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1 Exhibit Number Six will be admitted into evidence without
2 objection. State's Six consisting of how many?

3 DEP. SOL. THORNTON: I believe it's seven plastic
4 baggies, Judge.

5 THE COURT: You want to look, Mr. Mathews?

6 DEP. SOL. THORNTON: I'm sorry, Judge. I thought I had
7 already shown it to him.

8 MR. MATHEWS: Yeah. Those are fine.

9 THE COURT: Seven bags?

10 MR. MATHEWS: That is correct.

11 THE COURT: Proceed.

12 DEP. SOL. THORNTON: Thank you, Your Honor. Your
13 Honor, once again, I would like to approach.

14 THE COURT: Yes.

15 Q I'm going to hand you four individual small bags, sir,
16 marked for identification as State's Seven, Eight, Nine and
17 Ten. Do you recognize each of those items, sir?

18 A Yes, sir. I do.

19 Q And what are they?

20 A Seven and Eight, which are a standard miniature brown
21 paper bags, which we do sometimes use for evidence
22 collection, both of them would be projectiles, which is the
23 lead portion of the bullet. Once it's been fired it's the
24 actual piece of lead, labeled as a projectile. State's Nine
25 and Ten, Nine, which is a manila envelope, is a projectile

1 as well. Again, the lead portion of the round. Ten is a
2 shell casing, also in a manila envelope.

3 Q All right. Detective Scott, did you collect those
4 items?

5 A Yes, sir. I did.

6 Q All right. And is that your name that appears on the
7 blue evidence card?

8 A That is correct.

9 Q All right, sir. Did you turn those into evidence?

10 A Yes, sir. I did.

11 Q All right. Same question as before, sir, based on your
12 experience as a detective, to your knowledge, have any of
13 those been tested against anything?

14 A Not to my knowledge, no, sir.

15 Q Do they appear in the same condition and sealed in the
16 same way as when you turned them into evidence?

17 A Not to my knowledge, no, sir.

18 Q Do they appear in the same condition and sealed in the
19 same way as when you turned them into evidence?

20 A Yes, sir. They are.

21 DEP. SOL. THORNTON: Your Honor, at this time, I'd ask
22 that State's Seven through Ten be admitted into evidence.

23 THE COURT: Any objection as to State's Exhibit's
24 Seven, Eight, Nine and Ten?

25 MR. MATHEWS: No, sir.

1 THE COURT: Ladies and gentlemen of the jury, State's
2 Exhibit's Seven, Eight, Nine and Ten will be admitted into
3 evidence without objection. You may publish.

4 DEP. SOL. THORNTON: Thank you, Your Honor.

5 Q Det. Scott, other than the collection of the evidence,
6 did you have any other major role in this case?

7 A No, sir.

8 Q Thank you.

9 DEP. SOL. THORNTON: Judge, I have no further
10 questions. Detective, please answer any questions Mr.
11 Mathews has for you.

12 THE COURT: Cross-examination?

13 MR. MATHEWS: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. MATHEWS:

16 Q Det. Scott, when you picked up those shell casings, did
17 you use gloves?

18 A Yes, sir, I do.

19 Q Why do you do that?

20 A Because we don't want any kind of transfer of any type
21 of evidence from the shell casing, as well as if we use any
22 type of oar sticks, metal objects, that could potentially
23 ruin the tool markings, which is what we use to prepare a
24 shell casing to a firearm, if we do have the firearm.

25 Q Would you also -- would you also do that to preserve if

1 there were any fingerprints on them?

2 A Yes, sir. Sometimes, we do.

3 Q Okay. But these were not sent for fingerprints?

4 A No, sir. We actually process all of our stuff in
5 house.

6 Q Okay. Was that done?

7 A Again, I can't say for one hundred percent sure whether
8 it was done or not once I turned it to evidence. I do not
9 physically process these.

10 Q Would there be some indication on the envelopes if it
11 had been done?

12 A Again, not to my knowledge. It could or couldn't,
13 depending on who processed it.

14 Q Okay. You collected the shells and you sent them into
15 evidence, and as far as you know, they weren't tested for
16 prints, but you wanted to make sure that by using gloves
17 that it would be able to be done if it could be done?

18 A Well, also, the use of gloves was important to this
19 particular crime scene because of the blood as well. We use
20 precautions, with there being blood, obviously, any kind of
21 blood borne pathogens we don't want to contract that, if
22 there is any and it is present.

23 Q Sure. Did you take any pictures?

24 A I did not.

25 MR. MATHEWS: I have nothing further, Your Honor.

1 THE COURT: Redirect?

2 DEP. SOL. THORNTON: None, Your Honor. As to this
3 witness, ask that he be allowed to step down, subject to
4 recall. He's been instructed not to discuss his testimony.

5 THE COURT: Mr. Mathews, as to this witness?

6 MR. MATHEWS: He can go or stay as he pleases.

7 THE COURT: You have no objection?

8 MR. MATHEWS: No, sir.

9 THE COURT: Don't discuss your testimony. You're
10 excused, subject to recall. You may leave the courtroom.
11 Thank you.

12 WITNESS: Okay, Judge.

13 DEP. SOL. THORNTON: Court's indulgence one moment,
14 Your Honor.

15 (BRIEF PAUSE IN THE COURTROOM.)

16 THE COURT: All right, counsel. Let's move along.

17 DEP. SOL. THORNTON: Sorry, Judge. Trying to shorten
18 it up. Ray Taylor, please.

19 MADAME CLERK: Please come forward to be sworn.

20 WHEREUPON, RAY TAYLOR IS DULY SWORN.

21 THE COURT: State your name for the record and spell
22 your last name for the court reporter.

23 WITNESS: Cameron Ray Taylor, T-A-Y-L-O-R.

24 THE COURT: Your witness, counsel.

25 DEP. SOL. THORNTON: Thank you, Judge.

1 DIRECT EXAMINATION

2 BY DEP. SOL. THORNTON:

3 Q Mr. Taylor, who do you work for, sir?

4 A Colleton County Sheriff's Office.

5 Q And what do you do for the Sheriff's Office?

6 A I'm a Deputy and assigned to the Investigation Division

7 over Sex Offender Registry.

8 Q All right. And do you perform other duties sometimes

9 as need be?

10 A Yes, sir.

11 Q Did you still work for the Sheriff's Department, sir,

12 back on April the 10th, around that timeframe, of 2009?

13 A Yes, I did.

14 Q All right. And did you have any connection to the case

15 of State v. Derrick Fishburne, in the murder of Donald

16 Green?

17 A Yes, I did.

18 Q All right, sir. And what was your involvement, if any?

19 A I was sent to the autopsy down at the Medical

20 University and remained there the entire time. Then, any

21 evidence that was obtained from that was given to me to

22 bring back to the office.

23 Q All right, sir.

24 DEP. SOL. THORNTON: And Your Honor, if I may approach?

25 THE COURT: You may.

1 Q Sir, I'm going to hand you what's been marked for
2 State's identification State's Exhibit Number Eleven. Do
3 you recognize that bag and the contents thereof?

4 A Yes, sir. I do.

5 Q All right. And what is that bag that's been marked as
6 State's Exhibit, for identification, Number Eleven, and the
7 contents thereof?

8 A One of the bags contains nail clippings, pulled scalp
9 hair, metallic fragments, blood spots, and clippings that
10 were taken from the deceased. The other bag here contains
11 four projectiles that were removed from the victim's body.

12 Q All right. And was that done in your presence?

13 A Yes, sir. It was.

14 Q All right. And did you then take custody of those
15 items?

16 A Yes, sir, I did. I returned back and at that time,
17 they were signed over to the evidence technician on that
18 same date, later on that afternoon.

19 Q All right. And do they appear in the same condition as
20 they were when you turned them into evidence?

21 A Yes, sir, they do.

22 Q All right, sir.

23 DEP. SOL. THORNTON: Your Honor, at this time, I'd ask
24 that State's Exhibit Number Eleven be moved into evidence.

25 THE COURT: Is that right?

1 WITNESS: Yes, sir.

2 THE COURT: Any objection to State's Eleven?

3 MR. MATHEWS: No, sir.

4 THE COURT: Ladies and gentlemen of the jury, State's
5 Exhibit Number Eleven will be admitted into evidence,
6 without objection. State's Exhibit Number Eleven now in
7 evidence. You may publish and proceed.

8 Q Officer Taylor, other than transporting this evidence,
9 the bullet fragments and things, from the Medical University
10 to evidence here in Colleton County, did you have any
11 connection with this case?

12 A No, sir. I did not.

13 DEP. SOL. THORNTON: Your Honor, I have no further
14 questions at this time. Officer Taylor, please any
15 questions that Mr. Mathews has.

16 THE COURT: Cross-examination?

17 MR. MATHEWS: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. MATHEWS:

20 Q Det. Taylor -- or Officer Taylor, based on the markings
21 on that, were any of those things sent to SLED for analysis?

22 A That I do not know.

23 Q Okay. Would it be reflected on the envelope or the
24 bags marked as they were?

25 A I don't know the procedure ---

1 THE COURT: Just a moment. Is there an objection?

2 DEP. SOL. THORNTON: The State will stipulate that
3 those items were not sent to SLED, just to save Mr. Mathews
4 some time.

5 THE COURT: Do you accept the stipulation?

6 MR. MATHEWS: Yes, sir, that's fine.

7 THE COURT: Very well. Anything further?

8 MR. MATHEWS: No, sir.

9 THE COURT: As to this witness?

10 DEP. SOL. THORNTON: The same as the others, Judge.
11 Subject to recall and he knows not to discuss his testimony,
12 but we're late enough in the afternoon that I ask that he be
13 released. But he understands he's still under subpoena.

14 THE COURT: You can't discuss your testimony with any
15 other witness. You are subject to recall, but you are
16 excused from the courtroom.

17 WITNESS: Thank you.

18 THE COURT: Call your next witness.

19 DEP. SOL. THORNTON: Thank you, Your Honor. The State
20 calls Lorinda Williams to the stand.

21 MADAME CLERK: Please come forward to be sworn.

22 WHEREUPON, LORINDA WILLIAMS IS DULY SWORN.

23 MADAME CLERK: Please have a seat on the witness stand.
24 State your full name for the record, please.

25 THE COURT: Watch your step right there. Have a seat

1 and make yourself comfortable. Pull that microphone over.
2 It's gonna amplify your voice. Please speak up so my last
3 jurors down there can hear you. State your full name and
4 spell your last.

5 WITNESS: Lorinda Williams, W-I-L-L-I-A-M-S.

6 DIRECT EXAMINATION

7 BY DEP. SOL. THORNTON:

8 Q Ms. Williams, do you know the person seated at the
9 defense table?

10 A Yes.

11 Q And who is that, ma'am?

12 A Derrick Fishburne.

13 Q Does he have a street name?

14 A Yes.

15 Q What is it?

16 A D-Rock.

17 Q And how do you know Mr. Fishburne?

18 A I dated D-Rock.

19 Q All right. And were you dating him in April of 2009?

20 A Yes.

21 Q Specifically, on the evening of April the 9th, into the
22 early morning hours on a Friday morning, April 10th of 2009?

23 A Yes.

24 Q All right, ma'am. And did he stay at your house at
25 some point during those two days?

1 A Yes, sir.

2 Q All right. Were you questioned by law enforcement
3 about D-Rock or Derrick Fishburne's whereabouts late in the
4 evening on April the 9th, early in the morning of April the
5 10th, 2009?

6 A Yes, sir.

7 Q And do you recall what you told them?

8 A Yes, sir.

9 Q Had he been there that day? And when I say "he", I
10 mean, Derrick Fishburne had he been at your house at some
11 point that day on April the 9th, 2009?

12 A Yes.

13 Q All right. To your knowledge, did he leave at some
14 point late in the evening on April the 9th?

15 A I don't know. I left to go to the mall.

16 Q Okay. Very late in the evening, did you tell the
17 detectives that he left sometime around 12:45 to 1:00 a.m.?

18 A Yes.

19 Q And the 12:45 was April the 9th; the 1:00 a.m. would
20 have been April the 10th, as the time had gone over?

21 A Yes.

22 Q All right. And did you also put in a statement that he
23 didn't come back until about, I believe the statement said
24 3:00 p.m., did you mean 3:00 p.m. or did you mean 3:00 a.m.?

25 A A.M.

1 Q All right, ma'am. Is it your testimony that D-Rock was
2 gone from your house from 12:45 or so on the evening of the
3 9th into that next morning at 3:00 a.m. before he got back?

4 A Yes, sir.

5 Q Do you remember what he was -- do you remember what you
6 told the detectives what he was wearing when he left your
7 house? And I can give you your statement if you need to be
8 refreshed.

9 A All I remember is a red shirt.

10 Q All right. And he got back to your house, you said, at
11 3:00. Did he leave later that morning?

12 A Yes.

13 Q Okay. Other than talking to law enforcement, ma'am, in
14 this one instance, do you have any other connection to this
15 case?

16 A No, sir.

17 Q Do you still date Mr. Fishburne?

18 A Yes.

19 Q Okay.

20 DEP. SOL. THORNTON: Court's indulgence, Your Honor.

21 Q Ma'am, let me ask you something just to make sure.
22 It's been pointed out to me that I said something in error.
23 Of course, after midnight, 12:45 would have been April the
24 10th, so what we're talking about is late on that Thursday,
25 April the 9th, but he left sometimes early morning hours

1 April the 10th at 12:45 A.M.; is that correct?

2 A It was 12:45, so it would probably be that Friday.

3 Q Right. That morning, early, and he got back at 3:00.

4 A Right.

5 Q Okay. I'm sorry if I confused you. I apologize. Do
6 you live in the same place now that you did then?

7 A No, sir.

8 Q All right. Where did you live in April when Derrick
9 was staying at your house, at least some of the night?

10 A [REDACTED] Briarwood Street.

11 Q Briarwood, is that off any other major road?

12 A I don't know the road.

13 Q Is it near Peachtree Street?

14 A It's right behind the Subway Station.

15 Q Right behind the Subway, okay. I don't have anything
16 further. Thank you very much. Please answer any questions
17 Mr. Mathews has.

18 THE COURT: Cross-examination.

19 MR. MATHEWS: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. MATHEWS:

22 Q Lorinda, do you go by the name "Penny"?

23 A Yes, sir.

24 Q Now, when Derrick had left, he left with Ti-Ti?

25 A Well, I don't know who he left with, but he left while

1 I was in the shower.

2 Q I see, okay. Do you know what car he left in?

3 A No, sir.

4 Q Could it have been a blue Caprice?

5 A I mean, Ti-Ti was there, but I don't know who he left
6 with.

7 Q Okay. Did he leave in Ti-Ti's car?

8 A I don't know, sir.

9 Q Okay. Did he have any other car that he was driving
10 that night?

11 A No, sir.

12 Q So it would have had to have been with whoever came
13 with him?

14 A He was already there to my house.

15 Q Oh, Derrick -- okay. Ti-Ti was, also?

16 A Yes.

17 Q Okay. So whatever Ti-Ti had, that's what they left in?

18 A I don't know, sir.

19 Q All right. You said, I think it was in a -- now, when
20 he came back at 3:00 in the morning, he said to wake him up
21 to go to roll call the next day?

22 A Yes, sir.

23 Q Okay. And did you do that?

24 A Yes, sir.

25 Q Okay. Did he have any reason -- did he indicate that

1 he was afraid to go to roll call or anything like that?

2 A No, sir.

3 Q Okay. I think you said in your statement that Ti-Ti
4 you thought was Timothy Holmes?

5 MR. MATHEWS: Your Honor, may we approach?

6 THE COURT: Counsel approach.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
8 AND OUT OF THE HEARING OF THE JURY.)

9 THE COURT: Proceed. As we discussed, consistent with
10 my ruling.

11 MR. MATHEWS: Yes, sir.

12 Q Ms. Williams, you indicated in your statement, that you
13 thought that Ti-Ti was Timothy Holmes?

14 A Yes.

15 Q Okay.

16 MR. MATHEWS: May I approach, Your Honor?

17 THE COURT: You may.

18 Q Ms. Williams, I'm handing you what's been marked as
19 Defendant's Exhibit Number Nine. Have you ever seen this
20 person before?

21 A No, sir.

22 Q Okay. When you say Timothy Holmes, how did you
23 determine the name Timothy Holmes?

24 A I just got his name, the last name, mixed up.

25 Q Okay. So, it wasn't really Timothy Holmes?

1 A It was Timothy, but I don't know his last name.

2 Q Okay. Maybe Behling?

3 A I don't know his last name.

4 Q Okay. What did he look like?

5 A Timothy has dreds, well, braids in his hair.

6 Q What's the difference between dreds and braids?

7 A Braids is braided to the back or it can be single; and
8 dreds is locks.

9 Q Okay. Would braids be kind of kneaded into the head
10 and dreds be more to the top and hanging down like hair,
11 natural?

12 A Yeah.

13 Q Okay. So Timothy Behling had dreds, as opposed to
14 Derrick who had maybe close braids, right?

15 A Ti-Ti had braids.

16 Q Okay. But were they drooping down like that or were
17 they ---

18 A I don't know.

19 Q Okay. About how long were Ti-Ti's braids?

20 A Long.

21 Q Long?

22 A Uh-huh.

23 Q All right. Long and they could be kind of braids, kind
24 of dreds?

25 A He had them all kind of ways.

1 Q Okay. That particular night, do you know how they
2 looked?

3 A No, sir.

4 Q How long does it take to braid hair tight like Derrick
5 had had it?

6 A It depends on the braider.

7 Q Okay. Well, a range?

8 A An hour.

9 Q Okay. An hour if you're good, and depending on, you
10 know, okay. When you last saw Derrick, did he look the same
11 as when you last saw him as when you saw him before he left?
12 his hair?

13 A Yes.

14 Q Did you allow, I believe, the Sheriff's Office to
15 search your home?

16 A Yes.

17 Q Did they take anything?

18 A No, sir.

19 Q Did you hide anything or say, "Have the run of the
20 place. I don't have anything to hide"?

21 A I didn't hide anything, but I gave them the right to
22 search.

23 Q Okay. And how long were they there?

24 A About 20 minutes; 30 at the most.

25 Q Thirty at the most? Did they look in closets and under

1 beds and all that stuff?

2 A Yes.

3 Q And they left with nothing?

4 A Yes, sir.

5 MR. MATHEWS: Nothing further, Your Honor.

6 THE COURT: Redirect?

7 DEP. SOL. THORNTON: None, Judge.

8 THE COURT: As to this witness?

9 DEP. SOL. THORNTON: Your Honor, I'd ask that she be
10 excused.

11 THE COURT: Any objection?

12 MR. MATHEWS: No, sir.

13 THE COURT: You may step down, Ms. Williams, and you
14 are excused from the trial of this case. You may leave the
15 courtroom at this time. Call your next witness.

16 DEP. SOL. THORNTON: Your Honor, at this time, I would
17 ask that the State rest for today. I still have some more
18 witnesses, but they're going to be longer witnesses, Judge;
19 only one or two left, but the next witness will probably be
20 very long.

21 THE COURT: Counsel approach.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
23 AND OUT OF THE HEARING OF THE JURY.)

24 THE COURT: Madame Foreperson, I told you I was going
25 to get you home earlier tonight than I did last night.

1 We're going to stop at this point for the evening. I
2 anticipate we will complete the trial of this case tomorrow.
3 Of course, that's an estimate, ladies and gentlemen, there's
4 no way to know that with certainty because it's impossible
5 to ascertain what witnesses will say and how long questions
6 will take with any degree of complete certainty, but we feel
7 like we can complete it tomorrow.

8 Over the overnight recess, I ask that you please not
9 discuss this case with anyone, not even a member of your own
10 family. If somebody tries to talk with you about it, just
11 tell them you're on the jury and that the judge ask that you
12 not discuss it. Please don't listen to any television
13 account or read any newspaper account, or listen to any
14 radio account. This trial, as I've instructed you
15 throughout the trial, you must decide this case solely upon
16 evidence introduced in this courtroom when both sides are
17 present, with the right of cross-examination.

18 I'm going to ask that you be back in your jury room
19 tomorrow morning, we're going to start at 9:30, so I ask you
20 to be in your jury room prior to 9:30 in the morning, so
21 that we can move to complete the trial. Thank you for your
22 patience today. I look forward to seeing you tomorrow
23 morning. We'll have something for you in your jury room if
24 you want to get here early and have a cup of coffee or some
25 juice or a snack. Thank you very much. You may leave the

1 courtroom at this time. Everyone else remain seated while
2 the jury is leaving the courtroom.

3 (4:45 P.M., 7-20-10, WHEREUPON THE JURY EXITS-ENTERS
4 THE COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
5 RECORD.)

6 THE COURT: All right. I request that the lawyers, if
7 they have any requests to charge in this case, please submit
8 them to my law clerk before you leave the courtroom today so
9 that we can be working on the charge, since it's anticipated
10 that the case will go to the jury tomorrow.

11 Are there any other matters outside the presence of the
12 jury that need to be taken up on the record, from the State
13 of South Carolina?

14 DEP. SOL. THORNTON: No, sir.

15 THE COURT: From the defendant?

16 MR. MATHEWS: I'm unaware of any. I'm not sure how I'm
17 going to get the requests to charge today, Your Honor, it's
18 almost 5:00, and I don't know what the evidence is going to
19 be tomorrow. I'll do the best I can.

20 THE COURT: Well, I understand you don't know what the
21 evidence is going to be tomorrow, but you've known about
22 this trial for some time and you knew it would go to the
23 jury tomorrow if you started it today, so certainly you're
24 in a position to submit any requests that you have. This is
25 certainly no surprise for you, Mr. Mathews. You know I

1 always -- let's see, how many cases have you tried in front
2 of me, Mr. Mathews? At least ten. And in every case you've
3 tried in front of me over the past ten years, Mr. Mathews,
4 I've requested requests to charge the night before at 5:00
5 on the day before the case goes to the jury, so I don't find
6 the statement that you're surprised about this to be
7 anything unusual about any case you've tried.

8 MR. MATHEWS: I was ready in Sincere Owens, Your Honor.
9 That's the case I was ready on, but I'll get them as quick
10 as I can, Your Honor.

11 THE COURT: I'll expect you to hand them up, just as I
12 expect them from counsel for the State, Mr. Mathews, because
13 we'll be working tonight in order not to delay the jury any
14 further. In fact, Mr. Mathews, I want to see you in
15 chambers about that, along with Mr. Thornton, right now.
16 Court is adjourned until 9:30 in the morning.

17 (WHEREUPON, COURT IS ADJOURNED FOR THE EVENING.

18 (WEDNESDAY, 7-21-10, 9:39 A.M., COURT RECONVENES.)

19 THE COURT: Is the State ready to proceed?

20 DEP. SOL. THORNTON: Yes, sir.

21 THE COURT: Is the defendant ready to proceed?

22 MR. MATHEWS: Yes, sir.

23 THE COURT: Odell, bring me the jury, please.

24 (9:40 AM, 7-21-10, WHEREUPON THE JURY ENTERS THE
25 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE

1 RECORD.)

2 THE COURT: Good morning, Madame Foreperson, good
3 morning, ladies and gentlemen of the jury. Hope everybody
4 had a pleasant evening. Thank you for being here on time.
5 We will now continue with the testimony in the trial of this
6 case. Solicitor, you may call your next witness.

7 DEP. SOL. THORNTON: Thank you, Your Honor. We recall
8 Andre Williams to the stand.

9 THE COURT: Mr. Williams, you're still under oath. If
10 you'll come up and take the witness stand. This witness has
11 previously been sworn in the trial of this case. State your
12 full name and spell your last name.

13 WITNESS: Andre Williams, W-I-L-L-I-A-M-S.

14 DIRECT EXAMINATION

15 BY DEP. SOL. THORNTON:

16 Q Det. Williams, I apologize. I just have one very quick
17 question for you, sir. There's been a lot of testimony
18 about the photo lineups. I believe your previous testimony
19 was that you get the person's information, name, height,
20 weight, or social security number and send it to SLED, and
21 they send it back with that picture and five other people
22 that look similar to him; is that correct, sir?

23 A Correct.

24 Q Do you know where the actual photographs themselves
25 come from?

1 A SLED gets it from the DMV.

2 Q So, they're drivers license or state I.D. pictures?

3 A Correct. They go on DMV online.

4 Q Thank you, sir.

5 DEP. SOL. THORNTON: No further questions, Judge. Mr.
6 Mathews.

7 THE COURT: Cross-examination?

8 MR. MATHEWS: No, sir. No questions, Your Honor.

9 THE COURT: You may step down.

10 DEP. SOL. THORNTON: Thank you, Your Honor. Your
11 Honor, at this time, the State calls Captain Gene Johnson to
12 the stand.

13 MADAME CLERK: Please come forward to be sworn.

14 WHEREUPON, CAPTAIN GENE JOHNSON IS DULY SWORN.

15 MADAME CLERK: Please have a seat on the witness stand
16 and state your full name for the record.

17 THE COURT: Good morning. You know what to do. Pull
18 the microphone over. State your full name and spell your
19 last name for the court reporter.

