

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

Honorable Jocelyn J. Newman, Circuit Court Judge

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S.C. SUPREME COURT

ROBIN G. REESE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-001110

APPENDIX

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¹ Pages 629, 725, and 1090 from the trial transcript are missing and were not included in the Record on Appeal for Petitioner or her co-defendant in their direct appeal cases. Petitioner’s Counsel contacted the court reporters involved with the trial but neither of them had retained a copy of the 2012 trial transcript.

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1 look at it?

2 A Yeah.

3 Q You can read, right?

4 A (Affirmative nod).

5 Q Is that the statement you gave police back
6 on February 13th of 2010?

7 A (Affirmative nod).

8 Q I need you to say yes or no.

9 A Yes.

10 Q Is that in your handwriting?

11 A Yes.

12 Q And I want to direct you to page -- you
13 gave them that information that's filled out at
14 the top about where you live and all that?

15 A Uh-huh.

16 Q On that second page, that part that's
17 highlighted, what does it say?

18 A Yeah, she was about in her late twenties.

19 Q And how much did you think she weighed?

20 A She was about a hundred fifty, my size.

21 Q Thank you. Didn't you tell them that she
22 was also assaulting the gentleman on the ground?

23 A Well, that's the thing. I don't know if
24 she was actually helping the guy or she was with
25 the group of guys, the group of people, but she

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1 had something in her hand.

2 Q She had something in her hands?

3 A Yes.

4 Q All right.

5 MS. SAMSOM: No further questions,

6 Your Honor.

7 THE COURT: Redirect?

8 DIRECT EXAMINATION

9 BY MR. CHAPLIN:

10 Q When you called 9-1-1, you called them
11 because you saw something? Correct?

12 A That's the only reason.

13 Q The only reason?

14 A Yeah.

15 Q You would have no reason to call 9-1-1 and
16 make up something that you didn't see?

17 A No.

18 Q Correct?

19 A Correct.

20 Q You're here telling the truth today under
21 oath, correct?

22 A Yes.

23 MR. CHAPLIN: Thank you very much.

24 MR. FARLEY: No questions.

25 THE COURT: Anything further?

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1 MS. SAMPSON: Nothing further.

2 THE COURT: All right. You may come
3 down, ma'am. Thank you very much. You're free
4 to go.

5 (WITNESS STEPS DOWN)

6 THE COURT: Without objection?

7 MR. FARLEY: Without objection.

8 MS. SAMPSON: Without objection.

9 THE COURT: You're free to go. Next
10 witness.

11 MR. CHAPLIN: Your Honor, at this time
12 the defense for Henry Gray rests.

13 THE COURT: All right.

14 THE COURT: Any reply or rebuttal?

15 MS. CAMPBELL: Yes, Your Honor.
16 Your Honor, may we approach for just a second.

17 THE COURT: Sure.

18 (OFF RECORD BENCH CONFERENCE)

19 MR. FARLEY: Your Honor, at this
20 time the defense for Ms. Robin Reese would like
21 to rest.

22 THE COURT: All right.

23 MR. FARLEY: We would like to make a
24 motion to renew ---

25 THE COURT: We'll do that in just a

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1 minute. All right. Ladies and gentlemen, that
2 concludes the defense of both defendants in this
3 case. Now, at this point in the trial, the
4 State has the opportunity if they so choose to
5 call a rebuttal witness, any witness where
6 something was presented to you they feel needs
7 rebuttal as far as the record is concerned.
8 They have that opportunity.

9 Counsel has indicated to me that they will
10 call a rebuttal witness or at least one and they
11 were not anticipating we would be this far along
12 at this moment, so they need a few minutes just
13 to get their witnesses in order and so rather
14 than have you just sit here, I'm going to let
15 you retire to the jury room for a few minutes
16 and just relax. when they're ready to continue
17 we will do so. We're going to finish this case
18 today now. Just there's a lot left to come, but
19 we'll get done today. So just relax for a few
20 minutes and we'll call you when we're ready.

21 (JURY OUT @ 9:34 A.M.)

22 THE COURT: Ms. Campbell, do you need a
23 break?

24 MS. CAMPBELL: Just five minutes.

25 THE COURT: This will be a good time

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1 when you're ready to view jury charges.

2 MS. CAMPBELL: We can do that now.

3 MS. SAMPSON: We can do that now.

4 THE COURT: I thought you had to step
5 out.

6 MS. CAMPBELL: I can get them to step
7 out to get out people.

8 THE COURT: All right. Well, let me
9 look over your proposed charges and I'll be
10 ready in just a few minutes.

11 MS. CAMPBELL: Okay, Judge. We'll
12 be back in ten minutes.

13 (BRIEF RECESS)

14 (DEFENDANTS PRESENT)

15 THE COURT: State ready?

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: All right. Let's go
18 ahead and do that.

19 MS. CAMPBELL: Okay.

20 THE COURT: Bring the jury, please.

21 (JURY IN @ 10:16 a.m.)

22 BAILIFF: Jury is present, Your
23 Honor.

24 THE COURT: Solicitor.

25 MS. CAMPBELL: May it please the Court.

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1 The State calls Dr. Clay Nichols.

2 (WITNESS TAKES STAND)

3 CLAY NICHOLS, being duly sworn to tell
4 the truth, the whole truth and nothing but the
5 truth, testified, as follows:

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL:

8 Q Dr. Nichols, where are you employed?

9 A I am the deputy chief medical examiner for
10 the State of North Carolina.

11 Q How long have you been employed in that
12 capacity.

13 A About one year.

14 Q Prior to that where did you work?

15 A I worked here in Richland County where I
16 was the chief medical examiner for Richland
17 County.

18 Q Back in February of 2010, what were your
19 duties?

20 A I was the chief medical examiner.

21 Q For Richland County?

22 A Yes.

23 Q At that point was Dr. Bradley Marcus one
24 of the people employed within your group?

25 A Yes.

1 Q And he assisted in autopsies and things of
2 that nature?

3 A Yes.

4 Q Can you tell this jury a little about your
5 education and training in the field of forensic
6 pathologist?

7 A I received my B.S. from the University of
8 the Oklahoma in 1981, I received my M.D. degree
9 also from Oklahoma in 1985.

10 After that I entered a residency program in
11 both anatomic and forensic pathology at MUSC,
12 completing that in 1999.

13 For the next ten years, I was on the
14 faculty as assistant professor and associate
15 professor where I taught Pathology to residents,
16 medical student, Fellows, dental students,
17 pharmacy students.

18 After that I entered private practice here
19 in the Columbia area, where I was the chief
20 medical examiner for ten years.

21 Following that I'm the deputy chief medical
22 examiner for the State of North Carolina.

23 I'm board-certified in both anatomic and
24 forensics pathologist and hold unrestricted
25 licenses to practice medicine and surgery in

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1 both North Carolina and South Carolina.

2 Q Have you been qualified before as an expert
3 in the field of forensics pathologist.

4 A Yes.

5 Q Approximately how many times have you been
6 qualified?

7 A Hundreds.

8 MS. CAMPBELL: Your Honor, at this time
9 we'd offer him as an expert in forensics
10 pathologist.

11 THE COURT: Any *voir dire* or
12 objection?

13 MR. FARLEY: No objection, Your Honor.

14 MR. CHAPLIN: No objection, Your Honor.

15 DIRECT EXAMINATION CONTINUED

16 BY MS. CAMPBELL:

17 Q Doctor, I want to turn your attention back
18 to mid to late February 2010. Were you aware
19 that Dr. Marcus had performed an autopsy on a
20 young man named Kenneth Mack?

21 A Yes, ma'am, I was.

22 Q Were you asked, actually at the time, to
23 review his findings as far as cause of death and
24 things of that nature?

25 A Yes, I was.

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1 Q And specifically and I'll be brief since
2 this is reply testimony. Did you review his
3 work in that case?

4 A Yes, I did.

5 Q Was it done correctly?

6 A Yes.

7 Q As a result of that, was a cause of death
8 determined?

9 A Yes, it was.

10 Q Were you also given a history of what had
11 happened or what may have happened prior to the
12 young man being declared brain dead in the
13 hospital?

14 A Yes, I was.

15 Q Is that important as far as your field is
16 concerned?

17 A Sometimes it's very important. Sometimes
18 it's not. In this particular case it was, due
19 to the nature of two assaults within a short
20 period of time.

21 Q Were you aware that after the second
22 assault he was never conscious again and was
23 posturing by the time EMS got there?

24 A That's correct.

25 Q Based on your review of the autopsy --

1 which was done correctly in this case; is that
2 right?

3 A Yes.

4 Q And your review of the history, were you
5 able to make any determinations as far as which
6 assault either contributed solely or was a
7 contributing factor to his death?

8 A The timeline and injuries indicate that it
9 would have been a second assault where the
10 deceased fell and hit the concrete, resulting in
11 closed head injury.

12 The first assault, the evidence isn't there
13 for a head injury.

14 The second assault, there is real good
15 evidence for a head injury.

16 Q And you discussed these with, I believe,
17 the coroner's office as well police officers in
18 this case?

19 A Yes.

20 Q And you've also had an opportunity prior to
21 testifying here today to review those findings
22 again?

23 A Yes.

24 Q And those are still your findings?

25 A Yes, they are.

1 Q But for the second assault, he would not be
2 dead?

3 A That's correct.

4 MS. CAMPBELL: That's all that I have.

5 THE COURT: Cross-examination?

6 CROSS EXAMINATION

7 BY MR. FARLEY:

8 Q Dr. Nichols, again the 00 you're here to
9 testify to the blunt force trauma that was
10 suffered by Mr. Mack?

11 A I'm here to answer questions. The cause of
12 death in Mr. Mack is the blunt head trauma, yes.

13 Q But again, you're not here to propose how
14 that happened necessarily or who may have been
15 involved ---

16 A Not who was involved.

17 Q --- nor have any information in that
18 regard?

19 A Not as far as who was involved, how it
20 happened. Once again, the injury where he fell
21 and kinda struck his head on the concrete. I
22 think would itself have been a fatal injury.

23 MR. FARLEY: Please answer any
24 questions Mr. Chaplin has.

25 CROSS EXAMINATION

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1 BY MR. CHAPLIN:

2 Q So Dr. Nichols, your analysis is based on
3 the fact that he hit his head on the concrete;
4 correct?

5 A Yes.

6 Q Thank you very much. No further questions?

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION

9 BY MS. CAMPBELL:

10 Q That would be concrete or a hard surface
11 commensurate with concrete?

12 A Yes.

13 MS. CAMPBELL: That's all I have.

14 MR. FARLEY: I don't have anything
15 further.

16 THE COURT: Anything further?

17 MR. CHAPLIN: I'm fine. Thank you.

18 THE COURT: All right. Thank you
19 very much, Doctor.

20 MS. CAMPBELL: Thank you. May he be
21 excused?

22 THE COURT: Yes, ma'am. Be excused.

23 MS. CAMPBELL: Thank you. Have a good
24 day.

25 THE COURT: Yes, sir.

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1 WITNESS: Thank you.

2 (WITNESS STEPS DOWN)

3 MS. SIMPSON: The State calls
4 Quintus Young.

5 (WITNESS TAKES STAND)

6 QUINTAS YOUNG, being duly sworn to tell
7 the truth, the whole truth and nothing but the
8 truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY MS. SIMPSON:

11 Q Mr. Young, where do you work?

12 A I am employed with the State Law
13 Enforcement Division, commonly known as SLED.

14 Q How long have you been with SLED?

15 A Five years, this month.

16 Q What exactly do you do at SLED?

17 A As a toxicologist, we're responsible for
18 the analyses of biological specimens: blood,
19 urine, tissue -- to detect the absence or
20 presence of drugs, alcohol and poisons and to
21 interpret those findings for courts of law,
22 coroners and pathologists.

23 Q So you're a toxicologist?

24 A Yes.

25 Q Can you tell us a little bit about your

1 educational background training and background?

2 A Yes, I received my bachelors from the
3 University of South Carolina in Chemistry.

4 Once I was hired on at SLED in 2007, I
5 completed the alcohol and drug portions of
6 training.

7 Q All right.

8 MS. SIMPSON: Your Honor, at this
9 time, I would seek to qualify Mr. Young as an
10 expert in toxicology.

11 THE COURT: Any voir dire or objection?

12 MR. FARLEY: No voir dire or objection,
13 Your Honor.

14 MR. CHAPLIN: Voir dire, Your Honor.

15 THE COURT: Yes, sir.

16 VOIR DIRE EXAMINATION

17 BY MR. CHAPLIN:

18 Q. Please -- I'm sorry, state your last name
19 again. Is it Young?

20 A. (Affirmative nod), Young.

21 Q. You said you majored in Chemistry?

22 A. Yes.

23 Q. And where did you go to school?

24 A. University of South Carolina.

25 Q. Did you take organic chemistry?

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1 A. I did.

2 Q. What is organic chemistry?

3 A. It's related to carbon molecules.

4 Q. Did you take inorganic?

5 A. I don't think I did.

6 Q. You have a Bachelor of Arts or a Bachelor
7 of Science in Chemistry?

8 A. Bachelor of Science.

9 Q. Did you take German?

10 A. No.

11 Q. Did you take quantitative analysis

12 A. I did.

13 Q. Now, after college, to prepare for this
14 job, did you take any additional training?

15 A. No, once I began, I had in-house training
16 at SLED.

17 Q. So in-house training?

18 A. Right.

19 Q. After a degree from Carolina?

20 A. Correct.

21 Q. How long have you been ---

22 A. Five years.

23 MR. CHAPLIN: Okay. No objection.

24 Thank you.

25 THE COURT: All right, sir. You may

1 continue.

2 DIRECT EXAMINATION CONTINUED

3 BY MS. SIMPSON:

4 Q And Mr. Young, have you been qualified as
5 an expert before?

6 A Yes.

7 Q Did you receive some blood samples in this
8 case?

9 A I did.

10 Q And whose blood specimens did you receive?

11 A Kenneth Mack.

12 Q All right. Did it come to you through
13 SLED's evidence?

14 A Intake, (affirmative nod).

15 Q Okay. Which I guess utilizes the standard
16 procedures and protocols to protect the
17 integrity of the specimen?

18 A Correct.

19 Q What exactly do you test for?

20 A We test for volatiles, which would be
21 ethanols -- drinking alcohol -- and any drugs.

22 Q I see.

23 A Any prescriptions or ---

24 Q Can you describe for the jury kind of the
25 process that you used?

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1 A Okay. Once a sample is admitted, we first
2 test for volatiles. In this case it was
3 negative for alcohol. From there we go to a
4 drug screen which is a panel of your common
5 drugs: cocaine, marijuana, amphetamine,
6 methamphetamine, and from there if it screens
7 for anything positive it would go to a
8 confirmation second test just to make sure that
9 what is there is really there.

10 Q Okay. The second test you said is used to
11 confirm?

12 A Right.

13 Q Did you make any findings, in this case?

14 A I did.

15 Q Can you tell the jury about those?

16 A In this case like I stated, it was a
17 negative blood alcohol. On the drug screen it
18 screened positive for benzodiazepines and
19 tetrahydrocannabinols; which we found later to be
20 Lorazepam and a metabolite of marijuana/THC.

21 Q Okay. And just this probably a fairly
22 simple question, but "positive" means it was
23 present in the system.

24 A Right.

25 Q And I believe you said it was a THC

1 metabolyte. Can you tell the jury exactly what
2 that is?

3 A THC is the only active component of
4 marijuana. Once it's inquested it begins to --
5 that's the body's natural thing to do is break
6 it down to get rid of it. The carboxyl THC that
7 I found in this case was inactive but it clearly
8 shows a history of use.

9 Q What does it mean exactly to be inactive?

10 A Non-interfering.

11 Q So is there a timeframe that you can put
12 when the marijuana is ---

13 A Not so much. It really depends on
14 frequency of use. One dose could show up a week
15 later in a test.

16 Q And let's move on. You said Lorazepam?

17 A. Yes.

18 Q Can you tell the jury what that is?

19 A That's in the drug class of
20 benzodiazepines, which are commonly used for
21 anxiety but Lorazepam is normally administered
22 in hospitals for head injuries. What it does is
23 it shows the brain activity to prevent brain
24 swelling.

25 Q So -- and what would the effect of Ativan

1 potentially have on your system?

2 A It's a very simple central nervous system
3 depressant similar to that of alcohol.

4 Q Okay. You said potentially it's either
5 usually prescribed by a medical doctor or
6 administered through an EMT?

7 A Right.

8 Q So what would the combined effects of, say,
9 the inactive metabolite and Ativan have
10 together?

11 A Together the THC would not play a role in
12 impairment.

13 Q Why is that again?

14 A It's inactive.

15 Q Does that mean the person wasn't
16 necessarily under the influence?

17 A Right.

18 Q So Mr. Mack was not under the influence of
19 marijuana?

20 A Correct.

21 Q And in your report it's noted certain
22 levels: therapeutic, toxic. Can you tell us
23 about the levels that you found in this case?
24 Can you tell us about the levels that you found
25 in this case?

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1 A It was .12 micrographs per liter.

2 Q Was that with respect to the Ativan?

3 A Yes. Therapeutic level range from .01 to
4 .24, so that would fall in that range.

5 Q So mid range?

6 A Right.

7 Q It didn't rise really to the toxic levels
8 at all.

9 A No

10 Q Would that have contributed in any way to
11 the cause of death?

12 A No, not if administered by the hospital.

13 Q So for example if a person had been -- I
14 guess this was inactive so not under the
15 influence of marijuana.

16 A True.

17 Q And if the Ativan had been administered by
18 an emergency medical technician, there would be
19 no impairment?

20 A Correct.

21 MS. SIMPSON: Thank you.

22 THE COURT: Cross-examination.

23 CROSS EXAMINATION

24 BY MR. FARLEY:

25 Q Mr. Young, I just have a quick question.

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1 How did you term that the THC from the marijuana
2 is inactive?

3 A Say it again?

4 Q You said the THC was inactive.

5 A Correct.

6 Q I believe you said the THC is the active
7 (sic) ingredient in marijuana.

8 A Correct.

9 Q And I believe in this case you said you
10 determined that it was inactive?

11 A Correct. If you see on the report it's
12 Tetrahydrocannabinol, THC, that's the
13 metabolite. The drug screen we do on the front
14 end only shows class. The tests that we do to
15 confirm are more specific and let's you know
16 parent drug, metabolite. It tells the
17 difference.

18 Q So were you able to determine when he
19 ingested this drug?

20 A No, we can't do that. We can only say
21 what's in the blood at the time of draw.

22 Q So you don't know when he ingested the
23 marijuana?

24 A Correct.

25 Q You just know it was in his system?

1 A Correct.

2 Q Well, how do you know he wasn't under the
3 influence?

4 A Because of the lack of parent THC.

5 Q Because of the lack of parent HTC?

6 A Yes.

7 Q I don't think I follow that exactly.

8 A Parent THC ---

9 Q You'll have to forgive me, I don't have a
10 degree in Chemistry.

11 A That's okay. Parent THC is the only active
12 component of marijuana.

13 A That's the objective competent of the
14 marijuana. As I stated before, once ingested in
15 the system the body begins to break it down to
16 get rid of it and this is one of the
17 metabolites.

18 Q So if you could determine that it was
19 already breaking it down, then how can you
20 determine ---

21 A We can't say when he ingested it.

22 Q Could he have ingested it that morning?

23 A It's possible. It's possible -- but I
24 can't say because parent THC shows -- parent THC
25 shows a fairly recent use, like within the past

1 two to four hours or something. Because there
2 is a lack of it, I really can't say when he did
3 it.

4 Q But if you can't tell when he ingested the
5 drug, isn't it hard to say whether or not he's
6 under the influence or not?

7 A No, because it is not present.

8 MR. FARLEY: Please answer any
9 questions Mr. Chaplin has.

10 CROSS-EXAMINATION:

11 BY MR. CHAPLIN:

12 Q Mr. Young, I however did major in
13 chemistry.

14 A All right.

15 Q All right. Let me ask you a couple of
16 questions. I didn't hear you're speak a whole
17 lot about -- and I didn't ask you about this.
18 When you took your chemistry courses, did you
19 take a a lot Biology?

20 A I think I took one biology course.

21 Q Now, did you ever work on a cadaver while
22 you were at Carolina?

23 A No.

24 Q Okay. Did you ever take familial
25 physiology?

1 A No.

2 Q Okay. So you never had any intention of
3 going back to med school or whatever?

4 A Right.

5 Q So you strictly worked in a lab with
6 chemicals, Bunson burners, and did hocus-pocus
7 stuff, like black magic?

8 A Not hocus-pocus.

9 Q I'm just using slang, but I'm saying you
10 basically worked in a lab?

11 A Right.

12 Q But you're here today testifying as to the
13 impact of drugs on a human body?

14 A Correct.

15 Q And what qualifies you to do that?

16 A My training.

17 Q Okay. I'm sorry. Tell me about that
18 training.

19 A At SLED when we're first hired on, you
20 begin volatile analysis training. That consists
21 of the verbal/oral exams, written exams and
22 different courses -- not courses but teachings
23 from people who have been there for years, years
24 and years.

25 Q Okay. So then it's your testimony that

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1 your training with regards to the impact of
2 drugs on the human system would be on-the-job?

3 A Right.

4 Q Okay. So no really formal training in that
5 area?

6 A Well, I did go to the work assigned school
7 of alcohol. That would be formal. It wasn't be
8 like University of South Carolina.

9 Q Right. So you take like seminars and stuff
10 like that?

11 A Right.

12 Q Of course, but you never took a formal
13 physiology class where you ---

14 A No.

15 Q All right. Let me move on. Now have, you
16 indicated that the victim was a frequent user of
17 marijuana?

18 A No. I said the level -- what's present
19 would be determined by how often he smoked or
20 did not smoke.

21 Q Okay. Can you tell how often he smoked?

22 A No.

23 Q You can't?

24 A (Negative gesture).

25 Q Okay. So he could have been a frequent

1 user?

2 A Right.

3 Q Okay. All right. Now, do you know when
4 this blood sample was taken?

5 A I cannot find in my notes right now.

6 Q All right. So you're not certain?

7 A I am not.

8 Q All right. I can accept that. Are you
9 aware that at some point the victim was given
10 several other medications?

11 A No.

12 Q Okay. Are you aware that he was given a
13 dose of Lidocaine?

14 A No, I'm not.

15 Q All right. What about a dose of Mecora?

16 A No.

17 Q Okay. Well, it's on the report. Would
18 those medications have any impact on the test
19 that you ran?

20 A No.

21 Q Tell me why.

22 A Well, these drug screens are specific for
23 drug classes. If those drugs don't fall within
24 those clarifications and we don't have a history
25 of it, we don't search for it. Protocol for

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1 homicides, drug screen, anything screens
2 positive, you confirm it and that's in the case.

3 Q Okay. So they didn't show up on the
4 screens that you did because you didn't test for
5 those particular ---

6 A Correct.

7 Q I don't mean to say opiates but those
8 particular drug classes?

9 A Correct.

10 Q But you can't say certain that it didn't
11 have an impact on the things that you did test
12 for?

13 A I can't say that it didn't have an impact?

14 Q Yes.

15 A No, I couldn't.

16 Q Okay.

17 Q So you're saying he couldn't have been a
18 frequent user of marijuana, you're not sure if
19 the other medications could have decreased the
20 level of THC that you found.

21 A Those things, that wouldn't have interfered
22 with any drugs that I found. You're saying
23 other drugs that would have affected this, on
24 the report?

25 Q Yes.

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1 A. No, sir.

2 Q Again, I need you to explain it to me --
3 tell me why?

4 A Each drug has -- breaks down to different,
5 uh, on the different instruments that we use. So
6 pretty much each drug has a fingerprint.

7 Q Right.

8 A So what is here is here. It wouldn't be
9 affected by any other drug.

10 Q Okay. And you're basing that on your
11 on-the-job training?

12 A Correct.

13 Q At SLED?

14 A Correct.

15 Q All right. No further questions.

16 MS. SIMPSON: Nothing further, Your
17 Honor.

18 THE COURT: All right. You may come
19 down.

20 (WITNESS STEPS DOWN)

21 THE COURT: May this witness be
22 excused?

23 MR. FARLEY: No objection, Your Honor.

24 THE COURT: Without objection.

25 MR. CHAPLIN: No objection.

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1 MS. SIMPSON: The State calls Kevin
2 Thomas.

3 (WITNESS TAKES STAND)

4 KEVIN THOMAS, being duly sworn to tell
5 the truth, the whole truth and nothing but the
6 truth, testified, as follows:

7 DIRECT EXAMINATION

8 BY MS. SIMPSON:

9 Q Good morning Mr. Thomas.

10 A Good morning.

11 Q You were actually here with us earlier in
12 the week, correct?

13 A I was, yes.

14 Q Can you remind the jury about what you do
15 and your role in this case?

16 A At the time of this case I was an emergency
17 medical technician based with Richland County
18 EMS, responsible for providing basic life support
19 care in a prehospital setting.

20 Q And you actually responded to a call in
21 this case regarding a Kenneth Mack, correct?

22 A Correct.

23 Q The victim?

24 A (No verbal response).

25 Q And when you responded, I believe you said

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1 you also responded with a partner?

2 A Correct, he was a paramedic.

3 Q What is your primary goal when responding
4 to any scene as a first responder?

5 A Primary goal is to initiate life saving
6 measures, if necessary, and transport them to
7 the hospital.

8 Q Is collection of evidence up there in your
9 goals?

10 A Negative. Correction, no.

11 Q And would you have collected blood in this
12 case?

13 A No, we don't collect blood.

14 Q No EMT collected blood in this case?

15 A No.

16 Q All right. And let me talk to you a little
17 bit about -- the victim in this case was
18 posturing at the time?

19 A Correct.

20 Q Would Ativan have been administered?

21 A If he was exhibiting signs of a seizure,
22 which our standing protocol is when we
23 administer Ativan, if he was seizing.

24 Q In this case he was actually was showing
25 seizure activity. Correct?

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1 A During my time with him he was posturing.
2 Now, between what happened once we got him in
3 the back of the truck, I got in the front of the
4 truck and drove. I don't know what happened
5 between the time we got him in the back and got
6 him to the hospital.

7 Q So your partner would have been the one
8 actually to administer the Ativan?

9 A Correct.

10 MS. SIMPSON: Thank you.

11 THE COURT: Cross-examination.

12 MR. FARLEY: Just a quick question.

13 CROSS EXAMINATION

14 BY MR. FARLEY:

15 Q So do you have any knowledge of whether
16 Ativan was administered?

17 A During the transport, I do not know whether
18 it was given or not. I was not in the back with
19 the patient.

20 Q Do you have any knowledge of whether your
21 partner did so?

22 A I don't know if he did or not.

23 Q Okay.

24 A I mean, I can read the report and whatever
25 the report says, I can verify, but as far as

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1 actually seeing him give it.

2 Q But actually as far as your testimony today
3 you can't really testify to anything regarding
4 Ativan?

5 A I was not present so, no, I can't.

6 MR. FARLEY: Thank you.

7 MR. CHAPLIN: No questions for
8 Mr. Thomas.

9 MS. SIMPSON: Beg the Court's
10 indulgence. No further questions?

11 THE COURT: All right. All right,
12 sir. You may come down. Thank you very much.

13 (WITNESS STEPS DOWN)

14 THE COURT: May this witness be
15 excused?

16 MR. FARLEY: No objection, Your Honor.

17 MR. CHAPLIN: No objection.

18 THE COURT: Yes, ma'am, next witness.

19 MS. CAMPBELL: One more witness.

20 That's all.

21 THE COURT: Go ahead.

22 MS. CAMPBELL: One more.

23 THE COURT: Go ahead.

24 MS. CAMPBELL: State would call

25 Sergeant Peagram.

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1 (WITNESS TAKES STAND)

2 WILLIAM PEGRAM, being duly sworn to
3 tell the truth, the whole truth and nothing but
4 the truth, testified, as follows:

5 DIRECT EXAMINATION

6 BY MS. CAMPBELL:

7 Q You're already under oath, Sergeant Pegram,
8 this is already prepared so we're limited to two
9 different areas we're going to talk about.

10 A Okay.

11 Q In this case did you attend the autopsy of
12 Kenneth Mack?

13 A I did.

14 Q Was clothing collected at the autopsy?

15 Q Which is -- did much of that clothing have
16 blood on it and therefore was a biohazard?

17 A Yes.

18 Q However you actually saw the clothing
19 yourself?

20 A I did.

21 Q Can you describe to the jury what clothing
22 was found on -- was taken from the victim at the
23 autopsy?

24 A He was wearing gray sweat pants.

25 Q Actually accompanied the autopsy. He

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1 wasn't wearing them at that time. I don't want
2 to mislead.

3 A Yes.

4 Q Okay.

5 A He was wearing gray sweat pants, a royal
6 blue shirt, a black jacket and I believe he was
7 wearing tennis shoes.

8 Q I want to show you a list from the autopsy
9 that actually illustrates, he had on a couple of
10 layers of clothing?

11 A He did.

12 Q Which it was actually snowing that day?

13 A It was snowing.

14 Q Is that a list of what was the collected at
15 the autopsy?

16 A It is what was collected and bagged. It
17 was a black jacket, a green shirt, two black
18 shirts, a barber's jacket, two pairs of sweat
19 pants, dark blue and dark gray, socks, black
20 shoes.

21 Q Does it mention any blue jean jacket or
22 blue jean clothing?

23 A No, it does not.

24 Q The only other area I want to ask you about
25 is, you participated in the interview of Robin

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1 Reese, I believe on February 14th.

2 A I did.

3 Q That was when she brought her daughter
4 down, as well?

5 A That's right.

6 Q At the that point, you mentioned earlier,
7 you didn't advise her of her rights?

8 A Right.

9 Q Why?

10 A She wasn't a suspect at that time.

11 Q At that point, what information or any
12 information do you have about anything with the
13 chair?

14 A The only thing as of the 14th was the
15 anonymous tip coming into the telephone resposne
16 unit, TRU. That information only provided the
17 name of Mr. Gray and that he used a chair. At
18 that point we had not located the chair or
19 Mr. Gray.

20 Q At any point in your interaction, I believe
21 you assisted Investigator Sumpter in
22 interviewing her that day?

23 A Correct.

24 Q Did she ever intention to you or tell you
25 about her being involved in an assault on this

1 victim with a chair?

2 A No, she did not.

3 Q At any point did you tell her you didn't
4 want to talk to her about her assault on the
5 victim?

6 A No, I did not.

7 Q In fact, would that have been crucial to
8 your investigation.

9 A Yes it would have been crucial.

10 Q Had she related that information, what
11 would you have done?

12 A Well, she would have been indicated on that
13 point. We would have stopped and treated her as
14 a suspectg.

15 Q That day was she ever treated as a suspect
16 in this case?

17 A No, she was not.

18 Q Was she free to go home?

19 A Yes.

20 Q And did she?

21 A Yes.

22 Q The victim in this case, approximately how
23 tall husband was he?

24 A He was 5'8", 165 pounds.

25 Q Thank you.

1 CROSS EXAMINATION

2 BY MR. FARLEY:

3 Q Investigator, you testified yesterday that
4 you're used to interviewing people in Gonzales
5 Gardens; is that correct.

6 A I'm accustomed to interviewing people in
7 general.

8 Q But you've had lot of dealings with
9 Gonzales Gardens?

10 A Yes.

11 Q Is that correct?

12 A Yes.

13 Q At the time Ms. Robin Reese came in for her
14 statement, you wanted to investigate more about
15 Marcellius Brooks?

16 A Yeah, what I wanted to investigated was the
17 truth about the incident to determine what
18 happened.

19 Q But you testified a moment ago that
20 Marcellius Brooks had come up as a person of
21 interest?

22 A Yes.

23 Q And you want to learn more about that
24 occurrence was, and that's what you asked about;
25 correct?

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1 A Yes, that was one of the things.

2 Q And you didn't ask about anything else?

3 A At that point, we had no knowledge about
4 the second assault.

5 Q But having no knowledge, you had no reason
6 to ask about anything else; correct?

7 A Well, generally we ask to tell us from
8 beginning to end what happened.

9 Q All right.

10 A And that's where we develop our
11 information.

12 Q In regards to Marcellius Brooks?

13 A No, in regards to the overall incident.
14 Marcellius Brooks was just one part of the
15 interview.

16 Q But wasn't that your main point of
17 interest?

18 A He was one point of interest.

19 Q That's what you asked Ms. Reese about?

20 A I asked Ms. Reese about the incident and
21 Marcellius Brooks.

22 Q I understand.

23 Q And in your dealings with Gonzales Gardens,
24 are you accustomed to many of the folks from
25 there just providing all kinds of information

1 unrelated to the questions you're asking?

2 A In this case, we had people come forward.

3 I don't really understand your question.

4 Q Well, I guess what I'm asking you, if
5 you're asking people specific questions and they
6 don't know to go beyond the scope of those
7 questions, is that something you're accustomed
8 to, is having them go far beyond the scope and
9 tell you more information than you require?

10 A Well, that's hard to answer. I mean, it
11 depends on the person and what they tell us.

12 Q Right. And the other way, too. It's hard
13 for those people to know exactly what you
14 require?

15 A Well, I don't think it would be that
16 difficult. I mean, you come in and you're
17 requested to describe an event from beginning to
18 end. They describe the event from beginning to
19 be.

20 Q And as related to ---

21 A And some people are deceptive and they
22 fail to give the second part or all of the
23 information.

24 Q But if you're asking for information
25 related to Marcellius Brooks, Bloom, a person of

1 interest at the time, ---

2 A That is a specific question.

3 Q Right.

4 A And that was done in this case among other
5 things.

6 Q I'm just reviewing her statement. I'm sure
7 you remember it. That's pretty much what she is
8 speaking about, is his ---

9 A. That is all she is speaking about.

10 Q The incident with Marcellius Brooks?

11 A That's correct.

12 Q Thank you.

13 A Yes, sir.

14 CROSS EXAMINATION

15 BY MR. CHAPLIN:

16 Q Investigator Pegram, you're the lead
17 investigator for this entire case?

18 A Yes.

19 Q How long have you been in law enforcement?

20 A Twenty-nine years.

21 Q So how often have you testified in front of
22 of a jury?

23 A I have no idea.

24 A Sure, I mean, hundreds of times.

25 Q Hundreds of times, okay. So you're pretty

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1 experienced at doing that?

2 A I would say, (affirmative nod).

3 Q Okay. While most of the witnesses were
4 sequestered, you sat here through the entire
5 trial; did you not?

6 A I did.

7 Q Okay. And you testified last, correct?

8 A Yes.

9 Q Okay. No further questions?

10 THE COURT: Anything further?

11 MS. CAMPBELL: No, sir.

12 THE COURT: You may come down, sir.

13 WITNESS: Thank you.

14 (WITNESS STEPS DOWN)

15 THE COURT: Next witness.

16 MS. CAMPBELL: Your Honor, that's all.

17 THE COURT: All right. Ladies and
18 Gentlemen, that will conclude the evidence in
19 this case, the remaining portion of the trial
20 will consist of the final arguments of
21 counsel and my charge to you on the law of the
22 the State of South Carolina, after which the
23 case will be turned over to you for
24 deliberation.

25 I'm going to give the attorneys just a

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1 few minutes to prepare their closing arguments.
2 I'm sure they are already prepared but maybe
3 they need a short bathroom break or something,
4 so we'll take a morning break at this time and
5 we'll -- it's not going to be a long break, so -
6 - we need to keep moving. Please retire to the
7 jury room. Don't discuss the case among
8 yourselves while you're in the jury room.

9 (JURY OUT @ 10:54 a.m.)

10 THE COURT: All right. Counsel, the
11 only thing I think left to discuss is the --
12 whether or not to give an involuntary
13 manslaughter charge.

14 I told you in chambers I will give the
15 voluntary manslaughter charge.

16 So let me -- Mr. Farrell (sic) or Mr.
17 Chapman, tell me what is involuntary about this
18 death/killing when your client says she didn't
19 do anything to kill him. I guess I need to
20 address this to Mr. Farrell, since Mr. Chaplin's
21 client has not testified.

22 MR. FARLEY: Your Honor, with all due
23 respect, it is Farley.

24 THE COURT: What did I say?

25 MR. FARLEY: Farrell.

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1 THE COURT: Will you call Dave
2 Farrell, tell him I'm going to start calling him
3 Mr. Farley.

4 MR. FARLEY: I apologize, Your Honor.
5 Your Honor, I would just say that we believe
6 Ms. Reese does deserve a charge of involuntary
7 manslaughter given the facts that have been put
8 forth by the witnesses in this case. We believe
9 she has done nothing that could have led to the
10 intentional death of the victim in this case.

11 THE COURT: We are not talking about
12 the intentional.

13 MR. FARLEY: Yes, sir.

14 THE COURT: We're talking about -- I
15 hate to use the word "accident", but it's very
16 similar to an accident.

17 MR. FARLEY: Well, again, Your
18 Honor, I think that's exactly the case. As far
19 as the actions of Ms. Reese, ---

20 THE COURT: She doesn't even admit that
21 she did anything to kill him.

22 MR. FARLEY: That's correct. So if
23 death is the end result, I think that has to be
24 considered involuntary manslaughter. She did
25 nothing to facilitate the death given the facts

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1 that she was involved with.

2 THE COURT: But there has to be a
3 killing. For involuntary manslaughter, there
4 has to be a killing, first, and then there has
5 to be an unlawful act, not intending to cause
6 death or great bodily harm.

7 If I assume that the unlawful act that
8 she admits is throwing the chair, she says it
9 didn't hit him. She says it didn't kill him.

10 Now, if she had said on the stand 'I
11 threw a chair, but I didn't mean to hit him but
12 it hit him and killed him', then I've got the
13 link between the killing and her act. But she
14 says none of that happened. She says she got
15 age angry and threw a chair that did not hit
16 him, so there's no killing as a result of
17 actions, involuntary actions. There has to be
18 both. There has to be a killing and it has to
19 be done involuntarily.

20 It's the shooting of an unintended
21 victim a mile away that the bullet comes down
22 and kills somebody.

23 But she doesn't admit the killing. She
24 admits an unlawful act but there's no killing.
25 It's got to be both to warrant an involuntary

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1 manslaughter charge.

2 MR. FARLEY: I understand.

3 THE COURT: If I look at the
4 testimony in the light most favorable to her and
5 if the jury believes everything she said,
6 there's still not an involuntary killing because
7 she doesn't admit to killing.

8 She says she didn't meant to kill him.
9 She says that if something killed him, it was
10 not me. So it's not to be a not guilty or
11 involuntary or voluntary or murder. So ---

12 MR. FARLEY: I understand, Your Honor.

13 THE COURT: That's the way I read the
14 case law.

15 MR. FARLEY: I understand, Your Honor.
16 Thank you.

17 THE COURT: All right. I respectfully
18 deny your request to charge involuntary because
19 there's been no involuntary killing. There's
20 been a -- all right.

21 MR. CHAPLIN: Your Honor.

22 THE COURT: Yes.

23 MR. CHAPLIN: I, too, made some
24 additional charges, requests for charges, if you
25 would please deny those on the record, I would

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1 appreciate it.

2 THE COURT: Well, I don't deny your --
3 I have a stack of papers here. I'm don't deny -
4 - I grant your Motion for voluntary
5 manslaughter.

6 MR. CHAPLIN: Thank you.

7 THE COURT: I deny you Motion for
8 involuntary manslaughter for the same reason.
9 (A), you're client didn't even testify about
10 anything.

11 MR. CHAPLIN: Yes.

12 THE COURT: He can't -- I can't tell
13 the jury that he involuntarily killed somebody
14 when they have no evidence.

15 MR. CHAPLIN: I understand.

16 THE COURT: And secondly, I don't
17 think the defense of others applies in this
18 case. I'd certain give reasonable doubt and
19 proximate cause.

20 MR. CHAPLIN: Thank you very much.

21 THE COURT: From the State?

22 MS. CAMPBELL: Nothing, Your Honor.
23 Could I possibly get a copy of your hand of one
24 is the hand of all charge, just because I want
25 to make sure I don't miss anything. The one I

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1 handed up was erroneous. I didn't mean to hand
2 that one up.

3 THE COURT: It's printing right now.

4 MS. CAMPBELL: Thank you, sir.

5 THE COURT: Just for timing purposes,
6 do you plan to open on the law?

7 MS. CAMPBELL: Yes, sir.

8 THE COURT: I'd like to put some sort
9 of arbitrary time limits on this. How much time
10 do you need, Mr. Farley?

11 MR. FARLEY: I wouldn't take more than
12 twenty, twenty-five minutes.

13 THE COURT: Thirty minutes?

14 MR. FARLEY: Yes, sir.

15 THE COURT: Mr. Chaplin?

16 MR. CHAPLIN: Well, Your Honor, I would
17 say thirty to forty-five minutes.

18 THE COURT: I'm going to tweak you at
19 thirty minutes. I won't sit you down but I'll
20 remind you that you're -- and that would have to
21 apply to your closing, your final argument.

22 MS. CAMPBELL: Final argument, yes,
23 sir.

24 THE COURT: All right.

25 MR. CHAPLIN: So how long will she have

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1 to argue the two?

2 THE COURT: She's got to open on the
3 law, which shouldn't be more than ten or
4 fifteen; then thirty minutes, an hour.

5 MS. CAMPBELL: Yes, sir.

6 THE COURT: Got it. I won't be too
7 strict about it.

8 MR. CHAPLIN: Considering how the State
9 had four days, and we had one.

10 THE COURT: Well, if you have other
11 evidence you wish to produce, I mean, I'm not
12 restricting you from producing evidence.

13 MR. CHAPLIN: I understand, sir. I
14 would just like a little leeway on the closing,
15 that's all.

16 THE COURT: I'll give to it you.

17 MR. CHAPLIN: Thank you, sir.

18 THE COURT: But don't try me.

19 MR. CHAPLIN: I'm not and I feel you.

20 Okay.

21 (BRIEF RECESS)

22 (DEFENDANTS PRESENT)

23 THE COURT: Is the State ready to
24 proceed?

25 MS. CAMPBELL: Ready.

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1 THE COURT: Is the defense ready?

2 MR. CHAPLIN: Ready, Your Honor.

3 THE COURT: Bring in the jury.

4 (JURY IN @ 11:14 a.m.)

5 BAILIFF: Your Honor, the jury is
6 present.

7 THE COURT: Thank you very much.

8 Ms. Campbell, you may begin with your closing
9 remarks.

10 MS. CAMPBELL: May it please the Court.

11 Good morning. First thing I want to do on
12 behalf of the State of South Carolina, of the
13 citizens of Richland County and on behalf of the
14 family of the victim in this case is to thank
15 you for your service. I know when you showed up
16 on Monday morning, you may have tried to
17 anticipate what type of case. I'm sure you
18 didn't anticipate anything such as this case.

19 As the testimony has unraveled, it has
20 been graphic, it has been ugly. I apologize for
21 that, but we don't make the facts. Each of
22 you've paid attention carefully in this disputed
23 case about what happened back on February 13th.

24 Now, I am going to have an opportunity
25 to talk to you a little bit now about the law in

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1 the case. Then you're going to hear from the
2 two defense attorneys. Then Ms. Sampson, my
3 co-counsel, is going to get up here and talk to
4 you a little bit about the facts as we find the
5 facts, as we think the credible evidence shows
6 the facts and what they would be.

7 Remember, ladies and gentlemen, our
8 duty is to render justice. We bring forth all
9 the facts, the good, the bad and the ugly
10 because you must have the right to make your
11 decision based on credible evidence.

12 Now as I am talking about the law, if I
13 say anything different because ultimately the
14 judge is going to charge you on the law. If I
15 say anything different from what the judge
16 charges you, you take it right from what he
17 tells you. It is my intentional on my part.

18 I am going to discuss some of the
19 concepts, because there are multiple indictments
20 in this case and multiple charges all arising
21 out of a series of events that happened back on
22 February 13th. In that same vein, if either
23 side mischaracterize the facts when we are
24 talking to you, you remember them because that
25 is your role.

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1 The roles in this courtrooms are very
2 specifically designed. They are definite. The
3 role of the prosecution to bring forth all the
4 relevant evidence to help you make a addition as
5 to the guilt or innocence of these defendants.
6 The defendants' role is very simple, to defend
7 the client to the best of their ability. The
8 judge's roll is to determine what's admissible,
9 what's not admissible as the evidence that comes
10 before you and ultimately charge you on what the
11 law is that you must apply to the facts as you
12 find them.

13 Ladies and Gentlemen, nobody is going
14 to get up here and say that the most important
15 role in this courtroom is not yours. It is
16 yours. Each of individually and collectively
17 once you get back in that jury room. You
18 combine and weigh the credible, believability
19 evidence in this case and determine who is
20 responsible for the death of Kenneth Mack.

21 Now, you have heard all the evidence
22 from which you can base your verdict. What is
23 the evidence? The evidence is the sworn
24 testimony by witnesses and the exhibits that
25 will go with you, the ones that were admitted,

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1 back into that jury room. It's not innuendo,
2 conjecture, speculation or just plain wishful
3 thinking on anybody's part. It's the credible
4 or believable evidence.

5 I am to apologize if through the course
6 of this we have done anything to offend you in
7 any way. At times our questions has been
8 inartful, probably clumsy in ways. You heard
9 about testimony that wasn't admissible, was
10 admissible. It's been convoluted. You've been
11 very patient in dealing with all our clumsiness
12 -- videos that didn't play properly, we may have
13 put in supplements and things of that nature.
14 Please, please don't hold that against the State
15 or against the victim's family in this case.

16 Now, criminal cases are somewhat
17 unique. In a criminal case a defendant, as he
18 should, has an absolute right to confront each
19 and every witness against him. That is his
20 Constitutional right, as it should be. In this
21 case, you have heard references to many, many
22 statements, many, many reports, be it autopsy,
23 toxicology, whatever. You have heard about
24 other witnesses at the scene. As you have seen,
25 you don't have those reports. The only

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1 statement that was actually admissible was a
2 prior inconsistent statement by Ms. Chase.
3 Remember, she changed her testimony? It's only
4 admissible in certain ways. The reason the
5 statements aren't entered for your consideration
6 is there are no depositions read you or video
7 depositions that were read to you. The reason
8 for that is very simple. You as a jury in
9 criminal cases have a right to judge each and
10 every witness that comes before you, to judge
11 their credibility. We don't just admit an
12 autopsy report. You have a right to hear from
13 the pathologist, to judge his credibility, to
14 see what's brought up on cross-examination that
15 would make him more credible or less credible.
16 So that is the reason for that.

17 In that same manner, you've also heard
18 references to some witness that is haven't
19 appeared before you. There comes a point that's
20 called cumulative evidence. We can only put up
21 so many people to say the same thing over and
22 over and over. You heard from the witnesses as
23 to the assault that occurred in this case that
24 could identify the person and/or had something
25 to contribute. Were there were more people out

1 there that we could find or couldn't find? You
2 also heard about witnesses that we couldn't
3 find. We have brought forth all the relevant
4 evidence sufficient and you have heard from
5 every eyewitness that came to the police and
6 observed anything that happened down there
7 between buildings F and G on that date. But the
8 reason you heard about other police officers
9 being at the scene and things like that, is but
10 you may not have heard from them is because we
11 can't simply bring people in to say the same
12 thing over and over and over. At some point it
13 becomes cumulative and we can't do it.

