

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Honorable Frank R. Addy, Circuit Court Judge

RECEIVED

DEC 13 2017

S.C. SUPREME COURT

CHARLES L. ANDERSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001099

APPENDIX

LARA M. CAUDY
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	i
TRIAL TRANSCRIPT (Dated October 1-2, 2012).....	1
TRIAL TRANSCRIPT (Dated October 3-4, 2012).....	392
ANDERS BRIEF OF APPELLANT	654
OPINION NO. 2014-UP-108 (S.C. Ct. App. Filed March 12, 2014).....	668
APPLICATION FOR POST-CONVICTION RELIEF	670
RETURN.....	677
AMENDED RETURN AND MOTION FOR MORE DEFINITE STATEMENT	681
POST-CONVICTION RELIEF HEARING TRANSCRIPT (Dated November 7, 2016)	689
ORDER OF DISMISSAL.....	730
INDICTMENTS	743

INV. STOKES - CROSS by MR. THOMPSON

Page 110

1 room; do you recall that?

2 A. Yes. I had a -- a video recording device.

3 Q. Okay. And then -- so she --

4 A. Or an audio recording device.

5 Q. So that would've been on Monday, right?

6 A. Yes.

7 Q. Okay. So Molly's account and Mr. Crain's account
8 led to the arrest of these four people that were charged? Is
9 that -- is that a fair, nutshell assumption?

10 A. Yes.

11 Q. All right. And, then...

12 (Brief Pause)

13 Q. Now Mr. Anderson was picked up on the 12th,
14 correct?

15 A. That's correct.

16 Q. And when -- and then he signs a consent to search
17 and his mother consents to search?

18 A. That's correct.

19 Q. On the 13th or was that the 12th?

20 A. The 12th.

21 Q. Okay. And ---

22 A. That's during his interview.

23 Q. Okay. And would it be a fair assumption to say,
24 once that gun was found, you basically shut this investigation
25 down?

Pamela Faucette, CVR Home: 864-574-9534 Cell: 336-260-2864

INV. STOKES - CROSS by MR. THOMPSON

Page 111

1 A. No, sir.

2 Q. Okay. Well we'll follow up, but, I mean, you sent
3 everything to SLED, right?

4 A. We sent the initial items that we could -- that we
5 could submit at one time to SLED.

6 Q. These -- these witnesses that you had; Mr. Crain,
7 Ms. Carroll, Ms. Ramirez and Ms. Bogan, did you have any new
8 witnesses after finding that gun?

9 A. We didn't determine if there -- there were any --
10 any further witnesses past that.

11 Q. And you shut investigating down, right? You
12 basically shut it down then, right?

13 A. We don't -- we don't classify an investigation
14 closed until the end of the court proceedings.

15 Q. Okay.

16 (Brief Pause)

17 Q. And I think Mr. Cude or Mr. Gray -- Mr. Gray made
18 the issue about what -- what room he said he was in?

19 A. Yes. There was some discrepancy. Your client
20 indicated to me -- I'm sorry -- yeah, your client indicated to
21 me, when I -- while filling out the consent to search form,
22 that his room was the last room on the right.

23 And his mother showed the officers the last room
24 on the left and stated that was -- that was Charles' room.

25 Q. Did you search the last room on the right? Do you

INV. STOKES - CROSS by MR. THOMPSON

Page 112

1 recall if the last room on the right was searched?

2 A. I wasn't there. I was there interviewing Mr.
3 Anderson. Officers from the violent crime task force went to
4 that address.

5 Q. And was it determined to be the last room on the
6 right -- the right or left?

7 A. On the consent to search form?

8 Q. Uh-huh (affirmative).

9 A. Yes. During -- during the time I was filling this
10 out, Mr. Anderson requested to put on there which room it was.
11 And he told me it was the last room on the right. So I added
12 it to the -- to the consent to search form.

13 Q. The consent -- was he Mirandized at that time?

14 A. Yes, sir, he was.

15 Q. Is -- is that in the reporting?

16 A. ---Yes, sir, it is. Also initially he decided he
17 didn't want to sign it, and I actually -- and I actually took
18 the consent form back.

19 And then, a few minutes later he asked for the
20 consent form back and signed it.

21 Q. You went into that yesterday I believe. You -- I
22 believe you went into that yesterday about the consent form,
23 did you not?

24 A. Just trying to clarify for you.

25 Q. Okay.

INV. STOKES - CROSS by MR. THOMPSON

Page 113

1 (Brief Pause)

2 Q. Now you indicated you don't send everything to

3 SLED. Is that a funding issue or --

4 A. We send as much as we can. They will only test a
5 certain number of -- of items.

6 Q. Okay.

7 A. That's their procedure; it's not ours.

8 Q. Okay. So you can maybe prioritize a lot?

9 A. Unfortunately, you know, you're trying to do it
10 off-the-cuff, to try to determine what is the most important
11 item to be tested. Unfortunately, that's the box we get put
12 into that we have no control over.

13 Q. And was it your testimony you don't know if that
14 bottle and cup came from the scene?

15 A. No. The -- the cup, the Styrofoam cup? Is that
16 what you're asking, Mr. Thompson?

17 Q. Yes, Your Honor -- I mean yes, yes sir. Yes, sir.

18 A. Yeah, the Styrofoam cups were in close proximity
19 to the scene where Mr. Means was found. And -- and they were
20 photographed and recovered by Investigator Guthro as a normal
21 course of action.

22 (Brief Pause)

23 MR. THOMPSON: No further questions.

24 THE COURT: Mr. McCarty?

25 CROSS EXAMINATION by MR. MCCARTY: 11:55 A.M.

INV. STOKES - CROSS by MR. MCCARTY

Page 114

1 Q. Investigator Stokes, I -- I ask this question here
2 and I don't mean to be flippant by asking it, but you arrest
3 first and then investigate?

4 A. No, sir.

5 Q. Is how it typically works?

6 A. No, sir.

7 Q. Isn't that how you described the Feishunti Clark
8 or Little Man incident? That he was arrested on these charges
9 -- and I'm -- I'm suggesting what he was charged with, but I'm
10 assuming something similar at least to what Ms. Hollis and Mr.
11 Anderson were charged with; am I correct?

12 A. Typically we go from witnesses and that's how he
13 was developed as a witness -- from a witness' testimony.

14 Q. But, after he was arrested, you stated you
15 continued your investigation and cleared him; am I right?

16 A. Through statements of other people involved, yes.

17 Q. And those statements weren't taken before his
18 arrest?

19 A. (No Response)

20 Q. Those statements from these other people were not
21 taken before his arrest?

22 A. I'm talking specifically about statements from co-
23 defendants.

24 Q. Okay. Let me ask you this: You spoke with Ms.
25 Means, she was there on the scene, but she couldn't provide

INV. STOKES - CROSS by MR. MCCARTY

Page 115

1 any information as to what had occurred or was seen out there
2 according to what your report states; am I right?

3 A. ~~She indicated to me that she was inside her~~
4 apartment.

5 Q. And -- and I believe that's what she testified to
6 hear yesterday or the day before. What about Mr. Kelly, did
7 you ever talk to him during the course of your investigation?

8 A. No, sir.

9 Q. All right. He never came forward to you with any
10 information regarding seeing Ms. Hollis wearing a chain that
11 may have belonged to the victim?

12 A. No, sir.

13 Q. Investigator Stokes, when you met with Molly
14 Bogan, how many times would you guess that you met with her in
15 interviews, either assisting or conducting?

16 A. I was present either at City Hall or at her house
17 on three (3) separate occasions. I didn't actually sit in on
18 every interview with her.

19 Q. Would you agree with me, though, that on those
20 three (3) occasions in which you met with her, her story
21 changed or altered with each telling?

22 A. The only one I would say changed was the initial
23 statement we took from her. And I think she was under the
24 influence of --

25 Q. Well I'm not asking you to speculate --

Pamela Fancette, CVR Home: 864-574-9534 Cell: 336-260-2864

INV. STOKES - CROSS by MR. MCCARTY

Page 116

1. A. Okay.

2. Q. --- of what you thought that was. But you would
3 say that it changed from the time you initially spoke with
4 her ---

5. A. Yes.

6. Q. --- and when you met with her again? Do you recar
7 -- do you recall meeting with her on the 11th at her home?

8. A. Yes, I do.

9. Q. Do you recall specifically inquiring of her what
10 color the shirt was that -- or what colored clothing Ms.
11 Hollis was wearing that night?

12. A. Not exactly.

13. Q. All right. You remember an audio recording that
14 interview though; do you not?

15. A. Yes, sir.

16. Q. And -- and that's a tape recorder you either had
17 laid out on the table or carried in your pocket; am I right?

18. A. Yes, sir.

19. Q. Do you recall asking her -- and it's around the
20 thirty-five (35) minute mark into this interview with her --
21 what Ms. Hollis was wearing? Do you recall whether or not
22 Molly said a dark-colored T-shirt, it may of been black or
23 some kind?

24. A. I'm -- I'm sure I asked her, but I don't recall
25 her answer.

INV. STOKES - CROSS by MR. MCCARTY

Page 117

1 Q. You don't recall her replying black?

2 A. No, sir.

3 Q. You don't recall asking her whether or not it was
4 a purple shirt and her denying that it was and stating that it
5 was black or dark blue?

6 A. No, sir.

7 Q. Okay. But you're not denying that, that was a
8 recording of which you made of that interview; am I correct?

9 A. Yes, sir.

10 Q. And Investigator Stokes, once this purple shirt
11 came into the possession of the City Police Department, came
12 into your custody, it was submitted to SLED for analysis; am I
13 correct?

14 A. That's correct.

15 Q. Okay. And you later on -- and this is all after
16 Ms. Hollis has been arrested?

17 A. That's correct.

18 Q. You later on learned that trace evidence had
19 determined that somehow gunshot residue is on a portion of
20 this shirt some place; am I right?

21 A. That is correct.

22 Q. And your allegation, of course, is that this is
23 her shirt?

24 A. Based on testimony of her mother, yes.

25 Q. Okay. Of which you have no first-hand knowledge.

Pamela Faucette, CVR Home: 864-574-9534 Cell: 336-260-2864

INV. STOKES - CROSS by MR. MCCARTY

Page 118

1 of; am I right?

2 A. No, sir.

3 Q. Okay. But, once you learned that an item has
4 potential evidentiary value; like something like gunshot
5 residue on it, and you stated you're allowed to resubmit an
6 item back down to SLED, why was this item not resubmitted to
7 SLED for further analysis?

8 A. It's just an oversight on our part.

9 Q. Okay. When Ms. Hollis -- and you stated she
10 turned herself in on the 11th; am I correct?

11 A. That's correct.

12 Q. So this happened on the 7th; the 8th, the 9th, the
13 10th, and Monday morning, the 11th, she turned herself in; am I
14 right?

15 A. That's correct.

16 Q. Freely and voluntarily? She wasn't brought in by
17 a black-and-white in handcuffs or anything like that; am I
18 correct?

19 A. That's correct.

20 Q. When -- when she did that -- and I'm assuming she
21 was arrested at that time on these charges?

22 A. That's correct.

23 Q. And, then, you began to continue -- like you say,
24 continue with your investigation and trying to determine
25 anything that may be developed from this.

Pamela Fancette, CVR Home: 864-574-9534 Cell: 336-260-2864

INV. STOKES - REDIRECT by MR. GRAY

Page 119

1 But, once she was arrested, do you know from your
2 report anything that was received either from her, on her, or
3 in her property as it relates to this case, such as the gun,
4 gold jewelry, necklaces?

5 A. She didn't have anything.

6 Q. She had nothing related to this?

7 A. She didn't have any kind of jewelry on.

8 Q. Okay.

9 MR. MCCARTY: Your Honor, if I may have just one
10 brief moment, please.

11 THE COURT: Yes, sir.

12 (Off-the-Record Discussion)

13 MR. MCCARTY: Nothing further, Your Honor. Thank
14 you.

15 THE COURT: Mr. Gray, you may redirect.

16 MR. GRAY: Thank you.

17 REDIRECT EXAMINATION by MR. GRAY: 12:06 P.M.

18 Q. As you testified, this case wasn't shut down after
19 the arrests, was it?

20 A. No, sir. Like I said if we had had witnesses
21 starting at or the beginning of this trial, we would be re-
22 interviewing them now and trying to get them into this case.

23 Q. So as late as March or April of this year, you
24 were still submitting items to SLED?

25 A. That's correct.

INV. STOKES - REDIRECT by MR. GRAY

Page 120

1 Q. And the purple shirt, that is Ms. Hollis's shirt
2 as far as you know?

3 A. I'm sorry?

4 Q. The purple shirt ---

5 A. I didn't understand your question.

6 Q. --- that is Ms. Hollis a shirt?

7 A. That's my understanding.

8 Q. All right. You said you had talked to Molly Bogan
9 on at least three (3) occasions. What was her demeanor?

10 A. The night of -- the night of the shooting, she was
11 extremely upset and she was scared. And that's -- that's --
12 that's our experience, that people, when they're scared and
13 under a traumatic thing, they don't want to get involved.

14 You know, they don't want to be seen talking to
15 the police right -- right then and there. That's the whole
16 purpose for us giving out our business cards and sending out
17 the flyers. That way we can be contacted later and -- and
18 hopefully get some -- some information that's beneficial to us
19 during our investigation.

20 Q. Now you've heard defense counsel talk about Little
21 Man in this case. And Mr. Anderson also had a nickname too.
22 Don't tell me what it was, but he had a nickname also?

23 A. Everyone involved had nicknames.

24 Q. Right. And that's how you connected Mr. Anderson
25 is because of his nickname?

INV. STOKES - REDIRECT by MR. GRAY

Page 121

1 A. Yes, sir, that's correct.

2 Q. Okay. And as far as Ms. Hollis, during your
3 ~~initial investigation, between that initial investigation and~~
4 the time she turned herself in, did she change her appearance
5 in any way?

6 A. She did.

7 Q. How so?

8 A. It's my understanding she -- she cut her --

9 MR. MCCARTY: Objection, Your Honor. He
10 speculating. He said, "it's my understanding."

11 THE COURT: Well, then, let's see if there's a
12 foundation for his understanding. I'll ask you to go
13 further in your foundation.

14 MR. GRAY: Yes, sir.

15 THE COURT: To that extent, I sustain the
16 objection.

17 MR. GRAY: Yes, sir.

18 Q. (By Mr. Gray) Did you interview witnesses that
19 knew the Defendant Ms. Hollis?

20 A. Yes, we did.

21 Q. You one of those was Ms. Molly Bogan?

22 A. Yes.

23 Q. Did she describe the Defendant to you?

24 A. She did, including her hairstyle.

25 Q. Including her hairstyle, which was what?

INV. STOKES - RECROSS by MR. THOMPSON

Page 122

1 A. Dreadlocks.

2 Q. When you saw Ms. Hollis, on the day she turned
3 herself in, did she have the same hairstyle?

4 A. She did not. I also talked to her on...

5 (Brief pause while witness reviews document!)

6 A. She came up before her name was ever put into the
7 paper as a suspect. She came up and wanted to talk to
8 officers.

9 And Investigator Porter and I spoke to her on
10 April the 8th, 2011. She instructed -- or she instructed us
11 that she had heard her name in the newspaper that -- that she
12 was a suspect in this case and also word on the street and she
13 wanted to come up and talk to us.

14 Q. What was the change to her?

15 A. She had a close haircut with somewhat of a Mohawk,
16 but it was extremely -- it was real close on the sides and
17 slightly higher on the top, but it was in a Mohawk style.

18 MR. GRAY: Thank you, sir. No further questions.

19 THE COURT: Mr. Thompson, any other questions?

20 MR. THOMPSON: Briefly -- briefly, Your Honor.

21 THE COURT: Yes, sir.

22 RECROSS EXAMINATION by MR. THOMPSON:

12:07 P.M.

23 Q. You -- you indicated the Ms. Molly Bogan was
24 extremely upset the night of the shooting?

25 A. Yes.

INV. STOKES - RECROSS by MR. THOMPSON

Page 123

1 Q. Okay. And about how long after the shooting was
2 that?

3 ~~A. We talked to her immediately upon arriving on the~~
4 scene she was taken to City Hall given a -- given a few
5 minutes to -- to sit down. And Investigator Porter I believe
6 took a statement from her as to what she was -- what she saw.
7 And I took a statement from -- from another witness.

8 Q. Okay. So, when did she do a photo lineup?

9 A. I'm not sure when she saw the first photo lineups.

10 Q. You weren't present for that?

11 A. No, sir.

12 Q. Okay.

13 A. I know she came back to City Hall with her mother
14 stating that she was scared the night it happened and she was
15 indicating she wanted to tell us what happened.

16 Q. Was that the same night or ---

17 A. No.

18 Q. --- the second?

19 (Brief pause while witness reviews document.)

20 A. She came on the 9th with her mother to City Hall.

21 Q. And then later on you went to her house -- her
22 home, right?

23 A. Yeah, to show her photo lineups.

24 Q. Oh, did -- did she do two photo lineups?

25 A. She -- I couldn't tell you exactly how many phone

INV. STOKES - RECROSS by MR. MCCARTY

Page 124

1 lineups she seen right off the top of my head.

2 Q. Okay. And you indicated your first knowledge of
3 any of these folks was based upon nicknames, right?

4 A. We were given nicknames initially for all the
5 suspects, that's correct.

6 Q. And I keep using Little Man, and I shouldn't do
7 that, but ---

8 MR. THOMPSON: Thank you. No further questions.

9 THE COURT: Yes, sir, Mr. McCarty, your -- your
10 witness.

11 RECROSS EXAMINATION by MR. MCCARTY:

12:08 P.M.

12 Q. Investigator Stokes, you keep talking about Molly
13 being scared the night of the shooting and -- and I think we
14 flushed out yesterday that she gave an interview with
15 Investigator Porter about an hour after this was initially
16 called out; am I right?

17 A. That's correct.

18 Q. And you've been in here from the very beginning,
19 right?

20 A. That's correct.

21 Q. And I think he's Lieutenant Foster now; am I
22 right?

23 A. Yeah.

24 Q. He came in and testified about being first on and
25 we watched the in-car video of this?

INV. STOKES - RECROSS by MR. MCCARTY

Page 125

1 A. That's correct.

2 Q. And it was his dash cam video that we watched.

3 ~~They were off to the side, but out in front was that black~~
4 Mercedes SUV driven by Molly Bogan; am I right?

5 A. That's correct.

6 Q. And Molly, you saw her testify here yesterday.
7 She's a white woman, a young girl?

8 A. That's correct.

9 Q. Did you see her, based upon your three (3)
10 interviews with her and your watching the video and watching
11 her testify, did you see her in that video yesterday?

12 A. Yes, I did.

13 Q. I saw her walking around; is that the same thing
14 you saw?

15 A. I saw her at the back of the SUV. It appeared
16 that she got something out of it and then -- then walked
17 outside of camera.

18 Q. Did she run?

19 A. No. But there were police officers on the scene.

20 Q. She was walking with another lady named Latrica
21 Martin?

22 A. Yes, sir.

23 Q. They were walking around, right?

24 A. Yes, and the police are on the scene.

25 Q. It's seen on the dash cam video, correct?

Pamela Fancette, CVR Home: 864-574-9534 Cell: 336-260-2864

INV. STOKES - RECROSS by MR. MCCARTY

Page 126

1 A. Yes.

2 Q. All right. At this is just moments after the
3 shooting has occurred there at that point; am I right?

4 A. There are several officers on the scene.

5 Q. Well I mean at the time this camera recording was
6 made, this was just moments after the shooting had occurred,
7 not an hour later like when she gave her interview; am I
8 right?

9 A. I'm not sure of the exact time line on the -- on
10 the video. And she might have ---

11 Q. And I'm not trying to pin you down to minutes; I'm
12 just saying moments generally speaking?

13 A. When he first pulls in, I don't see her on the
14 video when I saw it yesterday.

15 Q. That you saw her come into camera range -- camera
16 view?

17 A. Yes, I did.

18 Q. And you could observe her demeanor there; could
19 you not?

20 A. I saw her walking from the back to the SUV and she
21 walked away.

22 Q. Walking?

23 MR. MCCARTY: Thank you.

24 MR. GRAY: Nothing further from the State, Your
25 Honor.

Page 127

1 THE COURT: All right, sir, you may step down.

2 Thank you very much.

3 ~~(Witness complied with the Court's request.)~~

4 THE COURT: All right. Ladies and gentlemen of the
5 jury, we're past noon, so I'm going to stop this point in
6 time for your lunch break.

7 I will give you the same instructions I've given you
8 every time you've left the courthouse; that is, not to
9 listen to, watch, or read media reports.

10 Don't attempt to gather information on your own.
11 Don't discuss the case with anyone. Don't allow anyone
12 to discuss the case with you.

13 Should anyone attempt to do so, please, report that
14 upon your return. I'm going to ask that you be back in
15 the jury room at 1:30. We should be in a position to
16 resume the trial at that time.

17 At this time the bailiffs will show you out. And I
18 hope you have a good lunch. Thank you very much.

19 (The jury exited the Courtroom at 12:10 P.M.)

20 (Off-the-Record Comments)

21 MR. GRAY: Excuse me, Your Honor.

22 THE COURT: Yes, Mr. Gray?

23 MR. GRAY: I wanted to let you know, the State
24 rests ---

25 THE COURT: Oh, okay.

Page 128

1 MR. GRAY: --- in their -- in their case in chief.

2 THE COURT: All right. Well, when we come back,
3 then, Mr. McCarty and Mr. Thompson, I will be inquiring
4 of your clients concerning their right to testify.

5 MR. MCCARTY: Yes, sir.

6 THE COURT: Is there any information that either of
7 you feel you need to have as you have the opportunity to
8 discuss that decision with your clients?

9 MR. MCCARTY: No, Your Honor.

10 MR. THOMPSON: No, Your Honor.

11 THE COURT: So, you've -- you've gathered the
12 information you need?

13 MR. MCCARTY: The only thing I might require her --
14 ask if the Court to consider, Your Honor -- and I know is
15 going to impose upon one of the deputies here -- but I
16 know that in the jail room there's only one interview
17 room; if we might be able to use the room out here on the
18 backside of your courtroom just so I could speak with her
19 regarding ---

20 THE COURT: I'll allow Ms. Hollis to go there.

21 MR. MCCARTY: Thank you.

22 THE COURT: That'll be fine. And then anything
23 else, Mr. Gray?

24 MR. GRAY: No, sir, Your Honor.

25 THE COURT: Okay. All right. We'll take those

MOTIONS & MATTERS

Page 129

1 matters up and any motions that the Defense may wish to
2 make when we return. Again, remain seated as Defendants
3 exit.

4 (Off-the-Record Comments)

5 THE COURT: We are in recess until 1:30. Thank you
6 very much.

7 (Whereupon, a lunch recess was taken from 12:15
8 p.m. until 1:32 p.m.)

9 MOTIONS AT END OF STATE'S CASE

10 (Off-The-Record Comments)

11 THE COURT: All right. Is the State ready to
12 proceed?

13 MR. GRAY: Yes, sir, Your Honor.

14 THE COURT: Is the Defense ready to proceed, Mr.
15 Thompson?

16 MR. THOMPSON: I am, Your Honor. I have one
17 witness en route. And I believe it's Officer Cheeks
18 and ---

19 THE COURT: Okay. Well we've got a few things we
20 need to take up before you offer evidence.

21 MR. THOMPSON: Okay. Yeah, but -- so I just wanted
22 to let the Court know I -- I -- I may have a delay on
23 another witnesses. But I hope everything will work out.

24 THE COURT: All right. Mr. McCarty, are you ready
25 to proceed?

MOTIONS & MATTERS

Page 130

1 MR. MCCARTY: Yes, sir, Your Honor.

2 THE COURT: All right. I indicated that. when we
3 came back, I would entertain any motions that the Defense
4 might wish to raise. Mr. Thompson, any motions from Mr.
5 Anderson's perspective?

6 MR. THOMPSON: Your Honor, only on the armed
7 robbery. I don't know that the State met their burden on
8 that. But, now, Mr. McCarty is going to argue the same
9 motion. And he's been doing a little better than me on
10 this oral arguments, so, I don't know -

11 THE COURT: All right. well let's hear about that,
12 Mr. McCarty.

13 MR. MCCARTY: - If it may please the Court, Your
14 Honor?

15 THE COURT: Yes, sir.

16 MR. MCCARTY: Again, on behalf of Ms. Hollis, and
17 from my understanding for Mr. Anderson too as well, we'd
18 ask that the Court grant a directed verdict motion in
19 favor of the Defendants for the lack of evidence the
20 State failed to put forth in its case in chief with
21 regard to the charge of armed robbery.

22 As the Court is aware, the armed robbery is the
23 taking and carrying away of another personal property
24 with the intent to deprive them while armed with a deadly
25 weapon.

MOTIONS & MATTERS

Page 131

1 In the case they presented was circumstantial at
2 best. There was no direct testimony identifying anybody
3 having seen either of these two individuals placing a gun
4 or doing anything like that with regard to the victim,
5 Mr. Means, in this situation.

6 In fact, the testimony, Mr. Crain couldn't identify
7 anything regarding the robbery. Ms. Carroll
8 unfortunately couldn't identify anybody in here.

9 The only testimony relating to what occurred around
10 this supposed robbery was that of Molly Bogan's. And she
11 said she looked down at her GPS unit in her car, heard
12 the shot, and looked back up.

13 But she testified did not see anyone removing
14 anything from Mr. Means, taking or carrying away anything
15 or doing anything like that.

16 The evidence that the State's put forth is no
17 physical evidence to say this was recovered, it was the
18 victim's, and this is whose possession it was found in.

19 But rather it was the testimony of an individual who
20 saw Ms. Hollis supposedly at a party three (3) or four
21 (4) days later wearing what he identified as the victim's
22 jewelry.

23 And -- and I don't believe that, that is evidence
24 sufficient enough to go forward to the jury and support
25 the charge on the armed robbery.

MOTIONS & MATTERS

Page 132

1 If the Court would like to entertain that first, I
2 would also, on Ms. Hollis's behalf, make a further motion
3 with regard to the murder charge under the State's theory
4 of the hand of one is the hand of all.

5 If you'd like to -- I don't know if you want me --

6 THE COURT: You can go ahead and argue that if
7 you'd like.

8 MR. MCCARTY: Thank you. Your Honor, with regard
9 to the hand of one is the hand of all, as the Court knows
10 on -- and I'm referencing the *Franklin* (phonetic) case
11 from 1989, a State Supreme Court case, but in that
12 they're talking about the prior knowledge of a crime.

13 Even if you know that it's going to be committed,
14 without more it's not sufficient to make a person guilty
15 of that crime.

16 "Mere knowledge that another person is going to
17 commit a crime, even if they are present when the crime
18 is committed, is not sufficient to convict them as a
19 principal.

20 "Guilt as a principal must be shown by actual,
21 constructive presence at a scene as a result of a prior
22 arrangement. Therefore, a finding of a prior
23 arrangement, plan, or common scheme, is necessary to find
24 guilt as a principal."

25 Your Honor, in this case -- and, again, I -- what I

MOTIONS & MATTERS

Page 133

1 read there was a -- a request for charge that I had which
2 came out of the request for charge publication that they
3 submit throughout the bar and we're able to purchase.
4 And that's quoting the *Franklin* case from 1989.

5 But, in this situation here as well, Your Honor, I
6 don't know that the State again has put forth and met its
7 burden of proof as far as satisfying every element of the
8 crime to -- of murder under the accomplice liability
9 theory to show to submit it to the jury for
10 consideration, in that, they have established that
11 there's no prior arrangement;

12 That there is no theme or motive or anything like
13 that which places her there and even participated and
14 helped set it up or, by prior arrangement, be there.

15 The only testimony that Molly Bogan provided was
16 that apparently or supposedly Ms. Hollis said to her
17 something about they are going to get Mister -- or
18 they're going to get the victim something about a snitch,
19 to that effect.

20 That doesn't denote a prior arrangement as to her
21 reason for being there. It doesn't denote anything as
22 far as her being part of a scheme or a plan to execute
23 this.

24 And, therefore, I think the State has failed to meet
25 its burden of proof regarding the elements of this

MOTIONS & MATTERS

Page 134

1 offense to charge her under accomplice liability as the
2 hand of one is the hand of all.

3 THE COURT: Anything further, Mr. Thompson?

4 MR. THOMPSON: Well, again, I think my client would
5 be included in that same motion as far as the no common
6 scheme nor plan and all that argument he went into.

7 I don't think the state has shown that -- that --
8 that the hand of one is the hand of all is applicable
9 here.

10 THE COURT: Mr. Gray, are you going to argue this?

11 MR. GRAY: Yes, sir. Your Honor, in this case, Ms.
12 Hollis initiated this action. There was a common scheme
13 or plan. It doesn't matter if it was one minute
14 beforehand or twenty-four (24) hours beforehand.

15 She talked to Ms. Bogan. She said, "Yeah,"
16 basically, "...there he is, that snitch," she sets
17 things in motion. Mr. Anderson comes, two other men
18 come; they surround the victim in this case.

19 Mr. Anderson shoots him. She takes jewelry from
20 him. So brazen is that taking by force or violence, she
21 wears that jewelry to a party on a Sunday night, where
22 she's identified in court by someone -- one who saw her.

23 Armed robbery, taking by force or violence with a
24 deadly weapon, a pistol in this case, with the intent to
25 permanently deprive the owner of that property.

MOTIONS & MATTERS

Page 135

1 What's more permanent than death in this situation,
2 Your Honor? She took it. She meant -- meant to keep it.

3 Lastly, Your Honor, the murder -- the murder
4 situation, Mr. Anderson was there. The victim was there
5 near his sister's house.

6 She knew -- excuse me, Ms. Hollis knew, saw him
7 walking, called out about a snitch, said it to Ms. Bogan
8 also. And that's when they surrounded this victim, Mr.
9 Means.

10 If she hadn't initiated this action, made any
11 statements whatsoever, Mr. Means may well still be alive.
12 But the Defendant Mr. Anderson, was put on alert. The
13 other two gentlemen came up and that's when they
14 engaged ---

15 THE COURT: Now the testimony I believe, Mr. Gray,
16 was that the statement that was made -- allegedly made by
17 Ms. Hollis was made to Ms. Bogan.

18 I don't recall if there was anyone else present to
19 hear that comment. I didn't hear that from the
20 testimony. Did I miss something?

21 MR. GRAY: No, sir, no, sir. You didn't. But my
22 point is that she stated that, turned around, and in that
23 enclosed area, as you can see on the videotape as small
24 as it is, it took Mr. Anderson and the other two seconds
25 to come upon Mr. Means, along with Ms. Hollis, when she

MOTIONS & MATTERS

Page 136

1 recognized him.

2 THE COURT: Well the case that Mr. McCarty is
3 referring to I believe -- I haven't read it in full, but
4 I've read some snippets during lunch, talks about the
5 fact that, if someone is present at the scene of a crime,
6 and even if they know a crime is about to be committed,
7 to get to the hand one/hand of all you've got to prove
8 some alert act done in the furtherance of the crime.

9 MR. GRAY: Yes, sir.

10 THE COURT: Is that the way you read the case, Mr.
11 McCarty?

12 MR. MCCARTY: Your Honor, that's the way I read the
13 case. The *Franklin* case, as I understand it, involved
14 the robbery of a -- I could be misquoting here, but I
15 believe it was a -- a motel or a hotel, something like
16 that.

17 And I could be wrong as to who was robbed, but it
18 involved that, yes, sir, Your Honor. And there were four
19 people actually charged in that case as well.

20 And as to whether not being there or knowing about
21 it was sufficient enough to establish either just mere
22 presence or knowledge, which as the Court knows, are two
23 principles of law which can be charged to the jury
24 anyway, mere presence and knowledge, where the facts
25 support that.