20 WITNESS: My name is Gene Johnson. Last name, J-O-H-N-
21 S-O-N.

22 THE COURT: Your witness, counsel.

23 DEP. SOL. THORNTON: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY DEP. SOL. THORNTON:

1 Q Mr. Johnson, who do you work for, sir?

2 A Colleton County Sheriff's Office.

3 Q And in what capacity?

4 A I'm a Captain with support services.

5 Q All right. And did you work for the Sheriff's
6 Department on or about April the 10th of 2009?

7 A Yes, I did.

8 Q On that day, sir, did you conduct any interviews?

9 A Yes.

10 Q All right, sir. And did you conduct any interview of
11 anybody that you see currently in this courtroom?

12 A Yes, I did, with the defendant sitting at the defense
13 table, Derrick Fishburne.

14 Q All right. And did you talk with Mr. Fishburne about
15 his potential involvement in the murder of Donald Green?

16 A Yes.

17 Q Captain Johnson, before you talked to the defendant in
18 this case, Derrick Fishburne, did you read him what they
19 call the Miranda Rights?

20 A Yes, I did.

21 Q And is there a particular way you do that? Do you do
22 it by a card? Do you do it by a form? How is that
23 completed?

24 A That's a form that we read to them.

25 DEP. SOL. THORNTON: Your Honor, may I approach?

1 THE COURT: You may.

2 Q Capt. Johnson, I'm going to hand you what's been marked
3 as State's Exhibit Number 12. Can you identify that
4 document, sir?

5 A Yes, this is the Miranda Form that I read to him that
6 morning and had him sign.

7 Q All right. Could you go over the rights that you read
8 to him?

9 A Yes. It says, "You have the right to remain silent.
10 Anything you say can and will be used against you in a court
11 of law. You have the right to talk to a lawyer and have him
12 present while you're being questioned. If you cannot afford
13 to hire a lawyer, one will be appointed to represent you
14 before being questioned. You can decide at any time to
15 exercise these rights and not answer any questions or make
16 any statements."

17 Q All right, sir. And did you read him those rights?

18 A Yes, I did.

19 Q Is there any place next to those where Mr. Fishburne is
20 able to indicate that he's been read those rights?

21 A Yes.

22 Q And what is that, sir?

23 A He would place his initials to the left of the Miranda
24 Rights, Miranda Warnings, and there is initial one through
25 five that says "DF".

1 Q All right, sir. And did Derrick Fishburne put "Derrick
2 Fishburne" next to each one of those?

3 A That's correct.

4 Q And did he indicate to you that he understood his
5 rights?

6 A Yes, he did.

7 Q Is there any other section on that piece of paper, sir?

8 A Yes, sir. There's also a waiver at the bottom of it
9 that is also read, too.

10 Q All right. Did you read Derrick Fishburne that waiver?

11 A Yes, I did.

12 Q Would you read it for me, please?

13 A This says: "I have read and have had read to me the
14 above statement of my rights. I understand each of these
15 rights and having those rights in mind, I waive them and
16 willingly make a statement."

17 Q Capt. Johnson, is that the form that you used that day?

18 A Yes, sir.

19 Q All right. Has it been altered or changed in any way?

20 A No, sir.

21 Q Were you the officer that indicated that you witnessed
22 that statement?

23 A Yes.

24 Q Did you sign that statement or indicate with your name
25 that you witnessed it?

1 A I did.

2 Q All right. Has it been altered in any way?

3 A No.

4 DEP. SOL. THORNTON: Your Honor, I'd ask that State's
5 Exhibit Twelve be admitted into evidence.

6 THE COURT: Mr. Mathews, Any objection as to State's
7 Twelve?

8 MR. MATHEWS: No, sir.

9 THE COURT: Ladies and gentlemen of the jury, State's
10 Exhibit Number Twelve will be admitted into evidence without
11 objection. State's Twelve in evidence without objection.
12 You may publish to the jury.

13 DEP. SOL. THORNTON: Thank you, Your Honor.

14 Q Capt. Johnson, did you talk to Mr. Fishburne after he
15 understood that, did he indicate that he would give you a
16 statement or talk to you about this case?

17 A Yes.

18 Q All right, sir. And did you videotape your
19 conversation with him?

20 A Yes, it was.

21 Q All right, sir. And at my request, have you and I gone
22 over that videotape in question?

23 A Yes.

24 Q And have you reviewed that videotape?

25 A Yes, I have.

1 Q All right, sir. Is that the same videotape that you
2 provided to defense counsel and to my office?

3 A Yes.

4 Q All right. I'd ask you, sir, to look at the screen for
5 me, please. Now, before I play this, sir, can you tell by
6 looking at the first part of this video, is that the video
7 that we're discussing today?

8 A Yes, it is.

9 Q All right, sir. And who is that that is about to sit
10 down?

11 A That's me.

12 Q All right. And who is that opposite you?

13 A That's the defendant, Derrick Fishburne.

14 Q All right. And I see up in the corner that says 4-10-
15 09 at approximately 10:30 in the morning, is that at least
16 accurate as to the day?

17 A Yes.

18 Q All right. And is this the interview that we're
19 talking about today?

20 A Yes.

21 Q And other than -- well, let me ask this another way.
22 The very beginning of the tape that you provided to me, did
23 that have the defendant sitting by himself for about 45
24 minutes, 30 minutes?

25 A Yes.

1 Q Is this the first part of where you initially started
2 talking to him?

3 A That's correct.

4 Q So there's no other discussions before this?

5 A No, sir.

6 Q All right, sir. And is this the interview based on
7 your looking at this photograph, or still shot?

8 A Yes. Yes.

9 THE COURT: Counsel, you and Mr. Mathews approach,
10 please.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
12 AND OUT OF THE HEARING OF THE JURY.)

13 DEP. SOL. THORNTON: Thank you, Your Honor. Your
14 Honor, at this time, with the consent of defense counsel,
15 he's been aware of the interview. It comes from a cd that
16 he has, and once he's done with cross-examination, I will be
17 marking it, Your Honor. I'm just stating this for the
18 record because I can't identify it as an exhibit.

19 THE COURT: Is that correct, Mr. Mathews? You have no
20 objection to him playing what he loaded into his own
21 computer and marking the entire exhibit, which you have a
22 copy of, as an exhibit in evidence in the trial of this
23 case, without objection; is that correct?

24 MR. MATHEWS: That is correct.

25 THE COURT: And my understanding is that you and Mr.

1 Thornton have both edited this tape. You both consent to
2 the contents and that certain portions have been redacted by
3 consent of the parties; is that correct, Mr. Mathews?

4 MR. MATHEWS: Yes, sir.

5 THE COURT: Mr. Thornton?

6 DEP. SOL. THORNTON: Yes, sir.

7 THE COURT: You may proceed, without objection.

8 DEP. SOL. THORNTON: Thank you, Your Honor.

9 (9:51 A.M. video begins - video ends 10:38 A.M.)

10 Q Det. Johnson, is that an accurate depiction of the
11 interview that you did?

12 A Yes.

13 Q At sometime after this do you come back in and just
14 serve warrants on Mr. Fishburne for this case?

15 A I did, yes.

16 Q Okay. I just want to ask you one question, sir; you
17 indicated when you were talking to him, you said, "You're
18 not the only name that was called." And there's, of course,
19 outside of your presence, there's been testimony about that.
20 To your knowledge, has anybody other than Derrick Fishburne
21 been identified by eyewitnesses as the shooter in this case?

22 A No.

23 Q I have nothing further. Det. Johnson, please answer
24 any questions Mr. Mathews has for you, please, sir.

1 THE COURT: Cross-examination?

2 MR. MATHEWS: Yes, sir. May it please the Court?

3 CROSS-EXAMINATION

4 BY MR. MATHEWS:

5 Q Det. Johnson, how are you doing today?

6 A I'm good, sir.

7 Q It's pretty clear that based on your investigation that
8 Mr. Fishburne lied to you about not being at the club.

9 A Yes.

10 Q Was -- what was the first theory that you investigated,
11 that you looked into as an investigator in this case?

12 A What was the what now? I'm sorry.

13 Q The first theory -- the first theory as to why this
14 went down.

15 A I really didn't. I mean, we didn't have a motive or a
16 choice why it took place.

17 Q Did you talk to a Matthew Goodwin?

18 A Yes.

19 Q Okay. In fact, you talked with him before you talked
20 with Mr. Fishburne, correct? Like 2:00 in the morning or
21 3:00 in the morning, something like that, just before?

22 A I may have. I honestly can't remember.

23 Q Okay. Why did you talk to Matthew Goodwin?

24 A There was an altercation that took place inside the
25 club that night before the shooting, and if my memory serve

1 me correctly, there was an argument or some words he had
2 with the victim, Donald Green.

3 Q Okay. So, Matthew Goodwin and Donald Green had gotten
4 into it; over a girl?

5 A Yes.

6 Q Okay. And as a result of that, you interviewed Mr.
7 Goodwin?

8 A Yes.

9 Q And that was also videotaped?

10 A Yes.

11 Q Did Mr. Goodwin write out a written statement as a
12 result of your interrogation, discussion, or interview?

13 A Yes.

14 Q During the interview, did he at some point mention that
15 ---

16 DEP. SOL. THORNTON: Objection, Your Honor. It's
17 hearsay.

18 THE COURT: Sustained.

19 MR. MATHEWS: I'll restate that.

20 THE COURT: Cross. Please rephrase the question.

21 Q As a result of your talking with Mr. Goodwin, you took
22 a written statement. I think you've indicated already.
23 What did you do with that written statement from Mr. Goodwin
24 once you received it?

25 A After he wrote it, I attempted to read it, but I

1 couldn't fully understand it, because his words were, like,
2 in pieces. So, what I did, I said, "Can I do this? Let me
3 rewrite your statement in your words and I will have you
4 sign it." I also told him that I would put a note on the
5 bottom, explaining the reason why I wrote the statement and
6 he signed it.

7 Q Did he also in his first written statement, leave
8 something out?

9 A Yes, he did.

10 Q What did he leave out?

11 A If I remember correctly, he left out the fact that
12 Derrick Fishburne and I think it's a guy by the name of Ti-
13 Ti, was at the club. And if I may say, those are things he
14 told me verbally and he just left them out of the statement.
15 I wanted that in the statement.

16 Q Did you have a chance to look at Mr. Goodwin's cell
17 phone at some point during that conversation?

18 A Yes.

19 Q What time was a call received, according to your review
20 of that cell phone?

21 A It was after 1:00. I can't remember the time.

22 Q About 1:22?

23 A That's possible.

24 Q Okay. And at that time, he was at the club?

25 A Yes, sir.

1 Q What time did the shooting take place?

2 A I'm not exactly sure, but it was between 1:00 and 1:30,
3 I think it was.

4 Q Right around that time?

5 A Around that time, yes.

6 Q Okay. Why did you rule Matthew Goodwin out as a
7 suspect during that interview? Or did you?

8 A According to his interview, he was not at the club when
9 the shooting took place.

10 Q He had been at the club, but he wasn't at the time the
11 shooting took place?

12 A That is correct; according to his statement, yes.

13 Q But he was at the club at 1:22?

14 A He was at the club, I'm assuming, 1:22. I can't
15 remember the exact time, but he was at the club between 1:00
16 and 1:30.

17 Q Okay. All right.

18 MR. MATHEWS: If the Court will indulge me one moment.

19 (BRIEF PAUSE IN THE COURTROOM.)

20 MR. MATHEWS: No further questions, Your Honor.

21 THE COURT: Redirect?

22 REDIRECT EXAMINATION

23 BY DEP. SOL. THORNTON:

24 Q Capt. Johnson, you testified, and be very careful about
25 saying anything particular about what someone else told you,

1 because that's not appropriate. But you testified that Mr.
2 Goodwin, and when asked by Mr. Mathews that he told you D-
3 Rock or Derrick Fishburne was at the club, other than that,
4 was he able to give you any information that he saw the
5 shooter or he saw the shooting or anything?

6 A No.

7 Q Thank you. Nothing further.

8 THE COURT: Recross, limited to redirect?

9 MR. MATHEWS: No, Sir.

10 THE COURT: As to this witness, Solicitor?

11 DEP. SOL. THORNTON: Ask that he be excused, Judge.

12 But he's on telephone standby. He's been told not to
13 discuss this case.

14 THE COURT: Any objection, Mr. Mathews?

15 MR. MATHEWS: No, Your Honor.

16 THE COURT: Capt. Johnson, you know that you're subject
17 to be recalled. Please don't discuss your testimony with
18 anybody. You may leave the courthouse at this time. Call
19 your next witness.

20 DEP. SOL. THORNTON: Your Honor, Court's indulgence for
21 one moment.

22 THE COURT: Yes, sir.

23 DEP. SOL. THORNTON: Your Honor, at this time, the
24 State rests.

25 THE COURT: Ladies and gentlemen of the jury, I have to

1 take up some matters at this time. So, I'm going to ask
2 you, we're going to take our mid-morning break. If you'd
3 please retire to the jury room. Please do not discuss the
4 case. You've not heard all the evidence or the final
5 arguments of the attorneys or my charge on the law. So, I
6 ask you, please, not to discuss the case. I'll be back with
7 you just as quickly as I can. You may retire to your jury
8 room at this time.

9 (10:45 A.M., 7-21-10, WHEREUPON THE JURY EXITS THE
10 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
11 RECORD.).

12 **THE COURT:** The jury is no longer in the courtroom.
13 Mr. Mathews, I'll be happy to hear from you. The State has
14 rested.

15 **MR. MATHEWS:** Thank you, Your Honor. Your Honor, I'd
16 move at this time for a directed verdict of acquittal, that
17 the evidence in the light most favorable to the State has
18 not met the prima fascia case for an intentional killing by
19 Mr. Fishburne of the victim.

20 **THE COURT:** That motion is respectfully denied.

21 **THE COURT:** Let me put a couple of things on the record
22 at this point. The first thing, I'm concerned about how an
23 Appellate Court can review the evidence presented to the
24 jury in the form in which we just presented the video. Now,
25 I realize that we can verbalize it by saying that the first

1 part of the actual tape -- can we make a copy of what was
2 shown?

3 DEP. SOL. THORNTON: I was going to ask, with the
4 Court's permission, Your Honor, there is a way, I believe, I
5 can burn exactly what was up there to a CD-ROM and just
6 enter that as evidence. I didn't want to interrupt the
7 proceedings to ask you that.

8 THE COURT: That's fine as long as Mr. Mathews agrees,
9 because I want the record to -- if you put that entire tape
10 in, the Appellate Court does not know what was shown to the
11 jury.

12 DEP. SOL. THORNTON: While we were watching it, Judge.
13 I thought about that, and my request would be, if Mr.
14 Mathews has no objection, I'll just go ahead, during the
15 lunch break, I will burn it to a disk.

16 THE COURT: Show it to Mr. Mathews.

17 DEP. SOL. THORNTON: Yes, sir.

18 THE COURT: And let's put on the record that he's in
19 agreement that that would be the exhibit placed into
20 evidence and was actually shown to the jury. Is that
21 satisfactory with you, Mr. Mathews?

22 MR. MATHEWS: Your Honor, may I be heard?

23 THE COURT: Sure.

24 MR. MATHEWS: I think it would be, as a supplement,
25 that what was actually presented along also with the actual

1 tape, so that if it's necessary for a Court to review it,
2 they can see what was redacted as well, or for PCR purposes,
3 or whatever. So, I don't have any -- I think that's a good
4 suggestion to the Court that Mr. Thornton had on that. I
5 would ask in addition to that that the full tape also be
6 submitted as an exhibit, a Court's exhibit, but not in
7 evidence, obviously, to go back to the jury.

8 THE COURT: Well, the jury has not seen the full tape,
9 nor have I, so I'm not sure what the reason for that is.
10 You have it. You have the full tape and Mr. Thornton does,
11 but no one else has seen it, but the two of y'all. And
12 y'all made a decision only, in fact, you requested it,
13 because of your concern about -- and let me put on there so
14 the Appellate Court knows what I'm talking about.

15 My understanding is the first part of this full video
16 tape shows the defendant alone in an interview room and
17 there's actually no questioning, and that lasts some 30 to
18 45 minutes. That was not shown to the jury a while ago.

19 Then, Mr. Mathews, pre-trial, was concerned that there
20 not be any reference on the video to gangs or the Dooley Hill
21 Gang or the Sand Hill Gang, which the Solicitor agreed. So,
22 the Solicitor agreed to review the tape to redact any
23 reference to that. While the Solicitor was reviewing that
24 tape, the Solicitor discovered that there was some reference
25 both by the defendant and by the interviewer to a polygraph,

1 which would not be admissible in the trial of the case, and
2 the Solicitor redacted that from the tape. Have I stated
3 that correctly, Mr. Thornton?

4 DEP. SOL. THORNTON: You have, Your Honor. The two
5 longer breaks the jury heard as far as breaks in audio, were
6 references to polygraphs. There were two conversations,
7 brief, but two conversations about that, and upon reviewing
8 the tape again, to make absolutely sure last night there was
9 reference made by the defendant to "You guys must think
10 someone from Sand Hill done this." And I took that
11 reference out this morning and played that for Mr. Mathews,
12 prior to the Court taking the bench.

13 THE COURT: All right. So, what the jury actually saw
14 was a redacted version of the interview with Gean Johnson
15 that eliminated each of the things that I've enunciated on
16 the record. Now, it's completely true that Mr. Mathews has
17 had a complete copy of the entire tape to prepare for trial,
18 and that the Solicitor has had a complete copy of the entire
19 tape for trial. While the entire tape needs to be a part of
20 the Court's record for Appellate review, when no one else
21 has seen it, but the two of y'all, I'm not sure, since y'all
22 agreed to the redaction. Can you tell me, Mr. Mathews?

23 MR. MATHEWS: I withdraw that, Your Honor; that's fine.

24 THE COURT: All right. Mr. Thornton, here's what I'm
25 going to ask of you, since I'm not a computer expert, but if

1 you can burn an exact copy of what the jury saw, then I will
2 ask you to do it and show it to Mr. Mathews, because I want
3 him to tell me on the record, before this case goes to the
4 jury, obviously, that he's satisfied that that's what is in
5 evidence. Otherwise, an Appellate Court, if we put the
6 entire tape in, they'll have some idea now that I've
7 enunciated on the record, but they're not sure when we
8 started and when we stopped, if that becomes important later
9 on for purposes of any review; you understand?

10 DEP. SOL. THORNTON: Yes, sir.

11 THE COURT: All right. Now, the next thing I want to
12 make clear in this trial is that both of you in my chambers
13 have entered into certain stipulations which you have never
14 published to the jury or on the record.

15 First of all, let's make sure what the stipulations
16 are, outside the presence of the jury, and then have it
17 published to the jury that you agree that those matters are
18 stipulated as a matter of fact; Mr. Thornton?

19 DEP. SOL. THORNTON: Your Honor, I believe that Mr.
20 Mathews is withdrawing his request to stipulate as to the
21 ethanol content of the blood of the victims, so that's no
22 longer an issue.

23 THE COURT: Is that correct, Mr. Mathews, because I
24 sure wasn't aware of that. You told me last night you
25 wanted it.

1 MR. MATHEWS: That is correct, Your Honor.

2 THE COURT: All right.

3 DEP. SOL. THORNTON: Your Honor, we have stipulated on
4 the record in front of the jury as to chain of custody,
5 which I do not think requires any further written record,
6 because that's actually on the record. The only other
7 stipulation I am aware of is in regards to a photograph of
8 the defendant being as he appeared when he was put into the
9 jail on April the 10th of 2009. Mr. Mathews has a written,
10 a partially typed, and I asked him to put one more phrase in
11 there, a sheet of paper, Judge, that we can put as an
12 exhibit, and I've stipulated that it's correct and Mr.
13 Mathews prepared it.

14 THE COURT: You got it, Mr. Mathews?

15 MR. MATHEWS: I do, Your Honor. May I approach?

16 THE COURT: Certainly. Now, Mr. Thornton, Mr. Mathews
17 has handed me this and there's not another sentence added,
18 but there are three words added; is that what you're
19 referring to? "At the jail."

20 DEP. SOL. THORNTON: Your Honor, I apologize. That is
21 what I asked him to say, either, at the jail or at the
22 Sheriff's Department, to indicate what time it was.

23 THE COURT: Well, Mr. Mathews, show it to him and make
24 sure that's the agreement. As far as I'm concerned, we'll
25 publish it

1 I have no problem with that. You've seen this?

2 DEP. SOL. THORNTON: I've seen it, Judge. We took care
3 of that this morning. He did that at my request. I am
4 completely okay with it.

5 THE COURT: All right. Now, there's one last thing I
6 want to put on the record at this point. I told Mr. Mathews
7 last night in my chambers that I would. During the Neal v.
8 Biggers Hearing yesterday morning, the question was asked by
9 Mr. Mathews "which way the vehicle of Sonja Grant was
10 pointed." Whether it was pointed toward Walterboro or away
11 from Walterboro, by Mr. Mathews in his cross-examination.

12 There was an objection by the Solicitor not being
13 relevant to the issue of identification. I called the
14 lawyers to the bench and I asked Mr. Mathews to tell me why
15 that was relevant. He gave me no reason at the bench. I
16 sustained the objection because I had no reason to determine
17 how that would be relevant, since Ms. Grant had testified
18 that she was standing in the driver's door of the car and
19 looking, and not inside the car.

20 Later, after I had ruled on the Neal v. Biggers issue,
21 or the identification issue in this trial, Mr. Mathews
22 attempted to make argument as to why it was relevant. I
23 told him I had already ruled on that and I pointed out to
24 him, which I point out to all my attorneys, that in the
25 Rules of Criminal Procedure, we have a rule concerning

1 argument, and I believe it's Rule 18, and it is Rule 18 of
2 the Rules of Criminal Procedure, and it states, "Counsel
3 shall not attempt to further argue any matter after he has
4 been heard and the ruling of the Court has been announced.
5 B, no argument shall be made on the objection as to
6 admissibility of evidence, or conduct of trial, unless
7 specifically requested by the Court. C, no attorney shall
8 interrupt another in the course of his argument."

9 In light of that rule, I told Mr. Mathews that it is
10 improper for him to continue to try to spout reasons after
11 I've ruled, because I have to ask him for information and
12 make my ruling based on the information that he gives me at
13 the time. I wanted there to be a record of why I ruled the
14 way I did, based on the bench conference that I had with Mr.
15 Mathews on the identification issue during the bench
16 conference, when I asked him to tell me how it might be
17 relevant so I could make a ruling in light of Mr. Thornton's
18 objection. That's everything I think I wanted to put on the
19 record.

20 Mr. Mathews asked me for a request to charge of alibi
21 and Mr. Thornton did not ask me for any requests to charge.

22 Mr. Mathews, does the defendant, at this point, have
23 any additional requests to charge that you did not mention
24 to me in the charge conference last night?

25 **MR. MATHEWS:** Not at this time, Your Honor. And I

1 would like to also apologize to the Court for arguing after
2 the Court had ruled. I do apologize for that.

3 THE COURT: Very well. Mr. Mathews, you and your
4 client come around, please. Vicky, please swear the
5 defendant.

6 MADAME CLERK: Please come forward.

7 WHEREUPON, THE DEFENDANT, MR. DERRICK FISHBURNE IS DULY
8 SWORN.

9 THE COURT: Mr. Fishburne, you've been sworn now. At
10 this time, I'm going to explain to you certain of your
11 rights. If you do not understand anything that I say, I
12 want you to let me know. If you want me to explain anything
13 in further detail, I want you to let me know; do you
14 understand? You've got to speak up, now. All right. State
15 your name.

16 WITNESS: Derrick Fishburne.

17 THE COURT: All right. Mr. Fishburne, we have now
18 reached the stage of the trial where you may present your
19 defense and you have the right to testify in your own
20 behalf. However, no one, no one can make you testify. In
21 the event he has a record -- Solicitor, does he have a
22 record?

23 DEP. SOL. THORNTON: He does, Your Honor, and I
24 apologize. I forgot -- it's the only thing I didn't go over
25 with Mr. Mathews, but the only thing that I would be aware

1 of that I would be able to use against him is a 2001
2 conviction for manufacturing drugs, Your Honor. Oh, I'm
3 sorry, he was convicted of possession for a gram of ice
4 crack or crank, so I believe that carries more than a year.
5 It has been within 10 years. I believe I could use that,
6 although he has several other arrests, I see no other
7 convictions I could use against him. That would be the
8 conviction.

