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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable Maite Murphy, Circuit Court Judge

App. Case No.: 2017-002055

Cornell Devon Tyler, 326023,

Petitioner,

vs.

State of South Carolina

Respondent.

APPENDIX
VOLUME II OF III

Tricia A. Blanchette
Post Office Box 2147
Leesville, SC 29070
(803) 908-3266
Attorney for Petitioner

Alan Wilson
Attorney General

Megan H. Jameson
Senior Assistant Deputy
Attorney General

Julie A. Coleman
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for Respondent

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1 Q Okay. And you're not going to be able to
2 say "uh-huh" or "huh-uh" --

3 A Okay.

4 Q -- because that's not going to be able to
5 be legible if we have to go back and look at the
6 transcript at some point in time.

7 A All right.

8 Q All right. And, matter of fact, what I'll
9 do, I'm going to step all the way back here just to
10 encourage you to speak up a little bit, if you will,
11 okay?

12 A Okay.

13 Q All right. And if you need to, you may
14 need to lean forward, because that is a microphone
15 right in front of you, and that'll project your
16 voice a little bit.

17 A All right.

18 Q Now, where are you from, Mr. Smith?

19 A Aiken, South Carolina.

20 Q I need you to speak up a little bit more.

21 A Aiken, South Carolina.

22 Q And born and raised in Aiken?

23 A Yes, sir.

24 Q I need you to --

25 A Yes, sir.

1 Q You have to speak loud enough for the last
2 juror to be able to hear.

3 A Okay -- yes, sir.

4 Q Do you have any children in Aiken?

5 A Yes, sir.

6 Q How many?

7 A Five.

8 Q Okay. And right now, obviously you're
9 incarcerated, is that correct?

10 A Yes, sir.

11 Q Tell us where you are serving time and
12 what you're serving time for.

13 A At Manning Correctional Institute for
14 second-degree burglary and strong-arm robbery.

15 Q So Manning Correctional Institute?

16 A Yes, sir.

17 Q Where is that located?

18 A In Columbia, South Carolina.

19 Q And you said you're serving for
20 second-degree burglary and strong-arm robbery?

21 A Yes, sir.

22 Q And did you do those crimes?

23 A Yes, sir.

24 Q And were you found guilty in Court?

25 A Yes, sir -- I pled guilty.

1 Q You pled guilty?

2 A Yes.

3 Q So that means you accepted responsibility
4 for what you did?

5 A Yes, sir.

6 Q All right. Now, do you recognize any of
7 the people in this courtroom sitting on this side of
8 the partition?

9 A Yes, sir.

10 Q Who do you recognize?

11 A Mr. Bill Weeks, Mr. Prince, Ms. Brisbin --
12 that's it.

13 Q Okay. And do you recognize anyone on the
14 other side of the courtroom?

15 A Cornell Tyler.

16 Q All right. And, again, being in Aiken
17 County, from Aiken County, and spending time in
18 Aiken jail, you've come into contact with some of
19 these people, correct?

20 A Yes, sir.

21 Q All right. Now, there was a point in time
22 when you were arrested for these matters that you
23 are now serving time for in Manning Correctional
24 that you were housed at the Aiken County Jail,
25 correct?

1 A Yes, sir.

2 Q And about how long were you in that jail?

3 A Thirteen to fourteen months.

4 Q Now, in that 13 to 14 months, did you ever
5 come in contact with Wallow Ware?

6 A Yes, sir.

7 Q Did you ever come in contact with Kendall
8 Seawright?

9 A With who?

10 Q Kendall Seawright.

11 A Kendall Seawright?

12 Q Yes, sir.

13 A No, sir.

14 Q Did you ever come in contact with James
15 Gleaton?

16 A No, sir.

17 Q Did you ever come in contact with Edward
18 Walker?

19 A Yes, sir.

20 Q All right. Now, when you came in contact
21 -- did you ever come in contact with Cornell Tyler?

22 A Yes, sir.

23 Q All right. When you were in jail in 2005
24 in Aiken County, when you came in contact with
25 Wallow Ware, what types of things did you discuss,

1 if any?

2 A We talked about this case right here.

3 Q About this particular case?

4 A Yes, sir.

5 Q All right. And what was the -- what, if
6 anything, was discussed about this particular case?

7 A Excuse me, say it again?

8 MR. WEEKS: Your Honor, I object as to the
9 specifics of a proper foundation for this question.

10 THE COURT: All right, Mr. Gipson.

11 MR. GIPSON: And, Your Honor, I think the
12 foundation has been laid in the sense that Mr.
13 Ware's testimony was that he --

14 THE COURT: That's your legal response, not a
15 factual response.

16 MR. GIPSON: I believe we laid a proper
17 foundation, Your Honor. May we approach for a
18 moment?

19 THE COURT: All right.

20 MR. GIPSON: Thank you.

21 THE COURT: Ladies and gentlemen, we'll have
22 you go to the jury room for a moment. Please do not
23 discuss the case.

24 (The jury left the
25 courtroom at 3:25 p.m.)

1 THE COURT: All right, you can step down, sir.
2 If you'll go back, we'll have you come back in a
3 moment.

4 (The witness left the
5 courtroom.)

6 THE COURT: Yes, sir.

7 MR. GIPSON: And, Your Honor, I asked Wallow
8 Ware the specific question. Once he denied that he
9 ever spoke to anybody about this case, I asked him a
10 specific question, whether or not he spoke to Wallow
11 DeShawn Smith about his particular testimony
12 matters, the events and occurrences of this
13 particular -- for that particular date, matters
14 involving this case.

15 He said no. I then presented the
16 transcripts to him. I believe it was between 111
17 and 112, where we had asked him that specific
18 question in prior testimony, when he testified on
19 another occasion. And in that, his answer was that
20 he had spoken to him about the matters in this case
21 and some specifics of the case.

22 And I asked him if that was indeed a true
23 answer. And that's when he, you know, affirmatively
24 said, "Yes, I talked to him about that," those types
25 of things. But I used that part of the record to

1 show that he has on different occasions described
2 that he had spoken to Wallow DeShawn Smith about the
3 specifics of this case.

4 And so that's what we're delving into now,
5 because on a prior occasion, he told us that he had
6 spoken to him about the specifics of this case, and
7 tried to deny it, and then came back around and
8 admitted that he did speak to him.

9 THE COURT: Therefore what?

10 MR. GIPSON: Therefore, I think Mr. Smith
11 should be allowed to talk about exactly what they
12 talked about. They talked about the specifics of,
13 you know, the discovery in the case.

14 THE COURT: Mr. Weeks?

15 MR. WEEKS: I don't think they can argue the
16 point. He admitted that he had given an
17 inconsistent -- he's been impeached on the fact that
18 he gave an inconsistent answer to the question that
19 was asked.

20 As I remember, Wallow Ware was asked
21 whether or not -- on the stand this time, whether or
22 not the first time he testified he said that he had
23 talked to DeShawn Smith. Apparently, the answer was
24 "on a couple of occasions."

25 When he testified this time, he answered

1 originally, "I did not talk to him about the
2 specifics of my case." And I'm doing it from my
3 memory of his testimony this time.

4 But he asked Mr. Smith on the stand, "Did
5 you talk to him?" "Yes, I did." Well, he just
6 impeached -- used it to impeach the concept of
7 whether he talked to him. And where he goes from
8 there is to me kind of a fishing expedition as to
9 impeaching somebody.

10 You impeach somebody with specific stuff,
11 not to say, "Well, what all did y'all talk about?"
12 The specific question was, "Did you talk to him?"
13 "Yes, sir, I did." Well, if Wallow Ware tells him
14 that he was driving down the road, he gives him the
15 exact story he's given us in court today, it's not
16 impeachment material.

17 He has to ask him specifically, you know,
18 something contradictory to that, not just have this
19 man come from prison and relate some conversation he
20 had in a jail cell.

21 THE COURT: All right, Mr. Gipson?

22 MR. GIPSON: And, Your Honor, with the
23 testimony we asked, I asked if he told anybody else
24 the matters that he spoke to about in court today.
25 And he said at first --

1 THE COURT: What he said and what you said,
2 we're beyond that point.

3 MR. GIPSON: Yes, sir.

4 THE COURT: The question is, therefore, what?
5 Therefore, what does it allow you to do? Does it
6 allow you to ask a question, "Well, what did he tell
7 you?" --

8 MR. GIPSON: Yes, sir.

9 THE COURT: -- and let him go through two weeks
10 of conversation they had, or two hours of
11 conversation they had. Or are you therefore,
12 despite all of that, limited to asking him some
13 specific thing that contradicts what he said in
14 Court?

15 MR. GIPSON: Yes, sir. And I believe that I'm
16 allowed to go in and ask him, you know -- the
17 specific question I believe I can ask him is what
18 did he tell him, you know. Did he tell him --

19 THE COURT: Well, what did he tell him?

20 MR. GIPSON: He told him -- there are several
21 things, Your Honor. In the prior appearance, he
22 mentioned that he was in the car, he was driving.
23 Certain things happened. Head Walker was in the
24 car, hanging onto the car and was shooting, things
25 of that nature.

1 THE COURT: That would not be impeachment,
2 because that's what he testified to, right? Or you
3 want him to -- since he said he didn't talk with him
4 about anything, then you want him to testify as to
5 everything that he told him?

6 MR. GIPSON: Well, I'd like him to testify
7 about some of those matters. I won't say everything
8 that he told him, but those matters that are
9 specific to this case, especially as it relates to
10 his involvement in his cousin's involvement, Head
11 Walker's involvement, in this matter, which he has
12 denied in Court.

13 THE COURT: Do you have specific questions to
14 ask him concerning all that as opposed to an open-
15 ended "What did he tell you?"

16 MR. GIPSON: I do, Your Honor. I do. I do
17 have some specific questions.

18 THE COURT: All right. What do you say, Mr.
19 Weeks?

20 MR. WEEKS: Well, Your Honor, we've got a
21 transcript of Mr. Smith's testimony from another
22 time. And his testimony over my objection was there
23 had been some conversation with Ware.

24 The only thing I see different from what's
25 been testified to was that he said Walker jumped in

1 the car with a gun. He said Ware told him this.
2 All he knows was that Walker jumped in the car with
3 a gun and told him to follow the truck, a red truck.

4 And as he was following the red truck,
5 Walker got out of the window and started shooting at
6 the truck. I don't know that that's a part that's
7 different.

8 THE COURT: Mr. Gipson, anything else?

9 MR. GIPSON: That's the crux of what I'm
10 asking, Your Honor, those matters.

11 THE COURT: The crux of what you just --

12 MR. GIPSON: Yes, sir.

13 THE COURT: -- were discussing --

14 MR. GIPSON: Yes, sir.

15 THE COURT: -- with Mr. Weeks there?

16 MR. GIPSON: That's correct.

17 THE COURT: Well, I didn't hear what you were
18 telling him.

19 MR. GIPSON: I just told him that was the crux
20 of what it was, just that Ware testified that his
21 cousin jumped in the car with a gun, told him to
22 follow him the car, and they were riding down
23 shooting at the car.

24 THE COURT: He's your witness. So do you
25 intend to ask him those questions, did he say, did

1 he say that?

2 MR. GIPSON: I do.

3 THE COURT: Is there any objection to that by
4 the State?

5 MR. WEEKS: No, not right now.

6 THE COURT: All right.

7 MR. WEEKS: I'm sure I will if Mr. Gipson is
8 going to testify. I really don't want too much
9 leading, you know?

10 MR. GIPSON: And, Your Honor, that quite
11 honestly was the reason for asking him what was said
12 -- you know, "What, if anything, was said to you
13 during the meeting?"

14 But if you'll allow me to ask him a
15 specific question like that, I can do that. That's
16 the reason for asking the kind of open-ended
17 question.

18 THE COURT: Well, you're limited to asking what
19 was contradictory to his testimony as opposed to --

20 MR. GIPSON: Yes, sir.

21 THE COURT: -- I believe as opposed to just an
22 open-ended statement.

23 MR. GIPSON: Yes, sir.

24 THE COURT: All right, anything else?

25 MR. WEEKS: The whole issue about whether or

1 not he is properly impeaching Mr. Ware's testimony,
2 he never asked Mr. Ware, "Did you ever tell DeShawn
3 Smith that Edward Walker jumped in the car with a
4 gun and told him to follow the truck, a red truck?"

5 THE COURT: Well, he went through a litany of
6 that with one of those guys. And I'm not sure
7 whether it was Ware or Walker.

8 MR. GIPSON: I went through it with Walker and
9 some of that with Ware as well.

10 MR. WEEKS: And they're all in denial that they
11 -- he asked him, "Did you ever talk? Did you ever
12 talk? Did you ever give him any details of your
13 case?" But he never specifically said, you know --

14 THE COURT: Well, I'll allow the specific
15 questioning of him regarding any inconsistent
16 statements.

17 MR. GIPSON: Thank you, Your Honor.

18 THE COURT: Now, let's bring the jury back.

19 MR. GIPSON: And may I ask this question, Your
20 Honor?

21 THE COURT: Yes, sir.

22 MR. GIPSON: We're going to broach this subject
23 as well with Edward Walker, because Mr. Smith said
24 that he had conversation with Mr. Walker as well.
25 And, again, we went through that litany of questions

1 with Walker, and I can read those questions to the
2 Court about the specific things that he asked or --
3 that I asked him whether or not he had conversation
4 with Edward Walker about it. So that's going to
5 come up with Edward Walker to impeach the testimony.

6 THE COURT: All right, I understand.

7 (Whereupon, the witness was
8 brought in and placed back on the witness stand.)

9 THE COURT: All right, bring the jury, please.

10 BAILIFF: Yes, sir.

11 (The jury returned to the
12 courtroom at 3:35 p.m.)

13 THE COURT: You may proceed.

14 MR. GIPSON: Thank you, Your Honor.

15 EXAMINATION CONTINUED

16 BY MR. GIPSON:

17 Q Just to recap very briefly, Mr. Smith, you
18 said you were housed in a pod at the Aiken County
19 Detention Center with Wallow Ware, correct?

20 A Yes, sir.

21 Q I need you to speak up a little.

22 A Yes, sir.

23 Q And while there, you had conversations
24 with Wallow Ware about particulars in this case?

25 A Yes, sir.

1 Q Okay. Now, did he at any point tell you
2 that Edward Walker got into the car with a gun?

3 A Yes, sir.

4 Q And will you tell us what he said?

5 A He said that -- from the beginning?

6 Q Just from him getting in the car with a
7 gun.

8 A He said that Edward Walker got in the car,
9 him and his partner, and they went out to Mr.
10 Cornell's house. He said that --

11 MR. WEEKS: Objection.

12 THE COURT: The objection is
13 sustained.

14 MR. GIPSON: I'm sorry, Your Honor.
15 I apologize. I spoke over you.

16 THE COURT: Okay, next question.

17 Q The specifics -- did he tell you that
18 Edward Walker got into the car with a gun?

19 A Yes, sir.

20 Q Okay. When did he tell you that happened?

21 A When he went out to the truck.

22 Q Okay, tell us that portion.

23 A He said that Edward Walker got into the
24 car with him and told him to follow that truck.
25 They went after the truck. He said Edward Walker

1 got out of the car and started shooting at the
2 truck.

3 Q And he told you this while you were at the
4 Aiken County Detention Center?

5 A Yes, sir.

6 Q Okay. Now, did he tell you who else was
7 in the car?

8 A No, sir.

9 Q Did he -- and when you said "No, sir," he
10 didn't say anything about anyone else being in that
11 car?

12 A No, sir.

13 Q Okay. What did he tell you?

14 A He said that when the truck started
15 flipping --

16 MR. WEEKS: Objection, Your Honor.

17 This was just answered.

18 THE COURT: The objection is
19 sustained.

20 Q Now, did he tell you what happened as this
21 -- after the shots were fired?

22 A He said he went back to Cornell's house.

23 Q And after the shots were fired, was that
24 all that he told you about this case, the specifics?

25 A Yes, sir.

1 Q All right. Now, why is that he felt so
2 comfortable coming to talking about this case?

3 MR. WEEKS: Objection, Your Honor.

4 THE COURT: The basis for the
5 objection?

6 MR. WEEKS: He can't speak as to why
7 Wallow Ware felt comfortable or not.

8 THE COURT: The objection is as to
9 the form of the question. Restate the question --
10 rephrase the question.

11 Q Did you speak to Mr. Ware about issues
12 other than this case?

13 A We was just talking about our cases
14 together.

15 Q So you told him stuff about your case?

16 A Yes, sir.

17 Q He told you stuff about his case?

18 A Yes, sir.

19 Q Did you have any other interaction with
20 him while he was housed in the same pod with you?

21 A Well, we've been in two pods together.

22 Q And this was over a period of how long?

23 A A couple of months.

24 Q Did you talk about anything other than
25 cases?

1 A No, sir.

2 Q All right. Did you have an opportunity
3 while you were back there to meet -- in the Aiken
4 County Detention Center -- to meet with Edward
5 Walker?

6 A Yes, sir.

7 Q Did you talk to Edward Walker?

8 A Yes, sir.

9 Q How did you come to meet him and speak
10 with him?

11 A We was in A pod together, and we was in C3
12 together.

13 Q And when you say A pod and C3, those are
14 just two different areas?

15 A Two different pods, yes.

16 Q All right. And while you were back there,
17 did you have an opportunity to talk to Edward Walker
18 about things regarding this particular case?

19 A Yes, sir.

20 Q Did you talk to him about things and
21 matters not regarding this case?

22 A Yes, sir.

23 Q Did you have an opportunity to talk to him
24 and interact with him in other ways?

25 A Yes, sir.

1 Q What other ways did you interact with Mr.
2 Walker?

3 A We played cards together. We were always
4 on the rock together.

5 Q You said you were always --

6 A On the rock. That's what you call the
7 rock when you're sitting on there, from outside your
8 cell, looking at TV or whatever.

9 Q And that area is known as the rock?

10 A Yes, sir.

11 Q Okay. And how long total were you housed
12 with Mr. Walker?

13 A The first time was in A pod together, was
14 probably for about a month. And then we moved to C2
15 -- C3, and we was probably in there for about a
16 month or two.

17 Q Now, you said you had an opportunity to
18 speak to him about the case.

19 A Yes, sir.

20 Q Did Edward Walker ever tell you that he
21 was directly involved in this matter?

22 A Well, yes, sir.

23 Q Did he ever tell you that he was in a car
24 driven by Wallow Ware --

25 A Yes, sir.

1 Q -- on August 27, 2005?

2 A Yes, sir.

3 Q Will you tell us about that?

4 A He said -- from the beginning?

5 MR. WEEKS: Objection, Your Honor.

6 THE COURT: The objection is
7 sustained.

8 Q Did he tell you that he ever fired a shot
9 in this case?

10 A Yes, sir.

11 Q What did he tell you?

12 A He told me that he was on top of the -- he
13 was in the car. He was on top of the car shooting
14 at a truck.

15 Q And did he tell you who was in the car
16 with him?

17 A He said Wallow Ware. Well, really, he
18 didn't call his cousin's name. But he just said "my
19 cousin."

20 Q And to your knowledge, who is his cousin?

21 A Wallow Ware.

22 Q How often did you speak with Edward Walker
23 about the matters in this case?

24 A Well, we just discussed it, because he
25 asked me -- he was like, "What you think I should

1 do?" I was like, "I don't know what you should do."
2 And he called me -- I forgot his name, Mr. Bill
3 Hartman or something like that.

4 Q Yes, sir.

5 A He tried to get me involved in that case
6 through him.

7 Q And Bill Hartman used to be an
8 investigator, is that correct?

9 A Investigator, yes.

10 Q All right. Now, did you have an occasion,
11 after you learned about these matters with Mr.
12 Walker and Mr. Ware, to do anything in particular
13 with that information?

14 A Yes, sir.

15 Q What is it that you did?

16 A Well, when I first got here, when he was
17 telling me about it, just from the wrongdoings of
18 what he told me he did, I wrote Mr. Prince about it.

19 Q Okay. And who is Mr. Prince?

20 A That man right there.

21 Q Okay. So he's an officer with the Aiken
22 County Sheriff's Department?

23 A Yes, sir.

24 Q Okay. And what happened as a result of
25 you writing Mr. Prince?

1 A Nothing.

2 Q What happened next?

3 A I wrote Mr. Bill Weeks about it.

4 Q Okay. And what happened as a result of --
5 and tell us what you wrote Mr. Weeks.

6 A About the proceedings of this case.

7 Q And what happened as a result of you
8 writing Mr. Weeks?

9 A Nothing.

10 Q Did you have an opportunity to meet with
11 Mr. Weeks?

12 A Yes, I met with Mr. Weeks, with Ms.
13 Brisbin, and Mr. Prince.

14 Q Okay. So several of the folks sitting on
15 the prosecution side of the courtroom?

16 A Yes, sir.

17 Q Okay. And as a result of those things,
18 were you -- you were in jail at that time,
19 obviously.

20 A Yes, sir.

21 Q Were you offered anything?

22 A No, sir.

23 Q Did you have pending charges?

24 A Yes, I had my charges that I was on right
25 now.

1 Q Okay. Were you offered anything as a
2 result of what you -- with the information that you
3 provided to them?

4 A No, sir.

5 Q So what happened? After you provided the
6 information, what happened?

7 A Nothing.

8 Q All right. Now, at this point in time,
9 you've come in this courtroom, and you've promised
10 to tell the truth, the whole truth, and nothing but
11 the truth?

12 A Yes.

13 Q Have you done that?

14 A Yes, sir.

15 Q What have you gained from your testimony
16 here today?

17 A Nothing.

18 Q Is anybody promising you anything?

19 A No, sir.

20 Q Is anybody saying "We're going to help you
21 get out of jail"?

22 A No, sir.

23 Q Is anybody paying you to testify?

24 A No, sir.

25 Q Then why are you here?

1 A Because it was wrong, and, like I say, I'm
2 trying to do better in my life right now. I feel
3 like this is a start for me to do better in my life,
4 because, you know what I'm saying, it was senseless.

5 Any other time, I wouldn't have stepped up
6 to do nothing like this. But I felt like it was
7 wrong, for a man to go around and brag about what he
8 did, you know what I'm saying.

9 Q Okay. And at any point in time as you
10 learned information from these two individuals --
11 the cousins, Mr. Ware and Mr. Walker -- did they
12 ever tell that you Cornell Tyler was in that car?

13 A No, sir.

14 MR. GIPSON: All right, Your Honor, that's all
15 my questions.

16 THE COURT: All right, cross-examination?

17 CROSS-EXAMINATION

18 BY MR. WEEKS:

19 Q How are you doing, Mr. Smith?

20 A Doing all right.

21 Q You said nothing happened as a result of
22 your writing a letter to me.

23 A Nothing.

24 Q Do you think I just come over there and
25 visit people at the jail every day?

1 A I don't know what you came over there.
2 But I know you came over there to hear what I had to
3 say.

4 Q I came over there to talk to you along
5 with Ms. Brisbin, didn't I?

6 A Yes, sir.

7 Q And y'all had pending charges Ms. Brisbin
8 was prosecuting you on?

9 A Yes, sir.

10 Q And your lawyer was there?

11 A Yes, sir.

12 Q And as we were leaving, you handed me this
13 letter that you had written?

14 A Yes, sir.

15 Q Okay. And in the letter, don't you tell
16 me that Edward Walker says he told you he grabbed a
17 pistol?

18 A He grabbed a pistol?

19 Q That he pulled out a pistol because he
20 didn't know who it was. Did Edward Walker tell you
21 he was shooting a pistol?

22 A He told me he was shooting a pistol.

23 Q A pistol -- you're clear about that?

24 A I think he said a gun.

25 Q But in this letter, you say a pistol,

1 don't you?

2 A But, you know what I'm saying, from the
3 street we call it pistol, gun, burners, everything.
4 So it all means the same.

5 Q A pistol on the street is the same thing
6 as a rifle?

7 A Well, it could be.

8 Q Okay. And also you said that Edward
9 Walker told you that they were following a red
10 truck, didn't you?

11 A Yes, sir.

12 Q Okay. And that he was doing the shooting
13 while he was going 90 to 100 miles an hour?

14 A Yes, sir.

15 Q And did he tell you Cornell Tyler was in
16 Jamaica?

17 A That's what he told me.

18 Q Now, to be straight, you're serving time
19 for strong-arm robbery and burglary second?

20 A Yes, sir.

21 Q But you have a prior history of failure to
22 stop for a blue light, possession of a stolen
23 vehicle in '03, in '94 another strong-arm robbery.
24 And to be honest, the day Ms. Brisbin and I went
25 over and you handed us all these letters that you

1 had written, you were pretty much trying to convince
2 us that had information on about three or four
3 different murders, weren't you?

4 A Three or four different murders?

5 Q Three different cases that you wanted to
6 snitch people out on in the jail?

7 A I don't think about it as snitching.

8 Q Well, you were giving us letters
9 implicating --

10 A Yes, sir.

11 Q -- saying they were making admissions to
12 you?

13 A Yes, sir.

14 Q And at the same time, you were trying to
15 get help for your strong-arm robbery case, weren't
16 you?

17 A Well, no, not really help.

18 Q You were just telling us all this out of
19 the goodness of your heart with your lawyer there?

20 A Well, you could say that.

21 Q And Mr. Gipson didn't ask you how much you
22 had been rooming with Cornell Tyler while you were
23 at the jail. How much is that?

24 A Excuse me?

25 Q How much you stayed with Cornell Tyler

1 while you were at the jail.

2 A How long did I stay with him?

3 Q Uh-huh.

4 A I stayed in the room for about three --
5 about three or four weeks.

6 Q Okay.

7 THE COURT: Any redirect?

8 MR. GIPSON: Court's indulgence.

9 REDIRECT EXAMINATION

10 BY MR. GIPSON:

11 Q And isn't it true that you wrote these
12 statements prior to ever rooming with Cornell Tyler?

13 A Yes, sir.

14 Q And did Cornell Tyler at any point ever
15 ask you to do anything for his case?

16 A No, sir.

17 Q I'm sorry?

18 A Excuse me?

19 Q You were answering -- did Cornell Tyler
20 ever ask you to do anything for this case?

21 A No, sir.

22 Q And the statements that you wrote and gave
23 to the Solicitor's Office in this case were done
24 prior to you ever being --

25 A Yes, sir.

1 Q -- roomed with Mr. Tyler, prior to?

2 A Way before we was roommates.

3 Q Thank you. That's all my questions.

4 MR. WEEKS: Your Honor, may I follow up?

5 THE COURT: Yes, sir.

6 RE CROSS EXAMINATION

7 BY MR. WEEKS:

8 Q You never wrote me a statement about
9 Wallow Ware, did you?

10 A No, sir. The only reason why I didn't
11 write you a statement about Wallow Ware is because
12 the first time when I wrote you a statement about
13 Edward Walker, you didn't do nothing about it. So I
14 figured that it wasn't important to you. So I just
15 left it alone.

16 Q The fact of the matter is you never said
17 anything about Wallow Ware?

18 A No, sir.

19 Q Okay.

20 THE COURT: You may step down, sir.

21 MR. GIPSON: I'd ask that he be excused, Your
22 Honor.

23 MR. WEEKS: No objection.

24 THE COURT: This witness is excused.

25 Your next witness.

1 MR. GIPSON: I'd like to call Frederick Scott,
2 Your Honor.

3 THE COURT: All right, Frederick Scott.

4 CLERK OF COURT: Mr. Scott, I need you to come
5 forward here, please. Place your left hand on the
6 Bible and raise your right.

7 (The witness was sworn.)

8 CLERK OF COURT: Please have a seat in the jury
9 box, state your full name for the Court, and spell
10 your last.

11 MR. SCOTT: Frederick Lee Scott -- S-C-O-T-T.

12 FREDERICK LEE SCOTT, having first
13 been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. GIPSON:

16 Q Good afternoon, Mr. Scott.

17 A Good afternoon.

18 Q Now, where are you from, Mr. Scott?

19 A Springfield.

20 Q And the Orangeburg side of Springfield or
21 the Aiken side of Springfield?

22 A The Orangeburg side.

23 Q All right. And were you living in --
24 where were you living in August of 2005?

25 A On the Aiken County side.

1 Q And can you tell us exactly where on the
2 Aiken County side of Springfield you were living?

3 A I was living on Highway [REDACTED], at [REDACTED].

4 Q [REDACTED] --

5 A That's the highway. It's Salley.

6 Q Okay.

7 A Salley, South Carolina.

8 Q Okay, so on the Salley side. And is there
9 a particular road or a name for the --

10 A Road.

11 Q Road?

12 A Yes, sir.

13 Q All right. And tell us -- just kind of
14 orient us to kind of what that's near.

15 A It's by a little restaurant, about two
16 miles from Salley.

17 Q Okay. Now, I'm going to hand you what's
18 been marked at this point as State's Exhibit Number
19 Sixteen. Just take a quick look at that and let me
20 if you can just kind of orient yourself based on
21 looking at that diagram.

22 A Yes, sir.

23 Q You can orient yourself?

24 A Yes, sir.

25 Q And just let ask you this. When you nod

1 your head, it's hard for the Court Reporter to --

2 A Okay.

3 Q know if it's a "yes" or a "no," so
4 you've got to "yes" or "no."

5 A Yes, sir.

6 Q All right. So looking at that exhibit
7 that I just handed you, can you tell the Court what
8 that looks like?

9 A It's the exact spot where I was living out
10 here, right here by the restaurant.

11 Q Okay.

12 MR. GIPSON: If I can have the Court's
13 indulgence, may I have that back from you? Court's
14 indulgence, Your Honor. Your Honor, may the witness
15 step down?

16 THE COURT: Yes, sir.

17 MR. GIPSON: Thank you.

18 Just come on down here and talk to us for
19 a couple of moments.

20 Q If you'll hold this pen. Would you show
21 the jury where you lived in August of 2005?

22 A In August of 2005, I would be living up on
23 this end.

24 Q You can touch the screen.

25 A I would be living up on this end. This is

1 the four-way crossing down by the pecan trees that
2 leads towards the swamp. And this is was the road
3 like towards the club. I was staying up on this end
4 where there's another four-way crossing.

5 Q Okay. And if you'll just put a circle
6 about where you were living at that point in time.
7 You can write on the screen.

8 A Okay, I was living up here -- right up
9 here.

10 Q And show us where that four-way stop is
11 again, please.

12 A The four-way stop is actually right up in
13 here, and there's a restaurant right here.

14 Q Okay. Do you know the name of that
15 restaurant?

16 A Rudy's Hilltop.

17 Q Okay.

18 COURT REPORTER: Say the name again.

19 Q Would you explain the name again, please?

20 A The name of the restaurant is Rudy's
21 Hilltop.

22 COURT REPORTER: Rudy?

23 MR. SCOTT: Yes, ma'am.

24 Q If you'll have a seat now, please. Now --
25 and, again, you were living at that location you

1 just spoke about in August of 2005, correct?

2 A Yes, sir.

3 Q August 27, 2005, you lived in that
4 location?

5 A Yes, sir.

6 Q What, if anything, do you remember about
7 August 27, 2005?

8 A Well, that morning, me and my wife was in
9 the bed, and there was a knock on the door. So my
10 wife got up, went and answered the door. When she
11 answered the door, she hollered back in the room --

12 Q You can't tell me what your wife said.

13 A Okay.

14 Q But you can tell me what happened as a
15 result of any conversation your wife had.

16 A Okay. Well, there was a knock on the
17 door. So the door was answered, and it was Mr.
18 Walker.

19 Q Okay. When you say Mr. Walker, who is it
20 you're referencing?

21 A Mr. Edward Walker.

22 Q Okay. Also known as Head Walker?

23 A As Head Walker.

24 Q All right. Did you know Head Walker
25 before August 27, 2005?

1 A Yes, sir.

2 Q How did you know him?

3 A I used to date one of his relatives, a
4 relative in his family.

5 Q All right. And did you have any other
6 knowledge of him?

7 A Besides knowing reputation-wise, no other.

8 Q Okay. When you met with Mr. Walker or Mr.
9 Walker came to your door that morning, what
10 happened? What's the next thing that happened?
11 Well, first of all, what time was it?

12 A It was between seven and eight.

13 Q Okay.

14 A It had to be between seven and eight.

15 Q All right. Well, what happened next?

16 A I told Mr. Walker to sit up under the
17 tree, and I would be out in a minute, because I
18 wasn't dressed yet.

19 Q Okay.

20 A So I got dressed. I went out up under the
21 tree, and he was -- you know, he was nervous. So I
22 asked him, I said, "What's wrong?" And he just --
23 he kept his head down, and he said, "Man, I think we
24 done shot somebody."

25 And I kind of looked at him, and I said,

1 "What'd you say?" And by the time I said that, my
2 next-door neighbor, which is my stepfather-in-law,
3 he came out of his trailer and was coming toward me
4 and Mr. Walker.

5 Q What's his name?

6 A Mr. John George Gaines. And he was coming
7 toward me and Mr. Walker. Before he could get to me
8 and Mr. Walker, Mr. Walker made a low statement
9 saying --

10 MR. WEEKS: Objection.

11 THE COURT: Your basis for the
12 objection?

13 MR. WEEKS: Hearsay.

14 THE COURT: All right, Mr. Gipson?

15 MR. GIPSON: Your Honor, these are
16 again -- it's not hearsay based on the fact that
17 these again are direct questions we've asked Mr.
18 Walker that he's referring to. I can ask just a
19 question if you'd like, Your Honor.

20 THE COURT: All right, specifically
21 word the question. The objection is sustained.

22 MR. GIPSON: Your Honor, may I
23 approach -- I'll just rephrase it, Your Honor --

24 THE COURT: All right.

25 MR. GIPSON: -- and ask him another

1 question.

2 Q While Mr. Walker had that conversation --
3 first of all, why couldn't he come in the house?

4 A Because Mr. Walker had never been in my
5 house until then. And before that incident, you
6 know, Mr. Walker had a run-in with my wife earlier.

7 Q All right. Now, that particular morning,
8 you said under the tree you all had a conversation.
9 Did he ask you to do anything particular?

10 A No, sir, he didn't ask me to do anything
11 particular. He just stated in a low voice that ---

12 MR. WEEKS: Objection, Your Honor.

13 THE COURT: All right, counsel
14 approach.

15 MR. GIPSON: Yes, sir.

16 THE COURT: The objection is
17 sustained.

18 MR. GIPSON: Thank you, Your Honor.

19 Q While you were in the presence of Mr.
20 Walker that morning, did he discuss hiding a gun in
21 your presence?

22 A He made a statement, yes, sir.

23 Q What did he say?

24 A He said in a low voice, "I need to hide
25 the gun."

1 Q And what did you do after he said that?

2 A I just -- I looked at him like, "Are you
3 talking to me?" But he never did say anything else.

4 Q Okay. And so he came to your house at
5 7:00 in the morning and discussed hiding a gun?

6 A Yes, basically that's what it was.

7 Q Now, what happened in that area earlier
8 that morning?

9 A There had been a shooting.

10 Q Okay. How do you know that?

11 A We got a message over the phone --

12 Q Okay.

13 A -- that morning.

14 Q That there had been a shooting?

15 A Yes, sir.

16 Q Did you recognize anything out of the
17 ordinary that morning?

18 A Besides later on a tow truck came through
19 with the paper truck on the back that had been
20 wrecked and shot up.

21 Q Okay. How far did you live away from the
22 area where the paper truck -- and I know we saw it
23 on the diagram. But how physically far did you live
24 from that location?

25 A Maybe a mile.

1 Q Do you work, Mr. Scott?

2 A Yes, sir.

3 Q Where do you work?

4 A At the time that the incident happened, I
5 was working taking care of the cows that was in the
6 pasture that the truck overturned in.

7 Q So you're very familiar with that area?

8 A Yes, sir.

9 Q All right. Was it out of the ordinary for
10 Mr. Walker to come to your house?

11 A Yes, sir.

12 Q Let me ask you this. In view of the fact
13 that he came to your house to discuss these things
14 and you were aware that a shooting had taken place,
15 why didn't you go to the police?

16 A I didn't want anything to do with it, to
17 tell you the truth.

18 Q And you had an opportunity to go to Mr.
19 Weeks, to go to law enforcement, because they're all
20 over the place for the next few days, few weeks,
21 quite honestly. Why didn't you just go down there
22 and say, "Hey, I know something happened"?

23 A Like I said, I didn't want anything to do
24 with it.

25 Q Okay. And why are you in here testifying

1 today?

2 A Because I -- you know, I thought about it.
3 And it had been somebody in my family that was the
4 victim and I knew somebody else had knew what
5 happened, I would want them to come forward and tell
6 exactly what happened.

7 Q At any point in time, did Mr. Walker ever
8 mention Cornell Tyler's name?

9 A No, sir.

10 Q How did Mr. Walker leave your house?

11 A He left in a blue Ford -- a short blue
12 Ford. And exactly, he was sitting under the tree,
13 and the car was coming from the direction that the
14 incident happened at. He stood up and waved his
15 hand.

16 The car came in the yard. He went and
17 talked to the person in the car. The car left and
18 went back toward the same direction it just had came
19 from. About five or ten minutes later, the car came
20 back.

21 Mr. Walker went back to the car, said a
22 couple of words to the driver, looked back toward me
23 and said, "Man, I'll see you later." He got in the
24 car. They left and went toward Wagener.

25 Q Now, did you hide a gun for Mr. Walker?

1 A No, sir.

2 Q Did you do anything else regarding this
3 case?

4 A No, sir.

5 Q Okay. Your only involvement in this case
6 is just the things that you have talked to this
7 Court and this jury about right here today?

8 A Yes, sir.

9 MR. GIPSON: That's all my questions,
10 Your Honor.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION

13 BY MR. WEEKS:

14 Q Mr. Scott, are you sure you know what that
15 diagram is all about?

16 A Yes, sir.

17 Q Would you step down here for me, please?
18 If I heard you right, you said if you go this way,
19 where do you get to?

20 A You go that way. Okay, I see what you're
21 saying. In fact, my house is up here, not right
22 there. This is the other direction. I'm looking
23 for my house.

24 The way it's set up here, this would be
25 the road coming from Salley. But if I look at it

1 now, I would have to say this way, and this would be
2 the road coming from Salley. So this road here
3 leads out to the pecan trees.

4 That road there goes up toward the
5 residence of Mr. Cornell Tyler. This road here goes
6 back toward -- if you go back down this way, it goes
7 back toward Salley.

8 Q Well, where is the restaurant?

9 A The restaurant is over here.

10 Q The restaurant is over there. That's
11 where your house is, over there?

12 A Yes, sir.

13 Q I thought you said that your house was by
14 the restaurant?

15 A That's what I'm explaining. I said I
16 didn't realize.

17 Q Well, did the restaurant move, or did the
18 diagram move?

19 A Neither one moved. It's just I --

20 Q Is your house by the restaurant?

21 A Yes, sir.

22 Q And the restaurant you're now convinced is
23 over here somewhere?

24 A Yes, sir.

25 Q So we would say -- do you want to mark

1 that now where your house?

2 A It would be somewhere up in here.

3 Q Okay. Now, do you know Ms. Valerie
4 Williams?

5 A Yes, sir.

6 Q Is she a neighbor?

7 A She stays right down the road.

8 Q Right down the road?

9 A Yes, sir.

10 Q And didn't you say your address was
11 Road?

12 A Road.

13 Q Road runs down this way, and
14 there's a four-way stop right there, isn't there?

15 A Yes, sir.

16 Q Okay. But you said your address was South
17 Dixie?

18 A Yes.

19 Q And this ain't South Dixie over here, is
20 it?

21 A No, sir.

22 Q What is that?

23 A r.

24 Q What's the name of the road?

25 A I don't exactly know the name.

1 Q How about is there a road that comes in
2 right here?

3 A I don't know. I can't remember.

4 Q Mr. Scott, I ain't lived down there
5 before. How long have you lived there?

6 A A couple of years.

7 Q You don't know whether or not there's a
8 road that comes in right here?

9 A Not unless it's a dirt road.

10 Q Now, if you go down this road right here,
11 this way, what do you get to? I ain't trying to
12 trick you, but I'm trying to figure out if you know
13 the scene.

14 A You go to Aiken that way, the way to go to
15 Salley from the other road, from Windsor Road,
16 coming that way.

17 Q Okay. You can have a seat back up there.
18 Now, all of this happened, you're convinced, at 7:00
19 -- either at seven or eight in the morning?

20 A Yes, sir.

21 Q And this Walker fellow, who doesn't ever
22 come to your house, had some disagreement with your
23 wife, he's going to come up to you and get you to
24 hide some gun?

25 A Yes, sir.

1 Q You never saw a gun?

2 A No, sir.

3 Q Is a pistol the same thing as a rifle to
4 you?

5 A No, sir.

6 Q Did he say what kind of gun?

7 A No, sir.

8 Q And while y'all are sitting there -- while
9 he's sitting there with you -- you see the tow truck
10 coming by with the --

11 A No, sir, that was later on.

12 Q Later on, okay.

13 A Yes, sir.

14 Q But all in this area that was depicted up
15 here, law enforcement was all over that area at 7:00
16 or 8:00 that morning, right?

17 A I imagine so.

18 Q Well, did you see any police cars?

19 A No, sir, not from the time I was under the
20 tree.

21 Q Not for the time you was under the tree.
22 Did you go out?

23 A No, sir, I never did left the house that
24 day.

25 Q How long have you known Cornell Tyler?

1 A For a while -- couple of years maybe.

2 Q Just a couple of years?

3 A Far as I can remember, you know, about as
4 long as I knew Mr. Walker.

5 Q All right. How long is that?

6 A Ten, fifteen years.

7 Q Okay. That's more than couple, isn't it?

8 A Yes, sir.

9 Q All right. And you live right -- I guess
10 you live right in the neighborhood of Mr. Cornell
11 Tyler, don't you?

12 A Somewhere around up in that area.

13 Q Somewhere around up in that area.

14 MR. WEEKS: No further questions.

15 THE COURT: Anything further?

16 MR. GIPSON: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MR. GIPSON:

19 Q Did you draw that diagram? This diagram
20 that we showed you as State's Exhibit Number
21 Sixteen, did you draw this?

22 A No, sir.

23 Q Okay. What is your address?

24 A My address was Road --

25 Q Okay.

1 A -- what was on my--

2 Q And that's your address -- wherever it
3 falls on this map, that's your address?

4 A Yes, sir.

5 Q And that's where you live?

6 A Yes, sir.

7 Q And that's behind the restaurant?

8 A Yes, sir.

9 Q Rudy whatever restaurant?

10 A Yes, sir.

11 Q And that hasn't changed regardless of how
12 many questions you're asked?

13 A Yes, sir.

14 MR. GIPSON: That's all my questions.

15 MR. WEEKS: Nothing further.

16 THE COURT: You may step down.

17 MR. GIPSON: I'd ask that the witness be
18 excused, Your Honor.

19 MR. WEEKS: No objection.

20 THE COURT: This witness is excused.

21 Your next witness.

22 MR. GIPSON: May we approach for a moment, Your
23 Honor?

24 THE COURT: Ladies and gentlemen, we're going
25 to have you go to the jury room for a while. Please

1 do not discuss the case.

2 (The jury left the
3 courtroom at 4:08 p.m.)

4 THE COURT: Yes, sir.

5 MR. GIPSON: Your Honor, except for potentially
6 Mr. Tyler, that's all my witnesses. I'd like, if I
7 could, to have a few moments to discuss the
8 ramifications of testifying with Mr. Tyler.

9 THE COURT: All right, we'll take about -- how
10 much time do you need?

11 MR. GIPSON: Fifteen or twenty minutes max,
12 Your Honor. And may we approach for a moment?

13 THE COURT: All right. We'll take a recess.
14 Mr. Tyler has a right to talk with his lawyer and
15 any family members that he wants to. And they can
16 come to the railing and talk with him. We'll be in
17 recess.

18 MR. GIPSON: Thank you, Your Honor.

19 THE COURT: Let's take a break.

20 (Court in recess while
21 defense counsel confers with the defendant.)

22 THE COURT: Thank you. Please be seated.

23 All right, Mr. Tyler, if you will stand,
24 please. Have you made a decision as to whether or
25 not you're going to testify?

1 MR. TYLER: Yes, sir.

2 THE COURT: And what is your decision?

3 MR. TYLER: To testify, sir.

4 THE COURT: All right. Are you ready to
5 proceed, Mr. Gipson?

6 MR. GIPSON: We are, Your Honor.

7 THE COURT: All right, bring the jury in.
8 Thank you.

9 (The jury returned to the
10 courtroom at 4:40 p.m.)

11 THE COURT: All right, your next witness.

12 MR. GIPSON: Your Honor, I call the defendant,
13 Cornell Tyler.

14 THE COURT: Mr. Tyler.

15 CLERK OF COURT: Please place your left hand on
16 the Bible and raise your right.

17 (The witness was sworn.)

18 CLERK OF COURT: Please have a seat in the
19 witness box, state your full name for the Court, and
20 spell your last.

21 MR. TYLER: My name is Cornell Tyler -- T-Y-L-
22 E-R.

23 CORNELL TYLER, JR., having first been
24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. GIPSON:

2 Q And, Mr. Tyler, I think I'm going to have
3 to treat you a little bit similarly like I have some
4 of the others. I'm going to stand farther back to
5 encourage you to raise your voice a little bit more.

6 A Yes, sir.

7 Q As you know, you're either going to have
8 to speak up or lean into the microphone a little
9 bit.

10 A Yes, sir.

11 Q All right. Now, the truth of the matter
12 is you're Cornell D. Tyler, Jr., correct?

13 A Yes, sir.

14 Q All right. And do you have a nickname?

15 A Yes, sir.

16 Q What is that?

17 A Duce.

18 Q Why do people call you Duce?

19 A Because I'm a junior of my father, and
20 duce stands for two.

21 Q Okay. Now, how old are you, Mr. Tyler?

22 A Twenty-five.

23 Q And where are you from?

24 A Springfield, South Carolina.

25 Q From the Orangeburg side or the Aiken

1 side?

2 A Aiken side.

3 Q And were you brought up in Springfield all
4 of your life?

5 A Yes, sir.

6 Q Did you go to school here?

7 A In Wagener, South Carolina, yes, sir.

8 Q And you graduated from Wagener High
9 School --

10 A Yes, sir.

11 Q -- or Wagener-Salley? When did you
12 graduate?

13 A 2001.

14 Q Did you have any extracurricular
15 activities or anything of that nature?

16 A Yes, sir, I played football, and I took
17 building construction in high school.

18 Q I'm sorry, the last one?

19 A I took building construction.

20 Q You took business construction?

21 A Building construction.

22 Q Building construction?

23 A Yes, sir.

24 Q Okay. And you did that in hopes of doing
25 what?

1 A To be a framer or a football player,
2 either one.

3 Q Okay.

4 A Yes, sir.

5 Q Obviously, you weren't a football player.
6 So did you do some construction, things of that
7 nature?

8 A Yes, sir.

9 Q Okay..

10 A What happened, I was about to go to
11 college football, too, but I had my son at an early
12 age. So that's why I didn't pursue football.

13 Q Okay.

14 A Yes, sir.

15 Q Now, you mentioned a son. How many
16 children do you have?

17 A I've got three.

18 Q And how old are they?

19 A Six, four, two.

20 Q And do you support them?

21 A Yes, sir.

22 Q How so?

23 A The way I support them?

24 Q Yes, sir.

25 A By working.

1 Q Now, what kind of jobs have you had in the
2 past?

3 A Well, when I first got through with high
4 school, I started at Turf Farms -- that's a grass
5 farm -- cut the grass, stuff like that. Then I
6 started carwashing, and I did brick mason work with
7 my cousin, Durrell Padgett. And I did mechanic work
8 with my cousin, Ernest Bell. And I did repairing
9 polo fields, too, on the side.

10 Q Okay. What are the most recent jobs that
11 you've held?

12 A With Cleckley-McGee Construction, working
13 with my cousin, Ernest Bell.

14 Q Okay. And where is Cleckley-McGee
15 Construction?

16 A It's in Orangeburg, South Carolina.

17 Q Okay. What kind of work did you do for
18 them?

19 A I was a laborer. I started out as a
20 laborer.

21 Q Okay. And did you climb the food chain at
22 all? Did you get any promotions, things of that
23 nature?

24 A Well, before I could climb, my grandma had
25 passed, so I kind of fell back from work. Then I

1 didn't go back at that time. I went back to work
2 with Ernest Bell, mechanic, because more money was
3 coming in to do with mechanic.

4 Q All right. Did you at any point in time
5 have more than one job?

6 A Yes, sir.

7 Q Okay. And when was that time period, and
8 what were the jobs?

9 A That was before this incident. That was
10 in '05. I did polo grounds during the summertime,
11 too, after I get through mechanic. Like if mechanic
12 slowed down early that day, Mr. Frank Buckett would
13 call me. And I'd get the crew up, and we'd go do
14 the field.

15 Q And you keep saying "do polo grounds."
16 What does doing polo grounds entail?

17 A It's after the horses done tore the field
18 up from playing polo. When they make turns, they
19 dig a hole in the ground. So we walk around with
20 buckets of dirt and throw dirt in the holes and get
21 our feet and just move it out. And we do the whole
22 fields, practice fields, too.

23 Q About how large are those polo fields, for
24 all of us who don't know a lot about polo?

25 A Some fields are bigger than others, but

1 most of the time about 150 yards.

2 Q So a little bit larger than a football
3 field?

4 A Way larger, yes, sir.

5 Q So basically that's a football field and a
6 half?

7 A Yes, sir.

8 Q All right. And if you have a crew, how
9 long does it take you to do that type of thing, to
10 fix a whole field?

11 A Well, most of the time we'll usually go
12 out there with six to eight people. So if it's
13 eight people, it'll take about eight hours, and then
14 depending on how bad the field is, too.

15 Q Okay. So in August of 2005, is it fair to
16 say you were working with your cousin doing
17 mechanic's work --

18 A Yes, sir.

19 Q -- Mr. Bell?

20 A Yes, sir.

21 Q And you were also working on polo fields?

22 A Yes, sir.

23 Q Would that have been the case on or about
24 August 26 and 27, 2005?

25 A Yes, sir.

1 Q All right. Let's focus a little bit more
2 now.

3 A Yes, sir.

4 Q First of all, where were you living in
5 August of 2005?

6 A Academy Road,
7 Springfield.

8 Q Union Academy Road?

9 A Yes, sir.

10 Q And quite honestly, that's the address
11 that we've been talking about throughout this entire
12 case?

13 A Yes, sir.

14 Q All right. Tell us about that particular
15 property. Are you the only person in your family
16 who lives there?

17 A Well, my mother lives like a quarter mile
18 behind me.

19 Q But it's all one kind of set of property?

20 A Yes, sir, the same land.

21 Q Heirs' property kind of thing?

22 A Yes, sir.

23 Q All right. So you live next to the road?

24 A Yes, sir.

25 Q Okay. Who was living with you in August

1 of 2005?

2 A My brother and Mr. Johnny Miles.

3 Q Okay. Your brother is who?

4 A Mr. Tremaine Tyler.

5 Q And how old is your brother?

6 A He's 27 now, I think.

7 Q Okay. And you said Mr. Johnny Miles?

8 A Yes, sir.

9 Q And who is Mr. Johnny Miles?

10 A He's a friend of the family.

11 Q And Mr. Miles is how old?

12 A I think Mr. Miles is 62, I think, if I'm
13 not mistaken.

14 Q And that would have put him around 60 or
15 so when this incident took place?

16 A Yes, sir.

17 Q Why was Mr. Miles living with you?

18 A Well, he had a falling-out with his boss,
19 and he lived on his boss' property. So he had
20 nowhere to live at the time. So he came and stayed
21 with me and asked can I give him a job, because he
22 knows I different kind of work. And I let him stay
23 with me, and he worked with me to make money to help
24 him get back on his feet, so to speak.

25 Q About how long did he live with you?

1 A Before this incident, I'd say about a week
2 and a half, two weeks at the most.

3 Q And then this incident took place?

4 A Yes, sir.

5 Q All right. Now, if we were to focus
6 specifically, we'll start with the 26th of August of
7 2005, what, if anything, happened on the 26th?

8 A The 26th, during the daytime?

9 Q Yes, sir.

10 A I had a cookout to my house.

11 Q All right.

12 A Yes, sir.

13 Q And who was at that cookout?

14 A Well, me, and my brother, Johnny Miles,
15 and friends of my family, and family members,
16 because the neighborhood basically involves all
17 family.

18 Q And was Edward Walker at that cookout?

19 A No, sir.

20 Q How do you know that?

21 A Because I don't let Head Walker come in my
22 house like that.

23 Q Why not?

24 A Because he's got a reputation.

25 Q When is the last time to your knowledge ---

1 when was the last time Edward Walker came to your
2 house prior to -- when was the last time that he
3 came to your house prior to this incident?

4 A I'll just say probably about two weeks, so
5 to speak.

6 Q Okay. And was that whenever the rift took
7 place?

8 A Sir?

9 Q Was that when the rift or whatever took
10 place? Was that when you told him not to come back
11 to your house?

12 A Yes, sir.

13 Q Okay. Now, after this barbecue ended,
14 what happened next?

15 A Well, me and my brother was in the house
16 playing PlayStation, like we normally do, sit around
17 with Mr. Miles. And we joked around, looked at TV,
18 played the PlayStation. That was about it.

19 Q And just for clarification purposes, just
20 in case, what is PlayStation?

21 A It's a PlayStation 2. It's a video game,
22 with boxing, football, basketball, baseball, so to
23 speak, stuff like that.

24 Q And what game did you and your brother
25 play?

1 A Madden '05.

2 Q All right. Football game?

3 A Yes, sir.

4 Q All right. Are you any good?

5 A I'm all right. My brother, he plays it
6 more than me, so really he's a little better, of
7 course.

8 Q Any particular team you play with?

9 A I played the Tampa Bay Buccaneers.

10 Q All right. Now, who was in the house that
11 evening as it spilled over in the morning time?

12 A Me, and my brother, and Mr. Johnny Miles.

13 Q What's the next thing of significance that
14 happened?

15 A Well, later on that night, round about
16 eleven, I had a friend to come by name of Misty.
17 She said she was going to go to the club. The club
18 is about 15 minutes from my house on 302 going
19 towards Aiken, headed towards Wagener.

20 She came by my house, and she wanted to
21 know could she come out after the club. I said,
22 "Well, if it isn't too late, just come and knock on
23 the door, and I might wake up. If I don't, you'll
24 just know I'm asleep." That's what happened right
25 then.

1 Q And did you have a phone at the house?

2 A Yes, sir, a cell phone.

3 Q Okay. And tell us about cell phones in
4 that area.

5 A Well, where I live at, it's a bunch of
6 trees and a bunch of poles. So for me to get a good
7 signal, I have to leave out my house and walk up and
8 down the road for me to get all my bars up so I
9 could talk.

10 If not, it'll be a lot of static. And the
11 LG phone, the kind I had, it'll drop. If there's a
12 lot of static coming in, it'll just cut off.

13 Q So is it fair to say that cell phone
14 reception is iffy when you get out to that area?

15 A Yes, sir.

16 Q Okay. And we're not talking about a city
17 area, are we?

18 A No, sir, country.

19 Q We're talking about the country?

20 A Yes, sir.

21 Q All right. What, if anything, happened
22 next?

23 A Well, next I went on to bed and left my
24 brother playing the game after Misty left to go to
25 the club. I laid down till about three-something.

1 Close to four, I heard a knock at the door.

2 So they must have been knocking for a
3 couple of minutes. When I got up, I thought it was
4 here. When I got up, there's Walker.

