VOLUME II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Berkeley County

Honorable Michael G. Nettles, Circuit Court Judge

RON SANTA MCCRAY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2017-002051

APPENDIX

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Her report clearly provides specific evidence, beyond just the testimony that was elicited as it relates to injuries that were non-related to the allegations in the case. Tattoos, show improved, baby boy with a Bullhead, living legend, hand holding a ball mid-abdomen, multiple scars -- I'm sorry, tattoo of a man on the upper left chest, tattoo of unbreakble, tattoo of the state with the some specific markings upon it, and a no new limit tattoo.

I think we should have been able to have free cross-examination of this witness. And we again were limited in our ability to cross-examine the witnesses that the State has presented in this case attempting to prove their case against my client.

I think it's a very basic fundamental right we would have to be able to confront and cross-examine the witnesses. We believe that we have been denied that right.

THE COURT: All right. Mr. Biering, was there any indication in the report that you had been given that there was any connection to any of these tattoos with the gunshot wound? Or any infection or anything that would have hastened his death?

MR. BIERING: Your Honor, it's our position -- the answer to that question is no.

THE COURT: All right. And I understand your position was that these tattoos were somehow gang-related. But since she was a doctor, there was no indication from either you or the State at the bench conference that anything about this tattoo medically was related to this death.

Anything else we need to place on the record other than those two items, Mr. Biering?

MR. BIERING: Your Honor, the issue of gang relation --

THE COURT: Mr. Biering, you placed it on the record. Anything other than those two items that need to be placed on the record?

Those are the notes I made from this morning of the two items that needed to be placed on the record.

MR. BIERING: Your Honor, I had a continued objections as it relates to the qualifications as Dr. Presnell regarding the ballistics.

I think that that's sufficiently been placed on the record. I made contemporaneous objections as it relates to that.

I do have additional information I believe would be appropriate to place on the record as it relates to the issue of tattoos. But certainly, I'm not at the liberty simply to speak without leave from the Court.

THE COURT: All right.

And anything further? You have gone over -- from the State -- you've gone over all your items?

MS. WILLIAMS: Just to clarify the record the State's position on 65 and 69 are just that those were the only --

THE COURT: They are already admitted. His objection is noted. I don't need any further explanation. They're clear for the record. Thank you.

MS. WILLIAMS: What about for the question was actually that she -- did she note any prior injuries, not in any --

THE COURT: It's all in the record, Ms. Williams, thank you.

All right. I need you just to check to make sure that all of your exhibits have been made -- have been entered that you think have been entered after we break for lunch. I will give you leave to do that since there were so many exhibits.

All right, I need to advise your client of his rights, Mr. Biering. Please swear Mr. McCray.

THE CLERK: Please raise your right hand.

Do you solemnly swear that the testimony you will give the Court in this matter will be the truth, the whole truth and nothing but the truth, so help you

God.

THE DEFENDANT: I have a question.

THE COURT: Mr. McCray, I'm advising you of your rights. But in order for you to address the Court, I need you to be placed under oath.

Do you understand that?

THE DEFENDANT: Yes. Yes.

THE COURT: All right. And did you understand the oath?

THE DEFENDANT: Yes, I did.

THE COURT: And do you accept the oath at this time?

THE DEFENDANT: Yes, I do.

THE COURT: All right.

Mr. McCray, I'm only going to probably ask you two questions at this time. You can put your hand down. I'm not going to ask you anything unrelated to whether or not you understand your right to testify.

Do you understand that.

THE DEFENDANT: Yes.

THE COURT: All right. We have reached the stage of the trial where you may present your defense. You have the right to claim the protections given to you by the Fifth Amendment to the constitution of the United States. No person shall be compelled in any

criminal case to be a witness against himself.

This mean that you cannot be required to testify. You do have the right to testify on your own behalf, however, no one can make you testify. This is a personal right, and no one can waive this right except for you.

If you decide to testify, you will be subject to the same rules that govern other witnesses. And you may be examined and cross-examined on any relevant issue in this case.

In addition, if you have any convictions involving dishonesty or false statement, or for crimes punishable by imprisonment for more than one year, and the Court determines the probative value of admitting this evidence outweighs its prejudicial effect to you, the solicitor will be able to introduce your record to attack your credibility.

Mr. Alfaro, do you have any convictions that you believe will be used to attack his credibility?

MR. ALFARO: Your Honor, I don't believe there are any that would be used unless the defendant opened the door to those. I don't believe there are any related to dishonesty.

There is a 1998, it's called possession of marijuana out of Texas. I guess based on the weight,

would be more appropriate to a possession with intent to distribute here.

There is an unlawful carrying of pistol from 1991, that again would be outside the 10 years unless the door would be opened. Possession of crack cocaine from 1993, similar circumstances.

And that would be the extent of the convictions that the State has possession of at this time.

THE COURT: Mr. Biering, have you reviewed your client's rap sheet; is that correct?

MS. WILLIAMS: Yes, Your Honor, I have.

THE COURT: And you've gone over what could potentially be used only if Mr. McCray testifies and in essence opens the doors to those issues?

MS. WILLIAMS: Correct, Your Honor.

THE COURT: If you decide to testify, this decision on your part must be freely, voluntarily, and intelligently made with the knowledge of the protections given to you by the Fifth Amendment, and the consequences of your decision to testify.

If you decide not to testify, I will instruct the jurors that they are to give no consideration to the fact that you did not testify. There is to be absolutely no prejudice to you because you did not testify.

It's left entirely up to you. You may talk with your attorney, your friends, your family members, or anyone else. But the final decision is left entirely up to you.

Do you understand what I have explained to you?

THE DEFENDANT: Yes, Your Honor.

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

THE DEFENDANT: I don't have any. I have a type of a matter that was handed down to me by Judge Dennis. But I don't know.

THE COURT: As far as whether or not to testify and your Fifth Amendment rights?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Mr. McCray, I'm going to let you discuss that matter with Mr. Biering. I just wanted to -- because we are going to break for lunch. So this is going to give you time to consider what I have discussed with you as the consequences and the benefits of testifying, and to give you time to speak with your attorney, or with whomever else you need speak with, concerning this matter.

Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And if you have any further

questions, Mr. Biering may need to approach the Court in the presence of the solicitor perhaps, and articulate to me any concerns that you may have about that.

But at this time, I think it's best that you consult with your attorney.

Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. So when we come back after lunch I likely will ask you whether or not you have had time to meet with your attorney, and whether or not you are going to testify.

All right, thank you. You may have a seat, Mr. McCray.

Mr. Biering, do you have witnesses that you anticipate that you will be calling?

MR. BIERING: Yes, Your Honor, I do. I had requested from the scheduling standpoint the ability to be able to begin my defense tomorrow morning.

The Court suggested at one of the side bars or prior to beginning, that was something the Court was considering doing.

From a scheduling standpoint, I'd ask that we be able to do that. I know we are going to have some motions as it relates to some of our anticipated

witnesses that need to be handled this afternoon. Certainly --

THE COURT: You have motions concerning witnesses?

MR. ALFARO: We have the issue -- some of the witnesses on Mr. Biering's witness list, the officers that we have been informed are going to testify about prior interactions and convictions with the victim that we feel would be inadmissible testimony.

I don't know if those may need to be proffered before they testify or are called.

THE COURT: All right, Mr. Biering, I had jumped ahead by advising your client. Are you making a motion for directed verdict at this time?

MR. BIERING: We are. We do make a motion for direct verdict.

THE COURT: Let me hear you on that.

MR. BIERING: Your Honor, it's simply our position that the State has failed to produce evidence addressing all elements of the crime. And we would ask the Court to enter a directed verdict of not guilty at this time on the sole charged indictment of murder.

THE COURT: All right.

MR. ALFARO: Your Honor, the testimony that has been presented, as well as the physical evidence,

including the defendant's statement, looking at the evidence in the light most favorable to the State, we have met our burden of proof producing any evidence that would allow a jury to convict the defendant of the charge of murder.

We feel we have met that burden and the motion should be denied.

THE COURT: Mr. Alfaro, the air just went on. Can you speak up?

MR. ALFARO: Your Honor, looking at the evidence in the light most favorable to the State, we feel we have met our burden of producing evidence that would allow a jury to reach a reasonable verdict of convicting this defendant, convicting him of murder beyond a reasonable doubt.

We feel we have met that burden. We ask that the motion for directed verdict be denied.

THE COURT: Any response?

MR. BIERING: No, Your Honor. Again we just do not believe they have met the burden. We do not believe that they have presented sufficient evidence on each of the elements of the crime. We'd ask for a directed verdict at this time on the sole charge of murder.

THE COURT: Rule 19 of the rules of criminal

procedure the Court is concerned with the existence or non-existence of the evidence and not its weight.

In considering, I must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. The defendant is charged with murder, which is the killing of any person with malice aforethought.

There has been testimony that the victim is deceased. That there was a gunshot. There has been ample testimony, the witnesses that the State has produced have relayed that Ron shot Reggie. The victim was lying on the ground. Help me, Ron shot me, was the statement.

And Ms. Coaxum indicated that she heard the defendant say, die, mother-fucker, die. The testimony that has been presented in the light most favorable to the non-moving party, the State, has met its burden. The case will be presented to the jury.

I'll note your objection for the record.

Mr. Biering, anything further?

MR. BIERING: Your Honor, I do think that left unanswered was the Court's ruling on our requested remedy for Felicia Coaxum and Joyce Wright.

THE COURT: All right. And does the State take any position as to that?

MS. WILLIAMS: We object, Your Honor. The only question, I think once the conviction came out, the only question he can ask, once they admit to it, I don't even think he gets to ask any questions. The fact that would ever open up anything to cross-examination, if it had been exposed in the original testimony, should be the same analysis we use now.

I don't know of anything about having a breach of trust, or an 11-year-old fraudulent check that would prompt more questions. Mr. Biering has exhaustingly cross-examined all of those witnesses.

And we would object to them coming back. We think it would be confusing for the jury. And we ask that that not be allowed.

THE COURT: Anything further, Mr. Biering?

MR. BIERING: The jury is not going to be confused at all by witnesses coming back on the witness stand. They are all lay individuals here. They're not going to be surprised at all to see any witness back.

THE COURT: That is not a concern of the Court, but thank you for pointing that out.

Once the information was presented to the -- to Mr. Biering and brought to the Court's attention we recalled -- I allowed the State to recall and allowed

Mr. Biering to cross-examine on the sole issue of the conviction and the rap sheet that was presented.

Based upon my review of the evidence and the rules, as well as current case law, I am denying your motion to recall them for extended cross-examination. Note your exception for the record, thank you.

MR. BIERING: Thank you, Your Honor.

THE COURT: Anything further?

MR. BIERING: Just the scheduling issue.

THE COURT: All right. Let's -- we will be back at 2:00. Just approach for scheduling.

MR. BIERING: Thank you, Judge.

THE COURT: Thank you.

(Whereupon, a discussion was held at the bench off the record.)

(Whereupon, a recess was taken.)

THE COURT: Mr. Biering, are you ready?

MR. BIERING: Just let me get my stuff out of my bag, Your Honor. I was meeting with a witness.

Your Honor, I have one witness that was here right before we broke for lunch who is not back. I don't have any reason to anticipate he will not be here.

If I could have a moment for him to arrive, I would appreciate it.

THE COURT: Is that your only witness?
MR. BIERING: No, it's not, Your Honor.
THE COURT: Then let's take one out of order.
MR. BIERING: Your Honor, I would call Joseph Williams.
THE COURT: Thank you.
MR. ALFARO: Your Honor, may we approach while the jury is coming in?
THE COURT: Yes.
(Whereupon, a discussion was held at the bench off the record.)
(Whereupon, the jurors enter the courtroom.)
THE COURT: Thank you, be seated.
Counsel, approach.
(Whereupon, a discussion was held at the bench off the record.)
THE COURT: Ladies and gentlemen, there is a matter of law I must take up outside of your presence.
Do not begin your deliberations. Do not discuss this case amongst yourselves. Please rise for the jury.
(Whereupon, the jurors exit the courtroom.)
THE COURT: Mr. Biering, please bring Mr. Williams in.
THE COURT: Mr. Williams, I need you to come

forward. If you'll just have a seat in the chair for me, please.

JOSEPH WILLIAMS,

after having first been sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows:

THE COURT: Mr. Williams, your name did not make the witness list. So I have a few questions for you to determine whether or not I am going to allow you to testify.

I need you to write your birth date and social security number on this piece of paper for me.

THE WITNESS: What else do you need?

THE COURT: Just your birth date and your social security number.

Mr. Williams, how old are you?

THE WITNESS: 30.

THE COURT: You are 30. And without telling me your exact address, can you tell me what area you live in.

Berkeley County or Charleston County.

THE WITNESS: Wando.

THE COURT: You live in Wando?

THE WITNESS: Yes, ma'am.

THE COURT: And where do you work?

THE WITNESS: QIC. Trucking company.
THE COURT: QIC as a truck driver?
THE WITNESS: Yes.
THE COURT: Mr. Biering, here is the date of birth and social security number.
Any further questions or identifiers from the State?
MR. ALFARO: Given the common name, if we could get a middle name for Mr. Williams.
THE COURT: Mr. Williams, do you have a middle name.
THE WITNESS: Rance, R-A-N-C-E.
THE COURT: Thank you.
Any other identifying information?
MR. ALFARO: No, Your Honor.
THE COURT: Mr. Biering, is there any other identifying information for the jury?
MR. BIERING: No, Your Honor. But I do think that the employment, I think that provides more information about the witness than -- by this witness than would have been what is supplied by any other witness.
THE COURT: I note your exception.
You may step down, Mr. Williams. I have to bring the jury back in because your name wasn't on the

witness list. So we are going to make a determination whether or not any of the jurors know you.

So please do not discuss your testimony until you are told that you can, okay?

Thank you, Mr. Williams. I apologize for the in and out for you.

All right, Mr. Biering, do you have anyone else? Any other witnesses that did not make the witness list so we can go ahead and -- well, let me ask it this way. The individual that was here before lunch and has not returned, what is that person's name.

MR. BIERING: His name is Edward EJ Bacon. He is number one on our witness list, Your Honor.

THE COURT: Okay, great. And is Mr. Bacon back?

MR. BIERING: Yes, Your Honor, he is back.

THE COURT: Okay, great.

MR. BIERING: There is one other witness that is not on my witness list that I intend on calling.

THE COURT: What is that individual's name.

MR. BIERING: Captain Rick Ollic.

THE COURT: All right. Cpt. Ollic was on the --

MR. BIERING: He has been mentioned a number of times throughout the course of the trial.

THE COURT: I thought I called his name. He wasn't on your witness list, was he?

MR. ALFARO: No.

THE COURT: I guess I just had heard his name so many times.

All right. So it's Cpt. Rick Ollic; is that correct?

MR. BIERING: Yes, Your Honor.

MR. ALFARO: Yes.

THE COURT: All right.

Mr. Biering, anyone else?

MR. BIERING: If I could have just a moment, Your Honor

THE COURT: You can take all the time you need.

MR. BIERING: Your Honor, my client desires that we add Yolanda Hill to the witness list as well.

THE COURT: All right. Is Yolanda Hill here?

MR. BIERING: No, Your Honor.

THE COURT: Well, do we know -- have any identifying information about Yolanda Hill?

MR. BIERING: I have no identifying information about Yolanda Hill, Your Honor.

THE COURT: All right. When are you going to have Ms. Hill here?

MR. BIERING: My client would desire that I have Ms. Hill here tomorrow. I will endeavor to do everything in my power to make that happen, Your Honor.

THE COURT: My intention is to have all your other witnesses, except for your client, done by this afternoon because it is 2:30. I think we may be able to accomplish that.

Are you going to be able to get in touch with Ms. Hill?

MR. BIERING: Your Honor, prior to the break from the scheduling standpoint, what I was informed --

THE COURT: That wasn't my question. Are you going to be able to get in touch with Ms. Hill?

I am attempting to only inquire of the jury one additional time so as not to draw any attention to any of these other witnesses.

Do you have identifying information about Ms. Hill? Where does she work? How old is she? Where does she live?

MR. BIERING: My client says I can have that in 10 minutes, Your Honor.

THE COURT: Is Cpt. Ollic available? Is he outside?

MR. BIERING: He is here, Your Honor.

THE COURT: Here's what we are going to do, Mr. Biering. I'm going to inquire as to Cpt. Ollic and Mr. Williams. Mr. Bacon was on the witness list.

And if you can get in touch with Ms. Hill, we

will do it at the appropriate time.

Let's bring in the jury.

MR. BIERING: Your Honor, before the jury comes in, from a scheduling standpoint, my understanding was that we were going to go until approximately 3:30 this afternoon.

THE COURT: Yes.

MR. BIERING: From our bench conference.

THE COURT: Yes.

MR. BIERING: And I have other witnesses that sort of --

THE COURT: Other witnesses other than these you've just indicated to me?

MR. BIERING: No, Your Honor, but certainly other witnesses that are on my witness list that I have indicated to them to be here tomorrow morning.

THE COURT: All right, so there has been a failure of communication. We'll address that. Let's go ahead and get done.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Thank you, be seated.

Ladies and gentlemen, the Court inadvertently left off some names off the witness list. Remember on Monday when I called out the lengthy names who may be called as potential witnesses.

Ladies and gentlemen, as you heard the State has rested and now it's the time for the defense to present its witnesses.

Is there any member of the panel related by blood, marriage, close personal friends, ever have any business, personal or professional dealings with Joseph Rance Williams from Wando, Cpt. Rick Ollic from the Berkeley County Sheriff's Office, or Yolanda Hill, if so please stand at this time.

Thank you, there are none.

Call your first witness, Mr. Biering.

MR. BIERING: Your Honor, we would call Joseph Williams to the stand.

THE COURT: All right. Thank you.

JOSEPH WILLIAMS,

after having first been sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows:

THE COURT: Mr. Biering.

MR. BIERING: May it please he Court.

DIRECT EXAMINATION

BY MR. BIERING:

Q Mr. Williams, where do you reside?

A Jack Primis, Wando, South Carolina.

Q And how long have you resided in that area?

A I would say going on ever since 2004.
Q Where did you reside before?
A New York City.
Q How old are you, Mr. Williams?
A 30.
Q And, Mr. Williams, what do you do for a living?
A I'm a truck driver.
Q How long have you been doing that?
A Since about February 2006.
Q You do mostly local, or do you do long distance hauling?
A Both depending on how the money rolls.
Q Wherever your employer tells you to go, right?
A Hey, that's how it works.
Q Mr. Williams, back in September of 2009, did you resides in the Jack Primis area?
A Yes.
Q Mr. Williams, do you know Ron McCray?
A Yes, I do.
Q And do you know Reginald Porcher?
A Yes.
Q And how long do you think you had known first Mr. McCray?
A Pretty much been a lifetime.
Q How about Mr. Reginald Porcher, how long did you

know him?
A Known him since I was a young'un.
Q Since you were young?
A Yes, single digits also.
Q Single digits. Now, you said that you had move here from New York City?
A Yes.
Q Before moving here from New York City in 2004, did you come to the Jack Primis Wando area to visit or on a occasion?
A Yes. One time I was living down here going to school.
Q Back in September of 2009, specifically September 16th of 2009, were you in the Jack Primis community?
A Yes.
Q And do you recall, or are you aware that Reginald Porcher was involved in some type of an incident, shooting incident on Jack Primis Road on September 16th, 2009?
A Yes, sir.
Q And were you in the proximity of that area on September 16th of 2009?
A Yes, sir.
Q Can you tell us where you were?

A I was coming up the road on my way from Mr. McCray's house. He has a pool table, and that's where we normally go there and play games of pool.

Q And can you tell us what you saw that day?

A Yes. As I was on my way up going to Mr. McCray's house, I heard Mr. McCray yell out, hey, and you know that brought it to my attention right there. I started to look up, find out what was going.

I seem him, Mr. McCray, and I saw Mr. Porcher, both of them started going in two separate directions. So a stopped for a moment, you know, look what was going on because I didn't know, just coming up the road, I didn't know what was going on.

So on top of that, you know, Mr. McCray went back to his vehicle and he grabbed his weapon. Just as well as Mr. Porcher was going back to his vehicle to grab his. It almost look like a scene almost out of a western like, you know, who could get to their weapon first almost, so to say, so.

Q Did you hear anything?

A As far as?

Q At that time did you hear anything else? What happened after that point?

A As I approached to get closer, Mr. McCray was on his way toward Reggie. And then once Reggie got back

to his vehicle, that's what when he was scuffling for something, from what I saw.

Then once I saw what it was, it was a weapon coming out of his hand. And then he turned it back toward --

Q Out of his hand, you mean Reginald Porcher's hand?

A Yes.

Q What happened then?

A Then I seen Reginald grab the weapon and point it back towards Mr. McCray. And that's when Mr. McCray let off his shot.

Q Did the police question you that day?

A No, sir.

Q Mr. Williams, prior to September 16th of 2009, did you have occasion to be -- first, let me back up. The area where Reggie and Ron were at that day, they call that the tree, or they call that the hill. What do they call that area?

A The area is known as, you know, they call it the tree, a nickname. That's like a little spot where everybody would occasionally hang out, something like that.

Q You said they'd hang out?

A hang out, yes.

Q Did you have occasion to, prior to September 16th of 2009, be in close proximity of the tree?

A Excuse me?

Q Just before that, on other occasions, had you had an opportunity to be at the tree?

A Every now and then I would stop, say what's up to the guys, on my way in and out mostly.

Q What would go on under the tree on the occasions where you were there?

A Like sometimes they be chilling the tree, just chilling out, taking in the shade. Every now and then, you know, drinking. Might be smoking.

Q Smoking, smoking what?

A Marijuana, cigarettes, various.

Q I'm sorry, what?

A Various.

Q Various things. You got any -- have you ever been convicted of a crime, Mr. Williams?

A No.

Q So, Mr. Williams, was that a place, while you had seen, you had occasion to see that on, is that someplace that you regularly hung out?

A No.

Q Why wouldn't you hang out there, Mr. Williams?

A Wasn't my cup of tea.

MR. BIERING: Mr. Williams, thank you.

THE COURT: Mr. Alfaro.

CROSS-EXAMINATION

BY MR. ALFARO:

Q Mr. Williams, what time was it that you claim that you saw the defendant and the victim that day?

A It was afternoon time.

Q Around what time?

A Had to have been after 3:00, 2:30, 3:00, something like that.

Q You have been friends with the defendant, you said, your whole life?

A Yes.

Q You just got down here in 2004, is that what you testified to?

A Yes.

Q So you knew him -- did you live in South Carolina before that, or just that's when you moved to Jack Primis?

A I moved to Jack Primis in 2004.

Q And you said you were going to play pool with the defendant?

A Going to his house to play pool, not necessarily with him but I had a key at the time so I could go over there just to play pool. If somebody just happened to

be there with me, I would just, you know, play some games with him.

Q So you went to his house pretty regularly?

A Yeah.

Q Where does he live on Jack Primis in relationship to the entrance at Clements Fairy Road?

A I would have to say a half a mile down the road.

Q And is his house before or after -- where do you live on Jack Primis?

A All the way at the end.

Q At the very end of it?

A Yeah.

Q And where were you when this supposed argument took place?

A I was on my way up the road.

Q Where?

A Up Jack Primis Road, going toward Mr. McCray's house.

Q Were you on Underlie Road? Were you on Jack Primis? Where were you standing?

A I was on Jack Primis in the road.

Q At the intersection of Underlie?

A Underlie approaching towards it.

Q How far away were you from Underlie Road?

A I would say within 30 yards approaching at the

time.
Q Were you on your end, or had you gone past Underlie?
A No, I was my end south coming back north.
Q So you hadn't gotten to Underlie yet?
A Not all the way. I was still approaching.
Q You were 30 yards away?
A 30 yards, approaching.
Q And you see Ron McCray with a shotgun?
A As I was approaching he yelled out. He yelled out and at first I didn't know what was going on, you know. Then I seen both individuals scattered. Then I paused for a moment. Then I continued to walk and that's when I saw Mr. McCray.
Q So you are 30 yards up the road on Jack Primis. Where are they standing?
A Excuse me?
Q Where is the victim and the defendant, where are they standing?
A They was in the driveway, where the driveway was.
Q Are you familiar with that? You said you're familiar with the tree?
A Yes.
Q Where they up near the tree?

A Close to it. Wasn't right up on it, I would have to say.
Q So what kind of gun did the victim supposedly have?
A As far as?
Q You said you saw a gun, what did you see?
A I saw a shotgun.
Q The victim had a shotgun?
A The victim? No. He had a handgun.
Q What color was it?
A I couldn't grab the color.
Q Do you know the difference between a semiautomatic and a revolver?
A If I would see it up close, yeah.
Q Which one was it?
A Couldn't tell you. I know it was a handgun he pulled out.
Q You don't know what color it is. You don't know what kind of gun it is. But you know it's a gun?
A Yes.
Q 30 yards away, you don't know what color it is?
A I was 30 yards and approaching. By the time the incident actually took place, I was closer. I was still approaching.
Q So you see two people with guns?

A Yes.
Q And you keep approaching?
A Yes.
Q You see somebody -- showing you State's Exhibit 144 -- standing on the road, arguing with somebody, holding a shotgun, and you keep walking towards him?
A Yes, I was still walking. Yes, I was.
Q Okay. Where did the defendant get that shotgun from?
A I couldn't tell you that one, sir.
Q No? You testified that you saw him get his gun after you saw them argue, and they went their separate ways.
A As far as out of his vehicle, yes. Out of his vehicle. I thought you meant as far as where he got it from somewhere else as far as after the vehicle.
Q So your testimony is Ron McCray gets out his car. What kind of car was he in?
A He was in a blue car, dark blue.
Q Blue car?
A Yes.
Q Are you sure it was a blue car?
A Yes.
Q Gets out of a blue car, walked up, says hey. Am I right so far?

A Yeah.
Q Then they go their separate ways?
A Yes.
Q Ron goes back to the blue car and gets that shotgun?
A Yes.
Q And that's the shotgun you saw him with that day, the one I showed you?
A I can't say it up close, that close it was the actual shotgun. But I know it was a shotgun.
Q Okay. So you see him go back to his car and get a shotgun?
A Yes, sir.
Q Where is the victim at, where is Reggie at when this was going on?
A He went back to his vehicle.
Q What kind of vehicle was he in?
A He was in a black vehicle.
Q What kind of vehicle was it?
A I know it was a pickup truck.
Q Okay. Which side of the pickup truck did he go into?
A Passenger.
Q Okay. So the victim goes into the passenger side of his car?

A Yes.
Q Okay. Did he get all the way in?
A From what I saw, he was in there.
Q I mean you saw him, you saw him start to get into his truck?
A As far as the whole, his whole body he went in there trying to grab what he was trying to grab. Shuffling around in there, if that's what you want to call it.
Q So could you see what part of his truck he was reaching for?
A Excuse me?
Q You weren't able to see what kind of -- what part of his truck he was reaching for?
A What part of in his truck he was reaching for?
Q Was he going to -- did you see him go to the glove box?
A I can't -- I wasn't that close to see if he was going to the glove box.
Q So you're not close enough to know if he is going to the glove box.
Was he going under the seat?
A Looked like he was down doing that.
Q Okay. So his whole body is in the car?
A Half of his body.

Q Half of his body. You sure he wasn't going to get his key to try to get away from the guy with the shotgun?

MR. BIERING: Objection, calls for speculation.

THE COURT: Overruled.

Q (By Mr. Alfaro) I'm sorry, I didn't hear your answer.

A I couldn't tell you that, if he was going for his keys or not.

Q So you don't know if he was going for a gun?

A I just know when he came back out he had a weapon in his hand.

Q A weapon, and you don't know what color it is?

A No, I didn't.

Q You don't know what it looks like?

A I know he pointed it in his direction.

Q Where were you when he pointed the gun?

A I was close.

Q Were you in front of him or behind him?

A I was still in the road.

Q Okay. So the defendant is sitting right there?

A Yes, sir.

Q Okay. I am the victim. Where are you at?

A You say this is the driveway?

Q Are you behind me or are you behind him?

A I'm behind him.
Q Okay. So you are behind him, and the victim is pointing some kind of gun or something at him, right?
A Yeah.
Q And you are still walking forward?
A At this point I get closer I stopped and had to watch what was going on.
Q Okay. So you got two people out there with guns?
A Yeah.
Q One of them is this shotgun?
A I ain't going to say necessarily it's that shotgun.
Q One of them is a shotgun?
A Shotgun, yes, sir.
Q And you keep walking?
A I got close enough to where I could see what was going on.
Q Did you have a gun with you?
A No.
Q Did you have a bullet proof vest on?
A No.
Q Do you think it was a good idea to keep walking up in to a shooting?
A I'm not going to say it was, but I was walking.

Q So when you were there, you kept walking. How close did you get to Ron McCray before he shot and killed Reggie Porcher?

MR. BIERING: Objection, compound question.

THE COURT: Overruled.

A What is the question, sir?

Q (By Mr. Alfaro) You are still walking while this is going on?

A Yes.

Q How close were you to Ron McCray when Ron McCray shot and killed Reggie Porcher?

A Say from the incident when he shot him, I'd say I was still within about 15, 20 yards, something like that.

Q 15, 20, yards; is that right?

A Yes, sir.

Q So you started off 30 yards away. That's what you testified to, right?

A Yes.

Q You're walking forward. Let me start back again.

30 yards away you see them having their conversation. You start walking forward. And the time it takes you to cover 15 yards they have argued, they have separated, he has walked back to his car.

Where did he get the shotgun out his car?
A Out the passenger side.
Q Passenger side. Did he have to walk around the car to get the shotgun out?
A No.
Q Went straight to the passenger side?
A Yes.
Q So you're still walking, he has walked to his car, he has gotten this shotgun out, and he has walked up to the victim.
Am I right so far?
A He is walking towards him.
Q Okay. And the victim was going his way to go get this thing that you say is a gun?
A Yes, sir.
Q And that entire thing -- and then they come back together. And how far away is he from the victim when he shoots the victim?
A Say about 12, 15 feet.
Q So he closes back to 12 or 15 feet with this shotgun in the time it takes you.
MR. BIERING: Objection. The witness has continued to say he knows -- he says it was a shotgun, he doesn't know what shotgun it is.
He continues to include that component in his

question. I believe it's argumentative.

THE COURT: Overruled.

MR. BIERING: Thank you, Your Honor.

Q (By Mr. Alfaro) So in the time it takes you to cover 15 yards, 15 yards, they've come together, they've argued.

A I didn't say they argued.

Q What did they do?

A I said all I heard was Ron McCray say, hey. And then both take off.

Q Oh, so they weren't arguing?

A I didn't see no arguing.

Q They didn't through any punches? They weren't fighting?

A I didn't say that.

Q Okay. You heard hey, and then he went and got a shotgun.

A I heard hey, and they just ran to their vehicles.

Q And he went and got a shotgun?

A If that's what it was.

Q So the victim says, hey, and he goes and gets a shotgun, you saw that?

A You said the victim said that? No, I said --

Q Ron, the defendant Ron McCray said that.

A -- Ron said that.
Q Okay, so Ron says, hey.
A Yes.
Q They separate --
A That's what brought it to my attention to look up and really find out what was going on. Then I seen both parties run towards their vehicle.
Q Okay. So he says, hey, and they separate?
A Yeah.
Q And he goes and gets a shotgun, a shotgun?
A Correct.
Q Walks back up with a shotgun?
A Right.
Q And shoots Reggie Porcher?
A Reggie draw his weapon out and was holding it toward Ron.
Q Well, Reggie is in his truck doing something under the seat. Who got to their car first?
A I'd say everyone was kind of split, split the same almost. I can't say one really beat the other.
Q Did you see -- strike that.
So Reggie got -- went into the passenger side of his truck is what you are saying?
You said he went into the passenger side of his truck?

A Yeah.
Q Comes back out of the passenger side of his truck, and gets shot where in relation to his truck?
A Right by his truck,
MR. BIERING: Objection, compound question, Your Honor.
The question is testimony, not -- and it's asked and answered.
THE COURT: Overruled.
Q (By Mr. Alfaro) Where was the victim standing when he got shot?
A Close to his truck.
Q On the passenger side?
A Yes.
Q Okay. Behind or in front of him?
A Right on the side.
Q On the passenger side?
A Yes.
Q Where did you go after the victim got shot?
A Proceeded back down the road.
Q Did you check on your friend, Ron McCray?
A No.
Q Do you stay and talk to police?
A No.
Q Why not?

A I went back down the road. I mean, I just say, hey. It is what it is and I just left.

Q Okay. So before the shooting, I want to make sure I have your testimony right because we kind of talked over each other at some point.

Before the shooting, the only thing you heard was, hey?

A Hey, then both parties.

Q How many shots were fired?

A One.

Q Who fired that shot?

A Ron.

Q I know you said you left shooting because it is what it is. Did you call the police later?

A No.

MR. ALFARO: Thank you.

THE COURT: Mr. Biering.

MR. BIERING: No further questions for this witness.

THE COURT: Is this witness excused?

MR. BIERING: We would ask he be excused.

THE COURT: Mr. Alfaro, any objection to this witness being excused?

MR. ALFARO: No, Your Honor.

THE COURT: Mr. Williams, you are free to step

down. You are free to remain with us, but you are also free to leave the courthouse. Thank you.

THE WITNESS: All right. Appreciate you, ma'am.

THE COURT: Thank you.

Call your next witness.

MR. BIERING: I would call EJ Bacon.

ERNEST BACON,

after having first been sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows:

DIRECT EXAMINATION

BY MR. BIERING:

Q Good afternoon, Mr. Bacon.

Mr. Bacon, do go by EJ?

A Yeah.

THE COURT: Mr. Bacon, you are going to have to speak loudly into the microphone, okay?

A Yes, I do go by EJ.

MR. ALFARO: Your Honor, can we approach briefly?

THE COURT: You may.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: Mr. Biering.

Q (By Mr. Biering) Mr. Bacon, how old are you?

A 21.
Q You are 21. And do you reside in the Wando area?
A Yes, sir.
Q Jack Primis area?
A Yes, sir.
Q And how long have you resided in the Jack Primis area?
A I was born there.
Q You were born there?
A Yes.
Q And do you know Ron McCray that is seated over at this table?
A That's my first cousin.
Q That's your first cousin. Did you know Reginald Porcher?
A For like two hours maybe.
Q I'm sorry?
A Two hours. For like two hours, yes.
Q You knew him for two hours?
A Yes.
Q What does that mean?
A That means I met him twice. I only spent probably an hour the first time, an hour the second time.

THE COURT: Are you having trouble hearing?

Mr. Bacon, I'm going to need you to just go ahead and lean right top of that microphone because the jury cannot hear you.

You can go ahead and yell if you need to. We'd rather you be too loud than not loud enough, all right.

THE WITNESS: Yes, ma'am.

THE COURT: Thank you.

So can you explain? You said you knew the victim for two hours.

THE WITNESS: Two hours. For like the first time I met him.

THE COURT: I need you just tell me -- repeat for the jury what you just said.

A I met him, I had two encounters with him. Like first time I met him for two hours -- I mean for an hour. And the second time I met him was for another hour.

We talked. We was friendly the first time I met him. The second time it wasn't friendly.

Q (By Mr. Biering) When you say it wasn't friendly, what happened?

A We got into an argument over something.

Q I'm not asking you what he said, I'm just saying what happened?

A We had a scuffle, we fought.
Q I'm sorry?
A We fought. We had a fight.
MR. ALFARO: Objection, Your Honor.
THE COURT: What's the basis?
MR. ALFARO: Can we approach?
THE COURT: You may.
(Whereupon, a discussion was held at the bench off the record.)
THE COURT: Ladies and gentlemen, I have determined the response from this witness, the last response is not appropriate and was non-responsive.
So if you would please strike it from your notes, if you had written anything down regarding that last response. If that is discussed at all, Madam Foreperson, you must indicate to the other jurors that they cannot discuss it.
Mr. Biering, your witness.
MR. BIERING: Thank you, Your Honor.
Q (By Mr. Biering) On September 16th, 2009, Mr. Bacon, did you reside in the Jack Primis, Wando area of Berkeley County?
A I was sitting on Ron's porch.
Q Can I ask, did you reside?
A Oh, was I living there?

Q Did you live -- I'm sorry. Did you live in that area on September 16th, 2009?
A Yes, sir.
Q Okay. September 16th, 2009, are you aware that Reginald Porcher was shot, involving a gun incident?
A Yes, sir.
Q Were you present where you could visually see --
A No.
Q Let me finish my question.
Were you present where you could visually see the time when Mr. Porcher -- you knew he was shot -- the time that he was shot. Were you able to visually see that event?
A No.
Q Were you in proximity that you could hear things?
A Yeah. Things like?
Q Did you hear anything that afternoon around the time that Mr. Porcher was shot?
MR. ALFARO: Objection.
A He's --
THE COURT: Hold on one second. When there is an objection I need you to stop talking, all right?
What's the basis?
MR. ALFARO: Leading.

THE COURT: Remember this is your witness, so just rephrase your question, Mr. Biering.

Q (By Mr. Biering) What did you hear on the afternoon of September 16th, 2009?

MR. ALFARO: Objection.

THE COURT: Overruled.

A I was on Ron's porch at the time and I heard gunfire in Jack Primis. And I went inside the house and I asked my cousin, Ron's brother, what was that about.

Q You cannot say anything that anybody else said. I'm not asking you to testify as to what other people said. I want to make sure you understand that's not my question.

A Okay.

Q So you heard gunfire?

A Yes, sir.

Q Are you familiar with an area called the tree in the Jack Primis area?

A Yes, sir.

Q And have you had occasion to be at the tree?

A Plenty of times, yes, sir.

Q All right. Let's focus on September 15th, 2009, back, okay? I'm not talking about from that point forward.

Prior to --

MR. ALFARO: Objection.

THE COURT: Let him finish his question.

MR. BIERING: Thank you, Your Honor.

Q (By Mr. Biering) Prior to September the 16th of 2009, had you had occasion to be at, or in the close proximity of the tree in the Jack Primis area?

A Talking about on the 15th?

Q No, not specifically on the 15th. On occasion, on separate occasions in the past?

A Yes. In the past, yes.

Q And what are some of the things that you would regularly see going on at the tree?

MR. ALFARO: Objection, relevancy.

THE COURT: Mr. Biering, what's the relevance.

MR. BIERING: The relevance is that we are attempting to --

THE COURT: You may approach.

(Whereupon, a discussion was held at the bench, off the record.)

THE COURT: Sustained.

Q (By Mr. Biering) On September 16th of 2009, after you heard gunfire, did you have occasion to go to the tree area?

A Yes.

Q Can you tell me who you saw at the tree area?
A The whole community.
Q I'm sorry?
A The whole community.
Q Anybody specifically that you would --
A Why so specific?
Q Let me ask you this. Did you see Sleepy?
A Did I see Sleepy?
Q Yes.
A No, he was gone.
Q He was gone?
A Gone.
Q Do you have reason to believe that he was there before you got there?
A Yes.
Q And why do you believe he was there?
A Because he was at the house.
Q I'm sorry?
A He was at the house. He was at Ron's house.
Q Did Sleepy have anything with him?
MR. ALFARO: Objection.
THE COURT: What's the basis?
MR. ALFARO: Calls for speculation. He says he didn't see him. He can't testify as to what he had with him if he didn't see him.

THE COURT: Rephrase your question, Mr. Biering.

Q (By Mr. Biering) After you heard gunfire, did you see Sleepy that afternoon?

A Afterwards, no.

Q No?

A (Negative head shake.)

Q Did you see Sleepy at any time in the 24 hours after you heard the gunfire?

A No.

MR. BIERING: Thank you.

THE COURT: Mr. Alfaro.

MR. ALFARO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ALFARO:

Q Mr. Bacon, you were at Ron McCray's house when you heard the gunfire?

A Yes.

Q You testified you didn't see anything before or during the shooting?

A I didn't see anything? What do you mean?

Q You weren't at the area where the shooting happened --

A No.

Q -- at the time of the shooting?

A No.

Q You didn't see anything?
A No.
Q You said you heard gunfire?
A Yes, sir.
Q How many gunshots did you hear?
A A couple.
Q A couple? How long have you known Mr. McCray?
A All my life.
Q Are you all friends, family, what?
A Family, first cousin, friends too.

MR. ALFARO: All right, thank you.

THE COURT: Redirect?

MR. ALFARO: I don't have any further questions of this witness.

THE COURT: Is this witness excused?

MR. ALFARO: Yes, Your Honor.

THE COURT: Any objection, Mr. Alfaro?

MR. ALFARO: No, Your Honor.

THE COURT: Mr. Bacon, you may step down. You are free to leave the courtroom, but you are also free to remain with us. Thank you.

Call your next witness.

MR. ALFARO: I would call Cpt. Rick Ollic to the stand.

RICK OLLIC,

after having first been sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows.

THE COURT: Mr. Biering.

MR. BIERING: Thank you.

DIRECT EXAMINATION

BY MR. BIERING:

Q Cpt. Ollic, can you tell us how long you have been with the Berkeley County Sheriff's Department?

A I, have been with the sheriff's office approximately 27 years.

Q And you currently hold the rank of captain; is that correct?

A I'm currently the captain over the investigations division, yes.

Q And how long have you been employed in that capacity?

A 15-plus years.

Q So you were the captain certainly over investigations September 16th of 2009; is that correct?

A That is correct.

Q And you are aware that this trial is about a case against Ron McCray in the death of Reginald Porcher; is that correct?

A That is correct.

Q And you are here pursuant to a subpoena?
A I was subpoenaed by your office to be here today, yes.
Q Thank you. Would you agree that on October the 12th that you had contact with Mr. Porcher, Reginald Porcher's father, and his mother? Did you have a chance to review your incident reports as related to that?
A I reviewed the case, yes.
Q And on that day did you have contact with the mother and father?
A I did.
Q And would you agree that on that day that they provided you some names for follow-up?
A They did.
Q And were those names Henry Lincoln, Blaze Doyle and Abdulla Fishburne?
A I'd like to see the report.
MR. BIERING: If I could approach the witness, Your Honor?
THE COURT: You may.
A That is correct.
Q (By Mr. Biering) Prior to coming to court today, did you have an opportunity to review the entire case file?

A Yes, I reviewed. That goes along from the beginning of the case, throughout, to the arrest. And then preparation for prosecution.

Q Did you interview Henry Lincoln?

A I did not.

Q Did you interview Blaze Doyle?

A I did not.

Q Did you interview Abdulla Fishburne?

A I did not. But I was unaware he was interviewed, but I did not.

Q Do you have any information about the whereabouts of Abdulla Fishburne?

A I don't have any clue where Mr. Fishburne could be.

MR. BIERING: Thank you.

THE WITNESS: You're welcome.

MR. ALFARO: No questions, Your Honor.

THE COURT: Is this witness excused, Mr. Biering?

MR. BIERING: Yes, Your Honor.

THE COURT: Any objection?

MR. ALFARO: No objection.

THE COURT: Captain, you are excused. You are free to remain with us.

THE WITNESS: Thank you, Your Honor.

MR. BIERING: Your Honor, can we approach?

THE COURT: Ladies and gentlemen, we are going to take a short break. Do not begin your deliberations. Do not discuss this case amongst yourselves.

Please rise for the jury.

(Whereupon, the jurors exit the courtroom.)

THE COURT: Thank you, be seated.

MR. BIERING: Your Honor, I candidly anticipated Mr. Bacon's testimony to go a bit longer than it did. And I possibly erroneously I understood our timeframe for the afternoon to be 3:30.

I thought we were going -- there would be a motion argued as well as it relates to some of our others witnesses. I would ask that we be able to be in recess until tomorrow morning with the presentation of the balance of the defense.

THE COURT: Mr. Biering, how many more witnesses do you have to call?

MR. BIERING: Your Honor, if we look at the potential witness list, the first person -- everyone below Mazzell would be very brief. I'm talking a few moments at best.

THE COURT: So are you indicating Currie, Brabam, Jackson, Geiger?

MR. BIERING: Would be very brief.

THE COURT: And then Graham, Pridgen, and Kenealy?

MR. BIERING: Graham, Pridgen and Kenealy would also be brief.

As it relates to the other witnesses, Your Honor, I do not anticipate having --

THE COURT: Can't we put Currie on? He can be here quickly. Can't we put Currie on? He's just right outside the door.

MR. BIERING: We can, Your Honor, but --

THE COURT: I said 3:33, Mr. Biering. We have got 15 minutes. Can we not put Currie on?

MR. BIERING: Sure. I think he is going to open up a can of worms because that really then goes into the other issue about the --

THE COURT: Let's address the issue.

MR. BIERING: Your Honor, I have got witnesses that I intend to present. So I don't think I necessarily have to -- I don't have any motion before the Court. I just would like --

MS. WILLIAMS: It's our motion in limine, Your Honor. And I think that the State would rest on our argument that introducing evidence of each and every conviction or every time that Reginald Porcher came

into contact with law enforcement is not admissible, it's not relevant. It's just --

THE COURT: Is that what you are intending to do with Lt. Currie.

MR. BIERING: My intend with Lt. Currie is to discuss testimony regarding Mr. Porcher's actions, which did result in a conviction, for throwing bodily fluids on a correctional officer and assaulting a correctional officer.

THE COURT: And when was that?

MR. BIERING: That was in 2007, Your Honor.

THE COURT: And how does that relate to this incident?

MR. BIERING: Your Honor, the State wants to look solely at the issue of 404, character evidence. And certainly as we look at rule 404(a)(2) that the notes to the rule suggest is a re-statement of the state of the law in South Carolina, referencing back State versus Boyd and the cases that follow that case.

I think that's a component of it, but I don't think that's the only issue. I think it also has to be looked at in light of Rule 406. In Rule 406, habit, routine and practice. Evidence of the habit of a person, or the routine practice of an organization, whether corroborated or not, regardless of the presence

of eyewitnesses, is relevant to prove the conduct of a person or organization on a particular occasion was in conformity with a habit or routine practice.

And we have got multiple -- first let me say this, let me take one thing off the table. There was a suggestion that I would attempt to bring in every --

THE COURT: Let's do it this way. Let's bring in Lt. Currie and find out, outside the presence of the jury, what he is going to say.

Let's bring him in so we are not speculating as to what we are going to inquire.

BARRY CURRIE,

after having first been sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows:

THE COURT: Mr. Biering.

MR. BIERING: May it please the Court.

DIRECT EXAMINATION

BY MR. BIERING:

Q Mr. Currie, I'm sorry, your rank again? I'm sorry.

A Lieutenant.

Q Lieutenant, I'm horrible about remembering ranks. Lt. Currie, how long have you been with Berkeley County?

A I was first employed in 1988.
Q And have you been employed with them consistently since that time?
A I left for about two years and came back.
Q Where did you go in between that two years?
A I left law enforcement. I was a truck driver for two years and then I came back.
Q And in 2007 were you employed with Berkeley County?
A I was.
Q And specifically, were you assigned to the jail?
A I was.
Q And what was your capacity and involvement there in the Hill-Finkley Detention Center?
A I was the captain or director of the detention center.
Q And in September of 2007, first back it up first.
MR. BIERING: May I approach the witness, Your Honor?
THE COURT: You may, you have permission.
Q (By Mr. Biering) In September of 2007, you had supervisory capacity in the jail; is that correct?
A Correct.
Q What was your role there again?

A I was the captain or director of the detention center.

Q And if an officer was assaulted within the correctional center, is that something that -- or one of the correctional officers -- is that something that you would be involved with?

A I would probably know about it, yes.

Q And you have been subpoenaed to be here today; is that correct?

A I have.

Q And have you had an opportunity to review any records relating to Reginald Porcher?

A I have.

Q And were you aware at the time, contemporaneous to September of 2007, of an incident with Reginald Porcher and your correctional officers?

A I don't remember exact dates but, yes, I remember having problems with him.

Q And after having an opportunity to review the incident reports relating to those events, has that refreshed your recollection?

A Yes.

Q And can you tell us what Reginald Porcher did to your correctional officers?

A He, in this case here, he, from his cell, he

threw a cup of urine on two officers.
Q And to your knowledge, was he convicted as a result of his actions?
A To my recollection, yes. I think he received six months.
Q Now you have been with Berkeley County Sheriff's Department since 1988; is that correct?
A Correct.
Q And do you recall when the agency began doing bloodborne pathogen training?
A To my best recollection would have been the early '90s.
Q And in the training as it relates to bloodborne pathogens, do they also discuss contact with other bodily fluids, and other body components?
A They do.
Q And you are in a supervisory role at that point. What are some of the concerns -- you have been trained on this. How many times do you think you have gone through bloodborne pathogen training?
A A bunch.
Q Have you had occasion to give additional training to your correctional officers?
A They would receive annual training. It's something that we have to do every year as required by

the county.
Q You had to follow up and make sure that was completed; is that correct?
A Correct.
Q And what are some of the concerns with bloodborne pathogens and contact with human products?
A Well, being -- not knowing, catching diseases or being infected with any type of deadly, or just any type of disease.
Q So you take the being thrown waste products on you very seriously; is that correct?
A Oh, yes, sir.
Q And is it possible for waste products to enter the body through mouth, eyes, nose? Is it possible for that to occur?
MR. ALFARO: Your Honor, I'm not sure honestly if we can object during proffers, but it's objectionable as far as relevance, it's objectionable as far as outside the scope.
THE COURT: Mr. Biering, I think we are getting far afield. So if you can bring it back in. Thank you.
Q (By Mr. Biering) You said you thought it could be deadly to be in contact with bodily fluids?
A Possibly, yes.

MR. BIERING: Thank you.

THE COURT: Do you have any inquiries to Lt. Currie?

MR. ALFARO: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. ALFARO:

Q Lt. Currie, did you tell Ron McCray about this incident?

A Did I tell him about it?

Q Did Ron McCray know about this?

MR. BIERING: Objection, calls for speculation.

THE COURT: Overruled.

Q (By Mr. Alfaro) Lt. Currie, did you tell Ron McCray about this specific incident?

A No, sir.

MR. ALFARO: Thank you.

THE COURT: You me step down.

I'm sorry. Do you have any questions based upon the cross-examination?

REDIRECT EXAMINATION

BY MR. BIERING:

Q Prior to September 16th, 2009, did you have any contact with Ron McCray?

A I've never had any contact with him that I know of.

MR. BIERING: Okay, thank you.

THE COURT: You may step down. Thank you.

Do not leave until you are told to leave. Thank you.

THE WITNESS: Yes, ma'am.

THE COURT: That's the testimony that you anticipate from Lt. Currie; is that correct?

MR. BIERING: Yes, Your Honor, it is.

THE COURT: And again tell me how it comes in.

MR. BIERING: Well, Your Honor, I think that quite candidly I would be calling my witnesses out of order. But I think it's going to come in pursuant to Rule 406, habit, routine and practice.

And I also, which is going to require, Your Honor, multiple witnesses to develop a habit or routine. And beyond that, I think that if we go to the case of --

THE COURT: All right, Mr. Biering, maybe I'm missing the point because you haven't called all your witnesses. But wouldn't, even assuming that you could establish that that was a habit or routine, how is the scene where the shooting occurred a jail cell, and how is Mr. McCray a law enforcement officer, corrections officer?

MR. BIERING: Doesn't have to be an issue, our

position is it doesn't have to be an issue about a correctional officer, it has to be -- the issue of reckless disregard for life.

And what we have are multiple witnesses that we believe present evidence of Reginald Porcher's reckless disregard for life that go to the issue of self-defense.

THE COURT: All right. Mr. Biering, in order for that to be admissible, you are going to have to show that, first of all, either the defendant knew, right? And there was, based upon this witness's testimony, there was no indication that that witness told Mr. McCray that, or that they were directed against the defendant; two years prior is not so closely connected to a point in time or occasion as to indicate state of the mind of the victim; or there was any indication of great bodily harm as identified under the statute that would put Mr. McCray under as to this witness.

MS. WILLIAMS: Your Honor, just for clarification purposes, it was five years before. Oh, I'm sorry, Your Honor, you're right. It was two years before.

MR. BIERING: Your Honor, I think that there are two things. One, again, I think it has to be looked at

-- and I agree as it relates to the issue of knowledge. I think that's a key component. That's why I said I think that I potentially have my witnesses out of order.

And it's a scheduling issue that, again, I apologize for my understanding of what --

THE COURT: Let me ask you this. Who do you need? I can have them all here this afternoon. You need Brabam, Jackson and Geiger? Is that right?

MR. BIERING: Yes, Your Honor.

THE COURT: All right.

MR. BIERING: But, Your Honor, again I think we would only be proffering that testimony at this point. That's my understanding. I think quite candidly I have to put my client up first before I'm going to be able to put these other people up.

THE COURT: Well wouldn't you want to know, Mr. Biering, if their testimony is going to be admissible before you put your client up?

Or are you -- you are not ready to put your client up is what you are telling me?

MR. BIERING: Your Honor, I have made it clear through the progress of this scheduling that I would ask you begin the defense case Thursday morning. It will go quickly.

THE COURT: Yes or no.

MR. BIERING: No, Your Honor, I'm not prepared to put my client up at this time.

THE COURT: Okay, thank you. Let's bring the jury in.

MS. WILLIAMS: Your Honor, I want to put something on the record real quick. Our position is still that even if Ron McCray that Reginald Procher threw urine on someone, it has nothing to do --

THE COURT: I understand. I understand your argument.

MR. BIERING: I just don't want the issue to be reframed just because --

THE COURT: It's not.

MS. WILLIAMS: Okay. Just want to make sure the record is clear.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Ladies and gentlemen, we have reached an appropriate time, some people consider this a very important holiday. So we are going to go ahead and break a little early this afternoon so that you can make your holiday arrangements.

Please remember all of my admonitions. Do not begin your deliberations. Do not discuss this case. Do not read, watch, listen to any news accounts

regarding this case should there be any.

Please be back in the jury room at 9:15. Thank you. You are excused for the evening. Thank you.

(Whereupon, the jurors exit the courtroom.)

THE COURT: You all may be seated. We are at ease.

Mr. Biering, I need to see you all in chambers for scheduling.

MR. BIERING: Thank you.

THE COURT: We are at ease.

(Whereupon, a recess was taken.)

THE COURT: Mr. Biering, I understand Lt. Jackson is on his way. Lt. Brabham is on his way. And they're attempting to contact Sgt. Geiger.

MR. BIERING: Your Honor, I'm prepared whenever they arrive.

THE COURT: So Lt. Jackson I think should be the first one. So if you will just let us know when he is here.

But we can address some other issues if you have some issues regarding the records custodian; is that correct?

MR. BIERING: Yes, Your Honor, I do.

THE COURT: So you plan to call Nadine Pridgen and Janice Kenealy from the Department of Corrections;

is that correct?

MR. BIERING: Yes, Your Honor, I do.

THE COURT: And --

MR. BIERING: And, Your Honor, we had issued, or had issued a subpoena in this case. And the return was provided from that subpoena. The subpoena was for the records custodian for the Department of Corrections for both the medical and their disciplinary side.

We have on standby, and prepared to be here tomorrow morning, the two records custodian that Your Honor just mentioned, Nadine Pridgen and Janice Kenealy.

It is my understanding that the Court would desire that we proffer all of the testimony that we would be eliciting from those witnesses.

THE COURT: Right.

MR. BIERING: It is my understanding that the State --

THE COURT: Tell, Mr. Biering, when those records, the dates of those records?

MR. BIERING: The date on the cover sheet, the return, October 15th, 2012.

THE COURT: You mean -- I'm sorry, when was the victim in custody? That's what I meant, I'm sorry.

MR. BIERING: Records span from early '09 to

back into 2008 as it would relate to the medical.

I do believe, Your Honor -- I'm sorry to be speaking from my seat. Actually they span from 2009 back through 2002, the medical component.

The disciplinary component spans I believe to be a full record, Department of Corrections record, span from 2009, January of 2009 back to February of -- I'm sorry, back to September of 2002.

THE COURT: All right. Is it one packet or two.

MR. BIERING: It's two packets. They came separate because they're medical and disciplinary.

THE COURT: Okay, if you will mark the medical as Defendant's 1, and the disciplinary as Defendant's 2 for purposes of the record.

MR. BIERING: It is my understanding that authenticity is not challenged.

THE COURT: Mr. Alfaro, let me hear from you. Do you object to the testimony of, or the admission of these two documents?

MR. ALFARO: We don't object to the use of the records for the very limited purpose of the motion in limine as an attempt to proffer what the expected testimony would be.

We would like to have copied those. I don't believe we have those.

MR. BIERING: I can e-mail those to him in just a moment, it's not a problem, from my desk.

THE COURT: Let the court reporter mark them.

MR. BIERING: Your Honor, if I'm following correctly, the medical would be Defendant's 1 for purposes of the proffer, and the disciplinary would be Defendant's 2 for purposes of the proffer.

(Whereupon, Defendant's Exhibit Nos. 1 and 2 are marked for identification.)

THE COURT: And Lt. Jackson is here so, counsel, if your investigator can just make a copy of the record.

Cpt. Ollic, you are on the witness list and I don't know if they may call you back.

Any objection to Cpt. Ollic remaining in the courtroom?

MR. BIERING: I don't have any objection.

THE COURT: Any objection?

MR. ALFARO: No, Your Honor.

THE COURT: Lt. Jackson is here. Let's go ahead and call him in.

MR. BIERING: Your Honor, if it would be -- I have got a copy I can send them by e-mail.

THE COURT: What would you prefer, Mr. Alfaro?

MR. ALFARO: If we can copy them, I can look at

them while we are doing these other witnesses.

THE COURT: Okay, thank you.

FRANK JACKSON,

after having first been sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows:

DIRECT EXAMINATION

BY MR. BIERING:

Q Lt. Jackson, how long have you been employed with the Berkeley County Sheriff's Department?

A Approximately 14 years.

Q And prior to being employed with the Berkeley County Sheriff's Department, what did you do?

A I was a combination deputy sheriff and captain with the Florida Department of Corrections.

Q Are you from Florida?

A No, originally from New York.

Q Did you ever work in law enforcement in New York?

A No, sir. Well I did as a civil air, civil air patrol, civil defense.

Q Lt.Jackson were you employed with Berkeley County Sheriff's Department in 2002?

A Yes, I was.

Q And at that point you were in the detective

division; is that correct?
A That's correct.
Q What is your current capacity?
A Right now I'm the accreditation manager at homeland security officer.
Q Back in -- let's get right to the heart of things. Back in 2002, January of 2002, did you have occasion to be involved with an investigation for a burglary, a safecracking incident?
A Yes, I did.
Q And did that investigation involve Reginald Porcher?
A Yes, it did.
Q And can you tell us what happened for you to be involved in any type of investigation? What was the nature of the event?
A The investigation stemmed from the taking of an ATM machine from a convenience store on Daniel Island area.

And the subjects, along with two other subjects, had taken the ATM machine out of the store. And they were coming back into the area of Daniel Island. They flipped the vehicle, and they were thrown from the vehicle, and things of that such; ejected from the vehicle.

Q And was Mr. Porcher injured in that incident?
A Yes, sir, I believe he was.
Q Were his injuries severe?
A To my knowledge I think it was something that involved his leg or his ankle was broken, something like that. I don't remember clearly, but I know he was hospitalized.
Q And, Lt. Jackson, specifically what did you find out happened as it relates to the taking of the ATM machine? Who was there, who was around, what happened specifically; do you know?
A May I refer to my notes?
Q Certainly.
A It's the incident report. Basically a deputy was dispatched to the alarm call out to the Pantry out on Highway 41. And while dispatched he advised that black male subjects had entered, made entry into the Pantry and attempted to steal the ATM machine in the front of the store.

They -- central dispatch also advised that the subjects left in a dark in color pickup truck. And upon the deputy's arrival, they saw where the ATM machine was, and it was gone, and the pickup truck had overturned at an intersection.

Further investigation showed that the other

subjects involved Quincy Lamont Skipper, Reginald Michelle Porcher, and I believe it was a -- I don't have the other subject's name, but there were three of them. And Reginald Porcher.

Q Now, you said they were involved in an accident after they had taken the ATM machine; is that correct?

A That's correct.

Q And prior to that, were they traveling at a high rate of speed? Is that one of the causes of the accident?

A It was.

Q Do you know if there was an estimate of how fast they were going?

A No, sir, I do not.

Q And to your knowledge, isn't it true that Mr. Reginald Porcher was thereafter convicted of burglary charges as a result of your investigation of this incident and arrests that were made?

A Yes, sir, that's true.

Q And isn't it true that he was convicted on burglary second as a violent offense?

A Yes, sir, and safecracking.

Q And safecracking. Were there any people present at the Pantry when this burglary and safecracking took place?

A A gentleman by the name of Drew Eastwick I believe it is, as far as the voluntary statement obtained by one of the deputies.

Q So he was present at the scene. Did he work for the Pantry?

A What he learned was he heard loud music, as far as the statement, he heard loud music over at his business. Three of his customers had left.

And he went to the door only to see the pickup truck, S-10 pickup truck at the curb. The pickup gunned the motor, what have you, and proceeded towing -- towing the ATM. And another fellow attempted to block the truck, the S-10. And the two were quickly following them.

And the truck turned over -- in pursuit of the truck, the truck turned over in a field.

Q You said they were towing the ATM?

A It's kind of blurred under -- it's on the statement. He went to the door only to see the truck, S-10 pickup at the curb. The pickup it -- I think best I can make it out, yes, sir.

Q Do you know if there were any people or houses or other vehicles around at the time that they wrecked as they were traveling at a high rate of speed leaving the crime scene?

A No, sir, I don't know.
Q Don't know?
MR. BIERING: No further questions for the witness.
THE COURT: Mr. Alfaro, do you have any questions.
MR. ALFARO: No, Your Honor.
THE COURT: All right.
Thank you, Lieutenant, for getting here to promptly you are excused. If you don't mind waiting outside, I'm going to make a ruling on whether or not you will need to be here tomorrow to testify.
THE WITNESS: Thank you, Your Honor.
THE COURT: Thank you.
All right, Mr. Biering, is each of the officer's testimony going to be as to each individual crime charged?
Can I make a ruling as to Lt. Jackson's testimony independent of the other two?
MR. BIERING: That's up to Your Honor. I mean our position is that they all would come in. But certainly I think that there could be potential testimony that one would say would be different than another one that could potentially allow us bring in one and not the other.

THE COURT: Are the other two going to testify to this ATM incident?

MR. BIERING: No, Your Honor, they're not.

THE COURT: All right. What is the State's position as to the testimony that was presented by Lt. Jackson?

MR. ALFARO: Your Honor, again we rely on the motion limine that it's impermissible character evidence regarding the victim. We think it amounts to a general character attack of the victim.

There is no indication that it has any connection to the defendant. And it was not involved. There is not indication they have put forth that the defendant had any knowledge of it that would have any bearing on the murder case at hand.

THE COURT: Mr. Biering, I will be happy to hear from you.

MR. BIERING: Your Honor, as I stated on the record previously, I believe that the actual admissibility of this information arguably would hinge on my client's testimony. And from the order standpoint, I think we are prejudiced in that light.

But, as it would relate to this specific issue, again it's not just an issue about 404, it's an issue about habit or routine.

And what I think that we are going to present, Your Honor, is a litany that is equivalent to evidence of habit or routine practice that goes back to 2000 that involves a violent burglary that was seven years prior to the events here.

There is a case, recent case that states that voluntary manslaughter 23 years prior to the event is not within the proximity of time that would be appropriately to be considered. And I'm not asking to bring in something from 23 years ago, it's 7 years prior. And there is a continued pattern of activity. So I think it's admissible.

But I think that arguably for the Court to rule as it relates to admissibility, two things have to occur. One, I think that certainly we are in a very different position as it relates to this first component because you are going to have the opportunity to have this information proffered to you, so that I believe you will be able to see the pattern. Or, not necessarily see the pattern, that not the appropriate way to say it, you would be able to see what we believe would be evidence of a pattern or routine.

And second, I think you would need to be able to hear my client's testimony.

THE COURT: All right.

MR. BIERING: Our position is that a ruling at this point would be premature.

THE COURT: Mr. Biering -- I'm sorry, Mr. Alfaro, I'm looking at Mr. Biering.

Mr. Alfaro, is it the State's position that aren't these or prongs? Does it have to be what he believes? Do I need to hear his testimony first?

MR. ALFARO: Your Honor, I don't think that you have to hear his testimony first.

I think again under 404, it's impermissible character evidence of the victim. Regarding the argument that it's 406 habit, the only thing that that witness testifies is to related to ATM's and the Panty. There is no indication that the murder took place at either of those locations. There is no indication it had anything to do with that burglary or any other burglary or a theft from an ATM.

MR. BIERING: Your Honor, I think we have discussed this, to make it clear for purposes of the record, again I raised the issue of a case of State versus Amburgey.

And what we believe to be the third prong, and that third prong would be, or to produce reasonable apprehension of great bodily harm. And again we do have what we believe to be a scrivener's error in the

Southeastern Reporter.

I went back to the original source, it's the printed Southeastern reporter from -- I won't say which lawyer it's from -- but like from 1945, Judge. So the original printed book from Southeastern Second; or to produce reasonable apprehension of great bodily harm, we believe the third prong. I think again it goes to this pattern.

THE COURT: All right. Habit is described as conduct that is situation-specific, or specific particularized conduct capable of almost identical repetition. And that distinguished from character that is a generalized description of a person's disposition of a general trait, such as honesty, temperance or peacefulness.

The testimony that has been presented in Defendant's 1, 2 as to the documents, to the testimony of Lt. Jackson, and to the testimony of Lt. Currie, they do not rise to a -- they are situation-specific.

We do not have either the victim or the defendant near or around a convenience store or an ATM or in a jail cell or any testimony involving urine.

Those two specific incidents of conduct are -- the motion in limine, and those two officers, will not be allowed to testify. I do not find that the

testimony concerning the victim's behavior at the Department of Corrections is closely connected with the homicide as reasonably to indicate the deceased's state of mind at the time of the homicide.

There was nothing to indicate that there was great apprehension of great bodily harm. Again situation-specific, there was no jail cell, no one was in custody at the time. And there is no indication prior to all of the discussion in presenting his defense that the defendant knew, or reasonably would have known, that -- of the instances of violence.

I note your exception for the record as to those three. We are waiting now to hear from Lt. Brabham and Sgt. Geiger.

Is Lt. Brabham here.

MR. ALFARO: I believe he is here.

THE COURT: All right. Bring him in.

DAVID BRABHAM, JR.,

after having first been sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows:

DIRECT EXAMINATION

BY MR. BIERING:

Q Good afternoon. And your rank again? I'm sorry.

A Lieutenant.
Q Lieutenant. I'm going to try to work on remembering ranks.
Lt. Brabham, how long have you been employed with Berkeley County Sheriff's Department?
A Since August 10, of '98. Roughly 15 years.
Q And were you working in a law enforcement capacity before that time, sir?
A Yes, sir.
Q And where were you working before that time?
A I worked for the Moncks Corner Police Department.
Q And how long did you work for Moncks Corner Police Department?
A Roughly three years, started in '95.
Q Prior to '95, did you work in law enforcement?
A No.
Q And you've work then consistently in law enforcement, except for vacation and holidays, from '95 forward; is that correct?
A That's correct.
Q What is your current role with the Berkeley County Sheriffs Department?
A I'm currently assigned as a lieutenant in the patrol division. I'm in charge of one squad.

Q And how many people do you supervise?
A Roughly 14.
Q And back in 2000, were you employed in a different capacity with the sheriff's department?
A I was.
Q And what was your employment capacity in 2000 at the sheriff's department?
A I was a corporal assigned to the drug enforcement unit.
Q And did you have occasion to work in the Wando area?
A Yes.
Q And have you had on occasion the opportunity to be in the Jack Primis area of Wando?
A Yes.
Q Specifically on June 3rd of 2000, did you have occasion to be in the Wando, Jack Primis area?
A Yes.
MR. BIERING: Can I approach witness?
THE COURT: You may.
Q (By Mr. Biering) Have you had an opportunity to review an incident represent from 6/3/00?
A Yes, sir.
Q It looks like you got the same incident report that I do.

What was going on on June the 3rd, 2000 out in the Jack Primis area?

A We, and I refer to we as the drug enforcement unit, were conducting a drug checkpoint on Jack Primis Road, which is in the Wando area.

Q And that day did you have occasion to come into contact with Reginald Porcher?

A Yes.

Q And can you tell us the facts and the details relating to your contact that you had with Reginald Porcher?

A While conducting the drug checkpoint, a gray in color Honda approached the checkpoint, noticed officers there, made an abrupt turn to elude the checkpoint at which point myself and other officers gave chase. Ended up in a vehicle pursuit with that car up until it voluntarily stopped after it got caught in traffic and the driver was Mr. Porcher.

Q And did you take Mr. Porcher into custody?

A We did.

Q And did you search his person at the time you took him into custody?

A Yes, we did.

Q And did you search his vehicle?

A Yes.

Q And did you find anything as a result of those searches?

A We did. In the vehicle there was a, excuse me, I'm going to refer to the notes just to make sure. A .38-caliber blue steel Taurus on the passenger seat during the search.

Q As a result of your stop, did you make any arrests?

A We did. The arrest of Mr. Porcher.

Q And what did you arrest Mr. Porcher for?

A He was charged with unlawful carrying of a pistol, drive under suspension, and failure to stop for blue light.

Q What type of pistol was it?

A It was a .38-caliber Taurus.

Q What is the safe way to store a handgun?

A In a home? In a vehicle? Where?

Q From a gun safety standpoint.

A Gun safety standpoint.

THE COURT: Mr. Biering, this isn't relevant. Let's move on, thank you.

Q (By Mr. Biering) How did you find this gun?

A It was on the passenger seat just sitting there.

Q What condition was the gun in?

Let me ask you a question. Did it have a

trigger-lock on it?
A I don't recall, no.
Q No. You would have noted that if it had a trigger-lock on it.
Was it loaded?
A I believe so. Yes, it was.
Q Fully loaded is how you noted it back in 2000; is that correct?
A Yes.
Q You charged him for failure to stop for blue light. Did you also charge him with driving under suspension?
A Yes, sir.
Q And you charged him with unlawful carrying of a pistol?
A I did.
Q And to your knowledge, he was convicted on those charges?
A Yes.
MR. BIERING: Thank you.
MS. WILLIAMS: No questions.
THE COURT: What was the exact date, Lieutenant.
THE WITNESS: June 3rd, 2000.
THE COURT: 2000, thank you.
Based upon my question, did you have any further

questions?

MR. BIERING: No, Your Honor.

THE COURT: May this witness be released?

MR. BIERING: Yes, Your Honor.

THE COURT: Any objection?

MR. ALFARO: No, Your Honor.

MR. BIERING: Well subject to the Court's ruling, but I think the Court has already --

THE COURT: I'm going -- you are still under subpoena, all right?

I'm going to make a ruling here in just a few minutes and Mr. Biering will call you and tell you what time you need to appear tomorrow, all right.

THE WITNESS: Yes, ma'am.

THE COURT: Thank you.

Thank you for getting here so promptly.

All right, let me hear argument on Lt. Brabham.

MS. WILLIAMS: Your Honor, Lt. Brabham testified about an incident involving Reggie Porcher, pulled him over in a car, doesn't mention if Ron McCray is anywhere around.

He is not doing anything violent. He's carrying a weapon, which was against the law, he was illegally carrying a weapon.

Again, we don't think this is relevant to the

issue at hand. It has nothing to do with any action against Mr. McCray. It has nothing to do with the events that occurred nine years later at Jack Primis Road.

And we would ask that this testimony be excluded. It's prejudicial and not probative.

THE COURT: All right.

Mr. Biering, let me hear from you.

MR. BIERING: Your Honor, I would reiterate the argument that I made previously as it relates to the other testimony. I believe it's an issue not just of Rule 404, but I think it's an issue of Rule 406.

Amburgey speaks to the issue of, or to produce reasonable apprehension of great bodily harm. There is a television show, what is it like A Thousand Ways To Die or something like that. The reality is is that great bodily injury doesn't have to just occur at the hand of a gun.