9 THE COURT: You agree, Mr. Mathews; that is his record?

10 MR. MATHEWS: Yes, sir.

11 THE COURT: All right. Mr. Fishburne, and because you
12 have a record for a conviction which involves either -- and
13 the law says dishonesty or false statement, or for a crime
14 punishable by imprisonment of more than one year, and this
15 Court determines as a matter of law that the probative value
16 of admitting this evidence outweighs its prejudicial effect
17 to you, if you take the witness stand, the Solicitor -- and
18 I so rule, the Solicitor would be able to introduce your
19 criminal record for impeachment purposes to attack your
20 credibility or your believability with the jury. If you
21 elect not to take the witness stand, I will charge the jury
22 in my charge on the law that they are not to give the fact
23 that you did not testify any consideration whatsoever; and
24 there is to be absolutely no prejudice to you because you
25 did not testify. The matter of whether or not you testify

1 will be left entirely up to you.

2 In other words, it's your decision and no one else's as
3 to whether or not you testify in the trial of this case.
4 You can certainly talk with your attorney and I'll give you
5 a moment to do so, but the ultimate decision is not your
6 attorneys, it's yours. The ultimate decision as to whether
7 or not you testify is completely yours. Have you understood
8 what I've just told you, Mr. Fishburne?

9 MR. FISHBURNE: Yes, sir.

10 THE COURT: I'll give you a moment to talk with your
11 attorney.

12 (BRIEF PAUSE WHILE DEFENDANT FISHBURNE AND MR. MATHEWS
13 HAVE A DISCUSSION.)

14 THE COURT: Mr. Fishburne, have you had a moment now to
15 talk with your attorney?

16 WITNESS: Yes, sir.

17 THE COURT: Have you had adequate time?

18 WITNESS: Yes, sir.

19 THE COURT: Have you made a decision as to whether or
20 not you wish to testify in the trial of this case?

21 WITNESS: Yes, sir.

22 THE COURT: And what is that decision?

23 WITNESS: (SPEAKS SILENTLY TO MR. MATHEWS.)

24 MR. MATHEWS: Your Honor, Mr. Fishburne wants to know
25 if he says no now, can he still testify later if he changes

1 his mind?

2 THE COURT: Well, that's the reason I'm asking him now,
3 because I want to make sure he understands that I'm not
4 trying to -- if there were a valid reason for changing his
5 mind, his decision is, now, not to testify?

6 MR. MATHEWS: Your Honor, my advice to him would be to
7 wait. We have a couple of witnesses subpoenaed. To wait and
8 see how their testimony goes.

9 THE COURT: So, he's acting on your advice not to want
10 to give me an answer now?

11 WITNESS: No, sir. I mean, I really don't
12 understand ---

13 THE COURT: Hold on a second. You don't need to say
14 anything. Mr. Mathews, that question is to you. You
15 advised him to wait and not make a decision now; is that
16 what you're telling me?

17 MR. MATHEWS: Yes, sir.

18 THE COURT: Counsel approach

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
20 AND OUT OF THE HEARING OF THE JURY.)

21 THE COURT: All right. Mr. Mathews, I called you to
22 the bench to make sure I understood and not to interfere
23 with your relationship confidentiality with your client that
24 I wanted to make sure your client understood his rights
25 concerning testifying in this case and gave you additional

1 time to speak with him, which you've taken. Now, tell me,
2 Mr. Mathews, have you and your client had sufficient time to
3 discuss this?

4 MR. MATHEWS: Yes, sir.

5 THE COURT: And what is it that you tell me that you
6 wish to do, because I'm going to inquire of your client
7 again, because this is his decision, as you know, and not
8 yours.

9 MR. MATHEWS: My -- I believe there's enough on the
10 record that I can argue without his need to testify, and he
11 may just dig his hole deeper if he does; his criminal
12 record, I don't think would be a big deal, but I'm advising
13 him at this time that it's up to him. It's his decision
14 completely, but that I think I can prove anything that I
15 need to through further witnesses.

16 THE COURT: Now, I want you to understand, Mr.
17 Fishburne, I told your lawyer at the bench that if you
18 wanted to wait, I would wait, but I'm going to stop the
19 trial at that point, send the jury out again, and I'm going
20 to go back through this. The reason we do it at this stage
21 is because you've now heard all of the State's evidence,
22 they've rested, you understand?

23 WITNESS: Yes, sir.

24 THE COURT: Now, if you want more time, I will give you
25 more time. My understanding, however, from your lawyer

1 is -- but this is your decision. Your lawyer tells me he
2 wanted to confer with you some more, so I gave him some
3 additional time so y'all could go back to the defense table
4 and talk, which you've done now. So, I need to know now, do
5 you want additional time or have you decided whether or not
6 you wish to testify in the trial of this case?

7 WITNESS: I don't wish to testify.

8 THE COURT: Pardon?

9 WITNESS: I don't wish to testify.

10 THE COURT: Is that your decision?

11 WITNESS: Yes, sir.

12 THE COURT: That's not Mr. Mathews' decision? That's
13 your decision?

14 WITNESS: No, sir, that's mine.

15 THE COURT: And nobody forced you to enter into that
16 decision?

17 WITNESS: No, sir.

18 THE COURT: And you don't want more time/

19 WITNESS: No, sir.

20 THE COURT: And you do not wish to testify in the trial
21 of this case?

22 WITNESS: No, sir.

23 THE COURT: Thank you very much. You may return to
24 your seat.

25 All right. I think I have -- Counsel approach and let

1 me show you a proposed verdict form before we go forward. I
2 think I made this one real wordy, and I hope I haven't
3 gotten it too wordy.

4 (WHEREUPON, A BENCH CONFERENCE WAS HELD.)

5 THE COURT: All right. We're going to take about a
6 five minute recess at this time.

7 (Off the record, briefly.)

8 THE COURT: Mr. Thornton, you have in your hand a new
9 disc?

10 DEP. SOL. THORNTON: I do, Your Honor. At this time,
11 Judge, I'd ask that this be marked as Exhibit Number
12 Thirteen. I believe it's already been agreed to. It will
13 be admitted into evidence.

14 THE COURT: Mr. Mathews, have you had a chance to
15 discuss it with Mr. Thornton and review it?

16 MR. MATHEWS: I have and -- and I have no objection.

17 THE COURT: All right. Do you want to do it in the
18 presence of the jury, Mr. Thornton, or do you want to do it
19 now, since they've already viewed it? What you're putting
20 in is Number Thirteen, is actually what the jury just viewed
21 on video; is that correct?

22 DEP. SOL. THORNTON: That is correct, Judge.

23 THE COURT: Is that your understanding, Mr. Mathews?

24 MR. MATHEWS: Yes, sir. Your Honor, for a point of
25 clarification, may I be heard? Just if this, as well as the

1 car videos, if they could come out here and watch it, as
2 opposed to watching it back there.

3 THE COURT: That's correct. So that we have control
4 over what they see, but let's deal with first things first,
5 now. State's Number Thirteen, any objection?

6 MR. MATHEWS: No, sir.

7 THE COURT: All right. Mr. Thornton, State's Thirteen
8 is now in evidence, and a jury has already viewed what
9 you're telling me that you're putting into evidence, and the
10 Appellate Court now knows that State's Number Thirteen is
11 exactly what the jury saw.

12 DEP. SOL. THORNTON: Yes, sir. And for that reason, I
13 don't see the need to do it again in front of them, now is
14 fine.

15 THE COURT: I understand.

16 DEP. SOL. THORNTON: I just wanted it in evidence.

17 THE COURT: It's in evidence, without objection. Now,
18 Mr. Mathews, in answer to your question, as to any video
19 that's been introduced into evidence in the trial of this
20 case, I'm going to tell the jury they are going to have all
21 the exhibits in the jury room, but all we're giving them is
22 the disc, not any equipment to play it with. If they want
23 to look at a disc, I'm going to tell them they will have to
24 come back so we can use the screen and the equipment in the
25 courtroom. Does that answer your question?

1 MR. MATHEWS: It does, Your Honor. Thank you.

2 THE COURT: All right. Is the State now ready to
3 proceed?

4 DEP. SOL. THORNTON: State is ready, Your Honor.

5 THE COURT: Is the defendant ready to proceed?

6 MR. MATHEWS: Yes, sir, Your Honor.

7 THE COURT: Bring us the jury, Odell.

8 (11:30 A.M., 7-21-10, WHEREUPON THE JURY ENTERS THE
9 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
10 RECORD.)

11 THE COURT: Ladies and gentlemen of the jury, you've
12 heard the evidence from the State of South Carolina. We
13 will now hear from the defendant. Mr. Mathews, you may call
14 your first witness.

15 MR. MATHEWS: Thank you, Your Honor. Jarrod Frazier,
16 he's right outside.

17 MADAME CLERK: Please come forward to be sworn.

18 (WHEREUPON, MR. JARROD FRAZIER IS DULY SWORN.)

19 THE COURT: Watch your step on those steps. Make
20 yourself comfortable. Pull that microphone over. It's
21 going to amplify your voice and I need you to speak up.
22 State your full name for the record and spell your last name
23 for the court reporter.

24 WITNESS: Jarrod Lee Frazier, F-R-A-Z-I-E-R.

25 THE COURT: Thank you. Your witness, counsel.

Direct Examination of Jarrod Frazier by Mr. Mathews

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1 MR. MATHEWS: Thank you, Your Honor.

2 DIRECT EXAMINATION

3 BY MR. MATHEWS:

4 Q Mr. Frazier, where are you from?

5 A Walterboro.

6 Q Okay. And this is your home?

7 A Yes, sir.

8 Q What do you do for a living?

9 A I drive a truck.

10 Q Okay. You've taken time off of work today?

11 A Yes, sir.

12 Q And you're under subpoena?

13 A Yes, sir.

14 Q And you don't really want to be here?

15 A No, sir.

16 Q Okay. Do you know Derrick Fishburne?

17 A Yes, sir.

18 Q That's him over there?

19 A Yes, sir.

20 Q How long have you been knowing Derrick?

21 A Since middle school.

22 Q All right. Mr. Frazier, do you remember April 10th or
23 the 9th, the night of the 9th through the 10th, of last
24 year?

25 A Yes, sir.

1 Q And what happened that night? Was there anything
2 special that happened that you would remember that night, as
3 opposed to any other?

4 A The shooting outside the club.

5 Q Okay. All right. And did you see Mr. Fishburne in the
6 club that night?

7 A Yes, sir.

8 Q Okay. About what time did you see him?

9 A About one o'clock.

10 Q Okay. All right. And did y'all talk?

11 A For a couple of minutes.

12 Q Okay. All right. And just -- just chilling out and
13 talking, generally?

14 A He came and talked to me for about three, four minutes,
15 and told me he wasn't gonna be long. He wasn't gonna stay
16 in the club long.

17 Q Okay. And was he in the club long?

18 A For about ten minutes.

19 Q Okay. What happened next?

20 A He walked across the dance floor, I guess to talk to
21 somebody and then he walked outside or whatever.

22 Q Okay. All right. And then what happened?

23 A I walked to the door to go ask him a question, you
24 know, before he left or whatever, I figured he was leaving.
25 When I got out there, I didn't see him. I called his name,

1 or whatever, but I didn't get an answer. Then, I seen a
2 truck pulling off, and I just figured it was him. I assumed
3 it was him leaving. Then, I went back into the club.

4 Q He said he was leaving, you walked outside and he was
5 gone?

6 A Yeah, I didn't see him when I walked out.

7 Q Okay. What happened next?

8 A When I went back into the club, probably about 10
9 minutes later, that's when the shooting or whatever happened
10 outside.

11 Q All right.

12 MR. MATHEWS: I have no further questions, Your Honor.
13 Please answer any questions that the State has.

14 THE COURT: Cross-examination?

15 CROSS-EXAMINATION

16 BY DEP. SOL. THORNTON:

17 Q I'm sorry, did you say you saw him leave the club or
18 not?

19 A I didn't actually see him drive off.

20 Q So, you don't know for sure whether he left the club or
21 not; you just didn't see him outside?

22 A Right.

23 Q All right. Did you ever go to law enforcement to give
24 a statement?

25 A No, sir.

1 Q You never went and tried -- attempted to talk to
2 Detective Andre Williams?

3 A No, sir.

4 DEP. SOL. THORNTON: Court's indulgence, Your Honor.

5 THE COURT: Yes, sir.

6 Q Were you with anybody else that went to try to talk to
7 law enforcement, the twins?

8 A What twins?

9 Q Broughton, Shawnee? Were you with them when they went
10 to talk to law enforcement, or attempted to?

11 A No, sir.

12 Q But you can't say whether Derrick left or not?

13 A Can't actually say.

14 Q But he was at the club, right?

15 A Yeah.

16 Q Okay. So sometime around the hours of 1:00 in the
17 morning, he was not at his girlfriend's house, Penny. Is
18 that his girlfriend? Lorinda Williams at that time?

19 A Yes, sir.

20 Q All right. And so if somebody else had indicated that
21 he was at his girlfriend's house at 1:00, that wouldn't be
22 true would it?

23 A Not at 1:00.

24 Q All right. And you can't say for sure whether he shot
25 Donald Green or not, can you?

1 A No, sir.

2 DEP. SOL. THORNTON: I don't have anything further.

3 THE COURT: Redirect?

4 MR. MATHEWS: Limited to cross, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. MATHEWS:

7 Q Mr. Frazier, you indicate that you've not given a
8 statement to law enforcement. Had you given a statement to
9 anybody?

10 A I wrote a statement for them saying that he was there
11 so he could get a bond.

12 MR. MATHEWS: May I approach, Your Honor?

13 THE COURT: You may.

14 Q Mr. Frazier, I'm handing you what's been marked as
15 Defendant's Exhibit Number Eleven and ask if you can
16 identify that?

17 A Yes, sir.

18 Q Okay. Is that an affidavit that you signed?

19 A Yes, sir.

20 Q And is that true?

21 A Yes, sir.

22 MR. MATHEWS: I would submit that into evidence at this
23 time, Your Honor.

24 DEP. SOL. THORNTON: I would object, Your Honor.

25 THE COURT: Let me see it, please. Counsel approach.

1 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
2 AND OUT OF THE HEARING OF THE JURY.)

3 DEP. SOL. THORNTON: My apologies, Your Honor. I'll
4 withdraw the objection.

5 THE COURT: Defense Exhibit Number Eleven will be
6 admitted into evidence, without objection. Defense Eleven
7 in evidence. Anything further on redirect?

8 MR. MATHEWS: No, sir.

9 THE COURT: Recross, limited to redirect?

10 DEP. SOL. THORNTON: Yes, sir. Thank you.

11 RECROSS EXAMINATION

12 BY DEP. SOL. THORNTON:

13 Q Sir, in that statement you indicated this is an
14 affidavit. You understand what an affidavit is, don't you?

15 A (NO RESPONSE.)

16 Q Meaning that you swore to tell the truth in that
17 affidavit, didn't you?

18 A Yes, sir.

19 Q You swore to tell the truth when you came here today?

20 A Yes, sir.

21 Q In that affidavit, does it say that you saw him leaving
22 in an SUV?

23 A (NO RESPONSE.)

24 Q That's not -- wait a minute. Is that what it says?

25 A Yes, sir.

1 Q Is that what you testified to here today?

2 A (NO RESPONSE.)

3 Q Did you see him leave or not?

4 A No, I said I assumed. That's all I said.

5 Q That's what you said today. That's not what you put in
6 that affidavit, did you?

7 A No, sir.

8 Q So, you swore to tell the truth then, and you swore to
9 tell the truth now, and one of them can't be true; isn't
10 that right?

11 A Yes, sir.

12 Q Thank you. No further questions.

13 THE COURT: As to this witness, Mr. Mathews?

14 MR. MATHEWS: He may be excused, Your Honor.

15 THE COURT: Any objection, Solicitor?

16 DEP. SOL. THORNTON: No, sir.

17 THE COURT: You may step down and you are excused from
18 the trial of this case. You may leave at this time. Call
19 your next witness.

20 MR. MATHEWS: We call Matthew Smoak, Your Honor.

21 MADAME CLERK: Please come forward and be sworn.

22 (WHEREUPON, MATTHEW SMOAK IS DULY SWORN.)

23 THE COURT: Have a seat. Adjust the microphone. It's
24 going to amplify your voice.

25 WITNESS: Matthew Smoak, S-M-O-A-K.

1 THE COURT: Your witness, Mr. Mathews.

2 MR. MATHEWS: Thank you, Your Honor.

3 DIRECT EXAMINATION

4 BY MR. MATHEWS:

5 Q Mr. Smoak, you go by "Matt"?

6 A Yes, sir.

7 Q And where are you from?

8 A Right here in Walterboro.

9 Q You lived here your whole life?

10 A Yes, sir.

11 Q Are you working at this time?

12 A Yes, sir.

13 Q Where are you working?

14 A Petco.

15 Q Are you, like, the dog guy or what's your job at Petco?

16 A I do pretty much everything.

17 Q Were you working at a different job in April of 2009?

18 A Yes, sir.

19 Q What were you doing?

20 A I was at Spirit's Lounge.

21 Q Okay. Were you bouncing at Spirit's Lounge on April

22 the 9th of 2009?

23 A Yes.

24 Q Okay. Did anything happen in particular that night?

25 A Yes, sir

1 Q What happened?

2 A There was a small confrontation out front and then
3 later on near closing there was a shooting.

4 Q Okay. Now, you gave a statement I believe to law
5 enforcement that same night, pretty soon after this
6 happened; is that correct?

7 A Yes, sir.

8 Q I believe that's in evidence at this time. And at some
9 point later on, did you discover new information?

10 A Yes.

11 Q Well, first of all, tell me what you saw that night.
12 You said there was a small confrontation out front. Tell me
13 -- tell the jury about the confrontation

14 A There was some guy out in front of the bar. He was,
15 kind of, I guess he was a little too intoxicated. He was
16 trying to get into a girl's car, beating on the windows,
17 pulling on the door handles, throwing himself, and stuff
18 like that, just because he was trying to get in the car.
19 The other guy tried to get him to calm down and quit doing
20 it. Then, he noticed me standing there, looking at him, and
21 asked me "What the (emphasized pause) I was gonna do,"
22 because I was security, and he started to approach me and
23 the other guy stopped him and told him to calm down, you
24 know, and asked me to don't call the law; please go back
25 inside. He would handle it. It was his cousin or whatever.

1 And so I walked back inside hoping the guy would calm down.

2 Q Did you discover who the person trying to calm the
3 other fellow down, who that was?

4 A Yes, sir.

5 Q Okay. Who was that?

6 A That was Donald Green.

7 Q That was Donald Green? That was the fellow that was
8 killed?

9 A Yes, sir.

10 Q And describe the fellow that Donald Green was having
11 the confrontation with. What did he look like?

12 A He was about six foot, wearing a yellow shirt, had his
13 -- his hair was braided back, like braided up.

14 Q How long were his braids?

15 A About five or six inches long.

16 Q Five or six inches long, about, like that? (INDICATING
17 WITH HANDS.)

18 A Yes, about that.

19 Q Okay. And they were -- were they tight to his head or
20 were they flopping loose to the side?

21 A At -- like, at the beginning, they may have been pulled
22 back. Later on, they may have been loose. I think they
23 were. I'm pretty sure -- they looked -- they might have just
24 been messed up from when they were arguing or pushing and
25 shoving one another around.

1 Q But if they were pulled back, they were pulled back and
2 tied. They weren't braided to his head?

3 A I don't think so.

4 Q Okay. All right.

5 A But the club was dark.

6 Q It was dark? Were you able in the dark to see the --
7 see them from the sides?

8 A Kind of. Like I say, they might have stuck out just a
9 little bit. It wasn't a lot.

10 Q Okay. All right. And you were shown, I think, a photo
11 lineup sometime later on?

12 A Yes.

13 Q Maybe a month or so later? A couple of months or
14 whatever?

15 A I think it was a week or two.

16 Q All right. And at that point, you were presented a
17 photo lineup and you picked out, out of the choices
18 available, you picked out Derrick Fishburne?

19 A Yes, sir.

20 Q All right. And how did you end up at the Sheriff's
21 Office? What happened?

22 A I was called in by Detective Williams just to talk over
23 my statement and stuff like that. Once I got there, I let
24 him know that I had some more information being that I found
25 out from the newspaper who had been shot, because I had seen

1 | them arguing earlier that night and I had told him what I
2 | knew about that after I found out who that was, because my
3 | first statement, I didn't know who got shot or anything. I
4 | didn't know that was the same two guys that -- that the guy
5 | that got shot was the guy that was trying to stop the guy
6 | that was trying to get into the car out front. I didn't
7 | know it was the same guy. As soon as I found out that was
8 | the same guy, I let them know about the confrontation that
9 | was out front and all that.

10 | Q All right. I don't have any further questions -- oh,
11 | his first name is Derrick Fishburne. Have you ever known or
12 | talked to Derrick Fishburne before?

13 | A I've seen him around back when we were in high school,
14 | just seen him, kind of a face with a name, but other than
15 | that, I don't know him.

16 | Q Like you said, it was dark, but you're sure about the
17 | hair and the shirt?

18 | A Yes.

19 | MR. MATHEWS: Nothing further, Your Honor.

20 | THE COURT: Cross-examination?

21 | CROSS-EXAMINATION

22 | BY DEP. SOL. THORNTON:

23 | Q Mr. Smoak, just a couple of things. I'm a little bit
24 | confused. You kept talking about he and Derrick Fishburne,
25 | and you indicated you don't know him very well, but you know

1 him to look at him; is that right?

2 A Pretty much.

3 Q All right. do you see him in this courtroom right now?

4 A Yes, sir.

5 Q Where is he?

6 A Sitting right over there.

7 Q Sitting right here with Mr. Mathews. So, that's

8 Derrick Fishburne as far as you know him, correct?

9 A Yes, sir.

10 Q All right. And that's the one who had trouble with

11 Donald Green that night that you saw; isn't that right?

12 A Yes, sir.

13 Q All right.

14 DEP. SOL. THORNTON: Your Honor, may I approach?

15 THE COURT: You may.

16 Q Sir, I want to hand you what's been marked for

17 identification as State's Exhibit Number Fourteen. Can you

18 recognize that?

19 A Yes, sir.

20 Q What is that?

21 A That's the lineup I looked at.

22 Q All right. And did you make any notation as far as

23 which person you saw that night get in a fight with the

24 victim?

25 THE COURT: Just a moment. I already have a Fourteen.

1 The tape was Fourteen.

2 COURT REPORTER: It was Thirteen, I believe, Your
3 Honor. The tape was Thirteen.

4 THE COURT: We don't have a Fourteen?

5 COURT REPORTER: This should be Fourteen.

6 THE COURT: All right. Excuse me, counsel. I'll let
7 you go back. My court reporter is saying this is Fourteen.
8 Proceed. It is Exhibit Fourteen. You may proceed.

9 DEP. SOL. THORNTON: Thank you, Judge.

10 Q Sir, that's been marked for identification as State's
11 Exhibit Number Fourteen. You testified that was the lineup
12 you were shown; is that right?

13 A Yes, sir.

14 Q All right. Did you make any notes as far as which
15 person you saw get in a fight with Donald Green that night?

16 A Yes, sir. I put my initials by it.

17 Q And whose picture did you put the initials by?

18 A Number Three.

19 Q And who is that?

20 A Derrick Fishburne.

21 Q All right. And is that the same Derrick Fishburne that
22 is sitting here today?

23 A Yes, sir.

24 Q Of course, his hair is different than it is in the
25 picture, right?

1 A Yes, sir.

2 Q And his hair may or may not have been different the
3 night of the club; is that right?

4 A Yes, sir. It may or may not.

5 Q All right. Is there any doubt in your mind as to who
6 it was you saw that night get in a fight with the victim,
7 Donald Green?

8 A No, sir.

9 Q You're sure it was Derrick Fishburne?

10 A Yes, sir.

11 Q All right. Thank you, sir.

12 DEP. SOL. THORNTON: No further questions.

13 THE COURT: Redirect?

14 MR. MATHEWS: (PAUSING.)

15 THE COURT: Just a moment, is there additional
16 testimony?

17 DEP. SOL. THORNTON: Your Honor, I deeply apologize for
18 interrupting; I do not mean to. But I would, at this time,
19 move State's Exhibit Number Fourteen into evidence. I
20 apologize.

21 THE COURT: Any objection as to State's Fourteen, Mr.
22 Mathews?

23 MR. MATHEWS: No, sir.

24 THE COURT: State's Exhibit Number Fourteen, Ladies and
25 gentlemen of the jury, will be admitted into evidence

1 without objection. State's Fourteen now in evidence.

2 Redirect?

3 MR. MATHEWS: Thank you, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. MATHEWS:

6 Q Mr. Smoak, you mentioned, obviously, the defendant is
7 the person at the defendant table?

8 A Yes, sir.

9 Q Did you indicate -- in that photo lineup, in those
10 photos, are they all equal, similar, or are they similar?
11 Or is there a difference between one and the other five?

