

VOLUME III OF III

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

HORACE ELIJAH WATTS,

APPELLANT

APPELLATE CASE NO. 2017-000255

RECORD ON APPEAL

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1 Q Make any promise to him?

2 A No.

3 Q Did he pick out a picture without any hesitation?

4 A Without any hesitation, he picked out the picture.

5 MS. GARFIELD: Thank you, Investigator Fields.

6 Please answer any questions the Defense has.

7 THE COURT: Cross?

8 MS. WALKER: Thank you, Your Honor.

9 Can I borrow Exhibit No. 10, Judge?

10 THE COURT: Yes, right there. Just take them all. I
11 don't like to keep up with them too much.

12 CROSS-EXAMINATION

13 BY MS. WALKER:

14 Q Investigator Fields, you -- with Miss Sims, all you
15 did was show the lineup, correct?

16 A Correct.

17 Q And then with Mr. Lewis and Mr. Cleckley, you did an
18 oral interview; is that correct?

19 A Correct.

20 Q And that was recorded on audio?

21 A Yes.

22 Q Did you write a report for this investigation?

23 A Did I write a report?

24 Q Yes, ma'am.

25 A A report was already written by someone else.

1 Q Did you write any case notes?

2 A No.

3 Q Do you recall what time -- were all these interviews
4 done the same night?

5 A They were done the same night.

6 Q They were?

7 A The interview with Mr. Cleckley was done and the
8 interview with Terry was done. I showed the photo lineup
9 to Jasmine. I think that was done the same night, too,
10 I'm not sure.

11 Q So all of this stuff happened on the same night?

12 A They all came to headquarters.

13 Q Do you recall what time?

14 A I do not.

15 Q Do you know if they were transported together?

16 A I can't recall that.

17 Q Were they in the same room together?

18 A They were on the second floor. At the interview,
19 they came downstairs.

20 Q So they were all -- I'm sorry?

21 A Second floor in the foyer, some downstairs in the
22 foyer, some upstairs on the second floor of the foyer, but
23 the interview was done on the first floor.

24 Q And the interview was done individually?

25 A Yes.

1 Q And then regarding your lineup method, you said that
2 you showed them -- you showed the pictures one by one?

3 A Correct.

4 Q So they could look at them one by one?

5 A Correct.

6 Q And these numbers that you put in the upper left-hand
7 corner, did you put those numbers there?

8 A Yeah, I think I did. I'm not sure.

9 Q You think you did?

10 A Yeah.

11 Q Are you saying that looks familiar?

12 A Yeah.

13 Q Is there any reason that you didn't change the
14 numbers between each lineup?

15 A No, it was just -- I didn't change them because it
16 was just so many back-to-back interviews.

17 Q But you could have changed the numbers if you wanted
18 to?

19 A Possibly, but because we had so many that we had to
20 interview.

21 Q You decided against it?

22 A Yeah.

23 Q Okay.

24 MS. WALKER: Beg the Court's indulgence.

25 THE COURT: Yes, ma'am.

1 (Pause.)

2 BY MS. WALKER:

3 Q And in looking at these photos, State's Exhibit 10,
4 there is photo one, two, three and then four was the one
5 that they identified as a subject, five and six. Would
6 you agree that photo number four in comparison to the
7 other five is more blurry than the other photos?

8 A They are, but they also indicated that they knew him.

9 Q But this photo just as it exist physically is more
10 blurry?

11 A Yeah.

12 MS. WALKER: Thank you, Your Honor. No further
13 questions.

14 THE COURT: Redirect?

15 MS. GARFIELD: No, sir.

16 THE COURT: Thank you, ma'am. You may step down.

17 THE WITNESS: Thank you.

18 MS. GARFIELD: That concludes testimony at this time
19 for Daquan Cleckley and Jasmine Sims.

20 THE COURT: All right.

21 Yes, ma'am?

22 MS. WALKER: Thank you, Your Honor. May it please
23 the Court? I would continue our argument regarding the
24 issue regarding the blurry photograph, as you know, that
25 photograph is blurry. I think it does suggest to the

1 person looking at it that it is more separate than the
2 others, and as I said before, that they did know them. So
3 we are arguing sort of this subconscious desire to pick
4 the person you know and as well as the picture is
5 different.

6 Furthermore, Your Honor, Mr. Cleckley said that he
7 was told specifically to pick out who shot his uncle and
8 Ms. Sims said pick out who is familiar. So I would argue
9 in both those circumstances then they were suggested that
10 somebody or some person was responsible, one, directly for
11 the death of an uncle; or two, responsible for something.
12 And that would be unduly suggestive regarding those
13 lineups, Your Honor.

14 These are quick events. Mr. Cleckley was having to
15 view all of this through a window while he was trying to
16 gather family members. Miss Sims indicated she -- what I
17 think she was trying to say was that she kind of wasn't
18 paying attention, may have been in a daze until she
19 started paying attention and dove under a car or behind a
20 car and was only able to do so very quickly. These events
21 transpired very quickly. I don't think they had
22 sufficient time to make an accurate identification. We
23 would argue to suppress the out-of-court lineups and
24 in-court lineups, Your Honor.

25 THE COURT: Ms. Garfield?

1 MS. GARFIELD: Judge, first, I will address Daquan
2 Cleckley. Mr. Cleckley does testify that it's still
3 daylight outside. He was inside the house looking outside
4 a window that was not dirty, blinds were open. The lights
5 inside the home were off, making looking outside easier.
6 He was only eight to 10 feet away and possessed no vision
7 issues. He was close with the Defendant and his brother
8 and had ample opportunity to see the events unfold in
9 front of him.

10 Miss Sims, my understanding of her testimony is it
11 was very hot outside. She had her head between her knees
12 because she was, quote, her term, "blacking out", which I
13 believe is probably light-headed as we've all felt
14 sometime in July when it's so hot outside, and she wasn't
15 paying any attention. And then once she heard the
16 gunshots, she went down the steps off the porch where she
17 hid behind a car and watched Horace Watts shoot her uncle
18 five feet away. She knew Horace, also, from the
19 neighborhood. Although she did not know him personally,
20 she knew him by name.

