

VOLUME II of II

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Charleston County

SC SUPREME COURT,

Roger E. Henderson, Circuit Court Judge

QUENTIN JENKINS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002181

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT (dated February 4, 2008).....	1
POST TRIAL MOTION TRANSCRIPT (dated March 7, 2008)	729
POST TRIAL MOTION TRANSCRIPT (dated March 14, 2008)	792
INDICTMENTS AND SENTENCING SHEETS.....	857
FIRST APPLICATION FOR POST-CONVICTION RELIEF (filed October 27, 2010)	869
RETURN	876
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated November 18, 2011)	880
ORDER OF DISMISSAL	924
SECOND APPLICATION FOR POST-CONVICTION RELIEF (filed December 7, 2012)	931
AMENDED SECOND APPLICATION FOR POST-CONVICTION RELIEF (filed June 6, 2013).....	938
RETURN AND PARTIAL MOTION TO DISMISS.....	942
CONDITIONAL ORDER OF DISMISSAL	951
POST-CONVICTION RELIEF HEARING TRANSCRIPT (dated July 20, 2015).....	959
ORDER OF DISMISSAL	967
AMENDED ORDER OF DISMISSAL.....	972

1 excused from the state?

2 MR. WILLIAMS: No, Your Honor.

3 THE COURT: From the defense?

4 MR. RUNYON: No, Your Honor.

5 THE COURT: Sir, you are excused.

6 You may call your next witness.

7 MR. WILLIAMS: Thank you, Your Honor. State
8 calls Michael Hodges.

9 MR. MICHAEL HODGES,
10 after having first been duly sworn to state the truth,
11 the whole truth and nothing but the truth, testified
12 on his oath as follows:

13 THE COURT: Thank you, you may proceed.

14 MR. WILLIAMS: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. WILLIAMS:

17 Q Mr. Hodges, do you know Jabez Batiste?

18 A I don't know him but I know of him.

19 Q And do you know Quinton Jenkins?

20 A Yeah.

21 Q Do you know Bernard Green?

22 A Yeah.

23 Q Did you know them back in -- do you know Travis
24 Simmons?

25 A Yeah, I kind of knew him. we are kind of

1 acquaintances, not real good friends like the other
2 two, you know.

3 Q Did you know Quinton and Bernard back in
4 January of 2007?

5 A Yeah. Yeah.

6 Q On January 4th, 2007 were you aware that a
7 couple people got killed up at the McDonald's on West
8 Ashley?

9 A Yes, sir.

10 Q Do you remember that day?

11 A Not fully, to be honest with you, I was
12 drinking. But from what I can remember.

13 Q Do you remember seeing Bernard Green and
14 Quinton Jenkins before those killings happened?

15 A Yeah. Yeah.

16 Q Where did you see them at?

17 A At my house.

18 Q Where was your house at?

19 A My old house actually on [REDACTED].

20 Q Were they over at your place?

21 A Yeah, chilling, like we doing cutting up, you
22 know, like we usually do every day, chilling. Like a
23 regular day.

24 Q Did they say anything about where they were
25 going to evening?

1 A No. All I heard, you know what I'm saying,
2 yeah I'm going to run a lick. To me that meant
3 anything something real small, but never nothing that
4 big.

5 Q what was it you heard?

6 A We was going to run a lick. Like I overheard
7 them when I was talking to one of our friends and
8 shit.

9 Q watch your language.

10 A Excuse me, whoa.

11 Q Are you nervous?

12 A Not really. It's just --

13 Q Take your time.

14 A People staring at me.

15 Q You say you were going to -- they were going to
16 run a lick?

17 A Yeah, that could mean anything, like, I don't
18 know. I mean I didn't know they were going to do that
19 if that's what you're trying to ask me.

20 Q I'm trying to ask you what they said.

21 A Just go run this lick.

22 Q what does a lick mean to you? A robbery? what
23 does it mean?

24 A It could be something like that, or it could be
25 something as small as stealing something.

1 Q As small as stealing something?

2 A Yeah,

3 THE COURT: Sir, please speak directly into the
4 microphone.

5 A As small as stealing something, like a candy
6 bar, you know.

7 Q So --

8 A That didn't mean anything to me. I didn't know
9 it. If I had know they was going to do some stuff
10 like that, I would have stopped it. I didn't.
11 They're friends. I do care about my friends, you
12 know.

13 Q So if you had known that they were going to be
14 involved in murder you would have stopped them?

15 A No, I did not know that.

16 Q So when they left you did not know where they
17 were going?

18 A No.

19 Q Did you see them later on after they came back?

20 A Yeah, later on that's when I heard pretty much
21 what you all probably been hearing all today.

22 Q What did you hear and who did you hear it from?

23 A I guess both of them.

24 Q Did you hear anything from Quinton Jenkins?

25 A Not much.

1 Q what did Quinton Jenkins say?

2 A He said that, you know, he was in the back with
3 Jabez. Jabez shot the first shot, and I guess he got
4 panicked because I guess he saw somebody move or
5 something, and I guess he did not what normally would
6 if he were legally owning a gun, he saw a situation
7 like that, so I guess he panicked and started
8 shooting.

9 You know, trapped in the backseat. I don't
10 know if it was a two-door or a four-door.

11 Q So he told you that --

12 A I don't if it was a two-door or four-door car.
13 I did not find out about the car until I got the
14 paper.

15 Q I want to back up to what he said. He said
16 that he was with the Jabez?

17 A Yeah.

18 Q Jabez fired the first shot?

19 A Yeah, in the front seat.

20 Q And that he panicked?

21 A Yeah. I guess he was trapped in the back,
22 yeah.

23 Q Well, I don't want you to guess at something.
24 Isn't that what he said?

25 A Yeah.

1 Q He said he panicked and starting shooting
2 people?

3 A I don't remember if he said he panicked, that's
4 my word. He just said he was fidgety.

5 Q The guy was fidgety?

6 A Yeah, so.

7 Q So he shot him?

8 A Yes.

9 Q Did Quinton Jenkins tell you he shot the guys
10 there?

11 A Yeah.

12 Q He said he shot?

13 A Yeah.

14 Q Did you see Quinton with a gun?

15 A That, since this is really important, I know
16 the statement may have said I seen him that day, I
17 seen him before, I mean, hell, he seen me with a gun
18 before, you know. But you know what I'm saying?

19 Q Did you see him with a gun that night?

20 A No, that night? I can't remember that night.

21 I mean I can't remember seeing him with a gun, like
22 knowing how important this is I was thinking back on
23 that day, you know what I'm saying, I would have told
24 you the honest truth if I saw a gun. I don't know why
25 I said that, I guess I was nervous.

1 Q But you did say at one point you saw him with a
2 gun?

3 A Yeah, I saw him with a gun.

4 Q And he does own a gun?

5 A No, he don't own one.

6 Q Had you seen him with guns before?

7 A Yeah, like I said, and he seen me with guns
8 before.

9 Q When you see him with a gun, did you see him
10 with a semi-auto?

11 A It was a semiautomatic. That's when he pulled
12 -- that's like the type of gun you just pull, you got
13 to keep pulling, not pull back, all that crap.

14 Q Casing ejects, pull the trigger and the casing
15 flies out?

16 A Yeah.

17 Q So you saw him with the kind of gun you pull
18 the trigger and the casing ejects?

19 A Yeah.

20 Q Did Quinton Jenkins say anything else to you
21 about what happened?

22 A Not really. In a nutshell he just told me what
23 happened in the car, and then they hauled ass. And
24 went back to my house. I did not see Travis or Jabez
25 though.

1 Q And he told you that he shot the guys?

2 A Yeah. Jabez shot first, that's what I was
3 told.

4 MR. WILLIAMS: Thank you. Nothing else, Your
5 Honor.

6 THE COURT: Any questions for the witness?

7 MR. RUNYON: Briefly.

8 THE COURT: You may proceed.

9 CROSS-EXAMINATION

10 BY MR. RUNYON:

11 Q Mr. Hodges.

12 A Yes, sir.

13 Q Now I was trying hard to listen over there so I
14 apologize.

15 A I'm so sorry.

16 Q Okay, kind of speak up I would appreciate it.

17 A Okay.

18 Q Now the night of this incident, or that
19 afternoon, you said -- who was there when they were
20 talking about running a lick?

21 A Some dude name Snoop. I don't know his real
22 name really like that. He was like a guy from the old
23 neighborhood, you know.

24 Q What was his name?

25 A Snoop, nickname. I don't know his real name.

1 Q Snoop. All right, was Quinton there?

2 A Yeah, he was at my house a little while and
3 stuff chilling like we usually did.

4 Q I know but was he there when Snoop talked about
5 running a lick?

6 A Yeah, I believe he was talking to somebody. He
7 was talking to Snoop.

8 Q Is Snoop Bernard Green?

9 A No Snoop is some other guy, he is a tall,
10 lanky.

11 Q So Snoop, and Snoop is not Jabez?

12 A No.

13 Q And Snoop is not Travis Simmons?

14 A No.

15 Q So Snoop was talking about running a lick that
16 night?

17 A Not Snoop.

18 Q Who was talking about running lick?

19 A I overheard -- Quinton and BJ.

20 Q Okay, Quinton and BJ?

21 A Yeah. They just said they was running a lick
22 and they walked off. I did not ask them any
23 questions, where they was going, I looked at them
24 like, Snoop, they going to do something stupid.

25 But I did not know it was going to do that,

1 dude, I don't know anyone wants to be doing that,
2 whatnot.

3 Q Now you say when did you see Quinton with a
4 gun? Before or after this event?

5 A Before.

6 Q Okay.

7 A Like he seen me with a gun too before, makes
8 things fair, you know.

9 Q Okay. And where did you see him with a gun?

10 A My house, like the same spot he seen me with
11 one at.

12 Q And whose gun was it that you saw him with?

13 A I really don't know, that could have been -- I
14 really don't know.

15 Q But it wasn't Quinton's gun?

16 A No.

17 Q On the night in question that BJ and Quinton
18 were talking about running a lick and they were
19 walking off, did you see Quinton with a firearm of any
20 kind?

21 A No.

22 Q Okay. Was he wearing his Taco Bell uniform?
23 Do you remember?

24 A Yeah. Yeah, he had it on. Yeah, he had it on
25 I think, I don't know.

1 Q So he was wearing his Taco Bell uniform, but
2 you didn't see him with any weapon that night?

3 A No. To be fair, thinking hard on it, not that
4 night, no.

5 Q Now as it relates to a conversation later on,
6 or at least you hearing something, did you hear it
7 directly from Quinton about what supposedly happened?

8 A Yeah.

9 Q Okay. And did he say he was in the car?

10 A Yes, he was in the back.

11 Q He was in the back?

12 A Yeah.

13 Q Jabez was in the front?

14 A Yeah.

15 Q And Jabez shot somebody?

16 A Yes.

17 Q Okay. And then Quinton told you that he shot
18 somebody?

19 A Yeah, yes.

20 Q All right. Do you know where this happened?

21 A Well I found out after the fact Mickey D's.

22 Q Okay. Mickey D's, that's McDonald's?

23 A Yes.

24 Q Okay. When did Quinton make this admission or
25 talk about this?

1 A When did he make this admission? I don't know
2 if he came back exactly after the incident, but I
3 guess a little bit after the incident. After, you
4 know, the shooting.

5 Q So he came back -- they came back to your house
6 at ??

7 A Yes.

8 Q They didn't go back to his house?

9 A They went back to his house, he had to go to
10 work.

11 Q Okay. How far is your house from his house?

12 A Nothing but a little short hop and a skip away.

13 Q Hop and a skip away?

14 A I see him walking down, you know, just
15 chilling. You know, it ain't that far though. It's
16 like two streets.

17 Q Okay. All right. And you are not sure if he
18 said that this particular night, about what time did
19 they come back roughly?

20 A Roughly 9 o'clock.

21 Q Okay. So they came back roughly 9 o'clock and
22 then he had to go to work?

23 A Yeah. He was supposed to have been at work.
24 But, you know, I would be late too.

25 Q All right. And are you sure Quinton said he

1 did some shooting or that there was some shooting and
2 Jabez started all that?

3 A Yeah, pretty much said he just shot them, you
4 know, because the dude was fidgeting like I said, you
5 know.

6 A If he shot somebody, where was -- did he have a
7 gun with him?

8 A I didn't see him with a gun.

9 Q Okay.

10 A well, not that night.

11 Q You didn't see him with a gun that night, you
12 didn't see him when he came back he didn't have a gun.
13 Did you see Jabez that night after the --

14 A No. I have not seen Jabez after that whole
15 thing. I guess he went back to school and whatnot.
16 Nope.

17 Q Okay.

18 MR. RUNYON: No further questions, Your Honor.

19 THE COURT: Any redirect of the witness?

20 MR. WILLIAMS: Briefly, Your Honor.

21 THE COURT: You may proceed.

22 REDIRECT EXAMINATION

23 BY MR. WILLIAMS:

24 Q what was talked about before, Mr. Runyon asked
25 about doing a lick, do you remember giving a statement

1 in the case, you talked about something you gave a
2 written statement to the police afterwards?

3 A Yeah.

4 Q Was that statement accurate apart from the
5 thing with the semi-auto, seeing a gun that night on
6 Quinton?

7 A Yeah, basically.

8 Q Was the part where you said that Quinton and
9 Bernard both told you that they were going to
10 McDonald's to do a rip for drugs, for ectasy?

11 A Like I said, I found out about that afterwards.
12 I don't remember them telling me that. If I knew they
13 was going to go to McDonald's for
14 that --

15 Q So the part about them going to rip somebody
16 for ectasy is something you found out later?

17 A Yeah.

18 Q You find out from Quinton or Bernard?

19 A And it says right there in the statement they
20 came back to my house and told me the story.

21 Q So Quinton also told you afterwards that they
22 were going to do a rip for drugs and that's why they
23 went to the McDonald's?

24 A Yeah.

25 Q Okay. And that was at the time he also talked

1 about the guy fidgeting and he shot them?

2 A Yeah.

3 Q Okay, thank you.

4 MR. WILLIAMS: Nothing else.

5 THE COURT: Any objection to the witness being
6 excused from the state?

7 MR. WILLIAMS: No, Your Honor.

8 THE COURT: From the defense?

9 MR. RUNYON: No, Your Honor.

10 THE COURT: Sir, you are excused.

11 You may call your next witness.

12 MS. STEELE: State Ila Simmons.

13 MS. ILA SIMMONS,

14 after having first been duly sworn to state the truth,
15 the whole truth and nothing but the truth, testified
16 on her oath as follows:

17 THE COURT: You may proceed.

18 MS. STEELE: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. STEELE:

21 Q Ms. Simmons, what is your occupation?

22 A I'm employed at the South Carolina Law
23 Enforcement Division, also known as SLED, in the
24 forensic laboratory in the trace evidence department.

25 Q And how long have you been employed by SLED?

1 A Eight years.

2 Q All right. And what are your duties with SLED?

3 A I work in the trace evidence department. In
4 trace we analyze gunshot residue; we do bullet to
5 target distance determinations; we compare glass
6 samples; we compare fiber samples; we compare paint
7 samples; we also analyze arson residues and explosive
8 residues.

9 Q And what is gunshot residue?

10 A Gunshot residue is a mixture of microscopic
11 chemicals that come out of a gun when its fired.
12 Everyone is familiar that a bullet comes out of a gun,
13 well the mixture of chemicals that are put in the
14 cartridge that makes the bullet come out of the gun
15 also come out of the gun and can get on anything
16 that's in the vicinity of a weapon when it's fired,
17 including the hand of the person that's shooting the
18 gun.

19 Q And what makes testing for gunshot residue
20 possible?

21 A The fact that it does adhere to the skin of
22 someone in the vicinity of the weapon, someone
23 shooting the gun or someone in close proximity to the
24 muzzle end of the gun when it goes off.

25 Q And what is your educational background?

1 A I have a bachelor's of science degree in
2 chemistry. After completing my bachelor's of science
3 degree I came to work at SLED where I underwent an
4 in-house training program that took about three years
5 to complete where I worked with a trained, qualified
6 trace evidence examiner who taught me how to collect,
7 analyze and write reports in the area of trace
8 evidence. I have analyzed approximately 2,000 GSR
9 samples in that one year. And since then probably
10 about 2,000 a year since then.

11 Q And are you a member of any professional
12 organizations associated with this type of work?

13 A Yes, I am. I'm a member of the American
14 Academy of Forensic Science, the Southern Association
15 of Forensic Science, and I'm also a member of the
16 FBI's gunshot residue symposium.

17 The FBI requests people that are in gunshot
18 residue analysis come to Quantico and discuss the
19 standards of practices, and we set those up, as to how
20 everyone around the world should be analyzing gunshot
21 residue.

22 Q And have you testified previously regarding
23 gunshot residue?

24 A Yes, I have, probably 70 times in civil,
25 federal and state courts in South Carolina.

1 Q Have you been qualified as an expert in the
2 field of gunshot residue?

3 A Yes, I have.

4 Q And in what courts were you qualified as an
5 expert?

6 A In the general sessions court of South
7 Carolina, also civil courts and federal courts for the
8 state.

9 Q And have you ever qualified as an expert in
10 gunshot residue in these courts here in Charleston
11 County?

12 A I have.

13 MS. STEELE: Your Honor, the state would move
14 to have Agent Simmons qualified as an expert in
15 gunshot residue.

16 MR. RUNYON: No objection.

17 THE COURT: So admitted.

18 MS. STEELE: Thank you, Your Honor.

19 Q (By Ms. Stelle) Ms. Simmons, I'm going to show
20 you what has been marked as State's Exhibit 77. Do
21 you recognize that?

22 A Yes, ma'am, I do. This is the outer envelope.
23 May I open it to look inside?

24 Q Yes.

25 A This is the outer envelope that contains the

1 evidence, this how we get it in to SLED. The gunshot
2 residue kits are put in these envelopes and sent to
3 our department. That's what it contains.

4 Q And how many gunshot residue kits are in there?

5 A Two.

6 Q Where were those gunshot residue kits taken
7 from?

8 A They were taken from the hands of Channing
9 walker and Kareem Shakoor.

10 Q And can you explain what's in the kit?

11 A Uh-hum. These are standardized kits, they're
12 made by a company that SLED authorizes to make the
13 kits. There are two portions in all of the GSR kits
14 that are made by this company.

15 The first portion is a particle lift, which
16 this is the plastic vial. If you remove this there is
17 a little piece of double-sided sticky tape on the
18 handle in there and that's the first portion of the
19 GSR kit.

20 What they do is they take the vial out, open it
21 like this, so they don't ever have to touch the
22 double-sided sticky tape. They take it and they dab
23 it across the area of the hand. There is one sample
24 collected from the right palm, another sample
25 collected from the back of the right hand, one sample

1 collected from the left palm, and one from the back of
2 the left hand.

3 Also included in the kit is Q-tips and a
4 diluted nitric acid. These Q-tips, a few drops of
5 nitric acid is put on the Q-tips and samples are
6 collected from the site areas; two swabs from the
7 right palm, two swabs from the back of the right hand
8 and so forth.

9 Q Did you exam the contents of both of those
10 kits?

11 A Yes, I did.

12 Q Just describe the examination that you made?

13 A Uh-hum. When we get the kits what we do is we
14 analyze the swabs first. what we do is try to
15 determine how much gunshot residue, if any, is present
16 on the swabs. what we are looking for is the
17 quantities of three specify metals, lead, barium and
18 antimony.

19 You can get lead on your hands from different
20 things, fishing weights, lead paints. You can also
21 get antimony on your hands from leather-treated goods.
22 Barium comes from makeup and talcum powder. However,
23 when you put these three elements together in a
24 certain concentration at certain thresholds with one
25 another, it's specific to gunshot residue. You're not

1 going to get them on your hands in these ratios unless
2 you have been around a weapon that has been fired.
3 And that's what we are looking for with the swabs.

4 with the particle lifts we put them on
5 microscope, a very strong powered microscope that can
6 see 100,000 times greater than the human eye can see.
7 And what we're looking for there are the particles of
8 the gunshot residue containing these three elements.

9 Q And what conclusions did you reach as a result
10 of your examination from each of the kits?

11 A Okay. On the Channing Walker kit we found
12 metals consistent with gunshot residue found on all
13 areas of the hand; on the palm of the right hand, back
14 of the right hand, palm of the left hand, back of the
15 left hand.

16 A Kareem Shakoor we determined that gunshot
17 residue, the quantities of metals found that are
18 consistent with gunshot residue on the right palm, on
19 the back of the right hand, and on the back of the
20 left hand.

21 Q And what levels of gunshot residue -- or were
22 levels of gunshot residue found consistent with each
23 of the individuals firing a gun or being in close
24 range with a gun?

25 A On Mr. Shakoor's hands, on Kareem Shakoor, on

1 the palm and back of the hand it was slightly more
2 elevated than is generally seen with shooting a gun.

3 The way we determine that is we've taken numerous
4 firearms and fired different types of ammunition in
5 them, and taking these GSR kits and the hands of
6 analysts working in the lab. So we get an idea of how
7 much you should have on your hands from shooting a
8 gun, how much you should have on your hands for being
9 in the vicinity of a weapon when it's fired.

10 And it was slightly elevated on the right palm
11 and back of the right hand. On the back of the left
12 hand it was consistent with having either been in the
13 vicinity of a gun or firing a gun.

14 Q Okay.

15 A On Channing Walker's hands the levels were much
16 more elevated. Where we are expecting to see 200
17 counts of lead from firing a weapon, we were seeing
18 much higher counts, 1,000, 5,000 counts of lead on the
19 hand; 700 and then 3,000 on the area of Mr. Walker's
20 hands.

21 So that is much more consistent with having
22 been in the vicinity of a weapon, muzzle vicinity of a
23 weapon when it's fired because 90 percent of gunshot
24 residue is going to come out of the muzzle of the gun
25 when it's fired. Therefore only a small amount, when

1 you are firing a gun like this, is going curve back
2 around and go on the hand of someone shooting.

3 However, if you're standing directly in front
4 of the gun when it goes off, you're going to have more
5 gunshot residue, you can get more gunshot residue on
6 you than if you shoot the gun.

7 Q So is it more consistent with being near a gun
8 when it was fired rather than firing the gun
9 themselves?

10 A Yes, it was. On Mr. Walker's hand definitely.
11 And on the right hand of Kareem Shakoor.

12 Q It was more consistent with Shakoor being near
13 the proximity of where the gun was fired rather than
14 firing the gun?

15 A Yes.

16 Q Are you able to, looking at the levels of
17 gunshot residue on the victims' hands, are you able to
18 give us -- come up with a range of how close the gun
19 was when it was possibly fired?

20 A All we can give is an estimation. The only way
21 you can determine how far a gun was and how far
22 gunshot residue can go would be to fire at someone's
23 hands. Well, there is no one willing to stand in
24 front of a gun during a test firing and have their
25 hands up to catch the gunshot residue.

1 So all we can give is an estimation as to how
2 far it's traveled and gotten on targets and things of
3 that nature, parchment paper or cloth. So it's not a
4 one-to-one transfer with skin.

5 So basically what we can say is that with a
6 handgun, a higher caliber handgun like with a .45, it
7 would probably go approximately six feet. But that's
8 just an estimation.

9 Q Are you able to give an estimation in this
10 case?

11 A With, like I'm saying, with a handgun it's
12 probably going to be at the farthest six feet.

13 Q Okay.

14 MS. STEELE: I have no further questions for
15 this witness, Your Honor.

16 THE COURT: Any questions for the witness?

17 MR. RUNYON: Briefly.

18 THE COURT: You may proceed.

19 CROSS-EXAMINATION

20 BY MR. RUNYON:

21 Q Good afternoon.

22 A Good after noon.

23 Q As it relates to the gunshot residue as it
24 relates to Mr. Shakoar, the quantities of metals found
25 are consistent with gunshot residue?

1 A Yes, sir.

2 Q That's on the right palm?

3 A Yes, sir.

4 Q And the right back?

5 A Yes, sir.

6 Q Okay. And you think it may be consistent with
7 not having fired a gun but it could have fired a gun.

8 A That is a possibility, yes, sir.

9 Q So you are not saying that Mr. Shakoor didn't
10 fire a gun?

11 A No, sir, I'm not saying that.

12 Q And as it relates to Mr. Channing Walker's, you
13 found gunshot residue on his GSR kit?

14 A Uh-hum.

15 Q And the right back is consistent with gunshot
16 residue?

17 A Uh-hum.

18 Q Correct?

19 A On Mr. Walker all areas are consistent with
20 gunshot residue.

21 Q All areas?

22 A Yes, sir.

23 Q Which is consistent with being in the vicinity
24 of a weapon being fired or in fact firing the weapon?

25 A Yes, sir. With his quantities though they're

1 much, much higher so it's more consistent with him
2 having been in close proximity to the muzzle end of
3 the gun than firing a gun.

4 Q Okay. Of course what variables that can affect
5 this is in fact the ammunition itself; is that not
6 correct?

7 A Yes, sir, because different ammunitions have
8 different amounts of primer you loaded into them.

9 Q So if you have a higher power, that's my word,
10 you correct me because you are the expert.

11 A If you have a higher caliber weapon like a .45
12 versus a .22 then you'll have more gunshot residue in
13 the load in the charge.

14 Q what about .9mm?

15 A Yes, sir, it's going to be in a medium range.
16 Not quite as high as a .45, but higher than a .22.

17 Q Okay. So there is nothing in these gunshot
18 residue kits that precludes either of the individuals
19 that you tested from having fired a weapon -- let me
20 strike that.

21 Both of these individuals were in proximity to
22 weapons being fired?

23 A Yes, sir, that is possible.

24 Q Based upon the gunshot residue?

25 A Yes, sir.

1 Q And both of these individuals' gunshot residue
2 kits were consistent with them possibly having fired
3 weapons themselves?

4 A Yes, sir. However on Mr. Walker being that the
5 concentrations were so much higher, he would have had
6 to have fired a weapon numerous times, or having had
7 reloaded the weapon opened the breach and got the
8 gunshot residue.

9 Q So as a practical matter if he goes bang, he is
10 going to have some amount of gunshot residue?

11 A Yes. If he is in the proximity of that gun
12 within about six feet of it, yes, there should be some
13 gunshot residue.

14 Q But if he goes bang, bang, bang, there's going
15 to be a lot more?

16 A Yes.

17 Q So the more shots that the person might fire,
18 the more gunshot residue they're going to have on
19 their hand?

20 A Yes, sir, that's a possibility.

21 Q And possibly on their clothes and what have
22 you?

23 A Yes, sir.

24 Q And there is no way you can quantify how much
25 they should have based upon the number of shots?

1 A No, sir, because you don't know exactly how
2 much gunshot residue is emitted each time a gun is
3 fired, and how much is going to stay on the hand each
4 time.

5 Q All right. And each -- I shouldn't say each,
6 but the weapon utilized also plays a role in the
7 disbursement of the gunshot residue on to the operator of
8 the gun?

9 A Yes, sir, depending on what type of firearm it
10 is. If it's the semiautomatic versus a revolver, yes,
11 sir, that is also a possibility.

12 Q All right. So bang you have some residue,
13 bang, bang, bang, bang, bang, you have a lot more?

14 A Yes, sir.

15 MR. RUNYON: No further questions, Judge.

16 THE COURT: Any redirect?

17 MS. STEELE: Briefly, Your Honor.

18 THE COURT: You may proceed.

19 REDIRECT EXAMINATION

20 BY MS. STEELE:

21 Q Ms. Simmons, if someone is being shot at, if
22 they were shot at several times would they have more
23 gunshot residue on them?

24 A Yes because it's going to put more gunshot
25 residue in the atmosphere. So therefore they would

1 have more gunshot residue on their hands if they were
2 being fired upon multiple shots.

3 MS. STEELE: No further questions for the
4 witness.

5 THE COURT: Any objection --

6 MR. RUNYON: I just have one more question.

7 THE COURT: Certainly.

8 RECROSS-EXAMINATION

9 BY MR. RUNYON:

10 Q Does your analysis reach a conclusion as to
11 whether or not these individuals were operating a
12 weapon or whether they were being shot at?

13 A I can't say for certain, I can just say the
14 concentrations were more consistent with being in the
15 vicinity of a weapon than firing. But firing is also
16 possible.

17 MR. RUNYON: All right, thank you.

18 THE COURT: Anything further from the state?

19 MS. STEELE: No, Your Honor.

20 THE COURT: Any exceptions to the witness being
21 excused from the state?

22 MS. STEELE: No, Your Honor.

23 THE COURT: From the defense?

24 MR. RUNYON: No, Your Honor.

25 THE COURT: State may call your next witness.

1 MS. STEELE: State calls Agent Ken Whitler.

2 MR. KEN WHITLER,
3 after having first been duly sworn to state the truth,
4 the whole truth and nothing but the truth, testified
5 on his oath as follows.

6 THE COURT: You may proceed.

7 MS. STEELE: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MS. STEELE:

10 Q Mr. Whitler, what is your occupation?

11 A I'm a firearms tool mark examiner with the
12 South Carolina Law Enforcement Division in the
13 laboratory services.

14 Q And what law enforcement agency?

15 A South Carolina law enforcement division also
16 known as SLED.

17 Q And how long have you been employed by SLED?

18 A Since 1997.

19 THE COURT: You want to stipulate?

20 MR. RUNYON: Your Honor, I will stipulate. We
21 have been around the block before.

22 THE COURT: I would imagine there is no
23 exception.

24 MS. STEELE: No, Your Honor.

25 THE COURT: The Agent's expertise will be

1 stipulated and he will be admitted as an expert in the
2 area of firearms, is that correct, and tool marking.

3 MS. STEELE: Firearms identification.

4 THE COURT: Firearms identification without
5 objection.

6 Q (By Ms. Steele) Mr. Whitler, what are your
7 duties with SLED?

8 A I exam firearms and tool mark evidence in the
9 laboratory division.

10 Q And what exactly is firearms identification?

11 A Firearms identification is the study of the
12 markings on ammunition components, such as bullets and
13 cartridge cases, for the purpose of associating those
14 bullets or cartridge cases with each other or with a
15 particular firearm; for example to determine if a
16 bullet was fired by a particular gun or a cartridge
17 case was fired by a particular gun.

18 Q What makes some identification possible, what
19 do you do to make an identification?

20 A The marks we are using are microscopic marks
21 that are placed on the firearm during the process of
22 manufacturing that firearm. When the bullet or
23 cartridge case is fired in a particular firearm, in
24 many cases marks are transferred to the bullet or the
25 cartridge case.

1 And it's those marks that we are able to match
2 with test-fired bullets from a particular gun, or if
3 no gun is submitted we look at additional bullets.
4 And if they have the same marks on them, those marks
5 are produced by the bullet or the cartridge case being
6 fired by a particular gun.

7 Q were you giving any items to examine in this
8 case?

9 A Yes, I was.

10 Q what items did you examine in this case?

11 A There were three bullets, a bullet jacket
12 fragment, a lead fragment and eight cartridge cases
13 submitted in this case that we examined.

14 Q Okay. And what were -- did you make an
15 examination of each of those items?

16 A Yes, I do.

17 Q And can you describe in detail the examination
18 you made of each item?

19 A In this case since there was no firearm
20 submitted all I could do was inter-compare the bullets
21 with each other and the cartridge cases with each
22 other.

23 As far as the cartridge cases, I determined
24 that all the cartridge cases were fired by the same
25 firearm. The three bullets and the bullet jacket

1 fragment didn't have sufficient agreement of the marks
2 to enable me to say that they were fired by the same
3 firearm.

4 They did have sufficient class characteristics
5 that they could have been fired by the same firearm.
6 But again because there wasn't sufficient agreement of
7 the microscopic marks, I could not say it was fired by
8 a specific firearm, but merely a firearm that has the
9 same class characteristics.

10 So those three bullets and the bullet jacket
11 fragment could have been fired by the same firearm or
12 another firearm with similar rifling characteristics.
13 The lead fragment had no marks of value at all and was
14 unsuitable for any sort of comparison.

15 Q When you say bullets, were those three were
16 they fired bullets, the three bullets?

17 A Yes, they were fired bullets and fired bullet
18 jacket fragment.

19 Q And looking at those five items, the three
20 fired bullets, the lead fragment and the fired bullets
21 jacket fragment, are you able -- were you able to
22 determine if those were fired from the same gun or
23 probably fired from the same gun? Were you able to
24 make a determination?

25 A All I could say is that they could have been

1 fired from the same gun or another gun with same
2 rifling characteristics. Or there could have been
3 multiple guns.

4 Q Then you said you also examined four shell
5 casings, eight shell casings in this case; is that
6 correct?

7 A That's correct.

8 Q And what were you looking for in your
9 examination of those eight shell casings?

10 A To determine if there was sufficient agreement
11 of the microscopic marks on the shell case to
12 determine if they were fired by the same firearm.

13 Q And what conclusions did you reach as a result
14 of your examination of those eight shell casings?

15 A That they were all fired by the same firearm.

16 Q And can you explain to the jury what the
17 difference is between a semiautomatic and a revolver?

18 A The difference between a semiautomatic and a
19 revolver, a semiautomatic pistol and a revolver, is
20 that a semiautomatic pistol when you pull the trigger
21 the cartridge is fired and the cartridge case is
22 ejected from the pistol as the bullet goes down the
23 barrel of the firearm.

24 It's really sort of a, you might want to call
25 it a self-loading pistol. You have your cartridges in

1 a device called a magazine that's inserted in the
2 pistol. You have one barrel on the gun and each time
3 you fire the cartridge is placed in the chamber of
4 that barrel and fired.

5 with a revolver you have a cylinder that
6 rotates around the barrel. And every time you pull
7 the trigger the cylinder rotates a certain amount and
8 puts a new cartridge in line with the barrel. It does
9 not eject the cartridge cases until you finish firing
10 or you open the cylinder and manually extract or eject
11 the cartridge cases.

12 Q So in a semiautomatic the cartridge cases are
13 automatically ejected each time you fire?

14 A Unless there is something wrong with the
15 pistol. Because if it's not ejected the next
16 cartridge will not fit into the chamber.

17 Q Okay. And in this case were you able to tell
18 if the shell casings that were fired were from a .9mm
19 or from a semiautomatic weapon?

20 A These cartridge cases were .9mm Luger caliber
21 cartridge cases which is predominantly a cartridge
22 that is used in semiautomatic firearms.

23 Q And how were you able to say -- I mean, what --
24 why do you say they were probably from a
25 semiautomatic?

1 A Because the vast majority of firearms you
2 encounter chambered for .9mm Luger cartridges are
3 pistols or semiautomatic pistols or carbines or
4 machine guns. There are not very many -- I have run
5 across a couple of revolvers chambered for .9mm Luger
6 but they're very few and far between.

7 Q So if someone were to fire a semiautomatic,
8 fire eight shots with a semiautomatic somewhere, would
9 you expect to see eight shell casings? would eight
10 shell casings automatically be ejected from the gun?

11 A If the pistol is operating normally and it is
12 fired eight times, there should be eight cartridge
13 cases ejected from it.

14 Q Okay. And if a revolver was fired eight times,
15 would you expect to -- would the person have to open
16 the chamber and dump the shell casings out for those
17 to be found?

18 A There are a few eight-shot revolvers being
19 produced now, but in order to get cartridge cases out
20 of the revolver you would have to open it and manually
21 eject them.

22 Q Okay.

23 MS. STEELE: That's all the questions I have
24 for this witness, Your Honor.

25 THE COURT: Any questions for the witness?

1 MR. RUNYON: Yes, briefly.

2 THE COURT: You may proceed.

3 CROSS-EXAMINATION

4 BY MR. RUNYON:

5 Q Good to see you again, sir, how are you doing.
6 Essentially there are about 30 brands of manufacturers
7 of .9mm Luger caliber cartridges that are processed or
8 sold in the United States; isn't that correct?

9 A I really can't give you a number. There are a
10 large number of people that manufacture pistols in
11 that caliber.

12 Q Let me put it to you this way just to get to
13 the point. Your report says there are 30
14 manufacturers.

15 A Okay. That report, that listing is not
16 all-inclusive, there could be more. And that's based
17 on the rifling characteristics on the bullets.

18 Q Okay.

19 A There could be far more manufacturers that
20 because their rifling is different there could be
21 several hundred manufacturers. That list is just for
22 those particular bullets.

23 Q Okay. Did someone send you a .9mm carbine
24 rifle to test?

25 A No, sir.

1 Q Okay. But .9mm ammunition you would expect
2 would be, Luger ammunition would be utilized in a, as
3 you said, a carbine type firearm?

4 A A carbine has a long barrel on it. I would
5 expect to find it in either something like -- there
6 are some carbines and submachine guns chambered for .9
7 Luger, there are just numbers of pistols chambered
8 for .9mm Luger. It's become a very popular cartridge.

9 Q All right. And now can you say with any
10 reasonable scientific certainty the ejection distance
11 for a typical .9mm shell, or would that depend upon
12 the weapon itself and the manufacturers?

13 A As far as ejection patterns on pistols, you
14 really have to test each individual pistol. And the
15 problem with it is it's all -- there are a number of
16 variables. For example, how the person holds the
17 pistol. If they didn't hold it the same way each
18 time, hold it tightly one time and loose the next, you
19 can affect where cartridge case will go.

20 You have got just a normal variation from shot
21 to shot from where some will throw them very close,
22 some will throw 10, 15 feet apart. It depends on the
23 ammunition, whether they are holding the gun perfectly
24 vertical or turning it sideways. And because of that,
25 and then the surface area. When you get to a crime

1 scene and you see cartridge cases on the floor or on
2 the parking lot or whatever, what you are seeing is
3 where the cartridge case ended up, not where it
4 actually may have been ejected.

5 So when it comes out of the pistol and hits a
6 hard surface like a parking lot, it may roll 10 or 20
7 feet. You don't know, somebody could have kicked it,
8 whatever.

9 So, you really can't say with any certainty
10 where a gun was in relationship to where the cartridge
11 case was found. There are so many variables I
12 hesitate. No one I know will try to give you a
13 ballpark figure unless you have all those variables
14 answered, and it's almost impossible unless you were
15 there at the scene.

16 Q So as a practical matter these shell casings
17 can also roll, for example if a car is pulled up on to
18 towed dolly and towed at an angle even for a short
19 distance?

20 A It just depends on the surface and how they're
21 situated.

22 Q that's right.

23 MR. RUNYON: No further questions, Judge.

24 THE COURT: Any redirect of the witness?

25 MS. STEELE: Nothing from the state.

1 THE COURT: Any objection to the witness being
2 excused from the state?

3 MS. STEELE: No, Your Honor.

4 THE COURT: From the defense?

5 MR. RUNYON: No, Your Honor.

6 THE COURT: Sir, you are excused.

7 Call your next witness.

8 MS. STEELE: Your Honor, if I could have one
9 minute to make sure our next witness has arrived.

10 State calls Dr. Cynthia Schandl.

11 DR. CYNTHIA SCHANDL,
12 after having first been duly sworn to state the truth,
13 the whole truth and nothing but the truth, testified
14 on her oath as follows:

15 THE COURT: You may proceed.

16 MS. STEELE: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MS. STEELE:

19 Q Ms. Schandl, what is your profession?

20 A I'm a forensic pathologist and assistant
21 professor at the University of South Carolina.

22 Q Are you a licensed physician?

23 A Yes, I am.

24 Q In what states are you licensed?

25 A South Carolina and Florida.

1 Q How long have you been licensed?

2 A I have --

3 THE COURT: You want to stipulate to her?

4 MR. RUNYON: Your Honor, I would stipulate
5 also.

6 THE COURT: Any exception from the state?

7 MS. STEELE: No, Your Honor.

8 THE COURT: The doctor's qualifications are
9 stipulated to, she is admitted as an expert in the
10 area of forensic pathology.

11 MS. STEELE: Thank you, Your Honor.

12 THE COURT: You may proceed.

13 MS. STEELE: Thank you, Your Honor.

14 Q (By Ms. Steele) Dr. Schandl, what particular
15 branch or field of medicine do you specialize in?

16 A Forensic pathology.

17 Q And exactly -- can you explain to the jury
18 exactly what forensic pathology is, what it involves?

19 A Yes. In order to be a forensic pathologist one
20 must be trained as medical doctor and then further
21 trained as a pathologist. And then there is
22 additional training specifically for forensic
23 pathology which is the study of disease as it relates
24 to cause of death.

25 so a forensic pathologist's job in most cases

1 is going to be determination of the cause of death and
2 at times also the manner of death.

3 Q And does that work include the performance of
4 autopsies?

5 A Yes. Our main tool as a forensic pathologist
6 in determining cause and manner of death is the
7 autopsy, yes.

8 Q And did you have occasion to perform an autopsy
9 on Kareem Shakoor?

10 A Yes, ma'am, I did.

11 Q What date did you perform that autopsy?

12 A That autopsy we performed on January 5th, 2007.

13 Q Was that the first time that you had come in
14 contact with the body of Kareem Shakoor?

15 A Yes, it is.

16 Q And how long did that autopsy last? About how
17 long did it take?

18 A I don't know precisely. A case of this
19 complexity probably took about three hours on the
20 front side, meaning the actual examination of the
21 body.

22 Q And where did the autopsy take place?

23 A We perform our autopsies at the Medical
24 University of South Carolina in the autopsy suite.

25 Q Dr. Schandl, I'm going to show you what has

1 been marked as State's Exhibit 69. Do you recognize
2 that?

3 A Yes. State's Exhibit 69 is a photocopy of a
4 body diagram that was produced during the autopsy.
5 And it's a diagram that shows injuries to the body.

6 Q And was that done by you during the autopsy?

7 A Yes, it was done under my supervision by my
8 resident and myself.

9 MR. RUNYON: I have no objection, Your Honor.

10 THE COURT: Marked and admitted without
11 objection.

12 MS. STEELE: Thank you, Your Honor.

13 (Whereupon, State's Exhibit 69 is admitted into
14 evidence.)

15 Q (By Ms. Steele) Dr. Schandl, did you find any
16 injuries to the body of Kareem Shakoor when you did
17 the autopsy?

18 A Yes, ma'am.

19 Q I'm going to show you what is marked at State's
20 Exhibit 69. Are those injuries indicated on this
21 sketch?

22 A Yes, they are.

23 Q And I'd like to -- could you explain the
24 injuries, each injury one by one, each injury that was
25 found on the victim?

1 A Yes, I can. There were several scrapes or
2 abrasions on the body. There was an abrasion one to
3 each knee, a scrape here, a scrape here. An abrasion
4 to the right elbow and an abrasion or scrape to the
5 upper left eyelid. And an abrasion or scrape on the
6 thigh, on the right side of the thigh.

7 In addition to those abrasions there were
8 multiple gunshot wounds, and those are designated in
9 this diagram by letters. Each letter may indicate
10 either an entrance gunshot wound, or an exit gunshot
11 wound.

12 So in particular, going through the gunshot
13 wounds, this is gunshot wound D here to the upper
14 lateral back. (Witness indicating.) This gunshot
15 wound is an entrance wound. It went through the skin,
16 into the tissue beneath the skin, into the muscle, and
17 then it came out the exit wound, which is C, here in
18 the underarm or axillary region here under the right
19 arm. It then continued into re-entrance wound B,
20 which is here on the right chest. Again it went
21 through skin, subcutaneous tissue, fatty tissue,
22 muscle, and then back out through re-exit wound A.

23 So this gunshot wound, which is a single tract,
24 encompasses four gunshot wounds; from D out, C in, to
25 B in and out A. So basically from the back out the

1 chest. This gunshot wound resulted in disruption and
2 bleeding just in those soft tissues. It did not enter
3 the chest cavity, it did not cause organ damage. So
4 that the damage caused by this bullet is in the muscle
5 and tissues beneath the skin as well as of course the
6 disruption of the skin itself.

7 Another gunshot wound was to the right inguinal
8 region, which is near the groin. This is an entrance
9 gunshot wound that is labeled I. (Witness
10 indicating.) This gunshot wound tract was basically
11 again through soft tissues, went adjacent to the
12 rectum, which is the large bowel but didn't perforate
13 the rectum, and then eventually came out of the right
14 buttock at this exit wound which I believe is K.

15 So we have the shot from D, C, B, A, single
16 shot. And then we have shot from I to K.

17 Q And Dr. Schandl, just briefly, the gunshot
18 wound from I to K, what was the injury caused inside?
19 Did that just go through soft tissue or what did that
20 hit?

21 A Yes, the injury at the groin that came out the
22 buttock did just cause soft tissue injury, it did not
23 hit organs. It did cause bleeding and destruction of
24 the shot tissues along its pathway.

25 Q And the next gunshot wound?

1 A Yes. The third gunshot was to the left arm,
2 and the entrance wound is designated here as H. This
3 entrance wound joins up with G which is the exit
4 wound. (Witness indicating.)

5 So this bullet went through the skin, through
6 the subcutaneous fatty tissue, muscle of the arm, hit
7 and fractured the bone of the arm, the humerus, the
8 bone of the upper arm, and then continued traveling
9 through muscle, subcutaneous skin, subcutaneous tissue
10 and skin, exiting here on the medial aspect of the
11 upper left arm at gunshot wound designated G.

12 This bullet then continued and caused a
13 superficial defect of the chest here at what is called
14 gunshot wound F. And in that case just some soft
15 tissue and skin damage. So this gunshot went through
16 the arm, fractured the bone of the upper arm and
17 caused soft tissue hemorrhage and disruption as well
18 as skin hemorrhage and disruption.

19 The final gunshot started at an entrance wound
20 on the back at J. This bullet did enter the right
21 chest cavity. It went through the right lung. It
22 went through three portions of the heart, including
23 the right atrium, the interventricular septum and the
24 left ventricle of the heart, causing a great deal of
25 destruction to the base of the heart as well as one of

1 the coronary arteries. It then continued through the
2 left lung and out the chest exiting at gunshot wound E
3 here to the left chest.

4 From those wounds, this bullet that went
5 through the heart and the lungs, there was a great
6 deal of bleeding into both chest cavities that totals
7 -- I have to look it up for a second -- 1,600ml, 1,600
8 milliliters, that's more than a liter-and-a-half of
9 blood in the left chest, and three/quarters of a liter
10 of blood into the right chest. So a great deal of
11 bleeding was caused by this gunshot wound.

12 Q And, Dr. Schandl, are you able to tell from the
13 autopsy what angles shots are fired, or what angles
14 the shots entered the body from?

15 A At autopsy what we can do is match up the
16 entrance wound to the exit wound and make that
17 estimate, that trajectory of the direction that the
18 bullet was traveling through the body.

19 Q Could you come and demonstrate on me the
20 entrance and exit wound optically of each gunshot?

21 A Yes.

22 MS. STEELE: May the witness step down, Your
23 Honor?

24 THE COURT: Uh-hum.

25 A So the first gunshot that we described, that I

1 described to you, is the one that went through the
2 back and out the front on the right shoulder, that is
3 D to C to B to A. And the trajectory is forward and
4 left. Like this. (Witness indicating.) So that is
5 how it went through the back and came out the chest.

6 The second wound pathway that we described I
7 believe was the groin injury. And the entrance wound
8 in that case is at I. And the approximate trajectory
9 of that wound is here in the right groin, to the left,
10 slightly down, and 45 degrees back. Approximately
11 like that. (Witness indicating.) And that exited out
12 the left buttock.

13 The gunshot wound to the upper left arm starts
14 here at the outside or lateral aspect of the upper
15 left arm. And the approximate trajectory of that
16 wound is 30 degrees up, forward, and to the right. So
17 going through the arm fracturing the bone in the upper
18 arm and then striking the chest. (Witness
19 indicating.)

20 And the final wound that we described, which is
21 J, is the right side of the back. The approximate
22 trajectory of that wound is 30 degrees up, 45 degrees
23 to the left and falling. (Witness indicating.) Again
24 crossing through the right lung, the heart, the left
25 lung and out the chest at E on the front of the chest.

1 Q (By Ms. Steele) And that is if someone is
2 standing like this when they're being shot?

3 A That's correct. So the way that we make those
4 estimates of the trajectory is with what we call the
5 body in anatomical position. Of course in real life
6 people don't stand like that, they're moving around,
7 so it makes -- you really can't determine where two
8 bodies are in space simply because if someone is bent
9 over like this the trajectory is going to be down,
10 where we are calling it forward.

11 So all we know is where the bullet entered and
12 where it exited. We can give you that trajectory.

13 Q Okay. And were all the gunshot wounds from the
14 back, except the one that was to the groin; is that
15 correct?

16 A The one to the left arm, its coming somewhat
17 forward with the body in anatomical position, and of
18 course there are two in the back, and the one that is
19 actually going back is to the groin.

20 Q And are you able to tell -- can you come up
21 with an opinion at the autopsy about the distance that
22 the gun was fired from to make the gunshot wound on
23 the victim? Are you able to determine the distance?

24 A Yes. In any case where a gunshot wound is
25 examined, we look at the skin for particular signs

1 that might help us determine the range of fire. So
2 basically we are trying to determine how far away from
3 the target, in this case Mr. Kareem Shakoor, was the
4 end of the muzzle.

5 And there are only a couple of things that we
6 can look at in order to determine ranges. One is
7 whether or not there is soot at the wound. If there
8 is soot at the wound, that indicates that the muzzle
9 was right up against the skin or certainly very near
10 to the skin because soot comes out of the muzzle of
11 the gun and doesn't travel very far. So if we would
12 see soot, that would tell us that that is a contact
13 gunshot wound.

14 The other thing we can look for something that
15 we call stippling. And stippling indicates a close
16 range fire which is anywhere in less than
17 approximately 18 to 24 inches, so anywhere this far or
18 closer is what we call close range. And what we see
19 with stippling is that particulate matter, unspent
20 gunpowder, other particulate matter comes out of the
21 muzzle of the gun and actually scrapes the skin
22 causing small abrasions, that is what -- that is
23 stippling. So we can look for that and that will tell
24 us this is a close range gunshot wound.

25 In the absence of either of those, no soot and

1 no stippling then we can call the wound distant, which
2 simply means we did not find either soot or stippling.
3 And in this case all of these wounds are called
4 distant as no soot or stippling was present in any one
5 of them.

6 Q And when you say distant, are you able to come
7 up with a range at all?

8 A When I say distant that simply means that in
9 most firearms with most ammunition distant means more
10 than 18 to 24 inches away. We have to also consider
11 the fact that some of the evidence may be lost on
12 clothing. So if particulate matter comes out of the
13 muzzle and attaches to the clothing rather than
14 abrading, scratching the skin, we may not see
15 stippling but it may also still be close range.

16 So we are very limited by what we actually see
17 on the skin. So I say distant gunshot wound, but that
18 really does mean the same thing as indeterminate
19 range, meaning that all I can tell you is that I did
20 not see indicators of a contact or close range gunshot
21 wound.

22 Q And during the course of the autopsy, did you
23 examine any clothing that was taken from the body?

24 A We do look at the clothing, and again we are
25 looking for the same things. First of course we are

1 looking to see that the defects from the clothing
2 match up with the underlying wounds.

3 And of course the other thing that we can look
4 for is there soot or is there gunpowder residue on the
5 clothing. And we do comment on that and in this case
6 none was found. But again we are limited by what we
7 can actually physically see.

8 Q Okay. Were any tests performed to determine
9 the presences of drugs in Mr. Shakoor's system?

10 A Yes. Every autopsy does also requires us to
11 perform toxicological analysis on blood and urine, if
12 it's available, at postmortem examination. So, yes,
13 it was also done in this case.

14 Q And what were the results of those tests?

15 A Mr. Shakoor had evidence of Delta 9
16 Tetrahydrocannabinol, THC, which is an active
17 marijuana product in his blood at a low level of 1.4
18 nanograms per milliliter. He also had a breakdown
19 product of Delta 9 THC, which is an inactive
20 metabolite present in his blood. Those were the only
21 findings.

22 Q And, Dr. Schandl, I want to backup for a minute
23 to the gunshot wounds again. Gunshot wound J that
24 entered through J and exited through E, you said that
25 that went through the heart and through the lungs?

1 A Yes.

2 Q what exactly happened? Could you explain in
3 detail what happens when a bullet goes through the
4 heart?

5 A well, it's going to depend upon the force that
6 is transmitted by that bullet. So it's going to
7 depend on the caliber of the bullet; it's going to
8 depend on the size of the bullet, the actual gram
9 weight; and it's also going to depend on whether the
10 bullets goes all the way through the body where some
11 energy is then spent outside of the body on the other
12 side, or whether it stays in the body where all the
13 energy is transferred to those organs that it passes
14 through.

15 I can tell you what this particular round did
16 to Mr. Shakoor's heart and that is basically destroy
17 the base of the heart. So as the bullet is traveling
18 not only does it make a hole where it's going but it
19 also makes a temporary cavity as the energy is
20 transmitted to that surrounding tissue. So that
21 temporary cavity, as the bullet is going through,
22 opens and then as the bullet exits that temporary
23 cavity collapses.

24 so although a bullet might itself be quite
25 small, the energy that is transmitted to the organs

1 that it passes through might be quite large, and again
2 depending on the round it is used.

3 So in this case I can tell you that there was
4 -- the base of the heart was essentially destroyed,
5 with the valves being destroyed, one of the coronary
6 arteries destroyed. So in this case there was a great
7 deal of force.

8 Q So would blood stop pumping immediately upon
9 impact with the bullet?

10 A Well, nobody tells the heart to stop, it just
11 keeps on doing its thing. So in this case we know
12 that it pumped enough in order to put, you know, more
13 than two liters of blood into the chest cavities on
14 both sides. So it continues to attempt to do its
15 thing as long as it possibly can.

16 Q And are you able to say with an injury such as
17 this one from the bullet shot, the gunshot J, about
18 how long death would result from an injury such as
19 this?

20 A In this case I call it from seconds to minutes.
21 I can't tell you precisely when his heart stopped or
22 precisely when brain death occurred. But from seconds
23 to minutes.

24 Q And during the autopsy were you able to
25 determine the height and weight of Kareem Shakoor?

1 A We do weigh every body as they come up, so this
2 weight is going to include the body-bag and the
3 clothing that they are in. And that weight with the
4 body-bag and clothing is 140 pounds. The length of
5 the individual was 69 inches.

6 Q And in doing your autopsy report, at the end of
7 the autopsy, are you able to determine a manner of
8 death and a cause of death?

9 A Yes, ma'am.

10 Q Okay. And what was the cause of death in this
11 case?

12 A The cause of death is heart and lung
13 perforations due to a single, distant, perforating
14 gunshot wound to the back.

15 Q And where were any contributing injuries to
16 that?

17 A The contributory injuries are three distant
18 perforating gunshot wounds to the left arm, right
19 shoulder and right flank.