12 A There's differences.

13 Q Okay. Now, does one of them stand out from the other
14 five?

15 A Yes, sir.

16 Q Why is that?

17 A Because I recognize him.

18 Q Well, I understand. But is it also lighter than the
19 others?

20 A A hair, maybe.

21 Q Okay. Now, you answered Mr. Thornton's question to say
22 that Derrick's hair was not the same that night. Was it
23 closer to that, what you see in the photo lineup? Or was it
24 closer to how his hair is now?

25 A It was closer to how it is in the photo.

1 Q Okay. So, his hair was significantly longer than it is
2 now?

3 A Yes, sir.

4 Q Okay. And how -- you said it was five or six inch
5 braids to the side, but tied back?

6 A Yeah, maybe pulled back, at one point.

7 Q But it was loose at one point and it was tied at one
8 point?

9 A Yes, sir.

10 Q All right. Where's the stipulation? Okay. Is the
11 person you saw that night, his hair didn't look ---

12 MR. MATHEWS: May I approach the witness, Your Honor?

13 THE COURT: You may, but show what you're going to
14 show ---

15 DEP. SOL. THORNTON: I understand what it is, Judge.
16 I'm fine with it.

17 MR. MATHEWS: Okay.

18 THE COURT: Identify it for the record.

19 Q This is Defense Exhibit Number Ten. Mr. Smoak, I'm
20 handing you, or I'm holding up to you a picture of State's
21 Exhibit Number Ten, and ask ---

22 THE COURT: Wait a minute, Counsel; Defense Exhibit.

23 Q Oh, Defense Exhibit Number Ten, sorry about that. And
24 the person you saw that night, his hair did not look like
25 this, did it?

1 A No.

2 Q All right.

3 MR. MATHEWS: Nothing further, Your Honor.

4 THE COURT: Recross, limited to redirect?

5 DEP. SOL. THORNTON: Nothing, Your Honor. Thank you.

6 THE COURT: As to this witness, Mr. Mathews?

7 MR. MATHEWS: He can be excused.

8 THE COURT: Any objections, Solicitor?

9 DEP. SOL. THORNTON: Absolutely none.

10 THE COURT: You may step down. If you'll leave that
11 exhibit for the court reporter, and you are excused from the
12 trial of this case. Call your next witness, counsel.

13 MR. MATHEWS: The defense rests, Your Honor.

14 THE COURT: Is there any reply from the State of South
15 Carolina?

16 DEP. SOL. THORNTON: Oh, no, sir.

17 THE COURT: Counsel approach.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
19 AND OUT OF THE HEARING OF THE JURY.)

20 THE COURT: All right. Madame Foreperson, ladies and
21 gentlemen of the jury, although you've heard all the
22 evidence in this case, you have not heard the final
23 arguments of the attorneys or received my charge on the law.
24 In order to give them an opportunity to prepare that, we're
25 going to stop at this point. I know your lunch will be here

1 in a little while. We're going to serve it to you in your
2 jury room. We're going to take a little longer lunch break,
3 so if I've got smokers, you can go outside. Please, during
4 the lunch break, do not discuss this case. We're going to
5 conclude this trial immediately after lunch, but your lunch
6 will be here as soon as possible. But they need a little
7 time, because they haven't prepared their arguments. I've
8 got to prepare my charge, which I've been working on
9 throughout the trial, and I have to confer with them about
10 what should be in and what should be out. We'll be working,
11 so I don't want you to think we're delaying you. As soon as
12 we're ready and I know you've had lunch, and I've given them
13 an opportunity to have lunch, we'll start back. That may
14 not be until 2:00; it may be before 2:00. As soon as we
15 can, and I know you're taken care of, we'll start back. But
16 no matter how long it takes, please do not discuss this
17 case. It would be improper for you to do so. And I'll be
18 back with you as quick as I possibly can. Thank you for
19 your patience and your cooperation. You may retire to your
20 jury room at this time.

21 (11:55 A.M., 7-21-10, WHEREUPON THE JURY EXITS THE
22 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
23 RECORD.)

24 THE COURT: Are there any matters of law that I need to
25 hear from the defendant?

1 MR. MATHEWS: Yes, sir, Your Honor. I would renew my
2 prior motion.

3 THE COURT: The motion you made for directed verdict at
4 the close of the State's case?

5 MR. MATHEWS: Yes, sir.

6 THE COURT: That motion at the close of all the
7 evidence is respectfully denied, Mr. Mathews. I'd like to
8 see counsel briefly in chambers, so that I can go over
9 everything that I've put together in my charge.

10 Let the record reflect that counsel has already
11 reviewed the proposed verdict form at the bench and both
12 counsel for the State and counsel for the defendant have
13 indicated to the Court that they have no objection to the
14 verdict form. I've also shown Mr. Mathews my proposed
15 charge, which he and Mr. Thornton tell me they have no
16 objection to on alibi, and I'll go over the rest of the
17 charge with them in chambers to make sure they know exactly
18 what I'm charging so they can prepare their closing argument
19 around my charge and get lunch.

20 At this point, we will not be back in recess before
21 1:00, and probably it may be closer to 2:00, depending on
22 when the jury gets lunch. It could be as early as 1:30 if
23 they get lunch earlier, or 1:45, so I'm going to ask the
24 people in the courtroom to be back in the courtroom no later
25 than 1:45 this afternoon. Court is in recess until then.

1 (COURT IS RECESSED FOR LUNCH FROM 12:00 P.M. - 2:00
2 P.M.)

3 THE COURT: Let the record reflect I've been over my
4 entire charge with counsel during the lunch break, and I
5 have also been over the verdict form. They agree that the
6 State has last argument and they understand everything
7 that's going to be in my charge. They agree to the verdict
8 form. They've asked for 25 minutes each for closing
9 argument. Mr. Mathews, I assume you will argue first.

10 MR. MATHEWS: Yes, sir.

11 THE COURT: And you know that when you reach 20
12 minutes, you will get the familiar -- Ms. Pye, tell him what
13 he'll get in 20 minutes.

14 MS. PYE: (TAPS ON THE TABLE.)

15 THE COURT: To let you know that you have -- we don't
16 put a hook around anybody's neck and pull them back down,
17 Mr. Mathews, but we'd like for you to try to remember that's
18 your five minutes that you asked for 25, and as you agreed
19 with me in chambers, nobody listens after 20 minutes. so,
20 you need to be able to do it within 25. The State will also
21 have 25 minutes, and the State will get the familiar tap
22 after 20. I think that's everything that we covered in
23 chambers. Have I left anything out, as far as the State is
24 concerned?

25 DEP. SOL. THORNTON: No, sir.

1 **THE COURT:** Insofar as the defendant is concerned?

2 **MR. MATHEWS:** No, sir.

3 **THE COURT:** Very well. Now, to my bailiffs, I know
4 people want to come in, but once the lawyers start arguing
5 and I charge this jury, nobody's coming in and out of this
6 courtroom. So, if there's anybody out there, let them in
7 now.

8 (1:50 P.M., 07-21-10, WHEREUPON THE JURY ENTERS THE
9 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
10 RECORD.)

11 **THE COURT:** Madame Foreperson, ladies and gentlemen of
12 the jury, you've heard the evidence in this case. You will
13 now hear the closing arguments of the attorneys, followed by
14 my charge to you on the law in the case. I ask that you
15 give the attorneys your careful consideration. Mr. Mathews.

16 **MR. MATHEWS:** Thank you, Your Honor.

17 **CLOSING ARGUMENT**

18 Madame Forelady, ladies and gentlemen of the jury, I
19 told you at the beginning of the case what I expected the
20 evidence to show, and by and large I think it did show what
21 I said it was going to show. I said right from the
22 beginning that the State would be able to prove that it was
23 Derrick Fishburne. Why? Let's get that out of the way. He
24 did. He was rounded up and the testimony of Det. Williams
25 was that they picked him up from roll call. He is one of

1 the usual suspects. He had been at roll call, so he already
2 had some trouble. They knew him. They took him from here
3 and took him down to the station and Det. Williams told you,
4 he was already under arrest at that time. He was under
5 arrest for murder and it really didn't matter what he said.

6 One of the things also, what Det. Johnson said in the
7 tape that you got to see is that Derrick's brother is in
8 prison. This is not a pretty fact, but it's the truth of
9 the matter. The Fishburne's had trouble; it's a fact. So
10 what does that mean to Derrick? What does that mean to
11 anybody being rounded up and taken down to the Sheriff's
12 Office to get a statement? Do you think you're going to get
13 a fair trial? He was already under arrest and it -- yeah,
14 they checked out his story and it didn't check out, but if
15 he was already under arrest, it didn't matter. He was
16 already there. Some of the witnesses, a number of the
17 witnesses that the State has relied on, they say, you know,
18 they're gonna talk some about -- and I'll get into this in
19 more detail later, but they said, "Well, we're not just
20 going to rely on Fatimah Washington. We also had Sonja
21 Grant." But, guess what? She didn't give a statement until
22 a month after Derrick had already been in jail. So, they
23 didn't rely on that. They didn't rely on that testimony.
24 Ms. Penny, his girlfriend testified, "Yeah, he wasn't
25 there." She told the truth. She also said she let law

1 enforcement search the house where Derrick had stayed, and
2 he was back by 3:00. They searched the house and what did
3 they find? Nothing. Nothing. No guns, no blood-splattered
4 clothes. Did you see all the blood? You're going to see
5 some gruesome pictures. The sad fact of the matter is the
6 State has absolutely proven that Donald Green was killed, he
7 was. And it's a horrible thing that he was, but in the
8 gruesome photos, it might make you mad. You might want to
9 do something about it. You should want to do something
10 about it, but don't rush to get the wrong guy, and that's
11 what happened in this case.

12 They got a name. They got a name before they got a
13 description. "That was D-Rock." That's what they relied on
14 right from the beginning. Det. Johnson in his long
15 interview with Mr. Fishburne, said right there, sort of
16 towards the end, he says, "I need D-Rock. I have to find
17 out from my detectives who you were." People at the club,
18 "I knew D-Rock." Sonja says that she and Fatimah said at
19 the same time, "Oh, my God, that was D-Rock." But there
20 weren't descriptions, there were names.

21 Now, from the stand, who gave the best description of
22 the person that may have done the shooting? It was not any
23 of the State's witnesses, it was not. It was a witness that
24 I called. The witness that I called, Matthew Smoak, gave a
25 statement immediately on the stand. Apparently, he wasn't

1 Officer Regalado came out there, Officer Buchanan came out
2 there. They did their job. They rode out there and you can
3 see, I put the videotape in. I introduced that. The State
4 didn't introduce that. The car video is coming in so that
5 you can see how busy it was. You can see that line of cars
6 starting way down Jefferies, all the way to the end. And
7 you can see how dark it was. You can see that from the
8 video. You don't have to guess at that. You've got
9 pictures, but those pictures, flash fail and all that sort
10 of stuff.

11 One of the things that you can see in detecting Officer
12 Buchanan's car, is he turned his car around to point, so his
13 headlights are facing over there. So, that illuminated
14 things, lighter than it was. So, the pictures, you see, are
15 helpful, but only to a point, because with flashes and
16 things like that, it doesn't show the full story; the car
17 video's, too. It was dark. It was crowded. It was chaotic.
18 You can get that in a few minutes. The tape goes on for an
19 hour or so, but you don't need that much; five minutes is
20 plenty to see the circumstances. People walking in and out,
21 some of them drunk. It's a club and it's dark out front.

22 So, what did Matthew Smoak tell you about what he saw?
23 Matthew did point out the photo lineup. There's no
24 question, he pointed out a photo lineup, but that photo
25 lineup showed Derrick Fishburne as his driver's license

1 photo showed him, but as a stipulation in there, plus
2 there's testimony to support it, that that's not what
3 Derrick looked like on April the 9th. And you can see it
4 from the film, too, when Detective Johnson is asking him
5 questions, look at his hair. It almost looks like a crew
6 cut. Yeah, it's got little braids back there, but they're
7 tight, they're tight against his head. And if you look at
8 the picture of the day he was arrested, his jail photo, it's
9 in there. Penny says it takes about an hour to braid her,
10 or whatever, he's getting ready to go to court. She had to
11 wake him up to go to Court. He came in at 3:00 in the
12 morning and when is he gonna get his hair done? That's what
13 he looked like. He looked like the picture where he was
14 booked. And very freely, and very quickly, Matthew Smoak
15 said, "Yeah, this picture here of the guy with the dreds,"
16 he described it, not even -- it's even longer than in that
17 picture. This is the picture that he identified. That's
18 pretty long. It might've looked like that, maybe possibly,
19 but he described four to five, or five to six inch dreds
20 that were so long that they could be pulled in the back in a
21 bunch, tied, not braided close to the head, but tied.
22 That's, may be possible you can get that out of this, maybe,
23 but you can't get that out of this. That's what Derrick
24 Fishburne looked like on April the 9th and April the 10th.
25 That's what he looked like. And Mr. Smoak wasted no time at

1 all in saying, "No, he didn't look like that. I mean,
2 immediate. One of the things that you have the benefit of,
3 you don't have to leave your common sense by the sideline,
4 and you have a chance to see how these witnesses reacted
5 when they talked.

6 You had a chance to see. One of the witnesses that
7 Derrick called, that I called, was Jarrod Frazier. Now, he
8 wasn't -- you know, he may have made an assumption about the
9 one in the car as opposed to that, but if anybody tells you
10 he was lying, you saw it, he looked like a deer in the
11 headlights. He wasn't trying to put anything over on
12 anybody. He made an assumption, perhaps, but he went out
13 looking. He saw Derrick at the club. Known him since
14 middle school, absolutely knew him. Okay? Now, what do the
15 people that are talking about Derrick, they're talking about
16 different things that D-Rock may or may not have been
17 wearing. But one thing Matthew Smoak said loud and clear,
18 he was wearing a yellow shirt. Who said anything about a
19 yellow shirt? This is somebody who saw him close and
20 described him with detail, more detail than anybody else out
21 there. There are a couple of statements that say red and
22 black shirt, red and white shirt, red shirt, whatever, but
23 those aren't close, and those other descriptions didn't have
24 the same specificity that the bouncer had. The guy that was
25 there in the club, working the door.

1 And that's the next thing, too, what do we know about
2 Matthew Goodwin? Det. Johnson said that's the person he
3 talked to first, and this is the problem with making an
4 assumption, whether it is Jarrod Frazier's assumption or
5 anybody else's, when you have a name and you're working from
6 a name, to get to a description, is that you start out with
7 something and if I remember correctly, one of the things
8 that Judge Buckner said at the very beginning of this was
9 you don't take notes. Y'all aren't supposed to take notes.
10 Why is that? He said it's because if you make a mistake, it
11 compounds, it gets worse, and that's what happened in this
12 case.

13 They talked to Fatimah and because she said it was D-
14 Rock, because she said it was D-rock, that's what they went
15 with. She made a mistake. That wasn't who it was. The
16 bouncer saw -- described somebody, and he was in a
17 better position to see what happened. Matthew Smoak -- I
18 mean, Matthew Goodwin, he had shown Gene Johnson, Det.
19 Johnson, his cell phone where he had received a call at the
20 club at 1:22, if my memory serves, 1:22. The shooting
21 happened at about 1:26. This is somebody who had a beef.
22 HE and Donald Green got into it inside the club. They got
23 into it inside the club. That was clear and the reason that
24 Det. Johnson let it go because he said he had left before
25 this happened. Well, that's also what Jarrod Frazier had

1 said that Derrick had done, had left ten minutes or so
2 before and Matthew Goodwin supposed left, I don't know, it
3 couldn't have been, the shooting happened between 1:00 and
4 1:30, and he was there at 1:22 ---

5 DEP. SOL. THORNTON: Objection, Your Honor. That's
6 facts are not in evidence.

7 THE COURT: Counsel approach.

8 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
9 AND OUT OF THE HEARING OF THE JURY.)

10 THE COURT: I'll make a record of it at the appropriate
11 time. Let's proceed.

12 CLOSING ARGUMENT (CONT'D)

13 BY MR. MATHEWS:

14 Okay. That's one of the great things about this. You
15 get to hear the testimony from the stand. You get to
16 draw -- you get to listen, and you know what was said,
17 because you were here and you listened to it. My
18 recollection of testimony is not evidence. Mr. Thornton's
19 recollection of the evidence is not evidence. The evidence
20 is the testimony from that stand.

21 Now, the two biggest problems here, Sonja Grant. Sonja
22 Grant mostly told the truth, mostly. She said that she had
23 picked up Fatimah Washington at Druid Hills at about 1:00 in
24 the morning to go and pick something up from Brandon
25 Jenkins, Brandon White, also known as Kenneth White. We

1 have a statement from Kenneth White in evidence and you'll
2 have a chance to look at that and read that statement.

3 Kenneth White absolutely must have seen what happened,
4 based on his statement, must have. Sadly, you don't get to
5 hear from him, but you do get to see his statement. You can
6 ask yourself reasonably why he wasn't called as a witness.
7 Why the State didn't call him as a witness, because his
8 testimony, his statement ---

9 DEP. SOL. THORNTON: Objection, Your Honor.

10 MR. MATHEWS: Your Honor ---

11 THE COURT: Counsel approach.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
13 AND OUT OF THE HEARING OF THE JURY.)

14 THE COURT: Objection is sustained.

15 The law will tell you how to go forward at this point,
16 ladies and gentlemen. I've tried to do the best I can.
17 Look at all the evidence that you have, consider all the
18 evidence that you have; All the exhibits that you have to
19 look at, and consider them.

20 Derrick Fishburne is a usual suspect. Sonja Grant,
21 whose statement was given a month later, later than this
22 happened, basically did -- she was backing up her friend.
23 That's what she was doing. She -- she came from Druid
24 Hills, she was facing, parked in the second row of cars,
25 back behind -- facing away from Walterboro, in between the

1 driver's door and the car, that was her testimony; and her
2 testimony also was that Fatimah Washington also had her
3 elbow propped against the car. That doesn't fit at all with
4 what Fatimah Washington said. Fatimah Washington said that
5 she ran when she heard the shots. Saw two shots, turned
6 around and ran across the street. That doesn't make any
7 sense at all. It doesn't make any sense at all. It's no
8 wonder that she gave a statement later on that it wasn't
9 proven.

10 It's a tough set of circumstances for anybody, but it
11 was dark, it was hard to see, they were talking, they were
12 talking to each other. They said they were talking to
13 Brandon White, also. I'm not sure how you get all of this
14 that quick. And then you run across the street, if that did
15 happen. I'm not sure what you can see in that short amount
16 of time.

17 In any event, there's no indication at all, then why
18 Derrick Fishburne would have done this. Absolutely no
19 motive. Motive is not absolutely required in South
20 Carolina, but it sure is helpful, because if there's not a
21 reason for Derrick to kill this fellow, because maybe he
22 didn't kill this fellow. If there's no reason. Matthew
23 Goodwin had a reason. That fellow with the five to six inch
24 dreds, and a yellow, not a red, shirt, and a yellow shirt,
25 maybe he had a reason, maybe. Fatimah also said that she

1 was going to meet with a friend. Sonja said she was going
2 to pick up some money. It may have been business, I don't
3 know. They didn't go in the club in any event. I don't
4 know what happened. I don't know what happened inside the
5 club.

6 Jarrod Frazier knows what happened inside the club. He
7 said he talked to his friend, Derrick, for a few minutes,
8 walked across the dance floor, and out the door. He wanted
9 to talk to him, followed behind, called his name, called his
10 name out, and he wasn't there anymore. The inference you
11 can draw from that is that he left.

12 A number of things which would have been nice to have,
13 it would have been nice to have, I don't know, but a car is
14 important. Det. Inabinett testified that he took some
15 prints off of a Chrysler 300 that Derrick was known to
16 drive. Okay, he said in his statement that he drove other
17 people's cars. He said that. He said some things that
18 weren't true, that probably was true. If he's known to
19 drive a car, it's not a surprise that you would find his
20 prints inside the car. What would have been more helpful is
21 to show a picture of the car to anybody that was at the
22 club. To show a license plate to anybody that was at the
23 club. The question isn't whether or not the Chrysler 300
24 that they found at Derrick Fishburne's brother's house would
25 have Derrick Fishburne's fingerprints in it. The question

1 is, is that the car that was at the club? Was that car at
2 the club? Is there anybody to say that that particular
3 Chrysler 300 was there? There are license plates, you can
4 take this information. You can know this. You don't have
5 to guess and nobody was even shown a picture to say "Is this
6 the car?" How easy would that have been? Bullet shells were
7 found all over the place. Det. Scott testified that he
8 picked them up. He used gloves. He said there were a
9 number of reasons why he did that. He did it because
10 there's blood out there. You don't want to get sick. You
11 don't know what's out there. One of the reasons he says is
12 because from time to time they'll check the shell casings
13 for fingerprints. Wouldn't it have been nice if that had
14 been done? Wouldn't it have been nice if anything would
15 have been found, a gun, maybe, some clothes, anything like
16 that, that linked Derrick Fishburne to the shooting.

17 Yeah, we've got some eyewitness testimony, such as it
18 is, in a dark circumstance for somebody who doesn't have a
19 lot of ability to be able to see and they're shown a picture
20 of how somebody looked, sometime in the past, but clearly
21 not how they looked the day this happened. The Solicitor
22 took a great deal of time saying, pointing to Derrick
23 Fishburne, saying his hair didn't look like that back then,
24 did it? "No, didn't look like that; looked more like this.
25 Looked more like this."

1 Take a look at Derrick Fishburne today and take a look
2 at how he looked on that day. His hair looks about the same
3 there, in my opinion, you have to make your own opinion up,
4 it looks more like that than it does like the picture that
5 was shown to the witnesses.

6 I don't know that this was -- this wasn't an
7 intentional thing on law enforcement's part, they had a
8 name. They had a name. One of the things that Det. Johnson
9 said, "He's a good man. He does a good job. We can give to
10 him our respect," but he made a mistake. He took the
11 statement of Matthew Goodwin and he said when the statement
12 was presented to him at the end, he changed it, because it
13 didn't have D-Rock and Ti-Ti's name on it. And that, he
14 thought, was an important thing.

15 It wasn't important enough, apparently, for the-- I
16 don't know, I don't know why it wasn't on there. But it was
17 important at that point you already had in your mind that
18 this is who did it. Then, you're going to read those things
19 in, and if it's not on the statement, you're going to put it
20 on the statement. Det. Johnson didn't know that D-Rock was
21 Derrick Fishburne. He had heard the name. Once he found a
22 name, there were pictures put to it. That's how SLED puts
23 these photo lineups together. They don't show pictures of
24 different people that meet descriptions given on scene; that
25 would be helpful. That would be very helpful. Give me

1 pictures of six people who have five to six inch dreds, or
2 braids, loose or tied in the back, but long, and not tight
3 to the head, and yet, wearing a yellow shirt or whatever.
4 Give that description and say, give me six people that look
5 like that. That's helpful. But when you say give me a
6 picture of Derrick Fishburne and five people who look like
7 Derrick Fishburne, then the examination is only to determine
8 who looks the most like Derrick Fishburne, and who is going
9 to look the most like Derrick Fishburne? Derrick Fishburne.

10 You see what you expect to see. And once you have
11 that, once you have that and you see that, it's burned in
12 your brain. Where did Sonja grant learn that Derrick
13 Fishburne, D-Rock, was Derrick Fishburne? From the
14 newspaper? Didn't know the name; didn't know his name until
15 after, in between the time that she -- of the accident and
16 the time she went in there, she had learned the name. You
17 hear the name, then you put it with a face.

18 My recollection is that Penny Williams said that
19 Derrick Fishburne and Ti-Ti went out. Ti-Ti she thought was
20 Timothy Holmes. When asked about it, she said, "Well, I got
21 the last name wrong, it wasn't Holmes. Okay? That's the
22 problem. That's the problem. You get a name instead of a
23 description and that's what you're starting from. You start
24 off wrong, you're going to keep going wrong. Just like
25 Judge Buckner said, "You start off wrong, it gets

1 entrenched. It gets worse, and it gets worse, and it gets
2 worse, and that's what happened in this case.

3 (JUDGE TAPS THREE TIMES ON THE BENCH.)

4 As far as the fingerprints go, it was the car he was
5 expected to be in anyway. The judge is going to tell you
6 what the law is in this case. He's gonna tell you the
7 definition of murder, and I'm sure the Solicitor will also
8 spend some time talking to you about this. The main thing,
9 the burden of proof is always on the State, always. The
10 defendant doesn't have to prove a thing, and it's a good
11 thing, too, because if you had to prove what didn't happen,
12 you'd never be able to do it. You don't have to fill in the
13 gaps. You don't have to make assumptions.

14 You follow the evidence and you don't have to say he is
15 innocent of this, that's not right. The choices aren't
16 innocent or guilty. It's guilty or not guilty. Guilty is
17 beyond a reasonable doubt. It doesn't mean-- you don't have
18 to leave out having made a decision that it did or did not
19 involve -- just had the State proven beyond a reasonable
20 doubt, that's what the standard is. And it's a good thing,
21 too. It's a good thing, too.