21 I find that all that -- they had a personal
22 knowledge, being able to pick out the individual from the
23 lineup. As far as the terminology of how it was used, I
24 don't think that would be suggestive of which picture
25 they're picking out and we believe they are admissible.

1 THE COURT: All right. Both Mr. Cleckley's and Miss
2 Sims's out-of-court and in-court identifications are
3 admissible. They both have known the Defendant for some
4 time before the incident. Mr. Cleckley testified between
5 two and three years and Miss Sims testified she knew him
6 throughout the neighborhood. She had seen him routinely
7 and she would visit at her uncle's house all the time and
8 saw him at that point in time. They both also testified
9 that they actually witnessed the Defendant in the incident
10 at the time and promptly reported it to law enforcement.

11 They had an opportunity to view the criminal at the
12 time of the scene. They were paying attention to the
13 surroundings. Both of them gave eyewitness accounts of
14 what they saw. Their accuracy was proper based upon the
15 circumstances. Their level of certainty was proper based
16 upon the circumstances. And the time between the crime
17 and the confrontation was proper given the circumstances.
18 They're both admissible.

19 As to the statements that the officer made about
20 picking out who you saw shoot your uncle or who you're
21 familiar with, I find them not to be so unduly suggestive
22 as to not render the lineups -- or the out-of-court
23 identification inadmissible. And based upon the blurry
24 photo, again, I do not believe it rises to the level of
25 unduly suggestive as to create a situation where people

1 are picking out improper people.

2 Next.

3 MS. GODWIN: The State calls April Cleckley.

4 APRIL CLECKLEY, after being duly
5 sworn, testified as follows:

6 THE CLERK: Please have a seat. State your full name
7 for the record.

8 THE WITNESS: April Mae Cleckley.

9 DIRECT EXAMINATION

10 BY MS. GODWIN:

11 Q Ms. Cleckley, where do you live?

12 A I was living at [REDACTED], but I'm no
13 longer there.

14 Q All right. And you were living there in July of
15 2014?

16 A Uh-huh.

17 Q What was your relationship to Isaac Lewis, the victim
18 in this case?

19 A My brother-in-law.

20 Q He was your brother-in-law?

21 A Uh-huh.

22 Q So you are married to?

23 A His brother.

24 Q His brother, okay. And how did you know or did you
25 know Horace Watts?

1 A Him and my son were friends. They went to school
2 together.

3 Q And who are your son?

4 A Daquan.

5 Q Okay. So Daquan and Horace went to school together?

6 A Uh-huh.

7 Q Did he -- did you ever see him outside of school with
8 your son?

9 A No.

10 Q What about Malik Davis?

11 A No.

12 Q How did -- did you know Malik Davis?

13 A I know him by being his friend.

14 Q And was Malik also friends with your son?

15 A They was.

16 Q I want to take you back to that day, July 12th, 2014.
17 Can you kind of tell me what was going on at your house?

18 A They was having a surprise birthday party for me, and
19 we were like standing around having a good time.

20 Q So when did -- were you at the house all day or did
21 you arrive that afternoon? When did you -- when were you
22 at the house?

23 A It was like in the afternoon.

24 Q Okay. So when you arrived, approximately how many
25 people were there?

1 A I'm going to say first started out, like, 15.

2 Q Like, 15?

3 A Uh-huh.

4 Q Did more people come later?

5 A Yeah.

6 Q Okay. So that afternoon, were you there when an
7 altercation occurred?

8 A At the time -- I was in the house at the time.

9 Q So you were there, but you were inside?

10 A Uh-huh.

11 Q So you didn't witness anything?

12 A Huh-uh.

13 Q So that afternoon when everyone was there, y'all were
14 getting ready for this party, did you see -- what
15 brought -- what -- did you notice anything happening
16 outside?

17 A I know Malik and my nephew, I heard, got into an
18 altercation on the outside.

19 Q Okay. And which nephew is that?

20 A Terrell.

21 Q So approximately when was that?

22 A That was like in the afternoon.

23 Q And then what happened after that altercation?

24 A They got into a fight.

25 Q Okay. Once the fighting was done, do you know where

1 anybody went or did you not see that?

2 A Huh-uh.

3 Q After the fight, do you know who -- you said that
4 Malik and your nephew got into a fight?

5 A Uh-huh.

6 Q Do you know if either of them returned to your house?

7 A Did they return?

8 Q Uh-huh.

9 A Yes.

10 Q Who returned?

11 A Both of them.

12 Q All right. When you say both of them, what do you
13 mean? Who are you talking about?

14 A Malik and his brother.

15 Q And where were you when they returned?

16 A I was standing on the side of my home, like, in front
17 of my yard.

18 Q And what did you see first?

19 A I saw them -- when I was standing in my yard, I saw
20 them coming up Center Street. They started shooting
21 before they even came to my house.

22 Q And what did you do?

23 A I ran in the house.

24 Q Did you see anything else from inside the house?

25 A My brother-in-law.

1 Q What did you see with your brother-in-law?

2 A I seen when they came and got there and they shot
3 him.

4 Q Who?

5 A Horace.

6 Q And where was that?

7 A Just like he was standing on the side. He was trying
8 to get away, but he didn't make it.

9 Q And you saw Horace?

10 A Uh-huh.

11 Q All right. I want to ask you, looking at State's
12 Exhibit 8, do you recognize this area?

13 A Uh-huh.

14 Q And what is this? What is this thing, the whole --

15 A That's Center Street.

16 Q Okay.

17 A Magnolia Street.

18 Q All right. So that is a map of Center Street and
19 Magnolia Street. Do you see where you used to live on
20 this map?