14 Now, the burden of proof is on the
15 State of South Carolina to prove this
16 defendant's guilt beyond a reasonable doubt, and
17 I submit, ladies and gentlemen, in this case, in
18 this courtroom, perhaps more than any other that
19 is a burden the State welcomes based on this
20 evidence. Proof beyond a reasonable doubt.

21 Now, the judge will tell you'll and he will
22 instruct you what that means. It's a legal
23 term. What is proof beyond a reasonable doubt.
24 The law doesn't require that the State prove the
25 defendant's guilt beyond all doubt, just beyond

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1 a reasonable doubt.

2 The simplest way to define that, ladies
3 and gentlemen, what is reasonable doubt? It's
4 the kind of doubt that would make a reasonable
5 person hesitate to act. But in our state, we
6 have adopted some language that may help you and
7 the judge will charge you about this. As far as
8 defining what is reasonable doubt, very simply a
9 case in our state -- this is how our courts have
10 defined proof beyond a reasonable doubt. Proof
11 beyond a reasonable doubt is proof that leaves
12 you firmly convinced of the defendant's guilt.
13 There are very few things in this world that we
14 know beyond every possible doubt.

15 If based on your consideration of the
16 evidence you are firmly convinced that the
17 defendant is guilty of the crime charged, you
18 must find him Guilty.

19 If on the other hand you think there is
20 a real possibility that he is not guilty, you
21 must give him the benefit of the doubt and find
22 him Not Guilty.

23 Proof that leaves you firmly convinced
24 of the defendant's guilt. Even in criminal
25 cases, the law recognizes that we don't have to

1 overcome every possible doubt but just that
2 proof which leaves you firmly convinced. That
3 may help you as you listen to the judge, in
4 guiding you to what is actual reasonable doubt.

5 Now, in this case both of these
6 defendants are before you and you are here today
7 to determine the elements of the crime,
8 determine whether or not these defendants are
9 responsible. That is the extent.

10 However, there will be many other areas
11 that the judge will explain to you: the hand of
12 one is the hand of all; proximate cause;
13 different things like that that play because of
14 the unique facts in this case. Obviously this
15 has come up before, because there are legal
16 standards which define and help you in
17 determining whether or not these two defendants
18 individually are guilty of, number one, murder
19 and, number two, lynching in the first degree.
20 Those are the two indictments.

21 Now, in certain cases if certain facts
22 apply, the judge will also charge -- in most
23 cases, actually -- as to lesser-included
24 offenses that is could or could not apply, for
25 you to consider.

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1 Lynching in the first degree, there is
2 no lesser offense you're going to have to
3 consider.

4 However, in murder a lesser-included
5 offense is voluntary manslaughter. The judge
6 will charge you that if you find that the State
7 has not met the elements of murder, which I
8 submit we have, however I'll get back to that,
9 then you can consider whether or not these two
10 defendants are guilty of voluntary manslaughter.

11 Let's consider them separately, but
12 those are the choice.

13 Very simply, ladies and gentlemen,
14 murder is probably the most heinous crime we
15 have and has probably the shortest definition in
16 our Code of Laws. Very simply, Murder is the
17 killing of any person with malice aforethought
18 either expressed or inferred.

19 Very simply what do those terms of art
20 mean? Malice aforethought, either expressed or
21 inferred? Very simply, ladies and gentlemen, I
22 want to talk to you about the term "malice" and
23 about the "aforethought", as far as those go.

24 Murder is the killing of another. Now
25 you will hear -- listen if you will, you hear

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1 the Judge tell you that at no point there had to
2 be premeditation. Although, I submit in this
3 case that we have that.

4 At no time as you listen to the Judge's
5 charge will he talk about how we have to prove a
6 motive, although I think that was fairly obvious
7 in this case as well.

8 Those are not elements of the crime
9 that we must prove. It doesn't mean that Robin
10 Reese or Henry Gray had to decide weeks
11 beforehand, days beforehand, even minutes
12 beforehand, to go and commit the assault that
13 ultimately led to the death. Basically we have
14 to prove that just before and at the time of the
15 act, and I will get back to that, that Henry
16 Gray and Robin Reese had malice in their heart.

17 What does the term "malice" mean? The
18 simple definition which I think of, and which is
19 always helpful to me, is the word "malicious."
20 Were their act malicious? Because malice is the
21 basis of that word. Very simple, Ladies and
22 Gentlemen, it doesn't get much more malicious
23 than this. As Ms. Simpson told you in her
24 opening, this case reeks of malice.

25 The judge will charge you that malice

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1 does not necessarily impart ill will towards the
2 individual injured. In this case, it does. But
3 it signifies, rather, a general malignant
4 recklessness of the lives and safety of others,
5 or a condition of mind that sounds a heart
6 regardless of social duty and fatally bent on
7 mischief.

8 Now, the defense may get up here -- and
9 you've got to understand that what was perceived
10 by Robin Reese as to what happened to her child,
11 -- whether or not this victim should have been
12 messing with her child is not a consideration.
13 Whether or not she acted upon that belief and
14 had a sufficient cooling down period, I'll get
15 back to, but basically when considering whether
16 or not malice was present -- it's not
17 necessarily ill will towards but a heart devoid
18 of social duty and fatally bent on mischief.
19 There is no doubt that on this date that Henry
20 Gray and Robin Reese, for whatever reason, were
21 going to make a point. They did. It cost this
22 victim his life.

23 Malice is a term of art that imparts
24 wickedness. Nobody is going to get up here and
25 say that they had the right to do what they did.

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1 I submit that they won't. No one will get up
2 here and say that no matter what information was
3 relayed to you, that anyone has a right to then
4 go and beat someone to death. It excludes just
5 cause for legal excuse. It is something that
6 brings wickedness with a depraved spirit, a
7 heart devoid of social duty and fatally bent on
8 mischief. It can denote hostility and ill will
9 towards another but not necessary towards the
10 specific injured. It is the intentional doing
11 of a wrongful act without just cause or excuse
12 and with the intent to inflict an injury under
13 the circumstances.

14 Listen carefully, too. This isn't a
15 self-defense case. The judge will not instruct
16 you on the elements of self-defense. Nobody is
17 going to say that.

18 And nobody was going to say that it was
19 an accident. Clearly the acts that day were
20 intentional. That excludes accident. The judge
21 will not instruct you on that law either.

22 What he will instruct you on is murder
23 and voluntary manslaughter. I submit, ladies
24 and gentlemen, that is the issue in this case.

25 Now, as I mentioned earlier, does

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1 malice have to be in the heart of the person --
2 premeditation is not an element. We don't even
3 have to prove motive, although I submit that we
4 did. Malice aforethought does not require that
5 malice exists for any particular time before the
6 act is committed, but malice must exist in the
7 defendant just before and at the time that the
8 act was committed. Therefore, there must be a
9 combination of the previous evil intent and the
10 act. It doesn't have to have be for a long
11 time, it can happen for merely a second. Malice
12 may exist for any appreciable period of time
13 before the act of killing occurs. Malice may be
14 conceived the very moment the fatal blow is
15 struck.

16 I submit, ladies and gentlemen, if this
17 case doesn't have malice, what case does?

18 Now, if you find that these -- that the
19 State has not met their burden and that these
20 two defendants, individually, were not acting
21 with malice, then you may consider the charge of
22 voluntary manslaughter. It is a lesser included
23 charge of murder. The Judge will explain these
24 terms to you.

25 Voluntary manslaughter is the unlawful

1 killing of a human being in the sudden heat of
2 passion upon sufficient legal provocation.

3 Remember, the killing of another in the
4 sudden heat of passion with sufficient legal
5 provocation. There is nobody in this courtroom
6 who can get up here and say that Robin Reese
7 wasn't angry that day, and that she had a right
8 to be angry that day based on the information
9 that was relayed to her. We're the ones that
10 brought that information to you, because you
11 have a right -- and should always want to get
12 the accurate, total picture, the credible
13 picture about what happened that day. We wanted
14 to make sure that you knew about the first
15 assault. Nobody sugarcoated this victim and
16 what he did that day. Did he think she was
17 older? It doesn't matter. His acts were wrong,
18 but his acts do not justify murder.

19 There are laws in this country for a
20 reason. There are police out there for a
21 reason. Vigilantism, revenge are not okay.
22 Understandable to some degree, the want to do
23 it, but you don't go out and hunt down a man and
24 beat him like a wild dog.

25 Killing another in the sudden heat of

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1 passion upon sufficient legal provocation.
2 Listen carefully because it doesn't mean -- is
3 there sufficient legal provocation here? Was
4 Robin Reese legally provoked? Possibly. Did
5 she have enough time to compose herself? She
6 finished playing her video game. Was she that
7 provoked or was she just going to make things
8 right on her own terms because that's how they
9 do it.

10 The judge will tell you, be he will
11 define those terms, "sufficient legal
12 provocation" and "heat of passion."

13 By the way, one alone -- say just legal
14 provocation -- doesn't automatically reduce a
15 murder to manslaughter. There also has to be a
16 cooling down period. If there is a sufficient
17 cooling down period, no matter how provoked a
18 person is, then they are still guilty of murder
19 if a reasonable person would not have so acted.

20 The judge will tell you also that words
21 alone, however bold and insulting, are not
22 enough to be legal provocation. In other words,
23 just because someone walks up to another person
24 and starts yelling obscenities and insulting
25 their mother, that alone will not reduce murder

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1 to manslaughter.

2 The Judge will also instruct you that
3 if the heat of passion is cooled, or if there
4 was enough time between the provocation -- and
5 the provocation would be the time period when
6 she found out about what happened and then she
7 finishes her video game, then she chooses to
8 walk down the street and at that point starts
9 making phone calls, if any, then the killing,
10 the passion of a reasonable person to cool, the
11 killing would not be voluntary manslaughter. It
12 would be murder. So in other words, in order to
13 find that it's reduced from murder to voluntary
14 manslaughter, you must find that there was legal
15 provocation and that there was not a sufficient
16 time for murder.

17 An example of legal provocation, and
18 this is just one example and the Judge may give
19 you other examples, is if someone is in a pool
20 hall and someone walks up, picks up a pool stick
21 and hits a person over the head with -- even
22 though it doesn't rise to the level of self-
23 defense, because it can't kill them -- and then
24 the person reaches in their pocket and, before
25 they can think, they stab the person and it

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1 causes their death, that would reduce that
2 murder to manslaughter. It was not a sufficient
3 cooling off period and he was legally provoked.
4 That's just one example, and the Judge may give
5 you others.

6 So when you go back there and are
7 considering the two charges against these
8 defendants for murder, you'll have three choice:

9 Whether they are guilty of murder.

10 Or if you don't that the State has met
11 their burden, then whether they're guilty of
12 voluntary manslaughter.

13 I submit, Ladies and Gentlemen, that
14 the defense will get up here and argue that
15 their only -- that they are only guilty of
16 voluntary manslaughter, the lesser-included.

17 As we ask is that you look at the total
18 picture, the total timeframe, and if they have
19 sufficient time to cool off. Did they have an
20 alternative to their choice of how they chose to
21 handle their perception of what happened that
22 day? Murder or manslaughter?

23 Now, the second charge, which is
24 totally separate, even though it's based --
25 there are different elements and that's why we

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1 have two charges before you. The second charge
2 is lynching in the first degree.

3 Basically, Ladies and Gentlemen, any
4 act of violence inflicted upon the body of
5 another person shall which results in the death
6 of that person shall constitute the crime of
7 lynching in the first degree. It's antiquated
8 language but basically it is the intent of
9 inflicting violence upon another.

10 In this case, nobody is going to get up
11 here and dispute that violence caused the death
12 of someone. That is a crime in our state.
13 This is a totally separate indictment from what
14 you find on the murder charge.

15 The Judge will then define what is a
16 "mob" for purposes of your consideration. Under
17 our laws, a mob is defined as two or more
18 persons, without color or authority of law, with
19 premeditated intent of committing an act of
20 violence upon the person of another, whether it
21 be an act of violence that causes harm or an act
22 of violence that causes death, such as in this
23 case.

24 What is the premeditated purposes?
25 Ladies and gentlemen, I submit in this case it's

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1 somewhat simple. Either you believe Robin
2 Reese's version of events, which is not
3 supported by any of the eyewitnesses, by any of
4 the evidence, by the DNA, by the phone records
5 or the videotapes even, which would make her not
6 guilty or she went there for the premeditated
7 purpose -- even in her own testimony, she said
8 she went looking for him. She tried to say it
9 wasn't for revenge, that she just wanted to look
10 for him. Even in that part of her testimony she
11 admits premeditation.

12 To constitute a mob, the assemblage
13 need not have formed for the purpose to commit
14 an act of violence but rather the purpose and
15 intent may be formed after all the parties are
16 assembled. That's very important when I get to
17 another theory of law in just a second, that
18 kind of ties all of this together.

19 As you see in this case, the law is
20 very important. The reason that you were able
21 to consider this charge is because of something
22 called "the hand of one is the hand of all",
23 as well has the lynching charges in this state.

24 Finally, as I mentioned in the first
25 degree, without color of law, it is permissible

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1 to infer that all persons present when an act of
2 violence is committed have aided and abetted in
3 the crime and are guilty as principals.

4 Listen carefully to the Judge. We
5 don't have to prove, either to the murder or the
6 lynching charge, who actually inflicted the
7 fatal blow, at what moment. You can consider
8 all their acts. If they are together -- and I
9 will get back to that -- or if they are aiding
10 and abetting, even if they aren't together, in
11 the act that ultimately caused his death, then
12 all are guilty. It's under the adage of the
13 hand of one is the hand of all.

14 The judge is going to give you a fairly
15 lengthy definition of that. It's very
16 important. Listen carefully to that.

17 Mere presence at a scene is not enough
18 to constitute guilt. For it to be the hand of
19 one is the hand of all, you must be guilty as --
20 and we've heard these terms "principal", an
21 actual player or an actual instigator for it to
22 rise to the level of the hand of one is the hand
23 of all. I don't know how, and I could be wrong,
24 that anyone is going to get up here and say, or
25 maybe they will, that Henry Gray and Robin Reese

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1 weren't acting together that day. The hand of
2 one is the hand of all. If a crime is committed
3 by two or more experience who are acting
4 together in the commission of an offense, the
5 act of one is the act of both or all.

6 By way of illustration, two people can
7 be guilty of the killing of another, or murder,
8 when only one of two had a pistol and there was
9 only one bullet. If both are together, acting
10 together, assisting each other in the commission
11 of the offense, the law says that under those
12 circumstances the act of one is the act; and, as
13 it is sometimes said, the hand of one is the
14 hand of all.

15 A very simple version of it. Two
16 people band together, they walk up and commit a
17 robbery -- say a grocery store or convenience
18 store. One of them is going to be the lookout.
19 The other one has the gun. It's loaded. Even
20 if the person who is acting as the lookout --
21 and he's way out in the parking lot just making
22 sure the police don't come -- even if he tells
23 the other, "do not shoot anyone when you go in
24 there" because they are together and acting
25 together committing an offense, under the law

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1 they are both guilty. When the shooter goes in,
2 shoots the clerk dead. The lookout under our
3 law is just as guilty as the person who actually
4 gives the fatal blow.

5 In this case, you have heard there were
6 multiple blows struck by people that date. You
7 have heard from all of them and you have heard
8 from experts, and I'll get back to the known
9 cause of death. It doesn't matter. Even under
10 their theory of the case, both Henry Gray and
11 Robin Reese are guilty on both of these offenses
12 under the hand of one is the hand of all.

13 Now, whether or not being present at a
14 crime, in order for it to be the hand of one is
15 the hand of all there's got to be some showing
16 of some overt act: the phone call by Robin
17 Reese, the fact have she got down there has
18 quickly as possible. Remember, too, about how
19 Henry Gray came out, was fine with Kenneth Mack
20 who he seemed to know by all accounts, they all
21 agree, and then all the sudden he got that phone
22 call and things changed. "I'm going to take you
23 down to where my sister is."

24 Remember this victim's last words, "If
25 you're going to do anything to me, you're going

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1 to do it to me here. I'm not going back down
2 there." Those were the last words this victim
3 ever said.

4 Does that show hand of one is the hand
5 of all? To be present in order for the hand of
6 one is the hand of all at the commission it is
7 sufficient to aid, abet and assist in the
8 commission of the crime. Just because Robin
9 Reese didn't get there right at the very moment,
10 she was still present, aiding -- and set up the
11 whole thing. But for Robin Reese, Henry Gray
12 doesn't do this. I don't know under what theory
13 they're going to argue that, to say she is not
14 guilty as a principal.

15 The Judge will also charge you that in
16 order to show the crime of murder that we must
17 also show that there was a proximate cause.
18 It's called the "but for." You have heard from
19 experts. You believe which experts you believe,
20 which ones were credible because three experts
21 credible and one, (negative gesture).

22 Very simply it's kind of a "but for."
23 But for the second assault, Kenneth Mack does
24 not die. He was beaten. He was hurt, but he
25 does not die. We don't have to prove which

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1 actual blow, be it a beating with a chair, be it
2 when he fell on the ground or be it was swept
3 off his feet and -- or when he fell on his head.
4 We don't have to prove that, although I submit
5 we have, but we do have to prove that there was
6 a proximate cause between the second beating and
7 this two involved. I submit, ladies and
8 gentlemen, there should be no doubt as to common
9 sense.

10 The first one, he gets up, moves and he
11 walks away. He is coherent. He's able to talk.
12 Somebody puts him stumbling a little, some put
13 him not quiet steady. But he walked all the way
14 down on his own, that's undisputed, to get to
15 the other end, four buildings down. Then he's
16 able to have conversations.

17 Your common sense alone. He goes down.
18 He never has a voluntary movement again.
19 He's posturing, signs of an acute head injury.
20 That alone -- but you don't have to rely on that
21 alone because you have credible experts, the
22 ones from South Carolina, who were able to come
23 in here and who thoroughly examined and made
24 sure they came to the right conclusions and they
25 testified before you that because but for that

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1 second assault, Kenneth Mack does not die.

2 The fatal blow occurred during the second
3 assault.

4 What's reasonable? We can't say which
5 blow actually did it. Did the chair do it? Did
6 the fall to the ground caused by Henry Gray do
7 it? Does it matter? No, under the law, the
8 hand of one is the hand of all. Both were
9 there. Robin Reese was a couple seconds late
10 getting there but she got there and she got the
11 blows there. We have don't have to prove they
12 had a specific intent to kill. Listen carefully
13 to the Judge. All we have to prove is what they
14 did caused the death and that they were acting
15 maliciously. I submit, ladies and gentlemen, no
16 one is going to get up here and argue that
17 beating someone -- be it with your hands, fists,
18 anything is not malicious, especially when he
19 dies.

20 The acts of two or more persons may
21 combine or concur together as an efficient or
22 proximate cause of the death of a persons.
23 The defendants' actions may be regarded as
24 proximate cause if it is a contributing cause.
25 It doesn't have to be the sole cause. It

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1 doesn't have to be anything. Robin Reese's
2 telephone call alone, getting her riled brother
3 up, that was a cause; but for that phone call,
4 nobody dies. The defendant's act may not be the
5 sole cause of the death providing it's a
6 proximate cause actually contributing to the
7 death of the deceased. One who inflicts an
8 injury on another is deemed by law to be guilty
9 of homicide if the injury concerted immediately
10 causes or leads to the death of the deceased.
11 The fact that other causes also contribute to
12 the death of the deceased does not relieve a
13 defendant's responsibility.

14 This is some of the law the Judge is
15 going to charge you. As you probably
16 understand, the law in this case is very
17 important and understandable.

18 Again, on the two indictments for
19 murder, you'll have three choices:

20 Is he guilty of murder?

21 Is he guilty of voluntary manslaughter?

22 Or, is he not guilty?

23 I submit, ladies and gentlemen, they
24 will get up here and they will tell you that
25 wasn't really a murder. It's only voluntary

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1 manslaughter. All we ask that is that you look
2 at all the facts in this case as a whole
3 together. There was a sufficient cooling off
4 period if she was legally provoked. There were
5 other alternatives than beating him. Henry Gray
6 was going to grab him and take him up there, so
7 she could beat him. That is malice.

8 Now, the Judge will also instruct you
9 there were two kinds of evidence you can
10 consider in this case, direct evidence and
11 circumstantial evidence.

12 Direct evidence is that kind of
13 eyewitnesses who corroborate each other. In
14 cases, as you probably understood, different
15 people have different angles. They saw
16 different things. That's what makes them
17 credible. They came up here and told you what
18 they observed. I submit to you, ladies and
19 gentlemen, when considering that -- consider
20 Mary Anderson. She is the one person in this
21 chase that had absolutely nothing to do with
22 this case. She was the only one who actually
23 didn't live out there that night. She was just
24 visiting her sister. She was so appalled by the
25 beating she saw -- and she didn't even see the

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1 initial takedown -- that she came forward
2 voluntarily to police, independent of the others
3 and everything else. I beg you to judge her.

4 Circumstantial evidence is not better
5 or worse than direct/eyewitness evidence, which
6 is typically considered the most reliable.
7 However it does help in this case but you have.
8 Circumstantial evidence is a series of facts or
9 events that take place which show or infer
10 another fact, such as the DNA evidence in this
11 case. It's "circumstantial" that this defendant
12 was hit with the chair, because DNA as we have
13 heard does not float through the air. It has to
14 be transferred it. It's down there on the
15 bottom, where it would have been hitting him.
16 They want to tell you that it is transferred
17 from handshake to handshake, whatever. That is
18 circumstantial evidence.

19 An example that some judges use, and I
20 don't know if this judge will, is basically
21 saying I go to bed tonight, I look out my window
22 and I only see dew on the ground, on the grass.
23 When I wake up in the morning and look outside,
24 I see that there that there's snow as far as you
25 can see. That is circumstantial evidence,

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1 reliable circumstantial evidence, that it snowed
2 during the night. The defense may get up here
3 and say, 'Oh no, somebody decided to play a joke
4 on you, went to North Carolina and brought in a
5 snow blower and blew snow all around you for
6 twelve hours to trick you.' That's not
7 reasonable.

8 Court reporter is evidence which points
9 to the existence of facts. Very simply,
10 however, it doesn't matter because the judge
11 will tell you that you don't weigh one more than
12 the other, direct more than verdict.

13 In this case, taken together they
14 totally corroborate each other. Circumstantial
15 evidence: telephone calls, which we have gone
16 back and forth about, whichever one you want to
17 believe. I think she finally admitted making
18 the phone call. That's circumstantial evidence
19 of the phone call that precipitated all of this.
20 The phone records give us that information.

21 In this case, circumstantial evidence
22 totally corroborated the directed verdict that's
23 been presented for you.

24 I'll trying to finish up.

25 Criminal intent. In every case the

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1 State must prove the defendants had criminal
2 intent. Nobody is going to argue that they
3 weren't having criminal intent that day. It's a
4 state of mind of the defendant. While we can't
5 take a person's brain and dissect to determine
6 what they were thinking at the time they did
7 this to a medical certainty, the law does
8 understand that you can look at that facts and
9 circumstances surrounding an event, as it's been
10 presented to you, in determining whether or not
11 there was criminal intent.

12 Ladies and Gentlemen, by her own
13 admission there was criminal intent.

14 Now, you also heard from a number of
15 witnesses which are, because of certain
16 training, can be qualified as expert witnesses.
17 Judge them the same way you do any other.

18 Expert witnesses are allowed to come
19 before you because they have certain training
20 and can testify to opinions. Normal witnesses
21 like me, I'm not an expert or anything but they
22 can come before you and testify as to an opinion
23 in their expertise and I submit, Ladies and
24 Gentlemen, that when you consider the credible
25 expert testimony in this case there is no issue

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1 as to cause of death.

2 Finally, credibility. This case boils
3 down to it, credibility, believability of the
4 witnesses, who had something to gain, who had
5 something to lose? Were they biased or
6 prejudiced? You can consider all of a witness's
7 testimony, none of a witness's testimony or part
8 of a witness's testimony. It is totally up to
9 you, because the most important role in this
10 courtroom is yours.

11 What was their demeanor like?

12 Was their testimony corroborate by the
13 other witnesses?

14 Was it corroborated by their own prior
15 statements?

16 You heard from Kara Chase. She has
17 become affiliated with the family. She got up
18 here and she tried to help out her friend. That
19 is perhaps understandable, but you have her
20 credibility testimony. That's the only
21 statement that's admitted, from when she gave a
22 prior statement that was inconsistent, when she
23 didn't have those prejudices involved. What's
24 more important was her testimony corroborated by
25 what the other eyewitnesses observed.

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1 Ladies and Gentlemen, in this case we
2 are lucky because certain witnesses did come
3 forward. They did the right thing.

4 Robin Reese even admits she went down
5 there. She may minimize her involvement, as
6 every defendant that would testify may do.

7 Marcellius Brooks, by gosh, just because
8 the State puts up Marcellius Brooks doesn't mean
9 that we believe every word he says. What he
10 does is he sets up the whole chain of events.
11 That's why you heard from him.

12 You heard from Sergeant Pegram. She
13 minimized his involvement since day one. He has
14 his own day in court.

15 Credibility, believability. You can
16 believe one against many, many against one. I
17 submit, Ladies and Gentlemen, that when you look
18 at all the evidence in this case the only
19 credible evidence shows you exactly what Robin
20 Reese and Henry Gray did back on February 13th
21 on 2010 when they the law into their own hands.
22 No matter what Mr. Mack did or didn't do, that
23 wasn't their right. That wasn't the right
24 choice. There were other avenues, other choices
25 that they could have had.

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1 All the State asks is that you consider
2 the facts as you determine them, apply the law
3 and that you come to a verdict that speaks the
4 truth for the citizens in this county.

5 Hold them responsible for their
6 choices. They had options. They made their
7 choices and Kenneth Mack doesn't get another
8 choice or another option. Thank you.

9 THE COURT: Mr. Farley.

10 MR. FARLEY: Thank you, Your Honor.
11 May it please the Court.

12 MS. CAMPBELL: Do you want me to move
13 that?

14 MR. FARLEY: If you don't mind. Can
15 you, please?

16 MS. CAMPBELL: (Complies).

17 MR. FARLEY: Thank you. Ladies and
18 Gentlemen of the jury, it's been a long week.
19 We've seen a lot of testimony, had a lot of
20 people come up to talk to us. I want to start
21 by thanking you also for your service. I'm sure
22 you didn't anticipate when you arrived on Monday
23 that you were going to be such a long haul nor
24 such a rollercoaster of emotion. We had a very
25 interesting trial and a very lengthy trial, so I

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1 want to thank you for coming here and doing your
2 civic duty.

3 I'd like to remind you, too, that my
4 name is Andrew Farley. I'm an attorney here in
5 Columbia and also Lexington. I'm here on behalf
6 of Ms. Robin Reese. I am here to represent her
7 today here in court. In my opening statement, I
8 told you to please listen to all the witnesses,
9 to please consider all the evidence that we're
10 going to have in this case that was brought
11 forward. I'm sure you did so.

12 I also asked you to look at any
13 discrepancy, any holes, any problems with their
14 chase may come forward. I submit to you I think
15 there's been many.

16 I don't believe that the prosecution
17 has been able to prove their case. They've been
18 unable to prove that Ms. Robin Reese is guilty
19 of lynching in the first degree or guilty of
20 murder beyond a reasonable doubt.

21 Now, what did the evidence show us?

22 I mean, what happened in this case?

23 I mean, we've heard from a lot of
24 witnesses who told us Melquanna S
25 Lucy, was going home. She was "harassed", to

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1 use the words of some witnesses, "assaulted" is
2 another word, "bothered", I think, by
3 Mr. Kenneth Mack.

4 Certainly I think that was inappropriate. I
5 don't think anyone would disagree with that.
6 Melquanna was thirteen (13), Mr. Mack at the
7 time was thirty-nine (39).

8 After that he -- she slapped him,
9 certainly. He tackled her to the ground, and
10 then we had Mr. Bloom who felt that he had to
11 intervene and knocked Mr. Mack off of her.
12 He took her to her mother. Her mother,
13 certainly, I think any mother would be agitated,
14 upset, angry that this happened. She took her
15 daughter back home and she told you, she
16 certainly wanted to go find Mr. Mack. She
17 didn't intend to kill Mr. Mack. She didn't
18 intend to lynch Mr. Mack, not to murder
19 Mr. Mack. She just wanted to tell Mr. Mack to
20 not ever bother her child again. I don't think
21 that's unusual. I don't think that's
22 unreasonable. I think that's what a lot of
23 mothers would do.

24 I'd also like to talk about and
25 highlight some of the witnesses that we did see

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1 in this case, and there were a lot of witnesses.
2 We had many, many people come up and testify. I
3 don't mean to go through all of them, but I
4 would like to highlight some, and I'm going to
5 do it out of order. Please forgive me.

6 Officer Gillian, he came up and
7 testified. He came up to testify about the
8 chair. He told you that just with the naked eye
9 you couldn't even see blood on the chair and it
10 took three different tests to find any blood.
11 The last test, this BlueStar test, some sort of
12 protein activation test, you heard from another
13 witness -- Ms. Unger, I believe, who worked for
14 SLED -- said that could come from common
15 surfaces. She is also the one that did the DNA
16 analysis.

17 I'd also like to remind you that
18 Investigator Pegram, he also testified. He
19 testified -- but in his testimony, he kind of
20 seems to wander. He wants it both ways. He
21 wants to have you understand that there's a lot
22 of problems in Gonzales Gardens. It's difficult
23 to get statements out of the Gonzales Gardens,
24 it's hard to believe anyone in Gonzales Gardens,
25 but that everyone in this case is believable and

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1 every statement in this case is credible. It's
2 just ordinarily they're not, but 'we have
3 everything in this case.' I think you can
4 certainly question that.

5 I would also point out that
6 Investigator Pegram also testified that Henry
7 Gray was in between F and G buildings, said
8 something to Mr. Mack and then received a phone
9 call and then became upset with Mr. Mack.

10 Later in the same testimony he wants
11 you to understand that Mr. Mack was at F and G,
12 said something to the victim, ran up to
13 Ms. Reese's apartment in the N building, took a
14 phone call from her phone line. I don't know
15 how he figured that the call coming in. That he
16 then ran back down here.

17 Then in another part of his testimony
18 he wanted you to understand he got a call on his
19 cell phone.

20 So that, in and of itself, is
21 contradictory.

22 I'd also like to bring up two of the
23 witnesses that did say they see the incident at
24 F and G building, Donetti Perry. You can
25 certainly judge the credibility of Miss Perry.

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1 She was here on the witness stand. came to say
2 what she was going to say, but once she had said
3 what she observed she couldn't elaborate. She
4 couldn't give you any more details. When
5 pressed, she was unsure of how far away, what
6 her angle of vision was, what exactly the
7 distance. I think that credibility in itself
8 could be called into question.

9 Mary Anderson, another witness. She
10 came to testify as to what she saw. Also could
11 not tell you how far away she was, and that at
12 one point she said she was twenty-five feet
13 away, at another point she said she was one foot
14 away. She also testified that the entire time
15 she was wearing reading glasses, which I think
16 would be very difficult to see something that's
17 happening twenty-five feet away. If she were
18 only one foot away, I think it would be even
19 more difficult.

20 We also heard from Little Ricky or
21 Angelo Boyd. He also testified to the fact that
22 Melquanna S was also assaulted. He was
23 there. He saw it. He corroborated the
24 testimony of Lucy and Marcellius Brooks. Just to
25 remind you, he said she was saying "please

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1 stop", screaming, upset and that Mr. Mack didn't
2 stop.

3 We heard from Lucy. Lucy testified to
4 the same thing. She asked him to quit, said
5 "leave me alone." He grabbed her by the jacket
6 and she slapped him. That's when he took her to
7 the ground.

8 You heard from Marcellius Brooks.
9 Marcellius Brooks came here today to tell you
10 that in his observation he felt he needed to
11 intervene in what was going on. It was that
12 serious and that when he did so, his kindness
13 got repaid with the charge of murder.

14 Then finally we heard from Ms. Reese.
15 Ms. Reese wanted to tell you what her story was,
16 and I'd like to address a few things.

17 She told you not that she kept making
18 her video games. She was done with her games.
19 She was ready to take her child back to her
20 hours where she would be safe.

21 It's not as if she just calmly had a
22 cooling off period, she wanted to get her child
23 to where she would be safe.

24 You also heard her testify she called
25 several people. I submit to you, I don't think

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1 about. This case is not really about lynching
2 or murder. This case is really about a mother
3 and a mother's concern for her daughter. That's
4 what we really have to consider today. That's
5 what really is the motivation behind this case.

6 And, Ladies and Gentlemen, you can use
7 common sense and apply that common sense with
8 facts of this case. I believe in applying that
9 common sense to this case, you will arrive at
10 the correct conclusion. The case against
11 Ms. Reese has been elevated to a point where it
12 just doesn't deserve. This case does not
13 warrant the charges that have been brought
14 against Ms. Reese.

15 I mean, you heard her testify that she
16 wanted to find Mr. Mack, but common sense should
17 tell you she didn't want to go find him for
18 revenge. She wasn't going to find him to kill
19 him. She just went to tell him "leave my child
20 alone." You heard her try to tell the truth to
21 you. She tried to kick him. She missed. She
22 fell. She slapped him. In her anger when she
23 pulled away, she grabbed a chair and flung it in
24 the general direction. That's a far cry from
25 trying to kill someone. That's just anger

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1 expended.

2 This case has got these incredible
3 charges heaped upon it when it does not deserve
4 it. I would submit to you that these charges
5 simply are not appropriate. And as the
6 solicitor pointed out to you, they require
7 malice aforethought. They require planning. It
8 really requires intent to get together, to want
9 to do this. My point to you is no one in this
10 wanted to kill. Robin Reese did not want to
11 kill or lynch or murder anyone. She just wanted
12 to go tell someone "leave my baby along."

13 You know, maybe the right thing to do
14 would have been to call the police. Maybe
15 that's what should have been done, in hindsight.
16 But as Investigator Pegram pointed out, Gonzales
17 Gardens is a pretty rough place and we don't
18 have -- or we have the luxury of not living in
19 Gonzales Gardens, Ms. Reese does not. This is
20 reasonable doubt.

21 Just one final thing I would tell you,
22 that I think it's a natural reaction to want to
23 protect your children. It's a natural reaction
24 when you find out or when you think your child
25 is hurt or upset or assaulted to want to try to

1 protect them further, to try to warn away the
2 danger, to try to prevent it from ever occurring
3 again and that's what Ms. Reese tried to do.
4 She just tried to warn away the danger and tell
5 this man "don't ever come around my child
6 again."

7 I'd like to remind you, too, that all
8 the witnesses, the ones that you may think are
9 credible or not, all of them said she was there
10 less than five minutes. She came in and was
11 gone almost immediately.

12 Now have, Judge Cooper is going to
13 instruct you on the law and you should listen
14 very closely to what he's going to say, because
15 he is going to tell you about something the
16 solicitor has already brought up -- it's very,
17 very important. That's why we all cover it.
18 That's the burden of proof in this case.
19 Beyond a reasonable doubt.

20 Beyond a reasonable doubt means that a
21 reasonable person might hesitate, a reasonable
22 person might say, 'I'm not certain. I don't
23 know.' It's okay not to know, it's okay to have
24 reasonable doubt. What we have in this case is
25 reasonable doubt because the State simply cannot

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1 prove in this case that Ms. Reese wanted to
2 lynch and murder Kenneth Mack.

3 When you deliberate back in the jury
4 panel, I want you to remember that this case is
5 really about a mother and daughter, and that's
6 the essential part of this case. That's what
7 started this whole thing and I would want you to
8 think about the reasonable doubt and I want you
9 to think about what the prosecution has been
10 able to bring to the table. What I want you to
11 do, what we're asking you to do is to return
12 Ms. Reese to her home, return Ms. Reese to her
13 family and her friends. Importantly, return
14 Ms. Reese to Lucy. And I want you to return the
15 verdict that justice requires.

16 The only verdict that you can reach
17 when you look at all the evidence and all the
18 witnesses in this case and that's a verdict of
19 not guilty. The charge of the murder of Kenneth
20 Mack and the charge of lynching in the first
21 degree of Kenneth Mack, Not Guilty, because
22 Robin Reese is not guilty of these charges.
23 Thank you.

24 THE COURT: Mr. Chaplin.

25 MR. CHAPLIN: Thank you very much, Your

1 Honor. Good afternoon ladies and gentlemen of
2 the jury.

3 Ladies and gentlemen, we've been here
4 for five days and for five days this chair has
5 sat in front of you. I'm going to bring it a
6 little closer (moving chair) -- because you see
7 what's been sitting in this chair for the past
8 five days has been reasonable doubt.

9 Reasonable doubt, there can be no doubt
10 that would affect a reasonable person's belief.
11 There must be no doubt that Henry Gray is
12 guilty. There must be no dispute that any
13 reasonable alternative is possible. The State
14 must prove every element of the charged offense
15 beyond a reasonable doubt. There must be no
16 doubt that would cause a reasonable person to
17 hesitate and the State must leave you firmly
18 convinced that Henry Gray is guilty.

19 I suggest to you ladies and gentlemen
20 that that is not the case here.

21 I'm going to leave this right here.
22 I'm sorry it's a little small.

23 So -- to you reasonable people, let's
24 talk about the evidence in this case, and let's
25 just review the reasonable doubt. First and

1 foremost, let's talk about the issues with the
2 marijuana and the Ativan. If that was such a
3 nonissue for the State, why didn't they bring it
4 up to you? Why did we bring that to your
5 attention?

6 The State would have you believe that
7 there's basically no problems with that and
8 everything is fine. When I asked the gentlemen
9 could there be any effect on Mr. Mack with
10 regards to mixing those two ingredients, clearly
11 it was stated no. Yet when I asked him about
12 his knowledge base on that particular issue, he
13 said he didn't really have any knowledge on that
14 so he couldn't really form an opinion, very
15 confusing. But when we got up there, we
16 explained it to you in much greater detail.

17 Now, labels on the autopsy photos.
18 You're going to see those photos when you go
19 back in the room. What you're going to find is
20 that there are no labels, so you're just going
21 to have to take their word for it that it is
22 what they've told you that it is.

23 They have told you over and over that
24 the victim was beaten with this chair but yet
25 none of them have been able to find blood, and I

1 mean, they are saying 'well, maybe there was a
2 trace amount or something like'; but, come on,
3 you take a chair and you beat somebody with it,
4 why isn't there blood all over this chair? Why
5 isn't this chair bent? Why is this chair still
6 usable? Now, you heard somebody say that they
7 found some DNA on the chair. Well, why did they
8 have to go to and resort to DNA? Why couldn't
9 they just bring you a blood match? Because there
10 is none. So they had to go to the next best
11 thing, which was DNA.

12 But then I suggest to you that you also
13 heard testimony that the victim was in this area
14 leaning on something or whatever the case might
15 be. I don't know. I wasn't there, but his DNA
16 allegedly is on the bottom of this chair. That
17 doesn't make any sense to me, but at the same
18 rate, if I took that at what they're saying and
19 I have no reason to think they would fabricate
20 that, it still doesn't pass the sniff test. I
21 expect that chair would be covered in blood,
22 skin, tissue whatever that case may be and it's
23 just not there.

24 The doctor talked to you about a lucid
25 interval. Now, the reports say that when the

1 gentleman -- when the victim got up, he was
2 lucid. The State argues, 'Well, that's not a
3 lucid interval. That just means that he was
4 lucid.' Well, you interpret it however you like
5 but what the State would like you to believe is
6 when the victim got up from the first attack, he
7 was lucid.

8 Then you heard a very credible
9 forensics pathologist tell you that it is
10 possible to sustain a horrific beating in one
11 location and then things go on in your head,
12 swelling, bleeding, whatever the case may be
13 that would cause you to pass out and collapse in
14 a different location. You heard medical
15 testimony on that issue, but yet what the State
16 wants you to believe is that whatever occurred
17 in that the first attack did not occur. It did
18 not have any impact on the victim and that it
19 definitely had to be the second attack that
20 killed him. They have brought in people
21 after -- numerous witnesses try to bolster that
22 particular testimony. Again, it does not
23 necessarily make sense. Why? Because Amber
24 Hardy, Isaac Weathers, Kiki Burns, all of them
25 testified contrary to that and they told that

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1 man did not just pop up and walk away, that he
2 definitely was impaired as a result of that
3 horrific -- and what did Amber call it, brutal
4 attack at the top.

5 I'm going to say like Attorney Farley
6 said, it's common sense here. What about all of
7 the different people that the State can't find
8 that have not been arrested in this case? Come
9 on. It's been two years since this family has
10 lost their loved one, and yet the State has
11 brought this case to trial, and there's still
12 Juve, Trigger, Genesis and whoever else, all
13 those little hooded people that were beating the
14 brakes off of this man at the top and they don't
15 know where they are. Yet they want you to
16 believe and have confidence in the fact that
17 they have sufficiently investigated this case
18 and that you can trust their evidence and that
19 it's beyond a reasonable doubt. I tell you,
20 that dog don't hunt.

21 Now, proximate cause, that's a kind of
22 fancy term but I'm just going to break it down
23 to this: in order for you to believe that the
24 victim's injuries and what he sustained at the
25 top of the hill did not cause his death, and,

1 you know, I think the State is going to get up
2 here and argue a "but more" type of argument,
3 but let's just stick with what I'm saying. In
4 order for you to say that, you would have to
5 believe what Marcellius Brooks told you, and I
6 suggest that's a very dangerous thing to do;
7 because even the lead investigator, Pegram, and
8 even the lead prosecutor in this case has told
9 you that Marcellius Brooks is a liar, that he is
10 deceptive, but yet the majority of their
11 investigation is based on what he has said.

12 They weren't there. They don't know if the
13 man popped up or if he stumbled or whatever.
14 All they can go by is the evidence. Clearly
15 they don't believe Amber Hardy, Isaac Weathers
16 or Kiki Burns. They believe Marcellius Brooks.
17 Marcellius said all he did was do a slap and a
18 kick. You've heard numerous people come in here
19 and say that's clearly not true, but in order
20 for all of their analysts to be that "but for"
21 the second attack, you would have to believe the
22 slap and the kick theory. I suggest to you
23 again that does not pass the sniff test either.

24 You heard numerous people talk to you
25 about kicks, stomps to this man's head. And

1 where did it occur? They told you about the
2 top, where Marcellius Brooks and his band of
3 thugs, his mob attacked this man.

4 Now, you also heard people tell you
5 that, 'well, I think there's been some testimony
6 that Mr. Gray swept his feet from under him and
7 he fell back.' I know that you all were paying
8 attention when you heard all the doctors say all
9 the injuries to the victim's head were on the
10 side. I think you also paid attention when
11 Donetti Perry said it occurred in the middle and
12 she said the middle is grass. I know you heard
13 the rebuttal witness that came in here this
14 morning, I can't remember his name right now,
15 and he clearly said 'yes, ma'am it had to happen
16 on concrete.' Then when I asked him, 'Are you
17 telling me that your testimony is that it had to
18 happen on concrete? Yes.' Then the state
19 popped up and said, 'Well could it be concrete
20 or a hard surface?' Because you see, they
21 realized there was something wrong with that
22 testimony. Donneti Perry said the man did not
23 fall on concrete.

24 Now, it would be nice if you knew more
25 about that crime scene, but guess what, all

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1 these pictures with the snow on the ground and
2 all the rulers on the ground and things like
3 that, that's not even of the area between F and
4 G. You can throw those in the garbage. That's
5 not even the crime scene in this particular
6 case. It's not even relevant, but I tell you
7 what is, they did find blood up there and they
8 did find missing earrings and buttons and all
9 this other good stuff so something definitely
10 happened up top that was definitely more than a
11 kick and a slap. And they're going to send
12 those pictures back with you in the jury room.
13 I suggest that you don't throw them in the
14 garbage but you look at them because what that
15 cause is it tells you is really what happened up
16 there when Marcellius and his boys beat the
17 brakes off the victim in this particular case.

18 Now, Brooks testified, and he said
19 these were his witnesses. You know, I'm sitting
20 here and I've been looking at this file for like
21 the last four months. I'm convinced at this
22 point the only person that really investigated
23 this case is Marcellius Brooks. Marcellius
24 Brooks is the one that came to the police and
25 said, 'Oh, no, no, no. There was another

1 *attack.'*

2 *Oh, really? Well, we're looking kind of*
3 *foolish right now. Tell me about that.*

4 *See, it happened that the bottom.*

5 *Tell me about that.*

6 *Well, do you got any witnesses?*

7 Then he sends his witnesses in to tell
8 the police about the attack that he told them
9 about. Who are his witnesses? Mary Anderson
10 Donetti Perry, Kara Chase. Now, when they came
11 in, and all of them came in on the 16th of
12 February, 2010. None of them were under oath.
13 Now, I don't know why they all showed up
14 together, and I'm not trying to say anything bad
15 about these ladies. All I'm telling you is they
16 all got in the car or whatever the case may be.
17 They all ended up in the police department at
18 the same time. They all gave statements.

19 But let me tell you, when Donetti Perry
20 and Kara Chase got here to the courtroom this
21 week, their stories were different. And you
22 know why, because they had to look that the man
23 and raise their hand and they had to go under
24 oath. They said, *'no way I'm going to get hit*
25 *with a zero-to-five perjury charge for trying to*

1 *help somebody like Marcellius Brooks, who in all*
2 *counts is going to walk. I am not going to do*
3 *that.*

4 They got on that stand and what did
5 they do? They told the truth. That's the only
6 time that these people were under oath. The
7 other times I'm not sure why they did what they
8 did or how they did it or if they were
9 influenced or whatever. I'm not going to stand
10 up here and tell you things that aren't in
11 evidence. All I'm telling you is that something
12 happened. I do know that when they got in here,
13 they had a great deal to say and it was
14 inconsistent and they were under oath.

15 Now, it's up to you to determine how
16 reliable those statements are, and that's your
17 job. You're going to take in the back with you,
18 you're going to take a statement from Kara Chase
19 a couple of them. I just want you to keep in
20 mind that in none of those statements was Kara
21 Chase under oath. The only time that Kara Chase
22 swore on the Bible -- and you heard what
23 Marcellius Brooks said, he said, '*Yeah, I was*
24 *lying but not on the Bible.'* The only time
25 Kara Chase was under oath was when she sat on

1 that stand and she told you all what she
2 remembered occurring occurred on the 13th of
3 February on that day.

4 You're going to also notice that there
5 was snow and ice on the ground when you look at
6 these pictures. I don't think the fact they got
7 the wrong location matters because I think there
8 was snow everywhere. I tried to draw you a
9 diagram of the different attacks. They keep
10 tell you that there were one attack -- rather
11 two attacks. I don't know that. I heard that
12 at one point there was a man on top of a girl.
13 I heard at one point there was a man that pushed
14 him off the girl. I heard at one point somebody
15 kicked the man in the head. Then I heard this
16 morning that the man tried to run and then he
17 fell. Then I heard again a group of guys, four
18 or six guys, chased the man. So a whole lot of
19 stuff happened up there. It's even not sure
20 what all occurred, but I tell you one thing, it
21 had an impact on this case.