22 So, this is my last chance to talk to you. The
23 Solicitor now will have a chance to talk to you, but ask
24 yourself, why the State didn't call Matthew Smoak. I called
25 him. Why did the State not do that? If they were so proud

1 of his testimony and so proud of the photo lineup, if they
2 were so proud, why didn't they call him? He said, Yeah,
3 that's him in the photo lineup, but the first thing he
4 described wasn't how Derrick Fishburne looked that day.

5 If the State had believed -- if they thought that would
6 have helped, they would have called him. They didn't call
7 him. Ask yourself where is the other evidence? Where is
8 the motive? Why did Derrick do this? If you don't have a
9 good reason, that is a reasonable doubt. Right there, if
10 you don't know why Derrick would have done something like
11 this, welcome to the club. Listen carefully, consider all
12 of the evidence very carefully, and when you do, I'm
13 confident that you will find the State has not proven
14 beyond a reasonable doubt that Derrick murdered anybody.
15 Thank you.

16 THE COURT: Solicitor.

17 DEP. SOL. THORNTON: May it please the Court? Mr.
18 Matthews?

19 CLOSING ARGUMENT

20 DEP. SOL. THORNTON:

21 Wouldn't it be nice, ladies and gentlemen, yeah,
22 wouldn't it be nice if Derrick Fishburne hadn't brutally
23 murdered Donald Green, then none of us wouldn't need to be
24 here and you wouldn't have to worry about any of this.

25 So, yeah, that's one thing about this. Gean Johnson

1 testified as to this Matthew Goodwin statement that he
2 looked at it, couldn't read it, and that he had left
3 something out of the statement, and that's why he was going
4 to rewrite it. You know, ladies and gentlemen, defense
5 lawyers love to talk about what you don't have. Well, we
6 don't have this. We don't have that. You know what, I
7 don't have a videotape showing you that Derrick Fishburne
8 killed Donald Green. I don't have that. Been doing this 13
9 years and never have had one of those. I don't have a
10 confession from Derrick Fishburne indicating "I did it." I
11 don't have that in this case. I don't have Derrick
12 Fishburne on tape at the scene doing the killing. I don't
13 have any of those things. I don't need them.

14 What do you have in this case? You've got Derrick
15 Fishburne in this case lying about where he was on the night
16 that Donald Green was killed. It is undisputed that he got
17 in that interview room and lied. What did he keep telling
18 Capt. Johnson? "Just check with my girlfriend. Just check
19 with my girlfriend. Just check with my girlfriend. I was
20 home all night." He did talk about going to the store, but
21 when Det. Johnson asked him from midnight until you got up
22 this morning, did you go anywhere? Nope, I was there all
23 night. All you got to do is check. What did Lorinda
24 Williams tell you when she got on the stand? He was gone
25 from around 12:45 until 3:00 A.M. Isn't that interesting

1 that that's exactly when Donald Green was murdered.

2 At the scene of the crime, there have been several
3 vehicles talked about. You saw the Jeep in the picture.
4 They ran the prints that were on the Jeep and came back to
5 the owner of the Jeep. Well, that's no big surprise. There
6 was also mention of a Chrysler 300, a black Chrysler 300.
7 Lo and behold, another coincidence, Derrick Fishburne is
8 known to drive a Chrysler 300, black in color. Lo, and
9 behold, another coincidence, his fingerprints are found on a
10 black Chrysler 300 at his brother's house. Is that all he
11 lies about? No. He lied several times. Remember when Det.
12 Johnson caught him lying about not having a cell phone? He
13 lied about where he was. He lied about not driving
14 anywhere. "I only use my girlfriend's car or racing."
15 Well, I'm not an expert on racing, but I haven't seen too
16 many Chrysler 300 race cars running around the tracks. He
17 also lied about not having a cell phone.

18 What do we know? It is undisputed that Donald Green
19 was murdered. Shot six times at the Spirit's Lounge, what
20 was then the Spirit's Lounge, here in Colleton County.
21 Nobody can deny that. The only issue is did Derrick
22 Fishburne do it? That's all you got to decide. Is he the
23 shooter? You have two eyewitnesses who testified on that
24 stand in front of you that he did it.

25 Now, Mr. Mathews, I think we're going to call this the

1 braid's defense. Is it braids? Is it dreds? Were they
2 short? Were they long? Were they down on his head or were
3 they up? He took great pains to talk about that. Is it
4 more or less believable in your mind when a witness says, I
5 saw Derrick Fishburne do something, then with a different
6 hairstyle I was able to pick him out in his DMV photo, and
7 said that's the guy who did it. And then sitting here with
8 all of his hair cut off, appearance altered a little bit, is
9 that the person? Do you see him in the courtroom? Yes, I
10 do. Point him out for me. So, three different hairstyles,
11 but the same face. Isn't that what Fatimah told you when
12 she got off the stand, yeah, different hair, but the face
13 doesn't change. Mr. Mathews takes great pains to talk about
14 well, I don't understand. You didn't give a description,
15 you didn't give a description. You got a name. Well, let
16 me ask y'all something, what is more accurate? Who did you
17 see do it? Well, I saw a white male, he's about 6'1, 180,
18 wears glasses, and unfortunately, balding. Or is it, "I saw
19 Sean Thornton, you know the Deputy Solicitor, he's the one
20 who did it. I've known him since 1994." Which one of those
21 is more accurate? Which one of those is more specific? Why
22 do you need a description of somebody as a white male or a
23 black male, this tall, this short, if you know who it is and
24 it's not just one person who said who it was, it's two
25 people. To believe this story, you've got to believe that

1 they all got up here and lied. Was there any doubt in the
2 way they testified? You know, part of what you have to do
3 is judge the credibility of the witnesses. Did Fatimah
4 look like she wanted to be here? Did she talk to you about
5 this statement that she wrote? And it's in evidence.
6 You'll have it. "On April the 10th, 2009, I, Fatimah Leah
7 Washington, wrote a statement on Derrick Fishburne, accusing
8 him of a crime that he did not commit. I went to the Annex
9 to try and change but I was not able to. Signed, Fatimah
10 Washington." Was that brought out on the stand? Did
11 anybody try to hide that from you? Did she explain that to
12 you? What did she tell you? I did it because I was tired
13 of the problems. Problems with who? Problems with his
14 family. Shocking, another coincidence. How many innocent
15 people do you have running around whose families are trying
16 to give problems to witnesses?

17 Didn't find a gun. Keep in mind when this shooting
18 happened. What did law enforcement tell you? I think
19 somebody said it was around 1:30 in the morning, and again,
20 what Mr. Mathews -- one thing he said, maybe the only thing
21 that I agree with, what he says isn't evidence. What I say
22 isn't evidence. If y'all remember it differently, you go
23 with your memory, okay, about anything. But my recollection
24 is 1:26 to 1:30 in the morning. What time did his
25 girlfriend testify that he got home? 3:00. You mean to tell

1 me that it is beyond recognition that you can get rid of a
2 gun or hand it to somebody or throw it out of a window or do
3 anything else you want to do with it? Andre Williams
4 testified that he only lived about 10 minutes away from
5 there. So, we're supposed to give him credit because he was
6 smart enough to ditch the gun before he got home? He ought
7 to get a pass for that?

8 You know, murder, ladies and gentlemen, is the unlawful
9 killing of another with malice aforethought. The judge is
10 going to charge you on what the law is. If I say something
11 wrong, trust me, go with what he says. Unlawful killing of
12 another with malice aforethought. It's undisputed that
13 Donald Green was unlawfully killed. There were six rounds
14 pumped into his body. Six shots, six rounds. What could be
15 more malicious, Ladies and gentlemen, firing a shot at a man
16 and while he was laying helpless and dying on the ground,
17 pumping another five rounds into his dying body. It doesn't
18 get any more malicious than that. And the only thing you
19 have to figure out in this case is that D-Rock did it. D-
20 Rock, Derrick Fishburne, you know, Mr. Mathews talks about
21 mentioning these other people, about how many people there
22 were, you know, how many people were at the Spirit's Lounge.
23 How many people were ID'd as fighting with the victim? Of
24 those people, how many people were ID'd by eyewitnesses as
25 that's the man that did it. Not, well there was a man with

1 dreds. There was a man with braids. There was a man with
2 this. Derrick Fishburne, D-Rock, did the shooting. The
3 only way that man walks is if you don't believe the
4 eyewitnesses. That's it. If you believe the eyewitnesses,
5 he's guilty. You ought to find him guilty. If you don't,
6 then you ought to turn him loose. But that's the only way
7 he gets found not guilty in this case is if you disbelieve
8 Sonja Grant. You disbelieve Fatimah Washington. You
9 disbelieve his fingerprints on a car at the scene at the
10 crime. You don't care of the fact that he lied repeatedly
11 about where he was that night. That's it; that's the
12 evidence in this case.

13 I told y'all this wasn't CSI. I told you it was real
14 life and that was a real man laying there that bled to death
15 on that ground after Derrick Fishburne, D-Rock, put an end
16 to his life by firing six shots into his body. That's real
17 life. It ain't about what you don't have, ladies and
18 gentlemen, it's about what you do have. And the only thing
19 I can ask you is take this evidence, look at it when you get
20 back into that room, and put D-Rock away, because Derrick
21 Fishburne murdered Donald Green on April the 10th, 2009,
22 here in Colleton County, and he deserves to get punished for
23 it. Thank you.

24 JURY CHARGE

25 Madame Foreperson, ladies and gentlemen of the jury, it

1 is now my duty to charge you on the law in this case. The
2 State of South Carolina has charged the defendant, Derrick
3 Fishburne, with two offenses in these indictments, as I have
4 told you throughout this trial. In Indictment Number 2009-
5 GS-15-0256, with the offense of murder, and in Indictment
6 number 2009-GS-15-0255, with the offense of possession of a
7 weapon during the commission of a violent crime.

8 I remind you that the fact that the defendant was
9 arrested, the fact that the defendant was charged, and the
10 fact that the defendant was indicted in this case, is not
11 evidence in this case, nor does it create any presumption or
12 inference of guilt. These indictments, these documents are
13 simply the formal written instruments in which contain the
14 charges made against the defendant, and they are the formal
15 documents by which the case is brought into this Court of
16 General Sessions.

17 Now, ladies and gentlemen, the defendant has pled not
18 guilty to these indictments. And that plea of not guilty by
19 the defendant puts the burden on the State of South Carolina
20 to prove the defendant guilty beyond a reasonable doubt. A
21 person that is charged with committing a criminal offense in
22 South Carolina is never required to prove himself or herself
23 innocent.

24 I charge you, ladies and gentlemen, that it is an
25 important rule of law that the defendant in a criminal

1 trial, no matter what the seriousness of the charge may be,
2 will always be presumed to be innocent of the crime for
3 which the indictment was issued, unless guilt has been
4 proven by evidence, satisfying you of that guilt beyond a
5 reasonable doubt.

6 The presumption of innocence does not end, ladies and
7 gentlemen, when you begin your deliberations, but it
8 accompanies the defendant throughout the entire trial, until
9 you, as the jury, reach a verdict of guilt, based on
10 evidence satisfying you of that guilt beyond a reasonable
11 doubt.

12 The presumption of innocence is not just a mere legal
13 theory. It's not just a legal phrase. It is a substantial
14 right to which every defendant is entitled, unless you, the
15 jury, are satisfied from the evidence of the defendant's
16 guilt beyond a reasonable doubt.

17 What is a "reasonable doubt" in the law? A reasonable
18 doubt is the kind of doubt that would cause a reasonable
19 person to hesitate to act. The State has the burden of
20 proving the defendant guilty beyond a reasonable doubt.
21 Some of you may have served as jurors in civil court, where
22 in civil court, unlike a criminal case, you were told that
23 it is only necessary to prove that a fact is more likely
24 true than not true. We call that, in civil court, by the
25 greater weight, or the preponderance of the evidence in a

1 civil case.

2 In a criminal case, ladies and gentlemen of the jury,
3 the State's proof must be more than that. It must be beyond
4 a reasonable doubt. Proof beyond a reasonable doubt is
5 proof that leaves you firmly convinced of the defendant's
6 guilt.

7 There are very few things in this world that we know
8 with absolute certainty, and in criminal cases, the law does
9 not require proof that overcomes every possible doubt. If,
10 based on your consideration of the evidence, you are firmly
11 convinced that the defendant is guilty of the crime charged,
12 you must find the defendant guilty. On the other hand, if
13 you think there's a real possibility that the defendant is
14 not guilty, you must give the defendant the benefit of the
15 doubt and find the defendant not guilty.

16 I remind you, ladies and gentlemen, that during this
17 trial, you and I have had certain duties to perform. As a
18 trial judge, it's been my responsibility to preside over the
19 trial of the case, and I also have the duty to rule on the
20 admissibility of evidence offered during the trial of this
21 case.

22 You, as a jury, are only to consider the competent
23 evidence before you. If there was any testimony ordered
24 stricken from the record in this case during this trial, you
25 should disregard that testimony. You are to consider only

1 knowledge or personal observation.

2 The law makes absolutely no distinction, Ladies and
3 gentlemen, between the weight or the value to be given to
4 either direct or circumstantial evidence, nor is a greater
5 degree of certainty required of circumstantial evidence than
6 of direct evidence. You, as a jury, should weigh all of the
7 evidence in this case, both direct and circumstantial.
8 After weighing all of the evidence, if you are not convinced
9 of the guilt of the defendant beyond a reasonable doubt, you
10 must find the defendant not guilty.

11 On the other hand, after weighing all of the evidence
12 in this case, both direct and circumstantial, if you are
13 convinced of the guilt of the defendant beyond a reasonable
14 doubt, you must find the defendant guilty.

15 Necessarily, ladies and gentlemen of the jury, you as a
16 jury must determine the credibility of the witnesses who
17 have testified during this case. Credibility simply means
18 believability. It becomes your duty as jurors to analyze
19 and to evaluate the evidence and determine which evidence
20 convinces you of its truth.

21 In determining the believability of witnesses who have
22 testified in this case, you may believe one witness over
23 several witnesses, or several witnesses over one. You may
24 believe a part of the testimony of a witness, and reject the
25 remaining part of the testimony of that same witness. You

1 may believe the testimony of a witness in its entirety or
2 you may reject the witness's testimony in its entirety.

3 You may consider whether any witness has exhibited to
4 you any interest, any bias, any prejudice, or other motives
5 in this case. You may also consider the appearance, or the
6 manner, of the witness while on the witness stand. We call
7 that the demeanor of the witness while the witness is on the
8 witness stand in judging the credibility, or the
9 believability, of the witnesses who have testified during
10 the trial of this case.

11 Now as I told you during the trial of this case,
12 ordinarily, witnesses are not permitted to get on this
13 witness stand and say, "My opinion is so-and-so. My
14 conclusion is so-and-so." The rules of evidence do not
15 permit witnesses to testify to opinions or conclusions. An
16 exception to this rule exists for those witnesses that we
17 call "expert witnesses". A witness, who by education,
18 training, or experience, has become, or claims to have
19 become, an expert in some art, science, profession or
20 calling. They state an opinion as to material matters in
21 which the witness claims to be an expert, and they'll also
22 state the reasons for his or her opinion if qualified as an
23 expert by the Court.

24 You should consider any expert opinion received in
25 evidence in this case, and just like any other evidence in

1 the testimony which has been presented from the witness
2 stand, any exhibits which have been made a part of the
3 record in this case, and any stipulations of counsel which
4 occurred during the trial of this case, in making your
5 decision as a jury.

6 I, also, as the presiding judge have the additional
7 duty to charge you the law that applies to this case. As
8 the presiding judge, I am the sole judge of the law, and it
9 is your duty as jurors to accept and apply the law exactly
10 as I now state it to you. If any of you walked into this
11 courtroom, and you already had any idea as to what you think
12 the law is or what the law ought to be, and it does not
13 agree with what I'm now telling you what the law is, you
14 must abandon any of your preconceived ideas, because you are
15 sworn in that oath which each of you took, to accept and
16 apply the law exactly as I state it to you, now.

17 In every case tried in this Courtroom before a jury,
18 the jury becomes the sole and exclusive judges of the facts
19 in the case. A trial judge, such as myself, cannot
20 intimate, state, comment on, or make any statement
21 whatsoever, to a trial jury, such as yourself, about the
22 facts in a case.

23 Since you, the jury, are the sole judge of the facts of
24 this case, you are not to infer from what I have said during
25 the progress of this trial, in ruling upon the admissibility

1 of evidence, or otherwise, or anything that I now say during
2 this instruction to you on the law, that I have any opinion,
3 whatsoever, about the facts in this case. The law does not
4 allow me to have an opinion about the facts in this case.
5 This is a matter solely for you, ladies and gentlemen of the
6 jury, to determine.

7 As jurors, then, you remember that it is your duty
8 under your oath, to determine the effect, the value, weight
9 and truth of the evidence presented during the trial of this
10 case.

11 Ladies and gentlemen, there are two types of evidence
12 that are generally presented during a trial, and like many
13 things in the law, ladies and gentlemen of the jury, we have
14 names for those types of evidence. We call the two types of
15 evidence, direct evidence and circumstantial evidence.

16 Direct evidence is the testimony of a person who claims
17 to have actual knowledge of a fact, such as an eyewitness to
18 an event. It is evidence which immediately establishes the
19 main fact to be proved.

20 Circumstantial evidence, as contrasted with direct
21 evidence, is proof of a chain of facts and circumstances
22 indicating the existence of a fact. Circumstantial evidence
23 is evidence which establishes collateral facts, from which
24 the main fact may or may not be inferred. Circumstantial
25 evidence is based on inference, and not on personal

1 this case, you give it the weight you think it deserves. If
2 you decide that the opinion of an expert witness is not
3 based on sufficient education or experience, or if you
4 should conclude, as a jury, that the reasons given in
5 support of the opinion are not sound, or that the opinion is
6 outweighed by other evidence, you may disregard the expert
7 opinion entirely.

8 An expert witness's opinion is to be given no greater
9 weight than that of other witnesses, simply because the
10 witness is an expert.

11 I charge you, ladies and gentlemen, that a statement,
12 or statements, plural, alleged to have been made by the
13 defendant have been admitted into evidence during the trial
14 of this case. While the Court has determined that the
15 statements are admissible, I instruct you, ladies and
16 gentlemen, and charge you that you make the ultimate
17 decision of whether or not the defendant made any statement
18 or statements. If the defendant did make a statement, in
19 your determination, you must determine also whether the
20 statement, or statements, were made by the defendant
21 voluntarily and of his own free will. This means that the
22 statement or statements were not caused by pressure, or
23 force, or fear, or threats, or coercion, or intimidation, or
24 by hope, or a promise of leniency, or a reward of any kind.

25 In determining whether the statement or statements were

1 voluntary, you as a jury should consider both the
2 characteristics of the defendant and the details of the
3 questioning. Some of the factors that you may consider if
4 in evidence in the trial of this case are the age of the
5 defendant, the defendant's education or lack of education,
6 the defendant's mental ability or capacity, the defendant's
7 IQ or intelligence, the defendant's background or
8 environment, length and place of detention, the nature of
9 the questioning and the advice, or lack thereof, to the
10 defendant of his constitutional rights, including, but not
11 limited to, constitutional right to remain silent, that any
12 statement could be used against him in a court of law, the
13 right to have a lawyer present and if he could not afford a
14 lawyer, one would be appointed to represent him without any
15 cost and that he could stop making a statement at any time.
16 You, as a jury, must carefully consider all of the
17 surrounding circumstances based on evidence introduced
18 during the trial of the case before you give any weight to
19 an alleged statement or statements.

20 The State has the burden of proving beyond a reasonable
21 doubt that the alleged statement or statements were
22 voluntary. If you determine they were, you may give the
23 statement or statements any further consideration that you
24 as a jury deem proper. You must decide what weight, if any,
25 should be given to the alleged statement or statements. If

1 you determine the alleged statement or statements were not
2 the free and voluntary statement of the defendant, you
3 should not consider the statement or statements at all.

4 I instruct you, ladies and gentlemen, and emphasize the
5 fact that the defendant did not testify, and that is not a
6 factor to be considered by you, the jury, in any way in your
7 deliberations and in your consideration of the guilt or the
8 innocence of the defendant. It must not be considered by
9 you in any manner whatsoever in your jury room. A defendant
10 has a constitutional right to remain silent and the
11 assertion of this right to remain silent must not be
12 considered by you in your deliberations.

13 I repeat that under that oath which each of you took,
14 you are to draw no conclusions whatsoever as a juror, from
15 the fact that the defendant in this case did not testify.
16 The fact that the defendant did not testify should not even
17 be discussed in your jury room.

18 The burden of proof, as I have stated to you, is on the
19 State of South Carolina. The defendant is not required to
20 prove his innocence. The burden of proof remains on the
21 State of South Carolina to prove guilt beyond a reasonable
22 doubt.

23 Now, the indictments in this case allege different
24 offenses against the defendant. As I told you at the
25 outset, the charges are one indictment charges financial

1 identity theft and the other indictment charges murder.

2 Each charge is a separate and a distinct offense. You as a
3 jury must decide each charge separately on the evidence and
4 the law that applies to it uninfluenced by your decision as
5 to any other charge.

6 I charge you, ladies and gentlemen, that you have heard
7 the term in this case, stipulation. A stipulation is an
8 agreement, an admission, or a concession, made in judicial
9 proceedings by the parties or their attorneys. Stipulations
10 are binding upon those who make them. A stipulation is an
11 agreement and an understanding. The Court and the jury must
12 accept stipulations as binding upon the parties. If counsel
13 for the parties have stipulated to any fact or any fact has
14 been admitted by the stipulation, you will regard that fact
15 as being conclusively proved as to the party or parties
16 making the stipulation or admission as a fact.

17 I charge you, ladies and gentlemen of the jury, and
18 remind you, that the burden of proof in the trial of this
19 case is upon the State of South Carolina. The burden of
20 proof beyond a reasonable doubt extends to every element of
21 the crimes charged, and this specifically includes the
22 burden of proving beyond a reasonable doubt the identity of
23 the defendant as the person who committed the crime.

24 Identification testimony is an expression of belief or
25 impression by a witness. You must determine the accuracy of

1 the identity of the defendant. You must consider the
2 believability of each identification witness in the same way
3 as any other ones. You must be satisfied beyond a reasonable
4 doubt of the accuracy of the identification of the defendant
5 before you may find the defendant guilty. On the other
6 hand, if after examining the testimony, you have reasonable
7 doubt as to the accuracy of the identification, you must
8 find the defendant not guilty.

9 I charge you, ladies and gentlemen, in this case the
10 defendant has raised the defense of alibi. In order to
11 establish an alibi, it must be shown that the defendant was
12 at another specified place at the time the crime was
13 committed and that it was therefore impossible for the
14 defendant to have been at the scene of the crime. Mere
15 denial of presence at the scene of a crime does not
16 constitute an alibi. There is no burden on the defendant
17 to prove an alibi. The burden is on the State to prove
18 beyond a reasonable doubt that the defendant was actually
19 present at the scene of the crime, actually participated in
20 the crime, and was not somewhere else. In other words, the
21 State has the burden of disproving the defendant's alibi
22 defense.

23 In order to establish criminal liability, criminal
24 intent is required. For example, for any particular crime,
25 just by example, purpose, or intent, or malice, or

1 reckless, or even in some cases, criminal negligence.
2 Those are examples of criminal intent. Criminal intent must
3 be proven by the State beyond a reasonable doubt.

4 Criminal intent is always a matter that must be
5 determined by the jury from the circumstances surrounding
6 the situation, based on evidence introduced during the trial
7 of this case.

8 There is no way, ladies and gentlemen, to prove intent
9 to a mathematical certainty. There is no way medical
10 science can dissect a person's brain and determine what that
11 person had in mind; so the law says, ladies and gentlemen,
12 that criminal intent may be inferred from the circumstances
13 shown to have existed. This, ladies and gentlemen, is how
14 you as a jury make a determination of whether or not any
15 element in a crime requiring intent was present.

16 It is not necessary to establish intent by direct
17 evidence, but intent may be established by inference in the
18 same way as any other fact, by taking into consideration the
19 acts of the parties, and all the facts and circumstances of
20 the case based on evidence introduced during the trial of
21 the case.

22 Criminal intent is a mental state, a conscious
23 wrongdoing. It is up to you, as a jury, to determine what
24 the defendant intended to do, based on the circumstances
25 shown to have existed, from evidence introduced during the

1 trial of the case.

2 Criminal intent can arise from action or a failure to
3 act. It may arise from negligence, recklessness, or an
4 indifference to duty, or to consequences considered by the
5 law to be the equivalent of criminal intent.

6 Now, I charge you, ladies and gentlemen, in this case,
7 the defendant, Derrick Fishburne, is charged with the
8 offense of murder. For this offense of murder, the State
9 must prove beyond a reasonable doubt that the defendant
10 killed another person with malice aforethought.