5 Q And you got up and answered the door?

6 A Yes, sir.

7 Q And it's your testimony did you know that
8 it was -- who were you expecting --

9 A I was expecting --

10 Q -- or were you expecting anybody?

11 A I was expecting Misty to come back from
12 the club. And that's what made me --

13 Q Made you get up?

14 A Yes, sir.

15 Q Okay. And when you got to the door, who
16 was it?

17 A Edward Walker.

18 Q What happened from there?

19 A Well, when he came to the door, he asked
20 me to let him borrow \$20. First, I asked him, "What
21 you doing at my house this time of night?" Because
22 you know I don't allow people to come to my house
23 this time of night, like that right there, unless
24 they don't call me and let me know earlier that day,
25 just like a friend or something like that.

1 Q All right.

2 A And I told him, you know, "You need to
3 leave, because you and my brother got in an
4 altercation about this female. I don't know nothing
5 about what's going on. You know, I don't pick no
6 sides, you know.

7 "If you and my brother have got a
8 disagreement, I don't know what's going on, so I'm
9 out of it." So he asked me can he borrow \$20. I
10 gave him the \$20 and told him he needed to leave.

11 Q Why did he feel comfortable asking you to
12 borrow money?

13 A Well, when he first got out of prison, I
14 saw him up town, and he had --

15 Q When you're saying "up town," where is up
16 town?

17 A In Wagener, yes, sir.

18 Q All right. And what happened?

19 A When he first got out of prison, he asked
20 me could he borrow \$20 because he didn't do nothing
21 for his son the whole time. He at least wanted to
22 go to him with some diapers and something from
23 Dollar General, toys or something. So, you know, me
24 being the person that I am, I let him borrow the
25 \$20.

1 Q Okay. And what happened from there?

2 A So after I told him to leave --

3 Q We're focusing back on one night. At this
4 point, it's August 27, 2005?

5 A Yes, sir. After I told him to leave,
6 right?

7 Q Yes, sir.

8 A After I told him to leave, I closed the
9 door, went back in my room, and laid down. About
10 that time, I heard shots go off. So I paused for a
11 minute like, "What's going on?"

12 The first thing in my mind was hunting,
13 because shots go off in my 'hood all the time -- my
14 neighborhood. You know, the first thing I'm going
15 to think is hunting, not nothing serious or nothing
16 like that.

17 Q Okay.

18 A But I got back up, you know. After I laid
19 down for a couple of seconds -- I'd say 30 seconds
20 to a minute -- I got back up. And I didn't see
21 nobody, so I just closed the door, went back and
22 laid down.

23 Q Okay. Now, you said that Johnny Miles was
24 at your house?

25 A Yes, sir.

1 Q And your brother, Tremaine, was at the
2 house?

3 A Yes, sir.

4 Q Where were they when these shots were
5 fired?

6 A In the living room area.

7 Q Okay. Now, what happened next?

8 A Next, I laid down for about two or three
9 minutes. Walker came back to my house, knocked on
10 the door again.

11 Q Okay.

12 A I opened the door. He told me, "I believe
13 something happened," which I asked him what
14 happened, and he wouldn't tell me what happened. He
15 just said, "You just need to get from around here."

16 So at that point, I closed the door. He
17 left. I got my brother and Mr. Johnny Miles up. I
18 said, "Man, Walker said something happened. We need
19 to get up and leave. I don't know what it is or
20 what happened."

21 Q Why did you feel compelled to get up and
22 tell them they need to leave? Why would you feel
23 that's necessary?

24 A Well, at the time when he came back and
25 said something had done happened, and I heard shots,

1 I kind of put two and two together. Like I heard
2 shots, and he told me I needed to leave, something
3 had done happened that I don't know nothing about.

4 So I don't know what happened. I couldn't
5 pinpoint. So he told me to leave, so I felt like I
6 needed to leave.

7 Q Okay. And did you leave?

8 A Yes, sir.

9 Q First, before you left, did you see
10 anybody else at your house?

11 A No, sir.

12 Q How did Head Walker get to your house?

13 A I really don't know. But after learning
14 the case, he was with his cousin.

15 Q Okay.

16 A Yes, sir.

17 Q And his cousin is who?

18 A Mr. Wallow Ware.

19 Q So you said Head told you that you needed
20 to leave?

21 A Yes, sir.

22 Q You said you woke up your brother,
23 Tremaine?

24 A Yes, sir.

25 Q You woke up Mr. Miles?

1 A Yes, sir.

2 Q What happened --

3 A I was already trying to wake him up,
4 because he heard the same thing I heard.

5 Q Okay. And what did you do next?

6 A Well, next I was about to get on my phone
7 and try to call him, go outside, but my friend
8 pulled back up, Misty.

9 Q Okay.

10 A And I asked Mr. Miles, you know, "Do you
11 got somewhere you can go?" because my mother, she
12 had a friend that lived in Aiken. And I keep my
13 sister sometimes, so I know that my brother was in
14 Aiken. I didn't attempt to go to her house. At the
15 time Misty came up, Mr. Miles said we'd go to his
16 niece's house --

17 Q Okay.

18 A -- till we find out what's going.

19 Q Okay. And don't tell me what anybody --
20 well, don't tell me exactly what he said, but you
21 can tell me what you did.

22 A Yes, sir.

23 Q That's considered to be hearsay.

24 A Yes, sir.

25 Q When you heard these shots, Head Walker

1 says, "You better go," why didn't you just call the
2 police?

3 A At first, I didn't know what happened. So
4 I didn't want to call the police and get no -- you
5 know, there still could have been -- I'm thinking
6 somebody still could have been hunting. I really
7 don't know what happened at the time.

8 Q But why did you feel compelled because
9 Head said, "You need to leave"?

10 A Well, I kind of figured maybe he seen
11 something or heard something or was just around when
12 the shots were fired.

13 Q Okay.

14 A And I believed him when he told me I
15 needed to leave, so I just believed and listened to
16 him.

17 Q Has he ever come to your house before and
18 told you, "You need to leave"?

19 A No, sir.

20 Q And so what is about that that made you
21 just need to leave? If I came up in the middle of
22 the night and said, "You need to leave your house,"
23 you're going to leave your house?

24 A Well, the only thing that made me leave
25 then is when I heard the shots.

1 Q All right.

2 A You know, I just kind of figured maybe
3 something wasn't right at that time.

4 Q Now, you said that your friend Misty ended
5 up coming to the house?

6 A Yes, sir.

7 Q And the next thing you did was what?

8 A Well, we caught a ride with her to Aiken,
9 to Johnny Miles' niece's house.

10 Q Okay.

11 A Mr. Johnny Miles' house.

12 Q All right. And what happened next, if
13 anything?

14 A Well, we got there, and we went to sleep.

15 you know, because it wasn't -- we got there and went
16 to sleep, laid down. And early that morning, I got
17 a phone call from my mother. They said something
18 had done happened.

19 Q And what did you learn as a result of that
20 phone call?

21 A I learned somebody was killed, sir.

22 Q Okay.

23 A Yes, sir.

24 Q Did you have anything to do with that?

25 A No, sir.

1 Q Let me ask you this question. Did you go
2 outside in the road that night?

3 A No, sir.

4 Q Did you get in the car with anybody that
5 night --

6 A No, sir.

7 Q -- other than Misty?

8 A No, sir.

9 Q Did you talk to anybody outside your house
10 other than --

11 A No, sir.

12 Q -- Head Walker?

13 A No, sir.

14 Q And were you inside the house, outside the
15 house?

16 A I was in like my doorway talking to Mr.
17 Walker.

18 Q Okay. Were you on the side of the road?

19 A No, sir.

20 Q Were you up the road?

21 A No, sir.

22 Q Where were you when all of these things
23 happened?

24 A I was in my house.

25 Q Now, you said that you went to Johnny

1 Miles' niece's house?

2 A Yes, sir.

3 Q In Aiken?

4 A Yes, sir.

5 Q Got a phone call, and you learned that
6 somebody had died?

7 A Yes, sir.

8 Q What happened next?

9 A Next, after my mother told me that, I
10 started calling my uncle. Actually, I was calling
11 my uncle before that time, because I don't know
12 Johnny Miles' -- Mr. Miles' niece like that.

13 So I wanted to be, you know, so I called
14 my uncle, which lived in North Carolina. I couldn't
15 get in contact with him. So after I got my mother -
16 - after I got the phone call from my mother --

17 Q Yes, sir.

18 A -- Mr. Miles called a friend that said he
19 might could take us to meet my uncle in Rock Hill,
20 South Carolina.

21 Q Okay. And so you went to Rock Hill?

22 A Yes, sir.

23 Q Let me ask you this. When you learned
24 that somebody had died, why is it that you didn't
25 just call the police then and just say, "Hey,

1 something funny's going on around here"?

2 A Well, at the time my mother called me, I
3 was being looked for.

4 Q Being looked for, for what?

5 A For, I think, the murder.

6 Q Why were you being looked for when you
7 never went outside your house?

8 A I guess somebody had done said or put my
9 name in something.

10 Q So why not call the police, why not stick
11 around, why not just go on down to Aiken County
12 Sheriff's Department or the Public Safety Department
13 or something -- why not just do that?

14 A Well, at the time my mother told me I was
15 being looked for, for a murder, I got scared, and I
16 got nervous.. I didn't know what to think or what to
17 do.

18 Q What is there to be scared of when you
19 didn't do anything?

20 A Well, I'm not used to going to jail for
21 something serious, not used to going to jail,
22 period. I'm not no troublemaker. So I was kind of
23 nervous. My name was being put into something I had
24 nothing to do with, and I just got very scared.

25 Q And what did you do as a result of that?

1 A I called my uncle and let him I was coming
2 up there.

3 Q And what happened next?

4 A When I got my uncle, I started back
5 calling my family members, telling them I had
6 nothing to do with this, and we needed to seek help.

7 Q And when you say seek help, what are you
8 talking about?

9 A Like attorneys -- you know, counsel. And
10 I was telling my father and my girlfriend at the
11 time to call investigators and let them know I
12 wanted to turn myself in. But I wanted to turn
13 myself in with a lawyer so I know I'll be safe and
14 nothing will happen to me.

15 Q And to your knowledge, did your family and
16 you have contact with investigators?

17 A Yes, sir.

18 Q Investigators where?

19 A Aiken County Sheriff's Department.

20 Q Now, isn't it true that you didn't come
21 back to Aiken for a little bit of time? Isn't that
22 true?

23 A Sir?

24 Q You did not come back to Aiken for quite
25 some time?

1 A Yes, sir.

2 Q Where did you go from Rock Hill?

3 A To Columbia.

4 Q Why didn't you just go back to Aiken and
5 deal with the police at that point by yourself?

6 A I was still scared, sir. I didn't know --
7 you know, first, I was being wanted for murder, dead
8 or alive. I was armed and dangerous, which I
9 wasn't. And I wanted to have a lawyer present to
10 turn myself in to get stuff in order, letting them
11 know that I didn't have nothing to do with this.
12 When I turned myself in, I wanted everything to be,
13 you know, in decent order.

14 Q Did you come back to Columbia?

15 A Yes, sir.

16 Q What did you do while you were in
17 Columbia?

18 A Well, we just stayed in contact with
19 investigators, found lawyers, called different
20 lawyers. And I just stayed in a hotel room.

21 Q You just stayed in a hotel room --

22 A Yes, sir.

23 Q -- that entire time you were in Columbia?

24 A Yes, sir.

25 Q How many days were you in Columbia, do you

1 know?

2 A About 12 days.

3 Q And you just stayed in Columbia?

4 A Yes, sir.

5 Q Did you go out anywhere?

6 A No, sir.

7 Q You didn't go the zoo, or you didn't go to
8 the park?

9 A No, sir.

10 Q And you just stayed in the hotel room?

11 A Yes, sir.

12 Q What did you do in that hotel?

13 A I just -- basically, I was stressed out
14 real bad, calling my parents, telling them they need
15 to get help, I don't know what's going on, why
16 people put my name in this. Basically, I was
17 stressing my parents out more than anything.

18 Q Did you tell them where you were?

19 A No, sir.

20 Q Did you get back in touch with
21 investigators?

22 A Yes, sir.

23 Q When you left your house, did you hide
24 anything?

25 A No, sir.

1 Q You didn't have guns with you?

2 A No, sir, it wasn't no guns.

3 Q So you're telling this Court you didn't
4 have guns with you?

5 A No, sir.

6 Q Did you take evidence with you, and run it
7 up to North Carolina, and throw it all up and down
8 I-77?

9 A No, sir.

10 Q Why is it that you left Aiken and went to
11 Rock Hill and went to Columbia?

12 A I didn't feel safe in Aiken. And I didn't
13 really have nobody in Aiken like family members that
14 I could go to, to feel safe with. I felt safe with
15 my uncle, because I know my uncle will try to help
16 me if I ask him to.

17 Q Help you do what?

18 A Get lawyers, help me with money issues and
19 stuff like that.

20 Q Did you get a lawyer?

21 A Yes, sir.

22 Q What happened when you got a lawyer?

23 A Well, after I got my lawyer, we called
24 investigators and met with them at Aiken County
25 Detention Center, and I turned myself in.

1 Q Now, let's backtrack for a minute. Who
2 was with you when you went to Columbia?

3 A My brother, and Mr. Johnny Miles, and my
4 uncle.

5 Q And why was your brother with you?

6 A My brother, he's got like a -- I would say
7 he's mentally incompetent. So he's got -- I ain't
8 going to say got to have somebody around him, but he
9 needs somebody around him to help make decisions or
10 as just thinking, because my brother is 27, but I
11 think he's got the mind of like a 12- or 13-year-
12 old, could be younger than that. I'm not for sure.

13 Q So you took him with you?

14 A Yes, sir.

15 Q And while you were there, you packed a
16 bunch of clothes and took all that stuff with you?

17 A No, sir.

18 Q What did you do?

19 A I just left. While I was at my house, I
20 just left my house.

21 Q And so for that entire time, all you had
22 was the clothes on your back?

23 A Yes, sir.

24 Q So you stayed in a hotel room with the
25 clothes on your back and nothing else?

1 A Yes, sir.

2 Q Did you go out around Columbia, ride
3 around Columbia?

4 A No, sir.

5 Q You stayed in that hotel room?

6 A Yes, sir.

7 Q And you said you had some contact with
8 police at that point in time, correct?

9 A Yes, sir.

10 Q And you eventually turned yourself in?

11 A Yes, sir.

12 Q What, if anything, happened next?

13 A After I turned myself in?

14 Q Yes, sir.

15 A Well, after I turned myself in, you know,
16 I talked to my lawyer and talked to investigators.
17 And I've been in jail since that day:

18 Q Did you shoot Debra Dorch?

19 A No, sir.

20 Q Did you shoot Mr. Brewer?

21 A No, sir.

22 Q Did you fire a gun that day?

23 A No, sir.

24 Q That morning?

25 A No, sir.

1 Q That evening?

2 A No, sir.

3 Q Anywhere around Union Academy Road or
4 Windsor Road, in a pasture, all those areas we
5 talked about?

6 A No, sir.

7 Q Were you in Wallow Ware's car that
8 morning?

9 A No, sir.

10 Q That day?

11 A No, sir.

12 Q Earlier that day?

13 A No, sir.

14 Q Did you try to get into a mail truck --
15 excuse me, the Aiken Standard truck that belonged to
16 Ms. Dorch that morning?

17 A No, sir.

18 Q Then why are you wrapped up into this
19 thing? Help us -- explain why you're wrapped up
20 into this thing.

21 A Well, the way I really feel about this
22 whole thing is you've got people that's trying to
23 put the blame on somebody else. The people that do
24 the crime don't want to do the time but go to jail
25 and brag about it to the whole jail, telling them

1 what the Solicitors do, that they're going to put a
2 story together, make me and my brother go to jail
3 for it so they can come home and still do the same
4 thing and brag.

5 Q And, again, it's your testimony that you
6 didn't have anything to do with it?

7 A Yes, sir.

8 Q Did you plan it?

9 A No, sir.

10 Q Did you tell somebody to go do something
11 on your behalf?

12 A No, sir.

13 Q Did you get in the car and, like Seawright
14 said, he just all of a sudden get out of the car?

15 A No, sir.

16 Q You weren't in that car at all?

17 A No, sir.

18 Q What proof do we have that you weren't in
19 that car?

20 A Well, actually, we had forensics to come
21 in there and say they tested the car for
22 fingerprints. Mine wasn't in there. We had
23 forensics test footprints by the road, and it wasn't
24 mine.

25 We've got people that said they ain't even

1 went to the road. Well, how did their footprints
2 appear to the road? They said they was still inside
3 the house the whole time.

4 Q Are you trying to say there are people
5 lying on you?

6 A Yes, sir.

7 Q What's the reason for lying on you?

8 A The reason to lie -- so they won't go to
9 jail for the rest of their life like they're trying
10 to make me.

11 Q Let me ask you this. You're coming in
12 here, and you're saying that you -- essentially;
13 you're saying you didn't do anything --

14 A Yes, sir.

15 Q -- you didn't do anything wrong. Did you
16 do something wrong here?

17 A Yes, I did wrong for not calling the
18 officers, for not letting them know what I knew that
19 night. That's what I felt like I did wrong. I
20 shouldn't have stayed gone as long as I did. But at
21 the time, I was nervous. But I should have called
22 them. I wish I would have.

23 But it seems like now, if I still would
24 have called them, I'm still going through the same
25 thing, because the evidence really speaks for

1 itself. I wish I would have called them.

2 Q Once you actually turned yourself in to
3 police and had an opportunity to tell them at that
4 point that you were not guilty, did you at that
5 point in time try contact Wallow Ware, or Edward
6 Walker, or any of them?

7 A No, sir.

8 Q Have you talked to them since this point
9 in time?

10 A No, sir.

11 Q Have you passed notes to them?

12 A No, sir.

13 Q Have you discussed anything about your
14 case?

15 A No, sir.

16 Q Have you discussed anything about your
17 case with anybody?

18 A No, sir.

19 Q Why not?

20 A Besides my lawyer.

21 Q Why not?

22 A Because when I first got my lawyer, he
23 instructed me not to say nothing to nobody about the
24 case but him.

25 Q Okay.

1 A And I didn't feel comfortable discussing
2 it, because it wasn't nothing for me to discuss. I
3 didn't know nothing. I didn't do nothing.

4 MR. GIPSON: Your Honor, I'd ask the
5 Court's indulgence for a moment.

6 Q Have you promised anybody in this case
7 anything to come in and testify on your behalf?

8 A No, sir.

9 Q Have you talked to any of these people who
10 have come in and testified today?

11 A No, sir.

12 Q Have you been promised anything by the
13 Solicitor's Office or by anybody to come in and
14 testify?

15 A No, sir.

16 Q Has anybody said, "Well, if you get up
17 here and take the charge, we'll help you either 'x,'
18 'y,' or 'z'?"

19 A No, sir.

20 Q And why are you in here testifying today?

21 A Well, from the bottom of heart, I want to
22 apologize to the family for my name being put into a
23 situation like this that I didn't have nothing to do
24 with. And I want to basically prove my case,
25 because the law states that you're innocent until

1 proven guilty.

2 But I feel like already that I'm guilty
3 and I've got to prove my innocence, because of my
4 name being put all in this situation and I had
5 nothing to do with it. And I want to get on the
6 stand to apologize to the family like I did the last
7 time and tell them I'm sorry about what happened,
8 you know, because I've got family, too.

9 I've got a daughter. I've got a son.
10 I've got brothers. I've got a sister. And if the
11 same thing happened to my family, justice should be
12 served. I'm not saying nothing's wrong with that,
13 but the right people justice needs to be served on,
14 not somebody that they ain't got one piece of
15 evidence on, not when you can show the
16 inconsistencies with statements to prove that
17 everybody that takes the stand done said something
18 different a while back.

19 This is my second time, not the first. So
20 I've got to go to trial two times. I've got to have
21 24 people on the jury to see the truth. I don't
22 feel like that's right.

23 Q But you're saying that you didn't do this?

24 A Yes, sir.

25 Q And you didn't shoot anybody?

1 A Yes, sir.

2 Q You didn't handle any guns?

3 A Didn't handle none, sir.

4 Q And you didn't plan any crime?

5 A No, sir.

6 Q You didn't do anything in furtherance of
7 the murder or the injury -- the murder of Debra
8 Dorch or the injury of Mr. Brewer?

9 A No, sir, I didn't do none of it.

10 Q All right. Please answer any questions
11 that Mr. Weeks or Mr. Kodman may have.

12 THE COURT: Mr. Weeks?

13 MR. WEEKS: May we approach?

14 THE COURT: Yes, sir.

15 Ladies and gentlemen, your attention is
16 not to be diverted in any way from any testimony or
17 reference to any other trial. You are concerned
18 about this trial, this week, the evidence presented
19 in this trial.

20 Cross-examination?

21 MR. WEEKS: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. WEEKS:

24 Q Mr. Tyler, your best friend is James
25 Gleaton, isn't it?

- 1 A He's a friend, yes, sir.
- 2 Q Is he a close friend?
- 3 A He's a friend, I can say that.
- 4 Q Close friend, or just a friend?
- 5 A Just a friend or associate, sir.
- 6 Q Just a friend or associate. He lives down
- 7 the road from you, around the corner from you?
- 8 A Yes, sir.
- 9 Q Okay. And he lives between where -- you
- 10 know where Hartwell lives, don't you?
- 11 A Yes, sir.
- 12 Q He lives on the other side of Hartwell?
- 13 A Yes, sir, on down the road.
- 14 Q If you went out your house, went down the
- 15 road to Windsor Road --
- 16 A Yes, sir.
- 17 Q -- took a left --
- 18 A Yes, sir.
- 19 Q -- go down to Hartwell's house, Hartwell's
- 20 on the left?
- 21 A Yes, sir.
- 22 Q Go a little further, Gleaton is on the
- 23 right?
- 24 A Yes, sir.
- 25 Q All right. And Hartwell is a friend of

1 yours, too, isn't he?

2 A Yes, sir.

3 Q Okay. And Wallow Ware is a friend of
4 yours?

5 A We went to school together.

6 Q Well, is he a friend of yours?

7 A No, sir. We didn't hang out or nothing.

8 Q Okay. Played high school football
9 together?

10 A Yes, sir.

11 Q But he isn't a friend of yours?

12 A No, sir. I mean, he's not nothing but an
13 associate. We talked, conversation.

14 Q Kendall Seawright?

15 A No, sir.

16 Q He's not a friend of yours?

17 A No, sir.

18 Q Did y'all go to school together?

19 A Yes, sir.

20 Q Been to your house before?

21 A Like probably like a year or something
22 before this incident.

23 Q Ware had been to your house before, too,
24 hadn't he?

25 A Probably like a year. You know, they

1 don't come regular.

2 Q Walker comes regularly, doesn't he?

3 A No, sir.

4 Q Well, he had been there two weeks before
5 this?

6 A Yes, sir.

7 Q Is that when he had some altercation with
8 your brother?

9 A No, they had an altercation before that, I
10 think, yes, sir.

11 Q When was it you say you loaned him the
12 money?

13 A When he first got out of prison.

14 Q Well, when was that?

15 A That would be three to four months prior
16 to the incident.

17 Q All right. So three or four months before
18 the incident, you loaned him some money?

19 A Yes, sir.

20 Q He comes back to your house at some point
21 and gets in some argument with your brother?

22 A No, the argument wasn't at the house.

23 Q Wasn't at the house?

24 A No, sir.

25 Q How many times have you been back to your

1 house between the incident and the time --

2 A That was --

3 Q -- between the time you loaned him the
4 money and August the 27th?

5 A He came back two weeks with somebody else,
6 but he know he couldn't come in the yard -- been
7 prior to that night, that night of the 27th.

8 Q Now, you don't stand on your porch all day
9 and watch him going up and down your road, do you?

10 A No, sir.

11 Q So is it possible he could have been close
12 to your house earlier in the day?

13 A Yes -- possible? Well, during the
14 daytime, mostly I stay outside. So I ain't seen
15 him. You know, I ain't heard of him being around
16 the area. Mr. Miles and my brother, they'll be
17 outside most of the time of day.

18 Q Mr. Miles and your brother. On a Friday,
19 Mr. Miles wasn't working?

20 A No, sir.

21 Q You were paying him to do what?

22 A Well, I had pit bulls, and we worked at my
23 cousin's, Ernest's shop, that lived a quarter up the
24 road.

25 Q And you were paying Mr. Miles to do what?

1 A Just assist us, to help us and help me
2 out.

3 Q Doing what -- what kind of assistance?

4 A Feed the dogs.

5 Q Feed the pit bulls?

6 A Yes, sir.

7 Q Okay. Now, you had guns in the house,
8 didn't you?

9 A No, sir.

10 Q You didn't have a shotgun?

11 A No, sir. Mr. Miles could have had one,
12 but I didn't.

13 Q Mr. Miles who was living in your house
14 could have had a shotgun --

15 A Yes, sir.

16 Q -- in there, but you didn't?

17 A Yes, sir.

18 Q Okay. But that shotgun that could have
19 been in your house, do you know where it was found?

20 A No, sir. Later through the case, it was
21 found in the woods.

22 Q In the woods. Do you know how it got
23 there?

24 A I think by him.

25 Q And was that part of getting out of town?

1 A No, sir.

2 Q Well, there ain't no question you took Mr.
3 Miles out of town, is there?

4 A Yes, sir -- well, he took me, actually.

5 Q He took you to your uncle's house?

6 A Well, he got his friend to take us.

7 Q All right. And his friend was who?

8 A I don't know his name.

9 Q You don't know who took you to North
10 Carolina?

11 A No, sir.

12 Q Your uncle lives in North Carolina,
13 doesn't he?

14 A Yes, sir.

15 Q Not Rock Hill, is it?

16 A Well, we met him in Rock Hill -- like I
17 said, Rock Hill.

18 Q Did you ever go to North Carolina?

19 A Well, I didn't really see the sign that
20 said North Carolina, but you could call it, because
21 I think they're next-door neighbors.

22 Q Well, the reason you were going to North
23 Carolina is it was a different state, wasn't it?

24 A No, sir.

25 Q Okay. Now, you were going up there

1 because your uncle is a closer relative than your
2 mama, who lives a quarter of a mile behind you?

3 A Yes, sir, that's my mama's brother.

4 Q Okay, your mama's brother. But your mama
5 lives a quarter of a mile behind you?

6 A Yes, sir.

7 Q At her house?

8 A Yes, sir.

9 Q Been calling lawyers, calling
10 investigators for you, but you didn't go to her
11 house and say, "Mama, somebody's causing me some
12 trouble"?

13 A Yes, she wasn't home that night.

14 Q Okay. But you called her early that
15 morning, didn't you?

16 A My mother called me.

17 Q Okay. She called you because she got word
18 the police were looking for you, didn't she?

19 A Yes, sir.

20 Q Okay. Now, this Misty girl --

21 A Yes, sir.

22 Q -- she wasn't your girlfriend?

23 A No, she's just a friend.

24 Q The girlfriend you called at 5:00 in the
25 morning was who?

1 A Dana.

2 Q Dana?

3 A Tried to call -- yes, sir.

4 Q Tried to call her at 5:00, she wasn't at
5 home.

6 A The phone dropped, so I couldn't really
7 get through.

8 Q Called her at her house?

9 A Yes, sir.

10 Q You called her on a cell phone?

11 A Yes, sir.

12 Q Did you text her any?

13 A Yes, sir.

14 Q How many times?

15 A I'm not really sure.

16 Q More than five?

17 A No, sir.

18 Q Did you tell her Misty was going to give
19 you a ride somewhere?

20 A No, sir.

21 Q All right. So let me get this straight.

22 Mr. Edward Walker, who hadn't been to your house in
23 two weeks, who none of y'all like, had a fight with
24 your brother or some disagreement with your brother,
25 shows up at your house at 4:00 in the morning?

1 A Yes, sir. Well, I ain't going to say I
2 don't like him. I ain't going to say I don't like
3 him, you know.

4 Q Well, do you like him?

5 A He's all right as far as -- I mean, I
6 don't judge nobody -- say judge or be not judged.

7 Q He had been at your house before. He
8 shows up at 4:00. You know he lives in Wagener;
9 don't you?

10 A He really didn't have no place to live but
11 at my house.

12 Q Well, you know where Wallow Ware lives,
13 don't you?

14 A Yes, sir.

15 Q Okay. He lives where?

16 A I think he lives up about two miles from
17 where I live at. He lives with his girlfriend, I
18 think.

19 Q Wallow Ware lives two miles from you?

20 A I think.

21 Q You're thinking that. You went to high
22 school with Wallow Ware?

23 A Yes, sir.

24 Q All right. Wagener is not two miles from
25 you, is it?

1 A He didn't live in Wagener.
2 Q Salley is not two miles from you?
3 A Yes, sir, Salley is about two miles.
4 Q Salley is two miles from you?
5 A I think so.
6 Q Well, getting back to that, this Walker
7 you hadn't seen in two weeks --
8 A Yes, sir.
9 Q -- who you don't dislike, comes to your
10 door and borrows money from you --
11 A Yes, sir.
12 Q -- at 4:00 in the morning?
13 A Yes, sir.
14 Q You don't look outside?
15 A No, sir.
16 Q Does he come inside?
17 A No, sir.
18 Q Well, how did you talk to him?
19 A In the door..
20 Q How did you give him the money?
21 A Right there at the door.
22 Q At the door to your place is a porch?
23 A Yes, sir.
24 Q And on the other side of that porch is
25 your driveway?

1 A Yes, sir.

2 Q And you didn't see nobody out there?

3 A No, sir.

4 Q And he just shows up?

5 A Yes, sir.

6 Q And you know he don't live nowhere near
7 you.

8 A Yes, sir.

9 Q How did he get there?

10 A Well, I kind of figured it was a car,
11 because on my porch I had stuff where if somebody
12 pulled up on my yard, you can't see. If you see a
13 car with the lights on, you see a car. But there
14 wasn't no lights on, so I ain't just opened the door
15 and looked and asked how he got there, because he
16 could have been walking, because usually he ain't
17 got no car.

18 Q What did you do?

19 A I just asked him what he was doing at my
20 house the time of night.

21 Q And he said?

22 A He said he wanted to borrow some money.

23 Q And did you loan him money?

24 A Yes, sir.

25 Q At 4:00 in the morning?

1 A Yes, sir.

2 Q All right. After you loan him the money,
3 he leaves?

4 A Yes, sir.

5 Q And you go back to sleep?

6 A No, I didn't go back to sleep. I laid
7 down.

8 Q Laid down. And you hear some shots?

9 A Yes, sir.

10 Q Okay. Did you notice where your brother
11 was at that time?

12 A I'm thinking he was still in the living
13 room, because they was like sound asleep.

14 Q To the living room that goes out to the
15 porch --

16 A Yes, sir.

17 Q -- that goes out to the yard?

18 A Yes, sir.

19 Q There ain't no question you and your
20 brother had been living there for some time?

21 A Well, actually, we just now moved back
22 into my trailer, because we used to live with my
23 uncle on Stonemint Drive, because I remodeled my
24 trailer.

25 Q Okay. How long was that prior to August

1 the 27th?

2 A About two and a half weeks.

3 Q So you had been living there two and a
4 half weeks?

5 A Yes, sir.

6 Q And you already said you had been out in
7 the yard all the time watching the road?

8 A Yes, sir.

9 Q And they didn't find any footprints in
10 your yard, did they?

11 A No, sir.

12 Q Well, could it be because you went and
13 bought new tennis shoes when you went to North
14 Carolina?

15 A Well, I feel it was because I wasn't out
16 there that night.

17 Q Okay. Well, you know, you saw where they
18 were taking casts of the footprints, didn't you?

19 A Yes, sir.

20 Q And you saw where they were comparing them
21 to shoes that you had on when you turned yourself in
22 18 days after this?

23 A Yes, sir.

24 Q And those shoes were new, weren't they?

25 A No, sir.

1 Q They had been bought after you left
2 Salley?

3 A No, sir, the same shoes I had on.

4 Q The same shoes you had on --

5 A Yes, sir.

6 Q -- are the same shoes that you had on 18
7 days later?

8 A Yes, sir.

9 Q And your lawyer didn't tell you, "You
10 don't need to be wearing the same shoes or the same
11 clothes"?

12 A My lawyer -- we didn't discuss nothing
13 like that. My family was discussing with the
14 lawyer.

15 Q I see. So you weren't the one being in
16 touch with law enforcement, it was your family?

17 A Yes, sir.

18 Q You were hiding in Columbia, weren't you?

19 A No, sir.

20 Q You were not hiding?

21 A No, sir.

22 Q Okay. Well, what do you call staying in a
23 motel room 24 hours a day for 12 days if it's not
24 hiding?

25 A Stressed out and making arrangements to

1 handle when I'm coming out.

2 Q And how were you making arrangements to
3 eat?

4 A Well, I had a friend that lived in
5 Columbia that brought me food.

6 Q Is this Misty or somebody else?

7 A No, sir.

8 Q And they brought you money, too, didn't
9 they?

10 A No, sir.

11 Q They brought you clothes, or did you go
12 out and buy clothes?

13 A No, sir, I ain't go out to buy no clothes.

14 Q How about Tremaine? He was with you,
15 hiding out, too, in Columbia, wasn't he?

16 A We were staying together, sir.

17 Q Staying together?

18 A Yes, sir.

19 Q Was he stressing, too?

20 A Yes, sir.

21 Q And how about Johnny Miles?

22 A All of us was in the same predicament.

23 Q Same predicament?

24 A Yes, sir, as far as stress-wise.

25 Q Okay. But there ain't no question Johnny

1 Miles left y'all up there, and he came back to
2 Aiken, didn't he?

3 A Yes, sir.

4 Q You and Tremaine continued to stay in that
5 motel until you met up with your lawyer, and he
6 turned you in to the Sheriff's Department?

7 A Yes, sir.

8 Q Okay. And it's your testimony today that
9 sometime after 4:00, when Walker comes back, you,
10 your brother, and Johnny Miles, a 60-year-old man,
11 bail out, and y'all are in North Carolina before
12 lunchtime, aren't you?

13 A Well, actually, yes, sir -- Rock Hill,
14 yes, sir.

15 Q During that period of time, do you have
16 any idea how many times you called Uncle Earl in
17 North Carolina?

18 A No, sir.

19 Q Well, give me -- did you call him once?

20 A I can't quite remember, but I know I was
21 calling him.

22 Q You were calling him?

23 A Yes, sir.

24 Q Okay. Did you ever talk to him?

25 A Yes, sir.

1 Q Did you talk to him before you drove all
2 the way to North Carolina?

3 A No, sir.

4 Q So you drove all the way to North Carolina
5 in the hopes that you were going to be able to get a
6 hold of Uncle Earl --

7 A Yes, sir.

8 Q -- and that he was going to put you up for
9 a while till you could get all this mess straight?

10 A Well, actually, I was going to my uncle
11 for help.

12 Q And, obviously, you know we have your
13 phone record, don't you?

14 A Yes, sir.

15 Q And that there are hundreds of calls on
16 there?

17 A Yes, sir.

18 Q So you know how to call, use a phone to
19 call people, don't you?

20 A Yes, sir.

21 Q Could have called the police?

22 A Yes, sir.

23 Q Could --

24 A Yes, sir.

25 Q -- have got them to come out there and

1 investigate Edward Walker that day, couldn't you?

2 A Yes, sir.

3 Q You could have said, "Hey, if they're
4 looking for somebody for murder, Edward Walker's got
5 to be the one. Y'all get him."

6 A Yes, sir.

7 Q "Tail him. Come on and get him."

8 A Yes, sir.

9 Q You didn't do that that day, did you?

10 A Yes, sir -- because I didn't see Edward
11 Walker do anything, so I couldn't said, "Y'all come
12 get Edward Walker." And at the time, I was being
13 looked for, so that's why I didn't call. I wish I
14 would have. I should have.

15 Q You know you were being looked for, for
16 murder?

17 A Yes, sir.

18 Q And based upon Mr. Walker knocking on your
19 door and telling you that "You need to leave,"
20 you're in North Carolina two or three hours later.
21 And you still don't think you need to call the law
22 and say, "Edward Walker has got to be involved in
23 it"?

24 A That was actually six hours, sir, I think.

25 Q Okay. Still don't think you need to?

1 A No, sir.

2 Q Or didn't think you need to at the time?

3 A Sir?

4 Q You didn't think you needed to at the
5 time?

6 A No, sir.

7 Q Because you were hiding, weren't you?

8 A No, sir, I went for help.

9 Q It's your testimony under oath here today
10 that you were not hiding from the law when you went
11 to North Carolina?

12 A I felt like I wasn't hiding. If I was
13 hiding, I wouldn't never turn myself back in, sir.

14 Q Well, why didn't you get your mama and
15 daddy to tell them where you were? They could have
16 gave you a ride to Aiken County.

17 A Because I wanted to turn myself in with a
18 lawyer. I didn't trust to turn myself with just my
19 mama and daddy without a lawyer being present, sir.

20 Q A lawyer that told you to keep your mouth
21 shut and don't give any statements to anybody,
22 right?

23 A Yes, sir.

24 Q Huh?

25 A Yes, sir.

1 Q Okay. And there's no question you've been
2 housed with Wallow DeShawn Smith?

3 A Yes, sir -- after I wrote the statement,
4 sir.

5 MR. GIPSON: I didn't hear your last
6 statement, sir.

7 Q What did you say last?

8 A I said I was housed with Mr. Wallow D.
9 Smith after he wrote y'all with the statements about
10 the other co-defendants in the case, sir.

11 Q How did you know Wallow wrote us those
12 statements?

13 A At the preliminary hearing.

14 Q At the preliminary hearing --

15 A Yes, sir.

16 Q -- you found out he wrote some statements?

17 A Yes, sir.

18 Q Okay. But you didn't have anything to do
19 with those statements?

20 A No, sir. Actually, I think y'all got the
21 statements the same day I turned myself in.

22 Q The same day you turned yourself in?

23 A Yes, sir. I think y'all got the
24 statements on the 13th, and I turned myself in on
25 the 13th.

1 Q Did you have anything to do with that?

2 A No, sir. I wasn't in jail yet. He was.

3 Q Okay. Who is Ronnie Miller?

4 A That's my friend that was in Columbia.

5 Q Slugger -- does he go by Slugger?

6 A No, sir.

7 Q Who is Slugger?

8 A Slugger is James Robinson.

9 Q James Robinson. Did he come up to your
10 house that morning of August 27th?

11 A No, sir.

12 Q Let me get this straight. You didn't even
13 have a car that was operable, did you?

14 A No, sir.

15 Q But you had a four-wheeler?

16 A Yes, sir.

17 Q Walker tells you to leave, and you don't
18 know where he goes?

19 A No, sir.

20 Q But within a matter of hours, you're in
21 North Carolina --

22 A Yes, sir.

23 Q -- by way of Aiken?

24 A Yes, sir.

25 Q And it's still your testimony under oath

1 you weren't hiding?

2 A Yes, sir. I feel like I wasn't hiding.

3 MR. WEEKS: No further questions.

4 THE COURT: Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. GIPSON:

7 Q Between the time that you left Aiken and
8 returned with a lawyer to turn yourself in, you
9 didn't buy any clothes, did you?

10 A No, sir.

11 Q What did you buy?

12 A Nothing.

13 Q Did you buy food?

14 A No, sir. My friend bought it for me.

15 Q Okay. So you were in that hotel room, and
16 you didn't buy anything, you didn't go hang out, you
17 didn't do anything?

18 A No, sir.

19 Q You said you made phone calls, and you
20 texted?

21 A Yes, sir.

22 MR. GIPSON: That's all my questions, Your
23 Honor.

24 MR. WEEKS: Nothing.

25 THE COURT: Step down, sir.

1 MR. TYLER: Thank you, sir.

2 MR. GIPSON: The defense rests, Your Honor.

3 THE COURT: Ladies and gentlemen, you have
4 heard the defense's case.

5 Any reply by the State?

6 MR. WEEKS: Can we just talk logistics for a
7 second, Your Honor, at a sidebar?

8 THE COURT: Ladies and gentlemen, if you'll
9 just stand for a moment. Ladies and gentlemen, just
10 stay standing. That's it for today as far as the
11 testimony is concerned.

12 Tomorrow morning we'll learn whether or
13 not there will be any reply testimony. If not, then
14 we'll move into closing arguments, the jury charge
15 on the law, and then the deliberations to reconcile
16 this case. We'll do all that tomorrow.

17 We're through for the day. So have a good
18 evening. Please do not discuss the case, read any
19 news accounts, be exposed to any information other
20 than what you get right here in this courtroom.
21 We'll see you tomorrow at 9:30 a.m. Thank you.

22 (The jury left the
23 courtroom at 5:29 p.m.)

24 THE COURT: All right. Regarding requests to
25 charge, Mr. Gipson.

1 MR. GIPSON: Your Honor, I've handed mere
2 presence. And I think that's the only thing I'd
3 admit at this point in time. Other than that, I
4 think your standard charges cover the rest.

5 THE COURT: All right, from the State.

6 MR. WEEKS: Your Honor, we handed up one charge
7 we think is appropriate in this case. There's been
8 evidence and testimony that's been submitted.

9 THE COURT: Are you seeking any charge on the
10 flight issue?

11 MR. WEEKS: No, Your Honor.

12 THE COURT: Pardon me?

13 MR. WEEKS: Not a charge on that.

14 THE COURT: Okay.

15 MR. WEEKS: I'd like one, but I think the
16 Supreme Court said that it's --

17 THE COURT: It's not appropriate to charge?

18 MR. WEEKS: Yes, sir.

19 THE COURT: All right. Let's see now, on the
20 hand of one.

21 MR. GIPSON: And, Your Honor, I would object to
22 a charge of hand of one, hand of all.

23 THE COURT: On what theory?

24 MR. GIPSON: A couple of different things, Your
25 Honor. First, there would have to some type of

1 intention of common design that's been hashed out
2 and developed between the cohorts that are doing
3 this thing.

4 And I don't -- and the testimony that has
5 come out from all witnessses' statements is that
6 something -- they saw these headlights, and all of a
7 sudden, you know, some things happened, some shots
8 were fired, people jumped in the car and went after
9 the truck.

10 And it's my contention at that point there
11 was not -- you know, that there was not a common
12 design or scheme of some sort that was put together
13 in terms of what was going on and what was allegedly
14 supposed to happen at that point in time.

15 THE COURT: Mr. Weeks?

16 MR. WEEKS: Well, Your Honor, they didn't have
17 to send out a memo. It happened very quick based on
18 the testimony. The testimony is that Cornell Tyler
19 was instructing Wallow Ware to follow the car, if
20 you believe Wallow Ware.

21 Edward Walker's testimony is that he was
22 on the car and that he was hanging on for dear life
23 and just watching everything. But Seawright's
24 testimony puts them leaving, going down the road.
25 Just the mere fact that he bailed out of the car

1 kind of tells something about he thought something
2 was fixing to happen.

3 But him going down the road, taking a
4 left, following and catching up to the car, and
5 driving, Mr. Ware arguably has under the law hand of
6 one, hand of all confessed to murder on the witness
7 stand. Mr. Cornell Tyler, based on Mr. Ware's
8 statement, was directing him.

9 And Mr. Cornell Tyler had the gun that was
10 the murder weapon in this case, according to the
11 testimony. So I believe hand of one, hand of all is
12 appropriate. And there was conflicting testimony
13 about whether Mr. Walker was shooting or whether
14 both of them were shooting.

15 And it wouldn't matter which one of them
16 was shooting. They could have both been shooting
17 and both been guilty of murder under the hand of one
18 is hand of all. So I believe it's an appropriate
19 charge under the facts of this case.

20 THE COURT: All right, Mr. Gipson, anything
21 further?

22 MR. GIPSON: Yes, Your Honor. Also, one of the
23 other elements necessary there is that, of course,
24 the defendant has to be present at the scene. And
25 what we're talking about, of course, is a conference

1 liability.

2 I think the case that the State has
3 presented essentially says that either Cornell Tyler
4 -- as I listened to it, says that either Cornell
5 Tyler pulled the trigger and fired these shots, or
6 he didn't. And so I think that's the question.

7 The way that they've presented is that
8 Cornell Tyler was the person who did this and fired
9 the shots. That's what -- you know, all the
10 witnesses they've lined up are people who have tried
11 to say that he's the person who fired the shots.

12 So I think that the crucial question is
13 whether or not he fired the shots or whether he
14 didn't, not whether or not these other people may
15 have done something. Again, it seems not to be a
16 common design, or scheme of any sort, or some
17 intention on common design.

18 I have a couple of brief memos I did make
19 copies of where I'm just kind of putting some things
20 together. But I can hand that to the Court. I've
21 kind of put some case law together. I can make
22 copies for Mr. Weeks.

23 THE COURT: All right.

24 MR. GIPSON: But just to -- it's really a
25 question of whether or not Mr. Tyler pulled the

1 trigger, not whether or not these other people --
2 because everybody's saying he did it.

3 THE COURT: You have the driver of the car --

4 MR. GIPSON: Yes, sir.

5 THE COURT: -- who helped facilitate a defense,
6 according to one interpretation of the testimony, by
7 driving the car while Mr. Tyler was shooting,
8 chasing the car, two working together to commit the
9 crime. He wasn't shooting from his porch.

10 He was shooting, according to that
11 testimony, from the back of the car. So you have
12 two people acting together in committing the crime.
13 And then another interpretation of it, based on the
14 testimony that you extracted from the driver, you
15 had both people shooting at the car.

16 So, again, you have more than one person
17 participating in the commission of the crime,
18 assisting each other, acting together. And where
19 that's the case, the act of one is the act of all.
20 If you have some parties acting together, then the
21 other party who indicate that they have to have some
22 agreement on the commission of the crime, common
23 scheme, prearranged plan. Mr. Weeks says it
24 appeared that the entire thing happened at the spur
25 of the moment.

1 It's the State's theory that not they knew
2 in advance that people would be delivering the mail
3 and plan to ambush and kill the mailman or the paper
4 lady but that it was a spontaneous act and that the
5 common scheme, or agreement, or arrangement
6 including, of course, on the issue of malice. And
7 that can be formed in an instant prior to the act.
8 So if the common scheme or people acting together
9 has to be over a period of time and there is some
10 law that you have that supports that, then certainly
11 I'll be happy to review it.

12 MR. GIPSON: Yes, sir.

13 THE COURT: But clearly the State has charged
14 more than one person with committing the crime. The
15 testimony can be interpreted to be more than one
16 committing the crime, though each one of the
17 defendants has their own individual defenses about
18 what they did, what they knew, what they intended.

19 It all depends on what the jury believes
20 based on the testimony as to who did what and why,
21 if any reason existed at all. But I'll be happy to
22 receive what you have and review it, and then
23 charging takes place in the morning. And by that
24 time, I will have reviewed every case you gave me.
25 Of course, my law clerk will have reviewed all of

1 it:

2 MR. GIPSON: If you'll allow me to make a copy,
3 I didn't expect this to move as quickly or make
4 progress. But I'll make copies, and I can hand you
5 the original and one that you can use to write on.

6 THE COURT: All right.

7 MR. GIPSON: If I could have just a couple of
8 minutes to do that. That's all that I have, sir.

9 THE COURT: All right. Now, on the issue of
10 mere presence, under the hand of one charge,
11 contained in that states that mere presence at the
12 scene of a crime is not sufficient to convict one as
13 a principal on the theory of aiding and abetting.
14 Intent is also a necessary element, for there must
15 be a common design or intent to commit the crime,
16 and the crime must have been committed pursuant
17 thereto with the person aiding and abetting by some
18 overt act.

19 That means intending the result which
20 actually occurs, that it's not accidentally or
21 voluntarily, but intent that's shown by acts and
22 conduct and other circumstances from which the jury
23 would reasonably infer intent. And the State must
24 prove these elements beyond a reasonable doubt. As
25 I stated earlier, therefore, mere presence is

1 contained in that definition.

2 MR. GIPSON: Yes, sir.

3 THE COURT: If you request a separate
4 instruction on mere presence in addition to this
5 particular one, I will use the standard mere
6 presence instruction that's typically used. I
7 wouldn't use a mere presence instruction that
8 requests like the one you gave me that is
9 specifically stated to this case, because I do not
10 give instructions that reflect some comment by the
11 Court as to the facts and that would make the
12 interpret there to be some comment concerning the
13 facts.

14 MR. GIPSON: And the one that you read in your
15 standard portion I think is adequate. So, in that
16 sense, I think I'll withdraw my request, because
17 after hearing it, it's adequate, sir --

18 THE COURT: All right.

19 MR. GIPSON: -- in my mind.

20 THE COURT: Very well. Any other requests to
21 charge -- that seems to be about it?

22 MR. GIPSON: And if I may, Your Honor, I don't
23 expect to have any others, but if I can review some
24 things. I don't think I'll have any others, Your
25 Honor.

1 THE COURT: All right. Well, I give the jury a
2 copy of the charges. Of course, they can be
3 modified at any time. But I don't make last-minute
4 changes right at going into closing arguments. So
5 as soon as possible, let me know, of course,
6 whatever circumstances dictate.

7 MR. GIPSON: I don't anticipate any others,
8 Your Honor.

9 THE COURT: All right.

10 MR. GIPSON: I just didn't want to preclude
11 anything.

12 THE COURT: I understand.

13 MR. GIPSON: Thank you, sir.

14 THE COURT: All right, 9:30 it is.

15 - End of Day -

1 Thursday, January 10, 2008

2 (The defendant, together
3 with counsel, was personally present in the
4 courtroom.)

5 THE COURT: So we're ready now for Mr. Tyler.
6 Mr. Weeks, do you plan any reply?

7 MR. WEEKS: No, Your Honor.

8 THE COURT: All right. Anything before we
9 bring the jury, then, for closing arguments?

10 MR. WEEKS: Not from the State, Your Honor.

11 MR. GIPSON: And, Your Honor, I'd just like to
12 renew my directed verdict motion because on previous
13 argument that I addressed the Court.

14 THE COURT: All right. It's all for the jury
15 to decide, and I believe there are jury issues that
16 the jury has to consider and decide guilt or
17 innocence based on the evidence.

18 MR. GIPSON: Thank you, Your Honor.

19 THE COURT: Let's bring them in.

20 (The jury returned to the
21 courtroom at 9:56 a.m.)

22 THE COURT: All right, all jurors are back.
23 Good morning.

24 THE JURY: Good morning.

25 THE COURT: Mr. Weeks, any reply testimony?

1 MR. WEEKS: No reply from the State, Your
2 Honor. And the State would also waive its opening
3 on the law.

4 THE COURT: All right. Ladies and gentlemen,
5 you have now heard all of the testimony in this
6 case. You have now received all of the evidence in
7 this case. We'll now move to closing arguments.

8 And after that, I will give you the jury
9 charge, and this case will be yours to decide.
10 You've been there listening, being focused, paying
11 attention, and after closing arguments and jury
12 charge, it will be your time to deliberate on this
13 matter.

14 Now, what the lawyers will now tell you is
15 not evidence, because you have heard all of the
16 evidence. And evidence comes from a witness stand
17 or through exhibits, or stipulations, or other
18 things already in evidence.

19 You have now heard all of the evidence.
20 Certainly, what they tell you is important. It's a
21 critical part of the case. I'd ask, then, that you
22 give them your undivided attention at this time.

23 Mr. Gipson.

24 MR. GIPSON: May it please the Court, Your
25 Honor.

1 THE COURT: Yes, sir.

2 MR. GIPSON: May it please the Court, Your
3 Honor.

4 THE COURT: Yes, sir.

5 CLOSING ARGUMENT

6 BY MR. GIPSON

7 MR. GIPSON: Mr. Weeks, Mr. Kodman, Ms.
8 Brisbin, Mr. Foreperson, and ladies and gentlemen of
9 the jury, first and foremost, I just want to thank
10 you for your time. And I know you probably sit up
11 here and say that's one of the most disingenuous
12 things you can do and feel like we're just saying
13 these things just to kind of make you feel better
14 about sitting up there.

15 But we really and truly -- when I say
16 "we," I want to thank you for your time, I'm sure
17 Mr. Weeks wants to thank you, I know Mr. Tyler wants
18 to thank you, and I'm sure the Brewers' family and
19 Ms. Dorch's family would like to thank you, and also
20 this Court thanks you, because what you have done
21 here in terms of serving on this jury and all of
22 your attentiveness is crucial to the way that our
23 democracy works.

24 It's been said that jury duty is one of
25 the most patriotic services that a citizen can

1 perform in times of peace. And I believe it was
2 Winston Churchill that said that. And he said that
3 because the right of a person who has been charged
4 with a crime -- the belief that a person is presumed
5 innocent -- innocent until proven guilty beyond a
6 reasonable doubt -- is one of the cornerstones of
7 our democracy.

8 You see people in other countries fighting
9 all the time and people getting arrested without
10 having a right to a trial, having a right to face
11 their accusers, having a right to be heard, having a
12 right to tell their side of the story if they choose
13 to.

14 But that's not what our country does. I'm
15 not going to stand before you and say that this is a
16 perfect system. There are flaws, as there are with
17 all systems. But is the best one that's going at
18 this point in time, because it allows people who
19 have been accused of a crime, like Mr. Tyler, to
20 have their day in court, and to be heard, and to
21 allow a jury of 12 reasonable people who don't have
22 any stake in this case, who don't have any friends
23 to reward or any enemies to punish -- 12 people who
24 have no stake in this case -- to determine whether
25 or not the State has proven its case beyond a

1 reasonable doubt.

2 Now, at this stage in the case, what we're
3 going to try to do or what I'm going to try to do is
4 to anticipate the questions that the 12 of you may
5 have, and that's no disrespect to y'all. And in
6 doing that, I'm going to try to be as efficient as I
7 possibly can as I outline our position of the case,
8 what we feel happened, what we feel didn't happen,
9 what we feel exists in this case, and what we truly
10 feel is lacking in this case.

11 We're going to explain all of those
12 things, and I'll try to be as efficient as I
13 possibly can. And let me also say that if during my
14 advocacy for Mr. Tyler, if I've offended anybody by
15 the way I've conducted myself or some of the things
16 that I've said, hold that out on me as things that I
17 need to work on as a person or a lawyer.

18 If I've been rude or if I've made you mad
19 about the way that I've done things, hold that out
20 on me as some of the things that I have to work on,
21 but don't hold that against Mr. Tyler, please. Now,
22 we began this case on Tuesday, and one of the things
23 that I told you is we were here to set the record
24 straight.

25 I told you that I did not believe that the

1 State, represented by Mr. Weeks and Mr. Kodman, and
2 other members of the Solicitor's Office, could prove
3 this case beyond a reasonable doubt. And I told you
4 a little bit about what that definition is. And the
5 Court will instruct you about the law a little bit
6 later.

7 And there are two major definitions that I
8 believe this Court will talk about. One is the
9 amount of doubt that causes a reasonable person to
10 hesitate to act, meaning as you have listened to the
11 testimony here over the last couple of days, as you
12 have seen the witnesses, their demeanor, as you have
13 looked at this evidence that you have been
14 introduced to and will at some point in time during
15 your deliberations be able to look at and review, if
16 anything makes you hesitate to believe that Mr.
17 Tyler did the things that he's accused of, then
18 that's reasonable doubt.

19 If you feel like the people who have
20 testified for the State have had motives to
21 corroborate their stories, if the cousins, Wallow
22 Ware and Mr. Walker, were not truthful about things,
23 if you've learned other things about this case, or,
24 quite honestly, if there are things that the
25 prosecution did not bring to you that you need to

1 know in order to make this crucial decision, then
2 the oath that you took as jurors to well and truly
3 try this case, that requires you to find Mr. Tyler
4 not guilty.

5 And it's not guilty because they have not
6 proven the case beyond a reasonable doubt. The
7 first definition I mentioned is the amount of doubt
8 that causes a reasonable person to hesitate. Have
9 you hesitated as you've heard this evidence?

10 The second definition is are you firmly
11 convinced of his guilt. Are you firmly convinced of
12 his guilt? One of the things that Mr. Weeks said in
13 his opening statement -- and I say hold him to it,
14 because he told you what he was going to prove --
15 has he proven that Cornell Tyler shot Debra Dorch
16 and Joe Brewer?

