. PLEXICO: Your Honor, before you leave the bench
19 in regards to this matter ...

20 (State and Defense attorneys conferring.)

21 MR. PLEXICO: I don't have anything further.

22 THE COURT: All right. Very good. See everybody at
23 9:30 in the morning.

24 MS. LEGETTE: Thank you, Your Honor.

25 THE COURT: Thank you.

DAVID BLACK - DIRECT

1 END OF DAY'S PROCEEDINGS: 2:15 P.M.

2 * * * *

3
4 ON WEDNESDAY, AUGUST 10, 2011 AT 9:36 A.M.:

5 THE COURT: State ready to proceed?

6 MR. FERGUSON: Yes, sir, Your Honor.

7 THE COURT: Defense ready to proceed?

8 MR. PLEXICO: Yes, Your Honor.

9 THE COURT: You can go ahead and bring out the jury.

10 (Jury enters courtroom at 9:36 a.m.)

11 THE COURT: Solicitor, would you call your next
12 witness?

13 MR. FERGUSON: Thank you, Your Honor. The State calls
14 special agent -- former special agent, David Black.

15 DAVID BLACK, having been duly sworn, was examined and
16 testified as follows:

17 DIRECT EXAMINATION

18 BY MR. FERGUSON:

19 Q. Good morning, Mr. Black.

20 A. Good morning, sir.

21 Q. Who do you work for?

22 A. Well, I used to work for the South Carolina State Law
23 Enforcement Division better known as SLED. I've retired
24 with 30 years of law enforcement service for the State of
25 South Carolina.

DAVID BLACK - DIRECT

1 Q. And were you working for SLED back in July of 2007?

2 A. Yes, sir. I was.

3 Q. And what were your duties with SLED at that point?

4 A. At that point in time I was a senior agent assigned to
5 the SLED forensic services firearms department. And I am
6 a firearms and tool mark examiner.

7 Q. And could you explain for the jury what that means?

8 A. As a firearms and tool mark examiner, I would receive
9 evidence such as firearms, ammunition, ammunition
10 components.

11 When I talk about ammunition components, I'm talking
12 about after the, after ammunition is broken down, like,
13 bullets, cartridges cases. Also I do serial number
14 restoration on cases. I was also an IBIS technician.
15 This was a machine that we could input fired bullet and
16 cartridge cases into a computer that would search the
17 unknown bullets and cartridges cases against unknown cases
18 and compare one another and see if we can match bullets
19 and casings to other cases.

20 And that's pretty much it. And also tools and tool
21 mark cases in serial number restoration.

22 Q. Thank you. Could you describe your training,
23 education and experience as a firearms expert?

24 A. Yes, sir. I received an associate degree in criminal
25 justice from Florence-Darlington Technical College. I

DAVID BLACK - DIRECT

1 then transferred to the University of South Carolina,
2 Columbia, where I received a bachelor of science in
3 criminal justice with a minor in sociology.

4 I was employed with the Richland County Sheriff's
5 Department for seven years; four years as a line deputy,
6 three years as a latent print examiner and crime scene
7 investigator.

8 I was then employed with the South Carolina Law
9 Enforcement Division, SLED. And for over 15 of those
10 years I was a latent print examiner and crime scene
11 investigator. During those almost -- during that time,
12 whether working crime scenes or evidence that was
13 submitted to me as a latent examiner, I had an opportunity
14 to process a lot of firearms, see the different firearms
15 that were out there, how those firearms operated and
16 functioned.

17 The same with the ammunition, ammunition components.
18 I became familiar with them, how they interacted with one
19 another, and was able to identify actual ammunition
20 components.

21 After those years of training, I was transferred to
22 the firearms department where I went through an intensive
23 three year in-house training program. It was -- during
24 this three-year program you had several segments or phases
25 of training. In each phase of training you would have

DAVID BLACK - DIRECT

1 written tests, oral tests and also practical tests.

2 And at the end of three years you're given a
3 cumulative test that was also written, practical and also
4 oral.

5 Approximately at least 50 percent or more than 50
6 percent of the time spent on comparison microscope.
7 During the three years I also worked firearm cases under
8 the direct supervision of a firearms examiner. And they
9 would co-sign that report with me with my conclusions.

10 I've been to many firearms schools, armor schools,
11 Smith and Wesson, Glock, Hi-Point, to name a few. I've
12 been to a number of plants to see firearms made and how
13 they are made.

14 In particular, the FM Manufacturer which is outside
15 Columbia. I have viewed a lot of videos and DVDs to also
16 show how these weapons and firearms are made and how
17 ammunition is made. I've also been to some tool plants to
18 see how tools were made; Cooper Tool out of Sumter and
19 another plant, Owens, out of Cheraw, South Carolina.

20 I'm also a member of AFTE which is the Association of
21 Firearm and Tool Mark Examiners. And this is a
22 professional organization. It sets the standards that we
23 go by.

24 Q. Thank you. Your Honor, at this point I would move to
25 have Mr. Black qualified as an expert in firearm

DAVID BLACK - DIRECT

1 identification.

2 THE COURT: Any objections?

3 MR. PLEXICO: No objections, Your Honor.

4 THE COURT: Granted.

5 BY MR. FERGUSON:

6 Q. Mr. Black, I want to show you what's been previously
7 marked for identification as State's Exhibit 37 and ask
8 you if you can identify this item. Your Honor, may I
9 approach?

10 THE COURT: Sure.

11 THE WITNESS: Do you have something I can use to open
12 an envelope with?

13 BY MR. FERGUSON:

14 Q. I do. (Pause.)

15 A. Yes, sir, I can.

16 In this sealed envelope were four fired cartridge
17 cases. Each one of the fired cartridge cases bears the
18 head stamp CBC nine millimeter Luger. Also on the, not
19 only written on the seal of the envelope but also
20 described on the actual cartridge case, it's a SLED
21 laboratory number, the respective item number and the
22 initials, DWB, which are my initials.

23 Also present in the sealed envelope was one fired
24 bullet that also bears the SLED laboratory number, the
25 respective item number, and the initials, DWB. And also

DAVID BLACK - DIRECT

1 present in the envelope are sealed packets that include
2 three lead, fired lead fragments, a bullet copper jacket
3 fragment. And these items also contain the SLED
4 laboratory number, item number, and the initials, DWB.
5 It's also in a sealed envelope.

6 Q. Thank you. And who did you receive these items from?

7 A. All these items I received from Special Agent Kenley
8 with the SLED latent print crime scene department.

9 Q. Are they in substantially the same condition as the
10 last time you had your hands on them?

11 A. Yes, sir; they are.

12 Q. And are they sealed?

13 A. Yes, sir. As a matter of fact I was the one when I
14 was finished, I sealed all the items. On this particular
15 envelope I left the original seal as received intact. I
16 opened the envelope from the bottom and resealed it with
17 the SLED evidence tape. It has the date which I sealed
18 it, which is September the 5th, 2007, and my initials,
19 DWB, on the front and back.

20 Q. And, Mr. Black, so it was sealed when you received
21 those items?

22 A. That's correct.

23 Q. And it was sealed when those items left your custody?

24 A. That is correct.

25 MR. FERGUSON: Your Honor, if I could beg the Court's

DAVID BLACK - DIRECT

1 indulgence for one moment, I would like to individually
2 mark those items that were inside 37 as A, B, C, D.

3 (Thereupon, State's Exhibit No. 37-A, fired cartridge
4 case, 37-B, fired cartridge case, 37-C, fired cartridge
5 case, 37-D, fired cartridge case, No. 37-E, fired bullet,
6 No. 37-F, fired bullet, were marked for identification.)

7 THE WITNESS: These are, in order, items one, two,
8 three, and four fired cartridges cases.

9 Sir, here is the item five, bullet, and this is the
10 item six, fragments that I referred to. So here's this
11 envelope.

12 THE COURT: A through F.

13 BY MR. FERGUSON:

14 Q. Mr. Black, what did you do with these items when you
15 received them?

16 A. Following our department protocol when I received the
17 evidence, I go through a process of documenting the
18 evidence. I'm equipped with a digital camera which I
19 photograph the evidence as received, first in their sealed
20 containers. Then I remove them from the containers and
21 went through a photographic process showing as much of all
22 size and shapes of the particular item.

23 Once that was done I mark each item, again, with the
24 lab number, the item number, my initials. With all these
25 items we, and when I say 'we' I'm referring to the SLED

DAVID BLACK - DIRECT

1 firearms department. We have established worksheets that
2 are used. I fill out information on the worksheets as far
3 as, for example, with the fired cartridge cases, I put the
4 head stamp information.

5 When I refer to the head stamp, I'm referring to the
6 actual bottom of the fired cartridge case. And present on
7 there normally is the manufacturing information. And in
8 this case all four fired cartridge cases bore the head
9 stamp CBC which represents Mag Tech Industries and the
10 caliber which was nine millimeter Luger. So this gives us
11 the information who it's made by, possibly made by what
12 the caliber would be for that particular cartridge case.

13 In the case of the bullet, one of those things and
14 again, also -- pardon me. With the cartridge case when
15 I'm doing microscopic comparison, looking at them, I can
16 actually, I'll actually draw the worksheet and note any
17 markings that I may see on that particular item.

18 With the fired bullets or fired fragments, it's the
19 same process of documentation and I would write down any
20 information that I can see. For example, with fired
21 bullets, one of the things that we're looking for is
22 something called rifling. Rifling are the chemical
23 grooves or spiral grooves that were cut or impressed on a
24 bullet when it's fired from a rifle barrel.

25 The raised portion of rifling are known as lands and

DAVID BLACK - DIRECT

1 the rifling that is between the lands or the depressed
2 areas between the lands are known as grooves. When a
3 bullet is fired through a rifle barrel the rifling will,
4 the bullet will engage the rifling and through that
5 manufactured process the individual marks or
6 characteristics that are from that rifling will mark that
7 bullet. Rifling is designed by the manufacturer to help
8 stabilize the bullet, give it a spin and also help with
9 the accuracy.

10 And it's these markings that I'm looking for under the
11 comparison microscope. And it's the same, similar
12 markings that I'm also looking at on the cartridge case
13 when it's being fired through the process of being
14 extracted, ejected, from the firearm.

15 Q. Thank you. Your Honor, at this point I would ask that
16 State's Exhibit 37-A through F be admitted into evidence.

17 THE COURT: Any objections?

18 MR. PLEXICO: No, Your Honor.

19 THE COURT: All right. Thirty-seven A through F are
20 in evidence without objection.

21 (Thereupon State's Exhibits 37-A, fired cartridge
22 casing; 37-B, fired cartridge casing; 37-C, fired
23 cartridge casing; 37-D, fired cartridge casing; 37-E,
24 fired bullet; and 37-F, fired bullet fragment, were
25 received into evidence.)

DAVID BLACK - DIRECT

1 BY MR. FERGUSON:

2 Q. Now, Mr. Black, 37-A through D are the four shell
3 casings; is that correct?

4 A. Yes, sir.

5 Q. And were you able to come up with any findings
6 regarding similarities between those shell casings?

7 A. Yes, sir; I was.

8 Q. And what were those findings?

9 A. With the process of looking through the comparison
10 microscope, the comparison microscope are essentially two
11 microscopes side by side that has an operable bridge
12 between the two and what I can do is look at two items at
13 the same time.

14 And it's a process of actually looking at each one of
15 these cartridge cases against one another through that
16 process. And with the stagings that are on the comparison
17 microscope, I can move the cartridge cases in line with
18 one another.

19 Through this comparison process what I was able to
20 determine, that there were sufficient marks of
21 identification, individual characteristics, that showed me
22 that all four fired cartridge cases, State's Exhibit 37-A
23 through D, were fired by the same cartridge case based on
24 those markings that are present on the head stamp of the
25 firearm.

DAVID BLACK - DIRECT

1 The particular marks are known as breach face marks.
2 When -- in this particular case, when the cartridge is
3 fired, a cartridge contains the cartridge case, the
4 bullet, a live primer and the gunpowder that's inside.
5 When the firing pin strikes that primer, it ignites the
6 gun powder that's inside the case.

7 Two things are going to happen. First, the bullet's
8 going to be forced out the cartridge case, down the rifle
9 barrel and from the firearm to the intended target.

10 Not only is there a frontward motion there's also a
11 rearward motion, that because of the force that's
12 generated that cartridge case is going to come also back.
13 It's going to be extracted which is pulled from the barrel
14 and kicked out or ejected from the firearm. This allows
15 the firearm to go through a process of firing and loading
16 and unloading and reloading again.

17 What was particularly significant about these fired
18 cartridge cases, perpendicular to the parallel breach face
19 marks, if the breach face marks -- when I say parallel or
20 horizontal, going straight across, there was a firing pin
21 drag that was perpendicular to, it was going vertical to,
22 those horizontal marks.

23 This particular characteristic is common in Hi-Point
24 firearms. The reason for this, the firing pin that is
25 located in the Hi-Point firearm is also used as the

DAVID BLACK - DIRECT

1 ejector. As that fired cartridge case is being pulled
2 from the barrel, the firing pin which was used to strike
3 that primer is also being used to pull it from and kick it
4 out of the firearm to eject from the firearm.

5 So what is happening, that firing pin is being dragged
6 perpendicular to those marks. And that is something in
7 common in particular with Hi-Point firearms. So it's most
8 consistent with a Hi-Point firearm.

9 But the main thing is all four fired cartridges cases
10 were fired by the same firearm.

11 Q. And, Mr. Black, on State's Exhibit 37-E and F, could
12 you determine whether those projectiles were fired from
13 those casings?

14 A. There is no way possible to compare fired bullets to
15 fired cartridge cases. I have no way of knowing. I can
16 compare fired bullets to fired bullets and fired cartridge
17 cases to fired cartridge cases; however, we're not able to
18 compare the two to one another. There's no way to tell.

19 Q. Could you say in your opinion that they're
20 consistent -- those projectiles are consistent with the
21 nine millimeter that's stamped onto those casings?

22 A. When you're saying projectiles, are you saying
23 bullets?

24 Q. Yes, sir.

25 A. Yes, sir. The bullets that I received are consistent

DAVID BLACK - DIRECT

1 with those bullets that are loaded in nine millimeter
2 Luger cartridges, yes.

3 Q. And could you make a determination between State's
4 37-E and State's 37-F?

5 A. With 37-E, which was a fairly intact bullet, through
6 the processing of the microscopic examination it contained
7 nine lands and grooves with a left-hand twist. When I
8 described earlier the rifling, this is the rifling that's
9 inside the barrel that is made by the manufacturer. The
10 -- the nine, it means that it had nine lands and grooves
11 in the barrel.

12 When I refer to a left-hand twist if you can think of
13 a clock, as the clock goes to the right that's known -- as
14 the hand goes to the right, that's known as right hand,
15 it's in this direction (indicating). It's clockwise.

16 If it goes to the left, that's counterclockwise. So
17 the rifling with a left-hand twist was a counter clockwise
18 movement, in that direction.

19 What is unique about the nine left-hand twist, that is
20 also characteristic of a Hi-Point firearm. To date they
21 are the only firearms known manufactured that have a nine
22 left-hand twist. And that's those firearms made by
23 Hi-Point.

24 In my comparison of State's 37-E to 37-F, there are
25 three lead fragments in 37-F. There were no marks of

DAVID BLACK - DIRECT

1 identification on those fragments. I can't tell you if
2 they were fired by the firearm or not. There's no way to
3 tell. There's no way to make an identification.

4 However, there was a copper fragment, bullet fragment,
5 and that was inconclusive that there were not sufficient
6 marks to determine if this fragment was fired by the same
7 firearm that fired 37-E.

8 Q. Thank you, Mr. Black. I want to show you what's been
9 previously marked as State's Exhibit 40 for identification
10 purposes and ask if you can recognize the items inside of
11 here. Your Honor, may I approach the witness?

12 THE COURT: Sure.

13 MR. FERGUSON: Thank you.

14 THE WITNESS: Yes, sir. I can.

15 BY MR. FERGUSON:

16 Q. And what is it?

17 A. State's Exhibit 40 is another fired bullet. And it is
18 in a -- I received it in a sealed container. And when I
19 was finished with it, I resealed it in the same container
20 as I did before. I left the original container on the top
21 and tied it, and then at the bottom where I reopened it I
22 resealed it from that end and --

23 MR. PLEXICO: Your Honor, Your Honor, may we
24 approach?

25 THE COURT: Sure.

DAVID BLACK - DIRECT

1 (Off-the-record discussion.)

2 BY MR. FERGUSON:

3 Q. Mr. Black, who did you receive that item from?

4 A. This was submitted by the Allendale County Coroner's
5 Office. And I received it from the SLED evidence log in
6 what's known now as the SLED evidence intake department.

7 Q. What did you do with it after you were done with it?

8 A. When I was finished with it, as with the other
9 evidence, I resealed it in, first, this plastic baggy that
10 I put it in, and sealed it back in this envelope.

11 And this State's Exhibit 40 bears the SLED lab number,
12 item number, my initials on the actual bullet that I
13 described it on and on the packaging. And on the exterior
14 envelope also included SLED seal tape, the date I sealed
15 it, which was September the 5th, 2007, and my initials,
16 DWB.

17 Q. Mr. Black, were you able to compare State's Exhibit 40
18 with the other bullet in this case, the whole bullet,
19 State's Exhibit 37-E?

20 A. Yes, sir. I was.

21 Q. And were they consistent with one another?

22 A. Through the process of the comparison process, State's
23 Exhibit 40 also had a rifling of nine lands and groves
24 with a left-hand twist but also while on the comparison
25 microscope I compared State's Exhibit 37-E to State's

HAYZEN BLACK - DIRECT

1 Exhibit 40.

2 I did find identifiable characteristics, matching
3 characteristics, through that comparison process and I
4 determined that State's Exhibit 37-E and State's Exhibit
5 40 were fired by the same firearm.

6 Q. And, again, with State's Exhibit 40, in your expert
7 opinion to a reasonable degree of scientific certainty,
8 can you say that those projectiles or those bullets are
9 consistent with the four casings in this case?

10 A. They are -- yes. They are nine millimeter Luger
11 caliber bullets and they could have been, you know, it's
12 possible they could have been, yes.

13 Q. Thank you. I have no further questions for you,
14 Mr. Black.

15 THE COURT: Mr. Plexico?

16 MR. PLEXICO: I have no questions. Thank you for
17 coming, sir.

18 THE COURT: You may step down. Any objections to this
19 witness being excused?

20 MR. FERGUSON: No, Your Honor.

21 MR. PLEXICO: No, Your Honor.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Call your next witness.

24 MR. FERGUSON: The State calls former coroner, Hayzen
25 Black.

HAYZEN BLACK - DIRECT

1 HAYZEN BLACK, having been duly sworn, was examined and
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. FERGUSON:

5 Q. Good morning, Mr. Black.

6 A. Good morning.

7 Q. What do you do for a living?

8 A. Retired. I was in --

9 (Interruption.)

10 Q. Could you repeat that for us, sir?

11 A. I'm retired with Allendale -- I was the Allendale
12 County Coroner from '07 to '10.

13 Q. And so you were the Allendale County Coroner back in
14 July of 2007?

15 A. I was.

16 Q. And could you tell us about in particular a call-out
17 that you received on July 22nd, 2007?

18 A. I was called to Robinson (sic) Street for a DOA. And
19 when I got there we found out that it was more involved.
20 An individual had been shot several times, was laying
21 outside on the roadway, covered up. When SLED got there,
22 we examined the body for gunshot wounds and various
23 things.

24 Q. And did you ultimately take possession of that body?

25 A. I did.

HAYZEN BLACK - DIRECT

1 Q. Were you able to determine the identity of that body?

2 A. I didn't know the individual. I just went by the
3 record that we had by Deputy Coroner Dean Allen. Had
4 arrived before I did, and he had gotten all the
5 information on the individual.

6 Q. And, Mr. Black, did you issue a death certificate in
7 this case?

8 A. I did.

9 Q. Okay. Now, once you secured the body at the scene,
10 what happened to it at that point?

11 A. We removed the body and carried it to Keith Smith's
12 Funeral Home. The county did not have a morgue at the
13 time. I immediately contacted Newberry Pathologist which
14 was probably around midnight or so and that was to set up
15 time for an autopsy.

16 And the next morning early we put the body in our
17 carrier and went on to Newberry for the autopsy.

18 Q. And, Mr. Black, did you attend that autopsy?

19 A. I did.

20 Q. And did you receive personal effects and other items
21 of evidence from the pathologist into your custody?

22 A. I did.

23 Q. And what were those items?

24 A. Shirts, pants, and belts and then the bullet in a
25 special container and other fluids that we would carry to

HAYZEN BLACK - CROSS

1 the toxicologist at SLED.

2 Q. And specifically, Mr. Black, what did you do with that
3 bullet?

4 A. It went to SLED in Columbia.

5 Q. Okay. And did you ever come into possession of that
6 bullet after it went to SLED?

7 A. I did.

8 Q. And what did you do with it then?

9 A. Well, I kept it in the cabinets we have for storage
10 until SLED approached me about it.

11 Q. And when was that?

12 A. That was on August 14th, '09. Agent Johnson called me
13 to pick up the bullet that went through the head.

14 Q. Thank you, Mr. Black. I have no further questions for
15 you. Please answer any questions Mr. Plexico has.

16 CROSS-EXAMINATION

17 BY MR. PLEXICO:

18 Q. What happened with the fluids, sir, that were taken
19 from the body?

20 A. Excuse me?

21 Q. Fluids?

22 A. Fluids?

23 Q. Yes.

24 A. What about them?

25 Q. What fluids were they?

JANICE ROSS - DIRECT

1 A. They were blood, urine and feces.

2 Q. And who were those turned over to?

3 A. They were turned over to SLED for toxicology.

4 MR. PLEXICO: I don't have anything further.

5 THE COURT: Anything further?

6 MR. FERGUSON: Just briefly.

7 REDIRECT EXAMINATION

8 BY MR. FERGUSON:

9 Q. Those fluids, were you ultimately able to determine
10 the identity of the body from whom those fluids came from?

11 A. Excuse me?

12 Q. Who was the victim in this case? Who was the body
13 that you had custody of?

14 A. Laurice Garvin.

15 MR. FERGUSON: Thank you, Mr. Black.

16 THE COURT: You may step down. Any objections to this
17 witness being excused?

18 MR. PLEXICO: No, Your Honor.

19 MR. FERGUSON: No, sir, Your Honor.

20 THE COURT: You're excused. Call your next witness.

21 MR. FERGUSON: The State calls Dr. Janice Ross.

22 (Thereupon, State's Exhibit Nos. 41 through 47,
23 photographs, were marked for identification.)

24 JANICE ROSS, having been duly sworn, was examined and
25 testified as follows:

JANICE ROSS - DIRECT

DIRECT EXAMINATION

BY MR. FERGUSON:

Q. Good morning, Dr. Ross.

A. Good morning.

Q. Who do you work for?

A. Newberry Pathology Associates in Newberry, South Carolina.

Q. What do you do there?

A. We do pathology for the hospital and we do forensic autopsies for coroners in the state.

Q. And, Dr. Ross, could you tell the jury your education, training and experience as a pathologist?

A. I got a BS degree in biology at the University of South Carolina. I then got my MD from Upstate Medical Center in Syracuse, New York, where I did further training in pathology.

Pathology is the study of diseases and we learn how to identify and diagnose tumors, infections from, by looking at tissue and looking at tissue under the microscope and then also using the laboratory.

We also are trained to do an autopsy to the find cause of death.

Q. Dr. Ross, could you explain the difference between general and forensic pathology?

A. Yes. What I just described was general pathology,

JANICE ROSS - DIRECT

1 diagnosing tumors and infections and using laboratory
2 work. And you do hospital autopsies.

3 A forensic pathologist has further training in the
4 areas of legal problems. The word forensic means legal.
5 So we use our pathology education to look at forensic
6 cases, murders, stabbings, suicides, and identifying
7 patterns of injury.

8 We do autopsies for the legal process.

9 Q. And Dr. Ross, how many autopsies would you say that
10 you performed in your career as a pathologist?

11 A. Over 5,000.

12 Q. And, Dr. Ross, have you ever testified as an expert
13 before in a court of law?

14 A. Yes.

15 Q. How many times, approximately?

16 A. Over 60 in the State of South Carolina.

17 Q. Thank you. Your Honor, may I approach the witness?

18 THE COURT: Sure.

19 MR. FERGUSON: Your Honor, at this point I would
20 move to have Dr. Ross qualified as an expert in forensic
21 pathology.

22 THE COURT: Any objection?

23 MR. PLEXICO: There's no objections, Your Honor.

24 THE COURT: You are.

25 BY MR. FERGUSON:

JANICE ROSS - DIRECT

1 Q. Dr. Ross, could you explain for the jury the procedure
2 of an autopsy just in general the process?

3 A. Yes. The autopsy is authorized by the coroner who
4 sets up a schedule for the autopsy. The body is brought
5 to us for the autopsy at the Morgue at the Newberry County
6 Memorial Hospital.

7 We receive the body in a body bag. Take photographs
8 externally, do a clothing chart and then remove the
9 clothing and do an external examination, front and back,
10 of the body, looking for patterns of injury or any signs
11 of natural disease.

12 And then we do a type of internal injury, looking at
13 each organ and further identifying patterns of injury and,
14 to come up with the cause of death.

15 Q. Now in the external examination, are one of the things
16 you're looking for, bullet wounds?

17 A. Yes.

18 Q. And could you describe some of the characteristics
19 that you look for when looking for bullet wounds?

20 A. Yes. We look for where the bullet is, whether it's an
21 entrance wound or an exit wound.

22 We look for evidence of what we call a range of
23 bullet. In other words, how close the gun might have been
24 to the person when it went off.

25 The close range -- when a bullet comes out of a gun

JANICE ROSS - DIRECT

1 also there's powder that comes out and if the powder hits
2 the skin it leaves little marks called stippling and
3 tattooing.

4 If the gun is far enough away where that powder
5 doesn't reach the skin, we call it a distant wound.

6 So we have various ranges of distances.

7 Q. And then, Dr. Ross, if you find a wound how do you
8 determine whether it was an entrance or an exit wound?

9 A. Various ways. But they're usually -- an entrance
10 wound is fairly clean cut and has an abrasion where the
11 bullet goes, pushes the skin in, and it actually abrades
12 the skin around the hole itself.

13 Q. Dr. Ross, in the case that we're here for this week,
14 how did you become involved? Who requested the autopsy?

15 A. The coroner, Hayzen Black.

16 Q. When did you receive custody of Mr. Garvin's body?

17 A. We did the autopsy on July 22nd, 2007. I'm sorry.
18 July 23rd, 2007, at 9:30 a.m.

19 Q. And could you explain your findings after your
20 external examination?

21 A. Yes. We found -- first of all, the person was, the
22 patient was -- received clothes and we found some bullet
23 holes in the clothing, the shirt. Then we found two
24 further bullets, two bullet wounds in the head and one in
25 the chest.

