

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Aiken County

Honorable Maite Murphy, Circuit Court Judge

LONDON DEVONTA WOODEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000809

APPENDIX

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S.C. SUPREME COURT

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1 **THE WITNESS:** Thank you.

2 **THE COURT:** All right. Mr. Gibbons?

3 **MR. GIBBONS:** Your Honor, can we approach?

4 **THE COURT:** Yes.

5 (WHEREUPON, there was a bench conference out of the
6 hearing of the jury and the Court Reporter.)

7 **THE COURT:** Ladies and gentlemen, we're going to
8 take a little bit of a break at this time and I'm going to
9 let you step back to the jury room and I'm going to ask you
10 not to discuss the case. But I am going to ask you to do
11 something. I want y'all to select me a foreperson of this
12 jury while you're back there, if you don't mind.

13 Madame Bailiff what do you want? Get them to write
14 it down and give it to me?

15 **THE BAILIFF:** Yes.

16 **THE COURT:** Give the bailiff the name and he or she
17 will give it to me. So I'll bring you back in five or ten
18 minutes.

19 (WHEREUPON the jury left the courtroom at 11:53
20 p.m.)

21 **THE COURT:** All right. We'll take about a ten
22 minute break. Ms. Holmes if you need to use the restroom,
23 you can walk around, just be back in here when we get
24 started.

25 I'll see y'all in a few minutes.

1 (WHEREUPON a recess was observed .)

2 THE COURT: All right. For y'all's information,
3 Trent Harrelson, Juror No. 72, has been selected as the
4 foreperson. I don't know which one he is, but...

5 All right. Mr. Gibbons?

6 MR. GIBBONS: Your Honor, we would call Suzanne
7 Bolin.

8 THE COURT: Hold it. Well --

9 MR. GIBBONS: We're still working on that --

10 THE COURT: I don't have my jury in here.

11 MR. GIBBONS: I'm sorry, Your Honor. We're still
12 working on that --

13 THE COURT: Oh, I thought you were going to tell me
14 something about it. Are we going to need to take another
15 break?

16 MR. GIBBONS: No, sir.

17 THE COURT: All right. Let's bring the jury in. I
18 thought you told me you were finished and that y'all just
19 wanted to talk to your client a minute.

20 MR. GIBBONS: We did.

21 (WHEREUPON the jury entered the courtroom at 12:07
22 p.m.)

23 THE COURT: All right. Where is Mr. Harrelson?

24 (WHEREUPON a juror raised his hand.)

25 THE COURT: You're going to have to swap places

1 with this young lady down there, if you don't mind.

2 (WHEREUPON the jurors switched seats.)

3 THE COURT: And that will be your seat on a
4 permanent basis. Everybody else can sit wherever you want
5 to sit and Mr. Harrelson, thank you for agreeing to serve
6 as foreperson of the jury.

7 Ladies and gentlemen, thank you for doing that for
8 me.

9 All right. Mr. Gibbons?

10 MR. GIBBONS: Thank you, Your Honor.

11 Susan Bolin.

12 THE COURT: Is that person on this list?

13 MR. GIBBONS: She is.

14 SUSAN BOLIN,

15 having been duly sworn, testified as follows:

16 THE CLERK: Have a seat in the witness box, State
17 your full name for the Court and spell your last.

18 THE WITNESS: My name is Susan Heyward Bolin,
19 B-o-l-i-n.

20 THE COURT: Wait a minute. She's not on my list.

21 THE CLERK: She's on the one I have, Your Honor.

22 MR. GIBBONS: Your Honor, if we inadvertently left
23 her off the list, the solicitor and I had talked about
24 having her as a witness. We would ask that you inquire of
25 the jury.

1 THE COURT: All right. Ma'am, tell me your name
2 again? Susan Bolin?

3 THE WITNESS: Susan Bolin.

4 THE COURT: Spell it.

5 THE WITNESS: B-o-l-i-n.

6 THE COURT: Bolin.

7 THE WITNESS: Yeah.

8 THE COURT: Ladies and gentlemen, this is Susan
9 Bolin and she was not given -- her name was not given to
10 me. Y'all remember when I read you the list of all the
11 witnesses and I asked you certain questions about --

12 I would like to inquire at this time, is there any
13 member of this jury panel or any member of the jury panel's
14 immediate family that is related by blood or connected by
15 marriage or either now or in the past has had a close
16 personal relationship with Ms. Bolen or either now or in
17 the past had an employment or a business relationship with
18 her?

19 (WHEREUPON there was no answer.)

20 THE COURT: Okay. Anything from the State?

21 MR. GRIMES: Nothing on behalf of the State.

22 THE COURT: Okay. Mr. Gibbons, if you would,
23 please, sir.

24 MR. GIBBONS: Thank you, Your Honor. Appreciate
25 that.

Susan Bolin - Direct Examination by Mr. Gibbons

DIRECT EXAMINATION

BY MR. GIBBONS:

Q How are you today, ma'am?

A Fine, how are you?

Q I'm well. Where are you employed?

A I'm part time Coronor for the Aiken County
Coroner's Office.

A And how long have you been doing that?

A Since 2008.

Q What are some of your duties?

A Photograph bodies, document injuries, take the
deceased to the autopsy in Newberry, notify next of kin of
death.

Q And you're part time doing that?

A Uh-huh.

Q Do you work any particular days? Weekends?

A I usually work Fridays, Saturdays, and Sundays.

Q And were you working in that position October 1st
of 2011?

A Yes, sir.

Q And did you have an occasion to be called out to
the hospital?

A I did.

Q And what did you find when you got to the hospital?

A I found a black male deceased from three gunshot

Susan Bolin - Direct Examination by Mr. Gibbons

- 1 wounds, lying supine in the hospital bed, wearing a gown.
- 2 Q And did you notice anything else on his body?
- 3 A I noticed his hands were sealed in plastic baggies.
- 4 Q And did you do that?
- 5 A I did not.
- 6 Q That was already done when you got there?
- 7 A Yes, sir.
- 8 Q And is that unusual?
- 9 A No. Lots of times the hospital will go ahead and
- 10 seal the bags for us when somebody's a victim of a gunshot
- 11 wound.
- 12 Q They'll do it for you? What does that mean?
- 13 A They'll do it to secure evidence.
- 14 Q And what --
- 15 A For who's ever investigating.
- 16 Q And what kind of evidence do they get off of those?
- 17 A We take the person to autopsy and do GSR testing.
- 18 Q And do you do that or does the sheriff's office do
- 19 that?
- 20 A I do sometimes. The sheriff's office usually does
- 21 it.
- 22 Q And is there any other reason that you're aware of
- 23 that these bags are on the hands at that point?
- 24 A No.
- 25 Q You never saw anybody clean the hands?

Susan Bolin - Direct Examination by Mr. Gibbons

- 1 A No, sir. .
- 2 Q And you went with the body to autopsy, correct?
- 3 A I did.
- 4 Q And did you ever see anybody do a GSR kit?
- 5 A I believe clay Adams went to autopsy with me. I'm
- 6 not sure if I witnessed him doing the GSR, but I'm sure it
- 7 was done at autopsy.
- 8 Q Was that normal for it to be done there?
- 9 A Yes.
- 10 Q That's pretty routine?
- 11 A Routine.
- 12 Q Did you fill out a report based on what you did?
- 13 A I did.
- 14 Q And what kind of stuff do you document?
- 15 A The time it happened, the place it happened, what
- 16 time the person arrived at the Aiken Regional, who brought
- 17 him there, where the situation happened, their body
- 18 condition, funeral home request, stuff like that.
- 19 Q Do you have anything to do if they're an organ
- 20 donor?
- 21 A Yes.
- 22 Q What do you do in that regard?
- 23 A I usually ask the family if they would like to
- 24 donate the person's organs. They also have to be screened
- 25 by our tissue organ company and Mr. Karl Edwards is in

Susan Bolin - Direct Examination by Mr. Gibbons

1 charge of that.

2 Q Now, on your report -- you got it there with you?

3 A Yes.

4 Q Do you recall writing that?

5 A Yes. On my handwritten notes --

6 MR. GRIMES: Objection, Your Honor. We're objecting
7 to hearsay. May we approach?

8 THE COURT: He just asked if she remembered, right?

9 MR. GRIMES: Her response is reading from the notes.

10 THE COURT: Well, that's the question. Do you
11 remember writing that report?

12 THE WITNESS: I do.

13 THE COURT: All right.

14 BY MR. GIBBONS:

15 Q And that's your writing, right?

16 A This is my handwriting.

17 Q What did you write down regarding organ donor?

18 MR. GRIMES: Objection, Your Honor, hearsay.

19 MR. GIBBONS: She can say what she wrote, Judge.

20 MR. GRIMES: It's an out-of-court statement, Your
21 Honor.

22 THE COURT: That's --

23 BY MR. GIBBONS:

24 Q Were his organs given to donor?

25 A They were not.

Susan Bolin - Direct Examination by Mr. Gibbons

1 Q Why not?

2 MR. GRIMES: Objection, Your Honor. Based on --

3 THE COURT: I don't know that she's qualified to
4 say why they weren't given.

5 MR. GIBBONS: Why did she not submit the paperwork
6 is what I'm asking her, Judge.

7 THE COURT: All right. I'm sustaining the
8 objection.

9 BY MR. GIBBONS:

10 Q Are there some criteria why you don't submit?

11 A There are.

12 Q What are some to have criteria?

13 A Disease, infections, drug use history, a number of
14 different things that could disqualify someone.

15 Q Was this case disqualified?

16 A It was.

17 Q Why was it disqualified?

18 A Because --

19 MR. GRIMES: Objection, Your Honor. May we
20 approach?

21 THE COURT: You may.

22 (WHEREUPON, there was a bench conference out of the
23 hearing of the jury and the Court Reporter.)

24 BY MR. GRIMES:

25 Q I'm going to show you Defense Exhibits 1 and 2.

Susan Bolin - Cross-Examination by Mr. Grimes

1 A Uh-huh.

2 Q And I'm going to ask you if they fairly reflect
3 what you saw on that day?

4 A Yes, they do.

5 MR. GIBBONS: Nothing further.

6 THE COURT: All right. Anything from the State?

7 **CROSS-EXAMINATION**

8 BY MR. GRIMES:

9 Q Do you recall -- I think you indicated that the
10 bags were on the victim's hands before you got to the
11 hospital?

12 A When I arrived to the emergency room where the body
13 was laying, the first thing I do is photograph the body.
14 And when I photographed the body, the hands were in a clear
15 bag, each hand.

16 Q And not to be obvious, but, you wouldn't know what
17 happened before the victim's hands were in the bags then
18 would you?

19 A No, I was not there.

20 Q Okay.

21 MR. GRIMES: No further questions.

22 THE COURT: All right. Ma'am --
23 Anything?

24 MR. GIBBONS: Nothing further.

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

Susan Bolin - Cross-Examination by Mr. Grimes

1 **MR. GIBBONS:** That would be the defense's case.

2 **THE COURT:** All right. Anything in reply?

3 **MS. YOUNG:** Beg the Court's indulgence.

4 (WHEREUPON there was a pause in the proceedings.)

5 **MS. YOUNG:** Nothing in reply, Your Honor.

6 **THE COURT:** All right. Ladies and gentlemen, the
7 State and the defendant have both -- Mr.

8 Just one other thing.

9 Mr. Gibbons, there's been no change about the
10 matter that we --

11 **MR. GIBBONS:** No, sir.

12 **THE COURT:** All right. So the next phase of the
13 trial is when the lawyers have an opportunity to make their
14 closing arguments and we're going to do that after lunch.
15 I'm going to ask y'all to be back here at 1:30. That will
16 give you about an hour and ten minutes to have lunch and
17 give these lawyers a few minutes to sort of collect their
18 thoughts on -- hold on just a second. I know you're
19 hungry, but --

20 We'll let the lawyers have a few minutes to collect
21 their thoughts and get ready for their closing arguments
22 and we'll do those closing arguments and then I'll instruct
23 you as to the law and you'll get the case later on this
24 afternoon.

25 Again, don't discuss this case with each other or

1 with anybody else while you're gone to lunch. Don't
2 discuss it with each other or when you get back to the jury
3 room, in the not too distant future, you're going to be
4 able to discuss the case as long as you want to discuss it
5 and when we're finished, you'll be able to discuss it with
6 anybody you want to discuss it with, but until then, please
7 no discussions again. Don't make any inquiries while
8 you're at lunch about anything. Don't read anything,
9 listen to anything, or watch anything with respect to any
10 news or something like that.

11 Y'all have a nice lunch. We'll see you back here
12 and ready to go at 1:30. Thank y'all.

13 (WHEREUPON the jury left the courtroom at 12:19
14 p.m.)

15 **JURY CHARGE CONFERENCE**

16 **THE COURT:** All right. Just to talk to you a
17 little bit about charges, before we get out of here. Based
18 on our preliminary conversations we've had in my office,
19 other than the normal charge relating to burden of proof
20 and State v. Nebraska, basically what I use, hesitate to
21 act and the things such as credibility and all that. I'm
22 going to charge the prior record of witnesses as to
23 credibility. I will give an instruction as to the
24 defendant not testifying in this matter; and of course, I'm
25 going to charge murder and the use of a weapon during the

1 commission of a violent crime, possession of a weapon.

2 I'm going to charge intoxication because there's
3 been some -- I intend to charge mere presence.

4 Anything else y'all think I need to charge in this
5 matter that you would like or do you have anything you want
6 me look at?

7 MS. YOUNG: Your Honor, do you charge firmly
8 convinced regarding reasonable doubt? We would request
9 that.

10 THE COURT: I do charge that -- I charge: What is
11 reasonable doubt? Reasonable doubt is the kind of doubt
12 that would cause a reasonable person to hesitate to act.
13 If you have such a doubt as to the guilt of the defendant,
14 then he would be entitled to a verdict of not guilty.
15 Proof beyond a reasonable doubt is proof that leaves you
16 firmly convinced of the defendant's guilt. Reasonable
17 doubt may arise from evidence which is in the case or from
18 the lack of evidence in the case. If you think the
19 defendant is probably guilty of the circumstances, whether
20 the circumstances were suspicious is not enough.

21 Anything else?

22 MS. YOUNG: Nothing from the State.

23 MR. GIBBONS: Your Honor, we do have evidence that
24 my client was being shot at as well that night.

25 THE COURT: Say that again.

1 **MR. GIBBONS:** We do have evidence that my client
2 was being shot at as well that night.

3 **THE COURT:** What does that do?

4 **MR. GIBBONS:** I think you should consider a
5 self-defense charge.

6 **THE COURT:** Well, the only evidence as to the
7 shooting -- he was being shot at -- is the evidence that he
8 was being shot at after he was shot by Tall Tay? What's
9 his name, Tall Tay?

10 **MS. YOUNG:** Tay.

11 **MR. GIBBONS:** Tall Tay.

12 **THE COURT:** Tall Tay. Isn't that the only evidence
13 that's --

14 **MR. GIBBONS:** Yes, Your Honor, but I think the
15 charge itself says you don't have to wait until they fire
16 the first shot. Act upon appearances and shoot away if you
17 think you're in danger.

18 **THE COURT:** Well, I'll look at it, but I -- if
19 y'all want to come back to my office prior to -- all right.

20 **MR. GIBBONS:** You want us to come now?

21 **THE COURT:** No, let me read the self-defense charge
22 again. But I -- from the testimony -- there's the
23 testimony as to more than five bullets shot, which
24 apparently went into the victim. Somebody called up and
25 said after the fact, there were ten shots fired.

1 **MR. GIBBONS:** Right.

2 **THE COURT:** Or maybe more.

3 **MR. GIBBONS:** Right.

4 **THE COURT:** And then somebody said after the
5 shooting when they -- Tall Tay was holding his friend in
6 his lap, he got out his pistol and started running after
7 your client and started shooting the gun at that time.

8 **MR. GIBBONS:** Yes, but we also have testimony that
9 the guy, let's shoot the one, whatever that means. He came
10 out shooting, if you want to believe what the witness was
11 saying.

12 **THE COURT:** Well, that was testified to that that
13 means, let's fight. I mean, do you want -- I don't think a
14 mutual combat -- I don't think you're allowed to have
15 mutual combat with guns. It would be dueling if nothing
16 else. I --

17 What do y'all have to say about this?

18 **MR. GRIMES:** Your Honor, obviously, there's four
19 requirements for the self-defense charge. The fourth
20 requirement specifically it applies here. There's no other
21 probable means of avoiding the danger. The only allegation
22 that they're using to that he was in self-defense -- in any
23 type of position that would invoke self-defense -- was that
24 they were squared off in the road in a fight-type situation
25 prior to the shooting occurring. No evidence that he tried

1 to flee that scene or tried to avoid that fight.

2 In any event, the witnesses that are available said
3 that he instigated the fight, which would bear upon the
4 danger that caused him to be in fear in the first place.
5 There's no evidence or no testimony of anybody said that
6 they were shooting at him prior to him pulling out the gun,
7 gave any -- there's no evidence that he had any reason to
8 be in fear for his life that's admitted from the witness
9 stand.

10 I realize that you can comment on what you hear on
11 9-1-1 tapes or other things -- the fact that there may have
12 been some more shots and they may be able to characterize
13 that in their closing statement, but there's no evidence to
14 support that the defendant would be in a self-defense
15 position prior to the shooting occurring from any of the
16 documents or evidence that's been admitted or any testimony
17 from any of the witnesses.

18 THE COURT: I don't see any self-defense either.
19 But I'll look at it, Mr. Gibbons and if y'all will come
20 back a few minutes before...

21 MR. GIBBONS: All right.

22 THE COURT: All right. Y'all have a nice lunch and
23 we'll see you back in an hour.

24 (WHEREUPON a recess for lunch was observed.)

25 THE COURT: All right. Mr. Gibbons, as I told the

1 solicitor, y'all apparently didn't want to come talk to me
2 at 25 after like I asked you to, but I've reviewed the
3 self-defense. I just -- I don't see it. I mean it -- this
4 fellow -- the testimony is that he got out and somewhere
5 raised his hands and said I don't want to fight. We're all
6 going be friends. Or somebody else said he raised his
7 hands and said, I don't want to do this. I just don't see
8 it. The only time the shots reportedly were fired by
9 anybody was after the fact by Tall Tay and your client
10 was -- had already done what, supposedly, what he was
11 alleged to have done. So I'm not going to charge
12 self-defense. But your request is noted.

13 MR. GIBBONS: Thank you, Your Honor.

14 THE COURT: Are y'all ready to go?

15 MS. YOUNG: Ready, Your Honor.

16 MR. GIBBONS: I have a demonstrative item. Do you
17 want me to mark it as a piece of evidence, Your Honor?

18 THE COURT: Not if it's demonstrative.

19 Bring us the jury, please.

20 (WHEREUPON the jury entered the courtroom at 1:34
21 p.m.)

22 THE COURT: All right. Ladies and gentlemen, as I
23 told you before we broke for lunch, the phase of the trial
24 that have reached is the point where the lawyers have the
25 opportunity to make their closing arguments on the facts.

1 The State gets to make two closing arguments. The State
2 gets to open on the law and then they get to make their
3 argument after the defendant makes the defendant's opening.

4 After that I will instruct you as to the law that
5 applies in this case and you will then retire to the jury
6 room and begin your deliberations and hopefully, ultimately
7 render your verdict in this matter.

8 So with that said, I'll ask, Madame Solicitor, you
9 ready to proceed?

10 MS. YOUNG: Your Honor, the State's going to waive
11 opening on the law.

12 THE COURT: Any objection?

13 MR. GIBBONS: No, sir.

14 THE COURT: All right. Mr. Gibbons, you ready?

15 MR. GIBBONS: Yes, sir.

16 THE COURT: All right.

17 CLOSING ARGUMENTS

18 MR. GIBBONS: If it please the Court, ladies and
19 gentlemen, I know this has been a rough couple of days.
20 You probably learned more than you probably want to know
21 about Dallas Circle. But I want to thank you for your
22 attentiveness. You've watched carefully, you've paid
23 attention and that's all I asked you to do up front is to
24 pay attention and you've done that. And I appreciate that.

25 At the end of the trial, both sides get to talk. I

1 get to go first and the State gets to go last. So this is
2 my last time to talk to you about this case and about the
3 evidence that you've seen and the evidence that you haven't
4 seen in this case.

5 Now, as I told you when we got started, this case
6 to me is about any port in the storm. The storm was Dallas
7 Circle that night. Shooting going on, people screaming,
8 people running around, people hollering. Law enforcement
9 headed that way; and you heard what they thought about
10 Dallas Circle on their tape. Here we go again. I won't
11 use the colorful language, but -- had to go back out here
12 again.

13 There's not a lot on that tape. Just watching it
14 in front of a car for most of it. But if you look at it --
15 and you're going to have it in your jury room -- if you
16 want to look at it, there are people walking back and forth
17 and back and forth the whole time the tape's running, and
18 the officers have mic's on, cuts off once in a while, but
19 one of them has a mic on him pretty much the whole time.
20 What you didn't hear on that tape is, Hey you, what's your
21 name? How about you, what's your name? How about you, did
22 you see anything?

23 Right after it happens, first guy on the scene,
24 people there right when he got there. Did you hear any of
25 that on that mic?

1 Now, trials are supposed to be about the truth.
2 And they're supposed to be an a search for the truth. And
3 this is a murder trial. This is as serious as it gets.
4 This is the brain surgery of the legal system and should be
5 about the truth. It's a hard decision y'all have to make.
6 And in order to make you the most comfortable as they can
7 about your decision, you should seek everything possible.
8 You should listen to everything possible, look at
9 everything possible, review everything possible, because
10 this is an important case.

11 Now, the State's had all this stuff. And remember,
12 the judge told you, they bear the burden. I believe the
13 solicitor told you in her opening, the State had to prove
14 everything beyond a reasonable doubt. Their job. The
15 judge will tell you the defendant doesn't have to prove
16 himself innocent -- ever. The defendant doesn't have to
17 testify and part of your instructions, part of your oath
18 you swore to, the judge will tell you, is instructions on
19 the law.

20 The fact that the defendant doesn't testify cannot
21 be any part of your decision or discussed any way or held
22 against him in any way. That's what you swore to. Because
23 the State has the burden. They choose when to go to trial,
24 they choose whatever is put before you. And in this case,
25 they chose some evidence they didn't want you to see. But

1 I think you should hear it all.

2 Now, what is the standard? Reasonable doubt. The
3 judge is going to instruct you on exactly what that is.
4 Reasonable doubt is a doubt that would give someone a
5 reason to hesitate, to hesitate. That doesn't mean you
6 don't end up stepping, but to hesitate. Probably not good
7 enough. Horseshoes or hand grenades? Close enough is not
8 good enough. If there is a doubt that you can have
9 reasonable doubt of, anywhere in this case, your oath, your
10 promise and our whole legal system, the judge will tell
11 you, requires a not guilty.

12 Now, it's not an easy job you're called to do. But
13 he's also going to tell you, you have nobody to reward; you
14 have nobody to punish. It's supposed to be about the
15 truth. Give you as much evidence, as much evidence as we
16 can and you come up with what's the truth, good or bad.

17 Now, this case starts out with a tape of 9-1-1
18 calls. Now, I'd like to just try and remember everything,
19 I probably won't, but I'm going to tell you -- please
20 listen to that tape. You're going to have that with you as
21 well.

22 That CD. What do we hear on that CD? Well, when
23 the State rested its case, when the State called its last
24 witness, you heard one of the calls. You heard one of the
25 calls. They didn't play the one that talked about ten

1 shots. This is not supposed to be a shell game to you
2 folks, this isn't hide the thimble. For someone to make a
3 decision on a murder case, they should have all the
4 evidence, all the information, good or bad. It's not about
5 winning a ball game. It's about the truth.

6 So we heard there were ten shots on one of those
7 calls that you didn't hear from the State. Why? It
8 doesn't fit their story. What else did we hear? One of
9 those calls is a guy saying, My home boys been shot. Help
10 him up. Help him up. My home boys been shot. Get the
11 ambulance here. Help him up. Help him up. Give me that.
12 What's that all about?

13 The dispatcher's voice comes on and says, what are
14 you talking about, Give me that?

15 You're asking the wrong questions.

16 What's that all about? We don't know; they weren't
17 questioned. You wouldn't even have that issue in front of
18 you if we'd stopped when the State finished putting up
19 evidence. Does that give you a hesitation?

20 Shouldn't you have been privy to what that was
21 about? And you've seen Tave come up, give me that. Well,
22 Tave is the one that had a gun. Right there at the victim
23 and his buddy saying, Give me that. Give me that. Give me
24 that. What is it? You're asking the wrong questions.
25 Never questioned. Tave's dead now. He wasn't questioned

1 for a year up until his death. This was about a year ago
2 he died. He got shot. Never questioned. Does that give
3 you a reason to hesitate?

4 In this case, law enforcement pulled up to a place
5 they have a lot of calls at where no one ever talks. They
6 find one witness, who they don't go question. You remember
7 the testimony. She came up to them and started giving them
8 a story. That's the only one they were relying on. What
9 do we know about her?

10 Twice convicted, lying to the police. Twice. What
11 else do we know? On the run from the law at the time she
12 was giving the statement, disappeared afterwards. State
13 caught up with her later and made an appointment for her to
14 come in. Did she come in? No. They went and got her and
15 locked her up. If you look at the timing of this thing,
16 for almost two years, they built a murder case and made
17 their decisions on an investigation based on that witness.

18 She with her lawyers, controlled where they looked,
19 where they didn't look, what they decided not to do, what
20 they decided wasn't important. When they could have known
21 that night by clicking the little mic on his shoulder, her
22 record and the fact that she was wanted. That's the one
23 witness for almost two years in this case. Now, does that
24 cause you to hesitate?

25 Did law enforcement go into that situation assuming

1 no one would talk because they never did? Sounds like it
2 on tape. You don't hear anybody asking anything. Just
3 driving up, folks walking around, going about their
4 business, minutes after a murder. Nobody's name is asked,
5 nobody's searched. They don't even have the scene all
6 squared away. They park on top of the scene. Does that
7 cause you to hesitate?

8 Now, the investigator gets there. She doesn't have
9 any notes or any documentation of who she talked to other
10 than Ms. Carter. Did she call in and check on it? See who
11 she was talking with? No. She just took what she said as
12 gospel. Even had a bottle collected and a bag tested
13 because she got information from Schantrika that whoever
14 shot the victim sat in that chair and drank that beer.

15 Why does that matter? Well, guess what,
16 unidentified DNA on the beer. You've got all these people
17 out there, unidentified. Why did she say that? Did she
18 see everything she said she saw? Does she have a reason?

19 Remember, the judge is going to tell you, you can
20 believe all of what a witness says, none of what a witness
21 says, part of what they say and you can take into
22 consideration how they act when they're saying it, what
23 their chance was to see what they're saying, to have been a
24 witness to it; but you can also take into consideration any
25 motive they might have for saying the story they're saying.