17 Are you firmly convinced of that after
18 listening to the testimony, listening to the experts
19 in the science in this case? Are you firmly
20 convinced that he was even in that car, or are you
21 convinced that the people who said he was in that
22 car have some kind of stake or some reason to say
23 the things that they said to take the heat off of
24 them?

25 Do you believe science, or do you believe

1 the cousins and their friends and the lies that
2 they've told to cover things up? I say that because
3 after all of this time, after two and a half days of
4 trial, they haven't changed my mind. After studying
5 this case for two and a half years, they still
6 haven't changed my mind.

7 MR. WEEKS: Your Honor, I'm going to object at
8 this time.

9 THE COURT: The objection is sustained.
10 Personal opinions must remain outside --

11 MR. GIPSON: Yes, sir.

12 THE COURT: -- of the case.

13 MR. GIPSON: Yes, sir. Now, one of the things
14 that I try to do in these types of cases is I try to
15 come up with an analogy, something that can you help
16 me wrap my mind around what the evidence shows and
17 can make it a little bit easier to understand how
18 this whole thing works.

19 And it reminds me of a time when I went on
20 a family vacation to a place called New Braunfels,
21 Texas. We were on our way to San Antonio. And New
22 Braunfels is an old kind of German colony, Dutch
23 colony, I believe. It's one of the two.

24 Don't hold me to it, but it's one of the
25 two. And what they do is they do things kind of the

1 old-fashioned way. You can there, and they have old
2 breweries and things of that nature. And I was too
3 young to go into those, but they make beer the
4 old-fashioned way.

5 They make jewelry the old-fashioned way.
6 They make horseshoes and all of those types of
7 things, similar to a Fredericksburg, Virginia, type
8 place. And one of the things that struck me is they
9 had a jeweler there who made gold bracelets, and
10 silver bracelets, and other types of jewelry.

11 And what they do is they'd make the
12 jewelry, and then they'd explain to you a little bit
13 about the process. And what they do is they take
14 these nuggets of gold and drop it into a huge urn, a
15 melting pot. They call it a crucible, I believe.

16 And they heat up the crucible. And the
17 more it heated up, the gold would begin to melt.
18 And if you were dealing with gold that you had
19 sifted out and that you had found, it would start to
20 melt, and the impurities would rise to the top. And
21 the gold, the finest part of it, the true gold,
22 would separate from the impurities.

23 And they'd skim those impurities off so
24 they'd have the purest form of that gold, and then
25 they'd go ahead and start to make the jewelry from

1 there. And you're probably sitting here saying, you
2 know, "Well, what does that have to do with this
3 case?"

4 It's an analogy. And if you envision this
5 witness chair as that melting pot, as that crucible,
6 and you envision the gold and the nuggets of gold as
7 the witnesses' testimony, hoping you get the purest
8 form of that by putting it in a crucible and heating
9 it, and you envision my role in questioning the
10 witnesses as the heat that's added to the urn or
11 that crucible, then you can start to see that you
12 add that heat, and you start to whisk away the
13 impurities, and separate the impurities from the
14 true gold, from the good stuff, from the things that
15 really matter.

16 And that's what our role is in this case.
17 As the witnesses testify, we turn the heat up a
18 little bit. And you start to get rid of the junk,
19 you get rid of the impurities, you get rid of the
20 things that don't belong.

21 So you end up with the purest form of the
22 testimony that you can, which is the truth. And
23 that's what our process has been here today and over
24 the last few days. And if you look at the
25 witnesses, you can see how as we turned the heat up,

1 the truth began to come out.

2 The first witness -- and I've laid them
3 out chronologically, but I'll take some of them out
4 of order just for organizational purposes. The
5 first witness that came before us was Mr. Joe
6 Brewer. And first and foremost -- and I've said it
7 before, and I will say it again -- the act that took
8 place on August 27, 2005, was cowardly, it was
9 senseless, and it deserves to be punished, without
10 question.

11 Mr. Brewer said he had just begun working
12 for the Aiken Standard for about approximately two
13 weeks at that point in time. And he had gone down
14 the route that he traveled through, went through
15 Wagener and through Windsor and Union Academy Road,
16 three to four times. This may have been the fourth
17 or fifth time doing it.

18 And Ms. Dorch was very new to the route,
19 and he was supervising her. You heard the
20 testimony. And when it gets interesting, he says
21 that they pulled up to the area around Cornell
22 Tyler's house. And they were a little -- Ms. Dorch
23 had potentially missed one of the tubes that you put
24 the paper in.

25 And as she passed the tube, she said, "Oh,

1 I missed one," and began to back up to the tube.
2 And at that point, somebody approached her car. Mr.
3 Brewer this time said that someone approached the
4 car, tried to get into the car, and she sped off.

5 People jumped in the car and took off
6 after her. The interesting thing is that Mr. Brewer
7 sat in that witness chair a couple of days ago. He
8 said that somebody came to the car, and when I
9 prompted, "Who was it?" he said Cornell Tyler came
10 to the car -- "It was Cornell Tyler. I know it was
11 Cornell Tyler."

12 And as I started to turn that heat up a
13 little bit and ask him questions, I said, "Well, Mr.
14 Brewer, isn't it true that you gave testimony on a
15 prior occasion, and you said you didn't know who
16 came to your car?" -- confronted him with that
17 testimony.

18 And that was the truth. He did not know
19 based on what he said before. What he said was a
20 different thing two days than he said in prior
21 testimony, and a different thing than he said to law
22 enforcement the same day that this thing happened.
23 He didn't know who did it.

24 I ask you, do you believe that your memory
25 is going to be more clear the day that something

1 happened or 864 days later? He said he didn't know.
2 And when prompted about knowing and prompted with
3 the statements that he gave before, he said, "Well,
4 I just kind of -- it came to me."

5 He had an epiphany one morning and said,
6 "Oh, it was Cornell Tyler." I submit to you the
7 epiphany was the fact that he has sat down with Bill
8 Weeks and the prosecution and talked about this
9 matter over and over again. And the power of
10 suggestion is a strong thing.

11 If somebody tells you over, and over, and
12 over, and over that something is it, that something
13 happened a certain way, at some point in time you
14 may begin to believe it. But the truth of the
15 matter is when he was prompted, when it was freshest
16 in his mind, he had no idea who approached the car.

17 Now, remember, I talked to you about
18 pieces of a puzzle and how you can take a piece here
19 and a piece there and start to put these pieces
20 together. Remember, I told you that on Tuesday.
21 There are pieces of this puzzle that will start to
22 come together if you really think about it.

23 And let me ask you to do this, too. Just
24 please resist the urge to become emotional about
25 this case. It is a heinous case. But if you become

1 emotional, you forget to be reasonable. And when
2 you become emotional, you're doing exactly what the
3 prosecution wants you to do, and you forget about
4 the reasonable things that are there that show you
5 that this could not have happened the way that they
6 presented it.

7 He says that Cornell Tyler came to the
8 car. And none of Cornell Tyler's footprints are
9 anywhere near that spot. The only footprint -- and
10 we're going to get back to this latter -- that he
11 found on the side of the road by where he said that
12 Cornell Tyler came to that car belonged to Edward
13 Walker.

14 Is that making you hesitate for a moment?
15 Are you firmly convinced that things happened the
16 way the prosecution has said that they happened? He
17 said something else 00 Mr. Brewer said something
18 else -- that was very crucial in this case.

19 And, again, he changed his story around,
20 and when prompted and presented with prior
21 testimony, changed it back to what he said the first
22 time. I asked him, I said, "Well, Mr. Brewer,
23 didn't you say in prior testimony that a car passed
24 -- that after all of these things happened, you saw
25 a car slow down, looking into the field?" He said,

1 "Yes."

2 "And you said it was very suspicious,
3 didn't you?" And he said, "Yes, it was very
4 suspicious." I said, "Well, how many people were in
5 that car?" "Two -- the forms of two people," not
6 three, not people hanging all over the roof -- two
7 people, two people.

8 And that's important because we know for a
9 fact that two people were in that car, because
10 they've told you -- Edward Walker, Wallow Ware. We
11 know that, uncontradicted testimony. Nobody has
12 come in here and said that Edward Walker and Wallow
13 Ware weren't down that road.

14 The only contradicted testimony about who
15 was in that car is whether or not Cornell Tyler was
16 in that car -- completely uncontradicted, two people
17 in a car. Are you firmly convinced? Are you
18 hesitating to act?

19 That's based on Mr. Brewer's testimony,
20 who was there -- who was there, who was there -- not
21 somebody who's got charges pending, somebody trying
22 to get something off of them. The testimony given
23 almost contemporaneously, almost exactly after this
24 thing took place, 864 or so days ago, that's what
25 was said, not the things that you start to hear in

1 this courtroom.

2 That's why I say when you turn the heat
3 up, you start to get a purer form of what really
4 happened. This is an uncomfortable proposition for
5 you to sit as jurors as, but there are some tough
6 decisions that have to be made.

7 And the prosecution has not presented
8 credible evidence that should get you there beyond a
9 reasonable doubt. And that's what their burden of
10 proof is. That's what their job is. That's what
11 they have to do.

12 And as jurors when you promised to well
13 and truly try the case, those are factors that
14 you've got to get past -- not just skirt around, but
15 you've got to get past those -- past those -- to
16 find a person guilty of murder, a person guilty of
17 assault with intent to kill, a person guilty of
18 possession of a weapon during the commission of a
19 violent crime, when you know that two people who got
20 up here were actually there, two cousins. And blood
21 is thicker than water.

22 Now, another witness that we heard from
23 was Ms. Valerie Williams. And she essentially said
24 that Mr. Brewer came to her home, and it was right
25 after this thing happened. He was covered in blood.

1 She called 911 and explained the situation.

2 And she said, "You know, I was concerned
3 about him, but I was also concerned, you know, a
4 person came to my door bleeding, so I needed to call
5 911." And she verified that he came to the door.

6 Nobody's contesting that he was shot.
7 Nobody's contesting that he was in the car. She
8 just reiterated the things that he testified to.
9 And as a result of these calls, one of the people
10 who came out as a first responder was Mr. Harding.

11 And he did exactly what he was supposed to
12 do as an officer. He looked around, he secured the
13 scene, and he made sure that people who weren't
14 supposed to be around it didn't come around.

15 He made sure that the scene didn't get
16 contaminated. He made sure that nothing got
17 missing. He did his job exactly the way that it was
18 supposed to be done.

19 And what he also told you is that he
20 really didn't know any particulars about the case.
21 He just secured the area. And he also did something
22 else. He started a crime log, is what I call it, so
23 that he could note the people who came in to make
24 sure that they had a note of everybody who came in.

25 One of the things that's not being said in

1 this case, we're not saying that anybody has
2 tampered with any evidence. We're not saying that.
3 We're not saying that. Because once this thing
4 started, the investigators who came on the scene and
5 the SLED people who analyzed evidence, they did
6 their jobs.

7 They collected evidence, and the evidence
8 showed what it should have showed -- that something,
9 first of all, wrong happened, something heinous
10 happened. It showed the shooting. They showed the
11 bullets, shell casings, all of those things that
12 you'll have an opportunity to take a look at.

13 They showed those things. But what they
14 didn't show is that Cornell Tyler did those things.
15 And as I said, I'm taking them a little bit out of
16 order. Bernice Wingard said something that was
17 crucial as well.

18 She lived along that stretch of road. She
19 said, "I heard shots. I was getting ready for work
20 that morning. I usually leave somewhere around 4:30
21 or so, because I've got to be at work at 5:00. I
22 heard shots. And what did I do when I heard those
23 shots? I called 911. And then I kind of waited for
24 a minute, then I got ready to leave."

25 And what did she say? "I saw a car coming

1 back down the road with headlights on, and I thought
2 that car may be involved. So I just kind of froze
3 for a minute and decided to wait a little bit
4 longer, and then I left."

5 I asked her a crucial question. I said,
6 "Were you the only one in the car?" She said, "I
7 wished that I wasn't, but I was. I wish someone
8 else had been with me, but I was the only one in
9 that car when I went to work."

10 So you know what that says. She was not
11 the person that Mr. Brewer saw pass by, because
12 there was one person in her car. He saw two.
13 That's crucial. That's another one of those pieces
14 that I ask that you think about as you start to go
15 through and analyze the matters in this case.

16 Now, as we go further in this testimony,
17 we met with Kendall Seawright, we met with Edward
18 Walker, we met with Wallow Ware. And I'm going to
19 attempt to take those three together. They're
20 almost like, I don't know, three amigos, three
21 compadres.

22 The three of them, the three friends,
23 which, of course, we know these two were cousins,
24 and their friend, Kendall Seawright. It just seems
25 kind of fortuitous the way this whole meeting thing

1 happened. And just ask yourself -- I mean, quite
2 honestly, if you're going to lie about the little
3 things, are you going to be truthful about the big
4 things?

5 Do you honestly believe that Kendall
6 Seawright was just playing pool one day, and just
7 happened to be walking down the street on the
8 corner, and just happened to run into his good
9 friend, Wallow Ware, who had just previously
10 happened to just see his cousin walk up while he was
11 talking to a girl at a set of apartments in Salley,
12 or Wagener, or one of those areas?

13 All of these fortuitous things, these
14 serendipitous things that just happened, and they
15 just happened to get together, and they just
16 happened to decide to go down to John Hartwell's
17 house and hang out. You know, they just happened to
18 do these things.

19 Do you really believe that's how this
20 happened? Or do you believe that the three of them
21 had plenty of time to sit down and start discussing
22 how they want this testimony to unfold? They say
23 that they went down to Cornell Tyler's house.

24 Kendall Seawright says, "Well, you know,
25 we went down there, and I don't know why we were

1 there. Head Walker wanted to go down there." Head
2 Walker says, "Well, you know, Kendall wanted to go
3 down there." Suffice it to say they end up there.

4 Kendall says he's sitting in the car.
5 Head goes up and knocks on the door. And at some
6 point in time, Duce comes to the door -- Mr. Tyler
7 comes to the door. And he says what? "Why are you
8 at my house at this time of morning?" --
9 uncontradicted, "Why are you here?" -- you know,
10 essentially, "You don't belong here. You know that
11 you're not supposed to come around here."

12 And at some point in time, Kendall
13 Seawright says that as this thing went further, some
14 headlights came out. He claimed that Cornell ran to
15 the side of the road, and went back in the house,
16 and all of this shooting took place.

17 He says that Cornell's brother did a bunch
18 of shooting, and they took off after her. Now,
19 Kendall does say he got out of the car. Probably
20 the smartest thing that anybody could have done who
21 was in that car was what he did, was to get out of
22 the car.

23 But I submit to you that he's still
24 covering, if you listen. He's covering for his
25 friends who he came down there with. And he's

1 covering for them, if you listen to the testimony
2 that you heard after that.

3 I asked him a couple of questions. I
4 said, "Well, Mr. Seawright, you said that Cornell
5 got in the car with a gun?" He said, "Yes, I think
6 it was a gun. I'm pretty sure it was one, but I'm
7 not sure. Then Head jumped on top of the car and
8 started riding down on top of the car."

9 And we're going to get to that as well.
10 But he said that Head Walker jumped on that car.
11 They took off after her. But he said two things.
12 He said he never saw Cornell Tyler shooting
13 anything. He also said -- and this was interesting
14 to me. He said, "Well, I can't say that he was in
15 the car the whole time. You know, he could have
16 gotten out."

17 That to me sounds like somebody who's
18 beginning to vacillate because they know that the
19 heat is on them, and they don't want to incriminate
20 themselves any more. Maybe he knows that he's lying
21 about this thing. And he knows the two that did it,
22 but he doesn't want to put Mr. Tyler all the way in.

23 But he wants to help his friends who he
24 came down there with, who he hangs with all the
25 time. He wants to give them a little bit, but he

1 definitely doesn't want to put Mr. Tyler all the way
2 in.

3 He says, "I never saw him shooting a gun.
4 And he could have gotten out of the car, because I
5 didn't see him get out when they came back." Does
6 that stuff kind of seem a little bit inconsistent
7 with somebody who was an eyewitness to these things?

8 Think about those things. Those are those
9 nuggets that I'm talking about. Those are those
10 things that you've got to consider. These are
11 people who are really tight and friends who came
12 down there. And somebody is covering for someone.

13 If you listen to the testimony, they are
14 recovering. He rode with them. He rode back with
15 them, after all of these things happened. And just
16 humor me for a moment. You've all been to movies.
17 You heard that line of questioning.

18 You've been to a football game, or to a
19 movie, or to a play, a ballet, something, with
20 friends. You go to the ballet, and you love it, you
21 hate it, you are indifferent towards it, whatever.
22 After you've finished and get back in the car,
23 what's the first thing that you do? You talk about
24 it.

25 You talk about what you saw, what you

1 liked, what you didn't like. "I'll never go see
2 them again." "I hate Will Smith movies." "I love
3 this, I love that." You say something. But they
4 didn't say a word. Do you really believe that?

5 Do you really believe that? These same
6 three people who rode down together had everything
7 to say to one another, rode back after this
8 occurrence, this heinous occurrence, and had nothing
9 to say to one another, except, "Yes, I'll see y'all
10 later," like it's just something they do every day?

11 Do you believe that, or does that make you
12 hesitate? We know good and well that they talked
13 about what happened. They said, "All right, you
14 didn't see this. I didn't do this. You know, if
15 somebody says something, I didn't have anything to
16 do with it."

17 You know good and well that's what
18 happened. And that's the kind of thing that they
19 discussed when they got back in here with Mr. Weeks
20 and the Solicitor's Office under this roof,
21 somewhere in this courthouse, and sat down and
22 talked about testimony -- because when I asked Mr.
23 Seawright the direct question, "You all sat down
24 together, a couple of y'all had lawyers, you sat
25 down with Mr. Weeks, and you got in there to kind of

1 get your stories straight, didn't you?" And he
2 said, "Yes."

3 To get their stories straight, to make
4 sure that they didn't really point their fingers at
5 one another, to make sure that they protected one
6 another the best they could so that they could all
7 try to point the finger at Mr. Tyler. Think about
8 those things. Think about those things.

9 Does it make you wonder when they sit
10 together before a case comes up and corroborate
11 their stories? Proof that they corroborated their
12 stories -- did you hear how they answered the
13 questions when they were confronted, the three of
14 them -- when they were confronted with issues that
15 were contradictory?

16 "Well, I left some details out this time
17 that I kind of remembered this time that I didn't
18 remember the first time." Folks, they read from a
19 script. That was the mantra of this case for those
20 three guys. "There were some details I kind of left
21 out."

22 Well, what kind of details did Wallow
23 Ware, the cousin, leave out? He says -- when we get
24 to the crux of the matter, he says that "Well, while
25 Cornell Tyler was doing all this shooting, my cousin

1 jumped on top of the car, and he didn't have a gun."

2 I said, "Well, Mr. Ware, didn't you say in
3 prior statements, prior testimony, with police and
4 under oath that your cousin was doing some shooting
5 and he had a gun?" "No, I didn't say that. I
6 didn't say that."

7 Presented it to him, read it to him, and
8 he sat there, eyes going in every different
9 direction. He was caught. And what did he say?
10 "There were some details that" -- he went right back
11 to the script.

12 "There were some details that I didn't
13 remember from the last, you know, situation, but I
14 remember them better now." Eight hundred and
15 sixty-four days later, you're remembering details
16 that you didn't remember a couple of days when you
17 were arrested and interviewed by the police -- that
18 you didn't remember, that you didn't remember, that
19 you did not remember -- when you were under oath and
20 placed your hand on this Bible and promised to tell
21 the truth, the whole truth, and nothing but the
22 truth -- those details.

23 He's lying to you. He's lying to you.
24 And can you convict a person of murder based on
25 those lies -- lies that you know he would not even

1 acknowledge when presented with them? What kind of
2 liar do you have to be to keep lying when you're
3 presented with the lie, after promising to tell the
4 truth?

5 You're the kind of liar who is covering
6 for your cousin. Blood is thicker than water. Are
7 you firmly convinced that Mr. Tyler is a murderer?
8 Are you firmly convinced, or are you hesitating to
9 act?

10 Mr. Ware spoke about the fact that his
11 cousin jumped on top of the car. And it was
12 interesting to me that he also said that he didn't
13 notice that he was on top of the car until he got a
14 little ways down the road. Come on, now. Have you
15 ever left a cup of coffee on top of the car?

16 You pull off. The coffee spills over the
17 car. You know, you say a couple of words that you
18 shouldn't say in Court. There goes your coffee that
19 you paid for, and you hope it wasn't Starbucks,
20 because then you'd have to go back and pay for it
21 again.

22 Have you ever left you wallet on top of
23 the car? You pull off. "Oh, man, I forgot my
24 wallet," or "I left my briefcase, and it fell off
25 the car and fell into the street" -- or your glasses

1 or your camera. That's the kind of stuff you
2 forget. It's stuff that, you know, you do it
3 inadvertently.

4 You just put it up there, and you have 30
5 or 40 things in your mind. You jump in the car,
6 pull off. Bam, it falls off. You realize it fell
7 off. And sometimes you don't even realize it fell
8 off, because it's so light that you may not hear it.

9 But a grown, 25-year-old man at 4:30 in
10 the morning, jumping on top of your car while you're
11 pulling off to chase somebody, I would think that
12 you would hear that. Does that leave you firmly
13 convinced that he's lying to protect somebody?

14 Let's take that a little bit further. He
15 says that the sun roof just happened to be open just
16 a little bit. And you'll have a chance to look at
17 those pictures. He said that the sun roof was open.
18 And as they drove down the road -- when I talk about
19 this road, you'll see it. It's State's Exhibit
20 Number Fifteen, and State's Exhibit Number Thirteen,
21 and State's Exhibit Number Twelve, pictures of Mr.
22 Ware's car that was involved in this.

23 He says the sun roof just happened to be
24 open just a little bit. And that was what enabled
25 his cousin, the stunt man, to jump on the car while

1 it was pulling off and hold onto to just a little
2 bit while it was riding. And he said it was just
3 open a little bit, now. You know, it was open a
4 little bit.

5 So he says his cousin is holding onto the
6 sun roof, 160-or-some-odd pound man, grown man,
7 holding onto the sun roof, going down a dirt road
8 chasing somebody. Let me ask you this as an aside.
9 Have you ever been riding in the car with or without
10 a seat on for a minute, and you look down and just
11 have to throw on brakes real quick, say, five miles
12 an hour?

13 What happens? Ten miles an hour, 15 miles
14 an hour, same thing. If you have books in the back,
15 briefcase in the back, anything else in the back,
16 groceries in the back, somebody pulls in front of
17 you, throw on brakes, everything flies. That's
18 inertia.

19 An object in motion is going to stay in
20 motion until some other object stops it. That's
21 what happens. That's the science. That's the real
22 world. That's not how it works with Mr. Ware and
23 Mr. Walker.

24 He gets on this car, holding onto a sun
25 roof two inches, driving down a dirt road, weaving

1 back and forth. And, oh, Mr. Walker is just holding
2 on. Then he comes to the end of the road and takes
3 a left, which means he has to slow down.

4 And he's going -- he's got to be going --
5 he said he got up to speeds of 75 miles an hour.
6 And Mr. Brewer said he looked down, and it was
7 somewhere down between 95 and 100 he's driving. So
8 when he turns to the left, Mr. Walker doesn't fly
9 off the car then -- doesn't tear his hands up,
10 doesn't break a finger, break a nail, nothing.

11 He doesn't even tell you that. Is that
12 even reasonable? Is it plausible? Does it make you
13 hesitate? And that's why I said when we started
14 this case common sense is the key in this case. You
15 don't park your common sense outside in the car when
16 you come in here. You bring it in here.

17 That's the common-sense stuff in this case
18 that matters. If a person will get up here and put
19 their hand on the Bible and tell you that story,
20 come on, people, what are they really hiding?
21 They're hiding the fact that the two of them -- like
22 Mr. Brewer said, two persons -- the two of them were
23 in that car, and they did this deed.

24 That's what's being hidden from you.
25 That's what's being hidden. But more so the fact

1 that he says -- Ware says they got to going 75 miles
2 -- or 70 miles an hour down the road, and his cousin
3 is just holding on.

4 Has anybody in here ever water-skied
5 before? You may get up to about 35, and if you're
6 doing that, you're doing really well. And that is
7 one of the hardest things to try to do, to hold on.
8 And you're bumping up and down, water-skiing.

9 And you mean to tell me this man held on
10 70 miles an hour, shots being fired all around him.
11 It's summertime in Aiken. In most of South
12 Carolina, you're driving at night and have lights
13 on, moths are hitting the car, stuff flying in front
14 of the car, getting hit by moths, everything else
15 out there.

16 Come on, people, you know that didn't
17 happen. It's not reasonable. It's not logical.
18 Then they go to a four-way stop, and he said that
19 they stopped at some point and turned around.
20 That's when Mr. Brewer saw them, when they stopped
21 and turned around.

22 But if you stop and turn around, why not
23 get in the car then? He says he rode back, and
24 that's about 2.2 miles. He rode a total of 4.4
25 miles on top of a car with his hands in the sun

1 roof, and no effects of it. When you look at this.
2 sun roof, there's nothing wrong with this sun roof,
3 nothing broken.

4 Come on, people, it's not reasonable.
5 It's not reasonable. Are you firmly convinced after
6 hearing that, or does it help you a little bit more
7 when you learn that he's got a past -- grand
8 larceny, strong-arm robbery, burglary third, been to
9 jail for a while, career criminal, been in these
10 types of situations or criminal situations a good
11 bit.

12 This isn't new to him. This isn't his
13 first time around the block. It's not his first
14 rodeo. He's used to this. You saw how he sat up
15 there, wasn't flinching -- "No," "No," "Huh-huh,"
16 "No." Somebody died -- "No," "Huh-uh," "I didn't do
17 it," "I didn't do anything wrong."

18 Is that the demeanor of somebody who cares
19 about a situation? He sat up there like he was just
20 being asked questions about whether or not he likes
21 football, basketball, and golf -- not about the
22 death of somebody that you have been directly linked
23 to. It's not plausible.

24 And even in his testimony, when he was
25 confronted with things that he did say or didn't say

1 on prior occasions, what does he say? "All the
2 details. You know, there's some details I just
3 happened to leave out."

4 Detail number one, he says, "Oh, yes, I've
5 seen guns all around Cornell Tyler's house, and
6 there are always scopes and all kinds of guns." He
7 never said that to police at any point in time.
8 It's not in any statements of any sort.

9 I said, "Well, where is it?" "Oh, you
10 know, one of those details I just remembered 864
11 days later." When I asked, "Well, Mr. Walker, what
12 kind of shoes were you wearing?" "Oh, some red
13 Timberlands. Oops, I didn't mean to say that,"
14 because now we remember based on what Mr. Leatherman
15 and some of the other SLED people who come up, and
16 Aiken County Sheriff's Department people, that the
17 footprint that is clear that we know was his
18 footprint from a red Timberland -- a red Timberland
19 boot -- not Cornell Tyler, not Wallow Ware, not
20 Kendall Seawright -- Head Walker.

21 And then the story he comes up with was,
22 "Well, you know, I was down at Cornell's earlier
23 that day, and he wasn't home. So, you know, I
24 walked down the road to see some people" -- another
25 detail that nobody heard anything about until he got

1 on this stand 864 days later.

2 And we've come to learn from Cornell's
3 testimony that he had a barbecue that day. He was
4 home. Johnny Miles was home. His brother was home.
5 Family was there. And he said Edward Walker didn't
6 come. He wasn't welcome. He wasn't there.

7 These are those types of details that I'm
8 talking about. Are you firmly convinced? And all
9 of these things, these new stories, start to surface
10 after the powwow happened with the Solicitor's
11 Office, the meeting with those three.

12 And they started coming up with new
13 stories and new, innovative ways to try to pin this
14 thing on Cornell Tyler. I submit to you that they
15 are protecting one another. They're protecting one
16 another. It's clear.

17 And the Solicitor's Office should be going
18 after them. We know they were in the car. And
19 circumstantial evidence tells you that Mr. Brewer
20 saw them driving away, the two people -- the two
21 people.

22 Now, one of the things that you're told
23 when people are dealing -- well, at least I remember
24 being told as I go back to that crucible situation,
25 talking about getting the purest testimony is

1 there's this old saying garbage in, garbage out. If
2 you put garbage into that crucible and heat it up,
3 you're not going to get gold, because you didn't
4 start with anything.

5 And that's what happened. You have gotten
6 garbage type testimony, testimony that makes no
7 sense, self-serving in every way, shape, or form.
8 And that's what you've gotten back. That's what
9 you've gotten back in this situation. That's
10 exactly what you've gotten back.

11 Now, you may remember when you first came
12 in on Tuesday -- and I'm sure you remember -- this
13 list, this roll. The Clerk's Office actually called
14 the roll. And they called, and they wanted to know
15 who was here, who was present, who was not present,
16 so that they could determine who was going to be
17 able to serve and who was going to be available to
18 serve on jury duty.

19 And I ask you to do that same type of roll
20 call, you know, in terms of who's absent, who's
21 present, what's absent, what's present in this case.
22 And if you look at the things that aren't present,
23 the things that are absent in this case, those are
24 crucial matters that should have been brought to you
25 by the Solicitor's Office, who has the burden of

1 proof in this case.

2 Lt. Fleury, at the end of the State's case
3 yesterday, talked about coming to the scene at a
4 certain time. And what did he say? He mentioned
5 the name of Johnny Miles. And that name was
6 mentioned by Cornell Tyler.

7 This was an older man who Cornell Tyler
8 allowed to stay at his house while he was -- he had
9 gotten -- basically, he got thrown out, something
10 happened with his boss, and he didn't have a place
11 to stay. Cornell Tyler let him stay there and
12 allowed him to work with him.

13 Johnny Miles was there. Where is he?
14 Absent. That's somebody who could come in and tell
15 you something about this case. They tried to
16 bootstrap that information because there was a
17 shotgun that was found that belonged to Johnny
18 Miles, a 60-year-old gentlemen. He's 62 now, has
19 nothing to do with this case.

20 But they saw his shotgun, and, oh, they
21 didn't bring it. Johnny Miles had a shotgun there.
22 There was nothing else said about it. But you asked
23 Fleury, turned that heat up on him, and he said that
24 had nothing to do with this case. That was his
25 shotgun.

1 But where is he? Maybe he could shed some
2 light on this thing. Maybe he could tell you what
3 really happened out there. He's not here. He
4 didn't testify. But remember something -- and Judge
5 Newman explained this to you at the beginning -- the
6 State has the burden of proof.

7 We don't have to do a thing. We don't
8 have to call witnesses. We don't have to
9 cross-examine witnesses. I don't even have to do
10 this right now. Some of you are probably saying "I
11 wish he wouldn't. I wish he'd sit down."

12 But we don't have anything to prove. They
13 do. They do. You don't have any footprints of
14 Cornell Tyler exactly where they should have been on
15 the side of the road. The only footprints you have
16 is Johnny Miles.

17 You have no fingerprints of Cornell Tyler
18 in that car, nothing. For somebody who was supposed
19 to be crawling all around in the car and sticking
20 through the windows and shooting, you'd expect to
21 see something. You don't have any of that.

22 There is no trace evidence. You had a CSI
23 person come in here and testify about how they
24 collect evidence, what they look for, how they make
25 latent fingerprints, how they -- not how they make

1 them, but how they collect latent prints. You heard
2 all that testimony.

3 And through all the expertise, all those
4 15 years of classes that he's been to, and all the
5 training he's been through, and all the places he's
6 worked, he could not find any trace that Mr. Tyler
7 was in that car.

8 And you want to know why he couldn't find
9 a trace of it? Because he wasn't. He wasn't. The
10 science doesn't lie. The science says no
11 footprints, no fingerprints, no trace evidence, and
12 no motive.

13 What's the motive? Nothing. There is
14 nothing that's been introduced to say that Cornell
15 Tyler had any reason to be in that car doing any of
16 those things. There is an absence of unbiased
17 witnesses. The only people who have said are people
18 who are directly related to one another and friends
19 in this case.

20 But all of these people who came in and
21 who had all of this extensive learning, extensive
22 training, law enforcement and otherwise, have not
23 been able to find one scintilla of evidence that
24 says Cornell Tyler was in that car -- none of them,
25 none of them. And there is absence of proof beyond

1 a reasonable doubt by either definition, whether
2 it's firmly convinced or whether it's causing a
3 reasonable person to hesitate to act.

4 You heard from Ira Parnell, the gun
5 expert. He told you about how guns work, all of
6 those types of thing. And he said the gun could
7 have been as small as 30 inches, as large as much
8 larger -- 45 inches, maybe more. But he couldn't
9 tell you that Cornell Tyler had anything to do with
10 any of those things, none of them.

11 You heard from Joe Powell, trace evidence
12 expert. We just talked about it -- couldn't find
13 fingerprints of Mr. Tyler, couldn't find footprints
14 of Mr. Tyler, no fibers, no nothing like that,
15 nothing saying that he was there -- nothing,
16 nothing, nothing.

17 And, incidentally, the only thing that
18 they talked about, about gunshot residue, was they
19 said they found some on Mr. Brewer. And they said
20 that maybe it was because a bullet exploded and it
21 got on him while he was being shot. They're saying
22 maybe he could have shot a gun -- I don't know.

23 And that's not why we're here. But we're
24 here to say that the evidence does not say that
25 Cornell Tyler did any of those things. The science

1 doesn't say any of that stuff. Dr. Sexton went
2 through the autopsy. Nothing that he showed us can
3 tell us anything to do with Cornell Tyler.

4 We talked about the reason why we can't
5 find any of these things is because they don't
6 exist. The only thing that exists is three people
7 lying and covering for one another.

8 You know, we brought in three witnesses
9 and Mr. Tyler, and you're aware who those people
10 were. Those were James Gleaton, Wallow Smith, and
11 Frederick Scott. Mr. Gleaton, who knows these
12 folks, and they said -- the three friends said, "You
13 know, we saw Mr. Gleaton at a friend's house. He
14 wanted some beer. I had some in the trunk and gave
15 it to him, went inside."

16 He said they pulled up. He confirmed a
17 couple of things. He confirmed the fact that Wallow
18 Ware was driving that car. He said, "The car was
19 like mine, and I know it because, you know, they're
20 very similar. When I saw a car coming down, I was
21 walking towards the house, actually going down there
22 to see what they were up to.

23 "And the car passed me by. I heard some
24 shooting." We asked, "Well, who was in the car?"
25 He said, "I'm not really sure." He said on the way

1 back, he saw them pass by again. And he said one
2 thing. He said he heard Walker yelling.

3 He didn't say he heard Cornell Tyler
4 yelling. He didn't say that. He said he heard
5 Walker yelling. And he knows Wallow Ware's car
6 because it's a lot like his. That's what he said.

7 He doesn't have any enemies to reward -- I
8 mean, enemies to punish or friends to reward in this
9 case. Wallow D. Smith, in Manning Correctional
10 Institution over in Columbia, pled guilty to what he
11 did, taking responsibility for what he did, in jail
12 for it. He tells you that he had an opportunity to
13 meet Kendall Seawright.

14 He met Wallow Ware. He also met Cornell
15 Tyler. And he met them in jail. And one of the
16 things people do in jail is sometimes they talk
17 about their cases -- you know, "What's your opinion
18 on this?" "This is what happened. What do you
19 think? What do you think?"

20 And he said that James -- excuse me, that
21 Wallow Ware told him that his cousin, Edward Walker,
22 had shot, had fired a gun, and was in that car.
23 That's what he told you. He also told you that he
24 wrote a letter, wrote to the Solicitor's Office.

25 They came and talked to him. They didn't

1 act on it. So at a later date, when Head Walker and
2 he were housed and they started talking about
3 things, he said, "I didn't write them again because
4 they didn't act on the first one. They didn't seem
5 interested," is what he said.

6 He said, "Head Walker said something very
7 similar to me as well. He said that he was -- that
8 he was in a car and that he fired shots. And he
9 never mentioned Cornell Tyler's name in any of this.
10 He never said Cornell was in the car."

11 And Mr. Smith never made any overtures,
12 never said that Ware said that Mr. Tyler was in that
13 car. When they talked to people about their case
14 directly, they never mentioned Mr. Tyler. They only
15 mentioned him when they started being prompted by
16 law enforcement and started putting their stories
17 together.

18 That's when Mr. Tyler's name started
19 coming up, and that's when they started trying to
20 assign blame to him, because they knew that they
21 were in trouble, they knew that they were in the
22 car, and they knew that everybody else knew that the
23 two of them were involved -- the two people in the
24 car, the two people in the car.

25 Freddie Scott said that, you know, "That

1 morning somewhere around seven or so, he came to my
2 door. And, yes, I know. I mean, he had some
3 problems with my wife at one point in time. I know
4 him.

5 "And he knocked on my door. I came to the
6 door. We went outside and talked for a little bit."
7 And what did he say? He said, you know, "I think we
8 shot somebody." That's what he said.

9 And he also said that Head Walker said
10 something to him about hiding a gun. And then a car
11 came, and he waved to the people. They picked him
12 up because they were coming from down in that area,
13 and left.

14 I asked him that, and he told you those
15 things. He doesn't have any stake in this case.
16 And Mr. Weeks tried to cross-examine him -- he
17 didn't try, he cross-examined him. And he tried to
18 cross him up a little bit and say, "Well, did you
19 live on this side, or this side, or this side?"

20 And he didn't draw the map. His address
21 is what it is. It's behind the restaurant, which is
22 diagonal from the field. He knows Ms. Williams, and
23 he knows that he tends to the cows in the pasture.
24 That's his job.

25 What reason does he have to come in here

1 and start lying about stuff? None, none. These are
2 people who have been in contact. They're not just
3 sitting here; and they come in for a few minutes in
4 Court, and they put on a good face.

5 They've been in contact with them for some
6 period of time. They know them. They know their
7 reputation. They know the kind of people they are.
8 And they can come in here and tell you a little bit
9 more about them and their character than we can
10 establish in a few minutes through a
11 cross-examination.

12 And that's one of the crucial things here.
13 It's interesting that Cornell decided to testify as
14 well, Mr. Tyler. He didn't have to do that. But he
15 told me he wanted to get up here and explain to you
16 all that really happened that day.

17 And what did he tell happened? You heard
18 him. It was just a few hours ago. He told you, "I
19 was at my house, a knock on the door -- you know,
20 knocked a few times. And quite honestly, I thought
21 it was Misty."

22 He said he went to the door, and there was
23 Head Walker. And he said, you know, "Why are you
24 here this time of morning?" Head asked him to
25 borrow some money. And what did he tell you?

1 He said Head had been in prison for a
2 while, and he'd been, you know, on hard times,
3 hadn't done anything for his kids, and he asked him
4 to borrow \$20 before. "I gave it to him." And he
5 came back, he said, and said, "Can I borrow some
6 money?" He said, "Yes, I gave it to him and said
7 "You've got to go." He said, "I went back to bed."

8 A few minutes later, he starts hearing
9 gunshots. Head Walker comes back and says, "Y'all
10 need to leave." Now, the problem is that he left.
11 He left. That is a problem in this case. You
12 cannot get around that.

13 He left. You can't get around it. And
14 you have little rhymes that people will tell you.
15 You know, if a person flees, they're guilty, stuff
16 like that. If they flee, they say if a person runs,
17 there are all kind of things and mantras that people
18 will tell you, "Well, you know, if he's not guilty,
19 why did he go?"

20 And I really can't tell you. You know,
21 until you walk a mile in a man's shoes, you don't
22 quite know what decisions they'll make at what
23 particular time and why they do it. But I can say
24 this reasonably. There are people that are afraid
25 to get married.

1 There are people that are afraid of water.
2 There are people that are afraid of dogs. There are
3 people that are afraid of a lot of things. But
4 something of this magnitude, if your name -- well,
5 if you get stopped by the police, maybe you're
6 speeding, maybe you're not, you get a little
7 nervous, a little bit of trepidation there, you
8 know.

9 Those are the things that make people
10 nervous. But if your name is called in a murder and
11 somebody said -- and you know that somebody with a
12 bad reputation, who's been in jail a bunch of times,
13 was around your house and some shooting took place,
14 the man says, "You know what, you may need to leave"
15 -- you know that -- don't you think you're going to
16 be a little bit nervous?

17 Do you think that maybe you may make a
18 decision on the spot that may not be a good one? He
19 left. He said, "I tried to get in touch with my
20 uncle because I just needed to talk to somebody."
21 And he got in touch with his uncle.

22 And he said, "And then I came down to
23 Columbia, and I got in touch with my family and got
24 in touch with the Aiken County Sheriff's
25 Department." He tried to put some money together to

1 get a lawyer 00 he did that -- "And I turned myself
2 in."

3 That's what he said. Should he have left?
4 No, he shouldn't have left. He should have stayed
5 there and should have faced the music from day one.
6 He should have called 911 and should have gone down
7 to the Sheriff's Department and said, "You know
8 what, this stuff was going on outside, and I didn't
9 have anything to do with it. But, you know, y'all
10 just need to know there were some people around my
11 house."

12 That's what he should have done. There's
13 no question about that. That's what he should have
14 done. But he says, "When my name was called, you
15 know, and they said they were looking for me to do
16 with a murder, I got scared. And I didn't know what
17 to do. I hadn't been in this kind of situation
18 before, and I left."

19 But, folks, there is absolutely no
20 evidence in this record that says that he went up
21 the road, and took guns with him, and hid guns, and
22 hid evidence, none of that stuff. You didn't hear
23 that. Quite honestly, when Mr. Fleury came and
24 checked the house, he didn't find anything.

25 He made a bad decision. But he turned

1 himself in once he hired an attorney. And they
2 walked up to Aiken County Detention Center, walked
3 in, and he turned himself in. And that's what he
4 did.

5 And the evidence still does not connect
6 him, the science doesn't connect him, to the things
7 that Mr. Weeks is trying to say happened out there.
8 Now, as we start to wrap this thing up a little bit,
9 Bill Weeks didn't bring in the uncle and say, "What
10 did y'all talk about?"

11 He could have done that. He didn't bring
12 him in here. He didn't bring in anybody from any
13 hotel in Columbia where he stayed and say, "Was he
14 there? Was he here? Did he do this? Did he do
15 that?" No, he didn't.

16 And you know what Cornell said? He said,
17 "You know what, I got in that hotel, and I stayed
18 there. I didn't go anywhere. I just sat there, and
19 I was scared. I just talked to my family, and I
20 just wanted to make sure that I had somebody to walk
21 in there with me, because I didn't do it."

22 That part is reasonable. But he shouldn't
23 have stayed gone. He shouldn't have gone. There's
24 no question about that. And an interesting thing,
25 too, is with this Head Walker thing. You know,

1 Cornell lent him money, gave him money on a couple
2 of occasions to help get him out of a situation.

3 And he turned around and bit him. There's
4 an old proverb where a man walks into the woods, and
5 he sees a snake that's frozen. It's cold outside.
6 It's snowing. The snake's frozen. He picks the
7 snake up, brings him in the house, lights a fire,
8 and puts a blanket over the snake.

9 And the snake begins little by little, as
10 reptiles will do, they start to thaw out, and he's
11 still alive. And he brings the snake back to
12 health. The snake thaws out, and he's okay. And
13 then the man goes over to touch the snake. The
14 snake bites him on the hand, and he's dying. It's a
15 poisonous snake.

16 He said, "Why did you bite me? I brought
17 you back to health. I helped you out. I did
18 everything I could to get you back to where you
19 needed to be." And the snake said, "You knew I was
20 a snake."

21 And that's kind of what we're left with
22 here. Edward Walker is the logical person who did
23 all of these things, who has covered, who has lied,
24 who has weaved this web of lies, who sits up in here
25 unshaken, unmoved, and tells this story like he's

1 telling you about something -- no emotion, nothing.
2 He just talks to you like he's just talking to
3 somebody on the side of the road.

4 One other thing I want you to think about
5 as you look at these pictures. They said that
6 Cornell Tyler hung out of that window shooting a
7 gun. Did you look at Cornell Tyler? Do you see his
8 size?

9 Do you think that he could fit out of that
10 back window to shoot a rifle, fit through a sun roof
11 to shoot a rifle? Look at him. Again, that's
12 reasonable doubt. And this car, the back windows
13 don't even go all the way down. They go halfway
14 down. Do you think he could do that, or do you
15 think the thin man who sat up here was the person
16 who was doing that kind of stuff?

17 Let's just be reasonable for a minute, cut
18 all that other stuff out. Could he have even fit in
19 that window? Think about it. And as I said, when
20 this thing boils down, they just want you to be
21 emotional about it. They're going to come in here
22 in a couple of minutes, and I expect Mr. Weeks to
23 say, you know, "Well, the bottom line is we think
24 Cornell did the shooting. But you know what, it
25 really doesn't matter, because, you know, since his

1 friends were around him and the stuff happened at
2 his house, it doesn't matter if he shot them or not,
3 because there's a doctrine called hand of one is the
4 hand of all.

5 "And if you or one of your cohorts does
6 something, and you're around them, and you knew that
7 they're about to do it, or you had something to do
8 with it, you're just as guilty as they are. So it
9 doesn't matter if he shot them or not." But, folks,
10 I tell you that that's offensive, because that's not
11 what he told you.

12 He told you Cornell Tyler shot those two
13 people -- killed Ms. Dorch and injured Mr. Brewer.
14 That's what he told you. Don't let him start
15 wiggling off the hook and changing things around now
16 that he knows that the evidence doesn't show what he
17 promised you that it was going to show.

18 Cornell Tyler didn't shoot anybody. He
19 wasn't in the car. He didn't plan anything. He
20 didn't have any scheme or anything like that to put
21 these things together. There's no proof of that --
22 no credible proof, no believable proof of that.

23 Don't let Mr. Weeks start wiggling off the
24 hook with that kind of stuff, because beyond a
25 reasonable doubt is the standard here. And they

1 have not met it. If you choose to vote not guilty
2 here, it doesn't mean that you condone what happened
3 out on the side of the road that day.

4 You're saying that in this instance, in
5 this case, in this courtroom, they have not proven
6 beyond a reasonable doubt that Cornell Tyler did
7 these things. That's what you're saying. There is
8 another day for them to bring justice to Wallow
9 Ware, to bring justice to Head Walker.

10 But in this situation, they haven't
11 handled what needs to be handled. They haven't
12 gotten you firmly convinced. If you believe that
13 Cornell Tyler may have done something or he could
14 have been involved, that's reasonable doubt.

15 If you say he may have, or maybe he knew
16 something about it at some point in time, or
17 possibly, all of those things are reasonable doubt.
18 And you have to get past the speculation, and the
19 suppositions, and the what-ifs and the maybes.
20 You've got to get past all of that in order to vote
21 guilty based on the oath that you took.

22 You've got to get past those things. Have
23 they proven? Don't get emotional, get reasonable.
24 Yes, what happened was wrong and bad. But did that
25 man, Mr. Tyler, do it? That's the question that you

1 are left with.

2 Verdict is from the word verdicto. You'll
3 hear that. It comes from a Latin word meaning to
4 speak the truth, a Latin verb, I guess that is. And
5 that's what is supposed to happen. You have to
6 speak the truth as to whether or not they've proven
7 this case beyond a reasonable doubt.

8 Mark Twain said that a lie can travel the
9 world around while the truth is putting on its
10 shoes. This lie has been traveling around here for
11 two and a half years. To tell the truth about what
12 happened, the truth is that they know who did the
13 shooting, and it wasn't this man.

14 They know who was involved, and it wasn't
15 this man. Let your verdict speak the truth, because
16 they have not proven this case beyond a reasonable
17 doubt. Let's end this thing and get the people in
18 this courtroom and in jail who were involved in it.
19 Thank you for your time.

20 THE COURT: Ladies and gentlemen, let's stand
21 for a moment. Ladies and gentlemen, I'll have you
22 go to the jury room for just a few minutes, maybe
23 five minutes. Please do not discuss the case.

24 (The jury left the
25 courtroom at 11:00 a.m.)

1 THE COURT: We'll take five minutes.

2 (Court in brief recess.)

3 THE COURT: All right, thank you. Please be
4 seated. You may bring the jury.

5 (The jury returned to the
6 courtroom at 11:16 a.m.)

7 THE COURT: Mr. Weeks?

8 MR. WEEKS: Thank you, Your Honor.

9 CLOSING ARGUMENT

10 BY MR. WEEKS

11 I know it's difficult sitting in here,
12 watching lawyers parade around, make arguments, but
13 I hope the first thing you thought when I stood up
14 is, "Well, he just needs to sit down, because the
15 State has shown us beyond a reasonable doubt that
16 this man is guilty."

17 But I'm going to go through and do my job
18 once again and show you why Cornell Tyler is guilty
19 of murder. We have brought in pictures. We brought
20 in forensics. And I never could figure out from the
21 argument that Byron was making whether or not he
22 agreed with the forensics or disagreed with the
23 forensics.

24 But they were uncontradicted throughout
25 the trial of this case, the forensics that were

1 brought in, one of which was this photograph. And
2 this senseless killing -- and I mean senseless --
3 started right here. You saw Mr. Brewer come up
4 here, and he talked about Debra Dorch missing the
5 tube.

6 And you're going to see a picture in a
7 minute of the tube. It's at the top right there.
8 She backs up, catches the tube -- or she hits the
9 tube, backs up, catches the tube, and comes back
10 past it, right in here -- right in here. When she
11 does, a man approaches the car.

12 Mr. Brewer doesn't know him at that time,
13 but he comes up. And where he's come from is right
14 out of this porch. Comes out to the road there,
15 goes up to the car. Ms. Dorch, reasonably so --
16 because we know now that that man had a rifle in one
17 hand and an arm to grab at the door -- guns it,
18 goes down this dirt road.

19 This is at 4:00 in the morning. Ain't
20 nobody hunting at 4:00 in the morning, okay? So
21 they're proceeding down this way. We brought up
22 this nice screen. This disaster, merciless killing,
23 ends right in that field. It starts right here.

24 And you've heard lots of testimony about
25 Bo Duke and the Dukes of Hazzard in this case, which

1 admittedly just sounds ludicrous, sounds ridiculous.
2 Sometimes the truth is the truth. But this chase
3 took place along this stretch of road right here.

4 Now, I know lawyers are advocates, and
5 they hear what they want to hear sometimes. But
6 there was never a witness from the State that
7 testified that those boys -- men, murderers -- went
8 past that four-way stop sign right there. The truck
9 is in the field over here.

10 You've got pictures of it that we'll show
11 in a minute. They never went past here. This is
12 where they turned around and went back down this
13 road and back to Cornell Tyler's house to clean up.

14 But this, as you will see, is where the
15 four-way stop sign is. One fact's for certain.
16 Y'all won't ever be able to see through me. This is
17 where the four-way is, okay? This is where the
18 truck is. Now, that's uncontradicted in the
19 evidence.

20 They want to make a big thing out of a car
21 coming up down this road, and turning around, and
22 going back and looking slow. Well, ladies and
23 gentlemen, we don't know who that was. We're not
24 trying to say that was the bad guys in this case.

25 That's a rubbernecker, as we all know what

1 they are. They see something. They ride up and
2 down the road and go back. He wants to make a big
3 deal out of it. He wants to call Joe Brewer a liar
4 so bad he can't stand it -- just wants to do it.

5 And Joe Brewer has told the truth from day
6 one. If this is not trauma, ladies and gentlemen, I
7 don't know what trauma is. Being shot at going over
8 a two-mile stretch of road, in a truck, being hit,
9 watching the driver of the car get hit, tell you
10 she's hit, then watching the driver of the car get
11 hit again and dying right there, and you're sitting
12 there with a double stack of newspapers in your lap,
13 and the car is going 100 miles an hour, and her
14 foot's pressed down on the accelerator.

15 Now, if that ain't trauma, it's just
16 starting really good, because that car goes down
17 here. And you'll see the pictures. It goes off the
18 road, comes back on the road, and loses it, and just
19 starts flipping a number of times, ends up there.
20 He don't know how many times it flipped.

21 Debra Dorch, bless her heart, was flipped
22 out of it, was dead already. But he's in the middle
23 of this field in the middle of nowhere. I grew up
24 in the middle of nowhere, so I'm allowed to say
25 where the middle of nowhere is. That's the middle

1 of nowhere..

2 Now, this car that comes up and down, he's
3 not saying it was the bad guys. There wasn't any
4 testimony about that -- just want to make Joe Brewer
5 a liar. Let's make a man who just is the luckiest
6 man I know a liar, because, you know, the respondent
7 is not a liar.

8 Now, this is an aerial photograph of what
9 I'll show you in a little while. Mr. Leatherman
10 brought up there with a sketch. That's all it is,
11 you know. They've all seen it. The witnesses had a
12 right to see it.

13 So the witness comes up, and he says, "I
14 live down here." He lives down here. And I point
15 out to him that "You probably don't know where you
16 live, do you?" He's living somewhere up this way.
17 And the reason that was important and the reason I
18 had to call him on it was (a) he's lying, and (b) he
19 don't know what direction is up or down, and (c) it
20 makes no sense at all what his story was.

21 But we go further. This is where it
22 really began. See the blue tube over there on the
23 right. We all see the blue tube. The truck's there
24 for just decoration, because that's where -- that's
25 the next-to-last mailbox that Debra Dorch filled.

1 She backs up, and she comes back up the
2 road. Now, ladies and gentlemen, somebody gave me a
3 poem one time about dirt roads. Dirt roads are, you
4 know, soon to be a thing of the past probably. They
5 pass some one-cent sales tax to pave the world.

6 But dirt roads are really good sources of
7 evidence if it don't rain. But if it rains, a dirt
8 road ain't worth a flip. And a dirt road ain't any
9 good when cars are going up and down it going to
10 work. A dirt road ain't worth a flip if the police
11 don't find it right away as to find forensic
12 evidence.

13 But in spite of that, Billy Fleury and his
14 men are canvassing this whole area, trying to find
15 leads. They don't know yet. Mr. Brewer's in the
16 hospital. Debra Dorch is dead. All they have is
17 these 911 things, and they don't know where they're
18 at. They're disoriented.

19 So they're talking to a man that's living
20 right here, and he says, "I heard shots down that
21 way." As a result of what he said, they go down
22 there, and they find a pile of shell casings. Well,
23 I'll tell you why all that gets important, because
24 that pile of shell casings is right here -- right
25 there.

1 Well, this is Cornell Tyler's house right
2 here. This is Tremaine Tyler's house right here.
3 This is where Johnny Miles is being paid to feed the
4 pit bulls, right there. Now, they see a pile of
5 shell casings. They know there's been gunshots.

6 So they start bird-dogging this particular
7 spot. They start marking it off. But by then,
8 quite honestly, it's (a) rained, and (b) cars have
9 gone up and down the road. And even with Cornell
10 Tyler's unbelievable testimony, you can probably
11 assume that they've at least walked in the area.
12 They've had to get out of Dodge.

13 But this pile of shell casings starts
14 really some incredible police work. A little closer
15 view, you see how close the front door is to his
16 house? And he hears seven shots out here or there's
17 shots fired in his driveway, and he thinks it's deer
18 hunters.

19 That's unbelievable. But, anyway, the
20 people are right there. He don't even see the car
21 in the front yard. The pile of shell casings is
22 right here. If you're shooting at a car going down
23 the road, unless the car is going here or unless the
24 car is going there, common sense will tell you that
25 you're going to fall out in generally this same

1 area.

2 Well, that's what they found, and it was
3 just good police work, right in that area. This is
4 the area, and you can see tracks all in there.
5 We're not trying to cover up tracks. These dirt
6 roads make tracks, but they also erase tracks, too,
7 with rain. Wallow Ware says he pulls up right here,
8 right in here.

9 You know, what is that? You can see the
10 road. You can see the house. Is it 30 feet, 35
11 feet? Well, he sees, he goes around to the side to
12 use the bathroom. One goes around to the other side
13 to use the bathroom.