20 Q And what was the manner of death determined in
21 this case?

22 A The manner of death in this case is homicide.
23 And we have to chose from are homicide, accident,
24 suicide, natural and undetermined. And in this case
25 it was homicide.

1 Q Okay. Dr. Schandl, one more thing. The shot J
2 to the heart, would be cause someone to fall
3 immediately? would it be debilitating immediately?

4 A It most likely would have been immediately
5 debilitating because as the heart is attempting to
6 beat, the blood is not going where it should be going.
7 So in this case rather than going to the head to keep
8 you conscious it's going into the chest cavity.

9 So chances are that although the heart is
10 attempting to beat, enough blood pressure is not going
11 to the head so he probably most certainly would have
12 lost consciousness right away.

13 MS. STEELE: That's all the question I have for
14 this witness.

15 THE COURT: Any questions for the witness?

16 CROSS-EXAMINATION

17 BY MR. RUNYON:

18 Q Good afternoon, doctor. Can you, referring to
19 your testimony rather than re-plowing the ground so to
20 speak, can you tell some order of shots from your
21 autopsy?

22 A The order of shots, you mean which one was
23 fired first and so forth?

24 Q Yeah, first, second, third?

25 A No, sir.

1 Q And can you tell whether this individual was
2 sitting, standing? I believe you covered that, based
3 upon the angles and without actually being there so to
4 speak, you have no physical evidence that determines
5 whether they were standing, sitting or what have you?

6 A That is correct. I cannot determine that.

7 Q In particularly in this case?

8 A In any case, sir.

9 Q well, if you are supplied -- well, there might
10 be evidence in some cases where it could tell you
11 whether or not he was standing or sitting or what have
12 you, correct?

13 A Rarely, but it is possible, .

14 Q Okay. So these wounds could have been fired in
15 any number of ways -- caused from a projectile coming
16 from any number of directions and any number of
17 particular order?

18 A That's correct.

19 Q Okay. And certainly the fatal wound would have
20 been J, as you said, which is in the back going right
21 to left. Is that a fair statement?

22 A That was the wound that was immediately fatal,
23 yes. I cannot say that the others in themselves would
24 not have been fatal.

25 Q well, let's assume that the others could have

1 been fatal, but in your professional expert opinion, J
2 was probably the fatal wound?

3 A In this case, yes, sir.

4 Q Okay. And that was coming right to left?

5 A It was.

6 Q Okay. And the other -- and you correct me if
7 I'm wrong because I have been wrong more times than I
8 am right on many occasions, at least that's what my
9 wife tells me -- on some of these other wounds they
10 are -- strike that. In fact, these other wounds are
11 primarily right to left in the front, correct?

12 A Well, again with the body in anatomical
13 position we have got two in the back that are coming
14 basically forward, one in the arm that is coming
15 somewhat forward, and then one to the groin that
16 appears to be going back, again with the person
17 standing still.

18 Q Which would be in some relationship kind of
19 from front to back on that one?

20 A The groin wound.

21 Q Right.

22 A Correct.

23 Q And based upon your answer to the solicitor's
24 questions about the wound J, that probably would put
25 most people down in your professional opinion?

1 A Yes, I believe so.

2 Q So they would not be going too much further
3 after that wound?

4 A Correct.

5 Q Okay. And certainly there is nothing in your
6 autopsy that would indicate whether or not this
7 deceased was -- I think maybe I've covered it but I
8 just need to check -- that there is nothing in your
9 autopsy that would tell us that this person was
10 sitting, standing, running, walking or anything?

11 A That is correct.

12 Q Okay.

13 MR. RUNYON: No further questions.

14 THE COURT: Any redirect of the witness?

15 MS. STEELE: No, Your Honor.

16 THE COURT: Any objection to the witness being
17 excused from the state?

18 MS. STEELE: No, Your Honor.

19 THE COURT: From the defense?

20 MR. RUNYON: None, Your Honor.

21 THE COURT: Doctor, you are excused.

22 THE WITNESS: Thank you, ma'am.

23 THE COURT: You're welcome.

24 Could counsel approach for me, please?

25 (Whereupon, a discussion was held at the bench

1 not on the record.)

2 THE COURT: You may proceed. Call your next
3 witness.

4 MS. STEELE: State calls Dr. Erin Presnell.

5 DR. ERIN PRESNELL,
6 after having first been duly sworn to state the truth,
7 the whole truth and nothing but the truth, testified
8 on her oath as follows:

9 THE COURT: You may proceed.

10 MS. STEELE: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. STEELE:

13 Q Dr. Presnell, what is your profession?

14 A I'm a forensic pathologist at MUSC right down
15 the street.

16 Q Are you a licensed physician?

17 A Yes.

18 Q Okay. And in what state are you licensed to
19 practice?

20 A South Carolina.

21 Q Okay.

22 MR. RUNYON: Your Honor, we would stipulate to
23 her qualifications to testify in the area of forensic
24 medicine.

25 THE COURT: Any objection?

1 MS. STEELE: No, Your Honor.

2 THE COURT: So admitted. The doctor is
3 admitted as an expert in the area of forensic
4 pathology by stipulation.

5 Q (By Ms. Steele) Dr. Presnell, what branch or
6 field of medicine do you specialize in?

7 A Forensic pathology.

8 Q exactly what does forensic pathology involve?

9 A Forensic pathology is a subspecialty of
10 pathology. Most people are hearing about forensic
11 autopsies and all on the TV, but it's actually a
12 subspecialty of pathology where the broad field is the
13 study of disease where if a doctor takes a biopsy or
14 does surgery and takes out an organ, the pathologist
15 gets it, looks at it, and diagnoses disease.

16 Forensics is that subspecialty where instead of
17 just looking at a piece of tissue or an organ,
18 something that has been affected, we are looking at
19 the entire body. And instead of just looking for
20 disease, we are also looking for disease, but we are
21 also evaluating trauma and ultimately through the
22 autopsy coming up with a cause and manner of death.

23 Q And does the work that you do include a
24 performance of autopsies?

25 A Yes, that is primarily what we do.

1 Q Okay. And did you have occasion to perform an
2 autopsy on Channing walker?

3 A I performed an autopsy on Mr. walker on January
4 2007.

5 Q Okay. Was that the first time you came in
6 contact with the body of Channing walker?

7 A Yes, it was.

8 Q And where did that autopsy take place?

9 A At the Medical University of South Carolina,
10 down the street, in the hospital.

11 Q And about how long did that autopsy last?

12 A I don't recall. When you do an autopsy it
13 depends on how complicated it can be. A very
14 straightforward one may take two hours, more
15 complicated one may take three, four, five hours.
16 That's not the only part of the autopsy, after we have
17 done what we call the gross autopsy, we've also taken
18 samples of tissue and we've also drawn blood and urine
19 for toxicology and we still have to get all those
20 results back.

21 There are many more hours back-to-back spent
22 putting an autopsy report together. So I really don't
23 have a good estimate other than to say many hours.

24 Q I'm going to show you what has been marked as
25 State's Exhibit 68. Do you recognize this?

1 A Yes, it is a copy of a diagram that we drew at
2 the time of the autopsy.

3 Q Okay.

4 MR. RUNYON: No objection, Your Honor.

5 THE COURT: Marked and admitted without
6 objection.

7 MS. STEELE: Thank you Your Honor.

8 (Whereupon, State's Exhibit 68 is admitted into
9 evidence.)

10 Q (By Ms. Steele) Dr. Presnell, when you did the
11 autopsy of Mr. Walker, did you note any injuries in
12 that case?

13 A Yes, indeed. He had five gunshot wounds to his
14 chest and his upper extremities. I'm suspecting that
15 we are going to go ahead and go through each one of
16 those injuries. I will describe which ones were the
17 fatal ones and which ones were what we consider
18 incidental or contributory but not actually the fatal
19 ones.

20 Q And I'm going to show you what has been marked
21 State's Exhibit 68. Does this sketch show the
22 injuries that were located at the time of the autopsy?

23 A Yes. This shows the gunshot wounds, there are
24 also a couple of abrasions or scratches on him.
25 However these are the primary gunshot wounds. I will

1 go through each one them.

2 We label our gunshot wounds A, B, C, et cetera,
3 so that we don't -- for instance if you have an
4 entrance and an exit wound that's actually two holes
5 and we don't confuse us thinking that there might be
6 more gunshot wounds than what we actually have. So we
7 label them A, B, C and we kind of match them up as we
8 get inside the body and we can see the pathways.

9 It's a little difficult to see the actual
10 letter resolution here. But right on the midchest,
11 mid-upper chest, there is gunshot wound A. That
12 actually enters into the chest, and I will tell you
13 what it goes through, but it's going to exit right
14 here, gunshot wound labeled I. So A enters into the
15 chest wall, goes through the heart, it goes through
16 the pulmonary artery, which is one of the main
17 arteries taking blood to the lung, it also go through
18 the left lung on its way to exit the left lower back
19 right here at I. So A to I. (Witness indicating.)

20 The next gunshot wound -- this is not in the
21 order that they were received, but just as we went
22 through them -- is gunshot wound B. It's to the
23 right, chest abdomen area, kind of on the side there.
24 This gunshot wound goes through the liver, which is
25 right underneath where that is, through the pancrease

1 in the middle, through the left kidney on the left
2 side and the bullet stops right -- you can see a mark
3 right there. (Witness indicating.) That's actually
4 a little abrasion on the skin that the bullet made, it
5 didn't actually exit. The bullet is right there
6 underneath the skin and we retrieved that bullet.

7 So those were the two major gunshot wounds. We
8 also have three to the extremities, all of them in and
9 out. We have two to the right arm. And the entrance
10 wounds are D and E. Here is D and here is E.

11 (Witness indicating.) So one is to the upper arm and
12 it's goes through just soft tissue muscle, doesn't hit
13 any bone, and it exits at C.

14 (Witness indicating.)

15 The other one to the right arm is E, right
16 there, it's on the inner part of the wrist, and it
17 goes through the bones of the wrist and exits F on the
18 front of the right wrist.

19 So that's two gunshot wounds to the torso, two
20 to the right arm, and we have one to the left arm
21 which is entrance at G and goes through the two bones
22 in the arm and exits at H, right here on the inner
23 part of the wrist. (Witness indicating.)

24 Q Dr. Presnell, could you just briefly come
25 around and indicate -- well, first of all, are you

1 able, from looking at the gunshot wounds, able to
2 determine the path that the bullets took entering the
3 body and possibly exiting the body?

4 A Right. I just described all the pathways that
5 the bullets went through, yes.

6 Q Are you able to show the angle of how they
7 entered the body?

8 A Yes. We estimate a trajectory of the pathway
9 of the bullet through the body. I can demonstrate
10 that right now if you like.

11 Q Yes, if you could.

12 MS. STEELE: May the witness step down, Your
13 Honor?

14 THE COURT: Uh-hum.

15 Q (By Ms. Steele) If you could briefly
16 demonstrate each one.

17 A I did just want to preface it by saying that
18 when we estimate the trajectory of the bullet through
19 the body, we assume the body is in what we call
20 anatomical position which is their palms straight
21 forward like this. (witness indicating.) This is not
22 -- frequently the person is not in this position when
23 they sustain a gunshot wound. But we don't have any
24 other way really to do that at the time of the
25 autopsy.

1 Q So they could be sitting or crouching or
2 running or anything?

3 A Any position, however that correlates to the
4 scene would be whether it was consistent or not.

5 Gunshot wound A to the chest is approximately
6 45 degrees left, 40 degrees down and back. So it's
7 going in this direction. So you can kind of correlate
8 that with the diagram, going in the chest and coming
9 out the left back here. So about that direction.
10 (Witness indicating.)

11 The one to the right chest, slash, abdomen is
12 15 degrees back, 15 degrees down and to the left. So
13 it's not as steep of an angle. And remember that
14 bullet is right under the exit wound from gunshot
15 wound A, so it's the same kind of direction but one is
16 more like this and one is a little more shallow like
17 this direction. (Witness indicating.)

18 When you get to the arms, that's even more
19 confusing because really nobody tends to walk around
20 with their arms palms straight forward, and the arms
21 can be in so many different positions it can be
22 confusing. However we do try to go ahead and estimate
23 that.

24 Gunshot wound E, and you have to stand with
25 your arms straight forward like that. Gunshot wound D

1 is to the back of the arm here, maybe you can turn
2 sideways, back of the arm here and we have about 30
3 degrees forward, 40 degrees down and to the left. So
4 in this direction, to come out the front of the arm.
5 it's just going through soft tissue, and that's the
6 approximate direction. (witness indicating.)

7 The one to the right wrist. It goes into the
8 side of the right wrist here and is going forward,
9 slightly up, and to the right. So it's going kind of
10 in this direction. Basically from the back inner
11 wrist to the front of this wrist -- the middle part of
12 the front wrist, so in that direction. (witness
13 indicating.)

14 Again, any way she moves her hands will change
15 where the bullet is actually coming from. Does that
16 make sense?

17 All right. And then the last one is the
18 gunshot wound to the left forearm, which enters a
19 little bit higher and exits a little bit lower.
20 The gunshot wound is kind of on the outside of the
21 forearm. It goes and exits right on the inner part of
22 the arm. That direction is probably approximately 60
23 degrees down, it's slightly going backwards, and again
24 going to the right. So in this direction. (witness
25 indicating.) Again as the arm moves it truly changes

1 the direction.

2 It does bring up one point with this gunshot
3 wound, the one to the upper arm here, the exit wound C
4 on the very front of the arm is very close to the
5 entrance wound on the abdomen. So there is a
6 potential for this one in particular, the gunshot
7 wound to the upper arm, to be a reentry into the
8 abdomen. However it truly depends on the way the
9 person was positioned and it could easily have been a
10 separate gunshot wound as well.

11 Q Thank you. And I want to go over again quickly
12 just the injuries that resulted from each gunshot. I
13 think you said D, E and G just went through soft
14 tissue; is that correct?

15 A No, D is the one to the right upper arm that
16 went through soft tissue. E is through the right
17 wrist bones, actually went through the bones and
18 fractured these bones. G to the left forearm went
19 through both bones, the radius and the ulna in the
20 left forearm and fractured those.

21 Q Okay. And the other --

22 A The other two gunshot wounds to the torso, A
23 went through the heart, the pulmonary artery and the
24 left lung. And B, the one to the chest slash abdomen
25 right side went through liver, pancreas and left

1 kidney.

2 Q And can you explain what actually happens to
3 the heart when the bullet goes through it?

4 A There is a hole that is made, the bullet puts a
5 hole in it. If there is a hole in the heart the blood
6 is not effectively being pumped around the body, it's
7 not being delivered to the vital parts of your body,
8 in particular your brain. And without oxygen then you
9 will experience death.

10 Q Are you able to tell, if you are shot in the
11 heart, if you receive a wound in the heart such as in
12 this manner, would you -- would an individual
13 immediately fall or immediately be debilitated?

14 A It's completely dependant on the individual.
15 Really the only time we can say that somebody
16 immediately fell is if you have a gunshot wound to the
17 brainstem, that type of injury.

18 Frequently somebody does fall immediately with
19 a gunshot wound to the heart. But there have been
20 incidents reported where somebody can move around for
21 seconds after being shot through the heart.

22 Q And were you able to tell how much blood was
23 lost due to the gunshot wound to the heart?

24 A I don't know how much blood was lost at the
25 scene. However, let me see what we've got. we have

1 100cc's or 100 milliliters of blood in the pericardial
2 sac, which is the sac that holds the heart. And then
3 we have 700cc's, 700 milliliters of blood in the left
4 chest cavity. That's again what remains in the body,
5 that's not what actually leaked out the holes in his
6 body.

7 Q And what about the -- can you explain in more
8 detail the damage from the wound B, the damage to the
9 liver and other organs that you mentioned?

10 A The gunshot -- the bullet from B went through
11 the liver and made a hole in the liver, and went
12 through the pancreas and put a hole in the pancreas,
13 and went through the liver and put a whole through the
14 kidney. The liver, pancreas and kidney, left kidney,
15 all had perforating holes through them.

16 Q Would those organs immediately stop working at
17 that point?

18 A No. They would not particularly -- they would
19 not immediately stop working, they would probably
20 start bleeding. Depending on how long the person was,
21 there would be changes after that. But again he had a
22 gunshot wound through his heart as well and probably
23 didn't live that long.

24 Q And are you able to come up with an opinion of
25 a distance that the gunshot wounds came from when they

1 entered the body?

2 A Yes. One of the things we do at autopsy, and
3 you probably heard this previously, but we try to help
4 estimate the range of fire, how far away the gun was
5 from the body.

6 Just explaining, not only does the bullet come
7 out the end of the barrel of a gun when it's fired,
8 but so does soot and gunpowder particles which are
9 used to send the bullet down the barrel. If the gun
10 up against the skin then what you expect to see is a
11 rim of soot around the entrance wound. As the gun
12 moves back from the skin, then you get -- sometimes
13 you still get soot, but those gunpowder particles
14 actually strike the skin around the entrance wound and
15 cause little abrasions which we call stippling or
16 powder tattooing, and that would indicate a close
17 range. So that's contact and that's close range.

18 Once you get that barrel far enough away
19 neither the soot nor the gunpowder particles are going
20 to reach the skin, you won't see any soot or
21 stippling, those abrasion around it, and we consider
22 that a distant gunshot wound.

23 To really narrow down the range of fire you
24 have to test-fire the weapon to see, you know, when
25 the gunpowder particles would no longer reach the

1 target. But if you want to include most handguns
2 without test-firing the weapon, most handguns by the
3 time they are 36 to 42 inches, so a yard to a yard and
4 a half away from the target, then at that point the
5 soot and gunpowder particles will no longer reach that
6 target. And from that point on is considered a
7 distant gunshot wound.

8 So a yard to a yard and a half and further is
9 just a gunshot wound. In this case we didn't see any
10 stippling, we didn't see any soot, we didn't see any
11 gunpowder particles on the clothing, so we call these
12 distant gunshot wounds.

13 Q And how many gunshot entry points are there in
14 this case? Is it four, or you also mentioned there is
15 a possibility of a re-entry wound, correct?

16 A Yes. There are five gunshot wounds to the
17 body; four that are in and out, and one that is in and
18 the bullet is recovered from within the body.

19 The one that I talked about to the right upper arm
20 potentially may have been one that re-entered into the
21 abdomen. So at least four gunshot wounds to the body,
22 up to five.

23 Q And were there any other injuries noted on the
24 body during this autopsy?

25 A There were a few abrasions, he had one on his

1 nose, one on his chest, one on his knee, and one on
2 the side of his buttock. An abrasion is a scratch.

3 Q And during the autopsy is the clothing removed
4 from the body for the autopsy?

5 A The -- if it's not already been removed by the
6 EMS then we do remove the clothing.

7 Q And do you look for any defects in the clothing
8 that would be consistent with these wounds?

9 A Yes. We examine the clothing that we receive
10 at autopsy, take pictures, and document the defects.
11 And his clothing had circular defects corresponding to
12 the gunshot wounds.

13 Q And did you find any bullets or anything of
14 that sort during this autopsy?

15 A Yes. We recovered one bullet, it was
16 underneath that abrasion on the back there, from the
17 gunshot wound B to the right side of the chest.

18 Q Do you know if that was a bullet or if it was a
19 projectile?

20 A It was a copper-jacketed bullet.

21 Q And were any tests performed on Mr. Walker to
22 determine the presence of drugs in his system?

23 A Yes, we collected fluids for toxicology and
24 they were negative; negative alcohol, negative drugs.

25 Q And during the autopsy, did you come up with

1 the height and the weight of Mr. Walker?

2 A Yes, we did. He weighed approximately 155
3 pounds, and he was about 66 inches in height, which
4 the 5'6".

5 Q And, Dr. Presnell, at the end of your autopsy
6 were you able to determine a manner of death and a
7 cause of death?

8 A Yes. We called the cause of death the cardiac
9 perforation, or the heart perforation, due to the
10 gunshot wound to the chest. And contributory we
11 called the other four gunshot wounds contributory to
12 the cause of death. The manner of death we classified
13 as a homicide.

14 MS. STEELE: No more questions for this
15 witness, Your Honor.

16 THE COURT: Any questions for the witness?

17 MR. RUNYON: Briefly.

18 THE COURT: You may proceed.

19 CROSS-EXAMINATION

20 BY MR. RUNYON:

21 Q Dr. Presnell, I heard you talk about the fact
22 that really can't tell where the weapon might have
23 been because you don't know how the person was
24 situated in time and space so to speak?

25 A Exactly.

1 Q Okay. But generally speaking, were these shots
2 right to left, left to right, front to back; can you
3 tell us that?

4 A Well, you know again you are brining up the
5 point is it right to left. well, it depends on how
6 your arm is. If it's like this, yes it's right to
7 left. But if you have it turned around then it's
8 going to be the opposite way.

9 But the ones to the body are both right to
10 left. The one to the midchest goes to the left chest
11 wall. The one to the right chest goes to the left
12 chest wall. And then we have two gunshot wounds to
13 the right arm, however it was situated. And then one
14 gunshot wound that is going towards the right, but
15 it's going more strikingly from up to down. So it's
16 almost as if the person had their arm straight forward
17 as the bullet was coming at them directly.

18 But really again with the arms it's difficult to say
19 which direction they were coming. Certainly in the
20 body it was right to left.

21 Q So, your testimony is not suggesting that
22 someone fired say down at someone?

23 A I can't say whether somebody is firing down or
24 not. I can only tell you the direction that the
25 bullet is going through the body. And it's completely

1 dependant on the scenery, recollection of witnesses as
2 to what is the scenario. And I can tell you whether
3 these bullet pathways fit that scenario.

4 Q So what you have to do is take your testimony
5 and your forensic results, and when I say you I mean
6 someone has to take your results and match it, as you
7 say, with the physical evidence of where the person
8 was, who was sitting beside them, who was standing in
9 front of them, all of those factors go in to
10 determining or making a final determination as to
11 maybe where the shot came from?

12 A Right. If that's possible to reconstruct it,
13 that would be ideal.

14 Q Okay.

15 MR. RUNYON: No further questions, Your Honor.

16 THE COURT: Any redirect of the witness?

17 MS. STEELE: No, Your Honor.

18 THE COURT: Any exception to the witness being
19 excused from the state?

20 MS. STEELE: No, Your Honor.

21 THE COURT: From the defense?

22 MR. RUNYON: No, Your Honor.

23 THE COURT: Doctor, you are excused.

24 THE WITNESS: Thank you.

25 THE COURT: Madam Forelady, ladies and

1 gentlemen, we are going to take advantage of this
2 break in testimony to take our evening recess. During
3 the break please do not discuss this case among
4 yourselves or with anyone else. Please do not watch
5 or read or listen to any media accounts about this
6 case; that includes anything that could be on the
7 radio, television, Internet or otherwise.

8 Also, don't do any independent research of any
9 type, including any issue or matter involved in this
10 case on the Internet. We will resume in the morning
11 at 9:30. I anticipate that we will have closing
12 argument and charge, as well as any concluding
13 testimony in this case tomorrow. So it is essential
14 that you abide by the court's instructions.

15 We would ask that you return directly to your
16 jury room at 9:30. I cannot think of anything else
17 except for you all not to have any contact with anyone
18 in or about the courthouse. Especially at this late
19 stage in the trial, I would hate for you to have an
20 innocent conversation with someone and someone
21 observing that conversation thinking you are talking
22 inappropriately about the case.

23 Hope you have a good evening. We will see you
24 in the morning at 9:30. If any of you feel you need
25 to be escorted to your cars, please let the bailiffs

1 know and we will make sure to have someone walk you to
2 the garage.

3 (Whereupon, the jurors exit the courtroom.).

4 THE COURT: Is there anything before we break
5 for the evening from the state?

6 MR. WILLIAMS: No, Your Honor, we don't have
7 any further witnesses. I can rest in front of the
8 jury tomorrow. I'm hoping Mr. Runyon and I can make
9 sure all the exhibits are in order in the morning as
10 well.

11 THE COURT: That will be fine. What we will do
12 in the morning, I will allow -- what we will do is
13 before we begin is I will question the defendant
14 regarding his right to testify. I assume over the
15 evening that -- I assume Mr. Runyon has already
16 discussed that with him. You all can have a
17 discussion with him about that over the evening.

18 what I need to know, however, is there any
19 record the state would be seeking to introduce to
20 impeach the defendant's credibility?

21 MR. WILLIAMS: No, I don't think he has any
22 prior convictions, judge.

23 THE COURT: So that is a non-issue. I will
24 then question him in the morning regarding his right
25 to testify.

1 MR. RUNYON: Thank you, Your Honor.

2 THE COURT: And then what we will do, we will
3 do that before we resume. The state will then rest in
4 the presence of the jury.

5 If the defendant intends to testify we will
6 take his testimony or any other witnesses that the
7 defense may want to present. We will then, if
8 necessary, hear any rebuttal testimony, after which we
9 will take a short break, have a charge conference, and
10 then have closing argument and charge.

11 I assume that if the defendant does not testify
12 that the defense will want to have last argument.

13 MR. RUNYON: Absolutely, Judge.

14 THE COURT: Does the defense anticipate calling
15 any witnesses other than his client?

16 MR. RUNYON: Not at this time, Judge.

17 THE COURT: Okay. And what we plan to do,
18 Madam Clerk, if you take the jurors' lunch orders,
19 then we will go from there. But we will -- just in
20 case they are out deliberating while it's the lunch
21 hour.

22 Okay. Is there anything else before we break
23 from the state?

24 MR. WILLIAMS: No, Your Honor.

25 THE COURT: From the defense?

1 MR. RUNYON: No, Your Honor.

2 THE COURT: You all have a good evening and I
3 will see you in the morning.

4 (Whereupon, the proceedings in the matter
5 before the Court were adjourned for the evening.)

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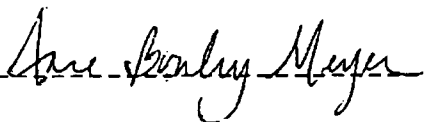
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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete transcript of
record of all the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in the
Circuit Court for Charleston County, South Carolina, on the
6th day of February, 2008.

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



Anne Bouley Meyer, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2007-GS-10-4660,
4661, 4662, 4663

3 STATE OF SOUTH CAROLINA)
4 Plaintiff)

5 V.)

TRANSCRIPT OF RECORD

6 QUINTON R. JENKINS,)

7 Defendant.)
8

9 FEBRUARY 7, 2008
10 CHARLESTON, SOUTH CAROLINA
11 VOLUME 4

12
13 B E F O R E :

14 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
15
16
17

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

19 MR. NATHAN WILLIAMS, Assistant Solicitor
20 MS. KIM STEELE, Assistant Solicitor
21 REPRESENTING THE STATE

22 MR. WILLIAM RUNYON, ESQUIRE
23 REPRESENTING THE DEFENDANT

24 ANNE BOULEY MEYER, RPR
25 CIRCUIT COURT REPORTER

I N D E X

WITNESSES

All Matter:	page
PRELIMINARY MATTERS BY THE COURT	10:1
JURY VOIR DIRE BY THE COURT	16:10
PRELIMINARY MATTERS BY THE COURT	43:14
JURY INSTRUCTIONS BY THE COURT	57:24
OPENING STATEMENTS BY MR. WILLIAMS	68:2
OPENING STATEMENTS BY MR. RUNYON	76:3
DEFENDANT'S RIGHTS BY THE COURT	569:8
DEFENSE MOTION BY MR. RUNYON	580:24
CHARGE CONFERENCE BY THE COURT	584:10
CLOSING ARGUMENT BY MR. WILLIAMS	596:16
CLOSING ARGUMENT BY MR. RUNYON	646:16
JURY INSTRUCTIONS BY THE COURT	666:17
JURY QUESTION	688:16
JURY VERDICT	690:4
POST-TRIAL MOTION BY MR. RUNYON	696:12
SENTENCING BY THE COURT	697:22
	646:16
MR. DAVID OSBORNE for State	
PRELIMINARY MATTERS by BY MR. WILLIAMS	48:17
MR. JOHN GIANATAS for State	
Direct Examination by BY MR. WILLIAMS	78:18
Cross-Examination by BY MR. RUNYON	93:16
Redirect Examination by BY MR. WILLIAMS	95:25
MS. DEBORAH HEYWARD for State	
Direct Examination by BY MR. WILLIAMS	97:2
Cross-Examination by BY MR. RUNYON	108:3
Redirect Examination by BY MR. WILLIAMS	109:25
MR. JOHN GIANATAS for State	
Cross-Examination by BY MR. RUNYON	109:25
MS. DEBORAH HEYWARD for State	
Cross-Examination by BY MR. RUNYON	109:25
Redirect Examination by BY MR. WILLIAMS	109:25
MS. ANEESA SHAKOOR for State	
Direct Examination by BY MR. WILLIAMS	111:6
MR. WILL SCOTT CROSBY for State	
Direct Examination by BY MR. WILLIAMS	124:15

1	Cross-Examination by BY MR. RUNYON	140:6
2	MR. HENRY CHARLES COMER for State	
3	Direct Examination by BY MR. WILLIAMS	144:3
4	MR. RICHARD WEIRSMA for State	
5	Direct Examination by BY MS. STEELE	149:1
6	Cross-Examination by BY MR. RUNYON	185:7
7	Redirect Examination by BY MS. STEELE	190:3
8	Recross-Examination by BY MR. RUNYON	191:5
9	MR. STEVEN HOOD for State	
10	Direct Examination by BY MS. STEELE	192:4
11	Cross-Examination by BY MR. RUNYON	210:15
12	Redirect Examination by BY MS. STEELE	214:1
13	MR. ALFONZA JONES for State	
14	Direct Examination by BY MR. WILLIAMS	215:24
15	Cross-Examination by BY MR. RUNYON	220:7
16	MR. HENRY MIDDLETON for State	
17	Direct Examination by BY MS. STEELE	221:18
18	MR. BARRY GOLDSTEIN for State	
19	Direct Examination by BY MR. WILLIAMS	231:21
20	Cross-Examination by BY MR. RUNYON	257:9
21	Redirect Examination by BY MR. WILLIAMS	268:17
22	MR. JEROME FLEMING for State	
23	Direct Examination by BY MR. WILLIAMS	270:2
24	Cross-Examination by BY MR. RUNYON	279:14
25	MR. DAVID OSBORNE for State	
26	Direct Examination by BY MR. WILLIAMS	282:9
27	Cross-Examination by BY MR. RUNYON	332:9
28	Redirect Examination by BY MR. WILLIAMS	342:6
29	Recross-Examination by BY MR. RUNYON	345:14
30	MS. ANITA MAESTAS for State	
31	Direct Examination by BY MS. STEELE	350:14
32	Cross-Examination by BY MR. RUNYON	369:11
33	MS. KALISHA GILL for State	
34	Direct Examination by BY MS. STEELE	374:22
35	Cross-Examination by BY MR. RUNYON	386:24
36	MS. BRITTANY ALLEN for State	
37	Direct Examination by BY MS. STEELE	389:11
38	Cross-Examination by BY MR. RUNYON	400:18

1	MR. TRAVIS D. SIMMONS for State	
	Direct Examination by BY MR. WILLIAMS	403:23
2	Cross-Examination by BY MR. RUNYON	431:13
	Redirect Examination by BY MR. WILLIAMS	451:17
3		
	MR. BERNARD GREEN for State	
4	Direct Examination by BY MR. WILLIAMS	458:1
	Cross-Examination by BY MR. RUNYON	485:20
5	Redirect Examination by BY MR. WILLIAMS	488:22
6		
	MR. MICHAEL JOHNSON for State	
	Direct Examination by BY MR. WILLIAMS	490:4
7	Cross-Examination by BY MR. RUNYON	494:12
8		
	MR. MICHAEL HODGES for State	
	Direct Examination by BY MR. WILLIAMS	495:13
9	Cross-Examination by BY MR. RUNYON	502:9
	Redirect Examination by BY MR. WILLIAMS	507:23
10		
	MS. ILA SIMMONS for State	
11	Direct Examination by BY MS. STEELE	509:20
	Cross-Examination by BY MR. RUNYON	518:25
12	Redirect Examination by BY MS. STEELE	522:25
	Recross-Examination by BY MR. RUNYON	523:14
13		
	MR. KEN WHITLER for State	
14	Direct Examination by BY MS. STEELE	524:14
	Cross-Examination by BY MR. RUNYON	531:11
15		
	DR. CYNTHIA SCHANDL for State	
16	Direct Examination by BY MS. STEELE	535:2
	Cross-Examination by BY MR. RUNYON	551:8
17		
	DR. ERIN PRESNELL for State	
18	Direct Examination by BY MS. STEELE	555:4
	Cross-Examination by BY MR. RUNYON	570:16
19		
20	EXHIBITS	
21	For State:	
22	1 Photo	
	In Evidence	154:15
23		
	2 Photo	
24	In Evidence	162:24
25		
	3 Photo	
	In Evidence	154:15

1	4	Photo	
2	In Evidence		154:15
3	5	Photo	
	In Evidence		89:13
4	In Evidence		154:15
5	6	Photo	
	In Evidence		172:25
6	7	Photo	
7	In Evidence		89:13
8	8	Photo	
	In Evidence		126:10
9	10	Photo	
10	In Evidence		177:1
11	13	Photo	
	In Evidence		162:24
12	14	Photo	
13	In Evidence		154:15
14	15	Photo	
	In Evidence		154:15
15	16	Photo	
16	In Evidence		172:25
17	17	Photo	
	In Evidence		162:24
18	19	Photo	
19	In Evidence		154:15
20	20	Photo	
	In Evidence		162:24
21	21	Photo	
22	In Evidence		89:13
23	22	Photo	
	In Evidence		89:13
24	In Evidence		154:15
25	23	Photo	
	In Evidence		177:1

1	26	Photo	
2	In Evidence	162:24	
3	27	Photo	
4	In Evidence	82:9	
5	28	Photo	
6	In Evidence	82:9	
7	29	Photo	
8	In Evidence	198:20	
9	30	Photo	
10	In Evidence	198:20	
11	31	shell casing	
12	In Evidence	162:24	
13	32	shell casing	
14	In Evidence	158:2	
15	33	projectile	
16	In Evidence	162:24	
17	34	projectile	
18	In Evidence	162:24	
19	35	fired shell casing	
20	In Evidence	158:2	
21	36	projectile	
22	In Evidence	160:3	
23	38	Projectile	
24	In Evidence	158:2	
25	In Evidence	158:2	
26	39	shell casing	
27	In Evidence	162:24	
28	40	Photo	
29	In Evidence	198:20	
30	41	Photo	
31	In Evidence	205:6	
32	42	Photo	
33	In Evidence	198:20	

1	43	Photo	
2		In Evidence	198:20
3	44	Photo	
4		In Evidence	198:20
5	45	Photo	
6		In Evidence	198:20
7	46	Photo	
8		In Evidence	198:20
9	47	Photo	
10		In Evidence	198:20
11	48	Photo	
12		In Evidence	354:4
13	49	Photo	
14		In Evidence	354:4
15	50	Photo	
16		In Evidence	354:4
17	51	Photo	
18		In Evidence	354:4
19	52	Photo	
20		In Evidence	354:4
21	53	Photo	
22		In Evidence	198:20
23		In Evidence	320:25
24	54	Photo	
25		In Evidence	224:2
26		In Evidence	392:3
27	55	Photo	
28		For Identification	137:3
29	56	Photo	
30		In Evidence	354:4
31	57	Photo	
32		In Evidence	354:4
33	58	Photo	
34		In Evidence	354:4

1	59	Photo	
2		In Evidence	354:4
3	60	Photo	
4		In Evidence	354:4
5	61	Photo	
6		In Evidence	354:4
7	62	Photo	
8		In Evidence	354:4
9	63	Photo	
10		In Evidence	354:4
11	64	Photo	
12		In Evidence	354:4
13	67	Diagram of car	
14		In Evidence	152:25
15	68	diagram of body	
16		In Evidence	558:2
17	69	diagram of body	
18		In Evidence	537:23
19	71	shell casing	
20		In Evidence	354:4
21	72	shell csing	
22		In Evidence	354:4
23	73	shell casing	
24		In Evidence	354:4
25	74	shell casing	
		In Evidence	354:4
	75	fingerprint card	
		In Evidence	227:23
	76	fingerprint card	
		In Evidence	366:19
	81	projectile	
		Received	208:6

1	82	scale	
2	In Evidence		325:17
3	83	scale	
4	In Evidence		325:17
5	84	ID card	
6	In Evidence		324:13
7	11A	Photo	
8	In Evidence		172:25
9	25A	Photo	
10	In Evidence		172:25
11			
12			
13			
14			
15			
16			
17			
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1 THE COURT: You may be seated.

2 Is the state still in the posture that it is
3 ready to rest this morning?

4 MR. WILLIAMS: Yes, Your Honor.

5 THE COURT: And, Mr. Runyon, if you and your
6 client can stand for me, please.

7 Sir, raise your right hand to be sworn.

8 (Whereupon, the Judge places the defendant
9 under oath.)

10 THE COURT: Please state your full name for the
11 record?

12 THE DEFENDANT: Quinton Ralph Jenkins.

13 THE COURT: Sir, at this time I am going to
14 explain to you certain of your rights. If you do not
15 understand anything that I say, please let me know.
16 If you want me to explain anything in more detail,
17 please let me know. Do you understand?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Sir, we have now reached the stage
20 of the trial where you may present your defense. You
21 have the right to claim the protections given to you
22 by the Fifth Amendment to the Constitution of the
23 United States. And that amendment states in part that
24 no person shall be compelled in any criminal case to
25 be a witness against himself. This means that you

1 cannot be required to testify in this case. You
2 have the right to testify on your own behalf, however
3 no one can make you testify. This is a personal
4 right, and no one can waive this right except. If you
5 decide to testify you will be subject to the same
6 rules that govern other witnesses. And you may be
7 examined and cross-examined on any relevant issue in
8 this case. And in addition if you have any
9 convictions involving dishonesty or false statement or
10 for crimes punishable by imprisonment for more than
11 one year and this Court determines that the probative
12 value of admitting this evidence outweighs its
13 prejudicial affect to you, the solicitor will be able
14 to introduce your record to attack your credibility.

15 If you decide to testify, this decision on your
16 part must be made freely, voluntarily and
17 intelligently, with knowledge of the protection given
18 to you by the Fifth Amendment and the consequence of
19 your decision to testify. If you decide not to
20 testify, I will instruct the jurors that they cannot
21 give the fact that you did not testify any
22 consideration whatsoever. And there is to be
23 absolutely no prejudice to you because you did not
24 testify. In fact they will be instructed that it
25 cannot be discussed in any manner whatsoever during

1 the course of their deliberations.

2 It is left entirely up to you whether or not
3 you testify. You may talk to your family members,
4 your friends, your attorney or others, but the final
5 decision is left entirely up to you.

6 sir, do you understand your rights as I have
7 just explained them to you?

8 THE DEFENDANT: Yes, ma'am, I do.

9 THE COURT: Do you have any questions about
10 what I just explained to you?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Have you discussed with your lawyer
13 whether you should or should not testify?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And, sir, do you wish to speak with
16 him anymore at this time regarding that issue?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Mr. Runyon, do you wish to discuss
19 the matter with your client any further at this time
20 after the court's explanation of his rights?

21 MR. RUNYON: No, Your Honor.

22 THE COURT: sir, do you wish to testify?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: what we will do -- sir, you may
25 take your seat.

1 what we will do is we will bring in the jury,
2 the state will rest as I understand it, Mr. Williams.

3 MR. WILLIAMS: Yes, Your Honor.

4 THE COURT: Will the defense be calling any
5 witnesses or will they also be resting?

6 MR. RUNYON: No, Your Honor, we'll rest subject
7 to their resting.

8 THE COURT: What we will do is once the state
9 has rested we will reserve any motions for the record
10 and then I will hear those and then I will allow the
11 defense to rest. And then we will have charge
12 conference and then we will then prepare for closing
13 argument and charge.

14 Is there any exception to us proceeding in that
15 way from the state?

16 MR. WILLIAMS: No, Your Honor.

17 THE COURT: From the defense?

18 MR. RUNYON: No, Your Honor. We agree with
19 reservation.

20 THE COURT: I just didn't want to have to send
21 them out and bring them back in.

22 Please bring in the jury.

23 (Whereupon, the jurors enter the courtroom.)

24 THE COURT: Ladies and gentlemen, I hope that
25 you all had a restful evening. We will now resume

1 with the trial.

2 The state may proceed.

3 MR. WILLIAMS: Thank you, Your Honor. At this
4 time the state rests.

5 THE COURT: The defense may proceed.

6 MR. RUNYON: Your Honor, at this time the
7 defense will respectfully rest.

8 THE COURT: Madam forelady, ladies and
9 gentlemen, both the state and defense have rested
10 their case. The next part of the process will involve
11 closing arguments and the Court's instruction of the
12 law. There are some matters of law that I need to
13 take up with the attorneys that should be fairly
14 brief. After that again we will proceed with closing
15 arguments and the Court's instruction.
16 During this break please do not discuss the case among
17 yourselves, and please leave your notepads in your
18 seats. If you need anything, please let the bailiffs
19 know. If you go with your caretakers.

20 (Whereupon, the jurors exit the courtroom.)

21 THE COURT: You may be seated. Are there any
22 motions now that the state has rested their case?

23 MR. RUNYON: Yes, Your Honor. Rather than make
24 the motions twice, I will make motions, the same
25 motions would apply to the close of the state's case,

1 and at the resting of the defendant.

2 Your Honor, we respectfully move for a directed
3 verdict of not guilty on the grounds that the state
4 has failed to prove a prima facia case. Secondly, out
5 of an abundance of caution, Judge, we move for a
6 directed verdict on the grounds that I don't think
7 there has been any testimony that the shooting area
8 was in fact in Charleston County. Therefore it would
9 be a question of jurisdiction of the court.

10 while there has been plenty and ample evidence
11 as to where the shooting occurred, I'm just making
12 that motion out of an abundance of caution.

13 THE COURT: Would the state like to respond?

14 MR. WILLIAMS: Your Honor, I specifically
15 recall asking Officer Henry Comer, the first
16 responding officer, the address of the McDonald's, if
17 that was in Charleston County. He looked at me
18 strange, as if it was a strange question, and he said
19 it was in Charleston County. I believe two or three
20 of the first witnesses, Your Honor, established that.

21 I routinely Lee ask that of the initial
22 witnesses to get that out of way. So I think there
23 was certainly evidence of venue in this case. And
24 certainly, Your Honor, plenty of direct evidence that
25 this defendant was the shooter, as well as plenty of

1 circumstantial evidence that he was not only the
2 shooter, but certainly guilty of an alternate theory
3 or lesser theory of the hand of one.

4 THE COURT: Anything further from the defense?

5 MR. RUNYON: Judge, just to clarify the record,
6 we make a motion as it relates to the jurisdiction of
7 the court as to the location of the crime. It's not a
8 question of venue. Venue is a place where you try a
9 case, jurisdiction goes to whether or not the grand
10 jury had the authority to issue the indictment.

11 I understand what the Court's going to make a
12 ruling on, but I just want to make that clear since
13 people seem to muddle this question of venue and
14 jurisdiction.

15 THE COURT: The fact that the crime took place
16 in Charleston County is more than amply supported by
17 the testimony in the record. And there is case law
18 that indicates -- there used to be, of course, it's
19 one of get technicalities of cases, a person would
20 testify directly that it was in a particular county
21 where the offense took place.

22 There is case law that indicates as long as
23 there is substantial inference of the information on
24 the record that it does not have to be that testimony.
25 But in any event I think there is, if my recollection

1 is accurate, testimony from the officer that the
2 offense did in fact take place in Charleston County.
3 So I don't think that that is an issue regarding a
4 motion for directed verdict.

5 As regards to the motion as raised by the
6 defense, the Court is required to view the evidence in
7 the light more favorable to the state. And the Court
8 is concerned with the existence or nonexistence of
9 evidence, not its weight, it is not for the Court to
10 weigh testimony. The Court does not act as the
11 fact-finder, nor does the Court act as an arbiter of
12 the credibility and believability.

13 The motion should be granted if the evidence
14 merely raises a suspicion of the defendant's guilt.
15 However, if the state presents any evidence which
16 reasonably tends to prove the defendant's guilt, that
17 can either be by direct evidence or circumstantial
18 evidence reasonably tending to prove the defendant's
19 guilt, or from which the defendant's guilt could be
20 logically and fairly deduced, then the case must go to
21 the jury. And that's what we are faced with in this
22 case.

23 Therefore, the motion for directed verdict is
24 denied.

25 Are there any further motions before we proceed

1 with the charge conference from the state?

2 MR. WILLIAMS: No, Your Honor.

3 THE COURT: From the defense?

4 MR. RUNYON: No, Your Honor.

5 THE COURT: Bear with me just one moment. I
6 will give the jury a general charge regarding their
7 responsibility, my responsibility, how they're to
8 judge witness credibility and believability, as well
9 as their responsibility to follow the laws as the
10 Court instructs.

11 As I recall none -- I may be wrong because I'm
12 relying on my memory rather than my actual notes --
13 but did any of the witnesses have a record, a criminal
14 record? I think some of them had pending charges.

15 MR. WILLIAMS: Nothing came up, Judge.

16 THE COURT: General charge regarding expert
17 witness testimony. We will give the general charge
18 regarding identification testimony.

19 Also general charge regarding direct and
20 circumstantial evidence, that being that there is no
21 distinction between the two. And a brief definition
22 of what the two are from State versus Graham
23 (phonetic).

24 I will give a general charge regarding the
25 indictment, that it is not evidence, as well as the

1 presumption of innocence. Also a charge on the
2 failure of the defendant to testify, it cannot be used
3 in any way against him.

4 I will charge Victor versus Nebraska on
5 reasonable doubt. I will then charge the elements of
6 murder. Are there any requests for any
7 lesser-included offenses by the defense?

8 MR. RUNYON: Yes, Your Honor. We would ask the
9 Court to, out of an abundance of caution, we'd ask the
10 Court to charge voluntary manslaughter in this matter,
11 and charge accident. There was some testimony as it
12 relates to, from I believe Mr. Hodges, that Mr.
13 Jenkins was supposed to have said that he reacted to
14 what --

15 THE COURT: You understand in the defense of
16 accident you admit you did it, but that it was an
17 accident.

18 MR. RUNYON: I understand, Judge. Quite
19 frankly, I don't expect you to give that charge under
20 the circumstances of this case.

21 THE COURT: I don't think factually it's
22 supported. Let me ask, does the state have any
23 exception to charging voluntary manslaughter?

24 MR. WILLIAMS: Your Honor, I don't think we
25 have heard any evidence this was heat of passion type

1 of crime.

2 THE COURT: well, we heard testimony that one
3 of the victims had a lot of GSR on him, which
4 indicated he had fired a gun, which indicates that
5 there must have been some discord in that parking lot.

6 MR. WILLIAMS: I think what the testimony was,
7 Your Honor, was that was a possibility.

8 THE COURT: I think she testified that he had a
9 lot of GSR on him, and it could not come from a
10 defensive posture, that it came from him firing a
11 weapon.

12 MR. WILLIAMS: I believe her testimony, I don't
13 know mean argue with the Court, but I believe she said
14 it was from being shot at repeatedly or shooting
15 repeatedly, meaning that he was hit four times.

16 THE COURT: well, it's for the jury to decide
17 whether he shot -- well, he was shot. But she also
18 said that it came across, that it came from him
19 shooting.

20 MR. WILLIAMS: Could have.

21 THE COURT: well, I'm going to go back and look
22 at the transcript. My memory isn't perfect, but I
23 listen very carefully. And I listen with an objective
24 ear.

25 MR. WILLIAMS: I understand.

1 THE COURT: But I will go back and look at it.
2 Is there any exception to the charge of voluntary
3 manslaughter from the state?

4 MR. WILLIAMS: Yes, Your Honor, I don't believe
5 there is any evidence that would support a heat of
6 passion argument in this case. I believe it was quite
7 simply, especially through the testimony of Debra
8 Heyward, two individuals that were shot down in the
9 parking lot, one was clearly shot in the back several
10 times, and the other all at close range.

11 So I don't believe there has been any evidence
12 on the record that this was heat of passion.

13 THE COURT: What is the evidence in the record,
14 Mr. Runyon, that would meet the elements of voluntary
15 manslaughter; that being sufficient legal provocation
16 for your client to have used a weapon?

17 MR. RUNYON: Well, Judge, they presented the
18 expert witnesses, and the Court's recollection is
19 absolutely accurate. There was ample testimony that
20 the gunshot residue on the hands of, I believe it was
21 Mr. Shakoor, could have --

22 THE COURT: I believe it was Channing Walker,
23 not Mr. Shakoor.

24 MR. RUNYON: Channing Walker could have come
25 from holding the weapon when it was fired. And, you

1 know, someone responded in the heat of passion to an
2 unwarranted attack, then that can support the
3 voluntary manslaughter.

4 And once again, my learned friend and I can
5 debate this with the Court all we want, but that's
6 really a question for the jury to decide as to whether
7 or not that evidence is sufficient, if it's not, to
8 discard the charge of voluntary manslaughter.

9 THE COURT: Are there any other requests --
10 well, I will finish with the charge and then we will
11 deal with that.

12 Her testimony was the concentration was
13 consistent with firing in the vicinity, concentration
14 was so much higher he had to have fired several times,
15 but I'm going to go back and look and see if my memory
16 is accurate.

17 Out of an abundance of caution I probably will
18 charge voluntary manslaughter, although I do not think
19 there is any evidence in the record of sufficient
20 legal provocation, nor do I think necessarily the
21 evidence raises to the level of voluntary
22 manslaughter. But out of an abundance of caution I
23 may charge it. I don't believe there is any harm or
24 fowl to either party involved. There is a marginal
25 amount of evidence that might support it.

1 The problem -- I don't think accident -- let me
2 ask the state. Does the state have any exception to
3 charging accident?

4 MR. WILLIAMS: I do. I don't think there is
5 any evidence this was an accident. There was a
6 statement, I believe attributed to this defendant,
7 that Jabez Batiste shot first when people started to
8 move so he had to shoot them. But I don't think it
9 was an accident.

10 That almost amounts to self-defense or closer
11 to -- it's not an accident where he would have done it
12 unintentional, it was intentional for a reason.

13 THE COURT: The elements for the defense of
14 accident are that, it is a complete defense, and it
15 excuses a shooting based on several elements, one of
16 which is that the act was unintentional, the other is
17 that the defendant had to be acting lawfully. There
18 is no evidence in the record that he was acting
19 lawfully, and also that reasonable care was used by
20 the defendant in handling the weapon.

21 And I don't believe he has raised self-defense.
22 There is no indication that the gun accidentally
23 discharged. I don't think there is any evidence in
24 the record to support an accident defense.

25 Is there any evidence in the record that your

1 client was armed lawfully?

2 MR. RUNYON: No, Your Honor. As a matter of
3 fact, the factual question -- I have to be candid with
4 the Court -- we touched on with a lot of the witnesses
5 about whether he had a gun or someone else had a gun.

6 THE COURT: The problem with an accident
7 defense as well as many other defenses is basically
8 you are admitting that the act happened and that he
9 participated in it, but that these are mitigating
10 tings that happened that caused it. And I don't
11 believe there is any evidence in the record that
12 legitimately, at least from your perspective, could be
13 argued that your client did in fact shoot him. As a
14 matter of fact, your defense is that he didn't do it
15 at all.

16 In order to argue accident you have to admit he
17 was armed, that he was there and that he shot.

18 MR. RUNYON: Yes, Your Honor.

19 THE COURT: The Court will not be charging
20 accident. I will however charge voluntary
21 manslaughter out of an abundance of caution as a
22 lesser-included offense.

23 I will then charge the forms of the verdict.
24 Are there any other requested charge -- I will charge
25 the hand of one which is accomplice liability, after I

1 charge both the elements of murder and voluntary
2 manslaughter. I will also charge the elements of
3 possession of a firearm during the commission of a
4 violent crime.

5 Are there any other requested charge from the
6 state?

7 MR. WILLIAMS: No, Your Honor.

8 THE COURT: From the defense?

9 MR. RUNYON: Yes, Your Honor. We would
10 respectfully move the Court charge mere presence and
11 accessory after the fact.

12 THE COURT: Accessory after the fact would be
13 if he stumbled upon the situation after the incident
14 took place, not an active participant.

15 MR. RUNYON: Right.

16 THE COURT: Let me hear from the state. What
17 is the state's position on accessory after the fact?

18 MR. WILLIAMS: Your Honor, I believe that's a
19 separate charge. It's not a lesser-included.

20 THE COURT: It's not a lesser-included.

21 MR. WILLIAMS: He's asking the Court to create
22 a charge and I don't think the Court can do that. The
23 state could -- I don't think you can charge the
24 inconsistent verdict --

25 THE COURT: I can't hear you.

1 MR. WILLIAMS: Your Honor, in order to do that
2 the state would have to bring that charge. We haven't
3 done that. And if we had it would certainly be an
4 inconsistent verdict. We can't charge principle
5 liability as well as accessory after the fact
6 liability.

7 The state has chosen not to do that. This
8 charge, whatever happens with this case, will preclude
9 by double jeopardy us charging that separate type of
10 charge

11 THE COURT: It is not my understanding that
12 accessory after the fact is a lesser-included offense
13 of murder or voluntarily manslaughter, therefore would
14 be appropriate for the Court -- as a matter of fact
15 there is case law, Hook versus State, which indicates
16 that it is not a lesser-included offense of the
17 greater offense under the element test. So therefore
18 the Court would not charge that.

19 Is there any exception from the state on
20 charging mere presence? I think it is included within
21 my accomplice liability charge, mere presence is not
22 sufficient to prove the hand of one.

23 MR. RUNYON: Judge, we are familiar with the
24 various ways of charging and we were not concerned
25 with the separate charge of mere presence as long as

1 it's at least included in the general charge as to the
2 offense.

3 THE COURT: I'm sorry, Mr. Runyon, I was
4 talking to my clerk and I did not hear everything you
5 said.

6 MR. RUNYON: All we want is mere presence to be
7 mentioned in the general charge or as a separate
8 charge. We don't insist on a separate charge of mere
9 presence if it's --

10 THE COURT: I think my accomplice liability
11 charge encompasses mere presence, but give me one
12 moment. Yes, mere presence at the scene of a crime is
13 not sufficient to convict one as a principle on the
14 theory of aiding and abetting.

15 And then there is some other reference to one
16 having to be an active participant in the offense.
17 Not simply being present when the act is being carried
18 out. Even if the defendant is present when the crime
19 is committed.