11 Malice is hatred, ill-will, or hostility towards
12 another person. It is the intentional doing of a wrongful
13 act without just cause or excuse, and with an intent to
14 inflict an injury or under circumstances the law infers an
15 evil intent.

16 Malice aforethought does not require that malice exist
17 for any particular time before the act is committed, but
18 malice must exist in the mind of the defendant just before
19 and at the time of the act being committed. There must,
20 therefore, be a combination of the previous evil intent and
21 the act.

22 Malice aforethought may be expressed or inferred.
23 Those terms "expressed" and "inferred" do not mean different
24 kinds of malice, but merely the manner in which malice may
25 be shown to exist. That is, either by direct evidence or by

1 inference, from the facts and circumstances, which are
2 proved based on evidence introduced during the trial of the
3 case.

4 Express malice is shown when a person speaks words
5 which express hatred or ill-will for another, or when the
6 person, beforehand, prepared to do the act, which was later
7 accomplished. For example, lying in wait for a person, or
8 any other act or preparation going to show that the deed was
9 in the defendant's mind, would be express malice. Malice
10 may be inferred from conduct showing a total disregard for
11 human life. Inferred malice may also arise when the deed is
12 done with a deadly weapon. I charge you that the defendant
13 in this case is also charged with the offense of possession
14 of a weapon during the commission of a violent crime.

15 For this offense, the State must prove beyond a
16 reasonable doubt that the defendant was in possession of a
17 firearm, or visibly displayed what appeared to be a firearm
18 during the commission of a violent crime. A firearm means
19 any machine gun, automatic rifle, revolver, pistol, or any
20 weapon which will or is designed to or may readily be
21 converted to expel a projectile.

22 In order to find the defendant guilty of possession of
23 a weapon during the commission of a violent crime, you must
24 first find the defendant guilty of either committing a
25 violent crime or attempting to commit a violent crime.

1 I charge you that the offense of murder is a violent
2 crime under the laws of the State of South Carolina.
3 Therefore, ladies and gentlemen, in order to convict the
4 defendant of the offense of possession of a weapon during
5 the commission of a violent crime, you must find the
6 defendant guilty of a violent crime.

7 Now, Madame Foreperson, and ladies and gentlemen, I've
8 charged you on the law in order to help guide you to a fair
9 and a just result in this case.

10 You're the judges of the facts in this case, and based
11 on your deliberation of the facts in this case and the law
12 as I've explained it to you, you will soon begin your
13 deliberations. You've been selected as fair and impartial
14 jurors. You are sworn to fairly and impartially try and
15 determine the facts of this case, and when you comply with
16 that oath to do it fairly and impartially, no one can
17 criticize your verdict. You are to decide the case based
18 solely on the evidence introduced. What you've heard from
19 the sworn witnesses on the witness stand, any exhibits
20 introduced into evidence, and stipulations of counsel. You
21 will have the exhibits with you in your jury room, with the
22 exception that I need to point out to you that with two
23 exhibits, which are tapes. You'll actually have the tape,
24 but if you need to view it, you'll have to come back to the
25 courtroom where I can set up the equipment for you in order

1 to enable you to view it again if you so desire.

2 You must decide the issues in this proceeding without
3 any bias and without any prejudice toward any party to this
4 case. You cannot allow yourself, ladies and gentlemen, as a
5 juror to be governed by public opinion. You cannot allow
6 yourself to be governed by any other arbitrary factor, such
7 as emotion or public opinion. Both the defendant and the
8 State of South Carolina have the right to expect that each
9 of you will carefully and impartially consider all of the
10 evidence in this case and that you will follow the law as I
11 have instructed it to you to be in reaching your verdict in
12 this case.

13 Now, I told you that I had prepared a verdict form for
14 you. Pay absolutely no attention, ladies and gentlemen of
15 the jury, to the order in which I wrote the forms of
16 verdict. I obviously had to write one before the other in
17 order to prepare the verdict form, so the order has no
18 significance, whatsoever.

19 I have put on the verdict form the title of the case.
20 It says at the top, State of South Carolina, County of
21 Colleton, Court of General Sessions, and has the indictment
22 numbers below it, and then it says State of South Carolina
23 v. Derrick Fishburne, defendant, and it has the word
24 "verdict" in the caption at the top.

25 Underneath that caption, I have question number one,

1 which says, "We, the jury, by unanimous consent, find the
2 defendant, Derrick Fishburne, in Indictment Number 2009-GS-
3 15-0255 -- hold on. I need to make one change, because I
4 have the wrong number written in on my verdict form.

5 "We, the jury, by unanimous consent, and I've just
6 changed it because I wrote the wrong last number on the
7 indictment on there. "By unanimous consent, find the
8 defendant, Derrick Fishburne, in Indictment Number 2009-GS-
9 15-0256, and 0256 is the murder indictment. The first form
10 of verdict under question one is guilty of murder. If that
11 be your form of verdict, Madame Foreperson, you would check
12 on the line beside that form of verdict. The second form of
13 verdict under number one asking We, the jury, by unanimous
14 consent, find the defendant, Derrick Fishburne, in
15 Indictment Number 2009-GS-15-0256, the second form of
16 verdict is: not guilty of murder. If that be your form of
17 verdict, you would check on the line beside that form of
18 verdict. You cannot find both forms of verdict as to
19 question one. You must find one or the other, guilty or not
20 guilty.

21 Under question two on the verdict form, "We, the jury,
22 by unanimous consent, find the defendant, Derrick Fishburne,
23 in Indictment Number 2009-GS-15-0255, I've changed that
24 number on there because I had a 6, where there was a 5, and
25 I put in parentheses after that, which is possession of a

1 weapon during the commission of a violent crime, I put in
2 parentheses, you may only find the defendant guilty of this
3 crime, possession of a weapon during the commission of a
4 violent crime, if you have previously found the defendant
5 guilty of murder.

6 If you find the defendant not guilty of murder, you
7 must find the defendant not guilty of possession of a weapon
8 during the commission of a violent crime. That is because I
9 told you in order to find a person in South Carolina guilty
10 of possession of a weapon during the commission of a violent
11 crime, you must first find the person guilty of the
12 commission of a violent crime, or attempting to commit a
13 violent crime.

14 The two forms of verdict under question two, we, the
15 jury, by unanimous consent, find the defendant, Derrick
16 Fishburne, in Indictment 2009-GS-15-0255, will either be
17 guilty of possession of a weapon during the commission of a
18 violent crime, if that be your verdict, you would check,
19 Madame Foreperson, on that line, or not guilty of possession
20 of a weapon during the commission of a violent crime, and if
21 that be your verdict, you would check on that line following
22 the instructions I've given you question two as to what you
23 can do based on how you determine question one.

24 You will then sign your name Madame Foreperson after
25 you've put the appropriate check marks for the jury on the

1 verdict form and fill in today's date.

2 Now, ladies and gentlemen of the jury, your verdict
3 must be unanimous, that is all twelve of you must agree on
4 the verdict. When you have reached a verdict, Madame
5 Foreperson, you'll see that I've put some instructions for
6 you at the bottom. It says indicate your findings by
7 checking the appropriate line and certifying by your
8 signature in filling in the date. Then, you will knock on
9 the jury room door, inform the bailiff that you've reached a
10 verdict, and we will then bring you back in to the courtroom
11 to publish your verdict once you've reached a verdict.

12 Now, I remind you that after we have published your
13 verdict in the courtroom, my law clerk, Nick Rivera, will be
14 looking for you because whatever you write on this verdict
15 form, he will want you to write on these indictments that I
16 hold in my hand.

17 All right. Ladies and gentlemen of the jury, I'm going
18 to ask you at this time if you will retire to your jury
19 room. Do not begin your deliberations yet. It might be
20 necessary for me to bring you back into the courtroom for
21 some brief additional instructions. When it is time for you
22 to begin your deliberations, I will send the verdict form
23 into you by the bailiff, along with all the exhibits which
24 have been introduced into evidence during the trial of the
25 case, and have the bailiff instruct you that you may then

1 commence your deliberations. So, do not begin until I give
2 you instructions through the bailiff.

3 I ask that you retire to your jury room at this time.
4 Mr. Alternate Juror, please remain in the courtroom with me.
5 Ladies and gentlemen of the jury, you may retire to your
6 jury room at this time.

7 (3:02 P.M., 7-21-10, WHEREUPON THE JURY EXITS THE
8 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
9 RECORD.)

10 THE COURT: No one became ill, or for some legal reason
11 could not continue to serve in this case. This concludes
12 your service in the trial of this case. I want to thank you
13 very much for your service. I certainly invite you to stay.
14 I can't let you go back in the jury room, now, once the jury
15 gets it, but I'd like you, if you'd like to stay during
16 deliberations, I realize you've been patient. All a judge
17 can do is exactly what I asked you to do. I've watched you
18 throughout this trial and you've listened. That's exactly
19 what I want my jurors to do. On behalf of Colleton County,
20 I want to thank you for your service during the trial of
21 this case. I appreciate that. Solicitor, Mr. Mathews,
22 please approach, before I let this gentleman go. I need to
23 check on scheduling to tell him before he leaves.

24 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE RECORD
25 AND OUT OF THE HEARING OF THE COURTROOM.)

1 **THE COURT:** All right. I've conferred now with members
2 of the Solicitor's Office and it appears that I have enough
3 non-jury matters, that would be guilty pleas, bonds, things
4 of that nature, that I will not need you anymore this week.
5 This concludes your service for the week, and on behalf of
6 Colleton County and the court, I thank you for your service,
7 your patience, and your willingness to listen. I invite you
8 to stay with us while the jury deliberates and for
9 sentencing in the event he's convicted. If you'd like to,
10 it's a public proceeding, but if you'd like to leave the
11 courtroom, I'd be happy for you to do so, because you are
12 now exempt from jury service if you choose to claim your
13 exemption for three years.

14 **JUROR:** Thank you, sir.

15 **THE COURT:** Thank you. Have a nice day.

16 **WITNESS:** I'm 65, so I'll claim my exemption.

17 **THE COURT:** Congratulations. Thank you for serving.

18 Any exceptions or additions to the charge from the
19 State of South Carolina?

20 **DEP. SOL. THORNTON:** No, sir.

21 **THE COURT:** Any exceptions or additions to the charge
22 from the defendant?

23 **MR. MATHEWS:** No, Your Honor.

24 **THE COURT:** I'd ask that counsel come forward, with the
25 court reporter, before y'all start rifling through her, and

1 go over her list with her and the exhibits to certify that
2 the court reporter has all the exhibits, and by the way, my
3 law clerk -- y'all saw me take the blame for the wrong
4 indictment number on the verdict form. He doesn't believe
5 that judges -- I want to make sure you hear this Ms.
6 Haselden; Judges take the bullet every now and then. My law
7 clerk has now reprinted the verdict form with the correct
8 indictment numbers on it since I caught it in the middle of
9 my charge. I want y'all to look at it with the indictments
10 and satisfy yourselves that it is correct. Please come to
11 the bench.

12 (COUNSEL COMES FORWARD TO CERTIFY THE EXHIBITS AND THE
13 VERDICT FORMS.)

14 THE COURT: Is the State satisfied that the court
15 reporter has all the exhibits?

16 DEP. SOL. THORNTON: The State is satisfied, Judge.

17 THE COURT: And you have no objection to the bailiff
18 taking the exhibits, along with the amended verdict form,
19 it's been reprinted, that you've just reviewed at the bench,
20 by my law clerk, into the jury by the bailiff, telling the
21 jury they may now commence their deliberations?

22 DEP. SOL. THORNTON: No objection from the State.

23 THE COURT: Very well. Is the defendant satisfied the
24 court reporter has all the exhibits?

25 MR. MATHEWS: Yes, sir.

1 **THE COURT:** All right. Does the defendant have any
2 objection to the bailiff taking the amended verdict form,
3 which you've just reviewed at the bench and told me you were
4 satisfied with, along with all the exhibits, into the jury
5 room and telling the jury they may now commence their
6 deliberations?

7 **MR. MATHEWS:** No objection, Your Honor.

8 **THE COURT:** Very well. Mr. Padgett, if you'll get all
9 my exhibits, and the verdict form. Tell the jury they may
10 now commence their deliberations. Please tell them -- who's
11 going to be with the jury back there?

12 **BAILIFF PADGETT:** Odell.

13 **THE COURT:** All right. Have him step in here.

14 **(BAILIFF JONES STEPS TO COURTROOM.)**

15 **THE COURT:** All right. If the jury wants to view --
16 what exhibit numbers are they, the tapes?

17 **DEP. SOL. THORNTON:** One is Thirteen and ---

18 **MADAME CLERK:** Defense Exhibit One and State's
19 Thirteen.

20 **THE COURT:** If the jury wants to view Defense Exhibit
21 One or State's Exhibit Thirteen, they'll have to come back
22 into the courtroom where we can set the equipment up.
23 That's just the tape. They don't have the ability to see it
24 unless we control what they see out here. Just tell them
25 because of the equipment, we'll have to set it up. They can

1 let us know by knocking on the door if they wish to view it.

2 You understand?

3 BAILIFF JONES: Yes, sir.

4 THE COURT: All right. Mr. Padgett, you can take them
5 on in there. All right. Counsel, it is now 3:15 and the
6 bailiff has taken in the verdict form and telling the jury
7 they may commence their deliberations. We'll take a break
8 before we start back.

9 (3:15 P.M., WHEREUPON THE EXHIBITS AND VERDICT FORMS ARE
10 TAKEN INTO THE JURY FOR DELIBERATION. DURING THIS TIME,
11 GUILTY PLEAS ARE TAKEN BY THE COURT UNTIL A VERDICT IS
12 REACHED.)

13

14 THE COURT: I understand from my bailiff that the jury
15 has reached a verdict in the case we're trying. Anything
16 from the State before we publish the verdict?

17 DEP. SOL. THORNTON: No, sir.

18 THE COURT: Anything from the defendant before we
19 publish the verdict?

20 MR. MATHEWS: No, sir.

21 THE COURT: Now, ladies and gentlemen, you'll notice
22 that my law enforcement personnel is standing at the doors
23 of the courtroom. The reason for that is I will not
24 tolerate any type of emotional outburst when this verdict is
25 published. If you cannot control your emotions, I ask you

1 to leave the courtroom now. If there is any outburst when
2 the verdict is published, I can assure you I will enforce
3 the power not to have one with the contempt powers of my
4 Court. So, if you feel you can't control your emotions and
5 you can't remain silent, leave this courtroom at this time.
6 Very well. Bring me the jury.

7 (4:55 P.M., 7-21-10, WHEREUPON THE JURY ENTERS THE
8 COURTROOM AND THE FOLLOWING PROCEEDINGS ARE HELD ON THE
9 RECORD.)

10 **MADAME CLERK:** Madame Forelady, have you reached a
11 verdict?

12 **MADAME FORELADY:** We have.

13 **THE COURT:** You may publish the verdict.

14 **MADAME CLERK:** Indictment number 2009-GS-15-0255,
15 2009-GS-15-0256, the State of South Carolina v. Derrick
16 Fishburne, we the jury, by unanimous consent, find the
17 defendant, Derrick Fishburne, in Indictment 2009-GS-15-0256,
18 guilty of murder.

19 We, the jury, find unanimous consent, the defendant,
20 Derrick Fishburne, in Indictment 2009-GS-15-0255, guilty of
21 possession of a weapon during the commission of a violent
22 crime. Signed by Foreperson, Rhonda D. Kierpiec. If this
23 is your verdict, please raise your right hand.

24 **THE COURT:** Let the record reflect that 12 hands were
25 raised in response to the Clerk's question. Anything

1 further from the defendant before I excuse the jury?

2 MR. MATHEWS: Post-trial motions, Your Honor.

3 THE COURT: I understand that, but anything for the
4 jury?

5 MR. MATHEWS: No, sir.

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, first of all, on behalf of Colleton County and this
8 Court, I want to thank you for your service during the trial
9 of this case. I tell juries this a lot, but I watch juries,
10 obviously, every week, and all a judge can do is ask a jury
11 to listen, and I've watched the 12 of you throughout this
12 trial, and that's exactly what you did; and I thank you for
13 that.

14 Unless we have people like yourself who are willing to
15 give of their time and serve on the jury, justice can never
16 be accomplished in the courtroom, and I thank you for that
17 willingness to serve and for leaving your homes and jobs.
18 Now, I told you this would be a good week for you. The good
19 news I've got for you is this completes your jury service
20 for the week. When I excuse you from the courtroom, I'm
21 excusing you for the balance of the week. You will not have
22 to come back. This completes your service, and if you
23 listened to my instructions earlier, you're exempt from jury
24 service for three years by virtue of if you choose to claim
25 your exemption, by virtue of your service this week. So,

1 even if the computer were to draw you at random, you're
2 exempt, should you choose to claim your exemption, for three
3 years.

4 Now, sentencing in this case is getting ready to occur.
5 I invite you to stay for sentencing. You can remain in the
6 sentence box and my law enforcement personnel will see that
7 you get to your car, or if you would like to leave, you can;
8 but we're going to sentence in this case, and because you
9 were here for the trial, I invite you to stay. It's a
10 public proceeding in the courtroom if you'd like to stay.
11 If you want to be seated out in the courtroom, you can do
12 that, if you'd like to remain, rather than in the box. It's
13 entirely up to you. If any of you need a work excuse for
14 serving on the jury, go downstairs to the General Sessions
15 office downstairs, the clerk's office. The sign says
16 "General Sessions" and we'll be happy to provide a work
17 excuse for you for serving on the jury this week.

18 I thank you very much for your service. If you'd like
19 to stay, I'd be happy for you to stay. If you'd like to
20 leave, you can leave at this time. Thank you very much.
21 This concludes your service for the week.

22 (BRIEF PAUSE WHILE SEVERAL JURORS LEAVE AND SOME
23 REMAIN.)

24 **THE COURT:** Defendant, Counsel, and Solicitor, come
25 around for sentencing.

1 DEP. SOL. THORNTON: Your Honor, may I approach?

2 THE COURT: You may.

3 DEP. SOL. THORNTON: I believe you already have the
4 indictments, Your Honor.

5 THE COURT: I do. Let the record reflect that the
6 clerk has already got the verdict form, and my law clerk has
7 already gotten the foreperson to sign the verdict on the
8 indictments. Now, Mr. Mathews, I understand you have some
9 post-verdict motions before we get to sentencing that you
10 would like to place on the record at this time?

11 MR. MATHEWS: Yes, sir.

12 THE COURT: The Solicitor is now present, after he's
13 been working on the sentence sheet, and I didn't want you to
14 start when he couldn't hear you when he was trying to get
15 the paperwork filled out. I'm happy to hear from you.

16 MR. MATHEWS: Thank you, Your Honor. Your Honor, we'd
17 ask for a motion for judgment notwithstanding the verdict
18 and the Court's heard the evidence. We would just make that
19 motion at this time.

20 THE COURT: Mr. Mathews, in criminal case, there is no
21 such thing as a JNOV. There's a motion for new trial or a
22 motion for arrest of judgment. There is no JNOV in a
23 General Sessions case. Are you moving for a new trial
24 absolute or in the alternative for arrest of judgment on the
25 grounds that you made a directed verdict at the close of all

1 the evidence?

2 MR. MATHEWS: Yes, sir. I don't want to be
3 ineffective. I'm sorry I misstated that.

4 THE COURT: Very well. For the reasons I stated at the
5 close of the State's case, and at the close of all the
6 evidence, your motion for a new trial and your motion for
7 arrest of judgment on the grounds that you made at those two
8 stages are respectfully denied. All right. Solicitor, I
9 have the sentence sheet now. Obviously, I'm very familiar
10 with the facts of this case. But I'll be happy if you'd
11 like to tell me any additional thing or allow if you have
12 someone that wants to speak to me, I'm happy to hear from
13 you before I hear from Mr. Mathews in mitigation.

14 DEP. SOL. THORNTON: Your Honor, I would appreciate if
15 you would hear from Ms. Rosa Green, who is the mother of the
16 decedent in this case -- sister, I apologize, of the
17 decedent in this case, Donald Green. If Ms. Rosa would come
18 up and speak, Your Honor. And after she gets done, I would
19 like to address the Court very briefly. I understand you
20 already know the facts, Judge.

21 THE COURT: State your name for the record, if you
22 would, please ma'am.

23 WITNESS: Rosa Green.

24 THE COURT: Yes, ma'am.

25 WITNESS: Good afternoon, Your Honor. I apologize for

1 the emotions.

2 THE COURT: Take your time.

3 WITNESS: My brother, Donald, was a happy spirit, just
4 a very happy, happy person, and what happened to him should
5 not have happened. He had three kids, two twin boys and a
6 seven year old daughter that was handicapped. He would walk
7 into the room and she would just smile, she would light up.
8 She always recognized his presence. The two kids, the day
9 after this incident happened, they walked around looking for
10 him. They couldn't find him. They looked confused and they
11 looked lost. What happened in this situation caused three
12 kids to be without a father, and it should not have
13 happened. Today, before I came here after lunch, my mother
14 said it shouldn't have happened. It was like somebody did
15 something to an animal, and every day she cries. That's it.
16 May I be excused?

17 THE COURT: Yes, ma'am.

18 DEP. SOL. THORNTON: Your Honor, if it please the
19 Court. I'm not going to go over the facts. You've already
20 heard them, Judge. You know, Your Honor, this is a man in
21 his twenties. He was twenty-seven years old. It doesn't
22 get more senseless than this. We didn't get into a lot of
23 the background facts, but you heard from Matthew Smoak.
24 What this basically was over, Judge, is Derrick Fishburne
25 was trying to get in some girl's car and there was some

1 issue between him and Donald Green, or between him and the
2 bouncer, and Donald Green tried to intervene, and told the
3 bouncer, "Don't worry about calling the police. You know,
4 we cousins." I don't know if there's an actual familiar
5 relationship or he just said that because they knew each
6 other, but he basically tried to break up a fight, or to
7 keep a fight from happening. And for that, Derrick
8 Fishburne gunned him down and put six bullets in him, Judge.
9 And it's just that he killed him, it's that he shot him and
10 as he fell to the ground, he continued pumping more rounds
11 into him. For that reason, Judge, and because this is not
12 Mr. Fishburne's first time at the rodeo, he already has a
13 felony drug conviction, Your Honor, back from 2001, which is
14 the extent of his criminal record, along with a 2004 simple
15 possession of marijuana. He also -- I believe that's it,
16 Judge, as far as convictions. You know, Your Honor, he's
17 got two prior drug charges. Granted, one of them is
18 Magistrate's Court. He's now graduated to a senseless and
19 brutal murder. He's shown absolutely no remorse. I would
20 ask in this case, Your Honor, for a life sentence.

21 **THE COURT:** Mr. Mathews, I'm happy to hear from you in
22 mitigation.

23 **MR. MATHEWS:** Thank you, Your Honor. Your Honor, Mr.
24 Fishburne has consistently denied his guilt. Obviously, the
25 jury has found otherwise. He indicates the person involved

1 in the altercation, Renaldo Williams, that's who -- and that
2 wasn't related to the shooting at all. In fact, there
3 are -- in any event, Renaldo Williams and his girlfriend
4 were in that fight.

5 In any event, he's consistently denies his guilt, he's
6 lived in Colleton County his whole life. His mom, his
7 sisters are here. His only General Sessions offense was
8 from 2001, a simple possession of crack cocaine. It is a
9 tragic thing that happened to Mr. Green and Mr. Fishburne,
10 maybe if he had had a little more faith in the system, might
11 would have just told the truth to start with. Ask the Court
12 to show whatever mercy the Court can show.

13 **THE COURT:** Mr. Fishburne, is there anything you want
14 to tell the Court prior to sentencing?

15 **MR. FISGBURNE:** Yes, sir. I'd like to say I feel Mr.
16 Mathews did his job. I hope the family don't hold any
17 grudges against me. I just want to do what I got to do and
18 so I can get out and get on with my life.

19 **THE COURT:** Mr. Fishburne, I can't think of a case
20 where the evidence was any more clear than it was for this
21 jury in this case. I can well understand why the jury felt
22 the way they did. I think the State clearly proved your
23 guilt beyond a reasonable doubt. There were two
24 eyewitnesses to this. This was a senseless act of violence
25 in our community. I understand that you're young. I

1 understand that the maximum penalty is life imprisonment and
2 I also understand that every day that I give you for murder
3 you've got to serve every day. I know Mr. Mathews has told
4 you that, haven't you, Mr. Mathews?

5 MR. MATHEWS: Yes, sir.

6 THE COURT: There's no such thing as cutting one day
7 short for murder. If I give you the minimum sentence for
8 thirty years, you serve thirty years. I agree with the
9 Solicitor that this case, because of the facts of this case,
10 deserves more than the minimum sentence. I cannot bring
11 back the life that was lost here, but I have no doubt that
12 the jury's verdict was a correct one in this case. On
13 Indictment Number 2009-GS-15-0256, the State v. Derrick
14 Fishburne, indictment for murder, the sentence of this Court
15 is defendant is committed to the State Department of
16 Corrections for a term of 40 years.

