VOLUME III of IV

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marion County

Michael G. Nettles, Circuit Court Judge

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S.C. SUPREME COURT

SHAWN REAVES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000630

APPENDIX

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Q Those phones, those cell phones are not in this evidence box; is it not?
A No, sir. No, sir, they're not.
Q There was a blue-tooth that was found near the crime scene; is that correct?
A That is correct.
Q Who does that blue-tooth belong to?
A I have no idea.
Q You were in here when the SLED Agent Ken McKensy said that was returned back to Marion P.D.
A Yes.
Q Did you request it be returned back to Marion P.D.?
A No, I did not.
Q Is that a photograph of that blue-tooth ear piece that we're talking about?
A Yes, it is.
Q Is that piece of evidence in this box?
A No, it's not.
Q Do you know where that evidence is today?
A No, I do not.
Q There was three gold chains found in different locations near the shooting; is that correct?
A That is correct.
Q Is that one of the chains?
A Yes, in that photo, yes, but I never seen it at the

scene but yes, that's a photo of.
Q Do you have that ---
A No, sir.
Q ---piece of evidence?
A No, sir.
Q Was it collected at the scene as evidence?
A Yes, sir. If it was photographed by SLED they collected it.
Q Was that piece of evidence returned to anyone?
A I'm not sure. I never seen that piece of evidence.
Q Do you know what happened to that piece of evidence?
A No, I do not.
Q And of course that chain is identified in photograph identified as Defense Exhibit 12. I have Defense Exhibit 7. That is also a chain that was found at the scene; is that correct?
A That is correct.
Q Is that chain in that evidence box?
A No, it's not.
Q Do you know where this chain is?
A No, sir, I do not.
Q Do you know who it was turned over to?
A No, sir, I never seen that piece of evidence.
Q Do you know whether or not it was ever turned over to anyone?

A I do not know.
Q Do you know whether or not it was just lost?
A I do not know.
Q What I have marked as Defense Exhibit 8, that is also a third chain; is that correct?
A That's correct.
Q Is that piece of evidence in that box?
A No, it's not.
Q Do you know where this piece of evidence is?
A No, sir, I do not.
Q Do you know whether or not someone claimed this piece of evidence?
A No, sir, I do not know.
Q Was this evidence ever tested?
A I do not know. I never seen that piece of evidence.
Q Was the previous two chains I just asked you about tested?
A I do not know.
Q You know whether or not it was lost?
A I do not know.
Q Now is it possible that that evidence, all of the pieces of evidence that are either lost or missing or was turned over or whatever, all of that piece of evidence that was collected at the crime scene and not contained in this box, isn't it true that it is possible that that

piece of evidence could have helped to establish everybody who was at the scene or at least the owners of those particular persons who carried those items at the scene?

A You asking me to speculate again. I can't say that possible or not. It could be and could not be.

Q I'm asking you to give your opinion as an investigator.

A Yes. As an investigator it could be, yes, sir.

Q And the identity of everyone who was at the crime scene would be real important; is that not correct?

A That is correct.

Q And you would agree with me you still don't know the identity of everybody who was at that crime scene?

A I agree because we still have a -- stuck with a shooter that we need to identify.

Q Now Mr. Applewhite, when he was shot he was taken to Marion County Medical Center; is that correct?

A That is correct.

Q And PFC Jackson went to Marion County Medical Center to retrieve his clothing; is that correct?

A That is correct.

Q And these would have been bloody clothes that he was wearing when he was shot; is that correct?

A That is correct.

Q Do you know what he had on?

A No, sir, I do not.

Q Did you ever see those clothes?
A No, sir, I did not.
Q Now isn't it true that sometimes the clothes of the victim, the clothes of the person who was shot -- and I'm asking your opinion as an investigator -- could reveal evidence that could be valuable in connection with a case?
A It could. All evidence could be valuable.
Q I think you previously testified that his clothes, I think, were picked up by one of the officers, PFC Jackson; is that correct?
A That is correct.
Q Do you know what PFC Jackson did with those clothes?
A As far as I can recall he turned them over to Captain Gray.
Q And was those clothings ever -- what happened to those clothes when they were turned over -- well, let me ask you this question, were those clothes placed into your evidence locker?
A Not by me, no, sir.
Q Do you know whether or not they were properly logged in?
A No, sir, I do not.
Q Are those clothes in those box?
A No, sir, they're not.
Q Have you ever seen those clothes?

A No, sir, I do not.
Q Have those clothes ever been sent to SLED to be analyzed?
A As far as I know, no, sir. You're asking me again to speculate. No, sir, I wouldn't know.
Q Yeah. If you don't know just say you don't know. I'm not asking you to speculate. Now the other items that's contained in that box would be -- if I'm not correct, I think we established that the white and the black hat is in that box in the evidence; is that correct?
A That's correct.
Q There's a pair of Jordan shoes; is that correct?
A That's correct.
Q And who does those Jordan shoes belong to?
A I think Joemilla Dozier Wilson, Wilson Dozier.
Q Okay. And why was those shoes collected?
A There was evidence at the scene to collect to see if there was either blood or any evidence that would be found on those shoes.
Q Were they ever sent to SLED to be analyzed for that purpose that you said that you collect those shoes for?
A They was collected. They was taken by SLED. I don't know if they was analyzed or not.
Q Did you ever receive a report from SLED indicating they were analyzed?

A I received several reports. Like I say, I don't remember. I don't recall if that was in there saying it was analyzed or not.
Q There was also a pair of, pair of jeans, blue jeans with a white belt in them; is that correct?
A That is correct.
Q Who are the owner of those clothes?
A Ms. Joemilla Dozier Wilson.
Q And those clothes are in that box; is that correct?
A Yes, they are.
Q And were those clothes -- and I'm assuming those clothes were collected because for the same reason that you stated about the shoes, to make a determination as to whether or not there was any blood or either other evidentiary value that might be found on them.
A That is true.
Q Was those clothes ever tested by SLED?
A They was collected by SLED. I don't know if they were tested or not.
Q Did you ask SLED to test them?
A I didn't ask them because I didn't send the evidence at first. Now we did receive reports back, several reports back from SLED. I don't know what's been analyzed or not.
Q Okay. Now this case has been going on -- this case is roughly over three-and-a-half years old; is that correct?

A That is correct.
Q You're saying after three-and-a-half years of investigation and three-and-a-half years of having this case, you don't know whether or not you have a SLED report for any of the evidence that's we just talked about?
A No, sir, I do not.
Q Did you read anything in preparation for this case today?
A No, sir, I did not.
Q How did you prepare for this case today?
A Mentally of this case.
Q Just memory?
A Yes, sir.
Q Do you think your file and your notes -- do you -- is it correct that your memory usually fades over time?
A That depends on the event. I mean, I heard this before mentioned in this courtroom. That depends on the event. Sometimes you get more information days later after the event than you can at that time because of the stress and because of shock to a person. So it depends. But normally, it is better at the beginning and deteriorates over time.
Q Okay. And I know you says it depends. But I'm asking specifically about this event. Is your memory better over time as far as this event?

A As far as this event it's the same.
Q It's the same?
A It's the same.
Q So what you're testifying to that you don't know today you didn't know then?
A I didn't know then.
Q And you never knew?
A I never knew.
Q Would you agree with me that there's a lot that you didn't know?
A Yes. That's the reason why I made my own investigation and try to burn this case back when it was given to me to find out what I need to know.
Q But you never learned it, did you?
A Never learn everything. Never learn the identity of the second shooter.
Q Yes, specifically talking about this case?
A Talking about this case.
Q Okay. There was also a black durag that was found at the scene; is that correct?
A That is correct.
Q And that black durag is pictured in what's been marked Defense Exhibit 3; is that correct?
A That's correct.
Q Has that black durag been analyzed?

A Again, I'm not sure. It was collected by SLED; and when they receive reports back on several items I don't know if those items were tested or not.
Q Were you in the courtroom when detective -- when SLED Agent McKensy said they were returned ---
A Yes.
Q ---without analysis?
A If he said, I didn't hear that part, but yes, I was here.
Q Now when did you learn that these items that we just listed, I think there was some, maybe 11 or 12 items roughly. When did you learn that these items had not been tested in the investigation?
A In the investigation I didn't learn about the items was tested or not. Some of these items I didn't even know about that we don't -- that we don't have until the first trial started of this year.
Q Have you ever been able to identify the owner of the black durag?
A No, sir, I have not.
Q Has anybody come and claimed it?
A No, sir.
Q And I'm assuming the black du-- just as in the other evidence that we're talking about, the black durag was collected for the same reason that there was -- that it

was located near the crime scene and as a potential that it could have evidence; is that correct?
A Yes. There's always a potential in evidence at crime scene could have some evidence.
Q But at this particular point in time three-and-a-half years later you don't know whether or not any of this evidence has evidentiary value?
A No, sir, I do not.
Q Now this alleged second, this alleged second shooter that you were talking about that you were looking for, isn't it possible that the second shooter, or the alleged second shooter, could have dropped this over in that stuff?
A It's possible.
Q And if the second shooter did drop some of that stuff into a simple analysis of that stuff, then it'd be get -- you're closer in identifying who that person was.
A Yes.
Q But you say none of that was done ---
A As far as I know.
Q ---that you know.
A Right.
Q Now Lieutenant Blue, I'm -- during the course of your investigation did you come into some information or come into some evidence that identified a potential second

shooter, come into a name?
A Possible name. There were several names that possibly could have been, yes.
Q Do you remember the name Gail Davis?
A Yes.
Q Did you talk with Gail Davis?
A Yes.
Q Isn't it true that you indicated in one of your notes and one of your investigatory notes that Jeremy Vereen could have been the second shooter?
A Yes.
Q Have you talked to Jeremy Vereen?
A Several times.
Q And he answered your questions?
A Yes.
Q Now would you agree with me that when you're talking with potential -- when you're talking with potential suspects in a murder case, that those conversations that you have with those persons are extremely important?
A Yes.
Q Okay. And that's the reason why you always document them; is that correct?
A That's correct.
Q Did you turn over your entire file to the prosecutor's office in this case?

A Yes.
Q Can you explain why there was not one note in your entire file that indicates that you ever talked with Jeremy Vereen?
A Yes, I can. I never found him. He had fled to Philadelphia and I never found him until about a year-and-a-half later.
Q Where did you find him at year-and-a-half later?
A Mr. Vereen?
Q Yes.
A In jail.
Q And did you talk with him?
A I did.
Q And I think you previously said he talked with you back -- and my question is, is that why isn't there any evidence, and you didn't answer this and that's why I'm asking again. Why isn't there any report to your file indicating that you have ever talked to Jeremy Vereen?
A Because I did not talk to Mr. Jeremy Vereen about this case because he's still a suspect and I didn't want to shake him in any way. I talked to him on other cases.
Q Okay. So Jeremy Vereen you said is a suspect in this case and you have not talked with him after three-and-a-half years about this case?
A That's correct.

Q You received more than one communication from more than one person in reference to Jeremy Vereen; did you not?
A Yes. Not as being the shooter but as being a accessory.
Q Do you remember the name -- like I said, I'm not asking you what she said because that would be hearsay -- Ashley Salt.
A No, sir, I don't recall that name.
Q Like I said is, that it's hearsay so don't say what anyone else said or anything like that. Showing you that just to refresh your memory.
A Yes.
Q Did Jeremy Vereen's name came up ---
A Yes.
Q ---with your conversation with Ms. Salt?
A Yes.
Q Okay. And did you -- and I'm not asking you what she said to you. I'm gonna ask you your questions. Did you ask her whether or not Jeremy Vereen was a shooter, the shooter, second shooter, however it was?
A Yes.
Q Do you plan to talk with Jeremy Vereen sometime this century?
A If I can get a lot more probable cause and information and facts to the case, yes. There's a lot of things that

was given in this case that don't have any proof or any facts to that.

Q Well, I'm not talking about arresting him. I'm saying do you talk with him?

A That's what I'm talking about also. If you got a suspect, Mr. Brooker, you don't want to go to him right then, then you going to mess up your case. You take time to build with your case.

Q And what have you build your case with regarding him to this particular point?

A So far it be coming up empty every time I get a lead.

Q Now these leads that you talk about, did you document them?

A No, sir, that -- Ms. Ashley was, yes.

Q Okay. But these other leads you just mentioned, you didn't document them?

A No, sir.

Q Okay. So the only way that we would know that you actually did, did what you say you did, in reference to these other leads is by accepting your word?

A At this point, yes, sir.

Q Now you were in the courtroom when Jackie McGill testified; is that correct?

A Yes, sir, I was.

Q And you were the one who administered the photo lineup

to Jackie McGill; is that correct?
A That is correct.
Q Now did you also hear Jackie McGill testified that he couldn't recall which photo lineup that he had seen; is that correct?
A That is correct.
Q I have what's been marked as Defense Exhibit 14. Is that the photo lineup that you showed to Jackie McGill?
A Yes, it is.
Q And I have been marked -- I have in my hand what's identified as Defense Exhibit 13. Is that the photo lineup identification form that you gave to Jackie McGill to select which person he saw that night?
A Yes, it is.
Q Now in this photo lineup is it not true that Shawn Reaves is identified as photo number three?
MR. DEBERRY: Objection, Your Honor.
THE COURT: Grounds.
MR. DEBERRY: He's misidentified his client in the courtroom at this time. I think that's his brother. Shawn Reaves is here in the courtroom.
MR. BROOKER: I think that's what I said.
THE COURT: Overruled. Go ahead and continue.
MR. BROOKER: I think I said Shawn Reaves.
THE COURT: Go ahead.

BY MR. BROOKER:
Q I'll repeat it. Is that Shawn Reaves identified in this photograph as photograph number three?
A Yes, it is.
Q And on Jackie McGill's identification form did he not identified -- identify picture number two as the person he saw shooting that night?
A Yes, he did.
Q And picture number two is not Shawn Reaves; is it not?
A No, it's not.
Q Could there have been any other photo lineup that you showed Jackie McGill?
A No, sir.
Q Other than this one?
A No, sir, it is not. That's the only photo lineup there was done.
Q And you're certain about that?
A I'm absolutely positive about that.
Q Now were you in the courtroom when Jackie McGill said that he wrote a statement, a three page statement, on the back of the patrol car that night?
A Yes, I was.
Q Were you also in the courtroom when Jackie McGill said that Travis Lane and also, I think, Karen Graves, the other two persons that was riding with Ramel Applewhite,

wrote statements on the back of the patrol car that night at the scene?

A Yes, I was.

Q Are you in possession of those statements?

A No, I'm not.

Q Have you ever been in possession of those statements?

A No, I have not.

Q Do you know what happened to those statements?

A No, I do not.

Q Now if you don't have them and you don't know what happened to them and you are the lead investigator, is it accurate to assume they've been lost?

A I was not the lead investigator at the time when those statements was allegedly written so I can't say that. I don't have no idea. They was never given to me.

Q Have you talked with anyone -- and don't tell me what anyone else says. Have you talked with anyone in your attempt to try to find those statements that Jackie McGill indicated that they wrote that night?

A Yes.

Q Who have you talked with in trying to locate those statements?

A I talked to officers that was at the scene and see if anyone knew about the whereabouts of some alleged statements.

Q And don't tell me what anyone says. Even after those attempts they were never retrieved?

A No,they was not.

THE COURT: Are you going to be much longer, Mr. Brooker? We might need to take a break if you are.

MR. BROOKER: I'll be more than happy to take a break because we are going to be a little bit longer.

THE COURT: Members of the jury, take a 20 minute break. Need something to drink get it. Need something to eat get it. Use the restroom, whatever. Do not discuss the case at all.

(WHEREUPON, the jury was removed from the courtroom at 10:58 a.m., and the following proceedings commenced in open court.)

(Court's Exhibit Number 1 was marked and made a part of the record.)

THE COURT: Let me go over one thing, lawyers, before we start back so we can plan accordingly. We have researched -- solicitor has the immunity from being called to testify. Even though he himself is prosecuting the case, however, the Defense must show that the testimony is only available from the Solicitor. So if you can get it from somebody else you might can speed up this trial.

MR. BROOKER: I know, Your Honor, that's why I said if the other officer, if they testify to what we're

trying to achieve we wouldn't need him so that's why I told you we won't know until after the other ones.

THE COURT: Just want to know where everybody -- to know where we stand on that.

(WHEREUPON, the jury was returned to the courtroom at approximately 11:21 a.m., and the following proceedings commenced in open court.)

THE COURT: All right. Before we begin, Lieutenant Blue, we took a 20 minute break. Did you talk to anybody about this case?

THE WITNESS: No, sir.

MR. BROOKER: Your Honor, if I'm not mistaken, I might be mistaken, I think we ended off with a line of questioning pertaining to Defense Exhibit 13 and Defense Exhibit 14, I think which is the photo lineup identification form that was executed by Jackie McGill and I think the full photo lineup itself.

BY MR. BROOKER:

Q If I'm not correct, and I believe, I think one of the last questions that I may have asked you was that you were absolutely certain whether or not this was the photo lineup that you showed Jackie McGill.

A Yes, absolutely positive.

Q Absolutely certain. Now did you also -- Travis Lane was also at -- also at the incident, is that correct, when

it occurred?
A Yes.
Q And I think we also prior to leaving, and I'm just trying to get a point of reference, that we talked about the statements that I think you said that you were in the courtroom when Jackie McGill said that he wrote a three page statement; that Travis Lane wrote a statement; and that Karen Graves, who was the third person, that was with them wrote a statement.
A Yes.
Q And I think Travis Lane was also asked to have a photo lineup conducted; was it not?
A Yes.
Q And that he do a photo lineup. Did you presented him a photo lineup?
A I don't recall.
Q Okay. I ask you to take a look at that.
A Yes.
Q And what is that?
A It's a photo lineup identification form.
Q Is that the photo lineup form that you gave to Travis Lane?
A Yes.
Q And how can you be certain that's the photo lineup that you gave to Travis Lane?

A He signed it. He signed it, or his signature right there. Travis Lane signed it. I signed it also and witnessed by Mr. Heather (ph) Evans.

Q And you actually -- you signed it. You actually signed that and you actually witnessed Travis Lane sign it?

A Yes.

Q Okay. And just to be absolutely certain he witnessed it in your presence; is that right?

A Yes.

Q And that is the actual document. This is the actual document that you witnessed and signed?

A Yes.

Q And that that is your actual signature?

A Yes.

Q Okay.

MR. BROOKER: We move to enter this into the record.

THE COURT: Any objection?

MR. DEBERRY: No objection, Your Honor.

THE COURT: All right, Defendant's 17.

(WHEREUPON, Defendant Exhibit No. 17 was marked for identification and received into evidence.)

BY MR. BROOKER:

Q Now this photo lineup was conducted on May 17 of 2007; is that correct? Take a look at it for me.

A Yes.
Q With Travis Lane; is that correct?
A Yes.
Q And the photo lineup that you did with Jackie McGill was conducted on the exact same date; is that correct? I can allow you to see it to refresh your memory. And of course I'm referring to what's been identified as Defense Exhibit 13, photo lineup form for Jackie McGill.
A Yes.
Q That was also done May -- on May 17th?
A Yes.
Q Were they there together?
A Probably so I would recall but probably so.
Q Okay. But the two was conducted on the exact same day?
A Yes.
Q And of course, that would have been three days -- that would have been three days, roughly three to four days after on the shooting; is that correct?
A That is correct.
Q Okay. Now would you have shown -- or did you show Travis Lane the exact same photo lineup that you showed Jackie McGill?
A Yes.
Q And is this the photo lineup that's identified as Defense Exhibit 14?

A Yes.
Q And I'll ask you the same question just for clarification for the jury is that, the photo in this lineup that's identified as number three, is that a photo of Shawn Reaves?
A Yes.
Q Okay. I'm gonna hand you back the, what's identified as Defense Exhibit 17, which is the photo lineup form for Travis McGill.
A Travis Lane.
Q Travis Lane, I apologize. On the photo lineup are there six options or six choices?
A Yes.
Q Okay. On the identification form, the photo lineup identification form that you said that you administered to Travis Lane, are there also six choices?
A Yes.
Q Okay. And of those six choices, which choice did Travis Lane selected?
A Number two.
Q Number two?
A Yes.
Q Now that is the exact same person that Jackie McGill selected?
A Yes.

Q So both of these individuals selected the same person?
A Yes.
Q Is that correct?
A That is correct.
MR. BROOKER: May I have your permission, Your Honor, to publish this to the jury?
THE COURT: Sure.
BY MR. BROOKER:
Q Now, and I'm asking you this based upon your knowledge. Were you in the courtroom, I think, when Jackie McGill said that he and Ramel Applewhite were friends?
A Yes.
Q And that he'd known him, I think, since childhood?
A Yes.
Q And were you also in the courtroom when Jackie McGill said that he had seen Shawn White around the neighborhood prior to this particular incident?
A His name is Shawn Reaves, yes.
Q I'm sorry, Shawn Reaves.
A Yes.
Q Okay. And were you also in the courtroom when he looked at that same photo lineup that is circling around with the jury, and he says that Shawn Reaves is number three?
MR. DEBERRY: Objection, Your Honor.

THE COURT: Grounds.

MR. DEBERRY: Can we approach please?

THE COURT: Sure.

MR. BROOKER: Certainly.

(WHEREUPON counsel approached the Bench for an off-the-record discussion.)

BY MR. BROOKER:

Q Okay. I think you were in the courtroom when Shawn Reaves, I think, when Jackie McGill looked at that photo lineup and said that he could pick out Shawn Reaves. He recognize Shawn Reaves from that photo lineup that's circulating; is that correct?

A That is correct.

Q Now from your investigation, I'm asking you from your investigation, do you know of any reason why Jackie McGill would have to lie to protect Shawn Reaves?

A No, sir.

Q Do you know of any reason from your investigation why -- excuse me, Jackie McGill, I think I said Jackie Lane. But Jackie McGill would lie to protect Shawn Reaves?

A No.

Q Do you know any reason why Travis Lane would lie to protect Shawn Reaves?

A No.

Q Now I think you said that you were the investigator in

connection with this case?
A Yes, sir.
Q Is that correct?
A That is correct.
Q You took over -- let me correctly state that. You took over maybe one or two days later after, after Captain Gray; is that correct?
A That is correct.
Q Okay. Now I have in my hand what's been identified as Court Exhibit 2. Now would you agree with me that Court's Exhibit Number 2 appears to be a statement that where it has Jackie McGill's name on it and Travis Lane's name written at the top?
A Yes.
Q Okay. Now this statement was in your investigatory file; was it not?
A Yes, it was.
Q And you recognize this as being one of the statements that was in your investigatory file?
A Yes.
Q Was it not?
A Yes.
Q And this is one of the statements that you turned over to the Prosecutor's Office; is it not?
A Yes.

Q Whose statement is this?
A It's the statement of Jackie McGill and Travis Lane.
Q So this is Jackie McGill's statement?
A That's the statement he gave me at the time. So I wrote the statement when I was taking notes. I had to read, go back over this case. I re-called them to my office and talked to both of them. And the reason why Travis Lane name is on there, it was Jackie McGill was talking to me and I asked him who else was there. He advised me it was Travis Lane. I put Travis Lane address and phone number on that side and then asked him to have Travis come see me.
Q So Travis wasn't present when this, when this document was produced?
A He wasn't present when I wrote it. He came by. I asked him about the case, and Travis Lane said he says the same thing Jackie McGill says.
Q Don't tell me what anybody else says.
A I didn't say what he said.
Q Okay. But you're saying, you're saying that -- and let me make sure I get this right, is that this is Jackie McGill's statement?
A That's exactly what he was telling me. Maybe not be word for word, but that's somewhat he told me.
MR. BROOKER: Can we approach, Your Honor.

THE COURT: Sure.

(WHEREUPON counsel approached the Bench for an off-the-record discussion.)

BY MR. BROOKER:

Q Now what's been identified as Court Exhibit Number 2, and of course, I think where we left off that you said that you called Jackie McGill into the office and that as Jackie McGill told you what happened you wrote it down.

A I said may not be word for word. He told me what happened. That's the reason why I want to know about this case because I didn't have any information to go on.

Q I understand. Did Jackie McGill tell you that Keshawn Applewhite threw -- make sure I know where I am. That Keshawn Applewhite threw Joemilla Wilson Dozier down into the mud?

A Yes.

Q He told you that?

A Yes.

MR. BROOKER: If you'd indulge me just a second, Your Honor.

BY MR. BROOKER:

Q Did Jackie McGill told you that Keshawn Applewhite was walking up the steps when he was shot?

A I think the exact term he said was walking towards the steps.

Q Okay. Now since you wrote this I'll ask you, do you have -- and you correct me if I'm wrong -- while walking up the steps Keshawn said what?

A That's what I have, yes, sir, that's correct. But it may not be accurate but that is correct. That's what I have on the form.

Q So you're saying that you don't know whether or not -- you don't know whether or not this statement that you took is entirely accurate?

A I don't know maybe entirely accurate what he was telling me. He may have said towards or what I just wrote it like that. He may have said towards the steps; I don't know. I don't recall but I know that's what I wrote on there. Up the steps.

Q You wrote down he was walking up the steps?

A Right.

Q Okay. Did you let him review this after you wrote it down?

A He didn't have to sign it so I did not let him review from my personal notes.

Q Okay. So my understanding this could be your error?

A It could be my error, yes, sir.

Q And just to be absolutely certain, was the previous statement I asked you, when it says that -- when this statement says that Jackie McGill said that he -- that

Keshawn Applewhite threw Joemilla Dozier Wilson into the mud?

A Yes.

MR. DEBERRY: Objection.

MR. BROOKER: Is that a clerical error?

MR. DEBERRY: Asked and answered.

THE COURT: Sustained.

MR. BROOKER: All I'm asking, is that a clerical error. That's not a question I asked him before then. I asked him about when he said that, but I want to make sure that wasn't a clerical error too so I'm asking was that a clerical error. Yes, was that a clerical error.

THE COURT: All right, I overrule it. Go ahead.

BY MR. BROOKER:

Q Was that a clerical error?

A It's not, but it don't say whether it was in yard or down the street It just said he threw her in the mud. It doesn't say where.

Q Okay.

A That's accurate. Yes, sir, in the mud.

Q I don't understand. Yes or no, is that a clerical error, then you can explain?

A It's not a clerical error, no.

Q So that was accurate?

A That was accurate.

Q Okay. Now when y'all went into the house -- and I'm taking you back to the crime scene.
A Okay.
Q When y'all went into the house and searched the house, and I think you said that Brandon Bellamy, you testified previously that Brandon Bellamy that Joemilla Wilson Dozier and I think Rodney McElveen were all taken from the back room of the house and that they were all arrested?
A No, they was all detained.
Q Detained?
A Yes.
Q Detained. Do you know how long they were detained for?
A I do not.
Q Okay. Were they detained there at the scene? Were they moved away from the scene and detained someplace else?
A They were detained at the scene a brief moment. Then they was removed from there and taken to the police department.
Q Okay. And did you take them to the police department?
A No, I did not.
Q Did you know who took them to the police department?
A No, I do not.
Q Do you know what time they left the scene to go to the police department?

A No, I do not.
Q Now in -- now how long did you stay at the scene that night?
A The whole entire time till next early part of that next morning.
Q Early part of the next morning?
A Yes.
Q Okay. Now did you process anything else at the crime scene other than what we talked about?
A No, sir, I did not.
Q Now I think you said that you don't know whether or not -- I think you previously said that y'all went -- that they were detained as suspects, those three persons: Brandon Bellamy, McElveen, Brandon Bellamy, Rodney McElveen, and Joemilla; is that correct?
A They was detained.
Q Okay. Now at that particular period of time -- and I'm asking you as an investigator. At that particular period of time I'm assuming because you detained them -- who made the decision to detain them?
A I guess Captain Gray who was on scene that day.
Q You don't know but you believe maybe Captain Gray?
A Yes. Yes.
Q Okay. Was they detained because they were suspects and you didn't know whether or not they had any evidence?

MR. DEBERRY: Objection, Your Honor. He says he doesn't have any direct knowledge. He didn't -- he was not the one who detained them. That's an improper question.

MR. BROOKER: I'm just asking.

THE COURT: He said he doesn't know who detained them. This is a separate question.

MR. BROOKER: If he doesn't know the answer he can simply say no.

THE COURT: Overruled. Go ahead.

BY MR. BROOKER:

Q Were they detained because they were potential suspects in connection, in connection with that case?

A I would assume so. Everyone that was inside that house at that time was a suspect.

Q Everyone inside of the house was a suspect?

A Yes.

Q Was everyone at the crime scene was a potential suspect?

A Yes.

Q Okay. Now you tell me whether or not I'm correct. That generally when you go on a crime scene you don't know what happened and everybody who was involved in that crime scene, everybody is a potential suspect?

A That's true.

Q Until you can rule them out.
A That is correct.
Q And would you agree with me that a good investigator then makes an attempt to rule out people so that you can narrow it down to a smaller pool of people they investigate?
A That's correct.
Q Okay. I think there was testimony, I think, that was given -- I think you was in the courtroom -- that when gunshot residue kit was taken, I think, on those three persons in the residence; is that correct?
A That's correct.
Q Was a gunshot residue kit to your knowledge performed on Travis Lane?
A To my knowledge, no.
Q Was one performed on Jackie McGill?
A To my knowledge, no.
Q Was one even performed -- was one performed on Ms. Graves, I think, Karen Graves?
A No.
Q Okay. Now other than their own words, other than their own words, did you have any other independent evidence to rule them out?
A Other than their own words?
Q Other than their own words.

A Yes.
Q Okay. Tell me, as long as it's not hearsay, tell me what other independent evidence that you have to rule them out.
A If I tell you what he said it would be hearsay, but another witness that didn't want to be known didn't want to come forward.
Q I see. I see. I see. So okay, I see. You're talking about some other witness?
A Yes.
Q Okay. And don't tell me what this person says. Is this somebody who so that you can tell me the name of this person; could you not?
A I prefer not to. It's a confidential informant.
Q So you had a conversation with someone and you prefer not to release their name?
A Yes.
Q Okay. Now let me ask you about physical evidence. Did you have any physical evidence that excludes them?
A No.
Q Could you -- okay. You couldn't exclude them through physical evidence?
A No, sir, not through physical evidence, no, sir.
Q Did you made an attempt to collect and test any physical evidence that would exclude them?

A Did I make that attempt?
Q Yeah.
A It wasn't my case at that point.
Q Okay. Do you know whether or not lieutenant, or Captain Gray I'm sorry, collected and requested the testing of any sort of physical evidence that could exclude those persons?
A I can't say. I don't -- I don't know.
Q Now were you in the courtroom when Jackie McGill testified that at the time of the shooting that up where the steps were, somewhere around front of the house, there was a group of people there?
A Yes.
Q Do you know the names of every last person that was up around the front of the house at that time?
A No, sir.
MR. BROOKER: Now if you will indulge me just a second, Your Honor, I may be drawing close to an end.
BY MR. BROOKER:
Q What do you know about the relationship between Brandon Bellamy, and I'm talking about at the time of the -- of the shooting that night. What do you know about the relationship between Brandon Bellamy and Joemilla Wilson Dozier?
A Personally? You want to know personal knowledge?

Q Do you have personal knowledge?
A No, sir, I do not.
Q Do you learn -- do you learn anything about that, their relationship, was through the course of your investigation?
A I looked through the course of the investigation I learned that they -- he may have interest in her, and I don't know what the extent of it was.
Q Okay. So during the course of your investigation you said you learned that he may have had an interest in her?
A Yes.
Q Do you know whether or not she had an interest in him?
A I do not, no, sir.
Q Okay. Do you know why she was at his home that night?
A You're asking me to speculate again.
Q No, no, I'm asking you do you know. If you don't know just say you don't know.
A I do not know. I do not know.
Q So you don't know why she was at his home?
A No.
Q When -- isn't it true that when y'all went into the house and when y'all retrieved Joemilla, I think you testified that y'all went in the house and that they were in the back bedrooms. Isn't it true that when y'all went in the house and y'all detained Joemilla Wilson Dozier and

y'all detained Brandon Bellamy they were in the same bedroom?

A They was in the same closet, yes, sir.

Q They were in the same closet?

A Yes.

Q Y'all retrieved them from the closet?

A Yes, in the back bedroom.

Q So they was in the closet in one of the bedrooms?

A Yes.

Q Now don't tell me what anybody else says. Don't tell me what she says. I'm just going to ask you whether or not you did it. Did you discuss Joemilla's relationship with Brandon Bellamy when you talked with her?

A No, I did not.

Q And just, I'm gonna ask you why didn't you feel the need to go into that line of questioning?

A At that moment, that time, I didn't know anything about any of the case at all. At that moment where our main attempt was to discover any evidence and prevent it from being lost and apprehend the suspect that may be in the house.

Q Okay, let's go beyond that night. At any time after that night, have you went into that line of questioning with Joemilla Wilson Dozier about her relationship with Brandon Bellamy?

A No.
Q Now let me ask you a question. Do you think that was important to find out?
A Yes. I did receive information, a little information, but I didn't have no need to go into that point with her.
Q Okay. And just to make sure, you says -- you said yes to my question?
A Yes.
Q That it was, that you do think it was ---
A Yes.
Q ---important to figure out what that relationship was?
A Yes.
Q Okay. As an investigator I know that you said you were only -- that was your first murder scene. But as an investigator why do you think it was important to discern what that relationship was or go into that line of questioning with Joemilla?
A It was important to rule her out as being a suspect or even co-suspect in the incident, and it was important if I may have had information that she was not talking about the case.
Q Okay. That's the point I'm trying to get. It is important to find out whether -- isn't it true it's important to find out whether or not what her relationship was or whether or not she had a close relationship with

Brandon Bellamy?
A Yes.
Q In order to determine whether or not she would have an interest in protecting him?
A Yes.
Q And I think you said that you didn't do that. You didn't query her about those questions?
A I didn't talk to her. I talked to others and I got information about that.
Q Do you know what her relationship was to anybody that was in that house that night?
A The only -- no, I don't. The only person I know is about her and Brandon.
Q Okay. Did you question her about her relationship with anybody else in that house that night?
A I asked her -- I didn't question her, go into details, but I did ask.
Q You did ask her. And you -- did you ask her -- don't tell me what she says. I'm just finding out what your line of questioning was. Did you ask her about -- did you ask her about her relationship with Rodney McElveen?
A No.
Q Okay. Did you ask her whether or not she was ever intimate with Rodney McElveen?
A No, about with Shawn Bellamy, no, sir. No, sir.

Q I know. I know. I'm going into everybody that was in the house that night.
A Okay, no, sir.
Q I'm gonna ask that same question about Deshawn Bellamy.
A Yeah.
Q Did you ever ask her whether or not she was ever intimate with Rodney McElveen?
A No.
Q Did you ask her whether or not she was ever intimate with Deshawn Bellamy?
A Yes.
Q Okay. Now, I think you indicated -- and you correct me if I'm wrong -- that you talked with Jackie Lane (sic); is that correct?
A Jackie McGill?
Q I'm sorry. I don't know why I keep calling Jackie Lane. But you talked with Jackie McGill; is that correct?
A Yes, that's correct.
Q And you talked with him because he was there at the scene when this incident took place; is that correct?
A That's correct.
Q And you talked with him because, because given the fact that he was there at the scene he could potentially have valuable information?
A That's correct.

Q Okay. You talked with Travis Lane for the exact same reason?
A That is correct.
Q Okay. Have you ever interviewed Karen Graves?
A I'm not sure. I did try to interview her. I don't know if she ever came. I don't recall if she ever came to interview or not.
Q Now isn't it true that night from your investigation that you learned that Ramel Applewhite came around to Deshawn Bellamy's house in his car with Jackie McGill with Travis Lane and with Karen Graves?
A Yes.
Q They were all in the car together when he drove around there?
A Yes.
Q Okay. Were you in the room when Jackie McGill testified that when shooting broke out that Travis Lane and that Karen Reaves -- excuse me, Karen Graves, were back at the car?
A Yes.
Q Do you know what the relationship was between Kar -- and I think were you in the courtroom when Jackie McGill said that the relationship between Karen Graves and Ramel Applewhite was that they were cousins?
A Yes.

Q And you did -- you knew they were cousins?
A I didn't know it until after the investigation, yes.
Q Did you learn that during the course of your investigation?
A Yes.
Q Now as an investigator with your experience do you believe that because Karen Reaves -- and I'm talking about your investigative instincts and your experience, in your experience, in your training, do you believe that Karen Reaves -- excuse me, Karen Graves, would have an interest in finding out, of wanting to help law enforcement in learning who the perpetrators shot her cousin?
A Yes.
Q And specifically, that situation where she may have been a witness there; is that correct?
A Yes.
Q A known witness to you; is that correct?
A Yes, that's correct.
Q And don't you think it would have been extremely important to interview her to find out what she knew?
A It is important. And like I said, I don't know if I ever got in touch with her or not. I know I tried to make contact with her. I don't recall that she ever gave me a statement or not.
Q Did you turn all of your notes ---

A Yes.
Q —of your investigation over to the Prosecutor's Office?
A Yes, I did.
Q Okay. Then could you explain to me why is there no indication in your notes that you ever talked with Karen Graves?
A Probably she never showed up. I don't know. That's, like I said, I don't know if she came or not.
Q Could you explain to me why in your notes there was no indication that you ever made an attempt to contact Karen Graves?
A No, sir, I can't explain that. I've never made, put in my notes everybody I made an attempt to talk to. I didn't put on my notes everybody I made attempt to talk to so I can't explain that.
Q So you may have done a lot of stuff that you never wrote down?
A There's a lot of stuff in course of investigation that you do, and everything that you have. You don't write down everything unless they show some importance or facts into the case.
Q Has she ever come forth and called you and says, I was there when my cousin was shot, I want to tell you what I know?

MR. DEBERRY: Objection, that calls for hearsay.
MR. BROOKER: No, it's not. I'm asking you -- well, I can rephrase it.
THE COURT: Please do.
BY MR. BROOKER:
Q Did she ever presented to you seeking to give you information in reference to what she knew that night?
MR. DEBERRY: Your Honor, that calls for hearsay.
MR. BROOKER: No. I'm asking him what she said. I'm asking whether or not she ever presented to him seeking to provide him with information.
THE COURT: Not what she said?
MR. BROOKER: Not what she said.
THE COURT: Overruled.
THE WITNESS: I don't recall.
BY MR. BROOKER:
Q You don't recall whether or not she ever presented to you offering herself, offering to give information to you?
A I don't recall.
Q If that would happen do you think that would have been a real important event?
A If that would have happened I think that I would have had some notes on it.
Q I'm sorry, I didn't hear you.
A I think I would have had some notes in my report on it.

Q Okay. So if that had happened that was — that's important enough to document?
A Yes.
Q But there is no documentation in your evidence to that particular fact, is there not, that she ever presented herself to you?
THE COURT: Asked and answered, let's move on.
THE WITNESS: No.
BY MR. BROOKER:
Q It has. I'm positive.
MR. BROOKER: Thank you, Your Honor.
BY MR. BROOKER:
Q Now, were you in the courtroom also when I think the SLED agent, SLED agent or former SLED agent Ken McKensy testified that you provided him with gunshot residue samples, I think, from Rodney McElveen, Brandon Bellamy, and Ms. Wilson Dozier?
A Yes.
Q Okay. And you did provide those gunshot residue tests?
A Yes.
Q Okay. And who did you receive those gunshot residue from?
A If my memory serves me right it was Detective Woods.
Q And when did you receive them from Woods?
A Sometimes on that next day on the 14th.

Q Did you keep a record of, chain of custody record, as to actually when he gave it to you?
A No, sir, I did not.
Q Okay. So this is purely based upon your memory?
A Yes.
Q Where were you when he gave it to you?
A In my office.
Q And did you know what time or when did he took those gunshot residue kits?
A I don't know what time. I know it was sometimes during the 13th, I mean 14th, after this incident take place.
Q Do you know where he obtained them from?
A Where he obtained them from?
Q Where were those persons when he actually took the samples from?
A They was at Marion Police Department.
Q Is that the Marion Police Department?
A Yes.
Q They were not taken at the scene?
A No, sir, they was not taken at the scene.
Q And I think you previously testified -- and correct me if I'm wrong -- is that it was Detective Woods and/or Officer Woods and Captain Gray that questioned those three individuals down at Marion County Detention Center in Marion City Police Department and those three individuals

I'm talking about?
A Yes.
Q Is McElveen, Bellamy, and Ms. Dozier Wilson?
A That is true, correct.
Q Were any notes or recordings made from their questioning that you came across when you assumed the investigation?
A No, sir.
Q Was any turned over to you?
A No, sir.
Q Now if you can indulge me just a moment, Your Honor, I may be about finished. Did you question any witnesses at the scene that night?
A No, sir.

MR. BROOKER: Indulge me just a second, Your Honor, I think I'm about finished. I need to be absolutely certain. I don't think I have any further questions, Your Honor.

THE COURT: Any redirect?

MR. DEBERRY: No, Your Honor.

THE COURT: Thank you. All right. Jurors, lunch is here. I'm gonna ask you step back into the jury room or eat lunch. If you need to take a smoke break let the bailiff know. We're going to start back 45 minutes sharp. You may step down.

(WHEREUPON, the jury was removed from the courtroom at 12:12 p.m.)

THE COURT: We will recess till 1:00.

(WHEREUPON, a lunch break was taken.)

THE COURT: Go ahead and bring out the jury.

(WHEREUPON, the jury was returned to the courtroom at approximately 12:55 p.m., and the following proceedings commenced in open court.)

THE COURT: Call your next witness.

MR. DEBERRY: Thank you, Your Honor. The State calls Latoya Davis.

THE CLERK OF COURT: Come around and let me swear you in please. Place your left hand on the Bible, raise your right hand.

WHEREUPON,

LATOYA ANTOINETTE DAVIS,

having been duly sworn by the Deputy Clerk of Court, testified as follows:

MR. DEBERRY: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. DEBERRY:

Q Latoya, could you speak up so the jury can hear you. First of all, and could you just tell the court reporter your full name.

A Latoya Antoinette Davis.

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Q Okay. And where do you live, Latoya?
A [redacted], Marion, South Carolina.
Q So you live on East Barnes Street here in Marion?
A Yes, sir.
Q Okay. How long have you lived there?
A About ten years now.
Q Ten years? All right. I'm gonna ask if you can -- Your Honor, I'm going to show her what's marked State's Exhibit 19. Could you step down. Can you tell the jury what street this is?
A Well, this is -- that street, does that say Pine Street?
Q And this is East Mullen Street?
A Uh-huh.
Q What street is this?
A Bond.
Q Okay. Can you point to the jury where your house is on Bond street?
A Right here.
Q Okay. So your house is right in here?
A Yes, sir.
Q And have you ever been to [redacted]?
A Yes, sir.
Q Okay. And if you had to walk from East Mullen Street to Bond Street how long would that take you?

A Like two to three minutes.
Q So it's not a very great distance.
A Huh-uh.
Q Okay. Is there any possibility doesn't look there'd be any streets between here?
MR. BROOKER: Objection to leading.
THE COURT: Sustained.
BY MR. DEBERRY:
Q Okay. Is it possible for one person to walk through here?
MR. BROOKER: Objection to leading.
THE COURT: Overruled.
THE WITNESS: Yes, sir.
BY MR. DEBERRY:
Q Okay. All right. You can take the stand back. Thank you. Latoya, can you just show this alternate juror one time.
A This is East Mullen Street.
Q Where is the house you said you had been to before?
A Right here.
Q And where would your house be on Bond Street?
A Right here.
Q Okay. All right. And you testified that's just a short walk if you had to walk?
A Yes, sir.

Q Okay. Were you living on Bond Street where you just pointed out in May of 2007?
A Yes, sir.
Q Okay. And do you remember May 13th, 2007?
A Yes, sir.
Q Okay. And you know that's the events that took place that day that's why we're here today?
A Yes, sir.
Q Okay. Do you know Shawn Reaves?
A Yes, sir.
Q Do you see him here in court today?
A Yes, sir.
Q Okay. Is he sitting at defense table?
A Yes, sir.
Q Okay. And do you know if he's got -- do you know another name for Shawn Reaves?
A Mister.
Q Mister, okay.
A (Shakes head.)
Q And how long have you known Shawn Reaves?
A About six, seven years.
Q Okay. If you can just speak up for us.
A Okay.
Q Latoya, were you at [redacted] on Mother's Day that year, 2007?

A Yes, sir.
Q All right, what were you doing over there?
A I was just over there talking.
Q Was there a group of people you were with?
A I was with Joemilla.
Q With who?
A Joemilla.
Q And what's her last name?
A Wilson.
Q Okay. And about what time in the day was it when you and her or when y'all were there together?
A Daytime. It was going on nighttime.
Q It was going on nighttime? Okay. And can you tell the jury what happened there that day with y'all and if you left and under what circumstances you left?
A That night her and Keshawn started fighting and I live -- when I went home I heard gunshots.
Q Okay. So you said that they got -- they started fighting?
A Uh-huh.
Q And you left?
A Uh-huh.
Q And so did Joemilla not go with you? She stayed there?
A Yes, sir.
Q Okay. And where did you go?

A I went home.
Q Okay. You went home to Bond street?
A Yes, sir.
Q Okay. And that was where you testified to just a few minutes walk?
A Yes, sir.
Q Okay. And you testified that you heard gunshots?
A Yes, sir.
Q Okay. Were you sure that's what you heard?
A Yes, sir.
Q Okay. And tell the jury what you saw shortly after the gunshots?
A After gunshots I saw Shawn get in a gray Civic Honda with tinted windows.
Q Okay. Where did you see him get in, into that car?
A It was like about the street, by the street light.
Q Was it close to your house?
A Yes, sir.
Q Okay. And you say he -- when you say Shawn are you talking about Shawn Reaves?
A Yes, sir.
Q Okay. How -- how close to the street light was Shawn Reaves when you saw him get into the gray Honda Civic?
A Well, if you were standing back ---
Q If you're the car, and I'm the street light, how do I

need to back ---
A No, you need to come up.
Q About...
A About right.
Q So that's how close he was to the street light?
A Uh-huh.
Q And how far away were you when you saw Shawn Reaves get into the Honda Civic?
A You can step back a bit. About right there.
Q About right here? Okay. So you saw all in that close proximity a close distance?
A Uh-huh.
Q Is there any doubt in your mind that you saw Shawn Reaves ---
A Sir?
Q ---get in that car?
A Yes, sir.
Q You're sure that he was Shawn Reaves?
A Uh-huh.
Q Yes or no?
A Yes, sir.
Q Okay. Is that all you saw after the gunshots?
A Yes, sir.
Q Okay. I have no further questions. Please answer any questions Mr. Brooker has.

CROSS-EXAMINATION

BY MR. BROOKER:

Q Ms. Davis, when any shooting took place you had already left I think [redacted]; is that correct?

A Yes, sir.

Q So just to be absolutely certain, he wasn't a direct witness to any shooting; were you not?

A No, sir.

Q And you're not here to tell this jury that you directly witnessed Shawn Reaves shoot anybody; is that correct?

A No, sir.

Q And you can't say that; is that correct?

A No, sir.

Q All right. Now I think you said that you were over there with Joemilla; is that correct?

A Yes, sir.

Q And that y'all were over there just before dark?

A Yes, sir.

Q Okay. And I think you said that eventually did Ramel Applewhite come?

A Yes, sir.

Q Okay. Now did Ramel Applewhite, did he come over there twice?

A I think so.

Q You think so?

A Yes, sir.
Q Okay. He did not came over there earlier when you and Joemilla was there and y'all left?
A I—
Q Just tell us what your involvement. If you don't remember it's okay.
A I don't remember.
Q Okay. Now you remember when he came there and when the fight started between Ramel Applewhite and Joemilla; is that correct?
A Yes, sir.
Q Okay. And where was Joemilla? Where was Joemilla when Ramel Applewhite arrived?
A In the house.
Q Okay. And who was she in the house with?
A One of her friends.
Q Was that Brandon Bellamy?
A I don't remember.
Q Okay. Do you know whose house it was?
A His aunt's.
Q Whose aunt?
A Deshawn.
Q Okay. Do you know him by Deshawn?
A Yes sir.
Q You don't know him by Brandon, okay. Okay. So I'll

ask that using -- Deshawn, was she in the house with Deshawn Bellamy?

A Yes, sir.

Q Okay. And don't tell me what anybody says, but what happened when Ramel Applewhite arrived?

A Him and her started fighting.

Q Okay. Did -- okay. Did Joemilla eventually came out of the house?

A Yeah.

Q Okay. And did they start fighting immediately or what happened?

A They was fussing, then they started fighting.

Q And where were they fighting at?

A In the street.

Q Okay. Was this in front of the house or was this down the road from the house?

A In front.

Q Did I -- they ever go down the road and out to down the road?

A Yes, sir.

Q So they went down the road and they got in right down the road?

A Uh-huh, yes, sir.

Q Okay. I'm sorry, go ahead.

A Yes, sir.

Q They got in a fight down the road first?
A I don't remember.
Q Okay. But what did you see when they got in a fight down the road? What happened?
A He pushed her on the ground and it was -- he was fighting.
Q Fighting, talking about fighting?
A Yes, sir.
Q Okay. Now did anyone broke it up when they were fighting down the road where -- I'm talking when they walked down the street.
A I don't remember.
Q Okay. Now you said they also fought in front of the house?
A Yes, sir.
Q Okay. When you said fight, what happened when they were fighting in front of the house?
A Just about the same thing.
Q It was fist fighting?
A Yes, sir.
Q Did he threw her down into a puddle or either into mud?
A Yes, sir.
Q Did anyone broke that fight?
A I don't remember.
Q Okay. Now at that point in time did you leave?

SW - L. DAVIS - CROSS

A It was nighttime.
Q No. I'm talking about did you left after the fight had start?
A Yes, sir.
Q Was that second fight up at the house?
A Yes, sir.
Q Okay. And why did you leave at that particular point in time?
A 'Cause I was to be go home just because.
Q Okay. Okay. Now when you left and you pulled off.
A Huh.
Q When you pulled off, where was Joemilla when you pulled off in your car to leave?
A I don't know where she was.
Q Where was Ramel Applewhite?
A I don't know where he was at.
Q Where was they when you last saw them before you left?
A In the yard.
Q Were they still fighting at that time?
A No, sir.
Q Okay. Now I think you said you drove home and what happened when you got home?
A I heard gunshots.
Q When -- did you hear it instantly after you got home?
A Yes, sir.

Q Were you in the house or were you outside?
A I was outside.
Q You were outside of your house? Indulge me for just a second. So you were always outside of the house. You never went -- you never was inside of the house when you heard the shots?
A No, sir.
Q Now have you talked with any of the investigators in connection with this case? If you remember.
A No, sir.
Q No. That you don't remember or, no, that you didn't talk with anyone, any of the investigators in the case?
A I don't -- I talked to, yes, sir.
Q Who did you talk with? Well, let me ask, I'll just ask directly. Did you talk with Lieutenant Blue in connection with this case?
A Yes, sir.
Q All right. And when did you talk with Lieutenant Blue, if you can remember?
A It was in 2007.
Q Okay. Was it days or weeks after the shooting?
A Day after.
Q The next day after?
A Yes, sir.
Q Okay. Did he contact you or did you contacted him?

A He contacted me.
Q Okay. And did he come over to your home and talk with you?
A Yes, sir.
Q You said after the shooting you said you saw Shawn Reaves leaving that black Honda -- I'm sorry, gray Honda; is that correct?
A Yes, sir.
Q And that this would have been after the shooting?
A Yes, sir.
Q Now when you were there at the scene, approximately how many other people were there at the scene?
A A lot. It was more than five.
Q More than ten?
A No.
Q I'm sorry?
A No.
Q Okay. Can you hear over in the corner?
THE POTENTIAL JUROR: She -- she needs to speak up.
BY MR. BROOKER:
Q I'll ask again. Speak up. Was there more than ten people?
A No.
Q Okay. No, no more than ten people so somewhere between

five to ten people at the scene ---
A Yes, sir.
Q ---that was out there.
A Yes, sir.
Q Is that correct? Now I think you said that Joemilla was in the house, and I think you said you know him as Deshawn Bellamy?
A Yes, sir.
Q Do you know what their relationship was?
A Friends.
Q Okay. Now when you say friends, I'll kind of pressure a little bit on what your definition is. Were they intimate? If you know.
A I don't know.
Q Okay. And don't tell me what anybody says, but have you -- prior to this particular day were you and Joemilla good friends?
A Yes, sir.
Q Okay. And don't tell me what she said to you. I'm just going to ask you whether or not you had the conversation. Did y'all have a conversation about Brandon or Deshawn Bellamy prior to that? Had she talked with you about Deshawn Bellamy prior to this particular day?
A No, sir.
Q If she didn't talk with you about Deshawn Bellamy prior

to that particular day how would you have known they were friends?

A 'Cause I be with her.

Q You've just been with her and you've seen them together on previous occasions?

A Yes, sir.

Q Now. And I am asking you what your present sense impression was. When Ramel Applewhite came to the scene what were your impressions of his temperament?

MR. DEBERRY: Objection, Your Honor.

THE COURT: Grounds.

MR. DEBERRY: Your Honor, I think it calls for hearsay and I don't think that she can testify to that. Calls for speculation as well, and I mean, present sense impression.

THE COURT: Just rephrase the question and lay a little bit of foundation.

BY MR. BROOKER:

Q I'm asking you your opinion.

MR. BROOKER: I think she can testify what her opinion is.

MR. DEBERRY: Objection, Your Honor, a lay witness cannot testify to their opinion. They have to be qualified as an expert to get their opinion.

MR. BROOKER: If he'd allow me to finish I think

he'll find I'm not asking her -- to ask for opinion. In reference -- I'm asking for her opinion with respect to her feelings or her impressions. She can testify to what her impressions were when -- what her feelings were.

THE COURT: Good.

BY MR. BROOKER:

Q Did you have any feelings -- and I'm not asking you if that's what Mr. Ramel Applewhite actually was. Did you have any impressions -- I'm asking you for your impressions -- as to whether or not he was upset when he fought?

A I don't know.

Q You don't know?

A Huh-uh.

Q Asking you, again, for your feelings.

MR. DEBERRY: That's asked and answered, Your Honor.

MR. BROOKER: No. No.

THE COURT: Go ahead and finish your question.

MR. BROOKER: Wish they would allow me to ask before they do the objection so I'd know whether or not it's asked and answered. Okay.

BY MR. BROOKER:

Q I'm asking you your impression at a different point in time. I think I asked you what was your impressions when

he arrived. I'm asking you now, what was your impression, do you have an impression with respect to whether or not he was upset when they started fighting?
A Yes.
Q What was that impression?
A That he was kind of mad.
Q And I'll ask you -- and you tell me whether you know or not -- do you know why he was mad? If you don't know you say you don't.
A No, sir.
Q Now if you can indulge me just a second, let me make sure I don't have any followup questions. Now when you talked with Detective Blue I think you said, I think it was the next day, did you give Detective Blue a written statement?
A Yes, sir.
Q You did give him a written statement?
A Yes, sir.
Q Did you write it there at the house?
A Yes, sir.
Q And did you sign it?
A Yes, sir.
Q And did you date it?
A Yes, sir.
Q Did you talk with anyone else other than Detective Blue

from the Marion City Police Department about this investigation?

A No, sir.

MR. BROOKER: I have no further questions.

THE COURT: Thank you. Redirect.

MR. DEBERRY: None, Your Honor.

THE COURT: You may step down. Call your next witness.

MR. DEBERRY: Your Honor, we call Joemilla Wilson Dozier.

THE COURT: Is this your last witness?

MR. DEBERRY: It is, Your Honor.

THE COURT: You got your witnesses lined up?

MR. BROOKER: I don't know if they're downstairs or not, Your Honor, so they never were released. So if, I'd have to check and see if they're -- they definitely. were subpoenaed. Assuming they're, like I said, they never were released, they should be here. We subpoenaed chief -- we subpoenaed Captain Gray.

(WHEREUPON counsel approached the Bench for an off-the-record discussion.)

WHEREUPON,

JOEMILLA WILSON,

having been duly sworn by the Deputy Clerk of Court, testified as follows:

THE DEPUTY CLERK OF COURT: Have a seat in the witness box.

MR. DEBERRY: Thank you.

DIRECT EXAMINATION

BY MR. DEBERRY:

Q Could you please speak up, for one, to make sure the jury can hear what you have to say, and tell the court reporter your name.

A Joemilla Wilson.

Q Joemilla Wilson?

A Yes, sir.

Q Okay. And are you from Marion, Joemilla?

A Yes, sir.

Q Okay. And have you been from around here all your life?

A Yes, sir.

Q Okay. And were you in Marion back in May, or May the 13th, 2007?

A Yes, sir.

Q Okay. And at that point in time did you know a Ramel Deshawn Applewhite?

A Yes, sir.

Q Okay. And had y'all or were y'all, had y'all been in a relationship?

A Yes, sir.

Q And can you explain on Mother's Day of that year what y'all's relationship was?
A He wasn't my boyfriend then.
Q Okay. So he -- was he previously your boyfriend?
A Yes, sir.
Q Okay. And on that day had -- have you ever been over to [redacted]?
A Yes, sir.
Q And what was your purpose for going to East Mullen Street?
A I was going to see somebody, going to see Deshawn.
Q Deshawn, and what's his last name?
A Bellamy.
Q Okay. And at that point in time were y'all in a relationship?
A Me and -- no, me and Keshawn weren't.
Q Okay. So what would you classify, just a friend or?
A Yes, sir.
Q Okay. And who did you go there with that day?
A Latoya.
Q And who is Latoya? What's her last name?
A Davis.
Q Okay. And had you been there -- about what time or, did you go there just one time that day or can you tell the jury about that day?

A I went one time, then I left, and then I came back a second time.
Q Okay. Were you with Latoya both times?
A Yes, sir.
Q Okay. And did Keshawn come to [redacted] that day?
A Yes, sir.
Q And what do you believe that -- why did he come there?
A He came two times.
Q Okay. What time -- when was the first time?
A The first time he came -- when I saw him coming up the street I left. I could see him coming around the curve so we passed each other when I was going down the road. And I could see that he had stopped at the house, but I don't know what happened 'cause I left. And then I waited like maybe a hour, maybe a hour, hour-and-a-half, then I came back and ---
Q The first time he came back, about what time would it have been?
A I'm not sure. I know it was before -- it was dark outside.
Q It was dark outside?
A Yeah.
Q You say you waited an hour. Were you trying to avoid Keshawn?

A Yes, sir.
Q Okay. How close in time to y'all's relationship was that?
A What do you mean?
Q I mean, had y'all recently decided not to be together or?
A Yeah, like maybe the month before.
Q Okay, all right. So did eventually y'all see each other there at East Mullen Street?
A The second time.
Q Okay. And when he got there where were you?
A In the house.
Q Okay. And did you come outside to talk to him?
A Yes, sir.
Q Okay. And what happened when you came outside?
A We went in the street and we talked for maybe one or two minutes. Then we start arguing, then we started fighting.
Q Okay. And did the fighting take place -- where all did the fighting take place?
A Like at the edge of the yard and mostly in the street.
Q When you say in the street, was it down the street or right in front of the house or?
A In front of the house.
Q Okay. Now how many people were there at the house when

this was going on?
A I'm not sure. It was -- I don't know. It was just a lot of people outside. I don't know how many exactly.
Q Would you say maybe between five to ten or more?
A Maybe about ten, maybe ten.
Q About ten? Okay. And do you know Shawn Reaves?
A Yes, sir.
Q And do you know another name he may go by?
A Yes, sir.
Q What is that?
A Mister.
Q Okay. And do you see Shawn Reaves in the courtroom today?
A Yes, sir.
Q Is he sitting at the defense table?
A Yes, sir.
Q All right. Joemilla, you testified that y'all were fighting in the street at the edge of the yard.
A Yes, sir.
Q Was anybody -- was anybody with Keshawn?
A Yes, sir.
Q Do you remember who they were?
A Jackie, Travis, and Nicole.
Q So there was two guys and a girl?
A Yes, sir.

Q And did you know them from previous occasions?
A Yes, sir.
Q Okay. Did you feel threatened by them being there?
A No, sir.
Q Okay. So did anybody try to break the fight up at any point?
A Yes, sir, but they couldn't. They were trying to just, yeah, break it up a little bit but they couldn't break it up.
Q You remember who was that?
A Really mostly Jackie.
Q Okay. When you say Jackie was there trying to keep peace?
A Yes, sir.
Q All right.

MR. BROOKER: Objection to leading, Your Honor.

THE COURT: Sustained.

BY MR. DEBERRY:

Q Could you tell the jury what you witnessed? At some point when the fight was over with what happened. Tell the jury what happened.
A I went walking back towards the house, and I like, when I was going back toward the house Keshawn was walking towards his car. But then I hear him coming up behind me, and I could hear -- I don't know who it was; it was either

Jackie or Travis. One of them was telling him, man, just let's go. And I could hear him coming up behind me and I was going towards the porch. And as I was about to walk up the steps, he walked up and pushed Shawn and snatched his chains off.

Q Okay. So where was Shawn standing?

A On the side like on the side of the porch.

Q Okay. So what happened at that point?

A That's when he pulled the gun out and started shooting.

Q Who pulled the gun out?

A Shawn.

Q And did you see anything about that gun?

A I know it was a silver revolver; that's all.

Q All right. And do you know how many -- and you say started shooting?

A Yes, sir.

Q And what happened?

A I couldn't hear like, everything got quiet. I couldn't hear, but I could see the firing coming off the gun and then Keshawn fell forward. And I don't know where everybody else went after that.

Q How far from you, when you say you saw a silver revolver in Shawn Reeves' hands and you saw fire coming out of that revolver, if I'm Shawn Reaves how far away was I from you?

A Back up a little bit. No, come forward. Like maybe, maybe one step back. Okay.
Q We were this close in relation?
A Yes, sir, but he wasn't standing directly. I was kind of catty -- Keshawn was beside me.
Q Was anything blocking the view between you and that silver revolver?
A No, sir.
Q And you say you saw fire coming from the end of that revolver?
A Yes, sir.
Q And you testified after you saw the fire coming from the end of that revolver that Keshawn fell to the ground?
A Yes, sir.
Q Who was shooting that revolver?
A Shawn.
Q Is that Mister?
A Yes, sir.
Q Joemilla, did you hear any other shooting?
A No, sir. I didn't even hear that. I just -- everybody got real quiet; I could see it.
Q Okay. So did you say -- you say you just couldn't hear anything?
A Yes, sir.
Q Okay. So you couldn't have heard any other gunshots?

A No, sir.
Q All right. Joemilla, what did you do at that point?
A Well, when Keshawn fell forward -- I had like, like the porch, and then it was a driveway. There was a car in the driveway. I had ran like around the car. And then when I noticed everybody was gone I came running from around the car and ran to Keshawn, and I was like pulling his arm but I thought it was hurting him so I stopped on his arm. And then by then Jackie and Travis were coming up, and Keshawn was trying to get up but he couldn't. He took like maybe one or two steps and he fell back down. Then that's when they got him and were trying to pull him to the car. They pulled him to the car.
Q So you were still outside at that point?
A Yes, sir.
Q What did you do when that happened?
A When they pulled him to the car I ran in the house to call the ambulance; but by the time I did that, I saw the ambulance had came already. Like, I don't know if somebody else had call them; but by the time I was getting ready to call, I saw the ambulance and the police and everybody come up.
Q Okay. So you were in the house at that time?
A Yes, sir.
Q Tell the jury how, I mean, what kind of emotional state

were you in?
A I was scared. I, like I couldn't, I was really scared. I was shaking; my hands were shaking. I couldn't hardly hold the phone to even dial 9-1-1.
Q All right. And you testified that the police were in the yard at that time?
A Yes, sir.
Q Did you know what to do?
A No, sir.
Q What did you do?
A I stayed in the house and, because I assumed -- I didn't go back outside. I thought the ambulance and everything were just going to come and take him on to the hospital. Then the police came in the house. When the police came in the house they had everybody in the kitchen. And they brought the dogs, and they were asking me, like, they were saying ---

MR. DEBERRY: Hold on just a second.

MR. BROOKER: Objection.

THE COURT: Don't say anything anybody else said.

BY MR. DEBERRY:
Q Just don't -- where were you when the police came in the house?
A In the kitchen.
Q You were in the kitchen, okay. You testified that you

were scared?
A Yes, sir.
Q Was -- who else was in the house with you?
A Me, Keshawn, his momma, and I think his little brother, and maybe his other brother. Yeah, his other brother.
Q Okay. Was McElveen in the house with you?
A Yeah.
Q Okay. Do you remember if any those people that were in the house with you, were they outside when the shooting happened?
A I don't -- I remember seeing Deshawn on the porch like when I first come -- when I came outside the first time he came outside behind me, but after that I don't remember if he stayed outside or whether he went in.
Q All right. But you're testifying that Shawn Reaves is the only person that you saw shoot ---
A Yes, sir.
Q ---Keshawn? All right. What did the police ask you to do that night?
A When I got to the police station they checked my hands for the gunpowder, and then I had to write a statement. And they took some pictures of my face and where I had bruises and everything and that was it.
Q Okay. And did -- at some point in time did Lieutenant Farmer Blue present you with a photo lineup?