20 MR. RUNYON: For the record, Judge, that would
21 satisfy our request for the charge.

22 THE COURT: If you all bear with us one moment,
23 we are having technical difficulties with the printing
24 and I need to print out the verdict forms so that you
25 all can review them. I would suggest you all take

1 leave of this moment and make sure the evidence is in
2 order and get yourselves organized for closing
3 arguments.

4 MR. RUNYON: Your Honor, by agreement we have
5 gone over the exhibits and they're separated. And in
6 consultation with the court reporter I think we have
7 got that accomplished.

8 THE COURT: Okay, get yourselves set up. I
9 assume you will be exercising the option of last
10 argument, Mr. Runyon?

11 MR. RUNYON: Yes, Your Honor. And Mr.
12 Williams, at least in a prior conversation, indicated
13 he would not require me to open under the law, so I
14 would just close.

15 THE COURT: Are there any exceptions to the
16 charges proposed from the state?

17 MR. WILLIAMS: No, Your Honor.

18 THE COURT: From the defense?

19 MR. RUNYON: No, Your Honor.

20 THE COURT: We will be at recess for about five
21 or ten minutes.

22 (Whereupon, a recess was taken.)

23 THE COURT: Counsel approach, please, to review
24 the verdict.

25 Are there any exception to the form of verdict

1 from the state?

2 MR. WILLIAMS: No, Your Honor.

3 THE COURT: From the defense?

4 MR. RUNYON: No, Your Honor.

5 THE COURT: I'm going to staple each verdict
6 form to the interior of each corresponding indictment.

7 Is the state ready to proceed with closing
8 argument?

9 MR. WILLIAMS: Yes, Your Honor.

10 THE COURT: Is the defense ready to proceed?

11 MR. RUNYON: Yes, Your Honor.

12 THE COURT: Please bring in the jury, Mr.
13 Robinson.

14 (Whereupon, the jurors enter the courtroom.)

15 THE COURT: Thank you, ladies and gentlemen, we
16 appreciate your patience. As I have indicated, we
17 have now reached the stage of the trial where we will
18 have closing arguments and the Court's instruction on
19 the law. You will hear from Mr. Runyon followed by
20 Mr. Williams after which the Court will give you
21 instructions regarding the law. I would ask that you
22 give the attorneys your undivided attention.

23 I'm sorry, you will hear from Mr. Williams
24 followed by Mr. Runyon. I apologize, and I would ask
25 that you give the lawyers your undivided attention.

1 You may proceed.

2 MR. WILLIAMS: Thank you, Your Honor. May it
3 please the Court, counsel.

4 THE COURT: Yes, sir.

5 MR. WILLIAMS: It's a case about choices. It's
6 a case about consequences. About the choices for four
7 young men to get involved in a drug deal. About the
8 choices that led to the murder of two men, Channing
9 walker and Kareem Shakoor, at the hands of two men who
10 were partners in crime; this defendant, Quinton
11 Jenkins, and Jabez Batiste.

12 You all sat here for the last three days now,
13 listened to all the evidence in this case, and I'm
14 going to tell you a lot of it was kind of boring. I
15 understand having to sit here and hear about shell
16 casings picked up and about where things were found
17 and where things were at. I'm not going to stand here
18 now and go through all of that again.

19 But a lot of that is important. So what I am
20 going to do is first of all go over the physical
21 evidence in this case that's important, the
22 testimonial evidence in this case that's important,
23 and how that physical evidence and the testimonial
24 evidence in this case convicts this defendant of
25 charges -- two charges of murder and two charges of

1 possession of a firearm during a violent crime.

2 The two types of evidence we have heard,
3 physical and testimonial. When I say physical what I
4 mean are the items that were found out there; talking
5 about shell casings, fingerprints. Some of that
6 requires processing and interpretation, but physical
7 evidence is specifically what it sounds like, they're
8 items, they are things, tangible.

9 we also heard testimonial evidence and that's
10 come through the testimony of several witnesses and I
11 will talk about some of them. I think we have seen a
12 wide range of types of witnesses in this case, and I
13 will speak on them. But what I want to talk about
14 first of all is the physical evidence, the important
15 physical evidence and what it tells us in this case.

16 The first thing that is of high importance in
17 this case is fingerprints. What we have heard is that
18 this defendant's fingerprints are all over that car,
19 all over the back and passenger side of that car. Ten
20 different prints. When I say ten prints, ten print
21 that they could make. You heard a lot of testimony
22 from Ms. Gill and Ms. Maestas that sometimes prints
23 don't even come back; they get smudged, the texture is
24 not right. We've got ten of this defendant's prints.

25 when you listen to what those prints were, they

1 were all across the car, and there were at least three
2 different times when they were duplicate. What I mean
3 by that is palm prints three different places, or one
4 finger in three different places. So it's not like we
5 have a hand on there once and a hand on there again.
6 we know at least three different times he had his hand
7 on that car and all across the back of it.

8 You know what else is interesting about those
9 fingerprints and palm prints, they were all the left
10 hand. If you think about that, I will argue it later,
11 there probably was something in that right hand.

12 The other interesting fingerprint in this case
13 is the one of Jabez Batiste. Now, there was some
14 different testimony when Kalisha Gill got up and
15 talked about the fingerprints she found. There was
16 actually two prints from Jabez Batiste, one was in the
17 Buick off the rearview mirror. And she wasn't real
18 clear, she didn't have it marked on her information,
19 but if you remember she said Henry Middleton, who
20 processed the gray Buick, had a print off the mirror.
21 That was Jabez Batiste fingerprint mark off that
22 mirror. And that really shows what we all know, Jabez
23 Batiste had control of that vehicle and was driving it.

24 But he also had a print right above that door
25 handle. Only one print from Jabez Batiste. And we

1 can all argue later, and I think we can talk about it
2 a little bit now, but Jabez Batiste was opening that
3 door, and Quinton Jenkins was standing by the back,
4 and that's what those prints show us.

5 The phone calls. Detective David Osborne
6 talked about this quickly. What do they tell us?
7 Jabez Batiste's phone calls going to the victim,
8 Kareem Shakoor, minutes before the murders occurred.

9 The red Honda. Apart from the fingerprints
10 that are all over it, there is a coat in the back,
11 there is cookies on the backseat. Somebody was back
12 there and they had a jacket, they had been sitting
13 back there. The rear seat is pushed forward.
14 Somebody got out of that backseat. Somebody left the
15 backseat to go out. The key is in the ignition, the
16 door is wide open. Somebody got out of there and they
17 got out in a hurry. They left the car sitting there
18 running, they left the doors wide open, they left the
19 seat pushed up.

20 That physical evidence, those simple facts
21 alone tell us a lot about what was happening in that
22 car just prior to these murders. And I will get to
23 that. Finally what that shows us that bullet hole,
24 that shows us right where someone was shooting from.
25 That door is wide open with a bullet hole right where

1 Channing walker is found dead.

2 Physical evidence. You don't need an
3 eyewitness for any of this, this is all interpreted by
4 crime scene officers and by detective in this case.

5 what else do we have. I will argue some of the
6 importance of this, but this is actually very
7 important, this seems almost common sense. Where were
8 the victims located? Kareem Shakoor across the
9 parking lot, Channing walker right there in the
10 driver's side door.

11 The blood trail. We know where Kareem Shakoor
12 was going from, and where he was going to, and that
13 when he was going there he was already shot, he was
14 bleeding. So we know Kareem Shakoor, although he ends
15 up across the parking lot, is bleeding before he get
16 to where he falls. So we know just from that blood
17 trail and where he was found that he was shot before
18 he fell and ran across the lot bleeding.

19 The GSR on the hands, close proximity to
20 gunshots. The pathologist also talked about this,
21 within 16 to 24 inches, no closer than that, but close
22 enough to be getting residue on your hands when
23 somebody else is shooting at you with the muzzle end
24 of the gun.

25 The shell casings. A lot of talk has been made

1 about the shell casings. The obvious thing is that
2 these were all from the same gun, a .9mm. What else
3 do we know about the shell casings? They're inside
4 the car and outside the car. That tells us a shooter
5 is going different places.

6 Now can we say exactly where he was? No. But
7 certainly if all the shell casings were inside the
8 car, or all the shell casings were outside the car we
9 would know certain things. Because they are in both
10 places we know that the shooting occurred over a span
11 of distance, at least with the .9mm.

12 We also know that it is sort of contained to a
13 small area, Detective Osborne talked about this a
14 little. He said, it looked like this was some kind of
15 familiarity. It looked like it all was contained to
16 one small area. So although the casings may be at
17 different areas within a 10 or 12 foot radius, all the
18 shooting happened within a 10 to 12 foot radius.
19 That's what the casings tell us.

20 Certainly if there were casings spread across
21 the parking lot 75 feet, that would tell us something
22 entirely different. So we do know something about the
23 shooting just based on the location of those casings
24 all coming from the same gun, or to some extent the
25 movement of the shooting.

1 The injuries. Kareem Shakoor was hit four
2 times, possibly five, we will talk about the re-entry
3 wound. At least four shots. He got shot once in the
4 front, in his groin, several times in his back. One
5 shot actually fractured his arm. If you all look at
6 the crime scene photo of Mr. Shakoor where he was
7 laying there, it's a black white one, look at the left
8 arm and you will see that hand twisted underneath his
9 body broken.

10 More importantly, the shot that hit him in the
11 back pretty much dropped him where he was. You heard
12 Mr. Gianatas talk about how he was still trying to
13 move along when he got in the parking lot, but we know
14 he was bleeding as he was running. And the final shot
15 that shot him in the back was the one that killed him.
16 we know that from the pathologist.

17 Channing Walker, four shots, possibly five
18 again with the possible re-entry. So we have anywhere
19 between eight and ten different shots as testified to
20 by pathologist and we have a projectile on the ground
21 right under him. It would appear, based on what
22 Officer Weirsmas said, that when somebody is shot from
23 above and they're close to the ground, that projectile
24 stops in the dirt, on the ground, in this case the
25 asphalt, and the victim laying on top of it would keep

1 the blood off of it.

2 Now that's all for your all's consideration.

3 what we do know about Channing walker is that he was
4 shot down right there in the doorway of that car. we
5 actually have one of the bullets looks like it hit him
6 and went through the door, or missed him and went
7 through the door, and that tell us right where the
8 shooter was when Channing walker was gunned down
9 inside that doorway.

10 Finally, what is not there? what do we all
11 expect to see at this crime scene that never turns up?
12 The gold necklace with the smiley face and the frown
13 face. An earring. we got plenty of testimony that,
14 you know what, he wore that all of the time. And the
15 fact that it's not there tells us this was a robbery.
16 No question.

17 I covered a lot of this. But what we know is
18 that the situation was set up. Phone calls. The
19 phone calls made by Jabez Batiste prior to going out
20 to that parking lot came off of Kareem's phone show
21 that this was an agreement, that they knew it was
22 going to happen. And Detective Osborne talked about
23 this whole familiarity. This isn't a case where
24 somebody ran away when someone snuck up with a gun on
25 them. This is a situation where gunfire erupted and

1 people ran in a panic.

2 we know that by these phone calls and by where
3 the casings were and how the doors were open, keys,
4 everything else. where were people at? we know on
5 the thumbprint of Jabez Batiste, looks like he opened
6 that door and he probably got in. we know the
7 defendant was back by the window, someone else was in
8 that back seat, someone was in the driver's seat.

9 That might seem like common sense, but if you
10 think about how we know that, you don't have to make
11 reference to any single witness that testified about
12 what they saw. All you need is that crime scene photo
13 which shows that door open, and those keys in that
14 ignition. It does not matter what Travis Simmons
15 said. It does not matter what Bernard Green said.
16 we know, based on the physical evidence, the keys in
17 the ignition, that car running, that door open, that
18 somebody was in that driver's seat, somebody put them
19 there.

20 That's why when I talk about physical evidence
21 and it's based on the scene being processed, utterly
22 and totally independent of any of those witnesses. we
23 know they left in a hurry, left the car running, left
24 the doors open, left the seat up.

25 we know where the shooting took place, a small

1 area. Some shots were fired either very close to open
2 doors so the shell casings would eject into the car,
3 bounce around. Maybe inside the car where the casings
4 were bounced around and landed. And definitely some
5 outside the car.

6 So with four shell casings inside the car,
7 those shots were fired either very close to where that
8 casing could eject into the car, meaning perhaps where
9 Channing Walker was, casing could eject in, or maybe
10 by an open door where a casing could jump in, or
11 inside the car where the casing would bounce around on
12 the interior.

13 Other shots weren't done that way. Some shell
14 casings, four, are outside the car. So we know the
15 shooting took place either outside or inside the car.
16 And if not inside, extremely close to it.

17 We know how they were shot. Again the blood
18 trail, shot in the back. We know that Kareem Shakoor
19 was the one in the driver's seat because that was the
20 car that he always drove, it was his mother's car. So
21 we know from the physical evidence alone, the blood
22 trail leading from that side of the car, Kareem
23 Shakoor, again all physical evidence, was the driver
24 of the car, got out in a hurry, was bleeding as he
25 ran, and got shot in the back and fell down and died

1 in the parking lot of McDonald's. All on physical
2 evidence.

3 We also know he was very close to the person
4 that shot him based on the gunshot residue off his
5 hands. And that is a lot to know without having one
6 single eyewitness have to testify.

7 Channing walker, we know from the residue on
8 his hands, was also close to the shooting at some
9 point. It would appear since we know that somebody
10 was in the backseat, we know Kareem Shakoor was in the
11 front seat, that it was Channing walker in the
12 backseat. And we know that whoever was in the
13 backseat got out of the backseat because the seat was
14 pushed forward.

15 So if we know that Mr. Shakoor is in the front
16 seat and gets out and runs, the only other person left
17 in the car was Channing walker. We know Channing is
18 in the backseat. We know he also gets out and pushes
19 that seat up. He could have climbed over the seat and
20 got in the front and got out the driver's side, or run
21 around. There are some things that only the people
22 that were out there know.

23 We do know that he was in the back, got out,
24 and then was shot down right there in the doorway,
25 bullets hitting him, some of them going right through

1 the door showing where the shooter was standing. The
2 total number of injuries are eight, possibly ten.
3 when I say that, that's entrance wounds. At least
4 eight shots, we have got eight casings out there.

5 And again the robbery. Now I want to talk for
6 a moment about testimonial evidence. I think the
7 physical evidence in this case tells us, we know a lot
8 about this case just on the physical evidence. But
9 the testimonial evidence is something else altogether.
10 we have heard a pretty wide array of different types
11 of folks come in here.

12 And some of those folks I was proud to put up
13 there. Debra Heyward is a person who stepped up, as I
14 would expect people to step up, she witnessed a
15 murder. She called the police, she told the police
16 what she saw. I'm proud to put Debra Heyward up
17 there.

18 John Gianatas heard shots ring out. Went
19 towards the shots. And certainly his law enforcement
20 background is important but he made a choice, while
21 people were driving through the drive-thru picking up
22 their dinner, to make a difference. He went towards
23 the gunshots, and he was there in that parking lot.

24 And will Crosby. Look at what will Crosby
25 does. He tells you, you know, probably wasn't the

1 smartest thing to do. I heard gunshots and instead of
2 going the other direction, I followed the guys that
3 left the parking lot that I saw get in the car from
4 where the shooting happened.

5 He was sick of hearing how that kind of stuff
6 going around where he lives. I'm proud of those three
7 witnesses, and they really just came in here and did
8 what we expect an ordinary citizen to do. Certainly
9 in extra ordinarily circumstances, but they all
10 stepped up, came up to this witness stand, and told
11 you what happened.

12 What did Debra Heyward say? She said, shots
13 drew her attention. That's important because what it
14 shows is she didn't see the first shot. Will Crosby
15 was very similar. John Gianatas was very similar.
16 That makes common sense. You don't start turning your
17 attention to something until something draws your
18 attention.

19 So Debra Heyward says, I heard a shot and then
20 I looked to try to focus on where it was. So there is
21 a shot she doesn't see, and then after that she sees,
22 quite simply, a person running away, get shot, and a
23 person in the door shot. I believe her testimony was
24 there was a person in the door that got shot by a guy
25 about 5'3" with like a gun in his hand, pointing at

1 people, shot down the guy in the door, and then the
2 guy with dreads was running away, and he got shot down
3 too.

4 The person doing the shooting 5'3" tall. That
5 may be the most important piece of evidence in this
6 entire case. As important as that height is the
7 height of all the other people she saw. The only
8 person that was 5'3". Remember what she said, how
9 tall were the other people? 5'8", 5'10". More
10 important than that, there was one person who was
11 shorter than everybody else that was standing out
12 there.

13 Will Crosby. Will Crosby is important. Not so
14 much because he could tell how tall people were, Debra
15 Heyward certainly could do that, what Will Crosby
16 gives us is the exact number. Debra Heyward did too,
17 she said four to five. But if you remember the way
18 she testified she said, look, there were four to five
19 people out there; two people fell down, and then two
20 people ran towards the car. I saw a person running.

21 Will Crosby says the exact same thing. The
22 shot drew his attention. When he looks over, people
23 disappear. And when asked if that is consistent with
24 being shot, yeah, I did not know that was going on at
25 the time, but there were two guys that fell and then

1 there were two other guys that ran to the car.

2 Two people left standing. Both running
3 together to the car at the same time. Will Crosby
4 gives us four people; two that get shot, two that run
5 to the car. That is the most important part of his
6 testimony. And Debra Heyward said the same thing; two
7 people get shot, other people go to the car. So we
8 have four people in that parking lot, two people that
9 get killed.

10 Will Crosby was also important beyond the
11 number because of the way he said, you know, they were
12 going together, they were running together, they were
13 acting together. I will talk about that later. But
14 apart from his specific knowledge that two people fell
15 and the other two got in the car, that's the second
16 most important thing he said.

17 Finally he said there were four people in that
18 car, he couldn't have been clearer on that. He was 10
19 yards, 20 feet away from that car, 30 feet away
20 following it, paying attention, telling the police on
21 the phone. So we know he said there's four people in
22 that car.

23 When you think about Will Crosby, Debra Heyward
24 and the physical evidence in this case, it is all you
25 need to convict this defendant. Just those three

1 things. This case can be a lot more complicated than
2 that, it really doesn't have to be.

3 How many people were in the parking lot? we
4 know that from these three things. what will Crosby
5 said, there were four; two people that fell, two that
6 ran to the car, and there was nobody else out there.
7 we know how many people were in the parking lot
8 through will Crosby.

9 Debra Heyward, one person was shooting, two
10 people got shot, and the others going to the car. She
11 puts four to five and when she talk about what she
12 saw, it's actually four. How many people were in the
13 parking lot? Four people in the parking lot. Heyward
14 and Crosby both give us.

15 who were those four people? we know Channing
16 walker and Kareem Shakoor were two of them because
17 their bodies were found there. They're right where
18 Debra Heyward said they would have fell. So two of
19 the people we know from the police, the crime scene
20 officer and the photographs you saw are Channing
21 walker and Kareem Shakoor.

22 who are the other two people? Look at the
23 fingerprints. You want to know who two other people
24 that were out there? Jabez Batiste, with his
25 thumbprint on that car, and this defendant, Quinton

1 jenkins, with his hand all over the back of that car.
2 There are four people in the parking lot based on the
3 bodies that were found and the prints that were found,
4 we know who those four people are; two victims, Jabez
5 Batiste and Quinton Jenkins.

6 who was doing the shooting? we know that too.
7 we know the person was 5'3" tall, approximately
8 shorter than everybody else. what do we know about
9 everybody out there? They're taller. And it doesn't
10 make a whole lot of sense to worry about how tall
11 Channing walker and Kareem Shakoor are because Debra
12 Heyward said two people got shot and fell down. so
13 obviously the 5'3" was doing the shooting and was
14 shooting the other two people. so it's not as if they
15 shot themselves or shot each other.

16 so it's not Kareem or Channing that's 5'3".
17 what it comes down to is of the other two people that
18 were out there, which one is 5'3"? which one is
19 shorter than the rest of the people? Jabez Batiste,
20 this was important, it went kind of quick, but
21 Detective Osborne said, I met him, I talked to him, he
22 was sitting in that interview with him, talking about
23 it at the school, took him through the booking
24 process, 5'10" 190 pounds.

25 Simmons, who stayed in the car, assuming he was

1 out there he was about 5'10". You all saw Bernard
2 Green, he's a good 6'1", 6'2". The victims didn't
3 shoot each other, didn't shoot themselves we know
4 that. Quite simply, based on this physical evidence
5 and these two witnesses, we know that this defendant
6 is the one that fired those shots.

7 we know the four people that were out there,
8 two of them died and one of them is about 5'10". I
9 submitted to you that is all you need in this case.
10 It is really that simple; physical evidence and two
11 witnesses.

12 And I dare say if Debra Heyward came in here
13 and said, you know, I recognize that person's face,
14 that would be a much more difficult decision. Trying
15 to identify somebody in court, remember what they look
16 like, it's much more difficult than saying, there was
17 one that was a lot shorter than the rest.

18 And it worked in this case simply because everybody
19 else in this case is a lot taller than Quinton
20 Jenkins. If Jabez Batiste was 5'3", 5'5", there may
21 be some confusion. But in this case that's not the
22 evidence we have. So I submit to you, all you need in
23 this case is Debra Heyward, Will Crosby and the
24 physical evidence that was retrieved.

25 Of course we have a lot more than that in this

1 case. This case wasn't just those three or four
2 witnesses. And I will still submit to you that's all
3 you need to show this defendant murdered those two
4 young men out there. But we also have other
5 testimonial evidence.

6 And when I talked about the physical evidence a
7 few minutes ago, it really has two purposes. One is
8 it tells us certain things independently. We know
9 certain things because of where the physical evidence
10 is. But it does something else. It does what we call
11 corroboration. It's corroborates the testimony of
12 witnesses. It's sort of a barometer of truth. How do
13 you know if somebody is telling the truth? Because
14 the physical evidence agrees. How do you know if they
15 are not telling the truth? Because the physical
16 evidence will disagree.

17 If somebody told you that they saw -- Debra
18 Heyward said, I saw Kareem Shakoor get shot down, run
19 to the back of the parking lot, we know that's not
20 true because his body wasn't found there. And I want
21 to use Debra Heyward as an example because she is
22 utterly and totally corroborated by all the physical
23 evidence and I want to use her as an example.

24 with Debra Heyward how do you know she is
25 telling the truth? Think about what she said. She

1 said the shooting happens all around this red car.
2 what do we find? Casings right in that area. She
3 says the shooter was standing by the red car and the
4 car that moved away later. Where are all those
5 casings? Right in that area.

6 In fact, if that gun was being pointed at
7 Channing walker, those shells are ejecting onto the
8 hood of the car, falling on the windshield, maybe over
9 the car, but certainly in that area. So we know when
10 she says that she is telling the truth because we find
11 physical evidence that that thing happened where she
12 said it did.

13 The victim ran towards the McDonald's. well,
14 of course we know that's true. Kareem Shakoor was
15 found towards the McDonald's. And not just found
16 there, but there is a blood trail. That would
17 indicate he had been shot and of course he would be
18 running. We know she is telling the truth when she
19 says she saw that because we find physical evidence
20 that tells us that is what happened.

21 That she said Kareem Shakoor got shot in the
22 back and fell. How do know that that's true? The
23 pathologist told us he had been shot in the back. So
24 again we know she is telling the truth because the
25 physical evidence says it. Can you imagine if she

1 said he got shot in the back and there weren't any
2 shots in the back? We would know she was mistaken.
3 But that didn't happen.

4 A person was shot in the doorway of the car.
5 She said that as well. How do we know that that's
6 true? Right where Channing Walker was found, shot in
7 the doorway of the car. Finally, the shorter person
8 and taller people out there. The defendant happens to
9 be 5'5" on his driver's license, he said 5'3",
10 everybody else is a lot taller. How do we know she is
11 telling the truth? Because it fits with the people
12 involved in this case.

13 Debra Heyward is certainly corroborated by the
14 physical evidence, so we know she is telling the
15 truth. But she is really the best example you can
16 come up with of somebody who is later corroborated by
17 physical evidence. And make no mistake, Debra Heyward
18 wasn't over there walking around at the crime scene,
19 she was over at the Burger King talking to detectives.
20 So it wasn't as if she had a chance to go over there
21 and figure everything out.

22 She fits the facts, the physical evidence,
23 because she is telling the truth. And that's how it
24 happened. She is truthful. And when the physical
25 evidence corroborates a statement, that's how we know

1 it's truthful.

2 I want to talk about some of the other
3 witnesses you heard from. I talked about Mr.
4 Gianatas, who ran over there to see what was going on.
5 I talked about Debra Heyward, trying to be the type of
6 person we expect who witnessed a murder. And I talked
7 about Will Crosby who chased after guys that just
8 committed a shooting.

9 I want to talk about Travis Simmons, Bernard
10 Green, Michael Johnson and Michael Hodges. I told you
11 all at the start of this case that witnesses are
12 sometimes like your family, you cannot always choose
13 them. And you know what? Bernard Green, Travis
14 Simmons, Michael Hodges and Michael Johnson, they all
15 knew about this case. They all knew what happened,
16 and you all deserved to hear from them.

17 As 12 jurors that have to deliberate on this
18 case you deserve to hear from every witness that was
19 out there, whether they want to be here or whether
20 they don't. And I'm going to put them up there and
21 I'm going to let them try to dodge around questions.
22 You deserve to hear from them.

23 I'm not necessarily proud of them getting up
24 there or not and saying that, but I certainly don't
25 apologize for putting up witnesses that may have seen

1 something, and given you all a chance to hear what
2 they have to say.

3 And they have varying degrees of testimony.
4 Michael Johnson didn't want to say a thing. He didn't
5 want to talk. He sat up there, leaned back, said he
6 didn't remember nothing. The only thing he would say
7 is that Jabez Batiste had a .22 revolver.

8 Bernard Green didn't seem to want to remember a
9 whole lot either. There are some important things he
10 remembered, and I will submit to you they were
11 corroborated by the physical evidence. But I don't
12 think anybody sat here and saw Bernard Green being as
13 candid as he could have been.

14 Travis Simmons. Travis Simmons pretty much
15 answered every question anybody asked him, as
16 thoroughly as he could. Now Travis probably isn't the
17 brightest guy around, but I think he was sincere. And
18 I think if you listen to what he said and look at the
19 physical evidence, you know he was telling the truth
20 about a lot of those things.

21 And Michael Hodges really didn't see a whole
22 lot. I'm not going to say Michael Hodges wasn't doing
23 the best he could. I think in all honesty Michael
24 Hodges is probably proud of himself too because he did
25 come in here and tell you all what he heard, what he

1 saw, and was really under no obligation other than a
2 subpoena.

3 He could have done the same thing Michael
4 Johnson did. He chose to tell you what he heard and
5 what he remembered. And part of that was Quinton
6 owned a semiautomatic gun, part of that was Quinton
7 said he shot the guy. So that's important.

8 what those four witnesses, and what they
9 account for, we know is true in certain respects. And
10 just like Debra Heyward, we know it's true because
11 it's corroborated by physical evidence. Don't believe
12 Travis Simmons because you like him, believe him
13 because what he says is corroborated by physical
14 evidence. The barometer of truth tells you that he is
15 being truthful.

16 what was his statement? That he, and to a
17 certain extent Bernard Green said, this was a drug
18 ripoff. There was a drug deal. what do we have that
19 shows that that statement is true? Four people going
20 together. You don't take four people over there to
21 have dinner on a night over at McDonald's, and two
22 stay in the car and two get out.

23 They went over there with a purpose, a drug
24 deal. And if the price wasn't right, they're going to
25 take the drugs. Remember what Michael Hodges said

1 Quinton Jenkins and Bernard Green told him? We are
2 going to do a drug rip for 25 ecstasy pills. We are
3 going to go rip somebody for some drugs, do a lick,
4 going to rip them off. This was a robbery.

5 Granted it may have been a kind of showing of
6 it being a drug deal, they went over there to rob
7 them. When you are going to rob somebody, you bring
8 guns, and when you rob people, people get killed.

9 We know that this was a ripoff because of the
10 physical evidence. So when they tell you that, the
11 people together, the phone calls, the proximity, the
12 familiarity, the fact that property is missing, that
13 alone tells you that this was a ripoff.

14 So when they tell you, they said they were
15 going to do a rip, it was a rip, we know it's true
16 because property was taken. Can you imagine if Travis
17 Simmons says, you know, we were going to do a drug
18 rip, but nothing got stolen, that wouldn't make any
19 sense. But it did get stolen.

20 Where people went, where the shots were fired,
21 Travis Simmons and Bernard Green, neither one of them
22 seemed overly concerned about something bad happening.
23 They knew it was a ripoff. And what was interesting
24 about both of them is they said when the shots went
25 off they thought they might be getting shot at. They

1 knew there was a danger inherent in this drug ripoff.
2 when those shots went off, they were afraid. They
3 thought they were getting shot at.

4 And of course they're not sitting there trying
5 to get descriptions of what people looked like and
6 where they were at. That makes sense. These guys
7 were out there for a drug ripoff. It's not surprising
8 to them things were going bad. They're not going to
9 sit around trying to get identities of people because
10 they already know who they are.

11 But how are they corroborated by the physical
12 evidence? Bernard Green says they went around to the
13 far side of the car. That's what Travis says also.
14 what do we have? Prints right where they said they
15 were standing. Can you imagine if they said, oh no
16 they were standing on that side of the car and we
17 found prints all over the other side? You'd know they
18 weren't telling the truth. But we know they are
19 because the fingerprints corroborate what they tell
20 us.

21 The casings located inside the car. This
22 statement about that first flash, Bernard Green seemed
23 like he was the only one that was looking over there
24 when that first flash went off, nobody else saw it.
25 Think about where he said that came from, right inside

1 the car. That casing, and other casings are located
2 inside the car. Now is it possible the casings were
3 fired in there later when somebody was walking around?
4 Sure. But it's certainly consistent with it.

5 The GSR on the hands. People getting shot
6 close up, same thing. That shot is going off inside
7 that car, the GSR is getting on the hands of the
8 people that are inside there, Channing Walker and
9 Kareem Shakoor.

10 The necklace and the description. This is the
11 one that I really think shows credibility because
12 Travis Simmons says the necklace had a frown face and
13 a smiley face. We know from Ms. Shakoor and from
14 Alfonza Jones that that's the type of chain that he
15 wore all the time. Where is he getting that from? He
16 saw it. You can't make that up. You try to say what
17 it is and it isn't, you're going to be wrong and he is
18 dead on.

19 He is telling the truth because he gives us a
20 description that we know is true from other evidence.
21 What did he say about the chain? This defendant and
22 Jabez Batiste are fighting over it. See who gets the
23 spoils of killing those young men, stealing their
24 chain.

25 The plan to rob, that's what they said. We're

1 going to go do a robbery, do a lick, because we're --
2 driving over people said, if the price ain't right we
3 are going to take them. Think about what happened
4 after that because it's kind of important. We've got
5 Quinton Jenkins and Jabez Batiste going back to the
6 car and saying, we need some money from Travis Simmons
7 to make it look real.

8 And that really matches up closely with what we
9 see with the physical evidence. They got close enough
10 so that they could shoot them at close range if they
11 had to. They went over there with the subterfuge, the
12 illusion of a deal. They checked it out first, come
13 back with the money, and at some point while the
14 robbery is going around they start shooting.

15 The plan, they ran to the car together. Will
16 Crosby told you. They left together. They got in the
17 car afterwards. They walked together, partners in
18 crime, Quinton Jenkins and Jabez Batiste. That's how
19 the plan is corroborated, by their actions that night.

20 Finally, the first shot being up at the front
21 of the car and the reaction of people. Bernard Green
22 told you that first shot happened inside the car,
23 that's corroborated by all these other things. And if
24 you think about it, Debra Heyward looks over, Kareem
25 Shakoor is being shot in the back. A couple things

1 could have happened. He could have been caught as he
2 was running from the car, or caught while inside the
3 car. But it's certainly consistent with that first
4 shot going off inside the car and hitting Kareem
5 Shakoor. So that's what the blood trail shows.

6 So we know this information about the first
7 shot going off sort of in the passenger compartment
8 area, that's consistent with the blood we see from
9 Kareem Shakoor going across the parking lot. So again
10 all of this information that we get in, there are
11 probably countless more examples, of physical evidence
12 that agrees with the testimony of Travis Simmons,
13 Bernard Green, Michael Hodges and Michael Johnson with
14 the little that he gave us.

15 Again although I'm not proud of those
16 witnesses, you all deserve to hear from them. I
17 submit to you they told the truth. Not because
18 they're particularly good people involved in the drug
19 deals, but because the physical evidence tells us that
20 they were telling the truth.

21 The evidence in this case points to one person.
22 All that physical evidence, all that testimonial
23 evidence that's corroborated by physical evidence time
24 and time again points to this defendant, Quinton
25 Jenkins.

1 The prints on the car. He was at the car for a
2 long time, knows what's going on, shows knowledge.
3 Three prints just don't get there, he is standing
4 there watching drug deal, robbery, murder.

5 The defendant is short. Everyone else is tall.
6 And we know the shooter was short. The only person
7 that fits that description. A drug deal, a robbery
8 corroborated by physical evidence.

9 what the defendant said, and I have not talked
10 about this yet, think about his statement. Those guys
11 started moving. Jabez shot first, the guy started
12 moving, and then I shot them. That fits everything.
13 what does Michael Hodges have to gain by coming in
14 here and saying that Quinton admitted he shot the
15 guys? Quinton Jenkins shot the guys and admitted it
16 to him later. He admitted to shooting both of them.

17 The warrant, I haven't talked about that much
18 either. Think about that. There is a .9mm round
19 inside his bedroom that is the same make, same
20 cartridge, .9mm, as the casings found at the crime
21 scene. I'm not telling you that that's all it takes
22 in this case to convict somebody, it's not. You need
23 a lot more than that.

24 But I can guarantee you if there wasn't any
25 ammo found at his house, you all would be thinking,

1 they didn't have nothing at his house. It certainly
2 means something. He has a bullet inside his house
3 that's the same as the type found at the crime scene.
4 Alone, maybe not all that big of a deal. Put it
5 together with all this stuff, time and time again the
6 evidence keeps pointing to Quinton Jenkins.

7 The argument over the chain. why do you fight
8 over a chain if you weren't a part of the murders?
9 You know what that shows us? He did the murder and he
10 was telling Jabez Batiste that he deserved to get paid
11 for it. Maybe he didn't more than was bargained for,
12 maybe he did the heavy lifting, he did the shooting,
13 he deserved the chain.

14 All of the evidence in this case is
15 overwhelming. It is certainly proof beyond any doubt,
16 let alone a reasonable doubt, that this defendant is
17 guilty of these murders.

18 However strong the case maybe that he was the
19 actual shooter, I submitted to you it's beyond all
20 reasonable doubt that he pulled the trigger, just on
21 the height of the physical evidence. The law doesn't
22 even require that high of a level of proof. The Judge
23 well read to you the law, and she will tell you
24 a person who joins with another to accomplish an
25 illegal purpose is criminally responsible for

1 everything done by the other person which occurs as a
2 natural consequence of the acts done in carrying out
3 the common plan or purpose.

4 You get together with somebody else to do a
5 drug rip and people get killed, the law doesn't say
6 you have to be the one that pulled the trigger. Don't
7 get me wrong, he pulled the trigger. But you don't
8 even have to find that in this case. The law says if
9 you just find that him and Jabez Batiste got together
10 to commit the unlawful act, the drug deal, the drug
11 rip and somebody got killed, it doesn't matter if he
12 pulled the trigger.

13 You know what, it doesn't matter if Jabez
14 Batiste did. They're both guilty I submit to you he
15 did pull the trigger. But the theory of the hand of
16 one says you don't even have to find that.

17 Mr. Runyon is going to have a chance to speak
18 when I'm finished, and I won't have a chance to speak
19 after that. But I want to anticipate some of the
20 things he may or may not say, and some of the
21 questions that may be going through your all's mind.

22 I often analogize a defense in the case with
23 what I've often heard is what Jewels Burns wrote in
24 20,000 leagues under the sea. But he talked about the
25 giant squid or the giant octopus. And what he says is

1 that the giant octopus doesn't have any kind of claws
2 or any kind of teeth to defend itself. What the
3 octopus does have is an ink sac. And the octopus,
4 when in danger, does not fight back, the octopus
5 deploys the ink sac and tries to obscure the facts,
6 tries to create confusion.

7 And you've heard a lot in this case of what I
8 call the octopus approach to defending somebody who is
9 truly guilty. The defense attempts to obscure the
10 facts. And the defense approach is nothing more than
11 distractions, and you've heard some of them in this
12 case being asked on cross-examination questions.

13 The one that we have heard a bunch of times, no
14 one who knew him saw him pull the trigger. What does
15 that ignore? The fact that we know the short guy
16 pulled the trigger, and everybody else is tall.
17 Nobody saw his face, nobody saw him pull the trigger.
18 That doesn't mean you can't find he did it.

19 In fact, it may be even stronger than somebody
20 identifying his facial features. Knowing how tall
21 somebody is when everybody else is a lot taller is a
22 lot more trustworthy than trying to identify
23 somebody's face among the group.

24 The prints. So his prints are on the car,
25 what's the big deal. He just happened to be out

1 there. His prints are all over that car. You cannot
2 deduct the value of that physical evidence because of
3 the quantity and because of the location. So what?

4 That's right where Bernard Green and Travis
5 Simmons say somebody was at when shots were being
6 fired. Who pulled the trigger? The guy whose prints
7 are sitting on the car right where you would think.
8 All his left hand because his right hand has got a
9 .9mm in it, he is shooting at people. The prints in
10 this case are important, and it's not mere presence.

11 The gun, nobody found the gun. You know what?
12 People that shoot other people with a gun tend to get
13 rid of them. That's not anything but a distraction.

14 Batiste shot also. Jabez Batiste might have
15 fired shots. Sure he might have, Quinton Jenkins
16 certainly did too. If Jabez Batiste did that, that
17 doesn't excuse Quinton Jenkins from shooting those two
18 young men down in that parking lot.

19 Bernard Green and Travis Simmons. We heard
20 some of this. They put those guys up there and the
21 states wants you to believe them. Again don't believe
22 them because they're necessarily good people, believe
23 them because the evidence corroborates them. Better
24 yet, you are going to hear, those guys have charges,
25 they're trying to help themselves.

1 well, first of all, you deserve to hear from
2 them. Second of all, do you really think that if
3 Travis Simmons and Bernard Green were trying to help
4 themselves that's what they would say? How hard is it
5 for Travis Simmons to say, I saw Quinton Jenkins
6 shooting those guys in the parking lot? How hard is
7 it for Bernard Green to say, I saw Quinton Jenkins
8 shooting them in the parking lot?

9 If they're going to come in here and not tell
10 the truth to help themselves, that's what they're
11 going to say. That's not what they said. They're not
12 trying to help themselves, beyond trying to say what
13 they saw. And they realize, you would think, we all
14 know, if they come in here and tell us something
15 that's not true, the evidence is going to tell us it's
16 not true.

17 So the idea that these guys are trying to help
18 themselves doesn't go very far. If they were truly
19 trying to do that, you would expect something far
20 different from what they told you.

21 This broken surveillance camera keeps coming
22 up. Apparently nobody can get murdered, murder
23 doesn't exist when the surveillance cameras don't
24 work. You don't need the surveillance camera. We
25 don't even know what the surveillance camera may or

1 may not show, where it was located, the quality, all
2 of those things. A distraction.

3 The ammunition. We see that ammunition all the
4 time, it's .9mm. Sure, that alone isn't one thing.
5 But don't think just because one thing in itself isn't
6 enough, that all the things together aren't more than
7 enough.

8 Finally, I have heard this question asked
9 something about a car being lifted up on the truck, as
10 if somehow when the car was put on the truck the shell
11 casings jumped off the ground onto the seat. Or
12 somehow when the car was put on the truck, the shell
13 casing ends up on the windshield. That's a
14 distraction.

15 The car was put on a truck. The shell casing
16 might have rolled around, but it didn't jump off the
17 floor. And there was no testimony the truck was going
18 and the car flipped over, rolled over. Again, it's a
19 distraction. That means nothing, a car being put on a
20 truck, a flatbed and pulled it up. Sure a shell
21 casing might have rolled around a foot, two feet.
22 Casings are all over the inside of that car. Being
23 put on the truck makes no difference.

24 And what these distractions try to do -- I'm
25 sorry, one more thing I forgot about. The defendant

1 goes to work at Taco Bell after he kills two people.
2 That's horrible. Shooting two people down in the
3 middle of the parking lot and being so callous as to
4 then go to work later on that night as if nothing has
5 happened. It's horrible.

6 But certainly it's not a case where the plan
7 was to go murder some people. I don't think there has
8 been any evidence in this case that it was anything
9 more than a drug deal where they were going to rip
10 them off. And then when something happened and the
11 shooting started, the quick decision to kill them was
12 made.

13 So, don't think that Quinton Jenkins said, you
14 know, I think tonight I'm going to go fit in a couple
15 murders before I go to work at Taco Bell. That's not
16 what happened. But the simple fact is he was going to
17 fit in a drug deal and a drug ripoff. And the fact
18 that he had to kill some people, meant he still had to
19 go to work that night and he did.

20 The fact that he did went to work certainly
21 doesn't mean that he couldn't have committed two
22 murders. That, ladies and gentlemen, is a
23 distraction. What it does is try to obscure the
24 evidence, and I'm not going to beat the evidence into
25 the ground anymore.

1 The height, the weight, the prints, the working
2 together, the fighting over the chain, the ammo in the
3 house, the admissions and confessions, the undeniable
4 fact that this defendant was a part of a drug deal, a
5 part of a robbery, and people got murdered in the
6 process.

7 The Judge is going to instruct you on what the
8 burden of proof is. She will tell you, proof beyond a
9 reasonable doubt is proof which leaves you firmly
10 convinced of the defendant's guilt. You have to be
11 firmly convinced that he is guilty to convict him.
12 And certainly, she'll tell you as well, proof beyond a
13 reasonable doubt is not proof beyond all doubt. There
14 are very few things in this world that we are all 100
15 percent certain of.

16 And sitting as juror, we don't always have all
17 the answers. In fact, you cannot be expected to. If
18 you did, you would be a witness up here testifying,
19 not a juror. There's going to be some things that you
20 don't know, but still can be firmly convinced of the
21 defendant's guilt.

22 The analogy I use is this photo. And if you --
23 when I first saw this, I did not know who the other
24 president was. When you see this you say, I know who
25 these three presidents are, I know there is somebody

1 else behind there, I don't know who it is. But the
2 point of all this is you don't have to know what is
3 behind that to know that this is a picture of Mt.
4 Rushmore. You may not be able to name all the
5 presidents. You may not even be able to say who this
6 president is. But you are certainly firmly convinced
7 that this is still a picture of Mr. Rushmore even
8 though you cannot see all of it.

9 And some of these things we have in this case,
10 there's questions. And it would be great if the Pope
11 and the Mother Theresa were the witnesses to every
12 crime and they could raise their hand and we would
13 instantly believe them. I'm not going to tell you it
14 wouldn't be nice to have that murder weapon. But
15 criminals get rid of them.

16 There are certainly some things it would
17 be nice to have. However, not having them does not
18 create a reasonable doubt. And this is simply an
19 example. Even though you don't have everything, you
20 still know what we have. And in this case even though
21 we don't have every single question answered, we know
22 beyond a reasonable doubt that this defendant pulled
23 the trigger and this defendant was involved in an
24 illegal purpose, a ripoff, and everything that occurs
25 as a natural consequence of that.

1 This case is sad and it's tragic. And there
2 may be no better example of the senselessness of
3 drugs, and the violence that goes along with it. But
4 it is noting more than a cold-blooded murder in a
5 parking lot. It's nothing less than that.

6 Quite simply, what happened? We know that
7 Kareem Shakoor was going to go catch a sale that
8 night. Alronza Jones said Kareem was on his phone,
9 I'm going to go catch a sale. We know he worked with
10 Channing walker, and him and Channing walker got
11 together and went over to the McDonald's.

12 We know Jabez Batiste was going to go rip those
13 guys off when he was calling Kareem. He was going to
14 set up the drug deal and then rip him off. And we
15 know that he wasn't going to do that alone. He wasn't
16 go to rip somebody off with one person. You bring
17 double what they got, so he got three of his buddies;
18 got Travis Simmons to drive, Bernard Green, Quinton
19 Jenkins.

20 He went and picked those guys up and he told
21 them what it was, says it's going to be a robbery,
22 we're going rip off those pills. If the price ain't
23 right, we're going to take them. And they all went
24 over there for that purpose.

25 And when they got there they pulled up, there

1 are two guys in the car. So Jabez Batiste and Quinton
2 Jenkins go, two of them. They talk with Kareem
3 Shakoor at that door and they discuss -- we don't know
4 exactly but I suspect probably a discussion about the
5 price because we know when they come back they say, we
6 need some money to make it look real. If the price
7 ain't right we're going to take the pills.

8 I guess the price wasn't right so they go back
9 to take them. They come back to get more money, make
10 it look real so they can get closer to these guys
11 before they rob them. When they do that they go back
12 around to the other side of the car. Jabez Batiste
13 puts his hand on that door, opens it up, gets inside
14 and leaves that print right above the door handle,
15 sits in the front seat.

16 Quinton Jenkins maybe gets in the back, maybe
17 stays outside. He definitely is at the back end of
18 that car with his left hand on it. And when they go
19 back in there to try to make it real, then they start
20 robbing them. Remember what Travis Simmons heard
21 Bernard Green say, them boys are giving it up now.
22 They're robbing them. They get that gold chain, they
23 get the necklace. The \$10 is in Kareem Shakoor's
24 hand. And something happens, a gunshot goes off, and
25 all of the sudden people start running.

1 It looks like Kareem Shakoor got hit either
2 immediately after getting out of the car, in a hurry,
3 leaves the keys in it, the car's running, leaves the
4 door wide open. He gets out and runs towards the
5 McDonald's, heads for safety. Channing walker is in
6 the back. He gets out in the front. And as Quinton
7 Jenkins is around the top of that car firing shots,
8 coming around, Jabez Batiste is getting out too, and
9 he is heading back toward where the car is parked. As
10 he is doing that Channing walker is getting out the
11 front, Kareem Shakoor is running.

12 And this is where the defendant catches them
13 both right there. As Kareem Shakoor is running
14 towards the McDonald's, shoots him down. As Channing
15 walker is either getting out of that car or standing
16 up in that doorway, he shoots him down too, hitting
17 him several times. One of those bullets is going
18 right through the door. You can tell right where
19 Quinton Jenkins was standing.

20 It looks like probably Kareem Shakoor got hit
21 in the arm, it broke his arm. Because the last shot
22 in the back is coming from that side. If you look at
23 the diagram in this case you can see Quinton Jenkins
24 right in the middle of all that.

25 Those casings are bouncing out. He is up close

1 on Channing walker. And as he is shooting maybe those
2 casings are bouncing into the car, bouncing over the
3 car. As he is shooting at the side door the casings
4 are bouncing.

5 The thing that is very hard to explain when we
6 look back on a case like this is how fast that would
7 have had to have happened. Think about what Crosby
8 said. Think about what Debra Heyward said. It's a
9 burst of gunfire bang, bang, then a couple seconds,
10 maybe half a second then more shots. People are
11 running, people are scared, people are moving fast and
12 this defendant has decided in an instant, somebody
13 moved, I had to shoot them. Somebody was running, he
14 shot them.

15 He makes a quick decision. But you know what?
16 He is in it for a robbery. When you are going to be
17 robbing somebody, you're backing somebody else up, you
18 got to start doing the shooting because that's what
19 you do. He was there to back up Jabez Batiste, he was
20 there with the gun, and when things started going bad
21 he cleaned up. He shot both those young men down in
22 the parking lot over nothing more than 25 ecstasy
23 pills.

24 After he does that, he finally catches up with
25 Jabez Batiste. Batiste apparently runs right back to

1 the car because he was the first one in. Batiste gets
2 back in the car. Quinton Jenkins gets back in the
3 car. And as they drive away Bernard Green says, what
4 did you do that for? what was that all about? Jabez
5 Batiste says, what was that all about? Quinton
6 Jenkins, they were moving, somebody moved, I shot
7 them. Admits to it. Cold blooded murder over nothing
8 more than 25 ecstasy pills and a chain.

9 As they drive back, they get back to where
10 Quinton and Bernard get out, what does this defendant
11 do? Argues over the chain. I just shot two people, I
12 deserve something, give me the gold chain. Jabez
13 Batiste tells him no, and then finally concedes. I
14 will give you the gold chain for killing both of them.

15 Jabez Batiste apparently keeps the pills.

16 Quinton Jenkins then goes in the backyard and
17 talks to people about what happened. Michael Hodges
18 knew what they were going out to do. They go back and
19 say how it went; shot the two guys, they were moving.

20 Jabez Batiste and Travis Simmons go back, drop
21 off the car. Couple days later Travis Simmons -- or
22 shortly after Travis Simmons gets a call from Jabez
23 Batiste, offers him some money, maybe to keep quiet,
24 maybe for the work he did driving the car.

25 Next thing that happens Detective David

1 Osborne, Detective Barry Goldstein, Detective Jerome
2 Flemming get involved and they work the case, along
3 with the work we expect from ordinary, brave citizens,
4 Mr. Gianatas, Ms. Heyward and Mr. Crosby.

5 Every time I see a case like this, these detectives
6 did not make a distinction. You heard David Osborne
7 say, when he first got out there it looked like it was
8 some kind of drug transaction. He's seen it before,
9 he's got the instinct. He is a violent crimes
10 detective. You heard their resumes. They're the best
11 you are going to find in the City of Charleston. I
12 submit the best you are going to find just about
13 anywhere. He knows this is a drug case. He knows
14 there is something going on here and they knew each
15 other and the phone call, but what's he do? He works
16 the case.

17 There is a quote I heard, and I don't remember
18 where and when it was said, but Martin Luther King,
19 Jr., said once that justice denied anyone is justice
20 denied everyone. And that's what these detectives do.
21 They don't make distinctions on the fact that somebody
22 might have been involved in a drug deal. They look at
23 two young men that were killed, who have families,
24 that were taken too soon, were taken too tragically
25 and they worked the case.

1 we heard testimony that was very quick. They
2 may have seemed like it was drug out, but you have to
3 remember those crime scene officers are out there for
4 hours and hours and hours. These detectives are
5 working for days and days and days following up leads,
6 checking the phone, interviewing every person and
7 having them write down a statement at the McDonald's,
8 going to the Burger King and taking those statement,
9 going out to will Crosby's house, they worked the
10 case.

11 And eventually it pays off. They get to Jabez
12 Batiste, they get information from Jabez Batiste, they
13 get search warrant after search warrant after search
14 warrant, they find every piece of evidence that
15 they're going to find, they interview every witness
16 that they're going to interview, and at the end of the
17 day they put together a case I'm proud to present to
18 you all in this courtroom. It proves the guilt of
19 this defendant and also the guilt of Jabez Batiste
20 beyond any reasonable doubt.

21 Quite simply, the people that acted in this
22 case, this defendant and Jabez Batiste got out of the
23 car, Travis Simmons and Bernard Green stayed in the
24 car. What is the natural and probable consequence the
25 law talks about of doing this? Shooting and murder.

1 You go for a drug deal, you go for a ripoff, the
2 natural consequence of that is people getting killed.
3 And make no mistake about it, drug dealing is a
4 dangerous business, people bring guns, people get
5 killed. He brought a gun, he killed people when it
6 had to be done. Pulled the trigger, flat out
7 committed cold-blooded murder.

8 You stay in the car, you can argue that you are
9 still part of that illegal purpose, but there is
10 certainly a distinction to be made between the people
11 that stayed in the car, and the people that got out.
12 And you can argue and you can beat to death what that
13 distinction is and whether Travis Simmons might
14 shouldn't have gone up in this part of the group,
15 guilty of murder.

16 But you know what, today is the day in court
17 for Quinton Jenkins. He's the only one in front of
18 you. Jabez Batiste gets his day in court too. But
19 right now it's Quinton Jenkins.

20 And despite these three people, there is no
21 question that the law says under the hand of one
22 theory, if you are engaged in an illegal purpose, a
23 drug deal, a ripoff, and somebody gets killed, you are
24 responsible for those murders. And that again, he is
25 responsible, he flat out pulled the trigger.

1 As I said at the start of this case, and I will
2 say it again, it's about choices. The choice to get
3 involved in a drug deal. And it's about consequences,
4 responsibility for murder when it happens. When you
5 pull the trigger, when you get involved in a drug
6 deal, when you plan a ripoff.

7 You all stood up here at the start of this
8 case, raised your hands and took an oath. That oath
9 is to return a fair and just verdict. To find a true
10 and just verdict. And this case, as sad as it is, as
11 unfortunate as it is, it's not complicated, it's quite
12 simple. This defendant was involved in a drug deal
13 and a murder.

14 He gets his day in court. He has had his day
15 in court. He is entitled to it. And our system has
16 to be that way, there's no better system in the world.
17 Everybody is entitled to a fair trial, have their day
18 in court. But you know what, he has gotten that. And
19 now the state is entitled to a verdict in this case.

20 The case has been proven by the detectives, by
21 the people that stood up and did the right thing. I'd
22 ask that you look at this case and find it's about
23 choices, that it's about consequence, ask that you do
24 what you took an oath to do and let your verdict
25 reflect the truth.

1 There is only one truth in this case. This
2 defendant is guilty of two counts of murder, he is
3 guilty of possessing a firearm during that crime. I
4 ask you do what you took an oath to do and find him
5 guilty of those charges.

6 THE COURT: Madam Forelady, ladies and
7 gentlemen, you all have been sitting about an hour.
8 I'm going to give you a very brief restroom break
9 after which we will resume argument. During this
10 break please do not discuss this case in any manner
11 whatsoever. Please leave your notepads in your seats.

12 And I'm going to give you about ten minutes to
13 refresh yourselves and once that is completed we will
14 then resume argument. If you would go with the
15 bailiffs for me, please.

16 (whereupon, the jurors exit the courtroom.)

17 THE COURT: Is there anything before we take a
18 break from the state?

19 MR. WILLIAMS: No, Your Honor.

20 THE COURT: From the defense.

21 MR. RUNYON: I just needed to clarify
22 something, Judge. Mr. Williams indicated that after I
23 speak he got a chance to talk and I don't think that's
24 the rule.