14 But, anyway, Cornell Tyler and his
15 brother, Tremaine Tyler, ultimately both come out of
16 this door right here. When they come, Cornell goes
17 to check on who's shining those headlights at his
18 house at 4:00 in the morning.

19 And those headlights for some reason are
20 concerning him. Now, I can't cut his head open and
21 find out why they were concerning him. I don't know
22 -- don't know. But they were concerning him. So he
23 goes out with his rifle to check on them.

24 And then his younger brother -- or
25 Tremaine -- Tremaine follows out with his

1 .9-millimeter pistol. Walker has seen him with a
2 .9-millimeter pistol. Both of these witnesses saw
3 him shooting in the roadway.

4 Well, there's a reason, I suggest to you,
5 why Tremaine Tyler, after shooting these rounds of
6 bullets, why Cornell Tyler left out in such a rush.
7 These young men that have gone down there that night
8 were fixing to have their lives changed.

9 And sometimes it's impossible to explain
10 why people do the most idiotic stuff in the world.
11 But they do. People commit horrible, violent crimes
12 every day in this country. Well, they committed one
13 that night.

14 This is where the end was starting to
15 come. You see the tracks in the road. What's
16 important with this shot, the reason I put it in
17 here, is Wallow Ware testified that he was down
18 here, and he saw the car go off the right side of
19 the road -- you can see the things there -- come
20 back on, go left, and start to flip.

21 You can see that. That's very reasonable.
22 He don't know that we're going to have a picture of
23 that two and a half years later to show you. But
24 that's what he tells us when we first talk to him a
25 day and a half after this incident -- that he turned

1 around in that road and went back the way he came.

2 But it's within eyesight. They're not on
3 the bumper at that point, even according to Mr.
4 Brewer, who's not looking at that point. Debra
5 Dorch has been hit. He's trying to gain control of
6 the vehicle. It ends up there.

7 If it's not trauma to step over the
8 lifeless body of the woman that was just driving the
9 truck you're in, I don't know what is. But he gets
10 out of that car. He's disoriented. It's flipped
11 from this road to here. He don't know how many
12 times. It's not important how many times, but it's
13 a bunch, high rate of speed.

14 The wire from the fence is just completely
15 encircling the truck. He don't know where's he at.
16 He's literally hiding out here trying to talk to
17 them when he sees cars going by. He's just been
18 shot at by people he don't know. He's traumatized
19 -- and lucky, extremely lucky.

20 This is what the police found when they
21 get there. They take the truck back, and they start
22 to look at the forensics. They don't know who's
23 involved still at this point.

24 They go back there and start looking at
25 these bullet holes -- bullet holes that not only go

1 through the bed of the truck, the back bed there,
2 and I would suggest to you there's at least one
3 piece of metal there, they go through the tailgate.

4 And I would suggest to you there's at
5 least one piece of metal there. And I don't know
6 how many of you own trucks, but there's a separate
7 cab to these puppies, and that cab is metal also.

8 And then you've got two big thick seats
9 there, and these bullets have gone through on a
10 trajectory about like this, just about like this --
11 not like this, about like this. Those dowels are
12 eerie, because those dowels show just how lucky a
13 man Joe Brewer is and how tragically unlucky Debra
14 Dorch was.

15 Where Debra Dorch was sitting, the shot
16 that killed her came through this seat -- the two
17 shots that killed her. Three shots come through on
18 this side. Three shots go through on the other.

19 Joe Brewer's seat was dissected with a
20 7.62 high-powered rifle round dead center mass, and
21 he got missed by it -- living right, doing something
22 right. The other shell comes through the other side
23 over there, and he told you he indicated he thought
24 he was hit on the arm.

25 Well, I can understand. I think it's very

1 reasonable that he didn't know how bad he was hit
2 after being flipped through the air and all of that.
3 The reason all of that is significant -- Wallow Ware
4 don't know this, Edward Walker don't know this,
5 Kendall Seawright don't know this -- is that he gets
6 a bullet lodged in him, and the rest of the bullet
7 down here on the -- down here at the seat -- that
8 SLED is going to take back and say are the same
9 bullets from -- that killed Debra Dorch -- identical
10 type bullets, NATO ammunition, Russian ammunition,
11 whatever.

12 There is a bullet, and part of it probably
13 is still lodged in Joe Brewer. Now, the police did
14 the forensic work and go to that truck, have that
15 truck, still trying to figure out where it all
16 emanated at and why these news carriers are being
17 cut down.

18 Well, this mark here is significant. This
19 is the four-way stop sign. This is where they find
20 one -- they just find one -- shell casing. But, you
21 know, it is a 7.62-by-39-millimeter shell casing in
22 the middle of nowhere. And two bullets are going to
23 be taken from the dead body of Debra Dorch, and one
24 is going to be taken from the truck right beside Joe
25 Brewer that are fired from that caliber of weapon.

1 So Wallow Ware, Edward Walker, and even
2 the police don't know that at that time. They know
3 that they've got a shell casing here in the roadway.
4 Well, they go back, and they do the work. They
5 start working.

6 They're canvassing. While this is being
7 done, while that's being picked up, they're
8 canvassing. They're back here at the scene. They
9 start trying to find footprints with some definition
10 to it.

11 Well, they got a cast up here, number
12 three. They got a cast down here, and I think
13 there's another cast in one of the other photographs
14 you'll have back there. They go to other footwear
15 indentations. You'll see the paint everywhere.
16 They're just trying to piece together what they can
17 get from the scene.

18 Now, the defense makes a big deal out of
19 -- you know, the defense is -- you can't have your
20 cake and eat it, too. If I had 14 prints of Cornell
21 Tyler out here in the road that the testimony of the
22 SLED agent was, "They're just consistent in out-sole
23 design. I can't say that he wore these Timberland
24 boots. But, you know, these Timberland boots are
25 sold by the truckload," he'd be yelling out, "Well,

1 those ain't Cornell's boots. He ain't proving those
2 are Cornell's boots."

3 Well, we ain't proving they're Edward
4 Walker's boot print. We're just giving you what we
5 found. Credibility goes to both sides of the aisle.
6 We're giving you what we found. There's a similar
7 track to Edward Walker there.

8 And he explained that. And there's a
9 difference from what Cornell says about his
10 relationship with Edward Walker, but I think that
11 relationship's kind of ludicrous that he explained.
12 But they're to find that people have walked to
13 identify. At this point in time, keep in mind, this
14 is still in the early morning hours of August the
15 27th.

16 Debra Dorch goes to autopsy on the early
17 morning hours of August the 27th. At autopsy, they
18 pull these bullets and clean them up. You've heard
19 testimony about that being the lead core, and this
20 being the jacket.

21 You've heard testimony, uncontradicted,
22 that these bullets were all fired from the same
23 weapon, a high-powered rifle. You've got the lands
24 -- or you've got the grooves if you've got the
25 lands. And you've got a microscopic comparison in

1 addition on there, in addition to the measurements
2 of the grooves and lands.

3 You've got this bullet busting apart,
4 which nobody knows at the time is relevant to
5 anything, that these bullets were shattering as they
6 were impacting through the bed of that pickup truck.
7 But forensics -- yes, forensics are good.

8 Forensics will corroborate and show you
9 why Cornell Tyler is guilty. Of the car, sometimes
10 it's amazing how lucky police can be in an
11 investigation. And sometimes it's extremely
12 excruciating.

13 They get to that car a day or two later,
14 and the way they get to it is from James Gleaton
15 saying his car has, you know, lights across it, but
16 it looked kind of like Wallow Ware's car. So they
17 talked to Wallow Ware.

18 This is August the 27th -- still ain't
19 found the Tylers, still ain't found anybody that
20 knows anything about it except Mr. Brewer, who don't
21 know of any of the people. He's never met Cornell
22 Tyler at that point in time, never seen him except
23 that night at that time. He's seen him since.

24 But, lo and behold, this car that they're
25 describing has a sun roof, and, lo and behold, it

1 has a front and back seat. And, lo and behold, it
2 is described to a "T" by Kendall Seawright as well
3 as Wallow Ware's car, Edward Walker as Wallow Ware's
4 car.

5 It is the car that was housing the bad
6 guys at that time, all the bad guys. But they don't
7 this till two days later, okay? And they do the
8 forensic stuff. They find Wallow Ware's
9 fingerprints on it.

10 They don't find Seawright's fingerprints.
11 They don't find Edward Walker's fingerprints. They
12 don't find Cornell Tyler's fingerprints in it. Is
13 it unusual? No. But we're going to bring it in
14 here anyway, because if we don't bring it in here,
15 they'll be bringing it in here and say, "Well, you
16 didn't find my client's fingerprints on it."

17 We didn't find anybody's but the owner's
18 fingerprints on it. And we had them all to compare.
19 But they explained to you the elements, the time,
20 all of that's important with fingerprints. And just
21 keep -- every time I keep saying something about
22 evidence is not here, I want you to think clean-up,
23 because clean-up was what was done.

24 Clean-up, maybe not the car as thoroughly
25 as it could, but Cornell Tyler had the whole time

1 back to make sure his fingerprints weren't on
2 anything, if there's anything in there a fingerprint
3 can take. It looks like a cloth interior.

4 He didn't know enough about gunshot
5 residue at the time. He's probably an expert in it
6 now, but he didn't know about it at the time. But
7 the gunshot residue was taken from the headliner of
8 this car a year after it had been sitting in police
9 impound.

10 And the gunshot residue just confirms
11 what's pretty obvious, that guns were fired from
12 that car. It's really uncontradicted that guns were
13 fired from the right side of this year. Their own
14 witness, Gleaton, says some weapons were being fired
15 from the right side of the car going down the road.

16 Kendall Seawright says that's where
17 Cornell Tyler was sitting. Wallow Ware says that's
18 where he was sitting. Edward Walker says that's
19 where he was sitting.

20 So it's not unusual that gunshot residue
21 was found on the headliner of that car from somebody
22 shooting a rifle out of an open window, wind blowing
23 back. Gunshot residue is particles -- microscopic,
24 tiny little particles -- that he don't have a clue
25 is there.

1 That's why I asked the question, "Were
2 y'all shooting out the back window going down the
3 road, hunting rabbits or anything like that? Have
4 you ever shot in that car?" "No."

5 Well, the car had been sitting in police
6 impound. Clay Adams testified that they towed it
7 that day. So that gunshot residue corroborates that
8 the shooting was coming from that point in time or
9 that point in the car.

10 Well, it's uncontradicted that there were
11 shots coming from the back right corner of that car.
12 Now, Dr. Sexton -- I don't know how anybody does
13 10,000 autopsies, but he has. And he comes, and he
14 has to testify in front of this girl's mother that
15 the wound that killed this girl came from a high-
16 powered rifle.

17 And he takes those pictures that go to
18 SLED, come back in here, and ends up in front of
19 you. Forensics -- you know, it's a fast-paced
20 world. Young people on the jury, older people on
21 the jury, but sometimes police work is just old-
22 fashioned leather.

23 It's not a situation in lower Springfield
24 or upper Springfield, either one --
25 Orangeburg/Springfield or Aiken/Springfield -- where

1 we're going to be able to videotape crimes on the
2 road. The only thing we're going to be able to do
3 is bring you some of the people that were there.

4 People that are charged with crimes don't
5 have to testify. We bring to you Joe Brewer out of
6 the grace of God. Without Joe Brewer, both of them
7 are dead. But with him, it led us along with good
8 police work, to find people to pinpoint where it was
9 at.

10 But, lo and behold, the Tylers ain't home.
11 They're not hiding, but they ain't home. It is
12 ludicrous, absolutely ludicrous, the story of
13 Cornell Tyler. Now, you might think that Wallow
14 Ware, Kendall Seawright, Edward Walker ain't the
15 best people in the world. There are some issues
16 along those lines, I'm sure.

17 Just because the State calls them as
18 witnesses doesn't mean that we think they were born
19 at the foot of the cross. The best story I ever
20 heard -- if you're going to convict the devil,
21 you've got to go to hell to get your witnesses -- is
22 pretty typical in most crimes.

23 The reason it's typical in most crimes is
24 because people don't do crimes in the First Baptist
25 Church very often. They do them at 4:00 in the

1 morning in the middle of the street or in a house
2 somewhere. And you're just so fortunate sometimes
3 that you can get to the people before they get to
4 their lawyers and the lawyers tell them to shut up,
5 don't talk.

6 Wallow Ware didn't have that luxury. When
7 he got to us, he didn't have a lawyer. He was
8 advised he could get one -- "I'll tell you what
9 happened."

10 August 29, 2005, Wallow Ware tells us what
11 happened, who was there, who was with him. If he
12 wanted to protect his cuz, as they want to make out,
13 he didn't have to have him on that car. He didn't
14 have to have him on that car, in that car, anywhere
15 near that car.

16 He knew he was driving. He knew it was
17 his car. But he didn't have to put his cousin into
18 the mix. And Wallow Ware under interrogation was
19 saying that he heard shots coming, could have been
20 both, could have been multiple. He's trying to tell
21 you that on the stand, and he's just having all
22 these papers waved in front of him.

23 From the minute we approached these
24 people, I think it's reasonable for you to assume
25 everything they've ever read, said, or done is typed

1 or videotaped. Well, somebody go back there in the
2 jury room and try to repeat one paragraph of what I
3 tell you in closing arguments verbatim. I bet you
4 can't do it.

5 And if you can do it and tell the person
6 next to you, I'll bet you they won't be able to do
7 it. It's just human nature. You can't remember all
8 of the nuances in something when you've given
9 multiple statements through the years.

10 But if, by the grace of God, we can come
11 in here and every witness that comes in there and
12 testifies for the State says exactly the same thing
13 every time, well, y'all would cry foul real quick,
14 because people can't do that, unless they've just
15 rehearsed and trained and rehearsed and trained.
16 And then professional actresses and actors can't do
17 it.

18 These are real people. These are real
19 eyewitnesses to real crimes. And in spite of not
20 knowing that we're going to come in here with
21 forensics and corroborate what they're telling us on
22 August the 29th, they don't know all this has been
23 found.

24 We don't go in there and tell them, you
25 know, "Look, we've got you. You've got to give it

1 up because we've got all this evidence on you." We
2 don't know a lot of the evidence we've got on them
3 right at that point in time.

4 It's still being analyzed. It's still
5 being sifted through. So they're telling the story
6 on August the 29th. Cornell Tyler's telling the
7 story yesterday, two and a half years with his
8 lawyers, and investigators, and his mama, and his
9 daddy.

10 Now, who can make up a story? Who is
11 meeting with the witnesses? You know, it's
12 malpractice for a lawyer not to meet with witnesses
13 he's going to call. So don't say that Bill Weeks is
14 up here dancing around because he met with his
15 witnesses. That's just not fair, not fair, because
16 he's met with his witnesses and will continue to
17 meet with witnesses, because it's malpractice not
18 to.

19 Now, I want to go a little bit to the
20 eyewitnesses' testimony. Wallow Ware sat on the
21 stand and essentially testified to being a murderer.
22 He don't want me to argue the hand of one, the hand
23 of all that you'll hear the Judge explain the law.

24 But it is the law, and it's the law
25 according to the Court. Debra Dorch wouldn't be

1 dead if it wasn't for Wallow Ware. Cornell Tyler
2 pulled the trigger. But they weren't shot on this
3 stretch of road here. They weren't shot by Tremaine
4 Tyler.

5 They were on this stretch of road here
6 before 911 is being called. But Cornell Tyler don't
7 know that. So Wallow Ware, who testified the very
8 first time or gave a statement the very time, was
9 implicating himself in a murder. He told that same
10 story for two and a half years.

11 They were trying to beat him to death
12 yesterday with some transcript about some words,
13 about whether or not he had said that Edward Walker
14 had something. Their witnesses come up here and
15 said that Edward Walker said he had a pistol.

16 But, ladies and gentlemen, a pistol didn't
17 kill Debra Dorch. It didn't wound Joe Brewer. A
18 high-powered rifle did that, and it wasn't but one
19 person that had that in that car.

20 Now, if you believe Edward Walker had a
21 pistol, there's nothing we can do to prove that
22 Edward Walker had a pistol. It don't make sense for
23 the defense to argue. He's down there to borrow
24 \$20, and he's got a pistol.

25 Don't know how he got there. You know, he

1 don't have a car. He don't have a window to throw
2 anything out of. But he's supposedly got a pistol.
3 "Oh, it could be 30 inches. It could be" -- well,
4 he didn't.

5 But Wallow Ware tells what he's observing,
6 tells what he did, and implicates himself, and he
7 goes to jail. He's charged with murder. Well, he
8 ain't looking out after cuz, because he implicates
9 cuz as being in the car, he's jumping on the back.

10 Now, if you're going to make up a story,
11 make a whopper. Just make a whopper. If you're
12 going to lie, lie about a lot. The business about
13 Edward Walker being on the back of the car is
14 incredible, stupid. Well, it would seem incredibly
15 stupid to go down the road shooting a newspaper
16 carrier through the back of the truck.

17 Now, is it reasonable to believe that he
18 was on the back of the car? All of these witnesses
19 testified to the same thing except Cornell, who
20 wasn't there at all. He was on the back of the car.
21 Well, you can't shoot going down the road at 75
22 miles an hour on the back of a car with the accuracy
23 that these holes were plugged into the back of that
24 truck -- can't do it.

25 Is it physically possible for him to hang

1 on? Yes. Was it physically possible for him to
2 bail out on the dirt road when he figures
3 something's going on? Well, on the dirt road, he
4 didn't know that Cornell was going to start cutting
5 loose on these people with a rifle.

6 He's getting the hell out of Dodge because
7 he's just heard shots. His ride is leaving. He
8 knows it's the only car there. He's getting out of
9 Dodge. It's his ride.

10 Well, his cousin don't stop at the stop
11 sign, because his cousin is being instructed by
12 Cornell to catch up with that truck. He's hanging
13 on, but he's hearing and he's watching, and he's
14 charged with murder, too. He don't have to come up
15 here and testify either.

16 His testimony was the same when he first
17 gave it. It's been brought up that they turned
18 around at the four-way stop sign. They don't know
19 the significance of that at that point in time, so
20 that's not something they could really make up that
21 they can get together and team up, and "We're going
22 to say that we stopped at the four-way stop sign."

23 What difference does it make? Well, you
24 know they stopped at the four-way stop sign because
25 they saw the wreck, or at least they were at the

1 four-way stop sign at some time. But there's been
2 no testimony from either one of those guys that they
3 followed the car on down the road.

4 You know, I think it was probably very
5 poignant when Wallow Ware was testifying about
6 seeing the flashers on the back of the car. Wallow
7 Ware knew at that point in time something bad was
8 happening.

9 When that car wrecked in front of him, he
10 knew that this guy wasn't just firing warning shots
11 out of his car. He was dead on. He was dead on.
12 So he stopped and slowed down, turned around, and
13 drove back.

14 But at one point in time, they're within a
15 car and a half length, 15 foot, depending on. And
16 if Edward Walker was the one doing the shooting, the
17 trajectory of those bullets into the bed of that
18 truck would have not been what they were.

19 They would have gone down into the bed of
20 the truck. They wouldn't have gone slam through the
21 tailgate, slam through the wheel well, into the
22 passenger compartment of that car or truck on a dead
23 line. The angles at that distance wouldn't do it.

24 If the top of his car is here, and the
25 window's here, do the math. That's what it is.

1 It's just that simple. Common sense is what we
2 talked about throughout the trial.

3 Both sides seem to talk about it, but they
4 want different results from it. And common sense is
5 just that. Common sense is the school of hard
6 knocks. Common sense is calling the State's
7 witnesses liars and then expect them to believe that
8 story of Cornell Tyler.

9 You know, Cornell Tyler says he wasn't
10 running, but I thought I heard Byron say he was. He
11 was hiding. It was awful. He shouldn't have. He's
12 hiding out. He's hiding out, and he's cleaned up.

13 You know, the ballistics in anything in a
14 lot of cases aren't important. The ballistics here
15 are somewhat important because they show a couple of
16 things. They show that what killed Debra Dorch and
17 wounded Joe Brewer was a high-powered rifle, most
18 probably a long rifle, most probably a similar rifle
19 to the one Ira Parnell, with his 35 years of
20 firearms experience, had up there.

21 And the significance of the shells was
22 important. The shells are important to show that
23 these bullet holes in this car, through the bed of
24 this truck, on a dead line into the body of Debra
25 Dorch and Joe Brewer weren't little .22 hollow

1 points. They were high-powered steel-jacketed 7.62
2 military ammunition.

3 Well, it wasn't a shotgun, it wasn't a
4 pistol. So that takes away some of the stories,
5 some of the red herrings that the defense could say,
6 "Well, you know, Johnny Miles shot them with a
7 shotgun." The dog feeder's shotgun they said was
8 found right back in here, in the woods.

9 The shotgun is just part of the clean-up,
10 and that's very logical. It's part of the clean-up.
11 The real clean-up was done when they loaded up the
12 high-powered rifle, the .9-millimeter, and put the
13 pile of bullets on the side of the road right there
14 where the witnesses say, where Joe Brewer drove by,
15 where even the next-door neighbor pointed down the
16 road.

17 But the significance of the forensics, the
18 significance of Ira, is none of those things killed
19 Debra Dorch but a high-powered rifle. Now, is it
20 significant that we can't find that rifle? No. We
21 prosecute murder cases without a body.

22 The significance of the rifle not being
23 found is not important when you consider that they
24 had 18 days, as I count it, to get rid of that
25 rifle. Do you think that Cornell Tyler, after

1 you've watched him, is dumb enough to throw the
2 rifle in the road in front of his house? No.

3 Do you think he's going to take the rifle
4 to one of his girlfriends' house? He's calling his
5 girlfriend, and Joe Brewer's probably not even out
6 of the field yet. He's got another girlfriend
7 coming to meet him at the house at the same time.

8 He's calling Uncle Earl. Uncle Earl, I
9 guess, is supposed to be my witness now. He's
10 calling Uncle Earl at 5:00 in the morning to get out
11 of Dodge, to get out of town.

12 The thing the forensics do is tell you
13 about the weapons that were used, and they cut out
14 all of the red herrings. What's his name -- Wallow
15 Ware, Edward Walker do not know that the caliber of
16 weapon that was being used when they're talking to
17 the police on August the 29th is 7.62-by-39
18 millimeters.

19 They do not know that the police have
20 found a shell casing in the middle of the road
21 matching the bullets that are going to be ultimately
22 examined by Ira Parnell and be determined to be a
23 7.62-by 39. They don't know that, but they tell --
24 what forensics do is corroborate exactly what they
25 told them.

1 Now, what hiding out in North Carolina
2 does is keeps us from getting to other evidence that
3 may be in front of him. It keeps us from getting
4 gunshot residue for test off the hands of Cornell
5 Tyler. It keeps us from getting Cornell Tyler's
6 shoes to match up against footprints that were taken
7 or footprints that might have been there.

8 Cornell Tyler's testimony that he spent 18
9 days in a motel room without changing clothes is
10 ludicrous. He's hired lawyers and investigators,
11 but he ain't changed clothes? You kind of know that
12 Wallow Ware and Edward Walker were at the wreck.
13 They saw the wreck, because they described it in
14 detail perfectly.

15 Those two were there. So they want you to
16 blame just Edward Walker and just Wallow Ware.
17 Well, there is no reason in the world for Wallow
18 Ware to put Cornell Tyler in the mix if his cousin
19 was the one doing it. There's no reason for him to
20 tell on his cousin.

21 There is no reason for him to put Kendall
22 Seawright down there, because Kendall Seawright, I
23 agree with Byron on that, the smartest fellow there
24 that night, he bailed out. He got out of that car.
25 But Walker and Ware don't know that Seawright's

1 going to say the identical, same thing he said when
2 the police got to him, found him, that Cornell Tyler
3 went out in the road, that Cornell Tyler got in the
4 car.

5 Seawright was there, bailed out of the
6 car, but some deal's got to be made out of him being
7 honest and saying "I don't know what happened down
8 the road. I wasn't there. I don't know if Cornell
9 got out in the road and danced around. I don't
10 know. But he was in the car when he left, with what
11 looked like a gun."

12 It just don't make sense anywhere in this
13 case that Edward Walker and Wallow Ware would decide
14 to all of a sudden gun down this paper carrier.
15 What did they hope to get out of it? What's the
16 deal? Do you think they were just going to rob her?

17 I like to read the Aiken Standard, but I
18 sure ain't going to rob nobody to get it. It just
19 didn't make sense. The people that were being
20 protected that night and was protecting their house
21 in their minds, for whatever reason, was Cornell
22 Tyler and Tremaine Tyler.

23 Now, Cornell may have been protecting
24 Tremaine. But we know from the forensics that the
25 .9-millimeter bullets didn't hit anybody. We know

1 from Joe Brewer that Debra wasn't hit until she got
2 on down the road. He wasn't hit until they got on
3 down the paved road. We know all that.

4 We know from Ms. Wingard about where the
5 shooting started, where they caught up to the car.
6 We know all that. And they've been down there and
7 canvassed that road in the heat of August days
8 looking for shell casings and more shell casings.

9 But it wouldn't add anything more. They
10 can't identify that to the bullets in the car. But
11 it goes to the extent of what police do to
12 corroborate what somebody has told them. They were
13 in essence corroborating Ms. Wingard.

14 They were in essence corroborating James
15 Gleaton. And the people are telling the story
16 before they know that the police can corroborate
17 that. They're telling the story about Maine going
18 out in the road and shooting a .9-millimeter pistol
19 before they know that we've got a pile of .9-
20 millimeter shell casings.

21 So all of that is going to show that they
22 are believable. How do you know anybody is going to
23 tell the truth? How do you know? Your children,
24 your wife, your husband, minister, how do you know
25 they're telling the truth? Well, you use your

1 everyday experiences to sift through the story..

2 It doesn't mean that you ignore your
3 common sense. It doesn't mean you ignore your gut
4 feelings. It doesn't mean that you have to have
5 rock-solid proof. I would venture to say y'all all
6 make decisions every day of your life that are made
7 beyond a reasonable doubt.

8 I'll tell you a funny story about beyond
9 reasonable doubt that they talk about. I mean, I
10 knew Byron would get up here and talk about it,
11 because that's what defense lawyers do. But when I
12 was trying to explain to my young partner over
13 there, when I first met him, that, you know, "I used
14 to play basketball." He said, "Okay. Well, come
15 on, let's play basketball."

16 So we go out and play basketball, and I've
17 got to admit it was pretty hard. It was pretty
18 humiliating. He's younger. He's quicker. He
19 shoots better. So I've just gotten humiliated.

20 So I'm trying to beef myself up a little
21 bit -- "Well, you know, I played in college, and I
22 used to could dunk the basketball." And he was like
23 rolling on the ground by that point. There was
24 reasonable doubt there.

25 He's hesitating to believe me, and

1 reasonably so. I mean, y'all look at me, and you
2 think, "He can't hardly get out of that chair over
3 there. I'm sure he used to couldn't dunk a
4 basketball."

5 So then I started telling him, you know,
6 "I could run back in my day, Steve," and he's still
7 like rolling on the ground. "No, I could run, and I
8 could score. I scored 2,000 and something points."
9 And he's like passing out by now, because he's just
10 watched me play.

11 So how do I dispel his hesitation to
12 believe me? Well, over the course of a year, I've
13 hauled in law enforcement officers. People in the
14 community have come by to see me. And they want to
15 talk about how fat I've gotten and how I used to
16 could play basketball.

17 So after a few witnesses come by who saw
18 me play basketball, and after you get a few honors
19 for doing it, then I think I proved to him beyond a
20 reasonable doubt that I used to could do it. And
21 that's essentially what you do when Wallow Ware is
22 apprehended and when Edward Walker is questioned.

23 The police go about helping me prove
24 beyond a reasonable doubt that Cornell Tyler
25 committed this murder. And until we're invaded by

1 outer space or Russians take over, the criminal
2 justice system in this country has worked on that
3 same premise.

4 Eyewitness testimony is good. Eyewitness
5 testimony is not infallible. But you have to look
6 to all of the nuances in a case. You have to give
7 witnesses some credibility, when they come forward
8 early, when they tell you details that you can later
9 prove scientifically.

10 And you have to realize that clean-up
11 means clean-up. Clean-up means getting to North
12 Carolina, getting rid of your clothes, getting rid
13 of your shoes, getting rid of your guns. And Wallow
14 Ware and Edward Walker didn't clean up, because they
15 didn't think they had committed any crimes.

16 Cornell Tyler knew he had. He knew he
17 had. I'm sure that Edward Walker had somebody he
18 could go visit somewhere else. But I am reasonably
19 sure, based upon what I heard up there on that
20 witness stand for the first time, that it probably
21 wouldn't be Mr. Scott.

22 I suggest to you the evidence that Mr.
23 Scott came forward and testified to is equally
24 unbelievable as Cornell Tyler's, that the man had
25 had an altercation with his wife. And for some

1 reason, right around the area where this murder is,
2 where there's police officers crawling down every
3 dirt road, he's going to come there and say, "Hey,
4 man, I need you to get rid of a gun."

5 Now, why is Mr. Scott doing this? Well,
6 Mr. Scott lives in the same community with Cornell
7 Tyler. Edward Walker doesn't. I say Mr. Scott
8 lives there. I'm not sure he knows where he lives
9 at.

10 And another thing that's important, too,
11 Wallow Ware, Edward Walker, Kendall Seawright, on
12 August the 29th or relatively close thereon, told
13 all they know about the case. Freddie Scott came up
14 here yesterday and wanted to say something. Now,
15 what he's getting out of it? I don't have a clue.

16 Shawn Smith is another one, you know.
17 Sometimes you're just darned if you do and darned if
18 you don't. You have some guys writing you letters
19 from the jail, and you go see him. Well, if you
20 don't believe him, or don't do what he says, or
21 don't give him a deal on his case, then you don't
22 act on it.

23 So where do you find him the next time you
24 see him? Up there testifying for the defendant.
25 And, you know, if you're going to lie, get it right.

1 You know, if he's going to make up a story -- you
2 know, I tell you this. I suggest to you there's
3 probably more lawyers in the Aiken County Detention
4 Center than there are in the City of Aiken, because
5 they all sit over there, and they go through their
6 discovery, and they trade the cases back and forth,
7 and they try to see who can help out each other the
8 most.

9 They pass notes. They do all of that
10 stuff. And it's all designed to "Hey, maybe I can

11 come in there and testify. Maybe I can come in
12 there and get somebody confused. Maybe I can come
13 in there and throw a red herring in the mix."

14 Shawn Smith, red truck. I ain't seen
15 anything red in this case but Debra Dorch's blood.
16 Pistol -- "You know, a pistol is the same thing as a
17 rifle. On the street, it's the same thing." It's
18 not believable. If you're going to lie, get it
19 right.

20 The first name on the list, Johnny Miles.
21 Now, where was Johnny Miles living? Where did
22 Johnny Miles vacate to? Where did Johnny Miles stay
23 while he was hiding from the law? He stayed with
24 Cornell Tyler and Tremaine Tyler.

25 And don't worry for one second why Johnny

1 Miles ain't here. I think it's obvious as the nose
2 on my big head. Byron didn't talk about it very
3 much, but he did mention Cornell's testimony.

4 I can't sit down without talking about
5 that ridiculous story -- that Edward Walker, who he
6 hadn't seen in two weeks, comes up to him, borrows
7 \$20, goes outside. He hears all these gunshots,
8 thinking it's hunters at four or five in the
9 morning.

10 This is a country boy over here, too.
11 He's grown up in the country. He knows people ain't
12 hunting at 4:00 in the morning. Why tell that
13 ridiculous story? But in spite of that, Edward
14 Walker comes back and said, "Man, you need to get
15 out of here" -- don't say why, don't say hello,
16 don't say anything but "You need to get out of
17 here."

18 So with just that minute piece of
19 information and being innocent as he is, he decides
20 to pack up his whole house and move to North
21 Carolina in the space of six hours. Now, is he more
22 believable than Wallow Ware, who says that he came
23 back and said, "You ain't seen nothing. You ain't
24 done anything"?

25 Is he more believable than Kendall.

1 Seawright saying he heard say or Walker heard
2 somebody say, "Clean up." I don't believe you can
3 say that. I don't believe the evidence suggests
4 that. That's the most ludicrous story I've ever
5 heard.

6 A man he don't like, don't want around his
7 house, comes and says that, and he decides to move
8 to North Carolina and don't even take a change of
9 underwear. That's not believable. I can stand up
10 here and talk about that all day.

11 He went to see Uncle Earl, because it
12 wasn't good enough to call the police, which is what
13 you should do. If you don't want to call them from
14 your house, go down the street and call them. Go to
15 your girlfriend's house and call them, but don't not
16 call them.

17 You know, the police in this case and
18 really every case, take a bashing. You know, the
19 police don't want to say the police ain't done
20 something, they should have done this, they should
21 have done that. But it's really an amazing case, it
22 really is, that they were able to solve this case
23 and solve it very quickly.

24 It took them a little while to get Cornell
25 Tyler in jail, like 18 days, because he was on the

1 run. They solved it quickly but didn't stop at that
2 point. They didn't just issue arrest warrants and
3 put them in jail. They kept working on it, sending
4 stuff to forensics, sending stuff to trace, as we
5 developed it, as we got into it and kept
6 corroborating these guys' story, because they don't
7 want to put a liar on the stand.

8 They don't want to put somebody up there
9 to convict Cornell Tyler. There has been no reason
10 in the world brought up in this trial why they would
11 have some vendetta against Cornell Tyler. Joe
12 Brewer doesn't have a vendetta against Cornell.

13 He says on the stand, "I don't know if
14 he's the one that shot me." If he wanted to lie, he
15 could say, "Yes, I could see this little guy, little
16 short guy, hanging out of the window shooting a
17 high-powered rifle at us." And the police, if they
18 wanted to lie, my God, they could have fingerprints
19 on top of fingerprints.

20 They could have footprints, boot prints,
21 DNA. They could just pile it in here if they wanted
22 to lie. If we wanted to lie, if Bill Weeks wanted
23 to dance around up here with a story that he's made
24 up, I promise you, after 25 years of doing this, I
25 could come up with a good one.

1 I could cross all the "T"s and dot all the
2 "I"s. But I'm standing up here telling you that the
3 police did what police do. They did their job.
4 They worked hard. They found the killer. They
5 found other people that are just as guilty of murder
6 as Cornell Tyler.

7 Now, our criminal justice system is unique
8 in the world. I can't make people get up there and
9
10 testify. I can't twist their arms to get them to
11 twist. And I can't try most of the time but one at
12 a time. Cornell Tyler is guilty of murder. He's
13 guilty of assault and battery with intent to kill.

14 This is Cornell Tyler's residence here.
15 This is where it all started. You know, Byron is
16 absolutely right. I was not going to get up here
17 and play on your emotions, even though he thought I
18 might.

19 If I would, I'd play that 911 tape. But
20 y'all have the right to go listen to that 911 tape
21 again. It is eery that you hear her last words.
22 But it is eery. But it's important to tell that
23 story the way we told it, because that's what Joe
24 Brewer was experiencing.

25 He almost laughed at him when he said he

1 was traumatized. If that's not the most traumatic
2 incident that a person has lived from, I just don't
3 know of another one. Maybe somebody out of the
4 World Trade that survived, that would be trauma.

5 But do you remember other things after you
6 see people, after you watch them? You saw all those
7 people up there testifying yesterday. Do any of
8 them look like Cornell Tyler? I don't think so.

9 But he wanted to make a big deal out of
10 that, wants to call Joe Brewer a liar. Call Joe
11 Brewer a legend. Don't call him a liar.

12 Now, like every time I've ever stood up
13 here in 25 years, I'm going to forget to have told
14 you something, just to remind you of something that
15 I wished I'd have said. But I'm going to leave you
16 with this thought.

17 It don't matter what we do in this. It
18 don't matter what kind of evidence people bring
19 before you in a criminal case. When you've got the
20 eyewitnesses to the murder, when you've got the
21 victim witness to the murder, when you've got
22 scientific proof that this person was committed with
23 a high-powered rifle, when you've got uncontradicted
24 proof that it began in the front yard of Cornell
25 Tyler's residence, when you've got uncontradicted

1 proof that Cornell Tyler was burning your funds up
2 and hiding in North Carolina and then Columbia for
3 18 days while he hired a lawyer, and the first thing
4 the lawyer said was don't talk to anybody, after you
5 get up there -- and I'm not saying Byron did that.

6 I don't think it was Byron -- "You get up
7 there and tell the jury some hocus-pocus story,"
8 you're entitled to use all that. But use your
9 common sense when you get back in that jury room --
10 do that.

11 THE COURT: Ladies and gentlemen, let's stand
12 for a moment.

13 (The jury complied.)

14 THE COURT: All right, we'll proceed with
15 the charge on the law.

16 CHARGE OF THE COURT

17 Mr. Foreman, members of the jury, you have
18 heard the testimony, and the evidence, and the
19 arguments of the State and the defendant. I will
20 now explain to you the law that applies to this
21 case.

22 Under the Constitution and laws of South
23 Carolina, you are the finders of the facts in this
24 case. I do not have the right to pass upon the
25 facts or even express any opinion that I may have as

1 to them.

2 You are the sole judges of the
3 credibility, the believability, of the witnesses who
4 have testified in this case. And in passing upon
5 their credibility, you may take into consideration
6 many things, such as the demeanor or manner of
7 testifying, whether the witness had a reason to be
8 biased or prejudiced, whether a witness' testimony
9 was contradicted on the hand or supported and
10 corroborated on the other hand.

11 You certainly do not determine the
12 credibility or believability by counting the number
13 of witnesses who have testified for either side.
14 You may believe a small portion of a witness'
15 testimony and disregard the larger, or vice versa.

16 You may believe one witness against many
17 or many against one. All of these things you will
18 consider, bearing in mind that you should give the
19 defendant the benefit of any reasonable doubt.

20 There has been evidence presented that a
21 witness or witnesses may have made prior statements
22 which are not consistent with the witness' present
23 testimony. You may use this evidence to decide
24 whether to believe the witness.

25 You may also use evidence of any earlier

1 contradictory statement to determine the truth of
2 those statements. It is up to you to decide whether
3 to believe the earlier statements or the testimony
4 given at trial.

5 If a witness is shown to have knowingly
6 testified untruthfully concerning any material
7 matter, you may consider this in determining whether
8 to trust the witness' testimony as to other matters.
9 You may reject all testimony of that witness or give
10 all or part of the testimony you think it deserves.

11 Now, the rules of evidence normally do not
12 permit witnesses to testify as to their opinion or
13 conclusions. An exception, however, to this rule
14 exists as to those whom we call expert witnesses.

15 Expert witnesses are witnesses who by
16 education and experience have become expert in some
17 art, science, profession, or calling. These
18 witnesses may state their opinions as to relevant
19 matters and material matters in which they profess
20 to be an expert and may also state the reasons for
21 the opinion.

22 You should consider expert opinion
23 received in evidence in this case and give it such
24 weight as you think it deserves. If you decide that
25 the opinion of an expert is not based upon

1 sufficient education and experience, or if you
2 should conclude that the reasons given in support of
3 the opinion are not sound, or if you feel that it is
4 outweighed by other evidence, you may disregard the
5 opinion entirely.

6 There have been some stipulations entered
7 into in this case. A stipulation is an agreement as
8 to a fact. Once a fact is stipulated to, that fact
9 becomes established for purposes of this case and
10 cannot be questioned or contradicted.

11 Now, the same Constitution and law which
12 makes you the finders of the facts and the evidence,
13 as I have discussed with you, I am as the Judge made
14 the sole and only instructor in the law. You must
15 accept as correct the law which I charge you and
16 apply it to the evidence as you find it and then
17 reach your verdict.

18 And, finally, I charge you in this regard
19 that you should not be concerned about what you
20 think the law ought to be but rather what I charge
21 you the law to be. There are two types of evidence
22 which are generally presented during a trial, direct
23 evidence and circumstantial evidence.

24 Direct evidence is the testimony of a
25 person who asserts or claims to have actual

1 knowledge of a fact, such as an eyewitness.
2 Circumstantial evidence is proof of a chain of facts
3 and circumstances indicating the existence of a
4 fact.

5 But the law makes absolutely no
6 distinction between the weight or the value to be
7 given either direct or circumstantial evidence, nor
8 is a greater degree of certainty required of
9 circumstantial evidence than of direct evidence.

10 You should weigh all of the evidence in
11 this case. After weighing all the evidence, if
12 you're not convinced of the guilt of the defendant
13 beyond a reasonable doubt, you must find the
14 defendant not guilty. On the other hand, if you are
15 convinced of the guilt of the defendant beyond a
16 reasonable doubt, you must find him guilty.

17 Now, the fact that the defendant was
18 arrested, charged, and indicted in this case is not
19 evidence in this case, nor does it create any
20 presumption or inference of guilt. The indictments
21 are simply the formal written instruments which
22 contain the charge or charges made against the
23 defendant.

24 They serve as the formal documents by
25 which the case is processed and brought into Court.

1 The defendant has pled not guilty to the
2 indictments, and that plea puts the burden on the
3 State to prove the defendant guilty. A person
4 charged with committing a crime or criminal offense
5 in South Carolina is never required to prove himself
6 innocent.

7 And I charge you that it is an important
8 rule of the law that the defendant in a criminal
9 trial, no matter what the seriousness of the charge
10 may be, will always be presumed to be innocent of
11 the crime for which the indictment was issued,
12 unless guilt has been proven by evidence satisfying
13 you of that guilt beyond a reasonable doubt.

14 This presumption of innocence does not end
15 when you begin your deliberations, but it
16 accompanies the defendant throughout the trial until
17 you reach a verdict of guilt based on evidence
18 satisfying you of that guilt beyond a reasonable
19 doubt.

20 The presumption of innocence is like a
21 robe of righteousness placed about the shoulders of
22 the defendant which remains with the defendant until
23 it has been stripped from the defendant by evidence
24 satisfying you of the defendant's guilt beyond a
25 reasonable doubt.

1 Presumption of innocence is not a mere
2 legal theory. It's not just a legal phrase. It is
3 a substantial right to which every defendant is
4 entitled, unless you, the jury, are satisfied from
5 the evidence of the defendant's guilt beyond a
6 reasonable doubt.

7 The State must prove the defendant guilty
8 beyond a reasonable doubt. So what is a reasonable
9 doubt in the law? A reasonable doubt is a doubt
10 which makes an honest, sincere, conscientious juror
11 in search of the truth to hesitate to act.

12 Proof beyond a reasonable doubt must
13 therefore be proof of such a convincing character
14 that a reasonable person would not hesitate to rely
15 and act upon it in the most important of his or her
16 own affairs. Proof beyond a reasonable doubt can
17 also be described as proof that leaves you firmly
18 convinced of the defendant's guilt.

19 Now, there are very few things in this
20 world that we know with absolute certainty. And in
21 criminal cases, the law does not require proof that
22 overcomes every possible doubt. If, based on your
23 consideration of the evidence, you are firmly
24 convinced that the defendant is guilty of the crime
25 charged, you must find him guilty.

1 If, on the other hand, you think there is
2 a real possibility that he is not guilty, you must
3 give him, then, the benefit of the doubt and find
4 him not guilty. Now, ladies and gentlemen, in this
5 case the State of South Carolina by these
6 indictments has charged the defendant with the
7 following offenses: murder, assault and battery
8 with intent to kill, and possession of a firearm or
9 knife during the commission or attempt to commit a
10 violent crime.

11 There are three separate indictments, and
12 you must determine separately as to each indictment
13 whether or not the State has proven the elements of
14 that particular crime. Your verdict does not have
15 to be the same for each indictment.

16 As to murder, the defendant is charged
17 with murder. The State must prove beyond a
18 reasonable doubt that the defendant killed another
19 person with malice aforethought. Malice is hatred,
20 ill will, or hostility towards another person. It
21 is the intentional doing of a wrongful act without
22 just cause or excuse and with an intent to inflict
23 an injury or in the circumstances that the law will
24 infer an evil intent.

25 Malice aforethought does not require that

1 malice exist for any particular time before the act
2 is committed. But malice must exist in the mind of
3 the defendant just before and at the time that the
4 act is committed. Therefore, there must be a
5 combination of a previous evil intent and the act.

6 Malice may be expressed or inferred.
7 These terms "expressed" or "inferred" do not mean
8 different kinds of malice but merely the manner in
9 which malice may be shown to exist. That is either
10 by direct evidence or by inference from the facts
11 and circumstances which are proved.

12 Expressed malice is shown when a person
13 speaks words or expresses hatred or ill will for
14 another person or when the person prepared
15 beforehand to do an act that was later accomplished.
16 For example, lying in wait for a person or other
17 acts of preparation going to show that the deed was
18 within the defendant's mind would be expressed
19 malice.

20 Malice may be inferred from conduct
21 showing a total disregard for human life. Inferred
22 malice may also arise when a deed is done with a
23 deadly weapon. And a deadly weapon is any article,
24 instrument, or substance which is likely to cause
25 death or great bodily harm. Whether an instrument

1 has been used as a deadly weapon depends on the
2 facts and circumstances of each case.

3 As to assault and battery with intent to
4 kill, the defendant has also been charged with
5 assault and battery with intent to kill. In order
6 to prove assault and battery with intent to kill,
7 the State must prove beyond a reasonable doubt that
8 the defendant committed an unlawful act of a violent
9 nature to the person or persons of another with
10 malice aforethought.

11 An assault occurs when a person unlawfully
12 attempts or offers to commit a violent injury upon
13 another person and have the present ability to
14 complete the attempted injury. An assault is the
15 intentional creation of a reasonable fear of
16 immediate bodily harm. It is not necessary that the
17 intended injury or harm actually take place.

18 For example, if I were to draw back as if
19 to hit you, that would be an assault if you were
20 within arm's reach. A battery is an unlawful
21 touching of another person by a person who has
22 committed an assault. An unlawful touching can be
23 caused by a part of the accused's body or by any
24 object the accused puts in motion.

25 Battery is the completion of the assault

1 by using or applying force to another person,
2 however slight, in a rude, angry, or resentful
3 manner without legal justification for doing so.
4 Using my earlier example, if I carry through the
5 assault by hitting you, then that is battery.

6 Malice aforethought has the same meaning
7 that I explained to you earlier when I gave you the
8 law regarding the crime of murder. Finally, the
9 defendant is charged with possession of a weapon
10 during the commission or attempt to commit a violent
11 crime. The State must prove beyond a reasonable
12 doubt that the defendant was in possession of a
13 firearm or visibly displayed what appeared to be a
14 firearm during the commission of a violent crime.

15 A firearm means any weapon which is
16 designed to or may readily be converted to expel a
17 projectile. In order to find the defendant guilty
18 of possession of a weapon during a violent crime,
19 you must first find the defendant guilty of either
20 committing or attempting to commit a violent crime.
21 Murder and assault and battery with intent to kill
22 are violent crimes.

23 Now, ladies and gentlemen, if a crime is
24 committed by two or more people who are acting
25 together in committing a crime, the act of one is

1 the act of all. A person who joins with another to
2 commit an unlawful act is criminally responsible for
3 everything done by the other person which happens as
4 a probable or natural consequence of the acts done
5 in carrying out a common plan and purpose.

6 For example, two people can be guilty of
7 killing another person when only one of the two had
8 a gun. There is only one bullet, and only one of
9 the two fired the shot that caused the death. If
10 two or more people are together, acting together,
11 assisting one another in committing the offense, the
12 act of one is the act of all; or, as it is sometimes
13 said, the hand of one is the hand of all.

14 Prior knowledge that a crime is going to
15 be committed without more is not sufficient to make
16 a person guilty of that crime. Mere knowledge that
17 another person is going to commit a crime, even if
18 the defendant is present when the crime is
19 committed, is not sufficient to convict the
20 defendant as a principal.

21 Guilt as a principal is shown by actual or
22 constructive presence at a scene as a result of
23 prior arrangement. Therefore, a finding of a prior
24 arranged plan or common scheme is necessary for a
25 finding of guilt as a principal. The State must

1 prove beyond a reasonable doubt by competent
2 evidence the theory of the hand of one is the hand
3 of all.

4 A principal in a crime is one who either
5 actually commits the crime or who is present aiding,
6 abetting, or assisting in committing the crime.
7 When a person doesn't act in the presence of or with
8 the assistance of another, the act is done by both
9 where two or more acting with a common plan or
10 intent are present at the commission of a crime.

11 It does not matter who actually commits
12 the crime. All are guilty. The hand of one is the
13 hand of all. Present at the commission of a crime
14 means to be sufficiently near to aid, and abet, and
15 assist in the commission of the crime. However,
16 mere presence at the scene of a crime is not
17 sufficient to convict one as a principal on the
18 theory of aiding and abetting.

19 Intent is also a necessary element, for
20 there must have been a common design or intent to
21 commit the crime, and the crime must have been
22 committed pursuant thereto with the person aiding
23 and abetting by some overt act. Intent means
24 intending the result which actually occurs, that is
25 not accidentally or involuntary.

1 Intent may be shown by acts and conduct of
2 the defendant and other circumstances from which you
3 may naturally and reasonably infer intent. The
4 State must prove these elements beyond a reasonable
5 doubt.

6 Mr. Foreman and members of the jury, you
7 have been selected by the State and the defendant to
8 be fair and impartial jurors. It is your duty,
9 then, by your joint deliberations to determine the
10 truth in this case, giving the defendant the benefit
11 of every reasonable doubt on each and every issue.

12 And from the facts which you determine to
13 be true, you take and apply the law which I have
14 just given you and thus arrive at a verdict which
15 speaks the truth in this case. I've told you the
16 standards you have to apply to each of those
17 particular charges and each indictment.

18 You've heard the evidence. You have now
19 heard the law. Whatever your verdict as to each of
20 these particular charges, Mr. Foreman will indicate
21 by writing "guilty" or "not guilty" on the back of
22 each indictment under the section marked "verdict."

23 These are the indictments you will have,
24 and there's a place here for verdict. And as to
25 each charge, you will write the verdict, either

1 guilty or not guilty, and then sign the verdict
2 forms. There is no significance in the order in
3 which I state these possible verdicts. Simply, one
4 must be stated first. And you'll sign at the bottom
5 of the verdict section and date it.

6 Now, remember that although the foreman is
7 the only juror who signs the verdict, it will not be
8 his alone. The verdict has to be a unanimous
9 verdict as to each charge. Now, Mr. Foreman, you're
10 not authorized to write nor sign that verdict until
11 all of you have agreed as to what the verdict should
12 be.

13 Now, ladies and gentlemen, I'm going to
14 send you to the jury room, but do not begin to
15 discuss the case until you have received a copy of
16 this jury charge that I have read to you, the
17 exhibits, and the indictments. Once you receive
18 these things, that will be your signal to begin your
19 deliberations.

20 And once you begin your deliberations, you
21 will deliberate until you have reached a verdict, at
22 which time you will knock on the door, advise the
23 Bailiff, and we will bring you out to receive your
24 verdict. We've ordered lunch for you, and it's
25 probably here or soon will be here.

1 Whether you want to stop deliberating and
2 eat, wait till you eat to deliberate, eat while
3 deliberating, that's all up to you. But I'll ask
4 that you go to the jury room and wait to receive the
5 verdict forms, the jury charge, and all the
6 exhibits. And that will be your signal to begin
7 your deliberation.

8 We'll need all of you to go to the jury
9 room except for the last two jurors selected, the
10 two alternates, who will stay in Court while you go
11 to the jury room. Please go to the jury room at
12 this time.

13 (The jury left the
14 courtroom at at 12:41 p.m. to deliberate their
15 verdicts.)

16 THE COURT: Are there any additions or
17 exceptions to the jury charge from the State?

18 MR. WEEKS: No, Your Honor.

19 THE COURT: From the defense?

20 MR. GIPSON: Only, Your Honor, as I mentioned
21 yesterday, it's my request.

22 THE COURT: All right, very good. If you all
23 will check with the Court Reporter that you agree on
24 all exhibits going to the jury, then the Bailiff can
25 take them. They can begin their deliberations.

1 While you all are doing that, I'll speak
2 to the last two jurors who were selected. We pick
3 14 jurors because something might happen to some of
4 the first 12. And in that event, then, you all
5 would move up and become a member of the regular
6 deliberating panel.

7 Since all the other jurors made it
8 through, you will not need to deliberate with them.
9 Certainly, I want to thank you for your patience,
10 and understanding, and participation in this case.
11 Today is Thursday, so we won't be hearing any other
12 cases this week with a jury trial. So, in effect,
13 you all are through with jury duty.

14 Anything you would like to tell them,
15 Madam Clerk?

16 CLERK OF COURT: They're to go over to see Lee
17 Ann Sanders and see about getting their checks.

18 THE COURT: Where can they find her?

19 CLERK OF COURT: You'll have to go over to the
20 Clerk's Office part, which is straight across --

21 BAILIFF: I'll show them where it's at.

22 CLERK OF COURT: Okay, thank you, sir.

23 THE COURT: All right. And you ordered lunch
24 for them as well?

25 BAILIFF: Yes, sir.

1 THE COURT: And is it here yet?

2 BAILIFF: Yes, sir.

3 THE COURT: You're welcome to stick around if
4 you want to, to find out what the verdict is, or
5 listen and hear it later on. Thank you all for your
6 services.

7 COURT REPORTER: Your Honor, we're sending back
8 State's One through Fifty-Two and Defense Number
9 One.

10 THE COURT: Do the parties agree as to those
11 exhibits?

12 MR. GIPSON: Yes, sir, we do.

13 THE COURT: All right. All right, while the
14 jury is out, we will take a break at least until
15 2:00 on this case. If we do not receive any
16 questions or anything in that span of time, we'll
17 say 2:00. All right, we will be in recess till
18 2:00.

19 (Court in recess.)

20 THE COURT: All right, we have a question --
21 one of two or three questions -- from the jury.
22 Number one, "Can we be able to watch the video part
23 of Ware video confession that was shown to us?"
24 Second, "Read some transcript of Walker, Ware, and
25 Seawright." Third, "Send device to play CDs."

1 We'll start with the third one. What
2 about that?

3 MR. WEEKS: We do.

4 THE COURT: What do you have?

5 MR. WEEKS: We have a laptop to take back
6 there.

7 THE COURT: A laptop that can play the CDs.
8 What do you say about that, Mr. Gipson?

9 MR. GIPSON: Your Honor, are we playing the
10 actual portion, or is that the entire thing?

11 MR. WEEKS: The portion we're going to have to
12 bring them out to do.

13 THE COURT: The question says "Some device to
14 play CDs." You have a CD player? What's on the
15 CDs, the entire statement?

16 MR. GIPSON: Yes, sir.

17 MR. WEEKS: That's what's on that one with the
18 portion, so we would have to bring that one out.

19 THE COURT: What's on the other CDs that we
20 have?

21 MR. WEEKS: The 911 tapes.

22 MR. GIPSON: And those are unobjected to, sir.
23 And I'm sure those can go. I don't have a problem
24 with those going back.

25 MR. WEEKS: It was just one tape with all three

1 of them on there.

2 THE COURT: The Ware tape, then, will need to
3 be taken off the list of exhibits and played in open
4 Court.

5 MR. GIPSON: Yes, sir.

6 THE COURT: And then kept out.

7 MR. WEEKS: Sir?

8 THE COURT: And then kept out, because
9 otherwise there would be no control in playing it to
10 include stuff not in evidence.

11 MR. GIPSON: Yes, sir.

12 MR. WEEKS: Good point.

13 THE COURT: And "Read some transcript of
14 Walker, Ware, and Seawright," there are no written
15 transcripts. So they would need to be able to hear
16 whatever testimony of those folks that they want to
17 hear.