22 As much as the State needs to rely on
23 therapy theory that whatever happened up there
24 was just minimal, I'm just telling you that is
25 not true. See, this case is getting old and the

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1 State needs to convict somebody for this crime.
2 There's a death and there's a family here, which
3 I have a great deal of respect for and I feel
4 sorry for them -- I'm sorry that they have to go
5 through this. But I am here to defend Henry
6 Gray. The State needs to close this case and
7 people are becoming impatient.

8 Now, I'm telling you I think you
9 deserve a little better. If you're going to be
10 asked to come in here and spend your week and
11 review evidence, to make a determination about
12 two people's lives, I think you also have an
13 expectation to expect that the evidence that
14 they bring to you would not be riddled with
15 errors and have gapping holes in it and require
16 that the State bring in investigators to impeach
17 their own witnesses that are supposed to be
18 telling you what occurred and not have to, after
19 the end of the case, bring in three or four
20 other people as rebuttal witness to say clean up
21 stuff that was not done appropriately and that's
22 what you've seen here in this particular case.
23 The State is not sure who to charge in this
24 case, so they just -- basically they charged
25 everyone. I take that back, not everyone, the

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1 ones that they say they could find.

2 Now, you also heard in testimony that
3 somebody saw Brooks go into a building down
4 there at the bottom when the cops came around.
5 That an officer went to the door and that by the
6 time he went to the door, Brooks disappeared.
7 Things that make you go, *'Humm, why was that?*
8 *What was he doing down there?*

9 You heard a lot about phone numbers,
10 and they want you to convict somebody based on a
11 phone number. You don't have any audio. You
12 don't know what was said. They're trying to
13 connect some lines and times. If he said this
14 is what occurred or whatever the case might be,
15 all mere speculation, it's mere speculation.

16 You need evidence. You're not going to
17 go back in there and say, *'Well I have a*
18 *suspicion.'* No. You're going to go back there
19 and say, *'I think they have proven beyond a*
20 *reasonable doubt that certain things occurred.'*

21 I told you earlier the names that the
22 police got to support the theory that my client
23 swept somebody's feet from under them and that
24 the other lady beat him with a chair, those
25 names came from the man sitting in jail charged

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1 with murder trying to get off that charge;
2 thinking that maybe if he provided a
3 distraction, maybe he could get a simple
4 assault. So basically, if the State believed
5 his witnesses, then maybe he would get a walk.

6 Beg the Court's indulgence.

7 Now, during this trial, the witnesses
8 were sequestered. That's another reason why I
9 think when they came in here, they had to tell
10 the truth. You see, they didn't get a chance
11 to, like they did when they went down to the
12 police department, sit around in the lobby or
13 whatever they did and talk about this thing.
14 They were sequestered. They don't know what the
15 other person said, they couldn't track it, so
16 they came in here and told the truth.

17 Well, stop and talk a minute about Mary
18 Anderson, who they say corroborated all of the
19 evidence of the other people. Mary Anderson
20 said that she didn't even write the report.
21 Mary Anderson said that when she came out that
22 the man was on the ground.

23 Now, I asked the officer that took the
24 report, and I said, 'Can Mary Anderson read?'
25 He said, *I don't know*. Well, I would have

1 expected that he would have said, 'Yes, she can
2 because I gave her the report, I told her to
3 review it and after she reviews it, to sign it.'

4 What did he tell me? 'I have no clue.' so
5 basically, I don't know who wrote that. I don't
6 know who wrote it.

7 Donetti Perry said when she went there,
8 the man was lying on the ground.

9 The EMS report that came in here said,
10 there were three men and one woman involved in
11 the matter. I don't know what case that is.

12 Now, my client is charged with murder
13 and he's charged with lynching. Well, first of
14 all, to charge him with murder you have to
15 believe beyond a reasonable doubt that Henry
16 Gray killed Mr. Mack. Then you also have to
17 believe that it was done with malice and that
18 the State has proven that beyond a reasonable
19 doubt. I suggest that's not the case.

20 Then he's also charged with lynching
21 and that's generally done by an angry mob.
22 Well, I suggest to you, Ladies and Gentlemen,
23 the only angry mob I heard about in this
24 particular case has been the people up there at
25 the top with Marcellius Brooks and all the guys

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1 in hoods.

2 So again look for the solid evidence in
3 this case and, please, please do not rely on
4 mere suspicious.

5 The hand of one is the hand of all.
6 You heard the prosecutor say just a second ago,
7 she said that the case is based on that theory.
8 But then she also turned around and said
9 Marcellius Brooks' acts do not meet the level of
10 murder. I'm going to ask you this, why is he
11 charged with murder if that's the case? That's
12 how confusing this whole case is.

13 I'm about to wrap this up. And I'll
14 say this, it took the State eighteen months in
15 this particular case to charge my client with
16 this murder.

17 The State doesn't know. The State is
18 confused on this whole thing. They basically
19 have charged everyone and what they've done is
20 they've brought you this evidence that's full of
21 reasonable doubt. That is reasonable doubt.
22 They've said, *'You figure it out. It's in your*
23 *hands. We don't know.'*

24 If they're so convinced that Marcellius
25 Brooks didn't committed murder, then why haven't

1 they dismissed his charges?

2 Why did it take them eighteen months to
3 charge my client?

4 Why are there so many problems with the
5 investigation?

6 I'm not trying to say that we've got a
7 bad police department or anything like that, and
8 I hope you don't get that impression, but what I
9 am saying is that we're here talking about
10 somebody's life, and I'm telling you that the
11 level of this evidence does not meet the
12 standard that I believe it should be in order to
13 make those kind of decisions.

14 So the State has had a problem on their
15 hands with regard to this case. They're hoping
16 that you can buy into their theory that it
17 occurred on the second attack and these are the
18 people that did it. They want you to find them
19 guilty of those charges.

20 I have suggest to you in closing that's
21 not the case here, that my client, Henry Gray
22 has pled Not Guilty. He is innocent and I'm
23 asking that you come back with a verdict of Not
24 Guilty as it pertains to murder and as it
25 pertains to lynching in this particular case.

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1 I thank you so very much for your time
2 and your attention.

3 THE COURT: Ms. Sampson.

4 MS. SAMPSON: May it please the Court.

5 "An eye for an eye leaves the whole
6 world blind."

7 Robin Reese and Henry Gray wanted to
8 take out revenge on Kenneth Mack for what he did
9 to Lucy, Melquanna S

10 Because they were told that he had
11 touched Lucy S in a way they didn't
12 think he should, they wanted revenge and they
13 got it. They went after Kenneth Mack like you
14 would go after a dog who has done something
15 wrong.

16 They didn't stop when they heard he had
17 been assaulted by three, four, five individuals,
18 wasn't good enough. He had to be taken care of.
19 They had to make sure he would never touch her
20 again, in Robin Reese's own words. They killed
21 him. He'll never touch anybody again.

22 That is the definition of murder.

23 You have heard evidence from several
24 different people and I'm going to go over that
25 and unfortunately, you're going to have to hear

1 it again. You heard from several people about
2 two incidents, not three, not four, but two.
3 One took place by L building now. As you can
4 see on this diagram here, and what everybody has
5 told you, has been consistent, L Building is
6 right here. Here is Forest Drive, here in the
7 B.P. station, here is where the market starts.
8 The first assault takes place here. It is a
9 series of events, not a series of assaults as
10 Mr. Chaplin would have you believe.

11 Lucy S begins to have a
12 conversation with Kenneth Mack. That turns into
13 an assault. He grabs her arm, for whatever
14 reason. She slaps him. In response, they end
15 up on the ground.

16 Now have, you've heard several
17 different versions of how that happens. That's
18 natural. If you see a car wreck, everybody is
19 going to say a different version of what
20 happened. They're not lying. They just were
21 focused on different things. That's what
22 happens.

23 But they both end up on the ground, and
24 what are Marcellius Brooks, Angelo Boyd and even
25 Lucy S telling you? They tell you that

1 Marcellius Brooks pulls him off, that he holds
2 him on the ground so that Lucy can get her licks
3 in, and that she does. Angelo Boyd takes a
4 couple of kicks, as he told you. But that did
5 not kill Kenneth Mack. And that wasn't enough
6 for Robin Reese and Henry Gray.

7 At the beginning of this case, my
8 co-counsel, Ms. Simpson, told you this was about
9 choice, bad choices made and continually made
10 over and over again. That is exactly what we
11 have shown you.

12 Kenneth Mack unfortunately made the
13 choice to touch Miss S -- right, wrong
14 or otherwise, he did that.

15 Marcellius Brooks made the choice to
16 intervene into an altercation that had nothing
17 to do with him, another bad choice. Marcellius
18 Brooks then takes Lucy to her mother who
19 everybody knows is hanging out in the Mini Mart
20 playing video games, because that's what she
21 does. He tells her what happens. But let's
22 remember, he also tells her, '*I took care of*
23 *it.*' He made the choice to tell her and then he
24 made the choice not to stop her when she goes to
25 get Kenneth Mack.

1 Because what does everybody tell
2 you'll? She is mad. She looked like she was
3 going to yell and she did. They told you she
4 left -- first she had to finish her video game.
5 Let's not forget she had to cash out. Then she
6 makes some phone calls. She chose to now
7 involve her brother, Henry Gray.

8 She calls him as she takes Lucy home
9 and tells him, *'Guess what that guy Ken did?'*
10 They would have you believe that she didn't know
11 Ken. That she didn't know Brooks either. How
12 did she call them? She told you she didn't know
13 Brooks. How did she have his number? She said
14 she got it from somebody else. Did she mention
15 calling that person? Look at the call logs.
16 She didn't have the time.

17 She called Brooks because she wanted to
18 make sure, *'It was Ken? Right? Ken is the one*
19 *who did it?'* *'Yep, it was Ken.'*

20 She called her brother: *'You'll never*
21 *guess what that Ken did?*

22 *Ken? Ken, the barber?*

23 *Yeah, Ken the barber.'*

24 Unfortunately for all of us, Ken chose
25 after he assaulted that first time to walk down

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1 the sidewalk, which you can see here, down
2 Forest Drive to G Building, where he hoped he
3 could get some help. Let's remember, he could
4 walk, he could talk and what Sanovia Thompson
5 told you is that the talked to a friend, who
6 went to get him something for his head. They
7 were friends. He'd just gotten beat up.

8 He could get help until Henry Gray
9 Robin Reese stopped him cold, couldn't call for
10 help, couldn't ask for help. Couldn't get up
11 and get help after they were through with him.

12 Now, everything was good, fine, going
13 well. Henry Gray comes out, *'What happened to*
14 *you?* Then he got that call from his sister.
15 The whole thing changed. His demeanor changed.
16 He started cussing, wanted to know, *'What the*
17 *fuck did you do to my niece?* Grabbed him. *'I am*
18 *taking you to my sister.'* Another bad choice --
19 and where the lynching began.

20 She called, said *'get Kenneth Mack'* and
21 Henry Gray did. He said, *'You're going to get*
22 *with my sister.'* They all heard that. That's
23 where they were going.

24 Kenneth Mack being the man that he was,
25 the man that he was said, *'I am not going*

1 anywhere. Whatever you gotta do, do it to me
2 here.' Henry Gray said all right, swept his
3 feet out, knocked him town. He's done.

4 Still not enough. Robin Reese arrives,
5 "That's him." How did she know that was him if
6 she didn't know it was Kenneth Mack. If she
7 didn't know Kenneth Mack was the man touching
8 her daughter, how did she know when she got
9 there that's the right guy? Because she knew
10 him. She goes up, she kicks him. She stomps
11 him, and yes, she takes this chair -- that's
12 been covered up for five days for whatever
13 reason, I don't know -- and hits him with it.
14 Not once but twice.

15 Yeah, that's a chair. I'm not that
16 big, but it's not that heavy. Did it break?
17 No. It's iron, it's not going to break.

18 Did it cut his skin? No, he had on
19 clothes. What did we just tell you he had on,
20 two pairs of sweats, a shirt, a barber jacket
21 and a regular jacket. Of course he's not cut,
22 but he is hurt. They kicked, stomped and hit a
23 man when he was down. Talk about malice.

24 Then instead of getting him help,
25 instead of waiting around to see if he was going

1 to get up, walked away as if nothing had
2 happened. They didn't even have the decency to
3 stay and tell people what happened. They didn't
4 have the decency to get the man some help. That
5 is malice.

6 Now, how do we know all of this, Ladies
7 and Gentlemen? The defense would have you
8 believe that you should just believe Robin
9 Reese. She told you -- she got up there and told
10 you what happened. But there is a huge problem
11 with that, Ladies and Gentlemen. If you believe
12 Robin Reese, you have to first disbelieve
13 Donetti Perry -- and I'll remind you she is the
14 one first to testify. Pink shirt on. She came
15 up here and she testified. Didn't want to be
16 here, but was under subpoena. Told you the
17 exact same thing she said back two years ago,
18 two years ago.

19 Now, honestly, you asked me what I was
20 doing two years ago, heaven help me, I have no
21 idea but she remembered because this was
22 traumatic. She had never seen a man beaten to
23 death. I hope that none of us ever have to see
24 a man beaten to death, but she did. She told
25 you she saw Robin Reese. She knows her, they

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1 can't get around that. She know her because her
2 father lives in G building. She knows Henry
3 Gray, known as Six, because that's his father.
4 She knew Lucy, because that's her grandfather.
5 They ignored that. You heard -- did you even
6 hear them talking about that?

7 I used to do what they do, did it for
8 twelve years. Part of what you do is you put up
9 smoke-and-mirrors, try to misdirect the jury,
10 have them look somewhere else other than the
11 evidence.

12 I want you to look directly at the
13 evidence. Donetti Perry told that she saw Robin
14 Reese and Henry Gray do this. Gray got the
15 call, swept him off his feet, knocking him down,
16 and beat him up.

17 Robin Reese comes around, kick him,
18 says, "*That's him.*" The takes this chair, hits
19 him with it. Walks off. So for her to be
20 telling the truth, Donetti Perry would have to
21 be a liar.

22 MR. FARLEY: Objection, Your Honor.

23 THE COURT: I think it's a fair
24 interpretation of the facts. Overruled.

25 MS. SAMPSON: Then we move to Kara

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1 Chase. She came up here, had the red hair. She
2 told you, *'Well, yeah, back in February 2010,*
3 *when everybody was best in my mind, I saw Robin*
4 *do this. I saw Henry do this. I was out there*
5 *and they did it.'* Now, two years later, when
6 her child is the best friend with Robin Reese's
7 child, she wants nothing to do with getting her
8 in trouble. That is her best friend's child and
9 her best friend's mother. Of course, her story
10 is different now.

11 Mr. Chaplin said to look for some
12 reason why things are different. That's the
13 reason.

14 But could she still not get around?
15 That Robin Reese was there, that Henry Gray was
16 there, and that they did it. And when we asked
17 her, *well, was your story back then true, what*
18 *did she tell you? 'Yes, yes it was.'* She never
19 denied that what she said back in February of
20 2010 was the truth. What she said this week
21 was, *'Well, I've had all of these things and I*
22 *just can't remember.'* But we asked again and
23 again, *'Did you tell the truth back then?'*

24 Yes, I did.

25 Is your statement true?

1 Yes, it is.

2 And in her statement she told them that
3 they did it, because they did it.

4 Again for Robin Reese to be telling the
5 truth Sanvoia Thompson would have to be lying.
6 She is friends with Robin Reese. She told you
7 she has known her since she was fifteen, because
8 she had dated her brother. She had absolutely
9 no reason to try to get this woman in trouble.
10 She told you that she did it. For Robin Reese
11 to be telling the truth, her friend is lying.

12 Then we get to Mary Anderson. Mary
13 Anderson -- little Mary Anderson -- had
14 absolutely no dog in this fight. She doesn't
15 live there. She doesn't know Robin Reese, she
16 doesn't know Henry Gray, she doesn't know
17 Marcellius Brooks. Mr. Chaplin would like you
18 to believe that they all came to the Police
19 Department together and just made this stuff up.

20

21 But what did she tell you? 'I went by
22 myself.' They just happened to go on the same
23 day. As Investigator Pegram told you, people
24 won't talk at the Gardens. At the Gardens. Not
25 at all, but inside the Gardens where all the

1 people are that they don't want to know that
2 they've talked to the police. Even Kara Chase
3 told you that. What did she say, *'You don't*
4 *talk in the 'hood. It'll get you killed.'*
5 So they go to the police station and they talk.
6 Mary Anderson told you about that.

7 What did she say? I loved her words, I
8 wrote it down: *"I seen what I seen."* And she
9 told Mr. Farley, when he tried to put words in
10 her mouth, *'Don't you put words in my mouth.'*
11 She saw Mr. Mack laying on the ground, she saw
12 Henry Gray and Robin Reese kick him, hit him,
13 take that chair and hit him with it.

14 For Robin Reese's story yesterday to be
15 true, Mary Anderson is a liar.

16 We also heard from Antonio Boyd. He
17 told you -- he didn't want to be here either --
18 about the first fight. Right? And he told you
19 how he and Marcellius Brooks went in and told
20 Ms. Reese that they took care of it. But she
21 denied that, *'didn't happen.'* Remember how she
22 told you that Brooks came in with some other
23 guy? Antonio Boyd is known as Little Ricky,
24 because of his size. He's not 6'2". For her to
25 be telling the truth, Antonio Boyd is lying.

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1 Marcellius Brooks would also have to be
2 lying. Now, again, Mr. Chaplin wants you to
3 believe that he has a reason to lie. He came in
4 here and told you what happened. He still is
5 facing charges. He is facing the same charges
6 that they are, for a very good reason. Without
7 his choices, none of us would be here. He chose
8 to tell Robin Reese. He chose to tell her who
9 did it and he chose to tell her where he went.
10 He chose not to stop her where she went to go
11 get him. That is why he was charged with
12 murder, under the hand of one is the hand of
13 all. He started it. Whatever happened
14 afterwards, he's just as liable for it. That's
15 why he's charged the murder.

16 We're not confused. We know exactly
17 what happened. We're not making this stuff up.
18 I couldn't make this stuff up if I didn't want
19 to, I'm just not that creative. People came in
20 here and told you all about it.

21 But again he told you what he did -- he
22 told Robin Reese, what he said to her. In order
23 for her to be telling the truth, he's lying.

24 And lastly for her to be telling the
25 truth, Lucy^S her daughter, also has

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1 to be lying. What did Lucy tell you? They said
2 'Me and mom -- I told her what happened, she
3 took me home. I stayed at the house. She never
4 came back.'

5 What did Robin Reese tell you? Oh, I
6 went back. After I tried to kick him and
7 missed. After I slapped him. Went back home
8 and talked to her about what had happened. She
9 also told you that Henry Gray came back with her
10 and talked to her. If that's true, then when
11 Lucy S was up here talking to you, why
12 didn't you hear that? Because it was simply not
13 true.

14 Ms. Campbell told you that you need to
15 decide the credibility of the witnesses based on
16 their reasons to lie. Ms. Reese stands here
17 accused of murder and lynching in the first
18 degree. If she doesn't have a reason to lie,
19 who does? She doesn't want to get in trouble
20 for this. She doesn't want a conviction. Of
21 course she has a reason to lie. For her to be
22 telling the truth, all of these people have to
23 be lying.

24 I just realized that I left off one
25 really important person -- and I'll apologize to

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1 him right now. Investigator Pegram, I left off
2 you and I am sorry. Because Robin Reese told
3 you that he just didn't let her talk. Does that
4 make any sense? He has twenty-something years
5 of experience, and doesn't want her to talk
6 about the one thing he's asked them to talk
7 about? He said *tell me what happened*. She left
8 out the I part where she tried to hit the
9 victim, left out the part where she and her
10 brother were there, left out that altercation
11 altogether because he said *'I don't want to talk*
12 *about that'*?

13 Look at that. You have the statement,
14 she wrote it in her own handwriting. She could
15 have written whatever she wanted. She didn't.
16 She didn't want to put herself out there, and
17 she said that. I didn't make that up. That's
18 not the State's position, that's her position.
19 She didn't want to put herself out there.

20 Ladies and Gentlemen, she did that
21 because she is the one that has a reason to lie.

22 Now, they would have you believe this
23 was a terrible investigation because we didn't
24 know what happened. Of course we didn't know
25 what happened, nobody was telling us. Officer

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1 Buck and Office Delage get a call that there's
2 been an assault. We all agree that happened.
3 That's when Kenneth Mack first gets involved.
4 But when they get there, nobody is there.

5 Now, if she is so upset about her
6 daughter being hurt, about her daughter being
7 touched, after they find Kenneth Mack, the
8 Gardens are loaded with police officers. They
9 are over there by the market taking photos. They
10 are over by Kenneth Mack, trying to get him
11 help. Tell them! All she had to do was walk
12 out of the Mini Mart -- I guess that's where she
13 went back, get off her dern video game -- and
14 tell them 'my daughter was assaulted.' They are
15 standing around, trying to figure out what
16 happened, taking photos. She said nothing,
17 because she knew what she did was wrong.

18 She told them nothing, so the police
19 don't know what to ask. They do think that
20 first assault is what killed him, until people
21 finally start talking. So, yes, on some reports
22 it says that he died from that first assault.
23 On the EMT report, it talks about the first
24 assault, because that's all that they knew about
25 when they wrote that report.

1 But when they got it straight, they
2 charged the right people. Yes, it took eighteen
3 months. We don't want to get it wrong. Do you
4 really want a solicitor's office that runs
5 around just charging people because we feel like
6 it or do you want us to do our jobs? Do you
7 want Investigator Pegram and the other
8 investigators to do their jobs to, do them
9 right, do what you pay us to do -- and we did?
10 We charged the right people with the right crime
11 because that's who did it.

12 I'll talk a little bit more about Robin
13 Reese and her versions of the truth. For Robin
14 Reese to not be guilty, you would have to
15 believe her list of lies:

16 She doesn't know Marcellius Brooks that
17 well. We already went over that. She had to
18 know him. She had his phone number.

19 Had to ask a friend for a cell phone?
20 When?

21 She also told you that Henry Gray was
22 at Lizard's Thicket. Yet one, two, three, four
23 people -- with no dog in this fight -- told you
24 that he was there at E building. Then she
25 suddenly remembered, *'Oh, yeah, he was there.'*

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1 *He pulled me off of him.* Which is it?

2 She didn't know the man who got into
3 the altercation with Lucy. So how did she know
4 -- she says that she runs up to G and just sees
5 a man and starts kicking him, but falls. Well,
6 how do you know that's him? Are you just going
7 to run up and start assaulting anybody in
8 Gonzales Gardens? I don't think so. He knew
9 exactly who he was.

10 She said she was looking for a man with
11 jeans and a jean jacket. We just told you that
12 he didn't have on jeans or a jean jacket. So
13 why was she assaulting him?

14 Again, had no idea that the man was at
15 G building. She just miraculously shows up
16 where the one man who assaulted her child is at?
17 She knew. Her brother told her.

18 She called her brother. He's standing
19 there looking at him. You don't think he went,
20 *'He's here, come get him.'* He's standing right
21 there with him.

22 She said she was so angry that she
23 tried to kick him but missed and fell and she
24 slapped him once. If you're that angry, how is
25 your brother going to stop the assault? She is

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1 so angry at what he did -- and you saw her -
2 that she just stopped? No. She beat him with
3 this chair and her feet. She didn't stop.

4 For these to be true, again all of
5 those people would have to be lying. Not one but
6 four.

7 Henry pulled her away from the men and
8 held her. Again, four against one. Nobody saw
9 that. Nobody even heard that until yesterday.

10 She then said that she threw a chair at
11 the man but it never came into contact with him.
12 Let's talk about that a little bit. They said
13 that you couldn't see blood on the chair. The
14 chair is black. There is not going to be much
15 that you're going to see on a black chair.
16 Lucky for us, we have forensics. They do their
17 job, they do it well. They took one, two, three
18 tests -- because that is how many that it took -
19 - and they find blood. If they hadn't, don't
20 you think that they would have hired an expert
21 to say that there was no blood? They find
22 blood.

23 Unfortunately the test that they used
24 for blood does interfere with another test for
25 blood, not for DNA. Those are two separate

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1 things. Our experts got up there and explained
2 it to you. They talked to you -- forget that,
3 they put smoke-and-mirrors, don't look at that.
4 She explained to you that you could still find
5 DNA. Nothing was wrong with her results.

6 Where did they find it? Under the
7 chair, where you would expect it if you took it
8 and hit someone with it and their blood sloshed
9 up on it -- their DNA, their sweat, tears. It
10 got on that chair. DNA can't be controverted.
11 It was on the bottom of that chair. The one
12 thing that they didn't do was explain how that
13 happened. Because they have no explanation for
14 how that happened, except for it happened during
15 the lynching and murder of Kenneth Mack.

16 Again, we went over this. We returned
17 home and talked to Lucy, with Henry. It
18 happened. She said that she spoke with Brooks
19 outside of her apartment. Remember, she told
20 you that -- that Gray did, that he thanked him
21 for what he had done. Why didn't you hear that
22 from Marcellius Brooks? Didn't happen.

23 Didn't tell police what happened
24 because Pegram didn't want to hear about it.
25 We've been over there.

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1 This last. Pegram told her that he
2 knew that she threw the chair. He didn't know
3 about the chair. What did he tell you? They
4 got an anonymous tip that a man threw a chair.
5 A man. Now, Robin Reese isn't a man. They
6 didn't know that the chair was even involved for
7 two days. When they're talking to her, they
8 don't know about the chair being involved in the
9 incident. So how could he have told her, 'we
10 already know about the chair.' He didn't tell
11 her that, because it didn't happen.

12 You have to disbelieve everybody in
13 order to believe Robin Reese. It just didn't
14 happen.

15 Cause of death in this case, as Ms.
16 Campbell sais, that seems to be the new defense
17 of the time, that you question the cause of
18 death. But their own experts agrees on the
19 cause of death.

20 Dr. Conradi, who has been doing this
21 longer than I have even been alive, told you
22 that he died during the second attack, during
23 the second. She, Dr. Marcus and even whatever
24 we could get out of Dr. Shaker agree that it
25 took blunt force trauma and that it would take

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1 significant force. Kicks from two, three people
2 that were all over his body, not just on his
3 head, is not enough force to kill him. He had
4 cerebral edema, his brain was swelling. He had
5 cerebral contusions. He had a skull fracture.
6 Your skull is one of the hardest materials out
7 there. It protects your brain. A kick just
8 ain't gonna do it.

9 Dr. Marcus showed you this diagram and
10 what Mr. Chaplin would love for you to believe
11 is that the injury is up on the top of the head.
12 Look at this picture, it's right here -- where
13 if you fell to the ground, you'd hit your head.
14 The reason that he fell to the ground was that
15 Henry Gray swept him, killing him.

16 There's no problem with cause of death.
17 They did it. He's dead. They should be held
18 accountable for it.

19 Now, the hand of one is the hand of
20 all. So if Robin Reese started this, and she
21 did start it, she is just as guilty as Henry
22 Gray. Without that choice make that call,
23 Kenneth Mack would be here today. Because they
24 don't want you to remember is that he could
25 walk, he could talk, he could ask and that he

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1 did ask for help after that first assault.
2 Instead of help, he got kicked, kicked and
3 chaired -- beat up on, by those two people.
4 When they left, they left him dead. The hand of
5 one is the hand of all.

6 Now, I'm almost done. I want to talk to
7 you a little bit about being a juror. We all
8 get instructions on how to be lawyers. We go to
9 law schools. Y'all are professionals, you have
10 instructions on how to do your jobs. Nobody
11 gives instructions on how to be jurors. We put
12 you twelve strangers in here and say *go figure*
13 *it out*. So I do want to give you instructions,
14 look at the evidence, listen to what you heard,
15 remember what you heard. Go back there and
16 discuss it because at the end of the day, there
17 is absolutely no evidence that supports Robin
18 Reese and Henry Gray of being innocent.

19 At the beginning of this case,
20 Mr. Chaplin talked to you about what it
21 would sound -- what the end of the world would
22 sound like. To his client, the end of the world
23 sounded like being wrongfully accused.

24 Kenneth Mack doesn't have to imagine
25 what the end of the world sounds like. Robin

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1 Reese and Henry Gray ended his world on February
2 13, 2010. Kenneth Mack's family and his mother,
3 they don't have to imagine. They had to bury
4 their loved one, and a part of Kenneth Mack's
5 mother's world died that day too. They don't
6 have to imagine the end of the world.

7 Mr. Chaplin told you just a few minutes
8 ago that Robin Reese was only there for a
9 minute, two minutes, couldn't have done this;
10 that Henry Gray was only there a couple of
11 minutes, couldn't have done this.

12 It takes hours to give life and seconds
13 to take it. They took Henry Gray's life with
14 total disregard for human life. That is the
15 definition of murder. Their actions -- while
16 only two people are needed to make a mob, not a
17 group, not a ton, two were lynching, there are
18 two of them. That is a mob that got together.
19 They don't have to plan on murder. They don't
20 have to intend on murder. They have to intend
21 to act together and they did when they stomped
22 him, when they kicked him, when they hit him and
23 when they left him bleeding literally to death.
24 Definition of lynching. They don't have to even
25 plan for him to die for murder. They have to

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1 disregard human life. Kicking the feet out from
2 under someone, kicking him while he's down,
3 beating him with a chair and leaving him in the
4 snow alone, unable to speak is disregard for
5 human life and the definition of murder.

6 As a solicitor, the State of South
7 Carolina and Kenneth Mack's family has given me
8 and put in me the faith to get justice, to make
9 justice happen. I now give that to you.

10 You all now have the choice, the choice
11 whether to let them go free for what they did or
12 to convict them for killing Kenneth Mack. I ask
13 that you hold them responsible. That you come
14 back with a verdict that speaks the truth, a
15 verdict that makes justice happen, a verdict of
16 Guilty of murder by Henry Gray and Robin Reese,
17 a verdict of Guilty of lynching in the first
18 degree because Robin Reese and Henry Gray took
19 the life of Kenneth Mack. Find them guilty
20 because they are guilty. Thank you.

21 THE COURT: Madam Forelady, Ladies
22 and Gentlemen of the jury, you've heard all the
23 testimony in this case. You've heard all the
24 arguments of counsel, both for the State and the
25 defendants. You'll take to the jury room all

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1 the evidence in this case these been introduced.

2 Now, from time to time, jurors ask me
3 to send me a copy of what I'm about to tell you
4 or go over with you. Well, generally speaking
5 I'm not able to do that. In some states it is
6 done. It's not done generally in South Carolina
7 so I ask you to pay close attention to what I
8 now tell you.

9 I'll remind you of a few things that I
10 mentioned in the opening remarks. Under our
11 Constitution and Code of Laws, only the jury can
12 make findings of fact. I'm not permitted to
13 indicate to you how I might feel about the
14 facts. If I have done or said anything in this
15 case which would indicate to you that I have an
16 opinion concerning the facts of this case, then
17 you should disregard that. You must
18 independently weigh the evidence presented in
19 this trial and render a verdict based solely on
20 that evidence.

21 The same Constitution and laws that
22 designate and make you the finders of fact also
23 make me the instructor of the law. If you have
24 some idea as to what the law is or what the law
25 ought to be and it does not agree with what I

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1 now tell you the law is, you're obligated under
2 the oath that you have taken to abandon this
3 preconception of the law and accept it and apply
4 the law precisely as I now state it to you.

5 As you know, the indictments in this
6 case allege several different offenses against
7 the defendants. Both defendants are charged
8 with lynching in the first degree and murder.

9 Each indictment charges a separate and
10 distinct offense. You must decide each
11 indictment for each defendant separately on the
12 evidence and the law applicable to it
13 uninfluenced by your decision as to the other
14 indictment.

15 The defendants may have be separately
16 convicted or acquitted on any or all of the
17 offenses charged.

18 You'll be asked to write a separate
19 verdict of Guilty or Not Guilty for each
20 indictment and for each defendant.

21 Now, I reminded you again the fact that
22 the defendants were arrested, charged and
23 indicted in this case, cannot be considered as
24 evidence of guilt in this case, not does it
25 create any presumption of inference of guilt.

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1 The indictment, again, is only the formal legal
2 document by which the charges are brought into
3 court and made against a defendant.

4 Now, each defendant has pled not guilty
5 to each of these indictments. That plea puts
6 the burden on the State to prove the defendant
7 is guilty. A person charged with committing a
8 criminal offense in South Carolina is never
9 required to prove himself or herself innocent.
10 I charge you this is an important rule of law.
11 The defendants in a criminal case no matter what
12 the seriousness of the charge may be will always
13 be presumed to be innocent of the crime for
14 which this indictment was issued unless guilt
15 has been proven to you beyond a reasonable
16 doubt.

17 This presumption of innocence does not
18 end when you begin your deliberations. In other
19 words, it accompanies the defendant throughout
20 the trial and until you reach a verdict of guilt
21 based on evidence satisfying you of that guilt
22 beyond a reasonable doubt.

23 The presumption of innocence again is
24 not a mere legal theory. It's not just a legal
25 phrase. It is a substantial right to which

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1 every defendant is entitled until and unless you
2 the jury are satisfied from the evidence of the
3 defendant's guilt beyond a reasonable doubt.

4 Well, what is a reasonable doubt in the
5 law? The attorneys have attempted to explain to
6 it you. A reasonable doubt is the kind of doubt
7 which would cause the reasonable person to
8 hesitate. I'll say that again. A reasonable
9 doubt is the kind of doubt that would cause a
10 reasonable person to hesitate to do something,
11 and in this case, to convict.

12 The State has the burden of proving the
13 defendant's guilt beyond a reasonable doubt.
14 Some of you may have served as jurors in civil
15 cases where you were told that it's only
16 necessary to prove a fact is more likely true
17 than not true, such as by the greater weight or
18 the preponderance of the evidence. In criminal
19 cases, however, the State's proof must be more
20 powerful than that. It must be beyond a
21 reasonable doubt.

22 To think that a defendant is probably
23 guilty or the circumstances are suspicious is
24 not enough. Proof beyond a reasonable doubt is
25 proof that leaves you firmly convinced of the

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1 defendant's guilt. Now, there are very few
2 things in this world that we know with absolute
3 certainty. In criminal cases the law does not
4 require proof that overcomes every possible
5 doubt.

6 If based on your consideration of the
7 evidence you are firmly convinced the defendant
8 is guilty of the crime(s) -- or either defendant
9 is guilty of the crime -- charged, you must find
10 that defendant Guilty.

11 On the other hand, if you think there
12 is a real possibility that the defendants
13 separately are not guilty, you must give each of
14 those defendants the benefit of the doubt and
15 find him or her Not Guilty.

16 Now, there are two types of evidence
17 which are generally presented during a trial.
18 They are called direct evidence and
19 circumstantial evidence. Direct evidence is
20 merely the testimony of a person who claims to
21 have actual knowledge of a fact, such as an
22 eyewitness. It's evidence which immediately
23 establishes the main fact to be proved.

24 On the other hand, circumstantial
25 evidence is proof of a chain or series of facts

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1 indicating the existence of some fact. It's
2 evidence which immediately establishes
3 collateral facts from which the main fact may be
4 inferred. Circumstantial evidence is based on
5 inference, not on personal knowledge or
6 observation.

7 The law makes absolutely no distinction
8 between the weight or value to be given to
9 either direct or circumstantial evidence, nor is
10 a greater degree of certainty required of
11 circumstantial evidence than of direct evidence.
12 You must weigh all the evidence in the case and
13 after weighing all the evidence, if you're not
14 convinced of the guilt of the defendants beyond
15 a reasonable doubt, you must find the defendants
16 guilty -- not guilty.

17 Now, necessarily you must determine the
18 credibility of witness who is have testified in
19 this case. There were a lot of witnesses in
20 this case. Credibility simply means
21 believability. It becomes your duty as jurors
22 to analyze and evaluate the evidence and
23 determine which evidence convinces you of its
24 truth.

25 In determining the believability of

1 witnessed who have testified, you may believe
2 one witness over several witnesses or several
3 witnesses over one. You may believe a part of
4 the testimony of a witness and reject the
5 remaining part of the testimony of that same
6 witness. You may believe the testimony of a
7 witness in its entirety or reject the testimony
8 of a witness in its entirety. You may consider
9 whether any witness has exhibited to you any
10 interest, bias, prejudice or other motive in
11 this case. You may also consider the appearance
12 and the manner of the witness while on the
13 witness stand.

14 Now speaking of witnesses, a person who
15 has a criminal record, and there were some in ,
16 this case, is competent to testify during the
17 trial. Past record does not affect the ability
18 of that witness to testify. Past record of a
19 witness may only be considered by you, if at
20 all, in determining the witness's believability.
21 Remember, you are the sole judges of the facts
22 in this case and of the believability of any and
23 all witnesses.

24 Also, we've had expert witnesses in
25 this case. Now, the Rules of Evidence, those

1 are the rules that guide our trial principles,
2 do not normally allow for witnesses to offer
3 opinions or conclusions. Normally witnesses
4 testify to facts, but an exception to this rule
5 exist for witnesses that we call an expert, and
6 we had some in this case; a witness, who by
7 education and/or experience has become expert in
8 some art or science or profession may state on
9 opinion to you as to relevant and material
10 matter in which the witness claims to be an
11 expert and may also state the reasons for that
12 opinion.

13 You should consider any expert opinion
14 received in evidence in this case like any other
15 evidence and give it the weight you think it
16 deserves. If you decide that the opinion of an
17 expert witness is not based upon sufficient
18 education and experience or if you conclude that
19 the reasons given in support of the opinion are
20 not sound or that the opinion is out weighed by
21 other evidence, you may disregard that opinion
22 in its entirety.

23 In other words, an expert witness's
24 testimony is to be given no greater weight than
25 that of any other witness simply because the

1 witness is an expert. Further you're not
2 required to accept an expert's opinion even
3 though it might not be contradicted.

4 Now, in order to establish criminal
5 liability, criminal intent is required.
6 Criminal intent must be proven by the State
7 beyond a reasonable doubt. Criminal intent is
8 always a matter that must be determined by the
9 jury from the circumstances surrounding the
10 situation. There's no way to prove intent to a
11 mathematical certainty. There is no way to
12 prove that medical science can dissect a
13 person's brain and determine actually person had
14 in mind, so the law says that criminal intent
15 may be inferred from the circumstances shown to
16 have existed at the time and place. This is how
17 you make a determination of whether or not the
18 element requiring intent was present. It's not
19 necessary to establish intent by direct or
20 positive evidence but intent may be established
21 by inference, in the same way as any other fact
22 by taking into consideration the acts of the
23 party and all the facts and circumstances of the
24 case.

25 In other words, criminal intent is a

1 mental state of conscious wrongdoing. It's up
2 the you to determine what the defendants
3 intended to do based on the circumstances shown
4 to have existed.

5 Now, the attorneys have talked to you
6 about the hand of one or the hand of all -- the
7 hand of all. If a crime is committed by two or
8 more people who are acting together in
9 committing a crime, the act of one is the act of
10 all. A person who joins with another to commit
11 an unlawful act is criminally responsible for
12 everything done by the other person which
13 happens as a probable or natural consequence of
14 the acts done in carrying out the common plan
15 and purpose.

16 For example, two people can be guilty
17 of the killing another person when only one of
18 the two had a gun. There's only one bullet,
19 only one shot fired that caused the death.
20 If two or more people are acting together
21 assisting each other in committing the offense'
22 the act of one is the act of all; or sometimes
23 referred to as the hand of one is the hand of
24 all.

25 Prior knowledge that a crime is going

1 to be committed without more is not sufficient
2 to make a person guilty of that crime. Mere
3 knowledge that another person is going to commit
4 crime, even if the defendant is present when the
5 crime is committed, is also not sufficient to
6 convict a defendant as a principal. Guilt as
7 the principal is shown by actual or constructive
8 presence at the scene as a result of prior
9 arrangement. The State must dispute beyond a
10 reasonable doubt by competent evidence the
11 theory of the hand of one is the hand of all.

12 A principal in a crime is one who
13 either actually commits the crime or who is
14 present aiding, abetting or assisting in
15 committing the crime.

16 When a person does an act in the
17 presence of and with the assistance of another,
18 the act is done by both. Where two or more
19 acting under common plan or intent are present
20 at the commission of a crime, it does not matter
21 who actually commits the crime. All are guilty.
22 Presence at the commission of a crime means to
23 be sufficiently near the crime as aid, abet and
24 assist in the crime. However, mere presence at
25 the scene of the crime obviously is not

1 sufficient to convict one as a principal on the
2 theory of aiding and abetting.

3 Intent is also a necessary element, for
4 there must have a common design or intent to
5 commit the crime and the crime must have been
6 committed with the person aiding and abetting by
7 some overt act. Intent meaning intending the
8 result which actually occurs. It's not
9 accidentally, involuntarily. The State must prove
10 these elements beyond a reasonable doubt.

11 Well, let me defined murder for you.
12 Each defendant is charged separately with
13 murder. The State must prove beyond a
14 reasonable doubt that the defendant(s) killed
15 another person with malice aforethought.

16 Malice is hatred, ill will or hostility
17 towards another person. It is the intentional
18 doing of a wrongful act without just cause or
19 excuse and with an intent to inflict an injury
20 under circumstances that the law will infer an
21 evil intent.

22 Malice aforethought does not require
23 that malice exist for any particular time before
24 the act is committed but malice must exist in
25 the mind of the defendant(s) just before and at

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1 the time the act is committed. Therefore there
2 must have a combination of the evil intent --
3 the previous evil intent -- and the act.

4 Malice does not necessarily impart ill
5 will towards an individual but signifies,
6 rather, in general a malignant recklessness of
7 the lives and safety of others, or a condition
8 of mind which shows a heart, regardless of
9 social duty, fatally bent on mischief.

10 Malice need not exist for any
11 appreciable time before the commission of the
12 act or killing occurs. Malice may be conceived
13 at the very moment that the fatal blow is
14 stricken.

15 Malice aforethought may be express or
16 inferred. These terms, "express" or "inferred"
17 do not mean different kinds of malice but merely
18 mean the manner in which the malice may be shown
19 to exist. That's either by direct evidence or
20 by inference from the facts and circumstances
21 which are proved.

22 Express malice is shown when a person
23 speaks words or expresses hatred or ill will for
24 another, or when a person prepared beforehand to
25 do an act which was later accomplished; for

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1 example, lying in wait for a person. Or other
2 acts of preparation that go to show that the
3 deed was within the defendant's mind would be
4 express malice. Malice may be inferred by
5 conduct showing a total disregard of human life.

6 Now, just as in some states you may
7 have -- either on television or otherwise read
8 that there are lesser-included offenses of
9 murder. For example, in some states there is
10 murder in the first degree, murder in the second
11 degree, murder in the third degree. You may
12 have heard those terms. In South Carolina we
13 call the lesser-included offense of murder
14 voluntary manslaughter. That's not murder in
15 the second degree, it's not murder in the third
16 degree, it's called voluntary manslaughter. This
17 is included within our law as a lesser-included
18 offense of murder.

19 So if find that the State has failed to
20 prove beyond a reasonable doubt that the
21 defendant(s) has committed murder, you may
22 consider whether the State has proved beyond a
23 reasonable doubt that the defendant(s) committed
24 voluntary manslaughter. To prove voluntary
25 manslaughter, the State must prove beyond a

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1 reasonable doubt that the defendant took the
2 life of another in the sudden heat of passion
3 based upon sufficient legal provocation, both
4 heat of the passion and sufficient legal
5 provocation must be present at the time of the
6 killing to constitute voluntary manslaughter.

7 Sudden heat of passion may for a time
8 affect a person's self-control and temporarily
9 disturb a person's reason. The sudden heat of
10 passion must be the type that would make an
11 ordinary person unable to coolly reflect on his
12 action and would produce an uncontrollable
13 impulse to do violence.

14 Sufficient legal provocation must be
15 the type that could cause a person of ordinary
16 reason and caution to become enraged and to lose
17 control temporarily. The provocation need for
18 voluntary manslaughter must come from some act
19 or related to the victim. However, words alone,
20 however vulgar or insulting, are not enough to
21 be legal provocation. The exercise of a legal
22 right, no matter how offense it is to another,
23 is never sufficient legal provocation for
24 voluntary manslaughter.

25 If the heat of passion had cooled or if

1 there was enough time between the provocation,
2 if any, and the killing for the passion of a
3 reasonable person to cool, the killing would not
4 be voluntary manslaughter. In deciding whether
5 a reasonable person would have had enough time
6 to cool off, you should consider all the
7 circumstances surrounding the killing. You may
8 consider the nature of the provocation, if any,
9 the defendant's mental and physical state, and
10 the circumstances and relationships between the
11 parties.

12 Now, where a person inflicts a fatal
13 injury on another person and that person dies at
14 a later time, you must be convinced beyond a
15 reasonable doubt that the infliction of the
16 injury was the proximate cause of the victim's
17 death.

18 Proximate cause is the direct cause.
19 It is the immediate cause. It is the efficient
20 cause. It is cause without which the death of
21 the victim would not have resulted. There must
22 be a change of causation from the time of the
23 injury until the time of the victim's death.
24 Proximate cause does not necessarily mean that
25 it occurred immediately prior to the death.

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1 There may be more than one proximate
2 cause. The acts of two or more persons may
3 combine together to be a proximate cause of the
4 death of a person. A defendant's act may be
5 regarded as a proximate cause if it is a
6 contributing cause to the death of a victim.

7 The fact that other causes also
8 contributed to the death of the victim does not
9 relieve the defendants from responsibility. The
10 defendant's act need not be the sole cause
11 of death but it must be the proximate cause
12 creating -- I'm sorry -- contributing to the
13 death of the victim.

14 The second charge is lynching in the
15 first degree. Any act of violence inflicted by
16 a mob upon the body of another person which
17 results in the death of the person shall
18 constitute the crime of lynching.

19 A "mob" is defined as the assemblage of
20 two or more persons, without the authority of
21 law, for the premeditated purpose and with the
22 premeditated intent of committing an act of
23 violence upon the person of another. To
24 constitute a mob under the statute, the
25 assemblage need not have formed with the

1 premeditated person -- formed with the
2 premeditated purpose and intent of committing an
3 act of violence on the person of another. But
4 the requisite purpose and intent may be formed
5 after the participants are assembled.

6 It is permissible to infer that all
7 persons present when an act of violence is
8 committed aid and abetted the crime and are
9 guilty as principals.

10 Now, Ladies and Gentlemen, I want to
11 emphasize this next point. I instruct you and
12 emphasize the fact that the defendant Henry Gray
13 did not testify I this case is not a factor to
14 be considered by you in any way in your
15 deliberations and your consideration on the
16 question of the guilt or innocence of Henry
17 Gray. It must not be considered by you in any
18 manner whatsoever.

19 A defendant has the Constitutional
20 right to remain silent and the assertion of this
21 right must not be considered by you in your
22 deliberations. I repeat, under your oath, you
23 are to draw no conclusion whatsoever from the
24 fact that the defendant Henry Gray in this case
25 did not testify. The fact that this defendant

1 did not testify should not even be discussed in
2 the jury room.

3 Burden of proof, as I have stated to
4 you, it is on the State to prove his
5 innocence -- is on -- as stated to you, it is on
6 the State to prove his guilt. The defendant is
7 not required to prove his innocence. The burden
8 of proof remains on the State to prove guilt
9 beyond a reasonable doubt.