25 THE COURT: I did not hear that.

1 MR. WILLIAMS: I said the opposite, Judge. If
2 I did I misspoke.

3 MR. RUNYON: I just wanted to make it clear.

4 THE COURT: I didn't hear him say that. We
5 will be at ease for ten minutes.

6 (Whereupon, a recess was taken.)

7 THE COURT: Is the state ready to proceed?

8 MR. WILLIAMS: Yes, Your Honor.

9 THE COURT: Is the defense ready to proceed?

10 MR. RUNYON: Yes, Your Honor.

11 THE COURT: Please bring in the jury.

12 (Whereupon, the jurors enter the courtroom.)

13 THE COURT: Ladies and gentlemen, we will now
14 resume with the closing arguments.

15 Mr. Runyon, you may proceed.

16 MR. RUNYON: Thank you, Your Honor.

17 Madam Forelady, ladies and gentlemen of the
18 jury, prior to getting into a lot of details, I have
19 to suggest to you that I'm not really sure what the
20 state's position is on a lot of thing.

21 I know their position on the defendant's
22 getting a fair trial. Well, they're just going to
23 obscure, and they don't say they're going to lie to
24 you or anything like that, or kind of indicate that.
25 I just want to tell you, since we have seen Mr.

1 Rushmore, there is an unpleasant -- I want to tell you
2 where this process we've got comes from.

3 Prior to 1776 there was this unpleasantness in
4 Boston, Massachusetts where people were shot on the
5 Boston Common, called it the Boston Massacre. And
6 they indicted the young lieutenant who commanded the
7 British troops that fired into the crowd.

8 And that was a big political thing, what have
9 you. And it came to a young lawyer and they said, we
10 need for you to defend the lieutenant. And he said,
11 well, I don't know, I'm just starting my practice, and
12 this is not a popular thing to do, and golly day. You
13 know, and they said, no, we need -- nobody else will
14 did it, et cetera, that sort of thing.

15 So he did. And the young lieutenant was
16 acquitted in a fair trial. And that was one of John
17 Adam's first big cases. And he later on went on,
18 nobody held it against him, later he went on to be
19 president of the United States.

20 Won't happen to me. But the simple fact is, is
21 this defending people in this courtroom is the right,
22 honorable thing to do. And we have to argue about and
23 talk about things, and all this stuff about
24 obfuscation and what have you, we will talk about how
25 the state likes to obfuscate, and how the state likes

1 to ignore things in this case.

2 Now, this case started before January 4th, when
3 on a particular dark night in December 2006 Mr.
4 Shakoor met with Mr. Batiste -- now we have heard a
5 lot about Mr. Batiste, we are going to hear a lot more
6 about him in just a few minute -- in a parking lot in
7 a Food Lion in North Charleston.

8 And we know that happened because they brought
9 Mr. Alfonza Jones in here. Remember, he's the big
10 fellow. He didn't necessarily want to be here, but he
11 knows about that drug deal because he was there. He
12 was there.

13 Now apparently that went well and Lord only
14 knows how many other times this guy Batiste, in
15 operating his business, has dealings with Mr. Shakoor.
16 So on the particular day in January, Mr. Batiste
17 apparently sets up a buy from Mr. Shakoor. And we are
18 not going to go over every little detail of this, but
19 to refresh your recollection, if your recollection has
20 had any time to dim, the simple fact of the matter is
21 is Quinton Jenkins didn't have anything to do with any
22 dealings of Mr. Batiste until he got in the car with
23 Mr. Green and they rode over to McDonald's that night.

24 Now he didn't even drive the car. Remember,
25 Mr. Batiste -- apparently he is not a very gallant

1 gentleman because he borrows his girlfriend's car and
2 then doesn't take it back to her. But the simple fact
3 is that he borrows the car, apparently drives it
4 around until he gets a-hold of Mr. Simmons, without a
5 license, says, Mr. Simmons I need you to drive the car
6 because I don't have my license. At least that's what
7 Mr. Simmons testified to.

8 And he says, we have got to pick up some other
9 folks. And so apparently Mr. Batiste called somebody,
10 and in the final analysis Mr. Bernard Green and Mr.
11 Quinton Jenkins get in the car and a lot of people
12 don't remember what Quinton Jenkins was wearing that
13 night, but then a lot of people remember he was
14 wearing his Taco Bell uniform because he had to go to
15 work that night, number one. And that's important
16 from the viewpoint of whether he even had a weapon.

17
18 And we will talk about that in a few minutes
19 and get into an area of obfuscation that the state has
20 done as it relates to all the shooting and what have
21 you.

22 They go over to McDonald's. Now remember this
23 big sign up here, Mr. Williams put up there for you,
24 about the hand of one is the hand of all? well,
25 that's not so. You heard from two people that were in

1 that car, they ain't going to have any trouble with
2 murder. It's accessory after the fact, maybe go to
3 prison for a few years and then they'll walk. That's
4 the deal the state made.

5 okay. They were part of the transaction.
6 They, according to the state's position, knew that
7 there was going to be a drug ripoff. And at least
8 that's what the state wants you to believe. And
9 that's what they say their evidence proves. That's
10 fine.

11 So, Quinton Jenkins and Batiste get out of the
12 car. And according to -- and there is a number of
13 witnesses that we have to talk about, at least coming
14 from the viewpoint of Mr. Simmons and Mr. Green, he
15 follows, or goes simultaneously, with Mr. Batiste to
16 the red car.

17 Now, there is a lot of talk about, you know,
18 the surveillance camera. Oh, that's obfuscation,
19 that's just the lawyer, that's just John Adams trying
20 to lie about the English Lieutenant giving a command
21 to fire. Well, if you are in the fast food business,
22 as he is, he knows about the surveillance cameras and
23 the surveillance camera, as you can tell from the
24 pictures, is right across from this place. So if he
25 was going to go over there to shoot somebody and

1 planning to do all this, for all he knows that camera
2 is working it didn't go out until 4:00-something that
3 afternoon. He didn't work at McDonald's. That's why
4 that's important, that's a fact or a factor that you
5 can consider in determining his intent at the time he
6 got out of that car.

7 Okay. It's not obfuscation. And you can say,
8 because it's your duty and your job, you can say,
9 we're not going to worry about the camera, whether it
10 was there or not. We are just going to discard that,
11 that's for you to do. But it's for us to call it out
12 to you, call your attention to it.

13 They get out and they go over to the car. I'm
14 not really sure, you take your recollection, don't
15 take mine, I'm not really sure what Mr. Simmons really
16 tried to tell you. He wasn't paying attention but
17 then he was. And they went over and I think he said
18 he saw them go to the right side of the car, okay.
19 And then later on they came back and then there was
20 some different testimony about eventually they got
21 around to the other side -- excuse me, to the left
22 side of the car. And then eventually they went back
23 and got around to the right side. That's between Mr.
24 Green and Mr. Simmons.

25 And Mr. Batiste gets inside the car. How do we

1 know where Mr. Quinton Jenkins was? By the state's
2 physical evidence; the fingerprints, the handprints on
3 the window and on the trunk. He's standing back
4 there. Got to remember where he's standing at the
5 time this whole thing gets started.

6 Now Mr. Batiste is in the car and he is doing
7 whatever he is doing because he is the drug dealer,
8 okay. And you can say, well, that's all right Mr.
9 Jenkins and these other guys they're his backups,
10 they're just as guilty. Okay, that's fine.

11 And what happens? What happens that we know is
12 reported by a witness, Mr. Simmons, Mr. Green, both,
13 there is a flash inside the car. Now when Mr. Simmons
14 and them drove up, there were two people in the red
15 car. One person sitting in the driver's seat and one
16 person is sitting in the backseat. So, this whole
17 thing about Mr. Jenkins getting in the backseat, that
18 just didn't happen. That just didn't happen.

19 okay. For whatever reason one of the
20 individuals was sitting in the backseat. Mr. Batiste
21 sits in the front seat. And the transaction commences
22 and something goes terribly arey. Mr. Jenkins is
23 standing by the back of the car, hands on the trunk,
24 hands on the window, whatever. How do we know that?
25 Because of their physical evidence.

1 And there is a flash from inside of the car.
2 They don't say which way the flash is going, but there
3 is a flash inside of the car. Not from outside, but
4 inside the car. Somebody inside the car shot. Mr.
5 Batiste?

6 Remember what the pathologist said? I can't
7 tell you how the people were located when they were
8 shot, whether they were standing up straight, laying
9 on the ground, sitting in a chair, or what have you.
10 But I can tell you that the wounds were right to left,
11 particularly Channing Walker, and except for the wound
12 in the back, Mr. Shakoor had right to left wounds for
13 the most part.

14 What is that consistent with? The person
15 sitting in the right seat of that car initiating the
16 gunfire, initiating the shooting of people. Just that
17 simple. And that wasn't Quinton Jenkins. That wasn't
18 Quinton Jenkins. Mr. Batiste.

19 Now, their expert witnesses came in, and here
20 is where the state wanted obfuscation. The lady from
21 SLED who analyzed the gunshot residue kits, and
22 remember I believe Sgt. Hood -- anyway, the police
23 officer up here -- and I gave him my hands and said,
24 how do you do a gunshot residue test? And I gave him
25 my hands and he said, do it over here and do it back

1 here. And the lady from SLED said that the results of
2 that test, I believe on Mr. Channing Walker, is
3 consistent with the following two hypotheses.

4 One -- I'm not trying to blow this ink that he
5 talks about, as a matter of fact, I don't even like to
6 go in the ocean let alone get involved in arguments --
7 the simple fact of the matter is there are two
8 hypotheses.

9 One is that Mr. Walker and Mr. Shakoor were in
10 the general vicinity, in close proximity to a gun
11 being fired. What is close proximity? That is up in
12 the air, we don't know. Two or three feet? Sure.
13 What did the pathologist tell you? This gunshot wound
14 is 24 to 36 inches. Last time I checked the Honda
15 Accord looked in that picture like it was more than
16 three feet wide.

17 Now, that is one hypothesis. Maybe they put
18 their hands up, maybe they were trying to grab a gun,
19 okay. Trying to grab a gun, Mr. Jenkins is outside,
20 they ain't grabbing no gun from Mr. Jenkins, if he has
21 it he's outside the car because his hand's out there.
22 But Mr. Batiste is sitting in that seat.

23 Now the second hypothesis that is presented to
24 you by the state's evidence is Mr. Channing Walker's
25 gunshot residue test, which is consistent as their own

1 expert said, with having fired a weapon. That's what
2 their expert said. We didn't bring some fancy expert
3 from New York City. You know, you don't buy salsa
4 from New York City and you don't bring experts from
5 New York City. Their expert said it's also consistent
6 with somebody have at least fired a gunshot Mr.
7 Channing walker.

8 At some point in time -- and, you know, even
9 Mr. Williams says, when you got drug deals you bring
10 guns to them. Now we did not hear anything about
11 their having guns because there weren't any guns when
12 Mr. Gianatas got there, and I don't think any of these
13 fine police officers would deep six any evidence like
14 that. But the simple fact is is that you bring guns
15 to drug deals for your own protection. That's what
16 Mr. Williams said. I don't know, I haven't been at
17 this for 40 years so maybe he is right, I just haven't
18 had the experience.

19 The simple fact is is that whatever started
20 started in that car, he was outside that car. He was
21 outside that car. Because that's what their physical
22 evidence says.

23 Now, the gunshot wounds, two of these
24 individuals were right to left, except for the shot in
25 the back of Mr. Shakoor. Right to left is consistent

1 with someone being in the right-hand side of that car
2 firing shots.

3 Now, Mr. Jenkins -- strike that. Remember
4 there wasn't blood, at least as found in the car. At
5 least the crime scene people did not find blood in the
6 car. But what did the -- and even if you look at
7 their crime scene photos you see, I believe with Mr.
8 Shakoor who kind of went across the parking lot a
9 little ways before he collapsed, there is small trail
10 of blood. But there isn't a trail of blood all the
11 way to the car from either side.

12 So it took a while for that wound to start
13 pumping out blood to the exterior. Remember what she
14 said, both of them, particularly in the chest cavity,
15 I believe Mr. Shakoor, the blood kind of pooled up.
16 And Mr. Williams said, and you take your recollection
17 over mine, he says, well, wounds like that they're
18 going down right away. She said, no, matter of
19 seconds to a minute or two. Each individual is
20 different. In a few seconds you can win the Super
21 Bowl. And I'm not trying to make this funny or
22 anything but I mean it's that simple. Seconds can be
23 an eternity.

24 Now, they get back in the car; Mr. Jenkins and
25 Mr. Batiste. Mr. Green is, as you can tell, he was a

1 little bit shaken by all of this. Mr. Simmons, you
2 know, the guy who wasn't involved even though the hand
3 of one is that hand of all, his main interest is the
4 fact that he needs to get paid. Remember he is going
5 to get paid for driving the car. He knew there was
6 going to be a drug deal.

7 And they drive off. And they drop Mr. Green
8 and Mr. Jenkins off. And there is talk about Johnson,
9 Hodges, and all that sort of stuff, talking about how
10 Quinton owned gun or had a gun or thought they saw him
11 with it. But they never saw him with it that day.
12 Never saw him with it that day.

13 Now what do we know is the state's position on
14 this case? The state's position is that there was one
15 weapon which fired all the casings. Remember that,
16 one weapon. That's their theory and that's what they
17 tried to prove. And that one weapon was fired inside
18 that car by somebody. Inside the car. Now,
19 you know, you make light of the fact that you know the
20 -- whether or not the automobile was towed in one way
21 or the other. The simple fact is the evidence
22 technician went out there, opened it up to take care
23 of the inside of the car and do her job and there are
24 shell casings inside the car, shell casing in the car.
25 And they want to discount, well, they could have done

1 all sorts of machinations and what have you.

2 And it is important how the car gets there
3 because shell casings were on the front floorboard,
4 they could have been rolled to the back. If they were
5 towed from the backside, could have rolled towards the
6 front. One was under the front passenger seat.
7 Remember that?

8 So how they got where they got could be
9 affected by the way the car was transported.
10 It doesn't make it a bad thing on the part of the
11 police, it's just a fact of life.

12 Now, but it does not answer the question of how
13 they got inside the car if the gun wasn't fired inside
14 the car. The gun. The gun. Because that is the
15 proof that they presented to you. The gun fired the
16 shots.

17 Now let me get right to the point here, because
18 I'm not good at obfuscation, contrary to -- Mr.
19 williams gives me more credit than I can really take.
20 I'm not good at obfuscation, doing all the skeet thing
21 and all that sort of stuff. That must have been a
22 great session at some prosecutor's seminar one day,
23 using the octopus example.

24 The problem you have as a jury is that Mr.
25 williams is absolutely correct, the hand of one is the

1 hand of all. And all four of these young men are
2 guilty of murder if it happened like he said. Except
3 what? Except Mr. Simmons isn't facing murder. He is
4 not facing life. Mr. Green isn't either.

5 Remember that pictorial up there about choices?
6 Well, the state made some choices in this situation.
7 And their choice was, well, he was outside the car so
8 we are going to try to hang him with the whole thing.
9 we will let the others do something else.

10 Now you will not have, you will not have before
11 you a charge of accessory after the fact for Quinton
12 Jenkins. You just won't have that. He is either
13 guilty of murder or manslaughter. But the simple fact
14 of the matter is it's our position that no one said,
15 we're going to go over there and we're going to kill
16 these people. No one said anything other than the
17 fact that if the price isn't right, according to the
18 evidence they presented, you know, we are going to do
19 a rip. We are going to take the drugs and go.

20 Now the natural consequences, and Mr. Williams
21 is right, the consequences of your actions, if you
22 stand as a lookout when your friend goes in to rob a
23 bank and they shoot somebody, you could be found
24 guilty of that murder unless, of course, the state or
25 government wants to let you plead to accessory after

1 the fact.

2 Now, Ms. Heyward -- and let's face facts. I
3 mean Ms. Heyward is a very nice lady, just doing her
4 duty as a citizen. Was out in the parking lot
5 checking on things and she hears shots and she looks
6 and she is not anticipating seeing this, not at the
7 corner of Orange Grove Road and Sam Rittenberg, but
8 there it is.

9 And she says, what? There are four or five
10 people. The shorter guy, she thought, was doing the
11 shooting. But she really didn't see the gun. And she
12 did not see the flashes in the car.

13 So there are -- you'll have them in this whole
14 box here and I'm not going to pull them all out for
15 you, that was very laborious, wasn't it, sitting here
16 and this exhibit, that exhibit, this exhibit. There
17 are four shells inside the compartment of the car as I
18 recall. Those came from the weapon in the car.

19 Now did Mr. Batiste have a .9mm? Could have.
20 Did Mr. Channing Walker or maybe Mr. Shakoor say,
21 look, Batiste, you've got come up with the money. I
22 mean we ain't going to front you these drugs. And
23 you're acting real hinky, so they pull out the gun and
24 things go to hell in a hand basket to be blunt about
25 it. Batiste grabs the gun, there is a flash and then

1 the shooting starts.

2 But the simple fact of the matter is is that
3 their theory of the case, their theory of this case is
4 not accomplice liability. Talk about obfuscation.
5 Their theory in this case is that Quinton Jenkins shot
6 these people all these times from standing outside the
7 car. Just couldn't have happened that way as far as
8 he is concerned.

9 Take the angles of the bullets, and the level
10 shots -- and you'll have the diagrams, and I'm not
11 going to stand up here and belabor that. They weren't
12 up, they weren't down, they are pretty consistent,
13 they were right to left. And the bullet hole in the
14 car door. Could it have occurred when the door was
15 open? Yes, it could have, except what? I believe it
16 was Sgt. Hood that did a trajectory with the green
17 tubes. That came inside the car, somewhere inside the
18 car most probably based upon their evidence.

19 Now my client is guilty of being an accessory
20 after the fact. He didn't call the cops, just like
21 Mr. Green, he didn't call anybody. He went on to
22 work, he didn't call the police. He also didn't have
23 this great deference shown to him. And I don't
24 understand that. There is nothing illegal about it,
25 where you go up to Denmark Tech and you meet with Mr.

1 Batiste, and you invite him to drive back to
2 Charleston with you, and then you drive him back to
3 school.

4 No, he wasn't given that deference. It just
5 doesn't fit that the man who sets up this whole thing,
6 who was a drug dealer, who was at least a drug dealer
7 from December if not before, should be given all this
8 deference, and they want to take the position that
9 Quinton Jenkins is in fact the shooter.

10 Now let's talk about what you have the ability
11 to do as jurors. You have the ability as jurors to
12 say, state, your theory is he was a shooter, we are
13 not going to find him guilty of that. That's it. Or,
14 you have the ability to say, well, he wasn't the
15 shooter but all this accomplice liability, we don't
16 care about these other people going their merry way,
17 we will find him guilty because he was involved;
18 whether he fired the shots or not. That's your
19 prerogative as jurors.

20 The judge is going to give you the law. You
21 also have the ability to find him guilty of
22 manslaughter, as the Court is going to give it to you.
23 Okay. Now they're going to tell you in the charge on
24 murder that the use of a deadly weapon can indicated
25 malice. But if you don't have the element of malice,

1 as you all perceive it, whether that's because Mr.
2 walker shot or what have you, you can find my client
3 guilty of manslaughter. If you want to buy their
4 theory that he fired some shots.

5 It's not obfuscation, these are the sad facts
6 of life, this young man's life. Absolutely,
7 positively.

8 Now do we want to approve of this kind of
9 conduct in our community? My law office is right
10 around the corner from this place. Right around the
11 corner, go up Orange Grove a little bit, behind Bobby
12 Hartman's and there I am. I have been, as you might
13 have gathered, I have been to that Burger King more
14 than one time. And every time they bring back the
15 McRib I go get one.

16 So I don't to be in a parking lot one night,
17 and I don't want my wife and my children and my
18 grandchildren to be subjected to that either. But the
19 simple fact of the matter is, that's not what we are
20 here to decide today. We are here deciding what you
21 ultimately find him guilty of, and what the Judge,
22 Judge's instructions to you are.

23 I'm going to ask you to find -- and since you
24 can't find him guilty of accessory after the fact like
25 these of two gentlemen in the car got their deals --

1 I'm going to ask you find him not guilty of murder.
2 Just very bluntly.

3 If you want to hold him accountable for any
4 role in these deaths, I would ask you to find him
5 guilty of something less than murder as the verdicts
6 are given to you.

7 And I also want you to find that he is not
8 guilty of possession of a firearm during a violent
9 crime, because they just really haven't proven that he
10 had the weapon. And he wasn't in the car, he didn't
11 -- the flash didn't come in the car. The flash came
12 from the car and he wasn't in the car.

13 It's a tough case, a real tough case. Mr.
14 Williams and I have the easy part of trying these
15 things, okay. Analyze, we have to sweat through the
16 facts, and you finally have to figure out how we are
17 going to present things or defend thing, prosecute
18 things, and then we come in here and when it all comes
19 down to it, after talking to all the witnesses -- and
20 by the way, you know, this is so like a lot of cases.

21 Mr. Gianatas, very competent individual. Law
22 enforcement for 27 years, now he works for another
23 public entity and he does the right thing. The
24 gentlemen across the street at the gas pump, he does
25 the right thing. Ms. Heyward does the right thing.

1 But no one told -- but they couldn't tell us what the
2 whole deal was all about.

3 The police department, they gathered evidence.
4 They gathered evidence. When it all comes down to it,
5 you folks are the ones who have got to decide what all
6 that evidence means, what impact it has.
7 And just because you are a drug dealer doesn't mean
8 you deserve to get shot. And that's not what I am
9 implying to you. But the simple fact is is that when
10 you get into this kind of work, you assume the risk of
11 dealing with a fellow like Mr. Batiste, who in
12 December deals with him, dollar for dollar, and in
13 January is going to rip you off.

14 Now you want to find Mr. Batiste guilty, he is
15 not on trial today; you can find him guilty. Don't
16 visit the sins of Mr. Batiste on Mr. Quinton Jenkins.
17 I ask you to find him not guilty of murder and accept
18 respectfully, we'll accept whatever verdict you all
19 find as it relates to this case. And thank you for
20 your attention.

21 If I have said or done anything during the
22 course of this trial that has offended you, I've only
23 been at this for 40 years, so sometimes I'm still
24 practicing. If I have said or done anything to offend
25 you, it really does offend you, call me up later on

1 and get me down the road for it, I don't mind. As I
2 said I'm still practicing, I'm still learning.

3 I want to thank you for your attention, I want
4 to thank you for your tolerance. I thank you for your
5 verdict. All we can expect is a fair consideration
6 from you as a jury. And I'd ask you to find my client
7 not guilty of the charge of murder. Thank you.

8 THE COURT: Ladies and gentlemen, why don't you
9 all stand a little bit and stretch, get your
10 circulation going, you have been sitting about 45
11 minutes, before we begin the Court's instructions.

12 During this trial, ladies and gentlemen, you
13 and I have certain duties to perform. As the trial
14 judge it is my responsibility to preside over the
15 trial of this case. I also have the duty to pass upon
16 or rule upon the admissibility of the evidence offered
17 during this trial. You are to consider only the
18 competent evidence that is before you, and you are to
19 disregard and disabuse from your mind any testimony
20 ordered stricken from the record in this case during
21 the progress of this trial.

22 You are to consider only the testimony which
23 has been presented from the witness stand, together
24 with any exhibits which have been made a part of the
25 record in this case. And any stipulations of counsel

1 made into the record.

2 I have the additional duty to instruct you on
3 the law applicable to this case. As the presiding
4 judge, I am the sole judge of the law of this case.
5 And it is your duty as jurors to accept and apply the
6 law as I now state it to you.

7 If you have a preconceived idea as to what the
8 law is or what the law ought to be in a case or in
9 this case and it should not agree with what I now tell
10 you the law is, you are obligated under your oath to
11 abandon this preconception on your part because you
12 were sworn to accept the law and apply the law
13 precisely as I now state it to you.

14 In every case tried in this court before a
15 jury, the jury becomes the sole and exclusive judges
16 of the facts in a case. You, the jury, are the judges
17 of the facts in this case. This Court is the judge of
18 the law. The constitution of our state has declared
19 that a trial judge shall not intimate, state, comment
20 upon or make any statement to a trial jury about the
21 facts in a case.

22 Since you, the jury, are the sole judges of the
23 facts in this case, you are not to infer anything from
24 what I have said during the progress of this trial in
25 ruling upon the admissability of evidence or

1 otherwise, or anything that I now say to you during
2 the course of this instruction that I have any opinion
3 about the facts in this case.

4 The law does not permit me to have an opinion
5 about the facts. This is a matter solely for you the
6 jury to determine. As jurors then it is your duty, as
7 I have instructed you, to determine the effect, the
8 value, the weight and the truth of the evidence
9 presented during this trial.

10 Necessarily you must assess the credibility of
11 witnesses who have testified in this case.
12 Credibility is simply a legalistic term meaning the
13 believability of each witness who has testified. It
14 becomes your duty as jurors to analyze and to evaluate
15 the evidence, and to determine that evidence which
16 convinces you of its truth.

17 I instruct you that in determining the question
18 of the credibility or believability of witnesses who
19 have testified in this case, you may believe one
20 witness as against several witnesses, or several
21 witnesses as against one witness. You may believe a
22 part of the testimony of a witness and reject the
23 remaining part of the testimony of that same witness.

24 If you have a good and sound reason, you may
25 believe the testimony of a witness in its entirety, or

1 reject the testimony of a witness in its entirety.
2 You may consider whether any witness has exhibited to
3 you any interest, any bias, any prejudice or other
4 motive in the case.

5 You may consider the demeanor of the witness,
6 that is the appearance and the manner of a witness
7 from the witness stand. You can believe as much or as
8 little of each witness's testimony as you think
9 proper. You may believe the testimony of a single
10 witness against that of many witnesses, or just the
11 opposite. Of course, you do not determine the truth
12 merely by counting witnesses. Throughout this
13 process, ladies and gentlemen, you have but one
14 objective, to seek the truth regardless of its source.

15 The rules of evidence ordinarily do not permit
16 a witness to testify to opinions or conclusions. An
17 exception to this rule exist for witnesses we call
18 expert witnesses. A witness who by education,
19 experience and training has become an expert in some
20 art, science, profession or calling, may state an
21 opinion as to relevant and material matters in which
22 the witness claims to be an expert, and may also state
23 the reasons for the opinion.

24 You should consider any expert opinion received
25 in evidence in this case like any other evidence.

1 Give it the weight you think it deserves. If you
2 decide that the opinion of an expert witness is not
3 based on sufficient education and experience, or if
4 you conclude that the reasons given in support of the
5 opinion are not sound, or that the opinion is
6 outweighed by other evidence, you may disregard the
7 opinion entirely.

8 An expert witness's testimony is to be given no
9 greater weight than that of other witnesses simply
10 because the witness is an expert. Further, you are
11 not required to accept an expert's opinion even though
12 it is not -- even though it is not contradicted.

13 Ladies and gentlemen, an issue in this case is
14 the identification of the defendant as the person who
15 committed the crime charged. The state has the burden
16 of proving identity beyond a reasonable doubt. You
17 must be satisfied beyond a reasonable doubt of the
18 accuracy of the identification of the defendant before
19 you may convict the defendant.

20 Identification testimony is an expression of
21 belief or impression by a witness. You must determine
22 the accuracy of the identification of the defendant.
23 You must consider the believability of each
24 identification witness, and the same way as any other
25 witness. You may consider whether the witness had an

1 adequate opportunity to observe the offender at the
2 time of offense -- at the time of the offense.

3 This will be affected by things like how long
4 or sort a time was available, how far or close the
5 witness was, the lighting conditions, and whether the
6 witness had a chance to see or know the person in the
7 past.

8 Once again I instruct you the burden of proof
9 on the state extends to every element of the crime
10 charged. And this specifically includes the burden of
11 proving beyond a reasonable doubt the identity of the
12 defendant as the person who committed the crime. If
13 after examining the testimony you have a reasonable
14 doubt as to the accuracy of the identification, you
15 must find the defendant not guilty.

16 I instruct you that there are two types of
17 evidence which are generally presented during a trial;
18 direct evidence and circumstantial evidence. Direct
19 evidence is the testimony of a person who asserts or
20 claims to have actual knowledge of a fact such as an
21 eyewitness. Circumstantial evidence is proof of a
22 chain of facts and circumstances indicating the
23 existence of a fact.

24 The law makes absolutely no distinction between
25 the weight or value to be given to either direct or

1 circumstantial evidence. Nor is a greater degree of
2 certainty required of circumstantial evidence than of
3 direct evidence.

4 You should weigh all of the evidence in this
5 case. And after weighing all of the evidence, if you
6 are not convinced of the guilt of the defendant beyond
7 a reasonable doubt, you must find the defendant not
8 guilty. Conversely, if you are convinced of the guilt
9 of the defendant beyond a reasonable doubt, then you
10 must find him guilty.

11 I instruct you that the fact that the defendant
12 was arrested, charged and indicted is not evidence in
13 this case, and it cannot be considered by you as
14 evidence of guilt in this case. Nor does it create
15 any presumption or inference of guilt. This
16 documentation, ladies and gentlemen, are simply the
17 formal written instruments which contain the charge or
18 charges made against the defendant. They serve as the
19 formal documents by which the case is processed or
20 brought into this court.

21 The defendant has pled not guilty to the
22 indictments, and that plea casts the burden on the
23 state to prove the defendant guilty. Because a person
24 charged with committing a criminal offense in South
25 Carolina is never required to prove himself or

1 herself innocent.

2 I instruct you, Madam Forelady, ladies and
3 gentlemen of the jury, that it is a cardinal and
4 important rule of the law of evidence that the
5 defendant in a criminal trial, no matter what the
6 seriousness of the charge made against him may be,
7 will always be presumed to be innocent of the crime
8 for which he is indicted, unless his guilt has been
9 proven by evidence satisfying you of that guilt beyond
10 a reasonable doubt.

11 This presumption of innocence does not cease
12 when you retire to deliberate, but it accompanies the
13 defendant from the time of his appearance, throughout
14 the trial, until you reach a verdict based upon
15 evidence satisfying you beyond a reasonable doubt.

16 Our Supreme Court has said that the presumption
17 of innocence is like a robe of righteousness placed
18 about the shoulders of the defendant, and it remains
19 with him and assigns him to that class, the innocent,
20 until that presumptive robe of righteousness has been
21 striped from his person by evidence satisfying you of
22 that guilt beyond a reasonable doubt.

23 Madam Forelady, ladies and gentlemen, the
24 presumption of innocence is not a mere legal theory.
25 It is not just a legal phrase. It is a substantial

1 right to which every defendant is entitled unless you
2 the jury are satisfied from the evidence of his guilt
3 beyond a reasonable doubt.

4 You may ask, what is a reasonable doubt in the
5 law? This state has the burden of proving the
6 defendant's guilt beyond a reasonable doubt. Some of
7 you may have served as jurors in civil cases where you
8 were told that it is only necessary to prove that a
9 fact is more likely true than not true. In criminal
10 cases the state's proof must be more powerful than
11 that, it must be beyond a reasonable doubt.

12 Prove beyond a reasonable doubt is proof that
13 leaves you firmly convinced of the defendant's guilt.
14 There are very few things in this world that we know
15 with absolute certainty. And in criminal cases, the
16 law does not require proof that overcomes every
17 possible doubt. If, based on your consideration of
18 the evidence, you are firmly convinced that the
19 defendant is guilty of the crime charged, you must
20 find him guilty.

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

24 Ladies and gentlemen, I instruct you and
25 emphasize that the fact that the defendant did not

1 testify is not a factor to be considered by you in
2 any way in your deliberation whatsoever. And in your
3 consideration on the question of the guilt or
4 innocence of the defendant, it must not be considered
5 by you in any manner whatsoever.

6 A defendant has the constitutional right to
7 remain silent, and the assertion of this right must
8 not be considered by you in your deliberations. I
9 repeat and emphasize that under your oath you are to
10 draw no conclusion whatsoever from the fact that the
11 defendant in this case did not testify.

12 The fact that the defendant did not testify
13 should not be discussed in any manner whatsoever in
14 the jury room during the course of your deliberations.
15 The burden of proof, as I have stated to you, is on
16 the state. The defendant is not required to prove his
17 innocence. The burden of proof remains on the state
18 to prove guilt beyond a reasonable doubt.

19 The defendant is charged with murder. The
20 state must prove beyond a reasonable doubt that the
21 defendant killed another person with malice of
22 forethought. Malice is hatred, ill will or hostility
23 towards another person. It is the intentional doing
24 of a wrongful act without just cause or excuse, and
25 with an intent to inflict an injury, or under

1 circumstances that the law will infer an evil intent.

2 Malice of forethought does not require that
3 malice exist for any particular time before the act is
4 committed, but malice must exist in the mind of the
5 defendant just before and at the time that act is
6 committed. Therefore, there must be a combination of
7 the previous evil intent and the act.

8 Malice of forethought may be expressed or
9 inferred. These terms expressed and inferred do not
10 mean different kinds of malice, but merely a manner in
11 which malice may be shown to exist. That is either by
12 direct evidence or by inference from the facts and
13 circumstances which are proven.

14 Expressed malice is shown when a person speaks
15 words which express hatred or ill will for another, or
16 when the person prepared beforehand to do the act
17 which was later accomplished. For example, lying in
18 wait for a person, or any other acts or preparation
19 going to show that the deed was within the defendant's
20 mind would be expressed malice.

21 Malice may be inferred from conduct showing a
22 total disregard for human life. Inferred malice may
23 also arise when the deed is done with a deadly weapon.
24 A deadly weapon is any artful instrument or substance
25 which is likely to cause death or great bodily harm.

1 whether an instrument has been used as a deadly weapon
2 depends upon the facts and circumstances of each case.

3 The following are examples of instruments which
4 may be deadly weapon. A pistol, a shotgun, a rifle, a
5 dirk, a dagger, a knife, a slingshot, metal knuckles,
6 a razor, gasoline, a firebomb or Molotov cocktail,
7 lighter fluid. A gun may be a deadly weapon even if
8 it is not operating.

9 If you find that the state has failed to prove
10 beyond a reasonable doubt that the defendant committed
11 murder, you may consider whether or not the state has
12 proven beyond a reasonable doubt that the defendant
13 committed voluntary manslaughter. To prove voluntary
14 manslaughter the state must prove beyond a reasonable
15 doubt that the defendant took the life of another in
16 the sudden heat of passion, based on sufficient legal
17 provocation. Both heat of passion and sufficient
18 legal provocation must be present at the time of the
19 killing to constitute voluntary manslaughter.

20 Sudden heat of passion may for a time affect a
21 person's self-control, and temporarily disturb a
22 person's reason. The sudden heat of passion must be
23 of the type that would make an ordinary person unable
24 to coolly reflect on his actions, and would produce an
25 uncontrollable impulse to do violence.

1 Sufficient legal provocation must be of the
2 type that would make a person of ordinary reason and
3 caution become enraged and to lose control
4 temporarily. The provocation needed for voluntary
5 manslaughter must come from some act of or related to
6 the victim. Words alone, however vulgar or insulting,
7 are not enough to be legal provocation where death is
8 caused by the use of a deadly weapon. The words must
9 be accompanied by some overt act. By some overt,
10 threatening act which would have produced the heat of
11 passion.

12 The exercise of a legal right, no matter how
13 offensive it is to another, is never sufficient legal
14 provocation for voluntary manslaughter. If the heat
15 of passion had cooled, or if there was enough time
16 between the provocation, if any, and the killing for
17 the passion of a reasonable person to cool, the
18 killing would not be voluntary manslaughter.

19 In deciding whether a reasonable person would
20 have had enough time to cool off, you should consider
21 all the circumstances surrounding the killing. You
22 may consider the nature of the provocation if any, the
23 defendant's mental and physical state, and the
24 circumstances and relationship between the parties.

25 Ladies and gentlemen, the defendant is charged

1 with possession of a weapon during the commission of a
2 or attempt to commit a violent crime. The state must
3 prove beyond a reasonable doubt that the defendant was
4 in possession of a firearm, or physically displayed
5 what appeared to be a firearm, during the commission
6 of a violent crime. A firearm means any machine gun,
7 automatic rifle, revolver, pistol or any weapon which
8 will, is designed to, or may be readily converted to
9 expel a projectile.

10 In order to find the defendant guilty of
11 possession of a weapon during the commission of a
12 violent crime, you must further find the defendant
13 guilty of either committing -- you must find the
14 defendant guilty of either committing a violent crime,
15 or attempting to commit a violent crime. Ladies and
16 gentlemen, I instruct you that murder and voluntary
17 manslaughter are defined by South Carolina code
18 annotated 16-1-60 as violent crimes.

19 Ladies and gentlemen, I instruct you that if a
20 crime is committed by two or more people who are
21 acting together in committing a crime, the act of one
22 is the act of all. A person who joins with another to
23 commit an unlawful act is criminally responsible for
24 everything done by the other person which happens as a
25 probable or natural consequence of the acts done in

1 carrying out the common plan and purposes.

2 For example, two people can be guilty of
3 killing another person when only one of the two had a
4 gun, there was only one bullet, and only one of the
5 two fired the shot that caused the death.

6 If two or more people are acting together
7 assisting each other in committing the offense, the
8 act of one, is the act of all. Or as it is sometimes
9 said, the hand of one, is the hand of all.

10 Prior knowledge that a crime is going to be
11 committed without more is not sufficient to make a
12 person guilty of that crime. Mere knowledge that
13 another person is going to a commit crime, even if the
14 defendant is present when the crime is committed, is
15 not sufficient to convict the defendant as a
16 principal.

17 Guilt as a principal is shown by actual or
18 constructive presence at the scene as a result of
19 prior arrangement. Therefore, a finding of a prior
20 arranged plan or common scheme is necessary for a
21 finding of guilt as a principal. The state must prove
22 beyond a reasonable doubt by competent evidence the
23 theory that the hand of one is the hand of all. A
24 principal in a crime is one who either actually
25 commits the crime, or who is present aiding, abetting

1 or assisting in committing the crime.

2 When a person does an act in the presence of,
3 and with the assistance of another, the act is done by
4 both. Where two or more acting with a common plan or
5 intent are present at the commission of a crime, it
6 does not matter who actually commits the crime, all
7 are guilty. The hand of one, is the hand of all.

8 Present at the commission of a crime means to be
9 sufficiently near to aid and abet and assist in the
10 commission of the crime. However, mere presence at
11 the scene of a crime is not sufficient to convict one
12 as a principal on the theory of aiding and abetting.
13 A defendant's presence where a crime is being
14 committed, or mere association with the person who
15 commits the crime, does not make a defendant an
16 accomplice or an aider and abetter of the person
17 committing the crime.

18 Intent is also a necessary element, for there
19 must have been a common design or intent to commit the
20 crime, and the crime must have been committed pursuant
21 thereto with the person aiding and abetting by some
22 overt act. Intent means intending the result which
23 actually occurs, not accidentally or involuntarily.

24 Intent may be shown by acts and conduct of the
25 defendant, and other circumstances from which you may

1 naturally an reasonably infer intent. The state must
2 prove these elements beyond a reasonable doubt.

3 The indictments in this case allege several
4 different offenses against the defendant. These
5 charges are as follows: Indictment 2007-GS-10-4660,
6 murder; 4661, murder; 4662, possession of a firearm
7 during the commission of a violent crime; and 4663,
8 possession of a firearm during the commission of a
9 violent crime.

10 Each indictment charges a separate and distinct
11 offense. You must decide each indictment separately
12 on the evidence and the law applicable to it,
13 uninfluenced by your decision as to any other
14 indictment. The defendant may be convicted or
15 acquitted on any or all of the offenses charged. You
16 will be asked to write a separate verdict of guilty or
17 not guilty as to each separate indictment.

18 On the offenses of murder, there are three
19 sperate options on each verdict form. And on the
20 offenses of possession of a firearm during the
21 commission of a violent crime, there are two different
22 options. And you don't have to write these down, they
23 will go to the jury room with you and they're fairly
24 self-explanatory.

25 As to the offense of murder, you will have the

1 following options: As to the indictment, we the jury
2 by unanimous consent find the defendant guilty of
3 murder; guilty of the lesser included offense of
4 voluntary manslaughter; or not guilty. And as to the
5 offenses of possession of a firearm during the
6 commission of a violent crime you will have the
7 options of: We the jury by unanimous consent find the
8 defendant guilty of possession of a firearm during the
9 commission of a violent crime; or not guilty.

10 There is no significance whatsoever to the
11 order in which I have listed these potential verdicts.
12 Ladies and gentlemen, your verdict must be a unanimous
13 one which means that all 12 of you must agree before
14 you can reach a verdict.

15 Madam Forelady, it will be your responsibility
16 to fill out the verdict forms. It will also be your
17 responsibility to knock on the door and advise the
18 bailiffs when the jury has completed its deliberations
19 and has reached a verdict. It is also your
20 responsibility that if the jury has any questions
21 during the course of deliberations that you write
22 those questions out and again knock on the door and
23 advise the bailiffs that the jury has a question.

24 Ladies and gentlemen, I will instruct you that
25 if you have any questions during the course of

1 deliberations, there will be a delay in our response,
2 that is because there are procedures we must follow in
3 answering your questions. So if you have a question
4 and there is a delay, please note that we are not
5 ignoring your question, we are simply following that
6 procedure that is mandated by state law.

7 Ladies and gentlemen, again your verdict must
8 be a unanimous one which means all 12 of you must
9 agree. I'm going to ask that you return to your jury
10 room at this time. But I'm instructing you, do not
11 yet begin your deliberations. There are matters of law
12 that I must take up with the attorneys that may
13 require additional instruction or clarification of an
14 instruction.

15 However, if there is no further instruction
16 your notepads will be sent into you, the alternates at
17 that time will be excused, and the evidence and the
18 verdict forms will also be sent into you and at that
19 time you will be advised that you can begin your
20 deliberations.

21 We have ordered your lunch and we anticipate
22 that -- we are hoping by 1:00, it may, because of the
23 downtown rush, it may be between 1:00 and 1:30. If
24 anyone is hungry please let us know and we will have
25 the bailiffs bring in some snacks to you. I'm hoping

1 that it will be here by 1 o'clock so that you will be
2 able to have your lunch.

3 Again, please don't yet begin your
4 deliberations, please go with the bailiffs, and please
5 leave your notepads in your seats.

6 (Whereupon, the jurors exit the courtroom.).

7 THE COURT: You may be seated. Any exception
8 to the charge from the state?

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: From the defense?

11 MR. RUNYON: No additions or exceptions, Judge.

12 THE COURT: If you all, I believe you all told
13 me that the evidence is in place.

14 MR. RUNYON: Yes, Your Honor.

15 THE COURT: Please, Mr. Robinson, you get the
16 evidence for me and the verdict forms and notepads
17 with the exception of the alternates. And if you
18 would have -- once you've done that, please bring the
19 alternates in for me.

20 (Whereupon, the alternate juror enters the
21 courtroom.)

22 THE COURT: On behalf of the state and the
23 defendant and defense counsel, we want to thank you
24 for your time and your attention to this case. Being
25 an alternate is really a thankless job. You got to do

1 all the work but you don't get to deliberate. So I
2 wanted to give you the Court's profound thanks and I
3 hope it has been educational for you. If you need a
4 work excuse before you leave today, please go to the
5 first floor clerk's office and they will provide you
6 one, otherwise it will be mailed to you along with
7 your check.

8 I'm going to excuse you both today. You're
9 free to stay if you like or you're free to leave. I
10 would ask that you stay until your lunch arrives which
11 we anticipate will be 1 o'clock. We will have a
12 comfortable place for you in the multi-purpose room so
13 you can wait while your lunch arrives and you are free
14 to stay and eat in there if you like, it won't get
15 cold or otherwise.

16 You are also free, as I have indicated, to stay
17 if you want until the jury reaches a conclusion of a
18 verdict in this case, but you are also free to leave.
19 I'm certain you have things you may want to do today.
20 You are free to discuss the case. I ask you not do it
21 until after Friday. By the same token, you don't have
22 to discuss this case if you don't want to.

23 If someone should persist in wanting to talk to
24 you, please notify the clerk's office so that the
25 court can take the appropriate action to protect your

1 privacy. You both are excused with the Court's
2 thanks. You can go with the bailiffs.

3 THE COURT If you all would stick around for me
4 until 1:00 just in case they have any questions.
5 After that I'll ask you leave your cell phone number
6 with us so that we can call you in the event there are
7 any questions we need to get back to the courthouse.

8 MR. RUNYON: Judge, in view of Justice Toal's
9 order in the past, I don't carry my cell phone in the
10 courthouse. I will provide some way for the clerk to
11 get a-hold of me.

12 THE COURT: Okay.

13 MR. RUNYON: I'm going to be around.

14 THE COURT: Okay.

15 (Whereupon, a recess was taken.)

16 THE COURT: We have a question from the jury,
17 it reads as follows: Your Honor, may we have a copy
18 of your instructions to the jury? Specifically, the
19 difference between murder and manslaughter, intent, et
20 cetera. And actually I need to make sure she signs
21 her name on these notes.

22 Then the response that I will give is as
23 follows: Ladies and gentlemen of the jury, our
24 procedures do not allow for a copy of the jury charge
25 slash instructions to be given to you. If there is a

1 specific instruction that you would like given again
2 or the entire instruction, please advise us and I will
3 accommodate your request immediately.

4 Is there any exception to the Court's response
5 from the state?

6 MR. WILLIAMS: No, Your Honor.

7 THE COURT: From the defense?

8 MR. RUNYON: Absolutely not, Judge.

9 THE COURT: What I will do is attach it to the
10 note and have it marked as a Court's exhibit, and have
11 the bailiff advise them it is not to be destroyed. I
12 suspect they're going to ask me to give them the
13 charges on murder and manslaughter, but we will await
14 further instruction from the jury.

15 (Whereupon, a recess was taken.)

16 THE COURT: Is the state ready to proceed?

17 MR. WILLIAMS: Yes, Your Honor.

18 THE COURT: Is the defense ready to proceed?

19 MR. RUNYON: Yes, Your Honor.

20 THE COURT: I have been advised by the bailiffs
21 that the jury has reached a verdict. Is there
22 anything before we proceed with receiving the panel
23 from the state?

24 MR. WILLIAMS: No, Your Honor.

25 THE COURT: From the defense?

1 MR. RUNYON: No, Your Honor.

2 THE COURT: Please bring in the panel.

3 (Whereupon, the jurors enter the courtroom.)

4 THE COURT: Thank you, you may take your seats.

5 Madam Forelady, is it correct that the jury has
6 reached a verdict?

7 THE FOREPERSON: We have, Your Honor.

8 THE COURT: If you could give the verdict forms
9 to the bailiff for me, please.

10 Madam Clerk, if you publish the verdict.

11 Please stand for publication of the verdicts.

12 THE CLERK: State of South Carolina, County of
13 Charleston, State of South Carolina versus Quinton R.
14 Jenkins, defendant, indicted number 2007-GS-10-4660.
15 We the jury, by unanimous consent, find the defendant
16 guilty of murder, signed Karen Ratliff, foreperson.

17 State of South Carolina versus Quinton R.
18 Jenkins, defendant, as to indictment 2007-GS-10-4661.
19 We the jury, by unanimous consent, find the defendant
20 guilty of murder, signed the foreperson Karen Ratliff.

21
22 State of South Carolina versus Quinton R.
23 Jenkins, defendant, as to indictment 2007-GS-10-4662.
24 We the jury, by unanimous consent, find the defendant
25 guilty of possession of a firearm during the

1 commission of a violent crime, signed Karen Ratliff,
2 foreperson.

3 state of South Carolina versus Quinton R.
4 Jenkins, defendant, as to indictment 2007-GS-10-4663.
5 we the jury, by unanimous consent, find the defendant
6 guilty of possession of a firearm during the
7 commission of a violent crime, signed Karen Ratliff,
8 foreperson. February 7, 2008.

9 THE COURT: Madam Forelady, ladies and
10 gentlemen, if these be your verdicts please indicate
11 by raising your right hand.

12 You may put your right hands down.

13 Are there any requests to poll the jury from
14 the state?

15 MR. WILLIAMS: No, Your Honor.

16 THE COURT: From the defense?

17 MR. RUNYON: Yes, Your Honor.

18 THE COURT: Madam Clerk, if you would poll the
19 jury.

20 Ladies and gentlemen, if you would give the
21 clerk your attention.

22 THE CLERK: Ladies and gentlemen, I'm going to
23 ask you each two question, is this your verdict and is
24 this still your verdict. Please answer each question
25 appropriately. Also please stand when I call your

1 name.

2 Karen Ratliff, 226. Is this your verdict?

3 THE FOREPERSON: Yes.

4 THE CLERK: Is this still your verdict?

5 THE FOREPERSON: Yes.

6 THE CLERK: Thank you, be seated.

7 Jack Summers, 264. Is this your verdict?

8 A JUROR: Yes.

9 THE CLERK: Is this still your verdict?

10 A JUROR: Yes.

11 THE CLERK: Joseph Haigler, 119. Is this your
12 verdict?

13 A JUROR: Yes.

14 THE CLERK: Is this still your verdict?

15 A JUROR: Yes.

16 THE CLERK: Matthew Maurer, 309. Is this your
17 verdict?

18 A JUROR: Yes.

19 THE CLERK: Is this still your verdict?

20 A JUROR: Yes.

21 THE CLERK: Theresa Chiarito, 58. Is this your
22 verdict?

23 A JUROR: Yes.

24 THE CLERK: Is this still your verdict?

25 A JUROR: Yes.

1 THE CLERK: Richard E. Richardson, 231. Is
2 this your verdict?

3 A JUROR: Yes.

4 THE CLERK: Is this still your verdict?

5 A JUROR: Yes.

6 THE CLERK: Richard Miller, 187. Is this your
7 verdict?

8 A JUROR: Yes.

9 THE CLERK: Is This still your verdict?

10 A JUROR: Yes.

11 THE CLERK: John Todd Craig, 68. Is this your
12 verdict?

13 A JUROR: Yes.

14 THE CLERK: Is this still your verdict?

15 A JUROR: Yes.

16 THE CLERK: Marie Smalls, 252. Is this your
17 verdict?

18 A JUROR: Yes.

19 THE CLERK: And is this still your verdict?

20 A JUROR: Yes.

21 THE CLERK: Henry Smith Junior, 255. Is this
22 your verdict?

23 A JUROR: Yes.

24 THE CLERK: Is this still your verdict?

25 A JUROR: Yes.

1 THE CLERK: Mary McDermott, 178. Is this your
2 verdict?

3 A JUROR: Yes.

4 THE CLERK: Is this still your verdict?

5 A JUROR: Yes.

6 THE CLERK: Theodore Simmons, 246. Is this
7 your verdict?

8 A JUROR: Yes.

9 THE CLERK: Is this still your verdict?

10 A JUROR: Yes.

11 THE CLERK: Your Honor, the jury has been
12 polled and the verdict stands.

13 THE COURT: Thank you very much.

14 Madam Forelady, ladies and gentlemen, on behalf
15 of the state and the defendant and defense counsel, we
16 thank you for your time and your attention to this
17 case.

18 we know that jury service is really thankless
19 and it is the donation of your time, at both sacrifice
20 to your personal and professional obligations. I hope
21 that jury service this week has been education for
22 you, and that you've learned it is really nothing like
23 television. I hope that you have learned how
24 indispensable you are to the process as fact-finders
25 and how unique our system is. And that we could not

1 conduct trials without your willingness to serve.

2 You are excused for the week. If you need a
3 work excuse, please stop by the first floor in the
4 clerk's office to get one if you need one today. If
5 not they will be mailed to you along with your check
6 and they will probably go out tomorrow.

7 You are welcome to discuss this matter if you
8 like. By the same token you are welcome not to
9 discuss the case. If someone should persist in trying
10 to speak to you, please make the clerk's office aware
11 so that we can take the appropriate action to protect
12 your privacy.

13 You are welcome to remain for sentencing if
14 you'd like. Please let the bailiffs know if you
15 desire to do that and you will be escorted back into
16 the courtroom where you will be allowed to sit in the
17 jury box due to the crowd, the lack of space in the
18 gallery.

19 Again you are excused with the Court's thanks.
20 Shortly I will hear post-trial motions. And I would
21 assume you all have the sentencing sheets filled out.
22 We will be at ease for a moment.

23 (Whereupon, a recess was taken.).

24 THE COURT: Are there any post-trial motions
25 from the state?

1 MR. WILLIAMS: None by the state, Your Honor.

2 THE COURT: From the defense?

3 MR. RUNYON: Yes, Your Honor. If we can get
4 the defendant back in here.

5 THE COURT: You can have a seat, sir.

6 THE DEFENDANT: I would rather stand, Your
7 Honor.

8 THE COURT: Okay, that's your preference.

9 Are there any post-trial motions, Mr. Runyon?

10 MR. RUNYON: Your Honor, we would move for a
11 new trial and make a motion to set aside the verdict
12 on essentially the same grounds that we enunciated at
13 the close of the state's case, close of the defense
14 case for the same reasons. While this was basically a
15 three-and-a-half day matter, I'm sure the Court is
16 aware of what our motions are so I am not going to
17 belabor the points, but reiterate them, and put them
18 in the record. And I renew those motions for a new
19 trial, and make a motion for arrest of judgment,
20 Judge.

21 THE COURT: Would the states like to respond,
22 Mr. Williams?

23 MR. WILLIAMS: Not on the motions, Your Honor.

24 THE COURT: Pardon me?

25 MR. WILLIAMS: Not on the motions. I ask the

1 Court deny them for the same reasons that they were
2 before.

3 THE COURT: The Court would deny the motions
4 and find there is no basis for a new trial. This was
5 largely a credibility case, and the jury has made its
6 findings. And those findings are amply supported both
7 by direct and substantial circumstantial evidence,
8 reasonably tending to prove the defendant's guilt in
9 this case on each of the offense.
10 Therefore, the motion for a new trial is denied. The
11 Court will find there is no basis for the motion of
12 arrest of judgment, and that motion would also be
13 denied.

14 Is there anything further from the state prior
15 to sentencing or regarding any post-trial motions?

16 MR. WILLIAMS: No, Your Honor.

17 THE COURT: From the defense?

18 MR. RUNYON: No, Your Honor. We are before the
19 Court for imposition of sentence, Judge.

20 THE COURT: Be glad to hear from the state.

21 MR. WILLIAMS: Thank you, Your Honor, may it
22 please the court.

23 THE COURT: Yes, sir.

24 MR. WILLIAMS: Your Honor, I'm going to say for
25 the sake of the jurors that are here, and I don't know

1 if Your Honor is aware of this, we proceeded to trial
2 back in December on the co-defendant in this case,
3 Jabez Batiste. At that time he was convicted of two
4 counts of murder, however he was acquitted of the
5 possession of a firearm.