JANICE ROSS - DIRECT

1 Q. And, Dr. Ross, I want to show you what's been
2 previously marked and previously shown to defense counsel
3 as State's Exhibits 41 through 47 and ask you if you can
4 identify what's being shown in these pictures.

5 Your Honor, may I approach?

6 THE COURT: Sure.

7 MR. FERGUSON: Thank you.

8 THE WITNESS: Yes, sir. These are printed photographs
9 from the photographs of our autopsy.

10 BY MR. FERGUSON:

11 Q. And, Dr. Ross, are those a fair and accurate depiction
12 of what you saw during your external examination of
13 Mr. Garvin?

14 A. Yes, sir.

15 MR. FERGUSON: Your Honor, I would move to have
16 State's 41, 42, 43, 44, 45, 46 and 47 admitted into
17 evidence.

18 THE COURT: Any objections?

19 MR. PLEXICO: No objections to those photographs, Your
20 Honor.

21 THE COURT: State's 41, 42, 43, 44, 45, 46 and 47 are
22 in evidence without objection.

23 MR. FERGUSON: Thank you, Your Honor.

24 (Thereupon, State's Exhibits Nos. 41 through 47,
25 photographs, were received into evidence.)

JANICE ROSS - DIRECT

1 BY MR. FERGUSON:

2 Q. Dr. Ross, now, I want to talk about the first gunshot
3 wound. And when you, in your report, when you gave these
4 numbers, now was that just for your own record keeping
5 purposes?

6 A. Just for organization. It does not mean the order in
7 which they were obtained.

8 Q. Now what you referred to as gunshot number one.

9 A. Yes. It went into the head, right in front of the
10 right ear. It went through the brain and came out the
11 left forehead, left frontal area.

12 Q. And now, would you describe that as a fatal wound,
13 Dr. Ross?

14 A. Yes.

15 Q. And why is that?

16 A. It lacerated the brain.

17 Q. And what terminal mechanism would that cause?

18 A. Well, eventually swelling of the brain and bleeding
19 around the brain. The skull is a closed space and it
20 can't take a lot of extra pressure or extra volume. So it
21 would cause unconsciousness immediately for one thing and
22 then death within a few minutes.

23 Q. And Dr. Ross, were there any -- were you able to
24 determine any type of range from your examination of the
25 entrance wound in gunshot number one?

JANICE ROSS - DIRECT

1 A. There was no evidence of stippling or tattooing that I
2 talked about before. And we described this as a distant
3 wound, so the gun was two to three feet away, and further.

4 Q. Thank you. Your Honor, may I approach the witness?

5 THE COURT: Sure.

6 MR. FERGUSON: And can the witness step down and
7 can we publish these to the jury and have her explain
8 them?

9 THE COURT: You may.

10 MR. FERGUSON: Thank you, Your Honor.

11 BY MR. FERGUSON:

12 Q. And, Dr. Ross, if you'd just remember to speak up
13 because the court reporter still needs to take down what
14 we're saying.

15 A. Yes, sir.

16 Q. Dr. Ross, this is State's Exhibit 41. If you could
17 hold that up and describe for the jury what that photo is
18 showing.

19 A. This is the right ear. It's hard to see. The edge of
20 the ear. This is the gunshot wound that went right before
21 the right, the right ear.

22 We put the label such that when you look at it the top
23 of the head is above it.

24 Q. And, Dr. Ross, when we talked about stippling and
25 soot, are any of those characteristics present in that

JANICE ROSS - DIRECT

1 entrance wound?

2 A. No.

3 Q. And what does that tell you about the range?

4 A. A distant wound.

5 Q. Now State's Exhibit 42.

6 A. This is a, the exit wound in the top of the left
7 forehead.

8 Q. And how were you able to determine that was an exit
9 wound?

10 A. It's irregular. It's not abraded on the edge, and it
11 has tissue coming out. It's hard to see that, but it has
12 tissue coming out with the bullet.

13 Q. And, Dr. Ross, had these wounds been cleaned prior to
14 these photographs being taken?

15 A. Yes.

16 Q. This is State's Exhibit 43.

17 A. This is an entrance gunshot wound in the right chest.
18 You can see the collar bone right here. Again the label
19 is such that the head is above it. It's an entrance wound
20 in the right chest.

21 Q. How were you able to determine that was the entrance
22 wound?

23 A. It's more rounded. It has that blackened edge around
24 it, it's the actual abrasion where the bullet pushes the
25 skin in and rubs the skin around a wound, causes an

JANICE ROSS - DIRECT

1 abrasion.

2 Q. And were you able to determine anything about the
3 range of that particular gunshot?

4 A. It might have been covered by a shirt. It was covered
5 by a shirt, and we looked at the shirt and there was no
6 evidence of powder on that, either.

7 It looks like a distant wound again.

8 Q. Thank you. State's Exhibit 44.

9 A. This is the exit wound on the back of, from the right
10 chest. This -- that wound -- that bullet went front to
11 back and slightly downward, and it went through the right
12 lung. It caused a lot of bleeding inside the right chest
13 cavity.

14 Q. Now, Dr. Ross, would you call that a fatal wound?

15 A. Yes.

16 Q. And what would be the triggering mechanism to cause
17 death in that wound?

18 A. Bleeding out.

19 Q. Thank you. State's Exhibit 45.

20 A. This is the entrance wound, what we called number
21 three. We found in the top of the head, just to the right
22 of midline. It's hard to see, but it's right in there.

23 Q. And how were you able to determine that was an
24 entrance wound?

25 A. Again, it's round and it has the abraded edges around

JANICE ROSS - DIRECT

1 it.

2 Q. Was there an exit wound from that bullet shot?

3 A. No, there was not.

4 Q. What does that tell you?

5 A. An exit wound.

6 Q. State's Exhibit 46.

7 A. Well, this is, this shows -- this is the top of the
8 head. And this just shows the exit wound from gunshot
9 wound number one. Remember it went in front of the right
10 ear and came out the left forehead.

11 And above that is the gunshot wound we call number
12 three in the top of the head. Number three went downward
13 and the bullet was found in the upper right -- upper left,
14 I'm sorry, neck slash head area.

15 Q. And, Dr. Ross, would that have been a fatal wound?

16 A. Yes.

17 Q. And finally this is State's 47.

18 A. This is the bullet that we retrieved from that area,
19 from the gunshot wound number three, from the left back of
20 the head.

21 Q. Thank you, Dr. Ross. If you can have a seat back up
22 on the witness stand.

23 A. (Complying.)

24 Q. Dr. Ross, I want to show you what's been previously
25 marked for identification as State's Exhibit 40 and ask

JANICE ROSS - DIRECT

1 you if you recognize the item inside this envelope.

2 Your Honor, may I approach the witness?

3 THE COURT: Sure.

4 MR. FERGUSON: Thank you.

5 THE WITNESS: Is it open?

6 BY MR. FERGUSON:

7 Q. Yes, ma'am. I believe one end is.

8 A. This is the bullet we retrieved from the victim at
9 autopsy, Jerome (sic) Garvin.

10 Q. What did you do after you removed it from Mr. Garvin's
11 body?

12 A. We sealed it and labeled it and sent it to SLED by way
13 of the coroner.

14 MR. FERGUSON: Your Honor, at this point I would move
15 to have State's Exhibit Number 40 admitted into evidence.

16 THE COURT: Any objections, Mr. Plexico? Any
17 objections, Mr. Plexico?

18 MR. PLEXICO: No, Your Honor.

19 THE COURT: All right. State's Number 40 in evidence
20 without objection.

21 (Thereupon, State's Exhibit No. 40, bullet recovered
22 during autopsy, was received into evidence.)

23 BY MR. FERGUSON:

24 Q. Dr. Ross, when we say 'cause of death', what do we
25 mean by that?

JANICE ROSS - CROSS

1 A. What actually caused the death, the mechanism of
2 death.

3 Q. Is it a medical reason for death?

4 A. Correct.

5 Q. And what would that be in this particular case?

6 A. It would be the laceration of the brain due to the
7 gunshot wounds to the head.

8 Q. Now manner of death, how does that differ from cause
9 of death?

10 A. Manner of death is how the cause of death came about
11 being. There are five categories; natural death, such as
12 a heart attack; suicide; homicide; accident; and
13 undetermined.

14 In this case it would be a homicide.

15 Q. Thank you, Dr. Ross. I have no further questions for
16 you.

17 THE COURT: Mr. Plexico?

18 MR. PLEXICO: Thank you.

19 CROSS-EXAMINATION

20 BY MR. PLEXICO:

21 Q. You said that as far as the distance goes it had to be
22 at least three feet away and you just don't know how far;
23 correct?

24 A. Correct. It depends on the gun and the caliber, the
25 length of the barrel. And as far as how close, it could

JANICE ROSS - CROSS

1 be anywhere from two to three feet up to many, many feet.

2 Q. Okay. As part of your process of rendering your
3 report, do you review the toxicological determinations?

4 A. We get that. We review that, yes.

5 Q. Did you review them in this case?

6 A. Yes.

7 Q. And they -- okay. And did they reveal that the
8 decedent had ecstasy in his blood at the time of his
9 death?

10 A. All I have on the report that I received was a small
11 amount of alcohol.

12 MR. PLEXICO: May I approach the witness?

13 THE COURT: You may.

14 BY MR. PLEXICO:

15 Q. Is MDMA, is this ecstasy?

16 A. That's an amphetamine. Vycon.

17 Q. That is also ecstasy?

18 A. I'm not sure. I'm not an toxicologist.

19 Q. But it's MDMA?

20 A. Correct. And --

21 Q. Go ahead?

22 A. And there's marijuana metabolites, too.

23 Q. And so you do have this?

24 A. Yes I missed a page there.

25 Q. Okay. So you said there's also marijuana metabolites?

1 A. Right.

2 Q. That means there was marijuana in the system?

3 A. Yes.

4 Q. And did that affect your analysis?

5 A. No, it did not.

6 Q. Okay. I don't have anything further.

7 THE COURT: All right. Anything further?

8 MR. FERGUSON: No, sir, Your Honor.

9 THE COURT: You may step down.

10 THE WITNESS: Thank you.

11 THE COURT: Call your next witness.

12 MS. LEGETTE: Your Honor, at this time the State
13 rests.

14 THE COURT: Members of the jury, we're going to take a
15 break. I have to take up some matters of law with the
16 lawyers outside of your presence. If you would go to your
17 jury room and do not discuss the case. We'll be back with
18 you in a moment.

19 (Jury exits courtroom at 10:28 a.m.)

20 THE COURT: Any motions from the defense?

21 MR. PLEXICO: Yes, Your Honor.

22 Your Honor, after hearing all the evidence put forth
23 by the State, I just don't see how the State has carried
24 its burden, Your Honor.

25 They have only placed my client in the area that

1 Mr. Garvin was shot. They have not placed a gun in
2 possession of my client.

3 They have, their own witnesses have described people
4 being in that area, on that corner, as normal. There're
5 normally a number of people who are there on that corner.
6 This is a normal activity at best. My client is -- at
7 worst my client is engaged in a normal activity of being
8 in the area and being on that corner. There's no evidence
9 that he shot at this individual.

10 There is -- the only thing they put forward was, is
11 that he was -- that he was seen running some unestablished
12 distance from the area, at least blocks, after the
13 shooting, perhaps 10 to 15 minutes after the shooting
14 which, of course, you could go much farther than blocks.
15 And that he had prior, made a prior statement that he was
16 going to shoot the individual.

17 While all of that creates a strong suspicion, Your
18 Honor, I don't think that is enough in law to go forward
19 to take it to a jury on murder.

20 They just don't have any evidence in this case. And
21 all they can possibly do is speculate. And a suspicion,
22 however strong, I think the case law is still good, I
23 think it entitles the Defendant to a directed verdict on
24 both the murder indictment and on the use of a weapon
25 during the commission of a violent crimes. Those being

1 indictments for murder 2009-GS-03-0056, and 2009-GS-03-
2 0057, the latter being possession of a weapon during the
3 commission of a violent crime.

4 We just don't think there's enough evidence to go to a
5 jury, Your Honor. Thank you.

6 THE COURT: Thank you very much.

7 We do have the Defendant in the area where a crime
8 happened; we do have the Defendant running away from that
9 direction shortly after the crime happened; we have a
10 witness that says he was indeed the trigger man.

11 We have circumstantial evidence, I think, certainly
12 enough to go to the jury.

13 Any other motions from the defense?

14 MR. PLEXICO: Not at this time, Your Honor.

15 If -- would you like to examine on him on the record?
16 I know we've already done that. Just to make sure the
17 record is clean and then I would like to move and renew my
18 motions based on the insufficiency of the evidence.

19 THE COURT: All right. All right. Mr. Breeland, if
20 you could swear him in again

21 (Defendant placed under oath.)

22 THE COURT: Mr. Breeland, I spoke with you yesterday
23 about your right to testify.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: As well as your right to remain silent.

1 Did you understand everything I said to you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that you have the right
4 to testify if you would like to? You have the right to
5 get on the stand and tell your side of the story. Do you
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand, however, that if you do
9 take the stand and testify, that you may be cross-examined
10 on any and all relevant issues in connection with this
11 case? Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand also that if you take
14 the stand and testify and you have a criminal record that
15 involves crimes of dishonesty and/or false statements, or
16 if you have a criminal record that involves crimes whereby
17 you could have been sentenced to more than one year and
18 the Court determines that the probative value of admitting
19 same outweighs the prejudicial effect, then you understand
20 that your criminal record could be introduced to attack
21 your credibility?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you understand, however, that you do
24 have the constitutional right to remain silent, you
25 understand that you do not have to testify, nobody can

1 make you testify.

2 In fact, if you chose not to testify you understand
3 that I would instruct the jury that they could not use
4 that fact in any way whatsoever against you. I would even
5 instruct the jury that they could not even talk about that
6 fact in the jury room.

7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions for me about
10 your right to testify and/or your right to remain silent?

11 THE DEFENDANT: No, sir.

12 THE COURT: Do you have any questions for your lawyer
13 about those rights?

14 THE DEFENDANT: No, sir.

15 THE COURT: And what is your decision?

16 THE DEFENDANT: No, sir. I'm going to chose not to
17 testify.

18 THE COURT: You do not want to testify; is that
19 correct?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. For the record I find you made
22 the decision freely, voluntarily and intelligently with
23 the advice of competent counsel. All right.

24 Anything further, Mr. Plexico?

25 MR. PLEXICO: No, Your Honor.

1 THE COURT: All right. You may step down. Anything
2 from the State before we proceed forward?

3 MS. LEGETTE: Your Honor, we just ask the Court to
4 admit all the evidence we've already previously made into
5 evidence to make sure everything is in evidence at this
6 time.

7 THE COURT: All right. It's my understanding, and you
8 correct me if I'm wrong, State's 36, 1 through 35, 37-A,
9 B, C and, D, 38, 41 through 47 and 40 are in evidence. Is
10 that correct from the State?

11 MR. FERGUSON: Well, Your Honor, 37-E and F is part of
12 that packet of 37 that we moved into evidence.

13 THE COURT: Is that right?

14 MR. PLEXICO: I don't know. I was fairly lost.

15 (Off-the-record discussion.)

16 THE COURT: As far as my charge goes, I'm going to
17 give an introduction, I'm going to go into direct and
18 circumstantial evidence, failure of the Defendant to
19 testify, duties of the jury, witnesses, expert witness
20 charge, police officer charge, mere presence, murder,
21 possession of a weapon, and the conclusion.

22 Is that okay with the State?

23 MS. LEGETTE: Yes, Your Honor.

24 THE COURT: How about you, Mr. Plexico?

25 MR. PLEXICO: Yes. I would just ask that the Court,

1 instead of failure to testify, could you couch it in terms
2 of the Defendant's right not to testify?

3 THE COURT: Yeah. I'm just going to add that, that's
4 exactly what I'm going to do.

5 MR. PLEXICO: Thank you, Your Honor.

6 THE COURT: Anything further from the defense?

7 MR. PLEXICO: Yes, Your Honor. I would like to renew
8 my motion for a directed verdict on the same grounds and
9 apologize for leaving out the testimony of Marcus
10 Witherspoon, Your Honor, for my client electing not to
11 testify.

12 I just don't -- I still don't believe that based on
13 the sufficiency of the evidence that these other
14 indictments I just mentioned on directed verdict motion,
15 Your Honor, 56, and 57, should go forward to the jury.
16 And I would ask for a directed verdict of not guilty based
17 on both those, insufficiency of the evidence.

18 Thank you, Your Honor.

19 THE COURT: Your motion is denied.

20 You can go ahead and bring out the jury. You can then
21 rest on the record.

22 MR. PLEXICO: Yes, Your Honor.

23 MS. LEGETTE: Your Honor, before we start the
24 closings, can we have a few moments to prepare and set
25 everything up?

1 THE COURT: Yes. We'll go ahead and do that, then
2 send them out.

3 MS. LEGETTE: Yes, sir. Thank you, Judge.

4 (Jury enters courtroom at 10:36 a.m.)

5 THE COURT: Mr. Plexico, if you'd call your first
6 witness.

7 MR. PLEXICO: Your Honor, the defense would rest, Your
8 Honor.

9 THE COURT: Thank you very much. At this point of the
10 trial, I have to send you back out to take up more
11 motions. The defense has rested.

12 If you would go back to your jury room. Do not talk
13 about the case. When I bring you back out we will proceed
14 with the closing arguments and my charge to you and then
15 I'll turn it over to you at that time.

16 So if you would go back to your jury room.

17 (Jury exits courtroom at 10:36 a.m.)

18 THE COURT: You can go ahead and get set up.

19 MS. LEGETTE: Thank you, Your Honor.

20 (Thereafter, a break was taken.)

21 (Jury enters courtroom at 10:50 a.m.)

22 THE COURT: Solicitor, you're recognized for your
23 closing.

24 MS. LEGETTE: Yes, Your Honor. May it please the
25 Court.

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 THE COURT: Sure.

2 MS. LEGETTE: Mr. Plexico. Ladies and gentlemen good
3 morning.

4 THE JUROR: Good morning.

5 MS. LEGETTE: Once again we find ourselves here.
6 Marquis Breeland, I told you in the beginning was a man of
7 his word. He told Willie James Elmore he was going to
8 kill, shoot, Laurice Garvin. And after he executed
9 Laurice Garvin, he went and told Marcus Witherspoon that
10 he killed him. A man of his word. Simple as that.

11 I told you in the beginning this was a simple case
12 that the evidence might not remind you of CSI, that you
13 may not like all of the witnesses. Marcus Witherspoon,
14 you may not like him, but he came in here and he sat down
15 and he told you what he was told by Marquis Breeland.

16 Now, ladies and gentlemen, this is a case about an
17 execution. You heard this morning from the pathologist
18 who told you about three different gunshot wounds to the
19 body of Laurice Garvin, any which of those three gunshot
20 wounds would have been fatal.

21 So it wasn't enough for Mr. Breeland to shoot him one
22 time. It wasn't enough to shoot him another time in the
23 head. But he had to shoot him one more time and finish
24 him off, execution style, with another gunshot wound to
25 the head.

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 Now, ladies and gentlemen, before we get to asking you
2 what we want this morning, we need to tell you a little
3 bit about what you're going to be asked to do when the
4 Trial Judge tells you what the law is.

5 Because, see, he told you in the beginning you're not
6 out to hunt down and seek to prosecute innocent men. We
7 give you the facts. You find the facts. You apply them
8 to the law.

9 The Judge himself will tell you what the law is but
10 before we get to that point, let us decide if the State
11 indeed has met its heavy burden.

12 So we start with murder. The question is asked: What
13 is murder? The Judge will tell you that murder is the
14 killing of a person with malice aforethought, and that
15 malice can be either express or implied.

16 What does that mean? The killing. What do we have
17 here? A man named Laurice Garvin riding in Kennedy Park.
18 Found dead. You heard from Mr. John Lawson, from the
19 Allendale County EMS, who told you that he was DOA. He
20 was asked: What does that mean? Dead on arrival. No
21 pulse. He was dead. We had the coroner come, Mr. Black,
22 and realized, yes, he's dead. Authorized an autopsy.
23 Then you have the pathologist who actually examined that
24 body. A dead man, Laurice Garvin.

25 So that's a killing. Mr. Laurice Garvin is dead. So

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 we can strike that one off. And for good measure, let's
2 put a check mark. So we have a killing, a dead man.

3 Of a person. That person is Laurice Garvin.
4 Identified by the coroner. Identified by the
5 pathologist. Identified by even Antonio Frazier. A
6 person is dead. That man is Laurice Garvin.

7 Now, let us talk about with malice aforethought.
8 Malice. What is malice? As I began to consider this case
9 I thought long and I thought hard about what malice is.
10 And the Judge will tell you, eventually, what malice is.
11 And it goes a little something like this: Malice is evil,
12 wicked, depraved, an evil heart. That's malice.

13 And, ladies and gentlemen, as I began to think more
14 and more and delve into this case, I wondered why. Why?
15 It's human nature to wonder why. Why? Why kill Laurice
16 Garvin?

17 Ladies and gentlemen, the only thing I could come up
18 with is malice. Evil. Wicked. Something evil lurking in
19 the dark. And as I began to think more and more about
20 evil and malice and wickedness, I began to see faces of
21 movies I had seen in the past, and faces of those
22 individuals, the evil face, an evil man.

23 What it takes to gun down a man and execute him in the
24 middle of the street as he drives by. What kind of face
25 is that? I saw the Mask. I saw the face of Freddy

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 Krueger, A Nightmare on Robin (sic) Street. That's what I
2 saw in my mind. A senseless, evil, wanton, wicked
3 killing. That's what I saw.

4 And as I began to think more deeply I realized that
5 evil has a new face. It's no longer the face of Jason the
6 Mask. It's no longer the face of Freddy Krueger. It is
7 the face of that man, Marquis Breeland, who sits before
8 you today cloaked in a robe of righteousness.

9 A robe of righteousness, ladies and gentlemen. The
10 Judge is going to tell you he has on a robe of
11 righteousness. He sits there with his glasses on, he
12 looks like a choir boy. But, ladies and gentlemen, I
13 submit to you that underneath the facade of the choir boy
14 and the glasses lurks the heart of an evil man. An evil
15 man who would gun down a man as he drove down the street
16 on a Sunday night in the Town of Allendale.

17 I can see, I can see as I look in my mind's eye. I
18 heard what the pathologist told you, I heard what the SLED
19 agent said. And I saw Laurice Garvin. I saw him driving
20 in his car. He was leaned back.

21 And I asked Mr. Kenley: Mr. Kenley, where would the
22 person have been standing to shoot Laurice Garvin? He
23 said, he'd have been standing at the window, right hand or
24 left hand, he could have shot into the window shooting
25 Mr. Garvin.

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 I remember asking the SLED agent: Well, how about
2 there's no blood in the car. He said, well, he must have
3 gotten out very fast on either side because there's no
4 blood on the car. Laurice Garvin, I can see him. He's
5 shot. He's going out of the car. He's fighting for his
6 life. He's shot one more time.

7 Then I can see it, ladies and gentlemen, he's shot
8 once in the car. He gets out. Imagine, he was running
9 for his life. He wanted to live.

10 The pathologist said the first gunshot wound obviously
11 must have been in the car -- what the SLED agent said.
12 The next gunshot wound must have been on the ground.
13 You'll see the sketch. It's on the ground. How did he
14 get two gunshot wounds to the head? One lodges behind his
15 ear and one goes out to the front. He wasn't shot twice
16 in the car. He was shot once in the car. He gets out.
17 Is he on his knees? Is he begging for life? He is
18 begging, ladies and gentlemen. He's shot once. He's shot
19 twice.

20 And there he is, the new face of evil, standing over
21 Laurice Garvin, killing him. Executing him in cold blood.

22 Laurice Jerome Garvin. Good and dead.

23 Now, ladies and gentlemen, that's malice. That's
24 malice. To shoot a man as he rides down a street, not
25 once, boom, he's out of the car. Not two times. That's

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 not good enough. I got to make sure he's good and dead.

2 A senseless, evil killing. A dead man of Allendale.

3 Let's talk about aforethought. What is aforethought?

4 Aforethought pretty much is: I have it in my mind

5 sometime before I did it.

6 What did the witnesses tell you? Mr. Willie James. A

7 sweet man. He said, he said he was going to kill him. He

8 said he was going to kill him. He pulled out something, I

9 don't know what it was. I don't know what it was, but he

10 said that he was going to kill him. And that was the day

11 before. He had it in his mind the day before to kill

12 Laurice Garvin.

13 Ladies and gentlemen, that's malice. Evil. Wicked.

14 Wanton. Depraved. And that's aforethought.

15 So we have malice aforethought. And it can be either

16 express or implied. What does express mean? Express

17 means, I'm going to kill him. What did he tell Mr. Willie

18 James? I'm going to kill him. As Laurice Jerome Garvin

19 drove by. Don't kill him over here. Don't do it over

20 here.

21 Mr. Willie James even had to say, I thought he was

22 going to do something. That's express.

23 Ladies and gentlemen, implied. Implied can be through

24 actions; the use of a deadly weapon, the use of a firearm.

25 That could be implied. We have a firearm used in this

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 case. How do we know that? Because you had the
2 pathologist tell you he's got three gunshot wounds; two to
3 the head, and one to the chest. You have shell casings
4 taken by SLED, analyzed by SLED. They all came from the
5 same firearm. The bullet in his brain that was extracted
6 in his autopsy was fired out of the same gun. That's what
7 you have, ladies and gentlemen.

8 Now, that is your motive. That's your motive.

9 And you can't find -- now understand this is, you can
10 only find Mr. Breeland guilty of the second charge if you
11 find him guilty of the murder. So understand, if you find
12 that he's not guilty of the murder, then you must find him
13 not guilty of the possession of a weapon during the
14 commission of a violent crime.

15 But if you find that he is guilty of the murder, then
16 you consider this. So let me tell you all about it. The
17 Judge, like I told you before, will ultimately tell you
18 what the law is. And if I am wrong he will correct me,
19 but let us examine what we have.

20 The possession of a weapon during the commission of a
21 violent crime. Now, if you find that he is convicted of
22 murder, then you can find this particular charge. Okay.
23 If you find him guilty of the murder. Now, of committing
24 a violent crime. Murder, the Judge will tell you, is a
25 violent crime in the State of South Carolina. And

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 Mr. Marquis Breeland was in possession of a firearm at the
2 time of and during the violent crime.

3 So we talked about it earlier. The gun. There had to
4 be a gun, ladies and gentlemen. There were casings found
5 at the location. Four casings. Bullets in the car. One
6 lodged in the back seat and also fragments in the front
7 passenger seat. Mr. Garvin had gunshot wounds to his
8 head. He had a gunshot wound to his chest. He was killed
9 by a gun.

10 And what happened after that? Once Mr. Breeland ran
11 from the scene, he went and told Marcus Witherspoon that
12 he shot and killed Laurice Garvin. So that's what you
13 have. He said that he shot him. Obviously he must have
14 been in possession of a firearm to shoot him. He said he
15 killed him. And that's possession during the commission
16 of a violent crime such as murder.