18 You don't have a transcript available, do
19 you, Madam Court Reporter?

20 COURT REPORTER: No.

21 MR. WEEKS: I think what they're talking about
22 is the previous transcripts.

23 THE COURT: Well, they're not in evidence, so
24 they don't get that. But any testimony that they
25 would like to hear regarding Walker, Ware, and

1 Seawright they'll need to hear it and tell us what
2 they want to hear, and then bring them in and play
3 it for them. Can you all cue the video part of the
4 Ware video confession that was shown to them? Can
5 you cue that --

6 MR. GIPSON: Yes, sir.

7 THE COURT: -- so we can show them that?

8 MR. GIPSON: We need to black those specific
9 areas out so we can -- that we played actually
10 during the trial. I have those ticker numbers
11 actually written down so we can start and stop it,
12 and nothing else.

13 THE COURT: Say that again?

14 MR. GIPSON: We've actually blocked out the
15 areas that were actually played at trial. It's
16 written down, 6:20 to 6:45, and then those two
17 are --

18 THE COURT: Can you all cue that up?

19 MR. GIPSON: Yes, sir.

20 THE COURT: Do you have one of those CDs in
21 here?

22 MR. GIPSON: I think they have the one back
23 there that has got the actual ticker numbers on
24 there on the exhibit, I believe.

25 THE COURT: Well, we'll need to get that

1 particular -- which exhibit is that?

2 MR. GIPSON: Defense one.

3 THE COURT: Defense one?

4 MR. GIPSON: Yes, sir.

5 THE COURT: Any objection to the Bailiff going
6 to the jury room and retrieving Exhibit Number One
7 so we can cue it prior to them coming in?

8 MR. GIPSON: No, sir.

9 THE COURT: All right, sir. We need Defense
10 Exhibit Number One sent back out here. How many
11 exhibits did you put in?

12 MR. GIPSON: Just one, Your Honor.

13 THE COURT: Just one, so Defense Exhibit Number
14 One. Any other thoughts on what the jury has
15 requested?

16 MR. GIPSON: No, sir.

17 MR. WEEKS: No, sir.

18 THE COURT: All right. So we'll send back a
19 laptop to play the CD. What else is on the laptop?

20 MR. WEEKS: I've got a star board back there.

21 THE COURT: Give it to them and let them cue it
22 up, whatever it is that they want to hear. While
23 they're cueing that up, we're going to take the next
24 probation violation.

25 (Whereupon, other matters

1 were heard before the Court.)

2 THE COURT: Are we all cued up here? All
3 right, who's running the machine for this display?
4 All right, let's bring the jury.

5 (The jury returned to the courtroom at
6 2:52 p.m. for playback of DVD.)

7 THE COURT: All right, ladies and gentlemen, I
8 have your note, which has three parts to it, the
9 first part being, "Can we be able to watch the video
10 part of Ware video confession that was shown to us?"
11 And we're going to play that for you in just a
12 second.

13 The second one, part of this is "Read some
14 transcript of Walker, Ware, and Seawright." There
15 are no printed transcripts of the testimony. The
16 Court Reporter takes down the testimony. There is
17 no instant transcription of the testimony.

18 Any testimony that you would like to
19 listen to, you'll have to let me know what you want
20 to listen to, and we'll bring you back in and play
21 that testimony over the sound system, be it Walker,
22 Ware, and Seawright. If you want to listen to their
23 entire testimony, one, two, or the three of them,
24 just send a note and we'll deal with that where I'll
25 have you come out and listen to it.

1 The third thing is "Some device to play
2 CDs." We'll send a laptop back there. We will have
3 a device to play CDs. The Ware video will not be
4 included because there are other things on there
5 that's not in evidence.

6 Are we set up?

7 THE COURT: All right. So you can play
8 that one.

9 (Whereupon, the DVD was played for
10 the jury.)

11 THE COURT: That's the portion of the video
12 that's in evidence, Mr. Weeks and Mr. Gipson?

13 MR. WEEKS: Yes, sir.

14 MR. GIPSON: Yes, sir, that's correct.

15 THE COURT: All right. So that has been played
16 for you. Regarding any transcripts you'd like to
17 listen to, let me know. And we'll send that laptop,
18 but that particular CD will stay in the courtroom.
19 All right.

20 (The jury left the courtroom at 2:55
21 p.m. to continue deliberations.)

22 THE COURT: Any exceptions to the Court's
23 instruction to the jury?

24 MR. WEEKS: Not from the State, Your Honor.

25 MR. GIPSON: Nothing from the defense, Your

1 Honor.

2 THE COURT: All right. Here is the note that
3 can be made part of the record.

4 (Court's Exhibit Number One, Jury
5 Question, was entered in the record.)

6 (Whereupon, other matters were heard
7 before the Court.)

8 THE COURT: All right, Mr. Bailiff, the
9 Solicitor, defense counsel, and an officer are going
10 in the jury room to set up that laptop and let them
11 know how it works, I imagine. So if you'll go in
12 there ahead of them to stop their deliberation while
13 the others go in, and you'll go in there with them
14 as well, just to be sure there's no conversation or
15 deliberation by the jury while they're in the room.

16 (Whereupon, other matters were heard
17 before the Court.)

18 THE COURT: All right, we need Mr. Tyler. We
19 need the defendant, Mr. Tyler. Can you cue that up,
20 Madam Court Reporter?

21 COURT REPORTER: He wants to take them in the
22 way they were presented, is that correct?

23 THE COURT: Yes, Ware, Walker, then Seawright
24 -- or the way they testified. It doesn't matter.
25 Which one is first?

1 COURT REPORTER: Seawright.

2 THE COURT: Okay. The testimony of Ware,
3 Walker, and Seawright. And what I propose to tell
4 jury approximately the length of the three hours of
5 testimony. And addressing the foreperson, I will
6 say to him that if at any point in the testimony of
7 these three people, they've heard enough of the
8 testimony that they're interested in hearing and he
9 lets me know, then we'll stop the testimony for that
10 particular witness.

11 What says the State about that?

12 MR. WEEKS: The State doesn't have any
13 objection to that.

14 THE COURT: And the defense?

15 MR. GIPSON: I do not have an objection to
16 that.

17 THE COURT: All right. So that's what we'll
18 do. So we'll need to have the jury come on in.

19 (The jury returned to the courtroom
20 at 4:26 p.m. for playback of videotaped testimony.)

21 THE COURT: All right, the jury is in. The
22 note is, "Can we hear all three testimony of Ware,
23 Walker, and Seawright?" and we're going to play that
24 testimony.

25 Mr. Foreman, at any point in time that you

1 have heard as much of any of the testimony that you
2 are satisfied that you want to hear, then you let me
3 know and we'll stop that testimony. The three
4 testimonies all total I think is about three hours'
5 testimony. But if have heard a sufficient amount of
6 any particular one, you let me know. Of course,
7 you'll have to get the sense of the jury in letting
8 me know.

9 MR. TAEGAR: Yes, sir.

10 THE COURT: All right.

11 MR. TAEGAR: Could we possibly get from the
12 part of the house, or do we have to hear the whole
13 thing?

14 THE COURT: Say it again?

15 MR. TAEGAR: Could we possibly hear from just
16 the house and onward, or do we have to hear the
17 whole thing?

18 THE COURT: Well, we'll start it, and then when
19 you've heard enough of any particular one, then let
20 me know.

21 MR. TAEGAR: All right.

22 THE COURT: All right. But I don't know where
23 it starts. We'll just have to listen and see.

24 MR. TAEGAR: Yes, sir, thank you.

25 (Whereupon, a portion of the

1 videotaped testimony of Kendall Seawright to the
2 beginning of the testimony of Wallow Ware was played
3 back for the jury.)

4 THE COURT: Does that conclude all that the
5 jury would like to listen to?

6 MR. TAEGAR: Yes, Your Honor.

7 THE COURT: All right, very good. I'll have
8 you go back to the jury room. Thank you very much.

9 (The jury left the courtroom at 5:15
10 p.m.)

11 THE COURT: Any exception from any of the
12 parties?

13 MR. GIPSON: Nothing, Your Honor.

14 MR. WEEKS: None from the State, Your Honor.

15 THE COURT: All right. We'll be at ease
16 waiting for the jury.

17 (Court in recess while jury
18 deliberations continue.)

19 THE COURT: Thank you. Please be seated. I
20 understand that there is a verdict, and I want to
21 admonish everyone that order must be maintained in
22 Court at all times.

23 MR. WEEKS: Your Honor, if we could just have a
24 minute. The victim's family is downstairs.

25 THE COURT: All right. All right, bring the

1 jury.

2 (The jury returned to the courtroom
3 at 7:48 p.m. with their verdicts.)

4 THE COURT: Mr. Foreman, if you'll stand,
5 please. Have you reached a verdict?

6 MR. TAEGAR: Yes, sir, we have.

7 THE COURT: Is it a unanimous verdict?

8 MR. TAEGAR: Yes, sir, it is.

9 THE COURT: Okay, if you'll pass it up.

10 All rise, please.

11 You may publish the verdict.

12 VERDICT OF THE JURY

13 CLERK OF COURT: Yes, sir. Your Honor, the
14 State of South Carolina versus Cornell Devon Tyler,
15 Docket Number 2006-GS-02-550, with the indictment
16 for possession of firearm or knife during the
17 commission of attempt to commit a violent crime,
18 verdict, guilty, Foreperson Martin Taegar.

19 Your Honor, Indictment 2006-GS-02-551, the
20 State of South Carolina versus Cornell Devon Tyler,
21 with indictment for assault and battery with intent
22 to kill, verdict, guilty, Martin Taegar, Foreperson.

23 Your Honor, we have 2006-GS-02-552, the
24 State of South Carolina versus Cornell Devon Tyler,
25 with indictment of murder, the verdict is guilty,

1 Foreperson Martin Taegar.

2 Ladies and gentlemen of the jury, if this
3 is your verdict, please indicate by raising of your
4 right hand. All hands are raised.

5 THE COURT: Okay. Any additional polling of
6 the jury requested by the State or the defense?

7 MR. WEEKS: Not by the State, Your Honor.

8 MR. GIPSON: No, sir.

9 THE COURT: All right, you may be seated.

10 Ladies and gentlemen, you were called upon
11 to come and serve on jury duty. You didn't
12 volunteer, but providence has brought you here for
13 this time, for this purpose, and you have responded
14 by serving. And you have rendered a unanimous
15 verdict finding the defendant guilty of each of
16 these charges. And I want to thank you for your
17 jury service.

18 Any post-trial motions by the defense?

19 MR. GIPSON: Yes, sir. I respectfully request
20 that the Court consider at this point setting aside
21 the verdict and potentially granting a new trial
22 that based on the fact there was obviously -- first
23 of all, we believe there was ample evidence in the
24 record that showed based on the credibility of what
25 was said by witnesses, things of that nature, that

1 these acts were not conducted by Mr. Tyler.

2 Your Honor, I believe that with the
3 co-defendants who testified, the information that we
4 have learned about credibility, and the things that
5 they were involved in as well should weigh heavily
6 on this case, Your Honor. And I'd ask that you
7 consider granting a new trial just based on the fact
8 that I think there was evidence that the jury may
9 not have considered that they should have considered
10 in order to render a verdict.

11 THE COURT: There was obviously conflicting
12 testimony, one version by the State, another version
13 by the defense. There were matters that
14 necessitated the jury to view the evidence and to
15 evaluate the credibility of the witnesses who have
16 testified. I find that there is ample evidence to
17 support the guilty verdict. I deny the motion, and
18 the jury verdict stands.

19 Ladies and gentlemen, you have found a
20 person guilty, and it becomes my duty to impose a
21 sentence. Are you ready to proceed for sentencing,
22 Mr. Weeks?

23 MR. WEEKS: Your Honor, just a couple of
24 minutes. We've got to fill out the aggravating
25 sentence sheet.

1 THE COURT: Ladies and gentlemen, though you
2 have no role in the sentencing, certainly with the
3 time and energy that you have invested in this case,
4 in most instances I find that the jury is interested
5 in that part of the proceeding as well. So during
6 the sentencing phase, you revert to being
7 spectators. But we'll proceed with the sentencing
8 at this time. The defendant will come forward.

9 Mr. Weeks, is there anyone you would like
10 to present on behalf of the victim the victims'
11 families?

12 MR. WEEKS: Yes, sir, Your Honor.

13 MS. KEYS: My name is Ms. Queen Esther Keys.
14 Your Honor, Mr. Weeks, and your colleagues, Ms.
15 Brisbin, and the jury, now I can let go and let God,
16 because now I feel peace. And I want to thank the
17 Court for giving him guilty.

18 I am just so relieved now. But, you know,
19 I also thought about I must forgive him for what he
20 did. I can forgive him because I know I need to
21 make it into heaven, and I am.

22 I forgive him what he did. For the act
23 that he did, I cannot, because it was vicious, and
24 he was a coward for what he did. And another thing
25 is that my daughter's not here anymore. She is

1 buried. She is dead.

2 But, see, he's still alive. He might have
3 to make some time, but he's still here. He has a
4 family. He also has a future. My daughter doesn't
5 have a future. And also she had to go from our
6 lives and our arms.

7 But today the victory was God's, and the
8 victory was to the Keys, to the Adams, the Smiths,
9 and also the -- also the other victim's family. The
10 victory is ours today, and it belongs to God. And I
11 just want to say thank you so much for what has
12 happened -- the law, justice has been done. Thank
13 you.

14 THE COURT: Yes, ma'am.

15 MR. BREWER: Again, I would like to thank the
16 Court very much for what's -- and I'd like to thank
17 the jury very much. Cornell, I do forgive you,
18 because I am Christian. It's hard for me, but one
19 thing I can say, this is a closure.

20 It's been hard over the years, because
21 I've had flashbacks, and it's really bad. I'm in
22 therapy. I've been in therapy for a month and a
23 half.

24 But I thank you, I thank this Court for
25 what they've done and for all the hard work that the

1 Sheriff's Department, and the Solicitor, and all.

2 And I just want to thank you for being the Judge
3 that you have been. Thank you very much.

4 THE COURT: Yes, sir, thank you.

5 Mr. Weeks?

6 MR. WEEKS: Your Honor, this is -- as I told
7 the jury, 26 years in Aiken County, practicing law
8 and prosecuting, I don't think I've ever seen a more
9 senseless murder -- absolutely senseless. All
10 murders are senseless, but this is one where -- you
11 know, just beyond description.

12 And recognizing that the jury deliberated
13 hard and thoroughly, recognizing that in all cases
14 we have issues with witnesses, issues with evidence,
15 I'd like to thank the Aiken County Sheriff's
16 Department for working very hard to bring Mr. Tyler
17 to justice.

18 The family of the Brewers and the Keys
19 have been very patient throughout this process. And
20 we certainly ask that you sentence him to the
21 maximum penalty allowed by law. Now, he has some
22 prior criminal history. But, quite honestly, I
23 think it's just arrests that have never come to
24 fruition in court.

25 There are pending charges on him now that

1 because of the mandatory sentences involved in this
2 case I'm pretty certain will go away. But that's
3 not to say that Cornell Tyler has been pure as the
4 driven snow in Aiken County. But this is a
5 horrible, horrendous murder that will be
6 appropriately punished. Thank you.

7 THE COURT: Mr. Gipson?

8 MR. GIPSON: May it please the Court, Your
9 Honor, Mr. Weeks, and to the Adams family, the Keys,
10 the Dorches, the Brewers as well, I agree -- and as
11 well as the jury. Again, I agree, and this is
12 something I've said from day one. I will never come
13 in here and say that this was not a senseless act, a
14 cowardly act, all of those things, because they're
15 true.

16 And the fact that Ms. Dorch passed away ..
17 and shouldn't have, you know, that is something that
18 I respect absolutely what her mother said. That is
19 something that she can never be brought back. Mr.
20 Brewer was injured, and there are parts of his life
21 that will be changed forever, Your Honor. And I
22 respect those things as well.

23 I'll say, Your Honor, in knowing Mr. Tyler
24 -- and I've known him some two and a half years,
25 Your Honor -- he has been forthright with me, and

1 he's spoken with me about the occurrence of that
2 evening. And he's told me quite honestly that he
3 feels for the family in terms of everything that's
4 taken place.

5 But he has always maintained that he was
6 not the person who did the shooting, and he wasn't
7 involved. And I respect completely what the jury's
8 decision is, Your Honor. I respect that. He's told
9 me he feels like this is more of a guilt by
10 association, a hand of one/hand of all issue, and I
11 respect that, and I know what the law is.

12 I say those things to say he's been
13 contrite about what's happened and taken place, and
14 he really and truly -- and I believe he'll express
15 this himself. He wants to convey to the Court that
16 any portion that he played in this thing in terms of
17 not coming to justice immediately, calling police,
18 all of the things that he could have done, he
19 apologizes for those things, Your Honor, and wishes
20 he could do those things absolutely different, if he
21 could have an opportunity to do those things, Your
22 Honor.

23 I'd ask that you -- understanding the
24 sentencing ranges, Your Honor, that you'd consider
25 the fact that he has no violent past, Your Honor.

1 And I know that doesn't change the fact that Ms.
2 Dorch is not here. But he has no violent past, Your
3 Honor.

4 He's worked most of his life, Your Honor.
5 He has a family as well. He's got family in the
6 courtroom, mother and father are here, Your Honor.
7 And he has not been a Boy Scout necessarily. I'm
8 not going to stand here and tell you that.

9 But, Your Honor, he's not been in this
10 courtroom multiple times. This incident is really
11 his first real stepping through the system, through
12 the criminal justice system. Your Honor, in
13 sentencing for murder, I understand your range could
14 be 30 years to life. And then there's assault and
15 battery with intent to kill, it could be up to 20
16 years.

17 All of those things, Your Honor, at his
18 age he's now 25 years old, Your Honor. And I'd ask
19 that you consider a sentence that would allow him to
20 pay his debt to society, Your Honor, and maybe at
21 some point in time, when he's an older man, to be
22 able to have an opportunity to set foot back on soil
23 other than prison soil.

24 I'd ask that you not give him a life
25 sentence, Your Honor, but to consider the fact that

1 his past has not been one of a lot of criminal
2 activity and convictions and things of that nature
3 and that he has worked and been a contributor to the
4 economy here. He's not done a lot of the things
5 that you see as a Judge in people coming before this
6 Court.

7 These are absolutely serious matters, and
8 I know that the jury deliberated hard, and they came
9 back with a unanimous verdict against him. But I
10 consider -- I'd ask that you consider being
11 merciful, as merciful as you can in this matter by
12 not sentencing him to the maximum, Your Honor. I
13 believe that his parents may, if you would allow,
14 like to speak on his behalf.

15 THE COURT: All right.

16 MR. GIPSON: Okay, thank you, sir. And then I
17 think he'd like to address you as well.

18 MR. TYLER: Mr. Brewer --

19 THE COURT: Sir, speak to me.

20 MR. TYLER: Okay. Well, Judge, the only thing
21 I can say is that I ain't never thought my son would
22 do anything like this, and I still don't think he
23 did it. And the only thing I'm asking you is to be
24 lenient on him. And, you know -- I appreciate the
25 good job you've done.

1 And, Judge, the only thing I can say, I
2 did all I could to bring him up right through
3 church, through everything. And like I say, and
4 maybe it ain't going to help none, but me and his
5 mom was going through some problems. And I happened
6 not to be down in the neighborhood when this started
7 to happen.

8 If I'd of been there, maybe Ms. Dorch
9 would have still been living. But I'm just asking
10 you, you know, that you have mercy on him, as he's
11 being a young man, 25 years old, two kids. And
12 matter of fact, I'm helping take care of his kids,
13 because I just got them out of a shelter.

14 So I'm asking that you be lenient on him
15 with your sentence. And from the bottom of my
16 heart, I'm just really sorry this happened. I --

17 THE COURT: There is no lenient sentence for
18 murder.

19 MR. TYLER: Well, I know he deserves some
20 punishment. I don't know your system. I don't know
21 if it's 30 years to life. But, you know, I know
22 that's your call. And I can't say what lenient
23 means. Lenient to me means not giving him life in
24 prison and give him time.

25 He's going to think about what he did, and

1 he knows, and God knows whether he did it or not.
2 Whether the jury convicted him as guilty or not, we
3 all know God knows. We may not know. We're going
4 by what the jury said.

5 But God knows, and God is going to punish
6 him for what he did. So my thing as being lenient
7 is not giving him life in prison and respect that he
8 does have three kids, a little daughter, two sons.
9 And that's all I've got to say, just be lenient on
10 him.

11 THE COURT: All right, thank you, sir.

12 MR. GIPSON: And I believe he'd like to address
13 you as well, Your Honor.

14 THE COURT: Yes, sir.

15 MR. TYLER: Well, Your Honor, I understand the
16 family. I understand that what happened is tragic.
17 And like I said again on the stand, I'm sorry for
18 what happened. And I had nothing to do with that.
19 I understand the jury has got to do what they feel
20 like is by the law.

21 THE COURT: Well, if you want to rehash the
22 testimony, you can save your breath.

23 MR. TYLER: But I just want to tell them I am
24 sorry, and I'm not guilty of the crime. You know,
25 my mother and father --

1 THE COURT: You're guilty as far as I'm
2 concerned. I'm going to sentence you because you've
3 been found guilty.

4 MR. TYLER: Yes, sir.

5 THE COURT: And I fully support the jury's
6 verdict.

7 MR. TYLER: Yes, sir.

8 THE COURT: And I agree with the jury's
9 verdict.

10 MR. TYLER: Yes, sir.

11 THE COURT: And that's the basis for my
12 sentence. So we're not here to recount guilt or
13 innocence.

14 MR. TYLER: Yes, sir.

15 THE COURT: That has been determined. And that
16 I support.

17 MR. TYLER: Yes, sir.

18 THE COURT: But go ahead.

19 MR. TYLER: I just want to let them know I'm
20 sorry for what happened. And, God, you know what
21 happened. And His will will be done. And I believe
22 in God. I believe His Son did die on the cross for
23 our sins.

24 And I can't say -- you know, I'm not mad
25 at nobody, because just like Ms. Dorch's mother

1 said, you've got to forgive. So I even forgive the
2 jury and what happened. But I just want to tell the
3 family I'm sorry and I didn't do it. And I feel --

4 THE COURT: Anything else?

5 MR. TYLER: And I just pray that if -- I
6 understand the sentences, I understand -- you know,
7 I respect what you're saying, sir. And I just pray
8 that you give me another chance.

9 THE COURT: Another chance for what?

10 MR. TYLER: To get out and -- well, they'll be
11 gone, but to get out and live my life again.

12 THE COURT: All right, thank you, sir.

13 Mr. Gipson?

14 MR. GIPSON: Your Honor, just in summation, I
15 just ask that -- again, I understand -- you know, I
16 will say this. I respect the jury's providence, and
17 I understand and respect the sentencing ranges that
18 you have to contend with, Your Honor. And I would
19 ask that you consider not sentencing him to the
20 maximum, Your Honor.

21 Because of the verdict, there is
22 punishment that is deserved, without question. And
23 I'd ask that you consider some of his prior history
24 in here in Aiken County and on this earth and not
25 judge him only by the acts that --

1 THE COURT: What prior history is that?

2 MR. GIPSON: Your Honor, the fact that he
3 worked for a living. He's been out -- he'd been in
4 Aiken County, Your Honor. He'd held several jobs,
5 back and forth held jobs here.

6 THE COURT: Where was he working at the time of
7 the killing?

8 MR. GIPSON: He was working at the polo
9 grounds, Your Honor, and he was also working with
10 Ernest Bell, who is a mechanic, Your Honor, back in
11 2005.

12 THE COURT: All right. Anything else, Mr.
13 Gipson?

14 MR. GIPSON: No, sir.

15 THE COURT: All right, Mr. Weeks?

16 MR. WEEKS: No, Your Honor.

17 THE COURT: I believe fully in our judicial
18 system and support for the jury's verdict. The best
19 thing or the closest thing we have to perfection is
20 to have the matters thoroughly litigated and to have
21 the matter tested through the advocacy system.

22 Mr. Gipson, you've done an excellent job
23 in defending him, one of the most thorough and
24 vigorous defense representations that I have
25 witnessed over the past couple of years, for sure.

1 But in the end, the truth surfaces through the
2 venting of the process.

3 And I must say I fully agree with the
4 jury's verdict. I say that despite the fact that
5 the law does not permit me to have an opinion and to
6 express an opinion to the jury prior to their
7 deliberating and deciding the case. But the jury
8 has spoken, and that's the truth as far as this case
9 is concerned.

10 These issues of credibility were issues
11 for the jury to decide. They are to be commended
12 for the long time that they took to deliberate and
13 to decide this case. And I am always very
14 appreciative, most appreciative, of any jury that
15 takes its time to sift through the evidence, to
16 weigh it, and to decide the case.

17 And they've decided this case, and I'm not
18 sentencing a person who is standing before me
19 claiming innocence. I'm sentencing a person who is
20 guilty. And that's the basis for my sentence.

21 And certainly it's one of the most heinous
22 and horrific crimes that anyone could imagine for
23 someone to take a job delivering the newspaper, and
24 to be in training, and to be traveling at what would
25 otherwise be the most peaceful time, right before

1 the day, at a dawn when you certainly would not
2 expect out in the country to be encountered by a
3 hail of gunfire, and bullets, and shooting.

4 I don't know what was going on at your
5 house at that time. One witness said, "I know a
6 spot we can go to," and the spot that they testified
7 they could go to ended up being your house. For
8 whatever reason, they decided the spot was your
9 house. And whatever you had in your house that made
10 them interested in going to your house that morning,
11 I don't know.

12 Whatever rage that you had in your mind
13 and your brother's mind that you didn't want anyone
14 coming to your house or was leery or suspicious of
15 someone coming to your house that time of morning,
16 and what they might be coming to your house for that
17 morning, I don't know.

18 The fact that there's one car at your
19 house and then another car at your house, and you
20 wanted to know who it was and what they wanted, and
21 to retaliate against a car that you had no clue was
22 there, I don't know. Those are the unknowns. Of
23 course, you know.

24 They're unknowns as far as I'm concerned.
25 But they certainly speak volumes of what eventually

1 occurred in this case. And that is that an innocent
2 life was killed and another life shattered. And the
3 fact that you're being sentenced almost is
4 insignificant.

5 And the fact that you have children and
6 placing a minimum sentence of 30 years, there is no
7 role that you can effectively play in their lives.
8 It's likely that there is none.

9 In many instances, I see in court an array
10 of people who testify, all of whom say they have --
11 you know, they're 20 or 25 years old, they have
12 four, they have five children. You have two
13 children. What role they can play in those
14 children's lives of any significance is not very
15 likely to be anything of benefit.

16 And time and time again, I've seen it
17 where those children as years pass end up standing
18 right in that same spot that you're standing in
19 right now. But that's another issue for another
20 day.

21 But it's tragic, Mr. Tyler, and the reason
22 why you would find it necessary after this event to
23 pick up, to immediately flee the scene, had a job, I
24 guess the job was not as important as your leaving.
25 It was not important.

1 And to abandon town, that's indicative of
2 something significant. All of that I'm sure bore on
3 the fact of your standing right there, right now,
4 about to be sentenced for these crimes. The statute
5 says that a person who is convicted of murder must
6 be punished by death, by imprisonment for life, or
7 by a mandatory minimum term of imprisonment for 30
8 years.

9 One lived; one died. The State is not
10 seeking the death penalty because it does not
11 qualify for the death penalty in this instance
12 because of lack of aggravating circumstances. So
13 it's mandatory it must be punished by imprisonment
14 for life or by a mandatory minimum sentence of 30
15 years.

16 No person sentenced to a mandatory minimum
17 term of 30 years is eligible for parole or any early
18 release program, nor is the person eligible to
19 receive any work credits, education credits, good
20 conduct credits, or any other credits that would
21 reduce the mandatory minimum term in prison of 30
22 years.

23 For assault and battery with intent to
24 kill, you're facing a sentence of up to 20 years.
25 That's likewise a no parole offense. And you're

1 facing five years for possession of a weapon during
2 the commission of a violent crime.

3 SENTENCE OF THE COURT

4 The sentence that I'm going to give you is
5 this. For murder, the sentence is 30 years. For
6 assault and battery with intent to kill, the
7 sentence is 20 years, to run consecutive to the 30
8 years. For possession of a weapon during the
9 commission of a violent crime, the sentence is five
10 years, to run consecutive to the first two
11 sentences. Good luck to you.

12 MR. GIPSON: Thank you, Your Honor.

13 THE COURT: All right, ladies and gentlemen,
14 Madam Clerk, do you have anything for the jurors?

15 CLERK OF COURT: They're being informed that
16 you can come back tomorrow. The Jury Clerk has your
17 check. You can get it between nine and five, or she
18 will be mailing them out, along with your
19 statements.

20 THE COURT: All right, ladies and gentlemen, I
21 certainly want to thank you for your hard work.
22 It's not easy, but no one said it would be.

23 --End of Transcript of Record--

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON JANUARY 7, 8, 9, AND 10, 2008, IN AIKEN, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE EIGHTEENTH DAY OF AUGUST, 2008.

Reema K. G. Thomas
REMA K. GANTT THOMAS
OFFICIAL COURT REPORTER
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 11/21/2013

WITNESSES

S. J. Prince, A.C.S.O.

FILED: *[Signature]* 23 2007
[Signature]
Deputy Clerk

ARREST WARRANT NUMBER

DIRECT INDICTMENT

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: April 13, 2006

VERDICT

Guilty

Foreperson of Petit Jury

Date: 01-10-07

DOCKET NO. 2006-GS-02 -

550

The State of South Carolina
County of Aiken

COURT OF GENERAL SESSIONS

APRIL 17, TERM 2006

THE STATE
vs.

CORNELL DEVON TYLER

Indictment for
POSSESSION OF FIREARM OR KNIFE
DURING COMMISSION OF OR
ATTEMPT TO COMMIT A VIOLENT
CRIME

SC Code: 16-23-490

CCR Code: 549

Class FEL-F

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on April 17, 2006, the Grand Jurors of Aiken County present upon their oath:

POSSESSION OF FIREARM OR KNIFE DURING COMMISSION OF OR
ATTEMPT TO COMMIT A VIOLENT CRIME

That CORNELL DEVON TYLER did in Aiken County on or about August 27, 2005, possess or visibly display a firearm or visibly display a knife during the commission or attempted commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

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Aiken County Clerk of Cou 8036421718

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WITNESSES

S. J. Prince, A.C.S.O.

FILED

July 23 2007

J. H. Haddad

Deputy Clerk

ARREST WARRANT NUMBER

H-874288

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: April 13, 2006

VERDICT

GUILTY

Foreperson of Panel Jury

Date:

01-10-07

DOCKET NO. 2006-GS-02 - 551

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

APRIL 17, TERM 2006

THE STATE

vs.

CORNELL DEVON TYLER

Indictment for

ASSAULT AND BATTERY WITH
INTENT TO KILL

SC Code: 16-3-620

QDR Code: 014

Class FEL-C(V)

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

INDICTMENT

At a Court of General Sessions, convened on April 17, 2006, the Grand Jurors of Aiken County present upon their oath:

ASSAULT AND BATTERY WITH INTENT TO KILL

That CORNELL DEVON TYLER did in Aiken County on or about August 27, 2005, with malice aforethought commit an assault and battery upon one Joe Brewer with intent to kill the said victim. All in violation of §16-3-620 of the Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

Nov 03 08 01:28p

Riken County Clerk Of Cou 8036421718

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WITNESSES

S. J. Prince, A.C.S.O.

For person of Grand Jury
Date: April 13, 2006

ARREST WARRANT NUMBER

H-874278

ACTION OF GRAND JURY

VERDICT

GUILTY

For person of Petit Jury

Date:

01-10-07

DOCKET NO. 2006-GS-02 - 552

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

April 17, Term 2006

THE STATE

vs.

CORNELL DEVON TYLER

Indictment for

MURDER

SC Code 16-3-10
CDR Code 116
Class FEL-EXM

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

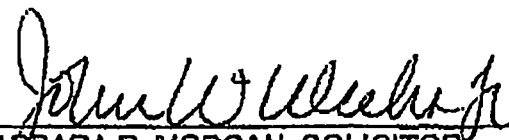
INDICTMENT

At a Court of General Sessions, convened on April 17, 2006, the Grand Jurors of Aiken County present upon their oath:

MURDER

That CORNELL DEVON TYLER did in Aiken County on or about August 27, 2005, feloniously, wilfully and with malice aforethought, then and there kill and murder Debra Dorch by means of shooting Debra Dorch in the back with a rifle and that the victim did die in Aiken County on Windsor Road, Springfield, South Carolina as a proximate result thereof on the 27th day of August, 2005. All in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BARBARA R. MORGAN, SOLICITOR

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM AIKEN COUNTY

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CORNELL D. TYLER,

APPELLANT

SUPPLEMENTAL
RECORD ON APPEAL

JOSEPH L. SAVITZ, III
Senior Appellate Defender

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

Attorney for Appellant

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

BARBARA R. MORGAN
Solicitor, Second Judicial Circuit
Post Office Box 3368
Aiken, SC 29802-3368
(803) 642-1557

Attorneys for Respondent

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2 COUNTY OF AIKEN

CIRCUIT COURT
2006-GS-02-551, 552

3
4 STATE OF SOUTH CAROLINA,

5 -vs-

TRANSCRIPT OF RECORD

6 CORNELL D. TYLER, JR.,
7 Defendant.

8
9 Heard on Wednesday, April 30, 2008

10 Aiken, South Carolina

11 BEFORE:

12 THE HONORABLE CLIFTON NEWMAN

13
14 APPEARANCES:

15 Counsel on Behalf of the State:
16 J. William Weeks, Esq.

17 Counsel on Behalf of the Defendant:
18 Byron E. Gipson, Esq.

19
20
21 Cheri L. Young, RPR
22 Circuit Court Reporter
23 P O Box 1154
Aiken, SC 29802-1154

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(No exhibits identified/introduced during the hearing of
this cause.)

1 ON WEDNESDAY, APRIL 30, 2008 AT 2:23 P.M.:

2 MR. WEEKS: Good afternoon, Your Honor.

3 THE COURT: Good afternoon.

4 MR. WEEKS: Your Honor, this is in regard to
5 general sessions. And I'm assuming that you have joint
6 jurisdiction at this point in time.

7 This is a motion to reconsider sentence given in
8 the case of State versus Cornell Tyler, Jr. It was given
9 during the week of January the 7th of 2008. Mr. Tyler, as
10 you recall, was convicted of the charge of murder, assault
11 and battery with intent to kill and possession of a
12 firearm in the commission of a violent crime.

13 Your Honor gave him a sentence of 30 years on the
14 murder, 20 years on the assault and battery with intent to
15 kill, consecutive, and incorporated the possession of the
16 firearm into the two charges pursuant to the statute. So
17 it was a total of 50 years for the three convictions.

18 THE COURT: All right.

19 MR. WEEKS: Your Honor, we have family members of
20 the victim, the deceased victim, and the victim that lived
21 are all here. If you want to hear from them after you
22 hear from the Defendant.

23 THE COURT: All right. Mr. Gipson?

24 MR. GIPSON: If it please the Court, Your Honor.

25 THE COURT: Yes, sir.

1 MR. GIPSON: And this motion comes, Your Honor,
2 pursuant to, as Mr. Weeks has mentioned, a guilty verdict
3 from a trial which was held in the first full week in
4 January, Your Honor. And first and foremost, as I mention
5 I believe, my first remarks, is that during the sentencing
6 phase of the trial, is we give absolute deference to the
7 jury's verdict.

8 They were obviously conscientious in their
9 reviewing of the facts, reviewing of the law. And I
10 believe they deliberated close to at least seven or so
11 hours. At least that. It may have been more than that
12 actually, Your Honor. So I do not question the verdict
13 that they came back with, Your Honor.

14 And, again, giving deference to the families
15 involved in this matter, Your Honor, it's been very
16 traumatic for them and I'm sure every time they have to
17 come back to court for this matter it's traumatic.

18 Your Honor, we come before you again requesting
19 that you consider a reduction of some sort in the
20 sentencing. My recollection -- I know Mr. Weeks said
21 there was a 50-year sentence. My recollection is it was
22 55, Your Honor.

23 THE COURT: That's what you have in your motion.
24 Do you have the sentencing sheets?

25 MR. WEEKS: Your Honor, I do not. Our office has

1 a copy of them. I don't know if they'll have them next
2 door or not.

3 THE COURT: All right.

4 MR. WEEKS: I'll get the clerk to pull them
5 though, if you give me three minutes to run over there.

6 THE COURT: All right. Well, let's just take a
7 break and get them.

8 MR. GIPSON: Yes, sir.

9 MR. WEEKS: Yes, sir. I need to know exactly.

10 MR. GIPSON: Yes, sir. Thank you.

11 THE COURT: We'll take a look when we get it.

12 (Pause.)

13 MR. GIPSON: Thank you, Your Honor. And, again,
14 with the jury finding him guilty, Your Honor, it's clear
15 that there was evidence in the record where that could
16 happen. There's no question about that.

17 And just upon reflection of the jury charges and
18 things of that nature, I think that part of their
19 consideration was the hand of one is the hand of all. And
20 I know if the Court remembers but there were two
21 co-defendants in this case, Your Honor. There was
22 Mr. Willie Ware, who purported to be the driver, Your
23 Honor, and also Mr. Edward Walker, who some testimony says
24 was on top of the car. Others say that he had potentially
25 done some shooting. He admitted to shooting. There was

1 some, maybe some contradictory testimony as to exactly
2 what his role was. It seem to may have been that.

3 But, Your Honor, our request comes based on the
4 fact that without a doubt he was convicted as you know of
5 murder, of assault and battery with intent to kill and
6 possession of a weapon during the commission of a violent
7 crime. And with those convictions, Your Honor, with those
8 sentences, it looks as if they were run concurrent, at
9 least that's what my recollection is, is that each of
10 those were run concurrent which gave him a total of 65
11 years.

12 THE COURT: You mean consecutive?

13 MR. GIPSON: Yes. Absolutely. Consecutive.
14 It's our request that you consider some type of concurrent
15 sentencing in some way, shape or form or maybe a reduction
16 in the assault and battery with intent to kill.

17 I understand that with a conviction of murder the
18 minimum sentence is 30 years and Your Honor was gracious
19 enough to give the minimum sentence in that situation.
20 We'd ask that you consider reducing the assault and
21 battery with intent to kill and/or the commission of a --
22 possession of a gun during the commission of a violent
23 crime, to either run those concurrent with the murder or,
24 Your Honor, to reduce it in some way, shape or form, Your
25 Honor.

1 And I ask that because there were co-defendants,
2 Your Honor. And my belief is that Mr. Walker was
3 intimately involved in this, Your Honor. And I respect
4 his sentencing which was much less. My belief is there
5 was some culpability -- there was more culpability with
6 him as well.

7 And I just asked co-defendant -- well, that
8 Mr. Tyler be treated somewhat in that same vein in terms
9 of the lessening of the sentence to allow him to of course
10 serve what he's got to serve under the murder but, Your
11 Honor, at least by running some of these sentences
12 concurrent, give him an opportunity to see the light of
13 day at some point in time, Your Honor.

14 Without question the jury had the ability to do
15 what it did and the evidence was in the record where they
16 could make that decision. And I do not question that
17 decision, Your Honor. But I do ask that you would
18 consider running these things concurrent.

19 Mr. Tyler did not have any type of criminal
20 history, excuse me, criminal convictions of any
21 consequence to this matter, Your Honor. He, you know, was
22 a citizen of Aiken County. And he, Your Honor, came -- he
23 comes from a good family. His family is here and his
24 family was in court that particular day, and that
25 particular week as well, Your Honor.

1 And, quite honestly, a lot of these things that
2 took place and all of the allegations that came and the
3 conviction came as shock to the family. I think that even
4 at the sentencing and I know they were very shaken by that
5 and still are.

6 I think there are some things that were mentioned
7 or stated at sentencing that could have offended Your
8 Honor, and I'd ask that you consider those as more or less
9 mistakes or things that were said in the passion of the
10 moment as opposed to just upon further reflection of the
11 evidence in the verdict as it came down.

12 But, Your Honor, again, we're asking that you
13 consider some type of concurrent running of the sentences
14 here, Your Honor, and at least give Mr. Tyler an
15 opportunity to see the light of day.

16 And also keeping in mind that at least one of the
17 co-defendants who was our belief and we believe there was
18 testimony that was presented that he was intimately
19 involved in the shooting as well.

20 Thank you.

21 THE COURT: All right. The record reflects that
22 he -- per the sentence sheets, that he was sentenced to 30
23 years for murder, 20 years for assault and battery with
24 intent to kill, and five years for possession of a weapon
25 during a violent crime. All sentences to run consecutive.

1 Mr. Weeks?

2 MR. WEEKS: Your Honor, it's always been my
3 position that this type of hearing which is the regular
4 type of hearing, that I'm not allowed to argue for more
5 time than Your Honor gave him at that point in time.

6 I will just point out, though, that the
7 co-defendant's cases have all been resolved. I believe
8 you did sentence those individuals at a later term of
9 court.

10 The driver was given 15 years for accessory after
11 the fact on a couple of counts. And the other guy that
12 they keep trying to say was, you know, involved in the
13 shooting was given ten years on assault charges. Assault
14 of a high and aggravated nature charges or assault with
15 intent to kill charges that he pled guilty to. He might
16 have pled Alford to, I'm not sure but it seems like he
17 did.

18 But, quite honestly, if I could have made them
19 all guilty of murder under the facts of this case I would
20 have.

21 I believe after part of what I think the jury
22 does in a case where co-defendants testifies is assess the
23 credibility of the co-Defendants. And that's part of what
24 I had to do on behalf of the State in deciding how to
25 proceed with the charges.

1 My opinion of Mr. Ware as the driver of the car
2 was that maybe technically I could have made him guilty of
3 murder under the hand of one, hand of all but it was just
4 so little pre-planning, there was so little meeting of the
5 minds so to speak as to what was going on that night with
6 him that I just felt like that was going to be a far
7 stretch with the jury.

8 And I don't think it was the right thing to do
9 for him at the time. I've discussed that with the family
10 and they concurred with me throughout about the
11 disposition of the cases in this matter.

12 Mr. Walker, the other bad guy in this thing, I
13 mean, my position at the first with him was that, you
14 know, I'd like him to go away for murder too. But I never
15 really could put a gun in his hand. The only one that I
16 could really put a gun in his hand was Mr. Tyler.

17 The victims all got hit with the same type of
18 weapon. I only had one shell casing. All of the evidence
19 we had, some of which didn't come in during testimony
20 during the second trial, was that Mr. Walker didn't have
21 the assault weapon. If anything he might have had a
22 pistol but that he didn't have the assault weapon that
23 drilled through the back of that truck and killed
24 Ms. Dorch and wounded Mr. Brewer.

25 So I did the best I could with the co-defendants

1 based on what I felt like was the reasonable evidence that
2 the State had. That wasn't in any way attempting to
3 diminish what we felt like the State had against Mr. Tyler
4 with regard to murder.

5 And I told Your Honor before and since, this is
6 the most senseless murder I've ever seen in Aiken County.
7 And I still believe that to this day. I mean, I see
8 senseless murders all the time but this was just the most
9 unprovoked, senseless murder I've seen.

10 And Ms. Dorch is never going to be with us.
11 Mr. Brewer by the grace of God, and I don't know how he --
12 you know, the picture in trial that showed the most
13 brutally to me was the one where his seat was drilled
14 center mass with this high-powered rifle and he ends up
15 with a bullet in his arm and not in the middle of his
16 heart, or else it would have been two counts of murder.

17 And I think it's fortunate for Mr. Tyler that
18 there weren't two counts of murder. We could be looking
19 at the death penalty in this situation. The death penalty
20 was never on the table because we didn't have the
21 statutory aggravating circumstances but if there was a
22 case of senseless killing that deserved the death penalty
23 this was one of them.

24 And that's the State's position with regard to
25 your sentence. The sentence was certainly within the

1 bounds of the law. And I don't have a problem with it and
2 never did the victims. They're just here supporting the
3 verdicts, supporting the sentence, and they, I believe
4 they have a right to speak at this time but that's the
5 State's position. We would like for the sentence not to
6 be changed.

7 Thank you.

8 THE COURT: All right. Be happy to hear from
9 anyone who would like to speak.

10 MR. WEEKS: Anybody?

11 MS. QUEENIE ESTHER KEY: Good afternoon, Judge
12 Newman.

13 THE COURT: Good afternoon.

14 MS. QUEENIE ESTHER KEY: I don't know who is the
15 victim. Are we the victim or is he the victim? I felt
16 like he had a jury trial, they found him guilty. And I
17 think if you do the crime you ought to do the time.

18 And as long as I'm alive I'm going to always be
19 my daughter's witness for her because she's not here. I
20 heard the lawyer said that give him some free time or
21 something. He's breathing air. He's still free. He
22 still has life. My daughter don't have life.

23 And I think, really, I really think maybe he
24 should have had the death penalty, but they conceded him
25 in having death penalty so he has time. I think he should

1 make the time because he did the crime.

2 THE COURT: Yes, sir.

3 MR. WILLIE J. KEY: Judge, Your Honor, I'm Willie
4 J. Key, the husband of Queen. Judge, we have been beat
5 down with this for a long time. And my heart goes out to
6 Mr. Tyler and Ms. Tyler family, but I also understand with
7 the law that if you do something you have to be punished.
8 I've always taught that sin has consequences. And I never
9 seen anywhere where it says that you can commit a crime
10 and you can choose how much time that you need to serve
11 for committing that crime.

12 We have, all our lives, depended on the justice
13 system to do the right thing. And I believe that the
14 right thing has been done.

15 Yes, he's still alive. Our daughter is gone.
16 Taking his life wouldn't accomplish anything. It might
17 make some of the family feel better, but I don't
18 particularly feel like that. But I feel that justice has
19 been served. And I feel like that I don't see anything
20 need to be reduced because I believe that he can come out
21 of this alive, even doing his time.

22 I feel sorry for him, for his family. But I
23 think we have choices in this life. And he made the wrong
24 choice. And if I made the wrong choice, I would have to
25 suffer the consequences of that choice that I made.

1 Thank you very much.

2 THE COURT: Yes, sir. Thank you.

3 MR. JOE BREWER: Joe Brewer. Your Honor, first
4 of all, I'd like -- well, first of all, I just thank the
5 grace of God that I was alive to begin with. I never
6 could understand why I was that way because I always felt
7 like, hey, I'm older than DeeDee and why didn't he take me
8 and leave her alive, but we can't question what the Lord
9 can do.

10 I do have a lot of feelings for the family of
11 Cornell, but as of today, I still cannot drive down a long
12 dirt road by myself. I still have that fear. And I think
13 if a car was to come behind me real fast or something like
14 that, that I think I would either cause that car behind me
15 to have an accident or I would have an accident. I know I
16 can save three miles from my house through a dirt road if
17 I wanted to but -- the way gas is now, but I won't do it.

18 I still have pain constantly in my hands and my
19 knees from the accident. It's got progressively in the
20 last three months really bad, especially in my hands.

21 But, I just think he -- the sentence should stay
22 the same. I don't think it should be diminished
23 whatsoever. I feel like the jury did the right thing, and
24 I feel like you did the right thing as well.

25 Thank you.

1 THE COURT: All right. Thank you.

2 MS. KATHY BREWER: I'm Kathy Brewer, wife of Joe
3 Brewer. And in effect Mr. Tyler has sentenced us all to a
4 life sentence. Mr. and Ms. Key without their daughter, my
5 husband with a memory of being shot, our family with the
6 memory of getting the call saying your husband's at the
7 hospital because somebody shot him.

8 What he said about going down the road, I've seen
9 him jump even when he's not by himself. I've seen him
10 jump because a car comes up too fast and that flashes
11 through his mind, is somebody going to try kill me again.

12 And I really don't feel that he needs to be out.
13 I don't think he should have the opportunity to hurt
14 anybody else again.

15 Thank you.

16 THE COURT: All right. Thank you.

17 MS. JACKIE: Your Honor, I apologize for my
18 appearance, but I just come from work. My name is Jackie
19 and I'm DeeDee's first cousin.

20 THE COURT: Yes, ma'am.

21 MS. JACKIE: I feel that his sentence should not
22 be changed because he took a life, not just somebody life,
23 he took my best friend, my first cousin and my daughter's
24 godmother.

25 She is the one that kept our family together all

1 the time. And my aunt is really going through a lot to
2 having to come back and forth dealing with this. And last
3 month was DeeDee's birthday, and that was so hard. When
4 her birthday came, all I could think about is that day
5 when my aunt called me at work and told me that DeeDee had
6 been killed. And I just think that the sentence should
7 stay the same, if not some more added to it.

8 THE COURT: Thank you.

9 MR. CHRIS BREWER: Your Honor, my name is Chris
10 Brewer. I'm the son of Joe Brewer. Dealing with the
11 memories of getting the phone call about my dad being
12 shot, being in the accident seeing, when I'm over at his
13 house, you know, he's asleep, seeing him having nightmares
14 about, him jerking around, knowing there's nothing I can
15 do about it, seeing him in pain. And I'm an EMT and
16 there's nothing I can do to help him.

17 Ever since the trial was over, it was a burden
18 lifted off our family that when we got the notice of this
19 trial was today, I could see the stress in his eyes. I
20 believe that the sentence should stay the same because,
21 you know, of what it's put my family through. Yes, I
22 feel, you know, bad -- I feel for his parents and his
23 family as well but, you know, what he put my family
24 through and what he's put Debra's family through.

25 Thank you.

1 THE COURT: All right.

2 MR. WEEKS: Thank you, Your Honor.

3 THE COURT: All right. Mr. Gipson?

4 MR. GIPSON: Your Honor, I believe that's all I'd
5 like to present. Just rest on what I previously requested
6 from the Court, that you consider those factors, Your
7 Honor. Thank you.

8 THE COURT: All right. Mr. Weeks and Mr. Gipson,
9 the sentence on the possession of a weapon during a
10 violent crime is a consecutive sentence. Mr. Weeks, you
11 thought that it was not --

12 MR. WEEKS: I apologize, Your Honor. I just read
13 his motion wrong. I was thinking it had been
14 incorporated.

15 THE COURT: All right. The statute regarding
16 that particular offense of possession of a weapon during a
17 violent crime, is captioned additional punishment for
18 possession of firearm during the commission of a violent
19 crime.

20 And it says that he must be imprisoned five years
21 in addition to the punishment for the principal crime.
22 This five-year sentence does not apply in cases where the
23 death penalty or a life sentence without parole is imposed
24 for the violent crime.

25 And when I considered the nature of the

1 possession of this weapon during this particular crime and
2 fashioning the sentence, I also considered the murder of
3 Ms. Dorch and the shooting of Mr. Brewer. And whereas it
4 often occurs during court that defendants may come in and
5 having committed five or ten crimes and then get a
6 concurrent sentence for all of the crimes, whether they
7 occurred at the same time or different times and
8 concurrent sentences are handed out in most cases. In
9 most cases I think you will find that defendants are
10 sentenced to a concurrent sentence as opposed to a
11 consecutive sentence.

12 In this case during sentencing there was the plea
13 fervent plea made to the Court not to impose a life
14 sentence. Please don't give him a life sentence. And.
15 Of course, as Mr. Weeks stated, this easily could have
16 been a death penalty case but for the grace of God in
17 sparing Mr. Brewer and as he, as I reflected on his
18 testimony during the trial and the, and all that he went
19 through that night. I mean, it's a miracle that he
20 survived that night. It would appear to seem that way to
21 me.

22 So then, with respect to the murder charge I did
23 not impose a life sentence though a life sentence could
24 have easily been imposed given the nature of the crime,
25 senseless killing of this young lady under the

1 circumstances under which she was killed.

2 Then the question to me then was, well, do I then
3 just throw in the, after giving in effect a minimum
4 sentence that I could give on the murder charge, do I then
5 just throw in the shooting of Mr. Brewer, or should the
6 Defendant separately pay for that offense.

7 We have separate victims. This has affected both
8 families in various ways. I wasn't offended necessarily
9 by anything that anyone stated at the sentencing. I
10 certainly understand the emotions that this all would have
11 on families of the Defendant and the families of the
12 victims. I heard the plea and the cries of everyone who
13 spoke. And I took that into consideration in imposing a
14 sentence for murder as opposed to, 30 years as opposed to
15 a life sentence.

16 The fact of the matter is that nothing I can do
17 or anyone can do will change what occurred that night and
18 the choices that Mr. Tyler made that night in deciding to,
19 for whatever reason he decided to jump in that car and go
20 after this vehicle and just with a very malignant and
21 barren heart decided that those human beings in that
22 vehicle did not have a right to live.

23 The murder was in his heart. He sought to kill
24 all those people. He knew who was in the car. He came up
25 to the car, followed the car, knew who was in the car. He

1 certainly knew there were people in the car and tried to
2 kill them.

3 So what am I to do? I cannot ignore the fact
4 that he committed separate serious criminal acts against
5 these folks under circumstances where that weapon was
6 possessed and if ever a consecutive sentence would be
7 imposed for possession of a weapon during a violent crime,
8 it would be this particular type violent crime.

9 I can't help you, Mr. Tyler. You did the crime,
10 you got to do the time.

11 I have no objection at all at any time when a
12 lawyer asks me to reconsider my sentence. I agree with
13 Mr. Gipson in many instances in the heat of the moment we
14 make decisions that we might later decide differently.

15 But I didn't make a snap decision in this case.
16 I listened carefully to what everyone had to say. I made
17 the decision at that time that I thought was the right and
18 proper decision considering what I had before me.

19 And everything that I've heard here today
20 reinforced that, that a proper decision was made on that
21 day. I therefore deny the motion to reconsider the
22 sentence.

23 MR. GIPSON: Thank you, Your Honor.

24 THE COURT: All right.

25 END OF PROCEEDINGS: 2:58 P.M.

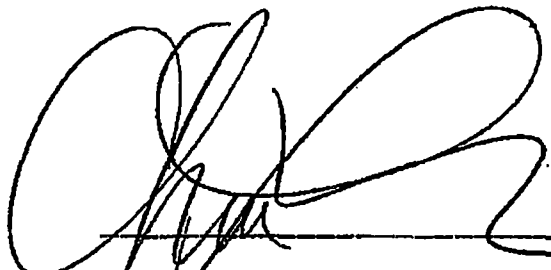
1 CERTIFICATE OF REPORTER

2 I, Cheri L. Young, Registered Professional Reporter,
3 and Official Court Reporter for the State of South
4 Carolina, do hereby certify that the foregoing transcript
5 of proceedings heard on Wednesday, April 30, 2008, in
6 Aiken, South Carolina, was reported by me using machine
7 shorthand and realtime computer-aided translation and is a
8 true, accurate and complete transcript of the proceedings
9 had and evidence introduced in the hearing of the matter.

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

12 I have hereunto set my hand this Friday, the 25th day
13 of July, 2008.

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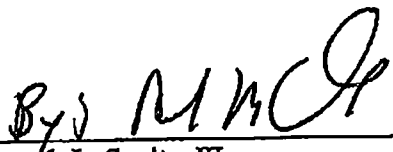


Cheri L. Young, RPR
Official Court Reporter

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Supplemental Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

October 13, 2010.



Joseph L. Savitz, III
Senior Appellate Defender

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

ATTORNEY FOR APPELLANT

C/8

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Aiken County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

CORNELL D. TYLER,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

JOSEPH L. SAVITZ, III
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error when he neglected to instruct the jury on the defense of alibi.

STATEMENT OF FACTS

On January 7 through 10, 2008, Cornell Tyler, Jr., stood trial in Aiken County, before Judge Clifton Newman and a jury, on indictments charging him with murder, assault and battery with intent to kill, and possession of a firearm during the commission of a violent crime. The State alleged that Tyler fired on a newspaper delivery truck, wounding the driver and killing the passenger. Its key witness was Edward Walker, who claimed that he was "[l]aying on top of the car, on the sunroof," during the high-speed chase and saw Tyler firing from the back passenger window. ROA p. 201, line 3 – p. 202, line 13. The defense contended that Walker himself was the perpetrator. ROA p. 662, line 22 – p. 663, line 1. When the shootings occurred, Tyler testified, "I was in my house." ROA p. 566, lines 22-24. He accused the State's witnesses of lying "so they won't go to jail for the rest of their life like they're trying to make me." ROA p. 577, lines 7-10.