A Oh, yes, sir.
Q Okay. And I'm gonna hand you what's marked as State's Exhibit -- or Defense Exhibit 14. Do you remember if that's the lineup they showed you?
A Yes, sir.
Q Okay. And do you remember who you identified as the shooter?
A Yes, sir.
Q And who was it?
A Number 3.
Q And who is number three?
A Shawn.
Q I'm gonna show you what's marked as State's Exhibit Number 2. Do you remember -- do you recognize that piece of paper?
A Yes, sir.
Q All right. Is this the piece of paper they showed you for you to make your determination on the lineup?
A Yes, sir.
Q All right. And whose signature is that?
A Mine.
Q So you signed this piece of paper?
A Yes, sir.
Q Okay. And beside where it says photo number 3 did you --

A Initial.
Q That's your initial?
A Yes, sir.
Q Did you do that?
A Yes, sir.
Q Okay. How long after the shooting was do you know if this took place?
A I'm not sure.
Q Okay. Is there a date on here?
A The 21st, May 21.
Q Joemilla, did Deshawn Bellamy have -- if you know, answer this question. If you don't know, I guess, say you don't know. But did Deshawn shoot Ramel?
A No, sir.
Q Okay.

MR. BROOKER: Objection, Your Honor, calls for speculation. I think she said in the shooting she previously testified in the shooting took place she wasn't quite sure whether or not he was outside. So calls for speculation.

THE COURT: I'm going to overrule it. He qualified the question and told her if she didn't know not to answer, not to speculate. She can answer the question.

MR. DEBERRY: Thank you.

///

BY MR. DEBERRY:

Q Did you shoot Keshawn?

A No, sir.

Q Do you know or do you believe Travis Lane or Jackie McGill shot Keshawn?

A No, sir.

Q Who did you see shoot Keshawn?

A Shawn.

Q Okay.

MR. DEBERRY: Your Honor, I just have a question if State's Exhibit Number 2 is admitted into evidence.

THE COURT: Any objections?

MR. DEBERRY: I don't know if it may be or not.

THE COURT REPORTER: It's not.

MR. BROOKER: No objection, Your Honor.

THE COURT: State's 2 in the evidence without objection.

(WHEREUPON, State Exhibit No. 2 was admitted into evidence.)

MR. DEBERRY: Thank you, Your Honor. I have no other questions.

Please answer any questions Mr. Brooker has.

THE COURT: Cross.

MR. BROOKER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BROOKER:

Q Joemilla, I think you testified -- Joemilla Wilson. I think you testified that you were at Shawn's house and then -- you were at Shawn's house, I think, on one occasion that day. And excuse me, not Shawn but Brandon Bellamy; I think you know him as Deshawn. He was at Brandon Bellamy, Brandon Deshawn Bellamy's house on one occasion, when you said you saw Mr. Applewhite came by; is that correct?

A Yes, sir.

Q And you said you immediately left?

A Yes, sir.

Q Okay. And why did you immediately left when you saw that Mr. Applewhite was coming?

A Because I already knew he come -- like, I already knew that by him coming over there it was going to be some type of problem.

Q Okay. Now you knew that there was going to be some sort of problem. Had you talked with -- had you talked with Keshawn Applewhite on prior to that particular day?

A Yes, sir.

Q Have y'all talked about -- you don't tell me what you said. Did y'all talk about Brandon Bellamy?

A Yes, sir.

Q Based upon that conversation did you fear for your own

safety that day?
A Yes, sir.
Q Did you fear for Brandon Bellamy's safety that day?
A Yes, sir.
Q Now you said that you and Shawn Bellamy were just -- excuse me, you said you and Brandon Deshawn Bellamy were just friends?
A Yes, sir.
Q Were y'all ever intimate prior to that particular day before the shooting?
A Yes, sir.
Q Y'all were intimate?
A Yes, sir.
Q To your knowledge -- and you tell me if you don't know -- to your knowledge did Mr. Applewhite know about that?
A The only reason he knew that I had started talking to Deshawn is because me and Deshawn had started being out in Marion like going different places like Wal-Mart and stuff like that. People would call him and tell him. And I had ran into his cousin one day and she came and gave me the phone. That's the only reason he had found out.
Q Okay. So when -- I just want to make sure I understand. So when you're talking about friends y'all were started dating or either seeing each other?

A Yes, sir.
Q So this just wasn't just a casual friendship?
A No, sir.
Q Somebody you just know?
A No, sir.
Q Y'all were starting to date each other?
A Yes, sir.
Q And now when you got in that car and left, were you leaving to try to avoid a confrontation?
A Yes, sir.
Q And I think you testified that when you drove past, when you got in the car -- I'm assuming this was the -- this was the -- you were in the car with Miss Latoya Davis; is that correct?
A Yes, sir.
Q Okay. Now to your knowledge -- and did you talk with Latoya Davis, don't tell me what she said or anything like that. Did you talk with Latoya Davis about your relationship with Keshawn?
A No, sir.
Q Okay. Did she know about your with relationship with Keshawn?
A Yes, sir.
Q Did she -- and if you don't know whether or not she knew, to your knowledge was she aware that you and Deshawn

were intimate, Deshawn Bellamy?
A No, sir.
Q Now you said that you broke up with Keshawn Applewhite about maybe a month earlier; is that correct?
A Maybe a month, yeah. Probably a month or a little bit over a month but it wasn't ---
Q Did y'all -- did you break up with him or did he break up with you?
A He just ---
MR. DEBERRY: Objection, Your Honor, I don't think that's relevant.
THE COURT: Overruled. Continue.
BY MR. BROOKER:
Q Did you break up with him or did he break up with you?
A No, I stopped talking to him.
Q Okay. Now you tell me, did you talk with him and told him that you were breaking up with him?
A We were living together.
Q Y'all were living together? Did you -- and did you moved out?
A Yes, sir, I moved back here.
Q Okay. And you tell me, what were your impressions? And I'm asking your impressions. Did you feel as if he was upset about y'all breaking up?
A He was, I mean, I think what really made him upset that

I started talking with somebody else just that like right after meeting him I start talking. That's what really upset him.

Q Did you know whether or not he wanted to break up with you?

MR. DEBERRY: Objection, Your Honor, she can't know that.

THE COURT: Sustained.

MR. BROOKER: She can ask -- well.

MR. DEBERRY: That's highly improper.

THE COURT: What she knew. She can say what she knew.

MR. BROOKER: Well, that's what I'm asking her. If she don't know she'll say no.

THE COURT: She can't speculate as to what he was thinking.

MR. BROOKER: No, what I'm saying is ---

THE COURT: What was the question again?

MR. BROOKER: Well, I was asking did she know because she obviously talked with him. It wouldn't be speculating.

THE COURT: Did she know what?

MR. BROOKER: Whether or not she was upset about the breakup. She obviously talked with him.

MR. DEBERRY: Your Honor, that's improper.

MR. BROOKER: I'm asking did she knew. If she didn't know she can say no.

THE COURT: I don't think that's the question you asked earlier; but in respect to that question, it was was he mad when you broke up. Is that what —

MR. BROOKER: Did she know if he was mad?

THE COURT: All right, you can ask that. Go ahead.

BY MR. BROOKER:

Q Do you know whether or not he was mad?

A Not at the moment. Like I said, not at the moment. He really just got upset when I started talking to someone else.

Q Okay. Now I'm gonna take you back when you left, you said you left the first time.

A Yes, sir.

Q You left the first time because you said you thought they were going to be trouble, and I think you said you left for, if I'm -- correct me -- you said about an hour, hour-and-a-half you left?

A Yes, sir.

Q And then you came back?

A Yes, sir.

Q Okay. Now when you left the first time you testified that the car you were in drove past Keshawn White's car;

is that correct?
A Yes, sir.
Q All right. Was there anybody else in the car? You tell me if you know. Did you see anybody or not? Did you see anybody else in the car with him at that time?
A Yes, sir.
Q Who did you see in the car with him at that time?
A It was his cousin, one of his friends, and his wife.
Q Okay.
A The first time.
Q The first time it was his cousin. And are you talking about Karen Graves?
A Yes.
Q Okay. It was his cousin; it was his friend?
A One of his friends.
Q Do you know which friend it was?
A It was a boy. He not from -- yes, he from Marion but I forgot his name. It wasn't like Jackie or anybody like that.
Q It wasn't Jackie McGill?
A No.
Q It wasn't Travis Lane?
A No.
Q Do you remember Jackie McGill and Travis Lane?
A Yes.

Q Okay. So he had one of his other friends in the car with him?
A Uh-huh.
Q And you said he had his wife in the car with him?
A His friend's wife, yeah.
Q I'm sorry?
A His friend's wife.
Q His friend's wife in the car, okay. And when you passed by did they stop at [redacted]?
A I don't -- I don't know. I saw the car pass by but he just kept on.
Q Okay. Now when you came back you said you came back, and how long were you there before Mr. Applewhite came back?
A I don't remember exactly how long it was; but when I came back, like I said, I just went straight in the house so I don't know how long it was.
Q Okay. Was it more than a minute?
A Yeah, it was more than a minute?
Q More than ten minutes?
A Yeah, more than ten minutes.
Q Was it more than 20 minutes?
A I don't know.
Q Okay. You know it was more than ten minutes, but you're not sure if it's more than 20. Okay. Now when

you're inside the house how did you learn that Keshawn Applewhite was outside?
A Rodney came and said, hey, Keshawn outside.
Q Yes, ma'am. Before the objection, yeah, you can't say what someone else says.
A Someone say Keshawn outside.
Q Okay. What did you do when you learned that Keshawn was outside?
A I didn't believe at first that he was outside because I knew he had to go back to Georgia because he had to work Monday. So I assume after the first time that he was already on his way back to Georgia. That's why I tried to wait before I went back over there.
Q Okay. Now did you look out the window to see whether or not he was out there?
A No, sir, I just went back in the living room and, like, they had a glass door so I saw him outside.
Q And what did you do at that time?
A I went to the door at first. I wasn't going to go outside and then he was like, just come outside, I just want to talk to you.
Q Again, I remind you you can't say what someone else says. It's going to be hearsay. Don't tell me what anyone else says. You can tell me what somebody do and what you say but you can't -- but that's it. You can tell

me what you say and you can tell me what someone else physically do, but not what they say. Okay?

A Okay.

Q All right. So were you scared to go outside?

A Yes, sir.

Q And why were you scared to go outside?

A Because I know how Keshawn -- well, I knew how he was so I already knew if I went out there me and him was going to get in an argument or either end up fighting.

Q Now if you were scared to go outside -- and I'm just asking you about your own thought -- why would you go outside?

A 'Cause he wasn't going to leave 'cause I could look past him and I saw Jackie and them standing at the car so I already knew. So I just went ahead outside thinking if I just go ahead outside, and we just go ahead and talk whatever, then he just going to leave and that will be the end of it.

Q Now if you don't know, say you don't know. Do you know why ---

MR. DEBERRY: Objection, Your Honor. Mr. Brooker asked that the witnesses be sequestered in this trial.

THE COURT: All right, if you will just wait outside the door that will be fine, but we'll need him shortly. Continue.

BY MR. BROOKER:
Q You tell me -- if you don't know say you don't know. But do you know why Jackie McGill and Travis Lane was there?
A No, sir. All I know is when he came back they were in the car together so I don't know why.
Q Now I'm gonna ask you to -- when you finally did come out of the house, what happened when you come out of the house?
A We walked in the street. At first I was like, we could talk right here. Then he didn't want to so we walked to the street and we were talking in the street.
Q I'm going to interrupt you. Were y'all in front of the house, still in front of the house at that time?
A Yes, sir.
Q Okay.
A And we started talking. He was asking me some questions and then we started arguing. And then he slammed me like. It was like a mud puddle like kind of on the right, out the, like, right at the edge of the yard. He slammed me in the mud puddle first, then I hit my head on the back of the -- back of Latoya's car. Then once I got up we were still fighting. Then he slam me in the street. Then I got up and we kept fighting and -- we were still fighting. We fought for a good little while. Then

like I said, Jackie was trying to break us up, but then I was still trying to fight him. And then, like, I was trying to push Jackie out the way. Then we were steady fighting, fighting, then eventually we stopped fighting. And I was like, it's not even worth it, you already told me what you had to tell me so it's no need for this and then I started walking back towards the house.

Q I'm gonna stop you there and I'm gonna bring you back up to that later. Now the fight that you just described, okay, that happened in front of the house?

A Yes, sir.

Q Prior to y'all fighting in front of the house did y'all walk down the street?

A No, sir.

Q Did y'all ever walk, walk down the street?

A No, sir.

Q Did y'all ever get in a fight down the street?

A No, sir.

Q How long did this fight took place? How long did y'all physically fought?

A I'm not sure how long exactly it was, but we were fighting for a while.

Q Was it more than a minute?

A Yeah, more than a minute, more than five minutes, and more than ten minutes but it wasn't — like it wasn't like

a steady fight like. He'll slam me, then I'll get up and then Jackie will try to break it up. It was like steady fight. We'll fight, Jackie would try to break it up, I'd push Jackie out the way or then we start back fighting.

Q Okay. Now at one point in time you said that there was a break in the fight and that you were walking back towards the house?

A Yes, sir.

Q Okay. Go ahead. What was Mr. Applewhite doing at that time?

A He was walking towards his car.

Q Okay.

A And then I could hear him coming up behind me and I hear -- I don't know if it was Jackie or Travis. One of them said, man, come on, let's go.

Q Again, I just remind you that you can't say what anybody says. You can say that you can hear someone talking to him but you can't say what ---

A Well, I could hear someone talking to him and I can hear him coming up behind me at the same time. And when I got to the porch, like right in the front of the bottom step, he came -- by this time he was already beside me and that's when he pushed him, pushed Shawn, snatched Shawn chains off.

Q Now when you and him, I think you said, were fighting

and I think you said more than a minute, more than five minutes, and you were not quite sure whether or not it was up to ten minutes, you said it was a constant stop-and-go type fight. Y'all was fighting and then it would have a break or intermission and then fighting back again; is that correct?

A (No response.)

Q Okay. Where was Brandon Bellamy at that particular period of time?

A I don't know. Like I said, I remember him coming out the house behind me; but during the fight I don't even know, like, I was focused on the people that was out in the street with us.

Q Okay. So during the fight you don't know where he was —

A No, sir.

Q —at the time of the fight when the fighting was going on and off. Now just before he was shot I think you were asked on direct examination did you know where -- do you know where he was, and I think you testified that you think he was on the porch but you wasn't sure; is that correct?

A Yes, sir, I don't know. I don't remember.

Q Okay. You don't remember. Now if you're not quite sure if he was on the porch and you don't remember, how

can you testify previously that you were certain that Deshawn Bellamy —

A No, sir.

Q —was the shooter?

A I never said I was certain. I never said I was certain. I know that he came outside behind me; I do know that. And then, like I said, I assume that he's not gonna go back in the house like because it was so many people outside that he was still outside. I never told you that I know for sure that he was outside.

Q So on cross-examination — okay. So your answer to that question is that you don't know if he was outside? You don't know if he was shooting?

A No. No, no, no, no, no, no. I know for a fact he was not sitting on the side of that porch.

Q Okay.

A I'm standing right here. I can see who is standing right here beside the porch, and Deshawn was not beside the porch on the ground on the porch. I did not see him over there. The only person I saw over there was Shawn.

Q But, and I'm asking you and I think I'll give you a chance to answer it again so we can be clear. You previously testified, and I think you just testified, that you're not quite sure where he was.

A Sir —

Q I'm trying to figure out is ---
A I'm telling you ---
Q Do you know whether he ----
A No, I don't know exactly where he was. I don't know where he was, but I do know he was not standing on the side of that porch. I can see who was standing on the side of the porch, and he was not on the side of the porch. I don't know where he was. He could have been on the porch; he could have been anywhere.
Q Okay.
A I don't know where he was but he wasn't on the side of the porch.
Q And that's what I'm trying to find out is that you don't know exactly where he was.
A Right.
Q You didn't see him?
A I didn't see him on the side of the porch.
Q You don't know exactly where he was. Is that correct?
A Yes, sir.
Q Now when you were asked on direct examination as to whether or not he was shooting and you said -- and you correct me if I'm wrong because I'm getting a little bit confused; I want to make sure I got it right.
A I'll correct you.
Q Is that you says, no, Deshawn was not the shooter.

A Right.
Q Okay. And my question to you is how can you make that statement if you couldn't see him and didn't know where he was?
A Well, sir, I saw the fire coming off the gun. I saw him shoot Keshawn. I saw when Keshawn fell forward. And I was on the side of the porch too when Keshawn fell forward trying to get him up and nobody was on the side off the porch but me and Keshawn.
Q I understand that, but I'm asking you about Deshawn Bellamy right now.
A Unless he came up behind me. I didn't see anybody -- I didn't even look behind me so I don't know who was behind me. All I could see was who was in front of me.
Q So is your answer to that question yes ---
A He wasn't standing in front of me?
Q Yes or no.
A I didn't see him in front of me so I don't know where he was.
Q Did you see -- did you know whether or not he was shooting is what I'm asking?
MR. DEBERRY: Objection, Your Honor. She's answered this clearly three times.
THE COURT: Sustained.
MR. BROOKER: No, sir, she has not answered that,

Your Honor, and that's why I keep asking it.

THE COURT: Well, ask it one more time.

MR. BROOKER: I want a yes or no question.

THE COURT: All right, you got one more time.

BY MR. BROOKER:

Q Just a yes or no question and then you can explain. Did you know whether or not he was shooting?

A Sir, I'll just tell you this, he wasn't shooting in front of me. How about that?

Q So you don't know?

A Okay.

Q Is that it?

A Okay.

Q 'Cause you didn't see it?

A Okay.

Q Okay. Now you was -- you said that you were dating him at the time; is that correct?

A Sir, we were talking. We weren't boyfriend, girlfriend; we were talking. I don't know what your definition of dating. When I say I'm in a relationship with somebody that's my boyfriend. Not one time did I tell you he was my boyfriend. Dating could mean we go to the movies. Dating could mean we go out to eat. I don't know what you're trying to say.

Q I think you testified y'all were intimate; is that

correct?
A Okay.
Q Okay.
A So you have -- okay, just go ahead.
Q All right. I'm assuming if y'all were intimate you had some feelings for him.
A Okay, yeah.
Q Is that correct? You answer yes or no.
A Yes, sir.
Q Did you have any feelings for him?
A Yes, sir.
Q Now how strong was those feelings that you had for him? He had very strong -- well, let me ask you, did you -- were you in love with him?
A No, sir.
Q Now you previously testified, and this is preliminary to the question, you previously testified that when you first saw Shawn Applewhite -- excuse me, Deshawn Applewhite, come there, excuse me, when you first saw Keshawn Applewhite come there —
A Uh-huh.
Q Is that you were frightened because of previous conversations?
A Yes, sir.
Q For yourself and also for Deshawn Bellamy.

A Yeah, frightened from more than just previous conversations.
Q And were you frightened for your safety?
A Yes, sir.
Q And for Deshawn's safety?
A Yes, sir.
Q But yet, you risked coming back there to see him that same night?
A Like I said, I waited an hour, hour-and-a-half because like I said, I knew Keshawn had to work Monday and he had to drive all the way back to Atlanta and I had saw him before I went to Deshawn house the first time. He was picking up the boy, his cous— I mean his wife. And his cousin was already in the car and they were going back to Atlanta so that's why I was even shocked to even see him come in the first time. So that's why I waited the hour, hour-and-a-half thinking, well, he gonna leave this time because he got to go to work tomorrow and he's not going to miss work and he's the one who is driving.
Q Okay. Now when you hear the shots how many shots did you hear?
A I didn't hear any shots. Everything got really quiet.
Q Okay. So you didn't hear any shots. It's just -- about how quick did it happen?
A It happened -- well, it happened quick when -- like

everybody disappeared fast. But like during the time he was shooting that kind of happened in slow motion. That's why I guess I was in shock. Everything got really quiet and I could see the fire coming out the gun. Then it's like, as soon as that after the fire coming off the gun like everybody left and Keshawn fell forward and that's when I was trying to get him up.

Q So as soon as the shooting stopped you said Keshawn fell forward?

A Yes, sir.

Q And did he fell forward on his knees or he just fell completely down on his stomach?

A He fell forward on his knees.

Q Okay. And then from there did he fell on to his stomach?

A Yes, sir.

Q Now did you talk with Lieutenant Blue? Did you talk to Lieutenant Blue – I think you said that you talked with Lieutenant Blue, was it that night?

A No, sir.

Q Okay. Who did you talk to that night? I think you said that y'all were taken down, yourself, Brandon Bellamy, and Rodney McElveen were taken down to the City Police Department?

A Yes, sir.

Q Did you talk with somebody down at the City Police Department?
A Yes, sir.
Q Who did you talk with down at the City Police Department?
A Captain Gray.
Q Okay. Don't tell me what he asked you. Did you answer his questions?
A Yes, sir.
Q Did -- were you requested to write a statement?
A Yes, sir.
Q Did you wrote a statement that night?
A Yes, sir.
Q When you wrote a statement that night who did you give that statement to?
A Captain Gray.
Q Did you sign your statement?
A Yes, sir.
Q Now did you also eventually talk with Lieutenant Blue later on?
A Yes, sir.
Q Do you remember telling Lieutenant Blue that Shawn Reaves was the only shooter?
A Yes, sir.
Q Now I'm gonna ask you for clarification based on that

statement. Was that a true and accurate statement that you gave?
A Yes, sir.
Q Or was the truth was is, is that you didn't see anyone else shoot?
A The truth is Shawn is the only shooter.
Q Only one?
A That's the only one was in front of me shooting.
Q Isn't it true that you have a relationship with Brandon Deshawn Bellamy and you're seeking to cover up for him because of your relationship with him?
A No, sir. I don't care who -- I'm not even going to jail for anybody. I'm not covering up for anybody. It could have been my brother; I'm not going to do it.
Q Now when was the first time that you regained sight of Brandon Deshawn Bellamy after the shooting took place? I know you said -- you previously testified that when the shooting happened you didn't see him and you didn't know where he was. When was the first time you then gained sight of him?
A When I went in the house.
Q Now you said that prior to your going into the house that when Mr. Applewhite fell you said that you went down and get his arm and try to help him up?
A Yes, sir.

Q Is that the first time that he'd fallen after he had been shot?
A Yes, sir.
Q Okay. Did anyone else then try to help you get him up at that time?
A No, sir, 'cause he got up -- like he got up a little bit but he wasn't standing straight up. He was hunched over and he took like maybe one or two steps and then he fell again.
Q And was it after that that you then went in the house?
A No, sir.
Q Okay. Tell me what you did after that.
A When he fell the second time I was yelling because I saw Jackie and Travis coming up and I was telling them come help me get him up. And they got him, like both of them had a arm a piece. And then I saw them take him to the car and he was trying to get him in the back seat. I don't know if he was too heavy; I don't know.
Q I understand, okay. At that time that you went in the house?
A Yes, sir.
Q And I think you testified that that's when you then first gained sight again of Brandon Deshawn Bellamy?
A Yes, sir.
Q Now you testified also that law enforcement came into

the house?
A Yes, sir.
Q And you correct me if I'm wrong, on direct examination you said that you were in the kitchen when they came in the house?
A The police didn't come in like on their own. Nobody let them. They kicked the door in to get in the house. And like how the house -- I can't explain it. Like how the house is made, it's like the kitchen here, and then it's like a -- then the hallway starts. So but I consider that to be the kitchen. If I'm standing, the hallway is here and the kitchen is here and I'm standing right here. I could see them in the kitchen. The only thing separating the floor is like a little piece of metal and my feet was sitting right here so I was in the kitchen.
Q You were standing very close to the kitchen when they started kicking in the door?
A Yes, sir.
Q Did they knock before they kicked in the door?
A Yes, sir.
Q And what did you do when they started to kick in the door?
A I didn't do anything. I was scared. I didn't know what to do, no nothing.
Q You sat right there?

A I was standing up.
Q Standing right there when they came into the house?
A Yes, sir.
Q Isn't it true that when law enforcement came in the house that you and Deshawn Bellamy were discovered in his bedroom in the closet?
A No, sir.
Q So that's not true?
A No, sir.
Q How long did y'all stay down at the -- correction, scratch that question. When they came in did they immediately take you into custody?
A They were saying like, you know —
Q Don't tell me what they said, just asking —
A Well, they came with the little shield things and the guns and flashlights and everything, was like get on the floor and —
Q Don't tell me what they said. You can tell me what they did.
A And they grabbed me, put me in -- and put me like near the door and then that's when they brought the dog in. And then they handcuffed me and sat me down and got everybody else that were in the house and brought everybody into -- me, Deshawn, Rodney into the kitchen. But his little brother and his momma, they had them in the

living room. And like I said, they had the cuffs and everything on us. They brought the dogs in, checked the house, up in the little attic thing. And then they took me outside and sat me on the porch. Then I was out there I know probably about maybe no more than five, ten minutes. Then they took me and were asking me questions, and then they put me in the car and took me to the police station.

Q Now do you know who handcuffed you when you came in on the inside of the house?

A No, sir, I don't remember who it was.

Q Okay. Do you know Lieutenant Blue?

A Yes, sir.

Q Was he one of the officers that came in the house that night?

A I don't remember.

Q Okay. Do you remember any of the officers that come in the house that night?

A No, sir.

Q Approximately how many officers came in the house that night when they picked you up?

A I don't know how many. I just remember the officer -- I'm not going to say for sure but I think the officer that I got in the car with -- I forgot his name; I just remember what he looks like. That's the only officer I

remember.
Q Okay. And I think you said that pictures of your face was taken, pictures of your wounds were taken, down at the City Police Department?
A Yes, sir.
Q Who took those pictures?
A I'm not sure, but I think it was Captain Gray.
Q And where did you have wounds at?
A In my face, some my arms and legs.
Q Now was a swab taken off of your gunshot residue was taken from you?
A That was the first thing we got.
Q Who took that?
A I think Captain Gray. That's the only person I can remember.
Q Well, let me ask you, was it a white fellow or black fellow that took it?
A White. I think it was Captain Gray. That's the only person I really know by name is Captain Gray, and I think it was Captain Gray because when I got there that was the only person that was really around. Other officers came in and out but that's the only one I talked to.
Q Captain Gray was the only one you talked to?
A Yes, sir.
Q But you said it was a white person that took the gun,

A Yes.

Q ---a white fellow that took the gunshot residue kit?

A Yes, sir.

Q And what time were you released?

A I'm not sure what time it was.

Q Okay.

A It was still dark. The sun hadn't come up yet but.

Q Okay. And they released you? Is that when you were released?

A Yes, sir, after I finished my statement and everything.

Q Okay. And did someone come and pick you up from the city jailhouse?

A Yes, sir.

Q Who was that?

A My mom.

Q Okay. And we're just about finished. Other than giving a statement to Captain Gray and other than giving a statement to Lieutenant Blue I think you said, or talking to Lieutenant Blue, did you give a statement to anyone else in the law enforcement department?

A No, sir.

MR. BROOKER: Indulge me just a second, Your Honor. I have no further questions, Your Honor.

THE COURT: Redirect.

MR. DEBERRY: I have nothing further, Your Honor.

THE COURT: You may step down.

Any other witnesses?

MR. DEBERRY: Your Honor, at this time that's the State's case.

THE COURT: Members of the jury, if you would step into the jury room. We have to take up some matters of law. I will be back with you very shortly. Do not discuss the case.

(WHEREUPON, the jury was removed from the courtroom at 2:15 p.m., and the following proceedings commenced in open court.)

THE COURT: Motions?

MR. BROOKER: Yes, Your Honor, I think, Your Honor, we have a few. First to start off with a motion to dismiss this case action based upon prosecutorial -- and what I mean by prosecutorial, not the prosecutor's office but actually the prosecutor who actually represents the State -- but based upon the State's misconduct in connection with this case. And what I'm referencing is, is that this is the exact same, I think, we made a similar motion, I think, prior to, prior to the first case I think in this particular case being declared a mistrial and that is because evidence that was obviously taken in connection with this case and that has been never produced by the

State. And specifically, that evidence that we're talking about is, is that Jackie Applewhite testified on the stand that he gave a three page statement, and he gave a three page statement, a three page statement that night and give it to detective -- to Lieutenant Davis that night. That Travis Lane wrote his statement on the back of the patrol car and gave it to Detective Davis that night, or he says he assumed he gave it to Detective Davis. That the other young lady that was there, that Karen Graves wrote a statement that night, and that statement was given to Detective Davis. That Ms. Joemilla Wilson, well, testified that she gave a statement and was asked and requested to write a statement and gave a statement of that night in writing, which she signed, and gave it to, I think, Captain Gray. She said also photographs was taken of her that night and was given to Captain Gray. Latoya Davis said that when Lieutenant Blue came to her house the next day, that she was requested to give a written statement and that she did give a written statement and signed that written statement. That all of this evidence, according to Brady, according to rules, according to the Rules of Criminal Procedure, has to be produced to us so that we can appropriately cross-examine these witnesses.

We were at a disadvantage in cross-examining all of those witnesses because they were testifying to

statements that they had given that had never been produced. We did not have the advantage of looking at those statements to see whether or not there was any contradictory testimony and that sort of -- that sort of evidence is real crucial because as you can see is that there was a number of witnesses who did testify, that when we did have their statement or they are an officer who testified and we did have their notes, we could cross-examine them on inconsistencies. It is vital to the Sixth Amendment, to the Sixth Amendment right to confront your accuser. Implicit in that, implicit in that right to confront your accuser, is to be able to cross-examine them. I think the Sixth Amendment says you have a right to confront them and to cross-examinate them. We're denied that opportunity or limited in the way in which we exercise that opportunity because of just absolutely gross negligence on the part of law enforcement. There was one, two, three, four, five witness statements that we know have been lost. Five witness statements that we know that have been lost. There was one statement that was given to us that was purported to be the statements of Jackie McGill. And of course, Jackie said he didn't write that statement and he even refute that some of the things that was contained in that statement that he actually said.

Their expert witness, I think, who was -- who was

Detective Woods, testified that he took the gunshot residue test from these persons and that he gave those gunshot residue tests results to Lieutenant Blue. And of course, Joemilla just testified, and of course we all know from Detective Woods being in the courtroom during the first proceeding that he is a black fellow, and she testified that it was a white fellow that actually took the gunshot powder residue from her. And she says she believes the white fellow was Captain Gray. She says I think that Captain Gray was the only one she had spoken to that night, that other people came in and out of the room, but she had spoken to Captain Gray, given her statements to Captain Gray.

Now I know that chain of custody, that chain of custody evidence, that gunshot powder residue kit, is already into evidence and there's either one or two conclusions that can be drawn from that and that idea is that Ms. Wilson, Joemilla Wilson, perjured herself on the stand when she said that she is certain that it was a white fellow that took it. She believed it was Captain Gray. Or that when Detective Woods testified and said that he took that, that he was perjuring himself. She also said that they took photographs of her. They took photographs that night, photographs that we have never received to this day. The point is that we have been

prejudiced by this, I guess, this substantial and severe negligent handling of this case.

THE COURT: Go ahead and respond, Solicitor.

MR. MCEACHIN: Thank you, Your Honor. I'll try and address everything that Mr. Brooker just went over. First, with regard to the statements that were testified about that have not been disclosed, I will state for the record that the State has given absolutely everything. As a matter of fact, between trials Mr. Brooker was given an opportunity to look over the actual investigator's file in this case. And we have given them absolutely everything. And of course, under Rule 5 and Brady we are required to give them anything in our possession. Obviously we can't give him something that's not in our possession. And I understand his hesitancy with regard to that particular information and perhaps I think our state courts have stated that there's an appropriate charge for spoliation of evidence and he -- I believe he is entitled to that particular charge based on the different pieces of evidence that were lost in this case, Your Honor.

But as far as any type of Rule 5 or Brady violation, we've turned over everything in the State's possession. Everything in the State's possession has been turned over.

THE COURT: I agree. The lack of evidence by the

police because they lost or misplaced it or whatever, goes to the credibility of their case but it is not enough to lead to a dismissal. I'm going to deny that motion. I'll hear your next motion.

MR. BROOKER: Next motion, Judge, is going to a very brief one. It's just renewal of a motion, and of course, and but it's going to be very brief. That's gonna be a speedy trial motion because now I think when we talk about previously -- and, of course, my motion, I'll put on the record probably three minutes and I'm gonna try to keep it that because it's renewal of a previous pretrial.

THE COURT: That's good enough to protect the record.

MR. BROOKER: I know, but the reason why I'm asking, renewing it is, that obviously is there was three elements that the Court basically say you take a look at and that is the delay, the reason for the delay, the input of the -- at least mentioning of a right. And what I mean by mentioning or protesting of the right for a speedy trial and then also the prejudice that has resulted as a result of speedy trial, and now that this case is over there's no question with respect to delay there was no reasonable delay. Everything that been introduced in this case was collected in I think 2007. I entered this case in 2008. Myself or the other counselors, not one of us

ever requested, ever requested for a continuance and never we're not ready, you know, therefore that's your grounds for delay. I think that's what was stated by the State, I think, previously as a reason why, well, there was delay is because he had two attorneys. We were just giving them some time. That's not a valid ground. You can't just give us time we're not asking for it when we're ready to go. So those first two prongs I think is definitely in our favor.

And the fourth, the fourth one, which is now I think after the case has been, their case has been presented, I think is heavily in our favor and that is to prejudice. The prejudice to the defendant, you know, as a result of this delay. There has been tons. I think there's probably been more lost evidence in this case than we have sitting here today. I think it is inescapable to say that there has been no prejudice to the defendant. It seems like every time we're testifying we're finding more lost evidence, and I imagine if we continue to take witnesses we're probably going to find more lost evidence. The prejudice in this case as a result of this delay is substantial. It is substantial. It's not like they lost one or two pieces of evidence that was, you know, administerial of value in connection with this case. They're losing eyewitness statements. They're losing

evidence that was found right there near the dead body. I mean, it is just substantial. And I think even if you consider and the court says if that you take that and kind of balance those four prongs, and even if you want to say, well, the exercise of right which was done last term of court if he said you're going to lose on that prong, I think there's absolutely no question that the other three prongs, the other three elements, are clearly in our favor and probably the fourth one as well too. Because we exercised that right, I think, last term of court in August, and I think that the State was given a pass because we were there, we were ready to go, and then they were ready to go and they were given a pass.

THE COURT: Okay. Any response?

MR. MCEACHIN: Yes, Your Honor. As Mr. Brooker stated they didn't even -- and I'm not sure motion was filed with the Clerk of Court's office, but they didn't assert right to speedy trial until the earliest, I believe it was, last term of court. The prejudice prong of the three prongs deals with any prejudice that may have stemmed from the delay. And of course, the minute the motion, speedy trial motion was filed, we would immediately set it to be tried this term so there was no additional delay with regard to the motion. And I'm sure everybody is aware we only have four terms of court in

Marion County. We tried it last term and we immediately tried it again this term. Therefore, I think the prejudice, once the motion was filed, I think the prejudice was very minor if at all in this case, Your Honor.

THE COURT: I'm gonna deny the motion. I'll be glad to hear your next motion.

MR. BROOKER: Our next motion is gonna be a motion, is a motion requesting a directed verdict for the charge of murder and then also on the charge of assault and battery with intent to kill. And of course that motion is based upon the fact that not all the elements has been satisfied as thought off at least with the -- the elements of murder is the killing of a person by the defendant and the defendant's conduct was a cause of the death; that the defendant's conduct was done with malice; and that the defendant's conduct was done with foresight or aforethought. Aforethought means that defendant's conduct was premeditated or that it was prepared, that he actually prepared to do it.

In this particular situation, Your Honor, is that one is, is there has been no evidence to identify. Obviously there is evidence that there was two distinct shooters. There's evidence there was two distinct shooters. The autopsy report pulled two bullets from the

body; and of course, as far as we know there could have been five distinct shooters because the other two holes were, I think, what the autopsy examiner called perforating holes, which means that the bullets passed to and never was recovered, therefore, it couldn't be made -- no determination could be made with respect to what type of firearm they came from or whether it came from a handgun or whether it came from a shot gun or rifle or whatever. But two distinct bullets were found. I think the expert testified they were distinct, and he says that there was absolutely no possibility in the world those two bullets could have been shot from the same gun because I think he said that one of the bullets had five lands and grooves, and the other bullet had six lands and grooves. Okay.

THE COURT: Why don't I ask the State right now, what kind of premeditation do we have, or do we have premeditation?

MR. DEBERRY: Your Honor, I want to quote from the law, Your Honor. It says, "Although malice must be aforethought there is no requirement that it must exist for any appreciable length of time before the commission of the act. It may be conceived at the very moment the act occurs. There must be a combination of the evil intent of the act producing a result." And we can even

imply malice aforethought by use of a deadly weapon. That's the law in this state, Your Honor, clearly a murder charge.

MR. BROOKER: Well, Your Honor, with respect to that, and I actually pulled a case on that, and of course that line of thought has ended I think, and I'll pull the case if you'd like me because I spent a lot of time on that. Is that South Carolina has taken a position, I think they've taken the position I think ever since a couple of years ago. I think it may have been, well, a year or two ago. It may have been 2000— or the last of 2009 case. Is that it used to be a long time in South Carolina that you could -- that you could infer malice and from the use of a weapon. But actually there was a supreme court case that basically says that, it says that, is that South Carolina at least in its previous positions when they actually charge juries that you can actually infer that malice from the use of a gun was absolutely wrong and that that was improper burden shifting. And it says that malice cannot be inferred from the use of a deadly weapon. It cannot be inferred. And I'd be more than happy -- I got this case right at my table and if Your Honor wants me to pull it ---

THE COURT: I'm familiar with what you're talking about.

MR. BROOKER: I'm sorry?

THE COURT: I'm familiar with what you're talking about.

MR. DEBERRY: Your Honor, in any event, if that case did overturn it's still the law of. It doesn't have to be for any appreciable length of the time beforehand and it can be coincide with the actual act.

THE COURT: Give me just a second to look at it.

MR. BROOKER: You want me to wait up and finish my argument.

THE COURT: Let's cross that bridge first.

MR. BROOKER: Okay.

(Pause.)

MR. DEBERRY: And Your Honor, I would like to add one thing as far as the malice is concerned. There is testimony in the record that the defendant fired five separate shots, not just a single shot, which I think that's certainly evidence for the jury to consider when determining whether or not there was malice by the defendant when he actually fired not one round but perhaps five distinct rounds at the victim, Your Honor.

MR. BROOKER: Well ---

THE COURT: Give me just a second. We'll deal with it.

MR. BROOKER: Yes, sir.

(Pause.)

THE COURT: Let me ask you this, Solicitor. If we find that there is enough evidence to warrant a self-defense charge, then we cannot find malice.

MR. MCEACHIN: No, Your Honor, that would be a distinction that the jury would have to make. That's a question of fact purely for a jury.

MR. BROOKER: Your Honor, under that line of reasoning you'd never be able to have a murder charge and a self-defense charge in the same case. And certainly there's plenty of case law in which there have been self-defense but we haven't got —

THE COURT: You're talking about the Belcher case; aren't you?

MR. BROOKER: I am talking about the Belcher case. That's —

THE COURT: Do you have a copy of the Belcher case?

MR. BROOKER: I certainly do.

MR. DEBERRY: Your Honor, for the record, can I also -- you know, there's expressed malice and there's implied malice, and the law is clear on a wanton disregard for human life. If a reasonable person would believe that death would follow his actions, then that's implied malice, and —

THE COURT: I understand.

MR. MCEACHIN: —it supports a murder charge. And the facts in this case that Mr. Reaves pulled the trigger five times —

THE COURT: I'm gonna let you charge further but give me just a second to look at this.

MR. BROOKER: It's actually South Carolina Supreme Court 2009 case.

(Document tendered to the Court.)

THE COURT: All right, go ahead and finish out your train of thought.

MR. BROOKER: Thank you, Your Honor. Now counsel said that implied malice or the aforethought can be inferred from the fact that there was five shots, but this where he has another problem. And that is, that the witnesses testified there were five shots. We know that there was two distinct shooters. The only evidence, the only evidence, the only evidence — well,let me put it like this. We know that there were two distinct shooters. There could even potentially be five separate shooters. There's can't be eliminated to that because three of the perforating holes, the bullets were never recovered, so they was never be able to determine whether or not they came from, whether or not —

THE COURT: I understand that but what's that got

to do with the defendant?

MR. BROOKER: What it has to do with the defendant is that, Your Honor, is that -- and this is the problem with the entire case -- is there they said it was five shots. Yeah, there was five shots but they can't say whether or not five shots was fired by him because there was two different shooters. They don't know whether or not he shot once, the other shooter shot four times. They don't know whether or not there was actually five different shooters and all of them shot once.

THE COURT: That's for those 12 people to figure out.

MR. BROOKER: Well, that's for those 12 people to figure out, Your Honor, is that but the rule says is that if it's a situation where those 12 people have to speculate with respect to how many times he shoots, how many times you're asking them to speculate with respect to how many times he shoots, that you have to grant a motion for a directed verdict because the jury cannot be put into a situation where they have to speculate did he shoot five times, did he shoot four times, did he shoot once, did the other guy shot four times, did he shoot twice, did the other guy shot three times, was there five shooters and everybody shot once?

THE COURT: I'm gonna deny the motions, both

motions, murder, and assault and battery with intent to kill.

MR. DEBERRY: Thank you, Your Honor.

THE COURT: Next motion.

MR. BROOKER: I'm assuming, Your Honor, I just want to make sure this is clear for the record, is that you're denying the motion based upon the fact that there is, that there is evidence of malice and also evidence of aforethought?

THE COURT: The jury could infer that along with voluntary manslaughter or self-defense.

MR. BROOKER: Okay. And just for -- well, well, I --

THE COURT: That's a question of fact. That's not for me to decide. I think there's enough there to give it to the jury.

MR. BROOKER: Yeah, I know it's a question of fact, but of course, Your Honor has to make determination as to whether or not there is evidence in which a reasonable inference can be drawn or either whether or not they would have to speculate. And of course, the courts have said where it's a situation where jurors have to speculate with respect to existence of a particular element then of course that's where Your Honor then steps in and then grants a motion for directed verdict because

you cannot ask a jury to speculate, speculate with respect to whether that is. That's why they give that authority to you. But let me -- give me just a second, Your Honor, let me make sure there is no other motions that we need to put on the record.

MR. DEBERRY: Your Honor, if I may just for the record very briefly.

THE COURT: You don't' need to; they're denied.

MR. DEBERRY: Okay.

MR. BROOKER: I think those are the only three motions that I think we have put on the record at this time.

THE COURT: Anything from the State?

MR. DEBERRY: No, Your Honor.

THE COURT: All right, Mr. Defendant, if you'd come on up here so I can go through your Fifth Amendment rights.

THE DEFENDANT: Say again.

THE COURT: Come on up here and get sworn in and have a seat.

THE CLERK OF COURT: Place your left hand on the Bible, raise your right hand.

WHEREUPON,

SHAWN REAVES,

having been duly sworn by the Clerk of Court,

testified as follows:

THE COURT: Yes, Mr. Clements is supposed to be sequestered.

CLERK OF COURT: Be seated in the witness box.

THE COURT: Is Mr. Clements supposed to be sequestered from the courtroom?

MR. BROOKER: I imagine so. Yeah, I think.

THE COURT: He has called you as a witness and sequestered all his witnesses. You might want to step into the hall if you don't mind.

MR. CLEMENTS: Yes, sir, Your Honor, I just would like to know when he plans on calling me. I have other obligations and other duties. I'd like to know when I'll be called.

THE COURT: We've got two witness before you and that may lead to you not needing to be called. We won't know until ---

MR. CLEMENTS: I have a speaking engagement, Your Honor. I'd like to be called ---

THE COURT: Hopefully soon.

MR. CLEMENTS: All right. Thank you, Your Honor.

THE COURT: Mr. Reaves, I want to go over certain things with you. One of them is your right to remain silent. That is a constitutional right that you have and I want you to understand that right. In other words,

you're here at your jury trial. We have a jury seated and you are having your day in court, but I want you to understand that when it comes time for you to testify you don't have to testify. I want you to understand that nobody can make you testify. Nobody can force you testify. In fact, if you choose not to testify, which you can, I will specifically tell that jury that they cannot use that fact against you in any way whatsoever. I'll tell that jury that that, the fact that you did not testify can have absolutely no prejudice against. I'll even go as far as to tell the jury they cannot even discuss that in the jury room. You understand that right?

THE DEFENDANT: Yes, sir.

THE COURT: Also, I want you to understand, however, that you do have the right to testify. And if you want to and you know what you're doing, and you talked to a lawyer about it, you can testify. You understand that?

THE DEFENDANT: Yes, sir.

THE COURT: However, do you understand that if you do testify you will -- may be cross-examined on any and all relevant issues in connection with this case? Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand also that if you

testify and you have a criminal record and it involves crimes, it involves dishonesty or false statements, or crimes which are punishable more than one year and the Court determines that the probative value permitting same outweighs prejudicial effect, then your criminal record may be introduced to attack your credibility. Do you understand that danger?

THE DEFENDANT: Yes, sir.

THE COURT: Have you talked with your lawyer about whether or not you want to testify?

THE DEFENDANT: No, sir.

THE COURT: You have not talked to him?

THE DEFENDANT: Not yet.

THE COURT: Then why don't you go on over there and do that right now. If you have any questions for me certainly let me know and then I want to know what your decision is.

MR. BROOKER: Your Honor, can we take 60 seconds?

THE COURT: Yes, sir, take as long as you need.

(WHEREUPON, a recess was taken from the proceedings.)

THE COURT: Come on around Mr. Reaves.

(Defendant Reaves resumes his seat on the witness stand.)

THE COURT: All right, Mr. Reaves, you are still under oath. Of course, you took a little while and you

went into the back room and you discussed whether or not you're going to testify with your lawyer. Have you made a decision as to what you want to do?

THE DEFENDANT: Yes, sir.

THE COURT: Have you understood everything I have told you thus far?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions for me or your lawyer at this time?

THE DEFENDANT: No, sir.

THE COURT: And what is your decision?

THE DEFENDANT: I'm not gonna take the stand.

THE COURT: All right. Thank you very much. You may step down.

All right, we're ready to move on with the Defense case?

MR. BROOKER: Yes.

THE COURT: All right, go ahead and bring out the jury.

(WHEREUPON, the jury was returned to the courtroom at approximately 2:54 p.m., and the following proceedings commenced in open court.)

(Juror approaches the Bench.)

THE COURT: If you lawyers will approach one second.

(WHEREUPON counsel approached the Bench for an off-the-record discussion.)

THE COURT: Come on up here one more second.

(Same juror approaches the Bench.)

THE COURT: All right. Call your first witness.

MR. BROOKER: Your Honor, we're gonna call Willie Smith, straight to Willie Smith.

CLERK OF COURT: If you will come around and let me swear you in please, sir. Place your left hand on the Bible, raise your right hand.

WHEREUPON,

WILLIE L. SMITH,

having been duly sworn by the Clerk of Court, testified as follows:

CLERK OF COURT: Thank you, sir.

MR. BROOKER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. BROOKER:

Q Mr. Smith, could you state your full name for the record.

A Willie L. Smith.

Q Okay. At one point in time were you the chief of police at the Marion City Police Department?

A Yes, I was.

Q Okay. And how long did you serve in your capacity as

chief of police with the Marion City Police Department?
A From February the 11th, 1991, until October the 18th of this year.
Q Okay. Now prior to that were you in law enforcement prior to becoming chief of police?
A Yes, I was.
Q Okay. Where were you -- what capacity were you working to prior to becoming chief of police in the city of Police Department of Marion?
A I was with the South Carolina Alcoholic and Beverage Control Commission. I was an enforcement agent there.
Q And how long were you with them?
A I was with them a little better than five years.
Q How long have you been in total -- in total how long have you been in law enforcement?
A I been in law enforcement since July the 1st, 1971.
Q Now do you remember May 13th, 2007?
A Some part of it, yes, I do.
Q Okay. Now do you remember a homicide or shooting taking place that day?
A Yes, I do.
Q Okay. And did you responded to that shooting?
A Yes, I did.
Q Now do you recall approximately what time you responded to that shooting?

A No, sir. I do not remember the time because I don't have any notes available for me so I can't even guess what time it was.

Q Okay. Now we were told that -- well, does each law enforcement officer has a code or unit number that they use when they dispatch to 9-1-1?

A Yes.

Q Okay. What is your code or unit number?

A I would be alpha one.

Q You're alpha one?

A Yes. I was alpha one.

Q Yes, you were alpha one. I'm gonna hand you a copy of what's been marked as Defense Exhibit 16, Defense Exhibit 16. And of course, this is the CAD report, and of course, it is three pages. Would you agree with me, the CAD report?

A May I examine it?

Q Yes, sir.

A Yes.

Q Okay, now I think starting on the second page, would you agree with me that there is a place where units, where particular officers would call in and they would be identified by a unit number.?

MR. DEBERRY: Objection, Your Honor. He can't lead this witness.

MR. BROOKER: Let me ask -- well, I ask the question is ---

THE COURT: Sustained.

BY MR. BROOKER:

Q Is that could you review that? Could you review the CAD report?

(Pause while witness reads report.)

THE COURT: You mind if we stop for just one second?

MR. BROOKER: No, not at all.

THE COURT: We could not find a Tendra Love Day Care in Marion. Is it here in Marion?

THE JUROR: It's on Mill Street.

THE COURT: Main Street?

THE JUROR: Mill Street.

THE COURT: Mill Street. We couldn't found it in the phone book anywhere or on the internet or anything. Can you get me a number? We'll handle it.

Go ahead, I'm sorry.

BY MR. BROOKER:

Q Is there a unit number that's identified on that CAD report?

A Yes, they are.

Q And again, what did you said was your unit number?

A Alpha one.

Q Is your unit number on that, on that CAD report?
A I don't remember seeing it unless I overlooked it. I don't see it.
Q Okay. So you don't see it on the CAD report?
A Unless I overlooked it, like I say.
Q Okay. I have in my hand what's marked as Defense Exhibit 1, just a crime scene log. Is your name identified on the crime scene log?
A No, it isn't.
Q Okay. So your name is not identified on the crime scene log as well?
A No, it isn't.
Q Okay. Were you at that scene?
A Yes, sir, I was there.
Q Okay. And you said you just don't remember what time you arrived?
A No, sir, I do not.
Q Okay. Now, could you tell me what's the first thing you saw when you arrived at the scene that night?
A As near as I can remember it was -- I know it was darkness. Some of the -- there was some tape around, the crime scene had been taped off. One of the officers met me and told me that ---
Q You can't testify to what anybody said. Just tell me what you saw.

A I was informed that this is where the crime scene -- this is where the shooting occurred. And I was also informed that there was a possibility that the -- there could be someone held up in the house that was in -- that was also cordoned off with the crime scene tape.

Q Now, and do you remember who -- which officer briefed you?

A I think, I think it was -- I think it was Lieutenant Davis I think it was.

Q Now, before you entered the crime scene did you have to sign this crime scene log form?

A No, I didn't.

Q To your recollection do you know who was handling the crime scene log form?

A I don't remember.

Q Now once you were debriefed -- and don't tell me what anyone says -- what happened next or what did you do next?

A I think we were trying to determine as to the house itself. We needed to, of course, needed to gain entry into the house to find out if indeed there were any suspects there in the house.

Q And who was part of that conversation? Or let me ask you this, is that, who was part of that conversation regarding making a decision to gain entry?

A I know it was myself, Lieutenant Hopkins, Captain Gray,

and I don't remember who else.
Q Okay. But definitely those three people, yourself ---
A That's correct.
Q ---Lieutenant Hopkins and Captain Gray?
A That's correct.
Q Okay. What do you do after you made a determination that you needed to enter the home?
A We kind of were in a hold mode for the time being because we needed to -- of course, to get entry we had to have a search warrant to get into the house because we certainly couldn't go into that house without having a search warrant to go in there. So we were kind of sitting back waiting for that warrant to be produced so that we could make entry into the house.
Q Now was that warrant produced?
A Yes, it was.
Q Who was in charge of obtaining that warrant?
A I think, I think, I think Lieutenant Hopkins was one of the officers that was working trying to secure that warrant.
Q Now how long did it take Lieutenant Hopkins to go to secure that warrant before he was able to come back?
A I have no idea.
Q Did you ever see the warrant when Lieutenant Hopkins -- or did you know whether or not Lieutenant Hopkins returned

---

A Yes, he did.

Q —personally? So you did see him when he returned?

A Yes.

Q Did Lieutenant Hopkins give you the warrant?

A No, he didn't.

Q Who did Lieutenant Hopkins give that warrant to?

A I do not remember.

Q But you didn't personally see it yourself?

A I saw it as like a distance maybe. I don't know, probably like where you are there. Lieutenant Hopkins is an experienced officer who has a lot of years of experience so I did not think that I needed to critique his warrant just to make sure it was right because he has done numerous warrants in the past.

Q So you never saw -- let me ask you this, did you flip through the warrant? I know you said you didn't think you need to check it. Just to make sure that I understand, did you flip through the warrant and look through it to see whether or not it was properly executed?

A No, I did not.

Q This is just for identification purposes. I don't know how close a look you get. Is -- does that look like the warrant that you saw that night from a distance?

A That's the -- that's the way a warrant would look.

Whether that's the warrant or not I can't tell, but it looks like -- what's the date on there. 5/13/2007, so it could be, yes.

Q Okay. Could be?

A Yes, sir. I haven't examined no more than the outer part of it so I can't tell from that.

Q Now how long did it take for entry to be made into the house after Lieutenant Hopkins arrived with the warrant?

A Well, we had to get some assistance from the sheriff's department just for officer safety. And it took, I don't know how long, but we had to get their -- they have some officers that are trained, Emergency Response Team, and we got -- they got them together and that's when the entry was made. And the house was one that the door because first they knocked and knocked and knocked and never would get a -- could get a response from the inside. And so of course then we had to make a forced entry and they first try kicking the door in to no avail because it was a really a solidified door, that it was wasn't easy to get in to. And after, I don't know, probably 15 minutes or more before they were able to get a entry into the house.

Q Now I know that you said you didn't see the warrant that night; but later on after that night, did the existence of that warrant come into controversy?

A Yes, it did.

Q How was the existence of that warrant came into controversy later on?

MR. DEBERRY: Objection, Your Honor.

THE COURT: What grounds?

MR. DEBERRY: May we approach just a second.

THE COURT: Sure.

(WHEREUPON counsel approached the Bench for an off-the-record discussion.)

BY MR. BROOKER:

Q I think just before we stopped I think you said that you later learned that there was an issue with respect to the existence of that warrant. And what was that issue?

A This occurred during the week that I was on vacation on the fishing trip down in Florida at Lake Okeechobee. The -- as far as what all occurred with that, that was handled by Captain Gray who worked under me at that time.

Q Yeah, I'm asking you what did you learn about -- what did you learn about the problems with that warrant later on? I know you may not have -- I'm not saying whether or not you personally challenged it. I'm asking you what did you learn about the problems with that warrant?

MR. DEBERRY: Objection, Your Honor. He's going to have to testify without direct knowledge and that's hearsay. He's asking ---

THE COURT: If he can answer without Hearsay then

I'll allow it. Don't say what somebody else said.

MR. DEBERRY: Well, he's gonna have to -- to answer questions he's gonna have to say what somebody else told him.

THE COURT: With his own knowledge.

Just don't say what somebody else said.

THE WITNESS: I understand. That's probably going to be what I would have to do, Your Honor, because this I got information from ---

THE COURT: Then don't answer it if you can't do it without hearsay.

THE WITNESS: ---was from someone else.

BY MR. BROOKER:

Q And who was that information obtained from?

A Captain Gray.

Q And that information was obtained from Captain Gray regarding problems with the warrant?

A That's correct.

Q Now did you ever talk with Lieutenant Hopkins in reference to, in reference to problems with this warrant? Don't tell me what Lieutenant Hopkins said. I'm just asking you, have you ever had conversation with him in reference to your knowledge?

A No, I did not 'cause while I was gone that's the time that Lieutenant Hopkins was resigned from the department.

Q You said he resigned from the department?
A Yes, he did.
Q Can you tell me yes or no, whether or not you know, do you know why he resigned from the department?
A No, I do not. I asked him but ---
Q Don't tell me what he told you.
A He didn't want to go into details on it so I didn't pressure.
Q Now as far as -- and I'm about to leave this particular issue. But let me ask, besides Lieutenant or Captain Gray, was there anyone else that was involved in this conversation with respect to, with respect to problems with the warrant that night?
A That night? There was no one involved in it.
Q No, I know. I'm talking about later on. Was there anyone else -- I know that you said that you had a conversation ---
A Right.
Q ---learning things from Captain Gray.
A That's why I had that conversation.
Q Did anyone else knew about what was going on with ---
A He was the only person that I had conversation with about the warrant.
Q And did he tell you what the problem was? Don't tell me what he says. I'm just asking did he tell you what the

problem was?
A He —
Q Just yes or no.
A Yes.
Q Okay. Now the people that were found on the inside of that house that night, those persons were -- are you -- you tell me who the persons that were found inside of that house that night.
A I'm sitting here without any notes whatsoever and haven't had access to any. I can't tell you who -- I deal with so many people in a day and a year I can't tell you what their names are.
Q Were there people taken out of the house? You don't have to tell me what their names were.
A Yes, there were.
Q How many people were taken out of that house that night?
A There was several people in the house. I don't remember how many there were.
Q Were those persons -- and don't tell what they were charged with. But were those persons charged with anything that were taken out of the house?
A Some were.
Q Were the charges against those persons later dismissed because of the problems that we discussed with the

warrant?
A I don't remember.
Q You're the chief of police and you don't remember?
A Sir, I -- it's like I said, I've been dealing with a lot of situations and I certainly can't remember everything. I have to refer to notes and all, and that's my way of supporting myself.
Q Now how long did you stay at the scene that night?
A I have -- I have no idea. I know it was greater than two hours, I know that.
Q Who was the lead investigator on the scene that night?
A Everybody from the investigative division was there. That's Lieutenant Blue, Captain Gray, and Lieutenant Hopkins.
Q Now within y'all ranks, do y'all have a lead investigator?
A Captain Gray.
Q He was the lead investigator within y'all ranks?
A Yes.
Q Was he on the scene that night?
A Yes, he was.
Q Would that then dictate that he would be lead investigator on the scene?
A Unless -- what occurs a lot is that sometimes when they have a case like that, he is then given to some of the

other, one of the other investigators, and he work along with that investigator in a particular crime.

Q Now who was barking out the orders that night telling everybody -- don't tell me what they say. I want to know who was barking out the orders that night telling everybody what to do.

A Well, of course, with him being lead investigator he was the one what normally take control of the crime scene.

Q So is that a yes or that he was barking out the ---

A "He" I'm referring to -- when I say "he" I'm referring to Captain Gray, yeah.

Q So is that a -- so are you saying that he was barking out the orders that night?

A Yeah.

Q He was the one that was directing the investigation?

A Yes.

Q Now did you enter the house that night?

A Yes, I did.

Q Did you enter that house at the time in which, at the time in which the rest of the team entered the house?

A No, I am not a member of the emergency response team so I entered after they had started clearing the house.

Q And what would have been the purpose for you entering the house?

A To as -- as an observer to because I know that one of

the things I always get is complaints about the activities of officers sometimes so I like to be there to make sure that everybody is treated with respect like they should be treated.

Q Did you question -- did you question Doretha McElveen that night in that house?

A I talked to several people. I may have and may not. I can't remember without my notes.

Q Did anyone else question her in that house that night?

A I don't -- I have no idea.

Q Who are all the people on inside of the house that night?

A I could not tell you who all the officers were because, like I said, some of these guys are members of the emergency response team who I am not exactly one hundred percent familiar with, by name that is.

Q I don't want you to tell me the ones that you don't know. Tell me which one of your officers was in the scene that night but was in the house that night.

A Lieutenant Blue, Lieutenant Hopkins, Captain Gray, those are the three that first come to my mind. Anybody else I can't, I don't -- they might skip -- if you call their name I might say, oh, yeah, I remember him there, but right now I can't remember.

Q Anyone else there that was not part of your team, not

part of the Marion Police Department, and I'm talking about in the house at that particular period of time?

A Some members of the Sheriff's Department.

Q Was Major Bobby Gerald on the scene?

A I don't remember him being there.

Q Was Solicitor Clements on the scene?

A Yes, he was.

Q And where was he at on the scene?

A He was outside the house.

Q Did he ever enter the house?

A I don't remember him entering the house.

Q Now did you talk with witnesses that night?

A Now normally what we do is investigators and officers normally talk with witnesses because they have to make notes and so that they can have something they can make reference to. I do not go and interview the witnesses and all because that's their job. And I believe in letting them do their job so I, I don't remember talking with any, any witnesses to any detail.

Q You just observed?

A Yes, I do.

Q In your observation of the investigation that took place that night, were there any mistakes in that investigation took place that night the way it was handled?

A I didn't -- I didn't see any.
Q Were you later terminated as a result of the mistakes that was made at that investigation that night?
MR. DEBERRY: Objection, Your Honor.
THE COURT: Sustained.
MR. BROOKER: Your Honor, I think goes to credibility of that investigation.
THE COURT: I'm gonna sustain the objection based of Rule 403.
MR. BROOKER: I'm sorry?
THE COURT: I'm basing that ruling on Rule 403.
BY MR. BROOKER:
Q Now you didn't interview any witnesses; is that correct?
A That's correct.
Q Okay. I think you said -- did you do anything else other than observe?
A My job is also if I see something that they possibly missed or needs -- have a question about, then I go to them, I ask them did you do so and so, or did you so this. If -- that is this my job. I'm not the -- my job is not the investigator. I'm the -- I was the administrator, not the investigator.
Q Okay. Just to make clear and so we can understand to get you off the bench and get you off the witness chair

real soon. You had little to no part in the investigation is what you're saying?

A That's correct.

Q Okay. And that's including the days afterwards?

A That's correct.

Q Now is it also your job to promulgate or develop policies and procedures for law enforcement for your law enforcement personnel?

A Yes, it is.

Q And that includes policies and procedures for conducting investigations?

A Yes, it is, but they are also -- these officers are sent to the South Carolina Criminal Justice Academy. At the Academy they go through training about handling investigations, interview techniques, and all of those things that are involved in criminal investigations. The expertise that the Criminal Justice Academy has far outreaches my expertise because they're the experts. They are the ones that train officers day in and day out. I just merely observe some of the things and watch and ask questions about things that I might see that might be a question.

Q Does the city of Marion Police Department have a standard of operating procedures for its law enforcement office to follow?

A Yes, it does.
Q And I'm not gonna ask anything specific from it, but is it -- does it look something like this? I'm not going to ask anything specific from it.
A Yes.
Q Okay. Did you develop those standards and procedures?
A Some of those are developed by the departments. Some of them are developed through the State and the Criminal Justice Academy.
Q Whose responsibility is to make sure that those policies and procedures exist for the officers?
A Mine.
Q Do you know what the policies or the procedures or the procedures are for handing a crime scene investigation like the one that took place that night?
A I can go through the manual and tell you.
Q Again, how long have you been a law enforcement officer?
A I've been a law enforcement officer since I tell you 39 years; but I can't tell you verbatim about any, these things like that, because if you want me to be particular with them then I refer to the book. That way I know that I'm exactly right in what I've said.
Q I don't need you to be verbatim. Could you tell me as a chief law enforcement officer for the City of Marion

what are the policies and procedures for handling a crime scene investigation?

MR. DEBERRY: Your Honor, that's the exact question that's been asked and answered.

THE COURT: Sustained. It has been the exact question. Move on to another one.

MR. BROOKER: He didn't answer it though.

THE COURT: He did.

MR. BROOKER: He said he can't answer it verbatim.

THE COURT: That was asked sometime ago actually.

BY MR. BROOKER:

Q Well, I'll ask you. You said you can't answer verbatim. Can you look in your procedures handbook and tell me what they are.

A What is it you need to know? I don't -- I'm not trying to be facetious. I just didn't understand, you know, what it is that you need. I'll be more than happy to --

Q You said you don't know those procedures verbatim. I said do you want to refresh your memory by looking in this book.

A If that's what you want me to do.

(Pause while witness reviews book.)

MR. DEBERRY: Your Honor, may Mr. Brooker just

ask a question. I don't know if Chief Smith is trying to read the whole manual or what's going on.

MR. BROOKER: No, I'm not asking him to read the manual, only a specific section.

MR. DEBERRY: Well, what section is it?

MR. BROOKER: I think he needs to refresh his -- I asked him if he needs to refresh his memory with respect to what the policies and procedures were. And he -- as he said he couldn't do it verbatim.

THE COURT: Just to speed things up, if you have a specific section go ahead and lead him in that direction and then he can refresh his memory. And we can go from there if you have a specific section or sections.

BY MR. BROOKER:

Q Let me ask you just flip to the table -- I don't know what you're looking at now.

A I was looking at searching for I thought that what you were talking about. I don't know 'cause you weren't specific with me.

Q Is there anything in the table of contents that pertains to how to deal with crime scene investigations?

A It doesn't spell out crime scene investigation, no, it doesn't. There are just several things that you look at as far as search and seizures, search of probably a residence, response back to, you know, stop arrest and

search of persons. You know, it just -- it's just certain, deals with several different things in there.

MR. BROOKER: Well, we move to treat this witness as a hostile witness.

MR. DEBERRY: Your Honor, may we approach.

THE COURT: Overruled. You can direct him to a specific section if you would like to cross-examine accordingly or direct accordingly.

MR. BROOKER: I beg -- may we approach, Your Honor.

THE COURT: You may.

(WHEREUPON counsel approached the Bench for an off-the-record discussion.)

BY MR. BROOKER:

Q You said that nothing there pertains to specific, to specific crime scene investigations or how to conduct a crime scene investigation?

A No, that is just like I told you. The officers, they go to the Academy and that's what they're trained for at the academy.

Q Now there's a section in here -- is there a section for stop arrests and search, and searching for person?