10 Now, Ladies and Gentlemen, you've also
11 the heard testimony in this chase concerning the
12 penalty a person can receive or serve for crimes
13 alleged in these indictments. In determining
14 the guilt or innocence of the defendants, you
15 cannot consider any possible penalty for a
16 particular crime. Punishment for the crimes is
17 a matter for me to determine and should never be
18 considered by you in any way whatsoever in
19 arriving at a fair and impartial verdict as to
20 the guilt or innocence of the defendant(s).

21 Now, in just a minute, you will begin
22 your deliberations. I'll remind you that during
23 your deliberations you must not and cannot
24 communicate with anyone outside the jury room.
25 We cannot provide any information to you, other

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1 information to you about the case other than
2 you've already received. You may not use any
3 reference materials, dictionaries, encyclopedias
4 or a Bible or any internet resource. If you
5 learn that any juror has violated this
6 instruction, you're to report that directly to
7 the court immediately.

8 Now, as I said, Ladies and Gentlemen,
9 nothing I may have said during the course of
10 this trial has been in any way intended to
11 express or suggest a view of the cases or an
12 opinion of mine as to the facts in the case.
13 If any of my actions or words have so seemed to
14 indicate, you will disregard and form your own
15 opinion as to these matters. I'm required to
16 declare the law, as I've done in these
17 instruction, to help guide you to a just and
18 lawful verdict. Whether some of these
19 instruction will apply will depend on what you
20 find to be the facts. The fact that I've
21 instructed on various subjects in this case must
22 not when it taken by you has indicating an
23 opinion of this court as to what you should find
24 to be the facts or what your verdict should be.

25 Now, there are two potential verdicts

1 to each charge which you may find in this case:
2 guilty and not guilty. There is no significance
3 whatsoever in the order in which I state these
4 possible verdicts. It's simply one must be
5 stated first.

6 All twelve of you must agree on the
7 verdict in each case. Your verdict cannot be
8 based on sympathy, passion, prejudice, emotion
9 or any other consideration not in evidence in
10 this case.

11 Madame Forelady, I have prepared two
12 verdict forms, one for each defendant. They
13 are, I hope, fairly straightforward.

14 First as to both defendants on the
15 charge of lynching in the first degree, once you
16 have reached the unanimous verdict, please
17 indicate guilty or not guilty as to each
18 defendant.

19 As to the charge of murder, once the
20 jury has concluded a unanimous verdict, please
21 indicate whether you find the defendant -- each
22 of the defendants -- guilty or not guilty of
23 murder.

24 If you do not find the defendants
25 guilty of murder, you may consider the charge of

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1 voluntary manslaughter, in which case you also
2 would find by unanimous consent the defendants
3 guilty or not guilty of voluntary manslaughter.

4 Once that is concluded, if you will
5 sign and date the verdict form, knock on the
6 jury room door and we will receive your verdict.

7 Now, Ladies and Gentlemen, I'm going to
8 ask you to retire to the jury room. Your
9 lunches are here. It's up to you whether you
10 want to begin deliberations before you eat or
11 after you eat or during -- while you eat.
12 I ask you not to begin your deliberations until
13 you have received the evidence and the verdict
14 forms. Once you have the verdict forms and the
15 evidence, the bailiffs are going to bring them
16 to you, you may begin your deliberations. Good
17 luck to all of you. Thank you very much.

18 (JURY OUT @ 1:43 p.m.)

19 THE COURT: Any exceptions or
20 objections from the State?

21 MS. CAMPBELL: No, sir.

22 THE COURT: From the defense.

23 MR. FARLEY: No.

24 MR. CHAPLIN: No.

25 THE COURT: All right. Counsel, if

1 you would please review the evidence with the
2 court reporter. We will stand at-ease until we
3 hear from the jury.

4 (REVIEW OF EVIDENCE)

5 (JURY IN DELIBERATION @ 1:54 p.m.)

6 THE COURT: I need to dismiss the
7 alternate. Any objection?

8 MS. CAMPBELL: You know my position --
9 without objection.

10 THE COURT: I can't find defense
11 counsel, but I'm going to go ahead and do it.

12 MS. CAMPBELL: Thank you judge.

13 MS. SIMPSON: Thank you.

14 THE COURT: No, hold on, I want one of
15 you to stay and witness. Is it -- yes, juror --
16 you're Juror Number 53 and Number 207, and I
17 still am not going to call you by your name.

18 Obviously the jury has begun
19 deliberating and you were chosen as alternates
20 to fill in if somebody were unable to continue
21 the trial. I will tell you many times we have a
22 problem with a juror -- I mean, we have a
23 problem with a juror. Jurors have problems,
24 cars break down, jurors get sick, any number of
25 reasons why we need alternates to sit and be

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1 ready to fill in during these cases would have
2 been prepared to sit to move in to the jury had
3 we needed your services but we didn't. Perhaps
4 that's a good thing. I do want to thank you for
5 your service. I'm going to dismiss you now.
6 Somebody in the check's office can -- either of
7 you need work excuses?

8 BAILIFF: I told them to drop by the
9 jury panel assembly room.

10 THE COURT: Is that the way they do it?
11 Okay. You are welcome to stay as I indicated.
12 The jury may be out an hour. They may be out
13 until midnight. It's not unusual, especially
14 when we have two defendants and three possible
15 verdicts for each defendant for jurors to take a
16 lot of time because jurors in my experience are
17 very conscious about going through the evidence
18 and going through the elements of the crimes
19 trying to decide which is the proper thing to
20 do.

21 You are released. You are free to talk
22 to anybody about this case if you wish to do so,
23 but you also are free not to talk to anybody.
24 If anybody wanted to -- if the defense lawyers
25 or these lawyers for the State want to talk to

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1 you and you felt you did not want to talk to
2 them, you don't have to. They know that, they
3 won't bother you.

4 I guess the only other thing I can say
5 is thank you for your service.

6 (ALTERNATES EXCUSED)

7 (JURY IN DELIBERATIONS

8 (DEFENDANTS PRESENT)

9 THE COURT: All right. Counsel, the
10 bailiff informs the court the jury has reached a
11 verdict. Are you ready to receive the verdict?

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: Defense?

14 MR. FARLEY: Yes, sir.

15 MR. CHAPLIN: Yes, Your Honor.

16 THE COURT: Bring the jury. Now,
17 Ladies and Gentlemen, before the jury comes in,
18 let me say something. Whatever the verdict is
19 in this case, I don't expect any outbursts.
20 These things are pretty emotional. I realize
21 that, but that is court of law and a place of
22 where the business of this court is conducted
23 and I don't expect any show of emotion.
24 If you have to show -- if you have to show your
25 emotion, please step outside.

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1 (JURY IN @ 3:30 p.m.)

2 BAILIFF: Your Honor, the jury
3 is present.

4 THE COURT: Thank you very much.
5 Madam Forelady, has the jury reached a verdict?

6 THE FOREMAN: We have, Your Honor.

7 THE COURT: Would you please hand it
8 to the bailiff.

9 THE FOREMAN: (Tenders)

10 THE COURT: (Upon review), all right.
11 Madam clerk, publish the verdicts, please.

12 THE CLERK: Indictment numbers
13 2010-GS-40-39 and 40, indictment numbers
14 2011-GS-40-4915, and 4916, the State of South
15 Carolina versus Henry Gray and Robin Reese,
16 (reading):

17 "We, the jury, by unanimous verdict
18 find, as follows:

19 As to Defendant Henry Gray, as to the
20 charge of lynching in the first degree,
21 Indictment 10-40-0039, we find the Defendant,
22 Henry L. Gray, guilty.

23 As to the charge of murder, Indictment
24 11-40-4915, we find the Defendant, Henry L.
25 Gray, guilty."

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1 This is signed by the foreperson, Juror
2 11, March 2nd, 2012.

3 As to the Defendant Robin Gray Reese,
4 (reading):

5 "We, the jury, by unanimous verdict
6 find, as follows:

7 As to Indictment 10-40-0040, lynching
8 in the first degree, we find the Defendant,
9 Robin Gray Reese, guilty.

10 As to the charge of murder, Indictment
11 11-40-4916, we find the Defendant, Robin Reese,
12 guilty."

13 This is signed by the foreperson, Juror
14 11, March 2nd, 2012.

15 Madam Foreperson, are these your
16 verdicts and the verdict of the entire jury?

17 FOREMAN: Yes, they are.

18 THE COURT: Is there a desire to
19 poll the jury?

20 MR. CHAPLIN: Please poll the jury.

21 MR. FARLEY: Please, Your Honor.

22 THE COURT: Madam clerk, please poll
23 the jury.

24 CLERK: Ladies and gentlemen of the
25 jury, I'm going to ask you two questions

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1 regarding the verdict. If you'll just answer
2 yes or no to both questions.

3 Juror Number 11, were these your
4 verdicts?

5 JUROR: Yes.

6 CLERK: Are these still your
7 verdicts?

8 JUROR: Yes.

9 CLERK: Juror Number 294, were these
10 your verdicts?

11 JUROR: Yes.

12 CLERK: Are these still your
13 verdicts?

14 JUROR: Yes.

15 CLERK: Juror Number 164, were these
16 your verdicts?

17 JUROR: Yes.

18 CLERK: Are these still your
19 verdicts?

20 JUROR: Yes.

21 CLERK: Juror Number 293, were these
22 your verdicts?

23 JUROR: Yes.

24 CLERK: Are these still your
25 verdicts?

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1 JUROR: Yes.

2 CLERK: Juror Number 162, were these
3 your verdicts?

4 JUROR: Yes.

5 CLERK: Are these still your
6 verdicts?

7 JUROR: Yes.

8 CLERK: Juror Number 94, were these
9 your verdicts?

10 JUROR: Yes.

11 CLERK: Are these still your
12 verdicts?

13 JUROR: Yes.

14 CLERK: Juror Number 19, were these
15 your verdicts?

16 JUROR: Yes.

17 CLERK: Are these still your
18 verdicts?

19 JUROR: Yes.

20 CLERK: Juror Number 16, were these
21 your verdicts?

22 JUROR: Yes.

23 CLERK: Are these still your
24 verdicts?

25 JUROR: Yes.

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1 CLERK: Juror Number 114, were these
2 your verdicts?

3 JUROR: Yes.

4 CLERK: Are these still your
5 verdicts?

6 JUROR: Yes.

7 CLERK: Juror Number 309, were these
8 your verdicts?

9 JUROR: Yes.

10 CLERK: Are these still your
11 verdicts?

12 JUROR: Yes.

13 CLERK: Juror Number 6, were these
14 your verdicts?

15 JUROR: Yes.

16 CLERK: Are these still your
17 verdicts?

18 JUROR: Yes.

19 CLERK: Juror 155, were these your
20 verdicts?

21 JUROR: Yes.

22 CLERK: Are these still your
23 verdicts?

24 JUROR: Yes.

25 CLERK: The jurors have been polled,

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1 Your Honor.

2 THE COURT: All right. All right.

3 Ladies and gentlemen of the jury, just because
4 of our sort of backed up trial schedule here in
5 Richland County, it's a very busy county, we
6 don't have the luxury as they do on television
7 in Law & Order for telling you that the
8 defendants will be sentenced later. They're
9 going to be sentenced today. That process will
10 take about another fifteen, twenty, thirty
11 minutes. I need for a few minutes to get the
12 paperwork done before sentencing occurs.
13 Sentencing will be done today.

14 I will tell you that based on your
15 verdict of murder, the minimum mandatory
16 sentence in the state of South Carolina is a
17 thirty year sentence. Of course it runs
18 anywhere from thirty years to life.

19 The sentence range -- you probably
20 heard that during the trial, of the lynching
21 charge is five to forty years.

22 The fact that the murder verdict
23 carries a mandatory minimum of thirty years
24 doesn't allow this court much leeway in terms of
25 sentencing, particularly on the lynching charge.

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1

2 Now, you are welcome to stay for that
3 process if you wish to do so. You need not
4 stay. You're going to be released at this time.
5 Again, I will have law enforcement to walk you
6 to your cars. But you're welcome to stay if you
7 wish to stay. The bailiffs will show you where
8 you can have a seat in the audience and witness
9 the process. It's a little -- a little more
10 that you will see, the process that we go
11 through every week here. So if you're
12 interested, please stay.

13 Some jurors feel it adds closure to the
14 process that they've been through this week, but
15 if you choose not to stay, at this time, I'm
16 going to tell you again that I appreciate your
17 services, as do all the court personnel here.

18 You've been a very attentive jury, you
19 haven't demanded more than we could accommodate.
20 We've tried to hopefully make it as pleasant as
21 we could for you. I can tell you that this
22 whole system can do without me, it can do
23 without these attorneys, but it can't do you.
24 You are an important part of the judicial system
25 of this county of this state and this nation.

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1 You probably heard me tell the jury venire
2 before they left that your role is written into
3 the Constitution of the United States. I's a
4 very vital roll to this whole system. We can't
5 operate without you. We can't operate without
6 citizens who are willing to come and resolve
7 these matters in this community. It's tough
8 work, but I'm happy that you were with us. I'm
9 happy that you were able to get together and
10 reach a decision. So many times it's very
11 difficult for twelve people to reach a consent
12 decision, but obviously the evidence convinced
13 you as to the way this case should have resulted
14 and the outcome should have been as you have now
15 indicated.

16 So with that, again let me wish you
17 well. I was kind of surprised to see the sun
18 shining today. Maybe you can get out and enjoy
19 a little bit of it before the evening if you
20 wish to do so. So you're dismissed at this
21 time.

22 I will tell that in probably fifteen to
23 twenty minutes that the sentencing process will
24 take place. You're welcome to stay. Good luck
25 to all of you. Thank you very much.

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1 (JURY DISMISSED @ 3:38 p.m.)

2 THE COURT: All right. Let's be at-
3 ease for a few -- let me -- hold on a minute.
4 Any Motions at this time, counsel?

5 MR. FARLEY: Yes, Your Honor. At this
6 time, Ms. Robin Reese would like to preserve and
7 renew all motions and objections previously made
8 and we'd also like to ask or make a motion for a
9 new trial under South Carolina Code 17-23-110.
10 The basis of that new trial is based on all of
11 our prior objections to the evidence.

12 THE COURT: All right. Anything from
13 the Defendant ---

14 MR. CHAPLIN: Yes.

15 THE COURT: --- Gray?

16 MR. CHAPLIN: For defendant Henry Gray,
17 Your Honor, we, too, would like to renew all
18 prior objections and motions and ask that a new
19 trial be granted based on all prior objections.

20 THE COURT: All right. What's the
21 State's position?

22 MS. CAMPBELL: Your Honor, we maintain
23 the position we had before and are in agreement
24 with your rulings.

25 THE COURT: All right. Well, I think

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1 the jury was within -- based on the evidence
2 presented, I think the jury was well within
3 their responsibilities to return the verdicts
4 they did based on the facts of this case.

5 I feel the rulings made prior to this
6 time, I feel comfortable that they were made
7 according to the law and I respectfully deny
8 both of your motions.

9 All right. Let's stand at-ease for
10 about ten minutes while the preparation for the
11 sentencing takes place.

12 (BRIEF RECESS)

13 (DEFENDANTS PRESENT - IN CUSTODY)

14 MS. CAMPBELL: May it please the Court,
15 Your Honor.

16 THE COURT: Who is first?

17 MS. CAMPBELL: Whoever you want.

18 THE COURT: Mr. Farrow (sic) can bring
19 his client. Yes, ma'am?

20 MS. CAMPBELL: May it please the Court,
21 Your Honor. We did run a rap sheet on
22 Ms. Reese. She is showing up with some assault
23 arrest. I am not showing any convictions on
24 those over the years.

25 Your Honor, I would just like to point

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1 out -- and they would be speaking as to both
2 defendants, whatever you think is proper. There
3 are family members here. That whole section of
4 people that you see right here on this end, on
5 the upper level, are all family members of the
6 victim in this case and have been here, I think,
7 almost all week. I know that the victim's
8 mother would like to speak. I do not know, but
9 I'll check and see if anyone else would like to
10 speak as well.

11 Your Honor, one thing that they wanted
12 me to hand up, which I did already share with
13 defense attorneys, both of them, is -- as you
14 heard during the trial, they decided to make the
15 victim in this case an organ donor. He did
16 donate organs to different people. I believe --
17 at this point, I would like to approach. This
18 is a letter form the recipient of the heart that
19 they wanted me to share with you.

20 If you would hear from them as to how
21 this has affected them.

22 THE COURT: You can designate one or
23 two family members.

24 MS. CAMPBELL: Yes, sir, I would be
25 glad to. Beg the Court's indulgence.

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1 Her daughter can join.

2 THE COURT: Do you want to come down,
3 ma'am?

4 MS. CAMPBELL: Your Honor, this is
5 the victim's mother. I think she would like to
6 address the court. Can you hear or do you want
7 me to put her closer?

8 THE COURT: Why don't you put her on
9 the stand there at that time podium.

10 MS. CAMPBELL: Be careful.

11 THE COURT: Yes, ma'am?

12 MS. CAMPBELL: State your name for
13 the record.

14 MS. WRIGHT: My name is Carrie Mack
15 Wright. Thank you, Your Honor, and I'd like to
16 thank all of the court solicitors office, the
17 investigators, all the officers and the victim
18 advocates. Everyone here today in your
19 representable place, I just want to say "Thank
20 you."

21 Even though this has been very, very
22 hard for me, but -- we came a long ways and,
23 Your Honor, I ask that you just kind of bear
24 with me because it's a little hard right now.
25 But I just want to share with you briefly how on

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1 February 14th of 2010 when the doctors told me
2 that my son was brain dead, not only that I lost
3 him, but a big part of me went with him.

4 It wasn't the fact that he died so,
5 because I understand that we all must leave
6 here; but the way that he left, it's very hard
7 for me. At the present time I am still in
8 counseling and in a support group, and I'm still
9 trying to overcome, to understand why.

10 But today I thank God for justice, but
11 I yet would rather have my son.

12 As I said, a part of my son's life has
13 died. My son died and part of my life has gone
14 with him. I would never be the same. The death
15 of my son had a devastating impact on my life.
16 The death was something that neither my son nor
17 I deserved.

18 My son's death has affected me mentally
19 and physically. The thought of thinking about
20 the assault is breathtaking. My son had a
21 horrible number of beatings and thinking about
22 lying there lifeless and defenseless. I've
23 asked myself the question over and over, 'Will I
24 ever overcome my child's death?' A part of my
25 life has been taken from me and nothing in the

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1 world can bring it back.

2 He was a very quiet, respectable young
3 man. He would give you his very last if you
4 were in need. My son was reared by his father
5 and his mother. He was taught to treat everyone
6 the way he wanted to be treated. He was reared
7 in a Christian home. He believed in the Bible
8 and praying day and night. If anyone spoke with
9 my son, they would say he would constantly
10 acknowledge God. My son didn't carry guns,
11 knives. He didn't walk around with his pants
12 down, his shirt out of his pants, his cap on
13 backwards. That sent a message alone. My son
14 was a very young man of integrity, a minister of
15 the Gospel of New Covenant Revival Ministry
16 church, a barber instructor. He was also once a
17 business owner and operator of results of a
18 blessed barber shop in Columbia and Gastonia,
19 North Carolina. My son was a poem writer,
20 motivated speaker.

21 My son wanted to live and let live.
22 There are four people living today because my
23 son's organs were given to help save other's
24 lives. My son valued life and didn't try to
25 take life.

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1 The heart that God put in man to love
2 one another turning to evil, the hand that God
3 gave to care for each other turning to violence.
4 My belief is that "thy shall not kill."

5 My son's death left me with a bleeding
6 heart. I often feel anxiety, nervous. I have
7 alread been diagnosed with post trauma stress.
8 No one knows how I struggle and suffer the
9 emotion, the impact on my son's death. Murder
10 is a deduction from my life and a responsibility
11 to society. My son is no longer here to help me
12 with my financial obligations. My son isn't
13 here to take me to doctors appointments, nor is
14 he here to just sit and talk and pray with me or
15 drive me to church.

16 I would not want any parent to lose a
17 child, especially to murder.

18 Once we were a family. Now, we are no
19 longer a family without my son. We no longer
20 celebrate holidays, birthdays, Thanksgiving,
21 Christmas. It is very hard to move on not
22 having my son who was also a father, uncle,
23 brother and so much more.

24 I am grateful for the parents of
25 murdered children's support group, the post

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1 trauma resources. I feel like my life has been
2 cut short, but I realize that only God can help
3 me.

4 Those that took my child's life, the
5 only hope I have is to believe in God to keep me
6 alive. There is nothing any more can I do to
7 give or to help with my child. My heart is
8 broken. My son always tried to help me to teach
9 other young men and women to be successful in
10 life. Even the day he was murdered, he was
11 working at the barber college. He called me
12 that morning and said he had four students that
13 came into school, and he wanted to reward them
14 by treating them with a pizza. It was snowing
15 that morning, and I said 'that is very nice.'

16 My son only weighed 130 or 135 and just
17 thinking about the number and attacks and
18 actually beating to death is insane. Seven
19 years ago my son attended Queen Bible College.
20 He left a legacy behind. He was blessed to have
21 many accomplishments but none of that will bring
22 him back. I hope that he has met our heavenly
23 Father and may he rest in peace.

24 For the ones that took his life, I hope
25 they will never had an opportunity to take,

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1 another life. I pray that God be with them and
2 justice has been served.

3 I hope and pray that no one here today
4 will ever lose their child, because a part of
5 your life will be gone with that child. Nothing
6 in the world can bring my son back. We all love
7 and miss him, his church family, students from
8 the barber college. Today I stand before you as
9 a mother. I am living off of one kidney today
10 and a thirty percent of -- but nevertheless, I
11 know that we all serve a real and a living God,
12 so God bless you all. Thank you, Your Honor.
13 Thank everyone here and for the opportunity that
14 you gave me just to share this with you.

15 THE COURT: Thank you very much
16 Ms. Mack.

17 MS. CAMPBELL: State your name.

18 KAREN MACK: I am Karen Mack Barber, -
19 - (emotional).

20 THE COURT: It's all right. Take your
21 time.

22 KAREN MACK: (Emotional), -- help me.
23 I thought I would feel different after hearing
24 the verdict of guilty, but as I sat there
25 nothing in me leaped for joy because at the end

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1 of the day, my brother is still not here.

2 Where can I possibly begin? Mere words
3 aren't enough to express the volume of hurt,
4 magnitude of sadness and insurmountable pain
5 that my family and I had experienced and are
6 experiencing every day as we try to cope with
7 this senseless murder. Even though it has been
8 nearly two years since I heard the grief-filled
9 cry of my mother urging me to get to the
10 hospital, I can still feel every emotion, recite
11 every moment, every play, every word I spoke or
12 heard during the dreadful day my family was
13 given the news that we lost Kenny -- who was a
14 father, a son, a brother, an uncle, a teacher, a
15 minister and best friend.

16 Kenny was special to me. He was my
17 brother. He was my friend. He was my biggest
18 supporter. His death has affected me in a lot
19 of different ways. For a time it made me second
20 guess the one thing that has kept me grounded
21 for most of my life, and that has been my
22 spiritual believes. I couldn't believe that God
23 would allow something like this to happen to
24 someone who loved Him so much.

25 I surely didn't believe that this no

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1 matter how horrific it would be would kill him.
2 I didn't believe he would die. I didn't believe
3 I would have to fight for my sanity and search
4 so deep within to stand through what he looked
5 like in the hospital. To stand through what the
6 doctors said, to stand through hearing them
7 pronounce him brain dead. To stand as I heard
8 my mother pray, cry and plead with God all the
9 night through. To stand as I helped my mother
10 make funeral arrangements for my young son. I
11 never dreamt he would die. Or I had muster up
12 the strength to speak at his funeral, kiss him
13 goodbye, or watch them lower his body into the
14 cold bitter earth.

15 No, this my brother. He was the child
16 that most resembled my deceased father. He was
17 the one who always did his very best to protect
18 me and guide me to God's best for me. He was
19 the one who brought me flowers to my college
20 graduation, and the one who helped to take care
21 of my mom when my oldest brother and I couldn't
22 be around. Kenny possessed the gentle hand that
23 clung to mine and reminded me that it would all
24 right at my father's funeral.

25 Kenneth was a constant reminder that

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1 our faith is an overcoming faith. It can
2 withstand, endure and conquer every situation we
3 go through. Kenny's life was a gift from God
4 and a present to everyone he met. His death was
5 unfair. It was undeserved, unwarranted and
6 incomprehensible.

7 No one should be permitted to take what
8 they lack the ability to give, and that's life.

9 Although I have gone through many
10 emotions that range from being sick on my
11 stomach, crying uncontrollably, sitting and
12 staring, I have never allowed anger to penetrate
13 my heart. Why? The heart is a symbol of love
14 and it is the one vital organ that determines
15 life. I have refused to allow the people who
16 took my brother's life to have mine, too.

17 My prayer is that justice will be done
18 and that no family will have to ensure the
19 unimaginable pain that my family has had to
20 endure as a result of this senseless act.

21 Thank you, Your Honor.

22 THE COURT: Yes, ma'am. Thank you.

23 MS. BROWN: This statement is from
24 Kenny Mack's oldest brother, Anthony. I am
25 going to read it on his behalf, (reading):

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1 "Brotherly love is something that two
2 brothers share. It's a love bond and a type of
3 friendship. Kenneth Mack was my best friend
4 since birth. He was also my mentor, he was my
5 little Big Brother. I called him that because
6 although he was younger than me, he was my
7 inspiration because he inspired me.

8 The death of my little brother has had
9 a devastating impact on my life. It's been very
10 hard for me to function. During the time of my
11 brother's death, I was on dialysis waiting for a
12 kidney donor. It was a very difficult and low
13 time for me. My little brother would call me
14 three times a day just to check on me and
15 encourage me to keep the faith.

16 Kenny was there for me during the bad
17 times and the good times. He was there when I
18 He was there when he was sick and well. My
19 brother was a spiritual man. He believed in
20 ministering to anyone who would listen.

21 His death has really taken a toll on
22 me. It hurt so bad not being able to hear his
23 voice or talk to him about the things he and I
24 talked about. There is no doubt that my little
25 brother would have given his life just to save

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1 mine. He was an angel that God sent me. A day
2 doesn't go by that I don't find myself expecting
3 him to call. I was used to him calling and
4 asking me whether I was okay and hearing him
5 say, " I love you, man." That was our bond.

6 So when all is said and done, Kenneth
7 Mack was my brother and best friend. I miss him
8 more and more every day. He died on his
9 birthday, which was Valentine's Day. On that
10 day a part of me died too.

11 My little brother is also still alive
12 because he lives inside of me. I received my
13 little brother's kidney. Because of his gift, I
14 have a second chance of life -- along with three
15 other men, who are also alive because my little
16 brother's organs were donated to save their
17 lives.

18 Kenneth will always be loved and
19 missed, but he will never be forgotten. I love
20 you, Kenny.

21 In closing, I hope and pray that those
22 who took my brother's life will find peace with
23 their God and they will never have a mind to
24 kill again. We do believe in justice and the
25 scripture that says, "What you sow, that you

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1 shall reap." God bless."

2 Anthony Mack, read by Nakia Brown with
3 the Solicitor's office.

4 THE COURT: Anything further?

5 MS. CAMPBELL: No, sir.

6 THE COURT: Mr. Farley, do you have
7 anything you wish to say on behalf of your
8 client?

9 MR. FARLEY: Yes, Your Honor. I know
10 Ms. Reese is very upset at this moment. We
11 would hope that given that you've sat through
12 this trial for the last five days you would --
13 when you go to give your sentence on Ms. Reese,
14 you would try to give the most lenient sentence
15 you possibly can. Thank you, Your Honor.

16 THE COURT: Robin Reese, do you have
17 anything you wish to say?

18 DEFENDANT REESE: To the family, my
19 heart goes out to you all. To sit up here and
20 say that I believe I even played a part in
21 taking his life, I don't feel I did -- but I
22 apologize, and I just ask for your forgiveness.

23 THE COURT: All right. Ms. Reese, the
24 jury having convicted you of murder and lynching
25 in the first degree, the murder carries a

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1 mandatory minimum of thirty (30) years. On both
2 charges you shall be committed to the State
3 Department of Corrections for a period of thirty
4 (30) years. Both sentences to run concurrent,
5 you are given credit for time served if you
6 served any time before today. Good luck to you,
7 ma'am.

8 (DEFENDANT REESE EXITS COURTROOM)

9 THE COURT: All right, Solicitor.

10 MS. CAMPBELL: May it please the
11 court, Your Honor, Mr. Gray's prior record
12 starts back in 1989. He received an armed
13 robbery conviction for which he received a YOA.

14 THE COURT: '89, YOA.

15 MS. CAMPBELL: Yeah, and he has a
16 '94 YOA revocation. I'm just going through the
17 convictions.

18 In 1998 -- actually, the conviction was
19 in 2000 for PWID cocaine. That was his first
20 drug offense.

21 In 2000, he was convicted of two counts
22 of criminal domestic violence.

23 His second drug conviction was in 2005
24 for PWID cocaine. Looks like a third offense.
25 It's missing an offense.

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1 Then, Your Honor, he has pending right
2 now, a trafficking in marijuana and trafficking
3 in cocaine charge that are still pending in our
4 office, that he picked up after this charge.

5 THE COURT: Mr. Chaplin?

6 MR. CHAPLIN: Yes, sir. As far as
7 mitigation is concerned, Your Honor, are you
8 ready for that now?

9 THE COURT: Yes, sir.

10 MR. CHAPLIN: Thank you very much.
11 Your Honor, I have met with Mr. Gray on numerous
12 occasions as we got ready for this trial.
13 Mr. Gray has been an good person to work with.
14 He's a good man and he's got a family out here
15 and I know that he feels badly what about has
16 occurred to the Mack family as well. He's a
17 little choked up right now and can't really
18 express a lot of that, but we're asking that you
19 show some leniency and mercy on him, Your Honor.
20 We would ask that whatever is a pending, all of
21 that be resolved at this time.

22 (TELEPHONE RINGING)

23 THE COURT: Please turn that off.
24 You'll just have to that up with the solicitor's
25 office. That's not a matter for this court.

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1 MR. CHAPLIN: That's right.

2 THE COURT: Mr. Gray, do you have
3 anything you want to say?

4 DEFENDANT GRAY: To the Mack family, I
5 ask the Lord for forgiveness for what they say I
6 did, and I ask you for your forgiveness. I'm
7 not a killer. I'm really not. I have kids, so
8 I can understand how you feel. I'm asking
9 you'll have -- and I deeply apologize for your
10 loss, deeply.

11 THE COURT: All right. Mr. Mack, the
12 same sentence as your sister on both charges,
13 that you be committed to the State Department of
14 Corrections for a period of thirty (30) years.
15 Both sentences to run concurrent. I'll give you
16 credit for time served. Any time served prior
17 to now will be credited against your sentence.

18 Do you happen to know how long that is,
19 Mr. Chaplin.

20 MR. CHAPLIN: It's been since ---

21 THE COURT: It will be important to
22 him later.

23 MR. CHAPLIN: Yes, sir. Your
24 Honor, I can't say exactly what the date is
25 right now.

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1 THE COURT: Well, I'm going to leave
2 it up to the Department of Corrections to
3 calculate it. They'll do it for you, but it's a
4 lot easier and it's more helpful to put it on
5 the sentencing sheet.

6 MR. CHAPLIN: If you could give me a
7 few minutes to verify that. I'll be glad to do
8 it -- since July of 2011, Your Honor.

9 MS. CAMPBELL: I'll check it, Your
10 Honor, and get back to you.

11 THE COURT: Well, we turn in these
12 sentencing sheets in.

13 MS. CAMPBELL: Can I bring it to you in
14 five minutes?

15 MR. CHAPLIN: July 15th, Your Honor.

16 THE COURT: All right. I'm going to
17 give that to you.

18 MS. CAMPBELL: 2011.

19 THE COURT: Good luck to you Mr. Gray.

20 (DEFENDANT GRAY IN CUSTODY)

21 THE COURT: That concludes this
22 matter.

23 (TRIAL CONCLUDED)

24

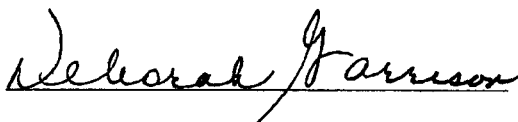
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CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate transcript of the jury trial held
before The Honorable Thomas G. Cooper, Jr.,
February 28 through March 2, 2012, as prepared
from the notes of Karen Ambroziak, Court
Reporter;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

June 19, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBIN REESE,

APPELLANT

APPELLATE CASE NO. 2012-209826

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. In this murder and lynching trial, did the trial judge err in refusing to charge the jury with the law of involuntary manslaughter when there was evidence from which the jury could conclude that the death was the result of an unlawful assault and battery not of a character that would naturally tend to cause death?
2. Did the trial judge err in admitting graphic autopsy photographs without balancing the probative value of the photographs against the danger of unfair prejudice?

STATEMENT OF THE CASE

In March of 2010, the Richland County Grand Jury indicted Appellant Robin Reese for lynching first degree, indictment #2010-GS-40-0040. In October of 2011, the Richland County Grand Jury indicted Reese for murder, indictment #2011-GS-40-4916. On March 2, 2012, Reese and her brother, Henry Gray, proceeded to jury trial before the Honorable G. Thomas Cooper. Attorney Andrew Farley represented Reese at trial. Attorney Mathias Chaplin represented Gray at trial. Attorneys K. Luck Campbell, April Sampson and Nicole Simpson prosecuted the case on behalf of the State. The jury returned verdicts of guilty and Judge Cooper sentenced Reese to 30 years concurrent for each charge. A timely notice of intent to appeal was served on March 6, 2012. This appeal follows.

STATEMENT OF FACTS

On February 13, 2010, the Columbia Police Department received calls about a fight on McDuffie Street at the Gonzalez Gardens Apartments. R. pp. 130-131, pp. 405-407; p. 932. One of the calls came from an eye witness, Amber Hardy. At trial Hardy testified that on February 13, 2010, she was the pharmacy manger at the CVS on Forest Drive. R. p. 405, lines 1-21. As part of her employment with CVS, she was in her car following a shoplifter when she observed a fight on McDuffie Street involving four black males and a black female beating another black male. R. pp. 406-407. Hardy described the beating as “brutal.” R. p. 410, line 22. When asked if the man tried to defend himself Hardy testified, “He was putting his hands up trying to defend himself, to deflect the kicks and the punches. They were all just taking turns and he would fall and they would kick him and punch him and like karate kicks like you would break a board in half.” R. p. 413, lines 11-16. Hardy testified that after the attack the assailants went to the store and the attacked man staggered off. R. p. 407, line 20 – p. 408, lines 1-9; p. 419, line 22 – p. 420, lines 1-7. No witnesses identified Appellant or her brother as being present at the brutal attack on McDuffie Street.

Another witness, Tyeshia Kiki Burns, was working at the BP Station across the street from McDuffie Street and Gonzalez Gardens on February 13, 2010. R. p. 921, lines 17 – p. 922, 923, lines 1-25. Burns testified, “The only thing I saw was, I was waiting on some customers and I [sic] about four or five people running up the street. One guy was in front of them. He run to his left. He must have tripped over a chain or something and he fell. All I saw was black hoods on them. That was it and after he went to get up, he stumbled back down and I went to turn around and look and he was gone.” R. p. 924, lines 2-10. Burns

testified that the crowd of four to five chased the man and beat him. R. p. 926, lines 22-24). Burns called 911. R. p. 932, lines 10-22.

Officers with the Columbia Police Department were told that several people were involved the fight on McDuffie Street and one was wearing a red hoodie or hat and another had on a black sweat shirt. R. p. 114, lines 1-21. One of the suspects was also described as a black male wearing a black hoodie with a red backpack or satchel. R. p. 142, lines 1-10. When the officers arrived at McDuffie Street, they did not find a fight. R. p. 131, lines 16-24. The officers drove through the apartment complex and one officer observed an individual with a red backpack enter an apartment. R. p. 132, lines 6-13; p. 142, lines 1-20. The officer went to the apartment, S6, and spoke with Ms. Valerie Goodwin who told the officer that “Bloom” had come into her apartment but was no longer there. R. p. 126, lines 1-11. “Bloom” was later identified as Marcellius Brooks. R. p. 126, lines 12-15.

The officers then received a call that there was a person on the ground between the F and G buildings in the apartment complex. R. p. 134, lines 18-24. Officers found an unconscious man who looked like he had fallen and had injuries to his nose and lip. (R. p. 135, line 9 – p. 136, lines 1-8. The officers called EMS who transported the man to Richland Memorial Hospital. R. pp. 321 – 324. The unconscious man was later identified as Kenneth Mack. R. p. 607, line 8 – p. 608, 609, lines 1-25. Mack was pronounced brain dead shortly after his arrival at the hospital. R. p. 608, lines 18 – p. 609, lines 1-4. The cause of death was a closed head injury due to “blunt head trauma.” R. p. 635, lines 1-7. On February 15, 2010, based upon further investigation, Investigator Pegram with the Columbia Police Department obtained an arrest warrant for Marcellius “Bloom” Brooks for the murder of Kenneth Mack. R. p. 698, lines 10-24.

During Appellant's trial Bloom was called a witness by the State. Bloom admitted tackling Mack on McDuffie Street. R. pp. 486-489. Bloom testified that he saw Mack slam Appellant's 13 year old daughter, Melquana S. "Lucy", to the ground after she slapped Mack. R. p. 487, lines 5-22. Bloom testified that he was helping Lucy by tackling Mack and getting him off of her. R. p. 489, lines 1-13. Bloom admitted hitting Mack twice after he was on the ground. R. p. 489, lines 13-19. Bloom testified that Angelo "Little Ricky" Boyd pulled him off of Mack. R. p. 490, lines 3-9. Bloom admitted that Lucy tried to kick Mack but denied that others were involved in the fight. R. p. 490, line 15 – p. 491, lines 1-19. Bloom denied kicking Mack. R. p. 491, lines 20-21.

Angelo Boyd was called as a witness by the State and he admitted kicking Mack after Mack threw Lucy to the ground. R. pp. 182 – 184. In his statement Boyd told police that he kicked Mack in the head while wearing Timberland boots. R. p. 196, line 21 – p. 197, lines 1-5. Boyd gave Investigator Pegram three additional names: Kenneth "Juve" Archie, Thomas "Trigger" Joseph and "Genesis." R. p. 707, lines 12-16. Both Bloom and Boyd testified that after the fight they took Lucy to the store where her mother, Appellant Robin Reese, was playing video games. R. p. 185, line 16 – p. 186, 187, lines 1-10; p. 493, line 7 – p. 494, lines 1-25).

Issak Wethers testified that on February 13, 2010, he lived in Gonzalez Gardens and saw a fight on McDuffie Street. R. p. 586, lines 9-19. Wethers testified that he saw a man in his thirties messing with a young teenage girl. R. p. 591, line 10 – p. 592, lines 1-23. Wethers testified that a group of four to five guys came to the girl's rescue and beat the man. R. p. 587, line 9- p. 588, lines 1-18; p. 593, lines 13-17. Wethers gave a statement to the police indicating that the man was being kicked, punched with fists and stomped. R. p. 597,

lines 10-17. Wethers testified that Marcellius Brooks [Bloom], Trigger, Juve and Little Ricky were part of the group of guys beating the man. R. p. 598, lines 6-23.

Lucy testified that on February 13, 2010, she was knocking on the door of the nail shop when Mack walked by and said to her, "You can come in my house." R. p.853, lines 14-20. The nail shop was closed so Lucy left. She went to the store where her mother was, bought some chips and began to walk home. R. p. 854, lines 4-15. Mack stopped Lucy on her way home and asked her for some of the chips. R. p. 854, lines 16-19. Lucy told Mack to leave her alone but he "just started jerking" her around. R. p. 854, line 19 – p. 855, lines 1-2. Lucy testified that Mack threw a snowball at her and then grabbed her with his right hand. R. p. 855, lines 2-7. Lucy hit Mack and he picked her up and threw her between two bushes and they began "tussling." R. p. 855, lines 8-13. Lucy then testified, "That's when is Mr. Marcellius [Bloom] came, got him off of me, hit him a couple of times and then some dudes came and jumped on him." R. p. 855, lines 14-16.

After Bloom's arrest for Mack's murder, he told the police of a second attack on Mack. R. p. 521, lines 10-22. Bloom provided the police with the names Donetti Perry, Sanovia Thompson and Kara Chase. R. p. 523, line 21 – p. 524, lines 1-17. At the time of trial, when Bloom testified as a witness for the State, charges of murder and lynching as well as unrelated charges of criminal domestic violence, malicious injury to personal property, two counts of simple possession of marijuana and possession with intent to distribute marijuana were all pending against Bloom.

Donetti Perry testified that on February 13, 2010, she lived in building F at Gonzalez Garden Apartments. R. pp. 211 – 214. Perry testified that she saw Mack and Appellant's brother, Kevin "Six" Gray having a conversation between the F and G buildings at the

apartment complex. R. p. 212, line 19 – p. 213, 214, lines 1-11. Perry testified that Mack looked like he had already been in a fight. R. p. 216, lines 18-20. According to Perry, Six received a phone call and then clipped Mack's feet from under him and Mack fell to the ground, hitting his head. R. p. 216, line 1- p. 217, lines 1-14. Perry testified that Six began kicking Mack. R. p. 217, lines 15-21. According to Perry, Appellant arrived after Mack had fallen to the ground and she kicked him. R. p. 220, line 18 – p. 221, lines 1-5. Perry testified that Appellant and her brother, Six, hit Mack with a chair. R. p. 222, line 2 – p. 223, lines 1-3.

Kara Chase testified that in February of 2010, she was homeless but would sometimes stay with Synovia Thompson who lived in Apartment F-8 in Gonzalez Gardens. R. p. 330, line 7 – p. 331, lines 1-2. Chase testified that on February 13, 2010, she was visiting Synovia when she saw an encounter between Six and Mack in front of the G building of Gonzalez Gardens. R. p. 333, lines 1-25. Chase testified, "It looked like when he [Six] went to hit him [Mack], he kind of missed him, which caught the man off guard which kind of – that's why I said he was swept off his feet." R. p. 336, lines 4-7. Chase testified that Mack fell down and Six walked away. R. p. 336, line 16 – p. 337, lines 1-18. Chase then testified that what happened next was blurry and testified that she was now blind and on dialysis. R. p. 337, lines 13-23. Chase did not remember Appellant striking Mack with a chair. R. p. 359, lines 15-18. Chase testified that she remembered Appellant hitting Mack but she did not remember Appellant picking up a chair. R. p. 343, lines 7-9.

In a statement admitted, over objection, pursuant to Rule 613(b), Kara Chase told the police:

I saw the victim in between the F and G building of Gonzalez Garden having a conversation with another man. The other

man grabbed the victim and went to walk him down the sidewalk. The victim snatched back and the other man swept the victim under his feet causing the victim to hit his head on the pavement. A few seconds later a female runs up the street saying, 'That's him.' She begins [sic] kicking the man repeatedly picking up an old chair throwing it on top of the victim. The other man continued to kick and stomp the man in his face once the female stopped. The victim layed [sic] on the ground the whole time this was occurring [sic].

R. p. 1119.

Sanovia Thompson testified that she saw Mack walking down Forest Drive at Gonzalez Gardens with his hand over his head. R. p. 566, line 16 – p. 567, lines 1-16. When asked how Mack's face appeared she replied, "He had a knot on his head and it obviously bleeding. He was kind of like staggering like he might have been intoxicated." R. p. 568, lines 3-5. Thompson testified that Mack walked up and spoke with Appellant's brother Henry Gray. R. p. 568, line 11 – p. 569, 570, 571. According to Thompson, after receiving a phone call, Gray grabbed Mack and said, "We're going to talk with my sister." R. p. 570, lines 18-25. The next things Thompson saw was Mack on the ground and appellant walking up the sidewalk. R. p. 573, lines 22-25. Thompson testified, "I heard Robin say 'why did you put your hand on my baby' or something like that. She kicked him on the leg one or two times and just walked away." R. p. 574, lines 14-18.

Mary Anderson testified that in February of 2010, her sister lived in the G building of Gonzalez Gardens. R. p. 283, line 20 – p. 284, lines 1-7. Anderson testified that as she was leaving her sister's apartment she saw Appellant and her brother kicking Mack. R. p. 287, line 3 – p. 288, lines 1-9. She testified that one of them hit Mack with a chair but she was not sure which one. R. p. 303, lines 4-14.

Appellant Robin Reese testified that by the time she arrived in front of the G building, Mack was already on the ground. R. p. 873, lines 8-11. Reese testified, "So I was raising hell, excuse me, excuse me, and I just wanted to know, you know, 'why was you on top of her? Why would you even be have a conversation or anything with a thirteen year old.' But he was just laying there. When I ran up, I tried to kick him but I slipped and fell because, you know, the ice and stuff. So instead of getting back up, I just reached over and I slapped him his face and told him 'you stay away from my kid, you need to [sic] round grown women, there's grown people out here that you can be around.'" R. p. 874, lines 8-19. Appellant admitted she was upset and slung a chair but denied that the chair made contact with Mack. R. p. 875, lines 9-14.

Three different pathologists testified at trial. All three agreed that the cause of death was blunt force trauma to the head. The toxicology report revealed the presence of marijuana and Lorazepam in the deceased's system R. p. 642, lines 4-7. The pathologist called by the State, Dr. Bradley Marcus, testified that he could not distinguish which injuries were sustained in the first attack on McDuffie Street and which injuries were sustained in the second incident between buildings F and G. R. p. 637, line 23 – p. 638, lines 1-4. Dr. Marcus testified that the second incident contributed to death. R. p. 638, lines 9-11. Dr. Adel Shaker, the forensic pathologist called by co-defendant Gray, testified that he could not determine which attack led to the death. R. p. 790, lines 3-8. Dr. Shaker testified that the injuries he observed were not consistent with being beaten with a metal chair. R. p. 785, lines 6-23. Dr. Shaker testified that the fatal blows could have been struck on McDuffie Street and during a lucid interval before herniation due to bleeding of the brain

the deceased could have walked to buildings F and G in Gonzalez Gardens and then collapsed. R. p. 786, line 22 – p. 787, lines 1-25.

Dr. Sandra Conradi, the forensic pathologist called by Appellant testified:

Mr. Mack was fatally injured in the second fight and in my opinion, he struck his head on a hard surface, fractured his skull, suffered very severe head injuries including bleeding between the scalp and his skull, bleeding under the skull, between the skull and the brain and he had bruising or contusions of his brain along with the other fractures and associated abrasions and contusions of his face and mouth, which were not fatal. The fatal injury was the brain injury. He suffered that from falling and being propelled onto a hard surface on the back of his head.

R. p. 842, lines 8-20.

Appellant objected to the trial judge's refusal to charge involuntary manslaughter R. pp. 972 – 975 and to the admission of autopsy photographs R. pp. 618 – 625). Both objections were overruled. The objections were renewed after the jury returned verdicts of guilty. R. p. 1094, lines 5-11. This appeal follows.

ARGUMENT

In this murder and lynching trial the trial judge erred in refusing to charge the jury with the law of involuntary manslaughter when there was evidence from which the jury could conclude that the death was the result of an unlawful assault and battery not of a character that would naturally tend to cause death.