1 Now, Ms. Carter, twice convicted for lying to the
2 police. Oldest one in a group painting gang signs down in
3 another a neighborhood. Admits to affiliating with gang
4 members. And comes forward as the only witness to
5 Mr. Maples' shooting. What else does she tell us? She
6 tells us that when she's going into the trailer, she meets
7 Erica coming out of the bathroom.

8 Now, y'all decide what was said on the stand. I
9 think Erica is the one that said she drove up and said she
10 saw the shooting in her car. So if you're going to believe
11 this star witness, Schantrika Carter, Erica jumped from her
12 car into a closed bathroom and came out again during the
13 shooting. Just didn't -- it's not possible.

14 This is kind of a blowup of where this all
15 happened. I know we've been throwing this map around and
16 little snappits here and there, but Schantrika Carter said
17 it happened up here where the patrol cars were. And what
18 did she say? Remember, I stood right here and I kept
19 turning around and finally I said, Tell me to stop when I'm
20 at the angle the victim was at when he got shot. And I
21 thought she'd stop me here. And I thought she might stop
22 me here, but I got almost directly facing her before she
23 told me to stop.

24 And what did she tell them that night? He got shot
25 in the stomach. Did she see it happen? Or did somebody

1 tell her what happened? Somebody that didn't want to talk
2 to the police. Did she really see it? If she did, why is
3 that a story? Because the doctor told us, those bullets
4 were going straight. They weren't going sideways, they
5 were going straight in the back. If I'm standing like
6 this, towards the shooter, the bullet would have to go over
7 my head, turn around and come straight in my back -- if you
8 believe Ms. Carter. Does that cause you to hesitate?

9 Now, Cameo, who by the way, was a pallbearer at the
10 victim's funeral, and also had been convicted of lying to
11 the police about something, never came forward, never
12 wanted to right the wrong on the guy he was a pallbearer
13 for almost two years. I guess it wasn't a priority. It
14 wasn't important to get the truth out.

15 What did he say? He said he parked in this area
16 and that the shooting -- the first shot happened right
17 here. And he said the victim was walking away with his
18 hands up when he got shot the first shot. He yanked his
19 hand down. Where did he say he ran? I asked him four or
20 five times and it's in his testimony -- you want to hear it
21 back, they can play it back.

22 He said first shot was fired here and that the
23 victim ran around this side of the trailer and he ran down
24 here going in the trailer and he heard the other shots
25 happen on the front part of that trailer. I asked him

1 three or four times. So he said they ran down here and
2 that's where the shots happened and then he saw him end up
3 over here.

4 All right. Well, that's not what Schantrika said.
5 She watched pretty much the whole thing right here. Ran in
6 here and watched out the back window.

7 And one thing doesn't lie. The shell casings.
8 They're not part of a big conspiracy to make up a story.
9 They're just shell casings. If all the other shots but the
10 first one took place behind that trailer, did they jump up
11 over the top of the trailer and land there? Or is somebody
12 telling you something they didn't really see? Does
13 somebody have a reason to tell you a story? Does that
14 cause you to hesitate?

15 There's a reason this all happened this way.
16 There's a reason the State didn't give you all the
17 information. This links up Schantrika Carter. Do you have
18 a doubt whether we're getting the full story here?

19 The little girl on the stand, several witnesses
20 have already told us that her grandmama sells liquor by the
21 cup out of the trailer. What does she say when she's asked
22 about that? I know nothing about it. And the few minutes
23 later when she was asked if there was a gang out there,
24 same thing came out of her mouth, I don't know nothing
25 about it.

1 Is there a reason why some of the residents might
2 not want to talk if there's a gang that shows up there on
3 nights and meets and decides where they're going to go?
4 Does that explain why that happened?

5 Now, the other witnesses in the case -- you've got
6 Schantrika, you've got Cameo, you've got the little girl.
7 We've got the lady that was coming out of the bathroom and
8 Schantrika's statement said she drove up and saw it happen.
9 We also have Octavia Bush saying that she saw the whole
10 thing as she was driving into this neighborhood from her
11 car. She saw the blasts, but she didn't hear the shot.
12 And she turned around and left.

13 Now, I asked point-blank -- she was asked who did
14 the shooting. She said London. All right. She's in her
15 car, it's dark. She's not close enough to hear the sound,
16 but she knew it was London and she saw the blast. I asked
17 her one question in particular, which way was he facing.
18 He had his back to me. How did she know who that was?
19 Does that make any sense? Is that reasonable?

20 Now, law enforcement got there, they talk to
21 Schantrika. They got the 9-1-1 tape talking about ten
22 shots; you've got a body at the hospital with five bullet
23 holes; and we've got the gun and they've got four shell
24 casings and that gun, the testimony was is an automatic,
25 which spits a shell casing every time it's shot.

1 Now, what did they not have? The extra shell
2 casings. And they didn't have anything else tying that gun
3 to anybody. The State wants you to believe that if someone
4 came in here right now and shot me and took off, ran
5 through the building next door and was caught in the
6 parking lot in front of it, that it wouldn't be relevant to
7 search that building. It doesn't matter if I threw down a
8 weapon in that building. It doesn't matter if I may have a
9 box of 25 shells in that building. Didn't matter to them.

10 Now, if I got shot and no one was there from law
11 enforcement and somebody loaded me in a car after this
12 conversation about, Give me that. Give me that. Pick him
13 up. Help him up. Took me to the hospital. They're not a
14 material witness at this point? They don't need to be
15 talked to? At least try. There's not documentation of
16 anybody even trying. They didn't even put up the person
17 that talked to them. They said an officer asked and they
18 said they wouldn't talk. Well, where's that person?

19 Don't you deserve to know everything? Or is this
20 another thing that doesn't go along with the story? An
21 inconvenient part of the story? We also know that Tave,
22 the guy that was supposed to, Hand me that. Hand me that.
23 And, Help the victim up, was at the hospital. We have no
24 testimony anyone tried to do a GSR kit on him.

25 Maybe it was law enforcement saying they never

1 talk. People from Dallas Circle never talk. We don't know
2 what was in the car. There might have been another gun in
3 the car. Wouldn't you want to know that? Again, this is a
4 serious case and I know they've been to Dallas Circle and
5 many people don't always talk down there, but they built up
6 evidence on a murder case and they don't try? You don't
7 make attempts? You don't document who's there? Sure they
8 might not want to talk that night while there's a guy
9 running around with a gun still; that he fired after London
10 had run away. Sure maybe they didn't want to talk that
11 night. But if you don't get their name, you're never going
12 to get a chance to talk to them later after it's cooled off
13 and you get their side of the story.

14 Now, there's one guy, the guy with the studio in
15 his house, I think his name's Jersey -- they call him
16 Jersey. What did he say? He said he saw London and
17 everybody else running away after the shots. Out this way.
18 And when he was asked point-blank did he have a gun, what
19 did he say? No. Now, that's another thing about the
20 stories that we've got. Some people are saying the
21 shooting happened here. Some are saying it started here
22 and carried itself down here to here. Some are saying it
23 happened over here and carried itself over here. We've got
24 all kinds of stories about that.

25 What else do we have? We got stories about the

1 defendant, London, running out this way. We've got stories
2 about him running down this tree line to his house. Can't
3 do both. The gun's found way down here. So did he shoot
4 up here, run down here, drop the gun and run all the way
5 out here? Does that make any sense? Does that story cause
6 \you to hesitate?

7 What else do we have from the witnesses? Well, a
8 couple of them -- the star witness says nothing about
9 London stomping through the yard saying I did it, I did it.
10 That story doesn't come along for two years. But does it
11 fit in the other stories? Does it make sense? The gun's
12 down here and he's hollering and waving the gun around up
13 here? And he's getting shot at and the gun ends up back
14 down there. You can't have it both ways. You can't have
15 it five ways either. It doesn't make any sense. It's not
16 reasonable, folks.

17 Now, the SLED agents, they're disinterested parties
18 in this case. They came in here and they told you what
19 they did in their lab. The casings match the gun. Pretty
20 clear. The gun can't fire ten shots without reloading.
21 That's pretty clear. So the bullets matched the gun but
22 there are no fingerprints on the bullets and that's about
23 all she could say other than she wouldn't expect the shell
24 casing to kick over the trailer and land in the other yard.

25 What about the trace guy? He says he gets GSR kits

1 from autopsies all the time. Wouldn't you have liked to
2 know? Wouldn't you like to know? There was a guy back
3 there with a body and someone was telling him, Hand me
4 that. Wouldn't you have liked to have known if he had a
5 gun that night too?

6 The hands, the hands really bother me. The wounds
7 in the hands. They're weird angles. If I'm grabbing
8 something and holding it out like this, isn't it reasonable
9 that a bullet might go in here and straight through here?
10 Well, we could rule that out if they'd done a GSR, couldn't
11 we? But you don't have that. It wasn't important. It
12 wasn't necessary. It wasn't worth looking at. That might
13 explain some of those other shots, but we don't know, do
14 we?

15 Now, Clay Adams says he's got a metal detector.
16 They know they've got four shell casings and five wounds.
17 Did he go back, sweep that place with a metal detector. In
18 the two years since this happened, did he do that? No.
19 Does that cause you to hesitate? That's up to you.

20 And I apologize for having to look at my notes, but
21 I want to make sure I don't leave something out.

22 Another thing, Schantrika, the star witness said
23 that London had a drink in his hand and he was walking
24 around and the victim was trying to get a drink from him.
25 That's the star witness.

1 Now, the other witness who was out there too said
2 the defendant was walking around trying to get people to
3 give him a drink. Well, which was it? We'll never know.
4 We don't have the names. We don't have the other people
5 that were there.

6 If you look at the pictures -- and you'll have them
7 back in -- in your jury room too -- it's pretty dark back
8 in that yard and there's no light pole back in the
9 backyard. There's one in the front yard, but you can tell
10 from the photo, back in the back it's pretty dark. And
11 while Schantrika was back there on the phone trying to call
12 9-1-1, letting it ring 15 times, you heard what was going
13 on in that house. Chaos, pandemonium, screaming,
14 hollering, shrieking; and yet, she wants you to believe she
15 could hear through that door and across that yard what
16 people were saying out there.

17 Cameo, the same way. Same house, same noise. He
18 wants you to believe he could hear that. And then he
19 didn't get what was said as correct. Two different
20 stories.

21 They didn't hear Jeremy. We got a 9-1-1 tape, Help
22 him up, Pedro. Help him up Tave. Get that. Get that.
23 Maybe they saw them with a gun. We don't know. They
24 weren't GSR'd. It wasn't important. It wasn't relevant.

25 Now, Clay Adams testified that when he gets to the

1 scene, he does whatever he's told do. So if he's working a
2 scene, he's told to work place A and he sees some blood on
3 the wall in place B. Apparently, he has to wait for the
4 other investigator to see it and tell him to go over there
5 because he said no one told him to go to that house and do
6 anything. No one told them get a search warrant. No one
7 told him to go in there and see if there was a gun or
8 ammunition or a holster, or a bullet trail, or nothing at
9 all. We don't know. You don't know. Does that cause you
10 to hesitate? Do you want to know that before you make this
11 important decision?

12 Now, Clay also told you that he didn't remember
13 exactly what he did, but he got those little things out of
14 that little pocket and he swabbed one of his hands. He did
15 that GSR kit on both of his hands, front and back. Who
16 picked up the gun? Clay Adams. What was on the gun? You
17 heard the SLED lady, a very weak mixture, a very weak
18 possible mixture, some part of DNA. Is it that new touch
19 DNA? Yeah. He uses a really small sample, doesn't he?
20 Yeah. If I touch someone sweaty and I went over and
21 touched someone else, I could transfer that, couldn't I?
22 Well, yeah, you could.

23 He also collected the jacket and swabbed it. It's
24 possible to transfer stuff. SLED said it was. We don't
25 know. Does that cause you to hesitate in this case?

1 London Wooden was new in the area. He wasn't part
2 of the crowd. He wasn't part of the group that met
3 together. He wasn't part of the group that would go up
4 there and drink with one another. This was a case where he
5 got in, you got one witness, you got one person locked up
6 we're out of there. We're done. Pretty much what it was.
7 Oh well, it's Dallas Circle. Well, it doesn't matter if
8 it's Dallas Circle or Woodside or the President of the
9 United States house. The constitution, taxpayers, and your
10 system requires the same level of competence, the same
11 level of thoroughness no matter who the victim is. You
12 have a right to know all the evidence, all the information
13 possible.

14 Clay Adams said that himself. He said we get as
15 much as we can, everything we possibly can on a murder
16 case. I asked him, did you collect evidence after you
17 swabbed for GSR, after you got his hands. He didn't
18 remember when he did it, but he thought it was towards the
19 first of the investigation. Does that cause you to
20 hesitate?

21 The SLED agents also told us that it didn't matter
22 once the victim had passed away, the GSR stopped absorbing.
23 So they could have gone to the hospital, taken those
24 bandages off that no one said they were there for any other
25 purpose other than to preserve that GSR evidence. They

1 could have done it that morning, they could have done it at
2 autopsy, which Dr. Ross says that happens all the time.
3 Not an expensive test, not a hard test, not a huge deal.
4 Wouldn't you like to know before you make this decision.
5 Shouldn't you know?

6 What else do we know about the gunshot residue? If
7 I handle a gun that hasn't been cleaned, I could possibly
8 get that on my hands and transfer it off on other stuff.
9 That was the SLED agent's testimony. Those officers had
10 their guns drawn out there, knocking on that door right
11 before they arrested him? We don't know. It's not
12 relevant what happened in the house, it's not relevant what
13 happened in the car, it's not relevant what wasn't in the
14 car. We got in, we got our guy, we got our one witness,
15 let's go home. It's Dallas Circle.

16 Let's not go out there and wait for somebody to
17 come home, we're going to drive by and put our card on
18 their door. On a murder case? Really? Really? Leave a
19 card on the door? I can see being busy that day, the next
20 day, but too busy the next week? Too busy the next month?
21 Too busy straight for two years? They had Jeremy's name
22 pretty quick on. He lived in the trailer park. Two years.
23 Does that cause you to hesitate?

24 Now, ladies and gentlemen, as I've said before,
25 your job is to find the truth. And probably is not good

1 enough. It's not your job to take what was apparently
2 treated as quick, fast, investigation and finish up, done.
3 It's not your job to take that and try to twist it around
4 into a verdict. It's your job -- it's not your job to fill
5 in the blanks. It's not your job to connect the dots.
6 It's not your job to put a blessing on that investigation.

7 You each are an independent juror. You each have
8 your vote. You each have to find if London -- you have to
9 consider -- even at this point, he's presumed to be
10 innocent. You each have to be convinced beyond a
11 reasonable doubt, personally in this case. If one juror
12 has a doubt with a reason, a reasonable doubt, by your
13 oath, by our constitution, by the judge's instruction, you
14 cannot return a guilty verdict. It's an independent
15 person's decision. It's not a job for eleven jurors to try
16 and convince the other one and wear them down. It's an
17 individual decision that each juror has to live with.

18 Now, writing a guilty verdict on this case says you
19 had all the information. That investigation is good enough
20 to convict that boy with those witnesses of murder. That
21 our system would put people on the stand and convict
22 somebody of murder when they've known to have lied to the
23 police, known that their statements don't fit together,
24 knowing that they've got a reason to say what they're
25 saying. It doesn't matter. Without all the information,

1 without a full story, a guilty verdict puts a blessing on
2 that.

3 Now, as I told you, I won't have another chance to
4 talk to you. The solicitor is going to come up now. She's
5 a great lawyer. She's probably over there taking notes on
6 everything I'm saying, that I missed, or I forgot. Please
7 don't hold my weaknesses and my faults in representing
8 London Wooden against my client. I'm not going to have
9 another chance to talk to you, but I would ask you, please
10 remember it's not probably. Your oath is beyond a
11 reasonable doubt, unanimously. One person with one doubt,
12 it's not a verdict of innocent. We don't have that. It's
13 a verdict of not guilty. You haven't proved it. Maybe it
14 happened isn't good enough. Maybe it happened, maybe it
15 didn't. If they haven't proved it, it has to be not
16 guilty.

17 Again, I thank you for your time. I remind you
18 that you can hear any testimony back over again. You've
19 got all the DVD's, the CD's to watch whatever you want to
20 watch over again. Please take this seriously. We've got a
21 family over here that's never going be the same. We've got
22 a family over here as well. This is a serious matter and
23 the things in this case -- you know how people talk about
24 CSI on TV and we expect too much. It creates a false view
25 of what these officers can do on a crime scene and juries

1 expect too much of them. Well, this is old fashioned
2 police work, knock on the door that wasn't done. This
3 isn't any hidden camera. Good old fashioned, knock on the
4 door, sit and wait for them to come home and ask them what
5 their name is and it wasn't done. Get a search warrant, it
6 wasn't done.

7 If you want to go back there and write a guilty
8 verdict and put your stamp of approval on this, that's your
9 decision, but I thank you for your time.

10 THE COURT: All right. Madame Solicitor?

11 MS. YOUNG: May it please the Court?

12 THE COURT: Yes, ma'am.

13 MS. YOUNG: Mr. Gibbons, ladies and gentlemen,
14 David Maple was murdered. I told you at the beginning
15 that's what this case is about. If this isn't a murder, I
16 don't know what is. This man was shot five times. And as
17 you see, three of the entrance wounds went right in his
18 back and Dr. Ross told you two went in his fingers. And
19 she told you that his hands were most likely up like this,
20 which is what most of the eyewitnesss said happened. But
21 before I get into all that, I want to draw your attention
22 to what we do have as evidence in this case.

23 Mr. Gibbons spent a lot of time trying to distract
24 you with smoking mirrors about what we don't have and what
25 we could have found. But ladies and gentlemen, I'd ask you

1 to focus on what we do have in this case and that is a
2 murder. The defendant shot the victim in the back five
3 times. That's what the eyewitnesses came in here and told
4 you and that's what the scientific evidence told you.

5 I want to talk about that a little bit first. Mr.
6 Gibbons down played it, but I think it's pretty important,
7 and I think you will feel that way too, that there were
8 many items that went to SLED to be tested. And the
9 analysts came in here and told you what they found and
10 that's important to think of from the beginning and I'll
11 tell you why.

12 Agent Eichenmiller told you that the gun that was
13 found at the scene right where the defendant had been
14 running fired the bullets that were found in the victim's
15 body at the autopsy and additionally that the shell casings
16 that were found were fired by that same gun.

17 Agent Roberts told you about the gunshot residue.
18 Lieutenant Adams told you -- he testified that he knew he
19 took that gunshot residue kit from the jacket, the sleeves
20 of the jacket that the defendant had on and he sent it to
21 Agent Roberts and guess what he found? Gunshot residue.

22 And finally and most importantly, you have the
23 testimony of Agent Webb, the DNA analyst. And she told you
24 that London Wooden's DNA was found on the pistol handle
25 that was found at the scene that fired the bullets and the

1 shell casings that murdered the victim in this case. And
2 why is that important to think about from the beginning?
3 Why would we start thinking about scientific evidence?
4 Well, I'll tell you.

5 The SLED agents, they work in Columbia at SLED and
6 they don't have any idea when they get that evidence what
7 happened in Dallas Circle, October 1st, 2011.

8 They get evidence that the Aiken County Sheriff's
9 Office sends them and that's what they test. And low and
10 behold, what do you know? The testing that was done by
11 independent agents confirms the story of the main
12 eyewitness in this case, Schantrika Carter. The agents
13 didn't know her story and Schantrika Carter didn't know
14 that the SLED agents were going to find scientific evidence
15 linking the defendant just as she told you happened. She
16 didn't know that at the time that she told the police what
17 happened, which I will point out they didn't have to go
18 question her about it because she came over to the car and
19 immediately started telling them.

20 And you're going to hear that. You can listen to
21 the tape again. But she immediately told them the
22 description of the shooter: Blue jacket, bluejean shorts,
23 gray shoes. Where did he go? He ran to his house a little
24 bit down the way.

25 And so instead of starting off the investigation by

1 talking to all these random people that are walking around,
2 the police do what you expect them to do and what they told
3 you is their job to do and that is to make the scene safe
4 and go try to find the person that murdered the victim in
5 this case. And they immediately go to the trailer which
6 they were directed, right over here where Schantrika told
7 them to go. And guess what they found when they go in
8 there. Knocked on the door and they found the defendant;
9 and low and behold, he's wearing the jacket described by
10 the witness, the shoes described by the witness and the
11 bluejean shorts. And instead of getting attracted to all
12 these theoretical possibilities of things that could happen
13 in some alternate universe, think about it this way, when
14 Schantrika calls 9-1-1, it's -- of course, chaos is going
15 on and she testified that when she called 9-1-1, that what
16 she was describing was actually happening.

17 And please don't forget, it wasn't ever addressed,
18 but it's very important, Schantrika said that the defendant
19 was standing over the victim, holding him by the neck with
20 the gun to his head and she called the police and reported
21 that while it was happening. That's a pretty major thing
22 that you need to consider. This wasn't any accident. This
23 wasn't any self-defense. This was cold-blooded murder.
24 That's what it was.

25 Now, you can watch the video. I mean, I submit to

1 you that it takes about seven or eight minutes for the
2 police officers to get to the scene; and I think the
3 defense wants you to believe that during that seven or
4 eight minutes, Schantrika Carter, who is this alleged gang
5 mastermind came up with this whole conspiracy that for some
6 reason they were just going to point this whole murder on
7 the defendant.

8 Ladies and gentlemen, that's just not reasonable,
9 logical. That's not what the evidence tells you. I'm not
10 really sure what the defense is. If it's gang related, if
11 it's Tave did it or the police didn't do the right job, but
12 all of that is distraction, okay? What you need to focus
13 on was what the five eyewitnessss came in here and testified
14 under oath, got on that stand and told you.

15 Now, there's a lot of criticism of Agent -- excuse
16 me, Investigator Lager's investigation because she
17 listened to the witness who's relaying of the story of
18 events that happened was corroborated instantly by the
19 first responding officers, finding the defendant in his
20 house just what she -- Schantrika told him that he would be
21 and also finding the gun in the area that she directed them
22 to. And they get the defendant out and they get the gun
23 and they have a version of events that they were told.

24 Now, she told you that they attempted to go and
25 what her attempts were, but she tried to interview

1 witnesses. Schantrika -- you know, she came in here and I
2 think they all told you, this is not the neighborhood where
3 people talk to the police. It's just not done. But she
4 came in here and she did that and what she told you on the
5 stand was the same thing she told Investigator Lager and I
6 want to point out, it doesn't matter if they were talked to
7 two years ago or two weeks ago, four more eyewitnesss
8 talked to Investigator Lager and then they came in here
9 and got up on that stand and they told you what happened.
10 Okay? So the fact of this no evidence or just trying to
11 guess what happened is just not reasonable in this case.

12 Now, I'm going to start back with the eyewitnesses
13 and I'd like to point out to you what about their story is
14 inconsistent. Well, I've shown this to a lot of witnesses
15 and they've waited around and they've seen this a lot too.
16 As you know, it's a circle. It's confusing, but the
17 testimony was that between No. 16 Dallas Circle and No. 12,
18 it was a hang out spot right there and that's where
19 everything happened.

20 Now, Schantrika is the first eyewitness and we'll
21 start with her. And I'm going to bring Cameo along because
22 I consider him the next main witness and the reason why is
23 they both told you the most about what happened. They were
24 the ones that had opportunity to see it -- by the way, they
25 were both out there and they came in here and told you what

1 they saw.

2 And it wasn't exactly the same. If it was exactly
3 the same, it would be like it was rehearsed and if it's not
4 exactly the same, it must not have happened. You can't
5 have it both ways. You heard the 9-1-1 calls. There's
6 chaos going on. Somebody that they both care about just
7 got shot right in front of them. They weren't standing in
8 exactly the same spot and might not have been looking at
9 exactly the same thing. This isn't a movie where everybody
10 just sees the same thing. They saw what they saw and they
11 came in here and told you.

12 I'm going to start at the beginning. Schantrika
13 told you she came to her grandmama's trailer with her baby
14 because everyone goes out to the club and she got her baby
15 situated and she came out the back door. And who was out
16 there? She told you that the defendant was out there. The
17 victim was out there. Tall Tave or Tay was out there and
18 somebody in a hoodie that she wasn't sure who it was.

19 Well, I appreciate her being honest and telling me
20 she's not sure who it was and trying to make up something
21 to go along with some fact or scheme or grand conspiracy
22 she has that does not exist.

23 But she told you that she came out there with her
24 cigarette to smoke and that immediately -- almost
25 immediately she said, within a few seconds or minutes, is

1 when this murder happened. And she told you that all of
2 this happened between these two trailers and that Bounce
3 was there -- she called hi. Bounce -- and the defendant.

4 Now, let's bring in Cameo. How are their stories
5 consistent with each other is what you should look at.
6 Cameo stated who was present. He said himself, he said the
7 defendant, the victim, Amanda Cheatham, somebody else he
8 wasn't sure about and they were all hanging out and they
9 were listening to music and the defendant was sitting on
10 that log, or standing on that log and he was trying to
11 start something, acting obnoxious.

12 What did Schantrika say about that? She called it
13 talking junk. Talking junk. But guess what? They both
14 told you what that defendant was doing, standing out there
15 trying to start something, trying to get attention, trying
16 to do whatever he could. And they both told you that this
17 argument was over a cup of liquor. Somebody had it,
18 somebody else wanted it and there was a back and forth
19 between it. And, you know, Give me a shot of that liquor;
20 no, you can't have any.

21 That's as quick as that could have happened. I
22 mean, this is not something that's long and drawn out. And
23 that's something that you need to consider. You're talking
24 about something that happened over a very brief period, two
25 years ago to these witnesses. They're trying to explain to

1 you and breaking it down into some long, drawn out thing
2 and that's just not a realistic way of viewing it, okay?
3 But they both told you that they had some argument with
4 each other, okay? And that they both came out into the
5 roadway and both of them told you that the victim, David
6 Maple was up closer to Ms. Mary's trailer. Both of them
7 told you that's where he was standing. In the same general
8 area. I don't think they could be exact. That just
9 wouldn't be realistic, but past the pole in this general
10 area; which, by the way, that is where the police pull up
11 and park, but, you know, not knowing that at the time they
12 responded to the scene, they did the best they could and
13 tried to address it later. Okay. That's just undue
14 criticism. They're not mind readers and they don't have a
15 crystal ball. But they both told you Bounce is up and the
16 defendant is down here.

17 Now, maybe they're off by a few feet, but here's
18 what we know. Both of them told you here in court that
19 they say that defendant shoot the victim. And they both
20 told a very similar story about what happened until we get
21 to the turning of Schantrika, which I'll address that. But
22 let's talk about what Cameo told you.

