

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable D. Craig Brown, Circuit Court Judge

REGINALD CANTY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-002316

APPENDIX

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State of South Carolina) In the Court of General Sessions
)
) Third Judicial Circuit
County of Sumter) 2009-GS-43-0993

The State of South Carolina,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 Daniel Deangelo Jackson and)
 Reginald Canty,)
)
 Defendants.)

August 8, 9, 10, 11, 12, 2011
Sumter, South Carolina

B E F O R E:

The Honorable William Jeffrey Young, Judge

A P P E A R A N C E S:

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Attorney for the State

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Circuit Court Reporter

M. BEAN - DIRECT EXAMINATION BY MR. MEADORS

1001

1 THE COURT: Same objection.

2 MR. WILDER: It's my understanding Mr. Bean took the
3 picture, so that portion of the objection is waived. But
4 the portion relevant to it being outside of the crime
5 scene, Your Honor.

6 THE COURT: That's right, and it's overruled.

7 MR. MEADORS: Thank you.

8 (PHOTOGRAPH MARKED INTO EVIDENCE AS STATE'S EXHIBIT
9 NUMBER 85.)

10 BY MR. MEADORS:

11 Q. Is this vehicle in 86, can you see it in 85?

12 A. Yes, sir, the taillights that you see in 85.

13 MR. MEADORS: And, Judge, with that, I think now we've
14 had the person that collected, took the picture, we'd offer
15 the 24.

16 THE COURT: All right. Subject to the objection ---

17 MR. WILDER: Same, same objection, Your Honor.

18 THE COURT: Subject to their objection.

19 (SNACK WRAPPER MARKED INTO EVIDENCE AS STATE'S EXHIBIT
20 NUMBER 24.)

21 MR. MEADORS: Beg the court's indulgence.

22 THE COURT: Yes, sir.

23 (A PAUSE.)

24 MR. MEADORS: Beg the court's indulgence. Thank you.

25 WITNESS: Yes, sir.

M. BEAN - CROSS-EXAMINATION BY MR. WILDER

1002

1 THE COURT: Mr. Deas.

2 MR. DEAS: No questions, Your Honor.

3 MR. WILDER: Mr. Wilder.

4 MR. WILDER: Thank you, Your Honor.

5 CROSS-EXAMINATION BY MR. WILDER:

6 Q. Good morning.

7 A. Good morning, sir.

8 Q. Investigator Bean, did you get a subpoena from me?

9 A. I did, sir.

10 Q. All right. Thank you for being here. Let me show you
11 a photo log if can you identify.

12 MR. WILDER: Permission to approach, Your Honor?

13 THE COURT: Certainly.

14 MR. WILDER: Thank you.

15 BY MR. WILDER:

16 Q. Can you identify that?

17 A. I believe this is Sergeant Mackessy's photo log of the
18 events that, that -- of all the photos.

19 Q. All right. Now, would it be uncommon for you to have
20 taken photographs and actually Officer Mackessy kept the
21 log?

22 A. Would it have been common?

23 Q. Was that, was that your practice?

24 A. Yeah, we -- yes, sir. We would do that sometime.

25 Q. Okay, because, because y'all are working together, and

1 y'all were a team, right?

2 A. Yes, sir.

3 Q. Is that right?

4 A. Yes, sir.

5 Q. In fact, I believe, wasn't the idea he was going to
6 retire and you coming on board, and wanted there to be two
7 of you in case Mr. Mackessy wasn't around one day, right?

8 A. Yes, sir.

9 Q. Okay, and it'd fair to say as you took the pictures,
10 maybe Mackessy was taking notes and vice versa?

11 A. Yes, sir. That would be a fair statement.

12 Q. Okay. All right. Now, can you look at that list?
13 Well, first of all, it's Defense I.D. Number what? What
14 are we looking at?

15 A. 5.

16 Q. Number 5, okay, Defense for I.D. Number 5. Now, can
17 you look at that list and tell the jury when it was the
18 picture of the Little Debbie cake wrapper was taken? Is it
19 on the list? That's the first ---

20 A. Oh, is it on the list?

21 Q. Is it on the list?

22 A. Yes, sir.

23 Q. Okay. Second page?

24 A. On the second page, yes, sir.

25 Q. And about how many pictures were in front of it?

M. BEAN - CROSS-EXAMINATION BY MR. WILDER

1004

- 1 A. Thirty-three.
- 2 Q. Okay. So, you got them listed in numbers there?
- 3 A. Yes, sir.
- 4 Q. And that's picture number thirty-three.
- 5 A. The little Debbie is thirty-four and thirty-five.
- 6 Q. Okay. Thirty-four and thirty-five are pictures of the
- 7 snack wrapper, wrapper, whatever it is. Okay. Now, tell
- 8 the ladies and gentlemen of the jury what car it was that
- 9 that was next to.
- 10 A. The car near unit number 9.
- 11 Q. Unit 9?
- 12 A. Yes, sir.
- 13 Q. Whose car was it?
- 14 A. No idea.
- 15 Q. Well, do you have a picture of the licence of that car
- 16 so we can ---
- 17 A. No, sir.
- 18 Q. --- run that license number?
- 19 A. No, sir.
- 20 Q. Did you write down whose car it was, the license
- 21 number of who is was?
- 22 A. No, sir.
- 23 Q. But Mr. Flexon's car was parked right behind it,
- 24 wasn't it?
- 25 A. Yes, sir.

M. BEAN - CROSS-EXAMINATION BY MR. WILDER

1005

1 Q. Do you -- did you interview whoever was driving that
2 car?

3 A. No, sir.

4 Q. Was it on the passenger's side or the driver's side of
5 the car that the Little Debbie snack cake wrapper was?

6 A. Driver's side.

7 Q. Driver's side. It was right next to the door where
8 somebody might get out and drop the wrapper?

9 A. Actually, it was by the rear tire.

10 Q. Rear tire. So, when somebody gets out of the driver's
11 side door, it's right behind where they would have gotten
12 out, right?

13 A. Yes, sir.

14 Q. Can you tell the jury whether that car door was
15 four-door or two-door?

16 A. No, sir. I cannot.

17 Q. So, we don't even know it if might be right next to
18 the rear door of that car, whoever or whatever is was,
19 right?

20 A. Could have been the rear door, yes, sir.

21 Q. Do you have a picture on your crime-scene log of the
22 front of the car?

23 A. No, sir.

24 Q. You testified that the, that the little Debbie wrapper
25 was on the other side of the tape that was put there,

M. BEAN - CROSS-EXAMINATION BY MR. WILDER

1006

1 correct?

2 A. Yes, sir.

3 Q. Do you know when that car at lot ■ arrived there ---

4 A. No, sir.

5 Q. --- that evening?

6 A. I do not.

7 Q. But you do know it was there before you got there?

8 A. I, I can't say that. I don't know.

9 Q. It's in the picture you took.

10 A. It's in the picture with the, the ---

11 Q. Well, it got there some time.

12 A. It could have been after I arrived, and so as you
13 pointed out, it was picture thirty-four. There was a lot
14 that went on.

15 Q. You think somebody backed that car up in front of lot
16 number ■ before you got there?

17 MR. MEADORS: Your Honor, he can't, he can't answer
18 that.

19 THE COURT: Sustained.

20 WITNESS: I'd speculate.

21 THE COURT: Speculation. Don't answer it.

22 (A PAUSE.)

23 BY MR. WILDER:

24 Q. Let me show you Defense for Identification Number what
25 is it?

M. BEAN - CROSS-EXAMINATION BY MR. WILDER

1007

1 A. 12.

2 Q. 12. Find your name on that list, please.

3 A. Okay. I have it.

4 Q. All right. Can you identify that as the crime-scene
5 log of people arriving?

6 A. Yes, sir. It's the crime-scene log of the scene.

7 Q. All right. Now, you found your name on it?

8 A. Yes, sir.

9 Q. How many names are in front of yours?

10 A. I believe it's sixteen.

11 Q. What time did you arrive at the crime scene according
12 to that log?

13 A. 2138.

14 Q. And is Deputy Griffin's name down at the bottom of it?
15 Did she, did she sign that?

16 A. Yes, sir. I believe that's her signature.

17 Q. Okay. Now, so do you -- does that kind of comport
18 with your memory as to what time you got there?

19 A. Yes, sir.

20 Q. Were you the one that spread the yellow tape, or did
21 somebody else spread it?

22 A. Somebody else put it out.

23 Q. Now, are you -- did I understand you have military in
24 your background?

25 A. As a dependent, yes, sir.

M. BEAN - CROSS-EXAMINATION BY MR. WILDER

1008

1 Q. Okay. So, in military, y'all are comfortable with
2 twenty-four hour clocks, right?

3 A. Yes, sir.

4 Q. When somebody says 2100 hours, what does that mean?

5 A. 21 would be 11. It's 12 and 8.

6 Q. 2000 hours would be what?

7 A. 2000 hours?

8 Q. Yeah?

9 A. That would be 10.

10 Q. And 1900 hours would be what?

11 A. 9. 12. 20. No, I'm sorry.

12 Q. All right.

13 A. Dependent, remember.

14 Q. What does the twenty-four hour clock say? What time
15 did you arrive on that log, Mr. Bean?

16 A. 21, 2138.

17 Q. All right. How long were you in the military?

18 A. I was not in the military.

19 Q. You were not. Well, you admit, would you not, if
20 you're not in the military -- you haven't been comfortable
21 with twenty-four hour clocks -- it's kind of hard to figure
22 what time is it, isn't it?

23 A. It can be, yes.

24 Q. Okay, but now in law enforcement, do y'all use the
25 twenty-four hour clock also?

1 A. Some do, some don't.

2 Q. Okay, but on that log, is it a twenty-four clock?

3 A. It is.

4 Q. How many total pictures did y'all take, according to
5 the photo log?

6 A. 110.

7 MR. MEADORS: Your Honor, we'll offer them all in if
8 he's wants to.

9 THE COURT: Well, he hadn't ---

10 MR. WILDER: All these?

11 THE COURT: He hadn't asked.

12 MR. MEADORS: Well, I'll put the pictures and the log,
13 everything in if he wants to.

14 MR. WILDER: Well, Your Honor, I can't move anything
15 into evidence at this point, but -- well, we'll address
16 that at the appropriate point.

17 BY MR. WILDER:

18 Q. Now, did you take a picture of lot ■?

19 A. No, sir.

20 Q. Did you take a picture of lot ■, mobile home park?

21 A. I did.

22 Q. Did y'all take pictures of the interior of lot ■?

23 A. There were a few, yes, sir.

24 Q. Were you called out to the St. Paul's Church Road, I
25 believe St. Mark's Circle, to take some pictures of the

M. BEAN - REDIRECT EXAMINATION BY MR. MEADORS

1010

1 trailer out there?

2 A. No, sir.

3 Q. Would you look at your log and see if there's any
4 reference to pictures of St. Mark's Circle?

5 A. Item 95, item 95.

6 Q. Oh. So, maybe you did take some pictures at St.
7 Mark's Circle?

8 A. No, sir.

9 Q. Would that mean Mr. Mackessy took those pictures?

10 A. Yes, sir.

11 MR. WILDER: Answer any more questions Mr. Meadors may
12 have for you.

13 THE COURT: Mr. Meadors, any redirect?

14 MR. MEADORS: Beg the court's indulgence.

15 REDIRECT EXAMINATION BY MR. MEADORS:

16 Q. I think I've asked this before. That mobile home
17 park's in Sumter County, isn't it? It's in Sumter County?

18 A. O.C., yes, sir.

19 MR. MEADORS: That's all. Thank you.

20 THE COURT: Thank you. You may step down.

21 WITNESS: Thank you.

22 MR. MEADORS: Your Honor, give me a moment to confer
23 with co-counsel?

24 THE COURT: Yes, sir.

25 (THE WITNESS EXITS THE STAND.)

1 (A PAUSE.)

2 MR. MEADORS: State of South Carolina rests, Your
3 Honor.

4 THE COURT: All right, ladies and gentlemen, the state
5 has now rested their case in chief. We have some matters
6 of law that we will need to take up outside of your
7 presence. So, I'm going to send you back to your jury room
8 to eat another donut at this time if you would like. Make
9 yourself comfortable, and we will be in here for a just a
10 minute. Thank you.

11 Please do not discuss anything about the case while
12 you're back there.

13 (THE JURY EXITS AT 10:03 A.M.)

14 THE COURT: All right, are there any motions to be
15 made at this time?

16 MR. WILDER: Yes, Your Honor.

17 MR. DEAS: Yes, sir.

18 THE COURT: Mr. Deas.

19 MR. DEAS: Thank you, Your Honor. May it please the
20 court? Your Honor, at this time I would move on behalf of
21 Reginald County for a dismissal, for a directed verdict of
22 not guilty as to the charge of both murder and armed
23 robbery.

24 What's been established through the state's evidence
25 at this point, now that they have rested, is that indeed

1 Mr. Canty gave about six statements. But in each of those
2 statements, he denies having any involvement in the
3 shooting of Mr. Flexon. What he does admit to in the --
4 starting with the third statement on January 13th and then
5 going through to the sixth statement on January 25th of '08
6 is that he tacitly agreed verbally to participate in the
7 robbery of the pizza man.

8 Verbally agreeing to do that but not taking any
9 affirmative steps to further the completion of the crime
10 does not establish his involvement under the accomplice
11 liability theory. In order for him to be an accomplice to
12 the crime or a co-conspirator in the crime, he would have
13 to do more than just simply verbally say yes, I'm going to
14 take part in it. He would have to take some affirmative
15 action, some actual, engage in some actual criminal conduct
16 to accomplish the crime or to assist in the accomplishment
17 of the crime. There is absolutely no evidence in the
18 record to establish that.

19 There are several lines of cases, one of being *State*
20 *vs. Mouzon*, that establish that conspiracy, liability under
21 conspiracy theory or an accomplice -- or accomplice
22 criminal liability theory must include some action on the
23 part of the co-conspirator to further the completion of the
24 crime. At this point, the record is devoid of any such
25 evidence, certainly with respect to the murder and also

1 with respect to the armed robbery.

2 As the court knows, mere presence or witnessing a
3 crime take place does not establish your involvement or
4 your participation in the crime. What's been established
5 through testimony and evidence is based on Mr. Canty's own
6 statements. He was -- he saw the crime take place or saw
7 some portions of the crime take place.

8 And even if you were to conclude that he was not in
9 his yard at his gate when he saw it, even if you conclude
10 that he was there within very close proximity to the crime,
11 if he was just there but did not engage in the robbing or
12 the shooting of the victim, and there's no evidence to
13 suggest that he did, then, Your Honor we're -- it's our
14 position that this matter is certainly one where a directed
15 verdict of not guilty should be granted.

16 There was no testimony from any of the investigating
17 officers to establish any link between Mr. Canty and the
18 murder of the robbery. There's no fingerprint evidence;
19 there's no DNA evidence; there's no eyewitness evidence.

20 There's absolutely just no evidence to link him to
21 this crime other than his own statements, which are
22 consistent in this respect. He said yes to participating
23 in a robbery, but he essentially withdrew from the fight
24 because when they arrived back at the mobile home park from
25 Cherryvale Grocery, he went home. And there's no evidence

1 to the contrary to that. The only evidence is he saw it,
2 or some portions of it, but he didn't participate in that.

3 Based on that, Your Honor, we would ask the court to
4 grant our motion for a directed verdict of not guilty.

5 THE COURT: All right, thank you.

6 Mr. Meadors.

7 MR. MEADORS: If it pleases the court? Your Honor,
8 there is direct and circumstantial evidence for the jury to
9 consider in this case.

10 First, his own words: yes, I will do the robbery.
11 Going out of the store with the co-defendant, Jackson, to
12 the phone, phone booth and saying there was a phone call
13 was made. We don't know which one made the phone call. We
14 don't.

15 We know from the time frame from that 8:04 to that
16 phone, I think we can argue they made that phone call. I
17 don't know which one, but they made the phone call to
18 deliver to lot ■, Your Honor, together there both of them.

19 Judge: It wasn't supposed to happen that way. If
20 that's not circumstantial evidence, I don't know. He's
21 saying he saw the revolver, and his mother and Dominick say
22 how could you see the revolver where you were at the porch.
23 You couldn't see it, and he drops his head and said it
24 wasn't supposed to happen today. I think that, that put
25 him right at the scene, Your Honor, when it's happening

1 after he's already said yes, I want to agree to the
2 robbery.

3 And finally, Judge, said nothing linking to him.
4 There's a casing in his room that comes from the gun that
5 killed William Flexon. I think if you consider all those
6 direct and circumstantial, there is enough evidence to,
7 respectfully, to go forward to the jury. And the jury has
8 got to decide the credibility of his statements, if any,
9 Your Honor.

10 THE COURT: All right, thank you. In a criminal case
11 for a directed verdict motion is always to be taken in
12 light most favorable to the non-moving party. This is a
13 circumstantial evidence case, and I find that whether -- I
14 don't know whether the jury will convict or not. But I do
15 find there, for Mr. Canty, there is sufficient evidence.
16 That it will move forward to the jury. So, your motion is
17 respectfully denied.

18 Yes, Mr. Wilder.

19 MR. WILDER: Thank you, Your Honor. At this time, we
20 would move for a directed verdict of not guilty as to the
21 defendant Daniel Jackson. Or in the alternative, Your
22 Honor, we would move for a mistrial, and here's the grounds
23 for our motion for directed verdict.

24 The only way that even the statement another person
25 did thus and so in this case has been established is as

1 non-testifying party, and that being Mr. Canty. He did not
2 testify. His statements were used by the state over our
3 objection and redacted.

4 The law as I understand it under *Bruton* is in any
5 identifying information must be redacted from any statement
6 of a non-testifying co-defendant. All right, if they
7 properly redacted the statement, there is no identifying
8 information pertaining to Daniel Jackson as to any
9 participation in a robbery or a shooting whatsoever. So,
10 either one of two things have happened. Either the
11 statements have been improperly redacted in order to get
12 some circumstantial evidence or any evidence against Mr.
13 Jackson. Or there is no evidence in the record pertaining
14 to Mr. Jackson.

15 Your Honor, the evidence is no fingerprints of Mr.
16 Jackson were identified anywhere near the scene, or even on
17 the murder weapon, or on the car, or any candy wrapper that
18 may or may not have been associated with this, with this
19 situation. No DNA is under the fingerprints that the state
20 was able to say belonged to Mr. Jackson. In fact, I
21 believe we've established in the record that there's loci
22 that don't belong to Mr. Jackson, that were inconsistent
23 with Mr. Jackson's DNA that were under the fingernails of
24 Mr. Flexon. If there was a struggle, there is some
25 contributing DNA from another party there. It does not

1 match Mr. Jackson. There's no evidence to link him to this
2 crime that way.

3 The footprint the tape shows that's in evidence that
4 he was wearing Timberland boots, they took a photograph of
5 a footprint. They say, they say they can't match that with
6 anybody. It was just, they couldn't get anything out of
7 it. But I submit it doesn't link up to it a Timberland
8 boot if -- even if you could try to get anything out of it.
9 It's just not -- there's no evidence linking this crime to
10 Mr. Jackson.

11 Your Honor, as to the alleged statement he made: How
12 could I be guilty of armed robbery. We don't even know
13 what order they served him with these warrants. They made
14 no recording of the statement. That is not inculpatory
15 necessarily. You put the right spin on it, it actually is
16 exculpatory. It's kind of like I can't believe I'm being
17 charged with this. So, that's not evidence that he
18 committed any robbery.

19 In fact, what we got there is he agreed to cooperate
20 with them. He waived his rights. They prove that by their
21 statement, Your Honor, the one they put in, the one that
22 they referred to that he waived his right to counsel. He
23 turned himself in. There is no evidence to establish that
24 Daniel Jackson committed this crime.

25 Further, Your Honor, the video that's in evidence, it

1 shows two guys going into a store. We submit that the
2 video is inconsistent with the state's theory of the case.
3 And that that's actually exculpatory, and we believe
4 there's no evidence that that would establish that he
5 either called the Sambino's pizza place that evening. In
6 fact, I think it proves that both of them didn't, as a
7 matter of fact. So, no, no, no evidence from that tape
8 that inculcates Daniel Jackson or Mr. Canty in this crime.

9 And if there is a statement of the co-defendant, the
10 non-testifying statement is supposed to be evidence against
11 him. If that's what we're trying to base it on, then that
12 would give rise to, I believe, a mistrial because it's
13 supposed to be redacted. And it's not supposed to be used
14 against him.

15 So, all of that, moving forward now to that
16 afterwards, he came into possession of rifle. Now, that's
17 what I got to address. I understand that; I have to
18 address that. But the state's own witness Isaac Boyd
19 testified that he got the rifle the next day.

20 Now, that is the only evidence that puts Mr. Jackson
21 in proximity or connection with a weapon that admittedly
22 likely was used to shoot that bullet that was in Mr.
23 Flexon. But there's no evidence Daniel Jackson was in
24 proximity or connected with that rifle at any time before
25 the next day, and that came in through the testimony of

1 Isaac Boyd.

2 Your Honor, I believe not only is there no direct
3 evidence to say Daniel Jackson was not involved, there is
4 plenty of circumstantial evidence to say he was not
5 involved because of the lack of fingerprints, footprints,
6 and DNA. And furthermore that there is no circumstantial
7 evidence -- the one -- the circumstantial that does exist
8 actually goes in the other direction.

9 So, I move it be dismissed for lack of any evidence,
10 any evidence that would prove murder or armed robbery
11 against Daniel Jackson. Or, in the alternative, or a
12 mistrial. Thank you.

13 THE COURT: Thank you.

14 Mr. Meadors.

15 MR. MEADORS: If it pleases Your Honor? In the light
16 most favorable to the state, the non-moving party, Your
17 Honor, Mr. Jackson was identified by Anitta Shannon on the
18 video from Cherryvale Grocery leaving out the door
19 approximately the same time the phone call was made to
20 Sambino's that Tanya Knudson gets and receives. And the
21 pizza is ordered to lot ■ of the mobile home park.

22 Judge, his statement, obviously you could take that
23 both ways. That's why it's a jury issue. Those are jury
24 arguments I think he was making. How could I be charged
25 with armed robbery if I didn't take anything from the pizza

1 man, we obviously think that's a statement against his
2 interest.

3 Again, Judge, Isaac Boyd, he directs Isaac Boyd to the
4 murder weapon, get the murder weapon. He left out the fact
5 about the casing that was found in a peanut butter jar in
6 his aunt's house shortly after he left. Obviously, we
7 think that is direct and circumstanced evidence of guilt,
8 Your Honor. And he told Mr. Boyd lie about it. Tell them
9 you picked me up the day before.

10 So, Your Honor, considering all of those, we think
11 there is enough evidence, and respectfully ask Your Honor
12 to deny the motion.

13 THE COURT: All right. Examining the evidence in the
14 light most favorable to the non-moving party, I find there
15 is sufficient evidence to take it to the jury. And,
16 therefore, the motion for directed verdict is respectfully
17 denied, Mr. Wilder. Any other motions?

18 MR. WILDER: And the mistrial motion?

19 THE COURT: Motion for mistrial is also denied.

20 MR. WILDER: Also denied. Your Honor, that would be
21 our motions, and thank you for hearing us.

22 THE COURT: All right, let me go ahead and put each
23 defendant under oath, and I will question them concerning
24 their right to testify.

25 Mr. Canty.

1 MR. DEAS: Your Honor, Your Honor.

2 THE COURT: Yes, sir.

3 MR. DEAS: Before we do that.

4 THE COURT: Do y'all want to talk to them for a few
5 minutes?

6 MR. DEAS: Yes, sir. Yes, sir, Your Honor.

7 THE COURT: All right, I'll give y'all ten minutes to
8 talk to your clients, and then I'll go through the
9 questions.

10 MR. DEAS: Yes, sir. Thank you very much.

11 THE COURT: All right, court will be in recess for ten
12 minutes.

13 MR. MEADORS: Thank you, Your Honor.

14 (OFF THE RECORD.)

15 THE COURT: All right, we'll do Mr. Canty first.
16 Please stand, Mr. Canty.

17 Please place him under oath.

18 (WHEREUPON, REGINALD CANTY IS DULY SWORN.)

19 THE COURT: Reginald Candy, at this time I'm going to
20 explain to you certain of your rights. If you do not
21 understand anything that I say now, please let me know.
22 And if you want me to explain in greater detail, please let
23 me go -- let me know. Do you understand?

24 MR. CANTY: Uh-huh.

25 THE COURT: All right. We've now reached the stage of

1 your trial where you may present your defense. You have a
2 right to claim the -- you have the right to claim the
3 protections granted to you by the Fifth Amendment of the
4 United States constitution, which in part says that no
5 person shall be compelled in any criminal case to be a
6 witness against himself. This means that you cannot be
7 required to testify in this case, and -- but you have a
8 right to testify on your own behalf. However, no one can
9 make you testify. This is a personal right, and no one can
10 waive this right except for you.

11 Now, if you decide to testify, you will be subject to
12 the same rules as any other witness, and you may be
13 examined and cross-examined on any relevant issues in this
14 case.

15 In addition, if you have any convictions which involve
16 dishonesty or false statements, or for crimes punishable by
17 imprisonment of more than one year, and I determine that
18 the probative value of introducing those into evidence
19 outweighs the prejudicial effect on you, then the solicitor
20 will be able to introduce the record to attack your
21 credibility.

22 Now, if you decide to testify, the decision on your
23 part must be freely, voluntarily, and intelligently made
24 with the knowledge of the protections given to you by the
25 Fifth Amendment and the consequences of the decision to

1 testify.

2 If you decide not to testify in this case, I will
3 instruct the jurors that they cannot give the fact that you
4 did not testify any consideration whatsoever. And there is
5 to be absolutely no prejudice to you because you did not
6 testify.

7 The decision is entirely left up to you as to whether
8 or not you want to testify. You may talk to your attorney,
9 your family, your friends. I've already given you time to
10 speak with your mother in private. And do you understand
11 everything that I've explained to you?

12 MR. CANTY: Yes, sir.

13 THE COURT: And do you have any questions about what
14 I've explained to you?

15 MR. CANTY: No, sir.

16 THE COURT: Have you discussed with your lawyer
17 whether or not you want to testify?

18 MR. CANTY: I, I discussed with him.

19 THE COURT: Okay, and do you need any more time to
20 speak to your attorney?

21 MR. CANTY: No, sir.

22 THE COURT: Do you wish to testify?

23 MR. CANTY: No, sir.

24 THE COURT: Thank you. You may be seated.

25 MR. DEAS: And, Your Honor, for the record, I wanted,

1 wanted to put on the record that during our discussions, I
2 advised Mr. Canty to testify. He indicated to me that
3 despite that advice, it was his choice not to testify.

4 THE COURT: You understand that, Mr. Canty? Your
5 attorney has advised you to testify. Do you understand
6 that?

7 MR. CANTY: Yes, sir.

8 THE COURT: And you still wish not to testify?

9 MR. CANTY: Yes, sir.

10 THE COURT: All right. Thank you.

11 All right, Mr. Daniel Deangelo Jackson, please stand.

12 (WHEREUPON, DANIEL DEANGELO JACKSON IS DULY SWORN.)

13 THE COURT: Mr. Jackson, at this time I'm going to
14 explain to you certain of your rights, just like I did with
15 Mr. Canty. If you do not understand anything that I say,
16 please let me know. If you want me to explain anything in
17 more detail, please let me know. Do you understand?

18 MR. JACKSON: Yes, sir.

19 THE COURT: We've now reached the stage of your trial
20 where you may present your defense. You have the right to
21 claim the protections granted to you by the Fifth Amendment
22 of the United States constitution, which states in part
23 that no person shall be compelled in any criminal case to
24 be a witness against himself. That means that you cannot
25 be required to testify in this case. You'd have the right

1 to testify on your own behalf; however, no one can make you
2 testify. This is a personal right, and no one can waive
3 this right except for you.

4 If you decide to testify, you will be subjected to the
5 same rules that govern other witness in this case, and you
6 may be examined and cross-examined on any relevant issue in
7 this case.

8 In addition, if you have any convictions involving
9 dishonesty or false statements, or for crimes punishable by
10 imprisonment of more than one year, and I determine that
11 the probative value of admitting this evidence outweighs
12 the prejudicial effect on you, the solicitor will be able
13 to introduce and attack your record to attack credibility.

14 If you decide to testify, the decision on your part
15 must be freely, voluntarily, and intelligently made with
16 the knowledge of the protections given to you by the Fifth
17 Amendment, and the consequences of your decision to
18 testify.

19 If you decide not to testify, I will instruct the
20 jurors that they cannot give the fact that you did not
21 testify any consideration whatsoever. And that there is to
22 be absolutely no prejudice to you because you did not
23 testify.

24 It is left entirely up to you whether or not you want
25 to testify. You may talk to Mr. Wilder, your attorney,

1 your family, your friends, or anyone else. But the final
2 decision will be left entirely up to you.

3 Do you understand what I've explained to you?

4 MR. JACKSON: Yes, sir.

5 THE COURT: Do you have any questions about what I've
6 explained to you?

7 MR. JACKSON: No, sir.

8 THE COURT: Have you had an opportunity to discuss
9 this with your lawyer?

10 MR. JACKSON: Yes, I have.

11 THE COURT: And do you wish to talk to your lawyer any
12 more at this time?

13 MR. JACKSON: No, sir.

14 THE COURT: Do you wish to testify?

15 MR. WILDER: Your Honor, until we know what Mr. Deas
16 is going to do, I can't even advise him on that aspect. I
17 think he does not want to testify.

18 THE COURT: Okay. I'm not going to hold him to it if
19 he changes his mind, but right now the question, he does
20 not want to testify.

21 MR. WILDER: Thank you.

22 THE COURT: He has a right to change his mind, just
23 like Mr. Deas's client would also have that right.

24 MR. WILDER: May I talk to him just one second?

25 THE COURT: Yes.

1 (A PAUSE.)

2 MR. WILDER: We're ready, Your Honor.

3 THE COURT: All right, anything further from the
4 state?

5 MR. MEADORS: No, sir.

6 THE COURT: You may be seated.

7 All right, let's bring our jury in.

8 (THE JURY ENTERS AT 11:21 A.M.)

9 CLERK OF COURT: Your Honor, all the jurors are
10 present in the courtroom.

11 THE COURT: All right, thank you, Mr. Bradley.

12 All right, ladies and gentlemen, for the last four
13 days, you have been subjected to extreme heat. The air
14 conditioner has now been fixed. Now you'll be subjected to
15 extreme cold. It works that way for just some reason.

16 All right, is the defense ready to proceed, Mr. Deas?

17 MR. DEAS: Yes, sir, Your Honor.

18 MR. WILDER: Yes, Your Honor.

19 THE COURT: All right, Mr. Wilder. All right, Mr.
20 Deas, you may present your defense.

21 MR. DEAS: Your Honor, we call Ms. Dorothy Canty.

22 THE COURT: All right.

23 DOROTHY CANTY, BEING DULY SWORN,
24 TESTIFIES AS FOLLOWS:

25 CLERK OF COURT: Have a seat up here, please. Please

D. CANTY - DIRECT EXAMINATION BY MR. DEAS

1028

1 state your full name and spell your last name for the
2 record.

3 WITNESS: Dorothy Canty, C-A-N-T-Y.

4 THE COURT: You may proceed.

5 MR. DEAS: Thank you, Your Honor. May it please the
6 court?

7 DIRECT EXAMINATION BY MR. DEAS:

8 Q. Ms. Canty, could you state your name again for the
9 court, please?

10 A. Dorothy Canty.

11 Q. And, Ms. Canty, where do you live, ma'am?

12 A. Now or?

13 Q. Now.

14 A. I live at [REDACTED] Alvin Street in Pinewood.

15 Q. Okay. Now, back on January 12th of 2008, where were
16 you living?

17 A. [REDACTED], I think, Cherryvale Drive.

18 Q. Okay. You were living in in the O.C. Mobile Home
19 Park?

20 A. Yes, sir.

21 Q. And who did you live there with?

22 A. Reginald Canty and my nephew, Desmond Canty.

23 Q. And, Ms. Canty, how long have you lived here in Sumter
24 County?

25 A. For about ten years.

D. CANTY - DIRECT EXAMINATION BY MR. DEAS

1029

1 Q. And where, where did you grow up?

2 A. In Rimini, Pinewood area.

3 Q. Now, where are you currently working?

4 A. Universe.

5 Q. Universe?

6 A. Yes.

7 Q. Is that like a uniform company?

8 A. Yes.

9 Q. Now how many children do you have, Ms. Canty?

10 A. Five.

11 Q. And could you name them all?

12 A. Queen C. , Lashawnda C. , Shequilla C. , Susan

13 C. , Reginald C.

14 Q. And Reginald Canty seated here to my left, that's your
15 son?

16 A. Yes.

17 Q. Now, the house that you lived in back on January 12,
18 2008, that was in O.C. Mobile Home Park. Is it like in a
19 U-shaped cul-de-sac?

20 A. Yes. Yes.

21 Q. Okay. I'm going to show you this photograph here.

22 You see that, this area here?

23 A. Yes.

24 Q. Is that the U-shaped, U-shaped cul-de-sac where you
25 lived?

D. CANTY - DIRECT EXAMINATION BY MR. DEAS

1030

1 A. Yes.

2 Q. And is your house the one that's in the middle here?

3 A. The one in the first -- it's middle of all that go
4 around the circle.

5 Q. Okay. That's your house there?

6 A. Yes.

7 Q. Okay. Now, is there a fence around your yard?

8 A. Yes.

9 Q. Does the fence go all the way around the perimeter of
10 the house?

11 A. Yes.

12 Q. It's a chain-link fence?

13 A. Yes.

14 Q. How many, how many exits do you have at your house?

15 A. I have one that come from off of Cherryvale Drive, one
16 under the car porch, and one come out the driveway.

17 Q. Okay. There's a, there's -- you can exit the house
18 from the front of the house?

19 A. Yes.

20 Q. And that would lead you to Cherryvale Drive?

21 A. Yes.

22 Q. And then there's, is there an exit to the side of the
23 house?

24 A. Yes.

25 Q. And is there an exit to the rear of the house?

D. CANTY - DIRECT EXAMINATION BY MR. DEAS

1031

1 A. Yes.

2 Q. Any other exits?

3 A. No.

4 Q. Going back to January 12, 2008, can you tell me,
5 ma'am, what you remember that evening so far as where
6 Reginald was around that evening? What's your memory of
7 where he was and what he was doing?

8 A. Well, he left out of the house and say he was going to
9 Latoya house. And he was out, and I'm assuming that's
10 where he was at. And then he back in, and he said I'll be
11 out in the front, and he went out. I'm assuming that's
12 where he was. I didn't got up and go check, sir.

13 Q. So, at some point he told you during that evening he
14 was going to go over to Toya's house?

15 A. Yes.

16 Q. Did he say -- and Latoya, what's her last name?

17 A. Rush.

18 Q. Okay. Did he say why he was going to Latoya's?

19 MR. WILDER: Your Honor, I'm going to object to what
20 he said because it's hearsay.

21 THE COURT: He's a defendant. It's not hearsay.

22 MR. WILDER: May we approach, Your Honor?

23 THE COURT: You may.

24 (OFF-THE-RECORD BENCH CONFERENCE.)

25 THE COURT: Objection sustained.

D. CANTY - DIRECT EXAMINATION BY MR. DEAS

1032

1 BY MR. DEAS:

2 Q. Ms. Canty, at some point he indicated to you he was
3 going to Toya's house?

4 A. Yes, sir.

5 Q. And did -- he left the house?

6 A. Yes.

7 Q. Do you remember approximately what time of the evening
8 that was? I know it was three years ago.

9 A. No, sir. I do not.

10 Q. Okay, but it was night. Was it nighttime?

11 A. Yes.

12 Q. And this would have been January of 2008, so it had
13 gotten dark early?

14 A. Yes.

15 Q. Now, at some point did he come back to the house, to
16 your house?

17 A. Yes.

18 Q. And what, if anything, did he do after he came back
19 home from Toya's house?

20 A. He came in, got something to eat, and went back out.

21 Q. Okay, and do you know about what time it was? Did he
22 say, did he say where he was going when he went back out
23 the second time?

24 A. No.

25 Q. Do you, do you know approximately what time it was?

D. CANTY - DIRECT EXAMINATION BY MR. DEAS

1033

1 A. No.

2 Q. Can you -- do you have any impression as to how much
3 time passed from when he was -- left the house to go to
4 Toya's, and when he came back to get something to eat?

5 A. I don't remember, sir, exactly.

6 Q. But he did come back?

7 A. Yes.

8 Q. To the house?

9 A. Yes.

10 Q. He ate?

11 A. Yes.

12 Q. Is that correct?

13 A. Yes.

14 Q. And then left?

15 A. Yes.

16 Q. All right. At some point during that evening, do you
17 recall hearing gunshots?

18 A. Yes.

19 Q. Do you know approximately what time it was when you
20 heard gunshots?

21 A. No, sir.

22 Q. But you did hear some?

23 A. Yes.

24 Q. Shortly after you heard the gunshots, what, what did,
25 what happened? Or what do you remember happening after you

D. CANTY - DIRECT EXAMINATION BY MR. DEAS

1034

1 heard the gunshots?

2 A. I went to the back door to look out the door. I
3 didn't saw nothing, so I went back in the house. When I
4 coming out, going back from the back door, Reggie was
5 coming in through the front door. And he asked me did
6 I ---

7 MR. WILDER: Objection.

8 A. --- heard.

9 THE COURT: Sustained.

10 BY MR. DEAS:

11 Q. So, he was coming into the front door as you were
12 coming from the back of the home?

13 A. Yes.

14 Q. What, what, if anything, did you do at that point?

15 A. He came in, and then we -- he went, we went back
16 outside, but I didn't see nothing, so.

17 Q. Did -- when you all went back outside, was it you and
18 Reggie together, you and Reginald together?

19 A. Yes.

20 Q. And what did you observe when you and Reginald walked
21 outside? What was going on outside?

22 A. Shortly after we got outside, then there was the
23 police.

24 Q. Do you recall if any law enforcement officers spoke
25 with you that evening?

D. CANTY - DIRECT EXAMINATION BY MR. DEAS

1035

1 A. Yes.

2 Q. And do you remember who it was?

3 A. Mr. Dominick West had came to speak to me.

4 Q. Did he come inside your house?

5 A. Yes.

6 Q. Okay, and did he talk to you?

7 A. He talked to me, and he talked to Reginald.

8 Q. Okay. So, he talked to both you and Reginald the very
9 night of the incident?

10 A. Yes.

11 Q. On January 12, 2008?

12 A. Yes.

13 Q. And did any other law enforcement officer talk to you
14 that evening?

15 A. It's another one, but I don't know, remember their
16 name, sir.

17 Q. Did you tell -- what did you tell the officer?

18 A. That I heard shots. I couldn't, I didn't see. He
19 asked me if I see anything, and I did not see anybody
20 because I didn't see. I just heard.

21 Q. Did you tell them about Reginald going over to Toya's
22 house?

23 A. No, sir.

24 Q. Did you tell him about Reginald coming back in at some
25 point after he went to Toya's house and getting something

D. CANTY - DIRECT EXAMINATION BY MR. DEAS

1036

1 to eat?

2 A. They didn't ask me that.

3 Q. At any point that evening, do you have any
4 recollection or any, any knowledge as to whether Reginald
5 went to Cherryvale Grocery Store?

6 A. Yes.

7 Q. Okay. How do you know that?

8 A. Because my nephew took him.

9 Q. Okay, and what's your, what's your nephew's name?

10 A. Desmond Canty.

11 Q. And so were you -- do you remember when your, when
12 your nephew, Desmond Canty, brought Reginald back from
13 Cherryvale Grocery Store?

14 A. Yes.

15 Q. Okay. Do you remember about what time that was?

16 A. No, sir.

17 Q. Do you know why Reginald went to Cherryvale Grocery
18 Store?

19 A. No, I did not.

20 Q. The -- do you know where lot number ■ is in your
21 neighborhood?

22 A. Yes.

23 Q. Okay. Are you familiar with the fact that that's the
24 area where the incident, where the shooting incident took
25 place?

D. CANTY - DIRECT EXAMINATION BY MR. DEAS

1037

1 A. Yes.

2 Q. Is there a light in that area?

3 A. There's a light in my yard right there at the corner.
4 It's where the big tree -- and it's a light right there.

5 Q. I'm going to have you step down, if you don't mind.

6 MR. DEAS: Your Honor, may she step ---

7 THE COURT: Certainly.

8 BY MR. DEAS:

9 Q. Take care. Okay, we're already established that your
10 house is the one that sits here in the middle, and let me
11 get you to come over here near this microphone, Ms. Canty,
12 because you're going to have to speak into it while you
13 also illustrate what's on this photograph. Kind of stand
14 right there, and I'll hold it up.

15 All right, show me where the light is. First, show me
16 where lot ■ is.

17 A. It's hard to see which way this ---

18 MR. WILDER: May it please the court?

19 THE COURT: Yes. You may certainly move over.

20 BY MR. DEAS:

21 Q. That's Cherryvale Drive here, right?

22 A. That's, that's lot, that's number 5. 6, ■ should be
23 right on through there.

24 Q. Okay, and where is lot number ■?

25 A. Lot ■ is at the end of the road right there.

D. CANTY - DIRECT EXAMINATION BY MR. DEAS

1038

1 Q. And who lives in lot number ■, or who lived in lot
2 number ■ then?

3 A. Latoya Rush.

4 Q. Okay, and show me where the gate, the gate that goes,
5 that goes around your property, show me where that gate
6 would be.

7 A. The gate would be right, and there's a big tree right
8 there. I used to hang my clothes down there. There's a
9 light that goes right off of there.

10 Q. Okay. So, there's a light right here in this area?

11 A. Yes.

12 Q. All right. Is there -- does the gate run in front of
13 the house, too?

14 A. It's a gate running in front of the house, too.

15 Q. If you come out of your house to the front, if you
16 come out of your house from the front entrance and exit,
17 can you walk around through the gate?

18 A. You can walk around through the gate, or you can walk
19 around the corner of the house and still see ---

20 Q. Okay.

21 A. --- lot number ■.

22 Q. Okay. Now, if you come out of your house out the
23 front and walk off the porch and come over to, come over to
24 the right side of the gate, can you see lot number ■ from
25 there?

D. CANTY - DIRECT EXAMINATION BY MR. DEAS

1039

1 A. Yes.

2 Q. Do you have any recollection as to whether that light
3 you described that's near where you hung clothes, do you
4 have any recollection as to whether that light was
5 operating on January 12, 2008?

6 A. Yes. Yes.

7 Q. It was?

8 A. It was.

9 Q. Okay. Do you know anything about any other lights in
10 this area being, being out that night or not functioning?

11 A. Well, it's a light was on number -- at, right at the
12 corner, number 5. I can't tell you whether it was working
13 or not. I don't know.

14 Q. You don't, you don't recall?

15 A. I don't.

16 Q. But the light that's here right behind your home near
17 where you hung clothes, that light worked?

18 A. Yes.

19 Q. Okay. On any given night in your neighborhood, are
20 there lights on in these trailers here?

21 A. Yes.

22 Q. And lights in other homes and in other areas in the
23 neighborhood?

24 A. Yes.

25 Q. Is it, at nighttime, is it pitch black in your

D. CANTY - CROSS-EXAMINATION BY MR. MEADORS

1040

1 neighborhood where you can't see anything?

2 A. No.

3 Q. All right, thank you, ma'am. You can have a seat.

4 MR. DEAS: Court's indulgence.

5 THE COURT: Yes sir.

6 (A PAUSE.)

7 MR. DEAS: Thank you, Ms. Canty. I have no further
8 questions.

9 THE COURT: Mr. Meadors, or whichever order you want
10 to go in.

11 MR. MEADORS: It doesn't matter to me.

12 CROSS-EXAMINATION BY MR. MEADORS:

13 Q. Good afternoon, Ms. Canty.

14 A. All right.

15 Q. Just a couple quick questions. So, after the
16 gunshots, you went to the back?

17 A. Yes.

18 Q. And when you came back in, Mr. Canty, your son, was
19 coming in the front?

20 A. Yes.

21 Q. And then he went back out?

22 A. Yes.

23 MR. MEADORS: That's all. Thank you.

24 THE COURT: Mr. Wilder.

25 CROSS-EXAMINATION BY MR. WILDER:

D. CANTY - CROSS-EXAM BY MR. WILDER / L. RUSH - DIRECT EXAM BY MR. DEAS 1041

1 Q. Ms. Canty, did he come in and out by himself?

2 A. Yes.

3 MR. WILDER: Thank you.

4 THE COURT: Any redirect?

5 MR. DEAS: No, Your Honor.

6 THE COURT: All right, thank you. You may step down.

7 (THE WITNESS EXITS THE STAND.)

8 MR. DEAS: Your Honor, at this time we call Ms. Latoya
9 Rush.

10 THE COURT: All right.

11 MR. MEADORS: May we approach a second? Not about
12 this witness, but a separate matter.

13 (OFF-THE-RECORD BENCH CONFERENCE.)

14 LATOYA RUSH, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 CLERK OF COURT: Please state your full name. Spell
17 your last name for the record.

18 WITNESS: Latoya Rush, R-U-S-H.

19 MR. DEAS: May it please the court?

20 THE COURT: Yes, sir.

21 DIRECT EXAMINATION BY MR. DEAS:

22 Q. How are you doing, Ms. Rush?

23 A. Fine.

24 Q. My name is Garryl Deas; I represent the defendant Mr.
25 Reginald Canty. Ms. Rush, could you just state your full

L. RUSH - DIRECT EXAMINATION BY MR. DEAS

1042

1 name for the court, please?

2 A. Latoya Rush.

3 Q. I'm sorry?

4 A. Latoya Rush.

5 Q. Ms. Rush, where do you live?

6 A. Columbia.

7 Q. Columbia, South Carolina?

8 A. Uh-huh.

9 Q. And how long have you lived in Columbia?

10 A. For a few months.

11 Q. And where were you, where were you raised?

12 A. Huh?

13 Q. Where were you born and raised?

14 A. Sumter.

15 Q. Here in Sumter?

16 A. Uh-huh.

17 Q. And you lived in Sumter your whole life until you just
18 recently moved to Columbia?

19 A. Pretty much, yeah.

20 Q. Where do you work, Ms. rush?

21 A. Taco Bell.

22 Q. You work at a Taco Bell in Columbia?

23 A. Uh-huh.

24 Q. Ms. Rush, do you know Reginald Canty?

25 A. Uh-huh.

L. RUSH - DIRECT EXAMINATION BY MR. DEAS

1043

1 Q. And at some point, did you used to live in the O.C.
2 Mobile Home Park on Cherryvale Drive?

3 A. Yes, sir.

4 Q. All right. Did you live there back on January 12,
5 2008?

6 A. Yes, sir.

7 Q. And do you have recollection as to the events that
8 occurred back on January 12, 2008, out at the O.C. Mobile
9 Home Park?

10 A. Yes, sir.

11 Q. Now, you live -- do you live close to where Reginald
12 Canty lives?

13 A. Yes, sir.

14 Q. And you're pretty familiar with the, that U-shaped
15 cul-de-sac where your house is and where Mr. Canty's house
16 is?

17 A. Yes.

18 Q. Who do you, who do you live with at -- well, let me
19 get you to step down first.

20 MR. DEAS: Your Honor, can she step down?

21 THE COURT: She may step down, certainly.

22 BY MR. DEAS:

23 Q. Is this, is this the U-shaped cul-de-sac where you,
24 where you lived back on January 12, 2008?

25 A. Yes.

L. RUSH - DIRECT EXAMINATION BY MR. DEAS

1044

1 Q. Okay. Can you point out where your house is? And
2 this is Cherryvale Drive running straight, Cherryvale Drive
3 running across.

4 THE COURT: Can all the jurors see it? Can y'all?

5 A. This here.

6 Q. This ---

7 A. Right here.

8 Q. This is Mr. Canty's house.

9 THE COURT: Just speak up, ma'am. You got to speak up
10 so everyone can hear.

11 Q. Speak right there in that microphone.

12 A. Right here.

13 Q. And which lot is that?

14 A. 9.

15 Q. All right. Would this be Mr. Canty's house here in
16 the middle?

17 A. Yes.

18 Q. Okay. Now, are you familiar with where the incident
19 that happened on January 12, 2008, took place?

20 A. Uh-huh.

21 Q. And where would that be?

22 A. Right here.

23 Q. Is that, that lot number ■?

24 A. Uh-huh.

25 Q. And who all lived with you at lot number ■?

L. RUSH - DIRECT EXAMINATION BY MR. DEAS

1045

1 A. Me, my brother, and my cousin.

2 Q. Okay, and what's your brother's name?

3 A. Anthony Rush.

4 Q. And what's your, what's your cousin's name?

5 A. Donovan Shields.

6 MR. WILDER: If Your Honor please, could she speak in
7 the microphone?

8 THE COURT: Please, please speak in the microphone.

9 MR. WILDER: I think that would help.

10 THE COURT: We want to hear what you have to say.

11 MR. WILDER: And could we repeat that last question?

12 BY MR. DEAS:

13 Q. Who, who lived in the house at lot number ■ which you
14 back on January 12, 2008? Speak up.

15 A. Me and my brother, Anthony Rush, and my cousin,
16 Donovan Shields.

17 Q. Okay, and the house where Mr. Canty lived, is there,
18 is there a fence around the house?

19 A. Yes.

20 Q. It's a chain, a chain-link fence?

21 A. Uh-huh.

22 Q. And can you tell me if there is -- if there was a
23 light in the area of lot number ■ back on January 12, 2008,
24 if you know?