And fleeing from police, the reality is that thousands of law enforcement officers have lost their lives as a result of people fleeing and failing to stop for a blue light. Innocent third-parties regularly have lost their lives, and continue to this day to lose their lives as a result of people who fail to stop for a blue light.

It is dangerous. Arguably more dangerous than a gunshot. Because the projectile has just a very small window. The vehicle is very wide. But law enforcement officers, innocent bystanders die as a result of this activity.

THE COURT: Did they on this occasion, Mr. Biering? Did anyone die on this occasion.

MR. BIERING: The issue --

MS. WILLIAMS: No, Your Honor.

THE COURT: Thank you.

MR. BIERING: I believe the Court was addressing was me.

It is not the issue of whether or not someone died. It's whether or not the conduct could produce a reasonable apprehension of great bodily harm, Your Honor.

THE COURT: So again, Mr. Biering, under the case that you have provided the Court and the citations that both of you have cite, tell me how it comes in.

MR. BIERING: It comes in, Your Honor, because he is illegally driving a vehicle with a loaded handgun that he has no legal right to posses, placing at risk of great bodily harm law enforcement, innocent bystanders. And is a component of his habit and routine practice as it would relate to 406.

THE COURT: Anything further from the State.

MS. WILLIAMS: Just that one incident does not establish a habit or routine, Your Honor.

THE COURT: All right. There has been nothing presented as to that that indicates that there was -- that the specific instance, there was no indication, and while Mr. Biering has made a very eloquent argument as to failure to stop for blue light, the testimony from Lt. Brabham was that he made an abrupt turnaround, they effectuated a stop, there is no indication that anyone was injured or killed during that traffic stop.

So even assuming that it was -- that there was an act of violence involved, they were not directed against the defendant. And the Court finds that there were not so closely connected with the homicide as to indicate the deceased's state of mind.

Again, Mr. McCray is not law enforcement, he was not using a blue light. There is no indication that a reasonable apprehension of great bodily harm would flow, even if Mr. McCray knew that.

Note your exception for the record. Lt. Brabham will not testify, and the testimony regarding that traffic stop will not be admissible.

Understand, Mr. Biering -- well, so I don't know, we weren't able to get in touch with Sgt. Geiger;

is that correct?

THE OFFICER: Yes, ma'am.

THE COURT: What time do you need Sgt. Geiger here?

MR. BIERING: As soon as the Court would like to start.

THE COURT: The jury comes back at 9:15. You've indicated to me that -- Mr. McCray, do you intend to testify? Have you had time to meet with your attorney.

THE DEFENDANT: Yes, Your Honor.

THE COURT: You have? And you will be testifying?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. So we just have Sgt. Geiger here at 9:30, let's say 9:15 just in case Mr. McCray changes his mind about testifying. Sgt. Geiger needs to be here at 9:15.

Anything further? Are there any other witnesses? What about the individual that you -- Ms. Hill? Have you been able to get in touch with her.

MR. BIERING: We are continuing to work on it.

THE COURT: She will need to be here at 9:15.

MR. BIERING: All witnesses that we intend on calling, we will have them here by 9:15.

THE COURT: Yes.

And Mr. Fishburne, has that been worked out?

MR. ALFARO: We need to address that with you in chambers, Your Honor.

THE COURT: All right, thank you.

With that, we are at recess until 9:15.

Thank you.

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

* * * * *

THE COURT: Mr. Biering, I understand that you have Sgt. Geiger; is that correct? Is he present? He is under subpoena.

Then let's move to your next witness. And we need to inquire outside the presence of the jury.

Is that Mr. Wright?

MR. BIERING: Yes, Your Honor.

If I could just be heard briefly on the record that while I understand the Court's ruling, desire based on the motion of the State that the testimony be proffered, I believe that that substantially affects our presentation and provides an opportunity for the State to be allowed into the purview of our defense.

And that testimony should be, we believe, should be elicited within the case and directly in front of the jury.

And I'm prepared to question Mr. Wright at this time.

THE COURT: As I understand the testimony, it relates to a prior bad act of the victim?

MR. BIERING: No, Your Honor, it does not.

THE COURT: What is it? My understanding of what you indicated to the Court in chambers was that it had to do with an incident between this witness and the victim related to the defendant. Is that correct?

MR. BIERING: No, Your Honor, that's not what I indicated. What I indicated was that I anticipated that this witness was going to testify about interactions that he had with Reginald Porcher within a few days prior to September 16th, 2009.

And that those interactions had direct relation to the events of September 16th, 2009.

THE COURT: What is the substance of the interaction, Mr. Biering?

MR. BIERING: I believe that he is going to get on the witness stand and say that he went to a location with Reginald Porcher was, purchased drugs, and that learned information that, at that time when he was there to purchase drugs, that directly related to the events of September 16th, 2009.

THE COURT: All right, Mr. Biering how does that -- how is that not violative of my prior ruling as to prior bad acts?

MR. BIERING: Because we are not presenting the testimony suggesting that Reginald Porcher sold drugs, we are not presenting testimony that says that Mr. -- I don't believe Mr. Wright is going to testify that he was purchasing drugs from Mr. Porcher.

What I believe the testimony to be is that Mr. Porcher was present at the time. And at that time this

witness, as I understand, learned information about Mr. Porcher that directly relates to the events of September 16th, 2009. I don't think that's a prior bad act.

THE COURT: Mr. Alfaro.

MR. ALFARO: I think just the portion of the testimony that he has -- that Mr. Biering has proffered regarding the victim being at a location where drugs are being sold, with a witness who may or may not say that the victim was selling drugs, is the walking definition of prior bad acts.

That had absolutely nothing to do with the murder on September 16th, 2009. That goes back to the general character attack which is prohibited specifically by the rules.

Now there seems to be veiled illusions to something that may be relevant to the murder, I think that's what the purposed of the proffer is in reference -- what they were doing in reference to our original motion in limine.

THE COURT: Mr. Biering, how is selling drugs not a prior bad act?

MR. BIERING: Your Honor, I don't -- first --

THE COURT: Being around drugs. How is that not a prior bad act?

MR. BIERING: I think they opened the door to the issue of marijuana anyway. They elicited testimony in their direct examination of the medical examiner that stated that Mr. Porcher had marijuana in his system.

I don't think it's any new information. And they have certainly opened the door to it. You know, they didn't make any motions to try to preclude that issue. Nor, did they try to hide that issue from the jury.

Your Honor, I am not presenting this witness. I don't care -- I'm not presenting this witness as it relates to a drug transaction. But the context of -- the context of where he was at is not relevant as it relates to what he has to say about what transpired.

It is relevant, though, as it relates to him being perfectly candid and credible when presenting his testimony to -- because a witness has got to be -- they got to come up and be truthful.

THE COURT: All right, let's just do it this way. We are going to proffer his testimony. So let's call your witness.

MR. BIERING: Chavis Wright.

THE COURT: Who is his attorney?

MR. BIERING: I have no idea.

MS. WILLIAMS: His attorney? You know what, Your Honor, I'm sorry, I can't remember. He is facing charges of criminal sexual conduct against a minor. And I think, I just cannot remember, but I just had Mr. Heart go check MCMS and he is going to pull the rap sheet and I asked him to look at the date of arrest and the attorney.

THE COURT: If he is represented, do you know who his attorney is?

MR. BIERING: I do not, Your Honor.

THE COURT: Mr. Biering, if he is going to give testimony that he was near or around places where a drug transaction may or may not have occurred, don't you agree he would have the right to have counsel present?

MR. BIERING: Your Honor, I don't even mind it. That's really not the point of --

THE COURT: Well, Mr. Biering, the point, a constitutional right is the point, all right?

Bring him in.

CHAVIS WRIGHT,

after having first been sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows:

THE COURT: Mr. Wright, are you represented by

-- I understand that you have pending charges; is that correct?

THE WITNESS: Yes, ma'am.

THE COURT: Do you have an attorney?

THE WITNESS: No, I have a public defender.

THE COURT: All right, a public defender is an attorney. Who is your public defendant.

THE WITNESS: Chad Shelton.

THE COURT: Chad Shelton? Does Mr. Shelton know that you here testifying today.

THE WITNESS: No, ma'am, he does not.

THE COURT: And you are not testifying related to your pending charges; is that correct.

THE WITNESS: No, ma'am.

THE COURT: You understand your right against self-incrimination?

THE WITNESS: Yes, ma'am.

THE COURT: Can you explain that to me, just in a nutshell?

THE WITNESS: I'm not testifying on myself.

THE COURT: I'm sorry?

THE WITNESS: Not testifying on myself.

THE COURT: Correct. And do you understand what you are doing here today?

THE WITNESS: Yes, ma'am.

THE COURT: And we are outside presence of the jury. Mr. Biering has called you to testify in this case. And so he is going to ask you some questions.

Do you wish to answer those questions at this time?

THE WITNESS: Yes, ma'am.

THE COURT: All right.

Mr. Biering.

MR. BIERING: May it please the Court.

THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. BIERING:

Q Mr. Wright.

A Yes, sir.

Q Your full name is?

A Chavis Lavon Wright.

Q And, Mr. Wright, you are currently over at the Hill-Finkley Detention Center; is that correct?

A Yes, sir.

Q And you have current pending charges?

A Yes, sir.

Q Do you have other prior convictions?

A I have did some time in the past.

Q Mr. Wright, where are you from?

A I'm from Huger, South Carolina.

Q Can you just -- not your specific address, but are you familiar with the Jack Primis area?
A Yes, sir, I am.
Q Are you from the Jack Primis area?
A No, sir, I'm not from the Jack Primis area.
Q Do you have occasion to be in the Jack Primis area?
A Yes, sir.
Q Did you live in Huger in September of 2009?
A Yes, sir.
Q And how old are you?
A I'm 32.
Q And do you, or did you know Reginald Porcher?
A Yes, I do know Reginald.
Q How long before 2009 had you known Reginald Porcher, do you believe?
A All my life pretty much. We went to school together.
Q I'm sorry?
A All my life. We went to school together.
Q Did you have occasion to hang out and be with him at different times?
A Yes, sir.
Q Did you have occasion in 2009 to hang out and be around Reginald Porcher?

A Yes, sir, I did. The night before the incident I was up there.

Q So the night before -- so when you said incident, you know Mr. Porcher was shot; is that correct?

A Yes, sir.

Q So you say that you were up there, when you say up through, you mean in the Jack Primis area?

A Yes, sir.

Q The night before Reginald Porcher was shot?

A Yes, sir.

Q And can you tell us about that night?

A I went up to there to meet a friend, Abdulla Fishburne. Because I smoke marijuana and I went up there to purchase me a bag of marijuana.

I was there with Reggie, Abdulla, and a couple other guys. I'm not familiar with their names, but I know them by face.

Q And that night --

THE COURT: Hold on one second.

Mr. Wright, I feel it incumbent upon the Court to advise you of your right against self-incrimination. And I remind you that you are still under oath.

Do you wish to continue?

THE WITNESS: Yes, ma'am.

THE COURT: All right, thank you.

Q (By Mr. Biering) Mr. Wright, did you have any interactions that evening with Reginald Porcher?

A The evening of the incident, or the day before?

Q The day before. I think we were talking about the day before.

A Yes, I did, sir.

Q And do you remember approximately how long you were there?

A About 10, 15 minutes tops.

Q And how would you describe Mr. Porcher that night?

A He was very upset and very angry. He was carrying on about the situation with Abdulla and Ron earlier that day.

Q And did you learn anything from Reginald Porcher through your interaction that evening with him?

A Yes, I learned that he was carrying a concealed weapon.

Q Did you see it?

A Yes, sir. He pulled it out and shot it in the air a couple times. And he --

Q Was it a handgun or a shotgun?

A It was a handgun.

Q And you saw him take it out and shoot it in the

air a couple times you said?
A Yes, sir.
Q Did you learn anything else that evening during your interaction with Reginald Porcher?
A At that time I was trying to get up out of there.
Q Did you learn anything -- let me ask you this.
Do you know Ron McCray?
A I know him. Not as well as everybody do, but I know him through his brother.
Q You testified earlier that you had an opportunity to hang out with Reginald Porcher?
A Yes, sir.
Q Did you have an opportunity to ever hang out with Ron McCray?
A No, sir.
Q Did you learn anything that night about Reginald Porcher and Ron McCray?
A All I learn is that he had animosity towards him, and he was going to retaliate on him the next day.
MR. BIERING: No further questions for the witness.
THE COURT: Mr. Alfaro. Ms. Williams.

CROSS-EXAMINATION

BY MS. WILLIAMS:

Q Where did you see Reggie Porcher exactly?
A It's in Jack Primis on the hill.
Q What hill?
A I'm not familiar with the name of the area, but that's what they call it, the hill.
Q Describe to me where it is?
A It's in Jack Primis.
Q Can you give me a better description than that?
A When you turn on Jack Primis, you go down and you come around the curve it's the second right.
Q Keep going. Take the second right, then what?
A You take the second right and go down, and it's the little area where the tree is, where we all hang out at the tree.
Q And you call it the hill?
A That's what everybody calls it.
Q And who is hanging out at the hill?
A That night it was me, Abdulla, Reggie, and six other guys.
Q Do you know any of the six other guys' names?
A No, sir, I just know them by face.
Q But you grew up with Reggie, right?
A Not really grew up with him. I went to school with him.
Q So did you know any of the other people that

were around him, or just Reggie?
A Reggie and Abdulla.
Q Didn't all the rest of those people go to school with him?
A No, sir.
Q And without telling us exactly what you were doing at the hill, it wasn't something that you'd want other people to know you were doing, right?
A Not really, but I'm being honest about it.
Q And yet Mr. Porcher decided to shoot a weapon in the air?
A Yes, sir.
Q Wouldn't that bring attention to the area?
A Yes, it would.
Q What did the gun look like?
A I know it was handgun, a revolver.
Q What color was it?
A I can't tell you what color it was because I was stayed my distance.
Q Well, how far away were you from it?
A Probably two or three feet away from each there.
Q Two or three feet?
A Yes, sir.
Q It's ma'am.
A Ma'am.

Q You couldn't tell the color from two or three feet?
A It was dark, ma'am.
Q What was Abdulla Fishburne's appearance?
A Me and him was standing side by side.
Q What was his appearance?
A His appearance?
Q Yeah. Anything unusual about the way he looked that night?
A Looked the same as always. He looked upset, other than that.
Q What was he upset about?
A The situation that happened with him and McCray earlier that day.
Q What was that situation?
A They had fight.
Q Did he have any injuries?
A Injuries? I didn't see any injuries.
Q And you have been in jail with Mr. McCray?
A Yes, ma'am.
Q And has he ever asked you to testify?
A No, ma'am.
Q Oh, you just came up here on your own?
A Uh-hum.
THE COURT: Is that a yes.

THE WITNESS: Yes.

THE COURT: She has got to write down what you say. And it's difficult for her to do uh-hum so I need you to say yes or no. Thank you.

A Yes.

Q (By Ms. Williams) So how does his lawyer know you wanted to testify?

A Because I spoke to him.

Q How did you get in touch with him?

A I spoke to him in the back back there.

Q Well haven't you been at Hill-Finkley?

A Yes.

Q So how would he even know the name Chavis Wright to know that you wanted to testify?

A Because Abdulla.

Q Okay. So you talked to Abdulla from the jail?

A Yes, I do.

Q And did you talk to Abdulla on behalf of Mr. McCray?

A Not really on the behalf of McCray, but dealing with the situation.

Q So you've called Abdulla from the jail?

A No, I wouldn't call Abdulla myself. I called a friend of mine and he gave me a three-way.

Q Okay. And did you tell Abdulla that Mr. McCray

wanted him here to testify?
A Told him I want myself here to testify.
Q You told -- okay, so you called from the jail to Abdulla Fishburne?
A I called a fiend of mine and he made a three-way. And I told Abdulla to make sure that they did get me on the stand.
Q And you thought Abdulla had the best direct line to Mr. Biering?
A No, I guess not.
Q Why wouldn't you just tell Mr. McCray?
So you and Mr. McCray have never talked about what you were going to say here today?
A Yes, we have talked about it. But I didn't tell him what I wanted to say. I just told him I wanted to come to court.
Q Didn't you just say that Mr. McCray didn't tell you that he wanted you to testify?
A I didn't say that I told him I wanted to testify, I told him I was coming to court. And he wouldn't ask me to testify.
Q Okay. So what did Mr. McCray and you discuss about your testimony?
A We didn't discuss nothing.
Q And did you ever hear the conversation between

Mr. McCray and Abdulla?

A No, sir. I mean, ma'am. No, ma'am. I never heard the conversation.

Q And did Abdulla ever tell you that Mr. McCray was trying to get him to lie?

A No, ma'am.

Q Did Abdulla ever tell you that he was scared of Mr. McCray?

A No, ma'am.

Q But Mr. McCray beat him up that day, didn't he?

A I didn't witness the fight, ma'am.

Q But you just testified that you knew about everything that was going between them?

A Because Abdulla told me about the situation.

Q What did he tell you?

A He told me that him and Ron got into a fight and he didn't like the fact that --

MR. BIERING: Objection, hearsay.

THE COURT: Hold on one second. When there is an objection I need you to stop talking to that I may rule on it.

Is there an exception?

Q (By Ms. Williams) What was Abdulla's demeanor like? How was he acting when he told you?

A He was very upset.

MS. WILLIAMS: Excited utterance.
Q (By Ms. Williams) Had it just happened?
A No, it happened earlier that day. I went over there about 6:00, 7:00.
MR. BIERING: Same objection.
THE COURT: Sustained as to hearsay.
MS. WILLIAMS: Court's indulgence.
THE COURT: Take your time.
MS. WILLIAMS: Nothing further.
THE COURT: All right. I think we have established what his testimony will be.
Mr. Wright, you may step down. Thank you.
Sgt. Geiger is here. You may call Sgt. Geiger.

JAMES GEIGER,

after having first been sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows:

THE COURT: Mr. Biering.

DIRECT EXAMINATION

BY MR. BIERING:
Q Good morning, Sgt. Geiger.
How long have you been employed with the Berkeley County Sheriff's Department?
A 18 years now.
Q And what is your current role with the Berkeley

County Sheriff's Department?

A Patrol supervisor.

Q Other than being employed with the Berkeley County Sheriff's Department, have you been employed with any other law enforcement agency?

A Yes, sir. Moncks Corner Police Department and St. Stephen's Police Department.

Q And was that within the 18 years, or was that before that 18-year period?

A Within that 18-year period.

Q So how many years consistently have you been with Berkeley County Sheriff's Department?

A I am thinking it's 16, something like that.

Q Okay. You were certainly employed with the Berkeley County Sheriff's Department on July 24th, of 2007; is that correct?

A Yes, sir.

Q And on -- you have been subpoenaed to be here today. On July 24th of 2007, do you recall making a traffic stop on Reginald Porcher?

A Mr. Biering, if I'm looking at the paperwork right it was in 2006.

Q Was it 2006? I'm sorry, okay. So it was 2006, you're right.

I'm sorry, July 23rd, 2006, do you recall --

well first, were you working with Berkeley County Sheriff's Department on July 23rd of 2006?

A Yes, sir, I was.

Q And do you recall, having an opportunity to refresh your recollection from your report, on July 23rd, 2006, making a traffic stop regarding Reginald Porcher?

A Yes.

Q And can you tell the Court what that traffic stop was for?

A Basically I saw the vehicle backing out of a driveway onto the roadway. I attempted to make a traffic stop for improper backing. Mr. Porcher didn't stop for my blue lights.

A short pursuit ensued. And he was -- ended up arrested without further incident.

Q Can you tell us what the conclusion of that short pursuit was? What brought it to a conclusion?

A He ended up pulling into the median.

Q I'm sorry?

A He pulled into the median. It was roughly maybe a two-mile chase, something like that.

Q Do you recall the speeds that you had to travel in that chase?

A We didn't get too fast. If I recollect

properly, I think we may have gotten up to 70 miles an hour.

Q Do you recall what the speed limit was?

A 45.

Q So you are traveling 25 mils an hour, approximately, over the speed limit?

A Yes, sir.

Q And is it your understanding that a conviction for failure to stop for blue light was the result of that arrest?

A I am not sure. I was never notified of the final disposition.

MR. BIERING: If I could approach?

THE COURT: You may.

MR. ALFARO: Objection, Your Honor. The witness has already testified he has no knowledge.

He is handing him a document from someplace else that's not authenticated, no foundation for what he is saying, there is no reason for him to be reading of another document.

THE COURT: Sustained.

MR. BIERING: If I can approach, Your Honor.

THE COURT: Approach the witness.

MR. BIERING: Approach the Court with the document.

THE COURT: Mr. Biering, I am assuming, I've heard testimony that it did result in a conviction. This witness just does not have the independent knowledge to be able to testify to that.

MR. BIERING: I just wanted the Court to take judicial notice, I have documentation to that.

That's all the testimony that I wanted to elicit on this proffer.

THE COURT: Mr. Alfaro, do you have any questions of this witness?

MR. ALFARO: No, Your Honor.

THE COURT: Thank you.

Sergeant, you may step down. Thank you. I ask that you remain outside the courtroom until I have issued my ruling. Thank you.

MR. BIERING: Your Honor, for the record, just to make sure it's clear that the -- for the purposes of our proffer, that the Court accept by way of judicial notice that there was a conviction --

THE COURT: Mr. Alfaro, did a conviction result -- was there a conviction for failure to stop for blue light as a result of this incident?

MR. ALFARO: The conviction shows there was a conviction.

THE COURT: Have you pulled the victim's rap

sheet?

MR. ALFARO: He has a conviction for failure to stop for blue light.

THE COURT: All right, thank you.

MR. ALFARO: For the record, Your Honor, the objection was based on the fact that it was not to refresh his recollection, he wasn't the witness that testified to that conviction.

THE COURT: Thank you.

Anything further regarding Sgt. Geiger's testimony, and his ability to testify in this case.

MR. BIERING: My position, Your Honor, my argument would be, against their motion in limine, would be the same arguments that I made previously. And if I could re-note those for the record, I don't think that they all need to be spelled out now.

THE COURT: Mr. Alfaro.

MR. ALFARO: State takes the same position we did in the motion in limine as well when the Court was ruling on Lt. Brabham, Lt. Currie. And we rest on those, Your Honor.

THE COURT: I agree. Sgt. Geiger's testimony, I grant your motion in limine, it will not come in.

MR. BIERING: Thank you.

THE COURT: Mr. Biering, just for scheduling,

what is the order of your witnesses for the morning?

MR. BIERING: Your Honor, I have got Mr. Wright that I intend on calling. And then I have got one other lay witness that my investigator just spoke with. They said they were in Goose Creek. And then I will be call Mr. McCray.

THE COURT: Is Mr. McCray, you intend for him to be your final witness; is that correct?

MR. BIERING: That is my intent.

THE COURT: All right. Mr. Alfaro, let me hear from the State's position as to the testimony of Mr. Wright.

MR. ALFARO: Your Honor, the State's position regarding his testimony is that his testimony is more testimony related to a prior bad act.

It may be the night before, but there was no testimony or no proper testimony to indicate that a gun was taken from the scene by the victim. There was no indication that the victim made any threats to either get back at Mr. McCray or to defend himself against Mr. McCray.

The only testimony was hearsay testimony related to what Abdulla Fishburne had said that the defendant did to him.

The specific act of the victim allegedly

possessing a gun or firing a gun, there was nothing that connected that to the defendant based off the testimony that was proffered by Mr. Wright.

THE COURT: Mr. Biering.

MR. BIERING: Your Honor, he testified that within a day of this event that he witnessed an upset and angry Reginald Porcher with a gun. And he also testified that the angry, upset Porcher had animosity towards Ron McCray.

This is not an issue of character. This is an issue of very relevant testimony that relates to the scene. We are talking about the exact same location of the events of September 16th. We are talking about -- we're not trying to attack the character in this instance of Reginald Porcher, we are describing the scene of this crime.

I think it's relevant. I don't think that 404 applies. I would ask that the Court allow the witness to testify.

THE COURT: Mr. Alfaro, do you have any response to that?

MR. ALFARO: Your Honor, I don't see how the testimony that was proffered had any relevance related to describing the area as Mr. Biering indicated.

There is just testimony was, as Mr. Biering

indicated, that the victim was upset because his friend had been beaten up by the defendant. I don't see how that testimony was relevant.

Again, there is no indication that he made any threats or any -- no indication that the connection is attenuated, at best, to the defendant.

THE COURT: All right.

Mr. McCray, please stand. I remind you that you are still under oath from yesterday.

Have you had time to discuss your testimony with your attorney?

THE DEFENDANT: Yes, I did.

THE COURT: And do you need any additional time to meet with your attorney to discuss your decision to testify?

THE DEFENDANT: Yes, I do.

THE COURT: All right. How much time do you think you will need, Mr. McCray?

THE DEFENDANT: I don't know. I just don't know, Your Honor. Give me ten minutes with him, I guess.

THE COURT: All right.

Mr. Biering, I'm going to give -- Mr. McCray has asked for additional time to discuss his testimony and his decision to testify or not testify. We are going

to be in recess for 15 minutes. Thank you.

MR. ALFARO: Thank you.

MR. BIERING: Your Honor, has the Court ruled as it relates to --

THE COURT: I have not ruled. Thank you.

You may escort Mr. McCray so that Mr. Biering may meet with Mr. McCray.

If you need any additional time, Mr. Biering, let me know. Thank you.

(Whereupon, a recess was taken.)

THE COURT: Let's bring in the jury.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Thank you, please be seated.

Good morning, ladies and gentlemen of the jury. I apologize. I know that you have been waiting. We all know that you have been waiting.

As I indicated to you when I gave my opening to you, searching for justice is often slow, deliberate and repetitive. And this is an example of one of those times.

Ladies and gentlemen, I know that that room is small and it gets very tight. So in order to continue with matters before the Court, I am going to release you to go ahead and have an early lunch. Please be back at 1:00 p.m. and we will continue at that time.

Please accept my sincere apologies. I know it's frustrating to sit in that room and wonder what we are doing. So I'm just going to go ahead and let you go.

Please be back at 1:00 p.m. Please remember all of my admonitions. Thank you.

Please rise for the jury.

(Whereupon, the jurors exit the courtroom.)

THE COURT: Thank you, please be seated.

Ms. Williams, before we break, so the record is clear as to what all has transpired, you brought to the Court's attention that there were some issue regarding the testimony of Mr. Williams.

MS. WILLIAMS: Yes, Your Honor. I just learned on the break that Mr. Joseph Williams, who testified for the defense, in violation of the rule of sequestration, had been sitting in the courtroom all day on Tuesday.

That, in our opinion, completely changes his testimony. He has had the advantage of listening to State's witnesses and fashioning his testimony, which is exactly why the rule of sequestration is in place and why both of us had asked for it.

Had that happened with the State's witness, I'm sure the defense would asking that the testimony be stricken. We are asking that his testimony be

stricken.

I'm happy to go pull some case law. I'm sure Your Honor is capable of doing that. I was in the processing of making list. I know of at least four people who sat here and saw him here all day Tuesday. Because their question was, how come our people can't be in the courtroom when your case was going on, but his people could be in the courtroom during your case. That was -- you know, they just didn't know.

So it came to light kind of spontaneously. Had I known before, I would have certainly alerted the Court. But we did just find that out. If the Court needs to hear from witnesses, I think they're happy to testify to that.

THE COURT: Mr. Biering, do we need to hear from witnesses who observed Mr. Williams in the courtroom? Or do you have any knowledge that he was in the courtroom throughout the testimony on Tuesday?

MR. BIERING: Your Honor, I don't. I am forward-thinking in the approach as it relates to the trial. And I have a very limited staff. And, Your Honor, I --

THE COURT: Is Mr. Williams here?

MS. WILLIAMS: I'm not aware of him being here.

MR. BIERING: I don't think so, Your Honor.

THE COURT: And he was here under your subpoena. Is that correct, Mr. Biering?

MR. BIERING: Yes, Your Honor.

THE COURT: During the break that we have, can you procure Mr. William's attendance before 1:00 p.m.?

MR. BIERING: I will do everything within my power to do that.

THE COURT: All right, thank you.

Any additional issues that we need to address?

We are going to break. I'm going to, during that time, we will be at ease. If you can get Mr. Williams here I think it's important to have his -- him here to determine whether or not he was seated in the courtroom. And please make sure that your witnesses that can testify to that.

Please be back -- let's go ahead and be back at noon and we will address all the pretrial issues.

Mr. Biering, this will also give you additional time to meet with Mr. McCray. Thank you.

MR. BIERING: Thank you, Your Honor.

(Whereupon, a recess was taken.)

THE COURT: Mr. Biering, you indicated there would be some lay witnesses that would be testifying. Can you ensure that they're not in the courtroom?

I know they're not now, but we're getting ready

to let people in. I don't know who they are.

MR. BIERING: Okay.

THE COURT: Were you able to get in touch with Mr. Williams?

MR. BIERING: We were able to get in touch with Mr. Williams. He, as the Court knows from his testimony, he is a truck driver. He was dropping a load at the Wando terminal was en route.

I spoke to him, I believe it was right at 11:25 when we were finally able to reach him. We called him immediately when we left here. We got a fast ring, he wasn't available, didn't have coverage. We spoke to him and he said he was dropping a load, then he was coming straight here.

So I would anticipate 12:15, 12:20, something like that.

THE COURT: Do you agree, Mr. Biering, that he was present? Or do I need to hear from him?

MR. BIERING: I don't know personally that he was present. He asked why he was coming back, and I told him.

THE COURT: What did he indicate.

MR. BIERING: He indicated he was in the courtroom for approximately 10 minutes during some testimony. I did not attempt to go in through -- I

didn't think it would be appropriate for me to have any detailed conversation with him about that.

But we asked him to come back. He has been released from the subpoena. I think that he was entitled to some explanation for that. But that was the only explanation I gave him.

MS. WILLIAMS: Your Honor, we have been reviewing the court tape because there is the video of everyone in the courtroom. It has gone very slowly so far.

I think he's -- it's a lot longer than 10 minutes. But we have only gotten through like a portion of Tuesday. So I think we just need to review some more.

But Chuck Harp is going to bring the time in of what we have been able to review so far of Mr. Williams and the testimony. Unfortunately, I think Mr. Bacon was in the courtroom for part of that time too.

THE COURT: All right, you let me know.

And is it the State's position that the testimony should be stricken?

MS. WILLIAMS: I will let Mr. Alfaro address that.

At this point, I know we have someone researching it. That's the relief we are seeking. I

just haven't -- I don't have any case law in front of me right now.

THE COURT: Mr. Biering, what do you think the appropriate relief should be? The remedy should be, if any?

MR. BIERING: May I approach, Your Honor?

THE COURT: You may.

Clearly you agree, 10 minutes, or however your witness has told you that at least 10 minutes, that clearly there was some violation of the rule sequestration regarding Mr. Williams. You would agree?

MR. BIERING: I would agree that there -- this is what I can agree to, Your Honor.

I agree that we stipulated, I believe, and then reported to the Court that we believe the witnesses should be sequestered. And without any doubt I believe that. I believe that was published.

What I don't think occurred was I don't think that at the times when there were changes and breaks in the Court, I don't think that issue was necessarily addressed.

THE COURT: And who do you believe the responsibility falls to to ensure that the Court's orders are followed, Mr. Biering?

MR. BIERING: Your Honor, I think that it is

incumbent upon all counsel and court staff that the Court's order be followed.

And as I have reported previously, I didn't realize -- I was paying attention towards the front of the courtroom. And I think that the issue, though, goes to -- there is case law on this issue.

THE COURT: All right, give me a citation.

MR. BIERING: I am going --

THE COURT: Is that Huckabee that you provided?

MR. BIERING: Your Honor, actually I'm going to -- well we can start Huckabee. Huckabee is a recent case in front of the Court of Appeals, Your Honor. I have provide both the State and the Court the same highlighted copies.

If you move over into the fourth page of the opinion, standard review, it appears that the issue really is within the sound discretion of the court as it relates to, first, whether or not there should be a sequestration order.

And then as we look farther into these cases, what the majority of these cases appear to have been in the arena of -- and I can see how this happens -- you've got the State, they present their testimony. Then the defense presents testimony. Then the State presents, as reply testimony, a witness that had been

in the courtroom after that.

That's the context of most of these cases. It's the State's reply witnesses in the courtroom during the defense case.

But if you'll look over to the fifth page of that. I think that what they look to is whether or not there is a knowing and intentional violation of the Court order, number one, as it relates to the witness's testimony.

And the other issue is I think they look to whether or not there is evidence to -- as would relate to the testimony that witness may have heard impacting their testimony.

Huckabee cites a number of other cases. I have provided for reference to the Court a few of those cases. Tisdale goes to an issue about whether or not a witness should be exempted from a sequestration order. And I think that in this case the issue is whether or not that exemption actually occurs after there has been a witness in the courtroom, after there has been a sequestration order. And that also within the sound discretion of the Court.

They look back to a 1964 U.S. Court Fourth Circuit case as they look at some of the different issues that I think have to be addressed. It goes to

the exclusion of testimony.

If we look there, the purpose of the exclusion rule is, of course, to prevent the possibility of one witness shaping his testimony to match that given by other witnesses in the trial. And if a witness violates, or he maybe disciplined by the Court.

The question of exclusion of the testimony of a witness, however, depends upon the particular circumstances and lies within the sound discretion of the trial court. And that takes us back to a 1893 case, Holder versus United States. I have also provided again a highlighted copy of that.

I don't think that case gives us a great list by way of criteria, or a greet checklist to look to what needs to occur here. But what it does say is this. Weight of the authority is that he cannot be excluded on that ground merely. But again, referencing the sound discretion of the trial court.

THE COURT: Mr. Alfaro, how long will it take for you to get the determination of whether Mr. Bacon was there, and how long Mr. Williams was in the courtroom?

I'm sorry, Ms. Williams.

MS. WILLIAMS: That's okay. I only stand up because he wasn't watching.

Mr. Bacon was definitely in the courtroom. For me to get a determination on how long each of them were in there shouldn't take long. I started doing it about 45 minutes ago.

THE COURT: Are you going to be able to determine -- there were periods, like today, we had a lengthy recess.

MS. WILLIAMS: We are doing like, they entered at 10:07, they left at this time. We are doing the exact times because it's on the tape and you can stop it and see.

THE COURT: All right. And you will be able to coincide that with testimony?

MS. WILLIAMS: I should be able to. You can kind of see the witnesses coming and going.

THE COURT: All right. I have a matter of urgency that I need to take a short break.

Please does not leave. It should not be too long. Thank you.

(Whereupon, a recess was taken.)

THE COURT: Any idea of the time?

MS. WILLIAMS: If I just watch it from then, I think I can get done by 1:00, Your Honor, I will try. We are trying to speed it up and it has to buffer and it's just stuff out of our control.

THE COURT: Can the two of you enter into a stipulation that Mr. Williams and Mr. Bacon were in the courtroom for a period of time during witness testimony, Mr. Biering?

MS. WILLIAMS: Absolutely.

MR. BIERING: Your Honor, if that's what the video shows, as an officer of the court, that's what she has represented to you. I certainly am not questioning that if that's what the video shows us.

THE COURT: All right. You had conversations with Mr. Williams and he did indicate to you that for at least 10 minutes, based upon your conversation, that he was in the courtroom, correct?

MR. BIERING: Correct.

THE COURT: And, Ms. Williams, as an officer of the Court you are indicating that Mr. Bacon was also on the video; is that correct?

MS. WILLIAMS: Yes, Your Honor. And it was during some testimony describing specific pieces of evidence. And during, you know, he would have been able to determine what the issues were of the case, and descriptions of evidence, and things of that nature.

THE COURT: All right. Based upon my review of the case law, this is how I am going to indicate to the jury that a stipulation has been entered into by the

State and the defense that Mr. Bacon and Mr. Williams were in the courtroom for a period of time during testimony of witnesses.

I will then indicate to them before a trial begins the witnesses may, by order of the court on a motion of counsel for either side, be sequestered to prevent a witness not yet examined from hearing the testimony of any other witness on the stand.

The Court has implemented the rule of sequestration in this case. Witness Joseph Rance Williams and Edward Bacon violated the rule of sequestration by remaining in the courtroom during testimony prior to their testimony.

If the rule of sequestration is violated by a witness, the violation should be considered by you in determining the weight and credit to be given to the testimony of that witness.

Any objection, Mr. Biering?

MR. BIERING: May I have just a moment?

MS. WILLIAMS: That's fine. The only objection that we would is just a slight thing.

I don't mind entering into a stipulation for the purpose of this hearing that that's true. I don't want the jury to hear that word because it sounds like there is some agreement. If you could just say that it has

been determined, that would be better.

THE COURT: All right, thank you.

MS. WILLIAMS: Thank you.

Your Honor, just --

THE COURT: Hold on one second.

MR. BIERING: No objection, Your Honor.

THE COURT: All right, thank you.

Yes, ma'am.

MS. WILLIAMS: Just to make the record clear, the remedy we are seeking is for the testimony to be stricken.

We understand that this is within the sound discretion of the Court, and understand the ruling of the Court and don't have a problem stipulating for the purpose of this hearing that he was in the courtroom. But we are still seeking the Court strike the testimony. But we understand this is within the discretion of the Court.

THE COURT: All right. I note your exception and we discussed that was the remedy that you were seeking.

And just let me make it clear that the Court, I take very seriously the fact that a court order has been violated. And that two witnesses, that we are aware of, have been in the courtroom during the

testimony in violation of the Court's order.

Based upon my research, it goes to the credibility and not to the admissibility and that is why I am giving the curative instruction.

I will reserve for a later time whether or not I think any further action as related to the defendant's case needs to be addressed. But we will reserve that for a later time.

As to the issue of the final witness, Mr. Wright's testimony. We, just for record, we had an in-chambers conference. And I inquired of the State how this should be distinguished, if at all, from Day and it is the Court's understanding that the State's position is that that testimony should not be allowed at all. Is that correct, Ms. Williams?

MS. WILLIAMS: Yes, Your Honor. It should not be allowed. And most especially any information about the gun since the gun is not connected.

The feelings of the victim toward the defendant were clear. But there was no connection between the gun and the defendant. That's our position.

MR. BIERING: May it please the Court, Your Honor.

THE COURT: Yes, sir.

MR. BIERING: Just for information purposes, I

don't think it matters at this point, but Mr. Williams is here.

THE COURT: I don't know, Mr. Biering, that we need to have any further testimony regarding Mr. Williams. It has been determined that 10 minutes, or even longer, at this point the Court is going to make the same determination and the same curative instruction.

Do you need any further questioning of Mr. Williams?

MS. WILLIAMS: No, Your Honor.

THE COURT: All right, thank you.

MR. BIERING: As it relates to the testimony of Chavis Wright.

Your Honor, the testimony that he proffered related to events within a very short timeframe before the actual shooting that we are here to discuss.

It is not an attempt to display character. It is a presentation of facts that are contemporaneous to the issues that we have here. There has been prior testimony about possession of a weapon by Mr. Porcher. There has been, now he proffers testimony that he saw, the night before -- make sure I have -- an upset, angry Reginald Porcher. And he said that he, can't remember the word he used, he exhibited, I think what he was

trying to say was that he exhibited animosity towards Ron McCray and fired a handgun.

I think that it's in such close proximity that it's not an issue of character, it's an issue of the actual facts as they relate to the case that we are involved in. Because it's specific as it relates to animosity towards Ron McCray, the defendant. It has been a day period, it seems like it's within 24 hours, and it puts him with a handgun.

Thank you, Your Honor. We'd ask that the testimony be allowed.

THE COURT: Since it's your motion in limine, I will allow you last argument, Ms. Williams.

MS. WILLIAMS: I'm sorry? On the motion limine?

THE COURT: Yes.

MS. WILLIAMS: In terms of this testimony?

THE COURT: Yes.

MS. WILLIAMS: We would just stand on our argument that this is more prejudicial than probative. That the testimony, even if taken at face value, even if you believe Mr. Wright, is that the day before he was angry with the defendant because he beat up his friend, and that also they were doing drugs and he shot a gun in the area.

He didn't say he was going to go shoot Mr.

McCray. He didn't say that he wanted to get revenge on Mr. McCray. He was just upset that he beat up Abdulla Fishburne. Which that may be relevant. But we think the gun part doesn't connect and it's highly prejudicial.

THE COURT: Mr. Biering, I will allow you to -- was there testimony indicating that the gun firing was in response, or in an effort to frightened Mr. McCray or this is what I'm going to do?

MS. WILLIAMS: No, absolutely not.

THE COURT: Do you agree, Mr. Biering?

MR. BIERING: I would agree he didn't testify that it was -- that gunfire was directed towards Mr. McCray. He just described an upset and angry man with animosity towards the defendant who is firing a gun at the same location where, you know, the alleged murder took place.

And we have got testimony of a gun at the scene. And it's within 24 hours, Judge. I'm not trying to bring in a failure to stop. I understand the Court's ruling on those.

THE COURT: Ms. Williams, how does this not go to the state of mind to the deceased?

MS. WILLIAMS: Well, first of all, just for clarification, it's not in the same location. It's all

a pretty small area, Jack Primis, but it's the hill, and that's a different location.

In terms of the state of mind of the deceased, you know, he can testify that he was acting crazy, that he was upset, that he was upset that Mr. McCray had beaten up his friend.

But I just think that the gun incident is not related, and it's so prejudicial it's implies that Mr. Porcher then brought a gun to the scene and that's just not true.

And I think that if the only connection that was made was that Mr. Porcher was upset with the defendant for beating up Abdulla Fishburne. If Mr. Wright wants to testify to that, that's the only connection that I saw in the testimony.

As far as the drugs, that they were doing drugs and that there was a gun there and that he was shooting a gun, we would just argue that it's a 403 argument, in addition to everything else. It's highly prejudicial and it's not connected to the defendant.

Court's indulgence.

THE COURT: Yes.

MS. WILLIAMS: And just to articulate that further, Your Honor, it does go to his state of mind that he was angry, maybe even that he was angry at the

defendant.

But there is nothing that was testified to that says that he was in the state of mind that he was going take a gun and go and use it against Mr. McCray. And that is the implication.

And so that's the connection that wasn't made. We think it's highly prejudicial. And the Court can allow some of his testimony, and not bring in the part that's not connected to the defendant and that would be highly prejudicial.

MR. BIERING: Your Honor.

THE COURT: Hold on one second.

The last thing that you said, Ms. Williams, that I can limit his testimony?

MS. WILLIAMS: We would ask that it all be limited. But I think that in all fairness Mr. Wright did make one connection that Mr. Porcher was upset with the defendant about beating up Abdulla Fishburne and that it was his state of mind.

The day before he was murdered, he was upset with the defendant because he had beaten up his friend. The fact that he was doing drugs when he was upset, or that there was firearm there, and that he allegedly fired a firearm, you know, this witness could have said that he had the firearm and he was, I'm going to get

McCray, or I'm going to use it's against McCray, or that he took the gun with him from the scene or whatever, but that's not what he said.

He testified about exactly when Mr. Porcher said. And I think if there was some connection to the gun, and him using the gun against him, then he didn't make it.

THE COURT: All right.

And you stood up, Mr. Biering.

MR. BIERING: I certainly understand their concern about prejudice. But the first issue is whether or not this testimony is probative, whether or not it's relevant.

It's within 24 hours, Judge. It's within 24 hours. It does go to his state of mind. They opened the door to the marijuana. They asked their witness about the marijuana. The jury is not going to be surprised -- the prosecution is not going to prejudiced by the fact that they found out there was marijuana near him because they have already brought that in.

THE COURT: What is the relevance 24 hours of the victim, or anyone smoking marijuana, with reference to this incident?

MR. BIERING: Judge, I said from the beginning that as it related to his testimony that was not -- I

don't get to pick what the witness says. I don't get to tell the witness what to say. I don't get to describe the facts as I'd like them to be. I don't get to pick facts overall.

I'm informed of a witness that has something to say. Who gets up and says something that's really not good for him. He says it. I asked him, I said, what were you doing there? Because I can't lead him down a path and ask him to say exactly what I want him to say, or answer only my specific questions.

I asked him the general questions as to what transpired and what occurred. He outlined those events.

I was very careful, Your Honor. and I think the Court would acknowledge this, and the State would too, I was very careful in my attempt not to elicit hearsay testimony. And he presented what he saw, what he heard, what he understood.

And it's within 24 hours of this event, and it's directly related to my client. I don't know how much more linked it could be --

THE COURT: Let me -- maybe you didn't understand my question.

What is the relevance of the victim smoking marijuana 24 hours before this incident.

MR. BIERING: I don't believe the witness testified that the Mr. Porcher was smoking marijuana. I think he testified that he was smoking marijuana. That was my recollection of the testimony.

That he went there to obtain marijuana. He called it the hill, but then he further described the tree where everybody hung out.

I don't think he said -- I don't recall him saying that Mr. Porcher was smoking marijuana. I think he said he went there to buy some marijuana and smoke some marijuana.

THE COURT: All right. With reference to -- this is all encompassing in the State's motion in limine about prior bad action.

Specifically with reference to the testimony of Mr. Wright -- and I notice Mr. Wright's attorney is present in the courtroom on the unrelated matter -- I am granting your motion in limine as to the testimony of drugs, drug use by the victim, and to the mention of the gun, the shooting of the gun. I find that neither are relevant to the situation and to the incident, more than 24 hours before.

Mr. Wright may testify that Mr. Porcher, the victim, was upset by Mr. McCray, the defendant, about beating up his friend. I find that any testimony

regarding the drugs and the gun are more prejudicial than probative. And there is absolutely no, in this Court's opinion, that there was any indication that they were so closely connected with the homicide as to justify their inclusion.

Note your exception for the record.

Mr. Shelton, I'm going to ask if you would be so -- if you would indicate to your client what the terms and the limitation of his testimony will be.

Any objection to allowing Mr. Shelton?

MS. WILLIAMS: No, Your Honor.

THE COURT: Mr. Biering?

MR. BIERING: Certainly not.

THE COURT: All right, thank you.

And with that the jury will be here and we will begin promptly at 1:00. You have a witness before Mr. McCray?

MR. BIERING: Yes, Your Honor. And I need to go make inquiry about a matter as relates to that witness before I would call that witness.

THE COURT: So just for scheduling, I understand you'll call Mr. Wright, then you will call the walk-in witness; is that correct?

MR. BIERING: That would be the order if I call either of them.

THE COURT: All right. Then you will call Mr. McCray?

MR. BIERING: That's when he would have the opportunity, yes, Your Honor, to choose to testify.

THE COURT: And then depending upon the time, are you prepared to argue and charge this afternoon?

MS. WILLIAMS: We are, Your Honor.

MR. BIERING: I am.

THE COURT: All right, thank you.

Mr. Biering just for scheduling, just to make sure, because the Court will have to make sure that the verdict forms and the charges are complete, if you'll give me some indication as to who, or the final scheduling before the jury comes in so that I can begin preparation. Thank you.

We are at ease.

(Whereupon, a recess was taken.)

THE COURT: Mr. Biering, I noted your request. He will be placed in the box before the jury comes in. And the Court does not have access to clothes and so there is no way to comply with the request. Thank you.

MR. BIERING: Thank you, Your Honor.

Your Honor, for the record, the advisement as it relates to this witness.

THE COURT: Yes.

MR. BIERING: Was done outside of my presence first by his attorney, and second I went in and accompanied his attorney. And certainly there was no violation of attorney/client privilege at that point between the two of them.

But I just confirmed, because I am presenting this witness, that he was informed of the Court's ruling as it relates to the limitation of his testimony.

THE COURT: All right, thank you.

MR. BIERING: Thank you, Your Honor.

THE COURT: Anything before we bring in the jury from the State?

MR. ALFARO: No, Your Honor.

THE COURT: From the defendant?

MR. BIERING: No, Your Honor.

THE COURT: All right.

To the members of the audience, just a cautionary tale. This is a courtroom. And as indicated in my instructions and opening to the jury, this courtroom is a place of honor.

If you cannot conduct yourself in an honorable fashion, there is no laughing that be will be tolerated, or outbursts that will be tolerated. My bailiff and my deputies have been instructed that if

anyone is acting inappropriately, and not respecting the honor and dignity and the serious nature of what goes on in the courtroom, you will be asked to leave, and we will deal with it accordingly.

Please bring in the jury.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Thank you, be seated.

Ladies and gentlemen, it has been determined that the witnesses that testified yesterday, Edward Bacon and James Williams, were in the courtroom prior to their testimony. Prior to their testimony testifying.

Typically what happens, it's called the rule of sequestration, and what that means is before a trial begins the witnesses may, by order of the Court either on its own motion or motion of counsel for either side, be sequestered. And the purpose for that it to prevent a witness not yet examined from hearing the testimony of any other witness on the stand.

The Court had implemented the rule of sequestration in this case. Witnesses Joseph Williams and Edward Bacon violated the rule of sequestration by remaining in the courtroom during testimony prior to their own testimony.

If the rule of sequestration is violated by a

witness, the violation should be considered by you in determining the weight and credit to be given to the testimony of that witness.

Ladies and gentlemen, we will now hear testimony, please, from your next witness. And just procedurally we had already had this witness in the box.

So just, will you call his name?

MR. BIERING: I will, Your Honor.

The next witness is Chavis Wright.

CHAVIS LAVON WRIGHT,

after having first been sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows.

THE COURT: Mr. Biering.

MR. BIERING: May it please the Court, Your Honor.

DIRECT EXAMINATION

BY MR. BIERING:

Q Good afternoon, Mr. Wright.

A Good afternoon.

Q Mr. Wright, where are you currently staying each day?

A In the Berkeley County Detention Center.

Q Okay. And do you have, have you ever been

convicted of a crime in the past?

A Yes, I have.

Q You have?

A Yes.

THE COURT: Mr. Wright, I need you to lean forward, the jurors are having trouble hearing you. Thank you.

A Yes, I have.

Q (By Mr. Biering) And do you know what your convictions, for what you have been convicted of?

A Armed robbery, financial card theft.

Q Thank you. Where are you from?

A I'm from Huger.

Q And how long have you lived in Huger?

A All my life.

Q How old are you?

A I'm 32.

Q Are you familiar with the Jack Primis area?

A Yes, I am.

Q Have you ever had occasion to be in the Jack Primis area?

A Yes, I have.

Q In 2009, specifically, did you have any occasion to be in the Jack Primis area?

A Yes, sir.

Q To be even more specific, in September of 2009, did you have occasion to be in the Jack Primis area?
A Yes, sir.
Q Mr. Wright, do you know Reginald Porcher?
A I do.
Q And were you aware that on September 16th, 2009 Mr. Porcher was shot?
A Yes, sir.
Q How long prior to September 16th of 2009 had you known Reginald Porcher?
A All my school life.
Q In September of 2009, did you see or have any interactions with Reginald Porcher?
A Yes, sir.
Q When in September of 2009 did you have any interactions with Reginald Porcher?
A The night before he got shot.
Q And where did you have interactions with Reginald Porcher the night before he was shot?
A It's in Jack Primis. I cannot remember the name of the street, but it's an area we all hang out it's called the hill. We all call it the hill.
Q Can you describe the hill?
A When you get off of Clements Fairy Road, you make a left, go down, come around a sharp curve, it's

the second right and you go down like a slope.

And it's like maybe three or four trailers out there, a big tree where we all hang out at.

Q Underneath the tree?

A Yes, sir.

Q So that was night before September 16th; is that correct?

A Yes, sir.

Q And who did you see that night at the hill or the tree?

A The ones I know of was Abdulla Fishburne, Reginald, Jeff, and six other guys. I know them by face, not by name.

Q Do you know approximately how long you were at the hill or the tree?

A I'd say 10 to 15 minutes tops.

Q Did you have -- can you describe the interactions that you had with Reginald Porcher during that timeframe?

A I was wondering why he was carrying on the way he was carrying on about the situation with Ron and Abdulla earlier that day when they had their fight.

Q Did you observe anything about his demeanor or his attitude?

A He was very angry.

Q Did you observe anything in relation to his anger that would relate to -- let me strike that.

Do you know Ron McCray?

A I know of him, but I don't know him like that.

Q Did you know -- in September of -- September 15th, 2009, did you know his name?

A I know his name? Yes, I know his name.

Q In relation to what you observed from Reginald Porcher and his anger, can you describe anything you may have observed as related to that in relation between Reginald Porcher and Ron McCray, if anything?

A His emotions, his anger, and the things he said, the threats he was posing.

Q And were those directed towards Ron McCray?

A Yes, sir.

Q Now you've testified that you know that Reginald Porcher was shot on September 16th, 2009?

A Yes, sir.

I was phoned by a friend of mine.

Q But you weren't there at the time that the shots were fired, were you?

A No, sir.

Q Did you have occasion on September 16th of 2009 to -- go back to the hill or the tree?

A As I was on the phone being told that he was

shot, at the same time I pulled over and police from the Berkeley County passed me. I followed.

MS. WILLIAMS: Objection.

THE COURT: Hold on one second. When there is an objection I need you to stop talking.

What is the objection?

MS. WILLIAMS: May we approach?

THE COURT: You may.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: Mr. Biering, you may continue. Thank you.

MR. BIERING: Thank you very much, Your Honor.

Q (By Mr. Biering) Mr. Wright, I think where we were is you had said that September 16th, and you had pulled off the side of the road because there was some police officers coming by you; is that right?

A Yes, sir. Yes, sir.

Q And where were you headed at the time?

A I was leaving work. I was getting off the I on Clements Fairy. I was headed home until I got the phone call. And that's when I had to pull over at the same time the police car was coming by.

Q And did you find yourself, after that time, back at hill or the tree?

A Yes, sir.
Q And can you tell us who you saw there, the people that you know by name, who did you see there when you pulled up?
A I first picked up, I drove past, then I turned around and I went to go park. And as I was parking I observed Sleepy standing on the side road with a black bag.

And as I got out of the car and I walked down to the hill I observed Abdulla, I observe Reggie and I observed Jeff and a couple other folks out there that I don't know by name.
Q Did you say you observed Reggie?
A Yes, sir.
Q Where was Reggie?
A He was sitting in Jeff's car.

MR. BIERING: No further questions of this witness.

THE COURT: Ms. Williams.

CROSS-EXAMINATION

BY MS. WILLIAMS:
Q Good afternoon, Mr. Wright.
A Good afternoon.
Q What time did you get off work?
A It was around 2:00 or 3 o'clock.

Q 3 o'clock?
A Around 2:00 or 3:00, in between.
Q And where do you work?
A I was working at Botany Bay Landscaping at the time.
Q Where is that?
A Mount Pleasant off of Rifle Range.
Q How far down on Rifle Range?
A I can't remember the name of the school that's right across from there, the elementary school before you get to the Kangaroo at the end.
I don't know if it's a--
Q Jennie?
A Not Jennie Moore, it's way past that.
Q Well how long did it take you to get from your job to Clement Fairy?
A About 15 minutes tops, depending on how the traffic is.
Q And what part of Clements Fairy did you get to?
A A little past Blue Waters.
Q Isn't that where the school buses are going? Traffic is pretty bad around 3 o'clock, isn't it?
A It all depends.
Q Are you sure it's 15 minutes?
A 15 minutes tops.

Q And you saw police cars?
A Yes, ma'am.
Q And what direction were they going?
A They was headed towards Jack Primis.
Q You think they were responding to the scene?
A I'm pretty sure.
Q And then how much later was it that you got to Jack Primis?
A Maybe five, six minutes afterwards.
Q After the police?
A Yes, ma'am.
Q So you get to -- 15 minutes later you get to Clements Fairy, and then you pull over. How long were you pulled over?
A Not even five seconds.
Q Five seconds? And then you drive to Jack Primis?
A Yes, ma'am.
Q And the police were on their way because of the shooting?
A I'm pretty sure they was.
Q And you go there after them?
A Yes, ma'am.
Q Now you testified that you hardly know Ron; is that right?

A Yes, ma'am.
Q But don't see him every day? Do you have lunch with him every day?
A Now that I'm here.
Q So you do know him.
A I know of him but I don't know him personally like that. I see him on the route. I don't socialize with everybody like that.
Q Do you have lunch with him every day?
A I have no choice, but don't mean I sits with him and conversates with him.
Q And you've talked to Mr. McCray about your testimony; haven't you?
A No, I haven't.
Q Do you know what Rule 5 is?
A Yes.
Q What is that?
A All the evidence they have against you.
Q And you've never looked at Mr. McCray's Rule 5?
A No, that's his personal business.
Q So before you got here, you knew absolutely nothing about this case?
A Yes, I did, because I was there.
Q When you got to -- scratch that.
Who else was there the night before you --

Reggie was murdered?

A I observed by name Abdulla Fishburne, I observed Reggie, I observed Jeff, and I observed six other guys that I don't know by name but I know them by their face when I see them.

Q Any females?

A No. No females don't be around.

Q And Mr. Biering asked you about the situation between Abdulla and Mr. McCray.

What did Mr. McCray do to Abdulla.

MR. BIERING: Objection.

Q (By Ms. Williams) If you know.

THE COURT: What is the basis?

MR. BIERING: Basis is a misstatement of the record.

THE COURT: Overruled. You may answers.

A Can you repeat the question?

Q (By Ms. Williams) If you know, what did -- you said you knew that Reggie was upset because of the situation between Mr. McCray and Abdulla.

What did Mr. McCray do to Abdulla?

MR. BIERING: Objection, misstatement of the current record before the Court.

THE COURT: Counsel, approach.

(Whereupon, a discussion was held at the bench

off the record.)

Q (By Ms. Williams) What did Mr. McCray do to Abdulla?

A From my understanding they had fought.

Q He beat him up?

A I guess he did, I didn't know --

Q And he beat him up with a shotgun, didn't he?

A I don't --

MR. BIERING: Objection.

THE COURT: What is your objection?

MR. BIERING: Can we approach?

THE COURT: You may.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: Sustained.

Q (By Ms. Williams) You were there long enough to be talking with these guys, right?

A Yes, ma'am.

Q And you were there long enough to know that Reggie was upset with Ron for beating up his friend, right?

A Yes.

Q What is Abdulla like?

A He is.

Q Is he a little slow?

A If you want to say that. I'm not one to judge nobody.
Q Kind of helpless?
MR. BIERING: Objection, call for speculation, asked and answered.
THE COURT: If he knows.
A I can't say that he is, ma'am.
Q (By Ms. Williams) Is Reggie protective of Abdulla?
A They are pretty good friends, yeah.
Q And so he is upset that Mr. McCray beat up Abdulla. What did he tell you about that fight?
A He didn't go into detail. He just said they had a fight and he wasn't going to let it ride.
Q Is Abdulla any match for Mr. McCray?
A I can't tell you that, ma'am.
Q Well you were there, you saw him.
A I didn't observe the fight, ma'am.
Q But you know Abdulla, and you have lunch every day with Mr. McCray.
How old is Abdulla?
A He is about 25, 26, something like that.
Q Isn't he about 20?
A I'm not sure his age. I know he is 20-something. 25, 26.

Q And you never discussed your testimony with Mr. McCray?
A No, ma'am. I never discussed my testimony with Mr. McCray.
Q So how did you get here today?
A I told you I called a friend of mine.
Q Who did you call?
A A friend of mind. Do I have to say his name?
Q Sure.
A His name is Clavis Crumbly (phonetic).
Q Okay, and then what?
A We gave me a 3-way to Abdulla. I told Abdulla I'm willing to take the stand.
Q Why would you have to call Abdulla to testify for Mr. McCray?
A Because I wanted to tell him the truth of what really happened.
Q Why wouldn't you just tell Mr. McCray because you have lunch with him every day?
A Because I'm just now meeting Mr. McCray in Berkeley County. I have seen him several times on the street, but we never exchanged any words.
Q You just said you had lunch with him every day.
A Yeah, that's in Berkeley County. I said on the street I didn't --

Q How long have you been in Berkeley County?
A Six months.
Q Okay. And is it fair to say that Abdulla Fishburne is afraid of Ron McCray.
MR. BIERING: Objection, calls for speculation.
Q (By Ms Williams) If you know.
THE COURT: Sustained.
Q (By Ms. Williams) And it's your testimony you got off work sometime 2:00 or 3:00. Took you 15 minutes to get there. You pulled off and the police -- pulled off so the police could go. And then you went to Jack Primis?
A Yes, ma'am.
MS. WILLIAMS: Court's indulgence.
Nothing further.
THE COURT: Mr. Biering.
MR. BIERING: Nothing further.
THE COURT: Mr. Wright, you may be excused, thank you.
Call your next witness.
MR. BIERING: I would call Sleepy Mitchell.

EDWARD MITCHELL,

after having first been sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows:

THE COURT: Mr. Biering.

MR. BIERING: May it please the Court.

DIRECT EXAMINATION

BY MR. BIERING:

Q Good afternoon, Mr. Mitchell.

Mr. Mitchell, do you have a nickname?

A Sleepy.

Q Sleepy?

A Yes.

Q If I could get you, Sleepy, if I could get you to sit up a little bit and maybe speak directly into that mic that might make things a little easier.

Mr. Mitchell, where are you from?

A Jack Primis.

Q And how long have you considered Jack Primis to be your home area?

A About 15 years.

Q About 15 years.

Prior to that, Mr. Mitchell, where did you consider home?

A Cainhoy out in Hill Ridge.

Q Cainhoy in Hill Ridge?

A Uh-hum.

Q And is it fair to say that Hill Ridge is a community off of 41?

A It's off of 98.
Q Off of 98, okay.
How far away is Hill Ridge from Jack Primis area?
A Like four or five miles.
Q Mr. Mitchell, in 2009 did you have occasion to be around the Jack Primis area?
A Yes.
Q Yes?
A (Affirmative head shake.)
Q In September of 2009, did you have occasion to be around the Jack Primis area?
A Yes.
Q You need to speak up, okay?
A Yes.
Q Because the court reporter needs to take down everything you are saying.
Mr. Mitchell, do you know Abdulla Fishburne?
A Yes.
Q Do people sometimes call him Dulla?
A Yes.
Q Mr. Mitchell, do you know Reginald Porcher?
A Yes.
Q Do you know Ron McCray?
A Yes.

Q Are all of the people that I just listed, are they people that also you believe would consider the Jack Primis community home?

A Yes.

Q Do you know that Reginald Porcher was shot?

A Yes.

Q On September 16th, I'm not asking you about any other days, September 16th of 2009, were you in the Jack Primis general area when Reginald Porcher was shot?

A Yes.

Q Were you at -- let me ask you this. Do you know where Reginald Porcher was, the general -- do they have a name for the area where Reginald Porcher was when he was shot?

A No.

Q No? Are you familiar with the place that some people call the hill?

A Yes.

Q Are you familiar with the place that some people call a tree? Is there a tree at the hill where people hang out?

A Sometimes, yes.

Q Is that the area where Reginald Porcher was when he was shot?

A I don't know.
Q You don't know?
A Uh-uh.
Q On September 16th, 2009, were you or did you go to that area?
A No, I didn't.
Q You never did on September 16th, 2009?
A No.
Q Did you see Abdulla Fishburne on September the 16th of 2009, the day that Mr. Porcher was shot?
A Yes.
Q You did?
A Yes.
Q And was that before or after Mr. Porcher was shot?
A After.
Q Was it immediately after?
A Yes.
Q Were you close enough to where Mr. Porcher was shot to hear gunfire?
A Yes.
Q What did you see?
A Nothing. I was at my place of residence. I was in the yard washing, washing the car and I heard a gunshot.

And I ducked myself. And I saw Abdulla Fishburne running towards me with a pistol in his hand and he was shaking like he was scared.

And I said, man, what happened? And he said, he said Ron just shot Reggie. And he was holding the pistol out like that, like pointing it towards me. And I grabbed it out of his hand. I said, man, give me that out of your hands before you hurt somebody. And when I took it off of his hands, he took off running in the woods.

Q Mr. Mitchell, did you take that gun to the police?

A No.

Q What did you do with it?

A I sold the gun in North Charleston.

MR. BIERING: Nothing further of this witness.

THE COURT: Ms. Williams.

CROSS-EXAMINATION

BY MS. WILLIAMS:

Q Did you see Reggie that day?

A No.

Q Did you ever come forward and tell anyone this before? Like the police or anybody?

A No.

MS. WILLIAMS: Nothing further.

THE COURT: Mr. Biering.
MR. BIERING: Nothing further.
THE COURT: All right. Is this witness excused?
MR. BIERING: Yes, Your Honor.
THE COURT: Any objection from the State?
MS. WILLIAMS: Not from the State.
THE COURT: Mr. Mitchell, you are free to go. You may remain with us, but you are also free to leave the courthouse. Thank you, you may step down.
Ladies and gentlemen, we are going to take a very brief mid-afternoon break. We will take about 10 minutes. If you need longer, just let the bailiff no.
Please rise for the jury.
(Whereupon, the jurors exit the courtroom.)
THE COURT: Thank you, be seated.
I am assuming, Mr. Biering, that was all your witnesses except for Mr. McCray. Is that correct?
MR. BIERING: Based on the Court's ruling as relates to other matters, Your Honor, that is all of our witnesses except for Mr. McCray, yes.
THE COURT: And, Mr. McCray, have you made a decision as to whether or not you will testify.
THE DEFENDANT: I will testify, Your Honor.
THE COURT: You will testify.
THE DEFENDANT: Yes, Your Honor. I will

testify.

THE COURT: Thank you. We are going to take a short break.

And, Mr. McCray, you will need to be seated in the chair when the jury comes back in.

Mr. Biering, you've gone over the Court's rulings and limitations on what Mr. McCray may testify; is that correct?

MR. BIERING: I have, Your Honor. But I would ask that, for the record, that I would ask that the Court place on the record those limitations as well.

I think that from a procedural history of this case, I think that it would be appropriate that on the record the Court's ruling be very clear in the presence of the defendant and the presence of the State so that there is not any room for any issue. And certainly not in a position to where I am pitted against my client as it relates to relating the Court's ruling.

I would ask the Court to place on the record the specific rulings, the specific limitations as it relates to his testimony.

THE COURT: First I hope Mr. McCray is not under the belief that you are pitted against him when you are relaying to him the court's instruction. I just wanted to make that clear. I do not need further explanation,

Mr. Biering.

Mr. McCray, one of the purposes of having an attorney, why it is always a benefit to you, is that Mr. Biering has been through law school, has passed the bar, and has been practicing, and he understands the very fine nuances. I can say terms like motion in limine or sequestration, and he understands what that means.

So I hope that when he explains to you the Court's ruling, that you understand that you've observed he has objected to most of the Court's rulings and taken exception with a large majority of the Court's rulings throughout this trial.

Mr. McCray, just in the simplest, because I do not want to give you the impression that I am telling you what you should say or should not say, but you are limited in certain areas because has the Court has ruled in the State's motion in limine.

Do you understand that, sir?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right. Basically, Mr. McCray, you have been here and heard the testimony that your attorney was attempting to introduce on your behalf concerning prior convictions or incidents with law enforcement involving drugs and guns with the victim.

Do you understand that?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And do you have any questions about that? Do you need any additional time? We have five minutes.

THE DEFENDANT: Your Honor, I do have questions.

THE COURT: All right. I'm going to -- I believe that it is clear, and you've indicated to you understood, and you were present throughout the Court's rulings on the motions.

And so if you have additional questions, I think it's appropriate, not in open court, but that you have those questions for Mr. Biering. Do you understand?

THE DEFENDANT: Yes, Your Honor.

THE COURT: All right, thank you.

We are at ease. And please make sure that Mr. McCray, we are going to take about seven minutes. So in five minutes -- do you need to go to the restroom.

THE DEFENDANT: Yes, ma'am.

THE COURT: All right. Please make sure that is accomplished and give Mr. Biering just a couple of moments with Mr. McCray before he takes the stand.

He needs to be in the witness chair when the jury comes in. We are at ease. Thank you.

(Whereupon, a recess was taken.)

THE COURT: Bring in the jury.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Thank you, please be seated.

Mr. Biering, call your next witness.

MR. BIERING: Your Honor, I would call my client, Ron McCray, to the stand.

THE COURT: Ladies and gentlemen of the jury, just procedurally Mr. McCray is already seated in the witness box.

Please swear Mr. McCray.

RON SANTA McCRAY,

after having first been sworn to tell the truth, the whole truth and nothing but the truth testified on his oath as follows:

DIRECT EXAMINATION

BY MR. BIERING:

Q Good afternoon, Mr. McCray.

A Good afternoon.

Q Mr. McCray, where are you from?

A Born in New York.

Q And how long did you live in New York?

A 10 years.

Q I need you to speak up, okay?

At some point in time -- let me ask you this question. Do you have family that is from the Jack

Primis area of Berkeley County?
A Yes, I do.
Q And can you describe -- who is your mother?
A Evelyn McCray.
Q And do you resides on a piece of heirs property, or have a place where you stay?
A Yes, I do.
Q On a piece of heirs property in the Jack Primis area?
A Yes, sir, I do.
Q Is that property maintained in the heirs of Wigfall?
A Yes.
Q And are you a direct descendant of Mr. Wigfall?
A Yes, I am.
Q And that's traced through your mother's family?
A Yes. My mother's grandmother.
Q Through your mother's grandmother?
A Yes, Saddie Vanbolt (phonetic), she used to be Wigfall. She married into the Vanbolt's family.
Q And you lived for a while and had a home in the Jack Primis area; is that correct?
A Yes.
Q In September of 2009, did you have place in the Jack Primis area?

A Yes.
Q And where was that located at?
A It's on Whitefalls Lane.
Q And can you describe the driving directions from let's say from Celments Ferry to that home?
A You would turn off of Clements Ferry, which is Highway 33. Make a left turn, that would be Jack Primis Road. You proceed that about a little over half a mile. And then you would take a right turn on Sarah Lincoln.

And then about a 16th on a dirt ride you would make a left turn on Whitefalls Lane. And my house would be facing you.
Q Is that near Underlie Lane?
A Positioning with my house is, yes. But using the actual roadway, you would go out the opposite way and then you would proceed to go back down.
Q So the way the crow flies, as some people would say, or the way the bird flies, they are close?
A Well in actuality the distance apart is only like three houses between it. There are trees.
Q Are you familiar with area called Underlie Roadway?
A Yes.
Q What is around Underlie?

A Well, they don't cut grass, there is no grass. So there is a tree. Guys hang out at the tree.

Q It's a regular hangout there. Do some people call it the hill?

A Not exactly. I guess you could say people that's not really from there they might say -- probably get the two confused, say under the tree.

Q So you call that area the tree; is that what you'd say?

A Yes.

Q Mr. Porcher -- I'm sorry, Mr. McCray, do you know or did you know Reginald Porcher?

A Yes.

Q Do you know Christopher Cleggett?

A Yes.

Q Do you remember September of 2009? Do you have a clear memory of that timeframe?

A Pretty, fairly clear.

Q Do you recall September 16th, 2009?

A Yes.

Q Can you tell what transpired on September 16th, 2009?

A Chris, Christopher Cleggett and I, we were traveling on Jack Primis Road going towards the end.

Q You said end, what is the end of Jack Primis

Road?
A It's like a culdesac.
Q I didn't mean to interrupt you. But it's a culdesac. So it's like a dead-end culdesac?
A Yeah, it's a roundabout.
Q Okay.
A And basically we were proceeding that way. And I saw Reggie's truck. And I told Chris, well, let's stop here for a minute. And we stopped. And pulled in.
Q That day when you got in car with Chris Cleggett, were you looking for Reginald Porcher?
A No.
Q You weren't looking for him that day? Had something transpired in the past regarding Reginald Porcher that you wanted to address with him?
A About five months, five months prior to that he had an incident with a girl that had a child, we have a child together, an incident happened at my house.
You know, something happened a long time ago. And it wasn't like necessarily me, I mean just wasn't.
Q You said -- do you remember being interviewed by Detective Alteri?
A Yes.
Q You stated in your interview that Reginald

Porcher raped Tiffany?

A From my understanding he tried to sexually assault her.

Q Is that something that you wanted to address?

A Yes. I happened to see him. I asked him, you know, find out what's up, what's up with it. She could have been lying to go me, I don't know, I wasn't there.