MOTIONS & MATTERS

Page 137

1 And here there is at least the indication that she
2 was present, you know, at least for the Court to consider
3 whether or not to charge mere presence. But I'm not
4 going to argue that at this point.

5 But in this circumstance -- and again, I understand
6 Mr. Gray's and the State's theory of their case. Okay?

7 And that's why Ms. Hollis sits here. But my
8 argument to you is that I don't believe that they've met
9 the elements necessarily to establish accomplice
10 liability to, then, place her in the position of a
11 principal for the prosecution of this case.

12 And, even if she had knowledge she communicated to
13 that -- to Ms. Bogan, according to Ms. Bogan's testimony,
14 I don't mean to misquote him, but I don't believe Ms.
15 Bogan ever said that she announced it to any other
16 individual out there.

17 And I also don't believe that Ms. Bogan testified
18 that she saw her -- I guess -- I'm -- I'm not exactly
19 sure how it played out without checking my notes, but I
20 don't believe that Ms. Bogan testified to what she
21 actually -- or that she even saw anything rather once the
22 shot occurred, who was around, and where everyone went.

23 THE COURT: Well, again, the -- the question I have
24 though -- I -- I think to -- to prove hand of one/hand of
25 all there has to be some showing of some act done in

MOTIONS & MATTERS

Page 138

1 furtherance of the conspiracy.

2 MR. GRAY: Yes, sir, Your Honor. And, in this
3 case ---

4 THE COURT: And I'm asking you what that is.

5 MR. GRAY: When she was by the car with Ms. Bogan,
6 she left there to help surround the victim in this case,
7 Mr. Stephen Means. That in and of itself is a
8 furtherance of that act.

9 Four -- four people surrounded him, restricting his
10 movements. At that point is where anything could have
11 happened.

12 And what happened was, Mr. Anderson fired a shot.
13 She robbed this gentleman of -- of his jewelry. And they
14 left the scene I guess in four different directions.

15 You heard the SLED expert testify that lead balls,
16 particles, four (4) to five (5) feet away from the
17 principal shooter; in this case, Mr. Anderson.

18 Her being there, her mere presence, would have been
19 at Ms. Bogan's door or just talking to her about
20 whatever. She spoke to Ms. Bogan and she acted on it.

21 THE COURT: You're saying the fact that she may
22 have gone over and help surround this individual ---

23 MR. GRAY: Yes, sir.

24 THE COURT: --- or restrict his movements ---

25 MR. GRAY: Yes, sir.

MOTIONS & MATTERS

Page 139

1 THE COURT: --- would constitute an overt act?

2 MR. GRAY: Yes, sir.

3 THE COURT: Mr. McCarty?

4 MR. MCCARTY: Your Honor, with regard to that,
5 again, I don't know that there is enough testimony to
6 establish that, that was a -- a proven element to the
7 Court.

8 THE COURT: Well, the question is not if there is
9 enough, the question is if there is any.

10 MR. MCCARTY: Well if there was any I guess. But
11 -- and to be honest I don't recall what that testimony is
12 that we're referring to there.

13 My -- my primary concern is that Ms. Hollis lived
14 there. Her presence there, she's a resident of Oakview
15 Apartments.

16 And one of the other witnesses for the State
17 testified that she knew she resided there, had seen her
18 there before and actually saw her outside when she
19 arrived home, which I believe according to the testimony
20 was around 4:30 that afternoon, approximately two (2)
21 hours before the shooting.

22 So -- and -- and she didn't at that time identify
23 that the victim was present there as well. So for Ms.
24 Hollis [sic] to say that she was there because of some
25 scheme or plan or design, I don't think that they've

MOTIONS & MATTERS

Page 140

1 established that beyond the fact that she resided there;
2 that she had every right to be at Oakview where she was
3 living.

4 THE COURT: Well, and as to the armed robbery, I
5 think that there's -- there's case law in the State to
6 the effect that, if someone is in possession of recently
7 stolen goods, that, that's an evidentiary fact of
8 circumstantial evidence, that could be taken into
9 consideration.

10 And that it can be used as evidence that the goods
11 were, in fact, taken by that person. That's -- that's
12 for the jury to decide, what weight to give to that.

13 But there is sufficient evidence I think on the
14 question of the armed -- of the robbery.

15 My concern is any overt acts in connection with the
16 murder. And I'm going to get the court reporter to
17 review the evidence with me on that point. And then I'll
18 make a ruling once I've had a chance to take a look at
19 that.

20 We'll be in recess for a few minutes while she takes
21 care of that. I'm going to remain on the bench. If
22 anyone wishes to leave the courtroom, you can do so.

23 But, Mr. Ruth, if you'll see that the group on the
24 one side has the right to leave if they want to. The
25 rest can stay. And then do the same for the left side.

MOTIONS & MATTERS

Page 141

1 We're in short recess.

2 (Off-the-Record Comments)

3 (whereupon, the requested testimony was listened to
4 by the court in chambers.)

5 (Off-the-Record Comments)

6 THE COURT: I've had an opportunity to review the
7 testimony of Ms. Bogan. And I find that the testimony is
8 sufficient to indicate that the Defendant, Ms. Hollis,
9 may have participated in an effort to restrict the
10 movements of the victim allegedly.

11 And there is efficient evidence or circumstantial
12 evidence to justify the case going to trial -- or going
13 to the jury both on the charge of murder and armed
14 robbery in both cases. Anything further?

15 MR. MCCARTY: Nothing, Your Honor.

16 THE COURT: At this time I'm going to inquire of
17 your clients concerning their right to -- to testify in
18 this case. I'd ask that the clerk, please, swear both
19 defendants. If you would, please stand and raise your
20 right hands.

21 (Whereupon,

22 CHARLES ANDERSON AND LAURI DANIELLE HOLLIS
23 first being duly sworn, testified as follows:)

24 THE COURT: Ms. Hollis, did you take the oath?

25 THE DEFENDANT: Yes, sir, I did.

MOTIONS & MATTERS

Page 142

1 THE COURT: Okay. Thank you, ma'am. All right.

2 At this time I'm going to go over certain of your rights.
3 If you do not understand what I explain to you at this
4 time, I will give you an opportunity to ask questions
5 when I finish my explanation.

6 Mr. Anderson, do you understand what we're doing?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Ms. Hollis, do you understand what I'm
9 doing?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: All right. We've reached the stage of
12 the trial where you have the right to present your
13 defense. As part of your defense, you have the right to
14 testify in this case.

15 You also have the right to claim the protections
16 which are given to you under the Fifth Amendment of the
17 United States Constitution.

18 That amendment reads in part that, "No person shall
19 be compelled in any criminal case to be a witness against
20 himself."

21 Now what that means is, that while you have the
22 right to testify, you cannot be required to do so. No
23 one can make you testify in this case.

24 The right to remain silent is a personal right. And
25 no one can give up the right to remain silent except

MOTIONS & MATTERS

Page 143

1 yourself.

2 Now, should you decide to testify, you will be
3 subject to the same rules that govern the testimony of
4 any other witnesses who will testify in this case. That
5 means that you would be examined by your lawyers and you
6 would be cross-examined by the other attorneys in this
7 matter.

8 And I will tell you that, if you have on your record
9 any convictions involving dishonesty or false statement
10 or for crimes which are punishable by imprisonment for
11 more than one year, and this Court makes a determination
12 that the probative value of admitting this evidence on
13 the question of credibility outweighs its prejudicial
14 effect to you, the solicitor would be in that case able
15 to introduce that record to attack your credibility.

16 Now I will tell you, if you decide to testify, the
17 decision on your part must be made freely and voluntarily
18 and intelligently by you, with knowledge of the
19 protections given to you by the Fifth Amendment to the
20 Consti -- Constitution and your -- the consequences of
21 your decision to testify.

22 I will advise you that should you decide not to
23 testify that I will charge the jury that they cannot give
24 the fact that you did not testify in this case any
25 consideration whatsoever in reaching a verdict in this

MOTIONS & MATTERS

Page 144

1 matter.

2 In other words, I will charge them that, that
3 particular issue should not even be discussed by them in
4 their deliberations. The decision as to whether or not
5 to testify in a case is left entirely up to you.

6 You have the right to consult with your attorney,
7 family, friends, or anyone else you'd like to talk to,
8 but the ultimate decision as to whether or not to testify
9 is your decision and yours alone.

10 Mr. Anderson, do you understand what I've explained?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you have any questions about the
13 matters I've gone over with you?

14 THE DEFENDANT: No, sir.

15 THE COURT: Ms. Hollis, do you understand the
16 matters I've explained?

17 THE DEFENDANT: Yes, sir, I do.

18 THE COURT: Do you have any questions about the
19 matters that I have discussed with you at this time?

20 THE DEFENDANT: No, sir, I do not.

21 THE COURT: Now, Mr. Anderson, have you had
22 opportunity to discuss this decision with your lawyer or
23 anyone else that you wish to discuss that decision with?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have you made a decision as to whether

MOTIONS & MATTERS

Page 145

1 -- or not to testify in this case?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you intend to testify?

4 THE DEFENDANT: No, sir.

5 THE COURT: And, Ms. Hollis, have you had an
6 opportunity to fully discuss your decision with anyone
7 that you would like to discuss that decision with?

8 THE DEFENDANT: Yes, sir, I have.

9 THE COURT: And have you made a decision as to
10 whether or not you wish to testify in this case?

11 THE DEFENDANT: Yes, sir, I have.

12 THE COURT: Do you intend to testify?

13 THE DEFENDANT: No, sir, I do not.

14 THE COURT: Okay. Thank you very much. Any other
15 matters that -- that I need to go over at this point in
16 time from the State's perspective?

17 MR. GRAY: No, sir.

18 THE COURT: Mr. Thompson, from Mr. Anderson's
19 perspective?

20 MR. THOMPSON: I only need to check and see if
21 Officer Cheeks has made it. I don't -- but that --
22 that's the only thing I would require.

23 THE COURT: He's standing up in the back of the
24 courtroom I believe.

25 MR. THOMPSON: Okay. That's great. Thank you.

MOTIONS & MATTERS

Page 146

1 THE COURT: All right. And anything further from
2 your perspective, Mr. McCarty?

3 MR. MCCARTY: No, Your Honor.

4 THE COURT: All right. Now I will remind witnesses
5 in the case that there is a sequestration order in this
6 case. Do you intend to call that officer first, Mr.
7 Thompson?

8 MR. THOMPSON: Yes, Your Honor.

9 THE COURT: Then he can stay in the courtroom.
10 Anyone else who intends to be a witness in this matter
11 for the Defense is required to leave the courtroom at
12 this time unless you are a member of the victim's family.

13 All right. Are we ready to proceed from the State's
14 perspective?

15 MR. GRAY: Yes, sir.

16 THE COURT: And, Mr. Thompson, are you ready to
17 proceed at this time?

18 MR. THOMPSON: Yes, Your Honor.

19 THE COURT: And Mr. McCarty?

20 MR. MCCARTY: Yes, sir.

21 THE COURT: All right. Let's bring the jury in.

22 (The jury is summoned at 2:05 p.m.)

23 THE COURT: And I will have you rest on the record.
24 They're not aware that you rested. And, then, we'll
25 proceed with the calling of the next witness.

MOTIONS & MATTERS

Page 147

1 MR. GRAY: Yes, Your Honor.

2 (The jury entered the Courtroom at 2:05 p.m.)

3 THE COURT: All right. The record will reflect
4 that the jury has returned to the Courtroom. And, if any
5 juror was -- had any problem with following the
6 instructions that I give you when you leave the
7 courthouse, please stand.

8 (No Response)

9 THE COURT: It appears that all jurors have been
10 able to comply with my instructions. And, when we took
11 our earlier break, the State was in the process of
12 calling its witnesses.

13 And, at this time, the State may call its next
14 witness.

15 MR. GRAY: Your Honor, at this time the State
16 concludes its case in chief.

17 THE COURT: All right. Ladies and gentlemen, the
18 state has now rested. That completes the presentation of
19 evidence by the State.

20 At this point in time, the Defense has the right to
21 present any evidence that the Defense chooses to do. Mr.
22 Thompson, do you wish to call witnesses?

23 MR. THOMPSON: I do, Your Honor.

24 THE COURT: You may call your first witness.

25 MR. THOMPSON: At this time I would recall Officer

OFC. CHEEKS - DIRECT by MR. THOMPSON

Page 148

1 Cheeks with the Spartanburg City Police Department.

2 THE COURT: All right. Sir, if you'll come
3 forward.

4 (The witness complied with the request.)

5 THE COURT: Officer Cheeks, I will remind you that
6 you have been placed under oath in this trial already and
7 that oath still applies to this testimony. Do you
8 understand and agree?

9 THE WITNESS: Yes, sir.

10 THE COURT: Have a seat, please.

11 (The witness complied with the request.)

12 THE COURT: Mr. Thompson, your witness.

13 MR. THOMPSON: May it please the Court?

14 DIRECT EXAMINATION by MR. THOMPSON: 2:05 P.M.

15 Q. Officer Cheeks, I apologize for getting you back
16 out here.

17 MR. THOMPSON: May I approach, Your Honor?

18 THE COURT: You may.

19 Q. Officer Cheeks, I want to ask you: Is that the
20 report you filled out when you responded April 7th, 2011? And
21 maybe just the first page is what I'm going to look at.

22 A. It appears to be, yes, sir.

23 Q. Okay. So -- and that's -- is that standard that
24 you would do that, make a report for when you -- when you come
25 upon a scene?

OFC. CHEEKS - DIRECT by MR. THOMPSON

Page 149

1 A. Yes, sir.

2 Q. Okay. And that's just the -- that's the policy of
3 -- of the office, correct?

4 A. Yes, sir.

5 Q. Okay. Now can you read what you put in here? Is
6 this what you're -- I mean, that's basically you're typing
7 that up; is that right?

8 A. Yes, sir.

9 Q. Okay. Can you read to the jury what you put in
10 that report?

11 A. Just the part you highlighted or the entire --

12 Q. Yeah, just the whole thing.

13 A. Okay. "On April 7th, 2011, at 1835 hours, Officer
14 Cheeks was dispatched to [REDACTED], which is Oakview
15 Apartments, in reference to a shooting.

16 "Upon my arrival at 1839 hours, I observed a black
17 male laying on the ground between Apartments and two oh --
18 being assisted by EMS.

19 "I then observed a black female crying and
20 screaming. I later established this to be -- established that
21 this was the victim's sister, Nicole Means.

22 "Ms. Means stated that a group of unknown black
23 males wearing white T-shirts and unknown other clothing had
24 chased her brother to the front of Apartments and at

25 [REDACTED]

OFC. CHEEKS - DIRECT by MR. THOMPSON

Page 150

1 "When she leaned out of her apartment, she heard a
2 single gunshot and seen her brother lying on the ground. Ms.
3 Means stated she stood over her brother -- over her brother's
4 body and yelled for someone to call 911."

5 (Brief Pause)

6 A. "Ms. Means later stated that she had seen the same
7 group of black males in the area earlier today in a tan or
8 gold Ford. Ms. Means did not give a vehicle license plate nor
9 did she see the direction of travel for the vehicle.

10 "After speaking with people in the area, an
11 unknown black female approached me and stated that..." ---

12 Q. All right. Could -- can you stop there because
13 that's hearsay up -- up there. Ms. Means has testified, and
14 she indicated to you, when you first got there, that her
15 brother was chased by these young men in white shirts,
16 correct?

17 A. That was her initial story, yes.

18 Q. Okay. And, then, you arrived there I believe at
19 what time?

20 A. I believe it was -- I believe it was six -- 6:39.

21 Q. Six, thirty-nine (6:39)? And that was shortly
22 after the shooting, correct?

23 A. Yes, sir.

24 Q. Okay. And, then, there was a little confusion
25 hear that -- that she did say chased by these guys in white

OFC. CHEEKS - DIRECT by MR. THOMPSON

Page 151

1 shirts, correct?

2 A. Yes, sir. As far as I remember, yes, sir.

3 Q. Okay. And, then, further in your report you list
4 several different people, and each of the -

5 THE COURT: I'm going to ask the attorneys to
6 approach for just a minute.

7 (Whereupon, a bench conference was had with all
8 attorneys present.)

9 THE COURT: You may proceed, Mr. Thompson.

10 Q. (By Mr. Thompson) This report, how -- how long
11 did it take you to compile this -- this report? Is that done
12 in that single -- that same day or do you -- is that over a
13 period of time?

14 A. Yes, sir, it was -- I completed my portion of the
15 report before I left the scene.

16 MR. THOMPSON: Okay. No further questions. Thank
17 you.

18 THE COURT: Any questions in follow-up, Mr.
19 McCarty?

20 MR. MCCARTY: Nothing, Your Honor.

21 THE COURT: Mr. Gray?

22 MR. GRAY: No questions, Your Honor.

23 THE COURT: All right, sir. You may step down.
24 (The witness complied with the request.)

25 THE COURT: Mr. Thompson, you may call you next

MS. TERESA RICE - DIRECT by MR. THOMPSON

Page 152

1 witness.

2 MR. THOMPSON: Your Honor, I'd call Teresa Rice.

3 THE COURT: Is she outside?

4 MR. THOMPSON: She may be. She was -- I think she

5 left.

6 THE COURT: Would you step out, Mr. Ruth, and get
7 her.

8 THE BAILIFF: Yes, sir.

9 THE COURT: Thank you.

10 (Brief pause while witness is summoned.)

11 THE COURT: Ma'am, if you would come forward to my
12 left to be sworn.

13 (The witness complied with the Court's request.)

14 THE COURT: Right over here, ma'am. Right here
15 (indicating).

16 (Whereupon,

17 TERESA RICE

18 first being duly sworn, testified as follows:)

19 THE COURT: Once you've had a seat, ma'am, state
20 your name, please.

21 THE WITNESS: Teresa Ann Rice (phonetic).

22 THE COURT: Thank you. Mr. Thompson, your witness.

23 MR. THOMPSON: Thank you, Your Honor.

24 DIRECT EXAMINATION by MR. THOMPSON: 2:12 P.M.

25 Q. Ms. Rice, do you know Charles Anderson?

MS. TERESA RICE - DIRECT by MR. THOMPSON

Page 153

1 A. Yes, sir.

2 Q. What's your relationship with Charles?

3 A. That's my nephew.

4 Q. So you've known him his -- his whole life?

5 A. Yes, sir.

6 Q. Okay. Is he your sister's child or ---

7 A. My sister's.

8 Q. Okay. Now do you recall Charles was arrested in
9 April of 2011?

10 A. Yes, sir.

11 Q. Okay. And do you ever visit Charles home?

12 A. I always come over there every -- about every day.

13 Q. Every day almost?

14 A. Uh-huh (affirmative).

15 Q. Okay. How -- how close do you live?

16 A. How close to I live? From Labada Street

17 (phonetic).

18 Q. Okay. Is it within walking distance or...?

19 A. No, riding distance.

20 Q. Okay. And, in -- in April of 2011, were you going
21 over there every day?

22 A. Yes, sir, almost every day.

23 Q. Okay. Do you know anybody else that's charged
24 with this same crime?

25 A. ... Quartez.

MS. TERESA RICE - DIRECT by MR. THOMPSON

Page 154

1 Q. Quartez? What's his last name?

2 A. (No Response)

3 Q. Do you know his last name?

4 A. Lyles, I think Quartez Lyles.

5 Q. You think it's Lyles? Okay. When was last time
6 you remember seeing Quartez?

7 A. It was on a Saturday at -- at Dren's (phonetic)
8 house, at Charles' mother's house.

9 Q. Is that where Charles lived?

10 A. Yes, sir.

11 Q. And what -- what -- again, what Saturday?

12 A. What Saturday?

13 Q. Yes, ma'am, do you recall?

14 A. No, I can't recall. I know it was on Saturday
15 after all of this incident had happened.

16 Q. After the shooting?

17 A. The shooting had happened.

18 Q. But was it before -- before Charles got arrested
19 or after?

20 A. After.

21 Q. Okay. Was Charles home when Quartez came over?

22 A. Yes. He knocked at the door.

23 Q. Okay.

24 A. And I went back there and told Charles, "Come to
25 the door." So, when Charles came to the door, I said Charles,

MS. TERESA RICE - DIRECT by MR. THOMPSON

Page 155

1 -- well, I didn't say Charles, I say, "Doo Doo now you know
2 what's going on in the street, the words on the street saying
3 you all did something."

4 He said, "I didn't did nothing." And I said,
5 "Okay. Now -- now you know ---"

6 Q. Okay.

7 A. -- what's going on."

8 Q. Okay. But, now, did you recognize Quartez? Had
9 you seen him before that day?

10 A. Well, I used to him all the time with Doo Doo.

11 Q. Okay. Okay. And what did Charles and Quartez do
12 once Charles came to the door?

13 A. They went straight back to the bedroom.

14 Q. To the back room?

15 A. On the left-hand side, Doo Doo's room.

16 Q. Okay. That's Charles' room?

17 A. Yes.

18 Q. Okay. And how long was Quartez there?

19 A. Oh, they were there for a pretty good while.

20 Q. Okay. And, then, did Charles and Quartez leave
21 together or ---

22 A. They left together.

23 Q. They did?

24 A. Uh-huh (affirmative).

25 Q. Okay. And you're pretty sure this was the

MS. TERESA RICE - CROSS by MR. GRAY

Page 156

1 Saturday after the shooting and -- but -- but before Charles
2 was arrested ---.

3 A. Yes, sir.

4 Q. -- the following Tuesday or Wednesday?

5 A. Yes.

6 MR. THOMPSON: I have no further questions.

7 THE COURT: Mr. McCarty?

8 MR. MCCARTY: No questions for Ms. Rice.

9 THE COURT: Mr. Gray, you may cross examine.

10 MR. GRAY: Thank you.

11 CROSS EXAMINATION by MR. GRAY:

2:15 P.M.

12 Q. Ms. Rice, when was Doo Doo arrested?

13 A. I don't know what date he was arrested. He was
14 arrested on a Monday. This right here happened on the
15 weekend.

16 Q. What happened on the weekend?

17 A. When the -- when I talked to Doo Doo.

18 Q. Okay. So --

19 A. It was a Saturday or Sunday I was over there. And
20 he got arrested on a Monday, and I said, "I just talked to
21 that boy."

22 Q. Okay. What about Mr. Lyles, when was he -- when
23 was he arrested?

24 A. Quartez Lyles?

25 Q. Yes, ma'am.

MS. TERESA RICE - CROSS by MR. GRAY

Page 157.

1 A. Oh, I don't know when he was arrested.

2 Q. weren't he and Charles arrested -

3 A. They were not arrested together. They -- they
4 got ---

5 Q. They were not arrested together?

6 A. No. They got Doo Doo on a Monday. I don't know
7 when they got Quartez.

8 Q. Would it surprise you to -- to know they were
9 arrested the same day?

10 A. No, sir.

11 Q. They weren't?

12 A. No, sir.

13 Q. You're sure?

14 A. I -- I -- I don't know because they got Doo on a
15 Monday when Doo Doo went to see his probation. I talked to
16 Doo Doo and Quartez on a Saturday or Sunday.

17 MR. GRAY: Thank you, ma'am.

18 THE COURT: Anything further, Mr. Thompson?

19 MR. THOMPSON: No, Your Honor.

20 THE COURT: Mr. McCarty?

21 MR. MCCARTY: No, Your Honor.

22 THE COURT: You may step down, ma'am.

23 THE WITNESS: Thank you.

24 (The witness complied with the Court's request.)

25 THE COURT: Mr. Thompson, you may call you next

Page 158

1 witness.

2 MR. THOMPSON: Your Honor, may we approach?

3 THE COURT: Certainly. Mr. Gray, Mr. Cude?

4 (Whereupon, a bench conference was had with all
5 attorneys present.)

6 (Mr. Thompson stepped out of the courtroom.)

7 THE COURT: Mr. Thompson, is the witness present?

8 MR. THOMPSON: No, she's not out there, Your Honor.

9 THE COURT: All right. Ladies and gentlemen,
10 there's a witness who is supposed to be here to testify
11 and has not arrived at this point in time.

12 So we're going to take a break and see if we can
13 locate that individual.

14 I'm going to ask the bailiffs to make you
15 comfortable. If you need something to drink or
16 something, let us know.

17 I don't know how long it's going to take us to
18 locate the witness. I hope it won't take too long, but
19 you never know about these things.

20 So I'm going to ask you to step back into the jury
21 room. As always, don't begin any discussions until I've
22 asked you to do so. Thank you very much.

23 (The jury exited the Courtroom at 2:18 p.m.)

24 THE COURT: All right. Court will be in recess.
25 If you would, advise me, Mr. Thompson, as to when that

Page 159

1 individual might arrive. Thank you very much.

2 MR. THOMPSON: Will do, Your Honor.

3 (Whereupon, a recess was taken until 2:50 p.m.)

4 (Off-the-Record Comments)

5 THE COURT: Mr. Thompson, has Ms. Rodriguez
6 appeared?

7 MR. THOMPSON: Your Honor, she didn't show up.
8 I've got -- I'm going to call a very brief witness.

9 THE COURT: Okay.

10 MR. THOMPSON: And, if she hasn't shown up by that
11 time, I'll waive her from testifying.

12 THE COURT: All right. Okay. Let's bring the jury
13 in. Well, let's be sure. Is the State ready?

14 THE BAILIFF: We need the defendants.

15 THE COURT: Oh, we've got to get the Defendants in
16 here. I'm sorry.

17 MR. THOMPSON: And I apologize for --

18 THE COURT: I'm bad. My bad.

19 (Brief pause while the Defendants are brought into
20 the Courtroom.)

21 THE COURT: All right. Is the State ready?

22 MR. GRAY: Yes, Your Honor.

23 THE COURT: Is the Defense ready, Mr. Thompson?

24 MR. THOMPSON: Yes, Your Honor.

25 THE COURT: Mr. McCarty?

MS. MILDRED MALLORY - DIRECT by MR. THOMPSON

Page 160

1 MR. MCCARTY: Yes, Your Honor.

2 THE COURT: Bring the jury in.

3 (The jury was summoned.)

4 (The jury entered the courtroom at 2:50 p.m.)

5 (Off-the-Record Comments)

6 THE COURT: The record will reflect that the jury
7 has returned to the courtroom. And at this time you may
8 call you next witness, Mr. Thompson.

9 MR. THOMPSON: May it please the Court, Your Honor?
10 I would call Mildred Loy.

11 THE COURT: Come forward, please ma'am, over here
12 to my left and be sworn.

13 (The witness complied with the Court request.)

14 MR. THOMPSON: Ms. Mallory. I'm sorry, Your Honor.
15 (Whereupon,

16 MILDRED MALLORY

17 first being duly sworn, testified as follows:)

18 THE COURT: Have a seat, please ma'am. And once
19 you're seated, state your name.

20 THE WITNESS: Mildred A. Mallory (phonetic).

21 THE COURT: Thank you. Mr. Thompson, your witness.

22 DIRECT EXAMINATION by MR. THOMPSON: 2:50 P.M.

23 Q. Ms. Mallory, what is your relationship to Charles
24 Anderson?

25 A. That's my son.

MS. MILDRED MALLORY - DIRECT by MR. THOMPSON

Page 161

1 Q. Okay. How old is Charles?

2 A. Nineteen (19).

3 Q. And how far did he go in school?

4 A. Ninth (9th).

5 Q. Okay. All right. At any time during Charles'
6 life, has he ever grown his hair out and worn dreadlocks?

7 A. No.

8 MR. THOMPSON: I have no further questions.

9 THE COURT: Do you wish to ask any questions, Mr.
10 McCarty?

11 MR. MCCARTY: No, Your Honor.

12 THE COURT: Mr. Gray?

13 MR. GRAY: No, sir, Your Honor.

14 THE COURT: All right, ma'am, you may step down.
15 Thank you very much.

16 (The witness complied with the request.)

17 THE COURT: Mr. Thompson, would you like to step
18 outside and check on that other witness?

19 MR. THOMPSON: I will, Your Honor. Thank you.

20 THE COURT: Thank you.

21 (Brief pause while Mr. Thompson stepped out of the
22 courtroom.)

23 THE COURT: Mr. Thompson, has the witness appeared?

24 MR. THOMPSON: She's not here, Your Honor. Mistr

25 -- I'll rest as to Mr. Anderson.

MOTIONS & MATTERS

Page 162

1 THE COURT: All right. This case -- that case has
2 been rested. Mr. McCarty, do you wish to call any
3 witnesses?

4 MR. MCCARTY: Your Honor, respectively, we would
5 rest Ms. Hollis's case.

6 THE COURT: All right. Does the State wish to call
7 any witnesses in reply?

8 MR. GRAY: No, sir, Your Honor.

9 THE COURT: All right. Ladies and gentlemen of the
10 jury, that completes the presentation of -- of evidence
11 in this matter.

12 At this time there are matters that I have to take
13 up with the attorneys before we proceed to the next stage
14 of the trial. It shouldn't take but just a few minutes.

15 I'll ask that you return to the jury room. And,
16 again, don't begin any discussions until I've asked you
17 to do so. Thank you very much.

18 (The jury exited at 2:54 p.m.)

19 THE COURT: All right. Anything from the State at
20 this time?

21 MR. GRAY: No, sir, Your Honor.

22 THE COURT: Anything from the Defense, Mr.
23 Thompson?

24 MR. THOMPSON: No, Your Honor.

25 THE COURT: Mr. McCarty?

CHARGE CONFERENCE

Page 163

1 MR. MCCARTY: Your Honor, just we would
2 respectfully request you to reconsider our motions we
3 made at the end of the State's case in chief at this
4 time.

5 THE COURT: All right. I -- I -- I have
6 reconsidered those and my rulings would be the same.
7 I'll allow the case to go to the jury. Specific requests
8 for charge from the State?

9 MR. GRAY: Hand of one/ hand of all, Your Honor.

10 THE COURT: All right. Any specific requests for
11 charge from the Defense, Mr. Thompson?

12 MR. THOMPSON: No, Your Honor.

13 THE COURT: Mr. McCarty?

14 MR. MCCARTY: I have some, Your Honor, and I was
15 looking them over because I didn't know how the case
16 would play out. I didn't bring a copy,

17 But it would fall under the hand of one/hand of all
18 as it related to the *Franklin* case which I was inquiring
19 of earlier.

20 THE COURT: Is that the one that requires an overt
21 act?

22 MR. MCCARTY: Prior knowledge of a crime not being
23 committed. I have it is number two (2) here. I'd be
24 happy to e-mail Abel and Chris and your law clerk.

25 THE COURT: Well, I'd be glad, if you would like to

CHARGE CONFERENCE

Page 164

1 -- why don't we take a short break. We'll go back to
2 chambers and I'll go over with you what I do intend to
3 charge.

4 MR. MCCARTY: Yes, sir.

5 THE COURT: And see if it's covered in that.

6 MR. MCCARTY: Thank you, Your Honor.

7 THE COURT: All right. We'll take a short recess.
8 I'll ask the attorneys to meet me in my chambers.

9 (Off-The-Record Comments)

10 (Whereupon, a recess was taken from 2:55 p.m. until
11 3:10 p.m.)

12 THE COURT: Thank you very much. You may be
13 seated. I'd ask the attorneys to approach briefly.

14 (Whereupon, a bench conference was had with all
15 attorneys present.)

16 THE COURT: All right. After a review of our
17 scheduling, I think we're going to adjourn and start again
18 in the morning with closing and charging. Let's bring
19 the jury in, so, I can dismiss them for the evening.

20 (The jury was summoned and entered the courtroom at
21 3:12 p.m.)