25 A. I don't know.

L. RUSH - DIRECT EXAMINATION BY MR. DEAS

1046

1 Q. Were there, were there lights around the neighborhood?

2 A. Mm-hmm.

3 Q. And you got to speak up.

4 A. Yes.

5 Q. Okay. Now, if -- at night, can you see in the
6 neighborhood?

7 A. Probably closer to the front. I don't think in the
8 back area.

9 Q. Okay. If ---

10 A. The street lights up front.

11 Q. All right. At night, is it pitch black where you just
12 can't see anything?

13 A. No.

14 Q. Okay. Now, okay, thank you, ma'am. You can have a
15 seat.

16 Going back to January 12, 2008, at some point did you
17 have any communication with the Reginald Canty on January
18 12, 2008?

19 A. Yes.

20 Q. And what, what was the extent of that conversation?

21 MR. WILDER: Your Honor, again ---

22 THE COURT: Sustained.

23 BY MR. DEAS:

24 Q. Did you talk to Reginald Canty that day?

25 A. Yes.

L. RUSH - DIRECT EXAMINATION BY MR. DEAS

1047

1 Q. Did you tell him anything?

2 A. Yes.

3 Q. What did you tell him?

4 A. I told him me and my boyfriend was going to McDonald's
5 and to keep a eye on my house because I didn't want to lock
6 my door.

7 Q. So, you told, you asked Reginald Canty to keep an eye
8 on your house?

9 A. Yes.

10 Q. And why did you ask him that?

11 A. Because I didn't want to lock my door.

12 Q. And where were you going?

13 A. To McDonald's down the road off of 41.

14 Q. With who?

15 A. My boyfriend.

16 Q. And what's his name?

17 A. Leon Smoot.

18 Q. And did Reginald keep an eye on your house?

19 A. Yes.

20 MR. WILDER: Your Honor, that calls for speculation.

21 She was down the road at McDonald's.

22 MR. MEADORS: I would join in that.

23 THE COURT: Sustained.

24 MR. DEAS: Your Honor, she saw him go to her house.

25 THE COURT: She can testify to that, but as to when

L. RUSH - DIRECT EXAMINATION BY MR. DEAS

1048

1 she wasn't there, she can't testify to anything when she
2 wasn't there.

3 BY MR. DEAS:

4 Q. After you asked Reginald to, to look out for your
5 house, did he go to your house?

6 A. I don't know.

7 Q. You don't?

8 A. I saw him as I was leaving. I spoke to him in the
9 yard.

10 Q. Okay.

11 A. So, when I got back to the house, I didn't go back to
12 my house. I stayed outside.

13 Q. Whose yard where you all in? Whose yard was he in
14 when you asked him to keep ---

15 A. His yard.

16 Q. --- to keep a lookout on your house?

17 A. His yard.

18 Q. And then you left?

19 A. Yes.

20 Q. All right. How long -- do you know about what time it
21 was when you left the neighborhood to go to McDonald's?

22 A. I really don't remember. It was dark, I know that.
23 Nighttime.

24 Q. And how long were you gone?

25 A. Probably really no more than ten minutes.

L. RUSH - DIRECT EXAMINATION BY MR. DEAS

1049

1 Q. And then you came back with the food?

2 A. Mm-hmm.

3 Q. Both you and your boyfriend?

4 A. Yes.

5 Q. By the time y'all were coming back, was the -- were
6 you observing that there was some activity in the
7 neighborhood?

8 A. Yes.

9 Q. What was going on as you came back from McDonald's?

10 A. While I was at McDonald's, I was getting my food
11 there, I just seen the ambulance and the police and stuff,
12 and so I was telling my boyfriend, okay, I really have a
13 bad feeling. So, I was going, and I see they turned down
14 Cherryvale, so I say oh lord. And then when they stopped
15 where I was living, then I just got out and I see I guess
16 the man was dead because they had him covered up or
17 whatever, so.

18 Q. So, you actually saw victim laying on the ground?

19 A. I didn't see him. I just seen someone covered up with
20 a sheet. That's all.

21 Q. And from the time you asked Reginald to watch your
22 house, from, from that time to you're going to McDonald's
23 and coming back was only about ten minutes?

24 A. Yeah. Probably no more than ten minutes.

25 Q. Did you see Reginald when you got back from

L. RUSH - DIRECT EXAMINATION BY MR. DEAS

1050

1 McDonald's?

2 A. I don't really remember. I was at, I was at the
3 house, his mom's house probably. I don't remember.

4 Q. Okay. So, when you came back from McDonald's, you
5 went in, you went in Reginald's house?

6 A. Yes. His mom was outside, so I was with her for the
7 rest of the night, yeah.

8 Q. Were you in her yard or in the house?

9 A. In her yard, in her house, both?

10 Q. Did Reginald at some point come back to the house?

11 A. Yeah. He was -- yeah.

12 Q. He did?

13 A. Yeah.

14 Q. Okay, and was he around in the house or in the yard
15 when the police were around?

16 A. I don't know. I wasn't outside with the police, so I
17 don't know.

18 Q. Okay. Did any police ever talk to you?

19 A. I remember I was in the house with his mom, and she
20 said the police outside want to ask you a question. But I
21 think all he asked me was anybody over there or something.
22 I was, like, no. My cousin at work right now, so.

23 Q. They were asking you if anybody was at your house?

24 A. Yes.

25 Q. And you told them no?

L. RUSH - CROSS-EXAMINATION BY MR. WILDER

1051

1 A. Yes.

2 Q. So, on the, on the day of January 12, 2008, at some
3 point that evening before you left to go to McDonald's, you
4 asked Reginald to watch your house because you were going
5 to McDonald's with your ---

6 A. Yes.

7 Q. You weren't around when the incident took place,
8 correct?

9 A. No, sir.

10 Q. And when you got back, you went to Reginald's house?

11 A. Yes. I, I saw his mom outside and talked to her.

12 MR. DEAS: Court's indulgence.

13 (A PAUSE.)

14 MR. DEAS: Thank you, Your Honor. No further
15 questions.

16 THE COURT: Mr. Wilder.

17 MR. WILDER: Thank you, Your Honor.

18 CROSS-EXAMINATION BY MR. WILDER:

19 Q. So, would you state your name again?

20 A. Latoya Rush.

21 Q. Latoya, okay. Latoya, you said Donovan Shields and
22 Anthony Rush lived there with you?

23 A. Yes.

24 Q. At that time?

25 A. Yes.

L. RUSH - CROSS-EXAMINATION BY MR. WILDER

1052

1 Q. Are you married to Anthony? Is that where ---

2 A. No.

3 Q. --- the last name?

4 A. No. Uh-uh.

5 Q. No? Would you tell the jury how old Anthony Rush and
6 Donovan Shields were back then?

7 A. I don't know how old my cousin is, so I wouldn't know
8 that. My brother, maybe around twenty.

9 Q. Twenty. Would it be fair to say both of them were
10 kind of, were kind of young teenagers at that time?

11 A. My brother and my cousin?

12 Q. Yes.

13 A. Yeah.

14 Q. All right, and Donovan Shields and Anthony Rush had
15 been living there at lot number ■ for some time, right?

16 A. Right.

17 Q. Okay. Now, do you also know Anthony as Chops?

18 A. Yes.

19 Q. That's his nickname?

20 A. Right.

21 Q. Do you know Marcus Branch?

22 A. Yes.

23 Q. And did Marcus Branch happen to be over at your house
24 that night?

25 A. I don't remember.

L. RUSH - CROSS-EXAMINATION BY MR. WILDER

1053

1 Q. You don't know, or you don't remember?

2 A. I don't remember. I'm not sure. I always had people
3 at my house, so.

4 Q. Well, isn't it true that Marcus Branch lost his cell
5 phone over there that night?

6 A. I don't know.

7 Q. And he was coming by Chop's house the next day, to
8 pick it up the next day?

9 A. I don't know. When my friends -- my brother's friends
10 over, I'm not with my brother's friend, so I don't
11 remember.

12 Q. Now, when the police got there, did Anthony Rush talk
13 to the police? Did you see him talking to the police?

14 A. No, sir.

15 Q. When the police got there, did Donovan Shields talk to
16 the police?

17 A. No, sir.

18 Q. Anthony owns a car, doesn't he?

19 A. No, sir.

20 Q. Well, back then he had a car he was driving, didn't
21 he?

22 A. Yes, sir.

23 Q. And sometimes it would be parked right there at the
24 lot next to lot number ■ right there in the cul-de-sac,
25 right?

L. RUSH - CROSS-EXAMINATION BY MR. WILDER

1054

1 A. If it was a blue car, yeah, but I had -- I remember my
2 car was always parked there, the black Mazda.

3 Q. Okay, let's see here if I can find the picture. Now,
4 I know the whole car isn't here. Can you identify that
5 hubcap?

6 A. No. That looks like my car, though.

7 Q. It looks like the hubcap to your car, right?

8 A. Yes. Yes.

9 Q. And if the hubcap on a tire like that is parked right
10 outside of lot number ■, is that hub -- if that's a picture
11 of a car parked right next to lot number ■ back in January
12 of 2008, like as not that's your hubcap, right?

13 A. Right.

14 Q. Did Anthony Rush drive your car?

15 A. Yes.

16 Q. Did Marcus Branch drive your car?

17 A. No.

18 Q. Marcus was a little younger than Anthony, wasn't he?

19 A. Right.

20 Q. What age was Marcus about then, if you can remember?

21 A. I don't know how old he is.

22 Q. Well, if you had to say how many years younger than
23 Anthony he was, then could you give us a guess on that?

24 A. I don't know how old he is. I don't know how many
25 years younger he is than all of them.

L. RUSH - CROSS-EXAMINATION BY MR. WILDER

1055

1 Q. But it's fair to say he was kind of a teenager?

2 A. He's younger than my brother, yes.

3 Q. Younger than your brother, and he's a teenager in
4 2008, right?

5 A. Right.

6 Q. And Marcus nor Anthony nor Donovan were there to talk
7 to the police after you got back?

8 MR. MEADORS: Your Honor, she's testified she didn't
9 know where ---

10 THE COURT: Asked and answered.

11 BY MR. WILDER:

12 Q. Now, when you got back, did you see any pizza boxes
13 along the road?

14 A. No. I wasn't looking. I wasn't looking for pizza
15 boxes.

16 Q. Okay, but you did come down Cherryvale Drive, right?

17 A. I did.

18 Q. Ma'am?

19 A. I did.

20 Q. You did? Okay. Now, would you agree that lot ■ was a
21 vacant trailer at that time?

22 A. Yes.

23 Q. How about lot 8? Who lived in lot 8?

24 A. I don't know. I know a lady used to live there with a
25 green car, but I'm not sure if she moved out by that time.

L. RUSH - CROSS-EXAMINATION BY MR. MEADORS

1056

1 So, I don't know.

2 MR. WILDER: No other questions.

3 THE COURT: Mr. Meadors.

4 MR. MEADORS: If it pleases Your Honor?

5 CROSS-EXAMINATION BY MR. MEADORS:

6 Q. Good morning, Ms. Rush.

7 A. Hi.

8 Q. You remember Mr. Branch coming over there about 11:30
9 or 12 that morning and getting his phone that he'd left
10 there?

11 A. I don't remember; I really don't.

12 Q. And I was just writing this down. I've just got a few
13 questions.

14 A. Uh-huh.

15 Q. You asked Mr. Canty to keep an eye on your house, but
16 when you left, he was -- do you know if he really kept an
17 eye on it when you were gone?

18 A. When I left, he was standing out in the yard. So, I
19 just said keep an eye on the house. I didn't want to lock
20 my door. And when I came back, I didn't go back over
21 there, so.

22 Q. And after the shooting, you were over at Ms. Canty's
23 house?

24 A. Yes. She was outside when I came home, so I just
25 stayed outside out there and talked to her.

L. RUSH - CROSS-EXAMINATION BY MR. MEADORS

1057

1 Q. And you didn't know if Reginald Canty was there or
2 not, I think you testified?

3 A. Right.

4 Q. Do you know Daniel Deangelo Jackson?

5 A. Yes.

6 Q. Did you see him there that night?

7 A. When I left the house to go to McDonald's?

8 Q. Yes, ma'am.

9 A. No, sir.

10 Q. Did you see him at any time that night?

11 A. Yes, sir.

12 Q. Where did you see him?

13 A. At my house.

14 Q. What was that about?

15 A. My brother and his friends, they all was, all was in
16 the house, so.

17 Q. Did he, did he ask you for anything?

18 A. Yes.

19 Q. What did he ask you for?

20 A. He asked me for -- did I have any socks or gloves.

21 Q. Any socks or gloves?

22 A. Yes.

23 Q. And that was on the evening of January 12th?

24 A. Yes.

25 Q. Did you give him any socks or gloves?

L. RUSH - RECROSS-EXAMINATION BY MR. WILDER

1058

1 A. No.

2 Q. How long have you known Daniel Deangelo Jackson?

3 A. I haven't known him that long.

4 Q. But is that the person right there that asked you for
5 socks or gloves sitting by Mr. Wilder on the night of
6 January 12, 2008?

7 A. Yes.

8 MR. MEADORS: We'd like the record to so reflect.

9 THE COURT: All right, the record will so reflect that
10 she has identified the defendant Daniel Jackson.

11 MR. MEADORS: Beg the court's indulgence. Thank you.

12 THE COURT: Mr. Deas, any direct or redirect for you?

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

14 THE COURT: Recross, Mr. Wilder?

15 MR. WILDER: Yes, sir.

16 RECROSS-EXAMINATION BY MR. WILDER:

17 Q. Ms. Canty, when's the first time you told anybody
18 Deangelo Jackson asked for socks and gloves?

19 A. Well, the police never talked to me, so I didn't tell
20 the police.

21 Q. You never told anybody that until this week? Is
22 that ---

23 A. Yes.

24 Q. --- what you're saying?

25 A. Right.

1 Q. So, here three years later is the first time you've
2 told anybody, right?

3 A. Right.

4 Q. Now, this is -- what relationship is Reginald Canty to
5 you?

6 A. That's my best friend's little brother.

7 Q. Friend's little brother?

8 A. Uh-huh.

9 Q. And Anthony is your cousin?

10 A. My brother.

11 Q. Your brother?

12 A. Right.

13 Q. Now, at this moment that you say he was asking for
14 gloves or something, that was over at Ms. Canty's house,
15 you say?

16 A. My house.

17 Q. Your house?

18 A. Right.

19 Q. Is there any other witness here today who heard that?

20 A. No.

21 Q. And you never told the police, right?

22 A. Correct.

23 Q. And nobody else saw Daniel there except you, right?

24 A. I, I guess. No one was there with us, no.

25 Q. And when you first told that to somebody, you were

L. RUSH - RECROSS-EXAMINATION BY MR. MEADORS

1060

1 trying to say that it was Mr. Jackson who asked you to
2 watch the house?

3 A. No. I didn't say that. I never asked him to watch my
4 house.

5 Q. You never asked Mr. Canty to watch your house?

6 A. I asked him, not Mr. Jackson.

7 Q. All right, what time did Mr. Jackson arrive at your
8 house?

9 A. I don't exactly remember what time, but it was a
10 little while before I left to go to McDonald's.

11 Q. Okay. At like maybe 8:00?

12 A. I don't know.

13 Q. How, how long? You said you were at McDonald's ten
14 minutes.

15 A. Not no longer than ten, right.

16 MR. WILDER: No other questions.

17 THE COURT: Any recross based upon Mr. Wilder's
18 questions?

19 RECROSS-EXAMINATION BY MR. MEADORS:

20 Q. I've never talked to you before today, have I?

21 A. Right.

22 Q. And the police never talked to you?

23 A. Right.

24 Q. Never asked you what you saw or heard that night?

25 A. Right.

L. RUSH - FURTHER RECROSS-EXAMINATION BY MR. WILDER 1061

1 MR. MEADORS: Thank you.

2 MR. WILDER: One follow up to that?

3 THE COURT: Yes, sir.

4 FURTHER RECROSS-EXAMINATION BY MR. WILDER:

5 Q. Did Mr. Deas talk to you?

6 A. Huh?

7 Q. Did Mr. Deas talk to you?

8 A. Yeah, I talked to him.

9 MR. WILDER: Thank you.

10 THE COURT: All right, thank you. You may step down.

11 (THE WITNESS EXITS THE STAND.)

12 MR. DEAS: Your Honor, the defendant Reginald Canty
13 rests.

14 THE COURT: All right. Thank you.

15 Mr. Wilder.

16 MR. WILDER: Your Honor, for the record, we renew the
17 motions made previously.

18 THE COURT: Yes, sir.

19 MR. WILDER: My turn now?

20 THE COURT: Yes, sir.

21 MR. WILDER: Thank you. Can I step outside and call a
22 witness?

23 THE COURT: You may.

24 MR. WILDER: Thank you.

25 (A PAUSE.)

L. CANTY - DIRECT EXAMINATION BY MR. WILDER

1062

LASHAWNDA CANTY, BEING DULY SWORN,

TESTIFIES AS FOLLOWS:

CLERK OF COURT: State your full name for the record.

WITNESS: Lashawnda Canty, C-A-N-T-Y.

DIRECT EXAMINATION BY MR. WILDER:

Q. Lashawnda, would you tell us your full name and where you live, or where you were living back in January 28 -- January 2008?

A. Lashawnda Canty. I was staying on Whitney Drive.

Q. Here in Sumter County?

A. Yes.

Q. All right. Are you from Sumter?

A. No.

Q. Where are you from originally?

A. Rimini.

Q. Where?

A. Pinewood. Rimini.

Q. Pinewood. Rimini?

A. Yes.

Q. All right. I want to ask you to lean forward a little bit. You speak right into that mic so that everybody can get the testimony down, okay?

A. Okay.

Q. All right, and how long had you been living there on Whitney Drive back in 2008?

L. CANTY - DIRECT EXAMINATION BY MR. WILDER

1063

1 A. Probably a year. I don't know. Probably that long.

2 Q. Okay.

3 A. I'm not sure.

4 Q. And did Daniel Jackson stay with you during that time?

5 A. Yes, he stayed there.

6 Q. Okay. Does Daniel have a relative also in Summerton
7 that he would stay with from time to time?

8 A. I'm not sure where he was when he wasn't at my house.

9 Q. Okay, but you know, you know who Andrea Russell is?

10 A. No.

11 Q. And you don't know whether she might be related to
12 Daniel also?

13 A. No.

14 Q. All right. How about Angela Boyd?

15 A. No.

16 Q. Don't know her?

17 A. No.

18 Q. Okay. Now, I'm going to show you a statement marked
19 Defense for Identification Number 18. You recognize your
20 statement on there, or your signature?

21 A. Yes.

22 Q. And did you have occasion to talk Dominick West, this
23 gentleman right here, and give him a statement?

24 A. Yes.

25 Q. Okay, and did you write that down and sign it, or did

L. CANTY - DIRECT EXAMINATION BY MR. WILDER

1064

1 he write it down and sign it?

2 A. I wrote it.

3 Q. You wrote it and signed it? Okay.

4 A. Yeah.

5 Q. And can you look at that and refresh your memory as to
6 the date that you talked with Dominick West?

7 A. The date?

8 Q. Yeah. When did you talk to him?

9 A. I'm not, I'm not sure the date.

10 Q. Okay, but you -- there's no question in your mind that
11 you wrote all that down?

12 A. Yeah.

13 Q. And you signed it?

14 A. I wrote this, yes.

15 Q. All right, and Dominick was asking you about Daniel
16 Jackson, right?

17 A. Yes.

18 Q. And did he stay with you and that sort of thing,
19 right?

20 A. Yes.

21 Q. Okay, and you tell him yeah, he stayed with you,
22 right?

23 A. Yes.

24 Q. And did Mr. West then ask for permission to search
25 your house?

L. CANTY - DIRECT EXAMINATION BY MR. WILDER

1065

1 A. Yes. They came at, at a later date, though.

2 Q. And so some later date, they came back and search your
3 house?

4 A. Yes.

5 Q. All right, and that was fine?

6 A. Yes.

7 Q. You let them do that?

8 A. Yes.

9 Q. Right, okay, and the time that you were talking to him
10 about Daniel, what did tell him about where Daniel was on
11 January 12, 2008?

12 A. The -- where he was?

13 Q. Yeah.

14 A. I didn't know where he was.

15 Q. Well, what did you tell him? Where did he tell him
16 Daniel was?

17 A. From this right here?

18 Q. Well, whatever you told him.

19 A. Oh. I mean, I didn't know where he was earlier, but I
20 know when he came to my house at some point.

21 Q. All right, and what did you tell him -- did, on
22 January 12th, did you tell him that Daniel had come to your
23 house?

24 A. Yes.

25 Q. All right, and tell the jury what you told Dominick

L. CANTY - DIRECT EXAMINATION BY MR. WILDER

1066

1 West.

2 A. Oh. Okay. I just said he, he was at my house. Well,
3 he came to my house. He got in bed. He was texting, and
4 then the next morning, we ate and he left.

5 Q. Okay. What time did he leave your house the next
6 morning?

7 A. Around 1 in the afternoon.

8 Q. 1 in the afternoon?

9 A. Yes.

10 Q. All right. So, he had come to your house the night of
11 January 12th, right?

12 A. Yes.

13 Q. All right, and he was, you said he was texting on his
14 cell phone, right?

15 MR. MEADORS: I'm going to object to leading.

16 A. Yes.

17 THE COURT: Sustained.

18 MR. WILDER: All right. Your Honor, I'd ask that this
19 statement be admitted into evidence.

20 MR. MEADORS: We have no objection.

21 THE COURT: Without objection.

22 Mr. Deas?

23 MR. DEAS: No objection.

24 THE COURT: No objection with Mr. Deas, Defendant's
25 Exhibit Number 2. Is that correct?

L. CANTY - DIRECT EXAMINATION BY MR. WILDER

1067

1 COURT REPORTER: 18.

2 THE COURT: 18?

3 COURT REPORTER: 18.

4 (STATEMENT MARKED INTO EVIDENCE AS DEFENDANT JACKSON'S
5 EXHIBIT NUMBER 18.)

6 BY MR. WILDER:

7 Q. So, he just got into bed, started texting on his
8 phone. Then he went to sleep. That's what you told
9 Dominick West?

10 A. Yes.

11 Q. And I believe the statement's dated January 17, '08.
12 Is that right?

13 A. Yes.

14 Q. Down at the bottom. Did you see what it was the
15 police carried away when they searched your house?

16 A. I think it was a -- some jeans and a shirt of
17 something.

18 Q. Okay. So, they took some jeans and a shirt?

19 A. Yeah.

20 Q. Now, when Daniel came to your house, did he have any
21 kind of rifle with him?

22 A. No. I didn't see anything.

23 Q. Did he have any kind of gun that you saw?

24 A. No.

25 Q. You don't like those kind of things, do you?

L. CANTY - CROSS-EXAMINATION BY MR. DEAS / MR. MEADORS

1068

1 A. No.

2 Q. Would you let them in your house if you saw them
3 coming with them?

4 A. No.

5 MR. WILDER: Okay. Answer any questions that Mr.
6 Meadors may have.

7 THE COURT: Mr. Deas.

8 MR. DEAS: Thank you, Your Honor.

9 CROSS-EXAMINATION BY MR. DEAS:

10 Q. Ms. Canty, according to your statement, what time was
11 it when Mr. Jackson came to your house?

12 A. I think it was, like, 3 in the morning.

13 Q. 3 a.m.?

14 A. Yes.

15 MR. DEAS: Court's indulgence.

16 Q. And that would have been on January 12, 2008?

17 A. Yes.

18 Q. According to your statement?

19 A. Yes.

20 MR. DEAS: Nothing further.

21 THE COURT: Mr. Meadors.

22 MR. MEADORS: Please the court?

23 CROSS-EXAMINATION BY MR. MEADORS:

24 Q. Hey, Ms. Canty.

25 A. Hey.

L. CANTY - CROSS-EXAMINATION BY MR. MEADORS

1069

1 Q. Just got a few questions.

2 MR. MEADORS: Do you mind if I -- Judge, can I
3 approach?

4 THE COURT: You may.

5 BY MR. MEADORS:

6 Q. Do you mind if I approach? So, State -- Defendant's,
7 excuse me -- what number is this?

8 THE COURT: 18.

9 Q. 18, this is your statement down here? I mean, that's
10 your signature? I'm sorry.

11 A. Yes.

12 Q. All right, and they crossed through here right here
13 and put L.C.?

14 A. I did, yeah.

15 Q. Was that so nobody else could ---

16 A. Write anything.

17 Q. --- add on to it?

18 A. Yeah.

19 Q. And you remember Dominick West taking it?

20 A. Yes.

21 Q. All right. You didn't have any trouble with him or
22 talking to him?

23 A. No.

24 Q. Okay. I mean, it was a good conversation?

25 A. Yeah.

L. CANTY - CROSS-EXAMINATION BY MR. MEADORS

1070

1 Q. And I believe you talked to Mr. Wilder, and you're not
2 sure where he was before he got there, correct?

3 A. Correct.

4 Q. I mean, you don't, you don't know where he went. Do
5 you live on Whitney?

6 A. Whitney drive, yeah.

7 Q. How far is that from O.C. Mobile Home Park?

8 A. Probably, like, five minutes.

9 Q. You can walk there?

10 A. I could, but it would probably take longer than five
11 minutes.

12 Q. Okay, but it's close?

13 A. Yes.

14 Q. And then on Defendant's 12, you said that:

15 On January 12th, Jackson and I were at my house.

16 Then he left and didn't return until 3:00 a.m.

17 A. Yeah.

18 Q. I'm not trying -- I'm just reading straight off it. I
19 promise you.

20 A. Okay.

21 Q. Didn't return until 3 a.m.?

22 A. Yeah.

23 Q. And you said he didn't leave until 1:00 the next day
24 when his uncle picked him up?

25 A. Yes.

L. CANTY - REDIRECT BY MR. WILDER / RECROSS BY MR. MEADORS

1071

1 Q. Do you know his uncle?

2 A. No.

3 Q. Now, you don't like guns in your house?

4 A. No.

5 Q. Has a gun ever been in there?

6 A. No.

7 Q. And so if he had this gun, he couldn't bring it home.

8 He'd have to put it somewhere else, wouldn't he?

9 A. Yes.

10 MR. MEADORS: Beg the court's indulgence.

11 THE COURT: Yes.

12 (A PAUSE.)

13 MR. MEADORS: Thank you. That's all.

14 THE COURT: Mr. Wilder, you have any redirect?

15 REDIRECT EXAMINATION BY MR. WILDER:

16 Q. But he didn't have a gun, did he?

17 A. No.

18 MR. WILDER: Thank you.

19 RECROSS-EXAMINATION BY MR. MEADORS:

20 Q. Were you awake when he came in?

21 A. Yeah.

22 MR. MEADORS: Thank you.

23 THE COURT: Mr. Deas?

24 MR. DEAS: Nothing further.

25 THE COURT: Thank you. You may step down.

A. BOYD - DIRECT EXAMINATION BY MR. WILDER

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1 (THE WITNESS EXITS THE STAND.)

2 MR. WILDER: Our next witness is also outside.

3 THE COURT: All right.

4 MR. WILDER: May she be excused, Your Honor?

5 THE COURT: Any objection to her being excused?

6 MR. MEADORS: None from the state.

7 THE COURT: All right. Thank you. You're excused,
8 ma'am.

9 MR. DEAS: No objection.

10 ANGELA M. BOYD, BEING DULY SWORN,
11 TESTIFIES AS FOLLOWS:

12 CLERK OF COURT: Please state your full name. Spell
13 your last name for the record.

14 WITNESS: Angela Maria Boyd, B-O-Y-D.

15 THE COURT: Mr. Wilder, you may proceed.

16 MR. WILDER: Thank you.

17 DIRECT EXAMINATION BY MR. WILDER:

18 Q. Angela, I want you to lean into the microphone a
19 little bit so we can all hear what you got to say.

20 A. Okay.

21 Q. Please give me your name and where you live.

22 A. My name is Angela Boyd. I live at [REDACTED] Summerton Jim
23 Ross Road, South Carolina.

24 Q. Okay. Do you know Andrea Russell?

25 A. Yes. That's my sister.

A. BOYD - DIRECT EXAMINATION BY MR. WILDER

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1 Q. Sister, okay, and do you know Daniel Jackson?

2 A. Uh-huh. Yes. That's my nephew.

3 Q. Nephew, okay, and did Daniel ask you to provide
4 him ---

5 MR. MEADORS: Objection to any hearsay.

6 THE COURT: Sustained.

7 MR. WILDER: Well, this is Daniel. Okay.

8 BY MR. WILDER:

9 Q. Did you give Daniel a ride to Sumter when he was
10 turning himself in to the police?

11 A. Yes, sir. I did.

12 Q. Okay. Now, did he go with you willingly? Did he
13 voluntarily go with you?

14 A. Yes. He asked me to take him.

15 Q. He asked you to take him?

16 A. He asked me to take him.

17 Q. Okay. Now, did you pick him up from Andrea's house?

18 A. Yes, I did.

19 Q. Okay, and was Isaac around at that time?

20 A. No.

21 Q. What's your relationship to Isaac?

22 A. Isaac is my husband.

23 Q. Oh, okay. When Daniel got to the Law Enforcement
24 Center, did you come inside with him?

25 A. Yes, sir, I did.

A. BOYD - DIRECT EXAMINATION BY MR. WILDER

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1 Q. All right. Did you get to talk to the police?

2 A. I talked to an officer -- I didn't remember his name
3 -- who was in the lobby when I got in there.

4 Q. Okay.

5 A. I can point him out; he's in here.

6 Q. All right, and did you get to go in where they were
7 asking Daniel questions?

8 A. No, sir.

9 Q. They didn't let you in the room?

10 A. No, sir. I -- it -- when I came in, it wasn't even
11 two seconds after I sat in a chair when an officer informed
12 me that I didn't have to stay there because he was going to
13 be there a long time. And I said you mean like until the
14 morning, and he said no. We're not planning on ---

15 MR. MEADORS: Objection to ---

16 A. --- letting him go.

17 MR. MEADORS: --- hearsay, Your Honor.

18 THE COURT: Sustained.

19 Q. Okay, but they didn't let ---

20 THE COURT: Jury will disregard the last statement.

21 BY MR. WILDER:

22 Q. So, they didn't let you go with him where he was being
23 talked to?

24 A. No, sir. They didn't.

25 Q. Okay. Now, did there come a time when you turned over

A. BOYD - DIRECT EXAMINATION BY MR. WILDER

1075

1 some more things to law enforcement?

2 A. Yes, sir. There was.

3 Q. Tell the jury about that. Where did you find them and
4 what did you do?

5 A. I, I had received a call from my sister, Andrea, in
6 reference to a gun what was left at -- in her house, and
7 she told me what ---

8 Q. As a result of receiving the phone call.

9 MR. WILDER: Except she testified.

10 THE COURT: She's already testified.

11 BY MR. WILDER:

12 Q. All right, what did she tell you?

13 A. She asked me what am I supposed to do with this gun.
14 I said Andrea, you need to call the people who came out
15 looking for Daniel and tell them to come and get it.

16 Q. Okay. Now, did you, did you have occasion to turn
17 over anything to law enforcement?

18 A. I had, yeah, an opportunity after Andrea called me
19 again and said she'd found a bullet.

20 Q. A bullet?

21 A. Uh-huh.

22 Q. And did you go get a bullet?

23 A. No, I did not. What happened was I told her to call
24 the police and the same people that came out to get the gun
25 to come out and get the bullet.

A. BOYD - DIRECT EXAMINATION BY MR. WILDER

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1 Q. All right, let, let me try to get this straight. How
2 long after you took Daniel to the Law Enforcement Center
3 was that?

4 A. I can't be specific, but it was a long time. At least
5 a week or two.

6 Q. At least a week or two. All right, so a week or two
7 later, you get a call from Andrea about ---

8 A. No, it wasn't a week ---

9 Q. No?

10 A. --- or two later. It was a week or two later that I
11 received the bullet.

12 Q. That you received the bullet?

13 A. Yes, sir.

14 Q. Okay, and you got it from Andrea?

15 A. No, I did not.

16 Q. Where did you get it?

17 A. Andrea had had a mental breakdown. Then she ended up
18 getting arrested as a result. And she was asked to leave
19 the premises at Meadowfield, at which point I went over
20 there to remove her property from the residence.

21 As I was getting there, I seen a warrant on the door.
22 The landlord approached me and had told me that she let
23 offers in to check for a third time that they had come out
24 there. And she informed me that they didn't leave with
25 anything. And I said, well, okay. So, I just had to get

A. BOYD - DIRECT EXAMINATION BY MR. WILDER

1077

1 all this stuff out of the house and bring it to my house.

2 When I got it to my house, I just let it, you know,
3 stay in one room. It was a while before I actually got the
4 stuff and got through it and organized everything.

5 There was a box I removed from her kitchen I dumped in
6 my kitchen. I'm going through the papers to make sure
7 there's no important papers when I found a baggie with a
8 bullet in it. And I knew what it was because Andrea had
9 talked to me about it before.

10 Q. Okay.

11 A. And that's when I called someone. I can't remember
12 the name of a card I had around that time to come out and
13 get it. And they took a couple of days to come out and get
14 it.

15 I'm running my errands, going on with everything in my
16 life. And then actually my fourteen year old at the time,
17 my fourteen-year-old daughter, Anne Boyd, was the one who
18 gave the bullet to the officer when they came to my house.
19 I wasn't home that day.

20 Q. So, you didn't even give whatever was in the little
21 packet to them, right?

22 A. No, sir. I didn't.

23 Q. Do you have any idea what the history on that thing
24 might have been before you found it in a box?

25 A. No, sir. I didn't.

A. BOYD - CROSS-EXAMINATION BY MR. MEADORS

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1 Q. Okay. Now, would it be fair to say that you were
2 doing everything in your power to cooperate with the
3 police?

4 A. Yes, sir. It was me and my family members.

5 Q. No, nobody was doing anything to force you to
6 cooperate with them, right?

7 A. No, sir. It's the way we've been raised.

8 (A PAUSE.)

9 MR. WILDER: Thank you.

10 WITNESS: You're welcome.

11 THE COURT: Mr. Deas.

12 MR. DEAS: No questions, Your Honor.

13 THE COURT: Mr. Meadors.

14 MR. MEADORS: Just a few.

15 CROSS-EXAMINATION BY MR. MEADORS:

16 Q. Good morning, Ms. Boyd.

17 A. Good morning.

18 Q. I've just got a few questions. You and Andrea are
19 sisters?

20 A. Yes, sir.

21 Q. And when Andrea called you about the rifle and all,
22 she tell you she'd been vacuuming in the house?

23 A. Excuse me?

24 Q. Do you remember, did she tell you she'd been vacuuming
25 and had found it or?

A. BOYD - CROSS-EXAMINATION BY MR. MEADORS

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1 A. No.

2 Q. Did she tell you how ---

3 A. I don't remember.

4 Q. All right, but she tell you she's found a rifle and
5 some other shell casing or bullets, right?

6 A. She told me she'd found a rifle and a box of bullets.

7 Q. And I'm not trying to be -- I'm just -- it's what
8 you've already testified.

9 THE COURT: You're objecting, sir?

10 MR. WILDER: No, Your Honor. I'm okay with that. I
11 should have asked my client before I stopped asking
12 questions. So, what I'd like to do is if I could ask one
13 or two more?

14 MR. MEADORS: Your Honor, he can't.

15 THE COURT: No, sir. I mean, he's started his
16 questioning. You'll get re -- you're get redirect.

17 MR. WILDER: All right. Thank you, Your Honor.

18 BY MR. MEADORS:

19 Q. Is it fair to say your sister called you? She'd found
20 a gun or rifle or something and some bullets and whatever
21 they were in, and you told her call law enforcement?

22 A. Right. There were two different phone calls on that.

23 Q. And I was just asking about the first one. You did do
24 that, and she did call?

25 A. Yes, sir.

A. BOYD - CROSS-EXAMINATION BY MR. MEADORS

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1 Q. And then she called you again a little later and said
2 I've found a shell casing in peanut butter?

3 A. And this was a couple days later.

4 Q. She called you about finding a shell casing in peanut
5 butter?

6 A. Yes, sir.

7 Q. No question about that, and you told her turn that
8 over to law enforcement?

9 A. Right.

10 Q. And she's already testified. Said she gave that to
11 you?

12 A. She just doesn't remember with everything she's been
13 through.

14 Q. And then -- but she did tell you about the rifle?

15 A. Yes.

16 Q. She did tell you about the shell casing in the peanut
17 butter, and you did tell her to turn those in, right?

18 A. Yeah.

19 Q. And you found them in a little bag or something,
20 didn't you? She said she gave them to you, and you said
21 you found them?

22 A. Well, I ---

23 Q. Did they ---

24 A. They were in her property that I removed from her
25 house.

A. BOYD - CROSS-EXAMINATION BY MR. MEADORS

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1 Q. And who turned it over to the police?

2 A. My daughter, Anne Boyd.

3 Q. Anne, okay. Well, this -- are you Angela Boyd?

4 A. Yes, sir.

5 Q. Okay. Does this document say it was received from you
6 from law enforcement, Angela Boyd?

7 A. Where?

8 Q. Right here, and I, can I come close?

9 A. Yeah, you can.

10 MR. MEADORS: All right, Judge?

11 A. Right up here.

12 Q. Is that you, Angela?

13 A. Yeah. My name is Angela Boyd.

14 Q. Does that say: Received from Angela?

15 A. It says it, yeah.

16 Q. Okay.

17 A. But I didn't sign it.

18 MR. MEADORS: Beg the court's indulgence.

19 THE COURT: Yes, sir.

20 (A PAUSE.)

21 MR. MEADORS: That all, Ms. Boyd. Thank you.

22 THE COURT: Mr. Wilder, redirect based upon his
23 cross-examination.

24 MR. WILDER: All right.

25 REDIRECT EXAMINATION BY MR. WILDER:

A. BOYD - REDIRECT EXAMINATION BY MR. WILDER

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1 Q. Do you know Curtis Wheeler?

2 A. Yes, sir, I do.

3 MR. MEADORS: Objection. That's not proper.

4 THE COURT: Sustained.

5 MR. MEADORS: Judge, for the record, he...

6 BY MR. WILDER:

7 Q. Mr. Meadors asked you about receiving a ---

8 MR. MEADORS: Judge, may we approach?

9 THE COURT: You may.

10 Q. --- a rifle.

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 THE COURT: You may ---

13 Q. All right. So, Ms. Russell ---

14 THE COURT: --- proceed with redirect.

15 MR. WILDER: Thank you.

16 BY MR. WILDER:

17 Q. So, Ms. Russell had a mental breakdown?

18 A. Yes, she did.

19 MR. MEADORS: Your Honor, objection. That's not
20 proper.

21 MR. WILDER: Well, he asked her that. She responded.
22 That was responsive to one of his questions.

23 THE COURT: It did -- it was talked about.

24 MR. MEADORS: I didn't know she had responded to me.
25 I didn't ask her about a breakdown or not. If she did,

A. BOYD - REDIRECT EXAMINATION BY MR. WILDER

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1 I ---

2 WITNESS: I did say it.

3 MR. MEADORS: --- the record will reflect it.

4 THE COURT: She did.

5 MR. MEADORS: That's fine.

6 THE COURT: It was stated in one of her -- testimony.

7 MR. MEADORS: I apologize.

8 BY MR. WILDER:

9 Q. All right. So, during that period of time, Andrea was
10 having mental problems, right?

11 A. Yes, sir.

12 Q. Okay, and there came a time when she was kicked out of
13 Meadowfield Apartments?

14 A. Yes, sir.

15 Q. Okay, and you went to get a box?

16 A. I went, I had to clean the whole apartment out.

17 Q. Her whole apartment?

18 A. Whole apartment.

19 Q. All right. So, and when -- we know at some point in
20 time, the rifle had gotten there and you received a call
21 about that?

22 A. Yes, sir.

23 Q. And your advice to her was call law enforcement?

24 A. That's right.

25 MR. WILDER: Okay. All right. Thank you, and

1 whatever ---

2 THE COURT: Any recross?

3 MR. MEADORS: No, sir. Thank you very much.

4 THE COURT: Thank you.

5 MR. WILDER: Your Honor, I'd ask if ---

6 MR. MEADORS: Your Honor, could we approach?

7 THE COURT: You may.

8 You may step down.

9 WITNESS: Your Honor, may I say something?

10 THE COURT: No, ma'am. No, ma'am.

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 MR. WILDER: Don't leave.

13 (OFF-THE-RECORD BENCH CONFERENCE.)

14 THE COURT: You may step down, but you're still under
15 subpoena.

16 WITNESS: Okay.

17 THE COURT: So, don't leave the courthouse.

18 WITNESS: Don't leave the courthouse? Okay.

19 (THE WITNESS EXITS THE STAND.)

20 MR. WILDER: May I tell her to wait outside, Your
21 Honor?

22 THE COURT: Yes.

23 (A PAUSE.)

24 MR. MEADORS: Judge, could we ask the jury to be
25 excused while we go over these documents and then ---

1 THE COURT: Now would be a good time for a break.

2 Ladies and gentlemen of the jury, I'm going to give
3 you a short ten, fifteen minute break.

4 Well, let me see the attorneys here for just a second
5 for planning purposes.

6 (OFF-THE-RECORD BENCH CONFERENCE.)

7 THE COURT: All right, ladies and gentlemen, we're
8 going to take about a ten minute break, and then we will
9 come back.

10 Thank you. Please do not discuss anything about the
11 case while you're gone. We'll issue gloves when you come
12 back out.

13 (THE JURY EXITS AT 12:47 P.M.)

14 THE COURT: All right, court will be in recess
15 approximately ten minutes.

16 MR. MEADORS: Judge, can we do this before they come
17 back in?

18 THE COURT: Yes.

19 MR. MEADORS: These documents because, just all due
20 respect, there are some on here I may object to. And if
21 they have other people's names on it ---

22 THE COURT: All right.

23 MR. MEADORS: --- I don't want them to hear me
24 objecting.

25 THE COURT: Very well.

1 MR. MEADORS: Thank you.

2 (OFF THE RECORD.)

3 THE COURT: Let's bring the jury back out here so I
4 can send them to lunch. We've got some matters we need to
5 take up.

6 (THE JURY ENTERS AT 12:40 P.M.)

7 CLERK OF COURT: All the jurors are back in the
8 courtroom.

9 THE COURT: Thank you.

10 All right, ladies and gentlemen, we have some issues
11 that we need to take up. It's outside your presence, as I
12 did before, but I didn't want to keep you here. It's
13 getting close to the lunch hour. I'm going to give you a
14 shorter lunch today, and I'm going to dismiss you, and
15 y'all be back here at 2:00 if you could, please. So, you
16 only get an hour and fifteen minutes for lunch.

17 So, have a nice lunch, and if you want to go home and
18 get a jacket or something like that, you may do some.
19 Please do not discuss anything about the case while you're
20 at lunch. Thank you.

21 (THE JURY EXITS AT 12:44 P.M.)

22 THE COURT: All right, Mr. Wilder, I understand there
23 was some proffered testimony you wanted as well concerning
24 Mr. West.

25 MR. WILDER: I guess we just need to deal with these

1 one at a time.

2 So, Your Honor, the first thing is Amy Stephens was
3 here at my -- I had subpoenaed Amy Stephens, and she's one
4 of the forensic technicians at SLED, and she had processed
5 some of the evidence that SLED received. And I'm looking,
6 trying to put my hand, Your Honor, right there on the
7 report that Amy signed.

8 (A PAUSE.)

9 MR. WILDER: All right, here it is, Your Honor. Ask
10 that this be marked as an exhibit right now for purposes of
11 the motion I'm about to make to move it into evidence.

12 (SLED REPORT MARKED AS DEFENDANT JACKSON'S EXHIBIT
13 NUMBER 28 FOR IDENTIFICATION.)

14 COURT REPORTER: Defendant's 28 for I.D.

15 THE COURT: All right.

16 MR. WILDER: And this is a second one, I believe. Let
17 me make sure it's a different one or the same one. This is
18 a different one, so she processed that one also.

19 (SLED REPORT MARKED AS DEFENDANT JACKSON'S EXHIBIT
20 NUMBER 29 FOR IDENTIFICATION.)

21 COURT REPORTER: 29 for I.D.

22 MR. WILDER: All right, and this is a third one that
23 Amy Stephens signed.

24 (SLED REPORT MARKED AS DEFENDANT JACKSON'S EXHIBIT
25 NUMBER 30 FOR IDENTIFICATION.)

1 MR. WILDER: If it please the court? Since those are
2 the three that Ms. Stephens signed, I'd like to deal with
3 those as a group.

4 We want to now offer these into evidence as part our
5 of our case. These are forensic processing reports. Ms.
6 Stephens signed them. She was here subpoenaed as my
7 witness so I could hand her the form in front of the jury
8 and ask her with respect to each of those items what she
9 did. Where she sent them, which department of SLED she
10 sent them to, what did, what -- as she processed them
11 through the chain of custody.

12 Ms. Stephens, her purpose of why they do that is so
13 that they can track items through SLED. And without that,
14 you can't really just relate the specific evidence from --
15 to what it -- what was sent from Sumter County. It's part
16 of tracking it through SLED and when it gets to a certain
17 point in SLED after they receive it, those evidence
18 technicians, they route them to particular departments for
19 particular testing. And those three reports are signed by
20 Amy Stephens.

21 She was here subpoenaed as my witness, and it was my
22 understanding that he was going to stipulate to what those
23 witnesses would testify to. And when she came over here
24 the other day and they asked for permission for her to go
25 on back with Ms. Maryann Boehm, I just said well, okay, if

1 you're going to stipulate to what she would say and those
2 three signatures on those things and stuff, I said okay.
3 She can go. And now I'm moving them into evidence, and I'm
4 hearing objections from Mr. Meadors. In all sincerity, I
5 thought he was going to let me put those forms in.

6 THE COURT: Mr. Meadors.

7 MR. WILDER: So, I, I, I feel like I'm not being
8 treated fairly, Your Honor.

9 MR. MEADORS: And, John -- Judge, I respectfully want
10 this record to reflect that I honestly, and I thought every
11 time said it, I will stipulate to the chain. Every time he
12 asked, he said, you know, they've got to come in here and
13 prove chain. There was DNA evidence of a witness who was
14 still out. Didn't know if he -- I guess he didn't know if
15 I was going to call him at all.

16 I stipulated to the chain, and I honestly want to say
17 to the court and everybody in this courtroom that's what I
18 thought he meant, and that's what I think he said. I think
19 that's what I said, I stipulate to the chain, and he had
20 marked them as court's exhibits.

21 And, Judge, if I could go through each one of them,
22 and I do stipulate to this. So, he doesn't have to bring
23 these witnesses in to show that the chain is complete. And
24 I really thought that's what I was doing.

25 Judge, number 30 is a SLED laboratory forensic service

1 request involving one fired Winchester 30-30 casing. It's
2 in evidence; it's been reported on. Nothing else is on
3 here except it's got the name of Marcus Branch on the
4 front. And I think respectfully that's why he's trying to
5 introduce it.

6 MR. WILDER: And, Your Honor ---

7 MR. MEADORS: Let me -- can I just -- each one of
8 them?

9 MR. WILDER: Sure.

10 MR. MEADORS: Number 29, Judge, is -- looks like the
11 clothing. It's got oral swabs of Daniel Jackson, Nike
12 shoes. It's all been admitted. The results have already
13 been talked to. This adds nothing except the name Marcus
14 Branch on the back, which we think is not relevant. And
15 respectfully I -- anyway, I stipulated to this chain so she
16 didn't -- he didn't have to bring those witnesses in.

17 Item 28 again showing chain of evidence. It's all the
18 unfired cartridges, the rifle, and the cartridge, Judge.
19 That's all that's on here. It's been testified to what
20 happened. The report's in. I stipulated this chain and
21 for the record, I stipulate now for the chain as I did
22 before. It adds nothing in here except -- I mean, that's
23 it, Judge. It's already in; I stipulated to it.

24 THE COURT: Well, what is your objection to these
25 coming in?

1 MR. MEADORS: Judge, number one, it's already been
2 testified to. They're cumulative. It adds extra evidence,
3 subjective evidence.

4 I stipulated that these witnesses wouldn't have to
5 come in and say this is in our custody and control and move
6 it on. I really thought that's what I was doing, and what
7 I was doing.

8 My objection is that it contains other subjective --
9 it contains the name of Marcus Branch number one, Your
10 Honor.

11 THE COURT: Okay. Can that be deleted and -- let me
12 see the documents.

13 MR. MEADORS: Well, Judge, the problem is there's
14 already some stuff with Marcus in. So, if you delete it...

15 (A PAUSE.)

16 THE COURT: It would be easy enough to mark Marcus
17 Branch out on these. I mean, what you would do is you'd
18 use some Wite-Out and then make another copy, and then you
19 would take out the information along there, and you would
20 have no idea that he even existed as far as these reports.
21 One of them doesn't mention him at all.