23 He said that they went out there. Things were kind
24 of back and forth like it might be a fight and then the
25 victim said, Nah, I'm not going to do it, turns his back.

1 What are -- what are his hands doing? What did Dr. Ross
2 tell you? Where are his bullet wounds. Like I told you,
3 you never saw it coming. Schantrika told you that he said
4 something to the effect of, I'm not going to do it because
5 we're going to still going to be boys tomorrow.

6 Okay. There's absolutely no evidence that anything
7 other than the victim turning to walk away is what was
8 happening at the time. Now, Schantrika's testimony about
9 what happened got confusing, clearly, the victim was shot
10 in the back. And she told you and Cameo told you that the
11 defendant pulled a gun out of his waistband, pointed it at
12 the victim. Schantrika said it started lower and went up.
13 Okay. That's her perception of what happened. What did
14 Dr. Ross tell you? The bullet wounds into the back are
15 pretty much straight.

16 Now, they both told you that the victim had some
17 physical reaction to being shot, which you would expect.
18 He drew his hand in. If you get shot in the hand, wouldn't
19 you draw it in and do like that? Yes, you would. And he
20 turned to run and stumbled and then they both told you that
21 he went around -- the victim went around the back of
22 Ms. Mary's trailer. And ladies and gentlemen, as you know,
23 about five shots were fired into the victim. There's just
24 no -- I mean that's what happened. Okay? And four shell
25 casings were found. And those four shell casings are all

1 found in the same general area, which would be consistent
2 with what both witnesses told you about where the defendant
3 was standing when he murdered the victim. Okay.

4 Agent Eichenmiller told you that they don't do
5 trajectory tests for shell casings at SLED because there's
6 too many variables. But you'll have these back there and I
7 want you to look at them. In the pictures they look a lot
8 bigger, but look how small they are in real life. They're
9 tiny. That's why the deputies who were responding to the
10 scene were making such an effort to find where they were
11 and preserve them because they're small. Is it possible
12 that one of them was behind Ms. Mary's trailer like Cameo
13 said and because it's small and got buried in the dirt or
14 something they didn't find it.

15 Well, we know there had to be five shell casings.
16 So they didn't find one. I wish they did. I wish I had
17 every single thing perfect. But, ladies and gentlemen, you
18 need to remember that everything that he said that the
19 police didn't do or they didn't find, it don't negate or
20 take away from the fact that this incident happened. Okay?
21 The victim was murdered and the eyewitnesss came in here
22 and told you what they saw.

23 Now, y'all hear testimony and y'all heard it and I
24 think Mr. Gibbons got Erica and Octavia confused because I
25 call Octavia the next eyewitness, okay? And she told you

1 what happened was that she -- she's been there a lot. She
2 knows this place. She knows Dallas Circle. She told you
3 that she was driving in and she got to about Fats' trailer
4 and she was able to see the defendant shoot the victim.
5 She said she saw him shoot the victim. She saw the fire
6 from the gun.

7 Ladies and gentlemen, they know each other. She
8 told you she's known him for some period of time and he's
9 standing under a street light. And she recognized him.
10 Okay? I mean she knew him. I don't understand why that's
11 unreasonable. And she said, I'm getting out of here. And
12 she left and went home and told her mama and told her to
13 call 9-1-1.

14 Now, I submit to you that during that period of
15 time is the time that both Cameo and Schantrika are getting
16 the heck out of Dodge; and Schantrika told you that she
17 followed the victim a little ways around, but then it was
18 dark and then she went into the front door right on the
19 other side and Cameo told you that he went in the back
20 door. So they're both in this trailer and mass chaos is
21 going on. And they're not standing in the same spot.
22 Cameo told you that he was by the window with the AC unit
23 and that the window was up a little bit so he could hear
24 what was happening. And Schantrika told you that she's
25 looking through the back door through the diamond window

1 into the backyard where, as you can see in this picture,
2 there's not a light, but there's a street light back here.
3 You can see it shining in this picture. And they both told
4 you what they saw.

5 Both of them told you they saw the defendant
6 standing over the victim, holding him by the neck with a
7 gun to his head and Cameo told you he said something like,
8 Quit shaking, Quit shaking. And Schantrika told you that
9 he said, If you weren't my boy, I'd kill you right now. I
10 mean, you heard what she said. I'm not trying to directly
11 quote her, but that was the gist of it. Isn't it possible
12 that he said both things and that's what they each heard?

13 I mean, the way they described it, they both saw
14 it, they both were there. Holding him under the neck with
15 a gun to the back of his head while he was lying on his
16 stomach. He'd already been shot with a wound that was
17 going to kill him in a very brief period. Ladies and
18 gentlemen, that's cold blooded. That's murder. That's
19 what the defendant did.

20 Now, let's talk about Erica. Erica told you that
21 she'd been out at a different party the night -- or that
22 same night and she was coming in and that she was coming to
23 Ms. Mary's -- Ms. Mary's is a popular spot, apparently --
24 and that she saw the defendant -- she was doing like this,
25 coming between the two trailers right here. And let me

1 remind you both Schantrika and Cameo testified the victim
2 was laying on the ground right here, right by this trailer.

3 And the defendant, he's not a boy. He's a man. He
4 just shot somebody. I told y'all I was going to kill me a
5 motherfucker. I told y'all motherfuckers I was going to do
6 it. And he's doing this and Erika sees him and she heard
7 him. And she told you what she heard and she skedaddles
8 into the house. So did she come in the front door or did
9 she come out of the bathroom, which Schantrika told you
10 right over here or is it -- standing at the front door,
11 it's possible Schantrika is confused. The lights are off
12 and it's chaos, okay? But she told you she saw that. And
13 Cameo told you that he saw the same thing. He was
14 swaggering. I told y'all I was going the kill somebody. I
15 told you. Okay?

16 And that happened and that's between the trailers.
17 And then finally, we have Hakim Talib or Talib, I shouldn't
18 mispronounce it, who really didn't want to come in here
19 because he -- I think he said, I try to stay away from all
20 that mess. But this is his house, where he lived at the
21 time. Okay? And he was working a twelve-hour day that day
22 and he came home and he was in his studio. He told you his
23 music name is Jersey, and that he was in the studio and he
24 heard shots; and he goes to the door and what does he see?
25 He sees the defendant running from that same area between

1 the trailers, the same thing that Erica said, the same
2 thing that Cameo said and from the same point where
3 Schantrika said she saw him originally, holding -- with the
4 gun to his head, saying I told y'all, I told y'all. That's
5 because he was proud of what he'd just done, which was
6 murder the victim. Okay?

7 That's what happened, ladies and gentlemen. And if
8 you look at all the witness's testimony and put it all
9 together, there's kind of a picture I think you can start
10 to see. Everybody's hanging out by the pole, light pole, a
11 pole on the ground. The two of them, the victim and the
12 defendant get in an argument and go out here. The victim's
13 up here, the defendant's back by No. 12 and he shoots him.
14 And the victim runs around there and collapses on the
15 ground and the defendant comes over there, puts the gun to
16 his head and says that if you weren't my boy, I'd kill you
17 now, with the gun to his head. And that's what the
18 witnesses saw. Octavia saw it, she backed out. Erica saw
19 it, she ran in.

20 Ladies and gentlemen, that's what happened, okay?
21 These eyewitnesss came in here and told you that.

22 Now, there's a lot of reasons why, as I stated
23 before, their testimony would not be consistent, but they
24 don't have anything to gain. There's nothing to gain by
25 coming in here and getting up on the stand, which none of

1 them seemed really thrilled about; and they all got
2 questioned about their criminal records and to admit it and
3 had to take it, which they should have because they had
4 them. And they all told you, that defendant was the person
5 out there with the gun, okay? And now, there's some other
6 testimony from the witnesses that said that Tall Tave was
7 shooting also. And you heard the testimony. And I submit
8 to you that the shooting happens, the defendant shoots the
9 victim. The victim ones around the trailer. Tall Tave is
10 pissed off. That guy murdered his home boy. So he has to
11 go and get his gun from wherever it is, his car? Maybe his
12 gun was in -- maybe his gun was in Fats' trailer because
13 there's that --

14 **MR. GIBBONS:** I object to evidence outside the
15 record.

16 **THE COURT:** Stay within the record.

17 **MS. YOUNG:** Yes, sir.

18 In any event, the witness told you that Tall Tave
19 came up and said something to the effect of, You murdered
20 my home boy, and shot at London and that London ran off and
21 that he didn't -- he, Tall Tave didn't chase him, but he
22 stood there and knelt down with the victim on the ground.
23 Okay?

24 At that point in time I believe the testimony
25 was -- and you've heard it. The defendant ran around back

1 here, away from where the victim was, back around behind
2 Ms. Mary's trailer, back here where he ran. That's where
3 the gun was found and he ran home.

4 Now, I think that Mr. Gibbons raised the specter,
5 I'll call it, of contamination by -- this is again, not
6 only is there a vast conspiracy, there is complete and
7 utter incompetence on behalf of these trained law
8 enforcement officers and that Lieutenant Clay Adams, he's
9 the lieutenant over the forensic division, contaminated all
10 these things because he didn't handle evidence properly.
11 Well, I want to bring your attention back to what Agent
12 Webb told you. And she told you that she found DNA that
13 matched the defendant on the gun and she was asked about
14 CODIS and guess what she told you, law enforcement people,
15 law enforcement officers and salespeople that have
16 convictions and people that have concealed weapons permits,
17 they're in CODIS too.

18 There's no testimony from her about Clay Adams
19 being found. Smoking mirrors. That's misdirection.
20 That's not what happened in this case. The simplest
21 explanation for everything that happened is it happened
22 like the eyewitnesses told you. The defendant shot the
23 defendant -- victim and that's why he had gunshot residue
24 on his jacket and he had his DNA found on the gun. That's
25 what happened.

1 Bear with me just a moment. There's a lot of
2 testimony and I don't want to miss out on anything.

3 But again, I do just want to point out that y'all
4 heard the witness's testimony and you'll have a chance to
5 go back there and watch the video if you want it and you'll
6 have a chance to listen to the 9-1-1 calls. Let me address
7 that, okay, because that's been brought up.

8 There's no hiding the evidence from y'all. The
9 State brings you the evidence that proves the case. The
10 eyewitnesses who saw it, the SLED agents who did scientific
11 testing, completely separate and apart not knowing what
12 happened. And both of them came to the same conclusion.
13 Five eyewitnessss, three SLED people, they were out here
14 separately and they both come to the same conclusion and
15 that's that the defendant murdered the victim. I lost
16 where I was going with that one.

17 The simplest explanation. That's the one that's
18 most reasonable to believe because that's what happened and
19 the defense attorney, Mr. Gibbons, he's a great defense
20 attorney, I've worked with him. He came up here and told
21 you all these things that could have been done. And ladies
22 and gentlemen of the jury, they're just not relevant. Okay?

23 The officers respond to the scene. They take a
24 long time, but they're there in eight minutes or so. It
25 seems like forever and I'm sure it felt that way. And

1 Schantrika immediately comes up to them and tells them what
2 happened. And they go and find the defendant where she
3 says he's going to be wearing the clothes that she saw him
4 wear and then they go and stand over the gun and look at
5 the shell casings and kind of checked all that. And, you
6 know, hypothetical evidence for people that don't want to
7 talk to the police is just not something that you consider.
8 You can consider the evidence as you heard from here.
9 That's what matters and that's what tells you what happens
10 in this case. Okay?

11 Now, I just remind you that the defendant is
12 charged with two charges: Murder and possession of a
13 weapon during the commission of a violent crime.
14 Possession of a weapon charge is simply utilizing a handgun
15 to murder somebody and murder is killing of another human
16 being with malice aforethought. And I told y'all that
17 malice was ill will or bad feeling and didn't have to exist
18 for any predetermined set period of time. But ladies and
19 gentlemen, shooting somebody in the back and then going up
20 and putting a gun at their head while they're lying there
21 on the ground dying, if that doesn't show you malice? It
22 does show you malice. Okay?

23 The judge is going to instruct you on reasonable
24 doubt and he's going to tell you that if you are firmly
25 convinced that the State has proven their case, then that

1 meets the burden beyond a reasonable doubt. Is there any
2 question that this was cold-blooded murder? The defendant
3 (sic) never saw it coming. He turned his back. Bang,
4 bang, bang, bang, bang.

5 THE COURT: Ladies and gentlemen, my charge is
6 going to be about 15 minutes. Y'all want to take a break
7 before I give that to you or you want to go ahead and...

8 You want to take a break. All right. I'll give
9 you about five minutes, not much longer. So y'all step
10 back to the jury room. Do not discuss the case while
11 you're there and I'll bring you back in about five minutes.
12 No cigarettes.

13 (WHEREUPON the jury left the courtroom at 2:53
14 p.m.)

15 THE COURT: Are y'all going stay there? I'll leave
16 your client here if you're going to stay.

17 Let me just leave Mr. Wooden here for a few
18 minutes.

19 (WHEREUPON a recess was observed.)

20 THE COURT: All right. Mr. Holtzhouser, I want to
21 keep those doors closed during this charge so if anybody's
22 coming in, they better do it quickly.

23 Is Mr. Smith out there?

24 (WHEREUPON Mr. Smith entered the courtroom.)

25 MR. GIBBONS: Your Honor, during the break, we went

1 through all the exhibits and they're all there.

2 THE COURT: All right. Let's bring the jury in if
3 we could, Mr. Whittle.

4 THE BAILIFF: All right.

5 (WHEREUPON the jury entered the courtroom at 3:01
6 p.m.)

7 JURY CHARGE

8 THE COURT: Ladies and gentlemen, the indictments
9 charge the defendant in this case with the offenses of
10 murder and possession of a firearm during the commission of
11 a violent crime. I remind you that the defendant was
12 arrested, charged, and indicted in this case is not
13 evidence in the case and cannot be considered by you as
14 evidence of guilt; nor does it create any presumption or
15 inference of guilt. Those, in fact, are simply the formal
16 written instructions which contain the charges made against
17 the defendant. They are the formal documents by which this
18 case is brought into this court.

19 Now, the indictments in this case allege several
20 different offenses against the defendant. The indictment
21 for murder alleges that the defendant did in Aiken County
22 on or about October 1, 2011, feloniously, willfully and
23 with malice aforethought murder David Maple by means of
24 shooting him multiple times with a handgun and that the
25 victim did die as a proximate result thereof.

1 The indictment for possession of a firearm during
2 the commission of a violent crime alleges that Mr. Wooden
3 did in Aiken County on or about October 1, 2001 -- I mean
4 '11, possess or visibly display during the commission or
5 attempted commission of a violent crime, that being murder.

6 Now, each indictment alleges a separate and
7 distinct offense. You must decide each indictment
8 separately on the evidence and the law applicable to it
9 uninfluenced by your decision as to any other indictment.
10 The defendant may be convicted or acquitted on one of the
11 offenses and not convicted on the other. You will be asked
12 to write a separate verdict of guilty or not guilty for
13 each indictment.

14 Now, ladies and gentlemen, I do tell you that if
15 you do not find the defendant guilty of the murder, then he
16 could not be guilty of the offense of possessing a firearm
17 during the commission of a violent crime because there
18 would not have been a murder by him.

19 Now, Mr. Foreman and ladies and gentlemen, to these
20 indictments the defendant has entered pleas of not guilty,
21 which places upon the State, the burden of proving the
22 defendant guilty. A person charged with committing a
23 criminal offense in South Carolina is never required to
24 prove himself innocent. I charge you that it is a vital,
25 important, rule of the law that the defendant is in a

1 criminal trial, no matter how great or serious may be the
2 offense for which he is charged must always be presumed
3 innocent until his guilt has been proven beyond a
4 reasonable doubt.

5 This presumption of innocence remains with the
6 defendant at all times, from the moment of his appearance
7 in this court, throughout the trial and until you, the
8 jury, have upon the testimony and the evidence presented,
9 reached a verdict of guilty beyond a reasonable doubt. For
10 it is the solemn duty of the jury, if not clearly convinced
11 of the defendant's guilt beyond a reasonable doubt to
12 acquit the defendant.

13 So the burden of proof is upon the State to
14 establish by evidence to your satisfaction, the guilt
15 beyond a reasonable doubt of this defendant here on trial
16 for the crime of murder and possession of a firearm during
17 the commission of a violent crime.

18 Now, what is a reasonable doubt? A reasonable
19 doubt is the kind of doubt that would call a reasonable
20 person to hesitate to act. If you have such a doubt as to
21 the guilt of the defendant, then he would be entitled to a
22 verdict of not guilty. Proof beyond a reasonable doubt is
23 proof that leaves you firmly convinced of the defendant's
24 guilt. Reasonable doubt may arise from evidence which is
25 in the case or from the absence or lack of evidence in the

1 case.

2 If you think that the defendant is probably guilty
3 or the circumstances are suspicious is not enough. You
4 alone must make the determination of whether or not
5 reasonable doubt exists as to the guilt of the defendant.

6 Now, there are two types of evidence which are
7 generally presented during a trial, direct evidence and
8 circumstantial evidence. Direct evidence is the testimony
9 of a person who claims to have actual knowledge of a fact,
10 such as an eyewitness. It is evidence which immediately
11 establishes the main fact to be proved.

12 Circumstantial evidence is proof of a chain of
13 facts and circumstances indicating the existence of a fact.
14 It is evidence which immediately establishes collateral
15 facts from which the main fact may be inferred.
16 Circumstantial evidence is based on inference and not on
17 person knowledge or observation. The law makes absolutely
18 no distinction between the weight or value to be given
19 either direct or circumstantial evidence.

20 Nor is a greater degree of certainty required of
21 circumstantial evidence than of direct. You should weigh
22 all of the evidence in this case and half weighing all of
23 the evidence, if you're not convinced of the guilt of the
24 defendant beyond a reasonable doubt, you must find the
25 defendant not guilty.

1 Now, Mr. Foreman, and members of the jury under our
2 constitution and laws, you are the finders of the facts in
3 this case. I do not have the right to pass upon the facts
4 or even to express any opinion I might have as to those
5 facts. Nor may I intimate in any way what I may think
6 about the guilt or innocence of the defendant.

7 You are also the sole judges of the credibility,
8 the believability of the witnesses who have testified in
9 this case. In passing upon the credibility, you may take
10 into consideration many things, such as the demeanor or the
11 manner of testifying of the witness; whether the witness
12 had reason to be biased or prejudiced; whether a witness's
13 testimony was contradicted on the one hand or supported and
14 corroborated on the other hand. You certainly do not
15 determine the credibility or believability by counting the
16 number of witnesses for either side. You may believe a
17 small portion of a witness's testimony and disregard the
18 larger, or vice versa. You may believe one witness against
19 many or many against the one.

20 Now, you have heard the testimony of a witness --
21 witnesses who have special knowledge, skills, experience,
22 training or education in a particular profession or
23 occupation who have given their opinions as experts as to
24 matters in which they are skilled. In determining the
25 weight to be given such opinions, you should consider the

1 qualifications and the credibility of the expert and the
2 reasons given for the opinion. You are not bound by such
3 an opinion. Give it the weight, if any, to which you deem
4 it is entitled.

5 Now, ladies and gentlemen, a person who has a past
6 criminal record is competent to testify during trial. A
7 past record does not affect the ability of that witness to
8 testify. The past record may only be considered by you, if
9 at all, in determining the witness's believability.

10 Remember, you are are the sole judges of the facts of the
11 case and the believability of any and all witnesses.

12 All of these things, ladies and gentlemen, you will
13 consider, bearing in mind that you should give the
14 defendant the benefit of a about reasonable doubt.

15 Now, I instruct you and emphasize that the fact
16 that the defendant did not testify is not a factor to be
17 considered by you in any way in your deliberations and in
18 your consideration on the question of the guilt or
19 innocence of the defendant. It must not be considered by
20 you in any manner whatsoever. A defendant has the
21 constitutional right to remain silent and the assertion of
22 this right must not be considered by you in your
23 deliberations. I repeat, under your oath, you are not
24 to -- you are to draw no conclusion whatsoever from the
25 fact that the defendant in this case did not testify. The

1 fact that this defendant did not testify. That should not
2 even be discussed by the jury in the jury room. The burden
3 of proof, as I stated to you is on the State. The
4 defendant is not required to prove his innocence. The
5 burden remains on the State to prove guilt beyond a
6 reasonable doubt.

7 Now, the constitution and the laws, which make you
8 the finders of the facts make me the judge of the law and I
9 am the sole and only instructor of the law. You must
10 accept as correct the law that I charge and apply it to the
11 evidence as you find it and you reach your verdict.

12 And finally I charge you in this regard, you should
13 not be concerned about what you think the law ought to be
14 or what you wish the law were be -- would be, but only what
15 I charge you the law to be.

16 Now, the defendant is charged with murder. The
17 State must prove beyond a reasonable doubt that the
18 defendant killed another person with malice aforethought.

19 Now, what is malice? Malice is defined in the law
20 of homicide as a term of art. It is a technical term
21 importing wickedness and excluding just cause or legal
22 excuse. It is something that springs from the wickedness
23 from depravity, from the depraved spirit, from a heart void
24 of social duty and fatally bent on mischief.

25 Malice is hatred, ill will or hostility towards

1 another person. It is the intentional doing of a wrongful
2 act without just cause or excuse and with an intent to
3 inflict an injury or under circumstances that the law will
4 infer an evil intent.

5 Malice aforethought does not require that the
6 malice exist for any particular time before the act is
7 committed, but malice must exist in the mind of the
8 defendant just before and at the time the act is committed.
9 Therefore, there must be a combination of the previous evil
10 intent and the act. Malice aforethought may be express or
11 inferred. These terms express or inferred do not mean
12 different kinds of malice, but merely the manner in which
13 malice may be shown to exist; that is either by credible
14 evidence or by inference from the facts and circumstances
15 which are proved.

16 Express malice is shown when a person speaks words
17 which express a hatred or ill will for another or when the
18 person prepared beforehand to do the act which was later
19 accomplished. For example, lying in wait for a person or
20 any other act of preparation going to show that the deed
21 was within the defendant's mind with express malice.

22 Malice may be inferred through conduct showing a
23 total disregard for human life. Malice may be inferred
24 from the willful, deliberate, and intentional doing of an
25 unlawful act without just cause or legal excuse. Malice

1 may also arise when the deed is done with a deadly weapon.
2 A deadly weapon is any article or instrument which is
3 likely to cause death or great bodily harm. Whether an
4 instrument has been used as a deadly weapon depends on the
5 facts and circumstances of each case, but even if the facts
6 have proven that are sufficient to raise an inference of
7 malice, this inference could simply be an evidentiary fact
8 to be taken into consideration by you with all of the other
9 evidence in the case, and you may give it such weight as
10 you determine it should receive as to whether or not malice
11 has been proven beyond a reasonable doubt.

12 The defendant is also charged with possession of a
13 weapon during the commission or intent to commit a violent
14 crime. The State must prove beyond a reasonable doubt that
15 the defendant was in possession of a firearm or visibly
16 displayed what appeared to be a firearm during the
17 commission of a violent crime. A firearm means any machine
18 gun, automatic rifle, revolver, pistol, or any weapon which
19 is designed to or may be readily converted to expel a
20 projectile.

21 In order to find the defendant guilty of possession
22 of a weapon during a violent crime, you must first find
23 that the defendant is guilty of either committing a violent
24 crime. Murder is a violent crime.

25 Ladies and gentlemen, I charge you that voluntary

1 intoxication is never an excuse or a defense to a crime. A
2 person who voluntarily renders himself intoxicated is no
3 less responsible for his acts while in such condition. If
4 a person drinks intoxicating liquors or ingests something
5 that makes him intoxicated and if while in that condition
6 commits an act which would be a crime if it had been
7 committed by a sober person, the fact of drunkenness would
8 not relieve the intoxicated person from responsibility.
9 Voluntary intoxication is not an excuse for or a defense to
10 a crime.

11 Now, ladies and gentlemen, mere presence at the
12 scene is not sufficient to prove someone guilty of a crime.
13 A defendant's presence where a crime is being committed or
14 mere association with a person who commits a crime does not
15 make a defendant an accomplice or an aider and abetter to
16 the person committing the crime. The burden is on the
17 State to prove every element of the crime charged. If you
18 reviewing all of the evidence that the State has proved
19 that the defendant was only present at the scene of a crime
20 and if they have not proved beyond a reasonable doubt any
21 participation in the crime, then you must find the
22 defendant not guilty. The law is proof of presence at the
23 scene of a crime is not sufficient to find someone guilty.

24 Mr. Foreman, and ladies and gentlemen, you have
25 been selected as fair and impartial jurors, sworn to

1 impartially try and determine the facts of this case. And
2 when you comply with your oath to do so, then no one will
3 have a right to criticize your verdict and you will have
4 fully discharged your duty as jurors. You are to decide
5 this case according to testimony that you've heard from the
6 lips of the sworn witnesses along with other evidence
7 introduced.

8 I charge you that as a juror, you must decide the
9 issues in this proceeding without bias and without
10 prejudice to any of the parties. You cannot allow yourself
11 to be governed by sympathy, by prejudice, by passion, by
12 public opinion, or by any other arbitrary factor. Both the
13 State and the defendant have the right to expect that each
14 of you will carefully and impartially consider all of the
15 evidence in the case and that you will follow the law as I
16 have explained it to you.

17 Now, Mr. Foreman and ladies and gentlemen of the
18 jury, I have prepared two verdict forms here. Each verdict
19 form has two possible verdicts. I have prepared a verdict
20 form with respect to the charge of murder and a verdict
21 form with respect to the charge of possession of a firearm
22 during the commission of a violent crime. The two possible
23 verdict forms on each of the verdict forms -- the two
24 possible verdicts on the forms is, we, the jury unanimously
25 find the defendant guilty; or we, the jury unanimously find

1 the defendant not guilty.

2 As this verdict form says, ladies and gentlemen,
3 your verdict must be a unanimous verdict of all twelve
4 jurors. It cannot be eleven/one or seven/five or six/six
5 or it's got to be the unanimous verdict of all twelve
6 jurors on both verdict forms.

7 As I also said, if you do not find the defendant
8 guilty of the offense of murder, then you cannot find him
9 guilty of possession of a firearm during the commission of
10 a violent crime.

11 Now, in a minute, ladies and gentlemen, all but the
12 alternate -- Mr. Alternate, if you would stay here with
13 me -- I'm going to ask y'all to step back to the jury room,
14 but I'm going to ask that you not begin discussing the case
15 at all. I have to review with the attorneys the charge
16 that I just gave you and if the attorneys believe I failed
17 to charge you in some way or I charged you incorrectly and
18 I agree with them, I will bring you back and give you the
19 additional charge.

20 If I do not agree or there's no exceptions to the
21 charge, then I will have the bailiff bring this -- these
22 verdict forms, along with all of the evidence that has been
23 introduced in this case, all of the exhibits. At that
24 time, you can begin your deliberations.