Defense counsel requested and received a charge on mere presence. ROA p. 605, lines 1 and 2; ROA p. 720, lines 16-20. He did not request a charge on alibi, nor did he object to its omission from the judge's final instructions. ROA p. 724, lines 16-19.

The jury found Tyler guilty as charged, and the judge imposed consecutive sentences of thirty years for murder, twenty years for assault and battery with intent to kill and five years for possession of a firearm during the commission of a violent crime.

ARGUMENT

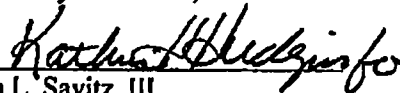
The trial judge committed reversible error when he neglected to instruct the jury on the defense of alibi.

A charge on alibi must be given "when the accused submits that he could not have performed the criminal act because he was in another place at the time of its commission." *State v. Robins*, 275 S.C. 373, 271 S.E.2d 319, 320 (1980). Where it is an issue, the State must disprove alibi. *State v. Mayfield*, 235 S.C. 11, 109 S.E.2d 719 (1959).

Tyler's testimony at trial supported a jury instruction on alibi. Since it was omitted, either the trial judge or defense counsel committed reversible error. "It is well-settled that counsel's rejection of an alibi charge when the defendant claims that he was in another place at the time of the commission of the criminal act constitutes deficient representation under an objective standard of reasonableness." *Ford v. State*, 314 S.C. 245, 442 S.E.2d 604, 606 (1994). Since Tyler's defense was solely alibi, there could have been no valid strategic reason for waiving an instruction on that defense. Compare *State v. Pagan*, 369 S.C. 202, 631 S.E.2d 262 (2006).

If the Court finds that this issue is barred procedurally because of defense counsel's omission, Tyler should file an application for post-conviction relief alleging that he did not receive effective assistance of counsel for this reason. See, for example, *Riddle v. State*, 308 S.C. 361, 418 S.E.2d 308 (1992). If not, the Court should reverse Tyler's convictions and remand for a new trial.

Respectfully submitted,


Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of June, 2009.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CORNELL D. TYLER,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Cornell D. Tyler Jr. states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Clifton Newman, which was held on January 11, 2008, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Cornell D. Tyler Jr.

Respectfully submitted,


Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of June, 2009.

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."

June 17, 2009



Joseph L. Savitz, III
Chief Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Aiken County

Clifton Newman, Circuit Court Judge

THE STATE,

RESPONDENT,

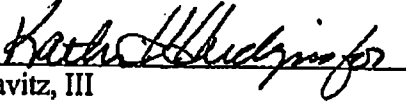
V.

CORNELL D. TYLER,

APPELLANT

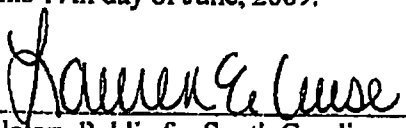
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant and Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 and on Cornell D. Tyler, Jr., #326023 at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010 this 17th day of June, 2009.


Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of June, 2009.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.

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.

Cornell D. Tyler,

Appellant.

Appeal From Aiken County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2012-UP-448
Submitted May 1, 2012 – Filed July 18, 2012

APPEAL DISMISSED

Senior Appellate Defender Joseph L. Savitz III, of
Columbia, and Cornell D. Tyler, pro se, for
Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, and Assistant
Deputy Attorney General Donald J. Zelenka, all of

Columbia; and Solicitor J. Strom Thurmond Jr., of Aiken, for Respondent.

PER CURIAM: Cornell D. Tyler appeals his convictions for murder, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime, arguing the trial court erred in neglecting to instruct the jury on the defense of alibi. Additionally, Tyler filed a pro se brief. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

FEW, C.J., and HUFF and SHORT, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

08-29449
08-2949

The South Carolina Court of Appeals

The State, Respondent,

v.

Cornell Tyler, Jr., Appellant.

Appellate Case No. 2008-089629

ATTORNEY GENERAL'S OFFICE

RECEIVED 8-27-12

ADMINISTRATIVE INSTRUCTIONS

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HAVE COPIES MADE

ROUTE TO

ORDER: TRANSCRIPT

CLERK RECORDS

OTHER: 08-2949

Remail sent to V.S.

Andy

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

John Cannon C.J.
Thomas J. Phillips J.
Paul E. Spivey J.

Columbia, South Carolina

cc:
Alan McCrory Wilson
John W. McIntosh
Joseph L. Savitz, III
Donald J. Zelenka
Barbara R. Morgan

FILED
August 27, 2012



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11829
COLUMBIA, SOUTH CAROLINA 29211
1016 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

February 21, 2013

The Honorable Liz Godard
PO Box 583
Aiken SC 29802-0583

REMITTITUR

Re: The State v. Tyler, Cornell Jr.
Lower Court Case No. 2006GS0200550, 2006GS0200552, 2006GS0200551
Appellate Case No. 2008-089629

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

cc: Cornell Tyler, Jr., 326023
Donald J. Zelenka
Barbara R. Morgan

ATTORNEY GENERAL'S OFFICE
RECEIVED 2/22/13
ADMINISTRATIVE INSTRUCTIONS
FILE 341 OPEN ✓ END
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ROUTE TO
ORDER TRANSCRIPT
PEN RECORDS CLERK RECORDS
OTHER
08-2949

Cornell D. Tyler, #326023
Lee Correctional Institution
990 Wisacky Highway
Richland Unit, Rm. B-187
Bishopville, SC 29010

September 25, 2012

Clerk of Court
Supreme Court of South Carolina
Post Office Box 11330
Columbia, SC 29211

RECEIVED

SEP 27 2012

Re.: Petition for Writ of Certiorari
Cornell Tyler v. The State (2008-089629)

S.C. SUPREME COURT

Dear Sir or Madame:

Please find enclosed my petition for writ of certiorari and certificate of service in the above matter. Please file these originals with your office.

As an indigent, pro se petitioner who is currently incarcerated, I am forced to beg the Court's indulgence on a couple of matters. First, as you will note from the date on the certificate of service, these pleadings have been delivered to the institutional mailroom with sufficient time to arrive at your office. Unfortunately, the prison system is less than reliable with the punctual delivery of mail. In the event that they do not arrive on time, please note that a prison riot occurring here at Lee on September 13 triggered a statewide prison lockdown; the lockdown was extended here at Lee, and most normal functions (such as mail room, law library, copies, etc.) were cancelled. Three other, smaller lockdowns have had similar effects, with the ultimate result that, despite my very best efforts, these pleadings have been mailed later than I would have preferred, so I may be forced to beg the court's indulgence.

Secondly, I am aware that Rule 226(c), SCACR, requires me to submit an original and six copies of my petition to your office for filing. Because of indigency, the aforementioned lockdowns, and prison restrictions on the copying of documents, that is simply not possible in the time allowed. Again, I beg the Court's mercy and indulgence in this matter. If necessary, I would be more than happy to reimburse the Court for the production of copies.

Finally, I have included all of the materials in my possession and control that are required as an appendix pursuant to rule 226(e). Anything not included has not been provided to me, and again, I beg the court's indulgence.

I am most appreciative for your time and your understanding in this matter.

Sincerely,

Cornell D. Tyler 326023

cc: South Carolina Court of Appeals
File

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County
Honorable Clifton Newman, Circuit Court Judge

2008-089629

Cornell D. Tyler,

Petitioner,

v.

The State of South Carolina,

Respondent.

PETITION FOR WRIT OF CERTIORARI
AND CERTIFICATION OF COUNSEL

Pursuant to Rule 226, SCACR, Petitioner Cornell D. Tyler would hereby move this Honorable Court to issue a writ of certiorari to review the decision of the Court of Appeals in the above-captioned matter, as there are substantial constitutional issues directly involved. Furthermore, in accordance with Rule 226(d)(1), Petitioner hereby declares under penalty of perjury that a pro se petition for rehearing was made to the Court of Appeals in this case, and that said petition was denied on August 27, 2012.

September 25, 2012
Bishopville, South Carolina

Cornell D. Tyler 326023
Cornell D. Tyler, #326023
Lee Correctional Institution
990 Wisacky Highway
Richland Unit, Rm. B-187
Bishopville, SC 29010

Petitioner, pro se

RECEIVED

SEP 27 2012

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STATEMENT OF THE ISSUES

1. Did the trial court lack jurisdiction over the cause as there is no indictment from the grand jury?
2. Did the trial court err in failing to properly voir dire the jury?
3. Did the trial court err in failing to grant Petitioner's motion for a change of venue?
4. Did the trial court err in denying Petitioner's motion for a directed verdict?
5. Did the trial court err in allowing the State to present to the jury a gun as demonstrative evidence when it had no relevance to the case at hand?
6. Was Petitioner prejudiced by the State's misconduct in vouching for the credibility of its witnesses and its prejudicial remarks in its opening and closing statements?
7. Is there sufficient evidence to uphold the guilty verdict when there was no evidence - only statements of a co-defendant - placing Petitioner at the scene of the crime?
8. Did the trial court err in charging jury with the "hand of one, hand of all" as an accessory aider and abetter pursuant to S.C. 16-21-140 for offense of murder and ABWIK?

STATEMENT OF FACTS

On January 7 - 10, 2008, Petitioner Cornell Tyler stood trial in Aiken county before Judge Clifton Newman and a jury, on indictments charging him with murder, assault and battery with intent to kill, and possession of a firearm during the commission of a violent crime. The State alleged that Tyler fired on a newspaper delivery truck, wounding the passenger and killing the driver. The State's key witness was Edward Walker, who claimed that he was "laying on top of the car, on the sunroof," during the high-speed chase and saw Tyler firing from the back passenger window. ROA, page 201, line 3 through page 202, line 13. The defense contended that Walker himself was the perpetrator. ROA page 662, line 22 through page 663, line 1. When the shooting occurred, Tyler testified, "I was in my house." ROA page 566, lines 22-24. He accused the State's witness of lying "so they won't go to jail for the rest of their life like they're trying to make me." ROA page 577, lines 7-10.

ARGUMENT

The Petitioner, Cornell D. Tyler, petitions this Court for a writ of certiorari to challenge his convictions for murder, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime. The Petitioner's appellate lawyer filed an Anders brief arguing the trial court erred in neglecting to instruct the jury on the defense of alibi, which is a PCR issue and is not, at any rate, preserved for appellate review. Petitioner also filed a pro se brief pursuant to Anders v. California, 386 U.S. 738 (1967). After a thorough review of the record and of all briefs pursuant to Anders v. California and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), the appellate court dismissed the appeal and granted counsel's motion to be relieved.

The Petitioner respectfully submits that the panel's decision overlooked and misapprehended certain facts and some of the issues that were preserved for the record and presented to the courts in Petitioner's pro se Anders brief. The Petitioner prays that this Court will grant certiorari and review these issues that were preserved.

1. DID THE TRIAL COURT LACK JURISDICTION OVER THE CAUSE AS THERE IS NO INDICTMENT FROM THE GRAND JURY?

Petitioner contends he was denied his 6th amendment right to a fair trial and his 14th amendment right to due process, as well as S.C. Const. Article I § II when he was tried on indictments that did not come from the grand jury, thus depriving the Court of its jurisdiction over the cause.

FACTS

The State lost the original indictment from the first trial and wanted to use a copy of the first indictment to proceed to a second trial. (See page 35, line 13 through page 36, line 8). The State asked the defendant to stipulate that the grand jury had convened on April 17, 2006, as well as to the grand jury's findings on the back of the indictment sufficiently alleged the facts of the charge. However, the back of the indictment as to the "action of the grand jury" is blank.

2. DID TRIAL COURT ERR IN FAILING TO PROPERLY VOIR DIRE THE JURY?

Petitioner contends that the trial court erred in failing to properly voir dire the jury as to pretrial publicity that rendered Petitioner's trial unfair and denied Petitioner his 6th amendment right to a fair trial and his 14th amendment right to due process of law.

FACTS

The trial judge admitted that he was unaware of any jurors in this case having stated at any time during these proceedings during the week of trial that they were aware of a prior trial in this case. (Transcript, page 123, lines 8-11); he further admitted that he (the judge) didn't ask any jurors whether they were aware of a prior trial (Transcript page 123, lines 22-24). Trial counsel also presented affidavits from the jury that was present during the first trial that clearly indicated that petitioner would not receive a fair trial due to publicity. Trial counsel presented to the court numerous newspaper articles that made an issue on how petitioner's first trial "did not render

justice," and how the people and the Aiken Standard "have full conviction that justice will be served." Because the victim was an employee of the Standard, numerous articles were run regarding this case.

3. DID TRIAL COURT ERR IN FAILING TO GRANT PETITIONER'S MOTION FOR A CHANGE OF VENUE?

Petitioner contends that the trial court erred in failing to grant Petitioner's motion for a change of venue, where there existed a strong possibility that Petitioner would not get a fair trial after the first trial was a mistrial.

FACTS

Trial counsel also presented an affidavit of the jury that was present during the first trial that clearly indicated that the petitioner wouldn't receive a fair trial due to publicity. Petitioner already had a trial that ended in a mistrial.

The town's only newspaper ran numerous amounts of prejudicial articles condemning the murder and calling for justice to be served. See Transcript pages 22-31. Since the victim was an employee of the newspaper, a large number of inflammatory articles ran in the paper.

4. DID THE TRIAL COURT ERR IN DENYING PETITIONER'S MOTION FOR A DIRECTED VERDICT?

Petitioner contends that the trial court erred in denying petitioner's motion for a directed verdict, especially when the State presented no evidence

placing Petitioner at the scene of the crime.

FACTS

A motion for a directed verdict should be granted by the trial judge when the evidence merely raises a suspicion that the accused is guilty. See State v. Buckman, 555 S.C.2d 402. Likewise, when the evidence simply allows the jury to engage in speculation regarding the guilt of the accused, the trial court judge is required to grant the motion for a directed verdict. See State v. Walker 562 S.E.2d 313 (2002); State v. Mitchell, 535 S.E.2d 126 (2000); also see State v. Sharck 322 S.E.2d 450. Evidence was insufficient to convict when the only evidence placing the defendant at the scene of the crime was a statement by his co-defendant. The State clearly has no evidence putting petitioner in the car or at the crime scene. See Transcript, page 336 line 21 through page 337 line 6.

5. DID THE TRIAL COURT ERR IN ALLOWING THE STATE TO PRESENT TO THE JURY A GUN AS DEMONSTRATIVE EVIDENCE WHEN IT HAD NO RELEVANCE TO THE CASE AT HAND?

There was no evidence showing the petitioner owned a 7.62 caliber weapon and no 7.62 weapon was found. Cumulative prejudicial effect of a 7.62 caliber weapon being shown to the jury outweighed the probative value of evidence in prosecution for murder committed by a weapon that fires a 7.62 round. Petitioner was not in possession of any weapon that fires a 7.62 round. No evidence was introduced showing the Petitioner ever owned or used a 7.62m weapon and no such weapon was found. Petitioner contends based on the record, page 353, in this case the gun should not have been presented to the jury

because the cumulative prejudicial effect of the enumerated evidence outweighed its probative value.

FACTS

During Petitioner's trial, the State called agent Ira Parnell to testify as a firearm identification expert. The State acknowledged that the weapon was not the weapon used. The SLED report stated that, based on the general rifle firing characteristic sizes 11, 12, and 14, a list of firearms and/or origins of firearms that might have fired these items includes but "is not limited to the following[.]" (Transcript, page 343 lines 16-25; page 345 lines 6-13.) See State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991); see also State v. McConnell, 350 S.E.2d 179 (1986).

6. WAS PETITIONER PREJUDICED BY THE STATE'S MISCONDUCT IN VOUCHING FOR THE CREDIBILITY OF ITS WITNESSES AND ITS PREJUDICIAL REMARKS IN ITS OPENING AND CLOSING STATEMENTS?

Petitioner contends that he was prejudiced by the State's misconduct in vouching for its witness and labeling the Petitioner's story as "unbelievable" and stating that Petitioner was guilty.

FACTS

In its closing statement, the State declared that, "well, he just needs to sit down, because the State has shown us beyond a reasonable doubt that this man is guilty." Transcript page 667, lines 12-16. Further, the State vouched for its witness when it declared that, "Joe Brower has told the truth from day

one... because you know he is not a liar." (See Transcript, page 670, line 5 and page 671, lines 5-7.) This after Joe Brower had already testified to two different statements at trial. Then, the State said, "Cornell Tyler has an unbelievable testimony," (page 673, lines 9-10). It was also improper for the State to say that defense witnesses were liars or were not telling the truth (page 701, lines 22-25; 702, lines 23-25). See U.S. v. Smith, 982 F.2d 681-684 (1st Cir. 1993); U.S. v. Thomas, 246 F.3d 438, 439 (5th Cir. 2001).

7. IS THERE SUFFICIENT EVIDENCE TO UPHOLD THE GUILTY VERDICT WHEN THERE WAS NO EVIDENCE - ONLY STATEMENTS OF A CO-DEFENDANT - PLACING PETITIONER AT THE SCENE OF THE CRIME?

At the close of the State's case, trial counsel moved for a directed verdict. Transcript page 475 lines 16-17. The motion was denied. At the end of the defense's case, trial counsel again moved for a directed verdict based on the sufficiency of evidence. The motion was denied. Petitioner contends that this was error.

FACTS

It has been held that the declarations of a co-conspirator or co-defendant can have no greater force than the testimony of an accomplice or co-defendant, and hence evidence of statement of a co-conspirator or co-defendant tending to inculcate the accused is not, in the absence of corroborative evidence, sufficient for a conviction. Unless corroborated, statements of a co-conspirator or co-defendant tending to inculcate the accused are insufficient to justify a conviction. See State v. Buckman, 555 S.E.2d 402; C.J.S. page 998.

The State presented no evidence that Petitioner was in the car or even at the scene of the crime, and used only the statement of a co-defendant to convict Petitioner with no corroborating evidence.

8. DID THE TRIAL COURT ERR IN CHARGING JURY WITH THE "HAND OF ONE, HAND OF ALL" AS AN ACCESSORY AIDER AND ABETTER PURSUANT TO S.C. 16-21-140 FOR OFFENSE OF MURDER AND ABWIK?

Petitioner contends that the "Hand of one, hand of all" theory was an erroneous and ambiguous jury instruction.

FACTS

The prosecution failed to properly allege or prove a conspiracy of accessory theory under which all defendants could be found guilty or not guilty. Had the State charged defendants with conspiracy, it could then have pursued a conviction against both defendants under the "hand of one, hand of all" theory. Under this theory, one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate that is incidental to the execution of the common design and purpose. State v. Woomer, 276 S.C. 258, 277 S.E.2d 696 (1981). To admit evidence under the theory, the existence of the common design and the participation of the accused against whom the evidence is offered should first be shown. However, the State didn't charge the defendants with conspiracy, so this approach was unavailable at trial. However, the State never presented any evidence that the Petitioner and co-defendant had joined with each other or with others to accomplish an illegal act. The State didn't even demonstrate prior knowledge

that a crime was going to be committed. However, the State must prove beyond a reasonable doubt by competent evidence of that theory that the hand of one is indeed the hand of all. See State v. Langley, 515 S.E.2d 98, State v. Woomer, 277 S.E.2d 696, State v. Austin, 385 S.E.2d 832, State v. Leonard, 355 S.E.2d 270.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Aiken County
Honorable Clifton Newman, Circuit Court Judge

2008-089629

Cornell D. Tyler,

Petitioner,

v.

The State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

I, Cornell D. Tyler, hereby certify under penalty of perjury that I have served a copy of the Petition for Writ of Certiorari on Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, and Assistant Deputy Attorney General Donald J. Zelenka at Post Office Box 11549, Columbia, South Carolina, 29211, by hand-delivering a copy of same to Lee Correctional mail room staff with first class postage paid.

September 25, 2012
Bishopville, South Carolina

Cornell D. Tyler 326023
Cornell D. Tyler, #326023
Lee Correctional Institution
990 Wisacky Highway
Richland Unit, Rm. B-187
Bishopville, SC 29010

Petitioner, pro se

To The Supreme Court of South Carolina

Dear Sir or madame:

Pursuant to Rule 226(e), SCACR, you are required to include a copy of the record on appeal and brief, the decision of the Court of Appeals in the case; and A copy of petition for rehearing and the Court's ruling on that petition.

Enclosed is the decision of the Court on my Appeal and petition for rehearing as required.

The Clerk of Court and the Court of Appeals never sent my copies of the record on appeal and my brief nor copies of my petition for rehearing.

As an indigent, pro se petitioner who is currently incarcerated I am asking

this Court to please contact the Clerk of Court for the Court of Appeals and have

the to forward all that is required pursuant to Rule 226(e), SCACR To this Court. I am

most appreciative for your time and understanding in this matter.

Sincerely,

Cornell D Tyler 376023

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.

Cornell D. Tyler,

Appellant.

Appeal From Aiken County
Clifton Newman, Circuit Court Judge

Unpublished Opinion No. 2012-UP-448
Submitted May 1, 2012 – Filed July 18, 2012

APPEAL DISMISSED

Senior Appellate Defender Joseph L. Savitz III, of Columbia, and Cornell D. Tyler, pro se, for Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney General John W. McIntosh, and Assistant Deputy Attorney General Donald J. Zelenka, all of

Columbia; and Solicitor J. Strom Thurmond Jr., of Aiken, for Respondent.

PER CURIAM: Cornell D. Tyler appeals his convictions for murder, assault and battery with intent to kill, and possession of a weapon during the commission of a violent crime, arguing the trial court erred in neglecting to instruct the jury on the defense of alibi. Additionally, Tyler filed a pro se brief. After a thorough review of the record and all briefs pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

FEW, C.J., and HUFF and SHORT, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

The State, Respondent,

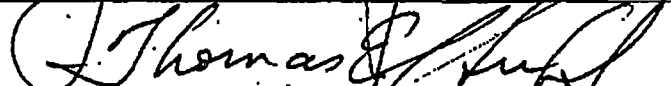
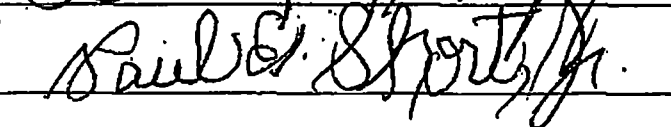
v.

Cornell Tyler, Jr., Appellant.

Appellate Case No. 2008-089629

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


C.J.

J.

J.

Columbia, South Carolina

cc:

Alan McCrory Wilson
John W. McIntosh
Joseph L. Savitz, III
Donald J. Zelenka
Barbara R. Morgan

FILED

August 27, 2012

Jornell D. Tyler, #32602's
Lee Correctional Institution
990 Wisacky Highway
Richland Unit, Rm. B-187
Bishopville, SC 29010

Supreme Court of South Carolina
Clerk of Court's Office
Post Office Box 11330
Columbia, SC 29211

The Supreme Court of South Carolina

The State, Respondent,

v.

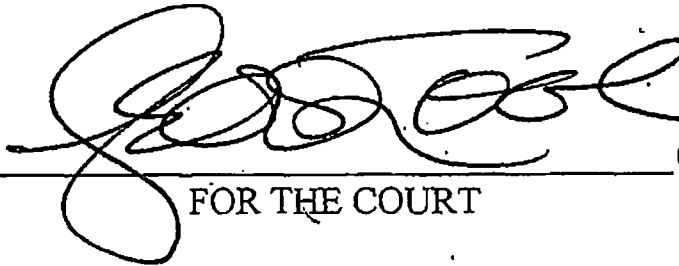
Cornell Tyler, Jr., Petitioner.

Appellate Case No. 2012-213046

ORDER

The South Carolina Court of Appeals dismissed the appeal in this matter after conducting a review pursuant to *Anders v. California*, 386 U.S. 738 (1967). *State v. Tyler*, Op. No. 2012-UP-448 (S.C. Ct. App. filed July 18, 2012) (Appellate Case No. 2008-089629). Petitioner now seeks review of that decision.

In *State v. Lyles*, 381 S.C. 442, 673 S.E.2d 811 (2009), this Court held that it "will no longer entertain petitions for writs of certiorari where the Court of Appeals has dismissed an appeal after conducting an *Anders* review." Accordingly, this matter is dismissed.



C.J.
FOR THE COURT

Columbia, South Carolina
October 3, 2012

cc: Donald J. Zelenka, Esquire
Mr. Cornell Tyler, Jr., 326023
The Honorable Jenny Abbott Kitchings

2013 - CP-02- 02859
2006 - GS-02- 0550, 0551, 0552

2006- GS-02-0550
H 874288
H 874278

Filed December 17, 2013
2013

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

C.C. CV & GS - Aiken County
1:00

Deputy Clerk: Donna THE COURT OF COMMON PLEAS
Trial Judge: James E. Gibson
Trial Atty: Berna Thomas
Court Reporter: Berna Thomas
Sec: PCR Petitioner: Solicitor
General Sessions: Atty. Gen.
Appointed Atty:

Full name and prison number (if any) of Applicant:

Cornell Devon Tyler

*326023

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
2. Name and location of Court which imposed sentence Aiken
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2006- GS- 02- 550
 - (b) 2006- GS- 02- 551
 - (c) 2006- GS- 02- 552
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 1-10-08
 - (b) 1-10-08

Revised 3/2003

- (c) 1-10-08
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?

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Ineffective assistance of Counsel.

Revised 3/2003

- (a) _____
(b) _____
(c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
(a) Counsel failed to investigate all of
(b) the facts and circumstances surrounding
(c) my case.
12. Prior to this application have you filed with respect to this conviction:
(a) any petition in a State Court under South Carolina Law? yes
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Direct Appeal
(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. _____ Direct Appeal.
ii. _____
iii. _____
iv. _____
(b) the name and location of the Court in which each was filed:
i. _____ South Carolina Supreme Court.
ii. _____
iii. _____
iv. _____
(c) the disposition thereof:
i. _____ Denied.
ii. _____
iii. _____

iv. _____

(d) the date of each such disposition:

i. _____ *Not known*

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____ *N/A*

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

no

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

Revised 3/2003

- (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? N/A
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. _____
- ii. _____ N/A
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. _____
- ii. _____ N/A
- iii. _____
19. State clearly the relief you seek in filing this application:
new trial
20. Are you now under sentence from any other court that you have not challenged?
no

STATE OF SOUTH CAROLINA)

VERIFICATION

County of)

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.

Cornell Newton Tyler #326023
Cornell Tyler

SWORN to and subscribed before me this 13
day of Dec, 2013.

John Surles (L.S.)
Notary Public

My Commission Expires: 11-4-2015

Revised 3/2003

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

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

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

Cornell Devon Tyler
Applicant

SWORN or affirmed to and subscribed before me this
13 day of Dec., 2013.

Debra Sipes
Notary Public

My Commission Expires: 11-4-2015

Liz Godard

Would you please send
my clock stamp copy back
as soon as you can for my
records. Thanks for you time
and may God bless you.

Cornell Tyler

IN THE COURT OF COMMON PLEAS
FOR THE SECOND JUDICIAL CIRCUIT

2013-CP-02-02859

RETURN

v.

Respondent.

I.

1 of 4

A timely Notice of Appeal was filed on Applicant's behalf by Robert M. Dudek, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction. State v. Cornell D. Tyler, Op. No. 2012-UP-448 (Ct. App. filed July 18, 2012). The Remittitur was issued on February 21, 2013.

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

II.

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

1. Ineffective Assistance of Counsel
 - a. "Counsel failed to investigate all of the facts and circumstance surrounding my case."

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

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

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

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an

evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

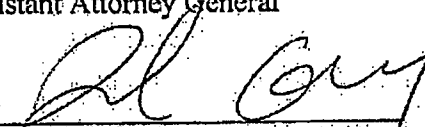
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

July 29, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

CORNELL DEVON TYLER, #326023,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-02-02859

AFFIDAVIT OF SERVICE BY MAIL

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

Aimee Jendrzewski Zmroczek, Esquire
A.J.Z. Law Firm, LLC.
PO Box 11961
Columbia, SC 29211

DATED this the 29th day of July, 2014.


Caroline Kaiser, Legal Assistant
For Respondent.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
AIKEN COUNTY	)	
	)	
CORNELL TYLER #326023	)	MOTION TO AMEND APPLICATION FOR POST
PETITIONER,	)	CONVICTION RELIEF BROUGHT PURSUANT
	)	S.C.R.C.P. 15(a)
-v-	)	2013-CP-02-02859
	)	
STATE OF SOUTH CAROLINA	)	
RESPONDENT	)	

COMES NOW, Cornell Tyler, by and through his attorney of record (), asking this Honorable Court to Amend his Original Post Conviction Relief Application, this action being brought pursuant to S.C.R.C.P. 15(a). For the requested relief, Petitioner will forever pray.

s/ Cornell Tyler
 Cornell Tyler, #326023
 Lee Corr. Inst.
 990 Wisacky Highway
 Bishopville, S.C. 29010
 F5-B-187

Sworn To And Subscribed Before Me
 This Day Of Dec 29th, 2015
Darlene Ponder
 Notary Public South Carolina
 9/27/2023

1-27-16
Richard
White
 Deputy Clerk

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
CORNELL TYLER #326Q23	)	MOTION TO AMEND RULE 15(2)
PETITIONER,	)	
	)	CHARACTER WITNESS OR CHARACTER EVIDENCE
-v-	)	2013-CP-02-02 859
	)	
STATE OF SOUTH CAROLINA	)	
RESPONDENT	)	
	)	

Trial Counsel was ineffective for not calling the Character Witness from the first trial. 404(2)(3), 405 State and Federal. See also State v. Major, 391 S.E.2d 235(1990); see Rule 608 also. When the accused offer evidence of his good character regarding specific character traits relevant to the crime charged, the State may cross-examine as acts relating to the traits focused on the accused. 16-3-20(b).

s/ Cornell Tyler
 Cornell Tyler, #326023
 Lee Corr. Inst.
 990 Wisacky Highway
 Bishopville, S.C. 29010
 F5-B-187

Sworn To And Subscribed Before Me
 This Day OF Dec 29th, 2015
Darwin Parnell
 Notary Public South Carolina E.K.A 9/27/2023

ISSUE (1) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Was Trial Counsel ineffective failing to ask trial court for an instruction on the defense of alibi, when applicant submits at trial that it was impossible for him to commit the offense because he was in another place at the time the of the commission of the crime?

Was Trial Counsel ineffective failing to object to the indictment(s) prior to the jury being sworn, as to the defects in the indictment; which showed the Grand Jury convened on April 17, 2006 when there was no General Session held in April?

Was Trial Counsel ineffective failing to ask Trial Court to hold the State to the standard that it must prove Corpus Delicti of the offense. It is the standard that the State must establish two propositions in prosecution of a criminal charge: that a crime has been committed, and that it was committed by the person charged.

Was Trial Counsel ineffective failing to ask the Trial Court for the Winship Standard. Due Process Clause of the Fourteenth Amendment protects an accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charge?

Was Trial Counsel ineffective failing to request a Motion of Dismissal of the trial for lack of evidence, as there was no evidence placing Petitioner at the scene of the crime? See State v. Schrock, 323 S.E.2d 450

Was Trial Counsel ineffective failing to call Character witness for the defense, as these two witnesses were called to testified during Petitioner's first trial which ended in a hung jury?

Was Trial Counsel ineffective failing to object to Solicitor Bill Weeks opening and closing arguments to the jury in which he vouched for the State's witnesses saying that they were telling the truth...[Tr.Tr.pg. 65, lns. 1-4]...and statements where he called the Petitioner a killer and calling Petitioner and his witnesses liars...[Tr.Tr.pg. 667, lns. 1-25, pg. 709, lns. 1-25].

Was Trial Counsel ineffective failing to investigate not only the victim's medical record but the Doctor's report on the gun shot wound, ballistic report on the car and witness statement before second trial?

Was Trial Counsel ineffective failing to call Expert Witness, when he had promised the jury that he would call his own Expert Witness to show that there was two sides to the story, and not coming through with his promise?

Was Trial Counsel ineffective failing to impeach State witness when they changed their testimony and Trial Counsel had proof (a C.D. of their statement) that their statement at trial was inconsistent with that which they had given prior to trial?

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
CORNELL TYLER #326023	)	MOTION TO AMENDED
PETITIONER	)	RULE 15(A) CASE# 2013-CF-
	)	02-02855 ^A
V.	)	
STATE OF SOUTH CAROLINA	)	ILLEGAL INDICTMENT
RESPONDENT	)	

On April 17, 2006 I Petitioner In The Caption Motion was never "Indicted" with Accordance of Law Through The Federal Government It's Agencies And Court And The State S.C. Constitution Equal Protection. Petitioner's indictment process wasn't properly establish. See: U.S v. Bolton, 893 F.2d 894. General Sessions have jurisdiction over All Criminal Charges. S.C. Code of Law has provided such statute for Equal Protection For Citizens 14-5-630 schudule Term of Court in the Second Circuit. Therefore the equates such ANN§: 14-9-170 the Court of General Session in each of the counties shall constitute the Grand Jury for the County Court and meet with the County Court of each of it's terms. 14-9- 210 Indictment For County Court Case By Grand Jury of Court of General Sessions. See: Evans -v- State, 61 S.E.2d 510. This Court doesn't have authority now. Indictment must be legally constituted.

CORNELL TYLER #326023	)	SWORN TO AND SUBSCRIBED BEFORE
LEE CORR. INST.	)	ME THIS DAY OF <u>Dec 29th</u>
990 WISACKY HWY	)	2015.
BISHOPVILLE, S.C. 29010	)	<u>Devin Pangle</u>
F-5-B-187	)	NOTARY PUBLIC OF SOUTH CAROLINA
		MY COMMISSION EXPIRES: <u>9/27/2023</u>

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
CORNELL TYLER #326023	)	MOTION TO AMENDED
PETITIONER	)	RULE 15(2) CASE# 2013-CF-
	)	02-02859 ^A
V.	)	
STATE OF SOUTH CAROLINA	)	KANGAROO COURT
RESPONDENT	)	
	)	

On January 7, 8, 9, 10 I Petitioner in the caption case above was tried and sentenced by Honorable Judge Clifton Newman. However with accordance of Law S.C.Code.14-5-630 has provided "schedule" For General Sessions, which who have Jurisdiction over All Criminal Charges. A self appointed Tribunal is unauthorize with accordance of Law. Therefore, due to that irregular procedural with was a Mock Court. Person impersonating State Official even Circuit Court Judges can not claim jurisdiction. Accordance of S.C. Code of Law 16-17-735 (3) (C); Trial or sentencing of a person or property.

CORNELL TYLER #326023	)	SWORN TO AND SUBSCRIBED BEFORE
LEE CORR. INST.	)	ME THIS DAY OF <u>Dec. 29th</u>
990 WISACKY HWY	)	2015.
BISHOPVILLE, S.C. 29010	)	<u>Darwin Pangle</u>
F-5-B-187	)	NOTARY PUBLIC OF SOUTH CAROLINA
		MY COMMISSION EXPIRES: <u>9/27/2023</u>

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
CORNELL TYLER #320623	)	MOTION TO AMEND RULE 15(2)
PETITIONER,	)	
	)	EXPERT WITNESS
-v-	)	2013-CP-02-02859
	)	
STATE OF SOUTH CAROLINA	)	
RESPONDENT	)	

Trial Counsel was ineffective for not calling his Expert Witness, which violates Rule 702-705, see also State v. McClinton, 217 S.E.2d 584.

s/ Cornell Tyler
 Cornell Tyler, #326023
 Lee Corr. Inst.
 990 Wisacky Highway
 Bishopville, S.C. 29010
 F5-B-187

Sworn To And Subscribed Before Me
 This Day Of Dec 29th, 2015
Donna P. Pung
 Notary Public South Carolina Exp 9/27/2023

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 AIKEN COUNTY)
)
 CORNELL TYLER #326023) MOTION TO AMEND RULE 15(2)
 PETITIONER,)
) (BRADY MATERIAL)
 -v-) 2013-Cp-02-02859
)
 STATE OF SOUTH CAROLINA)
 RESPONDENT)

Trial Counsel was ineffective for not investigating the victim's medical record for being shot, the window and the State's witness statement before the second trial. Information or evidence that is favorable to a criminal defendant's case the Prosecution has a "Duty" to disclose. Due Process Prosecution with holding of such information violates rights. 83 S.Ct. 1194 "Exculpatory Evidence."

s/ Cornell Tyler
 Cornell Tyler, #326023
 Lee Corr. Inst.
 990 Wisacky Highway
 Bishopville, S.C. 29010
 F5-B-187

Sworn To And Subscribed Before Me
 This Day Of Dec. 29, 2015
Dorine Pangle
 Notary Public South Carolina Exp 9/27/2023

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Cornell Tyler, 326023,

☒ Plaintiff

v.

State Of South Carolina

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2013-CP-02-02859

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Tricia A. Blanchette, Bar No. 74904
Address:
PO Box 12725
Columbia, SC 29211
phone: 803-988-0008 fax: 803-988-8070
e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:
Julie A. Coleman, Bar No.
Address:
PO Box 11549
Columbia, SC 29211
phone: 803-734-3737 fax: 803-734-4113
e-mail: other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ 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: Amendment to PCR Application

Estimated Time Needed: Full day 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

December 20, 2016
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT:

- ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ 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, SCRCP)
☐ 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:

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CLERK'S VERIFICATION

Date Filed:

DEC 22 2016

Collected by: _____

AIKEN COUNTY
CLERK OF COURT

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
DOCKET NO.: 2013-CP-02-2859

CORNELL TYLER, 326023,)
Applicant,)

v.)

STATE OF SOUTH CAROLINA,)
Respondent,)

AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

This matter comes before the Court by way of an Application for Post Conviction Relief filed on December 17, 2013. Applicant, through counsel, would move to amend his allegations, as follows:

1. Ineffective assistance of trial counsel for failure to effectively prepare and investigate prior to trial.
2. Ineffective assistance of trial counsel for failure to obtain and/or communicate plea offers to Applicant.
3. Ineffective assistance of trial counsel for seating two jurors exposed to media thus resulting in the Court's denial of the change of venue motion.
4. Ineffective assistance of trial counsel for failure to utilize witnesses at trial.
5. (Ineffective assistance of trial counsel for failure to properly utilize defense witnesses at trial.) Alternatively, newly discovered evidence and/or prosecutorial misconduct regarding witness James Gleaton.
6. Ineffective assistance of trial counsel for failure to fully impeach and cross-examine the State's witnesses and failure to pursue matters of prosecutorial misconduct alluded to in cross-examination and closing argument.
7. Ineffective assistance of trial counsel for failure to object to expert testimony that exceeded the expert's area of qualified expertise. Transcript pp. 417-419.
8. Ineffective assistance of trial counsel for failure to fully develop an alibi defense and request an alibi charge at trial.
9. Ineffective assistance of counsel for failure to make contemporaneous objections to the State's closing argument.

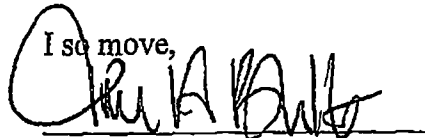
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AIKEN COUNTY
CLERK OF COURT

10. Ineffective assistance of trial counsel for failure to object to the trial judge's failure to use the permissive inference language approved in State v. Elmore, 279 S.C. 417, 308 S.E.2d 781 (1983), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991), during the charge to the jury.
11. Ineffective assistance of appellate counsel for failure to raise all meritorious issues on appeal; specifically, but not limited to trial counsel's arguments regarding venue and the "hand of one" charge.
12. Pursuant to Rule 15(b), SCRCP, Applicant would move to amend to conform to the evidence and testimony presented at the evidentiary hearing.

I so move,



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
Attorney for Applicant

December 20, 2016
Columbia, SC

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

Cornell Tyler #326023,)
Applicant,)

2013-CP-02-02859

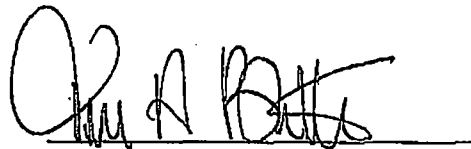
v.)

CERTIFICATE OF SERVICE

State of South Carolina,)
Respondent.)

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed in the mail this 20th day of December 2016, a copy of an Amendment to Application for Post Conviction Relief, to Julie A. Coleman of the Attorney General's Office, at:

Office of the Attorney General
Att: Julie A. Coleman, Ast. AG
PO Box 11549
Columbia, SC 29211



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

December 20, 2016

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DEC 22 2016

AIKEN COUNTY
CLERK OF COURT

State of South Carolina
County of Aiken

Court of Common Pleas

Cornell Devon Tyler)
)
 Applicant,)
 v.)
)
 State of South Carolina)
)
 Respondent.)

Transcript of Record
2013-CP-02-01748

January 24, 2017
Bamberg, South Carolina

B E F O R E:

The Honorable Maite Murphy, Judge.

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

Tricia Blanchette, Esquire
Attorney for the Applicant

Julie Coleman, Esquire
Attorney for the Respondent

Bethanie K. Creppon
Circuit Court Reporter

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E X H I B I T S

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P R O C E E D I N G S

* * *

MS. COLEMAN: May it please the Court. This is Cornell Tyler vs. The State of South Carolina, Docket No. 2013-CP-02-01748. The applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court.

Applicant was indicted at the April 2006 term of the Aiken County Grand Jury for murder, assault and battery with intent to kill, and possession of a firearm or knife during commission of or attempt to commit a violent crime. Byron Gipson represented the applicant.

Applicant proceeded to a jury trial before the Honorable Clifton Newman. Applicant was convicted as indicted. On January 10th, 2008, Judge Newman sentenced Applicant to a 30-year term of imprisonment for murder, a 20-year term of imprisonment for assault with intent to kill, and a five-year term of imprisonment for possession of a weapon with all sentences to run consecutively.

A timely Notice of Appeal was filed on and an Anders brief was submitted by Robert M. Dudek, Esquire -- excuse me, that's not right -- Joey

1 Savitz, Esquire. Sorry, that's a misprint. The
2 South Carolina Court of Appeals affirmed Applicant's
3 conviction. The remittitur was issued on February
4 21st, 2013.

5 Applicant filed a timely Application For
6 Postconviction Relief on December 17th, 2013,
7 alleging he was being held in custody unlawfully
8 based on the following allegations: Ineffective
9 assistance of counsel for failure to investigate.

10 An amendment was filed on December 20th, 2106,
11 and I'm sure Ms. Blanchette will go over each of the
12 allegations of that amendment today. The State
13 filed its return on July 29th, 2014. And the
14 applicant is present today and represented in this
15 matter by Ms. Tricia Blanchette.

16 THE COURT: Good morning.

17 MS. BLANCHETTE: Thank you, Your Honor. May it
18 please the Court. Tricia Blanchette here on behalf
19 of Mr. Cornell Tyler. As the State indicated, we
20 did file a detailed amendment. It was submitted
21 December 20th, filed on December 22nd. Do you have
22 a copy of that in your packet? If not, I have an
23 additional copy.

24 THE COURT: Do you have an extra copy?

25 MS. BLANCHETTE: I do, if that would be easier.

1 THE COURT: Thank you.

2 MS. BLANCHETTE: And, Your Honor, that will be
3 a roadmap of, essentially, the issues that we're
4 going to discuss today. If you'd like, I can read
5 each of those into the record and provide any
6 explanation. But I intend to pretty much follow
7 that amendment as the outline of the issues we're
8 going to discuss here and present witnesses on.

9 One other housekeeping matter: I wanted to
10 make sure -- there's two volumes of the record on
11 appeal, but there's also a supplemental volume. And
12 I forgot to check with the State to ensure that that
13 was in your packet, because I'll be referencing that
14 as well.

15 THE COURT: I don't see a supplemental one.
16 Oh, I do have it.

17 MS. BLANCHETTE: Okay. So I will be
18 referencing that. Additionally, there was a -- two
19 trials in this case. There was one held in 2006 and
20 then one held in 2008. As part of discovery in this
21 case, the solicitor turned over a copy of their
22 complete file, and in that file were partial trial
23 transcripts from the trial. I'll be referencing
24 those and would like to mark those as Applicant's
25 Exhibits or Court's Exhibits, whichever you prefer.

1 But I do have a copy of the partial transcripts from
2 the first trial.

3 THE COURT: Whichever way is fine with me.
4 Any objections?

5 MS. COLEMAN: No objection.

6 And, Your Honor, I'd just like to object to
7 number 12 on the amendment, which is Applicant would
8 amend to conform the evidence and testimony
9 presented at the evidentiary hearing. I know that
10 this is usually included in these amendments, but if
11 there's anything too farfetched or any allegation
12 that comes up that we haven't had ample time to
13 prepare for, I would just like to object to that.

14 THE COURT: Well, certainly at the time that it
15 comes up, you can renew your objection.

16 MS. COLEMAN: Thank you.

17 THE COURT: Thank you.

18 MS. BLANCHETTE: Your Honor, I can just mark
19 these as Applicant's 1 and 2, if that's fine.

20 THE COURT: That's fine.

21 (Applicant's Exhibit Nos. 1 and 2 marked for
22 identification.)

23 THE COURT: And, again, what is the description
24 of those exhibits?

25 MS. BLANCHETTE: Applicant's 1 would be the

1 transcript of James Gleaton at the trial in 2006.
2 Applicant's 2 will be a partial transcript of the
3 trial from 2006, and it is 175 pages in total.

4 THE COURT: Thank you.

5 MS. BLANCHETTE: I had made two additional
6 copies of these, but I handed one to Mr. Gipson and
7 one to the State. Would you like the exhibits at
8 this time?

9 THE COURT: Are you going to be referencing --

10 MS. BLANCHETTE: I will be referencing these,
11 yes.

12 THE COURT: Yes. All right. You may call your
13 first witness.

14 MS. BLANCHETTE: Thank you, Your Honor. I
15 would call Marcia Blizzard to the stand.

16 MARCIA BLIZZARD

17 being first duly sworn, testified as follows:

18 THE WITNESS: Yes, sir.

19 THE COURT: Good morning. Have a seat and
20 state your name for the record.

21 THE WITNESS: My name is Marcia Lee Blizzard.

22 THE COURT: Your witness.

23 MS. BLANCHETTE: Thank you, Your Honor.

24

25

DIRECT EXAMINATION

1 BY MS. BLANCHETTE:

2 Q. Ms. Blizzard, what is your current occupation?

3 A. I'm an art teacher at Busbee Corbett Elementary
4 Middle School.

5 Q. And what school district is that in?

6 A. That's in Aiken County.

7 Q. Okay. And what county do you currently reside
8 in?

9 A. Aiken County.

10 Q. Okay. And how is it that you know the
11 applicant here today, Mr. Cornell Tyler?

12 A. He's a former student of mine.

13 Q. Okay. And do you recall testifying at his
14 first trial in Aiken County in 2006 when Byron
15 Gipson, seated over there, was his attorney?

16 A. I do.

17 Q. And do you know the reason that you were called
18 to testify?

19 A. To be a character witness because of him being
20 one of my students.

21 Q. And we don't have the portion of the transcript
22 where you testified at the first trial. Do you
23 recall what you testified to?

24 A. I did make note of the fact that he was a good
25 student. And the way that I knew that was because

1 his father and I were classmates and that -- because
2 I didn't have to constantly call the parent for
3 correction or behavior, that I recognized he was a
4 good student.

5 Q. Okay. Now, do you remember being contacted
6 prior to his second trial in 2008 or receiving a
7 subpoena to testify at that trial?

8 A. No, ma'am.

9 Q. Okay. And if you would have received a
10 subpoena, would you have been willing to come
11 testify again as a character witness?

12 A. Yes, ma'am.

13 Q. Okay. And you're here today under subpoena; is
14 that correct?

15 A. Correct.

16 Q. And you were willing to comply with that
17 subpoena?

18 A. Yes, ma'am.

19 Q. Okay.

20 MS. BLANCHETTE: Your Honor, I have no further
21 questions of this witness.

22 THE COURT: Any cross-examination?

23 MS. COLEMAN: No questions, Your Honor.

24 THE COURT: You may step down, ma'am. Thank
25 you.

1 MS. BLANCHETTE: And, Your Honor, may she be
2 excused from her subpoena?

3 THE COURT: Any objection?

4 MS. COLEMAN: No objection.

5 THE COURT: You may be excused.

6 You may call next witness.

7 MS. BLANCHETTE: Your Honor, I would call
8 Andrew McAllister to the stand.

9 ANDREW MCALLISTER

10 being first duly sworn, testified as follows:

11 THE WITNESS: Yes, sir.

12 THE COURT: Your witness.

13 DIRECT EXAMINATION

14 BY MS. BLANCHETTE:

15 Q. Can you please state your name for the record?

16 A. Andrew Owen McAllister.

17 Q. And, Mr. McAllister, what is your current
18 occupation?

19 A. I'm Bible vocational minister at New Holland
20 Baptist Church, but I'm a retired educator from
21 Aiken County.

22 Q. Okay. And when you were an educator, did you
23 know Mr. Tyler?

24 A. I did.

25 Q. And in what capacity? What role were you

1 playing in the school at that time?

2 A. Okay. I was an administrator, assistant
3 principal. So I knew him around about the school
4 grounds and the various outdoor activities. And
5 then by being the assistant principal, I get to know
6 those students who had to have correction, and he
7 never was one of those.

8 Q. Okay. Do you remember being called to testify
9 in his trial in Aiken County in 2006?

10 A. I can recall that, yes.

11 Q. Okay. And you testified as a character
12 witness; is that correct?

13 A. Correct.

14 Q. Okay. And did you testify to essentially what
15 you've told us here today?

16 A. That's right.

17 Q. Okay. Do you have anything further to add that
18 you remember testifying about in 2006?

19 A. No, I don't.

20 Q. Okay. And do you remember being contacted by
21 his attorney seated over there, Mr. Gipson, or
22 anyone on his behalf to testify at his trial in
23 2008?

24 A. No. I wasn't aware of that.

25 Q. Okay. If you would have received a subpoena,

1 would you have been willing to testify at the second
2 trial in 2008?

3 A. Yes.

4 Q. Okay. And you received a subpoena to be here
5 today?

6 A. Yes, that's why I'm here.

7 Q. Okay. And my next question is, and you
8 complied with that subpoena; is that correct?

9 A. Correct.

10 Q. Okay.

11 MS. BLANCHETTE: Your Honor, I have no further
12 questions of this witness.

13 THE COURT: Any cross-examination?

14 MS. COLEMAN: No cross-examination.

15 THE COURT: You may step down, sir. Thank you.

16 MS. BLANCHETTE: Again, Your Honor, may he be
17 excused from his subpoena?

18 THE COURT: Any objection?

19 MS. COLEMAN: No objection.

20 THE COURT: You may be excused, Mr. McAllister.
21 You may call your next witness.

22 MS. BLANCHETTE: Your Honor, I would call
23 Joseph Savitz to the stand.

24

25

JOSEPH SAVITZ

1 being first duly sworn, testified as follows:

2 THE WITNESS: Yes, sir, I do.

3 DIRECT EXAMINATION

4 BY MS. BLANCHETTE:

5 Q. Could you please state your name for the
6 record.

7 A. Joseph L. Savitz -- S-A-V-I-T-Z -- III.

8 Q. And, Mr. Savitz, what is your current
9 occupation?

10 A. I'm retired from the State of South Carolina.
11 I used to work at the Office of Appellate Defense.
12 I've been gone from there six years now.

13 Q. And how long were you at the Office of
14 Appellate Defense?

15 A. I was there from January of 1985 to the end of
16 2010.

17 Q. And were you there your entire career as an
18 attorney or did you start somewhere else?

19 A. I had two years before I got a job at -- I
20 graduated in '82 and got the job at the end of -- at
21 appellate defense at the end of '84. So I was there
22 for most of my career.

23 Q. And while you were there, what type of appeals
24 did you handle?

25 A. I specialized in, like, murder cases, handled

1 half of the death penalty appeals, but mostly
2 murders and other homicides.

3 Q. Do you have any idea the approximate number of
4 appeals you handled while you were at appellate
5 defense?

6 A. It was hundreds of them. I have no idea how
7 many exactly.

8 Q. Okay. And do you recall handling the appeal of
9 Cornell Tyler?

10 A. Actually, I do not. I have no recollection of
11 having handled this case.

12 Q. And with that said, have you had the
13 opportunity to review the brief that was submitted
14 in this case?

15 A. Yes, I did.

16 Q. Okay. And --

17 A. My name is on it. I mean, I'm responsible for
18 it. But this is one of those I just do not
19 remember.

20 Q. But you have reviewed the brief bearing your
21 name prior to today?

22 A. Yes.

23 Q. Now, in that brief the issue is raised that the
24 trial judge committed reversible error when he
25 neglected to instruct the jury on the defense of

1 alibi.

2 A. Right.

3 Q. But in there it does not mention whether or not
4 the defense counsel had requested an alibi
5 instruction.

6 A. Right.

7 Q. And it says if the issue is procedurally
8 barred, that potentially could be an issue for
9 postconviction relief.

10 A. Yes.

11 Q. Can you explain the reasoning behind that
12 brief?

13 A. Yeah. What we'd do with cases is if we
14 couldn't spot an issue that we thought was
15 meritorious on direct appeal but we did see
16 something that would be meritorious here at a PCR
17 hearing, we would often, instead of just filing an
18 Anders brief that didn't say anything helpful, we
19 would point out the issue that hadn't been preserved
20 and say -- to kind of give whoever got the PCR the
21 idea that, hey, you might ought to take a look at
22 this issue when you file the PCR application. And
23 that's what happened in this case, I imagine.

24 Q. So it would be your regular practice then to
25 spot an unpreserved issue, for lack of better words,

1 to set it up for a potential PCR?

2 A. That's right.

3 Q. Okay. And in reviewing this brief, does that
4 appear to be what was being done in this case?

5 A. That's what it looks like was being done is
6 that there's a -- his defense was alibi, no alibi
7 charge was requested so, obviously, I noted it for
8 PCR.

9 Q. And by way of the amendment, the applicant has
10 alleged that you were ineffective for failing to
11 raise other meritorious issues on appeal.

12 A. Right.

13 Q. One of those would be the change of venue
14 motion that was had.

15 A. Yes.

16 Q. Do you have any reasoning why you did not raise
17 that issue on appeal?

18 A. I mean, I don't remember this case at all, so I
19 would be guessing. You know, if I did -- I mean,
20 I -- if I didn't raise it, it's because I didn't
21 think it was meritorious. I mean, you know, the
22 failure to raise any issue is because if I didn't
23 raise it, I didn't think it was meritorious at the
24 time.

25 Q. Okay. And a second issue that was identified

1 in the amendment was that trial counsel had made an
2 objection to the hand-of-one-hand-of-all charge.

3 A. Right.

4 Q. Do you have any recollection as to why you
5 would not have raised that issue?

6 A. Once again, you know, it wouldn't have been any
7 strategic reason. If it's a meritorious issue, I --
8 obviously if it's meritorious, I just missed it.

9 Q. Okay. And are you familiar with the case of
10 Israel Wilds vs. The State of South Carolina?

11 A. Yes, I am.

12 Q. Okay. Would you like me to hand you a copy of
13 that to review?

14 A. No.

15 Q. Okay. And why is it that you're familiar with
16 that case?

17 A. Because I represented him on appeal at some
18 point back in the day.

19 Q. Okay. And do you recall the outcome of that
20 case in 2014 in the South Carolina Supreme Court?

21 A. Well, the appeal we lost. And I think then a
22 PCR was filed and the issue was that I was
23 ineffective in not having -- I'm the appellate
24 lawyer that's mentioned in that case. The issue was
25 that I was ineffective in not raising the

1 hand-of-one issue on appeal.

