

VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Honorable William H. Seals, Circuit Court Judge

RECEIVED

MAY 18 2018

S.C. SUPREME COURT

JAMES R. ROSE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002052

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

MEGAN H. JAMESON
Senior Assistant Deputy Attorney General

Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

PAGES 501-799

INDEX

INDEX	i
TRIAL TRANSCRIPT (FEBRUARY 9-12, 2013).....	1
FINAL BRIEF OF APPELLANT (DECEMBER 18, 2014)	678
APPLICATION FOR POST-CONVICTION RELIEF (JULY 7, 2015).....	697
RETURN (FEBRUARY 18, 2016).....	704
AMENDED APPLICATION FOR POST-CONVICTION RELIEF (JANUARY 4, 2017).....	710
POST-CONVICTION RELIEF HEARING TRANSCRIPT (JANUARY 10, 2017)	712
ORDER OF DISMISSAL (SEPTEMBER 15, 2017)	770
INDICTMENT	797

DIRECT EXAMINATION BY MS. BALDWIN OF JOHN ROBERTS

1 way. I touch my steering wheel. I drive to McDonald's and
2 I get something to eat. I touch the door at McDonald's. I
3 touch things.

4 And as I'm touching all the stuff, that material is
5 transferred from my hands to whatever I've touched. So what
6 we've found is that in six hours you will have lost the
7 material from your hands that was deposited by that firearms
8 even if you are just sitting there breathing much less
9 exerting yourself physically in any manner.

10 Q. And those kits were tested by your agency in this case?

11 A. They -- yes, the kits were done at SLED.

12 Q. And a report was generated?

13 A. It was.

14 Q. By whom?

15 A. The report was generated by Megan Fletcher.

16 Q. And who is Megan Fletcher?

17 A. Megan Fletcher is one of the analysts in the Trace
18 Evidence Department.

19 Q. Now our understanding is Ms. Fletcher is unavailable
20 today; she is in a training?

21 A. That's correct.

22 Q. So you are here to testify on her behalf?

23 A. I am.

24 Q. You are capable of interpreting the results of her
25 report?

1 A. I am.

2 Q. Do y'all do peer review?

3 A. We do.

4 Q. And what is that?

5 A. Peer review means that when somebody generates a report
6 such as this it is handed to somebody else who has no idea
7 about what's going on but is qualified to testify in court
8 on whatever report has been handed to them.

9 They go through a report and make sure the report is
10 grammatically and structurally correct. And then they go
11 through the data that is generated and they make sure that
12 the conclusions that are drawn and written out on the report
13 are correct and in line with SLED's protocol.

14 Q. Well, let's go through the report shall we?

15 A. Sure.

16 Q. Tell me about Item 1.

17 A. Item 1 was gunshot residue kit from Joy Terese Holmes.

18 Q. And Item 1.1?

19 A. Item 1.1 was the right palm from that gunshot residue
20 kit.

21 Q. What were the results?

22 A. No gunshot residue was found.

23 Q. And Item 1.2?

24 A. Item 1.2 was the right back.

25 Q. What were those results?

DIRECT EXAMINATION BY MS. BALDWIN OF JOHN ROBERTS

1 A. The quantities of metals found did not indicate the
2 presence of gunshot residue.

3 Q. Now what's the difference between no gunshot residue
4 was found and the quantities of metals found does not
5 indicate the presence of gunshot residue?

6 A. First of all, they are both negatives. No gunshot
7 residue found, that's fairly simple. We didn't find any
8 gunshot residue.

9 Quantities of metals found did not indicate presence of
10 gunshot residue is also a negative; however, it is slightly
11 more complicated than just negative.

12 They are both of those are results for different types
13 of testing. The first one is the result that you get when
14 you test the particle lifts. The particle lifts we are
15 looking for actual particles of gunshot residue that may be
16 on lifts. We don't find any, no gunshot residue found.
17 Easy.

18 Item 1.2, the right back. Quantities of metals found
19 do not indicate the presence of gunshot residue. That is a
20 result from the swabs that correspond to the right back of
21 the hand.

22 The swabs we are not looking for particles. We are
23 looking for amounts of metals. Now the metals that are in
24 the particles are the same as the metals that we are looking
25 for on the swabs. They are just in a different physical

1 manner.

2 So they are both negatives, one is from swab. One is
3 from a particle lift.

4 Q. And tell me about Item 1.3.

5 A. One point three was the left palm. And it reads no
6 gunshot residue a result from a particle lift.

7 Q. And Item 1.4.

8 A. Item 1.4 was the -- was the left back sample. And
9 quantities of metals found did not indicate the presence of
10 gunshot residue.

11 Q. Now tell me about Item 2 and what those results were.

12 A. Item 2 was a gunshot residue kit from James Reginald
13 Rose. The results were no conclusions can be drawn. The
14 samples were collected beyond the six-hour timeframe in
15 which probative evidence would be found.

16 This gunshot residue kit was taken on a live person
17 after the six-hour window had passed between the time of the
18 incident and the time of collection.

19 Q. And Item 3 and those results?

20 A. Item 3 was a gunshot residue kit from Antoine Aiken.
21 And on the right palm, the right back, the left palm and the
22 left back, all four areas. Quantities of metals found did
23 not indicate the presence of gunshot residue. Negative.

24 Q. Item 4 and those results?

25 A. Item 4 was a gunshot residue kit from Tawana Alston and

DIRECT EXAMINATION BY MS. BALDWIN OF JOHN ROBERTS

1 the right palm, the right back, the left palm, and the left
2 back. Quantities of metals found did not indicate the
3 presence of gunshot residue. So a negative on that one as
4 well.

5 MS. BALDWIN: Beg the Court's indulgence. I have no
6 further questions. Please answer any Ms. Runey has.

7 THE WITNESS: Yes, ma'am.

8 THE COURT: Cross-examination.

9 MS. RUNEY: Thank you, Your Honor.

10 CROSS-EXAMINATION BY MS. RUNEY OF JOHN ROBERTS:

11 Q. Good afternoon, Agent Robert.

12 A. Hi.

13 Q. The only items you received in this case were gunshot
14 residue kits from four individuals?

15 A. That's the only items that were received by the Trace
16 Evidence Department. That's correct.

17 Q. No articles of clothing were received?

18 A. No, ma'am, not by us.

19 Q. And what you testified is gunshot residue consists of
20 lead, barium, and antimonies?

21 A. That's what we look for when we're -- when we're
22 testing for it, yes.

23 Q. When you're determining whether gunshot residue is
24 present?

25 A. If I was determining whether gunshot residue was

1 present I would be looking for a particle that contains all
2 three elements in a spherical shape.

3 Q. Lead, barium, and antimonies, all of them?

4 A. That's correct.

5 Q. And you did not find -- or I'm sorry, Ms. Fletcher from
6 your department did not find any gunshot residue when she
7 tested any of these kits?

8 A. That's correct. But the one was not tested at all --
9 or there weren't any conclusions to be drawn because it was
10 taken beyond the six-hour window.

11 Q. Collected too late?

12 A. Yes.

13 Q. But Ms. Fletcher notes in her report that they were
14 metals detected?

15 A. Yes, the quantity of metals found could also indicate
16 that there were metals found.

17 Q. And we could use any of that as an example beside Mr.
18 Rose's kit because it wasn't tested at all?

19 A. That's correct.

20 Q. So each case metals were found; so that means it could
21 have been lead, it could have been barium, or it could have
22 been antimony; they just weren't in a particle together,
23 correct?

24 A. No, they weren't in quantities that we would associate
25 with being near a gun, holding a gun, or firing a gun.

CROSS-EXAMINATION BY MS. RUNEY OF JOHN ROBERTS

1 Q. And there are many things in the environment that can
2 remove these particles that constitute gunshot residue,
3 correct?

4 A. Yes.

5 Q. Weather, rain?

6 A. Rain could, yes, ma'am.

7 Q. Washing your hands?

8 A. Yes, ma'am.

9 Q. Blood?

10 A. Yes, ma'am.

11 Q. Touching your car, this podium, the desk?

12 A. Yes, ma'am.

13 Q. Door handles?

14 A. Yes, ma'am.

15 Q. Normal physical activity?

16 A. Yes, ma'am.

17 Q. So because actual gunshot residue is not found, you
18 can't determine whether somebody fired a gun or not?

19 A. All I got was negatives on this. I can't tell what --
20 I mean my -- my assumption would be that they were not near
21 a gun when it went off in the very least.

22 Q. You testified earlier that if you went to the shooting
23 range and you fired your weapon and then you left and you
24 started touching things, that gunshot residue would be
25 removed; right?

1 A. It could be, yes, ma'am.

2 Q. Especially if you washed your hands?

3 A. Especially if I washed my hands.

4 Q. That's all I have. Thank you.

5 A. You are welcome.

6 THE COURT: Any redirect?

7 MS. BALDWIN: Just briefly.

8 **REDIRECT EXAMINATION BY MS. BALDWIN OF JOHN ROBERTS:**

9 Q. Those metals you were speaking of, Agent, can also get
10 on your hands naturally; correct, through not firing a gun?

11 A. They can.

12 Q. Could you give us some examples of those what you would
13 touch that would cause that?

14 A. Just for lead by itself, fishing weights.

15 Q. Anything in the courtroom that you think could cause
16 that?

17 A. No.

18 Q. Okay. But things in our environment?

19 A. Yes.

20 Q. Anything besides just fishing weights?

21 A. Anything that had lead in it. Anything that had lead
22 in a manner that I could rub off and get it. Lead paint
23 wouldn't to do it. The paint, the lead is embedded in the
24 paint in a manner where I couldn't just reach up and grab
25 like an old where somebody had painted with lead paint I

REDIRECT EXAMINATION BY MS. BALDWIN OF JOHN ROBERTS

1 couldn't just reach in onto that paint and get lead on my
2 hands from that paint. It would have to be something that
3 wasn't readily accessible.

4 MS. BALDWIN: Beg the Court's indulgence.

5 Q. So when in that report it says the quantities in metals
6 found do not indicate the presence of gunshot residue,
7 you're not just talking about lead then?

8 A. No, ma'am.

9 Q. You are talking about antimony?

10 A. And barium.

11 Q. And barium. And so those don't indicate that a gun was
12 fired, the presence of those metals in that quantity?

13 A. That's correct

14 MS. BALDWIN: I have no further questions.

15 THE COURT: Okay. All right.

16 MS. RONEY: No further questions. Thank you.

17 THE COURT: Sir, you may step down and be excused.

18 THE WITNESS: Thank you

19 THE COURT: Thank you.

20 MS. SHEALY: Maryann Boehm.

21 (WHEREUPON, the witness was duly sworn.)

22 THE CLERK: Once you are seated if you would please
23 into the microphone state our first and last name and spell
24 your last.

25 THE WITNESS: My name is Maryann Boehm, B-O-E-H-M.

REDIRECT EXAMINATION BY MS. BALDWIN OF JOHN ROBERTS

1 (MARYANN BOEHM, having been first
2 duly sworn testified as follows:

3 DIRECT EXAMINATION BY MS. SHEALY OF MARYANN BOEHM:

4 Q. Ms. Boehm, if you would please tell the jury where you
5 are currently employed.

6 A. I work for the South Carolina Law Enforcement Division,
7 commonly known as SLED.

8 Q. And what do you do for SLED?

9 A. I am assigned to the DNA Case Work Department.

10 Q. And how long have you worked there?

11 A. Approximately eight year.

12 Q. Tell us a little bit about your educational background.

13 A. I received a bachelors of science at Integrated Science
14 and Technology with a concentration in bio technology from
15 James Madison University which is in Harrisonburg, Virginia.

16 Q. Okay. And have you ever testified before regarding DNA
17 analysis?

18 A. Yes, I have.

19 Q. Where were you instructed regarding how to in fact
20 analyze DNA?

21 A. I was trained at SLED by a qualified analyst for
22 approximately a year prior to my taking on cases.

23 Q. Okay. And how many times have you been qualified
24 previously as a DNA analyst?

25 A. Approximately 40 times.

DIRECT EXAMINATION BY MS. SHEALY OF MARYANN BOEHM

1 MS. SHEALY: Your Honor, at this time we would offer
2 her as an expert in the field of DNA analysis.

3 THE COURT: Any objection or voir dire?

4 MS. RUNEY: No, Your Honor. Thank you.

5 THE COURT: She is a so qualified as an expert in the
6 field of DNA analysis.

7 Q. Ms. Boehm, if you would please could you just briefly
8 describe to the jury what is meant by the term DNA.

9 A. Sure. DNA stands for DeoxyriboNucleic Acid. It is the
10 chemical found in all of our cells of our body except for
11 red blood cells.

12 We get half of our DNA from her mother and half from
13 our father. With the exception of identical twins no two
14 individuals have the same DNA.

15 In forensic science we are interested in the portions
16 of DNA that differ between individuals which have 15
17 different locations. The combination of these tests results
18 make up what we call a DNA profile.

19 Q. Could you also tell us what is meant by the term
20 touch-DNA?

21 A. Touch-DNA is when a request is made to look for in DNA
22 where a person has touched an object. So like for this
23 countertop. Sometimes if you touch an object you leave some
24 skin cells behind. And it can vary whether you leave DNA
25 behind. Some people are called shedders. They slough off

1 more skin cells so they are more likely to leave DNA behind.

2 It also depends on how frequently you touch the object.

3 Say for example my steering wheel of my car, I touch that
4 often, multiple times a day. So more likely to find my DNA
5 on there because I touch it often versus just touching this
6 counter for the first time. You know, I might not leave as
7 much DNA behind.

8 It also depends on how hard I touch the object. If I
9 just brush the object I'm probably not going to leave as
10 many skin cells if I rub the object.

11 Q. Okay. And in order for you to be able to perform a DNA
12 analysis do you have to have some type of sample to compare
13 lift stick or swab stick?

14 A. Yes. We develop a DNA profile from the evidence and
15 then we compare it to any standards that are committed in a
16 case. Standards are from known individuals. It is either a
17 swab from the inside of their cheek or a blood sample.

18 Q. And in this case were you provided with State's
19 Exhibit 95, that being two DNA buccal swabs from James Rose?

20 A. Yes, ma'am. This is our Lab Item Number 10.

21 Q. And were you also provided with State's Exhibit 85,
22 that being a swab from the front passenger interior door
23 latch?

24 A. Yes, ma'am. I did receive this as well. It's our Lab
25 Number 8.

DIRECT EXAMINATION BY MS. SHEALY OF MARYANN BOEHM

1 Q. And regarding State's Exhibit 86, that being a swab
2 from the passenger side rear passenger interior door latch?

3 A. Yes, I did.

4 Q. Okay. If you would please, did you in fact perform an
5 analysis on these items?

6 A. Yes, I performed DNA analysis on all of these items.

7 Q. And could you tell the jury what the conclusions of
8 your analysis were?

9 A. Sure. Referring to my report, the DNA profile
10 developed from Item 8 which was the swab from the front
11 passenger side interior door latch is from an unidentified
12 male individual.

13 The DNA profile developed from Item 9 which was swabbed
14 from the passenger side, rear passenger interior door latch
15 is a mixture of at least two individuals. The DNA of the
16 major contributor to this mixture is from an unidentified
17 male individual. James Rose can be excluded as a
18 contributor to this mixture.

19 Q. Okay. So in other words, your conclusions were that
20 James Rose's DNA were not on the two swabs that you have
21 been provided with?

22 A. That's correct.

23 Q. But in fact there were two other individuals ultimately
24 or three other unidentified individuals' DNA?

25 A. From looking at my results it looks like the

1 unidentified individual from Item 8 is the same unidentified
2 individual from the major contributor of Item 9. So there's
3 at least two individuals who touched that car.

4 Q. And at least one of those is a male?

5 A. Yes, ma'am.

6 Q. Let's see. I have no further questions. Answer any
7 the defense may have.

8 THE COURT: Thank you. Any cross-examination?

9 MS. RUNEY: No, ma'am, I have no questions for this
10 witness.

11 THE COURT: All right. Ma'am, you may be excused.
12 Thank you.

13 MS. SHEALY: Michelle Eichenmiller.

14 (WHEREUPON, the witness was duly sworn.)

15 THE CLERK: Please state your first and last name and
16 spell your last for the record.

17 THE WITNESS: My name is Michelle Eichenmiller,
18 E-I-C-H-E-N-M-I-L-L-E-R.

19 DIRECT EXAMINATION BY MS. SHEALY OF MICHELLE EICHENMILLER:

20 Q. Ms. Eichenmiller, would you please can you tell the
21 jury where you are currently employed.

22 A. I currently work for the State Law Enforcement Division
23 in the Forensic Laboratory in the Firearms Department.

24 Q. And how long have you worked at SLED?

25 A. It will be eight years this April.

1 Q. And while you have been at SLED have you always been in
2 the same department?

3 A. Yes, ma'am.

4 Q. Okay. Tell us a little bit about your educational
5 background.

6 A. I have a bachelor's degree in biology, and I also have
7 a master of forensic science degree.

8 Q. And where were you trained as to firearm
9 identification?

10 A. Unfortunately you can't learn firearm's identification
11 in school. So you have to do an apprenticeship program
12 which is a three to five-year program under trained,
13 qualified firearm's examiners.

14 So I watched what they did, learned how they examined
15 evidence, took tests, did my own microscopic examinations.
16 And at the end of about four years I took a comprehensive
17 exam and then they signed off and said I could do forensics
18 identification on my own.

19 Q. And you have been doing that for how long now?

20 A. Since 2010, so three years.

21 Q. Have you previously testified in court?

22 A. I have.

23 Q. And have you been qualified as an expert in the field
24 of firearm identification?

25 A. Yes.

1 Q. Your Honor, at this time we would offer her as an
2 expert in the field of firearm identification.

3 MS. RUNEY: No questions and no objections.

4 THE COURT: She is so qualified as an expert in the
5 field of firearm's identification.

6 BY MS. SHEALY:

7 Q. Ms. Eichenmiller, if you would please tell the jury
8 when we are talking about the field of firearm
9 identification what are the possibilities of what you can
10 find in doing an analysis?

11 A. The common answers that we can give are either
12 positive, negative, inconclusive or unsuitable. Positive
13 would be this piece of fire ammunition was fired by this
14 firearm. Negative is it wasn't fired by this firearm.
15 Inconclusive is we can't tell you if it was or it wasn't.
16 And unsuitable is it is too damaged for me to tell you if it
17 was.

18 Q. Okay. And in answering that question, you're talking
19 about when you have ammunition or a projectile, fired
20 ammunition, and are comparing it to an actual weapon; is
21 that correct?

22 A. Correct.

23 Q. Now if you would, tell the jury what you can do if what
24 you have are projectiles and no weapon.

25 A. Sometimes we will receive projectiles or cartridge

DIRECT EXAMINATION BY MS. SHEALY OF MICHELLE EICHENMILLER

1 cases in the case and we have no weapons. So we can compare
2 those to each other to see if they were fired by the same
3 firearm.

4 And if they are bullets we can also give you a list of
5 manufacturers that could have made a firearm that would fire
6 that bullet based on the dimensions of the landing grooves.

7 Q. Okay. And regarding this case were you provided with a
8 number of projectiles?

9 A. Yes, sir.

10 Q. And with one projectile, State's Exhibit 93, that being
11 from the head during autopsy?

12 A. Whenever we receive evidence in the lab I take pictures
13 of the outside packages and then when we open it up I will
14 write on it with the lab number my initials and the item
15 number and then repackage it and seal it with my initials
16 too.

17 So this is what I examined in this case.

18 Q. Okay. And showing you State's Exhibit 76, that a
19 projectile removed from the bottom of cabinet, could you
20 tell the jury whether or not you also analyzed that item?

21 A. It is the same container which still has my initials
22 and the date on it. It's the projectile is in here.

23 Q. Okay. And then what about State's Exhibit 91, that
24 being a projectile from the left chest cavity during
25 autopsy?

1 A. Yes, this is the item I examined.

2 Q. How many did I give you?

3 A. Three.

4 Q. Okay. And then State's seven -- excuse me, Exhibit 75,
5 the projectile and a piece of plastic saw guard from the
6 laundry room floor, did you also analyzed that?

7 A. Yes. This one also has the lab number, my initials,
8 and the item number.

9 Q. Now if pellets were removed from someone is there any
10 type of examination that you can do regarding pellets?

11 A. Basically what we would do with pellets if they were
12 removed from the scene would be we could just measure them
13 and tell you what size they're consistent with and if they
14 could have been in and if we have shot shells or shotguns.

15 Q. Okay. If we could just stop on that for just a second.
16 Explain to a jury when a shotgun is fired explain what
17 pellets are in relationship to a shotgun being fired.

18 A. Shotguns normally have many pellets that could come out
19 of a gun. That's how -- that's what we refer to pellets.
20 They are very -- they could be very small or very large.

21 There is birdshot which is smaller and buckshot which
22 is larger. But there are several projectiles that come out
23 at once with a shotgun typically.

24 Q. And once you receive the various projectiles in this
25 case could you describe to the jury what type of analysis

1 you performed.

2 A. These were fired bullets. I was able to examine them,
3 count lands and grooves where applicable. There was one
4 that I couldn't. Compare them to each other. Determine if
5 they were fired by the same firearm and then measure their
6 lands and grooves and for investigative purposes of what
7 type of gun you might be looking for.

8 Q. Describe that for us again. When you say lands and
9 grooves what does that mean?

10 A. When a firearm is manufactured the manufacturer chooses
11 a number of lands and grooves to put in a barrel. They give
12 stability to a bullet.

13 It is sort of like when a quarterback throws a football
14 it gets stability and accuracy. That's dependant on what
15 the manufacturer wants to do. They pick a number. They
16 pick a direction. And then they pick a size of lands and
17 grooves. So that is particular to different firearms.

18 Q. So when you're looking at the various projectiles are
19 you trying to determine whether or not they have the same
20 lands and grooves or similar lands and grooves?

21 A. That's where I start usually. I will count the number
22 and see if they could have come from the same firearm.

23 And then I put them up under my comparison microscope
24 which is basically two separate microscopes connected by an
25 optical bridge. Basically a pair of binoculars where I can

1 look through and see both bullets at the same time, rotate
2 them around and try to match up the striations that I see.

3 Striations are scratches that are placed on the bullet
4 by the firearm.

5 Q. And as it relates to the projectiles that you are
6 discussing could you describe to the jury whether or not
7 that means a shotgun could have emitted those projectiles?

8 A. Not typically. These would come from a handgun.

9 Q. Okay. If you would please, tell the jury your
10 conclusions from analyzing each projectile.

11 A. Do you want me to use State's exhibit or ...?

12 Q. If you could.

13 A. Okay.

14 Q. Or just the description from where it came.

15 A. Okay. The fired bullet that was in the saw guard which
16 is State's Exhibit 75, and one from the left chest cavity
17 which is 91, and State's Exhibit 76 which is from the bottom
18 of the cabinet, were all fired by one firearm, the same
19 firearm; and they may be suitable for identification with
20 that firearm.

21 Q. Meaning if we had a firearm you could then compare it?

22 A. Correct.

23 Q. Okay. So the one from the saw guard, the one from the
24 chest cavity, and the one from the cabinet, all were fired
25 by the same weapon?

DIRECT EXAMINATION BY MS. SHEALY OF MICHELLE EICHENMILLER

1 A. Yes.

2 Q. And could you tell the jury based on the projectile
3 what type of weapon would have fired those projectiles?

4 A. Yes, based on the size which is the caliber, it was a
5 .38 Special or a .357 magnum caliber.

6 They were fired out of a firearm with five grooves,
7 right twist. When I put that information into a database
8 that we have, it will be list of firearm -- or manufacturers
9 that could have fired it.

10 Do you want me to read the list?

11 Q. Yes, go ahead and tell us that.

12 A. Okay. In .38 Special there's a couple of different
13 ones. It could have been manufacturer Alamo, Alpha, Century
14 Arms, Aerisoti (ph), Escoden (ph), Gabliando, Herbert
15 Schmidt, INA, Llama, Ruger, Smith and Wesson, Sport Arms, or
16 Taurus.

17 In 357 magnum caliber it could have been Coonan Arms,
18 Kaznar, Llama, Ruger, Smith and Wesson, or Taurus.

19 Q. Okay. And when you were discussing a .38 Special or a
20 357 magnum, are those handguns?

21 A. Yes.

22 Q. And are they revolvers?

23 A. Yes, typically.

24 Q. What is the significance of a revolver over a non
25 revolver?

1 A. A revolver versus a semi automatic, a revolver will not
2 eject cartridge cases typically. It will be they will stay
3 in the cylinder.

4 A semiautomatic will after each firing will kick the
5 cartridge case out and it will laden at the scene.

6 Q. Okay. And I notice that as you were telling us your
7 conclusions you did not mention State's 93, that having come
8 from the head at autopsy.

9 A. Correct.

10 Q. Could you describe to us what the results of that
11 were?

12 A. That one was damaged and limited marks of value. So it
13 may or may not be suitable for identification.

14 It was compared to the other three. And it was
15 inconclusive. That means it was too damaged for me to tell
16 you for certain that it came from the same firearm as the
17 other three.

18 Q. And what are ways that a projective can get damaged?

19 A. Depending on what it impacts could cause damage.

20 Q. And within a head you mean if it had struck structures?

21 A. Bone or -- correct.

22 Q. Okay.

23 MS. SHEALY: Beg the Court's indulgence for just a
24 moment. I have no further questions. Please answer any the
25 defense may have.

DIRECT EXAMINATION BY MS. SHEALY OF MICHELLE EICHENMILLER

1 THE COURT: Cross-examination.

2 MS. RUNEY: I don't have any questions.

3 THE COURT: Thank you. You may be excused.

4 MS. SHEALY: Your Honor, may be approach for just a
5 moment?

6 THE COURT: Sure.

7 (Bench conference.)

8 MS. BALDWIN: The State calls Dr. Lee Marie Tormos.

9 THE CLERK: Once you are seated, please state your name
10 and last name and then spell your last for the record.

11 THE WITNESS: My name is Lee Marie Tormos. Last name
12 Tormos, T-O-R-M-O-S.

13 (LEE MARIE TORMOS, after having
14 been sworn, testified as follows:)

15 DIRECT EXAMINATION BY MS. BALDWIN OF LEE MARIE TORMOS:

16 Q. Dr. Tormos, what is your occupation?

17 A. I am a forensic pathologist.

18 Q. What is forensic pathology?

19 A. Forensic pathologist is a person that does a postmortem
20 surgical examination to determine the cause and manner of
21 death.

22 Q. And tell the jury a little bit about your education and
23 training.

24 A. First of all, I went to the University of Puerto Rico
25 where I got a bachelor's degree in science as a premed

1 student. Then I went on to the state medical school where I
2 did my medical doctorate.

3 Then I underwent four years of specialty training in
4 anatomic and clinical pathology where I learned autopsy
5 techniques and I also learned to diagnose deceased as a
6 cause of death.

7 And then I did subspecialty training at the Medical
8 University of South Carolina where I did a fellowship. I
9 learned forensic pathology and how injury and the
10 interpretation of injuries to the body leads to the
11 determination of cause and manner of death in medical legal
12 cases.

13 Q. Do you belong to any medical or scientific groups or
14 associations?

15 A. Yes, I do. I belong to several. The most relevant
16 here is NAME which is a National Association of Medical
17 Examiners. I also belong to the AABB which is the American
18 Association of Blood Banking and the College of American
19 Pathologists in the past.

20 THE COURT REPORTER: I'm sorry, I didn't hear the last
21 one.

22 A. The College of American Pathologists.

23 Q. And excuse me if you have said it already. Where are
24 you employed?

25 A. I work at the Medical University of South Carolina

DIRECT EXAMINATION BY MS. BALDWIN OF LEE MARIE TORMOS

1 where I stayed on as a full-time forensic pathologist.

2 Q. How many autopsies have you performed?

3 A. I worked as a medical examiner for two years before
4 moving to the states. So all told I've done over a thousand
5 autopsies.

6 Q. Have you testified in court before?

7 A. Yes, I have.

8 Q. Approximately how many times?

9 A. About ten times. Here in the State of South Carolina.

10 MS. BALDWIN: Your Honor, at this time we would like to
11 have Ms. Tormos -- or Dr. Tormos qualified as an expert in
12 the field of forensic pathology.

13 MS. RONEY: Dr. Tormos is certainly qualified.

14 THE COURT: Okay. She is so qualified.

15 BY MS. BALDWIN:

16 Q. Dr. Tormos, can you explain to the jury what happens
17 during an autopsy what the procedure is.

18 A. Sure. During an autopsy the case is referred to by the
19 medical -- by the coroner in the State of South Carolina who
20 is leading the death investigation.

21 They give us a little bit of history and they tell us
22 the name and date of birth of the patient, and then the body
23 is brought up to us for the actual examination. When we
24 receive the body in the autopsy room we take pictures and
25 photographs to document the findings on the outside of the

1 body. We also draw diagrams. We do a detailed inspection,
2 drawing and samples that are needed including hair samples,
3 fingernail clipping, depending on the nature of the case.

4 And then we do the internal examination which consists
5 of a Y-incision and examination of the internal organs,
6 document the findings of the internal organs. And we also
7 look at the brain.

8 Q. Did you have the occasion to perform an autopsy on the
9 victim in this case, Leland Shannon, Jr.?

10 A. Yes, I did.

11 Q. And can you tell the jury about what your findings
12 were?

13 A. Okay, I have to give you a little bit of background.
14 This gentleman after he actually after he sustained his
15 injuries he was still responsive and he was transferred to
16 the Medical University by Carolina Emergency Department
17 where the doctors underwent heroic, heroic measures trying
18 to save his life.

19 We he arrived he was put under my anesthesia and he was
20 intubated. And despite all the surgical intervention that
21 the doctor -- the doctors did, the infusion of possible
22 blood products, the blood transfusions, the fluids they gave
23 him, they were not able to sustain his life and therefore he
24 was pronounced about six hours after he arrived in the
25 emergency department.

DIRECT EXAMINATION BY MS. BALDWIN OF LEE MARIE TORMOS

1 During that time a lot of procedures were done on his
2 body. So when I get the body for autopsy a couple of hours
3 later I have to take into consideration the medical
4 intervention that happened.

5 At that time when I received the body he had a sutured
6 incision on his scalp. He had tubes extending into his
7 mouth that had helped him breathe. He had a cervical
8 immobilizer in place. He had an abdominal incision that
9 extended from right below the ribs all the way down to the
10 anterior pelvis. And that had been closed off by gauze and
11 surgical film in order to allow his internal organs to swell
12 up and not be constricted.

13 They had also attempted to repair an injury to the left
14 thigh. And there was a sutured incision of the left thigh.
15 And they had also the suture -- they had also done incisions
16 below the left knee.

17 Chest tubes were in place. And he had other things
18 like EKG pads, IV fluid, and tubes inserted into his
19 antitibial (ph) facet and other monitors to monitor his
20 vital signs.

21 I documented all of those. I removed all of those. At
22 the time of examination I found that this descendant had
23 sustained three gunshot wounds and one shotgun wound.

24 Q. And where was the shotgun wound?

25 A. The shotgun wound was to the anterior left thigh

1 basically at the medial left side, a little bit on the
2 medial side.

3 The doctors had incised right through the entrance
4 wound. The shotgun pellets had shredded his femoral artery.
5 And they had -- it had also shredded his femoral vein.

6 They, the surgeons, had put a tub very similar to a
7 drinking straw on the ends of the femoral artery in an
8 attempt to bridge them temporarily until a more suitable
9 graft was done. And they had sutured his -- his femoral
10 vein.

11 There were pellets, birdshot pellets, still in the soft
12 tissues. But I did redocumentation that the surgeons did
13 remove the shotgun wadding, the plastic capsule that holds
14 the birdshot pellets together in the shotgun. They did
15 remove it from the soft tissues during the course of the
16 surgery.

17 Q. And tell us about the gunshot wounds, where were those?

18 A. Okay. The decedent had three gunshot ones. The first
19 gunshot wound was to the top of the head on the left side.
20 And it traveled in a downward direction and it lodged in his
21 brain.

22 I do not know if the clinicians were initially aware of
23 this wound to the head. I know they did not x-ray the head
24 prior to taking him to surgery. And so I am not sure if the
25 wound was identified by the clinicians early on.

DIRECT EXAMINATION BY MS. BALDWIN OF LEE MARIE TORMOS

1 They were more concerned with the wounds to the chest
2 and to the leg.

3 (WHEREUPON, State's Exhibit Number 107 marked for ID.)

4 Q. And Dr. Tormos, it actually might help you. I have
5 State's Exhibit 107 for identification. Can you tell me
6 what this is?

7 A. That is our standard male diagram for wound diagram,
8 the wounds on the body.

9 Q. And if I could have the witness step down, Your Honor,
10 if she could demonstrate on the diagram.

11 A. (Witness complies.)

12 Q. Use that marker. And if you could show the jury where
13 those wounds were.

14 A. The first -- I'm sorry, I'm right-handed. I'm sorry.
15 On the left side of the body. The first gunshot wound was
16 right here to the top of the head on the left side. And the
17 bullet travelled in a downward position. And it was
18 recovered right here in the head and within the brain.

19 The second gunshot wound was at the base of the neck,
20 right at the top of the shoulder right where this crease
21 sometimes forms. It was right there at the top of the
22 shoulder.

23 And the third gunshot wound is this one. So if you
24 look at it from the front and the back it is sort of at the
25 mid line. There was another gunshot wound just on the

1 posterior shoulder right there. This is about an inch
2 apart. So they are very close together.

3 This entrance wound (pointing) actually goes downward
4 and meets up with this entrance wound (pointing). So
5 therefore I know that two projectiles entered the body at
6 this point. But I cannot tell which one went where because
7 the trajectories overlap.

8 I do know that one of the bullets entered the body at
9 this level (pointing) approximately and it went into the
10 chest cavity where it lacerated the left lung and caused
11 blood accumulation.

12 The other one traveled under the skin, which is the
13 path of least resistant. In this fracture three ribs on the
14 lateral side which are ribs five, six, and seven. It then
15 fractured these ribs and then stayed right on the lateral
16 chest right under the skin.

17 The projectile on the lateral -- right under his skin,
18 was removed by the clinician when they were doing the
19 surgery because they had to place a chest tube as the bullet
20 was in the way. So the clinician did remove that one and
21 they transferred it to public safety which is our internal
22 department within MUSC for transfer of evidence.

23 The one that entered the chest cavity that lacerated
24 the lung, that one was loose within the lung chest cavity.
25 So it can move. And it's within the chest cavity, and you

1 can see it in the x-rays that it is moving.

2 And then remember also that he also had a shotgun wound
3 to the anterior medial left side. The doctors did cut right
4 through it. They removed the plastic wadding from the side,
5 which was right here (pointing).

6 They removed part of the pellets. They tried to fix a
7 femoral vein and femoral artery which were both transected,
8 okay. And then they closed it back up.

9 They also did surgical incisions of the leg. And they
10 also did the midline abdominal incision in order to allow
11 the body to swell up and not constrict any organ.

12 Q. Thank you. You can take your seat.

13 MS. RUNEY: Your Honor, before we go any further I just
14 would like to renew my earlier objection.

15 THE COURT: Okay, and these are to the documents she is
16 getting ready to offer into evidence?

17 MS. RUNEY: Yes, ma'am.

18 THE COURT: And the objection is overruled. I will
19 incorporate the prior arguments. I need the item numbers.

20 MS. BALDWIN: Your Honor, these are State's Exhibit 64
21 through 67.

22 THE COURT: Okay. Are you offering them into evidence?

23 MS. BALDWIN: Yes, Your Honor.

24 THE COURT: Defendant 64, 65, 66, and 67 are admitted
25 over objection. Defendant ---

1 Q. Doctor ---

2 THE COURT: I'm sorry, State's Exhibit 64, 65, 66, and
3 67 are admitted over the defendant's objection.

4 (WHEREUPON, State's Exhibit 64, photo, was marked for
5 identification.)

6 (WHEREUPON, State's Exhibit 64 was admitted into evidence.)

7 (WHEREUPON, State's Exhibit 65, photo, was marked for
8 identification.)

9 (WHEREUPON, State's Exhibit 65 was admitted into evidence.)

10 (WHEREUPON, State's Exhibit 66, photo was marked for
11 identification.)

12 (WHEREUPON, State's Exhibit 66 was admitted into evidence.)

13 (WHEREUPON, State's Exhibit 67, photo was marked for
14 identification.)

15 (WHEREUPON, State's Exhibit 67 was admitted into evidence.)

16 BY MS. BALDWIN:

17 Q. Doctor, you are going to see State's Number 64 come up
18 in front of you on that screen. Can you tell us what that
19 is?

20 A. That is an x-ray that was taken by the clinicians where
21 they identified the shotgun wound to the left thigh. And it
22 is an x-ray of the decedent's left thigh where you can see
23 all those little white dots are the birdshot pellets in the
24 soft tissues of the thigh.

25 Q. And State's 66, could you tell us what that is?

DIRECT EXAMINATION BY MS. BALDWIN OF LEE MARIE TORMOS

1 A. That is the pre-surgical procedure chest x-rays that
2 the clinicians took before taking this gentleman up to the
3 operating room.

4 As you can see, it has two projectiles. The one in the
5 mid left chest cavity, that is the one that was loose within
6 the chest cavity. And that is the one that I recovered.

7 And then there is right at the very edge near the lower
8 right-hand corner, that is the projectile that was under the
9 skin that the clinicians removed in the process of inserting
10 the chest tub.

11 Q. And State's 65?

12 A. This is the chest x-ray that I took at the autopsy
13 which only shows one projectile. You can see it is still in
14 the left chest cavity. But it in the margin of the lower
15 aspect of the heart which is this gray silhouette that you
16 can see on the left chest cavity. And that is a projectile
17 that I recovered at the time of autopsy.

18 Q. And State's 67?

19 A. This is an x-ray of the head. I took this x-ray before
20 I performed the autopsy. And it shows a deformed projectile
21 and projectile fragments as it entered the left aspect of
22 the head.

23 You can see the projectile fragments. May I point?

24 Q. You can actually -- you can touch that screen.

25 A. Okay. I'm sorry I didn't know that. These projectile

1 fragments are where the entrance wound is. And you can see
2 the fragments sort of give us the trajectory. And then that
3 is the projectile that I recovered from the brain.

4 Q. And just using that Smartscreen real great can we pull
5 us State's 66?

6 A. Okay.

7 Q. And just point out for the jury where those two
8 projectiles are.

9 A. Okay. So this is the chest. You can see the right --
10 the "R" marker is on the right side. This is the projectile
11 that I recovered at the autopsy (pointing). And this is the
12 projectile that was under the skin on the side of the chest
13 (pointing) that the clinicians recovered when they placed
14 the chest tube.

15 Q. Okay. We could just take this down. Doctor, as to the
16 shotgun injury, what did the dispersion of the pellets or
17 the nature of wound indicate to you as far as how far away
18 the gun was?

19 A. Okay, when shotgun pellets are fired to come out of the
20 plastic capsule and that basically spread out in the form of
21 a cone. But it travels a certain distance before they start
22 spreading out.

23 The wound characteristics with the scalloped edges tell
24 me that the end of the shotgun and the surface of the skin
25 were three feet or maybe a little less away from each other.

DIRECT EXAMINATION BY MS. BALDWIN OF LEE MARIE TORMOS

1 So this is what we call a relatively close gunshot wound.

2 Another characteristic is the actual plastic device
3 that holds the pellets was also embedded in the wound which
4 tells me that this is also less than three feet away from
5 the end of the weapon.

6 Q. And as to the head, neck, and shoulder injuries can you
7 tell the position that the victim was in when he was shot?