25 Mr. Foreman, when you have reached a verdict on

1 each verdict form, I'm going to ask you to circle what --
2 completely -- whatever that verdict is. I'm then going to
3 ask you to sign the verdict form as foreperson of the jury
4 and date the verdict form. I'm going to ask you to do that
5 on both of them if you have to fill out both of them. If
6 you only find the defendant -- if you find the defendant
7 not guilty of murder, then you don't have to do anything
8 with the other verdict form.

9 Now, I think that's it. All right. I'm going to
10 let y'all step back to the jury room. Do not discuss
11 your -- the case until you get something further from me --
12 oh, I know what I wanted to tell you, once you reach your
13 verdict if you'll knock on the door or --

14 Y'all still have a light system?

15 **THE BAILIFF:** There's a light system.

16 **THE COURT:** There's a light system out here. I
17 guess the bailiff has shown you how that works. Turn the
18 light on that you have reached a verdict on both verdicts
19 and we will bring you back so that your verdict can be
20 published.

21 Okay. So y'all step back to the jury room.

22 (WHEREUPON the jury left the courtroom at 3:20
23 p.m.)

24 **THE COURT:** All right. Mr. Cardenas, we're going
25 to be able to let you go at this time. I certainly

1 appreciate your willingness to make yourself available for
2 the last three days. As you see, we had to use one of you
3 and the method that we used, we put your names in something
4 and we draw it out and you're either fortunate enough that
5 you didn't get drawn or unlucky enough that you didn't get
6 drawn. I don't know how you feel -- a lot of jurors that
7 are alternates want to participate in the final decision.
8 A lot of them are glad they don't have to. So -- but I do
9 appreciate your willingness to serve. We're actually going
10 to be able to let you go for the rest of the week.

11 I guess y'all will take his badge.

12 THE BAILIFF: Yes, sir.

13 THE COURT: Does he need to do anything with the
14 clerk's office?

15 If you need something for work -- you need an
16 excuse for work?

17 THE JUROR: Yes, sir.

18 THE COURT: What should we do about that, Clerk?

19 THE CLERK: They'll take him over there to see
20 April.

21 THE COURT: You should be getting a check in the
22 not too distant future of not much money, but there will be
23 a lot of appreciation in that envelope. It won't show, but
24 take my word for it, we mean it and I do appreciate your
25 willingness to do it and I hope you realize how important

1 you are to the whole process.

2 THE JUROR: Thank you.

3 THE COURT: You have a nice weekend.

4 THE JUROR: You too.

5 THE COURT: You're free to leave at this time.

6 (WHEREUPON the juror left the courtroom.)

7 THE COURT: All right. Anything from the State
8 with respect to the instructions?

9 MS. YOUNG: Your Honor, I don't have any objections
10 to the charge, the only thing that I didn't hear was what
11 they should do if they have a question.

12 THE COURT: Well, I don't tell them what they
13 should do because I figure they'll figure it out; and I
14 hope they don't and just deliberate and get the verdict.
15 It's the power of suggestion if I tell them that.

16 MR. GIBBONS: No objections from the defense
17 either, Your Honor.

18 THE COURT: All right. Thank you. Y'all have
19 already marked -- put the exhibits in order --

20 And Madame Court Reporter, if you'll put this...

21 We'll stand in recess in this matter.

22 (WHEREUPON this case was in recess while the jury
23 was in deliberations. Deliberations began at 3:22 p.m.)

24 THE COURT: All right. Madame Solicitor and Mr.
25 Gibbons -- where's your client? Could we bring him out,

1 please.

2 (WHEREUPON the defendant was brought into the
3 courtroom.)

4 JURY QUESTION

5 THE COURT: All right. They want -- this thing
6 says testimony about GSR on Defendant's hands. I don't
7 know what there is about GSR on defendant's hands.

8 DNA results of -- gun. Fingerprints on gun.

9 Now, does that mean they want to hear the experts
10 completely on that stuff? Why don't I bring them in and
11 let them listen to it.

12 Bring them in, if we could.

13 (WHEREUPON the jury entered the courtroom at 4:01
14 p.m.)

15 THE COURT: All right. Mr. Foreman, I guess you
16 know -- apparently y'all want to listen to the testimony
17 concerning GSR on defendant's hands. Do y'all remember
18 where that might be?

19 Is that correct? You want to hear all of that
20 testimony?

21 THE JUROR: Yes, sir, specifically, I think the
22 SLED agent -- the results of the GSR on his hands.

23 THE COURT: All right. And then you want to hear
24 DNA results of gun?

25 THE JUROR: Yes, sir.

1 **THE COURT:** Does that mean you want to hear all of
2 the testimony about the testing and all that or --

3 **THE JUROR:** Just the -- I think what specifically
4 how many markers were matched up.

5 **THE COURT:** All right. And then fingerprints on
6 the gun?

7 Y'all are going to have to -- maybe y'all can help
8 Brenda identify where that might be in the --

9 It may take a few minutes.

10 All right. We're going to try to find that stuff
11 on the tapes. We're going to try to get all three of them
12 so when you come back we'll play it bam, bam, bam. So if
13 y'all would step out, we'll get you back in here in a few
14 moments.

15 (WHEREUPON the jury left the courtroom at 4:03
16 p.m.)

17 **THE COURT:** Your Honor, may we approach?

18 (WHEREUPON, there was a bench conference out of the
19 hearing the Court Reporter.)

20 (WHEREUPON the jury entered the courtroom at 4:09
21 p.m.)

22 **THE COURT:** All right. Ladies and gentlemen, we
23 were hoping to be able to shorten this, but I guess we're
24 not able to stipulate to some of the matters.

25 They have been able to stipulate to the fact that

1 there was no gunshot residue on the hands of the defendant.
2 So we have now the -- Agent Webb with SLED -- we're going
3 to start her testimony from the beginning and you can stop
4 me when you hear whatever it is you want to hear. Whatever
5 it is you want to hear, when you've heard enough you can
6 stop us and we'll stop and then we'll have to come back on
7 the fingerprints. Apparently the testimony of the
8 fingerprint fellow is relatively short and we'll have to
9 locate that and we'll play it.

10 Okay. Madame Court Reporter?

11 (WHEREUPON the following testimony of Amanda Webb
12 was played back to the jury:)

13 **DIRECT EXAMINATION**

14 BY MS. YOUNG:

15 Q Agent Webb, are you employed at SLED?

16 A Yes, I am.

17 Q And how long have you been employed there?

18 A A little over -- about six years.

19 Q And in what capacity are you employed with SLED?

20 A I'm a forensic scientist in the DNA case work
21 department.

22 Q Will you please describe for the jury your
23 background, training, education, things of that nature?

24 A Certainly, I have a Bachelor's of Science in
25 Forensic --

1 (WHEREUPON it was indicated by the jurors that they
2 wanted to fast forward through the testimony.)

3 THE COURT REPORTER: How far?

4 THE COURT: Well, just the general qualifications
5 and being qualified as an expert, y'all don't need to hear
6 that, do you?

7 (WHEREUPON the court reporter began searching for
8 the portion beyond the qualification.)

9 THE COURT: Pardon?

10 THE JUROR: I think the testimony in question is
11 toward the end of her testimony. It was specifically
12 about -- I think 15 total markers or either 8 or 12 that
13 they actually were the defendant.

14 THE COURT: Y'all prepared to agree on that?

15 MR. GIBBONS: I think we need to hear it, Judge.

16 THE COURT: All right. See if you can find that
17 portion of the testimony, Brenda. I think it was toward
18 the end of the State's examination.

19 (WHEREUPON the correct portion of testimony was
20 being searched for by the court reporter and the
21 attorneys.)

22 (WHEREUPON the following testimony of Amanda Webb
23 was played for the jurors:)

24 A Yes, that is the swabs from the .25 caliber pistol.
25 I was able to develop a profile from that and it's a

1 possible mixture. And what that means is that I was really
2 unable to determine if there was only one person's DNA on
3 the item or if there could have been more than one person.
4 That's what we call a mixture. I was unable to determine,
5 simply because there wasn't a full profile of DNA. There
6 wasn't the complete amount of DNA and that's often found on
7 touch items. Just because touch DNA doesn't provide,
8 really, as much DNA as some of the other things, like blood
9 or buccal standards that we get collected. So that's not
10 uncommon that it wasn't the full amount of DNA.

11 But from what I did develop, London Wooden could
12 not be excluded as a contributor to the item. And since I
13 stated his DNA as matching to the item, I had to calculate
14 a statistic and the statistic is the probability of
15 randomly selecting an unrelated individual who could have
16 contributed to this mixture is approximately one in 16,000.
17 Basically what that does is just gives weight to the
18 evidentiary item. It tells basically how rare the DNA that
19 I was able to calculate a statistic on is.

20 So I was -- out of 16,000 individuals, if you pick
21 someone at random, one of those persons could potentially
22 have that same DNA.

23 Q Did you form any opinions regarding SLED Item 10
24 with regard to the victim in this case, David Maple?

25 A Yes. David Maple was excluded from this item.

1 That means his DNA wasn't on the item.

2 Q At all?

3 A At all.

4 Q And you've previously testified London Wooden would
5 not be excluded. Could you further describe what that
6 means?

7 A Yes. Cannot be excluded, it's really just a
8 preference of wording for our reports, but cannot be
9 excluded means that he's included, that I did find matching
10 DNA.

11 Q So based on your training and experience, what you
12 tested, is that considered a match?

13 A Yes, it is.

14 Q So what you tested, they match from the firearm
15 handle to the defendant in this case?

16 A Yes, it is.

17 MS. YOUNG: No further questions.

18 THE COURT: All right. Mr. Gibbons.

19 (WHEREUPON the recording was turned off.)

20 THE COURT REPORTER: You want me to continue?

21 THE COURT: Well, that must have been when Mr.

22 Gibbons asked about -- that would have been where in --

23 MR. GIBBONS: I think it was after I think it was
24 suitable to put in CODIS and that 's when she turned and
25 started reading the chart.

1 THE COURT: I know, but it was specifically
2 requested about how much matches were there.

3 MR. GIBBONS: Yes, sir.

4 THE COURT REPORTER: That was at the end yours?

5 MR. GIBBONS: Kind of toward the end, not at the
6 very end.

7 THE COURT: This is not an inexact science, ladies
8 and gentlemen, upon locating quickly the information on the
9 tape.

10 THE COURT REPORTER: I'm going to start it right
11 here, Your Honor, and see if this is what they want.

12 THE COURT: Tell me how far into his testimony are
13 you.

14 THE COURT REPORTER: It's pretty close to the end
15 of his.

16 THE COURT: All right.

17 (WHEREUPON the following testimony of Amanda Webb
18 was played for the jury:)

19 A ...basically it just helps locate any person of
20 interest. Any person who might have left their DNA at the
21 scene.

22 So what happens is that profile is entered into a
23 computer data base. In this case it's a combined DNA index
24 system and it just -- it houses known individuals' DNA
25 profiles. So if it happened to match a certain person,

1 then it would return a hit, which is a match and that would
2 just allow an investigator to go out and contact that
3 person and do some investigation work.

4 Q So in this particular case did...

5 (WHEREUPON the recording was stopped.)

6 THE COURT REPORTER: I need go forward a little bit
7 more, Judge.

8 THE COURT: Was that on direct or redirect?

9 THE COURT REPORTER: It was on direct. I must have
10 pushed a button without realizing it.

11 I think I found it.

12 (WHEREUPON the following testimony of Amanda Webb
13 was played for the jury:)

14 Q And it's just a little small sample and it might be
15 two people, it might be one?

16 A That's correct.

17 Q Now, you talked about CODIS, does something have to
18 be at a certain level to get into CODIS or can you put that
19 one in two result into CODIS?

20 A It has to be a certain level. That's correct. We
21 need to have out of the 15 complete locations of DNA you
22 have to have 8 locations.

23 Q And did you have 8 locations in this sample of one
24 in 16,000?

25 A Yes, I did.

1 Q So you could have put that in CODIS, correct?

2 A Yes, that's correct.

3 Q And you could have run, Aiken County, South

4 Carolina to see if there's anybody that you already had on

5 file that would match that DNA, correct?

6 A Yes, that correct.

7 Q And was it put in CODIS?

8 A Yes, it was.

9 Q And did you run it that way?

10 A Yes, I did.

11 Q And did you get if anyone else in South Carolina?

12 A No, there were no matches returned for that item.

13 Q So out of the one in 16,000, we've got now, one in

14 the whole State of South Carolina?

15 A Not the whole State of South Carolina, it just

16 depending on what individuals are in the data base.

17 Q All right. So the numbers used, would still be one

18 in 16,000 of the population, not just of the people that

19 have been tested, correct?

20 A Yes, that's correct.

21 Q So still 160,000 in the County, still you've got

22 ten of them?

23 A Yes, that would be right.

24 THE COURT: All right. Ms. Young anything further?

25 MS. YOUNG: Just one question, Your Honor.

REDIRECT EXAMINATION

BY MS. YOUNG:

Q Agent Webb, did you find anything in your analysis that was foreign to the defendant...

(WHEREUPON the recording was stopped.)

THE COURT: I think that answered their question.

THE JUROR: It is -- I think that's what we need.

THE JUROR: If I recall, the was -- the defense was specifically asking about the number of markers that would constitute a match versus a possible mixture.

(WHEREUPON there was more searching of testimony with the attorneys and the court reporter.)

RECROSS EXAMINATION

BY MR. GIBBONS:

Q Didn't you say that it's a possible mixture?

A I did, yes.

Q Why is that when you keep saying it all belongs to one profile?

A Well, with these low level samples, it really is harder to interpret, especially when you don't get a full profile and full information. But when you do compare it to the standard from London Wooden, everything that was developed from the item also matches London Wooden's DNA. If there was a mixture of somebody else out of -- I have twelve locations where I actually had some information. If

1 it was a mixture that somebody else had deposited enough
2 DNA, I would really kind of expect to at least see at least
3 one location where somebody else's DNA could be showing up
4 and I don't see that here.

5 Q Well, ma'am, I didn't write the report, you did,
6 right?

7 A That's correct.

8 Q And you did put possible mixture?

9 A Yes, I did.

10 Q And now you're telling us you can't tell us why you
11 put possible mixture?

12 A Yes, I couldn't determine from the data that I had
13 whether or not there could be more than one contributor or
14 not.

15 Q Okay. Well, you're getting me confused. You said
16 there's nothing to indicate anybody else but the one
17 profile, but then you're saying you can't say it's not a
18 mixture?

19 A Yes.

20 Q Is that what you're saying?

21 A Yes, that's what I'm saying.

22 Q What's the criteria to say it's a mixture?

23 A Well, for our laboratory's protocol, the criteria
24 is more than two lils or numbers at more than one DNA
25 location. And what that means is, with DNA, you expect to

1 see at least two numbers at a certain location. The reason
2 is because your mom gives you one number. You get half of
3 your DNA from your mom and you get half of your DNA from
4 your dad and so dad will give you another number. It's
5 possible that they could give you the same number at that
6 location, so you might only have one number, but we only
7 expect up to two, no more. So if you have more than two
8 numbers at more than two locations of DNA, then you can
9 call it a mixture. And that -- and also there's ratios of
10 amounts of DNA within those two numbers at DNA locations.
11 You expect to see a balance.

12 You expect to see -- if mom gave you half the DNA
13 and dad gave you half, you expect those to be equally
14 balanced as far as intensity. So if you have some
15 intensity that 's a little out of balance, it could
16 indicate that maybe there's more than one person there. I
17 had some examples of that on this profile and so that's
18 kind of why I said possible mixture. But on those low
19 level samples, you might not get the most pristine data.
20 Meaning that sometimes you do have some imbalance as far as
21 the intensity of the DNA's found at the different
22 locations. And that's what I had here. So it couldn't be
23 determined based on intensity of DNA found at specific
24 locations.

25 Q But you did type possible mixture?

1 A Yes, that's why I called it a possible mixture.

2 Q Thank you.

3 THE COURT: There's an answer to your question
4 that's on this tape and we've got to find it.

5 THE JUROR: That was, I think, the right part, I
6 think. The question was about the number that was matched
7 up 15. He said 12, she said 12 --

8 THE COURT: All right. Now, what's the other thing
9 we need do other than the DNA. Now, you want to hear the
10 testimony about the fingerprints.

11 THE COURT REPORTER: His testimony is very long.

12 THE COURT: Talking about Lieutenant Adams?

13 THE COURT REPORTER: Yes, sir.

14 THE COURT: Y'all remember where it might be?

15 THE JUROR: May I, Your Honor? I think the
16 question is if there are any fingerprints taken from that.

17 THE COURT: Well, we're going to have to play it
18 because we can't get the lawyers to agree as to what should
19 be told to y'all. I'm not faulting them for it.

20 The best thing -- y'all remember where that may
21 have been discussed?

22 Was it in direct testimony, Madame Solicitor?

23 MS. YOUNG: Your Honor, I don't remember. The
24 other counsel is telling me it was in direct.

25 MR. GRIMES: Your Honor, he was talking about

1 collecting the evidence and at various points he talked
2 about what he did with it and why. That's in that portion
3 of it. We may be able to narrow it down...

4 (WHEREUPON the attorneys were searching through the
5 testimony with the court reporter.)

6 THE COURT: I tell you, if y'all go back to the
7 jury room and we'll see if we can find this thing and then
8 we can...

9 (WHEREUPON the jury left the courtroom at 4:31
10 p.m.)

11 (WHEREUPON the testimony was located.)

12 THE COURT: All right. If y'all don't mind, we'll
13 tell them as a result, there were no fingerprints found.

14 MS. YOUNG: And the computer is ready.

15 THE COURT: All right. Bring the jury out.
16 Is that okay with y'all.

17 MS. YOUNG: Yes, Your Honor.

18 MR. GIBBONS: Yes, sir.

19 (WHEREUPON the jury entered the courtroom at 4:56
20 p.m.)

21 THE COURT: Okay. Ladies and gentlemen, I'm sorry
22 it took us so long, but it took us this long to find that
23 portion of the tape of Lieutenant Adams and I think the
24 clerk -- I mean the court reporter is going to play it for
25 you now.

1 (WHEREUPON the following testimony of Clay Adams
2 was played for the jury.)

3 Q Where they would do the swabs and then it would go
4 to the fingerprint department to where those people then do
5 the fingerprints and then it will go to the firearms
6 department. So by an examination that I made of the weapon
7 and determined that the surface area involved on this
8 weapon was probably not going to generate us enough surface
9 for identified fingerprint, we decided that the best
10 evidence would be to collect a DNA swab of it and then send
11 it straight to the firearms department, for example.

12 THE COURT: As a result, no fingerprints were found
13 on the gun.

14 Now, did that answer your question?

15 THE JUROR: I think so.

16 THE COURT: Now, y'all have asked for a computer
17 and -- where's my computer man?

18 This gentleman in the back with the blue shirt on
19 says he knows how to operate a computer, so whose computer
20 is it?

21 MS. YOUNG: It's the solicitor's office computer,
22 Your Honor, but the investigator has taken off -- just to
23 explain, it's prepared for the jury to use.

24 THE COURT: Okay. So it's ready to go?

25 MR. GIBBONS: Yes, sir.

1 THE COURT: Do we need to instruct them in any way?

2 THE INVESTIGATOR: They just need to lift it up,
3 tap the screen. It should come on, ready to play.

4 THE COURT: All right. Mr. Bailiff, if you will
5 take the computer back --

6 Ladies and gentlemen, have we answered all your
7 questions as to your note?

8 THE JUROR: I think so.

9 THE COURT: All right. Good.

10 All right. Take the computer back for them,
11 someone and take the jury back.

12 (WHEREUPON the jury left the courtroom at 4:58
13 p.m.)

14 THE COURT: All right. Now, note No. 1 will be
15 marked as Court's Exhibit No. 1; and Note No. 2 will be
16 marked as Court's Exhibit No. 2.

17 Did y'all hear that?

18 MS. YOUNG: Yes, sir.

19 (WHEREUPON this case was in recess while the jury
20 continued deliberations.)

21 (WHEREUPON it was reported that the jury reached a
22 verdict at at 5:23 p.m.)

23 THE COURT: It's been reported that the jury has
24 reached a verdict. Is the solicitor ready to receive the
25 verdict?

1 Are y'all ready?

2 MS. YOUNG: I'm just trying to get word to the
3 victims, but otherwise -- they're downstairs, but we're
4 ready.

5 THE COURT: Are they somewhere close to where you
6 sequestered your witnesses?

7 MS. YOUNG: Yes, sir.

8 (WHEREUPON the Court was waiting for the victims to
9 enter the courtroom.)

10 THE COURT: Madame Solicitor, do you know where
11 they are?

12 MS. YOUNG: They're in the basement. We're just
13 trying to get word down there.

14 THE COURT: Deputy, can y'all cuff the defendant?
15 I want the defendant restrained, can y'all do that?

16 (WHEREUPON the defendant was handcuffed.)

17 (WHEREUPON the victims entered the courtroom.)

18 VERDICT

19 THE COURT: All right. As I said, the jury's
20 reached a verdict. I want to tell everybody in the
21 courtroom, I don't want any kind of outburst, any problems
22 whatsoever. If you do, you'll definitely be removed and
23 you might be something else, so I instruct everybody to
24 be -- to restrain themselves when this verdict comes in.

25 All right. Mr. Whittle, can you bring the jury in,

1 please.

2 (WHEREUPON the jury entered the courtroom at 5:29
3 p.m.)

4 THE COURT: All right. Mr. Foreman, ladies and
5 gentlemen of the jury, I'm sorry to keep y'all waiting, but
6 when y'all were deliberating, we were doing some other
7 things, taking some -- doing some probation matters and
8 things of that nature and it took us a while to get the
9 courtroom empty and restocked again.

10 But, Mr. Foreman, it's been reported that the
11 jury's reached a verdict on these charges?

12 THE JUROR: We have.

13 THE COURT: Is this the unanimous verdict of all
14 twelve jurors?

15 THE JUROR: It is.

16 THE COURT: If you will hand the verdict form to
17 Mr. Whittle, please sir.

18 (WHEREUPON the verdict was handed up to the Court.)

19 THE COURT: All right.

20 THE CLERK: Your Honor, we have the State of South
21 Carolina versus London Devontay Wooden, Indictment No.
22 2012-GS-02-00473, We, the jury, unanimously find the
23 defendant guilty. Signed by the foreperson, Trent
24 Harrelson; dated November 14th, 2013.

25 THE COURT: That's the murder charge?

1 **THE CLERK:** Yes, sir.

2 **THE COURT:** All right. Thank you.

3 **THE CLERK:** We have the State of South Carolina
4 versus London Devontay Wooden, Indictment No.
5 2012-GS-02-00474, possession of a firearm during the
6 commission of a violent crime. We, the jury, unanimously
7 find the defendant guilty, signed by the foreman, Trent
8 Harrelson; dated November 14th, 2013.

9 Mr. Foreman, ladies and gentlemen of the petit
10 jury, if this is your verdict, please indicate by the
11 raising of your right hand.

12 All hands are raised, Your Honor.

13 **THE COURT:** Thank you. Anything from the State
14 with respect to the jury?

15 **MS. YOUNG:** No, sir, Your Honor.

16 **THE COURT:** Anything from the defense?

17 **MR. GIBBONS:** No, Your Honor.

18 **THE COURT:** All right. Mr. Foreman, ladies and
19 gentlemen of the jury, I thank you very much for your
20 service this week. I know this was a tough case and
21 they're intense when they're this serious, but you have
22 been an excellent jury. You've been attentive and
23 responsive to everything we've asked and I certainly do
24 appreciate it.

25 I hope you understand how important you are to this

1 process and we're going to be able to turn you loose for
2 the rest of the week. I know if you need an excuse for
3 work --

4 Madame Clerk, what do they need do?

5 Anybody need an excuse for work?

6 THE CLERK: If they want to come back, there in the
7 jury room, we'll come back there and write them out for
8 work.

9 THE COURT: I'm going to ask y'all if y'all will go
10 back to the jury room and stay back there just a second.
11 We'll get the verdict forms. I want to come back and speak
12 to you briefly before you leave. Y'all go on back, but
13 again, on behalf of everybody, we thank you very much, and
14 I'll be with you momentarily.

15 (WHEREUPON the jury left the courtroom at 5:33
16 p.m.)

17 THE COURT: All right. Anything from the State?

18 MS. YOUNG: No, sir, Your Honor.

19 THE COURT: Anything from the defense?

20 MR. GIBBONS: I would like to make a motion for a
21 new trial at this time based on the rulings of the Court
22 regarding hearsay statement of the coroner and the
23 self-defense charge not being charged.

24 THE COURT: All right. I'm going to deny your
25 motion based on my rulings previously. But what I'm -- I'm

1 not going to sentence him right now. I'd like for y'all to
2 bring him back tomorrow: It's late and I'd just as soon
3 think about this tonight and we'll bring him back tomorrow.
4 I hope that doesn't present a burden on family or victims
5 or anything like that, but I would feel better doing it in
6 the morning some time.

7 So Madame Solicitor, if you can have him brought
8 back over here tomorrow morning at 9:30, we'll deal with it
9 at that time.

10 MS. YOUNG: Yes, sir, Your Honor.

11 THE COURT: Thank y'all for your services, you did
12 a good job and we will conclude for the afternoon and we'll
13 see you tomorrow.

14 (WHEREUPON this case was in recess until the
15 following morning.)

16 THE COURT: Good morning. Where's Mr. Wooden?

17 MS. YOUNG: They're bringing him out, Your Honor.

18 (WHEREUPON the defendant entered the courtroom.)

19 **GUILTY PLEA**

20 LONDON WOODEN,

21 having been duly sworn, testified as follows:

22 THE CLERK: The defendant is sworn, Your Honor.

23 THE COURT: All right. Mr. Wooden, my
24 understanding is you are, in addition to having been
25 convicted yesterday of the murder charge and the possession

1 of a weapon during the commission of a violent crime, you
2 are pleading to an offense of burglary first degree; is
3 that correct?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And have you talked to your attorney
6 about that charge?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Have you told him everything you know
9 about the matter.

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Has he answered all your questions,
12 done everything you've asked him to do with respect to the
13 burglary charge?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: And you satisfied with his services
16 with respect to the burglary charge?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Mr. Gibbons, you concur with your
19 client entering a guilty plea on that charge?

20 MR. GIBBONS: I do, Your Honor.

21 THE COURT: You think it's in your best interest to
22 do so?

23 MR. GIBBONS: I do.

24 THE COURT: You think the State most probably would
25 prevail if it went forward with a trial on that charge?

1 MR. GIBBONS: I think they would.

2 THE COURT: Now, Mr. Wooden, you understand that on
3 the burglary charge, the penalty is fifteen years to life.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Fifteen up to life, you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, you're 19 years of age.