22 THE COURT: The record will reflect the jury has
23 returned to the courtroom.

24 All right, ladies and gentlemen, I've gone over with
25 the attorneys our schedule for the remainder -- the

Page 165

1 remainder of the trial.

2 If we tried to finish this afternoon, we would
3 probably be giving the case to you at five o'clock (5:00)
4 or after. And I really don't want to put you in that
5 position.

6 So, what were going to do is, I'm going to adjourn
7 as far as you're concerned for the rest of the day and
8 let you go. We will ask that you be back in the jury
9 room at nine o'clock (9:00) in the morning. We do plan
10 to start promptly at that time.

11 So please be on time and be ready to go at that
12 time. And at that time we will be hearing the closing
13 arguments from the attorneys, I'll charge you concerning
14 the law, and, then, the case will be turned over to you
15 for your deliberations.

16 One more time I'm going to give you the instructions
17 that I give you when you leave the courthouse. And,
18 again, that is not attempt to gather any information on
19 your own;

20 Don't watch, listen to, or read any media reports
21 about the case. Don't discuss the case with anyone. And
22 don't allow anyone to discuss the case with you.

23 And should someone try to contact you about your
24 service on this jury, please report that upon your return
25 and I'll take the appropriate action.

Page 166

1 So at nine o'clock (9:00) in the morning you can be
2 in the jury room, we'll try to get started as closely to
3 that time as possible.

4 I hope you all have a good evening and at this time
5 you're free to go. The bailiffs will check you out in
6 the jury room.

7 (The jury exited at 3:14 p.m.)

8 THE COURT: All right. Court will be adjourned
9 until nine o'clock (9:00). Everyone remained seated
10 while the Defendants exit the Courtroom.

11 (Off-the-Record Comments)

12 THE COURT: We're in recess until nine o'clock
13 (9:00). Thank you very much.

14 (Court adjourned at 3:18 p.m.)

Page 167

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

October 4, 2012

9:02 A.M.

(Off-the-Record Comments).

THE COURT: All right. Is the state ready to go forward at this time?

MR. GRAY: Yes sir, Your Honor.

THE COURT: Mr. Thompson, for the Defense?

MR. THOMPSON: Yes, Your Honor.

THE COURT: Mr. McCarty?

MR. MCCARTY: We are, Your Honor.

THE COURT: All right. I'll believe we'll be leading with you, Mr. Thompson; is that correct?

MR. THOMPSON: I believe so, Your Honor.

THE COURT: Okay. All right. Bring the jury in, Mr. Ruth.

(The jury was summoned and entered the Courtroom at 9:02 a.m.)

THE COURT: Thank you, sir. All right. The record will reflect that the jury has returned to the courtroom. And I hope everyone had a good evening.

At this time I will, again, ask if there were any of you that had any difficulty in complying with my instructions while you were away from the courthouse, please stand.

(No Response)

CLOSING ARGUMENT - MR. THOMPSON

Page 168

1 THE COURT: It appears that all have been able to
2 comply with the Court's instructions.

3 When we broke yesterday afternoon, the evidence in
4 this case had been presented to you. And at this time
5 the attorneys will be allowed to make their closing
6 arguments are statements to you.

7 And at this time, Mr. Thompson for Mr. Anderson,
8 will be going first. You may proceed, Mr. Thompson.

9 MR. THOMPSON: Thank you, Your Honor. May it
10 please the Court?

11 THE COURT: Yes, sir.

12 (Mr. Thompson's closing argument began at 9:03
13 a.m.)

14 MR. THOMPSON: Ladies and gentlemen, it has been a
15 long week and I know you guys have missed your jobs and
16 are also missing time with your family. I appreciate
17 your service this week.

18 It's incredibly serious stuff. My client is charged
19 with the most serious crime you can be charged with, and
20 that's murder and armed robbery.

21 In my opinion, when they found that gun, Officer
22 Stokes just shut everything down. He stopped
23 investigating. I'm asking you to pick it up here today.

24 Weigh this evidence. Consider that testimony right
25 there on the stand and pick this -- pick this

CLOSING ARGUMENT - MR. THOMPSON

Page 169

1 investigation up in that jury room. That's what I'm
2 asking you to do.

3 Let's go back over everything that went on this
4 week. First I want to talk about the witnesses in this
5 case.

6 Perry Crain, the older gentleman, sat here
7 (indicating). I stood here (indicating). He said, "I'm
8 ten (10) feet away, I see the shooter, the guy had
9 dreads."

10 Alice Carroll, she was very nervous, but she said
11 the shooter had dreads as well. Okay? That doesn't
12 match my -- my client's description at all.

13 I'll tell you little bit about Ms Crain -- Mr. Crain
14 and Ms. Carroll. They're not tied to anybody in this
15 case.

16 They're bystanders. They're there and this takes
17 place in front of them. They don't have a dog in the
18 fight is what I like to say.

19 They're neutral. All they did was get up here and
20 they're going to tell the truth. And that's what they
21 did: They saw a guy with dreads shoot Stephen Means. It
22 happened right in front of them.

23 The other witness, Miss -- Nicole, Stephen Means'
24 sister, verified through Officer Cheeks that she told him
25 some guys in white T-shirts chased her brother right

CLOSING ARGUMENT - MR. THOMPSON

Page 170

1 before she shut -- the door didn't even close and she
2 heard the shot. She tried to -- you know, she -- her
3 memory is probably bad over nineteen (19) months ago.
4 But the day of it, she told this officer they chased
5 my brother, those guys in white T-shirts.

6 The state's alleging this is what my client had on
7 (picks up black overalls), okay? They took it into
8 evidence because it matched the description of what he
9 had on that day.

10 It's not a white T-shirt. It's not even close.
11 That's his haircut right there (indicating). That's the
12 way he always wears his hair; not even close to dreads.
13 I'm asking you to take that into account right here.

14 We'll move on through the other things. Molly Bogan
15 sat up here. She told you she had two times -- my client
16 was produced in photo lineups. Neither time did she pick
17 him out. In fact, one time she picked another guy; can't
18 identify my client.

19 She's on the driver's side. There's another person
20 on the passenger side. Supposedly, my client is over
21 here (indicating) with a gun in his hand. She says she
22 -- she recognizes him now. Of course she does.

23 She picks him out in the courtroom because no one
24 else is sitting over there other than Ms. Hollis. And
25 she knows Ms. Hollis.

CLOSING ARGUMENT - MR. THOMPSON

Page 171

1 Ms. Bogan has no credibility. Officer Stokes told
2 you she came in three different times. This is her
3 fourth time. Is she telling the truth finally? I doubt
4 it. Because why? Because she's tied to somebody else
5 who's charged in this, Latrica Martin.

6 She goes to Latrica's house every day. She visits
7 with Latrica's child. She makes her own sandwiches at
8 Latrica's house.

9 I don't know what her motivation is, who she's
10 protecting, what she's doing; she's not credible. She's
11 supposedly so upset she can't remember.

12 State's Exhibit 5, that horrible scene where we see
13 Mr. Means' body taken to the ambulance, watch State's
14 Exhibit 5.

15 You'll see Ms. Bogan. And you'll see Latrica
16 Martin. They're walking around casually. They're not
17 bothered all. There's no trauma in those folks.

18 Look at that (indicating). Now that's them, isn't
19 it? That looks like a normal day. They're walking
20 around the car.

21 There's no fear in their eyes. They're not crying.
22 Is just not true; they're not traumatized.

23 I'm asking you to judge her credibility and -- and
24 determine her motive and what she's -- what she's
25 connected to and who she's connected to and compare that

CLOSING ARGUMENT - MR. THOMPSON

Page 172

1 to the other witnesses in this case.

2 Weigh those and I'll think you'll see the neutral
3 witnesses. Mr. Crain and Ms. Carroll, and Ms. Means all
4 have a better recall of what happened and they're more
5 credible, especially Ms. Carroll and Mr. Crain. They
6 don't have a dog in the fight like I said.

7 Who's not here today? Who was not here all week?
8 For one, nobody come through this door or sat on that
9 stand that could identify my client.

10 Nobody picked him out. There's two other people
11 charged, Charles Jackson. He's gone for two weeks on the
12 run I think Mr. Stokes said.

13 Quarte' Lyles, he's not here. You need to ask
14 yourself why are those folks not here?

15 The main thing you need to ask yourself is why is
16 Latrice Martin not here? Why is the person that was
17 supposedly sitting on the passenger seat with my client
18 right outside the window, why is she not here?

19 Why would she not sit up there and say "Yeah, he was
20 standing right outside the door there"? Probably because
21 she couldn't.

22 And think about Ms. Bogan's testimony too. I said,
23 "Ms. Bogan, were you -- you said you were looking down at
24 your phone," and she corrected me, "It was GPS."

25 "Well, if you're looking at that and you said you

CLOSING ARGUMENT - MR. THOMPSON**Page 173**

1 saw my client, well how long was it from the time you saw
2 him and the gunshot?" "I don't know." "Was it ten (10)
3 seconds, was it five (5) minutes?" "I don't know, I
4 can't remember." Was it an hour?

5 Again, she's not credible. My client arrested here
6 in Spartanburg where he's supposed to be. He's not on
7 the run. He's not altering his appearance, okay?

8 How -- how did they get my client? Officer Stokes
9 said they went off a nickname. That's how they
10 originally got started with everybody.

11 And I think he even threw Little Man around. How
12 many Little Mans did they have? I don't know, but
13 nicknames is what got us started on this thing.

14 Let's talk about the evidence now, the gun. I told
15 you at the beginning I got to get you past the gun.

16 No doubt the gun is in my client's home. It's found
17 there. My client's aunt testified Quartez Lyles came
18 over. Quartez Lyles probably had that gun with him.

19 My client's mom told you he's got a eighth-grade
20 education. He's easy pickings for Quartez Lyles.

21 Quartez has got to get rid of that weapon. Charles
22 Jackson has run off to Gaffney or North Carolina
23 somewhere. He can't get Charles involved.

24 Charles Anderson is easy pickings. And that's what
25 he does.

CLOSING ARGUMENT - MR. THOMPSON

Page 174

1 Think about the DNA, okay? Officer Guthro, a 20-
2 year veteran, the SLED expert, both told you this DNA is
3 transferable. It's under my guy's mattress. It's got to
4 have his DNA on it. His mattress has got dead cells all
5 in it.

6 So it stands to reason there would be D -- DNA from
7 my client on that gun because it's in his bed.

8 But about the main thing Sergeant -- or Officer
9 Guthro said, the best evidence, even better than DNA is
10 what? It's fingerprints. No fingerprint from my client
11 on that gun.

12 I think one of the State's attorneys tried to say,
13 "Well, wouldn't that DNA get on there by him touching
14 that trigger? Well, a finger print would or a palm
15 print. Nothing, no prints.

16 Go back to your eyewitnesses again. Mr. Crain, no
17 dog in the fight. I stood here beside Ms. Faucette and
18 he said, "That's how close I was." "That's how close I
19 was and the guy had dreadlocks." or "The shooter had
20 dreadlocks." Ms. Carroll reinforced what Mr. Crain said.

21 Think about the DNA evidence on the bottle and the
22 cups. And my client wasn't tied to the scene there. The
23 only thing tying my guy to the scene is Molly Bogan,
24 whose credibility is minimal at best.

25 She got up here and we know it was at least the

CLOSING ARGUMENT - MR. THOMPSON

Page 175

1. fourth story she told. Officer Stokes brings her in
2. three (3) different times. Officer Stokes told you, he
3. -- he agreed with me that he was informed Mr. Crain was
4. the best witness. I think he is.

5. I think Mr. Crain saw everything. "That boy got
6. shot." He said he saw the guy get shot. And the guy
7. with dreadlocks shot him.

8. But also think about Molly Bogan. She said Little
9. Man; Little Man is one of them.

10. Officer Stokes dropped the charges on Little Man.
11. Molly's credibility with Little Man not good, but it is
12. with my client? I don't think so.

13. Like I say, he found that gun and he shut this
14. investigation down. I'm asking you guys to pick it up.
15. Look at everything, guys. Look at this (indicating).

16. The shooter is in white -- I mean, "People in white
17. T-shirts chased my brother down."

18. This is not a white shirt. The shooter had dreads.
19. He don't have dreads.

20. My client is charged with murder and robbery. He's
21. not charged with having a firearm in his possession or a
22. firearm in his home. If he were, it would be a much
23. stronger case.

24. The gun's at his house. There's no denying that.
25. The gun has got the DNA on it. We're not denying that.

CLOSING ARGUMENT - MR. THOMPSON

Page 176

1 But DNA is transferable. Quarte' Lyles came over.

2 Like I say guys, Ms. Bogan, Latrica's friend, said
3 she visits every day, visits with her child, okay? well,
4 like I say, I don't know what her motivation is or who
5 she's protecting. I don't know, okay?

6 I know that her credibility is very minimal. And I
7 know Perry Crain's and I know Alice Carroll's credibility
8 is very strong. They were right there; eyewitnesses.

9 And I leave you with the fact that Latrica Martin is
10 not here. Bogan -- Ms. Bogan told you, she was in the
11 passenger side.

12 Supposedly my client would have been right there
13 beside her. That would have been a great witness for the
14 State to call unless she didn't say the same thing Molly
15 said.

16 Too many unanswered questions. And Judge couch is
17 going to charge you on beyond a reasonable doubt. And
18 this case is chock-full of reasonable doubt.

19 When you go in there and ask yourself these
20 questions, and weigh this evidence, you'll come back with
21 a not guilty verdict. You've got too many unanswered
22 questions.

23 He'll tell you that -- what reasonable doubt is. I
24 won't go into it. He'll do a much better job of
25 explaining it than I can. But guys there too many

CLOSING ARGUMENT - MR. THOMPSON
unanswered questions.

Page 177

The State's got that gun, that's their foundation.
But then they start piling up box on top of box and
eventually that case crumbles.

They -- they got the gun. I've got -- we've got
eyewitnesses that say the shooter had dreadlocks. We've
got eyewitnesses that say guys in white T-shirts chased
the victim down.

That's the crime scene. That's -- that's just
minutes after it happened, shortly thereafter. That's
when people's memories are best, not nineteen (19) months
later, not two (2) weeks later. Right when something
happens, that's -- that's when you remember.

When you leave here today, you'll remember what
color suit I had on. Two weeks from now, you probably
won't remember.

Think about that. Think about Ms. Martin -- I mean
Ms. Means. She saw people in white T-shirts chase her
brother. Officer Cheeks reinforced that.

And consider those other eyewitnesses, put them here
(indicating); put Ms. Bogan here (indicating). And
you'll see that their credibility far outweighs her
credibility.

And also they have no connection to the case other
than Ms. Means and her -- her brother is the victim.

CLOSING ARGUMENT - MR. MCCARTY

Page 178

1 Consider all of this, guys. Consider my client's
2 attire that day supposedly. Consider those eyewitnesses
3 and I think you'll get past the gun.

4 You'll realize that, that's the only thing that got
5 my client in this thing. And the only reason he's here
6 is that Sergeant Stokes or Officer Stokes found that gun
7 and he shut this thing down.

8 Mr. McCarty had a great question yesterday: Did he
9 arrest first and then investigate later? I believe
10 that's what's happened here.

11 I'm asking you guys to pick up this investigation
12 and come back with a not guilty verdict. Thank you.

13 THE COURT: Mr. McCarty?

14 MR. MCCARTY: May it please the Court?

15 THE COURT: Yes, sir.

16 (Mr. McCarty's closing began at 9:17 a.m.)

17 MR. MCCARTY: The hand of one is not always the
18 hand of all. And Lauri Hollis had no hand in this case.

19 The State is proceeding on the prosecution of her,
20 charging her with crimes of murder and armed robbery,
21 under the theory that the hand of one is the hand of all.

22 Now in order to proceed under that theory of
23 prosecution -- the judge will tell you about this in his
24 charge -- but the State is going to have to show to you
25 that Lauri Hollis was at the scene of this crime by some

CLOSING ARGUMENT - MR. MCCARTY

Page 179

1 prior arrangement;

2 That she was acting in concert with at least one or
3 more persons, that they had devised some type of scheme
4 or plan or devised whatever it may be, and that they had
5 the intent to act on those when this occurred.

6 It is the State's job to bring forth witnesses, to
7 provide evidence which supports their theory of the case.
8 And the State has not met that burden to prove that case
9 against Lauri Hollis.

10 The State has brought forth, as Mr. Thompson has
11 told you, five (5) people who are what we call lay
12 witnesses as attorneys.

13 Those are all -- those are people who come off the
14 street, who don't have the technical experience like law
15 enforcement or the folks from SLED or Dr. Wren, who's a
16 pathologist. They're just everyday folk who happened to
17 be at, near, or around, who can tell you what they saw.

18 Well, what did they see? Four of the five (5)
19 people couldn't tell you really anything that occurred.
20 Mr. Thompson just explained to you what Mr. Crain said
21 and what Ms. Carroll said, but you saw Ms. Carroll.

22 When asked to say who was here, boy, she craned all
23 the way around this courtroom, looked all out through
24 that gallery looking for everybody she could see. In
25 fact, she said to the solicitor, "who should I pick?"

CLOSING ARGUMENT - MR. MCCARTY

Page 180

1 So what did she provide about this crime? She
2 certainly didn't pick out Ms. Hollis. And Mr. Crain said
3 it was a guy; again, not Ms. Hollis.

4 Ms. Means was inside at the time when this occurred.
5 So there's no testimony that anybody saw Ms. Hollis
6 participate in the shooting.

7 There's no evidence or testimony that anyone saw Ms.
8 Hollis participate in the robbery of the victim in this
9 case except one person, and that was Molly Bogan. And
10 the state is putting all of its eggs into that one
11 basket.

12 Their theory of hand of one is the hand of all rests
13 solely on whether you believe Molly Bogan.

14 Molly Bogan came in here and you saw her sit here.
15 You saw how she responded to not only my questions, Mr.
16 Thompson's questions, but to the state's own questions as
17 they were her witness -- or she was their witness. I'm
18 sorry.

19 How did she respond? She couldn't remember quite a
20 bit. "I don't recall." "I don't remember." Do you
21 believe her?

22 And certainly testimony from the officers led you --
23 led you to hear that they had concerns about whether they
24 believed her. Three (3) separate times they went and
25 spoke with her.

CLOSING ARGUMENT - MR. MCCARTY

Page 181

1 Now they wanted to shore that up and say, "Well, it
2 was because she was scared." "She was worried." "She
3 was fearful."

4 Well, an hour after the shooting she's telling
5 Russell Porter she was inside the house. She didn't see
6 anything. Doesn't know anything about it.

7 But we see in the moments after the shooting that
8 she's outside walking around with whom Investigator
9 Stokes identified as Latrica Martin from his
10 investigation of this case.

11 But Molly does tell you that right before this
12 happened that she pulls in, Latrica Martin is in the
13 passenger seat of that black Mercedes SUV that she's got.

14 And allegedly Ms. Hollis comes over to her driver-
15 side window, leans in, and tells her they're about to get
16 somebody, something is about to go down; whatever it was
17 that she said.

18 And that's what the state is hanging their hat on
19 here. They want you to believe that, that is the plan.
20 That is the scheme. And that is the reason she's there.

21 Except there's another little problem with that.
22 If you'll recall from Ms. Means' own testimony, when she
23 got home that day prior to the shooting, earlier in the
24 day, she saw Ms. Hollis outside.

25 She confirmed Ms. Hollis lives in Oakview

CLOSING ARGUMENT - MR. MCCARTY

Page 182

1 Apartments, is a resident there. It's a place where
2 people hang out outside.

3 So was Ms Hollis there because of some prior
4 arrangement or was she there because she lived there?
5 This scheme or this plan, this intent, that she's talking
6 to with Molly Bogan, this is the point where you get to
7 apply probably the most -- or the best tool in this case,
8 and that's common sense.

9 Here's a common sense question for you: Does it
10 make sense, if you're involved in a case or if you're
11 involved in a plan or a scheme, or whatever it may be, to
12 potentially rob, possibly shoot and even kill someone and
13 you're acting with other people in part of this, why do
14 you go over and lean in the window and tell somebody,
15 "Hey, it's about to go down"?

16 And, if you do, do that, why does the person who
17 just got told that not a little more heightened, a little
18 more aware, a little bit more concerned about it?

19 "Geesh, I just got told something bad is about to
20 happen, better look around and see what's happening out
21 here."

22 Because Molly Bogan told you she did not do that.
23 In fact, she did say, "Well, in the moments before,
24 during, and right after, I was looking down at the GPS
25 unit in my car; don't know what happened. Looked up and

CLOSING ARGUMENT - MR. MCCARTY
everybody's running away."

Page 183

1
2
3 she didn't testify she saw a robbery. She didn't
4 testify she even saw the shooting. Do you believe Molly
5 Bogan?

6 I want talk a little bit about the armed robbery
7 because that's another charge that Ms. Hollis sits here
8 accused of. And, again, under this whole theory that the
9 hand of one is the hand of all, that she acted in concert
10 with these people;

11 There was a prior arranged plan for which she was
12 there to help and intended to execute and commit this
13 crime.

14 The only testimony about the armed robbery is this,
15 and it comes from a person who waited five hundred and
16 forty-four (544) days to come in and tell anybody about
17 it.

18 That she was allegedly at a party three (3) nights
19 after the shooting. She had on jewelry that apparently
20 had belonged to the victim.

21 Well, what about that party? There were thirty (30)
22 to forty (40) other people that were there. Who else did
23 the State bring forward to collaborate that testimony, to
24 say, "Yes, I was also at that party." "Yes, I also saw
25 her." "I have no connection to this"?

CLOSING ARGUMENT - MR. MCCARTY

Page 184

1 They didn't provide that testimony. They didn't
2 provide that evidence.

3 But Mr. Gray's going to come up here and he's going
4 to tell you -- and I believe the judge will probably tell
5 you too in his argument -- that any evidence that someone
6 is in possession of property from someone who's recently
7 been robbed, is circumstantial evidence to at least infer
8 that you might be able to consider whether or not they
9 committed that robbery.

10 And that's it in a nutshell. The judge, he's going
11 to charge that and tell you a little bit more about it.

12 But I will tell you is the testimony that you have
13 here -- or the question I'll ask is: Is the testimony
14 that you have here enough to convict her of armed robbery
15 based upon that?

16 Because there is no eyewitness testimony that it
17 occurred. The only testimony concerns what occurred three
18 (3) days later.

19 The State forth brought -- brought forth a lot of
20 other witnesses, and they were the chain witnesses. And
21 boy, I'm telling you, that's excruciating.

22 It's boring; it is. And, if you've done enough
23 trials as I have, the solicitors have, and Mr. Thompson
24 has, everybody in here except you folks have gone through
25 that.

CLOSING ARGUMENT - MR. MCCARTY

Page 185

1 But it's a necessary part because it tells you how
2 did the State maintain, how did they control, what did
3 they do with a piece of evidence that they collected.
4 And ultimately, how it got down to SLED, who performed
5 their tests on it. But it's necessary to show you that.

6 And what did SLED come up here and testify to? SLED
7 came up here and told you number one, anything relating
8 to that gun there's nothing that forensically links her
9 to this crime.

10 Her DNA is not present on it. Her fingerprints are
11 not present on it. In fact, any of the evidence
12 collected from or around the crime scene has nothing to
13 do with Lauri Hollis.

14 She was excluded, excluded, and excluded on any of
15 those DNA samples.

16 Now I will admit that Ms. Simmons came here. She
17 talked to you about finding that gunshot residue on a
18 purple shirt. And I'm sure the State is going to make a
19 lot of hay about this purple shirt (indicating).

20 What did she tell you about the gunshot residue?
21 Yes, it was there. Was she able to tell you how it got
22 there? When it got there? Under what conditions it came
23 to arrive there?

24 She couldn't tell you any of that. All she could
25 testify to is that that shirt had the presence of gunshot

CLOSING ARGUMENT - MR. MCCARTY

Page 186

1 residue.

2 And what do we know about that shirt? It didn't
3 come into police custody until five (5) days later. It
4 came out of a vehicle belonging to someone else; not Ms.
5 Hollis's vehicle, at a location not even Ms. Hollis's
6 home or apartment, but someplace else.

7 There's been no account for how that shirt was
8 maintained, how it was handled, what it was exposed to.
9 We don't know any of that.

10 All we know is that, when it got to SLED and she did
11 her tests, yes, it had something on it. And the State is
12 going to say there's the linchpin; that links her to
13 this.

14 But, you know, even after the state had that purple
15 shirt in their possession, and they found out that it had
16 gunshot residue on it, they didn't even bother to send it
17 back down to SLED to confirm whether or not it belonged
18 or even had been worn by Lauri Hollis.

19 We talked a lot about that; touch DNA, the skin
20 cells which get on clothing. That was always the
21 example; clothing.

22 There's clothing. Why didn't they do anything with
23 it?

24 Another interesting thing is this: Throughout this
25 entire case there's not been one mention that Lauri

CLOSING ARGUMENT - MR. MCCARTY

Page 187

1 Hollis was wearing a purple shirt on the day of this
2 incident. No one; Molly Bogan, the investigators, none
3 of the four (4) or five (5) other witnesses they brought
4 up here, said anyone was wearing a purple shirt.

5 The police were not looking for a purple shirt. In
6 fact, Investigator Stokes didn't tell you anything at all
7 about having ever seeing her in a purple shirt.

8 She came to the police station on the 8th. You heard
9 that. He didn't tell you she was wearing a purple shirt
10 then.

11 When she turned herself in, after learning from the
12 news that she was a suspect, he didn't tell you that she
13 was wearing a purple shirt then.

14 But yet five (5) days after the shooting, they want
15 you to believe that "Ha ha, we found her shirt. That's
16 hers. It links her to this unequivocally without doubt."

17 Well that's your question: Is there doubt
18 concerning that shirt, its ownership, how that gunshot
19 residue got there, how the shirt was maintained?

20 Is there doubt in your mind about the sufficiency
21 and the weight of that evidence as it relates to being
22 able to convict her of either of these crimes, but
23 especially under the theory that she acted in concert
24 with other people, through some plan or scheme, to do
25 this?

CLOSING ARGUMENT - MR. MCCARTY

Page 188

1 I too am not going to talk to you too much about the
2 probable -- or proof beyond a reasonable doubt because
3 the judge has that in his jury charge. But I will tell
4 you that proof beyond a reasonable doubt is simply this:
5 When you're deliberating and you're thinking about
6 an issue, and you're going over testimony and a fact, if
7 there's a point in that deliberation in your mind where
8 it causes you to pause, to think about it, to guess,
9 that's reasonable doubt.

10 And the judge will tell you the law in this state
11 and the United States requires that, if that reasonable
12 doubt exists in your mind, you must return a verdict of
13 not guilty to the defendant, for Lauri Hollis. And you
14 must return the verdict of not guilty.

15 And I think that, after you carefully deliberate
16 this, you recall and weigh Molly Bogan's testimony, you
17 look at everything else that does not link her to this
18 crime, that you will find the State failed to meet its
19 burden of proof and that Lauri Hollis is innocent of
20 these charges.

21 And respectfully, upon behalf of Ms. Hollis, we
22 request that you return a verdict of not guilty. Thank
23 you.

24 THE COURT: Mr. Gray, for the State?

25 MR. GRAY: Thank you, Your Honor.

CLOSING ARGUMENT - MR. GRAY

Page 189

(Mr. Gray's closing began at 9:29 a.m.)

MR. GRAY: Good morning, ladies and gentlemen. I appreciate your attention throughout this long trial.

Mr. Thompson, Mr. McCarty are excellent attorneys. They give you speeches about common sense, but in this case, everything doesn't make sense. Everything doesn't make sense.

There's a different set of rules. Like one rule, "snitches get stitches." "Snitches get stitches." And that's sad because like Mr. McCarty said, in this state, and in this country, that's a prevalent theme unfortunately.

If they had in their minds that Mr. Means was a snitch, and their goal was to get him, that's the common scheme or plan. It doesn't mean it was four (4) months ago or two (2) days before, it was to get Mr. Means.

She, Miss -- Ms. Hollis, is not only guilty of this, this whole situation, she started it. You -- you heard about the three (3) gentlemen in the car waiting, waiting.

There's the starter pistol right there (indicating). She told Ms. Bogan, "There is that snitch." "Something is about to go down." "We're going to get him."

I'm paraphrasing, but if I'm wrong, listen to it again. She starts towards Mr. Means. Three others come

CLOSING ARGUMENT - MR. GRAY

Page 190

1 up, including Mr. Anderson.

2 They circle around Mr. Means, cut off any lanes of
3 escape. Mr. Means gets shot.

4 You heard from Dr. Wren how he was shot; once with
5 three injuries; back here (indicating) and it comes out
6 of his left chest and winds up in his arms.

7 What was Mr. Means trying to do? He was trying to
8 run and get away. But he couldn't because they're
9 surrounding him.

10 The armed robbery portion is not common sense. It
11 doesn't make sense. Dr. Wren told you he had maybe ten
12 (10) minutes of life.

13 They took the time to get trophies. A grille, who
14 takes a grille? For that matter, who takes just the top
15 part of the grille out of someone's mouth during a
16 robbery?

17 They took his phone and they took his necklace. And
18 that necklace is what Mr. Kelly saw a couple of days
19 later at a party. Trophies.

20 The judge is going to tell you what armed robbery
21 is, by force or by violence while armed with a deadly
22 weapon, a gun that Mr. Anderson had. What's more violent
23 than a gunshot?

24 They took his necklace. They took his phone. They
25 didn't take his money. They took his grille, half of his

CLOSING ARGUMENT - MR. GRAY

Page 191

1 grille. They took these things as trophies because
2 snitches get stitches.

3 That's what they thought. That's what Ms. Bogan
4 thought. She sat up here and told you, "I was scared."
5 "I was scared what happened to him was going to happen to
6 me."

7 But she got up on the stand and told you, "I saw
8 that man face first for the first time today. That's the
9 shooter." That's the starter pistol (indicating), the --
10 the beginning of this entire act. She saw an opportunity
11 and she took it.

12 The other three (3) were there. They saw her move
13 and they moved. That common scheme or plan through
14 actions or deeds.

15 Ms. Carroll, God bless her, she couldn't see
16 anything and couldn't remember allegedly. Mr. Crain got
17 up here and before I could finish questioning him, he was
18 so scared, "Can I go?"

19 No, they don't have a dog in this fight, but they
20 were scared clearly of this situation. But the neutral
21 witnesses in this case that they alluded to, SLED.

22 SLED, they truly have no dog in this fight. They
23 don't know what happened. They analyze the evidence, the
24 evidence that Detective Stokes kept gathering, kept
25 sending down to SLED.

CLOSING ARGUMENT - MR. GRAY

Page 192

1 They found the gun that belongs to the Defendant.
2 could've, should've, would've, no; science tells you that
3 gun belonged to Mr. Anderson.

4 The bullet that came out of the body of Stephen
5 Means and the spent shell casing came from that 9
6 millimeter Ruger that was found between the mattresses.

7 Not on top of the mattresses, not somewhere else,
8 between the mattresses.

9 That's his room. He could put the gun anywhere he
10 wanted to, but he put it between the mattresses. So,
11 when he signed this consent form, I know what he was
12 thinking. And you do too: "[REDACTED]
13 Spartanburg, SC, the room of Charles Anderson, Jr., the
14 last room on the right."

15 Even this consent to search shows the deception.
16 His aunt got on the stand and said, "Doo Doo's room is
17 the last on the left."

18 Had an officer, who had been sequestered who said,
19 "His -- his was the last room on the left." "How do you
20 know?" "That's where Mr. Anderson's mother took us."

21 She had no idea he was trying to mis -- mislead the
22 police even then with a simple consent to search. "My
23 room is the last room on the right." No, it's on the
24 left.