6 And I believe the same evidence this jury heard
7 was the same evidence that jury heard. They also
8 believed, I think through their verdict, that at least
9 Jabez Batiste wasn't the one firing the gun in this
10 case. I think there is penalty evidence in this case
11 that Quinton Jenkins was the one that killed two
12 people, shot one of them down in the doorway and shot
13 one in the back killing him.

14 And, Your Honor, Jabez Batiste was sentenced to
15 40 years. I don't think that should influence this
16 Court's sentencing. I certainly think this is a case
17 though given the conduct, meaning shooting people in
18 the back for absolutely no good reason, not to mention
19 the aggravation of shooting two people, killing two
20 people in one incident, certainly warrants a life
21 sentence, if not consecutive life sentences, which the
22 Court is entitled to give.

23 Your Honor, I do want to point out that the
24 work that was done by the City Police Department, by
25 Detectives Osborne, Flemming and Goldstein when they

1 put the case together well. And I also want to point
2 out the investigation done by Investigator Jim Neison
3 from my office, a lot of work that was put out in
4 court was actually a part of what he did. I do want
5 to recognize their efforts and certainly let the Court
6 know and the victims in this case know that it was
7 their work that made these convictions possible.

8 Your Honor, I ask you allow Ms. Walker and Ms.
9 Shakoor to speak.

10 THE COURT: I was going to ask if the state had
11 any further statements from any members of the
12 victims' family that they wish to make. And also, as
13 I understand it, Mr. Jenkins has no record, correct?

14 MR. WILLIAMS: That's correct, your Honor. He
15 did have a pending charge, I don't know if the Court
16 wants to hear about that, at the time of this
17 incident.

18 THE COURT: I don't think it would be relevant
19 to sentencing. Do you all plan to proceed on that
20 charge, or do you plan to no-pros it?

21 MR. WILLIAMS: I move to dismiss it, Your
22 Honor.

23 THE COURT: Can you tell me what it was?

24 MR. WILLIAMS: It was possession of Ecstasy
25 case.

1 THE COURT: Be glad to hear from anyone further
2 that would like to make a statement for the benefit of
3 the Court.

4 MS. SHAKOOR: My name is Aneesa Shakoar, the
5 mother of Kareem Abdul Shakoar. And, Your Honor,
6 first of all I would like to give thanks to Almighty
7 God Allah for justice prevailing in this courtroom
8 today. He provided the wisdom of the jurors to come
9 back with a guilty verdict. Myself and my family
10 thank you so much.

11 To the Detective Osborne, Flemming and
12 Goldstein, your tireless efforts and the precision of
13 work that you did to present to Mr. Williams to
14 present this case, nothing but a guilty verdict could
15 be rendered.

16 The killing of my son has forever changed my
17 life, my entire family. Kareem means generous and
18 kind. And, Your Honor, he was that to a fault
19 sometimes. He was a profession, a rapper. He worked
20 his job each and every day. And the -- I understand
21 now the title of his CD, Lowering the South is Not
22 Complete.

23 And I think that meant that he was complete in
24 his duties to God, and he has been a God-fearing
25 child, to his mother, to his community, and that he

1 was blessed to be able to see his dream. He had a
2 vision and not a posse.

3 He was about to go into the studio the night
4 that he was killed to release his second CD. And
5 selfishly he brought other artists onto his music.
6 And he was blessed to perform before an open act for
7 some of these popular rap artists, and we were proud
8 of him and we often told him that.

9 As this trial first came about, the articles
10 written on it, I couldn't read the newspaper, to this
11 day I have not read them. Some talked about him, his
12 educators, friends, everyone came to me and it was
13 nothing but good thoughts about Kareem. All we can do
14 is raise our kids to the best of our ability. To
15 teach them right from wrong, to have them to do unto
16 others as they would have them do to themselves.

17 And this in my heart I know. The child did not
18 possess a gun he would never, ever have cold-bloodily
19 taken another life as if it meant nothing, especially
20 if they was retreating. But my child to end his life
21 that way, to be shot in the back viciously by totally
22 a menace to society that I am glad that you all have
23 taken off the streets for the rest of his life. No
24 regard for anyone else that was in the parking lot, no
25 regard for his family, that is it is hurtful.

1 And the music industry and our family will
2 forever be affected by this. And something must stop,
3 Your Honor. It's a cesspool of killing for young
4 African-American youth.

5 It has been said that we would have the see
6 them in a museum, from the ages of 13 to 20 we will
7 wonder what they looked like because there will be
8 genocide, they will become extinct. With guns on the
9 street, Lugers, my boy talked about it in one of his
10 songs. You're going crazy with them. Step into the
11 ring and we'll go head to head like man to man in the
12 old times.

13 Nobody wants to fight anymore. You are cowards
14 and you can easily shoot someone down with a gun. So
15 that was his philosophy, be what it may be said. His
16 legacy will be one that he was a warm and giving and
17 loving child, and intended to give to the society. A
18 vicious act of man, be God is the victor and Kareem is
19 victorious.

20 I thank you all again so much for your verdict.
21 And you can't bring Kareem back, but his spirit will
22 live on. We thank you so much from the family of the
23 Shakoors.

24 THE COURT: Thank you, very much, ma'am. Is
25 there anyone further that would like to speak?

1 MS. WALKER: Good after, my name is Maggie Lee
2 walker and I'm from St. Matthews, South Carolina. And
3 I'm standing here on behalf of my son, Channing
4 Cantrell walker. For those who may not have known
5 him, Channing was a loving child. He brought nothing
6 but happiness into our homes, into the community and
7 into our church.

8 To know Channing, you would have not even seen
9 him there, but you could always see his smile. And
10 that anything that he did he was committed to doing.
11 He worked diligently, into the churches, and any time
12 anybody would call and ask him to do a favor for them,
13 he was willing to go.

14 Because I guess, you know, as I sat back and I
15 have heard all of this, but you know a child does
16 practically what he sees. And his mother is guilty of
17 putting that on display. Because my thing is if you
18 cannot help someone along the way, then you are living
19 with being vein.

20 But also, I would like to say that, you know,
21 Channing was called out, you know. And he missed,
22 never thinking that this would ever took place. But,
23 God as my witness, I just thank you all for your time.
24 And I would like to thank you all of the Department of
25 Charleston, and for all the sacrifice that you all

1 have made, and called. And, Ms. Terry, I could call
2 her at any time. And I just thank you so much for
3 rendering such a verdict.

4 So it would be such a pleasure for me to go
5 back and tell my family that the victory has been won
6 here today. Because I know, without a shadow of a
7 doubt, I'm here by myself, but then I'm not by myself
8 because I take the Lord wherever I go because this is
9 the only way I have been taught, and this is the only
10 way I know.

11 But, I ask that you continuously to pray for me
12 because I don't know whether I mentioned before, I
13 have been down this road before. In fact this is my
14 second time going down this road. My husband was
15 killed the same way. And now they took my only child.

16 But, you know, he lives within me. And I know
17 he would be so proud of me standing today because he
18 often said to me, mama, you're a big girl. So I'd
19 just like to thank you again for your time and your
20 sacrifice that you all have put in. Thank you.

21 THE COURT: You're welcome, ma'am.

22 Anything further from the state?

23 MR. WILLIAMS: No, Your Honor, thank you.

24 THE COURT: Mr. Runyon.

25 MR. RUNYON: Your Honor, these things are

1 always extremely difficult. You have the victims'
2 families, you have the victims and you have the
3 defendant and the defendant's family.

4 Mr. Jenkins 'family lives here in Charleston.
5 I believe they're outside in the hallway. They were
6 kind of overcome by the verdict. Both are
7 hard-working individuals. Mr. Jenkins worked for, I
8 believe, Charleston Water System. Ms. Jenkins works,
9 as you heard from one of the prospective jurors, she
10 has been a long-time employee of Roper Hospital.

11 Quinton has completed high school, his high
12 school level courses. He has not gotten his GED, but
13 he has completed all the work to take it.

14 Judge, it's kind of difficult to ask the Court
15 not to be somewhat merciful in the sense of at least
16 not sentencing him any greater than Mr. Batiste.
17 Judge, we are losing a whole generation of kids.

18 THE COURT: That is correct.

19 MR. RUNYON: They're either winding up as
20 victims or they're winding up in prisons. And I'm not
21 sure what the answer is, but this is just one chapter
22 of a many chapter book. And I'm not sure that dealing
23 with him more harshly, no prior record, had one little
24 dust-up when he was a juvenile which was actually not
25 -- it was a status offense versus a criminal offense.

1 And I'd ask the Court to take all that into
2 consideration. And I'd also ask the Court -- and
3 you've heard, and I'm not going to belabor the facts
4 but you've heard the facts -- this was not something
5 which he set up, et cetera, et cetera. Had it not
6 been for the intervention of Mr. Batiste in setting
7 this whole thing up, Quinton Jenkins wouldn't have
8 been there that night. He would have gone on to his
9 job at the Taco Bell, and would not have wound up
10 here.

11 I'd ask the Court to be as lenient under the
12 circumstances as possible given the sentencing
13 structure. I would ask the Court to run these
14 sentences concurrent since both of them occurred in
15 the same event. I believe we have some statutory
16 authority for that. And I'd ask the Court to -- not
17 by any means give someone a break just for giving them
18 a break, but because of his age and the fact that he
19 is only one of many kids who were on both sides of
20 this issue today.

21 And maybe one day we will find the solution, I
22 don't know what the solution will be. Certainly drugs
23 either directly or indirectly, Your Honor, are
24 affecting this community greatly and affecting young
25 people and in particular young males. Even if not

1 taken, they're terribly seriously and this is just a
2 tragedy for everyone, the victims' families and Mr.
3 Jenkins' family.

4 THE COURT: How old is your client?

5 MR. RUNYON: He is 19 now, Judge.

6 THE COURT: How old was Mr. Walker?

7 MR. WILLIAMS: He was 20 years old, Your Honor.

8 THE COURT: And how old was Mr. Shakoor?

9 MR. WILLIAMS: 20 as well.

10 THE COURT: Anything further, Mr. Runyon? Does
11 your client wish to say anything or any members of his
12 family wish to say anything for the record.

13 MR. RUNYON: No, Your Honor. The family, they
14 would just appreciate all consideration possible. Mr.
15 Jenkins would like to address the Court.

16 THE COURT: Certainly, I would be glad to hear
17 from you.

18 THE DEFENDANT: Judge, I would be a man about
19 it. I mean I was out there that day it happened, but
20 I wasn't the one who did it, okay. I have nightmares
21 to this day about what happened. I set up here and
22 watched the hand of one is the hand of all all day
23 long for three days straight.

24 And it's eating me up inside, eating me up
25 inside because I did too have a part of that. And I

1 mean, but to sentence me, to find me guilty for
2 murdering two people, I don't know see how. I can't
3 see how they did convict me of murder for being there
4 but not doing it. I don't understand that.

5 When you go, when you go, you can answer that
6 right now. And you is the one behind the chair right
7 now, and I mean that's all I got to say. I feel I
8 can't explain to you all how I feel right now because
9 I am going to try right now for my life. You can give
10 me life or whatever, you know what I'm saying, I'm not
11 saying it don't matter to me, but at the same time
12 everybody wants to be punished, all should be
13 punished, that's how I see it.

14 I did not get on that stand this whole week
15 because I don't if this man need the way of asking me
16 questions, asking me questions. I'm tired of seeing
17 these dead bodies, I'm not used to nothing like that.
18 I'm not used to pulling no gun like that, that ain't
19 me. I work, I work also. I go to church too. It
20 just wrong place at the wrong time, that's how I see
21 it.

22 MR. RUNYON: Your Honor --

23 THE COURT: Do the parents wish to say anything
24 for the record?

25 THE COURT: The parents have come in now.

1 MS. JENKINS: Yes, Your Honor..

2 THE COURT: Yes, ma'am. Would you state your
3 name for the record?

4 MS. JENKINS: My name is Vera Jenkins, and I'm
5 Quinton Jenkins' mother. Your Honor, I remember
6 asking my son several times when this happened. I
7 said, Quinton, I said, I need to know the truth, I
8 said, because two young mens' lives has been taken
9 away from them, I need to know from you.

10 I said, I already know you was there, but I
11 need to know did you commit this crime? I said, you
12 look me in my eyes and you tell me the truth right
13 now, I said, because if you did it, I said, you better
14 start repenting for your sins. I said, because murder
15 you will go to jail, and that's it, your life is gone,
16 whereas these two young men, life was already taken
17 away from them.

18 He looked me in my face and he said, mama, he
19 said, they have the wrong person. I did not commit
20 that crime. He said, I will look the two victims'
21 families in their eyes and tell them, I didn't do it.
22 He said, I was there but I did not do it.

23 And I believed him. I went and I prayed and I
24 prayed and I fasted and I asked God, I said, show me,
25 show me, if you show me that my child committed this

1 crime then, God, then I will get down on my knees and
2 repent for his sins, but he's going to have to repent
3 for his own. God never showed me.

4 I've heard so many talks and so many rumours,
5 all kinds of stuff. He was there, but he wasn't the
6 one that did it. I have had people come up from the
7 streets and just tell me, I'm praying for you. He was
8 just at the wrong place at the wrong time.

9 Your Honor, I do not believe that my son took
10 the lives of those two young men. I do not believe
11 it. I'm not going to say he was not there because he
12 was there. But I know he did not took their lives.
13 And I play for the families, the Shakoor family and
14 the Channing family and I ask that they will find
15 peace in their hearts and forgiveness because that
16 could have been him.

17 And I just preach to him, mind the people that
18 you be with. Mind the company that you keep. Him and
19 Jabez was not friends. They were not friends. They
20 were not friends. I have never seen Travis before. I
21 know BJ, but I never seen Jabez before. And I pray
22 for you all because that was truly a loss on your
23 part. And just like I say, that could have been him.

24 And my heart goes out to you. I know I've
25 never said anything to you because I just didn't know

1 how to. But I prayed. And I prayed that you all find
2 peace and forgiveness in your hearts. But I know my
3 son did not commit this crime. I know he didn't.

4 And I know the person that did it, he's going
5 to have to repent. He is going to have to repent.
6 He's going to have to answer to God. And I just ask
7 that the Court find mercy and grace right now for my
8 child's life. And I can tell you to look you all up
9 in prayer, always.

10 when I took my family down to the end of that
11 courtroom I said, God told me to take you all down
12 here to pray. These young people have got to learn to
13 realize that the company that they keep, everybody is
14 not their friend. And this is my 16 year old son
15 right here and I preach that to him every day. Mind
16 the company that you keep, everybody is not your
17 friend.

18 Nobody, but only God can stand and judge. And
19 I just ask that the Court find mercy on behalf of my
20 child, and you all can find forgiveness in your heart
21 because I know he did not commit this crime. Lord, I
22 just ask that you forgive him. Your Honor, that's all
23 I have to say.

24 Quinton, I love you. My son, I love you. And
25 you keep your head up. Just know that when we always

1 talk we always pray and you remember that. You
2 remember to stay and pray, you understand what I'm
3 saying? Stay and pray because only God is going to
4 bring you through this. I cannot do no more. That's
5 all I can do is pray for you. And leave you in the
6 hands of God. But I love you.

7 MR. RUNYON: Your Honor, Mr. Jenkins has
8 nothing to say.

9 We just commend the defendant to the mercy and
10 consideration of the court, Judge. You have a heavy
11 burden of casting judgement in a very tragic
12 situation.

13 THE COURT: Thank you very much.
14 Anything further from the state?

15 MR. WILLIAMS: No, Your Honor, thank you.

16 THE COURT: Bear with me one moment.

17 Sir, if you would stand for sentencing. On
18 indictment 2007-GS-10-4660, which is the offense of
19 murder. Sir, you are sentenced to the state
20 department of corrections for a period of 40 years.

21 On the offense -- on indictment
22 2007-GS-10-4661. Sir, you are sentenced to the state
23 department of corrections for a period of 40 years.
24 On indictment 2007-GS-10-4662, which is possession
25 of a firearm during the commission of a violent crime,

1 you are sentenced to the state department of
2 corrections for a period of five years. As well as
3 2007-GS-4663, you are sentenced to the state
4 department of corrections for a period of five years.

5 Each of these sentences are concurrent with one
6 another, and you are to receive credit, pursuant to
7 24-13-40 to be calculated and applied by the
8 department of corrections for any pre-detention time
9 that you have served.

10 MR. RUNYON: Thank you very much, Your Honor.

11 THE COURT: Thank you very much.

12 MR. WILLIAMS: Thank you, Your Honor.

13 THE COURT: Thank you, Mr. Williams. Mr.
14 Williams, Mr. Runyon, Ms. Steele, it was a pleasure
15 trying this case with you.

16 (Whereupon, the proceedings in this matter
17 before the Court were adjourned.)

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
Official Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete transcript of
record of all the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in the
Circuit Court for Charleston County, South Carolina, on the
7th day of February, 2008.

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

--- Anne Bouley Meyer ---

Anne Bouley Meyer, RPR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
DOCKET NO.

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PROCEEDINGS

VS.

March 7, 2008
Charleston, South Carolina

QUENTIN R. JENKINS,

Defendant.

BEFORE:

THE HONORABLE DEADRA L. JEFFERSON, Judge.

APPEARANCES:

NATHAN WILLIAMS, ESQ.

– and –

KAREN STEELE, ESQ.

ASSISTANT SOLICITORS

ATTORNEYS FOR THE STATE

WILLIAM L. RUNYON, JR., ESQ.

ATTORNEY FOR THE DEFENDANT

HEATHER GAYLE BURNS, RDR
OFFICIAL COURT REPORTER
9TH JUDICIAL CIRCUIT

INDEX**WITNESSES****ELENI MARIA ROUMEL**

by the Court Page 28

by Mr. Williams Page 39

by Mr. Runyon Page 42

EXHIBITS**In evid.**

Court's 1

E-mail

29

1 (The Judge enters the
2 courtroom at 10:09 a.m.)

3 THE COURT: Okay.
4 First things first. The
5 Department of Corrections did
6 not transport Mr. Jenkins.
7 They said they did not receive
8 my order nor did they receive
9 any fax request of the inmate
10 transfer, so he's at Kirkland
11 and they did not transport
12 him.

13 One of the jurors
14 called at 8:30 this morning to
15 say he is camping at a music
16 festival in Florida and he
17 won't be back until tonight.
18 He said his roommate received
19 the letter but did not call
20 him to tell him about it. And
21 that is Mr. Haigler.

22 At this point we only
23 have nine jurors so without
24 him that still leaves four who
25 have not arrived, for whatever

1 reason. Jack Summers, Matthew
2 Maurer, Richardine Richardson,
3 Richard Miller, John Craig,
4 Mary Smalls, Theodore Simmons,
5 Henry Smith, and Mary Mc
6 Dermott have all appeared.
7 Joseph Haigler, John
8 Harleston, Theresa Chiarito,
9 Harry Withers, and Mary Holmes
10 have not appeared, although --
11 no. The two alternates, I
12 don't know why they're even on
13 the list because they were not
14 included. So actually we're
15 not missing four jurors.
16 We're only missing three.
17 Theresa Chiarito, John
18 Harleston, and Joseph Haigler.

19 Do we know who the
20 alleged offending juror is?

21 **MR. WILLIAMS:** Your
22 Honor, I've reviewed the
23 questionnaires. I believe
24 it's juror three oh nine,
25 Matthew Maurer. My notes

1 indicated - - actually Miss
2 Steele's notes indicated at
3 the time of the jury selection
4 he disclosed that his wife was
5 a physical therapist at
6 M. U. S. C.

7 THE COURT: Okay.

8 MR. WILLIAMS: I
9 reviewed the other jurors and
10 I didn't see anything that
11 would be consistent with that.

12 MR. RUNYON: I agree
13 with that, Judge.

14 THE COURT: Okay. All
15 righty. I need some input
16 from you all as to how we
17 should proceed. My main
18 concern, Mr. Runyon could
19 always waive the presence of
20 his client but my main concern
21 is these three absent jurors
22 and I feel that to conduct an
23 appropriate voir dire we would
24 need all of the jurors.
25 However in part I think that

1 we should go ahead at least --
2 excuse me -- initially and
3 determine exactly the
4 substance of what was
5 disclosed in the physical
6 therapy session to Miss
7 Roumel.

8 **MR. RUNYON:** Judge, we
9 would have no problem with
10 putting at least, quote, the
11 Roumel end of the matter on
12 the record. And I think we're
13 all kind of in agreement and I
14 think probably Miss Roumel
15 would have the substance of
16 what her report would be. And
17 we can either do that by --
18 she's present. We can either
19 do that by having her testify
20 or simply by stipulation.

21 I think that the
22 substance of her testimony,
23 Judge, would be that she was
24 at physical therapy on the
25 Thursday morning of the, of

1 the day the case went to the
2 jury and that in the course of
3 her physical therapy treatment
4 her testimony would be that
5 she heard, overheard the
6 conversation where there was a
7 physical therapist, she
8 believes the name was Amy, I'm
9 subject to being corrected,
10 but Amy who would say that,
11 who said to that patient that,
12 that her husband was still on
13 jury duty and inquiring of the
14 patient and that he was voting
15 guilty.

16 And, and that that's
17 what she put in her e-mail.
18 The e-mail was e-mailed prior
19 to the State resting and prior
20 to the case going to the jury.
21 But it was not opened by Miss
22 Steele until the day
23 afterwards because of course
24 Miss Steele was busy and but
25 that would be I think the

1 substance of her testimony if
2 she were called to testify.

3 I don't think anyone
4 is in disagreement as to what
5 the subject of her testimony
6 would be unless my learned
7 friend over here insists on
8 not stipulating to what her
9 testimony would be.

10 I guess he won't
11 stipulate so I guess we're
12 going to have to have some
13 testimony, Judge.

14 THE COURT: That would
15 be my preference in any event.

16 MR. WILLIAMS: Your
17 Honor, I was waiting. I don't
18 have a problem stipulating. I
19 do think what the e-mail says
20 is that he's apparently voting
21 guilty. I don't think we have
22 any evidence that says he is
23 voting guilty.

24 THE COURT: Well, there
25 are many layers of this, many

1 layers of this issue, one of
2 which is and the most crucial
3 for the Court is whether any,
4 whether there were premature
5 deliberations on his part, and
6 then the second layer of that
7 is whether there's pre -- if
8 there were premature
9 deliberations if they in any
10 way affected his ability to
11 remain fair and impartial and
12 render a fair and impartial
13 verdict.

14 And the next layer is
15 whether any discussions he had
16 with his wife whether he had
17 any of those with the other
18 jurors such that it infected
19 the deliberative process. The
20 remainder of that really is a
21 matter of contempt for the
22 Court, whether he followed my
23 instructions and really, quite
24 frankly, ethical issues for
25 Miss Roumel in having had the

1 conversation at all with her
2 physical therapist and then
3 reducing that to an e-mail and
4 having said that to Miss
5 Steele.

6 So there many layers
7 to it, some of which I will to
8 deal with and determine
9 whether I need Mr. Maurer, I
10 need to hear what Mr. Maurer
11 is going to say, whether he in
12 fact discussed it with his
13 wife in violation of the
14 Court's instructions and then
15 I'm going to have to deal with
16 that from a contempt
17 perspective. And then after
18 talking with him, if he says
19 to me that he had no
20 discussions with the jurors
21 then that really eliminates
22 the need to voir dire the rest
23 of the jurors. But out of an
24 abundance of caution I may
25 voir dire each juror and ask

1 them in fact whether they had
2 any conversations with Mr.
3 Maurer regarding any
4 discussions he may have had
5 with his wife about the case.
6 I haven't decided yet exactly
7 how I'm going to proceed with
8 that.

9 But I'm concerned
10 that they did not transport
11 Mr. Jenkins. I think he needs
12 to be, probably our of, from,
13 from a P. C. R. perspective he
14 needs to be present, however
15 just for judicial economy I
16 think I would prefer to
17 preserve Miss Roumel's
18 testimony and if I'm
19 mispronouncing her name, I
20 apologize, her testimony so
21 that we can at least dispose
22 of that portion of it.

23 And then I need to
24 decide what I'm going to do
25 with the balance of the jurors

1 and then I'm going to have to
2 deal with these other jurors
3 and whether I'm going to have
4 to send the sheriff to go pick
5 them up. That would take the
6 balance of the day. I could
7 send the sheriff to go get
8 them but in all likelihood
9 some of them are at work, some
10 may be, you know, I just don't
11 know why they didn't show up,
12 because the notice very
13 clearly told them that if they
14 did not appear that it would
15 be contempt and that I would
16 send the sheriff to pick them
17 up.

18 **MR. RUNYON:** Judge, to
19 the extent that we, we need to
20 preserve Miss Roumel's
21 position in the case, I would
22 have no objections to a
23 limited waiver of Mr. Jenkins
24 appearance or presence for the
25 purpose of that preservation.

1 The balance of it I don't
2 think I'm authorized.

3 THE COURT: I don't
4 think it would be wise or
5 prudent on your part to do
6 that. I think for --

7 MR. RUNYON: That's
8 correct.

9 THE COURT: -- P. C. R.
10 purposes he needs to be here.
11 Do you know what number your
12 secretary faxed the documents
13 to the Department of
14 Corrections and on what date
15 she did it?

16 MR. RUNYON: No.
17 Judge, what occurred was, was
18 the, was the order was sent to
19 your office.

20 THE COURT: It was
21 signed and --

22 MR. RUNYON: -- and it
23 was signed and then you
24 trans -- your office
25 transmitted it to Miss Reina

1 downstairs for the purpose of
2 processing the matter.

3 **THE COURT:** That might
4 be where the -- I think Miss
5 Reina probably was under the
6 impression that you all were
7 supposed to get everything
8 straight with the Department
9 of Corrections.

10 **MR. RUNYON:** And I
11 think that could have been,
12 Judge.

13 **THE COURT:** I think
14 that's where the problem came
15 in.

16 **MR. RUNYON:** That could
17 have been, Judge, because we,
18 we never received the order
19 back.

20 **THE COURT:** Really?
21 Then that means -- Miss Reina
22 is very efficient. I'm sure
23 she faxed it. It wouldn't be
24 the first time that the
25 Department of Corrections said

1 they didn't get something.

2 **MR. RUNYON:** Judge, the
3 Department of Corrections,
4 they -- I can tell you that if
5 there's a problem with his
6 transport it was at the
7 Department of Corrections end.
8 I've been through that too
9 many times and they have too
10 many layers of bureaucracy
11 that that has to go through
12 and then they also, somebody
13 up there checks the weather
14 and if they decide they don't
15 want to drive to Charleston on
16 that particular day then the
17 tire's flat or something. I
18 mean it's just a nightmare
19 getting somebody transported
20 down here.

21 But the actual
22 progress of that order went to
23 Miss Reina. Miss Reina then
24 got it -- did what she does
25 very efficiently and got it to

1 the sheriff.

2 And out of an
3 abundance of caution, Judge,
4 it's an unpublished opinion
5 but in the case of the State
6 versus Murphy Rivers they,
7 they relied upon the fact that
8 defense counsel waived the
9 argument not asking for
10 certain things. We would ask
11 that all jurors be voir direct
12 and to, to protect the record.
13 we would ask that all jurors
14 be subject to voir dire on the
15 issue of the --

16 THE COURT: I'm going
17 to voir dire all of them.

18 MR. RUNYON: All right.

19 THE COURT: Because I
20 need to know whether he --
21 whether in the course of -- I
22 need to make sure that they
23 were not subject to any
24 outside influence.

25 Okay. Let's see what

1 we should do first. I think
2 what I will do is bring in the
3 jurors who have appeared so
4 that no more of their time is
5 wasted, because most of them
6 were on time and -- well, some
7 of them were on time but not
8 all of them were on time.
9 Some of them just got here.
10 And excuse them for the
11 remainder of the day. Let
12 them know that all of their
13 number has not appeared and as
14 a result that we're going to
15 have to reconvene the matter,
16 that they will be getting a
17 new notice, and what I think
18 I'll do is do it for ten days
19 out. I left my calendar
20 downstairs. I apologize.

21 Next week I have
22 non-jury. The following week,
23 which is the seventeenth, I
24 have Common Pleas. I am
25 thinking that we can do that

1 hearing on the twenty-first,
2 which would give us -- I could
3 have my secretary send the
4 notices out on Monday and we
5 could reconvene the hearing on
6 the twenty-first, and that
7 gives us more than enough time
8 to get the defendant -- to get
9 the documents processed
10 through the Department of
11 Corrections and get him
12 transported and get my jurors
13 back here. Is that acceptable
14 to everyone?

15 MR. WILLIAMS: Yes,
16 your Honor. Do you want my
17 office to do the transport
18 order? We do them more
19 routinely. May be easier.

20 THE COURT: Why don't
21 we do both.

22 MR. WILLIAMS: Okay.

23 THE COURT: We can do
24 both and that way we're
25 covered on both ends of it

1 because I spoke to the young
2 lady in inmate records and she
3 said she had a stack of things
4 but she did not have this
5 order and I said well, it's
6 been signed since this past
7 Monday, so I know it was
8 transmitted the day it was
9 signed, but for whatever
10 reason, you know. It happens,
11 it really does happen all the
12 time, unfortunately, under the
13 best of circumstances.

14 So we'll -- and I'll
15 have my office -- no. Yeah.
16 You all can do it and I'll
17 have the clerk's office do it
18 and hopefully it will work out
19 as it was supposed to.

20 Okay. Any exceptions
21 to me bringing in the jurors
22 who have arrived and who are
23 present and who -- and
24 advising them that they will
25 be getting a new notice for

1 the twenty-first due to
2 circumstances beyond our
3 control regarding the balance
4 of the jurors being present?
5 And also I'm going to instruct
6 them that they're not to
7 speculate about why they are,
8 have been reassembled, that
9 they're not to allow
10 themselves to be exposed to
11 any media coverage about the
12 case, and I also -- my
13 instruction is going to be a
14 little stronger because I'm
15 going to advise them that if
16 they violate my instructions
17 they will be held in contempt.
18 Is there any exception from
19 the State?

20 MR. WILLIAMS: No, your
21 Honor. I think you'd probably
22 have to order them to come
23 back.

24 THE COURT: I can, but
25 I'm going to send them a

1 notice because --

2 MR. WILLIAMS: Okay.

3 THE COURT: --

4 unfortunately I'm going to
5 need one if I have to send the
6 sheriff for them.

7 MR. WILLIAMS: All
8 right. Thank you.

9 THE COURT: Because I'm
10 going to have to do a bench
11 warrant which means I'm going
12 to need an order, an
13 underlying order, having
14 commanded them to appear.

15 MR. WILLIAMS: All
16 right.

17 THE COURT: Or
18 they won't go pick -- it ain't
19 the old days where I can just
20 go tell the sheriff to go pick
21 them up. Judge Fields used to
22 do it. When a juror didn't
23 show up, he'd just send the
24 sheriff to go pick them up.
25 Now you need an order.

1 Okay. Any
2 exceptions?

3 MR. RUNYON: No
4 exceptions to the position
5 about bringing the jury out,
6 Judge, under the circumstances
7 that is now upon us.

8 THE COURT: Yeah. I
9 just think it would be
10 piecemeal for me to -- and
11 then if I also run the risk if
12 I do it that way of them
13 talking to one another and I
14 don't want that happen, and I
15 have gone to great pains to
16 make sure that they are not
17 aware of the outstanding
18 motion nor the reason for why
19 they have been reassembled.

20 (The jury enters the
21 courtroom at 10:28 a. m.)

22 THE COURT: Good
23 morning, ladies and gentlemen.
24 We appreciate your patience.
25 I appreciate that you all have

1 abided by the Court's
2 instructions and appeared this
3 morning. Unfortunately there
4 are three of your member who
5 have not abided by my
6 instructions and have not
7 appeared this morning and as a
8 result I am going to have to
9 postpone the purposes for
10 which you have been
11 reassembled and I profusely
12 apologize. I could simply
13 send the sheriff for them but
14 I would imagine that would
15 take several hours to
16 accomplish and I do not think
17 that would be an efficient use
18 of your time.

19 The Court does not
20 mean to seem mysterious for
21 the purposes for which it has
22 reassembled you, but it is
23 necessary that the Court not
24 give any further information
25 than which has been provided.

1 This hearing is going
2 to be rescheduled for the
3 twenty-first day of March,
4 which is two Fridays from
5 today. You will receive an
6 additional notice in the mail,
7 exactly that or identical to
8 the one that you have received
9 for today's hearing.

10 In the interim it is
11 essential that you have
12 absolutely no discussion about
13 this case among yourselves or
14 with anyone else. That you
15 not speculate about the
16 purposes for which the jury
17 has been reassembled. And in
18 addition that you take extra
19 precaution not to allow
20 yourselves to be exposed to
21 any media coverage that there
22 may be about this case. That
23 includes anything that could
24 be in the newspaper,
25 television, radio, or

1 internet, and you are not to
2 do any individual or specific
3 types of research regarding
4 any potential issue or matter
5 involved in this case on the
6 internet or otherwise.

7 It is essential that
8 you abide by the Court's
9 instructions.

10 Please no walking
11 while the Court is speaking.

12 AN OFFICER: I'm sorry,
13 your Honor.

14 THE COURT: Please take
15 your seats.

16 AN OFFICER: They're
17 leaving. They've leaving,
18 your Honor. They're in the
19 wrong courtroom.

20 THE COURT: Oh, I'm
21 sorry. Go ahead. But I need
22 you to man that door for me
23 because it's distracting.

24 AN OFFICER: I'll go
25 ahead and lock the doors.

1 THE COURT: Thank you.

2 Ladies and gentlemen,
3 it is essential and I need to
4 instruct you very ardently and
5 I need you to take this
6 instruction to heart because I
7 mean it very seriously.
8 You're to have absolutely no
9 discussion among yourselves or
10 with anyone else or speculate
11 again the purposes for which
12 your number has been
13 reassembled. If anyone
14 violates that instruction I
15 need to advise you and put you
16 on notice that you will be
17 found in contempt of Court and
18 that subjects you to a
19 six-month stint in jail as
20 well as a fine of up to a
21 thousand dollars. Okay?

22 So I need you to very
23 specifically abide by that
24 instruction and take it with
25 the seriousness with which it

1 has been given.

2 Again we appreciate
3 your patience with us this
4 morning. I know that many of
5 you had other obligations and
6 I apologize profusely that you
7 all had to appear and that we
8 were not able to accomplish
9 the purposes for you have been
10 reassembled. I hope that you
11 all have a good morning. We
12 already have checks ready for
13 you to compensate you for your
14 time. I'm sorry that they
15 cannot be larger, and also the
16 bailiffs will provide you with
17 parking so that you will not
18 have to pay for your parking.

19 Mr. Brown, if you
20 could with Mr. Rueger. He let
21 me know that those checks had
22 already be done, that they are
23 available and ready, and if
24 any of you need work excuses,
25 please let Mr. Brown know and

1 we will make sure that you
2 have those before you leave
3 this morning.

4 Again -- oh. She has
5 them ready. Good girl.

6 She's going bring
7 them to Mr. Brown.

8 Again, I appreciate
9 you all being diligent and
10 abiding by the Court's
11 instructions. It is greatly
12 appreciated.

13 I hope you all have a
14 good weekend and you're
15 excused with the Court's
16 profound thanks.

17 (The jury leaves the
18 courtroom at 10:32 a.m.)

19 **THE COURT:** Miss
20 Roumel, if you would take the
21 stand, please, and raise your
22 right hand to be sworn.

23

24

25

1 ELENI MARIA ROUMEL,
2 having been called as a
3 witness, is duly sworn and
4 testifies as follows:

5 THE COURT: Mr.
6 Williams or Mr. Runyon, do you
7 all prefer that the Court
8 question the witness or do you
9 all want to question the
10 witness in direct and cross
11 and then have the Court ask
12 any questions? What is your
13 preference?

14 MR. WILLIAMS: I would
15 just as soon follow up, your
16 Honor. I do have a copy of
17 the e-mail if the Court
18 doesn't.

19 THE COURT: I have it.

20 MR. WILLIAMS: Okay. I
21 have no, no problems following
22 up if necessary.

23 MR. RUNYON: I have no
24 problem following up, Judge.
25 I mean I think we're in

1 agreement, but since she's on
2 the stand perhaps if she could
3 identify the e-mail so we can
4 make it an exhibit.

5 THE COURT: Bear with
6 me one second. I need to take
7 care of something.

8 (The Judge leaves the
9 courtroom for a brief period
10 and then returns.)

11 THE COURT: Do you have
12 an extra copy of the email?

13 MR. RUNYON: I have,
14 Judge.

15 THE COURT: If you
16 could give it to the court
17 reporter for me, please.

18 (Whereupon, the email
19 previously referred to is
20 received and marked as Court's
21 Exhibit No. 1 for purposes of
22 the record.)

23 THE COURT: The jurors,
24 a bunch of them have, they
25 were still out in the hallway.

1 Many of them have plans to
2 take off the twenty-first,
3 which is Good Friday. And
4 then some of them have other
5 plans the twenty-fourth, that
6 are going to take them
7 throughout the rest of the
8 month and into April and I
9 just do not want -- I'm on
10 vacation the week of the
11 thirty-first. We're in
12 chambers the week of the
13 twenty-fourth. And chambers
14 is not a problem but I have a
15 gentleman who indicates he's
16 going to take care of his
17 elderly father and he will not
18 be back for several weeks and
19 he made that commitment and I
20 don't want this hearing
21 dragging out indefinitely.
22 I'd like to take care of it.
23 So what we may well
24 have to do is reschedule it
25 for next Friday, which is the

1 --

2 MR. WILLIAMS: Fourteen
3 th, I believe.

4 THE COURT: The
5 fourteenth, and I'll just have
6 to make sure that not only are
7 the notices sent out but that
8 they're called also. They
9 were supposed to be called by
10 the clerk's office and, and
11 confirm that they received
12 their notices and their
13 appearance, but apparently
14 they're telling me that that
15 was not done. So I have to
16 make sure that that is taken
17 care of.

18 Is there any
19 exception from the State?

20 MR. WILLIAMS: No, your
21 Honor.

22 THE COURT: From the
23 defense?

24 MR. RUNYON: No, your
25 Honor.

1 MR. WILLIAMS: I can
2 give you the indictment
3 numbers, Judge.

4 THE COURT: I have
5 them. Indictment number's
6 2007-GS-10-4660, which is an
7 indictment for murder. 4661,
8 which is an indictment for
9 murder. 4662, which is
10 possession of a firearm during
11 the commission of a violent
12 crime. And 4663, which is
13 possession of a firearm during
14 the possession -- during the
15 commission of a violent crime.

16 Miss Roumel, what is
17 your relationship with Miss
18 Steele?

19 THE WITNESS: Miss
20 Steele is a friend of mine.

21 THE COURT: When you
22 say friend, quantify that for
23 me. Is she more of an
24 acquaintance or is she a close
25 friend or is she a casual

1 friend?

2 THE WITNESS: I would
3 say she's a casual friend. We
4 have lunch together
5 occasionally and I see her at
6 social events.

7 THE COURT: Did you
8 send an e-mail to Miss Steele
9 on February seventh of 2008?

10 THE WITNESS: Yes.

11 THE COURT: And what
12 was the substance of that
13 e-mail?

14 THE WITNESS: We had
15 been e-mailing along with some
16 other women about having lunch
17 and at the end of the e-mails
18 about lunch I e-mailed her
19 about a conversation that I
20 overheard while I was at
21 physical therapy session that
22 morning.

23 THE COURT: Okay. And
24 what -- when you were at
25 physical therapy that morning

1 and where was the physical
2 therapy?

3 THE WITNESS: It's at
4 the M. U. S. C. James Island
5 location which is off of Folly
6 Road.

7 THE COURT: And where
8 were you at the time of that
9 physical therapy session,
10 physically in the building?
11 Where were you located?

12 THE WITNESS:
13 There's, there's a large room
14 that all patients are in and
15 all physical therapists are in
16 for physical therapy. It's a
17 wide open room. It's large.

18 THE COURT: And what
19 were you doing at that time?

20 THE WITNESS: I was
21 doing, at the time -- at which
22 time? At the time I overheard
23 the conversation?

24 THE COURT: Yes.

25 THE WITNESS: I was

1 over doing exercises for my
2 back.

3 THE COURT: And who
4 were you doing those with?

5 THE WITNESS: My
6 physical therapist.

7 THE COURT: And who is
8 it?

9 THE WITNESS: Her name
10 is Whitney Lee.

11 THE COURT: And then
12 what happened next?

13 THE WITNESS: We were
14 doing exercises and the place
15 where we were doing exercises
16 was right next to where they,
17 I guess the physical
18 therapists have their coffee
19 and kind of almost like a
20 break room and I overheard
21 another one of the physical
22 therapists talking about her
23 husband being on a jury.

24 THE COURT: Wait one
25 second for me, please. Some

1 is coming through the door.

2 Okay. Go ahead. You
3 overheard the physical
4 therapist talking about her
5 husband being on jury duty.

6 THE WITNESS: I, I
7 believe that she was asked by
8 somebody, I don't know who,
9 whether her husband was done
10 with jury duty so that she was
11 still -- he was still on the
12 jury.

13 THE COURT: And what
14 else did you hear?

15 THE WITNESS: I heard
16 her say that he was upset
17 after one of the days when I
18 guess family members had
19 testified. I heard her say
20 that it was a case about,
21 about a crime at a Mc Donald's
22 and I heard her say I guess
23 after being asked by one, one
24 of her friends or somebody
25 else, I don't know if it was a

1 patient or another physical
2 therapist, I heard her say I
3 think that he is probably
4 going to vote guilty. And I
5 think that she also said that
6 they were, were done or were
7 about to be done.

8 THE COURT: And did you
9 hear anything else?

10 THE WITNESS: Not that
11 I, not I recall.

12 THE COURT: And this --
13 when did this, what you
14 overheard, what day was that?
15 Was that the same date you
16 sent the e-mail?

17 THE WITNESS: Yes.
18 Yes, your Honor. My physical
19 therapy session is at seven
20 thirty in the morning on
21 Tuesdays and Thursdays. So it
22 would have been between seven
23 thirty and probably about
24 eight ten.

25 THE COURT: And what

1 prompted you to send the
2 e-mail to Miss Steele?

3 THE WITNESS: I don't
4 know, your Honor. I, you
5 know, just as a friend to tell
6 her that -- I, I really don't
7 know, you know. It was more
8 as a friend to say, you know,
9 that someone thought she was
10 doing a good job.

11 THE COURT: So you had
12 no direct conversation with
13 this physical therapist? You
14 overheard the conversation?

15 THE WITNESS: I
16 overheard the conversation,
17 your Honor.

18 THE COURT: Was she
19 aware that you could hear her?

20 THE WITNESS: I'm sure.
21 Yes. She was close by. She
22 was probably the distance
23 between myself and the court
24 reporter. There were several,
25 there were several people

1 around. Probably more than --
2 probably about five people
3 around.

4 THE COURT: Any
5 questions from the State?

6 MR. WILLIAMS: Just
7 briefly, your Honor.

8 THE COURT: You may
9 proceed.

10

11

12

13

14 EXAMINATION BY MR.

15 WILLIAMS:

16 Q Miss Roumel, you sent
17 the e-mail that morning. Correct?
18 Around 9:30 I think the e-mail
19 shows.

20 A Whatever the e-mail
21 shows is likely when I sent it.

22 Q And you later
23 actually called Miss Steele that
24 night. Is that correct?

25 A I did.

1 Q And at that point you
2 in fact alerted her to the e-mail,
3 the fact that you had overheard
4 parts of a conversation and as
5 part of your professional duty you
6 were telling her that it sounded
7 like somebody was maybe engaging
8 in some misconduct?

9 A I did.

10 Q So although it may
11 not be in the e-mail that there
12 was some concern of yours
13 professionally, you later that day
14 did alert her and told her about
15 the e-mail?

16 A I did. I did that
17 evening.

18 Q And at that evening
19 it was actually late at night?

20 A It was after work.
21 I don't -- I don't know the exact
22 time.

23 Q And your concern at
24 that point was that there may have
25 been some misconduct in the trial

1 that you wanted to let her know
2 about?

3 A That was, that was
4 part of my concern. The other
5 part was, you know, I, you know,
6 wanted to let her know and also
7 apologize if my e-mail had caused
8 her any inconvenience in her, in
9 her trial.

10 Q But she wasn't aware
11 of it at that time?

12 A She had no idea.

13 Q Okay. So essentially
14 had disclosed to her through
15 e-mail and then by phone that
16 there may have been some
17 misconduct that you were aware of?

18 A Yes.

19 MR. WILLIAMS: I have
20 nothing else, your Honor.

21 THE COURT: Mr. Runyon.

22

23

24

25

1 EXAMINATION BY MR.

2 RUNYON:

3 Q Just to make it
4 absolutely clear now that the
5 physical therapy, the physical
6 layout of where you were taking
7 physical therapy was like, just
8 like a big room, like a courtroom,
9 and it has various machines and
10 table and weights and all that
11 sort of stuff in it?

12 A Yes.

13 Q And there are no
14 cubicles or curtains or anything
15 of that sort?

16 A They do have some,
17 some rooms that are closed off in
18 the back and then there's a
19 waiting room and offices, but I
20 wasn't in that part.

21 Q All right. But the
22 general area where you do the, the
23 exercise for your back and a lot
24 of other exercises, that was
25 basically like a big bull pen so

1 to speak where everybody is doing
2 their --

3 A Yes.

4 Q -- their physical
5 therapy exercises?

6 A Generally. That's
7 correct.

8 Q Right. And you and I
9 believe the e-mail itself is timed
10 at 8:48 in the morning.

11 A No. It says 9:38.

12 THE COURT: It's 9:38
13 on the top, February seventh,
14 2008.

15 MR. RUNYON: Oh, excuse
16 me. Judge, I'm, I'm still
17 catching up with modern
18 technology.

19 THE COURT: Okay.

20 MR. RUNYON: Pardon me.
21 I'm an old hand.

22 THE COURT: No problem.

23 Q And so, and of course
24 there's no question about the fact
25 you discharged your ethical duties

1 in this matter by notifying an
2 officer of the Court about what
3 you heard and later on about your
4 concerns, et cetera?

5 A I believe so.

6 Q Well, I'm not asking
7 if you believe so. I'm telling
8 you, you did that. Okay?

9 A Thank you.

10 Q All right. And, and
11 your physical therapist's name is
12 Whitney Lee?

13 A Yes.

14 MR. RUNYON: No further
15 questions of this witness,
16 your Honor.

17 THE COURT: Any further
18 questions, Mr. Williams?

19 MR. WILLIAMS: Not from
20 the State, your Honor.

21 THE COURT: Miss
22 Roumel?

23 THE WITNESS: Yes, your
24 Honor.

25 THE COURT: Your

1 colleagues have done an ardent
2 job of trying to cover you in
3 this matter. Ultimately
4 whether anything ethical or
5 unethical has transpired is my
6 decision. I have great
7 concerns about what you did as
8 an officer of the Court and as
9 a fellow lawyer I have
10 concerns because the e-mail
11 speaks for itself.

12 While your ethical
13 concerns may have arisen later
14 about juror misconduct, that
15 was not the tone of the e-mail
16 you sent. The tone of the
17 e-mail you sent was that you
18 had over -- and I didn't know
19 at the time that you overheard
20 the conversation because the
21 context of the e-mail
22 indicates that you may well
23 have had the conversation with
24 the person.

25 But now having heard

1 what you recall, reported to
2 the Court, and I think you
3 were honest when you said to
4 me just now in response to my
5 question that you sent the
6 e-mail to her because you had
7 overheard the conversation,
8 you -- there was an indication
9 that this juror might vote
10 guilty, and you wanted her to
11 know that she was doing a good
12 job and give her a heads up as
13 to what was going on in her
14 trial, and that in and of
15 itself is very troubling to me
16 and I'm not going to be
17 dishonest with you and tell
18 you that I'm not going to get
19 an ethics opinion about it,
20 because I am. And then I'm
21 going to determine what I'm
22 going to do from there. The
23 ethics rules allow me to do
24 one of two things. I can go
25 to your senior partner and

1 have a chat and see if they
2 can correct it or I can report
3 it to the disciplinary
4 council.

5 THE WITNESS: Your
6 Honor, may. . .

7 THE COURT: I think
8 sometimes -- and I'm troubled
9 by this young generation of
10 lawyers who do not understand
11 the gravity of what we do for
12 a living. We handle people's
13 lives. A trial is a very
14 serious matter. It is
15 someone's life. It is not a
16 game, and that is what
17 troubles me.

18 Now, we've had --
19 and, and I don't have a
20 problem in theory with you
21 having -- really what you
22 should have done if you had
23 concerns about juror
24 misconduct is you should have
25 contacted the Court and you

1 should have said I overheard
2 this conversation and it's
3 troubling me because it
4 indicates to me that this
5 juror may have been engaged in
6 premature deliberations; not
7 to call your friend and say
8 "atta-boy, this guy's going to
9 vote guilty. "

10 So I applaud your
11 colleagues for covering you as
12 they should. Now I don't know
13 where this road with me is
14 going to end with you but
15 think in the future it should
16 be a very valuable lesson to
17 you and to your colleagues
18 regarding how matters should
19 be handled because in a very
20 brief moment you can make a
21 decision that can have very
22 grave consequences.

23 **THE WITNESS:** I agree
24 and, your Honor, I would
25 sincerely like to apologize to

1 the Court for, for taking up
2 judicial resources and, you
3 know, for any time, and for
4 both counsel for the time that
5 it's caused them. It was not
6 my intension whatsoever to, to
7 engage in any impropriety or
8 to, to insert myself into this
9 trial at all. I really did
10 think all the -- I thought
11 that the case was essentially
12 done. I mean in hindsight I
13 deeply regret wasting the
14 Court's time.

15 THE COURT: Thank you
16 very much.

17 THE WITNESS: I'm
18 sorry, your Honor.

19 THE COURT: Thank you
20 very much, Miss Roumel. Hae a
21 good day. You're excused.

22 Okay. Is there
23 anything else we need to do
24 this morning or that we can
25 accomplish without the

1 defendant's presence?

2 **MR. RUNYON:** No, your
3 Honor.

4 **THE COURT:** And I'm
5 certain that you will share
6 this transcript or appropriate
7 portions -- well, you don't
8 have to go through the expense
9 of, of the transcript. You
10 certainly will be able to
11 convey to your client the
12 substance, the substance of
13 what took place.

14 **MR. RUNYON:** Judge --
15 excuse me. I'm sorry.

16 Judge, it's not part
17 of the record, the clerks's
18 minutes are not part of the,
19 quote, record.

20 **THE COURT:** Yeah, they
21 are. They're a part of the
22 file.

23 **MR. RUNYON:** Well,
24 they're a part of the file but
25 insofar as the transcript --

1 THE COURT: Well, I
2 believe they're a part of the
3 transcript.

4 MR. RUNYON: Well, just
5 out of an abundance of
6 caution, what I would like to
7 do, unless there's objection
8 is state that the, for the
9 record that the Court recessed
10 on Wednesday, February sixth
11 at 5:05, reconvened on
12 Thursday, February seventh,
13 2008 at 9:35 a.m. which puts
14 it in the time frame of a, of
15 a, and I was corrected, a 9:38
16 e-mail, which Miss Steele had
17 not opened.

18 THE COURT: I don't
19 think there's any questions
20 that Miss Steele didn't or any
21 contention that she did not
22 receive the e-mail till after
23 the trial concluded and the
24 verdict had been rendered and
25 sentence had been imposed.

1 MR. RUNYON: Well, I
2 just have a --

3 THE COURT: I don't
4 think there's any, I don't
5 think there's any, I don't
6 think there's any contention
7 about that, is there?

8 MR. RUNYON: Well, I'm
9 not suggesting there is, but
10 what I'm saying, Judge, is
11 that just for the record so
12 it's crystal clear if, if this
13 ever has to be read by someone
14 in Columbia on appeal of this
15 matter that the trial had not
16 even gone to the jury when
17 this conversation was
18 overheard.

19 THE COURT: I don't
20 think there's any question
21 about that. I think you all
22 probably can stipulate to
23 that. I don't think there's
24 any question that the
25 conversation with, that the

1 juror's wife, whatever she
2 said, was said prior to the
3 conclusion of the trial and
4 probably was said at the time
5 the Court was getting ready to
6 close and charge -- well, when
7 did we close and charge this
8 case?

9 MR. RUNYON: We closed
10 on Thursday.

11 THE COURT: On
12 Thursday. 12:21 is when --
13 well, we started closing
14 arguments that morning and the
15 Court's charge was at 12:21
16 and concluded at 12:47.

17 MR. RUNYON: Correct,
18 your Honor.

19 MR. WILLIAMS: I think
20 we were back on the record at
21 9:35, your Honor.

22 MR. RUNYON: 9:35
23 according to the minutes of
24 the honorable clerk.

25 MR. WILLIAMS: I guess

1 the only thing I'm concerned
2 about is the State could have
3 had any knowledge of - -

4 **THE COURT:** No. I
5 don't think there's any
6 question Miss Steele did not
7 get the e-mail until after
8 everything was concluded.
9 Miss Roumel's testimony even
10 reflects that she called her
11 that night and that Miss
12 Steele had not opened her
13 e-mail apparently and so she
14 brought the e-mail to her
15 attention.

16 **MR. RUNYON:** And the
17 purpose of putting that time,
18 that time on the record was
19 not to question whether or not
20 the State could have known,
21 did know, or what-have-you.
22 That, that wasn't the issue.
23 It was just making sure that
24 the, the various times were on
25 the record, so that it was

1 clear that the case had not
2 gone to the jury and thus
3 we're going to probably argue
4 that, that the conversation,
5 subject to whatever we hear,
6 that the conversation with the
7 juror's wife probably occurred
8 prior to even the physical
9 therapist session that
10 morning.

11 THE COURT: Again as
12 I've emphasized, there are
13 many layers to this
14 proceeding. Whether he had a
15 conversation in violation of
16 the Court's instructions with
17 his wife may be a matter of
18 contempt that does not affect
19 the ultimate outcome of this
20 trial.

21 The issue for the
22 purposes of this hearing which
23 is very clear by case law is
24 if there's premature
25 deliberations, whether that

1 has affected the -- whether it
2 was prejudicial and whether it
3 affected the outcome of the
4 trial. In other words,
5 whether some outside influence
6 affected the jury's verdict.
7 That is the Court's inquiry or
8 the scope of the Court's
9 inquiry.