17 And that's what you have, ladies and gentlemen. Those
18 are your issues to consider. So, while considering these
19 issues, I simply want to go over with you some of what you
20 heard during the trial, just in case maybe your memory is
21 like mine from time to time, and I happen to forget.

22 I want to ask: Who said it? Who said that? What do
23 we have? Marquis Breeland was standing on the corner on
24 Robin Street before it happened. A young woman named
25 Patricia Bradley walked in here and said, yes, I know

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 Marquis Breeland. And there he sits. And I saw him
2 standing on the corner of Robin Street.

3 Well, you remember, Laurice Garvin met his death there
4 on Robin Street. That's where he was found, intersection
5 of Robin and Fairdale, a corner. Marquis Breeland was
6 standing earlier on the corner.

7 What else did you hear? Somebody said, I heard
8 shots. I saw a car go by slowly. I saw three black males
9 running. Running is a very interesting word. Let us not
10 forget running. Running through the path. Two of them
11 were tall and one was short.

12 That's Mr. Richard Priester. He heard shots. He
13 lived -- he was in Kennedy Park at the time. Heard shots,
14 saw the car roll by slowly and saw males running through
15 the path. Running. Running. What were they running
16 from? Are they running from the crime they just
17 committed?

18 Tall. You saw Mr. Breeland when he came in here for
19 jury selection. Is he not tall? Tall. Running.

20 Now, I want to know who said this, Marquis Breeland
21 and Anthony Sanders were running towards us on the same
22 street as the crime scene. Running, ladies and
23 gentlemen. Running. Still running. Still running. Why
24 is Marquis Breeland still running? What is he running
25 from?

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 Running towards us. Same street as the crime scene.
2 Running on that street. Tall. Running on that street.
3 Marquis Breeland. They flagged us down. They were acting
4 really nervous. They were out of breath. They were
5 running away from the scene. Got out of the car. And
6 guess what else they did when they got out of the car?
7 They ran. Ran. Still running.

8 Now, Mr. Plexico told us that it's an easy walk.
9 Well, if it's such an easy walk to the Morrell's house,
10 why was Marquis Breeland still running? What is he
11 running from?

12 Our next man, Mr. Latrincy Carter, said -- no, I'm
13 sorry. He said when he told him he was going to the crime
14 scene oh, oh, oh, we're not going that way. We're not
15 going over that way. We're not going over that way. Why
16 ain't you going over that way? Everybody else is going to
17 Kennedy Park. Everybody else is going to Kennedy Park. I
18 want you to look and see. Look and see. Everybody else
19 is going to Kennedy Park. The one said they were nosey.
20 They were going to see.

21 I want you to look at this picture. You'll have it.
22 I want you to look at this picture. Back in here you see
23 people. People just standing around. I asked the
24 agent --

25 MR. PLEXICO: Your Honor --

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 MS. LEGETTE: I asked the agent, are there onlookers.
2 These are onlookers. Everybody else was going to the
3 murder scene but you got two men. Marquis Breeland, I'm
4 going to kill him. Now he's running from the scene.
5 Running.

6 What's he guilty of? He's guilty of killing Laurice
7 Garvin. He's got to get away. And when Anthony Sanders
8 wasn't fast enough, he's still got to get a rid. And then
9 he's still running. Still running.

10 And, ladies and gentlemen, let us consider Marcus
11 Witherspoon. Let us consider him. Marcus came in here,
12 had a sense of shame with his head down, and told us he
13 really didn't want to be here. Information that he knew
14 for a long time, he just kept to himself. Oh, yes. Kept
15 to himself.

16 He said a friend basically came to him and told him
17 what he did. He said Marquis Breeland came to
18 Mr. Witherspoon the night of this murder and confided in
19 him, told him what he did. Said, I shot and killed
20 Laurice Garvin.

21 I asked Marcus why did he tell you that. He said, oh,
22 because he wanted recognition. He wanted me to recognize
23 him. He thought highly of me. And Marcus didn't want to
24 be here. I imagine he didn't want to tell on his friend.
25 I imagine he felt like a snitch. Yep, said the life he

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 used to live, he admitted to be a self-confessed
2 criminal. And, yes, he's facing 10 to life in prison.

3 But even being the criminal that he is and even facing
4 all of that time, something he said struck me. Not just
5 that Mr. Breeland confided in him, but something he said
6 that struck me in the craw. And it was, I ain't going to
7 just lie to send somebody else to prison to keep me out of
8 prison for life.

9 That says something to me, ladies and gentlemen. No,
10 he ain't going to do that. And, yes, he can help himself,
11 but lying to get out of life, that wasn't it. He didn't
12 come in here and say, yeah, I'm glad to be here. Yeah.

13 Imagine the cost to Marcus Witherspoon. Imagine that
14 cost. He hung his head low when he walked in and he hung
15 his head low when he walked out, even though what he
16 faced. He didn't just come here to perform. He came here
17 to tell the truth. He told you what Marquis said.
18 Marquis Breeland told him he killed Laurice Garvin.

19 And, ladies and gentlemen, I surmise that the reason
20 Marcus came in here, that the mark is wide and the mark of
21 the universe is long but it bends towards justice. And
22 what I mean by that is Marcus sat it on a long time but
23 that justice finally caught up with him and justice
24 brought him in here to tell what he knew. Simple as that.

25 And then we have Mr. Willie James Elmore. I called

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 him Mr. Willie James. Now, Mr. Willie James told us that
2 he has known Marquis Breeland though he called him another
3 name, that he's known him all his life, for all
4 Mr. Breeland's life.

5 And I remember he smiled kind of when he said it. He
6 smiled. And I imagine that maybe he thought somewhat
7 highly of Mr. Breeland. He even said it. He said, I
8 didn't want to believe that he did it. But when I asked
9 him, Mr. Elmore, Mr. Willie James, you did tell him, don't
10 shoot him over here. Yeah.

11 I said, you thought he was going to do something,
12 didn't you? He said yes. You see, Willie James has known
13 him all his life but when he said he was going to shoot
14 Laurice Garvin, Mr. Willie James, a man who has known him
15 all his life, said, don't shoot him over here. That's
16 what he tells him, because he thought he would shoot him
17 over there.

18 Now, maybe we ought to ask ourselves, well, why when
19 Mr. Willie James asked Marquis if he shot Laurice, why did
20 Marquis say no, he didn't do it.

21 And then you ask the question: Well, why did he tell
22 Marcus Witherspoon? Well, I thought about that, too.
23 Apparently Marquis thought enough of Mr. Willie James, a
24 man he's known his whole life, to listen to Mr. Willie
25 James and not shoot him over there but shoot him on the

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 other side.

2 And then when Mr. Willie James asked him did he do it,
3 no, sir, I didn't do it. Mr. Willie James talked to the
4 police. Marquis wanted Mr. Willie James to think highly
5 of him, keep thinking highly of him, like he always has,
6 when he smiled when talking about him.

7 But on the other hand, Marquis wanted street praise
8 from Marcus Witherspoon. Marcus Witherspoon's been a big
9 man around here. He wanted Marcus Witherspoon's street
10 praise. He wanted him to recognize him.

11 So, ladies and gentlemen, that is the case that the
12 State of South Carolina has brought to you. You will have
13 the evidence. You will have the shell casings. You will
14 have the bullets. You will have the photographs. You
15 will have the photographs, ladies and gentlemen. If the
16 photographs aren't clear enough for you, you can come out
17 here and look at them on this screen.

18 You will have all of that. You have the words of the
19 people who told you where Marquis Breeland was. You will
20 have the words of the people who told you, he told me he
21 did it.

22 That is our case, ladies and gentlemen. And with
23 that, we submit to you that Marquis Breeland is guilty of
24 murder and that Marquis Breeland is guilty of possession
25 of a firearm during the commission of a violent crime.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 Ladies and gentlemen, because he's guilty, we ask you
2 now to find him guilty of murder, the execution of Laurice
3 Jerome Garvin. A man just riding in his car, like so many
4 others have done, riding through Kennedy Park. Apparently
5 it was a place to be. Robin Street is a busy place. And
6 he just decided to go meet his friends and go down there.
7 Regardless of whether he was smoking or drinking, he was
8 minding his own business.

9 And, ladies and gentlemen, Marquis Breeland is guilty
10 of executing that man, shooting him once in his car and as
11 he ran begging for his life, shooting him twice more. We
12 ask you to find him guilty of that crime and the
13 possession of a weapon during that crime.

14 And, ladies and gentlemen, when you do that, the
15 wicked Marquis Breeland will cease and Laurice Jerome
16 Garvin's soul will be at rest.

17 Thank you.

18 THE COURT: Mr. Plexico?

19 MR. PLEXICO: If it pleases the Court, Madam
20 Solicitor, Mr. Solicitor.

21 All the evidence is in. I think the question of this
22 case is: What does it take in America to convict somebody
23 of murder?

24 While all cases are different, you need to have
25 evidence. And remember, as I told you to start with, that

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 this is no evidence. The State has the burden of guilty
2 beyond a reasonable doubt. This is no evidence. And you
3 have to go all the way over to enough evidence to show
4 guilt beyond a reasonable doubt.

5 Has the State climbed this hill? How much evidence
6 did they put forward?

7 They have not shown, number one, that my client
8 possessed the gun. They have not shown my client has ever
9 possessed a gun. They have not shown that my client has
10 ever possessed any nine millimeter ammunition. They have
11 not shown that he has possessed any ammunition. They have
12 not shown he possessed a nine millimeter or ever even
13 touched a gun. There is no evidence my client ever had a
14 gun.

15 Running off at the mouth as they call it, I put that
16 in quotation marks, is not evidence. Now, you've heard
17 from the forensics. There is none. There's no
18 fingerprints on any weapon. There are -- there's no DNA
19 evidence. There's nothing to talk about because there's
20 no evidence.

21 So if my client sitting here today on trial for
22 murder, how much evidence does it take in America to
23 convict a man of murder?

24 You heard -- excuse me, Court's indulgence.

25 Who saw my client shoot anyone? No one. He's seen

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 standing on the corner. How many young people -- goodness
2 knows what the unemployment rate is -- is standing around
3 on the corner wishing they had something to do? Is that a
4 crime in America? Okay. Can we arrest them for murder?

5 What did Ms. Bradley say? That's not unusual for
6 people out there, probably I didn't even see. Now, is
7 that evidence that you're nearby? Let's go arrest people
8 who are nearby. Is that what the police are known for?
9 Is that -- use your common sense.

10 When you see blue lights, when you see the police
11 coming, do people run off? Is that what the police are
12 known for? Just round them up, get whoever is nearby.
13 And what is it?

14 Like I said, no one saw anybody with a gun. No GSR,
15 that's a gunshot residue test, on the victim. Now why
16 wouldn't you take a gunshot residue test on a victim? If
17 they had fired a gun, obviously you have four cartridges
18 that match up.

19 Okay. Now, who fired the fifth shot? So did he fire
20 that shot? Do we know what happened?

21 We don't know what happened. We don't know who did
22 it. We don't know because the State failed to put forward
23 any credible, credible evidence.

24 Now, there's no ID of anyone seen leaving the crime.
25 Now, what was it that Mr. Priester said? He said he was

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 five-seven (sic) and he was a little taller. The taller
2 one's were a little taller than him.

3 My client, look at those legs. In another day he
4 could have been a basketball player. He didn't say he saw
5 a very tall man, ladies and gentlemen, okay. But a man
6 who was taller than five, slightly taller than five-six.
7 Remember what he said. The physical description of the
8 people that Mr. Priester said he saw leaving did not fit
9 the physical description of the man they have on trial.

10 It's the wrong person.

11 Now, in May of this year, looking at a minimum
12 mandatory sentence in federal court of life, after -- and
13 I went through 10 years of crimes that show disregard for
14 others. Ten years of Mr. Witherspoon's criminal
15 activity. An entire decade of criminal activity. Now, he
16 wants you to believe an incredulous story that he says,
17 well, what was it, they were sort of friends.

18 He wants you to believe that somebody who's sort of,
19 sort of his friend would come, knock on his door, go to
20 his back door where nobody sees him, bring another
21 witness, Freddie Washington, and say, oh, I shot this guy
22 and then leave.

23 They don't talk about anything else. They don't say
24 anything else. He just comes up to the back door, knocks,
25 he goes outside the back door and nobody notices these

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 people are here. There's no corroboration that this ever
2 happened aside from the word of a man who's trying to
3 please a US attorney. A US attorney. Okay.

4 He has to perform well. He has to help the State get
5 a conviction. And the State, as he testified to, part of
6 his plea agreement, the US attorney will evaluate whether
7 or not he did it. That's sad. That's sad.

8 If that doesn't motivate people to go out and lie and
9 not tell the truth to save their own neck or anything that
10 they can put their selves into. And see how clever this
11 is. I give it to Marcus Witherspoon. He's a smart guy.
12 Of course, now, and it took a little while but we finally
13 got out the conspiracy of what he was actually charged
14 with, the trafficking in crack cocaine in federal court.
15 He's got a big charge. He's looking at life, minimum
16 mandatory life. Okay. Ten years for this slick guy to
17 wind up where he needs to be. Ten years. That's a long
18 time.

19 And what he had a reputation for, taking care of
20 business. Well, if you're dealing big time in drugs, what
21 goes with drugs. Use your common sense. Guns. It goes
22 with guns. Use your common sense.

23 Now, is this the guy that you can trust? Remember.
24 The testimony goes to what you can trust. Can you trust
25 the word of Marcus Witherspoon who's lived the life of a

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 criminal? That's just not trustworthy.

2 And you can look at the demeanor of how they handled
3 themselves on the stand. Well, of course, the State wants
4 to build them up because they have absolutely no case
5 without the word of Marcus Witherspoon. This is a 2007
6 case. Now, without Marcus Witherspoon, what do they
7 have? My client making a comment to Elmore? You've never
8 seen, and no one's ever seen the gun, ammunition,
9 particularly the kind of gun that's here. There's just no
10 evidence.

11 He's doing what a lot of other kids do and young
12 people and even older people, they go out and congregate
13 in the neighborhood and see who's going by, people
14 stopping by and talking to them. That's common. That's
15 not a crime.

16 But here things that are normal are a crime. That's
17 not right. Where's the evidence? Look over the
18 witnesses. What did they actually put up? Ms. Conner
19 says, and they are saying, where is everybody else going.
20 Everybody else went to the crime scene. Ms. Conner
21 testified Ktari Johnson was there, her niece. There was
22 another lady.

23 So it sounds like there were only four or five people
24 there and law enforcement. I mean, it doesn't sound like
25 there's certainly the entire town turned out, as they

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 would make it sound that our clients are running away.

2 Once again, what do young people do? Use your common
3 sense. However unfortunate it is, when they see the blue
4 lights coming, young people generally go away. They get
5 out of there before they're caught up, use your common
6 sense, in something that they're not involved in.

7 So remember, my client, if convicted, wouldn't be the
8 first person in the world that wasn't guilty of what they
9 were accused of but that's for you to decide.

10 So we have an individual, my client, Mr. Breeland,
11 who's on the corner sometime before the shooting. No
12 evidence at the time of the shooting. And then 10 to 15
13 minutes later they say he's running.

14 Well, he's going to the Morrell's house. You do not
15 spell Morrell with a W. You do not spell Morrell
16 W-I-T-H-E-R-S-P-O-O-N. He was not going to the
17 Witherspoon's house. That's important. Why? It never
18 happened. Is there any way the State could have proved
19 that he went to the Witherspoon house? No.

20 But if they had one to support his credibility, since
21 he's not credible and he's not believable because he'd sit
22 on anybody, use your common sense, to get out of his life
23 sentence. Okay. They would have put it up. But no
24 evidence exists for the State to find and put in front of
25 you to support anything that Marcus Witherspoon said

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 because he was so smart and clever and as he has been for
2 the last 10 years, okay, that you either believe him or
3 you don't.

4 Is that enough to convict my client? Is that guilt
5 beyond a reasonable doubt?

6 If you give it some credibility, what else is there?
7 There's nothing to add to it.

8 I've talked about the first witness. Then Ms. Love
9 says -- that was Ms. Conner. The next witness is
10 Ms. Love. She hears gunshots. She looks out. She sees
11 Ms. Kennedy over there. You heard from Mr. Lawson. He
12 had already passed away.

13 You heard from the chief. He roped off the scene.
14 You heard from SLED agent, Karl Kenley. He goes out, puts
15 his expertise to develop a crime scene. He couldn't get
16 any prints. He recovered the cartridge cases. Does it
17 say that my client fired the bullets that were coming from
18 the cartridge cases or that my client was there at the
19 time of the shooting?

20 Now, Mr. Frazier, he heard four or five shots. He saw
21 the decedent driving up and down the road. Doesn't really
22 know anything about it, didn't say -- he didn't even know
23 the decedent really well. I mean, what was the whole
24 point of even wasting time on that whole testimony.

25 Okay. You see Ms. Bradley. Here's what they say, oh,

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 puts him at the scene of the crime. They don't establish
2 when he was. There -- a lot of people were there. She
3 says they weren't doing anything wrong.. It's normal for
4 people to be there. They were being okay.

5 Once again, maybe this is why young people leave when
6 the police come around. When people are doing what's
7 normal and they're doing what's okay, maybe sometimes you
8 wind up at trial. And that's not the way it should be.
9 That's what.

10 Use your common sense.

11 Is there another explanation for that which they say
12 is bad, which indicates guilt? Sure there is. I'm not
13 involved in this, but I'm getting out of here.

14 Now, all Richard Priester said was he saw three guys
15 running, one short guy. He's five-six. He says, and I
16 emphasize that word, short. Look at that man's legs.
17 Just look at that man.

18 That's -- you wouldn't say he was slightly taller than
19 Richard Priester. I had him come out here and stand
20 beside me. He's short compared to me and I'm not tall.
21 And he indicated they weren't as tall as me. Use your own
22 common sense. He's says just slightly taller than him.
23 Certainly not for those lengthy long, long legs.

24 Now you can just see how tall he is. The description
25 of who was running away. The best witness does not match

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 the man on trial. How could you convict in good
2 conscience, if the description doesn't match, you can't
3 put a gun in his hand, and you can't put him there at the
4 time of the shooting. How could you convict him only with
5 Marcus? Hook, line and sinker, the word of Marcus
6 Witherspoon, which is incredible. It's simply not enough.

7 And you heard from Dwann Devoe and Latrincy Carter.
8 And you also heard from Willie James Elmore. Like I said,
9 is talking enough to convict somebody? That's not
10 evidence. They didn't like somebody. They didn't like
11 each other or whatever, that's not evidence he committed
12 the crime.

13 Now, then you have Dwann Devoe and Latrincy Carter.
14 Now, they asked for a ride to the Morrell's house. Okay.
15 Not the Witherspoon house. He put the two of those
16 together. They get in the car 10 to 15 minutes later, a
17 short distance from where the scene is.

18 If those were the same boys running, think about it,
19 would you run in a couple -- would you run more than a
20 couple of blocks in 10 or 15 minutes?

21 So it had to be somebody different. And how do you
22 know that? Because the distance is, is a matter of math,
23 if you go running, okay, you're going to go farther in a
24 couple of blocks. So as a matter of math they are
25 different from the people that Richard Priester saw

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 running because, number one, my client's not in that group
2 because he's just flat out too tall. Not slightly taller
3 than Richard Priester. He is much, much, much taller than
4 Richard Priester. The description doesn't match the
5 people Mr. Priester saw at the time he looked out the
6 window running away.

7 Those are the guilty people. They should be on
8 trial. There's somebody to be punished, but don't punish
9 an innocent man today. Don't do that.

10 Then you heard from Marcus Witherspoon who takes care
11 of business. That's pretty obvious when you look at his
12 business. His business is major drug dealing and being a
13 criminal. Proven criminal for 10 years. What kind of
14 credibility does he have? That's somebody that you can't
15 take his word a lot.

16 Now, nobody sees him at the crime. There's no
17 credible evidence. There's no confession from the
18 police. The police didn't get up here and say we
19 investigated it, we interrogated him, after an hour or two
20 hours he said, yes, I did it. There's no evidence.

21 They had to have somebody like Marcus Witherspoon
22 stoop that low to get somebody like that to try to get a
23 conviction. And that's not right here. It's not right in
24 America. It's not right in South Carolina. It's not
25 right in Allendale. It's certainly not right.

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 Who are your other witnesses? Mr. Johnson, SLED Agent
2 Johnson. He just came in and did the investigation, took
3 it over later, much later. Freeman, David Freeman from
4 SLED.

5 The solicitor characterized the recovered bullet as
6 being fired from the same gun. That's actually
7 inaccurate. If you remember his, his testimony. His
8 testimony was that this was consistent, not the same.
9 Consistent does not mean it is. It means it could be.
10 And this is a mischaracterization of the word. I want to
11 point that out to you.

12 Now, when the Defendant was there -- remember another
13 inaccuracy was Ms. Bradley testified and talked about the
14 guys being there. They wanted to make it look like he was
15 there at the time that he was shot. But I want that clear
16 in your mind; there's no evidence, as the solicitor said,
17 he was there at the time the individual was shot.

18 And if you look at, they described my client as, they
19 wanted to say really nervous. And then Mr., I believe it
20 was Carter who testified, said they just could have been
21 out of breath and, you know, they said nothing -- wasn't
22 really anything wrong.

23 Now, they're going to criminalize running. Going to
24 criminalize standing? Criminalize association with your
25 friends? Okay. Where does it stop? Now we're putting

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 together normal activities that are not criminal in order
2 to try to say that something is criminal.

3 And what is this street creed? There's no evidence of
4 a business relationship that my client -- Mr. Witherspoon
5 didn't say he was selling drugs for him, he was one of his
6 drug runners for Mr. Witherspoon in Mr. Witherspoon's drug
7 business. Okay. Why would he be, why would he come up
8 with somebody who was sort of a friend and go to the
9 trouble, go to the back door to nobody he knew, just tell
10 him and leave?

11 Does that make sense? Can you believe that?

12 If you don't believe that, there's absolutely no way,
13 no way at all, no way at all that this case should even
14 take five minutes to decide not guilty by the time
15 everybody makes the verdict (inaudible), and we know the
16 verdict should be not guilty. That would be the fair
17 verdict.

18 Now, three years it took Marcus Witherspoon to say
19 anything. Four years. 2007, to 2011. That tells you
20 that he's searching for something to help himself.
21 Anything to help him. And that's what's important for
22 him, to help himself to get out of his life sentence.

23 Now, I talked about circumstances earlier.

24 Mr. Witherspoon had to perform for US Attorney Richardson
25 who's going to get a report on whether or not he helps

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 secure a conviction, so Mr. Witherspoon can use that in
2 federal court to help lower his sentence.

3 His performance. It's all part of his performance.
4 You saw a performance from the solicitor about demanding
5 what happened. And the solicitor fell on the floor and
6 she put on a good performance too but, none of that was
7 testified to. That was all just imaginary just to stir up
8 emotions.

9 And I didn't object to it because I think you're wise
10 enough to know what the case is all about. It's just to
11 appeal to your emotions and not your rationality and
12 intellect.

13 It shows, in fact, the weakness of the State's case.
14 It shows that they, in fact, know themselves that they
15 have indeed failed to prove their case beyond a reasonable
16 doubt.

17 And when that is so obvious, that is so obvious, what
18 is left for you? What do you do? Appeal to your
19 emotion. If you can't get the facts throw yourself on the
20 floor, and stir up emotions. If you don't have the facts,
21 be dramatic. Put on a performance. Call in horrors like
22 Freddy Krueger. Don't use logic. Don't be analytical.
23 Don't look at the facts. Cloud your mind with emotions.

24 Is that the way, when you took your oath, was it to be
25 emotional? To ignore the facts? Was that part of it? I

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 didn't hear that part of it.

2 Look at the evidence, the credibility of the
3 evidence. We know one thing. The decedent was involved
4 in the drug world, too. We know Marcus Witherspoon was.
5 Ten years' time, but we know it's there.

6 Now, what does it take to convict somebody of a very,
7 very, very serious crime in America? Is it a hunch? Is
8 it a suspicion? Is it, he possibly did it? Do you
9 remember my example to start with? If you're in civil
10 court you're in a car accident, you run into somebody's
11 car at the IGA and you bend their fender. You go to
12 court. The jury or the Judge says, okay, you should have
13 looked before you pulled out and hit their fender. And
14 the evidence is not 50-50, and the Judge couldn't decide
15 but it's 51 percent. Well, that's enough to make you
16 guilty.

17 In criminal court it is guilt beyond a reasonable
18 doubt. And that is a doubt for which you have a reason.
19 Look at the reasons. I just don't believe Marcus
20 Witherspoon. I'm not putting anybody in prison on the word
21 of Marcus Witherspoon. They don't even have a gun. They
22 can't put a nine millimeter in that young man's hand.
23 They can't even put any gun. They can't put him at the
24 scene of the crime.

25 Look at those legs. They would have said it would

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 have been granddaddy long legs. I saw granddaddy long
2 legs running. Because you couldn't miss that. You just
3 couldn't flat miss that. It's just that obvious.

4 There's no description. There's no witnesses to the
5 shooting. What little bit they have doesn't fit that man
6 on trial. I can't in good conscience convict this man.
7 Those would be reasonable doubts and whatever else I have
8 missed.

9 It's always difficult to argue against emotion. Do
10 not let emotion rule. And that's what they're doing.
11 There's no evidence. Descriptions don't match. Innocent
12 things are just innocent. Normal behavior is just normal
13 behavior.

14 Don't let them take a collection of innocent things
15 and try to use that as evidence in something as serious as
16 a murder case. That just, that just makes no sense. It
17 makes no sense.

18 And I know it's difficult. It's difficult for jurors
19 to go in and follow their oath. And emotionally people
20 want to come back with a conviction. And I think that's
21 not following your oath because you're following
22 emotions.

23 We all feel sorry for the victim, that the victim has
24 passed away, and feel sorry for the victim's family. But
25 we're not here just to feed the system somebody, just to

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 give them somebody.

2 We have a standard. America has a standard. The
3 State of South Carolina has a standard, and Allendale
4 County has a standard.

5 There's no conviction in America without guilt beyond
6 a reasonable doubt. It cannot be done. It is a violation
7 of your oath. There must be evidence. When they started
8 this case, the defense has nothing to prove. We don't
9 have to say a word. The State has the burden. Why do
10 they have the burden?

11 By God, they've got the US attorney working on this
12 case. Who's got that kind of power over here? They're
13 sending down witnesses to get off life sentences. What
14 does a common man have? The public defender. He doesn't
15 have the taxing power of the State. He doesn't have all
16 the SLED officers. He doesn't have the US Attorney
17 investigator. He doesn't have the Allendale force or the
18 Allendale Sheriff's Department or the Allendale Police
19 Department.

20 Put all of that together. That's a lot. No one man
21 can overcome that, or one woman. All of that power of the
22 State. Power means power, power of the people. Now, with
23 all that power, all those investigative resources, this is
24 all they can do? This isn't even a case. That's it.

25 With all of that, no one man can overcome that much

CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 power against them. And that's why they, they have the
2 burden. You don't have to prove yourself innocent here in
3 America. They have to prove you're guilty.