21 A I think this area.

22 Q Okay. And what was your address?

23 A [REDACTED].

24 Q So [REDACTED]?

25 A Uh-huh.

1 MS. GODWIN: Your Honor, at this time, the State
2 would like to introduce for purposes of this hearing
3 State's Exhibit 8?

4 MR. RUFFIN: No objection to that, Your Honor.

5 THE COURT: Without objection.

6 (WHEREUPON, State's Exhibit No. 8 was admitted
7 into evidence.)

8 BY MS. GODWIN:

9 Q And I want to go back to a little before this. Tell
10 me a little bit about how your backyard was laid out?

11 A I have a -- well, it used to be -- I used to have a
12 big backyard. This is where, you know, family members
13 come and play basketball or whatever. And, you know, I
14 kind of like took them in. I treated them like my sons.

15 Q You treated who as your sons?

16 A Horace.

17 Q And Malik?

18 A And Malik.

19 Q So in your big backyard, was there a basketball goal
20 back there, you said?

21 A Uh-huh.

22 Q So oftentimes, people would come there to play
23 basketball?

24 A Uh-huh.

25 Q And Horace and Malik were among those people who

1 would come?

2 A Uh-huh.

3 Q So you had seen them back there -- you said you
4 treated them as your sons?

5 A Yeah.

6 Q With what kind of frequency were they coming around
7 your house?

8 A It wouldn't be an everyday thing, just very sudden.

9 Q But enough for you to kind of consider them as part
10 of your family?

11 A You'll have to excuse me. I'm nervous.

12 Q Do you need a minute?

13 A Huh?

14 Q I'm sorry. What did you say?

15 A No, I don't need a minute.

16 Q After all of this happened at your home, after you
17 saw your brother-in-law shot, what -- did you see anyone
18 leaving the scene?

19 A No.

20 Q So the last thing you saw was Horace shoot Isaac
21 Lewis?

22 A Uh-huh.

23 Q And after that, what did y'all do? Did you report
24 this?

25 A We called 9-1-1.

1 Q Okay. And after that, what happened?

2 A They came.

3 Q All right. And when you say they, you mean the
4 police?

5 A Police, the ambulance.

6 MS. GODWIN: Beg the Court's indulgence.

7 (WHEREUPON, State's Exhibit No. 13 was marked
8 for identification only.)

9 BY MS. GODWIN:

10 Q I'm going to show you what's been marked as State's
11 Exhibit 13. Tell me if you recognize State's 13?

12 A Yes.

13 Q What is that?

14 A This right here is my home.

15 Q So that's your house?

16 A Uh-huh.

17 Q Does that fairly and accurately depict the way your
18 house looked on that night?

19 A Uh-huh.

20 Q And that's after the police arrived?

21 A Uh-huh.

22 THE COURT: I need you to say yes or no.

23 THE WITNESS: Oh, yes.

24 BY MS. GODWIN:

25 Q Does it appear to have been changed or altered in any

1 way?

2 A No.

3 MS. GODWIN: Your Honor, at this time, the State would
4 move State's Exhibit 13 into evidence?

5 MR. RUFFIN: No objection.

6 THE COURT: All right.

7 (WHEREUPON, State's Exhibit No. 13 was admitted
8 into evidence.)

9 BY MS. GODWIN:

10 Q After the police were done at your house, did you the
11 have the occasion -- did you talk to one of the officers?

12 A I talked to one of the officers.

13 Q And do you remember them showing you some pictures --
14 Ms. Cleckley, I want to step up for a minute. When all of
15 this was happening at your house, do you remember what
16 time of day it was?

17 A Let's see.

18 Q It was what?

19 A I want to say around -- around 3:00, 3:30.

20 Q Okay. When Horace and Malik came back to your house,
21 was it daylight?

22 A It was daylight.

23 Q So you could see clearly?

24 A Uh-huh. Yes.

25 Q Okay. I'm going to show you what's been marked as

1 State's Exhibit 7. Do you recognize this?

2 A Yes.

3 Q What is this?

4 A It's a photo lineup.

5 Q Is this the lineup that the investigator showed you

6 when they met with you after the incident that occurred --

7 A Yes.

8 Q -- at your house? When the investigator was showing

9 you this lineup, do you remember how they showed it to

10 you?

11 A They was just showing me the pictures and I had to

12 pick a picture.

13 Q Did they show you one at a time or did they lay them

14 out?

15 A One at a time.

16 Q And did you pick a picture?

17 A Yes.

18 Q The investigator you were with, did they try to

19 suggest to you or tell you who to pick?

20 A No.

21 Q Did they tell you you had to pick someone?

22 A No.

23 Q Did they tell you that the person who did this would

24 definitely be in that lineup?

25 A No.

1 Q So why did you pick the one that you picked?

2 A Because I recognized Horace.

3 Q Okay. And when you picked -- which number was that?

4 A This was number two.

5 Q Did you write anything on here to indicate that you
6 picked that?

7 A Just my initials.

8 Q So these are your initials --

9 A Uh-huh.

10 Q -- K.C.? The man that you picked out as the one you
11 saw shoot Isaac Lewis, do you see him here in the
12 courtroom today?

13 A Yes.

14 Q Where is he seated? Can you point him out?

15 A Right here with the pink shirt.

16 MS. GODWIN: Let the record reflect the witness has
17 identified the Defendant.

18 THE COURT: All right.

19 MS. GODWIN: No further questions. Please answer any
20 questions they have.

21 THE COURT: Cross?

22 MR. RUFFIN: May it please the Court?

23 THE COURT: Yes, sir.

24 CROSS-EXAMINATION

25 BY MR. RUFFIN:

1 Q Ms. Cleckley, when the two individuals came off
2 Center Street shooting, were you in the front yard when
3 that first happened?