22 MR. MEADORS: Correct, that last one I -- yes, sir.

23 THE COURT: The last one doesn't mention him at all.

24 MR. MEADORS: The other thing in chambers Mr. Wilder
25 said he wanted to be argued, wanted to be able to show what

1 these folks had done with the evidence and what decisions
2 they had made.

3 THE COURT: That's a different matter.

4 MR. MEADORS: Okay. All right.

5 THE COURT: But as far as the forms, where it's got
6 Marcus Branch, I think it can be sanitized in such a way
7 that you would never know he was ever on these forms. Now,
8 I'm not conceding.

9 MR. MEADORS: I understand.

10 THE COURT: I'm just trying to work something out.

11 MR. MEADORS: I understand.

12 THE COURT: That gives Mr. Wilder a way to get the
13 forms in without inappropriately damaging your case. Now,
14 I have no problem if he appropriately damages your case
15 because that's what a defense lawyer is supposed to do.

16 MR. MEADORS: Sure.

17 MR. WILDER: Thank you, Your Honor.

18 MR. MEADORS: And I guess my position would be I have
19 -- since I've stipulated to that, a no-show chain, which I
20 agreed to do, those don't need to come into evidence
21 because the testimony would have been that's what it was.
22 I stipulated to it. They were court's -- that's why I was
23 making ---

24 THE COURT: And certainly you'll have an opportunity
25 in closing arguments ---

1 MR. MEADORS: Sure.

2 THE COURT: --- to explain that.

3 MR. MEADORS: And I really thought that's why I was
4 marking as court's exhibit because they weren't coming in,
5 and I was stipulating to it. And I think that kind of
6 helps my case that he just -- why didn't he just offer them
7 if he was trying to do that?

8 MR. WILDER: I can't offer evidence and move for a
9 directed verdict. At least that's the old rule. And also
10 at some point, I was going to try to argue that because I
11 didn't get a severance, I lost my last argument because Mr.
12 Deas put in evidence during my case. So, I didn't want to
13 screw up that. Let me rephrase that. I didn't want to
14 mess that argument up, Judge, by ---

15 MR. MEADORS: I don't think that's the law ---

16 MR. WILDER: --- putting in evidence.

17 MR. MEADORS: --- that you can't move for a directed
18 verdict.

19 THE COURT: I didn't know that was the law.

20 MR. MEADORS: I don't think that's the law.

21 MR. WILDER: Well, it used to be when I started
22 practicing thirty ---

23 THE COURT: I was never taught that as a judge.

24 MR. WILDER: Thirty years ago, that was the case.

25 THE COURT: A lot of things happened thirty years ago.

1 MR. MEADORS: Mr. Deas violated that, didn't he, by
2 moving for a directed verdict.

3 THE COURT: Mr. Deas put in one document, and it was
4 all over with at that point in time.

5 But I am, for this particular witness -- for whatever
6 it's worth, it can be sanitized by using Wite-Out, making
7 another copy of it, and you would never know that Mr.
8 Marcus Branch was on here.

9 MR. WILDER: And thank you.

10 MR. MEADORS: And those three documents, Your Honor,
11 don't, I guess, provide any subjective -- it's just it came
12 in and went out, not, not...

13 THE COURT: And that's basically correct.

14 MR. WILDER: All right. Now, Your Honor, same ---

15 MR. MEADORS: And, Judge, while we're staying on that,
16 and maybe I'm not -- I'm not cautiously paranoid, but the
17 other thing is I don't want Mr. Wilder to argue that we put
18 this in and they didn't, like we were afraid of it or
19 something. That, that's my other thing because I've
20 stipulated to it.

21 THE COURT: Right.

22 MR. MEADORS: You see what I'm saying? I just don't
23 want that to come back and ---

24 MR. WILDER: And again, Judge, he can argue to the
25 jury or tell the jury we stipulated to this. That's ---

1 THE COURT: And you're going to get last argument.

2 MR. MEADORS: Yes.

3 THE COURT: So, I mean, any...

4 MR. WILDER: All right, Your Honor, same situation,
5 Defendant's Exhibit Number 13. This is Selena Kinard's
6 report. I'll hand this up to the court so you can look at
7 that, and that's when the subject actually came up with --
8 and I thought he was going to stipulate the report came in.
9 That's what I thought he was saying. But that's, that's
10 another witness that's under my subpoena.

11 Now, you will recall that she sent word her husband
12 was in an automobile accident or in the hospital or
13 something.

14 THE COURT: Right.

15 MR. WILDER: After she sent word she was on annual
16 leave.

17 THE COURT: All right, this is again another one
18 that's easily sanitized with Wite-Out that would never show
19 Marcus Branch.

20 MR. MEADORS: Thank you, sir.

21 THE COURT: Being a part of it.

22 MR. WILDER: And, Your Honor, there's one from Vernoa
23 Gibson, and I'm looking through that and ---

24 MR. MEADORS: Judge, could we stay on this one for a
25 second? I understand your ruling, and I won't -- I'm not

1 arguing with it.

2 THE COURT: Go ahead.

3 MR. MEADORS: I guess at this point, it's cumulative,
4 too. I mean, it's all in.

5 THE COURT: It might be, but the harm of that over not
6 letting him have anything in is ---

7 MR. MEADORS: Yes, sir.

8 THE COURT: --- is less.

9 MR. MEADORS: I understand.

10 MR. WILDER: And let me find Verona so we can...

11 (A PAUSE.)

12 THE COURT: And again, Mr. Wilder, with the
13 instructions that we sanitize these, I'm really going to
14 hobble you a little that I'm not going to let you go into
15 the fact that Marcus Branch isn't on these documents.

16 MR. WILDER: All right, and I won't talk about that
17 with respect to these documents, Your Honor. But as he
18 said, there are some that are in evidence.

19 THE COURT: As to the ones that are in evidence, you
20 have a right to do that.

21 MR. WILDER: Thank you, Judge. I appreciate that.
22 Let's see here.

23 THE COURT: But I'm not going to let you argue on a
24 document that he has no way to cross-examine.

25 MR. WILDER: I gotcha.

1 MR. MEADORS: How far is Your Honor going to let him
2 go because there's no evidence Marcus Branch had anything
3 to do with this. So, we, we'd ---

4 THE COURT: I think I'd restricted him to say that ---

5 MR. WILDER: Now, now, before, Your Honor, you will
6 recall that Ms. -- one of our last witnesses testified that
7 Marcus did lose his cell phone. Chops lived over in the
8 next house. He was -- that he came over looking for a cell
9 phone the next day. I think ---

10 THE COURT: And I think that's all I allowed you to
11 do. I mean, that's all ---

12 MR. WILDER: Well, but ---

13 THE COURT: --- you're going to be able to do.

14 MR. MEADORS: I mean, I don't think he can argue that
15 he's the killer.

16 THE COURT: I know. Absolutely not. There's not --
17 that's pure speculation.

18 MR. WILDER: Well, Your Honor, with all due respect,
19 I'm, I don't agree with that, and I would ask the court
20 not ---

21 THE COURT: Well, I think third party ---

22 MR. WILDER: --- not to restrict me.

23 THE COURT: To get a third-party guilt charge and
24 argue, you've got to have a substantial amount to show that
25 the person was involved.

1 (DEFENSE COUNSELORS CONFER.)

2 MR. MEADORS: And could I just, just one thing I just
3 thought about. These weren't even marked previously.

4 MR. WILDER: That's true.

5 THE COURT: And it may not have been marked because it
6 may have ---

7 MR. MEADORS: I'm sorry.

8 (ALL COUNSELORS CONFER.)

9 MR. DEAS: Trying to help him out a little bit.

10 MR. MEADORS: Judge, again this is the defendant's
11 clothes which we admitted. I would have objected to the
12 document coming in if she was here, two reasons. The
13 clothes come in. They're already in. It's got Branch's
14 name on it again.

15 THE COURT: Is that easily ---

16 MR. MEADORS: It really adds nothing, Judge.

17 THE COURT: Let me see.

18 MR. MEADORS: And it's just a -- this isn't chain
19 evidence he's providing. It's just not. He's, he's
20 trying ---

21 THE COURT: I know, but I can see where there may have
22 been a misunderstanding. I mean, he had the witnesses
23 here.

24 MR. MEADORS: But ---

25 MR. WILDER: That's true.

1 THE COURT: They were here. They were under subpoena.
2 Evidently, there was a miscommunication to some extent.
3 Whether -- I mean, both of you think there was not a
4 miscommunication. I'm trying to let him just ---

5 MR. MEADORS: You're being judgely, and we appreciate
6 it.

7 THE COURT: --- to make it so that you get what you
8 want, and he gets what he wants without compromising the
9 case.

10 MR. MEADORS: And I guess I'm just saying I would have
11 objected to that document coming in.

12 THE COURT: And that may be, but the fact is based
13 upon your agreeing to the stipulation of the witnesses, and
14 knowing that the witnesses were going to be told to go
15 home, it puts Mr. Wilder in such a position that it would
16 be difficult to recover from.

17 Again, Marcus Branch's name it at the very bottom.
18 So, that can be sanitized to the point that you would not
19 know he exists to the extent there's not a big gap. And
20 again I'm going to restrict Mr. Wilder from arguing why
21 didn't you go and check out Marcus Branch.

22 MR. MEADORS: Thank you.

23 Did y'all want this marked?

24 MR. WILDER: Yes, please, and I'm going to move it in.
25 Now, Your Honor ---

1 MR. MEADORS: She's got to ---

2 MR. WILDER: Excuse me.

3 (SLED REPORT MARKED AS DEFENDANT JACKSON'S EXHIBIT
4 NUMBER 31 FOR IDENTIFICATION.)

5 COURT REPORTER: Defendant's 31 for I.D.

6 MR. WILDER: All right, I did not excuse Dominick
7 West; I asked him to stay with us. So, he's right, right
8 there.

9 THE COURT: Right.

10 MR. WILDER: Now, he testified while he was on the
11 stand that he signed this under oath before a magistrate,
12 that he swore to this. I'm going to move this into
13 evidence, and if he wants to have him on the stand when
14 that happens, I'll recall him.

15 MR. MEADORS: Judge, there's a case that Chief Justice
16 Finney authored that said search warrants themselves should
17 not come into evidence, and I'll find that case.

18 THE COURT: I've never seen a search warrant come into
19 evidence.

20 MR. WILDER: Well, Judge, this is not the search
21 warrant. This is the sworn statement Dominick West.

22 MR. MEADORS: It's part of the search warrant; it's
23 part of the affidavit.

24 THE COURT: It's a part of the search warrant.

25 MR. MEADORS: And there's a case on point, and I

1 think ---

2 THE COURT: It's attached to the search warrant.

3 MR. WILDER: I don't believe the case holds that I
4 can't use -- this is a signed statement under oath by
5 Dominick West. I believe I'm entitled to put it in, and I
6 ask the court to allow me to do it. If you rule that it's
7 inadmissible, we'll move on.

8 THE COURT: It's inadmissible.

9 MR. WILDER: But again ---

10 MR. MEADORS: But, Judge, I think that ---

11 MR. WILDER: I, I don't believe he's going to show --
12 find a case like. I don't -- he may, but ---

13 THE COURT: I've never seen a search warrant come in.

14 MR. MEADORS: Judge, I -- the reason I know it was a
15 case, I was trying to get Chief Justice Finney's son, and
16 Chief Justice Finney was in the -- and it wasn't Chip. It
17 was Jerry. The Chief Justice was in the courtroom, and I
18 actually turned and I thanked Chief Justice Finney for
19 helping the state, and it was about the search warrant.
20 And you're -- this is a part of the search warrant.

21 MR. WILDER: Well.

22 MR. MEADORS: It's not even the full search warrant.

23 MR. WILDER: Well, with all due respect, if there's a
24 case on it, let him show it to Your Honor.

25 MR. MEADORS: Happy to.

1 MR. WILDER: And let, let you read it.

2 THE COURT: We'll look at that before.

3 MR. WILDER: I don't know of a case that would prevent
4 me from putting a sworn statement in.

5 MR. MEADORS: It's a part of a search, part of a
6 search warrant, Judge.

7 THE COURT: Right.

8 MR. MEADORS: And then even if you did, you would have
9 to put the whole search warrant in.

10 MR. WILDER: Well, that would be up to him, I think.

11 MR. MEADORS: But I, but I think that's -- you -- the
12 case says you can't.

13 THE COURT: All right.

14 MR. WILDER: I'm moving it in.

15 THE COURT: All right, provide me the case before we
16 start back at 2.

17 MR. WILDER: All right, and, Your Honor, similar
18 situations with respect to the report of Raymond Mackessy.
19 Now, this one doesn't have Marcus Branch's name on it,
20 but ---

21 THE COURT: Well, Mackessy was here. His report's not
22 coming in. That's not one of the issues we got here.

23 MR. WILDER: Well, but, Your Honor, I couldn't put it
24 in during their case is my point.

25 THE COURT: Why?

1 MR. WILDER: I didn't want to.

2 THE COURT: But that's your decision on that. You
3 could have ---

4 MR. WILDER: Well, Your Honor.

5 THE COURT: --- brought it in.

6 MR. WILDER: I'll bring ---

7 THE COURT: He was here testifying.

8 MR. WILDER: I'll bring Mr. Mackessy back.

9 THE COURT: Okay.

10 MR. WILDER: He's under my subpoena.

11 THE COURT: You can do that.

12 MR. WILDER: Okay.

13 THE COURT: You can try to at that point in time.

14 MR. WILDER: All right.

15 THE COURT: But he's, he was here. He was on the
16 stand. I'm only cutting you a break because there was a
17 miscommunication.

18 MR. WILDER: Yes, sir.

19 THE COURT: And you sent three people back to
20 Columbia, so I'm trying to work with you, but anybody else
21 that was on the stand, it was your decision not to put it
22 in.

23 MR. WILDER: During their case.

24 THE COURT: Right.

25 MR. WILDER: Right.

1 THE COURT: Mr. Deas was able to put stuff in during
2 their case.

3 MR. WILDER: Yes, he was.

4 THE COURT: And so just because you make the decision
5 not to, and that was -- you're going to have to live with
6 that decision. You don't get to do that and then say,
7 well, I want it this way, too.

8 MR. WILDER: Well, then, Your Honor, I will have to
9 put these people back on the stand.

10 MR. MEADORS: Your Honor, I'd object to that. There's
11 no new testimony they're going to offer. He's already
12 testified to everything that's in this report, and I object
13 to that report coming in. I don't think he can recall ---

14 THE COURT: I don't know whether the report's coming
15 in. He can testify. If he thinks he -- I'm not going to
16 -- I think he's got a right to move forward on his case.
17 Whether it's effective or not, I don't know.

18 MR. MEADORS: And I ---

19 THE COURT: If he wants to call a witness who was one
20 of your witnesses and question, he has a right to do that.

21 MR. MEADORS: Yes, sir, I didn't know what ---

22 THE COURT: He's also bound -- again, this is his
23 witness at this point in time on direct examination.

24 MR. MEADORS: And I wasn't trying to argue with the
25 court. I really wasn't. I thought he said, well, I'll

1 call him back then. So, it's ---

2 THE COURT: That doesn't mean the document is coming
3 in.

4 MR. MEADORS: But, but -- okay. I just think it's
5 going to be the same testimony, and I don't think he can
6 call back the same witnesses.

7 THE COURT: Well, you know, we've been here all week.
8 If we have a little bit of duplicative ---

9 MR. MEADORS: You know what? I'm thinking, I'm
10 thinking to myself it's his -- I apologize.

11 THE COURT: It's his case.

12 MR. MEADORS: You're right.

13 THE COURT: Yeah. I told y'all from the very
14 beginning ---

15 MR. MEADORS: I totally, I totally ---

16 THE COURT: He needs to try his case, and you need to
17 try yours.

18 MR. MEADORS: I was wrong; I apologize.

19 THE COURT: Thank you.

20 MR. WILDER: All right, Your Honor, I would now move,
21 then, for whatever he'd like to -- effect he'd like to have
22 it argued Defense Exhibit for I.D. 8.

23 MR. MEADORS: Can I look at it?

24 MR. WILDER: Sure. 8, 11, 9, 10, 6, 7, Defense
25 Exhibit Number 3, which is a DNA report, Your Honor.

1 THE COURT: All that's been testified to.

2 MR. MEADORS: I would object to all these. The
3 witnesses were here.

4 THE COURT: Yeah, I'm not ---

5 MR. MEADORS: And could they have been provided ---

6 MR. WILDER: Move Defendant's Exhibit Number 21, the
7 cotton swab.

8 MR. MEADORS: Judge, that's into evidence, and I would
9 object.

10 MR. WILDER: Defendant's Exhibit Number 22 into
11 evidence.

12 MR. MEADORS: And again, 21 and 22 are part of a
13 search warrant.

14 MR. WILDER: 23.

15 MR. MEADORS: Object to both of those. Object to 23.
16 The DNA officer was here and testified.

17 MR. WILDER: 24.

18 MR. MEADORS: Your Honor, 24 is just a latent card of
19 Marcus.

20 MR. WILDER: It's where Marie Hodge testified, Your
21 Honor.

22 MR. MEADORS: And she was here, Your Honor.

23 THE COURT: She was here.

24 MR. MEADORS: We object to that.

25 THE COURT: And you -- she's already been

1 cross-examined on that. Is that correct?

2 MR. WILDER: We'll move ---

3 MR. MEADORS: Yes, sir.

4 THE COURT: Yes.

5 MR. WILDER: --- 25 into evidence.

6 MR. MEADORS: 25 is Jack Parrott, and he was here.

7 THE COURT: He was here.

8 MR. WILDER: This is a witness's statement, Defense
9 26. We'd move that into evidence.

10 MR. MEADORS: This is hearsay. It was Larry Archie's
11 statement, who didn't testify. We would object to that.

12 MR. WILDER: 27 we'd move into evidence.

13 MR. MEADORS: That's a part of a search warrant from
14 Clarendon County. We'd object to 27.

15 MR. WILDER: 18 we'd move into evidence.

16 THE COURT: He's just making a record.

17 MR. MEADORS: Lashawnda, that's that in evidence. I
18 agreed to that.

19 MR. WILDER: Oh, okay. Must have had another one.

20 THE COURT: That was Lashawnda Canty?

21 MR. MEADORS: Yes.

22 MR. DEAS: Yes.

23 MR. WILDER: Must have another copy of that then.
24 Okay.

25 THE COURT: Yes, because that went in just a little

1 while ago.

2 MR. WILDER: That, that one we got in, okay. We'd
3 move ---

4 MR. MEADORS: Your Honor, I don't know if I said
5 objection to all of the first ones when he started. Maybe
6 I'd better go back through for the record.

7 THE COURT: I'm taking it that each, all these, you
8 were objecting to.

9 MR. MEADORS: Yes. Yes, sir.

10 MR. WILDER: And I'm just trying to do this as
11 efficiently as possible, Judge.

12 THE COURT: That's right.

13 MR. WILDER: To make the record. Defendant's Exhibit
14 Number 12, which is the log report.

15 MR. MEADORS: Your Honor, that was cross-examined on.

16 THE COURT: Many times.

17 MR. MEADORS: I'd also object.

18 MR. WILDER: We'd move Defendant's Exhibit Number 17
19 into evidence.

20 MR. MEADORS: That's the statement by Henry Parker.
21 We'd respectfully say it's hearsay. Object.

22 MR. WILDER: We'd move Defendant's Exhibit 14 into
23 exhibit, into evidence.

24 MR. MEADORS: It's a picture of somebody I don't even
25 know, Your Honor.

1 MR. WILDER: Curtis Wheeler.

2 MR. MEADORS: I'd object to it.

3 MR. WILDER: Your Honor, I'd remind the court that
4 Isaac Boyd was on the stand. Identified that as Curtis
5 Wheeler.

6 MR. MEADORS: And he could have offered it then.

7 MR. WILDER: Well, I'm offering it now.

8 THE COURT: No, sir. You had your opportunity, Mr.
9 Wilder. You have to do it by the rules. You chose another
10 tactic of not trying get it, then something came in.
11 You're not going to get that second bite at the apple on
12 people who were here. I did it for three people who were
13 sent back to Columbia. I'm not doing it for any more, and
14 I'm not going to allow it.

15 MR. WILDER: All right. Respectfully, Your Honor, I
16 am asking that these be allowed in evidence before the
17 jury, and I'm so moving that the court admit them into
18 evidence.

19 THE COURT: And I respectfully deny your motion.

20 MR. WILDER: I understand. All right, we move
21 exhibits 15 into evidence.

22 MR. MEADORS: And we'd object to this, Your Honor.
23 It's -- that's not signed by anybody. It's an activity
24 control form. It about him turning himself in, and I think
25 he covered that with Dominick. Your Honor, we would

1 respectfully object to these, and we just ---

2 THE COURT: And your objection is sustained.

3 MR. MEADORS: Thank you.

4 MR. WILDER: And, Your Honor, we'd move Defendant's
5 Exhibit Number 2 into evidence at this time.

6 MR. MEADORS: Your Honor, this ---

7 MR. WILDER: As part of our case.

8 MR. MEADORS: Respectfully, this was the incident from
9 four days prior which contained all the names in here.

10 THE COURT: And I've already ruled on those.

11 MR. WILDER: That's true, Your Honor, but at this
12 point, I would argue that we have now had testimony of who
13 does live at that lot. Anthony Rush, Donovan Shields, and
14 Marcus Branch are all named in that, in that incident
15 report as having been involved in this robbery attempt days
16 before. And we believe that that is material now and
17 should come in in spite of the fact that it is a separate
18 case number.

19 But with all due respect, now that the other testimony
20 has come in, we believe that the fact that this happened is
21 very relevant to this case. It is very material, and would
22 prejudice the defense and result in an unfair trial in our
23 not being able to admit it.

24 THE COURT: Mr. Meadors.

25 MR. MEADORS: Judge, this is an incident that happened

1 four days prior. Establishing that somebody lives in a
2 certain house and trying to bring in an incident four days
3 before, respectfully, we think is not relevant and is very
4 prejudicial to the state. We respectfully ask Your Honor
5 -- and it's hearsay in here, too, Judge.

6 THE COURT: And I'm going to rule this inadmissible.

7 MR. MEADORS: Thank you.

8 MR. WILDER: All right, Your Honor, and then
9 Defendant's Exhibit 5, which is the photo log which he
10 stood up and said he'd let all the photos come in.

11 MR. MEADORS: But then he said, you know, I don't know
12 if I want to do that.

13 THE COURT: Yeah.

14 MR. WILDER: Well, I was waiting until it was my case,
15 Your Honor, and now it's my case.

16 THE COURT: But you're, again, you're trying to play
17 one hand, a decision. And then because I didn't grant your
18 directed verdict ---

19 MR. WILDER: That's right.

20 THE COURT: --- you want it played the other way. I'm
21 not going to allow you to do that. You could have put that
22 in during your case as well.

23 MR. WILDER: Your Honor, with all due respect, and
24 that's what the courtroom's for. I'm going to do exactly
25 what you tell me to do. There's never going to be any

1 question about that.

2 THE COURT: I know.

3 MR. WILDER: But I do need to make my record for
4 appellate purposes.

5 THE COURT: And I take no offense to that, Mr. Wilder.

6 MR. WILDER: Thank you.

7 THE COURT: You have made your record for appellate
8 purposes, but my ruling stands.

9 MR. WILDER: Now, Your Honor.

10 MR. MEADORS: Can I say, just follow up for the
11 record? Number, Number 5, he chose on the record not to
12 put it in and with the witness here.

13 MR. WILDER: All right. Now, Your Honor, I would like
14 to make a motion in some way, in some fashion that the
15 court approves of -- so that the record is made complete --
16 with the jury to where we know that all of these things I'm
17 asking to be allowed, to do in front of the jury. Or to
18 have Your Honor ruling, rule, rule that the proffers that
19 I'm making, things that I'm offering for evidence, I'm
20 doing so, it would be my intention to do that in front of
21 the jury except for the court ruling against me in this
22 case.

23 THE COURT: I understand.

24 MR. WILDER: And I'm not -- and really, I know some
25 lawyers will try that in front of a jury and make a big

1 scene about it. I'm not trying to do that. I'm just
2 trying to make my record. And if Mr. Meadors agrees that I
3 don't have to do it in front of the jury in order to
4 preserve the record, then I'm fine with that procedure.

5 MR. MEADORS: I do.

6 THE COURT: I think that's the whole purpose of doing
7 it that way.

8 MR. MEADORS: That's why I asked them to leave.

9 THE COURT: So it doesn't taint the jury.

10 MR. MEADORS: That's right.

11 THE COURT: And then have to have me rule it's
12 inadmissible, and then they still hear it. So, I think if
13 we try this ---

14 MR. WILDER: All right, and my argument is, is that by
15 so ruling, my client is being denied a fundamentally fair
16 trial.

17 THE COURT: And I understand that, but I don't agree
18 with it. But I still am keeping my ruling as I did.

19 MR. MEADORS: And could I say, though, for the record,
20 Your Honor, what he would be trying to do is offer in front
21 of the jury evidence Your Honor has found irrelevant or not
22 admissible, knowing that in advance. And so I don't know
23 what the purpose would be in front of the jury except it
24 looked like the state would be trying to hide something
25 when Your Honor has already ruled it's admissible.

1 THE COURT: That's correct. Nice try, but I'm not
2 going to allow you to do that. Is your record preserved as
3 you want it?

4 MR. WILDER: Your Honor, I, I don't know why these two
5 are still sitting over here because I wanted to make sure
6 that the Defendant's Exhibit 4 for I.D. and 20, I'm asking
7 that they also come into evidence.

8 MR. MEADORS: Your Honor, again, 20 was a part of the
9 search warrant. Dominick West was here. We'd object to
10 that, and another one is the Ray Mackessy fingerprint card
11 of Marcus Branch. We'd object to both of them, 20.

12 THE COURT: All right.

13 MR. WILDER: And now, Your Honor.

14 MR. MEADORS: 20 and, 20 and 4.

15 MR. WILDER: I have this question. If I put Dominick
16 back on the stand and I begin to -- and I then ask him
17 questions from the things that have been disallowed, move
18 them into evidence ---

19 THE COURT: Not if they've already been asked and
20 answered. We're not going to redo this trial. I mean,
21 we're not going to redo it.

22 MR. WILDER: So, it's Your Honor's ruling that if he's
23 on ---

24 THE COURT: If it's going to bring up different
25 testimony, you can certainly do it. But if it's going to

1 be the same rehash of what you've already cross-examined
2 him on ---

3 MR. WILDER: All I want to do, Your Honor, is put the
4 documents in.

5 MR. MEADORS: Your Honor.

6 THE COURT: The documents don't necessarily come in.
7 So, just because I'm not going to -- I mean, if he's here
8 to testify, he can testify to it, and he's already
9 testified to it.

10 MR. WILDER: That's true.

11 THE COURT: But I'm not going to let the documents
12 come in.

13 MR. WILDER: You're not going to let them in?

14 THE COURT: Right.

15 MR. WILDER: All right. That's the ruling, and I
16 respectfully ask the court to change it, but ---

17 THE COURT: Yes, sir. Thank you.

18 MR. WILDER: --- if you won't, I understand.

19 MR. MEADORS: Mr. Deas.

20 MR. DEAS: Well.

21 MR. MEADORS: That's already in.

22 MR. DEAS: Well, 18, Defendant's 18 is already in, I
23 believe. That's Lashawnda Canty's statement.

24 THE COURT: That's in.

25 MR. DEAS: That's in.

1 MR. MEADORS: That's all we have.

2 THE COURT: All right, is there anything else before
3 we take a quick lunch break?

4 MR. MEADORS: No, sir.

5 THE COURT: All right, we'll be adjourned until 2:00.

6 MR. MEADORS: Judge, can you tell us the plans? Are
7 we going to go forward at 2?

8 THE COURT: We were going to -- Mr. Wilder is going to
9 go ahead with his case. I don't know how we can possibly
10 at this point argue and charge this afternoon. I would
11 imagine you're going to take at least an hour.

12 MR. MEADORS: I'll try not to.

13 THE COURT: You will probably take at least an hour,
14 and you're going to take at least an hour. I can't imagine
15 that you would be able to do that -- that gives it to the
16 jury at 6:00, and I don't know that I want to do that.

17 So, I will stick to the current plan. We will finish
18 the testimony today. We have gotten -- I've done drafts of
19 the charge by me, but I need y'all to have time to look
20 over and present any additional proposed charges. I don't
21 see how we can do anything other than bring the jury back
22 tomorrow morning at 9:30 to start, if that gives everybody
23 an idea. And that will give y'all the evening to work on
24 your closing arguments if you need to.

25 MR. WILDER: Well, Your Honor, it may be I just want

1 to close. I'm going to talk, spend my lunch hour
2 talking ---

3 THE COURT: Well, that's a different matter.

4 MR. WILDER: Sir?

5 THE COURT: If you want to close at 2:00, we'd still
6 have to take up a few motions. But if we can -- I may, I
7 may see what the jury wants to do as to whether they want
8 to stay here.

9 But over lunch, y'all need to look at the proposed
10 charge and see if there are any additions.

11 MR. MEADORS: I guess the other thing, thinking about
12 today or tomorrow, and I'm fine either way. But one thing
13 we do have to do which may take some time.

14 THE COURT: And y'all need to go back and redact those
15 statements in a purified way because I know ---

16 MR. MEADORS: I don't know, I don't know if we can get
17 that done by 2. I don't know.

18 THE COURT: All right, then let's stick to the
19 original schedule. We will let the jury, if they go a
20 little bit early today, they may go a little bit early, but
21 they're going to need to be back here at 9:30. I hate to
22 bust up everybody's Saturday.

23 MR. WILDER: Your Honor, there is something else that
24 we need to proffer. And I think right now would be a good
25 time because -- rather than wait until after lunch.

1 Now, last week, we had some testimony from a Ms. Robin
2 Kreib, and I believe the way we left it, I got a little
3 transcript of it.

4 THE COURT: When was this?

5 MR. WILDER: Last week before this.

6 THE COURT: Oh, before I was involved.

7 MR. WILDER: Before you were involved. It was a
8 proceeding in front of Judge James, I believe it was. And
9 her testimony was to the effect that she found a Master
10 Card, it belonged to William Flexon, in the Tuomey Hospital
11 parking lot, Tuomey Hospital parking lot some months after
12 this incident. And I've got the exact date and all that in
13 the testimony.

14 Your Honor, I believe the stipulation from the state
15 at that time was that we didn't need to have her present.
16 We could use the transcript, but that he was going to
17 reserve making a motion as to whether or not it was
18 material or ---

19 MR. MEADORS: Relevant.

20 MR. WILDER: Relevant.

21 THE COURT: What would be the relevance of that?

22 MR. WILDER: Well, my argument is my client was locked
23 up for the period of time following when he turned himself
24 in to law enforcement all the way through the time that the
25 Master Card was found in the Tuomey Hospital parking lot.

1 And, therefore, whoever robbed Mr. Flexon was out there
2 running around with something they stole from him and
3 came ---

4 THE COURT: That is a stretch.

5 MR. WILDER: Well, I, I'm going to move it into
6 evidence and let him object and let Your Honor rule.

7 THE COURT: All right.

8 MR. WILDER: And it sounds like it's going to follow
9 the procedure that we're done already, and I'm not trying
10 to sandbag that in front of the jury either. I just, I
11 just want to put it on the record.

12 THE COURT: All right, go ahead. You want to go ahead
13 and move it in at this point in time?

14 MR. MEADORS: Probably the correct procedure, the
15 state would tell Your Honor she, she had a subpoena. She
16 had a trip to Pennsylvania. She was under subpoena. To
17 help her out, we took her statement here so she could go on
18 her trip that she'd planned for a year.

19 It happened months after the incident, and we just
20 don't see any relevance at all. And I told Mr. Wilder, and
21 I think it's reflected in that transcript that I would
22 object to that.

23 MR. WILDER: And he did preserve his objection.

24 THE COURT: Okay.

25 MR. WILDER: I'm not, not trying to pull a fast one on

1 his either, but I would move it into evidence when I put my
2 hand on it.

3 THE COURT: All right, and your objection would be?

4 MR. MEADORS: Judge, it's six months. I can't
5 remember the exact number of months afterwards. A credit
6 card was found by this lady, Ms. Robin Kreib, K-R-E-I-B, I
7 think. It has no relevance to the murder.

8 THE COURT: It's like a -- you don't know when it
9 might have gotten lost.

10 MR. MEADORS: Right.

11 THE COURT: It could have been lost before.

12 MR. MEADORS: It could have been when they took him to
13 the hospital, it fell out of his -- I, I don't ---

14 THE COURT: I mean, it's just like the shell casing.
15 I mean, the shell casings come in, but we have, we have no
16 idea as to where they came from, when, when they were fired
17 in the gun. There's nothing.

18 MR. MEADORS: Judge, I don't want to add to it, but
19 that other --- well, never mind. I won't say that.

20 MR. WILDER: Can we just -- I'll find it over lunch
21 and give it to the court reporter.

22 THE COURT: All right. Yes.

23 MR. WILDER: But that's our proffer.

24 THE COURT: Okay. Anything else before we break for
25 lunch? All right, court is in recess until 2 p.m.

1 MR. MEADORS: Thank you.

2 (OFF THE RECORD.)

3 THE COURT: All right, Mr. Wilder.

4 MR. WILDER: Thank you, Your Honor. At this point, we
5 would hand up for the court to mark as an exhibit the
6 testimony of Ms. Kreib that we referred to, and this would
7 be the lady that found the Master Card in the Tuomey
8 parking lot, parking lot.

9 (MASTER CARD MARKED AS DEFENDANT JACKSON'S EXHIBIT
10 NUMBER 32 FOR IDENTIFICATION.)

11 COURT REPORTER: Defendant's 32 for I.D.

12 MR. WILDER: I got a extra copy if you want to look at
13 it.

14 THE COURT: No. Okay. Well, I was just going to look
15 at this one.

16 MR. WILDER: Okay, Your Honor, we would ask to move
17 this into evidence in front of the jury also.

18 (A PAUSE.)

19 THE COURT: All right, Mr. Meadors.

20 MR. MEADORS: Your Honor, this was roughly five months
21 after the incident. Ms. Kreib has no knowledge of the
22 incident itself. I think I already even asked her that in
23 here. We just don't see how this could be relevant to the
24 incident on January 12th of '08, and we'd respectfully ask
25 Your Honor not allow it.

1 THE COURT: Mr. Wilder.

2 MR. WILDER: We would move it into evidence, and move
3 to be allowed to move it into evidence and publish it to
4 the jury.

5 THE COURT: All right, this is a card that was found
6 four months after. We don't know when. It was lost. We
7 don't know how somebody could have come in -- I mean, it
8 would, it would spin off into just rampant speculation, and
9 I'm going to disallow it. I'm going to ---

10 MR. MEADORS: Thank you.

11 THE COURT: --- exclude it from evidence.

12 Anything further?

13 MR. MEADORS: Nothing from the state.

14 MR. WILDER: May I talk with my client a moment?

15 THE COURT: You may.

16 How long do you think it will take you to sanitize
17 those statements that we had to make them so that they're
18 not obvious?

19 (A PAUSE.)

20 MR. WILDER: May it please the court?

21 THE COURT: Yes, sir.

22 MR. WILDER: My client would respectfully like to talk
23 to his aunt about whether or not he should testify.

24 THE COURT: He may. We'll set up the same
25 circumstances as you did with Mr. Canty. Please make sure

1 she's secure, and then have the deputy available out of
2 earshot but within presence.

3 MR. WILDER: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 MR. WILDER: And what else? Are they just going
6 through the exhibits?

7 THE COURT: I think just to see what...

8 (OFF THE RECORD.)

9 MR. WILDER: All right, Your Honor, is it okay to go
10 back on the record?

11 THE COURT: Yes, sir.

12 MR. WILDER: All right, Your Honor, my client has had
13 an opportunity to speak with his aunt. And he advises me
14 that he does not wish to testify.

15 THE COURT: And he had told me that earlier.

16 MR. WILDER: That is correct.

17 THE COURT: But I gave him an opportunity to change
18 his mind. Apparently he has not changed his mind.

19 MR. WILDER: He has not changed his mind, Your Honor.
20 Thank you.

21 THE COURT: Do you have any other witnesses, Mr.
22 Wilder?

23 THE COURT: Your Honor, I would ask that you inquire
24 of my client to make sure that he hadn't changed his mind.

25 THE COURT: All right, Mr. Jackson, would you please

1 stand?

2 MR. JACKSON: Yes, sir.

3 THE COURT: You're still under oath from a little
4 while ago.

5 Mr. Jackson, you've now had an opportunity to speak to
6 Mr. Wilder again. You've had an opportunity to speak
7 privately with your aunt, Ms. Boyd. Is that correct?

8 MR. JACKSON: Yes, sir.

9 THE COURT: Okay. A little while ago, you told me
10 when I went through the whole litany of questions that you
11 did not want to testify. Is that correct?

12 MR. JACKSON: Yes, sir.

13 THE COURT: After talking with Mr. Wilder and Ms.
14 Boyd, do you still wish to not testify?

15 MR. JACKSON: I don't want to testify.

16 THE COURT: Very good. Thank you.

17 MR. WILDER: Thank you, Judge.

18 (A PAUSE.)

19 THE COURT: Are we ready to proceed?

20 MR. WILDER: Your Honor, I've talked it over with my
21 client. We wish to close our case, and we're ready to
22 proceed if you'd like for me to do that in front of the
23 jury.

24 THE COURT: Yes. We will need to do that in front of
25 the jury.

1 All right, please bring the jury.

2 (THE JURY ENTERS AT 2:30 P.M.)

3 CLERK OF COURT: Your Honor, all jurors are present in
4 the courtroom.

5 THE COURT: All right, Thank you, Mr. Bradley.

6 Ladies and gentlemen, hope you had a nice lunch. Got
7 your jackets on. It's kind of funny. Before, you were
8 going back there to break to cool down. Now you're going
9 back there to warm up. My office is the same way.

10 All right, Mr. Wilder, you ready to proceed?

11 MR. WILDER: Yes, Your Honor. Defendant Jackson at
12 this time would rest, and renew our motions that were
13 previously raised.

14 THE COURT: Yes, sir. All right, thank you.

15 Mr. Meadors, does the state intend to have reply
16 testimony?

17 MR. MEADORS: Your Honor, the state has nothing in
18 reply. Thank you, sir.

19 THE COURT: All right. Thank you.

20 All right, ladies and gentlemen, I'm going to send you
21 back to the jury room for a few moments, and then we'll
22 bring you back out here to discuss where we may be going
23 from this point. All right, thank you. Please do not
24 discuss anything about the case.

25 (THE JURY EXITS AT 2:31 P.M.)

1 MR. WILDER: Your Honor, the motions that I asked to
2 be renewed were the motions for directed verdict of not
3 guilty, for mistrial. I'd ask the court observe for the
4 record that our motion for mistrial be composed of the
5 various things that I asked to be moved into evidence that
6 were not moved into, allowed to be moved into evidence, the
7 things that I've proffered that were not into evidence.

8 And, Your Honor, the fact that we had a severance
9 motion and that was denied, and that we now are in a
10 situation where redacted testimony has got to be produced
11 to the jury. It's always an uncomfortable position for a
12 case to be in.

13 And, Your Honor, the various objections of things that
14 the state made that were sustained, we would respectfully
15 ask for a mistrial on grounds -- on all those grounds. And
16 those would be our motions.

17 In addition to the -- now we feel at the close of all
18 the evidence, the state has now shut down. It's, it's
19 not going to offer any reply. Now we know that either
20 the redaction wasn't successful, or we believe that there
21 has been no evidence at all Daniel Jackson has been proved
22 to ---

23 THE COURT: What do you mean the redaction wasn't
24 successful?

25 MR. WILDER: Oh, either ---

1 THE COURT: When we haven't completely -- we've got to
2 go back and change things.

3 MR. WILDER: Right.. What I mean by that, Your Honor,
4 either the redaction is not successful and somehow evidence
5 slipped in from Mr. Canty against my client is what I'm
6 trying to say. Or that the -- we're stuck with the
7 evidence we got, which I don't believe proved him guilty at
8 all of a murder or an armed robbery. Daniel Jackson, that
9 is.

10 THE COURT: All right, Mr. Meadors.

11 MR. MEADORS: Your Honor, I stand on my previous
12 arguments.

13 THE COURT: All right, and I'm going to, having heard
14 the previous arguments and heard your argument, I am going
15 to respectfully deny your motion for directed verdict.

16 Do you need to make a motion as well?

17 MR. DEAS: No, sir, other than the fact that I renew
18 my same motion from before for directed verdict of not
19 guilty.

20 THE COURT: All right. Very well. That is as well
21 denied.

22 MR. MEADORS: Your Honor asked me to get a case. It's
23 *State vs. Johnson*, 512 S.E. 2d. 795. If you don't have a
24 copy of it, I'll get it to the court, but that's the cite.

25 THE COURT: All right, and I thought about that over

1 lunch as well. Normally your way of resolving any
2 perceived untruthfulness in a search warrant would be
3 through a motion to suppress. That the search was illegal
4 because of that, not bringing it up in court. So, I'm
5 satisfied with my ruling on that.

6 Have y'all had an opportunity to review the proposed
7 charge?

8 MR. MEADORS: Quite honestly I haven't, but I'm sure
9 it's fine. I'll say ---

10 THE COURT: Well, I mean, no. I mean, I'm just trying
11 to give y'all something because, I mean, if we can give it
12 to the jury today, that would be nice to do. If it's going
13 to take a while to get the case ready to start giving it to
14 the jury, then I would rather make sure they have plenty of
15 time.

16 Of course, I'm going to ask them if they want to
17 proceed today. Are y'all ready to proceed today if we ---

18 MR. DEAS: Well, Your Honor, I did have some request
19 for charges that could be some charges that aren't included
20 in your charges that you prepared.

21 THE COURT: Why don't we go back to my office, take a
22 few minutes and go back there and see where we're at?

23 Court will be in recess until the call of the court.

24 (OFF THE RECORD.)

25 MR. MEADORS: Your Honor, for the record, the defense

1 attorneys, with the aid of Investigator Mims, have copied
2 the originals, whited out the originals in evidence being
3 3, 4 -- 3, 5, and 7.

4 THE COURT: You actually copied them and then whited
5 out the copies, correct?

6 MR. DEAS: That is correct.

7 THE COURT: Because there's got to be the originals.
8 It's always goes to ---

9 MR. MEADORS: Copied them. Whited out the copy.
10 Copied them.

11 THE COURT: Right.

12 MR. MEADORS: And then inserted either another person
13 or other person, exact language that was read into the
14 record. Is that correct?

15 THE COURT: In a pen that's similar?

16 MR. MEADORS: And in an honorable person's pen, we put
17 it in, Your Honor.

18 THE COURT: Oh, thank you. Thank you.

19 MR. MEADORS: In similar ink, yes, sir.

20 THE COURT: Right.

21 MR. MEADORS: I think all parties have looked at them
22 and agree. It is the judge's pen.

23 THE COURT: Although you may object -- I understand
24 your objection runs -- at least in such a fashion that it
25 looks like was mine.

1 MR. MEADORS: Judge, now we come to -- the court
2 reporter had asked, so we have two 3, 5s, and 7s, two sets
3 of them. The original set and the redacted set.

4 THE COURT: Right, and they just need to be marked as
5 such for appeal purposes.

6 MR. WILDER: And, Your Honor, for the record, our
7 objection to doing it this way runs throughout.

8 THE COURT: Yes, sir.

9 MR. WILDER: Thank you.

10 THE COURT: Now, how about the other things that I had
11 said should go in with the Marcus? Did y'all work that
12 out? The three ---

13 MR. MEADORS: I'll be honest with you. We didn't, but
14 I -- can I just ---

15 THE COURT: Well, just make sure that gets taken care
16 of just like the others.

17 MR. MEADORS: Before the jury.

18 THE COURT: Before it goes to the jury.

19 MR. MEADORS: Just the ones that are already in
20 evidence? It won't take me two seconds.

21 THE COURT: It was just three documents.

22 MR. MEADORS: Right. I was going to look at the other
23 ones.

24 (OFF THE RECORD.)

25 THE COURT: How about let me -- the court reporter

1 suggested this. That the originals, I'm going to turn into
2 court exhibits. That way, they're still part of the
3 record, but there's no chance that they will end up going
4 back to the jury.

5 MR. DEAS: That's, that's fine.

6 MR. WILDER: I think that's good.

7 MR. DEAS: Definitely.

8 MR. MEADORS: Thank you.

9 COURT REPORTER: 10, 11, and 12.

10 THE COURT: Okay.

11 (VOLUNTARY STATEMENT [ORIGINALLY STATE'S EXHIBIT
12 NUMBER 3] MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER
13 10.)

14 (VOLUNTARY STATEMENT [ORIGINALLY STATE'S EXHIBIT
15 NUMBER 5] MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER
16 11.)

17 (VOLUNTARY STATEMENT [ORIGINALLY STATE'S EXHIBIT
18 NUMBER 7] MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER
19 12.)

20 MR. MEADORS: Judge, we'll just do the same procedure
21 on the others and white out Branch's name.

22 THE COURT: All right.

23 MR. MEADORS: That will probably just be easier.

24 THE COURT: Anything further before we bring the jury
25 back in?

1 (OFF-THE-RECORD BENCH CONFERENCE.)

2 MR. MEADORS: May it please the court?

3 THE COURT: Yes, sir.

4 MR. MEADORS: I am putting in Mr. Wilder's evidence, I
5 want the record to reflect, so this should be ---

6 MR. WILDER: He kept me from keeping -- putting in a
7 lot of it. I appreciate him doing one of them for me.

8 MR. MEADORS: This was Defendant's 28, SLED laboratory
9 forensic services lab request. This was the cartridges,
10 Judge.

11 THE COURT: Right, and it now does not have Marcus
12 Branch's name on it?

13 MR. MEADORS: That's correct, sir.

14 MR. WILDER: And that would be in evidence.

15 THE COURT: That's in evidence.

16 (SLED REPORT MARKED INTO EVIDENCE AS DEFENDANT
17 JACKSON'S EXHIBIT NUMBER 28.)

18 MR. MEADORS: Defendant's 30, which is SLED forensic
19 services lab request to have the one cartridge casing which
20 does have Branch's name on it.

21 THE COURT: And that will be redacted to remove his
22 name.

23 (SLED REPORT MARKED INTO EVIDENCE AS DEFENDANT
24 JACKSON'S EXHIBIT NUMBER 30.)

25 MR. MEADORS: With the consent of everybody, we're

1 going to give it to Sheriff Mims while we're arguing.

2 MR. WILDER: All right, Your Honor, when we say
3 consent, I would want the whole thing in there, but I
4 understand the court's ruling to redact the ---

5 THE COURT: All right, I've already ruled ---

6 MR. WILDER: You've ruled on that.

7 THE COURT: Right.

8 MR. WILDER: And so ---

9 MR. MEADORS: That's what I meant.

10 MR. WILDER: I'm not trying to ---

11 MR. MEADORS: It's consent that Mr. Mims ---

12 THE COURT: Consent that Mr. Mims will do it.

13 MR. WILDER: Right.

14 THE COURT: Okay.

15 MR. MEADORS: And ---

16 MR. WILDER: I'm more than happy with Mr. Mims taking
17 care of that.

18 MR. MEADORS: 29 is ---

19 MR. WILDER: He'll do a good job.

20 MR. MEADORS: Looks like the stuff from the autopsy.
21 29 does have Marcus Branch on it. Into evidence.

22 (SLED REPORT MARKED INTO EVIDENCE AS DEFENDANT
23 JACKSON'S EXHIBIT NUMBER 29.)

24 THE COURT: And I think I had further instructions
25 that since Marcus Branch's name is not on there, Mr. Wilder

1 would not be able to reference those forms concerning
2 Marcus Branch.

3 MR. WILDER: As to those forms, yes, Your Honor. I
4 understand that instruction.

5 THE COURT: And I have further instruction that as far
6 as you were able to go on the other testimony was that you
7 were able to say that Marcus Branch went and got a phone.

8 MR. WILDER: Sir?

9 THE COURT: That he went and picked up his phone. I
10 think that's my earlier ruling.

11 MR. WILDER: I can, I can go into that part of it.

12 THE COURT: Yeah, that he went over there to get a
13 phone.

14 MR. WILDER: Right.

15 MR. MEADORS: Judge, talking to co-counsel here, we're
16 just going to leave them. Since there are already some in
17 there, I'm just going to leave them. It may cause it worse
18 if we tried to change it.

19 THE COURT: All right.

20 MR. MEADORS: It is what it is. We'll withdraw the...

21 THE COURT: Sure.

22 MR. WILDER: All right, so those four things are now
23 in evidence.

24 THE COURT: They are now in evidence.

25 MR. MEADORS: And I did not move -- Mr. Wilder was on

1 the record -- into evidence, and she needs me to do that.

2 This is 31 we're moving in, and Your Honor has got it.

3 THE COURT: Right.

4 (SLED REPORT MARKED INTO EVIDENCE AS DEFENDANT
5 JACKSON'S EXHIBIT NUMBER 31.)