10 Okay. We will recess
11 this hearing. We'll reconvene
12 at 9:30 on the twenty-first.
13 No.

14 MR. RUNYON: No. The
15 fourteenth.

16 THE COURT: Yes. The
17 fourteenth. I'm sorry. Which
18 is this coming Friday. And
19 we -- I will endeavor -- my
20 secretary is sick today but I
21 have everything saved on the
22 computer and I will endeavor
23 to get those notices mailed
24 today. I will probably put
25 them in the mail myself to

1 make sure they get out today
2 and then I will have follow-up
3 phone calls made on Monday by
4 the clerk's staff to make sure
5 that each juror received their
6 notice and to insure their
7 attendance.

8 MR. WILLIAMS: We'll do
9 a transport order.

10 THE COURT: And also,
11 Mr. Williams, if you all could
12 go ahead and send the request
13 to transport Mr. Jenkins
14 today.

15 MR. WILLIAMS: Sure.

16 THE COURT: That would
17 be greatly appreciated.

18 Mr. Runyon, if you
19 could get your office to fax
20 over another transport order
21 for me.

22 MR. RUNYON: Yes, your
23 Honor.

24 THE COURT: I will sign
25 it. I will make sure the

1 Clerk's Office gets it and
2 then also we will make sure
3 that this transport -- I
4 will -- do you have this
5 transport request form in your
6 system, Mr. Runyon?

7 MR. RUNYON: Yes, your
8 Honor.

9 THE COURT: Can your
10 office provide this?

11 MR. RUNYON: Yes, your
12 Honor.

13 THE COURT: Can you --
14 I'm going to give you a fax
15 number that you need to fax
16 this to them at. It is eight
17 oh three eight nine six two
18 seven five zero, or two seven
19 four nine, and is of course to
20 the attention of the
21 Department of Corrections
22 request for transport, court
23 coordination section.

24 MR. RUNYON: Thank you
25 very much, your Honor.

1 THE COURT: You're
2 welcome. And I may just make
3 some changes to this one you
4 sent me and also fax it so
5 we'll be covered at least on
6 three bases and they should
7 not be able to tell us this
8 time that they did not
9 transport him.

10 MR. WILLIAMS: Judge,
11 we sometimes bring them over a
12 day early.

13 THE COURT: That's
14 fine.

15 MR. WILLIAMS: Do you
16 want to do that? You know, to
17 give us a chance to make sure
18 he's here.

19 THE COURT: You know,
20 that might be a good idea.

21 MR. WILLIAMS: We
22 generally bring people for a
23 whole week.

24 THE COURT: That's
25 probably a good idea although,

1 you know, sometimes if he's
2 just coming from Kirkland --
3 where's Kirkland located?

4 MR. RUNYON: It's in
5 Columbia, Judge.

6 THE COURT: They
7 usually bring them in the
8 morning and take them right
9 back.

10 MR. WILLIAMS: Yeah.
11 Well, I --

12 THE COURT: Yeah. I'll
13 leave that up to you all. He,
14 if he's just coming an hour
15 and a half away and with the
16 overcrowding situation at the
17 detention center, that's just
18 a lot for them to have process
19 somebody in for overnight and
20 then process them back out.
21 It's just easier. They should
22 be able to have him here and
23 actually what you probably
24 need to put on there is 8:30
25 instead of nine o'clock.

1 MR. WILLIAMS: Okay.

2 THE COURT: And that
3 way they'll go ahead and
4 transport him.

5 MR. WILLIAMS: Thank
6 you, your Honor.

7 THE COURT: Thank you
8 all.

9 MR. RUNYON: Thank you,
10 your Honor.

11 THE COURT: You all
12 have a good week-end.
13 Appreciate your patience.

14 (Whereupon, the
15 matter was concluded.)

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CERTIFICATION

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Charleston County, South Carolina on the 7th day of March, 2008.

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

DATED: April 14, 2008

Heather Gayle Burns RDR
HEATHER GAYLE BURNS, R. D. R.
Official Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2007-GS-10-4660,
4661, 4662, 4663

3 STATE OF SOUTH CAROLINA)
4)
5 Plaintiff)

6 V.)

TRANSCRIPT OF RECORD

7 QUINTON R. JENKINS,)

8 Defendant.)
9

MARCH 14, 2008
CHARLESTON, SOUTH CAROLINA

10
11
12
13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
15
16
17

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

19 MR. NATHAN WILLIAMS, Assistant Solicitor
20 MS. KIM STEELE, Assistant Solicitor
REPRESENTING THE STATE

21 MR. WILLIAM RUNNYON, ESQUIRE
22 REPRESENTING THE DEFENDANT
23

24 ANNE BOULEY MEYER, RPR
25 CIRCUIT COURT REPORTER

1 THE COURT: This is state of South Carolina
2 versus Quinton R. Jenkins and the indictment numbers
3 are as follows. You all have to bear with me, I'm
4 sorry, my allergies are giving me some issues this
5 morning.

6 Indictment numbers 2007-GS-10-4660, murder;
7 2661, murder; 4662, possession of a firearm during the
8 commission of a violent crime; and 4663, possession of
9 a firearm during the commission of a violent crime.

10 Mr. Jenkins had a trial before this
11 Court beginning on February, 4th, of 2008, concluding
12 on -- I believe we finished this trial on Thursday,
13 which would have been February the 7th.

14 The jury deliberated from 12:48 to 3:02.
15 During the course of deliberations it appears that the
16 jury had one question which the Court answered,
17 appears at 1:20. The jury then rendered its verdicts
18 of guilty on each of the offenses, and the defendant
19 was sentenced by the Court.

20 Thereupon Ms. Steele of the solicitor's office
21 -- whereupon the solicitor's office disclosed to the
22 Court, as well as Mr. Runyon, an e-mail that Ms.
23 Steele received from a friend of her's, friend slash
24 -- I think more that I mischaracterized it -- more of
25 an acquaintance, a professional relationship from a

1 Ms. Eleni Rumel, spelled E-L-E-N-I, Rumel, R-U-M-E-L
2 dated February 8th at 8:56. Well, that's when which
3 Ms. Steele sent it to me, I apologize. The e-mail is
4 dated Thursday, February 7th, 2008 at 9:38 a.m. and
5 apparently Ms. Rumel, Ms. Steele, Ms. Gordon had been
6 trying to arrange having lunch, as well as Ms.
7 Schachte and a few other professional acquaintances,
8 it appears were trying to arrange a lunch outing.

9 And in the course of that Ms. Rumel sent an
10 e-mail to Ms. Steele indicating, hey, I was at
11 physical therapy today, and one of the therapist's
12 husband is on your jury, he is apparently voting
13 guilty, see you tomorrow, exclamation point, signed
14 with an E, I assume for Eleni.

15 That e-mail has already been marked as a
16 court's exhibit and I would imagine it has already
17 been made a part of the Court's file. I sent my clerk
18 downstairs to get the file so that I can make sure
19 that has been done.

20 We convened this hearing originally -- and
21 subsequent to that -- and again as I indicated, Ms.
22 Steele disclosed both that e-mail to the Court and I
23 assume both to Mr. Runyon because on February 8th the
24 Court received a motion for new trial filed by Mr.
25 Runyon on behalf of his client. The basis for that

1 motion being a juror, prior to being charged and sent
2 to the deliberations, announced his vote for a verdict
3 of guilty in this case.

4 We subsequently, the Court scheduled a hearing
5 in this matter on March 7th, at which time there was a
6 little snafu with the department of corrections, and
7 actually the clerk's office has now acknowledged that
8 my order, which was signed to transport Mr. Jenkins,
9 was not acted upon by their office. So it apparently
10 sat in a stack of other papers and they did not fax it
11 over to the department of corrections and they
12 apologized for that and it happens. And with the
13 volume of paperwork that they deal with that does not
14 surprise me.

15 But in any event, what we did with the consent
16 of counsel is we went ahead and did a voir dire
17 basically of Ms. Rumel, we took her testimony,
18 regarding what in fact took place at her physical
19 therapy appointment on the date referred to in the
20 e-mail.

21 And the e-mail gives the impression that maybe
22 she had a conversation, but subsequent to her
23 testimony again on March 7th, both parties had the
24 opportunity to question her, it appears that she
25 considers Ms. Steele a casual friend, they have lunch

1 occasionally, some social events, she attends physical
2 therapy at the Medical University at the James Island
3 location.

4 That they were in a large room for physical
5 therapy. It is a wide open room. While she was doing
6 her exercises that there is a physical therapist
7 coffee break room that is near where she was
8 exercising, very close proximity, between the hours of
9 7:30 a.m., and 8:10 a.m.

10 And she overheard a physical therapist talking
11 about her husband being on a jury, and that she heard
12 her say he was upset after having heard one of the
13 family members testify, that it was regarding a crime
14 at McDonald's, and she heard her say in response to a
15 question, I think that he is probably going to vote
16 guilty.

17 And that she wanted to give her friend
18 basically an at-a-boy about her performance in the
19 trial. She said there were at least five other people
20 who could hear the conversation. And then she again
21 called her that night to see if she had received the
22 e-mail.

23 We then adjourned the hearing. Also, I
24 neglected to point this out, we were missing three
25 jurors who did not comply with their notices regarding

1 their appearance at the hearing. I believe I
2 documented those for the record. I know we were
3 missing Mr. Haigler, Number 119. And I believe we
4 were missing Ms. Chiarito and Ms. Richardson I
5 think but I need to look back and make sure instead of
6 going from my memory and I apologize.

7 Mr. Haigler was absent, Mr. Harleston and Ms.
8 Chiarito were the missing jurors; number 119, 226 and
9 number 58. The Court could have at that time in its
10 discretion issued bench warrant and had the sheriff's
11 department pick these missing jurors up because the
12 notice very clearly indicated to them that they were
13 being summonsed to appear, and failure to appear would
14 subject them be taken into custody of the sheriff's
15 department.

16 But in light of the torrential rains on that
17 day, and the fact that we had already had the jurors
18 waiting while we ascertained Mr. Jenkins' location,
19 and knowing it would have probably taken several hours
20 to marshal these jurors it did not make sense to do
21 that. So we recessed with consent of the parties the
22 hearing.

23 we also determined during the course of that
24 hearing that through a deduction, you all agreed that
25 you all determined that the offending juror was Mr.

1 Matthew Maurer, is that correct, Number 309?

2 MR. WILLIAMS: Yes, Your Honor.

3 THE COURT: How we will proceed this morning is
4 that I will question Mr. Maurer to determine if in
5 fact he had a conversation with his wife regarding
6 this trial, what the substance of those conversations
7 were, and then I will question each individual juror
8 as to whether they were exposed to any conversations
9 with Mr. Maurer that were outside of the evidence in
10 this case.

11 And as to whether they engaged in any premature
12 deliberations, which I really don't think is an issue,
13 but out of an abundance of caution I'm going to ask
14 that question.

15 Is there any exception to the Court proceeding
16 in this way from the state?

17 MR. WILLIAMS: No, Your Honor.

18 THE COURT: From the defense?

19 MR. RUNYON: No, Your Honor.

20 THE COURT: And the jurors are here for
21 purposes of the record, it should be noted that the
22 bailiffs were -- they were strictly advised in their
23 notice that they were not to have any discussions
24 about this case among themselves or with anyone else,
25 and that they were not to speculate about the purposes

1 for which they were being reassembled.

2 And they were also strictly instructed that
3 they were not to make any attempts to contact anyone
4 else or among themselves. I think I will probably
5 have copies of those notices made a part of the
6 record, as well all the Court's order to reassemble
7 the jury.

8 Is there any exception from the state?

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: From the defense.

11 MR. RUNYON: No, Your Honor.

12 THE COURT: Okay. I may ask them also if they
13 complied with the Court's notice that they not have
14 any discussion about this among themselves or anyone
15 else. Is there any exception from the state?

16 MR. WILLIAMS: No, Your Honor.

17 THE COURT: From the defense?

18 MR. RUNYON: No, Your Honor.

19 THE COURT: Bear with me one moment.

20 Please bring in Juror Number 309, Matthew
21 Maurer.

22 (Whereupon, the juror enters the courtroom.)

23 THE COURT: Mr. Maurer, how are you?

24 A JUROR: Good. How are you?

25 THE COURT: Fine. If you could state your full

1 name for the record.

2 A JUROR: Matthew Maurer.

3 THE COURT: Maurer, I was mispronouncing your
4 name.

5 A JUROR: That's okay.

6 THE COURT: Mr. Maurer, what does your wife do
7 for a living?

8 A JUROR: She is a physical therapist at the
9 Medical University of South Carolina.

10 THE COURT: And what location does she work at?

11 A JUROR: The James Island Ellis Oaks. Right
12 at the base of -- by the Lowes and James Island. The
13 base of the connector.

14 THE COURT: Now, Mr. Maurer, did you have any
15 dis -- let me ask another question before I get ahead
16 of myself, I apologize.

17 Sir, did you receive a notice to appear today
18 regarding the reassembling of the jury?

19 A JUROR: .

20 THE COURT: Okay. And, sir, that notice
21 instructed you not to have any contact with anyone or
22 to discuss the purposes for which the jury was being
23 reassembled; is that correct?

24 A JUROR: Yes, that's correct.

25 THE COURT: And did you comply with the Court's

1 instructions?

2 A JUROR: Yes, I did. I am assuming you mean
3 jurors?

4 THE COURT: Yes, sir, or anyone else?

5 A JUROR: No. No. I just the only thing I
6 have said is I told my wife I have to be in court, and
7 I told my boss I have to be in court on Friday.

8 THE COURT: Okay. Now, Mr. Maurer, prior to
9 and during -- during the course of the Court's -- of
10 the trial of this matter, you were instructed not to
11 have any discussions regarding this case among
12 yourselves or with anyone else; is that correct?

13 A JUROR: That's correct.

14 THE COURT: Sir, did you have in any
15 discussions with your wife regarding this case?

16 A JUROR: No. No. Not regarding details.

17 THE COURT: Tell me what discussions did you
18 have with your wife?

19 A JUROR: That we were just in court.

20 THE COURT: Did you tell her anything else?

21 A JUROR: No.

22 THE COURT: Did you ever evidence to her any
23 indication that you were upset about any of the
24 proceedings that were going on in court?

25 A JUROR: The only thing I said to her was some

1 of the images we were seeing are disturbing. I did
2 not go into detail about any of the images.

3 THE COURT: Did you at any time tell her how
4 you intended to vote regarding the guilt or innocence
5 of the defendant?

6 A JUROR: Absolutely not.

7 THE COURT: Did you give her any indication of
8 how you were feeling about this case?

9 A JUROR: No. No. I did not -- I'm sorry.
10 Except for again that the images we were seeing were
11 disturbing. She had asked me why I was kind of quiet
12 and I said that, you know, it hasn't been easy, the
13 last few days haven't been easy.

14 THE COURT: Sir, would it surprise you if
15 someone had reported to the Court that they overheard
16 your wife speaking at work indicating that she thought
17 you might vote guilty on this case, and that you were
18 on a trial that involved a murder that took place at
19 the McDonald's?

20 A JUROR: Yes, it would.

21 THE COURT: Sir, if you would step outside for
22 me with the bailiff, and don't go back in the jury
23 room yet. And if you would stand out there for me for
24 a moment.

25 (Whereupon, the juror exits the courtroom.)

1 THE COURT: Are there any further questions
2 from the state?

3 MR. WILLIAMS: No, Your Honor.

4 THE COURT: From the defense?

5 MR. RUNYON: Yes, Your Honor. I would ask the
6 Court to inquire along the lines, without specific
7 question, along the line of did he discuss with the
8 jury prior to the case going to the jury.

9 THE COURT: I asked him that. I asked if he
10 had premature deliberations, did he have any
11 deliberations prior to the Court -- I could ask it a
12 little differently.

13 MR. RUNYON: I'm just out of an abundance of
14 caution.

15 THE COURT: I thought I covered it by asking,
16 if they complied. I asked, I instructed you not to
17 discuss the case among yourselves or with anyone else,
18 did you comply with that instruction and he said yes.

19 But I will ask it a different way, I guess.
20 Any exception from the state?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: Please bring in Mr. Maurer back in.
23 (Whereupon, the juror enters the courtroom.)

24 THE COURT: Mr. Maurer, prior to the Court
25 releasing the jury to deliberate, did you have any

1 discussions with any of the other jurors regarding any
2 discussions you may have had with your wife.

3 A JUROR: Prior to -- can you repeat that so
4 I'm clear.

5 THE COURT: That was a long question.

6 A JUROR: Just so I'm clear.

7 THE COURT: I'm trying to determine if there
8 was premature deliberation. In other words, if there
9 was any discussion about the case before I told the
10 jury they could deliberate.

11 A JUROR: Absolutely not.

12 THE COURT: So my question is, did you discuss
13 among your fellow jurors anything about this case
14 prior to being instructed that you could deliberate?

15 A JUROR: Absolutely not.

16 THE COURT: And did you have any discussions
17 with any of the jurors about any of the conversations
18 you had with your wife?

19 A JUROR: No, I did not.

20 THE COURT: Okay. I'm going to send you back
21 to the jury room, but please do not discuss anything
22 that we have discussed here with your fellow jurors.

23 A JUROR: Okay, I will.

24 THE COURT: Thank you.

25 (Whereupon, the juror exits the courtroom.)

1 THE COURT: Are there any additional -- was
2 that sufficient follow-up, Mr. Runyon?

3 MR. RUNYON: I think it was sufficient, Judge.

4 THE COURT: All right. We will now go through
5 the balance of the list starting with number one,
6 number 264. And my questioning of them however will
7 not be as extensive as it was of Mr. Maurer because it
8 isn't necessary.

9 I will ask them if they had any discussions
10 prior, among themselves, about the case prior to
11 deliberations. And if they had any discussions with
12 Mr. Maurer about any -- if they had any discussions
13 with Mr. Maurer whatsoever regarding the case. I
14 think that would cover it.

15 Is there any exception from the state?

16 MR. WILLIAMS: No, Your Honor.

17 THE COURT: From the defense?

18 MR. RUNYON: No, Your Honor.

19 THE COURT: Please bring in Mr. Summers.

20 (Whereupon, the jurors enter the courtroom.)

21 THE COURT: Mr. Summers, how are you this
22 morning?

23 A JUROR: Fine, thank you.

24 THE COURT: We appreciate you being here. Mr.
25 Summers, did you receive the Court's notice to appear?

1 A JUROR: Yes.

2 THE COURT: And did you follow the Court's
3 instructions and not have any discussions or contact
4 regarding this case with anyone else or with your
5 fellow jurors?

6 A JUROR: No contact.

7 THE COURT: Okay. Sir, you of course sat on
8 this jury. I'm just going to confine my questions to
9 that period of time that you sat on the jury. The
10 Court instructed during the course of deliberations
11 that you were not to discuss the case among yourselves
12 or with anyone else. I need to know, did you comply
13 with that instruction?

14 A JUROR: .

15 THE COURT: Did you have any discussions
16 regarding this case before your deliberations in this
17 matter with Mr. Maurer?

18 A JUROR: No, ma'am.

19 THE COURT: Did you have any exposure to any
20 facts outside the evidence of this case prior to your
21 deliberations?

22 A JUROR: No.

23 THE COURT: Did you in any way deliberate
24 regarding this case prior to being released by the
25 Court to deliberate? In other words, did you engage

1 in any premature deliberations regarding this case?

2 A JUROR: No, ma'am.

3 THE COURT: Okay. Sir, if you would stand
4 right outside the door for me with Mr. Gaddes or Mr.
5 Brown.

6 (Whereupon, the juror exits the courtroom.)

7 THE COURT: Are there any additional questions
8 from the state?

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: From the defense?

11 MR. RUNYON: Judge, I think you may have
12 covered it generally, but I would ask the Court to
13 consider inquiring of the juror as to whether or not
14 he recalls any facts brought into the actual
15 deliberations that were outside of the evidence.

16 THE COURT: I asked that question. I asked him
17 if he was exposed to any facts outside of the evidence
18 prior to deliberation.

19 MR. RUNYON: Prior to deliberation.

20 THE COURT: I think actually were you exposed
21 -- I will ask the court reporter to read that question
22 back to me. Can you read that question back to me?

23 (Whereupon, the court reporter reads back the
24 question.)

25 THE COURT: You want me to ask if it was during

1 deliberations?

2 MR. RUNYON: Judge, out of an abundance of
3 caution.

4 THE COURT: I don't have any problem with that.
5 State have any problem with that?

6 MR. WILLIAMS: No, Your Honor.

7 THE COURT: Please bring in the juror.

8 (Whereupon, the juror enter the courtroom.).

9 THE COURT: Sir, did you have any exposure to
10 any facts outside of the evidence either before or
11 during the jury's deliberations?

12 A JUROR: No, ma'am.

13 THE COURT: Okay, thank you. Sir, if you would
14 go back to the jury room. Please do not discuss
15 anything I have discussed with you among your fellow
16 jurors.

17 A JUROR: Okay.

18 (Whereupon, the juror exits the courtroom.)

19 THE COURT: Number 119, Joseph Haigler.

20 (Whereupon, the juror enters the courtroom.).

21 THE COURT: Mr. Haigler, how are you doing this
22 morning?

23 A JUROR: Doing well.

24 THE COURT: Sir, did you receive the Court's
25 notice to appear regarding the reassembling of the

1 jury?

2 A JUROR: No, I actually -- what happened --

3 THE COURT: Not the first time, the second
4 time?

5 A JUROR: The second time, yes.

6 THE COURT: Okay. And, sir, did you comply
7 with the Court's instructions that you have no
8 discussion about this case or contact among yourselves
9 or with anyone else.

10 A JUROR: Yes, ma'am?

11 THE COURT: Sir, did you have any discussions
12 during the course of these -- before the deliberations
13 of this case with juror Mr. Maurer?

14 A JUROR: No, ma'am.

15 THE COURT: Did you have any exposure to any
16 facts outside the evidence of this case either before
17 or during jury deliberations?

18 A JUROR: No, ma'am.

19 THE COURT: Sir, the Court instructed that you
20 were not to have any premature deliberation about this
21 case. Did you engage in any premature deliberations?
22 In other words did you deliberate or talk with anyone
23 else about this case or with your fellow jurors before
24 being released to deliberate by with the Court?

25 A JUROR: No, ma'am.

1 THE COURT: Sir, if you would step right
2 outside the door for me with Mr. Gaddes.

3 (Whereupon, the juror exits the courtroom.)

4 THE COURT: Any further questions from the
5 state?

6 MR. WILLIAMS: No, Your Honor.

7 THE COURT: From the defense?

8 MR. RUNYON: No, Your Honor. I think we've got
9 the questions down.

10 THE COURT: Yeah, it's a science. Please bring
11 in Mr. Haigler.

12 (Whereupon, the juror enters the courtroom.)

13 THE COURT: Mr. Haigler, I'm going to send you
14 back to the jury room. Please do not discuss anything
15 that I have discussed with you among your fellow
16 jurors.

17 A JUROR: Yes, ma'am.

18 THE COURT: Thank you, sir.

19 (Whereupon, the juror exits the courtroom.)

20 THE COURT: Mr. Harleston. Number 226.

21 MR. WILLIAMS: Your Honor, I believe 226 is Ms.
22 Ratliff.

23 (Whereupon, the juror enters the courtroom.).

24 THE COURT: I need to go by my list. Wait a
25 minute.

1 Ma'am, state your name for the record.

2 A JUROR: Karen Ratliff.

3 THE COURT: Ms. Ratliff, how are you doing this
4 morning?

5 A JUROR: Good.

6 THE COURT: Appreciate you being here. Ms.
7 Ratliff, you received the notice to reassemble the
8 jury, correct?

9 A JUROR: Yes.

10 THE COURT: Ma'am, did you comply with the
11 Court's instruction by having no discussion or contact
12 with your fellow jurors or with anyone else regarding
13 this matter?

14 A JUROR: During the trial you mean?

15 THE COURT: No, after you received the Court's
16 notice which instructed you not to have any
17 discussions.

18 A JUROR: No.

19 THE COURT: Okay, meaning you did not have any
20 discussions?

21 A JUROR: I did not have any discussions.

22 THE COURT: Did you have any contact with your
23 fellow jurors?

24 A JUROR: No.

25 THE COURT: During the course of the trial,

1 ma'am, the Court instructed that you were not to have
2 any prior deliberations regarding the case before you
3 were released to deliberate. Did you comply with
4 those instructions? In other words, I'm trying to
5 determine if the jury had any premature deliberations.

6 Did you discuss this matter with any of your
7 fellow jurors prior to being released to deliberate?

8 A JUROR: We did not discuss matters of guilty
9 or innocence. We might have commented on the court
10 proceedings.

11 THE COURT: Did you discuss anything regarding
12 this -- when I say this case I'm talking about did you
13 all deliberate in any manner?

14 A JUROR: No.

15 THE COURT: Did you discuss any of the evidence
16 that was being presented among yourselves?

17 A JUROR: No.

18 THE COURT: And did you have any discussions
19 that would -- in other words, deliberations are when
20 you are to begin to discuss the case and you apply the
21 law to those facts and rendered verdicts. And I'm
22 trying to determine whether the jury had any of those
23 kind of discussions prior to being released by the
24 Court to do so?

25 A JUROR: Not to my knowledge. It was more

1 just comments on how the case was proceeding.

2 THE COURT: Meaning?

3 A JUROR: Just that it was going slow, let's
4 say or there were so many witnesses being presented or
5 whatever.

6 THE COURT: Okay. Did you have any discussions
7 about this case with Mr. Maurer?

8 A JUROR: No.

9 THE COURT: Before deliberations?

10 A JUROR: No.

11 THE COURT: Okay. Have you had -- did you have
12 any exposure to any facts outside of the evidence of
13 this case either before or during deliberations?

14 A JUROR: No.

15 THE COURT: Did you deliberate prior to being
16 released by the Court to do so?

17 A JUROR: No.

18 THE COURT: If you would step right outside the
19 door for me with Mr. Gaddes.

20 (Whereupon, the juror exits the courtroom.)

21 THE COURT: Any further questions from the
22 state?

23 MR. WILLIAMS: No, Your Honor.

24 THE COURT: From the defense?

25 MR. RUNYON: No, Your Honor.

1 THE COURT: Please bring in the juror.

2 (Whereupon, the juror enters the courtroom.)

3 THE COURT: I'm going to send you back to the
4 jury room. Please don't discuss anything that we have
5 discussed during the course of this questioning.

6 A JUROR: Uh-hum.

7 THE COURT: Thank you.

8 (Whereupon, the juror exits the courtroom.)

9 THE COURT: Bring in Ms. Chiarito, Number 58.

10 (Whereupon, the juror enters the courtroom.)

11 THE COURT: Ms. Chiarito, how are you doing
12 this morning?

13 A JUROR: Nervous.

14 THE COURT: Don't be, take a deep breath. Am I
15 pronouncing your name correctly?

16 A JUROR: Yes, ma'am.

17 THE COURT: Did you receive the Court's notice
18 to appear today?

19 A JUROR: Today? After my boyfriend checked
20 it, I have problems seeing the mail, so.

21 THE COURT: No, for this -- apparently you got
22 it because you are here today, correct?

23 A JUROR: I got called.

24 THE COURT: Okay, the clerk's office called
25 you?

1 A JUROR: Yes, ma'am.

2 THE COURT: Ma'am, did you discuss -- the Court
3 instructed that you were not to discuss this matter
4 among your fellow jurors or with anyone else prior to
5 appearing today. Did you comply with that
6 instruction?

7 A JUROR: Yes, ma'am.

8 THE COURT: Prior to being released to
9 deliberate in this case, did you have any
10 deliberations with your fellow jurors prior to the
11 Court allowing you to deliberate?

12 A JUROR: No.

13 THE COURT: Did you have any discussions about
14 the this case with Mr. Maurer?

15 A JUROR: Who is that?

16 THE COURT: That is -- well, if you don't know
17 him by name. I guess what I'm trying to determine is
18 did you and Mr. Maurer have any discussions about the
19 case prior to deliberations?

20 A JUROR: No, ma'am.

21 THE COURT: Did you have any exposure to any
22 facts outside of the evidence of this case either
23 before or during deliberations?

24 A JUROR: No, ma'am.

25 THE COURT: And did you deliberate in any way

1 about this case prior to being instructed by the Court
2 to deliberate?

3 A JUROR: No, ma'am.

4 THE COURT: If you would go with the bailiffs
5 for me and stand right outside the door.

6 (Whereupon, the juror exits the courtroom.)

7 THE COURT: Any further questions from the
8 state?

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: From the defense?

11 MR. RUNYON: No, Your Honor.

12 THE COURT: Please bring in Ms. Chiarito. Also
13 get Ms. Richardson.

14 (Whereupon, the juror enters the courtroom.)

15 THE COURT: Ms. Chiarito, we thank you. I'm
16 going to send you back to the jury room. Please don't
17 discuss anything I have discussed with you with your
18 fellow jurors.

19 A JUROR: Yes, ma'am.

20 THE COURT: Thank you.

21 (Whereupon, the juror exits the courtroom.)

22 (Whereupon, the juror enters the courtroom.)

23 THE COURT: Ms. Richardson, how are you doing
24 this morning?

25 A JUROR: Fine.

1 THE COURT: We appreciate you coming. I just
2 have a few questions for you.

3 Ma'am, you received the Court's notice to
4 appear?

5 A JUROR: .

6 THE COURT: And Did you comply with the Court's
7 instruction not to have any discussion or contact with
8 your fellow jurors or third parties regarding this
9 matter?

10 A JUROR: Yes.

11 THE COURT: Ma'am, did you have any prior
12 deliberations about this case prior to the Court
13 allowing you to deliberate?

14 A JUROR: No.

15 THE COURT: Did you have any discussions with
16 Mr. Maurer regarding this case prior to deliberations?

17 A JUROR: No.

18 THE COURT: Did you have any exposure to any
19 fact outside of the evidence of this case either
20 before or during deliberations?

21 A JUROR: No.

22 THE COURT: And, ma'am, again did you
23 deliberate about this case prior to being released by
24 the court to deliberate? In other words, before I
25 told you all you could start deliberating, did you

1 have any discussions with your fellow jurors or with
2 anyone else about this case?

3 A JUROR: No.

4 THE COURT: If you would stand right outside
5 the door for me with Mr. Gaddes.

6 (Whereupon, the juror exits the courtroom.)

7 THE COURT: Any further questions from the
8 state?

9 MR. WILLIAMS: No, Your Honor.

10 THE COURT: From the defense?

11 MR. RUNYON: No, Your Honor.

12 THE COURT: Bear with me one second.

13 (Whereupon, the juror enters the courtroom.)

14 THE COURT: Ms. Richardson, I'm going to send
15 you back to the jury room. Please don't discuss
16 anything I have discussed with you with your fellow
17 jurors.

18 A JUROR: Okay.

19 THE COURT: Thank you. We appreciate your
20 patience.

21 (Whereupon, the juror exits the courtroom.)

22 THE COURT: Richard Miller.

23 (Whereupon, the juror enters the courtroom.)

24 THE COURT: Mr. Miller, how are you doing this
25 morning?

1 A JUROR: I'm fine, thank you.

2 THE COURT: Sir, did you comply with the
3 Court's notice to appear which instructed you not to
4 discuss or have any contact with your fellow jurors or
5 anyone else regarding the reassembling of the jury?

6 A JUROR: Yes.

7 THE COURT: And, sir, the Court instructed that
8 you were not to have any deliberation about this case
9 prior to it being given to the jury for deliberation.
10 Did you comply with that instruction?

11 A JUROR: Yes.

12 THE COURT: Did you have any discussions about
13 this case with Mr. Maurer prior to deliberations?

14 A JUROR: I'm sorry, the name?

15 THE COURT: Mr. Maurer?

16 A JUROR: No.

17 THE COURT: Okay. Did you have any exposure to
18 any facts outside of the evidence of this case either
19 before or during deliberations?

20 A JUROR: No.

21 THE COURT: Sir, again did you deliberate about
22 this case prior to being released by the Court to
23 deliberate?

24 A JUROR: No.

25 THE COURT: If you would stand right outside

1 the door for me with Mr. Gaddes.

2 (Whereupon, the juror exits the courtroom.)

3 THE COURT: Any further questions from the
4 state?

5 MR. WILLIAMS: No, Your Honor.

6 THE COURT: From the defense?

7 MR. RUNYON: No, Your Honor.

8 THE COURT: Please bring in the juror. Also
9 get Mr. John Craig, Number 68.

10 (Whereupon, the juror enters the courtroom.)

11 THE COURT: Sir, I'm going to send you back to
12 the jury room. Please don't discuss any of the
13 questions that I have discussed with you with your
14 fellow jurors. Thank you, we appreciate your
15 patience.

16 (Whereupon, the juror exits the courtroom.)

17 (Whereupon, the juror enters the courtroom.)

18 THE COURT: Mr. Craig, how are you doing this
19 morning?

20 A JUROR: Hey, good.

21 THE COURT: Sir, we appreciate you being here.
22 Did you comply with the Court's instructions in your
23 notice that you have no discussion or contact with
24 your fellow jurors or with anyone else regarding the
25 purposes for which this jury is being reassembled?

1 A JUROR: Yes, I did.

2 THE COURT: And, sir, did you have any
3 discussions with Mr. Maurer regarding this case prior
4 to deliberations?

5 A JUROR: Who is that?

6 THE COURT: Mr. Maurer. Tall, sandy brown
7 hair?

8 A JUROR: I did not have discussions with
9 anyone.

10 THE COURT: Matthew Maurer?

11 A JUROR: No, ma'am.

12 THE COURT: Okay. Sir, did you have any
13 exposure, did you have any exposure to any facts
14 outside of the evidence in this case either before or
15 during deliberations?

16 A JUROR: No, I was not aware of the case.

17 THE COURT: Okay.

18 A JUROR: And before or --

19 THE COURT: What I'm trying to determine is did
20 you discuss this case with anyone, either jurors or
21 anyone else, prior to deliberating?

22 A JUROR: No, I did not.

23 THE COURT: And did you have any discussions
24 with anyone else -- well, you would have discussions
25 during deliberations.

1 sir, did you deliberate regarding this case
2 prior to being released by the Court to deliberate?
3 In other words, did you discuss this case among
4 yourselves or with any third parties prior to the
5 Court instructing you to deliberate?

6 A JUROR: No. We were instructed pretty
7 vehemently not to so I definitely did not.

8 THE COURT: Thank you very much. Sir, please
9 stand outside the door for me with Mr. Gaddes for a
10 moment.

11 (Whereupon, the juror exits the courtroom.)

12 THE COURT: Any further questions from the
13 state?

14 MR. WILLIAMS: No, Your Honor.

15 THE COURT: From the defense?

16 MR. RUNYON: No, Your Honor.

17 THE COURT: Please bring the juror back in for
18 me. Get Ms. Mary Smalls.

19 (Whereupon, the juror enters the courtroom.)

20 THE COURT: Sir, I'm going to send you back to
21 the jury room but I'm going to ask that you not
22 discuss these questions with your fellow jurors. We
23 thank you for your patience.

24 A JUROR: Okay, thank you.

25 (Whereupon, the juror exits the courtroom.)

1 (Whereupon, the juror enters the courtroom.)

2 THE COURT: Ms. Smalls, how are you doing this
3 morning?

4 A JUROR: Just fine, thank you.

5 THE COURT: Thank you for being here. You
6 received the Court's notice to appear, correct?

7 A JUROR: Yes.

8 THE COURT: And did you comply with the Court's
9 instructions and refrain from any discussion or
10 contact with your fellow jurors or third parties
11 regarding the purposes for which you had to be here
12 this morning?

13 A JUROR: That's correct.

14 THE COURT: Ma'am, prior to deliberations in
15 this case, did you have any discussions about this
16 case with Mr. Maurer?

17 A JUROR: No.

18 THE COURT: Did you have any exposure to any
19 facts outside of the evidence in this case either
20 before or during deliberations?

21 A JUROR: No, I didn't.

22 THE COURT: And, ma'am, the Court instructed
23 that the jury was not to deliberate before they were
24 instructed to. Did you deliberate in any way
25 regarding this case prior to being released by the

1 Court to deliberate?

2 A JUROR: No.

3 THE COURT: If you would stand right outside
4 the door for me with Mr. Gaddes.

5 (Whereupon, the juror exits the courtroom.)

6 THE COURT: Anything further from the state?

7 MR. WILLIAMS: No, Your Honor.

8 THE COURT: From the defense?

9 MR. RUNYON: No, Your Honor.

10 THE COURT: Okay. Bring in Ms. Smalls. Get
11 Theodore Simmons.

12 (Whereupon, the juror enters the courtroom.)

13 THE COURT: Ma'am, I'm going to send you back
14 to the jury room, but please don't discuss any of
15 these questions with your fellow jurors. We
16 appreciate your patience.

17 A JUROR: Thank you.

18 THE COURT: Thank you.

19 (Whereupon, the juror exits the courtroom.)

20 (Whereupon, the juror enters the courtroom.).

21 THE COURT: Mr. Simmons, how are you doing this
22 morning?

23 A JUROR: Fine.

24 THE COURT: Sir, did you receive the Court's
25 notice to appear this morning?

1 A JUROR: Yes, ma'am.

2 THE COURT: Did you comply with the Court's
3 instruction that you have no discussion or contact
4 with your fellow jurors or with anyone else regarding
5 why you had to be here this morning?

6 A JUROR: No, ma'am.

7 THE COURT: Meaning you complied with my
8 instructions?

9 A JUROR: Yes, ma'am.

10 THE COURT: Sir, did you have any discussions
11 with Mr. Maurer, Matthew Maurer, prior to
12 deliberations in this case?

13 A JUROR: No, ma'am.

14 THE COURT: Did you have any exposure to any
15 facts outside the evidence in this case either before
16 or during the course of trial?

17 A JUROR: No, ma'am.

18 THE COURT: Okay. And did you have any
19 exposure to any facts outside of the evidence in this
20 case during -- either before or during deliberations?

21 A JUROR: No, ma'am.

22 THE COURT: Sir, you were instructed not to
23 deliberate about this case prior to being instructed
24 by the Court to deliberate. Did you have any
25 premature deliberations in this case?

1 A JUROR: No, ma'am.

2 THE COURT: If you stand right outside the door
3 for me with Mr. Gaddes.

4 (Whereupon, the juror exits the courtroom.)

5 THE COURT: Any further questions from the
6 state?

7 MR. WILLIAMS: No, Your Honor?

8 THE COURT: From the defense?

9 MR. RUNYON: No, Your Honor.

10 THE COURT: Please bring in the juror and get
11 Mr. Henry Smith.

12 (Whereupon, the juror enters the courtroom.)

13 THE COURT: Sir, I'm going to send you back to
14 the jury room. Please don't discuss any of the
15 questions that I have asked you with your fellow
16 jurors.

17 A JUROR: All right.

18 THE COURT: Thank you, sir.

19 (Whereupon, the juror exits the courtroom.)

20 (Whereupon, the juror enters the courtroom.)

21 THE COURT: Mr. Smith, how are you doing this
22 morning?

23 A JUROR: Good. How are you?

24 THE COURT: Appreciate you being here. Sir,
25 you received the Court's notice to appear here this

1 morning, correct?

2 A JUROR: Correct.

3 THE COURT: Sir, did you comply with the
4 Court's instruction that you not have any discussion
5 or contact with your fellow jurors or any third
6 parties regarding the purpose for which you had to be
7 here this morning?

8 A JUROR: Yes, ma'am.

9 THE COURT: Sir, did you have any discussions
10 about this case prior to deliberations with Mr.
11 Matthew Maurer?

12 A JUROR: No, ma'am.

13 THE COURT: And, sir, were you exposed to any
14 facts outside of the evidence of this case either
15 before or during deliberations?

16 A JUROR: No, ma'am.

17 THE COURT: Sir, the Court instructed that the
18 jury was not to deliberate prior to being instructed
19 by the Court to do so. Did you deliberate in any way
20 with your fellow jurors or with anyone else prior to
21 being instructed by the Court to deliberate?

22 A JUROR: No, ma'am.

23 THE COURT: Sir, if you would stand right
24 outside the door for me with Mr. Gaddes.

25 (Whereupon, the juror exits the courtroom.)

1 THE COURT: Any questions from the state?

2 MR. WILLIAMS: No, Your Honor.

3 THE COURT: From the defense?

4 MR. RUNYON: No, Your Honor.

5 THE COURT: Please bring in the juror, then get
6 Mary McDermott.

7 (Whereupon, the juror enters the courtroom.)

8 THE COURT: Sir, I'm going to send you back to
9 the jury room. Please don't discuss any of these
10 questions with your fellow jurors and again we thank
11 you for your patience.

12 A JUROR: Yes, ma'am.

13 (Whereupon, the juror exits the courtroom.)

14 (Whereupon, the juror enters the courtroom.).

15 THE COURT: Ms. McDermott, how are you this
16 morning?

17 A JUROR: Fine.

18 THE COURT: We appreciate you being here. You
19 received your notice to appear this morning, correct?

20 A JUROR: Yes, I did.

21 THE COURT: And did you comply with the Court's
22 instruction that you not have any discussion or
23 contact among your fellow jurors or with any third
24 parties regarding be required to be here this morning?

25 A JUROR: Yes, ma'am, other than telling my

1 boss I had to be here.

2 THE COURT: Oh, of course. Yes, ma'am, we
3 understand that. Ma'am, prior to deliberations in
4 this case, did you have any discussions about this
5 case with Mr. Matthew Maurer?

6 A JUROR: I'm not sure which one, he's one of
7 the jurors. I'm not sure of all their names.

8 THE COURT: He is a younger gentleman, sandy
9 brown hair.

10 A JUROR: I did not have a discussion with him
11 personally, no.

12 THE COURT: Okay. Did you have any exposure to
13 any facts outside of the evidence either before or
14 during deliberations in this case?

15 A JUROR: No.

16 THE COURT: And you were instructed not to
17 deliberate prior to the Court's instructing you to.
18 Did you have any deliberations about this case prior
19 to being released by the Court to deliberate?

20 A JUROR: Not to deliberate. I mean there was
21 general just conversation but not discussion.

22 THE COURT: Was it general conversation about
23 the case or was it general conversation about life and
24 general things?

25 A JUROR: That's mostly what it was about, but

1 there probably was something said, I couldn't remember
2 because I tried to not listen.

3 THE COURT: Something said in what regard?

4 A JUROR: There was a question about, you know
5 -- I don't know exactly what was said. It was like
6 where the location was about the McDonald's, but that
7 was the only thing I can really remember.

8 THE COURT: Was that before or during
9 deliberation?

10 A JUROR: I think that was really during
11 deliberation. I don't remember discussing the case.

12 THE COURT: My questions are confined to before
13 deliberations, not during deliberations.

14 A JUROR: I do not recall discussing the case.

15 THE COURT: Before?

16 A JUROR: Before deliberation.

17 THE COURT: I just need to be clear with that.

18 A JUROR: I'm sorry.

19 THE COURT: That's okay. It's easy to get
20 confused. And again I want to be clear, did you have
21 any discussion or deliberation about this case prior
22 to being instructed by the Court to deliberate?

23 A JUROR: To deliberate, no.

24 THE COURT: If you would step outside the door
25 for me with Mr. Gaddes.

1 (Whereupon, the juror exits the courtroom.)

2 THE COURT: Any further questions from the
3 state?

4 MR. WILLIAMS: No, Your Honor.

5 THE COURT: From the defense?

6 MR. RUNYON: No, Your Honor.

7 THE COURT: Please bring in Ms. McDermott.

8 (Whereupon, the juror enters the courtroom.).

9 THE COURT: Ma'am, I'm going to send you back
10 to the jury room. I'm going to ask you have no
11 discussion about the questions that the Court has
12 asked you among your fellow jurors.

13 A JUROR: Okay.

14 THE COURT: We thank you for your patience.

15 A JUROR: Thank you.

16 (Whereupon, the juror exits the courtroom.).

17 THE COURT: That's all twelve. All right. Is
18 there anything further inquiry that need to be made of
19 any of the jurors from the state?

20 MR. WILLIAMS: No, Your Honor.

21 THE COURT: From the defense?

22 MR. RUNYON: No, Your Honor.

23 THE COURT: Okay. Are we ready to hear
24 argument on the motion? I'm going to keep the jurors
25 for a moment until we conclude the matter.

1 MR. RUNYON: I think so, Your Honor.

2 THE COURT: Okay. I'll be glad to hear any
3 argument on the motion.

4 MR. RUNYON: Your Honor, not to breeze through
5 the law, so to speak, but the law on the issue in this
6 state is pretty clear. Almost anything a juror does
7 can be considered, quote, misconduct. That sounds
8 kind of terrible, but it's not necessarily -- doesn't
9 have to be something horrible like trying to take a
10 bribe or something of that sort.

11 One of the cases, State versus Harris, which
12 was decided by our state Supreme Court back in 2000.
13 There a juror read a definition in Black's Law
14 dictionary.

15 THE COURT: The Court said it didn't influence
16 them because it merely confirmed the Court's
17 instruction.

18 MR. RUNYON: That's correct, Your Honor, that's
19 what the Supreme Court ultimately said. And the trial
20 judge, Judge Keesley, reached that discussion, I mean
21 reached that decision. And the Supreme Court said,
22 yes, this is misconduct, but it didn't affect the
23 outcome, it didn't prejudice the deliberations, et
24 cetera.

25 So, that's really the test. In other words, I

1 believe one of the jurors characterized your
2 instructions to the jury about discussing things as
3 vehemently instructing. I don't think the Court was
4 ever vehement with the jury, but that's a pretty good
5 way of saying you --

6 THE COURT: Emphasized it.

7 MR. RUNYON: You emphasized it, that's correct,
8 Judge. What we have heard is a factual question. Ms.
9 Rumel faxed this -- or e-mailed this e-mail to Ms.
10 Steele. Ms. Rumel is not going to make that stuff up.
11 It wasn't made up. She heard something and she put it
12 down.

13 And Mr. Maurer's wife does work there. And I
14 think the statement was that, pretty clear to
15 everyone, that he was going to be voting for guilty.

16 THE COURT: That's not actually what she said. If
17 we look at -- and I think the record needs to be
18 accurate. I think that her testimony was that she
19 said, overheard her say, in response to a question, I
20 think that he is probably going to vote guilty, which
21 is really conditional in its nature. She didn't say,
22 my husband said he's going to vote guilty, which is a
23 whole different story.

24 But even if he said that, that still doesn't
25 necessarily rise to the level of juror misconduct. If

1 it rises to the level of misconduct, I don't know that
2 it meets the second prong of the test.

3 MR. RUNYON: Well, that's what I was getting
4 ready to say. I don't mean to argue over semantics.

5 THE COURT: I know.

6 MR. RUNYON: The simple facts is is I said a
7 lot of things jurors do can be misconduct, the
8 question is is does it meet the second prong of the
9 test.

10 Judge, what we have here is we have a situation
11 where a juror discussed something with his wife. He
12 explained that he was upset by some of the images he
13 saw, et cetera, et cetera. And he explained it by
14 saying his wife said why are you so quiet, and he
15 proceeded to explain why he was so quiet, based on
16 what he had seen in court, things of that sort.

17 Needless to say, it appears that the result of
18 that conversation is he led his wife to believe, at
19 least, to reach a conclusion that he was probably
20 going to be voting for guilty.

21 THE COURT: Well, you know, marriage is a funny
22 thing.

23 MR. RUNYON: I know, I have been at it for 40
24 years.

25 THE COURT: When you live with somebody, I'm

1 not certain he said anything that led her to that
2 conclusion, whether she read his affect, his body
3 language, I'm not certain.

4 MR. RUNYON: I understand, Judge. Like I said
5 I have been at it for 40 years. I still don't
6 understand it.

7 But the simple fact is, and you know when you
8 are talking about this subject, it sounds so severe,
9 juror misconduct, like people are doing something that
10 is horrible, stealing cars, what have you. Well
11 that's not it.

12 He went home, and he had some discussion, he
13 had some discussion about the case, and whether it was
14 wifely intuition, wifely conclusion, she reached a
15 conclusion which she apparently announced, in
16 conditional terms, at her place of employment which
17 Ms. Rumel apparently overheard.

18 I think what we have got, Judge, is a juror who
19 reached a conclusion. And when this case went to the
20 jury we had 11 jurors. Reached a verdict prior to --
21 reached verdict on Wednesday. The case wasn't
22 completed until Thursday. And the case went to the
23 jury on Thursday.

24 So I think what we have here, Judge --

25 THE COURT: Actually. Ms. Rumel went to

1 therapy on Thursday.

2 MR. RUNYON: That's right, Thursday morning.
3 So assuming the timing is, Judge, is that she went to
4 therapy on Thursday morning. Wife across the room
5 says either -- however you want to interpret it, she
6 says what she says. Ms. Rumel then comes back to her
7 office and e-mails Ms. Steele.

8 So that we are crystalized that at early in the
9 morning the statement was made, prior to the case,
10 prior to the state resting, prior to anybody resting,
11 prior to any arguments.

12 So, sometime between the close of business on
13 Wednesday and let's say 7 o'clock the next morning Mr.
14 Maurer said what he said that led his wife to either
15 believe that or infer that he was going to be voting
16 guilty and the statement apparently was made.

17 We think that it meets the first prong of the
18 test of, quote, juror misconduct because I will say
19 for this hearing and during the trial this Court was
20 extremely explicit, like I said I wouldn't use the
21 word vehement, but extremely explicitly in
22 instructions to the jury about what they should do,
23 could do and couldn't do in discussing this with
24 anyone.

25 As a matter of fact, Judge, my recollection --

1 I don't have the transcript, this young lady up here
2 Ms. Meyer will ultimately probably be printing it --
3 you even gave, as I recall, an example of, you are
4 going to go home, and your family is going to ask you
5 if you're on a jury, what kind of jury, et cetera,
6 just don't discuss it. Tell them you can't discuss it
7 with them. That was your example to the jury, you
8 used an example of a family setting. And he did.

9 Now the question is, is did it affect
10 deliberations? The second prong of the test. I think
11 -- I don't want to just assume that we met the first
12 prong has been met, but I think in broad terms, and
13 under the Rimmer case, United States versus Rimmer,
14 there are several other cases, we -- the first prong
15 of the test is probably met.

16 The second prong is what is important. And,
17 so, did he go into the deliberations and say X, Y, and
18 Z? Did he say something prior to deliberations? It
19 was interesting the Ms. Ratliff said that the jury did
20 discuss how the case was proceeding, the number of
21 witnesses, things of that sort. And it's interesting
22 that when you talk to the jurors it's like talking to
23 witnesses at an intersection accident, it depends on
24 where they're sitting and what they recall.

25 But the simple fact is, Judge, when they

1 started deliberating, we have a prima facie showing,
2 or inference, that Mr. Maurer had already reached the
3 verdict prior to it being going to him. And we think
4 that that affects this defendant's right to have 12
5 dispassionate jurors openly discuss the matter --

6 THE COURT: You're saying that a juror is
7 precluded from formulating an opinion as they listen
8 to the evidence, I don't think the law supports that.
9 Juror, as they listen, they formulate opinions, they
10 are just not supposed to discuss them with anybody.

11 MR. RUNYON: They're not supposed to discuss
12 them, and I don't think they're supposed to reach the
13 final conclusion until the jury gets the case.

14 And I think a clear inference here is that Mr.
15 Maurer, once again with all his wifely intuition or
16 what have you, Mr. Maurer at least conveyed to his
17 wife in some fashion, through wife, through marital
18 telecommunications or what have you, that he was,
19 quote, going to be voting guilty. In other words, he
20 already decided, that's fine, I understand how things
21 like that can happen. And I'm not suggesting you
22 don't think about things.

23 Judge, for lack of a better expression I'm the
24 only person I think in the courtroom who sat on a
25 jury. And it was an extremely enlightening

1 experience. In was November of 1999. what goes on in
2 the jury room is extremely interesting. And I think
3 every lawyer should sit on a jury just to understand
4 how it really works.

5 And of course the witnesses come up, you think
6 about this, you're leaning this direction, you are
7 leaning that direction, but you really don't decide
8 until you sit down and after the judge gives you the
9 instructions you go in the room.

10 Now, I just think that we have met the first
11 prong. And the second prong is met in that we had 11
12 people deliberating, Judge, when they couldn't really
13 deliberate. And 11 people who went into the jury room
14 and said, okay, now what is this whole deal about?
15 what are we going to decide? They had one question.
16 And Mr. Maurer had already decided. He had reached
17 his verdict prior to the time he could.
18 And, frankly, I'm not sure how the Court wants to
19 interpret it, how the wife could have reached the
20 conclusion she did, but the simple fact is he more or
21 less announced it.

22 And I think that we were entitled -- and I
23 would also say, Judge, that the law is very clear that
24 unless you clearly have circumstances where a juror
25 would come in here and say, oh yeah, Mr. Maurer was

1 talking to us on wednesday evening or wednesday
2 afternoon and he had already made up his mind and we
3 have got to find this guy guilty and what have you, to
4 affected the jury, unless you have that clear-cut kind
5 of testimony, it's really addressed to the sound
6 discretion of the trial court.

7 And it's a little different from Judge
8 keesley's decision at trial because he could very
9 clearly see when the definitions that the juror had
10 read in Black's Law Dictionary were in keeping with
11 his instructions. And the interest thing there too
12 was, and it's completely understandable, you know,
13 it's not like she brought the Black's Law Dictionary
14 with her. She read it the night before when they came
15 back to deliberations, a three-day deliberation. So
16 it's clearly understandable.

17 But the simple fact, judge, is here Mr. Maurer
18 did affect the deliberations. He just was ready to go
19 in there and find him guilty even before he got the
20 evidence, heard arguments or got the instruction from
21 the court. We think Mr. Jenkins should be entitled to
22 a new trial.

23 Admittedly it's a fairly narrow problem, and
24 I'm not suggesting that Mr. Maurer is an evil man or
25 anything of that sort. But, as a practical matter,

1 the way this thing got started is not -- it didn't
2 come out of some juror saying something, it came out
3 of someone sending an e-mail who had no reason to,
4 quote, lie.

5 And I don't think she's lying. I think she
6 heard it and she's kind of reporting it in an offhand
7 fashion. So therefore we would ask the Court to
8 seriously consider granting to the defendant a new
9 trial. Setting aside the verdict and granting a new
10 trial.

11 THE COURT: Anything from the state?

12 MR. WILLIAMS: I will be quick, Your Honor.
13 Your Honor, I think more importantly than speculating
14 is we have clear -- we have some clear evidence in
15 front of us. And all we have and all the evidence
16 here is -- first of all speculation by Ms. Rumel, and
17 it sounds like speculation by the person at physical
18 therapy.