25 And, when they went in there, they found the gun

CLOSING ARGUMENT - MR. GRAY

Page 193

1 between the mattresses. He could have put that gun
2 anywhere, but he tried. But the officers did their job
3 and they found that gun.

4 They send it to SLED, along with the ballistics,
5 along with the touch DNA. That's his gun. That's the
6 gun that killed Mr. Means. And that's the man who fired
7 the shot (indicating) from the neutral witnesses in this
8 case.

9 Now they talk about Ms. Hollis and the purple shirt.
10 No, nobody described her in a purple shirt. Ms. Bogan,
11 who knew Ms. Hollis, described that she saw Mr. Stephen
12 Means and that Ms. Bogan -- excuse me, Ms. Hollis said,
13 "There's the snitch. Let's go get him." And everything
14 went into motion.

15 They went to her mother's house trying to do a
16 search, continuing the investigation. When they got
17 there, nothing was in the house. The mother pulled up
18 and told the officers, "No, here's Lauri's clothes."

19 They didn't search the vehicle. They didn't go
20 through it saying, "We want this, we want that." The
21 mother volunteered, "These are Lauri's clothes."

22 And lo and behold, what's on Lauri's clothes?
23 Gunshot residue. When a gun is fired, like Mr. McCarty
24 said -- said on his cross examination, there's a cloud.
25 The expert sat -- sat here and told you four (4) to five

CLOSING ARGUMENT - MR. GRAY

Page 194

1 (5) feet away.

2 They surrounded Mr. Means. She was no more than
3 four (4) to five (5) feet away unless she's -- she's a
4 welder. And there's been no discussion of that, that
5 she's a welder.

6 Either she's the unluckiest person in the world and
7 has been running around for five (5) days with GSR on her
8 shirt from a magic cloud of whatever or she was there
9 that day when Mr. Means was shot.

10 Not only was she there, she started it. Walked up
11 to him, helped surround him. When he got shot, GSR got
12 on her and she took a trophy, the Stewie necklace.

13 Not just any necklace, the Stewie necklace. Armed
14 robbery, common scheme or plan, the hand of one is the
15 hand of all.

16 Now we're going to talk about Ms. Latrica Martin.
17 That's a "look over here not over there" type of
18 situation.

19 Myself, Mr. Cude, Mr. Thompson, Mr. McCarty, we all
20 have the same ability to subpoena anybody we want for
21 this case. Why is Latrica Martin not here? I don't
22 know. They could have subpoenaed her.

23 MR. MCCARTY: Your Honor, if I may object at that
24 point.

25 THE COURT: Ladies and gentlemen of the jury, at

CLOSING ARGUMENT - MR. GRAY

Page 195

1 this point in time, I'll ask you to step back to the jury
2 room. Don't begin any discussions until such time as
3 I've advised you to do so. We'll take a short break. Go
4 back to the jury room.

5 (The jury exited the courtroom at 9:43 a.m.)

6 THE COURT: Thank you, Mr. Ruth. Mr. McCarty?

7 MR. MCCARTY: Thank you, Your Honor. I apologize
8 for interrupting during closing, but I think what he was
9 arguing there by saying the Defense had the ability to
10 subpoena any witness is almost akin to burden shifting;
11 saying that we had the ability to put up a defense when
12 it's the State's burden to put forth the case against
13 anybody charged.

14 THE COURT: Mr. Gray?

15 MR. GRAY: No, sir, Your Honor. I didn't comment
16 on burden shifting or putting up a defense. My -- I'm
17 rebutting Mr. Thompson saying, "why is she not here?"

18 I'm merely - in a reasonable doubt situation, all
19 I'm trying to say is that why is Ms. Latrica Martin not
20 here? I don't know why she's not here.

21 I'm not burden shifting to them to say they had a
22 duty to bring her here. They have a duty to put on a
23 defense, anything of that nature. But Mr. Thompson did
24 say, "why is she not here?"

25 And I'm saying, "I don't know. They could have

CLOSING ARGUMENT - MR. GRAY

Page 196

1 subpoenaed her to be here if they wanted her to be here."

2 MR. MCCARTY: Your Honor, if I may on that, it's -
3 - an argument. We're commenting on the State's
4 presentation in the case as to what was not here that
5 the jury can consider as far as testing the credibility
6 of other witnesses, which is to comment on the evidence
7 that they have put forward.

8 By just indicating to the jury that Mr. Thompson and
9 I, as attorneys, have the same ability to subpoena
10 something is at least in my objection akin to shifting
11 the burden to us to bringing Ms. Martin in. It was
12 incumbent upon us to do that.

13 THE COURT: Mr. Thompson?

14 MR. THOMPSON: I'll agree. I believe -- you know,
15 I think when he made the comment about the ability to
16 subpoena on that, that basically shifted the burden.

17 It's almost like we have the burden of proof of not
18 guilty by that statement as opposed to the burden is on
19 the State to prove guilt.

20 THE COURT: Well, I didn't -- I didn't hear him go
21 so far as that you had some obligation to bring that
22 person forward. I did hear him say that the -- that all
23 attorneys have the ability to subpoena witnesses.

24 I am going to sustain the objection. I'm not going
25 to allow you to go further into that argument.

CLOSING ARGUMENT - MR. GRAY

Page 197

1 MR. GRAY: Yes, sir.

2 THE COURT: I will strike that -- that argument
3 from the record and will instruct the jury that they
4 should disregard that in full.

5 MR. MCCARTY: That's all I would request, Your
6 Honor.

7 THE COURT: All right.

8 MR. GRAY: Yes, sir, Your Honor.

9 MR. THOMPSON: Thank you, Your Honor.

10 THE COURT: Bring the jury back.

11 (The jury is summoned and entered the Courtroom at
12 9:47 a.m.)

13 THE COURT: Thank you. The record will reflect the
14 jury has returned to the courtroom.

15 Ladies and gentlemen, a little later on, when I
16 charge you concerning the law, part of that charge will
17 indicate that the State has the burden of proof in this
18 case. And the only burden of proof in this case. And
19 I'll go over that with you in more detail when I charge
20 you concerning the law.

21 I have sustained an objection by the Defense to the
22 -- to the State's closing argument to the extent that
23 there can be no argument shifting the burden of proof
24 from the State in this matter.

25 So I'm going to strike the argument that the State

CLOSING ARGUMENT - MR. GRAY

Page 198

1 made concerning subpoenaing witnesses. I will instruct
2 you to disregard that argument in its entirety during
3 your deliberations.

4 And I'll talk to you in more detail about that later
5 on. But I have sustained the objection. I have stricken
6 that argument and given instructions to the State's
7 attorney concerning his further argument. You may
8 proceed, Mr. Gray.

9 MR. GRAY: Thank you, Your Honor. Just briefly,
10 ladies and gentlemen. I want to talk about the elements.

11 Once again, armed robbery; a violence, items taken
12 away from a victim for the permanent usage or denial of
13 that property.

14 That's -- that's what happened, ladies and
15 gentlemen.

16 Ms. Hollis went so far as to change her appearance.
17 She had dreads. When Mr. Kelly saw her, she had shaved
18 her head, but she still had on that trophy.

19 Mr. Anderson, he shot and killed Mr. Stephen Means
20 because they thought he was a snitch. That's pretty
21 simple, ladies and gentlemen.

22 Look at the neutral witnesses, the science, the SLED
23 evidence, and you'll see there was a common scheme or
24 plan.

25 It's -- it's not like some movie where every detail

CLOSING ARGUMENT - MR. GRAY

Page 199

1 was written out. "There's a snitch, we're going to get
2 him." They saw an opportunity and they did.

3
4 Common sense, I don't know. But I know common sense
5 beyond a reasonable doubt, especially in this situation.
6 I don't have to prove my case -- we don't have to prove
7 our case beyond any doubt; beyond a reasonable doubt.

8 This is a closed courtroom. If somebody walks in
9 that door dripping wet with an umbrella shaking it out,
10 and you've heard a lot of sounds outside, common sense
11 says it's raining outside.

12 Could it be a movie crew out there simulating rain?
13 It could. But beyond a reasonable doubt you know, from
14 the circumstances from what you see there, it's raining
15 outside. Not probably, it is.

16 In this situation the bullet, the gun, the DNA, the
17 trophy taken from Mr. Means, you add them up. Armed
18 robbery, murder; common scheme or plan.

19 The hand of one hand is the hand of all in this
20 case. They're both guilty of murder. They're both
21 guilty of armed robbery. Thank you.
22
23
24
25

JURY CHARGE

Page 200

1

2

3

4

JURY CHARGE

9:51 A.M.

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

THE COURT: Ladies and gentlemen, that completes the closing arguments made by the attorneys. And I told you that, when we reached this stage of the proceedings, it would be my responsibility to charge you concerning the law to be applied in this case.

When we began this case earlier in the week, I went over with you the indictments in this case. I'm going to go over with you again these indictments.

Those are the documents that bring the case before the court. It informs this court of the charges that are to be tried in this trial. It informs the Defendant of the charges that have been lodged against the Defendants in this case.

The first indictments that I will go over with you are those involving Mr. Anderson. The indictment numbers are 11-GS-42-5097 and 5098. 5097 is for the offense of armed robbery.

That indictment states that, "Charles L. Anderson did, in Spartanburg County on or about April 7, 2011, commit a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon

JURY CHARGE

Page 201

1 or while alleging, either by action or words that he was
2 armed while using a representation of a deadly weapon or
3 any object which a person present during the commission
4 of the robbery reasonably believed to be a deadly weapon;

5 "And did feloniously take from the person or
6 presence of Stephen Means by force, violence, and/or
7 intimidation, goods or monies of Stephen Means, to wit:
8 jewelry, cell phone, and dental gold, all with the intent
9 to deprive the owner permanently of such property in
10 violation of code section 16-11-330(a) of the Code of
11 Laws of South Carolina, 1976 as amended, against the
12 peace and dignity of the state and contrary to the
13 statute in such case made and provided."

14 That's the first indictment. The second indictment
15 -- and this case number 5098 -- is for the offense of
16 murder.

17 That indictment states that, "Charles L Anderson,
18 Jr., did in Spartanburg County, on or about April 7,
19 2011; feloniously, willfully, and with malice
20 aforethought caused the death of Stephen Means by
21 shooting the victim with a handgun.

22 "And that the victim died as an proximate result
23 thereof, all in violation of section 16-3-310 and 20 of
24 the Code of Laws of South Carolina, 1976 as amended,
25 against the peace and dignity of the State and contrary

JURY CHARGE

Page 202

1 to the statute in such case made and provided."

2 Those are the two indictments that are before the
3 Court as it relates to Mr. Anderson. The two indictments
4 that relate to Ms. Hollis are for the same two offenses.

5 They are indictments number 11-GS-42-5110 and 5111.
6 5110 is for the offense of armed robbery.

7 It alleges that she did, "...in Spartanburg County,
8 on or about April 7, commit a armed robbery while armed
9 with a deadly weapon."

10 I'm not going to read it to you in particular. It
11 reads exactly in the particulars as did Mr. Anderson's.

12 The other indictment is for the offense of murder.
13 It's case number 2011-GS-5111. And, again, it alleges
14 that, "Lauri Danielle Hollis did in Spartanburg County,
15 on or about April 7, 2011, willfully, feloniously and
16 with malice aforethought, caused the death of Stephen
17 Means by shooting the victim with a hand gun."

18 Now those indictments will be given to you. And you
19 will have them back in the jury room during your
20 deliberations. You'll have the right to study them at
21 that point in time and go over them in the particulars.

22 Now I'm going to remind you the fact that a
23 defendant has been arrested, has been charged, and even
24 indicted in this case, those facts don't constitute
25 evidence in this case and cannot be considered by you as

JURY CHARGE

Page 203

1 evidence of guilt in this matter.

2 Nor does the fact that an indictment has been issued
3 create any presumption or inference of guilt.

4 These are simply the documents that bring the case
5 before the Court. Again, it informs us of the charges to
6 be tried. It informs the Defendant of the charges that
7 have been lodged against the Defendants in this case.

8 Now in a case where you have multiple charges, more
9 than one indictment charging a particular defendant with
10 more than one crime, each indictment constitutes a
11 separate and distinct offense.

12 That means you, the jury, must decide each
13 indictment separately on the evidence and the law that
14 applies to that particular indictment.

15 A defendant can be convicted or acquitted on any or
16 all of the offenses that have been charged. And you'll
17 be asked to write a separate verdict of either guilty or
18 not guilty as to each of the indictments and as to each
19 defendant in the case.

20 And I'm going to instruct you that, when you reach a
21 verdict in this case, your verdict must be based upon the
22 law and the evidence presented during the trial.

23 It cannot be based on any passion, vindictiveness,
24 sympathy, or other emotion.

25 Now I'm going to charge you that where two defendants

JURY CHARGE

Page 204

1 have been charged with the commission of crimes, the case
2 of each defendant and the evidence and the law concerning
3 that defendant should be considered by you separately and
4 individually.

5 Your verdict does not have to be the same for both
6 defendants. In fact, you may find one defendant guilty
7 or not guilty and whether or not you do that, it should
8 not control your verdict as to the other defendant or the
9 other charges against that defendant.

10 If the evidence warrants it, you may convict one and
11 acquit the other, or you may convict both or you may
12 acquit both.

13 Again, you must consider each defendant and each
14 charge separately on the evidence and the law that
15 applies to that particular charge and to that particular
16 defendant. And, again, you'll write a separate verdict
17 of guilty or not guilty as to each defendant on each
18 charge.

19 Now I told you, at the beginning of the trial, the
20 Defendants have pled not guilty to the indictments that
21 are before the Court.

22 That plea, under the law and the Constitution of
23 this State and of the United States, places the burden of
24 proof upon the State in this matter.

25 A person charged with the commission of a criminal

JURY CHARGE

Page 205

1 offense in South Carolina is never required to prove
2 himself or herself innocent of that charge.

3 I charge you it's an important rule of law that a
4 defendant in a criminal case, no matter what the
5 seriousness of the crime might be, will always be
6 presumed to be innocent of the crime for which an
7 indictment has been issued unless and until guilt has
8 been proven to you, the jury, by evidence that satisfies
9 you of that guilt beyond a reasonable doubt.

10 The presumption of innocence doesn't end when you
11 began your deliberations. It accompanies the defendant
12 throughout the trial and into your deliberations until
13 such time as you reach a verdict based upon the law and
14 the evidence in this case and you find that the defendant
15 is guilty of the crime beyond a reasonable doubt.

16 Now the presumption of innocence has been described
17 sometimes like the robe that I wear into the courtroom.
18 It remains about the defendant's shoulder as the trial
19 begins. And it accompanies the defendant throughout the
20 trial.

21 It remains about the defendant's shoulders into your
22 deliberations. It stays about the defendant's shoulders
23 until such time as it has been stripped from him by
24 evidence that satisfies you of the defendant's guilt
25 beyond a reasonable doubt.

JURY CHARGE

Page 206

1 Now the presumption of innocence is not just a legal
2 theory. I hope you realize that; it's not just a legal
3 phrase. It's a substantial right that every defendant is
4 entitled to until you, the jury, are satisfied of the
5 defendant's guilt beyond a reasonable doubt.

6 Now you've heard me already talk about proof beyond
7 a reasonable doubt about three (3) times, maybe four (4)
8 times in what I've told you thus far. You might be asking
9 yourself, "Well just what -- what is meant or what is the
10 meaning of a reasonable doubt?

11 What -- what is a reasonable doubt? The law has
12 defined a reasonable doubt as that kind of doubt which
13 would cause a reasonable person to hesitate to act.

14 And the State has the burden of proving the
15 defendant's guilt of the charges or the indictments
16 before the Court beyond a reasonable doubt.

17 Now I'm going to caution you, and I don't want you
18 to be confused by this. There are two types of cases
19 generally that are tried in the courts of this country.

20 There are cases criminal in nature where someone is
21 charged with the commission of a crime.

22 And then there are cases civil in nature. That's
23 where someone is seeking monetary damages. And that can
24 be for a -- a breach of a contract or failure to pay a
25 debt or someone injured someone by their actions and have

JURY CHARGE

Page 207

1 to pay for the damages they caused. That is what is
2 meant by a civil case.

3 And there's two different standards of proof
4 depending on the type of case that is before the Court.
5 In a civil case, the standard of proof is by the greater
6 weight or the preponderance of the evidence.

7 what that means is, you've all seen the scales of
8 justice, it means those scales tilting ever so slightly
9 in favor of a plaintive or the person complaining or ever
10 so slightly in favor of the defendant.

11 And, when they tilt ever so slightly one way or the
12 other in a civil case, that side is entitled to a
13 verdict.

14 Criminal cases are different. The standard of proof
15 in this case is by the -- beyond a reasonable doubt.
16 It's a more powerful standard of proof than that in a
17 civil case.

18 Proof beyond a reasonable doubt is that kind of
19 proof that would leave you firmly convinced of the
20 defendant's guilt.

21 And I'm going to tell you there's few things that go
22 on in people's lives that can be proven beyond any doubt
23 whatsoever. And that's not the standard of proof that
24 the State is -- is held to in this case. They do not
25 have to offer proof that overcomes every possible doubt.

JURY CHARGE

Page 208

1 I will tell you that, if after your consideration of
2 the evidence, if you are firmly convinced of the
3 defendant's guilt beyond a reasonable doubt, you must
4 find the defendant guilty.

5 However, on the other hand, if you think there's a
6 real possibility that the defendant is not guilty, you
7 must give the defendant the benefit of that doubt and
8 find the defendant not guilty.

9 Now, at the beginning of the trial, I tried to point
10 out to you that you and I have certain duties to perform
11 in the trial. And they are separate and distinct from
12 each other.

13 As the trial judge, it's been my responsibility to
14 preside over the trial of this case. I've had the duty
15 of ruling on certain questions concerning the
16 admissibility of evidence or the appropriateness of
17 questions that have been asked or -- or things that might
18 have been said.

19 And I will tell you that you can only consider the
20 competent evidence and information allowed into the
21 record before you.

22 And, if there was any matter that I ordered stricken
23 from the record in this case, you must disregard that
24 matter in its entirety.

25 Those matters that I ordered to be stricken from the

JURY CHARGE

Page 209

1 record of this case should not even be discussed by you
2 in reaching a verdict in this case.

3 You are to decide the case based upon the evidence
4 that's been admitted into the record, including the sworn
5 testimony and whatever evidence came into the record
6 that's been admitted into that record through that
7 testimony.

8 Now I have the additional duty now of charging you
9 concerning the law in this case. And I told you, at the
10 beginning of the trial, you're the sole judges of the
11 facts; I'm the sole judge of the law in this case.

12 It's your responsibility, under the oath that you've
13 taken as jurors, to take the law as I give it to you and
14 accept it. And, then, apply it to the facts as you find
15 them to be during your deliberations.

16 And, again, if you came into the courtroom with any
17 idea or notion as to what the law is or somehow what the
18 law ought to be, you should leave those notions outside
19 of the jury room because it's your responsibility to take
20 the law as it is and as I give it to you and apply it to
21 the facts as you find them to be in this case.

22 Now I told you also that, in every case tried before
23 this Court in which a jury is participating, the jury is
24 the sole and exclusive judge of the facts in this case.

25 As a trial judge, I can't indicate or state or comment or

JURY CHARGE

Page 210

1 make any statement that -- concerning the facts in this
2 case.

3 And I will tell you, you should not take from
4 anything that I say or do during -- in the execution of
5 my duties in this case, to somehow indicate to you that I
6 have a preference one way or the other as to how you
7 determine the facts in this case.

8 The law doesn't allow me an opinion concerning the
9 facts. And I can assure you I have no opinion as to how
10 you determine the facts in this case. You are the sole
11 judges of the facts in this matter.

12 So, if there's anything that I say or do even during
13 my -- my charge concerning the law, that you somehow
14 think indicates a preference on my part, disregard that
15 notion in its entirety.

16 Because it's your duty as jurors to determine the
17 effect, the value, the weight, and the truth of the
18 evidence that's been presented to you during this trial.

19 Now in doing that I'm going to tell you that you
20 have the right to consider two types of evidence.

21 And you may ask yourself, "Well, what do you mean by
22 types of evidence?" And let me see if I can explain it
23 to you.

24 The law classifies evidence into two types of
25 evidence. One is referred to as direct evidence. The

JURY CHARGE

Page 211

1 other type of evidence is what is referred to as
2 circumstantial evidence.

3 Now direct evidence is testimony of a person who
4 claims to have actual knowledge of a fact, such as
5 someone who claims to have been an eyewitness or actually
6 experienced or heard or saw or smelled or somehow
7 directly experienced the facts about which they are
8 testifying.

9 And that's what we mean by direct evidence, someone
10 directly -- testifying directly on the fact that's sought
11 to be proven.

12 The other type of evidence that a jury has the right
13 to consider is what we refer to as circumstantial
14 evidence.

15 Now circumstantial evidence has been described as
16 proof of a -- of a chain of facts or circumstances that
17 indicate the existence of another fact.

18 It's been described as proof of collateral facts
19 from which a main fact could be reasonably inferred.

20 Now that's a lot of fancy language. And I'm going
21 to see if I can't make it a little more commonsensical.

22 I use a very simple example. Let's say last night,
23 when you decided to go to bed, you looked outside your
24 bedroom window and the stars were shining and it was a
25 beautiful night. And you went to bed and slept well all

JURY CHARGE
night.

Page 212

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

And got up the next morning and walked over to that same window and looked out and, while the sun might have been shining when you looked outside, there was water dripping from all the trees. The driveway or the road in front of your house was wet or had puddles in it. There's water on the grass.

Now during the night you were asleep so you didn't hear it rain. You didn't see it rain, but from the facts that you know to be true, collateral facts, you can reasonably infer that at sometime that main fact, that it rained during the night, is true.

So that's what we mean of proof of collateral facts from which you could reasonably infer the existence of some other fact.

Circumstantial evidence therefore is based on inference. It's not based on personal knowledge or observation.

The law makes absolutely no distinction between the weight or the value that you, the jury, can give to either direct or circumstantial evidence.

You're the sole judges of the facts and you're the sole judges of the weight you choose to give to the facts as you find them to be, that includes both direct and circumstantial evidence.

JURY CHARGE

Page 213

1 Nor is there a greater degree of certainty required
2 of circumstantial evidence than that of direct evidence.
3 I'm going to tell you as jurors you should weigh all of
4 the evidence in the case, both direct and circumstantial.

5 And I'll tell you if, after weighing all of the
6 evidence in the case, if you're not convinced of the
7 defendants guilt beyond a reasonable doubt, you must find
8 the defendant not guilty.

9 On the other hand, if -- if you're firmly convinced
10 of the defendant's guilt beyond a reasonable doubt, you
11 must find the defendants guilty.

12 Now, in doing your job as jurors, I told you, at
13 beginning of the trial, and I want to reemphasize that
14 it's your duty and responsibility to determine the
15 credibility or the believability of the testimony that
16 you've heard during this case.

17 It's your duty as jurors to analyze and evaluate the
18 evidence, determine which evidence convinces you of its
19 truth.

20 In determining the believability of witnesses who
21 testified in this case, as the sole judges of the facts,
22 you can believe one witness against all the others that
23 testified. You can believe all the others against one.

24 You have the right to believe all, part of, or none
25 of what a witness has told you.

JURY CHARGE

Page 214

1 In determining believability or credibility, I'll
2 tell you again to use your own good common sense in doing
3 so.

4 You have the right to consider factors as to whether
5 or not you believe that the witness exhibited to you
6 some type of interest or bias or prejudice or other
7 motive in the case.

8 You can consider the appearance, the manner of a
9 witness while on the witness stand. Again, use your own
10 good common sense and make a determination of what
11 evidence has convinced you of its believability.

12 So make a determination as to the credibility or the
13 believability of the testimony you've heard in this case.

14 Now there has been some evidence presented that
15 witnesses -- some of the witnesses may have made prior
16 statements which are not consistent with their testimony
17 given during the trial.

18 You may use this evidence to decide whether or not
19 to believe the witness. You may also use that evidence
20 of early -- earlier contradictory statements to determine
21 the truth of those statements or the statements made in
22 court.

23 It's up to you as jurors to decide whether to
24 believe the earlier statements or the testimony given at
25 the time of the trial.

JURY CHARGE

Page 215

1 If a witness is shown to have knowingly testified
2 untruthfully concerning any material matter, you have the
3 right to consider this in determining whether to trust
4 the defendant's [sic] testimony as to other matters.

5 You have the right, as I've told you, to believe all
6 of, part of, or none of what a witness has told you.

7 You can reject all of the testimony of that witness
8 or give all or part of the testimony the weight that you
9 think it deserves. Again, you're the sole judges of the
10 facts and the credibility of the testimony that you've
11 heard.

12 Also during this trial there was a wit -- a person's
13 past criminal record has been brought up concerning their
14 testimony.

15 A past criminal record does not affect the ability
16 of a person to testify during the trial. The past
17 record, if any, can only be considered by you, if at all,
18 in determining credibility or believability. Another
19 factor that you have the right to consider, if you choose
20 to do that.

21 Now one of the theories in this case has been
22 described. It's commonly referred to as the hand of one
23 being the hand of all.

24 And if a crime is committed by two -- by more -- two
25 or more people, who are acting together in committing a

JURY CHARGE

Page 216

1 crime, the act of one becomes or is the act of all.

2 A person who joins with another to commit an
3 unlawful act is criminally responsible -- responsible for
4 everything done by the other person which happens as a
5 probable or natural consequence of the act in carrying out
6 the common plan and/or purpose.

7 For example, I will tell you two people can be found
8 guilty of killing another person when only one of the two
9 had a gun. And when there was only one bullet and only
10 one of the two fired the shot that caused the death if
11 two or more people are together, acting together,
12 assisting each other in the commission of the offense.

13 Then the act of one is the act of all or as
14 sometimes has been said, the hand of one is the hand of
15 all.

16 Now prior knowledge that a crime is going to
17 committed -- be committed without more is not sufficient
18 to make a person guilty of the crime.

19 Mere knowledge that another person is going to
20 commit a crime, even if the defendant is present when the
21 crime is committed, is not sufficient to convict the
22 defendant as a principal.

23 Guilt as a principal, that means someone who is
24 actually acting in the case, is shown by actual or
25 constructive presence at the scene as a result of a prior

JURY CHARGE

Page 217

1 arrangement.

2 Therefore, a finding of a prior arrangement, plan,
3 or common scheme is necessary for a finding of guilt as a
4 principal. The State must prove, beyond a reasonable
5 doubt by competent evidence, the theory of the hand of
6 one is the hand of all.

7 Now a principal in a crime is one who actually
8 commits the crime or who is present, aiding, abetting, or
9 assisting in the commission of the crime.

10 When a person does an act in the presence of, and
11 with the assistance of another, the act is done by both.

12 Where two or more are acting with a common plan or
13 intent are present at -- at the commission of a crime, it
14 does not matter who actually commits the crime; all are
15 guilty. The hand of one then becomes the hand of all.

16 Presence -- presence at the commission of a crime
17 needs to be sufficiently near it as to aid, abet, and
18 assist in the commission of the crime.

19 However, mere presence at the scene of the crime is
20 not sufficient to convict one as a principal of the
21 theory of aiding and abetting.

22 Intent is also a necessary element or there must
23 have been a common design or intent to commit the crime.

24 The crime must have been committed pursuant thereto
25 with the person aiding and abetting by some overt act.

JURY CHARGE

Page 218

1 Intent means intending the result which actually occurs,
2 not by accident or involuntarily.

3 Intent may be shown by acts and conduct of the
4 defendant and other circumstances from which you may
5 naturally and reasonably infer intent.

6 The State must prove the elements of the hand of one
7 is the hand of all beyond a reasonable doubt. And,
8 again, I've told you that mere presence at the scene of a
9 crime is not sufficient to prove someone guilty of a
10 crime.

11 A defendant's presence at a crime where a crime is
12 being committed or mere association with a person who
13 commits a crime does not make the defendant an accomplice
14 or an aider or an abetter of the person committing the
15 crime.

16 Now, as we go through this, I'm just -- I'm going to
17 go over some things that I want to be sure you -- they
18 have been defined to you, as -- as best I can define them
19 before I talk about the specific charges in this case;

20 Because when I talk about the specific charges,
21 you'll hear these phrases used. And they may be actually
22 elements or -- or things that have to be proven before
23 the crime can be shown.

24 One of the things I want to be sure you understand
25 is what is meant under the law by a deadly weapon because

JURY CHARGE

Page 219

1 both of these offenses, for both defendants, involve an
2 allegation that they used a deadly weapon in the
3 commission of a crime.

4 For the charges of murder and armed robbery, it's
5 important that you understand the legal meaning of the
6 phrase, "deadly weapon." A deadly weapon is an article
7 or instrument or substance which is likely to cause death
8 or great bodily harm.

9 Whether an instrument has been used in a particular
10 event as a deadly weapon depends on how you determine the
11 facts and circumstances of the case.

12 The following are examples of instruments which have
13 been found in other cases to be a deadly weapon depending
14 on the circumstances as you determine them in each case.

15 Such things as a pistol, a shotgun, a rifle, a dirk,
16 a dagger, a knife, a slingshot, metal knuckles, a razor,
17 gasoline, fire bombs, even lighter fluid have been
18 determined in cases to constitute deadly weapons.

19 Again, it depends on how the item is used and the
20 facts and circumstances of the case as you determine
21 those facts and circumstances to be.

22 Now I want to go over with you the charge of armed
23 robbery. Both defendants, each defendant, is charged
24 with armed robbery.

25 And, in order to prove this offense, the State must

JURY CHARGE

Page 220

1 first prove, beyond a reasonable doubt, that the
2 defendant took personal property from the presence or
3 person of another person.

4 Property in the presence of a person is within that
5 person's reach or observation or control so that the
6 person could, if not overcome by violence or prevented by
7 fear -- or fear, keep possession of their property.

8 The State must also prove, beyond a reasonable
9 doubt, that a defendant charged with this crime carried
10 the property away intending to permanently deprive the
11 owner of the property and to keep the property for the
12 defendant's own use.

13 The slightest removal of property or the complete
14 possession of the property, if even for an instant by a
15 defendant, is sufficient to show a taking and carrying
16 away.

17 Taking and caring away of property must have been
18 done with violence or by putting the owner in fear of
19 violence.

20 Finally the State must prove, beyond a reasonable
21 doubt, that the defendant was armed with a deadly weapon
22 during the robbery.

23 And I've already defined to you what is meant by a
24 deadly weapon. It depends upon the facts and
25 circumstances of each case as I stated to you earlier.

JURY CHARGE

Page 221

1 I will charge you that a defendant, if a defendant
2 is found in possession of recently stolen goods, that
3 fact can be used as evidence that the defendant stole the
4 goods.

5 This would simply be an evidentiary fact. It should
6 be taken into consideration by you and considered along
7 with all the other evidence in the case.

8 You give it the weight you think it should have and
9 decide, as I've charged you, in weighing any evidence in
10 the case.

11 The next charge I want to talk to you about is
12 murder. The State must prove, beyond a reasonable doubt,
13 that the defendants killed another person with malice
14 aforethought.

15 Now "malice aforethought" is a legal phrase again.
16 And I'm going to try to define that you so you'll
17 understand what is meant by malice aforethought.

18 Malice is hatred or ill will or hostility toward
19 another person. It's the intentional doing of a wrongful
20 act without just cause or excuse, with an intent to
21 inflict an injury, or under circumstances where the law
22 might infer an evil intent.

23 Malice aforethought does not require that this
24 malice exist for any particular length of time before the
25 act is committed.

JURY CHARGE

Page 222

1 But malice must exist in the mind of the defendant.
2 just before and at the time the act was committed.
3 Therefore, there must be a combination of the previous
4 evil intent and the act.