6 THE COURT: All right, is there anything else before
7 we bring the jury back in?

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

9 THE COURT: We want it to go smoothly from this point.

10 MR. DEAS: Your Honor, I want to make a court exhibit
11 my jury charges, my request for jury charges.

12 THE COURT: Yes, sir.

13 MR. DEAS: Make it a court's.

14 THE COURT: I think you wanted, you wanted a mere
15 presence, which is already in.

16 MR. DEAS: Correct.

17 THE COURT: You want to make sure that we had separate
18 defendants.

19 MR. DEAS: That's correct.

20 THE COURT: Which is already in there.

21 MR. DEAS: And I asked for a withdrawal instruction.

22 THE COURT: Right, and there was no evidence of
23 withdrawal.

24 MR. DEAS: So, on the record you're denying our
25 request for a withdrawal ---

1 THE COURT: Absolutely. Yes, sir.

2 MR. DEAS: --- instruction.

3 (JURY CHARGE FOR DEFENDANT CANTY MARKED INTO EVIDENCE
4 AS COURT'S EXHIBIT NUMBER 13.)

5 COURT REPORTER: Court's 13.

6 MR. WILDER: And, Your Honor, I had asked for a charge
7 of accident, and also a charge on accessory after the fact.

8 THE COURT: Yes, sir, and Mr. Meadors wanted to be
9 heard on that.

10 MR. MEADORS: Judge.

11 THE COURT: There's no -- well, I ruled in chambers.
12 There's no evidence of the accident. I don't think you can
13 bring a gun to -- be accused of bringing a gun to an armed
14 robbery and then say it didn't go the way it should have,
15 and it was an accidental killing. I'm not going to give
16 you that charge.

17 And the other one was concerning accessory after.

18 MR. MEADORS: Accessory.

19 THE COURT: There's no evidence of that in the record.
20 I deny both requests for charge.

21 MR. WILDER: Thank you, Judge.

22 MR. MEADORS: Judge, I had moved to, just for sheer
23 expedience sake, to waive opening. I'm willing to do that
24 to speed this process up this afternoon.

25 THE COURT: Do y'all object to that?

1 MR. DEAS: I think that has, that has to be stipulated
2 to by defense. I disagree with that.

3 THE COURT: Okay.

4 MR. MEADORS: You're going to make me?

5 MR. DEAS: Yeah.

6 MR. MEADORS: Okay.

7 THE COURT: All right, to the extent that you, to the
8 extent that you want to go into it, you don't actually have
9 to go into it.

10 All right, let's bring the jury in.

11 (THE JURY ENTERS AT 3:39 P.M.)

12 THE COURT: All right, ladies and gentlemen, thank you
13 for your patience while you were back there. I did have
14 Mr. Bradley inquire as to whether y'all wanted to wait and
15 start tomorrow morning, but it's my understanding that
16 y'all want to go ahead and proceed with it tonight. And we
17 understand that you will need to be here until a verdict is
18 reached or alternative. And if necessary, supper will be
19 provided.

20 Ladies and gentlemen, we have reached the point in the
21 trial where all the testimony that you're going to hear in
22 this case has now been presented from this witness stand or
23 from other exhibits. Now is the time where the attorneys
24 will give you their closing arguments. After that, I will
25 charge you the law, and then I will send you to the jury

1 room to begin your deliberations.

2 Is the state ready to begin?

3 MR. MEADORS: Ready.

4 THE COURT: Is defense ready?

5 MR. WILDER: Yes. Yes, sir.

6 THE COURT: Mr. Meadors.

7 MR. MEADORS: If it pleases Your Honor?

8 Good afternoon. This part of the trial is called
9 closing agreements. We're not allowed actually to argue
10 with you back and forth. Perhaps we all wish we could talk
11 back and forth. But it's a chance for us to give you, the
12 attorneys and myself, to give you our views on the evidence
13 and the reasonable inferences from that evidence.

14 You as the finder of fact have decide what the truth
15 is here today. Thank you for being here. It's been hot;
16 it's been cold. Thank you for being here and paying
17 attention, and I mean that. Thank you.

18 I'm going to be very brief at this point. This is
19 called opening on the law. The state is required to open
20 on the law. Since we have the burden of proof, I will be
21 allowed to come back after both defense have gone and argue
22 what I believe the reasonable inferences are in this case.
23 I'll be very brief.

24 His Honor is going to charge -- and again to remind
25 you, His Honor is the law in this. He's the law; he really

1 is. What he says is the law, and he will tell you that
2 when we get through. And you will decide the facts, what's
3 credible, what's believable, apply His Honor's law, and
4 come up with a verdict.

5 Murder: the unlawful killing of another person with
6 malice aforethought. Meanness, evilness, wickedness. We
7 think we've shown that. I'll argue later, but I believe
8 the malice is, too. The use of one firearm, two firearms.
9 Meanness, evilness, no just, no just cause. You just did
10 it. It's mean. We believe that's been shown here.

11 Unlawful killing of another living human being,
12 intentional killing without just cause or excuse, and that
13 the person died as a result thereof, as a result thereof.
14 That's what Dr. Ross came and told you: as a result of
15 those two gunshots is why Bill Flexon is not here.

16 Armed robbery: take something away that's not yours by
17 means of force or intimidation. In this case, with the use
18 of a firearm. Those pizzas were taken from Bill Flexon,
19 property of him and/or Sambino's. That's the armed
20 robbery. You know what armed robbery is.

21 Murder and armed robbery, the burden of proof on the
22 state in this case, and His Honor will tell you, beyond a
23 reasonable doubt. It's not beyond all doubt. You've got
24 to be firmly convinced of the defendant's guilt. The state
25 doesn't have to prove it beyond every and all, each and all

1 doubt. The judge will tell you that. After considering
2 all the evidence, if you are firmly convinced the
3 defendants are guilty, then that oath that Mr. Bradley gave
4 you requires you to come back with a verdict of guilty.

5 The types of evidence His Honor will give, we'll go
6 over with you: direct and circumstantial evidence. You
7 know what direct is now. You see it. You hear it. You
8 touch it. Circumstantial evidence, proof of a fact,
9 another fact leads to the conclusion of another fact.

10 This case has got direct and circumstantial evidence.
11 Those shell casings, cartridge casings came from that
12 rifle. That's a circumstantial fact that's proved through
13 Tracy Thrower. Guy loves, he loves his job, and he came
14 and explained in detail how he compared, testified,
15 compared it to the shell casings. And yes, in my opinion
16 -- he is an expert in the field of firearms and tool mark
17 examination -- that rifle fired those shell casings.
18 Direct and circumstantial evidence.

19 Another body of law that His Honor will charge you on
20 is the hand of one is the hand of all. The act of one is
21 the act of all. If two or more defendants get together and
22 decide they're going to commit a crime, then they're both
23 responsible for any natural consequences that result from
24 that. If me and two other fellows wanted to go rob a
25 convenience store, I stayed outside driving the car, they

1 went out -- inside and killed the clerk, I'm guilty of
2 murder as much as they are. The hand of one is the hand of
3 all at. It's a natural consequence. You go to commit an
4 armed robbery, if something else happened, the law says
5 you're all equally guilty. The hand of one is the hand of
6 all. The judge will charge you on that.

7 Credibility, believability, you bring it in here with
8 you to evaluate people. That's what you gathered your
9 whole life. You don't go to school to be a juror, but you
10 come in here with that good old common sense that you have.
11 And that's what you use when you evaluate testimony, when
12 you listen to testimony.

13 His Honor will instruct you on expert witnesses. You
14 can consider their background and training, and that
15 training and what they've learned and acquired and consider
16 that and what they testified to. You had several experts
17 here in this case. Joe Powell, Joe Powell, an expert on
18 that residue, that spoke volumes. I'll talk about that
19 later in my closing. But expert testimony, consider their
20 background, their training when you consider their
21 testimony, if you so find.

22 Ladies and gentlemen, I don't know how long, but
23 shortly from now I'll be allowed to come back and tell what
24 I believe the facts are. All I ask you now -- and that's
25 the shortest open on the law I've ever given, but you'll

1 hear the law later. All I ask you now is listen to Mr.
2 Deas. Listen to him. Listen to Mr. Wilder. And then
3 please listen to me when I come back, and what we're
4 looking for here today, what we're all looking for here
5 today is justice and fairness. And we're asking you at the
6 end of the case, that I believe justice and what's right in
7 this case is a guilty verdict. Thank you.

8 THE COURT: Thank you, Mr. Meadors.

9 MR. MEADORS: Thank you.

10 THE COURT: Mr. Deas.

11 MR. DEAS: Thank you, Your Honor. May it please the
12 court?

13 THE COURT: Yes, sir.

14 MR. DEAS: Mr. Meadors, Mr. Foreman, ladies and
15 gentlemen of the jury, it's been a long week. Been a long
16 quest for the truth that we've all been on since Monday.
17 First of all, I'm going to say thank you for your time,
18 your dedication you've displayed over this week, the
19 commitment you've shown to try to help us find the truth
20 with regard to what happened back on January 12, 2008, at
21 the O.C. Mobile Home Park on Cherryvale Drive.

22 Don't think we could have picked thirteen better
23 people to help us do that. You all have given up your
24 lives for this week just like many of other jurors, juries
25 have done all across this nation. And that's what makes

1 our jury system the envy of the world is people, regular
2 people, everyday people just like you give up their time,
3 give up their lives for a short period of time to help us
4 dispense justice. I want to thank you.

5 Now, you're going to have an opportunity in a little
6 bit to go back to your jury room to deliberate to try to
7 determine the truth and try to find justice, and that's
8 what we all should be here about, try to dispense justice.
9 Not just for the defense, but also William Flexon. He's
10 not here due to a senseless, heinous crime.

11 As I said previously earlier this week, if you've got
12 red blood running through your veins and a beating heart,
13 you have to feel for the pain that his family has endured
14 through the loss of their loved one. My heart and prayers
15 go out. My heart goes out to them; my prayers go out to
16 them.

17 Like I also said. There's no question that was a
18 tragedy that happened on January 12, 2008. What would also
19 be a tragedy is if we don't hold the state to its burden of
20 proving their case against these two defendants. Not just
21 proving their case, but proving, proving it beyond a
22 reasonable doubt as to the charge of murder and as to the
23 charge of armed robbery with regards to my client, Reginald
24 Canty.

25 As Mr. Meadors just indicated, murder is the killing

1 of another person, the intentional killing of another
2 person with malice aforethought. Malice aforethought is to
3 intentionally kill someone knowing it's wrong without any
4 just, legal cause to do so. It's, it's to, it's to --
5 malice aforethought means to do so with wickedness in your
6 heart, a certain evilness.

7 Armed robbery is the unlawful taking of the property
8 of another, and to take said property from that person or
9 in that person's immediate presence and do so through
10 violence or intimidation. And you do so through the use of
11 a, of a, of a weapon, a deadly weapon like a gun, a knife,
12 a razor.

13 What the state has to prove, and this is the law of
14 the land, ladies and gentlemen. This is not just me saying
15 it. His Honor will charge you accordingly at the
16 appropriate time, but the law of the land is the state must
17 prove each and every element of those two crimes as to Mr.
18 Canty in order for you to find him guilty of murder and
19 armed robbery. They have to prove beyond a reasonable
20 doubt each and every element as to both of those crimes.
21 If they fail in that burden, if they fail to prove each and
22 every element of that crime beyond a reasonable doubt, it
23 is your legal obligation to return a verdict of not guilty.

24 What is reasonable doubt? His Honor is going to
25 charge you on that in just a few moments. But I'll tell

1 you have a bit about my view of reasonable doubt. I don't
2 drink coffee, never really have, but I usually will, I
3 sometimes will drink tea in the morning before I come in to
4 work. Sometimes as I'm leaving the house, I'll get to the
5 end of my driveway, and I'll hesitate for a moment, and
6 I'll try to remember if I turned the stove off from where I
7 had the teakettle on. That hesitation to act, where I stop
8 at the end of my driveway, I can sometimes pull back in to
9 the driveway, get out of my car, go back inside, and see if
10 I really turned, turned the stove off.

11 If you have that type of hesitation to act with
12 regards to you finding Reginald Canty guilty of murder,
13 it's your legal obligation to return a verdict of not
14 guilty because you have a hesitation to act due to the fact
15 that you have reasonable doubt.

16 Likewise, if you have that type of hesitation to act
17 with regards to whether the state met its burden as to the
18 charge of armed robbery, it is your legal obligation to
19 return a verdict of not guilty on the charge of armed
20 robbery as to Reginald Canty.

21 Now, let's look at the facts. We know certain things
22 with regard to this case. Certain things not disputed. We
23 know it happened on January 12, 2008. We know it happened
24 at O.C. Mobile Home Park. We know it happened on lot
25 number ■ We know Mr. Canty's house was near where the

1 incident happened. We know he lives in that U-shaped
2 subdivision. We know his house is the middle of that
3 U-shaped subdivision. Those are some things we can all
4 agree on.

5 We know Mr. Flexon was shot twice, one bullet entering
6 his chest from a rifle. The ballistics expert testified to
7 that. One bullet entered his arm, then exited his arm
8 through the elbow and reentered in his chest. The
9 pathologist testified to that. We know he was shot by two
10 different types of weapons. Ballistics expert testified to
11 that. We know that one of the bullets came from 30-30
12 Winchester rifle. We know that the other bullet, according
13 to the expert that was called by the state, came from
14 either a .38 special or a .357 Magnum. We know that. At
15 least that's what was conveyed by the expert.

16 What we also is that my client Mr. Reginald Canty's
17 fingerprints were not found on the weapon. Weren't found
18 on any of those shell casings. Weren't found, were not
19 found at the shell casing that was taken from Daniel
20 Jackson's aunt's house, Ms. Angela Boyd -- or, I'm sorry,
21 Andrea Russell. His fingerprints weren't even found in the
22 shell casing that was taken from under his bed.

23 We know that my client's fingerprints were not found
24 in Mr. Flexon's vehicle. We know his fingerprints were not
25 found on the pizza boxes that was found in the area.

1 What we do know, though, is that there were latent
2 prints lifted from one of the pizza boxes, prints that
3 didn't match Mr. Canty or Mr. Jackson. Somebody's prints
4 were on that pizza box, and it wasn't Mr. Canty and it
5 wasn't Mr. Jackson, the very same pizza box that Mr. Flexon
6 delivered to lot ■, Cherryvale Drive at O.C. Mobile Home
7 Park.

8 Now, let's think about the time line of all this
9 because that's important. A lot of times when the
10 witnesses were testifying, they really could not narrow
11 down time lines as to when certain things happened. The
12 video was off by an hour. They admitted it. They said
13 that was because of Daylight Savings Time and forgot to set
14 the clock back. The video was showing 9:00 when really it
15 was 8:00.

16 The video that was of the -- the video surveillance
17 from the store, from Cherryvale Grocery Store, shows Mr.
18 Canty and Mr. Jackson entering the store together. Shows
19 them still in the store at about 2104 p.m. That's 9:00
20 p.m. based on the video surveillance date and time stamp.
21 But if you accept the argument that it was off by an hour,
22 that it was fast by an hour, then it would be 8:04. Well,
23 if they're in the store at 8:04, according to the state's
24 video surveillance, and the call came in, according to Ms.
25 Knudson, at 8:04 -- she said she took a picture of her

1 caller I.D. when the call -- after this incident happened.
2 The police came out and talked with her. When she came out
3 to the scene, she said she ultimately took a picture. She
4 came back to the store and took a picture of her caller
5 I.D. and said it's 8:04. That's when the time -- that's
6 when the call came in.

7 You'll have an opportunity to look at this yourself.
8 It's in evidence. The video's in evidence; you can look at
9 it. If they're in the store at 8:04, 2104, which is really
10 9:04 -- you convert military time to standard time --
11 that's 9:04. They said it was an hour, about an hour fast.
12 You go 8:04. If they're in the store at 8:04 and that
13 call's coming in at 8:04, you can't be two places at one
14 time. They can't be in the store and making the call.

15 The pay phone, she dusted for fingerprints. It had
16 fingerprints on it, but it wasn't Mr. Canty and Mr.
17 Jackson's. It was of a lady named Linda McDuffie. No
18 fingerprints on the pay phone for Mr. Canty or Mr. Jackson.

19 Everywhere law enforcement turned to try to establish
20 or link Mr. Canty to this, to these crimes came up with
21 nothing. Fingerprints, no DNA evidence, no blood on Mr.
22 Canty linking in any way this crime. No blood of Mr.
23 Flexon linked to Mr. Canty in any way, shape, form, or
24 fashion. No fingerprints of Mr. Canty on pizza boxes, on
25 the gun, on shell casings, on the plastic donut wrapper,

1 nothing.

2 Mr. Canty, according to Sergeant Burnish, just a day
3 after the incident walking right near his home on Inabinet
4 Drive, Mr. Burnish out of his -- in his own words said that
5 he approached Mr. Canty. He was polite and cooperative.
6 Does that sound like the demeanor of somebody who just
7 committed a murder and an armed robbery? He willing talked
8 to him.

9 Now, your question is going to be, and it should be,
10 why did Mr. Canty not just simply tell all that he knew
11 right from the start? Now let me tell you. We know Mr.
12 Canty was sixteen years old when this incident happened
13 back on January 12, 2008. We know he had a seventh grade
14 education. That was testified to. Young man sees
15 something that probably and hope we none of us would ever
16 have to actually see with our own two eyes in our lives.

17 He says it in his statements, and you'll get to read
18 them. His statements are in evidence. He says he saw the
19 shooting. He also says when he's being interviewed by Mr.
20 West on January 17th that he didn't shoot and kill anyone,
21 but that he saw what happened.

22 Now, if you're sixteen years old and you hail from
23 where Mr. Canty grew up and lived, one of the golden rules,
24 the code, is if you see something, you zip your lip. Mum's
25 the word. You don't tell on your boys. You don't tell on

1 your friends. You don't snitch. That's the rule; that's
2 the code. That's what he knows. Keep your mouth shut.

3 He saw it. He was near enough to see it. When he was
4 asked about it, he was vague. He didn't say, oh, I didn't
5 see nothing. He didn't say, well, I was in Columbia, or I
6 was in Manning, South Carolina. Or I don't know what
7 you're talking about. He just was vague.

8 You'll get a chance, ladies and gentlemen, to take a
9 look at that, and it's in evidence. He doesn't come up
10 with some outlandish recitation or rendition about what his
11 whereabouts were, or what he was doing. He just was vague
12 about specifically what he saw because he not want to tell
13 anybody. That's the rule; that's the code.

14 What he says in the very first statement is
15 essentially consistent throughout the other statements he
16 gave. He says he left -- he says Toya asked him to watch
17 his house -- watch her house. Latoya Rush came and
18 testified and confirmed that. And in his very statement,
19 he says: I leave Toya's house. She asked me to watch his
20 house.

21 And I'm reading his words.

22 When she leave. So, I went and sat on my step,
23 and I saw a light. I want to see who it was, and
24 that's when I see two people fighting. I hear
25 somebody said no. Stop. Then I hear the

1 gunfire. I went into the house and told my
2 mother. The gun looked like a rifle, and the
3 person that was holding the gun had a hoodie, but
4 I couldn't see his face.

5 He didn't say he was somewhere else, or I don't know
6 what you're talking about. He could have. This was on
7 January the 13th. They were saying he wasn't even a
8 suspect then; he was just a witness. How did he become a
9 witness? Because his mother told law enforcement when they
10 talked to her on January 12th, the very night of the
11 incident, well my son came in the house and told me he saw
12 something. That's why they were back at -- that's why they
13 were talking to Mr., Mr., Mr. Canty. His own mother told
14 the police that her son came in the house that night, said
15 he saw something. And when they talked to him, he told
16 them. Just didn't give them the details as to who he saw
17 because he didn't want to tell on his friends.

18 Is that wrong? Is that a mistake? That is. Should
19 he have said it all initially? He should have, but does
20 that make him guilty of murder? No. Does that make him
21 guilty of armed robbery? No. What it makes him is a
22 scared, nervous sixteen year old with a seventh grade
23 education who's trying to do what he was taught growing up
24 in his neighborhood: keep your mouth shut. Don't tell on
25 your friends. That's what it makes you.

1 Now, they're going to want to make you think, I'm sure
2 the state's going to try to say that you can't believe
3 anything Mr. Canty says. He's told all these different
4 statements. He's trying to cover for himself. None of
5 what he's saying can be believed. Perhaps even Mr. Wilder
6 might say that with regards to Mr. Jackson. I don't know,
7 but if you think about it and you look at these statements,
8 you'll decide for yourself what the consistencies are and
9 what the inconsistencies, what the inconsistencies are.

10 I would submit to you, ladies and gentlemen, you will
11 find more consistencies in these statements than
12 inconsistency. You will find that they are more alike than
13 they are different.

14 The only difference, and I asked Mr. -- I asked
15 Sergeant Burnish on the stand. Are these statements just
16 outlandishly out of correlation with one another? Or do
17 they essentially just add more detail, specifically with
18 regards to the role of the other person? He agreed with
19 me. He agreed with me right on that witness stand.

20 I also asked Sergeant Burnish, if you remember his
21 testimony, if a person agrees or says yes in response to a
22 question of will you help me commit a crime, will you help
23 me rob the pizza place and if a person says yes, but if
24 they don't take any -- if they don't make any specific act
25 after that, they don't engage in any specific act after

1 that to further the completion of the crime, are they
2 guilty of the crime? He said no.

3 If all a person does, ladies and gentlemen, is tacitly
4 agree to participate in a crime by saying yes, I will, but
5 then they don't ever take any specific steps to participate
6 in the crime, they never follow up that agreement by saying
7 yes with some action to truly further the completion of the
8 crime, then, ladies and gentlemen, they cannot be liable
9 for the crime under this accomplice liability theory.

10 This conspiracy theory that if you, if you say yes,
11 I'll help you commit the crime but you don't do anything to
12 actually help to further the completion of the crime,
13 ladies and gentlemen, you are not guilty under the
14 accomplice criminal liability theory. You have to take --
15 you have to engage in some affirmative action that, that,
16 that, that furthers the completion of the crime, that helps
17 to accomplish the crime.

18 What did Mr. Canty do? What's the evidence says that
19 he did? And that's what you to have to base your verdict
20 on, the evidence. What does the evidence say he did?

21 He rode to the store, to Cherryvale Grocery Store with
22 -- he was driven there by his cousin Desmond Canty,
23 according to the testimony of his mom. He went in the
24 store with Daniel Jackson. We know that from the video.
25 He left the store with Daniel Jackson.

1 In the video, Mr. Canty is the one that's holding the
2 -- isn't the one that bought the Little Debbie cake. He
3 walks out of the store with Mr. Jackson. They go to the
4 right. There's nothing on the video that shows him using a
5 phone or calling.

6 So, if Mr. Canty agreed to take part in robbing the
7 pizza man and robbing Mr. Flexon, what did he do to make
8 good on that agreement? What did he do to further the
9 completion of the crime?

10 He went to Cherryvale Grocery Store and then went
11 home. And when he got back to his home, when he got back
12 to O.C. Mobile Home Park, he went home. He -- his mother
13 told you that. He went home and initially told his mother
14 I'm going to go watch Latoya's house. So, other than
15 driving to Cherryvale Grocery Store and then -- well,
16 riding to Cherryvale Grocery Store and then coming home,
17 Mr. Canty did not engage in any actual action to further
18 the completion of either the, of either the armed robbery
19 or the murder.

20 Now, if he would have come back to O.C. Mobile Home
21 Park and went in his house and got a gun, or went with
22 Daniel, Daniel Jackson or anybody else, and waited on the
23 pizza delivery. If he had served as a lookout somehow to
24 make sure nobody was coming around when this robbery took
25 place. If he had engaged in some type of conduct that

1 helped to accomplish the crime, that somehow aided and
2 abetted the crime, then yes, he could be found guilty under
3 the accomplice liability theory.

4 But I ask, ladies and gentlemen. Look at the
5 evidence. Remember the testimony. You tell me. What did
6 he do other than say I'll participate in the crime? But
7 ask yourself. What did he actually do to truly participate
8 in the crime, to help carry it out? Did he call the pizza
9 place? No. Was there ever any gun found, found in his
10 home? No. Were his fingerprints found anywhere? No. Was
11 blood evidence found that was connected to him? No. Was
12 there any evidence that he served, that he served as a
13 lookout that night while the other people robbed the pizza
14 man? No.

15 His mother actually said that he initially told her
16 when Toya was going off with her boyfriend to McDonald's.
17 She testified to that, that he actually told her, Latoya
18 told me to watch her house. He comes. He goes out. He
19 comes back. He eats and leaves again. She said shortly
20 after that, she heard gunshots. He comes back in.

21 Then the police are all around. The police actually
22 talk to him and his momma that night. He didn't go running
23 off anywhere to somebody else's house or try to -- he
24 didn't go somewhere, some -- to some other neighborhood to
25 sleep. He slept there at home that night, right at home

1 with his mother. Now, folk, that sound like the actions of
2 a guilty person?

3 Now, the shell casing that they found under his bed,
4 that's the shell casing that they say came from this 30-30
5 rifle. All right, now, remember, and this is also in
6 evidence. Here's that cartridge; here's that Styrofoam
7 cartridge. It holds twenty bullets, twenty bullets. All
8 right, let's think about this. They found eighteen
9 cartridges at Andrea Russell's home. They were still in
10 there. One bullet was lodged in the chamber of the gun,
11 the same gun that was found at Daniel Jackson's house.
12 That's nineteen now. They found a spent shell casing at
13 Andrea Russell's house, Daniel Jackson's aunt. That's
14 twenty bullets. Eighteen here unfired, one in the chamber,
15 one in Andrea Russell's house in a peanut butter jar that
16 was found. Ballistics expert said that, based on their
17 analysis, one of those bullets found in Mr. Flexon came
18 from that 30-30 rifle. Twenty bullets in this cartridge,
19 one in the chamber, eighteen found at Andrea Russell's
20 house, and another fired shell found at Andrea Russell's
21 house in a peanut butter jar. That's twenty bullets.

22 They found a shell casing under his bed. That would
23 be twenty-one, one more than this holds. What does that
24 mean, ladies and gentlemen? What did the ballistics expert
25 say? Just -- you can't tell from the shell casing when it

1 was fired from the gun. That shell casing could have been
2 in that neighborhood months before this incident and picked
3 up by Mr. Canty or anybody.

4 What do kids do when guns are around? They get
5 curious. They shoot. They shoot trees. They shoot at
6 targets. That's what they do. They see a shell casing.
7 They pick it up. Next thing you know, it's home with you.
8 It's under your bed.

9 You can't tell. The ballistics expert said it. I
10 asked him. Can you, from your analysis, say that that
11 shell casing came, matched the rifle bullet that was in Mr.
12 Flexon? No. Can't do that. That shell, that shell casing
13 could have been fired from that gun months before this
14 incident. No way to establish it.

15 And it obviously came from another set of ammunition
16 because only twenty was in here. Eighteen were unfired and
17 still in here. One was in the chamber, and one was in a
18 peanut butter jar that was fired.

19 That shell casing found under his bed doesn't
20 establish anything. It certainly doesn't establish that
21 that shell casing came from a bullet that was fired on
22 January 12, 2008. That shell casing could have been
23 produced from that weapon at any point.

24 Mr. Jackson, Mr. Canty, they live in that area. Mr.
25 Jackson lives with Mr. Canty's -- or at some point lived

1 with Mr. Canty's sister. It's obvious that Mr. Jackson had
2 been around that gun before. It's in evidence that he, the
3 day after the incident, called his uncle to come pick him
4 up, Mr. Isaac Boyd.

5 You heard from him. Mr. Isaac Boyd goes and gets him.
6 Takes him to Andrea Russell's house. He says that Mr., Mr.
7 Jackson comes out. That on their way to Andrea Russell's
8 house, they stop by this abandoned trailer. This is a day
9 after the incident. They stop by an abandoned trailer, and
10 he comes out with a basket of clothes. And lo and behold
11 in that basket is a rifle. He goes on to Andrea Russell's
12 house, and he shows the gun to everybody. Mr. Jackson,
13 police, police come looking for him; he runs away. That's
14 the testimony. That's the facts before you.

15 While he's running away, Ms. Russell finds the, finds
16 the gun under her couch. Same gun he brought from that
17 abandoned trailer. She calls her sister, Angela Boyd, and
18 says what do I do? She tells her you call the police, the
19 same people looking for Daniel. You call the police, tell
20 them you found a gun or a rifle under your couch that he
21 brought to your house.

22 She does. The police come and get it. Later on when
23 Ms. Russell obviously somehow gets displaced from her, from
24 her home and her sister goes to clean out from there and
25 move all her stuff out, she finds the peanut butter jar

1 with a bullet in it that her sister had already told her
2 about.

3 You tell me, ladies and gentlemen, what sounds like
4 the actions of somebody that was involved and what sounds
5 like the actions that -- of what somebody maybe saw but
6 wasn't actually involved. You tell me. Mr. Canty willing
7 to talk. Not willing initially to give it all, to tell it
8 all, but he was willing to cooperate and tell that he saw
9 something.

10 Ultimately, as you see in these statements, he gives
11 all -- he gives every -- he tells them everything he knows.
12 Certainly didn't have to do that, but he did.

13 Now, the issue in this, in this case, as I said, is
14 that it's not about just necessarily making a rush to
15 judgment: because two people are charged and are sitting
16 over there at the defendant's table, they must have done
17 it. It's not about a rush to judgment. It's about
18 withholding your judgement until you've heard it all
19 because that's what, that's the exact mistake I made with
20 my daughter I told you about on Monday. I accused her,
21 tried her, convicted her, punished her, only to find out I
22 was wrong as the day is long. I could remedy that with a
23 heartfelt I'm sorry. In the criminal, in the criminal
24 judicial system, when you make, when you make -- when that
25 kind of wrong is committed, I'm sorry don't erase it.

1 Often times you just have to deal with the consequences.

2 Now, Mr. Canty made some mistakes. There's no
3 question. He should have told the whole thing from the
4 start. But at sixteen years old, a seventh grade
5 education, coming from where he comes from and where he
6 hails from, he didn't. His instincts kicked in, and he
7 just, he zipped his lip to a certain degree. He didn't
8 tell it all. He should have, but ultimately -- but the
9 fact that he didn't name specifically who he saw shoot Mr.
10 Flexon and rob him, that doesn't make him guilty of murder.
11 Doesn't make him guilty of armed robbery, ladies and
12 gentlemen.

13 In the end, I ask you to do this, and as I said
14 earlier. There is no role in this courtroom today that's
15 as important as yours. Us lawyers, we're going to give you
16 our spin on things. The judge's role is to tell what the
17 law is, the law to apply to the facts of the case. You're
18 the finders of the facts. You're the ones who search for
19 the truth and speak the truth through your verdict.

20 All I ask you to do, ladies and gentlemen, is don't
21 base your verdict on any prejudice, bias, preconceived
22 disposition, or notions. Base your verdict on the evidence,
23 the evidence: no fingerprints matching Mr. Canty, no blood
24 evidence linking Mr. Canty to the crime, no fingerprints on
25 the gun, on the shell casings, on the plastic donut

1 wrapped, in Mr. Flexon's car. Footprints that were at the
2 scene don't match his. Blood stains in the abandoned lot
3 don't match him at all. No DNA evidence, no fingerprints,
4 no evidence linking him to the crime. No evidence should
5 equal a no on guilty and a yes on not guilty as to both
6 murder and armed robbery.

7 I ask you again, ladies and gentlemen, that your
8 verdict speak the truth. And that the truth is that the
9 state has not proven its case beyond a reasonable doubt as
10 to murder and armed robbery with regard to Reginald Canty.
11 And I ask you to adhere to your legal obligation and return
12 a verdict of not guilty. Thank you.

13 THE COURT: Thank you, Mr. Deas.

14 Mr. Wilder for Mr. Jackson.

15 MR. WILDER: Your Honor, I'd ask permission to set up
16 and show the video that's in evidence.

17 THE COURT: You may.

18 MR. WILDER: Thank you.

19 (A PAUSE.)

20 MR. MEADORS: Could we ask, could he pull it back a
21 little bit so we could see it also?

22 MR. WILDER: All right. Be glad to.

23 THE COURT: We'll dim the lights at the appropriate
24 time.

25 (A PAUSE.)

1 MR. WILDER: May it please the court?

2 THE COURT: Yes, sir.

3 MR. WILDER: Thank you.

4 All right, ladies and gentlemen of the jury, I thank
5 you for your attention to the evidence that's been
6 presented in the trial. And I'm now going to talk to you a
7 little bit about what, on behalf of Mr. Jackson, that I
8 think the evidence will show.

9 I have positioned the video here at 2101, okay, and
10 this is the state's evidence that's in before you. And I'm
11 going to start the tape rolling here, 2101. Let's see if
12 it will go. Yeah, that's 2116. Now I'm going to stop it
13 right there if I can get to it fast enough. Let's see if I
14 can. There we go.

15 You see a gentleman in the black hood right there?
16 And you have the -- you'll have this tape in evidence, so
17 you can play it when you get in the jury room if you want.
18 But I ask you to note the time date stamped 21:01:19, okay?
19 Now, remember it's an hour off, so we take away the hour,
20 and we're now at 20:01:19.

21 And I challenged all the witnesses. I said are you
22 sure it's an hour off, just an hour, exactly an hour? Did
23 you check it by your clock? No, I -- oh, yeah, it's an
24 hour. We know it was an hour. I, I, believe we had many
25 witnesses, Mackessy that testified an hour off, all that.

1 Okay, so it's an hour. It's an hour.

2 Okay, so 21:01:19, guy in black hood goes in
3 Cherryvale Grocery. Now, I asked all the witnesses when
4 they were testifying. What attempts did you make to
5 identify these people who are on the video? Oh, we don't
6 need to that because Ms. Shannon said that she recognized
7 Daniel Jackson in there. So, you know, they would just go
8 get Daniel Jackson. Okay, but who is this guy? And
9 there's a reason I'm asking that. So, let me let it run
10 some more here.

11 And now 22. Okay, 21:02:11, running. Yes, I believe.
12 Okay, I'm going to let it go fast forward now. I'm moving
13 fast forward, okay. All, now, okay, let's stop it right
14 there. Okay, this is now at date time stamp 21:01:50. Guy
15 in black hood leaves, right, 21:01:50.

16 Now, you remember later on we have references to
17 people in black hoods, okay? Now, all right, bear that in
18 mind, 21:01:50. All right, I'm going to move to another
19 portion of the video now.

20 This is 21:02:34. Now, here is where Mr. Jackson and
21 Mr. -- has been identified as coming in the store, and
22 there is Mr. Canty right next to him. They are now in the
23 store, and it is 21, 21:02:39. Okay, 8:02:39, please
24 remember that because the phone call to Sambino's came in
25 at 8:04.

1 Now, there is no way that anybody who just arrived at
2 this store could have made a phone call that arrives at
3 Sambino's before these two guys come in the store because
4 at 8:04 is when the call comes in. These guys are in the
5 store now at 8:02, all right?

6 In fact, let me, to emphasize that point, let me find
7 one of the state's evidence cards here, if I can locate it.
8 Remember the lady from Sambino's testified she took a
9 picture of the call that came in and what time it came in?
10 That is the call that was made to Sambino's to set up the
11 robbery and the shooting of Mr. Sexon -- Sexton -- Flexon,
12 Flexon, January 12th, 8:04 p.m. And to confirm that, you
13 heard Curt Gowdy testify to that when he testified, too,
14 about the call lasted two minutes and forty-one seconds.
15 And it's in the evidence that you have. That's what I was
16 just showing you is State's Exhibit Number 11 of the call.

17 Let me, let me say something else about that while I'm
18 on it because this exhibit here, State's Exhibit Number 12,
19 is also important when it comes down to that. This is the
20 slip, the order slip that came in from Sambino's for the
21 pizza that was delivered. And what's interesting about
22 that is it lists the time as 8:06 that the call came in.
23 But when the picture was given to Mr. Meadors just two
24 months ago, it actually turns out that the actual call was
25 made at 8:04, okay? And now they say they're still on the

1 phone at 8:06, and the testimony of the other lady at the
2 pizza place there has written 8:06 because she'd gone to
3 ask her husband was it okay to deliver pizza in this area.
4 So, she writes down 8:06.

5 Now, why is this important? Because for two and a
6 half, three years now, the police have been thinking the
7 call was made at 8:06.

8 MR. MEADORS: Objection, Your Honor.

9 MR. WILDER: Well, that's when they got this. They
10 got this, they got this early on. They didn't get this
11 evidence until last month. So, now we know the call was
12 actually made at 8:04, and then we got the records from
13 Curt Gowdy that confirm that. Call was made at 8:04, and
14 it lasted two minutes and forty-one seconds, all right?
15 So, if you're looking for guilt based on what happened over
16 here at the store, we don't have that.

17 Now let's let this run a minute because remember
18 Mackessy testified about a fellow named Junior, I believe
19 was the name he gave, but you were here. You've heard the
20 evidence. Now, did the police talk to this guy? I don't
21 know; we just don't know. What would he have said about
22 who was at the store? And I called him dancing, the guy
23 dancing because you watch him. He's going to be dancing
24 now. He's dancing all around. I don't know why. Look
25 what he's got in his hand: he's got a little cake in his

1 hand. I don't know that's got anything at all to do with
2 this, but there he is, and he's got a little cake in his
3 hand. Is it a Dunkin' Donut cake? I do not know, but
4 you're going to see him go out the door with it in just a
5 minute.

6 Remember black hoodie? The guy in the black hood goes
7 out before him, and now he's going to go out. He's gotten
8 him a cake, and somebody outside is making that call right
9 now while we're watching that video go. Somebody outside
10 is using the pay phone right now at this moment to call the
11 pizza place.

12 And we can't see it because it's off camera, but guess
13 what? It's not Reginald Canty and it's not Daniel Jackson.
14 So, if in consequence of any of those statements you hear
15 that Mr. Canty gave that I saw somebody, or I was with
16 somebody who made the call, couldn't have happened. Did
17 not happen because the two of them were in the store.

18 And this is the state's evidence. They gathered this,
19 and they got it the next day from Mr. Baldwin, who
20 testified about what went on there. And they began to
21 focus on the event that happened at the door as -- now
22 we're going to fast forward to that part of it, but here we
23 are at 2104, okay? Call being made right now. Look it
24 there. There's Mack talking to Reginald Canty at 2104,
25 8:04. Remember the time that was on the evidence here.

1 8:04 right down there, 2104 adjusted for an hour. There's
2 my client right there, and over here is Reginald Canty
3 inside the store, both talking to Mack.

4 You couldn't ask for more perfect proof of the fact
5 that these guys, these guys were not the ones that called
6 any Sambino's Restaurant and set up an armed robbery. That
7 is proof positive, ladies and gentlemen, that they did not
8 do this crime.

9 Now, not only do they not have that going for them.
10 They don't have fingerprints, they don't have footprints,
11 they don't have DNA, and I had to go through bringing all
12 these people over here to show that. And we did. You
13 know, the defendant in a criminal case has no burden of
14 proof; we don't have an obligation. The obligation is on
15 the state to prove guilt beyond a reasonable doubt.

16 We find ourselves carrying this burden of proof before
17 the court, not because we have to, but because we want to.
18 We want you to see this because this is the kind of
19 evidence that creates the reason for a doubt.

20 All right, 21:02:36. Let's see, are we repeating it
21 now? Yeah, okay, let me go to the part of it where they
22 come out of the store so you can see the exact last moment
23 that we can see them. All right, stop. Okay, now,
24 21:04:34 is, I believe, the last moment when they, they go
25 out the door. Okay, you see the door is shutting behind

1 them. I think that's -- I'm going to back it up just a
2 little bit, make sure I got that right. Okay, there they
3 go. There, there is Mr. Jackson on his way out. Okay,
4 still got his foot in the door 21:04:31. Mr. Canty is
5 moving toward the door. Mr. Canty goes to the door
6 21:04:33. Canty goes out last 21:04:35.

7 Now here's a bizarre part. If I got my time figured
8 out right, this, this lasted two minutes and forty-one
9 seconds. If I got my time figured out right, but you do
10 the math on it, figure it out yourself. They pass by
11 somebody who's already on the phone. Now, it would've been
12 possible, I think, for Canty to have overheard somebody
13 ordering pizza. That's how close these ships pass, but I
14 believe they were passing in the night. No connection
15 being proved by the state to anything in the way of a phone
16 call. And, in fact, what the evidence shows, I believe, is
17 that they are not guilty.

18 Now let's fast forward here to the actual crime scene
19 where the shots were fired.

20 If it's all right, I'm going to disconnect this.

21 THE COURT: Yes, sir.

22 MR. WILDER: I'm done with it, Your Honor. All right,
23 cut it off. Set it back a little bit maybe. Don't want to
24 trip.

25 First witnesses who was on the crime scene that

1 testified was Deputy Griffith, now Ms. Thomas. I believe I
2 saw her come in earlier. She might be -- might have gone
3 on out, but Ms. Thomas, she wasn't the first person on the
4 scene. She took, wrote down dutifully like you should do.
5 She took her notes, and she wrote down the people that were
6 already there before she arrived. And with deference to
7 Mr. Meadors, okay, maybe they weren't witnesses, but they
8 were there when she got there, okay?

9 So, I asked about complainants. Tell us who was there
10 when you got there. Okay, Ray Dickey, Jennifer Dickey,
11 Regina Patterson, and Linda Canty is what she said. If you
12 will think, you heard not a one of them. Nobody did the
13 state call to testify what those people saw. Did they take
14 statements? If they did, they aren't in evidence, okay?

15 So, what would they have said? What did they know?
16 Were there two people? Were there three people? Was it a
17 tussle? Was it a fight? We don't know because the state
18 didn't prove it.

19 Now, that's the, that's the thing about a criminal
20 case. The burden on -- is on them. If you go back in that
21 jury room and you don't have a sure, convincing -- your
22 mind isn't made up because you've got a question. You've
23 got a question what, question what would the people have
24 said if they were on the stand testifying. If you can't
25 answer those questions, then you may not convict because

1 that's a reason for a doubt. It's a reason to hesitate to
2 act, to hesitate to convict anybody.

3 They had this information for years. Where are these
4 people? Where are this -- where are these witnesses?
5 Where are the statements? What happened out here? We all
6 want to know what happened. We want to do the right thing.
7 They haven't proved what happened. You can't convict based
8 on speculation.

9 Next, when they get there and they begin to process
10 the crime scene, the testimony is, according to Ms. Thomas,
11 Deputy Griffin, now Thomas, that myself, Corporal Williams,
12 Reserve Figer, Corporal Hice, Sergeant Horton, Sergeant
13 Dukes, EMS, Captain Bradford, Captain Turner, Investigator
14 Barron, Reynolds, Boland, Garden -- Garner, Burnish,
15 Skinner, West, Coroner Vernon Moore, EMS, crime scene
16 people, Mackessy, and Bean. Finally arrive after all of
17 that, and we can't even get them to tell us for sure where
18 the little Debbie wrapper was on the scene. And why are we
19 interested? For this reason.

20 If they find pizza boxes across the street the next
21 day, and they got fingerprints off somebody who stole the
22 pizza on them, we want to know because the fingerprints of
23 whoever stole the pizzas might be likely on the box, as
24 there were fingerprints on the box. And we might likely
25 want to know who those fingerprints belong to. And was the

1 pizza boxes there that night, or did they get thrown down
2 the next day?

3 We don't know because the way the crime scene was
4 processed and the way the information came in to us in this
5 courtroom is all those people were there before anybody
6 took the first picture, and they could have moved anything.
7 Why do you put a piece of tape out there? So many people
8 coming and going, but we don't know whether or not that
9 crime scene was secure or not.

10 All right, the DNA. Mr. West testified that -- he
11 swore under oath that there was some kind of struggle, and
12 that that's why he was looking for DNA to compare with
13 fingernail scrapings under Mr. Flexon's fingernails. So,
14 we call a DNA expert witness and put her on the stand, and
15 she testified, yeah, there was a contributor to the DNA
16 under the fingernails. The loci of the DNA test revealed
17 that they're inconsistent with Daniel Jackson. Not Daniel
18 Jackson, along with no fingerprints, no footprints that
19 belonged to him. No blood on his clothes that belonged to
20 Mr. Flexon.

21 At the end of all of that, she testified yeah, after
22 all that testing, all we proved was that Daniel Jackson had
23 his own pants on at one point in time. And those pants
24 were taken from, we find out, Whitney Drive. And I think
25 if you look at the video, you can find those pants don't

1 even match the ones that are on that videotape. So,
2 they're not even the ones he was wearing that night.

3 If the state, whatever they took into evidence, don't
4 have the Timberland boots that he was wearing that night,
5 and they say that the footprints that were on the scene --
6 they couldn't get anything out of them.

7 AFIS fingerprints, let's talk about that for a minute.
8 You will have in evidence where they requested the
9 fingerprints of one to be compared with the palm print on
10 the door of Mr. Flexon's car. And you heard testimony that
11 they ruled out Mr. Flexon's palm print on there. Now,
12 there is the palm print of somebody who probably committed
13 this crime. It may not be AFIS quality fingerprints, but
14 it is a fingerprints that they can use to exclude people,
15 and specifically who did they exclude? Reginald Canty and
16 Daniel Jackson.

17 And I'm going to show you, let's look at State's 31.
18 That's where a pizza box was found, but it's the next day.
19 All I want to know is was it there that night because we
20 don't know who found it the next day. All we know is they
21 got a call about it. When did it get there?

22 Folks left with a pizza box. This pizza box had a
23 fingerprint on it. I submit it's the one that they can't
24 identify, and so far they apparently have not arrested the
25 person that did this because if they did, they'd be able to

1 tell you who that fingerprint belonged to.

2 Let's talk about blood in number 7 of O.C. Mobile Home
3 Park for a minute. Two identified females have left blood
4 in there. That's the testimony from the DNA expert. Who
5 were they? Well, you know, DNA is like this. They
6 sometimes call it a DNA fingerprint, but what they're
7 talking about is when you got it matched up, you can tell
8 it's them to them exclusion of one 1 in 6 million people,
9 maybe even 6 quadrillion. The numbers are staggering.
10 When they've got it right, they've got it right. They
11 don't have anybody's DNA that they've matched up yet.

12 All right, let me show you another picture. I hate,
13 hate to be showing this, but 49, there is Mr. Flexon's
14 body. I'm sorry about that, and my prayers are also with
15 the family, his family because nobody deserves to have to
16 be shot like that.

17 But I want to show it to you because there isn't
18 anything next to the van over here. But you remember they
19 testified that there was a cell phone on the ground just a
20 few feet away? Isn't it awful curious that Marcus Branch
21 shows up the next day looking for his missing, missing cell
22 phone at the O.C. Mobile Home Park number █ at the
23 residence of Anthony Rush, where the lady who testified
24 yeah, yeah, yeah. I heard Daniel Jackson say -- three
25 years later now -- yeah, he was looking for some gloves or

1 socks that night earlier, you know. We know that's a lie,
2 too, because at the time she says that happened, they're on
3 the video over that the Cherryvale Grocery.

4 Didn't happen. Who's she covering up for? I submit
5 she's covering up for either Anthony or that other guy that
6 lives over there in her, in her apartment or in her
7 trailer, or lived over there at that time. She's related
8 to both of them.

9 Well, look at this. This is the footprint, State's
10 Exhibit Number 46. Looks to me like you could match that
11 up with a shoe if you had one. Well, we tried to lift a
12 cast on it. Listen. Look at the bottom of the shoe and
13 see if it matches that. You know why they can't identify
14 it with anybody? I submit it's because it don't match
15 nobody in this case, so now they're embarrassed about it.

16 Look at this, and I asked Ms. Rush, who testified.
17 Exhibit 44, that's not Mr. Flexon's hubcap that that
18 Dunkin' Donuts wrapper is next to. It has no fingerprints
19 on it. You can't tell where it came from. It might not be
20 Cherryvale Grocery at all. And there's going to be
21 different testimony about what was bought there. Cake, pie
22 donuts? I don't know, but it's next to somebody's car, and
23 guess what? That's Ms. Rush's car it's next to, not by Mr.
24 Flexon's. And Ms. Rush's car is parked right in front of
25 Mr. Flexon's vehicle where it stopped.

1 Think about this for a minute. If you were going to
2 order pizza and then ambush the pizza man, what you'd need
3 is a place where you can kind of hide and look out, see who
4 was going to be coming. Happens all the time. We have,
5 we've had lots of pizza thefts and robberies here in Sumter
6 County. And I submit that's the way a person would do it.
7 You'd hide in a house and you'd look out and see if the
8 pizza guy came alone, unarmed. What it looks like, and
9 then you'd go running out and then rob him. So, but you
10 wouldn't want to bring him to your house. You'd want to
11 bring him to somewhere right down the street where they
12 couldn't connect it with you like number 9.

13 Here's the inside of Mr. Flexon's vehicle. You see
14 the pizza. No fingerprints on those. Can't tell where
15 that is.

16 All right these, this here is the delivery slip. This
17 is number 39. You'll see that was clipped to Mr. Flexon's
18 car window when he came in there.

19 And then let's go to these right here. The trailer
20 where -- State's Exhibit 37, 38, 35, 36. There, that is a
21 mobile home on St. Mark's Circle where one of the pizza
22 boxes winds up after the shooting, after the robbery, okay?
23 Now, the next day, Daniel Jackson did get a call on his
24 cell phone. We know that the testimony is that he's, he
25 was over at Whitney Drive that -- later that night. He

1 checked in with Lashawnda, and he went to bed.