A Yes, I just mentioned that.

Q Okay. And search and seizure of a residence; is that correct?

A I just mentioned that also.
Q Okay. But there's nothing in here that relates to how to conduct a crime scene investigation; is it not?
A That's the requirement of the Criminal Justice Academy.
Q Okay. That's -- but would you agree that there is nothing in there that deals with crime scene investigation, how to conduct a crime scene investigation?
A Like I previously stated, that's through the Criminal Justice Academy, not ---
Q Through the Criminal Justice Academy?
A Yeah.
Q Is it your job to make sure that your officers are well trained and understand how to conduct a crime scene investigation?
A That's the reason why they're sent to the Academy, sir. We are ---

MR. BROOKER: If we could ask for a yes or no and and then a response, Your Honor. He can then elaborate on however he wants to.

BY MR. BROOKER:
Q And I'll ask again, is it your responsibility ---

MR. DEBERRY: Objection, Your Honor, he's leading the witness.

MR. BROOKER: No, I'm not leading the witness. I'm asking him a question.

MR. DEBERRY: He asking for a yes or no answer.
BY MR. BROOKER:
Q Is it your responsibility —
THE COURT: Go ahead and ask and give a yes or no answer.
BY MR. BROOKER:
Q Is it your responsibility to make sure that your officers are trained and know how to conduct a trial scene investigation?
A Yes, sir, that is my responsibility. I have also tried to make sure that they have. As a matter of fact, I have even served on the board of directors at the Criminal Justice Academy as far as training for officers; and I made sure that those, some of those things are included in there.
Q In your opinion as chief of police was Lieutenant Blue well qualified to conduct a crime scene investigation?
A Lieutenant Blue was -- he was -- he was trained and qualified to do so. He was -- this is during his earlier stages of crime scene investigation, but I think he did a admirable job at that time.
Q In your opinion was Captain Gray well trained in how to conduct crime scene investigation?
MR. DEBERRY: Your Honor, he can't testify to opinion testimony.

MR. BROOKER: He can testify in his opinion, I think, as chief of that police department, and I think he said he was chief and it was his responsibility.

THE COURT: Why don't you rephrase your question.

BY MR. BROOKER:

Q As chief of police, in your opinion do you think your officers was qualified to conduct crime scene investigation issues?

MR. DEBERRY: Same objection, Your Honor. I'm sorry, that's not proper.

THE COURT: Overruled, go ahead.

THE WITNESS: Yes.

BY MR. BROOKER:

Q And that includes Captain Gray?

A Yes, sir.

Q Have you reviewed, yes or no, have you reviewed the way the investigation was conducted in this case?

A I have not went in in-depth detail about -- like I told you earlier, I talked with Captain Gray. He was telling me some, about there was some question about the warrant, that's all.

Q Okay. I don't know if that was a yes or no or not. You told -- tell me if it was. Have you reviewed the way they conducted the investigation in this case?

A I believe I answered. I told you not in detail ---
Q Not in detail?
A ---but I did discuss it with Captain Gray about the warrant. That's what I said.
Q And in your opinions that experienced law enforcement -- and I'm not talking in general, I'm talking about this case specifically -- was it done correctly?
A As far as I'm concerned and in my opinion, yes, it was.

MR. BROOKER: If you indulge me just a second, Your Honor, I may be about finished. Now I don't have any further questions for this witness, Your Honor.

THE COURT: Cross.

MR. DEBERRY: Thank you, Your Honor. The State doesn't have any questions for Mr. Smith. We appreciate his time.

THE COURT: Thank you. You may step down.

THE WITNESS: May I be excused, Judge?

THE COURT: Any objections to this witness being excused?

MR. DEBERRY: Not from the State, Your Honor.

MR. BROOKER: I would like to at least, Your Honor, hold him until at least Captain Gray testified to make sure we don't have any rebuttal because my ---

THE COURT: If you'd just hang around for a few minutes maybe we'll be done and you can go for good.

Thank you.

All right, call your next witness.

MR. BROOKER: We call Captain Gray, Jim Gray.

WHEREUPON,

JIM GRAY,

having been duly sworn by the Clerk of Court,

testified as follows:

THE COURT: Any time you're ready.

MR. BROOKER: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. BROOKER:

Q Captain Gray?

A Yes, sir.

Q How long have you been a law enforcement officer?

A I think 19 years.

Q And how long you've been Marion City Police Department?

A In that entire length of time. Prior to that I was about three maybe, four years with the Department of Corrections.

Q Now who is the chief investigator for the City of Marion Police Department at -- in March -- excuse me, May 13 of 2007. Who was the chief investigating officer with the Marion City Police Department?

A That would be me.

Q And what sort of training did you receive, I guess, to

prepare you to serve in that capacity as chief investigator?

A Well, actually that was an appointment, but I have been through numerous -- I have -- I hold associate's degree as well as a bachelor degree and not at that time did I have the bachelor degree. I been to numerous schools through in North Carolina as well as South Carolina, through the South Carolina Criminal Justice Academy, also through Florence Darlington Tech, Florence Police Department, different law enforcement agencies.

Q Okay. And what are some those classes that or courses that you took that prepared you to be a detective, a lead detective?

A Just basic crime -- not crime scene, but basic investigations and just years of experience.

Q Just basic investigations?

A Yes, sir. I ---

Q Did you have any -- I'm sorry, go ahead.

A I was gonna say I had some, you know, homicide training as well.

Q And could you explain that sort of homicide training?

A Just basically, you know, from the start how to work a case from beginning to the end.

Q And when did you have that training?

A I'm not exactly sure. It's been some years back.

Q More than five?
A It's probably somewhere around five years.
Q And this is five years before? Five years from today or five years from the day of May, from May of 2007?
A I'm not exactly sure of the date.
Q Now could you explain to me, I think, how do you conduct a crime scene investigation when you come across a murder scene like you did that night? How do you -- what do you do?
A Okay. On that particular night I didn't work that crime scene but on any -- on any homicide or I guess you would -- the first thing you want to do is check and see if there's any victims. You definitely want to render any type of first aid or. And then of course, once that's rendered and it's safe to enter, you know, EMS rescue, you want to go ahead and try to rope that area off to secure the crime scene, preserve any type of evidence.
Q Now you said you didn't work the crime scene that night?
A No, sir.
Q Who worked the crime scene?
A SLED, South Carolina Law Enforcement Division. I think it was Ken McKensy or Ken Kensy and, excuse me, let me look at the report.
Q Sure.

A According to the report it was special agent Kenny Kensy and special agent Melissa Skipper, which I'm the one who actually contacted SLED headquarters in Columbia to request assistance to work that crime scene.

THE COURT: Lawyers approach real quick.

(WHEREUPON counsel approached the Bench for an off-the-record discussion.)

BY MR. BROOKER:

Q Now you said Kenny McKenzie led that crime scene?

A Yes, sir, Kenny Kensy. Kenny Kensy and Melissa Skipper.

Q And what do you mean when you say they led the crime scene so I can understand what that means?

A Well, usually we're such a small department, Marion is such a small department and basically on an incident like that or such as that, what you want to do is concentrate on the crime itself. We don't have the manpower to actually work the scene and also try to figure out who or what happened. So in an event like that that we typically call -- well, we've always called in the South Carolina Law Enforcement Division and had them send crime scene techs down to work actual crime scene itself.

Q Now who made the decisions or made decisions with respect to what was done as far as, and I'll try and clarify that. Who was barking out the orders with respect

to leading these officers and telling them what to do at the scene?

A I'm not sure if there was a lead person. Chief Smith and myself along with the rest of the administrative staff was, in which was Lieutenant Farmer Blue, Lieutenant Craig Hopkins, was also on the scene.

Q Did y'all discuss a warrant that night, obtaining a warrant?

A For the residence?

Q Yes.

A Yes, sir.

Q Were you a part of that discussion?

A Yes, sir.

Q Who else was a part of that discussion?

A Chief Smith, Lieutenant Hopkins, Solicitor Ed Clements, Investigator Buddy Feagin. Also I think it was Investigator Ed Severance which Buddy Feagin and Ed Severance works for the Solicitor's Office.

Q And what decision was made?

A To obtain search warrants.

Q Do you know who was supposed to obtain the warrants?

A Yes, sir.

Q Who was that?

A Lieutenant Craig Hopkins.

Q Now to your knowledge -- and you tell me yes or no --

do you know whether or not he obtained a warrant?
A I'm not sure if I can answer that in a yes or no.
Q Let me ---
A I know there was a warrant, yes, sir.
Q Let me ask you, I'm asking you your knowledge that night, that night. I'm gonna ask you about your knowledge later on, but that night do you know whether or not Craig Hopkins had obtained a warrant?
A Yes, sir.
Q And how did you know?
A He told me that he did.
Q Well, don't tell me what someone else told you. Let me ask it a different way. Did you see the warrant?
A No, sir.
Q Do you know who the warrant was given to when Lieutenant Hopkins came back to the scene?
A No, sir.
Q Do you know who served the warrant?
A No, sir.
Q About what time was that warrant obtained and brought back to the scene?
A Sir, I'm not -- I couldn't begin to even speculate the time.
Q About what time was the home entered?
A I have no ---

Q If you need to refer to your notes I'll don't mind if you look for them.
A I don't know that there's anything. The only notes that I have are the actual incident, the actual incident report itself.
Q Okay.
A My portion of this or in this incident was limited due to health reasons I went out for a whole month the next day.
Q Okay. So you don't -- so I'm assuming is you're saying no, you don't know what time you entered, the residence was entered?
A That's correct, I do not.
Q Do you know who entered the residence?
A Yes, sir.
Q Could you tell me who entered -- I'm sorry, I didn't mean to interrupt you. Go ahead.
A No, sir, I can kind of -- I don't know verbatim. I know that Lieutenant Hopkins I think broke the window out of the house after, of course, we had already previously tried to make contact by knocking, knocking on the door, using PA system, trying to get someone to the -- to the door. There was force used to open the door itself. I know Lieutenant Hopkins, myself, I went in. There was other officers from the Marion Police Department that I

actually also went in, but there was officers and deputies that were there. Again, that's because of sort, you know, we always sort of work together, but entry was made by those individuals.

Q Okay. Now I'm gonna ask you some specific names and you tell me whether or not they were in, went in.

Lieutenant Farmer Blue?

A Lieutenant Blue was on the scene. I couldn't say whether or not he was actually in the residence or made entry at the beginning.

Q Yourself?

A Yes, sir.

Q Former Chief Smith?

A Yes, sir.

Q Detective Woods?

A Yes, sir.

Q Solicitor Ed Clements?

A Yes, sir. I had actually -- excuse me, I do have a question. I need to clarify something. Are you talking about actually making entry and going into the house or whoever was in the house that at any particular time?

Q Went into the house at any particular time or was in the house any particular time.

A Any particular time they were in the house, okay. Yes, sir.

Q Yeah. Investigator Ed Severance?
A Yes, sir.
Q Investigator Buddy Feagin?
A Yes, sir.
Q And SLED agent Kenny McKensy?
A I'm not sure if he actually went into residence itself.
Q Okay. Anyone else you can remember other than those? Well, Jimmy Jackson?
A I'm not sure. He was working. I'm not sure if he was.
Q Now when you went into the home did you interrogate anyone on the inside of the home?
A I questioned.
Q You don't have to tell me what they tell you, just asking, did you question anyone on the inside of the home?
A Yes, sir, I did.
Q Do you know who you questioned?
A Ms. Dorothy McElveen.
Q Did you question anyone else on the inside of the home?
A No, sir.
Q How long did you remain on the scene?
A I'm not sure, sir. I was back and forth from the police department back to the scene so I'm not exactly sure what my total time would be.
Q How many occupants, when entry was made how many occupants were found on the inside of the residence?

A I'm gonna have to refer back to the notes ---
Q That's fine.
A ---because I don't recall.
Q That's fine.
A The question was how many people were there?
Q Yeah.
A There appears to be four.
Q Okay. And ---
A And a child.
Q Do you know who four including the adult four besides the child?
A Bear with me, the lighting I'm getting on the -- the lighting is not the best in here. I'm trying to ---
Q I understand.
A Arms aren't long enough either. According to the report there was four adults and one juvenile.
Q And who are those four adults? Do you have the names?
A I've got maybe three names in this actual report that I have. It looks like Dorothy McElveen, Rodney McElveen, Brandon Bellamy.
Q Any of those individuals placed under arrest or under detention at the scene?
A According to the report, yes, sir.
Q Who were placed under arrest or detention at the scene?
A Who it was?

Q Yes.
A I don't have that in my —
Q I'm talking about —
A —report.
Q Which one of those individuals were one of those individuals that were placed under arrest?
A I have no idea.
Q Okay.
A I don't have that in this report.
Q Do you know the name Joemilla Wilson?
A Yes, sir.
Q Did you transport her from the scene?
A No, sir.
Q Who transported her from the scene?
A I don't know.
Q Where was she transported to?
A I know the one time she was at the police department.
Q Did you go to the police department to see her?
A I saw her at the police department, yes, sir.
Q Did you question her at the police department?
A Not that I recall.
Q Did you take a statement from her that she provided you with a written statement at the police department?
A I don't recall if we did. It would be in our — in the investigative notes.

SW - J. GRAY - DIRECT

Q Do you have any investigative notes?
A No, sir. They was turned over the following day.
Q Did you do a gunpowder residue kit on Ms. Wilson, Joemilla Wilson?
A No, sir, I didn't. No, sir.
Q I'm sorry?
A I didn't, no, sir.
Q You did not?
A I did not, no, sir.
Q Who did?
A Investigator -- former Investigator Larry Woods at the time was actually doing the gunshot residue kits.
Q Did you take pictures of Ms. Joemilla Wilson at the Marion County at the police department?
A Yes, sir, I think I did. Yes, sir.
Q What did you do with those photographs?
A They would have been left in the file.
Q And you're saying left in the file. Did you have a file?
A Yes, sir.
Q And they were put in the file?
A Yes, sir.
Q Was that file turned over to someone?
A Yes, sir.
Q Who was the file turned over to?

A Lieutenant Blue and Lieutenant Hopkins.
Q And those photographs was in the file when it was turned over?
A Everything that I had was -- would have been in that file?
Q What else did you have in that file?
A I don't -- I don't know.
Q Did you have statements from any witnesses at the scene, whether they were in that file or not?
A I didn't take any statements from anyone at the scene that I recall, but if -- if anything would have been given it would have all been in that one file and I don't recall any.
Q Just for clarification, do you recall receiving any statements from any witnesses at the scene? Just based on your memory.
A I don't recall.
Q I'm sorry?
A I don't recall it. At that time I was -- had been working 70, 80 hours a week for four years and I was having severe headaches. Like I said, I was placed out of work for a month following within the next period so I don't -- I haven't had anything else to do with that case since that night so I don't recall.
Q Did you receive Mr. Applewhite's clothing?

A No, sir, not to my knowledge. No, sir.
Q Do you know what happened to Mr. Applewhite's clothing?
A No, sir.
Q I'm referring to what's identified as Defense Exhibit 8. Did you ever see -- what is that in the photograph?
A It appears to be some type of chain or jewelry or what it appears to be.
Q Did you ever come in contact with that piece of evidence?
A No, sir.
Q Defense Exhibit 7, what is that in that photograph?
A Looks like another piece of jewelry.
Q Did you ever come in possession of that piece of evidence at any time?
A No, sir.
Q Defense Exhibit 12, what's in that photo?
A Again, looks like more jewelry.
Q Did you ever come in possession with that piece of evidence at any time?
A No, sir.
THE COURT: Be sure to speak up just a little bit.
THE WITNESS: Sorry, Your Honor. No, sir.
BY MR. BROOKER:
Q Defense Exhibit 11, what is in that photograph?

A Cell phone.
Q Did you ever come in possession of that any time?
A Not -- no, sir, not that I'm aware of.
Q Defense Exhibit 2, what's in that picture?
A Another cell phone.
Q Did you ever come in possession of that piece of evidence at any time?
A Not that I can recall.
Q Defense Exhibit 4, what's in that photograph?
A I'm not sure. Is that a ear piece or?
Q Have you ever come in possession of that particular evidence at any time?
A No, sir, not that I recall.
Q Defense Exhibit 9. What do you see in Defense Exhibit 9?
A Okay. It's some type of Visa card.
Q Did you ever come in possession of that piece of evidence ---
A No, sir.
Q ---at any time?
A Not that I recall, no, sir.
Q Finally, Defense Exhibit 10. What's that photograph?
A Looks like another cell phone.
Q Did you ever come in possession of that particular piece of evidence at any time?

A No, sir, I don't recall.
Q Do you know where those pieces of evidence are, the ones that we just went over?
A No, sir.
MR. BROOKER: Your Honor, we move to admit Detective Gray as an expert in the field of, I guess, homicide scene investigations.
THE COURT: Any objections?
MR. DEBERRY: No objection, Your Honor.
THE COURT: All right.
BY MR. BROOKER:
Q Detective Blue (sic), as a homicide scene and investigator what is the purpose of collecting evidence at the scene?
A It's to preserve it for any type of -- or looking for any type of evidentiary value to preserve it. And to exclude or to exclude someone or for the purpose of adding to the weight of the case.
Q On exhibits we just went over, and that's Defense Exhibit, Defense Exhibit 10, Defense Exhibit 3, Defense Exhibit 9, Defense Exhibit 4, Defense Exhibit 2, Defense Exhibit 5, Defense Exhibit 6, Defense Exhibit 11, Defense Exhibit 12, Defense Exhibit 7, and Defense Exhibit 8, to your knowledge was any evidentiary value taken from those, evidence collected at the scene?

A No, sir, not to my knowledge.
Q As an expert in crime scene investigations, it is your opinion, do you believe that evidence should have been taken or at least attempted to be collected from those pieces?
A If I knew more about the case I could probably say. I don't know enough about the case to say whether or not the phone records should have been ran down, or if any evidence could have been collected off the jewelry itself.
Q Is that stuff that's -- I'm sorry, I didn't mean to interrupt you. Go ahead.
A A couple of those that we didn't go over the photo the -- I don't know exactly what they are.
Q I think a couple of hats and a durag.
A Okay.
Q Prior to this particular murder scene how many murder scenes investigations did you lead?
A Maybe -- I've been involved in quite few, but maybe lead, maybe about four or five.
Q Now I'm gonna ask you a question in reference to the warrant. Did you later, did you later tell -- what's his name? Did you later talk with former Chief Willie Smith about the warrant that was secured that night or allegedly secured?
A I'm sorry, I understood what you -- I'm guessing I need

some clarification. Are you —

Q I'll re-ask it. Did you at some point in time talk with former Chief Willie Smith about the search warrant that was secured, or allegedly secured, by Lieutenant Hopkins the night of this particular incident?

A Yes, sir.

Q What was the nature of that conversation, or what did you tell him about that warrant?

MR. DEBERRY: Objection, Your Honor, calls for hearsay.

MR. BROOKER: I'm asking him —

THE COURT: He's asking what he said. Overruled.

THE WITNESS: It was basically about a letter that was actually written to accompany the search warrant.

BY MR. BROOKER:

Q I'm sorry? I'm sorry, I didn't understand.

A Yes, sir, I'm trying to figure out how to rephrase it. There was a -- at some point I had never seen the search warrant until recently, recently being this past spring between spring and summer. That's the first time I've seen that search warrant; it came into question. But I had -- there was a letter that was written at some point prior to this trial. That's the conversation that I had.

Q Well, I'm gonna ask you a question because, again, did you have a conversation with -- did you have a

conversation with former Chief Willie Smith about problems with the warrant? And I'm not talking about on the night of the incident; I'm talking about later on.

A Yes, sir.

Q And what did you tell him about problems with that warrant?

A The problem was I never saw the warrant, and there was a letter that was typed by Lieutenant Hopkins saying that —

MR. DEBERRY: Objection.

THE COURT: Sustained.

BY MR. BROOKER:

Q Yeah, don't tell me what Lieutenant Hopkins says. Don't tell me what Lieutenant Hopkins says. Tell me your understanding of what the problem was with that warrant, not...

A Well, the problem was I had never seen the warrant. It's...

Q Did you ever talk about -- did you ever discuss with lieutenant, discuss with Chief Willie Smith, about whether or not that warrant was actually secured that night?

A Yes, sir.

Q And what was -- and I'm asking you from your side of it, what was that conversation?

A Whether the conversation goes back to, again, there was

questions raised about the search warrant. I hadn't seen it, and I was concerned as to the timing in our, the system that we use. It's software, law track, so any time you go in it it time stamps everything. I can't -- I can't issue a warrant. I can't type up a warrant and put yesterday's date on it. It will not print out. It will print out a bad date. So you can't manipulate, you can't manipulate it at all so you have to put in current information.

Q Do you know what this is?

A Yes, sir.

Q What is that?

A It's a printout of the user log-in, and again, that's what I just sort of explained it. Whenever you go in and each time you log in it tells you where you go, how long you been there.

MR. BROOKER: Now I move to enter this into evidence as defense exhibit.

THE COURT: Any objection?

MR. DEBERRY: Objection, Your Honor, he has to have that authenticated by the person who made it. He does not have him here, not under subpoena. That is not the work of Captain Gray and it's not admissible.

THE COURT: I agree.

MR. BROOKER: Captain Gray just authenticated it

and said he does recognize it, explained exactly what it is.

THE COURT: He said he knew what it was. That's all so far.

MR. BROOKER: And he explained exactly what it is.

THE COURT: Do you want to go further with your foundation so you can lay proper foundation for it to come in?

MR. DEBERRY: Your Honor, it would be hearsay unless the person who created it is here to testify.

THE COURT: Unless it's a business record of some sort.

MR. BROOKER: Yeah, it is from a business record; the computer can't testify.

THE COURT: Also, it's a computer generated document whereby the computer automatically stamps it with it a time and date, so I mean, it is by a person.

MR. DEBERRY: Well, I mean, we also question relevancy but no objection. You can put in evidence; that's fine.

MR. BROOKER: We move to mark it as defense, Defendant's 18.

(WHEREUPON, Defendant Exhibit No. 18 was marked for identification and received into evidence.)

BY MR. BROOKER:

Q Now I'm gonna ask you to find search warrant number 63 on there.

MR. DEBERRY: Your Honor, may we approach?

THE COURT: Yeah, please.

(WHEREUPON counsel approached the Bench for an off-the-record discussion.)

BY MR. BROOKER:

Q Can you identify search warrant 63?

A Yes, sir.

Q And what is the date by search warrant 63?

A May 14th, 2007.

Q And whose name is by that date?

A Hopkins, Lieutenant Hopkins.

Q Lieutenant Hopkins?

A Yes, sir.

Q And what is the time?

A 01:11, it's in the morning.

Q Okay. And then what does it say in the event column?

A It just says added 63 to search warrant data base.

Q And what does that mean, added search warrant 63 to data base?

A That's whenever he was -- I'm not sure if he goes in as after you type it all in or you go in to add to it. It added the time into it then.

Q Now right before that, what does it say? Right -- the -- let's go to the line right before the, right before the row that we were just looking at. Let's go down one row.

A Go down or what?

Q Go down one row.

A It's edit search warrant data base.

Q And which search warrant was edited?

A 63.

Q Okay. That's the search warrant that was -- was that the search warrant that was edited earlier by Hopkins?

A Yes, sir.

Q And what's the time that search warrant was edited?

A 3:15 a.m.

Q Okay. And what's the day?

A 5/14/2007.

Q Now did -- to your memory did y'all enter the residence sometime after 3:15 a.m. on the 14th?

A The question was, did we enter after 3:15?

Q Yeah. Is that the first time that y'all entered the residence was after 3:15, after 3:15 a.m. on the 14th?

A I'm not sure what time we actually entered it.

Q Yeah. I don't want the specific time. Do you know? I'll just ask do you know?

A No, sir.

Q Do you know whether or not you entered after whether or not the entry into the home was made after 3:15, 3:15 on the 14th on the next day? 3:15 a.m. in the morning?

A No, sir, I don't remember.

Q We're almost done. Now other than what we talked about, did you play or do anything else in connection with the investigation?

A No, sir.

Q And I'm assuming, and I'm assuming when you say that, I'm talking about from the moment that you went on -- from that time, the day of the incident, up until the day that you entered this courtroom did you have anything else to do with the investigation over ---

A No, sir.

Q ---the last three-and-a-half years?

A No, sir.

MR. BROOKER: I have no further questions for this witness, Your Honor.

THE COURT: Redirect.

CROSS EXAMINATION

BY MR. DEBERRY:

Q Captain Gray, I just have two questions.

A Yes, sir.

Q This is warrant 36 which Mr. Brooker showed you. What's the date on the front page of that warrant?

A 5/13/2007.
Q Say again?
A 5/13/2007.
Q Okay. And just to tell the jury a little bit, when a search warrant is completed and do you -- is there something called a return made?
A Yes, sir.
Q And all I want you to tell the jury is when the return was made in that search warrant, not what was returned, just when if there's is a date on there or time, when it was.
A The date?
Q Does it have a date on it —
A Is that what you want me to?
Q —-at the top?
A Yes, sir. You want me to give the date you said?
Q The date of the return.
A 5/14/07.
Q Does it have a time?
A Yes, sir.
Q What time?
A 01:35 a.m.
Q Okay. I have no further questions. Thank you.
THE COURT: Anything further?
MR. BROOKER: Nothing further for this witness,

Your Honor.

THE COURT: You may step down.

If you'd call your next witness.

MR. BROOKER: I think we're going to have one more brief witness. We may not need to call our other witnesses. If we can approach.

THE COURT: Can this witness be excused?

MR. BROOKER: I think that witness can be excused. Have a good weekend.

(WHEREUPON counsel approached the Bench for an off-the-record discussion.)

MR. BROOKER: We re-call Lieutenant Blue.

THE COURT: Come on up, Lieutenant. How about witness Clements, can he be excused?

MR. BROOKER: If you can indulge me for just a second, I think we can.

THE COURT: Come on up, Lieutenant. You're still under oath. You understand that?

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. BROOKER:

Q Lieutenant Hopkins.

A Blue.

Q Blue. You previously testified that you executed -- you're the one who executed this warrant or served this

warrant; is that correct?
A Yes.
Q Take a look at that. Is that the warrant that you served?
A Yes.
Q I think you previously testified that you never looked in the body of it when you served it, you just saw the front?
A Yes.
Q Did you execute the return to that warrant?
A Yes, I think I did.
Q Is that your signature on the return for that warrant? Down at the bottom.
A I see it. Yes.
Q Okay. Now what time does it say that this warrant was served?
A The date it has on it is 5/14/07 at 1:35 a.m.
Q 1:35 a.m.?
A Yes, 1:35 a.m.
Q Okay. Now I'm gonna at least ask you to take a look at, and of course again, I'll ask you, was that search warrant 63?
A That's the number, yes.
Q Search warrant number 63?
A Yes.

Q And is this the search warrant that was obtained by Lieutenant Hopkins? So supposed to have been.
A Right, yes.
Q Now I'm gonna ask you to take a look at Defense Exhibit 18. You see the first highlighted line?
A Yes.
Q Do you see the line below that?
A Highlighted column?
Q No, the line below the highlighted line.
A Yes.
Q Okay. And what does that line say? Is that the -- does that say search warrant 63?
A Yes, it does.
Q Okay. And does it say Craig?
A Yes.
Q Is that Lieutenant Craig Hopkins?
A Yes, it is.
Q Is that the person who obtained this search warrant?
A Yes, it is.
Q What time does it say that he edited this search warrant?
A It says here it says 3:15.
Q Now on what day?
A 5/14/07.
Q Okay. Now is 3:15 a.m. on May 14, 2007, is that time

occurred -- is that a time that is after 1:35 a.m.?
A Yes.
Q On five? What's the difference in the hours roughly?
A Roughly about two hours and some minutes.
Q Roughly -- okay, roughly two hours?
A Yes.
Q Okay. So does that tell you anything about the search warrant that you served search warrant number 63 that you had in your hand that you said you never looked at?
A It tells me there may have been a problem with the search warrant, but I -- that doesn't rule the fact that I had it in my hand at the time.
Q Does it tell you that search warrant 63 was still being edited when -- after y'all searched the home?
A That's what it appears to be, sir.
Q If this document is correct, of course this is -- this document is correct, did you have a valid search warrant in your hand?

MR. DEBERRY: Objection, Your Honor. That calls for speculation.

THE COURT: Sustained.

MR. DEBERRY: Thank you.

MR. BROOKER: Well, let me rephrase it.

BY MR. BROOKER:
Q Do you know if you had an executed search warrant in

your hand —-

A Do I know?

Q —-when you served it? Did you know whether or not you had a valid executed search warrant in your hand when you served it?

A I just assumed that I had. I don't go in, no, sir.

Q No further questions.

THE COURT: Anything further?

MR. DEBERRY: No, Your Honor. Thank you.

THE COURT: You may step down.

If you'd call your next witness.

MR. BROOKER: If you can indulge me just a second. I'm going to discuss with my client. We may not need to call anyone else.

(Pause.)

MR. BROOKER: No further witnesses, Your Honor.

THE COURT: All right. Thank you. Bailiff, if you would excuse the witnesses. Please tell them they can go.

Does Defense rest?

MR. BROOKER: Defense rests, Your Honor.

THE COURT: All right. Members of the jury, if you would step into the jury room. At this time I have to take up some motions with the lawyers, and we'll be back with you shortly.

(WHEREUPON, the jury was removed from the courtroom at 4:47 p.m., and the following proceedings commenced in open court.)

THE COURT: I'll be glad to entertain any motions.

MR. BROOKER: Your Honor, we renew our motion and I won't go into it, but we just renew our motion for directed verdict based upon the grounds and reasons that we previously stated before and after the close of the State's case.

THE COURT: All right, thank you. Those motions are denied.

MR. BROOKER: And just so we can put on the record, we'll -- not just a motion for directed verdict but we also renew our ---

THE COURT: All the motions.

MR. BROOKER: ---all the motions that were made after ---

THE COURT: Got you.

MR. BROOKER: ---the close of the State's case.

THE COURT: All right. Thank you very much.

MR. BROOKER: Thank you, Your Honor.

THE COURT: With regards to the charge, let's see, I'm gonna charge certainly reasonable doubt, direct and circumstantial evidence, spoliation of evidence,

failure of the defendant to testify, duties of the judge and jury, prior record of a witness, expert witness charge, police officer charge, mere presence, malice, murder, voluntary manslaughter, self-defense, assault and battery with intent to kill, and then I'm going to close it out. Any objections?

MR. MCEACHIN: Briefly, Your Honor, self-defense under Jackson versus State, 355 South Carolina 568, 586 Southeast Second 562, a 2003 case decided by the South Carolina Supreme Court. In that case the Court said that there are four elements you have to look at to determine whether or not a defendant entitled to a charge of self-defense. The first is he was without fault in bringing on the difficulty. The second, he believed he was in imminent danger of losing his life or sustaining serious bodily injury. The third, he had no means of avoiding danger. And the fourth, a reasonably prudent person of ordinary firmness and courage would have entertained the same belief about the danger. Specifically with regard to elements two and four, that the Court enunciated in that case, Your Honor, the only evidence in this case at all that the victim in the case, Mr. Applewhite, created any type of presence for sense that there was any type of harm to come to the defendant was a shove and a grabbing of nexus if you take her at her

word. There was no evidence whatsoever he possessed a firearm. There was no evidence presented whatsoever that there was any sort weapon that he held, anything that would cause an individual to fear that they would be at risk of life and death. Nor was there any testimony from the State. And because the Defense did, in fact, put up a case nor was there any testimony from the Defense side of the case that the defendant did feel that he was in imminent danger of death or at least life threatening injuries. Because they don't meet that element, Your Honor, and because I don't believe a reasonable person under fourth prong meets that element either, I believe because those two elements are lacking I don't believe they're entitled to a self-defense charge.

THE COURT: Mr. Brooker.

MR. BROOKER: Your Honor, we would pretty much, I guess, make the same argument they made when we argued with respect to whether or not, whether or not there was malice and aforethought. And of course, there was absolutely no direct evidence with respect to malice, absolutely no direct evidence with respect to aforethought. And of course, what their position was is that even though, even though there was the only evidence that was even suggested was that this was a spontaneous action. I think every witness testified this was a

spontaneous action, testified to nothing that would justify and explain and I think in that particular situation they wanted benefit of the doubt and say, well, let's leave it up to the jury to interpret the evidence the way they see fit. And of course, I think —

THE COURT: I agree. I'm going to go ahead and charge it. We got a crowd of people there. We have ongoing fight going on. There's obvious two guns. There were two bullets there. It appears that there is a second shoot. There was a threat made, a push made, a grab made. I'm gonna let the jury figure it out and see if they can decipher as to whether self-defense applies or not.

MR. MCEACHIN: And Your Honor, the State would have one request, additional charge. We've allowed Mr. Brooker to look at this charge. It's the highlighted charge on this particular page, Your Honor. I'll let the Court review it and evidently make a determination whether that should be charged authority. I also noticed that the Court stated that there was going to be a mere presence charge. Because of the mere presence charge the State would also request a hand of one is the hand of all charge, and that's based on testimony of Tyler Connor who stated when he spoke to the defendant stated he and one of his buddies did the shooting together. So if the Defense is, in fact, getting a mere presence charge the State

would ask for hand of one is the hand of all.

THE COURT: Would the Defense like to take out the mere presence and go without the hand of one is the hand of all?

MR. BROOKER: Well, Your Honor, is that -- and this is the problem we're going to have with that is that, if Tyler Connor was testifying directly, testifying to direct witness and testifying to the specific, testifying to the facts as specific to this case, Tyler Connor basically testified to what he said was a murder -- was a drug deal gone bad and said that there was an exchange that went bad, that the guy threw the drugs down on the ground, threw the drugs down on the ground, and then that lunged at Shawn Reaves, lunged at Shawn Reaves, and then Shawn Reaves shot him. And then of course, his friend shot him in the back and then of course, he went and threw it in river. Now, and the statement that was given I think he said is that, I think one of the things about -- I think one of the statements about throwing the gun in the river, I think he actually said that he didn't make that statement and then when was given the -- what was purported to be his statement he basically said, well, I didn't write that, that Lieutenant Blue wrote that out along with us. If we're talking about the exact same case here, and that's the problem that you'll run into with

respect to that is, is that -- and of course, that's one of the reasons why I think in the first trial we made that -- I don't remember whether or not we made objection as to whether or not that evidence was relevant. I believe we did, or not, because there was issue as to whether or not he is talking about completely entirely different event than the one that was expressed herein because obviously that event is tremendously diverse in the facts of this particular case.

THE COURT: In other words, I believe what the Solicitor is saying is that if you'll do without mere presence they'll do without the hand of one is the hand of all.

MR. MCEACHIN: And the State has no problem with that. I just think mere presence really doesn't fit in this scenario. The only people that testified to Shawn Reaves being there were the people who testified he did the shooting so I don't think mere presence applies. We can do without the hand of one is the hand of all if mere presence is not.

MR. BROOKER: I don't think we're even entitled whether mere presence is testified or not.

THE COURT: Let me take a look at it real quick and think about it. I don't have any problem on removing mere presence after I read it and look at it and think

about it. The charge begins, furthermore, if you find from all the evidence that defendant was merely present at or near the scene. There's been more than that. There's testimony being him at the scene and being the shooter and so forth and so forth. So I'm going to take out mere presence and with both parties' consent, and I'll put in the hand of one is the hand of all.

MR. MCEACHIN: Your Honor, you can remove the hand of one is the hand of all.

THE COURT: All right, we're going to take that out.

MR. MCEACHIN: I don't have a problem with that as long as there's been a mere presence argument.

THE COURT: And I'm sure Mr. Brooker ---

MR. MCEACHIN: That would certainly ---

THE COURT: ---does not have a problem with that.

MR. MCEACHIN: I'm sure Mr. Brooker doesn't have a problem with that.

THE COURT: All right.

MR. BROOKER: Some of them I think, Your Honor, the ones that we just handed up were general charge of murder, aforethought on the legal definition of aforethought as one of the elements of murder, and legal provocation.

MR. MCEACHIN: Your Honor, in your manslaughter

charge legal provocation is defined in that charge.

THE COURT: It is in great detail.

MR. MCEACHIN: Okay.

MR. BROOKER: Judge, can I ask a question, when was the decision made with respect, I think we talked about this earlier, with respect to voluntary manslaughter?

THE COURT: I made that decision based on the evidence presented.

MR. MCEACHIN: That's a wise decision, Your Honor.

MR. BROOKER: Well then, if you're gonna instruct ---

THE COURT: Because he was pushed, he was grabbed, he was enraged. The jury could see it that way. And it cuts your way to a certain degree. It gives them a chance to deviate downward. We listened for it specifically. We had a note to listen to all of the witnesses and look for that and self-defense specifically, and we both agree, my clerk and I. It should be charged.

MR. BROOKER: That's a deviation upward because it goes up from assault and battery with intent to kill.

THE COURT: Right, but it goes down from murder.

MR. BROOKER: Upward, not downward.

THE COURT: It depends on which one you're

looking at.

MR. BROOKER: We just wanted to put our objection on the record, Your Honor, that he was indicted for obviously for murder and then of course later on, I think, within months prior to this, prior to this, prior to this case, within months prior to this case 2010 that indictment then was amended to include assault and battery with intent to kill. Obviously voluntary manslaughter is not a lesser included offense, I think, with any of these. And I think should they thought this was a voluntary manslaughter case, obviously they got plenty of time to indict it. We would simply object to at least being put in at specifically the last minute, and of course, we don't believe there's sufficient enough evidence, I think, in the record to actually justify it.

THE COURT: It is a lesser included offense to murder.

MR. MCEACHIN: It is, Your Honor.

MR. BROOKER: I know it has different elements.

THE COURT: The lesser included offense does.

MR. BROOKER: Like for instance malice afore— malice aforethought, those elements are not elements of involuntary manslaughter.

MR. MCEACHIN: That's the increased elements that makes it.

THE COURT: Mr. Brooker, I think your request to charge one, two, three, and four I have in the charge.

MR. BROOKER: Yeah, I know. I thought with respect to murder and what about aforethought to define legal definition of what aforethought is.

THE COURT: All that should be there in detail. And of course, legal provocation is an element of voluntary manslaughter.

MR. BROOKER: Legal provocation is -- it's also a defense to murder, assault and battery with intent to kill. And of course, like I said, we're not conceding the fact that he actually did anything because there's two witnesses that identify somebody else completely different than one witness identifying him.

THE COURT: We're charging legal provocation as element of voluntary manslaughter. Are you telling me it's a defense in itself? I'm not sure what...

MR. BROOKER: It is, Your Honor, is that, if you think you have to charge legal provocation in order to do -- in order to charge legal provocation if you're saying that in order to charge legal provocation you must also then charge, then charge voluntary manslaughter, we would, withdraw.

THE COURT: No, I'm just asking you why do you want it charged or what respect do you want it charged?

MR. BROOKER: Well, the reason, the reason why is that, well, Your Honor, is that a lot of times in a jury in a trial you have two -- you have so many conflicting stories. You don't know which one the jury intends to believe, which one the jury is going to believe. If the jury believes that, hey, you know, two of his own buddies, you know, says that Shawn Reaves wasn't the killer, it was somebody else. You know, then voluntary manslaughter, voluntary manslaughter doesn't even come into play because they choose to believe he didn't do it. Now if the jury says, well, okay, we're going to believe that he did do it, then of course the issue then becomes is, you know, it then becomes -- then that's when -- that's when it comes into play, you know, as to whether or not there was some sort of offense.

THE COURT: You're saying as a complete bar, I mean, as a not guilty or?

MR. BROOKER: It would definitely be a complete bar to murder, it would. It would be a complete bar to murder. It would be a complete bar ---

THE COURT: But that would make self-defense. We've got it in there already as an element.

MR. BROOKER: And just to make sure is that my objection at least to the voluntary manslaughter, is that being overruled?

THE COURT: I understand.
MR. BROOKER: I'm just asking for the record.
THE COURT: It does what?
MR. BROOKER: Is my objection to voluntary manslaughter being overruled for the record?
THE COURT: It is. I think the evidence warrants that, or they could find that anyway. How about verdict form? Has everybody looked at the verdict form?
THE LAW CLERK: I laid one on the table, Mr. Brooker.
MR. BROOKER: No objection to the verdict form.
THE COURT: All right. Why don't we take a 20 minute break. Let them smoke if they need to smoke, make sure they get a pack of nabs or whatever. Tell them when we come back at 5:30 we'll wrap it all up and try to give it to them. All right, tell them do not discuss the case.
(WHEREUPON, a recess was taken from the proceedings.)
THE COURT: Go ahead and bring out the jury.
(WHEREUPON, the jury was returned to the courtroom at approximately 5:30 p.m., and the following proceedings commenced in open court.)
THE COURT: All right, members of the jury, we're now going to proceed on closing arguments. I want you to understand that closing arguments are not evidence. It is simply the lawyers' position as to their case, and they

will argue their positions. Is the State ready to proceed or does the State waive?

MR. DEBERRY: Your Honor, the State is gonna waive opening on the law and close last.

THE COURT: All right, Mr. Brooker.

MR. BROOKER: Thank you, Your Honor. Good afternoon everybody. I know it's been extremely -- this has been an extremely long trial for everybody. It's encompassed, I think, just about the entire week, but it is extremely important. It is extremely important. We all know that you're tired. We are tired too. And I think the judge is tired, the lawyers are tired. I think everybody in this courtroom is exhausted. But, but, the most important thing in our system in our country is justice. We have one of the best systems in the world for it is not perfect. And you probably saw a lot of examples of the imperfections in our system today, I mean, a tremendous amounts It is not perfect. But it is the best system that I think exists in the world. Is that there used to be a long time ago, there used to be a long time ago now when people had disputes, and of course we couldn't resolve them in civilized ways. And we didn't have jury service. We didn't have six intelligent people from the community to sit down and listen to a case and apply the law; and then once that law is applied, once

those facts have been heard and the case decided by the jury, you know, then that is it. That is it. So I know you're tired, but the part that you're about to come through right now is probably one of the most critical parts of a trial. This is where you're gonna have the hard, hard process of going back in that jury room. After you've heard the judge's instructions, take all of this stuff that's been thrown at you this week and try and make sense of it and try and come out, you know, and do and give a verdict that does justice.

Now I started off at the beginning of this case the same and, of course, it's something that the judge emphasized; and that is, is that lawyers, we're not witnesses in a trial. We're just facilitators. We didn't witness anything so anything I say is not considered to be evidence. My job as a facilitator is to assist you or assist in the orderly presentation of this evidence to you. And then also my job in these closing arguments is to try to give a summation or even suggest an interpretation to some extent of everything that was given to you today. But it's your job to go back there and figure out what it all means.

Now let's talk about, let's talk about at least what he's been charged with. The judge is gonna charge you, I think, on three particular crimes. I think it

started out as, if you can recollect at the beginning of this case, started off at two. Now it's three charges that they're gonna give you instructions on. That's gonna be the charge of murder, the charge of assault and battery with intent to kill, and the charge of manslaughter. That's the new one that you're gonna get that was present from the beginning.

Now, what is murder? Of course, I'll tell you is that, again, remember my role and remember the judge's role. The instructions with respect to what the law is comes from Judge Seals. I'm gonna give you a little bit of information about it; but of course, if I say anything that contradicts Judge Seals, Judge Seals is the person that you rely on for accurate instructions or accurate definition of what the law is, okay? But obviously is that murder in South Carolina has a couple of elements. It is murder occurs when one person caused the death of another person, that death is done with malice, and that death is done with what's called aforethought. Aforethought. Remember that word and remember the words that the judge's instruction to you because they're extremely important. They're extremely important.

What is aforethought? Aforethought. You probably have never heard at least put in that term, but you know what it is. It's premeditation; it's planned.

In order for there to be a murder there has to be one person killing another person with malice. Malice simply means it has to be with some sort of evil intent, intent to do something evil or bad. And it has to be done with aforethought. It has to be done with premeditation. It has to be planned. It has to be planned.

MR. DEBERRY: Objection, Your Honor, that is not -- that is not the law.

THE COURT: He's already instructed the jury. And he's correct. I will instruct you on the law at the end of both attorneys giving their closing arguments, and you have to take the law as I give it to you, and I'll tell you about that in great detail. Right now it's just his position on the case and he's allowed to do that. If you will go ahead and continue.

MR. BROOKER: It has to be planned. Now what the attorney is gonna tell you is when he tells you, assuming what opposing counsel is going to tell you is, that with premeditation it doesn't have to be planned a week in advance. It doesn't have to be planned, you know, in six days in advance, doesn't have to be planned in an hour in advance. It can be planned within a short period of time, but it has to be planned. It has to be something that is thought out and acted on, even if it's done very quickly. He's also --the judge is also going to instruct you with

assault and battery with intent to kill. Malice and aforethought are also elements of assault and battery with intent to kill. Malice and aforethought are also elements of assault and battery with intent to kill. It's almost implicit in the actual, in the actual title of the offense itself, assault and battery with intent to kill. It must have been some sort of intent to kill. It must have been premeditated and planned. Must have been intentional.

Now the judge is also going to instruct you on some other things, some other definitions. He's gonna instruct you on the definition, you know, of -- and this is the new charge that wasn't here at the beginning of the case but it's now here. And that is, that involuntary manslaughter. He's gonna instruct you with respect to that. And of course, the judge is probably gonna tell you something to the extent is that involuntary manslaughter occurs when someone commits a crime but it's not premeditated. It's not planned or thought out. It happens in the passion. It happens with sudden passion, heat of passion. Now he's also going to instruct you with respect to self-defense. He's gonna instruct you with the in reference to what legal provocation is.

Now I'm not going to go any further into the law, but I want to give you at least a little bit of basis so that you'll know what you're looking at. Now what I want

to do is talk about the facts spending the rest of my time talking about the facts in this case because that is where, that is where the truth lies. It lies in the detail. It lies in the inconsistencies. It lies in the existence, and also just as important, in the nonexistence of evidence. And I put that easel up there because I'm gonna go through at least some of the witnesses, not in great detail, that testified today. If you can remember the first statement, the first witness that was put on the stand was, I think that was Lieutenant Davis. Lieutenant Davis was one of the first ones on the scene. If you can remember Lieutenant Davis, he was one of the first ones that came on the scene. And of course, what Lieutenant Davis testified to is that when he got on the scene, that when he got on the scene, that he arrived almost the same time as PFC Jackson. And that what they did was is, is that they secured the crime scene, they put up tape, and he said that they also talked to witnesses. Said they talked to pretty much three witnesses, three witnesses at, well, he said I think a little bit more than three witnesses but there was three particularly important witnesses they talked with. Those three witnesses were, if you can remember, it was Jackie Lane, Jackie -- excuse me, Travis Lane. It was Jackie McGill, and it was also Karen Graves. If you can remember, those are the persons

that have actually came to the scene with, came to the scene with Mr. Applewhite. And you heard Jackie Lane (sic) said that they were told by Officer Davis to write statements and he said that he wrote a three page statement, that he wrote a three page statement, gave it to Officer Davis. He said that, that Travis Lane also wrote a statement; that Karen Graves also wrote a statement and gave it to Officer Davis. Now Officer Davis testified is that he never received statements from them. He never received statements from them. He never received statements from them. Never received them at all. Pure inconsistency. What happened to those statements? Those statements were never produced in this trial. And matter of fact, you heard when Jackie Lane got on the stand and of course we presented a statement that was purported to be his statement and he said, I didn't write that, this is not the statement that I wrote that night. What happened to his statement? It was lost along with the statements of the three other persons. It was lost. And it was lied about. It all depends on who you believe. It was lost and it was lied about.

Now Lieutenant Davis obviously says that he has no direct evidence with respect -- I'll put an X mark by him, he has no direct evidence with respect to whether or not Shawn Reaves fired that day. Never was there, never

witnessed anything, no direct evidence at all, never seen nothing. Just testified to what he did when he arrived at the scene. They had a number -- now he also testified to the existence of a crime scene log, and we're gonna go through some of that. We're gonna go through some of the existence.

The next testimony that came was real important and that was investigator -- that was the SLED Investigator Kenny McKensy. Kenny McKensy testified he was called at that scene that night as in an assistance role to assist Marion County P.D. Department in collecting evidence and that he came there and he collected evidence that night. And he will -- and he, I think, stated in his testimony is that he collected cell phones, three cell phones. He collected, I think, a blue tooth. He collected three chains from the scene. He collected two white hats from the scene. He collected, I think, shoes from the scene. He collected a durag from the scene. And he said all of this evidence was valuable evidence in that all of this evidence was in and around near where Mr. Applewhite was shot, and that the value of that evidence is, is that that evidence would help place or help to identify exactly who was there.

Now law enforcement has testified. Lieutenant Blue testified is that they still don't know that all the

players that was involved in this case, still doesn't know. That's the purpose of that evidence. DNA evidence can be taken off of that, off of those hats. Hair samples can be taken from those hats and to identify exactly who was wearing them. So why -- sweat can be taken off those things. The three cell phones that was taken. Those three cell phones would potentially have telephone numbers. They would potentially have names and text messages to identify the owners. Who dropped those things at the scene? All of these items were littered around the scene where the shot -- where the shot took place. Who dropped those things? You heard him testify that they were returned on the request of the Marion County P.D., Marion City P.D. And you heard him testify that he was an expert on crime scene investigations that he had done hundreds of crime scene investigations of murders, murder crime scenes. And he testified that there were mistakes made there; that if he was leading that investigation he would have those items tested if those items had not been previously identified to try to determine who was there, to try to determine exactly whether or not any person who had possession of those particular items were somehow involved in this crime. And to his honesty, even though he's a law enforcement officer, to his honesty he told the truth and said they made mistakes and I think that was a

polite way to put it. They messed up in a big way. That was a polite way to put it. And obviously Kenny McKensy -- I'm gonna put an X mark by his name because he offered nothing to support their theory. His testimony was actually contrary to their theory. His testimony that they did a terrible job and that this is a crime that might never get solved because they did a terrible job.

MR. DEBERRY: Your Honor, I'm going to have to object. That's not in the record. That's not in the record.

THE COURT: I'm gonna overrule the objection and, again, I'm gonna instruct the jury in great detail that you are the finders of fact and I am the judge of the law and I'll explain that to you in great detail when I charge you in a few minutes. If you will continue.

MR. BROOKER: Thank you, Your Honor. Now I think that Jason Huffman was not a tremendous witness. I'm not talking about him. Jason Huffman -- I'm gonna put an X mark by his name -- he was one of the witnesses that testified as well too. Jason Huffman was more a witness that basically transported evidence pretty much. I think he transported some evidence from one place to another, testified he had no knowledge with respect to, wasn't at the scene, had no knowledge with respect to what happened

at the scene. He just was there to transport. So their witness Jason Huffman doesn't support their position.

Lisa McReynolds -- put an X mark by her name because I think she was a technician at SLED and she simply testified to the fact that when they submitted evidence there that she received it, processed it, and put it into a evidence locker for one of the analysts to testify. That she had no knowledge of this crime, had no knowledge of who shot who or what, no knowledge of that at all. So their first four witnesses doesn't offer you very much.

Gary Cook. Gary Cook is the gentleman who, again, was just a transporter of evidence. He testified that he -- that he followed Applewhite's body from the Marion County emergency room, transported it to, I think, MUSC where the autopsy was performed and simply collected two bullets that were taken from the body and brought them back to South -- brought them back to Marion County, Marion City P.D. for safe keeping and they could be processed by SLED. They had no knowledge with respect to what happened in connection with this crime, no knowledge with respect to who shot who or what, none at all. McGill, Jackie McGill definitely did not support their contention. Jackie McGill, if you could remember, is the young gentleman who actually went to the home with -- went

around to [redacted] with Applewhite. And of course, Jackie McGill, and obviously I think his credibility was a little bit shaken. I think first he testified on direct examination is that he thought that when Mr. Applewhite came to get him that they were gone to have, you know, have some fun and meet some girls. And then, of course, he testified that they went straight around to [redacted], directly there. Now you use your judgment as to whether or not he knew what was going on. He said he had talked to Applewhite when they got in the car. They had discussed this when they got in the car. So the fact of him saying, well, I thought we were going to meet some girls, you got good common sense. He knew that they were not going to meet any girls. Mr. Applewhite came around there to pick up these big guys because he was expecting trouble. He was coming to bring trouble. And of course, there's been some inconsistencies, I think, with respect to Mr. McGill's testimony. Now on cross-examination Mr. McGill testified that, I saw Shawn Reaves shoot this person, I saw Shawn Reaves. I saw Shawn Reaves is what he testified to. Shawn Reaves were the one that was shooting. And on cross-examination what he didn't tell you is, is about this photo lineup within days after. Within days after this shooting he did a photo lineup. Now I asked him,

well, to take a look at that photo lineup, do you see Shawn Reaves in that photo lineup. And he said, yes, Shawn Reaves is number three. You sure you recognize him? Yes, I recognize him. There's nothing deceptive about the photo. And it says, and then of course, we ask him, well then, why did you pick number two, why would you pick number two, the individual number two, and why are you now changing your story in court. At the beginning of this trial he testified that Shawn Reaves was not the murderer in this photo lineup. He said he actually even knew the guy. I don't know if that's true, but he said he actually even know the guy that's pictured here in number two. This was done right after this was done within three to four days after the murder. I know he wasn't lieing to protect Shawn Reaves. I mean, him and Shawn Reaves are not friends. Applewhite was his friend. He would have absolutely no reason to lie when he did this photo lineup a couple of days after this incident. He would have every reason to change his story and lie three-and-a-half years later in order to help the Marion County P.D. to try to get some sort of conviction on somebody for this murder because they screwed it up. Jackie McGill is -- definitely doesn't supports them and actually supports the defense if you believe that he's telling the truth then or do you believe he is telling the truth now

three-and-a-half years later when he's changing his mind. That same photo lineup now he says, well, I don't know if they gave me this photo lineup. Detective Blue testified that this is the photo lineup that he administered to him and that he is absolutely positive about it. And he has no other photo lineup. Jackie McGill, the other friend, his photo lineup identification form is identified as Defense Exhibit 17. He also selected number two. And on the same date a couple of days after this murder and says, number two is the guy. Now they had a lot of choices. If they did not know they could have said, well, I don't recognize any of them and not select anybody. But they did. They said, yes, I see him, it's number two. And now three-and-a-half years later when they are now being complicit with the Marion County P.D. to try and get some sort of conviction because all the problems that they had with this case they've now changed their story. Travis Lane for the Defense. Jackie McGill and Travis Lane for the Defense. Investigator Kenny McKensy for the Defense. Nobody up here for the Prosecution.

All of these are gonna be in evidence room with you. Look at them, study them. They are real important in connection with this case. Cynthia Schandl, she was the forensic pathologist. She did the autopsy. And of course, she simply testified to one particular fact and

she testified to an important fact. She testified, I know my handwriting is not great but it's more for my benefit than it is for yours. Cynthia Schandl testified that there was five shots, that he was struck five times, not that there was five shots I'm sorry, 'cause she wasn't there. He was struck five times. And one bullet was a fatal bullet. That was the bullet that hit him in the upper back. That's the bullet that struck him in the upper back. Now we intend to show that when Joemilla testified that she didn't testify truthfully; but even if you for some crazy reason decide to believe her, it is still inconsistent with him being the murderer 'cause this bullet came from the back and Joemilla testified to the fact that she saw, allegedly saw, Shawn Reaves pull a pistol. She didn't hear any shots or a number of shots or nothing. She saw fire come out and then when the fire ended she saw then Mr. Applewhite fell to his knees and then eventually he fell to the ground. Jackie McGill said the same thing. Jackie McGill said that Shawn Reaves shot him and that when Shawn Reaves shot him, that they were standing within arms length of each other and that Shawn Reaves shot him and then he stumbled forward and may have grabbed Shawn Reaves, allegedly grabbed Shawn Reaves, even though he picked out somebody else in the photo lineup. But even if you were to believe her, and there

are two witnesses contradicting her, two witnesses that has no reason to be a friend of Shawn Reaves because they were friends to Mr. Applewhite. Two of their own witnesses who say it was somebody else.

I think Niki Perry testified. Niki Perry was the SLED agent, and of course, she had nothing to do with this case, didn't know anything. So Doctor Schandl, her testimony benefits the Defense. Unless you believe that this person who is alleged to be Shawn Reaves sidestepped Mr. Applewhite and then went around to the back of him and then shot him in the back and then sidestepped him, again, and ran back; and unless you believe that, which nobody testified to, it is, it is physically impossible. It is mechanically impossible. Niki Perry just simply says that she worked at SLED and that she was another chain witness. She received evidence when it came in and processed it and provided, you know, for the technicians to test it. Didn't see nothing, didn't know anything, she just collected some evidence -- another X mark for the Defense.

Dan Defreese, Dan Defreese was the ballistics expert. He's the one who testified to the fact that those two bullets that was delivered to him that was distinctly two different bullets. Distinctly two different bullets. And, of course, he testified to the fact, that is, that the reason why that they know it's two different bullets

is because gun barrels these days -- I'm talking about handguns. These days is that handguns have what they call land and grooves in them, spiraling lands and grooves, either right or left. And those spiraling lands and grooves are like fingerprints. They can help identify what bullet came from what gun, if you have guns. There was no guns in this case. No guns ever found in this case. But he says that bullet two, that the two bullets that were taken from Ramel Applewhite's body, that those two bullets, there was absolutely no way in the world they could have been fired from the same gun because one of the bullets has five land and grooves and another one of the bullets have six land and grooves, completely distinctive. No way in the world there could have been shots in the same gun. So what do we know then? We know there was at least two shooters, possibly even five shooters, because the other three bullets were never recovered. So we don't know whether or not they were from -- whether or not they were three other shooters; we don't know that. There could potentially have been five shooters in this case. Now everybody who was there, Jackie McGill, Jackie McGill and also Ms. Joemilla, all testified there was only one shooter. Guess what, they were wrong. What else was they wrong about? They were wrong. And that is a fact. Because the science, the science is more reliable than

their memory of what they see or didn't saw. At least two shooters, could have even been five shooters. Could have been five shooters.

We ask you, well what type of gun could these have come from? And remember, he used the funny language, most likely or most probably they were from these types of guns. Let me tell you what most probably and most likely mean, and I think we got him to confess that. He didn't know. Most probably means I don't know, this is my best guess. And I think specifically he said most consistent. That's all it means. That is high falootin way for somebody to say I don't know, this is my best guess. My best guess it was these type of guns, and he said that. After it had been tortured out of him. He finally confessed to it. Dan Defreese for the Defense.

Tyler Connor. Tyler Connor was an interesting testimony 'cause he was so contradicting himself so much. I think he first testified to, well, Shawn Reaves told me this story or drug deal gone bad and I was so disturbed that I called my -- I told my daddy, then, my daddy told my lawyer and then my lawyer told Lieutenant Blue. And then of course, we asked him about the officer asked him about a specific officer, whether or not he had told that officer. He had actually approached that officer. And said that, oh, Shawn Reaves is a bad dude and that officer

then got in touch with Lieutenant Blue. I think it's Officer Richburg. And he said, well, it may have happened like that. Maybe I was wrong; I was just assuming. Then he says what are you in jail for? I'm in jail for assault and battery. That's what he says on direct. And then of course on cross he says weren't you in there for burglary? Oh, yeah, yeah, I forgot, I was in there for burglary too. Then we start going over his statement where he said, well, Shawn Reaves told him that he was in there because he was involved in a drug deal gone bad and that some guy had some drugs in his hands and the guy through the drugs down and charged Shawn Reaves and then Shawn Reaves said he shot him as the guy charged him, and he said so Shawn Reaves then says his buddy then shot him in the head and then he says that's what happened. That's what Shawn Reaves told him. And if you notice that story is completely factually inconsistent with this story. This story was not a drug deal gone bad. This story was actually a situation where actually it was a lover's quarrel. Actually, Mr. Applewhite was upset that Ms. Wilson, Joemilla, was seeing somebody else and he wasn't gonna tolerate it. She said that they were living together a month earlier and that he left, she left. She left him, and that he was upset about it. And he was really upset when he find out that she was now dating this

guy. He's really upset about that. And that there was a fight and then there was a shooting after the fight. Not one witness, whether law enforcement or whether fact witness, testified any type of drug deal gone bad. The forensic, the forensic examiner, testified that there was no shot to the head. And then of course, Tyler Connor told us about the sweet deal he got for burglary where he pretty much did some home arrest, I mean, did some -- he was on home arrest for a while, for a short period of time, did some probation and then that's it. And then we give him this statement and said, is this your statement, did you say that Shawn Reaves threw these guns in the water. He says, well, I never told Lieutenant Blue that. And I said, well, here is your statement, it's in here. He said, I never said that. And then that's when he says, well, I didn't wrote that statement, Farmer blue wrote it for me. Another example of just screwing up a case from top to bottom. Connor (sic) Reaves is a bust. Farmer Blue was chief investigator. Farmer Blue was the chief investigator.

Now, if you can remember, and I'm gonna be as quick as quick because there was so many mistakes made in this case. Is that one is you can remember all of that evidence that was lost. Two cell phones, three cell phones they don't know anything about. The three gold

chains they don't know anything about. The blue tooth they don't know who belonged to they don't know anything about. Even the victim's clothing, the victim's clothing, bloody clothing was lost, not retained. None of it was analyzed. None of it was analyzed. Just all sorts of mistakes that was made. There's all sorts of mistakes that was made. And you also heard me testify to the fact that didn't you receive information of a shooter, didn't you receive information of a shooter Jeremy Vereen. Didn't you receive it from two people. He confessed that he did. After three-and-a-half years have not talked to one of those people. After three-and-a-half years. And he gives some story, well, you know, he's a suspect so I can't talk with him, you know, I don't want to let him on or something like that. After three-and-a-half years. He just didn't do anything. Didn't do his job. Screw up.

Latoya Davis. I think Latoya Davis I think simply testified to the fact, you know, obviously she didn't see anything. Farmer Blue testified that he didn't see anything. So Farmer Blue for the Defense. Latoya, I think, testified to the fact that she went around there with Joemilla. I think she danced around with respect to whether or not she knew what their relationship was. And then she said that, you know, again, some inconsistencies about -- and that there was a lot of consistencies between

the witnesses how it happened that a fight took place. Some of them said there was a fight started down the street, then it came up, and then there was fighting then in front of the house again. Jackie McGill says that what caused Mr. Applewhite to come after her the second time when he came up to door was she spit on her. Joemilla Wilson never testified that she spit on him to provoke him to do that. Ms. Wilson never seen anything. The only thing Ms. Wilson said she saw is, she said she left sometime either during or shortly after the fact she went around to her house. And then she testified to the fact and she says that, well, she later on saw Shawn Reaves I think getting into a blue Honda -- excuse me, not a blue but a gray Honda. Not she saw him shoot anybody. Now is that unusual? I think there had been testimony from some of the other witnesses that when shots fired people scattered. That is absolutely no proof at all that he shot anybody. None at all. But again, you put up what you have, and if you have nothing you put up nothing. Latoya Davis, nothing. Joemilla Wilson, this was their primo uno witness. This is the one that's supposed to save them from all of their mistakes, all of their fallacies, all of their screwups. And of course, she testified inconsistencies. She testified to inconsistencies. She testified to the fact, and I know

you remember she testified to the fact about the breakup, that she had left him a month earlier. He was pretty upset about it. She testified to the fact that she feared for her safety, and she also feared for the safety of Brandon or Deshawn Bellamy, who she was in an intimate relationship with that time. And she said that she had talked with Mr. Applewhite about it and that also Mr. Applewhite would found out that they were seeing each other. And she said that when Mr. Applewhite came around there the first time he had Ms. Graves in the car. He had another friend and that friend's wife in the car, and that she left because she knew what was gonna happen, there was gonna be problems. She said she waited about an hour, hour-and-a-half and then she came back because she thought maybe he would have left then because he had to go to work. And she said she got back and then was in the house about 10, anywhere between 10, 20 minutes and then he came and she said she was frightened. He wanted her to come out of the house. And then of course there was some inconsistencies I think between her testimony and testimony of Mr. McGill about how the fight happened, where it happened, and whether or not she was slung into the mud. I think Mr. McGill said he never testified that he was -- that Mr. Applewhite slung her into the mud. And that's okay because obviously that was his friend and try

not to make him look as bad, bad, try to make it look less bad than that it was. She testified to the fact that she was having a relationship with Mr. -- with Mr. Bellamy, Deshawn Bellamy. Now what is really concerned about her is that she flopped and then flopped and then flopped back and then flopped again. And she flopped on the question was is that when she was asked on direct examination, do you know whether or not Shawn Bellamy shot, said I know for definitely when asked by the Solicitor, Shawn Bellamy did not shoot. Then later on she was then forced after probing and to say, well, I didn't know where he was when the shots took place. And we danced around that for 10 or 15 minutes until she finally told the truth and said I don't know where he was at the time the shots fired. The next time I saw him is when I got back in the house. She told a lie. Like I said, she flopped a couple of times in reference to that. Let me tell you why she flopped, she's protecting her boyfriend. Mr. Applewhite was beating the crap out of his new girlfriend.

MR. DEBERRY: Your Honor, I'm going to have to object. I think that's above crossing the line. I mean, I think there's clear testimony that characterize it like that is unfair.

THE COURT: Overruled it. I'm going to charge them with their duty and my duty at the appropriate time.

Continue.