At the end of the trial, counsel for Appellant requested a charge on the law of involuntary manslaughter. R. p. 973, lines 4-10. In response to the request for a charge on involuntary manslaughter, the judge stated:

But there has to be a killing, first, and then there has to be an unlawful act, not intending to cause death or great bodily harm. If I assume the unlawful act that she admits is throwing the chair, she says it didn't hit him. She says it didn't kill him. Now, if she had said on the stand 'I threw a chair, but I didn't mean to hit him but it hit him and killed him', then I've got the link between the killing and her act. But she says none of that happened. She says she got age [sic] angry and threw a chair that did not hit him, so there's no killing as a result of actions, involuntary actions. There has to be both. There has to be a killing and it has to be done involuntarily.

It's the shooting of an unintended victim a mile away that the bullet comes down and kills somebody. But she doesn't admit the killing. She admits an unlawful act but there's no killing. It's got to be both to warrant an involuntary manslaughter charge.

R. p. 974, line 2 – p. 975, line 1. The judge denied the request to charge involuntary manslaughter. R. p. 975, lines 17-20. The trial judge erred.

In State v. Chapman, 336 S.C. 149, 152, 519 S.E.2d 100, 101 (1999) the South Carolina Supreme court wrote:

Involuntary manslaughter is (1) the unintentional killing of another without malice, but while engaged in an unlawful activity not naturally tending to cause death or great bodily harm; or (2) the unintentional killing of another without malice, while engaged in a lawful activity with reckless

disregard for the safety of others. Bozeman v. State, 307 S.C. 172, 414 S.E.2d 144 (1992).

In Chapman the Court reversed a voluntary manslaughter conviction for failure to charge involuntary manslaughter because the defendant's act of pressing his shoulder into the victim's neck during the course of a fight was not the type of action naturally tending to cause death. The Chapman Court wrote:

Appellant was engaged in an assault and battery and, under the facts of this case, the battery was not such that naturally tends to cause death or great bodily harm. "An unintentional killing resulting from an unlawful assault and battery, not of a character of itself to cause death, is involuntary manslaughter ..." 40 C.J.S. Homicide § 40 (1991). See also People v. Johnson, 100 Ill.App.2d 13, 241 N.E.2d 584 (1968) (death resulting from blow from fist may be involuntary manslaughter because although unlawful, a blow to the face with hand is not likely to be attended with dangerous or fatal consequences); State v. Cobo, 90 Utah 89, 60 P.2d 952 (1936) ("the great weight of authority is that an unintentional killing, resulting from an unlawful assault and battery which in and of itself is not of a character to cause death, is held to constitute involuntary manslaughter...").

336 S.C. at 152-153, 509 S.E.2d at 101.

In the present case there was evidence from which the jury could have concluded that Appellant Reese and co-defendant Gray, under the hand of one is the hand of all theory argued by the prosecution, were engaged in an unlawful assault and battery, not of a character of itself to cause death, but which resulted in the unintentional killing of Mack, without malice. Dr. Conradi testified that Mack died as a result of falling and striking his head on the pavement during a scuffle with Gray. Gray's actions, while

constituting an unlawful assault and battery, are not the type of actions that would naturally tend to cause death or great bodily injury.

In closing argument the prosecution argued:

Dr. Marcus showed you this diagram and what Mr. Chaplin would love for you to believe is that the injury is up on the top of the head. Look at this picture, it's right here – where if you fell to the ground, you'd hit your head. The reason that he fell to the ground was that Henry Gray swept him, killing him.

There's no problem with cause of death. They did it. He's dead. They should be held accountable for it.

Now, the hand of one is the hand of all. So if Robin Reese started this, and she did start it, she is just as guilty as Henry Gray. Without that choice make that call, Kenneth Mack would be here today.

R. p. 1059, lines 9-23.

There is evidence in the record from which the jury could conclude that Mack's death was the result of an unlawful assault and battery not tending to cause death. A trial court should refuse to charge a lesser-included offense only where there is no evidence the defendant committed the lesser rather than the greater offense. State v. Smith, 315 S.C. 547, 446 S.E.2d 411 (1994). The judge erred in refusing to charge involuntary manslaughter. The fact that Appellant denied that the chair made contact with Mack does not preclude the requirement to charge involuntary manslaughter based on Gray's actions and the hand of one is the hand of all.

2. The trial judge erred in admitting graphic autopsy photographs without balancing the probative value of the photographs against the danger of unfair prejudice.

Dr. Bradley Marcus, a forensic pathologist, performed the autopsy on the deceased. At trial, the State offered, without objection, Dr. Marcus as an expert witness in forensic pathology. R. p. 606, lines 9-15. Dr. Marcus testified that the cause of death was a closed head injury due to “blunt head trauma.” R. p. 635, lines 1-7. Appellant Reese and co-defendant Gray also called forensic pathologists as experts to testify at trial and both agreed with Dr. Marcus that the cause of death was blunt force trauma to the head. (R. p. 795, line 24 – p. 796, lines 1-3; p. 843, lines 3-8.

During the testimony of Dr. Marcus, the prosecution moved to admit State’s exhibits #51-#57, pre-autopsy photos. Counsel for Appellant Reese objected stating, “Well, Your Honor, before we approach I’m also going to join with him in the objection. I think they are highly prejudicial to our clients, and I think his testimony can illustrate the autopsy without necessarily . . . R. p. 618, lines 12-17. The judge then sent the jury out and held an in camera hearing in regard to the photos. R. pp. 619 – 624. The prosecution additionally sought a ruling on State’s exhibits #80 - #83, autopsy photographs. (R. p. 622, lines 6 – 25. The prosecution argued that the photographs were necessary to show malice and cause of death. R. p. 619, line 15 – p. 620, lines 1-2. Dr. Marcus testified that the photographs were necessary to depict the cause of death and he could not diagram this. R. p. 622, lines 2-21. The judge overruled the objection to the photos stating, “All right. The objection is overruled.” R. p. 625, lines 2-3. State’s exhibits #80 - #83 were admitted in evidence over objection. R. p. 631, lines 15-20. The judge failed to balance the purported probative value of the photographs against the danger of unfair prejudice.

While questioning Dr. Marcus about the autopsy photographs, State's exhibits #80 - #83, the prosecutor, with the jury present, stated, "These are graphic." R. p. 631, line 25. The prosecutor was correct. The autopsy photographs depict the bloody, sawed open skull and exposed brain of the deceased. The judge failed to balance the purported probative value of the photographs against the danger of unfair prejudice. In State v. Collins, 398 S.C. 197, 202, 727 S.E.2d 751, 754 (Ct.App. 2012) the South Carolina Court of Appeals wrote:

"The admission of evidence is within the circuit court's discretion and will not be reversed on appeal absent an abuse of that discretion." State v. Dickerson, 395 S.C. 101, 116, 716 S.E.2d 895, 903 (2011). A trial court has particularly wide discretion in ruling on Rule 403 objections. See State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct.App.2003) ("A trial judge's decision regarding the comparative probative value and prejudicial effect of evidence should be reversed only in exceptional circumstances. We ... are obligated to give great deference to the trial court's judgment [regarding Rule 403]." (internal citation omitted)).

While great deference should be afforded to the trial court's judgment regarding the balancing analysis required by Rule 403, in the present case the judge failed to conduct the balancing analysis. The judge's failure to conduct the balancing test required by Rule 403 amounts to a failure to exercise discretion. The failure to exercise discretion constitutes an abuse of discretion. State v. Mansfield, 343 S.C. 66, 86, 538 S.E.2d 257, 267 (Ct.App.2000).

In Collins the Court found that the trial judge's failure to independently analyze the probative value of the photos constituted a failure to properly exercise discretion. In the present case, prior to trial when discussing the pre-trial motion to suppress the autopsy photos the judge stated, "[M]y normal rule on photographs is that if they assist

your pathologist in determining the cause of death, then they are admissible. If they are just for shock value, then they would not be admissible. But I will review them at the proper time.” When the photographs were offered in evidence, the judge failed to balance their probative value against the danger of unfair prejudice. The judge abused his discretion.

Pursuant to a Rule 403 balancing analysis, the probative value of the photographs is substantially outweighed by the danger of unfair prejudice. In State v. Torres, 390 S.C. 618, 623, 703, S.E.2d 226, 228-229 (2010) the South Carolina Supreme Court wrote:

Photographs calculated to arouse the sympathy or prejudice of the jury should be excluded if they are irrelevant or not necessary to substantiate material facts or conditions. State v. Brazell, 325 S.C. 65, 78, 480 S.E.2d 64, 72 (1997). Under Rule 403, SCRE, “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice.” To be classified as unfairly prejudicial, photographs must have a “tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.” State v. Franklin, 318 S.C. 47, 55, 456 S.E.2d 357, 361 (1995) (internal quotation omitted).

The probative value of the photographs is minimal. While the pathologist stated that the photographs were necessary to depict cause of death, prior to the introduction of the photographs, Dr. Marcus relied heavily on State’s exhibits #86 and #87, enlargements of diagrams prepared by the doctor and admitted without objection, in explaining the cause of death, blunt force trauma, to the jury. R. pp. 611 – 617. The photographs were not necessary to substantiate a material fact, cause of death. The cause of death, blunt force trauma to the head, was not in question.

The question at trial became whether the blunt force trauma was the result of the first attack on McDuffie Street or the incident that took place between the F and G buildings of Gonzalez Gardens. Dr. Marcus agreed that he could not determine which injuries were the result of the first assault and which injuries were the result of the second assault. R. p. 637, line 23 – p. 638, lines 1-4. The photographs did not serve to corroborate the pathologist's testimony in regard to when the injuries were inflicted because he could not say when the injuries were inflicted. Any other corroborative value of the photographs is minimal given the use of the diagrams.

On the other side of the scale, the danger of unfair prejudice was high. The photos were admittedly graphic. Viewing the photographs it is difficult to tell from the bloody mess how these photographs depict specific injuries and cause of death. In Collins, 398 S.C. at 207, 727 S.E.2d at 757, the South Carolina Court of Appeals wrote, "Photographs pose a danger of unfair prejudice when they have 'an undue tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.' State v. Holder, 382 S.C. 278, 290, 676 S.E.2d 690, 697 (2009) (internal quotation marks omitted)."

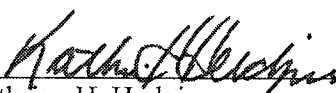
In Collins the Court found that the probative value of photos of the body of a dead ten year old who had been attacked by dogs was substantially outweighed by the danger of unfair prejudice. The Court in Collins wrote, "These gruesome photos have an overwhelming capacity to lure the jury into declaring guilt on the emotional basis of sympathy for the boy and his mother and horror at the sight of the boy's body. This is the unfair prejudice that substantially outweighs the probative value of the photos." 398 S.C. at 209, 727 S.E.2d at 758.

As in Collins, the photographs in the present case have an undue tendency to suggest a decision based on sympathy for the deceased based on the bloody, graphic photos rather than based on proper evidence submitted for the jury's consideration. The minimal probative value of the photos is substantially outweighed by the danger of unfair prejudice. Finally, the improper admission of the photographs is not harmless and warrants a new trial.

CONCLUSION

Based on argument one, the conviction and sentence for murder should be reversed and the case remanded for a new trial. Based on argument two, both the murder and the lynching convictions should be reversed and the case remanded for a new trial.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 8th day of January, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBIN REESE,

APPELLANT

Appellate Case No. 2012-209826

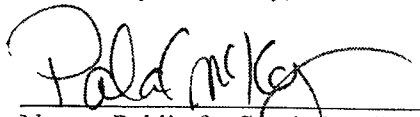
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William Edgar Saleter III, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 on, this 8th day of January, 2014.


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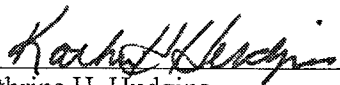
SUBSCRIBED AND SWORN TO before me
this 8th day of January, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 8th 2014


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STATE OF SOUTH CAROLINA
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Appellate Case No.: 2012-209826

-THE STATE,

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ROBIN REESE,

APPELLANT.

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1. In this murder and lynching trial, did the trial judge err in refusing to charge the jury with the law of involuntary manslaughter when there was evidence from which the jury could conclude that the death was the result of an unlawful assault and battery not of a character that would naturally tend to cause death?
2. Did the trial judge err in admitting graphic autopsy photographs without balancing the probative value of the photographs against the danger of unfair prejudice?

STATEMENT OF THE CASE

Appellant, Robin Reese (Reese) is presently confined in the South Carolina Department of Corrections (SCDC), as the result of her Richland County convictions and sentence. The Richland County Grand Jury indicted Reese in March 2010 for lynching in the first degree, (2010-GS-40-0040). The Richland County Grand Jury then indicted Reese for murder, in October 2011 (2011-GS-40-4916). Her brother, Henry Gray (Gray) was also indicted for the same charges. On February 28-March 2, 2012, Reese and Gray received a joint jury trial before the Honorable G. Thomas Cooper.¹ At trial, Andrew Farley, Esquire, represented Reese and Mathias Chaplin, Esquire, represented Gray. Fifth Circuit Deputy Solicitor K. Luck Campbell, and Assistant Solicitors April Sampson and Nicole Simpson prosecuted the case.

Judge Cooper instructed the jury on voluntary manslaughter but he denied each defendant's request to charge involuntary manslaughter. **R. pp. 972-76; see also Argument I, *infra*.** The jury convicted both defendants, as charged. Judge Cooper imposed concurrent sentences of thirty years imprisonment for each conviction, on each defendant. Both defendants timely served and filed notices of appeal.²

ARGUMENTS

- I. Assuming *arguendo* that the Court finds Reese's argument preserved for appellate review, the trial judge did not abuse his discretion by denying Reese's request to charge the jury on involuntary manslaughter because there was no evidence presented at trial that supported this instruction.**

¹ Judge Cooper denied the defendants' pretrial motions for a severance.

² Gray's appeal is pending before this Court and he has raised the same two issues in his Initial Brief of Appellant. See *State v. Gray*, Appellate Case No. 2012-209426.

Reese first argues that the trial judge erred by refusing her request for a jury instruction on involuntary manslaughter, as a lesser-included offense of murder.³ On appeal, she argues for the first time that involuntary manslaughter should have been charged because “there was evidence from which the jury could have concluded that Appellant Reese and co-defendant Gray, under the hand of one is the hand of all theory argued by the prosecution, were engaged in an unlawful assault and battery, not of a character of itself to cause death, but which resulted in the unintentional killing of Mack, without malice.” Respondent submits that this argument is not preserved for appellate review because she did not present the same argument to, and obtain a ruling on it from, the trial judge. Alternatively, Respondent submits that the trial judge did not abuse his discretion by denying Reese’s request to charge the jury on involuntary manslaughter because there was no evidence presented at trial that supported this instruction.

A. The evidence presented at trial.

1. The prosecution’s case.

On the afternoon of February 13, 2010, two officers with the Columbia Police Department were dispatched to a fight involving several people on McDuffie Street. They were told that one person involved in the altercation/was wearing a red hoodie or hat and that another person involved in it had on a black sweatshirt or hoodie and was carrying a red backpack or satchel. **R. pp. 111; 113-14; 128-32; 142.**

The officers did not find a fight when they first arrived at McDuffie Street. However, one officer saw an individual with a red backpack enter an apartment, as they drove through an apartment complex near this street. So, after notifying the other officer of what he was going to do, this officer went to that apartment and spoke with Ms. Valerie Goodwin. She told him that

³ Thus, this allegation has no bearing on her conviction and sentence for lynching in the first degree.

that "Bloom," Marcellius Brooks, had come into her apartment but was no longer there. **R. pp. 114-15; 118; 125-26; 132-34; 141-43.**

The officers then received a call that there was a person on the ground between two buildings in the apartment complex. When they investigated the call, they found an unconscious man, later identified as Kenneth Mack, lying on the ground. Mr. Mack looked like he had fallen and he had injuries to his nose and lip. Also, he did not respond to a sternum rub and it appeared that he was having a seizure.⁴ So, the officers immediately called EMS, and the man was transported to Richland Memorial Hospital shortly before 3:30 p.m. **R. pp. 115-17; 120; 134-36; 318-24; 607-09.** This man, Mr. Kenneth Mack, was pronounced brain dead shortly after he arrived at the hospital. **R. pp. 608-09; 688.**

A number of witnesses testified at trial to the attacks that ultimately resulted in Mr. Mack's death. As can be expected, these eyewitnesses gave varying accounts of the attacks. The first eyewitness called by the State was Angelo "Ricky" Boyd. Boyd testified that he was sixteen years old when the beatings occurred and that he lives on McDuffie St. On February 13, 2010, Boyd met up with his friend, Marcellius Brooks, that afternoon and the two started walking to Cousins Mini Mart, on Forrest Dr., which was a very short distance from where the victim was later found. **R. pp. 178-81; 190; 453-55.**

As the two were walking, they saw a man grabbing on the arm of Melquanna S., a/k/a "Lucy," Reese's thirteen year old daughter. "She was yelling 'Stop.'" The man did not stop and, eventually, he "threw her to the ground." Boyd is a friend of Lucy and her brother. So, he and Brooks intervened. Brooks tackled the man and held him down. Boyd kicked the man's face or

⁴ Mr. Kevin Thomas, a Richland County EMT who responded to the call testified that Mr. Mack "was having some posturing signs," and he explained that this is an involuntary response that is similar to a seizure "but it is more indicative of a brain injury. It's a different part of the brain than a seizure." **R. p. 322, lines 9-18.**

body with his Timberland boots and, at the insistence of Brooks and Boyd, Lucy hit him “a couple” of times while Brooks held him down. **R. pp. 181-84; 190-91; 196-99.**

By this time, a crowd had gathered. After this beating, Brooks and Boyd took Lucy to Cousins Mini Mart, to let Reese know about what had happened. They also let her know that “it was already good.” Reese looked as if she was going to finish her video poker game.⁵ Boyd and Brooks then both left the store. **R. pp. 184-90; 192-93.**

Police reviewed the store’s surveillance video and could see that several men came into the store and approach a woman who was playing video poker. The men then left and headed back towards the apartment complex. **R. pp. 387-88; 453-58; 726-27; State’s Exhibit 78.** Malik Akbar, one of the store’s co-owners at the time testified that he ran the store’s restaurant. He was familiar with Reese, Gray, and Brooks, and that Reese would come into the store and play video poker. **R. pp. 453-55; 460-61.**

Mr. Akbar testified that he saw Reese playing video poker there on the afternoon of February 13th. At some point, a group came into the store and Mr. Akbar saw the group, including Lucy and Brooks, talking to Reese and “dancing around” where Reese sat. Also, there was “quiet fussing.” Lucy and Reese left a short time later. **R. pp. 462-69; 471-72.**

Police also reviewed a video of a nearby fish market. **State’s Exhibit 93.** This video “corroborated that Brooks went to the store after the attack, “told Ms. Reese about the assault with her daughter and that she had left with her daughter and that she was on the cell phone at the time when she walked out the door.” However, there were technical problems when police tried to seize the video. **R. pp. 701-03.**

⁵ While Boyd did not recall doing so, he admitted that he could have told police that upon hearing that the man was harassing her daughter, Reese “jumped up and said, ‘Hell, no.’” He also could have told police that Reese stayed in the store and finished her video poker game. **R. pp. 186-87; 189.**

Ms. Donnetti Perry lives in the Columbia apartment complex where the crimes occurred, across the hall from Gray's father.⁶ Her friend, Sanovia Thompson, came to her door about mid-afternoon on February 13, 2010, and told her that something was happening outside. When Ms. Perry went to her door and looked outside, she saw Mr. Mack having a conversation with "Six," or Gray.⁷ **R. pp. 210-15.**

Gray was apparently unaware of the previous difficulty at that time and Gray asked Mr. Mack what had happened to him because Mr. Mack looked like he had been in a fight. As soon as Gray received a phone call, however, Gray used his feet to "clip" or undercut Mr. Mack's feet from under Mack. Mr. Mack immediately fell to the ground, striking his head. **R. pp. 215-17.**

Although Mr. Mack stayed on the ground, Gray repeatedly kicked him "all over." Gray also cussed him and asked him what he had done to Gray's niece. At some point, Reese came from her apartment and joined the fracas. Reese said, "yes, that's him' and started kicking him [while] saying ... 'I'm going to teach you for messing with my daughter' ... [or] something similar to that." Mr. Mack never got off of the ground or "put up a fight." Nevertheless, Reese got a metal chair off of a nearby porch, and both she and Gray hit Mr. Mack with it "two or three times." **R. pp. 217-23; 237; 239-42.**⁸

⁶ Although not redacted in Reese's Final Brief of Appellant, Respondent has not identified the apartment complex by name because many of the eyewitnesses, such as Ms. Perry, lived in complex. *See In re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings*, 375 S.C. 56, 57, 650 S.E.2d 462, 462 (2007).

⁷ Ms. Perry did not know Mr. Mack at the time and she was unaware of the first assault. **R. pp. 231-32.**

⁸ Police seized the chair (**State's Exhibit 72**) and it was swabbed for DNA. **R. pp. 374-76; 378-79.** Subsequent testing of these swabs by SLED DNA analyst Katie Ukra revealed that a presumptive test for the presence of blood was positive on several swabs. More importantly, a partial DNA profile was developed from the bottom seat of the chair and this partial profile matched the DNA profile of Mr. Mack, the victim. "The probability of randomly selecting an unrelated individual having a DNA profile matching this item is one in approximately twenty-five million." **R. pp. 535-42.** Respondent has not designated **State's Exhibit 72** as part of the record, but would represent as an officer of the Court that the chair is both sturdy and sufficiently heavy that using this object to strike another person is clearly indicative of malice.

By then, a crowd had gathered. Eventually, the siblings stopped their savage onslaught and walked back to their respective apartments. Perry testified that she could see that Mr. Mack was injured “all over,” and that blood was coming from his mouth. Thompson called the police. **R. pp. 223-26.**

Ms. Mary Anderson testified that her deceased sister also lived in the same apartment complex in February 2010, and that she had visited her sister on the afternoon of February 13th. As she was leaving, she saw Reese and Gray⁹ “beating the boy down [on] the ground[,] stomping [him], kicking him, doing everything and beating him with an iron chair,” while the victim “wasn’t moving at all.”¹⁰ She was unable to recall who used the chair. However, but she had indicated in her statement to police that both defendants did. Reese was wearing a pair of boots. **R. pp. 283-89; 297; 303-04; 315-16.**

As Reese was attacking Mr. Mack, Ms. Anderson heard Reese say, “motherfucker, why [did] you approach my 13-year-old?” The attack “[l]asted for a while” and was so intense that Ms. Anderson momentarily turned away from it and eventually had to leave. She was concerned that Reese and Gray were going to kill the man. After Reese and Gray stopped their attack, they walked to their father’s apartment. **R. pp. 289-92; 297; 304.**

In February 2010, Ms. Kara Chase was homeless but her best friend, Synovia Thompson, lived in the apartment complex where the beatings occurred.¹¹ On the afternoon of February 13th, she and Ms. Thompson were outside and they had one of the children of Ms. Thompson’s cousin with them. Ms. Chase remembered seeing a man whom she did not know, Mr. Mack, walking

⁹ She knew them through their father and recognized both. She identified Gray as “Six.” **R. p. 285.**

¹⁰ She did not know the victim but knew that he worked at a Forest Drive barber shop. **R. p. 287.**

¹¹ She was blind and on dialysis at the time of trial. **R. p. 337, lines 22-23.**

down the street that runs through the complex. This man had a “disagreement” with “Six,” *i.e.*, Gray, over something the man had said. Gray grabbed the man and told him, “you[’re] gonna talk to me.” **R. pp. 329-35.**

The grab “wasn’t forceful but it looked like Mr. Mack didn’t want to go with him either.” Something else was said and Gray hit Mr. Mack hard enough to take Mr. Mack’s feet out from under him. Mr. Mack fell to the ground and did not get up. **R. pp. 335-37; 339.¹²**

“That’s where it kind of gets blurry to me because I don’t remember exactly what happened from right there while the man was lying on that particular area. ... I know when the man hit the ground that [Gray] walked off.” Ms. Chase remembered Mr. Mack saying, “I’m not going anywhere;” Reese saying, “That’s him;” and Reese hitting Mr. Mack. She also remembered telling police that it looked like Mack hit his head when he fell to the ground and was “out cold” after this point, and that “the other man continued to kick and stomp the man in his face once the female stopped.” However, she did not remember Reese striking Mr. Mack with a chair or even picking up a chair. **R. pp. 337-43; 346; 348-49; 358-60.**

During the attack, Gray hit Mr. Mack with the chair. Also, Gray was wearing construction boots in the attack. Once the attack ended, Mr. Mack just lay on the ground. “Either he was faking it, so that way nothing else would happen to him, or he was seriously hurt.” **R. pp. 343-44; 348-49.**

¹² Ms. Chase’s daughter is the best friend of Reese’s daughter (**R. p. 338**) and, unfortunately because of that friendship, her physical limitations or because Reese, Gray and Lucy S. are all affiliated with the Bloods (**R. p. 693; 727-28; 755; 758**), Ms. Chase’s trial testimony deviated wildly from her statements to police, beginning at this point forward. *See also R. pp. 357, lines 22-24*) (admitting that she would like to do what she could to help the defendants). Because the evidence must be viewed in the light most favorable to the accused in determining whether or not to submit lesser included offenses, *see State v. Meckler*, 379 S.C. 12, 15, 664 S.E.2d 477, 479 (2008) (“A trial court should refuse to charge the lesser-included offense of involuntary manslaughter only where there is no evidence the defendant committed the lesser offense”), however, Respondent has discussed the remainder of it.

Because of the inconsistencies between Ms. Chase's testimony and what she told police, the State was allowed to introduce and publish her February 16, 2010 statement to police, as **State's Exhibit 88**. In her statement, she stated that:

I saw the victim in between ... [two] buildings of [the apartment complex] having a conversation with another man. The other man grabbed the victim and went to walk him down the sidewalk. The victim snatched back and the other man swept the victim from under his feet causing the victim to hit his head on the pavement A few seconds later a female runs up the street saying "That's him." She begins kicking the man repeatedly, picking up an old metal chair, throwing it on top of the victim. The other man continued to kick and stomp the man in his face. Once the female stopped, the victim laid on the ground the whole time this was occurring."

R. p. 678, lines 1-16. See also State's Exhibit 88, R. pp. 1119-21.¹³

She did not know the victim but she identified the male attacker as "Six" and the female attacker as his sister. Likewise, she had heard Mr. Mack say, "I am not going anywhere. Just do what you're doing to do to me here." Further, she indicated that Mr. Mack "did not have a chance to fight back or flee" and that "Six" was wearing construction boots. **R. pp. 678-80.**

On February 13, 2010, Amber Hardy was the pharmacy manager at the CVS pharmacy located on Forest Drive and near the apartment complex. That afternoon, she was in her car following a shoplifter. While Ms. Hardy was on the phone with police about the shoplifter, she saw four black males and a black female taking turns kicking and punching another black male on McDuffie Street. The victim was trying to defend himself. Although the beating only lasted for about "five minutes," Ms. Hardy testified that "[i]t seemed like forever." **R. pp. 404-08; 410-13; 420.**

¹³ Also, an investigator with the Fifth Circuit Solicitor's Office interviewed Ms. Chase on the day before the trial started. She confirmed at that time that her February 16th statement was correct. **R. pp. 660-64; 673.**

After the “brutal” attack was over, the attackers walked away from the victim and to the open air market. The victim could stand after the attack but he was very unsteady on his feet. Ms. Hardy returned to CVS. **R. pp. 407-08; 419-20.**

Marcellius Brooks, a/k/a “Bloom,” testified that he had been charged with murder in this case, but that he cooperated with law enforcement and was testifying because he was innocent of killing Mr. Mack. **R. p. 502, line 1 – p. 503, line 9; p. 505, lines 3-14; p. 508, lines 16 – p. 509, line 1; p. 522, lines 14-24.** Brooks used to live in the apartment complex where the beatings occurred and he was familiar “with the open air market ... on Forest Drive,” Cousins. He was friends with Reese and he used to be her next door neighbor. He also knew that Reese had a thirteen year old daughter named Lucy. He “knew of” Gray, to whom he referred as “Six.” **R. pp. 482-86; 510.**

As Brooks was walking down McDuffie Street on the afternoon of February 13, 2010, he saw Lucy involved in an altercation with a man that he had never seen. At first, she and the man were talking, but she soon slapped him. After that, the man picked up Lucy and slammed her on the ground. In response, Brooks decided to help Lucy. **R. pp. 486-88; 512.**

Brooks “bum rushed” the man, which he described as “tackling him off of her.” Brooks admitted that he hit the man twice “[w]ith a closed fist” while he held the man down. Brooks denied kicking the man or anyone else participating except for Lucy, whom Brooks persuaded to kick the man several times. However, Brooks was on top of the man and she could not kick him cleanly. As they were on the ground, a crowd started to gather. **R. pp. 488-91.**

At some point, Boyd pulled Brooks off of the man. The man ran away from Brooks and “towards the bottom of [the complex].” The man had a busted lip. **R. pp. 492; 499; 513; 520-21.**

Brooks then got Lucy, and he and Boyd walked her to the open air market because Reese was there playing video poker and he wanted to tell Reese about what happened. The crowd followed them. When Brooks told Reese what had happened, she was “upset.” Reese asked who the man was, and both Brooks and Lucy said that they did not know. **R. pp. 492-95; 527.**

Reese and Lucy soon left the store. She called someone on her cell phone as she was leaving, but Brooks did not know whom she had called. When Reese and Lucy left the store, Reese was mad and she walked down Forest Drive. Brooks did not accompany them. Instead, he walked down McDuffie Street and went to Valerie Goodwin’s apartment, as he had previously planned to do, and got some money to give to her incarcerated son. Brooks’ mother then picked him up and took him to her home. **R. pp. 495-500.**

The police called Brooks’ phone the following day and he turned himself in on February 15th. The charges against him were still pending at the time of trial and he had not received any promises or consideration on his charges, in exchange for his testimony. **R. pp. 500-06; 508-09.**

Ms. Sanovia Thompson testified that she lives in the apartment complex where the beatings occurred. On the afternoon of February 13, 2010, Ms. Thompson was babysitting her cousin and five children. The children were running around playing outside, but Ms. Thompson “was back and forth” because Ms. Chase was staying with her at the time. As Ms. Thompson was sweeping her stairs outside, she saw a man whom she did not know walking on the sidewalk on Forest Drive, “with his hand over his head. He appeared to be intoxicated” **R. pp. 564-67.**

Although the man could talk, he “had a knot on his head and it obviously was bleeding. He was kind of like staggering.” After the man spoke to someone else, Gray looked at him and asked, “[w]hat happened to you?” Gray then started to go “on about his business. The man

“said something about some young b-i-t-c-h up the street.” Just then, Gray’s telephone rang and he went into his father’s apartment answer it. **R. pp. 566-70.**

As soon as Gray came back outside, his demeanor had changed. He said, “‘you put your hand on my niece.’ He grabbed [the man] on the collar. He said, ‘we’re going to talk to my sister.’”¹⁴ Ms. Thompson followed the men, and when she saw them again, the man was on the ground. Reese was walking up the sidewalk and “looked like she was upset, maybe crying.” **R. pp. 571-74; 582.**

Because Ms. Thompson was unsure about what would happen next, she took the children inside. When she came back out, she saw Reese ask the man, “‘Why did you put your hand on my baby’ or something like that. She kicked him on the leg one or two times.” Then, Reese and Gray walked away from the man, who had never defended himself and did not get up. Ms. Thompson called 911 and Ms. Chase reported that the man was lying on the ground. **R. pp. 574-76; 579.**¹⁵

Mr. Issac Weathers testified that he lived in the same apartment complex in February 2010, and that he witnessed a fight on February 13th. “A young lady and a guy [were] arguing.” At first, Mr. Weathers thought that they were playing. They got “tangled up and they fell.” Then, “a bunch of guys just went and jumped on him.” Brooks or “Bloom” was the first person to hit the man. The girl also hit him at Brooks’ invitation for her to “‘get your licks in.’” **R. pp. 585-87; 591; 593.**

¹⁴ Thompson had known Reese for roughly five years at the time. **R. p. 571.**

¹⁵ At some point, Ms. Thompson noticed that a neighbor’s chair was in the grass instead of where it was normally kept. **R. p. 575.**

The man who was being beaten tried to convince his attackers that he and Lucy had been playing. Also, he tried to defend himself. When the attackers stopped beating him, the man “jumped up and ran.” The attackers went to the store. Mr. Weathers heard Brooks say that he did not get the man good enough. **R. pp. 587-89; 594; 599-600.**

Dr. Bradley Marcus testified that he is a forensic pathologist and he works as the coroner and chief medical examiner for Richland County. **R. pp. 601-02; 606.** On February 16, 2010, Dr. Marcus performed an autopsy on Kenneth Mack.¹⁶ Dr. Marcus detailed the injuries that he found on autopsy through diagrams (**State’s Exhibit 86-87**) and photographs (**State’s Exhibits 51-57 and 80-83**). *See Argument II.* There was a contusion caused by blunt force trauma on the right portion of the face (**State’s Exhibit 52**); a laceration over the left eye (**State’s Exhibit 53**); a laceration to the side of the left eyebrow (**State’s Exhibit 53**); sclera hemorrhaging in the whites of the eyes (**State’s Exhibit 54**); an injury to his inner lip that had hemorrhaged (**State’s Exhibit 55**); hemorrhaging along the scalp on the right side; hemorrhaging in the scalp on the back of the head; and hemorrhaging in the skin underneath the blunt force trauma contusion. **R. pp. 610-18; 625-27.**

Dr. Marcus’ internal examination focused on the head area and he concluded that the cause of death was a closed head injury due to blunt force trauma to the head. When he removed the skull cap and looked at the victim’s brain, Dr. Marcus found “a significant injury and the ultimate cause of his death. ... There was a massive amount of subdural hemorrhage, a massive area of blood around the left area of the head.” On the right, Dr. Marcus likewise found a subarachnoid hemorrhage and “cerebral contusions, which is actually hemorrhage in the brain

¹⁶ Although Mr. Mack was declared brain dead shortly after arriving at the hospital on February 13th, he was kept on life support until his organs could be harvested. **R. pp. 608-09.**

itself.” This is usually caused by blunt force trauma and required a “significant amount of trauma.” **R. pp. 627-632; 635; 639-40; 645-46.** *See also State’s Exhibits 80-83.*

Dr. Marcus explained that a person can live with trauma on the scalp but a person cannot live with the hemorrhage on the brain, itself. Dr. Marcus opined that the victim could have possibly lived if there had only been a subdural hemorrhage. **R. pp. 632-34.**

Dr. Marcus also found a skull fracture “in the right parietal area,” or “[t]owards the back of the head” and in the same area where he found the cerebral contusion and the hemorrhaging. Such an injury would require a “[s]ignificant amount of force” and it was “[a]bsolutely” consistent with a person having his feet swept out from under him and landing on his head. **R. pp. 628-29; 633-34; 639-40; 641.**

The injuries that Dr. Marcus found on autopsy were also consistent with the “posturing observed by the EMT. Dr. Marcus opined that “[t]he second assault certainly contributed to [the victim’s] death in this case,” but he could not distinguish which injuries were sustained in the first attack from those injuries that were sustained in the second attack. **R. pp. 635-38; 641; 648.**

On cross-examination, Reese elicited that a toxicology screen on the victim’s blood reflected that he had marijuana and .125 mg. of Lorazepam, or Ativan, in his system. Lorazepam is an anti-anxiety medication that is used to relax people. This level of Lorazepam was “in the midrange of therapeutic” and would not have contributed to the victim’s death. **R. pp. 641-44; 655.**¹⁷

¹⁷ Dr. Clay Nichols, a forensic pathologist, testified that he was the chief medical examiner for Richland County when the autopsy was performed. In that role, he had reviewed the autopsy procedures followed by Dr. Marcus and concluded that it was correctly performed. **R. pp. 936-39.** Dr. Nichols had also reviewed Dr. Marcus’ findings and the history that had been provided. He explained that “[t]he timeline and injuries indicate that it would have been a second assault where the deceased fell and hit the concrete, resulting in closed head injury. The first assault, the evidence isn’t there for a head injury. The second assault, there is real good evidence for a head injury.” **R. p. 940, lines 8-15.** Dr. Nichols had discussed his opinion with both the coroner’s office and police and he adhered to that opinion. **R. p. 940, lines 16-25.**

Inv. William Pegram testified that he is the supervisor of the City of Columbia Police Department's violent crimes unit and that he was the lead investigator in this case. The victim was already brain dead by the time he reached the hospital on February 13, 2010. **R. pp. 686-88.** As part of the investigation, a search warrant was issued and the records obtained for Brook's Nextel cell phone. **R. p. 699; see also State's Exhibit 75** (portions of Brooks' records). Also, investigators spoke to many of the witnesses, including Brooks, as well as Reese and her daughter, Lucy.¹⁸ Police were unaware of the second attack when Reese and her daughter were questioned. **R. pp. 697-99; 703-09.**

Because Reese's calls from her cell phone became important, Inv. Pegram testified that a search warrant was likewise issued and the records obtained for her Nextel cell phone. **R. pp. 714-15; see also State's Exhibit 76** (portions of Reese's records). He explained that there was a phone call from Reese to Brooks at 3:11 p.m. on the 13th and other calls between them that day. This showed deception in that Brooks and Reese knew each other, whereas they had tried to distance themselves from each other when interviewed. There was also a call from Reese to her father's telephone at 3:07 p.m. on the 13th, which police believed corroborated information that Gray had received a call before his attack on the victim. **R. pp. 716-19.**

Among the witnesses presented in reply, the State presented SLED toxicologist Quintas Young, who testified that he had analyzed blood samples of the victim. There was "a negative blood alcohol." However, the drug screen was "positive for [benzodiazepines] and tetrahydrocannabinos[,] which we found later to be Lorazepam and a [metabolite] of marijuana/THC." Mr. Young indicated that the carboxyl THC that was present was "inactive" or

¹⁸ Lucy was interviewed on February 14th and provided information about Brooks. A warrant was obtained for Brooks' arrest on the 15th. **R. pp. 697-98.** Reese had not mentioned being involved in an incident involving a chair and police were focusing on Brooks because they did not know that there had been a second attack. **R. pp. 964-68.**

non-interfering. This just meant that there was marijuana use in the past, and that it could possibly have been a week earlier, depending on the frequency of use. **R. pp. 943-44; 946-48.**

Mr. Young further explained that Lorazepam, or Ativan, is in a class of drugs called "benzodiazepines." Benzodiazepines are commonly used to treat anxiety. However, "Lorazepam is normally administered in hospitals for head injuries ... [because] it [slows] the brain activity to prevent brain swelling." Ativan is "a very simple central nervous system depressant similar to that of alcohol" and the amount of Ativan found in Mr. Mack's system fell within the therapeutic range. Even combined with Ativan, the THC found in Mr. Mack's system "would not play a role in impairment" because it was inactive. **R. pp. 948-50.**

2. Gray's evidence.

Gray's first witness was Dr. Adel Shaker, a forensic pathologist. Dr. Shaker was critical of the manner in which the autopsy had been performed. However, he agreed that the cause of death was blunt force trauma to the head and that he could not determine which attack led to the death. However, Dr. Shaker opined that the fatal blow could have been struck in the attack on McDuffie Street and that the victim could have experienced a lucid interval before herniation due to bleeding of the brain. Dr. Shaker further opined that, during the lucid interval, the victim could have walked to the location where the second attack occurred and then collapsed. **R. pp. 772; 777-79; 782-88; 794-95; 820-21; 823.**

Dr. Shaker further opined that the injuries he observed were not consistent with being beaten with a metal chair. Also, he hypothesized that the level of benzodiazepine in the victim's system, when combined with marijuana could have made the victim so unsteady on his feet that he fell. However, the drugs were unrelated to the cause of death and he conceded that hospital

personnel had given the victim Ativan when he was admitted. **R. pp. 780-81; 785; 791; 811; 817; 828.**

Ms. Kiki Burns testified that she had witnessed an incident on February 13, 2010, and that she had given a statement to police. She was working at a BP gas station immediately across Forest Drive from McDuffie Street. As she was waiting on customers, she saw "four or five people running up the street." One man was in front of the others, and the others wore black hoods. **R. pp. 921-24.**

The man in front ran to his left and he "must have tripped over a chain or something and he fell." The people who had chased him then beat him. Ms. Burns also saw a black female involved in the beating. After the attackers had walked away, the man tried to stand. However, "he stumbled back down." Ms. Burns "went to turn around and look and he was gone." **R. pp. 924-25; 930-32.**

3. Reese's evidence.

Dr. Sandra Conradi, Reese's forensic pathologist, testified that she had reviewed the autopsy report, the coroner's report, the investigative reports from the City of Columbia Police Department, the laboratory report and the photographs in this case. **R. pp. 840-41.** Based upon Dr. Conradi's review of this evidence, she opined that the cause of death was brain injury, as the result of blunt force trauma to the head. **R. pp. 843-44.**

She further opined that:

Mr. Mack was fatally injured in the second fight and in my opinion, he struck, his head on a hard surface, fractured his skull, suffered very severe head injuries including bleeding between the scalp and his skull, bleeding under the skull, between the skull and the brain and he had bruising or contusions of his brain along with the other fractures and associated abrasions and contusions of his face and mouth, which were not fatal. The fatal injury was the brain injury. He

suffered that from falling and being propelled onto a hard surface on the back of his head.

App. p. 914, lines 8-20. See also R. p. 846, line 24 – p. 847, line 6.

She explained that it takes “quite a severe” force to fracture a skull, and this could not be caused by simply falling to the ground. Rather, “you have to be propelled very hard to fracture the skull as this Mr. Mack did on the right side of his head and causing the degree of brain bruising and bleeding that he had.” **R. p. 844, lines 17-25.**

Melquanna “Lucy” S. testified that she was thirteen years old in February 2010. She had planned to get her nails done, at a salon on Forest Drive, on the afternoon of February 13th. However, the store was locked and a lady told her that it would not be open until Thursday.¹⁹ As she was standing there, a man approached her and said that she could come in his house. Although she did not know the man at the time, she later learned that this man was Mr. Mack. **R. pp. 849-54.**

Lucy went into the open air market and told her mother that she could not get her nails done that day and she bought some potato chips. As she was walking home, Mr. Mack approached her again and asked her if he could have some chips. Lucy told him to leave her alone because she was “trying to avoid having a conversation with him.” However, he stopped her in her tracks and was “jerking” her around. **R. pp. 854-55.**

He also threw a snowball at her. When she told him that she was going to get her mother, he grabbed her with his right hand. In response, Lucy hit him with her right hand. Mr. Mack then picked her up, threw her between two bushes and they began “tussling.” At that point, Brooks came over, “got [Mr. Mack] off of me, hit him a couple of times and then some dudes came and jumped on him.” **R. p. 855.**

¹⁹ A review of a 2010 calendar reflects that February 13, 2010, was a Saturday.

Lucy also got in “some licks,” meaning that she hit him “a couple of times” because she was upset and thought that Mr. Mack had “harassed” her.²⁰ After the fight, Brooks took her to the open air market, with the other participants in the beating following. They told her mother what had occurred, and Reese took Lucy home. When they got home Lucy was crying and she told her mother that the man had attacked her. Reese was also upset, but they did not call the police. **R. pp. 855-57; 861-62.**

The remaining defense witness was Robin Reese, who testified that she went to the open air market on February 13th to play a video game. Lucy “was on punishment” that day because of her grades but Reese allowed her to go to the nail salon because it was close to Valentine’s Day. When Lucy came back and told her the salon was closed, Reese told her to go home. Lucy left after buying a bag of potato chips with money that Reese had given to her. Reese stayed and continued playing the video game. **R. pp. 864-66.**

Between twenty and twenty-five minutes later, Lucy came back, accompanied by Brooks and another man. At first, Reese was mad because she thought that Lucy had disobeyed her. However, Brooks, who had been Reese’s neighbor, told her that he had just pulled a man off of Lucy. Lucy was crying and wet. Upset by what she had heard, Reese “wanted to know what happened and what do you mean ‘pulled off?’” **R. pp. 866-68; 883-84; 887; 890-91.**²¹

Reese got the tickets for her video game, took them to the counter and cashed them in. She and Lucy then left the open air market. She tried to call her brother but her father answered the phone. Reese hung up because he was too intoxicated to speak. **R. pp. 869-70; 883; 892.**

²⁰ She admitted on cross-examination that she had told police that she had also kicked him “a time or two. **R. p. 860, lines 4-7.**

²¹ She did not think to call the police. **R. pp. 891; 897-98.**

I still wasn't satisfied. The only thing I know at this time was a grown man on top of my daughter. So I called [Brooks] and asked him what happened. He said that he really didn't know, that he'd just seen that the guy was tugging at her. He knew that was Lucy but he didn't know that grown man.

So after he seen it, they told me that it happened like two or three times that he had pulled on her coat. She'd turned around and hit him. He scooped her up and was on top of her and that's when [Brooks] came to her.

I was never a part of this. This is what came back to me.

R. p. 870, line 18 – p. 871, line 6.²²

Following this conversation, Reese walked Lucy back home. After talking to Lucy to make sure that she had not been touched sexually, Reese “told her that I was going back to the store.” Reese left the apartment. Instead of going back to the store, however, she went to an area where she was told the man had gone and where a crowd had gathered because she wanted to know who had been on top of Lucy. **R. pp. 871-72.**

Gray was on his way back from the Lizard's Thicket at that point. By the time Reese first saw the man, he was “[lying] on the ground and he had his hands ...covering his face.” The man was “all bloodied up,” but Reese did not see how he got that way. Also, she never saw the man's face but his clothes matched the description that Lucy had given her. **R. pp. 872-74; 904-06.**

So I was raising hell, excuse me, excuse me, and I just wanted to know ... 'Why [were] you on top of her? Why would you even be hav[ing] a conversation or anything with a thirteen year old.' But he was just [lying] there. When I ran up, I tried to kick him but I slipped and fell because ... [of] the ice and stuff.

So instead of getting back up, I just reached over and I slapped him across his face and told him 'you stay away from my kid, you need to round grown women, there's grown people out here that you can be around.'

R. p. 874, lines 8-19.

²² Reese also unsuccessfully attempted to call her then-husband, Lucy's stepfather. **R. p. 871.**

According to Reese, this is when Gray first appeared at the scene and he helped her back to her feet. While she was still upset, he told her to let the police handle the matter. Reese saw the metal chair in front of an apartment and she slung it onto the grass. It did not, however, make contact with Mr. Mack's body. The man was not moving when Reese walked back to her apartment. **R. pp. 874-75; 905-06.**

B. The charge conference.

During Gray's case, the trial judge asked the parties to submit their requests to charge and they did so. **R. p. 919, line 10 – p. 920, line 11.**

After the State rested its case in reply, the trial judge held a charge conference. He began by noting that the only issue for discussion was whether or not he should instruct the jury on involuntary manslaughter. Also, he asked, "[W]hat is involuntary about this death/killing when [Reese] says she didn't do anything to kill him?" **R. p. 972, lines 9-19.**

Reese's counsel and the trial judge then had the following exchange:

MR. FARLEY: ... Your Honor, I would just say that we believe Ms. Reese does deserve a charge of involuntary manslaughter given the facts that have been put forth by the witnesses in this case. We believe she has done nothing that could have led to the intentional death of the victim in this case.