2 MR. MEADORS: Your Honor, I'm going to object.

3 There's nothing in evidence to that.

4 MR. WILDER: Well, he went to Lashawnda's house. I
5 think it was ---

6 THE COURT: Well, he said he was texting her.

7 MR. WILDER: --- confirmed by Canty.

8 THE COURT: There's nothing about a phone call.

9 MR. MEADORS: He's talking about a phone call. I
10 object.

11 THE COURT: There's nothing about a phone call.

12 MR. WILDER: Well, let me, let me ---

13 THE COURT: So, he texted when he came home.

14 MR. WILDER: He texted, that's right.

15 THE COURT: Texted her at 3:00 in the morning. That
16 was all that was in evidence.

17 MR. WILDER: Okay, texted. I stand corrected.

18 THE COURT: Jury will disregard the prior statement.

19 MR. WILDER: All right, but to text, you need your
20 cell phone, okay? So, Daniel Jackson still had a cell
21 phone at that time the next day, and he talked to -- he
22 called his uncle for a ride, and he got a ride. So, we
23 know that he had that ability. And the point is he -- the
24 cell phone, if there was one at the scene, didn't belong to
25 Daniel Jackson, okay?

1 Now, State's Exhibit Number 52, 51 show the position
2 of the pizza box relative to the victim, and they were
3 drawn by Sergeant Mackessy the next day. And, okay, maybe
4 the Dunkin' sticks wrapper wasn't 130 feet away like Ray
5 Mackessy said, but that was his job to tell you accurately
6 where it was because he was the investigator for the state.
7 And you know what? It's not on this diagram. So, whatever
8 it was found, which I submit this picture is more accurate
9 than any drawing, probably next to the vehicle that was
10 driven by Ms. Rush.

11 All right, let's talk about again St. Mark's Circle,
12 the trip to get -- the ride the next day. Isaac Boyd went
13 over probably -- although they didn't prove it, I don't
14 think, but probably by -- to State's Exhibit 36, this
15 mobile home. He was in there two minutes, if he went in,
16 two minutes. I don't know whether testimony reveals that
17 he went in or just went there, and Curtis Wheeler gave him
18 this gun. That's the next day. That is the first time
19 that Daniel Jackson ---

20 MR. MEADORS: Your Honor, I object. I don't think
21 there's testimony that Curtis Wheeler gave him ---

22 THE COURT: There was no testimony. Said they went
23 in, and then they came out with the gun. Didn't say who,
24 who he got it from.

25 MR. WILDER: Then wasn't the testimony two, two

1 minutes?

2 THE COURT: He went in and came out. Didn't say who
3 gave it to him.

4 MR. WILDER: Didn't he testify, Your Honor, that
5 Curtis Wheeler was there?

6 THE COURT: Curtis Wheeler was with him, but he didn't
7 say Curtis Wheeler gave it to him.

8 MR. WILDER: Okay. So, but that's who the gun --
9 where he, where he was when he got the gun, and Curtis
10 Wheeler was there.

11 Now, I'm not trying to suggest that you substitute
12 what I'm telling you for what you heard on this witness
13 stand. In fact, I'd much prefer that you use your own
14 memory, your own recollection as to what you heard. But
15 the facts show that Daniel Jackson didn't have that rifle
16 until he went to this location and he met Curtis Wheeler.
17 And at that location, we know that there were some uneaten
18 pizzas or uneaten, an uneaten, uneaten pizza and a pizza
19 box.

20 Again, no fingerprints of Mr. Jackson on any pizza,
21 pizza box, but doesn't that kind of sound like whoever did
22 commit this robbery went there with the pizza box the night
23 before? And so if Mr. Curtis Wheeler was there, as I
24 submit the evidence proves, that maybe Mr. Curtis Wheeler
25 had something to do with it.

1 MR. MEADORS: Your Honor, objection.

2 THE COURT: Sustained. Mr. Wilder, stick to what is
3 in evidence, please.

4 MR. WILDER: All right, let's turn to the reports that
5 are in evidence. State's Exhibit Number 58, Jeff's
6 Parrott's testimony. Now, this report dated December 2,
7 2008, which is all the way almost to the end of 2008.
8 Remember this is January 12th, the beginning of 2008 the
9 beginning, beginning of the year. Now we're toward the end
10 of the year. And we see that over at SLED, they're
11 processing a Winchester 30-30 shell casing which has come
12 in to them. And here is the listing of those people that
13 are on there as a victim and suspects, and now listed as
14 suspect is Marcus Branch.

15 Back at the beginning of the year, January 18, 2008,
16 we have a similar latent print report in evidence from Mr.
17 Parrot. And he says that these partial prints and whatnot,
18 no value for identification, but guess what? He's asking
19 that in order to further process some of the prints they
20 have taken, he wants them to give them more fingerprints.
21 Send us some more: Please submit complete fingerprints and
22 palm prints for further examination. Well, I don't know if
23 and when they did that, but we find out that when he issues
24 his next report, that the latent prints say:

25 Latent impression represented on Styrofoam

1 cartridge holder containing Winchester 30-30
2 cartridges not identified with Daniel Jackson.
3 They are not identified with Reginald Canty.
4 Latent impression represented on one unfired
5 30-30 cartridge from the Styrofoam holder not
6 identified with Daniel Jackson. Not identified
7 with Reginald Canty.

8 Now, this is what I want to ask you. Since this is
9 all evidence in this case, how are you going to feel when
10 they do identify who that print belongs to?

11 MR. MEADORS: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. WILDER: Or how will we, how will ---

14 THE COURT: Let me have a sidebar over here.

15 MR. MEADORS: Your Honor.

16 (OFF-THE-RECORD BENCH CONFERENCE.)

17 THE COURT: Jury will disregard the last statement in
18 its entirety.

19 Mr. Wilder, you may proceed as directed by this court
20 specifically.

21 MR. WILDER: Yes, Your Honor.

22 All right, so State's Exhibit Number 77 not identified
23 with Mr. Canty, not identified with Mr. Jackson.

24 All right, State's Exhibit 83, GSS -- SR kit was
25 William John Flexon. What I want to say about that is you

1 heard testimony from the witness stand that Mr. Flexon had
2 gunshot residue on the back of his right hand. Now, that
3 -- although there's different opinions about what might
4 cause that gunshot residue, one of the opinions about what
5 might cause it would be if Mr. Flexon had a gun in his
6 right hand and fired it. Now, I'm not here to tell you
7 that it happened, but I'm here to tell you that that's what
8 the GSR residue shows. And so you have to decide what you
9 think that ought to mean back in the jury room.

10 Did that mean that he was -- that he had a gun and
11 shot it in self-defense, or he had a gun and shot at
12 somebody? You know, I don't know; I just don't know what
13 it means. But remember they've got the burden of proof.

14 (A PAUSE AS DISTRAUGHT MEMBER OF THE VICTIM'S FAMILY
15 EXITS THE COURTROOM.)

16 MR. WILDER: May I proceed, Your Honor?

17 THE COURT: You may proceed.

18 MR. WILDER: Thank you, and that's one of the sad
19 things about what we do up here because when you have
20 evidence and it shows something, you just have to present
21 it like it is. That's SLED's report.

22 All right, let's move on to State's Exhibit Number 6.
23 Mr. Canty told so many different stories, and that's one
24 thing I do agree with Mr. Deas on when he said, well,
25 somebody might say you tell so many different stories that

1 you don't know when he's telling the truth or when he's
2 not. What I want to say about that is you decide from what
3 he said whether you think he was ever telling the truth to
4 law enforcement.

5 But doesn't it sound like, and I ask this question for
6 you to consider. This is rhetorical; I'm not looking for
7 an answer. But when you get in the jury room, kind of ask
8 yourself this question. Doesn't it sound like a sixteen
9 year old who's just trying to cooperate with the police,
10 who starts telling them anything he thinks they want to
11 hear? Because that, I believe, is kind of what it sounds
12 like.

13 We know that Mr. Jackson went in the store that night.
14 We know he was in there when the call was placed from the
15 outside cell phone. We know that he went out the door
16 approximately the same time Mr. Canty did. We do not know
17 anything else about where he went that evening from the
18 record. There is not one bit of evidence that would
19 establish whether he went left or right after he went out
20 of that door. There's not one bit of evidence that would
21 establish whether he went anywhere back to the Cherryvale
22 O.C. Mobile Home Park, or whether he went home to Whitney
23 Drive, or whenever he got there. There's just not one bit
24 of evidence to establish any of that. Not from Mr. Canty's
25 statements, not from the state, not from anybody who was

1 out there that night. There is simply no evidence in the
2 record.

3 The burden is never on the defendant to show what
4 happened. It is on the state. The state has not shown
5 that he was connected with this offense in any way, shape,
6 or form. Therefore, I must ask you to return a verdict of
7 not guilty for Daniel Jackson.

8 I don't believe you have any choice in the matter if
9 you follow the law that the judge will give you. There is
10 just not one bit of evidence, I submit, that would
11 establish that he had anything to do with this shooting.

12 Now, did he pick up a rifle from that mobile home
13 where Curtis Wheeler was? Yes. Did he take it over to
14 Summerton? Yes. They say, well, he ran away when the
15 police came. I remind you that there is no evidence that
16 Daniel Jackson knew the police were coming to talk to him
17 specifically. He just knew that they were police, and he
18 left. No evidence to show that they knew he was the one
19 they wanted to talk to.

20 But later when he talked to Ms. Andrea Russell, why
21 were they here? They're looking for you, Daniel. Okay.
22 I'm going to call my aunt, Angela Boyd, get a ride, and I'm
23 going to Sumter. I'm going to turn myself in. And he came
24 here and he turned himself in.

25 And how did I have to fight with Mr. Burnish over

1 there to get that simple fact? They don't want to say it
2 that. Oh, he wasn't there. Run, run, run. That's what
3 they want you to think, but no. He turned himself in.

4 And then as they're talking to him, they advise him he
5 has a right to an attorney, and they say no, I'll talk to
6 you. Talk to you. He waives his right to an attorney, and
7 he agrees to talk to them. And then they, then they won't
8 take any notes. They didn't take any notes. No notes.
9 Compare that to Reginald Canty, who they seem to be writing
10 down everything he said.

11 Did they record it? No. Did they videotape it? No.
12 And then I asked him, well, what order did you serve him
13 with the warrants in? Well, that's important because if
14 they served him with the armed robbery warrant and he said,
15 well, how can I be guilty of armed robbery? I didn't, I
16 didn't steal anything from the pizza guy. And then they
17 say and you're also charged with, with murder, and then
18 they terminate the interview.

19 MR. MEADORS: Your Honor, objection. Can we approach?

20 THE COURT: You may.

21 (OFF-THE-RECORD BENCH CONFERENCE.)

22 THE COURT: The objection is sustained. Mr. Wilder
23 will rephrase his statement.

24 MR. WILDER: I want to be accurate and find the form
25 that this information is on.

1 (A PAUSE.)

2 MR. WILDER: At 9:03, my client requested that the
3 interview be terminated, okay. Is that ---

4 MR. MEADORS: Your Honor.

5 THE COURT: I don't think that's ---

6 MR. MEADORS: I don't think that's -- I don't think
7 that time is right. I'm not...

8 THE COURT: That's what he...

9 MR. WILDER: Oh.

10 MR. MEADORS: 9:25.

11 MR. WILDER: 9:25.

12 THE COURT: Mr. Wilder, let me see you. Let me see
13 the attorneys real quick.

14 (OFF-THE-RECORD BENCH CONFERENCE.)

15 THE COURT: Objection is sustained.

16 Mr. Wilder, proceed as directed by this court.

17 MR. WILDER: All right.

18 THE COURT: For the last time.

19 MR. WILDER: Mr. Jackson requested at 9:25 that the
20 interview terminate.

21 THE COURT: That's correct.

22 MR. WILDER: And I apologize if I got the time wrong.

23 All right, and again, I don't, I don't want you to do
24 anything except take what you've heard from this witness
25 stand and decide what the evidence proves.

1 Ladies and gentlemen, I appreciate you being here. I
2 appreciate our jury system is the finest way we've got.
3 It's not perfect. It's an imperfect system. It's the
4 finest way we've got away, trying to establish what the
5 truth of something is and what a proper verdict should be
6 in a case.

7 I submit that the State of South Carolina has not
8 proven Daniel Jackson guilty of murder or armed robbery.
9 That he, he, he is, he is not guilty. That you should find
10 him not guilty, and that's what I'm asking you to do.
11 Weigh this evidence. Look at it. Please return a verdict
12 of not guilty. Thank you.

13 THE COURT: Thank you.

14 We've been going for an hour and a half. We'll take a
15 ten minute recess before we continue.

16 Thank you, ladies and gentlemen. Please do not
17 discuss anything while you're in the jury room.

18 (THE JURY EXITS AT 5:08 P.M.)

19 THE COURT: Court will be in recess ten minutes.

20 MR. MEADORS: Thank you.

21 (OFF THE RECORD.)

22 THE COURT: All right, please take a seat. All right,
23 let's bring our jury in.

24 (THE JURY ENTERS AT 5:21 P.M.)

25 CLERK OF COURT: All the jurors are present in the

1 courtroom.

2 THE COURT: Thank you, Mr. Bradley.

3 Mr. Meadors for the state.

4 MR. MEADORS: May it please Your Honor?

5 THE COURT: Yes, sir.

6 MR. MEADORS: Ladies and gentlemen, seven words.

7 Seven words that speak volumes. Reginald Canty, Reginald
8 Canty. Seven words: It wasn't supposed to happen that way.
9 It wasn't supposed to happen that way. What wasn't? The
10 robbery.

11 Mr. Deas asked Burnish yesterday. Was there anything
12 that put your client close to where Mr. Flexon was seen?
13 Yes, ma'am. Yes, sir. He did. After his momma and
14 Dominick West said -- after he told them, he said the other
15 person had a revolver. And both of them said how could you
16 tell it was a revolver from the front porch? You couldn't
17 see it from there. It wasn't supposed to happen that way.

18 And what does he says they did after that? And your
19 body, your body shows so much when he's testifying. I
20 asked Dominick. What? Did he do anything with his body?
21 He dropped his head. He started to cry.

22 That's real. That puts him there. He had no way to
23 know unless he could -- was there to know there was a
24 revolver. That the agent would come in later and say you
25 know what? It's a .357 or .38. I wish we had it. But Mr.

1 Canty knew what it was that first -- on the 17th when he
2 finally told, started telling some of the truth.

3 Did he fire the gun? He very well could have. Was he
4 there when it was fired? No question about it. Even if he
5 didn't, he agreed to do the robbery. He went with him, and
6 he was there, present when it happened. He basically told
7 them with his words and with his body. The hand of one is
8 the hand of all.

9 You know, Sergeant Burnish said something. I'm going
10 to disagree. I'm going to get him mad at me. He said it
11 seems like sometimes you're going to say more when the
12 parents aren't around. I think Mr. Canty said more when
13 his momma was there because the first two statements -- and
14 he's saying the statements were basically the same. Read
15 them. I don't think so. And first two, he doesn't say
16 anything about going to Cherryvale Grocery. Doesn't say
17 anything about seeing a revolver. Doesn't say anything
18 about being another person when they went and made the
19 phone call to Sambino's that he heard. Second statement,
20 he doesn't say anything about that.

21 Then we get to the 15th when his mother is there, and
22 he starts telling a little bit more, and I'm going to go
23 over them in a minute. And the 17th when he says I could
24 actually see a revolver there, and another person shot him,
25 and he tells a little more. And then the statement the

1 25th, another person shot.

2 Credibility, believability is the key to all cases.
3 Y'all have to decide that; that's what you're the judges
4 of, credibility, believability.

5 This case is serious. There's nothing more serious,
6 and all we're allowed to argue is what the evidence is and
7 reasonable inferences. That's what we have to do. I
8 apologize for objecting so much, but that's what we have to
9 do. These, these cases, evidence is presented, and that's
10 what you have to focus on, by law you have to focus on.

11 Defense attorneys -- some, not all -- respectfully, I
12 submit, will try to take you away from this to over here
13 and other issues. I call them smoke screens. I'm going to
14 go through a few that I think, that I know were argued to
15 y'all. Going to show you why I think they're smoke
16 screens, and then I'm going to go down through the
17 witnesses and try to sum this up as quick as I can.

18 The first is the time at the Cherryvale. We spent I
19 don't know how long arguing over whether it wasn't even an
20 hour off where everybody testified it's an hour off. They
21 forgot to fall back.

22 John Baldwin, did it -- was it an hour off? It was an
23 hour off. How do you know? I was looking at my clock when
24 I was looking at the video. Is there any question it's an
25 hour off? That's an example of not a reasonable doubt. It

1 was an hour off.

2 Was it exactly an hour off from the clock, the world
3 clock? I don't know, but it was an hour off. And now, now
4 it's a Swiss clock apparently. It's right on time.

5 But what I want to submit is taking you away from the
6 actual evidence, if you'd look at Tanya. Took a picture,
7 8:04. She took a picture. Said she showed it to law
8 enforcement that night. I don't know. She said she showed
9 them this actual thing. Gave it to me a few months ago,
10 but that time would never change, will never change. And
11 what does she do? She says on this slip, and this never
12 changed, and she testified to 8:06 was when it was over
13 after she'd taken it. That can never change.

14 He said something else. Law enforcement focused on
15 that. It's 8:04 and 8:04. That could never change.
16 That's beyond all doubt.

17 And if you look at the log, if you look at the video,
18 the video shows them leaving the store at 8:04:33 and the
19 call coming in to Sambino's at 8:04:55, you don't get any
20 better evidence than that did. What he's tried to do is
21 take you, said, oh, it's 8:06. No, ma'am, no, sir. They
22 leave there at 8:05:33. They take a right. You can't tell
23 where they go, and a phone call is made twenty-something
24 seconds later. That's good evidence.

25 Now, why is that important? Well, first of all, Mr.

1 Canty says he and another person went outside the store,
2 and he heard another person make a phone call ordering
3 three large pizzas: just what Tanya said they ordered to
4 lot number ■, lot number ■, O.C. Mobile Home Trailer Park.
5 Tanya asked him. Where you calling from? Well, I'm
6 calling from a pay phone, calling from a pay phone. Well,
7 number comes up ■.

8 You remember, you remember Mack? What did Mack say?
9 I said Mack, you remember that phone number? All I know is
10 I used to play the lottery with 415. That's pretty good
11 circumstantial evidence right there, ladies and gentlemen.

12 Is there any doubt that that phone call came to Tanya
13 from Cherryvale? No, ma'am, no, sir, at that time. Is
14 there any doubt these two individuals were there? No,
15 ma'am. No, sir.

16 They come out. Now, that's important because we later
17 learn he said yes, I want to do the robbery, Mr. Canty did.
18 He's out there at the phone; he's at the phone at that
19 point. Now what happens next? And just very briefly,
20 Tanya sees Bill Flexon leave.

21 Here's what I forgot. I don't know. This hit me last
22 night, but I think I can argue it, and I don't mean it bad
23 because my dad is a friend, friend of this person. Been
24 overseas with him to try to get some hostages one time, and
25 I don't mean this bad against this person I'm fixing to

1 tell you. But you start to wonder, but it just hit me.
2 You ask a name. You ask a name. What's the name? Where
3 did he get the name Jesse? Was he trying to be funny,
4 Jesse Jackson? And I don't mean that funny, but it's that
5 ironic. That just hit me. I don't know. I don't know.
6 Jesse. The call comes.

7 You know another thing I'm going to go over in a
8 minute. In one of his statements, Canty says he sees the
9 pizza man sitting there three minutes waiting and getting
10 out. Well, that's not in the first statement, second
11 statement, third statement. See him three minutes. Is he
12 a lookout? Is he up front with him? I don't know. I
13 don't know.

14 Bill Flexon is there. He's killed. Law enforcement
15 responds. Where do they go? They go first there. Tanya
16 tells Ernest, who she knew from a previous incident, y'all
17 need to go to Cherryvale. There's a pay phone there. This
18 thing came from a pay phone. They go to a pay phone. They
19 get a video. Mackessy had said, well, anything unusual
20 happen? Well, these two folks came in. I checked one of
21 them one time. Thought they'd taken something. They came
22 out of this video. That's what starts the investigation.

23 Anitta Shannon now, what does she say? I know that
24 fellow. Used to date somebody in my family. That's
25 Deangelo Jackson, Daniel Deangelo Jackson.

1 Burnish is coming out. Canvasses the neighborhood.
2 Happens to run into Reginald Canty. Takes two statements
3 from him, you remember, on the 13th. One, two I've already
4 talked about. Doesn't mention anything about Cherryvale.
5 Doesn't mention anything later about seeing the shooting,
6 seeing another person.

7 They then call Curt Gowdy. They then go to the
8 autopsy to learn there are two bullets. Two bullets killed
9 him. They're informed of that. Law enforcement wants to
10 know. They know there are two guns that now have killed
11 Bill Flexon.

12 They go back again and talk to Mr. Canty on the 15th.
13 After he talks about not being -- and you're going, you're
14 going to have these back there -- not being under the
15 influence, on the night of the shooting:

16 Another person asked my cousin, cousin Desmond
17 Canty to take him to Cherryvale grocery store. I
18 went along because I needed batteries. After
19 arriving at the store, me and another person got
20 out the car and went to use the pay phone. So, I
21 stood beside him swinging my phone, and I
22 overheard him stating he wanted to order three
23 large pizzas: one all pepperoni, one all cheese,
24 and one, I didn't hear the other one.

25 Is there any doubt who was at the phone when the phone

1 call was made? He told them while on the phone with the
2 order that the address is [REDACTED] Cherryvale Drive, lot [REDACTED].
3 Yes, I want to help with the armed robbery.

4 He got off the phone and we went on to the store.
5 That isn't in here. I'm just saying that from later. You
6 remember he agreed to do it later. He's there listening to
7 this. Knows this is an abandoned trailer park.

8 I went to look for some batteries and brought a
9 snack cake.

10 Excuse me.

11 He got off the phone and we went in the store. I
12 went to look for some batteries, and another
13 person brought a snack cake. While I was in the
14 store, the manager approached and asked what I
15 took. I told him nothing. That I had my phone.
16 Another person was standing at the door waiting
17 for me. After we left the store, we was going
18 back home, and another person asked to be dropped
19 off at Oaklawn, but we already had passed it.
20 So, we went back home, and another person left
21 walking. I went inside and then came back
22 outside to sit on the porch. As I came out the
23 house, I saw another person walk by, and I asked
24 him where he's going. He stated nothing and
25 walked toward the back of the mobile home park.

1 Toya, who stays beside, said she told me to watch
2 her house while she was from home.

3 Now, what you have to remember in all these cases,
4 ladies and gentlemen, you can believe some of what a
5 witness says or part of what a witness says. And Mr. Deas
6 said earlier or Mr. Wilder when can you determine Mr.
7 Canty's credible? I think it's when his body shows it when
8 he's with his mother.

9 I don't know. He's given different statements. He's
10 putting his credibility in issue. There's no question
11 about that. Y'all have to decide what the truth is; y'all
12 have to. He's put it in, and now he's saying:

13 I went to the house, got something to drink and
14 sat on the porch, and I saw car lights where lot
15 number ■ is.

16 And one time when Mr. Deas was talking in his closing,
17 he said Ms. Canty, bless her, she said he just left. I
18 don't know where he went. And then he said she saw Toya.
19 I didn't hear some of that testimony he was offering. It
20 didn't come out. Ms. Canty said I don't know where he
21 went. He left and came back. Then he left and came back.

22 One thing she did say. After the shooting, she went
23 down the side entrance and went out to see what's
24 happening. When she came back in, then she saw him come
25 in, and then he went back out. I submit that could have

1 been one of the shell casings, when it got in there. I
2 don't know, but there's a shell casing in his bedroom that
3 ties him to that gun which ties him to an armed robbery.
4 You want evidence?

5 I saw a white man wrestling with a tall black man
6 over a gun, and the black man told him to stop,
7 and then I heard a gunshot. Another person was
8 standing next to the van looking at the guys
9 wrestling. The other guy had a handgun that
10 looked like a revolver. After the gun fired,
11 everyone ran. I ran in the house. I told my
12 moms whatever I saw later on that night. I
13 wasn't truthful to law enforcement at the
14 beginning because I was nervous and scared
15 because I'd never saw anyone get killed before.

16 That's the 15th. Law enforcement gets a warrant for
17 Jackson. They go and start to look for Jackson. They go
18 to Wedgefield. They go to his aunt's house. They go
19 there. They talked to Ms. Russell, and y'all remember Ms.
20 Russell. She came in. Said law enforcement came. Yes,
21 she did. They searched. Was he there? No. What did she
22 tell you? He'd been there. Law enforcement came. He
23 left. Law enforcement. He came back; he came back.

24 Ms. Russell says that as she was vacuuming, she found
25 a gun, this rifle, and these cartridge cases. Calls law

1 enforcement. Kipp Coker comes and told you he got them.
2 No dispute about that, none whatsoever. He gets the rifle
3 and the shell casings.

4 Now, first of all, it was under a futon hidden. I
5 mean, why? And then later -- oh, and she says she calls
6 Angela Boyd, and Angela Boyd says turn it over. The
7 family, when enough's enough, sometimes they know it. The
8 family did the right thing: called law enforcement. They'd
9 been there looking for him. You now find a rifle. The
10 word's out there's a murder warrant. That's what they
11 testified to. Call them. It's tough to do the right thing
12 sometimes. His family did.

13 It's hidden. What happens next? She's going through
14 a tough time, Ms. Russell. She's made the turn, though.
15 Said she'd just left recovery. She's made it now. Maybe
16 yesterday, the day before was when she finally gets over
17 the top. What she does do? I said, you remember when I
18 said you like peanut butter? I like peanut butter, and I
19 do like peanut butter. She said yeah. I was going through
20 a rough time. I didn't have much money, and I was eating
21 peanut butter. I didn't have much. Peanut butter's
22 filling. Did you eat peanut butter that morning? Yes,
23 sir, I sure did. And after that, did all this happen where
24 Daniel came, police came, Daniel came, police came, Daniel
25 left, police left, Daniel came back? She said yes, sir.

1 And then you found this rifle? Yes, sir. Did you eat some
2 more peanut butter that night? Yes, sir. Was the peanut
3 butter jar the same as it was earlier that morning? No,
4 sir. What was the difference? There was a cartridge
5 casing in the peanut butter.

6 That is direct, direct because it matches this gun,
7 and circumstantial both. Why in heaven's name would you
8 put a cartridge in peanut butter? When the police are
9 looking for you. That is direct evidence of guilt.

10 Then with all due respect to Mr. Wilder, who asked
11 thirty-five minutes of questions on the time and everything
12 else, you know how many questions he asked Ms. Russell
13 about that shell casing in that peanut butter jar? Zero.
14 It kind of speaks for itself.

15 The gun that shot Mr. Sexton -- Mr. Flexon, I
16 apologize, the bullets were in his aunt's house that he hid
17 when he ran when the police came.

18 Now let's talk about who else in that family, and I
19 know it's tough on family. He called Isaac Boyd, his
20 uncle. Called Isaac Boyd and said would you come get me
21 and bring me back? Isaac did. And guess where they went?
22 Of all the places in the world, where did he ask Isaac to
23 take him? That St. Paul's Church Road to that trailer
24 home, of all the places in the world. And when -- the
25 first statement Isaac gave back in '08, he said he got him.

1 He went in. When he came, he didn't have a rifle. Mr.
2 Boyd, what happened next? Well, took him back to Sumter --
3 back to Summerton. Took him to Piggly Wiggly. Then he
4 went to Ms. Russell's house. That's where he took the gun
5 which she found later and gave the police. And it was, it
6 was tough testimony for him. You could kind of see he was
7 fighting. It was tough to be up here. It's got to be
8 tough to talk about that for your nephew, but doing the
9 right thing is tough sometimes.

10 And what did he say? Of course he said now that this
11 other fellow Curtis Wheeler was just out there. Wasn't
12 Curtis Wheeler's trailer. I think he's next door.

13 Said you put that in your statement? No, sir. Did
14 you talk to Deangelo, Mr. Jackson? Says no. Then I asked
15 him. Said, well, I did talk to him a few months ago, and
16 that's when he reminded me about Curtis Wheeler. No
17 evidence at all in this record that Curtis Wheeler had
18 anything to do with this, or Marcus. What's his last name?
19 None. Marcus Branch, no evidence whatsoever, no evidence
20 in the record, so he shouldn't be able to argue it.
21 Nothing to do with this case. That's a smokescreen.
22 There's no -- not a reasonable doubt. It can't be.

23 But what does he tell Mr. Boyd? And Mr. Boyd said the
24 other day, and this had to be tough, but it kind of wreaks
25 with the truth. He said lie for me. You remember that?

1 He asked his uncle to lie for him. Now, why would he do
2 that? Why would he do that? Tell them you brought me up
3 here that night. It was Saturday night. Well, Saturday
4 night's when he was involved in killing Bill Flexon. Lie
5 for me, Uncle. Tell them you brought me here Saturday
6 night. No, sir. No, ma'am. Thank goodness Isaac Boyd
7 didn't lie for him and he told the police, and that again
8 is evidence of guilt.

9 And you know what came out yesterday? I didn't know
10 it. Stayed with Ms. Canty. I like Ms. Canty. She got up.
11 Yeah, he stays with me. Gave a statement. Yeah, I don't
12 know where he was earlier in the day, but he got back at
13 3:00 in the morning. Do you like having guns in your
14 house? No.

15 He took the gun there. Went to her house. Had Isaac
16 Boyd get him the next day to take him back there. He was
17 hiding the gun. That all makes sense. But she didn't know
18 where he'd been before 3:00 in the morning, and she didn't
19 try to lie and say she had.

20 Then we get to the 17th. The rights are read, and I
21 wish I still had my momma here, but Ms. Canty -- you see,
22 nobody, nobody asked her about the time she was with
23 Dominick. No cross or anything. Well, did he try to cheat
24 or take advantage of you? She was right there, and she
25 signed the rights. Nobody even crossed her about that. I

1 submit that's because I don't think there was anything to
2 cross about.

3 And when we get to the 17th statement, the oral
4 statement with the Waiver of Rights, go look at them. I'm
5 not going to go over it now. You decide because Mom was
6 there. She's going to make sure his rights were read. You
7 think his momma's not going to ask for a lawyer and they're
8 not going to give it if she wants them to?

9 Dominick says:

10 I advised him that his stories in the past was
11 inconsistent. That he needed to be truthful from
12 here on out. Reginald began telling the story of
13 the events that happened on how he was at home,
14 and another person approached him and asked him
15 whether he wanted to make any money by robbing
16 the pizza man, and he told him yes.

17 Now, this is at home. He said yes.

18 Reginald then stated he asked his cousin Canty to
19 take him and another person to the store.

20 Okay, gets his cousin to take him in on the store.
21 They put it in motion. They put it in motion. Take them
22 to the store, Cherryvale, where he stated: Another person
23 made the telephone call to Sambino's Pizza.

24 Well, why? Why call Sambino's Pizza? Because we're
25 going to rob the pizza man. That's what they're doing.

1 Saying he didn't do anything. Are you kidding me? Yes,
2 I'll do it. Come on, cousin. Let's go. Let's go to the
3 store. Phone call's made. He's taking steps. His own
4 cousin drove him there that made the phone call that killed
5 Bill, his cousin.

6 Reginald then stated they went inside the store
7 and he wanted to buy some batteries, but they did
8 not have the kind he wanted. Reginald stated
9 another person bought a Debbie snack cake and
10 left the store. I then asked what did they do
11 next, and he stated they went back to his house.
12 Then another person walked back to the rear of
13 the mobile home park, and he watched until the
14 pizza man drove up in the van. Couldn't see it
15 from his front.

16 Undisputed. He couldn't see it from his front.

17 He began to say he stood in his yard by the gate
18 and saw a black male struggling with the pizza
19 man and another person, another black male
20 holding a revolver. I, Dominick, asked him how
21 he knew it was a revolver and it being dark with
22 no lighting on.

23 And one of the witnesses today, I can't remember which
24 one it was, said no, you really can't see in the back.
25 Y'all remember that, she said today?

1 I asked him how he knew it was revolver, it being
2 dark with no lighting on. He said it was a glare
3 coming from the gun. He then stated it was not,
4 it was not supposed to happen that way. He got
5 his cousin. They drove back, and I asked him
6 what did he meant by that, and he stated the
7 pizza man was not supposed to get shot.

8 Didn't do anything? Cousin takes you. You're there
9 when the call is made. You come back. It wasn't supposed
10 to be that way. This is classic, we submit, what the law
11 says. You go rob somebody, it goes bad. It goes real bad
12 for Bill: he's dead. Classic hand of one, hand of all.

13 He stated it was an accident. That's telling you.
14 That's telling you. Yeah, we were going to rob them. He
15 wasn't supposed to die. I'm going to get back to no way it
16 was an accident.

17 His mother then asked, his mother then asked, his
18 mother then asked how he knew it was an accident,
19 and you said you weren't there, and how you know
20 it was a revolver and it was dark outside.

21 Now Momma asked him that. His momma asked him that.
22 That's when he began to cry. That's real, that's credible
23 when Momma says how do you know that, son.

24 But then he stated he didn't shoot to kill him.

25 He kept saying it was an accident. He kept

1 saying he wasn't there, so I asked him. There's
2 no way you can say it was an accident if you
3 weren't there.

4 You were right there. He said it was an accident, but
5 then he wasn't there. It's an accident, but then he wasn't
6 there.

7 The body speaks louder than words:

8 And then he put his head on the table and
9 continued to cry. He then stated the subjects
10 ran away, and he ran in the house.

11 Didn't do anything afterwards. He agreed.

12 Couple other matters. We called these witnesses. I
13 had them subpoenaed; he had them subpoenaed. He had them.
14 I called them. We called them. The state called them.
15 Put up the DNA evidence. That's, that's, that's -- it's a
16 smoke screen. We put it up. That's one unidentified
17 profile underneath the fingernails. We never said it was,
18 and the other's a female. No evidence of female involved
19 in this at all.

20 There's blood in the trailer which nobody lives in.
21 No evidence at all it's linked to this, but we brought it
22 in. Good gosh, can you imagine if we hadn't brought it in
23 how much that would have been jammed down our throat? We
24 brought it in. Who is it? Unidentified.

25 The fingerprints. Here's what I want you to think

1 about, these unidentified or these prints on the shell
2 casing and the gun and all that. It came from his house.
3 He had the rifle. He was there. His aunt gave it over.
4 Is there any question who had the gun? And the prints that
5 were developed were not AFIS compatible. You can't just go
6 in there and print everybody. A smokescreen.

7 The prints from -- Ms. Hodge testified to, all
8 negative. One she said wasn't AFIS comparable. There's
9 nothing else she could do. The state brought in the
10 witnesses. They tried. Pizza boxes, think how many people
11 have handled that. I asked Tanya. Yes, a lot of people
12 handled that pizza box. They get one print that's not --
13 they ship it back to Marie Hodge, and she says it wasn't of
14 AFIS quality. Even the people that handled its prints
15 aren't on there. The elements affect it, porous, but at
16 least they checked. What if they hadn't checked?

17 Jason, the Dickeys, the Pattersons, all those, they
18 didn't witness, witness it. They were complaining
19 witnesses that were coming back from Cherryvale and just
20 ran out -- ran into the -- from the incident report, they
21 saw three black males running away. That's all they saw.

22 Were there two or three people involved in on this? I
23 don't know. I know there were two involved, and I know
24 there were two guns, and that's what you're focusing on
25 today, these two individuals.

1 And the final thing before I start to conclude
2 smokescreen. Stay focused. The little shoe print inside
3 the trailer. I think Ray Mackessy said you couldn't hardly
4 take a picture of it. It's in there; go look at it. The
5 other shoe print out there, I don't ever remember any
6 testimony coming in about Timberlands except Mr. Wilder's
7 questions in arguments. But anyway, they said that wasn't
8 cast. Well, they couldn't make a cast of it.

9 Debbie snack cake, clearly Mr. Jackson's got a Debbie
10 snack cake. Now, is that his Debbie snack cake that's out
11 there? I don't know, but there's a Debbie snack cake there
12 and a Debbie snack cake there. If that's all we had, I'd
13 say let him go. But it's another piece of evidence
14 circumstantially that can put him there.

15 Now, ladies and gentlemen, the gunshot residue. Mr.
16 Wilder said he could have had a gun. You heard Joe Powell,
17 the SLED agent, who documented and started a lot of these
18 programs. Well, you could, but if somebody fired
19 something, I would expect to find something inside and
20 outside. You remember that? I would really expect
21 somebody -- is that common sense?

22 And during the questioning, which I didn't hear in
23 closing, but what, what if there was an accident? What if
24 he was pulling, and it went back like this, with this?
25 Then it could have gone off. Well, Agent Powell, if you

1 grab the gun, if you just grab it, he said you'd probably
2 expect to find some on it. But if you grabbed it and it
3 went off, would there be something on the hands inside
4 inward? Yeah, I would expect to find that. You know where
5 they find it on his right? Outside. And is that
6 consistent -- left out -- is that consistent with getting
7 shot?

8 And they talked about distance, Mr. Wilder and Mr.
9 Deas talked about maybe there was a fight, maybe he had a
10 gun. There was no stippling; there was no tattooing. They
11 didn't give him a chance to fight. They just shot him. He
12 was delivering a pizza, y'all. They didn't get close
13 enough to him where he could defend himself. That's what
14 the gunshot residue shows.

15 The phone, they said it was broken. They couldn't
16 check it. It was a Virgin phone. You can't track it
17 anyway.

18 Toya Rush , said did he ask for gloves or socks? I
19 don't know. I'd never heard it before yesterday. That may
20 explain why his weren't there. Consider it if you want to.
21 I don't know.

22 Linda McDuffie, Linda McDuffie. Did you kill him?
23 No, sir. Did you see her? You remember Linda? No. She
24 have anything to do with this? She used the pay phone, the
25 only identifiable print. We went and found what we could

1 with Linda.

2 You didn't heard directly -- hear directly, but you
3 heard from Bill through Dr. Ross, and he saved this
4 evidence for you. It's really what spearheaded this.
5 Really Bill is what brought it all together because he
6 showed us, spoke to us through the autopsy: said two people
7 shot me.

8 I don't know if that rifle was shot off twice. You
9 remember when somebody asked Tracy Thrower, said wouldn't
10 you -- what, what do you expect? Said he could have shot
11 twice and missed.

12 But there are two guns that shot him, and that bullet
13 in his body, please listen to this. That bullet in his
14 body came back to this gun, this rifle. Came back to him.
15 That that rifle shot this bullet that killed Bill, the
16 same, the same rifle, the same rifle that Mr. Jackson asked
17 his uncle to take him to St. Paul Church Road. Of all
18 places in the world, a pizza box was there. One of their
19 pizza boxes was there. That's the armed robbery and the
20 murder. Of all the houses in this Sumter County, he had to
21 go to a house that has a pizza box. And you can't make
22 that up because Isaac Boyd ends up taking law enforcement
23 back there and finds the pizza box. And then he says this
24 is where I took him to get the gun. That's the gun. Is
25 there any doubt about that? And then that gun is taken

1 back and eventually comes through Russell and back to us.

2 And there's the revolver that Reginald said it wasn't
3 supposed to happen that way. It wasn't supposed to happen
4 that way. He could just see it from the porch. Wasn't
5 supposed to happen that way.

6 Sometimes, ladies and gentlemen, the reasonable doubt,
7 the judge will charge it on you. I learned this a long
8 time ago. You know, in life you have questions. Sometimes
9 in cases there may be questions about this or that, but
10 questions sometimes are just questions. It's not a
11 reasonable doubt. I submit to you there's not reasonable
12 doubt in this case. The state's burden is beyond a
13 reasonable doubt. You must be firmly convinced. I submit
14 the evidence is here.

15 Ladies and gentlemen, you remember we started, we
16 started this trial and till today, till right now, right
17 now they sit presumed innocent, cloaked with innocence.
18 And I asked you then. I said remember that cloak, and
19 that's going to stay with them until to you walk back
20 there, until His Honor gives you the law. And it's going
21 to stay with them until you get all this evidence back
22 there, you start looking and going through it, and I ask
23 you to. And it's going to stay there until then.

24 And then as you start thinking and looking through
25 this evidence, the gun, the bullets -- don't let me forget.

1 You remember they both had a shell casing which matched
2 that gun. The hand of one is the hand of all. The act of
3 one is the hand of all. The bullet of one is the bullet of
4 all. Ask Bill.

5 But as you go back to look through that evidence,
6 slowly start taking the, taking the cloaks off because
7 that's what you'll be doing. Take them off, and don't
8 throw them away. Please don't throw them away because in
9 this case, justice -- because you've got to follow that
10 oath Mr. Bradley gave you. If you believe the facts, you
11 follow the law and you believe the facts and the law, bring
12 that cloak back in here. Bring them both back in, both of
13 them with your verdict. And with your verdict of guilty of
14 murder, throw that cloak over Bill Flexon's body. Give him
15 some symbolic warmth. And bring that cloak of that armed
16 robbery and throw it on this, and throw it in this
17 courtroom.

18 It's like the Wild West out there literally with the
19 rifles. Gunfire, and he was delivering pizza and he wasn't
20 supposed to. The luckiest man in the world was Al. Al
21 would be dead. That's how random this is. Bill said I'll
22 take it on the way home. I'll take care of it; I'll get
23 it.

24 This has got to stop today, here in this courtroom.
25 We respectfully, respectfully on behalf of the state and

1 the Flexon family ask that you return a verdict that says
2 on January 12, 2008, Bill Flexon was just working,
3 delivering a pizza. He was set up by a planned agreement
4 that was carried out when they went to Cherryvale and made
5 a phone call, Mr. Canty and Mr. Jackson, and they came back
6 and they waited on him. And one had a rifle and one had a
7 revolver, or was right there where it was, or was acting as
8 a lookout. It doesn't matter, and that Bill Flexon was
9 gunned down. And then with those verdicts and the shell
10 casings that were found in both of them, the rifle which
11 matched. It wasn't supposed to happen this way.

12 Your greatest power is your power to choose. They
13 chose to rob the pizza man. As a result of that, he's
14 dead. It's now time for you to exercise your greatest
15 power. We ask that you come back with your verdict of
16 guilty of murder and armed robbery. Thank you.

17 THE COURT: The bailiffs will secure the courtroom.

18 (A PAUSE.)

19 *JURY CHARGE*

20 THE COURT: Thank you, Mr. Bradley and bailiffs.

21 All right, ladies and gentlemen, all of the evidence
22 and the testimony and the evidence that is going to be
23 presented to you in this case has now been presented to
24 you, and the attorneys have given you their closing
25 arguments. Now is the time where I will give you the law

1 which is to be applied in this case.

2 Ladies and gentlemen, I remind you that during this
3 trial, you and I have certain duties to perform. As the
4 trial judge, it is my responsibility to preside over the
5 trial of this case, and I have the duty to rule on the
6 admissibility of evidence that has been offered during this
7 trial.

8 You are to consider only the competent evidence before
9 you. If there was any testimony ordered stricken from the
10 record in this case during this trial, you must disregard
11 that testimony. I remind you you are to consider only the
12 testimony which has been presented from this witness stand,
13 any exhibits that have been made a part of this record, and
14 any stipulations of counsel.

15 Ladies and gentlemen, as I told you, I have the
16 additional duty to charge you the law that is applicable in
17 this case, and it is your duty as jurors to accept and
18 apply the law as I state it to you now. If you already
19 have an idea as to what the law is or what the law ought to
20 be, and it does not agree with what I now tell you the law
21 is, you must abandon that idea because you were sworn to
22 accept the law and apply the law exactly as I state it to
23 you.

24 Now, ladies and gentlemen, in every case tried in this
25 court before a jury, the jury becomes the sole and

1 exclusive judge of the facts of the case. As a trial
2 judge, I cannot intimate, state, comment, or make any
3 statement to you during this trial about the facts in this
4 case. Since you are the jury, you are the sole judges of
5 the facts in this case. You are not to infer from anything
6 that I've said during the progress of this trial in ruling
7 upon the admissibility of evidence or otherwise, or
8 anything that I say now during the course of these
9 instructions that I have any opinion about the facts in
10 this case. The law does not allow me to have an opinion
11 about the facts in this case. This is a matter solely for
12 you, the jury, to determine. And as jurors, it is your
13 duty to determine the effect, the value, the weight, and
14 the truth of the evidence presented during this trial.

15 Now, ladies and gentlemen, the indictment charges the
16 defendants with various crimes. And I remind you the fact
17 that the defendants were arrested, charged, and indicted in
18 this case is not evidence in this case, and cannot create
19 any presumption or inference of guilt. The indictment is
20 simply the formal written instrument which contains the
21 charges made against the defendants. It is simply the
22 formal documents by which the charges are brought into this
23 court.

24 Now, ladies and gentlemen, the indictment in this
25 cases alleges two different offenses against the

1 defendants. The charges are under indictment
2 2008-GS-43-993. Under count one: murder. Under count two:
3 armed robbery.

4 Each charge is a separate and distinct offense. You
5 must decide each count of the indictment separately on the
6 evidence and the law applicable to it, uninfluenced by your
7 decision as to the other charge in the indictment. The
8 defendants may be convicted or acquitted on either of the
9 offenses charged. You will be asked to write a separate
10 verdict of guilty or not guilty on each charge in the
11 indictment.

12 Ladies and gentlemen, I also charge you that there are
13 two defendants in this case. Daniel, Daniel Deangelo
14 Jackson is charged with murder and armed robbery. Reginald
15 Canty is also charged with murder and armed robbery. The
16 case of each defendant and the evidence and the law
17 concerning that defendant should be considered separately
18 and individually. Your verdict does not have to be the
19 same for each defendant. The fact that you may find one
20 defendant guilty or not guilty should not control your
21 verdict as to the other defendant where more than one
22 person is charged with the crime. If the evidence
23 warrants, you may convict one and acquit the other, or you
24 may acquit both, or you may convict both. It will depend
25 upon your view of the testimony and the evidence, and you

1 must take each defendant and consider the evidence as to
2 that defendant and my instructions to you on the law. You
3 will then write on a separate verdict form which I have for
4 each individual defendant.

5 Now, ladies and gentlemen, the defendants have pled
6 not guilty to the charges in the indictment, and their plea
7 puts the burden on the state to prove the defendants
8 guilty. A person charged with committing a crime,
9 committing a criminal offense in South Carolina is never
10 required to prove his innocence. I charge you that this is
11 an important rule of law that the defendant in a criminal
12 trial, no matter how serious the charge may be, will always
13 be presumed to be innocent of the crime which the
14 indictment was issued unless guilt has been proven beyond
15 by -- or by evidence that satisfies you of that guilt
16 beyond a reasonable doubt.

17 This presumption of innocence does not end when you
18 begin your deliberation, but it accompanies the defendants
19 throughout this trial until you reach a verdict of guilt
20 based upon evidence satisfying you, the jurors, of that
21 guilt beyond a reasonable doubt.

22 The presumption of innocence is like a robe of
23 righteousness placed about the shoulders of the defendants
24 which remain with the defendants until it has been stripped
25 from the defendants by evidence satisfying you of the

1 defendants' guilt beyond a reasonable doubt. The
2 presumption of innocence is not a mere legal theory. It is
3 not just a legal phrase, but it is a substantial right to
4 which every defendant is entitled unless you, the jurors,
5 the jury are satisfied from the evidence of the guilt
6 beyond a reasonable doubt.

7 Now, ladies and gentlemen, I instruct you and I
8 emphasize the fact that the defendants did not testify is
9 not a factor to be considered by you in any way in your
10 deliberations and in your consideration on the question of
11 the guilt or innocence of the defendants. It must not be
12 considered by you in any manner whatsoever. A defendant
13 has the constitutional right to remain silent, and the
14 assertion of this right must not be considered by you in
15 your deliberations. I repeat. Under your oath, you are to
16 draw no conclusion whatsoever from the fact that the
17 defendants in this case did not testify.

18 The fact that the defendants did not testify should
19 not even be discussed by you in the jury room. The burden
20 of proof, as I have stated, is on the state. The defendant
21 is not required to prove his innocence. The burden of
22 proof remains on the state to prove guilt beyond a
23 reasonable doubt.

24 That always begs the question: what is reasonable
25 doubt in the law? A reasonable doubt is the kind of doubt

1 that would cause a reasonable person to hesitate to act.
2 The state must prove, the state has the burden of proving
3 the defendants guilty beyond a reasonable doubt.

4 Some of you may have served as jurors in a civil case
5 where you were told that the -- it's only necessary to
6 prove that a fact is more likely true than not true, such
7 as by the greater weight or the preponderance of the
8 evidence. In criminal cases, the state's proof must be
9 more powerful than that. It must be beyond a reasonable
10 doubt.

11 Proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of the defendants' guilt. Ladies and
13 gentlemen, there are very few things in this world that we
14 know with absolute certainty. And in criminal cases, the
15 law does not require proof that overcomes every possible
16 doubt. If, based upon your consideration of the evidence,
17 you are firmly convinced that the defendants or defendant
18 is guilty of the crime charged, you must find the defendant
19 guilty. If, on the other hand, you think that there is a
20 real possibility that the defendant is not guilty, you must
21 give the defendant the benefit of the doubt and find him
22 not guilty.

23 Now, ladies and gentlemen, there are two types of
24 evidence which are generally presented during trial. There
25 is direct evidence and there's circumstantial evidence.

1 Direct evidence is the testimony of a person who claims to
2 have actual knowledge of a fact, such as an eyewitness. It
3 is evidence which immediately establishes the main fact to
4 be proved.