4 And it's not an iffy, maybe, maybe not. It's not even
5 if you're suspicious about it. It's not, he probably did
6 it. It is guilt beyond a reasonable doubt. I don't have
7 a doubt he did it. That's reasonable.

8 That's a heavy, heavy burden. And every time they
9 failed to meet their burden you have a duty, a duty, to
10 return a verdict of not guilty whether you want to or
11 not.

12 You don't convict people on a hunch.

13 You don't convict them on maybe.

14 You don't convict them on probably.

15 There has to be guilt beyond a reasonable doubt. And
16 they have utterly failed to do that.

17 I'm asking you to return a verdict that speaks the
18 truth. Veredicto, a Latin word, to speak the truth.
19 Return a verdict that speaks the truth that the State has
20 failed to carry its burden. Your job is determining in
21 there, has the State met its burden of proving the
22 Defendant beyond a reasonable doubt. The answer is fairly
23 not. And I ask you respectfully to bring back a verdict
24 as such.

25 Thank you very much.

JUDGE'S CHARGE TO THE JURY

1 THE COURT: Members of the jury. It is now my duty to
2 instruct you on the law applicable to this case. It is
3 your duty as jurors to accept the law as I state it to
4 you.

5 Furthermore, it is your duty to assign all issues of
6 fact in this case and to determine the effect, value, the
7 weight and truth of the evidence. Both the State and the
8 Defendant have a right to expect that you would carefully
9 consider and evaluate the evidence and apply the law of
10 this case to it so that at the end, the State of South
11 Carolina and the Defendant will receive a fair and
12 impartial trial.

13 I want you to further understand that when I use the
14 word Defendant, I refer to Mr. Marquis Breeland.

15 Furthermore, it is important to understand that the
16 State's charged the Defendant, Marquis Breeland, with the
17 offense known as murder and the offense of possession of a
18 weapon during the commission of or attempt to commit a
19 violent crime.

20 To these charges the Defendant has entered a plea of
21 not guilty. These pleas of not guilty place the burden of
22 proof on the State to prove the guilt of the Defendant
23 beyond a reasonable doubt.

24 It is also said that a Defendant is presumed under the
25 law to be innocent of these charges. It is a fundamental

JUDGE'S CHARGE TO THE JURY

1 rule under our law that a Defendant, irrespective of the
2 seriousness of the charges against him, is always presumed
3 innocent of the crimes for which he is charged unless and
4 until his guilt has been proven by evidence that satisfies
5 you beyond a reasonable doubt.

6 The presumption of innocence is not a mere legal
7 theory or a legal phrase. The presumption of innocence is
8 very important. You need to understand that this
9 presumption accompanies the Defendant from the time of his
10 arrest and appearance in this court and continues with the
11 Defendant even after you retire to the jury room to
12 deliberate.

13 In other words, the Defendant receives the presumption
14 of innocence until the very end of this trial when you the
15 jury will deliberate upon the evidence and decide whether
16 the State has proven his guilt beyond a reasonable doubt.

17 Proof beyond a reasonable doubt is proof that leaves
18 you firmly convinced of the Defendant's guilt. There are
19 very few things in this world that we know with absolute
20 certainty. So, even in criminal cases, the law does not
21 require proof that overcomes every possible doubt.

22 However, if based on your consideration of the
23 evidence you are firmly convinced that the Defendant is
24 guilty of the crimes charged, you must find him guilty.
25 However, if on the other hand you think there is a real

JUDGE'S CHARGE TO THE JURY

1 possibility that he is not guilty, you must give him the
2 benefit of the doubt and find him not guilty.

3 Please understand that reasonable doubt may arise from
4 the evidence which has been presented in the case or from
5 a lack of evidence in the case. It is your responsibility
6 to determine whether or not reasonable doubt exists as to
7 the guilt of this Defendant.

8 I charge you that the Defendant is entitled to every
9 reasonable doubt arising in the whole case. If upon any
10 issues of fact essential to conviction in a verdict of
11 guilty you have a reasonable doubt as to how that issue
12 should be resolved, it would be your duty to resolve that
13 reasonable doubt in favor of the Defendant.

14 Thus, in summary, it is important to understand that a
15 defendant is not required to prove his innocence.
16 Instead, the State is required by law to prove every
17 essential element of the offenses charged against the
18 Defendant by evidence which satisfies you of his guilt
19 beyond a reasonable doubt. Only then can you convict the
20 Defendant and find him guilty.

21 Members of the jury, there are two types of evidence
22 which are generally presented during a trial; direct
23 evidence and circumstantial evidence.

24 Direct evidence is the testimony of a person who
25 claims to have actual knowledge of a fact, such as an

JUDGE'S CHARGE TO THE JURY

1 eyewitness. It is evidence which immediately establishes
2 the main fact to be true. Circumstantial evidence is
3 proof of a chain of facts and circumstances indicating the
4 existence of a fact. It is evidence which establishes
5 collateral facts from which the main fact may be
6 inferred. Circumstantial evidence is based on inference
7 and not on personal knowledge or observation.

8 The law makes absolutely no distinction between the
9 weight or value to be given to either direct or
10 circumstantial evidence, nor is a greater degree of
11 certainty required of circumstantial evidence.

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

16 I further instruct you that the fact that the
17 Defendant in this trial did not testify on his own behalf
18 is not a factor to be considered by you in any way in your
19 deliberations and your consideration of the question of
20 guilt or innocence.

21 In this regard, a defendant has the constitutional
22 right to remain silent. And the exercise of this right
23 must not be considered by you in your deliberations. The
24 fact that the Defendant did not testify should not even be
25 discussed in the jury room.

JUDGE'S CHARGE TO THE JURY

1 The burden of proof, as I have stated to you, is on
2 the State. The Defendant has no obligation to prove his
3 innocence. The burden of proof remains with the State to
4 prove the Defendant's guilt beyond a reasonable doubt.
5 And the fact that the Defendant did not testify is not a
6 factor to be considered by you in deciding the guilt or
7 the innocence of a Defendant.

8 When you consider the whole case if you have a
9 reasonable doubt as to the guilt or the innocence of the
10 Defendant, then he is entitled to that reasonable doubt
11 and would be entitled to a verdict of not guilty.

12 However if upon considering the whole case you find
13 that the State has proved by evidence which satisfies you
14 of the guilt of the Defendant beyond a reasonable doubt,
15 then in such circumstances it would equally be your duty
16 to convict the Defendant and find him guilty.

17 During this trial you and I have certain duties to
18 perform. As the Trial Judge it is my responsibility to
19 preside over this trial, and I also have the duty to rule
20 upon the admissibility of the evidence offered during the
21 process of the trial.

22 In that regard you are to consider only the competent
23 evidence before you, and you are to disregard from your
24 mind any testimony ordered stricken from the record in
25 this case during the progress of this case, if there be

JUDGE'S CHARGE TO THE JURY

1 any. And you are to consider only the testimony which has
2 been presented from this witness stand, together with any
3 exhibits admitted into the record of this case.

4 Furthermore, I have the additional duty to charge you
5 on the applicable law of this case. And in that regard it
6 is your duty to accept and apply the law as I now state it
7 to you. If you have any preconceived ideas as to what the
8 law is or what the law ought to be and it does not agree
9 with what I tell you the law is, you are obligated under
10 your oath to abandon these preconceptions because you are
11 sworn to accept the law precisely as I now state it to
12 you.

13 In this trial you are the sole and exclusive judge of
14 the facts. Therefore I ask that you not infer that I have
15 any opinion about the facts in this case from anything I
16 have said during the course of this trial.

17 In this regard the law simply does not permit me to
18 have an opinion about the facts. As jurors it is your
19 exclusive duty alone to determine the effect, value,
20 weight and truth of the evidence presented during the
21 course of this trial.

22 In determining what the facts in this case are you
23 must judge the credibility which simply means the
24 believability of the witnesses and the value of weight to
25 be given to their testimony.

JUDGE'S CHARGE TO THE JURY

1 In making this decision there are many things you may
2 and should take into consideration, such as the appearance
3 and manner of the witness on the stand. And character is
4 often referred to as the demeanor of a witness. Was the
5 witness forthright or hesitant. Was the witness's
6 testimony consistent or did it contain discrepancies.
7 What was the ability of the witness to know the facts
8 about which he or she testified. Did the witness have any
9 cause or reason to be biased and prejudiced in the
10 testimony he or she gave. Was the testimony of the
11 witness corroborated or made stronger by other evidence
12 and testimony or was it made weaker or impeached by such
13 other testimony and evidence.

14 Furthermore, a person who has a past criminal record
15 is competent to testify during a trial. A past record
16 does not affect the ability of that witness to testify.
17 The past record may only be considered by you, if at all,
18 in deciding the witness's credibility.

19 Remember, you are the sole judges of the facts in this
20 case and the believability of any and all witnesses.

21 Furthermore, you have heard testimony from persons
22 described as experts. Persons who by their education and
23 experience have become expert in some field may testify
24 and state their opinion on matters. They may also state
25 their reasons for their opinions.

JUDGE'S CHARGE TO THE JURY

1 You should judge expert opinion testimony just like
2 any other testimony; you may accept it or reject it, give
3 it as much weight as you think it deserves, considering
4 the witness's education and experience, the reasons given
5 for the opinion, and all the other evidence in the case.

6 Also, please understand that the testimony of a police
7 officer is not entitled to more weight than that of any
8 other witness. You are the sole judges of the credibility
9 of a witness and you are not to give more weight to a
10 police officer's testimony solely because he is a police
11 officer. Rather, you should judge an officer's testimony
12 by the same standards that you apply to all other
13 witnesses.

14 Please understand that you have a right to believe a
15 small portion of a witness's testimony and disregard the
16 larger portion or vice versa. You may believe all of a
17 witness's testimony or none. You may believe the
18 testimony of a single witness against that of many or the
19 other way around.

20 In exercising your mental processes and attempting to
21 decide the truth, the law simply requires that you
22 exercise your good judgment, your common sense, your sense
23 of logic and reason and your experiences in life. You
24 then apply these attributes to the evidence, apply the law
25 as I now state it to you and thus arrive at a verdict.

JUDGE'S CHARGE TO THE JURY

1 Furthermore, if you find from all the evidence that
2 the Defendant was merely present at or near the scene of
3 the alleged crime or on the date in question, you are
4 instructed that such presence can only create a suspicion
5 and you cannot find the Defendant guilty because of a
6 suspicion.

7 Mere presence at or near the scene of a crime does not
8 in itself permit you to draw an inference that the
9 Defendant had knowledge of any criminal plan which might
10 have been borne, nor does mere presence support an
11 inference of intent to engage in or to aide in any
12 criminal conduct.

13 Thus, in summary, suspicious circumstances like mere
14 presence are not sufficient for a finding of guilty
15 against any defendant.

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

24 Malice aforethought does not require that malice
25 exists for any particular time before the act is

JUDGE'S CHARGE TO THE JURY

1 committed, but malice must exist in the mind of the
2 Defendant just before and at the time the act was
3 committed. Therefore, there must be a combination of the
4 previous evil intent and the act.

5 Malice aforethought may be expressed or inferred. The
6 terms expressed and inferred do not mean different kinds
7 of malice but merely the manner in which malice may be
8 shown to exist.

9 That is either by direct evidence or by inference from
10 the facts and circumstances which are proven. Express
11 malice is shown when a person speaks words which express
12 hatred or ill will for another or when the person prepared
13 beforehand to do the act which was later accomplished.
14 For example, lying in wait for a person or any other acts
15 of preparation going to show that the deed was within the
16 Defendant's mind, would be express malice.

17 Malice may be inferred from conduct showing a total
18 disregard for human life. Inferred malice may also arise
19 when the deed is done with a deadly weapon. A deadly
20 weapon is any article, instrument or substance which is
21 likely to cause death or great bodily harm.

22 Whether an instrument has been used a deadly weapon
23 depends on the facts and circumstances of each case. If
24 facts are proved beyond a reasonable doubt sufficient to
25 raise that inference of malice to your satisfaction, this

JUDGE'S CHARGE TO THE JURY

1 inference would be simply an evidentiary fact to be taken
2 into consideration by you, the jury, along with other
3 evidence in the case and you may give it such weight as
4 you determine it should receive.

5 The Defendant is also charged with possession of a
6 weapon during the commission of or attempt to commit a
7 violent crime. The State must prove beyond a reasonable
8 doubt that the Defendant was in possession of a firearm or
9 visibly displayed what appeared to be a firearm during the
10 commission of a violent crime.

11 A firearm means any machine gun, automatic rifle,
12 revolver, pistol or any weapon which will or is designed
13 to or may be readily converted to expel a projectile. In
14 order to find the Defendant guilty of possession of a
15 weapon during the commission of a violent crime, you must
16 first find the Defendant guilty of either committing a
17 violent crime or attempting to commit a violent crime.
18 Murder is a violent crime.

19 Ladies and gentlemen, I am now drawing near the end of
20 my charge.

21 And I want you to clearly understand that you are not
22 partisans or advocates for the State of South Carolina or
23 this Defendant. You do not serve as jurors to reward your
24 friends or punish your enemies. In this regard you have
25 been selected by both the State and this Defendant to be

JUDGE'S CHARGE TO THE JURY

1 fair and impartial jurors.

2 It is your duty by your joint deliberations to
3 determine the truth in this case, giving to this Defendant
4 the benefit of every reasonable doubt on each and every
5 issue. Then to the facts which you determine to be true
6 you should take and apply the law which has been given to
7 you by this Court and thus arrive at a verdict which
8 speaks the truth in this case.

9 In fact, the word verdict, which has a Latin
10 derivative, means a true saying. Thus when you have
11 accomplished these responsibilities you will have
12 satisfied your oath as jurors and you will have discharged
13 your duty to this Court.

14 Now, if you would hand the foreman the verdict form,
15 I'll appreciate it.

16 THE BAILIFF: (Complies.)

17 THE COURT: Now, Mr. Foreman, regarding the verdict
18 forms, you must render a verdict on the charges in this
19 case. For these charges if the State has failed to prove
20 the guilt of this Defendant beyond a reasonable doubt,
21 your verdict would be two words; not guilty.

22 Likewise for these charges if the State has proved the
23 guilt of this Defendant beyond a reasonable doubt, your
24 verdict would be one word; guilty.

25 Mr. Foreman, once a decision has been made, just check

JUDGE'S CHARGE TO THE JURY

1 whichever choice is your verdict, then sign and date the
2 verdict form. The verdict that you render in this case
3 must be the verdict of each and every juror. It must be
4 your unanimous verdict. All 12 jurors must agree on the
5 verdict which you authorize the foreman to write for the
6 jury.

7 Mr. Foreman and members of the jury, I want you to
8 further understand that the order in which the choices of
9 verdict appear on the verdict form are not suggestive of
10 any verdict on the part of this Court. The verdict in
11 this case must be determined by you, the jury, and not the
12 Court.

13 Furthermore, please understand that even though I have
14 given the verdict form to the Foreman, it is not his
15 verdict alone. It is the verdict of all 12 of you. And I
16 emphasize, again, it must be unanimous.

17 I now ask that you retire to the jury room but do not
18 begin your deliberations until you are told to do so. The
19 law requires that I now check with the attorneys and make
20 sure that I have not left anything out of my charge.
21 After I have checked with the attorneys, the bailiff will
22 bring in the items of evidence and instruct you to begin
23 your deliberations.

24 Also, should you have any questions during your
25 deliberations, you must put them in writing and send them

1 to me by the bailiff.

2 Furthermore, once you have reached your verdict,
3 please knock on the jury room door, ask the bailiff to
4 advise the Court that you have reached a verdict and we
5 will return you to the courtroom as promptly as possible
6 to dispose of this case.

7 You may now retire to the jury room but, again, do not
8 begin your deliberations at this point in time.

9 (Jury exits courtroom at 12:06 p.m.)

10 THE COURT: Any objections from the State as to the
11 charge given?

12 MS. LEGETTE: No, Your Honor. I would just add that
13 the alternate be asked out of the jury room.

14 THE COURT: Any objections from the defense?

15 MR. PLEXICO: No exceptions or additions from the
16 defense, Your Honor.

17 THE COURT: Does -- if the State and the defense
18 attorney would review all the items of evidence and put on
19 the record your agreement.

20 (Attorneys comply.)

21 THE COURT: For the record, are all of the items of
22 evidence accounted for, and proper and ready to go to the
23 jury? What say the State?

24 MS. LEGETTE: Your Honor, we're in agreement that
25 they're all with the bailiff and they are ready to go to

1 the jury.

2 THE COURT: What says the defense?

3 MR. PLEXICO: Yes, Your Honor.

4 THE COURT: All right. Send it to the jury and bring
5 out the alternate.

6 (Jury deliberations commenced at 12:09 p.m.)

7 THE COURT: Ms. Alternate, you come right over here.

8 THE JUROR: (Complies.)

9 THE COURT: I want to thank you for your service. I
10 want to let you know that your job was invaluable to the
11 process.

12 (Alternate excused.)

13 THE COURT: We'll be at ease until we have a verdict.

14 (Thereafter, Court stood at ease from 12:11 p.m.,
15 until 12:57 p.m., and continued as follows:)

16 THE COURT: For the record, we have several questions
17 from the jury.

18 The first one is: When was the accuser arrested?

19 The next one is: Where was he arrested?

20 The next question is: Where was the other person that
21 was running with him?

22 The next one is: Why didn't he testify?

23 Those are the questions we have. I thought about
24 writing in and saying, you have heard all the evidence
25 that you need to make a decision. Please continue with

VERDICT & SENTENCING

1 your deliberations.

2 Any objection from the State?

3 MS. LEGETTE: No objection, Your Honor.

4 MR. PLEXICO: No objections to that, Your Honor.

5 THE COURT: All right. I'll write that down.

6 (Pause.)

7 THE COURT: Do you want to see what I've written?

8 MS. LEGETTE: No, Your Honor, I --

9 THE COURT: Do you want to take a look at it before I
10 send it back?

11 MS. LEGETTE: No, Your Honor. That's fine.

12 MR. PLEXICO: No, Your Honor.

13 (Thereupon, Court's Exhibit No. 1, note from jury, was
14 marked for the record.)

15 THE COURT: Do you want to take this back to the
16 jury? Take that back to them.

17 THE BAILIFF: (Complies.)

18 (Thereafter, at 1:01 p.m., the Court stood in recess
19 until 1:07 p.m., when the following ensued:)

20 THE COURT: All right. Everybody, let me have your
21 attention real quick. I want you to understand that we
22 are getting ready to receive the verdict from the jury.

23 And I want you to understand that they have a job to
24 do. They don't necessarily want to be here and they're
25 not paid a lot of money but they have a job to do and

VERDICT & SENTENCING

1 those 12 people are going to do what they think is right.

2 Whether it's good or bad or whether you agree with it
3 or whether you don't agree with it, I want you to
4 understand that when that verdict comes back and whenever
5 it's read, I want absolutely no emotion in this
6 courthouse. I don't want anybody to make a sound. If I
7 hear a sound, either good or bad, if you gasp, if you
8 cough or you do anything that I can hear, I'm going to
9 lock you up for 10 days. You will be held in contempt of
10 Court.

11 I advise the Defendant as well. Do you understand
12 that?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Your family over here on the left, do
15 y'all understand what I'm saying? How about everybody on
16 the right? Do you hear me?

17 All right. If you cannot comply with that, then you
18 get up and leave now.

19 Does anybody have any questions about what I said?

20 (No response.)

21 THE COURT: All right. If I hear something, I'm going
22 to nod to you. I want you to put your hands up. All
23 right. Go ahead and bring in the jury.

24 Is the State ready to proceed?

25 (Jury enters courtroom at 1:10 p.m.)

VERDICT & SENTENCING

1 THE COURT: All right. Mr. Foreman, have y'all
2 reached a verdict?

3 FOREPERSON OF THE JURY: Your Honor, we have, sir.

4 THE CLERK: (Document handed to the Judge.)

5 THE COURT: All right. Thank you. All right. I find
6 that the verdict forms are in order, and I would ask that
7 the clerk please publish the verdict.

8 THE CLERK: In the State of South Carolina, the County
9 of Allendale, in the Court of General Sessions, 14th
10 Judicial Circuit, Indictment Number 2009-GS-03-056 and
11 057, the State of South Carolina versus Marquis Breeland,
12 the Defendant.

13 As to indictment number 2009-GS 03-056, murder, we,
14 the jury, unanimously find the Defendant, Marquis
15 Breeland, guilty.

16 As indictment Number 2009-GS-03-057, possession of a
17 weapon during the commission of or attempt to commit a
18 violent crime, we, the jury, unanimously find the
19 Defendant, Marquis Breeland, guilty.

20 Ladies and gentlemen of the jury, is this your
21 verdict?

22 THE JURY: (Collectively). It is.

23 THE CLERK: Is this still your verdict?

24 THE JURY: (Collectively). Yes.

25 THE CLERK: Thank you.

VERDICT & SENTENCING

1 the COURT: Is there anything further, polling from
2 the State?

3 MS. LEGETTE: No, Your Honor.

4 THE COURT: From the defense?

5 MR. PLEXICO: Yes, Your Honor.

6 THE COURT: All right. Madam Clerk, if you would
7 please poll the jury.

8 THE CLERK: Ms. Haynes, is this your verdict?

9 THE JUROR: Yes, it is.

10 THE CLERK: Is it still your verdict?

11 THE JUROR: Yes, it is.

12 THE CLERK: Ms. Salley, is this your verdict?

13 THE JUROR: Yes.

14 THE CLERK: Is it still your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Ms. Aiken, is this your verdict?

17 THE JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 THE JUROR: Yes.

20 THE CLERK: Mr. Jones, is this your verdict?

21 THE JUROR: This is my verdict

22 THE CLERK: And is it still your verdict?

23 THE JUROR: Still my verdict.

24 THE CLERK: Ms. Singleton -- Mr. Singleton?

25 THE JUROR: Yes.

VERDICT & SENTENCING

1 THE CLERK: Is this your verdict?

2 THE JUROR: Yes.

3 THE CLERK: And is it still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Mr. Dent, is this your verdict?

6 THE JUROR: Yes.

7 THE CLERK: And is it still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Mr. Purewal, is this your verdict?

10 THE JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Ms. Jackson, is this your verdict?

14 THE JUROR: Yes.

15 THE CLERK: And is it still your verdict?

16 THE JUROR: Yes.

17 THE CLERK: Mr -- Ms. Lawton. I'm sorry. Mr. Lawton,

18 is this your verdict?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Is it still your verdict?

21 THE JUROR: Yes, ma'am.

22 THE CLERK: Ms. Cave, is this your verdict?

23 THE JUROR: Yes, ma'am.

24 THE CLERK: And is it still your verdict?

25 THE JUROR: Yes, ma'am.

VERDICT & SENTENCING

1 THE CLERK: Ms. Williams, is this your verdict?

2 THE JUROR: Yes.

3 THE CLERK: And is it still your verdict?

4 THE JUROR: Yes.

5 THE CLERK: Ms. Manuel, is this your verdict?

6 THE JUROR: Yes.

7 THE CLERK: And is it still your verdict?

8 THE JUROR: Yes.

9 THE CLERK: Thank you.

10 THE COURT: Thank you very much, members of the jury.

11 I appreciate you being here and I appreciate you doing
12 your job. I appreciate you being here on time, giving us
13 no problem whatsoever and you have made a decision and we
14 are very appreciative for that.

15 I want to thank you personally and I want to thank you
16 on behalf of the State of South Carolina. I want you to
17 know that you have earned a three-year exemption from jury
18 service in this court.

19 And you will receive a check. And when you get that
20 check if you're not satisfied with how much money you get,
21 remember, I didn't write it. I didn't sign it. I have
22 nothing to do with how much money you get. Check with
23 your local representatives about that if you think you
24 should get paid more.

25 You are hereby dismissed. I hope you have a good

VERDICT & SENTENCING

1 weekend and a good rest of the week. Everybody else
2 remain seated while the jury is dismissed.

3 (Jury exits courtroom at 1:14 p.m.)

4 THE COURT: All right. Be glad to hear any motions
5 from the defense.

6 MR. PLEXICO: Your Honor, we would renew our motions
7 for a directed verdict.

8 Your Honor, the only substantial evidence that they
9 had that could lead to this would have been merely the
10 word of Marcus Witherspoon. And just being near the crime
11 scene wouldn't have been enough evidence.

12 We don't believe the sufficiency of the evidence was
13 such that a, upon reflection that it should have gone to
14 the jury. So on that basis we would renew our motion for
15 directed verdict on both charges, Your Honor.

16 THE COURT: All right. Those motions are denied.
17 Anything from the State?

18 MS. LEGETTE: Not from the State, Your Honor.

19 THE COURT: Do you have the sentencing sheets?

20 MS. LEGETTE: Your Honor, we have them. If we could
21 have a few moments, Your Honor, to make certain they're
22 correct.

23 (Pause.)

24 THE COURT: Solicitor, I'll be glad to hear from you.

25 MS. LEGETTE: Your Honor, as far as I understand, the

VERDICT & SENTENCING

1 victim's family does not wish to address the Court. They
2 did want me to tell the Court that they did feel like,
3 they felt they got a dirty look from Mr. Breeland; however
4 that's to be expected I suppose.

5 I do have his prior record, Your Honor. And that is
6 as follows: A 2000 trespassing; a 2002, burglary third
7 degree; a 2002, forgery; a 2003, burglary third degree; a
8 2004, possession of cocaine; a 2006, pointing and
9 presenting a firearm, and an assault and battery of a high
10 and aggravated nature. He was convicted at trial for
11 that. And a 2008 assault and battery of a high and
12 aggravated nature pled down from an ABWIK.

13 And that's all of his record, Your Honor.

14 THE COURT: Thank you very much. Mr. Plexico?

15 MR. PLEXICO: Thank you, Your Honor.

16 Your Honor, my client is a young man. I understand
17 the jury's verdict.

18 This is a very, very serious crime, Your Honor. We
19 would ask that, that you give him the minimum sentence
20 which is 30 years and serve day for day on the murder.
21 There's absolutely no parole. It's an extremely harsh
22 sentence, Your Honor.

23 As it stands, I believe he could lead a productive
24 life if he was out of prison, Your Honor. That will be
25 punishment to think about that which he has been found

VERDICT & SENTENCING

1 guilty of and to make penitence for that, Judge. And we
2 would ask for 4057, that that run concurrent.

3 His mother does not wish to address the Court.

4 Anything you want to say?

5 THE DEFENDANT: I just want to say, Your Honor, you
6 know, even though I wasn't the one who did this, but I got
7 found guilty, you know what I'm saying, no, nobody, just
8 saying, you know what I'm saying, investigate to the
9 fullest, you know. So I caught the hand of all.

10 And if they meant for me to go in and, you know, see
11 somebody tell it like it was, see, I'm just accepting how
12 it is. You know, I ain't proud of it, you know, but a man
13 did die, you know. I didn't do it, you know what I'm
14 saying, but I can understand the hurt, I know that I'm not
15 pivotal to this and I didn't do it and it wasn't no
16 evidence to show that I did do it.