9 THE DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: And how far did you go in school?

11 THE DEFENDANT: I got to the tenth.

12 THE COURT: Tenth grade?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you ever had a job.

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Do you have any children?

17 THE DEFENDANT: One.

18 THE COURT: How old is your child?

19 THE DEFENDANT: Three.

20 THE COURT: All right. And who do you live with
21 when you're not -- apparently you were living out at Dallas
22 Circle somewhere. Who was there with you?

23 THE DEFENDANT: My mom.

24 THE COURT: You lived with your mother?

25 THE DEFENDANT: Yes, sir.

1 **THE COURT:** All right. Now, you understand you
2 don't have to plead guilty to that charge, that burglary.

3 **THE DEFENDANT:** Yes, sir, Your Honor.

4 **THE COURT:** And you understand you're presumed to
5 be innocent and the State would have to prove you guilty
6 and prove you guilty beyond a reasonable doubt. But by
7 pleading guilty, you remove that burden from the State.
8 You understand that?

9 **THE DEFENDANT:** Yes, sir, Your Honor.

10 **THE COURT:** And you understand by pleading guilty
11 you waive some of your constitutional rights. You have a
12 constitutional right to a jury trial on that charge and let
13 twelve citizens of this county hear the evidence and they
14 ruled -- determine whether you're guilty or not. But by
15 pleading guilty, you give up your right to that jury trial.
16 You understand that?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** And by pleading guilty you give up your
19 right to confront any witnesses the State may have. By
20 that, I mean the State would have to call your witnesses
21 and you and Mr. Gibbons could see who these witnesses were.
22 Your lawyer would have an opportunity to examine those
23 witnesses if y'all elected to do to so, but you give up
24 your right to confront those witnesses by pleading guilty.
25 You understand that?

1 **THE DEFENDANT:** Yes, sir, Your Honor.

2 **THE COURT:** And you give up your right to remain
3 silent. You normally would not have to say anything, do
4 anything, help the State in any way, you wouldn't have to
5 testify at trial. If you elected not to testify, the Court
6 would instruct the jury they couldn't consider that fact
7 during the course of their deliberations, but by pleading
8 guilty you give up your right to remain silent. You
9 understand that?

10 **THE DEFENDANT:** Yes, sir, Your Honor.

11 **THE COURT:** And by pleading guilty, you give up
12 your right to put up any defenses you may have to that
13 charge. You understand that?

14 **THE DEFENDANT:** Yes, sir, Your Honor.

15 **THE COURT:** And by pleading guilty you're giving up
16 your right to contest any evidence the State may have
17 through any motions in limine or motions to suppress. You
18 understand that?

19 **THE DEFENDANT:** Yes, sir, Your Honor.

20 **THE COURT:** And by pleading guilty you're giving up
21 your right to testify at your trial, to tell your side of
22 the story if you want. You understand that?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** All right. Have you had any alcoholic
25 beverages in the last 24 hours?

1 THE DEFENDANT: No, sir, Your Honor.

2 THE COURT: Taken any drugs or had any medication
3 in the last 24 hours?

4 THE DEFENDANT: No, sir, Your Honor.

5 THE COURT: Are you under the influence of any kind
6 of substance here today?

7 THE DEFENDANT: No, sir, Your Honor.

8 THE COURT: Are you being treated by a psychologist
9 or psychiatrist for any mental illness or emotional
10 problems?

11 THE DEFENDANT: No, sir, Your Honor.

12 THE COURT: You have any complaints with the
13 solicitor's office?

14 THE DEFENDANT: No, sir, Your Honor.

15 THE COURT: You have any complaints with law
16 enforcement?

17 THE DEFENDANT: No, sir, Your Honor.

18 THE COURT: Complaints with anybody at the jail?

19 THE DEFENDANT: No, sir, Your Honor.

20 THE COURT: You understand when I sentence you here
21 today, you'll have ten days to appeal that sentence?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: And have you understood all my
24 questions here today?

25 THE DEFENDANT: Yes, sir, Your Honor.

1 THE COURT: Have your answers been truthful and
2 complete.

3 THE DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: All right. Mr. Wooden, have you
5 reviewed the indictments of the burglary with your
6 attorney?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: And you're admitting as true the
9 allegations in the indictment?

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: Has anybody threatened you, coerced you
12 or pressured you into pleading guilty?

13 THE DEFENDANT: No, sir.

14 THE COURT: You're pleading guilty freely and
15 voluntarily?

16 THE DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: And you're pleading guilty because you
18 are guilty?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: Anybody offered you anything or
21 promised you anything in order to get you to enter this
22 plea?

23 THE DEFENDANT: No, sir, Your Honor.

24 THE COURT: Including the State? There's no --

25 MR. GIBBONS: There's a recommendation of

1 concurrent, Judge.

2 THE COURT: There is going to be a recommendation?

3 MS. YOUNG: Concurrent with whatever your sentence
4 is on the trial charges, Your Honor.

5 THE COURT: All right. That's the only --

6 MS. YOUNG: That's the only recommendation.

7 THE COURT: -- recommendation is to recommend a
8 concurrent sentence?

9 MS. YOUNG: That's correct.

10 THE COURT: You understand that?

11 THE DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: That your understanding that the only
13 recommendation is a concurrent sentence?

14 THE DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: And the State or no one else has
16 offered or promised you anything else to get you to enter
17 this guilty plea, is that correct?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: All right. Mr. Wooden, as to
20 Indictment 2013-GS-20 -- no -- GS-02, I'm sorry, 906,
21 wherein the State alleges that you did in Aiken County on
22 or about August 1, 2011 willfully and unlawfully enter the
23 dwelling of Anthony Berry, located at 606 Edgefield Avenue
24 Northwest, Aiken, South Carolina; and you did so without
25 consent and with the intent to commit a crime therein and

1 when in effecting entry or in immediate flight, he became
2 armed with a deadly weapon and/or displayed what appeared
3 to be a firearm all in violation of the statutes of this
4 State, how do you plea?

5 **THE DEFENDANT:** Guilty.

6 **THE COURT:** I find this defendant to be represented
7 by competent counsel. He's satisfied with the services of
8 his attorney. I further find the defendant's pleading
9 guilty freely and voluntarily and his guilty plea is
10 entered knowingly and intelligently and I will accept his
11 plea.

12 All right. Madame Solicitor, what you want to tell
13 me about the burglary?

14 **MS. YOUNG:** Your Honor, on August 1st, 2011,
15 Anthony Berry reported to Aiken Department of Public Safety
16 that his home had been burglarized. He lives at 606
17 Edgefield Avenue here in the City of Aiken. He had gone
18 somewhere that morning, to the nurse, and came back home
19 about 2:30 in the afternoon and he noticed that the side
20 window was busted out and his front door was open.

21 Police came to investigate and they did find that
22 the side window had been broken. There appeared to be
23 blood on the window frame and the window glass pieces were
24 on the ground outside the window which all of that was
25 photographed and collected for forensic analysis.

1 Mr. Berry reported that the only thing that was
2 missing or taken was an AK47 rifle, a 30 round magazine
3 fully loaded and a duffel bag for the rifle. He had
4 previously had a federal firearms license, so he had a
5 right to have that kind of weapon and originally they
6 thought that -- they investigated a few adults who said he
7 had shown the gun to at the time. At the time this
8 happened he was in a relationship -- he, the victim -- with
9 the defendant's mother and he had had the gun out at her
10 home and shown it to some friends and those were the
11 original suspects. But Mr. Wooden was also present when he
12 had to gun out showing it to the friends.

13 Lieutenant Adams did some forensic analysis on the
14 glass for fingerprints and was able to develop a palm print
15 from London Wooden as well as right index fingers and
16 another palm print.

17 Furthermore, in August of 2012, Aiken Department of
18 Public Safety received a report from SLED that the DNA
19 profile developed from the blood on the window frame had
20 generated a CODIS hit and that it matched the defendant in
21 this case. He did not want to give a voluntary swab, so we
22 did have a Schmerber Hearing and we are still pending the
23 results on that, Your Honor, as you know, that this is a
24 property case and SLED now contracts those. But it was --
25 this is just a confirmation. It was his DNA according to

1 the CODIS hit.

2 Mr. Berry works for the city. We contacted him
3 about this and he states he is satisfied with Your Honor
4 sentencing. He understands what happened with the trial
5 and he did not wish to be present.

6 Mr. Wooden has no prior adult record. He did have
7 three juvenile adjudications, one in 2009 for petit
8 larceny, one in 2010, for resisting arrest, B section and
9 one in September 2011 for malicious injury to personal
10 property.

11 THE COURT: All right.

12 MS. YOUNG: Your Honor, as to the trial, Your
13 Honor, the victims do want to speak to you at the
14 appropriate time. I'm sorry to interrupt you.

15 THE COURT: Is there anything you want to tell me
16 before we do that?

17 MS. YOUNG: I think you heard all of the facts in
18 the case. I don't think there's anything I need to present
19 further on that.

20 THE COURT: All right. Let me hear from who you
21 would like for me to hear from if you don't mind.

22 MS. YOUNG: She doesn't want to come up here.
23 She's just going to have our victim advocate stand. This
24 is Demi Butler, the mother of the victim seated on the
25 front row with the red shirt on this side. She just wants

1 our victim advocate --

2 THE COURT: This is the second lady in?

3 MS. YOUNG: The second lady, yes, sir.

4 VICTIM ADVOCATE: Good morning.

5 THE COURT: Good morning, how are you?

6 VICTIM ADVOCATE: Good, how are you?

7 I'd like to thank the justice system for an amazing
8 job, my family for their love and support. Prayer, faith
9 and forgiveness have been my guidance. All we wanted was
10 justice for my son, David Maple, who was a blessing in all
11 of our lives. Through David, we witnessed what good can
12 do. Thank you from the family of David Javelle Maple.

13 THE COURT: All right. Thank you.

14 Anything from anybody else?

15 MS. YOUNG: That's it, Your Honor.

16 THE COURT: All right. Mr. Gibbons, anything?

17 MR. GIBBONS: Your Honor, you know the basic facts
18 about my client here. He's 19 years of age. He's been in
19 the department -- the Aiken County Detention Center since
20 the night this happened. So he's been locked up for about
21 two years already at this point.

22 He went to Aiken High School, finished through the
23 tenth grade. He has one child that's now three years old
24 that lives with its mother in Columbia. Your Honor, London
25 was a very young man when this happened and he's got a long

1 road ahead of him.

2 His mother would like to talk to you before you
3 sentence. We just ask you to consider the level of
4 maturity he was at when this event took place and then
5 sentence him accordingly. And we would ask you to go along
6 with the recommendation.

7 Ms. Felicia Jackson, his mother, she's here in the
8 courtroom.

9 THE COURT: Yes, ma'am. Good morning. Tell me
10 your name again, please.

11 MS. JACKSON: Felicia Jackson.

12 THE COURT: All right. Ms. Jackson, what you want
13 to tell me.

14 MS. JACKSON: I just wanted to let you know that
15 while he was growing up, he was not a trouble child. He
16 was the kind of person, he was like -- he plays football at
17 school. Until he got in ninth grade, he got in a little
18 trouble when he took a charge for my brother and he been in
19 trouble, like, ever since then. But he's the kind of boy
20 that if me and him riding down the road and the old lady's
21 going across the street, he would say, Mama pull over and
22 let me help her with her bags. So I just ask that you have
23 a little bit of mercy on him this morning, Your Honor.

24 THE COURT: You have other children?

25 MS. JACKSON: Yes.

1 THE COURT: How many other children.

2 MS. JACKSON: One.

3 THE COURT: Older?

4 MS. JACKSON: She's 13.

5 THE COURT: She lives with you?

6 MS. JACKSON: Yes, sir.

7 THE COURT: Was she living with you the night this
8 incident happened?

9 MS. JACKSON: No, sir.

10 THE COURT: All right. Thank you.

11 Anything you want to tell me, Mr. Wooden?

12 THE DEFENDANT: I'm sorry, Your Honor.

13 THE COURT: Thank you, ma'am.

14 SENTENCE

15 THE COURT: You know, the hardest thing about this
16 job that I have is determining what's an appropriate
17 sentence for every case I do because you're dealing with
18 lives, you're dealing with victims, you're dealing with the
19 State and what would be appropriate for the State; and, you
20 know, I listened to the evidence in this case and I know
21 you wanted to put the State through the exercise of
22 attempting to prove you guilty because of the high burden
23 that they had in this case.

24 And there was -- but your lawyer did an excellent
25 job. That jury -- I talked to them a little bit afterwards

1 and they thought a lot about some of the arguments that
2 your lawyer made in the case. But it's hard to overcome
3 all those witnesses that get up and say what they said and
4 the DNA and things of that nature.

5 You did a terrible thing and I'm sure -- I don't
6 know what your alcohol content was that night. Apparently
7 there was alcohol at the scene and I don't know if you were
8 participating in drinking that night, but clearly, you were
9 17, right?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Immature?

12 THE DEFENDANT: Yeah.

13 THE COURT: As most 17-year-old people are,
14 especially male. They seem to mature a little later. But
15 the -- you know, when you do stupid things like that and
16 people like the victim's family suffers and your mom --
17 obviously your mom loves you to death and this affects her.
18 Unfortunately, you got to pay the price. I'm not going to
19 put you in jail for the rest of your life so -- you're
20 young enough that when you get out if you behave yourself
21 in prison and don't get yourself in trouble with other
22 inmates, when you get out, you'll still have enough time to
23 maybe be productive for yourself and your -- is your child
24 a boy or a girl?

25 THE DEFENDANT: Boy.

1 **THE COURT:** Him -- and I don't know whether you
2 have any contact with the mother, whether the mother is
3 still in your life or not, but...

4 When did he go to jail? October 2nd or 1st?

5 **MS. YOUNG:** October 1st.

6 **MR. GIBBONS:** I would say the 1st. It was nine
7 o'clock, so I'm sure they got him that day.

8 **THE COURT:** All right. On the murder charge,
9 sentence of this Court is you be committed to the
10 Department of Corrections for a term of 35 years, plus
11 costs and assessments as applicable. On the burglary
12 charge, sentence of this Court is you be committed to the
13 Department of Corrections for a term of 35 years, plus
14 costs and assessments as applicable. On the possession of
15 a weapon, sentence of this Court is you be committed to the
16 Department of Corrections for a term of five years, plus
17 costs and assessments as applicable. Those charges will
18 all run concurrent and you'll be given credit for time
19 served since 10/1/11.

20 Good luck to you, Mr. Wooden. I hope you --

21 **MS. YOUNG:** Thank you, Your Honor.

22 **THE COURT:** -- do get better than you've done.

23 * * * * * END OF TRANSCRIPT * * * * *

24

25

1 State of South Carolina)

2 County of Aiken)

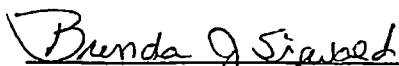
Certificate of Reporter

3
4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald,
7 Official Court Reporter for the Fifth Judicial Circuit of
8 the State of South Carolina, do hereby certify that I
9 reported the proceedings in the captioned case in the Court
10 of Common Pleas in and for the State of South Carolina on
11 the 12th through the 13th days of November, 2013.

12 I FURTHER CERTIFY that the foregoing pages 605
13 pages constitute a true, accurate and complete transcript
14 of said hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 2nd day of May, 2014.

19
20
21
22 

23 Brenda J. Sigwald,
24 Court Reporter and Notary Public
25 For the State of South Carolina
My commission expires
January 4, 2020.

m 012801
m 012802
2012A 0220100357

FORM 5

2015 -CP-02- 00816 614
2012 -GS-02- 0473 0474
2013 00906
Filed April 1, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

LONDON DEWITT WOODEN 357930)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS
Deputy Clerk: Barber Time: 12:25pm
Trial Judge: Barber
Trial Atty.: Grant Gibbons
Court Reporter: R. Sigwald
Sec: PCR Petitioner Solicitor
General Sessions Atty. Gen.
Appointed Atty.

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and veified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make chr to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exeise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay thfees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence Aiken County, Aiken South Carolina
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 2012-GS-02-00473
 - (b) 2012-GS-02-00474

Revised 3/2003

- (c) 2013-65-02-906
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty to 2013-65-02-906 YES
- (b) after a plea of not guilty to 2012-65-02-00473; 2012-65-02-00474 YES
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) My Issues were not Trial Judge errors, but errors of Counsel
- (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 at trial, Counsel failed to challenge
 (b) the probative value of State's DNA expert opinion being substantially
 (c) outweighed by the danger of unfair prejudice, Involuntary Guilty Plea.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Ineffective Assistance of Counsel at trial, Counsel failed to challenge the
 (b) probative value of State's DNA expert opinion being substantially outweighed
 (c) by the danger of unfair prejudice, and Involuntary Guilty Plea.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
 - 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?

No

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) Trial Counsel failed to preserve the issue stated above for ^{Direct} appeal review.

- (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? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. D. Grant Gibbons, and Andrew Smith
- ii. Post Office Drawer 2247, Aiken, South Carolina 29802
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Arraignment and plea
- ii. Trial
- iii. Sentencing

19. State clearly the relief you seek in filing this application:

Remanded for reTrial

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Londan Woods

SWORN to and subscribed before me this 27th
day of March, 2015

[Signature] (L.S.)
Notary Public

My Commission Expires: Nov. 14 2024

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

London Weeden

Applicant

SWORN or affirmed to and subscribed before me this
21st day of March, 2015.

[Signature]
Notary Public

My Commission Expires: Nov. 14 2024

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
London Devonta Wooden, #357930,	)	2015-CP-02-00816
	)	
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL
	)	MOTION TO DISMISS
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed April 1, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the April 2012 term of the Aiken County Grand Jury for murder (2012-GS-02-00473) and possession of a weapon during a violent crime (2012-GS-02-00474). DeGrant Gibbons, Esquire, represented Applicant. On November 15, 2013, Applicant proceeded to a jury trial before the Honorable James R. Barber. Applicant was found guilty on both charges. Judge Barber sentenced Applicant to a thirty five year term of imprisonment for murder and five year term of imprisonment for possession of a weapon during a violent crime.

A timely Notice of Appeal was filed on Applicant's behalf. By Order filed March 24, 2015, the South Carolina Court of Appeals dismissed the appeal pursuant to Applicant's request. The Remittitur was issued on April 14, 2015.

Additionally, the Applicant was true bill indicted at the June 2013 term of the Aiken County Grand Jury for burglary-first degree (2013-GS-02-0906). DeGrant Gibbons, Esquire represented Applicant. On November 15, 2013, Applicant pled guilty as indicted before the Honorable James R. Barber. Judge Barber sentenced Applicant to a recommended thirty five year term of imprisonment for burglary – first degree running concurrent to Applicant previous sentence of thirty five years for murder. Applicant did not appeal his guilty plea or sentence.

Attached herewith and incorporated herein are the records of the Bamberg County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, appellate records, and the plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failed to challenge the probative value of states DNA expert opinion being substantially outweighed by the danger of unfair prejudice.
2. Involuntary guilty plea.¹

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

¹ As will be discussed more fully below, Respondent submits that this allegation and any additional allegations stemming from Applicant's 2013 guilty plea is barred by the statute of limitations.

III.

As to any allegations stemming from Applicant's November 15, 2013 guilty plea, Respondent submits that those allegations for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was pled guilty to the burglary-first degree charges in this application on November 15, 2013. This Application was filed on April 1, 2015 which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent requests that this Court summarily dismiss the Application for post-conviction relief for failure to file within the time mandated by the Post-Conviction Procedure Act.

IV.

As to Applicant's allegations stemming from his murder and possession of a weapon convictions, Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A

reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code § 17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VII.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant’s allegations stemming from his murder and possession of a weapon convictions only. Respondent further submits that the Court should summarily dismiss any

allegations stemming from Applicant's guilty plea on November 15, 2013 because they are barred by the statute of limitations.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

August 27, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

LONDON D. WOODEN, #357930,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

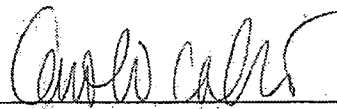
2015-CP-02-00816

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 27th day of August, 2015.



Caroline Collins, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2015-CP-02-816
	)	
London Wooden, #357930,	)	
	)	
Applicant,	)	
	)	AMENDMENT TO PRIOR PCR
v.	)	APPLICATION
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, makes the following additional claims and amendments to his prior application for post-conviction relief filed April 1, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel for advising Applicant to submit a DNA sample for the Burglary, First charge while advising Applicant it would have no effect in his Murder case.

(b) Ineffective assistance of counsel for failing to discuss and put forth a defense.

(c) Ineffective assistance of counsel for opening to door to prior bad acts by the Applicant.

(d) Ineffective assistance of counsel for failing to adequately cross-examine the State's DNA expert.

(e) Trial counsel's ineffectiveness rendered his subsequent guilty plea involuntary.

Respectfully submitted,


Lance S. Boozer

Attorney for Applicant

807 Gervais Street, Suite 203

Columbia, SC 29201

Phone: (803) 608-5543

Fax: (803) 926-3463

Columbia, South Carolina
December 2, 2015

Affidavit of Service

I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior PCR Application upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Daniel Gourley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211


Lance S. Boozer

Columbia, South Carolina
December 2, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2015-CP-02-816
	)	
London Wooden, #357930,	)	
	)	
Applicant,	)	
	)	SECOND AMENDMENT TO PRIOR PCR
v.	)	APPLICATION
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, makes the following additional claims and amendments to his prior application for post-conviction relief filed April 1, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Ineffective assistance of counsel for failing to challenge reliability of DNA expert.

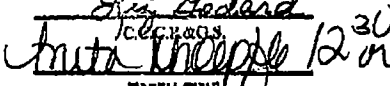
Respectfully submitted,


 Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 April 5, 2016

FILED

4-7-16

 JUDGE HODARD

 ANITA UNAPP
 DEBON CORR

Affidavit of Service

I, the undersigned, of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Amendment to Prior PCR Application upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Julie Coleman
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211



Lance S. Boozer

Columbia, South Carolina
April 5, 2016

FILED 4-7-16
Rej. Hadard
C.C.F. & G.S.
Trish Underhill 12:30
CLERK

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

) IN THE COURT OF COMMON PLEAS
) SECOND JUDICIAL CIRCUIT
) C/A NO: 2015-CP-02-816

London Wooden, #357930,
Applicant,

v.

State of South Carolina,
Respondent.

CONSENT ORDER

This matter comes before the court on an application for post-conviction relief filed on April 1, 2015.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. The Applicant was true bill indicted at the April 2012 term of the Aiken County Grand Jury for murder (2012-GS-02-473) and possession of a weapon during a violent crime (2012-GS-02-474). Applicant was subsequently indicted for burglary, first degree (2013-GS-02-906). DeGrant Gibbons, Esq., represented the Applicant. On November 15, 2013, Applicant proceeded to a jury trial before the Honorable James R. Barber on the murder and possession of a weapon charges. Applicant was found guilty on both charges. Following the trial, Applicant entered a guilty plea to burglary, first degree. Judge Barber sentenced the Applicant to a thirty-five (35) year term of imprisonment for murder and burglary, first degree, and five (5) years for possession of a weapon. All sentences were ordered to run concurrently.

FILED 12/11/16 2016
Clerk of Court
4:00

A Notice of Appeal was filed on Applicant's behalf. By Order filed March 24, 2015, the South Carolina Court of Appeals dismissed the appeal pursuant to Applicant's request. The Remittitur was issued on April 14, 2015.

Applicant subsequently filed this Application for post-conviction relief (PCR) on April 1, 2015, and amended on April 7, 2016. The State made its Return and Partial Motion to Dismiss on August 27, 2015. A hearing into the matter was held on May 26, 2016 at the Aiken County courthouse. Applicant was present at the hearing and represented by Lance S. Boozer, Esq. The State was represented by Assistant Attorney General Julie A. Coleman.

At the hearing, the State presented a motion to dismiss any allegations involving Applicant's guilty plea to burglary, first degree, as it alleged no appeal of the conviction was made and Applicant's PCR application was filed outside of the statute of limitations. Counsel for the Applicant and the Applicant both indicated they believed trial counsel had appealed both the trial convictions and guilty plea conviction. Applicant presented the testimony of trial and plea counsel, Mr. Gibbons. Mr. Gibbons testified that he was under the impression he appealed the trial and plea convictions. Mr. Gibbons further produced his file from Applicant's trial in which two Notices of Intent to Appeal were discovered. Both Notices were signed by trial counsel and dated November 18, 2013. One Notice only referenced Applicant's trial convictions while the other Notice referenced both the trial and plea convictions. Mr. Gibbons testified it was his absolute intent to file the Notice containing all convictions, however, it was apparent that there was an error on his part or his office in filing the Notice referencing only the trial

convictions. Both Notices were marked as exhibits at the hearing and reviewed by this Court.

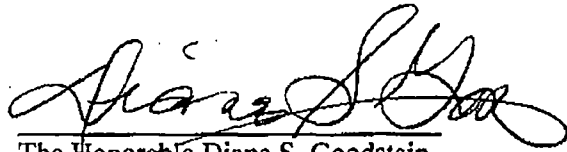
At the hearing on May 26, 2016, this Court made an oral finding that the State's partial motion to dismiss should be denied due to counsel's inadvertent mistake and that Applicant would be granted a belated direct appeal as it related to his guilty plea. This Court further orally ordered that Applicant's PCR application would be stayed until the belated direct appeal was resolved and then Applicant would be entitled to a full evidentiary PCR hearing challenging both his trial and guilty plea convictions.

Following the hearing, Applicant communicated to his counsel that he does not wish to pursue a belated appeal of this guilty plea conviction but desires rather only to have a PCR hearing on the merits of all convictions. Both counsel for the Applicant and the State communicated to the Court that Applicant wished to proceed with his PCR hearing rather than the belated appeal and no stay would be necessary. Due to the extraordinary circumstances in this case involving the inadvertent mistake in filing the Notice of Intent to Appeal by Mr. Gibbons, this Court denied the State's partial motion to dismiss and ordered that Applicant should receive a PCR hearing on both the trial and plea convictions. Counsel for the Applicant and the State agree and consent to this Court lifting the stay from this proceeding and continuing forward with a full evidentiary hearing on all allegations.

This Court finds and orders that by counsels' consent below, Applicant is entitled to a full evidentiary PCR hearing on both his trial and plea convictions. This Court vacates and/or alters any prior oral Order entered on the record at the PCR hearing held May 26, 2016, to conform to this Order. This Court also orders that this matter be

continued to the next available term of PCR court in the Second Circuit for a full evidentiary hearing.

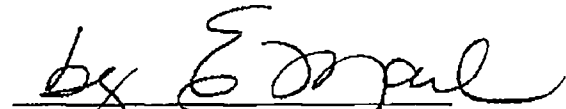
AND IT IS SO ORDERED.