5 Circumstantial evidence is proof of a chain of
6 circumstances indicating the existence of a fact. It is
7 evidence which immediately establishes collateral facts
8 from which the main fact may be inferred. Circumstantial
9 evidence is based on inference and not personal knowledge
10 or observation, and the law makes absolutely no distinction
11 between the weight or value to be given to either direct or
12 circumstantial evidence. Nor is there a greater degree of
13 certainty required of circumstantial evidence than of
14 direct evidence.

15 Ladies and gentlemen, you should weigh all the
16 evidence in this case. And after weighing all of the
17 evidence, if you are not convinced of the guilt of the
18 defendants beyond a reasonable doubt, you must find the
19 defendants not guilty.

20 Now, ladies and gentlemen, necessarily you must
21 determine the credibility of the witnesses who have
22 testified in this case. Credibility simply means
23 believability, and it becomes your duty as jurors to
24 analyze and evaluate the evidence, and determine which
25 evidence convinces you of its truth.

1 In determining the believability of a witness who has
2 testified in this case, you may believe one witness over
3 several witnesses, or several witnesses over one witness.
4 You may believe a part of the testimony of a witness, and
5 reject the remaining parts of the testimony of the same
6 witness. You may believe the testimony of a witness in its
7 entirety, or reject the testimony of a witness in its
8 entirety.

9 You may consider whether the witness has exhibited to
10 you any interest, bias, prejudice, or other motive in this
11 case. You may also consider the appearance and the manner
12 of a witness while on this witness stand.

13 Now, ladies and gentlemen, the rules of evidence, as I
14 have told you several times during this, ordinarily do not
15 permit a witness to testify to opinions or conclusions. An
16 exception to this rule is people we call expert witnesses.
17 A witness who by education and experience has become expert
18 in some art, science, profession, or calling may state an
19 opinion as to relevant and material matter in which the
20 witness claims to be an expert, and may also state the
21 reason for the opinion.

22 You should consider any expert opinion received in
23 evidence in this case, and like any other evidence received
24 in this case, give it the weight that you think it
25 deserves. If you decide that the opinion of the expert is

1 not based on sufficient education and experience, or if you
2 conclude that the reasons given in support of the opinion
3 are not sound, or that the opinion is outweighed by other
4 evidence, you may disregard the opinion entirely.

5 An expert witness's testimony is not to be giving --
6 to be given any greater weight than any other witness
7 simply because the witness is an expert. Further, you are
8 not required to accept an expert's opinion even though it's
9 not contradicted.

10 Now, ladies and gentlemen, the defendants are charged
11 with murder. The state must prove beyond a reasonable
12 doubt that the defendants killed another person with malice
13 aforethought. Malice is hatred, ill will, or hostility
14 towards another person. It is the intentional doing of a
15 wrongful act without just cause or excuse, and with intent
16 to, intent to inflict or injure -- an injury, or under
17 circumstances that the law will infer an evil intent.

18 Malice aforethought does not require that malice exist
19 for any particular time before the act is committed. But
20 malice must exist in the mind of the defendant just before
21 and at the time the fact is committed. Therefore, there
22 must be a combination of a previous evil intent and the
23 act.

24 Malice aforethought may be expressed or inferred.
25 These terms expressed and inferred do not mean different

1 kinds of malice, but merely the manner in which the malice
2 may be shown to exist. That is either by direct evidence
3 or by inference from the facts and circumstances which are
4 proved.

5 Expressed malice is shown when a person speaks words
6 which express hatred or ill will of another, or when the
7 person prepares beforehand to do the act which was later
8 accomplished. For example, lying in wait for a person, or
9 any other acts of preparation going to show that the deed
10 was within the defendant's mind would be expressed malice.

11 Malice may be inferred by conduct, showing total
12 disregard for human life. Inferred malice may also arise
13 when the deed is done with a deadly weapon. A deadly
14 weapon is any article, instrument, or substance which is
15 likely to cause death or great bodily injury, injury, harm.

16 Whether the instrument has been used as a deadly
17 weapon depends on the facts and the circumstances of each.
18 The following are examples of instruments which may be
19 deadly weapons: a pistol or a rifle. A gun may be a deadly
20 weapon even it is not operable.

21 Each defendant in this case, ladies and gentlemen, is
22 also charged with armed robbery. In order to prove this
23 offense, the state must first prove beyond a reasonable
24 doubt that the defendant took personal property from the
25 person or presence of another person. Property is in the

1 presence of a person if it is within the person's reach,
2 inspection, observation, or control so that the person
3 could, if not overcome with violence or prevented by fear,
4 keep possession of the property.

5 The state must also prove beyond a reasonable doubt
6 that the defendant carried the property away, intending to
7 permanently deprive the owner of the property and to keep
8 the property for the defendant's own use.

9 The slightest removal of the property or the complete
10 possession of the property, even for an instant, by the
11 defendant is sufficient to show a taking and carrying away
12 of the property. The taking and carrying away of the
13 property must have been done with violence, or by putting
14 the owner of the property in fear of violence.

15 Finally, the state must prove beyond a reasonable
16 doubt that the defendant was armed with a deadly weapon
17 during the robbery. A deadly weapon is any article,
18 instrument, or substance which is likely to cause death or
19 great bodily harm. Whether the instrument has been used as
20 a deadly weapon depends on the facts and the circumstances
21 of each case. The following examples are instruments which
22 may be a deadly weapon: a pistol, a shotgun, or a rifle.
23 And as I said, a gun may be a deadly weapon even if it is
24 not operable.

25 Ladies and gentlemen, if a crime is committed by two

1 or more people who are acting together in committing a
2 crime, the act of one is the act of all. A person who
3 joins with another to accomplish an illegal purpose is
4 criminally responsible for everything done by the other
5 person which occurs as a natural consequence of the acts
6 done in carrying out the common plan and purpose.

7 For example, two people can be guilty of killing
8 another person when only one of the two had a gun. There
9 can be only one bullet and only one of the two fired the
10 shot that caused the death. If two or more people are
11 together, acting together, assisting each other in
12 committing the offense, the act of one is the act of all,
13 or as sometimes said the hand of one is the hand of all.

14 Prior knowledge that a crime is going to be committed
15 without more is not sufficient to make a person guilty of
16 that crime. Mere knowledge that a person is going to
17 commit a crime, even if the defendant is present when the
18 crime is committed, is not sufficient to convict the
19 defendant as a principle.

20 Guilt as a principle is shown by actual or
21 constructive presence at a scene as a result of a prior
22 agreement. Therefore, finding a prior agreement, arranged
23 plan, or common scheme is necessary for a finding of guilt
24 as a principle.

25 The state must prove beyond a reasonable doubt by

1 competent evidence the theory of the hand of one is the
2 hand of all. The principal in a crime is who either
3 actually commits the crime, or who is present aiding and
4 abetting or assisting in the committing the crime. When
5 the person does an act in the presence of and with the
6 assistance of another, the act is done by both.

7 Where two or more are acting with a common plan or
8 intent are present at the commission of a crime, it does
9 not matter who actually commits the crime: all are guilty.
10 The hand of one is the hand of all. And present at the
11 commission of a crime means to be sufficiently near to aid
12 and abet and assist in the commission of the crime.

13 However, mere presence at the scene of a crime is not
14 sufficient to convict one as a principal on the theory of
15 aiding and abetting. Intent is also a necessary element
16 for there to have been a common design or intent to commit
17 the crime. And the crime must have been committed pursuant
18 thereto with the person aiding and abetting some overt act.

19 Intent means intending the result which actually
20 occurs, not accidentally or involuntarily. Intent may be
21 shown by acts and conduct of which the defendant and other
22 circumstances from which you may naturally and reasonably
23 infer intent. The state must prove these elements beyond a
24 reasonable doubt.

25 Now, ladies and gentlemen, there are two possible

1 verdicts for each defendant which you may find in the case
2 on the charges of murder and armed robbery. As to
3 defendant Reginald Canty under indictment 2008-GS-43-993,
4 count one on the charge of murder, you may find -- and you
5 will have this verdict form in the jury room with you, but
6 I'll go through it with you on this. You'll find not
7 guilty or guilty. As to defendant Reginald Canty under
8 indictment 2008-GS-43-993, count two on the charge of armed
9 robbery: not guilty or guilty.

10 As to defendant Daniel Deangelo Jackson under
11 indictment 2008-GS-43-993 on the charge of murder: not
12 guilty or guilty. As to defendant Daniel Deangelo Jackson
13 under indictment 2008-GS-43-993 on count two of the charge
14 of armed robbery: not guilty or guilty.

15 Now, ladies and gentlemen, there is no significance
16 whatsoever in the order which I state the possible verdict.
17 It's simply that one must be stated first.

18 Now, ladies and gentlemen, your verdict must be a
19 unanimous one. All twelve of you must agree on the
20 verdict. Your decision must not be based on sympathy,
21 passion, prejudice, or emotion, or any other consideration
22 that is not in evidence in this case.

23 Mr. Foreperson, when the jury reaches a verdict, you
24 will then write the verdict, check each box. You write in
25 the verdict, and then you sign your name as foreperson.

1 Then please knock on the jury room door. Inform the
2 bailiff that you have reached a verdict, and at that time
3 you will be received back here into the courtroom for the
4 publication of your verdict.

5 Now, ladies and gentlemen, I ask that you now return
6 to the jury room, but please do not begin your
7 deliberations until you are told to do so by the clerk or
8 the bailiff to do so. There are some matters that must be
9 discussed with the attorneys before we begin our
10 deliberations.

11 Now, ladies and gentlemen, we anticipated that you
12 would be going back there early, earlier, and I think your
13 supper is already back there, so you won't have to wait
14 long to eat. And I guess you may, if you want to, start
15 eating while they gather up all the evidence to the back
16 there, you may start doing so. Thank you, ladies and
17 gentlemen.

18 (THE JURY EXITS AT 6:24 P.M.)

19 THE COURT: Are there any objections from the state
20 for the closing argument? Excuse me, on the charge on the
21 law?

22 MR. MEADORS: No, sir. Judge, I don't want to make
23 things difficult, but it just hit me here, and I don't know
24 if it was requested. Was a charge of voluntariness? I
25 didn't know if that was -- it may not have been requested.

1 THE COURT: There was no request for that.

2 MR. MEADORS: We have no objection.

3 MR. DEAS: A charge for what again? I didn't hear.

4 THE COURT: Voluntariness.

5 MR. DEAS: Voluntary? Oh.

6 THE COURT: Any objection, Mr. Deas?

7 MR. DEAS: No objection, Your Honor.

8 THE COURT: Mr. Wilder?

9 MR. WILDER: Your Honor, we respectfully except on the
10 failure to charge the accident which we asked for.

11 THE COURT: Yes, sir.

12 MR. WILDER: And also to fail to charge the accessory
13 after the fact.

14 THE COURT: Thank you, and I've already, I've ruled on
15 that.

16 MR. WILDER: And those are the only two exceptions to
17 the charge, Your Honor.

18 THE COURT: Yes, sir, and I find that there was no
19 necessity to charge on those because there was no evidence
20 presented of that. All right, thank you.

21 MR. MEADORS: Thank you.

22 THE COURT: All right, court will be at ease until the
23 call of the court.

24 MR. MEADORS: Thank you.

25 MR. DEAS: Yes, sir.

1 (OFF THE RECORD.)

2 (MIRANDA WARNING FORM [ORIGINALLY STATE'S EXHIBIT
3 NUMBER 1] MARKED INTO EVIDENCE AS COURT'S EXHIBIT NUMBER
4 14.)

5 MR. MEADORS: For the state, John Meadors, I affirm
6 that defense counsel and I have looked at all the state's
7 and defense exhibits ---

8 MR. WILDER: All the evidence.

9 MR. MEADORS: --- and the entered items have gone back
10 to the jury room. And then items that are not entered are
11 with our wonderful court reporter.

12 MR. DEAS: Garryl Deas, counselor for defendant
13 Reginald Canty. All evidence has been accounted for and
14 submitted to the jury.

15 MR. WILDER: Likewise for the defendant Jackson on
16 behalf of myself.

17 (OFF THE RECORD AS JURY DELIBERATIONS BEGIN AT 6:48
18 P.M.)

19 (JURY QUESTION MARKED INTO EVIDENCE AS COURT'S EXHIBIT
20 NUMBER 15.)

21 THE COURT: Mark that.

22 (JURY QUESTION MARKED INTO EVIDENCE AS COURT'S EXHIBIT
23 NUMBER 16.)

24 THE COURT: We have another question from Mr. Holland,
25 the foreman. It says:

1 We want to see the form with the statement from
2 Canty stating, quote, we didn't mean for it to
3 happen this way and began to cry.

4 My recollection was that was not on a form. That was
5 an oral statement made to ---

6 MR. MEADORS: It was. It was on a form that he,
7 Dominick West, produced himself.

8 THE COURT: Right.

9 MR. MEADORS: Right, that I was reading for him.

10 THE COURT: But it didn't go into evidence.

11 MR. MEADORS: But it wasn't on any per se statement
12 form.

13 THE COURT: So, my answer is going to be it only came
14 in evidence in oral statement.

15 MR. DEAS: That's right.

16 MR. WILDER: That's fine.

17 (A PAUSE.)

18 THE COURT: Okay:

19 This only came into evidence as an oral statement
20 of Mr. Canty. There is no form.

21 MR. DEAS: That's right.

22 MR. MEADORS: Well, they saw me reading from
23 something. Can we just say this came in as an oral
24 statement?

25 (A PAUSE.)

1 MR. MEADORS: Investigator Mims, it was an oral
2 statement from notes taken by Dominick West. What's wrong
3 with that?

4 MR. WILDER: I like the way you first did it period.

5 THE COURT: I'm going to put that it only came in --
6 well, I think this only came into evidence as an oral
7 statement.

8 MR. WILDER: That's, that's ---

9 THE COURT: There is no form that they can look at.

10 MR. MEADORS: Well, if you could just -- right. If
11 they ---

12 THE COURT: I mean, it's in evidence.

13 MR. MEADORS: The compromise would be it came in
14 through as an oral statement.

15 MR. WILDER: Period, yeah. That, that's safe.

16 MR. MEADORS: He did testify as he had notes on it.

17 MR. WILDER: But that's a judge comment on the facts,
18 which is dangerous.

19 THE COURT: This only came into evidence as an oral
20 statement.

21 You want to look at it?

22 MR. MEADORS: That's good. We trust you. I trust.

23 THE COURT: Scratch through, make sure.

24 MR. MEADORS: Judge, I trust you.

25 (A PAUSE.)

1 THE COURT: All right, the way they're going, I
2 suggest you stay close. They know how to ask questions.

3 (OFF THE RECORD.)

4 THE COURT: Please mark that. Number please?

5 COURT REPORTER: 17.

6 (JURY QUESTION MARKED INTO EVIDENCE AS COURT'S EXHIBIT
7 NUMBER 17.)

8 THE COURT: All right, the jury has asked:

9 Could someone explain, quote, the hand of one is
10 the hand of all, closed quote. Need examples and
11 definition.

12 What I'm going to do is I'm going to bring them back
13 out and charge them the hand of one is the hand of all.

14 MR. DEAS: Your Honor, if you're going to charge hand
15 of one, hand of all, are you going to include in there
16 about, about mere presence and mere knowledge?

17 THE COURT: That's in there.

18 MR. DEAS: Okay.

19 THE COURT: That's, that's part of it

20 CLERK OF COURT: Do you need the alternate, Judge?

21 THE COURT: No, I do not need the alternate.

22 (THE JURY ENTERS AT 7:39 P.M.)

23 THE COURT: Mr. Meadors.

24 MR. MEADORS: They're across the street. Go, go
25 ahead.

1 THE COURT: I'm going to have to go forward.

2 Did the video work sufficiently for you? Okay.

3 The question I received from the foreman: Can someone
4 explain the hand of one is the hand of all. You need
5 examples of definitions. I'm going to read you the charge
6 that I gave you a little while ago on the hand of one.

7 If a crime is committed by two or more people who are
8 acting together in committing a crime, the act of one is
9 the act of all. A person who joins with another to
10 accomplish an illegal purpose is criminally responsible for
11 everything done by the other person which occurs as a
12 natural consequence of the acts done in the carrying out of
13 the common plan and purpose.

14 For example, two people can be guilty of killing
15 another person when only one had the -- of the two had a
16 gun, there was only one bullet, and only one of the two
17 fired the shot that caused the death. If two, two or more
18 committing the offense, the act is of one is the act of
19 all. Or, as is sometimes said, the hand of one is the hand
20 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 principle.

2 Guilt as a principle is shown by actual or
3 constructive presence at the scene as a result of prior
4 arrangement. Therefore, a finding of a prior arrangement,
5 plan, or common scheme is necessary for a finding of guilt
6 as a principle. And state must prove beyond a reasonable
7 doubt by competent evidence the theory of the hand of one
8 is the hand of all.

9 In principle in a crime is one who either actually
10 commits the crime or who is present, aiding, and abetting,
11 or assisting in committing the crime. When a person does
12 an act in the presence of and with the assistance of
13 another, the acts is done -- the act is done by both.

14 Where two or more acting as a common -- with a common
15 plan or intent are present at the commission of a crime, it
16 does not matter who actually commits the crime. All are
17 guilty. The hand of 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. However, mere presence at the
21 scene of a crime is not sufficient to convict one as a
22 principle on the theory of aiding and abetting.

23 Intent is also a necessary element, for there must
24 have been a common design or intent to commit the crime,
25 and the crime must have been committed pursuant thereto

1 with the person aiding and abetting some overt act.

2 Intent means intending the result which actually
3 occurs, not accidentally or involuntarily. Intent may be
4 shown by acts and conduct of the defendant and other
5 circumstances from which you may naturally and reasonably
6 infer intent. The state must prove these elements beyond a
7 reasonable doubt.

8 All right, thank you, ladies and gentlemen. If you
9 will now return to your jury room and resume your
10 deliberations.

11 (THE JURY EXITS AT 7:45 P.M.)

12 THE COURT: The court will remain at ease pending the
13 call of the court.

14 MR. MEADORS: Thank you, Your Honor.

15 (OFF THE RECORD.)

16 (THE COURT DISMISSES THE ALTERNATE JUROR.)

17 THE COURT: All right, let me announce to everyone the
18 jury has reached a verdict. This could be an emotional
19 time for a lot of people in here. I don't know what the
20 verdict is of course. Anyone who thinks they cannot
21 contain their emotions, I don't want anybody
22 second-guessing the jury by an outburst or anything like
23 that. I would advise you to leave at this point in time
24 because I will hold anyone in contempt of court for any
25 outbursts once the verdict is opened. So, is everybody

1 okay? If you think you need to leave, now is the time to
2 do it. All right, thank you.

3 Let's bring our jury in.

4 (THE JURY ENTERS AT 8:49 P.M.)

5 CLERK OF COURT: All jurors are present in the
6 courtroom.

7 THE COURT: Thank you.

8 Mr. Foreman, I understand the jury has reached a
9 verdict. Is that correct?

10 FOREPERSON: Yes, sir.

11 THE COURT: Is it unanimous?

12 FOREPERSON: Yes, sir.

13 THE COURT: All right. Thank you. Please pass it to
14 the bailiff.

15 (A PAUSE.)

16 THE COURT: Please publish the verdict. Defendants
17 will rise as the verdicts are read.

18 VERDICT

19 CLERK OF COURT: For the State of South Carolina,
20 County of Sumter, in the court of General Sessions,
21 indictment number 2008-GS-43-993, the *State of South*
22 *Carolina vs. Reginald Canty and Daniel Deangelo Jackson*,
23 defendants. We, the jury, unanimously find the defendant
24 as follows. Number one, as to the defendant Reginald
25 Canty, under indictment 2008-GS-43-993, count one on the

1 charge of murder: guilty. As to the defendant Reginald
2 Canty under indictment 2008-GS-43-993, count two on the
3 charge of armed robbery: guilty.

4 As to number three as to defendant Daniel Deangelo
5 Jackson under indictment 2008-GS-43-993 on the charge of
6 murder: guilty. As to defendant Daniel Deangelo Jackson
7 under indictment 2008-GS-43-993 on count two on the charge
8 of armed robbery: guilty. Signed John Holland, foreman,
9 dated August the 12th, 2011.

10 Ladies and gentlemen of the jury, is this your
11 verdict? So say you all by raising your right hand,
12 please.

13 (THE JURORS COMPLY.)

14 CLERK OF COURT: Thank you.

15 THE COURT: You may be seated.

16 Does the state request polling of the jury?

17 MR. MEADORS: The state does not, sir.

18 THE COURT: Mr. Deas, does Mr. Canty request polling
19 of the jury?

20 MR. DEAS: Yes, sir, Your Honor.

21 THE COURT: All right, please poll the jury.

22 CLERK OF COURT: Yes, sir, Judge.

23 *POLLING OF THE JURY*

24 CLERK OF COURT: Ladies and gentlemen of the jury,
25 when I call your name, raise your hand and answer my two

1 questions, please.

2 Juror number 60, Sherry Glasscho, is this your
3 verdict? It still your verdict?

4 MR. WILDER: Your Honor, I hate to interrupt, but may
5 we request separate polling for each defendant?

6 THE COURT: You may.

7 MR. WILDER: Thank you.

8 THE COURT: Separate polling for each. We'll do Mr.
9 Canty first, and then we'll do Mr. Wilder's client, Mr.
10 Jackson.

11 CLERK OF COURT: All right, sir.

12 THE COURT: So, this will be as to Mr. Canty only.

13 CLERK OF COURT: This is polling for Defendant Canty.
14 Juror number 100, Michael Knight, is this your verdict? Is
15 still your verdict?

16 JUROR: Yes, it is.

17 CLERK OF COURT: Thank you.

18 Juror number 115, Kelley McMillan, is this your
19 verdict? It still your verdict?

20 JUROR: Yes, it is.

21 CLERK OF COURT: Thank you.

22 Juror number 120, Charles Mullins, is this your
23 verdict? Still your verdict?

24 JUROR: Yes, sir.

25 CLERK OF COURT: Thank you.

1 Juror number 124, Thomas Nissen, is this your verdict?

2 Still your verdict?

3 JUROR: Yes, sir.

4 CLERK OF COURT: Thank you.

5 Juror number 6, Erin Anderson, is this your verdict?

6 Still your verdict?

7 JUROR: Yes, it is.

8 CLERK OF COURT: Thank you.

9 Juror number 155, Marcus White, is this your verdict?

10 It still your verdict?

11 JUROR: Yes.

12 CLERK OF COURT: Thank you.

13 Juror number 82, Johnnie Holland, is this your

14 verdict? It still your verdict?

15 JUROR: Yes, sir.

16 CLERK OF COURT: Thank you.

17 Juror number 132, Robert Rogers, is this your verdict?

18 It still your verdict?

19 JUROR: Yes, sir.

20 CLERK OF COURT: Thank you.

21 Juror number 144, Wendy Stickle, is this your verdict?

22 Still your verdict?

23 JUROR: Yes, sir.

24 CLERK OF COURT: Thank you.

25 Juror number 17. She's the alternate. Don't call her

1 name.

2 Juror number 145, Lakeishia Stubbs, is this your
3 verdict? Still your verdict?

4 JUROR: Yes, sir.

5 CLERK OF COURT: Did I call everyone's name as far as
6 Canty? What's your name, ma'am?

7 JUROR: Connie Davis.

8 CLERK OF COURT: Juror number 34, Connie Davis, is
9 this your verdict? It still your verdict as far as Mr.
10 Canty?

11 JUROR: Yes.

12 CLERK OF COURT: Thank you.

13 THE COURT: All right, please poll the jury concerning
14 Mr. Jackson.

15 CLERK OF COURT: Juror number 60, Sherry Glasscho, is
16 this your verdict and still your verdict?

17 JUROR: Yes, sir.

18 CLERK OF COURT: Thank you.

19 Juror number 100, Michael Knight, is this your
20 verdict? Still your verdict?

21 JUROR: Yes, sir.

22 CLERK OF COURT: Thank you.

23 Juror number 115, Kelley McMillan, is this your
24 verdict? Still your verdict?

25 JUROR: Yes, it is.

1 CLERK OF COURT: Thank you.

2 Juror number 120, Charles Mullins, is this your
3 verdict? Still your verdict?

4 JUROR: Yes, sir.

5 CLERK OF COURT: Juror number 124, Thomas Nissen, is
6 this your verdict and still your verdict?

7 JUROR: Yes, sir.

8 CLERK OF COURT: Juror number 6, Erin Anderson, is
9 this your verdict? Still your verdict?

10 JUROR: Yes, it is.

11 CLERK OF COURT: Thank you.

12 Juror number 34, Connie Davis, is this your verdict
13 and still your verdict?

14 JUROR: Yes, sir.

15 CLERK OF COURT: Thank you.

16 Juror number 155, Marcus White, is this your verdict?
17 Still your verdict?

18 JUROR: Yes.

19 CLERK OF COURT: Thank you.

20 Juror number 82, Johnnie Holland, is this your verdict
21 and still your verdict?

22 JUROR: Yes, sir.

23 CLERK OF COURT: Thank you.

24 Juror number 132, Robert Rogers, is this your verdict
25 and still your verdict?

1 JUROR: Yes, sir.

2 CLERK OF COURT: Thank you.

3 Juror number 40 -- 144, Wendy Stickle, is this your
4 verdict? Still your verdict?

5 JUROR: Yes, sir.

6 CLERK OF COURT: Thank you.

7 Juror number 145, Lakeishia Stubbs, is this your
8 verdict? Still your verdict?

9 JUROR: Yes, sir.

10 CLERK OF COURT: Thank you.

11 Your Honor, the jury has been polled as far as Canty
12 and Jackson goes, and the verdict stands.

13 THE COURT: All right, thank you. The verdict does
14 stand.

15 Ladies and gentlemen of the jury, let me take this
16 opportunity to thank you. Not everybody is brought in to a
17 five day case as you have been in this situation, and I
18 want to thank you for your timeliness, your patience, and
19 your willingness to do the job that was tasked to you.

20 As you now realize, the burden of doing justice and
21 coming up with a verdict is a heavy burden that most people
22 in society will never know what you went through. Do not
23 let anybody second-guess what you have done here today
24 because they did not hear the evidence that you heard.
25 They do not know what you've been through.

1 Ladies and gentlemen, throughout this trial, I have
2 told you do not speak to anyone about this trial. That
3 prohibition has now been lifted; you may speak to who you
4 would like to for as long as you would like to. You do not
5 -- if you don't want to talk with anybody and they persist
6 in talking to you, please let one of the bailiffs know, and
7 I will make sure that you're not bothered by anyone again
8 concerning your decision. It was a personal decision and a
9 group decision for each and every one of you. And I know
10 it weighs heavy on you.

11 Ladies and gentlemen, as I told you the other day,
12 there were a lot of important things happening in Sumter
13 this week, but there was nothing more important than what
14 you did. And the five days that y'all were here doing it
15 was a great service to our county and to our state and to
16 our entire justice system for America.

17 You know, it's not the attorneys that make it great
18 for our country. It's not the judges. It is people like
19 y'all who give up your lives and their families for a
20 period of time to come in here and take on one of the
21 heaviest burdens that humans ever have to do. So, ladies
22 and gentlemen, let me take this opportunity to thank you
23 again.

24 In approximately twenty minutes, I will sentence the
25 defendants in accordance with your verdict. You are

1 welcome to stay around. You've been here for five long
2 days; if you want to see it to the end, you're welcome to
3 do so. But if you decide that you want to go on home and
4 be with your families today, you are certainly welcome to
5 do that. I just leave the option open to you, but
6 sentencing will occur tonight in about twenty to thirty
7 minutes after I give the attorneys an opportunity to make
8 statements to the court.

9 But at this time, I am going to dismiss you. And,
10 ladies and gentlemen, let me have the opportunity to shake
11 your hand and thank you for your service.

12 (THE JURY EXITS AT 8:59 P.M.)

13 THE COURT: Court will now entertain any post-trial
14 motions. Mr. Deas?

15 MR. DEAS: Thank you, Your Honor. May it please the
16 court? Your Honor, in light of the jury's verdict, I would
17 make the standard motion for a judgement notwithstanding
18 the verdict as to the charge of murder, and also as to the
19 charge of armed robbery. Just to reiterate my previous
20 motion for directed verdict.

21 It is our position that the record was devoid of any
22 evidence that showed that Mr. Canty actually engaged in any
23 conduct that would further the completion of either the
24 murder or the armed robbery.

25 On that basis, we would, we would argue that he cannot

1 be held criminally liable under the hand of one, hand of
2 all theory for either murder or armed robbery. And we'd
3 ask the court based on that to issue a judgement
4 notwithstanding the verdict of not guilty as to both
5 charges.

6 THE COURT: Mr. Meadors.

7 MR. MEADORS: The state would ask Your Honor not to do
8 that. We thought we gave evidence to go forward, direct
9 and circumstantial, for the murder and armed robbery
10 against Mr. Canty.

11 He said yes, got his cousin to drive them there. Was
12 at the phone with Mr. Jackson. We believe that testimony.
13 Came back and then gave a statement that kind of put
14 himself at the incident where it happened where he said he
15 could see the revolver.

16 All that was presented and argued to the jury, and
17 they came back with a verdict. And we'd respectfully ask
18 Your Honor to let the verdict stand.

19 THE COURT: All right, as to Mr. Canty, I find that
20 the jury, just from some of the questions that came back,
21 analyzed that concerning Mr. Canty. And, therefore, the
22 verdict will stand. Your motion is respectfully denied.

23 Mr. Wilder.

24 MR. WILDER: Your Honor, at this time we would also
25 move the court to grant a motion for a directed verdict of

1 not guilty or judgement notwithstanding the verdict.
2 Sometimes it's been called an arrested verdict motion, Your
3 Honor. We make that motion, or in the alternative for a
4 mistrial. We renew that motion. And we'd also, you know,
5 make an alternative motion, if those two are not granted,
6 for a new trial.

7 And, Your Honor, the grounds for this would be the
8 court sitting as the thirteenth juror, we would urge the
9 court to take a view of the redacted statements.
10 Obviously, the jury must have used something in those
11 statements as evidence against my client because there is
12 no other evidence, I would submit, before the court that
13 would show his activities between the time he left the
14 store and the time he arrived at home at 3 that morning I
15 think was the next testimony, or whatever time he got home.
16 So, other than the redacted statements, that's the only
17 explanation for what, what happened during that time period
18 insofar as Mr. Jackson was concerned.

19 So, we would submit that the only logical inference
20 would be that the jury must have decided to use those
21 statements that Mr. Canty gave against Mr. Jackson, which
22 we don't believe should be permitted under the law of
23 Bruton, the confrontation of issues. The right that he has
24 under the United State Constitution and constitution of our
25 state, Your Honor. We believe that those rights were not

1 afforded him because of the joint trial, the nature of the
2 joint trial, and the denial of our motion for severance.

3 Your Honor, we would also ask that the court grant
4 this relief because of the various denials of the motions
5 that I made during the course of the case, not the least of
6 which was my motion for dismissal at the very beginning of
7 the case due to the lack of a speedy trial.

8 But also we raised various issues in our written
9 motions about Rule 5 violations, about the failure of the
10 state to turn over certain evidence which we felt was Rule
11 5 material in a timely fashion.

12 And, and then, Your Honor, the various things that we
13 attempted to put into evidence that Mr. Meadors objected
14 to. And very respectfully, Your Honor, we would make a
15 motion for the record that those -- the new trial be
16 granted on grounds that had the court allowed those things
17 to go before the jury, there would have *per se* been a
18 reasonable doubt. Or that would have gotten a trial that
19 was substantially fairer under our system of justice.

20 And all of those reasons, Your Honor, we would ask the
21 court to grant us a new trial if the mistrial motion is not
22 granted and the directed verdict of not guilty, judgement
23 NOV, is not granted. Thank you for hearing us, Your Honor.
24 We appreciate that.

25 THE COURT: Mr. Meadors, would you like to respond?

1 MR. MEADORS: Yes, sir. If it please the court, I
2 respectfully just differ in the view of the evidence.
3 There's evidence, we think direct and circumstantial, that
4 Mr. Jackson made that phone call. No question about it.
5 There was evidence of the use of the firearm. There's
6 evidence that he had the rifle, that he took his uncle to
7 get the rifle. That he -- the projectile, the rifle, and
8 the shell casings were in his aunt's house. He left, came
9 back. She found it. He'd hid it. Hid it in the peanut
10 jar, Judge, which we think was direct and circumstantial
11 evidence of guilt. And then, Judge, what I forgot to argue
12 at the end: when he said how can I be charged with armed
13 robbery if I didn't take any money from the pizza man.

14 We think all of those, there's plenty of evidence for
15 the jury, and we respectfully -- we respect the verdict,
16 and we ask Your Honor to let the verdict stand. Thank you.

17 THE COURT: Thank you. All right, I find that the
18 jury had sufficient evidence for both charges, actually
19 probably more than sufficient evidence based upon what I
20 observed in the court. And, therefore, I respectfully deny
21 your motion for mistrial and a new trial at this time.

22 All right, I will give the attorneys approximately
23 fifteen minutes to speak with their clients and any family
24 members that they need to, and then I will hear arguments
25 from the state and the defendants concerning sentencing.

1 MR. MEADORS: Your Honor, we need to get the paperwork
2 ready.

3 THE COURT: Right. Y'all need to do that as well.
4 We'll be in recess for fifteen minutes. So, that means
5 y'all need to be back in here by that clock twenty minutes
6 after 9:00.

7 (OFF THE RECORD.)

8 MR. DEAS: Your Honor.

9 THE COURT: Yes, sir.

10 MR. DEAS: For the record, I don't know if I actually
11 moved for a new trial or not, but if I didn't, I want to
12 make that motion.

13 THE COURT: Okay.

14 MR. DEAS: Just to protect the record.

15 THE COURT: Denied.

16 MR. DEAS: Yes, sir.

17 THE COURT: All right, Mr. Solicitor.

18 MR. MEADORS: Would Your Honor like, and I apologize
19 in advance, to hear from the family first?

20 THE COURT: Would be fine.

21 MR. MEADORS: Your Honor, first Michelle Principato.
22 Michelle is the sister of Bill, William Flexon, and would
23 like to address the court.

24 THE COURT: Yes, ma'am

25 MS. PRINCIPATO: First and foremost, I would like to

1 thank the jurors for their service. I have served in this
2 very court on a murder trial as a juror, and I know their
3 decision did not come lightly. I thank them for this
4 service in the case and bringing justice for my brother and
5 my brother's family. I thank them for my nephews who could
6 not be here: Bill Suggs, one serving in Afghanistan at the
7 moment, and one who's still home and could not be here. I
8 thank Your Honor for overseeing this trial for us.

9 And I just want to say on behalf of Bill and our
10 family that this has been a great tragedy for our family.
11 It has left a huge, huge hole in our family with our -- for
12 the boys, for Bill's grandkids, for my mother and my
13 brother, myself.

14 And, but I have to say at this time that I believe
15 justice has been served. I thank the community who was
16 wonderful to us when this happened. I thank the community
17 and their, their quick service and their diligence on this
18 case.

19 I pray for anybody who leaves this courtroom today
20 with a broken heart as we have and had to deal with. And I
21 just want to take one final moment to thank the community
22 and these officers, and this prosecution team did a
23 wonderful job on our case.

24 THE COURT: Thank you for your comments, ma'am.

25 MR. MEADORS: He's got a brother here, Jerry Flexon,

1 who would like to approach, Your Honor.

2 MR. FLEXON: She has spoken what needs to be said.

3 Thank you.

4 MR. MEADORS: Thank you. Obviously the family,
5 there's some who could, could not be here. Bill is in
6 their prayers, and I want to thank them publicly for their
7 patience. It took a long time to get here, and it wasn't
8 their fault. And I want to thank them for putting up with
9 us and for being as easy to deal with as they were. Judge,
10 obviously they love him and miss him.

11 In my quarter century of prosecuting, this is probably
12 as senseless a killing as I've ever been involved in. Just
13 delivering pizza, and it was a waste. And Al, wherever Al
14 is, is a lucky man or he'd be dead.

15 Judge, as far as the prior record, Mr. Jackson has a
16 juvenile record, Judge. Assault with intent to commit CSC,
17 he got a suspended commitment for in 2001. Malicious
18 injury to property in two thousand and -- excuse me.
19 Strike that, Your Honor. Simple assault and battery 2004,
20 probation. Malicious injury to property in 2004,
21 probation. That was the juvenile record.

22 Malicious injury to property 2006 as an adult.
23 Burglary second degree, five years suspended to five years'
24 probation. Malicious injury to a place of worship, five
25 years, five years' probation. Then another malicious

1 injury to property, 2007, September 2007. And then it
2 appears I guess while he was in, he had a malicious -- an
3 assault on corrections employee, convicted and got a year.
4 Malicious injury to personal property. Got convicted on
5 that, I think, and another malicious injury to property
6 April of '08. And I think that's why he was in waiting on
7 these charges because I do believe he got moved to Lee
8 Correctional Institute from the local facility.

9 Judge, as far as Mr. Canty, he has no prior record.

10 Judge, I, too, publicly want to thank the jury for
11 their verdict. I want to thank these set of fine officers.
12 I know it seems like a lot of these cases, the officers get
13 put on trial. And not to say that it's not a strategy and
14 I don't mean this ill toward these fine attorneys. But
15 they did a fantastic job, all of them. And Burnish,
16 Dominick, and I just want to thank them publicly. It was a
17 pleasure to work with them, and that's all we have.

18 THE COURT: Thank you.

19 Mr. Deas for Mr. Canty.

20 MR. DEAS: Your Honor, do you want us here?

21 THE COURT: Y'all may come forward.

22 MR. DEAS: May it please the court?

23 THE COURT: Yes, sir.

24 MR. DEAS: Your Honor, this job that we do is a
25 different one. It's a situation where you have a

1 responsibility to zealously represent your client, and
2 through the process and through this judicial system, you
3 encounter families like Mr. Flexon's family who've
4 experienced such a tragic loss, and your heart certainly
5 does go out to them.

6 Like I said in my opening and closing arguments, this
7 is a situation that you wouldn't wish on any family. And
8 my prayers and heart does go out to this family sincerely
9 and genuinely. What they've been through is certainly just
10 a tragic experience.

11 Mr. Canty has had his trial, and he's been found
12 guilty by a jury of his peers. And he understands that he
13 has to face the consequences of being found guilty of both
14 the charges of murder and armed robbery. He and I have
15 discussed that, and he understands that he has been held
16 accountable by this jury for what happened back on January
17 12, 2008.

18 As a young man at -- well, when this incident
19 happened, he was sixteen years of age. Had a seventh grade
20 education. He had worked some in landscaping for a
21 landscaping company. Obviously not married, not having any
22 children. No prior record. Never been in any trouble with
23 the law. Never had any brushes with the law. And he finds
24 himself now standing before His Honor guilty of the most
25 serious charge we have with respect to the law, criminal

1 law, as well as armed robbery, which is also a very serious
2 crime.

3 He finds himself in this position, quite frankly --
4 and he and I just discussed it -- because he made a very
5 poor decision, a very irresponsible decision, a very
6 inexcusable decision on that day of January 12, 2008.

7 You can say because of his youth and age, he may have
8 been lead astray by those that influenced him. You can say
9 that he was probably not mature enough at the time to
10 remove himself from the situation and to get out from under
11 the influence of others. But regardless of that, as a man
12 standing before you now, he is taking responsibility for
13 what occurred and for his role in it. And he has -- and
14 I'm going to give him an opportunity in a little bit to
15 state that himself.

16 He's here today with his mother and his four or three,
17 three sisters, Lashawnda, Shakea, and Queen, and they
18 support him and love him.

19 This is, this is a young man that seemed to be, at
20 least from the standpoint of the fact that he had no prior
21 record, was trying to do the right thing and veered off
22 that pass -- veered off that path without question on
23 January 12, 2008, by agreeing to take part in this crime.

24 And regardless of what the evidence showed, or
25 regardless of what his statements revealed, he, he

1 understands, I think now more than ever, that if you agree
2 to take part in something like that, and you take some
3 steps towards bringing it about, if you take some steps
4 towards completing it, to carrying it out, you've going to
5 be held accountable for it.

6 And I think what he should have done back then -- and
7 I think he's quite well aware of that now -- is never agree
8 to take part in it, and he should have just walked away or
9 gotten, removed himself from that situation altogether.
10 Because he didn't do that is, I think he understands is why
11 he's before you today. That's a lesson I'm sure he will
12 play in his head over and over and over again.

13 But, Your Honor, I would ask you to hear from him but
14 before you hear from him, I'll ask his mother if she wants
15 to take, take a moment to speak on his behalf.

16 Ms. Canty?

17 THE COURT: Ms. Canty, do you wish to say anything?

18 MS. CANTY: I can't.

19 THE COURT: All right.

20 MR. DEAS: Mr. Canty.

21 MR. CANTY: I would like to apologize to the victim's
22 family for any part that I participated in, as of saying
23 yes to the -- to actually saying yes to actually doing the
24 crime. But I would like, I still would like to pay my
25 respects and say I'm sorry for what happened, I have, I

1 participated in.

2 THE COURT: Thank you.

3 MR. DEAS: Thank you.

4 THE COURT: You may be seated.

5 Mr. Wilder, Mr. Jackson.

6 MR. WILDER: May it please the court?

7 THE COURT: Yes, sir.

8 MR. WILDER: Your Honor, my client is now twenty-three
9 years old. At the time that this took place, I think he
10 was nineteen or twenty.

11 Your Honor, when he was born, his mother was fourteen
12 years old, and his father shortly thereafter was sent to
13 prison. And, Your Honor, his mother took up with another
14 man, and they lived together until Daniel was six or seven
15 years old. And during that period of time, the man that
16 his mother had met at that time was abusive to him.

17 At age eleven, he was placed in a group home by Child
18 Protective Services after his mother was found -- abused
19 him and neglected him. They had taken him away from his
20 mother because she abused him.

21 He moved around to a variety of group homes and, Your
22 Honor, one reason we elected, and I did advise him not to
23 testify. One, you heard about the record that he had for
24 the burglary, and it seemed that that might inflame someone
25 to be holding that against him.

1 But he also tested for the IQ of 85 and a verbal IQ of
2 86 and a performance IQ of 87, and that falls in the low
3 average range of human intelligence. And I didn't think
4 that he would be able to articulate well enough to speak in
5 front of the jury.

6 When he was eleven, the report that I received says
7 that he was molested by a family member on his mother's
8 side, and that had happened just before he was sent to live
9 in a group home.

10 The jobs he's had, Your Honor, he worked at the Fort
11 Jackson commissary, and he had a job for about two weeks at
12 a car wash. But they tell me he was unable to hold down a
13 job, and I think that was because of his IQ.

14 The report says that he came from an abusive, chaotic
15 childhood, and I'm not trying to excuse anything that the
16 jury may have found that he did. That, that certainty is
17 every bit of what Mr. Meadors has made it out to be. But,
18 Your Honor, my client has always indicated to me that that
19 night when Mr. Canty went in the direction back to O.C.,
20 that he went another way, and that he was not present when
21 any of this happened. And that's what I presented to the
22 jury. That's what I argued to the court. That's what I
23 think that the evidence shows, the competent evidence, the
24 reliable evidence, the evidence that should have been
25 considered.

1 So, not to quarrel with the verdict of the jury, which
2 we know is there, but to say that Mr. Jackson has not had
3 too much of a good start in life and now faces what is
4 probably the worst or most serious kind of offense that we
5 have in our criminal justice system. And I'm asking you to
6 have mercy on him as you fashion your sentence.

7 At twenty-three years old, a life sentence is a long
8 time. I ask you to consider that one day he would like a
9 opportunity to get back and reunite with what remains of
10 the family that cares about him.

11 I would like you to hear from Angela who's here, and
12 she, she does care for him, Your Honor.

13 THE COURT: Yes, Ms. Boyd.

14 MS. BOYD: First, I would like to -- my family would
15 like to send our condolences to Mr. Flexon's family because
16 I know it's been hard. I know it's been hard. I respect
17 what the jury has decided, and I'm mad at my own self
18 because I wasn't able to be there for my nephew.

19 And I ask that you have mercy on him at this time
20 because I really remember being able to be there when he
21 was three years old, and I took him to a kindergarten class
22 I was working for. He was my favorite nephew.

23 My sister, his mother, wasn't able to be here -- she's
24 in Ohio -- because of financial difficulties. And it's
25 hard for me to imagine because when my mom passed away in

1 '07, I just wasn't strong enough to be there. I have five
2 of my own kids and my other sister's, too. And I wanted to
3 be there, and at every opportunity that I did have to be
4 with Daniel, I was there. It just wasn't enough.

5 And I'm asking you to have mercy on him, and to
6 remember that I and my family have told the truth no matter
7 how hard it was to do. And that Daniel, out of all the
8 people in my family that have come to me and asked me for
9 advice, he did not. He asked me to take him and bring him
10 up here. I did not know where the police department was.
11 I got lost coming to court a couple of times.

12 But I ask you to have mercy on him because I would
13 love to have the opportunity at some time in my life just
14 to be with him. Thank you.

15 THE COURT: Thank you, Ms. Boyd.

16 MR. WILDER: And, Your Honor, he has been incarcerated
17 on this warrant since the day he turned himself in to law
18 enforcement, and I ask whatever sentence, you give him
19 credit for the time he's served.

20 THE COURT: Does he wish to make a statement to the
21 court?

22 MR. WILDER: Daniel, do you want to talk?

23 MR. JACKSON: Yes, sir. May I begin? Your Honor,
24 since day one, all I been asking is that I be judged
25 according to the law, and also whatever someone else thinks

1 of me or believes to be true, that my constitutional rights
2 not be violated in any type of way.

3 Your Honor, I can't say too much, but I not commit
4 this crime. I never shot anybody, not a day in my life. I
5 never robbed anybody. I didn't take anything from nobody.
6 I never, never had no reason. And I admit I was wrong by
7 accepting that weapon and doing, you know what I'm saying,
8 taking when I know I'm not supposed to have no weapon in
9 the first place.

10 But, you know, I have family out there that I really
11 want to be with. I have a son I hadn't seen yet. I really
12 want to be home with my family.

13 Now I understand the consequences. I should never
14 accept that weapon, but I did. Your Honor, I do apologize
15 for that.

16 I did time for the crime that I did commit because I
17 was guilty of those charges. Some of them got dismissed
18 because I was not guilty. Your Honor, I'm not guilty of
19 this charge here.

20 THE COURT: Thank you.

21 Anything further, Mr. Wilder?

22 MR. WILDER: No, Your Honor.

23 THE COURT: All right. Thank you. You may be seated.

24 MR. WILDER: Thank you.

25 THE COURT: Give me a few minutes.

1 Just to be clear, the armed robbery minimum sentence
2 is ten years up to thirty years, and on the murder charge
3 is a mandatory minimum of thirty years to life?

4 MR. MEADORS: Yes, Your Honor.

5 (A PAUSE.)

6 *SENTENCE OF THE COURT*

7 THE COURT: Reginald Canty, please stand. Needless to
8 say, Mr. Canty, the consequences of your decision on
9 January the 12, 2008, are great. This state set a
10 mandatory minimum of at least thirty years that I must
11 sentence you.

12 I don't know whether you're a follower in this group
13 or what. But because of your participation in this, Bill
14 Flexon lost his life, and what y'all did was such a
15 senseless killing. You would have killed anyone. It was
16 almost -- not a random killing, but it was one where you
17 were going to kill whoever came up that night. It didn't
18 matter. He was the pizza man, as if whoever the pizza man
19 was didn't have a right to live.

20 He has a family. There are a lot of broken hearts in
21 this courtroom because of what y'all did that night. I
22 feel sorry for your mother, feel sorry for your sisters.
23 They actually tried to do the right thing throughout this.

24 I'm not sure that you did try to do the right, that
25 you tried to do the right thing. It does appear that

1 towards the end or after it happened there was remorse.
2 But it still doesn't take away the fact that no matter how
3 much remorse you have after that, Bill Flexon was still
4 dead, and his family did not have the right to have him
5 with them as they should have.

6 Concerning the armed robbery under indictment
7 2008-GS-43-993, sentence of the court is that you be
8 committed to the State Department of Corrections for a
9 period of thirty years. As to the charge of murder under
10 count 1 of indictment 2008-GS-43-993, it is the sentence of
11 this court that you be committed to the State Department of
12 Corrections for a period of thirty years. You may step
13 back.

14 MR. DEAS: Thank you, Your Honor.

15 THE COURT: Mr. Jackson, Mr. Wilder.

16 These shall run concurrently.

17 MR. DEAS: And credit for time served?

18 THE COURT: Credit for time served.

19 THE COURT: Mr. Daniel Deangelo Jackson, you made a
20 statement that you wanted to be with your family. I'm sure
21 Bill Flexon wanted to be with his family; I'm sure his
22 family wanted to be with him. He was a man who was just
23 trying to eek out a living, do the right thing. He
24 actually volunteered to do what he wasn't required to do.
25 And because of someone like you, who put this together, I

1 find that he didn't get to have that. He was murdered. He
2 was gunned down like a dog. And I find, based upon what I
3 heard in the testimony, that you were heavily involved with
4 this. I think to a large extent, Mr. Canty was probably a
5 follower. But I find, I see no remorse.