MR. BROOKER: Yeah. Well, and you decide it the way you want do. She said they had, there was fistfighting. And that's what Ms. Latoya Jackson said -- what Latoya Davis say. There was fistfight. I don't know how to describe it. And at no time did Mr. Bellamy came arrest him because Mr. Applewhite was a big guy and he has some big guys with him. He's coming around there for trouble. Now can you imagine how Mr. Bellamy may have felt, how little he may have felt and defenseless and helpless to help his girlfriend that was getting beat up? Anyone have had a motive to do that it would have been him; but she says, well, I know he didn't do it, but no, I didn't see him. She flip-flopped on it multiple times. We danced around that issue a couple of times. She had good reason to lie. She's protecting her new love. It's understandable. A lot of people do that sort of thing.

And I'm almost finished. Let's get to the last two witnesses that I think that we called. And those two witnesses were Mr -- were Mr. Willie Smith and I think Captain Gray. Well, Willie Smith, I think, testified that he was just there, chief of police, but he was just there just looking, observing. Didn't do nothing, just looking. Didn't know what the policies were, give me handbook, let me see what they are. Said his officers did a fine job.

They did a fine job is what he said. Did you see the search warrant? Said he and the solicitor and some other people sat around, made decision they needed a search warrant to enter the house, said he sent Detective Blue to go get the -- excuse me, Hopkins to go get the search warrant. Well, did you see the search warrant? No, I never saw a search warrant, I just kind of saw it from a distance. You notice that everybody was staying away from that search warrant. Hopkins said he served the search warrant, I mean Blue said, I'm the one who got it from Hopkins when Hopkins brought the search warrant back and I served it. Well, did you look at it? No, I just saw the face of it. You know whether or not the inside was filled out? No, I just saw the face of it. And then the last witness is the one who admitted they had screwed up with the search warrant; that they had had charges -- had arrested and had charges against Bellamy and McElveen and people they took out of the house but there was a problem with the search warrant. And, of course, they lied about it. But thank goodness for computers. Thank goodness for computers. Blue testified that warrant was served on 1:35 a.m. This computer usually log-in that Graves testified to, and says that that warrant was still being edited somewhere around 3:15 that morning. it was being edited. They were still working on the search warrant.

They didn't have one, and they lied about it. That's the credibility that's coming from the Marion P.D. And they get on the stand and said believe me. The crime scene log, look at this stuff in the room. The crime scene log, made it up after the fact. The people who were there are not on the crime scene log. They said, oh, Lieutenant Davis says oh, this an accurate thing, that this thing, if they are on the crime scene, if they was on the crime scene they was on this log. Chief Smith is not on the log. You heard Smith, oh, SLED agent Kenny McKensy says he's not on the log. Just a mess. Got two eyewitnesses that said Shawn Reaves didn't do it. Two eyewitnesses that has no reason to lie for one because I'm pretty sure they're probably no friend to him. They were friends to Mr. Applewhite. He got one young lady who probably is covering for her boyfriend or lover and just flip-flopped on the entire thing. You also heard that she testified to the fact that when law enforcement kicked in the door and came in the house that she was in the kitchen. But you remember when Lieutenant Blue testified? And Lieutenant Blue testified that when they came in they find Mr — they find Deshawn Bellamy and they find -- they find Joemilla in the closet in his bedroom. Why would she lie about that? Why would she lie about that? Why would she lie about anything? To protect her boyfriend, protect her

lover. Wouldn't be the first time it's happened.

Now, you the jury is gonna have to go back and consider all of this evidence. You have to make a just decision. And when you go in that jury room, in order to do your job correctly you're about to learn that in order to do your job quickly and that was with all the witnesses that you can't be motivated by passion. You can't be motivated by sympathy. You got to be motivated by the existence and non-existence of evidence. The burden of proof, remember, at the beginning of this case when we says that when I told you that we all have a jacket of innocence on us. All of us have that as citizens. Even people who are not citizens in this country, before they can be convicted of a crime they have a jacket of innocence. They're clothed of that innocence. And the only way that innocence can be removed is unless the State rip it off, rip it off, and show guilt beyond a reasonable doubt. They have to rip it off. They have to rip that cloth of innocence off and show guilt. And when they do that they have to do that with a good solid, credible evidence. Everybody, every citizen deserves that. If you're gonna charge somebody with a crime you have to build a good solid case, a good solid investigation. Every citizen deserves that. Mr. Applewhite deserves that. And when you get back in that jury room you ask

yourself, did they do their job? Now they're looking for a scapegoat. Now they're looking to push this case underneath the rug and not finish it and not do it right. Go back in that jury room and you tell them to do their job. Don't let them cut and run and bring such a lousy case and put it to you and ask you to send somebody to jail on such a lousy case. Tell them to do their job. He's entitled to it. We're all entitled to it. Even Mr. Applewhite is entitled to a good solid investigation into his death and not a series of blunders and mistakes. We're all entitled to that before we have our cloak of innocence ripped off of us. We're all entitled to a good decent investigation, a thorough one, an honest one, not where people lose evidence, not where people lie, not where people make up evidence.

Now all twelve of you as jurors have to go back in that room and you got a job to do collectively, and you have a job to do individually. Collectively, y'all are jurors, a jury, professional jury. And collectively y'all have to try to reach some consensus or try to make some decisions in this case. But individually, individually, you have to each be convinced of guilt beyond a reasonable doubt individually. That is an individual job. That is where you cease then to become a collective group and become an individual. All of you, each one of you, have

to find guilt in your own minds. It is not enough that this person has guilt in his mind. You can't make a decision off of that person. You have to find guilt in your own mind, each and every one of you individually. And I implore you to take that duty seriously and go back and do that. I know you're tired; I am tired too. We have talked more than anybody in this case, the attorneys has. My mouth is dry. My mouth is dry; my legs are weary. But this is justice in America. Please go back and take it seriously. Please go back and go through all of those exhibits, go through everything. I know it's gonna be a hardship on you, but please do that, and please be guided by the evidence or the lack thereof. Be guided by credibility or the lack thereof it. Don't be guide by sympathy. And I think if you do that, I think you'll come back and find that he's not guilty.

And I'm gonna say one more thing and I'm gonna sit down about guilt and innocence. And you look at that jury form, it's gonna have a place for guilt. It has a place for not guilty. Guilt means is that you all believe beyond a reasonable doubt that they have proven it beyond a reasonable doubt. Not guilty means that they have failed to prove this case beyond a reasonable doubt. They have failed to prove this case beyond a reasonable doubt. And I think if you sit back and look at the evidence I

think there is no choice in your mind but to find not guilty because they have not proven this case beyond a reasonable doubt. Tell them to go back and do their job and do it right, and you're not going to let them scapegoat and walk away from their responsibility. Go back and do your job and do it right. Thank you very much.

THE COURT: Thank you.

Mr. Deberry.

MR. DEBERRY: Thank you, Your Honor. Ladies and gentlemen, Mr. Brooker is wrong, okay? I'm just gonna tell you straight off just how it is. Your job is not as a twelve person jury to go in that room when I get finished talking and to tell the Marion Police Department to do their job. Your job is to decide from the facts that were brought out in this case who killed Keshawn Applewhite. I'm not gonna stand here and say that Marion Police Department did the best job I've ever seen. I'm not gonna say this or that. I want you to decide this case based on the facts. If you think that Joemilla Wilson Dozier came here and told you that she saw the fire coming out of the barrel that was being pulled, the trigger being pulled by Shawn Reaves, if you think she was lieing, let him walk out of here. But if you think that she was telling the truth and that that was the only

purpose she was here for today, then you got to find him guilty. Let me tell you something, Mr. Brooker wants you to think she's standing up for Brandon Bellamy. She told you, finally he got out of it. She doesn't know if he's the other shooter or not. She told you what she saw. She saw Shawn Reaves pulling the trigger of a silver revolver, pulling the trigger of a silver revolver. Mr. Brooker wants you to think about all the inconsistencies in this case, but I beg you to just consider what is consistent.

Jackie McGill and Ms. Dozier, Ms. Wilson Dozier, their stories are consistent. They weren't allowed to sit in this courtroom together and hear each other's testimony. They came. They didn't see how each other testified, but their stories were the same. Whether or not she was thrown into a puddle of mud or water makes absolutely no difference. It makes absolutely no difference. Mr. Brooker has been trying this entire time to take your eye off the ball. But ladies and gentlemen of the jury, I'm telling you, and I'm telling you that the evidence supports what they're telling you. She told you that she didn't run back inside until Travis Lane and Jackie McGill were trying to put their buddy back in the car. If he wants you to believe that they had guns and weapons and that they came there for a fight after Jackie McGill told you that he thought he might be getting to go

see a woman, if you believe that then let him walk out of here. He told you about Travis Lane; he wasn't fighter. He couldn't walk; he had bad feet. He was overweight. He couldn't hardly keep his pants pulled up. He didn't go there to fight anybody. He was forced into a situation to try to put his friend back in the car after he was gunned down by Shawn Reaves, and you know it because he was seen doing it. He was seen doing it. Jackie McGill stood right here and he said he hit the ground when the shots started. And then he shot five times. And then he heard some clicking. But Mr. Brooker doesn't want you to pay attention to Dan Defreese who's been a firearms expert for 43 years. He doesn't want you to listen to what he's got to say. He says that Mr. Defreese can't be believed at all because he admitted that everything is possible. And we know in this world that everything is possible. There's a possibility for everything. But it's a likelihood. We don't even have to prove he's guilty beyond any possibility; it's beyond a reasonable doubt. That level is here. Beyond any possibility is through the roof; it's impossible because everything in this world is possible. People can put the wrong bullets in the wrong shells and shoot them from the wrong guns, but Mr. Defreese told you what he found. He also told you that when a revolver runs out of shells it will click.

And that a .38 bullet, bullet number one is real important. It's real important. It came from a .38 or a 357. And Shawn Reaves told Tyler Connor when he was in DJJ that he was shooting a 38, a silver one, and that his buddy was shooting a 9. That's bullet number two that was lodged in his shoulder. And that Doctor Schandl or Schandl is, she testified to something that's real important also, and Mr. Brooker wants you to overlook that. Okay? What did she testify to that was so important? Well, bullet number one, the fatal bullet, it went through his aorta. It went through his lung. I think it went through his liver and it ended down in his colon. It entered through his back. He wants you to believe it's impossible that Shawn Reaves' bullet could have done that from shooting him in front of him. But think about it. I want you do think about it.

Think about the consistency in Jackie McGill, in what he told you, and the consistency about what Joemilla Wilson Dozier told you. That when Ramel Keshawn White started being shot, he fell forward. He fell to his knees. And Shawn Reaves was standing there shooting and that that bullet could go right into his back as he's falling forward. Did that bullet come from his back and come out his chest? No, it went down through his body. That's bullet number one. And that's a .38 Special or a

357 that Shawn Reaves even admitted to shooting somebody with. It's clear. It's clear what happened there. And it's clear that he's guilty. There's no question about it. That man is guilty. And the evidence proves it.

Ladies and gentlemen, Mr. Brooker wrote all over this and he started writing out witnesses names, and he puts X mark. He says, well, those are on the side of Defense. That's for you to decide. That is for you to decide. You take the evidence in this case and you do what you want to do with it. That's your right as a jury. He can't decide. He can't tell you whose side one witness is on and whose side another witness is on. It's all smoking mirrors. He doesn't want to -- he doesn't want to harp on the consistencies. He wants to tell you about the inconsistencies that doesn't make any difference. He wants to say, well, they must be lieing because one of them said they were fighting here and the other one is saying they might have been fighting ten feet over there. They must lieing because one of them said she spit on him and one of them didn't tell you that. They must be lieing because, you know, it's inconsistent.

But what is consistent? What do they remember the best? The tragic event that they witnessed, when that man pulled out a gun and started shooting and killed the victim, Keshawn Applewhite. That's what's consistent.

Did he fall down different ways? They tell you he fall down the same way, told you he got up and tried to get away and fell back down. And that Travis and Jackie at that time they got him and tried to put him in the car and get him to the hospital, get him some help, but he didn't make it. And Jackie McGill has got to live with it. Travis Lane, Travis Lane has got to live with it. And Joemilla Wilson Dozier, she must feel awful. She told you that she thought there might be trouble there that night. But do you think she thought he was going to get gunned down by Shawn Reaves? Yeah, there's another shooter out there and they don't have it. Does that mean Shawn Reaves is innocent? Does that mean that Joemilla Wilson Dozier didn't see the gun, that fire coming from the barrel of his gun? It all adds up. Bullet number one is a .38. Bullet number one is the fatal bullet. It's a simple fact and the facts are yours to decide, but the evidence in this case proves that he killed Ramel Keshawn Applewhite. There ain't no other way it can be said.

We're here about the truth. We're here for justice. Marion Police Department is not on trial here this week, and it is not your job to go in there and deliver a verdict that says Marion Police Department, go do a better job. This is the community you live in and this is the things that take place in the streets and the

community in which you live.

MR. BROOKER: Objection, Your Honor.

THE COURT: Sustained.

MR. DEBERRY: I want to turn your attention to the smoking mirrors of the search warrant. Ask yourself, what did the search warrant have to do with who killed Mr. Applewhite? Mr. Brooker thinks that this is a smoking gun; that at 3 or 4:00 in the morning it was edited. That's all this stuff; that's it. Farmer Blue tells you he had a warrant in his hand, and he served it on the person and that the return happened at 1:00. That's when they finished with the warrant, okay. We don't know what happened. We don't know what Craig Hopkins did. What we do know is that they weren't there. Mr. Brooker asked every single witness that question, were you there, did you see him shoot? And he's gonna, he's quick to tell you that everybody says, no, I wasn't there, I work in Columbia, no, I wasn't there, I was on the police department, we didn't get called until after the shooting. But he doesn't want to tell you about the witnesses who did see it and their consistencies. The search warrant doesn't have anything to do with this. You know what has to do with it. It's Joemilla Wilson Dozier and Jackie McGill, and the evidence that Mr. Defreese who's been a firearms expert for 43 years can tell. He told you that

bullet number one also had a crimping cannular that means it most likely shot from a revolver. Okay? It all adds up; it's all consistent. When Shawn Reaves ran out of bullets he continued to pull the trigger, and that shows you malice aforethought. That is your element that you can use to prove murder in this case and 'cause murder is the verdict that speaks the truth. There ain't no -- there's no question about it. Murder is the killing of another human with malice aforethought. And you can imply that there was malice aforethought simply by how many times Mr. Reaves pulled the trigger.

The judge is gonna tell you it doesn't have to be premeditated. It doesn't have to be planned. Mr. Reaves didn't have to think he was going over there and when Mr. Applewhite got there he was going to kill him. That's not what's required to prove murder. That premeditation can occur in a split second. The law and the judge will tell you, you just listen to the judge and take his word for it because he says it can happen at the time the man commits the act. It does not have to be planned. Implied, you can imply malice aforethought by the actions of a person. The law will tell you that you can say you can run this test on it. You can say if the actions of a human being, of a reasonable person, okay, if you're a reasonable person and that you believe that your actions

is a disregard for human life and that death will result as a cause of your actions, that's malice aforethought. That's all you need. And if you don't think that Shawn Reaves knew that by emptying his revolver in Keshawn Applewhite that death would result, then let him walk out of here. Let him walk. Your job is not to go in there and send a message to Marion Police Department. That's not justice. That's not justice. Your job is to deliver justice and to give a verdict.

And if you remember what I said at the very beginning of this trial, the word verdict means to speak the truth. The word verdict means to speak the truth, and so when you deliver your verdict here tonight in this courtroom, it's gonna be a collective verdict of all twelve of you and it's got to speak the truth. And there's not gonna be a space on the verdict form tonight of whether or not Marion City Police Department is guilty or innocent or whether or not they did their job or not. It's gonna be whether or not Shawn Reaves killed Keshawn Applewhite. That's your job. And you got to weigh all, every bit of the evidence to make that happen. It supports itself; it really does. Mr. Brooker wants you to think about the inconsistencies. I ask you to please to think about the consistencies. It's very important. It's your job to deliver justice and it's gonna be in your

hands. It's a decision you got to live with for the rest of your life.

MR. BROOKER: Objection, Your Honor.

THE COURT: Sustained.

MR. DEBERRY: I just ask you to think about one last thing. Why did a young Shawn Reaves take off? You heard he was supposed to be in alternative school. You heard they had to get him from Philadelphia. Innocent man doesn't leave like that. An innocent man does not take flight. Why did he go? You think Latoya Davis told you a lie when she said a few minutes after the gunshots he comes running out, jumps in the car, less than from me to you from her underneath a street light? He was gone. Thankfully he didn't stay long. It's your chance here tonight to serve justice in this case. I ask that you do it by doing it of a guilty verdict on a charge of murder will speak the truth.

Now there's gonna be two other operations on the verdict form. There's assault and battery with intent to kill. And like I said before, the simplest way to put it, that's attempted murder. If you don't believe that bullet number one was 38 that came out of a silver revolver is the one that struck his heart and killed him, then find him guilty of assault and battery with intent to kill because you know he shot him. You know he shot him. You

know that bullet number one came from his gun because he told you it did. And you know that bullet number two is from a 9-millimeter and that that was just lodged in his shoulder and that wouldn't matter, the doctor said that wouldn't have killed him. It's extremely believable he got shot on the way down, and that's why the bullet went in from above and it lodged down here. That's what happened. The facts are in the evidence.

There's also voluntary manslaughter that's gonna be on the verdict form. And that is for y'all to choose if you don't believe that there was malice aforethought. If you don't believe that Shawn Reaves believed that by shooting this man all the runs he had and trying to shoot him some more, if you don't believe that he thought that would cause death, then you find him guilty of voluntary manslaughter. But that action alone proves malice aforethought. It proves murder. Anybody knows, any reasonable person knows if you're gonna gun somebody down point blank, it's gonna be murder and you're gonna kill that man. And that's exactly what happened. So I ask you now, I'm not gonna take any more of your time. I know it's late and I know that we've all been here all week and I'm sorry for that. This is a very important matter. And I ask you to take the evidence in this case and to decide what it tells you. Bring the truth out here tonight, a

verdict that speaks the truth is guilty of murder. Shawn Reaves murdered Keshawn Applewhite. Thank you very much.

THE COURT: Members of the jury, it is now my duty as the trial judge to instruct you on the law applicable to this case. It is your duty as jurors to accept and apply the law as I now state it to you. Furthermore, it is your exclusive duty to decide all the issues of fact in this case and to determine the effect, the value, the weight and the truth of all the evidence. Both the State and the Defendant have the right to expect that you will carefully consider and evaluate the evidence and apply the law of this case to it so that in the end both the State of South Carolina and the Defendant will receive a fair and impartial trial. I want you to understand that when I use the word defendant I refer to Mr. Shawn Reaves. Furthermore, it is important to understand that the State of South Carolina charges the defendant Shawn Reaves with the offenses known as murder and assault and battery with intent to kill. To these charges the Defendant has entered a plea of not guilty. This plea of not guilty places the burden of proof on the State to prove the guilt of the defendant to you beyond a reasonable doubt.

It is vital to understand that the defendant is presumed under the law to be innocent of these charges.

It is a fundamental rule of our law that a defendant irrespective of the seriousness of the charges against him is always presumed innocent of the crimes for which he is charged unless and until his guilt can be proved by evidence that satisfies you beyond a reasonable doubt. The presumption of innocence is not a mere legal theory or legal phrase. The presumption of innocence is very important and you need to understand that this presumption accompanies a defendant from the time of his arrest and appearance in this court and continues with the defendant even after you retire to the jury room to deliberate. In other words, a defendant receives the benefit of the presumption of innocence until the very end of this trial when you, the jury, will deliberate upon the evidence and and decide whether the State has proved his guilt 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 so even in criminal cases the law does not require proof that overcomes every possible doubt. However, if based on your consideration of evidence you are firmly convinced that the defendant is guilty of the crimes charged you must find him guilty. If on the other hand, you think there is a real possibility that he is not

guilty you must give him the benefit of the doubt and find him not guilty. Please understand that reasonable doubt may arise from evidence which has been presented in the case or from the lack of evidence in the case. It is your responsibility to determine whether or not reasonable doubt exists as to the guilt of this defendant. I charge you that the defendant is entitled to every reasonable doubt arising in the whole case. If upon any issues of fact essential to conviction and a verdict of guilty you have a reasonable doubt as to how that issue should be resolved, it would be your duty to resolve that reasonable doubt in favor of the defendant.

Thus in summary, it is important to understand that a defendant is not required to prove his negligence. Instead, the State is required to prove by law every essential element of the offense charged against the defendant by evidence which satisfies you of his guilt beyond a reasonable doubt. Only then can you convict the defendant and find him guilty.

Members of the jury, there are two types of evidence which 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 a eyewitness. It is evidence which immediately establishes the main 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 establishes collateral facts from which the main fact may be inferred. Circumstantial evidence is based on inference and not on personal knowledge or observation. The law makes absolutely no distinction between the weight or value to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence. You should weigh all of the evidence in the case. 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. When evidence is lost or destroyed by a party you may infer that the evidence which was lost or destroyed by that party would have been adverse to that party.

I further instruct you that the fact that the defendant in this trial did not testify on his own behalf is not a factor to be considered by you in any way in your deliberations or in your consideration on the question of the guilt or negligence. In this regard a defendant has a constitutional right to remain silent. And the exercise of this right must not be considered by you in your deliberations. The fact the defendant did not testify should not even be discussed by you in the jury room. The

burden of proof, as I have stated to you, is on the State. The Defendant has no obligation to prove his innocence. The burden of proof remains with the State to prove the defendant's guilt beyond a reasonable doubt. And the fact that a defendant did not testify is not a factor to be considered by you in deciding the guilt or the innocence of the defendant. When you consider the whole case if you have a reasonable doubt as to the guilt or innocence of a defendant, then he is entitled to that reasonable doubt and would be entitled to a verdict of not guilty. However, if upon considering the whole case you find that the State has proved by evidence which satisfies you of the guilt of the defendant beyond a reasonable doubt, then in such circumstances it would equally be your duty to convict the defendant and find him guilty.

Also during this trial you and I have separate duties to perform. As the trial judge it is my responsibility to preside over this trial, and I also have the duty to rule upon the admissibility of the evidence offered during the process of this trial. In that regard you are to consider only the competent evidence before you, and you are to disregard from your mind any testimony ordered stricken from the record of this case during the progress of this trial, if there be any. And you are to consider only the testimony which has been presented from

this witness stand together with any exhibits admitted into the record of this case. Furthermore, I have the additional duty to charge you on applicable law of this case, and in that regard it is your duty to accept and apply the law as I now state it to you. If you have any preconceived ideas as to what the law is or what the law ought to be and it does not agree with what I tell you the law is, you are obligated under your oath to abandon these preconceptions because you are sworn to accept the law precisely as I now state it to you.

In this trial you are the sole and exclusive judge of the facts; therefore, I ask that you not infer that I have any opinion about the facts in this case from anything I have said or done during the course of this trial. In this regard the law simply does not permit me to have an opinion about the facts. As jurors it is your duty alone to determine the effect, value, weight, and truth of the evidence presented during the course of this trial. In determining what the facts in this case are you must judge the credibility which simply means believability of the witnesses and the value of weight to be given to their testimony. In making this decision there are many things that you may and should take into consideration such as: The appearance and manner of the witness on the stand, a characteristic often referred to

as the demeanor of a witness; was the witness forthright or hesitant, 'was the witness' testimony consistent or did it contain discrepancies; what was the ability of the witness to know the facts about which he or she testified; Did the witness have a cause or reason to be biased and prejudiced in favor of the testimony he or she gave; was the testimony of the witness corroborated or made stronger by other testimony and evidence or was it made weaker or impeached by such other testimony and evidence.

Furthermore, a person who has a past criminal record is competent to testify during a trial. A past record does not affect the ability of that witness to testify. The past record may only be considered by you, if at all, in deciding the witness' believability.

Remember, you are the sole and exclusive judges of the facts in the case and of the believability of any and all witnesses. Furthermore, you have heard testimony from persons described as experts, persons who by their education and experience have become expert in some field may state their opinion on matters in that field and may also state their reasons for their opinion. You should judge expert opinion testimony like any other testimony. You may accept it or reject it and give as much weight as you think it deserves considering the witness' education and experience, the reasons given for the opinion, and all

the other evidence in the case. Also, please understand that the testimony of a police officer is not entitled to more weight than that of any other witness. You are the sole judges of the credibility of a witness and you are not to give more weight to a police officer's testimony solely because he is a police officer. Rather, you should judge an officer's testimony by the same standards that you apply to all other witnesses. Please understand that you have the right to believe a small portion of a witness' testimony and disregard the larger portion or vice versa. You may believe all of a witness' testimony or none. You may believe the testimony of a single witness against that of many witnesses or the other way around.

In exercising your mental processes and attempting to decide the truth the law simply requires that you exercise your good judgment, your common sense, your sense of logic and reason and your experiences in life. You then apply these attributes to the evidence and apply the law as I now state it to you and thus arrive at a verdict. Furthermore, both the crimes of murder and assault and battery with intent to kill require that you find the defendant acted with malice and aforethought. Malice is hatred, ill will, hostility towards another person. It is the intentional doing of a wrongful act

without just cause or excuse and with an intent to inflict an injury or under circumstances that the law will infer an evil intent.

Malice aforethought does not require that malice exists for any particular time before the act is committed. But malice must exist in the mind of the defendant just before and act of time 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. The terms expressed and inferred do not mean different kinds of malice but merely the manner in which malice may be shown to exist. That is either by direct evidence or inferred from the facts and circumstances which are proved. Expressed malice is shown when a person speaks words which express hatred or ill will for another, or when the person prepared beforehand to do the act which was later accomplished, for example, lying in weight for a person or any other acts of preparation going to show that the deed was within the defendant's mind would be expressed malice. Malice may be inferred from conduct showing a total disregard for human life. In fact, if facts are proven beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would simply be an evidentiary fact to be taken into consideration by you,

the jury, along with other evidence in the case and you may give it such weight as you determine it should receive.

In this case the defendant is charged with murder. The State must prove beyond a reasonable doubt that the defendant killed another person with malice aforethought. Murder is the willful killing of a human being by another human being with malice aforethought. If you find that the State has failed to prove beyond a reasonable doubt that the defendant committed murder, you may consider whether the State has proved beyond a reasonable doubt that the defendant committed voluntary manslaughter. To prove voluntary manslaughter the State must prove beyond a reasonable doubt that the defendant took the life of another in the sudden heat of the passion based on sufficient legal provocation. Both heat of passion and sufficient legal provocation must be present at the time of the killing to constitute voluntary manslaughter. Sudden heat of passion may for a time affect a person's self-control and temporarily disturb a person's reason. The sudden heat of passion must be the type that would make an ordinary person unable to coolly reflect on his actions and would produce an uncontrollable impulse to do violence. Sufficient legal provocation must be the type that would make a person of ordinary reason

and caution become enraged and to lose control temporarily. The provocation needed for voluntary manslaughter must come from some act of or related to the victim. Words alone, however vulgar or insulting, are not enough to be legal provocation. When death is caused by the use deadly weapon the words must be accompanied by some overt threatening act which could have produced the heat of passion. The exercise of a legal right, no matter how offensive it is to another, is never sufficient legal provocation for voluntary manslaughter. If the heat of passion had cooled or if there was enough time between the provocation, if any, and the killing for the passion of a reasonable person to cool, the killing would not be voluntary manslaughter. In deciding whether a reasonable person would have had enough time to cool off you should consider all the circumstances surrounding the killing. You may consider the nature of the provocation, if any, the defendant's mental and physical stand, and the circumstances and relationships between the parties.

The defendant has raised a 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 the

evidence including the evidence of self-defense, then you must find the defendant not guilty. If 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. One, without fault. First, the defendant must be without fault in bringing 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 difficulty and would not be entitled to an acquittal based on self-defense. Two, imminent danger. The second element of self-defense is that the defendant was actually in imminent danger of death or seriously bodily injury, or that the defendant actually believed he was in imminent danger of death or serious bodily injury. If the defendant was actually in imminent danger it must be shown that the circumstance would have warranted a person of ordinary firmness and courage to strike the fatal below 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 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 beliefs may have been mistaken. It is for you to decide whether the defendant's fear of immediate danger of death or serious bodily injury was reasonable and would have been failed to find an ordinary person in the same situation.

Words accompanied by hostile acts may, depending on the circumstances, establish self-defense. The reasonable size, ages, and weights of the defendant and the victim may be considered in deciding the apparent or actual need for force in self-defense and the amount of force needed. Prior instances of violence by the victim may be considered in deciding whether the defendant actually believed he was in imminent danger of death or serious bodily injury or was actually in imminent danger. The final element of self-defense is that the defendant had 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. 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 and which a person of ordinary reasonable and firmness would have believed to be needed to prevent death or serious bodily harm. If the defendant is justified in defending himself or others and in firing the first shot, then the defendant is also justified in continuing to shoot until it is apparent that the danger of the death or serious bodily injury has completely ended.

The defendant has also been charged with assault and battery with intent to kill. In order to prove assault and battery with intent to kill the State must prove beyond a reasonable doubt the defendant committed an unlawful act of violent of a violent nature to the person of another with malice aforethought. An assault occurs when a person unlawfully attempts or offers to commit a violent injury upon another person and has the present

ability to complete the attempted injury. An assault is intentional creation of a reasonable fear of immediate bodily harm. It is not necessary that the attempted injury or harm actually take place. For example, if I walk up to you and when we are within arms reach I draw back to hit you, that is an assault. A battery is unlawful touching of another person by a person who has committed the assault. An unlawful touching can be caused by a part of the accused's body or by any object the accused puts in motion. A battery is a completion of the assault by using or applying force to another person, however slight, in a rude, angry, or resentful manner without legal justification for doing so. Using my earlier example, if I carry through the assault by hitting you, then that is the battery. A specific instance, intent to kill is not an element of assault and battery with intent to kill, but there must be a general intent to commit serious bodily injury. Intent means intending a result which actually occurs, not accidentally or involuntarily. Intent may be shown by acts and conduct of the defendant and other circumstances from which you may naturally and reasonably infer intent. Evidence of the character of the assault, the character of the instrument used, the manner in which it was used, the purpose to be accomplished and the resulting wounds or injuries may be

considered in determining the intent with which the assault was committed. Intent may be inferred when it is demonstrated that the defendant voluntarily and willfully commits an act, the natural tendency of which to destroy another's life.

Ladies and gentlemen of the jury, I am now drawing near the end of my charge and I want you to clearly understand that you are not partisans or advocates for the State or this defendant. You do not serve as jurors to reward your friends or punish your enemies. In this regard you have been selected by both State and this Defendant to be fair and impartial jurors. It is your duty by your joint deliberations to determine the truth in this case giving to this defendant the benefit of every reasonable doubt on each and every issue. Then to the facts which you determine to be true you should take and apply the law which has been given to you by this Court and thus arrive at a verdict which speaks the truth in this case. In fact, the word verdict which has a Latin derivative, means a true saying. Thus, when you accomplished these responsibilities you will have satisfied your oath as jurors and you will have discharged your duty to this Court.

Would you please hand the forelady the jury form.

Now Ms. Forelady, I have handed to you the

verdict form. When you arrive at a verdict in this case you will write your verdict on the form. For each charge if the State has failed to prove the guilt of this defendant beyond a reasonable doubt your verdict would be two words, not guilty. Likewise, for each charge if the State has proved the guilt of this defendant beyond a reasonable doubt your verdict would be one word, guilty. Ms. Foreperson, once a decision has been made just check whichever choice is your verdict and sign and date the verdict form. The verdict that you render in this case must be the verdict of each and every juror. It must be your unanimous verdict. All twelve jurors must agree on the verdict which you authorize the foreperson to write for the jury. Ms. Foreperson and members of jury, I want you to further understand that the order in which the choices of verdict appear on the verdict form are not suggestive of any verdict on the part of this Court. The verdict in this case is to be determined by you, the jury, and not the Court. Furthermore, ladies and gentlemen, please understand that even though I have given the verdict form to the forelady it is not her verdict alone. It is the verdict of all 12 of you. And I emphasize again, it must be unanimous.

In a moment you will retire to the jury room. However, I would ask that you do not begin your

deliberations until you are told to do so. The law requires that I now consult with the attorneys to make sure that I have not left anything out of these charges. After I have checked with the attorneys the bailiff will bring in the items of evidence and instruct you to begin your deliberations. Also, should you have any questions during your deliberations you must put them in the form of writing and send them to me by way of the bailiff. The court bailiff will be placed immediately outside the jury room door to provide security and assistance for you during your deliberations. Once you have reached your verdict please knock on the jury room door and ask the bailiff to advise the Court that you have reached a verdict and we will return you to the courtroom as promptly as possible. Thank you, and you may now retire to the jury room; but again, do not begin your deliberations until you are told to do so.

(WHEREUPON, the jury was removed from the courtroom at 7:18 p.m., and the following proceedings commenced in open court.)

THE COURT: Any objections to the charge given? What says the State?

MR. DEBERRY: None from the State, Your Honor, just that we remember to deal with the alternate.

THE COURT: Got you. What says Defense?

MR. BROOKER: None, Your Honor. I didn't hear anything that would cause us to object to anything.

THE COURT: All right, thank you. Let me ask you, the juror on the back row, fourth one over to the right, he seems to be crying and having some troubles. Do y'all want me to go ahead and replace him with alternate or do you want me to relieve him?

MR. BROOKER: Which one was that?

THE COURT: He was the fourth one over back row, had short hair.

MR. DEBERRY: Absolutely not, Your Honor.

THE COURT: Said he'd been to the mental institution several times, but had a driver's license, could read and write.

MR. BROOKER: That's the one I think that says he had mental problems, something like that.

THE COURT: Do you want me to replace him or do you want to take the alternate out and let him go.

MR. DEBERRY: No, Your Honor, I request he be left on. I haven't seen any problems from him.

THE COURT: I just don't want him to break down during jury deliberations. I've had that happen in Horry County trying a week long case, and I'm not going to have that again.

MR. DEBERRY: Well, maybe we could just -- well,

I ask he be left on the jury.

THE COURT: What says Defense?

MR. BROOKER: Let me please consult with him first.

(Pause while Mr. Brooker and defendant confer.)

MR. BROOKER: I have another suggestion before you decide. Why don't we bring him out and just ask him if he's okay and make sure that he's not about to blow his top. Well ---

THE COURT: Is that okay?

MR. BROOKER: Your Honor, and I was just going to say, Your Honor, yes, if it's a situation Your Honor is that where if he may be kind of erratic he's going to, I guess, interfere with the deliberation of the jury and cause a problem then we be -- we definitely be in agreement to remove him because obviously we don't want a mistrial situation.

THE COURT: Tell you what, since you consent with him he doesn't -- let's bring him out and just see what I think his status is, his emotional status.

Do you mind getting that one juror, just that one.

(Juror is returned to the court room.)

THE COURT: How are you doing?

THE JUROR: I'm going good.

THE COURT: If you would, tell me your name again I can't remember what your name was.

THE JUROR: John Duane Floyd.

THE COURT: Mr. Floyd, I noticed when the lawyers were giving their closing arguments that you looked like you were getting upset.

THE JUROR: No, sir.

THE COURT: I just want to make sure that if we leave you in there you can work the other jurors and ---

THE JUROR: Yes, sir.

THE COURT: ---you okay with working with the other jurors ---

THE JUROR: Yes, sir.

THE COURT: ---to work with them?

THE JUROR: Yes, sir. Yes, sir.

THE COURT: All right, I'm gonna put you back in there.

THE JUROR: Okay.

THE COURT: Thank you. All right.

(Juror is returned to the jury room.)

THE COURT: All right, y'all want to review the items of evidence, review all the evidence.

MR. DEBERRY: Your Honor, I reviewed State's exhibits.

THE COURT: All right. Has the State reviewed

all the evidence going into the jury room?

MR. DEBERRY: Yes.

THE COURT: Is everything in order?

MR. DEBERRY: Yes, Your Honor, that is correct.

THE COURT: Defense?

MR. BROOKER: Yes, Your Honor.

THE COURT: Everything is in order?

MR. BROOKER: Yes, Your Honor.

THE COURT: Bailiff, if you would send all of those items back. Bring out the alternate and I'll speak with her.

(Alternate returned to courtroom).

THE COURT: How are you doing? We're off the record.

(Alternate was excused.)

THE COURT: We'll be at ease until we have a question or a verdict.

(WHEREUPON, jury began its deliberations at 7:28 p.m. and court was in recess.)

THE COURT: All right, we have a question and it says, which carries a greater sentence between two and three. That's all it says. I think we need to respond something along the lines, that is not an issue or concern for the jury. And I just say, keep deliberating. All right. After they read it, take it back, and we'll mark

it.

(Judge writes response on jury note and note is sent back to the jury.)

THE COURT: Mr. Bailiff, have we got a verdict?

THE BAILIFF: We got a verdict.

THE COURT: Let me talk with everybody in the courtroom real quick just to make sure you understand where we are right now. I know that there's family members on both sides of the courtroom for both parties, and I know that you're all interested in this case and that your emotions might be running high. However, I want you to understand that I have a job to do. Part of my job is to make sure everybody gets a fair trial. The second part of my job is to make sure that that jury does what they need to do and nobody gives them a hard time about it. You follow me so far? So let me tell you, if anybody in this courtroom, when they read that verdict, if anybody acts out and makes a noise at all, good or bad, that includes you, good or bad, I'm gonna put you in jail for ten days. I don't care who you are. I don't care where you come from. You will go to the Marion County jail tonight. Does anybody have any questions about what I'm saying?

(There was no response.)

THE COURT: Now is the time to ask.

(There was no response.)

THE COURT: Can everybody in this courtroom go along with that? I don't want people saying, yeah, or bad or making any sounds at all. I want you to sit there like a rock until that jury is gone and thereafter also. Everybody okay with that? How about that crowd over here, you okay with it. How about the defendant?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Go ahead and bring out the jury.

(WHEREUPON, the jury was returned to the courtroom at approximately 9:08 p.m., and the following proceedings commenced in open court.)

THE COURT: All right, Ms. Forelady, have you reached a verdict, Madam Forelady?

THE FORELADY: Yes.

THE COURT: Would you hand the verdict form to the bailiff please, ma'am. Tell you what, Ms. Forelady, I think you need to check something on one and two.

THE FORELADY: On one and two?

THE COURT: I think I know what you mean but...

(Forelady complies by writing on verdict form, and then it's tendered to the Court)

THE COURT: All right, Ms. Clerk, if you would publish the verdict.

THE CLERK OF COURT: Thank you, sir. State of South Carolina, County of Marion versus Shawn Reaves, defendant, in the Court of General Session, Twelfth judicial Circuit, verdict form indictment number 2010-GS-33-0375. Murder, count one: We, the jury, by unanimous consent find the defendant Shawn Reaves not guilty of murder. Proceed to number two. Number two, assault and battery with intent to kill: We, the jury, by unanimous consent find the defendant Shawn Reaves not guilty of assault and battery with intent to kill. Proceed to number three. Number three, voluntary manslaughter: We, the jury, by unanimous consent find the defendant Shawn Reaves guilty of voluntary manslaughter. Dated November 12th, 2010, signed Joyce Stackhouse. Is this your verdict say you one say you all? If so, please raise your right hand.

(All jurors complied by raising their hand.)

THE COURT: Is there any need for further polling from the State?

MR. DEBERRY: No, Your Honor.

THE COURT: From Defense?

MR. BROOKER: No further polling, Your Honor.

THE COURT: All right, thank you. Members of the jury, I want to thank you for your service. I know it's been a hardship to be up here all week long and have to

listen to all this and make the hard decisions that you've had to make. But you have been attentive and you have done your job, and I appreciate that.

If you have any trouble with your child certainly try to let us know.

But you are free to go and you are dismissed. You can stay if you'd like but you can go.

(WHEREUPON, the jury was removed from the courtroom at 9:12 p.m., and the following proceedings commenced in open court.)

THE COURT: All right, I'll be glad to hear any motions from the Defense.

MR. BROOKER: Certainly. Your Honor, we make a motion for a verdict notwithstanding the judgment. And of course, and the basis for that is, is that, is that ---

THE COURT: Can't do that in a criminal trial. There is no judgment.

MR. BROOKER: Let me repeat that. A motion for a new trial. And we make a motion for a new trial based upon the fact is that there is absolutely, I think, no evidence that is in the record that would substantiate at least the charge of voluntary manslaughter. In order for the jury to reach the conclusion that Shawn Reaves is guilty of voluntary manslaughter, they have to first reach the conclusion that Shawn Reaves fired the fatal bullet.

And of course, I think throughout the course of this trial that's been one of the problems in connection to this case is that, now if they had said, well, it was assault and battery with intent to kill then, of course, with respect to assault and battery with intent to kill they would have to make no finding as to whether or not he shot the fatal bullet. I think there was testimony that came from, I think, the medical examiner that obviously is that the bullet that was fatal was the bullet that actually came from the back. And of course, there was testimony, I think, from Jackie McGill who testified that there was what he says, you know, five quick rapid fires, you know. Pop, pop, pop, pop, pop. There was also -- the only other person who testified with respect to any sort of shooting was with Joemilla Wilson, and she testified that she saw a flash. She saw a flash. And then, of course, when the flash was over with he then fell to his knees and he fell to the ground. And that's when she then tried to help him up.

No one, and even either of the experts, could not testify to or could not testify to, I think, or even eliminate this as being two shooters. It could potentially have been five shooters because the other -- the other three wounds in the body were perforating wounds, which means that the bullets passed through and

was never retained. So there was a potential for five shooters. So in order for the jury to make a conclusion or reach a conclusion that he actually did the killing, it would cause for them to speculate in reference to that. And obviously is, is that I think that was the reason for our motion for a directed verdict in the beginning is because, you know, they can't speculate with respect to, you know, whether or not he shot the fatal bullet or not. There has to be proof beyond a reasonable doubt, and there is no evidence offered in this case that would satisfy a proof beyond a reasonable doubt to say that Shawn Reaves, even if they, even if the jury did believe, that he fight -- that he was the one that fired the fatal bullets specifically when all of the witnesses testified that he shot him from the front and that there was a bullet that penetrated to the back. It is, you know, I guess physically impossible. It is absolutely physically impossible. Now I think, and of course, he is entitled to his interpretation. I think the prosecutor's office stated to the jury, I think, in conclusions that the bullet that was fired to his back and shou--to the back of the shoulder lodged in his shoulder and that that bullet was harmless but that was actually false. The bullet that actually shot him from the back from the medical examiner, that is the bullet that actually went in and pierced the

lung. I think the medical examiner says the bullet that was shot from the front that hit him in the shoulder in the front was the one that was nonfatal. And the other three bullets that were shot or other three wounds that were shot was nonfatal. So it is absolutely impossible for them to reach a conclusion based upon the evidence that was presented or the testimony that presented and the evidence that he actually shot the fatal bullet. It's absolutely impossible. And as a result of that, then they may have been motivated by some other factor, but definitely the facts. It is a case in which the evidence does not support the conclusion in which they reached, and we would ask that the Court set aside the verdict and of course order new trial on the issue of the remaining, I think, charge of involuntary -- or excuse me, voluntary manslaughter.

THE COURT: All right, thank you. I hear your motion; I understand it. I will deny it at this time. If you will bring him forward for sentencing.

Solicitor, what kind of record does he have?

MR. DEBERRY: Your Honor, we're unaware of any record that Mr. Reaves has, but I know that at the appropriate time the family would like to be heard from.

THE COURT: I'll be glad to hear from maybe one of them now.

MICHELLE SANDERS: Yes, sir. Who do I get to say what I've been wanting to say. I've been quiet, Your Honor. I've kept my mouth closed.

THE COURT: If you would give me your name right now.

MICHELLE SANDERS: Michelle Applewhite Sanders.

THE COURT: Okay, I will be glad to hear from you.

MICHELLE SANDERS: Okay. I mean, do I have to direct to you? Do I have to direct to you? I thought I get to ---

MR. DEBERRY: No, you have to speak to him.

MICHELLE SANDERS: What am I supposed to tell the judge?

THE COURT: It's up to you.

MR. DEBERRY: Tell the judge how you want him to handle this.

MICHELLE SANDERS: Your Honor, let me tell you something. Indulge me, Your Honor, 'cause I've been indulging you all week. Indulge me. Your Honor, if my son was in the street selling drugs, if my son was in the street getting in trouble, robbing people, carrying a firearms, not doing what he supposed to do, I would say okay, this is something I expect. Your Honor, my son graduated high school in the top ten percent of his class,

okay? He went to the military. He left the military. He went and set up a life in Atlanta. He was working full time going to college, okay. He wasn't in the street. He came home to see me for Mother's Day. He got here 2:00 Sunday morning and was to leave Sunday evening, you understand what I'm saying, Your Honor. I got children now that are still affected. There are days when I can't even do my job because I think about what happened to him. He sitting here talking about he -- what was the words you used? Okay, you want to negotiate, work -- I can't even think right now. But you want us to give him a chance. He didn't give my son a chance. Had he shown him the gun my son probably would have retreated and left, but no, he decided it was in his best interest to pull the trigger so when he didn't have regard for my son I can't feel safe walking Marion with people like him around. You understand what I'm saying, Your Honor. I can't feel safe.

I need to know that he's put away for as long as possible because my son didn't do anything to him. If anything, my son beef would have been with Deshawn, you understand. He was -- that's like me and him arguing and she shoots. He didn't have nothing to do with that. My son was innocent. He didn't come to Marion looking for a fight. He didn't come to Marion looking to hurt nobody.

He came to Marion to spend Mother's Day with me, you understand. That's -- I just want you to understand he, he, he took a innocent life, a innocent life. No matter about the arguing with Joemilla going on. He was innocent, Your Honor. He was unarmed. He was unarmed. He was defenseless. No matter how big he might have been or how bad Mr. Brooker wants him to be, no, sir. That wasn't the child that I raised; that wasn't him.

THE COURT: All right. I understand.

MICHELLE SANDERS: I want you to take into consideration that.

THE COURT: I will. Thank you very much. Anything further?

MR. DEBERRY: Not from the State, Your Honor.

THE COURT: I'll be glad to hear from you, Mr. Brooker.

MR. BROOKER: Thank you, Your Honor. Your Honor, I think these sorts of -- at this particular point in time I think is probably almost one of the periods of time I think probably most challenging to the Court. And the reason why I think it's most challenging is that because I think there is a lot of interest that the Court has to balance. One of the things I think, one of the interests I think the Court has to balance is that, is that the actual way the trial went, the information that

was solicited during the course of the trial, the circumstances surrounding the event, and then also, you know, the Court has to take into consideration at least the interest of the family. Now obviously with respect to taking in the interest of the family I understand exactly how his mother feels. His mother probably feels is that there is absolutely nothing that would satisfy her in this particular situation because obviously she looks at it from an emotional standpoint. And that is -- and that is understandable. She not a lawyer. She's not a practitioner. She's a mother, and that's her point of view. But all of us who sits in this courtroom, the rest of us, who are professionals and that we look at it from a different perspective, that we look at it less emotional, we have to look at the pros and cons of the case. We have to look at sometimes a case that's not quite clear. And in this particular situation I think a jury had an extremely difficult time finding this case, finding that he was guilty of murder in connection with this case. And the reason why I think they struggled with this case is because I think Your Honor sit here and I think heard the same evidence that we all saw in here is that, is that this is not an easy case. Regardless of who do you believe, if you believed at least the prosecutor's side of it, and that is that, and that is that Shawn Applewhite --

excuse me, Shawn Reaves, actually caused the death of Mr. Applewhite, if he says, well there is evidence to say that his -- say that he shot the fatal bullet that actually killed Mr. Applewhite. And of course, this was a situation that at the time that Shawn Reaves was 16 years of age. He has no prior criminal record. This is a situation that you have someone that was probably twice his size if you believe testimony that was heard that actually -- and I think there was actually, it was expressed in a couple of ways. I think Joemilla, I think, Wilson says that Mr. Applewhite I think walked up to him and says, what, and then grabbed a chain and jerk it off his arm and then he immediately starts shooting. And then, of course, I think if you believe Mr. Connor, Mr. Connor says, well, Mr. Reaves says the guy lunged at him, if you believe Mr. Connor.

I think in either situation there are some at least some mitigating factors in this particular situation. It was not a situation in which that no party was without, I think, fault in connection with this although one party lost their life and that is extremely tragic. That is extremely tragic. One party lost their life. And, of course, I think Your Honor has to, when he takes a look at this he has to balance all of those interests, balance how close this case was, and also

balance at least, you know, a lot of the mitigating circumstances that were brought out in connection with this case.

Now he exercised his right to a jury trial and obviously the law says is that he shouldn't be punished for exercising his rights. I know, I think, I've been doing this long enough, I think, sometimes where when someone exercises their constitutional right, and of course, they get hit pretty hard. That's happened, you know in a lot of the cases. But the court says, and I think the courts have said, that no one should be punished for choosing to exercise their constitutional right to a jury trial and have a jury sit and listen to some very complicated facts, to listen to quite a bit of defenses and make a determination as to whether or not that person was guilty because there was quite a bit. There was actually two witnesses in this case and those were the two witnesses Mr. McGill and actually Mr. Lane, you know, who gave photo identifications of different persons and says that, no. And of course they were not friends to Mr. Reaves. Now so this was not a case that was very easy where it was clear cut and where he was just simply it was a slam dunk case and he was simply wasting the time of the Court.

There are very serious mitigating factors, and

we'd ask the Court to take those mitigating factors and the consideration when it's trying to balance what's the appropriate verdict, —

THE COURT: All right. Thank you.

MR. BROOKER: —appropriate sentence. Thank you, Your Honor.

THE COURT: In reference to 2010-GS-33-0375, the defendant is committed to the State Department of Corrections for a term of 25 years. He will be given credit for time he has served thus far.

(Court's Exhibit Number 3 was marked and made a part of the record.)

* * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 25th day of March, 2011.

Frances Bakis Ray

FRANCES BAKIS-RAY, RPR
My Commission Expires: 9-13-2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAWN REAVES,

APPELLANT

APPELLATE CASE NO. 2010-178486

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial court err in denying appellant's motion to dismiss the indictments when evidence was missing and never produced, which included the victim's clothing and written statements from five eyewitnesses who testified they gave the statements to police on the night of the incident, which was a Rule 5 violation, and a violation of appellant's due process right to a fair trial?

2. Did the trial court err in denying appellant's motion to dismiss the case based on a violation of his Sixth Amendment right to a speedy trial when his first trial, which ended in a mistrial, was held on August 24, 2010 which was over three years after the incident which occurred on May 13, 2007, and his second trial was held November 8, 2010?

STATEMENT OF THE CASE

The Marion County Grand Jury indicted Shawn Reaves on the charges of murder and assault and battery with intent to kill (ABWIK) (Indictment 2010-GS-33-0375). On August 24, 2010 Reaves proceeded to trial before the Honorable William H. Seals and a jury. Reaves was represented by Thurmond Brooker, and the state was represented by H. Steven Deberry. The judge declared a mistrial based on the state failing to produce evidence to Reaves. R. 467, ll. 20.

On November 8, 2010, Reaves proceeded to trial again on the same charges before the Honorable William H. Seals and a jury. Reaves was again represented by Thurmond Brooker, and the state was represented by E.L. Clements, III, Solicitor; Steven Deberry; and Fitzlee McEachin. The jury returned a verdict of not guilty on the murder and ABWIK charges, but found Reaves guilty of voluntary manslaughter. Judge Seals sentenced Reaves to twenty-five years incarceration. Reaves' attorney filed a notice of appeal. This appeal follows.

ARGUMENT

I.

The trial court erred in denying appellant's motion to dismiss the indictments when evidence was missing and never produced, which included the victim's clothing and written statements from five eyewitnesses who testified they gave the statements to police on the night of the incident, which was a Rule 5 violation, and a violation of appellant's due process right to a fair trial.

Jackie McGill had been friends with Keshawn Applewhite since childhood. R. 266, ll. 1 – 25. On May 13, 2010, Applewhite returned to Marion to visit his mother for Mother's Day as he was then living in Atlanta. R. 267, ll. 1 – 25. Applewhite asked McGill to meet him at the local SOV Game Room which they did. Applewhite's cousin, Karen Graves, was with him. They met Travis Lane at the Game Room, and the four of them rode to Brandon Deshawn Bellamy's house. R. 268, ll. 1 – 24; R. 269 ll. 1 – 25; R. 270, ll. 1 – 9; R. 273, ll. 12 – 25; R. 274, ll. 1 – 25; R. 275, ll. 1.

Joemilla Wilson testified that she and the victim, Keshawn Applewhite, had been involved in a romantic relationship up until one month before this shooting incident on May 13, 2010. They were living together in Atlanta until she moved back to Marion about one month earlier. R. 554, ll. 1 – 25; R. 555 ll. 1 – 20; R. 571 ll. 3 – 21. She started seeing Deshawn Bellamy, and admitted she had been intimate with him. Applewhite was upset that she had already started seeing someone else. She was concerned for her safety and Bellamy's when she learned that Applewhite was in town on May 13, 2010. R. 568, ll. 1 – 25; R. 569, ll. 1 – 25; R. 570, ll. 1 – 25; R. 571, ll. 1 – 25; R. 572, ll. 1 – 3.

When Applewhite, McGill, Travis Lane, and Karen Graves arrived at Bellamy's house, there were several people in the yard. R. 275, ll. 19 – 25. Applewhite got out of the car, and asked to speak to Joemilla who was inside the house. She came out to talk to him, and they started walking down the street together. R. 276, ll. 1 – 25.

Joemilla's testimony was she and Applewhite walked down the street and started arguing. Then they started fighting mostly in front of the house. R. 557, ll. 1 – 24. McGill and some others tried to break up the fight. R. 559, ll. 5 – 15. Applewhite threw her into a mud puddle, and she hit her head on a car. She got up and they continued to fight. She then decided to go back to the house. R. 578, ll. 7 – 25; R. 579, ll. 1 – 7.

McGill testified that he tried to break up the fight because Applewhite and Joemilla were fighting hard. R. 277, ll. 1 – 25; R. 278, ll. 1 – 25. He got Applewhite and put him in the front seat of their car. Joemilla then walked up and spit on Applewhite. R. 279, ll. 1 – 25; R. 280, ll. 1 – 25.

Joemilla testified that as she walked back to the house, she could hear Applewhite coming towards her. As she walked up the steps, Shawn Reaves, whom she knew, was standing on the porch. Applewhite pushed Reaves and snatched Reaves' chains off. Reaves then pulled a gun, and started shooting. She saw Applewhite fall forward. R. 559, ll. 19 – 25; R. 560, ll. 1 – 25.

After everyone scattered, she went to Applewhite to try to help him. McGill and Lane also came and started dragging him to the car. About that time, the police and EMS arrived. R. 562, ll. 1 – 24. The police took Joemilla to the police station that night where she wrote a statement, and the police took pictures of her bruised face. R. 564, ll. 1 – 23.

The forensic pathologist testified that the cause of death of Applewhite was homicide. R. 372, ll. 15 – 23. She explained that the body had five gunshot wounds but only two bullets were lodged in the body. R. 365, ll. 15 – 25; R. 366, ll. 1 – 25; R. 367, ll. 1 – 11.

Dan Defreese, the SLED expert in the field of firearms, testified that the two bullets removed from Applewhite's body were from two different guns. One bullet was from a .38 caliber revolver or 357, and the second bullet was from a 9-millimeter Luger. R. 378, ll. 1 – 14; R. 379, ll. 1 – 25; R. 382, ll. 1 – 25; R. 383, ll. 1 – 25; R. 384, ll 1 – 25; R. 385, ll. 1 – 25; R. 386, ll. 1 – 8.

Police Lieutenant Walter Davis testified that he went to Philadelphia and brought Reaves back to South Carolina because they had a warrant for murder for him. Reaves was only sixteen years old at the time of the incident. R. 182, ll. 6 – 25; R. 183, ll. 1 – 25; R. 184, ll. 1 – 5; R. 696, ll. 4 – 25.

McGill testified that he wrote a statement that night immediately after the incident on the back of the police car and gave it to Lt. Davis. R. 301, ll. 1 – 25; R. 302, ll. 1 – 20; R. 314, ll. 1 – 16.

On cross-examination, McGill admitted that the testimony he gave was not consistent with the subsequent story he told later. R. 304, ll. 1 – 14. When defense counsel showed McGill the statement from Lt. Davis's file that McGill allegedly gave, McGill admitted that was not the statement he wrote on the night of the incident on the back of the police car. R. 315, ll. 11 – 25; R. 316, ll. 1 – 19.

McGill testified that Travis Lane and Karen Graves wrote statements on the back of the police car right after the incident as well. R. 314, ll. 6 – 25; R. 315, ll. 1 – 12.

Lt. Davis testified that he talked to McGill and Lane the night of the incident. R. 160, ll. 1 – 20. He also talked to several ladies that night as well but he did not remember their names. R. 161, ll. 23 – 25. Lt. Davis admitted that he asked McGill to write a statement, and he gave him paper to write it on. He thought McGill gave it to one of the other officers as he did not receive the statement. He did not remember if he asked Lane to write a statement. R. 167, ll. 1 – 25; R. 169, ll. 1 – 23.

Lt. Davis also testified that there was a crime scene log that everyone who entered the scene should have signed. However, that procedure was not followed. He was at the crime scene, and he did not sign his name but claimed someone signed his name. R. 169, ll. 1 – 25; R. 170, ll. 1 – 25; R. 171, ll. 1 – 25; R. 172, ll. 1 – 25.

Kenneth Kensy was employed with SLED in May 2007 as a crime scene examiner, and worked the scene in Reaves' case. R. 185, ll. 9 – 25; R. 186, ll. 1 – 25. He said it would be prudent to test the clothing of the people in close proximity to the gun shot for gun shot residue although the hands were a better indicator. R. 223, ll.1 – 25; R. 224, ll. 1 – 25; R. 225, ll. 1 – 25.

Lieutenant Farmer Blue with the Marion Police Department testified that the clothing of the victim of a homicide could reveal valuable evidence. He knew that Officer Jackson collected the victim's clothing from the Marion County Medical Center and turned them over to Captain Gray who was heading the investigation that night before Lt. Blue took charge the next day. R. 432, ll. 21 – 25; R. 433, ll. 1 – 21; R. 489, ll. 15 – 25. Lt. Blue said the clothes were not in the evidence box; he had never seen the clothes, and the clothes were never sent to SLED for analysis as far as he knew. R. 489, ll. 15 – 25; R. 490, ll. 1 – 25; R. 491, ll. 1 – 5.

Lt. Blue admitted that when he became the lead investigator two days after the incident, he realized he would have done some things differently. He said better evidence could have been collected, and more evidence should have been collected. R. 433, ll. 1 – 25; R. 434, ll. 1. On cross examination, he admitted that the case was still open because they were still looking for the second shooter. R. 442, ll. 1 – 5.

Lt. Blue admitted that he did not sign the log in sheet at the crime scene. R. 448, ll. 1 – 24. This was the first murder crime scene he had ever investigated. R. 466, ll. 14 – 25; R. 467, ll. 1 – 3. There were pieces of evidence that SLED collected that the Marion Police Department requested be returned without being tested. R. 470, ll. 14 – 25; R. 471, ll. 1 – 3. This included a white hat found at the scene. R. 471, ll. 4 – 25; R. 472, ll. 1 – 25. A blue and black hat was found at the scene that was returned without being tested. R. 474, ll. 1 – 25; R. 475, ll. 1 – 25. A VISA card was taken from the scene and returned to Bellamy without being checked for prints. R. 476, ll. 1 – 25. A Motorola cell phone and a second cell phone were taken from the scene and not tested. R. 479, ll. 20 – 25; R. 482, ll. 1 – 25.

Lt. Blue admitted that three gold chains taken from the crime scene as shown in photographs were not in the evidence box, and he did not know what happened to them. R. 486, ll. 21 – 25; R. 487, ll. 1 – 25; R. 488 ll. 1 – 25. He said that, as an investigator, that evidence could be helpful in identifying everyone at the crime scene because they still did not know the identity of everyone there. He had not identified the second shooter. R. 489, ll. 1 – 14. Everyone at the crime scene was a potential suspect. R. 519, ll. 18 – 20.

McGill and Lane were shown photo lineups and did not select Reaves as the shooter but , in fact, selected someone else. R. 502, ll. 1 – 18; R. 508, ll. 1 – 25; R. 509, ll. 1 – 25.

Lt. Blue admitted that he heard McGill testify that he and Lane and Graves had written statements and given them to the police the night of the incident at the scene. However, he did not possess those statements; and he did not know what happened to them. R. 502, ll. 19 – 25; R. 503, ll. 1 – 25; R. 504. ll. 1 – 3.

In a pretrial motion and at the close of the state's case, defense counsel moved for the indictments against Reaves to be dismissed due to a lack of due process based on the misconduct of the state in not producing evidence that was obtained during the investigation and then not provided to the defense because it was lost. Counsel argued that it was a violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83 (1963). R. 123, ll. 2 – R. 128, ll.25; R. 596, ll. 1 – 25; R. 597, ll. 1 – 25.

Counsel argued that because the victim's clothing was lost as well as the other evidence, he did not have the benefit of determining if that information would be helpful to his defense of the case. Counsel argued that the purpose of due process was for the defendant to be able to defend himself in the best way possible, and he had a right to weigh all of the evidence. R. 125, ll. 1 – 25; R. 126, ll. 1 – 5.

Counsel argued that he was not able to effectively cross examine the witnesses since their statements were not provided. He did not have the advantage of determining if there were contradictory testimony. Under the Sixth Amendment, Reaves had a right to cross-examine the witnesses. Due to the gross negligence of law enforcement, counsel argued Reaves' Sixth Amendment right was violated. R. 597, ll. 1 – 25; R. 598, ll. 1 – 25.

Counsel told the court that he never received the photographs taken of Joemilla Wilson on the night of the incident. R. 599, ll. 1 – 25.

Counsel argued that Reaves was prejudiced by the severe inappropriate handling of his case. R. 600, ll. 1 – 2.

The judge commented during the trial: "But, obviously, we've got a messed up trial based on that bad investigation." R. 263, ll. 14 – 24. However, he denied defense counsel's motion to dismiss the case because he ruled that the lack of evidence went to the credibility of the state's case but was not enough for a dismissal. He agreed with the state that Reaves was entitled to the charge of spoliation of evidence. R. 600, ll. 1 – 25; R. 601, ll. 1 – 4.

The judge did charge the jury on the spoliation of evidence. R. 676, ll. 10 – 16.

Rule 5, SCRCrimP, provides that the prosecution shall permit the defendant, upon request, to inspect and copy any documents, examinations, tests which are in the control of the prosecution which the prosecution intends to use as evidence in chief at trial. A Rule 5 violation is not reversible unless prejudice is shown. State v. Landon, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006).

The Due Process clause of the Fifth and Fourteenth Amendments mandate a defendant's fundamental right to a fair trial. State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998).

In State v. Osborne, 291 S.C. 265, 353 S.E.2d 276 (1987), the Supreme Court ruled that the prosecution's nondisclosure of tape recordings of statements made by key state's witness in prosecution of defendants for conspiracy, armed robbery, kidnapping, and murder deprived defendants of fair trial requiring new trial.

In Brady v. Maryland, *supra*, the United State Supreme Court declared the suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad

faith of the prosecution. State v Harvey Jones and Melissa Jones, 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996) citing Brady v. Maryland, *supra.*

The Sixth Amendment provides an accused with the right to be confronted with witnesses against him. The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence. State v. Gillian, 360 S.C. 433, 449-450, 602 S.E.2d 62, 71 (Ct. App. 2004).

The Fourteenth Amendment secures all persons against any state action which results in either deprivation of life, liberty, or property without due process of law. U.S.C.A. Amend. 14. The right to confront and cross-examine witnesses and to call witnesses in one's own behalf are essential to due process. Chambers v. Mississippi, 410 U.S. 284, 302 (1973).

In Arizona v. Youngblood, 488 U.S. 51 (1988), the United States Supreme Court held that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence did not constitute a denial of due process of law. Youngblood was accused of sexually assaulting and sodomizing a ten year old boy. The police collected a rectal swab for semen and the child's clothing. However, the police failed to refrigerate the clothing and failed to perform tests on the semen samples. None of their information was concealed from the respondent at trial, and the evidence was made available to the respondent's expert who declined to perform any tests on the samples.

Reaves' case is distinguished because the evidence was never presented to Reaves. The clothing was not provided; the witnesses' statements taken the night of the incident

were not provided as well as other evidence. The police deliberately not allowing SLED to perform an analysis on some evidence when the police asked for it to be returned before testing, was an act of bad faith.

The South Carolina Supreme Court held in State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001), that to establish a due process violation based on the destruction of evidence, a defendant must demonstrate (1) that the state destroyed the evidence in bad faith; or (2) that the evidence possessed an exculpatory value before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.

The police handling of the investigation was so severely inappropriate to the point of being misconduct and bad faith, especially in light of the fact that the second shooter was not identified. The police conduct in Reaves' case was a violation of his due process right to a fair trial.

ARGUMENT

II.

The trial court erred in denying appellant's motion to dismiss the case based on a violation of his Sixth Amendment right to a speedy trial when his first trial, which ended in a mistrial, was held on August 24, 2010 which was over three years after the incident which occurred on May 13, 2007, and his second trial was held November 8, 2010.

This incident occurred May 13, 2007. Shawn Reaves was arrested a few days later in Philadelphia on a warrant for murder. R. 183, ll. 5 – 25. The first trial was not held until August 2010. R.1. As a pretrial motion, defense counsel moved for the indictment against Reaves to be dismissed based on a violation of Reaves' Sixth Amendment right to a speedy trial which resulted in a lack of due process in Reaves' case. Counsel said the first trial in August 2010, resulted in a mistrial. R. 107, ll. 15 – 25; R. 108, ll. 1.