5 Malice aforethought can either be expressed or
6 inferred; in other words, proved by circumstantial
7 evidence.

8 These terms "expressed" and "inferred" malice do not
9 mean different kinds of malice. It, however, refers to
10 -- to the manner in which malice might be shown to have
11 existed.

12 That is either by direct evidence or by inference
13 from the facts and circumstances which have been proven.

14 Express malice is shown when a person speaks words
15 which express hatred or ill will for another person. Or
16 when the person prepares beforehand to do the act which
17 was later accomplished.

18 For example, lying in wait for a person or any other
19 act done in preparation to show that the deed was within
20 the defendant's mind, would be an expression of expressed
21 malice.

22 Malice can be inferred from conduct showing a total
23 disregard for human life. Inferred malice may also arise
24 when a deed was done with a deadly weapon. And I've
25 defined to you what is meant by a -- a deadly weapon

JURY CHARGE

Page 223

1 under the law.

2 Now, ladies and gentlemen, in this case your
3 verdicts must be unanimous. That means each and every
4 one of you must agree upon the verdict in the case as to
5 each indictment and as to each defendant unanimously.

6 And the verdict does not -- you have not reached a
7 verdict until such time as you been able to reach
8 unanimity as to each indictment in the case.

9 Ms. McCurry, if you would, raise your hand, please?

10 (The juror raised her hand.)

11 THE COURT: You're going to be the foreperson of
12 the jury. That means that you will be the person who is
13 responsible to preside over the deliberations of the jury
14 as they go forward.

15 You'll conduct the discussions. Now, if during the
16 discussions, the jury as a question concerning any matter
17 in the case, I'm going to ask you to write the question
18 down, knock on the door, submit it to the bailiff.

19 The bailiff will bring the question to me. And I'll
20 determine the appropriate answer.

21 I'm going to tell you now that I can't answer each
22 and every question you may have during your
23 deliberations.

24 I've already told you, I can't become involved in
25 your decisions concerning the facts in this case. Those

JURY CHARGE

Page 224

1 are your decisions and yours alone.

2 I can answer questions concerning my charge on the
3 law, the procedure that we followed, certain questions
4 about the evidence that had been -- that has been put
5 into the case.

6 However, Ms. McCurry, I'm not going to ask you to
7 edit any question the jury may have. What I would ask
8 you to do is get the jury to agree on the question itself
9 so that you submit either one or several questions, but
10 they agree on the form of the question.

11 Submit it to me and I'll determine the appropriate
12 answer that I should give -- should be giving to that
13 particular question.

14 Also, ma'am, it will be your responsibility to
15 record the verdicts once the verdicts have been reached.
16 And I'm going to give you a form in just a few minutes
17 and go over the form with you so that -- and that's as to
18 each defendant -- and go over the form so I'm sure that
19 you understand it.

20 You should only record the verdict once an unanimous
21 verdict has been reached on the questions presented to
22 you.

23 Now once you've completed your work and all verdicts
24 have been reached, you would knock on the door and inform
25 the bailiff that the verdicts have been reached. And the

JURY CHARGE

Page 225

1 jury would be then returned to the courtroom to receive
2 the verdicts.

3 Now, as I've told you, your verdict must be
4 unanimous. That means each and every one of you has an
5 equal say in the outcome of the case. And, again, a
6 verdict cannot be reached until unanimity has been
7 reached.

8 Now, I've gone over a lot of things with you. I
9 want to be sure I haven't misspoken during my charge
10 concerning the law.

11 Also there's a great deal of evidence in the case
12 and that evidence will be allowed to go back into the
13 jury room with you. So I want to be sure only the
14 evidence that went into the record goes back there and
15 not anything else.

16 So we've got some housekeeping matters that I have
17 to do with the attorneys before I ask you to begin your
18 discussions.

19 So, Madam Forelady, I'm going to ask you to take the
20 jury back to the jury room. Don't begin any discussions
21 about this case at this time.

22 I'll bring you back into the courtroom shortly and
23 give you your final instructions. And at that time the
24 case will be turned over to you for deliberations.

25 So if you'll retire to the jury room. Thank you

JURY CHARGE

Page 226

1 very much.

2 (The jury exited the Courtroom at 10:25 a.m.)

3 THE COURT: Any objection to the charge from the
4 State?

5 MR. GRAY: None, Your Honor.

6 THE COURT: Any Mr. Thompson for Mr. Anderson?

7 MR. THOMPSON: None, Your Honor.

8 THE COURT: Any Mr. McCarty?

9 MR. MCCARTY: No, Your Honor. Thank you.

10 THE COURT: All right. I'm going to ask that the
11 attorneys come forward and segregate if you would, move
12 over to one side, the evidence so that we're sure what's
13 going back to the jury, please.

14 MR. GRAY: Yes, sir.

15 THE COURT: And reach an agreement as to what is
16 going back, please.

17 (Pause while the attorneys checked the exhibits.)

18 (Off-the-Record Comments)

19 THE COURT: If you'll step up, gentlemen, and take
20 a look at the verdict form. I've put them on the bench
21 here.

22 (Brief pause while the attorneys check the verdict
23 forms.)

24 THE COURT: All right. On the record, Mr. Gray, do
25 we have an agreement as to the exhibits that are going

JURY CHARGE
back?

Page 227

1

2

MR. GRAY: Yes, sir, Your Honor.

3

THE COURT: Mr. Thompson?

4

MR. THOMPSON: Yes, Your Honor.

5

THE COURT: And Mr. McCarty?

6

MR. MCCARTY: We are, Your Honor.

7

THE COURT: Any objection to the verdict form, Mr.

8

Gray?

9

MR. GRAY: No, sir.

10

THE COURT: Mr. Thompson?

11

MR. THOMPSON: No, Your Honor.

12

THE COURT: Mr. McCarty?

13

MR. MCCARTY: No, Your Honor.

14

THE COURT: All right. Bring the jury in.

15

(The jury was summoned and entered the courtroom at

16

10:32 a.m.)

17

THE COURT: Ladies and gentlemen, and Madam

18

Forelady, the first thing I'm going to do is I'm going to

19

hand them to you, if you will take care of that for me,

20

Mr. Ruth.

21

BAILIFF: Yes, sir.

22

THE COURT: Those are the indictments in this case.

23

And I told you those would be submitted back to you for

24

your consideration. And, Mr. Ruth, if you'll hand these

25

documents to Ms. McCurry.

JURY CHARGE

Page 228

(Bailiff complied with the court's request.)

THE COURT: These are the verdict forms. And let's just go over them briefly so you'll understand. I think they are fairly self-explanatory, but let's be sure.

At the top it will have the state and county that we're in, the court that we're in, and also indicate the State against either Mr. Anderson or Ms. Hollis.

As to each Defendant it identifies the indictment numbers against them. There are two charges against each Defendant, one for armed robbery and one for murder.

So there's two different questions on the verdict form. And -- and it'll identify the charge, the indictment number, and, then, it'll have a choice of either not guilty or guilty.

I would ask that you either put an "X" or a check in the blank line adjacent to the appropriate verdict once the verdict has been reached.

And, ladies and gentlemen, let me caution you: The order in which I have put those choices on that form, don't think that somehow indicates a preference on my part.

I want to be sure that you understand that I've been doing this for several years and every verdict form I've ever done the choices are the same on each one.

So there's no preference. It's just the way I do

JURY CHARGE

Page 229

1 it. And so don't think that I'm trying to indicate
2 somehow a preference as to the verdict by the way I have
3 prepared the forms. The forms are prepared the same in
4 every case.

5 So, if you would, check the appropriate verdict once
6 a verdict as been reached on the charges. Once the form
7 has been completed, I'd ask that sign it.

8 And that's when you would knock on the door, inform
9 the bailiff that the verdict has been reached. Then
10 we'll ask you to come back once all verdicts have been
11 reached.

12 Now the evidence in this case has -- has been
13 placed. There's -- that big box was used for a piece of
14 evidence, and we put all the evidence in that box. It's
15 in evidence as well, the box.

16 There is a computer that's going to be given to you.
17 It is a clean computer. It has nothing on it other than
18 the ability to play the DVD that's in there that was
19 shown at the beginning of the trial.

20 If you feel the need to see that, you should be able
21 to operate it. If you have any difficulty, again, knock
22 on the door, let the bailiff know, and we'll give you
23 some technical help to -- to play it.

24 It's -- it's fairly self explanatory. I'm sure
25 somebody on the -- on the jury will able to get that

JURY CHARGE

Page 230

1 played for you on that computer. It's -- it's a fairly
2 simple way to do that.

3 So, that's available. You can watch it if you need
4 to do it. That computer is there for that purpose.

5 All right. At this point in time, I'm going to ask
6 that the two alternates to remain seated. I'm going to
7 ask that the jury itself retire to the jury room to begin
8 deliberations.

9 Let me caution you about just a couple of things
10 that can happen during deliberations.

11 I -- I can and will allow smokers to leave the room
12 while you are deliberating, but while they're gone, Madam
13 Forelady, deliberations must cease. Don't discuss the
14 case at all until they have returned.

15 In other words, all jurors must be present for any
16 deliberations that go on, on any subject in the case.

17 So, if that were to happen -- we won't let those
18 breaks happen very often, but we will allow that to
19 occur.

20 When we get to noon or a little after, if you are
21 still in deliberation, then, we'll inquire of the
22 foreperson as to whether or not you feel that lunch
23 should be ordered.

24 I will tell you it takes about an hour to an hour
25 and 15 minutes to order it, pick it up, and bring it back

JURY CHARGE

Page 231

1 to the courthouse.

2 So be aware of that. And, at any time you feel you
3 need that, let us know. But, when the person from the
4 clerk's office comes in to take a -- a meal order, again,
5 don't do any deliberating or discussion of the case while
6 that person is present.

7 Place your order, get that business finished, let
8 them leave, and then resume your deliberations. In other
9 words, discussions about the jury are among the jury;
10 other people may not be present while that's occurring.
11 So don't allow that to happen when we're were doing that.

12 Later on, if we get -- and I don't know that we'll
13 go that far -- but if we were to get to around 5:00 to
14 5:30, we'll have some discussions with you as to how you
15 wish to proceed at that point in time. So we'll talk
16 about that later if it comes up.

17 So, at this point in time, I'm going to ask the two
18 alternates to remain seated. I'm going to ask the jury
19 to retire and begin your deliberations in the case.

20 Thank you very much.

21 (The jury exited and began their deliberations at
22 10:35 a.m.)

23 (Off-The-Record Comments)

24 (Whereupon, the two alternates were excused.)

25 THE COURT: Any objection to my final instructions

JURY QUESTIONS

Page 232

1 from the State?

2 MR. GRAY: No, sir, Your Honor.

3 THE COURT: Any from the Defense, Mr. Thompson?

4 MR. THOMPSON: No, Your Honor.

5 THE COURT: Mr. McCarty?

6 MR. MCCARTY: No, sir.

7 THE COURT: All right. We will be in recess until
8 such time as a verdict is reached in this matter.

9 (Off-The-Record Comments)

10 THE COURT: All right. At this point in time, the
11 Court is in recess until such time as a verdict might be
12 reached. Thank you very much.

13 MR. GRAY: Thank you, Your Honor.

14 (Recess in the case began at 10:40 p.m.)

15 (Off-The-Record Comments)

16 (Another trial was begun while the jury was
17 deliberating.)

18 (The jury had a question at 11:36 a.m.)

19 THE COURT: I'll ask the attorneys to approach
20 briefly.

21 (Whereupon, a bench conference was had with all
22 attorneys present.)

23 (Off-the-Record Comments)

24 (Brief pause while the Defendants were brought back
25 into the Courtroom.)

JURY QUESTIONS

Page 233

1 THE COURT: All right. I have received an inquiry
2 from the jury. And at this time I'm going to ask the
3 bailiff to return the jury to the Courtroom.

4 (The jury was summoned and returned to the
5 courtroom at 11:42)

6 THE COURT: All right. Madam Forelady, I have
7 received an inquiry from you and it says, "Can we get a
8 copy of the testimonies of," and it names Molly Bogan,
9 Mr. Means' cousin, the -- the detectives that found the
10 shirt of Ms. Hollis, Mr. Crain, and Mr. Means' sister.

11 Let me explain to you how court reporting is done.
12 We keep -- the -- the court reporters take down an audio
13 recording. And she also repeats everything that's said
14 on an audio recording.

15 But there are no printed transcripts at this point
16 in time. That would be done after the trial has been
17 completed at a later date. So there is no written form
18 for that -- that testimony that we can provide to you.

19 We can play the recordings, however, if we replay
20 all of these, this is a good bit of the trial. And I'm
21 not sure -- and I don't want to know what you're looking
22 for in particular from that testimony.

23 If there are particular things that you'd like to
24 hear from the testimony, we can make arrangements to get
25 that ready, but that would take some time as well.

JURY QUESTIONS

Page 234

1 So I'm not discouraging you from making the request,
2 I am encouraging you, if at all possible, to narrow the
3 request because otherwise we'll start playing the entire
4 transcript over again it looks like, or pretty much all
5 of it.

6 And I don't know if that's what you need or not. So
7 I'm going to ask you to go back and discuss it with your
8 fellow jurors.

9 Of course, you have -- if you can use your
10 recollection and come to a consensus, that would help as
11 well. But, if you feel that you need to listen to either
12 all of the testimony or portions of the testimony, let us
13 know and we'll need to try to make arrangements to play
14 it.

15 But the recordings that are made are not made as --
16 as audio recordings to be played back. They're made to
17 be played for her to type from. So sometimes it's
18 difficult to get it where it will broadcast so everybody
19 can hear it. But we'll see what we can do about that.

20 So I'm going to ask you to step back, see if you can
21 narrow the request.

22 Also was there a request concerning lunch?

23 MADAM FORELADY: I think we're probably going to
24 need lunch.

25 THE COURT: Okay. So what I'm going to do is I'll

JURY QUESTIONS

Page 235

1 send the clerk in shortly to take a lunch order.

2 MADAM FORELADY: Thank you.

3 THE COURT: Okay? You may return to your
4 deliberations.

5 (The jury exited the courtroom at 11:44 a.m.)

6 THE COURT: Any objection to my response from the
7 State?

8 MR. GRAY: No, sir, Your Honor.

9 THE COURT: Any from the Defense, Mr. Thompson?

10 MR. THOMPSON: None, Your Honor.

11 THE COURT: Mr. McCarty?

12 MR. MCCARTY: No, Your Honor.

13 THE COURT: All right. The request will be made an
14 exhibit, a Court's Exhibit. And we will remain in recess
15 until such time as we either get a new inquiry or receive
16 a verdict. Thank you very much.

17 (Whereupon, Court's Exhibit Number 1 was marked for
18 identification.)

19 (The jury requested testimony to be played back.)

20 THE COURT: Thank you very much. You can be
21 seated.

22 All right. I've received a request from the jury.
23 It says they would like to hear Molly Bogan's, the
24 prosecutor's questioning, Mr. Crain's testimony, and Mr.
25 Kelly's testimony. And they say, "This is as much as we

JURY QUESTIONS

Page 236

1 could agree to narrow our list."

2 So I'm going to bring the jury in and we'll go over
3 -- play the requested testimony. Yes, sir?

4 MR. MCCARTY: Your Honor, just briefly. I know the
5 request of the jury is that they only play just the
6 prosecution's questioning, but in fairness, and to place
7 the whole testimony in context, if we consider playing
8 the entire testimony.

9 It was not very lengthy. She definitely was not on
10 the stand a long period of time.

11 THE COURT: Mr. Cude, any objection?

12 MR. CUDE: No objection, Your Honor.

13 THE COURT: And, in the interest of completeness, I
14 will direct that we play all of Ms. Bogan's testimony.

15 MR. MCCARTY: Thank you, Your Honor.

16 THE COURT: All right. Bring the jury in.

17 (Off-the-Record Comments)

18 (The jury entered the courtroom at 12:25 p.m.)

19 THE COURT: All right. Madam Forelady, we have
20 gotten your request and we've made arrangements to play
21 the testimony that you requested.

22 We're going to do in alphabetical order of these
23 people because that's how it comes up on the computer.
24 So we're going to do it in that fashion.

25 Also, you requested from Molly Bogan, the

JURY QUESTIONS

Page 237

1 prosecutor's questioning. When we play a witness's
2 testimony, generally we replay all of it.

3 MADAM FORELADY: Okay.

4 THE COURT: And so, if you would like to hear Ms.
5 Bogan's, we will play the whole thing.

6 MADAM FORELADY: Okay. Thank you.

7 THE COURT: All right. I'll ask the Court reporter
8 to proceed with playing the tape of the testimony of Mr.
9 Crain, Mr. Kelly, and Ms. Bogan.

10 COURT REPORTER: Ms. Bogan will be first.

11 THE COURT: Mr. Crain will be first?

12 COURT REPORTER: Bogan.

13 THE COURT: Bogan will be first? Okay.

14 (Whereupon, the testimony of Ms. Molly Bogan was
15 played in its entirety for the jury.)

16 THE COURT: Ladies and gentlemen, I'm -- I'm told
17 -- that your lunch has arrived, so, we'll take a break right
18 now, for about thirty (30) minutes to give you a chance
19 to have your lunch. Then we'll come back and play the
20 other testimony that you requested.

21 You may retire to the jury room.

22 (Off-the-Record Comments)

23 THE COURT: Okay. So everything should be in order
24 for you in the jury room for you to have your lunch. And
25 in about thirty (30) minutes we'll be calling you back to

JURY QUESTIONS

Page 238

1 hear the other testimony. Thank you very much.

2 (The jury exited the Courtroom at 1:06 p.m.)

3 THE COURT: All right. Everyone remained seated
4 while the Defendants leave the Courtroom.

5 (Brief Pause)

6 THE COURT: All right. Court is in recess for
7 about thirty (30) minutes. Thank you very much.

8 (Whereupon, a lunch recess was taken from 1:06 p.m.
9 until 1:33 p.m.)

10 THE COURT: Is the State ready to proceed?

11 MR. GRAY: Yes, sir, Your Honor.

12 THE COURT: The Defense, Mr. Thompson?

13 MR. THOMPSON: Yes, Your Honor.

14 THE COURT: And Mr. McCarty?

15 MR. MCCARTY: Yes, sir, Your Honor.

16 THE COURT: All right. Bring the jury in.

17 (Off-the-Record Comments)

18 THE COURT: Okay. Bring the jury in.

19 (The jury entered the courtroom at 1:46 p.m.)

20 THE COURT: All right. The record will reflect
21 the jury has returned to the Courtroom. I hope everyone
22 had a good lunch.

23 At this time we're going to go over the testimony
24 that you requested of Mr. Crain. You may proceed.

25 COURT REPORTER: Thank you.

JURY QUESTIONS

Page 239

1 (The testimony of Mr. Perry Crain was played in its
2 entirety for the jury.)

3 THE COURT: The next testimony will be Mr. Kelly's?

4 COURT REPORTER: Yes, sir.

5 THE COURT: All right.

6 (The testimony of Mr. Anthony Kelly was played in
7 its entirety for the jury.)

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, that completes the playing of the testimony that
10 you had requested.

11 At this time, I do want to go back and emphasize
12 just a couple of things for you. I asked you to -- to
13 reduce the list that you had.

14 Of course, if during your deliberations, you feel
15 that you need to hear additional testimony, let us know,
16 and we'll make arrangements to -- to make that available
17 to you.

18 I'm not trying to limit your access to it, but I did
19 want to make you aware of the difficulty it is in doing
20 that and the time that it may take.

21 Also I'd like to -- to go back and talk to you just
22 briefly. During my instructions to you on the law, I had
23 gone over the burden of proof in this case and explained
24 to you that the only burden of proof in this case is upon
25 the State.

JURY QUESTIONS

Page 240

1 And that is to prove the allegations beyond a
2 reasonable doubt. And, in that regard, I also want to be
3 sure that -- that I've instructed to you and emphasized
4 to you the fact that the defendants did not testify in a
5 case is not a factor to be considered by you in any way
6 in your deliberations and in your consideration of the
7 question of the guilt or innocence of a defendant.

8 That fact should not be considered by you in any
9 manner whatsoever. A defendant has a Constitutional
10 Right to remain silent. And the assertion of the right
11 must not be considered by you in -- in your
12 deliberations.

13 And, under your oath as jurors, as I've told you,
14 the burden of proof is solely upon the State. The
15 defendant is never required to prove himself or herself
16 innocent in a case.

17 So you're to draw no conclusion whatsoever from the
18 fact that the Defendants did not testify in this case.
19 Those factors should not even be discussed by you in your
20 deliberations as to whether or not they testified.

21 As I've said, the burden of proof is upon the State.
22 A defendant is not required to prove himself or herself
23 innocent. And the burden of proof remains upon the State
24 to prove guilt, again, beyond a reasonable doubt. So I
25 want to make sure that's clear.

JURY QUESTIONS

Page 241

1 I touched on it during the arguments of counsel.

2 And I think I covered it in my charge, but I wanted to be
3 sure that I emphasized that to you again. Those factors
4 should not be considered by you at all in reaching a
5 verdict in this matter.

6 All right, Madam Forelady, I'm going to ask you to
7 return to your deliberations. And, if you have any other
8 questions, please submit those when they come -- become
9 necessary. Thank you, Ma'am.

10 (The jury exited the courtroom at 2:06 p.m.)

11 THE COURT: Any objections to the response to the
12 question or my charge?

13 MR. GRAY: No, sir, Your Honor.

14 THE COURT: Any objection, Mr. Thompson?

15 MR. THOMPSON: None, Your Honor.

16 THE COURT: Any, Mr. McCarty?

17 MR. MCCARTY: No, Your Honor.

18 THE COURT: All right. We'll remain in recess in
19 this case then until a verdict is reached. Thank you
20 very much.

21 (Off-the-Record Comments)

22 (The jury had another question at 4:08 p.m.)

23 THE COURT: Thank you very much. You may be
24 seated. I'd ask the attorneys to approach briefly.

25 (Whereupon, a bench conference was had with all

JURY QUESTIONS

Page 242

1 attorneys present.)

2 THE COURT: All right. Bring the jury in, please.

3 (The jury was summoned and entered the courtroom
4 at 4:12 p.m.)

5 THE COURT: All right. The record will reflect
6 that the jury has returned to the courtroom. And you
7 asked, Madam Forelady, to -- for me to please explain
8 again the hand of one is the hand of all. ...

9 I explained to you earlier during the charge that
10 South Carolina does subscribe to that legal theory or
11 uses that legal theory; that is, that the hand of one is
12 that hand of all.

13 And, if a crime is committed by two more people who
14 were acting together in committing the crime, the act of
15 one is the act of all.

16 A person who joins with another to commit an
17 unlawful act is criminally responsible for everything
18 done by the other person which happens as a probable or
19 natural consequence of the acts done in carrying out the
20 common plan, scheme, or purpose.

21 In other words, two people can be guilty of a crime
22 when only one of them had the means for carrying it out
23 when they both acted together in carrying out the
24 particular crime.

25 So, if two or more people are acting together and

JURY QUESTIONS

Page 243

1 assisting each other in the commission of an offense, the
2 act done by one is the act of all, or it's sometimes
3 said, the hand of one is the hand of all.

4 Prior knowledge that a crime is going to be
5 committed without more is not sufficient to make someone
6 guilty of that crime.

7 Mere knowledge that another person is going to
8 commit a crime, even if the defendant is present when the
9 crime is committed, is not sufficient to convict the
10 defendant as a principal.

11 Guilt as a principal in a crime is shown by actual
12 or constructive presence at the scene of a crime as a
13 result of a prior arrangement.

14 Therefore, a finding of a prior arrangement or plan
15 or a common scheme, is necessary to find someone guilty
16 as a principal.

17 The State must prove, beyond a reasonable doubt, by
18 competent evidence, the theory of the hand of one is the
19 hand of all.

20 Now, a principal in a crime is one who either
21 actually commits the crime or is present aiding,
22 abetting, or assisting in the commission of the crime.

23 When a person does an act, in the presence of and
24 with the assistance of another, the act is done by both.

25 Where two or more, acting with a common plan or

JURY QUESTIONS

Page 244

1 intent are present at the commission of a crime, it does
2 not matter who actually commits the crime; all are
3 guilty. The hand of one is the hand of all.

4 To be present at -- at the commission of a crime
5 means to be sufficiently near so as to aid, abet, and
6 assist in the commission of the crime.

7 However, the mere presence at the scene of a crime
8 is not sufficient to convict one as a principal on the
9 theories of aiding and abetting.

10 Intent is also a necessary element for there must
11 have been a common design or intent to commit a crime.
12 And a crime must have been committed pursuant thereto
13 with the person aiding and abetting by some overt act.

14 Now intent means intending the result which actually
15 occurs. In other words, not accidentally or involuntary.

16 Intent may be shown by acts and conduct of the
17 defendant and other circumstances from which you might
18 naturally or reasonably infer intent. And the State must
19 prove these elements that I've gone over with you beyond
20 a reasonable doubt.

21 Again, the mere presence at the scene of a crime is
22 not sufficient to prove one guilty of a crime. A
23 defendant's presence where a crime is being committed, or
24 mere association with a person who does commit a crime,
25 does not make the defendant an accomplice or an aider or

JURY QUESTIONS

Page 245

1 an abetter of the person committing the crime.

2 The burden on the State is to prove every element of
3 the crime charged in this case.

4 Now that's the charge that I gave you concerning the
5 hand of one is the hand of all. Does that respond to the
6 question, Madam Forelady?

7 MADAM FORELADY: Yes, sir.

8 THE COURT: All right. Then I'll ask you to return
9 to the jury room to continue your deliberations. Thank
10 you very much.

11 (The jury exited the courtroom at 4:16 p.m.)

12 THE COURT: Any objections to my response from the
13 State?

14 MR. GRAY: No, sir.

15 THE COURT: Any from the Defense, Mr. Thompson?

16 MR. THOMPSON: No, sir.

17 THE COURT: Mr. McCarty?

18 MR. MCCARTY: No, Your Honor.

19 THE COURT: All right. The question will be made
20 an exhibit with the Court. I'd ask everyone to remain
21 seated while the Defendants leave the Courtroom.

22 (Whereupon, Court's Exhibit Numbers 3 & 4 were
23 marked for identification.)

24 (Off-the-Record Comments)

25 THE COURT: The Court is in recess until a verdict.

VERDICT

Page 246

1 is reached or additional questions are asked. Thank you.

2 (The verdict was reached at 4:55 p.m.)

3 THE COURT: Thank you very much. You can be
4 seated.

5 All right. I've been informed by the bailiff that a
6 verdict has been reached in the case. Is the State ready
7 to receive the verdict?

8 MR. GRAY: Yes, sir, Your Honor.

9 THE COURT: Is the Defense ready?

10 MR. THOMPSON: Yes, Your Honor.

11 THE COURT: Mr. McCarty?

12 MR. MCCARTY: Yes, Your Honor.

13 THE COURT: All right. Before the jury comes in, I
14 would like to caution those in the gallery. I know this
15 is been a rather lengthy and emotional trial.

16 We've had some difficulty with people expressing
17 emotions in the Courtroom. I can appreciate that this
18 has been a stressful situation for you.

19 However, I want to caution you: Any type of
20 demonstration, shouting out, any type of noise making by
21 someone in the gallery will be treated by this Court as
22 contempt of court.

23 If you have a difficulty in controlling your
24 emotions in a situation like this, I would urge you to
25 leave the courtroom at this time.

VERDICT

Page 247

1 otherwise, you'll be expected to sit quietly as
2 court proceeds with the reading of the verdict and with
3 whatever business we have to cover after that time.

4 So, if anyone has any difficulty in controlling your
5 emotions in a situation such as this, I would urge you to
6 now leave the courtroom.

7 (Spectators leave the courtroom.)

8 THE COURT: Bring the jury in.

9 (The jury entered the courtroom at 5:02 p.m.)

10 THE COURT: Madam Forelady, I have been informed by
11 the bailiffs that a verdict has been reached. Is that
12 true?

13 MADAM FORELADY: Yes, sir.

14 THE COURT: Pass the forms to the bailiff, please.

15 (Forelady complied with the Court's request.)

16 THE COURT: Thank you.

17 (Documents handed up.)

18 THE COURT: Madam Clerk, you may publish the
19 verdict, please.

20 MADAM CLERK: Yes, sir. "The State of South
21 Carolina versus Charles L. Anderson, Jr., we, the jury,
22 unanimously find the Defendant, Charles L. Anderson, Jr.,
23 concerning the offense of armed robbery, indictment
24 number 2011-GS-42-5097, guilty.

25 "We, the jury, unanimously find the Defendant,

VERDICT

Page 248

1 Charles L Anderson, Jr., concerning the offense of
2 murder, indictment number 2011-GS-42-5098, guilty."
3 Signed by the foreperson and dated October the 4th, 2011.

4 "We, the jury, unanimously find the Defendant, Lauri
5 Danielle Hollis, concerning the the offense of armed
6 robbery, indictment number 2011-GS-42-5110, guilty."

7 "We, the jury, unanimously find the Defendant, Lauri
8 Danielle Hollis, concerning the offense of murder,
9 indictment number 2011-GS-42-5111, guilty." Signed by
10 the foreperson and dated October the 4th of 2012.

11 Ladies and gentlemen of the jury, is this your
12 verdict and still your verdict? If so, please, raise
13 your right hand.

14 (All jurors raised their right hand.)

15 MADAM CLERK: So say you all.

16 THE COURT: Thank you, Madam Clerk.

17 MADAM CLERK: Yes, sir.

18 THE COURT: Anything further from the State before
19 I release the jury?

20 MR. GRAY: No, sir, Your Honor.

21 THE COURT: Mr. Thompson, anything from the
22 Defense?

23 MR. THOMPSON: None, Your Honor.

24 THE COURT: Mister ---

25 MR. ANDERSON: Excuse me. This is fucking.

VERDICT

Page 249

1 bullshit, nigger.

2 MR. THOMPSON: Shhhh...

3 MR. ANDERSON: Man, fuck that shit, man. I didn't
4 did do fucking murder. I didn't fuck that nigger there.
5 Fuck this shit.

6 THE COURT: Remove him from courtroom. Remove him
7 from the Courtroom.

8 THE DEFENDANT: I ain't no fucking murderer, man.
9 Man, fuck that shit, you and pussy-ass Abel Grabel
10 (phonetic). Fuck-ass nigger. You'll see me when I
11 (inaudible) get me out, nigger.

12 (Mr. Anderson was taken out of the courtroom, but
13 could still be heard making inaudible comments in the
14 hallway.)

15 MR. THOMPSON: I apologize, Your Honor.

16 THE COURT: That's quite all right. Mr. McCarty,
17 anything further from the Defendant, Ms. Hollis?

18 MR. MCCARTY: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen of the
20 jury, first of all, I want to thank you very much for
21 your service in connection with this case.

22 It's been a long case. And I appreciate your
23 attention to the details that have gone on.

24 I will tell you at this time this ends your service
25 for this week and the bailiffs will be checking you out.

SENTENCING

Page 250

1 I will tell you that, up until this time, I've
2 instructed you not to discuss the case with anyone. And
3 at this time you have the right to do so. You also have
4 the right not to do so.

5 If anyone should in any way harass you or bother you
6 concerning your service on this jury panel, please report
7 that immediately. We'll take the appropriate action to
8 see that, that ceases.

9 At this time, Madam Forelady, you need to see the
10 clerk before you leave. We've got some paperwork you to
11 sign with her before you leave the courtroom --
12 courthouse.

13 You'll receive a voucher for your services. That
14 will come in about a week.

15 Again, thank you very much for your attention to
16 your duties. You're free to go at this time. If you'll
17 step down and see the clerk.

18 (The forelady complied with the Court's request.)