4 A I was in the front.

5 Q Was anybody else on the street in front of you?
6 Anybody in your family, I mean.

7 A My nieces.

8 Q They were out in the street?

9 A We was all, like, standing out in front of the yard.

10 Q From where you were standing in the front yard, you
11 could see down the street?

12 A Uh-huh.

13 Q And what did you see those two people wearing? Do
14 you remember what clothes they were wearing?

15 A White tees.

16 Q Both of them?

17 A Yes.

18 Q And you said you saw them with guns in their hands?

19 A Yes.

20 Q Do you remember what they looked like?

21 A No.

22 Q And you heard gunshots at that time?

23 A They started shooting before they entered in my yard.

24 Q So you saw that in the street?

25 A Uh-huh.

1 Q And once that started happening, you ran to the
2 backyard and went into the back door?

3 A Yes.

4 Q Inside the house?

5 A Yes.

6 Q Once you got inside the house, you went by a window
7 and were looking out the window; is that right?

8 A Yes.

9 Q And is that like a living room? Do you remember?

10 A You say my living room?

11 Q I'm asking what window were you looking out of?

12 A My living room.

13 Q And you said that you saw -- I think that you said
14 you saw Horace at that time?

15 A Yes.

16 Q In your driveway?

17 A Yes.

18 Q And he was face to face with Isaac Lewis?

19 A It was like he was pointing the gun at him.

20 Q So you saw --

21 A He shot directly at him.

22 Q You saw that happen?

23 A Yes.

24 Q Through the window?

25 A Yes.

1 Q So is there anything in that window, like, in the
2 bushes or anything like that outside the window or blinds
3 on that window or anything like that?

4 A Blinds and bushes, but they were both low cut.

5 Q I'm sorry, what's that?

6 A Bushes was low cut.

7 Q Do you have the pictures in front of you, the
8 pictures from the photo lineup?

9 A No.

10 Q Let me see if I can... if you wouldn't mind flipping
11 through the actual photos for me real quick and tell me is
12 the picture that you picked out, does that one to you
13 looked blurry than the other photos in the group,
14 comparatively?

15 A This one is not blurry.

16 Q You do not think that the one that you selected, you
17 don't think it's blurry?

18 A No.

19 MR. RUFFIN: No further questions, Judge.

20 THE COURT: Redirect?

21 MS. GODWIN: Actually, beg the Court's indulgence.

22 (Pause.)

23 MS. GODWIN: No, sir.

24 THE COURT: Thank you.

25 THE WITNESS: You're welcome.

1 THE COURT: Next.

2 MS. GARFIELD: Diamond Corbett. Your Honor, at this
3 time -- and I apologize. I forgot to give you the rap
4 sheet. I don't think there's anything that would have
5 been --

6 MR. RUFFIN: I wouldn't address it at this time here
7 any way.

8 DIAMOND CORBETT, after being duly
9 sworn, testified as follows:

10 THE CLERK: Please have a seat. State your name for
11 the record.

12 THE WITNESS: Diamond Corbett.

13 DIRECT EXAMINATION

14 BY MS. GARFIELD:

15 Q All right. Ms. Corbett, can you spell your last name
16 for the court reporter?

17 A C-O-R-B-E-T-T.

18 Q Ms. Corbett, where do you live?

19 A [REDACTED].

20 Q That's here in Columbia?

21 A Yes, ma'am.

22 Q Is that where you were living back in 2014?

23 A Yes, ma'am.

24 Q And how old are you?

25 A Twenty-three.

1 Q Are you currently working?

2 A No, ma'am.

3 Q I want to ask you about back in 2014, were you
4 involved in a relationship with Daquan Cleckley -- I'm
5 sorry, Jamichael Lewis?

6 A Yes.

7 Q And explain your relationship with Jamichael Lewis
8 and his family back then?

9 A Me and Jamichael were living together. We have a
10 son. And I was very close with his family.

11 Q And did you know the deceased in this case, Uncle
12 Ike?

13 A Yeah.

14 Q You knew him as Isaac Lewis. Did you call him Uncle
15 Ike?

16 A Yeah.

17 Q Just tell the Judge a little about your relationship
18 with him?

19 A He was one of the first people that I had met when
20 Jamichael introduced me to his family. And he picked at
21 me instantly because I was small.

22 Q All right. But you also know the Defendant in this
23 case, Horace Watts?

24 A Yes.

25 Q And just tell the Judge how you knew him back then?

1 A He used to come to Auntie April's backyard to play
2 ball with them.

3 Q You say Auntie April, would that be the incident
4 location?

5 A Huh?

6 Q Would that be where Ike got shot?

7 A Yes.

8 Q You said to play basketball. Did they play
9 basketball actually at that house?

10 A In the backyard; everybody did.

11 Q Did you also know his brother, Malik Davis?

12 A Yeah.

13 Q Please just explain to the Judge how you knew Malik
14 back then.

15 A He used to go to the gym and play basketball at the
16 gym. He used to be in April's backyard as well.

17 Q You knew them both by their name?

18 A Uh-huh.

19 THE COURT: Is that a yes?

20 THE WITNESS: Yes.

21 BY MS. GARFIELD:

22 Q Be sure you say yes and no and not huh-uh. The court
23 reporter has to write down everything you say and make a
24 record of it. Okay?

25 A Yes.

1 Q Now, Ms. Corbett, I want to take you back to July
2 12th, 2014. Were you at Magnolia Street for a family
3 cookout?

4 A Yes.

5 Q Who were you there with?

6 A Jamichael -- everybody, really.

7 Q About how many people would you say were there?

8 A A little over 20.

9 Q Were they of all ages?

10 A Yeah.

11 Q Children?

12 A Even babies.

13 Q Babies?

14 A Yeah.

15 Q Were you there for a prior disagreement with Terrell
16 Threat and other family member?

17 A Uh-huh -- I mean, yes.

18 Q Did Malik Davis approach Terrell Threat?

19 A Yea.

20 Q Did you observe this disagreement between the two of
21 them?

22 A Yes.

23 Q Just tell the Judge what you saw.

24 A I saw Malik when he came up to Terrell. He was
25 talking trash and Terrell tried to back up a little bit

1 and he kept saying he didn't want to fight. And Malik hit
2 him first and Terrell just defended himself, hit him back.