8 A. No, I cannot. I can tell you how the bullets traveled
9 when they were within the body. So the bullets once they
10 entered the body they went downward, both the head and the
11 two to the base of the neck and the shoulder, they all went
12 downward and slightly leftward.

13 And I can tell you that the muzzle in relation to the
14 body was probably pointed in this direction (pointing). But
15 I cannot tell you if he was sitting up straight, if he was
16 shot from a second story balcony, if he was bent over at the
17 waist. I do not have that information.

18 MS. BALDWIN: Beg the Court's indulgence.

19 I have no further questions, Doctor.

20 MS. RUNEY: I don't have any questions for this
21 witness.

22 THE COURT: All right. Doctor, you may step down.
23 Thank you. And be excused.

24 MS. SHEALY: We just have that one other matter
25 remaining.

DIRECT EXAMINATION BY MS. BALDWIN OF LEE MARIE TORMOS

1 THE COURT: Okay. Ladies and gentlemen, I have a
2 matter of law that I need to take up with the attorneys. It
3 will not take us very long. Otherwise, I would excuse y'all
4 for the day. I know we have some folks that need to leave
5 by 5:15.

6 Do you have one short witness you can put up, Ms.
7 Shealy?

8 MS. SHEALY: Oh, no, we do not. We do not.

9 THE COURT: Okay. So do we want to just let everybody
10 go for today and ---

11 MS. SHEALY: Well, could we approach?

12 THE COURT: Uh-huh.

13 (WHEREUPON, bench conference was had.)

14 THE COURT: Ladies and gentlemen, as I indicated we
15 have -- I think we have one more witness that will be very
16 short. If you will return to your jury room we will get you
17 right back out as soon as we can. Thank you.

18 (WHEREUPON, jury exits courtroom 4:46 p.m.)

19 THE COURT: I'm sorry, that came across in a confusing
20 way. I'm assuming you're just putting the custodian up to
21 put the tape in, ---

22 MS. SHEALY: That's correct.

23 THE COURT: --- admitted and then that ---

24 MS. SHEALY: That's it.

25 THE COURT: Okay. Now I know there is an objection to

DIRECT EXAMINATION BY MS. BALDWIN OF LEE MARIE TORMOS

1 the one jail call. We wanted to listen to it again I
2 believe. So we could go ahead and do that.

3 MS. SHEALY: We will go ahead and do that.

4 (WHEREUPON, DVD of jail call was played.)

5 THE COURT: Okay.

6 MS. RUNEY: Thank you, Your Honor. My previous
7 objection was that Rule 804(b) (3) did not apply and that
8 this was not a statement against interest.

9 I also objected under Rule 403 and that it is not
10 relevant and it is confusing because it is not very clear
11 from the recording what he is talking about.

12 It is clear that he has been incarcerated, he is
13 looking for his girlfriend, finding -- trying to find out
14 how to get in touch with her and concerned that he can't
15 find her from the jail.

16 The end of the conversation is that he wants to see
17 what is going on, I know they took that girl's car, I guess
18 they're trying to find -- try to see if my DNA is in there.

19 I don't think that he is saying my DNA is in there. He
20 is -- he is saying that the police are taking that car to
21 see if his DNA is in there.

22 They take the car or some car that is of the
23 description at the scene that night and DNA is tested. The
24 jury is going to hear about that.

25 And he says my phone is in that car and -- or the phone

1 that I was using is inside there. He doesn't ever say that .
2 the phone I was using that night is in that car.

3 And I think it is very unclear -- I don't -- I don't
4 know the context of the entire conversation. I think the
5 jury is certainly not going to know the context of the
6 entire conversation.

7 And then the State did raise that could fall under
8 801(b) an admission by a party opponent. But our position
9 is that this is not an admission. He is in jail. He is
10 trying to find his girlfriend. And he is having whoever he
11 is talking to to try to track her down.

12 THE COURT: Okay. Ms. Shealy or Ms. Baldwin.

13 MS. BALDWIN: Thank you, Your Honor. It's the State's
14 position that it is an admission by a party opponent. He
15 states not only is he concerned that DNA may be in the car
16 that the police recovered, but he is also concerned about a
17 phone that he was using, his phone. And then he backs off
18 and says well the phone I was using.

19 It is in the car that police took into custody. Phones
20 were recovered in that car. The car the police took into
21 custody was a silver or gray, depending on how you describe
22 it, Neon.

23 Witnesses described a silver or gray sedan or silver or
24 gray Neon coming to the scene. One witness described the
25 defendant getting into that car and leaving after the

DIRECT EXAMINATION BY MS. BALDWIN OF LEE MARIE TORMOS

1 shooting in that same car. For those reasons we believe it
2 is evidence of guilt.

3 THE COURT: Okay. Well, you know, the caption for
4 801(d)(2) was a little bit confusion because they called it
5 admission by a party opponent.

6 But what the rule actually says is the statement is
7 offered against a party and is - and this subject is
8 Subsection A - the parties own statement in either an
9 individual or represented capacity.

10 Well, the statement about the phone and not my phone by
11 the phone I was using that night is the defendant's own
12 statement. I'm going to admit it 801(d)(2)(a).

13 I don't have a 403 problem with it for this reason: It
14 is relevant to his presence in the car for his concern about
15 connecting his presence to the car.

16 The only prejudice is that it is relevant to his
17 presence in the car. There is simply no substantial
18 prejudice to outweigh the probative value. So I'm going to
19 admit it under that -- what -- that's not hearsay. That is
20 what the rule is. It isn't hearsay.

21 I'm also going to admitted it -- nobody has put forth
22 this argument, but there are arguments that have been made
23 regarding using jail phone calls and the context of the
24 call. Ms. Runey did mention the context. And I understand
25 it that's that full telephone call, correct?

1 I mean the jail calls are usually limited to 15
2 minutes. But that one hung up a little over three. So I'm
3 not sure that there was any other conversation which could
4 context it.

5 And quite frankly, I'm not sure that the folks talking
6 wanted anybody to be able to figure out the context. So I'm
7 going to allow it. But I certainly note your objection for
8 the record.

9 MS. RUNEY: Thank you.

10 THE COURT: All right. Anything further before we
11 bring the jury out and play the tape for them?

12 MS. SHEALY: No, could I approach your court reporter
13 because after that I can rest.

14 THE COURT: Okay.

15 MS. ERHLICH: Your Honor, the only thing about that is
16 when the evidence goes back to the jury I don't think the
17 entire CD can go back to them.

18 THE COURT: No, they will have to redact it out.

19 MS. ERHLICH? Okay.

20 THE COURT: If it goes back.

21 MS. BALDWIN: I think they would have to just ---

22 THE COURT: They would have to ask to have it played is
23 what they would have to do.

24 We don't need to check the evidence right now ---

25 MS. SHEALY: Okay.

DIRECT EXAMINATION BY MS. BALDWIN OF LEE MARIE TORMOS

1 THE COURT: --- because you are going to rest. But I'm
2 going to let them go. I mean there are people that need to
3 be gone.

4 MS. SHEALY: Okay. That's fine.

5 THE COURT: So we can look at that after.

6 MS. SHEALY: Okay.

7 THE COURT: Okay. Are y'all ready for the jury; do you
8 want to go ahead and call your witness in?

9 MS. BALDWIN: Yes.

10 THE COURT: All right. Let's bring them in. Thank
11 you.

12 (WHEREUPON, jury enters courtroom December 11, 2013,
13 4:58 p.m.)

14 THE BAILIFF: The jurors are all present, Your Honor.

15 THE COURT: Thank you, sir. Thank you ladies and
16 gentlemen. Call your next witness, please.

17 MS. BALDWIN: Thank you, Your Honor. The State calls
18 Sergeant Kieviet Heyward.

19 THE COURT: Okay. Sergeant, if you would come on up
20 and we will swear you in.

21 (WHEREUPON, the witness was duly sworn.)

22 THE CLERK: After you are seated if you would please
23 state your first and last name and spell your last.

24 MS. HEYWARD: Kieviet Heyward. Last name is spelled
25 H-E-Y-W-A-R-D.

1 THE COURT REPORTER: I'm sorry, could I get the first
2 name too?

3 THE WITNESS: Kieviet, K-I-E, V as in Victor, I-E-T.

4 THE COURT: Thank you.

5 (KIEVIET HEYWARD, after having been
6 sworn, testified as follows:)

7 DIRECT EXAMINATION BY MS. BALDWIN OF KIEVIET HEYWARD:

8 Q. Sergeant, what is your occupation?

9 A. I'm the lobby sergeant for the Sheriff Al Canon
10 Detention Center.

11 Q. Okay. What do those duties involve?

12 A. We handle visitation, bonds and fines, phone records,
13 visitation logs, mail logs.

14 Q. And when you say phone records what do you mean?

15 A. We are responsible for keeping the records for all
16 phone calls made throughout the facility from inmates that
17 record and have those -- of those phone calls.

18 Q. You said those phone calls are recorded?

19 A. Yes, they are.

20 Q. And how are they recorded?

21 A. They are recorded digitally. And they are kept -- they
22 are filed on a computer. And we have to burn a disc when
23 subpoenaed for them.

24 Q. How are they organized; how do you keep track of each
25 inmate?

DIRECT EXAMINATION BY MS. BALDWIN OF KIEVIET HEYWARD

1 A. We keep track of the record records through inmate's
2 pin numbers. When an inmate comes into a facility they are
3 given each their own individual pin. And that's what they
4 use to make phone calls. So their pin is logged to them, to
5 that individual inmate.

6 Q. And those records are stored?

7 A. Correct.

8 Q. They are completed in the normal course of business?

9 A. Correct.

10 Q. How long are those records kept?

11 A. We keep records for approximately five years.

12 Q. And were you served with a subpoena requiring the
13 production of jail recordings, jail phone call recordings,
14 as to James R. Rose?

15 A. Correct.

16 Q. I'm going to show you what's been marked as State's
17 Exhibit 99 for ID. Can you tell me what that is?

18 A. This is the disc made by the jail. I see that Thomas
19 signed the disc. She is an employee of -- who works under
20 me who also assists me with printing and recorded when
21 subpoenaed.

22 MS. BALDWIN: Your Honor, at this time we would like to
23 admit State's Exhibit 99 into evidence.

24 THE COURT: Okay. I note there has been an objection.

25 MS. RUNEY: Yes, Your Honor, I would just renew that

DIRECT EXAMINATION BY MS. BALDWIN OF KIEVIET HEYWARD

1 objection.

2 THE COURT: All right. And subject to my prior ruling
3 the objection is overruled and I will admit the evidence,
4 State's 99 pursuant to Rule 803-6 and Rule 801(d)(2)(a).

5 MS. BALDWIN: Thank you, Your Honor.

6 (WHEREUPON, State's Exhibit 99 marked and admitted.)

7 MS. RUNEY: And Your Honor, that is limited to one
8 phone call on this CD?

9 THE COURT: The one phone call that we have discussed.

10 MS. RUNEY: Yes, Your Honor.

11 THE COURT: Thank you.

12 MS. BALDWIN: Beg the Court's indulgence.

13 BY MS. BALDWIN:

14 Q. And just to clarify, Sergeant, this disc is for phone
15 calls from inmate James R. Rose?

16 A. Correct.

17 MS. BALDWIN: Your Honor, at this time we would like to
18 publish the phone calls.

19 THE COURT: You may.

20 MS. BALDWIN: Exhibit 99.

21 (WHEREUPON, phone call played.)

22 THE COURT: Thank you. Cross-examination.

23 MS. RUNEY: I don't have any questions. Thank you.

24 THE COURT: All right. Thank you. Sergeant, you may
25 be excused. Thank you.

DIRECT EXAMINATION BY MS. BALDWIN OF KIEVIET HEYWARD

1 THE WITNESS: Thank you.

2 THE COURT: Yes, ma'am.

3 MS. SHEALY: Your Honor, at this time the State would
4 rest.

5 THE COURT: Thank you. Ladies and gentlemen, the State
6 has rested. So we are finished with the State's portion of
7 the case. And I'm going to go ahead and let y'all go for
8 the day.

9 We will see you back at 9:30 in the morning. I
10 understand we will have some doughnuts for you. So maybe
11 that will help keep everybody alert. And we might even
12 order lunch tomorrow. I just need to wait and see where we
13 are in the case.

14 Please do not begin discussing the case even with each
15 other. As you have only heard the State's portion. You've
16 not even heard the argument of the lawyers and the charge on
17 the law. And as always, please don't do any independent
18 research or communicate with anyone about your service.

19 Thank you, ladies and gentlemen. Have a safe ride
20 home. See you in the morning.

21 (WHEREUPON, jury exits courtroom 5:08 p.m.)

22 THE COURT: Okay. Any motions from the defense at this
23 time?

24 MS. RONEY: Yes, Your Honor. At this time the defense
25 would renew all of our previous objections for the record.

1 We would also make a motion for a directed verdict as to the
2 murder charge against Mr. James Rose.

3 There has been no physical evidence that links Mr. Rose
4 to this crime, nothing collected in the trailer where Mr.
5 Shannon was shot or Mr. Rose's home that would indicate he
6 had anything to do with this crime.

7 There has been a car that had been seized. There is
8 nothing that put Mr. Rose in that car, no physical evidence.
9 There is really no evidence that this is the same car other
10 than the make and the color of the car.

11 We have no gun that ties Mr. Rose to this shooting.
12 There is no blood found on him. There is no blood found in
13 his car. And there is no blood found in his home.

14 There are no fingerprints at the scene that put him
15 there at the time of the shooting. And, Your Honor, as far
16 as the witnesses that we heard from, they have shown us all
17 that they are not credible witnesses. They've given several
18 versions of their stories about what happened that night.
19 They have admitted that to us on the stand.

20 And because of those reasons the State has failed to
21 produce competent evidence that would show that Mr. Rose is
22 in fact guilty of these charges or that he shot Mr. Leland
23 Shannon.

24 THE COURT: Okay. Yes, ma'am.

25 MS. SHEALY: Thank you, Your Honor. It would be our

State v. James Rose

1 assertion that we have in testimony of Antoine Alston --
2 Antoine Aiken and Tawana Alston who indicate that Mr. Rose
3 was present that evening, that he had been irritated earlier
4 in the evening, that when he left that is when the other
5 individuals come into the home, one being tall and one being
6 short, and that Antoine Alston indicates that while --
7 Antoine Aiken indicates that when he runs around the mobile
8 home he can hear the voice that he has known since they were
9 children together, Mr. Rose indicating to tell them to go to
10 the back, go to the back, and then telling them to hurry up.

11 We also have the testimony of Joy Holmes who sees the
12 two people in her bedroom that is obviously after the
13 shooting occurs and sometime between when the vehicle leaves
14 that she said at the time that she gave her statement wore a
15 red shirt and had a familiar voice and who now has indicated
16 that after upon reflection and calming down that she
17 realizes that that was James Rose.

18 And, Your Honor, the fact that two of our witnesses
19 indicate that it was a gray Neon, a gray Neon was found at
20 his residence the next day.

21 The neighbor had indicated that he had become
22 increasingly hostile towards Julio, that he came over that
23 morning saying if anybody asks you if you know me or where I
24 am, say you don't, that when she asked him whether or not he
25 was involved in the shooting he dips his head.

1 Additionally she indicates on the news show it did not
2 say who had gotten shot. She asked him the morning hours of
3 the day that he was arrested and the later morning hours of
4 the incident who got shot. He answers Julio.

5 That we have substantial information that would warrant
6 the jury making a decision in this case.

7 THE COURT: Thank you. All right. Respectfully I'm
8 going to deny the motion for a directed verdict. As you
9 know, if there is any direct evidence or substantial
10 circumstantial evidence reasonably tending to prove guilt,
11 basically any evidence, competent evidence, the jury must
12 make the decision and a directed verdict is not indicated.

13 Certainly evidence has been presented. Eyewitness ---
14 (Pause.)

15 THE COURT: Okay. Just always worried when that door
16 opens to the jury.

17 ... from Mr. Antoine Aiken and Ms. Tawana Alston. We
18 also have Joy Mills testimony regarding what they saw and
19 heard on the evening of the shooting.

20 I believe Ms. Alston put the defendant as the driver of
21 the gray Neon that left with the individuals that she
22 indicated had ski masks on and that were the shooters.

23 We've also got Brandon Cantrell and Clarence Hush who
24 testified about the experience earlier in the day at the
25 decedent's residence where there was some issue with the pot

State v. James Rose

1 that they were going to buy, either the price being raised
2 or there not -- it not being there. But in the event that
3 Mr. Rose was made to wait for some period of time and was
4 not happy about that, that he was agitated. And according
5 to Mr. Hush wanted to get his respect.

6 All of that is properly submitted to the jury to give
7 it the weight that it sees fit. So I will deny the motion
8 for a directed verdict. Anything further?

9 MS. SHEALY: No, Your Honor. Thank you.

10 THE COURT: All right. Do you know yet if y'all are
11 putting any evidence up, or do y'all want to talk about it
12 tonight and just let me know tomorrow? That's certainly
13 fine.

14 (Counselors confer.)

15 MS. RUNEY: Your Honor, we would like to discuss this
16 tonight with Mr. Rose.

17 THE COURT: Okay.

18 MS. RUNEY: But we do feel like if we did, it could
19 move pretty quickly tomorrow morning.

20 THE COURT: Okay. Well, I'm just trying to figure out
21 what time to get you all to come. Go ahead and come at
22 9:30. Y'all have been really efficient today.

23 And if you do decide to put some evidence up, we can
24 talk about the charges when we take a break. And if you
25 don't, we can just let the jury wait for a little while and

1 eat their doughnuts.

2 I don't think it will take long to talk about the
3 charges. There's one indictment. Y'all have all tried
4 things with me before and usually we seem to move through
5 the charge conference pretty quickly.

6 You also should have a draft verdict form with those
7 charges since they are prepared. So anything else before we
8 break for the day?

9 MS. SHEALY: No, Your Honor. Thank you.

10 THE COURT: All right. Well, then I will see y'all at
11 9:30 in the morning. Thank you.

12 (WHEREUPON, recess for the day December 11, 2013, 5:15 p.m.)

13 (December 13, 2013)

14 (WHEREUPON, bench conference 9:40 a.m.)

15 THE COURT: We will be at ease until 10:00.

16 (WHEREUPON, break 9:41 a.m. for defense counsel to confer
17 with client.)

18 MS. SHEALY: Judge, he has in December of 2003
19 trafficking crack conviction, possession of cocaine second
20 conviction. And I'm only mentioning the convictions that I
21 think would fall under the rule.

22 THE COURT: Okay.

23 MS. SHEALY: He also had the December '08 bank fraud
24 charge -- I mean conviction. And a 2010 giving false
25 information conviction.

State v. James Rose

1 THE COURT: All right. Well, certainly the '08 and '10
2 are fair game. Y'all talk to me about the 2003 conviction.

3 MS. SHEALY: The conviction was December 6th of 2003.
4 And obviously the incident would have been prior to the
5 conviction.

6 THE COURT: Sure.

7 MS. SHEALY: And let me see. Let me double check what
8 that punishment was. On the trafficking charge he received
9 five years. And on the possession charge he received two
10 years. So I think that would put it within our ten-year
11 period.

12 THE COURT: It does put it within the ten-year period.
13 Okay. Y'all addressed for me the Rule 403 issue. And
14 anything else y'all need to tell me? Happy to hear from the
15 defense.

16 MS. RUNEY: Your Honor, I think that these convictions
17 fall under the rule. I don't have any argument against
18 those. But I just want to make sure that I've got them all:
19 December 2003 trafficking, the five-year sentence; 2008
20 financial transaction card fraud charge or financial card
21 charge; a 2010 false info. Am I leaving one out?

22 MS. SHEALY: Possession of cocaine second in '03.

23 MS. RUNEY: Was that December of '03 too?

24 MS. SHEALY: It was, the date of the conviction was.
25 And the rap sheet reflects bank fraud. That would be

1 December of '08.

2 MS. RUNEY: Thank you, Your Honor.

3 THE COURT: Okay. Anything further that we need to
4 take up before we bring the jury?

5 MS. SHEALY: Not from the State. Thank you.

6 THE COURT: Okay. Yes, sir, they can come on in.

7 (WHEREUPON, jury enters courtroom 10:16 a.m.)

8 THE BAILIFF: Jurors are all present, Your Honor.

9 THE COURT: Thank you, sir. And thank you ladies and
10 gentlemen. Thank you so much for your patience. We are
11 ready to continue with the trial. So I will call on Ms.
12 Runey.

13 MS. RUNEY: Thank you, Your Honor. The defense calls
14 James Reginald Rose.

15 THE COURT: All right, sir. If you will come on up we
16 will swear you in.

17 (WHEREUPON, the witness was duly sworn.)

18 THE CLERK: Sir, once you are seated if you would
19 please state your first and last name and spell your last
20 for the record.

21 MR. ROSE: Okay. My name is James Rose, R-O-S-E.

22 (JAMES ROSE, after having been
23 sworn, testified as follows:)

24 DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE:

25 Q. Good morning, James.

DIRECT EXAMINATION BY MS. RONEY OF JAMES ROSE

- 1 A. Good morning.
- 2 Q. How old are you?
- 3 A. I'm 36.
- 4 Q. Are you from Charleston?
- 5 A. No, I am originally from Philadelphia, Pennsylvania.
- 6 Q. How long were you in Philadelphia?
- 7 A. All my life.
- 8 Q. When did you come here?
- 9 A. When I was about 14 or 15.
- 10 Q. Do you have family here?
- 11 A. Yes, I do.
- 12 Q. Did you have family here when you came at 14?
- 13 A. My mother was here. My siblings were still in
- 14 Philadelphia.
- 15 Q. You have several brothers and sisters?
- 16 A. Yes.
- 17 Q. And did they move here?
- 18 A. Yes, they did.
- 19 Q. Are all of them here now?
- 20 A. Except for two. But I have a sister and a brother
- 21 still here.
- 22 Q. And some of the family is in the courtroom for you
- 23 today?
- 24 A. Yes, they are.
- 25 Q. Who is that?

- 1 A. My brother Siaeb (ph) and my sister Malaysha (ph).
- 2 Q. Okay. Do you work?
- 3 A. No, I don't.
- 4 Q. What do you do for money?
- 5 A. I sell marijuana.
- 6 Q. And have you been in trouble with the law before?
- 7 A. Yes, I have.
- 8 Q. In 2003 were you convicted of assault on a corrections
- 9 officer?
- 10 A. Yes.
- 11 Q. And you were convicted of something else then too.
- 12 What were you convicted of?
- 13 A. I think trafficking.
- 14 Q. Trafficking crack second offense?
- 15 A. Yes.
- 16 Q. And in 2003 were you convicted of a simple possession
- 17 of cocaine?
- 18 A. I believe so, yes.
- 19 Q. And you've been in trouble again after that?
- 20 A. Yes, I have.
- 21 Q. So in 2008 were you convicted of a bank fraud charge?
- 22 A. Yes, I have.
- 23 Q. And 2010 a false information?
- 24 A. Yes, I have.
- 25 Q. And you make your living doing something illegal, don't

DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE

1 you?

2 A. Yes, I do. I'm not proud of it. But yes, I do.

3 Q. And in January of 2012 that is exactly what you were
4 doing?

5 A. Yes, I was.

6 Q. And where did you get your drugs from?

7 A. Lincolnville from a guy named Leland Shannon.

8 Q. How did you know Leland Shannon?

9 A. Well, when I first came down here we used to live
10 together. He had a situation where as he just had a baby
11 and nobody really cared for his wife Andrea, so I asked my
12 girlfriend would she move her kids in one room so that they
13 could stay in another room. And she said yes, so we stayed
14 together for a while.

15 And, you know, I used to buy weed from him because he
16 had a bunch of weed back then.

17 Q. How long have you known him?

18 A. I think it is fair to say ten years or better maybe.
19 Maybe longer.

20 Q. Okay. And did you go to see him on Carolina Avenue?

21 A. Yes, I did.

22 Q. And where is Carolina Avenue?

23 A. In Lincolnville.

24 Q. Is that where Leland Shannon lived?

25 A. Yes.

1 Q. And do you know who lived with him?

2 A. Tawana Alston.

3 Q. How do you know Tawana Alston?

4 A. We used to date back in like '97. She got pregnant one
5 time and tried to say that I was the baby father. And I
6 asked her mother one time and her mother said they took the
7 blood test so I didn't have nothing to worry about, they
8 knew who the real father of the baby is.

9 Q. So it was not your child?

10 A. No, it wasn't.

11 Q. And do you know Julio's daughter, Joy?

12 A. I remember her when she was three years old. And
13 matter of fact, the night that I went over there I saw her
14 and I said -- I asked Leland I said is that Joy. He was
15 like yeah. I said damn, I ain't seen her since she was like
16 three years old. I said Joy do you remember me. She said
17 no. I said you don't remember when I stole your bike when
18 you was younger. She said oh yeah give me my money back.

19 Q. So you hadn't seen her in a very long time?

20 A. No.

21 Q. Okay. But you did see her in January of 2012?

22 A. Yes, I did.

23 Q. Okay. Do you know Antoine Aiken?

24 A. Yes, I do.

25 Q. And how do you know him?

DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE

1 A. He be around Lincolnville selling weed and trying to
2 get coke and stuff like that.

3 Q. Is he hanging -- does he hang around Leland's a lot?

4 A. Yes, he do. Because he be trying to get free coké.
5 That's why a lot of them hang around like him and Tawanda
6 Alston they be trying to get free coke off of Leland.

7 Q. Would you see Antoine there often?

8 A. Yes.

9 Q. And do you know Ishmael Weston?

10 A. I know him from being over to that trailer. He smoked
11 weed with them. And he tried to sell me some weed one time.
12 But I told him I'm not getting no weed from him. Because he
13 was a little dude and all he had was like quarters trying to
14 sell me them for a whole ones and I ---

15 Q. Do you know how old he is?

16 A. At the time I know he was like 13 or 14 or something
17 like. He was just a little boy to me.

18 Q. Would you see him at Leland's trailer?

19 A. Yes.

20 Q. Do you know where he lived?

21 A. Directly next door. I know his mother. And I know his
22 father.

23 Q. Okay. Now I want us to focus on January the 23rd of
24 2012. I want you to tell the jury what you did that day.

25 A. January 2012 on the 23rd?

1 Q. Yes.

2 A. Well

3 Q. Did you go over to Leland Shannon's trailer?

4 A. Yes, I did.

5 Q. Okay. Who did you go over there with?

6 A. Early that morning -- well, maybe it was like in the
7 afternoon I went over there with my girlfriend.

8 Q. What is your girlfriend's name?

9 A. Amber Wiley. That was my then girlfriend. But since
10 I've been here, you know, she left me.

11 Q. Okay. So you went over to the trailer in Lincolnville?

12 A. Yes.

13 Q. To do what?

14 A. To get some marijuana.

15 Q. And you took who with you?

16 A. Amber Wiley and Sea Dog who now I know as Clarence
17 Hush.

18 Q. Did Amber go with you with Clarence Hush?

19 A. Yes.

20 Q. He gave you a ride?

21 A. Yes, he did.

22 Q. And did you go over there any more that day?

23 A. Yes, I did. Later on that night.

24 Q. With who?

25 A. Clarence Hush and Brandon -- I don't recall Brandon's

DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE

1 last name. The Little White Guy. That's what I called him.

2 Q. Do you remember what time you went over there with
3 them?

4 A. I knew it was like ten something because I don't ride
5 real late on the street because I knew I had a warrant on me
6 so I would be cautious of who I ride with and what time I
7 ride on the street.

8 Q. What was that warrant for?

9 A. I was supposed to go to court one day. With the lawyer
10 I had notified me after the court hearing was over with so
11 they put a bench warrant on me.

12 Q. That wasn't me, was it?

13 A. No, that was Cantrell Frayer.

14 Q. Okay. But you did go back out to the trailer?

15 A. Yes, I did.

16 Q. And tell me why.

17 A. Cantrell -- Brandon -- I think his last name is
18 Cantrell also. He wanted some marijuana. So he didn't have
19 nobody to get it from, and I didn't have none.

20 Q. Had you ever taken him out there before?

21 A. Yes, I had.

22 Q. For what?

23 A. To get marijuana.

24 Q. Okay. And how would y'all get out there in the past?

25 A. In his car.

1 Q. Did you take his car that day?

2 A. Not that day because his car was leaking oil so we
3 couldn't take his car. But we normally do take his car.
4 Because I don't have a car and I don't have access to one.
5 So I usually pay somebody to give me a ride or something.
6 And that specific day Brandon's car was leaking oil so I
7 asked Sea Dog if he would take us and I would pay him.

8 Q. How did you know Sea Dog?

9 A. Being around the neighborhood. He would introduce you
10 to weed sales.

11 Q. Where did he live?

12 A. Right across the street from the trailer I was staying
13 in.

14 Q. Where you stayed with Amber?

15 A. Yes, where I stayed with Amber.

16 Q. And what did you call him?

17 A. Sea Dog, Unk.

18 Q. Do you know his name now?

19 A. Yes, I do.

20 Q. What is that?

21 A. Clarence Hush.

22 Q. Okay. And so Mr. Hush took you out to Lincolnville?

23 A. Yes, he did.

24 Q. And what did he do when you got there?

25 A. I went in -- the first person I saw was Joy. She was

DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE

1 outside. And that's when I told you I asked her if she
2 remembered me and she said no and I said well you don't
3 remember when I stole your bike when you was little. She
4 said yeah let me get my money.

5 And I went inside. We start talking about marijuana,
6 me and Julio. So he tried to sell me -- I don't know if
7 y'all know anything about the weight and stuff of marijuana.
8 But he tried to sell me 20 grams for \$120. And I told him I
9 wasn't paying for no weed like that because the weed was
10 brown and don't nobody like to smoke brown reefer.

11 And Brandon wanted some weed too. But he didn't have
12 enough. So I got a little bit of weed and I was supposed to
13 be waiting on some more, but they was taking so long and
14 Clarence was rushing me because he had to get his wife back
15 her car.

16 Q. Was that price bad for some bad weed?

17 A. Yes, it was. And prior to me telling him that the weed
18 was wack, Ross he jumped in the conversation and was telling
19 me well you could sell it for 20's.

20 And I was telling him man, you need to mind your
21 business because I ain't talking to you. So basically it
22 was me and him that was really arguing. And that is the
23 same thing I told the detective, Detective Perkins.

24 Q. Antoine Aiken jumped into the conversation?

25 A. Yes, he did like he always do. Because he is one of

1 those type of people if you've got something, he on your
2 side.

3 Q. Were you finished with your discussions about this?

4 A. Yes.

5 Q. Did you get some weed?

6 A. Yes, I ultimately got some.

7 Q. And why did you leave?

8 A. Because Clarence was rushing us and he didn't have
9 enough for Brandon. And I got a little bit for myself.

10 Q. Clarence Hugh came to the door ---

11 A. Yes.

12 Q. --- to get you?

13 A. Yes, he did.

14 Q. Who answered the door?

15 A. Ross. Antoine Aiken. Sorry.

16 Q. And did you leave?

17 A. Yes.

18 Q. And where did you go next?

19 A. I went back home. I know I stopped at the gas station.
20 But I'm not sure if I told the police that. But I stopped
21 at a gas station and I paid Clarence Hugh some money for
22 gas. And I got two cigars. Because I was going to smoke a
23 blunt later. And I went home. They dropped me off first
24 and then dropped the white boy off second. And then
25 Clarence went home.

DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE

1 Q. James, I'm going to go back up a little bit. Tell me
2 about what you did when you got in the car with Hush and
3 Cantrell, Brandon Cantrell, ---

4 A. Yes.

5 Q. --- who was looking for his weed ---

6 A. Right.

7 Q. --- what happened in the car?

8 A. We was riding back and I was like man I'm going to find
9 you something, man. Because the little that I had got I
10 mean it wasn't enough for the both of us. Because he likes
11 to smoke weed and he likes to sell weed.

12 So, you know, on our way back I'm just thinking of
13 people that I could call for some weed for him. And as I
14 was talking Clarence turned up the music and I was rapping
15 along with the music. That's when we got to the gas station
16 and we got the gas and stuff and went home.

17 Q. Were you angry in the car?

18 A. No.

19 Q. Were you looking for more weed?

20 A. Yes.

21 Q. Was Clarence Hush upset?

22 A. Yes, he was.

23 Q. Why?

24 A. Because his wife let him hold the car and as I was in
25 Lincolnville I took longer than expected. I stayed in there

1 too long. And that is why he came to the door and was
2 rushing me. I didn't mean to take that long, but I was
3 waiting on them.

4 Q. Waiting on what?

5 A. On the weed, the extra weed. And it never came so.
6 And I had already been there for like almost an hour.

7 Q. So Clarence was upset?

8 A. Yes, he was.

9 Q. You stopped at the BP?

10 A. Yes.

11 Q. And then what did you do?

12 A. We got gas. I bought two cigars. And we went straight
13 to Wilmer Acres. And they dropped me off first, and then
14 they dropped Brandon off second. And then I guess Clarence
15 went home.

16 Q. And just to clear this up, does Brandon Cantrell live
17 in Wilmer acres?

18 A. Yes, he stays directly in the back of me.

19 Q. Is this a trailer park?

20 A. Yes, it is.

21 Q. Brandon Cantrell lives there?

22 A. Yes.

23 Q. Does Clarence Hugh live there?

24 A. Yes, he does.

25 Q. And your girlfriend at the time, Amber Wiley, does she

DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE

- 1 live there?
- 2 A. Yes, she does.
- 3 Q. Did you stay with Amber?
- 4 A. Yes, I did.
- 5 Q. Okay. What did you do when you got home?
- 6 A. I watched ESPN for a little while. And it was kind of
- 7 late so I didn't feel like smoking, and I just went to bed.
- 8 And got up the next morning.
- 9 Q. I'm going to back up just a little bit. What did you
- 10 wear out to Lincolnville?
- 11 A. Some blue jeans, a red thermal long-sleeve, and some
- 12 black Adidas with cleats on the bottom.
- 13 Q. Okay. So you went to bed. Did you ever get up during
- 14 the night?
- 15 A. No, I did not.
- 16 Q. Did you ever leave Amber's house?
- 17 A. No, I did not.
- 18 Q. What did you do when you woke up the next morning?
- 19 A. When we woke up the next morning we had an eviction
- 20 hearing to go to because we was getting evicted.
- 21 Q. And where was that?
- 22 A. In Goose Creek.
- 23 Q. What county do you live -- or what county does Amber
- 24 live in?
- 25 A. I believe it is Berkeley County because it is College

1 Park. But Summerville is right by it. So I'm not sure.

2 Q. Where did you go to court?

3 A. In Goose Creek.

4 Q. Okay.

5 A. And I think that's Berkeley County.

6 Q. Okay. Did you go to the hearing with Amber?

7 A. Yes, I did.

8 Q. And where did you go when that was over?

9 A. After the hearing we went back home. And then Amber
10 called Lena -- I can't remember her last name. Bickman
11 or

12 Q. What did you call her?

13 A. I called her Lena.

14 Q. Who was she?

15 A. That's the girl ---

16 Q. How do you know her?

17 A. She -- I know her brother and I knew her from Woodside
18 Manor when I used to live there. Me and her brother we used
19 to work together for this guy that redoes parking lots. He
20 put down the ground foundation on a parking lot.

21 As a matter of fact, we did the parking lot in the
22 lawyer's office right across the street from here.

23 Q. Okay. Is Lena friends with Amber?

24 A. Yes. They consider their selves cousins. More like
25 sisters.

DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE

- 1 Q. Would Lena take Amber places?
- 2 A. Yes, that is why Amber called her so she could take her
- 3 to Charleston to see her probation officer.
- 4 Q. Was Amber on probation at the time?
- 5 A. Yes, she was.
- 6 Q. So Amber needed to be at her probation agent's office?
- 7 A. Yes.
- 8 Q. Who took her?
- 9 A. Lena took her.
- 10 Q. Did you go?
- 11 A. No, I did not.
- 12 Q. And in what type of car did Lena take Amber to
- 13 probation in?
- 14 A. In a silver Dodge Neon.
- 15 Q. It that the car you know her to drive?
- 16 A. Yes.
- 17 Q. Do you ever drive that car?
- 18 A. No. I don't even know her well enough to drive her
- 19 car.
- 20 Q. But she would take Amber places?
- 21 A. Yes, she would.
- 22 Q. Did you go to the probation office?
- 23 A. No, I did not.
- 24 Q. What did you do?
- 25 A. I stayed home.

1 Q. And did what?

2 A. I was just, you know, watching TV like I always do
3 until, you know, I get some sales or something.

4 Q. You get some ...?

5 A. Sales, you know, ---

6 Q. Okay.

7 A. --- like for marijuana.

8 Q. But this day when Amber went to probation ---

9 A. Yes.

10 Q. --- did you stay at home?

11 A. Yes, I did.

12 Q. And do you remember what time her appointment was?

13 A. I think it was like 9:00 -- maybe nine o'clock in the
14 morning ---

15 Q. Okay.

16 A. --- or ten-ish; something like that.

17 Q. In the morning?

18 A. Yes.

19 Q. And so you were at the trailer alone?

20 A. Yes.

21 Q. Did you talk to people on the phone?

22 A. Yes. My phone started ringing. This guy named Brian
23 called me, a guy that Nikki used to mess with. He called me
24 and said that man, your name stink around here. I said what
25 are you talking about. He said man, Nikki said you killed

DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE

1 Julio.

2 MS. SHEALY: I'm going to object to the hearsay, Judge.

3 THE COURT: Sustained.

4 BY MS. RUNEY:

5 Q. Your phone was ringing a lot, James?

6 A. Yes.

7 Q. And did you think the police would be looking for you?

8 A. One I heard -- well, once I saw it on the news and I
9 heard that a guy with a red shirt just left and coupled with
10 people were saying on the phone, I knew that they was coming
11 to look for me then.

12 Q. What time did you watch the news?

13 A. Twelve o'clock.

14 Q. Did you see a story on the news about this shooting?

15 A. Yes.

16 Q. Did that news story tell you who had been shot?

17 A. No.

18 Q. Did you know at that time who had been shot?

19 A. No, I did not.

20 Q. Did you find out from the phone calls that Julio had
21 been shot?

22 A. Yes, I did.

23 Q. Were you scared?

24 A. I was more like -- I was nervous because my name was
25 bordered to it and I couldn't understand why. So, you know,

1 I know that once your name is out there like that it is not
2 long before you go to jail.

3 Q. Did you run, James?

4 A. No, I did not.

5 Q. Where did you go next?

6 A. I walked across the street to my friend's baby mother
7 house. Her name is Diana. And I knocked on her door and I
8 said to her, I said did you see the news. She said yeah,
9 somebody in Lincolnville got shot.

10 So I said well -- she said I wonder who. I said man it
11 was Julio, and Nikki's going around telling people that I
12 did it. And she said -- I asked her did she know Nikki.
13 She said no. So ---

14 Q. Let me back up just a second. People had been calling
15 you?

16 A. Yes.

17 Q. On your cell phone?

18 A. Amber's cell phone. Because I had the food stamp cell
19 phone. And when you -- they only provide you with 250
20 minutes. So after that runs out the whole phone shuts off.
21 So I would use Amber's phone too.

22 Q. And you kept her phone at the trailer with you?

23 A. Yes.

24 Q. She didn't take it to probation?

25 A. No.

DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE

1 Q. Did she have a phone with her?

2 A. Yes, I would contact Amber through Lena's phone.

3 Q. If you needed her you would call Lena?

4 A. Right.

5 Q. Okay. I'm sorry to backtrack. You went over Deanna
6 Henderson's house?

7 A. Yes.

8 Q. What happened there?

9 A. After I asked her did she see the news she -- she asked
10 me. She said I wonder who got shot. And I told her Julio.
11 And again I told her I said Nikki's going around telling
12 people that I did it.