19 (The jury was excused and exited the courtroom at
20 5:10 p.m.)

21 (Brief Pause)

22 (Off-The-Record Comments)

23 THE COURT: Have the sentencing sheets been
24 prepared?

25 MR. GRAY: Yes, Your Honor.

SENTENCING

Page 251

1 THE COURT: All right. Mr. Thompson, I believe
2 you're going to need to meet with your client in the jail
3 room concerning the sentencing sheets.

4 If you have difficulty in that regard, please report
5 back to the Court and let me know.

6 MR. THOMPSON: Will do, Your Honor.

7 THE COURT: I'll give you a chance to go speak with
8 him at this time.

9 MR. THOMPSON: Thank you, Your Honor.

10 (Brief Pause)

11 THE COURT: And, Mr. Thompson, at this point in
12 time, the Court is of the opinion that he will not be
13 present for sentencing unless you advise the Court that
14 he can control himself in the courtroom.

15 MR. THOMPSON: I'll -- I'll fill you in when I
16 return, Your Honor.

17 THE COURT: Thank you. He's forfeited that right
18 at this point in time unless he changes his attitude.

19 DEPUTY: They had to take him on to the jail, Your
20 Honor.

21 THE COURT: Well, we need him to sign the
22 sentencing sheets. Is he down at the jail here?

23 DEPUTY: Yes, sir.

24 THE COURT: Well, let's go meet with him at the
25 jail.

SENTENCING

Page 252

1 (Off-The-Record Comments)

2 (Brief pause while paperwork is filled out.)

3 (Mr. McCarty and Ms. Hollis step forward for
4 sentencing.)

5 THE COURT: All right. We'll go ahead and handle
6 the sentencing on Ms. Hollis at this point in time, Ms.
7 Lauri Danielle Hollis ---

8 MR. MCCARTY: Your Honor, if -- if I may?

9 THE COURT: Yes, sir?

10 MR. MCCARTY: Based on the outburst we had there a
11 second ago, but I failed to make a motion at the end of
12 it before the jury was excused.

13 But on behalf of Ms. Hollis, respectfully we would
14 request the Court consider granting a motion for a new
15 trial on this matter based upon the lack of evidence and
16 the verdict of the jury.

17 THE COURT: All right. The motion has been
18 considered by the -- by the Court and the motion is
19 denied.

20 MR. MCCARTY: Thank you, Your Honor.

21 THE COURT: All right. Ms. Holl -- Ms. Hollis, you
22 have been found guilty by a jury of your peers. And, at
23 this point in time, I am considering sentencing in your
24 case.

25 I'll allow your attorney to speak on your behalf.

SENTENCING

Page 253

1 You; then, will be given an opportunity to speak to the
2 Court. And, then, I'll hear from the State and/or
3 victims if they choose to speak.

4 At this time, I'll hear from you, Mr. McCarty.

5 MR. MCCARTY: Your Honor, if it may please the
6 Court? As the Court is aware, I don't need to rehash the
7 facts in the case. You've heard them over the last
8 several days as related to the testimony about Ms.
9 Hollis's involvement in this.

10 The only thing I might offer is I'd ask the Court to
11 consider what her level of involvement was as it relates
12 to what the forensic evidence in this case presented with
13 regard to what was on the gun.

14 Ms. Hollis is twenty-seven (27) years old. She's an
15 eleventh grade in education. I think you'll find, when
16 Mr. Gray recites her criminal record, it is very little
17 and the charge in which is -- is on it is a very small
18 charge.

19 She has lived a good life free from crime prior to
20 this incident here for which the jury found her guilty.
21 She certainly is emotional at this stage.

22 And we would ask for as much mercy as the Court
23 would be willing to grant her, given the severity of this
24 offenses based upon the facts that the Court was aware of
25 throughout the trial.

SENTENCING

Page 254

1 THE COURT: All right. MS. Hollis, this is your
2 opportunity to speak to me concerning this matter. I'll
3 be happy to hear from you concerning it.

4 MS. HOLLIS: I'd just like to say that I do -- I
5 know my innocence and I'm not guilty, but I understand
6 their loss and what they're going through because it's
7 been eighteen (18) months of my life that I dealt with
8 myself.

9 And I would like to say that I'm sorry, but I had no
10 involvement in it. But I can only settle for what's --
11 what's given to me now and I'm willing to accept whatever
12 it handed to me.

13 But I am not -- I'm not guilty. And I'll just --
14 I'm not asking for their sympathy, but for their apathy.
15 And I'm just -- I mean, I'm -- I'm very sorry for their
16 loss.

17 But at the time, I just ask for mercy. That's all.

18 THE COURT: Thank you, ma'am.

19 MS. HOLLIS: You're welcome, sir.

20 THE COURT: Mr. Gray, I'll hear from the State.

21 MR. GRAY: Yes, sir, Your Honor. Speaking on
22 behalf of the family, we've talked about this and
23 acknowledged them from the beginning of this case.

24 They don't want anything harsh. We talked about the
25 death penalty and things like that.

SENTENCING

Page 255

1 They lost a son, a brother, an uncle. They have
2 expressed to me they had wanted a life for a life pretty
3 much, Your Honor, in this situation.

4 I understand she is less culpable than Mr. Anderson,
5 but I also understand if -- if she had not did what she
6 did, Mr. Means may still be here today.

7 Her record is a mis ---

8 MR. MCCARTY: Misdemeanor?

9 MR. GRAY: A misdemeanor. I think giving false
10 information. And that's it.

11 THE COURT: Would you agree with that?

12 MR. MCCARTY: I will. It is a false information
13 charge, a misdemeanor level offense.

14 THE COURT: All right. Do any of the family, the
15 victim's family, wish to be heard at this time?

16 MR. GRAY: No, sir, Your Honor.

17 THE COURT: All right then.

18 (Brief Pause)

19 THE COURT: I assume she has been serving time for
20 a period.

21 MR. MCCARTY: She has, Your Honor. I believe it's
22 five hundred and forty-three (543) days.

23 THE COURT: Five hundred and forty-three (543)
24 days? Thank you.

25 (Brief Pause)

SENTENCING

Page 256

1 THE COURT: Ms. Hollis, I am very familiar with the
2 facts that have been alleged and the verdict of the jury
3 in this matter. It is my sentence in both cases, and the
4 sentences have been run concurrently, that you be
5 confined to the State Department of Corrections for a
6 period of thirty (30) years.

7 I've given you credit for five hundred and forty-
8 three (543) days. Good luck to you, ma'am.

9 MS. HOLLIS: Thank you, sir.

10 (Off-The-Record Comments)

11 MR. MCCARTY: Thank you, Your Honor.

12 THE COURT: Yes, sir. Mr. Thompson?

13 MR. THOMPSON: Your Honor, I've -- I've talked to
14 Officer Zane (phonetic). He informed me they've already
15 transported my client when I got down there.

16 THE COURT: All right. So --

17 MR. THOMPSON: I'd just ask the Court what I need
18 to do next?

19 THE COURT: Well, I want to go ahead and pass
20 sentence at this point in time. I'll --

21 MR. MCCARTY: Your Honor, may Mr. and Mrs. Moore
22 leave?

23 THE COURT: Yes, they may. They're free to go.
24 Thank you.

25 (Ms. Hollis's family exits the courtroom.)

SENTENCING

Page 257

1 (Off-The-Record Comments)

2 (Brief Pause)

3 THE COURT: Pass the sentencing sheets to me.

4 (Documents handed up to the Court.)

5 THE COURT: All right. It's -- it's my finding
6 that the Defendant's actions, at the close of the trial,
7 forfeited his right to be present at this point in time
8 because he pose a danger to the Court and those that are
9 here.

10 I'm going to put his signature down as a refusal to
11 sign.

12 (Brief Pause)

13 THE COURT: All right. Mr. Anderson was found
14 guilty by a jury of his peers of the offense of murder
15 and armed robbery. At this time, Mr. Thompson, I'll
16 allow you to speak on his behalf.

17 ATTY 3: May it please the Court, Your Honor. I'd
18 just like the Court to consider his young age, not -- not
19 the best background. I -- I think his mom testified he
20 went through the eighth (8th) grade.

21 THE COURT: Uh-huh (affirmative).

22 MR. THOMPSON: She's -- didn't go very far in
23 school. In fact, the times I spoke with him, he -- he
24 was in an alternative school at an early age. And I
25 think he stayed there for -- until he was allowed to -

SENTENCING

Page 258

1 -- at the age -- at the age to quit or old enough to quit
2 or quit attending.

3 I'd just like you to consider those things in
4 passing sentence. I know his behavior here today was not
5 appropriate, but at the same time, it was -- you know, it
6 was somewhat hard to take for him.

7 And I'd just ask that you show some leniency and
8 maybe give him a chance at -- at some point; maybe not
9 max him out and -- and maybe he can get out and
10 contribute to society sometime in the -- in the future.

11 THE COURT: Mr. Gray?

12 MR. GRAY: Two thousand, ten (2010), there were
13 four convictions for strong armed robbery from this
14 young man. And there are some DJJ stuff I'm not going to
15 bring out -- up.

16 When he became an adult, obviously, it escalated.
17 He had to be arrested at -- at Probation and Parole
18 because he was on probation for these four charges.

19 Your Honor, as I said before with Ms. Hollis, these
20 people don't want any harm to come to this young man.
21 But they would like a life for a life.

22 And I'll let them speak at this time.

23 (Off-The-Record Comments)

24 THE COURT: Sir, your name is?

25 MR. BENNETT: My name is Paul Junior Bennett.

SENTENCING

Page 259

(phonetic).

THE COURT: Yes, sir, I'll be happy to hear from you. And your relationship...?

MR. BENNETT: Father ---

THE COURT: Thank you.

MR. BENNETT: --- of Stephen Means.

THE COURT: Yes, sir?

MR. BENNETT: I'll be sixty (60) years old this Christmas on my birthday. Me and wife, since my son got killed, we ain't got a good night's sleep, man. And it hurt, bad.

He's talking about that guy had a young life. My son was young. He had a life ahead of him and a two-year baby, man. Go ahead.

THE COURT: Ma'am, your name is?

MS. BENNETT: My name is Elaine Bennett. I'm Stephen Means' mother.

THE COURT: Yes, ma'am.

MS. BENNETT: And all I have to say is, I'm not mad at them. I'm not -- I'm not -- I'm not angry at them. And I don't hate them.

But if they only knew what they've done to me. I mean, it's -- I mean, they ruined my life. They took a piece of my heart away from me.

And he said this young man is nineteen (19); come

SENTENCING

Page 260

1 Saturday, my son would have been twenty-five (25) years
2 old. He left a one-year old son behind who will never
3 know his father. He will never know.

4 He left an uncle. He's a uncle. He's a brother. I
5 have three other kids. And my grandson will never know
6 who his father is. And he also was a young man.

7 He was only twenty-two (22) at the time. And they
8 took it upon themselves to take my son's life. And
9 that's all I have to say.

10 Like I say, I'm not mad at them. And I don't hate
11 them. But I just hate what they've done to me and my
12 family. Thank you very much.

13 THE COURT: Thank you, ma'am. Anything further
14 from the State?

15 MR. GRAY: No, sir, Your Honor.

16 (Brief Pause)

17 MR. THOMPSON: For the record, Your Honor ----

18 THE COURT: Yes, sir?

19 MR. THOMPSON: --- Mr. Anderson was -- has been
20 incarcerated since April 12th of 2011, Your Honor. I
21 don't -- I don't believe I brought that up.

22 THE COURT: All right. Thank you.

23 (Brief Pause)

24 THE COURT: All right. Based on the factors that
25 have been enumerated in the court today, for the armed

SENTENCING**Page 261**

1 robbery the sentence of Mr. Anderson is that he be
2 confined to the State Department of Corrections for the
3 period of thirty (30) years.

4 I've run that concurrent with the sentence for
5 murder. And the sentence for murder is life. Give him
6 credit for any time he may have served. Thank you very
7 much.

8 Court is adjourned until tomorrow morning.

9 (Whereupon, the proceeding concluded at 5:30 p.m.)

10 **END OF VOLUME II**

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

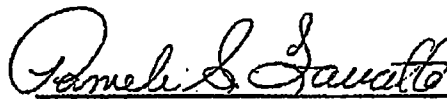
Page 262

REPORTER'S CERTIFICATE

I, the undersigned PAMELA FAUCETTE, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the Court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 261, were transcribed by me and represent a complete and accurate transcription of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

December 27, 2012



Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES ANDERSON,

APPELLANT

APPELLATE CASE NO. 2012-213188

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT.....	5
CONCLUSION.....	10
PETITION TO BE RELIEVED AS COUNSEL	11

TABLE OF AUTHORITIES**Cases**

<u>State v. Stewart</u> , 278 S.C. 296, 295 S.E.2d 627 (1982)	6
---	---

Constitutional Provisions

U.S. Const. amend. VI	9
-----------------------------	---

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in not granting a mistrial after an emotional outburst in the courtroom tainted the jury?

STATEMENT OF THE CASE

On August 18, 2011, Charles L. Anderson, Jr. ("Anderson") was indicted for murder and armed robbery. On October 1 – 4, 2012, Anderson was tried before the Honorable Roger L. Couch and a jury. R. 1. Anderson was tried along with a co-defendant, Lauri Danielle Hollis ("Hollis"). R. 1. Christopher Thompson represented Anderson. R. 1. Ryan McCarty represented Hollis. R. 1. Abel Gray and Daniel Cude represented the State. R. 1. The jury convicted Anderson on both charges. R. 638, l. 18 – 639, l. 15. Judge Couch sentenced Anderson to concurrent terms of life imprisonment for murder and thirty years' imprisonment for armed robbery. R. 651, l. 24 – 652, l. 7. Anderson timely filed and served a notice of appeal and this appeal follows.

ARGUMENT

The trial court erred in not granting a mistrial after an emotional outburst in the courtroom tainted the jury.

On April 7, 2011, Officer William Foster ("Foster") of the Spartanburg Public Safety Department responded to a call about a shooting. R. 122, ll. 5 – 13. He was the first officer to arrive on the scene. R. 122, ll. 12 – 13. He saw a man lying face down on the ground. R. 122, l. 14 – 123, l. 17. He rolled the man over. R. 123, ll. 6 – 10. Officer Foster saw what appeared to be a bullet wound in the left center of his chest. R. 123, ll. 6 – 10. A crowd of eight to ten people were standing around the bleeding man. R. 122, ll. 18 – 20. The man's name was Stephen Means ("Means"). R. 130, ll. 12 – 13.

Officer Foster's dashboard camera activated when he turned on his blue lights. R. 1, 123, l. 18 – 124, l. 3. The video from Officer Foster's patrol car was published to the jury. R. 125, l. 18 – 126, l. 8. At the 18:48:48 mark, the video shows Means strapped to a stretcher with a ventilator mask being wheeled away by emergency personnel. State's Exhibit 5. The court reporter noted that sobbing was heard in the courtroom. R. 126, l. 8. Judge Couch instructed the solicitor to stop the video and excused the jury. R. 126, ll. 9 – 14. Judge Couch then told the gallery that emotional outbursts would not be tolerated during the trial. R. 126, l. 22 – 127, l. 23. Following the testimony of several short witnesses, court adjourned for the evening. R. 151, ll. 9 – 10.

The next morning, Anderson moved for a mistrial. R. 154, – 155, l. 17. Anderson argued that the "outburst from the victim's mother or sister ... tainted the jury ..." R. 155, ll. 3 – 17. Anderson also argued that the outbursts from the victim's family upset the jurors and prevented Anderson from receiving a fair trial due to the jurors'

sympathy for the victim's family. R. 155, ll. 3 – 17. Co-defendant's counsel added to the argument, stating that the video had little probative value. R. 155, ll. 19 – 24. The trial judge denied the motion for a mistrial. R. 156, l. 19 – 159, l. 16.

"It is the duty of the trial judge to see that the integrity of his court is not obstructed by any person or persons whatsoever." State v. Stewart, 278 S.C. 296, 303, 295 S.E.2d 627, 631 (1982). In Stewart, a murder case, the court granted a mistrial because of outbursts from spectators. The spectators glared at the jury and responded with laughter at the witnesses. Id. The trial court failed to conduct any inquiry into whether the spectators' actions prejudiced the jury. Id.

Just as in Stewart, the trial judge failed to conduct any inquiry into the possible prejudice of the jury. Judge Couch said, "When that emotional outburst reached a point that I felt that it could have some effect in the case, I stopped the trial, removed the jury from that situation, cautioned the people involved not to be involved in that sort of activity." R. 157, ll. 16 – 20. In this statement, Judge Couch essentially admitted that the emotional outburst affected the case.

The emotional outburst undoubtedly aroused sympathy for the victim's family and made a difference in this close case. The jury deliberated for almost an entire day, asked several questions, and asked for the replay of testimony. R. 622, l. 21 – 247, l. 9. Furthermore, the evidence against Anderson was of dubious quality.

The two primary pieces of evidence connecting Anderson to the crime had severe flaws. First, the alleged eyewitness, MB, gave several different versions of events. MB was seventeen years old and claimed at trial that she witnessed the shooting. R. 184, l. 12 – 187, l. 19. Officer Jennifer Watson ("Watson") testified that on the day after the

shooting, she gave a photographic lineup of possible suspects, including Anderson, to MB. R. 243, l. 15 – 244, l. 5. MB did not identify Anderson. R. 243, ll. 15 – 25. Officer Watson also testified that MB gave several different versions of what she witnessed. R. 244, ll. 19 – 24. In the statement she gave the day of the shooting, MB said that she was in a friend's apartment holding a baby when she heard a gunshot. R. 206, ll. 2 – 13. MB told the police that she opened the door and looked outside. R. 206, ll. 8 – 13. She saw Means “on the grass bent over.” R. 206, ll. 10 – 12.

MB's trial testimony was completely different from what she told police on the day of the shooting. At trial, she claimed that instead of being inside an apartment holding a baby, she was outside in a car at the time of the shooting. R. 181, l. 11 – 183, l. 4. She claimed that several people were standing near their car. R. 183, ll. 4 – 10. Hollis was in this group. R. 183, ll. 9 – 14. She claimed that Hollis, “started talking about some dude and was talking about how – I didn't really catch on to it; she was just like something about they were about to get somebody because somebody had snitched on somebody.” R. 183, ll. 15 – 21. MB said that this point, Hollis walked away from the car. R. 183, ll. 22 – 23. Hollis and the other men with her supposedly then walked toward Means. R. 184, ll. 12 – 24. MB said she looked down at her radio and then heard a gunshot. R. 184, l. 25 – 185, l. 2. When she looked up, Means was falling to the ground and people were “running away.” R. 185, ll. 1 – 2.

She claimed that Hollis was in a group of four people in a circle around Means. R. 185, ll. 3 – 11. In direct contrast to her inability to identify anyone associated with the crime the day after the incident, MB made an in-court identification of Anderson as one of the individuals surrounding Means. R. 186, l. 14 – 187, l. 12. She claimed that

Anderson was the only person with a gun in his hand. R. 186, l. 14 – 187, l. 12. On cross-examination, she admitted that Anderson was “easy to pick out” because was sitting at the defense table. R. 189, ll. 12 – 21.

On cross-examination, MB said that someone named “Little Man” was one of the group gathered around Means. R. 200, ll. 8 – 10. She also knew several other people who were gathered around, including someone named “J.P.” R. 201, ll. 6 – 13. She admitted that she did not know Little Man or Anderson. R. 200, l. 19 – 201, l. 5. Defense counsel asked:

Q. And you basically are going off of Little Man and my client based upon what somebody else told you their name was; is that right?

A. I guess so.

R. 201, ll. 19 – 22.

The only other piece of evidence tying Anderson to the crime was a gun found between the mattresses of his bed. R. 322, ll. 15 – 20. Unsurprisingly, since it was found in his bed, the gun contained Anderson’s DNA. R. 451, ll. 16 – 25. The State’s DNA expert explained the concept of DNA transference from skin cells left behind by people. R. 457, l. 1 – 67, l. 17. Furthermore, it was by no means certain that Anderson knew the gun was at his house. Anderson consented to allow the police to search his room. R. 327, l. 9 – 328, l. 9. Another person charged with the murder named Quarte Lyles had been at Anderson’s house and in his room after the shooting. R. 545, l. 3 – 546, l. 22. It makes little sense that Anderson would have allowed a search if he knew the murder weapon was in his room.

Two of the State's main witnesses were unable to provide any relevant information. Alice Carroll claimed to witness the murder. R. 213, l. 13 – 215, l. 2. When asked if she could identify anyone in the courtroom connected with the murder, Carroll looked around and then asked the solicitor, "Will you – I don't know where to look at. Can you tell me where to look?" R. 215, ll. 7 – 8. She was ultimately unable to identify anyone.

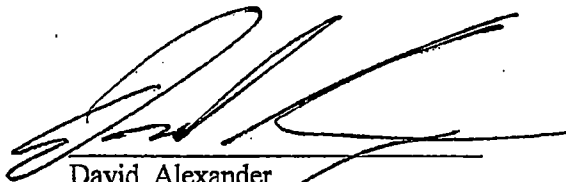
The State also called Perry Crain ("Crain"), who their lead investigator had referred to as their "main witness." R. 500, ll. 20 – 23. Crain testified that he witnessed the shooting. R. 218, l. 22 – 219, l. 6. Crane testified that he could not identify the murderer in the courtroom and did not remember his face. R. 219, ll. 7 – 17.

With the weakness of the State's case, the emotional outburst from the victim's family swayed the jury and caused the adverse verdicts. This created an unfair prejudice against Anderson and prevented him from receiving a fair trial from an impartial jury. See U.S. Const. amend. VI (guaranteeing the right to a fair and impartial jury). Since the tainted jury made the difference in this close case, the trial judge abused his discretion by not granting a mistrial and not enquiring into the impact of the outburst on the jury.

CONCLUSION

For the foregoing reasons, the Court should reverse appellant's convictions and grant him a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of August, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES ANDERSON,

APPELLANT

APPELLATE CASE NO. 2012-213188

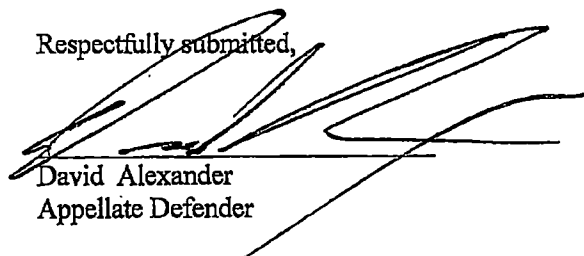
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charles Anderson states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Roger L. Couch, which was held on October 5, 2012, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Charles Anderson.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 5th day of August, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHARLES ANDERSON,

APPELLANT

APPELLATE CASE NO. 2012-213188

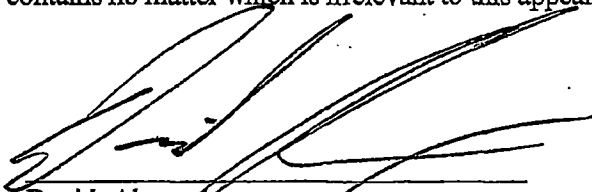
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial transcript volumes 1 and 2;
- (3) State's Exhibit 5 (to be transported).

I certify that this designation contains no matter which is irrelevant to this appeal.

August 5th, 2013



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

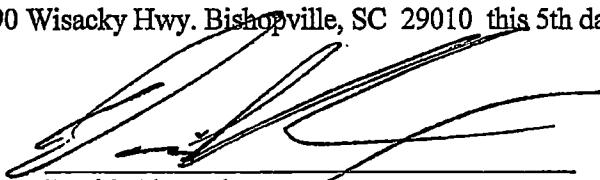
CHARLES ANDERSON,

APPELLANT

APPELLATE CASE NO. 2012-213188

CERTIFICATE OF SERVICE

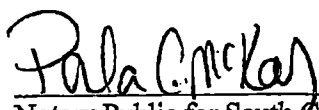
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Charles Anderson, # 338944, at Lee Correctional Institution, 990 Wisacky Hwy. Bishopville, SC 29010 this 5th day of August, 2013.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 5th day of August, 2013.



(L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Charles Anderson, Appellant.

Appellate Case No. 2012-213188

Appeal From Spartanburg County
Roger L. Couch, Circuit Court Judge

Unpublished Opinion No. 2014-UP-108
Submitted February 1, 2014 – Filed March 12, 2014

APPEAL DISMISSED

Appellate Defender David Alexander, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Donald J. Zelenka,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

HUFF, THOMAS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Spartanburg)

Charles L. Wesley Anderson #33894A)
 Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2015-CP-42-150

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Spartanburg County Detention
2. Name and location of Court which imposed sentence Spartanburg County Clerk of Court
3. Name(s) of co-defendant(s) (if any) LAURIE DANIELLE HOLDS, CHARLES KEVIN JACKSON
QUARTZ, DANA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder - 11-5098 - M125940
 - (b) Armed Robbery - 11-5098 M-125939
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Oct 4, 2012
 - (b) Life for Murder

- (c) 30 yrs Concurrent Armed robbery
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. March 12, 2014
- 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) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

CLERK OF COURT
SPARTANBURG DISTRICT
2015 JAN 12 PM 2:18
M. HOPE BLANCHARD

- (a) Insufficient Counsel
 (b) Violation of 6th Amendment Bruton's Sixth
 (c) Violation of Scrump Rule 5 Brady Violations

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Failure to request or object to a jury instruction on lesser included offense
 (b) Powerfully Incriminating Extrajudicial Statement
 (c) Failure to Support Client Brady Motion of discovery

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. _____

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2015 JAN 12 PM 2:18
 M. HOPE BLANCHET

- 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) Insufficient Counsel Chase my Lawyer
- (b) Working with the Solicitors
- (c) _____
17. Were you represented by an attorney at any time during the course of:

CLERK OF COURT
SPARTANBURG COUNTY
2015 JAN 12 PM 2:18
M. ROSE B. ACKLEY

Revised 3/2003

- (a) your arraignment and plea? NO
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

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

- (a) the name and address of each attorney who represented you:
- i. Christopher P. Thompson DAVID ALEXANDER
- ii. ADAMS LAW FIRM Division of Appellate Defense
- iii. 1082 Boiling Springs Rd 1330 Lady Street, Suite 401
SPARTANBURG SC 29307 COLUMBIA SC 29201-3
- (b) the proceedings at which each such attorney represented you:
- i. Christopher P. Thompson trial & Sentencing
- ii. DAVID ALEXANDER Appeal
- iii. _____

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

CASE OVERTURN

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

NO

CLERK OF COURT
 SPARTANBURG COUNTY
 2015 JAN 12 PM 2:18
 M. HOPE BLACKLEY
 Revised 3/2008

STATE OF SOUTH CAROLINA)

County of Spartanburg)

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.

Charles C. Wesley Anderson

SWORN to and subscribed before me this 4
day of Jan, 2015.

Dina Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

CLERK OF COURT
SPARTANBURG COUNTY
2015 JAN 12 PM 2:18
M. HOPE BLACKLEY

**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.

Charles L. Wesley Anderson
Applicant

SWORN or affirmed to and subscribed before me this
10th day of Jan, 2015

Dana Swis
Notary Public

My Commission Expires: 11-4-2015

CLERK OF COURT
SPARTANBURG COUNTY
2015 JAN 12 PM 2:18
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C/A No.: 2015-CP-42-0150
Charles L. Anderson, #338944,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed January 12, 2015, would respectfully show this Court:

I.

Charles L. Anderson ("the Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the August 2011 term of the Spartanburg County Grand Jury for murder (2011-GS-42-5098) and armed robbery (2011-GS-42-5097). Christopher P. Thompson, Esquire represented the Applicant. The Applicant was tried October 1-4, 2012, before the Honorable Roger L. Couch and a jury. The jury found the Applicant guilty of both charges as indicted, and Judge Couch sentenced the Applicant to concurrent terms of life for murder and 30 years for armed robbery.

A timely Notice of Appeal was filed on Applicant's behalf pursuant to Anders v. California.¹ The South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished opinion. State v. Charles Anderson, 2014-UP-108 (Filed March 12, 2014). The Remittitur was returned on March 28, 2014.

¹ 386 U.S. 738 (1967).

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

II.

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

- a. Ineffective assistance of counsel, in that:
 - i. Counsel failed to request or object to a jury instruction on lesser included offense;
- b. "Violation of 6th Amendment Bruton's Sixth," in that:
 - i. "Powerfully incriminating extrajudicial statement";
- c. "Violation of SCrimP Rule 5 Brady Violation," in that:
 - i. "Failure to support [the Applicant's] Brady motion of discovery."

III.

The Respondent interprets all of the Applicant's claims as allegations of ineffective assistance of counsel. In a PCR action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness

under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.” Id. at 117–18, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Patrick v. State, 349 S.C. 203, 207, 562 S.E.2d 609, 611 (2002).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

WHEREFORE, having made its Return, Respondent requests that an evidentiary hearing be held solely on the claim of ineffective assistance of counsel.

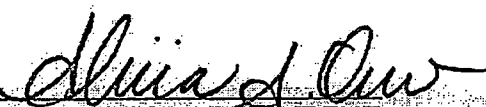
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ALICIA OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

Sept. 8, 2015.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	C/A No.: 2015-CP-42-0150
Charles L. Anderson, #338944,	)	
	)	
Applicant,	)	
	)	
v.	)	AMENDED RETURN AND MOTION
	)	FOR MORE DEFINITE STATEMENT
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Amended Return to the application for post-conviction relief (PCR) filed January 12, 2015, would respectfully show this Court:

I.

Charles L. Anderson ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. Applicant was indicted at the August 2011 term of the Spartanburg County Grand Jury for murder (2011-GS-42-5098) and armed robbery (2011-GS-42-5097). Christopher P. Thompson, Esquire represented Applicant. Applicant was tried October 1-4, 2012, before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to concurrent terms of life for murder and 30 years for armed robbery.

A timely Notice of Appeal was filed on Applicant's behalf pursuant to Anders v. California.¹ The South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished opinion. State v. Charles Anderson, 2014-UP-108 (Filed March 12, 2014). The Remittitur was returned on March 28, 2014.

¹ 386 U.S. 738 (1967).

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

II.

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

- a. Ineffective assistance of counsel, in that:
 - i. Counsel failed to request or object to a jury instruction on lesser included offense;
- b. "Violation of 6th Amendment Bruton's Sixth," in that:
 - i. "Powerfully incriminating extrajudicial statement";
- c. "Violation of SCrimP Rule 5 Brady Violation," in that:
 - i. "Failure to support [the Applicant's] Brady motion of discovery."

III.

Respondent submits Applicant's allegation of ineffective assistance of counsel is without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). The applicant "must first demonstrate that counsel was deficient and then must also show the deficiency resulted in prejudice." Walker v. State, 407 S.C. 400, 404-05,

756 S.E.2d 144, 146 (2014). First, the applicant must show that counsel's performance "fell below an objective standard of reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent interprets Applicant's third claim as an allegation that the State withheld material exculpatory evidence. In evaluating post-trial Brady claims, Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory

evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

Applicant has failed to set forth with any specificity the grounds upon which this allegation is based. In an application for PCR, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, Respondent submits that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. See S.C. Code Ann. § 17-27-50 (requiring that an applicant must "specifically set forth the grounds upon which [his] application is based"). Therefore, this allegation is so vague that it is impossible for the State to respond. Applicant has failed to set forth any facts to support this allegation. To the extent Applicant amends his application to set forth specific facts in support of this claim such that Respondent may fairly respond at the hearing. Respondent requests an evidentiary hearing to resolve this matter.

V.

Applicant's second allegation claims infringement of his rights under certain amendments to the United States Constitution. However, Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled

and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since Applicant has failed to make even a prima facie showing, the Respondent submits that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act.