3 Q All right. Describe Terrell's size. Is he taller
4 than you?

5 A Very.

6 Q Big guy?

7 A He's not really big. He is just tall and slim.

8 Q Is Malik Davis a tall guy?

9 A No.

10 Q Is he taller than you?

11 A Yeah, a little bit.

12 Q And he swung at Terrell?

13 A Yeah.

14 Q And then what happened?

15 A Terrell swung back. Terrell beat him up, really.

16 Q And did family members try to break up the fight?

17 A Yeah.

18 Q And did Malik Davis leave?

19 A Yeah.

20 Q Did he ever come back?

21 A Yes.

22 Q About how long between him leaving and him coming
23 back passed?

24 A I'd give it a good -- between 30, 45 minutes.

25 Q Did you see Malik Davis when he returned?

1 A Yes.

2 Q How did he get there?

3 A On foot.

4 Q You saw him on foot?

5 A Yes.

6 Q Did you see him get out of any car or anything?

7 A No.

8 Q Was he with anyone?

9 A Yes.

10 Q Who was he with?

11 A Horace.

12 Q What were they doing?

13 A Shooting.

14 Q Both of them?

15 A Yes.

16 Q At who?

17 A All of us.

18 Q And what did you do, Diamond?

19 A I ran.

20 Q Where did you run?

21 A In the backyard behind a tree.

22 Q Was everybody running?

23 A Yes.

24 Q What was Uncle Ike doing?

25 A He was trying to get everybody -- he was trying to

1 help everybody.

2 Q What had he been doing all during the day?

3 A Cooking on the grill for us.

4 Q And he's trying to help everybody?

5 A Yeah, he's trying to get everybody else from the
6 front yard.

7 Q Into where?

8 A To get them safe in the house.

9 Q And where were you?

10 A Hiding behind the tree.

11 Q Where was this tree, Diamond?

12 A Beside a car on the side of the house.

13 Q In the driveway or on the street?

14 A In the driveway.

15 Q You're behind a tree. Where is Ike in relation to
16 you?

17 A A little bit behind me by the big tree.

18 Q A little bit behind you. Did you see Horace Watts at
19 that time with a gun?

20 A Yes.

21 Q What was he doing?

22 A He pointed the gun at me first and then he pointed it
23 behind me. That's when he shot Uncle Ike.

24 MS. GARFIELD: Your Honor, with the Court's
25 permission, I'd like the witness to stand up to

1 demonstrate for you how she saw Mr. Watts shoot?

2 THE COURT: Okay.

3 BY MS. GARFIELD:

4 Q All right. I'm going to pretend like I'm you. About
5 how close were you to Horace?

6 A I'd say about right there.

7 Q This close?

8 A No. When you were standing right there and if I
9 stand down there.

10 Q Okay. Tell me to stop when the distance between --
11 you're Horace and I'm you.

12 A Go back a little more. About that distance.

13 Q Okay. What did you observe him do?

14 A He did like this at me and he did like this. And
15 when he did, the first shot, it whizzed past my arm.
16 That's when it hit Uncle Ike in the chest and it spin him
17 around. Then he shot again and that's when he fell face
18 forward in the ground.

19 Q Once you heard -- you go ahead and have a seat. Once
20 you heard the bullet whiz by you, what did you do?

21 A I tried to duck down.

22 Q And then after you did that, did you observe Uncle
23 Ike?

24 A (Nods in the affirmative.)

25 Q And where was he?

1 A The first shot, he grabbed his chest and it spin him
2 around. Then the second shot hit him in the back and he
3 fell. I'm sorry.

4 Q It's okay. Did you hear him say anything?

5 A Who, Uncle Ike?

6 Q I'm sorry, Horace.

7 A When he came in the yard, yeah.

8 Q What did you hear him say?

9 A Excuse my language, but he said, Y'all jumped my
10 fucking brother.

11 Q Was he saying this while he was shooting?

12 A Yes.

13 Q And did you see Malik anywhere?

14 A Yes.

15 Q Where was he?

16 A Standing at the front of the yard.

17 Q All right. Front of the yard?

18 A He didn't come in the yard.

19 Q Was Horace in the yard?

20 A Yes.

21 Q After that, what happened?

22 A I guess they ran out of bullets or something because
23 they just ran out of the yard.

24 Q Now, did you have an opportunity to go and talk to
25 police officers?

1 A Yes.

2 Q And did you give a statement to Investigator McKellar
3 with the Columbia Police Department?

4 A Yes.

5 Q And at any time during your interview did
6 Investigator McKellar show you some pictures?

7 A Yes.

8 Q I'm going show you what's been marked as State's
9 Exhibit No. 3. Do you recognize this first document, Jas
10 -- I'm sorry, Diamond?

11 A Yes.

12 Q All right. What does this document reflect?

13 A The photo lineup.

14 Q Did you indicate on this which picture you picked
15 out?

16 A Yes.

17 Q Which number did you pick out?

18 A Number five.

19 Q Is that also your signature?

20 A Yes.

21 Q Did you fill that out yourself?

22 A Yes.

23 Q Now, I'm going to also show you these pictures. Are
24 these the pictures that Investigator McKellar showed you?

25 A Yes.

1 Q And you picked out number five?

2 A Yes.

3 Q And who is number five a picture of?

4 A Horace.

5 Q All right. And you picked him out as being the
6 person that did what?

7 A Killed Uncle Ike.

8 Q And when you saw the person that you identified as
9 killing Uncle Ike, what was the lighting like outside?

10 A It was daylight.

11 Q All right. And you had a clear picture of him?

12 A Very clear.

13 Q You don't have any eyesight issues, do you?

14 A Not at all.

15 Q Ms. Corbett, at this time, I'm going to ask you do
16 you see the man in the courtroom that pulled a gun on
17 Uncle Ike and shot at him and killed him?