6 And the sentence of this court is on the armed robbery
7 charge under indictment 2008-GS-43-993 that you be
8 committed to the State Department of Corrections for a
9 period of thirty years. As to the charge under indictment
10 2008-GS-43-993 on the charge of murder, the sentence of
11 this court is that you shall spend the rest of your life
12 behind bars separated from the rest of humanity because I
13 don't think you can live with humanity. Good luck.

14 MR. MEADORS: Thank you, Your Honor.

15 MR. DEAS: Thank you.

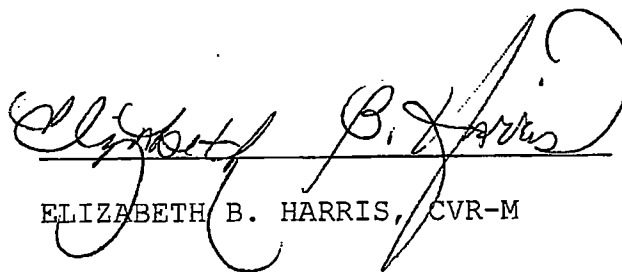
16 THE COURT: All right, we need to separate the
17 families. The lady jurors and the jurors, let the jurors
18 leave. We'll hold y'all here and then we'll escort y'all.

19 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
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 HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR SUMTER COUNTY, SOUTH CAROLINA, ON
THE 8TH, 9TH, 10TH, 11TH, 12TH DAYS OF AUGUST, 2011.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

APRIL 14TH, 2012

WITNESSES

SCSO

Burnish

ARREST WARRANT NUMBER

J292665; J292666

D/A: 01/25/08

ACTION OF GRAND JURY

True Bill

William Sanchez

Foreperson of Grand Jury

Date: 9/11/08

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008-GS-43- 993

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2008

THE STATE

vs.

REGINALD CANTY

DANIEL DEANGELO JACKSON

Indictment for

MURDER, ARMED ROBBERY

C. KELLY JACKSON, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR
MURDER, ARMED ROBBERY

At a Court of General Sessions, convened on September 11, 2008, the Grand

Jurors of SUMTER County present upon their oath:

CERTIFIED TRUE COPY
OF ORIGINAL FILE
Barbara Shaper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

COUNT ONE - MURDER

That REGINALD CANTY AND DANIEL DEANGELO JACKSON did in Sumter County on or about January 12, 2008, feloniously, wilfully and with malice aforethought, either expressed or implied, kill one William J. Flexon by means of shooting him with a firearm, and that the said William J. Flexon did die as a proximate result thereof.

COUNT TWO - ARMED ROBBERY

That REGINALD CANTY AND DANIEL DEANGELO JACKSON did in Sumter County on or about January 12, 2008, violate Section 16-11-330 of the Code of Laws of South Carolina (1976), as amended, while armed with a deadly weapon, to-wit: firearms, did feloniously take from William J. Flexon in the presence of William J. Flexon, by means of force or intimidation goods or monies of the said William J. Flexon, such goods or monies being described: three Sambino's pizzas.

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

P. Kelly Jackson
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS 1267

COUNTY OF SUMTER

INDICTMENT/CASE#: 2008-GS-43-0993

STATE VS.

REGINALD CANTY

AW#: J292775

AKA:

Date of Offense: January 12, 2008

Race: Black

Sex: Male

Age:

S.C. Code §: 16-03-0010, 0020

DOB: [REDACTED] 1991

SS#:

CDR Code #: 0116

Address: [REDACTED] Cherryvale Drive Sumter, SC 29150

SENTENCE SHEET

DL#

SID#

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: MURDERin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 0, 1, 1, 1, 6
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

 The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (Defendant Initial)
 The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

 #70429
 Solicitor

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 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus

costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant 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

\$14-1-211(A)(2) (DUI Surcharge) \$100

\$56-5-2995 (DUI Assessment) \$12

\$35.13 (Public Def/Prob) \$500

\$73.3, 1B TP (Law Enforce. Funding) \$25

\$33.7, 1B TP (Drug Court Surcharge) \$100

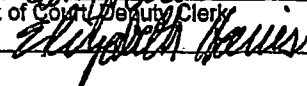
\$50-21-114(BUI Breath Test Fee) \$50

\$56-5-2942(J) (Vehicle Assessment) \$40/ea

3% to County (if paid in installments)

\$90.11 TP (SCCJA Surcharge) \$5

TOTAL


 Clerk of Court, Deputy Clerk
Court Reporter: 

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

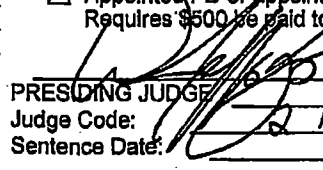
Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$35.13 TP
 Requires \$500 to be paid to Clerk during probation.
PRESIDING JUDGE: 

Judge Code: _____

Sentence Date: 8-12-11

1268

1072

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER

INDICTMENT/CASE#: 2008-GS-43-0993

STATE

VS.

REGINALD CANTY

AW#: J292778

AKA:

Date of Offense: January 12, 2008

Race: Black

Sex: Male

Age:

S.C. Code §: 16-11-0330(A)

DOB: [REDACTED] 1991

SS#:

CDR Code #: 0139

Address: [REDACTED] Cherryvale Drive Sumter, SC 29150

DL#

SID#

CERTIFIED TRUE COPY
OF ORIGINAL FILE
SENTENCE SHEET
Barbara Shaper
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Armed Robberyin violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0111319
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC) ☐ §17-25-45 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John P. Meador #10429
Solicitor

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 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; pluscosts and assessments as applicable*; the balance is suspended with probation for months/years and subject to South

Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred, ☐ Defendant Waives Hearing, ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§35.13 (Public Def/Prob)	\$500
§73.3, 1B TP (Law Enforce. Funding)	\$25
§33.7, 1B TP (Drug Court Surcharge)	\$100
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
§90.11 TP (SCCJA Surcharge)	\$5
TOTAL	\$

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

Court Reporter:

FORM 5
RECORDED

STATE OF SOUTH CAROLINA

COUNTY OF SumterReginald Campy 347341
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2015 JAN 13 AM 8:42

JAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

IN THE COURT OF COMMON PLEAS

2015-CP-43-00061

APPLICATION FOR

POST-CONVICTION RELIEF
OF ORIGINAL FILEBarbara Shana
DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE Correctional Institution
2. Name and location of Court which imposed sentence Sumter County General Sessions
3. Name(s) of co-defendant(s) (if any) Daniel Deangelo Jackson
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2008-GS-43-993 Armed Robbery,
 - (b) Murder
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 8/12/11
 - (b) 30 years for Armed Robbery

Revised 3/2003

RECEIVED

(c) And 30 years for Murder run concurrent.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) ☒ after a plea of not guilty _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

YES

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. THE COURT AFFIRM THE DENYING OF MY

ii. DIRECTED VERDICT MOTION. And Trial Court reversibly

iii. erred by admitting a close up photograph depicting the bloody victim

(c) the date of each such result:

i. MAY 5, 2014

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished Opinion

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Conflict of Interest
- (b) Attorney saw a possible Batson objection in the
- (c) jury selection that attorney did not raise.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Direct Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Division of Appellate Defense Court of
- ii. Appeals, 1015 Sumter Street, Columbia,
- iii. South Carolina.
- iv. _____
- (c) the disposition thereof:
- i. Denied
- ii. _____
- iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. May 5, 2014
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. Unpublished Opinion
- 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) My Attorney Mr. Stevens informed me that
- (b) the proper avenue to seek relief on these
- (c) issues is on a PCR Attorney claim.
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 "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Garryl L. Dear
- ii. The Dear Law Firm, 201 North Main Street
- iii. Sumter, South Carolina 29150
- (b) the proceedings at which each such attorney represented you:
- i. Breen Richard Stevens, South Carolina Commission
- ii. on Indigent Defense, Division of Appellate Defense
- Post office Box 11589
- iii. Columbia, SC 29211-1589
19. State clearly the relief you seek in filing this application:
Sentence and conviction reversed
20. Are you now under sentence from any other court that you have not challenged?

STATE OF SOUTH CAROLINA

County of

) RECORDED

2015 JAN 13 AM 8:42

VERIFICATION

I, Reginald Canty, 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.

Reginald Canty

SWORN to and subscribed before me this 8
day of Jan, 2015.

Debra Surgo (L.S.)
Notary Public

My Commission Expires: 11-4-2015

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

RECORDED
2015 JAN 13 AM 8:42

**JAMES C. CAMPBELL
CLERK OF COURT
SOUTHERN DISTRICT OF NEW YORK**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees, costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Reginald Canty

Applicant

SWORN or affirmed to and subscribed before me this

8 day of Jan, 2015.

Debra Sirois
Notary Public

My Commission Expires: 11-4-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Reginald Canty, #347341,	)	2015-CP-43-00061
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed January 13, 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 Sumter County Clerk of Court. The Applicant was true bill indicted at the September 2008 term of the Sumter County Grand Jury for murder and armed robbery (2008-GS-43-993). Garryl Deas, Esquire represented Applicant. Applicant proceeded to a jury trial and was found guilty of murder and armed robbery on August 12, 2011. The Honorable W. Jeffrey Young sentenced Applicant to thirty years for murder and thirty years for armed robbery to run concurrent.

A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction in sentence. State v. Canty, 2014-UP-208 (Ct. App. 2014). The Remittitur was issued on June 23, 2014.

Attached herewith and incorporated herein are the records of the Sumter County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina

Department of Corrections, appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. Conflict of interest
 - b. Attorney saw a possible Batson objection in the jury selection that attorney did not raise.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

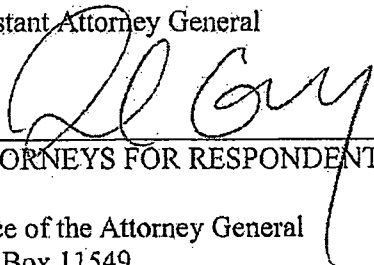
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

DANIEL GOURLEY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

March 4, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

REGINALD CANTY, #347341,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2015-CP-43-00061

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:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, SC 29201

DATED this 4th day of March, 2015.


 Caroline Collins, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	C/A NO: 2015-CP-43-61
	)	
Reginald Cnty, #345341,	)	
	)	
Applicant,	)	
	)	FIRST AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, at his request and through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed January 13, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(i) "Ineffective assistance of counsel for failure to object to the Solicitor's manipulation of the dockets in the prosecution of the Applicant's case. Specifically, that the Applicant's constitutional rights were violated by the purposeful manipulation of the dockets to obtain a conviction that would effect the client's decision to take the stand in his own defense."

(ii) "Ineffective assistance of trial counsel for failure to properly prepare and investigate, specifically, but not limited to the following claim: failure to review and explain the complete discovery materials to Applicant prior to trial; failure to conduct an independent investigation into the evidence and witnesses that formed the State's case against Applicant."

(iii) "Ineffective assistance of counsel for being inexperienced to conduct a murder trial. Trial attorney waited two years before he hired a private investigator. Attorney is ineffective for breaking attorney-client privilege."

(iv) "Trial counsel was ineffective for not questioning Investigator West about the resigned situation that took place May 5, 2010, with this person."

(v) "Attorney Deas did not properly handle the Batson motion during trial."

THE BOOZER LAW FIRM, LLC

A handwritten signature in black ink, appearing to read "L.S. Boozer", is written over a horizontal line.

Lance S. Boozer

Attorney for Applicant

807 Gervais Street, Suite 203

Columbia, SC 29201

Phone: (803) 608-5543

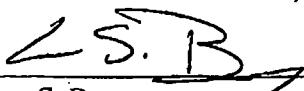
July 2, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	C/A NO: 2015-CP-43-61
	)	
Reginald Canty, #345341,	)	
	)	
Applicant,	)	
	)	AFFIDAVIT OF SERVICE
v.	)	
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Daniel Gourley
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

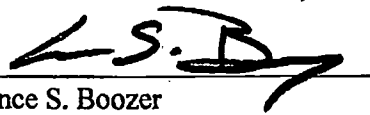
Columbia, South Carolina
July 2, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	C/A NO: 2015-CP-43-61
	)	
Reginald Canty, #345341,	)	
	)	
Applicant,	)	
	)	SECOND AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, at his request and through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed January 13, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (i) Ineffective assistance of counsel of appellate counsel

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543

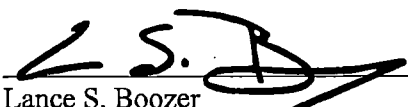
September 2, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRD JUDICIAL CIRCUIT
COUNTY OF SUMTER	)	C/A NO: 2015-CP-43-61
	)	
Reginald Canty, #345341,	)	
	)	
Applicant,	)	
	)	THIRD AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Applicant, at his request and through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed January 13, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (i) Counsel failed to object to jury instruction that jury may infer malice from the use of a deadly weapon. *State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009).
 - (ii) Counsel failed to request lesser included charges.

THE BOOZER LAW FIRM, LLC



Lance S. Boozer
 Attorney for Applicant
 807 Gervais Street, Suite 203
 Columbia, SC 29201
 Phone: (803) 608-5543

October 27, 2016

CERTIFICATE OF SERVICE

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing Third Amendment to PCR Application upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Julie Coleman
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC

A handwritten signature in black ink, appearing to read "L.S. Boozer", is written over a horizontal line.

Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
October 27, 2016

1 STATE OF SOUTH CAROLINA

IN THE CIVIL COURT

2 COUNTY OF SUMTER

3

4

5 REGINALD CANTY,

6 Applicant,

7 -vs-

8 STATE OF SOUTH CAROLINA,

9 Respondent.

)
)
)
)
)
)
)

TRANSCRIPT OF RECORD

15-CP-43-00061

10

11

March 31, 2017
Sumter South Carolina

12

13

14 B E F O R E:

15 HONORABLE D. CRAIG BROWN, Judge.

16

17

18 A P P E A R A N C E S:

19 LANCE S. BOOZER, Esquire
Attorney for the Applicant

20

21 RUSTON WESLEY NEELY, Asst. Attorney General
Attorney for the State

22

23

L. COCONUT PANTSARI, R.P.R.
Circuit Court Reporter

24

25

INDEX OF WITNESSES

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APPLICANT'S EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 (The following proceedings are reported on
2 March 31, 2017.)

3 THE COURT: Mr. Neely, call your case, please,
4 sir.

5 MR. NEELY: Thank you, Your Honor. This is
6 the case of Reginald Canty versus the State of South
7 Carolina. The case number is 2015-CP-43-061. Mr. Canty
8 was originally indicted for murder and armed robbery by
9 the Sumter County Grand Jury.

10 That's Indictment Number 2008-GS-43-993. He
11 was represented by Garryl Deas at trial. The jury trial
12 took place on August 12, 2011, before the Honorable
13 Jeffrey Young.

14 He was sentenced on August 12, 2011, to 30
15 years for murder and 30 years for armed robbery,
16 concurrent. A timely notice of appeal was filed on
17 applicant's behalf. Remitter was issued June 23, 2014.

18 (Pause.)

19 THE COURT: Yes, sir. I thought you were
20 still saying something, Mr. Neely.

21 Yes, sir, Mr. Boozer.

22 MR. BOOZER: Thank you, Your Honor. If it
23 please the Court. I will go ahead and call Mr. Canty to
24 the stand.

25 THE COURT: Sir, come around to be sworn,

1 please.

2 (The witness comes forward.)

3 REGINALD CANTY, being
4 first duly sworn, testifies as follows:

5 CLERK: State your name and spell your last
6 name.

7 THE DEFENDANT: Reginald Canty, C-A-N-T-Y.

8 **DIRECT EXAMINATION**

9 BY MR. BOOZER:

10 Q Mr. Canty, how are you doing today?

11 A I'm doing all right.

12 Q Keep your voice up so Madame Court Reporter can
13 take everything down. Okay? Scoot up a little
14 bit. How are you doing today?

15 A I'm doing all right.

16 Q And you know why it is you are here today?

17 A Yes, sir.

18 Q And what is it that you filed to get here? Did you
19 file a PCR application?

20 A I filed a PCR application to the State of South
21 Carolina, to the Third Circuit Court.

22 Q Okay. Tell the Court this: What is it that you
23 are currently incarcerated for?

24 A Murder and armed robbery.

25 Q And what were you originally charged with?

REGINALD CANTY -- DIRECT -- MR. BOOZER

1 A Accessory after the fact and criminal conspiracy.

2 Q And did you have a trial in this case?

3 A Yes, sir.

4 Q Who represented you at your trial?

5 A Garryl Deas.

6 Q Now, was Mr. Deas, was he appointed to represent
7 you or was he retained to represent you?

8 A He was appointed.

9 Q And when was -- do you recall when he was first
10 appointed?

11 A I want to say August of 2008.

12 Q So your trial was when? August of 2011?

13 A Yeah, August of 2011.

14 Q In between the time that he was appointed to
15 represent you sometime in 2008 and your trial in
16 2011, do you know about how many times you may
17 have either met with Mr. Deas or spoken with
18 Mr. Deas?

19 A Maybe, like, about three or four times.

20 Q Now, in this case was there ever a plea offer prior
21 to your trial?

22 A Yes.

23 Q How much time was that and what was it to?

24 A Thirty years.

25 Q All right. Did you decline that offer?

1 A Yes, sir.

2 Q Were you fairly adamant? Did you want a trial in
3 this case?

4 A Yes, sir.

5 Q Did you have any discussion with Mr. Deas about how
6 many murder cases he had tried before this case?

7 A Yeah, one time before.

8 Q I'm sorry?

9 A Yeah, one time.

10 Q Okay. Mr. Canty, you have raised -- you had an
11 original application and then there has been, I
12 believe, four subsequent amendments to that
13 application; is that correct?

14 A Yes, sir.

15 Q All right. Let's just go through some of your
16 allegations. It's my understanding that there are
17 a few that you do not want to proceed with; is that
18 right?

19 A Yes, sir.

20 Q Let's go through those. You alleged that there
21 existed in your original application a conflict of
22 interest on the part of your lawyer. Is that one
23 of your allegations?

24 A Yes, sir.

25 Q And is that one that you wish to proceed on?

REGINALD CANTY -- DIRECT -- MR. BOOZER

1 A Yes, sir.

2 Q If you would, explain to the Court why you believe
3 there was a conflict of interest with Mr. Deas
4 representing you at the time?

5 A Because I had found out from another attorney that
6 it was -- he showed me the website, that it was --
7 Garryl Deas, where it says that he was a drug
8 forfeiture attorney for the Solicitor, Kelly
9 Jackson. During the time I wanted a new -- it was
10 during the time where he was representing me.

11 Q So you received some information that Mr. Deas may
12 have been working at the Solicitor's Office at some
13 time or working with the Solicitor's Office as a
14 drug forfeiture attorney?

15 A Yes, sir.

16 MR. BOOZER: Your Honor, may I approach the
17 witness?

18 THE COURT: Yes.

19 BY MR. BOOZER:

20 Q I will hand you a copy of the document. If you
21 would take a look at that. Do you see that
22 document?

23 A Yes, sir.

24 Q And is that a copy -- have you ever seen that
25 particular web page before?

1 A No, just only on paper.

2 Q Just on paper. But is that to your knowledge what
3 the web page looks like?

4 A Yes, sir.

5 Q To your knowledge is that a website for Mr. Deas
6 and his law firm?

7 A Yes, sir.

8 MR. BOOZER: Your Honor, at this time we move
9 to make this Applicant's Exhibit 1.

10 THE COURT: Any objection?

11 MR. NEELY: No, sir, Your Honor.

12 THE COURT: Without objection, so admitted.

13 (Applicant's Exhibit Number 1 is received into
14 evidence.)

15 BY MR. BOOZER:

16 Q And, Mr. Canty, looking at Applicant's Exhibit 1,
17 it states on the website page that Attorney Deas
18 previously served as the drug forfeiture attorney
19 for the Third Circuit and responsible for all drug
20 seizure litigation in Sumter, Clarendon and
21 Williamsburg Counties; is that correct?

22 A Yes, sir.

23 Q And you believe that that could have been a
24 conflict of interest for him to serve in that
25 capacity and represent you?

REGINALD CANTY -- DIRECT -- MR. BOOZER

1 A Yes, sir.

2 Q All right. Mr. Canty, you also alleged in your
3 original application that your lawyer failed to
4 raise a Batson issue during the jury selection.

5 Is that an allegation that you would like to
6 withdraw?

7 A Yes, sir.

8 Q Now, you have also filed an amended application, a
9 first amendment. You have got allegation (I) that
10 is ineffective assistance of counsel for failing to
11 object to solicitor's manipulation of the dockets
12 in part.

13 Is that an allegation that you wish to
14 withdraw?

15 A Yes, sir.

16 Q You also have ineffective assistance of counsel for
17 failing to properly prepare and investigate,
18 failing to review and explain discovery materials,
19 failing to conduct an independent investigation in
20 witnesses that formed the State's case against the
21 applicant.

22 Is that an allegation you wish to go forward
23 with?

24 A Yes, sir.

25 Q If you would, to your knowledge what is it that

1 your lawyer did to prepare your case for trial?

2 A He never came and asked me the breakdown of what
3 was his strategy or how we are going to go at the
4 case. He never came and broke it down to me or let
5 me know or never came to an understanding of what
6 was going on.

7 Q Just briefly, what were the State's allegations
8 against you? Do you know what the State alleged
9 that your involvement in this was?

10 A Accessory after the fact and criminal conspiracy,
11 until it was upgraded to murder and armed robbery.

12 Q What was it that they were alleging you had done or
13 had been involved with?

14 A Killing William Fletcher.

15 Q And he was who?

16 A He was working with Sambino's at the time.

17 Q And did you have a codefendant in the case?

18 A Yes, sir.

19 Q And who was that?

20 A Daniel Jackson.

21 Q And did you and Mr. Jackson, were y'all tried
22 together?

23 A Yes, sir.

24 Q Do you know if your attorney looked into anything
25 or investigated Mr. Jackson at all at that time?

REGINALD CANTY -- DIRECT -- MR. BOOZER

1 A No, sir.

2 Q Who was Mr. Jackson represented by if you know?

3 A Arthur Wilder.

4 Q You have also got an allegation that your lawyer
5 was inexperienced to conduct a murder trial, and he
6 waited two years before hiring an investigator and
7 was ineffective for breaking attorney/client
8 privilege.

9 Is that an allegation you wish to proceed with
10 or is that one you wish to withdraw?

11 A I would like to proceed with that one.

12 Q Explain that, what you mean by that allegation to
13 the Court.

14 A I'm sorry. Can you repeat that again?

15 Q Of course. You have alleged that your lawyer -- we
16 will take it in parts -- that your lawyer was
17 inexperienced to conduct a murder trial. Explain
18 that allegation.

19 A Well, when we first started off, it was in -- he
20 was first appointed to me in October of -- August
21 of 2008. From then we received our motion or I
22 received my motion of discovery in September.

23 So I was looking from September to -- from
24 September when I received my motion of discovery,
25 and I was indicted at the time. But from January,

1 from January -- not January -- but from August and
2 September of 2008 until 2010, from July 2010 when I
3 first asked him about it -- I'm sorry, March
4 2010 -- when I first asked him about it, doing that
5 for me.

6 During the time he kind of, you know, started
7 out and came to talk to me one time. That's when I
8 told him or I wrote him a letter -- sorry. I wrote
9 him a letter and he came to see me.

10 I told him then and he was, like, he was
11 going to do that. But at the time we never got up
12 there until, like, July. So it was kind of pushed
13 back.

14 I still been wondering why it took two years
15 for him to obtain or to even think about -- because
16 I really don't know anything. Excuse me. I really
17 don't know anything about the law at the time.

18 So I was hoping he would, being that he
19 represented me, so he would be able to see that,
20 from 2008 to 2010 was two years; and nothing
21 have -- no evidence or anything have come up
22 between those times.

23 I was looking at it as in, it was ready for me
24 to go up. So I file for a speedy trial. I asked
25 him to file for a speedy trial. But I will say

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1 during that time, being if he was experienced
2 enough, he would have -- when he first gave me all
3 my discovery material, he would do that, file a
4 motion for a speedy trial.

5 Q Okay. And moving on, I think you have already
6 touched on this though. Within that allegation you
7 have that your lawyer waited two years before he
8 hired a private investigator.

9 Have you already covered that?

10 A Yeah, I covered that just then when I wrote him.

11 Q And for breaking attorney/client privilege, was
12 that something you covered or not?

13 A I don't think I have covered that.

14 Q Go ahead then and explain that, unless that is a
15 segment that you want to withdraw.

16 A That's really a segment I wanted to withdraw.

17 Q Okay. Now, Mr. Canty you filed a second PCR
18 amendment. It's my understanding that you would
19 like to withdraw that as well. That has to do with
20 ineffective assistance of your appellate counsel.

21 Is that a claim you wish to withdraw?

22 A Yes, sir.

23 Q Now, you filed also a third amendment, which is a
24 legal argument that I will not question you a whole
25 lot on that. But that allegation is that your

1 lawyer failed to object to a jury instruction, that
2 the jury may infer malice from the use of a deadly
3 weapon.

4 That's one that you are still proceeding on?

5 A Yes, sir.

6 Q And you understand that I will be questioning your
7 attorney about that and not you specifically?

8 A Yes, sir.

9 Q All right. You have also got in that third
10 amendment that your lawyer failed to request a
11 lesser-included charge.

12 Is that one of your allegations?

13 A Yes, sir.

14 Q And that's something that we will also be getting
15 into with your lawyer?

16 A Yes, sir.

17 Q To your knowledge did your lawyer ask that the jury
18 be charged with any sort of lesser-included charges
19 or that they could consider any lesser-included
20 charges?

21 A Yes, sir.

22 Q He did or didn't ask that?

23 A No, he didn't.

24 Q Okay. Mr. Canty, you have alleged a fourth
25 allegation, and this is --

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15

1 MR. BOOZER: Your Honor, does Your Honor have
2 a copy of the applicant's fourth amendment?

3 THE COURT: I have a first and second only. I
4 only have the first and second.

5 MR. BOOZER: First and second?

6 THE COURT: Yes, sir, in my packet.

7 MR. BOOZER: Beg the Court's indulgence, Your
8 Honor. May I approach with original copies?

9 THE COURT: Yes.

10 (Hands to Court.)

11 BY MR. BOOZER:

12 Q Mr. Canty, before we proceed with your fourth
13 amended application, let's just go back through and
14 make sure we have got the ones that you are
15 withdrawing so the record is clear. Okay?

16 A Yes, sir.

17 Q Okay. You are withdrawing in your first amended
18 application your amendment that is Roman Numeral
19 (I), which is ineffective assistance of counsel for
20 failing to object to the solicitor's manipulation
21 of the docket.

22 That's one that you are withdrawing?

23 A Yes, sir.

24 Q All right. You are going forward with the Roman
25 Numeral (2), which was dealing with your lawyer

1 preparing and reviewing discovery for your case; is
2 that correct?

3 A Yes, sir.

4 Q And you are also going forward with the allegation
5 Roman Numeral (3), which deals with your lawyer
6 being inexperienced to conduct the murder trial and
7 waiting two years before hiring a private
8 investigator.

9 Is that one you are going forward with?

10 A Yes, sir.

11 Q You have withdrawn part of that allegation, which
12 is that your lawyer was ineffective for breaking
13 the attorney/client privilege?

14 A Yes, sir.

15 Q You have also withdrawn allegation Roman Numeral
16 (4) or the First Amendment that your lawyer was
17 ineffective for not questioning Investigator West?

18 A Yes, sir.

19 Q All right. And then in your second amendment in
20 which you have alleged your appellate counsel was
21 ineffective, that's one that you are also
22 withdrawing?

23 A Yes, sir.

24 Q Mr. Canty, back to your fourth amendment, you have
25 alleged that there is after-discovered evidence

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17

1 pertaining to your actual innocence. It will be
2 presented through the testimony of your former
3 codefendant, Mr. Daniel Deangelo Jackson.

4 Is that one of your allegations?

5 A Yes, sir.

6 Q All right. You have already testified that
7 originally you proceeded to trial with your
8 codefendant? Y'all had a trial together?

9 A Yes, sir.

10 Q And to your knowledge was he convicted at trial as
11 well?

12 A Yes, sir.

13 Q And what sentence did he receive to your knowledge?

14 A Life.

15 Q And is it your understanding that he had an appeal
16 and that he was successful in getting a new trial?

17 A Yes, sir.

18 Q Now, you understand that Mr. Jackson is here today
19 to testify in your case?

20 A Yes, sir.

21 Q Have you made -- and understanding you are under
22 oath and whatnot -- do you understand -- excuse me.
23 Strike that. Have you made any promises or threats
24 to Mr. Jackson to testify on your behalf?

25 A No, sir.

1 Q Have you told Mr. Jackson how to testify?

2 A No, sir.

3 Q Okay. Mr. Canty, I want to make sure we've covered
4 all of your allegations that you are moving forward
5 with and understanding that Mr. Jackson will also
6 be testifying today.

7 Is there anything that we have not covered
8 with regard to your PCR application?

9 A No, sir.

10 Q Mr. Canty, that's all the questions I have for you
11 right now. Please answer any the State may have of
12 you. Okay?

13 THE COURT: Cross examination.

14 MR. NEELY: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. NEELY:

17 Q Mr. Canty, how are you doing today?

18 A I'm doing all right.

19 Q I want to clarify some issues that you went over
20 with your attorney, Mr. Boozer. When you allege a
21 conflict of interest between your attorney,
22 Mr. Deas, at trial and his relationship with the
23 Solicitor's Office, is that based purely on that
24 document?

25 A Is it based on that document?

1 Q Yes.

2 A Yes, sir.

3 Q Okay. So you don't have any outside knowledge,
4 other than that piece of paper, that there is any
5 conversation between your attorney and the
6 Solicitor's Office concerning your case?

7 A No, sir.

8 Q And, in fact, you have never even been to the
9 website that that page came from; correct?

10 A No, I never been.

11 Q And you don't know the timeline of when he worked
12 for the Solicitor's Office; is that correct?

13 A No, sir.

14 Q It's not correct or you don't know?

15 A I don't know.

16 Q Okay. And was there a forfeiture in your case?

17 A That's what I'm here trying to find out.

18 Q Was there a forfeiture action, like, did the police
19 take any money from you that you are trying to get
20 back?

21 A No, sir.

22 Q And when you spoke about the failure to investigate
23 by your attorney, I think what you said was, "He
24 never went over the strategy for the trial with
25 me"?

1 A Yes, sir, that's what I said.

2 Q Right. But that's not really a failure to
3 investigate, is it?

4 MR. BOOZER: Objection, Your Honor.

5 THE COURT: Grounds?

6 MR. BOOZER: Judge, I think he's asking for a
7 legal conclusion. I think he can certainly make the
8 allegation of failure to investigate, in what he felt
9 his lawyer did or didn't do to investigate.

10 THE COURT: I will sustain the objection.

11 BY MR. NEELY:

12 Q Your only allegation concerning his failure to
13 investigate was that he didn't tell you his trial
14 strategy for your case; is that correct?

15 A Yeah.

16 Q And, in fact, he did hire an investigator for your
17 case; isn't that right?

18 A Yes, sir.

19 Q Did you speak with that investigator?

20 A Yes, sir.

21 Q And did you tell the investigator your side of the
22 story and try to help him out?

23 A Yes, sir, but that was 2010, two years later.

24 Q Okay. And what did you tell the investigator?

25 MR. BOOZER: Objection, Your Honor.

1 THE COURT: Overruled. I want to hear it.

2 A What did I tell the investigator?

3 Q Yes.

4 A I just was telling him, like, where I was at during
5 the case, about how I didn't have anything to do
6 with anything. I didn't pull no trigger or
7 anything.

8 I was trying to show them because they were
9 trying to place me at the scene. I was telling
10 them where I was at during the -- excuse me --
11 where I was at during that time, where my house was
12 at. He was trying to get a picture of it.

13 So I was just showing him, like -- you know,
14 he was drawing it out, even though where I was at,
15 where the house and basically everything was at,
16 and how they try to place me at the crime scene off
17 a piece of paper. So that's all he was really
18 asking for.

19 Q Okay. So in your talks with the investigator, you
20 were telling him where you were at when the
21 incident took place?

22 A Yes, sir.

23 Q And where did you tell him you were at?

24 A On my porch.

25 Q On your porch. And you gave several statements to

1 law enforcement, didn't you?

2 A Yes, sir.

3 Q I think it was five or six?

4 A Five.

5 Q Five. And in those statements you actually placed
6 yourself in visual range of the scene?

7 A Yeah, my house is right there. I had no choice.

8 Q And, in fact, I believe you admitted to law
9 enforcement that you knew about the robbery that
10 was going to take place from the pizza man; is that
11 correct?

12 A Yeah, but I didn't know anything about anybody
13 getting killed or being involved or anything. I
14 don't even know if he was really planning it or
15 not. I don't know.

16 Q And part of your statement to law enforcement was
17 that you and Daniel Jackson, your codefendant, went
18 down to the convenience store; and he bought a
19 Little Debbie Cake, I believe?

20 A Yes, sir.

21 Q Is that correct?

22 A Yes, sir.

23 Q And that was actually corroborated -- or they went
24 back and got the surveillance video, didn't they?

25 A Yes, sir.

1 Q And it showed you and Jackson, which you already
2 admitted to; right?

3 A Yes, sir.

4 Q And when law enforcement asked you what had
5 happened -- I believe it was your fourth statement
6 that you gave to law enforcement -- you told law
7 enforcement that it wasn't supposed to happen like
8 that. Didn't you say that?

9 A Yes, sir.

10 Q And what did you mean when you say it wasn't
11 supposed to happen like that?

12 MR. BOOZER: Objection, Your Honor.

13 THE COURT: Overruled.

14 A As in about a robbery, I didn't know anybody was
15 getting killed or anybody really serious about
16 that.

17 Q Okay. And correct me if I'm wrong, but what I'm
18 hearing is you talked about the robbery with your
19 codefendant, but you didn't know that he was going
20 to shoot anybody; is that right?

21 A Yes, sir.

22 Q And then in your preparation for the trial, did you
23 tell your attorney your side of the story?

24 A Yes, sir.

25 Q And what did you tell your attorney?

1 A The same thing.

2 Q The same thing that you told the investigator?

3 A Yes, sir.

4 Q Okay. And did you tell him that you talked with
5 the codefendant, and he talked about robbing the
6 guy? You were talking about it, but you didn't
7 know that he was going to shoot anybody?

8 A I didn't know if he was serious.

9 Q There was a shell casing that was found underneath
10 your bed. Do you remember the testimony about that
11 coming out?

12 A Yes, sir.

13 Q How did that shell casing get there?

14 A I don't know.

15 Q You don't know? Okay.

16 MR. NEELY: That's all the questions I have,
17 Your Honor.

18 THE COURT: Any redirect?

19 MR. BOOZER: No redirect, Your Honor.

20 THE COURT: Sir, you may step down. Thank
21 you.

22 (Witness leaves the witness stand.)

23 THE COURT: Call your next witness, please.

24 MR. BOOZER: Thank you, Your Honor. We call
25 Mr. Daniel Jackson to the stand.

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1 DANIEL JACKSON, being
2 first duly sworn, testifies as follows:
3 THE DEFENDANT: State your name for the record
4 and spell your last name, please.
5 THE WITNESS: Daniel Jackson J-A-C-K-S-O-N.
6 THE COURT: Go ahead, Mr. Boozer.
7 MR. BOOZER: Thank you, Your Honor. If it
8 please the Court.

9 DIRECT EXAMINATION

10 BY MR. BOOZER:

11 Q Mr. Jackson, how are you?

12 A I'm fine.

13 Q Mr. Jackson, obviously you are currently
14 incarcerated?

15 A Yes, sir.

16 Q And what are you incarcerated for?

17 A I'm incarcerated for murder and armed robbery.

18 Q All right. In August 2011 did you proceed to a
19 trial on those same charges?

20 A Yes, sir.

21 Q Did you have a codefendant?

22 A Yes, I did.

23 Q Who was your codefendant?

24 A Reginald Canty.

25 Q And who was your lawyer?

1 A My lawyer was Arthur Wilder.

2 Q Were you convicted at that trial?

3 A Yes, sir.

4 Q And what type of sentence did you receive as a
5 result of that conviction?

6 A I was sentenced to life plus 30 years without
7 parole.

8 Q Okay. Following your conviction did you file an
9 appeal?

10 A Yes, sir.

11 Q What happened with that appeal?

12 A I was granted my direct appeal in 2014.

13 Q So your case was reversed. And did they order that
14 you have basically a new trial?

15 A Yes, sir. They had 15 days to get a release or
16 retry me.

17 Q Did you ultimately have a new trial?

18 A Yes, sir.

19 Q You did have another trial?

20 A I had a new trial last year December. I'd say
21 about December the 12th, 2016.

22 Q Did you actually proceed through with the trial or
23 did something happen?

24 A Yes, sir, I went through with the trial. Then on
25 the 14th of December, I took a guilty plea for 30

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1 years.

2 Q So there was no verdict in the trial? You just
3 ended up entering a plea?

4 A I ended up into a plea.

5 Q And what did you plead guilty to?

6 A I pled guilty to murder and armed robbery, first
7 degree murder.

8 Q And are those the same sentences -- or excuse me --
9 are those the same charges that you proceeded to
10 trial on when Mr. Canty was your codefendant?

11 A Yes, sir.

12 Q Same circumstances? Same facts?

13 A Yes, sir.

14 MR. BOOZER: Beg the Court's indulgence, Your
15 Honor.

16 THE COURT: Yes, sir.

17 (Pause.)

18 MR. BOOZER: Your Honor, we would just ask the
19 Court to take judicial notice that that is correct. He
20 did receive a 30-year sentence and pled guilty in
21 December.

22 THE COURT: Anything on that?

23 MR. NEELY: No real objection, Your Honor.
24 I'm not sure of the date exactly in front of us, but...

25 MR. BOOZER: Your Honor, I have printed out

1 copies from the Clerk of Court. If I can hand that up
2 to Your Honor and mark it as an exhibit.

3 MR. NEELY: That would be sufficient, Your
4 Honor.

5 THE COURT: All right, sir.

6 MR. BOOZER: Your Honor, these are Applicant's
7 Exhibit 2 and 3.

8 (Applicant's Exhibits Number 2-3 are received
9 into evidence.)

10 BY MR. BOOZER:

11 Q Who represented you at your plea?

12 A Timothy Murphy.

13 Q Who was the judge who took your plea?

14 A Judge Jeffrey Young.

15 Q And did you make certain statements at that plea
16 about Mr. Canty?

17 A Yes, I did.

18 Q Mr. Jackson, you understand that -- and have I not
19 interviewed you before?

20 A Yes, sir.

21 Q And have I explained to you that, of course, I'm
22 not your lawyer? I represent Mr. Canty?

23 A Yes, you have.

24 Q Did I inform you that you are certainly free to
25 consult with any lawyer you may choose about

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1 testifying?

2 A Yes, sir.

3 Q And is it your decision to testify today?

4 A Yes, sir.

5 Q Has anyone threatened or promised you to be here to
6 testify today?

7 A No, sir.

8 Q Did anyone threaten or promise you to make any sort
9 of statements at the plea you may have made?

10 A No, sir.

11 Q You understand you are under oath. And if for any
12 reason there were -- if any court were to find that
13 you were being untruthful, there could be certain
14 penalties for that?

15 A Yes, sir.

16 Q When you pled guilty, what statements actually did
17 you make to the plea court?

18 A Well, Judge Young, he asked me if the circumstances
19 were true that I was pleading guilty to. I told
20 him as far as on my behalf, it was. I committed
21 the murder. I committed the armed robbery. But
22 Mr. Canty didn't have anything to do with it. He
23 was not even a part of it. He was never a part of
24 anything that happened.

25 Q And when you say he was never a part of anything,

1 kind of what do you mean by that?

2 A Well, his involvement, that people were trying to
3 say he was involved in, he actually was never --
4 they was trying to make it seem like he was an
5 accessory, like aiding and assisting us, inside the
6 crime; and he never agreed to aid and assist us in
7 this.

8 It was actually a joke in the first beginning,
9 but I'm the one who took it serious. Because it
10 was something I was doing at the time, running the
11 operation that was going on in my neighbor. I was
12 heading the organization, and I did that in
13 order -- just being childish at the time.

14 Q So your testimony today is that Mr. Canty had no
15 involvement or any role whatsoever in the crime
16 that occurred?

17 A He had no involvement. I had a lot of influence on
18 all the guys that was around there at the time. I
19 really -- how can I put this? -- I put a lot of
20 fear in a lot of brothers, young brothers, at the
21 time.

22 So the only thing I did was make him get his
23 cousin to take me to the grocery store so I can
24 make the phone call in order to fulfill my plans
25 that night.

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1 Q Okay. And that was his only involvement?

2 A That was the only involvement. Like I said, I
3 forced him to do it.

4 Q Now, at the time of the trial when you and
5 Mr. Canty went to trial together, did you take the
6 stand and testify?

7 A Well, at the time I was going through a lot of
8 mental issues. I was actually on super max for
9 three years. My mental capacity, as far as my
10 lawyer, he thought I wasn't capable or you know
11 what I'm saying?

12 It wasn't right for me to take the stand at
13 the moment because I wasn't really functioning
14 right at the time. He thought it was going to be
15 an interest, conflict of interest, or anything as
16 far as the jury being able to believe what I was
17 saying.

18 Q And you're talking about back at the trial with
19 Mr. Canty?

20 A Yes, back in 2011, August 12th.

21 Q Are you under any sort of mental incapacity or
22 disabilities today that are affecting you in any
23 way?

24 A No, sir, I'm not.

25 Q And you understand what is going on here today in

1 court?

2 A Yes, sir, I do.

3 Q All right. Now, obviously like I said, you did not
4 testify at trial. So you couldn't make -- you
5 didn't make that statement that you just made?

6 A It was impossible for me to make it at that time.
7 I never got on the stand. I was actually told --
8 as a matter of fact, if you read my transcript, at
9 the end my lawyer actually admitted to the judge.
10 He said he didn't want me on the stand, and it was
11 his decision not to put me on the stand.

12 Q If Mr. Canty were to proceed -- well, let me ask
13 you this: Did you ever have an opportunity to tell
14 Mr. Deas what you stated to the plea court or what
15 you stated today in court?

16 A Mr. Deas never spoke to me. I never spoke to that
17 guy ever in my life.

18 Q All right. Mr. Jackson, if Mr. Canty were to
19 proceed to trial in these charges, would you make
20 the same statements you have made under oath today,
21 as well as the statements you have stated you made
22 at your plea? Would you do that?

23 A Yes, sir, I would.

24 MR. BOOZER: Beg the Court's indulgence, Your
25 Honor.

1 THE COURT: All right.

2 (Pause.)

3 BY MR. BOOZER:

4 Q Thank you, Mr. Jackson. That's all the questions I
5 have for you.

6 CROSS EXAMINATION

7 BY MR. NEELY:

8 Q Mr. Jackson, I am going to clarify and I will start
9 from the beginning. So the first trial you had,
10 you pled not guilty; correct?

11 A Yes, sir.

12 Q And it went through the entire trial process;
13 correct?

14 A Yes, sir.

15 Q And then you and your codefendant, Mr. Canty, were
16 found guilty by a jury; correct?

17 A Yes, sir.

18 Q At that trial you received life imprisonment
19 without parole?

20 A Yes, sir.

21 Q And Mr. Canty received 30 years?

22 A Yes, sir.

23 Q And then during the appellate process, your case
24 was reversed and remanded for a new trial; correct?

25 A Yes, sir.

1 Q And at that new trial, you pled not guilty again?

2 A Yes, sir.

3 Q And then how long did the trial go on before you
4 pled guilty?

5 A It started on, I believe it was Monday, the 7th of
6 December, 2016; and ended on the 12th of 2016,
7 December.

8 Q So a Friday?

9 A Yes, Friday was like the last day.

10 Q So it went through five days of trial, and then you
11 pled guilty?

12 A Exactly.

13 Q And just kind of going back over what Mr. Boozer
14 was talking about at the end there, when you said,
15 "I didn't have a chance to testify at trial"?

16 A Yes, sir.

17 Q If you had testified at trial, would you have
18 testified to what you said at the plea hearing?

19 A Yes, sir.

20 Q So you would have said, "I did it"?

21 A As far as the trial, yes, I would have said exactly
22 everything I said at the plea hearing.

23 Q So at your trial, the first trial, which was the
24 one with Mr. Canty; correct?

25 A Yes, sir.

1 Q Okay. So at your first trial with Mr. Canty, if
2 you had testified, you would have said, "I did it.
3 I pulled the trigger. Mr. Canty had nothing to do
4 with it"?

5 A Yes, sir.

6 Q Why did you plea not guilty then?

7 A Because at the time it was stated I was going to
8 get the death penalty, and I was not pleading to
9 death. That was the only thing they was trying to
10 say, either the death penalty or I tell on
11 everybody that was involved, which it was
12 impossible. How could I just tell on myself?

13 Q So you received notice that you were up for the
14 death penalty?

15 A Exactly.

16 Q How long had you known Mr. Canty at the time of the
17 incident?

18 A I hadn't even known him at all. I had just came
19 home from prison. So I'm not even from South
20 Carolina. I don't know anybody in South Carolina.
21 I don't have any family in South Carolina.

22 Q What were you in prison for prior?

23 A For drugs and, I believe, burglary and malicious
24 injury to property.

25 Q How long were you in jail for?

1 A Nineteen months.

2 Q Was that in a state jail or a federal jail?

3 A State of South Carolina.

4 Q What county?

5 A That was Sumter County.

6 Q And when you said, "I forced him to do that," you
7 are referring to what?

8 A To getting his cousin to take me to the grocery
9 store.

10 Q Okay. So you could make the phone call?

11 A Exactly.

12 Q To the pizza man?

13 A Yes.

14 Q And at that time were you planning on shooting the
15 pizza man?

16 A At the time it really wasn't -- see, at the time it
17 was, like I said, it was a joke. But by the time I
18 got there, I say, "You know, this is what I'm going
19 to do."

20 I had already made up my mind to do this, and
21 this is what I wanted to do. It was just a part
22 of -- at the time it was a part of my way of life.
23 It was the way people earn stripes and stuff, and
24 that's what I was doing.

25 Q So had you shot somebody else?

1 A Have I shot other people?

2 Q Yes.

3 A I mean, I believe that is irrelevant right now
4 because this is a case for somebody else.

5 Q I am just referring to -- you said, "It's what I'm
6 about and what I was doing at the time"?

7 A Yes, sir, at the time when I was young.

8 Q How long ago was that?

9 A That was December -- that was January 8, 2008 --
10 January 12, 2008.

11 Q Let me back up a little bit.

12 A Yes, sir.

13 Q Did you appeal your guilty plea?

14 A Appeal my guilty plea?

15 Q Yes.

16 A I have no idea what you mean by that. Like talking
17 about just recently?

18 Q The second trial when you plead guilty, you had ten
19 days to file a notice of appeal, to appeal that
20 guilty plea, did you do that?

21 A I tried to appeal the sentencing, but I never put
22 in for no appeal or anything. I never filled out
23 the application, never spoke to a lawyer or
24 anything about that.

25 Q So the appellate process is done?

1 A Exactly. I'm really not planning on going back,
2 period. I plan on doing my 21 years, day for day,
3 for committing the crime that I committed.

4 Q Okay. But there's no consequences to you admitting
5 to it now; correct?

6 A I have no idea. All I know is I'm doing 30 years
7 right now and that's all. I have nothing -- I'm
8 not in it for no pleas or anything. I'm admitting
9 it because it's the right thing to do.

10 Q Okay. And it's the right thing to do now?

11 A Exactly.

12 Q Was it the right thing to do at the beginning?

13 A At the beginning, like I said, I was young. I made
14 foolish mistakes that I'll never make again. Right
15 now if I am going to be a leader, I am going to be
16 a positive leader.

17 Q When you say it started out as a joke, was
18 Mr. Canty there whenever y'all were joking about
19 the armed robbery?

20 A He really wasn't. He was, like, in the
21 neighborhood; but it just -- he so happened to pop
22 up. When he popped up, you know, like I said, I
23 approached him, like, "I need you to take me to get
24 your cousin to take me to the store."

25 But it wasn't nothing like, "Oh, can you do

1 this or get down with this?" I never approached
2 him on no level like that. The only level I ever
3 approached him on was, "This is what I'm about to
4 do."

5 He probably overheard us speaking about it,
6 but none of us ever came to him because he was too
7 young at the time. I think he was like 15. I
8 wasn't involved in bringing young brothers like
9 that into my circle because I didn't trust them and
10 I didn't know him like that at all.

11 Q Once second. I thought you just testified that you
12 were about putting fear into young brothers?

13 A Yeah, but not him. He was 15. Everybody that was
14 in my circle was 17 and older.

15 Q Okay. So it's your testimony that he wasn't there
16 whenever y'all were discussing armed robbery?

17 A No, he stepped into the house after that.

18 Q Okay. And it's also your testimony that he wasn't
19 at the scene?

20 A No, he wasn't. He was on his porch. I remember
21 him being on the porch because I actually walked
22 past him when I was going to the back to commit my
23 crime.

24 Q And you testified earlier that your attorney told
25 you it was a bad idea for you to take the stand

1 because the jury wouldn't believe you?

2 A It's inside my transcript.

3 Q What is?

4 A It's inside the transcript where my lawyer admitted
5 at the end, at the closing argument, he admitted,
6 like -- well, it was the sentencing, at the
7 sentencing, which was like 1,295 pages, something
8 like that.