My brother was there. He didn't indicate nothing, so I don't know.

Q So why did you pull in? Why did you have Cleggett pull in?

A Because I wanted to talk to him.

Q What did you do?

A I -- when Chris stopped the car, I got out of the car. And I didn't close the door. I didn't close the door yet. And.

Q Were you a passenger in Mr. Cleggett's car?

A I was a passenger. I didn't close the door. I got out, had my hand still on the door and I said something, you know, told him, hey, Reggie, I'm coming up to talk to you, something like that.

And basically he just took off running. I was close to his truck because of the way I parked. And he wasn't -- he was a distance from his truck. Little more than halfway to the door.

Q Did it startle you whenever he ran to his truck?
A Yes, it did.
Q And what happened?
A Well then he started -- I paused. He got to his truck, his door was already open, the driver's side door was already open.

He got to his truck and he went down, went under the seat, on top of the seat, whatever, he reached in his truck and he came back out.

Q And at the time that he was doing this, what did you think was going on?

MR. ALFARO: Objection, leading.

THE COURT: Rephrase your question.

Q (By Mr. Biering) What were your thoughts about what Mr. Porcher was doing at the time?

MR. ALFARO: Objection, still leading.

THE COURT: Overruled. You may answer.

A I believe he was reaching for a weapon. I say that because I have known him all my life, so.

Q (By Mr. Biering) What did he do?

A He actually reached in, he dropped back, and I went back to the car. I wasn't -- my hand was still on the actual door handle, the window frame. And I had a shotgun with me.

Q When you got out of the car, did you have the

shotgun with you?

A No.

Q I'm sorry?

A No, sir, I did not.

Q Okay, continue.

A I went back to the car. I had a shotgun, it was sitting on the -- right on the passenger, and sitting between the seat and the actual door on the floor.

I grabbed the shotgun. I had it wrapped up in something. So I had to unwrap it and basically, you know, everything really transpired fast.

Grabbed the shotgun and he was -- he pointed to me what looked like a weapon. I picked my weapon up and I fired.

Q And you recall your statement, you recall giving your statement to Sgt. Alteri?

A Yes, I do.

Q You said in your statement, didn't you, that you shot Reginald Porcher; is that correct?

A Yes.

Q What happens then?

A His truck, there's some reason I don't know, he might have fell into his truck like. And his truck started going backwards, so he tried to stop it.

He started running beside his truck, but the

door was open, and he fell. The truck ran over his, like, his left leg so you could tell he was on the ground, passed him. And I ran over towards him. I kicked him. I did that to try to take the weapon off of him. And that was it. One time, and that was it.

Q At this point was this a heated -- this is heated, at this point?

MR. ALFARO: Objection, leading.

THE COURT: Sustained as to leading.

Q (By Mr. Biering) What were you thinking at this point?

A He, by his past actions --

MR. ALFARO: Objection.

Q (By Mr. Biering) Mr. McCray, I'm asking you --

THE COURT: Thank you, Mr. Biering.

Q (By Mr. Biering) -- what were you then thinking?

A I was thinking he was trying to hurt me.

Q I'm sorry?

A I was thinking he was trying to hurt me, harm me.

Q You said you kicked him to try to disarm him?

A Yes.

Q Did you disarm him?

A I didn't see the gun.

Q Okay. Then what happened, Mr. McCray?
A That was it. He got up, he went back towards the people that he was standing under the tree with and that was it.
Q Did you leave?
A I left. He didn't even appear to be shot. He got up. And here he went back to the people that he was standing next to the tree with.
I mean, he got shot. He was chased down to his truck. I did kick him. He got back up. He didn't appear to be -- nothing was wrong with him.
Q Did you leave?
A Yes, I left.
Q Now you say you fired the shotgun, what all did you have with you with that shotgun?
A I had it wrapped up, so that's it.
Q Did you have anything, any other items with the shotgun? Did you have any ammunition?
A What was inside the gun.
Q Well what was inside the gun?
A I guess a couple more shells. I mean I don't know. It has been there for awhile, so I don't know how many.
Q So were there more than one shell in the gun?
A I really can't answer that, could have been just

one. I don't know.
Q And, Mr. McCray, you left the scene that day; is that correct?
A Yes, I did.
Q A lot of discussion in your statement that you provided the video as it would relate to the events in between there. But you'd agree that ultimately you were picked up by the police; is that correct?
A Yes.
Q And you'd agreed that you told Sgt. Alteri where the gun was located; is that correct?
A Yes, I did.
Q I am going to ask you some questions, but I want you to be very careful that only asking --
MR. BIERING: Your Honor, I ask for some leeway for potential leading of the witness in a very limited area.
MR. ALFARO: Can we approach?
THE COURT: You may.
(Whereupon, a discussion was held at the bench off the record.)
THE COURT: You may continue.
MR. BIERING: Thank you, Your Honor.
Q (By Mr. Biering) Mr. McCray, isn't it true that you've known the Porcher family for a significant

portion of your life; is that correct?
A Yes.
Q And specifically you knew or know his, Mr. Reginald Porcher's, brother; is that correct?
A Yes, I do.
Q And specifically you've had, would you say, substantial contacts with -- maybe not substantial, have you had numerous contacts and been with him in numerous social settings?
A At least I would say four, four or five, yes.
Q And you knew Mr. Reginald Porcher; is that correct?
A Yes, he is at my house every day.
Q And you knew Mr. Reginald Porcher at least, I want to be specific, through the period of 2000 certainly through 2000 -- at the time of his passing; is that correct?
A Yes, sir.
Q And Mr. Porcher was, would it be fair to say, in somewhat regular contact with your brother for many of those years; is that correct?
A Yes.
Q Mr. McCray, do you know approximately how long you were at the tree on September 16th?
A Two minutes, three minutes.

Q And your testimony is that when you left Reginald Porcher was doing what?

A He was walking.

Q Mr. McCray, what else about the events of that day, or those directly related to it, leading up to that day, do you believe is appropriate to tell this jury about?

MR. ALFARO: Objection. Can we approach?

THE COURT: I'm sustaining your objection. Thank you.

Q (By Mr. Biering) Mr. McCray, based on the questions that I have asked you, is there any follow-up information that you need to more fully answer the questions I have asked you today?

MR. ALFARO: Objection.

THE COURT: Sustained.

MR. BIERING: Can we approach, Your Honor?

THE COURT: You may.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: Move on, Mr. Biering.

MR. BIERING: Thank you, Your Honor.

If I could approach the witness, Your Honor.

THE COURT: You may. You have continuing permission.

MR. BIERING: Thank you, Your Honor.

Q (By Mr. Biering) Let me show you what has been admitted previously as State's Exhibit 8. It's up on the board as well.

Mr. McCray, is this the area you call the tree?

A Yes. It's near that car on the camera.

Q Do you recall any other people that were there at the time you pulled up on September 16th?

A I remember Jarvis was here, Tanner, Roberts was there, Abdulla Fishburne was there. I vaguely remember.

Q And where specifically were they?

A Well if you were to turn that camera around and facing it coming out, they were sitting on the car.

Q All of them? They were all around the car?

A Pretty much.

Q And not Reginald Porcher, the other people that were there, when you drove up, what if anything did they do?

A I don't believe they did anything. They was just standing there talking I guess.

Q Before you left that day, what if anything did they do?

Were they still there?

A No. No, they left.

Q I'm sorry?
A Did people leave the area?
Q Right.
A To my knowledge, I mean I left the area.
Q No. When you left, could you still see them there?
A I left so how can you see someone leave.
Q Mr. McCray, was Abdulla fishburne still at the scene when you left?
A When I was pulling away, he was still there.
Q Did you make note of anybody else that was at the scene before you left?
A No, I didn't.
Q Okay.
MR. BIERING: If I could have just a moment, Your Honor.
THE COURT: Take your time.
MR. BIERING: No further questions for this witness at this time.
THE COURT: All right, thank you.
MR. ALFARO: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. ALFARO:
Q Mr. McCray, you testified that the problem you had with Reggie Porcher was from five months ago, five

month before the shooting?
A I didn't have a problem with him. He had a problem with someone else.
Q You weren't mad about that?
A I was upset at the time.
Q So five months before you shot Reggie Porcher you were upset?
A Yes.
Q All right. But you weren't upset that day when you went there to Jack Primis and saw him?
A No.
Q Okay. So you had gotten over it, you had, want to say, cooled off between five months and the time of the shooting?
A It had been about a thousand times after that. I mean, yes.
Q So you all, after that, everything was good?
A Yeah. I mean he still comes around. It's not like he, I mean.
Q Okay. Well that's good.
So that day you just wanted to talk to him?
A Yes.
Q You wanted to talk to him about that? That incident from five month before?
A I never seen him.

Q Okay. I thought you --
A I just said he still comes to my house but I never seen him.
Q Okay. I'm incredibly confused right now. Reggie Porcher, that's the person you shot, do you remember that?
A Yes.
Q Okay. You're -- the thing that you testified to when you were questioned by Mr. Biering, you said something happened with a girl five months before?
A Yes.
Q And you testified, to my question, that you weren't mad about that on the day of the shooting, correct?
A No, I wanted to question him.
Q Okay. So you had hung out with him, he had come over to your house every day, or not every day but a lot between the time of that thing five minute ago and September 16th, 2009?
MR. BIERING: Objection, compound question.
THE COURT: Overruled as to compound question.
A I never hung out with him
THE COURT: Mr. McCray, I know it's difficult. But I need you, when I am making a ruling, I need you to stop speaking. It's very important we don't speak

over each other so that the record will be complete. Thank you.

Mr. Alfaro, you may need to repeat your question.

Do you need him to repeat the question, Mr. McCray?

THE WITNESS: Yes, please.

THE COURT: All right, thank you.

Q (By Mr. Alfaro) So that day, on September 16th, 2009, you just wanted to talk to him?

A Yes.

Q And were you going to talk to him about the thing with the girl?

A Yes.

Q You weren't mad about that?

A I have said in my statement, I'm not for sure what happened.

Q So all I'm asking is you whether you were mad or not mad on September 16th, 2009. You weren't mad?

A No, I wasn't.

Q Okay. So you go there to talk to Reggie. And you happen to see him. What was he doing when you first saw him?

A He was talking to someone else, I don't -- he had his back turned toward me, and just talking to

someone else.
Q Okay. And was he talking to Abdulla?
A I don't know.
Q You don't know, okay.
So he is talking to somebody with his back turned to you, and is that when you and Chris stopped the car?
A Possibly.
Q I'm sorry, I didn't hear you.
A Possibly. I can't exactly say.
Q When you parked -- because you were riding with Christopher; is that correct?
A Yes.
Q When Christopher stopped the car, when you got there and you stopped, was that when Reggie was talking to somebody else with his back turned to you?
A Yes.
Q And what kind of car was that? Do you remember what kind of car Chris was in?
A It was a Volvo.
Q Volvo. Do you remember what color it was?
A Black.
Q All right. And so you stop the car, or Chris stops the car, and you get out. And you had a shotgun with you that day, correct?

A Yes, I did.
Q And where was that shotgun in the car?
A It was on the floor between the door and the passenger side, passenger seat.
Q Okay. Did Chris see the gun before you got out with it?
A I don't think so because I got out of the car before him.
Q Okay. So you had it kind of stuck down by the side of the seat?
A Right.
Q So you get there, you drove there with that shotgun; is that correct?
A Yes.
Q The shotgun was yours, not Chris's?
A It was mine.
Q So when you got in the car before Chris, you put that shotgun in the car, correct?
A I got in the car, well, before Chris. But, yeah.
Q But you were the one that put it in the car?
A I'm the one that put it in the car.
Q And you all were going to Jack Primis?
A No, I was going to West Ashley.
Q Okay. Where did -- so you were going to West

Ashley from your house?
A Yes, from my house. And we headed up the road circled, and I told myself, wait a minute, let's go down the road for a second.
Q Okay. And when you got there, you said Reggie was outside of his car, outside of his truck?
A Yes, he was about a little more than half the distance from that door of the courtroom.
Q From the courtroom? What side of the truck was he on?
A He was still on the driver-type side, but he was just way up in front of it.
Q Okay. So he was on -- he is probably --
A That's good.
Q -- about here from you? When you pull up, when you see him --
A Right, it's about right there.
Q Okay. And you didn't have -- and he ran as soon as he saw you?
A Probably as soon as I called him, something like that. Between the two I guess. He turned around and just.
Q So you see him cause you want to talk to him?
A Yes.
Q What did you say to him?

A I said, Reggie, look here for a minute, let me talk to you something, something like that. He gone.
Q Were you yelling at him?
A No, but I say it loud enough so he could hear me because he wasn't close to me.
Q So you yell at him for him to come talk to you, and he runs to his truck?
A Yes.
Q And he ran to the driver's side?
A Yes.
Q Now was his truck facing up the driveway? Or was it facing toward Jack Primis?
A Yes, up the driveway.
Q So he would have run from this direction that way?
A Yes, right. Past his truck door to come back, yeah.
Q And let's just say for example his truck is here.
A Okay.
Q He runs from there to the passenger side -- or the driver's side, I'm sorry.
A Right.
Q You are back there?
A Yes.

Q So you are to the back and to the right of his truck?
A Yes. On the passenger side, yes.
Q So you are kind of cornered back of his passenger side?
A Yes.
Q So you see him run to his driver's side. He opens the door and goes in?
A The door was already open.
Q The door was already open. I want to make sure I'm right on that.
Tell me when you are about the distance -- when I'm the distance that you were when he ran to his truck.
A Closer than that.
Q Closer than that?
A Okay.
Q Right here? About this distance. So we are still about this angle, right?
You are standing here, he is running towards his truck?
A Yes. I guess his truck would be more like by where Mr. Biering is sitting I guess.
A Okay. So he runs to the driver's side, gets in the car that is already open. And that is when you see

him go under the seat for something?
A He was on top or under. He reached in.
Q Okay. But you all weren't mad at each other, right?
A Well, I wasn't mad at him.
Q Okay. So you don't know -- I mean it's fair to say, you have no idea why he went into that car at the time?
A I would think I would know why he would do something like that.
Q Okay. You don't think he might have been just trying to get in his truck to get away?
A No. If he would have do that, he would have jumped in the seat.
Q But he got into the truck?
A He didn't get in the truck.
Q Okay. Now do you recall -- I believe you testified that you recall giving a statement to Sgt. Alteri regarding this shooting?
A Yes, I did.
Q Do you recall telling Sgt. Alteri that Reggie got into his truck, went down and popped up?
A He reached into his truck, yes.
Q And you shot him through the back window?
A Diagonally.

Q Diagonally, okay. So it's fair to say that you couldn't see into that truck when he went in?
A The windows were tinted, and it appeared like he reached for a weapon and draw back.
Q I didn't ask you what it appeared to be, I asked you is it fair to say that you could not see into that truck?
A I could see, but I couldn't see clear.
Q Okay. So you can see through the tinted windows at an angle, but you can't see clear?
A Right.
Q And I believe in your statement, your prior statement was that you were about 15 to 20 yards away from his car. That's where you all parked?
A Feet.
Q Feet, okay. So it's not your testimony today that you had the shotgun in your hand when you got out of that car?
A The shotgun was in the car. I grabbed it. I had my hand on the door. I didn't really leave the car. I had my hand on the door and that's when he returned to car to get it.
Q Okay. So he didn't run because there was some guy yelling out his name holding a sawed-off shotgun.
Q Compared to how you just stood?

A I asked you --
Q Compared to how you just stood, you couldn't see if I had a gun regardless because I am behind his truck diagonally. So no one could see if I had a gun.
Q Okay.
MR. ALFARO: Your Honor, we'd like to get State's Exhibit --
Q (By Mr. Alfaro) Is this the shotgun you had that day?
A Yes, it is.
Q And your testimony is he can't see this?
A If you hold it up he probably could.
Q Can you see it now?
A No.
Q You can't see this shotgun from there?
A You have a truck in between you. You have a truck between you.
Q You had a truck in between you. He cannot see you holding this but you can see him going in his truck, but you can't see clearly?
A Right, because the windows are tinted.
Q Right. And before you shot him you didn't see him holding a gun, did you?
A He was holding something in his hand.
Q I believe on direct you testified that after you

shot him you walked over to him, correct?
A Yes.
Q And you kicked him?
A Yes, I did.
Q Because you wanted to disarm him, correct?
A Yes.
Q And you also testified you didn't see a gun when you did that?
A I didn't see one.
Q How much times passed between the time that you shot him with that shotgun, and the time you walked over to him, kicked him, and didn't see a gun?
A Had to be seconds.
Q Seconds?
A Seconds.
Q So in seconds that gun disappeared?
A No. We moved from the area where he got shot.
Q Oh, okay.
A He got shot in this area. He ran with his truck for about -- ran with his truck for, I don't know, about two car lengths I guess and then he fell.
So after he got shot at was not where he ended up. He ended up further away.
Q So your testimony was after you shot him he was still moving around, up and moving around?

A Yeah, he got up and went back over to the people he was talking to.

Q What did you do after you -- so he gets up, and let me back up a minute.

You shoot him, he eventually goes down to the ground, correct?

A No, he didn't go to the ground.

Q Okay. When you kicked him, was he laying down, was he sitting down, was he standing up?

A He was getting up because the truck caught his foot. So he was getting up.

Q So he is getting up and you kick him back down?

A No, I didn't kick him back down. He got up.

Q You said you kicked him to disarm him?

A Yes, I kicked him. I didn't see a gun right there because he moved from different spots and, well, the truck just kept rolling.

But then he just got up.

Q There were a lot of other people out there then, weren't there?

A There was a lot of people out there.

Q And those people had just witnessed you shoot their friend and their family member?

A There is not one single person said they witnessed me shoot him. Besides Joseph Williams. You

got the records.

Q Are you denying that you shot him?

A No, I'm tell you I shot him.

Q Are you denying that there were people out there when you shot him?

A I'm telling you there was people out there. There was people out there.

Q But nobody could have seen it?

A You got the records. You heard the testimonies.

Q I did hear the testimony?

A Yeah. Everyone said well we perceive you fired a shotgun, you had a gun.

Q But perception aside, you shot him?

A Ron Santa McCray shot Reginald Porcher in self-defense, yes.

Q All right. So Ron Santa McCray shot Reginald Porcher who he didn't see with a gun?

A He had a weapon in his hand.

Q You went over there --

A -- looked like a weapon. You say he had an ink pen, you say he had an ink pen. Whatever he grabbed, he pointed it my way.

Q Okay. Well before I ask this question, if he had an ink pen in his hand, would you have shot him with a shotgun?

A No.
Q So nobody saw you shoot him. But after you shot him, because you do admit that you shot him, correct?
A One person said I shot him.
Q You just said -- well two people did because you just said Ron Santa McCray shot Reginald Porcher?
A You want to call me another person, that I saw myself shoot him?
Q Okay.
A I stood outside myself.
Q You said seconds after you shot him you walked over to kick him and you didn't see a gun?
A Not in that vicinity, no.
Q Did you go look in the other vicinity?
A No, I did not.
Q All those other people out there, their friends and family of Reggie Porcher, and there is a gun laying around?
A I don't know if they're related to him. I'm related to the people that's out there.
Q All right. But he had to at least know those people, wouldn't you say, since he was standing out there talking to them? Is that fair to say?
A I'm sure he does.
Q So there is a gun lay around with all of

Reggie's friends out there, and you went to disarm him but you didn't feel the need to go find that gun that you supposedly thought he had?

A No. Once again after -- when I first saw him, I thought I hit him. But when he started walking around this and that, I said I might have missed him or something because he was walking around.

Q You only shot him once, correct?

A Once.

Q The guy that you were scared of because you thought he had a weapon, you shot him, he is up and moving around, and there is a gun that supposedly is out there somewhere, and you didn't do anything else?

A I don't know if you could use that word, scared.

Q Okay.

A I'd use the word probably felt threatened.

Q You weren't scared of Reggie Porcher?

A Not afraid of him.

Q You had no reason to be afraid of him?

A But I have cautions of him.

Q Okay. You weren't too cautious of him because you told Sgt. Alteri that you were going there to beat him up?

A I was telling him I was going somewhere to beat him up, but I did not know where he was.

Q Do you recall telling Sgt. Alteri, now, you know, I can tell you my intentions, I was going to beat him up?

A Now I can tell you my intentions.

Q In your statement.

A Those are not my words.

Q Those aren't your words to Sgt. Alteri?

A Now I can tell you my intentions?

Q You don't recall telling -- you didn't tell Sgt. Alteri --

A I think I said if I was just, you know, run across him. I wasn't doing nor more than probably have a fight with him or something like that.

Got a lot words in there just now.

Q (By Mr. Alfaro) While they're queing that up, so after you went over and kicked him, didn't see the gun, is that when you left?

A Yes.

Q Okay. And you walked back over to Cleggett's car, Christopher's car, the Volvo?

A Yes, sir.

Q And did you have the shotgun with you when you did that?

A Yes, I did.

Q And did you say anything to anybody else as you

were walking away?
A Not that I can recall.
Q Now Reggie didn't say anything to you before you shot him, did he?
A No, he did not.
Q And based off of your statement and your testimony, there was no physical confrontation between the tow of you, was there?
A No, there was not.
Q I think we've got that part where you said before.
(Whereupon, a portion of State's Exhibit No. 137 is played in open court.)
Q (By Mr. Alfaro) Do you recall now saying you were going to beat him up?
A I said that already. I am thinking with the words that -- sounded like you added some more words towards that. I said that was my.
Q I asked you if you were going to beat him up?
A And I said yes.
Q Okay.
A But in your statement you added more words in there.
Q Okay, we will move past that then.
So Reggie didn't say anything before you shot

him, correct?
A No, he did not.
Q And it's your testimony that he was up and walking around after you shot him?
A Yes.
Q And how bad was he bleeding?
A He wasn't bleeding at all.
Q He wasn't bleeding at all? Was he holding his neck or anything?
A He was holding his left hand up. And it looked like he was holding it crossways like.
Q Did you think you hit him when you shot at him?
A From how he went down in the truck it appeared that I did hit him. When I went over there toward him, he wasn't bleeding.
Q And so your testimony is that after you had kicked him, he gets up, he goes back to hanging out with everybody?
A He walked towards that way.
Q You didn't say anything else to him?
A (Negative head shake.) I didn't.
Q And you said the truck had rolled back after you shot him?
A Yes. It started rolling.
Q And after you walked back to Christopher's car,

where did you all go?
A We went to a friend of mine's house, Felicia, Felicia Simmons.
Q And is that where you hid the shotgun?
A Yes.
Q And where in her apartment did you hide the shotgun?
A It was under at the foot of the bed in her bedroom.
Q Okay. Did you put anything over it?
A Something over it, yes.
Q Do you remember what it was you put over it?
A I really can't. I don't know.
Q After you left Felicia's you at some point came into contact with James Boykin; is that correct?
A Late that -- later on that night. Some hours, a lot of hours.
Q And you asked James to cash a check for you?
A Yes, I was doing a job over at James Island. I wanted to get my tools from off the job.
Q And at some point you borrowed Felicia Simmons's car; is that correct?
A Yes.
Q And is that a white Chrysler 300?
A Yellowish, creamish.

Q And after you were taken into custody and you met with Sgt. Alteri, he gave you the statement that we just played a part of?

A Yes.

Q Took your statement?

A Yes.

Q And before he took your statement, he gave you Miranda rights, correct?

A Yes, he did.

Q And you indicated that you understood those?

A Yes, sir.

Q And he didn't threaten you or force you in any way to give that statement?

A No, sir, he did not.

Q As a matter of fact during the statement you're relaxed enough that you are kind of laughing, and cutting a joke or two in that, aren't you?

A Not cutting a joke or two. He was referring to someone else saying how do you think this person might feel about it. And I was like a man, you know, probably, you know.

Q I think at some point he asked you --

A Yes, he did.

Q -- about how you were acting, and you indicated something to the effect that you have a strange way of

showing your emotions?
A Right. My actions was more to the questions that he was asking me. Because I know he asked me something about some pond that James told him about, some pone. Somebody else was talking about a Durango. I don't know.
Q But the shotgun that you hid at Felicia's is the shotgun that you used to shoot Reggie Porcher?
A Yes.
Q No question about that?
A No question about that.
Q Okay.
MR. ALFARO: All right, thank you.
Please answer any questions, follow-up questions Mr. Biering has for you.
THE COURT: Mr. Biering.
MR. BIERING: I don't have any further questions for this witness at this time.
THE COURT: All right.
Ladies and gentlemen -- did you have any additional witnesses?
MR. BIERING: Your Honor, I am checking on one matter. I believe, if I could approach, Your Honor.
THE COURT: You may just for scheduling.
MR. BIERING: Yes, ma'am.

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: Ladies and gentlemen, there is an issue that I must take up outside of your presence. While you are in your deliberations room at this time, we are close to the point where you will hear closing arguments on behalf of counsel and be instructed on the law applicable to this case.

Ladies and gentlemen, I will need to know if your preference is to begin your deliberations this afternoon, or to continue those in the morning.

So, Madam Foreperson, that will be your task during our break. We are going to take a break. Once you have your answer, if you could please let me know. Thank you.

Mr. McCray, stay seated. Please rise for the jury.

(Whereupon, the jurors exit the courtroom.)

THE COURT: Mr. Biering, are you ready?

MR. BIERING: My secretary is literally turning off of Main Street on to --

THE COURT: I don't know what that means, Mr. Biering.

MR. BIERING: There is an item that she is bringing my office that I require to call this next

witness. And it will be very brief.

THE COURT: Is that witness here?

MR. BIERING: Yes, Your Honor.

THE COURT: All right. And is the witness on the witness list?

MR. BIERING: Yes, Your Honor.

THE COURT: All right. Let's bring Mr. McCray back in.

The jury has indicated they wish to begin their deliberations in the morning.

Mr. Biering, you have one additional witness?

MR. BIERING: Yes, Your Honor, I do.

THE COURT: You indicated you needed a document. Can we start the testimony without the document?

MR. BIERING: It is so brief that if I did I would just be standing there. I'm going ask to admit a photograph, Your Honor. And it has been provided to me by the State.

THE COURT: Is there no way to agree on the admission of the photograph?

MR. BIERING: I requested that, Your Honor. I'm comfortable with the stipulation that that photograph would be admitted into evidence.

MR. ALFARO: Your Honor, it is a photograph that requires an explanation.

For the purposes of the record, it's a photograph that shows a knife that was recovered during the search of the victim's truck that would require, I think, the Crystal Spence would be the best witness for that since she is the one that searched the truck.

THE COURT: All right. It was Sgt. Shuler who previously from forensics --

MR. ALFARO: No. Mr. Biering, I believe is wanting to use Bobby Shuler as the case agent to testify about that, but.

THE COURT: All right. So the photograph is in your possession?

MR. BIERING: Your Honor, that's what they are bringing to me is multiple copies of the photograph.

Your Honor, can we approach?

(Whereupon, a discussion was held at the bench off the record.)

THE COURT: Let's bring in the jury.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Thank you, please be seated.

Madam Foreperson, we received your note, it will be marked as Court's Exhibit No. 1. We will break for the afternoon. It's an appropriate time for us to break.

Please do not begin your deliberations. Do not

discuss this case amongst yourselves. After the completion of any additional testimony and the introduction of any exhibits, you will hear closing arguments on behalf of counsel. And then I will instruct you on the law applicable to this case.

Ladies and gentlemen, please remember that you will have all of the exhibits that have been made part of the record in this case in the jury room with you while you are making your deliberations.

Since you have indicated you are ready to go home for the afternoon, we are going to break. Please again be back where the bailiff instructs you to return at 9:15 in the morning. Once all of you are here, we will begin with the trial of this case.

Please have a wonderful afternoon. Please remember all of my admonitions. Thank you. See you in the morning.

(Whereupon, the jurors exit the courtroom.)

THE COURT: Have a seat. Thank you.

Mr. Biering, we are breaking, it is approximately 3:35 we are going to break.

It is my understanding that Ms. Spence is not available to be here in a timely fashion. And given the juror's note that they wanted to leave, we want ahead and took a break.

It is my understanding that is the sole additional witness. Is that correct?

MR. BIERING: Yes, Your Honor.

THE COURT: All right. And the State's concern was that that would be the sole witness because you may have some rebuttal witnesses?

MS. WILLIAMS: Yes, Your Honor. We have rebuttal witnesses here, prepared to testify. If his sole witness is Crystal Spence, we are going to release them. But if he decides tomorrow to put on another witness, I can't get them back.

THE COURT: Mr. Biering has indicated that Ms. Spence is the sole remaining witness on behalf of the defense.

MS. WILLIAMS: Thank you, Your Honor.

THE COURT: All right. We have gone over some charges. Mr. Biering, I will await any additional charges that you are requesting.

As I indicated to you, I will not be charging voluntary manslaughter based upon the testimony that was presented by Mr. McCray. The copy of the verdict form, if counsel will review. If you will present me any additional charges that you think the Court needs to instruct. I have included the spirit of all of your charges that you have included.

It may not be word-for-word, but all of your charges are included. And likewise to the State.

Thank you. We are at ease until 9:15.

Thank you.

MR. BIERING: Thank you, Your Honor.

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

* * * * *

THE COURT: Mr. Biering, I'm going to mark your defendant's request to charge as Court's Exhibit 2. And based upon the testimony as presented at this time will be charging self-defense, including the duty to retreat from your own property.

Note the State's objection to that inclusion. Mr. Biering, are you prepared to go forward at that time?

MR. BIERING: I am, Your Honor.

THE COURT: And we had an in-chambers conference and I indicated to you we would put Ms. Spence on the stand. My understanding is that is your final witness, the State has no rebuttal witnesses, and then we would immediately go into closing.

I am reserving your argument concerning all motions and matters that would normally be presented at the close of your case. If, based upon Ms. Spence's testimony, I think that there is a reasonable likelihood that directed verdict will be granted, I will allow you that opportunity.

All right.

MR. BIERING: Thank you, Your Honor.

THE COURT: Is the State ready to proceed and to proceed with closing at the close of Ms. Spence's testimony?

MR. ALFARO: Yes, Your Honor.

THE COURT: All right. My understanding is Ms. Williams will go first opening on the law, Mr. Biering and then Mr. Alfaro; is that correct?

MR. ALFARO: Yes, Your Honor.

THE COURT: All right. Let's bring in the jury.

THE COURT: Ms. Spence, I will remind you that you are still under oath.

THE WITNESS: Okay, thank you.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Good morning, please be seated.

Ms. Spence, I remind you that you are still under oath.

CRYSTAL SPENCE,

after having PREVIOUSLY been sworn to tell the truth, the whole truth and nothing but the truth testified on her oath as follows.

THE COURT: Mr. Biering.

MR. BIERING: May it please the Court, Your Honor.

Permission to approach the witness, Your Honor?

THE COURT: You have continuing permission. Thank you.

MR. BIERING: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR BIERING:

Q Good morning, Detective Spence.

A Good morning.

Q I'm going to hand to you what have been premarked as Defendant's Exhibits 3 and 4.

Are you familiar with those photographs?

A Yes, sir.

Q Are those photographs that were taken during your investigation of the scene of the events that we are here talking with this week?

A Yes, they were.

Q And can you describe what is shown in Defendant's Exhibit 3? Photograph Exhibit 3?

A It is a knife.

Q And can you describe that knife?

A It's a got a serrated back, a black handle, approximately maybe six inches long.

Q Can you describe what is shown in Defense Exhibit 4?

A It's a shot from the back of the vehicle through the shattered window to the front of the vehicle using trajectory rods.

Q And you've had an opportunity -- those were pictures that were taken during your investigation, right? You were there on the scene that day?

A Correct.

MR. BIERING: I would move to admit 3 and 4 into the record as Defendant's Exhibits.

THE COURT: Any objection?

MR. ALFARO: No objection.

THE COURT: Defendant's 3 and 4 into evidence without objection.

(Whereupon, Defendant's Exhibit Nos. 3 and 4 are admitted into evidence.)

MR. BIERING: Permission to publish to the jury.

THE COURT: You may publish.

Madam Foreperson, when all of the jurors have reviewed that, if you will just hand them to the bailiff. Thank you.

Q (By Mr. Biering) Did you find any other weapons in the vehicle that day?

A No, sir.

Q Detective Spence, showing you what has been premarked as Defense Exhibit 5. Is that also a photograph that was taken during your investigation that day on the scene?

A Yes, it is.

Q Is there another knife depicted in that?

A Yes, there is.

MR. BIERING: Thank you. Move to admit this as

Defendant's 5.

THE COURT: Any objection?

MR. ALFARO: No objection.

THE COURT: Defendant's 5 into evidence without objection.

(Whereupon, Defendant's Exhibit No. 5 is admitted into evidence.)

MR. BIERING: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Alfaro.

MR. ALFARO: Thank you, Your Honor.

Your Honor, I'm going to wait until the jury finishes.

THE COURT: Take your time.

CROSS-EXAMINATION

BY MR. ALFARO:

Q Deputy Spence, regarding Defense Exhibit 3 the knife I believe you said was a serrated-back knife. Where was that knife located?

A In the passenger back seat pocket, at the bottom of the pocket.

Q You said at the bottom of the pocket?

A Uh-hum.

THE COURT: Is that yes?

THE WITNESS: Yes, sir.

Q (By Mr. Alfaro) When you first looked into the vehicle, was it readily apparent? Did you see it?
A No, it was not.
Q In your estimation, would it have been accessible from the driver's side door?
A It could have been reached from the driver's side door.
Q When you saw it, it was in the back pocket you said?
A Correct, in the back seat.
Q And regarding Defendant's Exhibit 5. Was that located in the same place?
A Same place.
Q Were either of those knives on the front seat of the vehicle?
A No.
Q Either of those knives on the back seat of the vehicle?
A No.
Q And regarding Defendant's Exhibit 4, the trajectory rod. There was a lot of testimony when you were on the stand the first time about trajectory rods.
Is this any different than the ones we testified about, or you testified about before?
A No, just a different angle.

MR. ALFARO: Thank you. No further questions.

THE COURT: Redirect?

MR. BIERING: None, Your Honor.

THE COURT: May this witness be excused?

MR. BIERING: Yes, Your Honor.

THE COURT: Any objection from the State.

MR. ALFARO: No, Your Honor.

THE COURT: You may step down. Feel free to remain with us. Thank you.

Call your next witness.

MR. BIERING: Your Honor, the defense rests.

THE COURT: All right. Reserving all motions and matters at the close of the defendant's case, does the State have any rebuttal?

MR. ALFARO: No, Your Honor.

THE COURT: Ladies and gentlemen, you have now heard all of the testimony that will be presented in this case, and received into evidence all of the exhibits that will be part of the record in this case.

We have now reached the stage in the trial where you will hear closing arguments on behalf of counsel. The State will open first on the law. The defendant will present his closing argument. And then the State will have an opportunity for rebuttal.

Ladies and gentlemen, after you have heard

closing arguments, I will instruct you on the law applicable to this case. Please remember what is contained in the attorney's closing arguments is not evidence in this case. It is only their contention as to what the evidence has shown.

Please give your attention to Ms. Williams.

MS. WILLIAMS: Thank you, Your Honor, may it please the Court.

MR. BIERING: Your Honor, can I approach on one issue?

THE COURT: You may.

(Whereupon, a discussion was held at the bench off the record.)

MS. WILLIAMS: Thank you, Your Honor, may it please the Court.

THE COURT: Yes, ma'am.

MS. WILLIAMS: Mr. Biering.

Ladies and gentlemen, I want to start by giving you a very sincere thank you. Because we all realize how tedious some of this testimony has been. And how difficult some of it has been to listen to.

I want to apologize in advance for some of the language that was used. And I might have to repeat some of that language. Mr. Alfaro might have to repeat some of that language. It's not language we use, but

it's in the case so we apologize in advance for that.

I'm going to very briefly tell you a little bit about the law. Then I will sit down, Mr. Biering will speak with you, and then Mr. Alfaro will talk to you about the case.

If I say anything that is different than the Judge, please excuse me and defer to the Judge. She is the authority on the law. So if that happens, it's inadvertent and it's not meant to be that way. So please defer to the Judge.

Now the State has the burden of proof, and we accept that burden. Murder is what we have to prove. Murder is the unlawful killing of another person with malice aforethought. Seems like a very simple statute, and it is in some ways.

Murder, unlawful killing. Ron McCray takes a sawed-off shotgun, shoots it through the back of Reggie Porcher's truck, shoots him in the back and the shoulder and kills him, killed another person.

Malice aforethought. Seems like a tricky concept, but it's a concept we deal with everyday. We deal with evil in this world. We deal with hatred. We deal with wicked hearts. Going up to someone who is bleeding on the ground, kicking them in the head and saying, die mother-fucker die. If that's not malice, I

don't know what is.

Malice can be expressed or implied. Words can be used, or you can imply it from the conduct, showing total disregard for human life. It can also be inferred from the use of a deadly weapon. In this case you saw the deadly weapon over and over again, the sawed-off shotgun.

Reasonable doubt. Reasonable doubt is often described by lawyers in very long examples, big words. It is a very interesting concept. It's not that hard to understand if you use your common sense. It's not all doubt. There is nothing in this world, or very few thing, we know beyond any doubt. And that is not required by the law.

And when you listen to the Judge's instruction she will say, it is not all doubt. So keep that in mind. If you came in here not knowing anything about this case, and you know now that that man murdered Reggie Porcher, I would submit to you that we have proven it beyond a reasonable doubt.

Self-defense. The Judge is going to charge self-defense in this case. That does not mean that this is a case of self-defense. Self-defense is a concept that requires four components. And it's not or, it's and. So every single component has to be

there for Mr. McCray to have self-defense.

The first one is a very important one for this case. The first element is defendant must not be at fault in bringing on the difficulty. His own testimony was that he went there to beat up Reggie Porcher, at best, if you believe that. He went there with a sawed-off shotgun to beat up Reggie Porcher. He brought on the difficulty.

Must have actually believed in imminent danger of losing his life, or serious bodily injury, or have actual imminent danger of losing life or serious bodily injury. So you have to believe that Ron McCray actually thought he was in imminent danger. And you are the sole judges of the credibility.

Now the third one I'm not going to read the whole thing, but what it basically says is that it's based on the standard of a reasonable person. The reasonably prudent man. The important concept there is it's not based on Ron McCray's mind, it's based on the reasonable person in society.

And then the last one is, defendant had no other probable means of avoiding the danger of losing his own life, or sustaining serious bodily injury. Getting in his car and leaving.

The last thing I want to discuss with you is

kind of an obvious concept. There are two kinds of evidence; direct and circumstantial. If it's raining outside, and you look out the window and you see rain, that's direct evidence. If people see Mr. McCray shoot Reggie Porcher, that's direct evidence.

Circumstantial evidence is if Mr. Alfaro came in here with wet clothing, then you would know it's probably raining outside, and you heard thunder.

In this case, Mr. McCray taking the murder weapon, hiding it in a completely other town, and then trying to get money so that he can leave town is circumstantial evidence that he committed murder, that he's trying to hide his crime.

I want to thank you again. I so appreciate the time and attention you have given us. And please pay attention to Mr. Biering.

THE COURT: Mr. Biering.

MR. BIERING: May it please the Court, Your Honor.

Mr. Alfaro, Ms. Williams, Mr. West.

Good morning. It has been a long week of some tedious testimony, numerous breaks, and up and down. And just as Ms. Williams thanked you, we thank you as well for your attention. It's difficult testimony. It's a difficult time to hear about death. It's

difficult to think of all the different situations and people that are involved; the fathers, the mothers, the siblings.

Death is never easy. When I stood before you earlier this week, I asked you to imagine a tree. I asked you to think about a tree in your life, a gathering place. I asked you to think about the different gathering places that we have in our communities.

Makes me think about some of the trees maybe that I have stood under, maybe with people after they are in the midst of grieving a death. I think about pictures under the same tree that I talked to you about, that vision that I have of that tree, that gathering place with the boards nailed to it. The remnants of makeshift tree houses, Capri Suns, those smells, those thoughts.

Think about standing there after there has been a death. And again, death is never easy.

We talked about that. I also told you that you were going to hear about a different kind of gathering place this week. That you were going to hear not about a tree that was littered with boards from makeshift, makeshift tree houses, but you are going to hear about a different kind of gathering place. And the reality

is I think the facts would show that you heard about a different type of gathering place this week.

The law provides that you are innocent until proven guilt. You are going to hear that if the State does not prove beyond a reasonable doubt the allegations in this case, that you should render a verdict in favor of the defendant.

I look at that as starting at zero. The State having the burden to bring forward evidence that takes you up to a level of reasonable doubt.

It is very interesting who we heard from in this case, and who we did not hear from in this case. It is very interesting as to what information was lost within the first few hours on September 16th, 2009 that unfortunately I don't think can ever be recreated.

Almost every witness that was asked a question, I think every witness that was asked a question about description of that scene, they described it as chaotic. But there was some consistencies as to what they described and who they described being there.

And we heard names Abdulla Fishburne, Jarvis, Lavon. Where is Abdulla Fishburne? Why didn't the State want you to hear from Abdulla Fishburne? Why is it that nobody talked about Abdulla Fishburne unless it was brought up in cross-examination?

Why didn't they talk about Jarvis? Why didn't you hear from him? Why didn't you hear from Lavon Mack? Let's go through the people that you heard from. And I'm going to go a good bit longer than Ms. Williams because I only get one opportunity to stand up.

First you heard from Charleston Police Officer -- let's walk through the testimony. You heard from Charleston Police Officer Tony Daniels. Tony Daniels responded to the scene and put out tape. That's pretty much what he said he tried to do. He tried to control the scene, understand what was going on there so that he could get EMS there. That's what Tony Daniels did, he put out tape.

Joyce Wright testifies. She testifies that she is on her porch. When you look at the photographs of the scene of the events of that day, this is what you're going to see. Looking in from Underlie, if you are in Jack Primis looking into Underlie you're going to see a house, a mobile home over to your right, you are going to see a mobile home over to your left.

Joyce Wright is talking about a house father back. That's what she described. Look for that house in the pictures. She is on her porch.

Felicia Coaxum was sleeping in her mother's

room. Akeem Asby he puts Abdulla and Sleepy at the scene. Tianna Mack-Collins was under her hairdryer. Lantania Asby was in bed asleep. Those are the State's witnesses that they put up to tell you what happened at the scene on September 16th, 2009.

That's all they put up. Jennifer Reed testified that she came to the scene and she did what she is trained to do, and everyone is glad to know we have faithful public servants that will come to areas of chaos to provide us care. She is the EMT. She did what she was supposed to do. But she didn't see the events of September 16th, 2009.

Crystal Spence, who you just heard from again, Crystal Spence investigated a crime scene that was defined by someone that she was not aware of had defined it based on, this is what she said, the only information I was provided is he was shot in the truck.

She investigated a crime scene that was defined by someone that she didn't know based on that sole information.

James Riser, James Riser you remember he was the individual who followed the instructions for the GSR kit that he says that he took from -- conducted on the hands of Reginald Porcher.

I want to take you back in time, okay. He said,

it's simple, I just needed to follow the instructions. This really stuck in my mind. He sat on the witness stand and he couldn't put on rubber gloves. He had to be given trash bags and he wore trash bags on his hands because he couldn't put on robber gloves to handle evidence. But all he had to do was follow the instructions.

He couldn't give you the time that he conducted the GSR test. He gave us a range of time that was approximately five hours.

You heard the testimony from the expert that was presented to you from SLED who says that she analyzed the GSR kit, that a 6-hour window seems to be an important window. She talked about some issue there about, you know, about how it might not matter as much if the person had passed away.

Then she went on to discuss the fact that if the hands were touched, washed, different things could happen to completely, completely take away any potential gunshot residue. And this is what she agreed to. And let me read it.

She agreed to a statement from the FBI Law Enforcement Bulletin, a negative finding does not imply that a subject was not in the vicinity of a recently discharged firearm. It only indicates that no evidence

or primer residue was found on the items tested.

The test itself I think is questionable, and I would ask you to consider how questionable it is considering the person who took it couldn't put on robber gloves, and couldn't tell you when he took it.

You heard from Kokinda, he said Crystal Spence did a fine job.

The State's next witness is an interesting guy. James Boykin. James Boykin is arrested with Ron McCray. In Ron McCray's statement that he gave to Alteri, the video, those questions made it pretty clear that Alteri asked him that Boykin was probably pretty upset, and didn't really realize that there was anything going on.

Boykin, you heard his criminal record. You heard the things he has been involved in. You heard the fact that I had to get back up here and ask him whether or not he actually had been convicted on a failure to register, as he is supposed to each year, as a sex offender. James Boykin wasn't at the scene on September 16th, 2009.

You heard from David Owen, from the Charleston County Sheriff's Department, from his forensics unit, who promptly and without incident put on gloves, described that he had gone to a location, per the

direction of my client given to Alteri, and recovered a gun without incident.

You heard from Scarborough, who actually arrested Ron McCray without incident.

You heard from Bobby Shuler who went through, I think twice you will remember, I think the prosecution asked him and then I asked him very open-ended questions that allowed him basically to restate what he believed his entire investigation to be. He was in charge of the crime scene he said. And he talked a lot about what he knew about this case.

But until we actually had to point out to him, couldn't seem to remember that he had been told within moments of the events about Abdulla Fishburne, through a statement given to him by Felicia Coaxum, then stated that not only had he been provided that information moments after the incident on September 16th, 2009, but he had met with Reginald Porcher's father, met with the person who had died's father and mother -- and you heard the same testimony from Captain Rick Ollic.

And what did they ask him? They asked him, would you look into Abdulla Fishburne, Henry Blaze and Mr. Lincoln. Where is Blaze? Where is Lincoln? Where is the explanation for it?

You heard from James Green. Here's what James

Green -- remember James Green, the expert from SLED? James Green, the expert from SLED, he couldn't tell you what the items of lead were.

He testified that one item, there were five of them, that one of the items was consistent with buckshot. But when asked directly, can you say with any level of certainty what they actually are, couldn't say what they were.

Dr. Presnell, the medical examiner comes in. And she presents that there is no tracking of the individual items that were removed from Reginald Porcher's body, as to which actual items were presented for investigation by SLED.

So this is where we come down to. We are at the end of the State's case. We are at the end of the State's case. I have just recanted for you an outline of the people that they have presented.

They presented fact witnesses from the scene, but fact witnesses from the scene that only talk about events from a certain point forward. They talk about events from a point where Ron McCray is seen with a gun. That's all they talk about.

Why don't they want to talk about what happened before? Who did you hear from next? You heard from Joseph Williams. Joseph Williams says he is walking by

the scene. Joseph Williams has no prior criminal record. I think two of the State's witnesses that they presented have criminal records.

So Joseph Williams has no criminal record. He is walking by the scene. And what does he say that he sees? He sees Ron call to Reggie. And then he describes Reggie running to his vehicle. He describes seeing Reggie with a gun. He describes as well that Ron ran to his vehicle and came back with a gun as well. And he describes Ron McCray shot Reggie Porcher.

The question is in those few moments. That's the question.

You've heard from Chavis Wright. Chavis Wright described that the night before he had had contact with Reginald Porcher. Chavis Wright described the night before having contact with Reginald Porcher. And what he described was an angry man, an angry man with animosity towards Ron McCray. That's what he described.

He described experiencing that at the same location of the events of September 16th that Joseph Williams witnessed. Chavis Wright within 24 hours of the events of September 16th saw Reginald Porcher, an angry man with animosity towards Ron McCray.

And Sleepy, Mr. Mitchell. Sleepy testifies that

he hears a shot. Sleepy hears a shot. He is a distance away from the events of September 16th, but he is there on Jack Primis. Close enough to hear.

And at some point he see Abdulla Fishburne running from the scene with a gun in his hand. What does he do? He takes the gun, he sells it.

Sgt. Alteri said something that continues to stick with me. You know, people say things sometimes to you. I don't know if this ever happens to you, but my wife gets on me, she says, I overanalyze things too much and I just need to move on and not worry about things that people say sometimes. But some things just stick with me, and I ponder over them.

But this is something that has just stuck with me. He says to Ron McCray in his interview with him on September 17th he says, I just need you basically to give me your side of the story, because, you know, there is two sides to the story. And you got theirs, and yours, and actually, he says, there are three sides. Then you got in the middle, there's the truth.

I think one of the reasons that it sticks with me is that lots of times we are in the midst of a situation, we believe just because we are present that we fully understand everything about it. That just because we are in the same room when something happens,

that we fully understand everything about it.

That's not true, though. And the reason it's not true is that my investigator behind me could be, who knows what he could be doing right now, I have not turned around to look, I don't care to. But I'm in the same room with him.

It's about perspective. It's about the different things that we can see. The different things that you can only see from certain locations and certain perspectives. And here is the perspective that I think we need to really focus on. And the perspective that we really need to focus on is the perspective of Joseph Williams.

Joseph Williams provided a perspective to the events of September 16th. James Wright put into context a perspective that Joseph Williams had.

Ron McCray neither had the perspective that Joseph Williams had, or the context of James Wright.

What Ron McCray had was, walks up. He says it has been months. He says he wants to get some answers, he wants to talk to Reginald Porcher. Because you heard what his testimony was. You heard it in the statement that was given on September 17, 2009.

Reginald Porcher raped the mother of his child and he wanted answers. He wanted answers.

And what he got was a man that instead of talking to him pulled a gun on him and he shot that man in self-defense. The man that he testified that he had known for over a decade. A family he had known almost his entire life.

You heard testimony from Ron McCray that he was on his family's property. Heirs property. Heirs of the estate of Joseph Wigfall.

You heard him testify that that heirs property was traced to him through his mother's family. And he provided you an outline of how he was an heir to that property, having a right to be on that property. Having a right to occupy that property. Now to the exclusion of other heirs, but certainly to the exclusion of others.

What you are going to hear from the Judge is this. You are going to hear from the Judge that there is not a duty to retreat from that property. That's what you are going to hear.

We paint a picture of a different tree. We painted a picture of a tree that is not that peaceful, loving tree where we build forts and we drink Capri Suns and we swing on the tire swing. That's not the picture that you have been given.

Ladies and gentlemen, I would ask that you

consider very carefully, as I know you will, the burden the State must carry. They must prove beyond a reasonable doubt my client, without legal justification, took a life with malice forethought of Reginald Porcher.

Ladies and gentlemen of the jury, I presented to you that the fact witnesses that they presented, nor cross-examination that they elicited, provided you with insight into the scene of September 16th, 2009.

They have failed to meet their burden, and we would ask that you return a verdict of not guilty in the case against Ron McCray. Thank you.

THE COURT: Mr. Alfaro.

MR. ALFARO: Die, mother-fucker, die. Don't fear God, fear me. I run Jack Primis. Those are the words of Ron McCray when he went to Underlie Lane with this shotgun and murdered Reggie Porcher for no reason at all.

On September 16th, 2009, Reggie Porcher went to Underlie Lane. He went there for his friends, his family, neighborhood kids who had just gotten off the school bus, he went there, was hanging out with them, and everything is fine. Everybody is getting along. There is no problem.

The problem started when that man showed up with

that shotgun. Because that man was mad about something that happened -- let me rephrase that -- something that may or may not have happened two months, five months ago.

Gets out of his car, black Volvo, with that shotgun. He walks up to Reggie, or walks toward Reggie, who is away from his truck, yells at him that he wants to talk to him. He wants to talk to him while he is holding that shotgun. Doesn't sound like a conversation I want to be a part of.

He yells at him. Reggie sees Ron McCray carrying that shotgun and does what any reasonable person would do. Any reasonable person would try to get away. He tried to get to his truck and he tried to get out of there.

He made it to his truck. But he wasn't fast enough, he didn't get out of there in time because Ron McCray fired that shotgun, that sawed-off 12-gauge shotgun through the back window of his truck. Five pellets, buckshot, lead pellets, hit him in the back, shoulder. One goes in, comes back out severing the jugular vein.

He is dying; but he hasn't died yet. He falls down. The truck rolls back across the street. Ron McCray is not done. Ron McCray walks over to him with

the shotgun still and, as he testified, as Reggie is trying to get up, struggling for his life, he kicks him, he spits on him, and he says, die mother-fucker, die.

He gets in his car, or as he is walking back to his car to leave, he is not done talking to Reggie and the other people that are out there. That's when he says, I run Jack Primis. Don't fear God, fear me.

That's what happened on September 16th, 2009. That's what this case is about. This case is not about the tree.

Mr. Biering asked you to go on an imaginary journey to this tree. He tells you about one tree where there are kids playing and there's Capri Suns. Then he tells you about another tree, it's supposed to be a darker, evil tree. This doesn't have anything to do with a tree. You know why? Because this could have happened anywhere.

Ron McCray had been looking for Reggie Porcher for months. He found him at the tree. He had a sawed-off shotgun, and he murdered him. He did it in broad daylight in front of people that have known him for years. That knew who he was.

He did it in broad daylight in front of all those people and that tells us that he would have done

that anywhere he ran into him. It just happened to be at the tree. So it's not about the tree, it's not about that.

It's about -- it is about the sights and sounds out there, though. It's about what those people that were out there heard.

Now one -- there are some other things that this case is not about. This case is not about Abdulla Fishburne. What do we know about Abdulla from the testimony? Ron McCray beat him up the night before. Abdulla is friends with Reggie. Maybe that's why Abdulla is not here.

This case is also it's not about now that the victim supposedly brought a knife to a gunfight. He has a knife in his car. It's wedged in the mat pocket in the back seat. Doesn't mean anything. Even more important, Ron McCray doesn't say anything about a knife. Nobody says anything about a knife.

It's not about that. It's about what Ron McCray did on September 16th, 2009. And it always not about heirs rights and property. My family used to own a lot of property in Moncks Corner. Doesn't mean that I get to go to that property that they used to own, take a shotgun and start blasting people that I may or may not have had a problem with months ago. It doesn't.

And he asked you also to talk about or think about what Joseph Williams said. I think we all remember Joseph Williams. And I will talk a little bit more about Joseph Williams, and Sleepy and Chavis in a little bit.

What is important is what Ron McCray did on September 16th, 2009. Ron McCray is guilty of murder. He killed Reggie Porcher on September 16th, 2009 in Berkeley County with malice aforethought. He had hatred, ill will and hostility in his heart.

And how do we know that? Malice, as Ann Williams told you, it's expressed or inferred. Here you speak words that express hatred or ill will, prepared to do the act beforehand. You show up -- track somebody down, you show up with a sawed-off shotgun, you shoot them, you tell them to die, that's expressed. It doesn't get more expressed malice than that.

Infer it from conduct showing total disregard for human life. It can be inferred from the use of a deadly weapon. Shot him with a shotgun, kicked him while he was bleeding and dying, he spit on him.

Now we do have the burden of proving this to you beyond a reasonable doubt and we have done that. Reasonable doubt is not all doubt. It's not absolute

certainty. Evidence that we have presented should leave you firmly convinced that the defendant is guilty. If you believe that, you are firmly convinced, then he is guilty.

Mr. Biering brought up self-defense. In order to have self-defense, in order for Mr. McCray to have been acting in self-defense, he has to have all four of those elements. He doesn't have any of them, much less all of them.

He cannot be at fault in bringing on the difficulty. Reggie didn't go to Ron. Ron tracked down Reggie. Ron made the decision to stop the car, get out with the shotgun, and murder Reggie Porcher.

He has to believe he is in imminent danger of losing his life or suffering bodily injury. He shows up at the scene with a shotgun in his hands. He yells at him to come talk to him. And when he runs, that supposedly puts him in imminent danger.

You are the guy with the shotgun, and you are the one that thinks you are in danger. He doesn't have that. No ordinary, reasonable, prudent person would think that they were in danger under that circumstances.

And the defendant had not other -- McCray had no other probable means of avoiding the danger. Don't

stop. Let this thing go that you are supposedly over anyway. He supposedly cooled off, it's two or five month ago. If he had stayed in that car and kept on going to wherever it was he claims he was going, none of this would have happened.

This is not self-defense, this is murder. As I said, he is clearly at fault for brining on the difficulty. He was the only one with the gun. He was the only one that said anything that day. And he is the only one that fired a shot, a gunshot that day. Things we just talked about.

And back to that one, that he could have avoided the danger. Don't get out of the car. Know why he got out of the car? Because he is one that had the shotgun.

And Mr. Biering went through the list of all, or some of the witnesses who testified for the State. And he is right. No one single witness, other than the defendant, no one single person that was out there that day testified that they saw every single second of those three minutes.

But all of those people saw Ron McCray with the shotgun. They heard the one gunshot. They saw Reggie holding his neck bleeding. And they watched Reggie Porcher die at the scene that day.

And if there is any part that any of them missed, Ron McCray said it for you. Ronald Santa McCray killed Reggie Porcher. Boykin wasn't out there that day, but Boykin tells you that when he is with McCray, McCray says, I killed him. Die, mother-fucker, die.

Now those witnesses, there is one witness that is not listed on there was Mr. Porcher. Reggie's father. He tells you how he got the call, he went to the scene, and he watched his son dying or dead, face-down in the dirt on Underlie Lane.

That is what this case is about. And that's what those people that testified, the friends and family that testified, the ones that called 911, they saw McCray with the shotgun. They saw him walking up the driveway with the shotgun. Reggie didn't have a gun. Reggie was there first. Reggie didn't say anything to McCray before McCray shot him.

They tell you that and McCray tells you that. One shot fired. They saw McCray standing over Reggie after he shot him with the shotgun, McCray tells you that too. They see him kick him, spit on him, tell him to die. And there is one other thing that the defendant said other than tell everyone there I'm God, it's something about God that I'm not going to repeat.

He said it and they heard it.

And after McCray leaves they help Reggie up. They call 911. He is bleeding, pouring blood from the neck and shoulder. They put him in the car, the Nissan that's in the pictures. He gets out. He is staggering around, he is begging for help. Help me, Ron just shot me. He staggers in the driveway, he collapses in the dirt.

Tianna holds him, sits with him until EMS can get there. He is already dead.

Now what is important about -- I mentioned the car so I will talk about it for just a second. McCray tells you that when he went over and kick Reggie he wasn't bleeding, thought he was fine.

You will see all that blood. You saw all that blood in the picture in that Nissan. You will see the victim's blood on the outside of his truck. Victim's blood was on the ground, in the road. Victim's blood was in that Nissan.

Now what else outside of those witnesses tell you that this is murder? The GSR kit. Mr. Biering made it a point that Detective Riser couldn't get the gloves on, all right. The six-hour window Mr. Biering said that Riser -- as Mr. Biering said, Riser testified that that was within five hours. Clearly within the

six hours that you could get it, whether he was alive or dead. But as the expert said, six hours doesn't really matter as much when the person you are taking the swabs from has died.

There was no GSR residue found on any part of his hand. And as Mr. Biering said the -- he read something to you from an FBI bulletin that negative result doesn't necessarily mean they weren't in proximity of a gun.

Well that's true. Because he was in proximity of a gun. He was in proximity of that shotgun that Ron Mcray shot him with. But what the GSR tells us is that he didn't fire a gun. What the eyewitnesses tell us that he didn't fire a gun. He didn't have a gun.

What Ron McCray says is he didn't have a gun. He didn't fire a gone. There are no guns found inside the victim's truck. No guns found on the victim or around the victim. Like I said, there is a knife that he kept in his truck in the back pocket of the back seat.

And the trajectory of the pellets. The pictures that you saw, all of the shots showed that the gunshot, the shotgun blast came from the back of the truck into the back of the truck from behind. He shot him from behind. From outside to in. From behind to front.

There is damage to the back window frame, it's bent in. Back window shattered, there is glass inside the car on the back seat. The front windshield is cracked. Shotgun pellets, other than the ones that were removed from Reggie, on the front floorboard, one's up in the visor. The wadding from the shotgun is on the dashboard. And there is a hole in the frame of the truck.

As Crystal told you, Crystal Spence told you, there is nothing that indicates that any shots were fired from inside of that truck. The only shot fired came from outside, and it came from Ron McCray.

EMS told you, Jennifer Reed told you that Reggie was already dead by the time they got there. They tried. They tried CPR. They did all the steps that they could. They got him in an ambulance. Tried to get him -- they got him to East Cooper. They tried to revive him, bring him back to life in the ambulance, couldn't do it. They tried again at East Cooper, nothing. He died on Underlie Lane face-down in the dirt at the hands of Ron McCray.

The autopsy evidence Dr. Presnell testified he was shot in the back and the shoulder, five pellets. Mr. Biering was making a point that she couldn't say those were pellets. He got shot with a shotgun.

Buckshot. They pulled buckshot out of his shoulder and out of his back.

Victim's blood is on the driver's side door of his truck, the driver's side, and on the Nissan and on the ground.

And the murder weapon in this case, Ron McCray tells you, that, yeah, the shotgun, I showed him the shotgun, that's the shotgun I used to kill Reggie Porcher. It was a 12-gauge sawed-off shotgun, double-ought buckshot.

These are the shotgun shells that were found at Felicia Simmons's house where Ron McCray told you he hid the gun. This is the shotgun shell, fired shell that Crystal Spence found at the scene where Ron McCray shot Reggie Porcher.

SLED's firearm expert testified that the buckshot that he analyzed, or the items that he analyzed were most consistent with buckshot. You will be able to look at these back in the jury room if you wish. Remington. Remington. Same shell.

We know that's the shells he used because Ron McCray says where he hid the gun. They found the gun where Ron said he hid it. They found the shells where they were. Where the gun was.

And wadding that was found on the dashboard of

the victim's truck, most consistent with filler wads from 12-gauge shot shells. That's what was used. 12-gauge shotgun with those 12-gauge shot shells fired the wadding and the pellets that were recovered. That's what those pellets did, in addition to killing Reggie Porcher.

Now Mr. Biering also referenced Sgt. Alteri, there are two sides to a story, then there's a third side, and somewhere in the middle there is the true. well, Yeah. There's everybody else's side, then there is Ron McCray's side. Ron McCray's confession. And then in the middle is the truth.

Because Ron McCray's testimony was a little bit different than what he said in his statement. In his confession, been looking for him for two months, here it had been over five months. His confession, doesn't know what if anything happened between Reggie and Tiffany. On the stand he said he doesn't know if anything happened, could have been lying to him.

He said he is not scared of Reggie. They were good, they were cool. He had been over to his house multiple times since that happened, supposedly.

He said both on the stand and in his statement that he put the shotgun in the Cleggett's car before they went to Underlie Road. He told Cleggett stop, got

out of the car with the shotgun. He told Sgt. Alteri that is intentions were he wanted to beat him up. He got on the stand and first he said -- well actually he said, no, no, I just wanted to talk. I didn't want to beat him up. Wasn't mad.

Got out of the car with the shotgun, he yelled at Reggie that he wanted to talk to him. On the stand he tells you that he didn't have a shotgun, that Reggie just ran. Reggie, who they were cool, according to him, just ran. Didn't run because of the shotgun, Reggie just ran.

Said Reggie ran to his track after he saw McCray, got in the driver's side, ducked down. And in his statement he says, when he popped up McCray shot him. And in his statement, didn't see Reggie's hands, just his head.

Now he claims that he had to go back into the Volvo to get that shotgun. Now he claims Reggie wasn't in the truck when he shot him. Now he claims that Reggie had something in his hand and pointed it at him. And we went through, and I walked across the courtroom, and I asked, how did you see in the truck? Windows are tinted. It's angled. Didn't see where he was going or what he was doing.

Truck rolls back. He testified that he walked

over to him, he kicked him to disarm him. I asked him, or he says, he kicked him to disarm him. Only problem, there wasn't a gun. Because there never was a gun.

He said that he did that seconds after shooting him. I guess we are supposed to believe that while Ron McCray has just shot Reggie Porcher, and has blasted that shotgun in that neighborhood and everybody is running and scattering, that somebody, I guess it's supposed to be Abdulla, ran over and grabbed the gun just a few feet from where Ron McCray is still with the shotgun and takes this gun that doesn't exist.

He also tells you that Reggie is not bleeding, that he is up and moving, that wasn't sure if he hit him and Reggie just went back to hanging out. That's not what the witnesses tell you. That's not what the 911 tape tells you.

You heard the 911 tape. You hear kids screaming in the background. You hear people crying and wailing because they just saw Ron McCray murder Reggie Porcher. He wasn't just hanging out, he was dying.

He tells you what he did with the gun after. He went back to Felicia's apartment, hid it under the bed, borrowed her car. Boykin, tells you he is with Boykin and he asks Boykin to go with him to cash a check and go to Money Man. That's matches up with what Boykin

says.

Part of what your job is as a jury is to judge the credibility of witnesses. And you can judge credibility by their demeanor on the stand, but also how other witnesses and stories match up and corroborate what they say.

Boykin tells you that he went to Money Man, the defendant tells you that's what they did. He also says Boykin was on the phone a lot before the cops pull him over. And if you watch that statement you can kind of see it click. Wait a minute, I was with Boykin he was on the phone, next thing we know the cops pull us over.

Bobby shuler told you that James Boykin was calling the police and giving them real-time information where they were. Corroboration.

On the stand he admitted it was the murder weapon. He confessed to Sgt. Alteri. He told you it was freely and voluntarily given. That's an issue in any case where someone gives a statement, you have to decide whether that statement is freely and voluntarily given.

He was read his rights. He told you from the stand that it was voluntary. He is laughing. He is relaxed. He is cutting up. Nothing was forced out of him. He sat in that witness stand, Ron McCray, and he

said, Ronald Santa McCray shot Reginald Porcher.

Now let talk about those other witnesses. Joseph Wilson (sic), first of all Joseph Wilson was in the courtroom when other people testified. The Judge has instructed you that you can use that in judging his credibility.

If you need another reason to doubt his credibility, that's a reason you can use. He claims Reggie had a gun, but he doesn't know what type -- what color it was or what type it was or where he got it from inside the car.

Claims Reggie went to the passenger side of his truck. The physical evidence doesn't tell you that, the defendant doesn't tell you that.

He claims Reggie was outside facing the defendant when he was shot by the defendant. He got shot in the back and the side, consistent with being in that truck.

One shot fired, back window of the truck shattered. He got shot inside that truck, not what Joseph Wilson thinks he saw from 30 yards away when they were supposed to be arguing with each other and all he heard was the defendant say, hey.

He did hear one shot, he got that right. But that's the other thing. I told you when Ron McCray

came out of that car with the shotgun, and Reggie saw him and he ran to get away, what any reasonable person would do, he would try to get away. That's every person in the world except for Joe Wilson. Who sees a guy with a shotgun, and sees somebody else supposedly with a handgun, and he just keeps walking on up the road to see what is going on.

He doesn't stay until the police come. No one else mentioned seeing him there. Never called the police. Had to wrong color car. Lifelong friend of Ron McCray.

Edward Bacon, also in the courtroom, also violated the sequestration order, also can use that to judge his credibility. Again, if you need another reason to doubt his credibility, first of all he didn't see anything. Wasn't even there. He heard gunfire, multiple shots.

Chavis Wright. He testified that Ron McCray, the defendant, beat up Abdulla Fishburne the day before and Reggie didn't like that because they were friends. All right. He also tells you that he was in Mount Pleasant when the shooting happened, coming home from work. Claims he went to the scene and when he got there Reggie was sitting in Jeff's car.

Didn't stay and talk to the police. Didn't

really have anything to tell them, but he didn't stay to tell them that he didn't have anything to tell them.

Sleepy Mitchell wasn't even there. He saw Abdulla with a gun running after the shooting happened. Again, this case is not about Abdulla Fishburne, it's about Ron McCray murdering Reggie Porcher.

Ronald Santa McCray shot Reginald Porcher. The eyewitnesses tell you that. The physical evidence tells you that. The defendant's confession and his testimony tell you that.

Ladies and gentlemen, the State has the burden of proving to you beyond a reasonable doubt that Ron McCray murdered Reggie Porcher on September 16th, 2009. And we have proven that to you beyond any reasonable doubt.

THE COURT: Ladies and gentlemen, we have reached the point in the trial where I will instruct you on the law applicable to this case.

I remind you that during this trial you and I have had certain duties to perform. As the trial judge, it is my responsibility to presides over the trial of this case, and I have a duty to rule on the admissibility of the evidence that has been offered in this trial.

You are to consider only the competent evidence

before you. If there was any testimony order stricken from the record, you must disregard that testimony.

You are to consider only the testimony that has been presented from the witness stand, the exhibits that have been made a part of the record in this case, as well as the stipulations of counsel.

I have the additional duty to charge you the law applicable to this case. As the presiding judge, I am the sole judge of the law in this case. It is your duty as jurors to accept the law and apply the law exactly as I state it to you now.

If you have any idea as to what the law is or what the law ought to be and it does not agree with what I tell you, you must abandon your own idea because you are sworn to accept the law and apply the law exactly as I state it to you now.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judges of the facts. A trial judge may not make any comment regarding the facts in this case. You are the sole judges of the facts in this case. Do not think that by anything that I have said or done throughout the progress of this trial, or during the charge on the law, that I have any opinion about the facts in this case. The law does not allow me to have an opinion

about the facts in this case.

This is a matter solely for you to determine. As jurors it becomes your duty to determine the effect, value, and weight of the evidence presented during this trial. The indictment in this case charges the defendant with the charge of murder.

I remind you the fact that the defendant was charged, arrested and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt.

An indictment is simply the formal written instrument by which this case is brought into the court. It is the written document by which this case and the charge are brought and made against the defendant.

Just as the indictments in this case are not evidence, any terminology or labels used to refer to the individuals involved in this case cannot be considered as evidence. For example, the use of words defendant and victim are merely formal labels and may not be considered by you as evidence in this case.

The defendant has pled not guilty to this indictment. A person charged with committing a criminal offense in South Carolina is never required to

prove himself innocent. I charge you it is an important rule of law that the defendant in a criminal trial, no matter what the seriousness of the charge may be, will also be presumed innocent of the crime charged for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations, but it accompanies the defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is not mere legal theory. It is not just a legal phrase. It is a substantial right to which every defendant is entitle until you, the jury, are satisfied from the evidence of the defendant's guilt beyond a reasonable doubt.

The State has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors before in civil cases where you were told that it was only necessary to prove that a fact is more likely true than not true, such as by a greater weight or preponderance of the evidence.

In criminal cases, the State's proof must be more powerful than that. It must be beyond a

reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty. And in criminal cases, the law does not require proof that overcomes every possible doubt.

If, based upon your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find the defendant guilty.

On the other hand, if you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him not guilty.

There are two types of evidence that are generally presented during a trial; direct evidence and circumstantial evidence. Direct evidence is the testimony of a person who claims to have actual knowledge of a fact, such as an eyewitness. It is evidence which immediately establishes the fact to be proved.

Circumstantial evidence is proof of a chain of facts and circumstances indicating the existence of a fact. It is evidence which immediately establishes

collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observations.

The law makes absolutely no distinction between the weight or value to be given either direct or circumstantial evidence, nor is a greater degree of certainty required of circumstantial evidence, then that of direct evidence.

You should weigh all of the evidence in this case. And, after weighing all of the evidence, if you are not convinced of the guilt of the defendant beyond a reasonable doubt, you must find the defendant not guilty.

Necessarily, you must determine the credibility of the witnesses who have testified in this case. Credibility simply means believability. It becomes your duty, as jurors, to analyze the facts and determine which convinces of you of its truth.

In determining the believability of the witnesses who have testified in this case, you may believe one witness over several witnesses, or several witnesses over one witnesses.

You may believe a part of the testimony of a witness, and reject the remaining part of the testimony

of that same witness.

You may believe the testimony of a witness in its entirety, or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice, or other motive in this case.

You may also consider the appearance and manner of a witness while on the witness stand.

I remind you that the rule of sequestration was implemented in this case. The fact that a witness violated the rule of sequestration by remaining in the courtroom prior to giving testimony should be considered by you in determining the weight and credit to be given to you to the testimony of that witness as any other facts, giving it the weight that you think it deserves.

A person who has a past criminal record is competent to testify during trial. A past record does not affect the ability of that witness to testify. The past record may be considered by you, if at all, in determining the witness's believability.

Remember, you are the sole judges of the facts in this case, and of the believability of any and all of the witnesses.