2 And I didn't testify at Mr. Wilds' PCR, but the
3 judge at the PCR eventually concluded that I was
4 ineffective in not raising it, it was appealed to
5 the Court of Appeals who affirmed, and then the
6 Supreme Court granted cert but then dismissed it as
7 improvidently granted. So that's -- the final
8 ruling on the case was that I was ineffective in
9 failing to raise that issue.

10 MS. BLANCHETTE: And, Your Honor, for the
11 record, that is Israel Wilds vs. The State of South
12 Carolina. That was filed February 5th, 2014, in the
13 South Carolina Supreme Court. And I have a copy for
14 Your Honor.

15 THE COURT: Thank you.

16 BY MS. BLANCHETTE:

17 Q. Mr. Savitz, is there anything further you'd
18 like to add regarding your representation in this
19 case?

20 A. Wish I would have raised that issue sooner.
21 Other than that, no.

22 Q. And which issue do you wish you would have
23 raised sooner?

24 A. About the hand of one.

25 Q. Okay. And any specific reasoning?

1 A. We probably would have won on appeal.

2 Q. Because the issue was preserved by trial
3 counsel?

4 A. I'm assuming it is preserved. I haven't read
5 the transcript.

6 Q. Okay.

7 MS. BLANCHETTE: Your Honor, I have no further
8 questions of this witness.

9 THE COURT: Cross-examination?

10 MS. COLEMAN: Thank you, Your Honor.

11 CROSS-EXAMINATION .

12 BY MS. COLEMAN:

13 Q. Good morning, Mr. Savitz.

14 A. Good morning. How are you?

15 Q. I won't ask you too much. I think she's asked
16 you most of your process in general and how you
17 choose which issues are meritorious and which are
18 not.

19 A. Right.

20 Q. You testified that you did not think this
21 hand-of-one issue was meritorious at the time or
22 else you would have briefed it; correct?

23 A. I mean, yes. I didn't think it was meritorious
24 at the time. Obviously I didn't think it was
25 meritorious in any case, apparently.

1 Q. Right.

2 A. I don't know why. It may have just been an
3 issue I missed. You know, I just didn't see it.

4 Q. And you've stated that you have not read the
5 trial transcript from this case; correct?

6 A. I have not read the trial transcript.

7 Q. Okay. So if something is in the transcript
8 that you might not recall, would you admit that that
9 was as that happened at the time?

10 A. I believe the transcripts are usually accurate.
11 Yes.

() 12 Q. Okay. Ms. Blanchette has pointed out this case
13 Wilds that you talked about.

14 A. Right.

15 Q. Do you remember the fact pattern, generally, of
16 that case?

17 A. Of the Wilds case?

18 Q. Yes.

19 A. I think there were -- three defendants were
20 walking along, if I remember correctly, there was a
21 shooting, two of the defendants said that Mr. Wilds
22 was the shooter. His defense was alibi. That was
23 actually the only evidence that he was the shooter;
() 24 that nobody else was.

25 The jury came back and said, hey, do we have to

1 find that he was the shooter, suggesting that one of
2 the other two may have been the shooter, I suppose.
3 And the Judge said, hey, I better give you
4 the-hand-of-one charge then. So they charged it --
5 the Judge charged it and the jury went out, came
6 back, and found him guilty.

7 And the Court said there's no evidence of any
8 kind of acting in concert here; the only evidence
9 here was that Wilds was the shooter and, therefore,
10 the-hand-of-one charge was inappropriate.

11 Q. Okay. So the reason that you were found
12 ineffective for not briefing that issue in the Wilds
13 case is because the only evidence that was presented
14 is that Wilds was the shooter and no other
15 co-defendants?

16 A. Well, I mean, I think it's probably broader
17 than that. It's that there was no evidence that
18 they were acting in concert. I don't think it
19 really mattered that he, you know, was particularly
20 the shooter. I mean, that happened to be the facts
21 of that case.

22 Q. Right. So in this case, Cornell Tyler, you say
23 you haven't reviewed the transcript.

24 A. No, I haven't.

25 Q. But if the transcript showed that there was

1 evidence presented of more than one shooter, would
2 you differentiate that from the Wilds case?

3 A. I mean, if there was evidence that -- if
4 there's evidence that the shooters were acting in
5 concert, yeah, I would have to.

6 Q. Okay. Did you brief anything regarding the
7 presumption inference?

8 A. No.

9 Q. Okay.

10 MS. COLEMAN: I beg the Court's indulgence.
11 No further questions. Thank you.

12 THE COURT: Any redirect?

13 MS. BLANCHETTE: Very briefly, Your Honor.

14 REDIRECT EXAMINATION

15 BY MS. BLANCHETTE:

16 Q. Mr. Savitz, I apologize because I know you
17 haven't reviewed the transcript. But if it's --

18 A. Right.

19 Q. -- clear from the statements made by the
20 witnesses and the solicitor at trial that the
21 ballistics showed that only one weapon --

22 A. Right.

23 Q. -- fired the fatal shots --

24 A. Right.

25 Q. -- would that be factually similar to the Wilds

1 case?

2 A. As I read the brief and read Wilds, it seemed
3 to me that there was no way to distinguish the two
4 cases. If there's something and I'm wrong about the
5 record then -- I mean, you know, the record is what
6 it is. I don't know.

7 Q. I appreciate that.

8 MS. BLANCHETTE: Nothing further, Your Honor.

9 THE COURT: You may step down, sir. Thank you.
10 You may call your next witness.

11 MS. BLANCHETTE: Your Honor, I'd call Kaliah
12 Felder.

13 KALIAH FELDER

14 being first duly sworn, testified as follows:

15 THE WITNESS: Yes, sir.

16 THE COURT: Your witness.

17 DIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q. Could you please state and spell your name for
20 the record.

21 A. Kaliah Felder, K-A-L-I-A-H.

22 Q. And, Ms. Felder, what county do you currently
23 reside in?

24 A. I currently reside in Richland County.

25 Q. Okay. And are you here today under subpoena?

1 A. Yes, ma'am.

2 Q. Okay. Ms. Felder, do you remember back to
3 August 27th of 2005?

4 A. Yes, ma'am.

5 Q. Okay. And do you know Mr. Cornell Tyler, who
6 is seated next to me?

7 A. Yes, ma'am.

8 Q. Okay. Back in August of 2005, was it your
9 regular practice to stop in at the home of
10 Mr. Tyler?

11 A. Yes, ma'am. Regularly on the weekends when we
12 would go out, we'd stop through to his home.

13 Q. You'd stop through, I'm sorry, what?

14 A. We'd go through to his home on the way going to
15 the club because the club -- you could take a back
16 road to the club from his house.

17 Q. Okay. And that's something you were regularly
18 doing back in 2005?

19 A. Yes, ma'am.

20 Q. Okay. And is there somebody that you would
21 regularly stop there with or were you by yourself?

22 A. Me and my best friend.

23 Q. Okay. And what is her name?

24 A. Misty.

25 Q. Okay. And do you remember going by Mr. Tyler's

1 house on August 27th, 2005 on the way to the club?

2 A. Yes, ma'am.

3 Q. Okay. Do you know approximately when that
4 would have been?

5 A. It probably was 11:30 --

6 Q. Okay.

7 A. -- 12:00, something like that, because usually
8 we left and went out pretty late going there.

9 Q. Okay. And if you could, just speak up so
10 everybody can hear you today.

11 A. I'm sorry.

12 Q. That's fine. So you went to his house and then
13 you proceeded to the club; is that correct?

14 A. Yes, ma'am.

15 Q. Okay. What did you -- how long did you stay at
16 the club; do you know?

17 A. We probably left there -- they close around
18 2:30 or 3:00 in the morning.

19 Q. Okay. And let me preface this by saying if I
20 was asking you these questions back in 2005 or 2006,
21 would your memory have been sharper back then?

22 A. Yes, ma'am.

23 Q. Okay. But you do recall that night?

24 A. Yes, ma'am.

25 Q. Okay. And after you left the club, did you

1 return to Mr. Tyler's residence?

2 A. Yes, ma'am.

3 Q. Okay. Do you have any idea approximately when
4 that would have been?

5 A. Probably 3:00, 3:15, 3:30.

6 Q. Okay.

7 A. I'm...

8 Q. You're estimating?

9 A. Yes, I'm estimating.

10 Q. Okay. When you were headed towards his house,
11 did you actually see Mr. Tyler?

() 12 A. Yes, ma'am.

13 Q. Okay. What was he doing when you saw him?

14 A. He was walking up the dirt road with his phone
15 or whatnot.

16 Q. Okay. And are you familiar with trying to use
17 your phone in that area?

18 A. Yes, ma'am.

19 Q. Okay. Is it easy to get reception out where
20 Mr. Tyler lives?

21 A. No, ma'am.

22 Q. Okay. What did it appear to you that he was
23 doing at that time?

() 24 A. It looked like he was trying to use his phone
25 or something or trying to get a signal or something.

1 Q. Okay. And once you stopped and talked with
2 him, what happened next?

3 A. We went -- we pulled over into his yard. And
4 when we pulled over into his yard, you know, him and
5 Misty talked for a little bit and then him and his
6 brother asked for, you know, a ride. By then, I
7 was -- as I stated, we had just left the club, so I
8 was...

9 Q. Were you intoxicated at that point?

10 A. Yes, ma'am.

11 Q. Okay. But you recall them asking for a ride.
12 Was that something that Misty and you would
13 typically do is give them a ride?

14 A. Yes, ma'am.

15 Q. Okay. And did anything seem out of the
16 ordinary or not typical with that night in question?

17 A. No, ma'am.

18 Q. Okay. Did you have any reason to believe
19 that -- now you know that the shooting had just
20 occurred. Did you have any reason to believe that
21 at the time?

22 A. No, ma'am.

23 Q. Okay. And do you recall who all got in the
24 vehicle and asked for a ride?

25 A. It was Deuce -- I'm sorry. Cornell, his

1 brother, and an older guy. But I don't, you know,
2 know the other guy.

3 Q. Okay. And you said nothing seemed out of the
4 ordinary when they asked for a ride and got in the
5 vehicle?

6 A. No, ma'am.

7 Q. Okay. Did they have any luggage with them or
8 any type of bags or anything that you recall?

9 A. No, ma'am.

10 Q. Okay. And do you recall where your friend
11 Misty brought them?

12 A. No, ma'am.

13 Q. Now, when did you hear that the shooting had
14 taken place that night?

15 A. I probably heard about it probably three or
16 four days later, because I'm not from that area.

17 Q. Okay. And what was your reaction when you
18 heard that?

19 A. I was like -- I didn't believe it.

20 Q. Okay. And why didn't you believe it? What
21 didn't make sense to you?

22 A. It didn't make sense because Mr. Tyler is,
23 like, a really sweet and genuine type of person.

24 Like, I didn't get that. And I knew that, you know,
25 we had just dropped them off. So...

1 Q. You just -- you didn't see anything out of the
2 ordinary that night?

3 A. No, ma'am.

4 Q. And if you had seen something out of the
5 ordinary or thought in any way that this had just
6 occurred and he was trying to get out of there,
7 would you have been in a vehicle with him?

8 A. No, ma'am.

9 Q. Okay. Now, did any investigators or anybody
10 ever come out and talk with you?

11 A. No, ma'am.

12 Q. Okay. Would you have been willing to talk to
13 someone if they wanted to talk with you about this
14 case and what happened that night?

15 A. Yes, ma'am.

16 Q. Okay. And if you would have received a
17 subpoena to testify at the trial in 2006, would you
18 have been willing to testify?

19 A. Yes, ma'am.

20 Q. If you would have received a subpoena to
21 testify at the trial in 2008, would you have been
22 willing to testify?

23 A. Yes, ma'am.

24 MS. BLANCHETTE: Your Honor, if I could beg the
25 Court's indulgence for one moment.

1 Your Honor, I have no further questions of this
2 witness.

3 THE COURT: Cross-examination?

4 MS. BLANCHETTE: Yes, Your Honor.

5 CROSS-EXAMINATION

6 BY MS. COLEMAN:

7 Q. Good morning.

8 A. Good morning.

9 Q. So you said that you went to the defendant's
10 house and picked him up around 3:00 or 3:15 in the
11 morning; is that right?

12 A. It was probably, like, 3:15 or 3:30. I'm not
13 for sure. I can't --

14 Q. Right. But around 3:15. And he was not -- you
15 said he was walking down the road using his phone?

16 A. He was like (demonstrating).

17 Q. Looking for service?

18 A. Yes, ma'am.

19 Q. Right. He was not inside sleeping at that
20 time?

21 A. No, ma'am.

22 Q. No. He was awake.

23 Okay. Did you ever reach out to his defense
24 attorney to tell him any of this?

25 A. No, ma'am. Actually, probably around two or

1 three months later, I moved to the state of New
2 York --

3 Q. Okay.

4 A. -- and I didn't move back until, like, 2008 or
5 2009.

6 Q. Okay. But you had heard about this shooting
7 and knew that he was charged with this crime?

8 A. Yes, ma'am.

9 Q. And he was a friend of yours and you didn't
10 want to see anything bad happen to him?

11 A. No, ma'am. I didn't want to see anything bad
12 happen to him.

13 Q. Right. Did you think at any time that it would
14 be important, maybe, to find his defense attorney
15 and tell him your story so it might help him out?

16 A. I didn't know that, you know, that had anything
17 to do with that night. If I did, I would have
18 reached out to someone and said something.

19 Q. Thank you.

20 MS. COLEMAN: No further questions.

21 THE COURT: Any redirect?

22 MS. BLANCHETTE: No, Your Honor. And, again,
23 this witness is under subpoena and I would ask that
24 she be released.

25 MS. COLEMAN: No objection.

1 THE COURT: All right, ma'am. You're free to
2 go. Thank you.

3 You may call your next witness.

4 MS. BLANCHETTE: Your Honor, I would call
5 Tremain Tyler to the stand.

6 TREMAIN TYLER

7 being first duly sworn, testified as follows:

8 THE WITNESS: Yes, sir.

9 DIRECT EXAMINATION

10 BY MS. BLANCHETTE:

11 Q. Could you please state your name for the
12 record.

13 A. Tremain Tyler.

14 Q. Okay. And, Mr. Tyler, make sure you speak into
15 that microphone so everybody can hear you. How is
16 it that you know Cornell Tyler?

17 A. That's my brother.

18 Q. Okay. And he is your older or younger brother?

19 A. Younger brother.

20 Q. And, Mr. Tyler, how old are you today?

21 A. I'm 36.

22 Q. Okay. And, Mr. Tyler, when you were growing
23 up, were you in different classes or special classes
24 when you were in school?

25 A. Yes, ma'am.

1 Q. And how far did you get in school?

2 A. 12th.

3 Q. Okay. And did you graduate with a regular
4 diploma or a certificate?

5 A. Certificate.

6 Q. Okay. And as far as employment, how have you
7 been employed through the years?

8 A. Construction work, like building -- like, brick
9 mason.

10 Q. Okay. And have you also worked with some
11 agencies and done some work?

12 A. Yes, ma'am.

13 Q. What kind of work have you done with different
14 agencies?

15 A. Like, cut down trees and all types of, like,
16 raking yards and stuff.

17 Q. Okay. Have you been a part of any programs?

18 A. Yes, ma'am.

19 Q. What type of programs?

20 A. Like, special needs program, like
21 tri-development center or something like that.

22 Q. Okay. And do you still have some learning or
23 capability difficulties now at your age of 36?

24 A. No, ma'am.

25 Q. Okay. Mr. Tyler, if I ask you a question you

1 don't understand today or if I need to slow down at
2 all, please let me know. Okay?

3 A. Okay.

4 Q. Okay. I want to take you back to the time of
5 2005. Were you living with your brother then?

6 A. Yes, ma'am.

7 Q. And were you living at the address 344 Union
8 Academy Road?

9 A. Yes, ma'am.

10 Q. Okay. Now, we're here today about the shooting
11 that took place August 27, 2005. Were you charged
12 as a result of that? Did you receive criminal
13 charges?

14 A. Yes, ma'am, I was.

15 Q. Okay. And did you spend time in the county?

16 A. Eight years -- I think it was like eight.

17 Q. And how did your time in the county end? What
18 was your issue when you got out of the county?

19 A. They send me to Columbia and a -- at a special
20 needs place, like a community center. From there
21 they sent me to, like, a group home.

22 Q. Did you have a medical issue at the end of your
23 time in county? Was something wrong with your
24 health?

25 A. Yes, ma'am.

1 Q. What was that?

2 A. Eating.

3 Q. Okay. And were you found to have a disease
4 when you got out?

5 A. Yes, ma'am.

6 Q. What was that?

7 A. I don't remember.

8 Q. Okay. Okay. Did you have leukemia, Mr. Tyler?

9 A. Yes, ma'am.

10 Q. Okay. Now, did you ever give a statement when
11 you and your brother were arrested? Did you ever
12 give a written statement to law enforcement?

13 A. Like what?

14 Q. Did you ever meet with investigators and write
15 and sign a statement?

16 A. No, ma'am.

17 Q. Okay. And were you called at either of your
18 brother's trials to testify?

19 A. No, ma'am.

20 Q. Okay. So you didn't get up in court and
21 testify before today?

22 A. No, ma'am.

23 Q. Okay. Did you ever speak with your brother's
24 attorney that you remember, Mr. Gipson? He's seated
25 here behind the two young ladies.

1 A. No, ma'am.

2 Q. Okay. Would you have been willing to speak
3 with him about your brother's case? Would you have
4 been willing to speak to your brother's attorney
5 about his case?

6 A. Yes, ma'am.

7 Q. Okay. And if you were told that you were
8 needed to testify at Cornell's trial, would you have
9 been willing to testify?

10 A. Oh, yes, ma'am.

11 Q. Okay. Let me take you back to the night that
12 this took place, August 27th, 2005. Do you recall
13 being asleep in the house when Mr. Walker came to
14 the door?

15 A. Yes, ma'am.

16 Q. Okay. Do you recall him leaving after talking
17 with your brother?

18 A. Yes, ma'am.

19 Q. Okay. Do you recall a short time later
20 Mr. Walker coming back?

21 A. Yes, ma'am.

22 Q. And based upon that, was it your understanding
23 that you-all needed to leave the area?

24 A. Yeah. He said we need to leave the area
25 because something happened.

1 Q. Okay. And do you recall catching a ride to the
2 Aiken County area with Misty and Kaliah?

3 A. Yes, ma'am.

4 Q. Okay. Okay.

5 MS. BLANCHETTE: Your Honor, if I could beg the
6 Court's indulgence one moment.

7 BY MS. BLANCHETTE:

8 Q. Now, in the time between when Mr. Walker came
9 and talked to your brother and Mr. Walker came back
10 and it was your understanding you-all needed to
11 leave, was your brother at the house with you?

12 A. Yes, ma'am.

13 Q. Did he, during that time, leave with any other
14 individuals in a car?

15 A. No, ma'am.

16 Q. Okay. Would you have been willing to testify
17 to that at his trial?

18 A. Yes, ma'am.

19 Q. Okay.

20 MS. BLANCHETTE: If I could beg the Court's
21 indulgence again one moment.

22 Your Honor, I have no further questions of this
23 witness.

24 THE COURT: Cross-examination?

25 MS. COLEMAN: Yes, just briefly.

1 CROSS-EXAMINATION

2 BY MS. COLEMAN:

3 Q. You said that you were charged with crimes
4 after this shooting occurred?

5 A. Yes, ma'am.

6 Q. Do you recall who your attorney was?

7 A. William -- William something. I can't think of
8 his --9 Q. And that's fine. But you were appointed an
10 attorney?

11 A. Yes, ma'am.

12 Q. Okay. Do you recall how many times your
13 attorney spoke with Cornell's attorney?

14 A. No, ma'am.

15 Q. No. Okay. Thank you. No further questions.

16 THE COURT: Any redirect?

17 MS. BLANCHETTE: No, Your Honor.

18 THE COURT: You may step down, sir. Thank you.

19 MS. BLANCHETTE: Mr Tyler is also here under
20 subpoena. I believe he'll want to stay, but I'd
21 just ask that he be released.

22 MS. COLEMAN: No objection.

23 THE COURT: Thank you.

24 MS. BLANCHETTE: Your Honor, my next witness is
25 going to be a little lengthy. Would you like me to

1 keep calling witnesses?

2 THE COURT: Yes, ma'am.

3 MS. BLANCHETTE: Okay. Your Honor, I would
4 call James Gleaton to the stand.

5 JAMES GLEATON

6 being first duly sworn, testified as follows:

7 THE WITNESS: Yes, sir.

8 THE COURT: Your witness.

9 MS. BLANCHETTE: Your Honor, may I approach
10 with a partial copy of the trial transcript and then
11 the full trial transcript?

12 THE COURT: Yes, ma'am.

13 DIRECT EXAMINATION

14 BY MS. BLANCHETTE:

15 Q. Mr. Gleaton, could you please state your name
16 for the record.

17 A. James Gleaton. Gleaton is G-L-E-A-T-O-N.

18 Q. Okay. And, Mr. Gleaton, we're here about a
19 shooting that took place in October of 2005 that
20 Mr. Cornell Tyler was subsequently tried for and
21 convicted at his second trial in 2008. Do you have
22 a recollection of those events?

23 A. Yes, ma'am. I can't -- yes, ma'am. I can't
24 forget it.

25 Q. Okay. And do you recall testifying at the

1 first trial in -- let me get that date for you, I'm
2 sorry -- the first trial in November of 2006?

3 A. Yes, ma'am.

4 Q. And do you recall testifying at the second
5 trial in January of 2008?

6 A. Yes, ma'am.

7 Q. Okay. I'm going to ask you some questions
8 about that. I've provided you a transcript of both
9 of those. Okay?

10 Do you recall also giving a voluntary statement
11 in this case to law enforcement on October 3rd,
12 2005?

13 A. Yes, ma'am, I did.

14 MS. BLANCHETTE: Your Honor, may I approach the
15 witness?

16 THE COURT: Yes, ma'am.

17 BY MS. BLANCHETTE:

18 Q. Mr. Gleaton, could you review this and identify
19 what it appears to be for the record.

20 A. You want me to read it out loud?

21 Q. I just -- what is it? What did I hand you?

22 A. A voluntary statement.

23 Q. Okay. And whose name is on it?

24 A. James Edward Gleaton.

25 Q. And whose signature?

1 A. My signature.

2 Q. Okay. So you identified this as your
3 statement?

4 A. Yes, ma'am.

5 MS. BLANCHETTE: Your Honor, I'd move the
6 voluntary statement of James Edward Gleaton in as
7 Applicant's 3.

8 THE COURT: Any objection?

9 MS. COLEMAN: No objection.

10 THE COURT: All right. It's in.

11 (Applicant's Exhibit No. 3 marked for
12 identification and admitted into evidence.)

13 MS. BLANCHETTE: Would Your Honor like a copy?

14 THE COURT: Yes, please.

15 BY MS. BLANCHETTE:

16 Q. Now, Mr. Gleaton, could you review your
17 statement for me or have you already?

18 A. I know exactly what I wrote.

19 Q. So would you agree that in your statement on
20 8/27 of '05 you were at a Mr. Hartwell's house
21 around 3:00 a.m.?

22 A. Yes, ma'am.

23 Q. You heard a shot?

24 A. Yes, ma'am.

25 Q. You saw a car come by and then a second car

1 that you recognized as Willie Ware's car?

2 A. Yes, ma'am.

3 Q. You didn't see anyone in the car or hanging out
4 of the car, is what you say in your statement.

5 A. Yeah. That's what I said on my statement.

6 Q. Okay. You heard shots and then you saw
7 Mr. Ware's car come by again at a high rate of
8 speed?

9 A. Yes, ma'am. That's what I said.

10 Q. Okay. And then you walked home and you
11 eventually got a ride; is that right?

12 A. Yeah. I -- right down the road.

13 Q. Okay. So that's the statement you gave to law
14 enforcement?

15 A. Yes, ma'am.

16 Q. Okay. Then do you recall testifying at the
17 first trial in 2006?

18 A. Yes, ma'am.

19 Q. Okay. And at that trial, did the State call
20 you as a witness?

21 A. Yes, ma'am.

22 Q. Okay. And if you'd like to, I gave you that
23 little packet, there is your trial testimony. At
24 the first trial when you're testifying for the
25 State, you indicate on page 4, is where I'll start,

1 that you heard gunshots prior to the car going past.

2 A. Right.

3 Q. Okay. And that you were waiting on your car to
4 come back and you thought it was your car being
5 raced but it was Mr. Ware's car.

6 A. Yes, ma'am.

7 Q. And they were similar in style, is that right,
8 your car and Mr. Ware's car?

9 A. Same color, just different headlights.

10 Q. Okay. You testify on page 5 you only saw --
11 I'm sorry. You testify on page 4 you saw a truck
12 then go by --

13 A. Yes, ma'am.

14 Q. -- then the car, then you heard shots beyond
15 the house that you were at.

16 A. Yes, ma'am.

17 Q. Okay. You testified that you only saw
18 Mr. Ware's car come back by the house --

19 A. Yes, ma'am, I did.

20 Q. -- but you couldn't see anybody in the car.

21 A. Yes, ma'am.

22 Q. Okay. You went home, the police come in your
23 driveway -- I'm going on to page 6 here -- and you
24 spoke with them a couple days later.

25 A. Yes, ma'am.

1 Q. Okay. And that's when that statement would
2 have been generated; is that right?

3 A. Yes, ma'am.

4 Q. Okay. You also say that Mr. Tyler was your
5 best friend --

6 A. Yes, ma'am.

7 Q. -- and that you had been with him earlier that
8 day at his house.

9 A. Yes, ma'am.

10 Q. Okay. On cross-examination they go into how
11 you know all the individuals. Since that's in the
12 record, I won't go through that today. But for the
13 Court's reference, it's page 8.

14 You do say on cross-examination on page 11 that
15 you didn't see Mr. Tyler in the car when it went by.

16 A. I didn't see nobody in the car.

17 Q. Okay. And that's what you testified to then;
18 correct?

19 A. Yes, ma'am, I did.

20 Q. Okay. And then you also testify -- if you
21 could look at page 11 and 12, you begin testifying
22 about a situation where you're in a room with
23 Mr. Kendall Seawright who was --

24 A. Yes, ma'am.

25 Q. -- one of the State's additional witnesses --

1 A. Yes, ma'am.

2 Q. -- and you were talking with him about being
3 nervous, and you discuss some of the things he
4 didn't need to say or did need to say.

5 A. Right.

6 Q. As a result they proffered your testimony,
7 which means they sent the jury out and they
8 continued to ask you questions, and you told them
9 about that meeting with Mr. Seawright.

10 A. Yes, ma'am.

11 Q. When you testified about the meeting with
12 Mr. Seawright, was that the honest truth?

13 A. Yes, ma'am, it was.

14 Q. Okay. Now, between the trials, what happened?
15 Did you have any meetings with Mr. Gipson the
16 defense attorney --

17 A. Yeah, I had two.

18 Q. -- have any meetings with the solicitor's
19 office?

20 A. Actually what happened was I was -- at the
21 first trial, I caught a charge and I was in the
22 county jail on a charge too. And then, you know,
23 while I was in there, I started thinking about
24 things. I was like, we got a woman dead and a man
25 could be going to prison, and I know the truth and I

1 ain't doing nothing about it. So I took my public
2 defender and I went to Mr. Weeks. And he
3 specifically told me if I change my testimony, I
4 would not get out of jail.

5 Q. And you took that to mean as to the current
6 charge that you had been picked up on?

7 A. Yes, ma'am.

8 Q. But then you subsequently testified at the
9 second trial for the defense. How did that come to
10 be? Did you get a subpoena? Why were you there?

11 A. Because, see, I talked to Mr. Byron, and I even
12 told him about it too, about the meeting I had with
13 Mr. Weeks, so we discussed it. But I was so scared
14 that -- because I had a serious charge too. And
15 when he told me that, I wanted to, but then I was
16 like, no, so I just left it just how it was.

17 Q. When you say left it how it was, can you
18 explain that to me?

19 A. Because, see, what happened, when the car went
20 by, I didn't see who was shooting, but when the car
21 came back by, I seen Edward Walker hanging out the
22 car with the gun.

23 Q. And all you testified to at the second trial,
24 specifically in reference to the transcript on pages
25 486 and -87, is you heard someone yell and you

1 thought it was Walker.

2 A. Right.

3 Q. But was there more to that story?

4 A. I knew -- I knew exactly who it was. I
5 raised -- I -- I knew exactly who it was.

6 Q. Okay. So you withheld that information when
7 the defense called you?

8 A. Yes, ma'am, I did because, like I said, I grew
9 up around all of them, I'm the older one out of all
10 of them, and I didn't -- you know, I didn't want
11 nobody to go to jail. But after me being in jail, I
12 realized that a woman is gone, a woman is dead, you
13 know, and this man, I been knowing him a long time,
14 you know, and then, like, his father, he's doing
15 everything he can to get his son out of jail for
16 something I know he didn't do.

17 Q. Sir, I have to ask the obvious question then:
18 Are you here today giving us this information
19 because you just want to help Mr. Tyler?

20 A. Ma'am, I'm here to help my conscious first
21 because 11 years -- I ain't sleep in -- I haven't
22 sleep in 11 years because I know a man is in jail
23 and a woman is dead all because of somebody else
24 action.

25 Q. So at trial you essentially watered down your

1 testimony?

2 A. I watered down my testimony.

3 Q. And you didn't implicate Mr. Walker?

4 A. I tried not to implicate nobody.

5 Q. Okay. Now, if Mr. Gibson would have asked you
6 if you met with the solicitor and you felt
7 threatened in any way, what would you have said at
8 that trial?

9 A. To be honest with you, I did discuss it with
10 him, but I didn't want to take a chance on my life
11 neither.

12 Q. Okay.

13 A. You know, I did discuss it with Mr. Gipson. We
14 did discuss it.

15 Q. And if he would have essentially --

16 A. If he would have asked me on trial then I would
17 have had -- yes.

18 Q. Okay. So you would have said yes, you felt
19 threatened. Would you have also -- if he would have
20 confronted you with potentially having told him
21 something different, more details implicating
22 Mr. Walker then not testifying to that when he
23 called, you would you have admitted that, that you
24 had essentially changed your story?

25 A. Yes, ma'am.

1 Q. Okay. So that's not something you're just
2 willing to admit today?

3 A. No, ma'am.

4 Q. If pressed on it, you would have admitted that
5 at the time of trial?

6 A. Yes, ma'am.

7 MS. BLANCHETTE: Your Honor, if I could beg the
8 Court's indulgence one moment, please.

9 BY MS. BLANCHETTE:

10 Q. And just to be clear because we're trying to
11 establish today what you could have testified to at
12 trial, what was the information that you had
13 regarding Mr. Walker? What did you see that night?

14 A. On this particular night, what really happened
15 was Willie Ware, Kendall, and Mr. Walker, they came
16 by my home. And I used to set them up with these
17 little women. So we was going to go purchase some
18 drugs. And at the time they had some beer in the
19 car, so I was like, let me get a beer. But when I
20 asked for the beer, the -- they was kind of warm.

21 So we took the -- I said, let me get the beer
22 and put it in the freezer, by the time we go get the
23 drugs and come back, the beer would be cool. By the
24 time I went in the house and came back, they was
25 gone. So I told my wife at the time, I was like,

1 they ain't going but up the road, so I'm going to
2 walk. And I also -- in my car too. But as soon as
3 I come out my yard, I heard a couple gunshots. Then
4 when I came out on the drive and got by Hartwell
5 house, that's when I seen the car going by.

6 Q. Okay. And whose car was that you saw going by?

7 A. That was Willie Ware car.

8 Q. Okay. And then did you hear additional
9 gunshots?

10 A. After they pass me, I hear, like, five or six
11 more shots.

12 Q. Okay. And then what did you see as far as the
13 car coming back by?

14 A. The car came back by itself and it slowed down
15 by Hartwell house and Walker was hanging out the
16 window on the passenger's side, just -- you know,
17 couldn't quite hear what he was saying, but I know
18 he was yelling --

19 Q. Okay.

20 A. -- you know, with, like, a long-type rifle in
21 his hand.

22 Q. Okay. And who was it that you saw with a
23 long-type rifle in his hand?

24 A. Edward Walker.

25 Q. Okay. And did you see Mr. Tyler with a

1 long-type rifle in his hand?

2 A. I didn't even see nobody in the car just but
3 the person hanging out the car. So I don't even
4 know who was driving the car, who was in the back
5 seat, who was in the front seat. I didn't see none
6 of that.

7 Q. Okay.

8 A. I seen the person hanging out the car because I
9 was on this side of the road with him hanging out
10 (indicating).

11 Q. Okay. And you've talked today about being
12 threatened and changing your testimony essentially.

13 A. Yes, ma'am.

14 Q. We met this morning; is that right?

15 A. Yes, ma'am.

16 Q. Okay. And I didn't make you any promises or
17 tell you I could help you out in any way or give you
18 any legal advice, did I?

19 A. No, ma'am.

20 Q. And I didn't threaten you in any way?

21 A. No, ma'am.

22 Q. Okay. And you are here under subpoena today;
23 is that correct? You received a subpoena to be here
24 today?

25 A. I ain't see it. But, I mean, I knew --

1 Q. You knew you needed to be here today?

2 A. I knew I needed to be here, yes, ma'am.

3 Q. Okay.

4 MS. BLANCHETTE: Your Honor, if I could just
5 beg the Court's indulgence one more time.

6 Your Honor, I have no further questions of this
7 witness.

8 THE COURT: Cross-examination?

9 MS. COLEMAN: Thank you.

10 CROSS-EXAMINATION

11 BY MS. COLEMAN:

() 12 Q. Mr. Gleaton, are you telling us today that you
13 lied on the stand at the trial?

14 A. I wouldn't say I lied, but I didn't tell
15 everything I seen.

16 Q. Okay. You didn't tell the whole truth --

17 A. No, ma'am, I haven't.

18 Q. -- in order to protect yourself; is that
19 correct?

20 A. Yes, ma'am.

21 Q. Okay. And you testified that you're close
22 friends with Mr. Tyler; correct?

23 A. Mr. Tyler, Willie Ware, Edward Walker, Kendall,
() 24 all us close friends.

25 Q. But you're good friends with Mr. Tyler and you

1 want him to do well?

2 A. I want all of them to do well, ma'am.

3 Q. Okay. Who did you tell the real story to?

4 A. To Mr. Weeks.

5 Q. The solicitor. Did you tell anyone else?

6 A. No. I know I -- well, maybe -- I maybe have.

7 I don't know. But I remember telling Mr. Weeks
8 that.

9 Q. Okay. And you don't think Mr. Weeks wanted to
10 find justice --

11 A. Ma'am, I understand that. I ain't say he -- I
12 was wrong. I'm telling you I was wrong.

13 Q. Okay. Thank you.

14 MS. COLEMAN: I have no further questions.

15 THE COURT: Any redirect?

16 MS. BLANCHETTE: No, Your Honor.

17 THE COURT: You may step down, sir. Thank you.

18 MS. BLANCHETTE: Your Honor, my next witness
19 would be trial counsel, probably my lengthiest
20 witness. I didn't know if the Court wanted to take
21 any type of break or...

22 THE COURT: We'll go ahead and get started, and
23 if we need to take a break, we'll take one.

24 MS. BLANCHETTE: Okay. Thank you, Your Honor.
25 Your Honor, I'd call Byron Gipson to the stand.

1 BYRON GIPSON

2 being first duly sworn, testified as follows:

3 THE WITNESS: I do.

4 THE COURT: Your witness.

5 DIRECT EXAMINATION

6 BY MS. BLANCHETTE:

7 Q. Could you please state your name for the
8 record.

9 A. First name is Byron, middle initial E., last
10 name Gipson, G-I-P- -- as in plaintiff -- -S-O-N.

11 Q. Mr. Gipson, what is your current occupation?

12 A. I'm an attorney with Johnson, Toal & Battiste
13 Law Firm.

14 Q. Okay. And how long have you been an attorney?

15 A. Almost 20 years.

16 Q. And during those 20 years, do you have primary
17 areas of your practice or do you just generally
18 practice?

19 A. General, but very heavily concentrated on
20 criminal and personal injury.

21 Q. Okay. And do you recall your representation of
22 Mr. Tyler that probably began somewhere in 2005?

23 A. I do.

24 Q. And you represented him in his first and second
25 trial that culminated in 2008; is that correct?

1 A. Correct.

2 Q. Okay. I just want to -- I'll kind of go
3 through the allegations as they're listed in the
4 amendment in order with you -- it's my understanding
5 you had a copy of that prior to today --

6 A. I did.

7 Q. -- and just ask you some questions about each
8 of those.

9 A. Sure.

10 Q. First he has alleged ineffective assistance
11 regarding preparation investigation. Generally,
12 what preparation did you do leading up to the first
13 trial?

14 A. The first trial Mr. Tyler was incarcerated at
15 the time at the Aiken County Detention Center and we
16 met countless numbers of times for countless numbers
17 of hours in preparation for that trial. I can even
18 remember meeting -- I believe it was even New Year's
19 Eve prior to the USC-Missouri bowl game. We met for
20 quite some time when they lost to Missouri. I
21 remember that very clearly.

22 We even met all the way through USC beating
23 Clemson that year, you know, back in November. We
24 met more times than one could remember. And I'm
25 sure that he would -- well, I hope he would attest

1 to that as well. I met with his mother, I met with
2 his father, I went to Wagener, I went to the area
3 where the shootings took place, extensive
4 preparation with witnesses that I was aware of.

5 Q. Okay. And did you utilize a private
6 investigator?

7 A. I did not.

8 Q. Okay. So you spoke with those witnesses
9 yourself?

10 A. I did.

11 Q. Okay. And at any time leading up to that first
12 trial, were there any plea offers extended that you
13 communicated to Mr. Tyler?

14 A. None.

15 Q. What was the situation with plea negotiations
16 in this case?

17 A. There really were none. There was -- the
18 allegation was extremely heinous, obviously. And
19 there -- when there are murder charges pending, most
20 times solicitors are unwilling to make an offer
21 that's going to be less than murder for 30 years,
22 which is going to be day for day, and that's not an
23 offer.

24 Q. Okay.

25 A. And I don't remember that ever being

1 communicated.

2 Q. So as far as you recall, were there any plea
3 offers communicated in this case?

4 A. I don't remember any plea offers being
5 communicated. If there were, I would have
6 communicated that to him. That being said,
7 Mr. Tyler alleged his innocence. So if there was an
8 offer of 30 years to him, that would have been no
9 offer at all.

10 Q. Okay. Do you have a copy of what would be the
11 supplemental record on appeal or the reconsideration
12 hearing transcript?

13 A. I do not.

14 Q. Okay.

15 MS. BLANCHETTE: Your Honor, may I approach the
16 witness?

17 THE COURT: You may.

18 BY MS. BLANCHETTE:

19 Q. Do you recall the hearing that was held on
20 April 30th, 2008 on reconsideration?

21 A. It was held. But, you know, nine and a half
22 years later, I can't say that I recall it
23 particularly.

24 Q. Okay. I'm going to direct your attention to
25 page 10 there -- actually, if you could just review

1 9 through 11 and I'll explain why I'd like you to
2 review those.

3 There, as I ascertain the transcript, Mr. Weeks
4 is talking about the weakness of the
5 hand-of-one-hand-of-all case, and then specifically
6 on page 10, line 12, he speaks about how Mr. Tyler
7 was the only one that could help him get Mr. Walker.
8 If you want to review those pages, I'd be happy to
9 give you time to look at 9 through 11.

10 A. So pages 9 through 11?

11 Q. Yes.

12 THE COURT: Ms. Blanchette, I hate to
13 interrupt. Can y'all just give me a brief
14 recitation of the factual allegations so it's a
15 little easier to follow?

16 MS. BLANCHETTE: Yes, Your Honor. And I
17 actually was going to direct your attention -- I'm
18 sorry. I've kind of moved things around. There's a
19 very brief recitation in the brief that I could go
20 through just to give you the dates and what actually
21 occurred.

22 THE COURT: Sure.

23 MS. BLANCHETTE: And then we have different
24 parties that testified at both trials.

25 But what occurred is that there was a newspaper

1 delivery truck that was in the area of Mr. Tyler's
2 residence -- this is just my version -- it missed
3 one of the tubes and the lady driving was being
4 trained to do the route, and that would be the
5 victim in this case. She missed the tube, she
6 backed up. At that time, the State alleges through
7 their witnesses, that Tremain Tyler shoots at the
8 vehicle, then a pursuit engages with individuals in
9 the car.

10 There's testimony from Willie Ware, Kendall
11 Seawright, Edward Walker regarding whether or not
12 they were in that car with Mr. Tyler. But they all
13 placed Mr. Tyler in the car. Each of those
14 witnesses for the State testified that Mr. Tyler was
15 in the vehicle with a rifle, and essentially they
16 chased and gunned down the victims in this case.

17 Michael Brewer was the second victim. He
18 sustained injuries that were life-threatening, but
19 he survived, made it to a nearby neighbor's home,
20 and that's when 911 was called. Upon emergency
21 crews arriving, that's when they found the deceased.
22 She had actually came out of the vehicle in the
23 wreck. And there were extensive pictures of the
24 wreck introduced at trial.

25 MS. COLEMAN: And, Your Honor --

1 MS. BLANCHETTE: I was going to say, if the
2 State would like to add anything, that's just sort
3 of my off-the-cuff --

4 MS. COLEMAN: And that's accurate as far as the
5 testimony goes and everything. Just by way of
6 background I'll add this was a very high-profile
7 murder case. It was known as the Aiken Standard
8 case because of the newspaper connection there.

9 And, essentially, it was a very high-speed
10 chase. I believe they chased this truck down the
11 road shooting at them something like 100 miles an
12 hour, and the truck ran off the road and flipped
13 several times. I believe the evidence showed that
14 the deceased victim was killed by the gunshots
15 before the truck was wrecked. But it was gruesome
16 and a big deal in this community.

17 THE COURT: Thank you, counsel. You may
18 proceed.

19 BY MS. BLANCHETTE:

20 Q. You had an opportunity to review those while I
21 was giving my --

22 A. I reviewed.

23 Q. -- attempt to give the facts or summary of the
24 facts.

25 Do you see there where the solicitor -- would

1 you agree that he indicates there was some weakness
2 in the hand-of-one-hand-of-all case?

3 A. At the resentencing, he says that in this
4 portion. He didn't say that at trial.

5 Q. Okay. And do you also see on page 10,
6 specifically line 12, where he says that your client
7 Mr. Tyler was the only one who could assist him in
8 getting Mr. Walker or put a gun in Mr. Walker's
9 hand?

10 A. I don't think I read it that way. I think I
11 read it -- it says: The only one -- and this is
12 reading from page 10 at line 14. It says: But I
13 never really could put a gun in his hand. The only
14 one that I could really put a gun in his hand was
15 Tyler. My reading --

16 Q. Okay. So you take that to mean Mr. Tyler?

17 A. Right.

18 Q. Okay. Not Mr. Walker.

19 A. Correct.

20 Q. So my question was going to be, did the
21 solicitor ever reach out to you and say I would like
22 for your client to assist me in prosecuting
23 Mr. Walker?

24 A. No.

25 Q. Okay. So that was never conveyed to you?

1 A. No.

2 Q. Okay. Now, at the first trial you called the
3 character witnesses that I called today,
4 Mr. McAllister and Ms. Blizzard.

5 A. Right. That's correct.

6 Q. Do you recall why you did not have them testify
7 at the second trial?

8 A. Not specifically. I'm sure it was strategy
9 related. I mean, my recollection -- I mean, we
10 don't have the transcripts in front of us. But I
11 think Mr. Weeks was effective in his
12 cross-examination of them.

13 And, essentially, I think the blueprint
14 cross-examination in a situation like that is that
15 you ask a person, all right, this was ten years ago
16 when you knew him, when did you see him last, when
17 did you last interact with him, what do you have to
18 talk about specifics in terms of what they've done,
19 and none of them could speak about those things.
20 And it didn't seem that that would be an effective
21 strategy this time around because we had other
22 witnesses.

23 Q. Okay. And then if the record reflects that he
24 graduated in 2001 and this was in 2005, you'd agree
25 that wouldn't have been ten years since they've been

1 around him?

2 A. It reflects what it reflects. I don't remember
3 specifically.

4 Q. Okay.

5 A. But I know he graduated.

6 Q. Okay. So that may have been your reason for
7 not calling them in the second time?

8 A. It was a strategic reason.

9 Q. Okay.

10 A. And I'm sure that was a good part of it.

11 Q. Now, the first trial concluded on November 30th
12 of 2006 and the second trial began on January 7th of
13 2008. Do you remember anything specifically you did
14 to prepare for the second trial?

15 A. Hours and hours and hours of review and meeting
16 with client, meeting with a couple people who we
17 figured may be more -- who could assist us in this
18 trial, and also trying to determine what new
19 strategy that the prosecutor would use this time
20 around.

21 Q. Okay. And what was the result of that
22 preparation? What did you come up with for the
23 second trial that was different from the first?

24 A. Unfortunately, it came up with a guilty
25 verdict.

1 Q. Okay. But strategy-wise, do you recall what
2 you came up with?

3 A. Strategy-wise, we called a gentleman who had
4 been housed at one of the correctional facilities, I
5 think, with Willie Ware. I think his name was
6 Willie Dashawn Wyatt or something along those lines.
7 We called him.

8 Mr. Gleaton testified this time around for
9 us -- well, I say for us. But we called Mr. Gleaton
10 this time around. We were careful in many areas
11 because, as you know, you're treading a thin line
12 when you're at trial. And it's different when you
13 sit and read a transcript years later.

14 But you tread a thin line with things because
15 there's some things you can ask of witnesses that
16 will actually open the door and put your client in a
17 much worse predicament. So you have to tread that
18 very thin line, especially when you've had a prior
19 trial and you have old testimony where doors can be
20 opened very quickly.

21 Q. Okay. And were you indicating that you only
22 called Mr. Willie Dashawn Smith at the second trial?

23 A. I remember calling him at the second trial. I
24 don't remember calling him at the first trial, but
25 it's possible.

1 Q. Okay.

2 MS. BLANCHETTE: Your Honor, may I approach the
3 witness?

4 THE COURT: Yes, ma'am.

5 BY MS. BLANCHETTE:

6 Q. This is a partial transcript from the first
7 trial. And if it reflects the testimony of Willie
8 Dashawn Smith, does that help you recall if you
9 called him at the first trial?

10 A. If -- the transcript speaks for itself.

11 Q. Okay.

12 A. So I'm not going to dispute it. If that's what
13 the transcript says, that's what it says.

14 Q. Okay.

15 A. It's been -- that first trial was 10 years ago,
16 11 years ago.

17 Q. It was.

18 Now let me ask you about a motion that you had
19 filed, a change of venue motion.

20 A. Sure.

21 Q. And I have a copy of that here for you.

22 MS. BLANCHETTE: Your Honor, may I approach the
23 witness?

24 THE COURT: Yes, ma'am.

25 BY MS. BLANCHETTE:

1 Q. Mr. Gipson, can you identify that for the
2 record, please.

3 A. Looks like a motion for change of venue that we
4 filed in this case for the second case.

5 Q. Okay.

6 MS. BLANCHETTE: At this time, Your Honor, I'd
7 move this Motion For a Change of Venue in as
8 Applicant's No. 4, I believe.

9 THE COURT: Any objection?

10 MS. COLEMAN: No objection.

11 (Applicant's Exhibit No. 4 marked for
12 identification and admitted into evidence.)

13 BY MS. BLANCHETTE:

14 Q. If we look at the transcript -- do you have a
15 copy of it there in front of you?

16 A. Which one?

17 Q. The second trial transcript.

18 A. All right. May I?

19 Q. Yes.

20 A. Thank you. All right.

21 Q. Now, every transcript that I've seen in this
22 case begins on page 9 and 10 where the jury is sworn
23 and then they're selected. So I haven't seen a
24 transcript that has the actual voir dire of the
25 jury. But beginning on page 10, it appears there's

1 jury selection. And if you flip forward to page 22,
2 that is when you actually make your oral change of
3 venue motion.

4 And as you stated, I'll defer to the
5 transcript, this is my summary of what it states is,
6 as part of your argument on page 26, you submitted
7 an affidavit of a prior juror Catherine Thomas that
8 addressed issues of publicity. As the State
9 indicated, this was a well-known case that involved
10 the local newspaper.

11 Also an issue with a juror that had been sat on
12 the prior jury that had a relationship -- well, a
13 relation to the sheriff and the fact that she had
14 felt that she was questioned by the community for
15 voting not guilty in the prior case. And you make
16 your argument that you want the case moved to
17 Bamberg, where we're here today, or Barnwell.

18 In response on page 30, looking at lines 5
19 through 17, the State's main argument is that you
20 didn't use all your strikes.

21 A. Uh-huh.

22 Q. And then you give an explanation as to why you
23 didn't use your strikes and you use the phrase,
24 essentially, you're darned if you do and you're
25 darned if you not.

1 Beginning on page 32, we have the judge's
2 ruling. And I apologize for the length of this
3 question. He said he's not concerned with your
4 juror from the prior trial and that you used only
5 six of the ten strikes and you sat Juror No. 6 who
6 had been exposed to media.

7 A. Uh-huh.

8 Q. You could have used all your strikes, he would
9 have striked for cause and, essentially, he finds a
10 fair and impartial jury has been sat. Why did you
11 choose not to use all your strikes and sit that
12 juror that had been exposed to media if your first
13 motion was a motion for a change of venue?

14 A. Because ultimately a judge asks the question of
15 anybody -- once you go through voir dire, as you
16 know, the ultimate question that the judge asks is
17 can you be fair and impartial in the trial of this
18 case. If a person answers that question in the
19 affirmative, meaning yes, then that person is sat on
20 the jury.

21 When you're striking for a murder case, you
22 have ten strikes, so you have to use them
23 judiciously. My looking at that voir dire -- excuse
24 me, at the jury venire, having floated it to other
25 lawyers who were from that area, floated it to the

1 public defender's office and other people who I know
2 from that county just trying to get an idea of who
3 was sitting on that jury who we felt could be
4 beneficial, who could be hurtful to us, it was our
5 position that seating those two was -- put us in a
6 better position than leaving it up to chance for who
7 else was going to come up because there were several
8 people in that venire that we felt could be very
9 hurtful to us just based on information we had and
10 our research of the jury prior to sitting for the
11 second case.

12 Q. Now the -- your argument and motion for change
13 of venue that was ultimately denied, that was not
14 raised on appeal. Was that an issue you would have
15 expected to see raised on appeal?

16 A. I leave the appellate issues to the experts. I
17 don't do appellate work.

18 Q. Okay.

19 A. So, you know, Mr. Savitz testified -- I don't
20 know if he briefed it or not. But that was not
21 something that was in my purview. We filed the
22 appeal in the proper amount of time so that any
23 issues that he saw that were meritorious could be
24 briefed.

25 Q. Okay. I've already kind of jumped ahead and

1 talked to you about some of the witnesses because he
2 has the allegation that witnesses were not called at
3 trial. I've already asked you about the two
4 character witnesses.

5 A. Sure.

6 Q. I'd like to ask you about the remaining that
7 testified here today; first, Tremain Tyler.

8 A. Okay.

9 Q. Can you tell me, you know, what interaction you
10 had with Mr. Tyler and how the decision was reached
11 to not utilize him at trial?

12 A. I think the decision was made just based on
13 conversations with Mr. Tyler, with his family. He
14 was facing the same charges his son was -- well,
15 excuse me, his brother was. And he had multiple
16 lines of testimony, even meeting with his lawyer
17 and, number one, the lawyer did not want him exposed
18 to a trial.

19 Normally what will happen when you have
20 co-defendants, especially when they're family, is
21 one will take the Fifth and will not speak on any
22 particular issues because they're facing
23 prosecution. But much of the testimony suggested,
24 you know, from others, that Tremain initially saw
25 the truck pull up that morning and initially ran out

1 and shot.

2 The backstory here is that there's an
3 allegation that some people from North, South
4 Carolina had robbed the Tylers in the past. That's
5 the backstory. And so at 4:00 in the morning or so,
6 there's some people who had come by the house who
7 were friends and acquaintances. They see a truck
8 coming down the road, you know, pitch dark. You
9 know, admittedly, it's in the country, and it's very
10 dark back there at 4:00 in the morning.

11 And the truck starts to pull up, slows down,
12 pulls up closer, slows down, and then throws its
13 bright lights on. And at that point, someone,
14 whether it was Edward Walker, somebody was outside,
15 whether it was Kendall Seawright, somebody allegedly
16 runs in and screams, you know, something is going
17 on. And the allegation is that Tremain ran out and
18 started shooting at that point.

19 Our position was, you know, there's several
20 things you have to think about there; number one,
21 the concern about calling Tremain because the family
22 didn't want him called; two, if you're opening the
23 door to put him in a situation where he says
24 something that actually is damaging to Mr. Tyler,
25 which, you know, I don't know if he was going to do

1 that or not, but his counsel, they did not want that
2 to happen, so we did not do that.

3 We did not feel that that was going to be a
4 strategy that was going to be wise based on what he
5 was facing and the fact that he was a co-defendant
6 in this case. So that was -- strategically, I think
7 that would have been very ignorant of me to do that
8 and call him to trial in that situation based on
9 what I had been advised to do by client and family.

10 Q. Okay.

11 MS. BLANCHETTE: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes, ma'am.

14 BY MS. BLANCHETTE:

15 Q. Mr. Gipson, I'm going to hand you a document.
16 If you could identify what it appears to be for the
17 record for me.

18 A. Proposed witness list that I submitted.

19 MS. BLANCHETTE: Your Honor, at this time I'd
20 move the Defense Proposed Witness List from the
21 trial in 2008 in as Applicant's No. 5.

22 THE COURT: Any objection?

23 MS. COLEMAN: No objection.

24 THE COURT: It's in.

25 (Applicant's Exhibit No. 5 marked for

1 identification and admitted into evidence.)

2 BY MS. BLANCHETTE:

3 Q. And, Mr. Gipson, on this proposed witness list,
4 Mr. Tremain Tyler is not listed; correct?

5 A. Correct.

6 Q. But Marcia Blizzard and Mr. McAllister are
7 listed on this proposed witness list?

8 A. That's correct. May I speak on that or do you
9 want me to speak on that?

10 Q. Please. Go ahead.

11 A. I think the keyword is proposed witness list,
12 and so it's a proposal. And as the trial goes
13 further, sometimes that proposal is -- sometimes we
14 determine that it's not wise to proceed with the
15 people who are listed. Sometimes the strategy
16 changes mid-trial depending on what the testimony
17 was.

18 So my practice, at the end of -- when I feel
19 like we've gotten to the point we're ready to rest
20 after consulting with my client, I always ask, is
21 there anything else, is there anybody else we need
22 to call? That's what I always do.

23 And if I get a negative answer at that point,
24 no, I think we're good, that's all we're going to
25 do, then that's when we stop. So it's a proposed

1 witness list for a reason and we didn't call them
2 because at that time we chose -- that was the
3 strategy at that time.

4 Q. Okay. And Mr. Tyler's testimony at the first
5 trial and at the second trial, he references a Misty
6 that came by the place and then came by and picked
7 him up and essentially brought him and Mr. Miles and
8 his brother to Aiken after the shooting had taken
9 place or after he had been given knowledge by
10 Mr. Walker that he needed to leave. Did you ever
11 look into locating Misty or the other girl that was
12 with her that night?

13 A. I'm not aware of the other young lady who
14 testified. I think her testimony here was that she
15 had moved to New York at some point in time. I
16 never had any contact with her, don't know her,
17 never seen her, I'm not aware of her.

18 Q. Okay.

19 A. I had heard the name Misty, but I was never
20 able to get in contact with Misty.

21 Q. Okay.

22 A. And I think it went a little bit deeper than
23 that in a sense, but I'll just say I was never able
24 to get in contact with Misty. But I think it was a
25 little bit deeper than that.