17 Just, you know, I guess, it's like they want me to be
18 the one, you know, because they locked the wrong person
19 up. And I'm just shocked, you know what I'm saying,
20 because things happen. But things happen. Bad things
21 happen to him and I know that. My mama's got to cry, too,
22 because his mama had to cry, you know. I ain't did it,
23 you know, that's the truth. I'm telling the truth. I'm
24 telling the truth.

25 Life goes on. You know, if anybody in this courtroom

1 who dis me because things like this happen when you're out
2 here on the streets.

3 That's all I have to say.

4 THE COURT: SENTENCE OF THE COURT ON INDICTMENT
5 2009-GS-03-00056, IS THAT THE DEFENDANT IS COMMITTED TO
6 THE STATE DEPARTMENT OF CORRECTIONS FOR LIFE.

7 IN REFERENCE TO 2009-GS-03-00057, THE DEFENDANT IS
8 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A
9 TERM OF FIVE YEARS AND THAT WILL BE CONSECUTIVE.

10 Mr. Breeland, I want you to understand that if you
11 want to appeal this matter, you have to do so within 10
12 days.

13 THE DEFENDANT: Yes, sir.

14 MS. LEGETTE: Thank you, Your Honor.

15 END OF CASE: 1:20 P.M.

16 * * * *

17 CERTIFICATE OF REPORTER

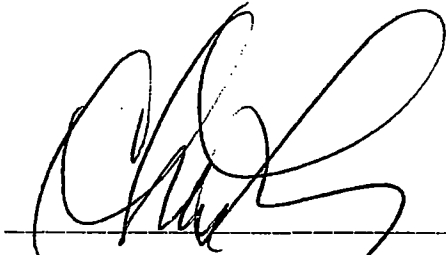
18 I, Cheri L. Young, Registered Professional Reporter,
19 and Official Court Reporter for the State of South
20 Carolina, do hereby certify that the foregoing transcript
21 of proceedings heard on Monday, August 8, 2011, Tuesday,
22 August 9, 2011, and Wednesday, August 10, 2011, in
23 Allendale, South Carolina, was reported by me using
24 machine shorthand and realtime computer-aided translation
25 and is a true, accurate and complete transcript of the

1 proceedings had and evidence introduced in the hearing of
2 the matter.

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

5 I have hereunto set my hand this Monday, the 30th day
6 of September, 2011.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



Cheri L. Young, RPR
Official Court Reporter

 ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

OCT 04 2012

Appeal from Allendale County

SC Court of Appeals

William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARQUIS BREELAND,

APPELLANT

Appellate Case No. 2011-197633

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE.....	4
ARGUMENT	
The trial court judge erred when he did not grant Breeland's motion for a directed verdict when the evidence adduced at trial did not amount to more than a mere suspicion that he was guilty of shooting the victim.....	5
CONCLUSION.....	9

TABLE OF AUTHORITIES

Cases

<u>State v. Arnold</u> , 361 S.C. 386, 605 S.E.2d 529 (2004)	8
<u>State v. Bostick</u> , 392 S.C. 134, 708 S.E.2d 774 (2011)	8
<u>State v. McHoney</u> , 344 S.C. 85, 544 S.E.2d 30 (2001)	7
<u>State v. Rothschild</u> , 351 S.C. 238, 569 S.E.2d 346 (2002)	7
<u>State v. Schrock</u> , 283 S.C. 129, 322 S.E.2d 450 (1984)	8

STATEMENT OF ISSUE ON APPEAL

Whether the trial court judge erred when he did not grant Breeland's motion for a directed verdict when the evidence adduced at trial did not amount to more than a mere suspicion that he was guilty of shooting the victim?

STATEMENT OF THE CASE

Marquis Sentel Breeland was indicted by the Allendale County grand jury of murder and possession of a weapon during the commission of a violent crime during its March 2010 term. He was tried before the Honorable H. William Seals, Jr. and a jury August 8- 10, 2011. He was represented by Stephen Plexico, Esquire. The state was represented by Tameaka A. Legette and Robert E. Ferguson, Jr., Esquires.

He was convicted and sentenced to life in prison.

This appeal timely follows.

ARGUMENT

The trial court judge erred when he did not grant Breeland's motion for a directed verdict when the evidence adduced at trial did not amount to more than a mere suspicion that he was guilty of shooting the victim.

Breeland was convicted of events that occurred on July 22, 2007. On that day, the victim, Laurice Garvin, was shot and killed at Kennedy Park, in Allendale, South Carolina.

The victim's body was located 40 feet from his car that was located on Robin Street, adjacent to the park. R. 33, ll. 16-20. The crime scene investigator, without objection, opined that the victim was shot through the driver's side window. R. 46, ll. 5-8. According to the investigator, it appeared that the victim was able to get out of the vehicle, and then was shot at least three more times. R. 48, ll. 2-10. Police recovered four cartridge casings at the scene. R. 42, ll. 9-13.

Antonio Frazier, a friend of the victim's, testified that he was not aware of any animus between Breeland and the victim. R. 59, ll. 22-24.

Patricia Ann Bradley testified that she saw Breeland, Anthony Sanders, and Ricky Brandt at the corner of Kennedy Park, along with another short black male. She also conceded that there could have been other people standing around the corner, as well. She stated that the area was a "very public place." R. 63, l. 21- 64, l. 3. Around the time that the victim was killed, she did not observe anyone doing anything criminal or illegal. R. 64, l. 24- 65, l. 5.

Richard Priester testified that he observed three men running away from Kennedy Park after he heard the gunshots. He did not know who they were. R. 71, l. 19- 73, l. 6.

Willie James Elmore testified that back in July of 2007 (specific date not testified to), he heard Breeland say "he was going to kill that dude." R. 74, ll. 8-22. Elmore testified that he gave a statement to in 2007 to law enforcement that Breeland said he was wanted to kill the victim. He testified that he did not think that he meant to do it. R. 75, l. 17- 76, l. 14. He testified that Breeland pulled out "something" but he did not know what it was. R. 77, ll. 8-18; R. 78, ll. 1-21. After the victim was killed, Breeland told Elmore that he did not know who did it. R. 78, l. 23- 79, l. 9.

Dwann Devoe, who, along with a friend, was driving his car around Kennedy Park, testified that he saw Breeland and Anthony Sanders running towards him. They flagged him down and asked for a ride. At the time of this encounter, law enforcement had already arrived at the scene of the shooting. R. 81, ll. 19-25. Devoe was driving toward Kennedy Park because he had heard that somebody had been killed. R. 83, ll. 12-25.

The state tried to get him to testify that Breeland appeared "nervous."

Q. Yes, sir. But so were they acting like they were nervous?

A: At the time they were, but at the same time they were panicking too, because they was running at that same time, too.

Q: Yes, sir. So you said in your statement they were acting really nervous; right?

A: Yes, ma'am.

R. 90, ll 8-15.

Latrincy Carter corroborated Devoe's account that he and Devoe picked them up in the car and gave them a ride to a friend's house, located close to the park. R. 93, l. 6- 96, l. 19.

The centerpiece of the State's case against Breeland was the testimony of Marcus Witherspoon. At the time of trial, Witherspoon had pleaded guilty to a federal drug charge subjecting him to a possible life sentence. He testified that he was hoping to receive a lighter sentence for testifying for the State of South Carolina. He testified that on the night of July 22, 2000, he saw Breeland. He stated that Breeland came to Witherspoon's house and "basically just told me that he was the one that, you know, pulled the trigger." R. 99, l. 8-102, l. 24. Witherspoon could not really explain why Breeland would say this to him other than he thought maybe he wanted recognition. R. 103, ll. 1-13. Witherspoon signed a plea agreement with the US Attorney's Office to cooperate with the government. R. 104, l. 3-114, l. 3.

Other than this evidence, nothing tended to show that Breeland shot the victim. There were no eyewitnesses, and there was no further evidence connecting him to the crime. At the close of the State's case, trial counsel made a motion for a directed verdict based on the lack of evidence adduced at trial. The trial court judge denied the motion. R. 155, l. 20-157, l. 14.

The court judge erred when he did not grant the motion for directed verdict because the evidence presented did not rise above the level of mere suspicion that Breeland was guilty of this crime. Breeland did not present a defense. Trial counsel renewed his motion for a directed verdict. R. 161, ll. 7-19.

A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged. State v. McHoney, 344 S.C. 85, 97, 544 S.E.2d 30, 36 (2001); State v. Rothschild, 351 S.C. 238, 243, 569 S.E.2d 346, 348 (2002). A circuit judge should grant a directed verdict motion when the evidence merely raises a suspicion the accused is guilty.

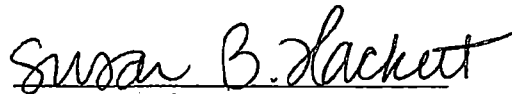
State v. Schrock, 283 S.C. 129, 132, 322 S.E.2d 450, 451-52 (1984). Mere suspicion is insufficient to support a guilty verdict. See State v. Arnold, 361 S.C. 386, 389-90, 605 S.E.2d 529, 531 (2004).

Here, the state never introduced any evidence regarding a motive or a murder weapon that could be traced to Breeland. See State v. Bostick, 392 S.C. 134, 708 S.E.2d 774 (2011). The state did not present any eyewitnesses. The state could not show any connection between Breeland and the weapon. The state did not show any relationship between Breeland and the victim. Additionally, there was *absolutely* no evidence he ever possessed a gun. The state's case rested solely on the purported confession made to a person hoping to derive some reward for the testimony. The evidence did not rise above a mere suspicion that Breeland was guilty of murdering the victim. The trial court judge erred, and respectfully Breeland asks this Court to reverse his convictions.

CONCLUSION

For the preceding reason, Breeland respectfully asks this Court to reverse his convictions.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

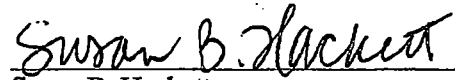
ATTORNEY FOR APPELLANT

This 4th day of October, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 4, 2012


Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Allendale County
William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MARQUIS BREELAND,

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 Alphonso Simon, Jr., Esquire, at the Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, South Carolina 29201, this 4th day of October, 2012.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of October, 2012.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: October 2, 2013.

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Allendale County
The Honorable H. William Seals, Jr., Circuit Court Judge
Appeal No. 2011-197633

THE STATE

RESPONDENT,

V.

MARQUIS SENTEL BREELAND,

APPELLANT

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
South Carolina Attorney General's Office
PO Box 11549
Columbia, SC 29211-1549
(803) 734-6307

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit
P. O. Box 1880
Bluffton, SC 29910

ATTORNEYS FOR RESPONDENT

RECEIVED

OCT 04 2012

SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES	ii
APPELLANT'S STATEMENT OF ISSUE ON APPEAL	1
RESPONDENT'S STATEMENT OF ISSUE ON APPEAL	2
RESPONDENT'S STATEMENT OF ISSUE ON APPEAL	2
STATEMENT OF THE CASE	3
STATEMENT OF FACTS	4
ARGUMENT	6
THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT; THE STATE PRESENTED SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE OF APPELLANT'S GUILT	6
CONCLUSION	12

TABLE OF AUTHORITIES

Cases

<u>State v. Belcher</u> , 385 S.C. 597, 685 S.E.2d 802 (2009)	11
<u>State v. Bostick</u> , 392 S.C. 134, 708 S.E.2d 774 (2011)	7
<u>State v. Cherry</u> , 361 S.C. 588, 606 S.E.2d 475 (2004)	7
<u>State v. Irvin</u> , 270 S.C. 539, 243 S.E.2d 195 (1978)	7
<u>State v. Kelsey</u> , 331 S.C. 50, 502 S.E.2d 63 (1998)	6
<u>State v. Manis</u> , 214 S.C. 99, 51 S.E.2d 370 (1949)	7
<u>State v. Martin</u> , 340 S.C. 597, 533 S.E.2d 572 (2000)	7
<u>State v. Massey</u> , 267 S.C. 432, 229 S.E.2d 332 (1976)	7
<u>State v. Mitchell</u> , 341 S.C. 406, 535 S.E.2d 126 (2000)	6
<u>State v. Nichols</u> , 325 S.C. 111, 481 S.E.2d 118 (1997)	7
<u>State v. Schrock</u> , 283 S.C. 129, 322 S.E.2d 450 (1984)	7
<u>State v. Weston</u> , 367 S.C. 279, 625 S.E.2d 641 (2006)	6
<u>State v. Williams</u> , 321 S.C. 327, 468 S.E.2d 626 (1996)	6

Statutes

S.C. Code Ann. § 16-1-60 (2010)	6
S.C. Code Ann. § 16-3-10 (2003)	6
S.C. Code Ann. § 16-23-490 (2010)	6

APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court judge erred when he did not grant Breeland's motion for a directed verdict when the evidence adduced at trial did not amount to more than a mere suspicion that he was guilty of shooting the victim?

RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Appellant's motion for a directed verdict when the State presented substantial circumstantial evidence of Appellant's guilt?

STATEMENT OF THE CASE

On August 8-10, 2011, Appellant Marquis Sentel Breeland ("Breeland") was tried by a jury for the murder of Laurice Garvin and for possession of a weapon during the commission of a violent crime. Appellant was tried in the Allendale County Court of General Sessions before the Honorable H. William Seals, Jr., Circuit Court Judge. Stephen T. Plexico, Esquire of the Fourteenth Judicial Circuit's Public Defender's Office, represented Appellant. The State was represented by Tameaka A. Legette, Esquire and Robert E. Ferguson, Jr., Esquire, both Assistant Solicitors for the Fourteenth Judicial Circuit. On August 10, 2011, Breeland was convicted of murder and possession of a weapon during the commission of a violent crime. (R. p. 210). He was sentenced to confinement for life for the murder conviction, and five years confinement for the possession of a weapon during the commission of a violent crime, both to be served consecutively. (R. p. 217). Before this Court is Appellant's direct appeal of both convictions. He requests this Court reverse his convictions and order a new trial. The State respectfully requests this Court deny Appellant's appeal and affirm his convictions.

STATEMENT OF FACTS

On July 22, 2007, the victim Laurice Jerome Garvin was found shot to death in Allendale. The forensic pathologist testified that Garvin had three gunshot wounds, two to the head and one to the chest. (R. p. 145). The pathologist determined that the victim died as a result of a laceration to the brain due to the gunshot wounds to the head. (R. p. 153).

Daphne Conner, a local resident, testified that on July 22, 2007, she saw a body laying in the road at Kennedy Park in Allendale. (R. p. 15-6). She also noticed there was a car at the edge of the road. (R. p. 16). Conner called 911. (R. p. 17). She indicated that it took approximately five minutes from law enforcement and the ambulance to arrive. (R. p. 17).

Marlene Levette Love testified that she was visiting at her mother's house in Kennedy Park on July 22. She indicated that she heard sounds that were similar to firecrackers. (R. p. 19). Everyone in her mother's house got down because they thought someone was shooting a firearm outside. After two minutes, she peeped out the window and saw a car light shining on a body. (R. p. 19). She noted the car was just outside the road. (R. p. 19). Love noted that she did not see anyone else when she looked out. (R. p. 21).

When law enforcement and EMS arrived, the victim was laying in the street. (R. p. 23). There were several gunshot wounds, including one to the head and another to the collarbone area. (R. p. 23). The victim was not breathing, had no pulse, and had no electrical activity according to the EKG. (R. p. 23). The victim was classified as dead on arrival. (R. p. 24).

John Sullivan, who was then a sheriff's deputy who oversaw operations at the Allendale Police Department, testified that when he arrived, the victim was in the roadway, covered, and was 175 ft or so away from a car that was in a ditch. (R. pp. 26-27). Karl Kenley of SLED testified the victim's body was approximately 140 ft from the car. (R. pp. 35, 36, 39-40). He noted that the vehicle was still in the drive position when they arrived. (R. pp. 38, 39). Four cartridge casings were recovered from the scene. (R. p. 42). A fired projectile was discovered in the rear seat on the driver's side of the vehicle. (R. pp. 43-44). Kenley also testified that the victim was possibly driving while sitting in an inclined position. (R. pp. 45-46). He noted that the victim was shot while in that position because the dowel rods and the holes in the seat corresponded with the wounds found on the right side of the victim's chest. (R. p. 46). The person who shot him would have had to be standing outside the driver's side window. (R. p. 46).

Kenley was also able to determine that the shooting occurred at or near where the cartridge casings were recovered. (R. pp. 47-48). He noted that no blood was found in the car, which indicated the victim either did not start bleeding before he got out of the car or his clothing absorbed any bleeding that may have occurred while he was in the vehicle. (R. p. 48). Kenley noted the victim was shot at least three more times after he got out of the vehicle. (R. p. 48).

ARGUMENT

THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION FOR A DIRECTED VERDICT; THE STATE PRESENTED SUBSTANTIAL CIRCUMSTANTIAL EVIDENCE OF APPELLANT'S GUILT.

Standard of Review

"'Murder' is the killing of any person with malice aforethought, either express or implied." S.C. Code Ann. § 16-3-10 (2003). "'Malice' is the wrongful intent to injure another and indicates a wicked or depraved spirit intent on doing wrong." State v. Kelsey, 331 S.C. 50, 62, 502 S.E.2d 63, 69 (1998).

If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16-1-60, he must be imprisoned five years, in addition to the punishment provided for the principal crime.

S.C. Code Ann. § 16-23-490 (2010). By statute, murder is a violent crime. S.C. Code Ann. § 16-1-60 (2010).

"A defendant is entitled to a directed verdict when the state fails to produce evidence of the offense charged." State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "If there is any direct or substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court must find the case was properly submitted to the jury." Id. at 292-93, 25 S.E.2d at 648.

A case should be submitted to the jury when the evidence is circumstantial "if there is any substantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced." State v. Mitchell, 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000); see also State v. Williams, 321 S.C. 327, 332, 468 S.E.2d 626, 629 (1996). "The jury weighs the evidence but when there is an absence of evidence, it

becomes the duty of the trial judge to direct a verdict...." State v. Schrock, 283 S.C. 129, 134, 322 S.E.2d 450, 452–53 (1984). Evidence must constitute positive proof of facts and circumstances which reasonably tends to prove guilt. Id. at 133, 322 S.E.2d at 452 (citing State v. Manis, 214 S.C. 99, 51 S.E.2d 370 (1949)). "Unless there is a total failure of competent evidence as to the charges alleged, refusal by the trial judge to direct a verdict of acquittal is not error." State v. Irvin, 270 S.C. 539, 543, 243 S.E.2d 195, 197 (1978) (citing State v. Massey, 267 S.C. 432, 229 S.E.2d 332 (1976)). On appeal of the denial of a directed verdict of acquittal, this Court must look at the evidence in the light most favorable to the State. State v. Martin, 340 S.C. 597, 602, 533 S.E.2d 572, 574 (2000).

State v. Bostick, 392 S.C. 134, 139, 708 S.E.2d 774, 776–77 (2011). In ruling on a motion for a directed verdict, a trial judge is concerned only with the existence of evidence, not with its weight. State v. Nichols, 325 S.C. 111, 122, 481 S.E.2d 118, 124 (1997). "[A] trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis." State v. Cherry, 361 S.C. 588, 594, 606 S.E.2d 475, 478 (2004).

Argument at Trial

After the State rested its case, Breeland moved for a directed verdict. (R. p. 155). Specifically, Breeland argued as follows:

Your Honor, after hearing all the evidence put forth by the State, I just don't see how the State has carried its burden, Your Honor.

They have only placed my client in the area that Mr. Garvin was shot. They have not placed a gun in possession of my client.

They have, their own witnesses have described people being in that area, on that corner, as normal. There're normally a number of people who are there on that corner. This is a normal activity at best. My client is – at worst my client is engaged in a normal activity of being in the area and being on that corner. There's no evidence that he shot at this individual.

There is the only thing they put forward was, is that he was -- that he was seen running some unestablished distance from the area, at least blocks, after the shooting, perhaps 10 to 15 minutes after the shooting which, of course, you could go much farther than blocks. And that he had prior, made a prior statement that he was going to shoot the individual.

While all of that creates a strong suspicion, Your Honor, I don't think that is enough in law to go forward to take it to a jury on murder.

They just don't have any evidence in this case. And all they can possibly do is speculate. And a suspicion, however strong, I think the case law is still good, I think it entitles the Defendant to a directed verdict on both the murder indictment and on the use of a weapon during the commission of a violent crimes. Those being indictments for murder 2009-GS-03-0056, and 2009-GS-032-0057, the latter being possession of a weapon during the commission of a violent crime.

We just don't think there's enough evidence to go to a jury, Your Honor. Thank you:

(R. pp. 155, l 22 – R. p. 157, l 5).

The trial court denied the motion.

We do have the Defendant in the area where a crime happened; we do have the Defendant running away from that direction shortly after the crime happened; we have a witness that says he was indeed the trigger man.

We have circumstantial evidence, I think, certainly enough to go to the jury.

(R. p. 157, ll 7-12).

Appellant renewed the motion after he rested his case. (R. p. 161). It was also denied by the trial court. (R. p. 161).

Relevant Facts and Argument

Appellant was not entitled to a directed verdict for the murder charge; the State presented substantial circumstantial evidence establishing Appellant murdered Laurice Garvin through Appellant's confession to Marcus

Witherspoon, and the presentation of testimony and evidence establishing Appellant's presence in the vicinity of the murder shortly before and shortly after it occurred, along with Appellant's statements indicating that he wanted to kill Mr. Garvin.

When viewed collectively and in looking at the evidence in the light most favorable to the State, it is clear the State presented substantial circumstantial evidence that Appellant committed the murder in this case. First, there was substantial evidence establishing that the victim was killed at the hands of another. The pathologist testified that the victim died as a result of a laceration to the brain due to gunshot wounds to the head. (R. p. 153).

There was testimony indicating Appellant was in the vicinity of the shooting around the time of the shooting. Ms. Bradley testified that she saw Appellant on the corner of the street where the shooting occurred on July 22. (R. pp. 60-61). She noted that Appellant was with Liberace. (R. p. 61). She further indicated that there was at least one other short black male on the corner with Appellant. (R. p. 64). During cross-examination, she indicated that she stated she saw Appellant, and Anthony Sanders, but she did not see Ricky Brandt that day. (R. pp. 63-64).

Mr. Priester, who on the day of the shooting was visiting a friend who lived on the street where the shooting occurred, testified that he saw three males running through a path some time shortly after the shooting occurred. (R. pp. 68-71, 72-73). Priester indicated that two of the males were taller than five feet, six inches tall, and the other was shorter. (R. pp. 68, 69-70).

Mr. Devoe testified that he was riding with Latrincy Carter through Kennedy Park shortly after the shooting. (R. pp. 81-82). Devoe noted that

Appellant and Anthony Sanders were running towards a stop sign. (R. p. 81). Appellant and Sanders requested a ride from Carter and Devoe. (R. p. 81). Devoe noted that Appellant and Sanders were running off the same street where the victim's body was located. (R. p. 84). Devoe testified that both Appellant and Sanders were running, and they were out of breath when they stopped Devoe and Carter. (R. p. 82). Devoe also indicated that in the statement he gave law enforcement in 2007, Devoe noted the Appellant and Sanders were acting nervous. (R. p. 90). Appellant and Sanders both requested and received a ride to a location that was a few streets away from the where the victim was killed. (R. p. 82).

Mr. Carter also testified that he and Devoe drove to see where the victim was shot on July 22. (R. p. 93). Carter saw Appellant and Sanders that evening. Carter indicated that Appellant and Sanders asked for a ride to the Morrells' house. (R. p. 93). Carter also stated that Appellant and Sanders informed them that they were not heading in the direction of where the victim was shot. (R. p. 93). Carter surmised that he and Devoe ran into Appellant and Sanders between ten and thirty minutes after the shooting, but he was not sure when the shooting occurred. (R. pp. 95-98).

There was also testimony that Appellant actually shot the victim. Appellant admitted to Marcus Witherspoon that he shot the victim. Witherspoon testified that he saw Appellant on July 22 after the shooting. (R. pp. 101-02). Witherspoon indicated that Appellant was with Freddie Washington and another

man that Witherspoon knew as Antron.¹ (R. p. 102). Appellant, Washington and Antron came to Witherspoon's back door, and they talked with Witherspoon on his back porch. (R. p. 109). Witherspoon testified that Appellant told him that he was the one who shot the victim. (R. pp. 102-03).

Finally, there was evidence that the shooting was done with malice aforethought. First, Mr. Elmore testified that he saw Appellant on the day of the shooting. Elmore testified that Appellant stated that he was going to kill the victim. (R. p. 74). Elmore, who knew Appellant only by his street name, Roadkill, stated "[w]e was standing there talking and all of a sudden he say he going to kill that dude." (R. p. 74, ll 16-7). Elmore noted that he witnessed Appellant pull out something that Elmore believed could have been a gun. (R. pp. 75-76, 77-78, 79). Elmore indicated he did not really see the gun, but knew that Appellant pulled out something and that Appellant said he was going to kill somebody. (R. p. 77). Second, malice could be inferred from Appellant's use of a firearm in killing the victim. See State v. Belcher, 385 S.C. 597, 612 n.9, 685 S.E.2d 802, 810 n.9(2009)(noting that State can argue for finding of malice from use of deadly weapon in murder, even if jury not given implied malice charge).

Altogether, Respondent submits Appellant was not entitled to a directed verdict on the murder charge. Since the trial court did not err in denying the denying the directed verdict motion as it relates to the murder charge, Appellant's conviction for murder should be affirmed.

¹ Witherspoon later testified that Antron's street name was Liberace. (R. p. 109).

CONCLUSION

For the foregoing reasons, the Respondent respectfully requests this Court to deny Appellant's appeal and affirm his convictions in the murder of Laurice Garvin.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

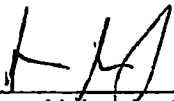
DONALD J. ZELENKA
Assistant Deputy Attorney General

ALPHONSO SIMON JR.
Assistant Attorney General
Bar No. 74713

Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ISAAC MCDUFFIE STONE, III
Solicitor, Fourteenth Judicial Circuit
P. O. Box 1880
Bluffton, SC 29910

ATTORNEYS FOR RESPONDENT

By: 
Alphonso Simon Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

(803) 734-6305

October 4, 2012

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Allendale County
The Honorable H. William Seals, Jr., Circuit Court Judge
Appeal No. 2011-197633

THE STATE

RESPONDENT,

V.

MARQUIS SENTEL BREELAND,

APPELLANT

CERTIFICATE OF SERVICE

I, Alphonso Simon, Jr., 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 U.S. mail, first class, postage prepaid to his attorney of record, Susan Hackett, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. 401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 4th day of October, 2012.



ALPHONSO SIMON, JR.
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Allendale County
The Honorable H. William Seals, Jr., Circuit Court Judge
Appeal No. 2011-197633

THE STATE

RESPONDENT,

V.

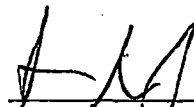
MARQUIS SENTEL BREELAND,

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 4th day of October, 2012.