13 So I asked her did she know who Nikki was. She said
14 no.

15 Q. Who is Nikki?

16 A. Tawanda Alston.

17 Q. Okay.

18 A. So a gray Charger rolled past. And it looked kind of
19 suspect. So I asked her. I said have you ever seen a gray
20 Charger back here. Because she lived there before I even
21 got over to that side. So I said you ever seen a gray
22 Charger. She said yeah. She said somebody stay back here.
23 And I said go see where they are going at.

24 So by the time she got to the edge of the driveway
25 police was coming from everywhere. And I had the weed in my

1 pocket and I was sitting in on the chair on her porch that
2 she was going to throw away, and I stuffed the weed in the
3 corner of the chair because I didn't want to get caught with
4 it. And ---

5 Q. James, did you ever tell Deanna Henderson that if
6 anybody comes looking for me don't tell them I am here?

7 A. Well, actually I did because it was a situation that
8 took place.

9 Q. Was it that day you told her that?

10 A. No, it wasn't that day.

11 Q. When?

12 A. It was a situation that took place a couple days before
13 that. I sold this guy a bag of weed when I was standing in
14 her driveway and the dude was kind of slow.

15 And his girlfriend called me and said did you sell him
16 a bag of weed. I said yeah. She said I told him not to get
17 that weed. I said okay. She said I need that money back.
18 And I said it don't work like that. So she said well I need
19 that for gas, you know, to get to work tomorrow.

20 So I said well man just tell him to come around here.
21 So I went in there and I told her I said look if somebody
22 come here looking for me tell them I don't live here now.

23 Q. Okay. Now take -- take us back and tell the jury what
24 happened when the police came to Deanna's house.

25 A. When the police came they asked me my name and they

DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE

1 told me to put my hands up in the air like this (motioning)
2 and walk down the steps backwards.

3 And by the time I got my foot on the last step they
4 picked me up by my belt and slammed me on the ground. And I
5 was like man what is all this for.

6 And they just kept roughing me up. They never told me
7 anything. They got me in the handcuffs and then they put me
8 in the back of the -- an SUV at first.

9 So as I was sitting in the back of the SUV saw Lena and
10 Amber coming through in the silver Dodge Neon. They parked
11 in the yard. And I was trying to yell for Amber to come
12 into the car. And the police was telling her don't come
13 next to the car.

14 So as I was sitting back there I was like damn I've got
15 to tell this girl to get weed out that chair. So I call her
16 to the car ---

17 Q. When you say her, who are you talking about?

18 A. Deandra. So I call her to the car. I didn't know the
19 police was going to come with her, so I had to think of
20 another story real fast.

21 Although I was sincere about it, I told her that I was
22 sorry for having them come into her driveway. Because she's
23 got small kids. Although I was sincere but my intentions
24 were to tell her to get that weed out that chair before they
25 find it.

1 Because I knew they was going to go in there and search
2 for it. Because I was sitting in that chair when they came
3 to her trailer.

4 Q. So you are under arrest?

5 A. Yes.

6 Q. Are you aware that you are under arrest for murder?

7 A. No.

8 Q. At some point were you told that you are under arrest
9 for murder?

10 A. No.

11 Q. Where were you taken from there?

12 A. To Rivers Avenue at the Sherriff's Station.

13 Q. And did they place you in a room; where did they take
14 you at the Sherriff's Station?

15 A. They had me in a room interrogating me.

16 Q. Okay. Do you remember who that was?

17 A. Detective Perkins.

18 Q. Did they ask you to give a statement?

19 A. Yes, they did.

20 Q. And did you give a statement?

21 A. Yes, I did.

22 Q. And what did you tell the police?

23 A. I told him that I went to buy some marijuana. Excuse
24 me. I went home. I don't know if I told them I stopped at
25 the gas station or not.

DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE

1 Q. Okay. Did you tell them who took you?

2 A. Yes, I did.

3 Q. Okay.

4 A. And I told them that I went home. I think I told them
5 I watched TV and then I went to sleep.

6 Q. Detective Perkins didn't like that, did he?

7 A. No, he did not.

8 Q. How do you know that?

9 A. Because he told me that if I didn't tell him who did
10 it ---

11 MS. SHEALY: Objection to the hearsay.

12 THE COURT: Sustained.

13 BY MS. RUNEY:

14 Q. Did you know who did it?

15 A. No, I didn't.

16 Q. Did you tell Detective Perkins who did it?

17 A. No, because I didn't know. That's why he charged me.

18 Q. So after that you were charged with murder?

19 A. Yes.

20 Q. Did you go to jail?

21 A. Yes, I did.

22 Q. When you went to jail did you talk to Amber?

23 A. No, but I was looking for her.

24 Q. How were you looking for her if you were in jail?

25 A. I knew she didn't have a phone because she had -- I

1 want to back up for a second because I never explained to
2 y'all how she got her phone back.

3 When she came back from the probation office this was
4 after I saw the news. So I told her I was going to turn
5 myself in. So she asked me was I ready. And I said no, let
6 me brush my teeth and stuff first.

7 So she took her phone and went to the store and said by
8 the time they get back would I be ready. And I told her
9 yes. But all of this happened before she got back.

10 Q. You were arrested before ---

11 A. Yes.

12 Q. --- you could do that?

13 A. Yes.

14 Q. Okay. And did you try to call her from the jail?

15 A. Yes, I knew that her brother was still there. But what
16 I didn't know was that he was locked up. He got locked up
17 the same time I did. But I knew I could contact her through
18 his phone because we all stayed together.

19 Q. Did he get locked up in Charleston County?

20 A. No, Berkeley County.

21 Q. Okay. And you're aware that the phone calls at the
22 jail are being recorded?

23 A. Yes, I was.

24 Q. Is there a recording on there that lets you know that?

25 A. Yes.

DIRECT EXAMINATION BY MS. RONEY OF JAMES ROSE

1 Q. And who did you call to try to find Amber?

2 A. I called my friend to make a three-way for me.

3 Q. Did you get Amber?

4 A. No.

5 Q. How did that make you feel?

6 A. I was kind of depressed because I knew that now, you
7 know, she didn't have nowhere to go and we was getting
8 evicted and it really made matters worse when all those
9 police came there and the man kicked us out the parking
10 lot -- well, out of the trailer park.

11 Q. Any you knew you were in jail for murder?

12 A. Yes, by that time, yes.

13 Q. Did you know that they had seized Ms. Everlina
14 Bickman's car?

15 A. Yes, when I was in the police car Amber and Everlina
16 drove up and they parked along side of one of the -- one of
17 the police's SUVs.

18 And I saw Everlina standing in the street hollering
19 y'all taking my damn car, y'all taking my car. And then she
20 was looking at me like it was my fault.

21 And they -- I saw them when they hooked the car up to
22 the tow truck. And that's when Detective Perkins came and
23 put me inside of his car. And once I got inside his car
24 they was pulling the silver Dodge Neon off taking it to be
25 towed.

1 Q. When you called your friend what did you mean by they
2 took that girl's car?

3 A. Because they said that it was -- her car -- Detective
4 Perkins said that her car matched the description that was
5 at the -- at Lincolnville at the time of the incident.

6 Q. Did you think that they were looking for evidence to
7 try to link you to this murder?

8 A. Yes.

9 Q. And explain to me what you are talking about when you
10 say my phone is in that girl's car.

11 A. You know me and my girlfriend -- like I told y'all
12 before, my phone went dead. So we share the same phone.
13 You know, she don't have no problem with me using her phone.
14 Just like if I to have a phone I wouldn't have no problem
15 with her using it. And I knew that she left the phone in
16 the car.

17 Q. James, you told Detective Perkins what you knew; didn't
18 you?

19 A. Yes, I did.

20 Q. Did you go back over to Lincolnville to Carolina Avenue
21 for a third time?

22 A. No, I did not.

23 Q. Did you plan to shoot and kill Leland Shannon?

24 A. No, I did not.

25 Q. Did you shoot Leland Shannon?

DIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE

1 A. No, I did not.

2 Q. That all I have. Thank you, James. Please answer any
3 questions Ms. Shealy may have.

4 A. Yes.

5 THE COURT: Cross-examination.

6 MS. SHEALY: Thank you, Your Honor.

7 CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

8 Q. Mr. Rose.

9 A. Yes.

10 Q. You think you are pretty smart, don't you?

11 A. No, not really.

12 Q. You have had since January of 2010 to be getting your
13 story together, haven't you?

14 A. No.

15 Q. You got copies of all the witness's statements, didn't
16 you?

17 A. Yes.

18 Q. In fact you pitched a fit to get those witness
19 statements, did you not?

20 A. No.

21 Q. You didn't get irritated with your lawyer?

22 A. Excuse me?

23 Q. You didn't get irritated with you lawyer because you
24 didn't have ---

25 MS. RUNEY: Objection, Your Honor.

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 THE COURT: Sustained.

2 BY MS. SHEALY:

3 Q. Tell the jury whether or not you have read Tawana
4 Alston's statement.

5 A. Yes, I have.

6 Q. How many times do you think you have read it?

7 A. I don't know.

8 Q. Five times?

9 A. Probably not.

10 Q. Twenty times?

11 A. Probably way less than that.

12 Q. Way less than that?

13 A. Yes.

14 Q. You've got other things to occupy your time while
15 you're sitting in jail?

16 A. Yes, I work in the county jail. I'm a unit worker.
17 That means I clean the showers. I clean the floor. I mop
18 the floor. And I get a dollar a day.

19 Q. So that is the first legal job you have ever had; is
20 that right?

21 A. No, not really. When -- back in '97 I moved to New
22 York and I found a job at this place called Clean Are Us.
23 They -- what they do is they've got contracts with stores
24 like Banana Republican, Express, Victoria Secrets.

25 And they -- if you work for them they let you clean --

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 well, you clean department stores, vacuum clean it and dust
2 mop it for dust bunnies and buff the floor. I did stuff
3 like that.

4 Q. Oh, you did; and that was back in '97?

5 A. Like '98 to '99.

6 Q. '98 to '99?

7 A. Yes.

8 Q. And you no longer wanted to have an honest job?

9 A. No, I moved back down here because of my situation in
10 New York City. And once I got here, you know, I couldn't
11 find a job.

12 Q. Okay. And you got back here when again?

13 A. Back in '99.

14 Q. So since 1999 you haven't been able to find a legit
15 job?

16 A. No, I haven't. As a matter of a fact, you know what,
17 when I came down here in '99 me and Tawanda Alston was
18 together then.

19 Because I thought that the last time we was together
20 was '97, but actually it was '99 because I got locked up and
21 she was in the car with me and my mother.

22 Q. She was in the car when you got locked up?

23 A. Yes.

24 Q. You pretty much have an answer for everything, don't
25 you, Mr. Rose?

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 A. No, not everything.

2 Q. Well, let's go back over a couple of those statements.
3 How many times did you read Antoine Aiken's statements?

4 A. I don't know.

5 Q. But you read them and read them and read them, did you
6 not?

7 A. I had read them before. Because they are mine. And I
8 had read them. But I'm not a lawyer so.

9 Q. You don't usually dress this way, do you, Mr. Rose?

10 A. Actually ---

11 MS. RUNEY: Objection, Your Honor.

12 A. --- yes, I do.

13 THE COURT: Sustained.

14 BY MS. SHEALY:

15 Q. Deanna Henderson's statement, how many times did you
16 read hers?

17 A. I don't know. I can't recall.

18 Q. Joy Mills?

19 A. I can't recall.

20 Q. Okay. Now you told us that you have got several
21 brothers and sisters. Could you tell me their names again?

22 A. Yes, my brother's name is Siaed (ph) Rose which is back
23 there now next to my beautiful sister Malashia Rose. And I
24 have a brother named Jeffrey Dawan Robinson. He's in
25 Philadelphia right now. And I have another sister named

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 Lady Simmons. Well, her last -- her maiden name is Rose,
2 but she got married while she was down here. But she's back
3 in Philly right now.

4 Q. So Jeffrey, he is tall?

5 A. Yes.

6 Q. He is thin?

7 A. Yes.

8 Q. And he is in Philadelphia?

9 A. Yes, he is.

10 Q. Now you told us that you were living in that trailer
11 park with Amber Wiley; she was your girlfriend?

12 A. Yes.

13 Q. And did Matt Wiley live there?

14 A. Yes, he did.

15 Q. Tell this jury, Matt Wiley is short and stocky; isn't
16 he?

17 A. I wouldn't say short. But he is stocky.

18 Q. And Sofia Wiley, his wife, lived in that mobile home
19 with y'all?

20 A. Yes, she did.

21 Q. And tell me has Amber Wiley come to see you at the jail
22 at all?

23 A. No, she hasn't.

24 Q. Has your brother Jeffrey come to see you at the jail at
25 all?

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 A. No, he hasn't.

2 Q. Has Matt Wiley come to see you at the jail at all?

3 A. No, he hasn't.

4 Q. And has Sophia Wiley come to see you at the jail at
5 all?

6 A. No, she hasn't.

7 Q. Now you've told us that Amber and Everlina Bickman were
8 pretty much like sisters; is that correct?

9 A. That's my opinion.

10 Q. That they were tight?

11 A. That's my opinion, yes.

12 Q. And did you know that Everlina's boyfriend was furious
13 with her for letting Amber use her car so much?

14 A. I have no knowledge of that. I never see Amber drive
15 that car. Every time I seen Everlina she was taking Amber
16 somewhere.

17 Q. Okay. Well, you've told us about your relationship
18 with Brandon Cantrell. Let me clarify that. Not only did
19 you take that high schooler to go buy drugs, you also helped
20 him to be able to sell drugs; is that correct?

21 A. No, that's not correct.

22 Q. Well, didn't you tell us that he would buy some to
23 sell?

24 A. I'm guessing. You know that is just my opinion.

25 Don't ---

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 Q. You testified ---

2 A. --- quote me on that.

3 Q. --- to it though?

4 A. Yes, but that's my opinion.

5 Q. And you swore on the bible, did you not?

6 A. Yes, I did.

7 Q. Okay. So then you would agree that not only did you
8 help a teenager use marijuana, you helped to put him in a
9 position to sell marijuana?

10 A. Well, actually I just met Brandon when I was around
11 there. I never knew how old he was. I never asked. We
12 just had a marijuana relationship. That's all.

13 Q. You didn't know he went to high school?

14 A. No, I did not.

15 Q. Didn't you refer to him as your little white friend or
16 little white guy?

17 A. Yes, because he's smaller than I am.

18 Q. And you were in this courtroom when he said that that
19 Neon was Amber's car?

20 A. The reason why he said that was because me, Matthew,
21 Sophia, and Amber stayed together. Matthew Wiley and Sophia
22 Wiley -- well, Sophia Wiley has the Neon that's gold. And
23 if you come there at nighttime it could look very much
24 similar to Lena's but it's just smaller.

25 And that guy would be so high all the time he could

- 1 have just an honest mistake.
- 2 Q. Okay. So you've ---
- 3 A. But ---
- 4 Q. --- got an answer for why Brandon Cantrell said that
- 5 the Neon was Amber's car; ---
- 6 A. Yes.
- 7 Q. --- you've got an answer for that?
- 8 A. Yes, it is.
- 9 Q. You've got an answer for that. And is it fair to say
- 10 that in that trailer park you were kind of the man for
- 11 drugs?
- 12 A. No, that's not fair to say.
- 13 Q. Well, where were you selling them? You said you would
- 14 sit around until you had some sales.
- 15 A. Right.
- 16 Q. Would you sell them outside the trailer park as well?
- 17 A. If need be, yes.
- 18 Q. Well, how did you get there?
- 19 A. Walking distance.
- 20 Q. So you sold your drugs within a walking distance?
- 21 A. Yes. Or people would come to me.
- 22 Q. Now tell us, Amber Wiley, she has a legitimate job;
- 23 didn't she?
- 24 A. Yes, she did.
- 25 Q. She worked at McDonald's?

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 A. Yes, she did.

2 Q. And Sofia she had a legitimate job?

3 A. Yes, she did.

4 Q. She worked at McDonald's?

5 A. Yes, she did.

6 Q. What did Matt Wiley do?

7 A. He was a construction worker. He used to work for
8 Sophia's dad.

9 Q. And while those people would get up and go to work, you
10 would stay home and watch TV and make some sales?

11 A. Actually they had a kid staying with them and he didn't
12 have a babysitter, so it was more so I was like the sit-in
13 guy. I would clean the house, take care of the kid until
14 they would get off of work. And then I would go out there
15 and do whatever.

16 Q. How old is that child?

17 A. Nine.

18 Q. And was the nine-year-old with you when people come and
19 buy pot at the house?

20 A. No, he wasn't.

21 Q. Was the nine-year-old would you take him when you would
22 go in walking distance to sell the drugs?

23 A. No, I would not.

24 Q. So you honored some type of daytime hours to watch the
25 kid?

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 A. Yes.

2 Q. You've got an answer for that too, don't you? Now it's
3 fair to say that you were getting ticked off at Julio; is
4 that fair to say?

5 A. No, that's not.

6 Q. So when Deanna Henderson comes in and tells the jury
7 that you had been complaining about Julio the days up to the
8 24th, that is just incorrect?

9 A. Yes, it is.

10 Q. She just made that up?

11 A. No, actually me and Deannie, me and her boyfriend was
12 in prison together.

13 Q. You and who? I'm sorry.

14 A. Me and -- her name -- Henderson. Me and her. Me and
15 her baby father were in prison together. And we got out it
16 was like hey what's up man. You know, it was -- I haven't
17 seen him in like seven years since we've been in prison
18 together. So we used to play chess together.

19 And I got to talking to him one day about Julio raising
20 the price of the weed. And I was like man you don't know
21 nobody else. And she was basically eavesdropping on our
22 conversation.

23 Q. Oh, okay. So she was an eavesdropper?

24 A. Yes.

25 Q. But the conversation took place?

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 A. Yes.

2 Q. So you were irritated with Julio that he was raising
3 the price?

4 A. No.

5 Q. It suited you fine?

6 A. Excuse me?

7 Q. It suited you fine?

8 A. I mean yes, it did because it wasn't mine. It wasn't
9 like I could do anything about it.

10 Q. Oh, but you tried to do something about it and did
11 something about it; didn't you, Mr. Rose?

12 A. No, I did no.

13 Q. You felt like Julio was cutting you out, didn't you?

14 A. No, I did not.

15 Q. He didn't want to deal with you anymore?

16 A. That's not true.

17 Q. Ya'll had words that night, did you not?

18 A. No, like I told them earlier, me and Rick Ross had the
19 words. Me and Julio I just told him that I wouldn't --
20 wasn't going to pay that much for no brown marijuana because
21 the people I sell marijuana to like green marijuana.

22 And I told him I wasn't paying no \$120 for no 20 grams
23 of marijuana. So Rick Ross jumped in my business and me and
24 him had words. And that's the same thing I told Detective
25 Perkins.

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

- 1 Q. You didn't put that in your statement, did you?
- 2 A. Well, no. But I told him that verbally. And it was
- 3 recorded and audio too.
- 4 Q. Recorded, audio?
- 5 A. Right.
- 6 Q. He gave you the sheet of paper and let you write what
- 7 you wanted to, didn't he?
- 8 A. He, he did.
- 9 Q. But you didn't write that down?
- 10 A. No, I didn't.
- 11 Q. And you and Julio and even Brian Williams y'all were
- 12 boys growing up together in Lincolnville, weren't you?
- 13 A. No, I'm from Philadelphia. And I never grew up down
- 14 here in Lincolnville. I met them once I came to South
- 15 Carolina. And I know Brian Williams from being around here.
- 16 I know he's a real good guy. And I met Julio through buying
- 17 marijuana. But as far as us growing up together, we never
- 18 grew up together.
- 19 Q. Okay. Well, Brian Williams has done well for himself;
- 20 is that fair to say?
- 21 A. I guess. I don't ---
- 22 Q. Do you know where his house is?
- 23 A. I don't know his background or nothing like that.
- 24 Q. Did you know where his house was?
- 25 A. Yes. Yes.

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 Q. And he lives in a nice house; is that correct?

2 A. I mean you -- I guess.

3 Q. And he worked as a barber and as a truck driver?

4 A. I have no idea.

5 Q. Julio was doing better than you were, wasn't he?

6 A. I can't say because I would be giving an opinion and it
7 wouldn't be factual. So I can't say. Because I wasn't
8 doing bad myself. I was just, you know, getting marijuana
9 and doing my little thing. But I wasn't like no drug
10 kingpin or nothing. I was just trying -- trying to survive.

11 Q. Let's talk about the survival. Amber who is working,
12 Sophia who is working, and you say Matt Wiley was working.
13 They were getting kicked out of the mobile home, weren't
14 they?

15 A. Yes.

16 Q. And you didn't want to go get a real job and help them
17 out?

18 A. That's basically why I was selling marijuana because
19 Amber's job, which was my girlfriend at the time her job --
20 her hours were part-time. Plus she was on child support.
21 And they was taking 50 percent on her check.

22 So we had to make a way somehow. And that's the only
23 way we could make ends meet. And I couldn't get a job for
24 the simple fact that I'm a convicted felon and I was on the
25 run at the time for not showing up for court on time.

1 Q. Let me make sure I got that straight. I think you told
2 us that the last legitimate job that you had other than
3 while you've been in the jail was in '99?

4 A. Yes.

5 Q. You were selling weed way back then too, weren't you?

6 A. I have.

7 Q. Okay. So you're not telling this jury that you just
8 all of a sudden started selling pot to help make ends meet?
9 Or are you?

10 A. I don't understand your question.

11 Q. Didn't you just tell this jury that the reason you were
12 selling pot is because - and you turned to them - because I
13 needed to help with the expenses?

14 A. Yes, that's true.

15 Q. But in fact, you have been dealing drugs for a number
16 of years; isn't that true?

17 A. I wouldn't say a number of years. That's not true, no.
18 But I have sold marijuana before '99. Because it is not
19 like that I'm, I'm doing real good and was able to hold a
20 job down or -- I was out on my own since I was 14 and came
21 down here.

22 So I guess you could relate to the struggle. I didn't
23 have like a steady family that I could depend on. I always
24 had to depend on myself.

25 Q. Did you just tell this jury that you were holding down

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 a steady job?

2 A. No, I did not.

3 Q. You didn't just say you were holding down a steady job?

4 A. No, I did not.

5 Q. Okay. Now that evening when you went over with Brandon
6 and Hush, first of all, you thought those guys would stick
7 by you; didn't you?

8 A. I'm not sure of the question you're asking.

9 Q. You thought they were loyal to you and were your
10 friends?

11 A. No, because I don't even know them. I just met them in
12 that trailer park. And I couldn't tell you none of their
13 names prior to me receiving the motion of discovery with
14 their statements and they name -- government names on it.

15 Q. Well, let's go back to this. You had told this jury
16 that when you finished up at Julio's that second time that
17 day you went, the first time that night, that when you got
18 in the car you weren't irritated?

19 A. No, I wasn't.

20 Q. You weren't mad?

21 A. No, I was.

22 Q. Well, why did you say to Clarence Hush that you were
23 going back to get your respect back?

24 A. Again, I didn't tell him that. The -- he turned up the
25 radio and we was listening to "T-I". And I was singing some

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 of his lyrics on the radio. And I said -- and he must have
2 misquoted me. But if -- if I would have said something to
3 that nature I'm sure Brandon Cantrell would have heard the
4 same thing. I never nothing like that. I was just quoting
5 music.

6 Q. Just singing lyrics?

7 A. Yes.

8 Q. So when Clarence Hush came up here you could tell he
9 didn't want to be up here, couldn't you?

10 A. I'm not sure. I don't really study nobody's demeanor
11 like that.

12 Q. You don't?

13 A. No.

14 Q. That night you're telling the jury that you went home
15 and went to sleep after you were dropped off by Mr. Hush; is
16 that correct?

17 A. That's correct.

18 Q. Was Amber there?

19 A. Yes, she was.

20 Q. Was Sofia there?

21 A. I don't know. Because me and Amber stays in one room.
22 And down the hall is the master bedroom. And Matthew and
23 Sophia stays in that room with the door closed all day. And
24 so we rarely have contact with each other.

25 Q. Y'all rarely have contact with each other?

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 A. Yes, other than passing by each other. Like when we
2 cook breakfast we eat separately. Things like that.

3 Q. When Ms. Runey was asking you about how you knew
4 Antoine and how you knew Tawana. Are you telling this jury
5 that because Tawana said you might be the father of her
6 child she is coming in here and just lying on you?

7 A. No, Tawanda actually has a history of lying. That's
8 all she does. I remember it was a time where she robbed my
9 sister out of \$1,800. And the only reason why my sister let
10 her stay with her is because of me. And I used to deal with
11 her back in the past.

12 And one day -- one night my sister fell asleep. And my
13 sister liked to leave her money on her dresser. Tawanda
14 snuck in her room and took the money and called a cab and
15 left. And then she tried to call the police and make a
16 report that said that my sister tried to threaten her.

17 Q. Okay. So that story that you just told, does that have
18 anything to do with the question I asked you?

19 A. No, I was just ---

20 Q. Telling the story?

21 A. Yes.

22 Q. When you gave your statement to the police that night
23 did you tell them look you cannot believe Tawana Alston?

24 MS. RUNEY: Objection, Your Honor.

25 THE COURT: What is the basis for your objection?

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 MS. RUNEY: Pitting the witnesses.

2 THE COURT: Sustained.

3 MS. SHEALY: May we approach just for a moment?

4 (WHEREUPON, bench conference as follows:)

5 MS. SHEALY: I asked him when he was talking to the
6 police that night did he tell them that. That's not -- I'm
7 not asking -- I'm not pitting him against her. I'm asking
8 did he tell the police that.

9 THE COURT: Did he -- did he tell them that?

10 MS. SHEALY: No.

11 THE COURT: Okay. Well, sustained.

12 (WHEREUPON, end of bench conference.)

13 THE COURT: Sustained.

14 MS. SHEALY: Sustained?

15 THE COURT: Yes.

16 MS. SHEALY: Okay.

17 BY MS. SHEALY:

18 Q. Mr. Rose.

19 A. Yes.

20 Q. Was there any reason that you were staring at Tawana
21 when you were telling that to Ms. Runey?

22 A. Excuse me?

23 Q. When you were telling Ms. Runey about how Tawana one
24 time said you were the father of her child you were staring
25 right out at her. Was there a reason for that?

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 A. Maybe you thought I was staring at her, but I was just
2 looking out into the crowd.

3 Q. When you were talking about Joy you would agree that
4 she had not been around Julio's for a long time; is that
5 correct?

6 A. I can't agree to that, again, because I don't know. So
7 I can't agree to something I don't know -- have no knowledge
8 of. So I don't know.

9 Q. Well, let me ask it this way: You had not seen Joy in
10 a long time?

11 A. Me personally?

12 Q. Yes.

13 A. No. I seen her when she was a little baby or three
14 years old maybe.

15 Q. And when you -- when you would go over to Julio's,
16 before that night you didn't see Joy over there?

17 A. Can you say that again, please.

18 Q. Before the night in question when you would go over to
19 buy drugs from Julio, Joy wasn't there?

20 A. I don't know.

21 Q. You just took note over that night?

22 A. I -- like I said, when I saw her, that was like my
23 first time seeing her since she was three. I don't know if
24 she was in the trailer or not.

25 Q. On those earlier occasions?

1 A. I don't know if she was there or not.

2 Q. Okay. And you've told the jury you knew Ishmal as a
3 kid?

4 A. Yes. He was -- he's like a kid that tries to act
5 grown.

6 Q. Now you've told us -- on the one hand you've told us,
7 you know, that you were making due by selling drugs?

8 A. Yes.

9 Q. And then you told us that there was an eviction
10 hearing; is that correct?

11 A. Yes.

12 Q. And you didn't have a car?

13 A. No, I do not own a car.

14 Q. How did you and Amber get to that evidence hearing that
15 morning?

16 A. It's a guy that lives around the corner and we paid him
17 \$10 to take us to Goose Creek.

18 Q. You didn't tell that when Ms. Runey was asking you
19 questions, did you?

20 A. No, because she never asked me.

21 Q. And did tell us that you called Clarence Hush Sea Dog
22 or Unk?

23 A. Yes.

24 Q. Now on your second visit to Julio's house that night
25 when you left you had been in there for an hour; is that

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 correct?

2 A. Approximately.

3 Q. And during that hour you never came to a successful
4 conclusion with Julio, did you?

5 A. I bought the weed anyway. It just wasn't enough for
6 Brandon because he wanted some also and it wasn't enough.

7 Q. And you're telling this jury that you deny getting back
8 in the car and being mad at Julio?

9 A. Yes.

10 Q. And when you got back in that car you had to listen to
11 Clarence Hush complain the whole time about keeping him
12 waiting?

13 A. That's correct.

14 Q. And he was complaining about how his wife was giving
15 him a difficult time?

16 A. That's correct.

17 Q. So you didn't have a good situation with Julio in the
18 house, Clarence is complaining, you can't find any pot; and
19 you're telling this jury that when you said I'm going to get
20 my respect back, it was lyrics?

21 A. Like I was telling y'all earlier that I had marijuana,
22 I just couldn't find none for Brandon. And yes, I was
23 rapping the TI song. I don't know if y'all are familiar
24 with it. But some of his lyrics he said I don't know what
25 you do for your respect but I'll die for mine.

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 And, you know, like I said, maybe he misquoted me or
2 something. He doesn't listen to the same type of music we
3 do. So I guess he was just trying to just drown us out
4 because he was made that I took longer than expected.

5 Q. And those lyrics say I'll die trying?

6 A. No, it says I don't know what you will do with your --
7 for your respect, but I will die for mine.

8 Q. I will die for mine?

9 A. Yes.

10 Q. Now you were telling us that you were using a food
11 stamp cell phone?

12 A. Yes.

13 Q. Did you use a food stamp cell phone to make your drug
14 deals?

15 A. Um, no, because the way that phone works is that you
16 have 250 minutes and the minutes run even when somebody
17 calls you. So no, I was trying to hold on to that -- those
18 minutes as long as possible when I really need it for
19 emergencies like talking to my mother or my family members.

20 Q. Okay. Now was your testimony with Ms. Runey that
21 Detective Perkins made the decision to arrest you for murder
22 because you wouldn't tell him who else was involved?

23 A. Yes, that's what he told me. He said ---

24 Q. That he was going to arrest you?

25 A. --- that if I didn't tell him who did it he was going

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 to charge me for it. And that's what he did.

2 Q. Okay. So the only reason that Detective Perkins
3 charged you with murder is because you wouldn't tell him the
4 other people?

5 A. Yes.

6 Q. Otherwise he was going to let you walk out?

7 A. I have no idea. But that's what he told me, if I don't
8 tell him who did it he was going to charge me for it. And
9 that's what he did.

10 Q. Now on that phone call from the jail ---

11 A. Yes.

12 Q. You've got a reason for everything don't you?

13 A. Not everything.

14 Q. Well, you were worried about DNA being in that car;
15 were you not?

16 A. No, I was not.

17 Q. You were not worried?

18 A. No, not at all.

19 Q. And when you say - and I'm quoting: My phone is inside
20 that shit. Well, not my phone but the phone I was using is
21 inside there.

22 A. Right, what I meant by that is that -- you know, I
23 didn't get into full detail. Because when you come in here
24 and intake you've got to go through processing. And they --
25 like after a certain amount of hours they dress you out and

1 take you upstairs. So I really was limited on that phone
2 call.

3 And the reason I called him was because I was trying to
4 get in touch with Amber and I knew that her phone was inside
5 of that car. So when I say my phone, I mean our phone. I
6 wasn't really concentrating on the choice of words I was
7 using.

8 But when I said my phone, I meant our phone. Because I
9 took -- I explained to y'all earlier that my phone went dead
10 so I use her phone. I don't have a phone that you pay the
11 bill every month. I just had the free food stamp phone.

12 Q. The food that the government gives to people who
13 don't -- can't afford a phone?

14 MS. RUNEY: Objection, ---

15 A. Yes.

16 MS. RUNEY: --- Your Honor.

17 THE COURT: Sustained.

18 BY MS. SHEALY:

19 Q. Mr. Rose.

20 A. Yes.

21 Q. In that phone conversation you say you don't want to
22 talk to the dude.

23 A. Yes, I was talking about her brother. Again, I didn't
24 know her brother was in jail at the time and that was his
25 phone. Because me and him we really don't see eye to eye.

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 One time we got into something in front of his mom's
2 house. And so we don't really see eye to eye like that.
3 And that's what I mean when I said I don't want to talk with
4 the dude. I'm talking about her brother. Because I had --
5 when I placed the phone call I had my home boy call her
6 brother's phone on three-way.

7 Q. Mr. Rose.

8 A. Yes.

9 Q. You were furious when you left Julio's with Brandon and
10 Clarence in the car, were you not?

11 A. No, I was not.

12 Q. You sat there seething thinking that Julio had
13 disrespected you; ---

14 A. I didn't ---

15 Q. --- is that correct?

16 A. No, that's not correct.

17 Q. You found two guys to come with guns and masks and join
18 you back at that house; isn't that correct?

19 A. That's incorrect.

20 Q. So the fact that there is testimony regarding a Dodge
21 Neon ---

22 MS. SHEALY: Objection, Your Honor. Asking the witness
23 to comment on the testimony.

24 THE COURT: Sustained. Rephrase your question.

25 BY MS. SHEALY:

1 Q. Mr. Rose.

2 A. Yes.

3 Q. Is it just a coincidence that right outside your
4 trailer park the next day is parked a Dodge Neon?

5 MS. RUNEY: Objection, Your Honor.

6 THE COURT: Y'all approach.

7 (WHEREUPON, bench conference was had 11:20 a.m. as follows:)

8 THE COURT: You are venturing into arguing instead of
9 asking him questions. You can -- you need to lead with a
10 question, not try to testify. All right. Any other
11 objection?

12 MS. RUNEY: No.

13 THE COURT: All right. That objection is sustained.

14 (WHEREUPON, end of bench conference.)

15 THE COURT: Sustained.

16 BY MS. SHEALY:

17 Q. Mr. Rose.

18 A. Yes.

19 Q. Had you ever gone over to Julio's house before in the
20 Dodge Neon?

21 A. No.

22 Q. And that day that you got arrested later that morning
23 there was a Dodge Neon parked outside your trailer; is that
24 correct?

25 A. No, that's not correct.

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

- 1 Q. That's not correct?
- 2 A. No.
- 3 Q. And when you went back over to Julio's that night you
- 4 didn't care who was inside, did you?
- 5 A. Excuse me?
- 6 Q. On that third time that you went back with your two
- 7 guys you didn't care who was inside, did you?
- 8 A. I never went a third time.
- 9 Q. Did you walk out of the door right as Tawana was going
- 10 to smoke a cigarette?
- 11 A. I don't recall that.
- 12 Q. You don't recall that?
- 13 A. No.
- 14 Q. Do you recall getting into the Dodge Neon with your two
- 15 guys and leaving?
- 16 A. I've never been in a Dodge Neon.
- 17 Q. You've never been in a Dodge Neon?
- 18 A. No.
- 19 Q. So Everlina Bickam who is like a sister to your
- 20 girlfriend, you have never been in her car?
- 21 A. Never.
- 22 Q. And did you direct your guys, the stuff in the back, at
- 23 Julio's?
- 24 A. I never been there a time -- time with nobody other
- 25 than Clarence Hush and the white guy. That's the only time

1 I've been there at nighttime.

2 Q. Antoine Aiken asked you when you arrived in that Neon
3 who were the guys in the car; and you wouldn't tell him,
4 would you?

5 A. I've never been in a Neon.

6 Q. You make sure that all three of y'all had weapons, did
7 you not?

8 A. I never owned a weapon.

9 Q. You have never owned a weapon?

10 A. No.

11 Q. Mr. Rose, you've been sitting at that jail trying to
12 figure out a response for everything; haven't you?

13 A. No.

14 Q. When Deanna Henderson approached the car and she said
15 did you shoot Julio did you go (motioning)?

16 A. First of all, I don't know if she was listening or
17 y'all was paying attention that I was explaining why I
18 called her to the car and the police came with her.

19 So if I was to do something like that or she asked me a
20 question like that, the police would have known about that.

21 Q. You have an answer for that as well, right, Mr. Rose?

22 A. No, well, I'm just stating the facts, you know, that a
23 police officer escorted her to the car and that's when I
24 told her that I was sorry for bringing cops in her yard like
25 that. Because she has two small kids. And she told me, she

CROSS-EXAMINATION BY MS. SHEALY OF JAMES ROSE:

1 said that okay, write me when you get to jail. She never
2 said nothing like that.

3 Q. So you're saying ---

4 A. Up until trial.

5 Q. --- you and Deanna Henderson were buddies?

6 A. No, I'm not saying that.

7 Q. But y'all were going to be pen pals?

8 A. No, I said that's what she said. I told you earlier
9 that that was just something that came out real quick
10 because I wanted -- I really wanted to tell her to get the
11 weed out that chair before them cops see it in there.

12 MS. SHEALY: Your Honor, may we approach for a moment?

13 THE COURT: You may.

14 (WHEREUPON, bench conference as follows:)

15 MS. SHEALY: Your Honor. He does have an unlawful
16 carrying of a weapon charge. He has testified that he has
17 never owned a gun. I think he has opened the door to that.

18 THE COURT: Anything on that? I think he has opened
19 the door.

20 (Counselors conferred.)

21 THE COURT: Do you have the indictment or any of the
22 information?

23 MS. SHEALY: No, I don't or any other information.

24 MS. RUNEY: There is a charge for a knife. That is
25 something other I think it would unlawful carry of a pistol

1 how they list it on the rap sheet.

2 THE COURT: Okay. If you have to establish that it was
3 a handgun pistol then I will let you do it. But other than
4 that, I don't think we can, okay. Thank you for
5 approaching.

6 (WHEREUPON, end of bench conference.)

7 BY MS. SHEALY:

8 Q. Mr. Rose.

9 A. Yes.

10 Q. I have nothing further.

11 THE COURT: Okay. Redirect.

12 REDIRECT EXAMINATION BY MS. RUNEY OF JAMES ROSE:

13 Q. James, have you ever hidden the fact that you sell
14 drugs?

15 A. No, I have not.

16 MS. RUNEY: That's all I have. Thank you.

17 THE COURT: Okay. Sir, you may step back to the table.
18 Thank you.

19 MR. ROSE: You are welcome.

20 THE COURT: Yes, ma'am.

21 MS. RUNEY: The defense rests.

22 THE COURT: Okay. Ladies and gentlemen, the defense
23 has rested. I need to take up a few matters with the
24 attorneys. And now would be a good time for you to
25 midmorning break. Please do not discuss the case yet.

State vs. James Rose

1 Thank you.

2 (WHEREUPON, jury exits courtroom December 12, 2013,
3 11:26 a.m.)

4 THE COURT: Okay. Any motions from the State or the
5 defense?

6 MS. SHEALY: None from the State.

7 MS. RONEY: Your Honor, at this time I would renew my
8 previous objections. I would also make another motion for a
9 directed verdict based on Mr. Rose's testimony here today
10 that he never went back over to the trailer in Lincolnville
11 and therefore we would ask for a directed verdict on the
12 murder charge.

13 THE COURT: Okay. Thank you. For the reasons stated
14 previously when the State rested I will deny the motion for
15 a directed verdict.

16 I don't believe that Mr. Rose's testimony has changed
17 that analysis. There has been evidence presented that meets
18 any evidence standard of State v. Cherry and the other cases
19 addressing the directed verdict standard in a General
20 Sessions case. Also that motion is denied.