The rules of evidence ordinarily do not permit

witnesses to testify to opinions or to conclusions. An exception to this rule exists for witnesses we call expert witnesses.

A witness who by education or experience has become an expert in some art, science, profession or calling may state an opinion as to relevant and material matters in which the witness claims to be an expert, and may also state the reasons for that opinion.

You should consider any expert opinion received in evidence in this case, and like any other evidence, give it the weight that you think it deserves.

If you decide that the opinion of an expert witness is not based on sufficient education or experience, or if you conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard that opinion entirely.

An expert witness's testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to accept an expert's opinion, even though it is not contradicted.

A statement alleged to have been made by the defendant has been admitted into evidence in this case.

While the Court has determined that the statement is admissible, I instruct you that you make the ultimate decision of whether or not the defendant made the statement.

If the defendant did make the statement, you must determine whether the statement was made by the defendant voluntarily and of his own free will. This means that the statement was not caused by pressure, force, fear, threats, coercion or intimidation, or by hope or a promise of leniency, or a reward of any kind.

In determining whether the statement was voluntarily, you should consider both the characteristics of the defendant and the details of the questioning.

Some of the factors that you must consider are the age of the defendant; the defendant's education or lack of education; the defendant's mental ability or capacity; the defendant's IQ or intelligence; the defendant's background and environment; the place and length of detention; the nature of the questioning; and the advise or lack thereof to the defendant of his constitutional rights; including, but not limited to, the right to remain silent; that any statement could have been used against him in a court of law; the right to have a lawyer present; that if he could not afford a

lawyer, a lawyer would be appointed to represent him without any cost; and that he could stop making a statement at any time.

You must carefully consider all of the surrounding circumstances before you give any weight to an alleged statement.

The State has the burden of proving beyond a reasonable doubt that the alleged statement was voluntary. If you determine it was, you may give the statement any further consideration you deem proper. You must decide what weight, if any, should be given to the alleged statement.

If you determine that the alleged statement was not the free and voluntarily statement of the defendant, you should not consider the statement at all.

In order to establish criminal liability, criminal intent is required. For example, the mental state required to be proven by the State for a particular crime might be purpose, intent, knowledge, recklessness or criminal negligence.

Criminal intent must be proven by the State beyond a reasonable doubt. Criminal intent is always a matter that must be determined by the jury from the circumstances surrounding the situation.

There is no way to prove intent to a mathematical certainty, because there is no way to tell with exact certainty what the person had in mind. The law says that criminal intent may be inferred from the circumstances shown to have existed.

This is how you make a determination of whether or not the element requiring intent was present. It is not necessary to establish intent by direct or positive evidence, but intent may be established by inference in the same way as any other fact by taking into consideration the acts of the parties, and all the facts and circumstances of the case.

Criminal intent is a mental state. It is a conscious wrongdoing. It is up to you to determine what the defendant intended to do based upon the circumstances shown to have existed.

Criminal intent can arise from action, or a failure to act. It may arise from negligence, recklessness or an indifference to duty, or to consequences that is considered by the law to be the equivalent of criminal intent.

The defendant is charged with murder. The State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Malice is hatred, ill will, or hostility towards another

person. It is the intentional doing of a wrongful act without just cause or excuse, and with an intent to inflict injury, or under circumstances that the law will infer an evil intent.

Malice aforethought does not require that malice exist for any particular time before the act is committed. But, malice must exist in the mind of the defendant just before and at the time that the act is committed. Therefore, there must be a combination of the previous evil intent and the act.

Malice aforethought may be expressed or inferred. These terms express and inferred do not mean different types of malice, but merely the manner in which malice may be shown. That is either by direct evidence, or by inference from the facts and circumstances which are proved.

Express malice is shown when a person speaks words which express hatred or ill will for another person, or when the person prepared beforehand to do the act which was later accomplished. Malice may be inferred from conduct showing a total disregard for human life.

The defendant has raised the defense of self-defense. Self-defense is a complete defense, and if it is established you must find the defendant not

guilty.

The State has the burden of disproving self-defense by proof beyond a reasonable doubt. If you have a reasonable doubt of the defendant's guilt after considering all of the evidence, including the evidence of self-defense, you must find the defendant not guilty.

On the other hand, if you have no reasonable doubt of the defendant's guilt after considering all the evidence, including the evidence of self-defense, then you must find the defendant guilty.

The following elements are required to establish self-defense. First, the defendant must be without fault in brining on the difficulty. If the defendant's conduct was the type which was reasonably calculated to and did provoke a deadly assault, the defendant would be at fault in bringing on the difficult, and would not be entitled to an acquittal based on self-defense.

The second element of self-defense is that the defendant was actually in imminent danger of death or serious bodily injury, or that the defendant actually believed he was in imminent danger or death or serious bodily injury.

If the defendant was actually in imminent danger, it must be shown that the circumstances would

have warranted a person of ordinary firmness and courage to strike the fatal blow to prevent death or serious bodily injury.

If the defendant believed he was in imminent danger of death or serious bodily injury, it must be shown that a reasonably prudent person of ordinary firmness and courage would have had the same belief.

In deciding whether the defendant actually was, or believed he was, in imminent danger of death or serious bodily injury, you should consider all the facts and circumstances surrounding the crime, including the physical condition and characteristics of the defendant and the victim.

The defendant does not have to show that he was actually in danger. It is enough if the defendant reasonably believed he was in imminent danger, and a reasonably prudent person of ordinary firmness and courage would have had the same belief.

The defendant has the right to act on appearances, even though the defendant's belief may have been mistaken. It is up to you, and for you to decide, whether the defendant's fear of immediate danger death or serious bodily injury was reasonable, and would have been felt by an ordinary person in the same situation.

Evidence of prior difficulty between the defendant and the victim may be considered in deciding whether a threat existed, whether the defendant had a reason to believe a threat existed, and how serious that threat was.

The intoxication of the victim may be considered in deciding whether the defendant's fear of death or bodily harm was reasonable.

The final element of self-defense is that the defendant has no other probable way to avoid the danger of death or serious bodily injury than to act as the defendant did in this particular instance.

If the defendant was on his own premises, the defendant had no duty to retreat before acting in self-defense.

A person cannot be required to make an exact calculation as to the degree or amount of force which may be needed to avoid death or serious bodily harm. Therefore, in self-defense, the defendant has the right to use the force needed to avoid death or serious bodily harm.

The force used in self-defense does not have to be limited to the degree or amount of force used by the victim. The defendant has the right to use so much force, as appeared to be necessary, for complete

self-protection in which a person of ordinary reason and firmness would have believed to be needed to prevent death or serious bodily harm.

Ladies and gentlemen, I'm now going to go over the verdict form. Madam Foreperson, it is your responsibility to complete the verdict form. The decision must be unanimous, which means all 12 of you must agree on the verdict.

In the Court of General Session for the Ninth Judicial Circuit, 2011-GS-08-947, State of South Carolina, County of Berkeley versus Ron Santa McCray, Defendant. Question number one, we the jury find the defendant guilty. Or, we the jury find the defendant guilty of murder.

Madam Foreperson, you will sign the verdict form indicating again the unanimous decision of all 12 of you. You will sign it, date it, and at that time you will indicate to the bailiff by knocking on the jury room door that you have reached a unanimous decision and have reached a verdict.

Ladies and gentlemen, to the 12, is there any member of the jury panel who cannot complete deliberations at this time, if so please raise your hand?

Ladies and gentlemen -- please let the record

reflect that all 12 jurors have indicated that they can continue with their deliberations. Madam Foreperson, if any member of the jury, before the bailiff brings in the verdict form and evidence to you, indicates otherwise, please immediately alert the bailiff.

Ladies and gentlemen, this will be the last time I indicate this to you. Do not begin your deliberations. Do not discuss this case amongst yourselves. We will be gathering the evidence to come back to you, as well as the verdict form. Once all of those things have been accomplished, the bailiff will indicate to you that you may begin your deliberations. So until that time, do not begin your deliberations.

To my two alternates, this completes your service to this case, but I will keep you. Do not begin your deliberations. Do not discuss this case with each other, or with anyone, until I have released you from service.

Ladies and gentlemen, you are excused. Please take all your belongings with you.

Please rise for the jury.

(Whereupon, the jurors exit the courtroom.)

THE COURT: Thank you, be seated.

Any objection to the charge as read, from the State?

MR. ALFARO: None to the charge, Your Honor. I do believe that when you were reviewing the jury form with the verdict, I think you said guilty both times.

THE COURT: Do you wish for me to bring them back in?

MR. ALFARO: I think probably it's best to do that on record.

THE COURT: All right.

Any objection to the charge as read?

MR. BIERING: Yes, Your Honor. The objection would simply be that I would specifically ask that the Court charge 16-11-440, subsection C, as previously presented.

THE COURT: I have marked that as Court's 2.

Thank you, bring the jury back in.

MR. BIERING: Your Honor, I have got further.

Just the issue of we'd also requested that mistake be charged, we would ask that be charged as well.

THE COURT: I'm sorry, I did not hear.

MR. BIERING: Mistake.

THE COURT: Mistake be charged. It was included, Mr. Biering. Thank you.

MR. BIERING: Thank you, Your Honor.

THE COURT: All right, they are taking a break.

Let me know when they are ready.

I will allow you to articulate at the close of the defendant's case, any motions or matter.

MR. BIERING: At this point now, Your Honor?

THE COURT: Yes.

MR. BIERING: Your Honor, we would renew our motion for directed verdict at this time.

Furthermore, Your Honor, we just take continued exception to our inability to present the evidence that we had that there was a, number one, knowledge by my client. And, number 2, significant numbers of incidents of a pattern, routine of conduct that would have furthered into my client's self-defense argument.

And the testimony has been proffered, but we make note of the continuing objection to that.

Thank you, Your Honor.

THE COURT: Mr. Alfaro.

MR. ALFARO: Your Honor, regarding the directed verdict motion, as at the close of the State's case, any evidence, it's the standard totality of the circumstances. Looking at the evidence in the light most favorable to the State, I believe that there was nothing presented during the defense's case which would substantiate a motion for directed verdict being granted.

THE COURT: All right.

Anything further, Mr. Biering?

MR. BIERING: No, Your Honor.

THE COURT: There has been nothing presented since the close of the State's case that would indicate that your motion for directed verdict should be granted. In the light most favorable to the State, there was the existence of evidence from which a jury could reasonably infer that the defendant was guilty of murder.

Note your exception. There has again been nothing presented that would indicate that the Court would have changed its ruling based upon the prior bad acts of the victim as relates to this matter.

Anything further?

MR. BIERING: Nothing further, Your Honor, from the defendant.

THE COURT: We have marked Court's 2, which was the charge that you presented this morning, requesting -- and I did include the portion of that, just for the record.

And is there anything further regarding charges that we need place on the record, Mr. Biering?

MR. BIERING: No, Your Honor.

THE COURT: All right. Do you believe that the

Court instructed substantially similar to your request regarding self-defense?

MR. BIERING: With the only exception that I have already made as it relates to the 16-11, the statute that I asked. Yes, Your Honor.

THE COURT: And I did include duty to retreat if the defendant was on his own premises, which I believe was the essence of what you requested.

With that there is no other request; is that correct?

MR. BIERING: Your Honor, it's just our position that, because that has been brought back up by the Court, that the essence of what -- the essence of it would not be sufficient. That we requested that code section statute be presented 16-11-440, subsection (c) would be an appropriate charge.

Thank you, Your Honor.

THE COURT: All right.

And anything further before, and we will just be waiting until the jury comes in so I can go back over the verdict form. My apologizes to all the parties.

MR. ALFARO: Your Honor, briefly for the record regarding the statute that Mr. Biering is referencing. The State had opposed the inclusion of the statute itself, feeling it would be unduly confusing for the

jury. There had not been any evidence presented that would substantiate that charge being provided to the jury. We have nothing further on that.

THE COURT: Thank you.

Can you take this time to be gathering the evidence that will go back. At this time my understanding is that there are ammunition; is that correct.

MR. ALFARO: Yes, Your Honor.

THE COURT: All right. So at this time I'm not going to send back both the weapon and the ammunition. So at this time we will send back only the ammunition. If they request the shotguns, I will then remove the ammunition and we will send the shotguns back.

MR. ALFARO: Thank you, Your Honor.

MR. BIERING: Thank you, Your Honor.

THE COURT: Is all the evidence ready to go back?

MR. BIERING: Yes, Your Honor.

MR. ALFARO: And the guns have been separated.

THE COURT: All right. Thank you.

(Whereupon, the jurors enter the courtroom.)

THE COURT: Ladies and gentlemen, it was brought to my attention I may have misread the verdict form, so I'm going to go over the verdict form with you one more

time just for clarification. But you will have this verdict form with you.

In the Court of General Session for the Ninth Judicial Circuit, 2011-GS-08-947, State of South Carolina versus Ron Santa McCray. There are two questions to number one and number two.

Number one, we the jury find the defendant not guilty. Or, we the jury find the defendant guilty of murder.

And once again, Madam Foreperson, there is a place for you to sign that this is the unanimous decision of the jury. You will sign and date it and indicate to the bailiff that you have reached verdict.

Ladies and gentlemen, we have gotten all the evidence together, so it should be just a few moments and then you may begin your deliberation.

Madam Foreperson, did any person indicate they were unable to complete their deliberation?

A JUROR: No.

THE COURT: All right, thank you.

Thank you, you are excused.

And to my two alternates, they will place in you a separate room together, thank you.

(Whereupon, the jurors exit the courtroom.)

THE COURT: Any objection to the verdict form as

read, from the State?

MR. ALFARO: No, Your Honor.

THE COURT: From the defendant?

MR. BIERING: No, Your Honor.

THE COURT: All right, thank you.

This will be go back, and all of the evidence.

All right, anything further regarding this matter?

MR. ALFARO: Nothing from the State, Your Honor.

THE COURT: From the defense?

MR. BIERING: Nothing from the defendant.

THE COURT: All right thank you. We are at ease.

(Whereupon, the jury received the evidence at 11:18 a.m.)

(Whereupon, a recess was taken.)

THE COURT: I understand we have a verdict.

Anything from the State before we bring in the jury?

MR. ALFARO: Nothing from the State.

THE COURT: Anything from the defendant?

MR. BIERING: Nothing from the defendant.

THE COURT: All right.

Ladies and gentlemen of the audience, you are free to remain in the courtroom. But the instructions

following, I do not have any idea what the verdict is.

Please remember, as I have instructed from the very beginning of this trial, this courtroom is a place of honor, and outbursts of any kind will not be tolerated. If you feel that you will be unable to maintain proper decorum, now is the time to leave.

Additionally, in order to preserve courtroom security, once the verdict is read the jury will be escorted out, all members of the audience must remain seated until you are alerted by courtroom security that you may leave the courtroom.

If you are unable to follow any of those instructions, you may leave now. If you cannot follow the Court's instructions, I may hold you in contempt, and that is punishable by imprisonment for up to one year.

So please understand that I am giving these instructions as part of my responsibility to maintain order and decorum in the courtroom. If you cannot follow any of those instructions, now is the time to leave.

Let's bring in the jury.

Everyone will remain seated.

(Whereupon, the jurors enter the courtroom at 12:05 p.m.)

THE COURT: Madam Foreperson, I understand you have reached a verdict. If you will hand the verdict form to the bailiff. And the bailiff, I need to make sure that the verdict is in order.

Mr. McCray, please rise.

THE CLERK: State of South Carolina, County of Berkeley versus Ron Santa McCray. Indictment number 2011-GS-08-947.

We the jury find the defendant guilty of murder. And it was certified by the foreperson.

Ladies and gentlemen, is this your verdict?

If I have accurately published the verdict, please indicate by raising up your right hand at this time.

THE COURT: Thank you. Let the record reflect that all 12 jurors raised their right hand.

Anything further required of the jury, Mr. Biering?

MR. BIERING: No, Your Honor.

THE COURT: From the State?

MR. ALFARO: No, Your Honor.

THE COURT: Thank you.

Have a seat, Mr. McCray. Thank you.

Ladies and gentlemen, this completes your service for this matter. It also completes your

service for the week. If you will please be escorted into your jury room, I will be there in just a few moments to personally thank you.

Please remain seated.

(Whereupon, the jurors exit the courtroom at 12:07 p.m.)

THE COURT: Outside the presence of the jury, anything further requested of the jury?

MR. BIERING: No, Your Honor.

THE COURT: Any objection to releasing the jury at this time?

MR. BIERING: No, Your Honor.

THE COURT: From the State?

MR. ALFARO: No, Your Honor.

THE COURT: All right.

And are you prepared to go forward with the sentencing at this time, Mr. Biering.

MR. BIERING: I am, Your Honor.

MR. ALFARO: Your Honor, may we just have two minutes with the victim's family.

THE COURT: Mr. Biering, I'm going to release the jury. If you would take this time to advise Mr. McCray of his appellate rights, that he will 10 days to appeal the jury's decision.

We will be at ease. Thank you.

(Whereupon, a recess was taken.)

THE COURT: Mr. Alfaro, I have the sentencing sheet.

Is there anything further from the State?

MR. ALFARO: Your Honor, I'm completing the form, if you want that as well.

THE COURT: I do not need that at this time. Thank you.

MR. ALFARO: Your Honor, the State is ready to proceed with sentencing.

You've heard the facts of the case throughout the week. The testimony was that this murder took place in broad daylight, in a community area where there were numerous innocent bystanders, including children, who had just gotten off the school bus.

For the defendant to go to that location with a sawed-off shotgun and murder the victim in that place not only obviously took the life of an innocent victim, but he also placed the lives of numerous bystanders in jeopardy as well.

His prior record is 1998 possession of marijuana between 5 and 50 pounds, unlawful carrying of a pistol in 1991. That marijuana charge was 1998.

Your Honor, based on the facts of the case, as well as the prior gun conviction, the State is asking

for a life sentence. We believe it is most appropriate sentence given the nature of the offense, as well as the factors the State has just expressed.

The victim's father, mother, as well as his brother and sister are present in the courtroom and would like to address Your Honor at the appropriate time.

THE COURT: All right. Let me hear from the family. And they may just stand right where they are. I know this courtroom is somewhat tight.

I'm going to need you to speak loudly. State your full name for the record.

MR. PORCHER: Your Honor, Robert Porcher, III.

Your Honor, our family chain has been broken. Not by sickness, old age, an accident like an auto accident, but by Ron McCray. Who of his own free will made a conscious decision that Reginald Mitchell Porcher did not deserve to live anymore.

The impact of such an unexpected death has had a tremendous, a tremendous sadness on our family. And I briefly want to share with this Court just some of life's experiences that Ron Santa McCray robbed Reginald of. A young, healthy 31-year-old male.

Reginald will never fall in love and ask a girl to marry him. He has been robbed of working in a

career that he loves, and provide for his family. Reginald has been robbed of building or purchasing his first home.

Reginald has been robbed of the joy and admiration that comes from a father to be when he finds out that his wife is carrying a child that he will have. The experience of sharing this news with his family and his friends.

The joy that I would have known that I was going -- that I would have knowing that I was going to be an uncle, or my sister an aunt. Ron Santa McCray robbed my parents of having grandchildren from Reginald. Reginald promised my mother years ago he would not father any kids until he was married.

Ron McCray robbed Reginald of the experience of the birth of his children. Watching his children learn to crawl, take their first steps, and teething. You, Ron, robbed him of hearing his children call him da-da for the first time. Or going to kindergarten for the first day of school.

You robbed Reginald of Christmases, birthdays, his 40th birthday, his 50th birthday, family vacations, taking his family to Disney World.

You robbed him, man, of all of those things. You robbed Reginald from watching Sesame Street with his

children, teaching them how their alphabets, teaching them how to count, learning to read. Which we all know one of those books he would have you taught his kids to read would have been Curious George. That was his favorite book as a child, and still as a young man.

You, Ron Santa McCray, robbed Reginald of family picnics, anniversaries, my daughter's high school graduation this spring where she would have been so proud of him because he always thought she was his child.

You robbed him of seeing my son play football, his basketball games, her volleyball games, her sister's volleyball games. You took that from him.

Because of you, Reginald Mitchell Porcher will have no offsprings. We won't have nephews and nieces. There will be no Reginald Mitchell Porcher, Junior. There will be no Reginald Mitchell Porcher, III. There will be no Reginald Mitchell, IV. Like my son at 14 is so proud to tell everybody, he is Robert Porcher, IV.

Your Honor, Ron McCray impacted our family beyond words. We ask that Ron Santa McCray, because of his violent, senseless and non-remorseful murder of Reginald Mitchell Porcher, be sentenced to life in prison. Thank you.

MS. PORCHER: My name is Marilyn Mitchell

Porcher. I am Reginald's mother.

This is the picture I sleep by my bed every night, along with Curious George that he had since he was 5 years old.

Judge Harrington, the unnatural death by murder of my son has left my family and me with deep, deep hurt that generates much pain and regrets. Regrets such as, we will never see him again or hear him lovingly call me Doctor P, or his father Pops.

We will always have to go to his grave to celebrate his birthday, which we have done since he was murdered. We will never share the joy of him getting married.

My husband and I will never have a daughter-in-law, grandchildren or great grandchildren from Reginald.

Your Honor, our lives will never be the same since the intentional and deliberate act of murder with malice of Reginald Mitchell Porcher by Ron McCray.

Reginald was not an angel. He had his issues like everyone else. But he did not deserve to be gunned down like a wild animal, and kicked in the face while he lie dying on the cold, hard ground pulling for his last breath.

As a family we have endured severe emotional

problems since Reginald was ripped out of our lives without warning on Wednesday afternoon, September 16th, 2009

Judge Harrington, you don't get over murder. The grieving process, it never ends. I cry for my loving son everyday. Reginald was a kind and companionate person. He did not hold a grudge. He loved his family, and especially his two nieces and his one nephew that was his Godson.

If I were to compare his character to his favorite animated character, it would be Curious George. At 5 years old we would go to the Charleston County library on King Street at that time, where he eventually checked out all of Curious George's books. And I assisted him in reading them.

When he turned 21, I purchased the hardback copy of all of Curious George's stories and gave it to Reginald for his birthday present. He was delighted.

You see, Reginald was curious, just like this animated friend. He was not evil. But he was murdered by a very evil person, Ron McCray.

As I close, Your Honor, please give my family justice for the murder of our loved one. Not closer, but justice. By not allowing Ron to cause grief to another family causing them to go through what we are

going through.

Not I, the mother, profits here. Both of us mothers, we are not profiting. We realize that we cannot bring Reginald back. We also realize that Ron McCray will live in prison by having free room and board, free meals, free TV and et cetera.

What will my family and I have? A dead son. A dead brother. And dead uncle.

Please, Judge, please give us justice, not closer. That's all we are asking. Thank you.

MR. PORCHER: My name is Robert Porcher, Jr., the father of Reginald, father of Robert and Crystal, grandfather of Morgan, Robert IV, and Mallory Porcher. And my wife, Marilyn Porcher.

I have a couple of scriptures that I would like to read. And the first one is the Ecclesiastes 8:11.

When the sentence for a crime is not quickly carried out, the hearts of the people are filled with schemes to do wrong.

Leviticus, 24:21. Whoever kills an animal must make restitution. But whoever kills a man, must be put to death.

We are not asking that Ron Santa McCray be put to death for killing our son, of whom he seemed to be so proud to witness and testify to. We are not asking

that he be put to death.

But we are asking that he be given a sentence that everyday he wakes up, after a restless night, everyday he wakes up he will remember the heartache and the pain that he caused my family and myself. And we pray that he have a very miserable time to wherever he is going.

And in my closing, I will say to this Court, it will be all over in the morning. Again we thank you for this opportunity.

MR. ALFARO: Your Honor, the only other thing I neglected to add and that is the defendant had a 1993 possession of crack conviction.

Your Honor, I think, as I stated before, the facts of the case, not only the defendant's actions before and during the shooting, but also his conduct after the shooting, we agree with the family, and it's the State's position that a life sentence would be the appropriate sentence for the Court to impose.

THE COURT: Thank you.

Mr. Biering, I'll be happy to hear from you, your client, or anyone regarding sentencing.

MR. BIERING: May it please the Court, Your Honor.

Your Honor, here in the courtroom with us in

back is my client's mother, Evelyn McCray, her brother, David McCray.

My client is 46 years old. As the Court knows, he has been in detention since September 17, 2009, 1,140 days.

Your Honor, when I first met Mr. McCray, I first met him earlier this year. And what I have discovered was a man who was a craftsman, plasterer and not just a drywaller. When I talked to him about his abilities there, talked to him about the work he's done, some of the projects he has been involved in.

I think he describe already to the Court living in a couple of different places.

He, Your Honor, he is a father. He 46 years old now. Certainly the minimum the Court could impose is a 30 year sentence which would make Mr. McCray a very old man when he would potentially finish that minimum sentence.

I do believe that he asks to be able to address the Court at this time. His mother is just not capable of addressing the Court at this time.

I'd ask the Court allow Mr. McCray to speak at this point on the issue of sentencing. We are asking the Court impose a 30 year sentence.

THE COURT: All right.

Mr. Biering, did you advise Mr. McCray of his right to appeal the sentence that I will impose today.

MR. BIERING: Yes, Your Honor, we have.

THE COURT: All right. And did you advise him that this is a violent and a most serious offense?

MR. BIERING: I have in the past, I will again.

THE COURT: Okay, thank you.

MR. BIERING: Yes, Your Honor. I've reviewed that. In summary reviewed my advise to Mr. McCray.

THE COURT: Thank you.

And you have advised Mr. McCray that he does not have to address the Court, and I will not consider the fact that he did not address the Court in imposing sentence?

MR. BIERING: Yes, Your Honor, I have.

THE COURT: Mr. McCray, I will be happy to hear from you.

THE DEFENDANT: Thank you, Your Honor.

I would like to say that I'm sorry to the family for this incident. I felt as though that my life was being threatened. I would never, and I haven't, imposed no kind of life threats on anyone before, ever. I have never shot anyone.

I think that the jury was probably mislead because they never had a chance to see Reginald's prior

records. My baby's mother, Tiffany, she made number five that he actually raped her.

But, at the same time, I really feel as though the jury was the product of knowing Reginald. In '98 he killed Anthony Moultrie. The jury was deprived of knowing him.

But at the same time, I am sorry for the actions that happened. And I felt as though that knowing him, knowing his history, he came at me in a violent manner as many people have testified for that.

I am a man first. And I respect other people's lives. I won't be charged with rape, or even accused of it. At the same time I have children. And from what I was told later after this arrest, that rape took place in front of my children.

But at the same time, you know, like I said, I'm sorry for Reggie dying. At the same time he was high. He does -- very reason he does what he does. I don't have an answer to that. He is totally different people. He has always been sheltered. I have always worked, that's just what I do.

I cannot express anymore saying that I believe that the jury was misled. If they were given the chance to really know him.

THE COURT: Mr. McCray, I want you to tell me

about you. This is not about the victim, I'm imposing sentence upon you.

THE DEFENDANT: Yes, ma'am.

Your Honor, I do have three children that I love, they love me. I wish to see them again. I wish to watch them grow.

One daughter, she is in college. My mother, she is in age, up in age now. Her health is not that well. I have a brother who has been a victim of a violent person. He is in a wheelchair now.

Your Honor, I wish to proceed in society and do the good things that I have always been doing. People just don't have bad things to say about me. But I have always respected other people. I have never disrespected people.

I just hope that the sentencing you would actually look at both sides. I'm not that type of person. I am just not. I'm just not that type of person. Whether you talk to people that has been around me in this jail, I'm not that type of person.

And, Your Honor, please just consider that. I'm not that type of person.

THE COURT: Anything further, Mr. Biering?

MR. BIERING: Nothing further, Your Honor.

THE COURT: All right.

Mr. McCray, I have sat here and observed you for the last week. I have heard the testimony. Your attorney has given you, in my opinion, one of the most zealous defenses that I have seen considering the facts and circumstances surrounding this case.

He was given additional time to come follow any leads that you had given him, and the assistance of the solicitor's office throughout this trial, to present a very vigorous defense for you.

Mr. McCray, the jury has given the opportunity to consider self-defense, and they have found you guilty of murder.

Based upon the testimony that I have heard, it's the order of the Court on indictment 2011-GS-08-947, that you be committed to the State Department of Corrections for a term of life. Give you credit for the time that you have served.

Good luck to you, Mr. McCray. Thank you.

We will take 15 minutes. Thank you.

(Whereupon, the proceedings in this matter before the Court were adjourned.)

* * * * *

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, and of all the proceedings had and evidence introduced in the above captioned case, relative to appeal, in the Circuit Court for South Carolina, on the indicated date.

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

Anne Bouley Meyer, RPR

Circuit Court Reporter

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Original Image of 773 S.E 2d 914 (PDF)

413 S.C. 76
Court of Appeals of South Carolina.

State v. McCray
Court of Appeals of South Carolina June 24, 2015 The STATE, Respondent, (approx. 20 pages)

v.

Ron Santa McCRAY, Appellant.

Appellate Case No. 2012–213393.
No. 5321.
Heard Jan. 6, 2015.
Decided June 24, 2015.

Synopsis

Background: Defendant was convicted in the Circuit Court, Berkeley County, Kristi Lea Harrington, J., of murder. He appealed

Holdings: The Court of Appeals, Williams, J., held that:
1 jury instruction regarding lack of duty to retreat when attacked in a place where a person had a right to be was not warranted as part of self-defense instruction;
2 allowing expert witness to testify when she had no independent basis for her opinion and when her testimony was based upon testimonial hearsay violated defendant's confrontation clause rights;
3 trial court's error in admitting testimony of expert witness, in violation of defendant's confrontation clause rights, was harmless, and
4 evidence that victim fired gun the night before incident was not so closely connected to homicide to allow for its admission into evidence

Affirmed.

West Headnotes (27)

Change View

1 **Criminal Law** Construction and Effect of Charge as a Whole
Criminal Law Instructions
In reviewing jury instructions for error, the appellate court considers the circuit court's jury instructions as a whole and in light of the evidence and issues presented at trial.

2 **Criminal Law** Matters of law in general
Criminal Law Construction and Effect of Charge as a Whole
A jury instruction is correct if, when read as a whole, the instruction adequately covers the law

3 **Criminal Law** Matters of law in general
Generally, the trial court is required to instruct the jury only on the current and correct law of the state.

4 **Criminal Law** Failure or Refusal to Give Instructions
To warrant reversal, a trial court's refusal to give a requested jury instruction must be both erroneous and prejudicial to the defendant.

SELECTED TOPICS

Criminal Law

Review
Transcript of Preliminary Hearing Testimony of Defendant
Offers of Proof of Evidence or Testimony
Disclosure of Information
Impeachment Evidence of Prosecution Witnesses

Secondary Sources

APPENDIX II: FAIR LABOR STANDARDS ACT REGULATIONS TITLE 29 CODE OF FEDERAL REGULATIONS

Fair Labor Stds. Hdbk. for States, Local Govs. and Schools Appendix II

The U S Department of Labor published rule changes in October 2013 that will modify the companionship and live-in domestic services exemptions (but not the babysitting exemption) effective on Jan 1, ..

Admissibility on issue of self-defense (or defense of another), on prosecution for homicide or assault, of evidence of specific acts of violence by deceased, or person assaulted, against others than defendant

121 A L R 380 (Originally published in 1939)

.. It is a general rule in most jurisdictions that on a trial for homicide, or for an assault and battery, where the defendant has laid a proper foundation by evidence tending to show that, in committing .

Alleged Victim's Commission of Prior Acts of and Reputation for Violence

15 Am Jur Proof of Facts 2d 167 (Originally published in 1978)

In a homicide or assault and battery case, evidence of the victim's character or reputation for violence, including evidence of specific prior acts of violence by the victim, generally is inadmissible.

See More Secondary Sources

Briefs

Thomas Joe MILLER-EL, Petitioner, v. Janie COCKRELL, Director, Texas Department of Criminal Justice, Institutional Division, Respondent.

2002 WL 32102969
Thomas Joe MILLER-EL, Petitioner, v. Janie COCKRELL, Director, Texas Department of Criminal Justice, Institutional Division, Respondent.
Supreme Court of the United States
May 28, 2002

...It is often said that most cases are won or lost on Voir Dire! agree. It is the first opportunity you have to impress the panel with your sincerity, integrity and ability. I believe in the importance o. .

JOINT APPENDIX, VOL. II

2004 WL 2691870
Thomas Joe Miller-El, Petitioner, v Doug Dretke, Director, Texas Department Of Criminal Justice, Correctional Institutions Division, Respondent.
Supreme Court of the United States
Sep 02, 2004

5 **Homicide** Requisites and sufficiency in general
A jury instruction on the common-law elements of self defense is not an exclusive instruction in a murder case, and additional elements may be included with a self-defense instruction if the facts and circumstances of the case support their addition.

6 **Homicide** Duty to retreat or avoid danger
Jury instruction regarding lack of duty to retreat when attacked in a place where a person had a right to be was not warranted as part of self-defense instruction, despite murder defendant's assertion that he was heir to property at which incident occurred, such that he did not have duty to retreat, where defendant arrived at or near area in question, exited his vehicle, yelled something at victim, and then fired his shotgun at victim, after which he approached victim, kicked him, and yelled "die motherfucker, die." Code 1976, § 16–11–440(C).

7 **Criminal Law** Necessity and scope of proof
Criminal Law Reception and Admissibility of Evidence
Criminal Law Rulings as to Evidence in General
The admission or exclusion of evidence is a matter addressed to the sound discretion of the circuit court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice.

8 **Criminal Law** Sources of data
The touchstone for determining whether an expert is giving an independent judgment or merely acting as a transmitter for testimonial hearsay is whether an expert is applying his training and expertise to the sources before him, thereby producing an original product that can be tested through cross-examination.

9 **Criminal Law** Use of documentary evidence
Allowing DNA analysis expert who peer reviewed another DNA expert's report to testify when she had no independent basis for her opinion and when her testimony was based upon testimonial hearsay contained in report prepared by nontestifying DNA analyst, violated defendant's rights under confrontation clause. U.S.C.A. Const Amend 6.

10 **Criminal Law** Reception of evidence
A violation of a defendant's Sixth Amendment right to confront a witness is not per se reversible error if the error was harmless beyond a reasonable doubt U S.C A Const Amend 6.

11 **Criminal Law** Reception of evidence
Whether a violation of defendant's Sixth Amendment right to confront a witness is harmless in a particular case depends upon a host of factors, including the importance of the witness's testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross examination otherwise permitted, and, of course, the overall strength of the prosecution's case U S.C A. Const.Amend 6.

12 **Criminal Law** Reception of evidence
Trial court's error in admitting DNA analysis expert who peer reviewed another DNA expert's report, in violation of murder defendant's confrontation clause rights, was harmless, witness's testimony that victim's DNA matched DNA recovered from scene merely proved that victim, whom defendant admittedly shot and kicked, was bleeding, and although witness's testimony was contradicted by defendant's testimony that victim was not bleeding after being shot and kicked, such contradiction was insignificant given overwhelming evidence of defendant's guilt. U S C A Const.Amend 6.

. called as a jury panel member, having been duly sworn by the Court to testify to the truth, the whole truth and nothing but the truth, was examined and testified as follows. Q Good morning, Ms. Young

JOINT APPENDIX, VOL. I

2004 WL 2899955
Thomas Joe Miller-El, Petitioner, v Doug Dretke, Director, Texas Department Of Criminal Justice, Correctional Institutions Division, Respondent.
Supreme Court of the United States
Sep 02, 2004

..Before DAVIS, JONES and DeMOSS, Circuit Judges. DeMOSS, Circuit Judge: Petitioner brings this federal habeas corpus petition claiming, pursuant to Batson v. Kentucky, that the state trial court erred i

See More Briefs

Trial Court Documents

United States of America v. Morad

2015 WL 10912349
UNITED STATES OF AMERICA, v. Mark MORAD, et al
United States District Court, E D Louisiana.
May 06, 2015

. The government moves the Court to issue an order in limine excluding five types of allegedly improper evidence that the government anticipates defendants will seek to introduce at trial Specifically,

In re River Canyon Real Estate Investments, LLC

2013 WL 4792272
In Re RIVER CANYON REAL ESTATE INVESTMENTS, LLC, Debtor.
United States Bankruptcy Court, D Colorado.
July 31, 2013

. THIS MATTER comes before the Court on the (i) Revised Fourth Amended Plan of Reorganization Proposed by River Canyon Real Estate Investments, LLC (the "Plan"), filed by Debtor River Canyon Real Estate .

In re Iglesia Puerta Del Cielo, Inc.

2014 WL 1165825
In re IGLESIA PUERTA DEL CIELO, INC., Debtor
United States Bankruptcy Court, W D Texas, El Paso Division
Mar 06, 2014

. .On this 26 day of February, 2014, came on for consideration by this Court the hearing on Confirmation of the Second Amended Plan of Reorganization, dated January 17, 2014 [Docket Number 57], and the Mo

See More Trial Court Documents

13 **Criminal Law** Evidence Admissible by Reason of Admission of Similar Evidence of Adverse Party
Otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence

14 **Criminal Law** Evidence Admissible by Reason of Admission of Similar Evidence of Adverse Party
Whether a person has opened the door to the admission of otherwise inadmissible evidence during the course of a trial is addressed to the sound discretion of the trial court.

15 **Criminal Law** Evidence Admissible by Reason of Admission of Similar Evidence of Adverse Party
Testimony of murder victim's father regarding victim's ability to play football was not evidence of victim's good character that opened the door to admission of additional prior bad acts evidence, but was instead an explanation of victim's physical limitations arising from previous automobile accident, which was relevant in light of defendant's testimony regarding victim's movement during altercation. Rules of Evid., Rule 404

16 **Criminal Law** Particular Evidence
Murder defendant's challenge to trial court's denial of his request to admit evidence of victim's prior drug use, on basis that testimony of medical examiner about victim's toxicology report, which indicated that victim had marijuana metabolites in his system at time of his death, opened the door for admission of such evidence, was rendered unpreserved for appellate review by defendant's failure to raise such claim at trial. Rules of Evid., Rule 404.

17 **Criminal Law** Presentation of questions in general
As a general rule, if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal.

18 **Homicide** Previous hostile acts or conduct of victim
Evidence of murder victim's previous violent acts, in form of prior burglary and safecracking incidents, as well as prior arrest for driving under suspension, failure to stop for a blue light, and unlawful carrying of a pistol, were situation-specific and unrelated to victim's state of mind at time of homicide, and thus testimony regarding such prior instances of violence was inadmissible

19 **Homicide** Previous hostile acts or conduct of victim
Evidence of other specific instances of violence on the part of the deceased are not admissible in a murder prosecution unless they were directed against the defendant, or, if directed against others, were so closely connected in point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide Rules of Evid , Rule 404.

20 **Homicide** Previous hostile acts or conduct of victim
In the murder prosecution of one pleading self-defense against an attack by the deceased, evidence of other specific instances of violence on the part of the deceased are not admissible unless they were directed against the defendant or, if directed against others, were so closely connected at the point of time or occasion with the homicide as to reasonably indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm. Rules of Evid., Rule 404.

21 **Homicide** Previous hostile acts or conduct of victim
Evidence that victim fired gun the night before murder incident was not so closely connected to homicide to allow for its admission into evidence where, at time of

homicide, no gun was found and no evidence was produced to show that defendant was aware of victim's behavior the night before. Rules of Evid , Rule 404.

22 **Criminal Law** Materiality and probable effect of information in general
The *Brady* disclosure rule requires the prosecution to provide the defendant with any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment.

23 **Criminal Law** Request for disclosure; procedure
The State has the duty to disclose *Brady* evidence even in the absence of a request by the accused.

24 **Criminal Law** Constitutional obligations regarding disclosure
An individual asserting a *Brady* violation must demonstrate the evidence was: (1) favorable to the accused, (2) in the possession of or known by the prosecution, (3) suppressed by the State, and (4) material to the accused's guilt or innocence, or was impeaching.

25 **Criminal Law** Materiality and probable effect of information in general
Criminal Law Impeaching evidence
"Favorable evidence" which must be disclosed by prosecution as *Brady* evidence is either favorable exculpatory evidence or favorable impeachment evidence.

26 **Criminal Law** Materiality and probable effect of information in general
Criminal Law Time and manner of required disclosure
When reviewing a claim of an alleged *Brady* violation, the materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense, information is not deemed material if the defense discovers the information in time to adequately use it at trial.

27 **Constitutional Law** Witnesses
Criminal Law Impeaching evidence
Evidence of witnesses' prior convictions relating to dishonesty was not "material," for *Brady* purposes, in murder prosecution, and thus prosecution's failure to disclose such information to defense prior to initial cross-examination of witnesses did not violate due process, prosecution produced testimony from multiple witnesses corroborating testimony of witnesses at issue, such that proceeding would not have been different had the evidence been disclosed sooner U S.C.A. Const Amend 14; Rules of Evid , Rule 609

Attorneys and Law Firms

***917** James Kristian Falk, of Bush Law Group, P.C , of Charleston, and Chief Appellate Defender, Robert Michael Dudek, of Columbia, for appellant.

Attorney General, Alan McCrory Wilson, Chief Deputy Attorney General, John W McIntosh, Senior Assistant Deputy Attorney General, Donald J. Zelenka, Assistant Attorney General, Kaycie Smith Timmons, all of Columbia; and Solicitor Scarlett Anne Wilson, of Charleston, for respondent.

Opinion

WILLIAMS, J.

***82** Ron McCray appeals his murder conviction, arguing the circuit court erred in (1) denying his request to charge the jury with the language from section 16–11–440(C) of the South Carolina Code (Supp.2014); (2) allowing an expert who did not prepare a forensic report to testify and act as a conduit for the admission of the report; (3) refusing to admit testimony

relating to Reginald Porcher's criminal record, drug use, and previous violent acts; and (4) restricting his cross-examination of two witnesses when the State failed to produce relevant impeachment evidence prior to his initial cross-examination of the two witnesses. We affirm.

FACTS/PROCEDURAL HISTORY

On September 18, 2009, an officer with the City of Charleston Police Department was called to the scene of a shooting on Jack Primus Road in Berkeley County, South Carolina. Upon arriving at the scene, the officer saw a female on her knees with Reginald Porcher's head cradled next to her body. He noticed blood around Porcher, who did not appear to be conscious. The officer cleared the group of people who had gathered around the woman and secured the scene. Police arrested McCray the following day and charged him with the murder of Porcher. His case was called for trial on October 29, 2012.

At trial, the State called Joyce Wright to testify. Joyce testified she was sitting on her friend's porch when Porcher was shot. She stated she saw a tall person wearing a white t-shirt walking toward a crowd near a tree[1] with something in his hand. Joyce testified she then heard a gunshot and the children who were playing nearby began to run away from the tree. According to Joyce, she also heard the children yelling "Ron shot Reggie" as they fled the area. Joyce stated she observed Porcher walking around in a circle and holding his neck before he fell to the ground.

Felicia Coaxum, who lived with Joyce, also testified at trial. Coaxum testified that, at the time of the shooting, she was ***83** asleep in her mother's room and was awakened by a loud noise. She looked outside and saw Porcher's truck rolling backwards toward the ****918** woods. Coaxum testified that—as the truck was rolling—back she saw Porcher lying on the ground, and McCray was standing over him holding something that had a "metal, wooden handle " According to Coaxum, McCray stomped on Porcher while saying "die mother-f* * *er, die." While Porcher was lying on the ground, Coaxum stated McCray asked the other people in the area if they had a problem and said "that he's God." Coaxum testified that, after stomping on Porcher, McCray got into a car and left.

In addition to Joyce and Coaxum, the State offered the testimony of Akeem Ashby. Ashby testified he was at the tree when McCray pulled up in his car and got out with a shotgun in his hand. As Ashby began to run away from the area, he said he heard a gunshot. Ashby also testified he heard McCray say "[s]omething like .. I assure you all I'm God."

At the conclusion of Ashby's testimony, the State recalled Joyce and questioned her about a 2001 fraudulent check charge. Joyce confirmed she had a fraudulent check charge on her record, and the State did not ask any additional questions. On cross-examination, McCray asked Joyce if she knew Abdullah Fishburne, but the circuit court instructed McCray that this cross-examination was limited to Joyce's prior convictions. McCray withdrew the question, and Joyce was dismissed Next, the State recalled Coaxum and questioned her about a 2004 breach of trust charge McCray had no additional questions for Coaxum on cross-examination

Porcher's father (Father), Robert Porcher Jr , also testified during the trial. During his testimony, the State asked Father if Porcher would have had a professional football career like Porcher's older brother, and Father responded that an automobile accident prevented Porcher from playing football. McCray argued that Father's testimony opened the door for testimony regarding prior bad acts because the jury could construe the testimony about a potential football career as evidence of Porcher's good character. As it pertained to the automobile accident, the circuit court limited McCray's cross-examination to the effect the accident had on Porcher's ***84** physical abilities. However, after McCray cross-examined Father, the circuit court allowed McCray to proffer testimony from Father regarding Porcher's prior criminal convictions. McCray then questioned Father about Porcher's previous convictions for burglary, disturbing schools, and fighting.

After McCray's cross-examination of Father—but before proffering his additional testimony—McCray argued he should be allowed a second unlimited opportunity to cross-examine Joyce and Coaxum because he did not receive their criminal records in discovery. According to McCray, knowledge of their previous convictions would have altered the way he prepared for and questioned the witnesses. The State acknowledged its failure to immediately turn over the reports was a mistake, but noted it did not realize this mistake until the witnesses were on the stand The circuit court denied McCray's request for a second unlimited cross-examination of Coaxum and Joyce.

Next, the State called James Boykin to testify Boykin testified that—after McCray shot Porcher—McCray called him and told him, "I shot that mother-f* * * er" and "I hope he died." McCray also told Boykin he spit in Porcher's face and said "die mother-f* * *er, die." According to Boykin, McCray arrived at his house the morning after the shooting and told him "he needed to go get his check and stuff because he had to handle some business because he kn[ew] he was in trouble " Boykin testified McCray called his supervisor to have his check put in Boykin's name Boykin drove to the construction site where McCray had previously worked to pick up McCray's check and work tools. Boykin stated that, while he was at the site, he spoke with a former employer and the owner of the site, after which he decided to call 911 out of fear of being charged as an accomplice to murder. Next, Boykin testified he took McCray's check to the bank, cashed the check, and gave the money to McCray. Boykin said he then took McCray to a pawn shop where he planned to sell his work tools, but because Boykin had called 911, the police were waiting at the pawn shop where they arrested Boykin and McCray in the parking lot.

The State subsequently called Stephanie Stanley, a forensic analyst with the State ***919*** Law Enforcement Division (SLED), to ***85*** testify. Stanley, who was qualified as a forensic science expert, testified that she worked as the peer reviewer for Katie Urka, the forensic scientist who performed a DNA analysis on samples taken from the scene of Porcher's death. Stanley testified about the procedures a peer reviewer follows in reviewing a DNA analyst's work McCray objected to her testimony on the grounds that Stanley could not testify as to the results of an investigation she did not conduct. The circuit court, however, allowed Stanley to continue to testify regarding the conclusions she drew from Urka's report. At the conclusion of her testimony, Stanley testified that Porcher's blood was found on swabs from a Toyota Tacoma Truck, the ground on Jack Primus Road, and a gold Nissan Maxima.

After questioning an expert pathologist about Porcher's autopsy, the State rested and McCray moved for directed verdict The circuit court denied McCray's motion for directed verdict.

In support of his theory of self-defense, McCray submitted Porcher's South Carolina Department of Corrections (SCDC) medical and disciplinary records into evidence and listed several witnesses who were going to testify about Porcher's past criminal history, drug use, and previous violent incidents. The State filed a motion in limine, arguing the records and testimony were inadmissible because they were irrelevant and highly prejudicial. The circuit court required McCray to proffer the evidence and testimony to rule on its admissibility

During Lieutenant Frank Jackson's proffer, he testified he investigated Porcher in a burglary and safecracking incident that occurred in 2002. According to Jackson, Porcher was convicted of burglary, second-degree burglary as a violent offense, and safecracking after he and two others took an ATM from a convenience store After Jackson's testimony was proffered, the circuit court denied the admission of the SCDC records and Jackson's testimony because the incidents described in the documents and the testimony were situation-specific, and neither Porcher nor McCray were near a convenience store or an ATM at the time of the homicide.

Subsequently, McCray proffered Lieutenant David Brabham's testimony. Brabham testified that he arrested Porcher in June 2000 for driving under suspension, failure to stop for a ***86*** blue light, and the unlawful carrying of a pistol. The circuit court did not admit Brabham's testimony because the incident was "not so closely connected with the homicide as to indicate the deceased's state of mind," finding no indication that the incident would cause a reasonable apprehension of great bodily harm.

Next, McCray proffered Chavis Wright's testimony. Chavis testified he was with Porcher in the Jack Primus Road area purchasing marijuana from Abdulla Fishburne the night before Porcher was killed According to Chavis, Porcher was "very upset and very angry [and] [h]e was carrying on about the situation with [Fishburne] and [McCray] earlier that day " Chavis testified he saw Porcher pull out a handgun and fire it in the air. When asked what he learned about Porcher and McCray that evening, Chavis stated, "I learn[ed] . that he had animosity towards him, and he was going to retaliate on him the next day." The circuit court found Chavis's testimony about Porcher being with him when he purchased marijuana and Porcher firing a gun into the air was not relevant to Porcher's death. The circuit court also found the testimony regarding the drugs and the gun was more prejudicial than probative, noting "there is absolutely no .. indication that they were so closely connected with the homicide as to justify their inclusion." However, the circuit court stated it would allow Chavis to testify that Porcher was upset with McCray for beating up his friend

After Chavis testified, McCray took the stand on his own behalf to present his theory of self-defense. McCray testified about the events that led to Porcher being shot. According to McCray, on the day in question, he was riding in a car with Christopher Cleggett on Jack Primus Road when he saw Porcher's truck parked near the tree and told Cleggett to pull over because he wanted to talk to Porcher. McCray testified that he got out of the car and yelled to Porcher that he was coming to speak with him. McCray ***920*** stated Porcher then ran toward his own truck, got in the driver's side door, grabbed something from under the seat, and got back out of the truck. McCray testified he believed Porcher was grabbing a weapon. In response, McCray said that he went back to the car and grabbed a shotgun. McCray stated he believed Porcher was pointing a gun at him, so he shot at Porcher.

*87 Next, McCray testified that Porcher's truck began rolling backward and ran over Porcher's leg. McCray stated he ran toward Porcher and kicked him while he was lying on the ground in an attempt to "take the weapon off of him." McCray, however, then testified that he never saw a weapon. McCray further testified that Porcher did not appear to have been shot. However, he then stated Porcher had been shot—and that he kicked Porcher—but "nothing was wrong with him."

After closing arguments, the circuit court first charged the jury with the elements of murder. Then, because McCray argued he shot Porcher in self-defense, the circuit court charged the jury with the law regarding self-defense. In addition, the circuit court instructed the jury that "[i]f the defendant was on his own premises, the defendant has no duty to retreat before acting in self-defense." McCray objected to the circuit court's charges and requested the court charge the jury with the language from section 16–11–440(C).[2] The circuit court denied McCray's requested jury charge.

McCray was found guilty of murder and sentenced to life imprisonment. This appeal followed.

ISSUES ON APPEAL

I. Did the circuit court err in denying McCray's request to charge the jury with the language from section 16–11–440(C)?

II. Did the circuit court err in allowing a witness to testify as an expert in DNA analysis when the expert had no independent basis for her opinion and her testimony was based upon testimonial hearsay contained in a report prepared by a nontestifying DNA analyst?

*88 III. Did the circuit court err in denying McCray's request to admit evidence and testimony regarding Porcher's criminal record, drug use, and previous violent acts?

IV. Did the circuit court err in denying McCray's request to conduct a second unlimited cross-examination of two witnesses when the State failed to provide McCray with relevant impeachment evidence in advance of his initial cross-examination of the witnesses?

LAW/ANALYSIS

I. Jury Charge

McCray argues the circuit court erred in denying his request to charge the jury with the language from section 16–11–440(C) because the court's self-defense charge failed to properly reflect that, as an heir to the property where the incident occurred, McCray did not have a duty to retreat. We disagree.

1 2 3 4 "In reviewing jury charges for error, this [c]ourt considers the [circuit] court's jury charge as a whole and in light of the evidence and issues presented at trial." *State v. Logan,* 405 S.C. 83, 90, 747 S.E.2d 444, 448 (2013) (citation omitted). "A jury charge is correct if, when read as a whole, the charge adequately covers the law." *Id.* at 90–91, 747 S.E.2d at 448. "Generally, the [circuit court] is required to charge only the current and correct law of South Carolina." *State v. Brown,* 362 S.C. 258, 261, 607 S.E.2d 93, 95 (Ct.App.2004) (citation omitted). "To warrant reversal, a [circuit court]'s refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." *Id.* at 262, 607 S.E.2d at 95 (citation omitted).

921 The circuit court charged the jury with the self-defense instruction our supreme court adopted in *State v. Davis,* 282 S.C. 45, 317 S.E.2d 452 (1984). In *Davis,* our supreme court suggested the circuit court use the following instruction when the facts indicate a self-defense charge is appropriate:

> Self-defense is a complete defense. If established, you must find the defendant not guilty. There are four elements required by law to establish self-defense in this case. First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed *89 he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense. These are the elements of self-defense.

Id at 46, 317 S E 2d at 453.

5 While we recognize the jury instruction in *Davis* is not an exclusive charge, additional elements may be included with a self-defense charge if the facts and circumstances of the case support their addition. *See State v. Fuller,* 297 S C. 440, 443, 377 S.E.2d 328, 330 (1989) (holding it was error for the circuit court to charge the *Davis* instruction as an exclusive self-defense charge when the facts and circumstances necessitated the circuit court charge additional elements that were requested by the defendant); *see also State v Nichols,* 325 S C 111, 116–17, 481 S E 2d 118, 121 (1997) (finding the evidence supported including additional instructions on (1) "the right to act on appearances," (2) "relevance of prior difficulties," and (3) "that a person does not have to wait before acting in self-defense").

6 In the instant case, the facts and circumstances do not necessitate self-defense instructions in excess of the *Davis* instruction. A review of the record shows that McCray arrived at the area near the tree, exited his vehicle, yelled something at Porcher, and then fired his shotgun at Porcher After shooting Porcher, McCray approached Porcher, kicked him, and yelled "die mother-f* * *er, die." Accordingly, based on the facts and circumstances of this case, we find the circuit court charged the correct law and did not err in *90 denying McCray's request to charge the jury with the language from section 16–11–440(C).

II. DNA Expert Testimony

Next, McCray argues the circuit court erred in allowing an expert witness to testify when she had no independent basis for her opinion and her testimony was based upon testimonial hearsay contained in a report prepared by a nontestifying DNA analyst. We agree; however, we find this error was harmless.

7 "The admission or exclusion of evidence is a matter addressed to the sound discretion of the [circuit] court and its ruling will not be disturbed in the absence of a manifest abuse of discretion accompanied by probable prejudice." *State v. Douglas,* 369 S.C 424, 429, 632 S.E 2d 845, 847–48 (2006) (citation omitted).

8 The Sixth Amendment's Confrontation Clause guarantees that, "[i]n all criminal prosecutions, the accused shall enjoy the right .. to be confronted with the witnesses against him." U.S. Const amend. VI. In *Crawford v. Washington,* the U.S. Supreme Court held the admission of testimonial hearsay against an accused violates the Confrontation Clause if (1) the declarant is unavailable to testify at trial and (2) the accused has had no prior opportunity to cross-examine the declarant. 541 U S. 36, 59, 124 S.Ct. 1354, 158 L.Ed.2d 177 (2004). "The touchstone for determining whether an expert is giving an independent judgment or merely acting as a transmitter for testimonial hearsay **922 is whether an expert is applying his training and expertise to the sources before him, thereby producing an original product that can be tested through cross-examination " *United States v. Palacios,* 677 F.3d 234, 243 (4th Cir 2012) (quoting *United States v. Johnson,* 587 F 3d 625, 635 (4th Cir.2009)) (internal quotation marks omitted).

9 This issue hinges on whether Stanley—a DNA analysis expert who peer reviewed another DNA expert's report—merely served as a conduit for introducing the results of DNA tests that were performed by an expert who did not testify. After a thorough review of the record, we find Stanley did not *91 offer any independent opinions regarding the results of the tests or produce an original product that could be tested through cross-examination. Specifically, during cross-examination, Stanley stated, "I did not perform DNA analysis in this

case.... My job was as a peer reviewer." Additionally, Stanley stated she was not present when the tests were conducted. Stanley's statement that the DNA swabs from the scene matched Porcher's DNA appears to be based solely on Urka's tests; therefore, we find Stanley merely served as a conduit to introduce the results of Urka's DNA tests. Accordingly, the circuit court's admission of Stanley's testimony violated McCray's rights under the Confrontation Clause.

10 11 "A violation of [a] defendant's Sixth Amendment right to confront [a] witness is not *per se* reversible error if the error was harmless beyond a reasonable doubt." *State v Pradubsri,* 403 S C 270, 280, 743 S.E 2d 98, 104 (Ct App.2013) (citation omitted).

> Whether such an error is harmless in a particular case depends upon a host of factors... These factors include the importance of the witness'[s] testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross examination otherwise permitted, and, of course, the overall strength of the prosecution's case.

State v. Gracely, 399 S.C. 363, 375, 731 S.E.2d 880, 886 (2012) (alteration in original) (emphasis omitted) (quoting *Delaware v. Van Arsdall,* 475 U.S. 673, 673, 106 S.Ct 1431, 89 L Ed.2d 674 (1986))

12 We find Stanley's testimony to be of minimal importance to the State's case Stanley's testimony that Porcher's DNA matched the DNA recovered from the scene merely proves Porcher—whom McCray admittedly shot and kicked—was bleeding after being shot and kicked by McCray. Although Stanley's testimony was contradicted by McCray's testimony that Porcher was not bleeding after being shot and kicked, we find this contradiction to be insignificant when considering the overwhelming evidence of McCray's guilt. Accordingly, we find it is clear beyond a reasonable doubt that the admission of Stanley's testimony was harmless.

***92 III. Prior Bad Acts**

McCray argues the circuit court erred in denying his request to admit evidence of Porcher's criminal record, drug use, and previous violent acts through the admission of Porcher's SCDC records and the testimonies of Father, Jackson, Brabham, and Chavis We disagree.

"The admission or exclusion of evidence is left to the sound discretion of the [circuit court], whose decision will not be reversed on appeal absent an abuse of discretion" or the commission of a legal error resulting in prejudice to the defendant *State v. Martucci,* 380 S.C. 232, 247, 669 S.E.2d 598, 606 (2008) (citations omitted) "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support " *Id* (citation omitted).

13 14 Rule 402 of the South Carolina Rules of Evidence states "[a]ll relevant evidence is admissible...." Rule 404 of the South Carolina Rules of Evidence states the following:

> (a) Character Evidence Generally. Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except
>
> ...
>
> (2) Character of Victim. Evidence of a pertinent trait of character of the victim ****923*** of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim offered by the prosecution in a homicide case to rebut evidence that the victim was the first aggressor;
>
> (b) Other Crimes, Wrongs, or Acts Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible to show motive, identity, the existence of a common scheme or plan, the absence of mistake or accident, or intent.

"It is firmly established that otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence." *State v Page,* 378 S C 476, 482, 663 S E.2d 357, 360 (Ct.App.2008) (citing *State v Young,* 364 S.C. 476, 485, 613 S.E.2d 386, 391 (Ct.App 2005)). "Whether a ****93*** person opens the door to the admission of otherwise inadmissible evidence during the course of a trial is addressed to the sound discretion of the [circuit court] " *Id* at 483, 663 S E.2d at 360 (citation omitted).

A. Robert Porcher Jr.

15 McCray argues the circuit court erred in denying the admission of Father's testimony regarding Porcher's arrests and prior bad acts because Father's testimony became relevant once he put his son's purported good character at issue through his statements about a potential football career. We disagree

We find Father's testimony regarding Porcher's ability to play football was not evidence of Porcher's good character. Rather, Father's testimony was an explanation of Porcher's physical limitations that was relevant in light of McCray's testimony regarding Porcher's movement during the altercation. We find the circuit court did not abuse its discretion in determining that Father's testimony did not open the door for additional prior bad act evidence. Accordingly, we affirm the circuit court's denial of the admission of Father's testimony regarding Porcher's prior bad acts.

B. SCDC Records

16 17 McCray argues the proffered SCDC records were admissible because the medical examiner's testimony about Porcher's toxicology report—which stated Porcher had marijuana metabolites in his system at the time of his death—opened the door for the admission of evidence of prior drug use. We disagree

"As a general rule, if an issue was not raised and ruled upon below, it will not be considered for the first time on appeal." *State v. Santiago*, 370 S.C 153, 163, 634 S.E.2d 23, 28 (Ct.App.2006) (citation omitted). At trial, McCray did not argue the State's use of the toxicology report opened the door for the admission of the SCDC records.[3] Therefore, we find this ***94** argument is not preserved for appellate review because it was not raised to or ruled upon by the circuit court.

C. Testimonies of Lt. Frank Jackson and Lt. David Brabham

18 19 McCray argues the testimonies of Jackson and Brabham were admissible because the specific incidents described were so closely connected to the homicide as to reasonably indicate Porcher's state of mind We disagree.

> The rule has long been established in this State that evidence of other specific instances of violence on the part of the deceased are not admissible unless they were directed against the defendant, or, if directed against others, were so closely connected in point of time or occasion with the homicide as reasonably to indicate the state of mind of the deceased at the time of the homicide....

State v. Amburgey, 206 S C. 426, 429, 34 S E.2d 779, 780 (1945) (citation omitted).

Based on our review of the record, we find the State did not open the door to testimony ***924** regarding Porcher's violent past and agree with the circuit court's conclusion that Jackson and Brabham's testimonies were situation-specific and unrelated to Porcher's state of mind at the time of the homicide. Accordingly, we find the circuit court properly denied the admission of the officers' testimonies.

D. Chavis Wright's Testimony

20 McCray argues the circuit court erred in finding Chavis's testimony regarding the night before Porcher's death, as well as his mention of Porcher's drug use and use of a gun, were irrelevant. McCray contends the evidence was relevant because the close temporal relationship with Porcher's death goes toward McCray's state of mind at the time of the murder. We disagree

> In the murder prosecution of one pleading self-defense against an attack by the deceased, evidence of other specific instances of violence on the part of the deceased are not ***95** admissible unless they were directed against the defendant or, if directed against others, were so closely connected at the point of time or occasion with the homicide as to reasonably indicate the state of mind of the deceased at the time of the homicide, or to produce reasonable apprehension of great bodily harm.

State v. Day, 341 S.C. 410, 419–20, 535 S.E.2d 431, 436 (2000) (citations omitted)

21 We agree with the State that Chavis's testimony about Porcher firing the gun the night before the incident was not so closely connected to the homicide to allow for its admission because, at the time of the homicide, no gun was found and no evidence was produced to show McCray was aware of Porcher's behavior the night before. Furthermore, upon review

of the record, we find no evidence that McCray had a reasonable apprehension of great bodily harm based on Chavis's testimony. Accordingly, we find the circuit court properly denied the admission of Chavis's testimony regarding Porcher's brandishing and firing a weapon the night before the homicide.

IV. Due Process

Finally, McCray argues the circuit court erred in denying his request to conduct a second unlimited cross-examination of Coaxum and Joyce because the State's failure to provide their prior criminal records violated his due process rights pursuant to *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). We disagree.

22 23 "The *Brady* disclosure rule requires the prosecution to provide the defendant with any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment." *State v. Anderson*, 407 S.C. 278, 286, 754 S.E.2d 905, 909 (Ct.App.2014) (citing *Hyman v. State*, 397 S.C. 35, 45, 723 S.E.2d 375, 380 (2012)). The State has the duty to disclose evidence even in the absence of a request by the accused. *Id.* at 287, 754 S.E.2d at 909 (citing *United States v. Agurs*, 427 U.S. 97, 107, 96 S.Ct. 2392, 49 L.Ed.2d 342 (1976))

24 25 26 "[A]n individual asserting a *Brady* violation must demonstrate the evidence was (1) favorable to the accused, (2) in the possession of or known by the prosecution; (3) suppressed ***96** by the State, and (4) material to the accused's guilt or innocence, or was impeaching." *Id.* (citing *Kyles v. Whitley*, 514 U.S. 419, 419, 115 S.Ct. 1555, 131 L.Ed.2d 490 (1995)). "Favorable evidence is either favorable exculpatory evidence or favorable impeachment evidence." *Id.* (citing *United States v. Bagley*, 473 U.S. 667, 676, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985)). "Materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense." *Hyman*, 397 S.C. at 45, 723 S.E.2d at 380 (quoting *Porter v. State*, 368 S.C. 378, 384, 629 S.E.2d 353, 356 (2006)) "[I]nformation is not deemed 'material' if the defense discovers the information in time to adequately use it at trial." *State v. Kennerly*, 331 S.C. 442, 453, 503 S.E.2d 214, 220 (Ct.App.1998). "A reasonable probability is shown when the government's evidentiary suppression undermines confidence in the outcome of the trial." *Anderson*, 407 S.C. at 287, 754 S.E.2d at 909 (citing *Hyman*, 397 S.C. at 45–46, 723 S.E.2d at 380).

27 In the instant case, Coaxum's and Joyce's prior convictions both related to dishonesty and, pursuant to Rule 609 of the South Carolina Rules of Evidence, these prior convictions were admissible as impeachment ***925** evidence. *See* Rule 609(a)(2), SCRE ("[E]vidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment."). We find the impeachment evidence was favorable to McCray. *See Anderson*, 407 S.C. at 287, 754 S.E.2d at 909 (noting impeachment evidence is favorable).

We further find the evidence was in the State's possession and was suppressed by the State. During the trial, the State admitted that the failure to turn over the documents until after the witnesses testified was an oversight. The State apologized for this error and stated it did not purposely suppress the evidence. Regardless of whether the State intended to suppress the evidence, we find the State was in possession of the evidence and its failure to give McCray the evidence satisfies the second and third *Brady* requirements.

Although the evidence was favorable impeachment evidence, in the State's possession, and suppressed by the State, we find no *Brady* violation occurred because the evidence was not ***97** material as defined by the fourth *Brady* element. *See Hyman*, 397 S.C. at 45, 723 S.E.2d at 380 ("Materiality of evidence is determined based on the reasonable probability that the result of the proceeding would have been different had the evidence been disclosed to the defense." (citation omitted)). The evidence was not material because the State produced testimony from multiple witnesses corroborating Coaxum's and Joyce's testimony. Specifically, Boykin's testimony—that McCray said he "shot that mother-f* * *er" and, as he was standing over Porcher, spit in Porcher's face and said "die mother-f* * *er, die"—provides support for the conclusion that any discrediting of the witnesses' testimonies would have been minimal. Additionally, Ashby's testimony corroborated Coaxum's, Joyce's, and Boykin's testimony. Therefore, we find the proceeding would not have been different had the evidence been disclosed to the defense prior to the initial cross-examination.

Accordingly, based on the significant amount of corroborating testimony, we find the suppressed evidence was not material and the State's suppression of the witnesses' criminal records did not violate the *Brady* disclosure rule.

CONCLUSION

Based on the forgoing, the circuit court's decision is

AFFIRMED.

GEATHERS and McDONALD, JJ., concur.

All Citations

413 S.C. 76, 773 S.E 2d 914

Footnotes

1 Underlie Road, which runs off Jack Primus Road, has a tree that is a gathering place for families who live in the area. The area where the tree is located belongs to the heirs of Mr. Wigfall McCray is a direct descendent of Mr. Wigfall through his mother, who is still alive.

2 Section 16–11–440(C) states,

> A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16–1–60.

3 Instead, McCray argued the medical examiner's testimony opened the door for Chavis to testify about marijuana The circuit court, however, did not rule on this argument when it was initially raised and, after Chavis's testimony was proffered, the court denied the admission of his testimony regarding drug use on other grounds.

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FORM 5

STATE OF SOUTH CAROLINA)
)
County of Berkeley)

IN THE COURT OF COMMON PLEAS

20 15 -CP-08- 2692

Ron Santa McCray 353031)
Full name and prison number (if any) of Applicant)
)
v.)
)
State of South Carolina)
)
)
)

APPLICATION FOR

POST-CONVICTION RELIEF

MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC
2015 NOV 25 AM 11:56
TSM

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 Lieber

2. Name and location of Court which imposed sentence Berkeley 300 califonia ave Moncks Corner SC. 29461

3. Name(s) of co-defendant(s) (if any) Christerpher Clegget

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) 2011-GS-08-0947 murder

810

(b) _____

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) November 2 2012 Life Sentence

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. The State of South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. June 24 2015

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. None

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel, further attachments of issues

(b) Denial of 5th, 6th, and 14th amendments U.S Const.

(c) Prosecutorial misconduct (see additional pages" 1B, 2B, 3B, 4B. Exhibits

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) actual innocence

(b) Brady violation

(c) prejudice and bias as a result I was denied a fair trial

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. _____

812

iv. N/A

(c) the disposition thereof:

i.

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.

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) N/A

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Christopher Reiriy

ii. James Falk direct appeal P.O. Box 1058 Charleston S.C. 29402

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Direct appeal

iii. _____

19. State clearly the relief you seek in filing this application:

Vacate sentence and conviction and or remand for 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 Berkeley)

I, Ron S McCray, 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.

Ron S McCray

SWORN to and subscribed before me this 20th day of November, 2015.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

TSM

2015 NOV 25 AM 11:56
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

11-20-2015

To Clerk

I am requesting a copy of this form

Thank You

Ron McCoy

Applicant _____ Date _____

Notary Public _____ Date _____

Form 5 Extention

1. Ineffective assistence of counsel/conflict of interest= @My attorney showed me a video tape of my brother and two of my other witnesses that was subpeona. He as me to give him the names of the people in the video and ask where was the video filmed at. He said that the police gave him the video and needed him to get the information from me. ⓑConflict of interest= The private investigator that my attorney hired is the arresting officers brother. He has never interviewed anyone in this case. Other investigators fund conflicting statements and mental health problems and propensity for violence while being on med and controled substence. Results. These people were eye witnesses or had information in my case. The attorney never called them and other witnesses to the stand. If they would have testified I would not have been convicted U.S. v. taylor 2012 wl 1390, 72 Transcript pg. 4-10. Ex. I, A

2 Ineffective assistence of counsel/Mallicious Prosecution = self defense was proven and shown and determine by the court. Although the judge shift the burden to the defense by reading the bogus self-defense statute, The prosecutor said in his closing arguments that McCray use a deadly weopen with malice and force. This will only confuse a jury. The trial attorney should have objected and therefore is ineffective. State v. Belcher 385 SC 597, 602-08, 685 SE2d 802, 804-08. code 1976 and 16-9-10 refer to transcript. Ex-C. State v Slater 644 SE 2d 50. State v Frazleren 736 S.E 2d 301

3 Ineffective attorney- Failed to impeach the state witness and Brady violation. The state witnes gave the police their statement. Their testimony at trial was different. They told sereral lies and contradicting statements. The prosecutor used these lies in the closing argument. Results = If trial attorney would have object and impeach these state witnesses the prosecutor would have never used the statement to get e conviction off of a purjury statement. refer to transcript and Ex-E-F.

4 Ineffective assistence of cause- The Judge at trial dismiss or over looks one of the evidentuary hearing without having the hearing or given a reason for not having the hearing. Trial attorney submitted Porcheer SCDC mental health records. The

prosecutor excepts the record as evidence. This is the most vital part of thi self-defense case. My attorney never objects for the Judges ruling which violates my due-prosecss. The Judge abuse her discression, predjudice me and showed bias. Porchee is an ill mental patient who was high on drugs and was on his meds which hightens his mental state refer to transcript. Ex C State V. Griffin, state v. Stackman 645E595

5 Ineffective assistence of counsel/Brady violation/co-ercion. My brother D. McCray gave the police a false phone number and phone provider that I R. McCray was to have in my poscession. The police issued a request to say that the number belongs to me, R. McCray, next the police tells Boykins what information they need and what they wanted him to say because I never had a conversation with Boykins. I have requested my phone records from the trial attorney and previous attorneys. Which proves that the clerk of court hand pick all of my attorneys and the same request was given to all of them and none of them would get my cell phone records, which I am requesting again for this PCR. The polic has my cell phone. I never had a phone conversation with Boykins the states witness. He was coerce by the police. Ex A, B, D, E, F, H, J, refer to transcript.