9 But it was at the end. He admitted his self
10 that he is the reason why I didn't get on the stand
11 and testify, and he know exactly what my testimony
12 was going to be about.

13 Q Well, let me just kind of back up a little bit.
14 The judge did go over with you that it was your
15 decision whether you wanted to testify or not;
16 right?

17 A Exactly, exactly.

18 Q And that's in the transcript as well; correct?

19 A Exactly.

20 Q Okay.

21 MR. NEELY: Beg the Court's indulgence.

22 THE COURT: Yes.

23 (Pause.)

24 MR. NEELY: That's all the questions I have,
25 Your Honor.

GARRYL DEAS -- DIRECT -- MR. NEELY

1 THE COURT: Anything further, Mr. Boozer?

2 MR. BOOZER: Nothing further, Your Honor.

3 THE COURT: Sir, you may step down. Thank
4 you.

5 (The witness leaves the witness stand.)

6 THE COURT: Mr. Boozer, any other witnesses?

7 MR. BOOZER: No other witnesses, Your Honor.

8 THE COURT: Let's stand down for just a minute
9 before we proceed with respondent's case. We will stand
10 down for a moment.

11 (Whereupon there is a recess.)

12 THE COURT: Is the State ready to proceed?

13 MR. NEELY: The State would call Garryl Deas
14 to the stand.

15 THE COURT: All right.

16 (The witness comes forward.)

17 GARRYL DEAS, being
18 first duly sworn, testifies as follows:

19 CLERK: State your name for the record and
20 spell your last name, please.

21 THE WITNESS: Garryl Deas, D-E-A-S.

22 DIRECT EXAMINATION

23 BY MR. NEELY:

24 Q Mr. Deas, if you would, I will start off by having
25 you go over your experience. When were you

1 admitted to the bar of South Carolina?

2 A I was admitted, I believe, in 1997.

3 Q And how much of your work has been criminal since
4 that time?

5 A Percentage wise, I would say probably about 50
6 percent of it. The other areas: I do personal
7 injury, workers' comp. I do probate. I do civil,
8 general civil, med mals, basically a general law
9 practice where I essentially handle a wide variety
10 of cases.

11 Q So at this trial in 2011, you had been an attorney
12 in a general practice for about 14 years?

13 A That's correct.

14 Q And had you ever handled a murder case before this
15 case?

16 A I believe I handled an attempted murder case before
17 that one, probably at least two or three attempted
18 murder cases prior to that one.

19 Q Were you comfortable with your experience and your
20 ability to handle this murder case?

21 A Yes.

22 Q And if you would -- and you can use your notes if
23 you need -- could you go over the evidence the
24 State presented against your client in general
25 terms?

1 A Well, I mean, we tried this case for five days. So
2 it was from, I believe, August the 8th through the
3 11th. So for four or five days we tried this case.
4 So there was a significant amount of evidence that
5 was put forth by the State as to both defendants.

6 I think probably the key evidence that was
7 brought against my client were his statements.
8 Just based on my recollection, I think he gave,
9 like, six different statements to law enforcement
10 over a period of time while his case was pending.

11 Q Were those statements essentially the same or did
12 they change?

13 A Each statement was different. He gave different
14 facts. There were certain statements where he made
15 no mention of Deangelo Jackson. I think as the
16 statements went on, he began to implicate Deangelo.

17 I think in one of his statements, one of the
18 latter statements, he actually identified Deangelo
19 as the shooter. But I do have notes. So, if I
20 may, I can take a look at it and give you more
21 detail.

22 Q Would you say his statements to statements
23 increased in his own culpability or not?

24 A Let me take a look. He gave his first statement on
25 January 13 of '08. I think then he gave a second

1 statement later that day. I think the first one,
2 according to my notes, the first statement he gave
3 was at 4:55 P.M. on January 13, 2008.

4 The second statement he gave on the same day
5 was at 6:00 o'clock P.M. Then he gave another
6 statement on January 15, 2008; and in that one he
7 said that a black man -- and this was according to
8 my notes -- that a black man wrestled with the
9 victim and shot the victim, not Deangelo. He said
10 in that statement that Deangelo only watched the
11 robbery but was not the shooter.

12 Q And that was the second statement?

13 A That was the third statement.

14 Q Okay.

15 A Then in a fourth statement, which was given on
16 January 17, 2008, he was interviewed. He said that
17 Deangelo Jackson asked him if he wanted to rob the
18 pizza man and that he said yes.

19 He told the investigator, Investigator West,
20 that three men robbed the pizza man and that they
21 were wearing hoodies. And when the victim tried to
22 take the rifle away from one of the males, the gun
23 fired and the victim was shot. He told
24 Investigators West, according to my notes, in that
25 fourth statement that he was in the yard when the

1 incident happened.

2 Then he gave a fifth statement on January 25,
3 2008; and in that statement he specifically
4 identified Deangelo Jackson as the shooter. He
5 admitted in that statement that they tried to rob
6 the pizza man and that the victim tried to take the
7 gun from Deangelo, and Deangelo shot him, shot the
8 victim. He also said that there was another person
9 that was present but ran away from the scene.

10 Then there was a sixth statement. It was a
11 letter that was written by -- that was allegedly
12 written by -- Mr. Canty and signed by him; but it
13 was mailed, I believe, to law enforcement by
14 Deangelo Jackson. So those are -- that essentially
15 gives you a synopsis of what he said in each
16 statement.

17 Q Okay. But in none of his statements did he admit
18 to being the triggerman; is that correct?

19 A No, he maintained always that he was not the
20 shooter.

21 Q And the State's theory of the case against him was
22 the hand of one, hand of all?

23 A Basically accomplice liability, hand of one, hand
24 of all.

25 Q And just to clarify something that Mr. Jackson said

1 earlier, was the death penalty ever an issue for
2 either one of these defendants?

3 A No, it wasn't.

4 Q And Mr. Canty said that you met with him three or
5 four times during the course of your
6 representation. Does that sound right to you?

7 A No, it doesn't. It was certainly more than that.
8 Of course, we are going back now to 2008. So we
9 are talking about nine years ago. But according to
10 my notes -- and I know this because he actually
11 grieved me. He filed a grievance with the bar
12 during the time that I represented him, which was
13 dismissed by the bar.

14 He was alleging that I did not take steps to
15 get him multiple bond hearings, which, of course, I
16 think during the course of me representing him, we
17 had at least three or four bond hearings.

18 He also made reference to the fact of the
19 numbers of time he and I met. And in my response
20 to the bar, I kind of detailed the numerous times I
21 met with Mr. Canty out at the Sumter jail. It went
22 far beyond two or three times.

23 Q And do you recall or recall from your notes what
24 the substance of those conversations were?

25 A I mean, each time we met, we discussed the case in

1 detail. We discussed the strategy for defense. We
2 discussed the discovery in detail. So there was
3 never any instance where I met with Mr. Canty where
4 we did not discuss the complexities of the issues
5 in this case.

6 Q Did you hire an investigator in this case?

7 A Yes, I believe we did.

8 Q Do you recall when you hired an investigator?

9 A Not right offhand, not without looking at my notes
10 to know the specific date, but an investigator was
11 hired.

12 Q Okay. And did your investigator speak with
13 Mr. Canty?

14 A Yes, I believe so.

15 Q Do you know what information he gave him?

16 A I do not.

17 Q Mr. Canty had evolving statements in this case at
18 trial. Did his statements to you about what
19 happened change?

20 A You mean his statements directly to me?

21 Q Yes, sir.

22 A Yes, they changed. He was not forthright with me
23 about all aspects of his involvement. It changed
24 as the representation went forward.

25 Q Okay. Was he difficult to work with?

1 A Oh, no, not at all. I mean, obviously it becomes a
2 little bit difficult when you are representing a
3 client and he files a grievance that's baseless.
4 It was determined to be baseless by the Office of
5 Disciplinary Counsel. That creates some issue, but
6 I never had any problems with Mr. Canty. He was
7 always respectful, and he was a pleasure to work
8 with.

9 Q I will ask you: The defense admitted an exhibit
10 with a picture from your website. Do you work for
11 the Solicitor's Office?

12 A No, I do not.

13 Q Have you ever worked for the Solicitor's Office?

14 A I was a -- I never worked for the Solicitor's
15 Office as a prosecutor. I was the Third Circuit
16 drug seizure attorney. It's an independent -- I
17 was an independent contractor for Solicitor
18 Jackson, who was the solicitor at the time, where I
19 assisted in all seizure cases in Lee County,
20 Clarendon County, Sumter County, and, I believe,
21 Williamsburg County as well.

22 So my role -- of course, seizure actions are
23 civil in nature. So my role was to essentially
24 file the necessary litigation and other paperwork
25 to effectuate seizures.

GARRYL DEAS -- DIRECT -- MR. NEELY

1 Q Did you ever discuss with the Solicitor's Office --
2 other than the negotiation for your clients -- any
3 of your clients or any of the details in their
4 cases?

5 A Say that one more time.

6 Q I'm sorry. That was a poorly phrased question.
7 Did you discuss with the Solicitor's Office or
8 solicitors at the Solicitor's Office cases that you
9 had, your client what he told you, or information
10 about the cases that you were --

11 A With regard to this particular case?

12 Q Yes.

13 A No.

14 Q Were you working for the Solicitor's Office in your
15 capacity as a forfeiture attorney at the time of
16 this trial?

17 A I believe this trial was in 2011. I believe I was
18 the drug seizure attorney at that time. I would
19 have to check my notes to make sure, but I believe
20 I was.

21 Q Okay.

22 A I did it for about seven or eight years. So I
23 still may have been the drug seizure attorney at
24 the time of this trial.

25 Q And while you were the forfeiture attorney, you had

1 a number of criminal cases?

2 A Yes. I mean, I had a full criminal practice. What
3 I did not do is I did not take drug cases, any
4 cases involving drugs, whether there was a seizure
5 or not. I did not take drug cases as part of my
6 criminal practice.

7 Q Is that in an abundance of caution?

8 A Correct.

9 Q Was there a plea offer in this case?

10 A There was an offer made, but it was contingent upon
11 my client being willing to cooperate and testify
12 against Deangelo Jackson, which he was not willing
13 to do.

14 Q Okay. Do you recall what that offer was?

15 A I do not. I'm sure it's probably in my case file,
16 but I don't know exactly what the offer was. I
17 don't even think it ever got to a specific sentence
18 recommendation.

19 It was more: "If he cooperates and he's
20 willing to cooperate, let's see at that point what
21 we can do." But, again, any offer that was going
22 to be made to him was going to be contingent upon
23 him being willing to testify against Mr. Jackson,
24 which he was adamant that he was not going to do.

25 Q And one of the allegations is that you failed to

1 request a lesser-included. Was there any evidence
2 submitted of self-defense or accident?

3 A No, this was a murder case. So there really is no
4 lesser-included offense to murder unless there is
5 some facts to support that, like, self-defense or
6 something of that nature. The facts surrounding
7 this case just didn't support that.

8 Q And your client's defense was total innocence?

9 A Yeah. His defense was, "I was not involved. I was
10 not the shooter, and I was not an accomplice. I
11 did not aid and abet the crime in any way, shape,
12 form or fashion." That was his position, that he
13 did not do anything to further the carrying out of
14 this crime.

15 Q And you asked the judge for a mere presence
16 instruction?

17 A I did.

18 Q And that was the basis of your defense?

19 A Correct, that just because he was there doesn't
20 mean he was an accomplice to the crime. Mere
21 presence does not mean you aided and abetted the
22 crime. It does not mean you engaged in any conduct
23 that carried -- that furthered the carrying out of
24 the crime.

25 Q Did Mr. Canty ever give you an explanation for how

1 the bullet casing got underneath his bed?

2 A He may have. I don't recall what he said. I think
3 what he told me was is that -- and I could be
4 wrong -- but I believe he told me that Deangelo at
5 some point gave them to him and told him to
6 basically get rid of them, and that's what he did.

7 MR. NEELY: That's all the questions I have,
8 Your Honor.

9 THE COURT: Mr. Boozer?

10 MR. BOOZER: Thank you, Your Honor.

11 **CROSS EXAMINATION**

12 BY MR. BOOZER:

13 Q Mr. Deas, how are you doing?

14 A Doing fine.

15 Q Good. Going back to the contract you had with the
16 Solicitor's Office to serve as the drug forfeiture
17 attorney, do you recall what years that may have
18 been?

19 A I know it was during Solicitor Jackson's tenure as
20 Solicitor here in Sumter. So I would say -- and
21 I'm not exactly sure -- but just kind of off the
22 top of my head probably from 2004 until about 2010
23 or '11.

24 I did it for about seven years. It stopped
25 when Solicitor Finney became the Solicitor of

1 Sumter County. So I'm not exactly sure when that
2 was. But once Solicitor Finney was elected, that's
3 when I was no longer the drug seizure attorney.

4 Q So that would have been during the time that you
5 were representing Mr. Canty?

6 A I think so. Again, I'm not sure if Mr. Canty's
7 case was prosecuted under Solicitor Jackson or
8 Solicitor Finney. I want to say his case was
9 prosecuted when Solicitor Finney was the Solicitor.
10 because it was prosecuted by John Meadors.

11 I believe John Meadors did not come on board
12 as the prosecutor until Solicitor Finney was
13 elected; but, again, I am just going by memory.
14 I'm not exactly sure.

15 Q Sure. Did you make any sort of -- I guess you
16 indicated you had hired a private investigator?

17 A Yes.

18 Q Did you do any sort of investigation on your own or
19 investigation with the investigator into the case?

20 A Yeah. I mean, I spoke with the investigator. I
21 spoke with my client. Of course, we went through a
22 significant amount of discovery material, talked to
23 potential witnesses, talked to law enforcement.
24 This was a murder case. There were a lot of
25 issues, a lot of facts, and a lot of evidence

1 involved.

2 But there was countless hours spent addressing
3 the facts surrounding this case. I was appointed,
4 I think, to represent Mr. Canty. I believe it was
5 under a 608 appointment where I was appointed to
6 represent him.

7 Q Going to the trial and I can certainly hand you the
8 trial transcript, but I can read it to you. It's
9 just a short passage. I am looking specifically at
10 page 1,221, beginning at line 11 of the transcript.

11 THE COURT: What page was that?

12 MR. BOOZER: Your Honor, it's 1,221, beginning
13 at line 11.

14 (Pause.)

15 THE WITNESS: Okay.

16 BY MR. BOOZER:

17 Q Going back, was your request for mere presence, was
18 that given or was that denied to your knowledge?

19 A I would have to -- of course, I don't have any
20 specific recollection of that. We are talking six,
21 seven years ago. Whatever the record reflects,
22 that's what happened. I know or I believe I
23 requested a mere presence instruction, and I'm also
24 certain it was given.

25 Q And specifically on 1,221, what I was directing

1 your attention to beginning at line 11, this is the
2 jury instruction that is being given. It begins,
3 "Malice" -- are you there?

4 A Yeah.

5 Q "Malice may be inferred by conduct showing a total
6 disregard for human life. Inferred malice may also
7 arise when the deed is done with a deadly weapon."

8 Are you familiar with or have you seen a case
9 that is called Belcher or State versus Belcher?
10 It's a Supreme Court case where the Court has
11 instructed that that specific charge where malice
12 may be inferred from a deadly weapon is not good
13 law where there is evidence that's presented that
14 would reduce, mitigate, excuse or justify a
15 homicide?

16 A I have heard of the case. I don't know when it was
17 issued. I don't know when that opinion was issued.

18 Q Sure. Do you think that -- what was your kind of
19 presentation or what was your strategy as far as
20 Mr. Canty for the trial?

21 A Well, essentially our strategy was to establish
22 that he was not the shooter and that he did not in
23 any way engage in any conduct that would establish
24 him as an accomplice.

25 He was not -- he did not do anything to

1 further the carrying out of the shooting.
2 Essentially, the strategy was to show that he was
3 merely present but he was not an accomplice.

4 Of course, the real issue for this case was
5 his statements because they changed from the first
6 one, all the way through the last one, which I
7 think, like I said, there were five or six of them.
8 His credibility was a problem.

9 MR. BOOZER: Your Honor, may I approach with a
10 copy of State versus Belcher?

11 THE COURT: Yes, sir.

12 MR. BOOZER: And I provided a copy to the
13 State as well.

14 (Hands to Court.)

15 BY MR. BOOZER:

16 Q Going back to sort of what you were telling me your
17 strategy was and his lack of involvement. Or since
18 you were asking for a mere presence instruction, he
19 was kind of simply there and was around at the
20 time.

21 Do you think that that would qualify sort
22 of -- according to Belcher -- that that is sort of
23 something that would reduce, mitigate, excuse, or
24 justify the homicide? Or at least that's an
25 argument that you could make on reducing his

1 involvement in it?

2 A Well, I think when it comes to that specific
3 instruction, it kind of depends on whether you
4 believe he was merely present or whether he was an
5 accomplice.

6 Because if he is an accomplice, then under the
7 accomplice liability theory, he is -- his actions
8 and Jackson's actions would be viewed as the same
9 because it would be viewed under the hand of one,
10 hand of all theory.

11 So I guess it just depends on whether or not
12 it's factual that he was merely present or is it
13 factual that he actually was involved beyond just
14 being present?

15 For instance, there was video in a convenience
16 store showing him and Jackson together prior to the
17 shooting. There was some evidence about phone
18 calls that had been made to the pizza place where
19 the pizza was ultimately ordered.

20 So there was some evidence that one could rely
21 upon to conclude that he was not just merely
22 present, but this was a plan to set up this pizza
23 man to come to that location to be robbed and in
24 this case killed.

25 So, ultimately, I think it kind of depends on

1 whether or not his position that he was merely
2 present is factual or whether the other, I guess,
3 allegation is factual, which is that he was not
4 merely present but that he was an active
5 participant.

6 Q During the trial, the initial trial, are you aware
7 that Mr. Jackson's trial was reversed on appeal?

8 A Yes, I am.

9 Q Are you aware of that?

10 A I am.

11 Q Are you are aware that Mr. Jackson has since pled
12 guilty to these same charges?

13 A Yes.

14 Q All right. At the time of the trial when Mr. Canty
15 was tried with Mr. Jackson, you would not have had
16 the opportunity to call Mr. Jackson as a witness?

17 A No. I mean, I can't call him as a witness because
18 he has a right to not testify. I mean, I could
19 call him; but he could still exercise his right to
20 remain silent. And he -- of course, he had an
21 attorney.

22 MR. BOOZER: Beg the Court's indulgence, Your
23 Honor.

24 THE COURT: Yes, sir.

25 (Pause.)

1 BY MR. BOOZER:

2 Q Thank you, Mr. Deas. That's all the questions I
3 have.

4 THE COURT: Mr. Neely?

5 MR. NEELY: Just very briefly.

6 REDIRECT EXAMINATION

7 BY MR. NEELY:

8 Q For the record the mere presence instruction by the
9 judge is on page 1,224, lines 13 to 18. The charge
10 conference that takes place with the judge and
11 Mr. Deas is on page 1128.

12 And just to clarify, mere presence is a
13 complete defense; isn't that correct?

14 A That is correct.

15 Q So it doesn't reduce the charge. It completely
16 negates the charge?

17 A Similar to self-defense, mere presence. If the
18 jury were to accept the theory that Mr. Canty was
19 just merely present and that he did not in any way
20 aid or abet this crime, he did not do anything to
21 further the carrying out of this crime, if that's
22 the theory that the jury believed, then he could
23 have been found not guilty based on mere presence.
24 But obviously the jury felt differently.

25 Q But Mr. Canty's mere presence, if the jury accepted

1 that, it would still not have excused or justified
2 the murder; correct?

3 A Correct.

4 MR. NEELY: That's all the questions I have,
5 Your Honor.

6 THE COURT: Mr. Boozer?

7 MR. BOOZER: Nothing further, Your Honor.

8 THE COURT: Sir, you may step down.

9 THE WITNESS: Thank you, Your Honor.

10 (The witness leaves the witness stand.)

11 MR. NEELY: The State has no further
12 witnesses, Your Honor. The State would rest.

13 THE COURT: Anything by way of argument by
14 either? Mr. Boozer?

15 MR. BOOZER: Judge, just briefly if it pleases
16 the Court. I would let Mr. Canty's allegations stand on
17 their own, except for I did want to touch briefly on the
18 testimony that was presented by way of Mr. Jackson.

19 Obviously, at the time of the trial, he was
20 there as a codefendant to Mr. Jackson. Mr. Jackson has
21 indicated today -- which I believe this does absolutely
22 qualify as after-discovered evidence because it wasn't
23 available during the time. He wouldn't have to testify
24 at the trial.

25 Since Mr. Jackson's trial was overturned and

1 he was going to have a new trial and ended up pleading
2 guilty just a few months ago, that would certainly
3 qualify as newly-discovered evidence.

4 Mr. Jackson has stated on the stand that he
5 admitted this in front of the plea court, these same
6 statements he made today. Mr. Jackson has also
7 testified that if Mr. Canty were to have a trial, he
8 would have make these statements.

9 I think this does qualify as newly-discovered
10 evidence of his actual innocence or lack of involvement
11 in the case, and that would certainly qualify him for a
12 new trial, Your Honor. Thank you.

13 THE COURT: Anything?

14 MR. NEELY: First off, I would disagree that
15 these statements qualify as newly-discovered evidence.
16 I think they go mostly in line with the evidence that
17 was presented at the trial. Mr. Canty gave a statement
18 he wasn't the triggerman. Mr. Jackson committed the
19 murder.

20 The only statements that are changed are the
21 fact that he's saying that he never spoke with Mr. Canty
22 about the robbery, which Mr. Canty admitted to in his
23 statement, and that he had no further involvement and
24 wasn't there at the time of the incident.

25 I would draw Your Honor's attention to a few

1 cases that I think are relevant to this matter. The
2 first case I would reference is State v. Mayfield,
3 235 S.C. 35.

4 What that says is recantation of testimony
5 ordinarily is unreliable and should be subjected to the
6 closest scrutiny when offered as grounds for a new
7 trial.

8 State v. Wright tells that --

9 THE COURT: What is the cite on that?

10 MR. NEELY: 269 S.C. 414. Finding evidence
11 supporting the trial court's determination of recanted
12 testimony of one witness was not believable --

13 COURT REPORTER: I'm sorry. I'm having a hard
14 time.

15 THE COURT: Speak up and slow down. Thank
16 you.

17 MR. NEELY: State v. Wright, 269 S.C. 414, the
18 finding in that case was the trial court's determination
19 of recanted testimony of one of the witnesses was not
20 believable.

21 State v. Harris, the finding where the record
22 supported the trial court's finding that circumstances
23 surrounding the witness's recantation of his trial
24 testimony and his testimony during the hearing, causing
25 to find the recantation testimony unreliable and noting

1 the issue came down to a matter of the credibility of
2 the witnesses.

3 THE COURT: Have you got a cite on State v.
4 Harris for my court reporter?

5 MR. NEELY: 391 S.C. 539.

6 THE COURT: Five what?

7 MR. NEELY: 539.

8 THE COURT: Sorry. Thank you.

9 MR. NEELY: In this case we have a number of
10 issues that I believe show Mr. Jackson's testimony is
11 unreliable. He spoke about a death penalty case. There
12 was never a death penalty case as testified by Mr. Deas
13 on the record for either one of the defendants.

14 I think probably the most unbelievable and
15 unreliable statement Mr. Jackson was made was that at
16 his trial, in which he pled not guilty, he wished to
17 take the stand and proclaim how guilty he was and
18 Mr. Canty was not guilty. I believe that lacks any
19 credence whatsoever and is beyond believability.

20 Again, at this point in time, Mr. Jackson has
21 nothing on the line, no stake in the game. He did not
22 appeal his 30-year plea deal that he received and has
23 finished the appellate process. He cannot be hurt or
24 harmed by his testimony at this point in time. Whenever
25 he could be harmed by his testimony, he pled not guilty,

1 not one but twice.

2 THE COURT: All right.

3 MR. BOOZER: May I briefly in response to the
4 cases cited?

5 THE COURT: Briefly.

6 MR. BOOZER: Very briefly, Judge. I think my
7 client would disagree with the characterization that
8 Mr. Jackson's testimony is recanting any sort of
9 testimony. He's not recanting testimony. He is
10 offering new testimony. I don't believe that would fall
11 under those lines of cases under a recantation.

12 THE COURT: Very well. All right. I will let
13 you all know.

14 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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C E R T I F I C A T E

I, the undersigned L. Coconut Pantsari, Official Reporter for the Third 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 the evidence introduced in the trial of the captioned cause, relative to appeal, in the Civil Court for Sumter County, South Carolina, on the 31st day of March, 2017.

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

December 27, 2017

A handwritten signature in cursive script that reads "L Coconut Pantsari". The signature is written in dark ink and is positioned above the printed name.

Court Reporter



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"I WELCOME THE CHALLENGE OF SEEKING SOLUTIONS TO ANY LEGAL PROBLEM REGARDLESS OF ITS COMPLEXITY OR SCOPE"



Attorney Profile

Garryl Deas

- BS Management Information Systems USC 1991
- Juris Doctor Syracuse University College of Law 1996
- Municipal Judge for the Town of Timmonsville, SC July 2000 - Jan 2004
- Drug Forfeiture Attorney for the Third Circuit Solicitor
- Certified to practice in the US District Court and the US Court of Appeals (Fourth Circuit).

Attorney Deas who is a native of Sumter, South Carolina received his Bachelor of Science Degree in

Attorney Deas currently serves as a part-time Municipal Judge for the Town of Atlantic Beach in North Myrtle Beach, South Carolina and he previously served as Municipal Judge for the Town of Timmonsville, in Florence County from July 2000 until January 2004. Additionally, Attorney Deas previously served as the Drug Forfeiture Attorney for the Third Circuit Solicitor C. Kelly Jackson and was responsible for all drug seizure litigation in Sumter, Clarendon, and Williamsburg Counties.



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The State of South Carolina VS Daniel Deangelo Jackson					
Case Number:	J292665	Court Agency:	General Sessions	Filed Date:	01/29/2008
Case Type:	Criminal-Clerk	Case Sub Type:			
Status:	Disposed	Assigned Judge:	Clerk Of Court C P, G S, And Family Court	Disposition Judge:	Young, W. Jeffrey
Disposition:	Pled Guilty				
Disposition Date:	12/14/2016	Date Received:	01/22/2008	Arrest Date:	01/16/2008
Law Enf. Case:	08004893	True Bill Date:	09/11/2008	No Bill Date:	
Prosecutor Case:		Indictment Number:	2008GS4300993	Waiver Date:	
Probation Case:					

Case Parties Charges Sentencing Associated Cases Actions Financials Bonds							
And/Or	Description	Amount	Units	Begin Date	End Date	Completion Date	Consecutive or Concurrent
	30 YRS., CONC., CTS						

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Sumter County Third Judicial Circuit Public Index



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The State of South Carolina VS Daniel Deangelo Jackson

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	FOR THE THIRD JUDICIAL CIRCUIT
	)	
Reginald Canty, #347341,	)	2015-CP-43-00061
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

This Court convened an evidentiary hearing into the matter on March 30, 2017, at the Sumter County Courthouse. Applicant was present at the hearing and represented by Lance Boozer, Esquire. Ruston W. Neely, Esquire, of the South Carolina Attorney General's Office, represented Applicant.

Applicant's trial counsel, Garryl Deas (Counsel), Esquire, and Applicant were present and testified. This Court also had the opportunity to listen to their testimony and rule on their credibility. This Court had before it a copy of the trial transcript, the records of the Sumter County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the direct appeal records, and the pleadings in this matter. This Court finds as follows:

I. PROCEDURAL HISTORY

Applicant was true bill indicted at the September 2008 term of the Sumter County Grand Jury for murder and armed robbery (2008-GS-43-993). Applicant proceeded to a jury trial and was found guilty of murder and armed robbery on August 12, 2011. The Honorable W. Jeffrey Young sentenced Applicant to thirty years for murder and thirty years for armed robbery to run concurrent.

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A timely Notice of Appeal was filed on Applicant's behalf. The South Carolina Court of Appeals affirmed Applicant's conviction in sentence. State v. Applicant, 2014-UP-208 (Ct. Ap 2014). The Remittitur was issued on June 23, 2014.

II. ALLEGATIONS

Applicant alleged the following grounds in his application:

1. Ineffective Assistance of Trial Counsel
 - a. Failure to investigate
 - b. Failure to object to Belcher instruction
 - c. Failure to request lesser-included charge instructions
 - d. Failure to properly review discovery materials with Applicant
 - e. Failure to question investigator concerning resignation from Sheriff's office
 - f. Conflict of interest, Counsel was formerly forfeiture attorney for the Solicitor's office
 - g. Breaking attorney-client privilege
 - h. Failure to properly argue Batson motion
2. Newly Discovered Evidence
 - a. Codefendant recant trial testimony
3. Prosecutorial Misconduct
 - a. Manipulation of the docket
4. Ineffective Assistance of Appellate Counsel

At the PCR hearing, Applicant withdrew the following allegations:

Failure to properly argue Batson motion,
 Breaking attorney-client privilege,
 Prosecutorial Misconduct,
 Ineffective Assistance of Appellate Counsel, and
 Counsel failed to question Investigator West concerning his resignation.

III. SUMMARY OF FACTS

William Flexon, a pizza delivery man, was killed by two shots on January 12, 2008 at an abandoned trailer at Lot [REDACTED], Cherryvale Road in Sumter County. He was lured there by Applicant and co-defendant DeAngelo Jackson in a robbery plot.

The incident began at Sambino's owned by Tanya Knudson. Around 8:04 pm that night, Sambino's received a telephone call from a male-like voice ordering three large pizzas. R. 197-98,

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790-91, 793. When asked, Tanya was told the call was being made from a pay phone. R. 198. The delivery was for Lot No [REDACTED] O.C. Mobile Home Park in Cherryvale. R. 202.

The next delivery person scheduled was Al. However, the victim, William "Bill" Flexon, took the order instead. R. 205-06. Sumter County Deputy Sheriff Jennifer Thomas, who was eating at Sambino's, sees Flexon leave with the pizzas. R. 207. Thomas received a call that shots were fired at Cherryvale. R. 207. She left Sambino's, goes to Lot [REDACTED] at the O.C. Mobile Home Park and found Bill Flexon's body on the ground. R. 314.

Tanya learned it was her delivery carrier who was shot. R. 208. She left and went to the mobile-home park and got into contact with Sergeant Burnish. R. 209, 218, ll. 18-25. [Tanya records the number for the call as [REDACTED]-1073. R. 201, l. 4; 219, ll. 18-25.] Tanya identified the closest pay phone to Sambino's as the one at Cherryvale Grocery. R. 209, ll. 8-11.

Law enforcement went to the Cherryvale Grocery and spoke with Eugene Mackovitch. R. 266-68. A video from the camera revealed two men came into the grocery store to use the pay phone. R. 267-68. Mackovitch was not able to identify the defendants, although he stated they looked familiar. R. 278. One of them was subsequently identified as co-defendant Daniel Jackson by Anitta Shannon, a grocery employee, after viewing the video. R. 300-02, 309, 825. Applicant was subsequently identified from the video by Investigator Burnish on January 14, 2008. R. 839-40. Mackovitch sold one of the two a "Little Debbie" snack. R. 268-69, 282. The one who purchased the Little Debbie left with it in his right hand. R. 274. After leaving, Mackovitch saw them turn to the right toward the payphone. R. 275-76, 283-84. Mackovitch stated he did not use the pay phone. R. 278. A Little Debbie snack wrapper was found at the scene. R. 276-77, 995. The sell by date on the wrapper is 1/22. R. 276. Cherryvale Grocery receives fresh product in the store. R. 276-77. This exhibit was discovered on the side of the road near the entrance to lot [REDACTED]. R. 376. It

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was 137 feet away from the victim's body. R. 417-19. There was insufficient ridge detail on the wrapper for positive fingerprint identification. R. 429.

Law enforcement went to the co-defendant's aunt, Andrea Russell. R. 486-87. Jackson was initially there, but fled when the police arrived. R. 485-87. However, when the police left, he returned. R. 488. Andrea Russell subsequently called the Clarendon County Sheriff's Office and advised them she found a rifle under her futon and asked them to come and get it. R. 447. They arrive; retrieved the rifle and a box of bullets she said were not hers. R. 447-451, 490, 843. Russell stated she discovered the rifle while vacuuming that day. In addition, Russell stated she had some peanut butter on the morning in question, nothing but peanut butter was in her jar that morning, but later that evening when she opened the peanut butter jar there was a shell casing in the jar. R. 491-93.

Evidence was presented Jackson called Isaac Boyd's wife on January 13 asking to be picked up from the American Inn in Sumter. R. 507. Boyd is Jackson's uncle. He testified he picked him up and took him to Curtis Wheeler's house to pick something up. While he stayed in the car, Boyd saw Jackson and Wheeler go to an abandoned trailer by the woods. Jackson told Boyd he needed to pick up some clothes. Jackson returned with a clothes basket, but Boyd did not realize there was a rifle in the basket until he got back to Sumter. R. 510-11. At that time, Boyd took Jackson to his aunt's house. This occurred on a Sunday night. However, Boyd claimed Jackson asked him to lie and say it occurred Saturday night. R. 511. Law enforcement searched Applicant's house and found a 30-30 shell casing under his bed, while searching for a weapon in a consent search. R. 630.

During the autopsy, law enforcement learned there were two bullets removed from the victim. R. 461-62, 838. Tracy Thrower, SLED forensics firearms examiner, determined the bullets

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came from two different firearms. R. 672. He opined one of the bullets came from the rifle located under the futon at Jackson's aunt's home. R. 676-77. He opined the other bullet did not come from the Winchester rifle. He stated the bullet was too large in diameter. R. 678, 697. He also opined the cartridge found in the peanut butter jar was fired from that Winchester rifle. R. 679. Investigator Burnish testified he recovered the 30-30 shell casing from underneath Applicant's bed, had it sent to SLED, received information the shell casing was fired from the rifle and warrants were issued for Applicant. R. 852-53.

Investigator Burnish went to Applicant's front porch and determined he could not see lot ■ from the porch, which is contrary to Applicant's January 25, 2008 statement. R. 861, ll. 4-9. Investigator West stated he could not see Lot ■ from Applicant's porch when they were conducting the search. R. 654. West stated someone sitting on the porch of Applicant's home would not be able to see Lot ■ because of the foliage. R. 629.

On January 13, 2008, law enforcement spoke with Applicant. R. 829-834. In his initial statement, he denied any knowledge of the crime. In his next statement, he stated he was there. R. 836-37. However, in these statements he did not admit he had been asked by his co-defendant to rob the pizza man, R. 837-38. Applicant gave another series of statements to law enforcement. Applicant was 16 years old at the time. In the redacted 10:35 a.m. statement, in pertinent part, Applicant stated:

Tonya Rush, who stayed beside me, she told me to watch her house. I went to the house and got something to drink, sat on the porch, and I saw car lights where lot ■ is. I went-I went to my fence. I saw a white man wrestling with a tall black man over a gun. The black man told him to stop, and then I heard a gunshot. The other person was standing next to the van looking at the guys wrestle. The other guy had a handgun that looked like a revolver. After the gunfire, everyone ran. I ran in the house. I told my moms what I saw later on that night. I wasn't truthful to law enforcement at the beginning because I was nervous and scared because I never saw anyone get killed before.

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R. 557, l. 16 – 560, l. 25.

On January 17, 2008 at 3:34 PM, Applicant made another statement to Investigator West, with his mother, Dorothy Canty, present. R. 564-65. Investigator West stated he had advised Applicant his first statement was inconsistent and he needed to be truthful. R. 573. Investigator West reported this new oral statement, in pertinent part, as follows:

[Applicant] began to say he stood in his yard by the gate and saw a black male struggling with the pizza man and another black male holding a revolver. I asked him how he knew it was a revolver, and it being dark with no lighting on, and he said there was a glare coming from the gun. **He then said-he then stated it was not supposed to happen like that. And I asked him what did he mean by that, and he said that the pizza man was not supposed to get shot. He stated it was an accident.** His mother then asked him how he knew it was an accident, and you said you weren't there. How you knew it was a revolver and it was dark outside. **Reginald then began to cry. He stated that he did not shoot and kill anyone. He kept saying it was a accident, and he kept saying he wasn't there. So, I asked him there is no way you can say it was a accident and you weren't there, and he put his head on the table and continued to cry. Reginald then stated that the suspects ran away and he ran in the house.**

R. 572, l. 24 – 575, l. 25 (emphasis added)

During this meeting, a written statement was prepared. The oral statement was written out onto a written statement form by Applicant and was read by Investigator West aloud. R. 579 -580.

The written statement continues:

Toya left. I then went and sat on my porch until the pizza man came. I saw a silver in color Chrysler van pulled up, and it pulled up to the back where another person was-the other person was. The pizza man stayed in his vehicle for approximately 3 minutes, and he then-and then-he then got out and went to the abandoned residence, lot number [redacted], and saw the door open and turn around and went back to his vehicle real fast. The pizza man was met by three males with hoodies. Another person was one of the males, and I didn't-and I don't know who the other two were. The pizza man was trying to take the gun rifle away from the black male, and the black male told the pizza man to stop, and then the gun fired. After I saw the man got shot, I ran in the house and told my moms I heard a gunshot.

R. 580, l. 19- 581, l. 10.

On January 25, 2008, Investigator West talked with Applicant again with his mother present. R. 584-87. At this time, Applicant wrote out another statement:

When we got home, another person went to the back of the trailer, and he wait at the back for the pizza man to come. When the pizza man came, they started to rob the man. The pizza man was trying to take the gun from another person, and this person said stop. And after he said stop, he shot the pizza man. It's a-then he stayed there for a second. Then he ran. It looked like it was another person running away with the other person around the car.

R. 586, l. 25- 583, l. 9.

Investigator West also spoke about his interview with co-defendant Jackson on January 16, 2008 at 9:03 PM. R. 593. Investigator West stated he gave Jackson his Miranda rights which Jackson waived. At that point, West served Applicant with a murder and armed robbery warrant. After being served with the armed robbery warrant, Jackson said "how could I be charged with armed robbery if I didn't steal anything from pizza man." R. 595, ll. 1-2.

IV. SUMMARY OF TESTIMONY

Counsel testified around half of his experience as an attorney, since 1997, was in criminal defense. He felt comfortable handling Applicant's case and had handled a few attempted murder cases before. The death penalty was never on the table for either of the defendants. There were no aggravating factors. Counsel discussed trial strategy, potential defenses, and discovery in detail with Applicant. He hired an investigator to independently review the case. He did not discuss the case with the solicitor's office. Only contact with the solicitor's office regarding Applicant's case was negotiating for plea deals. Every plea offer was contingent on Applicant testifying against his co-defendant. Applicant was adamant he would not testify against his co-defendant. There was no evidence of self-defense, accident, or anything to support a lesser-included charge. Applicant

maintained his complete innocence. His trial strategy was to show Applicant did not take any action that would make him an accomplice and was merely present.

Applicant claimed he spoke with Counsel three or four times, but Counsel never discussed trial strategy with him. The State offered him a plea offer for 30 years' incarceration for murder. He stated Counsel was inexperienced and didn't know the law he should have. He claimed Counsel wouldn't file his speedy trial motion after Counsel gave Applicant the discovery. He admitted Counsel hired an investigator, Applicant told the investigator he was on a porch the whole time. Applicant testified it was only supposed to be a robbery and his co-defendant wasn't supposed to shoot anyone. Applicant testified he didn't know how the shell casing or rifle got into his house.

Daniel Jackson, Applicant's co-defendant in a joint trial, claimed Applicant was never part of the armed robbery. He claimed Applicant never agreed to aid or assist in the crime. Jackson admitted there were no potential consequences for his testimony at the hearing because his appellate process was finished. He also claimed he wanted to take the witness stand at his own trial so he could admit he committed the crime and Applicant was not involved, but was scared of getting the death penalty. Jackson gave no explanation for the rifle under Applicant's bed, the shell casing in the peanut butter jar in Applicant's house, or Applicant's inconsistent statements to law enforcement.

V. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that Applicant has failed to satisfy his burden to prove that Counsel's representation was deficient or that he was prejudiced by Counsel's alleged deficiencies. Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 1985. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper

functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 1984. The proper measure of performance is whether Counsel provided representation within the range of competence required in criminal cases. Id.

This Court finds Applicant’s testimony lacked credibility. This Court finds that Applicant has failed to satisfy his burden to prove that Counsel’s actions were deficient. Applicant also failed to prove he was prejudiced by Counsel’s alleged deficiencies. This Court finds Counsel properly prepared for Applicant’s trial. This Court finds Counsel elucidated valid trial strategies in defending Applicant and preparing for trial. This Court finds Counsel rendered adequate assistance and exercised professional judgment in his decisions at trial. This Court dismisses Applicant’s application for the reasons set out below:

A. Ineffective Assistance of Counsel

In evaluating allegations of ineffective assistance of counsel, the court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove counsel’s performance was deficient. Id. Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 1989. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, Counsels’ 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. "[E]very effort be made to eliminate the distorting effects of hindsight" and to evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689. Accordingly, courts must be wary of second-guessing counsel's tactics. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 1992.

1. Failure to investigate.

Applicant failed to show how further investigation by Counsel would have benefited Applicant at trial. Applicant's assertion Counsel should have hired an investigator sooner and investigated further is purely speculative. Applicant did not prove what Counsel would have found if he had hired an investigator sooner or done further investigation. 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. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." State v. Glover, 318 S.C. 496, 498-499, 458 S.E.2d 538, 540. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998). The only evidence Applicant presented regarding witness testimony or further investigation was speculation on the part of Applicant.

Accordingly, this Court finds Applicant failed to prove Counsel failed to properly investigate. This Court also finds Applicant failed to prove he was prejudiced by Counsel's lack

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of investigation such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

2. Failure to object to Belcher instruction.

Where no evidence that would reduce, mitigate, excuse or justify the killing is presented, malice can be inferred from the use of a deadly weapon. See State v. Belcher, 385 S.C. 597, 612, n. 9, 685 S.E.2d 802, 810 n. 9 (2009). Here, Applicant did not assert any evidence that would reduce, mitigate, excuse, or justify the victim's murder. Applicant's final statement to law enforcement and his asserted defense at trial was he was merely present and saw the murder take place from a nearby porch. Therefore, the Belcher charge was appropriate.

Accordingly, this Court finds Applicant failed to prove Counsel was deficient for failing to object. This Court also finds Applicant failed to prove he was prejudiced by the Belcher instruction such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

3. Failure to request lesser-included jury instructions.

There was no evidence presented at trial indicating Applicant was guilty of a lesser-included offense. "If there is evidence in the record from which the jury could infer the defendant is guilty of the lesser-included offense, rather than the crime charged, the trial judge must instruct the jury on the lesser-included offense. A judge is required to charge a jury on a lesser-included offense if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." State v. Gilmore, 396 S.C. 72, 76-77, 719 S.E.2d 688, 690 (Ct. App. 2011) (internal cites omitted). Applicant's second to last statement to law enforcement insisted he was not there, while also insisting the shooting was an accident.

[H]e said that the pizza man was not supposed to get shot. He stated it was an accident. His mother then asked him how he knew it was an accident,

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and you said you weren't there. How you knew it was a revolver and it was dark outside. Reginald then began to cry. He stated that he did not shoot and kill anyone. He kept saying it was a accident, and he kept saying he wasn't there. So, I asked him there is no way you can say it was a accident and you weren't there, and he put his head on the table and continued to cry. Reginald then stated that the suspects ran away and he ran in the house.

R. 572, l. 24 – 575, l. 25

However, Applicant never placed himself at the scene, with a gun, or as part of the robbery. Further, there was no evidence presented to show legal provocation or the shooting was accidental. Therefore, Applicant's statement that the shooting was an accident was not evidence from which voluntary manslaughter or involuntary manslaughter could have been inferred where he denied involvement and denied having a firearm. Applicant's final statement to law enforcement and his asserted defense at trial was he was merely present and saw the murder take place from a nearby porch.

Therefore, there was no evidence in the record that would have allowed the trial judge to give a jury instruction for a lesser-included offense. This Court finds Applicant has failed to prove Counsel was deficient for failing to request a lesser-included charge. This Court also finds Applicant failed to prove he was prejudiced by the lack of a lesser-included charge such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

4. Counsel failed to properly review discovery with Applicant.

Applicant failed to prove Counsel did not speak with him often enough or review discovery with him thoroughly enough to properly prepare for trial. "This court has held that the brevity of time spent in consultation, without more, does not establish that counsel was ineffective. Therefore, it is not enough to merely show that counsel only met with [applicant] twice before trial as long as counsel devoted sufficient time to insure an adequate defense and to become thoroughly

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familiar with the facts of the case and the law applicable to the case.” Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980) (cites omitted). “[Applicant] did not offer any evidence or argument as to how counsel's alleged lack of preparation prejudiced him. Therefore, it is merely speculative that counsel's alleged deficient performance was prejudicial to [applicant].” Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008). Applicant claimed Counsel never discussed trial strategy with him. Applicant admitted he did relate his side of the story to Counsel and Counsel hired an investigator. Counsel testified he spoke with Applicant several times and hired an investigator to explore Applicant's version of the facts. Counsel testified they discussed trial strategy, potential defenses, and discovery in detail during their meetings. This Court finds Counsel's testimony credible. This Court also finds Counsel appropriately met with Applicant and was prepared for trial. This Court also finds Applicant has failed to prove he was prejudiced by Counsel's failure to meet with him more often.

Accordingly, this Court finds Applicant failed to prove Counsel should have spoken with Applicant more often or in more detail. This Court also finds Applicant has failed to prove he was prejudiced by Counsel's failure to speak with him more often such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

5. Conflict of interest.

Applicant failed to prove Counsel had a conflict of interest. Applicant produced a print out of a web page from Counsel's website. The web page noted Counsel formerly worked as the drug forfeiture attorney for the third circuit solicitor's office. It is axiomatic that many defense attorneys were formerly employed as solicitors or worked for the State. “Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional

predicate for a claim of ineffective assistance of counsel arising from multiple representation.” Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (internal cites omitted). “The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction.” State v. Gregory, 364 S.C. 150, 152–53, 612 S.E.2d 449, 450 (2005). Applicant has failed to show how Counsel’s employment for the State created a conflict of interest.

Accordingly, this Court finds Applicant failed to prove there was a conflict of interest. This Court also finds Applicant has failed to prove he was prejudiced by any potential conflict of interest such that there was a reasonable probability the result of the trial would have been different. Accordingly, this Court denies and dismisses this allegation.

B. Newly Discovered Evidence

Daniel Jackson’s, Applicant’s co-defendant at their joint trial, testimony was not newly discovered evidence. “[T]o obtain a new trial based on after discovered evidence, the party must show that the evidence: (1) would probably change the result if a new trial is had; (2) has been discovered since trial; (3) could not have been discovered before trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching.” Jamison v. State, 410 S.C. 456, 467, 765 S.E.2d 123, 128 (2014).

Further, this Court finds Jackson’s testimony was completely unreliable and lacking in credibility. At the PCR hearing, Jackson claimed Applicant was never part of the armed robbery. He claimed Applicant never agreed to aid or assist in the crime. Jackson admitted there were no potential consequences for his testimony at the hearing because his appellate process was finished. He also claimed he wanted to take the witness stand at his own trial so he could admit he committed the crime and Applicant was not involved, but was scared of getting the death penalty. Jackson gave no explanation for the rifle under Applicant’s bed, the shell casing in the peanut butter jar in

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Applicant's house, or Applicant's inconsistent statements to law enforcement. Jackson's change of heart from pleading not guilty and proceeding to trial to testifying he wanted to plead guilty and testify that Applicant was innocent is, in essence, a recantation. "[R]ecantation of testimony ordinarily is unreliable and should be subjected to the closest scrutiny when offered as ground for a new trial." State v. Wright, 269 S.C. 414, 421, 237 S.E.2d 764, 768 (1977).

Jackson faced no potential consequences for his testimony. Jackson's testimony he wanted to take the stand to admit his guilt and testify Applicant was innocent is incongruous with his assertion of his right to a trial. During Jackson's first trial, he was tried jointly with Applicant and found guilty by the jury along with Applicant. On appeal, Jackson's case was remanded for a new trial. After remand, Jackson again asserted his innocence and his right to a trial. After five days of trial, Jackson pleaded guilty and was sentenced to 30 years' incarceration. Applicant presented no evidence Jackson's testimony would have a reasonable probability the result of the trial would have been changed. Jackson's testimony did not relieve the damning evidence found in Applicant's home or the multiple conflicting statements he gave to law enforcement. Therefore, Applicant failed to show Jackson's testimony would probably have changed the result of the trial.

Therefore, this Court finds Applicant has failed to prove he should be granted a new trial based on his co-defendant's recantation. Accordingly, this Court dismisses this allegation.

VI. CONCLUSION

Based on 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 30 days from receipt of written notice of entry of judgment to secure the appropriate appellate review. See

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Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 1991, Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1g, SCRCP, provides that if Applicant wishes to seek appellate review, his post-conviction relief attorney must serve and file a notice of appeal on Applicant's behalf. Applicant and his attorney are directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of the Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 5 day of October, 2017.


 D. CRAIG BROWN
 Presiding Judge
 3rd Judicial Circuit

Florence, South Carolina

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