21 Is the State planning to offer any reply?

22 MS. SHEALY: No, I'm not.

23 THE COURT: All right. Are y'all ready to talk about
24 the proposed jury charges? Obviously I will take out the
25 section about defendant will not testify because he has now

1 taken the stand. But what other revisions, additions are
2 necessary?

3 MS. SHEALY: We are fine with the instructions that you
4 submitted to us.

5 THE COURT: Okay. Thank you. Yes, ma'am?

6 MS. EHRLICH: Your Honor, two issues.

7 THE COURT: Okay.

8 MS. EHRLICH: One is just I think there is maybe a typo
9 or a missing word.

10 THE COURT: I'm sure there's one somewhere. Direct me
11 to the page.

12 MS. EHRLICH: The first page where you have under the
13 Constitution and laws of South Carolina finders of the fact,
14 I do not have the right to pass upon the fact. I think
15 there's something missing there, like judgment or something.

16 THE COURT: I do not have the right to pass upon the
17 facts or even to express any opinion I might have to them.
18 I mean I can say comment if you would rather me to pass upon
19 the facts of ---

20 MS. EHRLICH: I just thought maybe there was a word
21 missing.

22 THE COURT: It's just an archaic way ---

23 MS. EHRLICH: Okay.

24 THE COURT: --- to say it.

25 MS. EHRLICH: Okay.

State vs. James Rose

1 THE COURT: I will change it to ---

2 MS. EHRLICH: I don't think it matters. I just wanted
3 to make sure ---

4 THE COURT: No, I like that -- that sounds very old
5 fashioned.

6 MS. EHRLICH: Yes, ma'am.

7 THE COURT: I like comment better. I will change it.

8 MS. EHRLICH: The only issue that we had is we
9 didn't -- Mr. Rose requested that Your Honor not instruct on
10 the hand of one is the hand of all.

11 THE COURT: Based on what?

12 MS. EHRLICH: Your Honor, I just want to put our
13 argument on the record.

14 THE COURT: Okay.

15 MS. EHRLICH: Under the hand of one or in the hand of
16 all, it's our position that there was no testimony from any
17 sort of co-conspirators about a preplanning for the event,
18 that nobody else was charged, nobody else has testified
19 about a prearranged plan to come in and do anything, and
20 that there is no testimony linking him to a planning of the
21 event.

22 In addition, the testimony of Brandon Cantrell was that
23 on the ride back he was making calls that he thought to try
24 to get weed. So there wasn't any sort of planning going on
25 in the car.

1 Your Honor, other than that I don't think that we have
2 any other argument as far as the instruction. But I need to
3 confirm with Ms. ---

4 THE COURT: Okay. Go ahead and just put them first.

5 MS. EHRLICH: That is all we have, Your Honor.

6 Your Honor, we have got a note also to add something
7 about prior bad acts not being evidence of guilt since there
8 was testimony regarding his record and also him being
9 involved in drug sales.

10 THE COURT: Okay.

11 MS. EHRLICH: I think the record would be limited to
12 impeachment. I think there is an instructions on it.

13 THE COURT: Okay. All right. Ms. Shealy, talk to me
14 about the hand of one, hand of all and the limit of the
15 prior bad act to be used for impeachment.

16 MS. SHEALY: Your Honor, do you have a standard charge
17 about a prior record?

18 THE COURT: I do not, but I can get one.

19 MS. SHEALY: The one that I've usually heard that
20 judges use is fine with me.

21 THE COURT: Okay.

22 MS. SHEALY: And regarding the hand of one, hand of
23 all, I think it's, you know, obviously clear that there was
24 a combining that evening. Three people arrive -- at least
25 three people arrive in a single vehicle together. They

State vs. James Rose

1 leave together. And the heinous murder occurs inside. They
2 brought weapons. They brought masks.

3 THE COURT: Okay. Well, and as I recall there was
4 testimony that he was the driver of the car and that he was
5 identified by at least one of the witnesses as telling them
6 where to look for the stash.

7 So if the jury accepts that testimony, the jury deems
8 what weight it gives to testimony. I have no function in
9 passing upon the credibility of the various witnesses; so I
10 am going to charge hand of one, hand of all.

11 If y'all will give me just a few minutes I will pull
12 together the charge on prior bad acts and the use of that
13 for impeachment only.

14 And why don't y'all take about ten or fifteen minutes
15 and take a break and get ready for your closings and we will
16 be ready to do that in just a moment.

17 And I will print y'all a fresh draft of the charge
18 because I want y'all to look at the language to make sure
19 that there aren't any further objections as to that. But I
20 will make when we get the final draft ready to charge a
21 charges exhibit and note that the objections have been
22 properly made and I will overrule those. Okay.

23 MS. SHEALY: Thank you.

24 THE COURT: Take fifteen. Thank you.

25 (WHEREUPON, break was had December 12, 2013, 11:32 a.m.)

1 THE COURT: All right. I did miss something on Page 2.
2 It should say in the top paragraph together with the
3 stipulations and the exhibit which have been made a part of
4 the record. So I'm just going to write that in.

5 The prior record section is on Page 7. And we can
6 certainly move that if you like. But I think that is the
7 only change. And I've changed, like I said, passed upon to
8 comment upon.

9 All right. And we -- any suggested changes to the
10 charge or any issues?

11 MS. SHEALY: The State is fine with the change, Your
12 Honor.

13 MS. EHRLICH: No, Your Honor.

14 THE COURT: Okay, then this will be the charge. I will
15 give it as soon as y'all finish your arguments. Are we
16 ready for the jury?

17 MS. SHEALY: State is ready.

18 MS. RONEY: Yes, ma'am.

19 THE COURT: All right. Let's bring them on in. Thank
20 you.

21 (WHEREUPON, jury enters courtroom 11:56 a.m.)

22 THE BAILIFF: All jurors are present, Your Honor.

23 THE COURT: Thank you, sir. And thank you, ladies and
24 gentlemen. We all appreciate your patience.

25 You have heard the evidence in the case and the State

CLOSING BY MS. RUNEY

1 and the defense have rested. We've reached the point in the
2 trial where you will hear the closing arguments of the
3 attorneys and then we will have the charge on the law. So
4 I'm going to call on Ms. Shealy and Ms. Baldwin or Ms.
5 Runey.

6 MS. RUNEY: Thank you, Your Honor.

7 CLOSING BY MS. RUNEY:

8 Things were normal that day. Normal days don't make
9 for a murder. Lots of people were coming and going, buying
10 and selling of drugs, partying, celebrating, drinking,
11 hanging out, joking, and smoking, taking shots.

12 James Rose participated in this too. He went there to
13 buy weed. And he told you that. And he went there twice
14 that day. And when this shooting happened his name is the
15 first one mentioned.

16 And things escalate from there. It is like a chain
17 reaction, dominoes. First mentioned by Tawana Austin. And
18 I told you when we started this trial there could possibly
19 be many surprises during this case. She has told so many
20 stories. So many stories that you cannot believe her.

21 She told police the same day that this happened that
22 Onyx held a gun to her face, that he is the one that said
23 freeze Bitch. She had it out for him then. They show her a
24 lineup, circles it right there, James's picture. He is the
25 one, he is the one that told me to freeze Bitch.

1 She gives a description to the police of the shooters.
2 She says James is there. There is a tall guy with a gun, a
3 short guy with a gun and a driver. Four people. You didn't
4 hear anybody else talk about four people there.

5 And that is what detectives ran with. You heard from
6 Detective Perkins, the case agent. He testified at the
7 preliminary hearing that that is what they base the arrest
8 on.

9 A preliminary hearing is a hearing that is used to
10 determine whether there is probable cause to arrest
11 somebody. And that's the evidence that he used it.

12 But that is not what you heard from her in here. And
13 now she tells you that she didn't tell the truth. She told
14 you that was wrong, that James didn't hold a gun to her face
15 and that James wasn't the man who said freeze Bitch.

16 He was the first person I saw. The first person you
17 saw? So that is how you decide to pin a murder on somebody?
18 She leaves, leaves the Sheriff's Department and goes back
19 with her friends. Her same friend that is also a witness in
20 this case.

21 And when she is picked up again by the police and taken
22 back to the Sheriff's Department that wasn't by her own
23 choice. And suddenly what she has to say is different. I
24 think within 24 of when this happened.

25 She told you this was the talk of the town, the talk of

CLOSING BY MS. RUNEY

1 Lincolnvile. And she was out there spreading James Rose's
2 name. Antoine is taken in and he is shown a lineup. He
3 looks at photographs of six people. James Rose is in there,
4 right there in the middle, the third picture.

5 Does he pick him out? No. Hours later. And he
6 doesn't even tell the man that he says is responsible for
7 this. Oh, I didn't tell because I was going to take it into
8 my own hands. A want-to-be killer, I will just kill who is
9 responsible for this.

10 He is picked up again walking down the street, going
11 home to wash up. Isn't that convenient. And now is when he
12 tells the police that James Rose orchestrated this plan for
13 these men who are dressed in black, wearing masks, to come
14 in and shoot Leland Shannon.

15 And you know why he didn't tell the police it was James
16 Rose? Because it wasn't.

17 And you know why he never even told the police those
18 words that he is now saying that James said? Because it
19 didn't happen. He didn't say those words.

20 Now two years later Antoine Aiken is going to come in
21 here and tell you that James was telling them what to do and
22 afterwards he is telling them to hurry?

23 Those are things you remember. You remember it after
24 it happened. Joy never saw James. She told the police
25 that. She told the police that two masked men came in her

1 room.

2 And all of this worked for the detectives. It was
3 easy. They could go arrest James and be done with it. It
4 was an easy arrest. Pick up the man that Tawana Alston said
5 did this.

6 When in fact the story that is used to prosecute him
7 later is completely different. It was easy, easy not to
8 check their stories out. And what I mentioned to you in
9 opening is that it is scary, scary that a man can sit at
10 that table and look at being prosecuted for murder, losing
11 his freedom. That's scary. Losing your freedom from
12 witnesses who can't even tell the truth. That James
13 murdered somebody for some weed, some brown weed, that he
14 was getting charged too much. Yet none of this was
15 mentioned to the detectives. Nothing about any argument
16 over the price of weed.

17 And you know what, it is pretty obvious. It's pretty
18 obvious that Detective Perkins he doesn't care about this
19 case. He did the interviews that he is supposed to do,
20 showed them the lineup, came back and got a name on a second
21 interview, and ran with it.

22 And as I said earlier, not a thing was done to verify
23 these accounts. Not Tawana's, not Antoine's, not Joy's.
24 There were even other people there that weren't even
25 interviewed.

CLOSING BY MS. RUNEY

1 Ishmal Weston was an eyewitness, and the police don't
2 interview him? Why is that? You heard a 911 call. I don't
3 know that Detective Perkins had even listened to that 911
4 call.

5 He didn't know that Brian Williams had called the
6 police. Brian Williams is across the street. Tawana runs
7 over there is banging at his door. Yeah, he is a witness.
8 He goes back over to the scene. Nobody ever talks to him.

9 And had he interviewed Brian Williams he would have
10 learned an important fact. Tawana told you that she jumped
11 under the porch and she ran. She heard shots. She even
12 said that she does not know what happened inside the
13 trailer. She could not see. And she did not see Julio get
14 shot.

15 But you know what Brian Williams said to you? He said
16 that Tawana was banging on the door screaming. At that time
17 he didn't know who she was. She screams Julio is shot,
18 Leland is shot. How did she know this? An important thing
19 to find out in investigating a murder.

20 Is it because she knew this was going to go down? Did
21 she scream to get Julio to come to the door? She knew he
22 had been shot without even seeing anything happen. What is
23 the real story?

24 They didn't find any drugs in the trailer. Okay, fine.
25 We all know that they were dealing drugs. We all know James

CLOSING BY MS. RUNEY

1 went there to buy the drugs. But what makes that fact
2 important is that Detective Perkins didn't even know. It is
3 your case. Trying to put the putting somebody away from
4 murder aren't you going to know your file, know your case?

5 The same as the preliminary hearing I asked about,
6 solely depending on the inaccurate accounts of Tawana Alston
7 and Antoine Aiken.

8 A lot is going to be made about what James Rose did the
9 next day. He knew the police were coming to look for him.
10 Word travels fast especially about things like this. He
11 goes over to his neighbor's house. And there is going to be
12 some debate about did James ask her who got shot or did she
13 ask James who got shot and somebody says that it was Julio.

14 Yeah, they knew that. People were calling. Things
15 were on the news. And James knew people were calling his
16 name. And then when the real shooters are never arrested,
17 nobody does anything to track them down, James is the
18 natural assumption. Somebody is going to pay.

19 Antoine Aiken told you this is what happens when you
20 buy and sell drugs, you negotiate the price. It is not like
21 going to the Harris Teeter picking out something you want,
22 looking at the price and paying for it. That's what drug
23 dealers do.

24 He also told you that he had heard these discussions
25 between Julio and James a lot and that this was nothing out

CLOSING BY MS. RONEY

1 of the ordinary. It's normal, not something you would kill
2 over.

3 Clarence Hush was mad at James. Mad at James because
4 he was taking too long, and his wife was going to be furious
5 with him. She was lighting up his phone.

6 So he went to the door to find out when James was
7 coming. And a big black guy in a green shirt answered the
8 door. A green shirt.

9 James comes to the car. Brandon Cantrell is in the
10 back. He doesn't have the weed for Brandon. So he is on
11 the phone calling trying to get a 15. Again, not something
12 you're going to kill over.

13 And you better believe if that video from the BP showed
14 James Rose all hyped up mad that you would have seen it in
15 here. He's sitting in the car calling for more weed for his
16 little white boy in the back.

17 I'm going to backtrack a little bit. Clarence Hush.
18 In a hurry to get home, goes to the door. The man is in a
19 green shirt. I'm going to tell you it is not just a
20 coincidence that Joy says one of the guys that comes in her
21 room in a mask with a shotgun has on a green shirt.

22 There are so many things about this case that don't
23 make sense. If Joy now says that she recognizes that voice
24 that she heard in her room that that was James Rose's voice,
25 when in the world did he go and get a gun and put a mask on

1 and why in the world would he come in there without a mask
2 and then put one on?.

3 I am not saying that Joy is lying. I'm not saying that
4 she intentionally came in here to try to lie on James Rose
5 or to frame James Rose.

6 She lost her father. She saw a horrific scene when she
7 left that bedroom. She wants somebody to be responsible.
8 It is human nature.

9 When this happens of course she is hysterical. She is
10 in the midst of a nightmare. If she had heard James Rose's
11 voice and recognized it, she would have told the police
12 that.

13 I don't think she thought to herself oh now I'm going
14 to say it is James. It can't sit well with her that two
15 people who shot her father are still out there, that nothing
16 has been done to find them.

17 It is easy to want somebody to be responsible. And now
18 that we are in this trial and that James Rose has been
19 arrested and James Rose sits at that table, it is easy to
20 think that that was his voice. But that should not be the
21 evidence that allows for James to sit here facing a murder
22 charge.

23 The real killers are still out there. And nothing has
24 been done. Clarence Hush told you he made a mistake on his
25 statement so he called the police, called the detectives to

CLOSING BY MS. RUNEY

1 say I told you the wrong time. And that was confirmed with
2 the video from the BP.

3 And you know what they told him? Don't worry about;
4 it's not important. What else did they say that about? It
5 doesn't matter; it's not important.

6 And you heard the same thing that I did, detectives are
7 busy. Detectives don't communicate well. Communicate.
8 Isn't that part of their job to communicate, to collect
9 evidence.

10 And you know what, in their -- in this case there is no
11 evidence that links James Rose to this murder. Nothing.
12 Nothing that the Charleston County Sheriff's Office Evidence
13 Unit, Crime Scene Unit, whatever you want to call it, did to
14 link him there.

15 And I know and I understand that you can't always find
16 fingerprints, you can't always find DNA. But there is
17 nothing. Nothing at James's house, no guns that are linked
18 to the murder or James, no blood found on anything that
19 belongs to James.

20 That was a brutal murder. You saw those terrible
21 pictures. There is blood everywhere. And if James was
22 involved in this murder he would have blood on him.

23 And if he wasn't standing right there in that small
24 area, you don't think that there would be blood in the car
25 from the shooters? You did not hear one thing about any

1 blood in that car. You know why? Because that is not the
2 car. And a big deal is going to be made about that car.

3 You didn't see any pictures of the Dodge Neon that
4 belonged to Everlina Bickman shown to Antoine Aiken or
5 Tawana Alston. Neither one of them were asked is this the
6 car you saw. And they weren't asked because it wasn't the
7 car.

8 We heard about a lot of stuff. And you are going to
9 get a lot of stuff back there with you. But nothing puts
10 James Rose killing Leland Shannon. In fact, you will see a
11 picture of some shotgun shells that were in the trailer at
12 Carolina Avenue, several red shirts that were collected at
13 James's house.

14 The house was a mess. There were clothes everywhere.
15 Nothing came of those shirts. No blood on his shoes, his
16 shoes that he left right outside.

17 Now if you had just committed a murder would you leave
18 your shoes right outside your door? You will have these
19 pictures. But this car is a mess.

20 This car was seized the very next day. Nobody cleaned
21 this car out. Nobody tried to wash blood out of this car.
22 And you know why? This car wasn't used.

23 Oh, and a big deal is going to be made about these
24 keys being in the car. And you know why these keys are in
25 the car? Because Everlina Bickman drove this car up to

CLOSING BY MS. RUNEY

1 Cindy Lane and the police pulled her out of it. So the keys
2 are in it.

3 There was a lot of blood and the pathologist told you
4 that Leland Shannon was shot in the leg at close range.
5 Three feet. Three feet from the muzzle of the gun to the
6 surface of the skin. And don't you know there was a lot of
7 blood.

8 There was blood dripping from the skill saw. There's
9 blood dripping on the wall. There is no way that this
10 shooter did not have blood all over him.

11 Touch-DNA, the handles of the car. It is not James
12 Rose's DNA. I don't know who it is. And they're going to
13 make a big deal about only two handles were swabbed for that
14 DNA. And let's blame it on SLED too. SLED's fault that
15 only two swabs of the four went up there?

16 SLED doesn't decide what they test. Detectives in
17 crime scenes do. And they made the decision not to send all
18 of those swabs.

19 And you know why they didn't send all of them? Because
20 it didn't matter because it wasn't in the car that was used.
21 They knew this wasn't the car they were looking for. This
22 car is a distraction, a distraction for an already weak
23 case.

24 And don't you think if you had used a car to commit a
25 murder you surely wouldn't have it around you or your house,

1 have it driven right up to your neighborhood where you now
2 know that the police are looking for you.

3 And you sure didn't hear from Ms. Everlina Bickman who
4 owns the car. Because don't you know that Everlina said
5 yeah that's my car outside with the keys in it or yes I let
6 James Rose use my car. Don't you think you would have heard
7 about it? You didn't.

8 You didn't hear it because she didn't say that. We
9 didn't even hear from a police officer that was there when
10 this car was taken into custody.

11 Ms. Meyer who works in crime scene said that the
12 Sheriff's Department already had the car when she got there.
13 You didn't hear that evidence because the State chose not to
14 tell you the truth.

15 And we know she was driving that car up. James told
16 you. Her purse is sitting in the front seat with all of her
17 medications. And she is asking for her stuff out of the
18 car.

19 And there is a phone in that car. You heard nothing
20 about trying to fingerprint that phone. Maybe you don't get
21 anything off of it. But don't you think you would try if
22 you thought this was a getaway car from a murder.

23 Nobody came in here and told you whose phone it was.
24 Cell phones can be tracked. And you didn't hear any
25 evidence of that. Nobody came in here to tell you that they

CLOSING BY MS. RUNEY

1 tracked the cell phone and where this car went because they
2 didn't do it.

3 And because the police don't do anything the
4 Solicitor's Office is left to prosecute the case with
5 nothing. Nothing but the words of people we know who lied.
6 Forced to use things like his jail phone call when he is
7 arrested trying to find his girlfriend.

8 So he knows he is about to be evicted, let out on the
9 street. Calling different cell phones trying to find her.
10 He has his friend call a family member's phone to find her.
11 That doesn't work.

12 He knows he is being blamed for a murder. He has been
13 arrested for it and is sitting at the jail. He has seen
14 that this car has been seized by the Sheriff's Office.

15 Of course they are going to look for DNA. Or you think
16 they would. He never says oh, no, my DNA is going to be
17 found in that car. He knew before the police even got there
18 why they were coming. He knew he was going to jail. Word
19 was traveling fast.

20 And after Antoine and Tawana gave their story it didn't
21 work. All of their stories didn't work. And Tawana's final
22 version she says James wasn't the shooter. I called James's
23 name because he -- I saw him. He was the first person I
24 saw.

25 And so now the State has to defend on something called

1 the hand of one to try to prosecute James, the hand of one
2 is the hand of all. He is not the shooter, he didn't bust
3 in the door, he didn't kill Leland Shannon, so now let's try
4 to prosecute him for it because he is the only man we have
5 got.

6 It has been two years and nobody has done anything to
7 find out who really shot him. So now suddenly Antoine Aiken
8 remembers oh yeah I ran out in the woods and I heard this
9 voice and it sounded like James Rose.

10 And Ms. Shealy kept asking him what else did James say.
11 Not what else did the person that sounded like James say,
12 what did James say.

13 So kept talking. And he says Onyx says this. He can
14 all of a sudden hear all this stuff outside of the trailer.
15 When Ishmal Weston told you he is in the bathroom and he
16 can't even hear what is going on in the bedroom next to him.

17 So you're left to depend on Rick Roth, a liar. He told
18 you he was a liar. He lied to 911 and said this is Ray. He
19 is a liar. He was drunk. And he was willing to kill,
20 himself, take matters into his own hands.

21 And they rely on Tawana Alston, convicted of attempted
22 armed robbery herself, convicted of burglary, convicted of
23 unlawful conduct towards a child.

24 And I'm not going to stand here and tell you that James
25 doesn't have a record. He does. And he tells you that.

CLOSING BY MS. RUNEY

1 But when I asked Tawana why her story was different, she
2 said I was confused.

3 This is not something to get confused about. And what
4 really baffles me about this case are there are so many
5 things that we have heard about that murderers don't do.
6 Murderers don't kill over a little bit of brown weed.

7 Murderers don't just hang out until their ride knocks
8 on the door and says come on, we've got to go, my wife is
9 going to be really mad.

10 They don't get mad over some weed and then catch a ride
11 from an old dude in the neighborhood and give him \$10 for
12 gas. If this was a fight about the money, James had it. He
13 had money for the 15 that he was looking for, \$15 worth of
14 weed. He didn't need to be fronted. Murderers don't do
15 that.

16 And you don't return to commit a murder and come in the
17 door joking about I told you I was going to come back. And
18 you definitely don't show up in the same clothes that you
19 had been wearing there earlier. You don't show up with two
20 masked men and you walk in plain as day.

21 You don't show your face if you are going to commit a
22 murder. And if you showed up to a place where there were
23 people you knew and you didn't have a mask on, you don't go
24 home and hang around your house where people know you are.
25 You don't walk around the neighborhood and go talk to your

1 neighbor. You don't let the getaway car ride around right
2 where you are.

3 You don't come home from committing a murder and hang
4 up your red hoodie on the back of the door. You don't come
5 home and leave the same red thermal shirt that you wore on
6 your bed where people know you are. And you don't apologize
7 to your neighbor for bringing the police to your -- her
8 house. And you don't just hang out like normal.

9 And James told you. He didn't have to testify but he
10 told you. Sells drugs and gets his drugs from Julio. And
11 he had been over that day. But he never went back a third
12 time.

13 And the solicitor tried to trip him up and said he had
14 an answer for everything. This is his chance. Of course he
15 wants to talk. He has been in jail for two years. Two
16 years for something he didn't do.

17 Accused of murdering his friend. And he wants his
18 chance to tell the truth. And he did. He told you he did
19 not go back over there a third time.

20 James Rose is not guilty, period. He didn't do this.
21 And now because the case is bad they are going to try to
22 convict him under the theory of the hand of one is the hand
23 of all.

24 Well, he's not guilty under that theory either. The
25 hand of one is the hand of all. Where is the hand of one?

CLOSING BY MS. RUNEY

1 And you know what, James Rose didn't have an answer for
2 everything. He didn't have an answer as to who did this.
3 And you know why? That is because James Rose is innocent.
4 Thank you.

5 THE COURT: Ms. Baldwin or Shealy.

6 MS. SHEALY: May it please the Court.

7 CLOSING BY MS. SHEALY:

8 Good afternoon. Why in the world would Antoine Aiken,
9 Tawana Alston, Joy Mills and Ishmal Weston want the wrong
10 person convicted? Why in the world?

11 Antoine Aiken took that stand and he tells y'all I told
12 the police everything my first interview except that man's
13 name. And why did he do it? He wanted to get his hands on
14 him. He wanted to kill him.

15 Why did he want to kill him? Because he knows he is
16 responsible. He knew it from the very beginning. He came
17 in this courtroom with the judge on the bench and law
18 enforcement in various areas in the courtroom and admitted I
19 called him a gentleman because I wanted to get my hands on
20 him, I wanted street justice.

21 But before he had gotten angry, before he had the
22 opportunity to sit up in that hospital and wonder whether or
23 not his cousin was going to die, before he had time to get
24 steamed up about what happened, he talked to the 911
25 operator. Antoine Bernard Aiken spoke to the 911 operator.

1 You could hear it in his voice the pain.

2 Joy, heard her screams in the background are wrenching.

3 The 911 operator: Where are the responsible people now?

4 They are gone.

5 That is what Antoine tells the 911 operator: They are
6 gone. They drove off. They were in a gray car.

7 Now this is important. James Rose when he walked up
8 here today and took the stand and all of his answers, he
9 told you he hadn't ever gone over to Julio's house before in
10 that gray car.

11 There was no way for Antoine and Tawana to know there
12 was a gray car associated with James Rose. They didn't know
13 that. Antoine told the 911 operator that two minutes after
14 the scene went down, it was a gray car.

15 And what does he say to the 911 operator. He asks
16 please somebody hurry up. Describe the man. Black, braids
17 in his hair, red shirt. How old did he look: Thirty-two.
18 Do you know his name?

19 Antoine Aiken when seeking help for his dying cousin
20 and listening to his younger cousin wale as he takes his
21 last breaths, he is giving 911 the best information he can.

22 And when he was asked, when he was asked do you know
23 his name -- and you can listen to the 911 call again if you
24 need to: Do you know his name?

25 What did Antoine Aiken say? Everybody calls him "O".

CLOSING BY MS. SHEALY

1 Everybody calls him "O". How tall? Six feet. How heavy?
2 A hundred and forty pounds.

3 She asked oh was it an SUV? No, a gray car. Two door,
4 four door? Antoine: I'm coming, Joy. Four door.

5 911 operator: Well, where is the vehicle now? I don't
6 know. They left. They left.

7 James Rose is guilty of murder. And let me address
8 something that Ms. Runey said. Murders don't make sense.
9 Is Ms. Runey is suggesting that there is always a good
10 reason for a murder? Murders don't make sense. And there
11 is nothing less about the law of the hand of one is the hand
12 of all. If you are guilty, it is the hand of one is the
13 hand of all.

14 Our law addresses the situation because often there is
15 just one trigger man but other people right there. Right
16 there in the planning, right there in the execution just
17 simply did not pull the trigger.

18 Let's take a look again at hand of one, hand of all.
19 The judge is going to tell you -- when I finish she is going
20 to give you the law on all the cases. And she will describe
21 to you and define for you what the hand of one is the hand
22 of all.

23 And listen to Judge McDonald when she tells you full
24 picture of hand of one, hand of all. If a crime is
25 committed by two or more people who are acting together in

1 committing a crime the act of one is the act of all.

2 A person who joins with another to accomplish an
3 unlawful act is criminally responsible for everything done
4 by the other person which happens as a natural consequence
5 of the act done in carrying out the common plan and purpose.
6 Loading up in a car, bringing maps, bringing guns, bringing
7 loaded guns.

8 If two or more people are together acting together
9 assisting each other in committing the offense, the act of
10 one is the act of all. Or as it is said, the hand of one is
11 the hand of all.

12 Ms. Runey was telling you what hand. What is she
13 talking about? We have the hand of the man who had the .38
14 Special, 357 magnum. That is a hand. We have the hand of
15 the man who shot the shotgun. That is a hand. And we have
16 the hand of that man, the one that was ticked off. Nothing
17 affects someone like James Rose like his pride does wanting
18 respect.

19 A principal in a crime is one who either actually
20 commits the crime or who is present, aiding, abetting, or
21 assisting in committing the crime. Driving, gathering,
22 yelling, go to the back, go to the back, the stuff's in the
23 back.

24 When a person does an act in the presence of and with
25 the assistance of another, the act is done by both. Where

CLOSING BY MS. SHEALY

1 two or more acting with a common plan or intent are present
2 at the commission of a crime it does not matter who actually
3 commits the crime.

4 Present at the commission of a crime means to be
5 sufficiently near to aid and abet and assist in commission
6 of the crime. That is our law.

7 James Rose wasn't just merely present over there. He
8 tells you he wasn't there at all. He denies a third trip.
9 Come on. James Rose was fed up. And who else told us that?
10 Deanna Henderson.

11 For the days before January 2014 he is complaining
12 Julio is not doing him right. He's the big man. He's the
13 big man in the trailer park. He's the one you buy stuff
14 from him. He may get you enough that you can sell some,
15 especially if you are a kid like Brandon Cantrell. That is
16 who James Rose is.

17 He takes a high schooler, drives him over town to get
18 you some stuff. You can smoke it. That's a great thing for
19 him to be doing. And in addition you might make a lot of
20 money off of it.

21 Last legit job he had was back in the '90s. Deanna
22 Henderson told us he was complaining and complaining. He
23 was mad. Because he had been dealing with Julio for a long
24 time. What did Brandon Cantrell tell us? He didn't say
25 that James Rose got back in the vehicle with some brown

1 marijuana. He said James Rose got back in the vehicle after
2 being in there for 45 minutes to an hour with nothing.

3 You got a glimpse of this man. That doesn't sit well
4 with James Rose. He is taking his underlings, let's go buy
5 some stuff, I'm the man, I can get it for you. And he comes
6 out empty-handed. Nobody is going to do that to me.

7 Been in there so long that Clarence Rush had to rush
8 him out -- Clarence Hush had to rush him out, go up to the
9 door. What's taking so long? Can you imagine, James Rose
10 trying to talk Julio into something. And Julio wasn't
11 buying it. And he paid dearly.

12 Just think about it. Onyx had to get back in that car
13 with Brandon and Clarence Hush and admit I couldn't get the
14 stuff. And in addition to that he had to hear Clarence Hush
15 fuss at him the whole time about how he was getting in
16 trouble with his wife and how it took too long. He's
17 sitting there seething.

18 And the rap song lyrics. Come on. If he and Clarence
19 Hush don't listen to the same kind of music do you think
20 Clarence Hush when he is getting yelled at and fussed by his
21 wife is going to turn on some rap music if he doesn't
22 usually listen to it? Come on.

23 And James Rose just wants to tell you he was feeling
24 musical. Just feeling the beat. Just giving us some rap
25 lyrics. Come on.

CLOSING BY MS. SHEALY

1 He's been sitting over there in that jail for almost
2 two years. He's been reading every single statement in this
3 case and he is trying to give you an answer for everything.

4 He was humiliated. And then he's got to give Clarence
5 \$10, has to pay for the ride out there. You could tell
6 Clarence didn't want to be here. Goodness gracious. You
7 could tell he didn't want to be here.

8 But he is the one who told you James Rose said I am
9 going to go back and get my respect. Again, murders don't
10 make sense. They are not for good reasons. They are not
11 for good reasons.

12 Joy and Antoine also told us that there was some words
13 between Julio and Rose when he was in the house. Now Ms.
14 Runey wants you to believe that everybody is a liar.

15 Well, if they were liars they could have come in here
16 and said listen they were having a knock down drag out.
17 They could come in here and say James Rose threatened Julio.

18 They didn't say that. They told you the way it did
19 happen. They said that the words were heated. Now let's
20 don't lose sight of this.

21 It is sort of interesting that what we have is we have
22 a mobile home and we have several people in the house. And
23 each of those people see an aspect of this murder. It's
24 like framed, freeze framed. Ishmal sees what he sees. Joy
25 in the bedroom sees what she sees it. Tawana walking

1 outside sees what she sees. And Antoine sees what he sees.

2 They didn't come up here and try to tell you they all
3 saw the same thing at the same time. They are not lying.
4 And what do they all say?

5 Tawana, his live-in girlfriend. Antoine, you saw him
6 break down on the stand. He loved Julio. Julio was his
7 cousin. Joy, Joy, the daughter who had just moved back in,
8 the daughter who didn't join the other guys at the table.
9 Ishmal told you Joy was working on homework. And when she
10 started feeling bad she -- bad, she retreated to her bedroom
11 to call her boyfriend. She had her snack on the bed and of
12 the cell phones.

13 Why would Ishmal who lives in Jacksonville now, who the
14 police never did interview, why would Ishmal, Antoine, Joy,
15 and Tawana tell you that James Rose came back that third
16 time unless he did. They also saw him.

17 Now what else did they tell you? When James Rose goes
18 to leave through that laundry room, Julio follows and
19 immediately the masked gunman upon Onyx getting on the porch
20 come tearing in there.

21 Ms. Runey can say what she wants about Tawana Alston.
22 You will have the opportunity if you need to to read --
23 listen to her testimony. But maybe you remember it vividly.
24 She wants to tell you that Tawana was lying.

25 Now Tawana nails it. Tawana nails it. Remember, they

CLOSING BY MS. SHEALY

1 had gotten her from the hospital. She gives her statement
2 at 3:50 in the morning. And before the police start saying
3 okay well who did you see first and what happened first and
4 whose first and first.

5 There are two different firsts here. The first person
6 she sees when she is on the porch is James Rose leaving
7 behind her. Where did he go with a red shirt on and no
8 mask? He goes to the car to get them. And the guys come
9 barreling up onto the porch.

10 The first statement, she read it for us. First
11 paragraph, in her handwriting, Julio, Joy, along with myself
12 and Ross, Antoine, we all was in the house enjoying
13 ourselves when Onyx, a.k.a. James Rose, came in. We all was
14 drinking. I went to take a shower. She corrected herself
15 and said it was a bath. Came back, smoked a Newport on the
16 back porch. Onyx came out behind me and went to a gray
17 four-door Neon. I flicked the Newport, turned around and I
18 had a shotgun in my face. Then a short fat guy came up with
19 like a nine-millimeter. He shot and my first reaction was
20 to drop, then went in, crawled under the porch and ran to
21 the neighbor. He said he was going to call the police. I
22 then ran and called my mother to come get me. And we came
23 straight to MUSC. The only thing I heard was Bitch freeze.

24 Is Ms. Runey trying to suggest that Tawana Alston is
25 involved in this? Why would she run to Brian Williams'

1 house and knock on the door and say something is going on
2 with Julio, he's been shot. Why?

3 Later she told us in this statement that the guy who
4 said -- that had the shotgun was tall and dressed in all
5 black. Ms. Runey tried to cross her up. But every time she
6 tried to explain: I'm telling you the order of the events
7 that happened.

8 Tawana passed Antoine when she ran around the side of
9 the mobile home. Something is wrong she calls out to Brian
10 Williams at his house.

11 She tells us the specifics on the car, gray, four-door,
12 Neon. She tells us that the tall guy and the short guy both
13 had on masks. It is interesting, and one of the reasons I
14 say that she nailed it is, she tells us one had a shotgun,
15 one had a handgun.

16 Now at three o'clock in the morning they were still
17 operating on Leland Shannon. Erin Meyer hadn't retrieved
18 all of the evidence. SLED hadn't analyzed anything.

19 But what does the evidence show us? He got shot in the
20 head by a handgun. He got shot in the neck and shoulder by
21 a handgun. And you saw the x-rays. Shotgun pellets, you
22 can see them in his leg. And we have them in evidence.

23 Tawana Alston nailed it. She tells you there are two
24 different kinds of guns. She tells you there is a tall guy.
25 She tells you there was a short guy.

CLOSING BY MS. SHEALY

1 If these people were conspiring to pin this on an
2 innocent man wouldn't Antoine have said oh, I saw the short
3 guy too? He didn't say that. He didn't have the
4 opportunity to see him. He was heading out the front door.

5 And that short guy with the handgun, remember what the
6 pathologist said about the path of those weapons? Straight
7 down in the head. Straight down to the shoulder. And he
8 missed twice. One is found on the saw, and one is found in
9 the cabinet. These guys were not playing.

10 Brian Williams told you in the middle of the night he
11 hears that frantic knock. And what does he do? He calls
12 911 and he goes over there.

13 Let's talk about Antoine. The judge is going to tell
14 you you are the judge of the credibility, the believability
15 of the witness, of all the witnesses.

16 Antoine Aiken, he was telling you like it happened.
17 And what is interesting about what he told you was when he
18 went to answer the door on that third visit from James Rose
19 he saw two guys in the car.

20 He asked Onyx who are they. And remember I was trying
21 to figure out if that happened on the porch. He goes no, it
22 started when I opened the door and it continued as we were
23 in the laundry room.

24 That memory is vivid for him. And Onyx was you don't
25 know them, you don't need to worry about it. But Antoine's

1 radar went up. Don't you know that he relives that
2 conversation every single day. Every single day. He knew
3 something wasn't right. You don't know them, you don't need
4 to worry about it.

5 Antoine tells you on that third visit, unlike the other
6 visits, Rose was there for a shorter time. Time enough.
7 Time enough to assess how many people were in Julio's house,
8 time enough to see whether the rifle that was usually in the
9 kitchen Antoine told us about whether it was there.

10 And he heads out, and Julio follows. And as Julio
11 turns that corner into the laundry room he hears shots. He
12 hears scuffling.

13 His immediate reaction was to help. The only thing he
14 could find was a pot. He turned that corner and saw a tall,
15 skinny guy in all black and something black in his hand.

16 He threw the pot and got the heck out of there. He
17 left. He ran. He hid. And he heard. He heard James Rose
18 calling the shots: The stuff is in the back.

19 And later: You're taking too long.

20 What does he see? He sees James Rose get in the
21 driver's seat of that gray Neon, the same description that
22 Brandon Cantrell gives of his girlfriend's car.

23 And again, in accessing whether Antoine is lying. He
24 doesn't tell you he sees the short guy ever. He doesn't say
25 oh and there was a short gut that got into the car too. He

CLOSING BY MS. SHEALY

642

1 doesn't tell you that. He tells you what frame he sees.
2 And the frame he sees is the tall guy and James Rose getting
3 into the vehicle. And they flee.

4 Ms. Runey wanted to make a big deal about the fact that
5 Detective Perkins -- and let me just offer, it is insulting
6 to suggest that the Sheriff's Department is going to do
7 what's easy in a murder.

8 Detective Perkins has told you it's still open as to
9 the other guys, that case is still open. But she made a big
10 deal about the fact they didn't go talk to Brian Williams,
11 they didn't go talk to her Ishmal.

12 So what's the problem. Ishmal came here from
13 Jacksonville to testify. Brian Williams has been sitting in
14 the courtroom since he testified. They told you what
15 happened. She wants you to believe this is a police
16 problem.

17 Let's stop and think about Ishmal for a second. I
18 think he was 15 or 16. James Rose said he was 13 or 14. He
19 was a kid. He was a kid that came to Julio's when he stayed
20 at his dad's because Julio had the video games.

21 James Rose has no more regard for human life than to
22 send those guys in when there is a kid over there. And
23 Ishmal is kind of a bigger teenager physically. But
24 remember how he talked. What did he say he did afterwards?
25 I went to go get my dad.