The Honorable Diane S. Goodstein
Presiding Judge

Orangeburg, South Carolina
12-12, 2016

WE SO MOVE AND CONSENT:


Lance S. Boozer, Esq.
Attorney for Applicant


Julie Coleman Esq.
Attorney for Respondent

State of South Carolina
County of Aiken

Court of Common Pleas

London Devonta Wooden	)	
	)	
Applicant,	)	Transcript of Record
v.	)	2015-CP-02-00816
	)	
The State	)	
	)	
<u>Respondent.</u>	)	

January 23, 2017
Bamberg, South Carolina

B E F O R E:

The Honorable Maite Murphy, Judge.

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

Lance Boozer, Esquire
Attorney for the Applicant

Julie Coleman Boozer, Esquire
Attorney for the Respondent

Bethanie K. Creppon
Circuit Court Reporter

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1 P R O C E E D I N G S

2 * * *

3 MS. COLEMAN: May it please the Court. This is
4 London Devonta Wooden vs. The State of South
5 Carolina, Docket No. 2015-CP-02-00816. The
6 applicant is presently confined in the South
7 Carolina Department of Corrections pursuant to
8 orders of commitment of the Aiken County Clerk of
9 Court.

10 Applicant was true-bill indicted at the April
11 2012 term of the Aiken County Grand Jury for murder
12 and possession of a weapon during a violent crime.
13 Grant Gibbons, Esquire represented the applicant.
14 On November 15th, 2103, Applicant proceeded to a
15 jury trial before the Honorable James R. Barber.
16 Applicant was found guilty on both charges. Judge
17 Barber sentenced the applicant to a 35-year term of
18 imprisonment for murder and a five-year term of
19 imprisonment for possession of a weapon to run
20 concurrently.

21 A timely notice of appeal was filed on
22 Applicant's behalf. By order filed March 24th,
23 2015, the South Carolina Court of Appeals dismissed
24 the appeal pursuant to Applicant's request. The
25 remittitur was issued on April 14th, 2015.

1 Additionally, the applicant was true-bill
2 indicted at the June 2013 term of the Aiken County
3 Grand Jury for burglary first degree. Grant
4 Gibbons, Esquire represented the applicant on this
5 charge as well.

6 On November 15th, 2013, immediately following
7 the murder trial, Applicant pled guilty as indicted
8 before the Honorable James R. Barber to burg first.
9 Judge Barber sentenced Applicant to a recommended
10 35-year term of imprisonment for burg first running
11 concurrent to Applicant's sentence for murder. Due
12 to a filing error by Mr. Gibbons, Applicant did not
13 appeal his guilty plea or sentence.

14 Applicant filed an application for
15 postconviction relief on April 1st, 2015, alleging
16 that he was being held in custody unlawfully based
17 on the following allegations: Ineffective
18 assistance of counsel and involuntary guilty plea.

19 Applicant filed an amended application December
20 2nd, 2015, alleging additional grounds for his claim
21 of ineffective assistance of counsel. The State
22 filed its return and partial motion to dismiss on
23 August 27th, 2015. A hearing was held on May 26th,
24 2016 at the Aiken County Courthouse before the
25 Honorable Diane Goodstein. Applicant was present

1 and represented by Lance Boozer, Esquire.
2 Respondent was represented by Assistant Attorney
3 General Julie Coleman.

4 At the hearing, the State presented its motion
5 to dismiss any allegation involving the guilty plea
6 to burglary first degree as it alleged that the
7 conviction was made -- excuse me -- no appeal was
8 made and Applicant's PCR application was filed
9 outside of the statute of limitations. Judge
10 Goodstein ordered that the applicant go forward on
11 all allegations in his PCR.

12 Applicant is present today for his full hearing
13 and is represented in this matter by Mr. Lance
14 Boozer.

15 THE COURT: Mr. Boozer?

16 MR. BOOZER: Thank you, Your Honor. May it
17 please the Court. And I do believe that that was
18 clear on the interesting sort of procedural
19 background. And, of course, today it's been ordered
20 and consented to by the State that he is challenging
21 both his trial and the effectiveness or
22 ineffectiveness of his lawyer at the trial; and then
23 immediately following the trial, there was the plea
24 to the burg first, that that will also be challenged
25 for PCR grounds as well.

1 THE COURT: Yes, sir. You may proceed.

2 MR. BOOZER: Thank you, Your Honor. We'll go
3 ahead and call Mr. Wooden to the stand.

4 THE COURT: Come on up, Mr. Wooden.

5 LONDON WOODEN

6 being first duly sworn, testified as follows:

7 THE APPLICANT: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. BOOZER:

10 Q. Mr. Wooden, how are you doing today?

11 A. I'm doing okay.

12 Q. Good. Okay. Do you know what you're doing
13 here in court today?

14 A. Yes, sir.

15 Q. What is that?

16 A. I'm here for postconviction relief. I'm filing
17 for ineffective assistance of trial counsel and for
18 my guilty plea -- I filed for involuntary guilty
19 plea and trial counsel ineffective assistance.

20 Q. Okay. And do you understand what it is that
21 you're asking this Court to do for you?

22 A. Yes, sir.

23 Q. And what is that?

24 A. New trial.

25 Q. And that's a new trial on all of those charges?

1 A. On all of my charges.

2 Q. All right. And what was the sentence that you
3 got as a result of the trial?

4 A. I got 35 years for murder, I got 35 years for
5 burglary first degree, and I got five years for
6 possession of a weapon during the commission of a
7 crime.

8 Q. And the burglary first, that was the plea
9 aspect of it?

10 A. Yes, sir.

11 Q. Okay. Now, who was your trial lawyer?

12 A. Grant Gibbons.

13 Q. Was anyone else sitting at counsel's table that
14 day representing you?

15 A. Andrew Smith.

16 Q. And we'll get into this a little bit more, but
17 did you have any contact with Mr. Smith prior to
18 your trial and plea?

19 A. Maybe once or twice.

20 Q. All right. Let's get to your allegations in a
21 moment and let's just give a little bit of
22 background. Okay?

23 A. Okay.

24 Q. Were Mr. Gibbons and Mr. Smith appointed or did
25 you retain them or hire them?

1 A. They was appointed.

2 Q. All right. When were you first arrested on
3 the -- what were you arrested first on, the murder
4 or the burglary?

5 A. Murder.

6 Q. All right. When were you arrested for that?

7 A. October the 1st, 2011.

8 Q. All right. When did you first get Mr. Gibbons
9 as your lawyer?

10 A. Mr. Gibbons came and seen me probably two or
11 three weeks prior to me being charged.

12 Q. Okay. Do you know about when that may have
13 been?

14 A. I can't give an exact date.

15 Q. Okay. Now, your trial was in December of
16 2015 -- excuse me. Your trial was November of 2013.

17 A. Yes, sir.

18 Q. Okay. Do you know how many times you met with
19 Mr. Gibbons in between the time he was appointed to
20 represent you and the time of your trial and then
21 ultimately your plea?

22 A. Exactly, no.

23 Q. Did you ever bond out?

24 A. No, sir.

25 Q. All right. Did you have any preliminary

1 hearing?

2 A. No, sir.

3 Q. All right. Is that anything that you discussed
4 with your lawyer?

5 A. Yes.

6 Q. All right. Tell the Court a little bit about
7 that. What was the discussion?

8 A. Well, a year after me being incarcerated, I
9 asked about my preliminary hearing. I guess my
10 counsel waived it or something. And after that, I
11 end up putting in -- I asked him for a motion for a
12 fast and speedy trial on all of my charges. And I
13 guess that kind of threw preliminary hearing out the
14 box.

15 Q. Okay. Was there ever a plea offer in the
16 case --

17 A. Yes.

18 Q. -- prior to you going to trial?

19 A. Yes.

20 Q. What was that offer for?

21 A. Thirty years.

22 Q. All right. Why didn't you take that?

23 A. Thirty years versus a trial, I didn't want to
24 waive any of my rights.

25 Q. Okay. Was this a case that you wanted to have

1 a trial in the whole time?

2 A. Yes.

3 Q. All right. Now, prior to your trial -- and I
4 think you said you're not sure how many times you
5 met with Mr. Gibbons; is that right?

6 A. Yes.

7 Q. But talking about those meetings, what would
8 you guys talk about in your meetings?

9 A. We would discuss the case, the evidence, the
10 witnesses. A lot of witnesses didn't come into play
11 until, like, I'd say probably a week before trial.
12 So a lot of evidence that was used during trial was
13 kind of new evidence. It wasn't evidence that I
14 knew about the time -- the two years I was
15 incarcerated in the Aiken County jailhouse.

16 Q. Okay. Do you recall what that evidence would
17 have been that was new?

18 A. Okay. We had a couple of new witnesses and,
19 also, I was waiting on the DNA results.

20 Q. All right. And we'll get to that here in a
21 minute because that's one of your allegations, is it
22 not?

23 A. Yes.

24 Q. All right. Did your lawyer have any
25 recommendations about what he thought you should do,

1 if you should take a plea or go to trial?

2 A. Yes.

3 Q. What was --

4 A. He thought I should take the plea.

5 Q. Even though he was advising you of that, you
6 still wanted a trial?

7 A. Yes.

8 Q. Going into trial, how much notice or kind of
9 heads-up did you have that you would be going to
10 trial during that week of November 12th of 2013?

11 A. Well, my counsel advised me that I was -- that
12 my upcoming trial date would be soon. We didn't
13 know exactly what date, but I would say probably the
14 weekend prior to my trial.

15 Q. The weekend prior to your trial is when you
16 found out that you would actually be going to trial?

17 A. The weekend before my trial.

18 Q. Okay. Going into the trial, did you know what
19 the trial strategy would be for your defense?

20 A. We haven't -- we discussed, like, two times of
21 the evidence that was being used against me during
22 trial. We hadn't fully come to an agreement on the
23 defense strategy.

24 Q. What was kind of the discussion about as far as
25 your defense strategy?

1 A. Counsel -- my counsel wanted me to testify to
2 self-defense.

3 Q. Okay.

4 A. And self-defense would have been the defense
5 strategy.

6 Q. Did you have any discussions with your lawyer
7 about what witnesses you would be calling on your
8 behalf?

9 A. No, sir, not that I recall.

10 Q. Okay. Now -- and, obviously, do you recall the
11 trial?

12 A. Yes.

13 Q. Okay. Do you recall what witnesses were
14 ultimately called to testify on your behalf --

15 A. Most.

16 Q. -- or in your defense?

17 A. Most.

18 Q. Okay. Who were they? And, in particular, I'm
19 talking about three witnesses. Do you recall who
20 those three witnesses were?

21 A. On the defense or...

22 Q. In the defense, correct.

23 A. We had a gang expert analysis, we had my mom.

24 Q. Do you recall a dispatcher being called?

25 A. Dispatcher, that's what it was.

1 Q. Do you also recall a part-time coroner being
2 called?

3 A. Yes.

4 Q. All right. Did you discuss with your lawyer
5 the fact that those three witnesses, particularly
6 the dispatcher, the investigator who was -- who had
7 some knowledge about gang activity, and then the
8 part-time coroner, did you discuss that with your
9 lawyer prior to trial?

10 A. Somewhat.

11 Q. Okay. Do you know why he wanted to call those
12 folks?

13 A. I found out during trial.

14 Q. Okay. What was your understanding of why he
15 wanted to call them during trial?

16 A. From my understanding, he wanted to, I guess,
17 put the gang analysis towards the defense of the
18 victim being affiliated with gangs. And the
19 coroner, I wasn't quite sure.

20 Q. Okay. Let's talk about your application. You
21 have an ineffective assistance of counsel for
22 failing to challenge DNA, a DNA for a burglary first
23 charge while advising you it would have effect on
24 your murder case. Tell me a little bit about what
25 you mean by that allegation.

1 A. Okay. When my motion for my speedy trial was
2 filed, after the hearing, my counsel advised me that
3 I should submit a DNA sample for identification
4 purposes.

5 Q. For which case?

6 A. My burglary.

7 Q. Okay.

8 A. And I gave my DNA to SLED. My lawyer's advice
9 was it would speed up the process with my trial.

10 Q. With your trial for the burglary first or with
11 regard to the murder?

12 A. At the time, neither one of us knew.

13 Q. Okay. Well, keep going explaining all this to
14 the Court.

15 A. Okay. After I gave my DNA sample for the
16 burglary, me and my attorney spoke prior -- I'd say
17 about three months after, and he advised me that the
18 Court would use my DNA for comparison purposes to a
19 partial DNA sample that was found on the murder
20 weapon. And we kind of got into an argument about,
21 you know, the DNA.

22 And I told him that I didn't want to give my
23 DNA for the murder instead of the burglary for
24 identification purposes. The Court was asking for
25 my DNA once again once I was advised that my DNA was

1 being used for the murder instead of the burglary.
2 And my lawyer's advice to me was that the DNA was
3 used to identify me, you know, as the user of the
4 gun or whatever.

5 And after that, we spoke on the burglary and
6 the DNA for the burglary charge. I asked why would
7 I have to submit another DNA sample if I've already
8 submitted a sample, and my lawyer told me that the
9 DNA sample the first time was for the murder charge
10 instead of the burglary and that the DNA for the
11 burglary was two separate cases, meaning that they
12 needed two separate samples.

13 Q. Okay. And is that everything in regards to
14 that allegation?

15 A. Yes.

16 Q. Okay. Now let's go -- you've got counsel
17 failed to discuss in putting forth a defense. And
18 initially you indicated a minute ago that your
19 lawyer was talking about wanting to put forth a
20 self-defense claim.

21 A. Yes.

22 Q. What was that?

23 A. I didn't see it. But the victim was shot in
24 the back and my counsel told me that if I testified
25 to a self-defense theory that, you know, I could win

1 on self-defense, and I just didn't see it.

2 Q. Well, what was your position in all of this,
3 that you had nothing to do with it?

4 A. Yes.

5 Q. Okay.

6 MR. BOOZER: I beg the Court's indulgence, Your
7 Honor.

8 THE COURT: Yes, sir.

9 BY MR. BOOZER:

10 Q. Now, at trial, did you -- were you even sure of
11 what really -- after the trial or during the trial,
12 were you even sure of what your actual defense
13 really even was?

14 A. No, sir.

15 Q. Okay. Now, and in fact, do you recall during
16 the State's closing on page 543 of the transcript
17 that the State even says, I'm not really sure what
18 the defense is? Do you recall the State making that
19 statement?

20 A. Yes.

21 Q. All right. Let's talk about this: You've got
22 an allegation that your lawyer opened the door to
23 prior bad acts that you had allegedly committed.
24 Are you familiar with that allegation and what we're
25 talking about?

1 A. Yes, sir.

2 MR. BOOZER: And, Your Honor, just for the
3 Court's reference, I'm looking at page 321 of the
4 transcript. And this is during examination of a
5 witness by the name of Erica Richardson.

6 BY MR. BOOZER:

7 Q. And, Mr. Wooden, you had indicated that
8 Mr. Smith was one of the lawyers sitting with
9 Mr. Gibbons at trial with you?

10 A. Yes, sir.

11 Q. Okay. He actually handled some of the
12 testimony or the cross-examination at trial?

13 A. Yes.

14 Q. And you didn't have a whole lot of interaction
15 with Mr. Smith?

16 A. No.

17 Q. All right. Do you recall on page 321 of the
18 cross-examination by Mr. Smith of Erica Richardson
19 where Mr. Smith asks Ms. Richardson: "Didn't you
20 try to press charges against him a month or two
21 before this happened?" Him being you, correct?

22 A. Yes.

23 Q. And she says: "Yes, sir, I did." And then he
24 asks: "Okay. But you don't have anything against
25 him?" And she says: "No, sir, I don't." And so if

1 we flip over on page 322 --

2 MR. BOOZER: And, Your Honor, I'm looking at
3 322, beginning on line 13. This is on redirect by
4 the State.

5 BY MR. BOOZER:

6 Q. Do you remember this, Mr. Wooden?

7 A. Yes.

8 Q. And the State asked Ms. Richardson:

9 "Ms. Richardson, he asked you about some charges
10 involving the defendant that you tried to press."

11 "Yes."

12 Question: "What type of incident was that?"

13 "It was an incident."

14 And then, actually, Mr. Gibbons, who is the
15 lawyer you had most of the encounters with, right --
16 is that right?

17 A. Yes.

18 Q. Okay. He actually -- "Your Honor, I object."

19 And then Mr. Smith says: "Objection, Your Honor."

20 The Court says: "Overruled. Y'all asked, y'all
21 opened the door on that." Do you recall that?

22 A. Yes, sir.

23 Q. All right. And then over on 323,

24 Ms. Richardson is allowed to go into detail about
25 what is alleged to have been an incident between you

1 and she in the past; is that right?

2 A. Yes.

3 Q. And what was your understanding -- what did
4 Ms. Richardson go on to tell the Court and the jury?

5 A. She went on to tell about an incident that took
6 place where me and her got into an altercation. And
7 she didn't file a police report against me, not that
8 I remember.

9 Q. And really what the testimony came out to be,
10 if it's in the transcript, that's how it came out?

11 A. Yes.

12 MR. BOOZER: And basically, Your Honor, I'm
13 looking at 323.

14 BY MR. BOOZER:

15 Q. She's basically saying that you were asking her
16 about having sex --

17 A. Yes.

18 Q. -- and then she goes on to say on line 15:
19 "Once I got out of the car and fixed to walk away,
20 he turned and punched me. I got the scar right here
21 to prove it. He knocked me out cold." She's
22 talking about you; right?

23 A. Yes.

24 Q. Now, otherwise, had your own lawyers not opened
25 the door to this, that would have never come out,

1 would it?

2 A. Yes.

3 Q. Okay. Did you have a problem with that? Do
4 you think that prejudiced your case?

5 A. Yes. Yes.

6 Q. All right. Did you have any discussion with
7 your lawyers prior to the examination of that
8 particular witness, Ms. Erica Richardson? Did they
9 ever talk to you about discussing that with her?

10 A. We discussed it, but we didn't plan on using it
11 as a defense. We discussed -- I advised him that
12 Erica Richardson was the one that I got into an
13 altercation with before my trial, and I didn't see
14 him as putting it towards a defense. He asked me
15 did I know her. Yes, I know her. I described how I
16 knew her by that incident.

17 Q. Okay. You've also got an allegation that your
18 lawyer failed to adequately cross-examine the
19 State's DNA expert.

20 A. Yes.

21 Q. And did the State have a DNA expert that ended
22 up testifying --

23 A. Yes.

24 Q. -- at trial?

25 A. Yes.

1 Q. All right.

2 MR. BOOZER: And, Your Honor, I'm looking at
3 the beginning of page 411 of the transcript.

4 BY MR. BOOZER:

5 Q. Mr. Wooden, specifically with regard to that
6 allegation, what is it that you feel like your
7 lawyer didn't do in examining the DNA expert?

8 A. I feel my lawyer could have done a better job
9 with cross-examining the State's DNA expert witness
10 in bringing out that the fact that the expert
11 testified that she was unable to determine if the
12 DNA was a mixture of more than two contributors or
13 not.

14 Well, on recross-examination, my counsel asked
15 why did she say the DNA belonged to one person. I
16 can't recall word for word exactly what she said,
17 but instead of testifying to a mixture, she said
18 that the DNA belonged to one person.

19 Q. Okay. Did she just -- did she say that it was
20 a mixture and that it was consistent though with
21 yours or do you recall what she said?

22 A. I can remember on direct where she said that
23 the DNA was a mixture -- she was unable to determine
24 if the DNA was a mixture or not.

25 Q. And we'll talk about that more with your lawyer

1 when he testifies. Now, ultimately, you're found
2 guilty at trial; correct?

3 A. Yes.

4 Q. And then did you enter a plea that same day
5 right after the trial?

6 A. Yes.

7 Q. All right. And tell me why you ended up
8 entering that plea that day.

9 A. Because I lost my trial. I lost my trial. I
10 felt as if my counsel could have did better. I
11 don't believe that counsel would have been the
12 proper representation for a trial during my burglary
13 case.

14 Q. Did you want to plead guilty?

15 A. No, sir.

16 Q. All right. And did you feel like that plea was
17 because you had just lost the trial?

18 A. Yes.

19 Q. All right. Was that case scheduled to be tried
20 at a later date?

21 A. Yes.

22 Q. Do you know when?

23 A. No.

24 Q. All right. Mr. Wooden, you've waited quite
25 some time to come in here and do this; right?

1 A. Yes.

2 Q. Okay. And I want to make sure that we've
3 covered all of your allegations, much of which we'll
4 get into when questioning your former attorney
5 Mr. Gibbons, but is there anything we've not covered
6 as far as your application is concerned or your
7 specific allegations or anything that you've not
8 touched on about why you think your lawyer was
9 ineffective?

10 A. Yes. My original application, I filed for
11 ineffective assistance of counsel for counsel
12 failing to challenge the probative value of the
13 State's expert witness analysis, what expert
14 testified about my DNA. The expert testified that
15 the DNA actually belonged to -- I really need to
16 kind of see it because I don't want to miss --

17 Q. What do you want to look at? You want to look
18 at --

19 A. The expert testimony, the recross and redirect
20 examination of the expert.

21 MR. BOOZER: Your Honor, if I may approach the
22 witness with the transcript.

23 THE COURT: Yes, sir.

24 BY MR. BOOZER:

25 Q. Are you pretty familiar with the transcript?

1 A. Yes.

2 Q. Okay. Do you want me to -- I'm going to hand
3 this to you so that you can look at it for a moment.
4 Just take your time and look through. And I'll
5 probably get you started. This is 411 with
6 Ms. Webb. So just take a moment and look through
7 that. Okay?

8 A. Okay. I found it.

9 Q. All right. Explain it to the Court, if you
10 would.

11 A. On recross-examination, starting at line 6 --

12 MS. COLEMAN: What page, please?

13 A. -- on page 414 --

14 Q. Hang on one moment. We're going to flip a
15 couple pages over to 414. Okay. Go ahead.

16 A. Okay. My counsel asked expert Amanda Webb on
17 recross: "Didn't you say that it's a possible
18 mixture?" The expert said: "Yes, I did. I did,
19 yes." And my counsel asked: "Why is that when you
20 keep saying it all belongs to one profile?"

21 Expert testified: "Well, with these low-level
22 samples it really is harder to interpret, especially
23 when you don't get a full profile and full
24 information. But when you do compare it to the
25 standard from London Wooden, everything that was

1 developed from the item also matches London Wooden's
2 DNA. If there was a mixture of somebody else out
3 of -- I have 12 locations where I actually had some
4 information. If it was a mixture that someone else
5 had deposited enough DNA, I would really kind of at
6 least expect to see at least one location where
7 somebody else's DNA could be showing up, and I don't
8 see that here."

9 Q. Okay. And what's your position? I mean, what
10 do you think your lawyer should have done?

11 A. I believe my counsel should have object to the
12 prejudice effect that came from the expert's
13 testimony. The expert is clearly contradicting
14 herself. She was unable to determine if the DNA was
15 a mixture or not.

16 Q. Okay. Do you feel like your lawyer should have
17 gone further to explain -- either objecting or gone
18 further to explain that to the jury that, hey, even
19 the State's own DNA expert is contradicting herself?

20 A. Yes.

21 Q. Okay. And you don't feel like he did that?

22 A. No.

23 Q. All right. Is there anything else with regard
24 to what you were just talking about that you need to
25 explain to the Court?

1 A. Oh, during deliberation there was three
2 questions; the jury had three questions about my
3 case.

4 Q. Okay.

5 A. I don't want to make any mistake on -- okay.
6 The jury had three questions during deliberation.
7 They wanted the testimony about the gun powder
8 residue on my hands --

9 Q. And what page are you looking at?

10 A. I'm looking at page 574, starting at line 4.

11 Q. Okay.

12 A. Okay. The jury had three questions. They
13 wanted to know about the gun powder residue on my
14 hands, the DNA results of the gun, and the
15 fingerprints on the gun, which the testimony would
16 be played back in court if you continue.

17 But as a result, there was no gun powder
18 residue found on my hands, there was no fingerprints
19 found on the gun, so the only testimony that was
20 played was the expert's testimony to the DNA results
21 of the gun where --

22 Q. What do you think your lawyer should have done?

23 A. Where -- I believe my lawyer should have
24 challenged the expert's opinion. I believe the
25 trial judge should have had the chance to assure

1 himself of whether the expert was presenting
2 scientific knowledge rather than dressing up an
3 unscientific opinion.

4 Q. Okay. Anything else?

5 A. No.

6 Q. Okay. Have we covered everything with regard
7 to your application and your allegations?

8 A. Yes.

9 Q. Okay. Mr. Wooden, if you would, please answer
10 any questions that Madam Attorney General may have
11 for you.

12 A. Okay.

13 THE COURT: Your witness.

14 MS. COLEMAN: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. COLEMAN:

17 Q. Good morning, Mr. Wooden. How are you?

18 A. Good morning.

19 Q. How many times did you meet with your attorney
20 before going to trial?

21 A. Before trial, I can't exactly remember how many
22 times we met.

23 Q. Was it --

24 A. It was like --

25 Q. Was it several?

1 A. It was several times. I can't put an exact
2 number on it.

3 Q. Okay. And you testified that you reviewed the
4 discovery with your attorney; correct?

5 A. Yes.

6 Q. Okay. Did you give your attorney any leads or
7 potential witnesses to investigate?

8 A. My mom.

9 Q. Okay. And there were several -- at this event
10 that they've testified to at the trial, there were
11 several witnesses that spoke about what happened the
12 night of the occurrence; correct? Were there
13 several people around at that incident?

14 A. You're talking about at the crime scene?

15 Q. Yes. At least from what it sounds like in the
16 trial transcript, there were several witness who --

17 A. Yes.

18 Q. -- spoke about --

19 A. Yes.

20 Q. -- what happened and there --

21 A. Yes.

22 Q. -- were a lot of people around; right?

23 A. Yes, yes, yes.

24 Q. Okay. So did you give your attorney the names
25 of anybody who could testify on your behalf to say

1 that you did not participate in this?

2 A. One person, but she wouldn't agree to testify.

3 Q. Okay. And you mentioned that you discussed the
4 self-defense argument that you could make at trial.

5 You discussed this with your attorney?

6 A. Yes.

7 Q. And you didn't believe that that would be
8 successful?

9 A. No.

10 Q. Were there any other defenses that you wanted
11 to use?

12 A. I could have seen counsel trying to challenge
13 certain evidence. But no.

14 Q. No further questions. Thank you -- oh wait,
15 I'm sorry. I missed the whole guilty plea part. I
16 apologize.

17 Okay. Your guilty plea, you pled guilty to
18 burglary first right after the trial?

19 A. Yes.

20 Q. Did you discuss possible defenses with your
21 attorney over the burglary first charge?

22 A. Yes.

23 Q. And what were some of those defenses?

24 A. I had an alibi witness, and that was it.

25 Q. Do you recall waiving your constitutional

1 rights at the guilty plea, like your right to a jury
2 trial and your right to remain silent?