6 Ineffective counsel/Failure to call a mistrial: A sled agent testified inplace of another sled agent. The agent was not on the scene but read and refered to pictures that another agent provided as evidence. Any evidence against me I have the right to confront my accusser, this is a violation of my due-process. refer to transcript. Bullcomins V. New Mexico US 131 sct 2705 2011

7 Ineffective counsel/Failure to call key witness - Alot of witnesses was subpeona and this trial attorney would not call any of them to testify. refer to transcript

8 Ineffective assistence of counsel/failure to introduce evidence/Brady violation: The State open the door for Porchees violant behavier when the state witness said Porchee sexualy assaulted R. McCray babys mother Tiffany Cameron. Trial attorney failed to investigate because Porchee was a register sex offender. This evidence should have been brought forward because the state open the door for his violent behavier. The state gave the instructions. 474 line 21-22 Ex C,

9 Ineffective Counsel/Trial attorney gives the judge my trial strategy. My attorney told the judge what my eye witness was going to testify about in chamber. The Judge the order a proffer testimony on my eye witness. Once the judge heard his testimony the judge made the witness change his testimony. This is my key eye witness to what he heard and to what he seen. My attorney did not have my best of interest. Self-defense was implimented and the testimony of this witness would have collaborated with the testimony of Williams testimony. Charis Wright said that Porchee made threats and was going to carry his threats out refer to transcript Ex-D State v. Taylor 333 SC 159, 508 SE 2d 870. State v. Sweat 362 SC 112, 606 SE 2d 508

10 Ineffective counsel/Failure to object for defendant being shackled. Attorney failed to protect my innocense by allowing the judge to deny my due-process.
Brewster v. Borden Kincher 745 F 2d 913
Illinois v. Allen 397 US 337, 90 sct 1057

11 Ineffective counsel/Brady Violation. My previous private investigator obtain a statement from the states witness that contridict their testimony at trial. This same investigator interviewed other witness and discovered that other people knew about Porchees mental health problems and his propensity for violence, also he had his meds with him at the time of the shooting and it is now missing from evidence. I have ask my trial attorney plenty of times for this investigator and his reports to represent me. Ex-E, C, A. This would have discredited the State witnesses. This would have proved that Porchee was on his meds and was high on cocaine and marijuana. Porchee has killed someone before under the same drugs.

12 Ineffective assistence of counsel/Failed to call mistrial when the Judge Violated My due-process. Any error in the trial court instructions of malice concerning self-defense was nessarily prejudicial. Trial court committed reversible in instructing jury which was hearing murder charge. Solely on common-law elements of self-defense but refusing requested additional instructions on defendants

right to act on appearances relevance of prior difficulties between defendan
and victim, and that defendant did not have to wait before acting in self-defe
court failed to charge on element of defense which were applicable to issuses
raised by defendant. State v. Nichols 481 SE 2d 118 1997
State v. Fuller 377 SE 2d 328
The sudge shifted the burden of to the defendant.

820

A

3-22-2012

Aff: Mary P. Brown

This court has appointed four different attorney's to represent me in my case. Three have been relieved. The fourth maybe heading that way too. The attorney's name is Christopher Biering. I have informed him of my trial strategy. Biering on the other-hand has no trial stragtegy.
An attorney is only a person that one consults with or an assistant of counsel for court preceedings.
I have prepared a list for my attorney to obtain before my next court appearence.

MUSC metal health records
A list of actions by a bi-polar patient on drugs
Toxicholigist for drug over-dose
news paper on death of Moultrie 1998
Audio tape Dec. 15 2009
EMT records - how much drugs administered
Phone records
Subpeonea 13 witnesses
" 2 P.I.
" Psychiatrist
" sketch artist

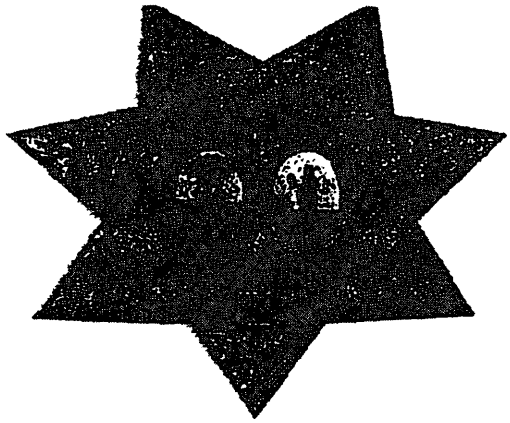
FILED
2012 MAR 28 AM 9:43
MARY BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

If this request is not fulfilled, Biering's will be ineffective. And you the clerk appointed another ineffective attorney and that would make this clerk of court ineffective with conspiracy

Ron Santa Mcra

PS: I have only seen Biering once.

B



BERKELEY COUNTY SHERIFF'S OFFICE
SHERIFF WAYNE DeWITT

Mr. Jacob Richardson,

This letter is to request a GPS tracking for telephone number ([redacted]-3124. It is believed that the phone is in possessed by a murder suspect that is evading arrest. This incident occurred on yesterday's date and the investigation revealed that the suspect is in possession of a phone with the previously telephone number.

Thank you,

Captain Ollic
223 North Live Oak Drive
Moncks Corner , S.C. 29461
843-719-4423 Office
843-719-4676 Fax

Ex-C

NMS LABS

CONFIDENTIAL

Workorder 09208341
Chain 11077064
Patient ID FA09-522

Unless alternate arrangements are made by you, the remainder of the submitted specimens will be discarded six (6) weeks from the date of this report; and generated data will be discarded five (5) years from the date the analyses were performed.

Workorder 09208341 was electronically signed on 09/23/2009 09:29 by:

Susan B. Crookham

Susan Crookham,
Certifying Scientist

Analysis Summary and Reporting Limits:

Acode 50013B - Cannabinoids Confirmation, Blood (Forensic) - Peripheral Blood

-Analysis by Gas Chromatography/Mass Spectrometry (GC/MS) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
11-Hydroxy Delta-9 THC	5.0 ng/mL	Delta-9 THC	1.0 ng/mL
Delta-9 Carboxy THC	5.0 ng/mL		

Acode 8052B - Postmortem Toxicology - Expanded, Blood - Peripheral Blood

-Analysis by Colorimetry (C) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
Acetaminophen	5.0 mcg/mL		

-Analysis by Colorimetry (C) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
Salicylates	200 mcg/mL		

-Analysis by Enzyme-Linked Immunosorbent Assay (ELISA) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
Barbiturates	0.040 mcg/mL	Methadone	25 ng/mL
Benzodiazepines	100 ng/mL	Opiates	20 ng/mL
Cannabinoids	10 ng/mL	Phencyclidine	10 ng/mL
Cocaine / Metabolites	20 ng/mL	Propoxyphene	50 ng/mL

Ecstasy pills Compound

-Analysis by Gas Chromatography/Mass Spectrometry (GC/MS) for: The following is a general list of compound classes included in the Gas Chromatographic screen. The detection of any particular compound is concentration-dependent. Please note that not all known compounds included in each specified class or heading are included. Some specific compounds outside these classes are also included. For a detailed list of all compounds and reporting limits included in this screen, please contact NMS Labs.

Amphetamines, Analgesics (opioid and non-opioid), Anesthetics, Anticholinergic Agents, Anticonvulsant Agents, Antidepressants, Antiemetic Agents, Antihistamines, Antiparkinsonian Agents, Antipsychotic Agents, Anxiolytics (Benzodiazepine and others), Cardiovascular Agents (non-digitalis), Hallucinogens, Hypnosedatives (Barbiturates, Non-Benzodiazepine Hypnotics and others), Muscle Relaxants, Non-Steroidal Anti-Inflammatory Agents (excluding Salicylate) and Stimulants (Amphetamine-like and others).

-Analysis by Headspace Gas Chromatography (GC) for:

Compound	Rpt. Limit	Compound	Rpt. Limit
Acetone	1.0 mg/dL	Ethanol	10 mg/dL

E1 - C

CAROLYN H. BYNES, CCC
SIGNED OFF ON 01/27/09 @ 14:04 BY CAROLYN H BYNES, HUMAN SERVICES COORD I

** ENCOUNTER: 155 MENTAL HEALTH CLINIC 01/27/09 11:42 LIEBER COMP
D: COUNSELOR LEE AND RANSOM WAS REQUESTED TO EVALUATE I/M CHARACTER AND TO SEE IF ANY PSYCHOSIS PRESENTED ITSELF. I/M BECAME A LITTLE HOSTILE WHENM FE MALE COUNSELOR TRIED TO CONFORT I/M ABOUT HIS BEHAVIOR AND PREPARING HIMSEL F LIKE AN ADULT SHOULD ACT. HIS MANNERISM BECAME VERY AGRESSIVE WITH NEGATI VE FEEDBACK TOWARD FEMALES. HE STATED THAT HE CANNOT STAND WHEN FEMALES TALK TO HIM IN THAT TONE OF VOICE. MY MOTHER DID THE SAME THING TO ME THAT S WHEN I RETALIATED AGAINST HER AND MY HOLD FAMILY. IT SEEMS THAT EVERY ONE IS AGAINST ME SO I DO WHAT I HAVE TO DO IN ORDER TO GET THE RESPECT THAT I NEED. I HAVE BEEN IN ALOT OF TROUBLE AND THE STATUS OF MY FAMILY GOT ME OUT OF ALOT OF TROUBLE. I WANT TO DO THINGS FOR MYSELF BUT I HAVE ALOT OF DIST URDANCE INSIDE OF ME. THIS STARTED WHEN I SAW MY RELATIVE BEING KILLED IN T HE WOODS AND I NEVER GOT OVER THAT. I FEEL THAT I NEED SOME HELP BECAUSE I HAVE ANGER ISSUES AND I CANNOT GET ALONG WITH PEOPLE. I HAVE TO HELP MYSE LF AND DONT DEPEND ON OTHERS. I TOLD THE OFFICERS AND STAFF AT BROAD RIVER AND KIRKLAND, BUT THEY WONT LISTEN. REPORTED THAT HE WAS DIAGNOSED WITH PTS D.
A: DX IMPRESSION: HX DX OF PTSD (MEDICATION THAT HE WAS PRESCRIBED BEFORE PROZAC AND VISTARIL. STOP TAKING BECAUSE IT MADE HIM SLEEP TO MUCH)
P: APPT 1/29/09 DR. HIGGINS 9:30AM MELVIN RANSOM,HSCII
SIGNED OFF ON 01/27/09 @ 12:18 BY MELVIN RANSOM, HUMAN SERVICES COORD II

** ENCOUNTER: 154 MENTAL HEALTH CLINIC 01/23/09 14:44 LIEBER COMP
INMATE SEEN ON YESTERDAY DURING INITIAL REVIEW AND AGAIN ON TODAY FOR AN IN ITIAL COUNSELING SESSION. INMATE RECENTLY ARRIVED FROM MCADOUGALL CI ON SATURDAY FOR FIGHTING. INMATE REPORTS HE HAS A PROBLEM WITH HIS ANGER. REPO RTS A PTSD DX AND HX OF MENTAL ILLNESS DATING BACK TO CHILDHOOD. REPORTS HI S PARENTS/ RELATIVED BELIEVED HE WAS "BAD" AND WOULD OFTEN BEAT HIM. REPORT S BEING FORCED TO LOOK AT A DECOMPOSED BODY OF A RELATIVE WHEN HE WAS JUST 13. EXTENSIVE HX OF SUBSTANCE ABUSE WITH COCAINE BEING DRUG OF CHOICE. BEGA N DRINKING AT AGE 13. MULTIPLE INCARCERATIONS DUE TO BEHAVIOR HE BELIEVES. FRUSTRATED AS HE STATES HE HAS NOT RECEIVED ADEQUATE MENTAL HEALTH TREATMEN T IN THE PAST. REPORTS PROZAC AND VISTARIL HELPED WITH MOOD AND BEHAVIOR IN THE PAST. INMATE IS SCHEDULED TO BE RELEASED 2/6/09. DENIED HI/SI IDEATIONS ,AFFECT PURPOSEFULLY MENACING. TALKED ABOUT THE MANY PHYSICAL ALTERCATIONS HE'S PARTICIPATED WITH MEN AND WOMEN. DISCUSSED ISSUES WITH HITTING WOMEN BECAUSE "DESERVED IT". SEVERAL CAR ACCIDENTS WHERE HE'S BEEN UNDER INFLUENC E OF ETOH OR ALCOHOL (ONE FATALITY AS A RESULT). I/J, EYE CONTACT POOR. PROVIDED INFORMATION ON CONTROLLING ANGER AND STRESS, WALKS WITH A LIMP. NO ISSUES NOTED WITH GROOMING/HYGIENE. CURRENTLY ON 72 HR DEADLOCK FOR INTE FERRING WITH INSTITUTIONAL COUNT. PROVIDED ADDRESS AS: [redacted] PINE FIELD DR. WANDO, SC. 29492 [redacted]-7632. WILL SCHEDULE F/U APPT AT CHAS. CO. MH. AND CONTINUE TO MONITOR UNTIL MAX OUT. LOLITA LEE, CCC.
SIGNED OFF ON 01/23/09 @ 14:56 BY LOLITA M LEE, HUMAN SERVICES COORD I

** ENCOUNTER: 153 SECURITY INIT 01/17/09 12:48 MACDOUGALL CORR COMP
S> 29YO MAXOUT 02/2009 IN TO MEDICAL AFTER BEING IN AN ALTERCATION WITH

EX-C

MDCI880D SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 08/16/10
OMINMDCA SCDC HEALTH SERVICES: MEDICAL SUMMARY PRIDGEN

SCDC# 287072 PORCHER,REGINALD - PAGE 1

** ENCOUNTER: 160 MENTAL HEALTH CLINIC 02/06/09 10:18 UNK COMP
INC NOTE
THIS WRITER CONTACTED BERKELEY COUNTY MENTAL HEALTH AT 403 STPNEY LANDING R
OAD MONCKS CORNER, S.C. 29461 843.761.8282 SPOKE WITH JOHNETTE. INFORMED IN
INAMTE'S SCDC DX OF POLY SUBSTANCE DEP. DID NOT FIT CRITERIA FOR SERVICES.
SUGGESTED THIS WRITER CONTACT THE CHARLESTON CENTER. THE CHARLESTON CENTER
WAS CONTACTED AT 5 CHARLESTON CENTER, CHARLESTON, S.C. 29401 843.958.3300
WAS INFORMED THE AGENCEY DOES NOT ACCEPT FIRST TIME APPTS. BUT INMATE COULD
ARRIVE FOR A WALK-IN ASSESSMENT ON MONDAY-THURSDAY 8:30 AM- 11:00 AM AND
1PM-3PM. INFORMATION WAS PROVIDED TO INMATE PORCHER PRIOR TO HIS RELEASE ON
THE ABOVED DATE. LOLITA LEE, CCC.
SIGNED OFF ON 02/06/09 @ 10:22 BY LOLITA M LEE, HUMAN SERVICES COORD I

** ENCOUNTER: 159 MENTAL HEALTH CLINIC 02/03/09 11:46 LIEBER COMP
INC NOTE
INMATE PROVIDED BOOKLET ON HANDLING/COPING WITH MENTAL ILLNESS. INMATE DEMA
NDED A COPY OF THE BOOK FOR HIS MOTHER. INMATE WAS INSTRUCTED TO SHARE THE
BOOK WITH HIS MOTHER UPON HIS RELEASE BUT CONTINUED TO ASK FOR ANOTHER COPY
. INMATE WAS REDIRECTED. LOLITA LEE, CCC.
SIGNED OFF ON 02/03/09 @ 11:47 BY LOLITA M LEE, HUMAN SERVICES COORD I

** ENCOUNTER: 158 MENTAL HEALTH CLINIC 02/02/09 15:09 LIEBER COMP
INC. NOTE *** PYSCH CLINIC F/U APPOINTMENT SCHEDULE FOR 2/26 @ 1:00 PM.
CAROLYN H. BYNES, CCC
SIGNED OFF ON 02/02/09 @ 15:10 BY CAROLYN H BYNES, HUMAN SERVICES COORD I

** ENCOUNTER: 157 MENTAL HEALTH CLINIC 01/29/09 12:34 LIEBER COMP
29 YO BM HERE FOR PSYCH EVEL. IM HAS BEEN DIAGNOSED WITH PTSD IN PAST.
WAS TREATED WITH PROZAC AND VISTARIL AT ALLENDALE. IM STOPPED THE MEDS AS
IT WAS TOO SEDATING. IM C/O PROBLEMS WITH ANGER AND THEN HE HAS "FLASH-
BACKS". EXTENSIVE HISTORY OF SUBSTANCE ABUSE. SEVERAL INCARCIRATIONS
-S/H, -VOICES AND NO SIGNIFICANT DEPRESSION
O: ALERT, CALM, MOSTLY COOPERATIVE, MOOD:OK, STREAM: WNL, NOT OVERTLY
PSYCHOTIC OR MANIC
A: POLY SUB DEP, R/O PTSD, R/O ASPD
STABLE
P: START PROZAC 20MG QAM
F/U 1 MOS - IF STILL HERE, SOONER IF PROBLEMS
P> FLUOXETINE 20MG
SIG:TAKE ONE QAM
SIG:
START DATE: 01/29/09 TOTAL DAYS: 30
MD:HIGGINS,EDMUND -
SIGNED OFF ON 01/29/09 @ 12:41 BY EDMUND S HIGGINS, PSYCHIATRIST
MEDICATION ORDERS GIVEN TO PHARMACY
SIGNED OFF ON 01/29/09 @ 14:53 BY CHESTER OGRODNIK, REGISTERED NURSE I

** ENCOUNTER: 156 MENTAL HEALTH CLINIC 01/27/09 14:01 LIEBER COMP
INC. NOTE *** PSYCH CLINIC ASSESSMENT SCHEDULE FOR 1/29/09 @ 9:30 AM TO BE
COMPLETED BY DR. HIGGINS.

Ex-D

State of South Carolina
county of Berkeley

In the General Sessions Court
Ninth Judicial circuit
case no 325008

State of South Carolina
Plaintiff

vs.

Ron Santa McCray
Defendant

To Have
Counsel Relieved

FILED
12 SEP -5 AM 9:37
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

The Defendant will move before this Honorable court of Judge Dennis on the date of October 8. 2012

(1) Attorney Chris Biering conspired with solicitor.

(2) Failed to represent defendant as order by Judge Dennise.

(3) Unethics by challenging defendant to a bet.

A copy of this is being forward to Judge Dennise.

Ron McCray

EXE

1 of 5

2009-09038994

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, James Jerome Clark Baptiste Jr, am not under arrest for, nor am I being detained for any criminal offenses concerning the events I am about to make known to Det Sgt Shuler, Det. Cpl. Peters. Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes it may serve.

I am 42 years of age, and I live at [redacted] Boston Grill Rd Mount Pleasant SC 29466

I Det Sgt Shuler B.R am writting this statement per the request of James Baptiste per his request TO HIM and permission in his words as it's told to me. I James Baptiste am giving this statement on my own free will & it's True to the best of my knowledge. On TO or about I've Known Ron McCray for approx 20 years we were contractors installing Sheetrock together we worked for a Mr. Jerry Lynch. I met Ron after I got out of the Coast Guard, Ron was dating a girl name Karen Smalls & I dated Krystal Addison Karen Nieces. I've known Reggie Porcher since High School, I played football with his brother Robert Porcher at Wando High School. On Tuesday 9-15-09 Ron told me that Reggie & Some young boy that just came from Atlanta, Ga 16 or 17 years old had robbed David of his Disability check at Cainpoint. They got money & Drugs 7 or 8 ounces I don't know what kind of Drugs & Approx 8 to 9 Thousand Dollars in Cash. He said that David had got robbed on Jack Primus Rd. Ron told me that the Boy from Atlanta Uncle Brought back the Disability Check to David. Ron told me he that he Beat the hell out of the Uncle & held a gun on him, his pump Shotgun USING telling him that he wanted all the stuff that was stolen from David. Ron said he would of Drowned him in the Ditch, but there wasn't enough water in the Ditch. Ron

I have read each page of this statement consisting of 5 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at The Charleston County Sheriff's Office N. Chas. SC 29405 3505 Pinehaven Dr. this 17th day of Sept 20 09.

WITNESS: [signature] CCSO

WITNESS: [signature] (286)

[signature]
Signature of person giving voluntary statement

ALF0057

EX-E

PAGE 2 OF 5 — STATEMENT CONTINUATION — #2009GR038777 CASE #

told me that he was going to kill Reggie, I told Ron that wasn't necessary just beat his ass, you don't have to kill him. Ron told me you handle your business your way and I will handle my mine my way. Ron was talking all kind of crazy, so I got done talking to him & hung up. jfb

Wednesday 9-16-09: Ron called me on my Cell ## 2072 (Cricket phone service) at approx 17:35hrs from his Cell # 3124 Ron asked me if I saw the news, I told him I knew, he Told me he Just Killed the "mother fucker. I asked Ron who did he just kill, he said Reggie Porcher, I thought he was just joking. Ron said he shot Reggie with his pump shotgun, he said that he shot that "mother fucker" a couple of times all the shots were above the waist in the upper chest & neck area. Ron never told me where the shooting occurred at. Ron told me that after shooting Reggie that Reggie kept trying to run & get away. Ron said that Reggie fell onto the ground & That he ran over to him and began stomping & kicking him in the face and saying "die mother fucker, you ain't dead yet, you bitch you ain't dead yet die mother fucka die mother fucker, so you can't be killed. Ron told me that he had forgot to pick-up the shell casings. Ron was laughing & just Talking about the whole shooting like he had shot a deer not a person human being. Ron told me that he had heard that Reggie still had a pulse when they Transported him to East Cooper Hospital, so he was going

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT

WITNESS: Cnty 64

WITNESS: (206) SIGNATURE:

EX-E

PAGE 3 OF 5 — STATEMENT CONTINUATION — CASE # 2007-090355

do go down there & pull the plug on him at the Hospital Ron then told me that he wasn't Finished he still had two more too kill The other boy that robbed David & the Boy Uncle. He Told me that a couple months ago Reggie had called the Police on him while they were at a gas station off of Clemente Ferry Rd. Ron said that Reggie called some female Chas City Police Officer on her cellphone and she came to the Gas Station, Because Reggie called the police on me he had to kill him. I had two of my Cousins a Kelly Marigalt & Derek Marigalt who overheard the conversation that Ron had with me on the Phone when I put the my cellphone on speaker phone. I was at my Mom's house raking leaves when Ron called me on Wednesday to tell me about the Shooting & Killing. I got done talking to Ron and some time after Jack Ron showed up riding a goldish in color Speed bike (motorcycle) at my Mom's house at [redacted] York St. Mt Pleasant, SC. Ron told me that he needed a favor, could I tell him how to get gunshot/ gun powder residue off of his hands, I told him I don't know. Chinery a cousin of Reggie called me and told me if I see Ron to call the police that was also on Wednesday. Then he Ron said that he wanted my help to go back over to where the Shooting happened and pick up the Shell casings that he left Behind at the Scene. I told Ron that I wasn't getting involved and so that, Ron then left on the motorcycle. Ron had also told me that he was going to kill David McCray his brother Ass, because he had called him on his cellphone —

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT

WITNESS: City Cy

WITNESS: (2pc) SIGNATURE: Jam 12

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So I could talk to the police who was at his house. Ron said that he hung up the phone & Turn the phone off so he couldn't be Tracked by the Satellite using the Cellphone. Ron Called me a couple more times from unknown #'s that night Wednesday 9-16-09 [illegible]

Thursday 9-17-09: Ron Called me at approx. 7:00am he said that he needed me to do him a favor and pawn some tools for him because he needed money to get out of Texas. Ron came over to my mom's house driving a white in color Chrysler 300. Ron used my Cellphone to call his boss at # [redacted]-0866 and told him he needed to come by the jobsite and pick up some of his tools. Ron told me that he wanted me to drive, just in case they get stopped by the police & they asked for his D.L. I drove & Ron is the passenger Seat, Ron told me to go by his friends work a girl who works at a gas station in Mt. Pleasant near the SCE&G Company & Hickory Shadow Subdivision & Sea Island Shopping Center. Ron Told the girl that he needed the car so he could do some running around with. We Couldn't get on the jobsite at till 08:30am to get the tools, so we went to the McDonalds on Folly Road across the bridge, [illegible] using the Drive thru, Ron also went inside to use the bathroom. Ron didn't want to go to the jobsite because he was afraid they had watch the news about the shooting. I dropped Ron off just down the street from the jobsite on James Island, and I went to the jobsite I spoke to Chip Guffin / Munden and told him what was going on and they told me to turn Ron in, I don't get

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT

WITNESS: C.A.B. G4

WITNESS: (2:04) SIGNATURE: [signature]

EX-E

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caught up in his troubles. Ron had spoken to his boss on the phone and asked his boss for an advance pay check for the work and put the check in my name. So I received a check from Ron's Boss for the Amount of approx $ 8158.25 and I picked up the tools & Stilts & put them in the car. I picked Ron Back up and we went to the Wachovia Bank on James Island cashed check & I put the envelope down inside the car. I went inside the bank & Cashed the check by myself, while Ron Stayed in the Car. When I went to the jobsite and was telling him what Ron was involved in, Chip said that I better listen to my mom and tell on him. I decided I needed to call the police, so I called information on my Cell phone [redacted] to tell the police that I had the subject that they were looking for involved in the Shooting on Ived. I talked to Charleston County Sheriffs office a lady on the phone & gave her the information & Vehicle Description & Tag # and told her that we were going to the Money Mart Power Shop. I asked the lady if they could wait for me to get out of the car first, because he had already killed one man and had talked about killing more, I didn't know if he had a gun or not. So as I pulled into the Money Mart Power Shop on Folly Rd and parked the police surrounded the car and removed Ron & I from the Car. I was transported to the Charleston County Sheriff's Office, [redacted] to talk to Detectives about this incident

I HAVE READ THE FOREGOING STATEMENT OR HAVE HAD IT READ TO ME AND IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE. I HAVE GIVEN THIS STATEMENT FREELY AND VOLUNTARILY AND HAVE BEEN PROVIDED A COPY OF MY STATEMENT

WITNESS: [signature] Cody G4

WITNESS: [signature] (VK)

SIGNATURE: [signature]

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Ron had said she was recanting her original statement and Felicia states she is sticking by her version that Ron murdered Reggie and she will testify at trial to this account of what she believed to have occurred. Felicia was asked about Reggie propensity for violence and did Reggie carry a gun. Felicia said Reggie was happy on this day he was shot while under the tree talking to the individuals she listed as being at the scene and that Reggie did have a violent temper but Reggie was happy that he was diagnosed with some type of mental disorder and was showing off his medicine bottle and telling the people under the tree he was happy to know what was wrong with him and why he would be combative one minute then forgiving the next.

Felicia Coaxum is employed at the Kangaroo Gas Station on Clement Ferry Rd. and will set up an interview with her son Dion Coaxum who has not been interviewed by the police. Felicia denies arguing with Reggie Porcher as was alleged by Ron McCray and Felicia denies she was having a discussion with Reggie at the time of the incident or concealing the gun that belonged to Reggie Porcher as Ron McCray has stated,

Eddie Terry
[redacted]-5728

Investigator Randolph was provided the above number by Ron McCray and Attorney Debra LittleJohn. McCray alleges that Terry will be of help to him in his defense and that Reggie Porcher was with Eddie Terry prior to Reggie demise. Eddie Terry was contacted by telephone on July 2, 2010 and advised that this investigator was working on behalf of Ron McCray and that it was my understanding from talking to Ron that he (Terry) had information that could aid in the defense of McCray. Terry stated he was out of town on vacation in Florida and to call him back on Tuesday when he is back in town. Terry would not elaborate on the phone as to what information he had that could help in the defense of McCray.

July 12, Investigator Randolph was able to make contact with Eddie Terry by cell phone [redacted]-5728 and Terry answered. I informed Eddie Terry that it was my understanding that he, Kevin Mack and Reggie Porcher were together before Reggie traveled to Jack Primus and was killed. Eddie Terry stated he, Kevin Mack and Reggie were together eating crabs in North Charleston and Reggie told him he was going in the country meaning Jack Primus area to his cousin's house. Eddie alleges that Reggie is the kind of guy who if he is angry that it would be obviously known and that he (Eddie) did not see it from the conversation he was having with Reggie that Reggie was angry. I asked specially did Reggie say he was going to Jack Primus to find Ron McCray since Ron had been looking for Reggie and Eddie Terry stated he did not know about that. Eddie was asked did he know about Reggie having a gun that day or did he know first had about Reggie being involved in any situation where Reggie had resorted to violence and Eddie said he heard about some instances where Reggie had violent tendencies but denied having any first hand knowledge of this himself. Eddie stated he is not able to get on the witness stand and testify to help Ron. Eddie said he likes Ron and want to help but he can't give us what we are looking for to assist Ron. Eddie said the only thing he knows is that Ron disable brother got left by Reggie brother somewhere in the country. Eddie was contacted again on 9-7-10 via cell phone from a non recognizable number due to the fact he was not answering my call to meet in person [redacted]-9392 to [redacted]-5728 and Eddie stated that he had just gotten out of jail for a Traffic offenses that his identity was fraudulently used and he spent 20 days in jail and just was released at 1 AM the same day of my call. Edie said he wanted to meet with the investigator face to face to discuss the matter but he

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DOB [redacted]
[redacted] Underlie Lane
Wando, SC 29492
Unemployed: reside with her mother Joyce Wright

Above was interviewed at her residence on June 28, 2010 in the presence of her mother and stated she was inside a bedroom toward the back of the house which is opposite from the front porch. Essence states she was on the phone in her room when she heard the shot rang out and she immediately came out of her bedroom and ran through the living room towards the front door where she saw her mother Joyce Wright talking to Donnell on the porch and her mother was asking Donnell what happened. Essence stated she dialed 911 from her cell phone [redacted]-0142 and from the house phone [redacted]-7697. Essence cell phone is with page plus. Essence states she told the 911 dispatcher someone got shot. Essence states she wasn't very close to the shooting victim from the porch where she proceeded outside to see what had occurred. Essence said she saw a gold car that Reggie was about to get into the back seat of which belonged to her Aunt Shirley Mack. The vehicle was occupied by Jarvious Mack. Essence said she was going to take Reggie to the hospital and said she saw Reggie get out of the gold car and walked by the mail box when he fell to the ground. Essence stated Tina Mack Collins and Quanzanea Mack Wigfall were applying pressure to Reggie and trying to help Reggie. Essence said she did not see the shooter. Essence states Rhubin Willis and Dion Coaxum allege they saw the shooting. Essence states Akeem AKA "pokee" saw the shooting also but would not talk to the police and give a statement that they saw the shooting. Essence heard her mother ask Donnell what happened which confirm this investigators assertion that her mother Joyce Wright did not witness the shooting as it occurred.

Felicia Coaxum B/F
[redacted] Jack Primus Rd
Wando, SC

Above was interviewed on June 28, 2010 at her residence by Investigator Randolph and Thomas McWhite where she states that she is cousins with Ron McCray. Felicia alleges she saw Jarvis Mack, Rubin Coaxum, Akeem Asby, Abdullah Fishburn and Sheldon Willis sitting in her driveway (yard which is the hang out spot under a large set of trees) prior to her heading back into her house to watch TV in a bedroom to the back of the trailer closest to the side of the house where the shooting occurred. Felicia stated at some point she doesn't recall how much time elapsed but she heard a loud bang noise like a gun shot and she ran outside to see what was going on. Upon her reaching her back deck she saw only Jarvis Mack and her son Dion Coaxum [redacted]-0156 still present at the scene while Ron McCray was still present after the shooting. Felicia said Jarvis and Dion were frighten and couldn't run away like the others who were at the scene. Felicia said she saw Ron McCray with a long brown object and initially thought Ron had a baseball bat or something as he was standing over Reggie. She thought Ron was beating Reggie with a baseball bat as she saw blood gushing from Reggie's neck. Felicia stated she saw Ron McCray kick Reggie as Reggie lay on the ground and that Ron allegedly told Reggie while kicking him "die mother fucker die" which is slightly in contrast as to what words were used in Felecia statement to the police. In Felicia written statement to the police she used the term "die bitch die". Felicia states she saw Ron McCray walk over to Jarvis and Dion and asked did they have a problem with what he just did. Felicia stated Chris Leggett was inside the car and she doesn't recall whether Chris got out of the car or not but Ron got into the car with Chris and left. I asked Felicia Coaxum about the fact that

change statement

EX-E

AGENCY I.D. SC0060000 — SUPPLEMENTARY REPORT

WHAT APPEARED TO BE A FRESHLY SHOT AND BLOODIED GREEN IN COLOR SHOTGUN SHELL LYING ON THE GROUND BEHIND THE NISSAN MAXIMA. THIS DET. OBSERVED WHAT APPEARED TO BE BLOOD DROPS ON THE GROUND TO THE LEFT OF THE GOLD NISSAN MAXIMA. LT. ROBERTA, C. SPENCE AND S. SHULER FROM THE FORENSICS DIVISION ARRIVED ON SCENE AND WAS BRIEFED ON THE INCIDENT AND BEGAN PROCESSING THE CRIME SCENE.

DET. MCELVOGUE AND THIS DET. BEGAN SPEAKING TO WITNESSES ABOUT THIS INCIDENT. THIS DET INTERVIEWED A MR. PELEUS COAKUM ABOUT THIS INCIDENT. MR. COAKUM ADVISED THAT SHE WAS BREIDNER RESIDENCE AT 1220 AGIE PHEASE RD., HEARD A LOUD POP SOUND, AND CAME OUTSIDE TO SEE WHAT THE NOISE WAS. MR. COAKUM OBSERVED THE SUSPECT STANDING OVER THE VICTIM, KICKING HIM IN THE FACE, AND SAYING "DIE BITCH, DIE". MR. COAKUM KNOWS THE SUSPECT AS RON MCCRAY, AND THE VICTIM AS ROSHNE PORCHER, FROM THE NEIGHBORHOOD. MR. COAKUM STATED THAT RON WAS HOLDING A LONG LITTLE BROWN COLOR OBJECT IN HIS HANDS. RON THEN GOT INTO A BLACK CAR AND FLED THE SCENE. (FOR STATEMENT) UPON COMPLETION OF THE INTERVIEWS WITH THE WITNESSES IT WAS DETERMINED THAT SUSPECT RON MCCRAY WAS RESPONSIBLE FOR THE SHOOTING OF THE VICTIM ROSHNALD PORCHER. THE INVESTIGATION REVEALED THAT RON MCCRAY LIVED JUST DOWN THE ROAD OFF OF DION PRAIRIE RD. AT [redacted] WHITE FALLS LN., WANDO, S.C. THIS DET. SPOKE TO LT. R. WILLIAMS ON SCENE AND ADVISED HE COULD SEND DEPUTIES TO [redacted] WHITE FALLS LN. IN AN ATTEMPT TO LOCATE THE SUSPECT AND SECURE THE RESIDENCE FOR A SEARCH WARRANT. I CONTACTED SGT. ANDY GRISHAM AND ADVISED HIM TO CONTACT SGT ALTEN AND PROVIDED HIM WITH A DESCRIPTION OF THE RESIDENCE AT 167 WHITE FALLS LN. FOR THE SEARCH WARRANT. CENTRAL DISPATCH WAS ADVISED TO SEND OUT THE FOLLOWING INFORMATION THAT THE SUSPECT IS A RON MCCRAY AND ROBBERY IN A BLACK VOLVO SEDAN DRIVEN BY A BLACK MALE SUBJECT BY THE NAME OF CHRIS. DET. RISER CONTACTED THIS DET. AND ADVISED ME THAT THE VICTIM ROSHNALD PORCHER HAD SUCCUMBED TO THE INJURIES FROM THE SHOOTING. THIS DET. CONTACTED CAPT. GILLIS AND SGT ALTMAN, LT. ROBERTA AND LT. WILLIAMS AND THEY WERE ADVISED THAT THE VICTIM WAS DECEASED. THIS DET. WAS ADVISED BY LT. ROBERTA FORENSICS UNIT THAT THEY WERE DONE PROCESSING THE CRIME SCENE AT WHICH TIME HE RELEASED THE PRELIMINARY FINDINGS AND THE CRIME SCENE WAS RELEASED. DET. MCELVOGUE SPOKE TO THE VICTIMS FATHER AND HE ADVISED THAT THE BLACK TOYOTA TRUCK BELONGING TO THE VICTIM COULD BE TURNED OVER TO A MR. KYLE DELAW. TAMEKA WAS ACCOMPANIED THROUGHOUT A CHAIN OF CUSTODY FORM. THIS DET. ADVISED R. SHULER THAT I NEEDED HER TO RESPOND TO EAST COOPER HOSPITAL AND MEET WITH DET. RISER TO TAKE CUSTODY OF EVIDENCE THAT WAS COLLECTED FROM THE VICTIM MR. ROSHNALD PORCHER.

THIS DET. ALONG WITH DET. MCELVOGUE RESPONDED TO 167 WHITE FALLS LN. WHERE DET. ROLLINSON, DET. SGT BOYD, SPC. S. JONES, CPL. AUSTIN AND SSP. JONES HAD THE RESIDENCE SECURED AND WAITING ON THE SEARCH WARRANT. SUPERVISOR MONROE, A MR. EVELYN MCCRAY, ADVISED THAT SHE HAD THE NAME OF THE PERSON DRIVING THE

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BLACK VOLVO, THAT HE WAS RELATED TO THE FAMILY. MR. MCCRAY ADVISED THAT THE SUBJECT DRIVING THE VEHICLE WAS A DEMETRIOUS CLEGGETT AND THAT INFORMATION WAS PROVIDED TO SGT ALTEN FOR INVESTIGATIVE PURPOSES. DET. POTTENGER AND DET. PETERS RESPONDED TO 167 WHITE FALLS LN. WITH THE SEARCH WARRANT FOR THE RESIDENCE. THE SEARCH WARRANT WAS EXECUTED AND MR. DAVID MCCRAY, WHO RESIDES AT THE RESIDENCE, WAS EXPLAINED AND PROVIDED A COPY OF THE SEARCH WARRANT AND THE RETURN. DURING THE SEARCH WARRANT A 2007 GRAY IN COLOR HONDA SHADOW MOTORCYCLE BEARING VIN#JH2RC44E97M100011 WAS LOCATED IN A WHITE IN COLOR WOODEN SHED ON THE PROPERTY AT [redacted] WHITE FALLS LN. NEXT TO THE RESIDENCE. THIS DET. CONDUCTED A CHECK OF THE VIN AND WAS ADVISED BY CENTRAL DISPATCH THAT THE MOTORCYCLE VIN# LISTED ABOVE AS STOLEN FROM CHARLESTON, S.C. CENTRAL DISPATCH ADVISED A NCIC HIT AND WAS CONFIRMED BY CITY OF CHARLESTON P.D. OFFICER MONTGOMERY, CPD CCN#2009-[redacted]. PARKER'S TOWING (251 HWY 41 WANDO, S.C. (843) 856-4545) RESPONDED AND TOWED THE MOTORCYCLE TO THE TOW YARD IN MT. PLEASANT, S.C.

THIS DET. SPOKE TO DET. RISER AND HE ADVISED THAT CORONER RIGABS RESPONDED TO THE HOSPITAL AND TOOK POSSESSION OF THE VICTIM FOR AN AUTOPSY. THIS DET. SPOKE TO CORONER RIGABS AND HE ADVISED THAT THE AUTOPSY WILL BE AT 0830 HRS. OFFICE ON TOMORROW'S DATE AT APPROX. 0930 AM. SGT ALTEN ADVISED ME THAT DET. M. BARRY WAS NOTIFIED AND WILL BE THE DETECTIVE ATTENDING THE AUTOPSY. DET. RISER RESPONDED TO 167 WHITE FALLS LN. WANDO, S.C. TO MEET WITH DETECTIVES ON SCENE. THIS DET. SPOKE TO CAPT. GILLIS TO PROVIDE HIM AN UPDATE AND BRIEF HIM ON THE SEARCH WARRANT PROCESS, AT WHICH TIME THE SEARCH WARRANT AT [redacted] WHITE FALLS LN. WAS COMPLETED AND ALL UNITS DEPARTED THE SCENE. THIS DET. ADVISED CAPTAIN GILLIS THAT I NEEDED A COPY OF THE CAD REPORT AND 911 TAPE.

09-18-09

DET. POTTENGER, DET. RISER AND THIS DET. PROCEEDED TO THE SCSCSO OFFICE AND MET WITH CAPT. GILLIS AND SGT ALTEN. THE INVESTIGATION REVEALED THE ADDRESS IN WHICH SUSPECT DEMETRIOUS CLEGGETT WAS RESIDING IN GOOSE CREEK, S.C. SATELLITE PD, E-911, SCSCSO, GCPD DEPUTIES AND GOOSE CREEK OFFICERS MET AT THE CIRCLE K ON STEPHENSON DR., GOOSE CREEK TO BRIEF ON THE INCIDENT. ALL PERSONNEL RESPONDED TO 439 MADELINE DR., GOOSE CREEK, S.C. AND UPON ARRIVAL OBSERVED A BLUE IN COLOR VOLVO SEDAN BEARING ALABAMA LICENSE PLATE SAMMON WITH THE FRONT OF THE RESIDENCE FACING NORTH TO THE ROADWAY. SCSCSO DEPUTIES AND GOOSE CREEK OFFICERS SURROUNDED THE RESIDENCE AND CONDUCTED A KNOCK AND TALK. DET. ALTEN MADE CONTACT WITH A BLACK FEMALE SUBJECT IDENTIFIED AS JESSICA PHILLIPS WHO CAME TO THE FRONT DOOR AND SHE GAVE DEPUTIES VERBAL AND WRITTEN CONSENT TO SEARCH THE RESIDENCE. AN INITIAL SAFETY SWEEP WAS CONDUCTED OF THE RESIDENCE AND

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MR. CLEGGETT WAS LOCATED IN A BACK BEDROOM. A SWEEP OF THE REST OF THE RESIDENCE REVEALED ANOTHER BLACK MALE SUBJECT IN A FRONT BEDROOM IDENTIFIED AS A DOMINIQUE PHILLIPS. THE RESIDENCE WAS SECURED AND SGT. ALTEN TOOK MR. CLEGGETT TO THE BEDROOM TO TALK ABOUT THIS INCIDENT. THIS DET. SPOKE TO MR. PHILLIPS AND HE ADVISED THAT HE GOT HOME AT APPROX. 0200 HRS ON 09-18-09 AND MR. CLEGGETT WAS ALREADY AT THE RESIDENCE. MR. PHILLIPS SAID THAT MR. CLEGGETT IS HIS MOTHERS BOYFRIEND AND THAT HE KNOWS THAT HE HAS CONNECTIONS FAMILY IN THE ALABAMA AREA.

MR. PHILLIPS ADVISED THAT HE KNOWS SUSPECT MR. MCCRAY HAS A GIRLFRIEND THAT DRIVES A WHITE/CREAM IN COLOR CHRYSLER 300 AND RESIDES AT AN APT. COMPLEX IN THE WEST ASHLEY AREA. MR. PHILLIPS AGREED TO TAKE DETECTIVES AND SHOW US THE LOCATION WHERE THE GIRLFRIEND OF RON LIVES. DET. RISER AND THIS DET. DROVE MR. PHILLIPS TO WEST ASHLEY AND HE DIRECTED US TO THE VILLAGE APTS. LOCATED AT NORTH WOODMERE APT [redacted] CHARLESTON, S.C. MR. PHILLIPS POINTED OUT A WHITE IN COLOR CHRYSLER 300 IN A PARKING SPACE IN THE AREA OF BLDG [redacted] AND HE ADVISED US THAT SHE RESIDES IN BLDG. 6 IN THE END APT WHICH WAS IDENTIFIED AS APT [redacted] DET. RISER OBTAINED THE SC LICENSE PLATE 6P91-948 FROM THE VEHICLE AND A CHECK OF THE VEHICLE INDICATED THAT IT RETURNED REGISTERED TO A DARLENE SANDERS OF [redacted] CHARLESTON, S.C. 29412. THE INVESTIGATION REVEALED THAT THE GIRLFRIEND OF RON MCCRAY WAS DARLENE SANDERS OF A FELICIA SANDERS. DET. RISER AND THIS DET. MET WITH CHARLESTON CITY P.D. OFFICERS AT THE SHOPPING CENTER LOCATED INTO THE APT. COMPLEX AND BRIEFED THEM ON THE INFORMATION PERTAINING TO THIS INCIDENT. A CONFIRMATION WAS MADE BY CPD#, CITY P.D. LT. ON SCENE THAT HE WERE NOT GOING TO ATTEMPT TO MAKE CONTACT WITH THE RESIDENCE AT APT B-11 AT THIS TIME AND THAT THE CHRYSLER 300 HAD LEFT THE AREA. THIS DET. CONTACTED SGT. ALTEN AND ADVISED HIM OF THE SITUATION AND DET. RISER AND THIS DET. LEFT THE AREA.

THIS DET. WAS CONTACTED BY CENTRAL DISPATCH THAT THEY HAD RECEIVED INFORMATION THAT THE SUSPECT WAS IN THE ABOVE CHRYSLER 300 AND WAS SUPPOSED TO BE GOING TO THE MONEY MAN PAWN SHOP ON FOLLY RD. CHARLESTON, S.C. AROUND 0930 AM TO PAWN SOME PROPERTY TO GET MONEY TO GET OUT OF TOWN. CENTRAL DISPATCH WAS ADVISED TO CONTACT CHARLESTON COUNTY SHERIFF'S OFFICE AND ADVISE THEM OF THE INFORMATION. THIS DET. CONTACTED CAPT. GILLIS AND BRIEFED HIM OF THE INFORMATION AND AT APPROX. 0930 HRS I RECEIVED A PHONE CALL FROM CENTRAL DISPATCH WHICH ADVISED ME THAT THE CHARLESTON COUNTY SHERIFF'S OFFICE HAD SUSPECT RONN MCCRAY IN CUSTODY. THIS DET. SPOKE TO SGT BLAIR FROM THE SC SCSO AND HE ADVISED ME THAT THEY HAD THE SUSPECT RON MCCRAY IN CUSTODY AND THEY WERE TRANSPORTING HIM TO THE CHAS. CNTY. DETENTION CENTER. SGT BLAIR ADVISED HE WANT TO INTERVIEW SCSCSO WITH THE VEHICLE AND THE OWNER, A MR. JAMES BOYKIN. THIS DET. ADVISED SGT BLAIR IF HE COULD HAVE THE VEHICLE TOWED TO THEIR IMPOUND YARD FOR PROCESSING AND HAVE

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MR. BOYKIN TRANSPORTED TO THE CHAS. CNTY. D.D. IN NORTH CHARLESTON, S.C. SGT. BLAIR ADVISED THAT HE WOULD ESCORT THE VEHICLE AND TRANSPORT MR. BOYKIN TO THE CHAS. CNTY. D.D. THIS DET. NOTIFIED CAPT. GILLIS OF THE UPDATED INFORMATION AND HE ADVISED THAT ARRANGEMENTS WERE BEING MADE TO PICK UP MR. MCCRAY AND I ADVISED HIM THAT I'D SELF ALONG WITH DET. PETERS WOULD BE GOING TO THE CHAS. CNTY D.D. TO INTERVIEW MR. BOYKIN. THIS DET. ALONG WITH DET. PETERS MET WITH MR. BOYKIN AND HE ADVISED THAT HE VOLUNTARILY WANTED TO SPEAK TO DETECTIVES IN REFERENCE THIS INCIDENT. MR. BOYKIN WAS PLACED IN ONE OF THE INTERVIEW ROOMS UPSTAIRS IN THE CCSO CID OFFICE. AT THIS POINT IN THE INVESTIGATION IT WAS DETERMINED THAT MR. BOYKIN WASN'T INVOLVED IN THE SHOOTING AND MURDER OF THE VICTIM. THIS DET. ALONG WITH DET. PETERS CONDUCTED AN INTERVIEW WITH MR. BOYKIN, AND ASKED HIM IF HE WAS WILLING TO PROVIDE US WITH A VOLUNTARY WRITTEN STATEMENT ABOUT WHAT HE KNEW ABOUT THIS INCIDENT. MR. BOYKIN ADVISED THAT HE WAS WILLING, BUT ASKED IF THIS DET. COULD WRITE THE STATEMENT FOR HIM BY HE WORDS AS HE TOLD IT TO ME, BECAUSE HE DIDN'T WRITE ALL THAT WELL. THIS DET. WOULD ASK QUESTIONS OF MR. BOYKIN ABOUT HIS KNOWLEDGE OF THIS INCIDENT AND HE WOULD PROVIDE ME WITH AN ANSWER WHICH WAS TRANSCRIBED ONTO THE STATEMENT FORM. UPON COMPLETION OF THE INTERVIEW, WHICH TOOK APPROX. 3 HOURS, THIS DET. OBTAINED A (5) PAGE(S) WRITTEN STATEMENT OF MR. BOYKIN KNOWLEDGE AND ACCOUNT OF THIS INCIDENT. MR. BOYKIN READ AND ACKNOWLEDGED THAT THE STATEMENT WAS TRUE AND CORRECT, BY INITIALING ALL CORRECTIONS AND SIGNING ALL 5 PAGES OF THE VOLUNTARY STATEMENT. (SEE 5 STATEMENT). THIS DET. SPOKE TO CAPT. GILLIS AND ADVISED HIM OF THE RESULTS OF THE INTERVIEW AND THAT PELICIA SANDERS WORKED AT THE KANSASCO CONVENIENCE STATION IN MT. PLEASANT, S.C. AND HE ADVISED THAT THEY WERE MAKING ARRANGEMENTS TO MEET WITH HER.

THIS DET. MET WITH DET. GWINNEARS CID AND PROVIDED HIM WITH ALL THE FACTS PERTAINING TO THIS CASE AND HE OBTAINED A SEARCH WARRANT FOR THE VEHICLE BY COLOR, CHRYSLER 300 BEARING SC LICENSE PLATE 6P91-948, VIN#2C3AA43R4AH186004. CAPT. GILLIS ADVISED THAT E. SHULER/CSCSO FORENSICS UNIT WAS RESPONDING TO THE CCSO EVIDENCE COMPOUND TO ASSIST CCSO WITH PROCESSING THE ABOVE VEHICLE. THIS DET. WAS ADVISED BY CAPT. GILLIS THAT SGT. ALTEN, HIMSELF ALONG WITH DET. GWINNEARS CID AND CCSO FORENSICS UNIT WAS RESPONDING TO VILLAGE APTS. TO MEET WITH MR. BRANCH. CAPT. GILLIS AND SGT ALTEN MET WITH DET. PETERS AND I AT THE CCSO AFTER THE SEARCH OF MISS BRANCH APT. FOR FURTHER INFORMATION AND BRIEF DET PETERS AND THIS DET LEFT CCSO AND RETURNED TO THE BCSCSO OFFICE.

09-18-09

THIS DET. OBTAINED A COPY OF THE CAD REPORT AND WAS ADVISED THAT THE AUDIO TAPE RECORDINGS FROM THE

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EX-F

Summary

Extraction Type	Cellebrite
Extraction start datetime	2012-08-01T00:00:00
Extraction end datetime	2012-08-01T00:01:04
Report type	Phone
Selected Manufacturer	Nokia (324)
Selected Device Group	2610/2630
Unit Identifier	0027349
Unit Version	Software: 5.0.1.6 (UFED), Pat Images: 1.0.3.1, Tiny Images: 1.0.3.2
UFED Physical Analyzer version	5.1.0.59
Case Number	2008-00025291
Case Name	[redacted]
Cyrus File Number	2008-00025291
Examiner name	K. P. Murphy
Department	Gwinnett County Sheriff's Office
Location	Lawrenceville, GA

Device Information

#	Name	Value	Del?
1	IMEI	011298001120292	[redacted]
2	MSISDN	+12565452257	[redacted]
3	MSISDN Type	MSISDN	[redacted]
4	Phone date/time	2007-01-01T01:02:27	[redacted]
5	Time zone	+12:00	[redacted]

Plugins

#	Name	Author	Version
1	UFED Logical Report Reader	Cellebrite	2.0
2	Physical Analyzer Report Reader	Cellebrite	2.0
3	ConnectionsReference Cross reference two phone numbers in a specific contact with the numbers in SMS messages and Calls. Will fill in the 'name field' of calls and SMS if there's a match.	Cellebrite	2.0
4	CrossPhoneSearch	Cellebrite	2.0

Contents

Type	Included in report	Total
Call Log	87	87
Incoming	33	33
Missed	21	21
Outgoing	33	33
Contacts	43	43
Phone	40	40
SIM	3	3
MMS Messages	2	2
Drafts	1	1
Outbox	1	1
SMS Messages	100	100
Drafts	4	4
Inbox	100	100
Outbox	2	2
Timezone	100	100
Data Files	1	1
Audio	1	1
Cached Files	0	0

Call Log (87)

* Phone details are cross-referenced from this device's contacts

Incoming (33)

#	Deleted	Method	Party	Time	Duration	Voice Mail	Status	Del?
1			+19403624439	8/17/2008 10:12:47 PM				[redacted]
2			+19403624439	8/17/2008 6:28:02 PM				[redacted]
3			+15403624439	8/17/2008 5:33:33 PM				[redacted]
4			+15403624439	8/17/2008 7:46:33 PM				[redacted]
5			No Number	8/16/2008 5:23:16 PM				[redacted]
6			+19407352442	8/14/2008 5:43:31 PM				[redacted]
7			+15403323997	7/25/2008 10:01:01 AM	00:03:02			[redacted]
8			+15403323997	7/25/2008 10:00:58 AM				[redacted]
9			+15403323997	7/25/2008 5:10:20 PM				[redacted]
10			+15403323997	7/26/2008 11:27:03 AM				[redacted]
11			+15403323997	7/26/2008 11:27:53 AM				[redacted]
12			+13402888471	7/17/2008 7:02:54 PM				[redacted]
13			No Number	7/11/2008 4:00:48 PM				[redacted]
14			No Number	7/7/2008 8:51:58 PM				[redacted]
15			+15403323426	7/24/2008 5:30:39 PM				[redacted]
16			+15403323426	7/24/2008 7:46:18 PM				[redacted]

#	Deleted	Method	Party	Time	Duration	Voice Mail	Source	Del?
17			+12082127469	8/4/2008 4:21:36 PM				[redacted]
18			+12089408889	8/26/2008 2:55:15 PM	00:00:57			[redacted]
19			+15408661702	8/14/2008 8:22:40 AM	00:00:35			[redacted]
20			+19408668429	8/16/2008 2:31:30 PM	00:00:39			[redacted]

Missed (31)

#	Deleted	Method	Party	Time	Duration	Voice Mail	Source	Del?
1			+19403668691	8/13/2008 11:53:20 PM				[redacted]
2			+12082302780	8/13/2008 2:23:15 PM				[redacted]
3			+19404343697	8/14/2008 9:45:23 PM				[redacted]
4			+19403624439	8/17/2008 7:43:56 PM				[redacted]
5			+12082702697	8/20/2008 9:39:15 PM				[redacted]
6			+13064618466	8/24/2008 4:52:10 PM				[redacted]
7			+19404343606	8/26/2008 8:26:40 AM				[redacted]
8			+12084618469	8/26/2008 8:53:14 PM				[redacted]
9			+19403624439	7/1/2008 1:21:23 PM				[redacted]
10			+19403624439	7/1/2008 2:58:04 PM				[redacted]
11			+12086618479	7/1/2008 1:13:23 PM				[redacted]
12			+19403424439	7/1/2008 6:59:29 PM				[redacted]
13			+16084624368	7/1/2008 10:02:29 PM				[redacted]
14			+19403423667	7/13/2008 10:49:53 AM				[redacted]
15			+19172403435	7/15/2008 10:53:43 AM				[redacted]
16			+19413223134	7/24/2008 10:53:07 PM				[redacted]
17			+12308621408	7/26/2008 11:09:52 PM				[redacted]
18			+19403624414	7/26/2008 3:20:43 PM				[redacted]
19			+12083424668	7/28/2008 6:41:39 PM				[redacted]
20			+19403624414	8/5/2008 4:48:40 PM				[redacted]
21			+19403621236	8/6/2008 9:49:17 PM				[redacted]
22			+19403624414	8/8/2008 9:43:43 PM				[redacted]
23			+12164619468	8/11/2008 9:37:16 PM				[redacted]
24			+19403624414	8/29/2008 9:58:40 PM				[redacted]
25			+14082606462	9/4/2008 3:03:42 PM				[redacted]
26			+12034621448	9/20/2008 11:48:52 AM				[redacted]
27			+12083466668	9/20/2008 10:59:55 AM				[redacted]
28			+12034241847	9/24/2008 9:09:52 AM				[redacted]
29			+19403624414	9/11/2008 8:58:15 AM				[redacted]
30			+19413601757	9/7/2008 10:45:58 PM				[redacted]
31			+19403621217	9/14/2008 12:12:58 PM				[redacted]

Outgoing (33)

#	Deleted	Method	Party	Time	Duration	Voice Mail	Source	Del?
1			7705622027 Mobile Cell	1/1/2007 9:23:46 AM				[redacted]
2			7705622027 Mobile Cell	1/1/2007 9:23:58 AM				[redacted]
3			7705672201 Mobile Cell	1/1/2007 9:24:20 AM				[redacted]
4			6782666665 Pure Cocoa	1/1/2007 9:29:21 AM				[redacted]
5			+14042621264 Phone	1/1/2007 9:29:48 AM				[redacted]
6			6782641669 Shop Galaxy	1/1/2007 9:32:09 AM				[redacted]
7			2052622267 SW	1/1/2007 9:32:56 AM				[redacted]
8			+6782129312 Storage Center	1/1/2007 9:33:14 AM				[redacted]
9			2052621268 HALL	1/1/2007 9:36:16 AM				[redacted]
10			2052622229 Jean	1/1/2007 10:27:59 AM				[redacted]
11			+12084618469	1/6/2007 2:13:07 AM				[redacted]
12			2054622267 Voice mailbox	1/6/2007 4:57:17 AM				[redacted]
13			6091767	8/14/2008 2:08:14 PM				[redacted]
14			6091767	8/14/2008 2:55:52 PM	00:00:04			[redacted]
15			6091767	8/14/2008 9:09:52 PM				[redacted]
16			6091767	8/14/2008 9:17:08 PM	00:00:15			[redacted]
17			6091767	8/14/2008 9:17:23 PM	00:00:19			[redacted]
18			6609420	8/14/2008 9:18:04 PM				[redacted]
19			6609420	8/14/2008 9:20:29 PM				[redacted]
20			6439415	8/14/2008 9:22:20 PM				[redacted]
21			6439091767	8/14/2008 9:22:53 PM	00:00:09			[redacted]
22			6439091439	8/14/2008 9:23:29 PM	00:01:05			[redacted]
23			6439091767	8/14/2008 9:24:54 PM	00:00:25			[redacted]
24			6439429456	8/14/2008 9:25:53 PM				[redacted]
25			6439429456	8/14/2008 9:26:04 PM	00:00:11			[redacted]
26			6439429456	8/14/2008 9:26:20 PM	00:00:01			[redacted]
27			6439091767	8/14/2008 9:26:32 PM	00:01:07			[redacted]
28			6439429456	8/14/2008 9:19:55 PM	00:00:13			[redacted]
29			6439429456	8/14/2008 9:22:23 PM	00:00:04			[redacted]
30			6439429456	8/29/2008 9:36:34 PM	00:00:44			[redacted]
31			6439429456	8/14/2008 9:37:52 PM	00:00:48			[redacted]
32			7732	8/14/2008 9:38:14 AM	00:00:08			[redacted]
33			+12084618469	8/14/2008 7:19:47 PM	00:00:04			[redacted]
34			+12084618469	8/14/2008 8:43:19 PM	00:00:03			[redacted]
35			+12084618469	8/14/2008 8:43:43 PM	00:00:04			[redacted]
36			+12084618469	8/14/2008 9:13:06 PM	00:00:04			[redacted]

EX-G

STATE OF SOUTH CAROLINA — IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY — WARRANT NUMBER: M 325008-Murder

FILED
2011 DEC 14 PM 2:10
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

STATE OF SOUTH CAROLINA)
)
versus)
) CONSENT ORDER RELIEVING
RON SANTA MCCRAY,) DEFENSE COUNSEL
Defendant.)

The above named Defendant is charged with the offense of Murder and is currently incarcerated at the Berkeley County Detention Center. Jerry N. Theos, Esquire, was appointed to represent the above named Defendant on June 16, 2011. It has come to light that counsel for the Defendant has a conflict in that he has employed and continues to periodically employ the son of a Berkeley County Sheriff's Office Captain who functioned as a supervisor in this investigation and is therefore a witness for the trial of this case. By and with the consent of the Deputy Solicitor, Bryan A. Alfaro, and the Defendant, Ron Santa McCray, Jerry N. Theos, Esquire, is hereby relieved as counsel in this case.

Based upon the foregoing and for good cause shown, it is hereby

ORDERED, ADJUDGED, AND DECREED, that Jerry N. Theos, Esquire, is hereby relieved as counsel in the above referenced action and that Christopher Bierig is hereby appointed to represent the above named Defendant by the Berkeley County Clerk of Court in this matter.

RM00111
SOI
12/11/11 VA

H

Randolph & Habersham Investigations, LLC

P.O. Box 900
Mt. Pleasant, SC 29465
843-343-7007
james@tanenbaumlaw.com

September 13, 2010

Berkeley County Public Defender Office
Debra K. LittleJohn, Esquire
219 N. Hwy. 52, Suite E
Moncks Corner, S. C. 29461

Re: State –vs- Ron Santa McCray

Dear Ms. LittleJohn:

Pursuant to your request, we initiated an investigation into the above reference matter. As a result, the following interviews were conducted.

6-7-10 Ron Santa McCray was completely debriefed at the Berkeley County Detention Center by Investigator Randolph. Brief facts of the case are as follows as out lined by defendant in this summary:

Defendant states the property where the shooting occurred is the Wigfall heir's property and he is a rightful heir to the land which makes him an owner of aforesaid property. Defendant wants to use the land to invoke the Castle Doctrine and alleges that Reggie Porcher (decease) had no business on the property and had been allegedly warned not to come back on to the property by Mr. Asby. Defendant in brief states Felicia Coaxum was talking to decease at the time he arrived and may have been arguing with him (Porcher). Defendant states upon decease observing him arrive that decease ran to his truck and pulled a hand gun and pointed the gun at defendant McCray. Defendant stated decease was standing in the doorway of his vehicle and pointed the gun in his direction. Defendant said he shot in self defense and after he defended himself that Eddie Mitchell "aka" Sleepy Mitchell came to the decease vehicle and took the gun the decease had and fled with the gun in hand. Defendant stated Eddie Terry can attest to Eddie Mitchell selling the gun to someone in the neighborhood and that Eddie Terry was with the decease an hour or two prior to the shooting and that Eddie saw decease with a gun and knows decease to have a propensity for violence and to carry a gun. Defendant states Jarvis was present sitting on a car at the time the incident took place. Defendant states the decease average approx. 2-3 fights per week and at some point in time that decease had broken the windows out of an individual named Gerald Green vehicle.

June 24, 2010 Investigator Randolph had an 11 minute T/C from Ron McCray from [redacted]-6614 and Ron asked did this investigator obtain some phone numbers from Attorney Debbie LittleJohn and Investigator Randolph did confirm that Attorney LittleJohn

Exhibit H

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County

3505 Pinehaven Drive
Charleston Heights, SC 29405-7789

OCA: 2009-018307

RETURN

I received the attached search warrant on, and have executed it as follows:
On September 16th at 4 O'clockPM, I searched (the person or place) described in the warrant and (the premises):

White 2005 Chrysler 300 SC [redacted], VIN # 2C3AA63H85H585505

I left a copy of the warrant with vehicle searched.
Together with a receipt for the items seized.
The following is an inventory of property taken pursuant to the warrant:

Photographs
(22) Latent Print cards
(3) Blood Swabs
Misc Paperwork
Motorola Boost Cell Phone
Blue/Gray 16 Gallon Shop Vac/w Hose
Misc Painting Supplies
Painting Stilts
Black Plastic Bucket

This inventory was made in the presence of Inv Meyer.
I swear that this inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this
day of 2009

Investigator K. Kjellman
(L. S.) (Signature of Officer Executing Warrant)

Signature of Judge

CCSO-113
12/10/98

838

Ex-I

Investigator Brother

CHARLESTON COUNTY SHERIFF'S OFFICE
3505 PINEHAVEN DRIVE * CHARLESTON HEIGHTS, S.C. 29405-7789 * (843) 202-1700

J. Al Cannon, Jr.
SHERIFF

INCIDENT REPORT

SC0100000	DISPATCH NUMBER: 2009-018307-B	ORIGINAL CASE NUMBER: N/A	PAGE 1 OF 03 PAGES	NCIC ENTRY	INQ.	ENT.

EVENT

INCIDENT TYPE	INCIDENT CODE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. FELONY TRAFFIC STOP	N/A	☒ YES ☐ NO	☐ YES ☒ NO	ROADWAY	N/A	☐ INDIVIDUAL ☐ BUSINESS ☐ FINANCIAL INST. ☐ GOVERNMENT ☐ RELIG. ORG ☐ SOC./PUB. ☐ OTHER ☐ UNKNOWN ☐ POLICE OFF.
2. WANTED PERSON / NCIC HIT	N/A	☒ YES ☐ NO	☐ YES ☒ NO	ROADWAY	N/A	
3. TOWED VEHICLE	N/A	☒ YES ☐ NO	☐ YES ☒ NO	ROADWAY	N/A	

INCIDENT LOCATION: 824 FOLLY RD JAMES ISLAND SC | ZIP CODE: 29412 | WEAPON TYPE: N/A

BEGINNING INCIDENT DATE	24 HR. CLOCK	ENDING INCIDENT DATE	24 HR. CLOCK	DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART TIME	TRACT #
9/17/09	0907	9/17/09	0907	9/17/09	0852	0907	0907	315-E

COMPLAINANT

NAME: (LAST, FIRST, MIDDLE): BERKELEY COUNTY SHERIFF'S OFFICE | RELATIONSHIP TO SUBJECT: #1 #2 #3 | RESIDENT: J | RACE | SEX | AGE | DOB | ETH

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	DRIVERS LIC / ID & STATE	SOCIAL SECURITY #
		BLD	BLK			

ADDRESS #	STREET NAME	CITY	STATE	ZIP CODE	DAY PHONE	EVENING PHONE
					H	H

OCCUPATION | EMPLOYER | ALIAS | NIC #

VICTIM #1

NAME: (LAST, FIRST, MIDDLE) | RELATIONSHIP TO SUBJECT: #1 #2 #3 | RESIDENT: J | RACE | SEX | AGE | DOB | ETH

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	DRIVERS LIC / ID & STATE	SOCIAL SECURITY #
		BLD	BLK			

ADDRESS #	STREET NAME	CITY	STATE	ZIP CODE	DAY PHONE	EVENING PHONE
		NO VICTIM			H	H

☐ VISIBLE INJURY ☐ NO ☐ YES | COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES | USING ALCOHOL ☐ NO ☐ YES ☐ UNK | DRUGS ☐ NO ☐ YES TYPE ☐ UNK | ☐ TWO-MAN VEHICLE ☐ ONE-MAN VEHICLE ☐ DETECTIVE SPLASH ☐ OTHER ☐ ALONE ☐ ASSISTED

EXPLAIN

OCCUPATION | EMPLOYER | ALIAS | NIC #

SUBJ. I.D.

☐ COMPLAINANT ☐ VICTIM # ☐ SUSPECT # ☒ SUBJECT # 1 ☐ WITNESS # ☐ WANTED ☐ WARRANT ☐ ARREST ☐ RUNAWAY ☐ MISSING PERSON

NAME: (LAST, FIRST, MIDDLE): BOYKIN, JAMES J C | RELATIONSHIP TO SUBJECT: #1 N/A #2 N/A #3 N/A | RESIDENT: J | RACE: B | SEX: M | AGE: 42 | DOB: [redacted] | ETH: N

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	DRIVERS LIC / ID & STATE	SOCIAL SECURITY #
508	170	BRO	BRO	N/A	[redacted] SCDL	[redacted]

ADDRESS #	STREET NAME	CITY	STATE	ZIP CODE	DAY PHONE	EVENING PHONE
[redacted]	BOSTON GRILL RD	MT PLEASANT	SC	29466	UNKNOWN H	UNKNOWN H

☐ VISIBLE INJURY ☐ NO ☐ YES | COMPLAINT OF NON-VISIBLE INJURIES ☐ NO ☐ YES | USING ALCOHOL ☐ NO ☐ YES ☐ UNK | DRUGS ☐ NO ☐ YES TYPE ☐ UNK | ☐ TWO-MAN VEHICLE ☐ ONE-MAN VEHICLE ☐ DETECTIVE SPLASH ☐ OTHER ☐ ALONE ☐ ASSISTED

EXPLAIN

OCCUPATION	EMPLOYER	ALIAS	NIC #
UNKNOWN	UNKNOWN	UNKNOWN	N/A

ARREST

(A) CHARGE	(C) CHARGE
N/A	N/A
(B) CHARGE	(D) CHARGE
N/A	N/A

NARRATIVE

(JAMES ISLAND) ON THE ABOVE DATE AND TIME R/D WAS ADVISED THAT SUBJECT #2 WAS GOING TO BE IN THE AREA OF FOLLY RD IN THE VEHICLE LISTED ON PAGE 03 OF THIS REPORT. AT THE LISTED TIME THE VEHICLE WAS LOCATED, BY LT SCARBOROUGH, TRAVELING SOUTH ON FOLLY RD, NEAR HUNLEY AVE. THE VEHICLE TURNED INTO THE MONEY-MAN PAWN SHOP, AT WHICH TIME LT SCARBOROUGH, R/D, DEPUTIES CRAVER AND MURPHY, ALONG WITH THREE (3) CHARLESTON CITY POLICE UNITS CONDUCTED A FELONY TRAFFIC STOP. BOTH LISTED SUBJECTS WERE DETAINED WITHOUT INCIDENT. R/D CONFIRMED, VIA NCIC, THAT SUBJECT #2 WAS STILL WANTED BY THE BERKELEY COUNTY SHERIFF'S OFFICE FOR HOMICIDE. R/D TRANSPORTED SUBJECT #2 TO THE CHARLESTON COUNTY DETENTION CENTER WHERE HE WAS TURNED OVER TO CPL MUSGROVE, BERKELEY COUNTY SHERIFF'S OFFICE WITHOUT INCIDENT. AT THE REQUEST OF THE BERKELEY COUNTY SHERIFF'S OFFICE THE LISTED VEHICLE WAS TAKEN TO THE CCSO EVIDENCE

PROPERTY EST.