CLOSING BY MS. SHEALY

1 He tells you that James Rose was there. He tells you
2 that James Rose left. He tells you that when he hears the
3 shot he is trying to go for the door, the front door. Ross
4 beat him to it.

5 He fled down the hallway to the bathroom and closed the
6 door. And what did he hear? This is interesting. What did
7 he hear? The first thing he heard was the sound of
8 footprints in the kitchen. And you have seen photographs of
9 the floor in the kitchen.

10 But what else does he hear? He hears the kitchen
11 cabinets opening, closing, slamming. James Rose, the stuff
12 down the hall in the back. The stuff in the back.

13 He tells you that he hears a bam when he hears feet
14 running down the hall when the door to the back room opens.

15 Ms. Runey wants to make big deal about whether there
16 were drugs in that house. Maybe there were. Maybe there
17 were. And Mr. Rose and the tall man and short man hoped to
18 benefit from them. Because they were headed towards the
19 back.

20 And what did he -- does he tell you that he hears from
21 Joy's room? A muzzled sound, talking through the ski mask
22 in Joy's room.

23 Joy, she had just moved back in with her father. She's
24 doing schoolwork while the others are doing their thing.
25 Talked about her lying on the bed, having a snack, talking

CLOSING BY MS. SHEALY

1 to her boyfriend. And her phone goes out of batteries. The
2 batteries run out.

3 She told us that prior to going in there -- or after
4 she went in there and she goes back to see if somebody else
5 has a phone that she sees her dad right before he turns into
6 the laundry room. Who was there before, before she went to
7 the room? Who does Joy tell you was there? "O". Onyx.

8 When she sees her father as he crests the laundry room
9 she had no idea that moments later her life would never be
10 the same. She heard the shots. She heard the commotion.
11 She saw men running by her room. She pulls her covers up.
12 They enter the room.

13 What Joy tells us is extremely important. She tells
14 the police from the beginning the guy had a red shirt on and
15 a Navy jacket, he had a mask on his face and a shotgun.

16 Who had gone out to the car after they walked on the
17 porch? James Rose. Now a Navy jacket, a shotgun, and a ski
18 mask. She told the police then, then, the same night that
19 she has got her father's blood on her, when she is given a
20 statement knowing that her father is dying in the hospital,
21 red shirt, navy jacket, dark voice that was familiar. That
22 is the best she could do under those circumstances.

23 The other one in her room? Short, 5'9". A gun to her
24 chest and to her head. They're trying to ask her where the
25 stuff was. And remember what the guy in the red shirt said.

1 Because this is important. Forget her, the Bitch doesn't
2 know anything.

3 Who would know that? James Rose. Joy hadn't been
4 around for years. He knew Joy wouldn't know where her
5 father kept the stuff because she was doing homework
6 earlier. She had not been over at that house a number of
7 times that James Rose came here.

8 And what did Joy tell us after she had time to process
9 everything? And keep in mind why would she want James Rose
10 convicted if he weren't the one, in addition to the two that
11 we don't have yet, responsible for her father's death?

12 She would have no motivation to come in here and tell
13 you something that wasn't true. She wants the right people
14 convicted.

15 And she said later, later when she could replay it,
16 when she could calm down enough, she realized the red shirt,
17 the voice; it was Onyx.

18 And then what was the final insult? She heard the
19 shot. She didn't hear her father. She hadn't made it out
20 the room yet. She hears the two guys heading back towards
21 the laundry room.

22 And what does one of them say? I won't use the words.
23 They were his words. "F" that "N", he's going to die
24 anyway. "F" that "N", he's going to die anyway. When she
25 could tell they were gone she runs and slips in his blood to

CLOSING BY MS. SHEALY

1 try to help him, screaming daddy.

2 And when the EMS gets there they have to pull her off
3 of him. Her last embrace. She walks out of that house
4 barefooted, blood between her toes, blood in her hair, blood
5 on her hand, blood on her clothing. Doesn't even think to
6 put on shoes before her grandfather takes her to the
7 hospital. That is where her mind was.

8 What do we know about James Rose that next morning?
9 Murderers aren't really -- they're not smart. We know he
10 goes across the street to Deanna Anderson -- Henderson and
11 says did you hear what happened in Lincolnville. And she
12 says the home invasion? Yeah. Well, who got shot, she
13 asked. And he says Julio.

14 Rose knew it was Julio. The news hadn't shared that.
15 If anyone comes looking for me, don't say I stay in this
16 trailer park. Say I don't stay here.

17 And hey that Dodge Charger rides by. He wants you to
18 believe he's just interested in a new automobile riding the
19 streets. Balogny. The Dodge Charger, the police are there.
20 And he asks her go see where they're going.

21 They arrest him. They put him in that car. Deanna
22 Henderson goes up there and he does say I'm sorry I brought
23 the police to your house.

24 Did you shoot Julio?

25 (Motioning). That's how he responses. No no; no hell

1 no.

2 And ladies and gentlemen, I don't know if Ms. Runey or
3 Mr. Rose want us to believe that of all the coincidences in
4 the world that there just happens to be a gray four-door
5 Neon parked outside his trailer. Come on.

6 This case has been proven in this chair by the people
7 who loved Julio, by the people who would want the killers of
8 Julio to -- excuse me -- to get justice. It is
9 disappointing -- it is disappointing that we were unable to
10 identify the other two passengers in the Neon when they
11 left.

12 Let's talk about that jail phone call. I tell you
13 what, James Rose is creative. Because he doggone has an
14 answer for everything.

15 He asked on that call: How did Amber sound when you
16 talked to her.

17 Ladies and gentlemen, he told you Amber is his former
18 girlfriend. Amber hasn't stuck by him. Amber hasn't come
19 to see him at the jail. He wants to talk to Amber to make
20 sure she is not going to hurt him with these charges.

21 He says: She didn't even pick up the phone. I guess
22 they're thinking I ain't never going to get out.

23 Well, they would because they know what you have done.

24 Let me leave a message, Rose says, because I'm going to
25 "F" that "N" up when I get out of here. I don't want to

CLOSING BY MS. SHEALY

1 talk to the dude. I'm just trying to see what is going on
2 with Amber. He's wondering are they talking, are they
3 telling.

4 They took that girl's car and saying I got DNA in there
5 I guess, and my phone is inside that shit; well, not my
6 phone but the phone I was using inside there. Putting
7 himself in that car. The phone I was using inside there.

8 Ms. Runey said they can't tell you whose phone was
9 inside the car. James Rose told us, the phone he was using
10 is inside the car.

11 Let's listen to the tape.

12 (WHEREUPON, jail phone recording was played.)

13 MS. SHEALY: He wanted to see if they were trying to
14 play him. Amber, Matt. Where is his brother?
15 Pennsylvania. He didn't murder for weed. He murdered for
16 pride. He murdered for ego. He murdered for desperation.

17 A human life was taken. And you saw him testify. Cold
18 as ice.

19 We are asking that you return a verdict of guilty.

20 Thank you.

21 THE COURT: Thank you. Everybody okay? All right.

22 Ladies and gentlemen, you have heard the testimony, the
23 evidence, and the arguments of the State and of the
24 defendant. I will now discuss the law that applies to this
25 case.

1 Under the Constitution and laws of the State of South
2 Carolina you are the finders of the fact in this case. I do
3 not have the right to comment upon the facts or even to
4 express any opinion that I might have as to them. This is a
5 matter solely for use the jury to determine.

6 As jurors it is your duty to determine the effect, the
7 value, the weight, and the truth of the evidence presented
8 during this trial.

9 As the trial judge it is my responsibility to preside
10 over the trial of the case and to rule upon or pass upon the
11 admissibility of the evidence offered during the trial.

12 You are to consider only the testimony which has been
13 presented from this witness stand together with the
14 stipulations and the exhibits which have been admitted into
15 evidence and made a part of the record.

16 I have the additional duty to charge you about the law
17 applicable to the case, and as the presiding judge I am the
18 sole judge of the law of this case.

19 It is your duty as jurors to accept and apply the law
20 as I now state it to you and then reach your verdict.
21 Finally, ladies and gentlemen, I charge you in this regard
22 that you should not be concerned with what the law ought to
23 be but what the court charges you that the law is.

24 The credibility of witnesses is a matter for you the
25 jury to determine. You are the judges and the sole judges

State vs. James Rose

1 of the credibility or believability of the witnesses who
2 have testified and the evidence in this case.

3 In passing upon credibility you may take into
4 consideration many things such as the demeanor or the manner
5 of the witness testifying, whether a witness had a reason to
6 be biased or prejudiced in some way, whether a witness's
7 testimony was contradict on the one hand or supported and
8 corroborated on the other hand, whether a particular witness
9 has a motive to testify favorably for one party versus the
10 other.

11 You may believe a small portion of a witness's
12 testimony and disregard the larger or vice versa. You may
13 believe one witness against many or many against one.

14 All of these things you will consider bearing in mind
15 that you should give the benefit of any reasonable doubt.
16 It becomes your duty as jurors to analyze and to evaluate
17 the evidence and determine that evidence which convinces you
18 of its truth.

19 The rules of evidence ordinarily do not permit
20 witnesses to testify as to opinions or conclusions. An
21 exception to this rule exists for witnesses we call and
22 designate as expert witnesses.

23 A witness who by their education and experience has
24 become expert in some art, science, profession or calling
25 may state an opinion as to relevant and material matters in

1 the areas in which the witness has been qualified as an
2 expert. Such a witness may also state the reason for any
3 such opinions.

4 Ladies and gentlemen, you should consider any expert
5 opinion received in evidence in this case and like any other
6 evidence give it the weight you think it deserves.

7 If you decide that the opinion of an expert witness is
8 not based on sufficient education and experience or if you
9 conclude that the reasons given in support of the opinion
10 are not sound or that the opinion is outweighed by other
11 evidence, you may disregard the opinion entirely.

12 An expert witness's testimony is to be given no greater
13 weight than that of other witnesses simply because the
14 witness is an expert. You are not required to accept an
15 expert's opinion even though it is not contradicted.

16 There are two types of evidence which are generally
17 presented during a trial, direct evidence and circumstantial
18 evidence.

19 Direct evidence is the testimony of person who claims
20 to have actual knowledge of a fact such as an eyewitness.
21 It is evidence which immediately establishes the main factor
22 to be proved.

23 Circumstantial evidence is proof of a chain of facts
24 and circumstances indicating the existence of a fact. It is
25 evidence which immediately establishes collateral facts from

State vs. James Rose

1 which the main fact may be inferred. Circumstantial
2 evidence is based on inference and not on personal knowledge
3 or observation.

4 Crimes may be proven by circumstantial evidence;
5 however, to the extent of the State relies on circumstances
6 evidence all of the circumstances must be consistent with
7 each other and when taken together point conclusively to the
8 guilt of the accused beyond a reasonable doubt.

9 If the circumstances merely portray the defendant's
10 behavior as suspicious, the proof has failed. The State has
11 the burden of proving the defendant guilty beyond a
12 reasonable doubt.

13 This burden rests with the State regardless of whether
14 the State relies on direct evidence, circumstantial evidence
15 or some combination of the two.

16 The fact that the defendant was arrested, charged --
17 arrested, charged and indicted is not evidence in this case
18 and cannot be considered by you as evidence of guilt in this
19 case nor does it create any presumption or inference of
20 guilt.

21 The indictment is simply the formal written instrument
22 which contains the charge made against this defendant. An
23 indictment is the formal document by which the case is
24 brought into this court.

25 The defendant has pled not guilty to the charge in this

State vs. James Rose

1 indictment. And that plea puts the burden on the State to
2 work to prove the defendant guilty. A person charged with
3 committing a criminal offense in South Carolina is never
4 required to prove himself innocent.

5 Ladies and gentlemen, I charge you that it is an
6 important rule in the law that the defendant in a criminal
7 trial no matter what the seriousness of the charge may be
8 will always be presumed to be not guilty of the crime for
9 which the indictment was issued unless guilt has been proven
10 by evidence satisfying you of that guilt behind a reasonable
11 doubt.

12 The presumption of innocence does not end when you
13 begin your deliberations. It accompanies the defendant
14 throughout the trial unless you reach a verdict of guilt
15 based on evidence satisfying you of that guilt beyond a
16 reasonable doubt.

17 The presumption of innocence is like a robe of
18 righteousness placed about the shoulders of the defendant
19 which remains with him unless it has been stripped from him
20 by evidence satisfying you of the defendant's guilt beyond a
21 reasonable doubt.

22 The presumption of innocence is not mere legal theory
23 and it's not just a legal phrase. It is a substantial right
24 to which every defendant is entitled unless you the jury are
25 satisfied from the evidence of the defendant's guilt beyond

State vs. James Rose

1 a reasonable doubt.

2 So the State must prove the defendant guilty beyond a
3 reasonable doubt. What is a reasonable doubt in the law. A
4 reasonable doubt is a doubt which makes an honest, sincere,
5 conscientious juror in search of the truth in the case
6 hesitate to act.

7 Proof beyond a reasonable doubt must therefore be proof
8 of such a convincing character that a reasonable person
9 would not hesitate to rely and act upon it in the most
10 important of his or her affairs.

11 Proof beyond a reasonable doubt can also be described
12 as proof that leaves you firmly convinced of the defendant's
13 guilt.

14 Now there are very few things in this world that we
15 know with absolute certainty. And in criminal cases the law
16 does not require proof that overcomes every possible doubt.

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

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

23 You have heard evidence that the defendant has been
24 convicted of a crime other than the one for which the
25 defendant is now on trial. This evidence may be considered

1 by you, if you conclude that it is true, only in deciding
2 whether the defendant's testimony is believable and not for
3 any other purpose.

4 You must not consider the defendant's prior record as
5 any evidence of the defendant's guilt of the charge we are
6 trying today.

7 The defendant is charged with murder. The State must
8 prove beyond a reasonable doubt that the defendant killed
9 another person with malice of forethought.

10 Malice is hatred, ill will, or hostility towards
11 another person. It is the intentional doing of a wrongful
12 act without just cause or excuse and with an intent to
13 inflict an injury or under circumstances that the law --
14 from which the law will infer an evil intent.

15 Malice of forethought does not require the malice
16 exists for any particular time before the act is committed,
17 but malice must exist in the mind of the defendant just
18 before and at the time the act is committed. Therefore,
19 there must be a combination of the previous evil intent and
20 the act.

21 Malice of forethought may be expressed or implied --
22 express or implied. These terms express and inferred do not
23 mean different kinds of malice but merely the manner in
24 which the malice is shown to exist. That is either by
25 direct evidence or by inference from the facts and

1 circumstances which are proved to your satisfaction.

2 Express malice is shown when a person speaks words
3 which express hatred or ill will for another or when the
4 person prepared beforehand to do the act which was later
5 accomplished.

6 For example, lying in wait for a person or any other
7 acts of preparation going to show that the deed was in the
8 defendant's mind would be express malice.

9 In order to establish criminal liability, criminal
10 intent is required. For example, the mental state required
11 to be proven by the State for a particular crime might be
12 purpose, intent, knowledge, recklessness, or criminal
13 negligence.

14 Criminal intent must be proven by the State beyond a
15 reasonable doubt. Criminal intent is always a matter that
16 must be determined by the jury from the circumstances
17 surrounding the situation.

18 There is no way to prove intent to a mathematical
19 certainty. There is no way medical science can dissect a
20 person's brain and determine what the person had in mind.

21 So the law provides that criminal intent may be
22 inferred from the circumstances shown to have existed. This
23 is how you make a determination of whether or not the
24 element requiring intent was present.

25 Criminal intent can arise from action or from a failure

1 to act. It is not necessary to establish intent by direct
2 and positive evidence. But intent may be established by
3 inference in the same way as any other fact, by taking into
4 consideration the acts of the parties and all the facts and
5 circumstances of the case.

6 Criminal intent is a mental state, a conscious wrong
7 doing. It is up to you to determine what the defendant
8 intended to do based on the circumstances shown to have
9 existed.

10 Ladies and gentlemen, mere presence at the scene of a
11 crime is not sufficient to prove someone guilty of a crime.
12 A defendant's presence where a crime is being committed or
13 mere association with the person who commits a crime does
14 not make a defendant an accomplice or an aider and abettor
15 of the person committing the crime.

16 Suspicious circumstances like mere presence are not
17 sufficient for a finding of guilt against any defendant.
18 Mere presence or mere association does not result in a duty
19 to act.

20 A person present where a crime is committed or who
21 associates with people who plan or commit a crime does not
22 generally have a legal duty to prevent that crime from
23 occurring or to object to the criminal conduct involved.

24 The burden is on the State to prove every element of
25 the crime charged. If you find after reviewing all of the

1 evidence that the State has proven that the defendant was
2 only present at the scene of a crime and that the State has
3 not proven beyond a reasonable doubt any other participation
4 in the crime, then you must find the defendant not guilty.

5 If a crime is committed by two or more people who are
6 acting together in committing a crime, the act of one is the
7 act of all.

8 A person who joins with another to commit an unlawful
9 act is criminally responsible for everything done by the
10 other person which happens as a natural or probable
11 consequence of the acts done in carrying out the common plan
12 and purpose.

13 For example, two people can be guilty of killing
14 another person when only one of the two had a gun, there was
15 only one bullet, and only one of the two fired the shot that
16 caused the death.

17 If two or more people are together, acting together,
18 assisting each other in committing the offense, the act of
19 one is the act of all. Or as it is sometimes said, the hand
20 of one is the hand of all.

21 Prior knowledge that a crime is going to be committed
22 without more is not sufficient to make a person guilty of
23 that crime. Mere knowledge that another person is going to
24 commit a crime, even if the defendant is present when the
25 crime is committed is not sufficient to convict the

1 defendant as a principal.

2 Guilt as a principal is shown by actual or constructive
3 presence at the scene as a result of prior arrangement.
4 Therefore, a finding of a prior arranged plan or common
5 scheme is necessary for a finding of guilt as a principal.

6 The State must prove beyond a reasonable doubt by
7 competent evidence the theory of the hand of one is the hand
8 of all.

9 A principal in a crime is one who either actually
10 commits the crime or who is present aiding, abetting, or
11 assisting in committing the crime.

12 When a person does an act in the presence of and with
13 the assistance of another, the act is done by both. Where
14 two or more are acting with a common plan or intent are
15 present at the commission of a crime it does not matter who
16 actually commits the crime. All are guilty. The hand of
17 one is the hand of all.

18 Present at the commission of a crime means to be
19 sufficiently near to aid and abet and assist in the
20 commission of the crime.

21 Mere presence at the scene of a crime is not sufficient
22 to convict one as a principal on the theory of aiding
23 abetting -- and abetting. However, presence at the scene of
24 a crime by prearrangement to aid, encourage, or abet in the
25 perpetration of the crime constitutes guilt as a principal.

State vs. James Rose

1 Intent is also a necessary element; for their must have
2 been a common design or intent to commit the crime, and the
3 crime must have been committed pursuant thereto with the
4 person aiding and abetting by some overt act.

5 Intent means intending the result which actually
6 occurs, not accidentally or in -- or involuntarily. Intent
7 may be shown by acts and conduct of the defendant and other
8 circumstances from which you may naturally and reasonably
9 infer intent. The State must prove these elements beyond a
10 reasonable doubt.

11 Ladies and gentlemen, you have been selected by both
12 the State and the defendant to be fair and impartial jurors.
13 It is your duty then in your deliberations to take the law
14 which I have just given to you and apply it to the facts
15 which you determine to be true.

16 You must consider these instructions as a whole and not
17 follow some and ignore others. You have heard the evidence
18 and now you have heard the law.

19 Whatever your verdict, your foreperson will indicate it
20 by checking not guilty or guilty as to the charge on the
21 verdict form. Your foreperson will then sign and date the
22 verdict form.

23 And we have a simple verdict form here. There is one
24 charge, one indictment: On the charge of murder, we the
25 jury unanimously find the defendant James Rose - and there

1 is a spot for guilty or not guilty. And after you
2 unanimously reach your verdict your foreperson will check
3 the verdict. She will then sign and date the verdict form
4 and knock on the door for the bailiff to come and get it.

5 Please remember that although the foreperson is the
6 only juror who actually writes the verdict, it's not hers
7 alone. The verdict must be a unanimous verdict, and your
8 foreperson is not authorized to write the verdict until you
9 have all agreed as to what that verdict should be.

10 Ladies and gentlemen, I'm going to send you to your
11 jury room in just a minute. But please don't begin
12 discussing the case until you have received the verdict form
13 and the exhibits and stipulations that have been admitted
14 into evidence.

15 Once you receive those, that will be your signal to
16 begin your deliberations. Once you begin your
17 deliberations, you will deliberate until you have reached a
18 verdict at which time you will knock on the door and the
19 foreperson will advise the bailiff that you have a verdict
20 and we will bring you out to receive it.

21 In the meantime, if you have a question that comes up,
22 write it out on one of the sheets of paper in your notebook
23 and give it to your foreperson and she will knock on the
24 door. The bailiff will bring it to me. I share any
25 questions y'all might have with the lawyers and we determine

State vs. James Rose

1 how best to respond to those.

2 If I could get my two alternates to stay outside the
3 door. After y'all return to your jury room I need to chat
4 with them briefly. Your lunch should be there. I apologize
5 for running over into the lunch time. But I wanted y'all to
6 be able to eat your lunch while you start delivering.

7 The alternates aren't allowed to be with you y'all
8 while you deliberate because by statute I have to release
9 them at this point. But you are allowed to get your lunch
10 and any other item that you might have in the jury room.
11 The bailiff will help y'all do that. So I'm going -- if I
12 could let everybody go. If my alternates will just wait
13 right outside the door. I need to ask the lawyers a quick
14 question and then we will go from there. Thank you very
15 much, ladies and gentlemen, for your patient.

16 (WHEREUPON, jury exits courtroom December 12, 2013,
17 1:48 p.m.)

18 THE COURT: Okay. Any objections to the charge? I
19 know I fumbled a word or two at least in the intent section.
20 I think I corrected it. But I'm happy to bring them out
21 here and recharge them on that if y'all need me to. I think
22 I said implied instead of inferred. But then I got back to
23 it. I'm having some eye allergy problems today in case
24 y'all can't tell. Either that or any other objections to
25 the charge as given?

1 MS. EHRLICH: Your Honor, we would just renew our prior
2 objection to the hand of one ---

3 THE COURT: Okay.

4 MS. EHRLICH: --- charge.

5 THE COURT: Thank you. I will note that. And I am
6 going to note that. And I'm going to go ahead and overrule
7 it again. And again, we will make the charge a Court's
8 exhibit. Anything from the State?

9 (WHEREUPON, Court's Exhibit Number 12, note from jury, was
10 marked for identification.)

11 (WHEREUPON, Court's Exhibit Number 13, charge, was marked
12 for identification.)

13 MS. SHEALY: Nothing, Your Honor. Thank you.

14 THE COURT: All right. I'm going to bring the
15 alternates out and let them go. And then I'm sorry to keep
16 y'all so late without eating. But I just wanted to get them
17 the case.

18 If you could bring them to me, that would be great.

19 (Document presented to the Court.)

20 THE COURT: Oh, thank you. I didn't realize y'all were
21 back. I really appreciate y'all being here and being so
22 attentive. I've watched all of y'all throughout the trial,
23 and y'all have taken notes.

24 By statute you're not allowed to be with the jury once
25 they start deliberating. You're certainly welcome to stay

State vs. James Rose

1 and come and hear whatever their verdict is. We have no
2 idea how long they will be. But they will begin
3 deliberating shortly.

4 But I did want to tell y'all thank you and that you can
5 certainly get your lunch and go. And I'll just meet you
6 right outside to thank you as well while the lawyers take a
7 look at the exhibits.

8 If y'all could go ahead and get those in order. Sam,
9 here is the verdict form.

10 (WHEREUPON, break December 12, 2013, 1:49 p.m.)

11 (WHEREUPON court reporter played back direct examination of
12 Antoine Aiken from 11:45 p.m. to playing of 911 tape.)

13 (WHEREUPON, jury indicated they had heard enough.)

14 (WHEREUPON, jury exited courtroom.)

15 THE COURT: All right. Anything from the State or the
16 defense?

17 MS. SHEALY: I have nothing. Thank you.

18 MS. RUNEY: Nothing from the defense.

19 THE COURT: Okay. We will be at ease until we hear
20 from them again.

21 (WHEREUPON, break 4:49 p.m.)

22 (WHEREUPON, resume January 12, 2013, 5:06 p.m.)

23 (WHEREUPON, Court's Exhibit Number 14, note from jury, was
24 marked for identification.)

25 (WHEREUPON, Court's Exhibit Number 15, note from jury, was

1 marked for identification.)

2 (WHEREUPON, Court's Exhibit Number 16, note from jury, was
3 marked for identification.)

4 THE COURT: It is to my understanding is that we have a
5 verdict. At this point there is a verdict, so if we could
6 bring the jury.

7 (WHEREUPON, jury enters courtroom January 12, 2013,
8 5:08 p.m.)

9 THE BAILIFF: The jury is all present, Your Honor.

10 THE COURT: All right. Thank you, sir. And thank you,
11 ladies and gentlemen.

12 Madam foreperson, it is my understanding that the jury
13 has reached a verdict. Is that correct?

14 MADAM FOREPERSON: Yes, Your Honor.

15 THE COURT: All right. And if you would give the
16 verdict form to our bailiff, please.

17 (Document presented to the Court.)

18 THE COURT: Thank you.

19 THE CLERK: If you will please have the defendant
20 stand. Case Number 2012-GS-10-3312, the State of South
21 Carolina versus James Rose, on the charge of murder we the
22 jury unanimously find the defendant James Rose guilty.
23 Signed Emily Long, December 12, 2013.

24 Madam forelady, ladies and gentlemen of the jury if
25 this is your verdict please raise your right hand.

1 (Jurors complied.)

2 THE CLERK: Please let the record reflect that all
3 jurors raised their hand.

4 THE COURT: Okay. Anything from the defense?

5 MS. RUNEY: I would ask you to poll the jury, Your
6 Honor.

7 THE COURT: All right. Could we poll the jury, please.

8 THE CLERK: Ladies and gentlemen, whenever I call out
9 your jury number if you would please respond to the
10 questions that I ask appropriately.

11 THE CLERK: Juror Number 157, is this your verdict?

12 JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: Thank you, ma'am. Juror Number 80, is this
16 your verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: Thank you, sir. Juror Number 133, is this
21 your verdict?

22 JUROR: Yes.

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: Thank you, ma'am. Juror Number 61, is this

State vs. James Rose

1 your verdict?

2 JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR: Yes.

5 THE CLERK: Thank you, ma'am. Juror Number 125, is

6 this your verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: Thank you, ma'am. Juror Number 25, is this

11 your verdict?

12 JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: Thank you, ma'am. Juror Number 119, is

16 this your verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yeah.

20 THE CLERK: Thank you, sir. Juror Number 287, is this

21 your verdict?

22 JUROR: It is.

23 THE CLERK: Is it still your verdict?

24 JUROR: Yes.

25 THE CLERK: Thank you, sir. Juror Number 88, is this

State vs. James Rose

1 your verdict?

2 JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR: Yes.

5 THE CLERK: Thank you, sir. Juror Number 282, is this
6 your verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: Thank you, sir. Juror Number 53, is this
11 your verdict?

12 JUROR: Yes.

13 THE CLERK: Is it still your verdict?

14 JUROR: Yes.

15 THE CLERK: Thank you. Juror Number 10, is this your
16 verdict?

17 JUROR: Yes.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: Thank you, sir. Your Honor, the jury has
21 been polled and the verdict stands.

22 THE COURT: Okay. Anything further from the defense?

23 MS. RONEY: Your Honor, at this time I would make a
24 motion for a new trial based on both motions for a directed
25 verdict and all my previous objections that have been place

1 on the record.

2 THE COURT: Okay. And I do note all the previous
3 objections were ruled upon. And I'm comfortable with those
4 rulings.

5 With respect to the motion for a new trial I will deny
6 the motion for a new trial and for the same reasons that we
7 discussed at the denial of the directed verdict stage.

8 Anything further to present before we talk about
9 sentencing?

10 MS. RUNEY: No, Your Honor.

11 THE COURT: Anything the State wants to put on the
12 record with respect to defense motions that I denied, or I'm
13 ready to talk about sentencing when you are.

14 MS. SHEALY: We are ready to talk about sentencing. I
15 have a sentencing sheet.

16 THE COURT: Okay. Thank you.

17 MS. SHEALY: Would like me to go over his prior record?

18 THE COURT: If you would.

19 MS. SHEALY: He has a criminal domestic violence
20 conviction from '95, possession of crack cocaine from '95, a
21 burglary third charge from '96, a disorderly conduct charge
22 from '96, a possession of controlled substance from '99,
23 possession of a stolen pistol from '99, a criminal domestic
24 violence conviction from '01, hindering an officer from '01,
25 receiving stolen goods from '01, possession of marijuana

State vs. James Rose

1 from '03, a disorderly conduct from '02; assault upon a
2 corrections officer, trafficking crack cocaine, possession
3 of controlled substance and possession of cocaine second all
4 from 2003. He has a possession of marijuana from 2007; a
5 bank fraud charge, a possession of controlled substance and
6 an unlawful carrying of a weapon from '08; a resisting
7 arrest charge from '09, and giving false information from
8 2010.

9 THE COURT: Okay.

10 MS. SHEALY: I would have to -- if you would allow me
11 to speak to my victim's advocate to see if anybody ---

12 THE COURT: Sure.

13 MS. SHEALY: --- from his family would like to speak.

14 THE COURT: Yes.

15 MS. SHEALY: Your Honor, his daughter, Joy Mills, and
16 his father, Leland Shannon, Jr., would like to address the
17 court.

18 THE COURT: Okay. Yes, sir. And you are Mr. Leland
19 Shannon, Sr.?

20 MR. SHANNON, SR.: Yes, ma'am.

21 THE COURT: Yes, sir, I'm happy to hear from you.

22 MR. SHANNON, SR.: Due to the nature of the crime and
23 how my son was killed I feel that a life sentence would be
24 proper for this particular defendant. And I don't feel like
25 he should be trusted out on the street if he can persuade

1 people to do what he did to my son. Thank you.

2 THE COURT: Thank you, sir.

3 Yes, ma'am.

4 MS. MILLS: My name is Joy Mills.

5 THE COURT: Ms. Mills, I know you are soft spoken and
6 this is hard to do. If you could just speak up for us a
7 little bit.

8 MS. MILLS: My name is Joy Mills. And I think that a
9 life sentence would be right because the way my father was
10 taken from me and my six other brothers and sisters it just
11 wasn't right. And we have to live through that every day.

12 THE COURT: Okay.

13 MS. MILLS: That's all I wanted to say.

14 THE COURT: Yes, sir. Thank you. Anything further
15 from the State?

16 MS. SHEALY: Your Honor, it has been a while since I
17 have had a defendant with this type of background going past
18 so many years. I understand that obviously the Court has
19 some latitude with the sentence. But I would say that this
20 one is deserving of a lot of time.

21 THE COURT: Okay. Thank you. All right. Ms. Runey.

22 MS. RUNEY: Thank you, Your Honor.

23 You heard a little bit about James from when he
24 testified in court today. He's 36 years old. Two of his
25 brothers and sisters have been in court with him today. His

State vs. James Rose

1 mother is in Charleston. She suffers from several mental
2 illnesses and she has not been here.

3 James has certainly lived a tough life back and forth
4 from here to Philadelphia. And as he told you, he was
5 dealing drugs and had a hard time keeping a regular job or
6 finding a regular job. And that is for many reasons:
7 Selling drugs, had a record, and couldn't keep a job.

8 He also suffers from mental illness. He has been
9 diagnosed as paranoid schizophrenic, suffers from
10 depression. And he is on medications. He is on Respadil
11 (ph) and Prozac now. He's been on different medications for
12 most of us life and is treated by Charleston Mental Health
13 when he is out of jail and of course at the jail here.

14 He has been incarcerated since his arrest on these
15 charges. I have had Mr. Rose evaluated by Dr. Mulberry. He
16 is certainly competent. But I give you that background
17 information just to let the court know what James has dealt
18 with growing up and as an adult.

19 It hasn't been an easy life. When you're fashioning a
20 sentence for James I hope you will take into consideration
21 that on murder it is day for day whatever sentence you give
22 him. And we hope that you could consider the minimum 30.
23 That's still a significant sentence.

24 And I have asked James not to say anything of course,
25 for purposes of appeal. And I ask you not to hold that

1 against him today.

2 THE COURT: I certainly will not. And whatever we need
3 to do to get your appeal perfected I certainly respect that.

4 MS. RUNEY: Thank you, Your Honor.

5 THE COURT: Anything further?

6 MS. RUNEY: Just one minute, Your Honor, if you don't
7 mind.

8 Your Honor, this is James' brother Saihed Rose.

9 THE COURT: Saihed Rose, yes, sir, I am happy to hear
10 from you.

11 MR. S. ROSE: As you know we are -- we are from
12 Philadelphia, so, you know, all of our -- as I grew up, you
13 know, that's all I -- that's all I know, you know, is my
14 brother. And, you know, he taught me -- he taught me to
15 stand strong.

16 You know, as you can see, he get found guilty but he is
17 still holding strong. And to the victim's family, you know,
18 I feel y'all, you know. So it's not like, you know, we
19 don't understand what y'all are going through.

20 But he is a good -- he is a good guy. I mean, you
21 know, he ain't ever been the type to let people run over
22 him. But he ain't ever been no killer. Do you understand
23 what I'm saying? And I just like for you to, you know, you
24 take that into consideration. You know, he's got nieces and
25 nephews, you know, younger brother. And, you know, that's

State vs. James Rose

1 all we know.

2 So, you know, keep your head up man.

3 THE COURT: Thank you, sir. Anything further?

4 MS. RUNEY: No, Your Honor.

5 THE COURT: Okay. Well, I'm certainly sorry for
6 everything everyone, both families, have gone through in
7 this situation. And it just absolutely did not have to
8 happen. But this was an execution. There is really no
9 other way to describe it.

10 And it is a tragedy for Mr. Shannon's family. I mean
11 seven children, nieces and nephews I'm sure he won't be able
12 to be there for them. And, you know, Mr. Rose won't be able
13 to be there for y'all.

14 Sir, the sentence is life in prison. God bless you.

15 MR. ROSE: Thank you.

16 THE COURT: Yes, sir.

17 THE COURT: All right. I am going to speak to the jury
18 and thank them and get them to sign the indictment and then
19 I'll be right back for anything else we need to put on the
20 record. The charge is a court's exhibit. So let me give
21 that back to the court reporter.

22 Ladies and gentlemen, I just want to thank y'all. You
23 are excused for the week. But I will meet you right back
24 here. All right. We will be at ease. I will come chat
25 with the lawyers in just a minute.

1 (WHEREUPON, break January 12, 2013, 5:19 p.m.)

2 (WHEREUPON, resumed 5:23 p.m.)

3 THE COURT: The foreperson has -- I mean Sam has the
4 signed indictment from the foreperson. I've got the
5 sentencing sheet if y'all just want to come get it and make
6 sure it is filled out properly. Anything else y'all need
7 from me?

8 MS. SHEALY: I'm good.

9 (WHEREUPON, the trial concluded 5:23 p.m.)

State vs. James Rose

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on December 9 through 12, 2013.

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



PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: February 21, 2014

Certified Transcript Provided For: SCCJD

Certification Reference # 022114 CR15

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES ROSE,

APPELLANT

APPELLATE CASE NO. 2013-002750

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
STATEMENT OF THE FACTS	5
ARGUMENT	
The trial judge erred in admitting telephone calls purportedly made by Appellant while in pre-trial incarceration because Appellant made no "admissions" during the calls as required by the Rules of Evidence in order to be admissible	8
CONCLUSION	17

TABLE OF AUTHORITIES

Cases

<u>City of Easley v. Portman</u> , 327 S.C. 593, 490 S.E.2d 613 (Ct. App. 1997).....	13, 14
<u>Pressley v. State</u> , 39 S.E.2d 478 (Ga.1946), ...	14
<u>State v. Gilchrist</u> , 342 S.C. 369, 536 S.E.2d 868 (2000)	15
<u>State v. Needs</u> , 333 S.C. 134, 508 S.E.2d 857 (1998)	14

Rules

Rule 801(c), SCORE.....	13
Rule 801(d)(2), SCORE.....	8, 10, 13, 14
Rule 801(d)(2)(A), SCORE	10, 13, 14, 15, 16
Rule 802, SCORE	13
Rule 804(b)(3), SCORE.....	8, 13

Other Authorities

Black's Law Dictionary (1990).....	14

STATEMENT OF ISSUE ON APPEAL

The trial judge erred in admitting telephone calls purportedly made by Appellant while in pre-trial incarceration because Appellant made no "admissions" during the calls as required by the Rules of Evidence in order to be admissible.

STATEMENT OF THE CASE

A Charleston County grand jury indicted Appellant for murder on June 11, 2012 (2012-GS-10-3312). R. 514. Appellant was tried before the Honorable Stephanie McDonald and a jury on December 9-12, 2013. Jennifer Shealy and Jessica Baldwin represented the state. Martha Kent Runey and Megan Ehrlich represented Appellant. R. 1. The jury found Appellant guilty as charged. R. 508, lines 19-23. Judge McDonald sentenced Appellant to life imprisonment. R. 509, line 14; R. 516.

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

On January 23, 2012, Appellant went to the deceased's home twice to buy marijuana. R. 13, lines 7-8; R. 39, lines 6-10; R. 41, lines 2-3; R. 97, line 11 – R. 98, line 4; R. 212, line 19 – R. 213, line 24; R. 407, lines 3-25. Tawana "Nikki" Alston, the deceased's girlfriend, and Antoine "Rick Ross" Aiken, the deceased's cousin, claimed Appellant returned for a third time later that night. R. 43, lines 14-18; R. 98, lines 5-10. According to Alston and Aiken, Appellant arrived in a gray, silver, or white four-door sedan – later described as a Dodge Neon – with two or three other people. R. 44, line 2 – R. 46, line 6; R. 101, lines 19-24; R. 111, lines 13-22.

Aiken claimed Appellant talked to the deceased for five minutes, and then left. R. 47, lines 15-17. Alston said Appellant walked out behind her. R. 100, lines 20-23. When Alston finished smoking a cigarette and turned around on the porch to re-enter the home, a person dressed in all black wearing a mask pointed a shotgun in her face. R. 101, lines 3-14. Another man ran past them shooting into the house. R. 102, lines 2-6. Alston claimed she fell over the porch banister, crawled under the porch, and ran across the street for help. R. 102, line 18 – R. 104, line 21. Initially, Alston told police that Appellant had a gun, but during her testimony, she admitted this was not true. R. 114, line 20 – R. 116, line 18; R. 119, line 21 – R. 120, line 23. Additionally, in her second statement to police, Alston identified two other people by name as being involved, but the police developed no evidence to support Alston's contentions. R. 124, lines 12-19.

Aiken, who remained in the home when Appellant and Alston walked outside, claimed the deceased got up to lock the door upon Appellant's departure. When the deceased turned a corner in the house, Aiken heard a gunshot and saw a tall masked man

wearing all black. R. 48, line 13 – R. 49, line 12. Aiken immediately ran out the front door and into the woods. R. 50, lines 18-19; R. 51, lines 15-17. From the woods, Aiken claimed he heard Appellant yell “it’s in the back room” and “hurry up.” R. 51, line 24 – R. 52, line 25. Further, Aiken claimed he saw the tall masked man leave the home and enter the car with Appellant in the driver’s seat. R. 54, line 9 – R. 55, line 4.