17 On Indictment Number 2009-GS-15-0255, indictment for
18 possession of a weapon during the commission of a violent
19 crime, the sentence of this court is the defendant is
20 committed to the State Department of Corrections for a term
21 of five years. Thank you very much, Mr. Thornton, and thank
22 you, Mr. Mathews.

23

24

25

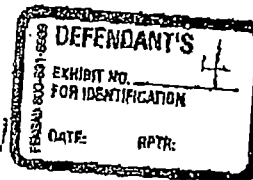
STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the trial of the captioned case, in the Court of General Sessions for Colleton County, South Carolina, on the 19th through the 21st day of July 2010.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 15, 2010


Rebecca H. Hill,
Official Court Reporter



10-5 09

On April 10, 2009 I Fatimah
 Alca Washington wrote a
 statement on Derrick Fishburne
 accusing him of a crime that
 he did not commit. I went
 to the fax to try and change but
 was not able to.

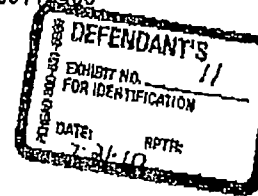
10-5 09

Fatimah A Washington

MAY-20-2009 WED 11:58 AM ATTORNEYS AT LAW

FAX NO. 8435770460

04/



STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT OF JARED FRAZIER

COMES NOW JARED FRAZIER, first being duly sworn and deposed, and states as follows:

On Thursday, April 9, 2009, at around 1:00 A.M. I witnessed Derrick Fishburne leave Spirits in a dark colored SUV. Just prior to seeing him leave, I had seen him in the club. He stood by the door for about 5 minutes and then came to talk to me by the bathroom. Derrick told me he wasn't going to stay long because he was going to a girl's house. He then walked across the dance floor, stood there about 5 minutes and then walked outside. A few minutes later I walked outside to ask him something and when I went outside is when I saw him leaving in a SUV. About 10 or 15 minutes after Derrick Fishburne left the club, the shooting occurred at the club.

FURTHER, AFFIANT SAYETH NAUGHT.

Jared Frazier

SUBSCRIBED AND SWORN TO BEFORE ME
 THIS 21 DAY OF May, 2009

Margaret Sanders
 NOTARY PUBLIC
 MY COMMISSION EXPIRES: 6-2-2014

WITNESSES

A. TAYLOR

A. Taylor ✓

ARREST WARRANT NUMBER

A101455

April 10, 2009

ACTION OF GRAND JURY

TRUE BILL

Melissa M. Kinard

Foreperson of Grand Jury

Date: 6-25-09

ERDICT

Guilty

Randall D. Kerpel

Foreperson of Petit Jury

Date: 7-21-10

INDICT

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

June Term 2009

THE STATE

vs.

Derrick Fishburne

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code: 0116COLLETON COUNTY
GENERAL SESSIONS COURT
2009 JUN 26 AM 8:11

STATE OF SOUTH CAROLINA)
)
 COUNTY OF COLLETON)

INDICTMENT
 2009-GS-15-0256

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Colleton County present upon their oath:

Murder / Murder

That in Colleton County on or about April 10, 2009, with malice aforethought, the defendant, Derrick Fishburne, did kill and murder the victim, Donald Green, by means of shooting the victim, and that the victim, Donald Green, did die in Colleton County as a proximate result thereof on April 10, 2009; 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.

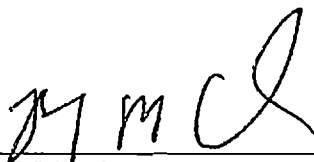


Isaac M. Stone, III, Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with 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."

September 21st, 2011



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Colleton

VS.

Derrick Fishburne

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009-65-15-0255

A/W#: 11-101-154

Date of Offense: 4/10/09

S.C. Code §: 16-23-750

CDR Code #: 579

SENTENCE SHEET

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

TO: Pass without Jury Verdict

in violation of § 16-23-750 of the S.C. Code of Laws, bearing CDR Code # 579

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State. (defendant's initials)

ATTEST:

Career Criminal, Western

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2009-65-15-0256
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

Presiding Judge

Judge Code:

Sentence Date:

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge. § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF COLLETON

THE STATE OF SOUTH CAROLINA

v.

DERRICK FISHBURNE,

Defendant.

COURT OF GENERAL SESSIONS

INDICTMENT # 2009-GS-15-0255

2009-GS-15-0256

VERDICT

VERDICT

1) We, the jury, by unanimous consent, find the Defendant Derrick Fishburne in Indictment No. 2009-GS-15-0256:

☒ Guilty of Murder.

☐ Not Guilty of Murder.

2) We, the jury, by unanimous consent, find the Defendant Derrick Fishburne in Indictment No. 2009-GS-15-0255 (You may only find the Defendant guilty of this crime if you have previously found the Defendant guilty of Murder. If you find the Defendant not guilty of Murder, you must find the defendant not guilty of Possession of Weapon during the Commission of a Violent Crime.)

☒ Guilty of Possession of Weapon during the Commission of a Violent Crime.

☐ Not Guilty of Possession of Weapon during the Commission of a Violent Crime.

Rhonda D. Kripiec
FOREPERSON

Walterboro, South Carolina
July 21, 2010

Please indicate your finding by checking the appropriate line and certify this finding by the foreperson's signature. Please inform the bailiff when you have reached your verdict.

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

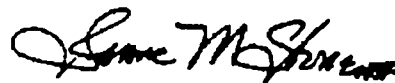
2009-GS-15-0255

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Colleton County present upon their oath:

Weapons / Poss. weapon during violent crime, if not also sentenced to life
without parole or death

That in Colleton County, South Carolina, on or about April 10, 2009, the Defendant, Derrick Fishburne, did possess a pistol or visibly display what appeared to be a pistol during the commission, or attempted commission, of murder, a violent crime. This is in violation of 16-23-490 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

STATE OF SOUTH CAROLINA)
COUNTY OF COLLETON)

INDICTMENT

2009-GS-15-0255

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Colleton County present upon their oath:

Weapons / Poss. weapon during violent crime, if not also sentenced to life
without parole or death

That in Colleton County, South Carolina, on or about April 10, 2009, the Defendant, Derrick Fishburne, did possess a pistol or visibly display what appeared to be a pistol during the commission, or attempted commission, of murder, a violent crime. This is in violation of 16-23-490 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

M-101454

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Colleton

THE STATE

against

Derrick Phillip Leonard Fishburne

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Colleton

Personally appeared before me the affiant

Andre Williams

being duly sworn deposes and says that defendant

Derrick Phillip Leonard Fishburne

who

did within this county and state on or about 04/10/2009

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Colleton

violate the criminal laws of the

in the following particulars:

DESCRIPTION OF OFFENSE

Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts.

THAT ON APRIL 10, 2009 ABOUT 0126 HRS. AT 3258 JEFFERIES HWY., WALTERBORO, SC. SPIRITS NIGHT CLUB, IN COLLETON COUNTY THE DEFENDANT DERRICK PHILLIP FISHBURNER ~~WALTERBORO, SC.~~ LAWFULLY HAVE IN HIS POSSESSION A PISTOL WHILE COMMITTING THE ACT OF MURDER. PROBABLE CAUSE BASED ON THE DEATH OF THE VICTIM AND WITNESS STATEMENTS. (C.A.#09-1790)

Pursuing Agency
Prosecuting Officer

Colleton County Sheriff

Andre Williams - 333

Offense Weapons / Poss. weapon during violent crime, if
not also sentenced to life without parole or death

Offense Code 0549

Code/Ordinance Sec 16-23-0490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused
is to be arrested and brought before me to be
dealt with according to the law

(L.S.)

Signature of Judge

Date

RETURN

of this arrest warrant was delivered to

defendant Derrick Phillip Leonard Fishburne

on April 10, 2009

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
P O Box 620
101 Hampton Street
Walterboro, SC 29488

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 516

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/☐ Municipality of

Colleton

Affiant's Address

112 S. Miller Street

Walterboro 29488-

Affiant's Telephone

(843)549-1122

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/10/2009

defendant

Derrick Phillip Leonard Fishburne

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Colleton

) as set forth below:

DESCRIPTION OF OFFENSE:

Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 04/10/2009

Kenneth Arthur Campbell Jr. (L.S.)
Signature of Issuing Judge

Kenneth Arthur Campbell Jr.

Judge Code: 5675

Judge's Address

40 Klein Street

Walterboro, SC 29488-1732

Judge's Telephone

(843)549-1122

Issuing Court.

☒ Magistrate☐ Municipal☐ Circuit

BAIL set by

Judge Reames McLeod
 on April 11, 2009
 Type and Amount: do last bond
 Name of Surety _____

PRELIMINARY HEARING held by

Judge Reames McLeod
 on 4-11-09
 Defendant Attorney **PUBLIC DEFENDER**
 Decision bind over

DISPOSITION before

Judge _____
 on _____
 by _____
 (indicate jury trial, bench trial, plea, not. pros., etc.)

Disposition

Sentence

COLLETON COUNTY
 GENERAL SESSIONS COURT
 2009 MAY 28 AM 11:13

JURORS

WITNESSES

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

Name: _____
 Address: _____
 Telephone: _____

CODEFENDANTS

Arraigned 4-11-09
 MAGISTRATE

Appointed Public Defender
 as Attorney 4-11-09

09-255

COUNTY OF Colleton
 STATE VS.
Derrick Fishburne
 AKA: 

INDICTMENT/CASE#: 2009-6S-15-0256
 A/W#: M101455
 Date of Offense: 4/10/2009
 S.C. Code §: 16-3-10; 16-3-20
 CDR Code #: 0116

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Murder

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-3-10; 16-3-20 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Career Criminal, Western

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 40 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2009-6S-15-0255
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

§ 44-53-450(C) (Conditional Discharge) \$350 \$

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk Patricia C. Grant

Court Reporter: Rebecca C. Lee

SCCA/217 (06/2010)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires

\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge Ryan

Judge Code: 0122

Sentence Date: 7/21/10

WITNESSES

A. Williams, CCSO

J. Taylor

ARREST WARRANT NUMBER

M101455

April 10, 2009

ACTION OF GRAND JURY

TRUE BILL

Melina M. Kinard

Foreperson of Grand Jury

Date: 6-25-09

VERDICT

*Guilty**Rhonda D. Kreppe*

Foreperson of Petit Jury

Date: 7-21-10

INDICT

DOCKET NO. 2009-GS-15-0256

The State of South Carolina

County of Colleton

COURT OF GENERAL SESSIONS

June Term 2009

THE STATE

vs.

Derrick Fishburne

Indictment for

Murder / Murder

SC Code: 16-03-0010; 16-03-0020
CDR Code: 0116

2009 JUN 26 AM 8:11

STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON)

INDICTMENT

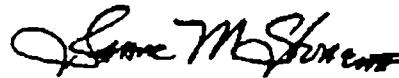
2009-GS-15-0256

At a Court of General Sessions, convened on June 25, 2009, the Grand Jurors of Colleton County present upon their oath:

Murder / Murder

That in Colleton County on or about April 10, 2009, with malice aforethought, the defendant, Derrick Fishburne, did kill and murder the victim, Donald Green, by means of shooting the victim, and that the victim, Donald Green, did die in Colleton County as a proximate result thereof on April 10, 2009; 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

AGENCY CHECKLIST
FOR CASES COVERED BY THE PRESERVATION OF EVIDENCE ACT

AGENCY:	Clerk of Court		
CASE NO.:	2009-GS-15-255, 256		
DEFENDANT:	Name: Derrick Phillip Leonard Labban	[REDACTED]	☒ Male ☐ Female
	[REDACTED]	Race: B	
ARREST CHARGE AND WARRANT NUMBER			
1.	murder M101455		
2.	possession weapons M101454		
3.			
☐ Additional charge(s) so additional checklist (attached).			
INVESTIGATIVE CHARGE AND WARRANT NUMBER			
1.	murder 2009-GS-15-256		
2.	pos. weapons 2009-GS-15-255		
3.			
☐ Additional charge(s) so additional checklist (attached).			
CHARGE DISPOSITION, DISPOSITION DATE AND AGENCY			
1	Charge:	murder	
	Disposition:	☐ Judicial Dismissal ☐ Prosecutor Dismissal ☐ Not Guilty at Trial ☐ Guilty Plea ☒ Guilty at Trial ☐ Other:	
	Sentence:	40 yrs conc to 2009-GS-15-255	
	Date of Sentence:	1/21/10	
	Custodial Agency:	☒ S.C. Department of Corrections ☐ S.C. Department of Juvenile Justice	
2	Charge:	possession weapons	
	Disposition:	☐ Judicial Dismissal ☐ Prosecutor Dismissal ☐ Not Guilty at Trial ☐ Guilty Plea ☒ Guilty at Trial ☐ Other:	
	Sentence:	5 yrs conc to 09-256	
	Date of Sentence:		
	Custodial Agency:	☐ S.C. Department of Corrections ☐ S.C. Department of Juvenile Justice	
3	Charge:		
	Disposition:	☐ Judicial Dismissal ☐ Prosecutor Dismissal ☐ Not Guilty at Trial ☐ Guilty Plea ☐ Guilty at Trial ☐ Other:	
	Sentence:		
	Date of Sentence:		
	Custodial Agency:	☐ S.C. Department of Corrections ☐ S.C. Department of Juvenile Justice	

AGENCY CHECKLIST **FOR CASES COVERED BY THE PRESERVATION OF EVIDENCE ACT**

Information on Charge Disposition, Disposition Date, and Sentence completed by:	Name: <u>Denrick Ishborne</u>	Date: <u>9/15/10</u>
	Rank/ID:	
Based upon Information on Charge Disposition, Disposition Date, and Sentence provided by:	Name: <u>Linda Carter</u>	Date: <u>9/15/10</u>
	Title/Office: <u>Clerk III, Assistant</u>	
	Method: ☐ Telephone ☒ Mail ☐ Other: _____	
Custodial Agency with which Registered: ☒ S.C. Department of Corrections ☐ S.C. Department of Juvenile Justice		
Person who submitted registration:		
Date registration submitted	Method of Registration:	
TYPE OF DISPOSITION: ☐ Destroyed (Method: _____) ☐ Returned to Owner (Name: _____) ☐ Other: _____		
DATE OF DISPOSITION:		
PERSON RESPONSIBLE (NAME AND ID):		
WITNESS(ES) (NAME AND ID):		
REASON FOR DISPOSITION:		
☐ Court Order (Judge/Date): _____ ☐ Returned to Owner (Name/Date): _____ ☐ Other (_____)		
NOTES:		

**CUSTODIAN OF EVIDENCE (S.C. Code §17-28-330(A))
REGISTRATION FORM**

INMATE NAME <i>Derrick Fishburne</i>		SCDC # * <i>00341860</i>
REGISTERING ENTITY (SHERIFF'S DEPT., POLICE DEPT., SOLICITOR, SLED, ETC.) * <i>Clerk of Court</i>		
COMPLETE MAILING ADDRESS * <i>PO Box 630 Whitehouse NC</i>		PHONE NUMBER * <i>843 549-581</i>
INFORMATION SUBMITTED BY/TITLE * <i>Linda Carter, Clerk III Accountant</i>		DATE * <i>9/15/10</i>
EMAIL ADDRESS <i>lcarter@ColletonCounty.org</i>		

*denotes required field

Mail completed from to:

Jimmy Sligh, Operations Coordinator
 Division of Operations
 4444 Broad River Road
 Columbia, SC 29210
 (803) 896-8540
 Email: Sligh.Jimmy@doc.state.sc.us

BAR set by

Judge R. M. L. L.
 on 10-11-87
 Type and Amount: 1000.00 - Bond
 Name of Surety: _____

PRELIMINARY HEARING held by

Judge Rebecca M. L. L.
 on 10-11-87
 Defendant Attorney: **PUBLIC DEFENDER**
 Decision: bind over

DISPOSITION before

Judge _____
 on _____
 by _____
 (Indicate jury trial, bench trial, plea, not. pros., etc.)
 Disposition: _____
 Sentence: _____

JURORS

WITNESSES

Name _____
 Address _____
 Telephone: _____

Name _____
 Address _____
 Telephone: _____

Name _____
 Address _____
 Telephone: _____

Name _____
 Address _____
 Telephone _____

Name _____
 Address _____
 Telephone _____

Name _____
 Address _____
 Telephone _____

Name _____
 Address _____
 Telephone _____

Name _____
 Address _____
 Telephone _____

CODEFENDANTS

09-254

Arrested 1-11-87
 MAGISTRATE

Appointed Public Defender
 as Attorney on 4-1-89

449

ARREST WARRANT

M-101455

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Colleton

THE STATE

against

Derrick Phillip Leonard Fishburne

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Colleton

Personally appeared before me the affiant Andre Williams

being duly sworn deposes and says that defendant Derrick Phillip Leonard Fishburne

did within this county and state on or about 04/10/2009

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Colleton) violate the criminal laws of the

in the following particulars.

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

THAT ON APRIL 10, 2009 ABOUT 0126 HRS AT 3258 JEFFERIES HWY., WALTERBORO, SC, SPIRITS NIGHT CLUB, IN COLLETON COUNTY THE DEFENDANT DERRICK PHILLIP FISHBURN ~~BEING DULY SWORN~~ WITH MALICE AFORETHOUGHT CAUSE THE DEATH OF DONALD GREEN BY SHOOTING HIM SEVERAL TIMES WITH A HANDGUN. PROBABLE CAUSE BASED ON WITNESS STATEMENTS. (CCA#09-1790)

Offense: Murder / Murder

Offense Code 0116

Code/Ordinance Sec 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to defendant

on Derrick Phillip Fishburne

[Signature]
 Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
 P O Box 620
 101 Hampton Street
 Walterboro, SC 29488

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

AFFIDAVIT

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

Signature of Affiant

[Signature: Andre Williams]

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Colleton

Affiant's Address 112 S. Miller Street

Walterboro 29488-

Affiant's Telephone (843)549-1122

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 4/10/2009

defendant Derrick Phillip Leonard Fishburne

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Colleton

) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 04/10/2009

[Signature: Kenneth Arthur Campbell Jr.]
 Signature of Issuing Judge

Kenneth Arthur Campbell Jr.

Judge Code: 5675

Judge's Address 40 Klein Street

Walterboro, SC 29488-1732

Judge's Telephone (843)549-1122

Issuing Court: ☒ Magistrate☐ Municipal☐ Circuit

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Derrick Fishburne,

Appellant.

Appeal From Colleton County
Perry M. Buckner, Circuit Court Judge

Unpublished Opinion No. 2012-UP-363
Submitted June 1, 2012 – Filed June 20, 2012

APPEAL DISMISSED

Chief Appellate Defender Robert M. Dudek, of
Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, and Assistant
Deputy Attorney General Donald J. Zelenka, all of

Columbia; and Solicitor Isaac McDuffie Stone, III, of Bluffton, for Respondent.

PER CURIAM: Derrick Fishburne appeals his convictions of murder and possession of a firearm during the commission of a violent crime, arguing the trial court erred in admitting eight autopsy photographs. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

PIEPER, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF COLLETON)

12-CP-15-814

DERRICK FISHBURN #341860)
Full name and prison number (if any) of Applicant.)

v.)

APPLICATION FOR

State of South Carolina)

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 particular question on the reverse side of the page or on an additional page. Applicant shall make clear 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 CORR. INST., P.O. BOX 205, RIDGEVILLE, S.C.
2. Name and location of Court which imposed sentence COLLETON COURTHOUSE P.O. BOX
3. Name(s) of co-defendant(s) (if any) 620, WALTERBURG, S.C. 29488
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-15-0256 MURDER 40 YEARS.
 - (b) 2009-GS-15-0255 POSSESSION OF A WEAPON 5 YEARS.
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) JULY 21, 2010 45 YEARS
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- ☒ (b) after a plea of not guilty COURT FINDING DEFENDANT 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. S.C. COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. APPEALS COURT AFFIRMED SENTENCE & CONVICTION
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. JUNE 20, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UNPUBLISHED OPINION NO. 2012-UP-363
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) ILLEGAL SENTENCE ENHANCEMENT IN VIOLATION OF
- (c) S.C. CODE ANN. § 16-3-10

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) SUPPLEMENTAL AMENDMENT WILL FOLLOW.
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? _____
- (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)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

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?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? YES
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. DAVID MATHEWS, 115 BENSON ST., WALTERBORO, S.C. 29488
 - ii. ROBERT M. DUDEK, P.O. BOX 11589, COLUMBIA, S.C. 29211
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. TRIAL
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

REVERSED REMAND WITH A VERDICT OF ACQUITTAL

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of COLLETON)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Devon M. Fisher

SWORN to and subscribed before me this 9th
day of October, 2 012

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2018

2012 OCT 16 AM 10:56
PATRICIA U. GRANT
COLLETON COUNTY
COMMON PLEAS

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, DERRICK FISHBURNE, 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.

Derrick Fishburne
Applicant

SWORN or affirmed to and subscribed before me this

9th day of October, 2012

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

2012 OCT 16 AM 10:56
PATRICIA L. GRANT
COLLETON COUNTY
COMMON PLEAS

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF COLLETON
COURT OF COMMON PLEAS
CASE NUMBER 2012-CP-15-00814

DERRICK FISHBURNE

APPLICANT

VERSUS

OCTOBER 27, 2014

TRANSCRIPT OF POST-CONVICTION RELIEF HEARING

BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

B E F O R E:

HON. EDGAR W. DICKSON, JUDGE

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

APPEARANCES

ON BEHALF OF APPLICANT
DERRICK FISHBURNE:

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ON BEHALF OF
STATE OF SOUTH CAROLINA:

HON. ASHLEIGH R. WILSON
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EXHIBITS

No exhibits were admitted.

10-27-14 FISHBURNE V STATE

1 BEGINNING 11:16 A.M.

2 BY THE COURT:

3 THE COURT: Thank you. You all may be seated.
4 Appreciate it.

5 MS. WILSON: Your Honor, next will be Derrick
6 Fishburne versus the State. Mr. Fishburne?

7 THE COURT: Okay. Yes, ma'am.

8 MS. WILSON: Thank you.

9 THE COURT: This is Mr. Fishburne?

10 MS. WILSON: Yes, your Honor.

11 THE COURT: Okay.

12 MS. WILSON: This is Derrick Fishburne versus the
13 State of South Carolina. Ashleigh Wilson, for the
14 State. Docket Number 2012-CP-15-0814. Mr. Fishburne
15 was indicted for murder and possession of a weapon
16 during the commission of a violent crime. That's
17 Indictment Numbers 2009-GS-15-00255 and -00256.

18 Mr. Fishburne proceeded to trial, where he was
19 represented by David Matthews, on July 21st, 2010. He
20 was convicted and sentenced by Judge Buckner to 40 years
21 for murder, and five years for the possession of a
22 weapon during commission of a violent crime.

23 He appealed his conviction, and his -- he appealed
24 his conviction, and his conviction was affirmed, and the
25 remittitur was issued on that in July, on July 6, 2012.

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1 He filed this application for post-conviction relief on
2 October 16, 2012, and he's here today, and represented
3 by Mr. Shaffer.

4 The State would request that Mr. Shaffer enumerate
5 the allegations that he's going to proceed on today.

6 THE COURT: Mr. Shaffer.

7 MR. SHAFFER: Thank you, your Honor. First,
8 there's failure to properly investigate. Then,
9 ineffective assistance of Counsel for failure to -- or
10 for introducing prior bad acts, essentially, into this
11 trial; and also, for characterizing him as one of the
12 usual suspects.

13 THE COURT: Okay. All right.

14 MS. WILSON: Your Honor, the State would like to
15 object, because Mr. Fishburne didn't enumerate these
16 allegations with specificity in his application, and he
17 solely alleged ineffective assistance of counsel.

18 THE COURT: The only one I saw was illegal sentence
19 enhancement. So, unless there was an appeal.

20 MR. SHAFFER: Your Honor, I actually -- this has
21 been called several times previously. This is the third
22 time we've been here. I emailed Ms. Wilson, probably,
23 in February, concerning this. February of last year, I
24 believe. Maybe not. Was it February of last year?
25 Judge Cooper?

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1 MS. WILSON: Yeah.

2 MR. SHAFFER: When Judge Cooper was on the Bench, I
3 believe it was February of last year, I emailed Ms.
4 Wilson. I told her about the allegation involving the
5 raising the bad acts and the fact that he was called the
6 usual suspect. That was the third email correspondence.
7 I could probably pull it up, if your Honor would give me
8 a second.