ALPHONSO SIMON, JR.
Assistant Attorney General

ATTORNEY FOR RESPONDENT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Marquis Breeland, Appellant.

Appellate Case No. 2011-197633

Appeal From Allendale County
William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2013-UP-073
Heard December 11, 2012 – Filed February 13, 2013

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy
Attorney General Donald J. Zelenka, Assistant Attorney
General Alphonso Simon, Jr., all of Columbia, and
Solicitor Isaac McDuffie Stone, III, of Bluffton, for
Respondent.

PER CURIAM: Marquis Breeland appeals his convictions for murder and possession of a weapon during the commission of a violent crime, arguing the trial court erred in denying his motion for a directed verdict because the evidence adduced at trial did not amount to more than a mere suspicion that he was guilty of shooting the victim. We affirm pursuant to Rule 220(b), SCACR, and the following authorities: *State v. Brandt*, 393 S.C. 526, 542, 713 S.E.2d 591, 599 (2011) ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [c]ourt must find the case was properly submitted to the jury." (quoting *State v. Weston*, 367 S.C. 279, 292-93, 625 S.E.2d 641, 648 (2006))); *id.* ("When reviewing a denial of a directed verdict, an appellate court views the evidence and all reasonable inferences in the light most favorable to the State."); *State v. Cherry*, 361 S.C. 588, 593, 606 S.E.2d 475, 477-78 (2004) (providing that when considering a directed verdict motion, the trial court is concerned with the existence of evidence rather than its weight); *id.* at 594, 606 S.E.2d at 478 ("[A] trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis."); *State v. Gaster*, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002) ("On an appeal from the trial court's denial of a motion for a directed verdict, the appellate court may only reverse the trial court if there is no evidence to support the trial court's ruling.").

AFFIRMED.

SHORT, THOMAS, and PIEPER, JJ., concur.

AW
14

FORM 5

STATE OF SOUTH CAROLINA

FILED FOR RECORD

COUNTY OF Allendale S.C.

2013 APR 10 AM 11:10 THE COURT OF COMMON PLEAS

2013-CP-03-61

Marquis Beeland 298259CLERK OF COURT
ALLLENDALE COUNTY, S.C.

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

v.

State of South Carolina

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 Lieber Correctional Institution P.O. Box 205 Ridgville SC 29472
2. Name and location of Court which imposed sentence Allendale County General Sessions P.O. Box 126 Allendale SC 29810
3. Name(s) of co-defendant(s) (if any) Anthony Sanders
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-LS-03-056 (Murder)
 - (b) 2009-LS-03-057 (Possession of a weapon during a violent crime)
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) August 10, 2011 (Life)
 - (b) August 10, 2011 (5 years)

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty Not Guilty
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Supreme Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. February 13, 2013
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unknown
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective Assistance of Trial Counsel
- (b) ~~Denying~~ Trial Court's denial motion for a directed verdict
- (c) Trial court Judge erred

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

- (a) Trial Counsel failed to object to Solicitor Misconduct/Critical Brady violation
- (b) Trial court judge erred by denying motion for directed verdict when evidence did not
- (c) rise above mere suspicion the Breckend was guilty of murdering the victim

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
Yes
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. The grounds of the trial court erred in denying my motion for a
- ii. Directed Verdict
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Post-Conviction is the Avenue To Raise These issue's
- (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? Yes
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. Elizabeth A. Franklin-Best P.O. Box 11589 Columbia, S.C. 29211-11589
- ii. Susan B. Heckert-H P.O. Box 11589 Columbia, S.C. 29211-11589
- iii. Stephen Plexico-P.O. Box 506 Hampton, SC 29924
- (b) the proceedings at which each such attorney represented you:
- i. Elizabeth A. Franklin-Best - Appellate Defender
- ii. Susan B. Heckert-H ~~P.O. Box~~ - Appellate Defender
- iii. Stephen Plexico Trial Lawyer
19. State clearly the relief you seek in filing this application:
New Trial / Conviction Vacated
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA)

County of Allendale)

VERIFICATION

Marquis Breekind 248254

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.

Marquis Breekind 248254

SWORN to and subscribed before me this 15th
day of April, 2013

Elyna Jones (L.S.)
Notary Public

My Commission Expires:

1/24/2018

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

I, Marquis Breeland, 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.

Marquis Breeland 298259
Applicant

SWORN or affirmed to and subscribed before me this
15 day of April, 2018

Sybil Jones
Notary Public
My Commission Expires: 4/24/2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ALLENDALE	)	
	)	
	)	2013-CP-03-0061
	)	
Marquis Breeland, #298259,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed April 10, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Allendale County Clerk of Court. The Applicant was indicted at the March 2010 term of the Allendale County Grand Jury for murder (2009-GS-03-0056) and possession of a weapon during the commission of a violent crime (2009-GS-03-0057). The Applicant was represented by Steven Plexico, Esquire.

The Applicant proceeded to trial and was convicted as indicted. On August 10, 2011, the Applicant was sentenced by the Honorable William H. Seals, Jr. to confinement for a period of life for murder and five (5) years for possession of a weapon during the commission of a violent crime.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Elizabeth Franklin-Best, Esquire, and Susan Hackett, Esquire, of the Office of Appellate Defense. The

Applicant's convictions and sentences were affirmed by the Court of Appeals. State v. Breeland, No. 2013-UP-073 (S.C. Ct. App. February 13, 2013). The Remittitur was issued on March 7, 2013.

Attached herewith and incorporated herein are the records of the Allendale County Clerk of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to object to solicitor misconduct and critical Brady violation.
2. Trial judge erred by denying motion for direct verdict when evidence did not rise above mere suspicion that Applicant was guilty of murdering the victim.

III.

The Applicant alleges ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel

rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant's second allegation regarding the trial judge's denial of his motion for directed verdict at trial should be summarily dismissed. 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). The Applicant could have raised this issue on appeal and the issue was indeed raised on appeal and ruled on by the Court of Appeals.. Therefore, the Court should summarily dismiss this allegation as it is a direct appeal issue that is procedurally barred by S.C. Code §17-27-20(b) (2003).

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held and this Court summarily dismiss the Applicant's claim regarding the trial judge's denial of his motion for directed verdict.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

September 22, 2014

STATE OF SOUTH CAROLINA

COUNTY OF ALLENDALE

MARQUIS BREELAND,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

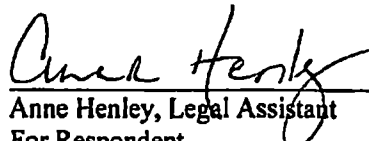
2013-CP-03-0061

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the abovecaptioned 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:

Mr. Evan K. Bromley
10 Pinckney Colony Rd, Ste 200
Bluffton, SC 29909

DATED this 22nd day of September, 2014


 Anne Henley, Legal Assistant
 For Respondent

FORM 5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ALLENDALE	)	CASE NO.: 2013-CP-03-00061
MARQUIS BREELAND 298259	)	
	)	AMENDED
vs.	)	APPLICATION FOR
	)	POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA	)	

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 the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention: **Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472**
2. Name and location of Court which imposed sentence: **Allendale County, General Sessions, PO Box 126, Allendale, SC 29810**
3. Name(s) of co-defendant(s) (if any): **Anthony Sanders**
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) **2009 GS-03-056 (Murder)**
 - (b) **2009- GS-03-057 (Possession of a weapon during a violent crime)**
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) **August 10, 2011 (life)**
 - (b) **August 10, 2011 (5 years)**
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
 - (b) after a plea of not guilty X Not Guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Affirmed trial court ruling(s)
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. Filed on February 13, 2013
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. Unpublished Opinion No. 2013-UP-073
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
 - (b)
 - (c)

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) **Ineffective assistance of trial counsel.**
 - (b) **Trial Court's denial of Motion for a Directed Verdict.**
 - (c)
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) **Trial counsel failed to object to Solicitor misconduct, critical Brady violation.**
 - (a) **Trial counsel failed to use an available preemptory strike on juror Ora Cave, sister to key witness Willie James Elmore.**
 - (a) **Trial counsel failed to object to the solicitor's closing argument wherein Mr. Breeland was prejudicially and improperly referred to as "the face of evil", "evil" and "wicked" along with a reference to a faux "robe of righteousness", among other improper comments.**
 - (b) **Trial Court Judge erred by denying Motion for Directed Verdict when evidence did not rise above mere suspicion that Breeland was guilty of murdering the victim.**
12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? **No.**
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? **No.**
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? **No.**
 - (d) any other petitions, motions or applications in this or any other Court? **No.**
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or

Revised 3/2003

application:

(a) the specific nature thereof:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

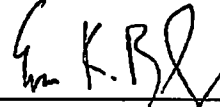
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? **Yes.**
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. **The grounds of the Trial Court erred in denying Motion for a Directed Verdict.**
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. **On Appeal** _____
- 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) **Post-conviction is the avenue to raise these issues.**
- (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? **Yes.**
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. **Elizabeth A. Franklin-Best**
PO Box 11589
Columbia, SC 29211
 - ii. **Susan B. Hackett**
PO Box 11589
Columbia, SC 29211
 - iii. **Stephen Plexico**
PO Box 506
Hampton, SC 29924
- (b) the proceedings at which each such attorney represented you:
- i. **Elizabeth A. Franklin-Best – Appellate Defender**
 - ii. **Susan B. Hackett – Appellate Defender**
 - iii. **Stephen Plexico – Trial Lawyer**
19. State clearly the relief you seek in filing this application: **New trial/conviction vacated.**
20. Are you now under sentence from any other court that you have not challenged? **No.**

[Signature page to follow]

Respectfully submitted,

WARD & BROMLEY, LLC



Evan K. Bromley, Attorney at Law
7 Simmonsville Road, Suite 200

Bluffton, SC 29910

Evan@WardBromley.com

Tel: (843) 706-2896

Fax: (843) 706-2894

Attorney for Marquis Breeland

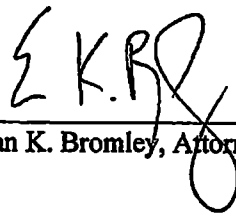
Bluffton, South Carolina
October 8, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ALLENDALE	)	CASE NUMBER: 2013-CP-03-0061
	)	
MARQUIS BREELAND (298259),	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF SERVICE
vs.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	

I, Evan K. Bromley, of WARD & BROMLEY, LLC, do hereby certify that on October 8th, 2015, I served copies of the following documents to the party(ies) named below by e-mail and by depositing same into the United States mail with sufficient postage affixed thereto to assure delivery as follows:

Documents: Amendment to PCR Petition

Mailed to: J. Rutledge Johnson, Esquire
SC ATTORNEY GENERAL'S OFFICE
PO Box 11549
Columbia, SC 29211



Evan K. Bromley, Attorney at Law

STATE OF SOUTH CAROLINA FILED FOR RECORD IN THE COURT OF COMMON PLEAS
 COUNTY OF ALLENDALE 2015 OCT 26 AM 11:30 CASE NUMBER: 2013-CP-03-0061

MARQUIS BREELAND (298259),

CLERK OF COURT
 ALLENDALE COUNTY, S.C.

Plaintiff,

PETITIONER'S PCR HEARING BRIEF

vs.

STATE OF SOUTH CAROLINA,

Defendant.

TO: THE HONORABLE COURT AND J. RUTLEDGE JOHNSON, ESQ.,
 ATTORNEY FOR THE STATE:

Overview and Procedural History

Marquis Sentel Breeland was indicted by the Allendale County grand jury of murder and possession of a weapon during the commission of a violent crime during its March 2010 term. Breeland was tried before the Honorable H. William Seals, Jr. and a jury August 8- 10, 2011. Breeland was represented by Stephen Plexico, Esquire. The State was represented by Tameaka A. Legette and Robert E. Ferguson, Jr., Esquires. Breeland was convicted on both charges. Breeland was sentenced to life in prison on the murder charge and five (5) years for possession of a weapon during the commission of a violent crime, both to be served consecutively.

Breeland appealed the conviction to the S.C. Court of Appeals where he was represented by Elizabeth A. Franklin-Best and Susan B. Hackett. The State was represented by Alphonso Simon, Jr. On appeal, Mr. Breeland argued the trial court erred when it did not grant Breeland's motion for a directed verdict when the evidence adduced at trial did not amount to more than a mere suspicion that Breeland was guilty of shooting the victim. In Unpublished Opinion No. 2013-UP-073, filed on February 13, 2013, the Court of Appeals affirmed the trial court's denial of Breeland's motion for directed verdict.

On April 10, 2013, Breeland initiated this proceeding by timely filing an application for post-conviction relief with the Clerk of Court of Allendale County. In the Application, Breeland sought a new trial or to have his conviction vacated on the basis of the following claims:

1. Ineffective assistance of counsel.
 - a. Counsel failed to object to solicitor misconduct and critical Brady violation.
2. Trial judge erred by denying motion for direct verdict when evidence did not rise above mere suspicion that Applicant was guilty of murdering the victim.

The State served its Return on the Application on September 22, 2014, wherein it requested an evidentiary hearing on the first claim of ineffective assistance of counsel and summary dismissal on the second claim of trial court error related to the denial of motion for directed verdict, as it had already been raised on appeal.

On October 9, 2015, the undersigned filed an Amended Application for Post-Conviction Relief. The Amended Application set forth additional grounds supporting Breeland's claim of ineffective assistance of trial counsel:

1. Trial counsel failed to use a preemptory strike on juror Ora Cave, sister to key witness Willie James Elmore; and
2. Trial counsel failed to object to the solicitor's improper and prejudicial comments during closing arguments.

Legal Standard for Ineffective Assistance of Trial Counsel

To establish a claim of ineffective assistance of trial counsel, a PCR applicant must show that: (1) counsel's representation fell below an objective standard of reasonableness and, (2) but for counsel's errors, there is a reasonable probability the result at trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Johnson v. State*, 325 S.C. 182, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial. *Id.*

The State's Case at Trial

The State alleged that Breeland shot and murdered Laurice Jerome Garvin around 10:00 p.m. on the night of July 22nd, 2007 in Kennedy Park of Allendale, SC. There were, however, many holes in the State's theory of the case. There were no eyewitnesses to the crime. The State could not produce the weapon allegedly used in the crime, and, thus, could not show any connection between Breeland and the weapon. There was no evidence that Breeland ever possessed a gun. Further, the State did not put forth any evidence showing any relationship between Breeland and the victim, Laurice Jerome Garvin. There was witness testimony that placed Breeland near the crime scene. The thrust of the State's case, however, rested solely on the purported confession made to a person hoping to derive some reward for the testimony.

The victim's body was located 40 feet from his car that was located on Robin Street, adjacent to the park. Tr. 81, LL. 16-20. The crime scene investigator opined that the victim was shot through the driver's side window. Tr. 94, LL. 5-8. According to the investigator, it appeared that the victim was able to get out of the vehicle, and then was shot at least three more times. Tr. 96, LL. 2-10. Police recovered four cartridge casings at the scene. Tr. 90, LL. 9-13.

Antonio Frazier, a friend of the victim's, testified that he was not aware of any animus between Breeland and the victim. Tr. 107, LL. 22-24.

Patricia Ann Bradley testified that she saw Breeland, Anthony Sanders, and Ricky Brandt at the corner of Kennedy Park, along with another short black male. She also conceded that there could have been other people standing around the corner, as well. She stated that the area was a "very public place." Tr. 111, L. 21- 112, L. 3.

Richard Priester testified that he observed three men running away from Kennedy Park

after he heard the gunshots. He did not know who they were, but two of them were tall and one of them was short. Tr. 119, L. 19- 121, L. 6.

Dwann Devoe, who, along with a friend, was driving his car around Kennedy Park, testified that he saw Breeland and Anthony Sanders running towards him. They flagged him down and asked for a ride. At the time of this encounter, law enforcement had already arrived at the scene of the shooting. Tr. 129, LL. 19-25. Devoe was driving toward Kennedy Park because he had heard that somebody had been killed. Tr. 131, LL. 12-25. Latrincy Carter corroborated Devoe's account that he and Devoe picked them up in the car and gave them a ride to a friend's house, located close to the park. Tr. 141, L. 6- 144, L. 19.

Willie James Elmore testified that back in July of 2007 (specific date not testified to), he heard Breeland say "he was going to kill that dude." Tr. 122, LL. 8-22. Elmore testified that he gave a statement to in 2007 to law enforcement that Breeland said he wanted to kill the victim. He testified that he did not think that he meant to do it. Tr. 123, L. 17- 124, L. 14. Elmore reiterated that he did not think Breeland was being serious about wanting to kill the victim. Tr. 126, LL. 13-21. After the victim was killed, Breeland told Elmore that he did not know who did it, and Elmore believed him. Tr. 126, L. 23- 127, L. 9.

The centerpiece of the State's case against Breeland was the testimony of Marcus Witherspoon. At the time of trial, Witherspoon had pleaded guilty to a federal drug charge subjecting him to a possible life sentence. He testified that he was hoping to receive a lighter sentence for testifying for the State of South Carolina. He testified that on the night of July 22, 2000, he saw Breeland. He stated that Breeland came to Witherspoon's house and "basically just told me that he was the one that, you know, pulled the trigger." Tr. 147, L. 8- 150, L. 24. Witherspoon could not really explain why Breeland would say this to him other than he thought

maybe he wanted recognition. Tr. 151, LL. 1-13. Witherspoon signed a plea agreement with the US Attorney's Office to cooperate with the government. Tr. 152, L. 3 - 162, L. 3. Witherspoon was appearing at trial to give testimony pursuant to the plea agreement and because he wanted the benefit of the plea agreement. Tr. 153, LL. 5-18. Witherspoon further testified that he thought he had to perform well at the trial if he was to get any relief under the plea agreement. Tr. 154, LL. 7-17. The plea agreement could potential reduce Witherspoon's mandatory life sentence to a minimum of ten (10) years. Tr. 154, L. 18 155, L. 11.

Argument

Ineffective Assistance of Trial Counsel

A. Failing to object to solicitor's improper and prejudicial comments during closing argument.

The theme of the State's closing argument was that Breeland was a man of his word – he told Willie James Elmore that he was going to kill the victim, and, after allegedly executing the victim, Breeland told Marcus Witherspoon that he had killed the victim. Tr. 211, LL. 5-10.

It is improper for the State, directly or indirectly, to vouch for the credibility of a witness' truthfulness or credibility. Yet on two different occasions during closing arguments, the Solicitor offered personal opinions on witness' character and truthfulness, specifically Willie James Elmore and Marcus Witherspoon, which both directly and implicitly amounted to the State vouching for their credibility.

In *State v. Shuler*, 344 S.C. 604, 545 S.E.2d 805, cert. denied, ___ U.S. ___, 122 S.Ct. 404, 151 L.Ed.2d 306 (2001), the Court explained that a solicitor:

cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness' truthfulness.... Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly

vouches for a witness' veracity by indicating information not presented to the jury supports the testimony....

344 S.C. at 630, 545 S.E.2d at 818 (citations omitted). "Because a jury must make its own assessment on the credibility of witnesses, it is inappropriate for the State to assure the jury of a government witness's credibility." *Gilchrist v. State*, 350 S.C. 221, 227, 565 S.E.2d 281, (S.C., 2002) citing *State v. Kelly*, 343 S.C. 350, 369, 540 S.E.2d 851, 861 (2001), rev'd on other grounds, 534 U.S. 246, 122 S.Ct. 726, 151 L.Ed.2d 670 (2002).

First, the Solicitor called Willie James Elmore "a sweet man." Tr. 216, LL., 6-8. In context, the solicitor was expressly bolstering Mr. Elmore's character and credibility by saying that Breeland told Elmore he was going to kill the victim, and what does sweet ol' Mr. Willie James (inferentially) have to lie about.

On a second occasion, the Solicitor improperly offered her personal opinion as to why the jury could believe that another witness – Marcus Witherspoon – was telling the truth. The Solicitor's full comments on Witherspoon's testimony during the closing argument, Tr. 221, L. 10 – 222, L. 24, are attached hereto and incorporated by reference as **Exhibit A**. The Solicitor opined that

"He came here to tell the truth. He told you what Marquis said. Marquis Breeland told him he killed Laurice Garvin.

And, ladies and gentlemen, I surmise that the reason Marcus came in here, that the mark is wide and the mark of the universe is long but it bends towards justice. And what I mean by that is Marcus said it on a long time but that justice finally caught up with him and justice *brought* him in here to tell what he knew. Simple as that."

Tr. 222, 16-24.

Adding to the impropriety of the closing arguments, was the Solicitor's repeated denigration of Breeland's character by referring to him as the "face of evil" and "wicked", along with religiously-tinged language.

The Solicitor described 'malice aforethought' as a "evil, wicked, depraved, an evil heart." Tr. 213, LL. 7-12. The Solicitor referenced faces of evil people that come to her mind, Jason the Mask, the face of Freddy Krueger, but that now she realized that evil had a new face – Marquis Breeland, "who sits before you here today cloaked in a robe of righteousness." Tr. 213, L. 13 – 214, L.8.

"A robe of righteousness, ladies and gentlemen. The Judge is going to tell you he has on a robe of righteousness. He sits there with his glasses on, he looks like a choir boy. But, ladies and gentlemen, I submit to you that underneath the façade of the choir boy and the glasses lurks the heart of an evil man. An evil man who would gun down a man as he drove down the street on a Sunday night in the Town of Allendale." Tr. 214, LL. 9-16.

The Solicitor then went on to say that, by finding Breeland guilty of all charges, "the wicked Marquis Breeland will cease and Laurice Jerome Garvin's soul will be at rest." Tr. 225, LL. 11-16.

The repeated denigration of Breelands character coupled with the religiously-tinged language was improper and infected the trial with unfairness by arousing the passion and prejudice of the jury depriving Breeland of a fair trial.

Breeland was further deprived of a fair trial by the Solicitor's improper vouching of the credibility of Willie James Elmore and Marcus Witherspoon. Elmore and especially Witherspoon were the State's key witnesses and, therefore, their credibility was crucial for the State's case. Due to the fact that Witherspoon was an admitted drug dealer, his prior convictions, and his interest in providing favorable testimony for the State to obtain leniency in his own case, Witherspoon's

credibility was clearly questionable. Given Witherspoon's obvious credibility problems and that fact that Breeland's conviction is inextricably linked to Witherspoon's credibility, trial counsel's failure to object to the State's improper vouching prejudiced Breeland's case.

The instant case is directly analogous to *Gilchrist v. State*, where the Supreme Court reversed the PCR Court's denial of post-conviction relief. Further, this is clearly distinguishable from *Randall v. State*, 356 S.C. 639, 591 S.E.2d 608, where the Court held a solicitor's improper reference to the defendant drug dealers as "dirty cockroaches" did not require a new trial because there was strong evidence of the defendants' guilt. Here, all you have is circumstantial evidence that puts Breeland near the crime scene and the testimony of two witnesses, Elmore and Witherspoon, saying Breeland told him he was going to kill Garvin and that Breeland told him he did kill Garvin, respectively.

B. Failure to use pre-emptory strike on Ms. Elmore during jury qualification phase.

Breeland was further deprived of a fair trial by trial counsel's failure to use a then-available preemptory strike on juror Ora Cave. Tr. 46, LL. 18-23. Ms. Cave was the sister of Willie James Elmore, one of the State's key witness' whose testimony was essential to the State's case. Tr. 29, LL. 4-20.

As previously set forth, Willie James Elmore testified that Breeland told him that that he was going to kill Laurice Garvin. After the murder, Breeland told Mr. Elmore that he did not kill Laurice Garvin. Mr. Elmore, despite knowing Mr. Breeland for most of Mr. Breeland's life, had survived several strokes and was only able to identify Mr. Breeland by the use of the street name "Roadkill". Tr. 18, LL. 2-7. The State pointed to Elmore's testimony as fulfilling the element of malice aforethought. Tr. 216, LL 6-15.

Mr. Elmore's sister, Ora Cave, was on the jury and trial counsel could had one remaining

pre-emptory strike that he could have used on Ms. Cave, but elected not to. Tr. 46, LL. 18-23. The credibility of Mr. Elmore and his testimony that Mr. Breeland told him he was going to murder Laurice Garvin was one of the main pieces of evidence the State presented that Mr. Breeland did in fact kill Mr. Garvin. By not striking Ms. Cave, the jury contained a person who could automatically vouch for one of the State's key witness' credibility. By failing to use his pre-emptory strike against Ms. Cave, when he had a pre-emptory strike available to him at the time, trial counsel severely prejudiced Mr. Breeland's case and deprived him of a fair trial before an impartial jury.

Conclusion

For the above stated reasons, Breeland received ineffective assistance of counsel due to counsel's failure to object to the Solicitor's improper closing arguments and for failing to use a preemptory strike on juror Ora Cave. Counsel's performance was deficient when measured by 'reasonableness under professional norms.' *Cherry*, 300 S.C. at 117, 385 S.E.2d at 625. Further, counsel's deficient performance prejudiced Breeland 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.

[Signature page to follow]

Respectfully submitted,

WARD & BROMLEY, LLC

E. K. Bromley

Evan K. Bromley, Attorney at Law
7 Simmonsville Road, Suite 200
Bluffton, SC 29910

Evan@WardBromley.com

Tel: (843) 706-2896

Fax: (843) 706-2894

Attorney for Petitioner Marquis Breeland

Bluffton, South Carolina
October 20, 2015

1 STATE OF SOUTH CAROLINA

2 COUNTY OF ALLENDALE

CIRCUIT COURT

2009-GS-03-00056 & 00057

3 STATE OF SOUTH CAROLINA,

4 -vs-

TRANSCRIPT OF RECORD

5 MARQUIS SENTEL BREEELAND,
6 Defendant.

7
8 Heard on Monday, August 8, 2011

9 Tuesday, August 9, 2011

10 & Wednesday, August 10, 2011

11
12 Allendale, South Carolina

13
14 BEFORE:

15 THE HONORABLE H. WILLIAM SEALS, JR.

16
17 APPEARANCES:

18 Counsel on Behalf of the State:

19 Tameaka A. Legette, Esq.

20 Robert E. Ferguson, Jr., Esq.

21 Counsel on Behalf of the Defendant:

22 Stephen T. Plexico, Esq.

23 Cheri L. Young, RPR
24 Circuit Court Reporter
25 P O Box 1154
Aiken, SC 29802-1154

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 MS. LEGETTE: I asked the agent, are there onlookers.
2 These are onlookers. Everybody else was going to the
3 murder scene but you got two men. Marquis Breeland, I'm
4 going to kill him. Now he's running from the scene.
5 Running.

6 What's he guilty of? He's guilty of killing Laurice
7 Garvin. He's got to get away. And when Anthony Sanders
8 wasn't fast enough, he's still got to get a rid. And then
9 he's still running. Still running.

10 And, ladies and gentlemen, let us consider Marcus
11 Witherspoon. Let us consider him. Marcus came in here,
12 had a sense of shame with his head down, and told us he
13 really didn't want to be here. Information that he knew
14 for a long time, he just kept to himself. Oh, yes. Kept
15 to himself.