TYPE (GROUP)	N/A					TOTAL VALUE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY
STOLEN		N/A					N/A
DAMAGED			N/A				
BURNED				N/A			JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
RECOVERED					N/A		N/A
SEIZED						N/A	

ADMINISTRATIVE

SUBJECT IDENTIFIED	SUBJECT LOCATED				
☒ YES ☐ NO	☒ YES ☐ NO	☐ ACTIVE ☐ UNFOUNDED	☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE NO CUSTODY

REPORTING OFFICER(S)	DATE	BADGE NUMBER	APPROVING OFFICER	DATE	BADGE NUMBER
WH SUMMERSELL	9/17/09	9356		9/17/09	9571
			FOLLOW-UP INVESTIGATION ☐ YES ☐ NO OFFICER		

ALE0021

E-J

AGENCY I.D. SC0000000 — SUPPLEMENTARY REPORT

DATE: 09/16/08
NOM: MERCER (M-000000), STATUTE 664-10
SUBJ: RON SANTA MCKRAY
ARR: DEP. J. T. POTTINGER
VICT: REGINALD FORDHER

ON 9/16/08 MYSELF ALONG WITH DEPUTY SAUNDERS MET WITH A CHARLESTON COUNTY DEPUTY AT THE CHARLESTON COUNTY DETENTION CENTER AND TOOK CUSTODY OF RON SANTA MCKRAY IN REFERENCE TO A MURDER WARRANT ON SEVERAL STATUTE 663-10. I ADVISED RON SANTA MCKRAY OF HIS MIRANDA RIGHTS, SECURED HIM IN DEPUTY SAUNDERS VEHICLE WITH HANDCUFFS AND SEAT BELT THEN TRANSPORTED HIM TO THE BERKELEY COUNTY CRIMINAL INVESTIGATIONS DIVISION. I THEN TRANSPORTED HIM TO THE HILL-PRAIRIA DETENTION CENTER WHERE I SERVED THE WARRANT ON HIM AND GAVE HIM A COPY. ANY PROPERTY REMOVED FROM RON SANTA MCKRAY WAS PLACED IN A JAIL PROPERTY BAG AND GIVEN TO THE CORRECTIONS OFFICER IN CHARGE OF BOOKING. RON SANTA MCKRAY WAS HANDCUFFED PRIOR TO AND AFTER TRANSPORTING HIM TO THE JAIL. MY VEHICLE ALONG WITH DEPUTY SAUNDERS VEHICLE WAS CHECKED PRIOR TO AND AFTER TRANSPORTING RON SANTA MCKRAY TO THE JAIL. CAPTAIN CELLI MADE CONTACT WITH THE VICTIMS FAMILY AND NOTIFIED THEM OF THE ARREST AND THE BOND COURT DATE AND TIME. THOSE COPIES OF ALL DOCUMENTS ARE PLACED THEM ON SHIFT. J. T. POTTINGER'S DESK BOOK.
MY SUPERVISORIAL SERGEANT VEHICLE IS CHECKED PRIOR TO AND AFTER EACH SHIFT.

CPL. S. MARSHAM — C-110
LT. A. KINNEY — C-10

MURGRAVE, SHAYNE	09/17/08				
MAZZELL, DANNY	09/16/08	193			

ALF0012

AGENCY I.D. SC0000000 — SUPPLEMENTARY REPORT

Detective Pettigrew
Reference: Homicide
Victim: Fordred, Reginald
Location: 1204 Joint Prince Lane, Wando, S.C.

This detective was notified by Sgt. A. Blake in reference to this incident. This detective met with Sgt. A. Allen of the Berkeley County Sheriff's Office to reference obtaining an arrest warrant for the suspect, Ron McCray, and a search warrant for his residence at [redacted] Whitefish Lane, Wando. This detective obtained the search warrant, for the residence, and a murder arrest warrant (#223000) for McCray, both signed by Judge Pyle. This detective turned the arrest warrant over to the Berkeley County Sheriff Office C.I.D. Office and the search warrant over to the R.C.I.D. This detective was briefed in the Whitefish Lane area turned over to Det. B. Blake as that day reports warrant could be executed.

This detective, along with Goose Creek Police Department and other deputies, responded to 424 Whitefish Drive, Goose Creek, S.C. in reference to the location of the suspects vehicle, a dark colored Volvo, which was used during the incident. This detective obtained a written statement from the witness, Pamela Phillips, in reference to a confrontation that she had with her boyfriend, Ron Odgard (now deceased). Phillips stated that she overheard a telephone conversation that Odgard was having with whom she believed to be McCray. Odgard and Phillips had McCray over yesterday in Clarkston during the conversation. Phillips stated that Odgard had her upset the telephone conversation and discovered that she'd had McCray's number, found McCray, in the room and then went approximately one thousand dollars from Odgard's wallet. Phillips stated that after McCray finished paying her was going to overpay for the incident with the incident. Phillips stated that the shooting occurred in front of McCray's residence. This detective turned the written statement over to Sgt. B. Blake.

Respectfully,
Detective Pettigrew

Attached to 09

SOTTERADE, MERCY	09/16/08		SHELTER, WORRY	09/16/08	AR
MAZZELL, DANNY	09/16/08	193			

ALF0013

AGENCY I.D. SC0000000 — SUPPLEMENTARY REPORT

09/16/2008
LINDERMAN LANE @ JACK PRAIRIE LN
HOMICIDE
1751 HOURS

THIS DEPUTY RESPONDED TO A REPORTED SHOOTING INCIDENT ON JACK PRAIRIE ROAD IN THE CANNEY AREA OF BERKELEY COUNTY. ENDS ON THE CRIME SCENE I ASSISTED IN SECURING THE SCENE AND ESTABLISHED A CRIME SCENE LOG.

CPL. P.T. GIANELLI
C-113

GIANELLI, PATRICK	09/17/08		GILLIGAN, STEPHEN	09/17/08	AR
MAZZELL, DANNY	09/16/08	193			

ALF0014

AGENCY I.D. SC0000000 — SUPPLEMENTARY REPORT

REFERENCE: MURDER
DATE: 09-16-08

ON THE ABOVE DATE, THIS DEPUTY RESPONDED TO JACK PRAIRIE ROAD; WHICH IS IN THE WANDO AREA OF BERKELEY COUNTY IN REFERENCE TO THE ABOVE INCIDENT TYPE. UPON ARRIVAL, THIS DEPUTY WAS ASSIGNED TO ASSIST DETECTIVES WITH THE AGENCY FROM THE CRIMINAL ENFORCEMENT DIVISION. THIS DEPUTY MET WITH A WITNESS BY THE NAME OF [redacted] WHO STATED THAT SHE HEARD A LOUD NOISE COMING FROM OUTSIDE AND THEN SHE WENT OUTSIDE TO CHECK ON HER 3 YEAR OLD CHILD. MRS. COARSE STATED SHE SAW A LARGE GROUP OF SUBJECTS RUNNING AND THEN SAW A LOCAL BOY BY THE NAME OF [redacted] (SHANE) OVER WHO SHE LATER FOUND OUT WAS PROVIDE PONCHER) LYING ON THE GROUND. MRS. COARSE THEN STATED THAT MR. MCCRAY KICKED MR. PONCHER IN THE HEAD AND YELLED AT HIM TO "DIE MOTHER FUCKER, DIE" THEN LEFT IN A DARK IN COLOR VEHICLE. THIS DEPUTY OBTAINED HER CELL PHONE NUMBER [redacted] AND INTRODUCED HER TO DETECTIVE SHALER. THIS DEPUTY WAS THEN ASKED TO RESPOND TO [redacted] ROAD; WHICH WAS AROUND THE CORNER FROM THE INCIDENT LOCATION. DEPUTY B. BAKE AND I ARRIVED AND MADE CONTACT WITH MR. MCCRAY'S BROTHER DAVID MCCRAY, MR. D. MCCRAY GAVE THREE DEPUTIES PERMISSION TO SEARCH THE RESIDENCE FOR HIS BROTHER, LOCATED IN MR. R. MCCRAY'S BEDROOM WAS A FEMALE AND EIGHT MONTH OLD BABY. MRS. [redacted] (MR. R. MCCRAY'S GIRLFRIEND) AND SHE WAS HOLDING A 9 MONTH OLD CHILD WHICH SHE ADMITTED WAS MR. R. MCCRAY'S CHILD. THE LOCATION WAS SECURED DUE TO SEEING THE FOLLOWING ITEMS IN MR. R. MCCRAY'S WALK IN CLOSET: A BLACK IN COLOR CLOTH RANDOM CASE LYING OFF THE FLOOR, CLEAR PLASTIC BAG CONTAINING GREEN PLANT MATERIAL, NEW ZIP LOCK BAGGIES, OPEN BOXES OF AMMUNITION. THIS DEPUTY SPOKE WITH DETECTIVE SHALER BY PHONE AND WAS INSTRUCTED TO READY APPROPRIATE TO DETECTIVE ALSOP FOR A SEARCH WARRANT. ONCE THIS TASK WAS COMPLETED, THIS DEPUTY SPOKE WITH MR. D. MCCRAY WHO STATED THAT HE BROTHER THAT SHOT AT MR. PONCHER FOR AN UNKNOWN AMOUNT WHERE MR. PONCHER PULLED OUT HIS FORD AND SHOOT AT MR. R. MCCRAY CONTINUED TO RECEIVE CALLS FROM MR. R. MCCRAY'S CELL PHONE [redacted] MRS. EVETH MCCRAY WHO IS MR. R. MCCRAY AND D. MCCRAY'S MOTHER CAME BY AND WAS ASKED IF SHE KNEW THE WHEREABOUTS OF R. MCCRAY. SHE STATED NO AND THAT SHE DIDN'T HAVE TIME AND THAT HE COULD CALL HER LATER AT HOME AFTER CHURCH [redacted]. MRS. D. MCCRAY WAS ASKED IF HER SON WAS TAKING ANY DRUGS AND SHE STATED "NO" HE WAS DOWN RIGHT CLEAN, NOT EVEN WEEDING. THE SCENE WAS TURNED OVER TO DETECTIVE SHALER.

DEPUTY A. BRAKE ADW C-117

ASHE JR, ALLEN	09/17/08		WILLIAM, STEPHEN	09/17/08	AR
MAZZELL, DANNY	09/16/08	193			

ALF0015

5-J

AGENCY I.D. SC0000000 — SUPPLEMENTARY REPORT

DATE: 011709

RE/R: MURDER (187/2000), STATUTE 187-A-10

SUBJ: RON SANTA MCGRAY

APP: DET. J. T. POTTINGER

VICT: REGINALD PORCHER

I ENTERED MYSELF ALONG WITH DEPUTY SAUNDERS WITH RON SANTA MCGRAY IN OWNERSTON COUNTY DEPUTY AT THE OWNERSTON COUNTY DETENTION CENTER AND TOOK CUSTODY OF RON SANTA MCGRAY IN REFERENCE TO A MURDER WARRANT (187/2000), STATUTE 187-A-10. I ADVISED RON SANTA MCGRAY OF HIS MIRANDA RIGHTS, SECURED HIM IN DEPUTY SAUNDERS VEHICLE WITH HANDCUFFS AND SEAT BELT THEN TRANSPORTED HIM TO THE BERKELEY COUNTY CRIMINAL INVESTIGATIONS DIVISION. I THEN TRANSPORTED HIM TO THE HILLSVILLE DETENTION CENTER WHERE I SERVED THE WARRANT ON HIM AND GAVE HIM A COPY. ANY PROPERTY REMOVED FROM RON SANTA MCGRAY WAS PLACED IN A P.E. PROPERTY BAG AND GIVEN TO THE CORRECTIONS OFFICER IN CHARGE OF BOOKING. RON SANTA MCGRAY WAS SEARCHED PRIOR TO AND AFTER TRANSPORTING HIM TO THE JAIL. MY VEHICLE ALONG WITH DEPUTY SAUNDERS VEHICLE WAS CHECKED PRIOR TO AND AFTER TRANSPORTING RON SANTA MCGRAY TO THE JAIL. CAPTAIN CLUB MADE CONTACT WITH THE VICTIMS FAMILY AND NOTIFIED THEM OF THE ARREST AND THE BOND COURT DATE AND TIME. I MADE COPIES OF ALL DOCUMENTS AND PLACED THEM ON MY DET. J. T. POTTINGERS DESK DOOR.

MY DEPARTMENTAL ISSUED VEHICLE IS CHECKED PRIOR TO AND AFTER EACH SHIFT.

CPL. S. MUNGRANE — LT. A. RAMSEY
C-139 — C-99

MUNGRANE, SHAYNE	09/17/09			
MAZZELL, DANNY	09/18/09	193		

ALF0012

AGENCY I.D. SC0000000 — SUPPLEMENTARY REPORT

Detective: Pottinger
Reference: Homicide
Victim: Porcher, Reginald
Location: 1234 Jack Prince Lane, Wanda, S.C.

This detective was notified by Sgt. S. Shuler in reference to the above incident. This detective met with Sgt. S. Allen at the Berkeley County Sheriff's Office in reference obtaining an arrest warrant for the suspect, Ron McGray, and a search warrant for 32 Hollerone [redacted] Wellsville Lane, Wanda. This detective obtained the search warrant, for the residence, and a murder arrest warrant (2000000) for McGray, both signed by Judge Fish. This detective faxed the arrest warrant over to the Berkeley County Sheriff Office C.I.D. Office so that it could be placed into NCIC/S. This detective then traveled to [redacted] Wellsville Lane and located the search warrant over to Det. S. Shuler, so that the search warrant could be executed.

This detective, along with Goose Creek Police Department and other deputies, responded to 432 Medallion Drive, Goose Creek, S.C. in reference to the location of the possible victim, a blue colored Volvo, which was used during the incident. This detective obtained a written statement from the resident, Pamela Phillips, in reference to a conversation that she had with her boyfriend, Chris Chappell (see statement). Phillips stated that after numerous [redacted] Chappell was having with whom she believed to be McGray, Chappell told Phillips that McGray was possibly in Charleston during the conversation. Phillips stated that Chappell told her about the heightened conversation and comments that what McGray's brother, Steve McGray, in the past and from more approximately nine thousand dollars from Steve McGray. Phillips stated that Ron McGray believed Steve was going to retaliate for the incident with his brother. Phillips stated that the shooting supposedly occurred at Ron McGray's residence. This detective turned the written statement over to Sgt. S. Shuler.

Suspect:
McGray, Ron

Arrested > 19

POTTINGER, JUSON T	09/17/09		SHULER, BOBBY	09/18/09
MAZZELL, DANNY	09/18/09	193		

ALF0013

AGENCY I.D. SC0000000 — SUPPLEMENTARY REPORT

09/18/2009
LINCOLNE LANE @ JACK PRINCE LN.
HOMICIDE
1719 HOURS

THIS DEPUTY RESPONDED TO A REPORTED SHOOTING INCIDENT ON JACK PRINCE ROAD IN THE CANNOY AREA OF BERKELEY COUNTY. ONCE ON THE CRIME SCENE I ASSISTED IN SECURING THE SCENE AND ESTABLISHED A CRIME SCENE LOG.

CPL. P.T. GUNNELLS
C-142

GUNNELLS, PATRICK	09/17/09		TILLMAN, STEPHEN	09/17/09
MAZZELL, DANNY	09/18/09	193		

ALF0014

AGENCY I.D. SC0000000 — SUPPLEMENTARY REPORT

REFERENCE: MURDER
DATE: 09-18-09

ON THE ABOVE DATE, THIS DEPUTY RESPONDED TO JACK PRINCE ROAD; WHICH IS IN THE WANDA AREA OF BERKELEY COUNTY IN REFERENCE TO THE ABOVE INCIDENT TYPE. UPON ARRIVAL, THIS DEPUTY WAS ASSIGNED TO ASSIST DETECTIVES WITH THIS AGENCY FROM THE CRIMINAL ENFORCEMENT DIVISION. THIS DEPUTY MET WITH A WITNESS BY THE NAME OF CLAUDIA COAKLIN WHO STATED THAT SHE HEARD A LOUD NOISE COMING FROM OUTSIDE AND THEN SHE WENT OUTSIDE TO CHECK ON HER 3 YEAR OLD CHILD. MRS. COAKLIN STATED SHE SAW A LARGE GROUP OF SUBJECTS RUNNING AND THEN SAW A LOCAL BOY BY THE NAME OF (RON MCGRAY) STANDING OVER WHO SHE LATER FOUND OUT WAS (REGGIE POACHER) LYING ON THE GROUND. MRS. COAKLIN THEN STATED THAT MR. MCGRAY KICKED MR. POACHER IN THE HEAD AND YELLED AT HIM TO "SHE MOTHER FUCKER, DIE" THEN LEFT IN A DARK IN COLOR VEHICLE. THIS DEPUTY OBTAINED HER CELL PHONE NUMBER (843-814-0136) AND INTRODUCED HER TO DETECTIVE SHULER. THIS DEPUTY WAS THEN ASKED TO RESPOND TO 187 WHITE FALLS ROAD; WHICH WAS AROUND THE CORNER FROM THE INCIDENT LOCATION. DEPUTY B. BOSS AND I ARRIVED AND MADE CONTACT WITH MR. MCGRAYS BROTHER (DAVID MCGRAY). MR. D. MCGRAY GAVE VERBAL DEPUTIES PERMISSION TO SEARCH THE RESIDENCE FOR HIS BROTHER, LOCATED IN MR. R. MCGRAYS BEDROOM WAS A FEMALE WHO IDENTIFIED HERSELF AS MR. R. MCGRAYS GIRLFRIEND AND SHE WAS HOLDING A 9 MONTH OLD CHILD WHOM SHE ADMITTED WAS MR. R. MCGRAYS CHILD. THE LOCATION WAS SECURED DUE TO SEEING THE FOLLOWING: INSIDE MR. R. MCGRAYS WALK IN CLOSET, A BLACK IN COLOR CLOTH HANDBAG CASE LYING ON THE FLOOR, CLEAR PLASTIC BAG CONTAINING GREEN PLANT MATERIAL, MINI ZIP LOCK BAGGIES, OPEN BOXES OF AMMUNITION. THIS DEPUTY SPOKE WITH DETECTIVE SHULER BY PHONE AND WAS DIRECTED TO RELAY INFORMATION TO DETECTIVE ALVEN FOR A SEARCH WARRANT. ONCE THIS TASK WAS COMPLETED, THIS DEPUTY SPOKE WITH MR. D. MCGRAY WHO STATED THAT HIS BROTHER WAS GIVEN AT MR. POACHER FOR AN EARLIER INCIDENT WHERE MR. POACHER PULLED OUT HIS GUN AND SHOOK IT AT HIM. MR. D. MCGRAY CONTINUED TO RECEIVE CALLS FROM MR. R. MCGRAYS CELL PHONE # (843-303-0163). MRS. EVELYN MCGRAY WHO IS MR. R. MCGRAY AND D. MCGRAYS MOTHER CAME BY AND WAS ASKED IF SHE KNEW THE WHERE ABOUTS OF A. MCGRAY. SHE STATED NO AND THAT SHE DIDN'T HAVE TIME AND THAT SHE COULD CALL HER LATER AT HOME AFTER CHURCH @ (843-821-4316). MRS. E. MCGRAY WAS ASKED IF HER SON WAS TAKING ANY DRUGS AND SHE STATED "NO HE WAS COMPLETELY CLEAN, NOT EVEN MARIJUANA". THE SCENE WAS TURNED OVER TO DETECTIVE SHULER.

DEPUTY: A. BRUCE ASHE C-117

ASHE JR, ALLEN	09/17/09		TILLMAN, STEPHEN	09/17/09
MAZZELL, DANNY	09/18/09	193		

ALF0015

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

SEARCH WARRANT

Form Approved by S.C. Attorney General Section 17-13-140 Effective 10, 1978

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR THE MUNICIPALITY OF :

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provision of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING) TO BE SEARCHED

BETTER DESCRIBED ON THE FACE OF THE AFFIDAVIT

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

BETTER DESCRIBED ON THE FACE OF THE AFFIDAVIT

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to the issuing Magistrate within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

Moncks Corner, S.C.
Sept 17, 2009.
11:35am

Phyllis Lewis (L.S.)
Signature of Judge

SCCA/313 (3-77)

ALF0233

RETURN

I received the attached Search Warrant Sept 17, 2009, and have executed it as follows:

On Sept 18, 2009 at 10:00 o'clock A M, I searched (the person/the premises) described in the warrant.

I left a copy of the warrant with (name of person searched or "at the place of search") The vehicle together with a receipt for all items seized.

The following is an inventory of property taken pursuant to the warrant:

I Label 1.ft from right fender

This inventory was made in the presence of _____ and

I swear this inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this 21 day of Sept, 2009.

Phyllis Lewis (L.S.)
(Signature of Judge)

(Signature of Officer Executing Warrant)

ALF0234

ALF2009-09-07035

WITNESSES
J Pettiejet
Berkeley County Sheriff's Office

AGENCY CASE NUMBER
090038994

AGENCY WARRANT NUMBER

DATE OF ARREST
M325008

ACTION OF GRAND JURY
September 17, 2009

Foreperson of Grand Jury
Date: 9-17-09

VERDICT

Foreperson of Petit Jury
Date:

DISTRICT

DOCKET NO. 2011-GS-08-0947

The State of South Carolina
County of Berkeley

COURT OF GENERAL SESSIONS
July Term 2011

THE STATE
vs.
Ron Santa McCray
DOB: [redacted]

Indictment for
Murder

FILED
2011 JUL 13 PM 2:29
CLERK OF COURT
BERKELEY COUNTY, S.C.

ALF0235

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

INDICTMENT

At a Court of General Sessions, convened on July 13, 2011 the Grand Jurors of Berkeley County present upon their oath:

Murder

That in Berkeley County on or about September 16, 2009, with malice aforethought, Ron Santa McCray did unlawfully kill and murder Reginald Porcher by means of a gunshot wound, and that Reginald Porcher did die in Berkeley County as a proximate result thereof on September 16, 2009. This action is 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.

BRYAN A. ALFANO
DEPUTY SOLICITOR

ALF0236

842

EXHIBIT J

AGENCY I.D. SC0080000 — SUPPLEMENTARY REPORT — CASE NUMBER 2 0 0 0 0 0 0 3 8 9 4 4 — MIS N — CRIME N

REF: HOMICIDE

VICTIM: REGINALD PORCHE

INCIDENT LOCATION: [redacted] JACK PRIMUS LANE, WANDO SC

NARRATIVE: ON 08-16-2009 THIS DETECTIVE, ALONG WITH DETECTIVE SGT. SHULER RESPONDED TO [redacted] JACK PRIMUS LN. AND UNDERLIE LANE IN REFERENCE TO A SHOOTING. UPON ARRIVAL, THE VICTIM, REGINALD PORCHE, HAD BEEN TRANSPORTED TO EAST COOPER HOSPITAL. THIS DETECTIVE RESPONDED TO EAST COOPER HOSPITAL TO POSSIBLY GET A STATEMENT FROM THE VICTIM. UPON ARRIVAL AT EAST COOPER, I WAS ADVISED THAT THE VICTIM HAD EXPIRED. I NOTIFIED SGT. SHULER WHOM WAS STILL AT THE CRIME SCENE. I THEN COMPLETED A G.S.R. KIT (GUN SHOT RESIDUE) ON THE VICTIM AND COLLECTED HIS CLOTHING AND PERSONAL ITEMS VIA EVIDENCE CHAIN OF CUSTODY SHEET. I REMAINED WITH THE BODY UNTIL THE CORONER OF BERKELEY COUNTY ARRIVED AND TOOK CUSTODY OF THE BODY. I AFFIDAVED SGT. SHULER AND RESPONDED TO [redacted] WHITEFALLS LANE, WANDO WHERE A SEARCH WARRANT WAS BEING EXECUTED.

DURING THE EARLY MORNING HOURS OF 08-17-2009 IT WAS DISCOVERED THAT RON SANTA MCCRAY (SUSPECT) HAS A NEXTEL TELEPHONE. I THEN CONTACTED NEXTEL TO SEE IF THE GPS ON THE NEXTEL PHONE COULD BE ACTIVATED TO ASSIST LAW ENFORCEMENT IN LOCATING THE SUSPECT'S LOCATION. I FILLED OUT THE PROPER FORMS FOR NEXTEL AND FAXED THEM. NEXTEL TRIED TO ACTIVATE THE GPS WITH NEGATIVE RESULTS DUE TO THE PHONE POSSIBLY BEING OFF. I ALONG WITH OTHER OFFICERS RESPONDED TO [redacted] MAGELINE DR. GOOSE CREEK IN REFERENCE TO THE POSSIBLE LOCATION OF THE VID SCLE (DARK IN COLOR VOLVO) WHICH WAS USED DURING THE CRIME. CONTACT WAS MADE WITH THE RESIDENCE AND CHRIS GLOGGETT WAS LOCATED AT THE RESIDENCE AND TRANSPORTED TO THE BERKELEY COUNTY SHERIFF'S OFFICE (BCSO). THE VEHICLE WAS TOWED TO BERKELEY COUNTY FORENSIC UNIT TO BE SEARCHED. I OBTAINED CONSENT TO SEARCH THE RESIDENCE FROM PENDOLA PHILLIPS AND COLLECTED CHRIS CLOTHING WHICH HE WAS WEARING DURING THE CRIME. ALL ITEMS WERE TURNED OVER TO EVIDENCE VIA EVIDENCE CHAIN OF CUSTODY. IT WAS DISCOVERED THAT CL.OGGETT DROPPED OFF MCCRAY IN THE AREA OF CHARLESTON WHERE HIS GIRLFRIEND LIVED. IT WAS ALSO DISCOVERED THAT SHE DROVE A WHITE IN COLOR CHRYSLER 300.

SGT. SHULER AND I RESPONDED TO 1315 APT. B 11 N. WOODMERE, CHARLESTON SC. IN REFERENCE TO LOCATING THE RESIDENCE AND VEHICLE IN WHICH IT WAS FOUND AT THE RESIDENCE IN THE PARKING LOT. WE THEN MADE CONTACT WITH CHARLESTON CITY POLICE DEPARTMENT AND INFORMED THEM OF THE INCIDENT WHILE A PLAN WAS BEING FORMED BETWEEN THE TWO AGENCIES. THE VEHICLE IN QUESTION LEFT THE AREA. CHARLESTON POLICE HOLDS THE VEHICLE OUT. THE DIVISION WAS MADE AFTER THE VEHICLE DID NOT RETURN TO THE AREA TO COME BACK TO BERKELEY COUNTY AND CHARLESTON POLICE DEPARTMENT WOULD BE IN CONTACT WITH US.

RISER, JAMES	09/21/09		SHULER, BOBBY	09/21/09	44
MAZZELL, CANDY	09/18/09	193			

ALF0218

AGENCY I.D. SC0080000 — SUPPLEMENTARY REPORT — CASE NUMBER 2 0 0 0 0 0 0 3 8 9 4 4 — MIS N — CRIME N

CASE STATUS: ARREST OVER 18

SUSPECT: MCCRAY, RON SANTA

RISER, JAMES	09/21/09		SHULER, BOBBY	09/21/09	44
MAZZELL, CANDY	09/18/09	193			

ALF0240

AGENCY I.D. SC0080000 — SUPPLEMENTARY REPORT — CASE NUMBER 2 0 0 0 0 0 0 3 8 9 4 4 — MIS N — CRIME N

REFERENCE: HOMICIDE

VICTIM: REGINALD PORCHER

LOCATION: UNDERLIE LANE AND JACK PRIMUS ROAD, WANDO, SC

ON 9/17/09, THIS REPORTING OFFICER WENT TO THE CHARLESTON COUNTY SHERIFF'S OFFICE FORENSIC SERVICES DIVISION IN REFERENCE TO PICKING UP EVIDENCE. THIS REPORTING OFFICER MET WITH DEPUTY KATHY S. SULLIVAN AND RECEIVED THE FOLLOWING EVIDENCE:

(1) REVELATION BAKED OFF 12 GA. SHOTGUN - 0372612
(2) JC HIGGINS BAKED OFF 16 GA. SHOTGUN - UNK
(3) (13) THIRTEEN 12 GA. BUCKSHOT SHELLS
(4) (8) FOUR 16 GA. SHOTGUN SHELLS
(5) (7) SEVEN LATEX GLOVES
(6) ONE BLACK JACKET
(7) ONE MULTI-COLOR PILLOW CASE
(8) PLASTIC BAG THAT CONTAINED THE AMMO AND GLOVES

ALL ITEMS WERE COLLECTED FROM THE WHITE CHRYSLER 300. THESE ITEMS WERE TRANSFERRED TO THE EVIDENCE ROOM OF THIS AGENCY.

SHERIFF SHULER - COUNTY 310

SHULER, SHARON	12/29/10		FOKINDA, DEAN	12/29/10

ALF0241

AGENCY I.D. SC0080000 — SUPPLEMENTARY REPORT — CASE NUMBER 2 0 0 0 0 0 0 3 8 9 4 4 — MIS N — CRIME N

DATE: 9/18/2009

LOCATION: FORENSIC SERVICES

REFERENCE: HOMICIDE

VICTIM: REGINALD PORCHER

ON 9/14/2009 THIS R/D EXECUTED A SEARCH WARRANT SIGNED BY JUDGE PAULA LEWIS ON A 1999 VOLVO 240, DEARING LICENSE PLATE [redacted] (STATE OF ALABAMA). THIS R/D PHOTOGRAPHED THE VEHICLE AND PROCESSED FOR LATENT FINGERPRINTS. ONE LATENT FINGERPRINT WAS RECOVERED FROM THE RIGHT FRONT DOOR AREA.

THE FOLLOWING ITEMS WERE RETAINED AS EVIDENCE:

(1) LATENT LIFT
(1) CD WITH PHOTOS

THE ABOVE ITEMS WERE TRANSFERRED TO THE EVIDENCE FACILITY OF THIS AGENCY PENDING INVESTIGATION

KONINDA, DEAN	12/29/10		KONINDA, DEAN	12/29/10

ALF0242

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	C/A NO: 2015-CP-08-2692
	)	
Ron Santa McCray, #353031,	)	
	)	
Applicant,	)	
	)	**NOTICE OF MOTION AND MOTION**
v.	)	**FOR APPROVAL OF FUNDS AND**
	)	**REQUEST FOR PRODUCTION OF**
State of South Carolina,	)	**RULE 5 DISCOVERY MATERIALS**
	)	
Respondent.	)	

The Applicant, at his request and through appointed counsel below, respectfully moves for this Court to approve funds for the investigation and discovery of certain records in the above-pending PCR matter. Applicant believes the records of both his own cellular telephone and witness James Boykin's cellular telephone should have been obtained by his trial counsel in order to impeach Mr. Boykin's testimony. Applicant further believes trial counsel should have obtained timesheet records from Mr. Boykin's employer to assist in challenging Mr. Boykin's testimony at trial. Accordingly Applicant seeks an Order from this Court authorizing funding to retrieve these telephone records and employment records through subpoena. Counsel respectfully requests this Court approve funding not to exceed $750.00 from the Office of Indigent Defense for any costs incurred in gathering this information.

Applicant further requests that this Court direct that the Berkeley County Solicitor's office deliver to appointed counsel a copy of any responses to his trial counsel's Rule 5 discovery requests.

Respectfully submitted,

Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

Columbia, South Carolina
August 11, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)
)
Ron Santa McCray, #353031)
☑ Plaintiff)
)
v.)
)
State of South Carolina)
☐ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.

2015 - CP - 08 - 2692

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Lance S. Boozer, Bar No. 75803	Rutledge Johnson, Bar No.
Address: 807 Gervais Street, Suite 203	Address: PO Box 11549
Columbia, SC 29201	Columbia, SC 29211
phone: 803-608-5543 fax:	phone: 803-734-3737 fax:
e-mail:lsb@boozerlawfirm.com her:	e-mail: her:

☑ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Funding and Production of Discovery Materials

Estimated Time Needed: 10 minutes Court Reporter Needed: ☑ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☑ PAID – AMOUNT:
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☑ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by:

☐ MOTION FEE COLLECTED:
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (11/03)

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*
*Also admitted in Florida

807 Gervais Street, Suite 203
Columbia, SC 29201

Telephone: 803-608-5543
Fax: 803-926-3463

Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

August 11, 2016

Honorable Clerk of Court
Common Pleas Court of Berkeley County
P.O. Box 219
Moncks Corner, SC 29461-0219

RE: Ron Santa McCray, #353031 v. State
2015-CP-08-2692

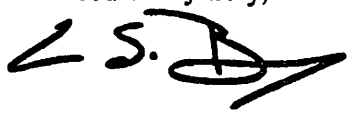
Dear Madam Clerk:

Enclosed for filing, please find an original and one (1) copy of the following documents:

- **Petitioner's Amended PCR Application; and**
- **Motion for Approval of Funds and Production of Discovery Materials**

Please file the original and return the extra file-stamped copy to my office in the enclosed self-addressed envelope. Thank you for your time and please do not hesitate to contact me should you have any questions.

Yours very truly,



Lance S. Boozer

cc: Rutledge Johnson, AAG
Ron Santa McCray, #353031

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Ron Santa McCray, #353031, Applicant, v. State of South Carolina, Respondent.	)	2015-CP-08-2692 **RETURN**

In response to the post-conviction relief application filed on November 25, 2015, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Berkeley County Clerk of Court's orders of commitment. The Applicant was indicted by the July 2011 term of the Berkeley County Grand Jury for one (1) count of Murder (2011-GS-08-0947). Christopher Beiring, Esquire, represented him. On November 2, 2012, the Applicant proceeded to a jury trial pursuant to which he was found guilty as indicted. The Honorable Kristi Lea Harrington sentenced the Applicant to confinement for life.

A notice of appeal was filed on Applicant's behalf and an appeal perfected pursuant to Anders v California 378 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. McCray, 413 S.C. 76, 773 S.E.2d 914 (Ct. App. 2015) (filed on July 29, 2015). The Remittitur was issued on July 14, 2015.

II.

In his application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
    a. "Actual innocence"
    b. "Failure to call key witness"
    c. "Failed to impeach the states (sic) witness and Brady violation"
    d. Conflict of interest regarding the private investigator
    e. "Self-defense was proven and shown and determine (sic) by the court"
    f. "Failure to call a mistrial"
    g. "Failure to introduce evidence"
    h. "Trial attorney gives (sic) the judge my trial strategy"
2. "Denial of 5th, 6th, ad 14th Amendments U.S. Const. (sic)"
    a. "Violation of Due Process"
3. "Brady violation"
4. "Prosecutorial misconduct"
    a. "Predjudice (sic) and bias as a result I was denied a fair trial"
    b. "Self-defense was proven and shown and determine (sic) by the court"

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, and the South Carolina Department of Corrections' records, the record on appeal, and Court of Appeals opinion. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Respondent construes Applicant's allegation as alleging ineffective assistance of counsel. The Respondent asserts that the Applicant's allegation of ineffective assistance of trial counsel is without merit. The Respondent also asserts that the Applicant's attorney rendered effective assistance well within the standard of reasonableness within professional norms for a criminal defense attorney.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney

performance is measured by its reasonableness under professional norms. Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625, (citing Strickland v. Washington). 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 v. Washington. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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. 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). In other words, where ineffective assistance of counsel is alleged as a ground for relief, the Petitioner 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 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent interprets Applicant's second claim as an allegation that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain

amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

V.

The Applicant also alleges that his Brady and Rule 5 rights were violated. The PCR judge held under State v. Bryant, 307 S.C. 458, 415 S.E.2d 806 (1992) that evidence which was not turned over under Brady requires reversal. However, we find Bryant inapplicable to this case. In Bryant, this Court held a trial judge should not rule evidence is exculpatory or impeaching without first inspecting the evidence. We did not address whether the evidence was exculpatory or impeaching. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963).

Brady requires the State to disclose evidence in its possession favorable to the accused and material to guilt or punishment. Pennsylvania v. Ritchie, 480 U.S. 39, 107 S.Ct. 989, 94 L.Ed.2d 40 (1887). Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. United States v. Bagley, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985).

VI.

Applicant also alleges prosecutorial misconduct. Prosecutorial misconduct is not an issue for post conviction relief. Rather, this allegation is a direct appeal issues that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicants burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, the Respondent requests an evidentiary hearing solely for the purpose of determining whether the Applicant's trial counsel was ineffective and whether the Applicant's appellate counsel was ineffective.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Deputy Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 9, 2016

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BERKELEY	)	
	)	
	)	2015-CP-08-2692
	)	
RON SANTS MCCRAY, #353031	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
The Boozer Law Firm, LLC
807 Gervais Street, Suite 203
Columbia, South Carolina 29201

DATED this 9th day of June, 2016.

Brianna Arnone

Brianna Arnone, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C/A NO: 2015-CP-08-2692
	)	
Ron Santa McCray, #353031,	)	
	)	
Applicant,	)	
	)	**FIRST AMENDMENT TO PRIOR**
v.	)	**APPLICATION FOR PCR**
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief filed November 25, 2015:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(i) Counsel failed to object to hearsay testimony identifying Applicant as alleged shooter.

(ii) Counsel failed to object to State's closing argument in which State argued the jury could infer malice from the use of a deadly weapon. *State v. Belcher,* 385 S.C. 597, 685 S.E.2d 802, (2009).

THE BOOZER LAW FIRM, LLC

Lance S. Boozer
Attorney for Applicant
807 Gervais Street, Suite 203
Columbia, SC 29201
Phone: (803) 608-5543
Fax: (803) 926-3463

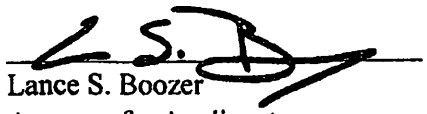
Columbia, South Carolina
August 11, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C/A NO: 2015-CP-08-2692
	)	
Ron Santa McCray, #353031,	)	
	)	
Applicant,	)	
	)	**CERTIFICATE OF SERVICE**
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR and Motion for Funding and Production of Documents upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, addressed as follows:

Rutledge Johnson
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211

THE BOOZER LAW FIRM, LLC



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Fax: (803) 926-3463

Columbia, South Carolina
August 11, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	
	)	CASE NO.: 2015-CP-08-2692
Ron Santa McCray, #353031	)	**MOTION AND ORDER INFORMATION**
Plaintiff,	)	**FORM AND COVERSHEET**
vs.	)	
State of South Carolina	)	
Defendant.	)	

Plaintiff's Attorney:	Defendant's Attorney:
Lance S. Boozer, Esquire, Bar No. _____ Address: 807 Gervais St, Suite 203; Columbia, SC 29201 Phone: _____Fax _____ E-mail: _____Other: _____	J. Rutledge Johnson, Bar No. 78871 Address: PO Box 11549 Columbia, SC 29211-1549 Phone: 803-734-3737 Fax803-734-4113 E-mail: _____Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ June 9, 2016
Signature of Attorney for ☐ Plaintiff /☒ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ _____
☒ EXEMPT:
(check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other:	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS

COUNTY OF BERKELEY 2015-CP-08-2692

RON SANTA McCRAY,
Applicant,
-vs-
STATE OF SOUTH CAROLINA,
Respondent.

TRANSCRIPT OF RECORD

August 2, 2017

Charleston, South Carolina

B E F O R E:

The Honorable Michael Nettles, Judge.

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

Lance S. Boozer, Esquire
Attorney for the Applicant

Lindsey McCallister, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

E X A M I N A T I O N S

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
RON SANTA MCCRAY	4	--	--	--
CHRISTOPHER BIERING	65	102	128	--

E X H I B I T S

APPLICANT'S	DESCRIPTION	MARKED	RECEIVED
1	Cell Phone Records	23	23
2	Letter from International Longshoremen's Association	28	28

(August 2, 2017.)

THE COURT: Ms. McCallister, you're recognized.

MS. McCALLISTER: Thank you, Your Honor. This is Ron Santa McCray vs. The State of South Carolina, 2015-CP-08-2692. We're here today on Mr. McCray's application for a post-conviction relief which he filed on November 25, 2015. He is currently incarcerated in the South Carolina department of corrections pursuant to orders of commitment from the Berkeley County clerk. He was indicted at the July 2011 term by the Berkeley County grand jury for one count of murder. That is indictment number 2011-GS-08-0947.

He was represented on those charges by Christopher Biering. He proceeded to a jury trial in front of Judge Harrington on November 2nd, 2012. The jury found him guilty as indicted, and he was sentenced to life. A timely notice of appeal was filed on his behalf. An appeal was perfected. The South Carolina Court of Appeals affirmed his conviction and sentence on July 29th, 2015.

Mr. McCray is present in the courtroom today and he is represented on this matter by Lance Boozer.

THE COURT: Mr. Boozer, if you could, let's place on the record the grounds that you intend on going

forward with here today.

MR. BOOZER: Thank you, Your Honor. If it pleases the Court: Judge, Mr. McCray initially filed his initial PCR application which was later amended. His claims are laid out, of course, in his original application and in the amendment, and they're fairly lengthy.

I intend to have him walk one by one through them as he testifies. In the interest of time, I'm happy to do that, but I'm also happy to review them before we get going, if that's what Your Honor prefers.

THE COURT: So, essentially, you have gone through this with your client. You're essentially going to go forward on all grounds that are set forth in the application?

MR. BOOZER: Correct. He wishes to proceed on all of his grounds, Your Honor.

THE COURT: Very good. We'll take them in due course. You may call your first witness.

MR. BOOZER: Thank you, Your Honor. We go ahead and call Mr. McCray.

RON SANTA McCRAY,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BOOZER:

Q. Mr. McCray, how are you?

A. I'm doing okay.

Q. And, if you would, while you're testifying, just make sure you keep your voice up, speak clearly and slowly so Madame Court Reporter can take down what you're saying, okay?

Do you understand what it is that you have filed to get to court today?

A. Yes, I do.

Q. And you filed an application for post-conviction relief?

A. Yes.

Q. What are you currently incarcerated for?

A. For murder.

Q. And what type of sentence are you currently serving?

A. A life sentence.

Q. Now, did you actually have a trial in that case?

A. Yes.

Q. And who represented you at the trial?

A. Christopher Biering.

Q. All right. Now, do you recall when you were first arrested on the charge?

A. Yes.

Q. When was that?

A. It was September 17th, I believe, of 2009.

Q. Okay. And before we get into that, you understand that the only thing this Court can do for you, of course, is to grant you a new trial?

A. Yes, yes.

Q. And not reduce your sentence or anything like that.

A. Right, right.

Q. After you were arrested, was Mr. Biering your first lawyer or was he your only lawyer?

A. No, he was not.

Q. Who was the first attorney?

A. Ms. Debbie Littlejohn.

Q. How long did Ms. Littlejohn represent you?

A. I believe that was a little over a year.

Q. Why did Mr. Biering come on to your case?

A. Well, after Littlejohn, there was -- I think there was either Jerry Theos or Cameron Marshall, either or, and then after those two, then it was Christopher Biering.

Q. Okay. So Mr. Biering eventually ended up being --

A. Number four, the fourth attorney.

Q. All right. When did Mr. Biering come on your case?

A. I believe that was 2011, around November.
Q. And when was your actual trial?
A. It was October 2012.
Q. How long do you think Mr. Biering was on your case, give or take?
A. Ten, eleven months.
Q. Okay. Do you remember how many times you met with Mr. Biering before your trial?
A. At least -- I'll just say six, between six to eight.
Q. Were you incarcerated or in the county detention center?
A. Yes, yes, I was.
Q. What would you and Mr. Biering discuss throughout your meetings?
A. We would discuss business, what happened. Of course, there were a number of documents I was trying to obtain, just -- things just started kind of like falling apart, I guess. The things I was trying to pursue, I guess he didn't really want to obtain those, I guess.
Q. We'll get to the specifics of those after we get into the application, but tell me about -- what was your relationship like with Mr. Biering?
A. It was pretty smooth going. I mean, he would ask me things and I would reply to it, and everything was

going -- the way it was, it was just -- I don't know. It just wasn't -- I don't know whether the lack of having my own, I guess, my private investigator, just one I could really reach out to and just give to me direction, and I was kind of like lacking some of that.

You know, he'd say things like, What happened to this right here? Why was this right here? So it started getting worse as the date, the trial date, starting getting -- along with the communication.

Q. As the trial date approached and finally arrived, how would you describe the relationship at that point with Mr. Biering?

A. It was getting pretty rough. Judge Dennis, he intervened. He ended up sending his -- what was it, his personal assistant, and he sat in on three of our meetings. Like I said, the information that I was trying to obtain, I just wasn't getting it.

Q. Okay. Let's go back to what you're talking about with what you believe is Judge Dennis's personal assistant sitting in on some meetings. Describe that a little bit.

A. He wanted to just give him info of how our relationship was going on.

Q. Who wanted to give info?

A. Judge Dennis wanted the info, the information, I

guess, to see how our relationship was going. I guess Judge Dennis was trying to make a speculation whether he was going to relieve him or not.

Q. Had you asked that Mr. Biering be relieved?

A. Yes, I did.

Q. And, obviously, that was not granted?

A. That was not granted.

Q. Touch a little bit more, though, why you believe Judge Dennis's assistant or someone related to --

A. His name is Tim. I don't remember his last name, but his first name is Tim.

Q. Okay. So how do you know he was Judge Dennis's assistant?

A. He was introduced to me as that by Mr. Biering.

Q. And he would physically sit with you while you were meeting with --

A. Yes.

Q. -- your lawyer? And just -- I'm getting bad about it, and I think you're starting to too, but let me finish the question before you start speaking so she can take down everything we're saying.

Okay. What did you ask your lawyer about that, about this third party sitting in on your meetings?

A. Well, I found it very odd, first of all, in the sense I started thinking that, well, Judge Dennis must

have been trying to help me out by trying to have Mr. Biering do pretty much what I asked him to do. It was nothing illegal, it was just asking him to obtain different evidence or witnesses. That was basically it.

Q. Okay. Let's move along to your PCR application.

MR. BOOZER: Your Honor, may I approach the witness with his file?

THE COURT: Yes.

BY MR. BOOZER:

Q. Just take a moment and take out whatever we need as we start, okay? And do you have a copy of your PCR application that you originally filed?

A. Yes.

Q. And that's where we'll begin.

A. All right.

Q. You just tell me when you get to it.

A. Okay. I believe I am ready.

Q. Now, as an attachment, you handwrote a number of attachments to your PCR application.

A. Right.

Q. Because, presumably, you couldn't fit it all on those lines, so let's go through those.

Your first allegation -- Your Honor, if I may have a little bit of leeway in framing these for the Court, your first allegation is that your lawyer was

ineffective, and you believed a conflict of interest existed, and in detail, you say that your lawyer showed you a videotape of your brother and two of your other witnesses that were under subpoena and he asked you to give him names of the video and ask where the video was filmed, and he said he needed to get information from you and that you believed there was a conflict of interest because the private investigator your lawyer hired is the arresting officer's brother, and he never interviewed anyone in the case?

A. Yes.

Q. All right. Explain that first allegation to the Court.

A. Okay. Well, basically, I never introduced my attorney to my brother, and he just came in one day. He had his laptop with him, and he told me -- there was some questions asked to him about this particular video. Well, here it is -- at the time my brother was accused -- I think he was arrested once for selling drugs or whatever, and he was subpoenaed also to testify about different events that happened with this actual case.

And he wanted me to give him information, and I just was very -- I mean, I wasn't going to do it anyway because I was so uncomfortable with that. You know, these people are here to help me, and here he is trying

to take it away, and I was -- you know, this is what we're not doing.

And that was it. It's in the transcript. I mean, we stopped communicating for a while, for about two weeks or something. I was not going to go forward with him, and the judge, he just wanted him to stay on and that right there, it's just -- whether it was just different witnesses that I really, really need to testify, of course, they weren't called anyway, and that was just -- man, that was just scary.

I told my brother -- I mean, people end up moving away just to stay away, just to stand clear, you know what I'm saying, wait for a minute because evidently there was some type of an investigation going on.

Q. Let me ask you this: You actually had some witnesses who testified.

A. Yes, I did.

Q. But you're just alleging that there were others that did not?

A. They were supposed to, yes.

Q. And who were they?

A. One of them was a -- we called him Booby, but his name is Jermaine Kinlaw.

Q. Okay.

A. And there was a Gerald Green, and, of course, my

brother, David McCray.

Q. Why did you want those folks to testify?

A. Well, Jermaine Kinlaw, he's a relative of Reginald Porcher. They have had shootouts in the house. That sounds crazy, but they do crazy stuff. They actually had gun fights, gun shootouts, inside the house, so --

MS. McCALLISTER: Your Honor, I have an objection. I think that this is all -- unless he was there personally, he doesn't have any basis for this knowledge and no foundation.

THE COURT: I'll sustain that objection.

MR. BOOZER: Your Honor, if I may, I'm trying to get basically his understanding of why he wanted his lawyer to call certain people. May I ask what was his understanding of why -- why he wanted the investigator to be called as witnesses? I certainly understand the hearsay part of it.

THE COURT: Propensity for violence and prior bad acts. We're not going to let him talk about the shootouts or anything.

BY MR. BOOZER:

Q. Mr. McCray, was part of your defense built around sort of establishing, I guess, or getting into the history or background or character of the victim?

A. Well, there was a lot of actions by him that were

directly or indirectly involving me.

Q. Okay. And the witnesses that you just named, are those the folks you believe could help establish or put that forth?

A. Definitely.

Q. Tell me a little bit about why you believe there was a conflict of interest in that your private investigator was a brother of the investigating officer.

A. Well, I had a previous private investigator, and here it is, the things I was pretty much asking -- things I was asking for him to obtain for me -- or, should I say, the things that the previous investigator, the things that he actually found, it was new to Mr. Biering, and I was trying -- like, there was a Coaxum, a Felicia Coaxum, she actually changed her statements, and he actually -- this guy, his name is Randolph Habersham.

He actually went to the neighborhood and had different interviews with several people and was actually talking to people and actually got the evidence, and, basically, Felicia Coaxum actually had a different statement, and she changed her statement and changed the place where she so-called witnessed something.

And, like I said, Habersham, that is who I actually wanted to be my private investigator, but Mr. Biering, he decided to get Scarborough, and he went out

to the neighborhood. No one would talk to him, and he said, Well, if you would -- they don't want to talk to me.

And I sit up here going, Okay. Look, evidently you can't get the job done, so we need to move forward to get someone else.

He decided no, so then I found out that he was the arresting officer's brother. I was, like, hold up, wait a minute. Are y'all setting this thing up on me or what? It didn't make sense. Why would you have --

Q. How did you find out?

A. Well, I was going over my paperwork. Going over my paperwork which I brought that along with me, and basically it has his brother's name on it.

Q. Let me ask you this: Was that brought up at all at trial, do you recall?

A. Yes. The beginning, when we talked about the conflict, so Mr. Scarborough's stating that he doesn't talk to his brother, but my grounds is that you can't get something done, and I don't know whether it's because your brother is involved -- because you're not investigating. You're not doing anything.

Q. Did you have any conversation with Mr. Biering about your concerns that he was related to one of the officers who was investigating the case?

A. Yes.

Q. All right. What was his response to you?

A. Don't worry about it. He's going to do his job.

Q. You've also got an allegation of ineffective assistance of counsel in what you call malicious prosecution. You've indicated in your application that self-defense was proven and shown and returned by the Court, although the judge shifted the burden to the defense by reading what you believe was a bogus self-defense statute.

A. Right.

Q. You also indicated that the prosecutor in his closing said that you used a deadly weapon with malice and force and your lawyer should have objected.

Now, with regard to the self-defense statute, you actually -- you had a direct appeal in your case.

A. Yes, I did.

Q. Was that one of the issues that was brought up on appeal?

A. Yes, it was.

Q. Okay.

A. And the main problem with that was that the judge said, well, he was just intoxicated, and they just mentioned briefly about he just had marijuana in his system, which I have the whole toxicology report, that he

had Ecstasy and cocaine in his system and he's on his bipolar meds, and what they did was -- I had doctors that examined him before. They were supposed to come testify and basically was going to explain how taking street, illegal drugs is going to heighten the effects on the medication that he was on.

And so what she did was downplayed it by just saying, Oh, the decedent had marijuana, when the tox report says cocaine and alcohol, and they just skipped past it, and that should have been brought up. The jury never knew nothing about it. They never knew he was a mental patient. They never knew nothing about his drug activity. They just never knew anything, and I believe there are, you know, points of -- levels of intoxication, like having a DUI. There's levels to that, and the tox report says that he was was super high, and they just downplayed it, and they just went right by it.

And she said, Well, just because he's intoxicated, you could just say self-defense.

Like, well, how are you intoxicated? He's more than that. So they just -- I believe they downplayed something, and the simple question was asked of the EMT tech, what was in his system? What was exactly in his system? Only thing she said was Accutane and marijuana. That's it.

Q. Did your lawyer take any further steps to question either that witness or any other witnesses about --

A. No.

Q. Hang on a second -- other narcotics that may have been found in his system?

A. No.

Q. Okay. And you believe he should have.

A. Yes.

Q. All right. Part of this allegation is your lawyer should have objected to the prosecutor's closing argument where it's talking about inferred malice, basically.

A. Right.

MR. BOOZER: Your Honor, on the transcript, I'm referring to page 718, lines 19 through 22.

BY MR. BOOZER:

Q. Now, obviously, this is a legal argument and a legal issue.

A. Right.

Q. But on that page, the solicitor says, talking about malice, and says, Infer it from conduct showing total disregard for human life. It can be inferred from the use of a deadly weapon, shot him with a shotgun, kicked it.

Now, is it your understanding that that is an improper jury instruction, to infer malice from the use

of a deadly weapon?

A. Yes.

Q. Based on case law that's out there?

A. Based on case law that's out there. Once self-defense was implied, it negates the word malice because there's room for some type of grounds of protecting yourself.

Q. Hang on a second. We'll talk about that, of course, with the other attorneys since that's a legal issue. Let's talk about your third allegation, that you believe your lawyer was ineffective for failing to impeach the State's witnesses and Brady violations. The State's witness gave police their statement. Testimony at trial was different. He told several lies and contradicting statements. If the trial -- if your lawyer would have objected and impeached the State's witness, the prosecutor could have never used the statement to get a conviction off a perjured statement. You've attached it in your application as Exhibits E through F.

A. Yes.

Q. What witness are you referring to in particular?

A. There's a guy by the name of James Boykin.

Q. Okay. And Mr. Boykin was someone who testified at your trial?

A. Yes.

Q. Now, as I indicated -- and, Your Honor, just for the Court's reference, Exhibit E, which is a part of your application, you've attached what appears to be a statement. Did you review discovery materials with your lawyer prior to the trial?

A. Yes, I did.

Q. Did you receive as part of your discovery materials that statement from Mr. Boykin?

A. I received that -- I didn't actually receive it from Christopher Biering. I actually never received an actual Rule 5 from --

Q. Let me ask you, you reviewed that statement from Mr. Biering?

A. Yes.

Q. The statement, as it is attached to your PCR application, is that a true and accurate copy of that statement?

A. Yes, it is.

Q. All right. Now, on page two of the statement, which is Exhibit E, it indicates -- it's going to be, really, beginning at the sixth line: Wednesday, 9/16/09, Ron called me on my cell number, [redacted]-2072, Cricket phone service, at approximately 1735 hours from his cellphone number, [redacted]-3124.

Was that your cell number at the time?

A. Yes, sir, I believe it was.

Q. Okay. Ron asked me if I saw the news. I told him no. He told me he just killed -- pardon the language, Your Honor -- as written motherfucker. I asked Ron who he just killed. He said Reggie Porcher.

Now, did you discuss not only the entire statement with your lawyer, but this phone call?

A. Yes, I did.

Q. All right. And why did you have a discussion with your lawyer about that particular phone call?

A. Because I didn't talk to the guy about this incident, period. I don't know where he got his information from, but he does claim he got it from some guy named Chain.

Q. Did you tell your lawyer that you believed this call never happened?

A. Yes.

Q. All right. And you denied ever calling Mr. Boykin and making these statements to him?

A. I never called him.

Q. Did you ask your lawyer to investigate or attempt to get those call records?

A. That was our main problem of him representing me, one of the main focus points right there. I couldn't believe this guy has a four-page statement, which

probably would have been a 30-, 40-minute phone conversation, and that's just impossible.

Q. Okay.

MR. BOOZER: Your Honor, as part of Mr. McCray's case, we had previously been granted authorized funding and be allowed to conduct limited discovery. As a part of that prior order, which was ordered by Judge Goldsmith, I retrieved copies of cellular records associated with the number [redacted]-2072 from AT&T who maintains Cricket telephone numbers.

I have since received a copy of the call records, which would reflect calls going into and out of that number for that day, on 9/16/09. When I received the response to the subpoena, I forwarded that information to the Attorney General's office.

At this time I would move to make that, which is included with a copy of my subpoena, the response from AT&T, the records, as well as the records custodian from AT&T and their verification of authenticity of the records, I would move to mark that as Applicant's Exhibit 1.

THE COURT: Any objection from the State?

MS. McCALLISTER: No, Your Honor.

THE COURT: Applicant's Exhibit 1 is in

evidence.

(Applicant's Exhibit 1 was marked for identification and admitted into evidence.)

MR. BOOZER: May I approach the witness, Your Honor?

THE COURT: Yes.

BY MR. BOOZER:

Q. I'm going to hand you what's been marked as Applicant's Exhibit 1, which is a copy of the subpoena which my office issued to AT&T. It also includes a copy of AT&T's response as well as the records custodian affidavit. If you would please turn to what would be in Exhibit 1 the fourth page. Are you at that fourth page?

A. Yes. It says page two at the bottom.

Q. That's correct. If you would, you'll see in the second column where it's dated connection date time, 9/16/2009, and then the third column is a series of times?

A. Yes.

Q. If you look down, beginning at line 69, which would begin at time of 1540, and you can look over and you see the originating number, beginning there and looking down to the bottom, to line 76 which was the originating time of 1805, do you see your number listed at all, your number that you had at the time [redacted]-3124?

A. No, sir, I do not.

Q. It was your [redacted]3124 number. Did it have an [redacted] prefix at that time?

A. Yes, it did.

Q. So according to the statement that you have marked as Exhibit E where Mr. Boykin indicates you called him on your cellphone, per these records, is there any indication you made that call?

A. No, sir, there's not.

Q. Thank you. Looking at the transcript -- and, Your Honor, I'll be referring to page 263 of the trial transcript. I'm sorry, Mr. McCray. That would be 263 of the transcript.

Now, this is the exhibit of Mr. Boykin at your trial, and in it, Mr. Boykin testifies that he talked to you on that day and said that Reggie was killed and you told him you shot Reggie and that you shot him and spit on him and you told him to fear God, don't fear me.

Now, it's your position that call never occurred.

A. It never occurred.

Q. Well, what did your lawyer say when you told him that call never occurred?

A. Well, he said, I'm going to try and get the records. So he said, I think the next time I saw him, he said that he went to the solicitor, and he said, Being

that your case is old, he can't get the records.

So I'm -- well, hold up. I have a codefendant.

Q. Who was your codefendant?

A. Christopher Cleggett.

Q. Okay.

A. I have his cell phone. I have it right here. So it's in evidence, so I asked him, I said, Why you can't go to a judge and just get records?

He said, Well, I mean, that's what the guy told me. I can't get them.

I'm, like, listen, man. I did not talk to this guy, man. He was coerced. I mean, I didn't talk to him about this case.

Q. Okay. So your lawyer never reached out and tried to subpoena these telephone records?

A. No.

Q. All right. Now, you understand we also made the attempt to get your telephone records. Do you recall that?

A. Right.

Q. I tried to do that; however, the telephone company said they were no longer available. Do you understand that?

A. Right.

Q. Let me ask you this: Did you believe it was important to try and discredit Mr. Boykin at trial?

A. Yes. He's the only -- he's given an actual reason, because in this police report, he states that Reginald Porcher robbed my brother, him and some other people, they robbed him and they took guns and drugs and money from him, and -- which I knew that wasn't true anyway, but that's what he said in his report.

And, you know, where does he get this information from? I knew Reggie didn't have nothing to do with that anyway, but that's what he said, but he's giving them an actual motive: This is the reason why this altercation happened between us, and I'm, like, I never -- you know, I never spoke to the guy, so why would he say something like that?

Q. Let me ask you this: Did you ask your lawyer or did you attempt to investigate any sort of time records or anything from Mr. Boykin's employer at any time?

A. Yes, I did. Well, prior to this right here, in this report right here, he says that -- we had talked over the phone approximately, like, three different dates, so I was so eager to get my records because three days now, I'm like, come on. I didn't talk to the guy.

But, anyway, on this report, he states that he was at home, raking the yard, so now he comes to court with a

whole different story, doesn't mention nothing about my brother being robbed or nothing like that, but he says he's at home raking the yard right here, so we went and got his job reports. He said he works as a longshoreman, and upon receiving those records, and it states right here, this is a longshoreman --

Q. Well, hang on a second. So you wanted your lawyer to subpoena or get records from the International Longshoremen's Association?

A. Well, everything was just so -- just wasn't supposed to happen, and I'm, like, man, there's no way. It was just too much. I couldn't believe it.

Q. Hang on. Listen to my question: Did you want your lawyer to investigate or try and get employment records for Mr. Boykin?

A. Yes.

Q. Okay. And where was it that he claimed that he worked?

A. The longshoreman association.

Q. And did you want your lawyer to get specific time records from when he was there?

A. Yes.

Q. Why did you want those?

A. He -- all of a sudden, he had another statement claiming that he was at work.

Q. Okay.

MR. BOOZER: Your Honor, as part of the funding orders, which I discussed previously, I sent correspondence and subpoena to the International Longshoremen's Association, and as an officer of the Court, I did have a telephone contact with their office. They responded that they did not have any records for the work history for that time period.

They responded by a letter to me dated June 7, 2017 indicating the request for detailed work history for the above-mentioned member within the time period indicated does not exist in that system. This response from the longshoremen's association I would move to mark this as Applicant's Exhibit No. 2, and I provided this previously to the State.

MS. McCALLISTER: No objection.

THE COURT: It's in evidence.

(Applicant's Exhibit 2 was marked for identification and admitted into evidence.)

MR. BOOZER: May I approach, Your Honor?

THE COURT: Yes.

BY MR. BOOZER:

Q. All right. Mr. McCray, you've got an allegation that the judge at trial overlooked an evidentiary hearing without having a hearing regarding mental health records

from SCDC of the victim, and your attorney never objected to the judge's ruling, and you indicated in your application you believe the judge abused his discretion. Of course, this Court can't do anything about a judge's ruling.

A. Right, right.

Q. But explain to the Court what you're talking about.

A. My attorney, I gave him the SCDC records because my previous attorney did get those records for me, and basically it was about -- there was some records that, believe it or not, whatever Reginald Porcher and his family has going on, there're some things that is just always missing. In the late '90s, he actually killed Anthony Moultrie.

MS. McCALLISTER: Objection, Your Honor.

THE APPLICANT: This was pertaining to --

MR. BOOZER: Hang on.

THE COURT: Objection?

MS. McCALLISTER: I have an objection to hearsay and speculation. I don't think he has personal knowledge of what he's testifying to.

THE COURT: I'll sustain that objection.

MR. BOOZER: My understanding is the objection is based on personal knowledge. May I question

the witness on his personal knowledge of what he understands and what he's about to testify to?

THE COURT: Yes.

BY MR. BOOZER:

Q. What is your understanding with regard to anything that has happened and what you're talking about with regard to this allegation in SCDC records?

A. Anthony Moultrie was my classmate, graduated high school together, Cane Bay High School in 1985. I knew more about the case than they actually presented, but Reginald was -- he was high at the time.

Q. How do you know this?

A. I know the guy. I mean, he's high.

MS. McCALLISTER: Objection, Your Honor. That's speculation.

THE APPLICANT: No, it's not, because I have proof.

THE COURT: You don't respond to her. It's an objection.

Go ahead. Your objection?

MS. McCALLISTER: That is speculation, Your Honor.

THE COURT: Did he actually observe him?

MR. BOOZER: That was the question I was asking, how he knows that.

THE COURT: Okay.

BY MR. BOOZER:

Q. Mr. McCray, you've indicated you've previously observed the victim in an altered state. How do you know that? Is that your own personal observation?

A. By seeing someone actually drinking a beer, that's my observation.

Q. Okay. In this particular instance that you're about to discuss, how did you know that the victim, when you observed him, was, as you described it, high?

A. Could you repeat that question again.

Q. Yes, I sure can. You've indicated that you believe the victim was high when you observed him at some point in the past, and you were about to tell us about that incident. How do you know that he was, as you describe it, high? What did you observe?

A. The person, I guess, swag, or swaying or whatever.

Q. When you say person, did you observe the victim in a stage of either drunk or high?

A. Yes, yes.

Q. Okay.

A. Okay. So during trial, Mr. Porcher, the father, was on the witness stand, and, once again, this is the evidence that was admitted, and the question was asked, proffered testimony, whether or not he knew about that

particular incident, saying, like, crime or criminal history, so his father mentioned about the car accident, and he said the other guy swerved in the center lane, or swerved over to the wrong lane, and this is what caused the accident.

That's what his father said at trial, so I'm telling my attorneys, No. The report is right here. It states that Reginald Porcher was under the influence of -- it says C, Exhibit C, it states right here. It says he was under the influence of alcohol and cocaine during this time and one fatality as a result. So what Mr. Porcher was talking about, that's not what these records say.

Q. Okay. Did your lawyer attempt to make any introduction of any of those records at trial?

A. He introduced it to the solicitor. The solicitor took it as exhibits, and they wanted to do a proffered testimony on the examiners of these records, SCDC records, and here it is. They call their names and they said they was going to be testifying first thing in the morning, and that was it.

Q. Is that something that happened on the record or was that something --

A. That happened on the record.

Q. Do you have the citation to that?

A. Yes, sir, I do.

THE COURT: Mr. Boozer, looking at number four, I'm having a little bit of a hard time following what the applicant is saying here. Ineffective assistance of counsel, the judge at trial dismissed or overlooks one of the evidentiary hearing without having the hearing or giving a reason for not having a hearing. Trial attorney submitted Porcher's SCDC mental records. Prosecutor accepts the records as evidence.

This is the most violent part of the self-defense case. My attorney never objects for the judge's ruling, which violates my due process. The judge views her discretion prejudices me and shows violence. Porcher is an ill mental patient, who, I assume mentally ill patient, who was high on drugs, was on his meds, which heightened his mental state for the transcript.

All right. Now, I as understand it, the records were introduced. Tell me, explain what he's saying there.

MR. BOOZER: Your Honor, I was getting him to point out --

THE COURT: I want you to explain what you think the point is.

MR. BOOZER: I think the point is this, Your Honor: If there was supposedly some sort of hearing that

was to take place where --

THE COURT: Is he objecting to the records? Did the records go in?

MR. BOOZER: Some SCDC records were proffered, and that issue went up on appeal.

THE COURT: All right.

MR. BOOZER: And that was one of the appellate issues. His argument is that he believed that the judge said that there was going to be a hearing on certain records coming in, and the hearing never happened for those records to have been admissible.

His argument is A, His Honor was wrong. If he didn't have a hearing, that certainly is an issue before this Court, an appellate issue, but that it should have been brought to the Court's attention by his former lawyer, Hey, we still got this hearing that's hanging out here we need to happen, and that's when I was referring Mr. McCray to the point in the record where that actually --

THE COURT: So they proffered the SCDC records, but it was never introduced to the jury; is that correct?

MR. BOOZER: That's my understanding, Your Honor.

THE COURT: And that was one of the issues

that was appealed, and why was that -- what was the outcome of that? Was it --

MR. BOOZER: Not preserved.

THE COURT: It was not preserved. Well, that's what we're getting at. I understand. I understand now.

Essentially, the lawyer was ineffective for not following through to enforce a ruling on the SCDC records, which never made it to the jury; is that correct?

MR. BOOZER: That's correct.

THE COURT: Now we're talking. All right. There it is.

THE APPLICANT: Thank you, Your Honor. It's on page 538. That is line number -- I guess you start at six, and it states that subpoena for those records of the custodian for the Department of Corrections, both of the medical and their disciplinary side, we have on standby and we are prepared to hear tomorrow morning the two records custodians that Your Honor just mentioned, and, basically, they called these witnesses and nothing never happened.

The appeal Court, they were misled by -- because they was thinking, in their ruling, in their opinion, they were saying that they stated that

Mr. McCray did not argue the State's use of the toxicology report, opened the door for the admission of the SCDC record; therefore, we find this argument is not preserved for the appellate review because it was not raised or ruled upon by the Court, and we just never had proffered it.

THE COURT: I understand the point it was not preserved for the record. We can move on unless there's other issues.

MR. BOOZER: There's not.

THE COURT: We've got that out. Very good. Let's move on to the next one.

BY MR. BOOZER:

Q. All right. Mr. McCray, in your fifth allegation, you've alleged that your lawyer was ineffective --

THE COURT: What I'm going to ask you to do is I'm going to ask you to encapsulate what your understanding of number five is, and then you can elicit testimony.

MR. BOOZER: Sure.

THE COURT: In a clear and concise way that will elicit whatever necessary testimony.

MR. BOOZER: And, Your Honor, this really goes along with the issue we've already covered, which is the phone records, but if I may take one moment so I can

get this to sync for Your Honor.

BY MR. BOOZER:

Q. Your fifth allegation is that basically you believe that your lawyer should have gotten the phone records because you believe Mr. Boykin gave multiple statements that were not disclosed to you -- a third statement that was not disclosed to you in discovery and basically he was coerced into making this statement about the cellphone call?

A. Yes. There was evidence --

THE COURT: Say that again.

MR. BOOZER: His allegation is that he believes James Boykin, who testified at trial, that he believes -- Mr. McCray saw two statements from Mr. Boykin. He believes there's a third statement that was not turned over in discovery. He believes that his lawyer should have gotten telephone records, as we've already gone over, to confront Mr. Boykin about that telephone call he alleged that occurred and that Mr. McCray believes that that testimony was basically the product of coercion for law enforcement about the telephone records.

And that's why he wanted telephone records in. I think we covered it in the prior allegation, but that's the basis of that allegation.

THE COURT: Somehow the phone records are going to prove a third statement?

MR. BOOZER: Well, it goes along with -- what his theory is, is that he thinks that law enforcement was telling Mr. Boykin what to say, and he believes that there has been no phone call and that this came about at the urging of law enforcement, and the phone records would refute the phone call ever occurred.

THE COURT: Okay. So he thinks that the two statements were coerced and that the phone conversations between he and the witness Boykin never took place?

MR. BOOZER: Correct, and he believes the phone records, had they been investigated, would have established all of this --

THE COURT: Certainly wouldn't have established the third statement, but it would indicate that the telephone call never took place where he gave a motive and admitted to killing.

MR. BOOZER: Correct. Correct, Your Honor.

THE COURT: Okay. And I'll allow you to elicit whatever testimony you want with regard to five.

BY MR. BOOZER:

Q. You've certainly heard this colloquy I had with the Court. That's your understanding of what allegation number five is?

A. Well, there's a little bit more to it, because I don't -- Your Honor, I was getting more in depth with the actual motives that was actually given, because, once again, he was stating that I gave him this information, but he took the first motive, stating that my brother was robbed. Then the second motive was that the mother of my child was raped by this guy, and, once again, he said he had this phone conversation with me, but it's two different motives, going two different directions.

But these are things that my attorney could have prevented, and, nevertheless, the solicitor should have -- I mean, there's no way that could have got by him without stopping -- stating that, Okay. You have two different statements. You can't have two different statements, two different motives, and it should have been stopped. And, once again, those phone records, they just would have cleared up anyway because, Your Honor, it's just perjury.

THE COURT: All right. So in number five, in addition to what you've encapsulated, there should have been more evidence on the contradictory statements.

MR. BOOZER: Correct, Your Honor.

THE COURT: All right. Number six, I'm going to allow you once again to encapsulate what you think his allegations are.

MR. BOOZER: Certainly, Your Honor. In number six, he believes his lawyer either was, A, ineffective, or B, should have requested a mistrial when a SLED agent was allowed to testify in place of another SLED agent.

BY MR. BOOZER:

Q. Mr. McCray, that's with regard to DNA?

A. Yes.

MR. BOOZER: And, Your Honor, full disclosure, this was an issue that was raised on appeal, with having one SLED agent DNA expert testify in place of another. The appellate Court -- the appellate Court agreed that it was an error to have done that but found it was a harmless error.

THE COURT: So really the ineffectiveness sort of goes by the wayside as well.

MR. BOOZER: It's difficult under the analysis. The appellate Court does think it's harmless for these arguments; however, he believes another step should have been taken at the trial level, which is a request for a mistrial and an objection at that point, which obviously the mistrial was not requested.

THE COURT: They say it was harmless, so a mistrial would have been ineffectual anyway, according --

MR. BOOZER: According to the Court of

Appeals, according to the appellate Court.

THE COURT: All right. Any testimony that you would need to substantiate that?