9 THE COURT: That's okay. That's okay.

10 MR. SHAFFER: And your Honor, and the failure to
11 investigate, I also informed her of previously.

12 THE COURT: Okay. All right. Ms. Wilson, you have
13 Mr. Matthews here, right?

14 MS. WILSON: Yes, your Honor. And I'd just like to
15 note for the record that we're just noting his
16 objection.

17 THE COURT: Okay.

18 MS. WILSON: Because he didn't fail -- he didn't
19 formally file an amended application to make these a
20 part of the record. Thank you.

21 THE COURT: Okay. Well, I'll note that it wasn't
22 done formally, but I'm letting him go forward on it.
23 Okay.

24 MS. WILSON: Thank you, your Honor.

25 MR. SHAFFER: Thank you, your Honor.

10-27-14 FISHBURNE PCR

DIRECT - DAVID MATTHEWS

1 THE COURT: Mr. Shaffer, are you ready to call your
2 first witness?

3 MR. SHAFFER: Yes, your Honor. Applicant would
4 call David Matthews to the stand.

5 THE COURT: All right. Mr. Matthews.

6 MADAM CLERK: Right here, sir. Left hand on the
7 Bible. Raise your right hand. Do you solemnly swear or
8 affirm that the testimony you give to the Court in the
9 trial shall be the truth, so help you God?

10 DAVID MATTHEWS: I do.

11 THE COURT: Thank you, Mr. Matthews. You need to
12 speak up so she can hear you.

13 DAVID MATTHEWS: Yes, sir.

14 THE COURT: Yes, sir. All right, Mr. Shaffer.

15 DAVID MATTHEWS

16 DIRECT EXAMINATION, BY MR. SHAFFER:

17 Q Mr. Matthews, you represented Derrick Fishburne,
18 correct?

19 A I did.

20 Q Okay. And you represented him on a murder charge.
21 Is that correct?

22 A I did.

23 Q Tell us a little bit about the allegations against
24 him.

25 A They said that he was involved -- that he shot

10-27-14 FISHBURNE PCR

DIRECT - DAVID MATTHEWS

1 somebody in a club just outside Walterboro. They had
2 developed -- I think they had taken a number of
3 different statements and suggesting various reasons why
4 it might be so. And I think the original statement said
5 something like there might have been some gang activity
6 or something like that, but that wasn't the theory on
7 which the State proceeded.

8 Q What theory did they proceed on?

9 A Ultimately, what Solicitor Thornton told the judge
10 in sentencing is that it had to do with a domestic
11 dispute at the club earlier. I knew that wasn't the
12 case, because I knew the guy that it was. It wasn't --
13 it wasn't Derrick. Somebody else was involved in that.

14 Q Okay. The evidence that they presented to the
15 jury, did they have a clear theory of motive, or would
16 you describe the evidence as having a clear theory of
17 the motive?

18 A No. I don't think they did. I think they -- all
19 the statements taken beforehand suggested that it was a
20 Dooley Hill versus -- I can get this -- another --
21 another gang. And I should remember, because they
22 alleged that Derrick, I think, was in the other gang.
23 But I -- that was -- all the statements taken at the
24 club from the people suggested that's what it was about,
25 but that wasn't what Solicitor Thornton told the judge

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DIRECT - DAVID MATTHEWS

1 at sentencing.

2 Q Okay. Did they have any -- did they have any
3 eyewitnesses to the shooting?

4 A They did. They had several -- well, they had
5 several witnesses that saw various people out there.
6 Folks -- some folks were able to identify Derrick. One
7 of the witnesses saw that -- said that Derrick was
8 there, but left the club, like, minutes before the
9 shooting, and I'm not sure who. I don't recall who that
10 was, but that's my recollection.

11 Q Okay. And that witness that said he had left
12 minutes beforehand, you actually had an affidavit from
13 him, correct?

14 A I don't remember.

15 Q Okay.

16 A If you got one, then, I probably did.

17 Q I got it. You don't dispute the fact that, if I
18 told you that made it into the Appellate Court record as
19 one of the Defense exhibits?

20 A Sure. I mean, yeah.

21 Q Okay. Now, at trial, that witness testified
22 slightly differently, that he didn't actually see him
23 leave, correct?

24 A That -- that sounds correct.

25 Q Okay.

10-27-14 FISHBURNE PCR

DIRECT - DAVID MATTHEWS

1 A I think he said he heard him, or something like
2 that; that it was -- or saw him walking out there, and
3 then saw the car go, or something like that. Whatever
4 was in the affidavit.

5 Q Okay. Did they have any other evidence that he did
6 it, any physical evidence?

7 A I don't remember.

8 Q Okay.

9 A I mean, I remember the question was about identity.
10 I mean, somebody was dead, and there were a lot of
11 shells and stuff out there.

12 Q What was your theory going into the trial?

13 A That it was -- that it was a fellow involved in the
14 -- in the domestic, and that it wasn't Derrick.

15 Q Okay. So, essentially, you presented a third-
16 party-guilt defense? Is that, more or less, it? In
17 other words, he wasn't --

18 A That sounds like a decent characterization.

19 Q Okay. Now, did you do any -- well, first of all,
20 did Derrick make any statements to the police?

21 A He did. He -- he talked to Lieutenant Johnson, and
22 initially, he denied that he had been in the club, and
23 that presented a problem, and discussed, at some length,
24 with Derrick about how to -- how to do that. And in
25 those discussions, he indicated that he didn't trust the

10-27-14 FISHBURNE PCR

DIRECT - DAVID MATTHEWS

1 police, because they had arrested him in the past.

2 Q Okay.

3 A Or they had harassed him, and because he was a
4 Fishburne, they were going to -- they weren't going to
5 believe him, anyway.

6 Q What do you mean, because he was a Fishburne?

7 A Well, I mean, his -- he -- and I'm -- I'm -- I'm
8 straining my memory a little bit here, but that he
9 didn't feel like he was going to get a fair shake from
10 them.

11 Q Okay. Now, he had other charges pending at this
12 time, correct?

13 A Yes.

14 Q Okay. What other charges? Do you recall?

15 A I don't. I know that he had a couple others, and
16 we were probably looking at probation on those.

17 Q Okay. Now, at one point, he even -- even in front
18 of the jury, you had mentioned the fact that he had roll
19 call the next day. Is that correct? Do you recall
20 that?

21 A If you say so.

22 Q Okay. You characterize him, at one point, as the
23 usual suspect. Okay?

24 A I believe he --

25 Q Tell us about that and why you did that.

10-27-14 FISHBURNE PCR

DIRECT - DAVID MATTHEWS

1 A Well, I had to -- I tried to find a way to explain
2 why he lied to the police. You know, you've got
3 somebody that has you leaving the scene before this
4 happens, so why would you deny that you're there? And
5 you know, you don't need to do that; and it's a lie, and
6 it's an unnecessary lie. And so, how do you explain
7 that? You've got to give the jury -- in my -- my
8 strategy, you've got to give the -- you can't -- juries
9 don't like lies, whether the police tell them or whether
10 the defendants tell them or whether witnesses tell them,
11 and you've got to explain it, somehow. And that was my
12 way to explain why he would lie about being in the club.

13 Q Okay. It's safe to say that that's sort of a
14 double-edged sword. Is that --

15 A Yes, it's a risk.

16 Q Okay.

17 A There's no doubt. I mean, you -- you want to
18 present some evidence that, you know, somebody doesn't
19 trust the police, then you have to show prior
20 involvement with the police, which, normally, you work
21 to try not to do. But, yeah, it's a risk. But I don't
22 know how -- but you've got to explain a lie.

23 Q Okay. Now, tell us a little bit about -- do you
24 recall what investigation you did prior to trial?

25 A I know we went out to the club. I talked to -- I

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DIRECT - DAVID MATTHEWS

1 talked to some witnesses. Certainly, I mean, obviously,
2 we both -- I say obviously -- I reviewed all the, you
3 know, all the State's discovery and all that, looked at
4 the videotapes and all. I think I -- I think I took
5 pictures out at the scene, but I'm not positive. I
6 think -- I'm pretty sure I did. I know I went out there
7 with our investigator.

8 Q Okay. Do you recall Mr. Fishburne telling you what
9 happened that night, or after he had said he wasn't
10 there? At some point, you confronted him with the fact
11 that he was actually at the club. Is that correct?

12 A I'm sure, yes. I'm sure I did. That's something
13 that you've got to -- I mean, you sit back there and
14 say, okay, I've got an affidavit from somebody who says
15 he'd just left the club; so, obviously, you were at the
16 club. Why did -- yeah, I recall talking to him. I
17 think he was out at Dorchester at the time. I think --
18 I think he was being housed at -- I could be mistaken on
19 that, but I know I talked to him -- I know I talked to
20 him about that, and explained that that was, you know,
21 better to say nothing than to -- than to say something
22 that they can prove to the contrary.

23 Q Now, did he tell you where he was actually at?

24 A I know that you and I discussed whether or not --
25 talked about the alibi, the girls that were supposed to

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DIRECT - DAVID MATTHEWS

1 have been an alibi. I don't recall whether I followed
2 up on that. I don't recall whether I talked to him. I
3 know that I had somebody that said he left the scene
4 just shortly thereafter, and that would have been a
5 matter of minutes and not hours. So, if I'm -- if I've
6 got already telling, you know, Derrick telling the
7 police he wasn't there when he was, and then I got --
8 the alibi witness is probably going to be held against
9 him. I'm looking at it and saying, you know, I've got
10 somebody that says you left just before it happened.
11 You don't need to be there hours before, and it's not
12 credible, because the witness that you have that's
13 trying to help you says that you were there within that
14 time frame. So, if I, you know, if we're talking about
15 minutes, an alibi, unless you're talking about hours,
16 and alibi witness isn't going to be much of a witness.

17 Q Okay. Now, whenever he left the club to meet with
18 the girls, and I'm taking it that that's what he had
19 told you, that he went to meet with the girls?

20 A That sounds familiar. I can't recall specifically,
21 but that sounds about right.

22 Q Okay. Do you recall him telling you the name of
23 the other person that was supposedly with him whenever
24 he went to meet with the girls?

25 A He may have. I don't recall.

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DIRECT - DAVID MATTHEWS

1 Q Okay. And it's your testimony that you didn't
2 present the alibi, or didn't go further into it, because
3 the jury might hold it against him?

4 A Well, I mean, if you -- if you're presenting a
5 witness or cross-examining a witness to establish from
6 one witness that he'd left just minutes before something
7 happened, you know, I saw him leave the club; I saw the
8 car go off; I didn't see him drive off, but you put two
9 and two together, that's what you've got. That sounds
10 like credible evidence that he wasn't there when it
11 happened. If you've got -- if you're going to then try
12 to, you know, put up another witness that says he was
13 with me for an hour, you know, before it happened, that
14 -- you -- I didn't want to do that.

15 Q Okay. Do you think it would have been helpful to
16 have the person who he left the club with, that there
17 was another person in the car?

18 A If they were -- if they were credible witnesses
19 that testified consistently with the Defense, then, yes.

20 Q Okay. Now, did you hire a private investigator on
21 this case?

22 A No. We had C.T., our in-house investigator, work
23 with us.

24 Q Okay. Did he do any work on it?

25 A I know he went out to the crime scene with me.

10-27-14 FISHBURNE PCR

CROSS - DAVID MATTHEWS

1 Q Okay. Do you know if he spoke to any of the
2 witnesses?

3 A I don't know. I -- he may have. I don't know.

4 MR. SHAFFER: Court's indulgence. No further
5 questions.

6 THE COURT: Anything on cross-examination?

7 MS. WILSON: Thank you, your Honor.

8 DAVID MATTHEWS

9 CROSS-EXAMINATION, BY MS. WILSON:

10 Q Mr. Matthews do you recall how far before trial you
11 were appointed to represent Mr. Fishburne?

12 A No.

13 Q Okay. Was it months, years, enough time?

14 A I don't -- I don't recall. My file's right there,
15 if you want to look.

16 Q And did you get to meet with him frequently before
17 trial?

18 A I got to meet with him before trial. I don't know
19 whether it was frequently. A couple times, anyway, I
20 know.

21 Q Okay. And did you file *Brady* and *Rule 5* motions on
22 his behalf?

23 A Yes.

24 Q And did you review the materials that you received
25 with Mr. Fishburne?

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CROSS - DAVID MATTHEWS

1 A Yes.

2 Q Did you talk to him about the elements of the
3 charges he was facing, and what the State had to prove?

4 A Yes.

5 Q And when you were discussing his version of the
6 facts, did you also discuss with him what defense you
7 would present at trial?

8 A I'm not sure I did.

9 Q And did he give you any potential witnesses or
10 people to investigate?

11 A Probably.

12 Q Is it your general practice to look into those
13 things when you receive them from your client?

14 A Yes.

15 Q Now, it's your testimony today that it was your
16 strategy to kind of present to the jury Mr. Fishburne as
17 a usual suspect, because you didn't have any other way
18 to explain his dishonesty with the police officers. Is
19 that correct?

20 A Yes.

21 Q Is it also your testimony that you strategically
22 decided not to try to present such an alibi witness to
23 say that the defendant wasn't present for -- or wasn't
24 at the club for an hour or long span of time, because
25 you had a credible witness that could say that the

10-27-14 FISHBURNE PCR

RE-DIRECT - DAVID MATTHEWS

1 defendant left shortly before the shooting. So, I guess
2 -- I guess the short version of that is, it was your
3 strategy, and you thought that an alibi witness would
4 conflict with this credible witness that you had that
5 said the defendant left before the shooting. Is that
6 accurate?

7 A That's fair.

8 Q And based off of that alibi witness, wasn't
9 something that you necessarily wanted to present to the
10 jury?

11 A I'm -- I'm -- you know, as long as the State -- the
12 State had several different theories of why this may
13 have happened. My theory, basically, was that this
14 other fellow, whose hairstyle was different, was the --
15 that was involved in the domestic dispute, was the guy
16 that did it; and Derrick was not involved in that
17 dispute, and he didn't do it. And alibi was not the
18 main theory. The main theory was that somebody else did
19 it, but there certainly was the element that somebody
20 else saw him leave or heard him leave, or you can infer
21 that he left minutes before it happened, but not hours.

22 MS. WILSON: Okay. Thank you.

23 THE COURT: Anything on re-direct?

24 MR. SHAFFER: Yes, your Honor.

25 DAVID MATTHEWS

10-27-14 FISHBURNE PCR

RE-DIRECT - DAVID MATTHEWS

1 RE-DIRECT EXAMINATION, BY MR. SHAFFER:

2 Q Mr. Matthews, you never talked to any of the -- any
3 witnesses that said he had been gone hours beforehand,
4 right? There's no witnesses, that you know of, that he
5 had been gone for hours ahead of time, ahead of the
6 shooting, right?

7 A I don't know. I don't know whether I ever talked
8 to those girls. Whether they could have said that or
9 not, I don't know.

10 MR. SHAFFER: Okay. No further questions.

11 THE COURT: Anything on re-cross?

12 MS. WILSON: Nothing from the State.

13 THE COURT: Thank you, Mr. Matthews. You may step
14 down. Appreciate it.

15 Mr. Shaffer, are you ready to call your next
16 witness?

17 MR. SHAFFER: Applicant will call Derrick
18 Fishburne.

19 THE COURT: Mr. Fishburne.

20 MADAM CLERK: Please raise your right hand. Do you
21 solemnly swear or affirm the testimony you give to the
22 Court in this trial will be the truth, so help you God?

23 DERRICK FISHBURNE: Yes, ma'am.

24 MADAM CLERK: Have a seat.

25 THE COURT: All right. Mr. Fishburne, if you'd

10-27-14 DERRICK FISHBURNE PCR

DIRECT - DERRICK FISHBURNE

1 have a seat. You ready?

2 DERRICK FISHBURNE: Yes, sir.

3 THE COURT: All right, Mr. Shaffer. Your witness.

4 MR. SHAFFER: Thank you, your Honor.

5 DERRICK FISHBURNE

6 DIRECT EXAMINATION, BY MR. SHAFFER:

7 Q Mr. Fishburne, where are you currently housed?

8 A Lee County.

9 Q All right. I need you to speak up real loud.

10 Okay?

11 A Lee County.

12 Q Okay. What kind of sentence are you doing?

13 A Forty years.

14 Q Okay. And that's for murder? Is that correct?

15 A Yes, sir.

16 Q Okay. And that arises out of the trial that Mr.
17 Matthews represented you on. Is that right?

18 A Yes, sir.

19 Q Okay. Now, did you shoot the victim in this case?

20 A No, sir.

21 Q Okay. Were you at the club whenever the shooting
22 occurred?

23 A No, sir.

24 Q Were you at the club prior to that?

25 A Yes, sir.

10-27-14 DERRICK FISHBURNE PCRDIRECT - DERRICK FISHBURNE

1 Q Okay. At what point did you leave the club? About
2 how long prior to the shooting occurring? Do you know?

3 A Maybe -- maybe 20, 30 minutes.

4 Q Okay. And that's just off of what people told you?
5 Is that right?

6 A Yes, sir. Like, by the time we got where we --
7 where I was going, you know, people was already calling,
8 saying what took place at the club.

9 Q Okay.

10 A It took about 30 minutes.

11 Q So, were you alone when you left the club?

12 A No, sir.

13 Q Who were you with?

14 A Deshawn Holmes.

15 Q Okay. And did you tell Mr. Matthews that?

16 A Yes, sir.

17 Q Okay. Where did you go to when you left the club?

18 A To Deshawn Holmes' girlfriend house.

19 Q Okay. And was she the only girl there?

20 A No, sir.

21 Q Who was there with her?

22 A Her sister. Well, it was -- her name is Tara. Her
23 sister's name is Tima, and her mother was there.

24 Q Okay. Now, did you tell Mr. Matthews about them?

25 A Yes, sir.

10-27-14 FISHBURNE PCR

1 Q Okay. And to your knowledge, what did Mr. Matthews
2 say? Did he say he would do anything involving those
3 witnesses?

4 A He said he would send, he mentioned C.T., out to
5 speak with them, to get their statements.

6 Q Okay. To your knowledge, had that been done?

7 A No, sir.

8 MR. SHAFFER: Okay. No further questions.

9 THE COURT: Anything on cross? Ms. Wilson,
10 anything on cross?

11 MS. WILSON: Nothing further from the State, your
12 Honor.

13 THE COURT: Okay. You may step down. Thank you.
14 All right. Mr. Shaffer, your next witness.

15 MR. SHAFFER: Applicant rests, your Honor.

16 APPLICANT RESTS.

17 MR. SHAFFER: May we approach?

18 THE COURT: Sure.

19 COURT REPORTER: Do you need this on the record?

20 MR. SHAFFER: No, ma'am.

21 OFF-THE-RECORD BENCH CONFERENCE. PRESENT:

22 THE COURT, MS. WILSON, MR. SHAFFER.

23 END BENCH CONFERENCE.

24 BY THE COURT:

25 THE COURT: We'll take about a five-minute break.

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1 OFF THE RECORD 11:40 A.M.

2 BACK ON THE RECORD 11:46 A.M.

3 BY THE COURT:

4 BAILIFF: All rise. Court is now back in session.

5 THE COURT: Thank you. You all may be seated. All
6 right. Mr. Shaffer. Yes, sir.

7 MR. SHAFFER: Thank you, your Honor. Involving the
8 potential alibi witness, I believe that that would be
9 the one that was in the car with him. I apologize. I
10 think it was Jamal. I kind of -- I'm sorry, the one
11 that was in the car with him was Jamal Green, right?

12 DERRICK FISHBURNE: Deshawn.

13 MR. SHAFFER: Deshawn Holmes was in the car with
14 him. Involving that witness, we had previously
15 continued this case, so that I could actually obtain an
16 investigator for it. I had requested -- I had actually
17 asked to get an investigator for Deshawn Holmes, Tara
18 and Tima, and Jamal Green. Your Honor, I had requested
19 that funding order in that case, and the judge
20 apparently had responded back that he had wanted more
21 information provided concerning the nature of it. As a
22 result -- and at that point, I actually tried to contact
23 the family. I was unable to get a hold of them at the
24 time, but. Therefore, at this time, we don't actually
25 have the investigator who had gone out to talk to these

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1 people.

2 Your Honor, I understand that the State, because of
3 the fact that it had been continued previously for this
4 reason, and I think, actually, your Honor, I think both
5 the times -- one of the times was continued for this
6 reason. But I think he was going to leave -- the first
7 judge was going to leave the record open; and then,
8 Judge Maddox, last time, just continued it. But because
9 of that, I had not requested a continuance in the case,
10 but your Honor, I am -- I have made attempts, at least,
11 to obtain funding for this case, and will continue to
12 speak with family, and try to get the information
13 necessary.

14 THE COURT: Has the family given you any contact
15 information regarding these names, these people?

16 MR. SHAFFER: No, your Honor. They said Deshawn
17 Holmes is incarcerated, apparently. Tara and Tima, I do
18 not have contact information. Jamal Green, they said,
19 was on the street, but they also told me that they had a
20 phone number for Jamal Green, or possibly have a phone
21 number for Jamal Green.

22 THE COURT: But they haven't given you that. Is
23 that correct?

24 MR. SHAFFER: No, your Honor, they have not.

25 THE COURT: Okay.

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1 MS. WILSON: What is the last name for the sisters?

2 MR. SHAFFER: Broughton.

3 MS. WILSON: Broughton?

4 MR. SHAFFER: Yeah, Tara and Tima Broughton.

5 THE COURT: All right. Anything else, Mr. Shaffer?

6 MR. SHAFFER: No, your Honor.

7 THE COURT: All right. I will take the matter
8 under advisement and review the trial record, and I will
9 get back to you all with my decision.

END PROCEEDING 11:49 A.M.

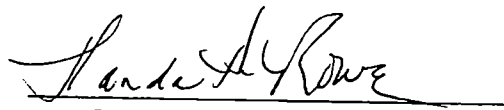
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CERTIFICATE OF REPORTER
OCTOBER 27, 2014 TRANSCRIPT OF
POST-CONVICTION RELIEF HEARING
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing October 27, 2014, Transcript of Post-conviction Relief Hearing is a true, accurate, and complete record of the proceedings on said date, in the case of Derrick Fishburne versus State of South Carolina, Beaufort County, South Carolina, Court of Common Pleas, Case Number 2012-CP-15-00814; that no exhibits were admitted; that I am of neither kin, counsel, nor interest to any party hereto.

This Certificate of Reporter contains my original signature and is attached to the copy of this transcript requested by Hon. Tristan M. Shaffer. Pursuant to SCACR 607, requests for copies of this transcript must be made to the court reporter. Unauthorized copying of this transcript is prohibited.

Witness my signature January 3, 2016.


Wanda H. Rowe, CVR-M
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF COLLETON

Derrick Fishburne, #341860,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2012-CP-15-0814

ORDER OF DISMISSAL

2015 DEC 21 AM 9:42

PATRICIA C. GRANT
COLLETON COUNTY
COMMON PLEAS

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 16, 2012. Respondent made its Return on July 15, 2013. An evidentiary hearing into the matter was convened on October 27, 2014, at the Beaufort County Courthouse. Tristan M. Shaffer, Esquire represented the Applicant. Ashleigh Wilson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. David Matthews, Esquire also testified. This Court had before it a copy of the records of the Colleton County Clerk of Court, records from the South Carolina Department of Corrections, and the trial transcript.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Colleton County Clerk of Court. The Applicant was indicted at the June 2009 term of the Colleton County Grand Jury for murder (2009-GS-15-0256) and possession of a weapon during the commission of a violent crime (2009-GS-15-0255). The Applicant was represented by David Matthews, Esquire.

The Applicant proceeded to trial and was found guilty as indicted. The Applicant was sentenced by the Honorable Perry M. Buckner to confinement for a period of forty (40) years for murder and five (5) years for possession of a weapon during the commission of a violent crime. The sentences are to be served concurrently.

A timely Notice of Appeal was filed on behalf of the Applicant. The appeal was perfected by Robert M. Dudek, Esquire, of the South Carolina Office of Appellate Defense. The South Carolina Court of Appeals dismissed the appeal. State v. Fishburne, No. 2012-UP-363 (S.C. Ct. App. June 20, 2012). The Remittitur was issued on July 6, 2012.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
2. "Illegal Sentence Enhancement in Violation of S.C. Code Ann. § 16-3-10."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove

that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

This Court had the opportunity to observe the witnesses on the witness stand and heard their testimony. This Court had a copy of the Clerk's records and has read the trial transcript, all of which assists the Court in judging the witnesses' credibility.

The Court finds that Applicant has failed to meet his burden of proof in establishing ineffective assistance of counsel. Applicant did not provide his alleged alibi witnesses at the evidentiary hearing nor did he locate and/or interview those witnesses within 30 days from the evidentiary hearing as ordered by Judge Dickson. See Bannister v. State, 333 S.C. 298, 509 S.E.2d

807 (1998) (An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial). Therefore, this application for post-conviction relief is denied.

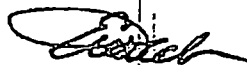
CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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 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!

Edgar W. Dickson
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

Dec. 15, 2015

Charleston, South Carolina