16 He said a friend basically came to him and told him
17 what he did. He said Marquis Breeland came to
18 Mr. Witherspoon the night of this murder and confided in
19 him, told him what he did. Said, I shot and killed
20 Laurice Garvin.

21 I asked Marcus why did he tell you that. He said, oh,
22 because he wanted recognition. He wanted me to recognize
23 him. He thought highly of me. And Marcus didn't want to
24 be here. I imagine he didn't want to tell on his friend.
25 I imagine he felt like a snitch. Yep, said the life he

CLOSING ARGUMENT ON BEHALF OF THE STATE

1 used to live, he admitted to be a self-confessed
2 criminal. And, yes, he's facing 10 to life in prison.

3 But even being the criminal that he is and even facing
4 all of that time, something he said struck me. Not just
5 that Mr. Breeland confided in him, but something he said
6 that struck me in the craw. And it was, I ain't going to
7 just lie to send somebody else to prison to keep me out of
8 prison for life.

9 That says something to me, ladies and gentlemen. No,
10 he ain't going to do that. And, yes, he can help himself,
11 but lying to get out of life, that wasn't it. He didn't
12 come in here and say, yeah, I'm glad to be here. Yeah.

13 Imagine the cost to Marcus Witherspoon. Imagine that
14 cost. He hung his head low when he walked in and he hung
15 his head low when he walked out, even though what he
16 faced. He didn't just come here to perform. He came here
17 to tell the truth. He told you what Marguis said.
18 Marquis Breeland told him he killed Laurice Garvin.

19 And, ladies and gentlemen, I surmise that the reason
20 Marcus came in here, that the mark is wide and the mark of
21 the universe is long but it bends towards justice. And
22 what I mean by that is Marcus sat it on a long time but
23 that justice finally caught up with him and justice
24 brought him in here to tell what he knew. Simple as that.

25 And then we have Mr. Willie James Elmore. I called

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF ALLENDALE)

CASE NUMBER: 2013-CP-03-0061)

MARQUIS BREELAND (298259),)

Plaintiff,)

CERTIFICATE OF SERVICE)

vs.)

STATE OF SOUTH CAROLINA,)

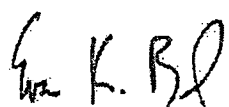
Defendant.)

FILED FOR RECORD
 2015 OCT 26 AM 11:31
 CLERK OF COURT
 ALLENDALE COUNTY, S.C.

I, Evan K. Bromley, of WARD & BROMLEY, LLC, do hereby certify that on October 21, 2015, I served copies of the following documents to the party(ies) named below by hand-delivering same as follows:

Documents: Petitioner's PCR Hearing Brief

Mailed to: J. Rutledge Johnson, Esquire
 SC ATTORNEY GENERAL'S OFFICE
 PO Box 11549
 Columbia, SC 29211


 Evan K. Bromley, Attorney at Law

1 In the Court of Common Pleas for the
2 State of South Carolina, County of Beaufort

3

4 Case No.: 2013-CP-03-0061

5 Marquis Breeland,

6 Plaintiff(s),

7 vs.

Transcript of Record

8 State of South Carolina,

9 Defendant (s) .

10

11

12

13

14

15 October 21, 2015

16 Beaufort, South Carolina

17

18

19

20

21 BEFORE:

22 The Honorable ROGER L. COUCH

23

24

25

APPEARANCE PAGE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES

REPRESENTING APPLICANT:

Evan K. Bromley, Esquire
Ward & Bromley LLC
7 Simmonsville Road, Suite 200
Bluffton, SC 29910
843-706-2896

REPRESENTING DEFENDANT(S):

J. Rutledge Johnson, Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, SC

INDEX PAGE

1 INDEX

2

3 WITNESS: PAGE:

4 STEPHEN PLEXICO

5 Direct Examination By Mr. Bromley 8

6 Cross Examination By Mr. Johnson 20

7 Redirect Examination By Mr. Bromley 23

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

PROCEEDINGS

1 PROCEEDINGS

2 THE COURT: Yes, sir.

3 MR. JOHNSON: May it please the Court. This is
4 Marquis Breeland versus the State of South Carolina,
5 2013-CP-03-0061. Mr. Breeland was indicted at the
6 March 2010 term of the Allendale County grand jury for
7 murder and possession of a weapon during the commission
8 of a violent crime. He proceeded to trial and was
9 convicted as indicted on August 10, 2011. And he was
10 sentenced by the Honorable William H. Seals junior to
11 confinement for life for murder and five years for
12 possession of a weapon during the commission of a
13 violent crime, to serve concurrently. There was a
14 notice of appeal filed on his behalf and the appeal
15 perfected.

16 His sentences and conviction were affirmed by the
17 Court of Appeals. Remitter was issued on March 7,
18 2013. He filed a timely PCR application April 10th,
19 2013. The State filed its return September 22nd, 2014.
20 And he is represented here today by counsel. I'll turn
21 it over to counsel, Your Honor.

22 THE COURT: Yes, sir. You are Mr. Bromley?

23 MR. BROMLEY: Yes, sir, Your Honor. May it please
24 the Court.

25 THE COURT: Happy to hear from you.

PROCEEDINGS

1 MR. BROMLEY: I have legal brief on the issues.

2 THE COURT: All right. If you want to pass that
3 up, that will be fine. Thank you.

4 MR. BROMLEY: Thank you, Your Honor.

5 THE COURT: Yes, sir.

6 MR. BROMLEY: My name is Evan Bromley. I'm here
7 on behalf of Mr. Breeland this morning. Mr. Breeland
8 has made PCR claims of ineffective assistance of
9 counsel for failure to object to the Solicitor's
10 improper comments during closing argument which
11 inflamed the passions of the jury, improperly vouched
12 for witness credibility. And along with ineffective
13 assistance of counsel for failure to use a peremptory
14 strike on juror Laura Cave who was a key witness -- or
15 a sister to a key witness of the State.

16 Mr. Breeland has also alleged claims of a
17 Solicitor misconduct, a Brady violation. He's also set
18 forth a claim of trial court error for denial of his
19 motion for directed verdict although that issue was
20 raised on appeal and ruled upon.

21 THE COURT: That sounds like an appellate issue to
22 me.

23 MR. JOHNSON: Yes, Your Honor.

24 THE COURT: That should not be --

25 MR. JOHNSON: That is exactly what the State.

PROCEEDINGS

1 Under Simmons versus State and Ashley versus State. We
2 would ask that you strike that. I would also ask for a
3 more definite statement on this Brady claim. First of
4 all, there is a case that says Brady is a direct appeal
5 issue. But depending on what it is I would like notice
6 of exactly what I am defending.

7 THE COURT: Well, there's the Osmond case and
8 other cases where PCRs were granted for, I would say,
9 prosecutorial misconduct and disclosure.

10 MR. JOHNSON: Correct.

11 THE COURT: Can you give us a little more detail
12 on what you are claiming was the Brady or Rule 5
13 violation?

14 MR. BROMLEY: Yes, Your Honor. That claim was
15 alleged by Mr. Breeland in his initial application.

16 THE COURT: I understand, but I kind of want to
17 know what he's saying. What does that mean when he
18 says that there was a Brady violation? Was there some
19 evidence that was not presented?

20 MR. BROMLEY: Your Honor, in my review of the
21 record I have not been able to find a Brady violation.

22 THE COURT: Well, I'll let you ask. I'm not going
23 to strike it right now. I'll let you ask him about it
24 on the stand and we will see what he says. But he's
25 going to have to be more specific than simply, He

PROCEEDINGS

1 didn't get everything.

2 MR. JOHNSON: And Your Honor, just to point you in
3 the record. I do believe that -- I hope that it's in
4 your packet. If not, I'll hand you up a copy. But
5 Solicitor Duffy Stone here in the 14th Circuit
6 certainly signed paperwork stating that they turned
7 over and allowed all inspection of books, records,
8 evidence that they have. So, if I need to call him and
9 introduce that, I certainly will.

10 THE COURT: Well, we will see what he says it is.
11 I mean, the Osmond case involved a viewing of the scene
12 the day before trial. And apparently a witness gave a
13 different story during that scene, but verbally gave
14 it. So, the fact that a file was open, that would not
15 have been disclosed, and certainly the Supreme Court
16 said that that was something that should have been
17 disclosed. So, we will see what he claims.

18 But it does have to be specific. We need to know
19 what he's saying wasn't turned over. Are you ready to
20 call your first witness, counselor?

21 MR. BROMLEY: Yes, sir.

22 THE COURT: You may do so.

23 MR. BROMLEY: May it please the Court, the
24 applicant would call Mr. Stephen Plexico.

25 THE COURT: Sir, please come forward and be sworn.

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 Thereupon,

2 STEPHEN PLEXICO

3 was called as a witness, having been first duly sworn,
4 was examined and testified as follows:

5 WITNESS: Stephen Plexico. P-L-E-X-I-C-O.

6 Stephen with a P-H.

7 THE COURT: Thank you sir. Please have a seat,
8 counselor. Your witness.

9 DIRECT EXAMINATION

10 BY MR. BROMLEY:

11 Q Good morning, Mr. Plexico. You represented
12 Mr. Breeland in his trial, August 8 through 10th, 2007 in
13 Allendale County; is that correct?

14 A Yes, sir.

15 Q What were the charges against Mr. Breeland?

16 A He had a -- it was a murder charge. He was
17 charged with killing Reece Garvin. Another charge, use of a
18 weapon too I believe. It's been quite a while.

19 Q Now, can you explain or give some detail about the
20 case that was put on by the State at trial?

21 A He was seen there hanging out with the boys. It
22 is a popular area. A lot of people -- there's a lot of
23 crime there. Petty things mainly. He was hanging out on
24 the corner. There was a shooting. He's seen running away.
25 He has allegedly said that he doesn't like the guy, he's

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 going to kill him or something to another individual which I
2 talked to you about. And then his buddy comes up or -- who
3 is under Federal indictment looking at a life sentence and
4 testified that my client said that he killed him, told him
5 that he killed him. That is about the size of it. Weren't
6 any witnesses. Somebody running away. Too tall. Tall is
7 5'6". He said he was taller than him. He kind of went back
8 and forth during the trial. They did notice his legs. My
9 client is a guy, tall guy, with long legs, kind of like
10 granddaddy long legs. I think that I called him that during
11 the trial, or referred to him as that to kind of put
12 emphasis on it. You know, no one saw him do it.

13 Q You said that there were no eye witnesses to the
14 crime?

15 A Yes, you know, they hear shots. There's a man
16 laying out in the street. And, you know, this guy is
17 running away. My client later says that he did it. And
18 then before that he said that he was going to kill him. And
19 the man said, Don't kill him over here, or don't do it over
20 here or something like that.

21 Q The man that you were just referring to, is that
22 Willy James Elmore?

23 A Mr. Elmore.

24 Q Was he a witness of the State?

25 A Right.

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 Q And do you recall his testimony?

2 A Well, essentially just that, that the guy came by
3 and he said something -- I don't remember. It is all in
4 here. Such, I'm going to get him or whatever. He pulled
5 something out. He didn't say that he pulled a gun out.
6 Didn't say that he saw a gun. And then he said something
7 about, Don't do it over here. But that is toward the front
8 of the transcript, I believe. That would be 121 to 127.

9 Q Yes, sir. The testimony of Mr. Elmore. And so it
10 was Mr. Elmore's testimony that prior to the date of the
11 murder Mr. Breeland said he was going to kill the victim?

12 A I don't remember if it was the day before or not.
13 It's been a while. But he said that we were standing out
14 there talking and all of a sudden he said he was going to
15 kill that dude. And I said, Don't you shoot him, that won't
16 be right. Take us over here. I think that they probably
17 couldn't understand him. I think he was probably saying,
18 Take that elsewhere or something. That is all. And then
19 she's asking questions.

20 Q Did Mr. Elmore believe that my client was going to
21 actually kill the victim?

22 MR. JOHNSON: Objection to speculation on that,
23 Your Honor.

24 THE COURT: You can rephrase the question.

25 MR. BROMLEY: Yes, sir.

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 BY MR. BROMLEY:

2 Q Mr. Plexico, did Mr. Elmore testify that he did
3 not believe that my client was going to kill the victim?

4 A Yes, I think that he did, as a matter of fact.

5 Q Was Mr -- did Mr -- could Mr. Elmore identify
6 Mr. Breeland by his legal name?

7 A I think that he may have called him Road Kill. I
8 don't remember. I had a motion on -- his nick name was Road
9 Kill and we were not to use his nick name unless that was
10 absolutely the only way that they knew him. I don't
11 remember. You would have to look back to his statement.

12 Q Was it your understanding that Mr. Elmore had --
13 was a survivor of several strokes?

14 A Come to think of it, yes. But that has been years
15 since, since then. I haven't even thought about that.

16 Q Did you raise this issue as to how the strokes may
17 affect his memory while you were examining him?

18 A No, I did not. It's all right here. It is only
19 about six pages. I don't see that in there. He liked my
20 client.

21 Q Marcus Witherspoon, was he a witness offered by
22 the State?

23 A Yes, he was the guy who was looking at life on a
24 Federal drug charge. And he got one of those agreements
25 where if you go out and help us and we deem that you give us

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 substantial assistance then we will consider that in your,
2 whatever it was, ten to life range on the sentence. You
3 know, I call it performing well. You become an actor for
4 the State, the Federal government or whatever.

5 Q And what was Mr. Witherspoon's testimony as to my
6 client's involvement in the alleged crime?

7 A My client comes over, goes to the backyard, no one
8 else verifies that he actually was at Mr. Witherspoon's
9 home. They are in the backyard. Mr. Witherspoon said I was
10 in the house, I didn't see him come, I didn't see him leave.
11 And we were around back, so nobody saw us around back. And
12 my client, while he was around back with Mr. Witherspoon
13 said that, Yeah, I killed him. I am the one who shot him.
14 And he said that the only reason that he figured that he
15 told him that was so that he would get his respect, or some
16 reference to that in transcript.

17 Q Was it your understanding that Mr. Witherspoon was
18 testifying pursuant to a plea agreement?

19 A Absolutely. I had a copy of it. He had to
20 perform well. Performance letter. I mean, I'm not -- that
21 is what it comes down to.

22 Q And was it Mr. Witherspoon's testimony that he had
23 to perform well to receive the benefit of his plea
24 agreement?

25 A He is a drug dealer and a long-time crook.

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 Essentially he didn't come out and deny it, but you know,
2 he's slick so he's not going to say, Yeah, I'm in here
3 saying what I have got to say. But that permeates the
4 testimony of his sideways denial. I'm here to tell the
5 truth and do the right thing, that is why I sell drugs and
6 steal stuff. Which was also his testimony about his own.

7 Q And Mr. Plexico, just to summarize, and correct me
8 if I'm wrong, but it was Mr. Elmore's testimony that
9 Mr. Breeland said sometime before the date of the crime that
10 he was going to kill the victim?

11 A Yes.

12 Q And it was Mr. Witherspoon's testimony that
13 sometime after the crime that he said that he did kill the
14 victim?

15 A Immediately after.

16 Q Were there any other -- did the police find a gun
17 that related to this matter?

18 A They didn't actually have a gun. They had -- they
19 had shell casings they had matched up to a prior shooting
20 incident in which my client plead guilty to; however, the
21 facts were real fuzzy. Kept that out. A man was shot at a
22 night club. Apparently there was a lot of shooting going
23 on. There's no allegation that he's the only one shooting.
24 The bullet hits the man, goes through him. They never find
25 the actual bullet or jacket or whatever, the lead core or

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 the jacket. They have the shell casing. They get the shell
2 casings from the night club and they match those shell
3 casings to the ones that they found on the ground at the
4 present case, the scene of the present case that we are here
5 today for, and they couldn't prove that my client fired the
6 weapon at the night club that ejected the matching shells
7 earlier. That was a week earlier. I think seven or eight
8 days earlier. That he is the one who had the gun at the
9 nightclub, they wanted to tie that in, that he was the one
10 running from the crime who had the gun that matched the
11 shells on the ground, but I kept it out. Too much
12 speculation. So, Judge Seals didn't allow that in.

13 Q But there was no gun?

14 A No gun, no gun.

15 Q Were Mr. Breeland's fingerprints on any of the
16 shell casings that they found?

17 A No, they didn't have anything. They didn't have
18 anything like that. I mean, they didn't have forensic
19 evidence. They just had somebody, you know, looking away
20 and him saying that he did it and was going to do it.

21 Q The credibility of Mr. Elmore and Mr. Witherspoon
22 was key to the State's case?

23 A Yes, but Mr. Elmore helped him. I mean,
24 Mr. Elmore said that I liked him and his situation was that
25 he didn't do anything. I was trying to get out -- people --

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 we have a lot of shootings in Allendale. I live there. If
2 he is running around with Shockheed Flowers, if that's his
3 buddy, I mean he has a lot of enemies. You are involved in
4 a lot of shootings. So, I was trying to get across, you
5 know, there's no telling. And it is a small community and
6 people know that.

7 Q Mr. Plexico, did you make any objections during
8 the State's closing argument?

9 A No, I think that you and I discussed that. Not
10 that I recall. I don't think that there's any on the
11 record.

12 MR. BROMLEY: Your Honor, I would like to publish
13 a portion to the record.

14 THE COURT: If you would like to refer me there,
15 I'll go there.

16 MR. BROMLEY: Yes, Your Honor. I'll direct Your
17 Honor's attention to Page 214 beginning on Line 4
18 through 17. That begins with, And as I began to think
19 more deeply.

20 THE COURT: I'm there. Okay.

21 BY MR. BROMLEY:

22 Q Mr. Plexico, are you there also?

23 A Yes.

24 Q Did you find any issue with the Solicitor calling
25 Mr. Breeland the face of evil?

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 A That to start with I didn't think that -- you
2 know, you have got to look at who you are dealing with and
3 to me, that is the Solicitor, she tends to act out a lot.
4 She screams, she dances around. I think that she looks
5 completely ridiculous. She looks clownish. You can put a
6 red nose on her and a little makeup and she can go to the
7 circus. I just thought that her acting out sort of insulted
8 the jurors. And I thought that she made a fool of herself.
9 Apparently, in hindsight, I was wrong because I lost the
10 case. But that is sort of what was going on with that.

11 Q In hindsight, would you have objected to
12 Ms. Legette?

13 A Yes. Yes.

14 Q Did you find any issue with any of Ms. Legette's
15 religiously tinged language such as a robe of righteousness
16 and calling Mr. Breeland a choir boy?

17 A No, I used that myself.

18 Q I would like to, again, direct the Court's
19 attention to Page 221 of the transcript, beginning with Line
20 10 and continuing on to Page 222 through Line 24.

21 THE COURT: All right, I'm on Page 221. What line
22 did you indicate?

23 MR. BROMLEY: Beginning at Line 10.

24 THE COURT: All right.

25 MR. BROMLEY: Through Page 222, Line 24.

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 THE COURT: Yes, sir.

2 BY MR. BROMLEY:

3 Q Mr. Plexico, would you let me know when you have
4 had a chance to review those?

5 A Line 10 to 24?

6 Q Line 10 on Page 221 through 222, Line 24.

7 A Yes, go ahead.

8 Q I believe that it was your testimony earlier that
9 Mr. Witherspoon's credibility was directly at issue in this
10 case?

11 A Yes.

12 Q Other than Mr. Witherspoon appearing to give
13 testimony pursuant to his plea agreement, did he offer any
14 other reason why he was appearing that day?

15 A No.

16 Q Looking specifically at Page 222, Lines 13 through
17 24, you did not make any objection to the Solicitor's
18 personal opinion as to why Mr. Witherspoon was telling the
19 truth or --

20 MR. JOHNSON: Objection to that form of the
21 question, Your Honor. Talking about the Solicitor's
22 opinion. I think that's trying to comment on the
23 evidence.

24 THE COURT: Well, what are you specifically
25 referring to as his opinion on the truthfulness of the

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 witness, what line?

2 MR. BROMLEY: I would -- Your Honor, I would say
3 beginning on Line 16 through Line 24 on 222. And more
4 specifically, the portion where the Solicitor says, And
5 ladies and gentlemen, I surmise that the reason Marcus
6 came in here.

7 THE COURT: All right. You say that it's improper
8 for the Solicitor to comment on the truthfulness of the
9 witnesses who testified in the trial?

10 MR. BROMLEY: Your Honor, I'm saying that it's
11 improper for the Solicitor to give her personal opinion
12 as to the truthfulness of the witness on trial when
13 that evidence wasn't -- when the evidence wasn't
14 presented at trial. That is her opinion as to, he was
15 brought into this courtroom because of justice. And I
16 believe that it's directly or indirectly vouching for
17 his credibility when that credibility was directly at
18 stake.

19 THE COURT: Okay. I'll let you go forward.

20 BY MR. BROMLEY:

21 Q You didn't register any objection to this portion
22 of Ms. Legette's testimony (SIC)?

23 A No, I mean the guy was arrested and he was looking
24 at life in prison. That is a fact. I mean, I didn't take
25 it the way that you are interpreting it. Yes, it was Marcus

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 Witherspoon justice caught up with. I mean, I didn't see it
2 as improper at the time. I missed it if it was.

3 Q Mr. Plexico, do you remember the composition of
4 the jury?

5 A I have my jury notes here. Let's see. I keep an
6 eye on that to make sure that there's not a due process
7 violation with the jury pool. You know, a black citizen on
8 trial with 12 white people. And what I have got here is --
9 let me do my accounting. Just a second.

10 I see at least six, seven, eight black
11 people that are on the jury. I think that it was vastly
12 black individuals on the jury. I'm more worried about
13 keeping track of my strikes.

14 Q And you did not object to the juror Laura Cave
15 (phonetic)?

16 A No, I did not object. I was on strike number nine
17 at that point.

18 Q Do you recall if she was related to any of the
19 witnesses?

20 A Yes, that is in the transcript where she stood up.
21 I don't have any notes about it. But I was on strike nine.
22 And, you know, when you have already burned through nine and
23 you have got one left. The one that I used that one on was
24 a registered nurse who I have down with a question mark as
25 to whether or not she was related to Judge Odom. Being a

DIRECT EXAMINATION OF PLEXICO BY BROMLEY

1 nurse, you see a lot of crime. You know crime victims, this
2 sort of thing. It makes you sympathetic and a little more
3 sophisticated and analytical, more pro law enforcement. I
4 mean, you had the rest of the bunch out there. To me she
5 looked mighty harmless and the old guy wasn't trying to hurt
6 my client. The old guy liked my client. The brother liked
7 my client. He liked him.

8 Q Was the identity of the old man that you are
9 referring to --

10 A Yes, the one who testified actually liked my
11 client.

12 Q You are referring to Mr. Willy James Elmore?

13 A Elmore. Elmore. I mean, I can't tell you what
14 was going through my mind then, but I mean, I can tell you
15 now that I'm on strike nine and I'm weighing things out, you
16 know. I'm looking around. You burn them out, you better do
17 it carefully.

18 MR. BROMLEY: No further questions for the
19 witness.

20 THE COURT: You may cross-examine.

21 MR. JOHNSON: Thank you, Your Honor. May it
22 please the Court.

23 THE COURT: Yes, sir.

24 CROSS EXAMINATION

25 BY MR. JOHNSON:

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 Q Now, Mr. Plexico, you agree with me that this was
2 completely a circumstantial evidence case, correct?

3 A Yes.

4 Q I mean, you have two witnesses that state that
5 Mr. Breeland admitted to him that he was, A, going to shoot
6 the person, and B, that he did shoot the person. And that
7 is the State's case?

8 A They didn't say that he was pulling out of a gun.
9 They tried to make it look that way. By the time that I
10 rehabilitated their witness in my favor I kind of thought
11 that was on Mr. Elmore that he said he had something but he
12 couldn't say it was a gun. He was running his mouth and
13 maybe he had a gun hanging out. And they probably shot half
14 of the people in Allendale that have been shot. I mean, I
15 am under oath.

16 Q Are you aware that the trial judge here did
17 instruct the jury concerning circumstantial evidence?

18 A I believe that he did. I don't remember.

19 Q On Page 246. Would you agree with me?

20 A I mean, yes, he's doing it on 246. I see it.

21 Q And as to the jury, you have already stated that
22 you didn't find her harmful to your client, correct?

23 A I mean, I can't tell you what was going on through
24 my mind at that point. But I mean, I'm down to nine and,
25 you know, in a perfect world if I had four or five left and

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 two jurors to pick, I would have been bolder. But, you
2 know, you burn those strikes carefully. So, you know, I'm
3 just telling you.

4 Q But the --

5 A There are a whole lot worse out there than that
6 one. And look at the one that I struck. Do I want the
7 analytical, registered nurse, college education, okay,
8 upstanding in the community, has to have a professional
9 license, works with victims of crimes? I mean, that's just
10 one example. I can't tell you who else was left.

11 I mean, I can't tell you what I was
12 thinking at the time. I can just tell you generally how
13 it goes.

14 Q As far as Marcus Witherspoon was concerned, you
15 certainly thoroughly cross-examined him concerning his
16 agreement with the feds in this case, did you not?

17 A Yes. Yes, sir.

18 Q And about the shell casings, just to reiterate,
19 you did have those included in pre-trial, 404(b).

20 A They couldn't bring that up. I think that they
21 brought the shell casings in, but they didn't mean anything.

22 Q Correct.

23 A They couldn't say that they were popping out of a
24 gun, the semiautomatic that my client was holding. You have
25 a lot of things there. It was a bad turn of events. I wish

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 that I would have done all of those things that Mr. Bromley
2 suggests. I mean, the case wouldn't have gone against my
3 client I mean, you know.

4 Q And you certainly argued that in closing, that
5 nothing was tying your client to this crime?

6 A I mean, you had to have evidence. I mean, the
7 Solicitor put on a performance which I thought it was a
8 clown act is what I would have called it. In retrospect I
9 should have absolutely objected to it.

10 Q But at the time you thought she was insulting the
11 jury, correct?

12 A Yeah. I mean, I thought that it was ludicrous.
13 It was antics. You don't treat a jury that way. They may
14 not be as bright as you, they may not, you know, have the
15 coat and tie on, but you know, you show them some respect
16 certainly and you don't look down on them. If you want to
17 lose a case that is how you do it.

18 MR. JOHNSON: Thank you, Your Honor. That is all
19 that I have at this time.

20 THE COURT: You may redirect.

21 REDIRECT EXAMINATION

22 BY MR. BROMLEY:

23 Q Mr. Plexico, I believe it is your testimony that
24 in hindsight you feel that you should have objected to
25 portions of closing?

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 A Yes, sir.

2 Q And do you feel that it had a material -- the
3 closing, the Solicitor's comments at closing had a material
4 impact on the jury's decision?

5 MR. JOHNSON: Objection, that is a legal
6 conclusion, Your Honor.

7 THE COURT: I sustain the objection.

8 Q How many criminal cases have you handled?

9 A I couldn't begin to count. I could wallpaper a
10 room with all of the indictments that I have got not guilty
11 written on. I have represented a lot. That doesn't include
12 the ones that were found guilty too. I have done this over
13 25 years.