18 A Yes.

19 Q And can you please point him out for the record?

20 A He's right there.

21 Q Can you explain to the Judge what he's wearing?

22 A He has on a pink collared shirt, a dress shirt, and
23 it looks like khaki dress pants.

24 MS. GARFIELD: Your Honor, may the record reflect the
25 witness has identified the Defendant?

1 THE COURT: All right. Yes, ma'am.

2 MS. GARFIELD: Thank you. No further questions.
3 Please answer any questions Defense counsel may have.

4 THE COURT: Cross?

5 MR. RUFFIN: Thank you, Your Honor. May it please
6 the Court?

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. RUFFIN:

10 Q Ms. Corbett, you were in the front yard when the
11 shooting first started; is that right?

12 A Yes.

13 Q You could see down the street?

14 A Yes.

15 Q And did you see what the shooters were wearing?

16 A I don't remember what Horace wore, but I know what
17 Malik had on.

18 Q What did Malik have on?

19 A He had on a black and blue designer shirt.

20 Q He had on a black shirt?

21 A Yes.

22 Q Are you positive?

23 A Yes.

24 Q Do you remember what their guns looked like?

25 A Yes. I don't know the exact model, but Horace gun

1 was like black. It was like a police gun and it had the
2 red beam on it.

3 Q I think you said earlier that once the shooting
4 started, you ran in the backyard, hid behind a tree?

5 A Yes.

6 Q A second ago when you demonstrated how the shooting
7 happened, it seemed like you were standing face-to-face --
8 like you were saying you were standing face-to-face with
9 Horace; is that right?

10 A I just demonstrated to you. I wasn't completely
11 standing that day, though.

12 Q Let me ask you this. You said that Horace pointed a
13 gun at you?

14 A Yes.

15 Q Did that happen while you were hiding behind a tree?

16 A Yes, it's not a big tree and it's not thick either.
17 You can see straight through the tree.

18 Q And when that happened, Uncle Isaac or Isaac Lewis
19 was next to you?

20 A He was behind me.

21 Q He was behind you?

22 A Yes, he was the only person behind me.

23 Q All right. And y'all were looking -- y'all would
24 have been back in the driveway looking out towards the
25 street?

1 A Yes.

2 Q And you're saying that Horace was looking towards
3 y'all?

4 A Yes.

5 Q And you say that you saw Horace shoot Isaac Lewis in
6 the chest?

7 A Yes.

8 Q And he was --- Isaac Lewis would have been right
9 behind you, I guess?

10 A Yes, because when he shot behind me, I turned around
11 and I looked. I saw Uncle Ike grab his chest.

12 Q Do you have the pictures up here?

13 A No.

14 Q Can you look at these pictures with me. These are
15 the pictures you were shown for the lineup, correct?

16 A Yes.

17 Q And you picked picture number five?

18 A Yes.

19 Q Would you agree with me that picture number five is
20 blurrier than the other pictures?

21 A No. It looks just like him.

22 Q I'm asking do you think that picture number five
23 appears to be blurrier than, say, picture number six?

24 A No.

25 Q Okay.

1 A Not to me.

2 MR. RUFFIN: Nothing further.

3 THE COURT: Redirect?

4 MS. GARFIELD: No, sir.

5 THE COURT: Step down.

6 Call your next witness.

7 MS. GODWIN: The State calls Shannon McKellar.

8 SHANNON MCKELLAR, after being
9 duly sworn, testified as follows:

10 THE CLERK: Have a seat. State your name for the
11 record.

12 THE WITNESS: Shannon McKellar.

13 DIRECT EXAMINATION

14 BY MS. GODWIN:

15 Q Sergeant McKellar, where do you work?

16 A Currently, I'm with the University of South Carolina
17 law enforcement.

18 Q All right. And in 2012, where were you?

19 A The City of Columbia Police Department.

20 Q And did you have the occasion to become involved in a
21 homicide investigation in July of 2014?

22 A Yes, I did.

23 Q How did you become involved in that investigation?

24 A Lieutenant J. P. Williams called me on my cell phone
25 and advised me they had a homicide and for me to respond

1 to Magnolia Street to assist.

2 Q And after you responded to the scene, did you have
3 the occasion to meet with and show lineups to some of the
4 witnesses?

5 A Yes, I did.

6 Q I'm going to hand you what's been marked as State's
7 Exhibit 3 and State's Exhibit 7. Take a look at 3 and
8 tell me if you recognize that.

9 A Yes, I do.

10 Q And what is that?

11 A It's a photo -- a standard photo lineup form that
12 we -- at the time, I'm assuming they still had this, that
13 we would fill out when we showed people photo lineups,
14 photo arrays.

15 Q And you used that to memorialize which one they
16 picked?

17 A Yeah. Basically, it's got my information, the
18 location, how many photos you showed, which photo they
19 IDed if they IDed one, and what the nature of the crime
20 was. Then we had them sign it and notarize it.

21 Q And for State's 3, the witness you're dealing with
22 was Diamond Corbett?

23 A Yes.

24 Q And what, if anything, was she told during this
25 process? Can you just explain the process?

1 A Basically, I tell her I'm going to show you six
2 photos. They're similar in the race, the gender, the
3 features, all that. And if you -- if any of the photos
4 are -- you know, basically, if you see anybody within the
5 six photos that was at the scene, that committed the
6 crime, that kind of thing, point them out. I tell them --
7 a lot of times, I'll tell them the person may not
8 necessarily be in there, just if you recognize one of
9 them, point them out.