3 A. Yes.

4 Q. Do you remember telling the plea judge that you
5 were satisfied with your attorney's services
6 regarding the burglary first charge?

7 A. Yes.

8 Q. And you had no complaints against your attorney
9 at the time; right?

10 A. No.

11 Q. You testified earlier that you pled guilty
12 because you lost your trial and you thought your
13 counsel could have been better; correct?

14 A. Yes.

15 Q. Did you ask for a new attorney?

16 A. Yes.

17 Q. You did after the trial?

18 A. Not after the trial, but before the trial. I
19 filed several allegations against my attorney before
20 the trial.

21 Q. Okay. And what was the result of that?

22 A. The State told me I -- that he was appointed to
23 me and I couldn't -- I couldn't.

24 Q. Okay. So you didn't tell the judge at the
25 guilty plea that you were not happy with your

1 attorney's services?

2 A. No.

3 Q. Why didn't you tell him that?

4 A. I was scared. I just was sentenced to 35
5 years. I didn't...

6 Q. Okay. Do you recall telling the judge that no
7 one was promising or threatening you in order to
8 plead guilty?

9 A. Yes.

10 Q. And you told the judge that you were indeed
11 guilty of this crime?

12 A. Yes.

13 Q. Do you want a trial on this charge?

14 A. Yes.

15 Q. Okay. Thank you. No further questions.

16 THE COURT: Redirect?

17 MR. BOOZER: Briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. BOOZER:

20 Q. Mr. Wooden, did you file a motion to have
21 Mr. Gibbons relieved prior to your trial?

22 A. Yes.

23 Q. Was that actually heard at a hearing or do you
24 recall?

25 A. Yes, we had a hearing in which I was able to

1 state the allegations against my attorney, and the
2 judge advised me that Grant was a pretty decent
3 lawyer and that I will have to proceed with
4 Mr. Grant Gibbons as my attorney..

5 Q. How long before your trial was this?

6 A. I can't exactly remember the exact date. It
7 wasn't too behind, not that I believe. It was
8 probably three, two months before.

9 Q. Okay. How much time did you spend with
10 Mr. Gibbons discussing the actual burglary first
11 charge?

12 A. We barely discussed the burglary charge. His
13 main focus was the murder charge.

14 Q. What led to the plea happening that day at the
15 trial?

16 A. Me being convicted of murder. My counsel
17 advised me that if I didn't plead to the burglary I
18 would sustain a life sentence.

19 Q. If you got found guilty of the burglary
20 first --

21 A. Yes, if I got found guilty in a jury trial of
22 burglary first degree.

23 Q. Okay. Thank you, Mr. Wooden. That's all the
24 questions I have for you.

25 THE COURT: Anything further?

1 MS. COLEMAN: Just briefly, Your Honor.

2 RECROSS-EXAMINATION

3 BY MS. COLEMAN:

4 Q. So you would have gotten life in prison if you
5 had been convicted of burglary?

6 A. If I wouldn't agree to accept the concurrent
7 plea deal --

8 Q. Right.

9 A. -- offered by the solicitor. Yes, ma'am.

10 Q. Okay. Thank you. No further questions.

11 THE COURT: You may step down, sir. Thank you.
12 You may call your next witness.

13 MR. BOOZER: Your Honor, may we take five
14 minutes for a brief restroom pause?

15 THE COURT: Sure.

16 MR. BOOZER: Thank you.

17 THE COURT: Just let me know when you're ready.

18 (Short break.)

19 THE COURT: Counsel ready to proceed?

20 MR. BOOZER: We are, Your Honor.

21 THE COURT: You may call your next witness.

22 MR. BOOZER: Your Honor, we'll go ahead and
23 call Mr. Gibbons to the stand.

24 THE COURT: All right. Mr. Gibbons.

25

1 DE GRANT GIBBONS

2 being first duly sworn, testified as follows:

3 THE WITNESS: I do.

4 THE COURT: Please have a seat and state your
5 full name for the record.

6 THE WITNESS: My name is De Grant Gibbons.

7 THE COURT: Your witness.

8 MR. BOOZER: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. BOOZER:

11 Q. Mr. Gibbons, how are you today?

12 A. I'm well, thank you.

13 Q. Good. Were you appointed or retained to
14 represent Mr. Wooden?

15 A. I was appointed.

16 Q. And have you been in the courtroom for his
17 testimony today?

18 A. I have.

19 Q. All right. Were you appointed at the same time
20 to represent him on the murder charge as well as the
21 burg first -- or talk a little bit about that.

22 A. I think a couple weeks after the murder case
23 began I was appointed. The burglary case didn't
24 come on for several months. They had a CODIS hit
25 and came forward with his name on that well after

1 the murder charge was already going on.

2 Q. All right. Do you know about how many times
3 you met with Mr. Wooden prior to the trial?

4 A. My notes reflect, either visits or phone
5 conversations, at least 15 times with me. Mr. Smith
6 went over a couple times. My investigator probably
7 went over three or four times; he would go over
8 recorded stuff with him.

9 Q. Who is Mr. Smith?

10 A. Andrew Smith. He was an attorney in my office.
11 We were in teams and he was on my team, so we he was
12 kind of my co-counsel when the trial happened.

13 Q. Okay. And who had the most contact with
14 Mr. Wooden, you or Mr. Smith?

15 A. It would be me.

16 Q. Okay. When you would meet Mr. Wooden, would
17 you review any defenses with him?

18 A. Well, towards getting closer to trial, we did
19 start trying to come up with a defense. Up until
20 that point, I really told him his best interest was
21 to make a deal because there weren't any really good
22 viable defenses that I could see. But when it was
23 apparent we had to go to trial, we had to come up
24 with something.

25 Q. And what was the defense in this case?

1 A. Well, a lot of the people involved -- it's a
2 very bad neighborhood where this happened. A lot of
3 the people involved are gang-related folks. The
4 victim, we tried to get him, but he never came in.
5 The victim, they thought, was on drugs at the time
6 of the incident.

7 The 911 call came in, they were saying there
8 were 20 shots, 10 shots, 15 shots. No one said his
9 name for a long time during the 911 call but, of
10 course, when they talked to them, they instantly
11 came up with a name.

12 So it was kind of a -- we were going to try and
13 establish that they were shooting back at him and
14 there were a lot of shots going on out there and it
15 might have been a self-defense case. In the
16 alternative, we were going to try and say that law
17 enforcement didn't talk to everybody out there.
18 There were a lot of people out there that were never
19 questioned.

20 Q. All right. Was there a plea offer in this
21 case?

22 A. There was.

23 Q. Do you recall what that was?

24 A. I think they agreed to a 30 minimum on the
25 murder.

1 Q. And what was Mr. Wooden's response to that?

2 A. He was not interested in that. We actually got
3 in some pretty heated conversations about, you know,
4 look, I know it's not a great offer, but the
5 alternative isn't great either. And, like I said,
6 we got into some pretty heated discussions about
7 whether or not he had a defense, whether or not he
8 had a case to go to trial on.

9 Q. Well, was he pretty adamant about proceeding to
10 trial?

11 A. He was.

12 Q. Prior to trial did you file requests for
13 discovery materials?

14 A. I did.

15 Q. All right. Did you review those with
16 Mr. Wooden?

17 A. I did. And Mr. Anderson probably did more of
18 that than I did, my investigator.

19 Q. Now going to the -- well, let me ask you this:
20 What was the trial strategy in this case at trial?

21 A. I was going to try to attack the credibility of
22 any witnesses that were, quote, unquote,
23 eyewitnesses; I was going to attack the
24 investigation because, as I said, there were a
25 number -- I think there were, like, 10 or 12 people

1 that walked in front of the camera that they never
2 talked to at one of the vehicles that was parked at
3 the crime scene.

4 In addition, I think -- if I remember right, I
5 think the Sheriff's Office drove over some of the
6 crime scene. And, you know, it was just some holes
7 I was trying to punch, if I could, and then on the
8 outside chance I could get a self-defense/mutual
9 combat story in there, I was going to work that in
10 too.

11 Q. Do you recall calling three witnesses in the
12 defense's case, one of which was a dispatcher --

13 A. Yes.

14 Q. -- an Aiken Police gang expert --

15 A. Yes.

16 Q. -- and a part-time coroner?

17 A. Yes, sir, I do.

18 Q. What exactly was the strategy for calling those
19 three witnesses?

20 A. Well, I needed the dispatcher to play the 911
21 tape where people were saying there were all these
22 shots that no one could account for on the State's
23 case. So they were saying there were multiple
24 people shooting, they're shooting over here, they're
25 shooting over there, they're running around, they're

1 in the woods, none of which really came forward
2 during the investigation, so I wanted to attack the
3 credibility of their investigation with that piece
4 of evidence.

5 The coroner -- the deceased was an organ donor
6 and they did not end up donating his organs, and the
7 coroner wrote on her report suspected drug activity,
8 and so I wanted to try to get in the fact that he
9 was a drug-affiliated person that ended up getting
10 shot.

11 Q. And how about as far as the police gang expert?

12 A. I wanted him to -- there were some tattoos the
13 guy had too that I wanted him to talk about that
14 were in the autopsy photos, and also whether he was
15 on their list. They keep an active list of all gang
16 members. But I kind of got cut off on that too.

17 Q. And when you're talking about tattoos on
18 somebody, are you talking about the victim?

19 A. The deceased, yes.

20 Q. Okay. Was there any evidence at trial that
21 there was -- that he was -- that Mr. Wooden was in a
22 gang?

23 A. Not that I'm aware of.

24 Q. Okay. By calling the gang expert and
25 introducing -- was it the defense that sort of

1 introduced this element of the gang activity into
2 the trial?

3 A. It was. And London had only been there a short
4 time. Everyone else was a local so-called, you
5 know, gang-affiliated group. He wasn't one of the
6 people that was there and was on the list that I
7 thought law enforcement might have.

8 Q. Okay. And do you think that by introducing
9 that element at all of the gang activity or whatnot,
10 do you think that could have sort of roped him in
11 guilty by association of being part of some sort of
12 gang activity?

13 A. Well, I didn't think so. But we really didn't
14 have a whole lot to work with in this case, so we
15 had to say something.

16 Q. Okay. Did you discuss with Mr. Wooden prior to
17 trial about calling those three folks, the coroner,
18 the dispatcher, and the gang expert?

19 A. We talked about the pictures and the tattoos
20 and we talked about all the people who walked in
21 front of that camera and they didn't talk to them.
22 He was saying there were more people out there they
23 should have talked to as well.

24 Q. All right. But did you specifically talk
25 about, hey, you know, I'm planning on calling these

1 folks to come in and testify, one being a
2 dispatcher, the coroner, and the gang expert? Did
3 y'all have any of that discussion?

4 A. I don't remember if we did or not. That was
5 kind of in the late stages when we knew we had to
6 come up with some defense material.

7 Q. Okay. Going back to his allegation that you
8 had advised him to submit a DNA sample for the
9 burglary first while telling him that it would have
10 no effect on the murder charge, do you have any
11 recollection about that?

12 A. Sure.

13 Q. And what -- okay. Tell us what you remember
14 about that.

15 A. They had taken a sample for the murder case.
16 Then they had a CODIS hit on something he had had on
17 his juvenile record, if I recall right, on the
18 burglary case. They had to take another sample for
19 the burglary case in order to be able to make a
20 chain because CODIS will not work if there's no
21 chain of custody on that kind of information. And I
22 don't think the burglary DNA -- official DNA ever
23 really got done because it was too close to the time
24 of the trial.

25 Q. Was there any linking between the DNA sample

1 which he gave for the burglary to -- then back to
2 the murder charge?

3 A. No, not to my knowledge because, like I said, I
4 don't think they had even tested his sample when the
5 trial for the murder case took place.

6 Q. Did you advise him to go ahead and submit the
7 samples?

8 A. My worry about the burglary case -- and I told
9 him they could have tried the burglary case first.
10 We discussed that that was a possibility because it
11 was a DNA match, and it was a strong one, we
12 thought. We talked about the fact that there was
13 already a CODIS hit there and that I'd been doing
14 this a long time and in that situation I had never
15 seen them not being able to get a sample.

16 And I was concerned when the burglary came up
17 if he got convicted of one charge and then the next
18 term of court he got convicted of the other charge,
19 that that would be a mandatory life if the State
20 filed notice. And that was pretty heavy on my mind
21 at that time too.

22 Q. You were talking about a 35-year offer in --
23 were you talking about the 35-year offer on the case
24 with the murder?

25 A. A 30-year offer.

1 Q. Okay. I'm sorry. He got convicted and was
2 sentenced to 35. Was there ever an offer that tied
3 the burglary first in with the murder?

4 A. I don't recall that being mentioned. Like I
5 said, the burglary case came in real late in the
6 game, and we were pretty well into prep mode on the
7 murder case when that came in.

8 Q. Were you doing any sort of investigation on the
9 burglary issue or was everything focused on the
10 murder charge?

11 A. Well, the burglary issue, there wasn't a lot of
12 investigation. There were no witnesses. It was
13 just some blood that got found at a crime scene that
14 matched to my client's DNA. And as far as I could
15 tell, they had no legitimate reason to have DNA on
16 that crime scene. So I don't know that there was
17 any investigation to do at that point.

18 Q. Okay. Do you recall the solicitor actually
19 making the statement at trial that he didn't even
20 know what the defense was in the case?

21 A. I do remember that. And I've made that myself
22 before.

23 Q. All right. Do you think by him saying that,
24 that the jury is probably thinking the same thing?

25 A. Well, as I told my client all through my prep,

1 that was not a good case to take to trial. We were
2 trying everything we could; we were trying faulty
3 investigation, we were trying for some sort of
4 self-defense. But all those witnesses were kind of
5 in lockstep that they did talk to and there were a
6 bunch that they didn't talk to. So it was what it
7 was at that time.

8 Q. Now, your co-counsel, Mr. Smith, he actually
9 handled some of the witnesses?

10 A. He did.

11 Q. Okay. Are you prepared to sort of testify to
12 what Mr. Smith was handling at the time and your
13 involvement?

14 A. Loosely, yeah.

15 Q. All right. Do you recall a witness by the name
16 of Erica Richardson?

17 A. I did.

18 Q. And just based on your recollection, what was
19 her role in all this?

20 A. She was a pretty damning witness. She kind of
21 drove up and was going to testify -- or did testify
22 that she saw London running across the yard with a
23 gun in his hand. And she IDed him; she said she
24 knew him.

25 I talked to Mr. Wooden before trial and I said,

1 you know, what's up with her? And he said she
2 didn't like him, that she had tried to get him
3 arrested. And that's all he told me about that
4 situation and that's all Mr. Smith knew about this
5 situation.

6 And looking at his record, I'm still not sure
7 what she's talking about as far as what she said she
8 got him in trouble for because I don't see it on his
9 record. All I see is some assault case.

10 Q. And, actually, in Mr. Smith's cross-examination
11 of Ms. Richardson -- and we've been through this
12 with Mr. Wooden --

13 A. Right.

14 Q. -- but he asked her about, well, didn't you try
15 to press charges against my client in the past? And
16 she said, yes, sir, I did. And then of course
17 Mr. Smith says, well, and you still don't have
18 anything against him, and she says, no, sir, I
19 don't, but then later on that kind of comes back up;
20 do you recall that?

21 A. I do. And that's what I'm saying. When
22 Mr. Smith and I were prepping, we had talked to
23 Mr. Wooden about this lady and he said, yeah, she
24 tried to get me in trouble before, she tried to get
25 me arrested for some stupid stuff. And that's

1 really all he told us.

2 Q. And, actually, on the redirect examination by
3 the solicitor's office, they actually kind of then
4 get into the details about what Ms. Richardson is
5 talking about.

6 A. Right. And I don't know -- I've never heard
7 anything about that from my client.

8 Q. Okay. And in here the State asks: "Well, what
9 type of incident was that?" And she starts to
10 answer it was an incident, and then you -- and this
11 isn't even your witness --

12 A. Right.

13 Q. You actually -- "Your Honor, I object," which
14 is really improper; right?

15 A. Correct.

16 Q. But right then you're trying to save the ship
17 from sinking.

18 A. That's exactly right.

19 Q. And then actually Mr. Smith, I guess, I don't
20 know what the timing is, but he says, "Objection,
21 Your Honor." I don't know if you nudged him or
22 what, but he objected as well.

23 A. Correct.

24 Q. Why were you making that objection?

25 A. Well, because we didn't know where they were

1 going with it because as far as we knew, she had
2 just tried to get him arrested for something. And
3 for them to do a redirect, I imagine they must have
4 had something, and I wanted to know what was it
5 before they said it.

6 Q. And then the judge says, "Too late, y'all
7 opened the door;" right?

8 A. Right.

9 Q. Okay. And then so eventually she's able to
10 testify and tell the jury about how Mr. Wooden's
11 wanting her and a friend to maybe sleep with him and
12 then she says, "So once I got out the car and fixed
13 to walk away, he turned to me --" Mr. Wooden -- "and
14 punched me. I got this scar right there to prove
15 it. And he knocked me out cold."

16 That's a pretty serious allegation and a bad
17 prior -- what is really a prior bad act of
18 Mr. Wooden.

19 A. Right.

20 Q. And typically that wouldn't have come out had
21 y'all not asked her those initial questions.

22 A. And typically we wouldn't have asked that if he
23 had told us that had happened. I still don't know
24 if that's true or not; that's just what she said.

25 Q. Okay. Do you think that that was damaging to

1 Mr. Wooden in the eyes of the jury?

2 A. I can't say whether it was or it wasn't. I
3 would have rather not had it in there. And if I had
4 known that's what happened, I wouldn't have --
5 neither one of us would have asked that question.
6 But when we asked about their involvement with each
7 other, he said that we had a -- she doesn't like me,
8 she tried to get me arrested for something.

9 Q. Do you recall if you would have sort of pressed
10 Mr. Wooden and said, tell us a little bit more, or
11 did y'all just let it go at that?

12 A. We just let it go at that.

13 Q. Do you think, looking back, it probably would
14 have been prudent to maybe ask him, give us a little
15 bit more detail so we can know what we're looking at
16 here?

17 A. We both should have probably treated that a
18 little better, he and I.

19 Q. Okay. Do you recall the State having a DNA
20 expert testify at trial?

21 A. I do.

22 Q. Okay. And have you reviewed the transcript
23 recently?

24 A. I have.

25 Q. And do you have a pretty good recollection

1 about this particular DNA expert?

2 A. Pretty good.

3 Q. So, actually, you sort of really challenged her
4 testimony, would you agree with that, in your
5 cross-examination?

6 A. I thought I did.

7 Q. What was it that you were trying to do with
8 her?

9 A. Well, she had a number. I think it was 1 in
10 16,000 --

11 Q. Okay.

12 A. -- or 1,600 -- 1,600 or 16,000, which was, at
13 the time, the lowest one I'd ever seen as far as the
14 statistical probability number, and I had done a lot
15 of DNA cases. And I kept pushing her on why that --
16 why she was calling that a match. I asked her why
17 she was calling it anything. She said it was a
18 mixture, she said she didn't know if it was a
19 mixture, and I pointed that out to her.

20 I got her all the way down to agreeing that she
21 would call it a match even it was half the people in
22 Aiken could be in that sample. And I thought that
23 was as strong as I could go on that situation.

24 Q. Okay. How many DNA cases do you think you've
25 tried or been involved in?

1 A. Well, I've done them on murder, I was the CSC
2 prosecutor for five or six years, so well over a
3 hundred, I would say.

4 Q. So the 16,000, you say that's the lowest number
5 you've seen?

6 A. It's the lowest I personally have seen.

7 Q. Is that the lowest by far you've seen or is it
8 just --

9 A. Well, it's like I told her, you know, most of
10 the time it's in the trillions, quadrillions, or
11 more, more than anybody on the earth. I think I
12 asked her that question and she goes, well, yeah,
13 that can happen. And I said, well, you'd call that
14 a match? Yeah. Well, what if it's one out of two?
15 Well, yeah, we'd call that a match in the situation
16 too.

17 Q. Do you recall --

18 MR. BOOZER: And, Your Honor, I'm looking
19 specifically on page 411 of the transcript during
20 Mr. Gibbons' cross-examination of Ms. Webb who is
21 the DNA expert.

22 BY MR. BOOZER:

23 Q. Do you recall asking the question of Ms. Webb,
24 beginning at line 15 --

25 A. 411? Let me get there.

1 Q. Yes, sir.

2 A. All right.

3 Q. Do you recall asking the question: "So match
4 doesn't really mean 100 percent, that's exactly that
5 person, it's just consistent?" She says: "That's
6 correct, and that's why we use the statistic."

7 A. Right.

8 Q. And you go on to press her even further and
9 say: "So you can't say, as DNA expert, that the
10 profile is Mr. Wooden?" And she starts hemming and
11 hawing a little bit and she says: "I can't say
12 with, you know, 100-percent certainty, but to a
13 reasonable degree of scientific certainty,
14 everything that I've developed --" And you say: "Is
15 consistent." She says: "-- from touch."

16 And then you go on, on 412: "Now, you weren't
17 even sure -- you weren't even completely sure it was
18 a mixture; right?"

19 "That's correct. It's a possibility, that's
20 correct. I couldn't tell either way."

21 A. Right.

22 Q. And then over on 415, beginning at line 6, you
23 say: "Well, you're getting me confused. You said
24 there's nothing to indicate anybody else but the one
25 profile, but then you're saying you can't say it's

1 not a mixture."

2 "Yes."

3 Do you recall that when the jury went out that
4 they wanted to hear some testimony replayed?

5 A. They did.

6 Q. Okay. And was she one of the witnesses that
7 they wanted to hear?

8 A. She was.

9 Q. All right. And so flipping over to page 579 --
10 and I'll wait a moment.

11 A. All right. I'm there.

12 Q. Looking at page 579, line beginning at 11, this
13 is -- do you agree with me that this is a replay of
14 her testimony?

15 A. Right.

16 Q. And the question -- and this is the end of what
17 they're replaying: "So based on your training and
18 experience, what you tested, is that considered a
19 match?" And she answers: "Yes, it is." Line 14:
20 "So what you tested, they matched from the firearm
21 handle to the defendant in this case?"

22 "Yes, it is."

23 "No further questions."

24 "Whereupon the recording was turned off."

25 Did any of your cross-examination get replayed

1 to the jury, do you recall? And I'll just go ahead
2 and tell you that some of it did get replayed. But
3 I was looking specifically, did they replay the
4 portion --

5 A. About the one-in-two?

6 Q. Correct.

7 A. I'm trying to see.

8 THE COURT: If you know the answer, Mr. Boozer,
9 the transcript speaks for itself.

10 MR. BOOZER: Absolutely, Your Honor. And I was
11 looking to --

12 THE WITNESS: Yeah. I'm trying to -- mine is
13 kind of turned upsidedown, so I'm trying to --

14 MR. BOOZER: He and I have transcripts which
15 were printed one page upsidedown and the other this
16 way, so it makes it difficult. So I'm reading
17 through the State's for a moment, Your Honor.

18 THE WITNESS: You want to direct me to what
19 you're asking me about?

20 BY MR. BOOZER:

21 Q. Initially what we were talking about was you
22 had questioned --

23 A. Looks like my recross is replayed starting on
24 583.

25 Q. Correct. And was it -- did the jury get to

1 hear again where she basically said I believe it is
2 not a match on what I was asking you a moment ago?

3 A. I got on 584, line 10, where she's saying she
4 put possible mixture and that she couldn't tell us
5 if it was a mixture or not.

6 Q. But how about the portion where you asked her:
7 "So you cannot, as a DNA expert, say that the
8 profile is Mr. Wooden?"

9 A. One hundred percent. I don't know. I don't
10 see it. But I haven't read through the whole
11 transcript.

12 Q. And as her Honor stated, the transcript will
13 speak for itself. If it's in there and played for
14 the jury, it will be in there; but if not, it
15 didn't.

16 A. I know they played part of the cross, but I'm
17 not sure if they played all of it.

18 Q. If they did not play that particular portion of
19 the cross-examination, which is from page 411 of
20 your -- this is actually from your
21 cross-examination, not the recross of Ms. Webb --
22 that that would have been important for the jury to
23 have heard again, if they're having that opportunity
24 to hear what the State said that it's a match, to
25 hear that portion?

1 A. I don't know what would be more important or
2 less important. Of course I would have liked to
3 have had them heard it all.

4 Q. But you would agree with me that her testimony
5 was somewhat inconsistent with what she was
6 testifying to with the State and what she was
7 testifying as to you?

8 A. Correct.

9 Q. Okay. Did you argue any of that to the jury in
10 your closing?

11 A. I believe I did, but I'd have to look.

12 Q. If it's in the transcript, it's in there?

13 A. If it's in there, it's in there. I don't
14 remember off the top of my head.

15 Q. Okay. But would you agree with me that that
16 would be important -- that the fact that her
17 testimony was -- would you categorize her testimony
18 as inconsistent?

19 A. I wouldn't know that I would call it
20 inconsistent. It was strange and it didn't -- I
21 thought it was suspect. I wouldn't say inconsistent
22 because I don't think I've ever heard someone say
23 they could call a one-out-of-two statistic a match.
24 But she said she would.

25 Q. Okay.

1 A. I thought that was really strange.

2 Q. And we'll use suspect then. If you believed it
3 was suspect, do you believe that that's something
4 important that you need to highlight in your closing
5 to the jury?

6 A. I would -- I hope I did.

7 Q. And if you didn't, would you say that that was
8 a mistake if you did not bring that out?

9 A. I hope I did. If I didn't, I should have.

10 Q. And you'll just, of course, let the record
11 speak for itself.

12 After the conviction and he was found guilty,
13 sort of explain and walk through what happened and
14 how much time elapsed with regard to the guilty plea
15 then for the burg first.

16 A. Well, I immediately became concerned that he
17 had another most-serious charge pending and I talked
18 to Mr. Smith about it. And I think London is
19 correct; I think he was kind of in shock at that
20 point. He wasn't -- I don't know what he was
21 hearing or what I was saying. But we did explain to
22 him I was very concerned that if we got into another
23 term of court with whatever happened with his other
24 charge, the State had given some indication about
25 filing for life without parole and it would be a

1 mandatory sentence at that point because it's two
2 most serious.

3 So we discussed that and I advised him that the
4 best thing we could do is get in front of this judge
5 today during this term of court. And I'd gotten
6 some indication to him that, you know, he would
7 treat it as same term of court, that he'd give him a
8 concurrent sentence. And so I thought it was
9 imperative that we got into court as soon as
10 possible.

11 Q. Okay. So all of this was basically a package
12 deal with the trial?

13 A. Yes.

14 Q. Okay. How much time do you think he had to
15 really absorb sort of what he was pleading to and
16 kind of the overall seriousness of that burg first?