14 MR. BROMLEY: No further questions.

15 THE COURT: Anything further from the State?

16 MR. JOHNSON: No, Your Honor. Thank you.

17 THE COURT: You may step down.

18 Do you wish to excuse the witness?

19 MR. JOHNSON: I would like to hold on to him for
20 the State's case.

21 THE COURT: Okay. Just stay with us, Mr. Plexico.

22 WITNESS: Yes, sir. Yes, sir.

23 THE COURT: Okay. The applicant may call his next
24 witness.

25 MR. BROMLEY: If I could have a moment, Your

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 Honor?

2 THE COURT: Yes, sir.

3 (Pause.)

4 MR. BROMLEY: Your Honor, at this time we would
5 move to strike the claim of the Brady violation, and we
6 rest our case.

7 THE COURT: Okay. I'll allow you to do so.

8 MR. JOHNSON: The State has no further witnesses,
9 Your Honor.

10 THE COURT: All right. Do you wish to argue your
11 case, sir? I'll hear argument at this time.

12 MR. BROMLEY: Yes, sir. May it please the Court.
13 As you have heard, this was a case that was based on
14 circumstantial evidence, primarily the testimony of
15 Mr. Elmore prior to the alleged crime saying that
16 Mr. Breeland was going to do it. And the testimony of
17 a convicted -- Mr. Witherspoon, who was testifying
18 under a plea agreement saying that some time after the
19 murder that Mr. Breeland told him he did it.

20 And the theme of the State's closing argument was
21 that Mr. Breeland was a man of his word. That he had
22 told Mr. Elmore that he was going to do it and that he
23 told Mr. Witherspoon that he did it. And so those
24 two -- the credibility of those two witnesses was
25 directly at issue.

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 And we believe -- and I believe, Your Honor, that
2 by the Solicitor's comments about both Mr. Elmore,
3 calling him a sweet old man in the transcript on
4 Page 216, Lines 6 through 8, that she was implicitly
5 bolstering the credibility of the witness. Sweet old
6 Mr. Elmore, what does he have to lie about.

7 And then you have her comments with respect to
8 Mr. Witherspoon where she says, He came here to tell
9 the truth. And she then goes on to make her own, what
10 I would characterize as her own opinion as to reasons
11 why he came here, for justice, and that he was coming
12 here to tell the truth and that justice finally brought
13 him in here. And that that -- the effect of that,
14 especially when there was not strong evidence of guilt,
15 was to either correctly or implicitly have the State
16 vouch for the credibility of Mr. Witherspoon when it
17 was directly at issue.

18 Further her comments calling Mr. Breeland the face
19 of evil and wicked. And further using religiously
20 tinged language such as, you know, the robe of
21 righteousness, and saying that -- requesting the jury
22 to convict Mr. Breeland so that the wicked Marquis
23 Breeland will cease in that --

24 THE COURT: The robe of righteousness reference
25 would normally be to standard charges that are made

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 concerning the presumption of truth that a good many of
2 judges in our state use to give an example of that robe
3 being about a Defendant's shoulders throughout a trial,
4 referred to as a robe of righteousness in some charges.
5 I think that that's what that reference is to. That is
6 what it appears to me it was to.

7 MR. BROMLEY: And then that she concluded that
8 wicked Marquis Breeland will cease and release Jerome
9 Garland's soul will be at rest. Ultimately I believe
10 that her comments had the effect of inflaming the
11 passions of the jury, improperly vouching for the
12 credibility of those witnesses. And ultimately
13 prejudicing Mr. Breeland's case such that he was denied
14 due process and deprived of a fair trial.

15 I believe that this case is similar to the
16 Gilchrist v. State case wherein the Supreme Court
17 reversed the PCR Court's denial of post-conviction
18 relief where the State's key witness was -- the
19 credibility was crucial for the case. And the fact
20 that he was an admitted drug dealer in the case, that
21 he was -- he had prior convictions that he was
22 providing favorable testimony to obtain lenience in his
23 own case.

24 The witness, Etheredge, in the case where the --
25 in his opening arguments in that case the Solicitor

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 made a comment that when comparing Gilchrist and
2 Etheredge that one of them was coming in, would have a
3 clean soul. And that those comments were improper and
4 improperly vouched for the credibility, especially when
5 it's at -- when the credibility of that witness is key
6 to the case. And that it's -- it's distinguishable
7 from Randall where the Solicitor referred to the
8 defendant drug dealer as dirty cock roaches, but didn't
9 require a new trial because there was strong evidence
10 of guilt.

11 And here I don't believe that is the case. That
12 it was circumstantial and there's no direct evidence
13 linking Mr. Breeland to the gun or there's no eye
14 witness saying that they saw Mr. Breeland shoot the
15 victim.

16 I would further argue with respect to not striking
17 Laura Cave that, as mentioned that Mr. Willy James
18 Elmore's credibility was at issue. The Solicitor used
19 him to establish the malice aforethought element of the
20 crime that he had told -- Mr. Breeland had told
21 Mr. Elmore prior to, at sometime prior to the murder,
22 that he was going to do it. That Laura Cave was
23 Mr. Willy James Elmore's sister, that -- ultimately
24 that provides someone who is going to sit there and can
25 vouch for him in the jury. And that it just denies him

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 an impartial injury.

2 And that here we have, especially with respect to
3 the Solicitor's closing comments where Mr. Plexico says
4 in hindsight he should have objected, and so I believe
5 that really it fits the rubric of ineffective
6 assistance of counsel.

7 THE COURT: Thank you. I will hear from the
8 State.

9 MR. JOHNSON: May it please the Court, Your Honor.

10 THE COURT: Yes, sir.

11 MR. JOHNSON: First, as far as the juror issue is
12 concerned, just like you point this Court to jury
13 selection on Page 30, on Page 28 -- 29, excuse me,
14 where Ms. Cave admits that Mr. Elmore is the brother.
15 But I also want to point you to the fact that the Court
16 has taken that into account. If you were selected to
17 serve on this jury, could you be fair and impartial to
18 both sides, and she answers yes. And would you be fair
19 and impartial to both sides, which she then affirms
20 yes.

21 Your Honor, I think that State versus Queen
22 states that jurors are presumed to follow Court's
23 instructions. That would be 264 S.C. 515. It is a
24 1975 longstanding case. He also stated that he was on
25 strike nine and made a strategic decision that she was

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 least harmful because Mr. Elmore was in favor of
2 Mr. Breeland and gave favorable testimony. So, I think
3 that you should deny that allegation on those grounds.

4 As far as vouching is concerned, I certainly
5 understand the Gilchrist case in just reading over it.
6 However, that statement is much more problematic in the
7 opening statement than what the Solicitor stated here.
8 That statement was, and I'll say this from the bottom
9 of my heart, that there's one soul who was at one time
10 unclean and is now clean. That is much more
11 inflammatory than anything Solicitor said.

12 Further, counsel stated that he thinks that
13 Solicitor's closing sometimes is clownish, a clown
14 show, but in hindsight that he would have objected to
15 it. I certainly emphasize the hindsight because, as
16 Your Honor, I have read to this Court I think two days
17 ago, Strickland -- State versus Butler citing
18 Strickland states that this Court should take all
19 measures to take away the distortion of hindsight and
20 look at it at the time.

21 And counselor is stating that at the time he
22 thought she was acting like a clown in the courtroom.
23 So, I believe that he had a reason not to object. He
24 didn't want to insult the jury was his last statement.
25 And that if you insult their intelligence that they

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 will turn against you and you will ultimately lose the
2 case. So, I think that he had a reason not to.

3 As far as Solicitor's closing statement, as far as
4 the wicked, you know, as Your Honor knows, it is the
5 State's burden of proof to prove malice aforethought in
6 a murder case. And one of the definitions of malice is
7 a wicked or depraved heart. So, I think that's what
8 she was going to to show her burden of proof in this
9 case. And for that reason, we ask that you deny this
10 application.

11 THE COURT: All right. Anything further?

12 MR. BROMLEY: Your Honor, I would just say that I
13 think that given the total weight that -- and the
14 credibility at issue with these witnesses, that it was
15 not reasonable or it was unreasonable not to object at
16 the time. And but for these errors there's a
17 reasonable possibility that the result would have been
18 different.

19 THE COURT: The issue that you are talking about
20 as far as vouching for the credibility of the witness,
21 mine, in reading that, it appears that the Solicitor is
22 arguing that cause of the witness -- the witness in
23 question's other legal problems, that justice was
24 bringing that witness into court. Am I correctly
25 understanding what she was arguing? Is that the

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 argument that you are referring to?

2 MR. BROMLEY: Your Honor, I would just
3 respectfully say --

4 THE COURT: Take me to the page in the transcript.

5 MR. BROMLEY: 222.

6 THE COURT: Sir?

7 MR. BROMLEY: 222, Your Honor.

8 THE COURT: All right. Just one second.

9 MR. BROMLEY: I believe beginning on Line 19.

10 THE COURT: All right. I'm sure that you know the
11 transcript much better than I do. I just got it about
12 15, 20 minutes ago. I was trying to read through it.
13 I think that you were referring to, the witness came
14 in, head hung low, he walked in, hung his head low when
15 he walked out, even though what he faced. He didn't
16 come here to perform, he came here to tell the truth.

17 And then she goes on to say, I surmise the reason
18 Marcus came in here was the mark is wide and the mark
19 of the universe is long but it bends towards justice.
20 Marcus stood it out a long time but justice finally
21 caught up with him and justice brought him here to tell
22 us what he knew. That is it. Is that the comment that
23 you were referring to?

24 MR. BROMLEY: Yes, sir.

25 THE COURT: So, her argument is that his criminal

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 he was -- whatever deal he had made.

2 You follow me?

3 MR. BROMLEY: Yes, sir.

4 THE COURT: So, I'm not sure that that is a
5 comment that I would say that was targeted to appeal to
6 a prejudice of a juror. It might be a comment that
7 somehow tries to explain in a favorable light a
8 decision by someone to testify when they are made a
9 deal on other charges.

10 MR. BROMLEY: And Your Honor I think, with respect
11 to that comment, that it kind of implicitly maybe
12 vouches for the credibility. With respect to maybe
13 inflaming the passions of the jury, it would be -- I
14 would point to her earlier comments with respect to
15 calling Mr. Breeland the face of evil. And she goes on
16 and said that when she was trying to imagine what
17 malice aforethought -- what malice was, and she said
18 that she thought of Jason the mask and Freddy Kruger
19 and -- but now she realizes that he has got a new face.
20 And Mr. Breeland and I --

21 THE COURT: Did I see those comments?

22 MR. BROMLEY: -- think that those comments more
23 implicitly inflame the passions of the jury than these
24 that you were just referring to may implicitly vouch.

25 THE COURT: Vouch. Any comments on that?

CROSS EXAMINATION OF PLEXICO BY JOHNSON

1 MR. JOHNSON: No, Your Honor. I rest on my
2 closing.

3 THE COURT: Okay. I will take it under
4 advisement. Thank you very much.

5 MR. BROMLEY: Thank you, Your Honor.

6 (Proceedings concluded.)

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE PAGE

1

2 CERTIFICATE

3

4 STATE OF SOUTH CAROLINA:

5 COUNTY OF BEAUFORT:

6 I, MONA L. MANLEY, Court Reporter, certify that I was
7 authorized to and did stenographically report the foregoing
8 proceedings and that the transcript is a true and complete
9 record of my stenographic notes.

8

DATED this 2nd day of February, 2017.

9

10

11

Mona L. Manley /s/

12

MONA L. MANLEY

13

Official South Carolina Court Reporter

Circuit Reporter for the 14th Circuit

(850) 893-6662

14

mmanley@sccourts.org

15

16

17

18

19

20

21

22

23

24

25

(EKR)
RECEIVED FEB 11 2016

STATE OF SOUTH CAROLINA
COUNTY OF ALLENDALE

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

Marquis Breeland, #298259,

2013-CP-03-0061

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

FILED FOR RECORD
2016 FEB -3 AM 11:04
CLERK OF COURT
ALLLENDALE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief filed April 10, 2013. The Respondent made its Return on September 22, 2014. An evidentiary hearing into the matter was convened on October 21, 2015, at the Beaufort County Courthouse. Evan K. Bromley, Esquire, represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

At the hearing, Applicant did not testify. Steven Plexico, Esquire, testified as a witness for the State. This Court had before it a copy of the records of the Allendale County Clerk of Court, records from the South Carolina Department of Corrections, the trial transcript and the appellate records.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Allendale County Clerk of Court. The Applicant was indicted at the March 2010 term of the Allendale County Grand Jury for murder (2009-GS-03-0056) and possession

TRUE COPY
Date 2/4/16
Elaine SABB
ELAINE SABB
CLERK OF COURT
ALLENDALE, SC

Page 1 of 8

RECEIVED

FEB 08 2016

Referred to R. Johnson/jen
Answered _____

of a weapon during the commission of a violent crime (2009-GS-03-0057). The Applicant was represented by Steven Plexico, Esquire.

The Applicant proceeded to trial and was convicted as indicted. On August 10, 2011, the Applicant was sentenced by the Honorable William H. Seals, Jr. to confinement for a period of life for murder and five (5) years for possession of a weapon during the commission of a violent crime.

The Applicant filed a timely Notice of Appeal. The appeal was perfected by Elizabeth Franklin-Best, Esquire, and Susan Hackett, Esquire, of the South Carolina Office of Appellate Defense. The Applicant's convictions and sentences were affirmed by the Court of Appeals. The Remittitur was issued on March 7, 2013.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Counsel failed to object to solicitor misconduct and critical Brady violation.
2. Trial judge erred by denying motion for direct verdict when evidence did not rise above mere suspicion that Applicant was guilty of murdering the victim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witness presented at the hearing, closely pass upon his credibility and weigh his testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he is entitled to post-conviction relief on the basis that he received ineffective assistance of trial counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002). To be entitled to post-conviction relief, the applicant must prove both of the following: (1) his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) the applicant suffered prejudice by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). Under this standard, counsel's deficient performance must have prejudiced the Applicant to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

A. Trial counsel's failure to object to the solicitor's improper comments during closing arguments.

The Applicant first alleges that trial counsel's failure to object to the solicitor's improper comments during closing arguments constituted ineffective assistance of counsel requiring a reversal

APL
P 3

and new trial. The South Carolina Supreme Court has held that the prosecution may introduce testimony on direct examination concerning a plea agreement between the government and the witness "only if the prosecutor's questions do not imply the government has special knowledge of the witness' veracity, the trial court gives a cautionary instruction, and the prosecutor's closing argument contains no improper use of the witness' promise of truthful cooperation." State v. Shuler, 344 S.C. 604, 629, 545 S.E.2d 805, 817-18 (2001). Under this limitation, "[a] prosecutor cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness' truthfulness." Id., at 630, 545 S.E.2d at 818; see e.g., Gilchrist v. State, 350 S.C. 221, 228, 565 S.E.2d 281, 285 (2002) (finding trial counsel's failure to object to the solicitor's improper comments required a reversal where the State improperly vouched for the testimony necessary to convict the defendant). "Improper vouching occurs when the prosecution places the government's prestige behind a witness by making explicit personal assurances of a witness' veracity, or where a prosecutor implicitly vouches for a witness' veracity by indicating information not presented to the jury supports the testimony." Shuler, 344 S.C. at 630, 545 S.E.2d at 818; see State v. Kelly, 343 S.C. 350, 540 S.E.2d 851 (2001).

Subject to this limitation, the prosecutor may still convey to the jury "his version of the testimony and to comment on the weight to be given such testimony." Randall v. State, 356 S.C. 639, 642, 591 S.E.2d 608, 610 (2004). The fact that the prosecutor improperly commented on the veracity of witness testimony in closing does not require reversal unless the statements were prejudicial to the defendant. Id. In an action for post-conviction relief, the applicant "has the burden of proving he did not receive a fair trial because of the alleged improper argument." Id. To satisfy this burden, the

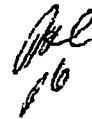
applicant must demonstrate that the prosecutor's improper comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id.

The solicitor's comments during closing argument, while constituting improper vouching for Marcus Witherspoon's credibility, were not prejudicial to the Applicant as required by Strickland. With regard to Witherspoon's testimony, the solicitor's comments concerning Witherspoon's motivation for testifying improperly vouched for his credibility by presenting information that was not presented to the jury during the trial. Because the solicitor's comments concerning this testimony were improper, trial counsel's failure to object constituted a failure to provide effective assistance under the prevailing professional norms. However, although trial counsel's performance was deficient under the first prong of Strickland, the Applicant did not suffer prejudice as the result of this deficient performance. Unlike the State's case in Gilchrist, the State's case against the Applicant did not rely on the improperly bolstered testimony of a single witness. Additional testimony presented at trial placed the Applicant at the scene where the crime took place, and the testimony of Willie James Elmore concerning the Applicant's statement that he planned to kill the victim provided a sufficient basis for the jury to convict the Applicant. Given the weight of the evidence against the Applicant excluding the improperly vouched testimony, the guilty verdict did not result from a denial of due process. Therefore, because the Applicant has not met his burden of proving prejudice resulting from trial counsel's deficient performance, this allegation is denied.

Bel
p 5

B. Trial counsel's failure to use a peremptory strike on juror Ora Cave, sister to witness Willie James Elmore.

The Applicant next alleges that trial counsel's failure to use a peremptory strike on juror Ora Cave constituted ineffective assistance of counsel requiring a reversal and new trial. Ms. Cave was the sister of Willie James Elmore, whose testimony, the Applicant argues, was essential to the State's case. The Applicant contends that by electing not to use his peremptory strike against Ms. Cave, when he had a peremptory strike available to him at the time, trial counsel rendered ineffective assistance, causing severe prejudice to the Applicant. At the hearing on October 21, trial counsel testified that he did not view Ms. Cave's relationship to the witness as harmful to the Applicant. Noting that he had only one remaining peremptory strike at the time, trial counsel testified that there were other potential jurors remaining whom he viewed as significantly more harmful to his case than Ms. Cave. Furthermore, Ms. Cave indicated that she could be fair and impartial to both sides during juror selection. Therefore, trial counsel's strategic decision to conserve his remaining peremptory strike for another juror was reasonable under prevailing professional norms at the time it was made. Further, jurors are presumed to follow the instructions of the trial court. State v. Queen, 264 S.C. 515, 521, 216 S.E.2d 182, 185 (1975). The Applicant failed to produce any evidence that Ms. Cave was impartial to the State or that she did not follow the instructions of the trial court as to prejudice the Applicant's trial. Because the Applicant has failed to satisfy either prong of Strickland, this allegation is also denied.

Handwritten signature and initials, possibly "JL" and "16", in dark ink.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant's attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

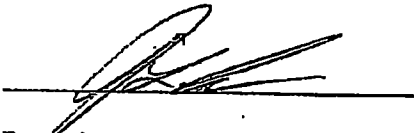


IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!

1/28, 2016
Spencer, South Carolina


Roger L. Couch
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

2013-CP-03-0061

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ALLENDALE)

CASE NUMBER: 2013-CP-03-0061

MARQUIS BREELAND (298259),)

Plaintiff,)

PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO ALTER OR
AMEND JUDGMENT

vs.)

STATE OF SOUTH CAROLINA,)

Defendant.)

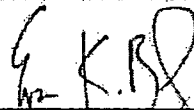
YOU WILL PLEASE TAKE NOTICE that on or after 10 days from the date hereof, or at such other time as the Court shall determine, the undersigned, as counsel for the Plaintiff, Marquis Breeland, will, and does hereby, move this Honorable Court for an Order, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, altering and/or amending its Order of Dismissal filed on February 3rd, 2016 (the "Order"), which is attached hereto and incorporated herein as **Exhibit A**, for the reasons set forth below:

1. The Order does not expressly address two issues raised in Mr. Breeland's Application for Post-Conviction Relief, although such issues were resolved with finality by the Court at the hearing on October 21st, 2015, namely:
 - a. Plaintiff's claim of ineffective assistance of counsel due to critical Brady Violation;
 - i. After consultation with Mr. Breeland at the hearing, and with Mr. Breeland's consent, the undersigned moved to strike this claim as lacking a factual foundation in the record, which was granted by the Court;
 - b. Mr. Breeland's claim that the trial judge erred by denying motion for direct verdict when evidence did not rise above a mere suspicion that applicant was guilty of murdering the victim;

- ii. Mr. Breeland raised this in his original appeal to the South Carolina Court of Appeals, which denied the claim by affirming the trial court's ruling. *See Unpublished Opinion No. 2013-UP-073*, filed on February 13, 2013. Thus, the Court summarily dismissed this claim at the October 21, 2015 hearing as not a cognizable claim for this PCR proceeding. *See Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974); *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001).
2. Movant moves this Honorable Court to amend the Order to include language as to the resolution of those certain claims raised by Mr. Breeland, as set forth in further detail hereinabove.
3. Pursuant to Rule 11, *SCRCP*, the undersigned has consulted with opposing counsel regarding the matters set forth herein.
4. This motion is based upon Rule 59(e), *SCRCP*, the statutory laws, common laws, and case law of the State of South Carolina, and any supporting materials to be supplemented hereinafter.

Respectfully submitted,

WARD & BROMLEY, LLC



Evan K. Bromley, Attorney at Law
7 Simmonsville Road, Suite 200
Bluffton, SC 29910

Evan@WardBromley.com

Tel: (843) 706-2896

Fax: (843) 706-2894

Attorney for Petitioner Marquis Breeland

Bluffton, South Carolina
February 16, 2016

RECEIVED
NOV 18 2016

BY: **(EKB)**

STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

MARQUIS BREELAND (298259),)

Plaintiff,)

vs.)

STATE OF SOUTH CAROLINA,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NUMBER: 2013-CP-03-0061

CONSENT ORDER

FILED FOR RECORD
2016 NOV 14 AM 9:31
ELAINE SABB
CLERK OF COURT
ALLENDALE COUNTY, S.C.

THIS MATTER is before the Court upon the motion of Evan K. Bromley, Esquire in his capacity as counsel for Petitioner, Marquis Breeland, to alter or amend this Court's Order of Dismissal filed on February 3, 2016 ("Order"). Upon the consent of the all parties to this action, as noted by their signatures below, and there being good grounds for same,

IT IS SO ORDERED:

The Order is amended as follows:

1. Mr. Breeland's PCR petition alleged a claim of ineffective assistance of counsel due to a critical Brady violation. After consultation with Mr. Breeland and upon Mr. Breeland's express consent at the hearing, Mr. Bromley moved to strike the claim due to a lack of factual foundation in the record, opposing counsel consented to the striking of such claim, and this Court granted such oral motion. Thus, Mr. Breeland's claim arising from the alleged Brady violation was struck from the application;
2. Mr. Breeland's PCR petition alleged a claim that the trial judge erred by denying his motion for directive verdict when the evidence did not rise above a mere suspicion that the applicant was guilty of murdering the victim. This issue had already been raised and ruled upon by the South Carolina Court of Appeals, which affirmed the trial court's ruling on Mr. Breeland's motion for directed verdict. See Unpublished

TRUE COPY

Date

11/14/16

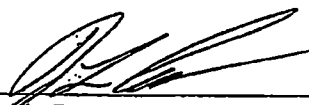
ELAINE SABB
CLERK OF COURT
ALLENDALE, SC

1

Roll
P1

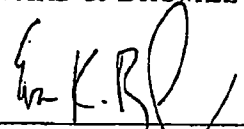
Opinion No. 2013-UP-073, filed on February 13, 2013. As such, this was not a cognizable claim in Mr. Breeland's PCR proceeding and this Court summarily dismissed such claim at the October 21, 2015 hearing. *See Simmons v. State*, 264 S.C. 417, 215 S.E.2d 883 (1974); *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001).

AND SO IT IS ORDERED this 21 day of November, 2016.


 Honorable Roger L. Couch
 Presiding Circuit Court Judge
 Fourteenth Judicial Circuit

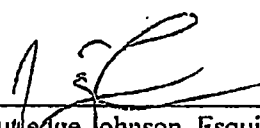
WE SO MOVE:

WARD & BROMLEY, LLC


 Evan K. Bromley, Attorney at Law
 7 Simmonsville Road, Suite 200
 Bluffton, SC 29910
Evan@WardBromley.com
 Tel: (843) 706-2896
 Fax: (843) 706-2894
 Attorney for Petitioner Marquis Breeland

WE SO CONSENT:

SC ATTORNEY GENERAL'S OFFICE


 J. Rutledge Johnson, Esquire
 P.O. Box 11549
 Columbia, SC 29211
rjohnson@scag.gov
 Tel: 803-734-3970
 Fax: 803-253-6283
 Attorney for the State of South Carolina

WITNESSES

S/A Richard Johnson ✓

EST WARRANT NUMBER

K007900

Date of Arrest: January 27, 2009

ACTION OF GRAND JURY

True Bill

Mary Battjes
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2009-GS03-0056

The State of South Carolina

County of Allendale

COURT OF GENERAL SESSIONS

March Term 2010

THE STATE

vs.

Marquis Sentell Breeland

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code:0116

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

INDICTMENT

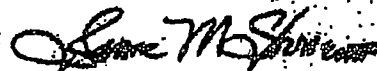
2009-GS03-0056

At a Court of General Sessions, convened on March 3, 2010, the Grand Jurors of Allendale County present upon their oath:

Murder / Murder

That in Allendale County, South Carolina on or about July 22, 2007, with malice aforethought, Marquis Sentell Breeland did kill and murder Laurice Garvin by means of shooting him with a gun, and that Laurice Garvin did die in Allendale County, South Carolina as a proximate result thereof on July 22, 2007; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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



Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

WITNESSES

A Richard Johnson ✓

ARREST WARRANT NUMBER

007901

Date of Arrest January 27, 2009

DECLARATION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: 3-3-10

VERDICT

Foreperson of Petit Jury
Date:

INDICT

DOCKET NO. 2009-GS03-0057

The State of South Carolina

County of Allendale

COURT OF GENERAL SESSIONS

March Term 2010

THE STATE

vs.

Marquis Sentell Breeland

Indictment for

Weapons / Poss. weapon during violent crime,
if not also sentenced to life without parole or
death

SC Code: 16-23-0490
CDR Code: 0549

STATE OF SOUTH CAROLINA)
COUNTY OF ALLENDALE)

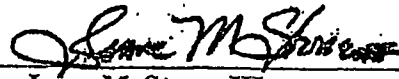
INDICTMENT
2009-GS03-0057

At a Court of General Sessions, convened on March 3, 2010, the Grand Jurors of Allendale County present upon their oath:

Weapons / Poss. weapon during violent crime, If not also sentenced to life

That in Allendale County, South Carolina, on or about July 22, 2007, the Defendant, Marquis Sentell Breeland, did possess a firearm or did visibly display what appeared to be a firearm or did visibly display a knife during the commission of or attempted commission of a violent crime, to wit: murder, a violent crime for which he is convicted of committing or attempting to commit; 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.



Isaac M. Stone, III
Solicitor, 14th Judicial Circuit