10 Q Is that what you did on this occasion?

11 A Yes, ma'am.

12 Q And what date was this?

13 A July 12th.

14 Q So it was the same day of the incident?

15 A Yeah. I want to say it was around nightfall when we
16 got called out, and this was probably a few hours later.

17 Q And do you remember when you showed this lineup to
18 Diamond, where were you?

19 A In the conference room at headquarters.

20 Q Was anybody else in there?

21 A No. I was actually interviewing -- and I can't
22 recall her name right now, but another female. And I
23 would have one step out. I never do two at the same time.

24 Q And how did you display the photos when you showed
25 them?

1 A I, basically, just turn them and flip them over.

2 Q So you laid them all out?

3 A No, not with the array. I'm used to doing photo
4 lineups, certain investigative arrays. So I would,
5 basically, just take them and flip them over, look at each
6 one. She may have flipped them herself. I don't recall.

7 Q And are there numbers on those pictures?

8 A Yeah, I number them. And like I said, I had two
9 people that night, so I renumber them, another set of
10 pictures before I do the second person that. That way the
11 people aren't the same numbers, if that makes sense.

12 Q Do you remember approximately how long it took
13 Ms. Corbett to identify?

14 A She immediately picked them out.

15 Q No hesitation?

16 A No, she said she knew him. I want to say she said
17 she knew him from the neighborhood.

18 Q After she picked out the photograph, did you have her
19 do anything to that to memorialize it?

20 A She initiated it.

21 MS. GODWIN: Your Honor, at this time, the State
22 would move State's Exhibit 3 into evidence for purposes of
23 this hearing.

24 MR. RUFFIN: No objection.

25 THE COURT: All right.

1 (WHEREUPON, State's Exhibit No. 3 was admitted
2 into evidence.)

3 BY MS. GODWIN:

4 Q And then if we could go to State's Exhibit 7.

5 A Yes, ma'am.

6 Q Do you recognize that?

7 A Yes, I do.

8 Q What is it?

9 A It is the same form for when we show photo lineups.

10 And this is Ms. April Cleckley, I think. I'm not sure how
11 you pronounce her last name.

12 Q Which one did she pick out?

13 A She picked out photo number two, which is the
14 Defendant.

15 Q And what date was this done?

16 A This was on the same day, July 12th, 2014.

17 Q And where were you when you showed her this?

18 A In the conference room, just me and her.

19 Q Okay. Again, how did you display these pictures?

20 A Basically, just the same thing I just told you with
21 the other one, just flipped them over or let her go
22 through them.

23 Q So one of you flipped through them?

24 A Yeah.

25 Q And when Ms. Cleckley selected number two, do you

1 know about how much time it took her?

2 A I'm pretty sure she was immediate. I want to say
3 Ms. Cleckley, she identified him as being there but I'm
4 not sure she identified what his involvement was. I just
5 remember she identified him being there.

6 Q With Ms. Cleckley, whenever she was picking him out
7 of lineup, she didn't know of his involvement?

8 A No, no, no, she said he was there. She said this guy
9 was there. I've got it written down there. She said he
10 was running down Magnolia Street right before shots were
11 fired.

12 MS. GODWIN: Your Honor, at this time, the State
13 would move to admit State's 7 into evidence.

14 MR. RUFFIN: No objection.

15 THE COURT: Seven without objection.

16 (WHEREUPON, State's Exhibit No. 7 was admitted
17 into evidence.)

18 BY MS. GODWIN:

19 Q So just to clear up, both of these, Diamond and Ms.
20 Cleckley, identified the Defendant in this case?

21 A Yes, ma'am.

22 Q And placed him at the scene with a gun?

23 A Yes, ma'am.

24 Q As the shooter?

25 A Yes, ma'am.

1 MS. GODWIN: Beg the Court's indulgence.

2 (Pause.)

3 MS. GODWIN: No further questions.

4 THE COURT: Cross?

5 MR. RUFFIN: Thank you, Your Honor. May it please
6 the Court?

7 CROSS-EXAMINATION

8 BY MR. RUFFIN:

9 Q Sergeant McKellar, did you know which of the pictures
10 was the suspect?

11 A I'm pretty sure I did.

12 Q And you numbered them?

13 A Yeah, I went through and numbered them.

14 Q So you would have known which number was the suspect
15 that you were looking for?

16 A Yeah, I would think so.

17 Q Did you number the pictures in front of the
18 witnesses?

19 A No, this was all done before I showed the pictures.

20 Q All right. And they were in the same room at one
21 point, but you sent one of them out?

22 A When we first brought them in, they were in the same
23 room. When I interviewed each one, one would sit outside
24 the room with the door closed. Basically, outside of
25 headquarters, there was a bench. Same thing with the

1 lineups, they were never in the room when one was seeing
2 the lineups.

3 Q Can you look through those pictures for me and tell
4 me if you think in your opinion that the pictures that
5 each of them selected, that Ms. Corbett and Ms. Cleckley
6 selected, the pictures that they selected, do you think
7 that they are blurrier than the other photos?

8 A Yeah, it seems a little blurry.

9 MR. RUFFIN: No further questions.

10 THE COURT: Redirect?

11 MS. GODWIN: No, sir.

12 THE COURT: Thank you. Have a good day.

13 THE WITNESS: Thank you.

14 THE COURT: Anybody else?

15 MS. GARFIELD: That's all the testimony for witnesses
16 April Cleckley, Diamond Corbett and all the testimony for
17 today's hearing.

18 THE COURT: All right. Let's hear about Ms. Corbett
19 and Ms. Cleckley.

20 MR. RUFFIN: Thank you, Your Honor. The only thing
21 I'd say about each of these is, again, the photo is
22 admittedly blurry -- Mr. Watts's photo is admittedly
23 blurry, at least, by Sergeant McKellar. I understand the
24 victim sort of argued with me a little bit on about
25 that -- excuse me, the witnesses.

1 THE COURT: The witnesses, right.

2 MR. RUFFIN: Because of that, Your Honor, we think
3 it's suggestive when you're shown a group of pictures and
4 one of them clearly stands out from the others. For that
5 reason, we'd ask that you not allow the jury to see the
6 lineups or not allow the witnesses to identify Mr. Watts
7 in court.