VI.

Respondent also moves for a more definite statement. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Applicant has wholly failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application well in advance and set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing.² Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VII.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an

² Applicant's attorney has been notified this hearing is expected to take place during the week of September 19, 2016. Therefore, Respondent requests Applicant provide Respondent with an amendment specifically setting forth the factual grounds for his allegations no later than thirty days from the date of service of this Return.

attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. Pro se filings will not be considered at the PCR hearing.

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCF.

VIII.

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

IX.

WHEREFORE, having made its Amended Return and Motion for More Definite Statement, Respondent requests that Applicant amend his application to set forth facts supporting his allegations of ineffective assistance of counsel and Brady violations. Respondent further requests an evidentiary hearing.

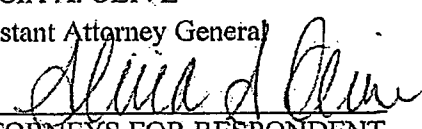
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA VALENZUELA
Senior Assistant Deputy Attorney General

ALICIA A. OLIVE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

July 22nd, 2016.

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

CHARLES L. ANDERSON, #338944,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

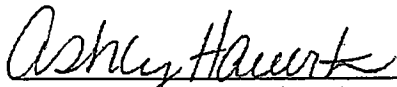
2015-CP-42-0150

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 **Amended Return and Motion for More Definite Statement** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Mr. John Brandt Rucker, Esquire
 Brandt Rucker Attorney At Law
 522 North Church Street
 Greenville, SC 29601

DATED this 22nd day of July, 2016.


 Ashley Haxworth, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Charles L. Anderson, #338944

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2015-CP-42-0150

Amendments to PCR Application

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 OCT 24 PM 2:01
M. HOPE BLACIN ET

Please find below the Amendments to the Applicant's PCR application. These amendments add and/or clarify claims, and should not be read to construe these amendments as withdrawing previous claims by the applicant.

- 1.) Trial counsel was constitutionally ineffective in failing to object to the Judge's mandatory presumption language and burden shifting language in the jury instruction on malice. Trial counsel was also constitutionally ineffective in failing to object to the confusing jury instruction regarding malice.
- 2.) Trial counsel was constitutionally ineffective in failing to object to an unconstitutional constructive amendment of the indictment through misleading jury instructions.
- 3.) Trial counsel was constitutionally ineffective in failing to object to the joinder of trial due to the unfair prejudice and failure of the State to indict the applicant for conspiracy or criminal conspiracy, and trial counsel was constitutionally ineffective in failing to object to the joinder without a consolidation hearing being held.
- 4.) Trial counsel was constitutionally ineffective for failing to object to the lack of specificity in the indictment for armed robbery.

The Applicant reserves the right to amend his application to conform to the evidence presented at trial pursuant to the South Carolina Rules of Civil Procedure, Rule 15b.

Greenville, S.C.

October 20, 2016



Brandt Rucker, Esq.
Attorney for the Applicant

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) COMMON PLEAS
3 COUNTY OF SPARTANBURG) OF THE SEVENTH
4) JUDICIAL CIRCUIT
5)
6 CHARLES L. ANDERSON,)
7)
8 Petitioner,) TRANSCRIPT OF RECORD
9) 2015-CP-42-00150
10 vs.)
11)
12 STATE OF SOUTH CAROLINA,)
13 Respondent.)
14)
15)

16
17
18
19
20
21
22
23
24
25

November 7, 2016
Spartanburg, South Carolina

BEFORE:
HONORABLE FRANK R. ADDY, Jr., Judge.

APPEARANCES:
J. BRANDT RUCKER, Esquire
For Petitioner
ALICIA A. OLIVE, ESQUIRE
For Respondent

Julie A. Ashbrook,
Circuit Court Reporter
Seventh Judicial Circuit

I N D E X

WITNESSPAGE

OVERVIEW OF CASE

By Ms. Olive

4

CHARLES L. ANDERSON

DIRECT EXAMINATION

By Mr. Rucker

7

CROSS-EXAMINATION

By Ms. Olive

20

REDIRECT EXAMINATION

By Mr. Rucker

23

CHRISTOPHER THOMPSON

DIRECT EXAMINATION

By Ms. Olive

25

CROSS-EXAMINATION

By Mr. Rucker

32

REDIRECT EXAMINATION

By Ms. Olive

38

COURT TAKES UNDER ADVISEMENT

40

CERTIFICATE OF REPORTER

41

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

EXHIBITS

MARKED

ENTERED

NO EXHIBITS PROFFERED

1 CHARLES L. ANDERSON VS. STATE OF SOUTH CAROLINA

2 THE COURT: All right. We'll get on the record
3 on case 15-CP-42-150. This is Charles Anderson versus
4 The State. Mr. Rucker is present representing
5 Mr. Anderson. Anything that we need to do, Attorney
6 General, before we go into it?

7 MS. OLIVE: Yes, Your Honor. Just briefly for
8 the record, Your Honor, Mr. Anderson was indicted in
9 August 2011 for murder and armed robbery. Chris
10 Thompson represented him on those charges. He was tried
11 October 1st through 4th, 2012, before Judge Couch and a
12 jury. He was found guilty as indicted. Judge Couch
13 sentenced him to concurrent terms of life for murder and
14 30 years for armed robbery.

15 He did file a timely notice of appeal. An appeal
16 was perfected on his behalf pursuant to Anders versus
17 California. The Court of Appeals dismissed his appeal
18 in an unpublished opinion filed March 12th, 2014. Your
19 Honor, he filed this application for postconviction
20 relief initially on January 12th, 2015.

21 The State filed an initial return and
22 subsequently filed an amended return and motion for more
23 definite statement. In response to that motion
24 Mr. Rucker, counsel for Mr. Anderson, provided
25 amendments to the postconviction relief application

1 dated October 24th, 2016, and those are in Your Honor's
2 packet.

3 Your Honor, at this time the State would move to
4 dismiss in the original application Mr. Anderson's claim
5 of the Brady violation. Your Honor, there's been no
6 factual allegations in either the amended application or
7 the original application pertaining to that allegation,
8 therefore dismissed because he failed to make a prima
9 fascia showing that any Brady violation occurred, Your
10 Honor.

11 THE COURT: All right.

12 MR. RUCKER: Your Honor, do you want to take that
13 issue up first or...

14 THE COURT: Is that something you all are really
15 pursuing or...

16 MR. RUCKER: Well, I believe we are. We have --
17 we did discovery in this case and if he's reviewed it I
18 think he does want to get into more specifics about what
19 that is, but his claim is a Brady violation. I think
20 that's sufficient.

21 MR. ANDERSON: No, that ain't what I'm talking
22 about. I'm meaning this right here.

23 THE COURT: We'll handle it, we'll handle it this
24 way. The Court will reserve ruling on that Brady issue
25 until a later point in time, but the motion is made.

1 MS. OLIVE: Your Honor, I -- pardon me for my
2 interruption, but I respectfully at this point the State
3 did make a motion for more definite statement. That was
4 made months ago, Your Honor. This case has been on the
5 roster several times. The motion for more definite
6 statement was made July 22nd, 2016.

7 This was on a roster subsequently in September,
8 Your Honor, and I'm receiving these amendments October
9 24, 2016. There's nothing in these amendments that
10 alleges anything about a Brady violation.

11 I am not prepared to address the Brady violation
12 and do not have a member of the solicitor's office here.
13 I don't even know what the substance of the Brady
14 violation would be, Your Honor. At this point the State
15 would be prejudiced by proceeding on a Brady violation
16 claim.

17 MR. RUCKER: Your Honor, my client indicates that
18 we want to withdraw the Brady violation portion and just
19 go forward on the amendments.

20 MS. OLIVE: Thank you.

21 THE COURT: Very good. All right. Call your
22 next witness or call your first witness.

23 MR. RUCKER: I call my client, witness, Charles
24 Anderson to the stand.

25 THE COURT: Sir, if you'll come on up and have a

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 seat, please.

2 (Whereupon, witness comes forward.)

3 THE COURT: Just raise your right hand the best
4 you can, sir. (Complies.)

5 Swear or affirm the testimony you're about to
6 give is the truth?

7 THE WITNESS: It's the truth.

8 THE COURT: Have a seat, please, sir.

9 MR. RUCKER: Your Honor, may it please the Court?

10 THE COURT: Yes, sir.

11 CHARLES L. ANDERSON,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. RUCKER:

15 Q. Mr. Anderson, before we start, you heard me tell
16 the judge that you didn't want to go forward on your
17 Brady violation PCR claim. Is that true?

18 A. Yes, sir.

19 Q. And you want to go forward on the amendments that
20 we filed recently?

21 A. Yes, sir.

22 Q. Okay. Have you had an opportunity to review
23 those amendments?

24 A. Yes, sir.

25 Q. Okay. Tell the Court what your current sentence

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 is.

2 A. A life sentence.

3 Q. Okay. And what charges were you convicted of?

4 A. Murder and armed robbery.

5 Q. Was that a result of a jury trial?

6 A. Yes, sir.

7 Q. And who was your attorney at that trial?

8 A. Christopher Thompson.

9 Q. Was he appointed or did you hire him?

10 A. Appointed.

11 Q. Okay. How far did you go in school?

12 A. Eighth grade.

13 Q. Did you indicate that to Mr. Thompson?

14 A. Yes, it was indicated to him.

15 Q. Okay. How many times total did you meet with
16 him, Mr. Thompson, to go over your case?

17 A. About four or five times.

18 Q. Okay. How long had he been your attorney by the
19 time you got to trial?

20 A. I'd say about 19 months.

21 Q. Okay. During the, during the meetings how long
22 would those last?

23 A. About 20, 30 minutes.

24 Q. Did he ever go over your discovery with you?

25 A. He stated the solicitor only gave him certain

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 things on my Rule 5.

2 Q. Okay. Did you feel prepared to go to trial when
3 you went to trial?

4 A. Nah.

5 Q. Did you talk to him about not being prepared?

6 A. It was too late.

7 Q. But did you talk to him about it or you just
8 didn't bring it up to him?

9 A. I'm saying I asked him about Rule 5 and he was
10 like as long as the solicitor get me them, but I asked
11 him how am I gonna go to trial when I don't know what
12 I'm going to trial against.

13 Q. Right.

14 A. To make it -- I ought to have something to have a
15 defense against what I'm going to trial for.

16 Q. Okay. Did you talk to him about any of these
17 issues that you have included in our amendments?

18 A. No, sir.

19 Q. Is that something you discovered later after you
20 got the discovery and the trial transcript?

21 A. Yes, sir.

22 Q. Okay. Specifically what is your complaint? And
23 we'll walk through them, but what do you believe
24 Mr. Thompson did incorrectly in your case?

25 A. What he did incorrectly?

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 Q. Right.

2 A. He failed to object to the judge's mandatory
3 presumption of burden shifting, my malice element on my
4 murder case. He failed to object ---

5 Q. Before we get into that let's -- I want -- the
6 judge has a packet, including the trial transcript, so
7 he'll kind of know what's going on, but kind of tell the
8 judge in your own words what your trial -- what the
9 issues were at your trial.

10 A. What the issue was?

11 Q. Right. What was the case about?

12 A. What was the case?

13 Q. Yeah.

14 A. I'm saying I amended. Will you let me speak what
15 I amend?

16 Q. No. You'll have a chance to read off the
17 amendments. I'm telling you that -- I'm asking you to
18 tell the judge what you were charged with and what
19 happened during the trial.

20 A. Oh. I was charged with murder and armed robbery.
21 But when the judge did the jury discretion (sic), he
22 charged the jury with accomplice liability, criminal
23 conspiracy, aided and abetted, receiving stolen goods and
24 robbery and I was never indicted for those charges.

25 Q. And why do you believe that's important?

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 A. Because in order for me to get -- in order for me
2 to be convicted of a crime I had to be indicted by a
3 grand jury.

4 Q. Were you tried with a co-defendant?

5 A. Alleged co-defendant.

6 Q. Well, the person was a co-defendant in your
7 trial.

8 A. There was, yeah. But in my indictment we was
9 never co-defendants.

10 Q. Okay. And then during the trial what was the
11 co-defendant's name?

12 A. Lauren Daniel Hollis.

13 Q. Did your attorney talk about trying you
14 separately from her at the case?

15 A. When I went back to court in May, but they gave
16 me a continuance for somebody having DNA on their
17 clothing. He decided being tried by myself, but October
18 came they tried it together in a joint trial.

19 Q. To your knowledge did your client -- did your
20 attorney object to that?

21 A. No, he didn't object.

22 Q. Okay. Are you gonna argue that he should have
23 and that affected those indictment issues?

24 A. Yes, sir.

25 Q. Okay. Let's go -- is that safely what you want

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 to cover with the -- well, strike that.

2 As to the burden shift in language, what do you
3 believe is burden shifting about the ---

4 A. Not an element.

5 Q. Right.

6 A. When he took -- when he -- when the judge was
7 instructing the jury on the malice element, he told the
8 jury that the deed was done with a deadly weapon, but
9 the malice, malice aforethought is said with the willful
10 intent and he said nothing about a deadly weapon.

11 Q. And you believe that was -- that's in part what
12 prejudiced you and got you convicted?

13 A. It confused the jury. The jury didn't know what,
14 what the law was on the malice element. What got me
15 convicted was the indictment. The other charges that
16 they -- that he amended during the jury instructions
17 that I was never indicted for.

18 Q. And do you believe that if your attorney would
19 have objected to that instruction you're talking about
20 in number one of your amendments that you would not have
21 been found guilty?

22 A. Yes, sir.

23 Q. Okay. As to number two -- now, have we covered
24 everything in number one that you wanted to cover?

25 A. Yes, sir.

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 Q. All right. As to number two, what are you
2 claiming in your second amendment?

3 A. My trial lawyer was ineffective in failing to
4 object to the discretion of reading the indictment
5 through misleading the jury instruction.

6 Q. All right. Do you -- does that refer back to the
7 malice instruction?

8 A. It can, but it go back to the indictment. Like,
9 let's see, the indictment for -- well, yeah, that go
10 back to the malice instruction, you're right.

11 Q. Okay. And do you believe that he -- is what
12 you're arguing that he should have objected and at least
13 ask for a curative instruction once it was mentioned to
14 the jury?

15 A. Yes, sir.

16 Q. Okay. And how do you think that would have
17 affected your case?

18 A. I wouldn't have been -- I wouldn't have got
19 convicted I feel.

20 Q. Okay. As to number three, what is your argument
21 in your third amendment?

22 A. Trial counsel was constitutionally ineffective in
23 failing to object to the joining of a trial due to the
24 unfound prejudice and failure of the State to indict the
25 applicant for conspiracy, criminal conspiracy and trial

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 counsel constitutionally effective (sic) in failing to
2 object to the judge without a consolidation and
3 everything else.

4 Q. To your knowledge did your attorney ever ask for
5 a consolidate -- what you're calling a consolidation
6 hearing?

7 A. No, he never asked for one.

8 Q. What do you believe a consolidation hearing is?

9 A. Asking me do I want to be joined with my
10 co-defendant or my alleged co-defendant during the
11 trial.

12 Q. And you believe your attorney asked you to waive
13 the right you had to try to object to that?

14 A. Did he waive the right?

15 Q. Yeah, I'm asking you if you believe he did.

16 A. I don't know if he did or not. When he, he leave
17 the courtroom and talked to the solicitor I don't know
18 what they said behind closed doors.

19 Q. But to your knowledge did you all ever go in the
20 courtroom with you present and him move to have you
21 tried separately?

22 A. No, he never did that.

23 Q. Did he ever tell you that he had a strategic
24 reason to do that?

25 A. No.

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 Q. And why did he tell you he didn't have you all
2 separated for your trial?

3 A. He never said. He ---

4 Q. How did -- go ahead.

5 A. He just said they're joining the trial, you know.
6 At the time I didn't know if they could do it or not.

7 Q. You were relying on your lawyer at that time to
8 be the expert.

9 A. Yes, sir.

10 Q. How do you think that affected your trial being
11 tried with her?

12 A. When they found her guilty with the hand, the one
13 hand of all. And I never agreed to being together with
14 her to commit the crime or agreed to knowing her when
15 the crime was presented. I don't know what is going on.

16 Q. Do you believe they showed any evidence of a
17 conspiracy between you and her?

18 A. Yes, sir. They kept saying that she did and by
19 her doing it and me being with her and conspired
20 together with one hand and the hand of all, but I never
21 -- she never agreed at trial or I never agreed saying
22 that we was together when this crime was committed.

23 Q. Did you give a statement to the police?

24 A. No, I didn't give no statement.

25 Q. To your knowledge did Ms. Hollis give a statement

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 to the police?

2 A. She did. She gave a statement. She gave a
3 statement and she got, what you call it, interrogation
4 where she implemented me an interrogation. But the
5 judge made a motion to where everything she said where
6 she wanted to quit speaking that he don't, what do you
7 call it, dismiss it from the record. So when she said
8 she wanted to go her fifth, she pleaded the Fifth on
9 remaining silent, but she kept on talking. Then when
10 she admitted to the thing, but the judge said that he
11 ain't gonna implement that in the case. So by him not
12 doing that I would never been convicted. I would never
13 been going to trial period.

14 Q. All right. Just to clarify, her statement was
15 used against you in court or not?

16 A. It wasn't.

17 Q. And how do you think because her being tried
18 together with you her statement not being entered in the
19 court affects you?

20 A. Because I know I could never cross-examine her
21 and ask her -- cross-examine her or having seen --
22 showing the judge and the jury how I was, how I was
23 being locked up, how I got locked up because she's the
24 person who got me locked up. And then how she got me
25 locked up, they made a motion for her not to hear her

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 interrogation or her statement at the trial.

2 Q. Did you speak with Mr. Thompson before the case
3 about that statement she had given?

4 A. Yes, sir. He said it was all right as long as
5 the judge dismissed what she said.

6 Q. Did you talk to Mr. Thompson about how that could
7 affect the outcome of the case?

8 A. Man, I'm saying I ain't know. I ain't know at
9 the time. I was relying on my lawyer at the time.

10 Q. Did you ever have a plea deal on this case? I
11 forgot to ask you at the beginning. Did they ever offer
12 anything to you?

13 A. Yeah, 30 years.

14 Q. And when did Mr. Thompson tell you about the plea
15 offer?

16 A. About nine months I had been locked up.

17 Q. Okay. And why did you reject that plea offer at
18 that time?

19 A. It was like a life sentence to me. And then I
20 was never guilty, so why would I plead guilty to a crime
21 I never committed?

22 Q. All right. Let's go to your number four. What
23 is your fourth claim?

24 A. Trial counsel was constitutionally ineffect (sic)
25 for failing to object to the lack of specif -- how do

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 you say that word?

2 Q. Specificity.

3 A. Specificity in the indictment for armed robbery.

4 Q. All right. What are you saying -- what's the
5 problem with the indictment for armed robbery?

6 A. I'm saying that when -- he said we gonna -- they
7 say we armed robbery, we armed robbery, meaning we was
8 together. In my indictment it said I did it by myself.
9 It didn't say she was with me or nothing.

10 Q. And I want to go back quickly about the joiner
11 issue. Did Mr. Thompson -- Mr. Thompson never made a
12 motion to sever the trial, did he, sever you from her,
13 right?

14 A. No.

15 Q. Did he ---

16 A. He made a motion for a mistrial, to go for a
17 mistrial for the outbursts in the courtroom, but the
18 judge didn't grant the mistrial. He say he stopped it
19 when he found out the courtroom -- he felt like it
20 affected my case. But then he came back and stated --
21 well, he ain't never named, I ain't named, but he came
22 back and stated the outburst did affect my case.

23 Q. Well here's what I'm asking, did Mr. Thompson
24 tell you why he believed the solicitor's office was
25 trying you with Ms. Hollis?

DIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 A. No, he never tell me that.

2 Q. Did he say that it would strengthen their case
3 against you to have her as a defendant as well?

4 A. No, he never said it.

5 Q. Did he tell you that they could be looking at
6 some evidence that may be suppressed against you that
7 she would bring in because she was present?

8 A. No, he never said that either.

9 Q. All right. Do you have any other issues you want
10 to take up with the judge?

11 A. No, it's just -- oh, yeah, do I got to amend?
12 Do I go to say my constitutional rights that has been
13 violated or do they already know or do I got to have to
14 put it on the record?

15 Q. I think he already knows. He's been put on
16 notice, so he knows.

17 A. About my Fifth Amendment, Fourth Amendment, Sixth
18 Amendment that I'm saying they violated?

19 Q. But that's the violations based on your
20 amendments, correct? I mean, that's the ---

21 A. Yeah, it ain't in here, man. I don't see it in
22 here.

23 Q. Well, you can't -- I can't have an open
24 conversation with you, I'm just asking you questions for
25 the judge. Do you believe it's included in your

CROSS-EXAMINATION OF CHARLES ANDERSON BY MS. OLIVE

1 amendments? Is that the effect of what went wrong in
2 your amendments?

3 A. Yes, sir.

4 MR. RUCKER: Okay. No further questions.

5 THE COURT: Ms. Olive.

6 MS. OLIVE: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. OLIVE:

9 Q. Mr. Anderson, didn't you consent to a search of
10 your home in this case?

11 A. Yes, ma'am.

12 Q. Okay. And a gun was found in between your
13 mattress?

14 A. Yeah, but I want to know -- I'm ain't trying to
15 be smart or nothing, but I want to know what do this
16 have to pertain to me coming back for ineffectives (sic)
17 counsel?

18 Q. Because we're talking -- well, you also have to
19 show prejudice in your case and so that sometimes
20 requires us to go through the record. But, again, a
21 weapon was found in your bedroom, correct?

22 A. Yeah, it was found there.

23 Q. Okay. And the -- it came out at trial that the
24 bullet that was retrieved from Mr. Means, the victim,
25 matched -- it matched that weapon, correct?

CROSS-EXAMINATION OF CHARLES ANDERSON BY MS. OLIVE

1 A. No, that was a penny. He never said for a fact.
2 He said a penny that the bullet matched that, but he
3 don't know.

4 Q. His expert opinion, correct?

5 A. It was a opinion, but at the same time opinion is
6 not a fact.

7 Q. Well ---

8 THE COURT: How about we let the record speak for
9 itself on that question.

10 MS. OLIVE: Thank you, Your Honor.

11 BY MS. OLIVE:

12 Q. And did not another witness at trial testify that
13 she saw you holding a gun that day?

14 A. I mean, she said she seen me with a gun, but she
15 didn't know who I was.

16 Q. But she identified you in court, correct?

17 A. That's because I've been on the news and I've
18 been in newspaper. Then she also said when ---

19 Q. Okay. Mr. ---

20 A. And she also --

21 Q. Mr. Anderson ---

22 A. -- said when she was cross-examined she also said
23 she guessed it was me.

24 Q. And, again, you received a plea offer in this
25 case of 30 years but you decided to go to trial; is that

CROSS-EXAMINATION OF CHARLES ANDERSON BY MS. OLIVE

1 right?

2 A. Yeah.

3 Q. Okay. And your testimony now is that that
4 statement that your co-defendant made that the judge
5 suppressed you think that statement, which implicated
6 you, would have been helpful in your trial?

7 A. No. The statement they never -- she never -- the
8 statement in the interrogation was never implemented in
9 my trial.

10 Q. But did she not implicated you in her statement?

11 A. Yeah, but it was never presented during trial.

12 Q. Okay. But you think that that statement
13 implicating you would have been helpful in your trial?

14 A. I'm saying -- no, what I'm saying is this. If
15 she -- when we had a joint trial I could never
16 cross-examine her because of her statement that she
17 stated, but then she always came back and say that she
18 didn't want to say what she said and they force her to
19 saying it implicating her. So it could have helped me,
20 but at the same time it was never implemented in my
21 trial. So I really don't know why I was -- I just want
22 to know this ---

23 Q. Mr. Anderson, please, I'm asking the questions,
24 okay?

25 A. I understand that.

REDIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 Q. Thank you.

2 A. But at the same time you're asking me questions
3 that have got nothing pertaining to why I'm coming back
4 on my PCR for.

5 THE COURT: Okay. If you could, it would be
6 helpful if you'd just answer the questions. Your
7 attorney can follow up with anything in a moment and ask
8 you questions again on anything that's relevant that you
9 need to add to the record, okay, sir?

10 THE WITNESS: (Nods head up and down.)

11 THE COURT: Go right ahead, please.

12 MS. OLIVE: Thank you, Your Honor. Thank you,
13 Your Honor, that's all the questions I have.

14 THE COURT: Redirect?

15 MR. RUCKER: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. RUCKER:

18 Q. Mr. Anderson, did Ms. Hollis in her statement
19 implicate herself?

20 A. Yes, sir.

21 Q. And it's your -- is it your belief that by her
22 implicating herself it exposed her to being the one who
23 actually committed the crime?

24 A. It could have.

25 Q. And did she try to point the finger at you to try

REDIRECT EXAMINATION OF CHARLES ANDERSON BY MR. RUCKER

1 to take some of the pressure off of her?

2 A. Yes, sir.

3 Q. To your knowledge was she trying to work a deal
4 with the solicitor's office?

5 A. I don't know, but I think so since she wrote a
6 statement and agreed to help them, cooperate.

7 MR. RUCKER: Okay. No further questions.

8 THE COURT: Sir, thank you. You can step down.
9 (Whereupon, witness leaves witness stand.)

10 MR. RUCKER: We have no other witnesses, Your
11 Honor.

12 THE COURT: Ms. Olive.

13 MS. OLIVE: Your Honor, the State would call
14 Chris Thompson.

15 THE COURT: Sir, if you'll come up, please.

16 (Whereupon, witness comes forward.)

17 Raise your right hand. (Complies.)

18 Swear or affirm the testimony you're about to
19 give is the truth?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: Ms. Olive.

22 MS. OLIVE: Thank you, Your Honor.

23 CHRISTOPHER THOMPSON,
24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

DIRECT EXAMINATION OF CHRISTOPHER THOMPSON BY MS. OLIVE

1 BY MS. OLIVE:

2 Q. Good afternoon, Mr. Thompson. Thank you for
3 sticking around with us today. Mr. Thompson, how long
4 have you been practicing law?

5 A. Since 2004.

6 Q. And how much of your practice has been criminal?

7 A. Pretty much all of it.

8 Q. And were you appointed or retained in this case?

9 A. Appointed in May of 2011.

10 Q. Do you recall how far in advance of the trial
11 that was?

12 A. Probably 18 months or so.

13 Q. And do you recall how many times you met with Mr.
14 Anderson?

15 A. I've got my office of Indigent Defense. I've got
16 -- I charged, I billed out nine visits and a total of 11
17 hours that I preventative stance. Nine visits and a
18 total of 11 hours that I went to jail time.

19 Q. And did you file a motion for discovery in this
20 case?

21 A. Yes.

22 Q. And did you review all discovery with Mr.
23 Anderson?

24 A. I believe there was a couple times in here, it
25 may be two or three hours at the jail and we would -- I

1 would be granted access to take a laptop in there and we
2 would review the CD's. And I think that's one thing
3 that held us up was Mr. Rucker had a hard time getting
4 the CDs from the solicitor's office and that's
5 expensive, so we reviewed. And I believe Ms. Hollis had
6 at least two statements on tape, maybe more. And
7 Mr. Lyles and another co-defendant, a little man, we
8 reviewed those in the paper discovery as well.

9 Q. So you did review those tapes and the paper
10 discovery?

11 A. Yes.

12 Q. Did Mr. Anderson discuss with you his version of
13 the facts of this case?

14 A. Yes.

15 Q. He had -- he never denied being there. He had
16 indicated early on that a guy named Lyles was the
17 shooter and that Mr. Lyles had brought the gun to
18 Charles' house and I pursued that theory.

19 And, oh, I don't know, sometime soon before the
20 trial he proceeded to tell me that Ms. Hollis was the
21 shooter. And so I felt good with her coming to trial
22 with us because there was eyewitness testimony that a
23 person with dreadlocks was the shooter and she was --
24 she had dreadlocks, so I -- and she was, you know,
25 obviously there on the scene, so I felt like that helped

DIRECT EXAMINATION OF CHRISTOPHER THOMPSON BY MS. OLIVE

1 our case somewhat. We had some heavy, heavy evidence
2 against us, however.

3 Q. So you -- did you feel that you needed to make a
4 motion to sever their trials?

5 A. Well, there were four co-defendants and I felt if
6 we all went to trial, it seemed like Lyles and Hollis
7 both were implicating Charles, and maybe the other guy
8 too, so I felt like the fewer the better. But at the
9 end of the day I thought that Ms. Bogan, being the
10 independent witness who was not charged with anything,
11 was going to be the one to be most detrimental to us.

12 And, like I said, I felt like it helped us with
13 Hollis being present. And basically we would be able to
14 prove at the date of the shooting she was wearing
15 dreadlocks and, quite frankly, looked a lot like a male.

16 Q. And did you -- the statement that Mr. Anderson
17 testified about earlier, did that statement come into
18 trial?

19 A. She never testified. And to my knowledge none of
20 her tapes or anything she said came into -- was ever
21 testified to other than what she said to Ms. Bogan prior
22 to the shooting. And through Ms. Bogan.

23 Q. Would Ms. Bogan had testified even if
24 Mr. Anderson had been tried separately?

25 A. I would imagine so. I mean, she was the -- she

DIRECT EXAMINATION OF CHRISTOPHER THOMPSON BY MS. OLIVE

1 was the most damaging witness that -- that, along with
2 some physical evidence the State had.

3 Q. Do you feel you had enough time to meet with Mr.
4 Anderson prior to trial?

5 A. Yes.

6 Q. Did you discuss with him any possible defenses?

7 A. I'm sure. I mean, I pursued everything he told
8 me. I felt like Charles, Charles is six-foot-five.
9 He's tall. That particular day was April, a hot day.
10 He had on a pair of black coveralls, so I felt like he
11 stuck out. So I felt like he was -- everybody -- and
12 there were several people saying he was there, but I
13 felt like he stood out. So I did pursue everything he
14 said.

15 I sat with his folks a couple times. And I could
16 see where the gun, I think the gun had his DNA on the
17 trigger, other places, and it was under his mattress.
18 But I could see where someone handed it off to him and I
19 -- but I, you know, pursued Cortez Lyles as the shooter.
20 I, quite frankly, I went to Oak View four or five times.
21 They always thought I was a nark down there and didn't
22 want to talk to me a whole lot. But, in fact, found a
23 couple of other witnesses down there that implicated
24 Charles, but pushed on with it.

25 And then he switched gears with Ms. Hollis later

DIRECT EXAMINATION OF CHRISTOPHER THOMPSON BY MS. OLIVE

1 on. And then so at trial we did get some -- there was
2 some evidence that Ms. Hollis had some residue on her
3 shirt.

4 And upon cross-examination of her, I kind of
5 hounded on that. And her attorney came to me and said,
6 look, she's going to testify your guy was the shooter.
7 So if your guy, he's going to testify that she was the
8 shooter. So I said well if he decides he don't want to
9 testify, she's going to decide she don't want to
10 testify. So they decided that they weren't going to
11 testify.

12 I felt like that helped Charles because I felt it
13 would hurt him if we had two people saying they saw him
14 shoot. So when she decided she wouldn't testify, then
15 Charles decided he wouldn't testify.

16 With her having residue on her, the dreadlocks
17 identification by an independent witnesses, I felt like,
18 you know, that was the theory to go with at trial. And,
19 like I said, I did try to run down the Cortez Lyles as
20 the shooter, but I never could get anything concrete on
21 that. Although I think, I think Mr. Lyles was one of
22 the people in the group of four that did not have
23 dreadlocks.