BY MR. BOOZER:

Q. Mr. McCray, is there anything further in regard to that allegation?

A. Yes.

Q. Okay.

A. What was supposed to have been mentioned was my attorney, he timely objected to the statements, but he did not object to the pictures, and when the statements and the pictures, they go together, and the Court of appeals, they didn't know that part. They only knew about the actual statement but not the actual pictures.

Once again, they go together, and those should have been objected to also, which prejudiced me. I mean, just -- you're talking about something that you wasn't supposed to be talking about, then you're showing the pictures to go along with that, and the appeal Courts, they did not agree upon it, and that is -- well, it was a constitutional violation, and, once again, the appeal Courts agreed with me saying yes, that is a constitutional violation.

THE COURT: Is this where the supervising agent testifies he didn't run the test but was allowed to

testify?

MR. BOOZER: Correct.

THE COURT: Which happened a bunch throughout the state at one time, right?

MR. BOOZER: Correct, Your Honor.

THE COURT: All right. Very good.

MR. BOOZER: All right.

THE COURT: Number seven.

BY MR. BOOZER:

Q. You allege, Mr. McCray, that you had witnesses under subpoena who did not testify.

A. Yes.

Q. Have we discussed those already when we talked about those folks earlier?

A. Yes.

THE COURT: He made the list of the witnesses. Let's list them again.

BY MR. BOOZER:

Q. Mr. McCray, list those folks that you indicated earlier, one which was your brother.

A. One was my brother.

THE COURT: His name?

THE APPLICANT: David McCray.

THE COURT: All right.

THE APPLICANT: The other one was, I believe,

Jermaine Kinlaw -- Jerome Kinlaw, Jerome Kinlaw.

THE COURT: Jerome Kinlaw.

THE APPLICANT: I think it's Jerome Kinlaw, and the other was a Gerald Green. Now, excuse me, Your Honor. Those are the ones that were in the actual video, but there are other people that was supposed to testify also.

THE COURT: I understand. I understand that you're saying that he failed to call witnesses. Those are the three that you're talking about?

THE APPLICANT: It's more than that.

THE COURT: Lay them on me.

BY MR. BOOZER:

Q. Who are the ones that you indicated were under the subpoena that your lawyer did not call?

A. I was really thinking that you just wanted the ones that was actually involved in that investigation.

THE COURT: I want to know which ones you're complaining about. Which ones are you complaining about?

THE APPLICANT: Those are the three that I actually --

THE COURT: Okay. Very good. All right. Number eight?

BY MR. BOOZER:

Q. And number eight, Mr. McCray?

THE COURT: You can elicit whatever -- you know, if he wants to talk about what David McCray would have to say, Jerome Kinlaw, or Gerald Green, why that was ineffectual for him not to call them.

BY MR. BOOZER:

Q. I think you testified a little on that, but, Mr. McCray, for the sake of thoroughness, those three folks that you just discussed about the witnesses you wanted at trial, or you asked your lawyer to have under subpoena, what was your understanding of what their testimony would have been, or why were they important, you believe, to your case?

A. Okay. This was like -- it was a gang activity, really. There was -- they were retaliating against me and my brother over the actions that I encountered with this other person named Abdullah Fishburne and Reggie Porcher, and there was a few other guys. They was actually retaliating against that because Abdullah Fishburne, he's the one that actually robbed my brother, him and his nephew, and they were retaliating because I did something to Abdullah Fishburne, and they would have cleared that up.

THE COURT: All right. Number eight?

BY MR. BOOZER:

Q. Now, one of your allegations is that you believe

that your lawyer was ineffective and that there was a Brady violation in the way you phrased it that the State opened the door for the victim's violent behavior when one -- when that State's witness, Mr. Boykin, acknowledged or testified that he said he -- that he had raped your girl and that you were angry.

A. Yes.

Q. Your Honor, I'm referring to page 259 of the transcript, and specifically, Judge, on 259, the question was asked: So what was his attitude toward the victim?

The answer: From him trying to rape his girl, whatever. He was angry. Now, that was elicited on direct examination by the State.

Mr. McCray?

A. Yes. James Boykin had to look at the actual police records. That's a matter that is an actual -- that was an old incident --

MS. McCALLISTER: Objection, Your Honor. He's speculating. He doesn't know whether Mr. Boykin looked at those records or not.

THE COURT: I'm going to allow him to testify. Go ahead.

THE APPLICANT: That particular incident, it happened, like, four or five months prior to the actual shooting. It happened a long time ago, so they had James

Boykin to bring us back up, and it's, like, there's nothing -- there is no altercation. There's no verbal nothing. There's nothing going on with that particular incident, so only thing I could have gathered was that he was trying to give the State a type of a motive on what could have happened, what could have caused the actual incident, and --

THE COURT: And what is the ineffectiveness?

MR. BOOZER: Absolutely, Your Honor.

Hang on a second. I'm going to ask a question.

Your Honor, I believe his position is at this point -- throughout the trial, it's obvious the defendant was trying to get into the prior bad acts of the victim. His allegation is when Mr. Boykin made a statement that is elicited by the State that the victim had allegedly raped his, as he says --

THE APPLICANT: Mother of my older child.

MR. BOOZER: At that point, the door is then opened into further inquiry as to victim's prior bad acts. Of course, now it was denied because they were trying to get it through in other ways, but it was always denied.

His argument is his lawyer at this point should have been able to jump up either at that point or

in his cross-examination of Mr. Boykin with the victim's prior bad acts or been able to introduce it some other way. That's his allegation. That was a door-opening event.

BY MR. BOOZER:

Q. And, Mr. McCray, that is correct, right, that you believe the lawyer should have taken further action and argued that the door was open for these prior bad acts?

A. Definitely, especially when a person has a totally different statement from the beginning. It's right there in front of you. You talk about from robbery till now something totally different. That would just open the door for a lot of things.

THE COURT: Very good.

MR. BOOZER: If I may move on to number nine.

THE COURT: Yes.

BY MR. BOOZER:

Q. Now, Mr. McCray, you've alleged that you believe your lawyer gave insight, basically, to the presiding judge about something that a witness would testify to, and you believe that because of that the witness changed his testimony. Is that your allegation?

A. Yes.

THE COURT: Say that again.

MR. BOOZER: Certainly.

Your Honor, my client alleges and believes that his former attorney in an in-chambers meeting, in discussing the case with the judge, told him about what a witness would say, and he believes because of that, that changed the witness's testimony at trial. I'll have him fill in the witness and why he believes that.

THE COURT: All right. How does he know what transpired in chambers?

MR. BOOZER: I'm going to ask him.

THE COURT: All right. Very good.

BY MR. BOOZER:

Q. Mr. McCray, who is the witness that you're referring to in your ninth allegation?

A. Chavis Wright.

THE COURT: Okay. Who?

MR. BOOZER: Chavis Wright.

BY MR. BOOZER:

Q. Mr. McCray, why do you believe your lawyer had an in-chambers meeting or a discussion with the judge about Mr. Wright's testimony?

A. It says it in the transcript.

Q. All right. Were you aware -- were you back there for the discussion?

A. No, I was not.

Q. Did you ask your lawyer about the discussion that

occurred with Mr. Wright?

A. Yes, I did. I asked him why would you tell the judge that, what he's going to testify about? And what happened was the judge took it upon herself to have a proffer testimony and then have some of his statements stricken, saying -- told him you can't mention this and that and that and just went down the line --

Q. And let me ask you, what was stricken from his statement, or what was he not allowed to talk about?

A. Events -- it was threats the night before because of the gang activity that they had going on. They didn't want that to be mentioned.

Q. What specifically do you think your lawyer discussed in chambers about the witness's testimony?

A. The actual language that was given that night before, that their plans of the retaliation, my attorney told her about it, and I would think that an actual solicitor would actually want the proper testimony, but the judge took it upon herself and said, No, I want to hear what he has to say, and they just struck everything down that he was talking about.

Q. What do you think your lawyer should have done differently?

A. She shouldn't have talked to him. He's an eyewitness. Put him on the stand, and let him talk and

let the solicitor object to something, but don't just stop him from testifying altogether.

Q. Okay. It is your position that you believe your lawyer should have objected to having this proffer or that there should have not been an in-chambers discussion?

A. They should have never had a conversation with them to give away my actual trial strategy, actual eyewitness statement, should never have told him, given him a heads-up on that.

Q. Okay. And moving on to your tenth allegation is that your lawyer was ineffective for failing to object to you being shackled during the trial.

A. Yes.

Q. All right. Now, during the trial, were you shackled?

A. Yes.

Q. Described the shackles that you had.

A. It was leg irons, the same ones pretty much I have on now, because I have, I guess, hard shoes with that, so it's going to make noise regardless. It's like you were being convicted -- you were convicted already.

Q. Hang on one second. Let's talk more about these shackles. So you said you had on leg irons?

A. Leg irons.

Q. Did you have any wrist or chain around --

A. No wrist restraints.

Q. Hang on a second -- or a chain around your waist?

A. No, I did not.

Q. Okay. So you had the leg shackles. Was there anything else that was confining you other than the leg shackles?

A. They sprayed some -- I guess it's what the dog scents, or whatever, and the aroma of it was so strong it was just -- they did that also.

Q. All right. So prior to you being placed in leg shackles, what were you wearing that day?

A. I had on street clothes.

Q. Describe what -- were you wearing a suit or a tie?

A. Sport coat and slacks.

Q. Okay. Was there any reason given to you as to why you were wearing leg shackles?

A. The lawyer made a statement stating what she was doing.

Q. When was that statement made that you recall?

A. No one was in the courtroom. The courtroom was empty, and I want to talk about that too, why the courtroom was empty. The courtroom was empty, and she was, like, giving her a reason why this is going to happen.

Q. What was the reason that you recall?

A. It didn't make sense to me, that I recall.

Q. Let me ask you this: Were the shackles put on you immediately before you entered the courtroom?

A. It was on me, yeah.

Q. Was there a hearing -- had anything happened before your trial date to where you had had any problems acting out in court or misbehaving or anything like that?

A. No, nothing.

Q. Did you ask your lawyer why you were in shackles?

A. Yeah.

Q. What did he say?

A. He said it's the judge's orders.

Q. To your knowledge, was there any hearing conducted to determine if you needed to be in shackles?

A. There was no hearing.

Q. All right. And now you were tried in Berkeley County?

A. Yes, I was.

Q. All right. Were you in the big courtroom in Berkeley?

A. Yes.

Q. In that courtroom -- and you see that today here in Charleston County I'm standing behind counsel table that has four legs and is open. Do you see that?

A. Yes.

Q. Does this look similar to the table you were sitting at during your trial in Berkeley County?

A. I believe so. I believe so. I know there is a type of a mat, a mat, I believe, and if you move your feet, it would make noise.

Q. Do you know if there was any enclosure around the table, or what I'll call a skirting, hanging down around the table?

A. I really can't recall. I can't.

Q. Okay. Now, did those shackles -- did they restrict your movement?

A. Well, certain ways that you twist -- I mean, it was too tight anyway, so it definitely would hurt, so you might see me grimace every now and then because --

Q. Could you audibly -- could you hear the shackles as you moved around?

A. Yeah.

Q. Okay.

THE COURT: Is there skirting in Berkeley County?

MR. BOOZER: Your Honor, I have been to Berkeley County before, but recently I haven't been back at the time that he was tried, and my recollection is that I think I was there last December. There was a

black skirting around the tables in the big courtroom at that time. At the time of his trial, I don't know.

THE COURT: I think it would be appropriate to ask whether or not the defendant was seated before the jury came in.

MR. BOOZER: And that was a question that's coming up, Your Honor.

BY MR. BOOZER:

Q. Were you seated -- when the jury would enter and exit the room, would you stand or would you remain seated? How would that work?

A. I would stand.

Q. You would stand?

A. And someone would help me stand.

Q. Who would help you stand?

A. Most likely it was the private investigator.

Q. Now, you testified at your trial, right?

A. Yes, I did.

Q. Did you testify from the witness stand, obviously?

A. Yes, I did.

Q. When you went to the witness stand, do you know whether you were already seated in the witness stand when the jury was in or whether you walked in in front of the jury?

A. Well, I definitely walked in front of the jury

when I was leaving anyway, so they knew I was restrained, so --

Q. When you say you were leaving, as in --

A. Coming off -- exiting the stand.

Q. Okay. So you believe the jury saw your shackles?

A. Yes.

Q. Okay. Mr. McCray, you indicated earlier there were two investigators involved in your case.

A. There were actually three.

Q. But let's talk about -- you had discussed there being two, where one investigator, you believe, was able to actually go out in the community and people would speak to him, and there was another investigator who you indicated had trouble communicating with folks in the community?

A. Yes.

Q. And so your allegation number 11 is you believe your lawyer was ineffective because you wanted to communicate, basically, with that investigator, or have him give reports? Is that your allegation?

A. Yes, it is.

Q. Have you described that in detail enough to cover that in your previous allegation, or do you want to discuss that further?

A. Well, I can discuss it further. That private

investigator, he actually discovered that Reginald Porcher had his medicine with him, and during this questioning, my attorney discovered that this person that he was talking to, Felicia Coaxum, said that Reggie acknowledged saying that he had a mental disorder, and he was showing off his medicine bottle. This is the actual report I'm reading off. He showed his medicine bottle, telling people under the tree he was happy --

MS. McCALLISTER: Your Honor, objection. He says he's reading off of a report.

THE APPLICANT: Right.

MS. McCALLISTER: That's hearsay, Your Honor. I don't think there is a foundation laid for that report or who wrote it or where it came from.

THE COURT: What is your response to that?

MR. BOOZER: Obviously, a report would clearly be hearsay, Judge. I would just ask, based on his meetings with his lawyer, what was his understanding of his investigator's findings and, without reading from the report, have him testify to that.

THE COURT: All right. Let's do it.

BY MR. BOOZER:

Q. Based on your meetings with your attorney and/or with your private investigator, what was your understanding that your investigator discovered, without

reading from any report?

A. He would discover things that would definitely help me out. Like I said, he reached out to the community, and evidence that I know he actually -- that the guy actually had with him that was not presented at trial and things that I believed that would help me with my self-defense, he could have presented that, and that opportunity was not provided.

I mean, he -- matter of fact, even the actual positioning of the people that was out there, that was changed during that course of an interview. One person said they was in the house, looked out the window, and during his actual report, he discovered that -- a police report that they were not in the window. They ran outside immediately. As soon as he heard a shot, he ran outside, and they went to the back way, and whatever they saw, they witnesses there, but in court the testimony was just different.

They just said no, they were inside looking out, observing everything through an actual window, and then when they start showing the pictures, the pictures would have indicated, well, you couldn't have seen nothing from the window anyway, and yet I didn't have that investigator and I couldn't prove that point.

Q. Let's talk about your 12th allegation in that you

believe your lawyer was ineffective for failing to call a mistrial when you believe that they wrongly instructed the jury on self-defense. Now, you understand that self-defense charge went up on appeal. You understand that, right?

A. Yes, I did.

Q. But your allegation is that your lawyer should have taken another step or requested a mistrial when he refused to give additional -- or she refused to give additional self-defense instruction?

A. Yes.

Q. Okay. Now, you've also filed an amendment in your PCR application by me.

MR. BOOZER: I'll be directing the Court's attention to page 97 of the transcript.

THE COURT: Top numbers or bottom numbers?

MR. BOOZER: Your Honor, I'm looking at top numbers.

THE COURT: Okay.

BY MR. BOOZER:

Q. Now, during the trial -- beg the Court's indulgence, Your Honor.

Ms. Wright testified at your trial; is that right, Mr. McCray?

A. Yes, yes.

Q. And during the trial, she indicated on page 97 she heard a gunshot. She ran out. All the kids were underneath the tree, coming towards her house, and I said, What happened? What happened?

And they said, Reggie shot -- I mean, Ron shot Reggie.

Did your lawyer make any sort of objection? At that point, did your lawyer object -- the transcript reflects --

A. No.

Q. Okay. Now, do you believe that is important -- you were talking about some pictures earlier, but why do you think your lawyer should have objected?

A. When they showed the pictures, it shows -- okay. Her original statement was -- her statement was that she actually saw me shoot him, and then when they showed the pictures, it shows that she can't see from her house. Her house is in the back, so she changed her statement and said that someone told her that.

Q. Okay. And your lawyer made no objection.

A. No, he didn't.

Q. And later on --

THE COURT: Is that failure to impeach or object to the statement?

MR. BOOZER: Failure to object, Your Honor.

THE COURT: To the statement?

MR. BOOZER: To the statement.

THE COURT: All right. Okay.

BY MR. BOOZER:

Q. And later, on page 124, do you recall a witness named Tina Collins testifying?

A. 124?

Q. Yes.

A. I can't remember who that actually was.

Q. Okay. But if the record reflects that this witness testified, obviously, she testified?

A. Yes. Yes, sir.

Q. And specifically, on page 124, the question was asked:

I know this is difficult for you. What do you remember happening after you were under the hair dryer?

One of my little cousins and my son came and told me I needed to come outside because a man had shot Reggie.

How old was your son?

I think he was seven or eight.

And what did you do?

I kind of didn't believe him at first, and then I jumped up, and I asked him what happened? And my

cousin said the bad man Ron, bad man Ron shot Reggie.

The bad man Ron?

Uh-huh.

Did your lawyer make any objection to those statements coming in?

A. No, he did not, and I really wouldn't understand why someone that young -- how do you even know me? I haven't been living, really, in South Carolina for the last two years prior to this. I mean, someone that young, how do you know me? That doesn't make sense.

Q. The point is, no objection was made.

A. No objection was made.

Q. Okay. You've also got an allegation -- and, Your Honor, I'm referring to line 718 -- or excuse me, page 718, and we've touched on it a bit already, but do you recall in the solicitor's closing, as we discussed, that they argued to the jury when they were discussing malice, inferring from conduct showing total disregard for human life, it can be inferred from the use of a deadly weapon, shot him with a shotgun.

Do you recall that?

A. Yes. I recall a little bit more than that, but yes.

Q. Okay. But that particular statement, you recall that statement occurring?

A. Yes. It bothered me a lot by when it said something about spitting on the guy, and that came from Boykin. That was bad. That should never have happened. Okay.

Q. Let's talk about this particular one, and this is a legal issue that we will get into more with your attorney, but your lawyer did not make an objection at that point, correct?

A. No.

Q. Okay. And you've raised a number of allegations. In my review, we've been through all of them. Is there anything we have not covered as it relates to your PCR application or what your lawyer was doing to represent you at trial?

A. There are just so many things that are missing that -- there are so many things that are just missing. There is a third statement that I was asked by some detectives when it was stated that a gun was thrown in a pond and --

Q. Hold on one second. Are you talking about -- you're referring back to where you believed there was a third statement from Mr. Boykin?

A. Yes.

Q. Okay.

A. And while the rest of his statements that he made,

that is not mentioned again.

Q. You've obviously reviewed all the discovery and transcripts of any recordings and whatnot. What's your understanding, or what makes you believe that there was a third statement?

A. Well --

Q. And don't read from anything, but just your understanding.

A. My understanding is by the repetitiveness that the detectives kept asking me about that one thing, and --

Q. About what one thing?

A. About throwing -- the gun was thrown in a pond.

Q. Okay.

A. And was telling them, I was getting a little agitated: Listen, I already told you. I told you, what, three four times now where it was at, in which the officers did go and retrieve it. It was right where I said it was, but it was, like -- it's just that if a witness, State witness, if he constantly lies to the prosecutor or the officers, you shouldn't even be using him because everything that you're finding out is not true, and when they brought all that about, they just kept letting it go on, and here it is where -- my private investigators, they found two different statements from everybody. Everyone's got two or three different

statements, and they had to have gone through some kind of a speech or some kind of a study of what to say. They were prepared to just come there and say this, and they had no proof of what they were actually doing, because, once again, they had two different statements anyway.

Q. And I think we've covered that initially, but, I mean, is there anything that we haven't covered as far as it relates to your allegations? I just want to make sure we have covered your allegations.

A. So, the question is, will there be a warrant issued out for James Boykin's arrest during that perjury?

THE COURT: You can't ask any questions. You filled out a very exhaustive application. We've been through all of them. Is there any other amendments?

MR. BOOZER: No, Your Honor.

Mr. McCray, if you would, please answer any questions the State may have.

MS. McCALLISTER: I do not have any questions.

THE COURT: You may step down. Thank you.

You may call your next witness.

MR. BOOZER: No further witnesses, Your Honor.

MS. McCALLISTER: Your Honor, I call Chris Biering to the stand.

THE COURT: Mr. Biering, please come forward.

CHRISTOPHER BIERING,

having been first duly sworn,

was examined and testified as follows:

DIRECT EXAMINATION

THE COURT: Yes, ma'am.

BY MS. McCALLISTER:

Q. Thank you. Mr. Biering, how long have you been practicing law?

A. I was licensed to practice in May of 1997. I've just celebrated my 20th year anniversary of practicing law.

Q. So is it fair at the time of this case in 2012 you had about 15 years of experience; is that correct?

A. I think that's correct, yes, ma'am.

Q. And how much of that experience would you say has been criminal law experience?

A. Overall, from a time commitment standpoint, it has been a third of my practice.

Q. Okay.

A. There have been phases of my practice where it has been less than that.

Q. But on average, about a third of your practice is criminal?

A. Yes, ma'am.

Q. And were you appointed in this case?

A. I was appointed.

Q. And can you give us a little bit of background about how you came to be involved.

A. I came to my office one day, and I had received a letter via fax with the appointment from the Clerk of Court, and as is customary in Berkeley with local lawyers, there's actually a place where your papers are at the courthouse, so I received that fax with the official document in my box.

Q. And do you recall approximately when that was?

A. I do not. I didn't -- if I need to bring my file with me, Your Honor --

THE COURT: Yeah.

THE WITNESS: It was some time late 2011. I believe Mr. McCray testified it was November 2011.

BY MS. McCALLISTER:

Q. And that comports with your recollection as well?

A. It does.

Q. Okay. And he was tried when, do you recall?

A. I don't recall a specific date of the trial. October 29th through November 2 of 2012.

Q. Okay. So you represented him for approximately a year?

A. Yes, ma'am.

Q. Okay. Can you give a brief summary of the charges and how they came about and how your client came to be arrested.

A. Well, briefly, from the standpoint of -- can you repeat your question.

Q. Just briefly, what the charges were and how your client came to be arrested for those charges.

A. The charge was murder, and the allegations were that he had shot Mr. Porcher and that he had left the scene, and then, you know, relatively shortly thereafter he was detained and arrested and gave a Miranda statement. It was videoed.

Q. And when you say shortly thereafter, do you recall the time frame? Do you think it was hours or days?

A. I want to say it was a couple of days. I can't remember the exact time frame on that.

Q. Did you --

A. I can go through my file if you want me to do that.

Q. Maybe in detail later. I think that's good for now. Did you meet with Mr. McCray to discuss these charges?

A. Nearly immediately after the appointment, there was a meeting, and that, the first meeting, I think, was very cordial. I was appointed. I tried to make it a

point to initially make sure that the clients that I'm appointed to represent, that they know they're my client. It doesn't matter how we began our relationship, that's our relationship, and I take those cases seriously, and I have handled them in the same way that I would handle a case as someone coming into my office and has chosen to retain my services. So I met with him shortly after the appointment, and then within -- as the course of my business, we immediately filed our own motion for discovery as well.

Q. How many times would you say you met with him in total?

A. I think he had testified around six. I think that number was above ten.

Q. Okay. And were all of those meetings at the detention center?

A. All of them were at the detention center or at holding cells in the Berkeley County courthouse.

Q. Okay.

A. There's also -- and I don't remember, but we may have met once -- sometimes they allowed the jury room to be utilized for client meetings, so we have met -- meeting clients in that room, and security allows you some time, but all of them were either in the detention center or at the courthouse.

Q. Okay. And did you discuss his version of events and what happened with him?

A. We did, and we discussed this, the case, fairly in depth, within the first one or two meetings. And, you know, I don't think that from the standpoint of the direction that we felt this was going anything really changed. I think from the beginning, we looked at this as a case that there wasn't a dispute about whether or not Mr. McCray had fired a shot at Mr. Porcher. The question was were we going to be able to prove self-defense, and very early on, I was presented information as to how we thought we could do that.

Q. All right. So when you discussed your client's version of events, he never denied shooting the victim?

A. I don't recall there ever be being a denial of that issue.

Q. And it's your assessment of the case and the State's evidence that the identity of the shooter was not in doubt.

A. I think it's important to understand where this occurred. You know, this community in the -- I guess that is the northeastern portion of Berkeley County. It's a beautiful area, you know, sandy pines, and then it opens up to these areas, but you've got these big live oak trees and you have families that have lived there for

a very long time, and my understanding from my investigation and from Mr. McCray that people knew one another. This was not a situation where there was a need for identification.

My understanding was the families knew one another. Both the McCrays and the Porchers had gone back for some time, and the people that lived in this community knew both McCray and Porcher. In addition to that, one of the things that we actually explored as relates to identity, I think this is important, is that we were looking at issues of potential stand your ground because we took the position that Mr. McCray actually had an ownership interest, possibly equitable, but an ownership interest in the property where this event transpired.

Q. Okay. You've touched on it a little bit, but I think you said that you got some information from him to kind of start your investigation of this case. Can you tell us a little bit about what type of investigation you did?

A. Well, you have to look at what your client tells you, and you have to look at the evidence that's provided by the State, and it appeared to be key to me very early on that there were -- and if I can use the names, there was a Mr. Bacon and a Mr. Mitchell. I think they were

E.J. and Sleepy.

There was a belief that one of these witnesses was going to be able to say that Porcher actually had a gun and that gun was removed from the scene by either maybe Sleepy or -- anyway, that he had removed the gun from Porcher immediately after the shooting, which would be a very important thing if we could show.

The problem was, I didn't know Mr. Bacon. I didn't know Mr. Mitchell, and I didn't have a client that was on the street to actually help me and help my investigator. I believed and requested immediately the assistance of Mr. McCray's brother, David, in communicating and locating witnesses.

Q. Okay. And were you doing this investigation or did you have an investigator that you used, or how does that work?

A. I have utilized the services of James Scarborough. He's a private investigator who's licensed through SLED. I've utilized his services dating back to 1999. I've always found him to be thorough, I've always found him to be professional, and I've always found him to be personable and able to talk with people, even difficult situations, and I utilized his services.

Q. Okay. And were you able to have access to the State's file?

A. Yes, ma'am.

Q. And did they turn over discovery to you?

A. Yes, ma'am.

Q. Throughout the course of the case?

A. Yes, ma'am.

Q. And did you talk to the solicitor?

A. I did on multiple occasions, both Mr. Alfaro and Ms. Williams, and I have a -- not that I'm a substantial portion of the criminal defense docket in Berkeley County, but I regularly have ongoing matters with the solicitor's office, major felonies, and have had cases with them and had regular professional contact with them involving cases since both of them came to the solicitor's office. Neither of them were at the solicitor's office when I began my practice in Berkeley.

THE COURT: We're going to take a break for lunch. We'll return at 1 o'clock sharp, and under these circumstances, obviously, you can't discuss it with either side. Very good. We will reconvene at 1:00.

(Recess taken.)

A F T E R N O O N S E S S I O N

THE COURT: You may proceed.

BY MS. McCALLISTER:

Q. In general, could you describe your relationship with Mr. McCray throughout the course of preparing the

case.

A. I think it changed. I think in the beginning I testified exactly what -- it was a cordial -- it was a good start. I think within our first two meetings -- and I think he testified there was a steady decline. I would agree with it, but I wouldn't say a steady decline. After those first couple of meetings, it was a very difficult relationship.

He made it very clear that he didn't want me to represent him. He filed documents with the Court and he wasn't -- well, he wasn't cooperative in the preparation of his defense as the way I think he needed to be.

Q. And in terms of the defense, did you discuss possible defenses and strategies with him?

A. Yes, I did, and one of the -- yes, we did. We discussed it in detail.

Q. And did you discuss the State's evidence with him?

A. I did.

Q. Could you briefly kind of describe what that evidence was.

A. One of the major components would have been in the video recorded statement Mr. McCray gave, and in that statement, I think it was very clear that Mr. McCray -- from the beginning, there was a dispute about whether or not he had shot Mr. Porcher. He presented within that

statement some issues and some discussion about some of the things that were surrounding the people in that community and the disputes that had gone on, and so that was a major component.

Then beyond that, at the scene, there were a significant number of individual items of evidence that were gathered at the scene, and each of those were itemized and we looked at them. I made multiple visits to the evidence holding location they have at Berkeley County, the sheriff's department has, and then there were countless statements and incident reports and supplementals, but each of those items were Bates stamped, and we kept a spread sheet of the Bates stamp, everything that was delivered to us, discovery, and also the items of evidence that were held by the department, and we looked at those.

So there was the video, and there was a number of items in the physical evidence and a number of statements, written statements, and incident reports.

Q. So statements from eyewitnesses, is that what you're referring to?

A. Yes, ma'am.

Q. Okay. So there were multiple eyewitnesses to the shootings; is that fair to say?

A. I don't think it's fair to say there were multiple

eyewitnesses to the shooting. I think that there were a number of people in close proximity to what happened, and they had different perspectives of what happened, and they were in their houses and on the porches. There were a number of people that were at the scene. I don't think it's fair to say there were these countless number of --

Q. So not to the shooting itself, but to the immediate afterward of the shooting.

A. And components of it. If you have a number of people within 100 yard distance, they're not all looking at the same spot at the same time.

THE COURT: Did anybody see the altercation, the shooting itself?

THE WITNESS: Your Honor, I think there were one or two that had seen -- it wasn't really an altercation. It was a driving up, Your Honor, and then a shooting, so --

THE COURT: Nobody told me where the shooting took place.

THE WITNESS: It took place on a road called Jack Primus Road over in the Clements Ferry -- I guess Clements Ferry-Wando area of Berkeley County. I think it would be -- like, the backside of Daniel Island would be another way to describe it.

THE COURT: Where was the defendant and where

was the victim?

MR. BOOZER: The defendant was getting out of a car. He had driven up -- there was some dispute about where, but he was within -- well, from here to the back of the courtroom. His car is in one spot and there is a truck --

THE COURT: So it was outside the car in somebody's yard?

THE WITNESS: Yes, Your Honor, but as I understood it, it was like a community -- it was a place that would be normal for people to congregate and kind of hang out and be there together.

THE COURT: All right.

BY MS. McCALLISTER:

Q. Did you feel like you had enough time to talk to Mr. McCray about the evidence you gathered or received?

A. I did. I certainly wish that we could have -- I wish our relationship would have been more cooperative. I think it could have helped his defense.

Q. Did you feel that you had sufficient time to prepare the case, notwithstanding the difficulties in your relationship?

A. I did. You know, from day one -- I mean, it wasn't like I was giving the case a week or two after the event in the arrest. A lot had happened, and I tried to

benefit from the work that had been done primarily, I think, by Ms. Littlejohn and Mr. Marshall.

Mr. Theos, I don't think did he any work on it except ask to be relieved. That's my understanding, but we went into it knowing that this was a trial case so -- hit the ground running, knew this was a trial case, and Judge Dennis, I believe it was Judge Dennis, both times gave us leave to -- because initially they were looking at, like, a March trial date, and I got appointed in November, so they gave me additional time to prepare.

Q. And I know you've said that you didn't feel the applicant was as cooperative as he could have been with you. One of the issues that he's raised is this issue of a video. Can you kind of explain the video and what that situation was with the video.

A. Well, the situation with the video, really going to the theory of the case, and I think from a trial standpoint, no matter whether I'm trying a murder case or I'm trying a speeding ticket case, you've got to have a theory, and you've got to be able to tell the story to the jury. And, you know, this is a situation where we drove out in this community, had a nice, beautiful area and lots of families that lived there, but then, as I understood it from Mr. McCray, there were these groups that were within the community that are pretty violent,

and there was a lot of -- there was a lot of the past history with the people that were involved.

There was specific acts of violence between people and their families, and there were a lot of guns and there was drug involvement, and the video was not provided to me in discovery because I worked with my investigator. I actually went to the scene multiple times myself, multiple times looking for witnesses.

In the midst of that, I encountered somebody that I knew to be a drug agent from Berkeley County, and he said, You need to look at this video, and he described a video.

And I said, Where's that?

And he said, Well, I think it's on the Internet, and that's a pretty big place. I went to YouTube and I found the video. The video, I believed, depicted my client's brother -- I think my client's brother was in the video, and I think that there were other people who were potential witnesses in this case in the video, and we needed to be able to show the jury that what Mr. McCray came into was an atmosphere of violence, that while it may have looked like a beautiful home site with a beautiful oak tree and pine forest around it that there was this environment that was kind of like an undercurrent that was violent, and the video had, I don't

know, 25 or 30 guys in it with assault rifles.

It was done to I think a local rapper who was doing the music behind it, and they were simulating a kidnapping in the video. I believe that the video -- actually, that there was a trailer in the video that was near the scene of the event.

Q. Okay. I just want to be clear. So this video, it's like a music video or professional video? It's not directly related to anything that had to do with this incident?

A. It is not directly related, but I believe a number of people were in that video who I believe, based on what I have been told, were potential witnesses in my case --

Q. Okay.

A. -- who could speak to this client and were in possession of assault rifles. When I say assault rifles, shotguns, things that were dressed out to look like assault rifles, things that were --

Q. So you believed these community members -- that Mr. McCray could potentially identify these community members for you to talk to?

A. That's correct.

Q. Is that all that you were using the video for?

A. I wanted to use the video, but I also wanted to know where some of these people were at. I didn't get to

speak to Sleepy or E.J. until the week of trial. I kept asking to have these people so I could prepare and prep them for court. I didn't get to talk to them until trial because I couldn't get cooperation.

Q. You couldn't get cooperation from who?

A. From my client, because I needed somebody on the ground to help me locate the people.

Q. Okay. Were you using that video in any way to cooperate with some kind of criminal investigation of your client's brother?

A. No, no.

Q. Okay. And, if you recall, this issue with the video, did that come up at trial or in a pretrial conference in any way, do you recall?

A. I don't know if it ever came up. It would be one of those things that would be very difficult to use at trial. It was a tool maybe to get to people, but --

Q. I guess I should maybe rephrase that. Do you recall if your client raised this issue of a video as one of the reasons for asking to have you relieved at trial?

A. He wrote two letters, and he actually testified in, I believe -- I think he testified in both hearings to be relieved, and I don't recall whether or not he raised the issue of a video or not.

Q. Okay. The transcript will reflect whatever it is.

A. Okay.

Q. So the witnesses at trial that he, that applicant, has named, I believe you were present for his testimony. He named a Gerald Green, David McCray, and Jerome Kinlaw as being in the video. Were you able to get in touch with those people or did he give you those names at the time?

A. He gave me a number of names and we had issued a number of subpoenas for trial, and I could not get the cooperation. A number of these people were not people that -- you know, I wasn't going to go to Walmart or, you know, to the doctor's office and find them working as a clerk, and I needed some help to find them. One of them was actually, as I understood, basically homeless, and he was kind of in and out, and he was a key person that I was looking for. I think that was Sleepy.

THE COURT: May I have counsel approach the bench for a moment?

(Discussion held at sidebar.)

BY MS. McCALLISTER:

Q. Mr. McCray also raised a conflict of interest as to your investigator. Were you aware of that concern? Did he speak with you about that?

A. He did speak with me about that, and I also raised within the second motion to be relieved what I considered

to be more important issues of conflict of interest. I'll speak to the first issue as it relates to Mr. Scarborough, or Captain Scarborough, whatever his title is.

As I previously testified, Mr. Scarborough has done work for me going back to my -- into my early part of the practice, and because of that, I know him. I mean, I've been involved -- I got my hands on guys, going places with my investigator. I want to see things myself and I want to kind of see sometimes how things go. I knew that he had basically no relationship with his brother. I didn't know the details of that, but --

THE COURT: No relationship with whose brother?

THE WITNESS: James Scarborough, the private investigator I employed in this case, had no relationship with his brother, Deputy Scarborough, who was with the Charleston County Sheriff's department, who I understood assisted because there was a question about Mr. McCray leaving Berkeley County and going into Charleston County, so Scarborough, Deputy Scarborough, was involved in the investigation, but I knew them to have no relationship.

Q. Was he involved in the investigation or was he involved in the arrest of Mr. McCray?

A. My understanding was he was involved in the

arrest.

Q. Okay. And he worked for Charleston County?

A. Charleston County sheriff's department.

Q. Was Charleston County sheriff's department the investigating agency on this?

A. Berkeley County was the lead investigating agency.

Q. Okay.

A. I think Charleston County was involved in the apprehension after they began looking for him.

Q. And so you were aware that this deputy, who was related to your investigator, was involved in some manner in the case?

A. Not when I first began working on the case, but at some point into it.

Q. And you raised that issue with the Court.

A. I raised that issue with the Court, but I also raised what I think is more important. I actually was -- I actually represented, as an attorney, Captain Olick, Lee Holbrook, Thomas Boyd, and Renee Ramsey, who were all actively involved in the investigation. I specifically made the Court aware of that, and Judge Dennis addressed that and Judge Dennis ruled that because I had no active representation of any of those persons that -- and, actually, in his ruling spoke to the fact that it would give me a better ability to be able to understand the

witnesses.

THE COURT: Did you perceive there that was -- the relationship between Scarborough and the Scarborough from Charleston who conducted the arrest who, to some extent, was briefly involved in the investigation, do you perceive that to be a conflict that adversely affected the defendant?

THE WITNESS: No, sir, I do not.

THE COURT: And how about your relationship with some of the other police officers? Did that affect your relationship? Did that affect the defendant in your representation of him?

THE WITNESS: The defendant believed that there was a conspiracy with the Clerk of Court somehow or another in the prosecution of his case, and then he further alleged these -- the letters speak to this issue of conspiracy, or something involved with me, and he perceived a conflict, and I reported to the Court that he would not waive that potential conflict of interest, and I take conflicts very seriously. My client said to me he believed there was a conflict of interest. He would not waive it. I reported to Court in conjunction with my request to be relieved as counsel.

THE COURT: And the Court found there was no conflict of interest. Do you perceive it to be a

conflict of interest that affected your ability to zealously represent the defendant?

THE WITNESS: It did not affect my ability to zealously represent the defendant.

THE COURT: Very good.

BY MS. McCALLISTER:

Q. Okay. Mr. McCray has also raised the issue of witnesses changing statements or giving multiple statements to police and then saying something different at trial, specifically James Boykin.

Do you remember Mr. Boykin's involvement in this case?

A. I do. I don't remember the specific testimony. I do recall a number of witnesses, their testimony -- it varied from their statements, and I typically cross-examine them on it.

Q. Did you cross-examine them on their statements and what they were saying at trial?

A. To the extent that I thought it was beneficial to move this along and not just look like I'm trying to attack witnesses.

Q. Okay. And in your experience, is it necessarily unusual for some details of the statement to change between the time it's given and the time the trial is called?

A. I think that's normal, unfortunately.

Q. And you did have the statements, the original statements; is that correct?

A. I did.

Q. So you were aware of them in discovery?

A. Yes.

Q. And you were conscious of the fact that maybe some of the details were changing on the stand?

A. Yes.

Q. And you cross-examined them to the extent that you felt it was useful?

A. To the extent I thought it was useful for the strategy of the case, in anticipation also of what I believed we would be able to present from the witnesses that I had not had an opportunity to prepare.

Q. Okay. And you have said that this case was always going to be a trial. Was it clear by the time trial started that your client was going to testify?

A. I think it was clear to me early on in my representation that he intended on testifying, and certainly I tried to work through those issues with him, but I think in the beginning it was his intention. He felt like he needed to tell his story.

Q. So you, in cross-examining your witnesses, you knew that your client was going to get up and tell his

story as well?

A. Yes, but it's a -- I mean, I try not to anticipate those things either by opening or in my questioning, but certainly have an anticipation of where my trial strategy is going, knowing that that's probably going to happen.

Q. The issue has been raised specifically with Mr. Boykin's testimony that he at trial testified that Mr. McCray called him at some point and essentially confessed to being the shooter. Do you recall that testimony of Mr. Boykin?

A. I do.

Q. Do you recall that issue coming up with your client?

A. I do recall an issue coming up where there was a request for certain records, but there was never a question about whether or not he had shot Mr. Porcher. I don't think that was ever a question, and some of the records, as I understood, were not available, and I didn't -- even if one phone didn't make a call to another phone, that doesn't mean that the call didn't happen from a third phone or a pay phone or somebody's house phone, so I didn't see it as an issue, but he did.

He wanted to chase that, which I believed to be contradictory. You can't go in and say -- you can't argue self-defense and then say, I didn't do it. I think

you got to have a -- you got to make a decision --

Q. Okay.

A. -- what your theory is.

Q. So you and Mr. McCray did discuss that issue. Did you tell him that assessment, that you thought that it was not something that was useful to pursue?

A. Yes.

Q. Okay.

THE COURT: You skipped malicious prosecution and self-defense.

MS. McCALLISTER: I skipped it?

THE COURT: The malicious prosecution and self-defense issues on appeal?

MS. McCALLISTER: Oh, thank you. Yes, Your Honor.

THE COURT: I think what the allegation is about the victim's psychological disorder and that sort of thing.

BY MS. McCALLISTER:

Q. So Mr. McCray has also raised the issue about he wanted some doctors or workers with SCDC who examined the victim to come and testify. Do you recall that issue at trial?

A. I do recall the issue. We actually obtained SCDC records, and we obtained records from MUSC regarding

Mr. Porcher, and --

Q. What did you do, if you recall, to get those records introduced at trial?

A. My recollection is -- and I didn't go back and reread the entire transcript word for word. My recollection is Judge Harrington said, You're not going to put -- you're not going to put the victim on trial here. That was my general recollection of how she addressed that issue.

THE COURT: Were the documents proffered in -- were the documents proffered? Do you think it would have made a difference on appellate issues or on the trial?

THE WITNESS: I can't speak to the appellate issues, Your Honor, but from the trial standpoint, we had gotten to a point, from a standpoint of the testimony that we had, that I don't think it would have made a difference. We were looking for testimony. We were looking for specific testimony that a gun was removed from Porcher.

BY MS. McCALLISTER:

Q. That issue that Mr. Porcher {sic} raised, that he said that there were witnesses who can testify to that --

A. You mean Mr. McCray?

Q. I'm sorry, yes, Mr. McCray raised that there were

witnesses who could testify to the fact that Mr. Porcher had a gun and it was removed from the scene, what did you do to locate those witnesses?

A. My investigator went to the scene multiple times. My investigator attempted to communicate with other contacts that he had in the community, both in the community, in the private community, and law enforcement community, and chased down a number of leads. I myself got in the car on a number of occasions and went to the community, knocked on doors, talked with people. I conversed with a past client of mine who has an unfortunate criminal background from that community and actually met with him out there, and so I attempted to locate people.

Q. So the end result was you were just unable to locate them?

A. And I kept being told, I'll bring them to trial. They'll be there for trial, by my client.

Q. So your client kept telling you that he would get these witnesses, but you were never able to get in touch with them?

A. I was not able to talk with them until they were at the courthouse.

Q. Okay. So, in your opinion, that piece of evidence, the issue of whether or not the victim may have

had a gun that was removed from the scene, that was, in your opinion, the key piece of evidence that you were looking to get?

A. Absolutely the key piece. One of the things -- if you go back to Mr. McCray's statement initially, he talks about Mr. Porcher turning and going back towards the vehicle and then going down and coming back up.

Q. So you thought you needed that to corroborate what your client was telling you was his version of the facts?

A. It would have been nice to have a gun on the victim. I think that would have matched our theory of the case.

Q. Okay. And I think you said this, but is your recollection that you did proffer some of those witnesses in terms of the victim's prior record or prior instances of violence?

A. I can't remember the details of how it was done, but yes, but they were not -- it was not presented to the jury.

Q. And did you ultimately, if you recall, have a witness who testified -- who testified that the victim had a gun the night before? Do you remember that?

A. I remember details -- you could place a gun, and then there was testimony about there being a gun there being removed, but not necessarily that specific

testimony being removed from Mr. Porcher, but then the other problem that we had was that me not being able to prepare my witnesses and meet with them, it's going on. Three or four attorneys at the solicitor's table, and I'm trying to try a case and pay attention to the witnesses, and my witnesses come into the courtroom and violate the sequestration order, so I end up with a statement from the bench to the jury that basically they need to discount the witnesses's testimony because they violated the sequestration order, and those were some of my very important witnesses, I think very important to the defense that what Mr. McCray wanted to tell the jury, but that instruction was damning.

Q. So those witnesses did ultimately testify to at least some of the issues that Mr. McCray wanted them to testify to.

A. Not to the extent we believed they were going to testify.

Q. Not to the extent that he had informed you of what they would say. Okay. And some of that, I guess -- was that subject to some rulings by the judge in terms of what they could get into and what they couldn't?

A. Yes. We were limited, basically, I think, to the date of the event. We couldn't go outside of the date of the event.

Q. But you did proffer additional testimony about that, about -- not that day previously.

A. I couldn't remember the extent, but, yes, ma'am, this was other testimony at trial.

THE COURT: While she's looking, what about the defendant's belief that there was a third statement of Boykin?

THE WITNESS: I don't remember any of that, Judge. I don't remember talking to him about that. I don't remember there being a question about whether or not there was a third statement of Boykin.

THE COURT: What about the witnesses Kinlaw and Jerome Green, and he didn't call them. Tell us about that.

THE WITNESS: Well, part of what I wanted to be able to show was this undercurrent of violence between the groupings of people, and Judge Harrington tightened down on what we were going to talk about and said, We're going to talk about what happened that day, you know.

There were a number of things that were out there that I think were meaningful issues. You know, Mr. McCray's -- the rape issue; Mr. Porcher, the issues of the things that had taken place. There was a robbery. There was an assault, all within very close proximity. We're not talking about things that took place years --

but we were limited to that day.

THE COURT: So the failure to call David McCray, Kinlaw, and Jerome Green were pursuant to the previously rulings of the Court because it addressed the undercurrent of violence and perhaps the rape issue?

THE WITNESS: And just their general kind of involvement and their past history, but at some, Judge, it wasn't -- there wasn't anything they could add, and they may potentially -- I didn't see that. Mr. McCray was there. I don't recall if both of the other ones were there or maybe one of them were there. The case took a whole week, and we were being moved to finish our case.

BY MS. McCALLISTER:

Q. As part of this issue, I think Mr. McCray is alleging that you essentially told the judge what the witness was going to say, and then the witness changed the testimony. Do you recall that?

A. I don't really understand his allegation. My experience in trial is that judges sometimes ask, is there going to be a duplication of testimony when there were questions asked. I don't really know of anything specific that --

Q. And some of these witnesses, you did have to proffer testimony first; is that correct?

A. Yes.

Q. And then the judge ruled on which pieces of the testimony would be admissible?

A. Yes, ma'am.

Q. Okay. Do you recall whether or not Mr. McCray was shackled at any point during his trial?

A. I tried to think about that a lot. I know his hands were not, and the only recollection I have, and I think something about he would always be seated before the jury came in so there wouldn't be an issue of him being seen with the leg shackles on.

And Judge Harrington, she's very particular from a trial standpoint. One of the things -- she wants to know how many ink pens are on the desk, and I think that may be a safety issue, but that kind of struck me a little bit.

Q. Okay. So to the best of your recollection, there were some precautions that were being taken to have him seated before the jury came in?

A. That's my understanding, and, also, I think on the witness stand as well. So I don't think that he was walking in front of the jury.

Q. Okay. Do you -- if you know, do you know whether the tables in Berkeley in the courtroom have kind of a barrier or curtain around them?

A. I am fairly confident that they do in courtroom E.

I believe they're there because there's been an ongoing discussion about privacy and ladies as they sit at tables and things.

Q. I think you said a little while ago that you tried to -- when you took over this case, you tried to build on some of the work that had already been done. In terms of the issue that Mr. McCray has raised about getting reports from previous investigators, do you recall talking about that issue with him at the time?

A. I do recall talking with him about that issue. So you had work that was done by Ms. Littlejohn in the public defender's office, and then you had work that was done by Mr. Marshall, and the work was very different. I was never able to really get anything from Mr. Marshall's investigators. It was like I was trying to deal with ghosts, and I've got a good working relationship with the public defender's office and known Ms. Littlejohn -- at that point, I had known her for 17 years, and I was able to gather information.

Q. So you were able to get some of the investigative reports or information that her investigator had gathered through the public defender's office?

A. I believe I received a full copy of the file from the public defender's office and from Mr. Marshall. I do not believe I received a file from Mr. Theos, but my

understanding all along is that Mr. Theos did not work on this case and that he was relieved because he employed a family member of the Berkeley County sheriff's department.

Q. Okay. And so you believe that you had the benefit of information or you were able to use information that the previous attorneys had gathered or done work on?

A. Yes, ma'am.

Q. And you discussed all of that information with Mr. McCray; is that correct?

A. Yes. I discussed what I received with Mr. McCray.

Q. And you discussed, maybe, how to use that or what the next steps were going forward that Thursday?

A. I talked about -- I think we talked about our general strategy. I did not have a detailed conversation with him about how we were going to use each item from a brick and mortar standpoint. I didn't go through Bates stamp one through -- I didn't go item by item, but I did talk about our theory and talk about the evidence he had, talked about what we had.

THE COURT: The self-defense charge, was that handled in the appeal, or do you believe that's a legal issue? What's your position on that?

THE WITNESS: My position is it's a legal issue. I think I raised certain objections within the

transcript, but I think it's a legal issue, and certainly I'm not in a position to -- I think judges have to rule on things, and I think we objected, and while I may disagree with a ruling, I certainly respect the rulings of the trial and other Courts.

BY MS. McCALLISTER:

Q. And you did make some specific requests for jury instructions; is that correct?

A. Yes, ma'am.

Q. In terms of self-defense; is that correct?

A. Yes.

Q. And she did give at least a portion of the instructions that you requested; is that correct?

A. Yes. Well, I say a portion. I don't think she utilized what I presented. I think she utilized what --

Q. But she did give an instruction on self-defense?

A. Yes, ma'am.

THE COURT: With regard to the inference of malice, same thing. What's your perspective with that?

THE WITNESS: You mean on my not objecting --

THE COURT: On the use of a deadly weapon, that being an inference of malice.

THE WITNESS: I don't recall the details about that. Are you asking if I think it's a legal issue? I don't recall where I objected to those certain

issues, but I do believe there was a jury instruction relating to that.

THE COURT: One of the last clarification I have, it was mentioned about the statement, or testimony was elicited, Ron shot Reggie, and referred to him as a bad man.

What do you think about the advisability of objecting to that and whether that would have been productive?

THE WITNESS: I am not shy to object, Your Honor, and I don't object to everything. And as I look back on it, I look back at a transcript, you know, there are people that say -- you know, some people say, I wouldn't change anything in life.

I have never read a transcript where I thought to myself I'd do everything exactly the same, so I think, as I recall those issues, we were not disputing whether or not Mr. McCray shot Porcher, and I certainly understand and respect his concern about that failure to object at this point.

BY MS. McCALLISTER:

Q. In fact, when Mr. McCray testified, did he admit that he was the shooter?

A. Yes.

Q. Circling back to the issue of self-defense and the

jury instructions, do you recall whether the issue of the inference of malice was raised by the solicitor in closing or in the judge's instruction?

A. Well, I think that the transcript -- I mean, I reviewed the transcript, I think that's touched on in their closing, and I would have to go back and review the transcript as it relates to each individual jury charge, but I think it was in both places.

There was a charge conference, like in most trials. We knew what was going to be charged when we closed, before we closed.

MS. McCALLISTER: Your Honor, may I have a moment? I am sure there are things that I have missed.

THE COURT: While she's looking at that, there's been some mention of you having a discussion with the judge in chambers about the testimony of a given witness. Do you recall that?

THE WITNESS: I don't recall any specific conversations about given witnesses except for, you know, you have a witness that's giving a statement, and, you know -- I think there was probably discussion about not necessarily the substance of testimony but just that I've got another witness I got, you know, going in this direction or something. I don't remember specifics, Judge, but --

THE COURT: So you don't recall if there was any discussion with the judge about the substance of a witness and the judge telling you what you could and could not ask?

THE WITNESS: Where I think that issue comes up goes to the issue of discussions after proffered testimony because there were conferences after proffer. The judge said, You're not going in this area. You're limited in certain areas, and we're not going to go in these areas.

MS. McCALLISTER: Your Honor, that's all the questions I have at this time.

THE COURT: Any redirect -- I mean, cross? I'm sorry.

CROSS-EXAMINATION

BY MR. BOOZER:

Q. Mr. Biering, how are you?

A. I'm good.

Q. Based on your testimony, it's pretty safe to say that you guys did not have a good relationship at the time trial started?

A. We didn't.

Q. Was there some -- do you think there were trust issues on behalf of Mr. McCray as far as your involvement in the case?

A. Yes, I do.

Q. Okay. Now, I know that at some point, obviously, there were motions to be relieved, and you indicated to the Court you were there to serve at the pleasure of the Court and if told to remain, you would remain. Do you think, though, that your relationship was so bad that it impaired your representation?

A. I needed David McCray to help me on the street locate my witnesses so that I could meet with them before trial. It's that simple. I needed somebody within that friend group to cooperate with me so that I could find and meet with my witnesses before trial. It's that simple.

Q. And understanding that your relationship that you had with Mr. McCray specifically, do you think it was to the point that it was so fractured that it was difficult to represent him or impaired your representation?

A. It was difficult to represent him, yes.

Q. Do you think that you conveyed that to the Court?

A. I think I conveyed that to the Court in both of the motions to be relieved. Judge Dennis has known me since prior to -- well, prior to me going to law school, and he knew what I was saying, and I think I was adamant. I was clear. I think Mr. McCray was clear in the specific writings that filed himself with the Court, and

Judge Harrington was fully aware of that situation when the trial began.

Q. Going back to the investigator, Investigator Scarborough, was there another private investigator that you had engaged?

A. I don't recall ever using another private investigator.

Q. Have you been in the courtroom for Mr. McCray's testimony today?

A. I have.

Q. Do you recall his recollection that there was another investigator who he claimed had a little bit better luck in the community with getting folks to speak to him?

A. I think what he was talking about was the person that had apparently worked for Mr. Marshall that we looked for and really didn't get anything, and then there was also a discussion that Mr. McCray had about Judge Dennis's assistant being at our meetings. That never took place. I don't know who Tim is. I think he said Tim. I don't know who Tim is, and I would meet with my client with a member of the court staff there. Certainly not to talk about anything substantive.

From the standpoint of meeting with Mr. McCray, I met with Mr. McCray with two people: One was a law clerk

that was employed by me and two was Mr. Scarborough.

Q. Okay. So you don't recall any other third parties that had any relationship with the Court being in any of your meetings?

A. There were not. Now, if we if we met in the jury room, in the back of the main courtroom, courtroom E -- and if you're looking at the bench, it's the room back off to the left, we may have met off to the right in the little conference room in the back. There would always be security there, and there's plainclothes security and there are uniformed security. It's a little different than here. You've got people in sheriff's deputy uniforms and you've got people in suits.

Q. Do you recall or do you have any recollection of Judge Dennis -- because of, I guess, the relationship and the motions to be relieved as counsel, did he ever indicate, Hey, I'm going to send another person in there to kind of make sure you guys are getting along, or anything like that?

A. I don't ever recall that, and I have my investigator with me. He's about 6' 6", weighs about 375 pounds. He's an ex-Marine, and I don't need anybody else to be with me.

Q. Going to Investigator Scarborough, did you have a discussion after you became aware of his relationship

with one of the arresting officers? Did you discuss that with Mr. McCray?

A. I don't recall the extent of it, but yes, we discussed it, and we had discussions prior to, I believe, both of the motions to be relieved because in a motion to be relieved, I think I've got a duty to my client, and if at that point my client's -- my client's position is that he wants me to advocate for me to get fired, then I think that's what I have to do, so we did that before those motions.

Q. Okay. I'm going to combine these, but there was some testimony on direct examination from you about this issue of malice, the inferred malice or whatnot that was made, and I'll represent to you that the transcript reflects that the solicitor in his closing made reference to the malice issue at page 718, and just --

THE COURT: I'm going to review the record as well, but did the trial judge charge inference of malice?

MR. BOOZER: The correct charge, coupled with the self-defense, was given with regard to malice. The one with that -- State versus Belcher, the 2009 case says you can't infer malice just because a deadly weapon was used when there is that available defense of self-defense. It was correctly done by the Court, but his position is that the solicitor misstated the law.

BY MR. BOOZER:

Q. Mr. Biering, if the transcript reflects that the solicitor did misstate the law and indicate that it can be inferred from the use of a deadly weapon and didn't object, would you agree that the transcript is accurate in that regard?

A. I don't have any dispute about the transcript, and it speaks to what took place in the trial.

Q. And would you agree with me that based on the case the State versus Belcher that that is not correct, that that is not a correct statement of the law?

A. Refer me to the line.

Q. Yes, sir. On page 718, and this is beginning on line 119, and I'm happy to read it to save you flipping through.

A. Are you asking about whether or not she can speak to inferred malice or express malice?

Q. Inferred malice.

A. She says the word inferred, but she's talking about express malice, and --

THE COURT: You say she. You're talking about who?

THE WITNESS: I'm sorry, Your Honor. It was Brian Alfaro and Anne Williams, and they took different witnesses and I apologize. When I read the transcript, I

wasn't necessarily thinking about --

THE COURT: You're talking about the lawyer, not the judge?

THE WITNESS: The lawyer, yes, sir. So he in line 11 or 12, he says it's expressed or inferred.

BY MR. BOOZER:

Q. Okay.

A. He says that, but then the balance of it, he's speaking about express malice.

Q. Well, let's jump down to line 19 where he then starts talking about inferred, and he says, Inferred from conduct showing total disregard for human life. It can be inferred from use of a deadly weapon, shot him with a shotgun.

That's not correct, right?

A. It's a legal issue, and the case speaks for itself, so I didn't object.

Q. Okay. James Boykin was a pretty big witness for the State, was he not?

A. I don't really think so.

Q. Have you reviewed -- and, certainly, I can hand it to you. Have you reviewed Mr. Boykin's statement recently? Do you have a different recollection of it?

A. I don't have an independent recollection of it. I'll be happy to review it again.

MR. BOOZER: Your Honor, may I approach the witness?

THE COURT: Yes.

BY MR. BOOZER:

Q. I'm going to hand you a copy -- this is actually Mr. McCray's PCR application with attached Exhibit E, the statement of Mr. Boykin. If you will just take a moment and review that to yourself.

A. I finished page two. Do we need to go through all five pages?

MR. BOOZER: May I approach the witness, just to make sure?

THE COURT: Yes.

BY MR. BOOZER:

Q. No, I think that's fine for now. Let me ask you this: Does that statement reflect the statement that you reviewed in discovery to the best of your recollection?

A. I don't have any reason to believe that that is a different statement than what was received by me in discovery. There's no way for me to say that sitting here. Certainly I'd have to look at those. My practice is when I'm preparing documents, I bring another person into the room. I read one, they read one, and then we switch.

Q. Okay. And all that being said, would this have

been something you would have reviewed with Mr. McCray?

A. Yes.

Q. And in that statement, it says that Mr. Boykin states, Wednesday, 9/16/09, Ron called me on my cell number, [redacted]-2072, at approximately 1735 hours from his cell number, [redacted]-3124. Ron asked me if I saw the news. I told him no. He told me he just killed the M-F'er. Asked Ron who he just killed. He said Reggie Porcher.

Now, at trial, that same testimony is elicited from Mr. Boykin that he received hat phone call. Do you recall that?

A. I do.

Q. Did you have any discussion with Mr. McCray about whether that phone call happened and what his position was with regard to that?

A. He had some differences of thoughts on what had transpired after the event as to what some of the people said from an investigator standpoint, but what transpired within the proximity of the event, I don't think there was any issue.

Q. As far as him admitting he shot him, the victim.

A. Yes, that's correct.

Q. Okay. But let me ask you this: Did you have any specific discussion where Mr. McCray denied making this

phone call to Mr. Boykin?

A. He didn't think things happened afterwards exactly like others had said. I didn't see where -- that wasn't my focus.

Q. Okay.

A. My focus was giving him a justified -- showing a legal justification for him to use deadly force and to shoot Reginald Porcher.

Q. And I understand he's telling you he disagreed with some of the things that happened post-incident, but specifically with regard to the phone call, do you have any independent recollection of discussing whether he denied that or whether y'all took any further action about that telephone call?

A. I didn't take any further action about the telephone call, and you've subpoenaed records that I didn't subpoena.

Q. Mr. Biering, I'm going to hand you as you referred to as Applicant's Exhibit 1, which in part contains these records that my office received from AT&T with regard to the phone number [redacted]-2072, which, of course, in Mr. Boykin's statement, he says that's his number, and then in his own statement, he said that Mr. McCray called him from [redacted]-3124.

In looking at these records -- and I'll just point

you to the relevant parts so you don't have to dig through this. If you look at page four, which will be labeled page two, and you see the lines where it's item and it has a series of numbers on the far left? If you look down --

A. Can you just point?

Q. Sure. All right. This is page two that we're on, and you see there's a series of numbers on the left-hand column under item?

A. Yes, sir.

Q. In looking down, beginning at line 69, which has, of course the military time of 1540.

A. So 69? Okay.

Q. And from 1540 through 17 -- well, it's the bottom of 1805, it shows you what's called originating number, which will be where the calls are coming from. Then it has the terminating number, which is the number that is associated with the statement from Mr. Boykin, where he acknowledges his number.

A. Okay.

Q. Would you agree with me that during those times there is no call from what Mr. McCray's number is as stated in Mr. Boykin's statement, which is cell [redacted]-3124?

A. From my review of this, it does not appear that there is a call from that number, if I look down from 69

to 76 on page two.

Q. Okay. And if I represent to you that those time frames on 9/16/09 that are shown on these records that Mr. Boykin alleged he received a phone call from Mr. McCray, during that time it does not show on this sheet, does it?

A. I don't see that number there. It speaks for itself.

Q. Okay. Now, had you subpoenaed the records at that time, could you not have attacked Mr. Boykin's statement to discredit him that he got this call from Mr. McCray?

A. I certainly could have.

Q. Because his testimony is important because there's no one else that Mr. McCray supposedly said this directly to, where he says, I shot the M-F'er, and then spits on him and says, I'm God, fear me?

A. I think that's the only testimony that relates to that.

Q. So if you're able to then discredit the portion that he even got this phone call, then it's possible that the jury may not believe all this other stuff Mr. Boykin is saying; is that right?

A. It's very possible, that certainly if you attack one item of credibility, that, you know -- it's hard to determine what a jury hangs onto to discredit the

testimony of a witness.

Q. Let's flip over to this issue of SCDC record. It's a big part of y'all's case and you made multiple attempts, I think, as reflected in the transcript to get into some background of the victim as far as prior bad acts and things of that sort?

A. We needed that and we needed a gun.

Q. Okay. Did you -- you tried to get into the SCDC records through a proffer, and it was not allowed; is that right?

A. The transcript would speak to that, and I personally -- I can't recall the specific detail on that issue. It was a long trial. There was a lot of evidence. I know ultimately we were told we weren't going -- we were not going to be able to go there.

Q. You were being confined to what you could get into?

A. I was being confined.

Q. Now, have you had an opportunity -- are you aware that Mr. McCray had an appeal, a direct appeal, from this case?

A. My recollection is that immediately after the trial, within a timely period, I did the initial notice of appeal, and my understanding was he had counsel Mr. Faulk. Mr. Faulk contacted me, and I spoke to

Mr. Faulk about it. I really didn't follow anything other than that. I did see an advance sheets ruling and read the ruling like I do other advance sheets.

Q. And did you read through the ruling in the advance sheets and the opinion?

A. I did at the time. I certainly did not do -- I can't speak to the ruling.

MR. BOOZER: May I approach the witness with a copy --

THE COURT: Yes.

BY MR. BOOZER:

Q. Mr. Biering, I'm going to approach with what is a copy of the opinion from the Court of Appeals, and specifically I will ask you only to look at a portion of it. You're welcome to look at the whole thing, but if you would, look at the portion that's B of the SCDC records, and please ignore my highlights.

A. Okay. Okay. I've read --

Q. After having read B, one of the appellate issues that Mr. McCray argued was that the proffered SCDC records were admissible because of the medical examiner's testimony about the existence of some marijuana in his system. Dr. Presnell testified to that. Do you recall that?

A. I recall the testimony. I don't recall who

testified, but I recall the testimony.

Q. And in our appeal, Mr. McCray's lawyer argues that was an opening of the door for an admission of evidence of prior drug use with regard to those SCDC records, but as you saw in the appeal, it said that this issue was not raised or ruled upon and couldn't be considered for the first time on appeal. At trial, McCray did not argue the State's use of the toxicology report opened the door for the admission of SCDC records; therefore, we find argument is not preserved for appellate review because it was not raised or ruled upon.

Do you think that that was an opportunity to then try to get it in another way, even though y'all had been shut down before?

A. Certainly, based on the Court's ruling, it is -- like most rulings, they're constructive, and I find it constructive at this point.

Q. Okay. Going to the issue of Mr. McCray in shackles the day of his trial -- you practice a large amount in Berkeley County?

A. Yes, sir.

Q. Have you found that to be something that's kind of common over there?

THE COURT: What is common?

MR. BOOZER: I'm sorry.

BY MR. BOOZER:

Q. I'm sorry. Have you found that to be a common issue, that defendants are tried in leg irons, or leg shackles?

A. I think that my experience is that those issues are probably more focussed on security issues that the sheriff's department has, or the detention center, I should say, and there are in the sheriff's department or the specific judge. I think specific judges have their own thoughts on how those things are handled.

Q. Was there ever any hearing conducted to determine that hey, Mr. McCray needs to be in leg shackles, do you know?

A. I do not recall there being a hearing on that issue.

Q. When did you become aware that he was going to be in leg shackles for the trial?

A. Probably at the -- there was -- and I can't remember if it was before the jury was qualified. Judge Harrington called us back into chambers and told us how things were going to be as relates to the decorum in her courtroom and how certain things were going to be handled.

Q. Was that one of the items that was discussed in chambers?

A. I think that was one of the items that of discussion in chambers.

Q. Do you recall any specifics of that discussion?

A. My recollection -- and I think I talked about this on direct, that there was just caution and concern about making sure the jury didn't see him in shackles.

Q. Did you ask why he needed to be in shackles? Let me ask you this: Had there been any prior instances in court appearances where Mr. McCray had acted out or done anything in the courtroom?

A. I don't think so.

Q. You may have answered this on direct, but do you recall if there was any sort of visual obstruction or skirt around counsel table or panels to block the jury's view of his leg irons?

A. I think there's something there. I believe it's there, and -- to be candid, my understanding in talking with people on the court staff who go back, it has nothing to do with defendants in shackles, it has to do with ladies in dresses, but I think there is some shield there.

Q. Okay. Do you know when the jury would either enter or exit, would you stand up when the jury would come in and out?

A. I can't recall how Judge Harrington handles that.

That's certainly my practice. Just like common courtesy when someone walks into the room, you stand up. I can't recall specifically how Judge Harrington handled that.

Q. Now, do you recall after -- obviously, he testified in trial, so he had to go to the witness stand. Do you recall after his testimony whether he was removed from the witness stand out of sight of the jury or whether he walked down?

A. My recollection is that the jury was brought in after he was seated and that he left the witness stand after the jury had left the room.

Q. Okay. And if the transcript reflects that he was seated when the jury came in, would you agree with that?

A. That's my recollection, so certainly -- and if the transcript reflects something different, you know, the court reporters do a very good job of taking down things.

Q. And how about if it's silent as to the issue, after he testifies, whether he came back down to counsel's table and the jury stayed in or out?

A. My recollection is there was no walking in front of the jury with shackles on. That's my recollection.

Q. Could you hear the shackles while you were seated next to him?

A. I don't recall that. I certainly would respect his position as it relates to hearing that. I think that

he would -- I would think a person would be very sensitive to that issue, so I respect his saying that he believed he could hear the shackles moving, so --

Q. I'm going to switch gears and go back for a moment, but this is a separate allegation where he's alleged that the State opened the door for violent behavior when Mr. Boykin testified that his baby's mother had been raped by -- allegedly by the victim.

Do you recall that testimony being elicited on the record by the State?

A. We wanted to use that, and we wanted to use the issue of the robbery. We wanted to use those things to paint what I think was a clearer picture of what Mr. McCray had described had gone on in his life, but --

Q. Once that testimony came out from their own witness, did you make any sort of argument that it should now be allowed in other areas because the State has opened the door?

A. I don't think we ever got to the point. I think we would have gotten to a point where we would have been able to use lots of things, call lots of witnesses, present lots of evidence had we had direct testimony from a witness that Mr. Porcher had a gun with him at the time of this event, and we couldn't elicit that. There was more we could have done after those witnesses, but we

couldn't. We didn't have it.

Q. And I think you said, counsel, the two big things for you in the case were, basically, the prior bad acts, or sort of his character, the victim's, and the gun. Is that what you've indicated?

A. Lots of people have guns. The question is, do those people who have guns going to shoot at you? So, yes, that's as pretty simple as that. We wanted to show that Mr. McCray had a reason to be concerned about his safety as it relates to being around Mr. Porcher, and Mr. Porcher had the present ability to utilize deadly force against Mr. McCray.

Q. But you would agree with me, though, that when you're trying to get this SCDC stuff in, trying to get these prior bad acts in, but here's an instance where the State voluntarily brings this in from one of its own witnesses, you would agree with me that you didn't take any action or argue that, hey, we should be allowed to get to this stuff because they've opened the door?

A. I did what I did. The transcript speaks to that. I don't know what else I could have done.

Q. Going back to what Mr. McCray -- his belief that there was a third statement from Mr. Boykin, did you ever become aware or read or listen to interviews between law enforcement and Ron McCray? Did you listen to his

interviews?

A. The interview between Mr. McCray and law enforcement?

Q. Yes, sir.

A. Not only did I listen to them, my practice is when I have recordings that in addition to -- well, when I say my practice, I'm certainly not going to do it in a run-of-the-mill minor misdemeanor case, but in a major case, I take those statements. I hire a court reporter, and I get transcripts of those statements so that I can go through, them word for word, line for line. I can scan them into a PDF and I can search words and do things with them, so yes.

Q. Do you recall there being a point where Sergeant Altieri was questioning Mr. McCray, and he's basically asking him, What did you tell James? What did you tell him about the gun that was thrown in the pond? Do you recall anything like that?

A. I don't recall the specifics of the statement as it relates to that. I do recall discussions. We can go back and look at the statement, if you'd like me to do that.

Q. Let me ask you, from an independent recollection, do you ever recall there being an issue or discussion or any statement given by Mr. Boykin that a gun had been

thrown in a pond?

A. I remember something about guns being disposed of or where the gun was at and discussion about that.

MR. BOOZER: Your Honor, I think we have an eyeglass issue at the moment. May I approach with counsel?

THE COURT: Yes.

(Discussion held at sidebar.)

THE WITNESS: Was it a copy of a transcribed --

THE COURT: He's going to read it and see if you recognize it.

THE WITNESS: Okay.

BY MR. BOOZER:

Q. You've indicated you've listened to and have read transcripts or statements from Mr. McCray given to law enforcement?

A. Multiple times.

Q. And interviews?

A. Multiple times. All of the statements, all of the recordings I've listened to multiple times.

Q. I'm going to read to you what's been represented to me as a copy of a transcript of one of those interviews. I'm going to you a portion of that. Would you tell me if that's representative of the interview?

Sergeant Altieri, was he one of the investigating officers or someone who conducted an interview?

A. My recollection, it was Gina Altieri. She's a very distinguished-looking individual. That's my recollection.

Q. Sergeant Altieri: What did you tell James because he's down there, something about the gun was thrown in the pond or --

Mr. McCray: I ain't telling him nothing.

Sergeant Altieri: You didn't tell him anything?

Mr. McCray: I didn't tell him nothing. I already told you where it's at so --

Right. Why would he be telling us that?