THE COURT: We are not talking about the intentional.

MR. FARLEY: Yes, sir.

THE COURT: We're talking about – I hate to use the word "accident", but it's very similar to an accident.

MR. FARLEY: Well, again, Your Honor, I think that's exactly the case. As far as the actions of Ms. Reese, ---

THE COURT: She doesn't even admit that she did anything to kill him.

MR. FARLEY: That's correct. So if death is the end result, I think that has to be considered involuntary manslaughter. She did nothing to facilitate the death given the facts that she was involved with.

THE COURT: But there has to be a killing. For involuntary manslaughter, there has to be a killing, first, and then there has to be an unlawful act, not []tending to cause death or great bodily harm.

If I assume that the unlawful act that she admits is throwing the chair, she says it didn't hit him. She says it didn't kill him.

Now, if she had said on the stand 'I threw a chair, but I didn't mean to hit him but it hit him and killed him', then I've got the link between the killing and her act. But she says none of that happened. She says she got age angry (sic) and threw a chair that did not hit him, so there's no killing as a result of ... involuntary actions. There has to be both. There has to be a killing and it has to be done involuntarily.

It's the shooting of an unintended victim a mile away that the bullet comes down and kills somebody.

But she doesn't admit the killing. She admits an unlawful act but there's no killing. It's got to be both to warrant an involuntary manslaughter charge.

MR. FARLEY: I understand.

THE COURT: If I look at the testimony in the light most favorable to her and if the jury believes everything she said, there's still not an involuntary killing because she doesn't admit to killing.

She says she didn't mean[] to kill him. She says that if something killed him, it was not me. So it's not to be a not guilty or involuntary or voluntary or murder. So ---

MR. FARLEY: I understand, Your Honor.

THE COURT: That's the way I read the case law.

MR. FARLEY: I understand, Your Honor. Thank you.

THE COURT: All right. I respectfully deny your request to charge involuntary because there's been no involuntary killing.

R. p. 973, line 5 – p. 975, line 19.

Gray then put his requests-to-charge on the record. Of relevance to the present issue, the trial judge granted the request for a voluntary manslaughter charge but he declined to give an involuntary manslaughter instruction for the same reasons as he had refused Reese's request. **R. p. 975, line 23 – p. 976, line 20.**

C. Discussion.

1. Reese's argument is procedurally barred.

On appeal, Reese claims for the first time that involuntary manslaughter should have been charged because

there was evidence from which the jury could have concluded that Appellant Reese and co-defendant Gray, under the hand of one is the hand of all theory argued by the prosecution, were engaged in an unlawful assault and battery, not of a character of itself to cause death, but which resulted in the unintentional killing of Mack, without malice."

However, her argument is not preserved for appellate review because she did not present the same argument to, and obtain a ruling on it from, the trial judge.

It is a well settled rule in this state that an issue is not preserved for appellate review unless it is both presented to and passed upon by the trial judge. *E.g., State v. McKnight*, 352 S.C. 635, 646, 576 S.E.2d 168, 174 (2003) (an issue must be raised to and ruled upon by trial court to be preserved for appellate review); *State v. Watts*, 321 S.C. 158, 167, 467 S.E.2d 272, 278 (Ct.App. 1996) ("To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court"); *State v. Fleming*, 254 S.C. 415, 421, 175 S.E.2d 624, 627 (1970) ("It is well settled that an issue which has not been presented to or passed upon by the trial judge will not be considered on appeal"). An analogous rule of appellate procedure is that an appellant may not raise a different argument on appeal in support of an objection or motion from

the argument that he or she raised in the trial court. *See, e.g., State v. Bailey*, 298 S.C. 1, 5-6, 377 S.E.2d 581, 584 (1989) (a party cannot argue one theory at trial and a different theory on appeal); *State v. Beekman*, ___ S.E.2d ___, ___ 2013 WL 3199303, *5 (S.C. Ct.App. Jun. 24, 2013) (“Because Beekman's only objection at trial on the basis that it was prior bad act evidence related to evidence of prior inappropriate touchings of Stepson, his argument on appeal that the substantive evidence surrounding the charges as to Stepdaughter and Stepson were inadmissible in the joint trial as they did not fall within an exception allowing prior bad act evidence is not preserved for our review”). *See also State v. Benton*, 338 S.C. 151, 526 S.E.2d 228 (2000) (issue not preserved if party argues one ground for objection at trial and a different ground on appeal); *State v. Byram*, 326 S.C. 107, 485 S.E.2d 360 (1997) (same). Finally, a motion or objection must be clearly stated at trial, so the party alerts the trial judge of the precise nature of why the objection or motion should be granted. *E.g., State v. Prioleau*, 345 S.C. 404, 411, 548 S.E.2d 213, 216 (2001) (an objection should be addressed to the trial court in a sufficiently specific manner that brings attention to the exact error).

As shown, neither Reese nor Gray made this argument in the trial court. **R. pp. 972-75.** Therefore, the foregoing authorities make clear that Reese’s argument is not properly before this Court on appeal.

2. The trial judge did not err.

Yet, even assuming *arguendo* that this Court finds Reese’s argument preserved for appellate review, it is without merit. The evidence presented at trial determines the law to be charged, and a trial court commits reversible error in failing to give a requested charge on an issue raised by the evidence. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001). In

determining whether to charge the lesser included offense of manslaughter, the trial judge must view the evidence in the light most favorable to the defendant. *Id.* “[T]o warrant a court’s eliminating the offense of [involuntary] manslaughter, it should very clearly appear that there is *no evidence whatsoever* tending to reduce the crime from murder to manslaughter.” *State v. Brayboy*, 387 S.C. 174, 691 S.E.2d 482 (Ct.App. 2010) (emphasis in original).

Under South Carolina law, involuntary manslaughter is the killing of another without malice and unintentionally **while engaged in either: (1) an unlawful act not amounting to a felony and not naturally tending to cause death or great bodily harm; or (2) a lawful act with reckless disregard for the safety of others.** *State v. Murray*, 404 S.C. 300, 303, 744 S.E.2d 607, 609 (Ct.App. 2013); *State v. Smith*, 391 S.C. 408, 706 S.E.2d 12 (2011); *State v. Tucker*, 324 S.C. 155, 478 S.E.2d 260 (1996). Respondent submits that there is no evidence in the record that would have entitled her to an instruction on involuntary manslaughter because she does not fit in either of these two (2) categories.

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Citing *State v. Chapman*, 336 S.C. 149, 152-53, 509 S.E.2d 100, 101 (1999), Reese suggests that there was evidence that she and Gray were engaged in an unlawful assault and battery that, “although not of a character of itself to cause death, it nevertheless resulted in the victim’s death. In denying the requested instruction, Respondent submits that the trial judge correctly understood both the applicable law and the facts of the present case. Reese’s problem is that there was no evidence supporting an involuntary manslaughter instruction.

First, her testimony was that neither she nor Gray did anything that would have caused the victim’s death. She did not see the victim until he was already motionless on the ground and Gray did not arrive on the scene until after she had missed in her effort to kick the victim and had

simply slapped him. Reese's pathologist, Dr. Conradi, testified that the victim received the fatal blow when he struck his head after being knocked from his feet in the second attack. Under Reese's testimony, neither she nor her brother caused this to occur.

Further, Respondent submits that the State's evidence was vastly unlike the factual scenario in *Chapman* and did not support the requested charge. Under the State's evidence, Reese and Gray were both guilty of murder under a theory of accomplice liability. *See State v. Thompson*, 374 S.C. 257, 261–62, 647 S.E.2d 702, 704–05 (Ct.App.2007) (“Under the ‘hand of one is the hand of all’ theory of accomplice liability, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose.’ ... ‘[The defendant’s] presence at the scene of a crime by pre-arrangement to aid, encourage, or abet in the perpetration of the crime constitutes guilt as a principal’”) (citations omitted). The State's evidence showed that after the first beating, which was administered for harassing sixteen year old Lucy S., the victim had visible injuries and he was very unsteady on his feet. His injuries included an injury to his head. However, he was alive, was walking and could communicate.

Gray had seen this and, initially, wondered what had happened to the victim. Gray did not become hostile until he received a telephone call, inferably from his sister, alerting him to what Mr. Mack had done to Lucy. Meanwhile, Reese had formulated a plan to, at the least, severely beat Mr. Mack after she had been told what he had done and even though she was aware that he had already been beaten.

Thereafter, Gray swept Mr. Mack's feet out from under him. This caused him to fall and, inferably, hit his head because he never made any effort to defend himself or escape the

maliciously brutal attack that ensued. Either Reese or Gray, or both of them, repeatedly kicked and stomped on the victim with construction boots, and beat him one or more times with a metal chair.

In *Chapman*, on the other hand, the appellant was engaged in an assault and battery. However, the Court found that his act of pressing his shoulder into the victim's neck, during the course of their fight, was not the type of action naturally tending to cause death or great bodily harm. *Chapman*, 336 S.C. at 152-153, 509 S.E.2d at 101. Here, though, the injuries suffered by the victim and the testimony of the various eyewitnesses as to how those injuries were inflicted belie any contention that the defendants' actions were not the type of action naturally tending to cause death or great bodily harm.

Moreover, Reese and Gray were engaged in at least two felonies at the time the injuries were inflicted: lynching under S.C. Code Ann. § 16-3-210 (Supp. 2009)²³ and assault and battery with intent to kill.²⁴

²³ As this Court explained in *State v. Barksdale*, 311 S.C. 210, 428 S.E.2d 498 (Ct.App. 1993):

The crime of lynching in the first degree is defined in S.C. Code Ann. § 16-3-210 as "[a]ny act of violence inflicted by a mob upon the body of another person which results in the death of the person.. ." To constitute the crime of lynching, the death must have been inflicted by a mob. A mob is defined in § 16-3-230 as the "assemblage of two or more persons, without color or authority of law, for the premeditated purpose and with the premeditated intent of committing an act of violence upon the person of another." In cases of lynching, a mob has been equated to an "unlawful assemblage of persons." *Cantey v. Clarendon County*, 101 S.C. 141, 143, 85 S.E. 228, 229 (1915).

Barksdale, 311 S.C. at 213, 428 S.E.2d at 500. See also *State v. Smith*, 352 S.C. 133, 572 S.E.2d 473 (Ct. App. 2002) (involving lynching in the second degree)

²⁴ "ABIK is an unlawful act of violent nature to the person of another with malice aforethought, either express or implied." *State v. Wilds*, 355 S.C. 269, 584 S.E.2d 138 (2003). "Generally, motive is not an element of a crime that the prosecution must prove to establish the crime charged, but frequently motive is circumstantial evidence ... of the intent to commit the crime when intent or state of mind is in issue." Danny R. Collins, *South Carolina Evidence* 319 (2d ed.2000). "State of mind is an issue any time malice or willfulness is an element of the crime." *Id.* Here, the State established the clear motive discussed above.

Finally, “a lesser-included offense may not be charged merely on the theory the jury may believe some of the evidence and disbelieve other evidence.” *Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011); *State v. Funchess*, 267 S.C. 427, 229 S.E.2d 331 (1976) (same). Therefore, an involuntary manslaughter charge would have been improper. Because there was no evidence presented to support the requested charge, the trial judge properly denied it. *See Knoten*, 347 S.C. at 302, 555 S.E.2d at 394. *See also Tucker*, 324 S.C. at 170-71, 478 S.E.2d at 268; *State v. Gibson*, 390 S.C. 347, 355-58, 701 S.E.2d 766, 771-72 (Ct.App. 2010).

II. The trial judge did not abuse his discretion by allowing the State to introduce State’s Exhibits 80-83, autopsy photographs, through the pathologist who conducted the autopsy because the probative value of these photographs was not substantially outweighed by the danger of unfair prejudice. Further, Reese’s argument that the trial judge failed to perform a Rule 403, SCRE, analysis is not properly before this Court because it was not presented to and passed upon by the trial judge.

There is no merit to the claim that the trial judge erred by allowing the State to introduce State’s Exhibits 80-83, autopsy photographs, through the pathologist who conducted the autopsy because the probative value of these photographs was not substantially outweighed by the danger of unfair prejudice, where the photographs were extremely probative since they corroborated the findings of both of the State’s pathologists about the cause of death, by illustrating the serious and fatal injuries suffered by the victim that were found on autopsy; the photographs were presented in the course of the autopsy pathologist’s scientific and almost educational discussion of his findings; the autopsy pathologist testified that the photographs were necessary to demonstrate his findings; Reese and Gray had each made cause of death and when the cause of death was inflicted issues in the case by presenting a pathologist who disputed some of the findings of the pathologist who conducted the autopsy; and each defense pathologist relied upon the autopsy photographs in reaching a conclusion of the cause of death and the timing of

when that injury was received. Further, Reese's argument that the trial judge failed to perform a Rule 403, SCRE, analysis is not properly before this Court because it was not presented to and passed upon by the trial judge.

A. How issue developed at trial.

Prior to trial, the trial judge noted a defense motion to suppress autopsy photographs. He stated that "my normal rule on photographs is that if they assist your pathologist in determining the cause of death, then they are admissible. If they are just for shock value, then they would not be admissible. But I will review them at the proper time." **R. p. 54, line 17 – p. 55, line 2.**

The Deputy Solicitor stated, "I will show them to Your Honor. In this case there is some issue as to cause of death, which may make them more relevant. **R. p. 55, lines 3-6.**

On direct examination of Dr. Marcus, the pathologist who performed the autopsy of the victim, the State showed him **State's Exhibits 51-57**. After he had looked at them, the State asked if these photographs were taken after the autopsy had been completed. Dr. Marcus replied that they had been taken before the autopsy. He also indicated that those photographs illustrated some of the injuries that he had described to the victim's head and eye areas. **R. p. 617, line 10 – p. 618, line 1.**

The State then moved to introduce these photographs into evidence and both defendants objected. Gray noted an objection. Then, Reese argued that they were highly prejudicial and that Dr. Marcus testimony could adequately describe the injuries that he had found. When Gray's counsel began to add to this objection, the trial judge sent the jury out, and addressed the question of admissibility *in camera*. **R. p. 618, line 2 – p. 619, line 1.**

The State showed the remaining photographs that it intended to introduce, **State's Exhibits 80-83**. The State then argued that cause of death was at issue and that the State had to prove malice. It also noted that both defendants had employed pathologists to dispute the autopsy findings. Therefore, the jury needed to have a clear understanding of precisely what injuries the victim sustained, "perhaps more than [in] any other [case]." **R. p. 619, line 12 – p. 620, line 2.**

The judge directed the State to make its proffer. The State made the following proffer through Dr. Marcus:

MS. SAMPSON: Do these [State's Exhibits 51-57] illustrate some of the areas of injuries, as well has the areas of lack of injury that you noted in your diagram?

THE WITNESS: Yes, they do.

MS. SAMPSON: Were those helpful in determining the cause of death in this case as far as what you observed?

THE WITNESS: Yes, they do.

MS. SAMPSON: Then I'll go to the next set. Doctor, I'm going to show you State's Exhibits 80 through 83. Were those photographs that you actually picked out that went through these that show significant findings as to the cause of death in this case?

THE WITNESS: Yes, these photos depict the cause of death. I can't diagram this.

MS. SAMPSON: And these would be crucial?

THE COURT: What numbers?

MS. SAMPSON: Eighty-one (81) through 83 -- to illustrate to the jury what you're talking about.

THE WITNESS: Yes.

THE COURT: Three photographs?

MS. SAMPSON: Four.

THE COURT: You said 81 through 83.

MS. SAMPSON: Maybe I misstated it.

THE COURT: Yes.

MR. FARLEY: Your Honor, my objection would just [be] -- they are saying that all of the photographs are necessary or some of the photographs are superfluous and some just more essential than others? I guess they want all [of] the trauma to come in. Dr. Marcus is saying it's necessary to have every single one of those.

THE COURT: You want to ask him? You want to ask [a] hypothetical?

MR. FARLEY: Yes. Dr. Marcus, you're saying you must have every one of those photographs or are some of ... those photographs [unnecessary] for your demonstrate.

THE WITNESS: I'd like to have every photograph.

MR. FARLEY: I didn't ask you what you'd like to have, I said are they necessary?

THE WITNESS: I feel they're necessary, yes.

MR. FARLEY: Thank you, Your Honor.

THE COURT: Mr. Chaplin.

MR. CHAPLIN: Yes, Dr. Marcus, ---

THE WITNESS: Yes, sir?

MR. CHAPLIN: As far as those photographs are concerned, what they show is the trauma that you just discussed, correct?

THE WITNESS: Yes, sir.

MR. CHAPLIN: All right. But you can't testify as to the cause of that trauma?

THE WITNESS: I can testify that blunt trauma caused the trauma.

MR. CHAPLIN: Okay.

THE WITNESS: Blunt trauma.

MR. CHAPLIN: But you couldn't say specifically when the trauma occurred?

THE WITNESS: No. I can't say when it occurred.

MR. CHAPLIN: You can't say the location that it occurred?

THE WITNESS: I can't say the location, no.

MR. CHAPLIN: You just know that it is blunt force trauma?

THE WITNESS: Yes, blunt force trauma.

MR. CHAPLIN: And that would be the extents of your presentation?

THE WITNESS: I believe so, yes.

R. p. 621, line 22 – p. 624, line 25. The trial judge overruled the objection without further argument. **R. p. 625, lines 1-3.**

Before the jury, Dr. Marcus utilized **State's Exhibits 51-57** to help him illustrate a contusion caused by blunt force trauma on the right portion of the face (**State's Exhibits 51- 52**); a laceration over the left eye (**State's Exhibit 53**); a laceration to the side of the left eyebrow (**State's Exhibit 53**); sclera hemorrhaging in whites of the eyes (**State's Exhibit 54**); and an injury to his inner lip that had hemorrhaged (**State's Exhibit 55**). **R. pp. 625-27.**²⁵

Dr. Marcus utilized **State's Exhibits 80-83** to illustrate the injuries to the victim's brain that he found. He explained that **State's Exhibit 81** was a photograph of how the scalp looked when the brain was exposed and it "shows some of the area of hemorrhage of the area of the brain. In a normal brain, this "area should be clean with no hemorrhage or anything to that area

²⁵ **State's Exhibits 56-57** depict the injuries to victim's back and legs, respectively, and neither exhibit is even remotely prejudicial.

at all.” **R. pp. 631-32.** He apparently used the remaining photographs, although not specifically identified in the record, to demonstrate the remaining brain injuries that he found. **R. pp. 632-34.**²⁶

B. Discussion.

“The State has the right to prove every element of the crime charged and is not obligated to rely upon a defendant's stipulation.” *State v. Martucci*, 380 S.C. 232, 249, 669 S.E.2d 598, 607 (Ct. App. 2008) (citing *State v. Johnson*, 338 S.C. 114, 122, 525 S.E.2d 519, 523 (2000)). “The relevancy, materiality, and admissibility of photographs as evidence are matters left to the sound discretion of the trial court.” *State v. Nance*, 320 S.C. 501, 508, 466 S.E.2d 349, 353 (1996); *State v. Todd*, 290 S.C. 212, 214, 349 S.E.2d 339, 340 (1986).²⁷

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. Rule 403, SCRE; *State v. Shuler*, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003); *State v. Alexander*, 303 S.C. 377, 401 S.E.2d 146 (1991). “To constitute unfair prejudice, the photographs must create a ‘tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.’” *State v. Kelley*, 319 S.C. 173, 178, 460 S.E.2d 368, 370-71 (1995) (quoting *Alexander*, 303 S.C. at 377, 401 S.E.2d at 149). A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances. *State v. Hamilton*, 344 S.C. 344, 357, 543 S.E.2d 586, 593 (Ct.App. 2001), overruled on other grounds, *State v. Gentry*, 363 S.C. 93, 610 S.E.2d 494 (2005). Further, “[i]f the offered photograph[s] serve[] to

²⁶ **State's Exhibit 82** depicts the injuries to the left side of the victim's face before the autopsy and is not prejudicial. **State's Exhibit 80** depicts the subdural hemorrhaging and **State's Exhibit 83**, shows the exposed brain and contusions and bleeding on the brain.

²⁷ All relevant evidence is admissible. Rule 402, SCRE. Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 401, SCRE.

corroborate testimony, it is not an abuse of discretion to admit [them].” *State v. Torres*, 390 S.C. 618, 623, 703 S.E.2d 226, 229 (2010) (quoting *Nance*, 320 S.C. at 508, 466 S.E.2d at 353).

In the present case, the trial judge admitted the photographs, **State’s Exhibits 80-83**, over the defendants’ objection that they were prejudicial and that they were unnecessary, since the testimony of Dr. Marcus adequately described the injuries that he found on autopsy. Because the objection of the defendants was that the photographs were more prejudicial than probative, neither Reese nor Gray challenged the trial judge’s failure to perform a Rule 403 analysis. Thus, Reese’s claim in that regard is not preserved for appellate review. *See McKnight*, 352 S.C. at 646, 576 S.E.2d at 174 (an issue must be raised to and ruled upon by trial court to be preserved for appellate review); *Watts*, 321 S.C. at 167, 467 S.E.2d at 278 (“To be preserved for appellate review, an issue must be both presented to and passed upon by the trial court”); *Fleming*, 254 S.C. at 421, 175 S.E.2d at 627 (“It is well settled that an issue which has not been presented to or passed upon by the trial judge will not be considered on appeal”).

More importantly, the trial judge did not abuse his discretion by rejecting the Rule 403 argument made by Reese. First, the **State’s Exhibits 80-83** were extremely probative since they depicted the serious and fatal injuries suffered by the victim that were found on autopsy. The photographs thereby corroborated the findings of both of the State’s pathologists about the cause of death. *See Torres*, 390 S.C. at 623, 703 S.E.2d at 229; *Nance*, 320 S.C. at 508, 466 S.E.2d at 353. Although Dr. Marcus’ opinion was that he could not determine in which of the two incidents the fatal injury occurred, he opined that the injury causing the cerebral contusion and the hemorrhaging would require a “[s]ignificant amount of force.” He further opined that it was

“[a]bsolutely” consistent with a person having his feet swept out from under him and landing on his head. **R. pp. 628-29; 633-41; 648.**

In reply, Dr. Clay Nichols, the former chief medical examiner for Richland County when the autopsy was performed, testified that he had reviewed the autopsy procedures followed by Dr. Marcus and concluded that the autopsy was correctly performed. **R. pp. 936-39.** Also, Dr. Nichols had reviewed Dr. Marcus’ findings and the history that had been provided. He opined that “[t]he timeline and injuries indicate that it would have been a second assault where the deceased fell and hit the concrete, resulting in closed head injury. The first assault, the evidence isn’t there for a head injury. The second assault, there is real good evidence for a head injury.” **R. p. 940, lines 8-15.**

Thus, the photographs were also relevant to prove the cause of death and to circumstantially negate that the cause of death was the result of any acts by Reese and or Gray that were not malicious. This is particularly true in light of the degree of force required in order for the blunt force trauma to have been inflicted. The State had the burden of proof and had the right to prove its case in the manner it as to solely rely upon Dr. Marcus’ expert testimony. *See Martucci*, 380 S.C. at 249, 669 S.E.2d at 607.

Secondly, the photographs were presented in the course of the Dr. Marcus’ clinically scientific and almost educational discussion of his findings. For most of the photographs, he explained precisely what was depicted and why the matter depicted in the photograph was significant. Thirdly, Dr. Marcus’ *in camera* testimony was clear: he thought that all of the selected photographs were necessary to fully illustrate and depict his findings. These findings were not something that he could clearly convey to the jury by a diagram.

Fourth, both Reese and Gray had chosen to make the cause of death and when the cause of death was inflicted issues in the case. Each defendant retained and presented a pathologist who offered differing opinions of what was revealed by the autopsy. As the Assistant Solicitor correctly observed during the *in camera* proffer, because of the position taken by Reese and Gray with respect to what the autopsy showed, the jury needed to have a clear understanding of precisely what injuries the victim sustained, "perhaps more than [in] any other [case]." **R. p. 619, line 12 – p. 620, line 2.** Having elected to base her defense, in part, upon a challenge to the findings on autopsy, Reese should not be heard to complain that the State was allowed to introduce photographs that the State's expert testified were necessary to illustrate his findings.

Fifth, both defense pathologists relied upon the autopsy photographs in reaching a conclusion of the cause of death and the timing of when that injury was received. **R. pp. 782-83; 801; 823; 828; 841; 843-44.** Reese's pathologist was somewhat critical of the photographs because the failure to include a ruler in them was not according to the protocol of the National Association of Medical Examiners. **R. p. 782, line 15 - p. 783, line 4.** However, he quickly added, "Otherwise [these] are beautiful pictures and good ones." **R. p. 783, lines 4-5.**

Given the manner in which the photographs were presented and the testimony about what they depict, Respondent submits that they did not create a 'tendency to suggest a decision on an improper basis, commonly, though not necessarily, an emotional one.'" *Kelley*, 319 S.C. at 178, 460 S.E.2d at 370-71; *Alexander*, 303 S.C. at 377, 401 S.E.2d at 149. Particularly in this day and age, where forensic matters are graphically shown in popular prime time television programs like C.S.I. and its progeny, the jurors simply would not be so shocked by these photographs that they would have rendered a verdict based on an emotional basis. Rather, they would have understood

that the autopsy was a necessary and indispensable process to determine the cause of death. In other words, the photographs were relevant and necessary, and they were not introduced with the intent to inflame, elicit the sympathy of, or prejudice the jury. *Id.* See also *Martucci*, 380 S.C. at 249-50, 669 S.E.2d at 607-08 .

Additionally, the photographs complained of here, specifically **State's Exhibits 80-83**, were not beyond "**the outer limits of what our law permits a jury to consider.**" See *State v. Collins*, 398 S.C. 197, 210, 727 S.E.2d 751, 758 (Ct. App. 2012) (citing *Torres*, 390 S.C. at 624, 703 S.E.2d at 229) (emphasis in original). In *Collins*, this Court found that the probative value of photographs of the 10-year-old child's partially eaten face and body, taken by a forensic pathologist before he performed an autopsy on child killed by dogs, was substantially outweighed by danger of unfair prejudice. *Collins*, 398 S.C. at 202-10, 727 S.E.2d at 754-58.

The defendant in *Collins* was charged with involuntary manslaughter and three counts of owning a dangerous animal. This Court found that the photographs in *Collins* added little to the testimony of witnesses; the issues to which the photographs related involved the conduct of defendant's dogs, as opposed to the defendant's own conduct; and that they were not material to the issues of defendant's conduct and whether his conduct was criminal. Also, this Court found that the photographs were graphic and shocking; that they prompted an intense emotional response; and that they had an overwhelming capacity to lure the jury into declaring guilt on the emotional basis of sympathy for the child and his mother, as well as horror at the sight of the child's body.

Unlike the photographs in *Collins*, however, the photographs in this case were material to the issues of cause of death, the timing of the cause of death and whether the injuries were

inflicted maliciously. Further, the photographs here depicted injuries that the State alleged were caused by the Gray and or Reese, while acting as accomplices. The photographs are not of injuries caused by dogs, or anyone or anything but the actions of Reese and Gray.

Also, the photographs were not inflammatory simply because they were taken at autopsy or because they were "graphic." To the contrary, both this Court and the South Carolina Supreme Court have upheld the introduction of autopsy photographs or graphic crime scene photographs that pass a Rule 403 analysis in a number of cases. *See, e.g., State v. Kelsey*, 331 S.C. 50, 76, 502 S.E.2d 63, 76 (1998) (photographs of various bone and bomb fragments and clothing found at crime scene were admissible in murder prosecution, despite claim that, because victim's body was found in woods 46 days after crime was committed, weather or local fauna could have altered crime scene during that period; photographs corroborated other testimony concerning condition of victim's body as first discovered by police at crime scene, and location of bone and bomb fragments supported testimony that bomb had been detonated in victim's mouth); *Martucci*, 380 S.C. at 249-50, 669 S.E.2d at 607-08 (upholding admitting autopsy photographs of child victim's internal organs and other injuries); *State v. Todd*, 290 S.C. at 214, 349 S.E.2d at 340 (black and white photograph of the victim's right upper chest with the breast exposed showing the location of the bullet wound was admissible to corroborate pathologist's testimony regarding location of wound, and did not prejudice defendant, since there was explicit testimony that victim's blouse and brassiere had been removed by medical personnel when they arrived at scene in order to administer medical assistance); *State v. Jarrell*, 350 S.C. 90, 106, 564 S.E.2d 362, 371 (Ct. App. 2002) (upholding the admission of graphic autopsy photographs in homicide by child abuse case because they corroborated testimony and demonstrated the extent of the

injuries); *State v. Ward*, 374 S.C. 606, 613, 649 S.E.2d 145, 149 (Ct. App. 2007) (upholding trial court's finding that probative value of two photographs illustrating graze wounds on the victim's back outweighed their prejudicial effect, since the jury's knowledge of the graze wound was necessary to rebut the defense's arguments about the angle of the shot); *State v. Dial*, ___ S.E.2d ___, Op. No. 5157, 2013 WL 3456559 (Ct.App., Jul 10, 2013) (probative value of three autopsy photographs of five-month-old victim's head injuries was not outweighed by danger of unfair prejudice in prosecution for homicide by child abuse; where photographs were introduced to corroborate testimony of forensic pathologist who performed autopsy that victim's various injuries were inconsistent with an accidental injury as defendant claimed had occurred, and they were highly probative of whether victim was abused and whether abuse was cause of his death, both integral elements of charged offense); *State v. Nichols*, 325 S.C. 111, 121, 481 S.E.2d 118, 124 (1997) (admitting a photograph of the victim's face because it demonstrated the angle and distance from which the victim was shot).

Finally, any error in the introduction of these photographs must be viewed as non-prejudicial and harmless beyond a reasonable doubt, since their introduction could not reasonably have affected the result of the trial. *See State v. Sherard*, 303 S.C. 172, 175, 399 S.E.2d 595, 596 (1991) ("Error in a criminal prosecution is harmless when it could not reasonably have affected the result of the trial"); *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989) ("When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result"). At worst, these photographs were cumulative to the other expert testimony concerning the victim's injuries. *See State v. Brazell*, 325 S.C. 65, 79, 480

S.E.2d 64, 72 (1997) ("Even if the descriptive testimony of the prosecution's witnesses adequately conveyed the brutality and malice of the crime and these photographs were unnecessary, they were harmless surplusage") (citing *State v. Robinson*, 201 S.C. 230, 22 S.E.2d 587 (1942) (finding the photographs unnecessary but harmless because they were not prejudicial or inflammatory)).

In addition to the previously stated reasons, there was overwhelming evidence of Reese and Gray's guilt, both individually and under a theory of accomplice liability. On the other hand, Reese did not challenge that the injuries occurred, but when they occurred. She did this through Dr. Conradi's expert testimony that the fatal blow occurred in the course of the second beating and Reese's testimony that she and her brother did not have any contact with the victim until after he was lying motionless on the ground. Also, neither she nor Gray did anything that could have caused the victim's death.

Under these circumstances any error must be viewed as harmless. Therefore, Reese's argument is without merit and there was no abuse of discretion.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court must be affirmed.

Respectfully submitted,

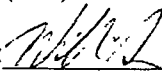
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By: 

WILLIAM EDGAR SALTER, III
ATTORNEYS FOR RESPONDENT

January 27, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Jr., Circuit Court Judge
Appeal Case No. 2012-209826

THE STATE

RESPONDENT,

V.

ROBIN REESE,

APPELLANT.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and does not include, or partially redacts, personal data identifiers, Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings, 375 S.C. 56, 650 S.E.2d 462 (2007)(requiring redaction of social security numbers, names of minor children, financial account numbers, and home addresses).

This 27th day of January, 2014.



WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General

ATTORNEY FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
G. Thomas Cooper, Jr., Circuit Court Judge
Appeal Case No. 2012-209826

THE STATE

RESPONDENT,

V.

ROBIN REESE,

APPELLANT.

CERTIFICATE OF SERVICE

I, William Edgar Salter, III, counsel for the Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing three (3) copies of the same via U.S. mail, first class, postage prepaid to his attorney of record, Kathrine H. Hudgins, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Ste. #401, Columbia, SC 29201.

I further certify that all parties required by Rule to be served have been served.

This 27th day of January, 2014.



WILLIAM EDGAR SALTER, III
Office of Attorney General
P. O. Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Robin Reese, Appellant.

Appellate Case No. 2012-209826

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-300
Heard May 13, 2014 – Filed July 30, 2014

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson, Chief Deputy
Attorney General John W. McIntosh, Senior Assistant
Deputy Attorney General Donald J. Zelenka, Senior
Assistant Attorney General W. Edgar Salter, III, and
Solicitor Daniel Edward Johnson, all of Columbia, for
Respondent.

PER CURIAM: Robin Reese appeals her convictions for murder and first-degree lynching, arguing the trial court erred by (1) not excluding graphic autopsy photographs under Rule 403, SCRE, and (2) refusing to charge involuntary manslaughter. We affirm.

Reese contends the trial court erred in admitting eleven autopsy photos. She argues the court should have excluded them under Rule 403, SCRE, because their probative value was substantially outweighed by the danger of unfair prejudice. *See* Rule 403, SCRE (stating relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice"). We find the trial court acted within its discretion in admitting the photos. *See State v. Gray*, Op. No. 5240 (S.C. Ct. App. filed June 11, 2014) (Shearouse Adv. Sh. No. 23 at 62, 76) (holding in the appeal of Reese's co-defendant, the trial court did not err in admitting the autopsy photos).

As for the trial court's refusal to charge involuntary manslaughter, we find Reese's argument on this issue unpreserved. The trial court denied Reese's request for an involuntary manslaughter charge after she argued "she [did] nothing that could have led to the intentional death of the victim in this case." On appeal, however, Reese asserts a much different argument—there is evidence from which the jury could conclude that Reese, based on her co-defendant's actions "under the hand of one is the hand of all theory," was engaged in an unlawful assault and battery not naturally tending to cause death or great bodily harm. Because this argument was not presented to nor ruled upon by the trial court, we do not address it. *See State v. McKnight*, 352 S.C. 635, 646, 576 S.E.2d 168, 174 (2003) (finding argument unpreserved when it "was not raised" to or "ruled on by the trial court"); *State v. Benton*, 338 S.C. 151, 157, 526 S.E.2d 228, 231 (2000) (declining to address appellant's argument regarding a requested jury charge when appellant argued a different ground in support of the jury charge at trial).

Reese's convictions are **AFFIRMED**.

FEW, C.J., SHORT and GEATHERS, JJ., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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August 15, 2014

The Honorable Jeanette W. McBride
PO Box 2766
Columbia SC 29202-2766

REMITTITUR

Re: The State v. Robin Reese
Lower Court Case No. 2011GS4004916
Appellate Case No. 2012-209826

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Kathrine Haggard Hudgins, Esquire
W. Edgar Salter, III, Esquire
Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
John W. McIntosh, Esquire
Daniel Edward Johnson, Esquire

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APPELLATE

FORM 5

2014C P4005657

STATE OF SOUTH CAROLINA

COUNTY OF RichlandRobin Gray Reese-350020

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELEASE

JENNETTE W. MCARDLE
C.C.P. & G.S.
2014 SEP 14 PM 1:35RICHLAND COUNTY
FILED**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 Camille Griffin Graham Correctional Inst.
2. Name and location of Court which imposed sentence 1701 Main St.
3. Name(s) of co-defendant(s) (if any) Henry Gray
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Lynching 1st degree 2010-GS-40-0040
 - (b) Murder 2011-GS-40-4916
 - (c) —
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) march 2, 2012 - 30 yrs Concurrent
 - (b) march 2, 2012 - 30 yrs

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Heard - 5/13/2014, Filed - 7/30/2014
- ii. Heard - 5/13/2014, Filed - 7/30/2014
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Trial Court acted within its discretion allowing photos.
- ii. Argument was unpreserved.
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Counsel was ineffective resulting in the State V/ Batson
 (b) Counsel was ineffective, failed to ask for lesser charge on
 (c) Counsel was ineffective, failed to elicit testimony from
Prosecutor record

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) See Back of this Page.
 (b) _____
 (c) _____

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? 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. _____

11a) Trial Counsel was ineffective for failing to give any explanation for the strikes, which resulted in getting the State v. Batsan motion. Had trial counsel took notes, he would of known Juror 11 was struck because she was smiling and winked her eye at the prosecutor. I asked him did he think they knew each other. Because of his ineffectiveness she was picked again and became the forebody (foreman). He had no reason for half of the strikes or notes stating why they were struck.

B) Applicant was denied the effective assistance of trial counsel, due to trial counsel's failure to offer evidence in support of a lesser included charge. Defense counsel had no explanation for failing to argue that the provocation needed for a charge of involuntary manslaughter, could have come from my co-defendant's actions under the hand of one is the hand of all theory. Failing to put into evidence a valid argument for the lesser included charge was ineffective counsel.

C) Trial Counsel was ineffective for failing to elicit testimony from the prosecutor when she accused me of calling my co-defendant, tying me into a confrontation that did not exist. On the phone records, my co-defendants number was not founded I testified that I did not call his phone in court. Counsel was ineffective allowing it into evidence.

- 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?

Yes, South Carolina Court of Appeals

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:

- i. Not including graphic autopsy photos under Rule 403, SCRE
- ii. Refusing to charge involuntary manslaughter.
- iii. _____

- (b) the proceedings in which each ground was raised:

- i. Trial Court acted within his Discretion
- ii. The argument was not presented at trial so it was
- iii. unpreserved.

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) attorney was ineffective in representation
- (b) _____
- (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? yes
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes

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

- (a) the name and address of each attorney who represented you:
- i. Andrew Farley - 201 W. Main St. Suite 201-C, Lexington S.C. 29012
 - ii. Kathrine Haggard Hudgins - S.C. Commission on
 - iii. Indigent Defense, 1320 Lady St., Suite 401 Columbia, S.C. 29201
- (b) the proceedings at which each such attorney represented you:
- i. Trial Court - Andrew Farley
 - ii. Appellant Court - Kathrine Haggard Hudgins
 - iii. _____

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

Appellate, time served, new trial, lesser included offense, Severance

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

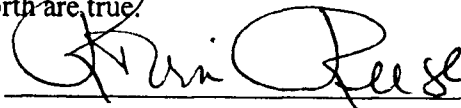
no

STATE OF SOUTH CAROLINA)

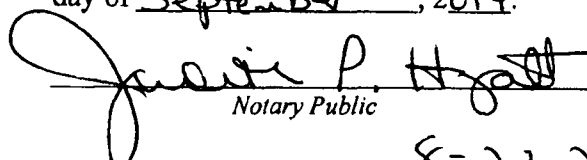
County of)

VERIFICATION

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



SWORN to and subscribed before me this 8th
day of September, 2014.

 (L.S.)
Notary Public

My Commission Expires: 8-23-21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2014-CP-40-5657
COUNTY OF RICHLAND	)	
	)	
Robin Gray Reese,	)	
S.C.D.C. No. 350020,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed September 14, 2014, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. The Richland County Grand Jury indicted the Applicant at the March 2010 term of General Sessions for Lynching – First Degree (2010-GS-40-0040) and at the October 2011 term for Murder (2011-GS-40-4916). Andrew Farley, Esquire represented Applicant on the charges.

Applicant proceeded to trial on March 2, 2012. The jury returned verdicts of guilty and the Honorable G. Thomas Cooper Jr. sentenced the Applicant to thirty (30) years imprisonment on each charge.

A notice of appeal was filed at the South Carolina Court of Appeals. Katherine Haggard Hudgins, perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence on July 30, 2014. State v. Reese, Op. No. 2014-UP-300 (S.C. Ct. App. filed July 30, 2014). The Remittitur was sent down on August 15, 2014.

Attached herewith and incorporated herein by reference are the records of the Richland County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In her application for post-conviction relief, the Applicant alleges she is being held in custody unlawfully for the following reason:

1. Ineffective assistance of counsel.
 - a. "Failed to ask for lesser charge on record"
 - b. Failed to elicit testimony from prosecutor

III.

The Respondent asserts the Applicant's allegation that her attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

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

S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

(signatures on following page)

Respectfully submitted.

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. CLAYTON MITCHELL
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

March 11, 2015

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
	)	2014-CP-40-05657
ROBIN GRAY REESE, #350020	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Robin Gray Reese, #350020
Graham Correctional Institution
4450 Broad River Road
Columbia, SC 29210-4096

DATED this 11th day of March, 2015.



 Sara B. Moore, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Case No(s) : 2014CP4005657
	)	
Robin G. Reese,	)	
	)	
Applicant,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

August 30, 2016
Greenville, South Carolina

B E F O R E:

HONORABLE JOCELYN J. NEWMAN, Judge.

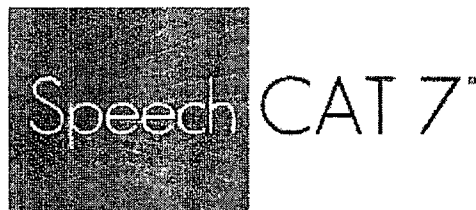
A P P E A R A N C E S:

JONATHAN D. WALLER, Esquire
Attorney for the Applicant

JESSICA E. KINARD, Esquire
Attorney for the Respondent

Teresa B. Johnson, CVR-M, CM
Certified Court Reporter
P.O. Box 2812
Greenville, S.C. 29602

Records are
taken and
produced via



I N D E XDIRECT CROSS REDIRECT RECROSS

Applicant's Witnesses:

Robin Reese

by Mr. Waller	7		
by Ms. Kinard		26	
by Mr. Waller			32

Andrew Farley

by Mr. Waller	35		
by Ms. Kinard		52	

Certificate of Reporter 66

EXHIBITS PAGENO.DESCRIPTIONID EV**APPLICANT EXHIBITS**

(No exhibits offered.)

RESPONDENT EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

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P R O C E E D I N G S

(Proceedings begin on the 30th day of August,
2016 at approximately 3:16 p.m.)

THE COURT: All right. Are we ready?

MS. KINARD: I believe so.

THE COURT: All right.

MS. KINARD: Thank you. May it please the
Court. This is the matter of Robin Gray Reese
versus the State of South Carolina. It's case
number 2014-CP-40-5657. We're before the Court
on an application for post-conviction relief
that was filed September 14th at 10:14.

Ms. Reese is currently incarcerated with
the South Carolina Department of Corrections
pursuant to Richland County Clerk of Court's
orders of commitment. The Richland County Grand
Jury indicted her on the March 2010 term for
First Degree Lynching and at the October 2011
term for Murder.

Andrew Farley represented her on these
charges. They proceeded to trial March 2nd,
2012 and a verdict was returned of guilty on
each count by a jury led by the Honorable G.
Thomas Cooper, and he sentenced the applicant
to 30 years on each charge.

1 Appeal was filed at the Court of Appeals.
2 Kathrine Hudgins perfected the appeal. And the
3 Court affirmed the applicant's conviction and
4 sentence on July 30th, 2014 in a published --
5 excuse me -- unpublished opinion. Remittatur
6 was returned August 15th, 2014.

7 The State is present and ready to proceed.
8 Ms. Reese is present and represented by
9 Jonathan Waller. There are a few amendments
10 that the State and Mr. Waller have discussed.
11 Although I do not believe they have been
12 formally filed, I will let him put those on the
13 record.

14 **THE COURT:** All right. Yes, sir,
15 Mr. Waller.

16 **MR. WALLER:** Thank you, Your Honor. I
17 spoke with Ms. Kinard on August 19th. She has
18 had at least 10 days notice or so. Your Honor,
19 the amendments that we would like to make a
20 part of the record are allegations of failure
21 to move to suppress a statement as to not
22 voluntarily given, failure to object to
23 impermissible comments during the Solicitor's
24 closing argument, failure to object to
25 (Indiscernible), failure to properly advise

1 applicant in regards to her decision to
2 testify, failure to obtain applicant's phone
3 records, a general allegation of failure to
4 prepare, failure to investigate and failure to
5 speak with State's witnesses, and finally,
6 failure to object to two trial objections
7 during the testimonies of Campbell Streeter and
8 William Pegram.

9 **THE COURT:** Okay. I'm going to have you
10 run through those one more time.

11 **MR. WALLER:** Sure. Your Honor, I can hand
12 up a hard copy.

13 **THE COURT:** That would be perfect. Thank
14 you.

15 **MR. WALLER:** Your Honor, the first seven
16 are on the bottom part of that and one more at
17 the top.

18 **THE COURT:** Can I have this or do you need
19 this?

20 **MR. WALLER:** You can have that copy,
21 Your Honor.

22 **THE COURT:** Perfect. Thank you. All right.
23 If you're ready to proceed, call your witness.

24 **MR. WALLER:** Thank you, Your Honor. I
25 would call Robin Gray Reese.

1 **ROBIN GRAY REESE**

2 having first been duly sworn, testifies as follows:

3 **THE CLERK:** State your full name for the
4 record. Spell your first name.

5 **THE WITNESS:** Robin Gray Reese, R-O-B-I-N.

6 **THE COURT:** You may proceed.

7 **MR. WALLER:** Thank you, Your Honor. May it
8 please the Court.

9 **DIRECT EXAMINATION**

10 **BY MR. WALLER:**

11 **Q** Good afternoon, Ms. Reese. How are you
12 today?

13 **A** I'm here.

14 **Q** A little nervous?

15 **A** Sorta.

16 **Q** Thank you for being patient with us. I know
17 it's been a long day. Ms. Reese, I want to take you
18 back, if I can, to when you were first arrested on
19 the charges. What were you originally arrested for?

20 **A** Lynching first degree.

21 **Q** Okay. Do you recall about when that was?

22 **A** Yeah. I turned myself in on February 19th

23 ---

24 **Q** Okay. So ---

25 **A** --- 2010.

1 Q --- several days after the incident took
2 place?

3 A Yes.

4 Q And eventually, you were also charged with
5 murder; is that correct?

6 A Correct.

7 Q Do you remember about how long it was
8 before you were charged?

9 A October of 2011?

10 Q So about a year and a half later?

11 A 18 months.

12 Q How did Mr. Farley come to be your
13 attorney?

14 A He called me one day in the early part of
15 October and said that he was going -- he was chosen
16 to be my public defend -- I meant my attorney.

17 Q October of which year?

18 A 2011.

19 Q So 18 months after you had originally been
20 arrested?

21 A Yes.

22 Q Did you have an attorney prior to that?

23 A No. In the beginning, I hired an attorney,
24 but he never showed up for court. He showed up for my
25 bond hearing, but I never heard anything else from

1 him.

2 Q Okay. Did you ever apply for a public
3 defender or anything like that?

4 A I did. Well, at first, I wrote the
5 Solicitor to let her know that I didn't have an
6 attorney and to see why I was being charged with the
7 crime that I was being charged with. She had to me --
8 she served me to come to court and indicted -- well,
9 I filed for a public defender. I don't know who chose
10 him. I just know that he called me, and that was just
11 before going to court to be indicted on the murder
12 charge.

13 Q Okay. Do you remember how long after you
14 filed the paperwork to apply for a public defender
15 that Mr. Farley came to represent you?

16 A It had to be like June or July of 2011.

17 Q Okay. So not too long?

18 A No.

19 Q Okay. When you and Mr. Farley first met,
20 had you been charged with the murder at that point?

21 A No. But our initial meeting was over the
22 phone and ---

23 Q Okay.

24 A --- he was letting me know that he was
25 going to be my attorney and I would be in court the

1 next week cause I was going to be indicted on murder
2 charges. That was our first conversation.