Counsel cited as the standard the four factors identified by the United States Supreme Court and reiterated in State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009). These factors were: (1) the length of the delay; (2) the reason for the delay, (3) the defendant's assertion of his right, (4) prejudice to the defendant. R. 108, ll. 1 – 24.

Counsel argued that he understood that the length of the delay of the trial was not *per se* a violation but should be considered in conjunction with the reason for the delay. However, he said the incident was May 13, 2007; Reaves was arrested May 29, 2007; and the first trial was held August 24, 2010. This created a delay of three years and six months which, he correctly argued, was a lengthy time. R. 109, ll. 1 – 25; R. 110, ll. 1 – 7.

Counsel argued that all of the discovery or evidence was collected within two months of the incident. One eyewitness, Joemilla Wilson, identified Reaves as the shooter on May 25, 2007. R. 110, ll. 8 – 25; R. 111, ll. 1 – 25. Counsel argued that this was not a complicated case, and there was no reason for the delay. Therefore, he argued, the first two factors violated due process. R. 111, ll. 117 – 25; R. 112, ll. 1 – 8.

The third factor, the defendant's assertion of the right, was made at the first trial in August 2010. Then the state went ahead with the trial at that time. R. 112, ll. 9 – 25. That trial ended in a mistrial when new evidence was untimely produced to the defense during the trial. R. 112, ll. 23 – 25; R. 113, ll. 1 – 12.

He argued on the fourth factor, that Reaves was prejudiced by the delay. He explained that when the new discovery was revealed during the first trial, Reaves' defense evolved and changed. However, the fact that evidence was lost which was crucial to the development of the defense occurred during this time period. He argued that the victim's clothing was critical because it may have provided evidence for a self defense theory of defense. R. 114, ll. 1 – 25; R. 115, ll. 1 – 25; R. 116, ll. 1 – 25; R. 117, ll. 1 – 25.

Counsel argued that one reason for a speedy trial was to insure that evidence was preserved to enable the accused person to be able to evaluate the evidence in order to present a defense. It was also essential to have the evidence fresh in the minds of witnesses. Counsel argued that Reaves' rights were violated as he was being forced to go forward without the advantage of having that evidence through no fault of his own. R. 118, ll. 1 – 22.

The solicitor argued that the evidence issue had nothing to do with the speedy trial motion. He argued that part of the delay was that Reaves had two lawyers during the

process, and that the assertion of the speedy trial right was first made at the start of the first trial. R. 119, ll. 14 – 25; R. 120, ll. 1 – 15.

The solicitor admitted that there were "very many" problems with the evidence in this case. No one knew, including him and the Marion Police Department, where some of the evidence that existed earlier was as it could not be found. He said all they could do was to go forward with the evidence they had. R. 120, ll. 16 – 25.

The judge denied the speedy trial motion finding the delay was reasonable, and there was no prejudice to Reaves. R. 121, ll. 4 – 25; R. 122, ll. 1 – 3.

At the close of the state's case, counsel again renew his motion for a dismissal based on the speedy trial motion. Counsel argued there was even more prejudice since he learned that eyewitness statements were lost. R. 601, ll. 5 – 25; R. 602, ll. 1 – 25; R. 603, ll. 1 – 25. The judge denied the motion. R. 604, ll. 1 – 7.

"Speedy trial" is part of due process of law to which every person accused of a crime is entitled under State and Federal Constitutions. Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966); citing U.S.C.A. Const. Amends. 6, 14, and S.C. Const. art. 1, Section 5.

In Doggett v. United States, 505 U.S. 647 (1992), the United States Supreme Court listed the factors required in order to assess speedy trial claims. There are four relevant inquiries: (1) whether delay before trial was uncommonly long, (2) whether the government or defendant is more to blame for the delay, (3) whether, in due course, the defendant asserted his right to a speedy trial, and (4) whether the defendant suffered any prejudice as to the delay's result. Id. at 651. See Barker v. Wingo, 407 U.S. 514 (1972). State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997); State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009).

The South Carolina Supreme Court held in State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007), that the determination that a defendant ahs been deprived of the right to a speedy trial is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense.

The trial judge erred by not granting Reaves' speedy trial motion to dismiss the indictment as there was a lack of due process based on evidence lost during this delay. The factors weigh in Reaves' favor as the length of delay was three and one-half years; the state did not have a good reason for the delay; Reaves asserted his right to a speedy trial; and the delay was prejudicial when evidence was lost during this delay.

CONCLUSION

Based on the above, Reaves' convictions and sentences should be dismissed.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

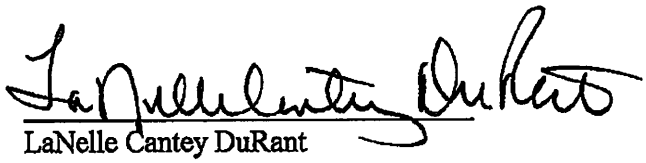
ATTORNEY FOR APPELLANT

This 19th day of February 2013

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

February 19, 2013



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2010-178486

THE STATE,

Respondent,

vs.

SHAWN REAVES,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial judge did not err in denying Appellant's motion to dismiss the charges after it became apparent during trial that several pieces of evidence had been lost at some point prior to trial because the missing and unaccounted-for evidence was not lost or destroyed in bad faith and did not possess any apparent exculpatory value at the time it was lost and because evidence of comparable value was available to Appellant through his ability to cross-examine the witnesses about their alleged missing statements.

II.

The trial judge properly denied Appellant's motion to dismiss his case based on an alleged speedy trial violation, which was raised for the first time thirty-nine months after his arrest and immediately before his first trial, because the approximately thirty-nine month delay prior to Appellant's first trial and the approximately forty-two month delay before Appellant's re-trial and conviction were not the result of any willfulness or neglect on the part of the State and did not result in any actual prejudice to Appellant.

STATEMENT OF THE CASE

In May of 2007, Appellant Shawn Reaves was arrested following an investigation into a shooting incident that resulted in a homicide. In August of 2010, the Marion County grand jury indicted Appellant for one count of murder and one count of assault and battery with intent to kill. On August 24, 2010, a jury trial was commenced in the Marion County court of general sessions with the Honorable William H. Seals, Jr., circuit court judge, presiding. However, that trial ended in a mistrial. Subsequently, on November 8, 2010, a second jury trial was commenced in the Marion County court of general sessions with Judge Seals again presiding. At the conclusion of the second trial, the jury acquitted Appellant of murder, convicted Appellant of the lesser-included offense of voluntary manslaughter, and acquitted Appellant of assault and battery with intent to kill. Following the verdict, the trial judge sentenced Appellant to a term of imprisonment of twenty-five years. Appellant then timely filed a notice of appeal.

STATEMENT OF FACTS

Around 10:00 p.m. on the evening of May 13, 2007, officers with the Marion Police Department received a report of a fight in progress and began responding to East Mullins Street in Marion, South Carolina, where the fight was reported to be occurring. (R. p. 146; pp. 148-149; pp. 154-155; p. 182; p. 445). A few minutes later, Lieutenant Walker Davis, Sr., of the Marion Police Department was notified shots were fired at the location of the fight and he hurried to the scene. (R. pp. 146-147). Upon arriving, he observed a large crowd of people and a white car parked on the side of the road with a man slumped over inside in the back passenger seat. (R. p. 149; pp. 160-161). Lieutenant Davis discovered the man in the vehicle, Ramel Keshawn Applewhite ("Victim"), had been shot, so the officer quickly requested emergency medical assistance and secured the scene. (R. pp. 149-151; p. 361). Shortly thereafter, paramedics arrived and transported Victim to a hospital. (R. p. 150). However, Victim died as a result of the shooting. (R. p. 368; p. 372).

Following the shooting, additional officers arrived at scene, including Lieutenant Farmer Blue of the Marion Police Department. (R. pp. 431-432). Lieutenant Blue began investigating the incident and learned potential suspects might have entered a nearby residence on East Mullins Street. (R. p. 434). In response, officers knocked on the door and windows of the residence in an effort to make contact with anyone inside, but no one responded. (R. pp. 434-435). Lieutenant Blue then obtained a search warrant, and officers entered the residence. (R. pp. 435-436). When they did so, they found several people hiding inside of the home, including Joemilla Wilson-Dozier, Brandon Deshawn Bellamy, and Rodney McElveen. (R. pp. 435-436). Thereafter, Detective Larry Woods of the Marion County Sheriff's Office performed gunshot residue testing on each of the

individuals. (R. p. 3; p. 8; p. 14; pp. 240-242). Meanwhile, Lieutenant Davis spoke with several witnesses at the scene, including Travis Lane and Jackie McGill, Jr., to find out what happened during the incident. (R. p. 159; p. 166; p. 432). In speaking with McGill, Lieutenant Davis provided him with paper, asked him to write out a statement, and instructed him to return the statement to him when it was completed. (R. p. 167). However, McGill never returned a completed statement to the officer. (R. p. 168).

Thereafter, around 1:30 a.m. on the following morning, Agent Ken Kensey, a special agent with the S.L.E.D. latent print crime scene unit, arrived at the location of the shooting to aid in processing the crime scene. (R. p. 185; Supp. R. p. 1). While processing the crime scene, Agent Kensey collected various pieces of evidence, including a black hat, a white hat, three gold chains, three cell phones, a mobile phone headset, a pair of black slippers, and a Visa card with the name "William A. Bellamy" on it, in the vicinity of where the shooting occurred. (R. p. 190; pp. 195-197; p. 217; pp. 221-222). He then provided the gold chains and cell phones to the Marion Police Department upon request and transported the other gathered evidence along with a black t-shirt, a blue jean jacket, and the three gunshot residue kits collected by Detective Woods to the S.L.E.D. crime lab for processing and analysis. (R. p. 190; pp. 198-207).

Later that day, Dr. Cynthia Schandl, a forensic pathologist at M.U.S.C. and an expert in forensics, performed an autopsy on Victim. (R. p. 358; p. 361). While conducting the autopsy, Dr. Schandl located five different gunshots wounds to Victim's body. (R. p. 365). Three of the wounds – one to the right side of Victim's back, one to Victim's stomach, and one to Victim's left side – resulted from bullets that entered and exited Victim's body. (R. pp. 365-366). One of the wounds occurred when a bullet entered and remained in Victim's shoulder. (R. p. 366). The final gunshot wound

occurred when a bullet entered Victim's upper back, struck his lung, aorta, and liver, and stopped in his colon. (R. pp. 366-367). Both of the bullets were recovered from Victim's body during the autopsy, and Dr. Schandl concluded the bullet removed from Victim's colon led to his death. (R. p. 368).

Subsequently, Dan Defreese, a S.L.E.D. analyst and firearms experts, examined the bullets recovered during the autopsy on Victim. (R. pp. 377-379; p. 381). He concluded the bullet recovered from Victim's colon was consistent with a .38 caliber or .357 caliber cartridge and was most likely fired from a revolver. (R. pp. 382-384). He further determined the bullet recovered from Victim's shoulder was consistent with a nine-millimeter cartridge and was most likely fired from a semi-automatic pistol. (R. pp. 384-385). Based on his examination, he concluded the two bullets were not fired by the same gun. (R. p. 385). Additionally, Michael Moskal, a forensic scientist in the S.L.E.D. trace evidence department and an expert in gunshot residue, analyzed the gunshot residue kits collected from McElveen, Wilson-Dozier, and Bellamy. (R. p. 242; pp. 244-245; pp. 247-248). Based on his analysis, Moskal concluded there was no gunshot residue present in any of the samples collected from those individuals. (R. pp. 249-250).

As the investigation into the incident progressed, Lieutenant Blue discovered the primary suspect in the shooting was known as "Mister," which was an alias of Appellant Shawn Reaves. (R. p. 438). Through his investigation, Lieutenant Blue also learned Appellant was observed at the scene of the shooting with a weapon and was seen fleeing from the area after the incident.[1] (R. p. 439). As a result, officers obtained warrants for Appellant's arrest, and Appellant was apprehended in Philadelphia, Pennsylvania, several

[1] During the investigation, Lieutenant Blue prepared a photographic line-up containing Appellant's photograph and showed it to McGill and Lane. (R. pp. 500-501; pp. 508-509). However, they did not identify Appellant as the shooter at that time and, instead, selected another photograph from the line-up. (R. p. 502; pp. 508-509).

days after the shooting. (R. pp. 183-184). Following his arrest, Appellant was transported back to South Carolina and indicted for murder and assault and battery with intent to kill, and he subsequently proceeded to trial. (R. p. 2; p. 104; p. 183; pp. 745-746).

During Appellant's trial, McGill testified about the shooting and claimed he wrote a statement for Lieutenant Davis on the night of the incident. (R. p. 43; p. 52; p. 58). McGill was then presented with a statement with his name and Lane's name on it dated for the morning after the shooting, but he denied knowing who wrote it. (R. pp. 55-56). Following McGill's testimony, defense counsel moved for the indictments to be dismissed, for a mistrial, and for a continuance based on the fact McGill claimed he provided a statement different than the one disclosed during the discovery process. (R. pp. 82-89). In response, the solicitor noted he had opened his file to defense counsel and did not have any other statements attributable to McGill in the file. (R. p. 89). The trial then recessed for the day. (R. p. 91).

On the following morning, defense counsel renewed his previous motions based on the fact a number of documents were discovered in an investigator's file after the trial recessed on the preceding day. (R. pp. 91-92). Defense counsel asserted the documents were exculpatory and should have been disclosed. (R. p. 93). The documents included a note by Lieutenant Blue indicating he had obtained information suggesting the second shooter may have been an individual named Jeremy Vereen, a statement from an individual who claimed Appellant's brother told her Appellant was not the shooter, an evidence log from Appellant's autopsy, an incident report prepared by Lieutenant Davis, a supplemental incident report indicating warrants were served, a note prepared by Lieutenant Blue regarding a statement he obtained from a person incarcerated with

Appellant at a detention center, paperwork related to Appellant's transfer from Philadelphia, a letter indicating evidence was returned to the Marion Police Department from S.L.E.D., a forensic services request submitted to S.L.E.D. regarding the bullets taken from Victim's body, several evidence release forms related to the gunshot residue tests collected on the night of the shooting, a note regarding Victim's autopsy, and a C.A.D. report from the night of the incident. (R. pp. 95-97; p. 713-741). Based on the State's failure to disclose those documents, defense counsel asserted Appellant was entitled to the dismissal of the charges or to the grant of a mistrial. (R. pp. 97-98). In response, the solicitor asserted he was previously unaware of the existence of the documents but conceded the granting of a mistrial would be an appropriate remedy. (R. pp. 98-99). The trial judge then denied defense counsel's motion to dismiss the indictments, granted the motion for a mistrial, and ordered the trial to be scheduled for the next available trial date, which was November 8, 2010. (R. pp. 99-100).

Thereafter, on November 8, 2010, Appellant again proceeded to trial. (R. p. 104). At the outset of the second trial, defense counsel argued Appellant's right to a speedy trial was violated because Appellant was being tried approximately three years and six months after he was arrested. (R. pp. 107-110). Defense counsel claimed there was no reason for such a lengthy delay and asserted Appellant was prejudiced by the delay because Victim's clothing and items collected at the scene of the shooting were lost prior to trial. (R. pp. 111-118). However, defense counsel conceded he first raised the speedy trial issue in August of 2010 and a trial was conducted after the motion was made. (R. p. 112; p. 119). He further acknowledged he was not Appellant's original attorney but was retained to represent Appellant one year after the shooting. (R. pp. 118-119). In response, the solicitor asserted some of the delay in bringing the case to trial resulted

from the fact Appellant changed his counsel. (R. pp. 119-120). He also noted Appellant did not raise the speedy trial issue until August of 2010, promptly received a trial at that point, and was then re-tried at the earliest opportunity to do so. (R. p. 120). The solicitor further argued the evidence was not lost as a result of any delay and was simply missing because no one knew where it was. (R. p. 120). After considering the arguments of counsel, the trial judge denied Appellant's speedy trial motion. (R. pp. 122-123). In reaching that conclusion, the trial judge found the delay in bringing the case to trial was lengthy but necessary based on the serious nature of the charges, the delay was partially caused by the heavy backlog of cases in Marion County, Appellant promptly received a trial after first raising the speedy trial issue twelve weeks earlier, and Appellant suffered no prejudice as a result of the delay because the evidentiary concerns raised by Appellant would likely work to his advantage. (R. pp. 121-122).

Subsequently, during trial, Lieutenant Davis testified about his investigation into the shooting and noted he asked McGill to prepare a written statement on the night of the incident but never received one from McGill. (R. pp. 146-151; pp. 167-168). Additionally, Agent Kensey testified about his role in the investigation and indicated he returned numerous items collected at the crime scene to the Marion Police Department without having the items tested. (R. p. 190; p. 199; p. 203; pp. 206-207; p. 211; p. 217; Supp. R. p. 1). Agent Kensey asserted he personally would have had the collected items tested because he believed the failure to test them was "potentially a missed opportunity" to learn who was present at the scene of the crime. (R. pp. 220-221). However, he noted it was common for agencies to request the return of items without testing due to the fact S.L.E.D. placed "severe" restrictions and limitations on the number of items that could be tested in a single case. (R. p. 235). He further noted S.L.E.D. had a heavy backlog in all

of its forensic departments and there would be no need to analyze some evidence if the identity of its owner could be determined through other means. (R. pp. 234-235).

Thereafter, McGill testified about the shooting, stating he met up with Victim, who was in town for Mother's Day, on the day of the incident and rode to Bellamy's house on East Mullins Street with Victim, Lane, and Victim's cousin, Karen Graves. (R. pp. 267-270; p. 274). McGill indicated ten people were congregating in the yard of the residence when they arrived and Victim asked to speak with Wilson-Dozier, who was Victim's girlfriend. (R. pp. 275-276). McGill testified Victim then walked to the street with Wilson-Dozier, who was initially reluctant to come outside of the residence. (R. pp. 276-277). After they did so, McGill stated Victim and Wilson-Dozier argued and began fighting before Victim threw Wilson-Dozier to the ground. (R. pp. 277-278). Eventually, McGill indicated he was able to separate Victim and Wilson-Dozier and return Victim to the car. (R. p. 279). However, he stated Wilson-Dozier came over to Victim, spat on him, and then walked to the residence's porch. (R. pp. 280-281). McGill testified Victim followed her, he saw Appellant, and then he heard gunshots. (R. p. 283; p. 286; pp. 288-289). After the gunshots, McGill stated Victim fell to the ground, he heard clicking sounds that sounded like a gun was out of bullets, and Appellant took off running.[2] (R. pp. 289-290; p. 295). He stated he then tried to move Victim to the car, law enforcement officers arrived on the scene, and he provided a statement to Lieutenant Davis. (R. pp. 294-295; pp. 301-302; p. 314). He stated he testified to everything contained in the statement and also claimed Lane and Graves provided statements that night. (R. pp. 301-302; pp. 314-315). However, he denied a statement introduced during

[2] During trial, Defreese, the S.L.E.D. firearms expert who examined the bullets recovered from Victim's body, testified a revolver would make a clicking noise if the trigger was pulled after its ammunition was exhausted but a semi-automatic pistol ordinarily would not. (R. pp. 387-388).

trial with his and Lane's names on it was his statement. (R. pp. 315-317). Significantly, he also repeatedly identified Appellant as the shooter and indicated he was certain Appellant was the person he saw shoot Victim. (R. p. 326; p. 353).

In addition to McGill's testimony identifying Appellant as the shooter, Tyler Connor, who was incarcerated in the Department of Juvenile Justice in May of 2007, testified he was placed in a cell with Appellant after the incident and spoke with him about why he was incarcerated. (R. pp. 414-417). Connor claimed Appellant stated he was incarcerated because he shot someone with a revolver, his friend shot the person with a nine-millimeter gun, and he left town. (R. pp. 418-419). Connor stated Appellant said the incident occurred after he argued with someone who purchased drugs from him. (R. pp. 425-427).

Additionally, Lieutenant Blue testified about his involvement in the investigation into the shooting. (R. pp. 432-433). He indicated he was assigned as the lead investigator in the case two days after the shooting, obtained arrest warrants for Appellant as a result of his investigation, and was still looking for the second shooter involved in the incident. (R. pp. 432-433; pp. 438-440; p. 442). Regarding the evidence collected during the investigation, he noted his department requested the return of several items without any analysis being conducted because the owners of the items had already been identified. (R. p. 444; pp. 476-477; p. 483). He further indicated he did not know what happened to Victim's clothing after the shooting, believed another officer picked them up from the hospital, and had no idea where they were currently located.[3] (R. pp. 489-491). Additionally, Lieutenant Blue stated the credit card recovered at the scene of the shooting

[3] When asked whether the clothes of a victim could "sometimes" have evidentiary value in connection to a case, Lieutenant Blue responded: "It could. All evidence could be valuable." (R. p. 490).

was released to Bellamy after he identified it as his brother's card, and he admitted he did not know where the gold chains discovered at the scene were located. (R. pp. 476-477; pp. 487-489). Regarding McGill's statement, he indicated the statement introduced during trial with McGill and Lane's names on it was the statement McGill provided to him after the shooting. (R. pp. 512-513). During his testimony, Lieutenant Blue also stated he would have done many things differently if he had been in charge of the investigation from the outset, and he indicated the process of collecting evidence could have been handled in a better fashion. (R. pp. 433-434).

Latoya Davis, who lived near the scene of the shooting, also testified about the incident during trial. (R. pp. 539-539). On the night of the shooting, Davis stated she was with Wilson-Dozier at the residence on East Mullins Street but went home after Wilson-Dozier and Victim began fighting. (R. pp. 536-539). When she arrived home, she indicated she did not see the shooting but heard gunshots and then saw Appellant, who she knew as "Mister," get into a vehicle and drive away. (R. pp. 539-540). She further testified she spoke with Lieutenant Blue on the day after the shooting and provided him with a written statement. (R. p. 547; p. 552).

Furthermore, Wilson-Dozier testified about her altercation with Victim and the subsequent shooting. (R. pp. 557-560). She stated she was in a relationship with Victim in May of 2007 but had broken up with him a month earlier. (R. pp. 554-555; p. 557). Wilson-Dozier indicated she went to visit Bellamy, who she was involved in an intimate relationship with at the time, at East Mullins Street on the day of the incident and Victim came over several times while she was there. (R. pp. 554-557; pp. 569-570). When Victim came over the second time, Wilson-Dozier stated she attempted to avoid him but eventually went outside of the East Mullins Street residence to speak with him. (R. pp.

556-557). When she did so, she testified they argued and began fighting in the yard and street where ten people had gathered. (R. pp. 557-558). After the fight ended, she stated one of Victim's friends tried to get him to leave and she walked towards the residence. (R. pp. 559-560). As she was walking up the steps to the residence, Wilson-Dozier testified Victim pushed Appellant, who she knew as "Mister," and grabbed Appellant's chains and Appellant responded by pulling out a silver revolver and firing the gun. (R. pp. 560-561). She indicated she then hid behind a car and checked on Victim before going into the residence and remaining there. (R. pp. 561-563). After the incident, she stated she selected Appellant from a photographic line-up as the shooter, wrote a statement for Captain Gray, and had her injuries photographed by law enforcement officers. (R. pp. 564-565; p. 588; p. 594).

At the conclusion of the State's case, defense counsel moved for the charges against Appellant to be dismissed "based on the State's misconduct in connection with [Appellant's] case." (R. p. 596). In support of the motion, he argued the testimony established several witnesses provided written statements on the night of the shooting, including McGill, Lane, Graves, Wilson-Dozier, and Davis, but those statements were not provided to him, which he maintained impacted his ability to cross-examine those witnesses. (R. pp. 596-598). Defense counsel further asserted Appellant was prejudiced by the "substantial and severe negligent handling" of his case. (R. pp. 599-600). In response, the solicitor indicated Appellant was provided with everything in the State's possession and was allowed to review the investigator's entire file. (R. p. 600). However, he conceded Appellant was likely entitled to a charge on spoliation of evidence. (R. p. 600). After considering the arguments of counsel, the trial judge denied

the motion, finding the alleged loss of the evidence impacted the credibility of the State's case but did not warrant dismissal. (R. pp. 600-601).

Following the trial judge's ruling on his motion to dismiss the case, defense counsel renewed his speedy trial motion, arguing the delay in bringing the case to trial resulted in substantial prejudice to Appellant due to the loss of various pieces of evidence. (R. pp. 601-603). In response, the solicitor noted Appellant did not seek a speedy trial until the preceding term of court and his case was immediately scheduled for trial. (R. pp. 603-604). Once again, the trial judge denied the speedy trial motion. (R. p. 604).

After the trial judge denied the motions, defense counsel called several witnesses in Appellant's defense, including Captain Jim Gray, who was the chief investigator for the Marion Police Department in May of 2007. (R. p. 605). Captain Gray stated he did not recall if he took a statement from Wilson-Dozier on the night of the shooting and indicated he did not take any statements from anyone at the scene. (R. p. 615; p. 617). However, he confirmed he photographed Wilson-Dozier on the night of the incident and placed the photographs in the case file. (R. pp. 615-616). He further asserted he did not receive Victim's clothing during the course of the investigation and did not know where it might be located. (R. pp. 617-618).

At the conclusion of the evidentiary phase of trial, the parties presented their closing arguments to the jury. (R. pp. 631-632). During his closing argument, defense counsel repeatedly called the jury's attention to numerous mistakes he asserted were made during the investigation into the shooting and noted numerous items of evidence collected at the scene of the crime were never tested or analyzed. (R. pp. 639-641; pp. 652-653). Thereafter, the trial judge instructed the jury on the applicable law and

explained: "When evidence is lost or destroyed by a party you may infer that the evidence which was lost or destroyed by that party would have been adverse to that party." (R. p. 673; p. 676). Subsequently, at the conclusion of trial, the jury convicted Appellant of the lesser-included offense of voluntary manslaughter and acquitted Appellant of the offenses of murder and assault and battery with intent to kill. (R. p. 692). Following the verdict, the trial judge then sentenced Appellant to a twenty-five year term of imprisonment. (R. p. 698).

ARGUMENT

I.

The trial judge did not err in denying Appellant's motion to dismiss the charges after it became apparent during trial that several pieces of evidence had been lost at some point prior to trial because the missing and unaccounted-for evidence was not lost or destroyed in bad faith and did not possess any apparent exculpatory value at the time it was lost and because evidence of comparable value was available to Appellant through his ability to cross-examine the witnesses about their alleged missing statements.

Appellant contends the trial judge erred in denying his motion to dismiss the indictments. Appellant maintains he was entitled to the dismissal of his charges after it became apparent during trial that several alleged statements and other pieces of evidence were missing and could not be located for trial. In support of his contentions, Appellant asserts the law enforcement officers' handling of his case was so severely inappropriate that it constituted bad faith and violated his right to a fair trial. To the contrary, the trial judge properly denied Appellant's dismissal motion because the lost and unaccounted-for evidence was not lost or destroyed in bad faith and did not possess any apparent exculpatory value at the time it was lost. Furthermore, comparable evidence was available based on the fact Appellant was capable of cross-examining any of the witnesses about their alleged statements during trial. Accordingly, the loss of the evidence did not entitle Appellant to the extreme measure of the dismissal of his charges, and the trial judge did not err in denying Appellant's motion. Appellant's conviction should be affirmed.

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The reviewing court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). The appellate court does not re-evaluate

the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

"Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness." California v. Trombetta, 467 U.S. 479, 485 (1984). The fundamental fairness standard requires criminal defendants to be given a meaningful opportunity to present a complete defense. Id.; see State v. Harris, 311 S.C. 162, 167, 427 S.E.2d 909, 912 (Ct. App. 1993) ("Due process requires that a criminal defendant be given a reasonable opportunity to present a complete defense."). However, "[t]he State does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant." State v. Cheeseboro, 346 S.C. 526, 538, 552 S.E.2d 300, 307 (2001). In order to warrant the dismissal of a case based on the loss or destruction of evidence, the defendant must show either: (1) the State destroyed the evidence in bad faith; or (2) the State destroyed evidence possessing an exculpatory value apparent before the evidence was destroyed and no other evidence of comparable value can be obtained by other means. State v. Mabe, 306 S.C. 355, 358-359, 412 S.E.2d 386, 388 (1991). "Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense." Trombetta, 467 U.S. at 488. Critically, "[t]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." United States v. Agurs, 427 U.S. 97, 109-110 (1976); see Arizona v. Youngblood, 488 U.S. 51, 57 (1988) ("[W]e think the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material

of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.").

In State v. Hutton, 358 S.C. 622, 624, 595 S.E.2d 876, 878 (Ct. App. 2004), Hutton was arrested and charged with numerous serious offenses. During trial, several witnesses implicated Hutton in the charged crimes, including one of the victims, James Bellinger. Id. at 624-626, 595 S.E.2d at 878-879. During the cross-examination of Bellinger, Bellinger revealed he wrote a total of three statements. Id. at 629-630, 595 S.E.2d at 880-881. Regarding the first statement, Bellinger indicated he untruthfully omitted certain information from the statement and it was thrown away by a law enforcement officer. Id. at 630, 595 S.E.2d at 881. Regarding the second statement, Bellinger indicated he again omitted some of the details about what happened during the incident. Id. Following Bellinger's testimony, the solicitor revealed he was only aware of Bellinger's third statement, which was the only statement provided to Hutton, and had no knowledge of the other two. Id. The trial judge then permitted defense counsel to question Bellinger outside of the jury's presence to determine what was in the other statements. Id. Thereafter, defense counsel moved for the charges to be dismissed due to the loss of the two statements because he contended he could not effectively cross-examine Bellinger without them. Id. However, the trial judge denied the motion, and Hutton was convicted. Id. On appeal, Hutton argued the trial judge erred in denying his motion to dismiss because he allegedly was denied an opportunity to fully cross-examine Bellinger, who he contended was a key State's witness. Id. at 630-631, 595 S.E.2d at 881. After considering the issue, this Court affirmed the trial judge's ruling, finding there was no evidence the State destroyed the statements to suppress exculpatory evidence, there was nothing suggesting the evidence possessed an apparent exculpatory value

before it was destroyed, and Hutton was not prevented from obtained comparable evidence by other means due to the fact he was allowed to thoroughly cross-examine Bellinger. Id. at 631-632, 595 S.E.2d at 881-882. In reaching that conclusion, this Court instructed:

> While we do not condone the destruction of any statements made by witnesses to the authorities, we consider dismissal of criminal charges a drastic remedy which should rarely be invoked as a sanction for the State's failure to preserve evidence. We still caution the prosecution and law enforcement authorities that the destruction of evidence will be highly scrutinized; however, we cannot find appellant was entitled to a dismissal based on the facts of this case.

Id. at 633, 595 S.E.2d at 885.

In the case sub judice, it became apparent during trial that several pieces of evidence, including the clothing Victim was wearing at the time of the shooting, were unavailable or unaccounted for while several written statements that were alleged to have been made by various witnesses were missing. However, the missing evidence was not lost or destroyed by law enforcement officers in an act of bad faith, and it did not possess any apparent exculpatory value at the time it was lost or destroyed. Furthermore, evidence of comparable value to the alleged statements was available by virtue of the fact Appellant was capable of cross-examining any of the witnesses alleged to have made those statements if he chose to do so. Therefore, the trial judge properly denied Appellant's motion and declined to grant the extreme remedy of dismissing Appellant's charges.

Initially, like in Hutton, no evidence was presented during trial suggesting the officers in Appellant's case destroyed or lost the unaccounted-for evidence in bad faith. See Trombetta, 467 U.S. at 488 ("The record contains no allegation of official animus towards respondents or of a conscious effort to suppress exculpatory evidence.").

Although the statements and other pieces of evidence could not be located prior to trial, no trial testimony suggested the officers investigating the case intentionally lost or destroyed the missing items for the purpose of suppressing exculpatory evidence. Instead, the testimony simply established multiple officers involved in the investigation were unaware of what happened to the different items after they were collected with several of the officers candidly acknowledging the investigation ideally would have been conducted in a different manner. Cf. Cheeseboro, 346 S.C. at 539, 552 S.E.2d at 307 ("While there is evidence of a lack of care, there is no evidence of an intentional destruction of relevant evidence in this case."). Accordingly, because the missing evidence was not lost or destroyed as the result of any bad faith on the part of the officers, the mere fact the evidence was lost and unaccounted-for did not entitle Appellant to the dismissal of his charges.[4] See Youngblood, 488 U.S. at 58 ("We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, *i.e.*, those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant." (italics in original)).

[4] On appeal, Appellant contends the decision of the Marion Police Department not to have S.L.E.D. test each item recovered from the scene of the shooting was "an act of bad faith." (App. Br. pp. 12-13). However, during trial, testimony was presented explaining the officers' investigatory decision not to test certain items for fingerprints, such as the cell phones and credit card collected at the scene, was reached due to S.L.E.D. restrictions on the number of evidentiary items that could be submitted for testing, the backlog of items submitted for testing at S.L.E.D., and the fact the owners of the untested items were identified through other means. (R. pp. 234-235; p. 444; pp. 476-477; p. 483). Accordingly, the decision not to have every piece of evidence collected from the scene of the shooting tested, which would not have been practical or possible under the circumstances, did not rise to the level of bad faith. See Jean v. Collins, 221 F.3d 656, 663 (4th Cir. 2000) (instructing bad faith in the context of the loss or destruction of evidence "requires that the officer have intentionally withheld the evidence for the purpose of depriving the plaintiff of the use of that evidence during his criminal trial").

Furthermore, in addition to the absence of any evidence suggesting bad faith on the part of the officers, no evidence was presented during trial suggesting the lost and unaccounted-for evidence possessed any apparent exculpatory value at the time it was lost. Regarding the missing physical items of evidence, nothing was presented to establish the gold chains, credit card, cell phones, or clothing of the victim were exculpatory in any way or critical to any defense theory Appellant intended to pursue. See, e.g., Cheeseboro, 346 S.C. at 539, 552 S.E.2d at 307 (finding a destroyed gun did not possess any apparent exculpatory value before it was destroyed where none of the witnesses or testimony raised any doubts regarding the gun and the timing of the recovery of the gun eliminated fingerprints from being an issue). Instead, Appellant simply speculated that the evidence could possibly have possessed some unspecified exculpatory value if it had been tested or analyzed in some way. However, the mere possibility the lost evidence **might** have potentially possessed exculpatory value was not sufficient to entitle Appellant to the extreme measure of the dismissal of his case. See Youngblood, 488 U.S. at 56, n. 4 ("Trombetta speaks of evidence whose exculpatory value is 'apparent.' The possibility that the semen samples could have exculpated respondent if preserved or tested is not enough to satisfy the standard of constitutional materiality in Trombetta. Second, we made clear in Trombetta that the exculpatory value of the evidence must be apparent '*before* the evidence was destroyed.' " (citations omitted) (italics in original)); see also State v. Adams, 304 S.C. 302, 304-305, 403 S.E.2d 678, 680 (Ct. App. 1991) ("If, on the other hand, Adams' purpose was to exploit any exculpatory potential the document might have had, he falls short of meeting the standard of constitutional materiality because he failed to make some showing that the document in fact possessed an 'exculpatory value that was apparent' before the State lost it. . . .

Speculation about such things, our Supreme Court has held, will not do." (citations omitted)).

Likewise, regarding the allegedly missing statements, no testimony was presented during trial suggesting the written statements allegedly prepared on the night of the shooting were in any way exculpatory to Appellant. Instead, each of the witnesses who allegedly made a statement and testified during trial unreservedly implicated Appellant in the shooting. Thus, assuming the missing statements actually existed, the statements most likely possessed inculpatory value as opposed to exculpatory value based on the testimony of the witnesses to whom those statements were attributed.[5] Cf. State v. Breeze, 379 S.C. 538, 546, 665 S.E.2d 247, 252 (Ct. App. 2008) ("Here, the destroyed evidence Breeze complains of was inculpatory rather than exculpatory."). Moreover, just like in Hutton, evidence of comparable value to the alleged statements was available due to the fact Appellant was fully capable of questioning the witnesses who allegedly made the missing statements about the contents of those purported statements during trial. Cf. Hutton, 358 S.C. at 632, 595 S.E.2d at 882 ("Nor can we find appellant could not obtain other evidence of comparable value by other means. The trial court allowed trial counsel to thoroughly cross-examine Bellinger about the first statement he gave and its contents."). Therefore, the fact the alleged statements could not be accounted for at the time of trial did not deprive Appellant of a fair trial or prevent him from presenting a complete defense. Cf. State v. Moses, 390 S.C. 502, 519, 702 S.E.2d 395, 404 (Ct. App. 2010) ("The defense asserts the tape 'would most likely' have allowed it to identify

[5] On appeal, Appellant contends McGill, one of the witnesses who allegedly prepared a written statement on the night of the shooting, admitted on cross-examination "that the testimony he gave was not consistent with the subsequent story he later told." (App. Br. p. 7). However, contrary to Appellant's assertions, McGill stated during trial his testimony was entirely consistent with his alleged written statement, his account of the incident had never changed, and any suggestion his previous statement "was not quite consistent" with his testimony was incorrect. (R. p. 302; p. 304).

witnesses who *may reasonably* have presented favorable evidence or evidence which could have lead the defense to impeachment evidence. Standing alone, this assertion is insufficient.").

Unquestionably, the investigation into Appellant's case was not conducted in an ideal or flawless manner. However, like all criminal defendants, Appellant was not entitled to a perfect investigation or a perfect trial and, instead, was only entitled to receive fair ones. See State v. Greene, 255 S.C. 548, 558, 180 S.E.2d 178, 184 (1971) ("[The appellant] was not entitled to a perfect trial, only a fair one."); see also Patterson v. New York, 432 U.S. 197, 208 (1977) ("Due process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person."); see, e.g., Barker v. McCollan, 443 U.S. 137, 146 (1979) (instructing law enforcement officers are not required to perform entirely error-free investigations). Despite the fact that evidence was lost and unaccounted-for in Appellant's case, that mistake did not deprive Appellant of a fair trial under the circumstances, and the loss of the evidence, which did not possess any apparent exculpatory value, was ultimately used to Appellant's advantage as the jury was instructed it could infer the lost evidence was adverse to the State's case. Cf. Youngblood, 488 U.S. at 59-60 (Stevens, J., concurring) ("[A]lthough it is not possible to know whether the lost evidence would have revealed any relevant information, it is unlikely that the defendant was prejudiced by the State's omission. In examining witnesses and in her summation, defense counsel impressed upon the jury the fact that the State failed to preserve the evidence and that the State could have conducted tests that might well have exonerated defendant. More significantly, the trial judge instructed the jury: 'If you find that the State has . . . allowed to be destroyed or lost any evidence whose content or quality are in issue, you may infer

that the true fact is against the State's interest.' As a result, the uncertainty as to what the evidence might have proved was turned to the defendant's advantage." (citations to the record omitted)). Because the lost and unaccounted-for evidence and statements were not destroyed in bad faith and did not possess any apparent exculpatory value at the time the items went missing, Appellant was not entitled to the dismissal of his case based on the loss of those items. See State v. Bland, 399 S.C. 220, 226, 730 S.E.2d 909, 912 (Ct. App. 2012) ("[O]ur holding that Bland failed to demonstrate that the lineup had exculpatory value is sufficient to uphold his convictions[.]"). Accordingly, the trial judge did not err in denying Appellant's motion to dismiss the charges based on the loss of the missing evidence. Appellant's conviction should be affirmed.

II.

The trial judge properly denied Appellant's motion to dismiss his case based on an alleged speedy trial violation, which was raised for the first time thirty-nine months after his arrest and immediately before his first trial, because the approximately thirty-nine month delay prior to Appellant's first trial and the approximately forty-two month delay before Appellant's re-trial and conviction were not the result of any willfulness or neglect on the part of the State and did not result in any actual prejudice to Appellant.

Appellant contends the trial judge erred in denying his motion to dismiss the case based on an alleged violation of his right to a speedy trial. Appellant maintains his constitutional rights were violated due to the length of the delays in bringing his case to trial, the lack of a valid reason for the delays, the fact he asserted his right to a speedy trial, and the fact evidence was lost during the delays. To the contrary, the thirty-nine month delay before Appellant's case was initially called to trial and the forty-two month delay before Appellant was convicted were somewhat lengthy and unusual, but the delays did not result from any willfulness or neglect on the part of the State. Instead, the delays were necessary and justified for several reasons, including the fact the case was complex and involved highly serious charges, the fact the investigation into the case was still ongoing even at the time of Appellant's trial, and the fact there was a heavy backlog of cases on the docket in Marion County at the time. Furthermore, Appellant failed to meaningfully assert his right to a speedy trial until immediately before his first trial, and Appellant suffered no actual prejudice as a result of the delays. For those reasons, the trial judge did not err in denying Appellant's motion to dismiss his case for an alleged speedy trial violation, and his ruling was supported by the evidence. Appellant's conviction should be affirmed.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]" U.S. Const. amend. VI. The fundamental right to a speedy and public

trial is guaranteed to all criminal defendants appearing in South Carolina courts by the Sixth and Fourteenth Amendments of the United States Constitution and by Article 1, Section 14 of the South Carolina Constitution. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703 (Ct. App. 2000).

Several factors must be considered when determining whether a criminal defendant's right to a speedy trial has been violated. Id. at 249, 528 S.E.2d at 703-704. In Barker v. Wingo, 407 U.S. 514, 530 (1972), the United States Supreme Court adopted a balancing test employing the evaluation of the conduct of both the defendant and the prosecution. Under the balancing test, four factors must be considered when evaluating the circumstances of a delay in the prosecution of a criminal defendant's case: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. Id. None of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. Id. at 533. Instead, "they are related factors and must be considered together with such other circumstances as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process." Id. "Whether or not a person accused of a crime has been denied his constitutional right to a speedy trial is a question to be answered in the light of the circumstances of each case." State v. Dukes, 256 S.C. 218, 222, 182 S.E.2d 286, 288 (1971).

When conducting the balancing test, the analysis need go no farther unless there is a delay that can be considered presumptively prejudicial. Barker, 407 U.S. at 533. "[A] delay may be so lengthy as to require a finding of presumptive prejudice, and thus trigger the analysis of the other factors." State v. Pittman, 373 S.C. 548, 549, 647 S.E.2d 144, 155 (2007). The South Carolina Supreme Court previously found a delay of two years

and four months sufficient to trigger a full review of the Barker factors. State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978). However, even where delay exists, "the determination that a defendant has been deprived of [the right to a speedy trial] is **not based on the passage of a specific period of time**, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense." Pittman, 373 S.C. at 549, 647 S.E.2d at 155 (emphasis added).

In the case at bar, the trial judge properly denied Appellant's motion for dismissal based on an alleged speedy trial violation. When considering the circumstances of the case, the delay of roughly thirty-nine months between the time Appellant was arrested and first brought to trial and the delay of forty-two months between the time Appellant was arrested and ultimately convicted were somewhat lengthy. However, those delays did not result in a violation of Appellant's constitutional right to a speedy trial when considered in relation to the other relevant factors and circumstances of Appellant's case. See State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) ("Although **delay alone is not dispositive**, this delay is sufficient to trigger review of the other three factors." (emphasis added)).

Turning to the relevant factors to be considered, the delays in the prosecution of Appellant's case resulted from the unique circumstances of the case and not from any intentional actions on the part of the State designed to delay the trial. In Appellant's case, Appellant was arrested in May of 2007 after law enforcement officers discovered he was involved in the shooting that resulted in Victim's death and he was apprehended in Philadelphia, Pennsylvania. Subsequently, the investigation into the incident revealed two shooters might possibly have been involved, which required the officers to continue their investigation and attempt to locate the second shooter. Thereafter, Appellant was

indicted in August of 2010, and his case was called for trial in the same month he first asserted his right to a speedy trial. Then, when his first trial ended in a mistrial, Appellant's case was called for trial a second time at the first available opportunity to do so in November of 2010, and Appellant was convicted approximately forty-two months after his arrest.

Notably, although the thirty-nine month delay before Appellant's case was initially called to trial and the forty-two month delay before Appellant was convicted were somewhat lengthy and unusual, the delays did not result from any willful or intentional conduct on the part of the solicitor designed to delay the speedy prosecution of the case. Initially, some of the delay in bringing Appellant's case to trial resulted from the fact the possible second shooter involved in the incident still had not been conclusively identified or apprehended. Because all of the suspects involved in the shooting had not yet been identified, the solicitor had a legitimate reason to delay bringing Appellant's case, which was complex and involved highly serious charges, to trial. See Pittman, 373 S.C. at 549, 647 S.E.2d at 155 ("A valid reason presented by the State may justify an appropriate delay."); see also Kennedy, 339 S.C. at 250-251, 528 S.E.2d at 704-705 (finding the complexity of the case, which required substantial time to investigate and prepare, constituted a legitimate reason for the delay in bringing the case to trial). Additionally, notwithstanding the ongoing nature of the murder investigation, the trial judge noted a portion of the delay associated with Appellant's case resulted from the heavy backlog of cases on the docket in Marion County, which was another legitimate justification for the delay in bringing the case to trial. Cf. State v. Chapman, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) ("A portion of the delay was caused by the normal condition of the docket. . . . The constitutional guarantee of a speedy trial affords

protection only against unnecessary or unreasonable delay."). Furthermore, a portion of the delay in bringing Appellant's case to trial resulted from the fact Appellant admittedly did not retain the defense attorney who ultimately tried his case until approximately one year after his arrest, and Appellant further contributed to the delay by successfully moving for a mistrial, which led to an additional three-month delay before Appellant's case could be re-tried. See, e.g., Waites, 270 S.C. at 108, 240 S.E.2d at 653 (considering Waites' counsel's actions delaying the trial when assessing whether a speedy trial violation occurred). Thus, when considering the reasons for the delays coupled with the unique circumstances of Appellant's case, the delays incurred were excusable and justifiable under the circumstances and were not attributable to any neglect or willfulness on the part of the State. See State v. Smith, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992) (finding the defendant bears the burden of showing a speedy trial delay was due to the neglect and willfulness of the State's prosecution); see also Dukes, 256 S.C. at 223, 182 S.E.2d at 223 ("The delay must be attributable to the State before the appellants can complain."). Accordingly, the trial judge did not err in denying Appellant's speedy trial motion. Cf. State v. Evans, 386 S.C. 418, 425-426, 688 S.E.2d 583, 587 (Ct. App. 2009) (finding no error in the denial of a motion to dismiss based on an alleged speedy trial violation where the delay prior to trial was approximately twelve years).

Notwithstanding the length of the delays and the reasons for the delays, Appellant also failed to meaningfully assert his right to a speedy trial because he waited approximately thirty-nine months before he first asserted the right. Cf. Waites, 270 S.C. at 109, 240 S.E.2d at 653 ("We think it significant that Waites, represented by counsel, waited approximately twenty-eight months before claiming he had been denied his constitutional right to a speedy trial."). Notably, during trial, Appellant acknowledged he

did not assert his right to a speedy trial until immediately before his first trial, which was thirty-nine months after his arrest, and conceded he promptly received a trial after first raising the issue. Thus, although Appellant challenged the length of the delays in bringing his case to trial, he waited over three years to do so for the first time and in no way sought a speedy trial prior that point. Therefore, because Appellant failed to meaningfully assert his right to a speedy trial prior to trial, the trial judge did not err in denying his speedy trial motion. See Barker, 407 U.S. at 531-532 ("The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.").

Finally, and most significantly, Appellant failed to articulate any actual prejudice suffered as a result of the somewhat lengthy delays in bringing his case to trial. See, e.g., State v. Cooper, 386 S.C. 210, 218, 687 S.E.2d 62, 66 (Ct. App. 2009) (characterizing prejudice to the defendant as the most important factor in an analysis of whether a speedy trial violation occurred). Notably, the only prejudice Appellant contended he suffered as a result of the delays was that evidence such as Victim's clothing and the alleged statements of several witnesses was lost prior to trial. However, no evidence was presented during trial suggesting the evidence was lost as a result of the delays. Cf. Kennedy, 339 S.C. at 250, 528 S.E.2d at 104 ("[T]here is nothing to suggest the delay caused the witnesses to become unavailable."). Instead, the testimony established the evidence could not be located due to issues with the investigation and not due to the passage of any period of time. Thus, the State's failure to call Appellant's case for trial at any earlier point in time had no impact on whether the evidence was lost or would have

been available for trial. Furthermore, the loss of the evidence, which may have been inculpatory and detrimental to Appellant's case, was beneficial to Appellant by serving as a disadvantage to the State. See State v. Robinson, 335 S.C. 620, 626, 518 S.E.2d 269, 272 (Ct. App. 1999) ("[L]ost witnesses and documents are also disadvantages that hamper the State."). Therefore, the trial judge did not err in finding Appellant did not suffer any meaningful prejudice as a result of the delays in bringing his case to trial. See id. (finding no evidence of actual prejudice resulting from the five-year delay in bringing Robinson's case to trial where the only assertion of prejudice was a general claim that witnesses and documents were lost as a result of the delay).

When considering the circumstances of Appellant's case in relation to the relevant Barker factors, Appellant failed to meet his burden of establishing he was denied his right to a speedy trial. See Dukes, 256 S.C. at 222, 182 S.E.2d at 288 ("The burden was on the appellants, who assert that they were denied their constitutional right to a speedy trial, to show that the delay was due to the neglect and willfulness of the State's prosecution."). Critically, Appellant failed to establish the delays in bringing his case to trial were attributable to any neglect or willfulness on the part of the State, failed to show he asserted his right in a meaningful way prior to the beginning of his first trial, and failed to establish any actual prejudice suffered as a result of the delays. See Brazell, 325 S.C. at 76, 480 S.E.2d at 70-71 ("Although the delay was lengthy and the justification was unsatisfactory, Brazell's right to a speedy trial was not denied when one balances the Barker factors. The long delay was negated by the lack of prejudice to the defense. There is no evidence that the delay was willful or intentional."). Accordingly, although there was a somewhat lengthy delay between the time Appellant was indicted and ultimately brought to trial and convicted, the trial judge committed no error in denying

Appellant's motion for a speedy trial, and his ruling was supported by the evidence. See Cooper, 386 S.C. at 217-218, 687 S.E.2d at 66-67 (affirming the denial of Cooper's speedy trial motion where the delay in bringing the case to trial was at least forty-four months); Robinson, 335 S.C. at 626-267, 518 S.E.2d at 273 ("Although the five-year delay in this case was substantial, upon our review and balancing of the Barker factors, we find Robinson was not denied his constitutional right to a speedy trial. The case was tried within one year of Robinson's first formal motion to dismiss. The State also presented adequate justification for the delay. Finally, Robinson presented no evidence of actual prejudice."). Appellant's conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

January 29, 2013

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2010-178486

THE STATE,

Respondent,

vs.

SHAWN REAVES,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
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I further certify that all parties required by Rule to be served have been served. This 29th day of January, 2013.

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Shawn Reaves, Appellant.

Appellate Case No. 2010-178486

Appeal From Marion County
William H. Seals, Jr., Circuit Court Judge

Unpublished Opinion No. 2014-UP-057
Heard January 6, 2014 – Filed February 12, 2014

AFFIRMED

Appellate Defender LaNelle Cantey DuRant, of Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant Attorney General Julie Kate Keeney, of Columbia, for Respondent.

PER CURIAM: Shawn Reaves appeals his conviction for voluntary manslaughter, arguing the trial court erred in denying his motions to dismiss: (1) the indictment when evidence was missing and never produced, which was a violation of Rule 5, SCRCrimP, and his due process right to a fair trial; and (2) the case based on a violation of his Sixth Amendment right to a speedy trial when his first trial, which ended in a mistrial, was held on August 24, 2010, more than three years after the incident, and his second trial was held on November 8, 2010. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to the motion to dismiss the indictment: *State v. Cheeseboro*, 346 S.C. 526, 538, 552 S.E.2d 300, 307 (2001) ("The State does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant."); *id.* at 538-39, 552 S.E.2d at 307 ("To establish a due process violation, a defendant must demonstrate (1) that the State destroyed the evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means."); *State v. Adams*, 304 S.C. 302, 304-05, 403 S.E.2d 678, 680 (Ct. App. 1991) (holding Adams fell "short of meeting the standard of constitutional materiality because he failed to make some showing that the document in fact possessed an 'exculpatory value that was apparent' before the State lost it."); *State v. Hutton*, 358 S.C. 622, 632, 595 S.E.2d 876, 882 (Ct. App. 2004) (finding the trial court allowed trial counsel to thoroughly cross-examine the witness about the first statement he gave and its contents; thus, Hutton could obtain evidence of comparable value by other means).

2. As to the motion to dismiss the case: *State v. Brazell*, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) (holding a reviewing court should consider four factors when determining whether a defendant has been deprived of his or her right to a speedy trial: (1) length of the delay; (2) reason for the delay; (3) the defendant's assertion of the right; and (4) prejudice to the defendant); *State v. Pittman*, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) ("[T]he determination that a defendant has been deprived of this right is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense."); *State v. Cooper*, 386 S.C. 210, 216-18, 687 S.E.2d 62, 66-67 (Ct. App. 2009) (finding the evidence supported the trial judge's determination that the delay of forty-four months in bringing Cooper's case to trial the second time was not apparently willful and was largely justifiable); *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (holding the "constitutional guarantee of a speedy trial is protection only against delay which is

arbitrary or unreasonable"); *id.* at 109, 240 S.E.2d at 653 (citing to *Commonwealth v. Watson*, 360 A.2d 710 (Pa. Super. 1976), in which the court concluded a delay of more than three years between defendant's arrest and trial did not deny him his constitutional right to a speedy trial where he did not assert the right until three days prior to trial); *Brazell*, 325 S.C. at 76, 480 S.E.2d at 70-71 (noting the three-year and five-month delay was negated by the lack of prejudice to the defense).

AFFIRMED.

SHORT, WILLIAMS, and THOMAS, JJ., concur.

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

SHAWN REAVES,

APPELLANT

APPELLATE CASE NO. 2010-178486

Appeal from Marion County

William H. Seals, Jr., Circuit Court Judge

Opinion No. 2014-UP-057

PETITION FOR REHEARING

The Court of Appeals affirmed the above named appellant's conviction and sentence on February 12, 2014. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, Appellant submits the following:

Shawn Reaves raised two issues on appeal. Issue One was whether the trial court erred in denying appellant's motion to dismiss the indictments when evidence was missing and never produced, which included the victim's clothing and written statements from five eyewitnesses who testified they gave the statements to police on the night of the incident, which was a Rule 5

violation, and a violation of appellant's due process right to a fair trial. Issue Two was whether the trial court erred in denying appellant's motion to dismiss the case based on a violation of his Sixth Amendment right to a speedy trial when his first trial, which ended in a mistrial, was held on August 24, 2010 which was over three years after the incident which occurred on May 13, 2007, and his second trial was held November 8, 2010.

The Court of Appeals held on Issue One that the state does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant citing State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001). The Court also cited Cheeseboro for the proposition that in order to establish a due process violation, a defendant must demonstrate (1) that the state destroyed the evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means. To support their ruling, the Court also cited State v. Adams, 304 S.C. 302, 403 S.E.2d (Ct. App. 1991), and State v. Hutton, 358 S.C. 622, 595 S.E.2d 876 (Ct. App. 2004).

On Issue Two, the Court of Appeals cited the four factors from State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997), for a court to consider in reviewing whether a defendant was deprived of his right to a speedy trial. These include: (1) length of the delay; (2) reason for the delay; (3) the defendant's assertion of the right to a speedy trial; (4) prejudice to the defendant.

The Court of Appeals misapprehended the issues, and the governing legal principles.

ISSUE ONE: Joemilla Wilson testified that she and the victim, Keshawn Applewhite, had been involved in a romantic relationship up until one month before this shooting incident on May 13, 2010. They were living together in Atlanta until she moved back to Marion about one month earlier. R. 554, ll. 1 – 25; R. 555 ll. 1 – 20; R. 571 ll. 3 – 21. She started seeing Deshawn Bellamy, and admitted she had been intimate with him. Applewhite was upset that she had already started seeing

someone else. She was concerned for her safety and Bellamy's when she learned that Applewhite was in town on Mother's Day, May 13, 2007. R. 568, ll. 1 – 25; R. 569, ll. 1 – 25; R. 570, ll. 1 – 25; R. 571, ll. 1 – 25; R. 572, ll. 1 – 3.

When Applewhite, McGill, Travis Lane, and Karen Graves arrived at Bellamy's house, there were several people in the yard. R. 275, ll. 19 – 25. Applewhite got out of the car, and asked to speak to Joemilla who was inside the house. She came out to talk to him, and they started walking down the street together. R. 276, ll. 1 – 25.

Joemilla's testimony was she and Applewhite walked down the street and started arguing. Then they started fighting mostly in front of the house. R. 557, ll. 1 – 24. McGill and some others tried to break up the fight. R. 559, ll. 5 – 15. Applewhite threw her into a mud puddle, and she hit her head on a car. She got up and they continued to fight. She then decided to go back to the house. R. 578, ll. 7 – 25; R. 579, ll. 1 – 7.

McGill testified that he tried to break up the fight because Applewhite and Joemilla were fighting hard. R. 277, ll. 1 – 25; R. 278, ll. 1 – 25. He got Applewhite and put him in the front seat of their car. Joemilla then walked up and spit on Applewhite. R. 279, ll. 1 – 25; R. 280, ll. 1 – 25.

Joemilla testified that as she walked back to the house, she could hear Applewhite coming towards her. As she walked up the steps, Shawn Reaves, whom she knew, was standing on the porch. Applewhite pushed Reaves and snatched Reaves' chains off. Reaves then pulled a gun, and started shooting. She saw Applewhite fall forward. R. 559, ll. 19 – 25; R. 560, ll. 1 – 25.

After everyone scattered, she went to Applewhite to try to help him. McGill and Lane also came and started dragging him to the car. About that time, the police and EMS arrived. R. 562, ll. 1 – 24. The police took Joemilla to the police station that night where she wrote a statement, and the police took pictures of her bruised face. R. 564, ll. 1 – 23.

The forensic pathologist testified that the cause of death of Applewhite was homicide. R. 372, ll. 15 – 23. She explained that the body had five gunshot wounds but only two bullets were lodged in the body. R. 365, ll. 15 – 25; R. 366, ll. 1 – 25; R. 367, ll. 1 – 11.

Dan Defreese, the SLED expert in the field of firearms, testified that the two bullets removed from Applewhite's body were from two different guns. One bullet was from a .38 caliber revolver or 357, and the second bullet was from a 9-millimeter Luger. R. 378, ll. 1 – 14; R. 379, ll. 1 – 25; R. 382, ll. 1 – 25; R. 383, ll. 1 – 25; R. 384, ll 1 – 25; R. 385, ll. 1 – 25; R. 386, ll. 1 – 8.

Police Lieutenant Walter Davis testified that he went to Philadelphia and brought Reaves back to South Carolina because they had a warrant for murder for him. Reaves was only sixteen years old at the time of the incident. R. 182, ll. 6 – 25; R. 183, ll. 1 – 25; R. 184, ll. 1 – 5; R. 696, ll. 4 – 25.

McGill testified that he wrote a statement that night immediately after the incident on the back of the police car and gave it to Lt. Davis. R. 301, ll. 1 – 25; R. 302, ll. 1 – 20; R. 314, ll. 1 – 16.

On cross-examination, McGill admitted that the testimony he gave was not consistent with the subsequent story he told later. R. 304, ll. 1 – 14. When defense counsel showed McGill the statement from Lt. Davis's file that McGill allegedly gave, McGill admitted that was not the statement he wrote on the night of the incident on the back of the police car. R. 315, ll. 11 – 25; R. 316, ll. 1 – 19.

McGill testified that Travis Lane and Karen Graves wrote statements on the back of the police car right after the incident as well. R. 314, ll. 6 – 25; R. 315, ll. 1 – 12.

Lt. Davis testified that he talked to McGill and Lane the night of the incident. R. 160, ll. 1 – 20. He also talked to several ladies that night as well but he did not remember their names. R. 161, ll. 23 – 25. Lt. Davis admitted that he asked McGill to write a statement, and he gave him paper to

write it on. He thought McGill gave it to one of the other officers as he did not receive the statement. He did not remember if he asked Lane to write a statement. R. 167, ll. 1 – 25; R. 169, ll. 1 – 23.

Lt. Davis also testified that there was a crime scene log that everyone who entered the scene should have signed. However, that procedure was not followed. He was at the crime scene, and he did not sign his name but rather claimed someone signed his name. R. 169, ll. 1 – 25; R. 170, ll. 1 – 25; R. 171, ll. 1 – 25; R. 172, ll. 1 – 25.

Kenneth Kensy was employed with SLED in May 2007 as a crime scene examiner, and worked the scene in Reaves' case. R. 185, ll. 9 – 25; R. 186, ll. 1 – 25. He said it would be prudent to test the clothing of the people in close proximity to the gun shot for gun shot residue although the hands were a better indicator. R. 223, ll.1 – 25; R. 224, ll. 1 – 25; R. 225, ll. 1 – 25.

Lieutenant Farmer Blue with the Marion Police Department testified that the clothing of the victim of a homicide could reveal valuable evidence. He knew that Officer Jackson collected the victim's clothing from the Marion County Medical Center and turned them over to Captain Gray who was heading the investigation that night before Lt. Blue took charge the next day. R. 432, ll. 21 – 25; R. 433, ll. 1 – 21; R. 489, ll. 15 – 25. Lt. Blue said the clothes were not in the evidence box; he had never seen the clothes, and the clothes were never sent to SLED for analysis as far as he knew. R. 489, ll. 15 – 25; R. 490, ll. 1 – 25; R. 491, ll. 1 – 5.

Lt. Blue admitted that when he became the lead investigator two days after the incident, he realized he would have done some things differently. He said better evidence could have been collected, and more evidence should have been collected. R. 433, ll. 1 – 25; R. 434, ll. 1. On cross examination, he admitted that the case was still open because they were still looking for the second shooter. R. 442, ll. 1 – 5.

Lt. Blue admitted that he did not sign the log in sheet at the crime scene. R. 448, ll. 1 – 24. This was the first murder crime scene he had ever investigated. R. 466, ll. 14 – 25; R. 467, ll. 1 – 3. There were pieces of evidence that SLED collected that the Marion Police Department requested be returned without being tested. R. 470, ll. 14 – 25; R. 471, ll. 1 – 3. This included a white hat found at the scene. R. 471, ll. 4 – 25; R. 472, ll. 1 – 25. A blue and black hat was found at the scene that was returned without being tested. R. 474, ll. 1 – 25; R. 475, ll. 1 – 25. A VISA card was taken from the scene and returned to Bellamy without being checked for prints. R. 476, ll. 1 – 25. A Motorola cell phone and a second cell phone were taken from the scene and not tested. R. 479, ll. 20 – 25; R. 482, ll. 1 – 25.

Lt. Blue admitted that three gold chains taken from the crime scene as shown in photographs were not in the evidence box, and he did not know what happened to them. R. 486, ll. 21 – 25; R. 487, ll. 1 – 25; R. 488 ll. 1 – 25. He said that, as an investigator, that evidence could be helpful in identifying everyone at the crime scene because they still did not know the identity of everyone there. He had not identified the second shooter. R. 489, ll. 1 – 14. Everyone at the crime scene was a potential suspect. R. 519, ll. 18 – 20.

McGill and Lane were shown photo lineups and did not select Reaves as the shooter but , in fact, selected someone else. R. 502, ll. 1 – 18; R. 508, ll. 1 – 25; R. 509, ll. 1 – 25.

Lt. Blue admitted that he heard McGill testify that he and Lane and Graves had written statements and given them to the police the night of the incident at the scene. However, he did not possess those statements; and he did not know what happened to them. R. 502, ll. 19 – 25; R. 503, ll. 1 – 25; R. 504. ll. 1 – 3.

In a pretrial motion and at the close of the state's case, defense counsel moved for the indictments against Reaves to be dismissed due to a lack of due process based on the misconduct of

the state in not producing evidence that was obtained during the investigation and then not provided to the defense because it was lost. Counsel argued that it was a violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83 (1963). R. 123, ll. 2 – R. 128, ll.25; R. 596, ll. 1 – 25; R. 597, ll. 1 – 25.

Counsel argued that because the victim's clothing was lost as well as the other evidence, he did not have the benefit of determining if that information would be helpful to his defense of the case. Counsel argued that the purpose of due process was for the defendant to be able to defend himself in the best way possible, and he had a right to weigh all of the evidence. R. 125, ll. 1 – 25; R. 126, ll. 1 – 5.

Counsel argued that he was not able to effectively cross examine the witnesses since their statements were not provided. He did not have the advantage of determining if there were contradictory testimony. Under the Sixth Amendment, Reaves had a right to cross-examine the witnesses. Due to the gross negligence of law enforcement, counsel argued Reaves' Sixth Amendment right was violated. R. 597, ll. 1 – 25; R. 598, ll. 1 – 25.

Counsel told the court that he never received the photographs taken of Joemilla Wilson on the night of the incident. R. 599, ll. 1 – 25.

Counsel argued that Reaves was prejudiced by the severely inappropriate handling of his case. R. 600, ll. 1 – 2.

The judge commented during the trial: "But, obviously, we've got a messed up trial based on that bad investigation." R. 263, ll. 14 – 24. However, he denied defense counsel's motion to dismiss the case because he ruled that the lack of evidence went to the credibility of the state's case but was not enough for a dismissal. He agreed with the state that Reaves was entitled to the charge of spoliation of evidence. R. 600, ll. 1 – 25; R. 601, ll. 1 – 4.

The judge did charge the jury on the spoliation of evidence. R. 676, ll. 10 – 16.