24 Q. And, I believe, you testified to this already but
25 Mr. Lyles was also pursued as a co-defendant and he was

DIRECT EXAMINATION OF CHRISTOPHER THOMPSON BY MS. OLIVE

1 one of the four co-defendants that you pursued?

2 A. Yes. Yes. He and -- I want to say a little man,
3 is the -- but I don't remember the name of the other
4 guy.

5 Q. Did you cross-examine the State's witnesses at
6 trial?

7 A. Yes.

8 Q. And, Mr. Thompson, let me ask you this, if Mr.
9 Anderson had been tried separately from Ms. Hollis,
10 given that she was also charged with these offenses,
11 would she have been able -- would you have been able to
12 call her as a witness to testify favorably for
13 Mr. Anderson if he had been tried separately?

14 A. Ms. Hollis, no. No, not based upon her
15 statements that I had viewed through discovery, you
16 know. And, like I said, I felt Ms. Bogan was the most
17 damaging. And Charles was right, on cross-examination
18 we were able to get it out that she did miss --
19 incorrectly identify him in a photo lineup.

20 Q. Mr. Thompson, did you at the time of trial see
21 any basis for objecting to the jury charge as given?

22 A. On the issue of, I guess on malice I think, you
23 know, that was probably my fourth or fifth murder trial,
24 and it was the basic standard malice jury charge. I
25 didn't see any -- I don't recall anything catching my

DIRECT EXAMINATION OF CHRISTOPHER THOMPSON BY MS. OLIVE

1 attention. And then what was the other one? I'm sorry.

2 Q. Mr. Anderson also alleged that the jury charge
3 somehow constructively amended the indictment.

4 A. On the lack of specificity in the indictment, I
5 don't know. I think what we did was just drafted the
6 same indictment for both parties.

7 Q. Did you see any reason to challenge the
8 indictment prior to trial?

9 A. No, I didn't make any motions to squash or
10 anything like that.

11 Q. And back to the jury instructions, was the charge
12 on the whole, did you feel it accurately charged the
13 law?

14 A. Oh, sure, yeah. And, you know, I think it, you
15 know, it's usually balanced. It goes into reasonable
16 doubt and the burden the State has and it was reasonably
17 balanced as I felt as I reread it.

18 Q. Were you expecting the charge on the hand of one,
19 hand of all?

20 A. Sure.

21 Q. Thank you, Mr. Thompson. That's all the
22 questions I have.

23 MR. RUCKER: May it please the Court?

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

CROSS-EXAMINATION OF CHRISTOPHER THOMPSON BY MR. RUCKER

1 BY MR. RUCKER:

2 Q. To your knowledge was there a deal offered to Ms.
3 Hollis to testify against Charles Anderson at some
4 point?

5 A. Not that I know of.

6 Q. All right. Who was Bogan? You testified about a
7 witness named Bogan. How did she relate to this case?

8 A. She was a girl who lived somewhere in Boiling
9 Springs and she, I think, testified she would come --
10 she would go to Oak View Apartment several days a week
11 and visit with a Kris -- a Ms. Martin, who was a friend
12 of hers.

13 Q. She was an alleged eyewitness in the case?

14 A. Yes.

15 Q. Okay. And your testimony was that she was a
16 crucial witness.

17 A. Yeah. Well, I said damaging. She was the most
18 damaging to us.

19 Q. Okay. Let's go over the evidence that was used
20 against him. What was the particular evidence you think
21 was used to convict him?

22 A. The fact that they had obtained search warrants.
23 It was identified at the scene. And, you know, like I
24 say, I think he stuck out. And he was identified at the
25 scene and obtained a search warrant to search his home.

CROSS-EXAMINATION OF CHRISTOPHER THOMPSON BY MR. RUCKER

1 I believe he had a search warrant or either the mother
2 consented to the search, I can't remember.

3 But they did find the murder weapon at his house
4 under his mattress with his DNA. I thought that was
5 damaging. Then, like I say, he had Ms. Bogan indicating
6 she looked up and saw Mr. Means falling to the ground
7 and Charles holding a gun.

8 Q. Okay. But there were four co-defendants in this
9 case; is that right?

10 A. Yes, sir.

11 Q. How many actually went to trial?

12 A. I believe -- now I know that with us just those
13 two. You know, from my -- I don't -- the other two I'm
14 not sure. I believe Lyles wound up doing a plea. He
15 was Judge Kelly's client at the time on that.

16 Q. And did the other two appear in court during this
17 trial to give statements against Mr. Anderson?

18 A. No.

19 Q. Was Ms. Bogan the only alleged eyewitness in the
20 case?

21 A. There were others that should have been police
22 reports. And, like I say, when I would go to Oak View I
23 was not the most welcome person over there.

24 Q. Right.

25 A. And I did meet with a lady that said she was

CROSS-EXAMINATION OF CHRISTOPHER THOMPSON BY MR. RUCKER

1 nearby and she identified somebody in dreads, but I was
2 able to elicit the same testimony from the victim's
3 sister --

4 Q. Okay.

5 A. -- that she had said basically the same thing,
6 somebody in dreadlocks.

7 Q. How many people ---

8 A. White t-shirt, shorts and dreadlocks.

9 Q. How many people actually testified as
10 eyewitnesses in this case?

11 A. As far as I know, Ms. Bogan and, as I recall, Ms.
12 Bogan and I believe that was it.

13 Q. All right. Ms. Bogan had conversations with Ms.
14 Hollis at some point?

15 A. Yes.

16 Q. And what did Ms. Hollis say to Ms. Bogan?

17 A. From what I recall that somebody had snitched on
18 -- somebody -- person A had snitched on person B or
19 something to that effect and they were going get them
20 for it.

21 Q. Okay. Did she implicate -- did Ms. Hollis
22 implicate my client in that conversation?

23 A. No, she didn't and never mentioned Charles.

24 Q. All right. But Ms. Bogan actually misidentified
25 my client, your former client, in the photo array; is

CROSS-EXAMINATION OF CHRISTOPHER THOMPSON BY MR. RUCKER

1 that right?

2 A. Right. Right.

3 Q. Did you ask for a *Neil vs. Biggers* hearing based
4 on that?

5 A. I believe what I requested was -- no, I didn't
6 request that. What I requested was I did something
7 pretrial. I forget what I call it, but I think we just
8 preserved it, I believe. But she did on the record
9 indicate that she misidentified him. But I think her
10 testimony was now that he's here face-to-face I know
11 it's him or something like that, but...

12 Q. But could it have been because it was unduly
13 suggested? You heard my client talk about T.V. coverage
14 of this.

15 A. The media. I'm sure it could have been.

16 Q. Okay. More importantly, though, if Ms. Hollis
17 was not a co-defendant in this case, her statements to
18 Ms. Bogan would not, not have been admissible, would
19 they? They'd be hearsay.

20 A. Sure. You know, Ms. Bogan, Ms. Hollis would have
21 had to have been.

22 Q. And those ---

23 A. They both testify to that.

24 Q. Those previous statements while not a requirement
25 of South Carolina law would go to motive; is that right?

CROSS-EXAMINATION OF CHRISTOPHER THOMPSON BY MR. RUCKER

1 A. I, I would assume.

2 Q. And it also shows malice.

3 A. Ms. Hollis. Ms. Hollis, maybe, yes.

4 Q. Well, she indicated -- your testimony earlier was
5 Ms. -- this was damaging testimony for you all because
6 it implicated Mr. Anderson during your direct
7 examination.

8 A. Well, her eyewitness account of what she saw is
9 the most damaging.

10 Q. The evidence was actually Ms. Bogan's testimony
11 and they found a gun under the pillow at my client's
12 mom's home; is that right?

13 A. Yeah. Under the mattress with the DNA on it.
14 And then Ms. Bogan's testimony that she looked up and
15 saw him.

16 Q. All right. So absent -- Ms. Bogan was the only
17 one who testified actually to what she saw happen; is
18 that right?

19 A. Yes, to my knowledge. I don't really know, but
20 as I recall.

21 Q. But a large part of her testimony was that she
22 had had a conversation with Ms. Hollis, a co-defendant,
23 beforehand that showed they were going to get this guy?

24 A. And I believe she basically testified that she
25 didn't really understand what Hollis was telling her.

CROSS-EXAMINATION OF CHRISTOPHER THOMPSON BY MR. RUCKER

1 Q. But did you know about that statement before you
2 went to trial?

3 A. Sure.

4 Q. Did you go over that discovery and that statement
5 with my client?

6 A. I'm sure I did.

7 Q. We actually had some trouble with discs, just
8 between us, didn't we?

9 A. Now, I don't -- we may have. I don't know about
10 the discs.

11 Q. You gave over what discovery you had, but there
12 was some discs that only the solicitor's had and you
13 didn't actually have; is that right?

14 A. That I don't know. I mean, I don't ---

15 Q. Well, you asked me to check with the solicitor's
16 office to see if there was additional information; is
17 that right?

18 A. Yeah. I guess, if they, I mean they could have
19 withheld something if they didn't intend to use it, I
20 don't know.

21 Q. All right. Why did you not ask to bifurcate this
22 case if you knew a statement by Ms. Hollis could be used
23 against my client?

24 A. Well, like I say, I thought it helped us having
25 her there with the dreadlocks and being identified with

REDIRECT EXAMINATION OF CHRISTOPHER THOMPSON BY MS. OLIVE

1 the person with the dreadlocks.

2 Q. But if he -- if she -- if Ms. Bogan can't
3 properly identify him and you don't have any statements
4 by Ms. Hollis to Ms. Bogan, all you have is the gun,
5 which is basically possibly accessory after the fact,
6 correct?

7 A. Possibly.

8 Q. I mean, you don't have any competent beyond
9 reasonable doubt evidence that would convince a jury at
10 that point, you would simply have he had the gun
11 afterwards?

12 MS. OLIVE: Your Honor, I would object to ---

13 THE WITNESS: And, like I said, her eyewitness
14 testimony.

15 THE COURT: Overruled.

16 MR. RUCKER: No further questions, Your Honor.

17 THE COURT: Anything on redirect?

18 MS. OLIVE: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MS. OLIVE:

21 Q. Regardless of whether Ms. Hollis had been tried
22 at the same time Ms. Bogan, she nevertheless testified
23 that -- well, let me rephrase the question.

24 Did Ms. Bogan identify Mr. Anderson in court?

25 A. Yes.

1 Q. And she stated -- did she indicate that he was
2 the person that she saw holding a gun --

3 A. Yes.

4 Q. -- after the shooting? Did you have any reason
5 to request a *Neil v. Biggers* hearing?

6 A. Not really. I mean, I thought it worked in our
7 favor that she didn't identify him on the, on the photo
8 lineup.

9 Q. So she did not identify him in the photo array?

10 A. And then she wrote down someone else that she
11 thought was the shooter.

12 Q. Did you cross-examine her on that at trial?

13 A. Yes.

14 MS. OLIVE: Thank you.

15 MR. RUCKER: Nothing further from us.

16 THE COURT: All right. Sir, thank you very much.
17 You may step down and you're free to go.

18 THE WITNESS: Thank you, Your Honor.

19 (Whereupon, the witness left the witness stand
20 and the courtroom.)

21 THE COURT: Admittedly I've not had a chance to
22 review this transcript. This was -- I think it was too
23 big to make it through the server, so I need to review
24 this this evening or maybe tomorrow. Anything that you
25 want to really direct the Court's attention to or want

1 to add?

2 MR. RUCKER: I think specifically what we got
3 into with Mr. Thompson as far as that in court
4 identification, the hearsay evidence that was admitted
5 because the co-defendant was present and was deemed an
6 admission against her. But there was no jury
7 instruction about that to the jury. And the previous
8 instructions that Mr. Anderson testified about.

9 THE COURT: All right. Anything that you need to
10 point me to or...

11 MS. OLIVE: I don't believe so, Your Honor.

12 THE COURT: Very good. The Court will take this
13 under advisement then and I'd like to say I'll have a
14 Form 4 by the end of the week, but I'm not sure I'm
15 gonna be able to get to all this and read all of this
16 before the end of next week, so...

17 MR. RUCKER: Yes, sir.

18 THE COURT: By the end of next week at the
19 latest, okay?

20 MR. RUCKER: Yes, Your Honor.

21 MS. OLIVE: Thank you, Your Honor.

22 THE COURT: Thank you.

23 (Whereupon, hearing concluded at 1:16 p.m.)

24

25 --- THIS ENDS REQUESTED HEARING ---

1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings and evidence introduced
8 in the hearing and/or trial of the captioned case,
9 relative to appeal, in the Court of Common Pleas for
10 Spartanburg County, South Carolina, on the 7th day of
11 November, 2016.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17

18 s/Julie A. Ashbrook.
19 Julie A. Ashbrook
20 Circuit Court Reporter
21 Seventh Judicial Circuit
22
23
24
25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
Charles L. Anderson, #338944,	)	C/A No.: 2015-CP-42-0150
	)	
Applicant,	)	
	)	ORDER OF DISMISSAL
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

2017 APR 14 AM 8:51
H. HOFFE CLERK

This matter comes before the Court by way of an Application for Post-Conviction Relief filed January 12, 2015. Respondent made its Return on September 8, 2015, and amended Return and Motion for More Definite Statement on July 21, 2016. Applicant amended his Application on October 24, 2016.

The Court convened an evidentiary hearing into the matter on November 7, 2016, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by J. Brandt Rucker, Esquire. Alicia A. Olive, Esquire of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's trial counsel, Christopher P. Thompson, Esquire also testified. The Court had before it a copy of the trial transcript, the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Charles L. Anderson ("Applicant") is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk

of Court. Applicant was indicted at the August 2011 term of the Spartanburg County Grand Jury for murder (2011-GS-42-5098) and armed robbery (2011-GS-42-5097). Christopher P. Thompson, Esquire represented Applicant. Abel Gray, Esquire and Daniel Cude, Esquire prosecuted the case. On October 1-4, 2012, Applicant was tried before the Honorable Roger L. Couch and a jury. The jury found Applicant guilty as indicted. Judge Couch sentenced Applicant to concurrent terms of life for murder and 30 years for armed robbery.

A timely Notice of Appeal was filed on Applicant's behalf pursuant to Anders v. California.¹ The South Carolina Court of Appeals dismissed Applicant's appeal in an unpublished opinion. State v. Charles Anderson, 2014-UP-108 (Filed March 12, 2014). The Remittitur was returned on March 28, 2014.

II. ALLEGATIONS

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

1. Ineffective assistance of counsel, in that:
 - a. Counsel failed to request or object to a jury instruction on lesser included offense;
 - b. Counsel failed to object to the trial judge's mandatory presumption language and burden-shifting language in the jury instruction on malice;
 - c. Counsel failed to object to an unconstitutional constructive amendment of the indictment through misleading the jury instructions;
 - d. Counsel failed to object to the joinder of trial due to the unfair prejudice and failure of the State to indict Applicant for conspiracy or criminal conspiracy, and counsel failed to object to the joinder without a consolidation hearing being held; and
 - e. Counsel failed to object to the lack of specificity in the indictment for armed robbery.
2. "Violation of 6th Amendment Bruton's Sixth," in that:
 - a. "Powerfully incriminating extrajudicial statement";
3. "Violation of SCrimP Rule 5 Brady Violation," in that:

¹ 386 U.S. 738 (1967).

2017 APR 14 AM 8:51
 H. HOPE ELAHELY

- a. "Failure to support [the Applicant's] Brady motion of discovery."

At the evidentiary hearing, Applicant proceeded only on the following allegations:

1. Counsel was not prepared
2. Counsel failed to object to a burden-shifting charge
3. Applicant was never indicted on some charges
4. Counsel was deficient in failing to ask to sever Applicant's trial from his co-defendants
5. Failing to object to lack of specificity in the armed robbery indictment

2017 APR 14 AM 8:51
M. HOPE ELACALLEY

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the record in its entirety and has heard the testimony and arguments presented at the evidentiary hearing. The Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon their credibility. The Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80.

A. Summary of Evidence Adduced at Trial

Applicant was tried with his co-defendant, Lauri Danielle Hollis, for the murder and armed robbery of Stephen Means. Molly Bogan testified she was present at the apartment complex when the shooting occurred. (Tr. at 179-82). She testified she saw Hollis and heard her talking about someone being a snitch and there was a group gathered around her. (Tr. at 183-86). She heard a gunshot, saw the victim fall, saw Hollis near the victim with about four other people, and saw them scatter after the gunshot. (Tr. at 184-86). Bogan testified she saw a gun in someone's hand, that she did not know him then and still did not know him, but she identified him in court as Applicant. (Tr. at 186). She denied seeing Hollis or anyone else with a gun. (Tr. at 187). Counsel cross-examined Bogan about her identification of Applicant. (Tr. at 190-92). She admitted could not identify Applicant in a photo line-up, but testified "I see him face-to-face

right now." (Tr. at 193).

The victim's sister testified she saw him just before he was shot and that he was wearing a necklace with a Stewie (from the cartoon Family Guy) charm. (Tr. at 163). The victim's cousin, Anthony Kelly, testified the victim wore this necklace every day. (Tr. at 226). Kelly saw Hollis ~~had~~ ^{at} a party after the victim's death, and she was wearing the victim's necklace. (Tr. at 231). Jennifer Watson testified she recovered the victim's belongings from the hospital and that she did not recover a necklace from those items. (Tr. at 240).

Lead investigator Brian Stokes testified he identified Charles Jackson and Quartez Lyles as other potential suspects. (Tr. at 253). He testified he collected a buccal swab from Jackson. (Id.). Buccal swabs were also collected from Applicant, Hollis, Feishunti Clark, (Tr. at 342), and Quartez Lyles. (Tr. at 371-72).

Applicant signed an authorization form giving officers consent to search his room. (Tr. at 256-57). Officer Christopher Layton testified that pursuant to the search warrant, they obtained a set of black overalls and a silver 9mm pistol, which was found under Applicant's mattress and contained two 9mm rounds inside. (Tr. at 322). Officer Ed Guthro testified he collected a shell casing, Styrofoam cups, a juice bottle, and photographs from the scene. (Tr. at 336-37). Ira Parnell, qualified as an expert in firearms and tool mark identification, testified the fired bullet and fired cartridge case were both fired from the 9mm pistol. (Tr. at 429-30). Dr. David Wren testified he removed a medium-caliber, copper-jacketed lead bullet from the victim. (Tr. at 289-91). Stephanie Stanley, qualified as an expert in forensic DNA analysis, testified the DNA from the grip of the pistol contained a mixture of at least three individuals. (Tr. at 452). She testified Applicant could not be excluded, but that Hollis, Clark, Lyles, and Jackson could all be excluded. (App. p. 453). Gunshot residue was found on Hollis's clothing. (Tr. at 414-16).

In his closing argument, Counsel pointed out that two witnesses identified the shooter as having dreadlocks and that Applicant did not have dreadlocks. (Tr. at 560-61). He also pointed out that the victim's sister told officers she saw "guys in white T-shirts" chasing the victim right before the shots were fired, but that Applicant was wearing black overalls. (Tr. at 561). He also pointed out that Molly Bogan failed to identify Applicant in two photo lineups. (Tr. at 561). Counsel also pointed out that the State did not present as witnesses Charles Jackson or Quartez Lyles though they had also been charged in connection with the murder and armed robbery. (Tr. at 563). Counsel argued "the only thing tying [Applicant] to the scene is Molly Bogan whose credibility is minimal at best." (Tr. at 565).

B. Summary of Testimony Presented at Evidentiary Hearing

Applicant testified he met with counsel four or five times prior to trial for about twenty minutes each time. Applicant testified he did not feel Counsel was prepared to go to trial. He stated Counsel reviewed discovery with him but that the solicitor only gave him "certain things on [his] Rule 5." Applicant testified Counsel should have objected to the malice charge or asked for a curative instruction. Applicant testified the State had offered a plea deal for thirty years and he rejected the offer because thirty years seemed like a life sentence.

Counsel testified he has been practicing criminal law since 2004. He was appointed eighteen months prior to Applicant's trial. Counsel testified he filed the appropriate discovery motions. He testified he met with Applicant nine times for a total of eleven hours, and that during these meetings, he reviewed discovery with Applicant, including all paper discovery and the recorded statements of Applicant's co-defendant, Hollis. He testified he and Applicant also discussed everything Applicant knew about the facts of the case. Counsel testified Applicant did not deny being present at the scene, but told him that Lyles was the shooter and that he brought

the gun to Applicant's home. Counsel testified he pursued everything Applicant told him about the facts of the case. Counsel testified that as part of his investigation, he pursued Lyles as the shooter. He also stated that the police reports contained information about additional witnesses, and he went to the apartments to try to speak to some of those witnesses but was unable to find any witnesses who would have been helpful to Applicant. Counsel testified he felt he had enough time to meet with Applicant, had sufficient time to prepare his case for trial, and felt prepared for trial.

Counsel testified Applicant was identified at the scene and his home was searched pursuant to a search warrant and the murder weapon was found in his house under his mattress and that the weapon had Applicant's DNA on the trigger. His overall theory of the case was that Hollis was the shooter, and he pursued this theory in preparing for trial. Counsel testified he was also trying to suggest Lyles was the shooter. Counsel stated he knew witnesses would identify Applicant as the shooter, but Hollis had gunshot residue on her clothes. Counsel testified he reviewed applicable defenses and his overall strategy and theory with Applicant. Counsel testified he did not move to sever because he felt it helped Applicant's case to have Hollis tried at the same time because her appearance matched witnesses' description of the shooter. He testified that Hollis did not testify and nothing came into trial other than what she said to Bogan. Counsel testified Bogan would have been called to testify even if the trials had been separated.

Counsel testified that Bogan's testimony and the connection of the murder weapon to Applicant were very damaging. He testified Bogan failed to identify Applicant in a lineup and that he had no reason to request a Neil v. Biggers hearing. Counsel testified Bogan identified Applicant in Court as the person she saw holding the gun and that he cross-examined her on her inability to identify him in a lineup. Counsel testified he had no basis to object to the jury charge.

He felt the charge was accurate and balanced. Counsel testified that he likewise had no reason to challenge the indictment. He testified he was expecting the charge of hand-of-one, hand-of-all.

C. Ineffective Assistance of Trial Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Failure to prepare for trial

Counsel testified he met with Applicant nine times for a cumulative total of about eleven hours and that in these meetings he reviewed the State's evidence with Applicant and discussed Applicant's knowledge of the facts, any available defenses, and trial strategy. This Court finds that based upon the testimony of Counsel at the hearing, trial counsel was extensively prepared for trial and articulated a wise trial strategy. Applicant made no showing that Counsel's trial preparation fell below an objective standard of reasonableness and has therefore failed to overcome the presumption that Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. See Strickland v. Washington, 466 U.S. 668, 690 (1984).

Additionally, Applicant presented no evidence that he was prejudiced by the alleged failure to Counsel to prepare for trial. See Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998) (holding PCR applicant was not entitled to relief where he failed to show how counsel's lack of preparation prejudiced him); See also Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (holding, where applicant alleged counsel was ineffective for failing to call certain witnesses, applicant's "mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice."). Applicant has presented absolutely no evidence of what information Counsel failed to uncover. Therefore, Applicant has failed to prove prejudice with respect to this allegation. Because Applicant has failed to demonstrate either deficiency or prejudice, this allegation is denied and dismissed.

Failure to move to sever

Applicant alleges counsel was deficient for failing to move to sever his and Hollis' trial. Applicant has failed to show that Counsel's conduct in not moving to sever the trials fell below

an objective standard of reasonableness. First, Counsel testified he had no reason to ask for severance and that regardless, he felt it was actually helpful for Applicant to be tried with Hollis. He testified and the record reflects that Hollis had gunshot residue on her clothing and that her appearance matched the witnesses' descriptions of the shooter. This Court finds Counsel articulated a credible reason for not moving to sever the trials, namely, that co-defendant Hollis most closely resembled the description of the shooter. Where Counsel articulates a valid reason for employing a certain strategy, his conduct will not be deemed ineffective assistance. See Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (citing Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992))). Accordingly, it helped Applicant that Hollis was tried with him.

Second, Applicant has made no showing that he would have been entitled to severance in this case had Counsel made such a request. Applicant was not entitled to a separate trial from his co-defendant as a matter of right. State v. Dennis, 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999) ("Criminal defendants who are jointly tried for murder are not entitled to separate trials as a matter of right.") (citations omitted). Where such a motion is made, the decision to sever is addressed to the sound discussion of the trial court and "should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a codefendant or prevent the jury from making a reliable judgment about a co-defendant's guilt." Id. (citing Zafiro v. United States, 506 U.S. 534 (1993)). A defendant appealing a judge's refusal to sever must also show he was prejudiced as a result of being jointly tried. Id. In this case, Counsel testified Molly Bogan's testimony and the murder weapon were both very damaging to Applicant's case. However, Counsel testified that Bogan's testimony would have come in regardless of whether Hollis was tried with Applicant. In addition, severance of the trials would not have prevented the

2017 APR 14
11 40 PM
FILE
851

introduction of the weapon because it was found pursuant to a search that was conducted of Applicant's room with Applicant's consent. Accordingly, Applicant has failed to show that, had the motion been made, he would have been entitled to severance.

In light of these circumstances and in light of counsel's reasoned decision that he need not ask to sever Applicant and Hollis' trials, this Court finds Counsel was not deficient. In addition, this Court finds there is no reasonable probability the outcome of trial would have been different but for the alleged error of counsel in declining to move to sever the trials because Applicant made no showing that he would have been entitled to a severance of the trials and this Court finds it *did* help Applicant's case that he was tried with Hollis. Accordingly, this allegation ~~and it~~ is denied and dismissed.

Failure to object to lack of specificity in indictments

Similarly, this Court finds Counsel was not ineffective for failing to request greater specificity in the indictment. An indictment is a "notice document." State v. Tumbleston, 376 S.C. 90, 95, 654 S.E.2d 849, 852 (Ct. App. 2007) (citing S.C. Const. art. I, § 11; S.C. Code Ann. § 17-19-10 (2003)). That an "indictment could be more definite or certain is irrelevant." State v. Tumbleston, 376 S.C. 90, 97, 654 S.E.2d 849, 853 (Ct. App. 2007) (citing State v. Gentry, 363 S.C. 93, 102-03, 610 S.E.2d 494, 500 (2005)). An indictment is sufficient if "it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." State v. Ham, 259 S.C. 118, 129, 191 S.E.2d 13, 17 (1972) (citing State v. McIntire, 221 S.C. 504, 509, 71 S.E.2d 410, 412 (1952) ("The general rule on this question is that the offense must be so described that the accused may know how to answer the charge, the court what judgment to pronounce, and conviction or acquittal thereon may be pleaded in bar to any subsequent prosecution.")).

The indictment charging Applicant with murder stated that Applicant "did in Spartanburg County on or about April 7, 2011, feloniously, willfully, and with malice aforethought, cause the death of Stephen Means by shooting the victim with a handgun, and that the victim died as a proximate result, all in violation of" §§ 16-3-10, -20 [of the] South Carolina Code of Laws."

Counsel testified he had no reason to object to challenge the indictments. This Court finds that as a notice instrument, the indictment was sufficient to place Applicant on notice of the charge for which he would have to answer. Therefore, Counsel was not deficient for not challenging the murder indictment. In addition, given the discovery provided to Applicant, any lack of specificity in the indictment did not prejudice Applicant because he was on notice concerning the allegations. Accordingly, Applicant has failed to prove either deficiency or prejudice, and this allegation is denied and dismissed.

Failure to object to burden-shifting charge on Malice

Applicant has failed to demonstrate deficiency or prejudice with respect to this allegation.

At trial, the court gave the following instructions regarding malice:

Malice is hatred or ill will or hostility toward another person. [It is] the intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury, or under circumstances where the law might infer an evil intent.

Malice aforethought can either be expressed or inferred; in other words, proved by circumstantial evidence. These terms "expressed" and "inferred" malice do not mean different kinds of malice. It however, refers to the manner in which malice might be shown to have existed. That is either by direct evidence or by inference from the facts and circumstances which have been proven. Express malice is shown when a person speaks words which express hatred or ill will for another person, when the person prepares beforehand to do the act which was later accomplished. . . .

Malice can be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when a deed was done with a deadly weapon.

(Tr. at 612-13).

This Court has reviewed the trial judge's instructions on malice and finds the instruction comports with the law. See, e.g., State v. Price, 400 S.C. 732 S.E.2d 652 (Ct. App. 2012) (finding no error where trial judge instructed on inferred malice where there was no evidence in the record that could reduce, mitigate, excuse, or justify the crime). Likewise, the Court does not find that the instruction was unduly confusing to the jury. Applicant has failed to prove that Counsel had any basis to object to the instruction or that any prejudice resulted from the lack of objection. See id. Accordingly, Applicant has failed to show either deficiency or prejudice with respect to this allegation.

Applicant was never indicted on some charges

This Court finds the record and charging documents do not support this allegation. In addition, Applicant has failed to present any evidence in support of this allegation. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985) ("In a PCR action, Applicant bears the burden of proving the allegations in his application."). Accordingly, this allegation is dismissed.

C. 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, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

IV. CONCLUSION

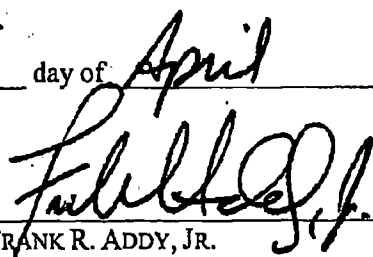
Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty (30) days from PCR counsel's receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 8th day of April, 2017.


FRANK R. ADDY, JR.
Presiding Judge
Seventh Judicial Circuit

Greenwood, South Carolina

2017 APR 14 AM 8:51
M. HOPE BLANCHLEY

WITNESSES

Spartanburg City Police Department

1. SENTENCE MADE

2. REPORTED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT

ARRESTED

M125939

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

AUG 18 2011

VERDICT

Guilty

Foreperson of Petit Jury
Date:

10/4/12

DOCKET NO.

11-GS-42-5098

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

AUG 22 2011

TERM

THE STATE

v

Charles L. Anderson, Jr.

Indictment for

MURDER

SC Code 16-03-0010, 0020
CDR Code 116
Class FEL-EXM

2011 AUG 24 PM 1:33

M. HOPE BLACKLEY

SCANNED

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

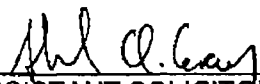
AUG 18 2011

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

MURDER

That Charles L. Anderson, Jr. did in Spartanburg County on or about April 7, 2011, feloniously, willfully, and with malice aforethought, cause the death of [REDACTED] by shooting the victim with a handgun, and that the victim died as a proximate result thereof, all in violation of §16-3-0010, 0020, *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.



ASSISTANT SOLICITOR

WITNESSES

D.B. Stokes

Spartanburg Public Safety Dept.

1. SENTENCE MADE

2. REPORT ENTERED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE
ARREST WARRANT NUMBER

7. ASSESSMENT FINE CARD MADE

8. TRAFFIC VIOLATION COPY
M125940

ACTION OF GRAND JURY

For person of Grand Jury
Date:

AUG 18 2011

VERDICT

Guilty

For person of Petit Jury
Date:

10/4/12

DOCKET NO.

11-GS-42-5097

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

AUG 22 2011

TERM

**THE STATE
vs.**

Charles L. Anderson, Jr.

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

2011 AUG 24 PM 1:33

M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on AUG 18 2011 the Grand
Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That Charles L. Anderson, Jr. did in Spartanburg County on or about, April 7, 2011, commit a robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, and did feloniously take from the person or presence of [REDACTED] by means of force, violence, and/or intimidation, goods or monies of [REDACTED] to wit: jewelry, cell phone and dental gold, with the intent to deprive the owner permanently of such property in violation of §16-11-330 (A), *THE 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.


ASSISTANT SOLICITOR