1 Q. Okay. And you were in the courtroom today for
2 Kaliah Felder's testimony.

3 A. I was.

4 Q. Would that testimony have been helpful or aided
5 the defense in the second trial?

6 A. It's hard to say. I mean, the question to me
7 is not whether or not the -- the question was
8 whether or not -- was who shot, you know, who shot
9 Ms. Dorch and who, you know, committed those acts.

10 So he was not charged with escape or flight
11 or -- you know, although they tried -- the
12 prosecution tried to get into those things. I don't
13 know if it would have been helpful or not. I mean
14 the question at hand was who pulled the trigger, who
15 did the shooting.

16 Q. And that's where I was going to go is what you
17 alluded to. The State did spend a lot of time
18 talking about his flight --

19 A. They did.

20 Q. -- and him leaving, being in North Carolina,
21 and then being in Columbia at a hotel for a period
22 of days. Also the issue was raised to the jury
23 about -- it was your position, I believe, from
24 reading the transcript that he just had the clothes
25 on his back. The State made it seem as if he was

1 planning this getaway and getting away from law
2 enforcement. So with that in mind, do you think
3 that would have -- her testimony today would have
4 aided the defense?

5 A. Not particularly.

6 Q. Okay. And would you concede though that her
7 testimony today corroborated some of the details
8 that were testified to Mr. -- by Mr. Tyler that were
9 uncorroborated at the time of the trial?

10 A. Her testimony, however many years later, is --
11 corroborates the things that she said. Some of that
12 seems to corroborate some, but it doesn't
13 corroborate other things that she wouldn't be aware
14 of that he and I met about, that he had other
15 witnesses that he and I met about.

16 So she testified about some things, but as in
17 all things, there are two sides and there are sides
18 that you haven't seen because you weren't a part of
19 the investigation that I was a part of. So what she
20 said here, there are some things that seem on its
21 face right now beneficial, but they're not always
22 beneficial based on the investigation that I did for
23 two years in this case.

24 Q. Okay. But comparing her testimony today to
25 what's on the record as to your attorney's

1 testimony -- or, sorry, as to your client's
2 testimony, it does corroborate some of the details
3 he gives such as Misty and a girl coming by the
4 house and then subsequently taking them to the Aiken
5 area?

6 A. It corroborates that.

7 Q. Okay. And at trial there was no one called to
8 corroborate that?

9 A. That's correct.

10 Q. Okay. And now I want to ask you a little bit
11 about James Gleaton. It may be easier just to let
12 you explain what interaction and what information
13 you had regarding Mr. Gleaton.

14 A. I think the easiest thing I can explain is that
15 the things he testified today about, seeing a gun in
16 Edward Walker's hands, I've never heard before
17 today.

18 Q. He also testified today that he had felt
19 threatened by the solicitor and he conveyed that to
20 you in a meeting. Do you recall that?

21 A. I don't specifically recall that. I don't
22 specifically recall that. I recall they had a
23 meeting. But I will say it's not uncommon for
24 people to feel, when they have pending charges
25 and they've testified for -- I've been doing this

1 for a moment.

2 So it's not uncommon for someone to feel
3 uncomfortable with saying something different or
4 they feel like -- they feel like the solicitor
5 controls their fate. That's not uncommon. I'm not
6 going to say that he didn't feel a certain type of
7 way about that. I don't want to step in his mind
8 and speak that. But I do know that the testimony
9 that was elicited today, I haven't heard before.

10 Q. So at the second --

11 A. And I'll say had I heard that, obviously there
12 would have been a change in how things were
13 presented. I never heard that Edward Walker was
14 coming back down the street with a gun in his hand.
15 I've never heard that.

16 Q. So help me with this: He's called at the first
17 trial by the State, and then he's subsequently
18 called by you at the second trial, but he doesn't
19 testify as strongly or implicates Mr. Walker in the
20 way that he did today. What was the reason you were
21 calling him at the second trial? What switched that
22 made him go from a State's witness to your witness?

23 A. Well, the State didn't call him. So I can't
24 control who they call. I think there were some
25 things that he said that were beneficial to

1 Mr. Tyler, so somebody's got to get it in. We were
2 going to present a case one way or the other.

3 Mr. Tyler was going to testify, so we weren't going
4 to gain any advantage by not calling him because we
5 had already given up having last argument. So in
6 that sense, there were some things that he said that
7 could be beneficial, so why not call him? He needed
8 to be called. He said some things that were
9 beneficial to Mr. Tyler.

10 Q. And in the second trial he added that he heard
11 Mr. Walker's voice as the vehicle went by.

12 A. Okay.

13 Q. Were you aware prior to putting him on the
14 stand that he was going to make that addition to his
15 testimony?

16 A. I don't remember at this point. But, again, he
17 said some things that were beneficial to Mr. Tyler
18 that didn't hurt Mr. Tyler. The State didn't call
19 him, so I think it was incumbent on me in that
20 situation with what needed to be presented,
21 especially being consistent with your defense, that
22 he needed to be called.

23 Q. Okay. How would the information that he
24 testified to today have impacted the trial?

25 A. I don't mean any disrespect, but there's the

1 old saying if ifs and buts were candy and nuts, we'd
2 all have a Merry Christmas. I don't know. I mean,
3 I'm sure if the jury heard that somebody else was
4 coming down the road with a shotgun in their hand --
5 or, excuse me, with a high-powered rifle in their
6 hand, I would hope that the jury would look at that
7 and say, hey, you know, that's evidence that the
8 person who you're saying did this didn't do it.

9 But I've seen juries do peculiar things. But I
10 would -- we're speculating. I would have wished
11 that if -- if there's an if out there, I would have
12 loved to have that information when we went to
13 trial, but we didn't.

14 Q. And would you agree that essentially your
15 closing argument was that Walker, Ware, and
16 Seawright were three friends who had gotten together
17 to make up a story to point the finger at your
18 client instead of at Mr. Walker?

19 A. That's correct.

20 Q. Okay. So it's your testimony implicating
21 Mr. Walker would have obviously strengthened that
22 argument that you were making on your client's
23 behalf?

24 A. I think it's very clear, I mean, even at this
25 point in time, that Mr. Walker was on the top of the

1 car or somewhere near the top of the car. Everybody
2 has testified about that. So what are you doing on
3 top of a car going 70 miles per hour down a road?
4 You know, I still have serious questions about that.
5 I still believe that he was intimately involved in
6 this situation.

7 But if I had been aware of information about
8 somebody saying they saw him holding a rifle at that
9 point in time, obviously I would have loved to have
10 had that, but I didn't. I didn't know that until
11 about 45 minutes ago today.

12 Q. Okay. In the first trial -- and I provided you
13 with a copy of Mr. Gleaton's testimony from the
14 first trial earlier this morning. Do you still have
15 that? If not, I can provide you my copy. His was
16 the small standalone transcript from the prior
17 trial.

18 A. I think it's sitting in my chair over there.

19 Q. Mr. Gipson, I'll provide you my copy.

20 A. Thank you. I appreciate it.

21 Q. Beginning on page 11 he begins testifying about
22 a conversation he had with Mr. Seawright regarding
23 their testimony right before the trial of the case,
24 and then a proffer is done outside the presence of
25 the jury. If you'd like to take a minute to review

1 that, that's fine, before I ask you a question.

2 A. I do need to review it. From page 11 through
3 where?

4 Q. It honestly goes through 11 to 17 is where the
5 ruling is by the Court.

6 A. I've reviewed it.

7 Q. Mr. Gipson, now that you've reviewed that, my
8 question is, you call Mr. Gleaton at the second
9 trial, why did you not try to attempt to elicit that
10 information from him at the second trial?

11 A. Because I met with Kendall Seawright
12 extensively, and based on some things that
13 Mr. Seawright said, I felt that it could be more
14 prejudicial to try to bring those things out because
15 there were some things that he was going to say that
16 could have hurt Mr. Tyler.

17 Q. So you thought it was prejudicial to bring out
18 the information that Mr. Gleaton had offered there
19 at the first trial?

20 A. I did because it may have -- and I don't
21 remember the chronology in which Seawright testified
22 in terms -- and Gleaton testifying in the second
23 trial. I don't remember that chronology. But there
24 were some things that were said that Mr. Seawright
25 was going to be very hurtful if he was brought back

1 there to testify.

2 Q. So he was utilized potentially as a reply
3 witness?

4 A. Correct.

5 Q. Since he was the State's witness, he would have
6 testified before you called Mr. Gleaton; correct?

7 A. Okay. Then he could have then, if brought back
8 in reply. And I think you're right in that
9 situation. But -- and again, the best I can tell
10 you is that in meeting with these witnesses and
11 going through these facts, these scenarios that were
12 put out there over, you know, a couple years', you
13 know, period of time, Mr. Seawright was extremely
14 uncomfortable with this situation and I felt that as
15 a reply witness, he could be extremely damaging if
16 the correct questions were asked.

17 Q. Okay. I don't mean to play Monday morning
18 quarterback. I know that you --

19 A. Yes, you do.

20 Q. -- were kind of the one in the heat of the fire
21 having to make these decisions.

22 A. That's what this is.

23 Q. But you said just based upon your meetings with
24 him. There's nothing specifically that you recall?

25 You were concerned about the State recalling him?

1 A. You didn't ask me if there was anything
2 specifically that I recalled.

3 Q. Well, let me rephrase --

4 A. You want to ask me that question?

5 Q. Well, let me rephrase the question because
6 that's not what I was attempting to ask. Upon
7 review of that, it would have caused you concern
8 that the State could have recalled --

9 A. Yes.

10 Q. -- him in reply?

11 A. Yes. Yes.

12 Q. Okay. Let me ask you a little bit about some
13 of the testimony of Kendall Seawright, actually, at
14 the trials. At the first trial, on page 11, he
15 testifies that Mr. Walker was in the car in the back
16 left-hand seat when they departed Mr. Tyler's
17 residence.

18 A. Okay.

19 Q. At the second trial on page 155 he testifies,
20 as you were talking about earlier, that Mr. Walker
21 was hanging on top of the car when they left. Is
22 there any reason you didn't impeach him with the
23 inconsistency from the first to second trial
24 regarding the location of Mr. Walker?

25 A. I think Mr. Walker even talked about the fact

1 that he was on top of the car when he testified in
2 the second trial. So, again, in these cases, you
3 know, it is different to read a transcript and to
4 try to -- you know, as you said, Monday morning
5 quarterback.

6 There's a principle that you have to -- that I
7 think it's wise for defense attorneys to abide by.
8 Sometimes you want a person to testify and get off
9 the stand as quickly as possible, because the longer
10 they stay up there, the more things can go wrong.

11 And in this situation, because it was clear
12 what Walker's testimony was going to be -- I mean,
13 Kendall Seawright, I don't remember him ever saying
14 he saw Edward Walker shooting a gun from the top of
15 the car or hanging out of the car or those types of
16 things. Where he was placed in the car wasn't as
17 crucial.

18 I mean, I don't think the jury made its
19 decision based on where his -- you know, if Kendall
20 Seawright was sitting here or sitting there. Walker
21 said where he was in the car; said he was on top of
22 the car, so that cured itself. But the feeling
23 was, sometimes you poke a hornet's nest one time too
24 many and you get stung, and I wasn't prepared to get
25 stung in that situation.

1 Q. But on page 183 during your cross, do you
2 recall asking him about meeting jointly? I believe
3 it was with Ware and Walker and the solicitor.

4 A. I don't specifically recall. But I know we
5 made allusions to that throughout the trial.

6 Q. Okay.

7 A. I called it a powwow.

8 Q. And you did. And you did that with each of the
9 witnesses. And then in closing you talk about how
10 Mr. Brewer, the other victim in this case that
11 survived, that he sat down with the solicitor and,
12 through the power of suggestion, came up with
13 Mr. Tyler's name -- that's page 626, lines 5 through
14 10 -- that these new stories evolved to pin it on
15 Mr. Tyler after a powwow. You made that argument on
16 647, lines 7 through 21.

17 And then you ultimately argued that Edward
18 Walker is the logical person that did this and they
19 weaved this web of lies on page 662. Was there any
20 reason you didn't specifically allege any kind of
21 prosecutorial misconduct? You just kept alluding to
22 the meeting and changing their stories and this web
23 of lies being weaved. But wouldn't that implicate
24 the solicitor? Why did you not raise that?

25 A. It was a closing argument and I'm not in a

1 position -- I didn't feel I was in a position to
2 start pointing fingers and suggesting that
3 Mr. Weeks, who has practiced law probably longer
4 than I have -- well, I don't want to say how old
5 Mr. Weeks is.

6 But he's been -- in my dealings with Mr. Weeks,
7 although we find ourselves on opposite sides of the
8 courtroom, I found no reason to feel like he did
9 anything in my mind that I learned about that was
10 improper.

11 And I don't say things like prosecutorial
12 misconduct lightly. I think that's an indictment on
13 a person's career and I think that's an indictment
14 on a lot of the things that a person has done that
15 is good in this world. Just because a person is a
16 prosecutor, their job is to do justice.

17 I don't agree with some of the things that
18 happened in this case, but to try to impugn his
19 character would have been -- I just don't believe in
20 that in this particular type of situation. And I
21 think that it would have been crossing the line on
22 my side because I had no evidence that he did
23 anything.

24 I don't have to like the way a case is put
25 together or where the witnesses lead a particular

1 situation, but it doesn't mean that a person has
2 crossed that line of prosecutorial misconduct,
3 because that's a very high accusation to make and I
4 would never make that lightly. That's disrespectful
5 to him and his career, and that's disrespectful to
6 the Bar to do that in a situation where you don't
7 have specific evidence to say that he did that. And
8 I do not have that in this case.

9 Again, I don't have to agree with the way
10 things -- you know, how the case was necessarily
11 prosecuted or what witnesses were brought on or even
12 how a jury, you know, came to its decision. I don't
13 necessarily have to agree with that. But I'm not
14 going to say a prosecutor is guilty of prosecutorial
15 misconduct without some kind of proof of that.

16 Q. And I think proof of that would be if he was
17 withholding the information regarding these stories
18 changing. But clearly you're arguing about it at
19 trial. So Mr. Weeks was making you aware of these
20 stories evolving and all of the information that he
21 was receiving from these testifying witnesses; is
22 that correct?

23 A. Ask that question again.

24 Q. When you say proof, I think proof of
25 prosecutorial misconduct, a Brady violation, would

1 be if he was not providing this information to you
2 regarding the evolving stories. Would you agree
3 with that?

4 A. That could be. Yes.

5 Q. Okay. And in this case you're obviously asking
6 the witnesses about it and arguing about it to the
7 jury, so you were aware of the changes in the
8 stories and the meetings that were taking place?

9 A. I don't understand the question. I mean,
10 what's your question?

11 Q. Did you feel that any information was being
12 withheld from you as far as this, what you say, the
13 weaving of the web of lies, or was the solicitor
14 being forthright with you?

15 A. I'd have made a motion to withdraw, exclude,
16 suppress, I mean, there's several things, if I felt
17 like things were being withheld, you know. And I
18 didn't make that motion, so that's not my feeling.
19 It's a closing argument. And when you make a
20 closing arguments, it's not evidence.

21 So, you know, you toe the line as far as you
22 can toe it without crossing that line in the
23 closing, and I'm sure I did that. And I toed that
24 line and I said some things that I believe and some
25 things that I believe about how some of these

1 witnesses testified and some things that were out
2 there. And, unfortunately, the jury did not agree.

3 But, you know, that's my job to zealously
4 represent Mr. Tyler. And I did -- that's exactly
5 what I did. I'd do it again if I was called on to
6 do that. That's exactly what we did. I told his
7 family that, I looked Mr. Tyler in the eye and told
8 him that, I told his dad that who is sitting back
9 there, I told his mother that. And that's exactly
10 what I did. And the things that I said are things
11 that I think the evidence bore out. But,
12 unfortunately, the jury didn't believe the way I do
13 or did.

14 Q. In your closing argument on page 663 line 9,
15 you said: "Do you think he --" meaning Mr. Tyler --
16 "could fit out that back window to shoot a rifle,
17 fit through a sunroof to shoot a rifle? Look at
18 him. Again, that's reasonable doubt. And this car,
19 the back window don't even go all the way down, they
20 go halfway down. Do you think he could do that or
21 do you think the thin man who sat up here was the
22 person who was doing that kind of stuff?"

23 Do you remember who the thin man would have
24 been? Was that Mr. Walker?

25 A. That would have been Mr. Walker.

1 Q. Okay. And I think you said earlier, you know,
2 that asking Mr. Seawright questions about where
3 people were placed in the car was not that relevant
4 to your case. But here you're essentially arguing
5 that your client, Mr. Tyler, couldn't have been in
6 the position they said he was because he couldn't
7 fit out the window. Is that correct?

8 A. Yeah. But I think you're trying -- I mean, we
9 can sit here and try to be technical about the way I
10 closed. But, you know, you can talk about passion
11 and evoking emotion. There's different things that
12 you argue and there are different reasons you argue
13 certain ways at closing.

14 And sometimes you use a common-sense approach,
15 sometimes you use the shotgun approach which means
16 you shoot it and hopefully one of those -- you know,
17 if something sticks or hits, it hits. And there
18 were some specific pieces there that I still
19 believe. The window went only halfway down.

20 And although this was two years -- and I told
21 Mr. Tyler this even after we finished: I said, I'm
22 not -- you know, he had a -- well, I won't talk
23 about that. But he had picked up a little bit of
24 weight and I said, look, I'm going to say some
25 things here, but don't get mad at me about saying it

1 because I think it's something that's relevant.

2 And so, you know, I think it's clear who I
3 believe the shooter was in this case.

4 Unfortunately, just based on the way things played
5 out, the jury -- well, it just -- it didn't play out
6 the way we wanted it to. But I said what I said in
7 closing because I was arguing zealously for my
8 client. And I think that if a jury sat back and
9 pieced those things together they could logically
10 come back with the conclusion that Mr. Tyler didn't
11 fire those shots.

12 Q. And kind of on that note, on page 728 the jury
13 comes back and they ask if they can have the
14 transcripts that are being referenced to the prior
15 testimony, which we all know would have been the
16 prior trial, and the Court responds that they
17 weren't in evidence, so the jury couldn't have those
18 to review. Do you think that hindered your case,
19 that they couldn't review the testimony that was
20 given in the first trial?

21 A. No. I mean, I can't say that it hindered. I
22 can't say that it hindered it, especially when
23 people admit that they said something different the
24 first time around. That doesn't necessarily hinder.

25 Q. And I already asked Mr. Savitz, and you were in

1 the courtroom today, about his failure to raise your
2 objection to the hand-of-one-hand-of-all charge.

3 A. Uh-huh.

4 Q. I've also referred you to the solicitor's
5 comments on reconsideration that I would
6 characterize as saying that the
7 hand-of-one-hand-of-all was weak. Do you recall
8 what your argument was, why you were objecting to
9 the hand-of-one-hand-of-all?

10 A. I don't. I don't specifically recall, you
11 know, this situation. But, generally, you don't
12 necessarily want to be lumped in with a -- in a
13 conspiracy because you may not have the same level
14 knowledge as another one has and when you come upon
15 that knowledge, it may be a different time period.
16 So I'm not a particular lover of that charge. I
17 mean, I think prosecutors love it but, you know, the
18 defense hates it.

19 Q. And in making that objection, is that something
20 that you would expect to then see raised on appeal?

21 A. Like I said, I try to put all of the things out
22 there that I'm aware of and try to, you know, object
23 when it's time to object. And sometimes, in the
24 heat of the battle, you may fall short here or
25 there. But I put it all out there.

1 Mr. Savitz is far more versed in appeals than I
2 am, so if he says there's nothing meritorious to
3 brief there, you know, I leave it there to him. But
4 when we put it all out there, and I do that
5 purposely, hoping that there will be something --
6 you know, if the jury doesn't come back, you know,
7 in our favor, hoping there's something that can help
8 him on appeal.

9 Q. I'm going to ask you about one of the witnesses
10 we haven't talked about yet today. On page 417, the
11 State's expert Dr. Joel Sexton is testifying. And
12 beginning on 417 through 419, he testifies,
13 specifically on 419, about his familiarity with
14 shooting pistols and shooting weapons and then
15 offers testimony on that.

16 Is there any reason you didn't object to that
17 line of questioning since he wasn't qualified in the
18 area of ballistics or firearms?

19 A. I think that it was cumulative at that point.
20 I mean, Dr. Sexton, I don't know if -- at that
21 point, he'd probably done more than 10,000
22 autopsies. And I don't know if he's still living,
23 but he was one of the preeminent pathologists -- you
24 know, forensic pathologists in the southeast or
25 probably in the nation.

1 He was -- he had unique qualifications in a
2 sense that I think he had been -- maybe not in this
3 particular trial, but I think he had been seen as an
4 expert in weapons at some point in time. You know,
5 he was -- as he told you, I mean, he was a world
6 class -- I think he was in the Guinness Book of
7 World Records for shooting things, you know, even
8 into his 80s.

9 So, you know, suffice it to say again, that, to
10 me, was cumulative. The question, it was clear. We
11 know that Ms. Dorch was killed by gunfire. The
12 question was who shot, not whether or not Dr. Sexton
13 thought it was -- you know, that that particular
14 round was a rifle round. I think that he could, you
15 know, tell from the exit wounds, things of that
16 nature, the size and the caliber, and he could
17 testify to certain things about that. So I saw no
18 reason to object to that.

19 I think sometimes, you know, you can sit here
20 and object to things and the jury starts to look at
21 you and you lose your credibility because you keep
22 objecting. To me, that was not something that was
23 going to carry any particular weight one way or the
24 other, his position on that round.

25 Q. And going back to the appeal, the issue that

1 was raised was failure to charge an alibi -- or to
2 give an alibi charge to the jury. Are you aware of
3 that?

4 A. After seeing, you know, the information, I'm
5 aware of that.

6 Q. Okay. And do you recall requesting that
7 charge?

8 A. I don't recall. I mean, we have a charge
9 conference, but that's not done on the record. But
10 I don't recall making that -- I mean, my question --
11 as I go back, I know a good bit of the thought
12 process, again, went back to Tremain and whether or
13 not we'd be opening the door for some things to
14 potentially happen or put him in a precarious
15 position by talking about alibi, you know.

16 And so I believe that was part of my thought
17 process in not specifically objecting to it and not
18 being charged. If it was not charged, that would
19 lead me to believe that I didn't request it.

20 Q. And, for example, you objected to the
21 hand-of-one charge and then you made an exception at
22 the end of the jury charge. And if you didn't make
23 an exception at the end regarding not giving alibi,
24 would that speak to you that you hadn't requested
25 it?

1 A. That would lead me to believe that. But, I
2 mean, I don't specifically remember. But I do
3 remember a conversation with my colleagues about the
4 danger of going down that alibi -- mentioning the
5 word alibi. It was alluded to throughout, but
6 mentioning that actual word was dangerous because --
7 just based on the way that I perceived that
8 Mr. Weeks was putting that case together, it was
9 dangerous for us to get there, for us to put that in
10 there.

11 Q. And I have a page of cites from Mr. Tyler's
12 transcript -- or testimony, but it's in the
13 transcript. And essentially he testified that he
14 remained in the home, he did not get in the car --

15 A. Right.

16 Q. -- he did not go with them while this heinous
17 act was being committed. That would allude to an
18 alibi, is that correct, saying he was not present?

19 A. It alludes to that, but you also have several
20 others. I mean, he was the only one that had that
21 point of view.

22 Q. And also in closing argument, I know we're
23 talking about alluding to alibi but not saying the
24 word --

25 A. Right.

1 Q. -- you do argue on 627 and 628 that the only
2 footprints by the car were Mr. Walker's -- that was
3 an issue that was brought out at trial -- and there
4 were two people in the car, Mr. Ware and Mr. Walker.

5 A. Two people that we knew were in the car.
6 Right.

7 Q. So you were essentially arguing to the jury
8 that your client wasn't in the car?

9 A. Correct.

10 Q. Okay. Now, did you -- I know that you
11 mentioned his brother and your reasons for not
12 calling him, so I won't go back and ask you those
13 questions again. But the other individual,
14 Mr. Johnny Miles, what was your reasoning for not
15 calling him to help establish an alibi?

16 A. Because you don't know what Johnny Miles is
17 going to say. I mean, Johnny Miles said he said he
18 saw a long gun, a rifle in the house; he said
19 Cornell ran out with a rifle, he said that when he
20 came back they took a four-wheeler and hid a rifle.
21 So I don't think it would have been smart of me to
22 call him.

23 Q. And he was actually called by the State in the
24 first trial; is that correct?

25 A. He was. Absolutely, he was.

1 Q. And was he present at the second trial, as far
2 as you know?

3 A. He was present. I think he was -- well, I know
4 for a fact he was downstairs waiting for a period of
5 time. But I think he had the flu, he was sick. But
6 they chose not to call him. And I was not going to
7 call him because, again, he was going to say some
8 extremely prejudicial things about Mr. Tyler.

9 Q. And based upon your experience as a criminal
10 trial attorney, since you only called Mr. Tyler and
11 you didn't call any other witnesses to establish an
12 alibi, do you think you would have had a viable
13 request for an alibi charge?

14 A. I don't know that I would have. I don't think
15 that I would have.

16 MS. BLANCHETTE: Your Honor, can I beg the
17 Court's indulgence one moment?

18 THE COURT: Yes, ma'am.

19 BY MS. BLANCHETTE:

20 Q. Mr. Gipson, you've used the word strategy, so
21 let me ask you this: Was one of your strategies to
22 attempt to show inconsistencies with the statements,
23 prior testimony --

24 A. Absolutely.

25 Q. -- video interviews of the State's witnesses?

1 A. Strategy is always to show inconsistencies with
2 the State's witnesses.

3 Q. And beyond that, what would you say were the
4 primary defenses or defense strategies in this case?

5 A. I think the strategies were to show large
6 lapses in the way the investigation was conducted,
7 issues with the evidence that was presented, and the
8 fact that it didn't -- that our investigation didn't
9 point to Mr. Tyler as being the guilty party and
10 that the guilty party was somebody who was a State's
11 witness as opposed to Mr. Tyler.

12 Q. Okay. If the record reflects on page 631 in
13 your closing argument you state that the
14 investigators did their job, you're not saying they
15 didn't do their job, would that be inconsistent with
16 what you're just testifying to? I want to give you
17 a chance to explain.

18 A. I mean, I think that's, like, part of a whole.
19 I mean, I think, depending on what jurisdiction
20 you're in, to come out and just start making
21 accusations against police is extremely dangerous.
22 Aiken would be one of those jurisdictions.

23 So I think that what you have to help people
24 understand is that -- and I think I probably said it
25 in my opening that officers are just like us,

1 experts are like us, they put their pants on one leg
2 at the time, and you're to give them the amount of
3 respect that they're due, they're all due respect,
4 but in this particular instance, if they made a
5 mistake, hold them accountable for that mistake.

6 So of course they did their job. They went out
7 and they investigated, they made arrests based on
8 what they thought. But I don't believe that what
9 they did in terms of their investigation was
10 thorough enough, and I think it led in other
11 directions that maybe they didn't look into. So I'm
12 sure in that -- probably that hour-and-a-half
13 closing I gave, I spoke about things of that nature
14 as well and not just one line.

15 Q. I've asked you a lot about your closing
16 argument. I have a couple questions for you
17 regarding the State's closing argument.

18 A. Uh-huh.

19 Q. Do you have a copy of the transcript there in
20 front of you --

21 A. It's here.

22 Q. -- specifically Volume II?

23 A. I do.

24 Q. On page 670, looking at line 5, in closing the
25 State argues: And Joe Brewer has told the truth

1 from day one. Is there any reason you didn't object
2 to that vouching -- I'm sorry. If you consider that
3 vouching, is there any reason you didn't object?

4 A. I mean, I think that's -- do I consider it? I
5 don't. And, I mean, again -- I mean, it's easy to
6 continue to say it and I will continue to say it.
7 You can read a book about how to close, you can read
8 a book about how to practice law, you can read a
9 book about how to ride a bike, but until you get on
10 the bike and ride the bike, it's not going to tell
11 you how to negotiate through bumps and if somebody
12 runs in front of you, how to throw on the brakes, if
13 the chain jumps off the bike, what do you do. It's
14 not going to tell you all of that stuff.

15 Some stuff you have to do by practicing.
16 That's why it's called the practice of law. You
17 practice because you never get it perfect. In every
18 instance there are decisions that you make on the
19 fly because sometimes if Mr. Weeks says, well, he
20 did this or that, this or that, sometimes you object
21 because you need to object.

22 But sometimes there's a flow that goes with
23 those things, and if you object, it looks fearful,
24 it looks like you're afraid, it irritates judges,
25 although they may not tell you that, it irritates

1 judges, and it irritates juries. Some things you
2 just let go because -- I'm quite certain that
3 there's some things that I said that could have been
4 objectionable that weren't objected to. So there's
5 a courtesy that goes both ways. If it's something
6 that just goes way out of bounds, I'm all over it.

7 But that, to me, you know, Mr. Brewer was a
8 seemingly nice person who was put in a very bad
9 situation and he was injured and he watched somebody
10 who he cared about die. So to object about the
11 prosecutor saying I think he's telling the truth I
12 think sends a bad sign from a defendant sitting
13 there when we've already cross-examined Mr. Brewer
14 and any inconsistencies are out there for a jury to
15 determine. So I didn't think it was necessary to
16 object. That's the short answer.

17 Q. And I just have a couple instances I want to
18 point out to you. If it's the same answer, please
19 feel free to just indicate that. But I want to make
20 sure I build a proper record here at the PCR.

21 A. Yes, ma'am.

22 Q. On page 706 he also says that his witnesses
23 aren't lying. Would that be the same response as to
24 why you did not object?

25 A. Yes, it would. I mean, again, what a judge

1 will tell you in the closing instructions is that
2 the testimony in openings and closings is not
3 testimony, that's counsel's attempt to persuade you.
4 And so, no. I mean, that's up to a jury to -- after
5 they've listened to all of the evidence -- I think
6 they even took notes in the first trial. It's up to
7 them to determine who they believe and who they
8 don't believe. It's credibility and believability,
9 not necessarily the arguments made.

10 Q. And this statement in closing is a little bit
11 different: On page 638, line 5, the State is
12 arguing that your client is now telling his story
13 two and a half years later after having the luxury
14 of your counsel and assistance.

15 In contrast, they say the State's witness
16 Mr. Ware on page 686 is not as fortunate, they got
17 to him before he had the luxury of a lawyer. Did
18 you find that objectionable on the basis that
19 they're commenting on your defendant's right -- or
20 your client's right to have a lawyer?

21 A. I did not object again. Again, it's closing
22 and I didn't object for the reason I didn't feel it
23 needed to be objected to at the time. I mean, I've
24 had situations where judges will -- they feel that,
25 you know, if something is too far out of bounds,

1 they'll stop and say, counsel, move on. But in that
2 position, you know, I do not feel like that was a
3 factor that swayed the trial one way or the other.

4 Q. I'd like to direct your attention to the
5 Court's charge now. On page 717, middle of the page
6 about line 12, he begins his expressed malice
7 instruction.

8 A. Uh-huh.

9 Q. And then on line 20 he goes into the malice may
10 be inferred from conduct showing a total disregard
11 from life and may also be inferred from the use of a
12 deadly weapon.

13 A. Uh-huh.

14 Q. At the time you tried this case, were you
15 familiar with State vs. Elmore that was handed down
16 in 1983?

17 A. I was familiar.

18 Q. Okay. And did you, at the time that you were
19 hearing this charge, identify that the Court had
20 deviated from the strict instruction given in
21 Elmore?

22 A. I didn't identify that to the Court. I was
23 interested in the fact that Mr. Savitz didn't brief
24 that because he didn't feel that it was an issue
25 either. So, I mean, I just -- I did not.

1 Q. Okay. But you would agree -- I know you said
2 you don't handle appeals, but South Carolina is a
3 preservation state -- as a trial attorney, you need
4 to object to the Court's charge for that to be
5 properly preserved for appeal?

6 A. It wasn't even mentioned on appeal. But
7 there's an objection that can be made in those
8 situations. I understand that. I agree that's a --
9 yes.

10 Q. Okay.

11 MS. BLANCHETTE: Your Honor, if I could beg the
12 Court's indulgence just for a couple moments.

13 THE COURT: Yes, ma'am.

14 MS. BLANCHETTE: I appreciate your time. I
15 don't have any further questions.

16 THE COURT: Cross-examination?

17 MS. COLEMAN: Your Honor, can we take a brief
18 break?

19 THE COURT: Yes, about ten minutes.

20 (Short break 11:41 AM - 11:55 AM.)

21 THE COURT: Are the parties ready to proceed?

22 MS. COLEMAN: Yes, Your Honor.

23 MS. BLANCHETTE: Yes, Your Honor.

24 THE COURT: You can begin your
25 cross-examination.

1 MS. COLEMAN: Thank you.

2 CROSS-EXAMINATION

3 BY MS. COLEMAN:

4 Q. Hi, Mr. Gipson. How are you?

5 A. I'm well. Thank you.

6 Q. You've already explained yourself greatly on
7 direct, so I don't have too many questions to ask
8 you. I'll start with a few just to kind of build
9 the record.

10 A. Sure.

11 Q. Did you review the discovery material with the
12 applicant before the trial?

13 A. Absolutely.

14 Q. And you explained everything to him?

15 A. For both trials.

16 Q. Did you discuss with the applicant the elements
17 of the charges and what the State was required to
18 prove?

19 A. Absolutely.

20 Q. And, obviously, you filed Rule 5 and Brady
21 motions?

22 A. I did.

23 Q. Did the State ever withhold any of that from
24 you, to your knowledge?

25 A. Nothing I'm aware of. They keep an open-file

1 policy. But there were numerous DVDs and CDs that
2 they had, so I got those, made copies for Mr. Tyler.
3 I met with Mr. Weeks. He had an open-door policy,
4 so we'd come in, sit down, and go through
5 everything. And we did that for both trials on
6 multiple occasions. They got sick of seeing me in
7 Aiken.

8 Q. Okay. Did you discuss the applicant's version
9 of the facts with him?

10 A. I did.

11 Q. And did he provide you with his alibi
12 defense --

13 A. May I --

14 Q. Sure.

15 A. -- retract? I mean, you say did I discuss it
16 with him, meaning did I discuss it with Mr. Weeks or
17 discuss it with my client?

18 Q. Sorry. With the applicant. Did you meet with
19 the applicant before the trial and did he give you
20 his version of the events?

21 A. Yes. Absolutely.

22 Q. And can you tell us what those were?

23 A. He mentioned that he was -- and I'm just going
24 back and trying to speak through it to make sure I
25 get every portion of it correct. But he was at his

1 home. And I think it would have been Mr. Ware,
2 Mr. Walker. And Kendall Seawright, evidently, came
3 to the house. He said he had been playing
4 PlayStation with his brother and maybe some other
5 folks. I don't quite remember how many. But at
6 some point in time, he essentially decided to go to
7 bed.

8 And it was early in the morning and he heard
9 some banging on the door and it was Mr. Walker.
10 Mr. Walker asked -- well, and the group that I just
11 talked about. Mr. Walker asked him to borrow some
12 money, and he essentially told him, you know, you
13 shouldn't be around here because, evidently, Tremain
14 and Mr. Walker were not on the best of terms.

15 He said -- my recollection is I think he went
16 back to lie down at some point in time. But he said
17 soon after, he heard some gunshots. And then
18 when he -- Mr. Walker came back and said they needed
19 to leave because something had just happened.

20 Q. And that's essentially what he testified to at
21 trial; correct?

22 A. Yeah. I think it's pretty close to what he
23 said. Yes.

24 Q. And would you qualify this as an alibi defense?

25 A. I didn't really view that as an alibi just

1 based on other information that we were receiving.
2 I just didn't feel that was the prudent course to
3 take.

4 Q. Okay. And correct me if I'm wrong, but it's my
5 understanding the case law says that an alibi has to
6 prove that -- or show that the defendant -- it was
7 physically impossible for him to be at the scene of
8 the crime. Is that correct?

9 A. I think it's close to that.

10 Q. Okay. Do you think that this story line
11 matches that?

12 A. No, I don't, not for alibi. I don't.

13 Q. Okay. And were there any other witnesses --
14 and we've already talked about Johnny Miles and the
15 brother Tremain. Were there any other witnesses
16 that you could have put up to corroborate his alibi
17 story?

18 A. None that I was aware of.

19 Q. Okay. One of the witnesses that was presented
20 today, Ms. Felder -- and I believe Ms. Blanchette
21 has already questioned you on her and whether or not
22 she would be helpful to you.

23 But her testimony today was that she knocked on
24 his door and they gave him a ride sometime around
25 3:15 in the morning. Does that match up with his

1 story? And if you'd like to refer back to that, I'm
2 looking at page 557 in Volume II of the transcript.
3 And this is where Mr. Tyler is on direct and he's
4 telling his version of the events.

5 A. If you could indulge me for just a moment.

6 Q. Sure.

7 A. Okay. I think I've -- I've gone to page 559.

8 Q. And I'm sorry if that's not a good starting
9 place. I was trying to figure out exactly where he
10 estimated a time. But did that kind of refresh your
11 memory on his story?

12 A. It does.

13 Q. Okay. Does that line up with the timeline that
14 the witness today gave, Ms. Felder?

15 A. I mean, I don't see the times, I guess, in the
16 testimony here in the transcript that you gave me.
17 But, you know, I think it was later, you know, when
18 this shooting and all those things took place. I
19 thought it was closer to 4:00. But, again, I'm just
20 having to go back in my mind and try to remember
21 those times.

22 Q. Right. And Ms. Felder testified today that
23 about 3:15 they gave him a ride and he was supposed
24 to be away from his house around 3:15; correct?

25 A. That's what she said today. But I don't know

1 that that matches up with what we talked about
2 initially --

3 Q. Right.

4 A. -- I mean, in terms of, you know, 2005, -6, -7,
5 and -8.

6 Q. Right. Do you recall what time the shooting
7 specifically happened or around --

8 A. It was later because the papers were delivered
9 sometime, I think, in that 4:00 range. So it would
10 have been later than that.

11 Q. Okay. Would you briefly describe the State's
12 evidence against the applicant?

13 A. They had, obviously, lots of testimony that
14 would have come from Mr. Ware, Mr. Seawright,
15 Mr. Walker, Mr. Gleaton. There were some neighbors
16 who heard some shots up and down, I think it was,
17 Windsor Road, there were some neighbors there, there
18 was a 911 call, you know, those types of witnesses.
19 They had Mr. Brewer, the driver of the vehicle. So
20 in terms of, I guess, fact witnesses, those would
21 have been what they had.

22 They had -- I think there was one shell they
23 found in terms of the back of the vehicle or the
24 back of the truck that Mr. Brewer and Ms. Dorch were
25 in. They used the wooden, what do you call them,

1 sties or whatever to try to talk about the
2 trajectory that the bullet would have had to travel
3 in order to go into the car.

4 They had -- there were footprints that were
5 out, but I believe one of the points of contention
6 was the fact that SLED could have done shoe casts on
7 that to compare them to certain things, they could
8 have gotten shoe -- you know, footwear, things of
9 that nature. But that was a good bit of what they
10 had. So it was -- it was, you know, a lot of fact
11 witnesses, eyewitnesses, or people who purported to
12 be eyewitnesses.

13 Q. Would you describe that evidence as strong?

14 A. I'm -- I'm -- that's the evidence they
15 presented. And I just don't agree with their
16 conclusion with the evidence. So I think it was
17 strong evidence that could have reached a different
18 conclusion, meaning that somebody else was involved.
19 That was my position.

20 And I'll say that today, I'll say that every
21 day of the week, and I'll look Mr. Tyler in the eye
22 and say that right now. That's what they presented.
23 And I think it could have led to a different
24 conclusion but, unfortunately, the jury didn't see
25 it our way.

1 Q. Right. Mr. Brewer, who was one of the victims
2 in this case who was shot and lived, he identified
3 the defendant, didn't he?

4 A. I believe the second trial he --

5 Q. Yes.

6 A. -- said he could identify Mr. Tyler.

7 Q. And I think you pointed out on
8 cross-examination that his story had changed; before
9 he wasn't sure who it was, but today he -- not his
10 story changed. I apologize. But he didn't know his
11 name previously, but now he was naming him Cornell
12 Tyler. Is that correct?

13 A. Correct.

14 Q. Okay.

15 A. And I don't remember him pointing Mr. Tyler
16 out. I mean, I think it was like he had an epiphany
17 of some sorts. I think he -- honestly, I think he
18 said he kind of had a dream and he had gone back
19 through his mind with this thing on thousands of
20 occasions, and now he could see Mr. Tyler. And, of
21 course, we took issue with that.

22 Q. And you pointed that out to the jury?

23 A. Absolutely.

24 Q. But he did -- Mr. Brewer does say -- did
25 testify that he saw the face of Mr. Tyler walking

1 toward the car before they drove away?

2 A. That's what he says.

3 Q. Okay. And of course we had the -- you stated
4 the co-defendants identified the defendant, said he
5 was in the car with them with a gun?

6 A. That's correct. Mr. Seawright said that,
7 Mr. Ware said that.

8 Q. Okay. Did the applicant ever give you any
9 witnesses or leads for investigation purposes?

10 A. I mean, I'm sure the people that we called are
11 people that he talked about, so he had to have done
12 that. I'm sure he did. I mean, we met. You know,
13 this is not one of those situations, which I can
14 appreciate from Mr. Tyler, saying I've never seen my
15 lawyer before he came to me the week before trial.
16 It's not that. I mean, we met extensively, his
17 family and all. We all met multiple times.

18 Q. Did you feel prepared for trial?

19 A. Absolutely.

20 Q. And we've discussed this a little bit, but you
21 argued vigorously in your motion to change venue
22 before the judge; correct?

23 A. Yes.

24 Q. And that motion was denied?

25 A. That's correct.

1 Q. The expert testimony on page 417 that
2 Ms. Blanchette has pointed out that you did not
3 object to being outside the scope of their
4 expertise --

5 A. Sure.

6 Q. -- if you would have objected to this
7 testimony, do you believe it would have changed the
8 outcome of the trial?

9 A. I don't. I think that the judge may have just
10 said move on. I mean, again, Dr. Sexton, you know,
11 more than 10,000 autopsies and has testified about a
12 lot of things over a lot of years and is qualified
13 to testify, and I don't think it swung the balance
14 one way of the other. Those couple of things that
15 he said there did not swing the balance in this
16 case.

17 Q. In the closing arguments, the State's closing
18 arguments, any of the spots where Ms. Blanchette
19 pointed out you failed to object, if you had made
20 those objections, do you believe it would have
21 changed the outcome of the trial?

22 A. I do not.

23 Q. Okay.

24 MS. COLEMAN: I beg the Court's indulgence,
25 please.

1 BY MS. COLEMAN:

2 Q. Mr. James Gleaton testified today with a
3 different story that he said at trial. Did he ever
4 tell you this version of events?

5 A. No.

6 Q. Were you aware of this in any manner?

7 A. No. Never.

8 Q. If he had told you this and you had the
9 opportunity to present his new story at trial, would
10 you have put him up?

11 A. Absolutely.

12 Q. Would you have been concerned at all with his
13 credibility knowing that they had a statement to use
14 against him?

15 A. I would have put him up. If that was his
16 testimony and he was willing to put his hand on the
17 Bible and swear to tell the truth, the whole truth,
18 and nothing but the truth, I would have let him
19 explain that. And he would have been susceptible to
20 cross-examine by Mr. Weeks or whomever from his
21 office was doing that, and they would have a chance
22 to question his credibility and believability. But
23 that was never an opportunity given because I've
24 never heard that until today.

25 Q. Okay. Was there evidence presented at the

1 trial that there was more than one shooter or more
2 than one defendant with a gun?

3 A. Yes.

4 Q. Okay. So do you believe that the
5 hand-of-one-hand-of-all charge was reasonable?

6 A. I hate that question. But I think that it
7 was -- there was evidence in the record where the
8 hand-of-one-hand-of-all charge could be given. I
9 think there was evidence in the record and the judge
10 believed that it could be given.

11 Q. And you requested a mere presence instruction,
12 didn't you?

13 A. Yes.

14 Q. Okay. No further questions. Thank you.

15 THE COURT: Any redirect?

16 MS. BLANCHETTE: Very briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. BLANCHETTE:

19 Q. Mr. Gipson, you were just asked by the State
20 about Mr. Gleaton and you were asked if you would
21 have put him up and if he would have been subject to
22 cross-examination. You did in fact call him at the
23 second trial and he was subject to
24 cross-examination; is that correct?

25 A. That is correct.

1 Q. Okay. Thank you. I just wanted to clarify
2 that for the record.

3 THE COURT: All right. You may step down.
4 Thank you.

5 MS. BLANCHETTE: Your Honor, if I may, one
6 housekeeping matter. I provided Mr. Gipson with my
7 extra copy that I was going to give to you of the
8 partial transcripts. I didn't know if he was
9 finished with those, if he wouldn't mind giving it
10 to Your Honor.

11 THE COURT: Thank you.

12 MR. GIPSON: Would those be the hole- -- this
13 is a --

14 MS. BLANCHETTE: There was one that's 175 pages
15 and then there's one that's just James Gleaton's
16 testimony.

17 MR. GIPSON: Okay. So...

18 MS. BLANCHETTE: Your Honor, may I approach?

19 THE COURT: You may.

20 MS. BLANCHETTE: Your Honor, my remaining
21 witness is Mr. Tyler. I didn't know if the Court
22 needed a lunch break at this point or if you wanted
23 me to go ahead and call him.

24 THE COURT: Let's go ahead and start and if we
25 need to stop, we'll take a break maybe around 1:00.

1 MS. BLANCHETTE: Okay. Your Honor, I'd call
2 Cornell Tyler to the stand.

3 THE COURT: Come on up, Mr. Tyler.

4 CORNELL TYLER

5 being first duly sworn, testified as follows:

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Thank you. Please state your name
8 for the record.

9 THE DEFENDANT: Cornell Tyler.

10 THE COURT: Thank you.

11 Your witness.

12 DIRECT EXAMINATION

13 BY MS. BLANCHETTE:

14 Q. Mr. Tyler, to begin, you filed the PCR
15 application we're here about today that is docketed
16 2013-CP-02-02859; is that correct?

17 A. Yes, ma'am.

18 Q. Okay. And by way of that application and the
19 subsequent amendment in December of 2016, you are
20 alleging today that both your trial and your
21 appellate attorney were ineffective?

22 A. Yes, ma'am.

23 Q. And what is the relief that you're asking this
24 Court to give you as a result of that ineffective
25 assistance?

1 A. A new trial.

2 Q. Okay. And it's been put in the record today
3 that you received a 30-year sentence and a 20-year
4 sentence. You understand those are not the maximum
5 sentences for the charges?

6 A. Ma'am?

7 Q. Do you understand that you didn't receive the
8 maximum sentences when you were convicted?

9 A. Oh, yes, ma'am.

10 Q. Okay. And I have discussed with you, by asking
11 the Court for a new trial, you're asking her to set
12 aside your current convictions, put you back in the
13 position you were before you were convicted, which
14 means you could be exposed to receiving up to the
15 maximum sentence. Understanding that risk, do you
16 still want to go forward today?

17 A. Yes, ma'am.

18 Q. Okay. Now, Mr. Tyler, you've been in the
19 courtroom all day. I want to go through your
20 allegations and go through a lot of the testimony
21 that's been elicited today.

22 A. Yes, ma'am.

23 Q. First I want to ask you about the preparation
24 that you did with your attorney leading up to the
25 first trial. He's indicated on the stand that you

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19 courtroom all day. I want to go through your
20 allegations and go through a lot of the testimony
21 that's been elicited today.

22 A. Yes, ma'am.

23 Q. First I want to ask you about the preparation
24 that you did with your attorney leading up to the
25 first trial. He's indicated on the stand that you

1 met numerous times and discussed your case. What is
2 your position on that?

3 A. Mr. Byron did real good on the first trial.

4 Q. Okay. So you did regularly meet with him and
5 prepare for the first trial?

6 A. Yes, ma'am.

7 Q. Okay. What kind of meetings took place between
8 the first and second trial?

9 A. Well, it was about the same, you know, it's
10 just that the second trial we basically went with
11 the same strategy. New things came up during the
12 trial, you know, but other than that, it was
13 basically the same -- you know, it was basically the
14 same strategy.

15 Q. Okay. I'm going to jump ahead to one of the
16 witnesses James Gleaton.

17 A. Yes, ma'am.

18 Q. Did Mr. Gipson come to you with information
19 regarding Mr. Gleaton between your two trials?

20 A. Yes, ma'am.

21 Q. Okay. What was that?

22 A. Well, what happened, when I was in the county
23 before we was about to go to trial, Mr. Gipson came
24 and met with me like a week before and he was like,
25 we got new evidence. So what he told me was that

1 Mr. Gleaton and his lawyer met Mr. Weeks and said
2 what he was going to say at this trial.

3 So my lawyer came and talked to me and said,
4 well, I'm going to call Mr. Gleaton and put that
5 information out on the next trial. So me being me,
6 he said that was new evidence, so Mr. Weeks had to
7 hear it and bring it to him because it's new
8 evidence that they had not heard before.

9 Q. Okay. And based upon that, it was your
10 understanding that Mr. Gleaton was going to be
11 called as a witness for the defense instead of a
12 witness for the State as he was in the first trial?

13 A. Yes, because prior to the State meeting with
14 him, they was meeting with him to be a witness. But
15 when he told them what he was going to say, that's
16 when the State dropped him and then we picked him up
17 to be my witness.

18 Q. And did you have an understanding as to why he
19 was going to be useful as a witness for the defense?

20 A. Yes, ma'am; for him to tell the truth, for him
21 to tell what he saw that placed me not in the car
22 like I wasn't.

23 Q. Okay. And what further was conveyed to you or
24 told to you as to what was anticipated that
25 Mr. Gleaton would testify to?

1 A. That he saw Edward Walker with the gun hanging
2 out the car going and coming from.

3 Q. So it's your testimony that prior to
4 Mr. Gleaton testifying today, you were aware that he
5 could testify and place a gun in Mr. Walker's hand?

6 A. Yes, ma'am. That's the reason we called him.

7 Q. Okay. And you knew that going into your second
8 trial?

9 A. Yes, ma'am.

10 Q. Okay. Let me ask you about the two character
11 witnesses that were called at your first trial and
12 recalled here today, Ms. Blizzard and

13 Mr. McAllister. Did you have any discussions with
14 your attorney about not utilizing them, not calling
15 them at your second trial?

16 A. No. I wanted them to be called.

17 Q. Okay. And was any reason ever given to you as
18 to why they were not called?

19 A. No, ma'am.

20 Q. Now, we've talked a lot today about alibi. And
21 one of your allegations deals directly with the
22 defense of alibi and the fact that that was raised
23 on appeal that the Court didn't give an instruction.
24 What if anything did you discuss with your attorney
25 about alibi?

1 A. We never talked about it.

2 Q. And did you ever talk about -- if you didn't
3 talk about the word alibi specifically, did you talk
4 about any witnesses -- and I'm going to use a big
5 word here, corroborated, which would be like could
6 support or match your story?

7 A. Yes, ma'am.

8 Q. Okay. And who did you tell him could do that?

9 A. My brother and Misty.

10 Q. And you gave him the name Misty?

11 A. Yes, ma'am.

12 Q. Okay. What discussions did you have with
13 Mr. Gipson as far as whether or not your brother
14 should be utilized as a witness at your trial?

15 A. Well, I just told him, you know, being that my
16 brother was mentally challenged, you know, I don't
17 know the case of that, you know. So we never really
18 talked about -- alibi never came up.

19 I never heard of alibi until after I got
20 incarcerated, you know, because had I knew that my
21 brother -- if we could have used him to give the
22 same statement that I give -- basically that we went
23 through the same situation, I would have asked him
24 to use my brother.

25 Because for me, what I'm hearing today, I don't

1 think that my brother could have said something that
2 would have hurt him, because if the allegation was
3 that my brother did something, he's saying the same
4 thing, he's in the house with me, his testimony
5 wouldn't have hurt either one of us.

6 Q. Did you have a discussion with Mr. Gipson about
7 your brother's testimony hurting you and that being
8 a reason for not calling him?

9 A. No, ma'am. He never even, you know, thought
10 about my brother as far as an alibi.

11 Q. Okay. So you guys didn't, like, list the pros
12 and cons or weigh the positive and negative of
13 calling your brother?

14 A. No, ma'am.

15 Q. Okay. Now I'll refer to your trial testimony
16 here. It's mostly pages 554 through 597 where you
17 give the series of events in your testimony. And
18 specifically on page 556 you say that a Misty came
19 by and she was going to the club and she wanted to
20 know if she could come by after the club.

21 A. Yes, ma'am.

22 Q. And then you testify about how you're playing
23 PlayStation, you-all went to sleep, and you heard a
24 knocking on the door that you thought was Misty
25 coming back?

1 A. Yes, ma'am.

2 Q. And the transcript will speak for itself, but
3 if you could just affirm kind of the summary that
4 Walker then came to your house asking for \$20 and
5 you told him that he needed to leave because he had
6 a situation with your brother over a girl?

7 A. Yes, ma'am.

8 Q. Okay. That you closed the door, you went back
9 in your room, you laid down, and you heard shots?

10 A. Yes, ma'am.

11 Q. You waited a minute, got up, you went outside
12 and you didn't see anybody, so you went back and
13 laid down?

14 A. Yes, ma'am.

15 Q. Okay. After a few minutes Walker came back and
16 knocked on the door. He didn't tell you that
17 anything had happened, but he told you you needed to
18 leave; is that what you testified to?

19 A. Yes, ma'am.

20 Q. Okay. You woke up your brother and Miles,
21 you're not sure if they woke up in the process or
22 you woke them up, and you were all preparing to
23 leave when Misty pulled up and she took you to
24 Miles' niece's house; is that correct?

25 A. Yes, ma'am.

1 Q. Okay. Now, Misty didn't testify today, but
2 Kaliah Felder testified. And you heard her
3 testimony; correct?

4 A. Yes, ma'am.

5 Q. Did you and Mr. Gipson ever discuss contacting
6 Misty or the girl that was with her that night to
7 help establish and corroborate your story that you
8 were going to tell at trial?

9 A. Her name came up, but we never discussed using
10 that as far as -- you know, because at the time, I
11 guess, he thought that that wasn't going to help the
12 verdict, you know. So it never was like -- only
13 thing we was, like, using was, like, things that was
14 going to affect the verdict at that time.

15 Q. Okay. Would you have wanted him to call Misty
16 or Kaliah to attest to the story that you gave in
17 your testimony?

18 A. Yes, ma'am.

19 Q. Okay. And you heard Kaliah's testimony today.
20 If your attorney would have spoken to her and
21 obtained that information, would you have wanted her
22 called at your trial?

23 A. Yes, ma'am.

24 Q. Okay. So just to be clear, Mr. Gipson didn't
25 discuss with you if there was any witnesses that

1 could testify to the facts that you were testifying
2 to?

3 A. Say that again.

4 Q. I'll say it this way: I'll rephrase my
5 question. Essentially you were the only person that
6 got up and testified to these facts?

7 A. Yes, ma'am.

8 Q. Did you and Mr. Gipson talk about calling other
9 witnesses that could testify to the same facts and
10 support the facts that you gave at trial?

11 A. No, ma'am.

12 Q. Okay. In essence, was it essentially you on an
13 island versus the facts given by the State's
14 witnesses?

15 A. Yes, ma'am.

16 Q. So would you have wanted additional witnesses
17 called like we've called here today at your PCR?

18 A. Yes, ma'am.

19 Q. And, specifically, today we have called
20 Tremain, your bother, Mr. Tyler, and then Kaliah
21 Felder?

22 A. Yes, ma'am.

23 Q. Okay. Going back to the beginning, were there
24 any plea offers ever communicated to you?

25 A. No, ma'am.