19 What Ms. Rumel testified to was that people
20 were sort of pushing the juror's wife, asking her
21 questions, saying what's going on, what's this about.
22 And it sounds like she was trying to draw conclusions
23 to answer questions or to discuss the case. But
24 certainly everything that she testified to sounded
25 like speculation.

1 There wasn't anything that was ever said that
2 the juror actually said he was going to do one thing
3 or another. In fact, some of what we did have was
4 speculation by the juror's wife, meaning that he
5 appeared to be upset, he seemed to be having a hard
6 time, and certainly that's consistent with what Ms.
7 Rumel says in her e-mail which is he's apparently
8 voting guilty.

9 So I don't think there is anything on this
10 record that shows that this juror had actually made up
11 his mind. In fact everything seemed to show that
12 people were trying to interpret his behavior and
13 speculate as to what they thought he was going to do.
14 And that's certainly corroborated by what he said,
15 that he had talked about what had happened, meaning
16 that it was a hard day, but he certainly never told
17 anybody what he intended to do, in fact he had not
18 made up his mind himself.

19 And, Your Honor, looking at what the law says,
20 it's a very high burden to start getting inside what
21 the jurors were doing during deliberations. There has
22 to be on one level of that first hurdle so to speak
23 some kind of outside influence.

24 And what Mr. Runyon talks about, a juror going
25 and reading a book, is certainly a juror taking

1 something from outside their deliberation, from
2 outside the evidence, and taking that into the jury
3 room with them. That's nothing close to what we have
4 here.

5 If we have anything it's possibly misconduct,
6 and when I say misconduct I mean of the premature
7 deliberation type. There has been absolutely no
8 allegation there's any kind of external influence in
9 this case, that anybody took information from outside,
10 or that this juror talked to his wife and got
11 information back from her.

12 If anything, it sounds like he could have
13 possibly prematurely deliberated, and I think that's
14 merely speculation. I understand, Your Honor, and I
15 believe that whenever there is some allegation that we
16 have to go through this process to be sure that that
17 did not happen, but everything we have heard during
18 this inquiry is that it didn't happen.

19 So I don't see any basis in fact or in the
20 record that would suggest that anything was done
21 improper. And I think that Mr. Maurer was simply
22 being candid when he said, my wife asked me a question
23 and I answered it. And it sounds like he answered it
24 in really the best way possible. I suppose he could
25 have said, I can't talk about it. But he simply said

1 he was upset based on some images. And I think
2 that's -- we've certainly protected the integrity of
3 the Court and integrity of the process, but there is
4 nothing here that would require a new trial.

5 THE COURT: Anything further, Mr. Runyon?

6 MR. RUNYON: No, Your Honor. We have made our
7 presentation.

8 THE COURT: If you all will bear with me a
9 moment, we will be at ease for about ten minutes.

10 (Whereupon, a recess was taken.)

11 THE COURT: I have listened intently to the
12 arguments of counsel, and we had the ability to
13 question each juror regarding this matter.

14 And I have taken the benefit of argument as
15 well as the inquiry of each of the jurors I will say
16 initially that this is a serious matter. Whenever
17 allegations of juror misconduct are raised, they're
18 serious because they affect the integrity of the
19 process which of course is paramount in this Court's
20 mind regarding the fairness and impartiality of any
21 verdict rendered, and the fairness and impartiality of
22 the process.

23 And I think it was best summed up by one of the
24 jurors who indicated that my instructions were
25 vehement, I think indicating that I was very serious

1 in those instructions and very stern. And I think
2 sometimes jurors wonder why you say things to them
3 over and over and over again. And I think probably
4 now having a point of reference they now understand
5 why you make those statements over and over and over
6 again, understanding of course the seriousness and
7 breadth of the process.

8 The case law is very clear that the trial court
9 has broad discretion in assessing allegations of juror
10 misconduct. The court is also equally clear that if
11 juror misconduct does not affect the impartiality of
12 the jury, it is not the type of misconduct which will
13 affect the verdict.

14 The decision to grant or deny a motion for new
15 trial based on juror misconduct is within the trial
16 Court's discretion. And accordingly the Court's
17 decision will not be disturbed absent an abuse of that
18 discretion which amounts to an error of law.
19 where the allegations of improper influence
20 potentially affect a fundamental fairness, of course
21 the Court may accept juror testimony to ensure due
22 process.

23 And we have had limited testimony to some
24 extent in terms of, and that was by consent of the
25 parties, with the questioning of the witnesses and

1 more particularly that of juror number 309, Mr.
2 Maurer, because it is those allegations that bring
3 this matter before the Court regarding any statements
4 his wife may have made during the course in her work
5 environment and being overheard by Ms. Rumel.

6 we have had many cases on juror misconduct in
7 the last year, that being the Pitman case, the Vestry
8 and Church wardens of the Church of the Holy Cross
9 versus Orkin Exterminating, and those predecessors of
10 those cases, State versus Matthew Scott Harris. But
11 the case law really is very much the same.

12 And what has been raised before this Court is
13 -- would be in the nature of what would be considered
14 an external influence, that being a juror allegedly
15 discussing the case with someone else or prematurely
16 deliberating.

17 And I have looked at the Pitman case, which
18 really is very much factually like this case, there
19 was an allegation that a juror not only discussed the
20 case with his wife, but brought it into the
21 deliberations and discussed it with the other jurors.
22 And in addition to that, went to a bar and discussed
23 it with the bartender, and allegedly told the
24 bartender that he thought Mr. Pitman was guilty.

25 And I cannot think of more analogous factual

1 situation than that to this case. Because it's very
2 much the same, the allegations that he discussed the
3 matter with his wife, and she then reported that to
4 someone else. In the Pitman case the allegation was
5 that the juror had discussed the case with his wife,
6 and she indicated she thought Mr. Pitman was not
7 guilty.

8 The juror testified on inquiry that he never
9 disclosed to his wife his positions, or his position
10 about the case or his thought process about the case.
11 But during deliberations he said to the other jurors,
12 my wife does not agree with me, thereby implying that
13 she did not agree with whatever his vote was going to
14 be in the deliberations.

15 It then apparently came to the attention of a
16 reporter and another juror that this particular juror
17 had a discussion about the case with a bartender, and
18 indicated to the bartender that he thought that Mr.
19 Pitman -- or that he was going to vote that Mr. Pitman
20 was guilty, which I think goes even a step further
21 than what we have experienced in this case.

22 And the Supreme Court was really quite clear in
23 indicating that whenever a motion for a new trial is
24 based on juror misconduct due to an external
25 influence, with the allegations being the discussion

1 of the case with other parties, and even an indication
2 of how you may be leaning to vote.

3 The only difference in this case is that he
4 talked to a bartender. well, there was some
5 allegation he talked to the bartender before
6 deliberations began, the bartender really couldn't
7 remember the timeline. He testified that the
8 discussions took place after deliberations began.

9 I don't know that it's necessarily crucial, at
10 least in terms of this Court's analysis of the facts
11 of this case, but the burden is on the defendant to
12 show prejudice. And that prejudice, as I understand
13 the case law, would be to show that there was an
14 external influence that affected the jury's
15 deliberations.

16 The testimony that I have before me that I will
17 give the most weight to would be that of Mr. Maurer.
18 Because everything else, what Ms. Rumel said, she
19 overheard in a thirdhand conversation, she was not a
20 party to the conversation. And the testimony that I
21 have from Mr. Maurer is that prior to deliberations he
22 did not discuss the case in any way, that he discussed
23 with his wife -- I'm looking for my notes, I
24 apologize. I wrote them down on my note sheet.

25 He acknowledges that his wife works as a

1 physical therapist at Medical University James Island
2 Ellis Oaks location. That he told his wife simply
3 that he was on jury duty. He did not give her any
4 details. He did however share with her that he had
5 seen images that were disturbing to him, although he
6 did not give her any details about the images.

7 And I don't think I'm mischaracterizing it when
8 he strongly said he did not indicate to her how he was
9 going to vote. And that he denied any indication
10 about how he was going to vote on the case. That his
11 wife, in response to an inquiry from his wife as to
12 why have you been so quiet the last few days, he
13 responded to her, this just has not been easy. He
14 said he would be surprised if someone had reported to
15 the court that his wife made these comments.

16 Now the Court in giving its direction to the
17 comments allegedly made by his wife by Ms. Rumel were
18 that she heard her say, he was upset, which
19 corroborates his statement to his wife that it was
20 disturbing to him, my words disturbing not his. That
21 the last few days had in fact been -- haven't been
22 easy. And that she heard her say in response to a
23 question, I think he -- I think that he is probably
24 going to vote guilty.

25 I think that my opinion about this would be

1 different if she had said to her in response to the
2 question, my husband told me he's going to vote
3 guilty. I think that's a very different statement
4 than, I think that he is probably going to vote
5 guilty. which indicates to me several layers of
6 things, one of which is that her comments to some
7 extent were speculation or conjecture on her part.
8 And it required her to surmise, or at least to give
9 her opinion, her impressions of her husband, and the
10 contingent term probably, which is conditional. It
11 does not say that he definitely was going to do
12 something.

13 But I think in large part the statement on her
14 part was rank speculation. And while it concerns me
15 regarding the integrity of the process, I do not think
16 it rises to the level of the type of external
17 influence that the Court would target as affecting the
18 jury deliberations as a whole.

19 But it still does not alleviate me of all --
20 it's troubling whenever, and it's troubling to the
21 public I think when someone makes a statement like
22 this, because it affects the entire process.

23 I do not want Mr. Runyon or his client to
24 perceive that the Court in any way does not understand
25 the seriousness of this, or diminishes in any way the

1 seriousness of this. And I think, based on my
2 comments I made to Ms. Rumel last week, the Court was
3 very troubled by the incidents as they evolved, and
4 I'm still troubled by it, frankly.

5 But in any event, what I have to consider is,
6 one, was there misconduct; and Two, when we are
7 talking about external influences as we are here, did
8 that conduct rise to the level of prejudice. That
9 being whether the misconduct, due to an external
10 influence, undermined the verdict, and was in some way
11 influenced by the verdict.

12 We look at the factors enumerated in Pitman,
13 one was the number of jurors exposed. Well, upon
14 inquiry of the other jurors, none of them were
15 exposed. The weight of the evidence properly before
16 the jury. There certainly was evidence beyond a
17 reasonable doubt to support the jury's verdict.

18 And the third prong which is the likelihood
19 that curative measures would be effected in reducing
20 prejudice, that would not be applicable in this
21 situation because the trial was concluded and there
22 was not -- if it had been raised, however, prior to
23 the verdict, the Court certainly could have given a
24 curative instruction, but that is not factually how
25 this case evolved. So that factor could not be

1 properly considered by the Court.

2 The next prong or consideration for the Court
3 is if the juror misconduct affected the impartiality
4 of the jury. Or in terms of the case law, was the
5 juror misconduct -- as they say, juror misconduct does
6 not affect the impartiality of the jury if it is not
7 the type of misconduct which would affect the verdict.

8 If some of the jurors had indicated to me that
9 they had had discussions with Mr. Maurer, that he had
10 in some way had an in-depth discussion with his wife
11 that affected his impartiality, and that that in term
12 affected their impartiality. Mr. Maurer in and of
13 himself is only one juror. There are 12 jurors that
14 must reach consensus and reach a unanimous verdict.

15 The Court has not heard anything up to this
16 point that has affected these other 11 jurors in terms
17 of their ability to deliberate and their ability to
18 reach a fair and impartial verdict.

19 In response to the inquiry, the jurors advised the
20 Court that they did not engage in any preliminary
21 discussions about the case, that the only comments, at
22 least from Ms. Ratliff, the other jurors denied any
23 other discussions, that they just commented on the
24 process of the trial. In other words, there were a
25 lot of witnesses and things were moving slow, which is

1 typical in a trial.

2 They all denied having any discussions with Mr.
3 Maurer. Frankly, what I found interesting is that
4 most of them did not know who he was. They said, who
5 is that? So they must not have known him. If you had
6 discussions with someone you certainly would remember
7 who they were outside of deliberations.

8 And each advised the Court in answer that they
9 did not have any exposure to any facts outside of the
10 evidence in the case either before or during
11 deliberations. And that each also answered that they
12 did not prematurely deliberate regarding the cause.

13 So even if I were to take the allegations by
14 Ms. Rumel -- well, let me state that another way.
15 Even if I were to take the statement that she said as
16 true, it is still speculative. It does not indicate
17 an intent or fixed opinion on the part of the juror to
18 have been predisposed or to already have made a
19 decision.

20 As we know, at least I know even with me, I may
21 be predisposed to something before coming to court as
22 a result of study, but as the lawyers argue and talk
23 to me I change my mind all the time. And I don't
24 think there is any indication in the record that Mr.
25 Maurer did not fully engage in deliberations, did not

1 have a full and fair exchange with the other jurors
2 during the course of deliberations, and thus become a
3 part of the jury's verdict in this matter.

4 And again, as I indicated, the most analogous
5 case in terms of facts is the Pitman decision, where
6 the gentleman discussed it with his wife and with the
7 bartender. And the court indicated by its decision
8 that there was no evidence in the record that the
9 behavior had risen to the level of affecting the
10 impartiality of the jury, and it did not affect the
11 verdict.

12 And there is no evidence in the record that the
13 -- that Mr. Jenkins experienced any prejudicial
14 effects from any potential comments that were made, or
15 that the comment prejudicially affected the jury's
16 verdict, or affected Mr. Maurer's decision to vote
17 guilty in this case.

18 Therefore the motion for a new trial is denied.

19 MR. RUNYON: Thank you, Your Honor.

20 THE COURT: Thank you. I appreciate your all's
21 patience in allowing me to -- and that decision is
22 based on State versus Pitman, found at 373 S.C. 5 --
23 527, 647 S.E.2d 144 which is a 2007 Supreme Court
24 decision.

25 The Vestry and Church wardens at the Church of

1 the Holy Cross versus Orkin Exterminating which is
2 found at 373 S.C. 200, 644 S.E.2d 735 which is a 2007
3 Court of Appeals decision.

4 And state versus Matthew Scott Harris which is
5 found at 340 S.C. 59, which is 530 S.E.2d. 626, and
6 that is a 2000 Supreme Court decision.

7 As well as State versus Aldrich, which is found
8 at 333 S.C. 307, 509 S.E.2d 811, which is a 1999
9 Supreme Court decision.

10 Thank you all very much.

11 MR. RUNYON: Thank you, Your Honor

12 (Whereupon, the proceedings in this matter
13 before the Court were adjourned.)

14 * * * * *

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER,
official Court Reporter for the Ninth Judicial Circuit
of the State of South Carolina, do hereby certify that
the foregoing is a true, accurate, and complete
transcript of record of all the proceedings had and
evidence introduced in the trial of the captioned
case, relative to appeal, in the Circuit Court for
Charleston County, South Carolina, on the 14th day of
March, 2008.

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

Anne Bouley Meyer

Anne Bouley Meyer, RPR
Circuit Court Reporter

NSW20070105083

WITNESSES

DAVID OSBORNE

Charleston City Police Department

AGENCY CASE NUMBER

0700276

ARREST WARRANT NUMBER

F969430

DATE OF ARREST

2007-01-04

ACTION OF GRAND JURY

(TRUE BILL)

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1004660

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April, Term 2007

07-248(1)

THE STATE

vs.

QUENTIN R JENKINS

Indictment for

Murder

SC Code: 16-03-0010, 0020

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2007 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about January 4, 2007, with malice aforethought, QUENTIN R JENKINS did kill and murder Kareem Shakoor by means of shooting, and that Kareem Shakoor did die in Charleston County as a proximate result thereof on January 4, 2007; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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


NATHAN WILLIAMS
ASSISTANT SOLICITOR

NSW20070105083

WITNESSES

DAVID OSBORNE

Charleston City Police Department

AGENCY CASE NUMBER

0700276

ARREST WARRANT NUMBER

F969431

DATE OF ARREST

2007-01-04

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1004661

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April, Term 2007

07-248(2)

THE STATE

vs.

QUENTIN R JENKINS

Indictment for

Murder

SC Code: 16-03-0010, 0020

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2007 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about January 4, 2007, with malice aforethought, QUENTIN R JENKINS did kill and murder Channing Walker by means of shooting, and that Channing Walker did die in Charleston County as a proximate result thereof on January 4, 2007; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

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


NATHAN WILLIAMS
ASSISTANT SOLICITOR

NSW20070105083

WITNESSES

Barry Goldstein

Charleston City Police Department

AGENCY CASE NUMBER

0700276

ARREST WARRANT NUMBER

K147832

DATE OF ARREST

2007-01-04

ACTION OF GRAND JURY

APR 09 2007

Foreperson of Grand Jury
Date: *M. Hawn*

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1004662

861

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The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April, Term 2007

07-489(1)

THE STATE

vs.

QUENTIN ROLF JENKINS

Indictment for

Possession of a Firearm During Commission
of a Violent Crime

SC Code: 16-23-0490

Queen Rattiff 1-7-08

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2007 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During Commission of a Violent Crime

That in Charleston County, South Carolina, on or about 2007-01-04, the Defendant, QUENTIN ROLF JENKINS, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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


NATHAN WILLIAMS
ASSISTANT SOLICITOR

NSW20070105083

WITNESSES

Barry Goldstein

Charleston City Police Department

AGENCY CASE NUMBER

0700276

ARREST WARRANT NUMBER

K147833

DATE OF ARREST

2007-01-04

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date: *[Signature]*

VERDICT

[Signature]
GuiltyForeperson of Petit Jury
*[Signature]*Date: *1-7-08*

INDICT.DOT

DOCKET NO. 2007GS1004003

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April, Term 2007

THE STATE

vs.

QUENTIN ROLF JENKINS

Indictment for

Possession of a Firearm During the
Commission of a Violent Crime

SC Code: 16-23-0490

09-489(2)

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2007 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about 2007-01-04, the Defendant, QUENTIN ROLF JENKINS, did possess a handgun or visibly display what appeared to be a handgun during the commission, or attempted commission, of Murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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


NATHAN WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.QUENTIN JENKINS

AKA: _____

Race: BSex: M

Age: _____

Address: _____

DL#: _____

SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1004660A/W#: F969430Date of Offense: 1/4/2007S.C. Code § : 16-03-0010.0020CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murderin violation of § 16-03-0010.0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §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:

Nathan Williams
Williams, Nathan

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 40 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: 07-GS-10-4661, 4662 and 4663☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$500

\$

\$25

\$

\$50

\$

\$ 128.75

\$ 3.75

_____ 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 A.L. JeffersonJudge Code: 21Sentence Date: 2/4/08

SCCA/217 (10/2007)

Court Reporter: A. Meyer

Clerk of Court/ Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
STATE VS.
QUENTIN JENKINS
AKA: _____
Race: B Sex: M Age: _____
DOB: [REDACTED] SSN: [REDACTED]
Address: _____
DL#: _____ SID#: _____

BY THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1004661
A/W#: F969431
Date of Offense: 1/4/2007
S.C. Code § : 16-03-0010.0020
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder

in violation of § 16-03-0010.0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §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:

Nathan Williams
Williams, Nathan

Defendant

Attorney for Defendant.

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 40 days/months/years or 0 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: 07-GS-10-4660, 4662 and 4663
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 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)	\$	\$ <u>3.75</u>
TOTAL		\$ <u>128.75</u>

_____ 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.

Evelyn Carter
Clerk of Court/ Deputy Clerk

Court Reporter: A. Meyer

PRESIDING JUDGE A. L. Jefferson

Judge Code: 21110518

Sentence Date: 2/7/08

SCCA/21.7 (10/2007)

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

STATE VS.

QUENTIN JENKINS

AKA:

Race: B

Sex: M

Age: -

Address:

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1004662

A/W#: K147832

Date of Offense: 1/4/2007

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Possession of a Firearm During Commission of a Violent Crime

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ 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:

Nathan Williams
Williams, Nathan

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 5 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: 07-GS-10-4660, 4661 and 4663
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

\$ _____

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$ _____

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$ _____

§ 56-5-2995 (DUI Assessment)

\$12

\$ _____

§ 35.13 (Public Def/Prob)

\$500

\$ _____

§ 73.3, 1B TP (Law Enforce. Funding)

\$25

\$ _____

§ 33.7, 1B TP (Drug Court Surcharge)

\$100

\$ _____

§ 50-21-114(BUI Breath Test Fee)

\$50

\$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea

\$ _____

3% to County (if paid in installments)

\$ _____

TOTAL

\$ _____

Erin Carter
Clerk of Court/ Deputy Clerk

Court Reporter: *A. Meyer*

PRESIDING JUDGE *A.L. Jefferson*

Judge Code: *2-1-1102-18*

Sentence Date: *2/7/08*

SCCA/217 (10/2007)

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.QUENTIN JENKINS

AKA: _____

Race: B Sex: M Age: _____DOB: [REDACTED] SS#: [REDACTED]

Address: _____

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1004663A/W#: K147833Date of Offense: 1/4/2007S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Possession of a Firearm During Commission of a Violent Crimein violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ 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:

Nathan Williams
Williams, Nathan

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or 1 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: 04-GS-10-4660, 4661 and 4662
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5%) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 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 \$ 25.00

§ 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) \$ 3.75TOTAL \$ 128.75Erica Carter
Clerk of Court/ Deputy ClerkCourt Reporter: A. MeyerPRESIDING JUDGE D. L. JeffersonJudge Code: 21 11002 18Sentence Date: 2/7/08

SCCA217(1000007)

STATE OF SOUTH CAROLINA

County of CHARLESTON2010-CP-10-8981
IN THE COURT OF COMMON PLEASQuentin ROLF Jenkins 326584

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF2010 OCT 27 PM 1:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE Correctional Inst 990 wisacky Hwy Bishopville
3c, 29010
2. Name and location of Court which imposed sentence Charleston County
General sessions
3. Name(s) of co-defendant(s) (if any) Bernard GREEN / Travis SIMMONS
Jabez Batiste
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007 GS 1004660 / 2007 GS 1004661 / 2007 GS 4662 / 2007 GS 1004663

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 7th 2008
- (b) 40 YEARS
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Appellate Court
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. MARCH 30 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/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) Trial Counsel was Ineffective for failing to object
 (b) To The Court's Erroneous Instructions To the Jury
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____

iv. _____
 (c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

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) FIRST Opportunity
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? _____
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (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. William L. Ruyoga Attorney AT Law
#3 Gamecock Avenue, Suite 303
 ii. Charleston, South Carolina 29407

 iii. _____

(b) the proceedings at which each such attorney represented you:

i. TRIAL

 ii. _____

 iii. _____

19. State clearly the relief you seek in filing this application:

NEW TRIAL

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Charleston)

I, Quentin Jenkins, 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.

Quentin Jenkins

SWORN to and subscribed before me this 20
day of Oct., 2010.

[Signature] (L.S.)
Notary Public

My Commission Expires: 5-16-17

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Quentin Jenkins, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Quentin Jenkins
Applicant

SWORN or affirmed to and subscribed before me this
20 day of Oct., 2010.

Shirley J. Smith
Notary Public

My Commission Expires: 5-16-14

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	2010-CP-10-8981
	)	
Quentin R. Jenkins, #326584,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the Application for post-conviction relief filed October 27, 2010, 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 Clerk of Court for Charleston County. The Applicant was indicted at the April 2007 term of the Charleston County Grand Jury for two counts of murder (2007-GS-10-4660,-4661) and two counts of possession of a firearm during commission of a violent crime (2007-GS-10-4662,-4663). William Runyon, Esquire, represented the Applicant. The Applicant proceeded to trial on February 4-7, 2008, after which a jury found him guilty as indicted. The Honorable Deadra L. Jefferson sentenced him to confinement for forty (40) years for each count of murder and five (5) years for each count of possession of a firearm. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Joseph L. Savitz, III, Esquire, of the South Carolina Commission on Defense, filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals subsequently

dismissed the appeal. State v. Jenkins, Op. No. 2010-UP-147 (S.C. Ct. App. filed February 24, 2010). The Remittitur was issued on March 30, 2010.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Final Anders Brief of Appellant, the Court of Appeals' opinion dismissing the appeal, and the Remittitur dated March 30, 2010.

II.

In his application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel failed to object to the court's erroneous instructions to the jury.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified, or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737

_____, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

QUENTIN JENKINS,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANTS.

2012-CP-10-07980

NOVEMBER 18, 2011

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE KRISTI L. HARRINGTON, JUDGE

APPEARANCES:

MARK PEPPER, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

MATTHEW J. FRIEDMAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

1

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Quentin Jenkins Peper Friedman	5	15	16	
Vera Jenkins Peper	21			
William L. Runyon, Jr. Friedman Peper	28	34		
				PAGE
Certificate of Reporter				44

PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1 **NOVEMBER 18, 2011**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had.)

4 MR. PEPER: Your Honor, it looks like we're
5 going forward with the applicant's ineffective assistance
6 and -- ineffective assistance, Your Honor. That's all
7 we've got.

8 THE COURT: All right. Mr. Peper, call your
9 first witness.

10 MR. PEPER: Thank you, Your Honor. We would
11 call Quentin Jenkins.

12 THE BAILIFF: I think the clerk stepped out,
13 Judge.

14 THE COURT: All right. If you could place your
15 right hand on the bible. No, left hand on the bible,
16 raise your right hand. Sorry. I don't normally do this
17 and I know it's kind of awkward for you.

18 Mr. Jenkins, do you swear that the testimony -- or
19 affirm -- that the testimony you're about to give is the
20 truth, the whole truth and nothing but the truth?

21 THE WITNESS: Yes, ma'am.

22 THE COURT: All right. If you will please have
23 a seat. Thank you. I need you to state your full name
24 for the record, Mr. Jenkins, and please spell your last
25 name.

1 THE WITNESS: Quentin Ralph Jenkins, J-E-N-K-I-
2 N-S.

3 THE COURT: Thank you, Mr. Jenkins. I can hear
4 you loudly and clearly. Thank you.

5 Mr. Peper.

6 MR. PEPER: Thank you, Your Honor. Please the
7 court.

8 **QUENTIN RALPH JENKINS,**

9 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

10 **DIRECT EXAMINATION**

11 **BY MR. PEPER:**

12 Q. Mr. Jenkins, you were arrested on January 11th of
13 '07; is that correct?

14 A. Correct.

15 Q. All right. And were you able to make bond while
16 you were -- you stayed in ---

17 A. Yes, sir.

18 Q. --- throughout the entire trial?

19 A. Yes, sir.

20 Q. Okay. And it's my understanding that you applied
21 for and were appointed a public defender originally?

22 A. Yes, sir.

23 Q. And that was Ms. Lorene Proctor; right?

24 A. Right.

25 Q. Now, while you were represented by the public

- 1 defender, were you able to meet with her?
- 2 A. Yes. I spoke with Ms. Lorene Proctor, I believe,
3 once.
- 4 Q. Okay. All right. When you had spoken to her, at
5 that point in time, had she received the Rule 5 discovery
6 motion?
- 7 A. I don't believe so, because she gave me a copy of
8 the notice, the motion that she was putting in for it,
9 but I never received it.
- 10 Q. Okay. At what point did you decide to substitute
11 your counsel for that of Mr. Runyon?
- 12 A. I don't remember the correct date -- the exact
13 date, but he was obtained, I believe it had to been in
14 April. It may have been in April.
- 15 Q. So that would be April of '07?
- 16 A. Correct.
- 17 Q. All right. And then it's my understanding that
18 your trial date was February of '08; correct?
- 19 A. Correct.
- 20 Q. So he was your attorney for roughly nine months?
- 21 A. Yes, sir.
- 22 Q. All right. During those nine months how many times
23 were you able to meet with Mr. Runyon?
- 24 A. May have been three times.
- 25 Q. All right. And obviously because of the high

1 amount of bond you were on, all three of those occasions
2 were at the jail?

3 A. Yes, sir.

4 Q. All right. Do you remember if he ever -- during
5 one of those three meetings, did he ever share the
6 discovery with you?

7 A. No, sir.

8 Q. Did he ever mail you a copy of the discovery?

9 A. No, sir.

10 Q. Did you receive anything from him at the jail while
11 you were there?

12 A. No, sir.

13 Q. Were you able to speak to him on the phone?

14 A. I spoke to him, yes.

15 Q. How often did you speak to him?

16 A. I called Mr. Runyon several times.

17 Q. But how often were you able to speak directly to
18 him?

19 A. Maybe two or three times.

20 Q. All right. Did you have family on the outside that
21 was trying to reach him?

22 A. Yes, sir.

23 Q. And how were -- were they successful in reaching
24 him?

25 A. Yes, sir.

Quentin Jenkins -vs- State of South Carolina (2012-CP-10-07980)
Quentin Jenkins - Direct Examination by Mr. Peper

8

1 Q. And were they able to sit down with him and go over
2 the facts of your case?

3 A. I believe he went over it with them once, maybe.

4 Q. All right. At any point in those three times that
5 he came to visit you did he hand deliver any documents to
6 you?

7 A. No, sir.

8 Q. Did he go over what -- the state's position with
9 regards to your involvement; did he go over that with
10 you?

11 A. Not really. It was only -- it was -- what he was
12 moving forward was his main objective, and that was for
13 me to be able to get charged with accessory after the
14 fact on mere presence. That was it.

15 Q. All right. Well, tell me about that conversation?

16 A. He came to me and told me clear cut, he said that
17 we've moving to go to trial, he said, because if the
18 state doesn't give us a plea to accessory after the fact
19 on mere presence, we're going to trial.

20 Q. Well, what was he basing that opinion on?

21 A. Because he said that they had no evidence that
22 could prove that I committed any murder.

23 Q. How did he know they didn't have any evidence?

24 A. He told me he was doing it for four years, Mr.

25 Peper.

1 Q. Well, I mean, did he -- how do you know what basis
2 he was making that opinion on?

3 A. I was going off his expertise and blind faith.

4 Q. Well, you didn't think to ask him if he had
5 reviewed the evidence for your particular case?

6 A. I asked him -- I requested a, I requested -- I've
7 written letters. I had that as evidence. The story was
8 not that he never gave me anything. He never gave me
9 anything I requested.

10 Q. Did he ever come to you with any plea offers that
11 ---

12 A. No, sir.

13 Q. --- that he was relaying on behalf of the state?

14 A. No, sir.

15 Q. Were there any plea offers ever made that you know
16 of?

17 A. If there was I wouldn't know because there was --
18 it was more -- I guess it was a secret; I don't know.

19 Q. Now, one of the co-defendants wrote a statement
20 basically saying you didn't have anything to do with it?

21 A. Correct.

22 Q. When did you learn about that statement?

23 A. I learned that statement when I was -- when I had

24 Ms. Proctor, I guess. No, pardon me. That was Mr.

25 Andrew Grimes.

Quentin Jenkins -vs- State of South Carolina (2012-CP-10-07980)
Quentin Jenkins - Direct Examination by Mr. Peper

10

1 Q. Okay. Public defender's office?

2 A. Uh-huh (affirmative).

3 Q. Okay. Did Mr. Runyon, to your knowledge, ever
4 speak with the co-defendants or their attorneys?

5 A. I wouldn't have a clue as to all that.

6 Q. Did he hire any sort of private investigator or
7 anything?

8 A. I doubt it.

9 Q. Have you received a copy of your discovery since
10 you were sentenced?

11 A. I received some paperwork, some documents, but I
12 know for a fact that it wasn't the complete Rule 5 in its
13 entirety.

14 Q. Well, what's missing?

15 A. Several items as far as the co-defendants'
16 statements, the indictments, search warrant, copies of
17 the search warrant, crime scene, crime scene pictures,
18 forensic files, SLED ballistics tests; things of that
19 nature.

20 Q. Well, how do you know that Mr. Runyon ever had
21 those things?

22 A. I wouldn't know. I mean, I would not know.

23 Q. Well, I mean, did the state present them at trial?

24 A. The state came forth with some evidence as far as
25 witnesses and they had statements or whatnot, but ---

- 1 Q. You'd never seen them before?
- 2 A. I'd never seen them.
- 3 Q. Did the state put into evidence pictures of the
4 crime scene?
- 5 A. Yes, sir.
- 6 Q. Have you ever seen those before?
- 7 A. Yes, sir. I've seen them on the overhead
8 projector.
- 9 Q. Huh?
- 10 A. I seen those on the overhead projector.
- 11 Q. Oh, but prior to trial had you ever seen them
12 before?
- 13 A. No, sir.
- 14 Q. And they put up witnesses, eyewitnesses?
- 15 A. Yes, sir.
- 16 Q. And they testified pursuant to their written
17 statement that they had made previously; correct?
- 18 A. Correct.
- 19 Q. Have you ever seen any of the written statements?
- 20 A. No, sir.
- 21 Q. How about the investigator, did he testify at
22 trial?
- 23 A. Yes, sir.
- 24 Q. And did he use his notes to testify?
- 25 A. Yes, sir.

1 Q. All right. Have you ever seen a copy of his notes?

2 A. Never seen a copy of the investigator notes, no,

3 sir.

4 Q. How about a search warrant?

5 A. No, sir. I never seen a search warrant.

6 Q. All those things you just testified to, the first
7 time you knew anything about them was the day of trial?

8 A. Yes, sir.

9 Q. Those three times that he came and met with you,
10 y'all didn't talk about that stuff?

11 A. I asked him -- like I said, I wrote him letters
12 requesting these things, but he never came forth with it.
13 When I asked him for it before we went to trial, he told
14 me, he said, that's nothing to worry about.

15 Q. What do you mean that's nothing to worry about?

16 A. He told me that wasn't anything for me to worry
17 about.

18 Q. What wasn't for you to worry about?

19 A. The motion of discovery.

20 Q. The discovery, the evidence against you wasn't
21 something to worry about?

22 A. He told me it wasn't nothing to worry about because
23 he'd been doing it for a long time and that what they had
24 wasn't enough to prove that I was the one who killed
25 anybody.

1 Q. Well, what did they have?

2 A. I would say what you call circumstantial evidence
3 and substantial evidence.

4 Q. Well, how do you know what they had? How do you
5 know what was circumstantial and what was direct?

6 A. From doing research.

7 Q. Your own research?

8 A. My own research.

9 Q. Well, didn't you hire Mr. Runyon to do that?

10 A. Yes, sir.

11 Q. You appealed this case, this conviction; right?

12 A. Yes, sir.

13 Q. All right. And is it fair to say that Mr. Runyon
14 would have forwarded whatever documents he had to your
15 appellate counsel?

16 A. Correct. I have letters -- I also have letters of
17 those written in correspondence with me requesting the
18 documents that he told me that he forwarded everything to
19 the appellate counsel.

20 Q. Okay. And so what is Mr. Runyon's latest position
21 on your Rule 5 discovery materials?

22 A. Well, he forwarded -- I believe when he wrote him a
23 letter, he forwarded everything to you. Well, he said he
24 forwarded everything to you and you forwarded everything
25 to me.

Quentin Jenkins -vs- State of South Carolina (2012-CP-10-07980)
Quentin Jenkins - Direct Examination by Mr. Peper

14

1 Q. And was that to your satisfaction?

2 A. No, sir.

3 Q. What was still missing from what I forwarded you
4 from Mr. Runyon?

5 A. Everything that we spoke about, the search warrant,
6 the investigative notes, the crime scene pictures, the
7 statements from the co-defendants. Any primary suspects.
8 Everything.

9 Q. All right. And your testimony today is that Mr.
10 Runyon never went over any of that with you prior to
11 trial?

12 A. No.

13 Q. And it's your testimony today that you have doubt
14 as to whether he even ever reviewed it ---

15 A. Yes.

16 Q. --- or received it?

17 A. Yes.

18 MR. PEPPER: Court's indulgence, Your Honor.

19 THE COURT: Take your time.

20 Q. Did you ever send a freedom of information act
21 request to South Carolina Law Enforcement Division?

22 A. Yes, sir.

23 Q. What did you do that for?

24 A. So that I could receive a copy of my motion.

25 Q. Did you ever get it?

1 A. I got what we considered the ballistics report from
2 the SLED office.

3 Q. Is that the first time you had seen it?

4 A. Yes, sir.

5 Q. You didn't see it when Mr. Runyon was representing
6 you?

7 A. No, sir. He never gave it to me.

8 Q. All right. The state is going to ask you a few
9 questions; okay?

10 A. All right.

11 Q. I'll get a chance to follow up after them.

12 MR. PEPER: Thank you, Your Honor.

13 THE COURT: Mr. Friedman.

14 MR. FRIEDMAN: Thank you, Your Honor.

15 **CROSS EXAMINATION**

16 **BY MR. FRIEDMAN:**

17 Q. Good morning, Mr. Jenkins.

18 A. Good morning.

19 Q. I believe you testified that you met with Mr.
20 Runyon three times prior to trial; is that right?

21 A. I believe it was approximately three times.

22 Q. Were you out on bond ---

23 A. No, sir.

24 Q. --- prior to that? You were not?

25 A. No, sir.

1 Q. During those meetings do you remember if you
2 discussed the elements of the charges?

3 A. No, sir.

4 Q. You did not?

5 A. Uh-uh (negative).

6 Q. Did you discuss the state's evidence against you?

7 A. No, sir.

8 Q. Did you discuss any defenses?

9 A. Only accessory after the fact and mere presence,
10 the defenses that he was moving for.

11 Q. What else did he discuss during this period?

12 A. That was it.

13 Q. Did you give Mr. Runyon the names of any witnesses
14 to contact?

15 A. Yes, I did.

16 Q. What names were those?

17 A. I believe it was Glen Sands, Christina Platt and
18 Priscilla Seminole.

19 Q. Did you give him their addresses or phone numbers?

20 A. No, sir. I don't believe so.

21 MR. FRIEDMAN: I have nothing further.

22 THE COURT: Mr. Peper?

23 **REDIRECT EXAMINATION**

24 **BY MR. PEPER:**

25 Q. What did Mr. Runyon do for you?

- 1 A. Sent me to trial and got me this time, I believe.
- 2 That how I feel. I mean, he did nothing for me. He
- 3 never disclosed the evidence. He never really consulted
- 4 with me about the case. The defense, I never -- I didn't
- 5 even understand the defense, so -- let along
- 6 understanding what I'm being charged with. He didn't do
- 7 anything.
- 8 Q. Did he discuss any of that with your family?
- 9 A. No.
- 10 Q. I mean, you were in jail the whole time; right?
- 11 A. Yes, sir.
- 12 Q. And your testimony is that he only came and saw you
- 13 at the most three times?
- 14 A. I believe so.
- 15 Q. Well, surely he met with your family outside?
- 16 A. Uh-huh (affirmative).
- 17 Q. Well, did he share with them the discovery?
- 18 A. No.
- 19 Q. Did he share with them what the potential defenses
- 20 were?
- 21 A. No, I don't believe so.
- 22 Q. Was there ever any plea offer that you know of?
- 23 A. I was never given a plea offer.
- 24 Q. What are you asking for here today? What ---
- 25 A. I'm asking for some type of relief; plea offer, new

1 trial.

2 Q. I mean, you do understand that if the court were to
3 find that Mr. Runyon was ineffective, that doesn't mean
4 you can go home; that just means you start over?

5 A. I understand that.

6 Q. And if you were to start over, there may not be a
7 plea forthcoming?

8 A. Uh-huh (affirmative).

9 Q. So why would you, why would you want the court to
10 award you another trial?

11 A. Because I feel as though it was -- he never
12 protected my equal protection and I had a fair trial in
13 that all these things were missing and most situations
14 that took place in my case when Mr. Runyon wasn't my
15 trial counsel and I had to go through two different
16 hearings, two different court hearings dealing with
17 another situation, he appealed it. There was no decision
18 made on that. It was just like it was all around the
19 board, he did nothing for me. He did nothing for me.

20 The man was -- he didn't consult with me and let me know
21 what was going on, because I didn't have any
22 understanding of what was really going on at the time.

23 Q. What kind of education do you have?

24 A. I'm in school at the moment, too. But I went to
25 high school.

1 Q. And you can read and write?

2 A. Yes, sir.

3 Q. So had you been provided the discovery, you would
4 have been able to comprehend it?

5 A. Yes, sir.

6 Q. It's just you never were provided it?

7 A. No, sir.

8 Q. All right. Quentin, this is your chance to try to
9 convince the judge that your counsel was ineffective. So
10 is there anything else that you would like to add with
11 regards to Mr. Runyon's representation?

12 A. Yes. It was a situation that took place when Mr.
13 Runyon was my counsel and it was dealing with the jury.
14 And they had me come back to the court from Kirkland,
15 back to here to the courthouse, they had a hearing on it
16 and I'm saying they -- whatever happened, I didn't
17 understand it at the time. He really didn't even let me
18 know what was going on with that. But it was dealing
19 with a juror's misconduct. And I know that's not the
20 topic or whatever, but he was the counsel at the time and
21 it was his duty to leave this issue for the appellate
22 courts to review and he did that; I believe so. I
23 believe he did that. But the appellate counsel didn't
24 brief on my appeal.

25 Q. So it sounds like you're okay with what -- with how

Quentin Jenkins -vs- State of South Carolina (2012-CP-10-07980)
Quentin Jenkins - Redirect Examination by Mr. Peper

20

1 Mr. Runyon handled the actual trial; that he preserved
2 certain rulings and ---

3 A. Yeah, he preserved that issue. But as far as the
4 paperwork ---

5 Q. Just leading up to trial?

6 A. The foundation, no, he never laid the foundation
7 for me in my case.

8 Q. Is it fair to say the majority of the testimony
9 that you heard in your trial was the first time you had
10 ever heard it?

11 A. Yes, sir.

12 Q. And how long had you been in jail waiting on trial?

13 A. I believe thirteen, fourteen months.

14 Q. Nine of those months Mr. Runyon was your counsel?

15 A. Yes, sir.

16 Q. Thank you.

17 MR. FRIEDMAN: Nothing further, Your Honor.

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

19 MR. PEPPER: Your Honor, we call his mother,
20 Vera Jenkins.

21 THE CLERK: Step right here. Raise your right
22 hand. Do you swear or affirm the testimony you will give
23 the court will be the truth, whole truth and nothing but
24 the truth, so help you God?

25 THE WITNESS: I do.

1 THE CLERK: Thank you. If you would, please
2 state your first and last names, spelling your last for
3 the record.

4 THE WITNESS: Vera Jenkins, J-E-N-K-I-N-S.

5 THE COURT: Mr. Peper.

6 MR. PEPER: Thank you, Your Honor, may it
7 please the court.

8 VERA JENKINS,

9 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. PEPER:

12 Q. Ms. Jenkins, you're Quentin's mother; right?

13 A. Yes, I am.

14 Q. Kind of tell me how Mr. Runyon became involved in
15 this matter?

16 A. Well, when Quentin was on Leeds Avenue, he -- after
17 we had the prosecutor that was not able to be his lawyer
18 again because of a conflict, he asked me to go and retain
19 Mr. Runyon. So I went and -- I took someone with me and
20 I went and go talk to Mr. Runyon. I explained to him
21 what was going on. He said he was familiar with the
22 incident that happened because his office was right
23 across the highway from McDonald's. I explained to him
24 that, you know, we was interested in having him to
25 represent Quentin as an attorney. He told me what his

1 fee was going to be. And, you know, I told him okay. So
2 he told me that he needed to have at least five thousand
3 dollars down payment. I went to Mr. Runyon's office and
4 I gave him the five thousand dollars. He said at that
5 time he was filing some papers through the court to get,
6 you know, what was going on as far as Quentin being
7 locked up was concerned. Well, that was the first time
8 that I saw him. The second time I met with Mr. Runyon, I
9 went to talk with him about something because I was
10 upset, at the time, something that I hard heard on the
11 news or whatever. And he instructed me that I didn't
12 need to be looking at the news and I didn't need to be
13 listening to what people were saying because people was
14 going to talk. So I asked him what was going on as far
15 as Quentin's case was concerned. He told me that they
16 really didn't have anything on Quentin; that Quentin was
17 there. They know Quentin was there, but give him some
18 time to, you know, find out some more information.

19 Q. Well, how did he know that at that point?

20 A. I don't know. I don't know. The same thing he
21 told me, he said that, you know, he was studying law for
22 a long time and, you know, his past history as being a
23 lawyer. So I felt comfortable at that time when I, you
24 know, hired him as the attorney. So, you know, I don't
25 know how that came about.

1 Q. Well, I mean, did he show you the basis for his
2 opinion? I mean, did he share any discovery with you or
3 any evidence with you?

4 A. No more than what I had told him from what I knew
5 that had happened.

6 Q. Now, backing up a second. When you first retained
7 him, were you the actual one who signed the legal
8 services agreement?

9 A. I was, yes.

10 Q. Okay. So essentially both you and Quentin? I
11 mean, Quentin was the defendant and you were essentially
12 the client as his mother?

13 A. Correct.

14 Q. All right. And so was it understood that you would
15 kind of be a part of this defense?

16 A. Well, after the second time of meeting with him and
17 explaining to him what I was upset about, I never heard
18 anything else.

19 Q. Well, what were you upset about?

20 A. I was upset about something -- it had something to
21 do with something that was in the newspaper. I can't
22 remember exactly what it was. But it had something to do
23 with the newspaper. Something I had read in the
24 newspaper.

25 Q. And so he essentially just brushed it off and said,

1 everything's going to be fine?

2 A. Yeah.

3 Q. At that point did he, did he -- had he performed an
4 evaluation of the case and started looking into what
5 evidence was -- could be held against Quentin?

6 A. We really didn't talk much about Quentin's case.

7 Q. Okay. All right. Were you able to communicate
8 effectively with Mr. Runyon?

9 A. No. I only saw Mr. Runyon the first time when I
10 went to take the money to retain him, the second time
11 when I went to have a talk with him and during the trial.
12 That was it.

13 Q. All right. Just so I understand, you didn't take
14 him -- you weren't able to pay his entire fee; correct?

15 A. No.

16 Q. All right. And in fact, did you tell me earlier
17 that ---

18 A. The day of the trial, the day of the trial, he
19 stated to me that he needed some more money because he
20 had those subpoenaed people to pay. So I took some money
21 by the office. And right before the trial started, he
22 asked me was I able to get by his office? And I told
23 him, yes, I gave the money to the secretary. But as far
24 as Quentin's case was concerned, he never called me, he
25 never called for my family to come in his office to have

1 a meeting to discuss what Quentin's chances was, what was
2 going on. I believe one time he mentioned to me about
3 one of the guys that was involved with it, that he had
4 gotten a good statement from that person. And that was
5 it.

6 Q. Well, did he share it with you?

7 A. No. He did not share with me. And there was
8 something else that I had asked him right before Quentin
9 was sentenced about the trial and he told me that he
10 wasn't going to discuss with me what him and Quentin had
11 talked about. And I felt that me being Quentin's mother
12 and I hired you as his attorney, me and my husband should
13 have known more about what's going on.

14 Q. How often were you speaking with Quentin?

15 A. When he was on Leeds Avenue?

16 Q. Uh-huh (affirmative)?

17 A. Just about every day.

18 Q. How often was Mr. Runyon coming to see him?

19 A. As far as I know of, maybe twice, that I know of.
20 I know one time, he called me, he was upset because they
21 had brought him out to see Mr. Runyon and Mr. Runyon
22 never came to the little visiting station and they had
23 him sitting there. And so I had spoke to one of my
24 friends who works up there at Leeds Avenue and he said,
25 yeah, Quentin was sitting there waiting for a long time.

Quentin Jenkins -vs- State of South Carolina (2012-CP-10-07980)
Vera Jenkins - Direct Examination by Mr. Peper

26

1 Mr. Runyon never showed up. Quentin have called me and
2 write letters like, Mama, can you please get in touch
3 with Mr. Runyon; I need to know what's going on. You
4 know, I haven't heard anything from him. He don't even
5 come up here to see me.

6 Q. What was he saying what was going on as in
7 procedurally, like when ---

8 A. His paperwork.

9 Q. Okay.

10 A. As far as his paperwork was concerned, he didn't
11 have the motion of discovery. It was a bunch of
12 paperwork. So I asked Mr. Runyon about it. And he told
13 me that -- this was after the trial was over. I asked
14 him about the paperwork, and he said he didn't have it.
15 He had already forwarded it to somebody in Columbia.

16 Q. How much of what you heard during the trial was new
17 to you?

18 A. Just about everything.

19 Q. How about Quentin?

20 A. Quentin didn't really know what was going on.

21 Q. You mean he didn't know what was going on in the
22 courtroom or he didn't know what was going on with his
23 case or he didn't know ---

24 A. He didn't know what basically was going on too much
25 with his case because there was not really no good

1 communication between him and Mr. Runyon. Just like I
2 say, he would call me upset because Mr. Runyon didn't
3 come to see him or didn't talk to him, didn't let him
4 know what was going on. So he would say, you know, can
5 you please get in touch with him?

6 MR. PEPER: That's all the questions I have,
7 Judge.

8 MR. FRIEDMAN: I have no questions, Your Honor.

9 THE COURT: Well, you may go ahead and step
10 down. Thank you.

11 Call your next witness, Mr. Peper.

12 MR. PEPER: Court's indulgence, Your Honor.
13 That's all we have, Your Honor.

14 THE COURT: Thank you.

15 Mr. Friedman.

16 MR. FRIEDMAN: Thank you, Your Honor. The
17 state would call Bill Runyon.

18 THE CLERK: Do you swear or affirm the
19 testimony you will give the court will be the truth, the
20 whole truth and nothing but the truth, so help you God?

21 THE WITNESS: I do.

22 THE CLERK: Thank you, sir. If you would,
23 please state your first and last name, spelling your last
24 for the record.

25 THE WITNESS: William L. Runyon, R-U-N-Y-O-N,

1 Jr.

2

WILLIAM L. RUNYON, JR.,

3

HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

4

DIRECT EXAMINATION

5 **BY MR. FRIEDMAN:**

6 Q. Good morning, Mr. Runyon.

7 A. Good morning.

8 Q. How long have you been practicing law?

9 A. Since September 13th, 1967.

10 Q. And were you appointed or retained in this case?

11 A. I was retained in this case.

12 Q. Do you recall about how many times you met with the
13 applicant?

14 A. Not specifically. I met with him more than what he
15 said. And I do recall the time that he wound up sitting
16 in the -- after his testimony, I do recall the time he
17 wound up sitting in the visitor's booth because I had
18 gone up there to see clients, and specifically Quentin,
19 and they had some sort of emergency or shutdown or
20 something at the jail and I couldn't see my clients. And
21 apparently they left Quentin sitting in the visiting
22 room, so I didn't see him that time. But there was a
23 sufficient number of times that we were able to discuss
24 the case and go over things.

25 Q. Do you recall if he was ever out on bond?

1 A. I thought he was at one point in time, but

2 apparently, in retrospect, apparently, he wasn't.

3 Q. Do you recall if you discussed the elements of the

4 charges with him?

5 A. Yes, sir.

6 Q. Did you discuss what the state was required to

7 prove?

8 A. Yes, sir. This was a case where the facts of the

9 case, as I recall, were that Quentin was supposed to go

10 to work at Burger -- not Burger King -- at Taco Bell, and

11 needed a ride to work, as I understand the basic story.

12 And that he went -- he caught a ride with somebody and

13 there were four guys in the car. There was also

14 testimony about a telephone call from, I believe, the

15 driver to someone and they set up a drug deal to meet at

16 McDonald's. And it was right around the corner from

17 where my office is. And the two cars met. Two people

18 got out of the car, went to the car where the transaction

19 was supposed to occur, and whatever happened, happened.

20 And the two people in the car who were supposed to sell

21 the drugs were shot and killed.

22 Q. Did you discuss potential defenses with him?

23 A. Yes, sir. Essentially what his basic position was,

24 was that he was catching a ride to work. He didn't know

25 there was going to be any kind of a drug deal. He didn't

1 take any part in anything. And everyone had kind of
2 lawyered up, so to speak, and so we basically had a mere
3 presence kind of defense initially. And frankly, that's
4 what Ms. Proctor had when I discussed it with her and
5 kind of took it over from her.

6 Q. Did you have any discussions with Quentin about
7 accessory after the fact?

8 A. I did talk to him about accessory after the fact,
9 but he was charged with, he was charged with -- let me
10 jump forward. After a while, at some point in time, I
11 believe a co-defendant or co-defendants, in fact, gave
12 statements which were extremely inculpatory. And then
13 there was the Burger King employee who her basic
14 testimony was she couldn't testify as to who did -- as to
15 who was who, but she did say that the shorter person did
16 the shooting and things of that sort, as I recall. And
17 that -- since Quentin was -- his height was an issue, and
18 then when other people started rolling over and trying to
19 make deals, that got kind of problematical for Quentin,
20 since it turned into the state attempting to prove he was
21 the shooter.

22 Q. Do you recall if you requested a jury charge on
23 accessory after the fact?

24 A. I think I did. But the transcript speaks for
25 itself. I don't recall -- I haven't had an opportunity

1 to review the transcript. But the simple fact is, if the
2 transcript says I did, I did. I think I did.

3 MR. FRIEDMAN: May I approach the witness, Your
4 Honor?

5 THE COURT: You may.

6 A. I think I requested a mere presence. I'm not sure.

7 Q. If I could turn your attention to page five eighty-
8 four. Does it look like you gave any requests for the
9 judge to charge?

10 A. I did request at page five eighty-four, starting at
11 line nine, I requested mere presence and accessory after
12 the fact. And of course, the court refused that, but I
13 did request it. If you take his basic position that he
14 was catching a ride to work and didn't -- wasn't part of
15 the initial drug transaction, discussion, etcetera,
16 etcetera, I thought it was appropriate to give him
17 accessory after the fact because he didn't call the
18 police afterwards. Of course, the court thought better
19 of it and that would be for the appellate court to rule
20 on.

21 Q. Okay. Thank you. Do you recall if there were any
22 plea offers in this case?

23 A. At first they were talking to everybody. They
24 talked to Ms. Proctor. Then they talked to me. And then
25 they talked to the other lawyers. And they wanted to get

1 down to who the shooters were. And then they settled on
2 Quentin being the shooter. And they didn't make him any
3 offers since he was supposed to have shot both people.
4 And it was pretty, it was a pretty brutal crime.
5 Q. Did you file the Brady and Rule 5 motions?
6 A. Yes, sir.
7 Q. And were you able to obtain the discovery?
8 A. Yes, sir. We obtained all of the discovery.
9 Q. Did you review that with the applicant?
10 A. Did I review it? Yes, sir.
11 Q. Was there anything missing that you know of?
12 A. I don't think there was a single solitary thing
13 missing.
14 Q. Did you discuss the co-defendants' statements with
15 the applicant?
16 A. As things came in, yes, sir.
17 Q. Did you ever tell Mr. Jenkins that the state didn't
18 have enough to convict him of murder?
19 A. Initially, yes, sir. When I first got into the
20 case, they had -- the real question was, he didn't make
21 the phone calls -- as I recall now subject to the
22 transcript and being corrected -- he didn't make a phone
23 call to set up the what was alleged to be a drug deal.
24 He didn't have the connections to the people who were
25 shot. He was in the car. There were four people in the

1 car. Two people got out of the car at McDonald's. Went
2 over to the car where the two people with the drugs were.
3 And the police really weren't sure who the people were.
4 He always maintained, initially, at least, that he was
5 just riding in the car, catching a ride to work at Taco
6 Bell. I believe that's where he worked, Taco Bell.