Aiken then entered the home where he found the deceased injured. R. 55, line 14 – R. 56, line 1. Although Aiken called 911 for help, he inexplicably used a false name. R. 56, lines 3-16. During Aiken’s first interview with police, he did not identify Appellant as being involved. However, after he had returned home and talked to others, he identified Appellant to police in a second statement. At trial, Aiken claimed he did not tell the police about Appellant’s alleged involvement because he wanted to exact justice personally. R. 60, line 9 – R. 61, line 1; R. 61, line 14 – R. 63, line 10.

Joy Mills, the deceased’s daughter, was present in the home during the shooting incident. She was in her bedroom talking on the phone when she heard scuffling and gunshots. R. 217, lines 9-14. She then saw two people run past her room and kick in the door of a back bedroom. R. 217, line 22 – R. 218, line 10. Mills claimed the two people wearing masks then entered her room with two shotguns. She further claimed that she recognized Appellant’s voice coming from one of the armed masked men. R. 219, line 24 – R. 220, line 16. However, Mills’ statement to police failed to identify the voice as belonging to Appellant. R. 226, lines 21-25.

At his trial, Appellant admitted to visiting the deceased twice on January 23, 2012 to buy marijuana. R. 407, lines 3-25. He further admitted that he was unhappy with the price the deceased wanted for the subpar marijuana he was offering. R. 410, lines 5-10.

Appellant left the deceased's residence, accompanied by Clarence Hush and Brandon Cantrell. R. 411, lines 3-17. Appellant arrived at his home, watched television, and then went to bed. R. 414, lines 5-8. He emphatically and unequivocally denied shooting the deceased. R. 427, line 20 – R. 428, line 1.

ARGUMENT

The trial judge erred in admitting telephone calls purportedly made by Appellant while in pre-trial incarceration because Appellant made no “admissions” during the calls as required by the Rules of Evidence in order to be admissible.

Relevant facts

During the course of the trial, defense counsel learned the prosecution intended to offer into evidence during its case-in-chief recordings of phone calls purportedly made by Appellant during his pre-trial incarceration. Defense counsel objected based on Rule 804(b)(3) of the South Carolina Rules of Evidence. Specifically, defense counsel argued the statements allegedly made by Appellant were not statements against interest, that the recording was unclear regarding the subject matter, and the recipient of the call was unclear. The phone call concerned Appellant’s attempt to contact his girlfriend about a phone the two shared and Appellant’s concern that his girlfriend had left the phone in a car, which was seized by the police. R. 164, line 22 – R. 165, line 14. A phone had been found in the seized car, but the police were unable to establish the ownership of the phone. R. 166, lines 5-7. The prosecutors countered that the “jail call” tied Appellant to the car, which was seized by the police and fit the description of the car driven by the suspects to and from the murder. R. 167, lines 4-12. The judge took the matter under advisement to determine if the statement was “so far contrary to the defendant’s pecuniary interest other than the fact that he references DNA that it would come within [Rule] 804(b)(3)[, SCRE].” R. 168, lines 1-10.

Then, the prosecutor cited Rule 801(d)(2), SCRE to support admission of the jail call. R. 169, lines 22-25. The judge was particularly concerned with the reference to DNA

on the jail call. Defense counsel explained that Appellant said “they’ve taken that girl’s car, they think they’re going to find my DNA in that car.” Clearly, Appellant was not concerned that his DNA would be found in the car; rather, he was speculating as to why the police had seized the car. R. 171, lines 1-3. Again, the judge R. 170. 320, lines 1-17.

After the prosecution presented additional evidence, the judge revisited the issue of the jail call. Defense counsel renewed the objection to the jail call. Specifically, defense counsel noted that in the call Appellant did not state that he thought his DNA was in the car; rather, Appellant speculated that the purpose of police seizing the car was to search for DNA. Concerning the phone, defense counsel explained that Appellant’s statements were not admissions. In fact, Appellant stated that the phone that he was using was in the car, but never stated that the phone he was using on the night of the murder was in the car or that he was the person who placed the phone in the car. R. 386, line 6 – R. 387, line 11.

The prosecutor countered that the jail call was an admission by a party opponent. According to the prosecutor, “He states not only is he concerned that DNA may be in the car that the police recovered, but he is also concerned about a phone that he was using, his phone. And then he backs off and says well the phone I was using.” R. 387, lines 13-18. The prosecutor described the seized car as “a silver or gray, depending on how you describe it, Neon.” Then, the prosecutor attempted to connect the seized car with the one used in the murder by stating that “[w]itnesses described a silver or gray sedan or silver or gray Neon coming to the scene.” Further, the prosecutor noted that “[o]ne witness described the defendant getting into that car and leaving after the shooting in that same car.” R. 387, line 19 – R. 388, line 2.

In ruling on the motion, Judge McDonald noted that the caption for Rule 801(d)(2), SCRE is “admission by a party opponent,” “but what the rule actually says is the statement is offered against a party and is – and this subject is Subsection A – the parties own statement in either an individual or represented capacity.” After concluding the statement was Petitioner’s own statement, the judge ruled the jail call was admissible pursuant to Rule 801(d)(2)(a). R. 388, lines 3-12.

Antoine Aiken, who was present at the home when the deceased was shot, claimed that Appellant arrived at the deceased’s home for a third time on January 23, 2012. Appellant was in a “four-door, midsized sedan.” R. 44, lines 7-9. Later, he described the car as “either a gray or white Neon.” R. 45, lines 19-22. After the shooting, Aiken claimed Appellant got into the driver’s side of the car. R. 54, line 23 – R. 55, line 4. Tawana Alston was also present at the home when the deceased was shot. She claimed that Appellant left the house as she walked onto the porch to smoke. R. 100, lines 6-23. She saw Appellant get into a “gray - - a silver Neon, four-door” just as someone placed a gun in her face. R. 101, lines 3-24; R. 111, line 13-22. Notably, neither Aiken nor Alston identified the car seized near Appellant’s home as the car involved in the murder.

Although James Perkins, a Charleston County Sherrieff’s Office detective, was not present when Appellant was arrested, he testified that a gray Dodge Neon was located in front of Appellant’s home.¹ R. 253, lines 6-21. Perkins admitted the car belonged to

¹ Brandon Cantrell, who lived near Appellant and Appellant’s girlfriend, identified a photograph of the seized car as belonging to Appellant’s girlfriend. R. 174, line 24 – R. 175, line 1. The testimony revealed Cantrell was simply wrong in his testimony that the seized car belonged to Appellant’s girlfriend. At least two police officers and Appellant testified that the car belonged to Everlina Bickman. R. 269, lines 17-25; R. 294, line 24 – R. 295, line 4; R. 416, lines 12-16.

Everlina Bickman, who was friends with Appellant's girlfriend, Amber Wiley. R. 269, lines 17-25. The police searched the Dodge Neon found near Appellant's home for evidence, but found none connecting Appellant to the car or connecting the car to the murder. R. 293, line 9 – R. 296, line 14; R. 301, line 15 – R. 307, line 25; R. 361, line 11 – R. 363, line 5. In the Dodge Neon, the police found two cell phones in the front passenger interior door compartment. R. 316, lines 14-23.

At the conclusion of the state's case-in-chief, the prosecution played the three-minute jail call purportedly made by Petitioner. Defense counsel renewed the objection, which was overruled. R. 392, line 22 – R. 393, line 21.

Appellant testified in his defense. Appellant explained that on January 24, 2012, he and his girlfriend attended an eviction hearing because they were being evicted. R. 414, lines 18-20. After the hearing, the two returned home. R. 415, lines 8-9. Thereafter, Appellant stayed home while his girlfriend met with her probation agent. Neither Appellant nor his girlfriend had a car; therefore, his girlfriend got a ride from her friend, Everlina "Lena" Bickman, who drove a silver Dodge Neon. R. 415, line 9 – R. 416, line 16. While the police were arresting Appellant on January 24, 2012, his girlfriend and Bickman returned in Bickman's car. When the police saw Bickman's car, they seized it. R. 422, lines 9-11. After Appellant arrived at the jail, he tried to reach his girlfriend by phone. R. 425, lines 14-15. Appellant explained to the jury that when he referred to the phone he shared as being in the car seized by the police on the jail call, he was referring to the phone he shared with his girlfriend and his belief that she had left the phone in the car when it was seized by police. R. 426, line 13 – R. 427, line 16. Appellant denied ever being inside the silver Dodge Neon. R. 454, lines 14-18.

During her closing argument, the prosecutor repeatedly used the seized Dodge Neon, which had no connection to the murder or to Petitioner, and Petitioner's jail call in an effort to bolster the state's case. One of the first things the prosecutor mentioned to the jury was that Aiken told the 911 operator that the perpetrators left in a gray car, and there was no way for Aiken to know Petitioner was associated with a gray car. R. 475, lines 5-14. Again, the solicitor tried to connect the two by recounting Aiken's testimony that he claimed he saw Petitioner "in the driver's seat of a gray Neon, the same description that Brandon Cantrell gives of his girlfriend's car." R. 485, lines 20-22. The prosecutor attacked the defense argument regarding the car: "And ladies and gentlemen, I don't know if [defense counsel] or [Petitioner] want us to believe that of all the coincidences in the world that there just happens to be a gray four-door Neon parked outside his trailer. Come on." R. 491, lines 2-5.

Then, the solicitor used the jail call. In the call, Appellant asked how his girlfriend, Amber Wiley, sounded when the unidentified person on the other end of the call spoke to Amber the previous day. Appellant noted that Amber has not answered his calls and he "guess[es] they're thinking I ain't never going to get out." The solicitor used that statement argue: "Well, they would because they know what you have done." When Appellant stated he only wanted to speak to Amber, the solicitor argued "He's wondering are they talking, are they telling." She then quoted Appellant as saying the following, "They took that girl's car and saying I got DNA in there I guess, and my phone is inside that shit; well, not my phone but the phone I was using inside there." The solicitor claimed this statement put Appellant inside the car: "[Defense counsel] said they can't tell you whose phone was

inside the car. [Petitioner] told us, the phone he was using is inside the car.” The solicitor then played the tape. R. 491, line 12 – R. 492, line 10.

Discussion

South Carolina imposes a system of rules to afford litigants and criminal defendants a fair judicial system. The Rules of Evidence govern how the parties present evidence and the admissibility of evidence in general. The Rules of Evidence have been designed to eliminate the introduction of unreliable evidence. One of the most unreliable forms of evidence is hearsay. The Rules strictly forbid the introduction of hearsay unless certain exceptions apply due to the clear unreliability of such evidence. See Rule 802, SCRE. Hearsay “is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Rule 801(c), SCRE. However, the Rules provide that admissions by a party-opponent are not hearsay. Rule 801(d)(2), SCRE. In addition to being an admission by a party-opponent, the statement must be offered against a party and is the party’s own statement in either an individual or a representative capacity. Rule 801(d)(2)(A), SCRE.

In a concurring opinion in City of Easley v. Portman, 327 S.C. 593, 607, 490 S.E.2d 613, 620-621 (Ct. App. 1997)(Anderson, J. concurring), the Honorable Ralph King Anderson explained the difference between a confession and an admission, and in doing so provided a definition of “admission” helpful to the analysis of Rule 801(d)(2)(A), SCRE.² Looking to Black’s Law Dictionary, Judge Anderson defined admission as “‘statements by a party ... of the existence of a fact which is relevant to the cause of his adversary.’” Id. at

² The case concerned a statement or admission against interest, which is governed by Rule 804(b)(3), SCRE. However, the analysis is helpful at least as far as the definition of “admission” is concerned for determining the contours of Rule 801(d)(2)(A), SCRE.

607, 490 S.E.2d at 621 (quoting Black's Law Dictionary 296 (1990)). Further, Black's defined an admission as "acknowledgment of a fact or facts tending to prove guilt which falls short of an acknowledgment of all essential elements of the crime." Id. (quoting Black's Law Dictionary 297 (1990)). He went on to describe an admission as "the avowal or acknowledgement of a fact or circumstances from which guilt may be inferred, only tending to prove the offense charged, but not amounting to a confession of guilt." Id. (citing Pressley v. State, 39 S.E.2d 478 (Ga. 1946)).

Very little law exists in South Carolina analyzing Rule 801(d)(2)(A), SCRE. However, at least two cases from our Supreme Court address the applicability of Rule 801(d)(2)(A), SCRE to criminal cases and shed some light on the issue presented.

In State v. Needs, 333 S.C. 134, 150, 508 S.E.2d 857, 865 (1998), the South Carolina Supreme Court held a defendant's statement to a second person that his mother owed a lot of people money and that killing his stepfather would allow his mother to collect \$260,000 from his stepfather's life insurance policies, of which his mother was going to loan him \$100,000 to start a business, was an admission by a party-opponent under Rule 801(d)(2), SCRE. In arriving at this conclusion, the Court noted that although the prosecution is not required to prove motive in a homicide prosecution, the prosecution may introduce evidence that a defendant carried an insurance policy on a victim's life where there is some showing that the defendant would derive some benefit from the proceeds of the policy based on South Carolina's case law. Id. The South Carolina Supreme Court noted in a footnote that a statement by a defendant to a third person in reference to the deceased, "If I don't kill this n[...] tonight he will be on my list," was admissible under Rule

801(d)(2)(A) as an admission by a party opponent. State v. Gilchrist, 342 S.C. 369, 373 n.3, 536 S.E.2d 868, 870 n.3 (2000).

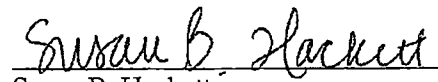
Appellant made no admissions during his phone call to an unknown person while awaiting trial. Appellant's statement that he "guessed" the police seized Bickman's car in hopes of finding Appellant's DNA in the car was in no way a statement of the existence of a fact which is relevant to his prosecution. His belief or speculation as to the contours of the investigation revealed no fact relevant to his prosecution. Appellant never stated he was worried that his DNA would be found in the car or that he had been in the car. Instead, his statement was clear that he was merely speculating as to why the police wanted to seize and search the car. The statement simply did not concern the existence of a fact relevant to the case or controversy. Instead, the admission of the jail call allowed the prosecution to twist and contort the call to suggest that Appellant was concerned or worried about his DNA being found in the car, when the actual call did not support such an argument or inference. Appellant's statement during the call that the phone he had been using was inside the car did not state a fact relevant to the prosecution. The evidence revealed that Appellant's girlfriend had been in the car immediately before the police seized it. The evidence further revealed that Appellant and his girlfriend shared a phone. Thus, due to their sharing a phone and the girlfriend's presence in the car immediately prior to the seizure, it was unsurprising that the phone would be inside the car. Again, the jail call allowed the prosecutor to distort Appellant's words during closing argument by stating that Appellant had identified the phone in the car as belonging to him and stating that he was worried about the presence of the phone in the car tying him to the car, which fit the description of the car used in the

homicide. A careful review of the jail call reveals Appellant made no admissions and the call was inadmissible hearsay as it did not fall within Rule 801(d)(2)(A), SCRE.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of December, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Stephanie P. McDonald, Circuit Court Judge

THE STATE,

RESPONDENT,

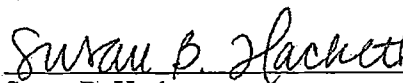
V.

JAMES ROSE,

APPELLANT

CERTIFICATE OF SERVICE

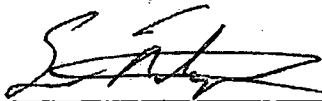
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Caroline M. Scrantom, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 18th day of December, 2014.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of December, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

FORM 5

STATE OF SOUTH CAROLINA)

County of CHARLESTON)2015-CP-10-3196
IN THE COURT OF COMMON PLEASJAMES R. ROSE ; # 293938)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2015 JUL -7 PM 4:17
JULIE S. ARMSTRONG
CLERK OF COURT**INSTRUCTIONS B 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 BROAD RIVER CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence NINTH JUDICIAL CIRCUIT
CHARLESTON COUNTY 100 BROAD STREET, SUITE 427 CHAS., SC 29401
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) 2012-GS-1003312 - MURDER

- (b) _____
(c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
(a) DECEMBER 12, 2013 ; LWOP
(b) _____
(c) _____
6. Check whether a finding of guilty was made:
(a) after a plea of guilty _____
(b) after a plea of not guilty ☒ _____
(c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES I DID
8. If you answered Ayes@ to (7), list:
(a) the name of each Court to which you appealed:
i. SOUTH CAROLINA COURT OF APPEALS
ii. _____
iii. _____
(b) the result in each such Court to which you appealed:
i. AFFIRMED
ii. _____
iii. _____
(c) the date of each such result:
i. JUNE 17, 2015
ii. _____
iii. _____
(d) if known, citations of any written opinion or orders entered pursuant to such results:
i. _____
ii. _____
iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
(a) _____

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
 (b) PROSECUTORIAL MISCONDUCT
 (c) VIOLATION OF DUE PROCESS
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) COUNSEL WAS INEFFECTIVE FOR FAILING TO ARGUE THE INSUFFICIENCY
 (b) PROSECUTION KNOWINGLY USED PERJURED TESTIMONY DURING TRIAL
 (c) APPLICANTS RIGHT TO SPEEDY TRIAL WAS VIOLATED (ON BACK)
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
 ii. _____
 iii. _____

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

A) Ineffective Assistance of Counsel

i. State concisely and in the same order the facts which support each of the grounds set out in (10):

'A) Counsel was ineffective for failing to argue the insufficiency of proof.

Counsel was ineffective for failing to request alibi charge.

Counsel was ineffective for failing to call witnesses.

Counsel was ineffective for failing to impeach witnesses.

Counsel was ineffective for failing to object to State's impugment of applicant's character.

Counsel was ineffective for failing to present alibi defense.

Counsel was ineffective for failing to investigate.

Appellate Counsel was ineffective for failing to brief preserved issues on appeal.

Counsel was ineffective for failing to present evidence to counter State's contention that applicant was present at the scene of the crime.

(B) Solicitor's use of applicant's nickname deprived accused of due process.

Solicitor knowingly used false evidence.

Solicitor violated applicant's constitutional rights.

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
- (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? _____
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. TRIAL COUNSEL - MARTHA K. RUNEY - 100 BROAD STREET, CHAS.
SC 29401
- ii. APPELLATE COUNSEL - SUSAN B. HACKETT - P.O. BOX 11589 -
COLUMBIA, SC 29211-1589
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. DURING TRIAL
- ii. DIRECT APPEAL
- iii. _____

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

A NEW TRIAL

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

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of CHARLESTON)

VERIFICATION

I, JAMES R. ROSE, 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.

James R. Rose #293938

SWORN to and subscribed before me this 2nd
day of July, 2015.

[Signature]
Notary Public

My Commission Expires:

My Commission Expires
March 5, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
James R. Rose, #293938,	)	2015-CP-10-3796
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief (PCR) filed July 7, 2015, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. The Applicant was indicted at the June 2012 term of the Charleston County Grand Jury for one (1) count of Murder (2012-GS-10-3312). Martha K. Runey, Esquire, represented him. The Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Stephanie P. McDonald sentenced Applicant to incarceration for life.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Rose, 2015-UP-286 (Filed on June 17, 2015). The Remittitur was issued on July 6, 2015.

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

II.

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

1. Ineffective Assistance of Counsel:
 - a. "Counsel was ineffective for failing to argue the insufficiency of proof;"
 - b. "Counsel was ineffective for failing to request alibi charge;"
 - c. "Attorney failed to object to known issues such Counsel was ineffective for failing to call witnesses;"
 - d. "Counsel was ineffective for failing to impeach witnesses;"
 - e. "Counsel was ineffective for failing to object to State's impugment(sic) applicant's character;"
 - f. "Counsel was ineffective for failing to present alibi defense;"
 - g. "Counsel was ineffective for failing to investigate;"
 - h. "Appellate counsel was ineffective for failing to brief preserved issues on appeal;"
 - i. "Counsel was ineffective for failing to present evidence to counter State's contention that applicant is present at the scene of the crime;"
2. "Prosecutorial Misconduct:"
 - a. "Solicitor's use of applicant's nickname deprived accused of due process;"
 - b. "Solicitor knowingly used false evidence;"
 - c. "Solicitor violated applicant's constitutional rights;"
 - d. Prosecution knowingly used perjured testimony during trial;"
3. "Violation of Due Process:"
 - a. "Applicant's right to speedy trial was violated."

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.

Respondent submits that Applicant's allegation of Ineffective Assistance of Counsel is without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

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

IV.

Respondent further submits Applicant's allegations of due process violations are without merit. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that an Applicant must "... specifically set forth the grounds upon which the application is based." S.C. Code § 17-27-50 (2003). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a *prima facie* showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JAMES R. ROSE, #293938

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

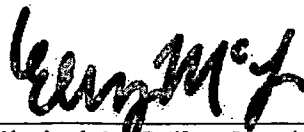
IN THE COURT OF COMMON PLEAS

2015-CP-10-3796

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:

James K. Falk, Esq.
 Falk Law Firm, LLC
 PO Box 1058
 Charleston, SC 29402

DATED this 18th day of February, 2016.


Elizabeth McLellan, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE 9th JUDICIAL CIRCUIT
	)	
James R Rose	)	
	)	
Applicant	)	2015-CP-10-3796
vs.	)	
	)	
State of South Carolina	)	AMENDED APPLICATION FOR
Respondent,	)	POST-CONVICTION RELIEF
_____	)	

FILED
2017 JAN -4 PM 12:44
CLERK OF COURT
JULIE J. ANDERSTROM

TO: Alicia Olive, Esq., Office of SC Attorney General, PO Box 11549,
Columbia, SC 29211-1549.

Applicant, by counsel, amends his response to questions 10 & 11 of his previously filed application for Post-Conviction relief. In addition to those grounds set forth in his original application, Applicant asserts the following grounds to support post-conviction relief:

1. Trial counsel failed to object, move to quash the indictment, or include in her motion for directed verdict that there was a material variance between the offense charged in the Indictment and the State's proof.
 - a. The indictment alleged that applicant "did kill and murder Leland Shannon by means of shooting the victim"
 - b. At the preliminary hearing James Perkins, the reporting officer testified that applicant shot and killed the victim.
 - c. The State based its entire case against applicant on a "hand of one hand of all" theory.
 - d. The indictment did was fatally flawed in that it did not provide applicant with notice of the charges against him.
2. Trial counsel failed to call witnesses whose testimony could have exculpated defendant or provided reasonable doubt of Applicant's guilt, namely Sofia Wiley and Everlina Bickman.
3. Trial counsel failed to call alibi witness, Amber Wiley.

4. Trial counsel failed to effectively impeach the direct testimony Tawana Alston. Additionally trial counsel failed to challenge Tawana Alston's story through her cross examination of the investigating officers.
5. Trial counsel failed to object to the Solicitor's improper closing argument at page 636 lines 8-9. The Solicitor's statement misrepresented the witnesses' testimony at page 346 lines 22-24.

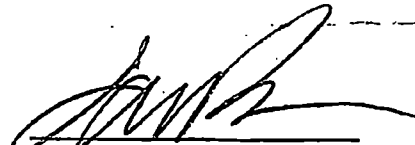
Respectfully Submitted,



James Falk, Esq.
PO Box 1058
Charleston, SC 29402
(843) 606- 6007
(843) 972 9005 fax
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that on January 4, 2017 a copy of the above was deposited in the US Mail to the above named party at the above identified address. Additionally undersigned certifies that a copy of the above was also sent to the above named at aolive@scag.gov


James Falk

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) Court of Common Pleas
) Case No. 2015-CP-10-3796
)
3 _____)
4 JAMES R. ROSE,)
)
5 Applicant,)
)
6 vs.) Transcript of Record
)
7 STATE OF SOUTH CAROLINA,)
)
8 Respondent.) DATE: January 10, 2017
)

10 | B E F O R E:

11 THE HONORABLE WILLIAM SEALS

13 | A P P E A R A N C E:

14 JAMES KRISTIAN FALK
Attorney for the Applicant

16 ALICIA OLIVE
Attorney for the Respondent

18 Karen V. Andersen, RMR, CRR
Circuit Court Reporter

20

21

22

23

24

25

1	<u>INDEX</u>	
2	EXAMINATION	
3	Witness Name	Page
4	MARTHA KENT RUNEY	
5	Direct By Mr. Falk.....	4
6	Cross By Ms. Olive.....	24
7	Re-Direct By Mr. Falk.....	34
8	Re-Cross By Ms. Olive.....	36
9	JAMES R. ROSE	
10	Direct By Mr. Falk.....	37
11	Cross By Ms. Olive.....	42
12	JAMES ROSE	
13	Further By Mr. Falk	47
14	SUSAN HACKETT	
15	Direct By Mr. Falk.....	52
16	Cross By Ms. Olive.....	56
17		
18		
19		
20		
21		
22		
23		
24		
25		

1 THE COURT: Call your next case whenever you are
2 ready.

3 MS. OLIVE: Thank you, Your Honor. May it please
4 the Court.

5 This is James Rose vs. State, 2015-CP-10-3696 (sic).
6 Mr. Rose was indicted in June of 2012 for murder. He was
7 represented by Martha Runey on that charge. He proceeded to
8 a jury trial, after which he was found guilty as indicted.
9 The Honorable Stephanie McDonald sentenced him to
10 imprisonment for life. A notice of appeal was filed on his
11 behalf and an appeal was perfected.

12 The South Carolina Court of Appeals affirmed his
13 conviction and sentence. The remittitur -- excuse me, that
14 was by an order filed June 17th, 2015. The remittitur was
15 issued on July 6th, 2015. He filed this application for
16 post-conviction relief on July 7th, 2015, and subsequently
17 filed an amended application for post-conviction relief,
18 which would have been filed last week, I believe, Your Honor.

19 He alleges several grounds of ineffective assistance
20 of counsel in his application and amended application, Your
21 Honor. He also alleges violation of due process, which the
22 State would move to dismiss at this time. He claims that his
23 right to a speedy trial was violated. That's a direct appeal
24 issue; can't be raised on post-conviction relief.

25 Your Honor, he is present in the courtroom today and

1 represented by James Falk. I will turn it over to Mr. Falk
2 at this time.

3 THE COURT: Any objection as to granting the State's
4 motion for violation of due process, Mr. Falk?

5 MR. FALK: No, Your Honor.

6 THE COURT: I will grant that motion.

7 MS. OLIVE: Thank you, Your Honor.

8 THE COURT: Anything you want to put on the record,
9 Mr. Falk, before we begin? If not, call your first
10 witness.

11 MR. FALK: No. I will call my witness to the stand.
12 I call my client to the stand.

13 THE COURT: Sure.

14 MR. FALK: Your Honor, let me change this up. Let
15 me call his counsel to the stand. I call Ms. Runey to the
16 stand.

17 MARTHA KENT RONEY,
18 having been duly sworn, testifies as follows:

19 THE CLERK: For the record, if you will please state
20 your name, spelling your last name.

21 THE WITNESS: Martha Kent Jenkinson Runey,
22 R-u-n-e-y.

23 DIRECT EXAMINATION

24 BY MR. FALK:

25 Q. Thank you, Ms. Runey. Did you represent Mr. Rose

1 throughout this proceeding?

2 A. I did.

3 Q. Were you present at his preliminary hearing?

4 A. I was.

5 Q. Okay. And did the preliminary hearing come before
6 the indictment was issued?

7 A. It did.

8 Q. At the preliminary hearing, what was -- do you
9 recall the testimony from the police officer at that hearing?

10 A. I do.

11 Q. And based on the police officer's testimony at that
12 hearing, what at that time did you think the State's theory
13 of the case was?

14 A. From reading over -- back over the transcript of the
15 trial and my cross-examination of the detective that was at
16 the preliminary hearing, at the preliminary hearing, he had
17 stated on the record that James Rose was the shooter.

18 Q. Okay.

19 A. At the preliminary hearing, but his testimony was
20 different at the trial.

21 Q. And he didn't witness that? He obviously didn't
22 witness the shooting; is that correct?

23 A. No, he did not.

24 Q. So do you know which witness he was relying on for
25 that testimony?

1 A. I don't remember. I would have to check the
2 transcript. It would likely have been Tawanna Alston, who
3 was one of the eyewitnesses at the scene.

4 Q. If I could, I do have a transcript here, if you
5 could look over it.

6 A. Sure.

7 Q. Feel free to look over any of that, but I show you
8 the section page 6.

9 A. It was Ms. Alston. I believe that was Tawanna
10 Alston. The transcript says Austin, but I remember that it
11 was Alston, A-l-s-t-o-n.

12 Q. Okay.

13 A. And at the end of this page, it says in the
14 transcript -- this is the detective testifying -- that
15 Mr. Rose came in with a weapon and did fire a shot.

16 Q. And, in fact, didn't it also say that he fired a
17 shot at her?

18 A. And it goes on to say, did shoot at the victim,
19 according to Ms. Alston and according to the CI who was
20 inside the residence.

21 Q. Okay. If you could maybe just look around that
22 section, because I think -- do you recall any testimony that
23 she indicated that Mr. Rose shot at her?

24 MS. OLIVE: Your Honor, are we referring to the --

25 MR. FALK: Preliminary hearing transcript.

1 MS. OLIVE: I don't have that. And, Your Honor, I
2 would just object to this testimony in general on relevance
3 grounds as to what was said in the preliminary hearing. We
4 are past that stage of the trial.

5 MR. FALK: Your Honor, I think it's relevant as far
6 as how the cross-examinations were set up at the trial and
7 the inconsistent statements that were obviously given at the
8 preliminary hearing. And, also, I think the relevance is
9 that my client thought up until opening arguments in this
10 case that it was alleged that he was the shooter, and that's
11 not developing arguments, that the State changes their theory
12 of the case and say this is a "hand of one is the hand of
13 all" case.

14 THE COURT: I'm going to overrule the objection.
15 You need to give her a copy of it to read.

16 MR. FALK: Do you have a copy also?

17 THE WITNESS: I'm sure I do.

18 I do.

19 BY MR. FALK:

20 Q. If you can skim through that testimony, I believe
21 it's at the beginning, around maybe page 6 or so, where I did
22 indicate that not only did my client -- not only did Ms.
23 Alston say my client shot the victim in this case, but that
24 she shot at him. I will find the citation.

25 A. I don't know if my pages are different. I'm glad to

1 go to whatever part you need me to.

2 Q. Could you look at page 7 and then again on page 9,
3 because I believe there's testimony there where the police
4 officer testified that Mr. Rose shot at the victim -- excuse
5 me. May I approach, Your Honor?

6 THE COURT: Yes.

7 THE WITNESS: This may be laid out a little bit
8 differently.

9 Q. I will move on. But there is testimony that it
10 was -- she's testifying that my client was the shooter?

11 A. I believe so. And I believe that during the trial,
12 the detective testified differently. And that's what I was
13 able to cross-examine him with the transcript at the
14 preliminary hearing.

15 Q. Okay. When you were preparing for trial, were you
16 preparing for a trial as though he was the shooter or that
17 this was a "hand of one is the hand of all" case?

18 A. Initially, after the prelim, I thought that the
19 allegations were that he was the shooter. When I reviewed my
20 notes for this hearing, I see that the prosecutor called me
21 in November of 2013. And I was able to document our
22 conversation on the phone. And it says she acknowledges that
23 the stories of some of the witnesses don't match up,
24 particularly, Ms. Alston and a witness with the last name
25 Aiken. And what my notes indicate is that there were two to

1 three more people with Mr. Rose. This is her -- these are
2 her allegations. And James comes into the house and he goes
3 out the back door and then the others come in.

4 So at that point, I didn't document that -- she was
5 not saying that he was the shooter, but that this was in
6 concert with two to three more people.

7 Q. Do you have the indictment in this case?

8 A. I do. There were several indictments and the State
9 only went forward on the murder indictment at the trial.

10 Q. Does that murder indictment indicate that there were
11 other people involved in the shooting?

12 A. It does not.

13 Q. Do you have a copy of the warrant that came with the
14 indictment, the arrest warrant?

15 A. I do.

16 Q. And does that indicate that my client was somehow
17 conspiring with other people to commit this crime?

18 A. The warrant does state that Rose and the other
19 subjects were brandishing firearms as they entered the
20 residence.

21 Q. The second paragraph of that also indicates that --
22 in that second paragraph of the indictment of that -- I guess
23 it's the third paragraph, there's a statement that a gun was
24 pointed at the witness's head, witness number one's head.

25 A. Yeah. Are you referring: Witness number one stated

1 that when she was outside on the porch, she saw Rose walk to
2 the vehicle and return with a gun and pointed it at her head?

3 Yes, that's correct.

4 Q. And is that your understanding, that that again is
5 the same witness who talked to Tawanna Alston?

6 A. Yes, it is.

7 Q. Did you ever advise my client of his liability in
8 this case if the State were to go forward on a "hand of one
9 is the hand of all" type of approach?

10 A. I remember that I met with Mr. Rose often and we
11 spent a lot of time preparing for trial, but I don't
12 specifically remember a discussion about "'hand of one is the
13 hand of all".

14 Q. During the course of your investigation, did you
15 have an opportunity to talk to a witness named Sophia Wiley?

16 A. My investigator did, yes.

17 Q. And do you have any notes in your file regarding
18 your conversations with Sophia Wiley?

19 A. I do.

20 Q. Did she give a statement to the police in this case?

21 A. She did.

22 Q. And do you have a copy of that statement handy?

23 A. I do.

24 Q. Could you read that, please?

25 A. I can.

1 MS. OLIVE: Your Honor, I would object to her
2 statement being read into the record. It's not part of the
3 record before this Court, to my knowledge. I certainly have
4 not seen a copy of the statement either. And the witness is
5 not here to testify.

6 THE COURT: All right.

7 MR. FALK: Your Honor, this is part of the Rule 5
8 discovery, which is certainly --

9 THE COURT: How is it not hearsay?

10 MR. FALK: I'm not offering it for the proof of the
11 matter asserted. I'm offering it for the fact that they were
12 on notice that she was giving a statement that attempted to
13 exculpate my client and this person was not called as a
14 witness.

15 THE COURT: You can rephrase your question.

16 BY MR. FALK:

17 Q. Did you have an opportunity to review that
18 statement?

19 A. I do have it here, yes.

20 Q. Is there anything in that statement -- you had an
21 opportunity to see that statement before the beginning of
22 this trial?

23 A. I did.

24 Q. And that statement was provided to you from -- as
25 part of the Rule 5; is that correct?

1 A. Yes.

2 Q. So that was not necessarily something that your
3 investigator generated; that was a statement that the State
4 generated?

5 A. That's correct.

6 Q. Okay. And is there anything in that statement that
7 tended to exculpate my client?

8 A. Sophia Wiley lived with James Rose and his
9 girlfriend Amber Wiley and her husband Matt Wiley. What her
10 statement does say is she was home with Matt Wiley and she
11 was getting ready to go out of town. So they were in the
12 room watching TV the night of the incident.

13 Q. Is there also a statement from Amber Wiley?

14 A. There is.

15 Q. And, again, is there anything in that -- is that a
16 statement that was provided to you as part of the discovery
17 in this case?

18 A. That is correct.

19 Q. And is there anything in that statement that tended
20 to exculpate my client?

21 A. If I remember correctly, what she said was that she
22 was home. James was there. She took a shower and took
23 Tylenol PM and went to bed. And then when she woke up the
24 next morning, James was there.

25 Q. Okay. And this was the same night of the shooting,

1 was it not?

2 A. Yes, yes.

3 Q. Okay. And you had an opportunity -- again, you had
4 an opportunity to locate her? Your investigator, did they
5 find her?

6 A. She would not cooperate with us.

7 Q. But you could have issued her a subpoena to testify,
8 could you not?

9 A. He served a subpoena. And I would have to check my
10 notes. So this e-mail is from my investigator to me. He
11 says that he received a call from Sophia Wiley and she wanted
12 to know why she and her husband would need to testify because
13 she was out of town at the time of the incident, which was
14 different from what she had told the investigators.

15 Q. What about Amber Wiley?

16 A. She was going to accept the subpoena for -- and then
17 the e-mail goes on to say: I spoke with Amber Wiley and she
18 advised me to leave her subpoena with her mother, Maggie
19 Brown, at Moultrie Avenue, Summerville. And he gives me
20 her number, Amber's number, and he tells me that he will
21 leave Amber's subpoena with Sophia on Monday since her
22 stepfather, Eric Brown, would not accept her subpoena while
23 he was there at his home.

24 And my notes from my file indicate that I called her
25 several times prior to the trial and she would not call me

1 back or cooperate with me.

2 Q. Okay. But she had given a statement to the police
3 and she signed her name at the bottom of the statement; is
4 that correct?

5 A. She did.

6 Q. And that statement said that she was at home that
7 night and that she went to bed and he was there. And when
8 she woke up, he was there; is that correct?

9 A. That's correct.

10 Q. And that covered approximately the same time?

11 A. I don't know. I would have --

12 Q. It's the same night we are talking about?

13 A. It's the same night. I don't know about the
14 specific times.

15 Q. Okay. And you had an address location to find her,
16 is that correct?

17 A. We did.

18 Q. And you could have issued her a subpoena to testify;
19 is that correct?

20 A. We tried to.

21 Q. And had she testified, she would have had to -- she
22 could have been cross-examined or impeached if her testimony
23 was other than the statement she gave to the police?

24 A. She could be impeached with her statement,
25 absolutely.

1 Q. So she would have been exposed to a criminal
2 sanction, supposedly, if she had given a false statement to
3 the police?

4 A. She could.

5 Q. And that was a witness then that the State could
6 have called to testify as an alibi witness?

7 A. The defense, could be.

8 Q. Excuse me. The defense could have called her as an
9 alibi witness; is that correct?

10 A. Yes.

11 Q. And was it a trial strategy reason for not calling
12 her?

13 A. I couldn't get her to respond to me. So I couldn't
14 even talk to her to see what she would say if she did get on
15 the stand. I'm not going to call somebody until I talk to
16 them.

17 Q. Did your investigator talk with her?

18 A. She wouldn't cooperate. It looks like he talked to
19 her about serving the subpoena on her, but he couldn't track
20 her down.

21 Q. Okay. And is there a statement from an Everlina
22 Brickman?

23 A. There is.

24 Q. Before we talk about that, was there testimony about
25 a silver Neon that was in this case?

1 A. That's correct.

2 Q. And can you summarize what that testimony was about
3 the silver Neon, or how that was relevant to the prosecution
4 against Mr. Rose?

5 A. The State argued that the people who came in and
6 shot the victim came to the trailer in a silver-colored Neon
7 sedan.

8 Q. Okay. Did the State allege that -- was there any --
9 was there not proof or was part of the theory of the State's
10 case that the Neon belonged to Everlina Brickman?

11 A. I believe so.

12 Q. And did she give a statement to the police about
13 whether or not she had lent that car?

14 A. She did.

15 Q. And that statement, did it indicate whether or not
16 she could have lent that car to either Amber Wiley or to
17 Mr. Rose?

18 A. She said she did not in her statement.

19 Q. Is that -- again, you had -- did your investigator
20 speak with Ms. Brickman?

21 A. I have to check my notes. It looks like I called
22 her on December the 5th. I left her a message that I wanted
23 to speak to her about the trial. And I was also trying to
24 get in touch with Amber. The number that I had for Amber was
25 a Cricket number. And the recording said Cricket customer

1 not available. It looks like during the trial, I kept
2 checking my messages and was not able to get in touch with
3 Ms. Brickman.

4 I see on November 27th of 2013, that I sent an
5 investigation request to my investigator about locating
6 Everlina Brickman.

7 Q. Is there any reason to think that Everlina Brickman
8 still doesn't live in this area?

9 A. I have no idea.

10 Q. So why did you not call her to testify?

11 A. Because I couldn't get in touch with her.

12 MR. FALK: Okay. One moment, Your Honor. May I
13 approach the witness?

14 Q. Christopher Hochreiter, H-o-c-h-r-e-i-t-e-r,
15 testified on behalf of the State; is that correct?

16 A. I believe so.

17 Q. Do you have the trial transcript?

18 A. I do.

19 Q. I believe his testimony starts on page 386.

20 A. If I remember correctly, he was the first
21 responder.

22 Q. He was the first responder to the scene?

23 A. Yes, sir, I guess. That's correct.

24 Q. And did he file an initial report on the case?

25 A. He did.

1 Q. And in that initial report, does it ever indicate
2 whether or not Tawanna Alston was at the scene? Is her name
3 listed?