Mr. McCray: I already told you where the gun is.

Beg the Court's indulgence, Your Honor. This is a typo. It says the Court is saying this. I believe that's not correct.

It says: All right. Well, I'll have to call this detective back, and I don't know where he's getting his information from, but apparently he says that he talked to you and you said it was thrown in the pond or something. Do you recall any of that?

A. I have transcripts of those statements. I do not

have an independent recollection of the individual words that were said in that statement. I'll be happy to refer to my file. If that is a copy of the statement, I do not dispute that generally the court reporter's transcription of those statements were correct.

I recall a number of specific items that didn't make sense in the transcriptions because when a court reporter is transcribing audio that it is not of Court quality, many times there are things that are inaudible, and there are things that would be handled differently in a controlled court reporter setting. So if it's a copy of the transcript, it's a copy of the transcript. I don't have an independent recollection.

Q. All right. Moving on to a couple of allegations of failing to object to hearsay testimony, do you recall the testimony of Joyce Wright in which she indicated Ron shot Reggie, Ron shot Reggie, she heard people saying that?

A. Generally. I don't remember the names, but I remember something being --

Q. You would agree with me that that's hearsay?

A. I would. The problem is there are multiple layers of hearsay. More important is not just the issue of hearsay. There are exceptions to the hearsay issue, and the question is, is it an excited utterance? And you've

got a grouping of houses, basically, in a circle around the scene of somebody being shot with a shotgun, and there wasn't a dispute about there being a shooting, and there wasn't a dispute about Mr. McCray doing the shooting.

Q. How about the next issue he has of hearsay, which would be, I believe Tamika Collins, in which she testifies: Then I jumped up and asked him what happened, and my cousin said the bad man, Ron, shot Reggie.

The bad man Ron?

Uh-huh.

If there's no objection, of course, you didn't object, would you agree with that?

A. Absolutely. If the transcript says I didn't object, I didn't object.

Q. Would you agree that is hearsay and/or the connotation that he's the bad man, do you agree that is objectionable?

A. I would agree from the layer standpoint -- first, it is an out of court statement, presented for the truth of the matter asserted, yes. It is hearsay, falls within the hearsay exception. I believe it falls within the excited utterance exception.

As it relates to the bad man component, certainly looking back, as you read the transcript, you know, it's

another layer of it.

Q. Okay. And, Mr. Biering, my client has pointed out a line in the transcript he wants me to address with you, which is going back to, I believe, Chavis Wright who is one of the --

A. What page is it?

Q. It's 563.

A. Yes, sir.

Q. And on 563, beginning at line 17, you're indicating to the Court that you're prepared to question Mr. Wright at this time.

And the Court says: As I understand the testimony, it relates to a prior bad act of the victim, to which you respond: No, Your Honor, it does not.

And the Court says: What is it? My understanding of what you indicated to the Court in chambers was that it had to do with an incident between this witness and the victim related to the defendant; is that correct?

And then you say: No, Your Honor. That's not what I indicated.

Do you recall if that was -- do you recall the specifics based on that of any discussion in chambers with the judge about Mr. Wright's testimony? And we may have numbers off. I'm happy to bring up a copy.

A. So the number I'm looking at is the upper right-hand corner of the transcript, page 563?

Q. Yes, sir.

A. Okay. I don't have any recollection of an in-chambers conference relating to these pages testimony. I think I'm looking at the wrong page, because I'm looking at direct examination of David Brabham.

MR. BOOZER: Your Honor, may I approach the witness? There's some transcript issues in the copies I've received that are out there.

MS. McCALLISTER: Your Honor -- and on my transcript, this is on page 570 too, so that may be the issue. We're a few pages off.

MR. BOOZER: The initial transcript that I was provided a hard copy by the State, I think it was an appellate record, and certain items were omitted so it was more of a condensed transcript. I have an electronic copy that has everything in it, so I think that this is that copy that has everything.

THE WITNESS: I don't remember an in-chambers meeting, but I recall that.

BY MR. BOOZER:

Q. Does that refresh at all, though, your recollection -- or is that what you're saying, you don't recall what was stated in chambers?

A. I don't, but it looks like I discussed it pretty extensively on the record, and the judge ruled, still looking at this issue of prior bad acts and what we were trying to say was basically it's a continuing transaction. It's not a prior bad act.

Q. Was the judge asking you in chambers to tell the Court off the record prior to the proffer what this witness was going to state?

A. I don't recall it like that. There were discussions about, you know, directions you can go and directions you can't go, areas you can move forward on, and there were areas that you can't.

MR. BOOZER: Beg the Court's indulgence, Your Honor.

That's all I have for you. Thank you.

THE COURT: Any redirect?

MS. McCALLISTER: Yes, Your Honor. Just briefly.

REDIRECT EXAMINATION

BY MS. McCALLISTER:

Q. On the issue of the leg shackles, I think you said that you would defer to Mr. McCray on whether or not he could hear the shackles. Do you recall personally hearing him make noises?

A. I think what I testified to is I don't have any

recollection of hearing that, but I certainly respect his position that he heard that. I don't recall that being an issue, but he recalls that being an issue, and I respect his position.

Q. Do you have any reason to believe that the jury could hear that?

A. I don't have any reason to believe that the jury could hear that. Courtroom E is a pretty big courtroom.

Q. And there's been a lot of talk about James Boykin. Do you recall whether Mr. Boykin was involved in the arrest of Mr. McCray?

A. All the names are kind of running together. I don't recall. If you want me to go back and look at the --

Q. Do you recall if Mr. McCray was arrested with another person, along with another person?

A. I don't recall. I'd have to back and look at the incident report and read that.

Q. Okay. Do you have that incident report in your file? It may also help if you look at page 272, starting at page 272 of the transcript, if that's easier for you to get your hands on.

A. Okay. 272 of the bound materials that were given to me, or we don't know?

Q. I have 272, so I think you have what I have, but

I'm not positive.

A. Okay. And I've got the --

Q. Okay.

A. I'm on page 272. What line?

Q. And I think it goes on -- just starting at the top line, and it goes on for a couple of pages. This is Mr. Boykin's testimony in my copy.

A. The first is By Ms. Williams. What is that? It's a copy of the check.

Q. Yes.

A. Okay.

Q. Do these few pages, 272, 273, 274, help you recall the circumstances of Mr. McCray's arrest?

A. This is the examination of Mr. Boykin, right?

Q. The pages that I'm giving you in my copy, yes.

A. Yes.

Q. Your recollection -- are you saying yes, that helps refresh your recollection?

A. Somewhat, yes.

Q. Do you recall if Mr. McCray was with anyone when he was arrested?

A. It looks like the transcript says that he was with Mr. Boykin.

Q. Okay. And what were they doing, or what were they in the process of doing?

A. It looks like there was some discussion about going to Money Man Pawn, needed to pawn tools to get some money.

Q. And they were arrested together in the car; is that correct, or in a car?

A. That's what it says. It says, As soon as I pulled in the parking lot the Money Man on Folly Road.

The police knew what car you were driving?

Yes, ma'am, talked about having guns pulled or something.

Q. Okay. And does it indicate whether Mr. Boykin was driving Mr. McCray?

A. I didn't read it with that in mind. I mean, if it speaks to who was driving --

Q. But from reading the transcript, you recall that they were together when Mr. McCray was arrested?

A. Yes.

Q. So is it fair to say that that indicates some discussion took place between the two of them?

A. That could certainly be inferred from that.

MS. McCALLISTER: I think that's all I have.

THE COURT: Very good.

MR. BOOZER: Your Honor, just one question?

THE COURT: The way examination goes in the courtroom is direct, cross, redirect. There is no such

thing as recross.

You may step down.

THE WITNESS: May I be excused, Your Honor?

THE COURT: Any objection to him being excused?

MS. McCALLISTER: No, Your Honor.

THE COURT: Thank you very much. You may call your next witness.

MS. McCALLISTER: Your Honor, that's all for the State.

THE COURT: I want to take an opportunity to review this transcript and review my notes on this matter, and I want counsel -- Mr. Boozer, I assume you have the ability to do a conference call at your office?

MR. BOOZER: I do, Your Honor. I will be back in Columbia tomorrow.

- - -

(Whereupon, the proceedings were concluded.)

- - -

I, the undersigned, Amanda Kelly Haffenden, RPR, CRR, Circuit 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 Berkeley County, South Carolina, on the 2nd of August 2017.

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

January 21, 2017

Amanda K. Haffenden

Circuit Court Reporter

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STATE OF SOUTH CAROLINA

ISSUED BY THE COURT OF COMMON PLEAS IN THE COUNTY OF BERKELEY

RON SANTA MCCRAY #353071,
Plaintiff.

v.

STATE OF SOUTH CAROLINA,
Defendant.

SUBPOENA IN A CIVIL CASE
Case No. 2015-CP-08-2692
Pending in Berkeley County, South Carolina

TO: **AT&T Wireless Subpoena Compliance**
Via Fax: 888-938-4715
11760 US Highway 1
North Palm Beach, FL 22408

_YOU ARE COMMANDED to appear in the above named court at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

___**YOU ARE COMMANDED** to appear at the place, date and time specified below to testify in the above case.

PLACE OF TESTIMONY	DATE AND TIME:

X YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents or objects):
Subscriber information and call records for Cricket telephone number [redacted]-2072 from September 15, 2009, beginning at 12:01 a.m. EST through September 17, 2009, ending at 11:59 p.m. EST.

PLACE OF INSPECTION: **The Boozer Law Firm, LLC, 1400 Laurel Street, Suite 4A. Columbia. SC 29201, email LSB@BOOZERLAWFIRM.COM or fax 803-753-9064.**	DATE AND TIME: **June 2, 2017, at 5:00 p.m.**

Any Subpoenaed organization not a party to this suit is hereby directed pursuant to Rule 30(b)(6), South Carolina Rules of Civil Procedure, to file a designation with the court specifying one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matter on which the person will testify or produce documents or things. The person so designated shall testify as to matters known or reasonably available to the organization

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER: Lance S. Boozer of The Boozer Law Firm, LLC, 1400 Laurel Street, Suite 4A, Columbia, SC 29201, (803)608-5543. I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1) AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.
DATE: May 19, 2017
ISSUING OFFICER'S SIGNATURE AND TITLE

INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) ATTORNEY FOR Plaintiff
SCCA Form 254 (7/93) (See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on Reverse)

PETITIONER'S EXHIBIT

at&t

GLOBAL LEGAL DEMAND CENTER
RESPONSE COVER SHEET

11760 US HIGHWAY 1, SUITE 600
NORTH PALM BEACH, FL 33408-3029
Phone 1-800-635-6840 Facsimile 1-888-938-4715

To: LANCE BOOZER
THE BOOZER LAW FIRM
807 GERVAIS STREET
SUITE 203
COLUMBIA, SC 29201

File Code: 2248452

From: NF

Phone Number: (603) 608-5543
Fax Number: 1

Request Dated: 5/19/2017
Received On: 5/19/2017

Number of Pages:
Date: 5/31/2017

RE: MCCRAY V SOUTH CAROLINA CASE 2015-CP-08-2692

Subscriber information is not available for Cricket Wireless from 2009.

All available requested information is enclosed.

IMPORTANT NOTICE:

Effective immediately, please include a time-zone in all legal demands served to AT&T. AT&T's records are kept and provided in UTC. If usage records were requested and no time zone was indicated, AT&T has queried the records in the time zone where your legal demand was issued

CONFIDENTIALITY NOTICE
This cover sheet, and any document which may accompany it, contains information from the National Compliance Center which is intended for use only by the individual to whom it is addressed and which may contain information that is privileged, confidential and/or otherwise exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the person responsible for delivering this message to the intended recipient, any review, disclosure, dissemination, distribution or copying or other use of this message or its substance is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone to arrange for the return of this communication to us at our expense. Thank you

2248452 NF

at&t

GLOBAL LEGAL DEMAND CENTER

11760 US HIGHWAY 1, SUITE 600
NORTH PALM BEACH, FL 33408-3029
1-800-635-6840
1-888-938-4715 (Fax)

VERIFICATION OF AUTHENTICITY OF AT&T RECORDS

STATE OF FLORIDA
COUNTY OF PALM BEACH

BEFORE ME, the undersigned authority, personally appeared Nancy Frechette, who being duly sworn, deposes and says:

My name is Nancy Frechette. I am over the age of 18 and qualified to make this affidavit. I am employed by AT&T as a Legal Compliance Analyst and also serve as the Custodian of Records for AT&T. I have been employed by AT&T since 11/15/1997. Attached to this Affidavit are true and correct copies of subscriber information and/or call detail issued by AT&T.

[redacted]-2072

The attached copies of billing records are maintained by AT&T in the ordinary course of business. I maintain and routinely rely on these documents in the course of my duties as Custodian of Records and Legal Compliance Analyst.

Nancy Frechette
May 31, 2017

The foregoing affidavit was sworn to and subscribed before me by Nancy Frechette, who is personally known to me.

May 31, 2017

Notary Public, State of Florida

Printed Name

Serial Number (if any)

GLOBAL LEGAL DEMAND CENTER

Notary Public State of Florida
James Edward Finkiea
My Commission GG 063699
Expires 01/18/2021

993 2248452
05/31/2017

WIRELINE

AT&T has queried for records from 09/15/2009 12:01:00am to 09/17/2009 11:59:59pm AT&T has queried for records using Eastern Time Zone. AT&T's records are stored and provided in UTC.

AT&T

Run Date: 05/31/2017
Run Time: 16:29:57
Voice Usage For: [redacted]-2072

Item	ConnDateTime (UTC)	Originating Number	Sec. Orig.	Terminating Number	Dialed Number	Elapsed Time	CIC	Call Code	Orig. Acc.
1	09/15/09 04:16:10	[redacted]7340		[redacted]2072		0:04	5792	0	
2	09/15/09 04:16:11	[redacted]7340		[redacted]2072		0:04	5158	119	
3	09/15/09 04:16:25	[redacted]7340		[redacted]2072		0:02	5792	0	
4	09/15/09 04:16:48	[redacted]7340		[redacted]2072		0:02	5158	119	
5	09/15/09 04:36:39	[redacted]9345		[redacted]2072		0:02	288	119	
6	09/15/09 04:36:43	[redacted]9345		[redacted]2072		0:03	6633	306	163
7	09/15/09 04:42:37	[redacted]7340		[redacted]2072		0:16	5792	0	
8	09/15/09 04:42:43	[redacted]7340		[redacted]2072		0:16	5158	119	
9	09/15/09 05:01:51	[redacted]7108		[redacted]2072		0:32	9	66	
10	09/15/09 05:09:21	[redacted]7340		[redacted]2072		0:35	5792	0	
11	09/15/09 05:09:29	[redacted]7340		[redacted]2072		0:35	5158	119	
12	09/15/09 05:14:02	[redacted]9999		[redacted]2072		0:43	9	66	
13	09/15/09 05:26:04	[redacted]0002		[redacted]2072		0:01	9	66	
14	09/15/09 05:35:54	[redacted]0002		[redacted]2072		0:04	9	66	
15	09/15/09 05:36:24	[redacted]0002		[redacted]2072		0:05	9	66	
16	09/15/09 11:46:31	[redacted]2730		[redacted]2072		0:17	9	66	
17	09/15/09 12:58:35	[redacted]7108		[redacted]2072		0:04	9	66	
18	09/15/09 13:06:30	[redacted]2730		[redacted]2072		0:00	9	66	
19	09/15/09 13:30:31	[redacted]9345		[redacted]2072		0:04	288	119	
20	09/15/09 13:30:35	[redacted]9345		[redacted]2072		0:04	6633	306	163
21	09/15/09 13:35:09	[redacted]7108		[redacted]2072		0:03	9	66	
22	09/15/09 13:38:00	[redacted]2354		[redacted]2072		0:12	288	119	
23	09/15/09 13:38:04	[redacted]2354		[redacted]2072		0:12	6633	306	163
24	09/15/09 14:44:44	[redacted]7108		[redacted]2072		0:00	9	66	
25	09/15/09 14:56:57	[redacted]7340		[redacted]2072		0:03	5792	0	
26	09/15/09 14:57:22	[redacted]7340		[redacted]2072		0:03	5158	119	
27	09/15/09 14:57:33	[redacted]7340		[redacted]2072		0:04	5792	0	
28	09/15/09 14:57:58	[redacted]7340		[redacted]2072		0:03	5158	119	
29	09/15/09 15:00:21	[redacted]7108		[redacted]2072		0:03	9	66	
30	09/15/09 16:30:54	[redacted]2730		[redacted]2072		0:04	9	66	
31	09/15/09 16:42:23	[redacted]2730		[redacted]2072		0:00	9	66	
32	09/15/09 20:32:47	[redacted]9999		[redacted]2072		0:27	9	66	
33	09/15/09 20:36:41	[redacted]7108		[redacted]2072		0:49	9	66	
34	09/15/09 20:40:22	[redacted]2072		[redacted]9034		0:28	6633	306	163
35	09/15/09 21:44:22	[redacted]2730		[redacted]2072		9:28	9	66	
36	09/15/09 22:39:24	[redacted]2730		[redacted]2072		3:43	9	66	
37	09/15/09 23:04:21	[redacted]2730		[redacted]2072		0:00	9	66	
38	09/16/09 00:46:18	[redacted]3180		[redacted]2072		1:46		1	

AT&T Proprietary

NF

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2248452
05/31/2017

AT&T has queried for records from 09/15/2009 12:01:00am to 09/17/2009 11:59:59pm AT&T has queried for records using Eastern Time Zone. AT&T's records are stored and provided in UTC.

AT&T

Run Date: 05/31/2017
Run Time: 16:29:57
Voice Usage For: (843)642-2072

Item	ConnDateTime (UTC)	Originating Number	Sec. Orig.	Terminating Number	Dialed Number	Elapsed Time	CIC	Call Code	Orig. Acc.
39	09/16/09 02:03:50	[redacted]6710		[redacted]2072		0:42	5792	0	
40	09/16/09 02:03:58	[redacted]6710		[redacted]2072		0:42	5158	119	
41	09/16/09 02:05:38	[redacted]7108		[redacted]2072		0:24	9	66	
42	09/16/09 02:47:06	[redacted]6710		[redacted]2072		0:09	5792	0	
43	09/16/09 02:47:14	[redacted]6710		[redacted]2072		0:09	5158	119	
44	09/16/09 03:13:20	[redacted]2730		[redacted]2072		0:43	9	66	
45	09/16/09 03:56:32	[redacted]6710		[redacted]2072		0:20	5792	0	
46	09/16/09 03:56:38	[redacted]6710		[redacted]2072		0:19	5158	119	
47	09/16/09 05:06:23	[redacted]2730		[redacted]2072		0:23	9	66	
48	09/16/09 05:10:10	[redacted]2730		[redacted]2072		0:04	9	66	
49	09/16/09 05:10:35	[redacted]2730		[redacted]2072		4:23	9	66	
50	09/16/09 05:59:35	[redacted]6710		[redacted]2072		0:41	5792	0	
51	09/16/09 05:59:40	[redacted]6710		[redacted]2072		0:41	5158	119	
52	09/16/09 07:10:56	[redacted]6710		[redacted]2072		1:17	5792	0	
53	09/16/09 07:11:01	[redacted]6710		[redacted]2072		1:17	5158	119	
54	09/16/09 09:21:15	[redacted]7108		[redacted]2072		0:04	9	66	
55	09/16/09 09:22:27	[redacted]7108		[redacted]2072		0:04	9	66	
56	09/16/09 11:21:23	[redacted]7108		[redacted]2072		0:04	9	66	
57	09/16/09 12:00:08	[redacted]7108		[redacted]2072		0:07	9	66	
58	09/16/09 12:01:09	[redacted]7108		[redacted]2072		0:06	9	66	
59	09/16/09 12:05:05	[redacted]7108		[redacted]2072		0:04	9	66	
60	09/16/09 12:10:27	[redacted]7108		[redacted]2072		0:04	9	66	
61	09/16/09 12:46:54	[redacted]7108		[redacted]2072		0:16	9	66	
62	09/16/09 12:49:08	[redacted]7108		[redacted]2072		0:05	9	66	
63	09/16/09 13:03:38	[redacted]7108		[redacted]2072		0:06	9	66	
64	09/16/09 13:12:20	[redacted]7108		[redacted]2072		0:00	9	66	
65	09/16/09 15:01:31	[redacted]9999		[redacted]2072		0:23	9	66	
66	09/16/09 15:05:44	[redacted]9999		[redacted]2072		0:03	9	66	
67	09/16/09 15:13:36	[redacted]9999		[redacted]2072		0:56	9	66	
68	09/16/09 15:35:57	[redacted]7108		[redacted]2072		0:02	9	66	
69	09/16/09 15:40:53	[redacted]7108		[redacted]2072		0:00	9	66	
70	09/16/09 17:23:58	[redacted]2730		[redacted]2072		0:28	9	66	
71	09/16/09 17:48:30	[redacted]7108		[redacted]2072		0:24	9	66	
72	09/16/09 17:50:18	[redacted]9999		[redacted]2072		0:00	9	66	
73	09/16/09 17:50:59	[redacted]7108		[redacted]2072		0:02	9	66	
74	09/16/09 17:51:37	[redacted]9999		[redacted]2072		0:00	9	66	
75	09/16/09 17:52:03	[redacted]7108		[redacted]2072		0:11	9	66	
76	09/16/09 18:05:53	[redacted]2730		[redacted]2072		0:07	9	66	

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994

2248452
05/31/2017

995

AT&T has queried for records from 09/15/2009 12:01:00am to 09/17/2009 11:59:59pm
AT&T has queried for records using Eastern Time Zone. AT&T's records are stored and provided in UTC.

AT&T

Run Date: 05/31/2017
Run Time: 16:29:57
Voice Usage For: (843)642-2072

Item	ConnDateTime (UTC)	Originating Number	Sec. Orig.	Terminating Number	Dialed Number	Elapsed Time	CIC	Call Code	Orig. Acc.
77	09/16/09 18:18:53	[redacted]4346		[redacted]2072		0:49	5792	0	
78	09/16/09 18:18:59	[redacted]4346		[redacted]2072		0:48	5158	119	
79	09/16/09 18:21:09	[redacted]7108		[redacted]2072		0:03	9	66	
80	09/16/09 18:33:42	[redacted]7108		[redacted]2072		0:02	9	66	
81	09/16/09 18:39:45	[redacted]7108		[redacted]2072		0:03	9	66	
82	09/16/09 20:02:51	[redacted]4346		[redacted]2072		0:24	5792	0	
83	09/16/09 20:02:57	[redacted]4346		[redacted]2072		0:24	5158	119	
84	09/16/09 20:31:20	[redacted]4346		[redacted]2072		0:29	5792	0	
85	09/16/09 20:31:28	[redacted]4346		[redacted]2072		0:29	5158	119	
86	09/16/09 21:14:40	[redacted]1256		[redacted]2072		3:59		1	
87	09/16/09 21:15:15	[redacted]3180		[redacted]2072		0:07		1	
88	09/16/09 21:24:46	[redacted]9999		[redacted]2072		3:38	9	66	
89	09/16/09 21:44:09	[redacted]2730		[redacted]2072		0:29	9	66	
90	09/16/09 21:58:51	[redacted]9999		[redacted]2072		0:50	9	66	
91	09/16/09 22:36:46	[redacted]2730		[redacted]2072		0:55	9	66	
92	09/16/09 22:55:49	[redacted]1256		[redacted]2072		2:10		1	
93	09/16/09 23:58:03	[redacted]2730		[redacted]2072		0:06	9	66	
94	09/16/09 23:14:16	[redacted]9999		[redacted]2072		0:37	9	66	
95	09/16/09 23:57:37	[redacted]2730		[redacted]2072		0:07	9	66	
96	09/17/09 00:10:02	[redacted]9999		[redacted]2072		3:23	9	66	
97	09/17/09 00:31:25	[redacted]7108		[redacted]2072		4:14	9	66	
98	09/17/09 01:03:48	[redacted]7108		[redacted]2072		0:04	9	66	
99	09/17/09 02:12:34	[redacted]7894		[redacted]2072		0:10		1	
100	09/17/09 02:52:37	[redacted]9999		[redacted]2072		0:00	9	66	
101	09/17/09 02:53:55	[redacted]9999		[redacted]2072		1:55	9	66	
102	09/17/09 03:00:25	[redacted]7108		[redacted]2072		1:03	9	66	
103	09/17/09 03:07:22	[redacted]7108		[redacted]2072		0:23	9	66	
104	09/17/09 03:24:52	[redacted]9999		[redacted]2072		0:05	9	66	
105	09/17/09 03:25:36	[redacted]7108		[redacted]2072		0:07	9	66	
106	09/17/09 03:26:41	[redacted]2730		[redacted]2072		0:34	9	66	
107	09/17/09 04:02:21	[redacted]9999		[redacted]2072		0:00	9	66	
108	09/17/09 04:59:26	[redacted]7108		[redacted]2072		0:00	9	66	
109	09/17/09 05:09:41	[redacted]6710		[redacted]2072		1:18	5792	0	
110	09/17/09 05:09:46	[redacted]6710		[redacted]2072		1:18	5158	119	
111	09/17/09 05:16:39	[redacted]6710		[redacted]2072		0:36	5792	0	
112	09/17/09 05:16:46	[redacted]6710		[redacted]2072		0:36	5158	119	
113	09/17/09 11:09:03	[redacted]0002		[redacted]2072		0:16	9	66	
114	09/17/09 13:01:27	[redacted]7108		[redacted]2072		1:25	9	66	

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2248452
05/31/2017

AT&T has queried for records from 09/15/2009 12:01:00am to 09/17/2009 11:59:59pm
AT&T has queried for records using Eastern Time Zone. AT&T's records are stored and provided in UTC.

AT&T

Run Date: 05/31/2017
Run Time: 16:29:57
Voice Usage For: (843)642-2072

Item	ConnDateTime (UTC)	Originating Number	Sec. Orig.	Terminating Number	Dialed Number	Elapsed Time	CIC	Call Code	Orig. Acc.
115	09/17/09 13:05:04	[redacted]1256		[redacted]2072		2:04		1	
116	09/17/09 14:16:04	[redacted]9999		[redacted]2072		0:04	9	66	
117	09/17/09 14:16:45	[redacted]9999		[redacted]2072		0:04	9	66	
118	09/17/09 14:17:26	[redacted]9999		[redacted]2072		0:05	9	66	
119	09/17/09 14:19:09	[redacted]9999		[redacted]2072		0:03	9	66	
120	09/17/09 14:21:01	[redacted]9999		[redacted]2072		0:05	9	66	
121	09/17/09 14:22:44	[redacted]9999		[redacted]2072		0:04	9	66	
122	09/17/09 14:23:24	[redacted]9999		[redacted]2072		0:04	9	66	
123	09/17/09 16:39:09	[redacted]9345		[redacted]2072		0:06	288	119	
124	09/17/09 16:39:13	[redacted]9345		[redacted]2072		0:06	6633	306	163
125	09/17/09 18:14:24	[redacted]7340		[redacted]2072		0:46	5792	0	
126	09/17/09 18:14:42	[redacted]7340		[redacted]2072		0:46	5158	119	
127	09/17/09 18:23:32	[redacted]7340		[redacted]2072		0:10	5792	0	
128	09/17/09 18:23:40	[redacted]7340		[redacted]2072		0:10	5158	119	
129	09/17/09 18:33:29	[redacted]9999		[redacted]2072		0:00	9	66	
130	09/17/09 18:40:32	[redacted]9999		[redacted]2072		0:04	9	66	
131	09/17/09 18:49:03	[redacted]2730		[redacted]2072		0:08	9	66	
132	09/17/09 19:26:57	[redacted]9999		[redacted]2072		0:06	9	66	
133	09/17/09 19:27:48	[redacted]9999		[redacted]2072		0:00	9	66	
134	09/17/09 19:34:06	[redacted]9999		[redacted]2072		0:05	9	66	
135	09/17/09 19:40:10	[redacted]2730		[redacted]2072		0:03	9	66	
136	09/17/09 19:42:54	[redacted]2730		[redacted]2072		0:07	9	66	
137	09/17/09 20:11:26	[redacted]9999		[redacted]2072		0:06	9	66	
138	09/17/09 20:12:15	[redacted]2730		[redacted]2072		0:04	9	66	
139	09/17/09 20:18:56	[redacted]9999		[redacted]2072		5:24	9	66	
140	09/17/09 20:19:17	[redacted]9999		[redacted]2072		0:05	9	66	
141	09/17/09 21:26:20	[redacted]2730		[redacted]2072		0:07	9	66	
142	09/17/09 21:45:36	[redacted]5571		[redacted]2072		0:07	9	66	
143	09/17/09 23:50:53	[redacted]2730		[redacted]2072		0:05	9	66	
144	09/18/09 00:11:35	[redacted]9999		[redacted]2072		0:00	9	66	
145	09/18/09 00:16:50	[redacted]9999		[redacted]2072		0:00	9	66	
146	09/18/09 00:38:14	[redacted]9999		[redacted]2072		0:07	9	66	
147	09/18/09 00:41:13	[redacted]9999		[redacted]2072		0:02	9	66	
148	09/18/09 01:05:24	[redacted]9999		[redacted]2072		0:00	9	66	
149	09/18/09 01:25:27	[redacted]7340		[redacted]2072		6:54	5792	0	
150	09/18/09 01:25:37	[redacted]7340		[redacted]2072		6:53	5158	119	
151	09/18/09 02:02:49	[redacted]9999		[redacted]2072		0:33	9	66	
152	09/18/09 03:00:36	[redacted]2730		[redacted]2072		0:54	9	66	

AT&T Proprietary

NF

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996

2248452
05/31/2017

AT&T has queried for records from 09/15/2009 12:01:00am to 09/17/2009 11:59:59pm
AT&T has queried for records using Eastern Time Zone. AT&T's records are stored and provided in UTC.

AT&T

697

Run Date: 05/31/2017
Run Time: 16:29:57
Voice Usage For: (843)642-2072

Item	ConnDateTime (UTC)	Originating Number	Sec. Orig.	Terminating Number	Dialed Number	Elapsed Time	CIC	Call Code	Orig. Acc.
153	09/18/09 03:04:23	[redacted]07108		[redacted]22072		0:09	9	66	
154	09/18/09 03:05:16	[redacted]07108		[redacted]22072		0:06	9	66	

Transmittal
International Longshoremen's Association
Local 1422
1141 Morrison Drive
Charleston, SC 29403

June 7, 2017

Lance S. Boozer, Esq.
The Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, South Carolina 29201

To: Attorney Lance S. Boozer

From: Julia Winder
ILA Receptionist

Re: James Boykin (SS#: [redacted])

The requested detailed work history for the above mentioned member within the time period indicated does not exist in the data system. If there are further questions, please feel free to contact me at (843) 720-7360.

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Ron Santa McCray, #353031, Applicant, v. State of South Carolina, Respondent.	)	C. A. No. 2015-CP-08-2692 **ORDER OF DISMISSAL**

FILED
2017 SEP 14 PM 12:36
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief (PCR) filed by Ron Santa McCray (Applicant) on November 25, 2015, and amended on August 11, 2016. Respondent made its Return on June 6, 2016. An evidentiary hearing into the matter was convened on August 2, 2017, at the Charleston County Courthouse. Lance Boozer, Esquire, represented Applicant. Lindsey McCallister, Esquire, of the South Carolina Attorney General's Office, represented Respondent. At the hearing, Applicant testified on his own behalf. Chris Beiring, Esquire, also testified. This Court had before it a copy of the records of the Berkeley County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the application and amendment, the State's Return, the trial transcript, and Applicant's appellate records.

PROCEDURAL HISTORY

Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Berkeley County Clerk of Court's orders of commitment. Applicant was indicted at the July 2011 term of the Berkeley County Grand Jury for one count of Murder (2011-GS-08-0947). Christopher Beiring, Esquire, represented him. On November 2, 2012, Applicant proceeded to a

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jury trial pursuant to which he was found guilty as indicted. The Honorable Kristi Lea Harrington sentenced Applicant to a term of life imprisonment.

A notice of appeal was filed on Applicant's behalf and an appeal was perfected by James Falk, Esquire, and Robert Dudek, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. McCray, 413 S.C. 76, 773 S.E.2d 914 (Ct. App. 2015). The Remittitur was issued on July 14, 2015.

SUMMARY OF FACTS ADDUCED AT TRIAL

Officer Tony Daniels of the Charleston City Police Department was dispatched to a shooting in the area of Underlie Road and Jack Primis Road on September 16, 2009. Trancript, pp. 89-90. Officer Daniels arrived at 4:50 p.m. Transcript, p. 90. When Officer Daniels arrived on the scene, he observed "a black female on the ground on her knees. She had a male's head cradled up next to her body." Transcript, p. 91. Officer Daniels saw blood all around the body, and he noted that the victim did not appear to be conscious. Transcript, p. 91. According to Officer Daniels, the woman "was screaming, [']shot him, shot him, shot him.[']" Transcript, p. 91. The man the woman was cradling was Reggie Porcher. Transcript, pp. 123-24, 126. Officer Daniels proceeded to clear a group of people that was gathered around the woman and to secure the scene. Transcript, pp. 91-92. Officer Daniels did not see any weapons in the area near where the victim was lying, nor did he see anyone at the scene with a weapon. Transcript, p. 93.

A number of witnesses testified about the events surrounding Reggie Porcher's death. Tianna Chanice Mack-Collins testified that she was at her aunt's house when her cousin and son came in and told her that she needed to come outside because "the bad man Ron, bad man Ron shot Reggie." Transcript, pp. 123-24. Mack-Collins ran outside, where she saw Applicant walking to his car. Transcript, p. 124. Mack-Collins called out to the victim, and he staggered

toward Mack-Collins holding his neck. Transcript, pp. 125-26. According to Mack-Collins, "he was like, help me, Ron just shot me." Transcript, p. 126. He then took his hand off of his neck, and blood started coming out of his neck. Transcript, p. 126. Mack-Collins tried to help the victim— staying with him until the police came. Transcript, p. 126.

Another witness, Joyce Wright, testified she was sitting on a friend's porch the day the victim was shot. Transcript, pp. 96-97. She saw him pull up to the area and saw him talking with one of her nieces. Transcript, p. 97. Wright testified "later on [she] saw somebody tall with a white T-shirt on walking towards the crowd where a lot of kids was at. And he had something long in his hand." Transcript, p. 97. Then, Wright heard a gunshot, and some of the children came up to her and shouted, "Ron shot Reggie." Transcript, p. 97. She also observed the victim walking around in a circle and holding his neck before he fell to the ground. Transcript, p. 97.

Felicia Denise Coaxum testified she had been in her mother's room asleep before being awakened by a loud noise. Transcript, p. 103. Coaxum testified she looked outside and "saw Ron McCray and Reggie. Reggie was down on the ground, and I saw Ron McCray was standing over Reggie stomping him and telling him, die mother-fucker, die." Transcript, p. 104. According to Coaxum, Applicant was carrying something with "a metal, wooden handle." Transcript, p. 105. As the victim was laying on the ground, Applicant "asked the other people in the area did they have a problem, and [said] that he's God." Transcript, p. 105. Coaxum then saw Applicant get in a car and leave the scene. Transcript, p. 105.

Akeem Asby testified that he was hanging out under the tree with the victim the day the victim was killed. Transcript, p. 113-114. Asby saw Applicant get out of his car with what looked like a shotgun in his hand. Transcript, pp. 114-15. Asby ran off, but he heard Applicant yelling at the victim, then heard a gunshot. Transcript, p. 115. When Asby returned, he saw the

victim clutching his neck, with blood coming out. Transcript, p. 115. Asby heard Applicant say "[s]omething like, God is a faggot. I assure you all I'm God. Things like that." Transcript, p. 115.

The State also called James Boykin, a friend of Applicant, to testify about what Applicant said and did after the shooting. Boykin testified he spoke with Applicant on the phone around the time of the incident, and Applicant told him he had shot the victim. Transcript, p. 263. Applicant came over to Boykin's house the morning after the shooting and "said that he needed to go get his check and stuff because he had to handle some business because he knows he was in trouble I guess." Transcript, p. 264. According to Boykin, Applicant called his supervisor to have his check put in Boykin's name. Transcript, p. 266. Boykin then dropped Applicant off and went to pick up the check and some of Applicant's work tools. Transcript, p. 267. When Boykin arrived to pick up the check from Applicant's supervisor, Boykin decided to change course—he called 911 and was given instructions on what to do to assist the police. Transcript, pp. 269-71. Boykin then went to the bank, got the check cashed, and gave Applicant the cash. Transcript, p. 271. Applicant directed Boykin to go to the Money Man pawn shop and "pawn the tools so he could make some more cash." Transcript, p. 272. Because Boykin had informed police of Applicant's plans, police were waiting at the pawn shop, and they arrested Boykin and Applicant when they pulled into the parking lot. Transcript, pp. 273-74.

ALLEGATIONS

In his original application and the subsequent amendment thereto, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
    a. Counsel and the private investigator had actual conflicts of interest;
2. "Malicious Prosecution"
    a. The solicitor improperly argued inferred malice from the use of a deadly weapon

in violation of Belcher;

3. Ineffective Assistance of Counsel
   a. Counsel failed to subpoena and/or call key witnesses for trial;
4. Ineffective Assistance of Counsel
   a. Counsel failed to introduce the victim's mental health records and failed to preserve the issue for appellate review;
5. Ineffective Assistance of Counsel
   a. Counsel failed to impeach the State's witness;
6. Ineffective Assistance of Counsel
   a. Counsel failed to object to improper testimony of a SLED agent;
7. Ineffective Assistance of Counsel
   a. Counsel failed to subpoena necessary records;
8. Ineffective Assistance of Counsel
   a. Counsel failed to pursue admission of victim's past behavior after State's witness opened the door;
9. Ineffective Assistance of Counsel
   a. Counsel informed the trial court of Applicant's trial strategy, which resulted in witnesses changing their testimony;
10. Ineffective Assistance of Counsel
    a. Counsel failed to object to Applicant being shackled during trial.
11. Ineffective Assistance of Counsel
    a. Counsel failed to obtain documents or hire services of other private investigators;
12. Ineffective Assistance of Counsel
    a. Counsel failed to object to hearsay testimony;
13. Ineffective Assistance of Counsel
    a. The trial court's self-defense instruction was improper and Counsel failed to object.

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 PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. Sec. 17-27-80 (2003).

Ineffective Assistance of Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

Where the application alleges ineffective assistance of counsel as a ground for relief, 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, 286 S.C. at 443, 334 S.E.2d at 814. 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. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of trial counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove that counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 at 688). 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.

Applicant testified he was arrested on September 17, 2009 for murder. Applicant testified his first appointed attorney was Debbie Littlejohn, who represented him for about a year. Applicant testified Counsel was his fourth attorney, appointed after Jerry Theos and one other person, and Counsel was appointed in November 2011. Applicant testified he met with Counsel six to eight times prior to trial and discussed with him the facts of what happened. Applicant testified the relationship started out well but began falling apart as trial approached because Applicant wanted Counsel to obtain certain documents, which Counsel did not do.

Applicant also testified he was upset because Judge Dennis's "personal assistant," a man named "Tim," began to sit in on meetings between Counsel and Applicant to determine if Counsel should be relieved.

Counsel testified he had approximately fifteen years of experience as a practicing attorney at the time of Applicant's trial, with about one third of his practice in criminal law. Counsel was appointed as Applicant's fourth attorney on this case, and he received the appointment approximately one year before the trial. Counsel testified he met with Applicant at least ten times, and he and Applicant began in-depth discussion about the issues in Applicant's case. Counsel testified this was always a self-defense case, as there was no question as whether or not Applicant was the shooter. Counsel testified he explained all of the State's evidence to Applicant, the elements of the offense, and explored possible defenses, including "Stand Your Ground," since Applicant claimed an ownership interest in the property where the shooting occurred. Counsel further testified he was given access to the solicitor's file, discussed the case with the solicitor on multiple occasions, and hired a private investigator to help locate potential witnesses. Counsel also testified he was able to review items of evidence collected from the scene, interviews and statements from witnesses who were present for the immediate aftermath of the shooting, and Applicant's video statement. Counsel testified Applicant never denied shooting the victim and gave a very clear statement to law enforcement indicating he was the shooter, but raising issues of ongoing disputes within the community to explain his actions.

Counsel testified his relationship with Applicant was cordial and cooperative at first. Counsel testified Applicant told him there were two witnesses, EJ and Sleepy, who would testify the victim also had a gun, but it was removed from the scene before law enforcement arrived. Counsel testified he hired James Scarborough as an investigator and asked Applicant to help Mr.

Scarborough locate these witnesses because the community was not cooperative in speaking with Counsel or Mr. Scarborough. Counsel testified the main impediment to securing favorable witnesses was that he did not have an "in" with the community, because it was a small, insular area in the county where everyone knows each other, and Applicant did not provide that help despite Counsel's repeated requests. Counsel testified he asked explained to Applicant his need for someone "on the ground" to help him locate witnesses and asked Applicant to direct his brother to assist in the investigation, but Applicant did not do so. Counsel also testified he tried to build on the work done by previous attorneys on the case, and he requested and received additional time to prepare. Counsel testified this was always a case that was going to trial, and he felt he had sufficient time to get ready. Counsel testified that the relationship between himself and Applicant became tense and steadily declined as trial approached, culminating in Counsel's request to be relieved at Applicant's behest. Counsel testified no one ever sat in on meetings with him and Applicant, other than the private investigator, Mr. Scarborough. Counsel testified he did not know anyone named Tim, and Judge Dennis never sent anyone to his meetings with Applicant, although there may have been courthouse security present outside the room.

Issues #1 and #11 -- Counsel and private investigator had conflict of interest; Counsel failed to obtain reports from previous investigators or hire other investigators

"An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). The South Carolina Supreme Court has further stated that a conflict of interest occurs when "a defense attorney places himself in a situation inherently conducive to divided loyalties." Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008). Until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for a claim of ineffective assistance of counsel arising from multiple representation.

Langford v. State, 310 S.C. 357, 359, 426 S.E.2d 793, 795 (1993) (citing Cuyler v. Sullivan, 446 U.S. 335, 350 (1980)); see also Burger v. Kemp, 483 U.S. 776, 783 (1987). "The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." State v. Gregory, 364 S.C. 150, 152–53, 612 S.E.2d 449, 450 (2005).

Applicant testified he felt Counsel had a conflict of interest because he presented Applicant with a video tape obtained from the police showing Applicant's brother and other community members and asked Applicant to identify the people in the video. Applicant testified he refused to do so because he felt Counsel was improperly working with law enforcement on an investigation. Counsel testified he learned about the video from a tip by a law enforcement source, but he tracked it down himself on YouTube. Counsel testified the video was completely unrelated to the shooting, and he only showed it to Applicant because he thought some of the people in the video might have been witnesses to the shooting because the video was filmed in the same neighborhood. Counsel testified he showed Applicant the video because he recognized Applicant's brother in it and thought the brother might be able to help locate witnesses. Counsel further testified the video helped for his theory of the case that this was a violent community with extensive past history between families, and the area had issues with drugs, guns, and gangs. The transcript reflects Applicant raised this issue during Counsel's motion to be relieved, and Judge Dennis found it was not a reason to remove Counsel from his representation of Applicant.

Applicant also testified he felt the private investigator hired by Counsel, James Scarborough, had a conflict of interest because Mr. Scarborough's brother was a deputy with the Charleston County Sherriff's Office and was the arresting officer in this case. Applicant testified previous investigators were able to get people to talk to them, but Mr. Scarborough was not, and

Applicant believed Counsel was ineffective for not obtaining the reports of the previous investigator(s) because those reports would have helped show witnesses were changing their stories. Counsel testified he had been working with Mr. Scarborough since 1999, and to his knowledge, the brothers did not have a relationship and never discussed the case with each other. Counsel testified he was more concerned about a possible conflict of interest because he had represented several members of the Berkeley County Sheriff's Office in the past. Counsel testified he raised both of these issues in his motion to be relieved, and Judge Dennis found there was no conflict in either situation. Counsel further testified he had no reason to believe Mr. Scarborough's relation to Deputy Scarborough impeded the investigation of Applicant's case in any way. Counsel testified the previous attorneys on the case used their own investigators, and he did attempt to obtain the investigator's file from the Public Defender's office but was unable to do so.

The Court finds Applicant has failed to meet his burden of proof on his claims Counsel and Mr. Scarborough, the private investigator, had conflicts of interest because Counsel testified the relationship between the brothers had no impact on his ability to investigate and prepare Applicant's case for trial, and the issue was raised to and ruled upon by the trial court, which found no conflict existed. Further, Applicant failed to explain what it is Mr. Scarborough failed to do as a result of this alleged conflict. This Court specifically finds there was no adverse effect, especially in light of the fact Deputy Scarborough worked for Charleston County, which was not the lead investigative agency handling the case, and he was only tangentially involved in the case as the arresting officer. This Court finds Counsel was under no obligation to seek out a different investigator.

Therefore, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms because Applicant failed to present compelling evidence of any actual conflict of interest. This Court also finds Applicant has failed to prove he was prejudiced by Counsel's performance because Counsel testified his investigation and preparation of Applicant's defense was not affected in any way. See Padgett v. State, 324 S.C. 22, 27, 484 S.E.2d 101, 103 (1997) (finding no conflict existed where "[c]ounsel specifically denied his relationships with two of the victims or his representation of the sheriff affected his representation of petitioner"). This allegation is therefore denied and dismissed.

Issues #2 and #13– Counsel's failure to object to "malicious prosecution[1]" and improper self-defense jury instruction

In State v. Belcher, the South Carolina Supreme Court held a "jury charge instruction that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify homicide." 385 S.C. 597, 600, 685 S.E.2d 802, 803-04 (2009). The Supreme Court further found that because "the evidence presented a jury question on self-defense, it was error to charge the jury that it may infer malice from the use of a deadly weapon." Id. at 601, 685 S.E.2d at 804.

Applicant testified he believed the self-defense charge given by the court was inadequate. Applicant testified the State's witnesses at trial only told the jury the victim had marijuana in his system at the time of his death. Applicant contends there were other drugs in victim's system and victim took prescription medication for mental health issues; however, Applicant asserts the

[1] Based on the testimony Applicant presented at trial, this allegation refers to Counsel's failure to object when the solicitor misstated the law of inferred malice during his closing argument, rather than an allegation the solicitor abused his prosecutorial discretion in pursuing this case against Applicant.

jury was unable to hear any testimony about the potential effects of that combination because Counsel was not allowed to call victim's doctors and did not cross examine the State's witnesses on these issues. Applicant testified because that testimony was not admitted, the self-defense instruction given by the trial court "downplayed" the issue of the victim's mental state. Further, Applicant testified Counsel should have objected when the solicitor argued inferred malice from the use of a deadly weapon in closing in violation of Belcher, 385 S.C. 597, 685 S.E.2d 802.

Counsel testified he proffered testimony regarding the victim's criminal history and previous violent acts, and the issue of whether the testimony was properly excluded was preserved for review and raised on direct appeal. Further, Counsel testified he requested specific instructions on self-defense, and while the trial court might not have given the exact instructions requested, he believed the instructions given were proper and saw no reason to object. Counsel also testified he does not object every single time there is a ground.

This Court finds Applicant has failed to prove Counsel was deficient or failed to render reasonably effective assistance under prevailing professional norms. The transcript reflects the trial court's jury instruction complied with the rule of Belcher, as the court did not instruct the jury malice could be inferred from the use of a deadly weapon. See Transcript, p. 743 ("Malice aforethought may be expressed or inferred. . . . Express malice is shown when a person speaks words which express hatred or ill will for another person, or when the person prepared beforehand to do the act later accomplished. Malice may be inferred from conduct showing a total disregard for human life.") As this allegation raises a legal issue, this Court has reviewed the full charge, as well as the solicitor's closing arguments. The Court finds Counsel was not deficient for failing to object because Counsel testified he doesn't always object even if he has grounds. The Court finds it was reasonable to believe an objection would call more attention to

the issue. Additionally, the issue raised in Belcher involved an error in the jury instructions, not in the solicitor's closing argument, and the jury charge given in this case comports with Belcher's requirements. Counsel cannot be deficient for failing to object to a proper jury instruction. Although the solicitor's argument was objectionable, the trial court's charge on malice was legally correct and was immediately followed by the charge on self-defense, so any prejudice from the solicitor's statement was cured by the thorough and correct instructions given by the trial court. See Humphries v. State, 351 S.C. 362, 373, 570 S.E.2d 160, 166 (2002) ("Improper comments do not automatically require reversal if they are not prejudicial to the defendant, and the appellant has the burden of proving he did not receive a fair trial because of the alleged improper argument.") (internal citation omitted). This allegation is therefore denied and dismissed.

Issues #3, #5, #7 – Counsel failed to impeach State's witness regarding previous statements,[2] failed to request cell phone records, and failed to subpoena or call favorable witnesses at trial

"[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012), overruled on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 744 (2014). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying

[2] Applicant frames this issue as a "Brady violation" in his original Application. However, this appears to be a misnomer for Applicant's contention that a third statement from James Boykin existed, and Counsel failed to obtain it and/or use it for impeachment at trial.

a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521-22 (2003). Additionally, in order to prevail on a claim of ineffectiveness based on counsel's failure to call a favorable witness, the South Carolina Supreme Court has repeatedly held a PCR applicant *must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence* at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis added). Applicant's speculation that the witnesses' testimony would have been favorable cannot, by itself, satisfy his burden of showing prejudice. Glover v. State, 318 S.C. 396, 498-99, 458 S.E.2d 538, 540 (1995).

Applicant testified Counsel failed to properly investigate the issue of telephone call made from Applicant to the State's witness James Boykin, during which Applicant allegedly confessed to murdering the victim because the victim had robbed Applicant's brother. Applicant testified this statement was contained in Boykin's statement to police, which he received in discovery, and when Boykin described the phone call at trial, he ascribed an entirely different motive for the shooting. Applicant testified this phone call never happened at all, and he asked Counsel to obtain phone records and Boykin's employment records to prove Boykin's statement was false. Applicant testified he felt it was important to discredit Boykin because the motive Boykin testified to at trial was fabricated. Applicant introduced Boykin's cell phone records at the evidentiary hearing as support for his contention the phone call did not occur as Boykin said. However, Applicant's cell phone records for the period in question are no longer available, and Applicant did not introduce the phone home records of either himself or Boykin. Further, Applicant testified Boykin gave police a third statement, which Counsel allegedly failed to use for impeachment.

Counsel testified he recalled discussing the phone-call issue with Applicant, and Applicant did request subpoenas be issued to obtain the cell phone records. However, Counsel testified there was never a question of whether Applicant shot the victim, and he did not feel he could argue self-defense while also denying Applicant did it. Counsel further testified this issue was not the focus of the self-defense theory, and what he really needed was a legal justification for why Applicant shot the victim. Counsel testified he told Applicant he did not think this was a useful issue to pursue and explained his reasoning. Counsel also testified he received the original witness statement in discovery and was aware of discrepancies between that statement and trial testimony. Counsel testified it was not unusual for some details of witness's stories to change, and he felt he cross examined Boykin on the inconsistencies to Applicant's benefit. Further, Counsel testified he knew from early on in the case that Applicant intended to testify and would not deny being the shooter. Additionally, Counsel testified from his review of the transcript and the arrest report, Applicant and Boykin were together in a car driven by Boykin at the time of Applicant's arrest, indicating some communication must have taken place between them. Counsel also testified he did not recall any third statement given by Boykin.

Applicant also testified there were three witnesses he believed could have provided favorable information, but those witnesses were either not subpoenaed for trial, or Counsel did not call them. Applicant testified the witnesses were his brother, David McCray; Jermaine or Jerome Kinlaw; and Gerald Green, all of whom appeared on the video Counsel played for Applicant. Applicant testified these witnesses were important to his case because they could testify the shooting was gang-related, and gang members were retaliating on Applicant due to the actions of Applicant's brother.

Counsel testified the three witnesses listed by Applicant were people who appeared in the video, but Applicant refused to help locate them. Counsel testified he did want to call witnesses who could testify to the undercurrent of violence in the community, but the trial court limited much of the evidence Counsel tried to introduce on that topic. Counsel testified he not think the trial court would have allowed this testimony to come in, and it would not have added to the defense because none of these people witnessed the shooting directly. Counsel testified he did an extensive investigation to find favorable witnesses, including visiting the scene on his own and with his investigator and attempting to contact community members privately and through law enforcement. Applicant did not call any of these witnesses to testify at the evidentiary hearing.

This Court finds Applicant has failed to prove Counsel was deficient or failed to render reasonably effective assistance under prevailing professional norms in regards to the investigation of the case or his presentation of witnesses at trial. This Court finds the cell phone records introduced at the evidentiary hearing do not definitively establish the phone call in question did not take place, as the records are only for Boykin's cell phone, not Applicant's, and the call could have taken place on another line, such as a home number. Additionally, Applicant did not call any of the witnesses he alleges should have been called at trial to testify at the evidentiary hearing. Applicant's assertion alone these witnesses would have provided favorable testimony is not enough to meet his burden as to this allegation. See Glover, 318 S.C. at 499, 458 S.E.2d at 540 ("The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice."). Furthermore, Counsel credibly testified he determined the witnesses would not help advance the self-defense theory. While the witnesses may have been useful to show the general atmosphere in which the

shooting took place, the trial court had already limited Counsel in that regard, and Counsel placed his objection on the record. This Court also finds no third statement by Boykin exists, and Applicant could not articulate any reason for his belief that it does. Further, the Court finds Applicant did not discuss the issue with Counsel if he did have such concern. Finally, the Court finds Counsel articulated a logical reason for failing to challenge Boykin's testimony regarding Applicant's motive, and it was a valid trial strategy to focus on self-defense, rather than trying to introduce evidence Applicant was not the shooter. This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by any deficiencies in Counsel's performance. This Court finds neither the testimony of the three witnesses nor the cell phone records would not have changed the result at trial, especially given the fact Applicant himself admitted to being the shooter, and multiple witnesses testified Applicant and Boykin were together in Boykin's car at the time Applicant was arrested, indicating the two had a conversation at some point during the timeframe in question. This allegation is therefore denied and dismissed.

Issues #4 and #8 – Victim's SCDC records and medical records, testimony regarding victim's prior drug use were improperly excluded because the State opened the door to admission, and Counsel failed to preserve that argument for appellate review

"The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Black, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012) (citing State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001)). See also State v. Stokes, 345 S.C. 368, 374 n.9, 548 S.E.2d 202, 205 n. 9 (2001) ("To the extent Stokes sought admission of the redacted portions in order to demonstrate the victim's bad character, i.e., that she was willing to go along to participate in a murder, we find the evidence was properly excluded."); State v. Whipple, 324 S.C. 43, 53, 476 S.E.2d 683,

688-89 (1996) (finding trial court proper excluded "testimony that the Victim had told both a boyfriend and friends of her parents that she had used drugs and crack cocaine when she lived in New Jersey, and that she had driven people in Myrtle Beach to an area to buy drugs" as irrelevant to defendant's guilt); Rule 403, SCRE ("Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.").

Applicant testified the trial court improperly refused to allow Counsel to introduce the victim's SCDC and mental health records to show the victim had a history of violence and drug use, and Counsel did not preserve this issue for appellate review. Applicant testified Counsel stated he would proffer the testimony of medical witnesses who could testify the victim had illegal drugs in his system other than marijuana, and those drugs would interact with his prescription medications for his mental illness. However, Applicant testified Counsel later failed to call the witnesses to proffer the testimony and records. Counsel testified he obtained the victim's medical records from MUSC and SCDC, and he wanted to introduce them at trial. Applicant also testified the State opened the door to evidence of the victim's violent behavior when its witness, James Boykin, testified at trial Applicant's motive for the shooting was that the victim had raped Applicant's girlfriend. Applicant testified Counsel was ineffective because he did not object to the hearsay or pursue further inquiry into the victim's previous bad acts.

Counsel testified he did want to use the issue of victim's previous bad acts, and he felt Boykin's testimony was helpful to the self-defense argument, rather than harmful, so he saw no reason to object. Counsel also testified he did not feel the statement about the alleged rape of Applicant's girlfriend or the robbery of Applicant's brother opened the door because he did not

any direct testimony that the victim had a gun at the time of the shooting. Counsel testified he would have pursued the bad-acts issue further if he had a witness who saw the victim with a gun, because he needed both in order to make a credible argument for relevance to Applicant's self-defense theory. However, Counsel testified the trial court made clear it would not allow the records to be introduced and stated Counsel was not going to "put the victim on trial." Counsel further testified he did not believe the introduction of the records themselves or testimony about them would have made a difference in the outcome of Applicant's trial because the main problem with Applicant's defense was that no witness ever came forward to say the victim had a gun at the time of the shooting. Counsel testified this was the key piece of evidence he was trying to obtain that would have helped advance the self-defense theory. Counsel testified the witnesses Applicant promised did not show up until the day of trial, so Counsel had no chance to prepare their testimony; they violated the sequestration order which resulted in a curative instruction addressing their credibility; and none of them testified to the extent Applicant lead him to believe they would. Counsel did proffer the testimony of several law enforcement officers regarding victim's criminal history, as well as the testimony of a witness who said he saw the victim using drugs the night before the murder. The transcript reflects the trial court declined to admit any of that testimony, and Counsel did not pursue the issue at any other point during trial.

This Court finds Applicant has failed to prove Counsel's performance was deficient, and Counsel rendered reasonably effective assistance under prevailing professional norms. The trial court has wide discretion as to what evidence and testimony is admissible. This Court finds credible Counsel's explanation of his overall strategy for the case, and finds self-defense was indeed the only reasonable theory for Counsel to pursue. The Court finds credible Counsel's

explanation as to why the testimony of the medical examiner did not open the door to the victim's drug use, as well as why the evidence Applicant alleges should have been introduced would not have affected the outcome of the case. Applicant did not produce any witnesses at the evidentiary hearing who could testify (a) whether victim was using illegal drugs at the time of the murder, and (b) whether Applicant had knowledge of any contemporaneous drug use by the victim at the time of the murder. Further, while Counsel may have had grounds to pursue admission of the prior bad acts testimony based on the State's examination of Boykin, this Court finds it would not have affected the outcome of the case. This Court finds credible Counsel's testimony he did not pursue the issue further because it was insufficient without also having a witness who could place a gun in the victim's hand at the time of the shooting. Therefore, this Court finds Applicant has not met his burden of proving he was prejudiced by the lack of testimony on these issues or that he would have been likely to prevail on this issue on appeal even if it had been preserved. See, e.g., Walker v. State, 397 S.C. 226, 241-42, 723 S.E.2d 610, 618 (Ct. App. 2012) (finding evidence victim was an alcoholic was not admissible under Rule 404(a)(2), SCRE, to prove victim was intoxicated at time of assault), overruled on other grounds by Walker v. State, 407 S.C. 400, 756 S.E.2d 744 (2014). This allegation is therefore denied and dismissed.

Issue #6 – failure to object to SLED agent testimony

Applicant testified Counsel should have objected when one SLED agent testified in place of another. Applicant testified Counsel did timely object to DNA reports being introduced, but did not object to the introduction of photographs, and Counsel should have moved for a mistrial. However, Applicant offered no testimony as to which photographs were objectionable or what basis Counsel had to request a mistrial.

This Court finds this allegation raises a legal issue which was addressed on its merits on direct appeal. The Court of Appeals found it was error for the trial court to admit the SLED agent's testimony, but the error was harmless in light of the overwhelming evidence of Applicant's guilt. State v. McCray, 413 S.C. 76, 90-91, 773 S.E.2d 914, 921-22 (2015). The Court therefore finds Applicant has failed to prove Counsel's performance was deficient in his handling of this issue or that Applicant suffered any prejudice as a result. This allegation is denied and dismissed.

Issue #9 – Counsel revealed Applicant's trial strategy to trial court and solicitor in chambers, and trial court instructed a witness to change his testimony as a result

Applicant testified the transcript indicates Counsel had a meeting in chambers with the trial judge and the solicitor regarding the testimony of Chavis Wright. Applicant testified he believed Counsel told the judge what his witness would say, and then the witness's testimony changed, but Applicant acknowledged he was not present in chambers for this discussion. Applicant testified he believed Counsel should not have told the judge or the solicitor about this witness because it was key to Applicant's defense.

Counsel testified the judge required him to proffer several witnesses, including Chavis Wright, and after the proffer, the trial court would rule on which statements were admissible. This Court's review of the transcript confirms Counsel's recollection. Transcript, pp. 576, 593-95, 610-19. The transcript further reflects Chavis Wright was eventually called as a witness and testified in front of the jury to seeing the victim the night before the shooting, discussing plans to retaliate against Applicant the next day for beating up a friend.

This Court finds no meeting ever took place in which the trial court instructed a witness to change his or her testimony. This Court finds Counsel's description of events leading up to the testimony of Chavis Wright to be credible and finds Applicant's testimony was not credible.

Therefore, this Court finds Counsel's performance was not deficient in proffering testimony as required by the trial court. This Court finds Applicant did not suffer any prejudice as Chavis Wright ultimately testified favorably for Applicant in front of the jury. Further, this issue was raised on direct appeal, and the Court of Appeals found the trial court properly excluded testimony by Wright as to the victim's potential drug involvement and firing a gun the night before the murder. State v. McCray, 413 S.C. 76, 94-95, 773 S.E.2d 914, 924 (2015). This allegation is therefore denied and dismissed.

Issue #10 – Counsel failed to object to jury seeing Applicant in shackles

"The law has long forbidden routine use of visible shackles during the guilt phase; it permits a State to shackle a criminal defendant only in the presence of a special need." Deck v. Missouri, 544 U.S. 622, 626 (2005). This is because "*visible* shackling undermines the presumption of innocence" and is a violation of a criminal defendant's right to Due Process. Id. at 630-31 (emphasis added).

Applicant testified he was in leg irons during trial because the judge ordered it, but never gave a reason. Applicant testified the shackles were tight, which caused him to grimace, and they could be heard when he moved. Further, Applicant testified he was wearing the leg shackles when he walked to the witness stand, in front of the jury. Applicant also testified the table in the courtroom was open, and he couldn't recall if there was a curtain blocking the jury's view of his feet. Applicant testified he did not have a waist chain or wrist irons, and he was dressed in street clothes throughout the trial. Applicant testified he believed Counsel was ineffective because no hearing was held to determine if the shackles were necessary, and Counsel did not object.

Counsel testified the judge was very concerned about safety and security issues in the courtroom. Counsel testified Applicant was always seated at the table before the jury came in, and his hands were always free. Counsel further testified, to the best of his knowledge, the tables did have curtains that would block the jury's view of Applicant's feet. Counsel testified he did not recall Applicant walking to or from the stand in front of the jury, and Applicant would have been seated before the jury entered the room. Counsel further testified he did not recall being able to hear the shackles when Applicant moved around.

This Court finds no deficiency on Counsel's part in handling the issue of Applicant's restraints during trial. This Court finds Applicant's testimony the jurors could hear the ankle chains when he moved was not credible. Applicant himself affirmed he was in street clothes, and his arms and waist were not shackled. The Court finds credible Counsel's testimony Applicant was seated at the trial table before the jurors entered the courtroom and remained seated while they were present. This Court finds Applicant did not walk in front of the jury with ankle shackles and was seated on the witness stand before the jury entered the room. This Court finds Applicant did not suffer any prejudice from wearing ankle shackles during the trial because the shackles were not visible to the jury, and there is no indication the jury was aware Applicant was restrained. This allegation is therefore denied and dismissed.

Issue #12 – failure to object to hearsay testimony

Applicant testified Counsel failed to object to multiple instances of hearsay introduced by the State's witnesses, Joyce Wright and Tina Collins. Applicant testified Counsel should have objected because pictures showed Joyce Wright couldn't see the shooting from her front window, and Counsel should have objected when Tina Collins testified the children at the scene told her "the bad man Ron" shot the victim. Counsel conceded some of the statements may have

been objectionable, but he testified repeatedly that the identity of Applicant was not contested and his focus was on the self-defense theory.

This Court finds Applicant has failed to meet his burden of proof regarding this allegation. This Court finds Counsel was not deficient for failing to object to Joyce Wright's statement because the statement was admissible as an excited utterance. See Rule 803(2), SCRE ("A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition" is not excluded by the hearsay rule.) Additionally, the Court finds Counsel may have had a basis to object to Tina Collins' testimony as to the phrase "the bad man" shot the victim, but given the context of the statement and the lack of emphasis on it in Collins' testimony as a whole, it was reasonable for Counsel not to object. Additionally, because Applicant's identity as the shooter was not in question, Applicant suffered no prejudice from the testimony of either witness.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by any alleged deficiencies in Counsel's representation. This Court finds the issues Applicant raises are problems of his own creation due to this lack of cooperation with Counsel, despite Counsel's repeated requests for Applicant to produce witnesses who could corroborate Applicant's claim the victim had a gun. This Court finds Counsel was unable to locate the witnesses due to Applicant's lack of cooperation or because the witnesses never existed, not because of any errors or deficiencies in Counsel's investigation, preparation, or presentation at trial. Therefore, this PCR application must be denied and dismissed with prejudice.

The Court notes Applicant must file and serve a notice of appeal within thirty days from receipt 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, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, Applicant must serve and file a notice of appeal. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent.

AND IT IS SO ORDERED this 6 day of Sept, 2017.

THE HONORABLE MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

Florence, South Carolina.

ALF2009-09-07086

WITNESSES

J Potteiger

Berkeley County Sheriff's Office

AGENCY CASE NUMBER

0909038994

ARREST WARRANT NUMBER

M325008

DATE OF ARREST

September 17, 2009

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 7/13/11

VERDICT Guilty

Foreperson of Petit Jury *Date:* 11-2-12

INDICT

DOCKET NO. 2011-GS-08-0947

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

July Term 2011

THE STATE

vs.

Ron Santa McCray
DOB: [redacted]
B/M

Indictment for

Murder

FILED
2011 JUL 13 PM 12:29
CLERK OF COURT
BERKELEY COUNTY, S.C

1024

ARREST WARRANT

M-325008

STATE OF SOUTH CAROLINA

[X] County/ [ ] Municipality of

Berkeley

THE STATE 2009-09038994

against

Ron Santa Mccray

Address: [redacted]

Charleston, SC 29492-7776

Phone: SSN: [redacted]

Sex: M Race: B Height: Weight:

DL State: SC DL #: [redacted]

[redacted] Agency ORI #: SC0080000

Prosecuting Agency: Berkeley County Sheriff Office

Prosecuting Officer: J. T. Potteiger - 0191

Offense: Murder / Murder

Offense Code: 0116

Code/Ordinance Sec: 16-03-0010, 0020

This warrant is CERTIFIED FOR SERVICE in the [ ] County/ [ ] Municipality of . The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to defendant Ron Santa McCray on 9-17-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
300 B California Avenue
PO Box 219
Moncks Corner, SC 29461

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

2009-2296

2009-2538

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Berkeley)

AFFIDAVIT

ORIGINAL

Form Approved by S.C. Attorney General April 21, 2003 SCCA 518

Personally appeared before me the affiant J. T. Potteiger who being duly sworn deposes and says that defendant Ron Santa Mccray did within this county and state on or about 09/16/2009 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Berkeley) in the following particulars:

DESCRIPTION OF OFFENSE Murder / Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

*****SEE ATTACHED AFFIDAVIT*****

2009 SEP 18 PM 2:11

BERKELEY COUNTY CLERK OF COURT MARY P. BROWN

Signature of Affiant

STATE OF SOUTH CAROLINA)
[X] County/ [ ] Municipality of)
Berkeley)

Affiant's Address 223 North Live Oak Drive
Moncks Corner, SC 29461-

Affiant's Telephone (843)719-4465

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on or about 9/16/2009 defendant Ron Santa Mccray did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [ ] Municipality of Berkeley) as set forth below:

DESCRIPTION OF OFFENSE: Murder / Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me on 09/16/2009

(L.S.)

Signature of Issuing Judge

James A Polk

Judge Code: 7031

Judge's Address 223 North Live Oak Drive
Moncks Corner, SC 29461-1481

Judge's Telephone (843)719-4050

Issuing Court: [X] Magistrate [ ] Municipal [ ] Circuit

ORIGINAL ORIGINAL ORIGINAL ORIGINAL

1025

1026

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

CASE NO.: 2009-090[illegible]4
WARRANT #: M 326008
AFFIDAVIT

PERSONALLY appeared before me affiant, Det. J. POTTEIGER, who first being duly sworn deposes and states that Defendant, RON MCCRAY, did within this County and State on or about September 16th, 2009 violate the criminal laws of the State of South Carolina in the following particulars, to wit:

DESCRIPTION OF OFFENSE - MURDER
§16-3-10

Affiant further states that there is probable cause to believe that the Defendant named above did commit the crime set forth and that probable cause is based on the following facts:

That on or about 09-16-09 at [redacted] Wando, S.C. located in the County and State aforesaid the Defendant did commit the offense of MURDER in violation of §16-3-10 of the South Carolina Code of Laws 1976, As Amended, in that the Defendant did willfully, unlawfully, feloniously and with malice aforethought (either expressed or implied), discharge a deadly weapon, namely a firearm, and shot and mortally wounded one Reginald Porcher without just cause or provocation and that Reginald Porcher did die of such wounds. Facts to establish the aforesaid: 1) On September 16th, 2009 the Berkeley County Sheriff's Office responded to [redacted]. S.C.29492 located in Berkeley County in reference to a shooting. 2) Detectives spoke with a person that witnessed the shooting. 3) The witness positively identified the defendant due to the fact that the witness knows the defendant. The witness stated that the defendant had what appeared to be a long gun. 4) The witness stated that the defendant did shoot the victim. After the defendant shot the victim he began kicking him and stating that's right lay there and die or words to that effect. 5) The defendant then fled the area in a dark color sedan. 6) Witness to prove the same.

All against the peace and dignity of this State.

Signature of Affiant
Det. J. Potteiger
223 N. Live Oak Dr.
Moncks Corner, SC 29461
761-6900 or 723-3800

SWORN TO AND SUBSCRIBED before me this
16th day of SEP, 2009.

(L.S.)
Signature of Issuing Judge

FILED
2009 SEP 18 PM 4:22
BERKELEY COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO.: 2011-GS-08-0947
STATE OF SOUTH CAROLINA	)	
	)	
v.	)	VERDICT FORM
	)	
RON SANTA McCRAY,	)	
	)	
Defendant.	)	
	)	

VERDICT

1. We, the Jury, find the Defendant NOT GUILTY.___

OR

2. We, the Jury, find the Defendant GUILTY of Murder.X

I certify that this decision is the unanimous decision of the Jury.

Delphia Bostic
Foreperson

November 2, 2012

1028

STATE OF SOUTH CAROLINA)
COUNTY OF Berkeley)
STATE VS.)
Ron Santa McCray)
AKA:)
Race: BLACK Sex: M Age: 46)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: Charleston, SC 29492)
DL#: [redacted] SID#:)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-08-0947
A/W#: M325008
Date of Offense: 9/16/2009
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 w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☑ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. _____ (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Alfaro, Bryan A.	70502			
	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☑ State Department of Corrections, ☐ County Detention Center,
for a determinate term of life ~~days/months/years~~ or ☐ under the Youthful Offender Act not to exceed ____ years
and/or to pay a fine of $ ____; provided that upon the service of ____ days/months/years and/or payment
of $ ____; plus costs and assessments as applicable*; the balance is suspended with probation for ____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☑ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922,it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship,transport,possess,or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: $ _____ plus 20% fee: _____ $ _____
Payment Terms: _____
☐ Set by SCDPPPS _____
Recipient: _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E begining _____
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: _____

*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	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
% to County (if paid in installments)		$ 3.90
TOTAL		$ 133.90

☐ Appointed PD or appointed other counsel, § 47.12 requires $500 be paid to Clerk during probation.

~~Clerk of Court~~ Deputy Clerk Linda J. Hill
Court Reporter: Anne Meyer
Presiding Judge
Judge Code: 215
Sentence Date: 4/11/12

CCA/217 (03/2011)