17 A. I don't know the times, to be honest with you.
18 I thought it was the next morning, but it could very
19 well have been half an hour, hour, two hours. I
20 just don't remember. It's been too long. But we
21 did go back in the back and we talked to him in
22 depth about what we were scared about.

23 Q. And you say you feel like he probably was in
24 shock from the trial?

25 A. Well, who wouldn't be? I mean --

1 Q. Right. Do you think that he was sort of just
2 going through the motions at the plea in answering
3 the questions or do you think that he fully
4 understood this?

5 A. I think he understood it. When we were
6 standing up from when the sentence was given, he --
7 we were walking out of the room together and he's
8 like, I should have told you, I should have agreed
9 with you, we should have done the plea. And I said,
10 let's go talk, and we went in the back and sat down
11 and we talked about all of the ramifications of the
12 burglary charge and what that could end up being,
13 and he understood.

14 I felt like he knew what he was doing. Was he
15 upset? Was he kind of reeling from that sentence?
16 I can't imagine anybody wouldn't be. But I felt
17 very strongly we had to get that done before that
18 term ended.

19 Q. Did y'all discuss any sort of trial strategy
20 for the burg first?

21 A. We had discussed it before. I mean, all you
22 can do is try and attack the DNA expert. And as you
23 can see from this trial, they're going to give their
24 story one way or the other, and that would be a
25 tough one to win.

1 Q. Did you explain to him that it wouldn't
2 basically be -- if he got found guilty at a trial,
3 that it basically wouldn't be an automatic life
4 sentence, but they would have to serve and put you
5 guys on notice that they were seeking life without
6 parole?

7 A. Well, they had already talked about serving it
8 before we even went on the murder trial. So I knew
9 they already had that in their head.

10 Q. Did you have that discussion with Mr. Wooden?

11 A. Yes, sir.

12 Q. Okay.

13 MR. BOOZER: I beg the Court's indulgence, Your
14 Honor.

15 BY MR. BOOZER:

16 Q. Mr. Gibbons -- and you may have already
17 answered this, and I apologize if you have -- but
18 why did you advise Mr. Wooden to go ahead and submit
19 to a DNA -- or submit a DNA sample?

20 A. Well, I didn't want it to be too far behind the
21 trial. If we were going to have to do it, I was
22 hoping for a chance to handle them at the same time
23 because of the two-strikes situation. It was a
24 CODIS hit and I've never seen that kind of a motion
25 being denied by a judge, so I just told him, you

1 know, there's really no point in waiting around,
2 it's going to happen anyway, let's just go ahead and
3 get it done.

4 Q. How about specifically though on the murder
5 charge? Did he submit to a DNA sample on the murder
6 charge?

7 A. I thought we had a Schmerber hearing on it.

8 Q. Okay.

9 A. And then at the last minute, he consented. We
10 had it set up for a Schmerber and then we got over
11 there and did it in the back.

12 Q. Would you see any benefit to him consenting to
13 the DNA?

14 A. Sure. If it came back not him on the gun,
15 we're golden.

16 Q. Thank you, Mr. Gibbons. That's all I have.

17 THE COURT: Your witness.

18 MS. COLEMAN: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. COLEMAN:

21 Q. Mr. Gibbons, can you -- we've had a lot of
22 testimony over this case this morning, but I don't
23 think we've gone over the facts yet. Would you tell
24 us the facts of this case and generally what
25 happened according to the State's witnesses?

1 A. I'll try. It's been a long time. This was at
2 a small circle trailer court in Aiken County, Dallas
3 Circle. 911 got a call that there were shots fired,
4 there were people still shooting. You could hear
5 shots in the background. They got out there, there
6 was a big crowd there that started to disperse.

7 I think, if I remember right, Mr. Wooden was
8 apprehended a few doors down, maybe his mom's
9 trailer, I think. There were witnesses that gave an
10 account that there was an argument and a shooting;
11 that Mr. Wooden was involved in the shooting; that
12 he chased one of the victims around one of the
13 buildings, shot, the victim was on the ground.

14 One witness was going to say he came up there
15 and kicked him and said some derogatory things to
16 him while he was laying there on the ground and then
17 ran off. I think the gun was found thrown in the
18 bushes somewhere nearby.

19 Q. And correct me if I'm wrong, it seemed like
20 from the transcript several of the witnesses
21 testified that -- or at least one or two of the
22 witnesses testified that the defendant shot the
23 victim five times in the back and then held a gun to
24 his head and then threatened him. Is that correct?

25 A. Correct. That's what I was talking about.

1 Q. What was the applicant's version of the facts?

2 A. There was -- it ranged. I mean, at some
3 points, I wasn't even there; some points it was, you
4 know, he was shooting at me. It just changed over
5 the course of the representation.

6 Q. Okay. And the applicant did not testify at
7 this trial; correct?

8 A. Correct.

9 Q. And he mentioned that you -- and you mentioned
10 a self-defense argument based on the shootout -- the
11 possible shootout that could have --

12 A. The number of shots that people were saying
13 were fired, yeah.

14 Q. Right. But you didn't think that this ended up
15 being a successful argument at trial?

16 A. I really thought he should have taken the deal
17 all along.

18 Q. Okay. Did you review discovery with the
19 applicant?

20 A. I did.

21 Q. Did you discuss with him the elements of the
22 charges and what the State was required to prove?

23 A. I did.

24 Q. Did he understand all that, in your opinion?

25 A. In my opinion, he did.

1 Q. Okay. What kind of evidence did the State have
2 against the applicant?

3 A. They had that suspect DNA, touch DNA off the
4 gun, they had eyewitnesses.

5 Q. How many do you think? I was thinking about
6 five.

7 A. Yeah. I was going to say four -- three, four,
8 or five.

9 Q. Okay. So how would you characterize this
10 evidence? Would you describe it as strong evidence?

11 A. Well, most of it was eyewitness which, you
12 know, you can always work with that a little bit.
13 But the stuff about having him down with the gun to
14 his head and threatening him and calling him names,
15 that was going to be pretty hard to deal with at
16 trial.

17 Q. And these witnesses all identified London
18 Wooden as the suspect; correct?

19 A. They did.

20 Q. Did the applicant ever give you any potential
21 witnesses or leads to investigate?

22 A. Like he said, he had me talk to his mom. But
23 as far as people, never had anybody.

24 Q. Okay. What kind of investigation did you do?

25 A. I put my investigator on it. He's former

1 captain of the sheriff's department. He reviewed
2 the evidence, I reviewed the evidence with him. We
3 went out to the crime scene, we walked around, we
4 talked to neighbors. We re-reviewed all the 911
5 tapes, all the photographs, coroner's photographs,
6 everything we could think of.

7 Q. Okay. Did you have ample time to prepare for
8 trial?

9 A. I think we did, yes.

10 Q. Okay. We've already discussed the buccal swab
11 a little bit, the DNA sample that the applicant
12 gave. If you hadn't have advised him to give his
13 DNA sample, would it -- would they have gotten it
14 anyway?

15 A. They surely would have gotten it, in my view.
16 And he was screaming speedy trial and I kept telling
17 him we don't have all the evidence, we don't have
18 all the evidence, if this evidence comes back right,
19 it may let you go. But he was adamant he wanted to
20 get to trial quick as he could. He didn't want to
21 stay in jail any longer. That was one of the issues
22 that he brought up when he was trying to get me
23 relieved.

24 Q. Okay. If he had chosen not to give a DNA
25 sample, do you believe that this would have changed

1 the outcome of the trial or of the guilty plea?

2 A. Not one bit.

3 Q. Okay. As far as the prior bad acts issue with
4 the witness that Mr. Smith was testifying -- or was
5 questioning -- and I know you can't testify on his
6 behalf. But just in general, do you believe that --
7 why do you believe that he questioned this witness
8 about her prior involvements with the applicant?

9 A. Well, we had talked to Mr. Wooden about it and
10 he had told us that they just had bad blood and she
11 didn't like him, she tried to get him in trouble a
12 while before.

13 Q. So were you trying to show to the jury that she
14 might be prejudice?

15 A. She had some bias, she might be lumped in with
16 this gang element that was in the case.

17 Q. Okay. And, ultimately, she ended up being able
18 to testify about these prior bad acts. Do you
19 believe that if she had not been able to testify
20 about these prior bad acts that the outcome of the
21 trial would have been different, even with the
22 eyewitnesses and the DNA evidence?

23 A. Like I said, I think once they have that person
24 saying he was leaning over him with a gun to his
25 head after he'd shot a bunch of times, threatening

1 him and calling him names, I think that would have
2 been astronomically hard to overcome.

3 Q. Okay. Turning to the guilty plea in the
4 burglary first charge, did you file any Rule 5 or
5 Brady motions for this charge?

6 A. We usually do that as a matter of course when
7 the file comes in. I'm sure we did.

8 Q. Okay.

9 A. I had all the reports.

10 Q. Okay. And did you review that discovery with
11 the applicant?

12 A. I did. There wasn't much to it.

13 Q. And you mentioned that there was DNA evidence
14 from his blood at the crime scene.

15 A. Yeah. All the report said was went to a crime
16 scene, glass was broken, there was blood on the
17 floor, we collected it. There wasn't a whole lot
18 there.

19 Q. How would you describe that evidence, the
20 State's evidence in this case?

21 A. In the burglary case?

22 Q. Yes.

23 A. It would be hard to get over once the DNA was
24 matched.

25 Q. Okay.

1 A. And they had already matched in CODIS.

2 Q. Right. Did you discuss Applicant's version of
3 the facts for the burglary case?

4 A. We did. I don't remember exactly what it was,
5 whether it was he had been there before at some
6 point in time. I just don't remember.

7 Q. Did he admit his guilt to you in this case?

8 A. I don't think he ever did. I don't think we
9 ever got that far into it.

10 Q. Okay. So the applicant pled guilty the morning
11 after he was convicted of murder; correct?

12 A. I think that's right.

13 Q. That's what it looked like from the transcript,
14 at least, before he was sentenced for the murder
15 charge. So you had the whole night -- the jury
16 returned with their guilty verdict and then you went
17 home and came back the next morning and he decided
18 to plead; correct?

19 A. If that's what the record says. Like I said, I
20 wasn't sure. I knew it was a little while.

21 Q. Okay. And during this time did you discuss the
22 decision with him to plead guilty?

23 A. We did.

24 Q. And he had the whole night to think about and
25 decided, ultimately, to plead guilty?

1 A. Yes, ma'am.

2 Q. Whose decision was it to plead?

3 A. His.

4 Q. Do you agree with that decision?

5 A. I do.

6 Q. Okay. Did he ever indicate that he wanted to
7 go to trial on this charge?

8 A. I don't recall him ever saying that. I know he
9 didn't after the verdict.

10 Q. Okay. Did you review the applicant's
11 constitutional rights before the guilty plea?

12 A. I did.

13 Q. Did he ever tell you he did not understand
14 something?

15 A. No.

16 Q. Did he ever express any concerns with you in
17 your representation before he pled guilty?

18 A. No. He was actually -- we were better
19 communicating and getting along better then than we
20 had in months.

21 Q. Okay. No further questions. Thank you.

22 THE COURT: Redirect?

23 MR. BOOZER: Just briefly.

24

25

1 REDIRECT EXAMINATION

2 BY MR. BOOZER:

3 Q. Did he file for a speedy trial on the burglary
4 charge as well?

5 A. I'm not sure, to be honest with you. He may
6 have. We may have combined it. I know we got in
7 front of the judge a couple times because they
8 didn't meet the deadline one time.

9 Q. Do you recall why he wanted you relieved as
10 counsel?

11 A. That I wasn't talking to him right, that I
12 wasn't getting the speedy trial done quick enough.
13 I think that was the main gist of it.

14 Q. Had the relationship gotten better immediately
15 prior to trial or was it still a little bit rough?

16 A. I think once he realized we were actually
17 prepping for trial, we were good.

18 Q. Thank you.

19 MR. BOOZER: No further questions, Your Honor.

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

21 Any further witnesses?

22 MS. COLEMAN: No further witnesses, Your Honor.

23 THE COURT: Anything further, counsel?

24 MR. BOOZER: Nothing further, Your Honor.

25 THE COURT: All right. I'll take the time to

1 review the record and notify of you an opinion.

2 MR. BOOZER: Thank you, Your Honor.

3 MS. COLEMAN: Thank you, Your Honor.

4 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Second Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Aiken County, South Carolina, on the 23rd of January, 2017.

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

June 5, 2017

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

London Devonta Wooden, #357930,

2015-CP-02-00816

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on April 1, 2015. Respondent submitted its Return and Partial Motion to Dismiss on August 27, 2015. An evidentiary hearing was convened on January 23, 2017, at the Bamberg County Courthouse. Applicant was present at the hearing and was represented by Lance Boozer, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

I. PROCEDURAL HISTORY

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was true bill indicted at the April 2012 term of the Aiken County Grand Jury for murder (2012-GS-02-473) and possession of a weapon during a violent crime (2012-GS-02-474). Applicant was subsequently indicted for burglary, first degree (2013-GS-02-906) by the June 2013 term of Aiken County Grand Jury. DeGrant Gibbons, Esquire, represented Applicant. On November 15, 2013, Applicant proceeded to a jury trial before the Honorable James R. Barber on the murder and possession of a weapon charges. Applicant was found guilty on both charges. Following the trial, Applicant entered a guilty plea to burglary,

first degree. Judge Barber sentenced the Applicant to a thirty-five year term of imprisonment for murder and burglary, first degree, and five years for possession of a weapon. All sentences were ordered to run concurrently.

A Notice of Appeal was filed on Applicant's behalf for the murder and weapons charges. By Order filed March 24, 2015, the South Carolina Court of Appeals dismissed the appeal pursuant to Applicant's request. The Remittitur was issued on April 14, 2015. Due to a filing error by Mr. Gibbons, Applicant did not appeal his guilty plea or sentence.

Applicant filed the current application for post-conviction relief on April 1, 2015. A hearing was held on May 26, 2016 at the Aiken County Courthouse before the Honorable Diane Goodstein. Judge Goodstein denied the State's Partial Motion to Dismiss and granted Applicant a belated appeal of his guilty plea. Subsequently, Applicant communicated to counsel that he did not wish to pursue a belated appeal and wanted only to continue forward with his post-conviction relief allegations. The full evidentiary hearing was heard over all allegations on January 23, 2017.

II. ALLEGATIONS

In his current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of counsel.
 - a. Failed to challenge the probative value of states DNA expert opinion being substantially outweighed by the danger of unfair prejudice.
2. Involuntary guilty plea.

Applicant filed amendments to his application on December 2, 2015, and on April 5, 2016, adding the following allegations:

- (a) Ineffective assistance of counsel for advising Applicant to submit a DNA sample for the Burglary, First charge while advising Applicant it would have no effect in his murder case.
- (b) Ineffective assistance of counsel for failing to discuss and put forth a defense.
- (c) Ineffective assistance of counsel for opening the door to prior bad acts by the Applicant.
- (d) Ineffective assistance of counsel for failing to adequately cross-examine the State's DNA expert.
- (e) Trial counsel's ineffectiveness rendered his subsequent guilty plea involuntary.
- (f) Ineffective assistance of counsel for failing to challenge the reliability of DNA expert.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was

deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 386 S.E.2d at 625. With respect to guilty pleas, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366 (1985).

V. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Trial Counsel, DeGrant Gibbons, Esquire.

Applicant testified that Trial Counsel was appointed to represent him two or three weeks prior to when he was charged with the crime. He stated that Trial Counsel waived his preliminary hearing and put in a motion for a speedy trial. He stated that he was given a plea offer for thirty years, but he did not want to waive his rights, so he went to trial instead. He stated that Trial Counsel advised him to take the plea deal.

Applicant testified that a lot of the State's witnesses did not come into play until a week prior to the trial, and there were new witnesses and DNA evidence that he did not know about. He stated that he discussed the evidence with Trial Counsel twice, but they did not fully come to an agreement about their defense strategy. He stated that Trial Counsel wanted him to testify that he was acting in self-defense. He stated that they did not discuss defense witnesses. Applicant testified that Trial Counsel called a coroner, a dispatcher, and a gang violence expert as defense

witnesses at trial, but he did not understand why until during the trial. He stated that they were trying to show the jury that the Victim was affiliated with a gang.

Applicant testified that he gave a DNA sample to law enforcement for the burglary charge, and three months later, he found out from Trial Counsel that they would also use the DNA sample against him in his murder trial. However, Applicant stated that he gave two separate samples, one for each charge.

Applicant testified that the Victim was shot in the back. Applicant stated that he had nothing to do with it. He stated that Trial Counsel knew about a fight that Applicant had previously had with a witness, and he brought it up in front of the jury, which opened the door to his prior bad acts. Trial tr. 321.

Applicant testified that Trial Counsel did not cross-examine the DNA expert, Webb, properly at trial. He stated that he should have brought out to the jury that the DNA found on the gun was a mixture of two people, not just his DNA.

Applicant testified that he pled guilty to the burglary charge immediately after his murder trial because he lost his trial, and he thought that his counsel could have been better. He stated that he did not ask for a lawyer before pleading guilty. However, he stated that he did ask for a new attorney two months prior to his trial, but his motion was denied. Applicant stated that he and Trial Counsel barely discussed the burglary charge. He stated that, if he had been found guilty of burglary at trial, he would have gotten a life without parole sentence.

After Applicant's testimony, Applicant called Trial Counsel to the stand. Trial Counsel testified that he met with Applicant at least fifteen times before the trial. He stated that he met with the investigator three or four times, and met with Andrew Smith, the Assistant Public Defender who helped him defend the case, at least a couple of times to discuss it. Trial Counsel

stated that he had the most contact with Applicant out of the two attorneys. He stated that he told Applicant that there were no viable defenses in his case and he should have taken the plea deal.

Trial Counsel testified that this crime took place in a bad neighborhood with lots of gang-related activity. He stated that there were ten to twenty shots going back and forth during the fight at issue. He stated that his strategy was to have Applicant claim self-defense and bring out the fact that the investigating officers did not speak to many witnesses who were at the scene of the crime. He stated that he wanted to attack the credibility of the eye-witnesses and to emphasize the chaos that ensued during this event to suggest that no one really saw what happened. He stated that his self-defense strategy was negated by mutual combat.

Trial Counsel stated that Applicant was adamant about proceeding to trial. Trial Counsel stated that he called three witnesses for the defense, including a dispatcher, which allowed them to play the 9-1-1 tapes and demonstrate the chaos and show that multiple people were shooting. He stated he also called a coroner to show the Victim's suspected drug activity, but the trial court would not allow this testimony in. He stated he called a gang expert to testify about the Victim's gang-related tattoos. Trial Counsel stated that he did not have a lot of evidence to work with, so he had to find something.

Trial Counsel testified that law enforcement took Applicant's DNA sample for the murder charge. He stated that law enforcement matched the burglary crime to Applicant through a CODIS hit, and he gave a separate DNA sample for the burglary charge to ensure the proper chain of custody. Trial Counsel stated that there was no link between the DNA samples given for the two crimes. He stated that regardless of whether he advised Applicant to give the sample, law enforcement would have been able to get a cheek swab DNA sample from him. He stated that

there were no witnesses of the burglary, but there was blood at the crime scene that matched Applicant's DNA.

Trial Counsel testified that Applicant did not tell him about the specific incident between him and witness Erica Richardson; he had only told them that they "had a bad history." He stated he was not aware that she had pressed charges against him, and they would not have asked her about their history if Applicant had told them. He stated that they both should have treated that situation a little better. Regardless, Trial Counsel testified that he did not believe that this specific testimony of his prior bad acts affected the outcome of the trial; he believed that Applicant would have been convicted even without that testimony.

Trial Counsel stated that he *did* cross-examine the DNA expert on the issue of the DNA mixture on the gun handle. He stated that he challenged her credibility on this issue and on the very low percentages that she gave to the jury.

Trial Counsel testified that he felt like Applicant knew what he was doing when he pled guilty to burglary. He stated that their trial strategy for the burglary charge would have been to attack the accuracy of the DNA, and this was a tough argument to win. He testified that the solicitors had already discussed with him that they would serve notice of Life Without Parole before the trial if they won on the murder charge. He stated that he discussed this with Applicant.

VI. 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 (1985).

As a matter of general impression, this Court finds Applicant's testimony and assertions to be not credible. In contrast, this Court finds Counsel's testimony to be credible and persuasive. These credibility findings have been applied to the Court's findings and conclusions set forth below.

INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant has asserted several allegations of ineffective assistance of counsel. This Court finds these claims to be meritless and they should be denied and dismissed with prejudice. Each allegation presented at the evidentiary hearing is addressed below.

Failure to adequately challenge the State's DNA expert

This Court finds that Trial Counsel was not ineffective in failing to adequately challenge the State's DNA expert. A review of the transcript shows that trial counsel effectively cross-examined the State's witness and highlighted the inconsistencies in her testimony. Although counsel admitted at the hearing that he should have asked for certain portions of the transcript to be replayed when the jury requested to review this expert's testimony, Petitioner failed to show that he was prejudiced as a result.

Furthermore, Applicant cannot meet his burden in proving prejudice because he failed to present the proper testimony of the DNA expert witness. The South Carolina Supreme Court "has repeatedly held a PCR 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." Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998). "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Applicant did not

present any testimony from Agent Webb to show how Trial Counsel should have properly cross-examined him, thus he has not proven prejudice.

Because Applicant has failed to show deficiency or prejudice, this allegation is denied and dismissed with prejudice.

Improperly advising Applicant to submit a DNA sample

This Court finds that Trial Counsel was not ineffective in advising Applicant to submit a DNA sample for his burglary charge. Trial Counsel presented credible, strategic reasons for doing so. Furthermore, Applicant can show no prejudice from this advice; Trial Counsel testified that a Schmerber¹ hearing was held in this case, and the trial court found the DNA evidence admissible. Because Applicant has failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

Opening the door to prior bad acts

As to Applicant's allegation that Trial Counsel was ineffective in opening the door to prior bad acts, this Court concludes that Trial Counsel was deficient in failing to investigate these acts before trial and allowing the prosecution to examine them with the witness. However, the Court finds that Applicant did not prove prejudice under the second prong of Strickland. Considering the cumulative weight of the evidence supporting Applicant's conviction, this mistake was simply not significant enough to change the jury's verdict. Therefore, this allegation is denied and dismissed with prejudice.

Advising Applicant to enter an involuntary guilty plea

Applicant alleges that Trial Counsel improperly advised him to enter an involuntary guilty plea. This Court finds that Trial Counsel was not ineffective in rendering advice on Applicant's subsequent guilty plea to burglary. Applicant had sufficient time to weigh the pros

¹ Schmerber v. California, 384 U.S. 757 (1966).

and cons of accepting the plea and Trial Counsel credibly testified that he discussed these options with Petitioner. In light of the strong DNA evidence against Applicant, this Court does not question the manner in which Trial Counsel advised his client. This Court finds that Applicant's guilty plea was not involuntary. Therefore, since Applicant has failed to prove either prong of the Strickland test, this allegation is denied and dismissed with prejudice.

Failing to Discuss and Put Forth a Defense

The Court finds that Trial Counsel was not ineffective in failing to discuss and put forth a defense. Trial Counsel testified at the PCR hearing that he spoke with Applicant about using a self-defense strategy. Trial Counsel also testified that a self-defense argument was negated by the evidence of mutual combat and the fact that the Victim was shot in the back. At trial, Trial Counsel called three witnesses for the defense, including a dispatcher, which allowed the jury to hear the 9-1-1 tapes to show that multiple shots were fired. Trial Counsel also called a coroner to show the Victim's suspected drug activity, and an expert on gang activity to testify as to the Victim's gang-related tattoos.

The Court concludes that Applicant failed to show Trial Counsel was deficient in using this defense strategy.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

VII. CONCLUSION

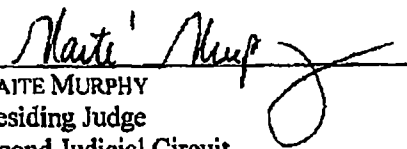
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant 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 is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 13 day of March, 2017.


MAITE MURPHY
Presiding Judge
Second Judicial Circuit

St. Matthew A., South Carolina

WITNESSES

Aiken County Sheriff

Viktoria Lager

Law Enforcement Case #: 11-062835

BAY

ARREST WARRANT NUMBERFILED 12 April 2012
M012801Liz Anderson
S.C.P. & G.S.
Shannon D. Rosenkrantz
Deputy Clerk**ACTION OF GRAND JURY**True BillWesley Eubank
Foreperson of Grand Jury
Date: April 12, 2012**VERDICT**Foreperson of Petit Jury
Date:**DOCKET NO. 2012GS0200473****The State of South Carolina****County of Aiken****COURT OF GENERAL SESSIONS****APRIL TERM 2012****THE STATE**
vs.**LONDON DEVONTA WOODEN****CDR #: 0116****Indictment for****MURDER****§ 16-03-0010; 16-03-0020****J. STROM THURMOND, SOLICITOR**

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

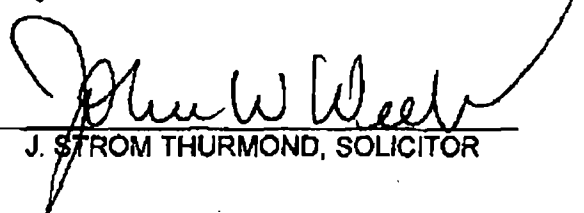
INDICTMENT FOR
MURDER

§ 16-03-0010; 16-03-0020

At a Court of General Sessions, convened on April 16, 2012, the Grand Jurors of
Aiken County present upon their oath:

That **LONDON DEVONTA WOODEN** did in Aiken County on or about October 1, 2011, feloniously, wilfully and with malice aforethought, murder [REDACTED] by means of shooting him multiple times with a handgun and that the victim did die as a proximate result thereof on the 1st day of October, 2011. All 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.


J. STROM THURMOND, SOLICITOR

WITNESSES

Aiken County Sheriff

Viktoria Lagger

Law Enforcement Case #: 11-062835

BAY

ARREST WARRANT NUMBER

FILED 12 April 2012
M012802

Liz Godard
S.C.C.P. & G.S.
Shannon W. Rosenkrantz
Deputy Clerk

ACTION OF GRAND JURY

True Bill

Wesley Gault

Foreperson of Grand Jury
Date: April 12, 2012

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2012GS0200474

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

APRIL TERM 2012

THE STATE

VS.

LONDON DEVONTA WOODEN

CDR #: 0549

Indictment for

**POSSESSION OF A FIREARM DURING
COMMISSION OF A VIOLENT CRIME**

§ 16-23-0490

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

INDICTMENT FOR
POSSESSION OF A FIREARM DURING
COMMISSION OF A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on April 16, 2012, the Grand Jurors of
Aiken County present upon their oath:

That LONDON DEVONTA WOODEN did in Aiken County on or about October 1, 2011, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


J. STROM THURMOND, SOLICITOR