4 A. It is not.

5 Q. And he listed Joy Holmes; is that correct?

6 A. Yes.

7 Q. And lady with the last name of Limehouse?

8 A. Limehouse, that's correct.

9 Q. So the first responder to the scene never indicated
10 that there was a Tawanna Alston present?

11 A. That's correct.

12 Q. Did you bring that up in the cross-examination of
13 this case?

14 A. I did.

15 Q. Can you show me?

16 A. I reviewed the transcript in preparation of this
17 hearing, and I remember questioning him about -- Tawanna
18 Alston testified that she ran from the trailer and she's
19 knocking on a neighbor's door. And I questioned him about
20 that. I don't specifically recall if I asked him if she was
21 listed in the initial report. But I can go back and read it,
22 if you need me to, or if you can point me to a specific area,
23 I can go there.

24 Q. I may have missed it, but I didn't see that area.
25 So my point is, is it not possible that Tawanna Alston was

1 never even present at the scene? The initial responder
2 shows -- lists the people he talked to.

3 A. She's not there when the initial responder goes to
4 the trailer.

5 Q. And when is the first time that she, Tawanna Alston,
6 ever makes a statement in this case?

7 A. I think she's taken from the hospital. She goes to
8 the hospital. And then she's taken to the sheriff's
9 department from the hospital to be interviewed.

10 Q. But didn't she originally testify that she hid under
11 the house, under the trailer?

12 A. It's my understanding that she got under -- there's
13 a porch that comes off the trailer or a deck, that she got
14 under there and then she ran to a neighbor's house.

15 Q. Did a Clarence Hush testify in this case?

16 A. He did.

17 Q. And wasn't his testimony that he was in a car at
18 11:30 purchasing gasoline at a BP station?

19 A. I know that he testified that he went to a BP
20 station with James Rose. And I do not recall the time.

21 Q. Okay.

22 A. I know it was late in the evening, close to
23 midnight.

24 Q. Was it not at 11:30, if you look at page 353, lines
25 4 and 5.

1 A. It looks like at this part of the trial, I'm
2 cross-examining Mr. Hush. And I ask him: Do you remember
3 what time you stopped at the BP gas station?

4 And he answered: Probably about ten minutes outside
5 of 11.

6 And I said: Ten minutes after 11?

7 And he said: Yes, ma'am.

8 Q. And then if you look at page 354, line 19.

9 A. I said: Okay. So you dropped James off around
10 11:30?

11 And he said: Yes.

12 Q. And that was dropped him off at his house?

13 A. That's my understanding, yes.

14 Q. Okay. Is this not providing the alibi for Mr. Rose?

15 A. I think it says he dropped off James at 11:30. And
16 that's why I elicited that testimony. I'm not sure if I
17 understand the question. I thought that fact was helpful to
18 Mr. Rose.

19 Q. Was there a charge to the jury about whether or not
20 he was entitled to an alibi instruction?

21 A. I don't remember.

22 Q. Could you look over your closing argument?

23 A. Did I?

24 Q. Could you?

25 A. I have.

1 Q. Did you argue an alibi in the closing argument?

2 A. I don't remember that I did. I don't think so,
3 no.

4 Q. And, certainly, had Amber Wiley been called to
5 testify, she would have testified that he was with her, and
6 Everlina Brickman would have testified she did not lend him a
7 car.

8 MS. OLIVE: Objection, Your Honor. Calls for
9 speculation.

10 THE COURT: Sustained.

11 BY MR. FALK:

12 Q. Is there a reason why you didn't argue that he had
13 an alibi for the time of the --

14 A. I don't recall.

15 Q. Thank you.

16 A. I don't remember.

17 Q. Could you look at the closing argument by Ms. Shealy
18 on page 636, if you could look at lines 8 and 9.

19 A. Okay.

20 Q. Now, there she argued: But he is the one who told
21 you James Rose said, I am going to go back and get my
22 respect.

23 And was she referring to Clarence Hush's testimony?

24 A. Yes.

25 Q. And is that not part of the theory of the State's

1 case, that Mr. Rose was going back because that somehow the
2 victim in this case had disrespected him and he was going
3 back there that night to get his respect back?

4 A. That was the State's theory, yes.

5 Q. Yes. Would you look at page 346, line 22 and 24.

6 A. 22 and 24?

7 Q. Yes, ma'am. Was he asked whether or not -- and,
8 again, this is Mr. Hush's testimony regarding what James Rose
9 said; is that correct?

10 A. That's correct.

11 Q. That's the subject of that question? And she asked:
12 Did he say he was going back out there to get his respect
13 back?

14 That was the question?

15 A. That's the question at 22.

16 Q. And what was his response?

17 A. No, he didn't never say that to me.

18 Q. I'm assuming -- obviously, there's a double negative
19 there, but that was a negative response to that question,
20 right?

21 A. That line, yes.

22 Q. But when the State represented to the jury in the
23 closing argument that Mr. Hush said that, did you not think
24 that was an opportunity for you to object to her arguing
25 facts that were not in evidence in this case?

1 A. I did not object.

2 Q. Did you think --

3 A. He said something -- he actually said something
4 different right before that. I remember that this witness
5 was really not happy about being there and was very annoyed
6 with the prosecutor for having him there at all. He was
7 brought from the jail. So I think he had a lot of different
8 answers for her.

9 Q. But, I mean, just in this case, this is -- he was
10 with -- he brought Mr. Rose to that -- to the victim's home
11 earlier that evening, right?

12 A. Earlier in the day, yes.

13 Q. In his black Nissan?

14 A. That's correct.

15 Q. And --

16 A. I did not object to the closing argument.

17 Q. Okay. Do you think that's an improper argument for
18 the State to be making? Excuse me. I will phrase it
19 differently.

20 Is the reason you did not object because you did not
21 think it was an improper argument?

22 A. I did not. I didn't necessarily agree with those
23 facts, but I didn't think it was objectionable.

24 MR. FALK: Okay. I have no further questions.

25 THE COURT: Cross.

1 MS. OLIVE: Thank you, Your Honor. May it please
2 the Court.

3 CROSS-EXAMINATION

4 BY MS. OLIVE:

5 Q. Ms. Runey, thank you for being here this morning.
6 I'm going to ask you general questions first and then circle
7 out.

8 How long have you been practicing law?

9 A. Since 2001.

10 Q. And how much of your practice has been criminal?

11 A. I was a law clerk after graduating from law school.
12 And I've been with the public defender's office for 14 years.

13 Q. Do you recall at what point you became involved in
14 this case, in Mr. Rose's case?

15 A. I can. Mr. Rose was represented by another public
16 defender in our office. And when he was arrested on the
17 charges that we are here for today, the murder and some
18 related charges, his case was transferred to me.

19 Q. Had you tried murder trials prior to Mr. Rose's
20 trial?

21 A. I have.

22 Q. Do you recall how many?

23 A. I don't.

24 Q. Did you meet with Mr. Rose to discuss these charges?

25 A. I did.

1 Q. Do you recall how many times you met with him?

2 A. I don't remember, but I can look up and tell you.
3 It looks like I met with him either at the jail or by video
4 conferencing 13 times. And I also have noted times that I
5 met with him here when he came over for certain hearings; but
6 13 meetings at the jail or by video conference.

7 Q. Do you recall what you discussed in those meetings
8 with him?

9 A. It would have been different things at different
10 stages of the case.

11 Q. Did you discuss the indictment with him and elements
12 of the offenses --

13 A. Yes.

14 Q. -- involved in this case, the offense of murder?

15 A. Yes.

16 Q. Did you discuss with him the State's burden of proof
17 at trial?

18 A. I'm sure we did. We had quite lengthy
19 conversations. And Mr. Rose was an intelligent client to
20 work with. And we went over various things in that. And he
21 was very active in that case as well.

22 Q. Did he discuss with you his version of the facts?

23 A. He did.

24 Q. Did you file Rule 5 or Brady motions in this case?

25 A. I did.

1 Q. Did you review that -- well, did you receive that
2 discovery?

3 A. I did.

4 Q. Did you review that with Mr. Rose?

5 A. I did, and provided him with copies.

6 Q. And did you learn -- Court's indulgence. Regarding
7 your investigation of this case, what sort of investigation
8 did you do?

9 A. What I generally do is, any lay witnesses, I have my
10 investigator try to locate them and do an independent
11 interview of what they told the police, not just their
12 statement to the police, but review those statements with
13 them, if they have given a statement to the police. In
14 preparation for the trial, I would have my investigator
15 subpoena all law enforcement, usually all witnesses that we
16 can locate, even if I don't plan to call them.

17 Q. And did you do that in this case?

18 A. I did.

19 Q. Of those witnesses, were you able to actually speak
20 with specifically the ones we've discussed today? Were you
21 able to actually speak with any of them?

22 A. My notes indicate that Amber had called me at the
23 beginning of this case. And that wasn't as far as a witness.
24 It was because she was concerned for James.

25 Q. Did that conversation have anything to do with her

1 providing an alibi for him?

2 A. It did not.

3 Q. Did you already have her statement at that point?

4 A. I did not.

5 Q. Did you discuss possible defenses with Mr. Rose?

6 A. We did.

7 Q. Did you ever discuss the possibility of an alibi
8 defense? Let me rephrase.

9 A. Well, I can tell you November 15th of 2013, I have a
10 jail visit listed for two hours. I also say to see notes,
11 but it says we reviewed the statements from Joy Holmes,
12 Tawanna Alston, Antwan Aiken, Ishmel Preston, Deanna
13 Henderson. We discussed possible offers in the case. And
14 that Mr. Rose did not want any offers.

15 I can refer back to those notes, but I know we
16 talked about the difficulty of locating Amber Wiley.

17 Q. Ultimately, you don't know what she would have
18 testified to, because you weren't able to make contact with
19 her?

20 A. I only have what was provided to me in the file.

21 Q. And the nature of that was that -- did she testify
22 that he was just in the house with her at that time?

23 A. I believe her statement said that --

24 Q. Excuse me her statement.

25 A. -- she was at home with James Rose, and that she

1 took a shower and took a Tylenol PM and went to bed. And
2 that he was also there when she woke up the next morning.

3 Q. So based on that statement alone, she couldn't have
4 accounted for where he was during that time?

5 A. I believe she said that she went to bed around 11 in
6 the statement.

7 Q. But while she was asleep --

8 A. She could not.

9 Q. Right. And, again, you testified you did try to
10 subpoena her?

11 A. I did.

12 Q. And that was at the address that you have for her?

13 A. It is.

14 Q. And that she provided?

15 A. That's correct. It looks like that there was some
16 interaction with her and my investigator over the phone.

17 Q. Without having spoken with her concerning what her
18 testimony would be, were you able to come to a decision about
19 whether you would have called her to testify even if she
20 had --

21 A. No.

22 Q. And you said that you met with Mr. Rose on November
23 15th, 2013, which would have been about little less than a
24 month before trial; would that be right?

25 A. That's right.

1 Q. At that point, you were aware that there were --
2 earlier, you testified that based on the preliminary hearing,
3 you thought that it was just alleged that James Rose was the
4 shooter, right?

5 A. At the preliminary hearing, the detective testified
6 that James Rose was the shooter.

7 Q. But, certainly, by the time you had this meeting
8 with him in November 15th, 2013, you were aware that that was
9 no longer the State's theory?

10 A. It looks like I had spoken to Ms. Shealy, the
11 prosecutor on November the 8th, and I met with him on
12 November the 15th to go over everything for the trial.

13 Q. At that point, do you recall what the State's theory
14 was that they were proceeding on at trial?

15 A. What my notes indicate with my conversation with Ms.
16 Shealy is that she acknowledges that some of the
17 eyewitnesses' stories don't match up, but her theory is that
18 Mr. Rose tells the other guys to go to the bathroom and
19 that's where all the stuff is. And that he had come into the
20 house, and he goes back out the door, and the other two to
21 three people come back in with him, into the trailer where
22 this happened.

23 Q. Did you develop an opinion about the State's ability
24 to prove Mr. Rose guilty beyond a reasonable doubt at trial
25 based on your discussion with the prosecutor and your review

1 of the discovery?

2 A. Did I think we had a chance to win? Yeah, I think
3 we had a chance to win.

4 Q. Did you feel that you had any reason to challenge
5 the indictment prior to trial?

6 A. I did not challenge the indictment at trial.

7 Q. What would have been the result had you challenged
8 the indictment?

9 A. I don't know that. I would have to review the case
10 law. But at that time, I didn't see any reason to challenge
11 the indictment.

12 Q. Do you know whether -- I mean, would they have
13 dismissed the case?

14 MR. FALK: Objection.

15 THE COURT: Sustained.

16 Q. So at the time you saw no reason to challenge the
17 indictment?

18 A. I did not.

19 Q. Do you feel that based on your conversation and your
20 advice to Mr. Rose, that he was sufficiently aware of the
21 charges against him and what he was being called to answer at
22 trial?

23 A. I think Mr. Rose was prepared for trial. I think he
24 knew his case very well.

25 Q. Did you have an overall theory or strategy in this

1 case?

2 A. I did. Our theory was that Mr. Rose had been at
3 this house earlier that day, but he never came back. And the
4 State alleged that he had come back and this is when this
5 incident occurred. But Mr. Rose testified and he told the
6 jury that he had been there. He knew the victims. He knew
7 the people there, but he had not come back.

8 Q. And you discussed this with Mr. Rose?

9 A. I did.

10 Q. How did you prepare your cross-examination of the
11 State's witnesses in this case?

12 A. I would have my notes from that and my notebook.
13 But what I generally do is go through the discovery, write
14 down the points that I want to make, not necessarily the
15 specific questions, because I think that ties you down. But
16 I would have written all the points that I wanted to make
17 sure I would cover with the State's witnesses on
18 cross-examination.

19 Q. Did you feel that you had a valid alibi defense
20 available to you?

21 A. Not from the people I had talked to. I didn't have
22 contact or was able to interview the people that could have
23 been possible alibi witnesses.

24 Q. So there would have been no reason to ask for an
25 alibi charge based on that?

1 A. I did not ask for one.

2 Q. Did you have a reason to ask for an alibi charge?

3 A. I don't think so. I didn't put up any alibi
4 witnesses.

5 Q. And you made a directed verdict motion in this case?

6 A. I did.

7 Q. Do you recall what the basis of that motion was?

8 A. I think I just pointed out the insufficiencies that
9 I saw in the State's case and pointed those out to the judge,
10 but that motion was denied.

11 Q. And was there any direct -- I mean, there was no DNA
12 evidence, right?

13 A. No.

14 Q. And you pointed that out in your directed verdict
15 motion?

16 A. I did.

17 Q. No GSR?

18 A. No.

19 Q. And you pointed that out as well?

20 A. I did.

21 Q. And, of course, ultimately, the judge denied the
22 motion for directed verdict?

23 A. That's correct.

24 Q. Did you cross-examine Ms. Alston at trial on the
25 inconsistencies between her statements and her testimony at

1 trial?

2 A. I did.

3 Q. And you stated that you don't specifically remember
4 having a discussion with Mr. Rose regarding his liability
5 under the theory of "hand of one is the hand of all", but you
6 testified you did discuss with him the elements of the
7 charges against him and the evidence that the State had
8 against him?

9 A. I did.

10 Q. And you did testify that you could have called Amber
11 Wiley as an alibi witness. But, again, you were not ever
12 able to have a conversation with her concerning what her
13 testimony would have been?

14 A. That's correct.

15 Q. Did you attempt to contact Everlina Brickman?

16 A. I did.

17 Q. Did she cooperate with you?

18 A. She did.

19 Q. You testified you did not recall cross-examining
20 Mr. Hochreiter -- I'm not sure I'm pronouncing his name
21 right, but the first responding officer -- about Alston being
22 at the house?

23 A. I think I asked him if he located a female witness
24 there. I don't think she was there when he responded.

25 Q. Were there others that testified she was there that

1 night?

2 A. Yes.

3 Q. Did you see any basis to object to the statement by
4 the prosecutor in closing?

5 A. I did not.

6 MS. OLIVE: Thank you, Ms. Runey. That's all the
7 questions I have.

8 MR. FALK: Just briefly.

9 REDIRECT EXAMINATION

10 BY MR. FALK:

11 Q. You said you had a conversation with the solicitor
12 some time in November right before the trial?

13 A. I did.

14 Q. And is it your testimony that at that time, she said
15 that she was going forward on an accomplice liability-type
16 theory, or that he just came back with other people?

17 A. I have in my notes that her theory was that he came
18 back with other people.

19 Q. Okay. So, I mean, she didn't say -- she didn't
20 advise you at that time that she didn't think that Mr. Rose
21 was not the shooter; is that correct?

22 A. My notes just indicate that James came in the house,
23 goes back out the door, and then the others come in, two to
24 three more people with him. That's all my notes indicate.

25 Q. Because "hand of one is the hand of all"-type theory

1 there's still an instruction on mere presence; is that
2 correct?

3 A. That's correct.

4 Q. Because there would have to be testimony that there
5 was some type of scheme or common plan in order for my client
6 to be responsible for two on the people?

7 A. That's correct.

8 Q. Okay. And, again, I think I asked my question
9 before I heard your answer. At that time, did you know if
10 the State was -- who did you think the State thought the
11 shooter was in November right before the trial?

12 A. I don't remember.

13 Q. Okay. Thank you. Now, by the time this case came
14 to trial, had the other two people ever been identified?

15 A. They had not.

16 Q. Do you have any information whether or not they were
17 ever caught?

18 A. They were not. Up until the trial, they were not.
19 And I have not heard anything since then that anybody else
20 has been arrested.

21 Q. Okay. And it is fair to say that this was actually
22 a close directed verdict argument, is it not?

23 A. I thought it was a good directed verdict argument,
24 yeah.

25 Q. Because it's my opinion of the judge's decision that

1 they were somewhat groping to find some connection between my
2 client and the shooting, right? There was some -- is it not
3 true that there was possibly some contradicted testimony
4 about whether or not my client was the driver when the car
5 came back?

6 A. Yes, yes. The only thing that put Mr. Rose there
7 were -- was the testimony of two eyewitnesses who testified
8 to different things at different times in the case. And so I
9 think I did have a good directed verdict argument.

10 Q. So this was a close case?

11 A. I think so.

12 MR. FALK: No further questions.

13 THE COURT: All right. Recross-examination.

14 MS. OLIVE: Brief recross-examination.

15 RE CROSS-EXAMINATION

16 BY MS. OLIVE:

17 Q. Ms. Runey, would it have changed -- you testified
18 that you don't recall whether the State was alleging prior to
19 trial that he was the one who actually fired the gun or he
20 was the one there acting in concert with other individuals?

21 A. I don't remember.

22 Q. Would that have affected -- having not remembered,
23 would that have affected your preparation for this case?

24 A. I don't think so.

25 Q. Would that have affected any of the arguments that

1 you made at trial?

2 A. No.

3 Q. Okay. Thank you.

4 THE COURT: All right. You may step down.

5 THE DEFENDANT: Thank you.

6 THE COURT: Call your next witness.

7 MR. FALK: I call my client, please.

8 JAMES R. ROSE,

9 having been duly sworn, testifies as follows:

10 THE CLERK: Sir, for the record, if you will please
11 state your name, spelling your last name.

12 THE DEFENDANT: Last name, my name is James Rose,
13 R-o-s-e.

14 DIRECT EXAMINATION

15 BY MR. FALK:

16 Q. I just want to go over a couple of things with you,
17 Mr. Rose.

18 A. Okay.

19 Q. When you went to trial, what did you think the
20 State's case was? Was it your opinion that they thought that
21 you were the shooter?

22 A. No. I thought that they was -- I thought that I was
23 going to trial for what the indictment said, that I shot and
24 killed the victim. I did not know that they was going to try
25 me on a "hand of one is hand of all". I had no indication of

1 that at all. Because, first of all, I wasn't never there.
2 And they implicated other people that I don't even -- I don't
3 know nothing about.

4 Q. And did you get an opportunity to read the discovery
5 in this case?

6 A. Yes.

7 Q. Is there anything in the discovery in this case that
8 made you think that the State did not think that you were the
9 shooter?

10 A. Well --

11 Q. There was a statement in the discovery by Ms.
12 Alston; is that correct?

13 A. Yes, sir.

14 Q. And that said that you were the shooter?

15 A. Yes.

16 Q. And you attended your preliminary hearing, did you
17 not?

18 A. Yes, I did.

19 Q. At the preliminary hearing, what did the
20 investigator officer say?

21 A. He said that Tawanna Alston advised him that I shot
22 the victim repeatedly after shooting at her.

23 Q. Okay. So when were -- when did you realize that the
24 State was using and "hand of one is the hand of all" theory
25 of the case?

1 A. When they -- when the solicitor gave the opening
2 statement, she said that I was guilty under the "hand of one
3 is the hand of all". And I was like -- I asked Ms. Runey, I
4 was like, what is that? You know, because it caught me off
5 guard. You know, you could say I was surprised, because I
6 had no idea. She told me that they dropped the other
7 indictments and they was just going forward with the murder
8 charge. So I already knew that I didn't commit the crime and
9 I wasn't there. So I thought -- I didn't know what to think.
10 I didn't even think there was going to be a trial, because --
11 because Tawanna Alston wrote a statement when the Detective
12 Perkins asked her, did she see me shoot the victim? And she
13 said no. And we got the statements. I showed -- well, my
14 lawyer saw them. Of course, the solicitor had them. So I
15 didn't -- I didn't think that there was going to be a trial,
16 because they already -- as a matter of fact, the judge in
17 this case during the in-camera hearing said that no witness
18 ever said that I shot the victim. So I was thinking that it
19 was over with.

20 Q. Did you have any discussion with your lawyer about
21 Amber Wiley?

22 A. She -- the day of trial, she told me that she was
23 going to call Amber. That was like a day before trial. She
24 said she was going to call Amber. She talked to her and she
25 said that she would be ready for trial. Well, you know, I

1 put in for a motion to be relieved of counsel because I was
2 putting in -- I was asking my trial attorney to put a speedy
3 trial motion in. And she wasn't doing it for some reason.
4 And so when I put in for the -- when I put in for the motion
5 to be relieved of counsel, the judge granted my motion for
6 for a speedy trial and denied me my motion to be relieved of
7 counsel.

8 And that's when, you know, she told me that she
9 talked to Amber and she will be available. We were supposed
10 to have a trial on the 2nd of December, but we didn't go on
11 the 2nd of December. Prior to that, she told me that she
12 talked to Amber and she would be ready.

13 Q. And you were aware that Amber -- that she made a
14 statement that, in effect, said that she was -- you were at
15 the house, she went to sleep, she woke up, you were there,
16 right?

17 A. Yes, sir. It was even a follow-up done by Detective
18 Wilson and Detective Smith, that they did a follow-up on my
19 alibi. When they arrested me, they were interrogating me.
20 And I told them, you know, where I been at. And they did a
21 follow-up and they confirmed it, that I was at my
22 girlfriend's house at 11:30, around the time that Antwan
23 Aiken said the incident happened. He said the incident
24 happened at 11:30 or 11:40, somewhere like that. But I was
25 home. And I don't have a vehicle. That's the reason why I

1 had to pay Clarence Hush some gas money to go to Lincolnville
2 in the first place.

3 Q. That was on the prior trip?

4 A. Yes, sir.

5 Q. And he testified that y'all got gas on the way
6 back?

7 A. Yes, sir.

8 Q. And that you bought that gas, I guess, or gave
9 somebody money for that gas?

10 A. Yes, sir. I explained all of this to my attorney,
11 my trial attorney.

12 Q. Okay. Were you aware of a statement made by
13 Everlina Brickman about the silver Neon?

14 A. Yes, sir. Because, you know, her vehicle was never
15 there in the first place. That morning, before I was
16 arrested, Amber Wiley called her to take her to see her
17 probation officer. And on their way back, I was already in
18 handcuffs. And the Charleston County sheriff told her to
19 park her car, and then they took her car. But prior to that,
20 she was never over there.

21 Q. Were you aware that she made a statement about
22 whether or not she lent the car to you or to Amber?

23 A. I read the statement. And she said that she did
24 not. And I asked Ms. Runey to subpoena her. And I guess I
25 caught her off guard, because she didn't know I wanted to

1 take the stand. But I felt as though I had no choice,
2 because they was implementing people that was unknown. And I
3 felt as though it was too many holes left open. And I felt I
4 had to fill them holes in, because I was being tried for
5 something that I had nothing to do with.

6 Q. Ms. Runey testified that by the time the trial had
7 started, the other two people who were referred to in the
8 trial, who came back late that evening, had never been
9 caught. Do you have any information about whether or not --

10 A. No, I don't.

11 Q. Do you have anything else you would like to say?

12 A. Nothing but, you know, I'm truly innocent. I
13 haven't done anything that they accused me of. This was my
14 story from the beginning. This is my story today. I gave a
15 statement when I was arrested of the same alibi that I got
16 today. It was confirmed by the detectives. And I am
17 still -- like, I'm still bewildered. It's like, I don't
18 understand why I'm in prison and I really don't understand
19 this.

20 MR. FALK: No further questions. Please answer any
21 questions Ms. Olive may have.

22 THE DEFENDANT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MS. OLIVE:

25 Q. Thank you. Good morning, Mr. Rose.

1 A. Good morning.

2 Q. So you acknowledge that you did read the discovery
3 in this case?

4 A. Yes, I have.

5 Q. And you went over that with your attorney?

6 A. We went over some things, not the whole -- me and
7 Ms. Runey went over some things, but not the whole discovery,
8 because I was still getting bits and pieces of the discovery
9 right before the day of trial.

10 Q. Is that because the State was still handing
11 discovery over at that point?

12 A. Yes, ma'am, but not the statements or nothing that
13 we discussed today, but they were still handing over stuff,
14 but nothing that we was discussing, nothing that we were
15 discussing right now. We been had that prior to going to
16 trial.

17 Q. And you did testify at trial?

18 A. Yes, I did.

19 Q. So you had an opportunity to tell your story then?

20 A. Yes, I did.

21 MS. OLIVE: Thank you. That's all the questions I
22 have.

23 THE COURT: Any redirect?

24 MR. FALK: No redirect. And we would rest.

25 THE COURT: All right. You may step down. Thank

1 you.

2 Any witnesses from the State?

3 MS. OLIVE: Your Honor, we do have Susan Hackett for
4 the single allegation that appellate counsel was ineffective
5 for failing to preserve issues on appeal. As to the issues
6 that have been raised already, the State would move for a
7 directed verdict at this time. These witnesses that have
8 been discussed are not present here today. They have not
9 testified here today. There can be no showing of prejudice
10 with respect to any allegation of ineffective assistance for
11 failing to call those witnesses because they are not here.
12 We don't know what they would have testified to. So that
13 calls for pure speculation. So we would move for a directed
14 verdict on ineffective assistance counsel in regard to
15 failure to call these witnesses.

16 We would also move for a directed verdict on the
17 allegation that counsel failed to object to the solicitor's
18 closing argument, first because it's our position that
19 there's been no evidence presented to show that Ms. Runey had
20 a duty to object. So there's no failure to object.

21 Further, there's no prejudice because the judge
22 advised in her instructions to the jury that closing
23 arguments are not to be taken as evidence by the jury. The
24 jury heard the testimony at trial. And they were to consider
25 that as the evidence and not the testimony -- excuse me, not

1 the statement provided at closing argument.

2 And, Your Honor, trial counsel testified that she
3 had no alibi defense to present. Therefore, we would move
4 for a directed verdict on the allegation as well, because
5 there's been no evidence to show that Mr. Rose had any
6 available alibi witness. And, certainly, there's been no
7 prejudice proven, because no alibi witness has been presented
8 today.

9 And with regard to the allegation that counsel did
10 not move to quash the indictment or did not move to amend the
11 indictment, Your Honor, we would move for a directed verdict
12 on that as well, because, first, there's no deficiency. She
13 testified she did not see any reason to challenge the
14 indictment. She was prepared to go to trial. Nothing
15 regarding the State's theory that we've discussed today would
16 have changed how she prepared for trial, nor would it have
17 changed her strategy at trial. And there's no prejudice
18 regarding any allegation that she did not move to or she
19 failed to move to quash the indictment or challenge the
20 indictment, Your Honor.

21 It's our position that Mr. Rose has not presented
22 sufficient evidence to satisfy his burden of proving
23 ineffective assistance of counsel and we move for a directed
24 verdict.

25 THE COURT: Reply to that?

1 MR. FALK: We will stand on most of our arguments,
2 but I would like to make a point, on the alibi witnesses, I
3 can appreciate there's a difference when somebody says, I
4 have this person, she would have said this. But in this
5 case, we have the statements that were given to the police.
6 And the statements were signed. And there's testimony that
7 everybody knows that you cannot give a false statement to the
8 police. So I do -- and my point always was, the State was
9 aware that there were these witnesses out there who had
10 already given statements to the police, you know, penalty of
11 some type of sanction for giving a false statement, A, that
12 he was with her; and B, that the car was not lent to him.

13 So, I mean, I do think the State in this case --
14 there is evidence that there were alibi witnesses available
15 who had already given statements to the police, and trial
16 counsel was aware of these. And why they did not call them,
17 I think --

18 THE COURT: Motion denied. I will take it under
19 advisement and give you an answer this week.

20 MS. OLIVE: Your Honor, I would like to -- are you
21 going forward on the allegation of ineffective assistance of
22 appellate counsel?

23 MR. FALK: I think we can go on that. We are fine
24 on that. Yes, we will take that off the table.

25 THE COURT: Any objection from the State?

1 MS. OLIVE: No, Your Honor. Thank you.

2 THE COURT: Okay. Mr. Rose, do you want to dismiss
3 your post-conviction relief application against the appellate
4 counsel? That would be Susan Hackett; is that right?

5 THE WITNESS: No, I don't.

6 THE COURT: You want to go forward on that issue?

7 MR. FALK: Yes, sir.

8 THE COURT: Let's go forward.

9 MS. OLIVE: Ms. Hackett is testifying by phone. We
10 just need a phone number.

11 THE CLERK: It will take just a moment to get it.

12 THE WITNESS: Thank you, Your Honor.

13 MS. OLIVE: Your Honor, I've provided the brief of
14 appellate and brief of respondent from the direct appeal in
15 your materials.

16 MR. FALK: While we are waiting, can I re-call my
17 client to the stand?

18 THE COURT: You may.

19 JAMES R. ROSE,

20 having been previously sworn, testifies as follows:

21 REDIRECT EXAMINATION

22 BY MR. FALK:

23 Q. Mr. Rose, you are still under oath.

24 A. Yes, sir.

25 Q. Can you state what your argument is against or

1 supporting your claim for ineffective assistance of appellate
2 counsel?

3 THE COURT: Do we have the lawyer on the telephone?

4 MR. FALK: I just thought we can put that --

5 THE COURT: Might not be a bad idea to have her hear
6 the allegation.

7 MR. FALK: That's all I was going to do.

8 THE COURT: Sit tight.

9 MS. OLIVE: For the record, the State -- the only
10 allegation contained in the application concerning
11 ineffective assistance of appellate counsel is for failing to
12 brief preserved issues. So we would object to any
13 allegations besides that that's already been stipulated, made
14 in the application because they have not been made in the
15 notice of any amendment.

16 THE COURT: What do you say?

17 MR. FALK: We are going to discuss the "hand of one
18 is the hand of all" instruction.

19 THE DEFENDANT: And the directed verdict.

20 THE COURT: I'm going to deny your motion. Just let
21 his testimony come forward to the matters.

22 MS. OLIVE: Thank you.

23 THE DEFENDANT: Thank you, Your Honor.

24 Your Honor, can I ask you a question?

25 MR. FALK: Let me ask. May I approach?

1 THE COURT: You may.

2 MS. OLIVE: This is Alicia Olive. We are here in
3 the courtroom with Judge Seels. Mr. Rose is on the stand
4 right now. He's going to testify as to his allegations of
5 ineffective assistance of appellate counsel. And then I will
6 be calling you.

7 MS. HACKETT: Okay. Thank you, Ms. Olive.

8 MR. FALK: This is James Falk. Can you hear me?

9 MS. HACKETT: Yes, I can hear you, Mr. Falk.

10 MR. FALK: I'm going to ask Mr. Rose some questions.

11 Q. Mr. Rose, can you set forth what your allegations
12 are of ineffective assistance of appellate counsel?

13 A. Yes, sir. I had -- my trial attorney preserved a
14 directed verdict motion for appellate review, appeal review
15 in the "hand of one is the hand of all" jury instruction.
16 And I wrote -- I discussed with Ms. Susan Hackett, the
17 appellate attorney ...

18 Q. She's on the phone now.

19 A. Okay. I discussed with her about raising this
20 issue, challenging it for appeal. And she wrote me a letter
21 back. I would like you to see it, if I can give it to you.
22 I've got three copies. And she wrote me a letter back saying
23 she won't raise it because she don't feel as though my trial
24 attorney properly argued the directed verdict. She said it
25 wasn't meritorious. But I feel as though I was prejudiced by

1 her not raising it because, had it went to the appeal court,
2 they would have looked at it different from the trial court.

3 And I asked her numerous times. And she sent me
4 this letter that I would like to enter it as evidence that I
5 made an attempt to ask her to raise these preserved issues,
6 and she refused to do so.

7 MR. FALK: We would like to try to enter it.

8 Ms. Hackett, do you recall any conversations between
9 Mr. Rose and yourself about issues that he wanted to raise on
10 appeal?

11 MS. HACKETT: I do not have an independent
12 recollection, but I have looked at my file and I believe that
13 Mr. Rose may be referring to a letter that I sent to him that
14 is dated October 7th, 2014.

15 THE WITNESS: Yes.

16 MS. HACKETT: I have reviewed the letter that I sent
17 him that date regarding my decision not to raise the directed
18 verdict issue.

19 MR. FALK: And can you elaborate on that, the
20 reasons in that letter.

21 MS. HACKETT: Certainly. I think the letter lays
22 out my thinking that I believed the issue did not have merit.
23 The standard for granting a directed verdict is whether
24 there's any direct evidence or whether there's circumstantial
25 evidence of a defendant's guilt. And I believed that the

1 State had presented direct evidence. And I believe in my
2 letter, I explained that the deceased daughter, her name was
3 Joy, she actually testified. And she stated that she
4 recognized the voice of one of the masked men and indicated
5 that she recognized that voice to be Mr. Rose. So that, to
6 me, appeared to be direct evidence of his guilt.

7 And then there was circumstantial evidence coming
8 from the testimony of Ms. Alston and Mr. Aiken. And while
9 those tended to be more of circumstantial evidence, I did
10 think there was evidence directly from Mr. Aiken, who
11 testified to hearing Mr. Rose direct others, the others who
12 were allegedly involved, as to where they may have been able
13 to find items, and I believe also to speed up the process.

14 MR. FALK: I'm sorry. Could you --

15 MS. OLIVE: I'm sorry. Is she referring to the
16 letter or is she --

17 MR. FALK: She's referring to her --

18 MS. OLIVE: I'm sorry. He's testifying on the stand
19 right now. Ms. Hackett hasn't been sworn in. I'm just -- I
20 apologize. I'm trying -- my objection would be that Mr. Rose
21 is the witness right now.

22 THE COURT: Sustained. Why don't you ask him
23 questions, and then we will put her on the stand and swear
24 her in.

25 BY MR. FALK:

1 Q. All right. Are those the only grounds for
2 ineffective assistance of counsel?

3 A. Yes, sir.

4 Q. And you feel you communicated those with Ms.
5 Hackett?

6 A. And I feel prejudiced by the whole situation.

7 Q. And you got a letter back from Ms. Hackett; is that
8 correct?

9 A. Yes, I did.

10 MR. FALK: No further questions.

11 THE COURT: All right. Cross-examination?

12 MS. OLIVE: I have no questions of Mr. Rose.

13 THE COURT: You may step down.

14 Call your next witness.

15 THE WITNESS: Thank you, sir.

16 MR. FALK: We call Ms. Hackett to the phone -- to
17 the stand. Does she need to be sworn?

18 THE COURT: She does.

19 SUSAN B. HACKETT,

20 having been duly sworn, testifies as follows:

21 THE CLERK: For the record, please state your name
22 spelling your last name?

23 THE WITNESS: Susan Hackett, H-a-c-k-e-t-t.

24 DIRECT EXAMINATION

25 BY MR. FALK:

1 Q. Ms. Hackett, I apologize that I let this sort of get
2 out of hand. You had testified about sending a letter to my
3 client?

4 A. Yes, sir.

5 Q. And, Your Honor, can we just bootstrap that under
6 the same -- or do you want her to re-swear to it?

7 THE COURT: Get through it briefly and quickly.

8 BY MR. FALK:

9 Q. Could you briefly set forth the grounds that -- so
10 you sent a letter to my client. Is that correct?

11 A. Yes, sir, I did, a letter dated October 7th, 2014,
12 in response to a letter he sent to me that was dated October
13 6th, 2014.

14 Q. And in this letter in October 6th, 2014, he was
15 asking you to raise the grounds on appeal that he thought
16 were preserved on the use of the "hand of one is the hand of
17 all" instruction and on the directed verdict; is that
18 correct?

19 A. I recall the part about the directed verdict. I
20 don't recall the specific question about the "hand of one is
21 the hand of all". But I do remember that being an issue in
22 his case.

23 Q. Okay. And you filed an appeal in this case; is that
24 correct?

25 A. Yes, sir, I filed a brief of appellate on his

1 behalf.

2 Q. And that wasn't an Anders brief? That was regular
3 brief; is that correct?

4 A. That's correct. It was a brief raising an issue on
5 the merits.

6 Q. Okay. That's right, merit brief. And you did not
7 raise an issue about the instruction on the "hand of one is
8 the hand of all"; is that correct?

9 A. That's correct.

10 Q. And you did not raise as an issue the Court's
11 failure to grant the directed verdict motion, correct?

12 A. That's correct.

13 Q. And do you recall whether or not trial counsel had
14 preserved the objection on the "hand of one is the hand of
15 all" instruction?

16 A. It's my recollection that trial counsel did preserve
17 that objection. I believe that that occurred on page 610 of
18 the transcript, where trial counsel argued against the hand
19 of one. And I believe the argument was there was no
20 testimony of preplanning and that no one else had been
21 charged.

22 Q. So the reason that you did not raise those issues
23 was not because they weren't preserved? They were preserved
24 issues, is that correct, the directed verdict and the "hand
25 of one is the hand of all"?

1 A. My recollection is that both of those issues were
2 preserved.

3 Q. Okay. And could you then briefly explain why you
4 did not raise those issues?

5 A. Certainly. I will start with the "hand of one is
6 the hand of all". In fact, my notes, and I reviewed those
7 when I received the subpoena, I wrote a note around page
8 transcript 200 through 203. This was the testimony of Antwan
9 Aiken where he talks about specifically hearing Mr. Rose
10 yell, it's in the back room. And then hearing Mr. Rose yell,
11 hurry up.

12 Those, to me, seem you negate the argument against
13 "hand of one is the hand of all". Additionally, the other
14 circumstantial evidence that seemed to indicate that Mr. Rose
15 may have been involved in some sort of plot to at least
16 robbery an individual in the home involving these other
17 people, I believe that Mr. Aiken also testified to seeing
18 Mr. Rose get in the driver's side of the car in which the
19 tall gentleman, who was masked and had a gun, also got in.
20 And so that was on about page 205 of the transcript. So I
21 did not think that that issue had much merit in light of
22 particularly Mr. Aiken's testimony.