7 Q. Did you review all the evidence with him as it came
8 in after that?

9 A. Yes, sir.

10 Q. Do you recall if there were any fingerprints -- any
11 of the applicant's fingerprints on the victim's car?

12 A. Vaguely I think I do recall that there was a
13 fingerprint -- there was fingerprint evidence later on
14 that came forth. I believe it was Mr. Jenkins'
15 fingerprint. This was an ongoing kind of situation. It
16 wasn't like they just had all the evidence and they just
17 gave it to you.

18 Q. When you got that evidence did you review that with
19 Mr. Jenkins?

20 A. I told him about it, yes, sir.

21 Q. Do you think you had enough time to prepare for
22 trial?

23 A. Yes, sir.

24 Q. Did Mr. Jenkins give you the names of any witnesses
25 to contact?

1 A. He gave me the names of some folks who would verify
2 that -- about catching a ride with someone to go to work.
3 But that never really was an issue, or at issue. Because
4 the problem with it was he was at the scene. We couldn't
5 -- we didn't have an alibi for him at the time of the
6 shooting. He was at the scene, at least in the car.
7 That's where the mere presence argument comes in. We
8 didn't have any witnesses that would not put him getting
9 in the car with the guy who set up the drug deal.

10 Q. I have nothing further.

11 THE COURT: Mr. Peper.

12 MR. PEPER: Thank you, Your Honor. May it
13 please the court.

14 CROSS EXAMINATION

15 BY MR. PEPER:

16 Q. Mr. Runyon, I believe you testified that you met
17 with the applicant two to three times. Is that what I
18 understand you ---

19 A. More than that. But it was a sufficient number of
20 times. I don't have a recollection of ten times or what
21 have you, but it was more than that. It was more than
22 two or three times.

23 Q. As in four or closer to ten?

24 A. I'd say six to eight times probably. But that's
25 subject to my recollection. The current vogue practice

1 now in prison is after these PCRs, applicants go back and
2 then they always write to Columbia and say, he didn't say
3 this or he said that and what have you. So I'm
4 qualifying my answer to you to the best of my
5 recollection. But it was -- and the other practice we
6 have at the office, just standard practice, is that if a
7 client calls the office, they can call collection. And
8 we will accept the call if I'm there. If I'm not there,
9 the secretaries don't accept the call. They hang up. So
10 we have kind of an open phone policy, if I'm present in
11 the office, number one, and it was at least a half a
12 dozen times, to my general practice and recollection.

13 Q. Okay. This was a homicide; right?

14 A. Yes, sir.

15 Q. All right. And it's fair to say, and I think you,
16 in fact, said this, that not all the discovery, not all
17 the evidence was just given to you up front; correct?

18 A. Right.

19 Q. In other words, it kind of trickles in. So it
20 would be fair to say that the incident report came first
21 and then maybe months later fingerprints would come in
22 and then months later another bit of evidence will come
23 in. Is that ---

24 A. No, it wasn't -- it didn't trickle like that in
25 this case, Mr. Peper. It was kind of a -- by the time I

1 got into it, there was a stack of discovery.

2 Q. Okay.

3 A. And then the fingerprint in the car, as I recall
4 now, subject to recollection, the fingerprint in the car,
5 which turned out to be his, was much, much later. There
6 was like two or three significant reports; the
7 fingerprint, and then the most significant thing was when
8 the folks started to turn on Quentin. So there were
9 actually two significant trickles if you want to put it
10 that way.

11 Q. All right. Well, these trickles, how were they,
12 how were they relayed to Mr. Jenkins?

13 A. Well, on those two I know I went to the jail and
14 talked to him about it.

15 Q. And when you went to the jail, would you hand
16 deliver the evidence that you were there to discuss?

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

18 Q. Did you mail it to him, mail a copy or ---

19 A. I don't recall what I mailed to him. When this
20 case was over with, I filed -- I perfected the appeal. I
21 mailed everything that I had to appellate defense.
22 Anything left over I sent to you when I got your request.
23 And so I literally have not been able to review this
24 file. So -- but it's interesting that everyone is
25 demanding their -- that we mail stuff. Because now the

1 federal judges are ordering us not to send defendants
2 their discovery. And so as a practical matter, we don't
3 have a practice of necessarily -- at that time we didn't
4 have a practice of just photocopying everything and
5 sending it to them. And I can tell you that we did not
6 send him everything to the jail by mail.

7 Q. Well, how was he able to review the evidence
8 against him?

9 A. We reviewed it when I went up to see him. This was
10 a fairly simple case, Mr. Peper.

11 Q. I'm confused because you said he ---

12 A. Well, if I can answer your question. He was in
13 jail. He was in the car. The question was did he get
14 out of the car. Was he the short man who shot the two
15 men as they lay basically on the ground, delivered the
16 coup de grace. Because that was the testimony of the
17 witness over at Burger King, the Burger King employee.
18 She didn't know who they were, but she did say the short
19 man was the shooter.

20 Q. And you know that from her written statement?

21 A. I knew that from her written statement. Of course,
22 that's what she testified to and that's what I went over
23 with him.

24 Q. So he knew what she was going to say prior to
25 trial?

1 A. Yes, sir. And that's what Ms. Proctor had gone
2 over with him, too. See, a lot of the things had been
3 done -- a lot of the discovery of the case, as I recall,
4 had been done with Quentin prior to my ever getting into
5 the case.

6 Q. So no additional discovery came in nine months
7 leading up to trial?

8 A. No, sir, that's not what I said. I did say that
9 there was fingerprint reports -- there was a fingerprint
10 report about his fingerprint in the car. I believe it
11 was on the door jamb, something like that. And then when
12 the -- when co-defendants started to testify.

13 Q. Co-defendants started to testify at trial?

14 A. No. When they started giving written statements.
15 And I discussed that with him and went over those things
16 with him.

17 Q. You did?

18 A. Yes, sir.

19 Q. Okay. And that was done at the detention center?

20 A. I beg your pardon?

21 Q. Was that done at Leeds, the detention center?

22 A. That would be done at Leeds, yes.

23 Q. Now, you testified that when you were first
24 retained you felt as though he had viable defenses;
25 correct?

1 A. I felt he had a viable defense since his position
2 was that all he did was catch a ride to work and he was
3 just sitting in the car and didn't know what was going to
4 happen, etcetera. So that would be a mere presence
5 defense; yes, sir.

6 Q. What led you to change your professional opinion
7 about whether or not he had defenses?

8 A. When the co-defendants, as I recall, gave
9 statements that he was, in fact, the shooter.

10 Q. Okay. And you testified earlier that this was an
11 ongoing kind of situation and when you learned new
12 information you would tell them about it; right?

13 A. Yes, sir. And it came in basically significant
14 clumps. It wasn't like it came in every week or anything
15 of that sort.

16 Q. Okay. So your position is you met with him as
17 often as you needed to for him to understand the evidence
18 against him?

19 A. Yes, sir. And it's also my position that I, as he
20 said, I talked to him on the telephone. Whenever I was
21 there and he called, I would talk to him. So, you know,
22 I can't -- I'm terrible about time keeping. I don't keep
23 time sheets. That's why when I'm appointed in federal
24 court, I never get paid for everything I do because I
25 don't keep my time accurately. I don't sit there and --

1 I couldn't work for one of the big firms. And so I can't
2 tell you that I talked with him fifteen times on the
3 telephone. I also have a practice that if someone wants
4 to call me at home, they can call me at home. I can't
5 tell you that I recall Quentin ever calling me at home.
6 I can't tell you he didn't. But I take phone calls at
7 home. And if I go to the jail to talk to X client, I'll
8 try to see my other clients that I have sitting in jail.
9 Now, I did not discuss this case at length, for example,
10 with his mother. My retainer contract clearly says it
11 doesn't matter who pays the fee. It names who's the
12 client. And there were certain things that I didn't
13 think that I could discuss with her; particularly when it
14 came to this question when they were zeroing in that he
15 was, in fact, the shooter.

16 MR. PEPER: Court's indulgence, Your Honor.

17 THE COURT: Yes, sir.

18 MR. PEPER: That's all I have, Your Honor.

19 Thank you.

20 MR. FRIEDMAN: No other questions, Your Honor.

21 THE COURT: Mr. Runyon, you may step down.

22 Call your next witness.

23 MR. PEPER: We have no other witnesses, Judge.

24 THE COURT: Hold on a minute. You've already
25 gone.

1 MR. PEPER: Yeah, I'm sorry.

2 THE COURT: Mr. Friedman may have somebody
3 else.

4 MR. FRIEDMAN: No other witnesses, Judge.

5 THE COURT: All right. Now, Mr. Peper.

6 MR. PEPER: Thank you, Your Honor. May it
7 please the court.

8 Your Honor is very familiar with the Strickland
9 test. Here's the issue we're having, is that, you know,
10 this is a murder where, you know, my client has been
11 sentenced to essentially the rest of his life in jail.
12 And I'm just not convinced that enough was done pretrial
13 in the investigation portion, and specifically the
14 communication between the applicant and Mr. Runyon.

15 We haven't heard what I believe testimony --
16 enough testimony to securely make an informed decision as
17 to whether or not the applicant knew what evidence was
18 against him. He certainly has a constitutional right to
19 review the evidence against him. And he's testified that
20 he did not receive it. There's been no testimony and no
21 proof that Mr. Runyon hand delivered discovery to him at
22 the jail or even visited him much more than three or four
23 times, as he can recall.

24 The applicant's testimony is that he came twice.
25 The mother's testimony is that he came two or three

1 times. I just don't know how you could possibly prepare
2 an applicant for a murder trial with only visiting him
3 four or five times and not reviewing all the evidence
4 against him, not making him a copy so that he can review
5 it, not hiring an investigator. There are just certain
6 issue that I believe would merit a new trial here under
7 those Strickland factors, and we would ask that Your
8 Honor rule that Mr. Runyon was ineffective in his
9 representation, and but for his representation there
10 would have been a more just result. And based on that
11 opinion order a new trial.

12 Thank you, Judge.

13 MR. FRIEDMAN: Thank you, Your Honor. The
14 state would submit that the applicant has failed to meet
15 his burden here. Mr. Runyon testified that he met with
16 the applicant a sufficient number of times. He testified
17 that he received the discovery and reviewed that with Mr.
18 Jenkins. He also indicated that he would update Mr.
19 Jenkins anytime any new evidence came in. In this case
20 there was fingerprint evidence that came in after the
21 original discovery. And some of the co-defendants
22 changed their statements and made statements against Mr.
23 Jenkins, indicating that he was the shooter.

24 Mr. Runyon believed that Mr. Jenkins knew what each
25 witness would testify to at trial ahead of time. And for

1 those reasons, we would ask the court to deny this PCR
2 application.

3 THE COURT: Any reply, Mr. Pepper?

4 MR. PEPER: That's all I have, Judge. I think
5 I've made my argument. Thank you.

6 THE COURT: I'm going to allow y'all to submit
7 proposed orders. With the upcoming holiday, I'll give
8 you ten days to submit your proposed orders.

9 MR. PEPER: Thank you, Judge.

10 MR. FRIEDMAN: Thank you, Your Honor.

11 THE COURT: Thank you.

12

13 [END OF REQUESTED TRANSCRIPT OF RECORD]

1 CERTIFICATE OF REPORTER

2 I, the undersigned Danette P. Hanks, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Court of Common Pleas for Charleston County, South
9 Carolina, on the 18th day of November, 2011.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 April 12, 2015

15

16

17

18

A handwritten signature in cursive script, reading "Susan Danette Hanks", written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Quentin R. Jenkins, #326584,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-10-8981

ORDER OF DISMISSAL

FILED
2011 DEC 20 AM 11:22
JULIE J. GRIFFITH
CLERK OF COURT

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed October 27, 2010. The Respondent made its Return on February 10, 2011. An evidentiary hearing into the matter was convened on November 18, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Mark Peper, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, William Runyon, Esquire, and Applicant's mother, Vera Jenkins, also testified. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Final Anders Brief of Appellant, the Court of Appeals' opinion dismissing the appeal, the Remittitur dated March 30, 2010, the current PCR application, and the State's Return thereto.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the April 2007 term of the Charleston County Grand Jury for two counts of

murder (2007-GS-10-4660,-4661) and two counts of possession of a firearm during commission of a violent crime (2007-GS-10-4662,-4663). William Runyon, Esquire, represented the Applicant. The Applicant proceeded to trial on February 4-7, 2008, after which a jury found him guilty as indicted. The Honorable Deadra L. Jefferson sentenced him to confinement for forty (40) years for each count of murder and five (5) years for each count of possession of a firearm. The sentences were to run concurrently.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Joseph L. Savitz, III, Esquire, of the South Carolina Commission on Defense, filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The Court of Appeals subsequently dismissed the appeal. State v. Jenkins, Op. No. 2010-UP-147 (S.C. Ct. App. filed February 24, 2010). The Remittitur was issued on March 30, 2010.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel in that counsel failed to object to the court's erroneous instructions to the jury.
2. At the hearing, Applicant alleged that counsel was ineffective for failing to get the discovery and show it to Applicant.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified that Lori Proctor, Esquire, was originally appointed as his

attorney, and he met with her one time. He testified that Ms. Proctor requested the Rule 5, but she had not yet received it when they met. Applicant testified that he retained Mr. Runyon in April 2007. He testified that he met with trial counsel three times and spoke on the phone with him two or three times, but he asserted that he never saw the discovery. He testified that he never saw the crime scene photographs, the witness statements, or the ballistics tests prior to trial. Applicant asserted that counsel told him that the State did not have enough to convict him for murder. He testified that there were no plea offers in this case.

Vera Jenkins, Applicant's mother, testified that counsel told her that the State did not have anything on the Applicant. She asserted that counsel never discussed the case with her.

Trial counsel testified that he did not recall specifically how many times he met with Applicant, but he asserted that it was more than three times and it was a sufficient number of times. He asserted that he discussed the mere presence defense and accessory after the fact with Applicant. Counsel testified that he requested a jury instruction on accessory after the fact, but the trial court refused to charge it. He testified that the State settled on Applicant as the shooter so the State did not extend any plea offers to Applicant. Counsel asserted that he initially told Applicant that the State did not have enough evidence to convict him for murder, but it was an ongoing investigation and the State later obtained fingerprint evidence implicating Applicant and the co-defendants gave incriminating statements against Applicant. He testified that none of the witnesses he interviewed would say that Applicant was not at the scene so there was no alibi defense.

Counsel testified that he reviewed the discovery with Applicant. He asserted that the ballistics report, the witness statements, the co-defendants' statements, the crime scene photographs, and the search warrant were all included in the discovery. Counsel testified that

Applicant knew what the witnesses would say prior to trial. He testified that he did not discuss the case at length with Applicant's mother because she was not his client.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCR; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The applicant must overcome this presumption in order to receive relief. Cherry, 386 S.E.2d 624.

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). 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." Id. at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

This Court finds that Applicant's testimony is not credible while also finding that trial counsel's testimony is credible. This Court finds that counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on several occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, and possible defenses or lack thereof.

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds that counsel demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977); Strickland, 466 U.S. at 668; Butler, 286 S.C. 441, 334 S.E.2d 813. This Court further finds counsel adequately conferred with Applicant, reviewed the discovery with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel properly reviewed the discovery with Applicant and prepared for trial. Counsel testified that he updated Applicant throughout his investigation, and he discussed the fingerprint evidence and the co-defendants' statements with Applicant as they came in. Counsel testified that he believed Applicant knew what each witness would testify to at trial.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence

that counsel committed either errors or omissions in his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

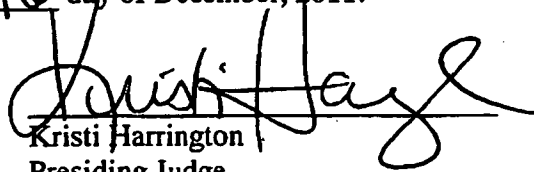
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial or sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 16th day of December, 2011.


Kristi Harrington
Presiding Judge
9th Judicial Circuit

Charles, South Carolina.

FORM 5

STATE OF SOUTH CAROLINA

County of Charleston2012-CP-10-7980
IN THE COURT OF COMMON PLEASQuentin Rolf Jenkins Jr. 3316584

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2012 DEC -7 AM 11:28
JULIE J. ALMSTRONG
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Inst 4460 Broad River road
Columbia South Carolina 29210
2. Name and location of Court which imposed sentence Charleston County
General Sessions
3. Name(s) of co-defendant(s) (if any) Jabez Batiste, Travis Simmons,
Bernard Green
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2007-GS-1004660, 2007-GS-1004661, 2007-GS-1004662, 2007-GS-1004663

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 7th 2008
- (b) 40 years
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) ☒ after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Appellate Court
- ii. Common Pleas Court
- iii. State Supreme Court
- (b) the result in each such Court to which you appealed:
- i. Appeal Denied
- ii. Post Conviction Relief Denied
- iii. Writ of Certiorari Dismissed without Prejudice
- (c) the date of each such result:
- i. March 30, 2010
- ii. December 20, 2011
- iii. November 5, 2012
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Dismissal order issued Based upon Austin v. State,
- ii. 305 S.C. 453, 409 S.E. 2d 395 (1991)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/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 Pcr Counsel Austin V. State Issue
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Pcr Counsel Failed to Submit A timely Notice of Intent to Appeal
- (b) As warranted by Rule 243, SCACB
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes Post conviction
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Post conviction Relief
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Charleston County
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____ N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____ N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____ YES

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?

Ineffective Assistance of Trial And Appellate Counsel

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____ Post Conviction Relief

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) Did not receive Effective Assistance of Per Counsel
 (b) per Rule 71.1 (G) SCRPC
 (c) _____

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
 (b) your trial, if any? YES
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. William L. Lunkin Attorney at law #3 Gamecock Ave. Suite 303
Charleston, South Carolina 29407
 - ii. Joseph L. Savitz III Appellate Defender South Carolina Commission on Indigent
Defense Division of Appellate Defense P.O. Box 11559 Columbia SC 29211
 - iii. Mark A. Pelee The Pelee Law Firm, PA 1637 Savannah Hwy., Ste 202
Charleston South Carolina 29407
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL
APPELLATE
 - ii. Post conviction relief
 - iii. _____

19. State clearly the relief you seek in filing this application:

Delayed writ of certiorari

20. Are you now under sentence from any other court that you have not challenged?

NO

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Charleston)

I, Quentin Rolf Jenkins Jr., 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.

Quentin R Jenkins

SWORN to and subscribed before me this 1
day of Dec, 2012.

Eugene R. Jenkins (L.S.)
Notary Public

My Commission Expires: April 4, 2016

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Quentin Rolf Jenkins Jr, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Quentin R Jenkins Jr
Applicant

SWORN or affirmed to and subscribed before me this

4 day of Dec 2012.

Eugene Keogh
Notary Public

My Commission Expires: April 4, 2016

1998

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Quentin R. Jenkins, # 326384

Applicant

vs.

State of South Carolina,

Respondent

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Case No: 2012-CP-10-7980

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

FILED
2013 JUN -9 PM 1:34
CLERK OF COURT
JULIE J. ARISTONG

THIS MATTER comes before this Court by way of an amended application for Post-Conviction Relief. Applicant hereby amends his Post-Conviction Relief Application by including the following grounds for relief:

- I. Applicant alleges that he is being held in Custody unlawfully for the following reasons:
 - A. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN THAT COUNSEL FAILED TO OBJECT TO THE STATES INTRODUCTION OF THE BLOODY PHOTOS, WHICH PREJUDICED APPLICANT INASMUCH AS IT SERVED TO INFLAME THE PASSIONS OF THE JURY
 - B. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL IN THAT COUNSEL FAILED TO BRIEF THE ISSUE ON APPEAL, "THAT TRIAL COURT ERRED IN ALLOWING THE STATE TO INTRODUCE TO THE JURY BLOODY PHOTO'S, WHICH WAS ONLY RELEVANT IN ENFLAMING THE PASSIONS OF THE JURY.
 - C. INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL IN THAT COUNSEL FAILED TO BRIEF THE ISSUE ON APPEAL, "THAT TRIAL COURT ERRED IN NOT GRANTING A MISTRIAL AFTER EVIDENCE AFTER-TRIAL REVEALED THAT A JURY MEMBER HAD DISCUSSED THE CASE WITH HIS WIFE.

Respondents may attempt to argue that the above - allegations should be summarily dismissed because they could have been raised by Applicant in his previous application. Aice v. State 305 S.C. 448 (S.C. 1991) Foxworth v. State 275 S.C. 615 (S.C. 1981).

To the contrary Applicant would argue in support of his Amended Application that the above-mentioned allegations even if it is successive, should be excused

by this Court because a "sufficient reason" exist allowing for a Successive application under §17-27-90. Although In the past our Supreme Court held that the contention that prior PCR Counsel was ineffective is not per se a "Sufficient reason" see Land v. State 274 S.C. 243 (1980). Applicant asserts that since the recent ruling by the United States Supreme Court in Martinez v. Ryan 566 U.S. — (2012), There is a sufficient Legal basis to argue that "Inadequate assistance of Counsel at the initial-review collateral proceeding establishes a "sufficient reason" to allow a Successive application on a claim of ineffective assistance at trial.

Applicant Supports this amend application and the allegations alleged herein by arguing that PCR Counsel was ineffective when he failed to raise these issues of verifiable merits in the initial review collateral proceeding. Since these issues have some verifiable merit, which applicant can demonstrate, these amended allegations cannot be summarily dismissed as successive.

Respectfully Submitted,

Quentin R. Jenkins

Quentin R. Jenkins, # 326584
Broad River Correctional Institution
4460 Broad River Road
Columbia, S.C. 29210

June 5 2013

940

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Quentin R. Jenkins, #326584,

Applicant

vs.

State of South Carolina,

Respondent

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Case No. 2012-CP-10-7980

CERTIFICATE OF SERVICE

FILED
JUN -6 PM 4:34
JULIE ARMYSTRONG
CLERK OF COURT

I certify that I have served the "Amended Application for Post-Conviction Relief" on the State of South Carolina by mailing a copy via First Class mail to Ashlergh R. Wilson, Assistant Attorney General this 5 day of June 2013 addressed as follows:

Ashlergh R. Wilson
Assistant Attorney General
Post Office Box 11549
Columbia, S.C. 29211

Quentin R. Jenkins

Quentin R. Jenkins # 326584
Broad River Correctional Institution
4460 Broad River Road
Columbia, S.C. 29210

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 143
Charleston, S.C. 29401

P.E.: Quentin R. Jenkins v. State of South Carolina
Case No: 2012-CP-10-7980
"Amendment to PCR Application."

Dear Ms. Armstrong:

Please find enclosed for filing with this Court in the above-mentioned PCR matter a "Amended PCR Application". I am respectfully requesting that you forward me a copy of the Filed clock and dated stamped document for my records. I would greatly appreciate your assistance and Cooperation in this matter.

Respectfully Submitted,

Quentin Jenkins

Quentin R. Jenkins #326584

June 5 2013

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Quentin Jenkins,
S.C.D.C. No. 326584,

Applicant,

v.

State of South Carolina,

Respondent.

2012-CP-10-7980

RETURN AND PARTIAL MOTION TO DISMISS

In response to the post-conviction relief (PCR) application that Quentin Jenkins (Applicant) filed December 7, 2012, the State (Respondent) would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. He was indicted at the April 2007 term of General Sessions for the Charleston County Grand Jury for two counts of murder (2007-GS-10-4660, 4661) and two counts of possession of a weapon during the commission of a violent crime (2007-GS-10-4662, 4663). William F. Runyan, Esquire, represented Applicant. Applicant proceeded to trial and a jury found him guilty as indicted. The Honorable Deadra L. Jefferson sentenced him to concurrent terms of imprisonment for forty years for each count of murder and five years for each count of possession of a weapon during the commission of a violent crime.

Applicant appealed, and following an *Anders*¹ brief, the South Carolina Court of Appeals dismissed the appeal. *State v. Jenkins*, Op. No. 2010-UP-147 (S.C. Ct. App. filed Feb. 24, 2010).

¹ *Anders v. California*, 386 U.S. 738 (1967).

The remittitur was issued on March 12, 2010.

2010-CP-10-8981

Applicant filed his first PCR application on October 27, 2010, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel in that counsel failed to object to the court's erroneous instructions to the jury.
2. At the hearing, Applicant alleged that counsel was ineffective for failing to get the discovery and show it to Applicant.

Respondent filed its return on February 10, 2011. An evidentiary hearing was held at the Charleston County Courthouse on November 18, 2011. Mark Peper, Esquire, represented Applicant. The Honorable Kristi L. Harrington denied and dismissed the application with prejudice on December 20, 2011.

Applicant filed a pro se petition for a belated writ of certiorari on October 12, 2012. Counsel for Applicant filed a notice of appeal on October 23, 2012. Applicant's counsel indicated he received written notice of entry of Judge Harrington's order of dismissal on January 5, 2012, but did not receive a copy of the order until May 31, 2012. The South Carolina Supreme Court dismissed the matter on November 5, 2012, and issued the remittitur on November 26, 2012. The court noted:

It is clear that the time to appeal in this matter expired long before either notice of appeal was prepared or served in this matter. Accordingly, this matter is dismissed. This dismissal is without prejudice to whatever right petitioner may have to seek relief under *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), by filing an application for post-conviction relief in the circuit court.

II.

Applicant filed his *second* and current PCR application on December 7, 2012, and amended application on June 6, 2013. He alleges he is being held in custody unlawfully for the

following reasons:

1. Ineffective assistance of PCR counsel, *Austin v. State* issue.
2. Ineffective assistance of trial counsel in that counsel failed to object to the State's introduction of the bloody photos, which prejudiced Applicant inasmuch as it served to inflame the passions of the jury.
3. Ineffective assistance of appellate counsel in that counsel failed to brief the issue on appeal, that trial court erred in not granting a mistrial after evidence after trial revealed that a jury member had discussed the case with his wife.
4. Applicant asserts that since the recent ruling by the United States Supreme Court in *Martinez v. Ryan*, there is sufficient legal basis to argue that inadequate assistance of counsel at the initial-review collateral proceeding establishes a sufficient reason to allow a successive application on a claim of effective assistance at trial.

For the purpose of this return, Respondent incorporates the Charleston County Clerk of Court records regarding the subject convictions, South Carolina Department of Corrections records, Applicant's previous and current PCR applications, and appellate records.

III.

Applicant alleges ineffective assistance of counsel in that he was denied the right to an appeal from the denial of his first PCR application. There is no constitutional right to appointed counsel for collateral review of a conviction. *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The Sixth Amendment right to the effective assistance of counsel does not extend to state post-conviction relief actions. *Coleman v. Thompson*, 501 U.S. 722 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a sufficient reason warranting a successive PCR application under § 17-27-90." *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

An exception which allows a claim of ineffective assistance of post-conviction relief counsel is found in *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Pursuant to *Austin*, a

PCR applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Respondent requests an evidentiary hearing solely on this ground for relief.

IV.

As to any and all other claims, Respondent submits these claims should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. *See* S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court held the one-year statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offenses he challenges in his application on February 7, 2008. The remittitur from Applicant's appeal was issued on March 12, 2010. Therefore, Applicant was required to file his PCR application on or before March 12, 2011. Applicant filed this application on December 7, 2012, **more than one year** after the statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, section 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent moves to summarily dismiss this application for Applicant's failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

This Court should also summarily dismiss the current PCR application because it is successive to Applicant's previous PCR application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or not properly raised in previous applications. *Aice*, 305 S.C. at 450, 409 S.E.2d at 394. Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." *Id.* at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant argues *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), allows successive applications upon claims of inadequate assistance of PCR counsel. Applicant's contention is without merit because the ruling in *Martinez* has no bearing on his ability to raise ineffective

collateral counsel claims in a subsequent, successive state PCR application. Rather, *Martinez* sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions when considered under the so-called “cause and prejudice” standard. *See Coleman*, 501 U.S. at 750 (“In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice.”). The *Martinez* Court used this standard as the foundation for its decision, finding that attorney error amounting to ineffective assistance of counsel during an initial-review collateral proceeding may be sufficient “cause” to excuse a prisoner’s procedural default in a federal habeas corpus proceeding. *See* 132 S. Ct. at 1314 (“Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner’s procedural default of a claim of ineffective assistance at trial.”).

Martinez has no application to successive state PCR actions, as the fundamental “cause and prejudice” standard on which *Martinez* relies is exclusive to federal habeas corpus actions. *Id.* at 1320. Further, the *Martinez* Court specifically noted that their decision was **not** addressing ineffective assistance of counsel claims raised in subsequent state PCR actions, opining, “This is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter.” *Id.* at 1315.

Additionally, *Martinez*’s interpretation of federal laws applicable to federal habeas corpus actions has no effect on South Carolina’s interpretation and application of its PCR statutes. *See* S.C. Code Ann. § 17-27-10 to 160 (2014). Therefore, the South Carolina Supreme Court’s opinion in *Aice v. State* still applies to claims raised in a subsequent state PCR action

alleging ineffective assistance of prior collateral counsel. *See* 305 S.C. at 451, 409 S.E.2d at 394 (“The contention that prior PCR counsel was ineffective is not *per se* a ‘sufficient reason’ warranting a successive PCR application under 17-27-90.”) The South Carolina Supreme Court recognized, “The holding in *Martinez* is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions.” *Kelly v. State*, 404 S.C. 365, 365, 745 S.E.2d 377, 377 (2013). Applicant’s contention that *Martinez* allows him to bring this untimely and successive state PCR application is misguided and erroneous.

Applicant failed to establish any sufficient reason why his current grounds for relief, except for his *Austin* claim, were not properly raised in his previous application. Respondent moves to summarily dismiss this application because it is successive to Applicant’s previous PCR application.

VI.

Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, Respondent requests that a hearing be held and that counsel be appointed to represent Applicant on the sole issue of whether Applicant is entitled to an appeal pursuant to *Austin v. State*. Respondent also requests that this Court summarily dismiss the remaining allegations in the application because it is successive and fails to comply with the filing requirements under the Uniform Post-Conviction Procedure Act.

(Signatures on the following page)

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN RATIGAN
Senior Assistant Deputy Attorney General

ELIZABETH HEDGE COE NEYLE
Staff Attorney

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

Columbia, South Carolina
January 30, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Quentin Jenkins, #326584

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

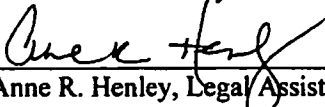
2012-CP-10-7980

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 and Partial Motion to Dismiss of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Quentin Jenkins, #326584
 Broad River Correctional Institution
 4460 Broad River Rd
 Columbia, SC 29210

DATED this 2nd day of February 2015


 Anne R. Henley, Legal Assistant
 For Respondent

cc
AT
AG

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Quentin Jenkins, # 326584,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2012-CP-10-7980

**CONDITIONAL ORDER OF DISMISSAL
(DISMISSING IN PART AND ORDERING
A HEARING SOLELY ON THE ISSUE OF
A BELATED AUSTIN APPEAL)**

FILED
2015 FEB-9 PM 12:16
JAMES C. COURTNEY
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Quentin Jenkins (Applicant) on December 7, 2012. The State (Respondent) made its return, requesting an evidentiary hearing on Applicant's claim relating to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), and a summary dismissal of Applicant's remaining claims.

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. He was indicted at the April 2007 term of General Sessions for the Charleston County Grand Jury for two counts of murder (2007-GS-10-4660, 4661) and two counts of possession of a weapon during the commission of a violent crime (2007-GS-10-4662, 4663). William F. Runyan, Esquire, represented Applicant. Applicant proceeded to trial and a jury found him guilty as indicted. The Honorable Deadra L. Jefferson sentenced him to concurrent terms of imprisonment for forty years for each count of murder and five years for each count of possession of a weapon during the commission of a violent crime.

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Applicant appealed, and following an *Anders*¹ brief, the South Carolina Court of Appeals dismissed the appeal. *State v. Jenkins*, Op. No. 2010-UP-147 (S.C. Ct. App. filed Feb. 24, 2010). The remittitur was issued on March 12, 2010.

2010-CP-10-8981

Applicant filed his first PCR application on October 27, 2010, alleging the following grounds for relief:

1. Ineffective assistance of trial counsel in that counsel failed to object to the court's erroneous instructions to the jury.
2. At the hearing, Applicant alleged that counsel was ineffective for failing to get the discovery and show it to Applicant.

Respondent filed its return on February 10, 2011. An evidentiary hearing was held at the Charleston County Courthouse on November 18, 2011. Mark Peper, Esquire, represented Applicant. The Honorable Kristi L. Harrington denied and dismissed the application with prejudice on December 20, 2011.

Applicant filed a pro se petition for a belated writ of certiorari on October 12, 2012. Counsel for Applicant filed a notice of appeal on October 23, 2012. Applicant's counsel indicated he received written notice of entry of Judge Harrington's order of dismissal on January 5, 2012, but did not receive a copy of the order until May 31, 2012. The South Carolina Supreme Court dismissed the matter on November 5, 2012, and issued the remittitur on November 26, 2012. The court noted:

It is clear that the time to appeal in this matter expired long before either notice of appeal was prepared or served in this matter. Accordingly, this matter is dismissed. This dismissal is without prejudice to whatever right petitioner may have to seek relief under *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), by filing an application for post-conviction relief in the circuit court.

¹ *Anders v. California*, 386 U.S. 738 (1967).

II.

Applicant filed his *second* and current PCR application on December 7, 2012, and amended application on June 6, 2013. He alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of PCR counsel, *Austin v. State* issue.
2. Ineffective assistance of trial counsel in that counsel failed to object to the State's introduction of the bloody photos, which prejudiced Applicant inasmuch as it served to inflame the passions of the jury.
3. Ineffective assistance of appellate counsel in that counsel failed to brief the issue on appeal, that trial court erred in not granting a mistrial after evidence after trial revealed that a jury member had discussed the case with his wife.
4. Applicant asserts that since the recent ruling by the United States Supreme Court in *Martinez v. Ryan*, there is sufficient legal basis to argue that inadequate assistance of counsel at the initial-review collateral proceeding establishes a sufficient reason to allow a successive application on a claim of effective assistance at trial.

Before this Court are the Charleston County Clerk of Court records regarding the subject convictions, South Carolina Department of Corrections records, Applicant's previous and current PCR applications, and appellate records.

III.

This Court finds this application must be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. See S.C. Code Ann. §§ 17-27-10 to -160 (2014). Section 17-27-45(a) states:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court held the one-year statute of limitations shall apply to

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all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant was convicted of the offenses he challenges in his application on February 7, 2008. The remittitur from Applicant's appeal was issued on March 12, 2010. Therefore, Applicant was required to file his PCR application on or before March 12, 2011. Applicant filed this application on December 7, 2012, more than one year after the statutory filing period expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, section 17-27-70(c) authorizes this Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds this application must be summarily dismissed for Applicant's failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

This Court also finds this current PCR application must be summarily dismissed because it is successive to Applicant's previous application. Courts disfavor successive applications and place the burden on applicants to establish that any new ground raised in a subsequent application could not have been earlier raised in a previous application. *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992). Section 17-27-90 of the South Carolina Code (2014) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or

pmo 7/4

was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are prohibited unless an applicant can indicate a "sufficient reason" why new grounds for relief were not raised or not properly raised in previous applications. *Aice*, 305 S.C. at 450, 409 S.E.2d at 394. Any new ground raised in a subsequent application is limited to those grounds that "could not have been raised . . . in the previous application." *Id.* at 450, 409 S.E.2d at 394. If Applicant could have raised these allegations in a previous application, then he may not raise those grounds in successive applications. *Id.* Applicant bears the burden of showing the allegations could not have been previously raised. *Land v. State*, 274 S.C. 243, 262 S.E.2d 735 (1980).

Applicant argues *Martinez v. Ryan*, 132 S. Ct. 1309 (2012), allows successive applications upon claims of inadequate assistance of PCR counsel. Applicant's contention is without merit because the ruling in *Martinez* has no bearing on his ability to raise ineffective assistance of collateral counsel claims in a subsequent, successive state PCR application. Rather, *Martinez* sets forth a narrow exception to the procedural default rules imposed on federal habeas corpus petitions when considered under the so-called "cause and prejudice" standard. See *Coleman*, 501 U.S. at 750 ("In all cases in which a state prisoner has defaulted his federal claims in state court pursuant to an independent and adequate state procedural rule, federal habeas review of the claims is barred unless the prisoner can demonstrate cause for the default and actual prejudice as a result of the alleged violation of federal law, or demonstrate that failure to consider the claims will result in a fundamental miscarriage of justice."). The *Martinez* Court used this standard as the foundation for its decision, finding that attorney error amounting to ineffective assistance of counsel during an initial-review collateral proceeding may be sufficient "cause" to excuse a prisoner's procedural default in a federal habeas corpus proceeding. See 132

RM 08/5

S. Ct. at 1314 ("Inadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial.").

Martinez has no application to successive state PCR actions, as the fundamental "cause and prejudice" standard on which *Martinez* relies is exclusive to federal habeas corpus actions. *Id.* at 1320. Further, the *Martinez* Court specifically noted that their decision was not addressing ineffective assistance of counsel claims raised in subsequent state PCR actions, opining, "This is not the case, however, to resolve whether [an exception to the constitutional rule that there is no right to counsel in collateral proceedings] exists as a constitutional matter." *Id.* at 1315.

Additionally, *Martinez*'s interpretation of federal laws applicable to federal habeas corpus actions has no effect on South Carolina's interpretation and application of its PCR statutes. See S.C. Code Ann. § 17-27-10 to 160 (2014). Therefore, the South Carolina Supreme Court's opinion in *Aice v. State* still applies to claims raised in a subsequent state PCR action alleging ineffective assistance of prior collateral counsel. See 305 S.C. at 451, 409 S.E.2d at 394 ("The contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under 17-27-90.") The South Carolina Supreme Court recognized, "The holding in *Martinez* is limited to federal habeas corpus review and is not applicable to state post-conviction relief actions." *Kelly v. State*, 404 S.C. 365, 365, 745 S.E.2d 377, 377 (2013). Applicant's contention that *Martinez* allows him to bring this untimely and successive state PCR application is misguided and erroneous.

Applicant failed to establish any sufficient reason why his current grounds for relief, except for his *Austin* claim, were not properly raised in his previous application. This Court summarily dismisses this application because it is successive to Applicant's previous PCR application.

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VI.

Applicant alleges ineffective assistance of counsel in that he was denied the right to an appeal from the denial of his first PCR application. There is no constitutional right to appointed counsel for collateral review of a conviction. *Pennsylvania v. Finley*, 481 U.S. 551 (1987). The Sixth Amendment right to the effective assistance of counsel does not extend to state post-conviction relief actions. *Coleman v. Thompson*, 501 U.S. 722 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a sufficient reason warranting a successive PCR application under § 17-27-90." *Aice v. State*, 305 S.C. 448, 451, 409 S.E.2d 392, 394 (1991).

An exception which allows a claim of ineffective assistance of post-conviction relief counsel is found in *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). Pursuant to *Austin*, a PCR applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application. Accordingly, this Court finds this application must be summarily dismissed because it is successive and untimely, and that a hearing must be held on the sole issue of whether Applicant is entitled to a belated appeal of the denial of his first PCR application.

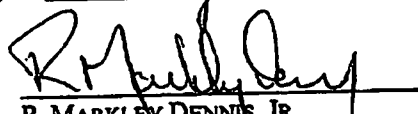
VII.

Pursuant to section 17-27-70(b) of the South Carolina Code, this Court intends to dismiss this application with prejudice unless Applicant provides specific reasons, factual or legal, why the application should not be dismissed in its entirety. Applicant is granted twenty days from the date of service of this Order upon him to show why this Order should not become final. Applicant shall file any reasons he may have with the Charleston County Clerk of Court and shall serve opposing counsel at the following address:

LMA 4/7

Office of the Attorney General
Elizabeth H. Neyle, Esquire
PCR Division
P.O. Box 11549
Columbia, SC 29211

AND IT IS SO ORDERED this 6th day of February, 2015.



R. MARKLEY DENNIS, JR.
Chief Judge for Administrative Purposes
Ninth Judicial Circuit

Monika Lerner, South Carolina

EMD/18

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	
Quentin Jenkins,	)	CASE NO. 2012-CP-10-07980
	)	
APPLICANT,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
State of South Carolina,	)	PCR HEARING
	)	
RESPONDENT.	)	
	)	

July 20, 2015

Charleston, South Carolina

B E F O R E:

The Honorable Roger H. Henderson

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

J. Rutledge Johnson, Esquire
For the Applicant

Rodney D. Davis, Esquire
For the Respondent

I N D E X

PCR HEARING -- 03

EXHIBITS - NONE PROFFERED

CERTIFICATION OF TRANSCRIPT -- 08

Look for an original signature in blue ink on the certification sheet to verify that the court reporter has certified the transcript you are viewing.

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

1 THE COURT: Yes, sir, Mr. Johnson.

2 MR. JOHNSON: May it please the court, Your Honor.

3 This is the case of Quentin Jenkins versus the State of
4 South Carolina. It is Case Number 2012-CP-10-7980.

5 Mr. Jenkins was indicted at the April 2007 term of the
6 Charleston County Grand Jury for two counts of murder and
7 two counts of possession of a weapon during the commission
8 of a violent crime.

9 He proceeded to trial and was found guilty as indicted.
10 The Honorable Deadra L. Jefferson sentenced him to
11 concurrent terms of imprisonment for forty years for each
12 count of murder and five years for each count of possession
13 of a weapon.

14 He appealed and filed an Anders brief or Anders brief,
15 however you want to say it. The South Carolina Court of
16 Appeals dismissed the appeal. Remittitur was issued on
17 March 12th, 2010. He filed his first PCR application on
18 October 27, 2010. The State filed its return February 10th,
19 2011.

20 There was an evidentiary hearing held at the Charleston
21 County Courthouse on November 18th, 2011; and he was
22 represented by Mark Pepper. The Honorable Kristi L.
23 Harrington denied and dismissed this application with
24 prejudice on December 20th, 2011.

25 He then filed a -- or applicant filed a pro se petition

1 for a belated writ of certiorari on October 12th 2012. And
2 counsel for applicant filed a notice of appeal October 23rd,
3 2012.

4 Applicant's counsel indicated he received written
5 notice of Judge Harrington's order on January 5th but did
6 not receive a copy of the order until May 31st, 2012.

7 The South Carolina Supreme Court dismissed the matter
8 on November the 5th, 2012, and issued the remittitur on
9 November 26th, 2012.

10 The court noted in the order - which I do believe is in
11 your packet - it stated it is clear that the time to appeal
12 this matter expired long before either notice of appeal was
13 prepared or served in this matter, accordingly this matter
14 is dismissed.

15 Its dismissal was without prejudice to whatever right
16 the petitioner may have as stated under Austin versus State
17 by filing an application for post-conviction relief in the
18 circuit court.

19 Mr. Jenkins filed his second PCR application on
20 December 7th, 2012, and made an amendment on June the 6th,
21 2013. And the State filed its return and partial motion to
22 dismiss on or about February 2nd, 2015.

23 The motion to dismiss would be all claims except for
24 the Austin versus State as they are both successive and time
25 barred at this point.

1 But he is here represented by Mr. Rodney who I will
2 turn over the case too.

3 THE COURT: All right. Mr. Davis.

4 MR. DAVIS: Thank you, Your Honor. May it please the
5 court. Based on all of that -- and we appreciate the
6 recitation by the State. We are here on an Austin v. State
7 matter only. We are simply asking for the client's right to
8 a belated appeal from his original PCR.

9 So at this time the court, if it please the court, we
10 would call Mr. Quentin Jenkins to the stand.

11 THE COURT: All right. Mr. Jenkins.

12 (WHEREUPON, counselors confer.)

13 (WHEREUPON, bench conference was had.)

14 THE COURT: Mr. Johnson.

15 MR. JOHNSON: Your Honor, as we just stated up at the
16 bench, based on the South Carolina Supreme Court's order I
17 have no legal basis to challenge that Mr. Jenkins is
18 entitled to an Austin versus State belated PCR appeal.

19 So that is our legal -- that is our position. And we
20 will not, you know, contest what the Supreme Court has
21 already stated.

22 THE COURT: Okay. Mr. Davis, with that being said I
23 don't know that there is any need for any testimony. But
24 if you still wish to seek some testimony I will give you
25 the opportunity to do so. But I don't see that it is

1 necessary.

2 MR. DAVIS: Your Honor, if I could have a moment to my
3 client -- with my client. But with the State's position
4 similar to -- I wish I had found some argument that we could
5 dig into some of the issues that were not previously raised.
6 I don't believe I have the grounds to do that based on Judge
7 Dennis' conditional order, and so that is why I am not
8 raising any issues on that.

9 I appreciate the State reflecting the facts of the
10 Supreme Court's order. If I could just have a moment to
11 explain that to my client ---

12 THE COURT: Sure.

13 MR. DAVIS: --- I believe we would just ask you to
14 grant the motion for PCR relief and allow him his belated
15 appeal. I don't think we have anything else.

16 THE COURT: Take a minute and talk to your lawyer, Mr.
17 Jenkins.

18 (WHEREUPON, Mr. Davis confers with his client.)

19 MR. DAVIS: Thank you, Your Honor. And my client
20 understands and we -- I am making a motion without testimony
21 based on the State's position that you grant the relief.

22 THE COURT: Okay. All right. Counsel, I will grant
23 the relief of a belated appeal under the Austin case.

24 Mr. Davis, would you be preparing the order or Mr.
25 Johnson?

1 MR. DAVIS: We will collaborate and we will get
2 something to you, Judge.

3 THE COURT: Okay. That sounds great.

4 MR. DAVIS: Thank you so much.

5 THE COURT: Okay. All right, sir. Thank you.

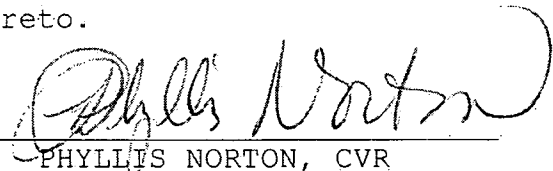
6 (WHEREUPON, the PCR hearing concluded.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court for Charleston County, South Carolina, on July 20, 2015.

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



PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: January 10, 2016

Certified Transcript Provided For: SCCD
Certification Reference # 011016 01216

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

NINTH JUDICIAL CIRCUIT

Quentin Jenkins, 326584)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER

Case No.: 2012-CP-10-7980

FILED
2015 SEP 10 AM 9:57
JULIE J. BARNES, CLERK OF COURT

Date of Hearing:

July 20, 2015

Presiding Judge:

The Honorable Roger Henderson

Applicant's Attorney:

Rodney D. Davis

Respondent's Attorney:

J. Rutledge Johnson

Court Reporter:

Phyllis Norton

This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR") filed December 7, 2012. The Respondent made its Return and Partial Motion to Dismiss on or about February 4, 2015. An evidentiary hearing into the matter was convened on July 20, 2015, at the Charleston County Courthouse. Applicant was present along with Applicant's PCR attorney, Mark Peper ("PCR counsel"). In addition, the Court had before it the records of the Charleston County Clerk of Court, the Supreme Court of South Carolina and the transcript of the proceedings against the Applicant.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections. In April 2007, the Applicant was indicted by a Charleston County Grand Jury for two counts of Murder and two counts of Possession of a Weapon during a Violent Crime. A trial was commenced and the Applicant was convicted of the charges. The Honorable Deadre Jefferson

sentenced the Applicant to concurrent terms of imprisonment for forty (40) years on each count of Murder and five (5) years for each weapon charge. Applicant appealed his conviction and the South Carolina Court of Appeals dismissed.

Applicant filed a PCR claim on October 27, 2010. Respondent filed a Return on February 10, 2011. An evidentiary hearing occurred on November 18, 2011, before the Honorable Kristi L. Harrington. The Applicant was represented by Mark Peper of the Charleston County Bar. Following the hearing, Applicant's PCR was dismissed with prejudice on December 20, 2011. Applicant filed a pro se Motion for a Belated Writ of Certiorari on October 12, 2012. PCR Counsel filed a Notice of Appeal on October 23, 2012. The South Carolina Supreme Court dismissed the matter on November 5, 2012, and issued the remittitur on November 26, 2012. Applicant filed the current PCR application on December 12, 2012 and amended the application on June 6, 2013.

At the evidentiary hearing, Applicant sought relief as to a belated appeal only. Based on the documents in the record and the waiver of any other potential PCR claims, the State conceded the Applicant's request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety. In a PCR action the Applicant bears the burden of proving each of the allegations raised by the application in order to receive any relief. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

This Court finds the Applicant is entitled to a direct appeal pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Counsel has a constitutionally-imposed duty to consult with defendant about appeal when there is reason to think either (1) that rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel

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that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When a criminal defendant requests an appeal, but counsel fails to file an appeal, counsel is deemed deficient. Flemming v. State, 309 S.C. 380, 381, 731 S.E.2d 889 (2012). In such a case, the defendant is entitled to a belated appeal without showing the appeal would likely have had merit. Id.

In White v. State, the South Carolina Supreme Court held that even if the post-conviction relief court finds that the Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Based off of the forgoing, this Court finds that Applicant did not knowingly and voluntarily waive his right to appeal. This Court concludes the Applicant is entitled to a belated review of his plea pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has withdrawn all complaints against PCR counsel with the exception of the request for a belated appeal. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate

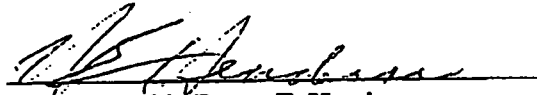
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review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Applicant is granted an appeal pursuant to White v. State. Within thirty (30) days of receipt of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions;
2. All other claims raised in the application for Post-Conviction Relief must be denied and dismissed with prejudice; and
3. The Applicant must be remanded to the custody of the Respondent.

IT IS SO ORDERED.


The Honorable Roger E. Henderson
Circuit Court Judge

August 20, 2015

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Charleston, SC 29405

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Quentin Jenkins,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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S.C. SUPREME COURT

AMENDED ORDER
Case No.: 2012-CP-10-7980

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JULIE J. ARMSTRONG
CLERK OF COURT

Date of Hearing: July 20, 2015
Presiding Judge: The Honorable Roger Henderson
Applicant's Attorney: Rodney D. Davis
Respondent's Attorney: J. Rutledge Johnson
Court Reporter: Phyllis Norton

This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR") filed December 7, 2012. The Respondent made its Return and Partial Motion to Dismiss on or about February 4, 2015. An evidentiary hearing into the matter was convened on July 20, 2015, at the Charleston County Courthouse. Applicant was present along with Applicant's PCR attorney, Mark Peper ("PCR counsel"). In addition, the Court had before it the records of the Charleston County Clerk of Court, the Supreme Court of South Carolina and the transcript of the proceedings against the Applicant.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections. In April 2007, the Applicant was indicted by a Charleston County Grand Jury for two counts of Murder and two counts of Possession of a Weapon during a Violent Crime. A trial was commenced and the Applicant was convicted of the charges. The Honorable Deadre Jefferson

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sentenced the Applicant to concurrent terms of imprisonment for forty (40) years on each count of Murder and five (5) years for each weapon charge. Applicant appealed his conviction and the South Carolina Court of Appeals dismissed.

Applicant filed a PCR claim on October 27, 2010. Respondent filed a Return on February 10, 2011. An evidentiary hearing occurred on November 18, 2011, before the Honorable Kristi L. Harrington. The Applicant was represented by Mark Peper of the Charleston County Bar. Following the hearing, Applicant's PCR was dismissed with prejudice on December 20, 2011. Applicant filed a pro se Motion for a Belated Writ of Certiorari on October 12, 2012. PCR Counsel filed a Notice of Appeal on October 23, 2012. The South Carolina Supreme Court dismissed the matter on November 5, 2012, and issued the remittitur on November 26, 2012. Applicant filed the current PCR application on December 12, 2012 and amended the application on June 6, 2013.

At the evidentiary hearing, Applicant sought relief as to a belated appeal from his PCR dismissal, only. Based on the documents in the record and the waiver of any other potential PCR claims, the State conceded the Applicant's request.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety. In a PCR action the Applicant bears the burden of proving each of the allegations raised by the application in order to receive any relief. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

This Court finds the Applicant is entitled to an appeal of his PCR dismissal pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Counsel has a constitutionally-imposed duty to consult with defendant about appeal when there is reason to think either (1) that rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to


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counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When a criminal defendant requests an appeal, but counsel fails to file an appeal, counsel is deemed deficient. Flemming v. State, 309 S.C. 380, 381, 731 S.E.2d 889 (2012). In such a case, the defendant is entitled to a belated appeal without showing the appeal would likely have had merit. Id.

In White v. State, the South Carolina Supreme Court held "[T]he right to seek appellate review of the denial of PCR is expressly authorized by state law. S.C.Code Ann. § 17-27-100 (1985); Supreme Court Rule 50(9). Whether such review is granted is discretionary with this Court. Knight v. State, 284 S.C. 138, 325 S.E.2d 535 (1985)." Therefore, where an Applicant establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to appeal the dismissal of his PCR action, the South Carolina Supreme Court, will grant discretionary review of that decision.

Based off of the forgoing, this Court finds that Applicant did not knowingly and voluntarily waive his right to appeal. This Court concludes the Applicant is entitled to a review of his plea pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has withdrawn all complaints against PCR counsel with the exception of the request for a belated appeal. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an

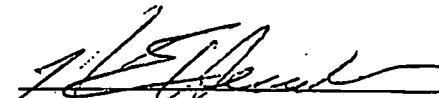
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Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The Applicant is granted an appeal pursuant to Austin v. State. Within thirty (30) days of receipt of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicant's convictions;
2. All other claims raised in the application for Post-Conviction Relief must be denied and dismissed with prejudice; and
3. The Applicant must be remanded to the custody of the Respondent.

IT IS SO ORDERED.


The Honorable Roger E. Henderson
Circuit Court Judge

11-25, 2015

#4