Rule 5, SCRCrimP, provides that the prosecution shall permit the defendant, upon request, to inspect and copy any documents, examinations, tests which are in the control of the prosecution which the prosecution intends to use as evidence in chief at trial. A Rule 5 violation is not reversible unless prejudice is shown. State v. Landon, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006).

The Due Process clause of the Fifth and Fourteenth Amendments mandate a defendant's fundamental right to a fair trial. State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998).

In State v. Osborne, 291 S.C. 265, 353 S.E.2d 276 (1987), the Supreme Court ruled that the prosecution's nondisclosure of tape recordings of statements made by key state's witness in prosecution of defendants for conspiracy, armed robbery, kidnapping, and murder deprived defendants of fair trial requiring new trial.

In Brady v. Maryland, *supra,* the United State Supreme Court declared the suppression of evidence favorable to an accused upon request violates due process where the evidence is In Brady v. Maryland, *supra,* the United State Supreme Court declared the suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. State v Harvey Jones and Melissa Jones, 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996) citing Brady v. Maryland, *supra.*

The Sixth Amendment provides an accused with the right to be confronted with witnesses against him. The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence. State v. Gillian, 360 S.C. 433, 449-450, 602 S.E.2d 62, 71 (Ct. App. 2004).

The Fourteenth Amendment secures all persons against any state action which results in either deprivation of life, liberty, or property without due process of law. U.S.C.A. Amend. 14. The right to confront and cross-examine witnesses and to call witnesses in one's own behalf are essential to due process. Chambers v. Mississippi, 410 U.S. 284, 302 (1973).

In Arizona v. Youngblood, 488 U.S. 51 (1988), the United States Supreme Court held that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence did not constitute a denial of due process of law. Youngblood was accused of sexually assaulting and sodomizing a ten year old boy. The police collected a rectal swab for semen and the child's clothing. However, the police failed to refrigerate the clothing and failed to perform tests on the semen samples. None of their information was concealed from the respondent at trial, and the evidence was made available to the respondent's expert who declined to perform any tests on the samples.

The Court of Appeals relied on Arizona v. Youngblood, id. for the proposition that Reaves had to show bad faith on the part of the state, but this reliance was misplaced. Reaves' case is distinguished because the evidence was never presented to Reaves. The clothing was not provided; the witnesses' statements taken the night of the incident were not provided as well as other evidence. The police deliberately not allowing SLED to perform an analysis on some evidence when the police asked for it to be returned before testing, was an act of bad faith.

In Arizona v. Youngblood, id., Justice Stevens did not agree with the Supreme Court's holding that the defendant must show bad faith because in his opinion, there could be cases where the defendant may be unable to show bad faith on the part of the state, but where the loss of evidence was nonetheless so critical to the defense as to make the trial fundamentally unfair.

In his dissent in Arizona v. Youngblood, id. , Justice Blackmun wrote that a defendant was entitled to a fair trial, and not a "good faith" try at a fair trial.

The South Carolina Supreme Court held in State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001), that to establish a due process violation based on the destruction of evidence, a defendant must demonstrate (1) that the state destroyed the evidence in bad faith; or (2) that the evidence possessed an exculpatory value before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.

In State v. Mouzon, 231 S.C. 655, 99 S.E.2d 672 (1957), the Supreme Court held that malice can be inferred from conduct which is so reckless and wanton as to indicate a depravity of mind and a general disregard for human life.

By way of analogy, the police handling of the investigation was so severely inappropriate to the point of being misconduct and bad faith, especially in light of the fact that the second shooter was not identified; GSR tests were not performed on everyone at the incident site; the victim's clothing was lost; DNA tests were not performed on many items of evidence. The police conduct in Reaves' case was a violation of his due process right to a fair trial. An affirmance of Reaves' conviction is only encouraging negligent and reckless investigations.

The Court of Appeals relied on the case of State v. Adams, *supra,* for the proposition that Adams failed to make a showing that the evidence was exculpatory before the state lost it. Adams is distinguished because Adams was claiming the original breathalyzer test was not valid and it was lost. However, Adams had been given a copy of the results, and could testify as to his claim. Reaves never had the evidence nor a copy nor the results so he could not determine if it was exculpatory or not.

ISSUE TWO: This incident occurred May 13, 2007. Shawn Reaves was arrested a few days later in Philadelphia on a warrant for murder. R. 183, ll. 5 – 25. The first trial was not held until August 2010. R.1. As a pretrial motion, defense counsel moved for the indictment against Reaves to be dismissed based on a violation of Reaves' Sixth Amendment right to a speedy trial which resulted in a lack of due process in Reaves' case. Counsel said the first trial in August 2010, resulted in a mistrial due to the state's untimely presentation of evidence to the defense. R. 107, ll. 15 – 25; R. 108, ll. 1.

Counsel cited as the standard the four factors identified by the United States Supreme Court and reiterated in State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009). These factors were: (1) the length of the delay; (2) the reason for the delay, (3) the defendant's assertion of his right, (4) prejudice to the defendant. R. 108, ll. 1 – 24.

Counsel argued that he understood that the length of the delay of the trial was not *per se* a violation but should be considered in conjunction with the reason for the delay. However, he said the incident was May 13, 2007; Reaves was arrested May 29, 2007; and the first trial was held August 24, 2010. This created a delay of three years and six months which, he correctly argued, was a lengthy time. R. 109, ll. 1 – 25; R. 110, ll. 1 – 7.

Counsel argued that all of the discovery or evidence was collected within two months of the incident. One eyewitness, Joemilla Wilson, identified Reaves as the shooter on May 25, 2007. R. 110, ll. 8 – 25; R. 111, ll. 1 – 25. Counsel argued that this was not a complicated case, and there was no reason for the delay. Therefore, he argued, the first two factors violated due process. R. 111, ll. 117 – 25; R. 112, ll. 1 – 8.

The third factor, the defendant's assertion of the right, was made at the first trial in August 2010. Then the state went ahead with the trial at that time. R. 112, ll. 9 – 25. That trial ended in a

mistrial when new evidence was untimely produced to the defense during the trial. R. 112, ll. 23 – 25; R. 113, ll. 1 – 12.

He argued on the fourth factor, that Reaves was prejudiced by the delay. He explained that when the new discovery was revealed during the first trial, Reaves' defense evolved and changed. However, the fact that evidence was lost which was crucial to the development of the defense occurred during this time period. He argued that the victim's clothing was critical because it may have provided evidence for a self defense theory of defense. R. 114, ll. 1 – 25; R. 115, ll. 1 – 25; R. 116, ll. 1 – 25; R. 117, ll. 1 – 25.

Counsel argued that one reason for a speedy trial was to insure that evidence was preserved to enable the accused person to be able to evaluate the evidence in order to present a defense. It was also essential to have the evidence fresh in the minds of witnesses. Counsel argued that Reaves' rights were violated as he was being forced to go forward without the advantage of having that evidence through no fault of his own. R. 118, ll. 1 – 22.

The solicitor argued that the evidence issue had nothing to do with the speedy trial motion. He argued that part of the delay was that Reaves had two lawyers during the process, and that the assertion of the speedy trial right was first made at the start of the first trial. R. 119, ll. 14 – 25; R. 120, ll. 1 – 15.

The solicitor admitted that there were "very many" problems with the evidence in this case. No one knew, including him and the Marion Police Department, where some of the evidence that existed earlier was as it could not be found. He said all they could do was to go forward with the evidence they had. R. 120, ll. 16 – 25.

The judge denied the speedy trial motion finding the delay was reasonable, and there was no prejudice to Reaves. R. 121, ll. 4 – 25; R. 122, ll. 1 – 3.

At the close of the state's case, counsel again renew his motion for a dismissal based on the speedy trial motion. Counsel argued there was even more prejudice since he learned that eyewitness statements were lost. R. 601, ll. 5 – 25; R. 602, ll. 1 – 25; R. 603, ll. 1 – 25. The judge denied the motion. R. 604, ll. 1 – 7.

"Speedy trial" is part of due process of law to which every person accused of a crime is entitled under State and Federal Constitutions. Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966); citing U.S.C.A. Const. Amends. 6, 14, and S.C. Const. art. 1, Section 5.

In Doggett v. United States, 505 U.S. 647 (1992), the United States Supreme Court listed the factors required in order to assess speedy trial claims. There are four relevant inquiries: (1) whether delay before trial was uncommonly long, (2) whether the government or defendant is more to blame for the delay, (3) whether, in due course, the defendant asserted his right to a speedy trial, and (4) whether the defendant suffered any prejudice as to the delay's result. Id. at 651. See Barker v. Wingo, 407 U.S. 514 (1972). State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997); State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009).

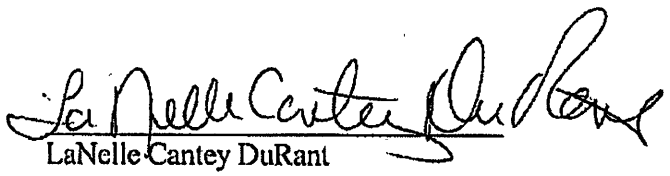
The South Carolina Supreme Court held in State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007), that the determination that a defendant ahs been deprived of the right to a speedy trial is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense.

The Court of Appeals relied on the case of State v. Cooper, 386 S.C. 210, 687 S.E.2d 62 (Ct. App. 2009), where the trial court ruled that the forty-four months delay in bringing Cooper's case to trial the second time was not apparently willful and largely justifiable. However, the Court also ruled in Cooper's case that the delay was not prejudicial because the state withdrew its notice to seek the death penalty.

The trial judge erred by not granting Reaves' speedy trial motion to dismiss the indictment as there was a lack of due process based on evidence lost during this delay. The factors weigh in Reaves' favor as the length of delay was three and one-half years; the state did not have a good reason for the delay; Reaves asserted his right to a speedy trial; and the delay was prejudicial when evidence was lost during this delay.

WHEREFORE, Appellant respectfully requests this Court to grant his petition for rehearing and reconsider its affirmance of Appellant's conviction and sentence.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

This 24th day of February, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAWN REAVES,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Shawn Reaves, #343643, Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 26th day of February, 2014.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 26th day
of February, 2014.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2010-178486

THE STATE,

Respondent,

vs.

SHAWN REAVES,

Appellant.

RETURN TO PETITION FOR REHEARING

On February 12, 2014, this Court issued an unpublished opinion in which it unanimously affirmed Appellant Shawn Reaves' conviction for voluntary manslaughter. State v. Reaves, Op. No. 2014-UP-057 (S.C. Ct. App. filed Feb. 12, 2014). Pursuant to Rule 221(a), SCACR, Reaves petitioned this Court for rehearing, and this Court requested that Respondent ("the State") file a return to Reaves' petition. For the following reasons, Reaves' petition for rehearing should be denied.

Indictment Issue

In his petition for rehearing, Reaves first contends that this Court erred in affirming the trial judge's decision to deny Reaves' motion to dismiss the charges against him after it became apparent during trial that several pieces of evidence had been lost at some point prior to trial. In support of that contention, Reaves initially maintains that the law enforcement officers in his case acted in bad faith while asserting that this Court erroneously relied upon the United States

Supreme Court's decision in Arizona v. Youngblood, 488 U.S. 51 (1988), for the proposition that Reaves was required to establish bad faith on the part of the State in order to obtain relief. (Pet. for Reh. pp. 9-10). Reaves further maintains that his case should have been dismissed because he had not been able to determine if the lost evidence was actually exculpatory while asserting that this Court erroneously relied upon the decision in State v. Adams, 304 S.C. 302, 403 S.E.2d 678 (Ct. App. 1991), in affirming his conviction. Contrary to Reaves' contentions, neither this Court nor the trial judge committed any error in finding Reaves' motion to dismiss the charges in his case to be meritless, and Reaves' conviction was properly affirmed on appeal.

As this Court noted in its opinion, "[t]he State does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant." State v. Cheeseboro, 346 S.C. 526, 538, 552 S.E.2d 300, 307 (2001). As a result, a criminal defendant is required to establish the existence of one of two different factors in order to be entitled to dismissal of criminal charges based on the loss or destruction of some potentially useful evidence prior to trial: (1) that the State destroyed the missing evidence in bad faith; or (2) that the State destroyed evidence possessing an exculpatory value apparent before the evidence was destroyed and no other evidence of comparable value can be obtained by other means. State v. Mabe, 306 S.C. 355, 358-359, 412 S.E.2d 386, 388 (1991). Significantly, "[t]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." United States v. Agurs, 427 U.S. 97, 109-110 (1976); see Arizona v. Youngblood, 488 U.S. 51, 57 (1988) ("[W]e think the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.").

As this Court correctly recognized in affirming Reaves' conviction, Reaves failed to establish the existence of either of the required factors warranting the dismissal of charges in regard to the unaccounted-for evidence in his case. Regarding the first factor, no actual evidence of bad faith was presented during trial or identified on appeal suggesting that the officers in Reaves' case intentionally destroyed or lost the unaccounted-for evidence.[1] See California v. Trombetta, 467 U.S. 479, 488 (1984) ("The record contains no allegation of official animus towards respondents or of a conscious effort to suppress exculpatory evidence."). Although several alleged statements and other pieces of evidence could not be located prior to trial, nothing that was presented during trial suggested that the officers investigating the case intentionally lost or destroyed those items for the purpose of suppressing exculpatory evidence. See Youngblood, 488 U.S. at 58 ("We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant."). Instead, the testimony simply established that multiple officers involved in the investigation were unaware of what happened to the different items after they were collected with several of the officers candidly acknowledging that the investigation ideally would have been conducted in a different manner. Cf. Cheeseboro,

[1] In his petition for rehearing, Reaves appears to assert that the decision of the Marion Police Department not to have S.L.E.D. test each item recovered from the scene of the shooting was "an act of bad faith." (Pet. for Reh. p. 10). However, during trial, testimony was presented explaining that the officers' investigatory decision not to test certain items for fingerprints, such as the cell phones and credit card collected at the scene, was reached due to S.L.E.D. restrictions on the number of evidentiary items that could be submitted for testing, the backlog of items submitted for testing at S.L.E.D., and the fact that the owners of the untested items were identified through other means. (R. pp. 234-235; p. 444; pp. 476-477; p. 483). Accordingly, the decision not to have every piece of evidence collected from the scene of the shooting tested, which would not have been practical or possible under the circumstances, did not rise to the level of bad faith. See Jean v. Collins, 221 F.3d 656, 663 (4th Cir. 2000) (instructing bad faith in the context of the loss or destruction of evidence "requires that the officer have intentionally withheld the evidence for the purpose of depriving the plaintiff of the use of that evidence during his criminal trial").

346 S.C. at 539, 552 S.E.2d at 307 ("While there is evidence of a lack of care, there is no evidence of an intentional destruction of relevant evidence in this case."). Accordingly, because the missing evidence was not lost or destroyed as the result of any bad faith on the part of the officers, the mere fact that the evidence was lost and unaccounted for did not entitle Reaves to the dismissal of his charges.

Regarding the second factor, no evidence was presented during trial or identified on appeal suggesting that any of the lost or missing evidence possessed an exculpatory value that was apparent before it was lost or destroyed.[2] In fact, Reaves appears to readily acknowledge in his petition for rehearing that none of the missing evidence had an apparent exculpatory value as he concedes that "he could not determine if it was exculpatory or not." (Pet. for Reh. p. 10). Critically, the mere possibility that the lost evidence **might** have potentially possessed exculpatory value was not sufficient to entitle Reaves to the extreme measure of the dismissal of his case. See Youngblood, 488 U.S. at 56, n. 4 ("Trombetta speaks of evidence whose exculpatory value is 'apparent.' The possibility that the semen samples could have exculpated respondent if preserved or tested is not enough to satisfy the standard of constitutional materiality in Trombetta. Second, we made clear in Trombetta that the exculpatory value of the evidence must be apparent '*before* the evidence was destroyed.' " (citations omitted) (italics in original)); see also State v. Adams, 304 S.C. 302, 304-305, 403 S.E.2d 678, 680 (Ct. App. 1991) ("If, on the other hand, Adams' purpose was to exploit any exculpatory potential the document might have had, he falls short of meeting the standard of constitutional materiality because he

[2] Notably, to the extent that Reaves is contending in his petition for rehearing that he was entitled to the dismissal of his charges due to the loss or destruction of the unaccounted-for evidence on a basis other than the alleged bad faith of the law enforcement officers investigating his case, that argument was not preserved for appellate review because it was not raised to this Court in Reaves' Final Brief of Appellant, which was focused **solely** on the alleged bad faith of the officers in the portion of the brief seeking relief due to the loss or destruction of the evidence. See McClurg v. Deaton, 395 S.C. 85, 87, n. 2, 716 S.E.2d 887, 888 (2011) ("It is axiomatic that an issue cannot be raised for the first time on rehearing.").

failed to make some showing that the document in fact possessed an 'exculpatory value that was apparent' before the State lost it. . . . Speculation about such things, our Supreme Court has held, will not do." (citations omitted)). Therefore, since none of the evidence missing in Reaves' case had any apparent exculpatory value, Reaves was not entitled to a dismissal of his charges due to the loss of that evidence.[3] See State v. Bland, 399 S.C. 220, 226, 730 S.E.2d 909, 912 (Ct. App. 2012) ("[O]ur holding that Bland failed to demonstrate that the lineup had exculpatory value is sufficient to uphold his convictions[.]").

Because Reaves failed to establish that the State destroyed the missing evidence in bad faith or that the State destroyed evidence possessing an exculpatory value that was apparent before the evidence was destroyed, he was not entitled to a dismissal of his charges based on the loss of that evidence. See Cheeseboro, 346 S.C. at 538-539, 552 S.E.2d at 307 ("The State does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant. To establish a due process violation, a defendant must demonstrate (1) that the State destroyed the evidence in bad faith, or (2) that the evidence possessed an exculpatory value apparent before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means." (citations omitted)). For the foregoing reasons coupled with the arguments raised in the Final Brief of Respondent and during the oral argument before this Court, the trial judge properly denied Reaves' motion to dismiss his charges, and this Court

[3] Moreover, in regard to the allegedly missing statements, evidence of comparable value to the alleged statements was available due to the fact that Reaves was fully capable of questioning the witnesses who allegedly made the missing statements about the contents of those purported statements during trial. Cf. State v. Hutton, 358 S.C. 622, 632, 595 S.E.2d 876, 882 (Ct. App. 2004) ("Nor can we find appellant could not obtain other evidence of comparable value by other means. The trial court allowed trial counsel to thoroughly cross-examine Bellinger about the first statement he gave and its contents."). As a result, the fact that the alleged statements could not be accounted for at the time of trial did not deprive Reaves of a fair trial or prevent him from presenting a complete defense and, thus, did not entitle him to any relief on appeal. Cf. State v. Moses, 390 S.C. 502, 519, 702 S.E.2d 395, 404 (Ct. App. 2010) ("The defense asserts the tape 'would most likely' have allowed it to identify witnesses who *may reasonably* have presented favorable evidence or evidence which could have lead the defense to impeachment evidence. Standing alone, this assertion is insufficient.").

correctly affirmed Reaves' conviction. Accordingly, Reaves' petition for rehearing should be denied.

Speedy Trial Issue

In his petition for rehearing, Reaves next appears to contend that this Court erred in affirming the trial judge's denial of his speedy trial motion. In making that contention, Reaves has raised an argument identical to the one raised in his Final Brief of Appellant save for the fact that he added the following brief passage:

> The Court of Appeals relied on the case of State v. Cooper, 386 S.C. 210, 687 S.E.2d 62 (Ct. App. 2009), where the trial court ruled that the forty-four months delay in bringing Cooper's case to trial the second time was not apparently willful and largely justifiable. However, the Court also ruled in Cooper's case that the delay was not prejudicial because the state withdrew its notice to seek the death penalty.

(App. Br. pp. 14-17; Pet. for Reh. pp. 11-14). To the extent that Reaves' argument in the petition for rehearing can be considered an assertion of error on the part of this Court, this Court properly affirmed the trial judge's denial of the speedy trial motion.

As this Court correctly noted in its opinion, several factors have to be considered when determining whether a criminal defendant's right to a speedy trial has been violated. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App. 2000). In Barker v. Wingo, 407 U.S. 514, 530 (1972), the United States Supreme Court adopted a balancing test employing the evaluation of the conduct of both the defendant and the prosecution. Under the balancing test, four factors must be considered when evaluating the circumstances of a delay in the prosecution of a criminal defendant's case: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. Id. None of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. Id. at 533. Instead, "they are related factors and must be considered together with such other circumstances

as may be relevant. In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process." Id.

When the relevant factors are considered in Reaves' case, it is clear that neither this Court nor the trial judge erred in finding that Reaves' constitutional right to a speedy trial was not violated. Turning to those factors, the delays in the prosecution of Reaves' case resulted from the unique circumstances of the case and not from any intentional actions on the part of the State designed to delay the trial. Specifically, some of the delay in bringing Reaves' case to trial resulted from the fact that the possible second shooter involved in the incident still had not been conclusively identified or apprehended, which constituted a legitimate reason for the solicitor to delay bringing Reaves' case to trial. See State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) ("A valid reason presented by the State may justify an appropriate delay."); see also Kennedy, 339 S.C. at 250-251, 528 S.E.2d at 704-705 (finding the complexity of the case, which required substantial time to investigate and prepare, constituted a legitimate reason for the delay in bringing the case to trial). Additionally, notwithstanding the ongoing nature of the murder investigation, the trial judge noted a portion of the delay associated with Reaves' case resulted from the heavy backlog of cases on the docket in Marion County, which was another legitimate justification for the delay in bringing the case to trial. Cf. State v. Chapman, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) ("A portion of the delay was caused by the normal condition of the docket. . . . The constitutional guarantee of a speedy trial affords protection only against unnecessary or unreasonable delay."). Furthermore, a portion of the delay in bringing Reaves case to trial resulted from the fact that Reaves admittedly did not retain the defense attorney who ultimately tried his case until approximately one year after his arrest, and Reaves further contributed to the delay by successfully moving for a mistrial, which led to an additional three-

month delay before Reaves' case could be re-tried. See, e.g., State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (considering Waites' counsel's actions delaying the trial when assessing whether a speedy trial violation occurred). Thus, when considering the reasons for the delays coupled with the unique circumstances of Reaves' case, the delays incurred were excusable and justifiable under the circumstances and were not attributable to any neglect or willfulness on the part of the State. See State v. Smith, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992) (finding the defendant bears the burden of showing a speedy trial delay was due to the neglect and willfulness of the State's prosecution); see also State v. Dukes, 256 S.C. 218, 223, 182 S.E.2d 286, 288 (1971) ("The delay must be attributable to the State before the appellants can complain."); cf. State v. Evans, 386 S.C. 418, 425-426, 688 S.E.2d 583, 587 (Ct. App. 2009) (finding no error in the denial of a motion to dismiss based on an alleged speedy trial violation where the delay prior to trial was approximately twelve years).

Notwithstanding the length of the delays and the reasons for the delays, Reaves also failed to meaningfully assert his right to a speedy trial because he waited approximately thirty-nine months before he first asserted the right. Cf. Waites, 270 S.C. at 109, 240 S.E.2d at 653 ("We think it significant that Waites, represented by counsel, waited approximately twenty-eight months before claiming he had been denied his constitutional right to a speedy trial."). Notably, during trial, Reaves acknowledged that he did not assert his right to a speedy trial until immediately before his first trial, which was thirty-nine months after his arrest, and conceded that he promptly received a trial after first raising the issue. Thus, although Reaves challenged the length of the delays in bringing his case to trial, he waited over three years to do so for the first time and in no way sought a speedy trial prior that point. Therefore, because Reaves failed to meaningfully assert his right to a speedy trial prior to trial, the trial judge did not err in

denying his speedy trial motion. See Barker, 407 U.S. at 531-532 ("The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.").

Finally, and most significantly, Reaves failed to articulate any actual prejudice suffered as a result of the somewhat lengthy delays in bringing his case to trial. See, e.g., State v. Cooper, 386 S.C. 210, 218, 687 S.E.2d 62, 66 (Ct. App. 2009) (characterizing prejudice to the defendant as the most important factor in an analysis of whether a speedy trial violation occurred). Notably, the only prejudice that Reaves contended he suffered as a result of the delays was that evidence such as the victim's clothing and the alleged statements of several witnesses was lost prior to trial. However, no evidence was presented during trial suggesting that the evidence was lost as a result of the delays. Cf. Kennedy, 339 S.C. at 250, 528 S.E.2d at 104 ("[T]here is nothing to suggest the delay caused the witnesses to become unavailable."). Instead, the testimony established that the evidence could not be located due to issues with the investigation and not due to the passage of any period of time. Thus, the State's failure to call Reaves' case for trial at any earlier point in time had no impact on whether the evidence was lost or would have been available for trial. Furthermore, the loss of the evidence, which may have been inculpatory and detrimental to Reaves' case, was beneficial to Reaves by serving as a disadvantage to the State. See State v. Robinson, 335 S.C. 620, 626, 518 S.E.2d 269, 272 (Ct. App. 1999) ("[L]ost witnesses and documents are also disadvantages that hamper the State.").

Thus, when considering the circumstances of Reaves' case in relation to the relevant Barker factors, Reaves failed to meet his burden of establishing he was denied his right to a speedy trial. See Dukes, 256 S.C. at 222, 182 S.E.2d at 288 ("The burden was on the appellants,

who assert that they were denied their constitutional right to a speedy trial, to show that the delay was due to the neglect and willfulness of the State's prosecution."). As a result, the trial judge properly denied his motion to dismiss his case based on alleged violation of his right to a speedy trial, and this Court correctly affirmed the trial judge's ruling. Accordingly, Reaves' petition for rehearing should be denied.

Conclusion

Based on the foregoing coupled with the arguments raised in the Final Brief of Respondent and during the oral argument before this Court, the State respectfully requests that Reaves' petition for rehearing be denied.

Respectfully submitted,

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March 10, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2010-178486

THE STATE,

Respondent,

vs.

SHAWN REAVES,

Appellant.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Return to Petition for Rehearing on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served. This 10th day of March, 2014.

Ellen R. DuBois

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The South Carolina Court of Appeals

The State, Respondent,

v.

Shawn Reaves, Appellant.

Appellate Case No. 2010-178486

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Paul E. Short, Jr. J.

J.

J.

Columbia, South Carolina

RECEIVED

MAR 21 2014

SC OFFICE OF
APPELLATE DEFENSE

cc:
LaNelle Cantey DuRant, Esquire
Mark Reynolds Farthing, Esquire
Julie Kate Keeney, Esquire

FILED
March 21, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Marion County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 2014-UP-057 (S.C. Ct. App. filed 2/12/2014)
10-GS-33-0375

THE STATE,

RESPONDENT,

V.

SHAWN REAVES,

PETITIONER

APPELLATE CASE NO. 2010-178486

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 3/21/2014.

QUESTIONS PRESENTED

1. Whether the Court of Appeals erred in affirming the trial court's denial of Reaves' motion to dismiss the indictment when evidence was missing and never produced, which included the victim's clothing and written statements from five eyewitnesses who testified they gave the statements to police on the night of the incident, which was a Rule 5 violation, and a violation of appellant's due process right to a fair trial.

2. Whether the Court of Appeals erred in affirming the trial court's denial of Reaves' motion to dismiss his case based on a violation of his Sixth Amendment right to a speedy trial when his first trial, which ended in a mistrial, was held on August 24, 2010 which was over three years after the incident which occurred on May 13, 2007, and his second trial was held November 8, 2010.

STATEMENT OF THE CASE

The Marion County Grand Jury indicted Shawn Reaves on the charges of murder and assault and battery with intent to kill (ABWIK) (Indictment 2010-GS-33-0375). On August 24, 2010 Reaves proceeded to trial before the Honorable William H. Seals and a jury. Reaves was represented by Thurmond Brooker, and the state was represented by H. Steven Deberry. The judge declared a mistrial based on the state failing to produce evidence to Reaves. R. 467, ll. 20.

On November 8, 2010, Reaves proceeded to trial again on the same charges before the Honorable William H. Seals and a jury. Reaves was again represented by Thurmond Brooker, and the state was represented by E.L. Clements, III, Solicitor; Steven Deberry; and Fitzlee McEachin. The jury returned a verdict of not guilty on the murder and ABWIK charges, but found Reaves guilty of voluntary manslaughter. Judge Seals sentenced Reaves to twenty-five years incarceration. Reaves' attorney filed a notice of appeal. The Court of Appeals affirmed Reaves' conviction and sentence on February 12, 2014. State v. Reaves, 2014-UP-057 (Ct. App. filed February 12, 2014). App. 1-3. Appellate counsel filed a petition for rehearing which the Court of Appeals denied on March 21, 2014. App. 4-17; App. 30. This petition for a writ of certiorari follows.

ARGUMENT

The Court of Appeals erred in affirming the trial court's denial of Reaves' motion to dismiss the indictment when evidence was missing and never produced, which included the victim's clothing and written statements from five eyewitnesses who testified they gave the statements to police on the night of the incident, which was a Rule 5 violation, and a violation of appellant's due process right to a fair trial

Jackie McGill had been friends with Keshawn Applewhite since childhood. R. 266, ll. 1 – 25. On May 13, 2010, Applewhite returned to Marion to visit his mother for Mother's Day as he was then living in Atlanta. R. 267, ll. 1 – 25. Applewhite asked McGill to meet him at the local SOV Game Room which they did. Applewhite's cousin, Karen Graves, was with him. They met Travis Lane at the Game Room, and the four of them rode to Brandon Deshawn Bellamy's house. R. 268, ll. 1 – 24; R. 269 ll. 1 – 25; R. 270, ll. 1 – 9; R. 273, ll. 12 – 25; R. 274, ll. 1 – 25; R. 275, ll. 1.

Joemilla Wilson testified that she and the victim, Keshawn Applewhite, had been involved in a romantic relationship up until one month before this shooting incident on May 13, 2010. They were living together in Atlanta until she moved back to Marion about one month earlier. R. 554, ll. 1 – 25; R. 555 ll. 1 – 20; R. 571 ll. 3 – 21. She started seeing Deshawn Bellamy, and admitted she had been intimate with him. Applewhite was upset that she had already started seeing someone else. She was concerned for her safety and Bellamy's when she learned that Applewhite was in town on May 13, 2010. R. 568, ll. 1 – 25; R. 569, ll. 1 – 25; R. 570, ll. 1 – 25; R. 571, ll. 1 – 25; R. 572, ll. 1 – 3.

When Applewhite, McGill, Travis Lane, and Karen Graves arrived at Bellamy's house, there were several people in the yard. R. 275, ll. 19 – 25. Applewhite got out of the car, and asked to

speak to Joemilla who was inside the house. She came out to talk to him, and they started walking down the street together. R. 276, ll. 1 – 25.

Joemilla's testimony was she and Applewhite walked down the street and started arguing. Then they started fighting mostly in front of the house. R. 557, ll. 1 – 24. McGill and some others tried to break up the fight. R. 559, ll. 5 – 15. Applewhite threw her into a mud puddle, and she hit her head on a car. She got up and they continued to fight. She then decided to go back to the house. R. 578, ll. 7 – 25; R. 579, ll. 1 – 7.

McGill testified that he tried to break up the fight because Applewhite and Joemilla were fighting hard. R. 277, ll. 1 – 25; R. 278, ll. 1 – 25. He got Applewhite and put him in the front seat of their car. Joemilla then walked up and spit on Applewhite. R. 279, ll. 1 – 25; R. 280, ll. 1 – 25.

Joemilla testified that as she walked back to the house, she could hear Applewhite coming towards her. As she walked up the steps, Shawn Reaves, whom she knew, was standing on the porch. Applewhite pushed Reaves and snatched Reaves' chains off. Reaves then pulled a gun, and started shooting. She saw Applewhite fall forward. R. 559, ll. 19 – 25; R. 560, ll. 1 – 25.

After everyone scattered, she went to Applewhite to try to help him. McGill and Lane also came and started dragging him to the car. About that time, the police and EMS arrived. R. 562, ll. 1 – 24. The police took Joemilla to the police station that night where she wrote a statement, and the police took pictures of her bruised face. R. 564, ll. 1 – 23.

The forensic pathologist testified that the cause of death of Applewhite was homicide. R. 372, ll. 15 – 23. She explained that the body had five gunshot wounds but only two bullets were lodged in the body. R. 365, ll. 15 – 25; R. 366, ll. 1 – 25; R. 367, ll. 1 – 11.

Dan Defreese, the SLED expert in the field of firearms, testified that the two bullets removed from Applewhite's body were from two different guns. One bullet was from a .38 caliber

revolver or 357, and the second bullet was from a 9-millimeter Luger. R. 378, ll. 1 – 14; R. 379, ll. 1 – 25; R. 382, ll. 1 – 25; R. 383, ll. 1 – 25; R. 384, ll 1 – 25; R. 385, ll. 1 – 25; R. 386, ll. 1 – 8.

Police Lieutenant Walter Davis testified that he went to Philadelphia and brought Reaves back to South Carolina because they had a warrant for murder for him. Reaves was only sixteen years old at the time of the incident. R. 182, ll. 6 – 25; R. 183, ll. 1 – 25; R. 184, ll. 1 – 5; R. 696, ll. 4 – 25.

McGill testified that he wrote a statement that night immediately after the incident on the back of the police car and gave it to Lt. Davis. R. 301, ll. 1 – 25; R. 302, ll. 1 – 20; R. 314, ll. 1 – 16.

On cross-examination, McGill admitted that the testimony he gave was not consistent with the subsequent story he told later. R. 304, ll. 1 – 14. When defense counsel showed McGill the statement from Lt. Davis's file that McGill allegedly gave, McGill admitted that was not the statement he wrote on the night of the incident on the back of the police car. R. 315, ll. 11 – 25; R. 316, ll. 1 – 19.

McGill testified that Travis Lane and Karen Graves wrote statements on the back of the police car right after the incident as well. R. 314, ll. 6 – 25; R. 315, ll. 1 – 12.

Lt. Davis testified that he talked to McGill and Lane the night of the incident. R. 160, ll. 1 – 20. He also talked to several ladies that night as well but he did not remember their names. R. 161, ll. 23 – 25. Lt. Davis admitted that he asked McGill to write a statement, and he gave him paper to write it on. He thought McGill gave it to one of the other officers as he did not receive the statement. He did not remember if he asked Lane to write a statement. R. 167, ll. 1 – 25; R. 169, ll. 1 – 23.

Lt. Davis also testified that there was a crime scene log that everyone who entered the scene should have signed. However, that procedure was not followed. He was at the crime scene, and he

did not sign his name but claimed someone signed his name. R. 169, ll. 1 – 25; R. 170, ll. 1 – 25; R. 171, ll. 1 – 25; R. 172, ll. 1 – 25.

Kenneth Kensy was employed with SLED in May 2007 as a crime scene examiner, and worked the scene in Reaves' case. R. 185, ll. 9 – 25; R. 186, ll. 1 – 25. He said it would be prudent to test the clothing of the people in close proximity to the gun shot for gun shot residue although the hands were a better indicator. R. 223, ll.1 – 25; R. 224, ll. 1 – 25; R. 225, ll. 1 – 25.

Lieutenant Farmer Blue with the Marion Police Department testified that the clothing of the victim of a homicide could reveal valuable evidence. He knew that Officer Jackson collected the victim's clothing from the Marion County Medical Center and turned them over to Captain Gray who was heading the investigation that night before Lt. Blue took charge the next day. R. 432, ll. 21 – 25; R. 433, ll. 1 – 21; R. 489, ll. 15 – 25. Lt. Blue said the clothes were not in the evidence box; he had never seen the clothes, and the clothes were never sent to SLED for analysis as far as he knew. R. 489, ll. 15 – 25; R. 490, ll. 1 – 25; R. 491, ll. 1 – 5.

Lt. Blue admitted that when he became the lead investigator two days after the incident, he realized he would have done some things differently. He said better evidence could have been collected, and more evidence should have been collected. R. 433, ll. 1 – 25; R. 434, ll. 1. On cross examination, he admitted that the case was still open because they were still looking for the second shooter. R. 442, ll. 1 – 5.

Lt. Blue admitted that he did not sign the log in sheet at the crime scene. R. 448, ll. 1 – 24. This was the first murder crime scene he had ever investigated. R. 466, ll. 14 – 25; R. 467, ll. 1 – 3. There were pieces of evidence that SLED collected that the Marion Police Department requested be returned without being tested. R. 470, ll. 14 – 25; R. 471, ll. 1 – 3. This included a white hat found at the scene. R. 471, ll. 4 – 25; R. 472, ll. 1 – 25. A blue and black hat was found at the scene that

was returned without being tested. R. 474, ll. 1 – 25; R. 475, ll. 1 – 25. A VISA card was taken from the scene and returned to Bellamy without being checked for prints. R. 476, ll. 1 – 25. A Motorola cell phone and a second cell phone were taken from the scene and not tested. R. 479, ll. 20 – 25; R. 482, ll. 1 – 25.

Lt. Blue admitted that three gold chains taken from the crime scene as shown in photographs were not in the evidence box, and he did not know what happened to them. R. 486, ll. 21 – 25; R. 487, ll. 1 – 25; R. 488 ll. 1 – 25. He said that, as an investigator, that evidence could be helpful in identifying everyone at the crime scene because they still did not know the identity of everyone there. He had not identified the second shooter. R. 489, ll. 1 – 14. Everyone at the crime scene was a potential suspect. R. 519, ll. 18 – 20.

McGill and Lane were shown photo lineups and did not select Reaves as the shooter but , in fact, selected someone else. R. 502, ll. 1 – 18; R. 508, ll. 1 – 25; R. 509, ll. 1 – 25.

Lt. Blue admitted that he heard McGill testify that he and Lane and Graves had written statements and given them to the police the night of the incident at the scene. However, he did not possess those statements; and he did not know what happened to them. R. 502, ll. 19 – 25; R. 503, ll. 1 – 25; R. 504. ll. 1 – 3.

In a pretrial motion and at the close of the state's case, defense counsel moved for the indictments against Reaves to be dismissed due to a lack of due process based on the misconduct of the state in not producing evidence that was obtained during the investigation and then not provided to the defense because it was lost. Counsel argued that it was a violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83 (1963). R. 123, ll. 2 – R. 128, ll.25; R. 596, ll. 1 – 25; R. 597, ll. 1 – 25.

Counsel argued that because the victim's clothing was lost as well as the other evidence, he did not have the benefit of determining if that information would be helpful to his defense of the case. Counsel argued that the purpose of due process was for the defendant to be able to defend himself in the best way possible, and he had a right to weigh all of the evidence. R. 125, ll. 1 – 25; R. 126, ll. 1 – 5.

Counsel argued that he was not able to effectively cross examine the witnesses since their statements were not provided. He did not have the advantage of determining if there were contradictory testimony. Under the Sixth Amendment, Reaves had a right to cross-examine the witnesses. Due to the gross negligence of law enforcement, counsel argued Reaves' Sixth Amendment right was violated. R. 597, ll. 1 – 25; R. 598, ll. 1 – 25.

Counsel told the court that he never received the photographs taken of Joemilla Wilson on the night of the incident. R. 599, ll. 1 – 25.

Counsel argued that Reaves was prejudiced by the severe inappropriate handling of his case. R. 600, ll. 1 – 2.

The judge commented during the trial: "But, obviously, we've got a messed up trial based on that bad investigation." R. 263, ll. 14 – 24. However, he denied defense counsel's motion to dismiss the case because he ruled that the lack of evidence went to the credibility of the state's case but was not enough for a dismissal. He agreed with the state that Reaves was entitled to the charge of spoliation of evidence. R. 600, ll. 1 – 25; R. 601, ll. 1 – 4.

The judge did charge the jury on the spoliation of evidence. R. 676, ll. 10 – 16.

Rule 5, SCRCrimP, provides that the prosecution shall permit the defendant, upon request, to inspect and copy any documents, examinations, tests which are in the control of the prosecution which the prosecution intends to use as evidence in chief at trial. A Rule 5 violation is not

reversible unless prejudice is shown. State v. Landon, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006).

The Due Process clause of the Fifth and Fourteenth Amendments mandate a defendant's fundamental right to a fair trial. State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998).

In State v. Osborne, 291 S.C. 265, 353 S.E.2d 276 (1987), the Supreme Court ruled that the prosecution's nondisclosure of tape recordings of statements made by key state's witness in prosecution of defendants for conspiracy, armed robbery, kidnapping, and murder deprived defendants of fair trial requiring new trial.

In Brady v. Maryland, *supra,* the United State Supreme Court declared the suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. State v Harvey Jones and Melissa Jones, 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996) citing Brady v. Maryland, *supra.*

The Sixth Amendment provides an accused with the right to be confronted with witnesses against him. The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence. State v. Gillian, 360 S.C. 433, 449-450, 602 S.E.2d 62, 71 (Ct. App. 2004).

The Fourteenth Amendment secures all persons against any state action which results in either deprivation of life, liberty, or property without due process of law. U.S.C.A. Amend. 14. The right to confront and cross-examine witnesses and to call witnesses in one's own behalf are essential to due process. Chambers v. Mississippi, 410 U.S. 284, 302 (1973).

In Arizona v. Youngblood, 488 U.S. 51 (1988), the United States Supreme Court held that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence did not constitute a denial of due process of law. Youngblood was accused of sexually assaulting and sodomizing a ten year old boy. The police collected a rectal swab for semen and the child's clothing. However, the police failed to refrigerate the clothing and failed to perform tests on the semen samples. None of their information was concealed from the respondent at trial, and the evidence was made available to the respondent's expert who declined to perform any tests on the samples.

In his dissent in Arizona v. Youngblood, id. , Justice Blackmun wrote that a defendant was entitled to a fair trial, and not a "good faith" try at a fair trial.

The South Carolina Supreme Court held in State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001), that to establish a due process violation based on the destruction of evidence, a defendant must demonstrate (1) that the state destroyed the evidence in bad faith; or (2) that the evidence possessed an exculpatory value before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.

The Court of Appeals held that the state does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant citing State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001). To support their ruling, the Court also cited State v. Adams, 304 S.C. 302, 403 S.E.2d (Ct. App. 1991), and State v. Hutton, 358 S.C. 622, 595 S.E.2d 876 (Ct. App. 2004). App. 2.

The Court of Appeals relied on State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001). for the proposition that Reaves had to show bad faith on the part of the state, but this reliance was misplaced. Reaves' case is distinguished because the evidence was never presented to Reaves. The

clothing was not provided; the witnesses' statements taken the night of the incident were not provided as well as other evidence. The police deliberately not allowing SLED to perform an analysis on some evidence when the police asked for it to be returned before testing, was an act of bad faith.

In State v. Mouzon, 231 S.C. 655, 99 S.E.2d 672 (1957), the Supreme Court held that malice can be inferred from conduct which is so reckless and wanton as to indicate a depravity of mind and a general disregard for human life.

By way of analogy, the police handling of the investigation was so severely inappropriate to the point of being misconduct and bad faith, especially in light of the fact that the second shooter was not identified; GSR tests were not performed on everyone at the incident site; the victim's clothing was lost; DNA tests were not performed on many items of evidence. The police conduct in Reaves' case was a violation of his due process right to a fair trial. An affirmance of Reaves' conviction is only encouraging negligent and reckless investigations.

The Court of Appeals relied on the case of State v. Adams, *supra,* for the proposition that Adams failed to make a showing that the evidence was exculpatory before the state lost it. Adams is distinguished because Adams was claiming the original breathalyzer test was not valid and it was lost. However, Adams had been given a copy of the results, and could testify as to his claim. Reaves never had the evidence nor a copy nor the results so he could not determine if it was exculpatory or not. App. 2.

The police handling of the investigation was so severely inappropriate to the point of being misconduct and bad faith, especially in light of the fact that the second shooter was not identified. The police conduct in Reaves' case was a violation of his due process right to a fair trial.

ARGUMENT

The Court of Appeals erred in affirming the trial court's denial of Reaves' motion to dismiss his case based on a violation of his Sixth Amendment right to a speedy trial when his first trial, which ended in a mistrial, was held on August 24, 2010 which was over three years after the incident which occurred on May 13, 2007, and his second trial was held November 8, 2010.

This incident occurred May 13, 2007. Shawn Reaves was arrested a few days later in Philadelphia on a warrant for murder. R. 183, ll. 5 – 25. The first trial was not held until August 2010. R.1. As a pretrial motion, defense counsel moved for the indictment against Reaves to be dismissed based on a violation of Reaves' Sixth Amendment right to a speedy trial which resulted in a lack of due process in Reaves' case. Counsel said the first trial in August 2010, resulted in a mistrial. R. 107, ll. 15 – 25; R. 108, ll. 1.

Counsel cited as the standard the four factors identified by the United States Supreme Court and reiterated in State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009). These factors were: (1) the length of the delay; (2) the reason for the delay, (3) the defendant's assertion of his right, (4) prejudice to the defendant. R. 108, ll. 1 – 24.

Counsel argued that he understood that the length of the delay of the trial was not *per se* a violation but should be considered in conjunction with the reason for the delay. However, he said the incident was May 13, 2007; Reaves was arrested May 29, 2007; and the first trial was held August 24, 2010. This created a delay of three years and six months which, he correctly argued, was a lengthy time. R. 109, ll. 1 – 25; R. 110, ll. 1 – 7.

Counsel argued that all of the discovery or evidence was collected within two months of the incident. One eyewitness, Joemilla Wilson, identified Reaves as the shooter on May 25, 2007. R. 110, ll. 8 – 25; R. 111, ll. 1 – 25. Counsel argued that this was not a complicated case, and there was

no reason for the delay. Therefore, he argued, the first two factors violated due process. R. 111, ll. 117 – 25; R. 112, ll. 1 – 8.

The third factor, the defendant's assertion of the right, was made at the first trial in August 2010. Then the state went ahead with the trial at that time. R. 112, ll. 9 – 25. That trial ended in a mistrial when new evidence was untimely produced to the defense during the trial. R. 112, ll. 23 – 25; R. 113, ll. 1 – 12.

He argued on the fourth factor, that Reaves was prejudiced by the delay. He explained that when the new discovery was revealed during the first trial, Reaves' defense evolved and changed. However, the fact that evidence was lost which was crucial to the development of the defense occurred during this time period. He argued that the victim's clothing was critical because it may have provided evidence for a self defense theory of defense. R. 114, ll. 1 – 25; R. 115, ll. 1 – 25; R. 116, ll. 1 – 25; R. 117, ll. 1 – 25.

Counsel argued that one reason for a speedy trial was to insure that evidence was preserved to enable the accused person to be able to evaluate the evidence in order to present a defense. It was also essential to have the evidence fresh in the minds of witnesses. Counsel argued that Reaves' rights were violated as he was being forced to go forward without the advantage of having that evidence through no fault of his own. R. 118, ll. 1 – 22.

The solicitor argued that the evidence issue had nothing to do with the speedy trial motion. He argued that part of the delay was that Reaves had two lawyers during the process, and that the assertion of the speedy trial right was first made at the start of the first trial. R. 119, ll. 14 – 25; R. 120, ll. 1 – 15.

The solicitor admitted that there were "very many" problems with the evidence in this case. No one knew, including him and the Marion Police Department, where some of the evidence that

existed earlier was as it could not be found. He said all they could do was to go forward with the evidence they had. R. 120, ll. 16 – 25.

The judge denied the speedy trial motion finding the delay was reasonable, and there was no prejudice to Reaves. R. 121, ll. 4 – 25; R. 122, ll. 1 – 3.

At the close of the state's case, counsel again renew his motion for a dismissal based on the speedy trial motion. Counsel argued there was even more prejudice since he learned that eyewitness statements were lost. R. 601, ll. 5 – 25; R. 602, ll. 1 – 25; R. 603, ll. 1 – 25. The judge denied the motion. R. 604, ll. 1 – 7.

"Speedy trial" is part of due process of law to which every person accused of a crime is entitled under State and Federal Constitutions. Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966); citing U.S.C.A. Const. Amends. 6, 14, and S.C. Const. art. 1, Section 5.

In Doggett v. United States, 505 U.S. 647 (1992), the United States Supreme Court listed the factors required in order to assess speedy trial claims. There are four relevant inquiries: (1) whether delay before trial was uncommonly long, (2) whether the government or defendant is more to blame for the delay, (3) whether, in due course, the defendant asserted his right to a speedy trial, and (4) whether the defendant suffered any prejudice as to the delay's result. Id. at 651. See Barker v. Wingo, 407 U.S. 514 (1972). State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997); State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009).

The South Carolina Supreme Court held in State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007), that the determination that a defendant ahs been deprived of the right to a speedy trial is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense.

The Court of Appeals cited the four factors from State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997), for a court to consider in reviewing whether a defendant was deprived of his right to a speedy trial. These include: (1) length of the delay; (2) reason for the delay; (3) the defendant's assertion of the right to a speedy trial; (4) prejudice to the defendant. App. 2.

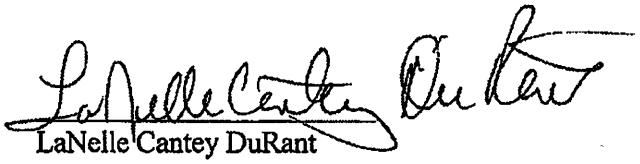
The Court of Appeals relied on the case of State v. Cooper, 386 S.C. 210, 687 S.E.2d 62 (Ct. App. 2009), where the trial court ruled that the forty-four months delay in bringing Cooper's case to trial the second time was not apparently willful and largely justifiable. However, the Court also ruled in Cooper's case that the delay was not prejudicial because the state withdrew its notice to seek the death penalty. App. 2.

The trial judge erred by not granting Reaves' speedy trial motion to dismiss the indictment as there was a lack of due process based on evidence lost during this delay. The factors weigh in Reaves' favor as the length of delay was three and one-half years; the state did not have a good reason for the delay; Reaves asserted his right to a speedy trial; and the delay was prejudicial when evidence was lost during this delay.

CONCLUSION

Based on the above, certiorari should be granted, and Reaves' convictions and sentences should be dismissed.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER.

This 23rd day of June, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Marion County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 2014-UP-057 (S.C. Ct. App. filed 2/12/2014)
10-GS-33-0375

THE STATE,

RESPONDENT,

V.

SHAWN REAVES,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, the S.C. Court of Appeals, and Mr. Shawn Reaves, #343643, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 23rd day of June, 2014.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 23rd day
of June, 2014.

_____ (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Marion County
Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2014-000813

THE STATE,

Respondent,

vs.

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Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUES ON CERTIORARI

I.

The Court of Appeals correctly determined the trial judge committed no reversible error in denying Reaves' motion to dismiss the charges after it became apparent during trial that several pieces of evidence had been lost at some point prior to trial because the missing and unaccounted-for evidence was not lost or destroyed in bad faith and did not possess any apparent exculpatory value at the time it was lost and because evidence of comparable value was available to Reaves through his ability to cross-examine the witnesses about their alleged missing statements.

II.

The Court of Appeals correctly affirmed the trial judge's denial of Reaves' motion to dismiss his case based on an alleged speedy trial violation, which was raised for the first time thirty-nine months after his arrest and immediately before his first trial, because the approximately thirty-nine month delay prior to Reaves' first trial and the approximately forty-two month delay before Reaves' re-trial and conviction were not the result of any willfulness or neglect on the part of the State and did not result in any actual prejudice to Reaves.

STATEMENT OF THE CASE

Procedural History

In May of 2007, Petitioner Shawn Reaves was arrested following an investigation into a shooting incident that resulted in a homicide. In August of 2010, the Marion County grand jury indicted Reaves for one count of murder and one count of assault and battery with intent to kill. On August 24, 2010, a jury trial was commenced in the Marion County court of general sessions with the Honorable William H. Seals, Jr., circuit court judge, presiding. However, that trial ended in a mistrial. Subsequently, on November 8, 2010, a second jury trial was commenced in the Marion County court of general sessions with Judge Seals again presiding. At the conclusion of the second trial, the jury acquitted Reaves of murder, convicted Reaves of the lesser-included offense of voluntary manslaughter, and acquitted Reaves of assault and battery with intent to kill. Following the verdict, the trial judge

sentenced Reaves to a term of imprisonment of twenty-five years. Reaves then timely filed a notice of appeal.

Subsequently, following oral argument, the Court of Appeals issued an unpublished opinion in which it unanimously affirmed Reaves' conviction for voluntary manslaughter. State v. Reaves, Op. No. 2014-UP-057 (S.C. Ct. App. filed Feb. 12, 2014). Thereafter, Reaves petitioned the Court of Appeals for rehearing, and the petition was denied. Reaves then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

Around 10:00 p.m. on the evening of May 13, 2007, officers with the Marion Police Department received a report of a fight in progress and began responding to East Mullins Street in Marion, South Carolina, where the fight was reported to be occurring. (R. p. 146; pp. 148-149; pp. 154-155; p. 182; p. 445). A few minutes later, Lieutenant Walker Davis, Sr. of the Marion Police Department was notified shots were fired at the location of the fight and he hurried to the scene. (R. pp. 146-147). Upon arriving, he observed a large crowd of people and a white car parked on the side of the road with a man slumped over inside in the back passenger seat. (R. p. 149; pp. 160-161). Lieutenant Davis discovered the man in the vehicle, Ramel Keshawn Applewhite ("Victim"), had been shot, so the officer quickly requested emergency medical assistance and secured the scene. (R. pp. 149-151; p. 361). Shortly thereafter, paramedics arrived and transported Victim to a hospital. (R. p. 150). However, Victim died as a result of the shooting. (R. p. 368; p. 372).

Following the shooting, additional officers arrived at scene, including Lieutenant Farmer Blue of the Marion Police Department. (R. pp. 431-432). Lieutenant Blue began investigating the incident and learned potential suspects might have entered a nearby residence on East Mullins Street. (R. p. 434). In response, officers knocked on the door and

windows of the residence in an effort to make contact with anyone inside, but no one responded. (R. pp. 434-435). Lieutenant Blue then obtained a search warrant, and officers entered the residence. (R. pp. 435-436). When they did so, they found several people hiding inside of the home, including Joemilla Wilson-Dozier, Brandon Deshawn Bellamy, and Rodney McElveen. (R. pp. 435-436). Thereafter, Detective Larry Woods of the Marion County Sheriff's Office performed gunshot residue testing on each of the individuals. (R. p. 3; p. 8; p. 14; pp. 240-242). Meanwhile, Lieutenant Davis spoke with several witnesses at the scene, including Travis Lane and Jackie McGill, Jr., to find out what happened during the incident. (R. p. 159; p. 166; p. 432). In speaking with McGill, Lieutenant Davis provided him with paper, asked him to write out a statement, and instructed him to return the statement to him when it was completed. (R. p. 167). However, McGill never returned a completed statement to the officer. (R. p. 168).

Thereafter, around 1:30 a.m. on the following morning, Agent Ken Kensey, a special agent with the S.L.E.D. latent print crime scene unit, arrived at the location of the shooting to aid in processing the crime scene. (R. p. 185; Supp. R. p. 1). While processing the crime scene, Agent Kensey collected various pieces of evidence, including a black hat, a white hat, three gold chains, three cell phones, a mobile phone headset, a pair of black slippers, and a credit card with the name "William A. Bellamy" on it, in the vicinity of where the shooting occurred. (R. p. 190; pp. 195-197; p. 217; pp. 221-222). He then provided the gold chains and cell phones to the Marion Police Department upon request and transported the other gathered evidence along with a black t-shirt, a blue jean jacket, and the three gunshot residue kits collected by Detective Woods to the S.L.E.D. crime lab for processing and analysis. (R. p. 190; pp. 198-207).

Later that day, Dr. Cynthia Schandl, a forensic pathologist at M.U.S.C. and an expert in forensics, performed an autopsy on Victim. (R. p. 358; p. 361). While conducting the autopsy, Dr. Schandl located five different gunshots wounds to Victim's body. (R. p. 365). Three of the wounds – one to the right side of Victim's back, one to Victim's stomach, and one to Victim's left side – resulted from bullets that entered and exited Victim's body. (R. pp. 365-366). One of the wounds occurred when a bullet entered and remained in Victim's shoulder. (R. p. 366). The final gunshot wound occurred when a bullet entered Victim's upper back, struck his lung, aorta, and liver, and stopped in his colon. (R. pp. 366-367). Both of the bullets were recovered from Victim's body during the autopsy, and Dr. Schandl concluded the bullet removed from Victim's colon led to his death. (R. p. 368).

Subsequently, Dan Defreese, a S.L.E.D. analyst and firearms experts, examined the bullets recovered during the autopsy on Victim. (R. pp. 377-379; p. 381). He concluded the bullet recovered from Victim's colon was consistent with a .38 caliber or .357 caliber cartridge and was most likely fired from a revolver. (R. pp. 382-384). He further determined the bullet recovered from Victim's shoulder was consistent with a nine-millimeter cartridge and was most likely fired from a semi-automatic pistol. (R. pp. 384-385). Based on his examination, he concluded the two bullets were not fired by the same gun. (R. p. 385). Additionally, Michael Moskal, a forensic scientist in the S.L.E.D. trace evidence department and an expert in gunshot residue, analyzed the gunshot residue kits collected from McElveen, Wilson-Dozier, and Bellamy. (R. p. 242; pp. 244-245; pp. 247-248). Based on his analysis, Moskal concluded there was no gunshot residue present in any of the samples collected from those individuals. (R. pp. 249-250).

As the investigation into the incident progressed, Lieutenant Blue discovered the primary suspect in the shooting was known as "Mister," which was an alias of Petitioner

Shawn Reaves. (R. p. 438). Through his investigation, Lieutenant Blue also learned Reaves was observed at the scene of the shooting with a weapon and was seen fleeing from the area after the incident. (R. p. 439). As a result, officers obtained warrants for Reaves' arrest, and Reaves was apprehended in Philadelphia, Pennsylvania, several days after the shooting. (R. pp. 183-184). Following his arrest, Reaves was transported back to South Carolina and indicted for murder and assault and battery with intent to kill, and he subsequently proceeded to trial. (R. p. 2; p. 104; p. 183; pp. 745-746).

During Reaves' trial, McGill testified about the shooting and claimed he wrote a statement for Lieutenant Davis on the night of the incident. (R. p. 43; p. 52; p. 58). McGill was then presented with a statement with his name and Lane's name on it dated for the morning after the shooting, but he denied knowing who wrote it. (R. pp. 55-56). Following McGill's testimony, defense counsel moved for the indictments to be dismissed, for a mistrial, and for a continuance based on the fact McGill claimed he provided a statement different than the one disclosed during the discovery process. (R. pp. 82-89). In response, the solicitor noted he had opened his file to defense counsel and did not have any other statements attributable to McGill in the file. (R. p. 89). The trial then recessed for the day. (R. p. 91).

On the following morning, defense counsel renewed his previous motions based on the fact a number of documents were discovered in an investigator's file after the trial recessed on the preceding day. (R. pp. 91-92). Defense counsel asserted the documents were exculpatory and should have been disclosed. (R. p. 93). The documents included a note by Lieutenant Blue indicating he had obtained information suggesting the second shooter may have been an individual named Jeremy Vereen, a statement from an individual who claimed Reaves' brother told her Reaves was not the shooter, an evidence log from Victim's autopsy,

an incident report prepared by Lieutenant Davis, a supplemental incident report indicating warrants were served, a note prepared by Lieutenant Blue regarding a statement he obtained from a person incarcerated with Reaves at a detention center, paperwork related to Reaves transfer from Philadelphia, a letter indicating evidence was returned to the Marion Police Department from S.L.E.D., a forensic services request submitted to S.L.E.D. regarding the bullets taken from Victim's body, several evidence release forms related to the gunshot residue tests collected on the night of the shooting, a note regarding Victim's autopsy, and a C.A.D. report from the night of the incident. (R. pp. 95-97; p. 713-741). Based on the State's failure to disclose those documents, defense counsel asserted Reaves was entitled to the dismissal of the charges or to the grant of a mistrial. (R. pp. 97-98). In response, the solicitor asserted he was previously unaware of the existence of the documents but conceded the grant of a mistrial would be an appropriate remedy. (R. pp. 98-99). The trial judge then denied defense counsel's motion to dismiss the indictments, granted the motion for a mistrial, and ordered the trial to be scheduled for the next available trial date, which was November 8, 2010. (R. pp. 99-100).

Thereafter, on November 8, 2010, Reaves again proceeded to trial. (R. p. 104). At the outset of the second trial, defense counsel argued Reaves' right to a speedy trial was violated because Reaves was being tried approximately three years and six months after he was arrested. (R. pp. 107-110). Defense counsel claimed there was no reason for such a lengthy delay and asserted Reaves was prejudiced by the delay because Victim's clothing and items collected at the scene of the shooting were lost prior to trial. (R. pp. 111-118). However, defense counsel conceded he first raised the speedy trial issue in August of 2010 and a trial was conducted after the motion was made. (R. p. 112; p. 119). He further acknowledged he was not Reaves' original attorney but was retained to represent Reaves one

year after the shooting. (R. pp. 118-119). In response, the solicitor asserted some of the delay in bringing the case to trial resulted from the fact Reaves changed his counsel. (R. pp. 119-120). He also noted Reaves did not raise the speedy trial issue until August of 2010, promptly received a trial at that point, and was then re-tried at the earliest opportunity to do so. (R. p. 120). The solicitor further argued the evidence was not lost as a result of any delay and was simply missing because no one knew where it was. (R. p. 120). After considering the arguments of counsel, the trial judge denied Reaves speedy trial motion. (R. pp. 122-123). In reaching that conclusion, the trial judge found the delay in bringing the case to trial was lengthy but necessary based on the serious nature of the charges, the delay was partially caused by the heavy backlog of cases in Marion County, Reaves promptly received a trial after first raising the speedy trial issue twelve weeks earlier, and Reaves suffered no prejudice as a result of the delay because the evidentiary concerns raised by Reaves would likely work to his advantage. (R. pp. 121-122).

Subsequently, during trial, Lieutenant Davis testified about his investigation into the shooting and noted he asked McGill to prepare a written statement on the night of the incident but never received one from McGill. (R. pp. 146-151; pp. 167-168). Additionally, Agent Kensey testified about his role in the investigation and indicated he returned numerous items collected at the crime scene to the Marion Police Department without having the items tested. (R. p. 190; p. 199; p. 203; pp. 206-207; p. 211; p. 217; Supp. R. p. 1). Agent Kensey asserted he personally would have had the collected items tested because he believed the failure to test them was "potentially a missed opportunity" to learn who was present at the scene of the crime. (R. pp. 220-221). However, he noted it was common for agencies to request the return of items without testing due to the fact S.L.E.D. placed "severe" restrictions and limitations on the number of items that could be tested in a single case. (R.

p. 235). He further noted S.L.E.D. had a heavy backlog in all of its forensic departments and there would be no need to analyze some evidence if the identity of its owner could be determined through other means. (R. pp. 234-235).

Thereafter, McGill testified about the shooting, stating he met up with Victim, who was in town for Mother's Day, on the day of the incident and rode to Bellamy's house on East Mullins Street with Victim, Lane, and Victim's cousin, Karen Graves. (R. pp. 267-270; p. 274). McGill indicated ten people were congregating in the yard of the residence when they arrived and Victim asked to speak with Wilson-Dozier, who was Victim's girlfriend. (R. pp. 275-276). McGill testified Victim then walked to the street with Wilson-Dozier, who was initially reluctant to come outside of the residence. (R. pp. 276-277). After they did so, McGill stated Victim and Wilson-Dozier argued and began fighting before Victim threw Wilson-Dozier to the ground. (R. pp. 277-278). Eventually, McGill indicated he was able to separate Victim and Wilson-Dozier and return Victim to the car. (R. p. 279). However, he stated Wilson-Dozier came over to Victim, spat on him, and then walked to the residence's porch. (R. pp. 280-281). McGill testified Victim followed her, he saw Reaves, and then he heard gunshots. (R. p. 283; p. 286; pp. 288-289). After the gunshots, McGill stated Victim fell to the ground, he heard clicking sounds that sounded like a gun was out of bullets, and Reaves took off running.[1] (R. pp. 289-290; p. 295). He stated he then tried to move Victim to the car, law enforcement officers arrived on the scene, and he provided a statement to Lieutenant Davis. (R. pp. 294-295; pp. 301-302; p. 314). He stated he testified to everything contained in the statement and also claimed Lane and Graves provided statements that night. (R. pp. 301-302; pp. 314-315). However, he denied a statement introduced during trial with

[1] During trial, Defreese, the S.L.E.D. firearms expert who examined the bullets recovered from Victim's body, testified a revolver would make a clicking noise if the trigger was pulled after its ammunition was exhausted but a semi-automatic pistol ordinarily would not. (R. pp. 387-388).

his and Lane's names on it was his statement. (R. pp. 315-317). Significantly, he also repeatedly identified Reaves as the shooter and indicated he was certain Reaves was the person he saw shoot Victim. (R. p. 326; p. 353).

In addition to McGill's testimony identifying Reaves as the shooter, Tyler Connor, who was incarcerated in the Department of Juvenile Justice in May of 2007, testified he was placed in a cell with Reaves after the incident and spoke with him about why he was incarcerated. (R. pp. 414-417). Connor claimed Reaves stated he was incarcerated because he shot someone with a revolver, his friend shot the person with a nine-millimeter gun, and he left town. (R. pp. 418-419). Connor stated Reaves said the incident occurred after he argued with someone who purchased drugs from him. (R. pp. 425-427).