23 Concerning the other issue of the directed verdict,
24 I believe my letter laid out exactly why I did not think that
25 issue had merit. Again, going to the standard, any direct

1 evidence or substantial circumstantial evidence tending to
2 show the defendant's guilt, I thought that there was direct
3 evidence in the record, particularly the deceased daughter's
4 testimony. Her first name was Joy. Her last name escapes me
5 at the moment. But she had testified to recognizing the
6 defendant's voice as being the voice coming from one of the
7 masked men inside the home.

8 And then the circumstantial evidence came from
9 Mr. Aiken and Ms. Alton, who were present in the home and
10 witnesses. And while they never indicated that Mr. Rose had
11 a gun or that, you know, that he shot anyone, their testimony
12 seemed to indicate that Mr. Rose may have been involved in
13 setting up what was going on.

14 MR. FALK: Thank you. No further questions.

15 THE COURT: All right. Cross?

16 CROSS-EXAMINATION

17 BY MS. OLIVE:

18 Q. Ms. Hackett, is it your testimony today that you did
19 not raise these issues because you did not feel they had
20 merit?

21 A. That's correct.

22 MS. OLIVE: Thank you. That's all the questions I
23 have.

24 MR. FALK: No redirect.

25 THE COURT: That's it. All right. Thank you, Ms.

1 Hackett. You have a good day.

2 THE WITNESS: Thank you, Judge. Thank you very
3 much.

4 THE COURT: I will take it under advisement along
5 with the others and let you know, if not today, later this
6 week.

7 (Whereupon, proceedings are adjourned.)

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

cc
AG 770
AT
SDL
GS

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

James R. Rose, SCDC No. 293938,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 2015-CP-10-3796

ORDER OF DISMISSAL

FILED
2017 SEP 15 AM 11:11
JULIE ANN BROWN
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief filed July 7, 2015, by James R. Rose (Applicant) alleging claims of ineffective assistance of trial and appellate counsel, prosecutorial misconduct, and violation of due process. Respondent made its Return on February 18, 2016, requesting an evidentiary hearing be held. Thereafter, on January 4, 2017, Applicant, through counsel, filed an amended application.

An evidentiary hearing into the matter was convened January 10, 2017, at the Charleston County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Assistant Attorney General Alicia Olive of the South Carolina Attorney General's Office appeared on behalf of the State. Applicant testified on his own behalf and testimony was presented from trial counsel and appellate counsel.

This Court had before it Applicant's trial transcript, Applicant's appellate records, Charleston County Clerk of Court's records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, and the Charleston County Clerk of Court records for this current proceeding. After reviewing the record in its entirety, along with the testimony and evidence presented at the evidentiary hearings, this Court finds Applicant has

failed to establish any constitutional deprivations or other grounds entitling him to relief and is denying and dismissing this application with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. During its June 2012 term of court, the Charleston County Grand Jury indicted Applicant for murder (2012-GS-10-3312). Martha Kent Runey, Esquire and Megan Ehrlich, Esquire, represented Applicant.

On December 9, 2013, Applicant proceeded to a jury trial in the Charleston County Court of General Sessions before the Honorable Stephanie P. McDonald, circuit court judge. Assistant Ninth Circuit Solicitors Jennifer Shealy and Jessica Baldwin prosecuted the case. On December 12, 2013, the jury convicted Applicant and Judge McDonald sentenced Applicant to a term of life imprisonment.

Thereafter, Applicant filed a timely notice of appeal. Applicant was represented by Appellate Defender Susan B. Hackett of the South Carolina Commission on Indigent Defense—Division of Appellate Defense. Following the submission of briefs, the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. James Rose, 2015-UP-286 (Ct. App. filed June 17, 2015). The Remittitur was returned to the circuit court on July 6, 2015.

FACTUAL HISTORY

Applicant James Rose, a/k/a "Onyx," a/k/a "O," a/k/a "Black," visited the victim's mobile home three times on January 23, 2012, attempting to buy marijuana. (Tr. 163-64, 191-92). Clarence Hush, a/k/a "Unk," drove Applicant and a third person to the victim's home for the

second attempted buy. (Tr. 341). At the end of the second visit, Applicant became heated and stated he would be back. (Tr. 163-164; 191- 193; 363-364). Testimony shows Applicant did return a third time that night in a gray, white or silver four-door sedan, later described as a Dodge Neon. (Tr. 194-196; 251; 261). Upon the third visit, which Applicant denies,¹ the victim died as a result of in-home gunfire. (Tr. 203; 525-526; 577). In addition to the victim, his daughter Joy Hill, cousin Antoine "Rick Ross" Aiken, girlfriend Tawana "Nikki" Alston, and neighbor Ishmal Weston were at the home throughout the evening to witness the course of events. (Tr. 191).

At trial, Antione Aiken testified Applicant stayed for a short visit and exited from the back door of the mobile home. (Tr. 197-198). The victim followed behind to lock the door and Aiken heard a gunshot. (Tr. 198). Aiken then saw the victim with a tall male dressed in black with a ski mask covering his face. (Tr. 198-199). Aiken reached for a gun he had stored in the corner, but discovered it was not in its usual place. (Tr. 200). He heard two more gun shots and watched the victim fall. (Tr. 200). Aiken then ran outside, where he heard Applicant state "go to the back room, everything in the back room" and "ya'll hurry up, come on, you're taking too long." (Tr. 202-203). Lastly, he saw the tall masked male exit from the back door and drive away in the car with the Applicant, who was in the driver's seat. (Tr. 204-205). Shortly thereafter, Aiken reported the victim's injuries to a 911 operator. (Tr. 206-207).

Tawana Alston also testified at Applicant's trial. She testified he exited the back door of the trailer to smoke a cigarette and Applicant exited behind him. (Tr. 250). She observed Applicant get into the driver's side of the car. (Tr. 251-252). The man in the ski mask pointed a

¹ Applicant testifies as to staying at his girlfriend Amber's trailer the remainder of that night. (Tr. 564, lines 3-8).

gun at her face told her to freeze. (Tr. 251). She saw a man that she described as "short" and "chunky" run upstairs shooting, and then the tall man with the shotgun also ran up the stairs. (Tr. 252-253). Alston heard three gunshots as she ran away from the trailer to the neighbor's house for assistance. (Tr. 253-254).

Ishmal Weston also testified at Applicant's trial. He testified he was at the trailer when Applicant arrived for the final time. (Tr. p. 166). He testified Applicant got what he wanted and exited through the back door. (Tr. 166-67). Shortly thereafter, he heard Alston scream and saw people enter the house and cause a commotion. (Tr. 168, 170). Weston then saw a black shadow resembling a shotgun pointed at him, then at the victim, and heard a "fuss" while the victim and man fought over the gun. (Tr. 168-169). He tried to exit the house and eventually went into a back bathroom to hide, heard gunshots, and locked the door. (Tr. 170-173). He then heard people ransacking the kitchen and living room area in an apparent search for something. (Tr. 173). He then heard muffled voices asking where the money was located. (Tr. 175). Thereafter, he heard people rummaging through the back room, run out of the house, and speed off in a car. (Tr. 176).

Victim's daughter Joy Hill also testified. She testified she saw Applicant at her father's house earlier in the evening and the two were discussing the rising prices of marijuana, which upset Applicant. (Tr. 363-364). She testified Applicant returned later that same evening and she went to her bedroom to lie down and talk on the phone. (Tr. 365-367). A little while later, she heard scuffling followed by gunshots and then two people ran past her room to the back of the trailer. (Tr. 367-368). She testified she jumped into her bed, pulled up the sheets, and pretended to be asleep. (Tr. 368-369). She testified Applicant and his associates came into her room with two shotguns, pointed one at her head and one at her chest and demanded to tell them where

something was located. (Tr. 370). She testified Applicant was wearing a red shirt, navy blue jacket, dark-colored jeans and a ski mask. (Tr. 370). She testified they then left her room. (Tr. 371). She testified she found her father in the kitchen covered in blood. (Tr. 371-372).

Alston, Aiken, and Hill all provided statements to law enforcement which identified Applicant. (Tr. 210, 376, 378-84). Aiken and Alston also identified Applicant in a photo lineup. (Tr. 214; 259-260). Alston identified the car parked outside the victim's home at the time of the crime as a gray or silver Dodge Neon and provided a description of Applicant's clothing as a "red T-shirt, blue jeans, [and] blue or black Nikes." (Tr. 256, 259, 261).

ALLEGATIONS RAISED

In his *pro se* application, Applicant alleged he is being held in custody unlawfully based on the following allegations:

1. Ineffective assistance of trial counsel for:
 - a. failing to argue the insufficiency of proof
 - b. failing to request an alibi charge
 - c. failing to call witnesses
 - d. failing to impeach witnesses
 - e. failing to object to the State's impugning of Applicant's character
 - f. failing to present an alibi defense
 - g. failing to investigate
 - h. failing to present evidence to counter State's contention that Applicant was present at the scene of the crime
2. Ineffective assistance of appellate counsel for failing to brief preserved issues on appeal.
3. Prosecutorial misconduct for knowingly using perjured testimony
4. Due process violation for violating Applicant's right to a speedy trial.

In his amended application, Applicant alleges the following additional allegations:

1. Trial counsel failed to object, move to quash the indictment, or include in her motion for directed verdict that there was a material variance between the offense charged in the indictment and the State's proof.

- a. The indictment alleged that applicant "did kill and murder Leland Shannon by means of shooting the victim"
 - b. At the preliminary hearing James Perkins, the reporting officer testified that applicant shot and killed the victim.
 - c. The State based its entire case against applicant on a "hand of one hand of all" theory.
 - d. The indictment did was fatally flawed in that it did not provide applicant with notice of the charges against him.
2. Trial counsel failed to call witnesses whose testimony could have exculpated defendant or provided reasonable doubt of Applicant's guilt, namely Sofia Wiley and Everlina Brickman.
 3. Trial counsel failed to call alibi witness, Amber Wiley.
 4. Trial counsel failed to effectively impeach the direct testimony Tawana Alston. Additionally trial counsel failed to challenge Tawana Alston's story through her cross examination of the investigating officers.
 5. Trial counsel failed to object to the Solicitor's improper closing argument at page 636 lines 8-9. The Solicitor's statement misrepresented the witnesses' testimony at page 346 lines 22-24.

In its return, the State moved to dismiss Applicant's allegation that his due process rights were violated by a lack of a speedy trial. At the start of the evidentiary hearing, the State moved to dismiss this allegation as a direct appeal issue improper for post-conviction relief. Applicant consented to the dismissal of this allegation and this Court dismissed this allegation.

SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

At the evidentiary hearing, Applicant presented testimony from trial counsel, Martha Kent Runey (trial counsel). She testified she has been a public defender for fourteen years. (PCR Tr. 24). She testified she met with Applicant at the jail or by video conference thirteen times and also met with him when he came to the courthouse for various hearings. (PCR Tr. 24-25). Counsel testified Applicant was intelligent and very engaged in his defense. (PCR Tr. 25, 30). She testified they reviewed the elements of murder and the State's burden of proof. (PCR Tr. 25). She testified they reviewed all discovery materials together and she provided him with a

copy. (PCR Tr. 26). She testified she worked with an investigator who attempted to locate and interview all witnesses who had previously spoken to law enforcement and subpoenaed them for trial. (PCR Tr. 26). She testified she discussed possible defenses, including an alibi defense, with Applicant. (PCR Tr. 27). She testified an alibi defense was not viable based on her review of the evidence and her investigation, and accordingly, she did not request a jury instruction on alibi. (PCR Tr. 31-32).

Counsel testified she represented Applicant at his preliminary hearing prior to the grand jury's issuance of an indictment. (PCR Tr. 4-5). She testified at the preliminary hearing, a detective testified Applicant was the shooter based on the statement of eyewitness Tawanna Alston, but his testimony was different at trial. (PCR Tr. 5-8). She testified she was able to cross-examine the detective on these inconsistencies between his preliminary hearing testimony and trial testimony with the use of the preliminary hearing transcript. (PCR Tr. 6-8). Counsel also testified the first responder to the scene did not list Alston as a person present at the scene and that she elicited this testimony on cross-examination. (PCR Tr. 18-19). She testified she also highlighted inconsistencies with Alston's statement and testimony at trial. (PCR Tr. 32-33).

Counsel testified she spoke with the prosecutor by phone in November of 2013 and the prosecutor acknowledged that many of the witnesses' stories did not match up and that it was unclear whether Applicant was the shooter. (PCR Tr. 8-9, 29-30, 34-35). She testified Applicant was indicted for several offenses, but the State only went to trial on the murder indictment. (PCR Tr. 9). Counsel testified she met with Applicant often and spent a lot of time preparing for trial, but that she has no specific recollection of advising Applicant about the "hand-of-one, hand-of-all" theory the State might pursue at trial, but acknowledged she did review all of the elements of

the offense with Applicant. (PCR Tr. 9-10, 32-33). She testified she did not see any reason to challenge the indictment. (PCR Tr. 30).

Counsel testified she used an investigator and one of the witnesses her investigator spoke with was witness Sophia [Amber] Wiley, who had previously given a statement to law enforcement and was included in discovery materials. (PCR Tr. 10-11). She elaborated that Wiley was a roommate of Applicant's and gave a statement to law enforcement that on the night of the shooting, Applicant was at home when she went to bed and when she woke up the next morning. (PCR Tr. 11-12). However, she testified Wiley had taken a Tylenol PM at approximately 11:00 p.m. and then went to bed shortly thereafter. (PCR Tr. 27-28). She testified Wiley would not cooperate with the defense team and said she was out of town on the night of the incident in direct contradiction to her earlier statement. (PCR Tr. 12-14). She testified she did not call Wiley as an alibi witness based on her second statement and her refusal to cooperate with the defense. (PCR Tr. 14-15, 31).

Counsel testified the State presented evidence that the people that shot the victim arrived at the trailer in a silver Neon sedan. (PCR Tr. 15-16). She testified the State presented evidence the Neon belonged to Everlina Brickman, who previously provided a statement to law enforcement. (PCR Tr. 16-17). She testified she tried to contact Brickman numerous times and also sent her investigator to locate Brickman, but was unsuccessful. (PCR Tr. 16-17).

Counsel testified Clarence Hush testified at Applicant's trial and stated he was in a car with Applicant at BP purchasing gas until 11:30 p.m., then dropped Applicant off at his home. (PCR Tr. 19-20). Counsel acknowledged she did not argue alibi in her closing and did not remember why. (PCR Tr. 20-21). She acknowledged the State's theory of the case was that

Applicant later returned to the victim's trailer in retribution for perceived disrespect. (PCR Tr. 21-23). She testified her defense theory was to acknowledge that Rose had been at the victim's home earlier in the day but never came back after he left. (PCR Tr. 30-31). She testified Applicant took the stand and testified accordingly at trial. (PCR Tr. 31). Counsel testified she moved for a directed verdict at the close of the State's case, citing a lack of direct evidence (including DNA or GSR). (PCR Tr. 32).

Applicant testified next. Applicant testified he thought the State would be presenting evidence that he was the shooter and not proceeding forward under a "hand-of-one, hand-of-all" theory until he heard the State's opening argument. (PCR Tr. p. 37-30). He testified he attended the preliminary hearing and heard the investigating officer say Alston reported Applicant shot the victim multiple times after shooting at her. (PCR Tr. p. 38). He denied being at the scene or shooting the victim. (PCR Tr. p. 39, 42). He testified he filed a motion to relieve counsel and for a speedy trial and the trial court granted his speedy trial motion but denied his motion to relieve counsel. (PCR Tr. p. 40). He testified counsel spoke with Wiley and counsel told him Wiley would be available to testify at trial. (PCR Tr. p. 39-40). He testified law enforcement spoke with Wiley, his girlfriend's roommate, in an attempt to confirm his alibi. (PCR Tr. p. 40-42). Applicant testified he did not have a car at the time of the incident, and therefore, Wiley's testimony that he was home before she went to bed and when she woke up the next morning establishes that he was home during the time the crime was committed at approximately 11:30 p.m. (PCR Tr. p. 40-41). He testified he knew Wiley did not want to testify, but he asked for her to be subpoenaed because he felt like he had no other choice. (PCR Tr. p. 42). Applicant testified he reviewed discovery with counsel, but does not think he reviewed a complete copy of

discovery because he kept getting more materials as the case progressed. (PCR Tr. 43). He testified that he took the stand at trial and told his version of events. (PCR Tr. 43).

He testified he wanted appellate counsel to brief preserved issues pertaining to the directed verdict and the "hand-of-one, hand-of-all" jury instruction. (PCR Tr. 48-49). He testified he asked appellate counsel to brief these issues and she responded she did not think they had been properly argued by trial counsel and were meritless. (PCR Tr. 49-50).

Appellate counsel Susan Hackett testified next. She testified she filed a merits brief on Applicant's behalf. (PCR Tr. 53-54). She testified she received a letter from Applicant on October 6, 2014, asking her to brief whether the trial court erred in denying his directed verdict motion and by instructing the jury on "hand-of-one, hand-of-all," (PCR Tr. 53-54). She testified based on her review of the transcript, both of these issues were preserved by trial counsel. (PCR Tr. 54-55). However, she testified she decided not to raise either issue on appeal, explaining:

Certainly. I will start with the "hand of one is the hand of all". In fact, my notes, and I reviewed those when I received the subpoena, I wrote a note around page transcript 200 through 203. This was the testimony of Antwan Aiken where he talks about specifically hearing Mr. Rose yell, it's in the back room. And then hearing Mr. Rose yell, hurry up.

Those, to me, seem you negate the argument against "hand of one is the hand of all". Additionally, the other circumstantial evidence that seemed to indicate that Mr. Rose may have been involved in some sort of plot to at least robbery an individual in the home involving these other people, I believe that Mr. Aiken also testified to seeing Mr. Rose get in the driver's side of the car in which the tall gentleman, who was masked and had a gun, also got in. And so that was on about page 205 of the transcript. So I did not think that that issue had much merit in light of particularly Mr. Aiken's testimony.

Concerning the other issue of the directed verdict, I believe my letter laid out exactly why I did not think that issue had merit. Again, going to the standard, any direct evidence or substantial circumstantial evidence tending to show the defendant's guilt, I thought that there was direct evidence in the record, particularly the deceased daughter's testimony. Her first name was Joy. Her last name escapes me at the moment. But she had testified to recognizing the defendant's voice as being the voice coming from one of the masked men inside the home.

And then the circumstantial evidence came from Mr. Aiken and Ms. Alton, who were present in the home and witnesses. And while they never indicated that Mr. Rose had a gun or that, you know, that he shot anyone, their testimony seemed to indicate that Mr. Rose may have been involved in setting up what was going on.

(PCR Tr. p. 55-56). In sum, appellate counsel testified she did not raise either issue because she did not believe either had merit. (PCR Tr. p. 56).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearings. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Specifically, this Court finds trial counsel's testimony credible and finds Applicant's testimony not credible. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial

process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813. The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). Judicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Strickland, 466 U.S. at 689. “[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). 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.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed, Strickland, 466 U.S. 668.

After careful review of the entire record, including the testimony presented at the evidentiary hearing, based on the standard discussed above, this Court finds Applicant has failed to carry his burden in this action regarding any of his allegations of ineffective assistance of counsel. Below are this Court's specific finding regarding each of Applicant's allegations of ineffective assistance of counsel:

Allegation: Failure to challenge the indictment or argue there was a material variance between the indictment and the State's proof

Applicant alleges trial counsel was ineffective for failing to challenge the indictment or argue there was a material variance between the indictment and the State's proof. Specifically, Applicant alleges trial counsel was ineffective for failing to argue the sufficiency of proof, failing to move to object or quash the indictment or include in her motion for directed verdict that there was a material variance between the offense charged in the indictment and the State's proof. Applicant alleges the indictment and preliminary hearing testimony indicated he was the shooter, but at trial the State presented evidence that he participated in the crime and was guilty under a "hand-of-one, hand-of-all" theory alongside other co-defendants. Applicant argues he

was not on sufficient notice of the charges against him or able to prepare a defense because he was unsure what evidence the State would produce against him at trial.

This Court finds this allegation is without merit and must be denied and dismissed with prejudice. The arrest warrant and accompanying affidavit clearly refute this allegation. In this affidavit from Detective J. Perkins signed January 25, 2012, Detective Perkins states as follows:

The first witness reported that James Reginald Rose came to the residence along with two unknown black male subjects who were waiting in a gray in color vehicle. Witness #1 stated that when she was outside on the porch she saw Rose walk to the vehicle and return with a gun and pointed it at her head. Rose and the other subjects were brandishing firearms as they entered the residence and that is when she heard three gunshots. The second witness reported that he saw a black male subject dressed in black clothing enter the residence and then shoot the victim. The second-witness reported that he then heard Rose state, 'come on hurry up' and saw Rose along with the other black male enter a gray in color vehicle and leave the scene.

That on January 24, 2012, while at the Charleston County Sheriff's Office both witnesses were separately shown six (6) picture photographic lineups and they positively identified the defendant, James Reginald Rose, as one of the armed assailants who entered the residence at the time of the shooting.

This arrest warrant and accompanying affidavit clearly put Applicant on notice that the State alleged he and two other black males entered the victim's home with firearms brandished and shot and killed the victim. Moreover, Counsel testified she spoke with the prosecutor nearly a month before Applicant's trial and was aware the State would be presenting evidence that Applicant was guilty under a "hand-of-one, hand-of all" theory. This Court finds Applicant had failed to meet his requisite burden of proof and this allegation must be denied and dismissed with prejudice.

Allegation: Failure to call witnesses whose testimony could have exculpated defendant or provided reasonable doubt of Applicant's guilt

Applicant alleges trial counsel was ineffective for failing to call witnesses on his behalf, specifically, Sofia Wiley and Everlina Brickman. However Applicant failed to present either of these witnesses at his evidentiary hearing or otherwise offer any evidence as to what their testimony would have been. Therefore, any assertion that they would have provided favorable testimony is purely speculative.

Consequently, this Court finds Applicant has failed to meet his requisite burden of proof as to this allegation. See Smith v. State, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (Ct. App. 2012) (finding an applicant failed to meet his burden of proof where he failed to present any testimony from the alleged character witnesses at the PCR hearing in order to establish prejudice from the lack of testimony of these witnesses at trial); Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (noting our courts have “repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial”); Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995) (holding a PCR applicant's mere speculation as to what the witnesses' testimony would have been cannot, by itself, satisfy the burden of showing prejudice). As Applicant failed to present either Wiley or Brickman, this allegation is denied and dismissed with prejudice.

Allegation: Failure to present an alibi defense, call witnesses in support of an alibi defense, and failure to request an alibi jury instruction

Applicant alleges trial counsel was ineffective for failing present an alibi defense, failing to call Amber Wiley as a witness in support of this defense, and failing to request a jury instruction on alibi. Applicant asserts he was at his girlfriend's home during the time of the murder and roommate Wiley provided a statement to law enforcement that supported this.

Counsel testified she used an investigator that spoke with Wiley, who had previously given a statement to law enforcement and was included in discovery materials, but that Wiley was uncooperative, denied being home on the night in question, and refused to cooperate. Additionally, she testified Wiley's original statement to law enforcement indicated she had taken a Tylenol PM at approximately 11:00 p.m. and then went to bed shortly thereafter. She testified she ultimately elected not to call Wiley as a witness because of her conflicting statements and refusal to cooperate with defense counsel.

"To be successful, [a defendant's] alibi must cover the entire time when his presence was required for accomplishment of the crime." State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (internal citations omitted). "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." Id.

When an applicant alleges counsel was ineffective for failing to present an alibi witness, counsel has a reasonable duty to investigate alibi witnesses identified by a defendant, and the failure to make some effort to contact them to ascertain whether their testimony would aid the defense is unreasonable. Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014) (citing

Strickland, 466 U.S. at 691; Grooms v. Solem, 923 F.2d 88, 90 (8th Cir.1991)). Moreover, when an applicant claims counsel was ineffective for failing to call an alibi witness at trial, the applicant must present the witness at the evidentiary hearing to establish his requisite burden of proof. See Glover v. State, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (“In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses’ testimony in a manner consistent with the rules of evidence. The applicant’s mere speculation what the witnesses’ testimony would have been cannot, by itself, satisfy the applicant’s burden of showing prejudice.”).

In the present case, counsel investigated the purported alibi witness identified by Applicant, and after obtaining a second statement from her and determining she was uncooperative and did not establish an alibi, elected not to call her as a witness. Counsel performed effectively regarding Applicant’s claims of an alibi. Additionally, Applicant failed to present testimony from Wiley at the hearing, and therefore, cannot meet his requisite burden of proof of establishing any purported prejudice. This allegation is denied and dismissed with prejudice.

Allegation: Failure to effectively impeach witnesses, particularly Tawana Alston

Applicant alleges trial counsel was ineffective for failing adequately impeach State’s witness Tawana Alston, the girlfriend of the deceased. Applicant asserts Counsel should have cross-examined her about inconsistencies between her statement to law enforcement and her trial testimony, and should have challenged Alston’s statement through the cross-examination of investigating officers.

At the evidentiary hearing, Counsel testified she also highlighted inconsistencies between Alston's statements and testimony at trial. (PCR Tr. 32-33). The record supports this. During trial, Counsel vigorously cross-examined Alston about her initial and subsequent statement to law enforcement and inconsistencies with her trial testimony, such as whether Applicant placed a shotgun in her face, who was the first person she saw on the porch, the number of and descriptions of the men with Applicant, whether Applicant told her to freeze, whether Applicant shot at her, whether or not Applicant's brother was involved in the shooting, and whether she went back into the trailer. (Tr. 263-278). Counsel also got Alston to admit she was not in the trailer at the time of the shooting, was not sure what happened inside the trailer, and did not see the victim get shot. (Tr. 276). This Court finds Counsel effectively handled Alston's cross-examination and was not deficient. This allegation must be denied and dismissed with prejudice.

Allegation: Failure to object to the solicitor's improper closing argument

Applicant alleges trial counsel was ineffective for failing to object to the Solicitor's improper closing argument that misrepresented the testimony of Clarence Hush. Specifically, during closing argument, the Solicitor argued, "But [Clarence] is the one who told you James Rose said I am going to go back and get my respect." (Tr. 636 lines 8-9). At trial, Clarence Hush testified as follows:

Q. But James Rose intended to get his respect back?

A. That's what he said.

Q. Did he say he was going back out there to get his respect back?

A. No, he didn't never say that to me.

(Tr. 346 lines 20-24). Applicant argues the State's closing argument misrepresented Hush's testimony and counsel was ineffective for failing to object.

Closing arguments are a basic element of the adversarial fact-finding process in a criminal trial. Herring v. New York, 422 U.S. 853, 858 (1975). Such arguments serve "to sharpen and clarify the issues for resolution by the trier of fact in a criminal case" and provide both the prosecution and the defense with an opportunity to advocate for their respective positions, to argue for certain inferences to be drawn from the evidence and testimony presented, and to identify the weaknesses in their opponents' positions. Id. at 862. As a result, closing arguments are crucial towards achieving the ultimate objective of the adversarial system of justice in the United States, which is for the correct verdict to be reached in each case. Id.; see also Gardner v. Florida, 403 U.S. 349, 360 (1977) ("[T]he debate between adversaries is often essential to the truth-seeking function of trials[.]").

In presenting a closing argument to the jury, a solicitor—and any other party—must confine the argument to the evidence in the record and the inferences to be drawn from that evidence. State v. Tubbs, 333 S.C. 316, 321, 509 S.E.2d 815, 818 (1999). However, the solicitor is unquestionably permitted in a closing argument to state and discuss the State's version of the testimony, to comment on the weight given to such testimony, and to point out the matters that the jury should and should not consider in arriving at a verdict. Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002); see State v. Durden, 264 S.C. 86, 92, 212 S.E.2d 587, 590 (1975) (" '[The prosecuting attorney] may argue with reference to any matters which the jurors may properly consider in arriving at their verdict, and may point out as well the matters which they should not consider.' " (citations omitted)).

Additionally, the statements of a solicitor at trial “must be carefully tailored so as not to appeal to the personal biases of the jury.” Brown v. State, 383 S.C. 506, 515, 680 S.E.2d 909, 914 (2009) (citing Von Dohlen v. State, 360 S.C. 598, 609 S.E.2d 738, 744 (2004)). “The argument must not be calculated to arouse the jurors’ passions or prejudices, and its content should stay within the record and reasonable inferences that may be drawn therefrom.” Id. A prosecutor may not urge jurors to convict a defendant in order to protect community values, preserve order, or deter future law breaking. State v. Liberte, 336 S.C. 648, 654, 521 S.E.2d 744, 747 (Ct. App. 1999) (internal citations omitted). In considering the propriety of a closing argument, “[i]t is sometimes difficult to draw the line between proper and improper argument, but counsel’s remarks must be confined within the record.” State v. Edgeworth, 239 S.C. 10, 14, 121 S.E.2d 248, 250 (1961).

When a challenge is raised to the propriety of a closing argument, the burden rests upon the party raising the challenge to establish that the allegedly improper argument rendered the trial fundamentally unfair. Simmons v. State, 331 S.C. 333, 338, 503 S.E.2d 164, 166 (1998). On appeal, appellate courts will review the alleged impropriety in the context of the entire record and must determine whether the comments so infected the trial with unfairness as to make the resulting conviction a denial of the defendant’s due process rights. State v. Rudd, 355 S.C. 543, 550, 586 S.E.2d 153, 157 (Ct. App. 2003); see State v. Patterson, 324 S.C. 5, 17, 482 S.E.2d 760, 766 (1997) (“The relevant question is whether the solicitor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.”). In making that determination, “ ‘it is not enough that the [challenged] remarks were undesirable or even universally condemned.’ ” Darden v. Wainwright, 477 U.S. 168, 181 (1999) (citation omitted).

In the present case, the challenged portion of the assistant solicitor's remarks, amounting to one sentence, only consisted of a small portion of a lengthy closing argument that properly focused on the testimony and evidence establishing Applicant's guilt. When considered as a whole, the State's closing argument remarks did not render Applicant's trial fundamentally unfair. See Darden, 477 U.S. at 181 ("The relevant question is whether the prosecutors' comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." (internal citations omitted)). See also State v. Plath, 281 S.C. 1, 17, 313 S.E.2d 619, 628 (1984) ("[A]ppellants complain of rhetorical flourishes engaged in by the Solicitor in his summation. . . . An inelegant turn of phrase or momentary lapse of good taste will rarely constitute prejudicial error, nor does robust language necessarily inject an arbitrary factor into a trial such as this one."); cf. Donnelly v. DeChristoforo, 416 U.S. 637, 645 (1974) ("[T]he prosecutor's remark here, admittedly an ambiguous one, was but one moment in an extended trial and was followed by specific disapproving instructions. Although the process of constitutional line drawing in this regard is necessarily imprecise, we simply do not believe that this incident made respondent's trial so fundamentally unfair as to deny him due process."). Accordingly, the State's closing argument was not fundamentally unfair and did not deprive Applicant of his right to a fair trial. See State v. Greene, 255 S.C. 548, 558, 180 S.E.2d 178, 184 (1971) ("[The appellant] was not entitled to a perfect trial, only a fair one."). Therefore, Counsel was not ineffective for failing to object. This allegation is denied and dismissed with prejudice.

Allegation: appellate counsel failed to brief preserved issues

Applicant alleges appellate counsel was ineffective for failing to brief preserved issues on appeal, specifically, whether the trial court erred in denying his directed verdict motion and by

instructing the jury on "hand-of-one, hand-of-all."

Appellate counsel Susan Hackett testified at the evidentiary hearing that she did not brief either issue because she did not believe they were meritorious. Specifically, she testified as follows:

Certainly. I will start with the "hand of one is the hand of all". In fact, my notes, and I reviewed those when I received the subpoena, I wrote a note around page transcript 200 through 203. This was the testimony of Antwan Aiken where he talks about specifically hearing Mr. Rose yell, it's in the back room. And then hearing Mr. Rose yell, hurry up.

Those, to me, seem you negate the argument against "hand of one is the hand of all". Additionally, the other circumstantial evidence that seemed to indicate that Mr. Rose may have been involved in some sort of plot to at least robbery an individual in the home involving these other people, I believe that Mr. Aiken also testified to seeing Mr. Rose get in the driver's side of the car in which the tall gentleman, who was masked and had a gun, also got in. And so that was on about page 205 of the transcript. So I did not think that that issue had much merit in light of particularly Mr. Aiken's testimony.

Concerning the other issue of the directed verdict, I believe my letter laid out exactly why I did not think that issue had merit. Again, going to the standard, any direct evidence or substantial circumstantial evidence tending to show the defendant's guilt, I thought that there was direct evidence in the record, particularly the deceased daughter's testimony. Her first name was Joy. Her last name escapes me at the moment. But she had testified to recognizing the defendant's voice as being the voice coming from one of the masked men inside the home.

And then the circumstantial evidence came from Mr. Aiken and Ms. Alton, who were present in the home and witnesses. And while they never indicated that Mr. Rose had a gun or that, you know, that he shot anyone, their testimony seemed to indicate that Mr. Rose may have been involved in setting up what was going on.

(PCR Tr. 55-56). In sum, appellate counsel testified she did not raise either issue because she did not believe either had merit. (PCR Tr. 56). This Court finds that Applicant has failed to establish his burden of both deficiency of appellate counsel and requisite prejudice entitling him to relief and that this allegation must be denied and dismissed with prejudice.

A defendant is entitled to effective assistance of appellate counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (citing Southerland v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999)). To prevail on a claim of ineffective assistance of appellate counsel, an applicant must establish both deficiency and prejudice. Southerland, 337 S.C. at 616, 524 S.E.2d at 836. If an applicant can establish both deficiency according to professional norms and prejudice to the extent that he would have been successful on appeal, he is entitled to a new trial. See Ezell v. State, 345 S.C. 312, 316, 548 S.E.2d 852, 854 (2001); Southerland, 337 S.C. 615-16, 524 S.E.2d at 836. See also Simpkins v. State, 303 S.C. 364, 401 S.E.2d 142 (1991) (post-conviction relief of a new trial granted based on appellate counsel's failure to raise an issue on appeal that constituted reversible error).

“Although it is possible to bring a successful ineffective assistance of appellate counsel claim based on failure to raise a particular issue on direct appeal, the Supreme Court has reiterated that it is ‘difficult to demonstrate that counsel was incompetent.’” United States v. Mason, No. 3:06-607-CMC, 2012 WL 5845807 at *1 (D. S.C. Nov. 19, 2012) (quoting Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000)). While appellate counsel is required to provide effective assistance of counsel, “appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) (citing Jones v. Barnes, 463 U.S. 745 (1983)). “For judges to second-guess

reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . .” Jones, 463 U.S. at 754. Additionally, our Supreme Court has expressly rejected the notion that appellate counsel has an obligation to raise all meritorious issues on appeal. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004). “Generally, only when ignored issues are clearly stronger than those presented, will the presumption of effective assistance of counsel be overcome.” Smith v. Robbins, 528 U.S. at 288 (quoting Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986)).

“To establish prejudice relating to the actions of appellate counsel, Defendant must establish a reasonable probability that, but for his counsel's unreasonable failure to include a particular issue on appeal, he would have prevailed on his appeal.” United States v. Mason, 2012 WL 5845807 at *1 (citing Smith, 528 U.S. at 285-86).

This Court finds that Applicant has failed to establish the requisite deficiency of appellate counsel or prejudice entitling him to relief. First, this Court finds that Applicant has failed to show that appellate counsel's performance was deficient, where there is no standard requiring appellate counsel to brief every possible meritorious issue and counsel appropriately raised issues on appeal that she believed were stronger and meritorious on Applicant's behalf. Second, this Court finds Applicant has failed to establish prejudice, as there is no reasonable likelihood that he would have prevailed on appeal had these two issues been raised. As appellate counsel raised meritorious issues on appeal, her performance was in accordance with professional norms and this Court finds that this allegation must be denied.

Allegation: failure to object to the impugning of Applicant's character

Applicant alleges trial counsel was ineffective for failing to object to the State's impugning of his character. Applicant failed to present any testimony to support this allegation. Additionally, a review of the record finds this allegation is without merit. This allegation is denied and dismissed with prejudice.

Allegation: failure to investigate

Applicant alleges trial counsel was ineffective for failing to adequately investigate his case. At the hearing, Counsel testified she worked with an investigator who spoke with or attempted to speak with all potential witnesses. Applicant failed to specifically allege what additional investigation counsel should have undertaken or what the results of such additional investigation would have yielded. Therefore, this allegation must be denied and dismissed with prejudice. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). This Court finds plea counsel's performance was reasonable according to professional standards and his allegations that plea counsel was ineffective must be denied and dismissed with prejudice.

Allegation: prosecutorial misconduct for knowingly using perjured testimony

Applicant alleges the State committed prosecutorial misconduct by using knowingly perjured testimony. Specifically, Applicant contends the investigating officer perjured himself at his preliminary hearing when he testified Applicant was the shooter.

"A conviction obtained by the knowing use of perjured testimony is fundamentally unfair

and must be set aside if there is any reasonable likelihood that the false testimony could have affected the jury's judgment. Simpson v. Moore, 367 S.C. 587, 601, 627 S.E.2d 701, 708 (2006) (citing United States v. Bagley, 473 U.S. 667, 678 (1985)). "The knowing use of perjured testimony is subject to the materiality standard of review: 'evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.' " Id. (citing Bagley, 473 U.S. at 682).

This Court finds Applicant has failed to meet his burden of establishing the State presented or used perjured testimony against him. Moreover, Applicant has failed to show the result of the proceeding would have been different absent the investigating officer's testimony that Applicant was the shooter rather than involved in the murder under a "hand-of-one, hand-of-all" theory. Therefore, this allegation is denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes Applicant must file and serve a notice of appeal within thirty days from the receipt of this Order by counsel of record to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides if the applicant wishes to seek appellate review, post-conviction relief

counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 6 day of Sept., 2017.


WILLIAM H. SEALS, JR.
Presiding Judge
Ninth Judicial Circuit

, South Carolina

JKS20120100640

WITNESSES

Charleston County Sheriff

AGENCY CASE NUMBER

2012001550B

ARREST WARRANT NUMBER

M620026

DATE OF ARREST

January 25, 2012

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JUN 11 2012

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2012GS1003312

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2012

THE STATE

vs.

JAMES R ROSE

DOB: 1977

B/M

Indictment for

Murder

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

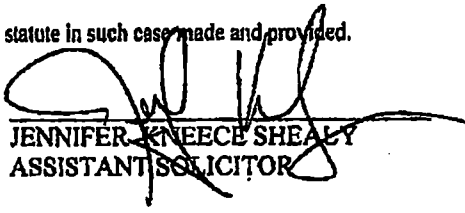
INDICTMENT

At a Court of General Sessions, convened on June 11, 2012 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about January 24, 2012, with malice aforethought, JAMES R ROSE did kill and murder Leland Shannon by means of shooting the victim, and that Leland Shannon did die in Charleston County as a proximate result thereof on January 24, 2012; 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.


JENNIFER KNEECE SHEALY
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.
James R Rose

INDICTMENT/CASE#: 2012GS1003312A/W#: M620026Date of Offense: 1/24/2012S.C. Code § : 16-03-0010, 0020CDR Code #: 0116

AKA:

Race: BLACK Sex: M Age: 36DOB: 1977 SS#: [REDACTED]

Address:

City, State, Zip: Ladson, SC 29456-3708DL#: [REDACTED] SID#: SC01003139*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kneece Shelly, Jennifernaia
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/B beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Phyllis Norton

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2103Sentence Date: December 12, 2013