8 THE COURT: All right. I'm going to admit both the
9 out-of-court and in-court identifications of April
10 Cleckley and Diamond Corbett of the Defendant. They both
11 know the Defendant by name and by sight and have
12 connections with him. They were both witnesses to the
13 alleged altercation. At one point, Ms. Corbett was
14 probably no more than 10 feet away from Mr. Watts,
15 according to her testimony, during the incident.
16 Ms. Cleckley clearly testifies that she saw him and saw
17 his participation in the crime. Taking those factors into
18 consideration, they had the opportunity to view the
19 alleged perpetrator at the time of the crime. They were
20 paying attention by both of their accounts. Their witness
21 is accurate -- testimony accuracy is accurate and their
22 level of certainty at the time of confrontation is certain
23 and there was appropriate timing between the crime and the
24 confrontation and they have prior knowledge of Mr. Watts
25 and who he was. And to the extent that the picture of him

1 in the photo lineup is blurry, I do not find that to be
2 unduly suggestive under the circumstances of their prior
3 relationship with him.

4 All right. What else?

5 MS. GARFIELD: That's all for today, Judge.

6 THE COURT: All right.

7 Mr. Ruffin?

8 MR. RUFFIN: That's all from us.

9 THE COURT: Okay. All right. Listen, I'm about to
10 start this other trial. Y'all need to sit down tomorrow
11 and e-mail me or somebody needs to send me an e-mail to
12 remind me -- I'm going to try to get this thing done as
13 soon as possible.

14 You've waited long enough. I'm going to do
15 everything in my power to get this thing done in January.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I can't get it done between now and the
18 end of the year. That's just too crazy of a mix, okay?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I'm going to do everything I can When I
21 have a first full week here in Richland to get you done
22 that week. I can't guarantee you that. I can't promise
23 you that. It's not my final decision. But I will go as
24 far as to call the Chief Justice if I need to if court
25 administration runs into it because you've been waiting on

1 your trial -- I assume you're in custody; is that right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You've been waiting on your court date
4 long enough. These people related to Mr. Isaac or Uncle
5 Ike and the other victim, everybody's waited long enough
6 for this thing to come to a conclusion. So I'm going to
7 do my best to get it done for everybody and get it done as
8 soon as possible, okay. We all need to get it resolved
9 and we all need to get it moved. The worst case scenario,
10 we'll go the week of February 20th. I'm going to try to
11 get it moved earlier than that. We need to get this case
12 resolved.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Anything else from the State?

15 MS. GARFIELD: No, sir.

16 THE COURT: From the Defense?

17 MR. RUFFIN: No, Your Honor.

18 *****END OF PROCEEDINGS*****

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the hearing of the captioned case,
relative to appeal, in General Sessions Court for Richland
County, South Carolina, on the 3rd day of October, 2016.

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

December 3, 2016

Penny M. Johnson

Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018

WITNESSES

(S) Matthew David McCoy
- Columbia Police Department

DOCKET NO. 2015 GS 40 0 00 83

The State of South Carolina
County of Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

1048

Defendant

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

87

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

ARREST WARRANT NUMBER

2014A4021601621

THE STATE
vs.

Witness:

C.C.C. PLS. AND G.S.

Horace Elijah Watts

ACTION OF GRAND JURY

TRUE BILL

Corinne L. ...
Foreperson of Grand Jury
Date: **JAN 9 5 2015**

VERDICT

Indictment for
MURDER

SC Code: 16-03-0010
CDR Code: 0116

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the Grand Jurors of Richland County present upon their oath:

MURDER

That Horace Elijah Watts did in Richland County, on or about July 12, 2014, kill the victim, Isaac Lewis, with malice aforethought, either express or implied, by means of shoot and kill, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Matthew David McCoy
- Columbia Police Department

DOCKET NO. 2015 GS 40 00084

The State of South Carolina

County of

Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

2014A4021601622

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

87

THE STATE
vs.

Horace Elijah Watts

ACTION OF GRAND JURY

TRUE BILL

Connie Lumpkin
Foreperson of Grand Jury
Date: **JAN 15 2015**

VERDICT

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

Foreperson of Petit Jury
Date:

WITNESSES

(S) Matthew David McCoy
- Columbia Police Department

DOCKET NO. 2015 GS 40 0 0024

The State of South Carolina

County of

Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

87

ARREST WARRANT NUMBER

2014A4021601623

Defendant

THE STATE
vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Horace Elijah Watts

TRUE BILL

Connie Lumpkin
Foreperson of Grand Jury

Date: **JAN 9 5 2015**

VERDICT

Indictment for
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-0490
CDR Code: 0549

Foreperson of Petit Jury
Date:

WITNESSES

(S) Matthew David Mccoy
- Columbia Police Department

DOCKET NO. 2015 GS 40 0 0085

The State of South Carolina

County of

Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

87

ARREST WARRANT NUMBER

2014A4021601628

Defendant

THE STATE
vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Horace Elijah Watts

TRUE BILL

Commissary Lumpkin
Foreperson of Grand Jury

Date: **JAN 15 2015**

VERDICT

Indictment for
UNLAWFUL CARRYING OF PISTOL

SC Code: 16-23-0020
CDR Code: 0044

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)


INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the Grand Jurors of Richland County present upon their oath:

UNLAWFUL CARRYING OF A PISTOL

That Horace Elijah Watts did in Richland County on or about July 12, 2014, carry about the person a pistol, such carrying not being authorized by law, in violation of Section 16-23-0020, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



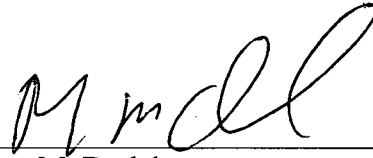
DAN JOHNSON, SOLICITOR

FILED

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

This 12th day of February, 2018.

RECEIVED

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SC Court of Appeals