Additionally, Lieutenant Blue testified about his involvement in the investigation into the shooting. (R. pp. 432-433). He indicated he was assigned as the lead investigator in the case two days after the shooting, obtained arrest warrants for Reaves as a result of his investigation, and was still looking for the second shooter involved in the incident. (R. pp. 432-433; pp. 438-440; p. 442). Regarding the evidence collected during the investigation, he noted his department requested the return of several items without any analysis being conducted because the owners of the items had already been identified. (R. p. 444; pp. 476-477; p. 483). He further indicated he did not know what happened to Victim's clothing after the shooting, believed another officer picked them up from the hospital, and had no idea where they were currently located. (R. pp. 489-491). Additionally, Lieutenant Blue stated the credit card recovered at the scene of the shooting was released to Bellamy after he identified it as his brother's card, and he admitted he did not know where the gold chains discovered at the scene were located. (R. pp. 476-477; pp. 487-489). Regarding McGill's statement, he indicated the statement introduced during trial with McGill and Lane's names

on it was the statement McGill provided to him after the shooting. (R. pp. 512-513). During his testimony, Lieutenant Blue also stated he would have done many things differently if he had been in charge of the investigation from the outset, and he indicated the process of collecting evidence could have been handled in a better fashion. (R. pp. 433-434).

Latoya Davis, who lived near the scene of the shooting, also testified about the incident during trial. (R. pp. 539-539). On the night of the shooting, Davis stated she was with Wilson-Dozier at the residence on East Mullins Street but went home after Wilson-Dozier and Victim began fighting. (R. pp. 536-539). When she arrived home, she indicated she did not see the shooting but heard gunshots and then saw Reaves, who she knew as "Mister," get into a vehicle and drive away. (R. pp. 539-540). She further testified she spoke with Lieutenant Blue on the day after the shooting and provided him with a written statement. (R. p. 547; p. 552).

Furthermore, Wilson-Dozier testified about her altercation with Victim and the subsequent shooting. (R. pp. 557-560). She stated she was in a relationship with Victim in May of 2007 but had broken up with him a month earlier. (R. pp. 554-555; p. 557). Wilson-Dozier indicated she went to visit Bellamy, who she was involved in an intimate relationship with at the time, at East Mullins Street on the day of the incident and Victim came over several times while she was there. (R. pp. 554-557; pp. 569-570). When Victim came over the second time, Wilson-Dozier stated she attempted to avoid him but eventually went outside of the East Mullins Street residence to speak with him. (R. pp. 556-557). When she did so, she testified they argued and began fighting in the yard and street where ten people had gathered. (R. pp. 557-558). After the fight ended, she stated one of Victim's friends tried to get him to leave and she walked towards the residence. (R. pp. 559-560). As she was walking up the steps to the residence, Wilson-Dozier testified Victim pushed Reaves,

who she knew as "Mister," and grabbed Reaves' chains and Reaves responded by pulling out a silver revolver and firing the gun. (R. pp. 560-561). She indicated she then hid behind a car and checked on Victim before going into the residence and remaining there. (R. pp. 561-563). After the incident, she stated she selected Reaves from a photographic line-up as the shooter, wrote a statement for Captain Gray, and had her injuries photographed by law enforcement officers. (R. pp. 564-565; p. 588; p. 594).

At the conclusion of the State's case, defense counsel moved for the charges against Reaves to be dismissed "based on the State's misconduct in connection with [Reaves'] case." (R. p. 596). In support of the motion, he argued the testimony established several witnesses provided written statements on the night of the shooting, including McGill, Lane, Graves, Wilson-Dozier, and Davis, but those statements were not provided to him, which he maintained impacted his ability to cross-examine those witnesses. (R. pp. 596-598). Defense counsel further asserted Reaves was prejudiced by the "substantial and severe negligent handling" of his case. (R. pp. 599-600). In response, the solicitor indicated Reaves was provided with everything in the State's possession and was allowed to review the investigator's entire file. (R. p. 600). However, he conceded Reaves was likely entitled to a charge on spoliation of evidence. (R. p. 600). After considering the arguments of counsel, the trial judge denied the motion, finding the alleged loss of the evidence impacted the credibility of the State's case but did not warrant dismissal. (R. pp. 600-601).

Following the trial judge's ruling on his motion to dismiss the case, defense counsel renewed his speedy trial motion, arguing the delay in bringing the case to trial resulted in substantial prejudice to Reaves due to the loss of various pieces of evidence. (R. pp. 601-603). In response, the solicitor noted Reaves did not seek a speedy trial until the preceding

term of court and his case was immediately scheduled for trial. (R. pp. 603-604). Once again, the trial judge denied the speedy trial motion. (R. p. 604).

After the trial judge denied the motions, defense counsel called several witnesses in Reaves' defense, including Captain Jim Gray, who was the chief investigator for the Marion Police Department in May of 2007. (R. p. 605). Captain Gray stated he did not recall if he took a statement from Wilson-Dozier on the night of the shooting and indicated he did not take any statements from anyone at the scene. (R. p. 615; p. 617). However, he confirmed he photographed Wilson-Dozier on the night of the incident and placed the photographs in the case file. (R. pp. 615-616). He further asserted he did not receive Victim's clothing during the course of the investigation and did not know where it might be located. (R. pp. 617-618).

At the conclusion of the evidentiary phase of trial, the parties presented their closing arguments to the jury. (R. pp. 631-632). During his closing argument, defense counsel repeatedly called the jury's attention to numerous mistakes he asserted were made during the investigation into the shooting and noted numerous items of evidence collected at the scene of the crime were never tested or analyzed. (R. pp. 639-641; pp. 652-653). Thereafter, the trial judge instructed the jury on the applicable law and explained: "When evidence is lost or destroyed by a party you may infer that the evidence which was lost or destroyed by that party would have been adverse to that party." (R. p. 673; p. 676). Subsequently, at the conclusion of trial, the jury convicted Reaves of the lesser-included offense of voluntary manslaughter and acquitted Reaves of the offenses of murder and assault and battery with intent to kill. (R. p. 692). The trial judge then sentenced Reaves to a twenty-five year term of imprisonment, and Reaves appealed his conviction. (R. p. 698). However, the Court of Appeals affirmed Reaves' conviction on appeal. (App'x pp. 1-3).

ARGUMENT

I.

The Court of Appeals correctly determined the trial judge committed no reversible error in denying Reaves' motion to dismiss the charges after it became apparent during trial that several pieces of evidence had been lost at some point prior to trial because the missing and unaccounted-for evidence was not lost or destroyed in bad faith and did not possess any apparent exculpatory value at the time it was lost and because evidence of comparable value was available to Reaves through his ability to cross-examine the witnesses about their alleged missing statements.

Reaves contends the Court of Appeals erred in affirming the trial judge's decision to deny Reaves' motion to dismiss the indictments. In support of that contention, Reaves asserts the investigating officers' handling of his case was so severely inappropriate that it constituted bad faith and violated his right to a fair trial in light of the fact it became apparent during trial that several alleged statements and other pieces of evidence were missing and could not be located for trial. However, contrary to Reaves' contentions, the trial judge properly denied Reaves' dismissal motion because the lost and unaccounted-for evidence was not lost or destroyed in bad faith and did not possess any apparent exculpatory value at the time it was lost. Furthermore, comparable evidence was available based on the fact Reaves was capable of cross-examining any of the witnesses about their alleged statements during trial. Accordingly, the loss of the evidence did not entitle Reaves to the extreme measure of the dismissal of his charges, and Court of Appeals properly affirmed the trial judge's denial of Reaves' motion. Reaves' petition for a writ of certiorari should be denied.

"Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness." California v. Trombetta, 467 U.S. 479, 485 (1984). The fundamental fairness standard requires criminal defendants to be given a meaningful opportunity to present a complete defense. Id.; see State v. Harris, 311 S.C. 162, 167, 427 S.E.2d 909, 912 (Ct. App. 1993) ("Due process requires that a criminal

defendant be given a reasonable opportunity to present a complete defense."). However, "[t]he State does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant." State v. Cheeseboro, 346 S.C. 526, 538, 552 S.E.2d 300, 307 (2001). In order to warrant the dismissal of a case based on the loss or destruction of evidence, the defendant must show either: (1) the State destroyed the evidence in bad faith; or (2) the State destroyed evidence possessing an exculpatory value apparent before the evidence was destroyed and no other evidence of comparable value can be obtained by other means. State v. Mabe, 306 S.C. 355, 358-359, 412 S.E.2d 386, 388 (1991). "Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense." Trombetta, 467 U.S. at 488. Critically, "[t]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." United States v. Agurs, 427 U.S. 97, 109-110 (1976); see Arizona v. Youngblood, 488 U.S. 51, 57 (1988) ("[W]e think the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.").

In the case sub judice, it became apparent during trial that several pieces of evidence, including the clothing Victim was wearing at the time of the shooting, were unavailable or unaccounted for while several written statements that were alleged to have been made by various witnesses were missing. However, the missing evidence was not lost or destroyed by law enforcement officers in an act of bad faith, and it did not possess any apparent exculpatory value at the time it was lost or destroyed. Furthermore, evidence of comparable value to the alleged statements was available by virtue of the fact Reaves was capable of

cross-examining any of the witnesses alleged to have made those statements if he chose to do so. Therefore, the trial judge properly denied Reaves' motion and declined to grant the extreme remedy of dismissing Reaves' charges.

Critically, Reaves failed to establish the existence of either of the required factors warranting the dismissal of charges in regard to the unaccounted-for evidence in his case. Regarding the first factor, no actual evidence of bad faith was presented during trial or identified on appeal suggesting the officers in Reaves' case intentionally destroyed or lost the unaccounted-for evidence. See Trombetta, 467 U.S. at 488 ("The record contains no allegation of official animus towards respondents or of a conscious effort to suppress exculpatory evidence."). Although several alleged statements and other pieces of evidence could not be located prior to trial, nothing presented during trial suggested the officers investigating the case intentionally lost or destroyed those items for the purpose of suppressing exculpatory evidence. See Youngblood, 488 U.S. at 58 ("We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant."). Instead, the testimony simply established multiple officers involved in the investigation were unaware of what happened to the different items after they were collected with several of the officers candidly acknowledging the investigation ideally would have been conducted in a different manner. Cf. Cheeseboro, 346 S.C. at 539, 552 S.E.2d at 307 ("While there is evidence of a lack of care, there is no evidence of an intentional destruction of relevant evidence in this case."). Accordingly, because the missing evidence was not lost

or destroyed as the result of any bad faith on the part of the officers, the mere fact the evidence was lost did not entitle Reaves to the dismissal of his charges.[2]

Regarding the second factor, no evidence was presented during trial or identified on appeal suggesting any of the lost or missing evidence possessed an exculpatory value that was apparent before it was lost or destroyed.[3] Specifically, as to the missing physical items of evidence, nothing was presented to establish the gold chains, credit card, cell phones, or clothing of the victim were exculpatory in any way or critical to any defense theory Reaves intended to pursue during trial. See, e.g., id. at 539, 552 S.E.2d at 307 (finding a destroyed gun did not possess any apparent exculpatory value before it was destroyed where none of the witnesses or testimony raised any doubts regarding the gun and the timing of the recovery of the gun eliminated fingerprints from being an issue). Instead, Reaves simply speculated the evidence could possibly have possessed some unspecified exculpatory value if it had been tested or analyzed in some way. However, the mere possibility the lost evidence **might** have potentially possessed exculpatory value was not sufficient to entitle Reaves to the

[2] In his petition for a writ of certiorari, Reaves appears to assert the decision of the Marion Police Department not to have S.L.E.D. test each item recovered from the scene of the shooting was "an act of bad faith." (Cert. P. p. 13). However, during trial, testimony was presented explaining the officers' investigatory decision not to test certain items for fingerprints, such as the cell phones and credit card collected at the scene, was reached due to S.L.E.D. restrictions on the number of evidentiary items that could be submitted for testing, the backlog of items submitted for testing at S.L.E.D., and the fact the owners of the untested items were identified through other means. (R. pp. 234-235; p. 444; pp. 476-477; p. 483). Accordingly, the decision not to have every piece of evidence collected from the scene of the shooting tested, which would not have been practical or possible under the circumstances, did not establish the existence of bad faith. See Jean v. Collins, 221 F.3d 656, 663 (4th Cir. 2000) (instructing bad faith in the context of the loss or destruction of evidence "requires that the officer have intentionally withheld the evidence for the purpose of depriving the plaintiff of the use of that evidence during his criminal trial").

[3] Notably, Reaves even appears to readily acknowledge in his petition for a writ of certiorari that none of the missing evidence had an apparent exculpatory value as he concedes that "he could not determine if it was exculpatory or not." (Cert. P. p. 13). However, to the extent Reaves is contending in his petition for a writ of certiorari he was entitled to the dismissal of his charges due to the loss or destruction of the unaccounted-for evidence on a basis other than the alleged bad faith of the law enforcement officers investigating his case, such an argument was not preserved for appellate review because it was not raised to the Court of Appeals in Reaves' Final Brief of Appellant, which was focused **solely** on the alleged bad faith of the officers in the portion of the brief seeking relief due to the loss or destruction of the evidence. See McClurg v. Deaton, 395 S.C. 85, 87, n. 2, 716 S.E.2d 887, 888 (2011) ("It is axiomatic that an issue cannot be raised for the first time on rehearing.").

extreme measure of the dismissal of his case. See Youngblood, 488 U.S. at 56, n. 4 ("Trombetta speaks of evidence whose exculpatory value is 'apparent.' The possibility that the semen samples could have exculpated respondent if preserved or tested is not enough to satisfy the standard of constitutional materiality in Trombetta. Second, we made clear in Trombetta that the exculpatory value of the evidence must be apparent '*before* the evidence was destroyed.' " (citations omitted) (italics in original)); see also State v. Adams, 304 S.C. 302, 304-305, 403 S.E.2d 678, 680 (Ct. App. 1991) ("If, on the other hand, Adams' purpose was to exploit any exculpatory potential the document might have had, he falls short of meeting the standard of constitutional materiality because he failed to make some showing that the document in fact possessed an 'exculpatory value that was apparent' before the State lost it. . . . Speculation about such things, our Supreme Court has held, will not do." (citations omitted)).

Likewise, as to the allegedly missing statements, no testimony was presented during trial suggesting the written statements allegedly prepared on the night of the shooting were in any way exculpatory to Reaves. Instead, each of the witnesses who allegedly made a statement and testified during trial unreservedly implicated Reaves in the shooting. Thus, assuming the missing statements actually existed, the statements most likely possessed **inculpatory** value as opposed to exculpatory value based on the testimony of the witnesses to whom those statements were attributed.[4] Cf. State v. Breeze, 379 S.C. 538, 546, 665 S.E.2d 247, 252 (Ct. App. 2008) ("Here, the destroyed evidence Breeze complains of was inculpatory rather than exculpatory."). Moreover, evidence of comparable value to the

[4] In his petition for a writ of certiorari, Reaves contends McGill, one of the witnesses who allegedly prepared a written statement on the night of the shooting, admitted on cross-examination "that the testimony he gave was not consistent with the subsequent story he later told." (Cert. P. p. 7). However, contrary to Reaves' contention, McGill stated during trial his testimony was entirely consistent with his alleged written statement, his account of the incident had never changed, and any suggestion his previous statement "was not quite consistent" with his testimony was incorrect. (R. p. 302; p. 304).

alleged statements was available due to the fact Reaves was fully capable of questioning the witnesses who allegedly made the missing statements about the contents of those purported statements during trial. Cf. State v. Hutton, 358 S.C. 622, 632, 595 S.E.2d 876, 882 (Ct. App. 2004) ("Nor can we find appellant could not obtain other evidence of comparable value by other means. The trial court allowed trial counsel to thoroughly cross-examine Bellinger about the first statement he gave and its contents."). Therefore, the fact the alleged statements could not be accounted for at the time of trial did not deprive Reaves of a fair trial or prevent him from presenting a complete defense. Cf. State v. Moses, 390 S.C. 502, 519, 702 S.E.2d 395, 404 (Ct. App. 2010) ("The defense asserts the tape 'would most likely' have allowed it to identify witnesses who *may reasonably* have presented favorable evidence or evidence which could have lead the defense to impeachment evidence. Standing alone, this assertion is insufficient.").

Unquestionably, the investigation into Reaves' case was not conducted in an ideal or flawless manner. However, like all criminal defendants, Reaves was not entitled to a perfect investigation or a perfect trial and, instead, was only entitled to receive fair ones. See State v. Greene, 255 S.C. 548, 558, 180 S.E.2d 178, 184 (1971) ("[The appellant] was not entitled to a perfect trial, only a fair one."); see also Patterson v. New York, 432 U.S. 197, 208 (1977) ("Due process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person."); see, e.g., Barker v. McCollan, 443 U.S. 137, 146 (1979) (instructing law enforcement officers are not required to perform entirely error-free investigations). Despite the fact evidence was lost and unaccounted-for in Reaves' case, that mistake did not deprive Reaves of a fair trial under the circumstances, and the loss of the evidence, which did not possess any apparent exculpatory value, was ultimately used to Reaves' advantage as the jury was instructed it could infer the lost

evidence was adverse to the State's case. Cf. Youngblood, 488 U.S. at 59-60 (Stevens, J., concurring) ("[A]lthough it is not possible to know whether the lost evidence would have revealed any relevant information, it is unlikely that the defendant was prejudiced by the State's omission. In examining witnesses and in her summation, defense counsel impressed upon the jury the fact that the State failed to preserve the evidence and that the State could have conducted tests that might well have exonerated defendant. More significantly, the trial judge instructed the jury: 'If you find that the State has . . . allowed to be destroyed or lost any evidence whose content or quality are in issue, you may infer that the true fact is against the State's interest.' As a result, the uncertainty as to what the evidence might have proved was turned to the defendant's advantage." (citations to the record omitted)). Because Reaves failed to establish that the State destroyed the missing evidence in bad faith or that the State destroyed evidence possessing an exculpatory value that was apparent before the evidence was destroyed, he was not entitled to a dismissal of his charges based on the loss of that evidence. See State v. Bland, 399 S.C. 220, 226, 730 S.E.2d 909, 912 (Ct. App. 2012) ("[O]ur holding that Bland failed to demonstrate that the lineup had exculpatory value is sufficient to uphold his convictions[.]"); cf. Hutton, 358 S.C. at 633, 595 S.E.2d at 882 ("While we do not condone the destruction of any statements made by witnesses to the authorities, we consider dismissal of criminal charges a drastic remedy which should rarely be invoked as a sanction for the State's failure to preserve evidence. We still caution the prosecution and law enforcement authorities that the destruction of evidence will be highly scrutinized; however, we cannot find appellant was entitled to a dismissal based on the facts of this case."). Accordingly, the trial judge properly denied Reaves' motion to dismiss the charges, and the Court of Appeals correctly affirmed the trial judge's ruling. Reaves' petition for a writ of certiorari should be denied.

II.

The Court of Appeals correctly affirmed the trial judge's denial of Reaves' motion to dismiss his case based on an alleged speedy trial violation, which was raised for the first time thirty-nine months after his arrest and immediately before his first trial, because the approximately thirty-nine month delay prior to Reaves' first trial and the approximately forty-two month delay before Reaves' re-trial and conviction were not the result of any willfulness or neglect on the part of the State and did not result in any actual prejudice to Reaves.

Reaves contends the Court of Appeals erred in affirming the trial judge's decision to deny Reaves' motion to dismiss the case based on an alleged violation of his right to a speedy trial. In support of that contention, Reaves maintains his constitutional rights were violated due to the length of the delays in bringing his case to trial, the lack of a "good" reason for the delays, the fact he asserted his right to a speedy trial, and the fact evidence was lost during the delays. To the contrary, the thirty-nine month delay before Reaves' case was initially called to trial and the forty-two month delay before Reaves was convicted were somewhat lengthy and unusual, but the delays did not result from any willfulness or neglect on the part of the State. Instead, the delays were necessary and justified for several reasons, including the fact the case was complex and involved highly serious charges, the fact the investigation into the case was still ongoing even at the time of Reaves' trial, and the fact there was a heavy backlog of cases on the docket in Marion County at the time. Furthermore, Reaves failed to meaningfully assert his right to a speedy trial until immediately before his first trial, and Reaves suffered no actual prejudice as a result of the delays. For those reasons, the trial judge did not err in denying Reaves' motion to dismiss his case for an alleged speedy trial violation, and the Court of Appeals properly affirmed the trial judge's ruling. Reaves' petition for a writ of certiorari should be denied.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]" U.S. Const. amend. VI. Several factors must be considered when determining

whether a criminal defendant's right to a speedy trial has been violated. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App. 2000). Those factors include: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530 (1972). Notably though, none of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. Id. at 533. Instead, "they are related factors and must be considered together with such other circumstances as may be relevant." Id. "In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process." Id.

When the relevant factors are considered in Reaves' case, it is clear neither the Court of Appeals nor the trial judge erred in finding Reaves' constitutional right to a speedy trial was not violated. Turning to those factors, the delays in the prosecution of Reaves' case resulted from the unique circumstances of the case and not from any intentional actions on the part of the State designed to delay the trial.[5] Specifically, some of the delay in bringing Reaves' case to trial resulted from the fact the possible second shooter involved in the incident still had not been conclusively identified or apprehended, which constituted a legitimate reason for the solicitor to delay bringing Reaves' case to trial. See State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) ("A valid reason presented by the State may justify an appropriate delay."); see also Kennedy, 339 S.C. at 250-251, 528 S.E.2d at 704-705 (finding the complexity of the case, which required substantial time to investigate and prepare, constituted a legitimate reason for the delay in bringing the case to trial).

[5] Notably, in Reaves' case, Reaves was arrested in May of 2007 after law enforcement officers discovered he was involved in the shooting that resulted in Victim's death and he was apprehended in Philadelphia, Pennsylvania. (R. pp. 183-184). Subsequently, the investigation into the incident revealed two shooters might possibly have been involved, which required the officers to continue their investigation and attempt to locate the second shooter. (R. p. 122; p. 385; p. 442). Thereafter, Reaves was indicted in August of 2010, and his case was called for trial in the same month he first asserted his right to a speedy trial. (R. p. 1; p. 112; p. 119; pp. 121-122; pp. 745-746). Then, when his first trial ended in a mistrial, Reaves' case was called for trial a second time at the first available opportunity to do so in November of 2010, and Reaves was convicted approximately forty-two months after his arrest. (R. pp. 121-122).

Additionally, notwithstanding the ongoing nature of the murder investigation, the trial judge noted a portion of the delay associated with Reaves' case resulted from the heavy backlog of cases on the docket in Marion County, which was another legitimate justification for the delay in bringing the case to trial. Cf. State v. Chapman, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) ("A portion of the delay was caused by the normal condition of the docket. . . . The constitutional guarantee of a speedy trial affords protection only against unnecessary or unreasonable delay."). Furthermore, a portion of the delay in bringing Reaves case to trial resulted from the fact Reaves admittedly did not retain the defense attorney who ultimately tried his case until approximately one year after his arrest, and Reaves further contributed to the delay by successfully moving for a mistrial, which led to an additional three-month delay before Reaves' case could be re-tried. See, e.g., State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (considering Waites' counsel's actions delaying the trial when assessing whether a speedy trial violation occurred). Thus, when considering the reasons for the delays coupled with the unique circumstances of Reaves' case, the delays incurred were excusable and justifiable under the circumstances and were not attributable to any neglect or willfulness on the part of the State. See State v. Smith, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992) (finding the defendant bears the burden of showing a speedy trial delay was due to the neglect and willfulness of the State's prosecution); see also State v. Dukes, 256 S.C. 218, 223, 182 S.E.2d 286, 288 (1971) ("The delay must be attributable to the State before the appellants can complain."); see, e.g., State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) ("Although **delay alone is not dispositive**, this delay is sufficient to trigger review of the other three factors." (emphasis added)); cf. State v. Evans, 386 S.C. 418, 425-426, 688 S.E.2d 583, 587 (Ct. App. 2009) (finding no error in the denial of a motion to

dismiss based on an alleged speedy trial violation where the delay prior to trial was approximately twelve years).

Notwithstanding the length of the delays and the reasons for the delays, Reaves also failed to meaningfully assert his right to a speedy trial because he waited approximately thirty-nine months before he first asserted the right. Cf. Waites, 270 S.C. at 109, 240 S.E.2d at 653 ("We think it significant that Waites, represented by counsel, waited approximately twenty-eight months before claiming he had been denied his constitutional right to a speedy trial."). Notably, during trial, Reaves acknowledged he did not assert his right to a speedy trial until immediately before his first trial, which was thirty-nine months after his arrest, and conceded he promptly received a trial after first raising the issue. Thus, although Reaves eventually challenged the length of the delays in bringing his case to trial, he waited over three years to do so for the first time and in no way sought a speedy trial prior to that point. Therefore, because Reaves failed to meaningfully assert his right to a speedy trial, the trial judge did not err in denying his speedy trial motion. See Barker, 407 U.S. at 531-532 ("The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.").

Finally, and most significantly, Reaves failed to articulate any actual prejudice suffered as a result of the somewhat lengthy delays in bringing his case to trial. See, e.g., State v. Cooper, 386 S.C. 210, 218, 687 S.E.2d 62, 66 (Ct. App. 2009) (characterizing prejudice to the defendant as the most important factor in an analysis of whether a speedy trial violation occurred). Notably, the only prejudice Reaves contended he suffered as a result of the delays was evidence such as the victim's clothing and the alleged statements of

several witnesses was lost prior to trial. However, no evidence was presented during trial suggesting the evidence was lost as a result of the delays. Cf. Kennedy, 339 S.C. at 250, 528 S.E.2d at 104 ("[T]here is nothing to suggest the delay caused the witnesses to become unavailable."). Instead, the testimony established the evidence could not be located because it was lost and not due to the passage of any period of time. Thus, the State's failure to call Reaves' case for trial at any earlier point in time had no impact on whether the evidence was lost or would have been available for trial. Furthermore, the loss of the evidence, which may have been inculpatory and detrimental to Reaves' case, was beneficial to Reaves by serving as a disadvantage to the State. See State v. Robinson, 335 S.C. 620, 626, 518 S.E.2d 269, 272 (Ct. App. 1999) ("[L]ost witnesses and documents are also disadvantages that hamper the State.").

Thus, when considering the circumstances of Reaves' case in relation to the relevant Barker factors, Reaves failed to meet his burden of establishing he was denied his right to a speedy trial. See Dukes, 256 S.C. at 222, 182 S.E.2d at 288 ("The burden was on the appellants, who assert that they were denied their constitutional right to a speedy trial, to show that the delay was due to the neglect and willfulness of the State's prosecution."). As a result, the trial judge properly denied his motion to dismiss his case based on alleged violation of his right to a speedy trial, and the Court of Appeals correctly affirmed the trial judge's ruling. See Brazell, 325 S.C. at 76, 480 S.E.2d at 70-71 ("Although the delay was lengthy and the justification was unsatisfactory, Brazell's right to a speedy trial was not denied when one balances the Barker factors. The long delay was negated by the lack of prejudice to the defense. There is no evidence that the delay was willful or intentional."); Cooper, 386 S.C. at 217-218, 687 S.E.2d at 66-67 (affirming the denial of Cooper's speedy trial motion where the delay in bringing the case to trial was at least forty-four months);

Robinson, 335 S.C. at 626-267, 518 S.E.2d at 273 (finding no speedy trial violation after a five-year delay where Robinson's case was tried within a year of his first formal motion to dismiss, the State presented adequate justification for the delay, and Robinson presented no evidence of actual prejudice). Accordingly, Reaves' petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

July 3, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Marion County
Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2014-000813

THE STATE,

Respondent,

vs.

SHAWN REAVES,

Petitioner.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Return to Petition for Writ of Certiorari on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 3rd day of July, 2014.

Ellen R. DuBois

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The Supreme Court of South Carolina

The State, Respondent,

v.

Shawn Reaves, Petitioner.

Appellate Case No. 2014-000813
Lower Court Case No. 2010-GS-3300375

ORDER

We grant the petition for a writ of certiorari to review the Court of Appeals' decision in *State v. Reaves*, Op. No. 2014-UP-057 (S.C. Ct. App. filed Feb. 12, 2014). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 242(i), SCACR.

C.J.

J.

J.

J.

J.

Columbia, South Carolina

August 22, 2014

cc:
The Honorable Jenny Abbott Kitchings

LaNelle Cantey DuRant, Esquire
Mark Reynolds Farthing, Esquire
Alan McCrory Wilson, Esquire
Julie Kate Keeney, Esquire
The Honorable Sherry R. Rhodes

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marion County

William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAWN REAVES,

PETITIONER

APPELLATE CASE NO. 2014-000813

BRIEF OF PETITIONER

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ISSUES

1. Whether the Court of Appeals erred in affirming the trial court's denial of Reaves' motion to dismiss the indictment when evidence was missing and never produced, which included the victim's clothing and written statements from five eyewitnesses who testified they gave the statements to police on the night of the incident, which was a Rule 5 violation, and a violation of appellant's due process right to a fair trial.

2. Whether the Court of Appeals erred in affirming the trial court's denial of Reaves' motion to dismiss his case based on a violation of his Sixth Amendment right to a speedy trial when his first trial, which ended in a mistrial, was held on August 24, 2010 which was over three years after the incident which occurred on May 13, 2007, and his second trial was held November 8, 2010.

STATEMENT

The Marion County Grand Jury indicted Shawn Reaves on the charges of murder and assault and battery with intent to kill (ABWIK) (Indictment 2010-GS-33-0375). On August 24, 2010 Reaves proceeded to trial before the Honorable William H. Seals and a jury. Reaves was represented by Thurmond Brooker, and the state was represented by H. Steven Deberry. The judge declared a mistrial based on the state failing to produce evidence to Reaves. R. 467, ll. 20.

On November 8, 2010, Reaves proceeded to trial again on the same charges before the Honorable William H. Seals and a jury. Reaves was again represented by Thurmond Brooker, and the state was represented by E.L. Clements, III, Solicitor; Steven Deberry; and Fitzlee McEachin. The jury returned a verdict of not guilty on the murder and ABWIK charges, but found Reaves guilty of voluntary manslaughter. Judge Seals sentenced Reaves to twenty-five years incarceration. Reaves' attorney filed a notice of appeal. The Court of Appeals affirmed Reaves' conviction and sentence on February 12, 2014. State v. Reaves, 2014-UP-057 (Ct. App. filed February 12, 2014). App. 1-3. Appellate counsel filed a petition for rehearing which the Court of Appeals denied on March 21, 2014. App. 4-17; App. 30. A petition for a writ of certiorari was filed June 23, 2014 which the Supreme Court granted on August 22, 2014. This brief of petitioner follows.

ARGUMENT I.

The Court of Appeals erred in affirming the trial court's denial of Reaves' motion to dismiss the indictment when evidence was missing and never produced, which included the victim's clothing and written statements from five eyewitnesses who testified they gave the statements to police on the night of the incident, which was a Rule 5 violation, and a violation of appellant's due process right to a fair trial

Jackie McGill had been friends with Keshawn Applewhite since childhood. R. 266, ll. 1 – 25. On May 13, 2010, Applewhite returned to Marion to visit his mother for Mother's Day as he was then living in Atlanta. R. 267, ll. 1 – 25. Applewhite asked McGill to meet him at the local SOV Game Room which they did. Applewhite's cousin, Karen Graves, was with him. They met Travis Lane at the Game Room, and the four of them rode to Brandon Deshawn Bellamy's house. R. 268, ll. 1 – 24; R. 269 ll. 1 – 25; R. 270, ll. 1 – 9; R. 273, ll. 12 – 25; R. 274, ll. 1 – 25; R. 275, ll. 1.

Joemilla Wilson testified that she and the victim, Keshawn Applewhite, had been involved in a romantic relationship up until one month before this shooting incident on May 13, 2010. They were living together in Atlanta until she moved back to Marion about one month earlier. R. 554, ll. 1 – 25; R. 555 ll. 1 – 20; R. 571 ll. 3 – 21. She started seeing Deshawn Bellamy, and admitted she had been intimate with him. Applewhite was upset that she had already started seeing someone else. She was concerned for her safety and Bellamy's when she learned that Applewhite was in town on May 13, 2010. R. 568, ll. 1 – 25; R. 569, ll. 1 – 25; R. 570, ll. 1 – 25; R. 571, ll. 1 – 25; R. 572, ll. 1 – 3.

When Applewhite, McGill, Travis Lane, and Karen Graves arrived at Bellamy's house, there were several people in the yard. R. 275, ll. 19 – 25. Applewhite got out of the car, and asked to

speak to Joemilla who was inside the house. She came out to talk to him, and they started walking down the street together. R. 276, ll. 1 – 25.

Joemilla's testimony was that she and Applewhite walked down the street and started arguing. Then they started fighting mostly in front of the house. R. 557, ll. 1 – 24. McGill and some others tried to break up the fight. R. 559, ll. 5 – 15. Applewhite threw her into a mud puddle, and she hit her head on a car. She got up and they continued to fight. She then decided to go back to the house. R. 578, ll. 7 – 25; R. 579, ll. 1 – 7.

McGill testified that he tried to break up the fight because Applewhite and Joemilla were fighting hard. R. 277, ll. 1 – 25; R. 278, ll. 1 – 25. He got Applewhite and put him in the front seat of their car. Joemilla then walked up and spit on Applewhite. R. 279, ll. 1 – 25; R. 280, ll. 1 – 25.

Joemilla testified that as she walked back to the house, she could hear Applewhite coming towards her. As she walked up the steps, Shawn Reaves, whom she knew, was standing on the porch. Applewhite pushed Reaves and snatched Reaves' chains off. Reaves then pulled a gun, and started shooting. She saw Applewhite fall forward. R. 559, ll. 19 – 25; R. 560, ll. 1 – 25.

After everyone scattered, she went to Applewhite to try to help him. McGill and Lane also came and started dragging him to the car. About that time, the police and EMS arrived. R. 562, ll. 1 – 24. The police took Joemilla to the police station that night where she wrote a statement, and the police took pictures of her bruised face. R. 564, ll. 1 – 23.

The forensic pathologist testified that the cause of death of Applewhite was homicide. R. 372, ll. 15 – 23. She explained that the body had five gunshot wounds but only two bullets were lodged in the body. R. 365, ll. 15 – 25; R. 366, ll. 1 – 25; R. 367, ll. 1 – 11.

Dan Defreese, the SLED expert in the field of firearms, testified that the two bullets removed from Applewhite's body were from two different guns. One bullet was from a .38 caliber

revolver or 357, and the second bullet was from a 9-millimeter Luger. R. 378, ll. 1 – 14; R. 379, ll. 1 – 25; R. 382, ll. 1 – 25; R. 383, ll. 1 – 25; R. 384, ll 1 – 25; R. 385, ll. 1 – 25; R. 386, ll. 1 – 8.

Police Lieutenant Walter Davis testified that he went to Philadelphia and brought Reaves back to South Carolina because they had a warrant for murder for him. Reaves was only sixteen years old at the time of the incident. R. 182, ll. 6 – 25; R. 183, ll. 1 – 25; R. 184, ll. 1 – 5; R. 696, ll. 4 – 25.

McGill testified that he wrote a statement that night immediately after the incident on the back of the police car and gave it to Lt. Davis. R. 301, ll. 1 – 25; R. 302, ll. 1 – 20; R. 314, ll. 1 – 16.

On cross-examination, McGill admitted that the testimony he gave was not consistent with the subsequent story he told later. R. 304, ll. 1 – 14. When defense counsel showed McGill the statement from Lt. Davis's file that McGill allegedly gave, McGill admitted that was not the statement he wrote on the night of the incident on the back of the police car. R. 315, ll. 11 – 25; R. 316, ll. 1 – 19.

McGill testified that Travis Lane and Karen Graves wrote statements on the back of the police car right after the incident as well. R. 314, ll. 6 – 25; R. 315, ll. 1 – 12.

Lt. Davis testified that he talked to McGill and Lane the night of the incident. R. 160, ll. 1 – 20. He also talked to several ladies that night as well but he did not remember their names. R. 161, ll. 23 – 25. Lt. Davis admitted that he asked McGill to write a statement, and he gave him paper to write it on. He thought McGill gave it to one of the other officers as he did not receive the statement. He did not remember if he asked Lane to write a statement. R. 167, ll. 1 – 25; R. 169, ll. 1 – 23.

Lt. Davis also testified that there was a crime scene log that everyone who entered the scene should have signed. However, that procedure was not followed. He was at the crime scene, and he

did not sign his name but claimed someone signed his name. R. 169, ll. 1 – 25; R. 170, ll. 1 – 25; R. 171, ll. 1 – 25; R. 172, ll. 1 – 25.

Kenneth Kensy was employed with SLED in May 2007 as a crime scene examiner, and worked the scene in Reaves' case. R. 185, ll. 9 – 25; R. 186, ll. 1 – 25. He said it would be prudent to test the clothing of the people in close proximity to the gun shot for gun shot residue although the hands were a better indicator. R. 223, ll.1 – 25; R. 224, ll. 1 – 25; R. 225, ll. 1 – 25.

Lieutenant Farmer Blue with the Marion Police Department testified that the clothing of the victim of a homicide could reveal valuable evidence. He knew that Officer Jackson collected the victim's clothing from the Marion County Medical Center and turned them over to Captain Gray who was heading the investigation that night before Lt. Blue took charge the next day. R. 432, ll. 21 – 25; R. 433, ll. 1 – 21; R. 489, ll. 15 – 25. Lt. Blue said the clothes were not in the evidence box; he had never seen the clothes, and the clothes were never sent to SLED for analysis as far as he knew. R. 489, ll. 15 – 25; R. 490, ll. 1 – 25; R. 491, ll. 1 – 5.

Lt. Blue admitted that when he became the lead investigator two days after the incident, he realized he would have done some things differently. He said better evidence could have been collected, and more evidence should have been collected. R. 433, ll. 1 – 25; R. 434, ll. 1. On cross examination, he admitted that the case was still open because they were still looking for the second shooter. R. 442, ll. 1 – 5.

Lt. Blue admitted that he did not sign the log in sheet at the crime scene. R. 448, ll. 1 – 24. This was the first murder crime scene he had ever investigated. R. 466, ll. 14 – 25; R. 467, ll. 1 – 3. There were pieces of evidence that SLED collected that the Marion Police Department requested be returned without being tested. R. 470, ll. 14 – 25; R. 471, ll. 1 – 3. This included a white hat found at the scene. R. 471, ll. 4 – 25; R. 472, ll. 1 – 25. A blue and black hat was found at the scene that

was returned without being tested. R. 474, ll. 1 – 25; R. 475, ll. 1 – 25. A VISA card was taken from the scene and returned to Bellamy without being checked for prints. R. 476, ll. 1 – 25. A Motorola cell phone and a second cell phone were taken from the scene and not tested. R. 479, ll. 20 – 25; R. 482, ll. 1 – 25.

Lt. Blue admitted that three gold chains taken from the crime scene as shown in photographs were not in the evidence box, and he did not know what happened to them. R. 486, ll. 21 – 25; R. 487, ll. 1 – 25; R. 488 ll. 1 – 25. He said that, as an investigator, that evidence could be helpful in identifying everyone at the crime scene because they still did not know the identity of everyone there. He had not identified the second shooter. R. 489, ll. 1 – 14. Everyone at the crime scene was a potential suspect. R. 519, ll. 18 – 20.

McGill and Lane were shown photo lineups and did not select Reaves as the shooter but, in fact, selected someone else. R. 502, ll. 1 – 18; R. 508, ll. 1 – 25; R. 509, ll. 1 – 25.

Lt. Blue admitted that he heard McGill testify that he and Lane and Graves had written statements and given them to the police the night of the incident at the scene. However, he did not possess those statements; and he did not know what happened to them. R. 502, ll. 19 – 25; R. 503, ll. 1 – 25; R. 504. ll. 1 – 3.

In a pretrial motion and at the close of the state's case, defense counsel moved for the indictments against Reaves to be dismissed due to a lack of due process based on the misconduct of the state in not producing evidence that was obtained during the investigation and then not provided to the defense because it was lost. Counsel argued that it was a violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83 (1963). R. 123, ll. 2 – R. 128, ll.25; R. 596, ll. 1 – 25; R. 597, ll. 1 – 25.

Counsel argued that because the victim's clothing was lost as well as the other evidence, he did not have the benefit of determining if that information would be helpful to his defense of the case. Counsel argued that the purpose of due process was for the defendant to be able to defend himself in the best way possible, and he had a right to weigh all of the evidence. R. 125, ll. 1 – 25; R. 126, ll. 1 – 5.

Counsel argued that he was not able to effectively cross examine the witnesses since their statements were not provided. He did not have the advantage of determining if there were contradictory testimony. Under the Sixth Amendment, Reaves had a right to cross-examine the witnesses. Due to the gross negligence of law enforcement, counsel argued Reaves' Sixth Amendment right was violated. R. 597, ll. 1 – 25; R. 598, ll. 1 – 25.

Counsel told the court that he never received the photographs taken of Joemilla Wilson on the night of the incident. R. 599, ll. 1 – 25.

Counsel argued that Reaves was prejudiced by the severe inappropriate handling of his case. R. 600, ll. 1 – 2.

The judge commented during the trial: "But, obviously, we've got a messed up trial based on that bad investigation." R. 263, ll. 14 – 24. However, he denied defense counsel's motion to dismiss the case because he ruled that the lack of evidence went to the credibility of the state's case but was not enough for a dismissal. He agreed with the state that Reaves was entitled to the charge of spoliation of evidence. R. 600, ll. 1 – 25; R. 601, ll. 1 – 4.

The judge did charge the jury on the spoliation of evidence. R. 676, ll. 10 – 16.

Rule 5, SCRCrimP, provides that the prosecution shall permit the defendant, upon request, to inspect and copy any documents, examinations, tests which are in the control of the prosecution which the prosecution intends to use as evidence in chief at trial. A Rule 5 violation is not

reversible unless prejudice is shown. State v. Landon, 370 S.C. 103, 108, 634 S.E.2d 660, 663 (2006).

The Due Process clause of the Fifth and Fourteenth Amendments mandate a defendant's fundamental right to a fair trial. State v. Kennerly, 331 S.C. 442, 503 S.E.2d 214 (Ct. App. 1998).

In State v. Osborne, 291 S.C. 265, 353 S.E.2d 276 (1987), the Supreme Court ruled that the prosecution's nondisclosure of tape recordings of statements made by key state's witness in prosecution of defendants for conspiracy, armed robbery, kidnapping, and murder deprived defendants of fair trial requiring new trial.

In Brady v. Maryland, *supra,* the United State Supreme Court declared the suppression of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution. State v Harvey Jones and Melissa Jones, 325 S.C. 310, 479 S.E.2d 517 (Ct. App. 1996) citing Brady v. Maryland, *supra.*

The Sixth Amendment provides an accused with the right to be confronted with witnesses against him. The Sixth Amendment rights to notice, confrontation, and compulsory process guarantee that a criminal charge may be answered through the calling and interrogation of favorable witnesses, the cross-examination of adverse witnesses, and the orderly introduction of evidence. State v. Gillian, 360 S.C. 433, 449-450, 602 S.E.2d 62, 71 (Ct. App. 2004).

The Fourteenth Amendment secures all persons against any state action which results in either deprivation of life, liberty, or property without due process of law. U.S.Const. amend. XIV. The right to confront and cross-examine witnesses and to call witnesses in one's own behalf are essential to due process. Chambers v. Mississippi, 410 U.S. 284, 302 (1973).

In Arizona v. Youngblood, 488 U.S. 51 (1988), the United States Supreme Court held that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence did not constitute a denial of due process of law. Youngblood was accused of sexually assaulting and sodomizing a ten year old boy. The police collected a rectal swab for semen and the child's clothing. However, the police failed to refrigerate the clothing and failed to perform tests on the semen samples. None of their information was concealed from the respondent at trial, and the evidence was made available to the respondent's expert who declined to perform any tests on the samples.

In his dissent in Arizona v. Youngblood, id. , Justice Blackmun wrote that a defendant was entitled to a fair trial, and not a "good faith" try at a fair trial.

The South Carolina Supreme Court held in State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001), that to establish a due process violation based on the destruction of evidence, a defendant must demonstrate (1) that the state destroyed the evidence in bad faith; or (2) that the evidence possessed an exculpatory value before the evidence was destroyed and the defendant cannot obtain other evidence of comparable value by other means.

The Court of Appeals held that the state does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant citing State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001). To support their ruling, the Court also cited State v. Adams, 304 S.C. 302, 403 S.E.2d (Ct. App. 1991), and State v. Hutton, 358 S.C. 622, 595 S.E.2d 876 (Ct. App. 2004). App. 2.

The Court of Appeals relied on State v. Cheeseboro, 346 S.C. 526, 552 S.E.2d 300 (2001). for the proposition that Reaves had to show bad faith on the part of the state, but this reliance was misplaced. Reaves' case is distinguished because the evidence was never presented to Reaves. The

clothing was not provided; the witnesses' statements taken the night of the incident were not provided as well as other evidence. The police deliberately not allowing SLED to perform an analysis on some evidence when the police asked for it to be returned before testing, was an act of bad faith.

In State v. Mouzon, 231 S.C. 655, 99 S.E.2d 672 (1957), the Supreme Court held that malice can be inferred from conduct which is so reckless and wanton as to indicate a depravity of mind and a general disregard for human life.

By way of analogy, the police handling of the investigation was so severely inappropriate to the point of being misconduct and bad faith, especially in light of the fact that the second shooter was not identified; GSR tests were not performed on everyone at the incident site; the victim's clothing was lost; DNA tests were not performed on many items of evidence. The police conduct in Reaves' case was a violation of his due process right to a fair trial. An affirmance of Reaves' conviction is only encouraging negligent and reckless investigations.

The Court of Appeals relied on the case of State v. Adams, *supra,* for the proposition that Adams failed to make a showing that the evidence was exculpatory before the state lost it. Adams is distinguished because Adams was claiming the original breathalyzer test was not valid and it was lost. However, Adams had been given a copy of the results, and could testify as to his claim. Reaves never had the evidence nor a copy nor the results so he could not determine if it was exculpatory or not. App. 2.

The police handling of the investigation was so severely inappropriate to the point of being misconduct and bad faith, especially in light of the fact that the second shooter was not identified. The police conduct in Reaves' case was a violation of his due process right to a fair trial.

ARGUMENT II.

The Court of Appeals erred in affirming the trial court's denial of Reaves' motion to dismiss his case based on a violation of his Sixth Amendment right to a speedy trial when his first trial, which ended in a mistrial, was held on August 24, 2010 which was over three years after the incident which occurred on May 13, 2007, and his second trial was held November 8, 2010.

This incident occurred May 13, 2007. Shawn Reaves was arrested a few days later in Philadelphia on a warrant for murder. R. 183, ll. 5 – 25. The first trial was not held until August 2010. R.1. As a pretrial motion, defense counsel moved for the indictment against Reaves to be dismissed based on a violation of Reaves' Sixth Amendment right to a speedy trial which resulted in a lack of due process in Reaves' case. Counsel said the first trial in August 2010, resulted in a mistrial. R. 107, ll. 15 – 25; R. 108, ll. 1.

Counsel cited as the standard the four factors identified by the United States Supreme Court and reiterated in State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009). These factors were: (1) the length of the delay; (2) the reason for the delay, (3) the defendant's assertion of his right, (4) prejudice to the defendant. R. 108, ll. 1 – 24.

Counsel argued that he understood that the length of the delay of the trial was not *per se* a violation but should be considered in conjunction with the reason for the delay. However, he said the incident was May 13, 2007; Reaves was arrested May 29, 2007; and the first trial was held August 24, 2010. This created a delay of three years and six months which, he correctly argued, was a lengthy time. R. 109, ll. 1 – 25; R. 110, ll. 1 – 7.

Counsel argued that all of the discovery or evidence was collected within two months of the incident. One eyewitness, Joemilla Wilson, identified Reaves as the shooter on May 25, 2007. R. 110, ll. 8 – 25; R. 111, ll. 1 – 25. Counsel argued that this was not a complicated case, and there was

no reason for the delay. Therefore, he argued, the first two factors violated due process. R. 111, ll. 117 – 25; R. 112, ll. 1 – 8.

The third factor, the defendant's assertion of the right, was made at the first trial in August 2010. Then the state went ahead with the trial at that time. R. 112, ll. 9 – 25. That trial ended in a mistrial when new evidence was untimely produced to the defense during the trial. R. 112, ll. 23 – 25; R. 113, ll. 1 – 12.

He argued on the fourth factor, that Reaves was prejudiced by the delay. He explained that when the new discovery was revealed during the first trial, Reaves' defense evolved and changed. However, the fact that evidence was lost which was crucial to the development of the defense occurred during this time period. He argued that the victim's clothing was critical because it may have provided evidence for a self defense theory of defense. R. 114, ll. 1 – 25; R. 115, ll. 1 – 25; R. 116, ll. 1 – 25; R. 117, ll. 1 – 25.

Counsel argued that one reason for a speedy trial was to insure that evidence was preserved to enable the accused person to be able to evaluate the evidence in order to present a defense. It was also essential to have the evidence fresh in the minds of witnesses. Counsel argued that Reaves' rights were violated as he was being forced to go forward without the advantage of having that evidence through no fault of his own. R. 118, ll. 1 – 22.

The solicitor argued that the evidence issue had nothing to do with the speedy trial motion. He argued that part of the delay was that Reaves had two lawyers during the process, and that the assertion of the speedy trial right was first made at the start of the first trial. R. 119, ll. 14 – 25; R. 120, ll. 1 – 15.

The solicitor admitted that there were "very many" problems with the evidence in this case. No one knew, including him and the Marion Police Department, where some of the evidence that

existed earlier was as it could not be found. He said all they could do was to go forward with the evidence they had. R. 120, ll. 16 – 25.

The judge denied the speedy trial motion finding the delay was reasonable, and there was no prejudice to Reaves. R. 121, ll. 4 – 25; R. 122, ll. 1 – 3.

At the close of the state's case, counsel again renew his motion for a dismissal based on the speedy trial motion. Counsel argued there was even more prejudice since he learned that eyewitness statements were lost. R. 601, ll. 5 – 25; R. 602, ll. 1 – 25; R. 603, ll. 1 – 25. The judge denied the motion. R. 604, ll. 1 – 7.

"Speedy trial" is part of due process of law to which every person accused of a crime is entitled under State and Federal Constitutions. Wheeler v. State, 247 S.C. 393, 147 S.E.2d 627 (1966); citing U.S. Const. amends. VI, XIV, and S.C. Const. art. 1, Section 5.

In Doggett v. United States, 505 U.S. 647 (1992), the United States Supreme Court listed the factors required in order to assess speedy trial claims. There are four relevant inquiries: (1) whether delay before trial was uncommonly long, (2) whether the government or defendant is more to blame for the delay, (3) whether, in due course, the defendant asserted his right to a speedy trial, and (4) whether the defendant suffered any prejudice as to the delay's result. Id. at 651. See Barker v. Wingo, 407 U.S. 514 (1972). State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997); State v. Evans, 386 S.C. 418, 688 S.E.2d 583 (Ct. App. 2009).

The South Carolina Supreme Court held in State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007), that the determination that a defendant ahs been deprived of the right to a speedy trial is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense.

The Court of Appeals cited the four factors from State v. Brazell, 325 S.C. 65, 480 S.E.2d 64 (1997), for a court to consider in reviewing whether a defendant was deprived of his right to a speedy trial. These include: (1) length of the delay; (2) reason for the delay; (3) the defendant's assertion of the right to a speedy trial; (4) prejudice to the defendant. App. 2.

The Court of Appeals relied on the case of State v. Cooper, 386 S.C. 210, 687 S.E.2d 62 (Ct. App. 2009), where the trial court ruled that the forty-four months delay in bringing Cooper's case to trial the second time was not apparently willful and largely justifiable. However, the Court also ruled in Cooper's case that the delay was not prejudicial because the state withdrew its notice to seek the death penalty. App. 2.

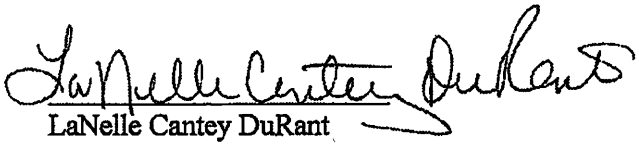
In State v. Lee, 375 S.C. 394, 653 S.E.2d 259 (2007), the Supreme Court held that the claim that the pre-indictment delay violated defendant's due process rights did not require proof that the state acted intentionally to gain an unfair tactical advantage over the defendant.

The trial judge erred by not granting Reaves' speedy trial motion to dismiss the indictment as there was a lack of due process based on evidence lost during this delay. The factors weigh in Reaves' favor as the length of delay was three and one-half years; the state did not have a good reason for the delay; Reaves asserted his right to a speedy trial; and the delay was prejudicial when evidence was lost during this delay.

CONCLUSION

Based on the above, Reaves' convictions and sentences should be dismissed.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER.

This 16th day of September, 2014

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Marion County

William H. Seals, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHAWN REAVES,

PETITIONER

CERTIFICATE OF SERVICE

I certify that a true copy of the brief of petitioner, in this case has been served on Mark R. Farthing, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Shawn Reaves, # 343643, Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 16th day of September, 2014.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 16th day
of September, 2014.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.

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STATEMENT OF ISSUES ON APPEAL

I.

The Court of Appeals correctly determined the trial judge committed no reversible error in denying Reaves' motion to dismiss the charges after it became apparent during trial that several pieces of evidence had been lost at some point prior to trial because the missing and unaccounted-for evidence was not lost or destroyed in bad faith and did not possess any apparent exculpatory value at the time it was lost and because evidence of comparable value was available to Reaves through his ability to cross-examine the witnesses about their alleged missing statements.

II.

The Court of Appeals correctly affirmed the trial judge's denial of Reaves' motion to dismiss his case based on an alleged speedy trial violation, which was raised for the first time thirty-nine months after his arrest and immediately before his first trial, because the approximately thirty-nine month delay prior to Reaves' first trial and the approximately forty-two month delay before Reaves' re-trial and conviction were not the result of any willfulness or neglect on the part of the State and did not result in any actual prejudice to Reaves.

STATEMENT OF THE CASE

In May of 2007, Petitioner Shawn Reaves was arrested following an investigation into a shooting incident that resulted in a homicide. In August of 2010, the Marion County grand jury indicted Reaves for one count of murder and one count of assault and battery with intent to kill. On August 24, 2010, a jury trial was commenced in the Marion County court of general sessions with the Honorable William H. Seals, Jr., circuit court judge, presiding. However, that trial ended in a mistrial. Subsequently, on November 8, 2010, a second jury trial was commenced in the Marion County court of general sessions with Judge Seals again presiding. At the conclusion of the second trial, the jury acquitted Reaves of murder, convicted Reaves of the lesser-included offense of voluntary manslaughter, and acquitted Reaves of assault and battery with intent to kill. Following the verdict, the trial judge sentenced Reaves to a term of imprisonment of twenty-five years. Reaves then timely filed and perfected an appeal.

Subsequently, following oral argument, the Court of Appeals unanimously affirmed Reaves' conviction for voluntary manslaughter in an unpublished decision. State v. Reaves, Op. No. 2014-UP-057 (S.C. Ct. App. filed Feb. 12, 2014). Thereafter, Reaves petitioned the Court of Appeals for rehearing, and the petition was denied. Reaves then filed a petition for a writ of certiorari in the Supreme Court, and petition was granted on August 22, 2014.

STATEMENT OF FACTS

Around 10:00 p.m. on the evening of May 13, 2007, officers with the Marion Police Department received a report of a fight in progress and began responding to East Mullins Street in Marion, South Carolina, where the fight was reported to be occurring. (R. p. 146; pp. 148-149; pp. 154-155; p. 182; p. 445). A few minutes later, Lieutenant Walker Davis, Sr. of the Marion Police Department was notified shots were fired at the location of the fight and he hurried to the scene. (R. pp. 146-147). Upon arriving, he observed a large crowd of people and a white car parked on the side of the road with a man slumped over inside in the back passenger seat. (R. p. 149; pp. 160-161). Lieutenant Davis discovered the man in the vehicle, Ramel Keshawn Applewhite ("Victim"), had been shot, so the officer quickly requested emergency medical assistance and secured the scene. (R. pp. 149-151; p. 361). Shortly thereafter, paramedics arrived and transported Victim to a hospital. (R. p. 150). However, Victim died as a result of the shooting. (R. p. 368; p. 372).

Following the shooting, additional officers arrived at scene, including Lieutenant Farmer Blue of the Marion Police Department. (R. pp. 431-432). Lieutenant Blue began investigating the incident and learned potential suspects might have entered a nearby residence on East Mullins Street. (R. p. 434). In response, officers knocked on the door and windows of the residence in an effort to make contact with anyone inside, but no one responded. (R. pp. 434-435). Lieutenant Blue then obtained a search warrant, and officers entered the residence. (R. pp. 435-436). When they did so, they found several people hiding inside of the home, including Joemilla Wilson-Dozier, Brandon Deshawn Bellamy, and Rodney McElveen. (R. pp. 435-436). Thereafter, Detective Larry Woods of the Marion County Sheriff's Office performed gunshot residue testing on each of the

individuals. (R. p. 3; p. 8; p. 14; pp. 240-242). Meanwhile, Lieutenant Davis spoke with several witnesses at the scene, including Travis Lane and Jackie McGill, Jr., to find out what happened during the incident. (R. p. 159; p. 166; p. 432). In speaking with McGill, Lieutenant Davis provided him with paper, asked him to write out a statement, and instructed him to return the statement to him when it was completed. (R. p. 167). However, McGill never returned a completed statement to the officer. (R. p. 168).

Thereafter, around 1:30 a.m. on the following morning, Agent Ken Kensey, a special agent with the S.L.E.D. latent print crime scene unit, arrived at the location of the shooting to aid in processing the crime scene. (R. p. 185; Supp. R. p. 1). While processing the crime scene, Agent Kensey collected various pieces of evidence, including a black hat, a white hat, three gold chains, three cell phones, a mobile phone headset, a pair of black slippers, and a credit card with the name "William A. Bellamy" on it, in the vicinity of where the shooting occurred. (R. p. 190; pp. 195-197; p. 217; pp. 221-222). He then provided the gold chains and cell phones to the Marion Police Department upon request and transported the other gathered evidence along with a black t-shirt, a blue jean jacket, and the three gunshot residue kits collected by Detective Woods to the S.L.E.D. crime lab for processing and analysis. (R. p. 190; pp. 198-207).

Later that day, Dr. Cynthia Schandl, a forensic pathologist at M.U.S.C. and an expert in forensics, performed an autopsy on Victim. (R. p. 358; p. 361). While conducting the autopsy, Dr. Schandl located five different gunshots wounds to Victim's body. (R. p. 365). Three of the wounds – one to the right side of Victim's back, one to Victim's stomach, and one to Victim's left side – resulted from bullets that entered and exited Victim's body. (R. pp. 365-366). One of the wounds occurred when a bullet entered and remained in Victim's shoulder. (R. p. 366). The final gunshot wound

occurred when a bullet entered Victim's upper back, struck his lung, aorta, and liver, and stopped in his colon. (R. pp. 366-367). Both of the bullets were recovered from Victim's body during the autopsy, and Dr. Schandl concluded the bullet removed from Victim's colon led to his death. (R. p. 368).

Subsequently, Dan Defreese, a S.L.E.D. analyst and firearms experts, examined the bullets recovered during the autopsy on Victim. (R. pp. 377-379; p. 381). He concluded the bullet recovered from Victim's colon was consistent with a .38-caliber or .357-caliber cartridge and was most likely fired from a revolver. (R. pp. 382-384). He further determined the bullet recovered from Victim's shoulder was consistent with a nine-millimeter cartridge and was most likely fired from a semi-automatic pistol. (R. pp. 384-385). Based on his examination, he concluded the two bullets were not fired by the same gun. (R. p. 385). Additionally, Michael Moskal, a forensic scientist in the S.L.E.D. trace evidence department and an expert in gunshot residue, analyzed the gunshot residue kits collected from McElveen, Wilson-Dozier, and Bellamy. (R. p. 242; pp. 244-245; pp. 247-248). Based on his analysis, Moskal concluded there was no gunshot residue present in any of the samples collected from those individuals. (R. pp. 249-250).

As the investigation into the incident progressed, Lieutenant Blue discovered the primary suspect in the shooting was known as "Mister," which was an alias of Petitioner Shawn Reaves. (R. p. 438). Through his investigation, Lieutenant Blue also learned Reaves was observed at the scene of the shooting with a weapon and was seen fleeing from the area after the incident.[1] (R. p. 439). As a result, officers obtained warrants for Reaves' arrest, and Reaves was apprehended in Philadelphia, Pennsylvania, several days

[1] During the investigation, Lieutenant Blue prepared a photographic line-up containing Reaves' photograph and showed it to McGill and Lane. (R. pp. 500-501; pp. 508-509). However, they did not identify Reaves as the shooter at that time and, instead, selected another photograph from the line-up. (R. p. 502; pp. 508-509).

after the shooting. (R. pp. 183-184). Following his arrest, Reaves was transported back to South Carolina and indicted for murder and assault and battery with intent to kill, and he proceeded to trial. (R. p. 2; p. 104; p. 183; pp. 745-746).

During Reaves' trial, McGill testified about the shooting and claimed he wrote a statement for Lieutenant Davis on the night of the incident. (R. p. 43; p. 52; p. 58). McGill was then presented with a statement with his name and Lane's name on it dated for the morning after the shooting, but he denied knowing who wrote it. (R. pp. 55-56). Following McGill's testimony, defense counsel moved for the indictments to be dismissed, for a mistrial, and for a continuance based on the fact McGill claimed he provided a statement different than the one disclosed during the discovery process. (R. pp. 82-89). In response, the solicitor noted he had opened his file to defense counsel and did not have any other statements attributable to McGill in the file. (R. p. 89). The trial then recessed for the day. (R. p. 91).

On the following morning, defense counsel renewed his previous motions based on the fact a number of documents were discovered in an investigator's file after the trial recessed on the preceding day. (R. pp. 91-92). Defense counsel asserted the documents were exculpatory and should have been disclosed. (R. p. 93). The documents included a note by Lieutenant Blue indicating he had obtained information suggesting the second shooter may have been an individual named Jeremy Vereen, a statement from an individual who claimed Reaves' brother told her Reaves was not the shooter, an evidence log from Victim's autopsy, an incident report prepared by Lieutenant Davis, a supplemental incident report indicating warrants were served, a note prepared by Lieutenant Blue regarding a statement he obtained from a person incarcerated with Reaves at a detention center, paperwork related to Reaves' transfer from Philadelphia, a

letter indicating evidence was returned to the Marion Police Department from S.L.E.D., a forensic services request submitted to S.L.E.D. regarding the bullets taken from Victim's body, several evidence release forms related to the gunshot residue tests collected on the night of the shooting, a note regarding Victim's autopsy, and a C.A.D. report from the night of the incident. (R. pp. 95-97; p. 713-741). Based on the State's failure to disclose those documents, defense counsel asserted Reaves was entitled to the dismissal of the charges or to the grant of a mistrial. (R. pp. 97-98). In response, the solicitor asserted he was previously unaware of the existence of the documents but conceded the grant of a mistrial would be an appropriate remedy. (R. pp. 98-99). The trial judge then denied defense counsel's motion to dismiss the indictments, granted the motion for a mistrial, and ordered the trial to be scheduled for the next available trial date, which was November 8, 2010. (R. pp. 99-100).

Thereafter, on November 8, 2010, Reaves again proceeded to trial. (R. p. 104). At the outset of the second trial, defense counsel argued Reaves' right to a speedy trial was violated because Reaves was being tried approximately three years and six months after he was arrested. (R. pp. 107-110). Defense counsel claimed there was no reason for such a lengthy delay and asserted Reaves was prejudiced by the delay because Victim's clothing and items collected at the scene of the shooting were lost prior to trial. (R. pp. 111-118). However, defense counsel conceded he first raised the speedy trial issue in August of 2010 and a trial was conducted after the motion was made. (R. p. 112; p. 119). He further acknowledged he was not Reaves' original attorney but was retained to represent Reaves one year after the shooting. (R. pp. 118-119). In response, the solicitor asserted some of the delay in bringing the case to trial resulted from the fact Reaves changed his counsel. (R. pp. 119-120). He also noted Reaves did not raise the speedy

trial issue until August of 2010, promptly received a trial at that point, and was then re-tried at the earliest opportunity to do so. (R. p. 120). The solicitor further argued the evidence was not lost as a result of any delay and was simply missing because no one knew where it was. (R. p. 120). After considering the arguments of counsel, the trial judge denied Reaves speedy trial motion. (R. pp. 122-123). In reaching that conclusion, the trial judge found the delay in bringing the case to trial was lengthy but necessary based on the serious nature of the charges, the delay was partially caused by the heavy backlog of cases in Marion County, Reaves promptly received a trial after first raising the speedy trial issue twelve weeks earlier, and Reaves suffered no prejudice as a result of the delay because the evidentiary concerns raised by Reaves would likely work to his advantage. (R. pp. 121-122).

Subsequently, during trial, Lieutenant Davis testified about his investigation into the shooting and noted he asked McGill to prepare a written statement on the night of the incident but never received one from McGill. (R. pp. 146-151; pp. 167-168). Additionally, Agent Kensey testified about his role in the investigation and indicated he returned numerous items collected at the crime scene to the Marion Police Department without having the items tested. (R. p. 190; p. 199; p. 203; pp. 206-207; p. 211; p. 217; Supp. R. p. 1). Agent Kensey asserted he personally would have had the collected items tested because he believed the failure to test them was "potentially a missed opportunity" to learn who was present at the scene of the crime. (R. pp. 220-221). However, he noted it was common for agencies to request the return of items without testing due to the fact S.L.E.D. placed "severe" restrictions and limitations on the number of items that could be tested in a single case. (R. p. 235). He further noted S.L.E.D. had a heavy backlog in all

of its forensic departments and there would be no need to analyze some evidence if the identity of its owner could be determined through other means. (R. pp. 234-235).