3 Q Okay. Did y'all have a discussion about the
4 murder charge and also the lynching and what the
5 charges carry as far as penalties?

6 A No, we never talked about that.

7 Q Okay. Did you understand what the charges
8 carry?

9 A My own understanding?

10 Q Yes, ma'am.

11 A I just knew it was serious.

12 Q Okay. But you didn't have a specific time
13 frame in mind?

14 A No, because the first attorney said that I
15 would get no jail time, but we never had a
16 conversation.

17 Q And that was 18 months prior?

18 A Correct.

19 Q Okay. When you and Mr. Farley met, did
20 y'all discuss the elements of those two crimes?

21 A Excuse me? I'm not understanding.

22 Q Did y'all talk about what evidence the
23 State would have to show to prove you guilty?

24 A I don't recall. I just remember him asking
25 me about a chair and a number of one of the,

1 supposedly, co-defendants.

2 Q Okay. How many times did you meet with
3 Mr. Farley?

4 A About twice at his office and I think he
5 came to my apartment about two, maybe three times.

6 Q Okay. And you were out on bond?

7 A Correct, from March 4th of 2010.

8 Q Okay. So you did about two weeks, three
9 weeks?

10 A Yeah, 13 days.

11 Q Okay. So you met with him, you think, maybe
12 five times and talked to him on the phone, other than
13 that?

14 A Yes.

15 Q Okay. At what point did y'all start
16 preparing to go to trial?

17 A I'm not understanding. The first time he
18 started asking questions or the strategy or whatever?
19 I'm not understanding.

20 Q Well, when's the first time y'all started
21 talking about a trial?

22 A Maybe about -- okay. From the time that I
23 was indicted on murder charges, he said to just go
24 ahead on with my life. I was like, dang, how many
25 people get charged with murder and get to leave the

1 courtroom? And I was like, well, I'm being charged
2 with murder. But he told me not to worry about it
3 right now. I didn't hear anything from him until that
4 following year, like, the end of January, close to
5 February.

6 Q Okay. When y'all met and when y'all talked
7 on the phone, did y'all discuss any defenses that you
8 might have?

9 A Not that I remember.

10 Q Okay. Did you give him any names of any
11 witnesses or any information that he needed to follow
12 up on?

13 A I think I gave him -- I'm not sure, because
14 I really didn't know witnesses or who I was supposed
15 to tell him who to look for or anything like that.

16 Q Okay. Let me ask you this -- did he, Mr.
17 Farley, that is, did he hire a private investigator?

18 A Yes.

19 Q Did you ever meet with the private
20 investigator?

21 A Yes.

22 Q Do you remember how many times you met with
23 the private investigator?

24 A Once. I saw him twice, but he only met
25 with me once.

1 Q Okay. What did y'all -- what did y'all talk
2 about, you and the private investigator?

3 A Along with Mr. Farley, he asked what
4 happened. And Mr. Farley had told him that he was
5 going to pursue my co-defendant because they said
6 that he was beating the guy.

7 Q Okay. Let me stop you there. You had two --
8 two people were -- two other people were charged in
9 the death of the victim?

10 A Correct.

11 Q One was tried with you?

12 A Yes.

13 Q And who was the one that was tried with
14 you?

15 A My brother.

16 Q And then there was another individual who
17 was also charged, but not tried the same time as you,
18 correct?

19 A Correct.

20 Q Okay. So when you say Mr. Farley was
21 talking about your co-defendant, which of the two are
22 you talk --

23 A My brother.

24 Q Okay. Your brother. What did he tell you
25 about your co-defendant?

1 **A** He said that they were going to pursue him
2 because witnesses put him at the scene of the crime.

3 **Q** Okay. And did your brother ever give a
4 statement or anything?

5 **A** Not that I'm aware of.

6 **Q** You gave a statement?

7 **A** Correct.

8 **Q** Okay. Let's talk a little bit about your
9 statement if you can. When did you give a statement?

10 **A** About five or six polices came to my
11 apartment, the front and back door, and told me and
12 my daughter -- asking me where was my daughter, I
13 said she was outside, and I needed to get her, and I
14 needed to come down there with them for questioning.

15 **Q** Okay. When was this?

16 **A** This was on February 14th, Valentine's Day,
17 2010.

18 **Q** The day after the incident; is that right?

19 **A** Yes. Correct.

20 **Q** Okay. So you said five or six police
21 officers came to the front --

22 **A** To the front and the back.

23 **Q** Five at each door or five total?

24 **A** It was like three and three at the front
25 and back.

1 Q Okay.

2 A And we rode in different cars. He put me in
3 one car and put my daughter in another car.

4 Q Okay. Did you have a car at the time?

5 A I had transportation.

6 Q Did you use that transportation or did you
7 ride with one of them?

8 A Well, I didn't -- I didn't get an option.
9 There was no option. They just said I needed to come
10 with them. They didn't even ask me if I had a car or
11 anything.

12 Q What kind of car -- what kind of police car
13 was it? Did it have lights on the top and markings on
14 the side?

15 A No, they were undercover cars.

16 Q Okay. Where did you sit?

17 A I sat in the front seat.

18 Q Okay. Do you know where your daughter sat?

19 A I don't know -- I don't even know what car
20 she got in. I just know that we -- one rode in one
21 car and one rode in another car.

22 Q Okay. Where did y'all go?

23 A To the Columbia Police Department.

24 Q On Washington Street?

25 A Yes.

1 Q Okay. What happened when you got to the
2 police department?

3 A They put me in a room and they put her in
4 another room.

5 Q Okay. How old was your daughter at the
6 time?

7 A She would be going on 14.

8 Q Okay. So still 13 at that point?

9 A 13, yes.

10 Q So when you were taken in the room, who all
11 was in the room?

12 A About four other people. A detective,
13 Mr. Sumter, Mr. Pegram, a lady and another officer.

14 Q Okay. Were you handcuffed at all?

15 A No.

16 Q Were you arrested that day?

17 A No, not that I know of.

18 Q How about the officers or investigators,
19 how were they dressed?

20 A I think one officer was in a police uniform
21 and the rest of them were in plain clothes.

22 Q Okay. The ones that were in plain clothes,
23 did they have their gun on them? Do you know?

24 A I don't know. I don't remember.

25 Q Did you -- were you free to leave that room

1 if you wanted to? If you wanted to walk away, could
2 you leave?

3 **A** I don't know. I was just -- after they
4 finished questioning me, asking me questions and
5 asking me to write a statement, I sat there a while
6 and waited for my daughter to come back. She came
7 back crying. I asked her -- she asked me could we
8 leave and I said I didn't know. He said that after we
9 finished -- asked them was they finished with her.
10 They said, well, we're going to take you back.

11 **Q** Okay. So you didn't know if you were free
12 to leave?

13 **A** No.

14 **Q** Okay. Did you ever ask?

15 **A** No.

16 **Q** Okay. Did you later find out that your
17 daughter had gave a statement?

18 **A** Yes.

19 **Q** Now, you testified earlier, I believe, that
20 your daughter was 13 at the time?

21 **A** Yes.

22 **Q** Were you allowed to be there with her when
23 she gave a statement?

24 **A** No, they separated us from the time we left
25 my apartment.

1 Q Okay. Your statement -- back to your
2 statement, and sorry to keep jumping around -- did
3 the four individuals stay in the room the whole time?

4 A Yes.

5 Q Okay. Who was asking questions?

6 A Detective Pegram.

7 Q Okay. Was he the only one that asked
8 anything?

9 A That I recall.

10 Q Okay. After they asked you questions, you
11 wrote a statement in your own handwriting; is that
12 right?

13 A Correct.

14 Q When Mr. Farley came to represent you, did
15 y'all discuss your statement at all?

16 A Well, I had just let them know that, uh,
17 they didn't read me my rights. Well, I didn't find
18 this out until later, but I did just make a statement
19 saying they didn't read me my rights. I didn't know
20 what it meant at the point, so I really -- I just
21 thought it was nothing.

22 Q Okay. And you were arrested, you said, two
23 days after the statement and three days after the
24 incident?

25 A Yeah, I turned myself in. The incident was

1 on February 13th. I turned myself in February 19th.

2 Q Okay. So six days after -- or five days
3 after the statement.

4 A Correct.

5 Q How did you leave the police station that
6 day?

7 A They took me back.

8 Q Okay. Did they bring your daughter back as
9 well?

10 A Yeah. We got to ride back together, as I'm
11 thinking.

12 Q In the same car?

13 A Yeah.

14 Q Okay. Did you and Mr. Farley discuss your
15 statement at all?

16 A No.

17 Q Okay. Did y'all discuss trying to make any
18 motion to suppress the statement or attempting to
19 suppress the statement?

20 A Not that I recall.

21 Q Did y'all ever discuss whether your
22 statement was given voluntarily or not?

23 A No.

24 Q Okay. Did you feel like you had to give a
25 statement that day?

1 **A** I thought I was just in custody and I just
2 had to do what they told me to do.

3 **Q** Okay. You testified at your trial.

4 **A** Correct.

5 **Q** Okay. Did you and Mr. Farley discuss your
6 testimony before you decided to testify?

7 **A** We talked briefly a couple of days prior to
8 that. But just before I started to testify -- I
9 didn't really want to testify.

10 **Q** Okay. The judge went through -- I believe
11 Mr. Farley placed on the record that it was your
12 decision and your right that to testify.

13 **A** Correct.

14 **Q** Did you and Mr. Farley -- prior to that
15 day, did y'all ever discuss that your statement could
16 be used against you?

17 **A** No.

18 **Q** Were you aware that your statement could be
19 used against you if you testified?

20 **A** No.

21 **Q** Okay. Before y'all began the trial, were
22 you able to ask questions to Mr. Farley about what
23 was going to take place?

24 **A** Excuse me?

25 **Q** Were you able to talk to Mr. Farley and get

1 an understanding of the procedures of trial, how
2 things would go?

3 A (No audible response.)

4 Q Had you ever been on trial before?

5 A No.

6 Q Okay. So did you know how things were going
7 to work in a courtroom?

8 A No.

9 Q Did Mr. Farley explain those things to you?

10 A He said that my daughter, the Solicitor
11 agreed to be easy on her, that he was -- she wasn't
12 going to -- she wasn't going to, I guess, be mean or
13 whatever. He just said that he would be -- she would
14 be easy on her.

15 Q Okay. Your daughter wasn't on trial during
16 your trial?

17 A No.

18 Q What did you and Mr. Farley discuss about
19 your trial and getting ready for it?

20 A We just talked mostly about the chair. I
21 kept saying that I didn't hit him with the chair. He
22 just had me to show him, basically, how I swung the
23 chair and stuff like that.

24 Q Okay. Did y'all discuss that your daughter
25 would testify?

1 **A** Yeah. He did share that with me. That's
2 what he was saying about the Solicitor wasn't going
3 to be hard on her.

4 **Q** Okay. Did you know -- when did you learn
5 your daughter had given a statement?

6 **A** I think that's when trial started, cause
7 when they said something about her statement, I was
8 like, I didn't even see her statement. I know she
9 had one and said something about a screen monitor or
10 whatever.

11 **Q** Okay. You didn't -- you weren't aware that
12 she had written a statement prior to trial?

13 **A** No.

14 **Q** Had you seen it in discovery?

15 **A** I never saw the discovery until I was in
16 prison when I sent for it from him. We never looked
17 at her discovery together. He'd tell me some names or
18 something from it and that would be the only thing I
19 know about my discovery.

20 **Q** Okay. You were not -- you weren't locked up
21 leading up to the trial?

22 **A** No.

23 **Q** Okay. Did you -- originally, when the trial
24 was taking place, you had to going to the detention
25 center; is that right?

1 **A** Correct, after the second day.

2 **Q** Okay. When y'all were in the courtroom
3 about to start the trial, did you and Mr. Farley have
4 any conversations before everything got started?

5 **A** Yeah, but it wasn't about my trial,
6 basically.

7 **Q** Okay. What did y'all talk about?

8 **A** We talked about -- oh, Jack Swerling was in
9 there. He was letting me know that he was a high-
10 priced attorney, and I knew that wouldn't be somebody
11 that I could afford, and that he makes -- I think he
12 said \$200 an hour. I was like -- he was like, the
13 State was only paying him, like, 40. The thing of it
14 was he was letting me know about the attorney and his
15 iPod, but we really never talked about what was going
16 on just before the trial started.

17 **Q** Okay. A couple of more questions here for
18 you. At the beginning of -- the beginning of the
19 trial, Mr. Farley made a motion for competency for
20 you. Did you -- did y'all talk about that beforehand?

21 **A** No, I was only aware of that when he --
22 when he was telling -- talking to the judge saying
23 that he made a competency motion -- a competency when
24 they asked for pretrial motions or something like
25 that, and he said he did, to the Clerk of Court.

1 Q Okay.

2 A Cause that's the only time I was aware of
3 it.

4 Q Okay. Sorry if I jumped around just a
5 little bit. When y'all were preparing for trial, did
6 you speak to any of the State's witnesses personally?

7 A When?

8 Q Before the trial?

9 A I didn't -- I never knew who the State's
10 witnesses was until probably -- maybe two weeks
11 before the trial started.

12 Q Okay.

13 A He had asked -- two of the State's
14 witnesses, he wasn't able to talk to. I know them,
15 you know, cause we all live in the same neighborhood.
16 He said -- he asked me could I talk to them to get a
17 feel of what they were saying. I could never talk to
18 them because I told him that the other co-defendant,
19 Marcellius Brooks hangs at -- her brother hangs at
20 her house so I wasn't able to talk to her. I wasn't
21 going to be able to do that.

22 Q Okay. What two witnesses are you talking
23 about?

24 A Mary Anderson and Donetti Perry.

25 Q Okay. So is it your testimony that Mr.

1 Farley was unable to reach those witnesses so he
2 asked you to reach out to them?

3 A Yes.

4 Q Did y'all discuss why it might be dangerous
5 for you to reach out to the State's witnesses?

6 A No.

7 Q Okay. Ms. Reese, was there ever a time when
8 you were -- had to get up from the table in front of
9 the jury?

10 A Yes.

11 Q How were you dressed at that point?

12 A I was dressed in regular clothes with -- I
13 had shackles on.

14 Q Okay. What type of shackles? Like you are
15 wearing today?

16 A Yes.

17 Q Okay. And you had to go in front of the
18 jury like that?

19 A Yeah, I took the stand.

20 Q Was the jury seated and you walked in front
21 of them or were they outside and you were already on
22 the stand?

23 A They were seated and I walked from that
24 side to this side.

25 Q Okay. All right. Lastly, Ms. Reese, was

1 there ever any plea offer made in your case? Do you
2 know?

3 **A** No.

4 **Q** Ms. Reese, Mr. Farley, in your defense,
5 hired an expert witness, a forensic pathologist. Did
6 y'all discuss that -- the witness' testimony?

7 **A** Excuse me?

8 **Q** Were you aware that Mr. Farley had retained
9 the services of an expert witness?

10 **A** Yes.

11 **Q** Did y'all discuss what that witness was
12 going to testify to?

13 **A** No.

14 **Q** Ms. Reese, I don't have any further
15 questions for you. Is there anything that you think
16 I've left out that the Court needs to be aware of of
17 Mr. Farley's representation?

18 **A** Not at the moment.

19 **Q** Please answer any questions Ms. Kinard has.

20 **A** Okay.

21 **CROSS-EXAMINATION**

22 **BY MS. KINARD:**

23 **Q** Good afternoon, Ms. Reese. I'm going to go
24 over a little bit about what you testified to. We
25 talked a bit about the statement that you gave to the

1 police the day after the incident happened. And you
2 recalled giving that statement with several officers
3 at the police station; is that correct?

4 **A** Correct.

5 **Q** And you said that you never discussed this
6 statement with Mr. Farley; is that correct?

7 **A** That I remember, yeah.

8 **Q** Do you know if this statement was
9 introduced at trial? Do you recall?

10 **A** I think so, yeah.

11 **Q** Okay. And you stated that you weren't
12 allowed to be with your daughter when she was
13 questioned; is that correct?

14 **A** Correct.

15 **Q** And did Mr. Farley know that?

16 **A** Yeah, I let him know that I know that.

17 **Q** Okay. So did y'all talk at all about trial
18 strategy, about what you can present to the court on
19 your behalf?

20 **A** Not that I remember.

21 **Q** What do you remember talking to him about?

22 **A** As far as getting ready for trial?

23 **Q** That and in general. You said you met with
24 him about five times?

25 **A** Yeah, we just -- we talked about him -- we

1 talked about what happened and about the chair and
2 the number, Marcellius Brooks' number. He asked what
3 that was on my phone records for. I think a day or so
4 before, I think we talked about trial, about my
5 daughter -- the Solicitor not being hard on her,
6 getting her on the stand. He let me know that if you
7 was subpoenaed, you had to show up, cause she didn't
8 want to do it.

9 Q Okay. So to put that into different words,
10 tell me if I'm wrong. You talked about your version
11 of the events?

12 A Yeah.

13 Q And you talked about how you remembered
14 everything happening that day?

15 A Yeah, I believe.

16 Q And you talked about who was involved, that
17 you remember?

18 A Yeah.

19 Q And you talked about your actions?

20 A Correct.

21 Q And the chair and other things. You talked
22 about being worried about your daughter? You talked
23 about being worried about your daughter during the
24 incident and that's what you led to do what you do --
25 did; is that correct?

1 **A** Say that again please.

2 **Q** Did you tell him that you acted the way you
3 did out of concern for your daughter?

4 **A** No, I didn't tell him I acted the way I did
5 because of concern for my daughter. I'm
6 misunderstanding what are you asking me.

7 **Q** That's okay. We'll move on. Did you talk to
8 him about being concerned about how the Solicitor
9 would treat her in court?

10 **A** No, that was something he brought to me
11 letting me know, I guess, to ease her so she could
12 take the stand.

13 **Q** Okay. And you said that you were wearing
14 street clothes during the trial; is that correct?

15 **A** Correct.

16 **Q** Regular clothes?

17 **A** Yes.

18 **Q** But you do recall walking in front of the
19 jury wearing shackles?

20 **A** Yes, ma'am.

21 **Q** Okay. Now, during the trial and before, you
22 talked to Mr. Farley about whether you should
23 testify?

24 **A** Yes.

25 **Q** And did y'all -- how long did y'all talk

1 about that? Do you remember?

2 **A** No, I really don't recall. It wasn't a long
3 issue or anything. It's just -- first, I really don't
4 understand about the strategy, when would be that
5 time that he would tell me what to say or how I'm
6 supposed to do on the stand, so I would just say a
7 few days prior to going to court.

8 **Q** Okay. And you discussed the fact that you
9 had a choice whether you wanted to testify or not?

10 **A** Well, he said that it would be a good idea
11 that I take the stand.

12 **Q** Did he give you reasons for that?

13 **A** Not that I recall. That was -- he was an
14 attorney, and I'm not aware of the law, so I just
15 trusted him.

16 **Q** Okay. Did you provide him any information
17 about witnesses that you should talk to that might
18 help you during the trial?

19 **A** I wasn't really aware of the witnesses.
20 Just like I said, I didn't know what the State had
21 against me. The only time I saw motions was in
22 prison. So I wasn't able to tell him who to talk to.
23 After I was told who the witnesses could be, I let
24 him know that he could talk to. Well, those were the
25 people he was going to talk to anyway.

1 **Q** So during all those meetings that you had
2 with him, you never talked about discovery that he
3 received from the State?

4 **A** He never showed me anything that had
5 anything to do with discovery.

6 **Q** Okay.

7 **A** And the first time that he ever told me
8 names of the witnesses, those were two names that I
9 had never heard of. He said he had to check his
10 notes, but we never went over anything together as
11 far as discovery.

12 **Q** Mr. Waller asked you about contacting
13 witnesses. Can you explain that a little bit? You
14 spoke to State's witnesses, people that the State was
15 going to call at trial?

16 **A** No. He asked me to speak and kind of see
17 where their head was. I told him that I wasn't going
18 to be able to do that with one particular witness
19 because that guy that was supposed to be the co-
20 defendant used to hang at her house, her apartment a
21 lot. So I wasn't going to be able to talk to her.

22 **Q** Thank you. I misunderstood that. Did you
23 feel like you could ask Mr. Farley any questions that
24 you had?

25 **A** Yeah, if I knew what to ask.

1 Q Okay. Did you feel comfortable going into
2 trial?

3 A No.

4 Q Did you let him know that?

5 A Yeah. I was scared that whole time. I was
6 scared.

7 Q You were scared?

8 A Yes.

9 Q But you trusted him as your attorney?

10 A Correct.

11 Q I have no further questions at this time.

12 THE COURT: Any redirect?

13 MR. WALLER: Just briefly, Your Honor.

14 **REDIRECT EXAMINATION**

15 **BY MR. WALLER:**

16 Q Just to clarify, I know Ms. Kinard just
17 asked you, but you never actually spoke to any of the
18 State's witnesses?

19 A No.

20 Q Okay. Y'all did discuss some of the
21 evidence. You mentioned the chair ---

22 A Yes.

23 Q --- and other things. So is your testimony
24 that you just never saw the discovery motion or any
25 of the evidence the State had against you?

1 **A** I never saw it.

2 **Q** Well, y'all talked --

3 **A** Excuse me. I saw it after I was already
4 found guilty and in prison. He sent it to me.

5 **Q** Y'all had talked about some things, though;
6 is that right?

7 **A** Yes.

8 **Q** Did you and Mr. Farley have any
9 conversations before the trial started about what
10 witnesses y'all were going to call in your defense?

11 **A** No.

12 **Q** Did you know what witnesses were going to
13 be called before they were called?

14 **A** For the State witnesses?

15 **Q** For your defense.

16 **A** No.

17 **Q** Okay. Other than yourself, you knew you
18 were going to --

19 **A** Yes.

20 **Q** Uh --

21 **A** And my daughter.

22 **Q** And your daughter.

23 **A** Yeah.

24 **Q** How was your brother dressed? Was he
25 sitting at the same table as y'all?

1 **A** Correct.

2 **Q** Okay. How was he dressed?

3 **A** He had on some slacks and a nice shirt.

4 **Q** Did he have shackles as well?

5 **A** Yes.

6 **Q** And he did not testify; is that right?

7 **A** No.

8 **MR. WALLER:** Okay. I have no further
9 questions. Thank you.'

10 **MS. KINARD:** Nothing further.

11 **THE COURT:** Okay. Thank you. You can go
12 sit back next to your attorney.

13 You have any other witnesses?

14 **MR. WALLER:** Thank you, Your Honor. I
15 would call Andrew Farley.

16 **ANDREW FARLEY**

17 having first been duly sworn, testifies as follows:

18 **THE CLERK:** Have a seat here and state
19 your full name for the record and spell your
20 first name for me please.

21 **THE WITNESS:** Andrew Farley, F-A-R-L-E-Y.

22 **THE COURT:** Your witness.

23 **MR. WALLER:** Thank you, Your Honor. May it
24 please the Court. Your Honor, may I approach the
25 witness?

1 **THE COURT:** Absolutely.

2 **DIRECT EXAMINATION**

3 **BY MR. WALLER:**

4 **Q** Good afternoon, Mr. Farley. How are you
5 today?

6 **A** I'm doing well.

7 **Q** Mr. Farley, thank you for coming back. I
8 know you're obviously a little ways from here. I want
9 to, I guess, jump right in so we can -- when were you
10 appointed and how did you come to represent
11 Ms. Reese?

12 **A** I think I was appointed -- and I -- please
13 forgive me. I had some notes and I'd forgotten
14 rushing back here. I didn't -- I thought we were
15 going to continue today. So I do apologize for that.
16 It was -- I want to say it was sometime around
17 October 2011 when I was appointed to represent
18 Ms. Reese in this case. At the time, she was charged
19 with Lynching. Soon after I had received my letter of
20 appointment, I noticed that the Solicitor's office
21 informed me that they were going to bring a charge of
22 Murder.

23 **Q** Okay. Were you able to meet with her before
24 she was arraigned on the Murder charge?

25 **A** I believe we had a phone conversation. We

1 actually physically met at the arraignment.

2 **Q** Okay. She was able to -- she was out on
3 bond the whole time her charges were pending; is that
4 right?

5 **A** That's correct.

6 **Q** Okay. You were appointed in October of
7 2011. How soon after your appointment did you receive
8 discovery in this case?

9 **A** I don't recall, exactly. I think it was a
10 month or two later or so. I mean, I immediately made
11 letter of representation and a Rule 5 Brady request
12 to get all the discovery, so I think it was a month
13 or two when I got -- I got supplemental discovery
14 along the way too.

15 **Q** Okay. This case was tried the end of
16 February and the beginning of March of 2012, so
17 roughly five months after you were appointed. Do you
18 think you had enough time to go over all the
19 discovery? Was it a lot?

20 **A** There was a good amount of discovery. There
21 really was. I mean, I do believe I had enough time to
22 go over it. This case, though, I will say, was quite
23 voluminous in its papers, the, you know, amount of
24 witnesses that were called, the complexity of the
25 case itself. There were a lot of moving parts.

1 **Q** There was extensive forensic and medical
2 testing done. Did you have all those reports?

3 **A** I did, from the coroner.

4 **Q** Okay. Did you retain the services of an
5 investigator?

6 **A** I did, Mr. David MacDougall, who is no
7 longer with us.

8 **Q** Okay. I want to talk, if I can, about Ms.
9 Reese's statement. Did you and Ms. Reese discuss the
10 circumstances surrounding her giving a statement?

11 **A** I recall we did briefly discuss that, but
12 my concern was whether the Solicitor's office was
13 going to use that statement. And to my recollection,
14 there was a point in pretrial where they discussed
15 with Judge Cooper as to whether they were going to
16 introduce that or not introduce that. I requested
17 that if they were going to introduce the statement or
18 use it in any way, we have a Jackson v. Denno
19 hearing. It's my recollection they didn't use the
20 statement at all.

21 **Q** Okay. All right. If I can, I want to, I
22 guess, start with the transcript. Tell me about the
23 jury selection process in this case.

24 **A** Initially, we -- I guess it was about a
25 half a day. It was quite long. We had quite a big

1 jury pool. We went through a lot of jurors. We ended
2 up striking a petit jury. The jury went out and the
3 Solicitor's office made a motion, what's called a
4 Batson motion, saying that there were some racial
5 elements that they felt that they needed to go over.
6 And we had a pretrial meeting about that with Judge
7 Cooper. For some reason, he felt that some of those
8 juror selections, myself and Mr. Chaplin couldn't
9 accurately explain. So then we struck a new jury.

10 Q Okay. Were you able to -- the second time
11 around, were y'all able to select a jury?

12 A We did select a jury the second time
13 around.

14 Q Okay. What, if you recall -- you mentioned
15 the Jackson -- making a motion requesting a Jackson
16 v. Denno hearing if the statement was going to be
17 used. Did you make any other pretrial motions that
18 you recall?

19 A Yes, I think I did make one on competency.
20 The one that I was really disappointed that was
21 denied is the motion to sever.

22 Q Okay.

23 A I still believe that if Ms. Reese could
24 have had her own separate trial apart from Mr. Gray,
25 it probably would have been a different outcome. I

1 mean I couldn't guarantee that, but I believe that.

2 Q If you could, briefly, so the Court's
3 aware, what -- what were the basis for your motion
4 and what did you think was the difference in the case
5 against Ms. Reese and her brother?

6 A Well, I base that motion to sever on the
7 fact that I thought Ms. Reese would have a fairer
8 trial if she were tried on her own, and it would be
9 more prejudicial if she were tried with Mr. Gray. I
10 certainly believe that -- I mean, in my opinion, I
11 thought that the charges were inappropriate. I
12 thought a more appropriate charge for Ms. Reese would
13 have been assault and battery of a high and
14 aggravated nature and maybe involuntary manslaughter
15 for Mr. Gray. Of course, I don't bring the charges.
16 But I think that she would have been -- she would
17 have found more benefit with her own separate trial.
18 However, Judge Cooper disagreed and felt in the
19 interest of judicial economy they should be tried
20 together.

21 Q Okay. The trial begins -- if I could get
22 you to find Volume 1 out of the three volumes and
23 turn to page 163, beginning on line 4. This is Ms.
24 Reese's co-defendant's counsel, Matthias Chaplin's --
25 I'm sorry -- Matthias Chaplin, his opening statement.

1 If you could review line 4 and continue down through
2 line 6.

3 A "Away from your family?"

4 Q The next sentence. So, "It sounds like."

5 A It sounds like being forced to sit in a
6 courtroom shackled. Sounds like pure and utter
7 despair.

8 Q Was Ms. Reese shackled during the trial?

9 A If I recall, she was.

10 Q Was Mr. Gray shackled during the trial?

11 A If I recall, he was.

12 Q Okay. Did you -- did you have any reason to
13 object to Mr. Chaplin's comments?

14 A And I'll be honest with you, the -- let me
15 back up. At the beginning of the trial when the jury
16 was struck and they left the courtroom, Judge Cooper
17 made the decision that he would take them into
18 custody at that point. At that point, they were no
19 longer able to return to their homes. I did make the
20 arrangement that we would have civilian clothes, you
21 know, regular civilian clothes for Ms. Reese for
22 every day of the trial that she would appear.
23 However, when the -- Judge Cooper made the ruling
24 that they would be in custody, then they would be
25 shackled. So it wasn't my preference.

1 Q Okay. Well, certainly. So she was taken
2 into custody, she was shackled while the jury was
3 sworn and there was no bond; is that correct?

4 A That's correct.

5 Q Okay. So she was shackled the length of the
6 entire trial?

7 A To my recollection.

8 Q Okay. Did Mr. Chaplin's comments give rise
9 to an objection in your mind?

10 A I'll be honest with you, that was quite
11 some time ago, and I was more focused on my own
12 opening statement in defending Ms. Reese, and that
13 may have gone by and I didn't pay that much attention
14 to it in preparing my own case for her, so...

15 Q Okay. Now, the order of things was the
16 State presented and Ms. Reese presented ---

17 A That's correct.

18 Q --- and then Mr. Gray presented? So you had
19 already given your opening statement at that point?

20 A That's correct.

21 Q I'm going to get you to grab Volume 2. I
22 apologize. Let me go back to Volume 1 for one second.
23 During the testimony of Donetti Perry, beginning on
24 page 318 and continuing on for quite some time, Mr.
25 Chaplin, slightly In Camera, asked questions about

1 gang activity. Do you recall references to gangs
2 during the trial?

3 **A** There were many references to gangs,
4 especially the Blood Street gang. At the beginning of
5 the trial or the beginning of the altercation with
6 the victim, I think was with the Blood Street gangs.
7 And throughout the trial, there were references that
8 they either have or had a presence in Gonzales
9 Gardens.

10 **Q** Okay. At this point, during the testimony
11 of Ms. Perry, Mr. Chaplin brings it up. Did you --
12 did you request a limiting instruction with reference
13 to Ms. Reese as the State took the position, and I
14 believe Judge Cooper agreed, that the door had been
15 opened by Mr. Chaplin to get into the gang
16 references?

17 **A** I don't recall.

18 **Q** Okay. I guess, now, we can turn to Volume
19 2. Do you recall Investigator Streeter testifying?

20 **A** Somewhat.

21 **Q** To refresh your memory, he took the
22 interview of Kara Chase. Does that help?

23 **A** Right. There were so many witnesses in this
24 trial -- I'll be honest with you -- and it was five
25 days long, and it was some time ago, so...

1 **Q** Sure. I understand. If you could, turn to
2 the beginning of your recross. It begins on line 9 of
3 page 747.

4 **A** Okay.

5 **Q** And you asked a question and an answer,
6 particularly the complete sentence on line 13, where
7 Investigator Streeter testifies that I felt like she
8 is being forthcoming. Did you have any reason to
9 object to that testimony?

10 **A** No.

11 **Q** Okay.

12 **A** Was there a trial strategy behind not
13 objecting to it?

14 **A** No, I don't think there was any. That was
15 just his testimony. I'm not sure what you mean.

16 **Q** Okay. I'm going to get you to fast-forward
17 to page 779.

18 **A** Okay.

19 **Q** All right. At the very top, this is
20 Sergeant William Pegram. Beginning on the first full
21 sentence of line 3 and going through line 6,
22 Investigator Pegram, or Sergeant Pegram, testifies
23 about his opinion of the law. Did you have any reason
24 to object to him commenting on the law which was both
25 made in the purview of the Court and the jury?

1 **A** Reading it now, it probably is an objection
2 and I may have -- in the length of the trial, I may
3 have just missed that objection.

4 **Q** Okay. All right. Again, on page 786, this
5 is, again, Sergeant Pegram. If I can get you to look
6 at line 17. It's an answer to a direct examination
7 question. Sergeant Pegram begins to go into Robin
8 Reese's statement.

9 **A** Yes, I do see that.

10 **Q** He asked solicitor -- Assistant Solicitor
11 Campbell if he can go into it. She responds sure. At
12 that point, did you -- why did you not renew or
13 request for a Jackson v. Denno hearing?

14 **A** You know, I don't recall.

15 **Q** Okay. The State never introduced the actual
16 written statement of Ms. Reese; is that correct?

17 **A** That's what I remember.

18 **Q** Okay. All right. And Mr. Farley, if I can
19 get you to turn to page 826, still the testimony of
20 Sergeant William Pegram, and this is the very, very
21 end of your cross -- excuse me -- your -- at some
22 point during your cross of Sergeant Pegram, you asked
23 a question regarding the video of the community
24 store, the open air market, they called it. And then
25 Ms. Campbell, on redirect examination, began on page

1 827, line 16. She begins to go into questioning about
2 gangs being involved, in general. What was the
3 strategy behind opening the door of getting into the
4 gang affiliations?

5 A The only thing I can recall is we certainly
6 wanted Ms. Reese to be able to talk about the people
7 who defended her daughter against the -- when her
8 daughter was assaulted.

9 Q That was in -- there were two separate, I
10 guess, assaults on the victim; is that right?

11 A Well, the first -- the first assault was
12 the victim on the defendant's daughter. That was the
13 first assault. That's what began the chain of events.

14 Q Okay. Right. But there were two assaults on
15 the actual victim himself.

16 A Correct. That's correct.

17 Q And so correct me if I'm misstating. I'm
18 not trying to put words in your mouth. The individual
19 that was charged with murder from the first assault
20 was, I remember, was gangs; is that correct?

21 A From my understanding.

22 Q Or he was alleged --

23 A He alleged to be. Certainly.

24 Q And so is that -- that's why you wanted to
25 go through the references or the affiliations?

1 **A** I think so, at the time, that we wanted to
2 establish that those were the people who defended the
3 defendant's daughter against the assault that began
4 this whole thing.

5 **Q** Mr. Farley, I want to ask -- you retained
6 an expert witness in this case; is that correct?

7 **A** I did.

8 **Q** Who did you retain, and how did you come to
9 retain the expert?

10 **A** You mean logistically how or why?

11 **Q** Why?

12 **A** Okay. I retained Dr. Sandra Conradi out of
13 Charleston, South Carolina. I had researched her
14 credentials and I had been referred to her by several
15 colleagues. She had an exemplary reputation as a
16 forensic pathologist. She had testified for many
17 years and thousands of cases through South Carolina,
18 and she had an excellent reputation, and I thought
19 that she would be a great help to our case.

20 **Q** Okay. She -- she did not create a written
21 report in this case; is that correct?

22 **A** I really don't recall.

23 **Q** At what point did you -- were you made
24 aware of her conclusions?

25 **A** We had several telephone -- extensive

1 telephone meetings where she relayed to me what her
2 testimony would be and what conclusions she had
3 arrived at by viewing all of the evidence we had
4 turned over to her.

5 **Q** Okay. And also her conclusion was that Mr.
6 Mack's, the victim's, death occurred as a result of
7 the second incident, the one involving Ms. Reese; is
8 that correct?

9 **A** Ms. -- Dr. Conradi -- Dr. Conradi's opinion
10 was that -- expert medical opinion was that before
11 Ms. Reese even arrived on the scene, the altercation
12 that happened between Mr. Gray and the victim led to
13 the victim falling or I guess there was a scuffling
14 or either he slipped or I don't know what happened,
15 but he slipped out of Mr. Gray's hand or Mr. Gray
16 pushed him, either way, struck his head upon the
17 pavement which induced a subdural hematoma.

18 **Q** That was the second --

19 **A** That was the second incident.

20 **Q** The one that Ms. Reese was alleged to had
21 been involved?

22 **A** That's correct.

23 **Q** What was -- knowing that she was going to
24 testify that the assault that Ms. Reese was alleged
25 to have been involved in, what was the strategy

1 behind calling her as a witness?

2 **A** Well, we had discussions about that. I
3 recall Ms. Reese saying she did want to testify. She
4 wanted to testify because she wanted to tell her side
5 of the story. We talked about the pros and the cons
6 of that. At the time, I didn't think it was a bad
7 idea, necessarily, if she wanted to do it. I think
8 Ms. Reese wanted to tell how she felt when she
9 learned that this -- the victim in this case had
10 assaulted her daughter and how she felt about that
11 and that that was something that she wanted to convey
12 to the jury as to why these series of events even led
13 us to be in the courtroom. I understood that -- why
14 that was important to her.

15 **Q** Okay. My question was, why call the doctor
16 if she was going to testify that the incident Ms.
17 Reese was alleged to have been involved in was the
18 cause of the death?

19 **A** The doctor was going to testify that the
20 blow that led to the death of the victim happened
21 before Ms. Reese even arrived.

22 **Q** Okay, but in the same incident she was
23 alleged to have been involved in and initiated?

24 **A** That's correct.

25 **Q** Okay.

1 **A** But it's purely a superfluous factor.

2 **Q** Okay. When you discussed with Ms. Reese her
3 testimony and her decision to testify, did y'all
4 discuss her statement at all?

5 **A** We discussed it briefly. Again, I didn't
6 know if it was going to be a part of the State's case
7 or not. And I think, ultimately, it really wasn't.
8 They didn't introduce it, and it was very little
9 testimony about it. I think maybe as you refreshed my
10 memory, some law enforcement, I guess, did refer to
11 it, but I don't really think there was much other
12 than that.

13 **Q** Would the fact -- assuming her statement
14 would have been suppressed, would that have changed
15 your advice as to whether to testify or not?

16 **A** No, I don't think so. Like I said, we
17 talked about the pros and the cons of her taking the
18 stand and her defense, and it is my recollection that
19 Ms. Reese definitely wanted to tell the jury why this
20 event occurred the way it occurred.

21 **Q** Okay. Was Ms. Reese aware that she could be
22 impeached with her prior statement?

23 **A** I -- well, I don't know what her
24 understanding was, but I do remember having a
25 discussion about that. Again, I don't know -- I

1 thought she may have comprehended that, but I do
2 remember there were a few occasions that we met at
3 her apartment, I brought the discovery, we did have
4 some discussions about this, but I did compete with
5 some basketball, too, on the TV, so that was kind of
6 distracting a little bit.

7 Q You didn't renew your motion for a Jackson
8 v. Denno hearing prior to her testimony; did you?

9 A No, I did not.

10 Q When Ms. Reese went to testify, how did she
11 get to -- how did she get to the witness stand?

12 A She walked there.

13 Q Where was the jury when she got there?

14 A I'm sorry?

15 Q Where was the jury? Were they in the
16 courtroom? Were they out of the courtroom?

17 A The jury was in the courtroom and they were
18 to Ms. Reese's left.

19 Q Okay. So Ms. Reese walked in front of the
20 jury?

21 A She did.

22 Q Wearing wrist shackles and ankle shackles?

23 A She did.

24 Q Did you have an objection to that?

25 A I mean, when the judge took them into

1 custody, that was his ruling.

2 Q Okay. All right. If I could get you to turn
3 and look at the third volume and turn to page 1129,
4 I'm almost finished.

5 A Okay.

6 Q If I could get you to turn to line 9. This
7 is the Solicitor's closing arguments. Full sentence
8 on line 9 is discussing Ms. Reese's statement and her
9 testimony.

10 A You're starting above at 8?

11 Q No, I'm starting at 9.

12 A Okay.

13 Q She talks about it and she says, No, me and
14 her got into it yesterday.

15 A Yeah. It says that nobody even heard that
16 until yesterday.

17 Q And that's talking about her story of what
18 happened. Did you have any reason to object to that?

19 A No, I don't recall any.

20 Q Okay.

21 A Sometimes, it's -- I mean, it's usually
22 pretty unorthodoxed to object in an opening statement
23 or closing argument. Sometimes those things can go
24 by so quickly that --

25 Q Okay. Well, you did object during this

1 closing argument. Do you recall that?

2 **A** I don't really recall that. I'm just
3 saying, sometimes it's hard to catch all the
4 objections when you're in a trial.

5 **Q** Okay. Could you turn to page 1119? 1119,
6 line 22.

7 **A** I do see it.

8 **Q** You did object during the State's closing.

9 **A** I felt that part was just egregious.

10 **Q** Okay.

11 **A** That was also very demonstrative, too.

12 **MR. WALLER:** Beg the Court's indulgence
13 one second.

14 **THE COURT:** Yes, sir.

15 **(WHEREUPON, there is a pause.)**

16 **MR. WALLER:** No further questions. Please
17 answer any questions Ms. Kinard has.

18 **CROSS-EXAMINATION**

19 **BY MS. KINARD:**

20 **Q** Thank you for being here, Mr. Farley, and
21 being patient with us today. I'm going to step back
22 and start with a little bit of history about you. How
23 long have you been practicing law?

24 **A** Almost 10 years.

25 **Q** And how much of that has been with criminal

1 law?

2 **A** Almost 10 years.

3 **Q** I'm sorry. What percentage of your practice
4 is criminal law?

5 **A** At the time I tried this case?

6 **Q** Yes.

7 **A** Probably about, I would say, 40 percent of
8 my practice was criminal law.

9 **Q** Let me go back and ask. You said that you
10 spoke with Ms. Reese on the phone prior to meeting
11 her and you met her for the first time at
12 arraignment; is that correct?

13 **A** That's correct.

14 **Q** And between the time that you met with her
15 and y'all went to trial, how many times do you
16 believe you met with her in person?

17 **A** I think it was about five or six different
18 times. Several times at my office, and I had gone to
19 her apartment several times as well, sometimes on my
20 own, sometimes with my private investigator, Mr.
21 David MacDougall.

22 **Q** During those meetings, what did you talk
23 about?

24 **A** Well, during those meetings, we just talked
25 about the facts of the case, certainly how she

1 remembered them. There were certain things that I
2 wanted to explore further. There was an allegation
3 that she had beaten the victim with a chair and what
4 her recollection of that was. I certainly thought
5 that the chair allegation was something that we
6 really had to deal with. I thought it was really
7 being misrepresented by the Solicitor's office. We
8 did talk about, when it was appropriate and we knew
9 we were going to trial, whether she should testify or
10 not testify.

11 Q Okay. Let's break a little bit of that. Did
12 you take the discovery that you received with you to
13 her apartment or did you have that accessible at your
14 office?

15 A I mean, I had it accessible at my office,
16 but what I remember is that I think the last two
17 times that I had gone to her apartment, I had it all
18 laid out in a trial notebook so we could go over it.
19 I remember sitting there on the couch and it was laid
20 out on the coffee table and we were talking about it.

21 Q So even though she may not have received a
22 physical copy, you feel comfortable stating that you
23 reviewed all of it with her?

24 A I do, yes.

25 Q And do you believe she understood what you

1 discussed regarding discovery?

2 **A** I thought so at the time. I thought she did
3 understand.

4 **Q** Did you feel like you could have productive
5 conversations with Ms. Reese?

6 **A** Yeah. I mean, I do believe that we had some
7 productive conversations. Again, if I were to say
8 that -- the only time -- the only times I thought it
9 was a little bit difficult is we always had the TV on
10 when we were at the apartment, and I did think that
11 that was kind of a distraction in how serious these
12 charges were. But then to be fair to Ms. Reese,
13 though, I don't think it really became completely
14 real to her just how serious this was until we -- you
15 know, we had to go. It was really going to happen.

16 **Q** Okay. During these meetings, did you
17 discuss the indictments and the elements of each
18 offense?

19 **A** I did.

20 **Q** And you discussed the possible punishments
21 for each charge?

22 **A** I did.

23 **Q** You believe she understood all those?

24 **A** I do believe that at the time, yes, she
25 did.

1 Q Did you discuss collateral consequences of
2 these punishments with her such as classifications,
3 time served?

4 A Yeah, we talked about those things.

5 Q Did you talk to her about the State's
6 burden of proving guilt beyond a reasonable doubt?

7 A We did have a discussion about reasonable
8 doubt. I did try to explain the different aspects of
9 how the trial was going to go, what we were going to
10 try to prove. Again, what I recall about sitting down
11 with Ms. Reese is that we -- our main strategy was to
12 point out the fact that all of this happened because
13 the victim assaulted her child, what caused it. All
14 of this came after. We certainly felt that that was
15 an important thing to bring out that Ms. Reese's
16 behavior was one of a concerned mother.

17 Q So that colored your entire trial strategy?

18 A Yes, it did.

19 Q And you discussed that as a strategy with
20 Ms. Reese?

21 A Yes, I did.

22 Q And you discussed with her her version of
23 the facts of the case, such as you mentioned the
24 chair?

25 A Yes, and also what she recalled observing

1 at the time and what her testimony was going to be.

2 Q Did she ever indicate to you -- excuse me
3 -- indicate to you that she did not understand what
4 you were talking about?

5 A I mean, she didn't indicate that to me, no.

6 Q What was the reason that you filed the
7 competency motion?

8 A Really, out of abundance of caution. I
9 wanted to make sure that we had every opportunity
10 available to us and that she was able to have
11 everything afforded to her before we began the trial.

12 Q Was that motion actually heard? Do you
13 recall?

14 A I think Judge Cooper denied it, if I
15 recall.

16 Q And you mentioned earlier the motion to
17 sever, also a pretrial motion, that was denied, I
18 believe you said, basically for judicial economy?

19 A It was.

20 Q And it's your opinion, just to reiterate,
21 that had that been granted and Ms. Reese had her own
22 trial, you believe the facts could have led to a
23 different outcome for her?

24 A It's my opinion. I obviously can't
25 guarantee that, but I felt that we were at a serious

1 disadvantage to have Mr. Gray with us. I thought that
2 Ms. Reese should have her own trial. My motion was
3 denied.

4 **Q** Did you enter any plea negotiations on her
5 behalf?

6 **A** We did. And I don't know if Mr. Gray
7 remembers -- I mean, Ms. Reese remembers, but the
8 Solicitor's office didn't make us any plea offers
9 until Day 4 of the trial. Again, we had been through
10 many witnesses and many days of trial at that point.
11 But what I remember is on Day 4, I believe it was Day
12 4, the Solicitor came to us and made us an offer that
13 if Mr. Chaplin's client was willing to plead to
14 involuntary manslaughter, that they would give Ms.
15 Reese a reduced charge. And we had a meeting about
16 that in one of the jury rooms.