Thereafter, McGill testified about the shooting, stating he met up with Victim, who was in town for Mother's Day, on the day of the incident and rode to Bellamy's house on East Mullins Street with Victim, Lane, and Victim's cousin, Karen Graves. (R. pp. 267-270; p. 274). McGill indicated ten people were congregating in the yard of the residence when they arrived and Victim asked to speak with Wilson-Dozier, who was Victim's girlfriend. (R. pp. 275-276). McGill testified Victim then walked to the street with Wilson-Dozier, who was initially reluctant to come outside of the residence. (R. pp. 276-277). After they did so, McGill stated Victim and Wilson-Dozier argued and began fighting before Victim threw Wilson-Dozier to the ground. (R. pp. 277-278). Eventually, McGill indicated he was able to separate Victim and Wilson-Dozier and return Victim to the car. (R. p. 279). However, he stated Wilson-Dozier came over to Victim, spat on him, and then walked to the residence's porch. (R. pp. 280-281). McGill testified Victim followed her, he saw Reaves, and then he heard gunshots. (R. p. 283; p. 286; pp. 288-289). After the gunshots, McGill stated Victim fell to the ground, he heard clicking sounds that sounded like a gun was out of bullets, and Reaves took off running.[2] (R. pp. 289-290; p. 295). He stated he then tried to move Victim to the car, law enforcement officers arrived on the scene, and he provided a statement to Lieutenant Davis. (R. pp. 294-295; pp. 301-302; p. 314). He stated he testified to everything contained in the statement and also claimed Lane and Graves provided statements that night. (R. pp. 301-302; pp. 314-315). However, he denied a statement introduced during

[2] During trial, Defreese, the S.L.E.D. firearms expert who examined the bullets recovered from Victim's body, testified a revolver would make a clicking noise if the trigger was pulled after its ammunition was exhausted but a semi-automatic pistol ordinarily would not. (R. pp. 387-388).

trial with his and Lane's names on it was his statement. (R. pp. 315-317). Significantly, he also repeatedly identified Reaves as the shooter and indicated he was certain Reaves was the person he saw shoot Victim. (R. p. 326; p. 353).

In addition to McGill's testimony identifying Reaves as the shooter, Tyler Connor, who was incarcerated in the Department of Juvenile Justice in May of 2007, testified he was placed in a cell with Reaves after the incident and spoke with him about why he was incarcerated. (R. pp. 414-417). Connor claimed Reaves stated he was incarcerated because he shot someone with a revolver, his friend shot the person with a nine-millimeter gun, and he left town. (R. pp. 418-419). Connor stated Reaves said the incident occurred after he argued with someone who purchased drugs from him. (R. pp. 425-427).

Additionally, Lieutenant Blue testified about his involvement in the investigation into the shooting. (R. pp. 432-433). He indicated he was assigned as the lead investigator in the case two days after the shooting, obtained arrest warrants for Reaves as a result of his investigation, and was still looking for the second shooter involved in the incident. (R. pp. 432-433; pp. 438-440; p. 442). Regarding the evidence collected during the investigation, he noted his department requested the return of several items without any analysis being conducted because the owners of the items had already been identified. (R. p. 444; pp. 476-477; p. 483). He further indicated he did not know what happened to Victim's clothing after the shooting, believed another officer picked the clothing up from the hospital, and had no idea where the clothing was currently located.[3] (R. pp. 489-491). Additionally, Lieutenant Blue stated the credit card recovered at the

[3] When asked whether the clothes of a victim could "sometimes" have evidentiary value in connection to a case, Lieutenant Blue responded: "It could. All evidence could be valuable." (R. p. 490).

scene of the shooting was released to Bellamy after he identified it as his brother's card, and he admitted he did not know where the gold chains discovered at the scene were located. (R. pp. 476-477; pp. 487-489). Regarding McGill's statement, he indicated the statement introduced during trial with McGill and Lane's names on it was the statement McGill provided to him after the shooting. (R. pp. 512-513). During his testimony, Lieutenant Blue also stated he would have done many things differently if he had been in charge of the investigation from the outset, and he indicated the process of collecting evidence could have been handled in a better fashion. (R. pp. 433-434).

Latoya Davis, who lived near the scene of the shooting, also testified about the incident during trial. (R. pp. 539-539). On the night of the shooting, Davis stated she was with Wilson-Dozier at the residence on East Mullins Street but went home after Wilson-Dozier and Victim began fighting. (R. pp. 536-539). When she arrived home, she indicated she did not see the shooting but heard gunshots and then saw Reaves, whom she knew as "Mister," get into a vehicle and drive away. (R. pp. 539-540). She further testified she spoke with Lieutenant Blue on the day after the shooting and provided him with a written statement. (R. p. 547; p. 552).

Furthermore, Wilson-Dozier testified about her altercation with Victim and the subsequent shooting. (R. pp. 557-560). She stated she was in a relationship with Victim in May of 2007 but had broken up with him a month earlier. (R. pp. 554-555; p. 557). Wilson-Dozier indicated she went to visit Bellamy, who she was involved in an intimate relationship with at the time, at East Mullins Street on the day of the incident and Victim came over several times while she was there. (R. pp. 554-557; pp. 569-570). When Victim came over the second time, Wilson-Dozier stated she attempted to avoid him but eventually went outside of the East Mullins Street residence to speak with him. (R. pp.

556-557). When she did so, she testified they argued and began fighting in the yard and street where ten people had gathered. (R. pp. 557-558). After the fight ended, she stated one of Victim's friends tried to get him to leave and she walked towards the residence. (R. pp. 559-560). As she was walking up the steps to the residence, Wilson-Dozier testified Victim pushed Reaves, whom she knew as "Mister," and grabbed Reaves' chains and Reaves responded by pulling out a silver revolver and firing the gun. (R. pp. 560-561). She indicated she then hid behind a car and checked on Victim before going into the residence and remaining there. (R. pp. 561-563). After the incident, she stated she selected Reaves from a photographic line-up as the shooter, wrote a statement for Captain Gray, and had her injuries photographed by law enforcement officers. (R. pp. 564-565; p. 588; p. 594).

At the conclusion of the State's case, defense counsel moved for the charges against Reaves to be dismissed "based on the State's misconduct in connection with [Reaves'] case." (R. p. 596). In support of the motion, he argued the testimony established several witnesses provided written statements on the night of the shooting, including McGill, Lane, Graves, Wilson-Dozier, and Davis, but those statements were not provided to him, which he maintained impacted his ability to cross-examine those witnesses. (R. pp. 596-598). Defense counsel further asserted Reaves was prejudiced by the "substantial and severe negligent handling" of his case. (R. pp. 599-600). In response, the solicitor indicated Reaves was provided with everything in the State's possession and was allowed to review the investigator's entire file. (R. p. 600). However, he conceded Reaves was likely entitled to a charge on spoliation of evidence. (R. p. 600). After considering the arguments of counsel, the trial judge denied the

motion, finding the alleged loss of the evidence impacted the credibility of the State's case but did not warrant dismissal. (R. pp. 600-601).

Following the trial judge's ruling on his motion to dismiss the case, defense counsel renewed his speedy trial motion, arguing the delay in bringing the case to trial resulted in substantial prejudice to Reaves due to the loss of various pieces of evidence. (R. pp. 601-603). In response, the solicitor noted Reaves did not seek a speedy trial until the preceding term of court and his case was immediately scheduled for trial. (R. pp. 603-604). Once again, the trial judge denied the speedy trial motion. (R. p. 604).

After the trial judge denied the motions, defense counsel called several witnesses in Reaves' defense, including Captain Jim Gray, who was the chief investigator for the Marion Police Department in May of 2007. (R. p. 605). Captain Gray stated he did not recall if he took a statement from Wilson-Dozier on the night of the shooting and indicated he did not take any statements from anyone at the scene. (R. p. 615; p. 617). However, he confirmed he photographed Wilson-Dozier on the night of the incident and placed the photographs in the case file. (R. pp. 615-616). He further asserted he did not receive Victim's clothing during the course of the investigation and did not know where it might be located. (R. pp. 617-618).

At the conclusion of the evidentiary phase of trial, the parties presented their closing arguments to the jury. (R. pp. 631-632). During his closing argument, defense counsel repeatedly called the jury's attention to numerous mistakes he asserted were made during the investigation into the shooting and noted numerous items of evidence collected at the scene of the crime were never tested or analyzed. (R. pp. 639-641; pp. 652-653). Thereafter, the trial judge instructed the jury on the applicable law and explained: "When evidence is lost or destroyed by a party you may infer that the

evidence which was lost or destroyed by that party would have been adverse to that party." (R. p. 673; p. 676). Subsequently, at the conclusion of trial, the jury convicted Reaves of the lesser-included offense of voluntary manslaughter and acquitted Reaves of the offenses of murder and assault and battery with intent to kill. (R. p. 692). The trial judge then sentenced Reaves to a twenty-five year term of imprisonment, and Reaves appealed his conviction. (R. p. 698).

On appeal, Reaves sought a reversal of his conviction, arguing the trial judge erred in refusing to dismiss his case based on an alleged due process violation that occurred as a result of the loss of certain evidence and on an alleged violation of his right to a speedy trial due to the fact his trial took place over three years after the incident. (App'x p. 2). However, the Court of Appeals affirmed. (App'x pp. 1-3). In affirming, the Court of Appeals determined Reaves failed to establish either the State destroyed the missing evidence in bad faith or the missing evidenced possessed an exculpatory value apparent before the evidence was destroyed and no other evidence of comparable value was available. (App'x p. 2). Furthermore, after considering the length of the delay, the reason for the delay, Reaves' assertion of his right to a speedy trial, and the prejudice that resulted to Reaves from the delay, the Court of Appeals determined Reaves' speedy trial rights were not violated. (App'x pp. 2-3).

ARGUMENT

I.

The Court of Appeals correctly determined the trial judge committed no reversible error in denying Reaves' motion to dismiss the charges after it became apparent during trial that several pieces of evidence had been lost at some point prior to trial because the missing and unaccounted-for evidence was not lost or destroyed in bad faith and did not possess any apparent exculpatory value at the time it was lost and because evidence of comparable value was available to Reaves through his ability to cross-examine the witnesses about their alleged missing statements.

Reaves contends the Court of Appeals erred in affirming the trial judge's decision to deny Reaves' motion to dismiss the indictments. In support of that contention, Reaves asserts the investigating officers' handling of his case was so severely inappropriate it constituted bad faith and violated his right to a fair trial in light of the fact it became apparent during trial several alleged statements and other pieces of evidence were missing and could not be located for trial. However, contrary to Reaves' contentions, the trial judge properly denied Reaves' dismissal motion because the lost and unaccounted-for evidence was not lost or destroyed in bad faith and did not possess any apparent exculpatory value at the time it was lost. Furthermore, comparable evidence was available based on the fact Reaves was capable of cross-examining any of the witnesses about their alleged statements during trial. Accordingly, the loss of the evidence did not entitle Reaves to the extreme measure of the dismissal of his charges, and Court of Appeals properly affirmed the trial judge's denial of Reaves' motion. Reaves' conviction should be affirmed.

"Under the Due Process Clause of the Fourteenth Amendment, criminal prosecutions must comport with prevailing notions of fundamental fairness." California v. Trombetta, 467 U.S. 479, 485 (1984). The fundamental fairness standard requires

criminal defendants to be given a meaningful opportunity to present a complete defense. Id.; see State v. Harris, 311 S.C. 162, 167, 427 S.E.2d 909, 912 (Ct. App. 1993) ("Due process requires that a criminal defendant be given a reasonable opportunity to present a complete defense."). However, "[t]he State does not have an absolute duty to preserve potentially useful evidence that might exonerate a defendant." State v. Cheeseboro, 346 S.C. 526, 538, 552 S.E.2d 300, 307 (2001). In order to warrant the dismissal of a case based on the loss or destruction of evidence, the defendant must show either: (1) the State destroyed the evidence in bad faith; or (2) the State destroyed evidence possessing an exculpatory value apparent before the evidence was destroyed and no other evidence of comparable value can be obtained by other means. State v. Mabe, 306 S.C. 355, 358-359, 412 S.E.2d 386, 388 (1991). "Whatever duty the Constitution imposes on the States to preserve evidence, that duty must be limited to evidence that might be expected to play a significant role in the suspect's defense." Trombetta, 467 U.S. at 488. Critically, "[t]he mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense." United States v. Agurs, 427 U.S. 97, 109-110 (1976); see Arizona v. Youngblood, 488 U.S. 51, 57 (1988) ("[W]e think the Due Process Clause requires a different result when we deal with the failure of the State to preserve evidentiary material of which no more can be said than that it could have been subjected to tests, the results of which might have exonerated the defendant.").

In the case sub judice, it became apparent during trial that several pieces of evidence, including the clothing Victim was wearing at the time of the shooting, were unavailable or unaccounted for while several written statements that were alleged to have been made by various witnesses were missing. However, the missing evidence was not

lost or destroyed by law enforcement officers in an act of bad faith, and it did not possess any apparent exculpatory value at the time it was lost or destroyed. Furthermore, evidence of comparable value to the alleged statements was available by virtue of the fact Reaves was capable of cross-examining any of the witnesses alleged to have made those statements if he chose to do so. Therefore, the trial judge properly denied Reaves' motion and declined to grant the extreme remedy of dismissing Reaves' charges.

Critically, Reaves failed to establish the existence of either of the required factors warranting the dismissal of charges in regard to the unaccounted-for evidence in his case. Regarding the first factor, no actual evidence of bad faith was presented during trial or identified on appeal suggesting the officers in Reaves' case intentionally destroyed or lost the unaccounted-for evidence. See Trombetta, 467 U.S. at 488 ("The record contains no allegation of official animus towards respondents or of a conscious effort to suppress exculpatory evidence."). Although several alleged statements and other pieces of evidence could not be located prior to trial, nothing presented during trial suggested the officers investigating the case intentionally lost or destroyed those items for the purpose of suppressing exculpatory evidence. See Youngblood, 488 U.S. at 58 ("We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, i.e., those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant."). Instead, the testimony simply established multiple officers involved in the investigation were unaware of what happened to the different items after they were collected with several of the officers candidly acknowledging the investigation ideally would have been conducted in a different manner. Cf. Cheeseboro,

346 S.C. at 539, 552 S.E.2d at 307 ("While there is evidence of a lack of care, there is no evidence of an intentional destruction of relevant evidence in this case."). Accordingly, because the missing evidence was not lost or destroyed as the result of any bad faith on the part of the officers, the mere fact the evidence was lost did not entitle Reaves to the dismissal of his charges.[4]

Regarding the second factor, no evidence was presented during trial or identified on appeal suggesting any of the lost or missing evidence possessed an exculpatory value that was apparent before it was lost or destroyed.[5] Specifically, as to the missing physical items of evidence, nothing was presented to establish the gold chains, credit card, cell phones, or clothing of the victim were exculpatory in any way or critical to any defense theory Reaves intended to pursue during trial. See generally id. at 539, 552 S.E.2d at 307 (finding a destroyed gun did not possess any apparent exculpatory value before it was destroyed where none of the witnesses or testimony raised any doubts regarding the gun and the timing of the recovery of the gun eliminated fingerprints from

[4] In his Brief of Petitioner, Reaves appears to assert the decision of the Marion Police Department not to have S.L.E.D. test each item recovered from the scene of the shooting was "an act of bad faith." (Pet. Br. p. 11). However, during trial, testimony was presented explaining the officers' investigatory decision not to test certain items for fingerprints, such as the cell phones and credit card collected at the scene, was reached due to S.L.E.D. restrictions on the number of evidentiary items that could be submitted for testing, the backlog of items submitted for testing at S.L.E.D., and the fact the owners of the untested items were identified through other means. (R. pp. 234-235; p. 444; pp. 476-477; p. 483). Accordingly, the decision not to have every piece of evidence collected from the scene of the shooting tested, which would not have been practical or possible under the circumstances, did not establish the existence of bad faith. See Jean v. Collins, 221 F.3d 656, 663 (4th Cir. 2000) (instructing bad faith in the context of the loss or destruction of evidence "requires that the officer have intentionally withheld the evidence for the purpose of depriving the plaintiff of the use of that evidence during his criminal trial").

[5] Notably, Reaves even appears to readily acknowledge in his appellate brief none of the missing evidence had an apparent exculpatory value as he concedes "he could not determine if it was exculpatory or not." (Pet. Br. p. 11). However, to the extent Reaves is contending in his appellate brief he was entitled to the dismissal of his charges due to the loss or destruction of the unaccounted-for evidence on a basis other than the alleged bad faith of the law enforcement officers investigating his case, such an argument was not preserved for appellate review because it was not raised to the Court of Appeals in Reaves' Final Brief of Appellant, which was focused **solely** on the alleged bad faith of the officers in the portion of the brief seeking relief due to the loss or destruction of the evidence. See McClurg v. Deaton, 395 S.C. 85, 87, n. 2, 716 S.E.2d 887, 888 (2011) ("It is axiomatic that an issue cannot be raised for the first time on rehearing.").

being an issue). Instead, Reaves simply speculated the evidence could possibly have possessed some unspecified exculpatory value if it had been tested or analyzed in some way. However, the mere possibility the lost evidence **might** have potentially possessed exculpatory value was not sufficient to entitle Reaves to the extreme measure of the dismissal of his case. See Youngblood, 488 U.S. at 56, n. 4 ("Trombetta speaks of evidence whose exculpatory value is 'apparent.' The possibility that the semen samples could have exculpated respondent if preserved or tested is not enough to satisfy the standard of constitutional materiality in Trombetta. Second, we made clear in Trombetta that the exculpatory value of the evidence must be apparent '*before* the evidence was destroyed.' " (citations omitted) (italics in original)); see also State v. Adams, 304 S.C. 302, 304-305, 403 S.E.2d 678, 680 (Ct. App. 1991) ("If, on the other hand, Adams' purpose was to exploit any exculpatory potential the document might have had, he falls short of meeting the standard of constitutional materiality because he failed to make some showing that the document in fact possessed an 'exculpatory value that was apparent' before the State lost it. . . . Speculation about such things, our Supreme Court has held, will not do." (citations omitted)).

Likewise, as to the allegedly missing statements, no testimony was presented during trial suggesting the written statements allegedly prepared on the night of the shooting were in any way exculpatory to Reaves. Instead, each of the witnesses who allegedly made a statement and testified during trial unreservedly implicated Reaves in the shooting. Thus, assuming the missing statements actually existed, the statements most likely possessed **inculpatory** value as opposed to exculpatory value based on the

testimony of the witnesses to whom those statements were attributed.[6] Cf. State v. Breeze, 379 S.C. 538, 546, 665 S.E.2d 247, 252 (Ct. App. 2008) ("Here, the destroyed evidence Breeze complains of was inculpatory rather than exculpatory."). Moreover, evidence of comparable value to the alleged statements was available due to the fact Reaves was fully capable of questioning the witnesses who allegedly made the missing statements about the contents of those purported statements during trial. Cf. State v. Hutton, 358 S.C. 622, 632, 595 S.E.2d 876, 882 (Ct. App. 2004) ("Nor can we find appellant could not obtain other evidence of comparable value by other means. The trial court allowed trial counsel to thoroughly cross-examine Bellinger about the first statement he gave and its contents."). Therefore, the fact the alleged statements could not be accounted for at the time of trial did not deprive Reaves of a fair trial or prevent him from presenting a complete defense. Cf. State v. Moses, 390 S.C. 502, 519, 702 S.E.2d 395, 404 (Ct. App. 2010) ("The defense asserts the tape 'would most likely' have allowed it to identify witnesses who *may reasonably* have presented favorable evidence or evidence which could have lead the defense to impeachment evidence. Standing alone, this assertion is insufficient.").

Unquestionably, the investigation into Reaves' case was not conducted in an ideal or flawless manner. However, like all criminal defendants, Reaves was not entitled to a perfect investigation or a perfect trial and, instead, was only entitled to receive fair ones. See State v. Greene, 255 S.C. 548, 558, 180 S.E.2d 178, 184 (1971) ("[The appellant] was not entitled to a perfect trial, only a fair one."); see also Patterson v. New York, 432

[6] In his appellate brief, Reaves contends McGill, one of the witnesses who allegedly prepared a written statement on the night of the shooting, admitted on cross-examination "that the testimony he gave was not consistent with the subsequent story he later told." (Pet. Br. p. 5). However, contrary to Reaves' contention, McGill stated during trial his testimony was entirely consistent with his alleged written statement, his account of the incident had never changed, and any suggestion his previous statement "was not quite consistent" with his testimony was incorrect. (R. p. 302; p. 304).

U.S. 197, 208 (1977) ("Due process does not require that every conceivable step be taken, at whatever cost, to eliminate the possibility of convicting an innocent person."); see generally Baker v. McCollan, 443 U.S. 137, 146 (1979) (instructing law enforcement officers are not required to perform entirely error-free investigations). Despite the fact evidence was lost and unaccounted-for in Reaves' case, that mistake did not deprive Reaves of a fair trial under the circumstances, and the loss of the evidence, which did not possess any apparent exculpatory value, was ultimately used to Reaves' advantage as the jury was instructed it could infer the lost evidence was adverse to the State's case. Cf. Youngblood, 488 U.S. at 59-60 (Stevens, J., concurring) ("[A]lthough it is not possible to know whether the lost evidence would have revealed any relevant information, it is unlikely that the defendant was prejudiced by the State's omission. In examining witnesses and in her summation, defense counsel impressed upon the jury the fact that the State failed to preserve the evidence and that the State could have conducted tests that might well have exonerated defendant. More significantly, the trial judge instructed the jury: 'If you find that the State has . . . allowed to be destroyed or lost any evidence whose content or quality are in issue, you may infer that the true fact is against the State's interest.' As a result, the uncertainty as to what the evidence might have proved was turned to the defendant's advantage." (citations to the record omitted)). Because Reaves failed to establish the State destroyed the missing evidence in bad faith or the State destroyed evidence possessing an exculpatory value that was apparent before the evidence was destroyed, he was not entitled to a dismissal of his charges based on the loss of that evidence. See State v. Bland, 399 S.C. 220, 226, 730 S.E.2d 909, 912 (Ct. App. 2012) ("[O]ur holding that Bland failed to demonstrate that the lineup had exculpatory value is sufficient to uphold his convictions[.]"); cf. Hutton, 358 S.C. at 633,

595 S.E.2d at 882 ("While we do not condone the destruction of any statements made by witnesses to the authorities, we consider dismissal of criminal charges a drastic remedy which should rarely be invoked as a sanction for the State's failure to preserve evidence. We still caution the prosecution and law enforcement authorities that the destruction of evidence will be highly scrutinized; however, we cannot find appellant was entitled to a dismissal based on the facts of this case."). Accordingly, the trial judge properly denied Reaves' motion to dismiss the charges, and the Court of Appeals correctly affirmed the trial judge's ruling. Reaves' conviction should be affirmed.

II.

The Court of Appeals correctly affirmed the trial judge's denial of Reaves' motion to dismiss his case based on an alleged speedy trial violation, which was raised for the first time thirty-nine months after his arrest and immediately before his first trial, because the approximately thirty-nine month delay prior to Reaves' first trial and the approximately forty-two month delay before Reaves' re-trial and conviction were not the result of any willfulness or neglect on the part of the State and did not result in any actual prejudice to Reaves.

Reaves contends the Court of Appeals erred in affirming the trial judge's decision to deny Reaves' motion to dismiss the case based on an alleged violation of his right to a speedy trial. In support of that contention, Reaves maintains his constitutional rights were violated due to the length of the delays in bringing his case to trial, the lack of a "good" reason for the delays, the fact he asserted his right to a speedy trial, and the fact evidence was lost during the delays. To the contrary, the thirty-nine month delay before Reaves' case was initially called to trial and the forty-two month delay before Reaves was convicted were somewhat lengthy and unusual, but the delays did not result from any willfulness or neglect on the part of the State. Instead, the delays were necessary and justified for several reasons, including the fact the case was complex and involved highly serious charges, the fact the investigation into the case was still ongoing even at the time of Reaves' trial, and the fact there was a heavy backlog of cases on the docket in Marion County at the time. Furthermore, Reaves failed to meaningfully assert his right to a speedy trial until immediately before his first trial, and Reaves suffered no actual prejudice as a result of the delays. For those reasons, the trial judge did not err in denying Reaves' motion to dismiss his case for an alleged speedy trial violation, and the Court of Appeals properly affirmed the trial judge's ruling. Reaves' conviction should be affirmed.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial[.]" U.S. Const. amend. VI. Several factors must be considered when determining whether a criminal defendant's right to a speedy trial has been violated. State v. Kennedy, 339 S.C. 243, 249, 528 S.E.2d 700, 703-704 (Ct. App. 2000). Those factors include: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his right; and (4) prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 530 (1972). Notably though, none of the four factors is alone necessary or sufficient for a finding of a speedy trial violation. Id. at 533. Instead, "they are related factors and must be considered together with such other circumstances as may be relevant." Id. "In sum, these factors have no talismanic qualities; courts must still engage in a difficult and sensitive balancing process." Id.

When the relevant factors are considered in Reaves' case, it is clear neither the Court of Appeals nor the trial judge erred in finding Reaves' constitutional right to a speedy trial was not violated. Turning to those factors, the delays in the prosecution of Reaves' case resulted from the unique circumstances of the case and not from any intentional actions on the part of the State designed to delay the trial.[7] Specifically, some of the delay in bringing Reaves' case to trial resulted from the fact the possible second shooter involved in the incident still had not been conclusively identified or apprehended, which constituted a legitimate reason for the solicitor to delay bringing Reaves' case to trial. See State v. Pittman, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2007) ("A valid

[7] Notably, in Reaves' case, Reaves was arrested in May of 2007 after law enforcement officers discovered he was involved in the shooting that resulted in Victim's death and he was apprehended in Philadelphia, Pennsylvania. (R. pp. 183-184). Subsequently, the investigation into the incident revealed two shooters might possibly have been involved, which required the officers to continue their investigation and attempt to locate the second shooter. (R. p. 122; p. 385; p. 442). Thereafter, Reaves was indicted in August of 2010, and his case was called for trial in the same month he first asserted his right to a speedy trial. (R. p. 1; p. 112; p. 119; pp. 121-122; pp. 745-746). Then, when his first trial ended in a mistrial, Reaves' case was called for trial a second time at the first available opportunity to do so in November of 2010, and Reaves was convicted approximately forty-two months after his arrest. (R. pp. 121-122).

reason presented by the State may justify an appropriate delay."); see also Kennedy, 339 S.C. at 250-251, 528 S.E.2d at 704-705 (finding the complexity of the case, which required substantial time to investigate and prepare, constituted a legitimate reason for the delay in bringing the case to trial). Additionally, notwithstanding the ongoing nature of the murder investigation, the trial judge noted a portion of the delay associated with Reaves' case resulted from the heavy backlog of cases on the docket in Marion County, which was another legitimate justification for the delay in bringing the case to trial. Cf. State v. Chapman, 289 S.C. 42, 45, 344 S.E.2d 611, 613 (1986) ("A portion of the delay was caused by the normal condition of the docket. . . . The constitutional guarantee of a speedy trial affords protection only against unnecessary or unreasonable delay."). Furthermore, a portion of the delay in bringing Reaves case to trial resulted from the fact Reaves admittedly did not retain the defense attorney who ultimately tried his case until approximately one year after his arrest, and Reaves further contributed to the delay by successfully moving for a mistrial, which led to an additional three-month delay before his case could again be brought to trial. See, e.g., State v. Waites, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (considering Waites' counsel's actions delaying the trial when assessing whether a speedy trial violation occurred). Thus, when considering the reasons for the delays coupled with the unique circumstances of Reaves' case, the delays incurred were excusable and justifiable under the circumstances and were not attributable to any neglect or willfulness on the part of the State. See State v. Smith, 307 S.C. 376, 380, 415 S.E.2d 409, 411 (Ct. App. 1992) (finding the defendant bears the burden of showing a speedy trial delay was due to the neglect and willfulness of the State's prosecution); see also State v. Brazell, 325 S.C. 65, 75, 480 S.E.2d 64, 70 (1997) (recognizing "**delay alone is not dispositive**" (emphasis added)); State v. Dukes, 256 S.C. 218, 223, 182

S.E.2d 286, 288 (1971) ("The delay must be attributable to the State before the appellants can complain."); cf. State v. Evans, 386 S.C. 418, 425-426, 688 S.E.2d 583, 587 (Ct. App. 2009) (finding no error in the denial of a motion to dismiss based on an alleged speedy trial violation where the delay prior to trial was approximately twelve years).

Notwithstanding the length of the delays and the reasons for the delays, Reaves also failed to meaningfully assert his right to a speedy trial because he waited approximately thirty-nine months before he first asserted the right. Cf. Waites, 270 S.C. at 109, 240 S.E.2d at 653 ("We think it significant that Waites, represented by counsel, waited approximately twenty-eight months before claiming he had been denied his constitutional right to a speedy trial."). Notably, during trial, Reaves acknowledged he did not assert his right to a speedy trial until immediately before his first trial, which was thirty-nine months after his arrest, and conceded he promptly received a trial after first raising the issue. Thus, although Reaves eventually challenged the length of the delays in bringing his case to trial, he waited over three years to do so for the first time and in no way sought a speedy trial prior to that point. See State v. Langford, 400 S.C. 421, 440, 735 S.E.2d 471, 481 (2012) (recognizing delay is not an uncommon defense tactic). Therefore, because Reaves failed to meaningfully assert his right to a speedy trial, the trial judge did not err in denying his speedy trial motion. See Barker, 407 U.S. at 531-532 ("The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right. We emphasize that **failure to assert the right will make it difficult for a defendant to prove that he was denied a speedy trial.**" (emphasis added)).

Finally, and most significantly, Reaves failed to articulate any actual prejudice suffered as a result of the somewhat lengthy delays in bringing his case to trial. See, e.g.,

State v. Cooper, 386 S.C. 210, 218, 687 S.E.2d 62, 66 (Ct. App. 2009) (characterizing prejudice to the defendant as the most important factor in an analysis of whether a speedy trial violation occurred). Notably, the only prejudice Reaves contended he suffered as a result of the delays was evidence – such as the victim's clothing and the alleged statements of several witnesses – was lost prior to trial. However, no evidence or testimony was presented during trial suggesting the missing evidence was lost as a result of the delays in bringing Reaves' case to trial. Cf. Kennedy, 339 S.C. at 250, 528 S.E.2d at 104 ("[T]here is nothing to suggest the delay caused the witnesses to become unavailable."). Instead, the testimony presented during Reaves' trial established the evidence could not be located because it was simply lost – and, in some cases, may have never existed – and not due to the passage of any period of time. Thus, the State's failure to call Reaves' case for trial at any earlier point in time had no impact on whether the evidence was lost or would have been available for trial and did not result in any other articulated prejudice to Reaves. Cf. Langford, 400 S.C. at 446, 735 S.E.2d at 484 ("[H]e cannot point to any evidence of anxiety caused by the stigma of being accused of these crimes."). Furthermore, the loss of the evidence, which may have been inculpatory and detrimental to Reaves' case, was beneficial to Reaves by serving as a disadvantage to the State. See State v. Robinson, 335 S.C. 620, 626, 518 S.E.2d 269, 272 (Ct. App. 1999) ("[L]ost witnesses and documents are also disadvantages that hamper the State.").

Thus, when considering the circumstances of Reaves' case in relation to the relevant Barker factors, Reaves failed to meet his burden of establishing he was denied his right to a speedy trial. See Dukes, 256 S.C. at 222, 182 S.E.2d at 288 ("The burden was on the appellants, who assert that they were denied their constitutional right to a speedy trial, to show that the delay was due to the neglect and willfulness of the State's

prosecution."). As a result, the trial judge did not abuse his discretion in denying Reaves' motion to dismiss his case based on alleged violation of his right to a speedy trial, and the Court of Appeals correctly affirmed the trial judge's ruling. See Brazell, 325 S.C. at 76, 480 S.E.2d at 70-71 ("Although the delay was lengthy and the justification was unsatisfactory, Brazell's right to a speedy trial was not denied when one balances the Barker factors. The long delay was negated by the lack of prejudice to the defense. There is no evidence that the delay was willful or intentional."); Cooper, 386 S.C. at 217-218, 687 S.E.2d at 66-67 (affirming the denial of Cooper's speedy trial motion where the delay in bringing the case to trial was at least forty-four months); Robinson, 335 S.C. at 626-267, 518 S.E.2d at 273 (finding no speedy trial violation after a five-year delay where Robinson's case was tried within a year of his first formal motion to dismiss, the State presented adequate justification for the delay, and Robinson presented no evidence of actual prejudice); see also Langford, 400 S.C. at 442, 735 S.E.2d at 482 ("A court's decision on whether to dismiss on speedy trial grounds is reviewed for an abuse of discretion."). Accordingly, Reaves' conviction should be affirmed.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals and the judgment and conviction of the trial court should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

September 29, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Marion County
Honorable William H. Seals, Jr., Circuit Court Judge
Appellate Case No. 2014-000813

THE STATE,

Respondent,

vs.

SHAWN REAVES,

Petitioner.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Angela S. Bennett, certify that I have served the within Brief of Respondent on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify that all parties required by Rule to be served have been served. This 29th day of September, 2014.



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Shawn Reaves, Petitioner.

Appellate Case No. 2014-000813

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Marion County
William H. Seals, Jr., Circuit Court Judge

Opinion No. 27569
Heard May 6, 2015 – Filed September 2, 2015

FILED
SEP 2 2015

AFFIRMED

Appellate Defender LaNelle C. DuRant, of Columbia, for Petitioner.

Attorney General Alan M. Wilson and Assistant Attorney General Mark R. Farthing, both of Columbia, for Respondent.

JUSTICE HEARN: Shawn Reaves was convicted of voluntary manslaughter after the shooting death of Keshawn Applewhite. He now argues that deficiencies in the police investigation—including the loss of potentially

exculpatory evidence and the failure to ascertain the identity of a second shooter—deprived him of a fair trial, and delays occasioned by the State's faulty investigation deprived him of the right to a speedy trial. Reaves asks the indictment be dismissed. We disagree and therefore affirm.

FACTUAL/PROCEDURAL HISTORY

Police responded to a call about a fight in progress in Marion. On their way to the scene, the officers were notified that shots had been fired. When they arrived, officers found Applewhite slumped inside the rear passenger seat of a white Crown Victoria with apparent gunshot wounds. Applewhite was transported to the hospital, but later died as a result of his injuries.

An autopsy revealed that Applewhite had been shot five times. Three of the bullets passed through his body. Another bullet entered and remained lodged in Applewhite's shoulder. The fifth bullet, which was determined to be the fatal one, entered Applewhite's upper back, struck his lung, aorta, and liver, and ultimately stopped in his colon. A South Carolina Law Enforcement Division (SLED) analyst determined the fatal bullet was a .38 or .357 caliber likely fired from a revolver, and the shot lodged in his shoulder was a 9mm caliber likely fired from a semiautomatic pistol. Accordingly, the analyst concluded the two shots were fired from different guns.

As the police investigation progressed, witnesses identified sixteen-year-old Reaves as one of the shooters. Police obtained a warrant for Reaves' arrest, and he was apprehended in Philadelphia in May of 2007, where he had fled after the shooting. Reaves was transported back to South Carolina and charged with murder and assault and battery with intent to kill. After more than three years had passed while incarcerated, Reaves made a speedy trial motion in August of 2010. Reaves' case was called for trial later that same month.

During the first day of Reaves' trial, an eyewitness to the shooting, Jackie McGill, and multiple police officers testified. After the jury was excused for the day, defense counsel had the opportunity to review a number of documents in the investigator's file which were previously unknown to either party. Among these documents was a signed statement from a hearsay witness saying that Jeremy Vereen, not Reaves, was the shooter who fired the fatal bullet. Also among the materials was a handwritten note from the lead investigator in the case indicating that Vereen may have been the second shooter. Reaves moved for a mistrial based

on the possible exculpatory value the documents presented, and because he had not been provided them pursuant to his request for disclosure under Rule 5, SCRCrimP. The State agreed a mistrial was appropriate. The trial judge granted a mistrial.

Prior to his second trial, Reaves moved for dismissal of the indictment on due process grounds. Reaves also made a motion to dismiss the case because his right to a speedy trial had been violated. Both motions were denied.

At the second trial, McGill again testified about the shooting. McGill stated he and Applewhite, along with Applewhite's cousin, Karen Graves, and McGill's friend, Travis Lane, drove together to see Applewhite's former girlfriend, Joemilla Wilson. Applewhite and Wilson had been living together in Atlanta as recently as a month before the shooting. However, Wilson was then at the house of her new boyfriend, Deshawn Bellamy.

According to McGill, Applewhite called Wilson out of the house to talk and the two started walking down the street, arguing. They soon started fist-fighting, and Applewhite threw Wilson to the ground. After McGill broke up the fight and put Applewhite back in the car, Wilson came over and spit on Applewhite through an open window. Applewhite then got back out of the car and chased after Wilson, who retreated to the porch of the house. Applewhite followed, but was intercepted by Reaves, who met him at the bottom of the porch steps. It was at this point that Reaves shot Applewhite.

McGill's testimony was corroborated by Wilson, who stated she saw Reaves fire a revolver at Applewhite. Additionally, the initial lead investigator in the case, Captain Jim Gray, testified to his investigation of the shooting and the second lead investigator, Lieutenant Farmer Blue, who took over after Captain Gray became ill, testified about his identification of Reaves as the shooter. This was Lt. Blue's first murder investigation, and he conceded "there would have been a lot of other things I would have done different (sic) in the case."

Over the course of the trial, it became clear there were serious problems with the investigation into Applewhite's death. The crime scene had not been properly sealed, and the crime scene log of people entering and exiting the area was not

accurately maintained.[1] A number of pieces of physical evidence—including two hats, a credit card bearing the name of William A. Bellamy, three cell phones, and a Bluetooth headset—were collected at the scene but not tested. Three gold chains, which Wilson testified were snatched off Reaves' neck by Applewhite moments before the shooting, were collected at the scene but were missing at the time of trial. Further, Applewhite's clothing, which was collected by police from the hospital, was also lost or destroyed. Additionally, five witness statements, written by McGill, Lane, Graves, and two other people, were purportedly taken by police officers at the scene that night but were unaccounted for at trial.

The problems with the investigation coincided with three main discrepancies in the facts of the case. First, although there was information Vereen was involved in Applewhite's death, the second shooter had not been definitively identified at the time of trial.[2] Second, both McGill and Lane were shown a photo lineup with Reaves in it, and despite testifying they had known Reaves for years, they both selected another person named "BT" as the shooter. Third, the inconsistency between expert testimony that the fatal shot was to Applewhite's upper back and witness testimony placing Applewhite in front of Reaves during the shooting was never explained.

Reaves renewed his motions to dismiss regarding his right to a fair trial and right to a speedy trial after the State's case and again at the close of all the evidence. Although the trial court expressed concern over the investigation of the shooting, it denied both motions.[3]

Reaves was ultimately convicted of voluntary manslaughter. He was sentenced to twenty-five years' imprisonment. Reaves appealed his conviction and sentence, claiming he was deprived of the right to a fair trial as a result of the lost evidence as well as his right to a speedy trial. The court of appeals affirmed in an

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[1] Marion's longtime mayor, Bobby Gerald, was walking around the scene after the shooting for unknown reasons, although it was determined he was *not* investigating the shooting.

[2] Lt. Blue testified that although he had information that Vereen was the second shooter, he had not talked to Vereen regarding the shooting in the three-and-a-half years or so between the incident and trial.

[3] At one point, the same trial judge, who had earlier granted Reaves' motion for a mistrial, stated: "obviously we've got a messed up trial based on that bad investigation."

unpublished opinion. *State v. Reaves*, Op. No. 2014-UP-057 (S.C. Ct. App. filed February 12, 2014). Reaves filed a petition for certiorari, which this Court granted.

ISSUES PRESENTED

I. Did the court of appeals err in affirming the trial court's denial of Reaves' motion to dismiss the indictment because his right to a fair trial had been violated?

II. Did the court of appeals err in affirming the trial court's denial of Reaves' motion to dismiss the case because his right to a speedy trial had been violated?

LAW/ANALYSIS

I. FAIR TRIAL

Reaves argues the court of appeals erred in affirming the trial judge's denial of his motion to dismiss the indictment because the evidence lost by police in the investigation of his case effectively deprived him of a fair trial. We disagree.

The Due Process Clause of the Fourteenth Amendment to the United States Constitution guarantees a defendant's fundamental right to a fair trial. U.S. Const. amend XIV. Where a defendant's right to a fair trial due to missing or destroyed evidence is at issue, the applicable standard is derived from the United States Supreme Court's opinion in *Arizona v. Youngblood*, 488 U.S. 51 (1988).

In *Youngblood*, a ten-year-old boy was abducted and brutally sodomized by a middle-aged man. *Id.* at 52. The police obtained a sexual assault kit from the hospital as well as the boy's underwear and shirt. *Id.* at 52–53. However, police did not timely examine the assault kit or refrigerate the boy's clothing; as a result, later tests on the kit and clothing were inconclusive as to the identity of the assailant. *Id.* at 53–54. Nevertheless, the State proceeded to trial based primarily on the boy's photo lineup identification of Larry Youngblood as his attacker. *Id.* at 53. Youngblood's primary defense was that the boy misidentified him as the perpetrator, but he was nevertheless convicted of child molestation, sexual assault, and kidnapping. *Id.* at 53–54. The Arizona Court of Appeals reversed Youngblood's conviction reasoning that the timely performance of tests with properly preserved semen samples may have produced results which could have exonerated him. *Id.* at 54–55.

Examining the question of whether Youngblood's right to a fair trial had been violated, the United States Supreme Court acknowledged that "'[w]henever potentially exculpatory evidence is permanently lost, courts face the treacherous task of divining the import of materials whose contents are unknown and, very often, disputed.'" *Id.* at 57–58 (quoting *California v. Trombetta*, 467 U.S. 479, 486 (1984)). Rejecting an approach which would impose on the State an absolute duty to retain and preserve all potentially exculpatory evidence, the Court instead crafted a standard which focused on police conduct where evidence was lost or destroyed:

> We think that requiring a defendant to show bad faith on the part of the police both limits the extent of the police's obligation to preserve evidence to reasonable bounds and confines it to that class of cases where the interests of justice most clearly require it, *i.e.*, those cases in which the police themselves by their conduct indicate that the evidence could form a basis for exonerating the defendant. We therefore hold that unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.

Id. at 58. Finding no bad faith present in the police's failure to refrigerate the clothing and perform tests on the semen samples, the Court reversed the Arizona Court of Appeal's dismissal of the case. *Id.* at 58–59.[4]

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[4] The Supreme Court in *Youngblood* was divided. Justice Stevens concurred in the result because although he agreed the defendant's right to a fair trial was not violated, he concluded "there may well be cases in which the defendant is unable to prove that the State acted in bad faith but in which the loss or destruction of evidence is nonetheless so critical to the defense as to make a criminal trial fundamentally unfair." *Id.* at 61 (Stevens, J. concurring). Justice Blackmun wrote for three dissenters, noting "the Constitution requires that criminal defendants be provided with a fair trial, not merely a 'good faith' try at a fair trial," and further that "[r]egardless of intent or lack thereof, police action that results in a defendant's receiving an unfair trial constitutes a deprivation of due process." *Id.* at 61, 62 (Blackmun, J. dissenting). The Supreme Court recently reiterated the *Youngblood* standard in *Illinois v. Fisher*, 540 U.S. 544 (2004).

Ironically, Youngblood was later exonerated by DNA evidence. *See* Norman C. Bay, *Old Blood, Bad Blood, and Youngblood: Due Process, Lost Evidence, and the*

A number of state courts have declined to follow the bad faith standard established in *Youngblood* based on state law grounds. *See, e.g., State v. Ferguson*, 2 S.W.3d 912, 917 (Tenn. 1999) ("Because we deem the preservation of the defendant's fundamental right to a fair trial to be a paramount consideration here, we join today those jurisdictions which have rejected the *Youngblood* analysis in its pure form."); *State v. Osakalumi*, 461 S.E.2d 504, 512 (W. Va. 1995) ("As a matter of state constitutional law, we find that fundamental fairness requires this Court to evaluate the State's failure to preserve potentially exculpatory evidence in the context of the entire record."); *Commonwealth v. Henderson*, 582 N.E.2d 496, 497 (Mass. 1991) ("The rule under the due process provisions of the Massachusetts Constitution is stricter than that stated in the *Youngblood* opinion."). However, Reaves does not ask this Court to do so here; his argument rests solely on the Fourteenth Amendment to the United States Constitution.

Specifically, Reaves argues the police's actions in failing to preserve evidence were so egregious as to constitute misconduct and bad faith. While he does not argue the police acted intentionally, he asserts the police's negligent and reckless conduct amounted to bad faith. However, Reaves cites no authority to support this proposition, and we found only a single federal district court case which has adopted this approach. *See United States v. Elliott*, 83 F. Supp. 2d 637, 647–48 (E.D. Va. 1999) ("[W]here the law enforcement officer acted in a manner which was either contrary to applicable policies and the common sense assessments of evidence reasonably to be expected of law enforcement officers or was so unmindful of both as to constitute the reckless disregard of both, there is a showing of objective bad faith sufficient to establish the bad faith requirement of the *Trombetta/Youngblood* test."). The weight of federal authority seems to reject this premise and has adopted the view that the extraordinary remedy of dismissal should only be granted when the authorities act intentionally and in bad faith. *See, e.g., United States v. Tyerman*, 701 F.3d 552, 560 (8th Cir. 2012) ("[The defendant] argues that a reckless destruction equates to bad faith. This court

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Limits of Bad Faith, 86 Wash. U. L. Rev. 241, 276 (2008). After his parole and rearrest for failing to register as a sex offender, Youngblood's attorney requested that police test a rectal swab taken from the victim with new, more sophisticated technology. *Id.* Once conducted, the DNA profile did not match Youngblood; instead, it showed that Walter Calvin Cruise, who had two prior child sex abuse convictions in Texas, committed the assault. *Id.* at 277. Youngblood was released from prison and his conviction was vacated. *Id.* at 276.

rejects that argument."); *United States v. Vera*, 61 Fed. Appx. 330, 331 (9th Cir. 2003) ("An officer does not act in bad faith unless he or she acts with the purpose of depriving the defendant of the potentially exculpatory evidence. Although the property officer may have acted negligently or even recklessly in destroying the chemical samples, there is no evidence that the officer acted in bad faith by deliberately destroying the evidence to deprive [the defendant] of access to relevant evidence." (internal citations omitted)).

Even if we were to accept the theoretical premise of Reaves' argument—that recklessness can equate to bad faith—we disagree the police were reckless in not preserving evidence in this case. Although the record is replete with indications the police investigation was deeply flawed, the record also contains no indication these flaws were the product of more than mere negligence. *See State v. Cheeseboro*, 346 S.C. 526, 539, 552 S.E.2d 300, 307 (2001) (declining to dismiss the indictment where police department negligently destroyed gun used to commit murder before the defendant was given the opportunity to run tests on it).

Further, to the extent Reaves was disadvantaged by the State's loss of evidence, Reaves' attorney was allowed to forcefully cross-examine the police officers on the deficiencies in their investigation. Additionally, the trial court instructed the jury "[w]hen evidence is lost or destroyed by a party you may infer that the evidence which was lost or destroyed by that party would have been adverse to that party."[5]

Accordingly, although we acknowledge there are deeply troubling aspects of the investigation in this case, the errors made by the police do not indicate bad

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[5] Although we note a similar jury charge was issued by the trial court in *Youngblood*, the propriety of this charge under state evidence law is not before the Court. Heretofore, an adverse inference charge based on missing evidence, sometimes referred to as a spoliation of evidence charge, has been limited to civil cases in South Carolina. *See Stokes v. Spartanburg Reg'l Med. Ctr.*, 368 S.C. 515, 522, 629 S.E.2d 675, 679 (Ct. App. 2006) (holding spoliation instruction was warranted in medical malpractice action where two pieces of evidence initially collected by hospital were missing); Kevin R. Eberle, *Spoliation in South Carolina*, 19 S.C. Law. 26 (2007) ("The courts of South Carolina have long recognized that a party is entitled to favorable presumptions [in civil cases] about the contents of missing evidence when an opponent is responsible for the destruction of evidence that might otherwise be expected to have been relevant.").

faith as is required to dismiss an indictment under the federal constitutional test. Therefore, we affirm the court of appeals' decision to affirm the trial judge's denial of Reaves' motion to dismiss.

II. SPEEDY TRIAL

Reaves argues the court of appeals erred by affirming the trial judge's denial of his motion to dismiss the indictment because his right to a speedy trial had been violated. We disagree.

A defendant's right to a speedy trial is derived from the Sixth Amendment to the United States Constitution which states that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial." U.S. Const. amend VI. The United States Supreme Court has deemed this right as different from any other right enumerated in the Constitution for the protection of the accused due to the reality that "[d]elay is not an uncommon defense tactic" and "deprivation of the right to speedy trial does not per se prejudice the accused's ability to defend himself." *Barker v. Wingo*, 407 U.S. 514, 521 (1972)).

The United States Supreme Court has identified four factors to consider in determining whether a criminal defendant's right to a speedy trial has been violated: (1) length of the delay; (2) reason for the delay; (3) the defendant's assertion of the right; and (4) prejudice to the defendant. *Barker*, 407 U.S. at 530. "[T]he determination that a defendant has been deprived of this right is not based on the passage of a specific period of time, but instead is analyzed in terms of the circumstances of each case, balancing the conduct of the prosecution and the defense." *State v. Pittman*, 373 S.C. 527, 549, 647 S.E.2d 144, 155 (2008) (citing *Barker*, 407 U.S. at 530).

The length of the delay serves as a trigger mechanism for the analysis of the other three factors. *Barker*, 407 U.S. at 530. The delay begins to be measured when a defendant is indicted, arrested, or otherwise accused. *State v. Langford*, 400 S.C. 421, 442, 735 S.E.2d 471, 482 (2012) (citing *United States v. MacDonald*, 456 U.S. 1, 6 (1982)). Until there is some delay which is presumptively prejudicial to the defendant, there is no necessity to examine the other factors. *Barker*, 407 U.S. at 530. However, there is no length of delay which is per se unconstitutional; the right to a speedy trial may be violated where the delay is arbitrary or unreasonable. *Pittman*, 373 S.C. at 549, 647 S.E.2d at 155.

Closely related to the length of the delay is the reason the State advances to justify the delay. *Barker*, 407 U.S. at 531. A deliberate effort by the State to delay the trial to injure the defense should be weighted heavily against it. *Id.* Neutral reasons, such as overcrowded dockets or negligence, should be weighted less heavily; however, the State is still ultimately responsible for bringing a criminal defendant to trial. *Langford*, 400 S.C. at 443, 735 S.E.2d at 483 (citing *Pittman*, 373 S.C. at 549, 647 S.E.2d at 155). Delays caused by the defendant should weigh against him. *Langford*, 400 S.C. at 443, 735 S.E.2d at 483.

The third factor—assertion of the right—recognizes that while a criminal defendant has no responsibility to bring himself to trial, the extent to which he exercises his right to a speedy trial is significant. *Barker*, 407 U.S. at 527–28. This consideration prevents a criminal defendant from strategically acquiescing in a delay which works to his advantage, then asking the case be dismissed at the last moment once it is called for trial. Accordingly, "the defendant's failure to assert the right, although not conclusive, makes it more difficult to show that the right was violated." *Pittman*, 373 S.C. at 550, 647 S.E.2d at 155.

The final factor—prejudice to the defendant—requires a reviewing court to analyze the three different types of prejudice the speedy trial right seeks to prevent: (1) oppressive pretrial incarceration; (2) anxiety and concern of the accused; and (3) the possibility the defense will be impaired. *Barker*, 407 U.S. at 532. The most serious of these interests is the last one because the inability of the defense to prepare its case—due to the death or disappearance of a witness, for example—cuts to the heart of the fairness inherent in the system. *Id.*

Reaves' speedy trial clock began to run when he was apprehended in May of 2007 and ran at least until his first trial in August of 2010, nearly thirty-nine months later. This length of time is presumptively prejudicial and triggers the remaining *Barker* inquiry. *See Pittman*, 373 S.C. at 551, 647 S.E.2d at 156 (finding delay of three years and two months was sufficient to trigger analysis of other factors); *State v. Waites*, 270 S.C. 104, 108, 240 S.E.2d 651, 653 (1978) (holding delay of two years and four months lengthy enough to warrant review of other factors).

The State asserts that the lengthy delay was due to a heavy backlog of cases in Marion County and the complexities involved in the investigation of the case. However, neither of these are compelling reasons, especially in light of how little

had been done by the police to investigate the identity of a possible second shooter. Accordingly, this factor weighs against the State. *See State v. Brazell*, 325 S.C. 65, 76, 480 S.E.2d 64, 70 (1997) (finding the State could not justify three year and five month delay where it claimed complexities in the case and upheaval in the solicitor's office caused the delay).

Turning to the third factor, Reaves did not assert his right to a speedy trial until over three years after his arrest. Significantly, his case was called for trial later that same month; the additional three-month delay was due to the trial judge's granting of Reaves' motion for a mistrial. Therefore, while we refuse to hold Reaves waived his right to a fair trial by acquiescing in the lengthy delay, his failure to assert his right to a speedy trial weighs strongly against him. *See id.* at 76, 480 S.E.2d at 71 (finding no speedy trial violation where trial was set for two months after defendant first moved for a speedy trial).

Finally, although we are cautious to not diminish the injurious effect of his lengthy incarceration prior to trial, we find Reaves has not shown the delay caused any particularized prejudice to his defense. He argues that the evidence missing in this case was lost by police during the delay, thus hampering the preparation of his defense. However, the record does not support this assertion. While it is not clear precisely when most of the evidence was lost, it is most likely that it happened shortly after Lt. Blue took over from Captain Gray as lead investigator, which was only two days after the shooting.

Further, there is no indication the lost evidence would have helped Reaves' case rather than hurt it; therefore, even assuming the evidence *was* lost during the delay, the record does not show how this would have been prejudicial to Reaves' defense. *See State v. Foster*, 260 S.C. 511, 515, 197 S.E.2d 280, 282 (1973) (finding no speedy trial violation after seven-year delay in bringing defendants to trial where the record was void of even minimal prejudice). Moreover, there is no question that Reaves was able to use the State's bungled investigation to his advantage by subjecting the police's actions to the crucible of cross-examination and by securing the spoliation of evidence charge at trial.

While this is an extremely close case, a trial court's decision as to whether to dismiss an indictment based on speedy trial grounds is reviewed for an abuse of discretion. *Langford*, 400 S.C. at 442, 735 S.E.2d at 482. Despite our disappointment in the manner in which the criminal justice system operated in this case, we cannot say the able trial judge abused his discretion in denying Reaves'

request to dismiss the case based on the violation of his right to a speedy trial. Although there was a significant delay between Reaves' arrest and his convictions and the State puts forth no compelling reason for the delay, Reaves cannot show he timely asserted his right to a speedy trial—or that his assertion when made was ignored—and cannot show that he suffered particularized prejudice as the result of the delay.

Nonetheless, we express our deep concern with a system which kept a sixteen-year-old offender in pretrial incarceration for over three years. This is precisely the type of prosecutorial discretion we sought to limit in our decision of *Langford*, which came too late to assist Reaves in timely being brought to trial. We fully expect that *Langford* will now prevent similar dilatory practices, and note that once this case was brought to the attention of the trial court through a speedy trial motion, it was expeditiously brought to trial.

CONCLUSION

For the foregoing reasons, we hold the court of appeals did not err in affirming the trial judge's denial of Reaves' motions to dismiss the indictment regarding his right to a fair trial or his right to a speedy trial. Accordingly, we affirm.

TOAL, C.J., BEATTY and KITTREDGE, JJ., concur. PLEICONES, J., concurring in a separate opinion.

JUSTICE PLEICONES: I concur with the majority's decision to affirm the Court of Appeals' opinion upholding petitioner's conviction and sentence. I write separately to emphasize the standard under which petitioner's fair trial claim should be analyzed. Further, although I find the trial judge did not abuse his discretion in denying petitioner's motion for a speedy trial, I concur with the majority's opinion in result only.

In South Carolina, to establish deprivation of a fair trial due to the destruction or loss of evidence, a defendant must show: (1) the State destroyed the evidence in bad faith; or (2) the evidence possessed an exculpatory value apparent before the evidence was destroyed, and the defendant cannot obtain other evidence of comparable value by other means. *State v. Cheeseboro*, 346 S.C. 526, 538–39, 552 S.E.2d 300, 307 (2001). While I understand the majority's exclusive reliance on *Arizona v. Youngblood*, 488 U.S. 51 (1988), is likely due to petitioner's failure to preserve for appellate review his argument under the second prong of *Cheeseboro*, in my view, it is worth noting that the analysis in South Carolina is more expansive than *Youngblood*, and includes a second prong as articulated in *Cheeseboro*.

I concur in the majority's decision to affirm the Court of Appeals.

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

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September 18, 2015

The Honorable Sherry R. Rhodes
PO Box 295
Marion SC 29571-0295

REMITTITUR

Re: The State v. Shawn Reaves
Lower Court Case No. 2010GS3300375
Appellate Case No. 2014-000813

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court along with the earlier decision of the South Carolina Court of Appeals is enclosed.

Very truly yours,

Daniel E. Shearouse

CLERK

RECEIVED
SEP 18 2015
SC OFFICE OF APPELLATE DEFENSE

cc: LaNelle Cantey DuRant, Esquire
Mark Reynolds Farthing, Esquire

No. _____

In the Supreme Court of the United States

SHAWN REAVES, Petitioner,

v.

STATE OF SOUTH CAROLINA, Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SOUTH CAROLINA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Whether the South Carolina Supreme Court erred in finding that Reaves was not deprived of a fair trial pursuant to the Fourteenth Amendment due to the destruction or loss of evidence which was so reckless that it rose to the level of bad faith pursuant to Arizona v. Youngblood, 488 U.S. 51 (1988).

Whether the South Carolina Supreme Court erred in finding that Reaves's case should not be dismissed due to a violation of his Sixth Amendment right to a speedy trial when he remained incarcerated in the local detention center for three years beginning at the age of 16.

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceeding in the South Carolina Supreme Court were Petitioner Shawn Reaves and the Respondent State of South Carolina.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Shawn Reaves asks this Court to issue a writ of certiorari to review the decision of the South Carolina Supreme Court in this case.

CITATION TO OPINION BELOW

The South Carolina Supreme Court's opinion is reported: The State v. Shawn Reaves, 777 S.E.2d 213 (Filed September 2, 2015). The opinion is reproduced in the Appendix A to this petition at pages App. A1 - 13. The opinion has the due process analysis and the speedy trial analysis applied to Petitioner's case.

JURISDICTION

The judgment of the South Carolina Supreme Court was entered on September 2, 2015. App. A1. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1257(a), Petitioner having asserted below and asserting herein deprivation of rights secured by the United States Constitution.

CONSTITUTIONAL PROVISIONS INVOLVED

> Amendment XIV: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
>
> Amendment VI: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; be confronted with the witnesses against him; and to have the compulsory process for obtaining witnesses in his favor.

STATEMENT OF THE CASE

The Marion County Grand Jury indicted Shawn Reaves on the charges of murder and assault and battery with intent to kill (ABWIK) (Indictment 2010-GS-33-0375). On August 24, 2010 Reaves proceeded to trial before the Honorable William H. Seals and a jury. Reaves was represented by Thurmond Brooker, and the state was represented by H. Steven Deberry. The judge declared a mistrial based on the state failing to produce evidence to Reaves. R. 467, ll. 20. On November 8, 2010, Reaves proceeded to trial again on the same charges before the Honorable William H. Seals and a jury. Reaves was again represented by Thurmond Brooker, and the state was represented by E.L. Clements, III, Solicitor; Steven Deberry; and Fitzlee McEachin. The jury returned a verdict of not guilty on the murder and ABWIK charges, but found Reaves guilty of voluntary manslaughter. Judge Seals sentenced Reaves to twenty-five years incarceration. Reaves appealed. The Court of Appeals affirmed Reaves' conviction and sentence on February 12, 2014. State v. Reaves, 2014-UP-057 (Ct. App. filed February 12, 2014). App. B1. Appellate counsel filed a petition for rehearing which the Court of Appeals denied on March 21, 2014. A petition for a writ of certiorari was filed June 23, 2014 which the Supreme Court granted on August 22, 2014. Oral argument was heard May 6, 2015. The South Carolina Supreme Court affirmed Reaves' conviction on September 2, 2015. App. A1

RELEVANT FACTS

Jackie McGill had been friends with Keshawn Applewhite since childhood. R. 266, ll. 1 – 25. On May 13, 2010, Applewhite returned to Marion to visit his mother for Mother's Day as he was then living in Atlanta. R. 267, ll. 1 – 25. Applewhite asked McGill to meet him at the local SOV Game Room. Applewhite's cousin, Karen Graves, was with him. They met Travis Lane at the

Game Room, and the four of them rode to Brandon Deshawn Bellamy's house. R. 268, ll. 1 – 24; R. 269 ll. 1 – 25; R. 270, ll. 1 – 9; R. 273, ll. 12 – 25; R. 274, ll. 1 – 25; R. 275, ll. 1.

Joemilla Wilson and the deceased, Keshawn Applewhite, had been involved in a romantic relationship until one month before this shooting incident on May 13, 2010. They were living together in Atlanta until she moved back to Marion. R. 554, ll. 1 – 25; R. 555 ll. 1 – 20; R. 571 ll. 3 – 21. She started seeing Deshawn Bellamy, and admitted she had been intimate with him. Applewhite was upset that she had already started seeing someone else. Wilson was concerned for her safety and Bellamy's when she learned that Applewhite was in town on May 13, 2010. R. 568, ll. 1 – 25; R. 569, ll. 1 – 25; R. 570, ll. 1 – 25; R. 571, ll. 1 – 25; R. 572, ll. 1 – 3.

When Applewhite, McGill, Travis Lane, and Karen Graves arrived at Bellamy's house, there were several people in the yard. R. 275, ll. 19 – 25. Applewhite got out of the car, and asked to speak to Wilson who was inside the house. She came out to talk to him, and they started walking down the street together. R. 276, ll. 1 – 25.

Wilson and Applewhite walked down the street and started arguing. Then they started fighting mostly in front of the house. R. 557, ll. 1 – 24. Applewhite threw her into a mud puddle, and she hit her head on a car. She got up and they continued to fight. She then decided to go back to the house. R. 578, ll. 7 – 25; R. 579, ll. 1 – 7.

McGill tried to break up the fight because Applewhite and Wilson were fighting hard. R. 277, ll. 1 – 25; R. 278, ll. 1 – 25. He got Applewhite and put him in the front seat of their car. Wilson then walked up and spit on Applewhite. R. 279, ll. 1 – 25; R. 280, ll. 1 – 25.

As Wilson walked back to the house, she could hear Applewhite coming towards her. As she walked up the steps, Petitioner Shawn Reaves, whom she knew, was standing on the porch. Applewhite pushed Reaves and snatched Reaves' chains off. Reaves then pulled a gun, and started

shooting. Wilson saw Applewhite fall forward. R. 559, ll. 19 – 25; R. 560, ll. 1 – 25.

The police took Wilson to the police station that night where she wrote a statement, and the police took pictures of her bruised face. R. 564, ll. 1 – 23.

The forensic pathologist testified that the cause of death of Applewhite was homicide. R. 372, ll. 15 – 23. She explained that the body had five gunshot wounds but only two bullets were lodged in the body. R. 365, ll. 15 – 25; R. 366, ll. 1 – 25; R. 367, ll. 1 – 11.

Dan Defreese, the SLED[1] expert in the field of firearms, testified that the two bullets removed from Applewhite's body were from two different guns. One bullet was from a .38 caliber revolver or 357, and the second bullet was from a 9-millimeter Luger. R. 378, ll. 1 – 14; R. 379, ll. 1 – 25; R. 382, ll. 1 – 25; R. 383, ll. 1 – 25; R. 384, ll 1 – 25; R. 385, ll. 1 – 25; R. 386, ll. 1 – 8.

Police Lieutenant Walter Davis testified that he went to Philadelphia and brought Reaves back to South Carolina on a warrant for murder. Reaves was only sixteen years old at the time of the incident. R. 182, ll. 6 – 25; R. 183, ll. 1 – 25; R. 184, ll. 1 – 5; R. 696, ll. 4 – 25.

McGill testified that he wrote a statement that night immediately after the incident on the back of the police car and gave it to Lt. Davis. R. 301, ll. 1 – 25; R. 302, ll. 1 – 20; R. 314, ll. 1 – 16.

On cross-examination, McGill admitted that the testimony he gave was not consistent with the story he told later. R. 304, ll. 1 – 14. When defense counsel showed McGill the statement from Lt. Davis's file that McGill allegedly gave, McGill admitted that was not the statement he wrote on the night of the incident on the back of the police car. R. 315, ll. 11 – 25; R. 316, ll. 1 – 19.

McGill testified that Travis Lane and Karen Graves also wrote statements on the back of the police car right after the incident. R. 314, ll. 6 – 25; R. 315, ll. 1 – 12.

Lt. Davis testified that he talked to McGill and Lane the night of the incident. R. 160, ll. 1 –

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[1] South Carolina Law Enforcement Division (SLED).