17 But it became a moot point on our side
18 because the offer was contingent on Mr. Gray, and Mr.
19 Gray flat out refused to entertain that offer
20 because, I think, murder was carrying 30 years and I
21 think involuntary manslaughter could carry up to 30
22 years and he felt it wasn't a good deal. Our deal was
23 contingent on him accepting it. I mean, it didn't --
24 you know, that was a decision that was really
25 ultimately made by Mr. Gray and Mr. Chaplin. I

1 certainly encouraged Mr. Chaplin to have his client
2 agree to that because I think that would have
3 resulted in a different outcome for our case as well.
4 That was Mr. Gray's decision, not ours, to make.

5 Q So there was never an independent plea
6 offer or an offer that was not contingent on someone
7 else?

8 A No is the short answer. But I believe that
9 the Solicitor's office really wanted to try or really
10 wanted Mr. Gray to take a plea because it's just my
11 opinion, but I ultimately feel that the Solicitor's
12 office felt Mr. Gray was directly responsible for the
13 victim's death.

14 Q Let's talk a little bit about her decision
15 to testify. Her, being Ms. Reese. Did y'all have
16 extensive conversations about that?

17 A We did talk about that. Again, we talked
18 about the pros and cons of testifying. But I think
19 that I recall Ms. Reese saying that she wanted to get
20 her story out. She wanted to tell the jury what her
21 side of the story was. She wanted them to understand
22 that she was -- all of her actions were based on the
23 fact that she was a concerned mother.

24 Q And as part of that, you discussed with her
25 the effect that her statement might have, even though

1 it had not been introduced at that point?

2 **A** We did. We did talk about that. We did.

3 **Q** And, Mr. Waller, referred you to a citation
4 in the transcript.

5 Beg the Court's indulgence. (Pause.)

6 Page 786. I don't think you need to flip
7 there, but generally, the portion of that information
8 was talking about getting phone numbers out of her
9 statement. Do you recall that?

10 **A** I mean, from looking at the transcript,
11 yes.

12 **Q** Do you know if the State had any other way
13 of getting those phone numbers or if they were
14 relying on the statement?

15 **A** I do not.

16 **Q** Okay. I would touch quickly on Ms. Reese
17 wearing shackles that would have been seen by the
18 jury. Was your lack of objecting, for lack of a
19 better term, because you didn't want to challenge a
20 previous ruling made by the judge?

21 **A** That's correct.

22 **MS. KINARD:** Beg the Court's indulgence.

23 (Pause.)

24 **THE COURT:** Certainly.

25 **BY MS. KINARD:**

1 Q I believe that covered everything that I
2 wished to elicit from you. Is there anything further
3 that you would like the Court to know about your
4 representation in this case?

5 A I'll tell you, I've tried a lot of cases,
6 but this is the only one that stayed with me. I think
7 the jury got it wrong this time. That's just my
8 opinion. I think Mr. Gray should be incarcerated for
9 this. I don't believe Ms. Reese should be
10 incarcerated for this. That's just my opinion.

11 Q And perhaps because of that and your duty
12 as an officer of the court, you did everything
13 possible, in the moment, to ensure that Ms. Reese --

14 A I did absolutely everything I possibly
15 could. This is one case that still just stays with
16 me. I tried to do everything I could. I don't know.
17 I mean, I put in every effort. It was a heck of a
18 trial. It was very long. Many witnesses. Like I said,
19 I think this verdict is probably the biggest
20 appointment -- disappointment I ever got.

21 Q Thank you, Mr. Farley. Nothing further at
22 this time.

23 THE COURT: Any redirect?

24 MR. WALLER: Just briefly.

25 REDIRECT EXAMINATION

1 **BY MR. WALLER:**

2 **Q** Mr. Farley, when Ms. Kinard asked you about
3 shackles, you testified that you didn't want to go
4 against the prior ruling. Judge Cooper ruled that she
5 had to be taken into custody overnight and during
6 breaks and things like that; is that correct?

7 **A** That's correct.

8 **Q** Did his ruling touch on her being shackled
9 in court -- I mean, in front of the jury?

10 **A** You know, I don't really recall that point.
11 It was my understanding that that was the protocol
12 that they could have on civilian clothes, but they
13 were going to be shackled while they were in custody.

14 **Q** Okay. You understood that to mean including
15 in front of the jury, though?

16 **A** Yes, that's what I -- that's what I
17 remember.

18 **Q** Briefly, you testified that you met with
19 Ms. Reese in her home and also at your office several
20 times. You recall about how long the meetings were?

21 **A** You know, I don't really. I want to say
22 they were kind of increasing. They were longer as we
23 got closer to the trial. We had several meetings.
24 Again, the longer ones we had at her apartment, that
25 was really getting closer to trial. There were also

1 some times Mr. MacDougall and I walked the grounds at
2 Gonzales Gardens to see the area in which the
3 incident took place and also to try to interview
4 witnesses.

5 Q Okay. Do you take notes of your meetings at
6 all?

7 A Yes, I do.

8 Q Okay. Do you -- I know we've had quite an
9 interesting day. I believe you testified earlier that
10 you forgot those notes back at your office?

11 A I did.

12 Q That's okay. I just want to mention earlier
13 that you filed a motion for competency out of an
14 abundance of caution. What were you caution -- what
15 were you trying to -- out of an abundance of caution
16 for what?

17 A Well, certainly, I thought it would be the
18 best practice to have Ms. Reese evaluated, just to
19 give her every opportunity possible. To be frank,
20 too, I thought that might also give us more time to
21 prepare for trial. I'm not saying we didn't have
22 enough time to prepare for trial. I am saying that
23 obviously the more time we have, the better off you
24 are.

25 Q And just finally, do you -- the case was

1 tried by Luck Campbell, April Sampson and Nicole
2 Simpson. Do you recall who you dealt with on a day-
3 to-day basis before the trial?

4 **A** Mostly Ms. Campbell and Ms. Simpson. Ms.
5 Sampson was undergoing cancer treatment, I believe.

6 **THE COURT:** Beg the Court's indulgence one
7 second. (Pause.)

8 No further questions. Thank you very much.

9 **THE COURT:** Any recross?

10 **MS. KINARD:** None, Your Honor.

11 **THE COURT:** All right. Thank you, Mr.
12 Farley. Sorry about the scheduling.

13 **THE WITNESS:** That's all right.

14 **THE COURT:** Any other witnesses?

15 **MR. WALLER:** I have no further questions,
16 Your Honor.

17 **MS. KINARD:** We have no other witnesses
18 from the State, Your Honor.

19 **THE COURT:** Would you like to make brief
20 arguments?

21 **MR. WALLER:** Your Honor, you have the
22 amendments that I passed up earlier. I think
23 they are fairly specific and outline page
24 numbers. The only thing I will touch on is the
25 Solicitor's closing comments and the Solicitor's

1 closing argument. There is case law that -- I
2 apologize. I do not have the cite in front of me
3 -- it is impermissible to comment that a
4 defendant is not credible because the first time
5 they waived their right to remain silent and
6 testify to something is the day of trial. The
7 gap -- the 18-month gap can not be held against
8 them. That's the only thing I would expound
9 upon. I believe everything else is fairly clear.
10 I'd just ask you to review the pages that were
11 specifically questioned and the files in the
12 case.

13 **THE COURT:** I was actually going to take
14 this one under advisement and ask for proposed
15 orders from both of you. I'll give you two
16 weeks-ish. Actually, I'll say if you give them
17 to me by the week of -- the week of the 19th, so
18 no later than the 23rd. Yeah, no later than the
19 23rd.

20 **MR. WALLER:** Thank you, Your Honor.

21 **THE COURT:** Thank you.

22
23 **(WHEREUPON, the proceedings conclude at**
24 **approximately 4:34 p.m.)**
25

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Columbia, South Carolina, on this 19th day of July, 2017.

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

Teresa B. Johnson

Certified Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Robin Gray Reese, #350020,)
Applicant,)
vs.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

C/A No.: 2014-CP-40-5657

**ORDER GRANTING
POST CONVICTION RELIEF**

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed September 14, 2014. Respondent made its Return on March 11, 2015, requesting an evidentiary hearing be convened. Jonathan D. Waller, Esquire, was appointed by the Richland County Clerk of Court to represent Applicant in this matter. An evidentiary hearing was held on August 30, 2016, at the Richland County Courthouse. Applicant was present and represented by Counsel Waller. Jessica Kinard, Esquire, of the South Carolina Office of Attorney General represented Respondent.

At the PCR hearing, Applicant testified on her own behalf. Also testifying was Applicant's trial counsel, Andrew Farley, Esquire. The Court had before it the Richland County Clerk of Court's records, Applicant's South Carolina Department of Corrections records, the PCR Application, the Return, and the trial transcript.

I. PROCEDURAL BACKGROUND

Applicant was indicted during the March 2010 term of the Richland County Grand Jury for Lynching in the First Degree (2010-GS-40-0040) and during the October 2011 term of the Richland County Grand Jury for Murder (2011-GS-40-4916). Applicant pled not guilty to the

charges and proceeded to trial on March 2, 2012 before the Honorable G. Thomas Cooper. The Applicant was found guilty of both charges.

The Honorable G. Thomas Cooper sentenced Applicant to thirty (30) years imprisonment for each charge, with the sentences to run concurrent to one another. Applicant filed a timely notice of appeal and by Order filed July 30, 2014, the South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. State v. Reese, Op. No. 2014-UP-300 (S.C. Ct. App.). The Remittitur was issued on August 15, 2014.

In her Application, Applicant made claims of "Ineffective assistance of counsel," stating specifically that counsel failed to ask for a lesser charge on the record and failed to elicit testimony from prosecutor. Prior to the evidentiary hearing convened August 30, 2016, Applicant, by and through her counsel, amended her Application to include specific claims of Ineffective Assistance of Counsel, specifically that counsel failed to move to suppress Applicant's statement as not voluntarily given, failed to object to impermissible comments during the Solicitor's closing argument, failed to object to Applicant being seen by the jury while wearing both ankle and wrist shackles, failure to properly advise Applicant with regards to her decision to testify, failure to obtain Applicant's phone records, failure to prepare, failure to investigate and speak with State's witnesses, and failure to object to impermissible testimony during the testimony of Campbell Streeter and William Pegram.

II. SUMMARY OF TESTIMONY

At an evidentiary hearing held August 30, 2016 at the Richland County Courthouse, both Applicant and trial counsel, Andrew Farley, testified as to the facts and circumstances surrounding Mr. Farley's representation of Applicant. At the beginning of Applicant's testimony, she testified that she and Mr. Farley had met on several occasions and that she and

counsel had discussed some of the evidence against her. Applicant testified that she did not have a complete understanding of both of the charges against her and that because there was approximately eighteen months between indictments, she did not understand the seriousness of her situation. Applicant testified that she was not aware of the penalties of the charges she faced. Applicant testified that Counsel was appointed to represent her in October of 2011, a great deal of time after she had been initially arrested. Applicant testified that Counsel employed the services of an investigator and that she had spoken with the investigator.

Applicant testified that she and Counsel had discussed the statement she had given to law enforcement and the circumstances that led to the statement; namely law enforcement approaching her home, both front and back, with a total of six (6) officers. She testified that she and her daughter, thirteen years old at the time, were placed in the back of separate unmarked police vehicles and taken to the police station. Once at the station, they were each questioned separately for several hours before being reunited. Applicant testified that there were three or four officers or investigators in the room with her throughout her time at the station, that they were visibly wearing firearms, and that she did not feel as though she was free to leave at any point. Applicant also testified that she was read no Miranda rights and was eventually transported back to her home by law enforcement, able to accompany her daughter this second time. Applicant testified that she told Counsel that she had not given her statement voluntarily and that she was unaware until trial that her daughter had indeed given a statement to law enforcement.

Applicant testified that she and Counsel did not discuss preparation for trial. She testified that while he had been in contact with some of the State's witnesses, he asked her to reach out to two of the State's witnesses to "feel them out." Applicant testified that she was never advised of

the potential dangers and penalties of a defendant contacting potentially adverse witnesses. Applicant also testified that she refused to contact the witnesses as requested due to those particular witnesses close relationship with a co-defendant's brother.

The Applicant testified that no plea offer was ever made by the prosecution until several days into the trial and that the offer that was made was contingent on her co-defendant brother also accepting a plea. The Applicant testified that immediately prior to trial, she had renewed concerns that Counsel was not properly prepared. She testified that there were several pieces of information that the State presented to the jury that she had been unaware of until they were presented. The Applicant testified that while she had discussed some of the discovery and evidence the State intended to use, it was only after her conviction that she was ever provided with a copy. The Applicant testified that she did not wish to testify and only reluctantly agreed to do so following Counsel's recommendation that her testimony was necessary. She testified that while she was advised of her right not to testify, she was not told how her testifying would change the procedures of trial; namely that by presenting evidence, her Counsel would be waiving the right of having the last closing argument.

The Applicant testified that both she and her co-defendant were shackled throughout the trial. She testified that she had been out on bond for the entirety of time the charges were pending and despite her bondsman agreeing to stay on the bond, she was taken into custody upon the initiation of the trial because Counsel failed to procure the agreed upon documentation from the bondsman. Applicant testified that when she was called to testify, the jury was seated in the courtroom and that she was forced to walk directly in front, and in full view, of the jury as she made her way to the witness stand.

Following Applicant's testimony, the Applicant called Andrew Farley to testify. On direct examination, Mr. Farley testified that he was appointed well after Applicant had been originally indicted, but that he felt that he had adequate time to prepare. He testified that the allegations were that the victim had gotten into some sort of altercation or struggle with the Applicant's thirteen (13) year old daughter. The victim was attacked by unrelated individuals in an effort to stop the altercation. The State went on to allege that when Applicant learned that the victim had been involved in an altercation with her child, she initiated and ultimately participated in a fatal assault on the victim, from which he never regained consciousness.

Counsel testified that he retained the services of a private investigator to attempt to contact some of the State's witnesses as well as to assist in the preparation of the defense case. Counsel testified that he and Applicant met on several occasions both at his office and at her home and they had adequate time to review the discovery provided. Counsel testified that he did not feel as though Applicant appreciated the serious nature of the charges. Counsel testified that he was aware of the circumstances of Applicant's statement to law enforcement and that he made a pre-trial motion to suppress the statement as involuntarily made. Counsel also testified that he filed a motion to have the Applicant evaluated "out of an abundance of caution." He also testified that he felt that Applicant had understood all of his conversations with her.

Counsel testified that he was prepared to try the case and that at the time and that he had retained an expert medical witness to testify regarding the cause of death. He testified that the victim in the case had been assaulted by multiple groups of people in a short time period. Applicant was alleged to have initiated and been involved in the second assault, which the State alleged was the fatal assault. The expert witness testified that the victim was dealt the fatal blow during the second assault. When asked why Counsel would still call upon the witness to testify

to an opinion that seemingly aligned with the State's position, he testified that he thought the expert's testimony fit in with the defense strategy that the fatal assault had taken place at the hands of her brother and any involvement she may have had was in reaction to the altercation or assault involving her daughter.

Counsel testified that no plea offer was extended to Applicant until several days into the trial and that the offer was contingent on Applicant's co-defendant/brother also pleading guilty. Counsel testified that he believed that it was in Applicant's best interests to testify in her defense as it would allow the jury to understand her actions following the assault on her daughter. Counsel testified that at the outset of the trial, Judge Cooper ordered that the Applicant be taken into custody as there had been no documentation provided that the bondsman would remain on the bond.

III. APPLICABLE LAW

In a post-conviction relief action, Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance on counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decision in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. The Applicant must overcome this

presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S.Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-118, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the trial transcript, Applicant's records from the South Carolina Department of Corrections, the Application for post-conviction relief, and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

As a matter of general impression, this Court finds the testimony of both Applicant and guilty plea counsel to be credible and persuasive in that they are in substantial agreement on the facts and circumstances as they took place. These credibility findings have been applied to the Court's findings and conclusions set forth below.

Applicant first contends that Counsel was ineffective for failing to move to suppress Applicant's statement to law enforcement as not voluntarily given. Counsel did make a motion,

pre-trial, as to the suppression and voluntariness of the statement. At the time he made his motion, the State informed the court that it did not intend to introduce Applicant's statement. However, during the testimony of Sgt. William Pegram, on p. 786, he proceeded to testify regarding some of the contents of Applicant's statement. At this point, it was incumbent upon Counsel to object to any testimony regarding Applicant's statement if, and until, Judge Cooper was able to make a ruling pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964). While Sgt. Pegram testified that Applicant was not read her rights because at the time of her statement, she was not a suspect, Record at 777, the circumstances surrounding her statement indicate that she may have been detained at the time of her statement. Her home was surrounded, front and back, by six law enforcement agents and she testified that she was not given a choice to not travel with law enforcement to be interviewed. She testified that she had her own transportation and would not have needed the officers to provide transportation. She testified that she and her daughter were transported in the rear of separate vehicles and placed in separate rooms. She testified that there were multiple law enforcement officers in the room with her at all times and that she did not feel that she was free to leave. She testified that after she was finished with her interview she had to wait approximately an hour before her daughter brought into the room, upset and crying. She testified that only then were her and her daughter transported back to their home. Applicant was not under arrest at the time but an arrest warrant was issued for her soon after.

While Counsel properly made a motion to suppress Applicant's statement pre-trial, he was deficient for failing to object to testimony regarding the contents of her statement when presented in direct opposition to the State's representations to the trial judge. Counsel testified that even if her statement had been suppressed, his advice to testify would not have changed. Unfortunately, the decision to testify is not one that rests with Counsel. Had the statement been

suppressed, Applicant may have exercised her right to remain silent as she testified she wished to do. When she ultimately chose to testify, her statement then could be used against her for impeachment purposes. Further, Counsel does not recall whether he informed Applicant that her testimony, and any presentation of evidence by the defense, would deprive her defense of having the last closing argument. Had Counsel properly advised her regarding both the statement and the benefits/risks of testifying, her decision may have been different. She has already testified that she did not want to testify and only reluctantly agreed to do so upon Counsel's recommendation. Counsel was deficient for failing to object to the contents of Applicant's statement being presented to the jury without a ruling and Applicant was prejudiced by not having a ruling from the trial judge to consider when making her decision whether to testify.

Next, Applicant contends Counsel was ineffective for a failing to object to impermissible comments made during the Solicitor's closing argument. During the Solicitor's closing argument, she was arguing to the jury regarding portions of Applicant's testimony and statement to law enforcement. In particular, the Solicitor was commenting on Applicant's testimony that she was so upset, she attempted to kick the victim but slipped and fell and was ultimately restrained by her brother. The Solicitor commented that "[n]obody even heard that until yesterday." Record, at 1129. The Solicitor's comments allege that Applicant had not given this version of events until it was in her best interests to do so. This constituted an impermissible comment on Applicant's right to remain silent. When an accused asserts a constitutional right, it is impermissible for the state to comment upon or argue in favor of guilt or punishment based upon his assertion of that right. State v. Johnson, 293 S.C. 321, 323, 360 S.E.2d 317, 319 (1987) (citing, Doyle v. Ohio, 426 U.S. 610, 96 S.Ct. 2240, 49 L.Ed.2d 91 (1976)). Counsel was deficient for failing to object to these comments by the Solicitor. When asked why he failed to

object, Counsel testified that he felt it was generally bad form to object during closing arguments. When informed that he had already objected previously during the same closing argument, Counsel was unable to articulate a valid trial strategy for failing to object to the comments about Applicant's right to remain silent. While this Court feels that Applicant has already shown prejudice regarding her decision to testify; the prejudice is only multiplied in the present instance. Not only was Applicant prejudiced by having to make an uninformed decision regarding her testimony, she was again and further prejudiced when the Solicitor commented on her failure to "tell her story" prior to testifying at trial.

Applicant further contends that Counsel was ineffective for failing to object to Applicant being seen by the jury while wearing both wrist and ankle shackles. Both Applicant and Counsel testified that Applicant was wearing shackles and was fully visible to the jury as she made her way to the witness stand. In the opening statement made by the counsel of Applicant's co-defendant, a reference was made to the co-defendant being shackled. Record, at 163. That comment was neither objected to nor was a motion for mistrial or for curative instruction made. At the outset of the trial, Judge Cooper inquired to Counsel as to whether the bondsman for Applicant had provided documentation as to whether they would remain on the bond once the trial started. As required, once the jury is sworn, the requirements of bond have been satisfied and at the discretion of the court, without the documentation from the bondsman, Judge Cooper required that Applicant be taken into custody for the remainder of the trial. When asked why he did not object the Applicant appearing in the presence of the jury while shackled, Counsel testified that he did not want to go against a previous ruling of the Court. This Court finds that Counsel misinterpreted the ruling of the Court in failing to object. The Court's ruling regarded the custody status of the Applicant during the course of the trial, not the appearance of Applicant,

while shackled, in the presence of the jury. In the absence of valid articulated trial strategy, it is deficient for Counsel to not have objected to Applicant appearing in the presence of the jury while in shackles. Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (S.C., 2001). Additionally, this Court finds that Applicant was prejudiced by her appearance while shackled. Even if taking the State's theory as absolutely true, Applicant was not present for the fatal blows to the victim. While the State contended that Applicant was equally culpable with her brother, that contention was based on a theory of accomplice liability in that the State alleged Applicant initiated and instructed her brother to kill the victim for assaulting her daughter. By seeing the Applicant in shackles, the jury had less of a step to take to believe that Applicant could direct the murder and place her on the same plane as her brother.

Finally, Applicant alleges that Counsel was ineffective in failing to object to impermissible comments made during the testimony of Campbell Street and William Pegram. On re-cross examination by Counsel, Mr. Streeter was asked if Kara Chase appeared nervous when speaking with him. Mr. Streeter's answer was non-responsive to the question and he answered that "[he] felt like she was being forthcoming." This non-responsive answer constituted improper bolstering of the witnesses credibility. By commenting that he believed Ms. Chase was being "forthcoming," Mr. Streeter intruded on the jury's duty to determine credibility of witnesses. Failure to object to this comment was error and as the purpose of Mr. Streeter's testimony was to rehabilitate the testimony of Ms. Chase, Applicant was prejudiced by Counsel's failure to object to these comments. Had Counsel objected, the jury would have been presented with the questionable testimony of Ms. Chase, who was a key witness for the State.

During the testimony of Sgt. William Pegram, he was asked about the charging of the third co-defendant, Marcellus Brooks. Mr. Brooks was the main perpetrator of the initial assault on

the victim and despite having no involvement with Applicant or her brother, either prior to, or following his assault, and the State's theory that the victim was dealt a fatal blow during the second assault, Mr. Brooks was also charged with murder. When asked why Mr. Brooks had not been charged at an early point in the investigation, Sgt. Pegram testified "[b]ecause I was still trying to determine what we had and who the principal party was in the case. By law – in my opinion of the law, everybody involved in this case was guilty but I had to determine the principal parties in the case." This comment was improper because it was an impermissible comment on the law; an area that rests solely with the trial judge to provide to the jury. Sgt. Pegram was an investigator on the case, has no legal training that was testified to, and was not acting as a prosecutor during the trial of the case. He was not permitted to comment or give his opinion on the law or the guilt of the parties; a duty left to the jury. By failing to object to the comments, Counsel was deficient and this deficiency prejudiced Applicant in that Sgt. Pegram had intruded on both the duty of the Court and the duty of the jury.

Applicant has met her burden of showing both deficiency of counsel and prejudice as required by *Strickland*. The evidence in the case was not overwhelming against Applicant despite being tried with her brother, whom the evidence was overwhelming. Applicant's brother was assaulting the victim well before Applicant arrived and according to the testimony of both witnesses and Applicant herself, the victim had already lost consciousness prior to her arrival, never to gain it again. The above discussed errors on the part of Counsel could each individually resulted in a different outcome in Applicant's trial. By failing to meet the standard of "reasonableness under prevailing professional norms" there is a reasonable probability that the outcome of Applicant's trial would have been different.

As to any and all other 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.

VI. CONCLUSION

Based upon the foregoing, the Court finds and concluded that Applicant has met her burden and shown that counsel was deficient in his representation of Applicant during her trial. Applicant was prejudiced when her counsel failed to act in accordance with prevailing professional norms resulting in improper evidence and inference being presented to the jury.

THEREFORE, the Applicant's Application for post-conviction relief is hereby granted and remanded to the Court of General Sessions for further proceedings consistent with this Order.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post Conviction Relief is hereby granted and Applicant's criminal case is hereby remanded to the Court of General Sessions; and
2. Applicant will be transferred to the Alvin S. Glenn Detention Center for further proceedings consistent with this Order.

AND IT IS SO ORDERED this _____ day of _____, 2016.

Jocelyn Newman
Presiding Judge

_____, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Robin Gray Reese, #350020,

Applicant,

V.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2014-CP-40-5657

ORDER OF DISMISSAL

RICHLAND COUNTY
 FILED
 2016 NOV 14 PM 4:44
 JENNIFER M. BRAND
 C.C.P. & G.
 Clerk of Court

This matter came before the Court by way of an Application for Post-Conviction Relief filed September 14, 2014. Respondent filed a return on or about March 11, 2015. The Court convened an evidentiary hearing into the matter on August 30, 2016, at the Richland County Courthouse. Applicant was present and represented by Jonathan Waller, Esquire. Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office represented Respondent.

Applicant and Applicant's trial counsel, Andrew Farley, Esquire, testified at the hearing. The Court had before it a copy of the trial transcript, the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. The Court finds as follows:

I. Procedural History

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. The Richland County Grand Jury indicted the Applicant at the March 2010 term of General Sessions for Lynching - First Degree (2010-GS-40-0040) and at the October 2011 term for Murder (2011-GS-40-4916). Andrew Farley, Esquire represented Applicant on the charges. Applicant proceeded to trial on

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March 2, 2012. The jury returned verdicts of guilty and the Honorable G. Thomas Cooper Jr. sentenced the Applicant to thirty (30) years imprisonment on each charge.

A notice of appeal was filed at the South Carolina Court of Appeals. Katherine Haggard Hudgins, Esquire perfected the appeal. The Court of Appeals affirmed the Applicant's conviction and sentence on July 30, 2014. State v. Reese, Op. No. 2014-UP-300 (S.C. Ct. App. filed July 30, 2014). The Remittitur was returned on August 15, 2014.

II. Allegations

In her application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. "Failed to ask for lesser charge on record"
 - b. Failed to elicit testimony from prosecutor

Prior to the evidentiary hearing, Applicant's counsel provided Respondent with informal amendments, which Respondent stipulated to consideration. These were placed on the record at the evidentiary hearing, and are as follows:

- a. Failure to move to suppress Applicant's statement as not voluntarily given.
- b. Failure to object to impermissible comments during Solicitor's closing argument
- c. Failure to object to Applicant being seen by jury while wearing both ankle and wrist shackles.
- d. Failure to properly advise Applicant with regards to her decision to testify.
- e. Failure to obtain Applicant's phone records.
- f. General failure to prepare.
- g. Failure to investigate and speak with state's witnesses.
- h. Failure to object during the testimony of Campbell Streeter and William Pegram.

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

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observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court finds Counsel's testimony credible and Applicant's testimony not credible. 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 (2003).

Summary of testimony

Robin Gray Reese - Applicant

Applicant began by testifying that she turned herself in to law enforcement on February 19, 2010. At her bond hearing, she was represented by an attorney other than trial counsel, though he began his representation of her before her murder indictment. Applicant testified that she served thirteen days before she was bonded out, and met with trial counsel approximately five times between his office and her apartment. She did not recall discussing what potential punishment her charges carried or what elements the State would have to prove, though she knew that her charges were serious. She further testified that she and trial counsel never talked about potential defenses or witnesses to call on her behalf, and that trial counsel told her to "go and live" after her murder indictment. Applicant testified that she met the private investigator hired by trial counsel one time, and was informed that they would pursue her co-defendant because the beating victim and witnesses put him at the scene.

Applicant testified regarding the circumstances surrounding her providing her statement to police, which included the police picking her and her daughter picking her up at home and taking them to the station in unmarked cars. She recalled four people being in the room during her questioning, and only one was in uniform. She did not recall if she was free to leave, and stated that she was not allowed to be with her daughter while she was questioned, though the police took them home in the same car. She testified that she told trial counsel she was not

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mirandized, and did not recall discussing with him whether her statement was voluntary or could be suppressed, though she felt like she was forced to give the statement.

Regarding trial preparation, Applicant testified that she never reviewed the discovery with trial counsel, and she was not aware of her daughter's statement. She relayed her version of the facts to trial counsel. They spoke briefly about what she would testify to, but she told trial counsel that she did not want to testify. He advised her that she would benefit from testifying, so she did. She stated that a lot of their discussions centered on the chair that she threw during the altercation. Applicant did not recall any plea offers being made to her, nor did she recall discussing the potential testimony of expert witnesses with trial counsel. Lastly, she testified that even though she was dressed in street clothes during the trial, she was shackled and walked in front of the jury in shackles. On re-direct examination, however, the Applicant admitted that she spoke with trial counsel about the discovery.

Andrew Farley, Esquire – trial counsel

Trial counsel testified that he was appointed in October of 2011. He received a call before Applicant was arraigned and met her there. Trial counsel testified that he immediately filed a notice of representation and Rule 5 discovery motion, the product of which he received within a month or two of appointment, as well as supplemental discovery. He recalled that there was a good bit of discovery, including all medical reports, and trial counsel testified that he had enough time to review and familiarize himself with all of it. He testified that he met with the Applicant five or six times, both at his office and at her apartment, to review the discovery. He testified that he vividly remembered a basketball game on the television at the Applicant's apartment that occupied more of her attention than his attempts at conversation could. He further testified that he reviewed all charges against the Applicant and the elements of those charges, the potential

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punishments and consequences of the charges, the state's burden of proof, her constitutional rights, defensive strategies, and what her potential testimony may be. To assist in preparation, trial counsel hired the late David MacDougall as a private investigator.

Trial counsel was aware that the Applicant had provided a statement to law enforcement prior to her arrest, and he considered the necessity of a motion to suppress it. However, trial counsel testified that his biggest concern was whether the solicitor would use it. Out of an abundance of caution, trial counsel made a pre-trial motion to suppress the motion, to which the solicitor's office responded that they did not intend to use the statement. The trial judge issued a ruling *in limine* to allow a Jackson v. Denno¹ hearing if and when the solicitor's office decided to bring in the statement. Out of an abundance of caution, Trial counsel had also filed a pre-trial motion for a mental competency evaluation that he did not pursue at the time trial because no concerns had arisen regarding the Applicant's competency. It was filed as a best practice – trial counsel wanted to give Applicant every opportunity to be okay with her situation and to buy time before trial if needed. He testified that it was until approximately a week before trial that the importance and severity of the trial and its consequences hit home with the Applicant.

The most important pre-trial motion, testified trial counsel, was a motion to sever Applicant's trial from her co-defendant. Trial counsel testified at length that Applicant's trial would have been fairer to her if she was tried alone, as it would have been easier for a jury to distinguish her actions from those of her co-defendant. He believed that assault and battery of a high and aggravated nature was a more appropriate charge for the Applicant, and that he may have been able to get such a charge if the trial were severed. Regardless, trial counsel understood that the trial judge's denial of the motion to sever was in the interest of judicial economy.

¹ Jackson v. Denno, 378 U.S. 368 (1964).

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Trial counsel briefly testified about jury selection in this trial. He recalled that there was a large jury pool from which the initial jury was selected; however, the prosecution made a Batson² claim, which was granted against the defense. At the PCR hearing, trial counsel testified that his motives behind juror selection were not racially influenced, but he could not satisfy the trial judge of that fact. A second jury was pulled, and trial proceeded. At that time, the trial judge remanded the defendants into custody and said that they would be shackled. Trial counsel did not recall objecting to his client being shackled in front of the jury, as he was under the clear understanding that the trial judge intended for them to remain in shackles.

PCR counsel examined trial counsel on several specific points in the transcript. The first was regarding mentions of gang activity, beginning on page 318 of the trial transcript. When asked why he did not ask for a limiting instruction on references to gang activity, trial counsel did not recall his reasoning behind the decision at that point in the trial, yet testified that he knew gangs would have to be discussed, as it was a group of Blood members that rescued the Applicant's daughter. This same logic applied when PCR counsel asked trial counsel why there was no objection later in the trial to the solicitor asking if there was any sort of affiliation between the defendants and the Blood gang.

Another specific point of questioning was found at page 747, line 13 of the trial transcript, in which Investigator Streeter testified that a witness's statement "seemed forthcoming." Trial counsel did not object at the time, and testified that he still did not see a reason to object. Comparatively, when asked why he did not object to Sergeant Pegram offering his opinion on the law at page 779, lines 3-6, trial counsel stated that he should have objected. Lastly, when Sergeant Pegram began referencing the Applicant's statement on page 786 at line

² Batson v. Kentucky, 476 U.S. 79 (1986).

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17, trial counsel could not recall why he did not renew his request for a Jackson v. Denno hearing at that time.

PCR counsel questioned trial counsel about two potentially objectionable statements in the prosecution's closing argument. The first, on page 1119 at line 22, drew an objection from trial counsel because it referred to a witness as a liar. PCR counsel then compared a statement on page 1129 at line 9, in which it could have been possible to infer that the solicitor was calling the Applicant a liar due to testimony presented earlier in trial. Trial counsel testified that he did not hear the statement that way at the time of trial, and did not believe that it was worthy of an objection.

Regarding the defense's expert, Dr. Sandra Conrady, trial counsel testified that he consulted with and hired her because of her excellent reputation and referrals, as well as her review of thousands of cases. He further testified that he had several calls with her about her conclusions and what her testimony would be at trial. Ultimately, her testimony was that the victim died as a result of a head injury that most likely occurred before the Applicant even arrived at the scene. This was in line with the overall defensive strategy that all of the injuries and the death of the victim occurred before the Applicant arrived, and that everything Applicant did was out of her concern as a mother.

Trial counsel recalled that Applicant wanted to testify and tell her side of the story. He did not think that this was necessarily a bad idea, as it allowed the Applicant to share her personal feelings when she found out about the assault on her daughter, notably the fact that she had been sexually assaulted as a teenager. He further testified that, even if her statement had been suppressed, it would not have changed his opinion on her testifying as he recalled discussing the potential for impeachment with her.

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Lastly, trial counsel testified that, despite his efforts, the solicitor's office did not make any plea offers to Applicant until the fourth day of trial. That offer required Applicant's co-defendant to plead to voluntary manslaughter in order for Applicant to receive reduced charges. Unfortunately, Applicant's co-defendant, who was also her brother, refused to plead, so both went to trial.

Ineffective Assistance of Counsel

In this post-conviction relief action, Applicant bears the burden of proving the allegations in her application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of trial counsel as a ground for relief, Applicant must prove trial 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." Id. (citing Strickland v. Washington, 466 U.S. 668, 686 (1984)).

The proper measure of performance is whether trial counsel provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). The Court strongly presumes trial counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The Court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, Applicant must prove trial counsel's performance was deficient. Id. Under this prong, the Court measures trial counsel's

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performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, trial counsel's deficient performance must have prejudiced 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.

This Court finds Applicant has failed to show that trial counsel's performance fell below an objective standard of reasonableness. All testimony indicated that trial counsel was extremely familiar with the facts of Applicant's case. This Court finds trial counsel met with Applicant an adequate number of times and was familiar with the discovery materials. Trial counsel indicated that he explained Applicant's constitutional rights, and explained the differences between going to trial and entering a guilty plea. Counsel indicated he never had trouble communicating with Applicant, and he never had any concern that Applicant did not fully understand their conversations.

Trial counsel refuted all allegations that Applicant made in her application as well as during her testimony including, but not limited to, voluntariness of her statement; preparation for the trial; specific potential objections during the course of trial; issues regarding the Applicant being shackled; Applicant's decision to testify; and allegedly impermissible comments made by the solicitor during closing argument. This Court finds that, through the presentation of evidence at the post-conviction relief hearing, Applicant has failed to demonstrate both deficiency by trial counsel, as well as any prejudice caused by trial counsel's actions. Therefore, this allegation is denied and dismissed with prejudice.

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

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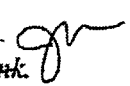
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evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

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 her 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 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, her post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and her attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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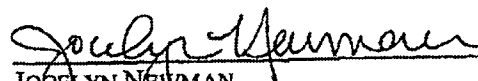
IT IS THEREFORE ORDERED THAT:

1. This Application for Post-Conviction Relief is denied and dismissed with prejudice; and

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2. Applicant must be remanded to the custody of the Department of Corrections to complete service of her sentence.

AND IT IS SO ORDERED this 9th day of November, 2016.


JOCELYN NEWMAN
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLANDROBIN GRAY REESE #350020

Plaintiff,

vs.

STATE OF SOUTH CAROLINA

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUITCASE NO.: 2014-CP-40-5657**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: <u>Jonathan D. Waller, Bar No. 76290</u> Address: <u>1315 Blanding Street, Columbia, SC 29201</u> Phone: <u>803-708-6767</u> Fax <u>803-708-6769</u> E-mail: <u>jwaller@thegieselawfirm.com</u> Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and II) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☒ Plaintiff / ☐ Defendant <u>11/28/2016</u> Date submitted	
SECTION III: Motion Fee ☐ PAID - AMOUNT: \$ _____ ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☒ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED - AMOUNT DUE: \$ _____	

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Robin Gray Reese, #350020,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
5TH JUDICIAL CIRCUIT**MOTION PURSUANT TO RULE 59(e)
SCRPC, TO AMEND**

Case No. 2014-CP-40-5657

YOU WILL PLEASE TAKE NOTICE that the Applicant, Robin Gray Reese, by and through her undersigned counsel, hereby gives notice of his intent to move and does so move the Court pursuant to Rule 59(e), SCRPC, for an Order of the Court to alter or amend its prior Order filed November 14, 2016 and served on counsel by the Clerk of Court, by US mail, on November 16, 2016.

The Applicant filed a timely application for post-conviction relief (PCR) on September 14, 2014. In her application, and subsequent amendments, Applicant indicated various claims of ineffective assistance of counsel. Specifically, Applicant raised nine (9) issues that she intended to present to the court during the evidentiary hearing.

The Applicant contends that despite the issuance of the Order of Dismissal, said Order of Dismissal does not contain specific findings of fact and conclusions of law regarding each of the claims presented at the evidentiary hearing, as required by S.C. Code Ann. §17-27-80.

The Applicant also contends that the "Summary of Testimony" section of the Order of Dismissal is not an objective, true, and accurate recitation of the testimony presented during the evidentiary hearing.

Applicant respectfully requests this Court to amend its prior Order pursuant to Rule 59(e), SCRCP to include accurate and objective "Summary of Testimony" and findings of fact and conclusions of law for each of the claims ineffective assistance of counsel as required by S.C. Code Ann. §17-27-80.

For the foregoing reasons, Applicant requests that the Court withdraw or amend its previous Order and issue a new Order the above requested findings and rulings.

Respectfully submitted,

By: 

Jonathan D. Waller
Giese Law Firm, LLC
1315 Blanding Street
Columbia, South Carolina 29201
Telephone: 803-708-6767
Facsimile: 803-708-6769
E-mail: jwaller@thegieselawfirm.com

ATTORNEY FOR THE APPLICANT

November 28, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	

Robin Gray Reese, # 350020,	)	Case No.: 2014-CP-40-5657
	)	

Applicant,	)
	)

v.	)
	)

State of South Carolina,	)
	)

Respondent.	)
	)

**RETURN TO APPLICANT'S MOTION
PURSUANT TO RULE 59(e), SCRCP**

RECEIVED
JAN 14 PM 12:22
CLERK OF COURT
RICHLAND COUNTY, S.C.

In response to Applicant's motion pursuant to Rule 59(e), SCRCP, dated December 1, 2016, Respondent would show this Court:

I.

This matter came before the Court by way of an application for post-conviction relief (PCR) filed September 14, 2014. Respondent filed its return on or about March 11, 2015. An evidentiary hearing was convened regarding this matter on August 30, 2016 at the Richland County Courthouse. Applicant was represented by Jonathan M. Waller, Esquire, and Respondent was represented by Jessica E. Kinard, Esquire of the South Carolina Attorney General's Office.

Testimony was provided by the Applicant and her trial counsel, Andrew Farley, Esquire ("counsel"). The Court had before it a copy of the trial transcript, the records of the Richland County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the pleadings. Thereafter, the Court denied relief by written order of dismissal dated November 9, 2016, and filed November 14, 2016.

II.

Respondent submits that the Order of Dismissal contains the appropriate findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976), and Rule 52(a)

SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent further submits that the summary of testimony is accurate and objective, thus reflecting the presentation of both parties at the evidentiary hearing.

III.

WHEREFORE, having made its return to the motion, Respondent asks this Court to deny Applicant's motion and allow the order of dismissal to remain in effect.

Respectfully submitted,

ALAN WILSON
Attorney General

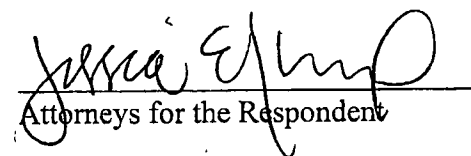
ROBERT BOLCHOZ
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
Assistant Attorney General

Post Office Box 11549
Columbia, South Carolina 29211

By:


Attorneys for the Respondent

Dec. 15, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

ROBIN GRAY REESE, #350020,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

2014-CP-40-5657

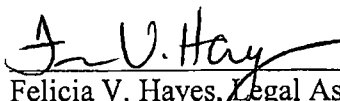
AFFIDAVIT OF SERVICE BY MAIL

2016 DEC 14 PM 12:22
 J. D. WALLER
 U.S. DISTRICT COURT
 S.C.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return to Applicant's Motion Pursuant to Rule 59(e), SCRCF** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 12th day of December, 2016.


 Felicia V. Hayes, Legal Assistant
 For Respondent

ROBIN GRAY REESE (SCDC #350020)

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: NEWMAN, J.

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Applicant's Motion Pursuant to Rule 59(e) SCRPC to Amend is DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk

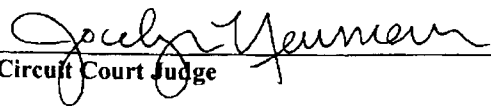
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2757
Judge Code

April 21, 2017
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 20th day of April, 20 17 to attorneys of record or to parties (when appearing pro se) as follows.

Jonathan D Waller

Jessica Elizabeth Kinard

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



WITNESSES

✓ (S) PEGRAM - CPD

ARREST WARRANT NUMBER

DP11157

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

OCT 05 2011

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2011GS4004916

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

✓
OCTOBER TERM 2011

42

THE STATE

vs.

Robin Gray Reese

Indictment for
MURDER

SC Code: 16-03-0010

CDR Code: 0116

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1358

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on OCTOBER 5, 2011,
the Grand Jurors of Richland County present upon their oath:

MURDER

That Robin Gray Reese did in Richland County, on or about February 13, 2010, willfully, feloniously, and intentionally kill the victim, KENNETH MACK, with malice aforethought, either express or implied, by means of PHYSICAL ASSAULT, and the victim did die as a proximate result thereof on or about in Richland County, in violation of Section 16-03-0010, S. C. 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.


DAN JOHNSON, SOLICITOR

WITNESSES

(S) Inv. W. Pegram, CPD

ARREST WARRANT NUMBER

K642287

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

MAR 11 2010

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-40-0040

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

MARCH TERM 2010

42

THE STATE

vs.

ROBIN D GRAY REESE

Indictment for

LYNCHING 1ST DEGREE

SC Code: 16-03-0210

CDR Code: 0312

CLASS Felony-Exempt

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED
Jesse H. Williams
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

1360

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT
LYNCHING 1ST DEGREE

At a Court of General Sessions, convened on March 10, 2010, the Grand Jurors of Richland County present upon their oath:

LYNCHING, FIRST DEGREE

CDR: 0313 16-03-0220

That ROBIN D GRAY REESE did in Richland County on or about February 13, 2010, band together with two or more persons thus constituting a mob for the premeditated purpose and with intent of inflicting violence upon the body of Kenneth Mack, such violence resulting in the death of Kenneth Mack. All in violation of Section 16-03-0220, S. C. 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.

WARREN B. GIESE, SOLICITOR

YPOC 4411 10/11/83

1362

STATE OF SOUTH CAROLINA

COUNTY OF
STATE*Richland*

VS.

AKA: *Robin Gray Reese*
 Race: *Black* Sex: *Female* Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

2011 INDICTMENT/CASE#: *4916*
 - GS - *40*
 A/W#: *DP11157*
 Date of Offense: *2-13-10*
 S.C. Code §: *16-3-10*
 CDR Code #: *0 / 1 / 1 / 6*

☐ CASE RESTORED
 SENTENCE SHEET
☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
 TO: *Murder*

in violation of § *16-3-10* of the S.C. Code of Laws, bearing CDR Code # *0 / 1 / 1 / 6*

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
 Solicitor

Defendant

[Signature]
 Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of *30* days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$_____, provided that upon the service of _____ days/months/years and/or payment of
 \$_____; plus costs and assessments as applicable*, the balance is suspended with probation for _____ months/years
 and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which
 are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on. _____

☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the
 State Department of Corrections.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
 Total \$_____ plus 20% fee: \$_____
 Payment Terms: _____
☐ set by SCDPPPS _____

Recipient _____	\$
*Fine	\$
§14-1-206 (Assessments 107 5%)	\$
§14-1-211(A)(1) (Conv Surcharge)	\$100 \$
§14-1-211(A)(2) (DUI Surcharge)	\$100 \$
§56-5-2995 (DUI Assessment)	\$12 \$
§35 13 (Public Def/Prob)	\$500 \$
§73.3, 1B TP (Law Enforce. Funding)	\$25 \$
§33.7, 1B TP (Drug Court Surcharge)	\$100 \$
§50-21-114(BUI Breath Test Fee)	\$50 \$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea \$
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP _____
 days/hours Public Service Employment
 Obtain GED _____
 Attend Voc. Rehab. or Job Corp. _____
 May serve W/E beginning _____
 Substance Abuse Counseling _____
 Random Drug/Alcohol Testing _____
 Fine may be pd in equal, consecutive weekly/monthly
 pmts. of \$_____ beginning _____
 \$_____ paid to Public Defender Fund
 Other _____

☐ Appointed PD or appointed other counsel, §35 13 TP
 Requires \$500 be paid to Clerk during probation

PRESIDING JUDGE

Judge Code: *2 / 1 / 2 / 6*
 Sentence Date: *3-2-12*

[Signature]
 Clerk of Court/ Deputy Clerk
 Court Reporter *[Signature]*

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

1369117

COUNTY OF
STATE

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip

DL#

SID#

INDICTMENT/CASE#:

2010

- GS -

40

40

A/W#:

K612287

Date of Offense:

3-13-10

S.C. Code §:

16-3-210

CDR Code #:

0 1 3 1 1 2

☐ CASE RESTORED

SENTENCE SHEET

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO:

in violation of 16-3-210 of the S.C. Code of Laws, bearing CDR Code # 0 1 3 1 1 2☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS (CSC☐ §17-25-45w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, _____ (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation; ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered

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

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5%)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§35-13 (Public Def/Prob)

§73.3, 1B TP (Law Enforce. Funding)

§33.7, 1B TP (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

PTUP

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

CERTIFIED TRUE

OF ORIGINAL FILED

PRESIDING JUDGE

C.C.C. Judge Code:

Sentence Date:

RICHLAND COUNTY

SOUTH CAROLINA

Clerk of Court/Deputy Clerk

Court Reporter: