

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Darlington County

Honorable Roger E. Henderson, Circuit Court Judge

JOSHUA A. REED,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-000555

APPENDIX

JOANNA K. DELANY
Appellate Defender

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

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

JOHNNY ELLIS JAMES, JR.
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

VOLUME II OF II

RECEIVED

NOV 26 2018

S.C. SUPREME COURT

INDEX

INDEX	i
TRIAL TRANSCRIPT (OCTOBER 21, 2013)	1
<u>ANDERS</u> BRIEF OF APPELLANT (NOVEMBER 13, 2014)	695
<u>ANDERS</u> PRO SE RESPONSE (JANUARY 9, 2015)	710
OPINION NO. 2015-UP-484 (OCTOBER 14, 2015)	713
REMITTITUR (NOVEMBER 13, 2015)	715
APPLICATION FOR POST-CONVICTION RELIEF	717
RETURN AND PARTIAL MOTION TO DISMISS	725
AMENDMENT TO PCR APPLICATION	732
POST-CONVICTION RELIEF HEARING TRANSCRIPT (JANUARY 16, 2018)	735
ORDER OF DISMISSAL	780
INDICTMENTS	793
SENTENCE SHEETS	797

SW - T. ANDERSON - DIRECT

1 suspects.

2 Q And detective -- if I can approach, Your Honor?

3 THE COURT: Yes.

4 BY MR. HOLT:

5 Q I ask you, what order did you interview them in,
6 do you remember?

7 A I believe my first interview was with Josh Reed
8 and then the next one was with Johnathan Reed.

9 Q All right. I show you what's been marked State's
10 Exhibit 15 and ask if you'd just tell me just
11 whether or not you do, if you recognize it?

12 A Yes, sir, I do.

13 Q And did you create it?

14 A Yes, sir.

15 Q And since the last time you viewed it have there
16 been any changes, alterations, or deletions?

17 A No, sir.

18 Q All right.

19 MR. HOLT: Your Honor, at this time the
20 State -- and could you just tell us what it is.

21 THE WITNESS: It's a DVD of the interview
22 I had with Josh Reed.

23 MR. HOLT: All right. And Your Honor, at
24 this time the State would like to move State's
25 Exhibit 15 into evidence.

SW - T. ANDERSON - DIRECT

1 THE COURT: Any objection, Mr. Jones?

2 MR. JONES: Let me make sure ...

3 (Pause.)

4 MR. JONES: No objection from Mr. Joshua
5 Reed.

6 THE COURT: Mr. Swilley?

7 MR. SWILLEY: There is no objection.

8 THE COURT: All right, admitted into
9 evidence State's Number — what was it, Mr. Holt?

10 MR. HOLT: 15.

11 THE COURT: State's Number 15 will be
12 admitted into evidence.

13 (WHEREUPON, State Exhibit No. 15
14 was admitted into evidence.)

15 MR. HOLT: And permission to publish to
16 the jury with Detective Anderson?

17 THE COURT: Permission granted.

18 (State's Exhibit Number 15 was played for the jury.)

19 BY MR. HOLT:

20 Q Sergeant Anderson, I'm gonna show you what's been
21 marked State's Exhibit 8 we just learned about. Did
22 the defendant in the video, was he telling you he
23 had never fired a gun?

24 A Yes, sir.

25 Q And about how many years had he said it'd been

SW - T. ANDERSON - DIRECT

1 since he fired a gun?

2 A A couple of years, two or three years, something
3 like that.

4 Q And did you later collect the blue shirt that he
5 had on in the video?

6 A I didn't collect it. Someone else did, yes, sir,
7 at my direction.

8 Q And what happened to that shirt?

9 A It was sent in to SLED to be analyzed for gunshot
10 residue.

11 Q And what did you find on the shirt?

12 A That there was some type of gunshot residue on
13 the shirt.

14 Q Okay. Why didn't you just take his word for it?
15 He's on the video telling you he didn't do it.

16 A Because I had witnesses at the scene.

17 MR. SWILLEY: Objection, Your Honor.

18 THE COURT: You can't say what the
19 witnesses said. He's answered the question.

20 BY MR. HOLT:

21 Q All right. Who'd you learn was driving, using
22 this?

23 A I had learned that Johnathan was the one driving
24 the truck.

25 Q Okay.

SW - T. ANDERSON - DIRECT

1 MR. HOLT: Permission to approach Your
2 Honor?

3 THE COURT: Yes.

4 BY MR. HOLT:

5 Q Now looking right here, would you stand up using
6 this and show the jury just about where Pride Park
7 is?

8 A Pride Park is right here where the purple/blue
9 is, which is at the intersection of Marion Avenue
10 and South Sixth Street.

11 Q And where are the two stores in question, the
12 Marketplace and Mozingo Liquor?

13 A The grocery store is here where the red balloon
14 is at. The Marketplace is actually at the corner of
15 West Carolina Avenue and Sixth Street. And Mozingo
16 Liquor is halfway between West Carolina and Marlboro
17 Avenue on South Sixth Street, walking distance from
18 each other.

19 Q Now from here to here, about how far is that?

20 A About four-tenths of a mile.

21 Q If you're driving in a car about how long does it
22 take you to get there?

23 A Even if you get stopped by the traffic light it
24 doesn't take more than a minute.

25 Q All right. And the green bubble?

SW - T. ANDERSON - DIRECT

1 A The green bubble is the area of their residence
2 on Lincoln Avenue. It's a dead-end street. It's
3 about four-tenths of a mile from Pride Park.

4 Q And from there to there about how long does it
5 take to get there?

6 A Again, maybe a minute at the most.

7 Q Now did you have -- did you have an opportunity
8 to interview his brother?

9 A Yes, sir, I did.

10 Q And I want to show you what's been marked as
11 State's Exhibit 14 and ask, just yes or no, can you
12 identify that?

13 A Yes, sir.

14 Q And when is the last time you had an opportunity
15 to view it?

16 A Yesterday.

17 Q And since you viewed it do you think there have
18 been any changes, alterations, or deletions made to
19 it?

20 A No, sir.

21 Q All right.

22 MR. HOLT: Your Honor, at this time the
23 State would move State's Exhibit 14 into evidence.

24 THE COURT: Any objection, Mr. Jones?

25 MR. JONES: No, sir.

SW - T. ANDERSON - DIRECT

1 THE COURT: Ms. Swilley?

2 MR. SWILLEY: There is none, Your Honor.

3 THE COURT: Admitted without objection.

4 (WHEREUPON, State Exhibit No. 14
5 was admitted into evidence.)

6 BY MR. HOLT:

7 Q All right. Before we watch that I want to ask
8 you something. You said that you were on the scene,
9 correct?

10 A Yes, sir.

11 Q All right. And you were also there when this was
12 photographed?

13 A Yes, sir, I was.

14 Q And when this was photographed — has this been
15 cleaned in any way?

16 A Not to my knowledge no, sir.

17 Q Okay. When you saw it there that day were there
18 any black marks on it, like rubber had hit it really
19 hard and fast?

20 A I couldn't tell you. Whatever is on there right
21 now is what was on it.

22 Q All right.

23 MR. HOLT: Your Honor, at this time the
24 State would like to publish State's Exhibit 14.

25 THE COURT: Permission granted.

SW - T. ANDERSON - DIRECT

1 (State's Exhibit Number 14 was played for the jury.)

2 BY MR. HOLT:

3 Q Detective Anderson, on the video you're
4 describing the suspects' clothes. Did you see what
5 type of shoes Josh had on in the liquor store?

6 A Yes, sir, it appeared to be some type of house
7 slippers, something with no back to them that ...

8 Q Did you ever find the murder weapon in this case,
9 the revolver used to kill Milton Hunter?

10 A No, sir, we didn't.

11 Q All right. Did you find the clothes that they
12 wore in the video?

13 A The white hoodie with the dollar symbols or
14 whatever dollar sign was never found.

15 Q And the black hoodie that Johnathan had on at the
16 gas station?

17 A Not that I know of, no, sir.

18 Q Okay. Now let's talk about the tire marks at the
19 scene of the crime. Why — just familiar with
20 myself from television, don't people pour plaster in
21 those and send them off to SLED for forensic
22 evaluation? Is that a real life thing, does that
23 happen?

24 A No, sir, it's not like television at all. One
25 analogy I tell people is when they watch CSI and

SW - T. ANDERSON - DIRECT

1 stuff, they have a murder and the CSI people are
2 crawling through a bed and they get their tweezers
3 and they go, ah, ha, I got a hair here. Well, in my
4 bed you're gonna find more than one hair and I don't
5 have any hair. The same with the tire impressions.
6 The ground is so compact there that it wasn't wet
7 where there would have been tire impressions or
8 anything like that so that's a TV thing. It's not
9 realistic. Basically what that is a tire mark it's
10 just on grass where tire was spinning.

11 Q Okay. Now I notice that there was some problems
12 with video times?

13 A Yes, sir.

14 Q Why did you not -- first of all, why did you not
15 have a copy of this tape, hours and hours of video
16 from stores?

17 A It's not common for proprietors to not know how
18 to download their video from their machine on to a
19 main drive which I did take a camcorder, set it up
20 on a tripod, and rewind their video; and because
21 they don't have to download it they also don't know
22 how to change the time every six months when we go
23 from daylight savings time and stuff like that seen
24 that's why I pulled out my cell phone to show credit
25 time show time on video where the machine at that

SW - T. ANDERSON - DIRECT

1 time and it was about an hour off.

2 Q All right. So right now do you remember about
3 what time in real life it would have been when they
4 entered those stores? Would it have been before
5 4:00, 4:00, after 4:00, before 3:00, after 3:00?

6 A It would have been real close to 4:00.

7 Q Okay. Now in the videos it looks like, or — let
8 me say this. At the time you made the video
9 interviews who did you believe the shooter to be?

10 A At the time I interviewed the two suspects I
11 believed that Johnathan was the one who did the
12 shooting and not Joshua. I learned later on that
13 Joshua was the one who did the shooting and not
14 Johnathan.

15 Q And why were you confused on that?

16 A I had originally received the name of Johnathan
17 as being the person who shot Milton Hunter. But
18 during subsequent interviews after the interviews,
19 after these interviews, subsequent interviews with
20 the witnesses again, the description did not match
21 the name and so I clarified the description of the
22 person who did the shooting and that's when I
23 realized Johnathan was not the one that did the
24 shooting; it was Joshua.

25 Q So the descriptions of the individual that shot

SW - T. ANDERSON - DIRECT

1 Milton Hunter, did they ever change, the
2 description?

3 A No, the description was the same. It was just
4 the wrong name was put to the face.

5 Q All right. Detective Anderson, after you did the
6 interviews what did your investigation consist of
7 after that?

8 A Basically after the interviews with those two,
9 starting the next day I re-interviewed some of the
10 witnesses. Did go back to [REDACTED] trying to find --
11 during the initial interview of the witnesses I was
12 thinking the shoes Johnathan Washington was wearing
13 were crocks. That's what I was looking for. I also
14 went back looking for a white hoodie with the green
15 dollars on it or whatever, never able to locate
16 that. Continued to check the area for a gun that
17 may have been discarded. Actually went back to
18 Pride Park again with a metal detector trying to
19 find shell casings that maybe EMS people because of
20 all their work things got put into, pushed into the
21 ground, going back and doing that, interviewing the
22 other the witnesses, and just making sure everything
23 was taken care of.

24 Q What did you do after that? About how many days
25 did this take?

SW - T. ANDERSON - CROSS

1 A That was probably over a three or four day
2 period.

3 Q Okay.

4 A I know the day after I interviewed one of the
5 witnesses. A couple of days later I re-interviewed
6 another witness. I think the video from the Mozingo
7 liquor store were about three days after the
8 incident.

9 Q All right. Investigator Anderson, please answer
10 any questions defense counsel might have.

11 A Yes, sir.

12 THE COURT: Cross-examination, Mr. Jones
13 or Ms. Wooten.

14 **CROSS-EXAMINATION**

15 BY MR. JONES:

16 Q Agent Anderson, let's kind of take it in reverse
17 order. The last video we saw from the two stores
18 —

19 A Yes, sir.

20 Q —is it my understanding from your investigation
21 and from watching those videos that both Mr. Reeds
22 appeared to be at the stores between 3:51 p.m. and
23 4 p.m. on the date in question?

24 A Yes, sir.

25 Q Okay. And is it also my understanding — and

SW - T. ANDERSON - CROSS

1 again, you're the lead investigator on this; is that
2 correct?

3 A Yes, sir.

4 Q So all the evidence was collected under your
5 supervision?

6 A Under my direction, yes, sir.

7 Q Under your direction, okay.

8 A Because the clothes, I did not actually see the
9 person, the officer collect that and stuff, but it
10 was at my direction.

11 Q Okay. So we've got from these videos both
12 Mr. Reeds at — and I may have it in reverse order
13 but it appeared that the first video was 3:51 to
14 3:54 and the second video was right at 4 p.m. Does
15 that sound right?

16 A Yes, sir, but I — one of the videos I think — I
17 couldn't tell you which store they were at first if
18 that's what you're asking.

19 Q Okay.

20 A Because one of the videos, it was even, you know,
21 another ten minutes off as far as the one video was
22 about an hour off from the actual time. The other
23 one, I think, was about like an hour and ten minutes
24 off. I'm not sure if they went to the convenience
25 store first, then the liquor store, or vice versa.

SW - T. ANDERSON - CROSS

1 Q Based on your knowledge of the facts as the lead
2 investigator, whichever store they were in last what
3 time did they leave?

4 A Right around 4:00.

5 Q Okay. And is it also my understanding that David
6 Sessoms, the 9-1-1 supervisor, testified that the
7 first call came in at 4:05 p.m. Does that sound
8 right?

9 A That sounds right, yes, sir.

10 Q Okay. Now hold that thought. And if I'm looking
11 at this -- you're familiar with this drawing?

12 A Yes, sir, that's my art work.

13 Q That's your art work?

14 A Yes, sir.

15 Q And if I point -- can you see it from where you
16 are? Is it fair to say that the stores are that
17 way?

18 A That's correct, yes, sir.

19 Q All right. So at 4-0 -- 4:00 we know that both
20 Mr. Reeds are uptown at the store, correct?

21 A Yes, sir.

22 Q All right. And is it your understanding that
23 they proceeded south on Sixth Street?

24 A Yes, sir.

25 Q That would take them in this direction, correct?

SW - T. ANDERSON - CROSS

1 A Yes, that direction.

2 Q Okay. And as Lieutenant Rudick told us the other
3 day, the fastest way from here to ■ Lincoln Avenue
4 is down this road to Eighth Street and then this way
5 and then this way?

6 A That's correct.

7 Q Correct, okay. So they leave the store at 4.
8 They come home?

9 A Yes, sir.

10 Q Headed home?

11 A Yes, sir.

12 Q They go down this way. I believe that both of
13 the young men — I'm not sure if both of them; I
14 know Johnathan I think said that he — there's a way
15 he went home?

16 A Yes, sir.

17 Q So he'd be going this way, correct?

18 A Yes.

19 Q And it doesn't take but what, a couple of minutes
20 to get from —

21 A Takes maybe a minute to get from the stores to
22 the park, about a minute from the park to where they
23 live.

24 Q Okay. So all of the testimony that we heard
25 yesterday from the witnesses didn't have the car

SW - T. ANDERSON - CROSS

1 going that way, did it, or the truck? It had it
2 going that way, correct?

3 A After the incident, yes, sir.

4 Q Okay. So if we are to believe what was said
5 yesterday, we got a truck leaving at 4, heading this
6 way, driving this way, going somewhere, turning
7 around and coming back up here and parking; is that
8 right?

9 A Yes, sir, at about 4:00, yes, sir.

10 Q Okay, all right. Thank you. I think that's all
11 I need on the diagram. Now, you interviewed
12 Ms. Gregg, Mr. Washington, and Mr. Wingate; is that
13 correct?

14 A Yes, sir.

15 Q All right. And when did your interview — were
16 they all done the same day?

17 A I interviewed the three of them at the scene
18 initially; and then later on, I think the next day I
19 re-interviewed Ms. Gregg, and then another day or
20 two later Wingate and Washington. It wasn't all in
21 the same day afterwards.

22 Q Okay. And during all of those interviews with —
23 well, let's let me break it down. First set of
24 interviews I assume was at Pride Park?

25 A Yes, sir.

SW - T. ANDERSON - CROSS

1 Q All right. From your conversations with those
2 three witnesses there and at the station where you
3 interviewed them a day or two later?

4 A Yes, sir.

5 Q Was it your understanding that all three of them
6 were personally familiar with Joshua Reed and
7 Johnathan Reed?

8 A As far as knowing who they were, being familiar
9 with them, yes, sir, but not necessarily being
10 friends with them.

11 Q Correct. But there's no question that they all
12 knew who they were?

13 A From my understanding, yes, sir.

14 Q Okay. And is it also a fair statement to say
15 that Ms. Gregg indicated in her interviews that she
16 really knew at least one of the Reeds because she
17 went to school with him?

18 A I believe so, yes, sir.

19 Q However, is it also your understanding that she
20 was totally confused about which one it was —

21 A Yes, sir.

22 Q —as far as name is concerned?

23 A Yes, sir. Yes, sir.

24 Q And I believe lieutenant Rudick actually said
25 that as he's talking to her he had to tell her that

SW - T. ANDERSON - CROSS

1 it wasn't the one she was talking, by name she was
2 talking about?

3 A I think he did say that, yes, sir.

4 Q Okay, all right. If that's the case, then today
5 we heard from various officers that I believe Ms.

6 — Officer Thompson was first on the scene?

7 A Yes, sir.

8 Q And then there was — I was a little bit confused
9 whether Officer Richardson was next or Officer
10 Huggins was next; but very close in time, those
11 three officers got to Pride Park; is that right?

12 A Yes, sir.

13 Q All right. Is it also you understanding that
14 Mr. Richardson and Mr. Huggins actually talked to at
15 least Mr.'s Washington and Wingate? There was a
16 little confusion about whether Ms. Gregg was also
17 there?

18 A Yes, sir, I know they talked to somebody. I'm
19 not really sure who they actually talked to, but
20 they got, they got the initial description out.

21 Q And also, this is where I'm a little confused.
22 Is it Mr. Richardson or Mr. Huggins that actually
23 called in the, whatever you call it, APB or the
24 whatever?

25 A I'm not sure who it was.

SW - T. ANDERSON - CROSS

1 Q Okay. But we you heard that one them did,
2 correct?

3 A Yes. Yes, sir.

4 Q And one of them also called that in, I assume
5 that that person talked to either or all, Ms. Gregg,
6 Mr. Washington, Mr. Wingate?

7 A That would be a good assumption, yes, sir.

8 Q Okay. Why didn't any of them tell them it was
9 the Reed brothers?

10 A I don't know — I can't answer the question for
11 why they didn't tell Sergeant Huggins or Sergeant
12 Richardson, but I can say that I was told that it
13 was Johnathan Reed.

14 Q Sometime later?

15 A A very short time later, yes, sir.

16 Q Okay, but immediately after it happened?

17 A Yes, sir.

18 Q And we heard Ms. Gregg testify oh, I know, I went
19 to school with him?

20 A Yes, sir.

21 Q They walked up and we hung around 10 or 15
22 minutes and we talked and we stared at each other
23 —

24 A Yes, sir.

25 Q —his words were done. If she knew them why

SW - T. ANDERSON - CROSS

1 didn't she tell the officers?

2 A I can't answer that question.

3 Q All right.

4 A During my time on patrol part of my duties were
5 to read the reports my officers wrote. And an
6 officer might come to you and something was stolen
7 from your house or you'd gotten in a fight and an
8 officer would talk and they would write the report.
9 I believe sit down and read the report and I would
10 start asking questions that weren't answered. And
11 the answer I would usually get, especially from a
12 new officer is, they didn't tell me. And so my
13 response to that is it's not their job to tell you,
14 it's our job to get the answers and that if we don't
15 ask the right questions we're not always going to
16 get the right answer. Basically, they're not
17 professional victims or witnesses; we're
18 professional information gatherers. And a lot of
19 times in a situation like that, especially from my
20 own personal experience, sometimes you don't really
21 realize what you've said or what you haven't said;
22 it's very traumatic.

23 Q No question.

24 A Yes, sir.

25 Q No question. However, the victim's sister

SW - T. ANDERSON - CROSS

1 testified she was standing almost shoulder to
2 shoulder with him?

3 A Yes, sir.

4 Q When she says these two gentlemen walked up, got
5 in their face, pulled guns out and shooting five
6 times.

7 A Yes, sir.

8 Q And she knew them 'cause she went to school with
9 them. I know them, I went to school, they're not
10 friends, but I've known them for years.

11 THE COURT: All right, let's ask the
12 question, Mr. Jones.

13 BY MR. JONES:

14 Q Why didn't they say it was Josh and Johnathan
15 Reed?

16 A In her situation I would think she probably still
17 extremely upset. I know when I was trying to talk
18 to her I had to get her to settle down a bit. And
19 so, as upset as she was, and I probably talked to
20 her less than five minutes after the shooting
21 occurred, I could see where she was still extremely
22 upset. And as a matter of fact, I would assume she
23 was very hysterical.

24 Q And would your answer to the question be the same
25 for Mr. Washington?

SW - T. ANDERSON - CROSS

1 A To an extent, yes, sir. He might not have been
2 as hysterical because it's not a family member, but
3 he's probably making sure he didn't mess himself.

4 Q And the same thing with Mr. Wingate?

5 A Mr. Wingate, yes, sir, same thing. I would think
6 being in front and watching someone get shot, I'm
7 just going holy cow, what's going on here.

8 Q But an officer stands in front of all three of
9 them saying we need to get a description so we can
10 go find these people —

11 A Yes, sir.

12 Q —is not the logical answer to that question,
13 oh, it's Terry Anderson, I've known him for years?

14 A You just did it though. You said an officer
15 getting a description. And that's probably what
16 they said, tell me what they look like. And victims
17 have a tendency to answer your question. This is
18 what they were wearing, something like. If the
19 officer might — the officer may not have said this,
20 who did this, they may have gotten a different
21 response.

22 Q But you heard Brandon Huggins testify this
23 morning; did you not?

24 A Yes, sir.

25 Q And what was his description that he received

SW - T. ANDERSON - CROSS

1 from everybody that he talked to?

2 A I can't remember off the top of my head. I don't
3 know the specifics. I don't know if he asked who
4 was it.

5 Q What was the des— you just — you told me that
6 their job was to get descriptions of who did that
7 —

8 A Yes, sir.

9 Q —so y'all can go find them.

10 A Yes, sir.

11 Q Okay. Did he not say this morning the only
12 description he got were two black males?

13 A That's probably what he said, yes, sir, and a
14 green pickup truck.

15 Q We didn't talk about short hair; we didn't talk
16 about long hair. We just said we got two black
17 males?

18 A Correct.

19 Q Okay. From three people who knew exactly,
20 according to their testimony, who Mr. Josh Reed —

21 A Yes, sir.

22 Q —and Mr. Johnathan Reed? Okay.

23 MR. JONES: One second please, Your Honor.

24 Thank you. That's all I have.

25 THE COURT: Mr. Swilley?

SW - T. ANDERSON - CROSS

CROSS-EXAMINATION

1
2 BY MR. SWILLEY:

3 Q Detective Anderson, I think your earlier remark
4 was you didn't find a whole lot at the scene of
5 Pride Park, correct?

6 A That's correct.

7 Q The fact other than Milton Hunter himself, you
8 didn't really find any other indicia as to the
9 shooting, correct?

10 A I'm sorry?

11 Q You didn't find anything else that even would
12 indicate there was a shooting other than Milton
13 himself, right?

14 A Correct.

15 Q And I think you commented that during the
16 interview with Joshua Reed that you were of the
17 impression at that time that Joshua Reed had been
18 the bystander instead of Johnathan?

19 A Yes, sir.

20 Q And I think you were heard to remark to Joshua at
21 that time you can save yourself. Did you say that?

22 A Yes, sir, probably.

23 Q Okay. And during Johnathan's video you said at
24 that time, you're incorrect, y'all thought Johnathan
25 was the shooter and he really wasn't, right?

1 A Yes, sir.

2 Q And I think you — would you say that it's true
3 your interview approaches in those two situations
4 were different with each brother?

5 A Yes, sir, a little bit.

6 Q Okay. Instead you were trying to get, I guess I
7 guess you were trying to get Joshua to turn on
8 someone else, correct, instead of —

9 A Yes, sir.

10 Q And then you were trying to get Johnathan to turn
11 on himself, right?

12 A Yes, sir.

13 Q Even so. But in all reality, had you known what
14 you know now you would have used a flip flop
15 technique?

16 A I would have definitely interviewed Johnathan
17 first.

18 Q Right?

19 A And probably used a different technique, yes,
20 sir.

21 Q Right, okay. And you said that in the store
22 video we saw Johnathan wearing a black hoodie,
23 right? Is that —

24 A He was in the convenience store.

25 Q That's correct. He had a blood hoodie and —

SW - T. ANDERSON - CROSS

1 A Yes, sir.

2 Q I think you testified you never recovered the
3 black hoodie?

4 A I can't remember off the top of my head.

5 Q Okay. So your incident report says that it was,
6 it was recovered and turned over to Laura South?

7 A Okay.

8 Q Is that correct?

9 A If it's in the report I would think so, yes, sir.

10 Q Okay. Let me go back to your interviews with
11 Asia Gregg. You interviewed her first?

12 A At the scene or later on?

13 Q On video?

14 A Yes, sir, I think I interviewed her the next day.

15 Q Okay. And when you're talking to Asia was there
16 any -- do you have any idea that there was more than
17 one person with a gun at the time again?

18 A No, sir, that's a question I never asked.

19 Q Okay, but never heard about anybody else owning a
20 gun other than the shooter, right?

21 A No, sir.

22 Q And you said that you would consider, you
23 considered that to be an important piece of
24 information?

25 A Yes, sir, I would.

SW - T. ANDERSON - CROSS

1 Q And I think you even testified today to
2 Mr. Jones, you know, it's your job to get the
3 answers, you're the professional information
4 gatherer?

5 A Yes, sir.

6 Q Right, okay. So, and you only had — you were of
7 the idea at the time there was only one person with
8 a gun at the scene?

9 A Yes, sir, that was my impression.

10 Q All right. And you didn't hear anything about
11 allegedly having any kind of weapon until this week,
12 correct?

13 A That's correct.

14 Q All right. So, and there was nothing stopping,
15 to your knowledge there was nothing stopping Asia
16 from getting in touch with you after her interview
17 to —

18 A No, sir, she had actually gotten in touch with me
19 anyway.

20 Q Oh, afterwards?

21 A Yes, sir.

22 Q Okay. And she never disclosed to you that
23 Johnathan never had a gun?

24 A No, sir.

25 Q And there's nothing based on your knowledge that

SW - T. ANDERSON - CROSS

1 would have prevented her from doing that?

2 A No, sir.

3 Q Okay. You gave her your card, right?

4 A I'm not sure if I did. I'm sure she had my phone
5 number.

6 Q Okay, you're right. And I think in Asia's video
7 you said -- I think even afterwards that you were
8 planning on going back to the scene to make a video
9 with her for her to show everybody around?

10 A I'm not sure if I did; but no, I never went back
11 there.

12 Q Never did that? Okay, all right.

13 A No, sir.

14 MR. SMILEY: Beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 BY MR. SWILLEY:

17 Q And Investigator Anderson, you were the one that
18 procured the arrest warrant, right, for both these
19 individuals?

20 A I believe so, yes, sir.

21 Q And you presented those to I believe municipal
22 Judge Saleeby, right?

23 A I guess so, yes, sir. I'm thinking he was still
24 our judge at the time.

25 Q Right. And the ver-- the warrant--

SW - T. ANDERSON - REDIRECT

1 A The affidavit itself?

2 Q Yeah, the affidavit itself for -- you'd agree it
3 states the same thing exactly, right?

4 A Yes, sir.

5 Q And at the time I guess -- well, I guess at the
6 time, you know, if the exact same thing on the
7 actual warrant didn't really apply to Johnathan; is
8 that correct?

9 A The way the warrants are written up is going by
10 the hand of one hand of all. If you're -- I'm --

11 Q Don't tell me about the law, I'm sorry. I just
12 want to make sure what was stated on each warrant is
13 the exact same thing, right.

14 A I would. I'm assuming so. I don't have them
15 with me. I'm thinking they are, yes, sir.

16 Q Okay, all right. Thank you.

17 THE COURT: Mr. Holt?

18 MR. HOLT: Just a couple of questions,
19 Your Honor.

20 **REDIRECT EXAMINATION**

21 BY MR. HOLT:

22 Q Detective Anderson, to your knowledge you were
23 just up here talking about it's important how you
24 ask questions?

25 A Yes, sir.

SW - T. ANDERSON - REDIRECT

- 1 Q Did you ask Asia who shot your brother?
- 2 A I'm not sure if I asked that particular question
- 3 in that way, but I'm sure it was asked because I did
- 4 get that information from her.
- 5 Q Did you ever ask the question how many people
- 6 there had guns?
- 7 A No, sir, I never did.
- 8 Q Okay. So you never got that answer until this
- 9 week, did you?
- 10 A That's correct.
- 11 Q When somebody else asked her that question?
- 12 A That's correct.
- 13 Q Okay. Now let me ask you this, do you speak to
- 14 anybody that you know, do you know their full name
- 15 everyone you speak to every day? Or everyone that
- 16 you see periodically, do you know their full name?
- 17 A Not their full name, no, sir.
- 18 Q Okay. Do you ever wave to people that you don't
- 19 know their name but you know who they are?
- 20 A Yes, sir.
- 21 Q So is it fair to say that that's pretty common
- 22 for people to know people but not know their names?
- 23 A Yes, sir, very common.
- 24 Q In your experience as an investigator have you
- 25 ever dealt with people who knew people but didn't

SW - T. ANDERSON - REDIRECT

1 know their names?

2 A That's very common, yes, sir.

3 Q And how soon after the shooting did you get the
4 photo lineups and confirmations from all these
5 witnesses of who did the shooting?

6 A Those were done within a matter of a couple of
7 hours.

8 Q Okay, all right. So, now David Sessoms at 9-1-1,
9 his alarm code time, the liquor store video clock,
10 the Marketplace liquor store clock, and your cell
11 phone clock, do you set all those clocks?

12 A No, sir, I don't.

13 Q Are all those clocks accurate?

14 A No, sir.

15 Q Did all those clocks provide a basic time line
16 for you, or did they provide an exact detailed
17 second by second time line for you?

18 A No, they gave me a basic time frame to work with.

19 Q Okay. And how close is Mozingo Liquors to the
20 Marketplace?

21 A 150 feet.

22 Q So you can't even tell which one they were in
23 last or firsts?

24 A No, sir.

25 Q Okay. And how close are both of those two stores

1 to the scene of the murder?

2 A About 4-tenths of a mile.

3 Q And how soon can somebody make it from there to
4 the murder site?

5 A Less than a minute.

6 Q Okay.

7 MR. HOLT: No further questions, Your
8 Honor.

9 THE COURT: Recross, Mr. Jones?

10 MR. JONES: Nothing.

11 THE COURT: Mr. Swilley?

12 MR. SWILLEY: I have nothing further, Your
13 Honor.

14 THE COURT: All right. Mr. Anderson, you
15 may step down.

16 All right, ladies and gentlemen of the
17 jury, I have been advised by counsel that there is
18 another witness that is scheduled and that witness
19 is scheduled for 2:00 so it's about five, ten
20 minutes to one right now and so I think it is
21 appropriate that we break for lunch at this time and
22 we are going to do that. I'm going to allow you to
23 go and get your lunch with the same admonitions I've
24 given you throughout this trial. Do not discuss the
25 case with anyone. Do not allow anyone to discuss it

1 with you and do not discuss it among yourselves when
2 you're reassembling in the jury box. If you would,
3 be back at 2:00. I'll see you at that time. Thank
4 you.

5 (WHEREUPON, the jury was removed from the
6 courtroom at 12:57 p.m, and the following
7 proceedings commenced in open court.)

8 THE COURT: All right. Let's wait just a
9 minute. Mr. Bailiff, let me know when the jury has
10 gotten on the elevators and gotten out the jury room
11 before we recess.

12 Mr — in preparation, Mr. Jones, let me
13 just ask a question of you and Mr. Swilley, there
14 was no contest with regard to the voluntariness of
15 the statements? You're not requesting any
16 instruction on that, is that correct, or would you
17 not?

18 MR. SWILLEY: That's correct. I have
19 nothing against voluntariness.

20 THE COURT: Okay.

21 (Pause.)

22 THE COURT: Am I correct in that Doctor
23 Ross is expected at —

24 MR. HOLT: 2, 2:00.

25 THE COURT: 2:00.

1 MR. HOLT: Yes, sir, and that will be the
2 last witness.

3 THE COURT: Okay. The jury is out the
4 building. We'll be in recess until 2:00. See you
5 then, counsel.

6 (WHEREUPON, a lunch break was taken.)

7 THE COURT: Both defendants are present in
8 the courtroom with their attorneys. The State is
9 represented by the Solicitor's Office. I understand
10 all the jurors are back, and we are now ready to
11 proceed. Anything before we bring the jury in,
12 Mr. Holt?

13 MS. PARKER: Your Honor, I'm going to be
14 handling Doctor Ross' testimony.

15 THE COURT: All right, Ms. Parker.

16 MS. PARKER: We had two things quickly. I
17 think we've all agreed to stipulate to Doctor Ross
18 being an expert in the field of forensic pathology.
19 She has laryngitis today. If I can cut down on the
20 number of questions I ask her and reduce how much
21 she has to talk, that will be helpful. Would you
22 give an instruction to the jury and let them know
23 that we've stipulated and agreed she's an expert?

24 THE COURT: Okay.

25 MS. PARKER: And then secondly, there is

1 an autopsy report that she has produced, statement
2 and the case history on page two, and I have — we
3 would like to move her report into evidence, but I
4 would like to redact what's in it. I have redacted
5 it and I have a redacted copy. I believe the
6 written statement would be hearsay, a written
7 assertion.

8 THE COURT: Mr. Jones, you agree to the
9 introduction of her report with the redaction as set
10 forth by, Ms. Parker?

11 MR. JONES: Yes.

12 THE COURT: You agree also?

13 MR. SWILLEY: I do, Your Honor.

14 THE COURT: Go ahead and give it to the
15 court reporter to make it.

16 MS. PARKER: Yes, Your Honor. Are we
17 going to make her I.D. it or can we just agree this
18 is in evidence? Can we agree?

19 MR. JONES: It's all right by me.

20 THE COURT: All right, so it's in
21 evidence.

22 (WHEREUPON, State Exhibit No. 23 was
23 marked for identification and received
24 into evidence.)

25 THE COURT: No objection?

1 MR. JONES: No objection.

2 THE COURT: All right, State's number 22
3 in evidence.

4 THE COURT REPORTER: 23, Judge.

5 MR. HOLT: 23.

6 THE COURT: 23 in evidence without
7 objection. And while we're doing that, Mr. Holt,
8 you had had a couple of things yesterday I think
9 that needed to be redacted and I want to go ahead
10 take care of those.

11 MR. HOLT: Your Honor, your report,
12 referring of course to State's Exhibit 3, 4 and 5
13 which are the photo lineup, questionnaires, and I
14 guess you call them proofs that Hartsville Police
15 Department did, we have redacted both the witnesses
16 for answer as well as the percentage that they felt
17 that they were correct in. These were already
18 I.D.'d and the only thing they were lacking was me
19 moving them into evidence after the redaction. I
20 now so move them into evidence.

21 THE COURT: Any objection, Mr. Jones?

22 MR. JONES: May I look at it?

23 (Pause.)

24 THE COURT: All right, we'll take care of
25 that after we finish with this witness. Anything

1 before we bring the jury in at this point,
2 Ms. Parker?

3 MS. PARKER: No, Your Honor.

4 THE COURT: Mr. Jones?

5 MR. JONES: No, sir.

6 THE COURT: Mr. Swilley?

7 MR. SWILLEY: No, sir.

8 THE COURT: All right, bring the jury in
9 please.

10 (WHEREUPON, the jury was returned to the
11 courtroom and the following
12 proceedings commenced in open court.)

13 THE COURT: All right, thank you very
14 much, ladies and gentlemen. Thank you for your
15 promptness in being back here and now we are ready
16 to begin. Before I do begin I need to ask you if
17 anyone tried to contact you about this case in any
18 way over the lunch recess I will need to know about
19 it now.

20 (There was no response.)

21 THE COURT: Negative response and that's
22 good.

23 All right, Ms. Parker, you may call your
24 next witness.

25 MS. PARKER: Thank you, Your Honor. At

SW - J. ROSS - DIRECT

1 this time the State calls Doctor Janice Ross.

2 THE COURT: All right, Doctor Ross.

3 WHEREUPON,

4 **JANICE ROSS,**

5 having been duly sworn by the Clerk of Court,

6 testified as follows:

7 THE CLERK OF COURT: Have a seat.

8 THE COURT: Ladies and gentlemen of the
9 jury, Ms. Parker is going to ask a few questions to
10 Ms. Ross and I'm sure about what she does and
11 everything; but I understand Doctor Ross has
12 laryngitis problems today and they have stipulated
13 and agreed that Doctor Ross is an expert in the
14 field of forensic pathology. She is qualified as an
15 expert by the Court. The parties have agreed to
16 this. And so I'm sure she's gonna tell you what
17 forensic pathology is, but I have qualified her as
18 an expert which means that she will be able to give
19 her opinion. I told your earlier what the
20 difference between a nonexpert witness and an expert
21 witness is. But with that, we won't have to spend a
22 lot of time on Doctor Ross' qualifications because
23 the parties have agree to it, okay.

24 MS. PARKER: Thank you, Your Honor.

25 **DIRECT EXAMINATION**

SW - J. ROSS - DIRECT

1 BY MS. PARKER:

2 Q Doctor Ross, can you state your full name for the
3 record?

4 A Janice George Ross.

5 Q And doctor Ross, what is your occupation or your
6 profession?

7 A I'm a forensic pathologist. A pathologist is a
8 doctor who is trained to diagnoses diseases like
9 cancers and infections and do autopsies to find
10 cause of death. A forensic pathologist uses that
11 knowledge in legal matters like homicides, suicides
12 and accidents. We are trained to identify patterns
13 of injury and to document those for a court of law.

14 Q Doctor Ross, how many autopsies would you say
15 you've performed in your career?

16 A At least 8,000.

17 Q And how many times have you testified in court
18 such as in concerning cause of deaths?

19 A At least 80 times.

20 Q Doctor Ross, did you have an opportunity to
21 perform an autopsy on Milton Hunter?

22 A Yes.

23 Q And what was the date and time of that autopsy?

24 A February 16th, 2012 at 8:30 a.m.

25 Q Doctor Ross, did you conclude what the manner of

SW - J. ROSS - DIRECT

1 his death was?

2 A Yes.

3 Q What was that?

4 A Homicide.

5 Q And what was that specific cause and mechanism of
6 his death?

7 A Laceration of the brain due to gunshot wound of
8 the head.

9 Q Upon initial examination of the deceased did you
10 notate in your report his approximate size?

11 A Yeah.

12 Q Height and weight physically?

13 A Yes. We measured him as 5 feet 6-and-a-half
14 inches. We estimated the weight at 165-pounds. We
15 don't have a scale in the morgue.

16 Q Doctor Ross, how many gunshot wounds did Milton
17 Hunter have? How many did he sustain?

18 A Three.

19 Q And I just wanted to ask you briefly about each
20 one in your report. You documented gunshot wound
21 number one and you numbered them. Gunshot wound
22 number one, was that the gunshot wound to the head?

23 A Yes, we just — they don't mean they came in that
24 order. We number gunshot wounds from top to bottom
25 so the first one we describe is the one in his head.

SW - J. ROSS - DIRECT

1 Q And Doctor Ross, would you explain a little bit
2 about the entrance of that, the entrance of the
3 bullet and the direction that it went?

4 A Yes. It came in the top of the head towards the
5 back and just to the right at midline. It went down
6 and forward, and the bullet itself was found behind
7 the left eye.

8 Q Okay. And that bullet was retrieved from his
9 body?

10 A Yes.

11 Q And was that a fatal gunshot wound?

12 A Yes.

13 Q Doctor Ross, would that gunshot wound be
14 consistent with a defendant standing over the
15 victim?

16 A Well, bullets go straight so whatever position —
17 the gun either had to be above his head or he could
18 have been leaning over bending over with the head
19 down.

20 Q Okay. Gunshot wound number two, is that the
21 gunshot wound — I'm talking about the one that
22 found, to the left cheek?

23 A Yes. It just went, went underneath the skin, was
24 not fatal.

25 Q Was there a bullet retrieved from that wound or

SW - J. ROSS - CROSS

1 as a result that gunshot wound?

2 A No, it went in and out.

3 Q In and out, okay. Gunshot wound number 3, where
4 was that one located?

5 A That went in the back just to the left of the
6 midline and went forward and towards the right. It
7 went through the bottom of the right lung, caused a
8 lot of hemorrhage, and the bullet himself was found
9 underneath the skin on the right side.

10 Q Was that bullet removed?

11 A Yes.

12 Q Okay. This is already State's Exhibit Number 23
13 that's already in evidence. Is that your report?

14 A Yes, it is.

15 Q Okay.

16 MS. PARKER: Your Honor, we have no
17 further questions.

18 THE COURT: All right. Mr. Jones?

19 MR. JONES: May I have a moment?

20 THE COURT: Yes, sir.

21 MR. JONES: Judge, I have no questions.

22 THE COURT: Thank you. Mr. Swilley?

23 **CROSS-EXAMINATION**

24 BY MR. SWILLEY:

25 Q Doctor Ross, this is the extent of your

1 activities in this investigation; is that correct?

2 A Yes.

3 Q Okay. The only information you derived is the
4 cause and manner of the deceased Milton Hunter; is
5 that true?

6 A Yes, and the direction of the bullets.

7 Q All right. Thank you.

8 THE COURT: Ms. Parker, anything else?

9 MS. PARKER: No, Your Honor.

10 THE COURT: All right. Thank you, Doctor
11 Ross. You are excused. Thank you for coming.

12 THE WITNESS: Thank you.

13 THE COURT: All right, Mr. Holt, do you
14 have the exhibits?

15 MR. HOLT: Judge, Mr. Jones, Ms. Wooten,
16 found one more thing they weren't happy with. I'm
17 correcting that now.

18 THE COURT: All right. Other than that
19 then, those are State's numbers?

20 MR. HOLT: 3, 4 and 5.

21 THE COURT: 3, 4 and 5, and will be
22 admitted into evidence so there won't be any
23 question about that.

24 All right, Mr. Holt, you may call your
25 next witness.

1 (WHEREUPON, State Exhibits Nos. 3, 4, and
2 5 were admitted into evidence.)

3 MR. HOLT: Your Honor, at this time the
4 State would rest.

5 THE COURT: All right, ladies and
6 gentlemen of the jury, you have heard the State has
7 rested their case. That means that you have heard
8 all of the testimony that you will hear from the
9 State at this time. There are certain matters of
10 law which I now need to take up with the attorneys,
11 and I'm gonna have to do that on the record and
12 outside your presence so I'm gonna ask you go to
13 your jury room while we take up these matters of law
14 and we'll send for you just as soon as we have
15 completed those. But do not begin your
16 deliberations yet; it's still premature for you to
17 begin deliberations in this case. But simply go to
18 your jury room and relax, and we'll send for you
19 just a as soon as I have these matters taken care
20 of. Thank you.

21 (WHEREUPON, the jury was removed from the
22 courtroom at 2:57 p.m., and the following
23 proceedings commenced in open court.)

24 THE COURT: All right, Mr. Jones, motions
25 on behalf of the defendant Joshua Reed.

1 MR. JONES: Yes, sir, just for a directed
2 verdict as to both causes of action. Your Honor, we
3 feel that the State has failed to present sufficient
4 evidence to go forward, and we would ask the Court
5 to dismiss both murder and possession of a weapon
6 during the commission of a violent crime.

7 THE COURT: All right, Mr. Swilley.

8 MR. SWILLEY: Your Honor, I move for a
9 directed verdict, a motion for directed verdict as
10 to both charges. The State did not proffer
11 substantial circumstantial evidence or any direct
12 evidence that would reasonably tend to prove that my
13 client was guilty of this matter. If the Court
14 recalls, the only evidence that was proffered was
15 he, that he had a firearm was that of Asia Gregg. I
16 believe she testified he had appeared to have a gun
17 in his pocket during the shooting, was standing next
18 to a Johnny Washington. Your Honor, I don't think
19 that evidence in and of itself would constitute
20 substantial circumstantial evidence or direct
21 evidence of the guilt of the accused which would be
22 Johnathan Reed. It may raise a mere suspicion which
23 would maybe could quietly or opinion as to guilt
24 based upon the facts and circumstances. But I don't
25 think that after testimony proffered Johnathan Reed

1 amounts to proof. You know, a trial judge is not
2 required to find that the evidence infers guilt
3 solution of any other reasonable hypothesis. There
4 was testimony that Mr. Reed, only from Asia Gregg,
5 had I believe had a gun, what appeared to be the
6 outline of a gun in his pocket and that he was
7 standing next to Johnny Lee Washington at the time
8 the shooting occurred.

9 There's been no other evidence proffered
10 during the course of this trial that would
11 reasonably tend to serve as circumstantial or
12 direct, or circumstantial evidence or direct
13 evidence.

14 THE COURT: How about accomplice liability
15 though?

16 MR. SWILLEY: Either one. There's
17 evidence -- she proffered testimony he was standing
18 there.

19 THE COURT: Isn't there testimony he drove
20 the vehicle that brought them up there, that it was
21 his vehicle?

22 MR. SWILLEY: That was not the testimony
23 of the witnesses. No one testified that he was
24 driving the vehicle that brought him there from the
25 witnesses. There was testimony he drove to the

1 liquor store.

2 THE COURT: Yeah.

3 MR. SWILLEY: But there's no testimony he
4 was driving the automobile from either of the three
5 lay witnesses that Mr — there's no testimony Mr.
6 Reed was driving the automobile. There's also been
7 excluded from the photograph, identification of the
8 photograph.

9 THE COURT: Do what?

10 MR. SMILEY: There's also — that hearsay
11 testimony has also been excluded from the
12 identifications of the paper identification from the
13 photo lineups.

14 THE COURT: I understand that, but there
15 is evidence in the record that he drove the vehicle
16 up to the store within a few minutes before the
17 murders occurred.

18 MR. SWILLEY: You have inferred that he
19 drove the vehicle into the park and you can't infer
20 in there I think as the —

21 THE COURT: Circumstantial evidence that
22 he was in control of that vehicle.

23 MR. SWILLEY: Even though, there's no
24 evidence that there was a prior idea, a common plan.
25 There's no common plan or scheme that was to take

1 place.

2 THE COURT: It doesn't have to be. It has
3 to be shown he's aiding and abetting, but it — does
4 not have to be prior common scheme under accomplice
5 liability. It just says aiding and abetting is what
6 it requires them accomplice liability.

7 MR. SWILLEY: I think the prior knowledge
8 that a crime is going to be committed without more
9 is not sufficient to make a person guilty of crime.

10 THE COURT: I agree.

11 MR. SWILLEY: I don't think there's been
12 any evidence he aided his brother in taking him to
13 the scene. There's no testimony that was the intent
14 of either one of the parties at that time.

15 THE COURT: Okay. Mr. Holt?

16 MR. HOLT: Who would you like me to
17 address? Which one would you like me to address?

18 THE COURT: Both of them.

19 MR. HOLT: Okay. Firstly, I think Mr.
20 Jones is the easiest one to get out. In regards to
21 Josh, we've got three eye witnesses as well as the
22 gunshot residue. I think my burden here is really
23 just a scintilla of the evidence, and I think I've
24 passed that. As you'd say there's just a lot of it
25 there. There's also his testimony that he'd never

1 been around guns and the gunshot residue was found.
2 I think the more persuasive but still not winning
3 argument is Mr. Swiley's. I think Asia's testimony
4 alone puts me past my burden there. You've got
5 substantial evidence that just prior to the crime he
6 was driving the car. That came from his own
7 statement, as well as the brother's statement, the
8 truck. You got Asia Gregg claiming that he had a
9 gun on him and that he stood over Johnny Lee
10 Washington while his brother killed Milton Hunter.
11 You've also got the other two witnesses who state
12 that he walked over there with his brother hand --
13 let me see, I to want say this. He was certainly --
14 he drove his brother there, walked over with his
15 brother in a menacing manner together. Both of
16 them, I think the testimony was mean lugging Milton
17 Hunter. Just briefly one more time, I think Asia
18 Greg's testimony gets me over Mr. Swiley's argument.

19 MR. SWILLEY: And Your Honor, I don't
20 believe it was testified to that he came there in a
21 menacing manner. Anything of that nature states in
22 order to be guilty as an aider or abettor the
23 participant must be chargeable with the knowledge of
24 the principal's criminal conduct. And that's State
25 v. Winter 292 SC 133. I'm reading, I've been

1 reading out of State v. Brandon Lewis which came out
2 May the 15th, 2013, which outlines, which kind of
3 gives a window as to what it takes could be, what
4 it takes to get past directed verdict by the theory
5 of accomplice liability.

6 THE COURT: You said — let me see it.

7 (Document tendered to the Court.)

8 THE COURT: All right. First of all, with
9 regard to rule 19, the motion for directed verdict,
10 the rule provides that on motion of defendant or on
11 its own motion the Court shall direct a verdict in
12 defendant favor on any offense charged in the
13 indictment after the evidence on either side is if
14 there is a failure of competent evidence tending to
15 prove the charge on the indictment. I've always
16 thought that the word, use of the word competent in
17 that rule is unfortunate because it applies a
18 determination of what weight is to be given to the
19 evidence. Several years I headed a task force to
20 revise the eyewitness did with certain revoice
21 supreme court that had not been adopted but one of
22 the things that we changed was the language of the
23 rule on the directed verdict say failure competent
24 evidence I believe we use language more like failure
25 of in evidence the record however rule 19 even in

1 its present form goes on to say ruling on motion to
2 trial judge to consider only existence or
3 nonexistence of the evidence and not in weight. So
4 I cannot weigh the evidence to determine what
5 credibility it should have. That is a matter for
6 the jury's determination. So first of all, with
7 regard to Mr. Joshua Reed it is clear that the
8 evidence in the record is that he was the person who
9 pulled out the gun, that he fired the five shots and
10 even though Mr. Jones uses the term and think that's
11 exactly what the key is here, sufficient evidence is
12 the term he used by Mr. Jones that's not a matter
13 for the Court to determine at the directed verdict
14 stage. That is a matter to determine whether
15 there's sufficient evidence to bring the jury of his
16 guilt beyond reasonable doubt and the Court in
17 looking at the existence or nonexistence of the
18 evidence can only conclude that there is evidence in
19 the record whereby Mr. — where the jury could
20 conclude that Mr. Joshua Reed is guilty of these
21 charges.

22 The question with regard to Mr. Johnathan
23 Reed is a bit more problematic. As we — obviously
24 the State's theory of the liability of Mr. Johnathan
25 Reed is on the theory of accomplice liability or

1 commonly referred to as the hand of one is the hand
2 of all, which has long been the law in this state,
3 as has also been said in cases in this state if
4 there's any direct or substantial, or circumstantial
5 evidence reasonably tending to prove the guilt of
6 the accused the matter should be submitted to the
7 jury. And of course, the accomplice liability
8 theory or the hand of one hand of all is that the
9 person must personally commit the crime or be
10 present at the scene of the crime intentionally or
11 through a common design aid, abet, or assist in the
12 commission of the crime through some overt act as
13 with all stated many times prior knowledge of the
14 crime going to committed is not enough, and this is
15 neither is mere presence. However, the case that
16 has been cited to the Court in support of the
17 directed verdict is the case of State versus Lewis
18 which was decided by the Court of Appeals in May of
19 this year. And I have reviewed that case, and I
20 think it is clearly distinguishable from the case at
21 hand. In that case a conviction for homicide by
22 child abuse using an aiding or abetting or
23 accomplice liability theory, and the facts of that
24 case are that the two defendants were not even in
25 the same room that the defendant in this case, the

1 Mr. Lewis, Mr. Richard Lewis who is the respondent
2 or the appellant in that case, had seen the mother
3 of the child spank the child earlier; but other than
4 that, had no reason to know other than the fact that
5 he was in the house that there had been any other
6 abuse. He was not in the room. He was in another
7 room entirely, and in no way even came up to the
8 victim or can be said to have been around the victim
9 in this case, or in that case.

10 Reading from the facts of that case the
11 Court said the record does not contain any evidence
12 to support this conviction, the conviction being
13 both Lewis and Hepburn assert that they were in
14 separate rooms during the time of the incident, not
15 within eyesight of each other. Hepburn claimed she
16 was asleep during the incident, and Lewis claimed he
17 was in the living room watching television. We
18 believe this is an important distinction from Smith.
19 Hepburn's and Lewis statements to investigators and
20 testimony implicate one or the other as having
21 committed homicide by child abuse. Lewis stated he
22 was in the living room and simply heard Hepburn walk
23 loudly into the victim's room at which point he
24 heard victims crying eventually stop. He testified
25 he subsequently discovered the victim's abnormal

1 condition when checking on her. Husband claimed he
2 never went to the victim's room after placing her in
3 her crib. And of course, her statement was that she
4 asserts that Lewis was the only person who could
5 have harmed the victim that night so; and as the
6 court said, the record does not support this
7 conviction. The State argues that because Lewis
8 instigated, abetted, and witnessed Hepburn's
9 spanking, then witnessed her disciplinary outburst
10 against her infant daughter, he knew then what he
11 knew later. First, there's no evidence to support
12 the claim that Lewis witnessed Hepburn's discipline
13 of her daughter. Secondly, we disagree with the
14 State's contention that because he witnessed Hepburn
15 spank the child earlier in the night he knew Hepburn
16 was going to abuse the victim. So I think that that
17 case is clearly distinguishable from the case where
18 you have two individuals, one of which has been
19 driving the vehicle just before the homicide in this
20 case happened, come up to the scene, both of them
21 get out of the vehicle, approach the scene together,
22 one pulls a weapon, one shoots. Even if you take
23 out the testimony of Ms. Gregg, I still think there
24 is sufficient evidence or there is evidence in the
25 record by which it could, a jury could conclude that

1 they were acting together. There's evidence of
2 Ms. Gregg, but there's also the evidence that they
3 came up to the scene together. They parked the
4 vehicle. They got out of the vehicle. They came
5 into the park together and they left together. And
6 I think all of those overcome the evidence or
7 sufficient evidence — overcome the mere suspicion
8 standard and are sufficient evidence or are evidence
9 both circumstantial, substantial circumstantial
10 evidence that would prevent me from granting a
11 directed verdict as to the defendant Mr. Johnathan
12 Reed and so I would respectfully deny that motion as
13 well.

14 All right. Now counsel, let's talk.
15 Mr. Jones, let me talk first with your client about
16 his Fifth Amendment rights. Mr. Reed, yesterday
17 afternoon I talked with you about your rights under
18 the Fifth Amendment right not to testify, your
19 privilege against self-incrimination, and you
20 indicated at that time you understood my
21 discussions. Have you had a chance to talk with
22 your lawyers about your Fifth Amendment rights?

23 DEFENDANT JOSHUA REED: Yes, sir.

24 THE COURT: Have you understood your
25 discussion with your lawyers?

1 DEFENDANT JOSHUA REED: Yes, sir.

2 THE COURT: And do you have any questions
3 that you want to ask either them or me regarding
4 your Fifth Amendment right or your right to remain
5 silent?

6 DEFENDANT JOSHUA REED: No, sir.

7 THE COURT: Have you made up a decision as
8 to whether you do or do not wish to testify in this
9 case?

10 DEFENDANT JOSHUA REED: Yes, sir.

11 THE COURT: And what is that decision?

12 DEFENDANT JOSHUA REED: Do not.

13 THE COURT: And is that decision on your
14 part freely and voluntarily made?

15 DEFENDANT JOSHUA REED: Made.

16 THE COURT: Is it freely made on your
17 part?

18 DEFENDANT JOSHUA REED: Yes, sir.

19 THE COURT: All right. Thank you. You
20 may be seated. The Court finds that the defendant
21 after having been advised, defendant Joshua Reed,
22 after having been advised by the Court and his
23 attorneys of his rights under the Fifth Amendment
24 and indicating that he understood those rights has
25 made a conscious free, voluntarily, and intelligent

1 decision to exercise that right not to testify in
2 this matter and the Court will respect that
3 decision.

4 All right, Mr. Johnathan Reed, if you
5 would stand please. Mr. Reed, yesterday I talked
6 with you about your Fifth Amendment rights and you
7 indicated that you understood those rights; is that
8 correct?

9 DEFENDANT JOHNATHAN REED: Yes, sir.

10 THE COURT: Have you since then had a
11 chance to talk with your lawyer about your Fifth
12 Amendment rights?

13 DEFENDANT JOHNATHAN REED: Yes, sir.

14 THE COURT: Have you understood your
15 discussions with him and with me?

16 DEFENDANT JOHNATHAN REED: Yes, sir.

17 THE COURT: Is there any questions that
18 you have of him, of me, or of me, that you would
19 like to ask about your Fifth Amendment privilege
20 against self-incrimination?

21 DEFENDANT JOHNATHAN REED: No, sir.

22 THE COURT: Have you made a — have you
23 made a decision as to whether you do or do not wish
24 to testify in this case?

25 DEFENDANT JOHNATHAN REED: Yes, sir.

1 THE COURT: What is that decision?

2 DEFENDANT JOHNATHAN REED: I do not.

3 THE COURT: Is that decision on your part
4 freely and voluntarily made?

5 DEFENDANT JOHNATHAN REED: Yes, sir, that
6 decision is freely.

7 THE COURT: All right. The Court would
8 find then that the defendant has — Johnathan Reed
9 has made a free, voluntarily, intelligent, and
10 knowing decision to exercise his Fifth Amendment
11 right and not to testify in this case and the Court
12 will respect that decision. Thank you, sir, you may
13 be seated.

14 All right, Mr. Jones, would the defendant
15 Joshua Reed intend to introduce any other testimony
16 in connection with this matter?

17 MR. JONES: No, sir.

18 THE COURT: So it would be his intention
19 to rest at this point?

20 MR. JONES: That's right.

21 THE COURT: Is that correct?

22 MR. JONES: Yes.

23 THE COURT: Mr. Swilley, how about
24 defendant Johnathan Reed, does he wish to introduce
25 any other testimony in this matter?

1 MR. SWILLEY: We would rest as well, Your
2 Honor.

3 THE COURT: So both sides have rested.
4 That means that we have completed all the testimony
5 that will be heard in this matter. All right, that
6 being the case then, we'll talk about scheduling
7 just a minute but let's go back a few — before we
8 do that to a little bit about requests to charges so
9 that I can start getting those together and see what
10 the thought is. I have told you that my general
11 felony charge will include a presumption of
12 innocence, reasonable doubt, burden of proof.
13 Procedural matters that I will charge will be direct
14 and circumstantial evidence, expert witnesses
15 because there have been two qualified in this case.
16 Of course the defendants not testifying. The
17 identification charge because I think both the
18 defendants want that. Separate verdicts that each
19 case should be weighed separately and they should be
20 separate verdicts decided that way. Accomplice
21 liability including the hand of one the hand of all
22 and mere presence. And I had asked earlier, Mr.
23 Jones, that there's no question on the statements
24 about voluntariness so we can take that out of the
25 equation.

1 MR. JONES: Yes, sir.

2 THE COURT: The substantive charges of
3 murder and possession of the weapon. Anything else
4 from the standpoint of the defense, Mr. — from the
5 prosecution, Mr. Holt?

6 MR. HOLT: Nothing else, Your Honor.

7 THE COURT: Mr. Jones?

8 MR. JONES: There may be a stretch —
9 during the playing of the statements, and I think it
10 was particularly Mr. Johnathan Reed's statement; but
11 Sergeant Anderson two or three times said give us
12 names of someone so that we can check out your
13 alibi, and the alibi basically was they were at the
14 store. I'd ask that the Court consider giving us an
15 alibi charge.

16 THE COURT: I hear you, okay. I'll let
17 you know about that. All right, Mr. Swilley, many
18 special requests?

19 MR. SWILLEY: Yes, Your Honor. I don't
20 know if you have your own personal mere association
21 charge along with mere presence, but I think that
22 would also be applicable in this scenario.

23 THE COURT: You got one you want to hand
24 up? I'll look at it.

25 MR. SWILLEY: I'm gonna have to do some

1 research. I didn't ---

2 THE COURT: I'm not sure there is one --
3 mere association is distinguished from mere
4 presence. I think that they're -- the presence
5 charge is the one that is key. If you got something
6 you want me to look at way of mere association I'll
7 take a look at it.

8 Mr. Holt, what say you as to request for
9 alibi?

10 MR. HOLT: I don't think there's been -- I
11 don't how you get one without testifying. I
12 certainly don't believe there's been any mention of
13 any alibi ever except a question posed by the
14 investigator. I don't think they're entitled to it.

15 THE COURT: Well, I don't think he's got
16 to testify to get an alibi or be entitled to an
17 alibi. I just don't think the fact that there's a
18 police officer said check out your alibi is enough
19 evidence to entitled you to it. I will not charge
20 it, Mr. Jones, so I'm gonna respectfully decline
21 that.

22 All right, counsel, I've got proposed
23 verdict forms here I'd like for y'all to come up and
24 look at them and tell me what you think. The
25 identical, this is the one with Mr. Johnathan Reed

1 and this is the one with Joshua Reed.

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

4 THE COURT: All right, Mr. Jones and Mr.
5 Swilley, since no evidence was presented by either
6 of the defendants the State has the right to make
7 last closing. I will ask you what order y'all are
8 going to go in and how much time do you need? Y'all
9 go first, then Swilley or Mr. Swilley then you? How
10 are y'all going to do it?

11 MR. JONES: I understand that the State is
12 still going to get to go last even though we —

13 THE COURT: No, I'm sorry. I'm sorry,
14 you're right. Okay, I was thinking that — how much
15 time you need?

16 MR. HOLT: Thirty minutes.

17 THE COURT: All right. What about you,
18 Mr. Jones, you going to go first of the two of you?

19 MR. JONES: Judge, I hadn't really talked
20 about it. If we're going in the same order i assume
21 that I would.

22 THE COURT: Okay. And how much time you
23 need?

24 MR. JONES: I'd like to ask for a little
25 more than, probably I'm gonna need maybe an hour.

1 THE COURT: I remind y'all like I tell my
2 preacher. Anything after 20 minutes is lost anyhow,
3 you know.

4 MR. JONES: How about 45?

5 THE COURT: Okay. Mr. Swilley, how much
6 time you need?

7 MR. SWILLEY: I can't see myself going
8 over 40 minutes.

9 THE COURT: Okay. All right, Mr. Holt, if
10 we said -- basically if I lot kind of time we're
11 taking about two hours which will be right at 5:00
12 we did arguments this afternoon we could do
13 arguments this afternoon and then come back and
14 charge I mean, charge and go to the jury in the
15 morning or we can adjourn for the afternoon and come
16 back and do arguments and charge in the morning.
17 What's the State's preference?

18 MR. HOLT: We'd like to adjourn for the
19 afternoon then come back and do charges and
20 arguments in the morning.

21 THE COURT: All right. Solicitor, from
22 scheduling standpoint here and understanding the
23 schedule, the solicitor is in charge of the docket,
24 you realize of course that will mean that the other
25 case, that will probably not go forward?

1 MR. HOLT: But it will also mean I get to
2 do pleas which are more indictments than clear that
3 one charge, Your Honor.

4 THE COURT: Well said. Okay. Is that
5 what you would prefer, Mr. Jones?

6 MR. JONES: Yes, sir.

7 THE COURT: Mr. Swilley?

8 MR. SWILLEY: Yes, sir.

9 THE COURT: All right. Then I'm gonna
10 bring the jury in and excuse them, and we will be in
11 recess this afternoon come back at 9:30 in the
12 morning and do begin arguments with Mr. Holt and
13 then Mr. Jones and then Mr. Swilley.

14 MR. JONES: Judge you want us to rest in
15 front of the jury?

16 THE COURT: Yeah, I do. I'll call on you
17 to rest, call on you to rest at that time, and I'll
18 tell them where we are. Okay, anything before I
19 bring the jury in?

20 MR. JONES: No.

21 MR. HOLT: No, sir.

22 THE COURT: All right, bring the jury in
23 please.

24 (WHEREUPON, the jury was returned to the
25 courtroom at and the following

1 proceedings commenced in open court.)

2 THE COURT: All right. Ladies and
3 gentlemen, thank you for your patience, and we are
4 now ready to go forward. You have heard all the
5 testimony from the standpoint of the State, and now
6 the Defense will have the right to present any
7 evidence that they wish to present. I'll call first
8 on Mr. Jones on behalf of the defendant Joshua Reed.

9 MR. JONES: Your Honor, on behalf of
10 Mr. Jones we — the Defense rests.

11 THE COURT: All right. Defense rests on
12 behalf of Mr. Joshua Reed.

13 Mr. Swilley, on behalf of —

14 MR. SWILLEY: We would rest as well, Your
15 Honor.

16 THE COURT: So both, that's on behalf of
17 Mr. Johnathan Reed; so both defendants have rested.
18 Ladies and gentlemen, what that means is that you
19 have now heard all of the evidence that you will
20 hear in this matter. There are only two things that
21 remain to be done. Those are the arguments of
22 counsel and instructions on the law by the Court.
23 Those matters will run us — probably just the
24 argument of counsel will probably run close to
25 four — well, that's 4:00, probably to 4:30. And

1 then after I will give you my instructions it will
2 be close to quitting time for the rest of the
3 afternoon, and I think that the appropriate thing to
4 do is to adjourn for the afternoon and do arguments
5 and closing in the morning. And so that's what
6 we're going to do. So I am going to allow you to go
7 for the rest of the day. I will tell you again as I
8 have told you throughout this case, that even though
9 you have heard all the evidence in this case and
10 it's still premature for you to begin any
11 deliberations about the case. You have not heard
12 the arguments of the lawyers, nor have you heard the
13 instruction on the law by the Court. So when you
14 reassemble in your jury room tomorrow morning, do
15 not discuss the case among yourselves. And we'll
16 bring you in at 9:30. You will hear the lawyers'
17 arguments and then you'll hear the instructions on
18 the law by the Court.

19 Also, while you're away from the
20 courthouse this afternoon do not discuss the case
21 with anyone. It's still premature for you to begin
22 any discussion of the case with anyone. Do not
23 allow anyone to discuss it with you. Get their name
24 or their description if anyone does try to contact
25 you or make any contact with you about this case

1 whatsoever. Simply relax, come back in the morning
2 rested, and we'll be ready to go forward with
3 closing arguments and instructions. Thank you.
4 You're free to go the rest of the afternoon.

5 (WHEREUPON, the jury was removed from the
6 courtroom and the following
7 proceedings commenced in open court.)

8 THE COURT: Mr. Swilley, here's that Lewis
9 case that you handed up. Thank you, sir. Let's
10 give the jury a chance to...

11 (Pause.)

12 THE COURT: All right. I've been advised
13 that the jury has left the courthouse. We'll be
14 adjourned till tomorrow morning at 9:30.

15 (Court was adjourned and resumed on October 24,
16 2013.)

17 THE COURT: We're back on the record with
18 regard to the matter of the State v. Reed, Joshua
19 and Johnathan Reed. Yesterday afternoon we had a
20 little charge conference and we have followed that
21 up with a charge conference in chambers. We had a
22 discussion in chambers this morning with regard to
23 the charges, and I want to run over those with you
24 and just clarify any differences that we may have
25 and get those on the record before we go forward

1 with arguments because I think counsel is entitled
2 to know prior to argument what the Court will charge
3 because it does make a difference with regard to
4 their closing arguments or summations. The Court
5 will charge — my general felony charge which will
6 include the presumption of innocence, reasonable
7 doubt, burden of proof. My reasonable doubt charge
8 is the one formulated and used primarily by — well,
9 used by, written by Judge Baxley. I don't know who
10 else uses it, but I use it. I think it is better
11 than just the hesitate to act brief without charge.

12 On the substantive charge I will, of
13 course, charge the murder charge, possession of a
14 weapon during the commission of a violent crime.
15 One of the matters we discussed and I'll come to in
16 just a minute and come back to in just a minute is
17 whether or not the murder charge should or should
18 not include an inference of malice with the use of a
19 deadly weapon, and we'll come back to that in just a
20 minute.

21 The other things that I will charge will
22 be the direct and circumstantial evidence charge as
23 enunciated in the recent case of Logan, State versus
24 Logan, and I'll use the direct and circumstantial
25 evidence charge that was approved by the Court

1 there. Expert witnesses, the ID charge that I
2 discussed with counsel in chambers, the multiple
3 defendants and finding individually, and the
4 accomplice liability or the hand of one is the hand
5 of all charge. Mr. Swilley has requested an
6 addition to that charge, and we'll discuss that in
7 just a minute. Those are the basic things I will
8 charge.

9 Now let's look at them individually. The
10 accomplice liability, the hand of one the hand of
11 all, I will include in that the mere presence, and
12 not only mere presence but the mere association is
13 not enough so that will be included at Mr. Swiley's
14 request. The ID charge, of course, is the charge
15 that I went over with counsel in chambers and will
16 use that ID charge. That's evidence that will be
17 waived by the jury with the identification will be
18 evidence that's waived by the jury to be credible
19 just like any other witness. The main discussion
20 centered around — before we get to that — any
21 problems with either one of those two matters, on
22 behalf of the State, Mr. Holt?

23 MR. HOLT: No, sir, Your Honor.

24 THE COURT: Mr. Jones?

25 MR. JONES: No, sir.

1 THE COURT: And Mr. Swilley?

2 MR. SWILLEY: No, Your Honor.

3 THE COURT: Now let's go to the one where
4 there may be some disagreement, and that is, the
5 inference of malice and the use of a deadly weapon.
6 That has long been the law in this state that malice
7 can be inferred with the use of a deadly weapon.
8 However, in the case of Belcher, State v. Belcher,
9 which was decided in October of 2009, the matter was
10 revisited. That was a self-defense case and the
11 Belcher case is a decision of the South Carolina
12 Supreme Court. And what the court held in that case
13 was that — and I quote — today you turn to
14 rationale underlined Hopkins, Lavell (ph), and
15 Jackson and hold that where evidence is presented
16 that would reduce, mitigate, excuse, or justify a
17 homicide or assault and battery with intent to kill
18 caused by the use of a deadly weapon, the jury
19 should not be charged with the, that malice may be
20 inferred from the use of a deadly weapon.
21 Continuing to quote, the permissive inference charge
22 concerning the use of a deadly weapon remains a
23 correct statement of the law where the only issue
24 presented to the jury is whether the defendant has
25 committed murder or assault and battery with intent

1 to kill. And then there is a footnote that goes on
2 to explain all of that.

3 So it is my view that unless there is some
4 evidence presented that would reduce, mitigate,
5 excuse, or justify homicide such as self-defense or
6 lesser included offense or something of that nature,
7 that the malice, the inferred malice charge is still
8 appropriate. And I -- it will be my intention to
9 charge the inferred malice. What's the State's
10 position?

11 MR. HOLT: We would like to have the
12 charge inferred malice, Your Honor.

13 THE COURT: All right.

14 MR. JONES: And Your Honor, if I might, I
15 would take exception and would object to the use of
16 that and I know it may be -- I will submit that the
17 terminology of mitigation could include the
18 situation that I believe we have here where the
19 defendant Joshua Reed says, I didn't do it, however
20 -- I did not do it, period. So I would submit that
21 it should not be used.

22 THE COURT: All right, your exception is
23 noted, Mr. Jones. To me that's not mitigation,
24 that's a question of guilt or innocence and not
25 mitigation.

1 MR. JONES: Yes, sir.

2 MR. SWILLEY: And your Honor, I would
3 likewise argue that the charging malice, the
4 inference of malice is improper. I think that the
5 fact my client is — there is evidence mere presence
6 and mere association, I think that would qualify as
7 what the supreme court's has enunciated as
8 mitigation or something otherwise that would
9 prohibit the use of the inference of malice charges.

10 THE COURT: All right, same ruling. I
11 think that the situation is that when you're
12 asserting that I didn't have anything to do with it,
13 I wasn't there, I didn't, didn't have anything to do
14 with it, it's not of mitigation or something that
15 would reduce, mitigate, excuse, or justify homicide;
16 and for that reason I would respectfully overrule
17 your objections to the charge. I think under
18 Belcher as it stands right now — supreme court may
19 change the law; and if they do, then that would be
20 to your benefit. But I think the way the law is
21 right now I have to follow the law as it is set
22 forth in Belcher which I think is the latest
23 pronouncement from the Supreme Court on the law of
24 inferred malice, and so your exceptions are noted
25 and I will charge the inferred malice. Okay. All

1 right, anything else before we bring the jury in,
2 Mr. Holt?

3 MR. HOLT: No, sir.

4 THE COURT: Mr. Jones?

5 MR. JONES: Nothing.

6 THE COURT: And Mr. Swilley?

7 MR. SWILLEY: No, sir.

8 THE COURT: All right, bring the jury in
9 please.

10 (WHEREUPON, the jury was returned to the
11 courtroom and the following
12 proceedings commenced in open court.)

13 THE COURT: All right. Good morning
14 ladies and gentlemen, and thank you for your
15 promptness in being back here. We did have another
16 legal matter that we had ed to get cleared up before
17 we could get started but we are now ready to begin.
18 Before I start I need to ask you again as I have
19 every day this week, if anybody has tried to contact
20 you or make any contact with you about this case in
21 any manner over the evening recess I will need to
22 know about it now.

23 (There was no response.)

24 THE COURT: Negative response, and that's
25 good. If anyone has read any newspaper stories or

1 seen any television or radio, or heard any radio
2 broadcast about this matter over the evening recess,
3 again, I would need to know about it now.

4 (There was no response.)

5 THE COURT: Again, negative response and
6 that's good. All right, ladies and gentlemen, I
7 told you yesterday that you have now heard all the
8 testimony in this case and all the evidence has been
9 introduced and all the testimony has been done, and
10 we now come to that stage of the trial where there
11 are only two things that remain to be done. Those
12 are the arguments of counsel and the instructions on
13 the law by the Court. I will tell you now as I did
14 at the first of this case, that the arguments of
15 counsel or the lawyers are not evidence in this
16 case. They're simply the lawyer's views of what
17 they think the evidence shows. You will decide this
18 case based on the evidence that you have heard from
19 this witness stand, plus any exhibits that have been
20 introduced into evidence which you will be allowed
21 to take with you to the jury room, and that will be
22 the basis for your decision. But the lawyers do
23 have the right, not only the right but the duty on
24 behalf of their clients to address you now and to
25 give you their views of what they think the evidence

1 shows.

2 When they have concluded their closing
3 statements or arguments to you I will then instruct
4 you on the law of South Carolina as it pertains to
5 the facts of this case as you may find those facts
6 to be, and then you will be allowed to retire and
7 deliberate your verdict. You will hear first from
8 Mr. Holt on behalf of the State, then from Mr. Jones
9 on behalf of the one defendant, and Mr. Swilley on
10 behalf of the other defendant.

11 Mr. Holt.

12 MR. HOLT: Thank you very much, Your
13 Honor, may it please the Court.

14 THE COURT: Yes, sir.

15 MR. HOLT: Mr. Jones, Ms. Wooten,
16 Mr. Swilley. February 15th, 2012, Anthony Wingate
17 gets a tattoo. And to celebrate and relax a little
18 bit, he drives over to Pride Park in Hartsville.
19 He's gonna get him something to eat, and he's gonna
20 fix himself a drink and that's the day he's got
21 planned. Asia Gregg and Johnny Lee Washington spend
22 the night together and they wake up, and they're
23 gonna eat some lunch. And somewhere during the
24 middle of them deciding where and what they're gonna
25 eat, they go to Yogi Bear and they pick her brother

1 up something and he decides he's gonna meet them at
2 Pride Park as well. It's very impromptu. There's
3 no plans that day; that's just what's immediately in
4 front of them.

5 Now, where it goes from there is the
6 reason you're here because sometime while they're at
7 that park they're noticed by Joshua and Johnathan
8 Reed. The Reed brothers drive by the park. Once,
9 twice, third time they pulled up. When they pull up
10 they walk across that very small park. They
11 exchange a few brief words. Johnathan stands over
12 Johnny Lee Washington. Joshua stands over Milton.
13 And very fast and very violent, Josh shoots Milton
14 about his body. And you heard about the wounds
15 yesterday at the top of the head. That's why we're
16 here today.

17 Now right now y'all might be thinking, why
18 and what do we do from here. I know some of the
19 evidence -- well, how is it gonna work? Well what
20 I'm gonna tell you is, it's not going to be just
21 what you think or might think you know about the law
22 or what you think or might think you know about
23 right or wrong that you use as a guidepost to decide
24 these facts. Because you're gonna decide these
25 facts within the guidelines of the law. They're

1 gonna dictate what happens. I'm gonna talk to you
2 about reasonable doubt. I'm gonna talk to you about
3 malice and murder and possession of a weapon. I'm
4 gonna talk to you about eyewitnesses, and I'm gonna
5 talk to you about the facts. And I'm gonna do it as
6 briefly as I can. I don't know if y'all noticed but
7 I was watching the clock just as much as y'all. It
8 was boring, a lot of it, okay. It's not any fun
9 being here but it's our job and we're gonna have to
10 get through it.

11 And I'll tell you briefly before I get
12 started, that the one place that your average South
13 Carolinian completely understands the law and is
14 correct is when it comes to the hand of one is the
15 hand of all. And I think everybody knows that;
16 everybody's heard it. And it's one of the very
17 rare, if not the only one, where everybody is
18 completely accurate and on the same page.

19 Now I'm gonna break this down into two
20 groups of evidence. First we're gonna have what I
21 call our fact evidence. These are our three
22 eyewitnesses to the crime; and then I'm gonna go
23 into what I call our investigatory evidence which is
24 your first responders, your 9-1-1, your
25 investigators, the people that look for evidence

1 after the crime was committed. And we're gonna talk
2 about all that in a row. But the first thing I need
3 y'all to understand and I want to talk to y'all
4 about, so I'm gonna give you an example and then
5 that's the only preaching I'm kind of gonna do. I'm
6 not a good preacher. I'm not a good teacher; I'm
7 not a good speaker. But I wanted to just give you
8 an example about 20 people going to a reunion or a
9 wedding party or something like that. And I say
10 there's 20 people there and say three big things
11 happen. Say somebody falls in a pool, somebody gets
12 punched in the face, and an older couple does that
13 thing that they always do after a few drinks and
14 have one of those awkward dances, okay. Say all
15 three of these things happen. Now, the next day,
16 you're asking these people at the party what
17 happened. You're gonna get twenty different
18 versions of what happened, okay. Now does that mean
19 that twenty people are lieing or nineteen people are
20 lieing? No. Life is not a movie. Life doesn't
21 break down where we view everything in slides from a
22 certain view point where the camera shows us why.
23 Life is complex. And if you ask one person what
24 happened and they tell you about the punch in the
25 face and they tell you about the dance, and then the

1 next time you ask them what happened they tell you
2 about all three, the punch, the dance — and now I
3 even forgot what the other one is. And the guy
4 falling in the pool, okay. Does that mean that the
5 first time they told you the story they lied? Of
6 course not. And if some person didn't see one thing
7 and he tells you about it, does that mean he's
8 lieing? It doesn't mean he's lieing, okay.

9 But what the point I want to make is by
10 asking questions in a certain manner I can make one
11 or any of those people appear to be lieing later on
12 when I ask them what happens. And by the questions
13 I use and maneuver I can imply that they're lieing
14 about what they leave out. Politicians, people who
15 make polls, advertisers, they earn their living
16 asking specific questions and specific ways to make
17 people believe them.

18 Now, let's go into our fact witnesses.
19 You got three witnesses to the crime: Asia Gregg,
20 Johnny Lee Washington, and Anthony Wingate. And
21 I've got Anthony Wingate underlined 'cause I want
22 everybody to realize that where Asia was his sister,
23 Milton's sister, the victim in this case, and Johnny
24 Lee Washington was her boyfriend and child's father,
25 Anthony Wingate is just a dude. He's just a guy who

1 was there, okay, that happened to see everything.
2 And I want you to understand that he's completely
3 unbiased. I believe Asia and Johnny a hundred
4 percent, okay. No doubt in my mind that what
5 they're saying is true and accurate, but also I can
6 understand where a jury might think they got a stake
7 in the case. But I want everybody to realize
8 Anthony Wingate didn't; he was just there.

9 Now what did Asia say, the Reeds drove by
10 multiple times. The last time a police car drove by
11 right before they pulled up. They walked and
12 entered from that one side of the park, and they
13 walked across but they did so in such a way that
14 Asia got up. And what she was doing, everybody
15 milling about in that area at the picnic tables, she
16 got up and stood beside her brother when they walked
17 up. And without words being exchanged from the
18 Reeds to the party, she said something along the
19 lines of, you're not gonna have to face this alone,
20 I'll be with you. Okay?

21 Few words were exchanged. Johnathan Reed
22 stood over Johnny Lee Washington who was sitting
23 down. Joshua Reed walked over to Milton so hands
24 were shook. And in no time at all it jumped from
25 talking to a murder, very brief. Now Asia might not

1 have understood what 3-feet was, okay, and I don't
2 remember why that question was important or what we
3 were talking about; but I think Mr. Jones is saying,
4 show me what 3-feet is. She's up there. He stops
5 right about here, and that's 3-feet. But I think I
6 cleared it up when I asked Asia, did you have a tape
7 measure, did you have a stop watch, were you paying
8 attention to those type of things? Okay. Time,
9 space, and movement are subjective. Somebody who's
10 6 foot 4 might think somebody who's 6'2" is short.
11 But 6'2" would be tall to me. Things are subjective
12 in the viewpoint of the witness. I think that's
13 common sense; I think everybody knows that. Asia
14 saw the gun that Johnathan had in his pocket, okay.
15 There's gonna be some conflict of that when me and
16 the other two people talk. I'm gonna put it into
17 evidence because she said it, and I'm also gonna say
18 that she was in the best viewpoint to witness it.
19 She was beside Milton. She was right up by him.
20 Anthony Wingate was so scared he was walking away.
21 Johnny Lee Washington was looking away till he heard
22 the first shot. But let's not forget, that just
23 like that sister jumped up beside her brother to
24 protect him, she had another stake in the argument.
25 She had Johnny Lee Washington, the father of her

1 child and her boyfriend. And so just as much as
2 she's going to be protecting Milton standing beside
3 him, she's going to notice why Johnathan Lee is
4 still standing down and she's gonna notice what
5 danger comes to him. She's right there at him
6 within arms reach. She saw the gun, okay?

7 What's our next witness gonna say. Johnny
8 Lee Washington, they drove by multiple times; that
9 they parked toward that side of the park; that a
10 police officer drove right before they got out; that
11 he was sitting down; that Johnathan was near him
12 shaking his hand; that he looked away. And when he
13 looked back in his face at that time Joshua was
14 shooting Milton. We know it was at the top of the
15 head and all the other — the evidence is right
16 there from the autopsy report. He's shooting. We
17 know that they immediately run away. We know that
18 they parked over there and they fled the scene.
19 Okay. That's his. Very quick, very, very quick
20 encounter.

21 Anthony Wingate, our most unbiased
22 witness, the guy who just started to fix himself a
23 drink. The Reeds drove by multiple times. The
24 Reeds parked on the other side of the park. I fixed
25 myself a drink before everybody got there; and by

1 the time all this had happened, I'd only made it
2 halfway through. That's the kind of time frame
3 we're talking about. When the Reeds approached, I
4 want you to think back on Anthony Wingate's
5 testimony. When the Reeds approached, okay, what
6 did say he picked up on? Didn't tell you why, but I
7 remember him looking like this and him saying that
8 he was walking away from the encounter. Anthony
9 Wingate didn't want any part of what was going down,
10 and he knew that without words. He knew that from
11 the way they walked up to that situation. He knew
12 he wanted to be somewhere else. And I won't
13 remember the specific things or crowd your memory of
14 them, but that is exactly what I got from his
15 testimony. The Reeds drove by multiple times,
16 parked on the other side of the park, couldn't
17 finish his drink, had to walk away. But also think
18 about his viewpoint and remember my example of the
19 party. And where he was to see Johnathan, he was
20 separated by two or three people standing beside
21 each other so he wouldn't have seen Johnathan. So
22 just because Asia saw Johnathan's gun and Anthony
23 didn't, don't get it confused. Don't think that one
24 or the other is lying. He didn't say Johnathan
25 didn't have a gun; he said she didn't see it. And

1 he wasn't in a position to see it. Cops drove by
2 right before. Think about what else he said. And I
3 want you to think about this. It goes to him being
4 unbiased, and him not having a stake in the outcome
5 of the fight. He has an expanded view of what's
6 happening. And what kind of shoes, what sort of
7 things he notices. Doesn't seem that important but
8 he says, Joshua's got on some type of slip-ons,
9 Crock-type shoes, okay. Now I don't want y'all to
10 forget that. And if I forget to tell you that you
11 can watch the liquor store video, and I want to
12 think about what kind of shoes Josh has got on. And
13 I want you to think that if they try to tell you
14 somebody else was there and the only reason that
15 they knew these defendants were in the area was
16 because they drove by, I want you to think is it
17 reasonable to believe that Joshua was driving with
18 his feet out in the car and so they — witnesses at
19 the scene could tell what type of shoes he had on?
20 I don't want y'all to forgot that Anthony Wingate
21 said Crock type slippers, and I don't want y'all to
22 do any kind of unreasonable thinking.

23 All right, now let's talk about our
24 investigatory witnesses and this won't be long at
25 all. You heard about the investigation. I don't

1 know what to tell you about that. I heard — put
2 the 9-1-1 tape in for a lot of reasons because I
3 want y'all to understand that where 18 months later
4 we're looking back on situations that happened there
5 and now and February 15th, 2012, it was absolute
6 chaos. The police don't come into a scene like
7 selling a car. There's not a desk and we're not
8 asking compliant questions. The police come on to a
9 murder scene. People are on the phone talking at
10 multiple times, it's chaos, it's confusion, and it's
11 violent. They walk on to the scene, and their first
12 priority is to contain the scene and to contain the
13 violence, and to that end they look for
14 descriptions. They want to know how soon can they
15 get a description out to all the other police in the
16 area so that they can start looking for stuff. And
17 I want y'all to think about each and every piece of
18 evidence they put in, all right? The 9-1-1 call
19 shows the confusion. The first responders, Milton
20 is on the ground. What do you find on him? You
21 find two cell phones. Nobody leaves the scene.
22 They get there almost directly after the phone call,
23 okay. Milton Hunter was completely unarmed. Find
24 him on the ground, a few witnesses there, they.
25 Look for a description. They get two black males

1 and they get a green F-150 truck and they put that
2 out, okay. We know from listening to witnesses
3 further down the chain in the investigation that
4 that's what they used to pull up to the green F-150
5 at the Reeds. That's the first time we get the
6 sense that the Reeds might be suspects in this case.
7 It's also where we learned that where the truck is
8 parked at ■■■, Johnathan leaves the house and walks
9 over to ■■■ but don't know why, okay. But now we
10 know that ■■■ is a place of interest as well.
11 Something might be going on at ■■■ that we need to
12 know about as well as ■■■. They block off that
13 scene and what do they find? They don't find any
14 shell casings and nowhere in this case in my scene
15 do we have a murder weapon. I don't want anybody
16 confused about that. We don't have a murder weapon.
17 It was a revolver. It didn't leave shell casings,
18 and we never found it. We don't have it, okay.

19 But what we did find is this, which as I
20 hold it right now looks kind of stupid; but we find
21 it on the Young and Young parking lot coincidentally
22 where everybody says the Reeds pulled up and parked.
23 We find this. It's not enough that the police
24 looked at it and say, hey, let's see if they're
25 missing a tail pipe and then let's say that's where

1 it came from. They don't do that. They do it to
2 begin with to get an idea. They found out it's
3 missing. Then they take it to a professional and
4 they show him. They looked at it and they say,
5 well, these rust marks correspond, the brakes
6 correspond, we know that this the one that came off
7 the truck because it fits in there perfectly and
8 because the marks in the brakings matched up. And
9 you heard Joseph Kinard say that on the stand. So
10 the Reed story that they were never there to begin
11 with starts to be chipped away at. What do we have
12 beside it? We got some circumstantial evidence that
13 that there's a tire mark on the ground, okay.
14 There's not any other tire marks near there. At
15 doesn't look like anybody else has been parking
16 there. The area is completely clean. There's no
17 trash, okay. Maybe things can stay on the ground
18 for a couple of days; but in a completely clean
19 area, I'm inclined to believe that somebody picks up
20 there regularly. I'm also inclined to believe that
21 we're in a little something called a recession and
22 metal doesn't sit the side of the road for long.
23 Anybody who doesn't know somebody that drives around
24 picking up metal doesn't know that many people,
25 okay. There's no way that that was on the ground

1 for a significant amount of time. Look at the
2 pictures — and that's why I put those into evidence
3 so you can see exactly how clean that area was.

4 Next, they find a green truck. They find
5 ■■■, they find ■■■, and they get their search
6 warrants. Rudick talked about early on interviewing
7 people at the park and them not knowing anything.
8 What I want you to gather from that is that the
9 police didn't choose the Reeds and then pigeon hole
10 all their evidence into proving them guilty. The
11 only evidence that's relevant in this trial is that
12 evidence and that's the only evidence you've heard.
13 But the police were expanding search warrant — I
14 mean, a search area. They're casting a wide net.
15 They need to get everything they can get, okay.
16 When they found some people that it didn't matter,
17 they threw them away. They weren't just trying to
18 pigeon hole these guys. Then I want you to think
19 about the photo lineups done the great FBI way.
20 They didn't just throw six people on a piece of
21 paper, they look any kind of way. They put the
22 suspects on there. They also thought enough about
23 it to age them and get modern pictures for them
24 because they didn't want to put a 15 and 16 year old
25 up there against all the rest of them, the grown

1 men, who fit that current description. Think about
2 what kind of effort they put into making it
3 completely non-biased. They separated the
4 witnesses. They had other police officers. The
5 Chief was there just to witness these photo lineups.
6 And then you heard the testimony from all three fact
7 witnesses to back that up. We were separate; I was
8 a hundred percent positive. How soon did it take
9 you to pick those people out? Boom, boom, I think
10 Anthony Wingate did like that to emphasize just how
11 quick he knew who it was. I think Asia Gregg said,
12 I was a hundred percent positive. Now during the
13 investigation Terry Anderson and a couple of other
14 people initially think Johnathan is the primary
15 shooter, and they tell you that. They also tell you
16 that during their investigation they realize that's
17 not true; and they also tell you that the
18 description of the shooter never changed, just the
19 names. The names of the two brothers were
20 confusing. Think about how many brothers you know
21 where you might not know which one is which.

22 Now I want to talk a little bit more about
23 just a little bit more of the evidence. Blue shirt,
24 Joshua Reed, never shot a gun Investigator Anderson,
25 never been around one, but I got GSR on a shirt I'm

1 wearing that I was wearing then, that I 'm talking
2 with you in a few hours later. Johnathan and Joshua
3 Reed, never been around guns, don't know nothing
4 about guns, never shot no guns in years. Both their
5 hands, back and front, gunshot residue. Never been
6 around guns, never seen guns, don't have nothing to
7 do with guns. Somebody at the scene said he had a
8 gun. And then in his room is found a gun and on his
9 hand is found GSR, and that's Johnathan Reed. And I
10 don't want anybody — we'll talk about the law in a
11 minute — to be confused with possession of a
12 firearm, I understand that he possessed this and
13 that's what I'm charging him with, okay. It's the
14 murder and the possession that Josh used and
15 Johnathan is tried under accomplice hand of one hand
16 of all accomplice liability. Don't be confused and
17 think I'm trying to prove he had this gun with him.
18 I believe he did; Asia Gregg says he did. He said
19 he never had a gun. It was found in his belongings
20 near his license. I'm not trying to prove that
21 though.

22 We talked about this earlier. The green
23 truck, had a muffler matched up. The crime scene,
24 how it matched up with exactly what our witnesses
25 said. The photo lineups, you can judge for yourself

1 what you think about them. You'll also have all
2 three where the witnesses picked them out hours
3 after the shooting. 9-1-1 call, it's not that
4 important, goes to the confusion. Those two
5 statements where the State believes we proved that
6 nothing they said was true but science, a little
7 hard to dispute that. I'm sure you'll hear some
8 ingenuous ways when it's their turn to talk on how
9 they're going to dispute science and metal, okay.
10 But you just think to yourself, is it reasonable.
11 Then we got these videos. Nobody is saying that
12 everything they said was a lie. They did go over
13 that store; they did do that. What I'm saying is
14 that in between that store when they made it home to
15 eat the fish and grits, that just as causally as
16 they picked up their liquor and their cigarettes,
17 they stopped and killed a man. And I don't want you
18 to think that I've got to prove why they did it
19 because here's the honest truth, okay, people
20 killing people in the streets, there ain't no why
21 that's ever going to make you happy. There ain't no
22 reason you're gonna get that satisfies you. We
23 don't have the reason. It could have been about
24 girls and money, I don't know. What I do know is
25 that they assassinated him, that they didn't go for

1 no fight. That when they showed up there it was a
2 murder, quick, and it was planned and they did it
3 with the ease with which they picked up their
4 brothers.

5 Now I want to talk about the autopsy for
6 two minutes; this happens after. And I want you to
7 think what size Milton is and how it fits into this.
8 Milton is 5'9", a hundred nothing, and you got two
9 guys who were close to 6'3", 6'4", over two hundred
10 pounds and they're walking up to him and very
11 quickly it goes to a killing. Now if you're
12 thinking it was going to be a fight or a beating or
13 teaching somebody a lesson, what did they need the
14 guns for? What in the world is Milton gonna do? Is
15 he some kind of karate expert where he's going to
16 twist these two big guys up? That ain't real life
17 and that ain't reasonable. I don't want y'all to
18 ever forget that. And I want you to think about
19 where those bullets were placed in his body, in his
20 head. What kind of fighting are you doing when you
21 get shot in the top of the head. You know what
22 you're doing? You're either ducking to cover
23 yourself or you're trying to pull yourself out of
24 your murderous grasp. You're doing one of those two
25 things when you get shot in the top of the head,

1 okay. 'Cause if you're using any type of weapon to
2 defend yourself, then you're gonna get shot here
3 while you're looking up, looking up trying to do
4 something. You're gonna get shot like this. You're
5 not gonna get shot on the top of your head.

6 Now I think the majority of what they're
7 gonna talk about when they get to talk that it
8 couldn't have been me, it couldn't have been me, it
9 couldn't have been me. Just remember, truck pipe,
10 tire marks, the GSR, the three eyewitnesses. Now
11 that's your facts. None of that is in dispute. I
12 you to go next to murder. This is what you need to
13 know. Murder is an intentional killing with malice
14 aforethought. They used a deadly weapon and I don't
15 have that weapon, okay. But if you think he poked
16 his fingers through that top of Milton's skull or
17 his body to kill him, then that's unreasonable.
18 Those are gunshot wounds. You heard a doctor
19 testify to it so I know beyond a reasonable doubt
20 that they had the murder weapon when they killed
21 Milton, okay. Defined as a willful, felonious
22 killing of a human being by a human being with
23 malice aforethought. Now that's where you're gonna
24 get tripped up. I got the killing, ain't nobody
25 gonna argue that.

1 What about this malice aforethought, John,
2 what's that? Malice aforethought is just a legal
3 term, okay. It's got a long definition and the
4 judge is gonna give you a long definition. The part
5 I want to stick out in your brain when you're
6 hearing the judge talk to you about the law, malice
7 is a legal term implying wickedness and excluding a
8 just cause or excuse. What kind of just cause or
9 excuse do we have here? There's absolutely none.
10 The judge is also, you're gonna hear, that it can be
11 inferred by the use of a deadly weapon. That's the
12 law. So if you're tripped up on this, just think if
13 we had a deadly weapon I can infer it, and that's
14 legal, and then you can move on. The murder in this
15 case is a lot simpler than all the words are gonna
16 allow you to think. Remember what I said about
17 lawyers and politicians, ain't no use in words.
18 Possession of a firearm during commission of a
19 crime, it's like I said, they got the violent crime
20 you go on to the next one. There's no way they
21 could have done this without a gun. They had to be
22 in possession. What's your three witnesses tell you
23 if you're worried about it? Asia said they both had
24 guns. Both the other two witnesses agreed a hundred
25 percent that Josh had a gun. And we're talking

1 about accomplice liability hand of one is the hand
2 of all. I compute that gun to Johnathan.

3 Now when you're listening to the law it's
4 going to be a complicated law. Essentially what it
5 is is the hand of one is the hand of all. We're
6 talking accomplice liability, and the judge is going
7 to charge it to you. Here's the case. Although
8 mere presence and prior knowledge of the crimes
9 going to be committed without more is insufficient
10 to constitute guilt. Now I imagine Mr. Swilley is
11 going to harpin on mere presence, mere presence,
12 mere presence, okay. If I'm sitting here talking to
13 Terry Anderson and I know him and Terry Anderson
14 jumps up and shoots the guy beside him, that's mere
15 presence. Mere presence is just something we use to
16 keep innocent people from getting out of it. But if
17 I drive my brother somewhere, if I take my brother
18 somewhere, if I walk with my brother with guns to a
19 place, then what happens, no matter what I intended
20 or believed to happen, when we went there with that
21 guns and with our evil purpose and a murder happened
22 is a logical consequence, that's accomplice
23 liability. I'm not wasting your time. That's what
24 it is, okay.

25 Presence at the scene of a crime by

1 pre-arranged agreement to aid. How about driving
2 your brother to there? What's Josh — even he
3 admitted in his interview, I don't drive. And on
4 the video you're gonna see Johnathan's driving.
5 Pre-arranged to aid. Encouragement. If I'm
6 standing over Johnathan Lee Washington while you
7 handle whatever beef you have with Milton, I'm
8 encouraging you and enabling you to continue to deal
9 with Milton because I'm keeping Johnny Washington or
10 whatever nosy witnesses are in the way away from
11 you. Abet. I got the gun in my pocket making sure
12 nobody's going to mess with you while you handle
13 whatever it is we came here to handle, okay? I
14 don't have to prove all of them; I just have to
15 prove one of them. The preparation of the crime
16 constitutes guilt as a principle; that's it. When
17 everybody says hand of one hand of all, that's it.
18 That's what we're looking for.

19 Here's the biggie. Here's what you're
20 gonna hear from both of them. Reasonable doubt,
21 reasonable doubt. Well, here it is for you, and the
22 judge is gonna charge you — I don't know what he's
23 gonna charge you verbatim, okay. But he's gonna
24 tell you the law and always listen to him. Not an
25 imaginary or a fanciful doubt or a weak doubt, it is

1 a substantial doubt, a doubt for which you can give
2 or assign a reason based on the testimony and
3 evidence in this case. Not imagination, not
4 fanciful thinking, testimony and evidence, not any
5 sort of doubt — you and I know from everyday life
6 experience that you may have a doubt about any
7 matter that arises no matter how trivial or serious
8 it may be. That's your reasonable doubt, okay.
9 It's not a guessing game; it's not a what if. It's
10 not a let's see how many circumstances I can
11 envision where they're not guilty of killing Milton
12 Hunter. You give or assign a reason based on the
13 testimony or evidence in this case with common sense
14 that 12 people can say that's common sense, okay?

15 Reasonable doubt, now I want to tell you
16 briefly and I'm not going to take up much more of
17 your time, how I think this whole thing went down
18 and I'm gonna excuse these two demonstrative pieces
19 that we used for earlier, okay. And you think in
20 your head how it probably went down. Everybody gets
21 to the party. Well, not a party but, you know, they
22 need to eat, he needs to eat and drink. Milton
23 shows up. The Reeds lived here and they have to
24 pass the park. They have to come this way once,
25 turn, they see him, okay? They go to the store and

1 do their errands. Whatever it is they do, that's on
2 video. They come back. They're still there, all
3 right. The Reeds go this way. Now Johnathan is
4 driving the car. At this time Johnathan is saying
5 we're not going back by there, we're gonna stop this
6 craziness. But he abets, who encourages, and he
7 engages. And he brings that truck back around to
8 right here and he parks, okay. How do we know this?
9 The muffler, the witnesses, the timeline and he
10 walks across here. How do we know that? All the
11 evidence above, plus the witnesses. And in the
12 space between a one hour show starting and in the
13 first commercial grade they walk across here. They
14 exchange some words, violence erupts, like that.
15 Milton Hunter doesn't strike anybody, no evidence of
16 that. Milton Hunter doesn't anger anybody, no
17 evidence of that. The killing happens. They flee,
18 run off that way.

19 Now Johnathan might have an argument if
20 he's driving to the liquor store and his brother
21 jumps out in a mad rush and kills somebody.
22 Johnathan might have that argument then, okay. But
23 he ain't got it when he drives back to the scene,
24 parks, walks over with his brother and stands in one
25 of 'em's way while his brother kills the other. You

1 don't have a mere presence charge because you didn't
2 have to be there; you didn't have to be involved.
3 It's not mere presence. And I think what you got,
4 ladies and gentlemen, is you more often to stop
5 these closings than it is to start them; you don't
6 know where to go. Just like any story that I tell
7 you, there's gonna be stuff I left out and stuff I
8 missed, came to light in this case. It's important.
9 I just hope you remember the shoes. I hope you
10 remember what my argument aside from mine is just
11 not reasonable. That people killing people in broad
12 daylight leaves witnesses, okay. That no -- for a
13 year-and-a-half their story has been these two men
14 killed my brother, my girlfriend's brother, and
15 killed some guy in the park that I saw him kill,
16 okay. That's your three stories that have never
17 changed; and all the evidence and all the
18 investigation that went on with it, backs that up a
19 hundred percent. And there's no reasonable reason.
20 You think about who did the lieing, and you think
21 about the science that proved them wrong. We're not
22 talking about Andy and Barney going out and figuring
23 something out by fire light. We're talking about
24 some people sending some stuff to SLED with some
25 electronic microscopes; and they say no, they were

1 in the presence of a gun, they did shoot a gun. And
2 then you talk about guys going to the house and
3 saying, well, he's saying he ain't got no gun,
4 what's this under his bed. Now all of a sudden
5 everything in that story you heard from those
6 witnesses clicks, and you understand exactly what
7 happened and what brought you here today.

8 Thank you very much.

9 THE COURT: Mr. Jones.

10 MR. JONES: Thank you, Your Honor. Mr.
11 Holt, Mr. Swilley.

12 All right, Mr. Foreman, ladies and
13 gentlemen of the jury, again, my name is Rick Jones;
14 and as you know, I've been representing Mr. Joshua
15 Reed here today. And it's very interesting — I
16 won't watch the clock. I've got a long ways to go
17 and a short time to get there, but I've got to tell
18 you everything that I think you need to know before
19 you retire to your jury room. I'm going to start
20 off by telling you what the judge — what I believe
21 was in both statements, or at least Miss Wooten's,
22 what the judge is going to probably start off
23 telling you when he begins talking about the law,
24 and what I have always understood since I've been
25 practicing law is the bedrock of criminal law in the

1 United States of maker which separates us from every
2 other country in the word. Number one, anybody --
3 and in this situation Joshua Reed -- walks into this
4 courtroom presumed to be innocent, period, number
5 one.

6 Number two, the State of South Carolina,
7 the government, right here sitting closer to you,
8 has the burden of proving that Mr. Reed committed
9 any crime, not the opposite which occurs in a number
10 of countries in the world is that Mr. Reed gets
11 charged and he's got to come up here and prove to
12 you he didn't do it. That's not what our law is.
13 He is presumed to be innocent when he walks in here
14 and the State's got the burden of proof. But number
15 three, is what Mr. will Holt closed on, and he
16 closed on it because he knows that that's what we do
17 when we present our statements to you is that the
18 burden that the Government has in proving that
19 anybody -- and in this case Mr. Reed -- did
20 something wrong, that he's got to prove it to each
21 and every one of you beyond a reasonable doubt. You
22 heard all three of them on TV. You've read books,
23 presumed innocent, burden of proof, beyond a
24 reasonable doubt. Please remember those because the
25 judge is going to tell you about them when he starts

1 talking to you about the law. All right.

2 This case, Mr. Holt covered it very well,
3 I broke it down five ways, all right. What you've
4 got from this witness stand and these exhibits which
5 have been presented are five things which the State
6 says leads, should lead you to believe that Mr. Reed
7 committed the crime of murder and possession of a
8 weapon during the commission of a violent crime.
9 Those five are these. You've got eyewitness
10 identification from the three fact witnesses that
11 Mr. Holt talked about: Asia Gregg, Johnny Lee
12 Washington, Mr. Wingate, Anthony Wingate.
13 Eyewitness, I saw it, here's what happened. Number
14 two, at some time after the event took place you got
15 a lineup. I'm gonna leave these right out front for
16 you because I want you to look at these when you go
17 back to your room, exhibits, State's Exhibits 1 and
18 2. You've got gunshot residue testimony, Lieutenant
19 Stoner testified yesterday. All right. Then you've
20 got kind of a side item; you've got an exhaust pipe
21 and tire tracks. And the last thing — and this
22 didn't happen until late yesterday afternoon — when
23 you saw the video from the Marketplace in Hartsville
24 and the liquor store you had testimony about watches
25 and clocks and things of this nature. But the fifth

1 thing that I broke this case down to is the
2 timeline, and I want to talk about all of them. The
3 reason that I break it down like that is because in
4 the State's burden of proving things to you beyond a
5 reasonable doubt, they say don't worry about it, we
6 got three people saw it happened, we picked them out
7 of a lineup, we got gunshot residue, we got an
8 exhaust pipe, and the timeline is — well, they
9 don't say much about the timeline; that's
10 interesting. All right. So let me do it in
11 reverse. And the reason I do it, period, is because
12 in order for the State to meet its burden of proof
13 they've got to erase from your mind reasonable
14 doubt. They've got to prove it beyond a reasonable
15 doubt. Like Mr. Holt said, the judge is going to
16 tell you the legal definition of reasonable doubt.
17 What I'm gonna do is I'm gonna show you what you
18 heard that is reasonable doubt.

19 Number one, let's start with — let's
20 start with the exhaust pipe. When Mr. Holt knocked
21 his exhibit down but I'm gonna, I'm gonna use this
22 just a minute, but I'm gonna hold it up see if I
23 can't talk to you about it while I'm holding it.
24 Josh and his brother live on Lincoln Avenue in the
25 City of Hartsville, right there, [REDACTED] and [REDACTED] I

1 think grandmother, grandfather lives in one house,
2 mother lived in the other. They kind of live
3 between the two houses. During the interview they
4 said, well that's — I call them both my houses
5 because they're so close to each other, I kind of
6 grew up in both places. At some point in time on
7 February the 15th of 2012 their mother says go to
8 the store, I need some cigarettes, here's some
9 money, go get it for me, all right? They did that,
10 but they also stopped by the liquor store to get
11 them some liquor. Well, but how do they do that?
12 From Lincoln Avenue to Eighth Street to Marion
13 Avenue to Sixth Street which takes you right up town
14 to Hartsville. I asked Lieutenant Rudick yesterday,
15 I think it was yesterday, I said what is the easiest
16 route 'cause he took it. He said he was parked in
17 the middle of the road here on Sixth Street, and he
18 said [REDACTED] Lincoln Lane, knew exactly where it was.
19 Well, I took a left on Marion, I went down to Eighth
20 Street and I traveled to Lincoln, one last house at
21 the end. That's the way you go from there to town.
22 That's important because, they said they did it
23 twice. They went and they came home, and they were
24 riding in their grandfather's green truck and they
25 rode right by Pride Park. Pride Park is on the

1 corner of Marion Avenue and Sixth Street. Rode by
2 it on the way to the store and on the way back. Did
3 they have any idea they lost a tail pipe during one
4 of those trips? Not at all. You heard Sergeant
5 Anderson ask and ask and ask, something is wrong
6 with your grandfather's truck; it's broke. I think
7 Johnathan said I was driving; it's got a dent in the
8 door; that's about all I know. Did they know it had
9 fallen off. Nope, didn't have a clue. Did it fall
10 off? I don't think there's any question about it.
11 I believe it fell off and I believe that it was on
12 Marion Avenue right where you turn to go on Sixth
13 Street, all right. Does that prove anything? Yeah,
14 it proves they went by. There's no question both of
15 them told you they went by there — excuse me, told
16 Sergeant Anderson which we heard yesterday on the
17 tapes that were played, all right.

18 Got the exhaust pipe. There's reasonable
19 doubt that the exhaust pipe proves that they
20 committed a murder in Pride Park? Well yeah, it
21 shows they went by there but it doesn't prove
22 anything other than they went by there and the pipe
23 fell off. Interestingly enough, I don't think
24 anybody said that when the two gentlemen that did
25 the killing jumped in the truck it sounded like a

1 tank leaving which it probably should have if that
2 fell off. I didn't hear anything about noise or
3 anything of that matter.

4 All right, you got -- you got GSR and
5 that's an acronym for gunshot residue. You had
6 Lieutenant Stoner, she came up, had this swabbed,
7 not swabbed but a little dab, that was taken from
8 both the Reed brothers' hand. And some clothing I
9 think they stipulate whatever happens. I think she
10 actually said she did that when she was testifying.
11 And it's not in evidence, but she held up a diagram
12 or a picture, and it was a very good picture of a
13 gun being fired and this cloud being created. And
14 in that cloud which comes out of the barrel of the
15 gun after it's discharged, were thousands upon
16 thousands of little particles, the gunshot residue.
17 And those little particles do what little particles
18 do and I assume they float around. She said
19 basically that cloud covers about a three to five
20 foot area when it disburses. And in this situation
21 the three eyewitnesses say, well, we had five shots
22 being fired. Lieutenant Stoner said, well, you got
23 five little clouds with thousands upon thousands of
24 little particles floating all around. And I -- and
25 I'm gonna tell you I'm bad at math, always been bad

1 at math. Thousands upon thousands times five is a
2 lot of stuff floating around. So you've got these
3 five clouds floating around and somehow you got on
4 Mr. Joshua Reed a dot here and a dot here; and, oh
5 yeah, you got a blue shirt that had a dot here.

6 Interestingly enough the testimony from
7 that stand from the three witnesses all talk about
8 phooey, I don't recall a blue shirt, but he's got a
9 blue shirt on when he's being interviewed. And
10 where is he being interviewed? In the police
11 station.

12 Now Lieutenant Stoner, one of the most
13 interesting parts of her testimony to me obviously,
14 was the fact when I — or the testimony when I asked
15 her, I said, where do the little particles go, well,
16 they float around like little particles do. And the
17 only thing I can think of is the TV commercials
18 where you got germs floating around and everybody
19 picks up germs here and there. You pick up a germ
20 if I blow one on you from my mouth and create a
21 cloud between me and you, or you pick it up from
22 other places. You pick it up when one of those
23 little particles attaches to something and I touch
24 that something, can it transfer, could it transfer:
25 absolutely. To your brother? Yes, absolutely, you

1 can do it like that. The Reeds end up at the police
2 station. I assume that they rode in a police car.
3 And I assume that from the testimony of all of the
4 police who came up yesterday that if every policeman
5 on the City of Hartsville police force and half of
6 the county force were not there I'd be real
7 surprised. So you got policemen everywhere. You
8 got particles everywhere. You've got transfer of
9 little particles here, there, doorknobs. Johnathan,
10 I believe, when Sergeant Anderson said when is the
11 last time you washed your hands. He said, well, I
12 just washed them in bathroom if you really want to
13 know. But I assume he grabbed the door on the way.
14 Anyway, four particles from that five clouds of
15 thousands and thousands of particles end up on one
16 or both of the Reeds. Where are the rest of them?
17 The police were at that house within minutes when
18 this situation happened. Where's the rest of it?

19 The third area, the timeline. Mr. Holt
20 zoomed past the timeline because if you think about
21 that was presented yesterday the timeline causes the
22 State a great deal of problems because David
23 Sessoms, the 9-1-1 supervisor, testified early on
24 that his records and his tapes show that a, the
25 first 9-1-1 call about an incident Pride Park on

1 February the 15th of 2012 came in — if I remember
2 correctly and I wrote it down; hope that you
3 remember also — was at 4:04:47, all right. Four
4 minutes and 47 seconds after 4:00, all right.
5 That's fine. The last thing we saw yesterday was
6 the two tapes from the stores; and I apologize, I
7 don't remember which was first and which was second.
8 What I do remember the testimony being is that the
9 last, right at 4:00. Sergeant Anderson had his cell
10 phone up here, and he showed how far off the video
11 clocks were from his cell phone; and he said, but
12 you got to set all those things. I don't know about
13 you, but I've never set my cell phone clock. That
14 comes from somewhere other than the sky. I don't
15 know where it is, but it is supposed to be right.
16 And I'll submit that if I had to guess that my one
17 clock is going to come pretty darn close to being
18 accurate also. So you got a span of four minutes
19 and 47 seconds from either Mozingo's Liquor Store or
20 the Marketplace here until drive here, drive here —
21 oh, drive back, walk across the park and according
22 to Asia, spend somewhere between 10 and 15 minutes
23 talking and/or staring at each other when an
24 altercation breaks out. You didn't hear much about
25 that because that doesn't fit the plan. That

1 doesn't fit what the State would have you believe
2 happened on that day. That's where your common
3 sense comes in, and that's why both of the Reed
4 brothers are happy that you are here because you got
5 to decide what happened. The Government doesn't
6 decide what happened. We certainly don't decide
7 what happened; that's your job. That's what I call
8 reasonable doubt. I don't make that up. That's not
9 a fanciful doubt. That is a doubt which causes
10 somebody to hesitate to act. It is a substantial
11 doubt. It's a doubt for which you can give a
12 reason. Well, you only had four minutes forty-seven
13 seconds for all of this to happen.

14 Now the two that I really want to spend a
15 little time on, the eyewitness identification by the
16 three witnesses and the lineup. If you would
17 have — and I'm gonna summarize the testimony but
18 I'm gonna pick me up a couple of things out of each
19 one of them's testimony that I think you heard yes—
20 excuse me, Tuesday: Ms. Gregg, Mr. Washington and
21 Mr. Wingate. And I want you to think about when the
22 judge says, here's the definition of reasonable
23 doubt, okay. Mr. Hunter, his sister, sister's
24 boyfriend, and some guy are in the park eating
25 and/or drinking. A green truck drives by. And

1 interestingly enough, after all H breaks loose and
2 the police go looking for green trucks they find one
3 real close; but they determine pretty quickly, oh,
4 that's not the right green truck. The point being,
5 I submit to you, that there wasn't are a bunch of
6 green trucks in Hartsville, F-150. Not many of them
7 lost a tail pipe 'cause we know why they lost a tail
8 pipe because they kept going by there. These people
9 are in the park and here come two gentlemen and they
10 stop up -- they ride by several times if you'll
11 believe what they say. And they finally stop and
12 they walk across the park and immediately Mr. Hunter
13 tenses up and his sister get up and says, all right,
14 we're gonna do this together, if you believe the
15 testimony. If you'll think about what just, what I
16 just said and what they said, there's -- we're
17 obviously missing something. But if that, in fact,
18 happened why would you tense up unless you knew
19 exactly who it was that was walking across that
20 park. Now think about it. I'll tell you again.
21 Why would you tense up and say, I tensed up and told
22 my brother that you don't have to go through this by
23 yourself, I'm gonna help you. Why'd you do that
24 unless you knew who the devil it was walking across
25 that park?

1 Well, interestingly enough, after
2 Mr. Hunter was killed — and I really should have
3 started by saying, this is a, this is a tragic,
4 tragic situation. A very young man in his 20's, he
5 is no longer with us, he is dead. And a mother lost
6 a son and a sister lost his brother, and on and on
7 and on. What is important is what you determine
8 happened and who, in fact, you think did the act.
9 So we get back to the sister and brother standing
10 and/or sitting and confronting the evil that
11 approaches them. And within a span, I think
12 Mr. Wingate said mere seconds. I think Johnny Lee
13 Washington said, I don't have any idea how long it
14 was, it seemed like a long time but I'm sure it
15 wasn't a long time. And Ms. Gregg says, it was at
16 least 10 or 15 minutes, the span of time from the
17 start of a television program to the first
18 commercial. Whether that's two minutes, ten
19 minutes, y'all determine that; you watch TV. Now
20 during that whole time all three of those witnesses
21 that testified saw something happen; and if you
22 believe the State's interpretation of their
23 testimony, Mr. Wingate said oh, oh, trouble coming,
24 I'm getting out of here and he's backing up. Of
25 course, Asia said he was over at the car the whole

1 time, that he was back behind them. He says, no, I
2 was sitting right there. Johnny Washington I think
3 testified he didn't get up. But Asia and her
4 brother were bracing for trouble. Okay. If they're
5 bracing for trouble is it not reasonable to believe
6 that they knew the people who were coming to
7 potentially cause the trouble. I would submit that
8 it is. And why is that important in this situation?
9 Because they all said they did it, that one right
10 there pulled the trigger five times, shot him. They
11 all shot the victim. Ms. Gregg miraculously
12 remembered about a year-and-a-half later, oh yeah,
13 he had a gun in his pocket, I could see the outline.
14 Mr. Washington never saw it. Mr. Washington is the
15 one that apparently was being guarded. He didn't
16 remember any gun. You know, Mr. Wingate wherever he
17 was he was didn't remember anything. Ms. Gregg,
18 when she very initially gives a statement, she
19 doesn't mention any gun; but just it hit her that,
20 oh yeah, that gun like that. Let me get back to
21 where I was. That is, in a situation tenseness
22 whatever period of time we're talking about, bam,
23 bam, bam, bam --I think that's five -- let's
24 got out of here and they take off.

25 Now I've never seen something like that

1 happen, and I doubt seriously that any of you have
2 seen something like that happen. However, I'll
3 agree with Sergeant Anderson, that is probably as
4 traumatic as it gets, particular for Ms. Gregg whose
5 brother falls down and Mr. Washington whose
6 girlfriend's brother falls down. And Mr. Wingate
7 who, remember now, says oh yeah, I knew Milton, we
8 used to date, her mother and daughter — or some
9 situation where they knew each other that happened
10 over here in Darlington. He knew what he was
11 talking about. So after all this happens and the
12 two gentlemen take off out of the park and go away,
13 Ms. Gregg is tending to her brother. Mr. Wingate is
14 calling 9-1-1, which we heard. And because Pride is
15 minutes away from the middle of town where the
16 police station is, you got policemen there almost
17 immediately. And the first ones on the scene,
18 Mr. Thompson, sees a person laying down. He goes to
19 tend to that person first. That's what he does.
20 There's people around. I'm not so sure he knew who
21 those people were; he just knew there were some
22 witnesses. Again, but he goes to tend to the victim
23 first. And either Officer Richardson or Officer
24 Huggins come up next, and I think the order was
25 Mr. Richardson first and Mr. Huggins second. But

1 they began to not only rope off the area but kind of
2 rope off the witnesses that are there. And I think
3 that Mr. Huggins got a little confused — or one of
4 them — and said, I got all three of them, I've got
5 girl and two guns and then there was a question
6 about maybe I just had the two guys. Anyway, he's
7 got eyewitnesses to the situation that he is holding
8 so they don't get away. And he's got to put out an
9 APB, which I think is television for All Points
10 Bulletin to find out who the devil it is and let's
11 go get him. And he says, give me a description,
12 tell me about this so that I can tell people to go
13 find him. And what they tell him, interestingly
14 enough, and these are the first two officers on the
15 scene, is they say, oh, they were in a green truck.
16 And oh, they were two black males. No other
17 description, period, none.

18 Now is it reasonable to think that this
19 violent confrontation that both Ms. Gregg and her
20 brother appeared to be aware of before it happened,
21 took place with two individuals that could only be
22 described as two black males? Ms. Gregg testified,
23 I believe, that she had known — she thought it was
24 Johnathan but she had known Joshua for years. They
25 went to school together. There weren't good

1 friends. She'd known him for years. And remembered
2 the name, started out as Rail, ended up Reed. This
3 is Johnathan. Oh, no, Lieutenant Reed says that
4 that's Johnathan. Happen he still doesn't remember
5 will it is couple of date later when she gives
6 Sergeant Anderson a statement at the police
7 department but she says — she didn't say oh, the
8 Reeds killed my brother. Doesn't say that. How
9 easy would that have been? Two black males, green
10 truck, go find them. No, no, no, the Reeds killed
11 my brother, I know them. Johnny Lee Washington,
12 same way, I don't recall how long she said he'd
13 known them. I think it was four or five years.
14 Same thing when he gets questioned. I initially at
15 the scene the only description we get is two black
16 males. We don't have fall short long hair, short
17 hair, we don't have anything. We got green truck.
18 We got a green truck, but we don't have anything
19 else except two black males. He doesn't — Mr.
20 Washington, did you now the Reeds? I didn't know
21 them like that. I known them a long time. Why
22 didn't you tell the policeman instead of going to
23 look for a green truck go to the Reeds house, I know
24 who they were, I've known them for years, they just
25 shot my friend Milton. Nope, didn't happen. I want

1 you to think about three because that's what
2 reasonable doubt is all about.

3 And last, the third eyewitness
4 Mr. Wingate, didn't have a dog in the fight
5 apparently. He got a tattoo, wanted to eat and
6 decided he wanted a drink because the tattoo hurt.
7 He's at the park, sees his friend Milton and a
8 fellow that he knew come up. He also said oh, yeah,
9 I've known the Reeds, known them for years. I known
10 them when they were little boys. Why didn't he say
11 when the policeman came up and said tell us who did
12 this so we can go find them. Why didn't he say, you
13 go for a green truck so you say go find the Reeds, I
14 know they did it, I've known him for years, go get
15 the Reeds. Well, the police say well, we didn't ask
16 them that question. I submit to you, I wouldn't
17 have needed a question. I would say go find the
18 Reeds, they were the guys who did it. All right, at
19 some point in time after the scene which I have no
20 doubt was extremely chaotic at the park on down, and
21 you've got Mr. Joshua Reed and Mr. Johnathan Reed
22 into custody. You've got — I don't recall the
23 ranks — I think it's Sergeant Blair or Lieutenant
24 Rudick. Lieutenant Rudick fixes up the lineup and
25 take — as I understood it took it to Ms. Gregg's

1 house I think. And Mr. Blair, Sergeant Blair,
2 showed it to Mr. Washington and Mr. Wingate. And
3 every one of them said number two and number four.
4 Well, I know it. It took them a second to figure it
5 out. Well, if they knew it then should they not
6 have known it at the time that it happened? And if
7 you'll look — take these lineups back with you
8 because it was interesting and I asked I think
9 everybody who mentioned the lineups. But when you
10 lay them down, and I think Sergeant Blair, if I
11 remember correctly, said he laid them all down. And
12 perhaps — I don't recall what Lieutenant Rudick
13 said. He might have said he showed them to them
14 individually. But if you lay them all out, if
15 you'll look at the pictures they're dark background,
16 dark background, dark background, oops, white
17 background, dark background. And to a lesser
18 extent, the same thing. Now this, by the way, is
19 Mr. Joshua Reed's lineup, exhibit number 2, with the
20 stark white background. And to a lesser extent the
21 same thing, dark background, dark background, dark
22 background, light background, dark background, dark
23 background. And every one of them's eyes went
24 immediately to those two people with the light
25 backgrounds. I submit to you that's reasonable

1 doubt when you talk about if they identify them in
2 the photo lineup.

3 Ladies and gentlemen, Mr. Joshua Reed
4 doesn't have to prove anything to you. You heard
5 him yesterday when interviewed by Sergeant Anderson
6 immediately after this happened. He said, yeah, we
7 drove by there, our mother sent us to the store, we
8 got her the cigarettes, we got us the liquor. We
9 came back; we went home. We started to eat. Every
10 policeman in the city of Hartsville pulled up in our
11 front yard. That's how their day went. Let me
12 mention one thing to you, I don't think it's ever
13 been clear. Joshua Reed and Johnathan Reed
14 obviously are brothers. I think from the statements
15 that were played yesterday, they're actually 364 or
16 three days apart in age and live kind of together
17 either in mother's house or grandfather's house.
18 But this week they've had competing or different
19 interests. That's why I represent Mr. Joshua Reed
20 and Mr. Swilley represents Mr. Johnathan Reed. And
21 the reason that's important is because Mr. Swilley
22 is gonna tell you as Johnathan Reed's representative
23 if I don't know what happened either but I know my
24 guy didn't pull any trigger and so you shouldn't
25 find him guilty. I submit to you that neither one

1 of them pulled any trigger and that you should find
2 them both not guilty because that old reasonable
3 doubt just came sneaking in of every one of the
4 witnesses that testified here Tuesday and Wednesday.
5 Thank you.

6 THE COURT: Mr. Swilley.

7 MR. SWILLEY: Thank you, Your Honor.

8 So I get to go last I'm gonna be at an
9 advantage, but I didn't take into account that you
10 guys have to sit here and listen to everybody else
11 and that Mr. Holt and Mr. Jones are gonna be all,
12 you know, a tough act to follow in that you guys,
13 you have to listen to us talk so long, but here I
14 am. Every time I try a case I always try to tell a
15 story that relates to what actually happened. I try
16 to put things into perspective for the jury so that
17 you can make a comparison and kind of see actually
18 what was going on. So this time, you know, it's
19 tough. Me or y'all, I can pretty much guarantee
20 have never been in any kind of predicament that even
21 remotely relates to something like this, okay. But
22 when Mr. Holt got up and started talking about his
23 example of the party where all the crazy stuff
24 happens, I remember a time that I was in somewhat
25 similar or comparable to a situation like this. It

1 involved the biggest bonehead — well, it's one of
2 the biggest bonehead things I have ever done in my
3 entire life. Back when I was in law school — and
4 y'all probably know about, there's this little
5 entertainment district in the middle of Columbia,
6 it's called the Five Points District. It used to be
7 a pretty fun place until it apparently turned into
8 some really war zone ish-type place, but you'd go
9 there at night and have a good time. I went to a
10 military college before I went to law school so I
11 wasn't used to a lot of freedom. I spend lot of
12 time down there; maybe it affected my GPA, I don't
13 know. I think it did affect my GPA. But there was
14 this one time where I was there, and I was with a
15 buddy of mine in high school. And we were in this
16 place; it's called the Salty Nut. It's on Harden
17 Street. And we were in there hanging out and it got
18 pretty late. We had a couple of drinks, probably
19 ready to go home 'cause like my mom and dad told me,
20 nothing is ever good after 12:00, and that's true.
21 And I was like well, you know, you want to hit the
22 road? And Steven says well, you know, why don't we
23 run in — there's this little college bar behind
24 Salty Nut called Pavlov's. And he said, you want to
25 go through Pavlov's to see if we know anybody there

1 before we leave; and I was like, yeah, you know,
2 sure, that's fine. We probably shouldn't have done
3 that. So we go, we walk in, and the whole place is
4 like a sardine can. You're just in there and it is
5 wall to wall, all right. And we're talking through
6 there, you know, probably gonna go through the back
7 door, then into the front door, and head home. That
8 was kind of the gentle plan. And some guy, some guy
9 in there who's bigger than me, about 6'1" or "2,
10 maybe a little bit thinner than my build, bumps into
11 me and I can't really tell if it was intentional or
12 what. But the guy just kind of lunges at me and I
13 try to push him off, and he intentionally at that
14 point kind of shoves me to the side a little bit,
15 and that's what set me; I snapped. And I looked
16 right at him, and I slugged him right in the chin.
17 And he was down for the count, eyes glazed over, on
18 the floor, didn't get up. And apparently this fella
19 was a pretty popular guy because it was chaos and
20 bedlam after that, and the next thing I know
21 somebody is driving me and I'm thrown out the door.
22 And I went home and I think I had some scabs on the
23 top of my head after that. I'm sure that the fella
24 had a sore jaw.

25 But the way that relates to what happened

1 with Joshua and Johnathan is like this, okay. What
2 we know from the first three witnesses is all you
3 need to know as far as what happened with Johnathan,
4 okay. What happened, you know, it's broad daylight,
5 all right. We know it was daytime outside in
6 February, okay. These guys, they go, they're in a
7 car, they go to the store. They go back to the park
8 in broad daylight. It's a place where everybody
9 frequents. There's people there, all right. This
10 is a public park in the middle of town in the middle
11 of the daytime, all right. They go there. We know
12 that they go in through there. We know that they
13 meet up. They're talking with Milton, Asia, Johnny
14 Lee, and Anthony. At some point words were said
15 between Josh and Milton; and based on what we know
16 and we don't know anything about the substantive
17 facts of what their dispute was over, but at that
18 time, what the fact — the facts that we know would
19 suggest at that time Joshua snapped. And he didn't
20 snap and punch somebody in the face. He snapped,
21 pulled out his gun, and shot Milton and squeezed off
22 five shots, three of which hit Milton and three of
23 which killed Milton. He snapped at that point just
24 like me in Pavlov's that night. He had no — at
25 that moment in time he had no idea or he had not —

1 if he had an idea he had no care in the world who
2 was there, who was looking, who could have gotten
3 hurt, who could have got in trouble, what would have
4 happened the split second after he pulled -- he
5 shot, he shot Milton. He had no regards and no
6 consciousness about that situation just like my
7 foolish self at that time when I was in the bar,
8 okay. Because look, if you're gonna go -- if you
9 have a prior plan to go kill somebody, you're really
10 gonna go in a public park, you're really gonna go to
11 three people or four people who are from your home
12 town, who are from your neighborhood, know you, or
13 if they don't know you they know who you are, they
14 know what you look like. Are you really gonna have
15 something to do with a preplanned murder in that
16 kind of situation, all right. That would be the
17 worst murder in the history of the world if it
18 was -- that would be the worst premeditated murder
19 in the history of the world, okay.

20 Joshua Reed himself probably didn't walk
21 into that park knowing that he was gonna shoot
22 Milton, all right. Milton pretty much cheesed him
23 off, something he said, and at that moment he just
24 lost it. And we got no ideas the substantive matter
25 of which they were, what they had going on between

1 them. But at that point in time, that second,
2 whatever was said to him triggered something in his
3 brain just like in mine that time, that made him
4 shoot Milton, okay. And Johnathan was there. But
5 just like Johnathan, just like my friend Steven that
6 time, he had nothing to do with it, all right. And
7 like I said, the only three people that bear any,
8 any relevance to Johnathan Reed are Asia, Johnny
9 Lee, and Anthony Wingate, okay.

10 Now what happened when the investigators
11 first got there, they gave everybody a video
12 statement. Asia who was right there, right, gave
13 her statement that the Reeds walked up, words were
14 exchanged, and then she saw the tall one with the
15 short hair pull out his gun and shoot Milton. She
16 gave, like she testified, 30 minute interview, you
17 know, about a bunch of stuff, about what's the fact
18 situation and never not one time and this is very
19 shortly after the incident did she mention Johnathan
20 Reed had any kind of firearm. Never not once was
21 that mentioned, okay. Now if that had just
22 happened, number one, wouldn't your memory — and
23 number two, don't you think it's relevant. And
24 don't you think the profession fact finder and
25 professional information gatherer like Terry

1 Anderson whose been doing this for a while would
2 have gotten that piece of information at that time?
3 All right.

4 And then this happened February 15th.
5 Today is October the 24th, all right. We started
6 this trial on the 21st all right. For a whole,
7 almost, shoot almost 18, more than 18 months — I
8 can't add — she had all the time in the world to go
9 back and correct herself and call Terry Anderson or
10 anybody from the Hartsville Police Department and
11 tell them, oh wait, I forgot about this really,
12 really important fact that I really should have told
13 you the first time. She never did that.
14 Coincidentally, when it comes time for trial and
15 maybe she's sitting there thinking about everything
16 that's going on, comes up with a theory or comes up
17 with the story that oh, and by the way, Johnathan
18 had, Johnathan had a gun and he was pointing it at
19 Johnny Lee Washington about his brother killed the
20 guy, all right.

21 Well, first of all, on Monday and you
22 heard her testify, she testified that Josh was
23 pointing the gun at him. And then maybe she sits
24 around and thinks about it a little more and
25 decides, well, maybe it's more believable if I said

1 he had a gun in his sweatshirt pocket and he was
2 standing over Johnny Lee pointing a gun at him. And
3 by standing over he'd have to be standing beside
4 Johnny Lee apparently. But notice how Johnny Lee
5 himself who if he's sitting down, if you're sitting
6 down on a picnic table and somebody is standing over
7 you and got a gun in your face pointing at you even
8 if it's in a sweatshirt right in front of your face.
9 you see it, all right. And never not — and for
10 all, for as much as I'm sure that she hates
11 Johnathan as well as Joshua, he didn't come back and
12 make that story up. And that leaves me — and that
13 is the only, that's the only time anybody, anybody
14 who is Asia, come up and said that Johnathan had a
15 gun at the scene. That's brand spanking new. Don't
16 give thought to that.

17 In order to really understand what's going
18 on, and in my line of work you sometimes forget that
19 this is not some — their involvement and my
20 client's involvement, Joshua's involvement, this
21 isn't a job for them, this is real life, all right.
22 It's my job. You know, I go home regardless of what
23 happens. I go home, I go back to Myrtle Beach. But
24 this is real life for everybody here: Johnny Lee,
25 Anthony, Asia, Johnathan, and Joshua. This is their

1 real life. And Asia saw her brother get murdered in
2 front of her face, and it's reasonable for her to
3 hate both of them like I asked her; that's
4 reasonable. I don't have — I don't have a brother,
5 but it's reasonable to want, like she said, I want
6 my heart for them to be convicted. That's
7 reasonable. But what's not right is trying to
8 change the facts around. I can see why she's doing
9 it because she wants Johnathan to go to jail just
10 like Joshua, but it's not right. And then when you
11 heard — I mean, you know, her brother was killed; I
12 understand that. And then Johnny Lee gets up
13 there — and I didn't think about this but when I
14 was cross-examining Johnny Lee I, you know, it got a
15 little heated. As you can tell, you probably know
16 by now from that story I told, my emo— I'm very
17 emotional. I don't maintain a calm composure. He
18 asked me a question, let me ask you a question, and
19 I said, no, you may not. And the reason I said
20 that — I didn't mean to sound rude — but I'm a
21 lawyer, I can't, I'm not a witness, I can't give
22 testimony, all right. But I didn't — you got to
23 think about, to Johnny Lee Milton was like his
24 brother-in-law and somebody killed his
25 brother-in-law, or the equivalent, right in front of

1 his face too, all right. Now I do have a
2 brother-in-law, you know, and if somebody killed my
3 brother in law in front of my face, it's
4 unimaginable. If somebody had killed the father of
5 my nephew in front of my face, I would despise the
6 person and anybody else associated with them and
7 that wouldn't be right. And that's the way I feel
8 and that's the way Johnny Lee feels. He admitted
9 that there was nothing else going on except for
10 Johnathan being there; but his point was and when he
11 said when I asked you a question, well that question
12 would likely have been, why was he there, why was he
13 there. He was there because he didn't know what was
14 gonna happen. That's the reason why he was there.
15 I can't say that, you know, during testimony because
16 I'm not a witness, but that's the only reasonable
17 explanation. He didn't know it was gonna happen.
18 Joshua didn't know it was gonna happen until he
19 decided to do it.

20 And then you go back to Anthony Wingate
21 who, I think, Mr. Jones used the phrase didn't have
22 a dog in the fight, and that's true. And his story
23 is he got up. And I don't know, it's hard to tell
24 exactly what happened with him. I mean, he's angry
25 too because somebody got killed in front of him and

1 he knew, you know, he's friends with — he says he's
2 friends with Johnny Lee and he knew why, he knew
3 Milton because I think he used to date mother's
4 daughter. So I'm sure he did not appreciate — even
5 he didn't have family connection. I'm sure he
6 didn't appreciate the fact that some, that this kid
7 got shot in front of him or something. He didn't
8 have anything to do with him in public. But, and he
9 had the same idea well, he was there and he was
10 there because he didn't know what happened. Even if
11 Johnathan did, had known it was gonna happen which
12 is not what the facts would suggest, the law says
13 that he still wouldn't be guilty, but that's not
14 what situation we're dealing with here. The
15 situation we're dealing with is this is a split
16 second a decision that Josh made that unfortunately
17 has affected numerous people, and I hate that. But
18 Johnathan Reed had nothing to do with that.
19 Johnathan Reed or anybody else wouldn't have gone to
20 that park if he knew there was gonna be a shooting.
21 No one is gonna put themselves in the middle of
22 something like that; that's illogical.

23 You know, after the three, the three fact
24 witnesses testified, everything else was either
25 something that was trying to prove or to prove

1 Joshua was guilty or prove that Joshua was there, or
2 it was evident that it was Johnathan that was a
3 smoke screen trying to make him look like a liar,
4 all right. That was the statement of Terry Anderson
5 'cause nowhere in there did he say anything that,
6 anything that would suggest that he did something
7 wrong. That statement was played to make Johnathan
8 look like a liar, all right. The reason why
9 Johnathan made that statement was to protect his
10 brother. I don't know of anybody that I would have
11 done that for. I don't know of anybody who — maybe
12 there's people on earth that would have done that
13 for me, but I — me, myself, I couldn't have done
14 that for anybody. He got up there. Terry Anderson
15 thought he was the one that shot him, accusing him
16 of being the shooter, still protecting his brother.
17 Lying to the police is not right obviously, it's
18 not a good thing to do, but I can't, I can't imagine
19 a devotion like that. That, but that was played to
20 make Johnathan look like he did something wrong.

21 And remember that the State has based
22 their theory against Johnathan on accomplice
23 liability, aiding and abetting to assist in the
24 commission of a crime. Once the crime has been
25 committed you can't be an accomplice anymore, okay.

1 They didn't introduce that tape to make Johnathan,
2 to try to make you think Johnathan is guilty of the
3 crime for lying. They put it in to make Johnathan
4 look like a liar. That was to make you think he's a
5 bad person. I mean, that's the only reasonable
6 explanation that I can find.

7 Also what they put into evidence, the
8 State put into evidence against Johnathan is, this
9 firearm that was lawfully found in Johnathan's room,
10 and we don't — let's assume for argument sake that
11 this thing right here belongs to Johnathan Reed. I
12 mean, his brother grew up in the house; there's
13 other people there. I have no idea whether this
14 firearm belongs to Johnathan Reed or not, all right.
15 But the firearm was offered for the exact same
16 thing, to make him look guilty, all right. Look
17 here, this I think is a .45 caliber patriot pistol,
18 okay. It's this long, right? And I'm glad that
19 Mr. Holt came to the conclusion that there's — I'm
20 not alleging that that was the gun that he had in
21 his sweatshirt that Asia said. Well, why was it
22 being introduced into evidence then? To make him
23 look like a liar again about the gun, right? If
24 really, I want to — here's the sweatshirt like the
25 one about the statement driving by the police,

1 remember that Investigator Anderson couldn't really
2 recall. If this thing was in this, was in the
3 pocket of the sweatshirt, all right, and both their
4 hands are in there, it's gonna be hanging out.
5 You're gonna be able to tell that was, that was in
6 the sweatshirt, all right. I can't take it out of
7 this box. It's kind of zip tight in there. And I
8 don't want to because I'm nervous around guns. But
9 you know, you got a sweatshirt and you got the gun
10 in there, look, there's like one Johnathan had.
11 There's probably actually less room in here. If
12 there's a gun in this in here, you see the outline
13 of the gun, you know, you're gonna know it, right.
14 Everybody's gonna see that it's gonna be hanging out
15 the barrel —

16 MR. HOLT: Your Honor.

17 THE COURT: Yes, sir.

18 MR. HOLT: At this time I'd like to
19 object. This —

20 THE COURT: Objection sustained, not in
21 evidence.

22 MR. SMILEY: Okay. The point is I — like
23 Mr. Holt said, use your collective common sense,
24 okay. Those are the facts. Everything after Asia,
25 Johnny Lee and Anthony were to make Johnathan Lee

1 look bad. That's what I'm trying to show y'all.
2 And maybe it did make Johnathan look bad. But what
3 it doesn't have any bearing on is whether or not he
4 did the crime for which he's indicted, right? The
5 whole time the Government has tried to combine these
6 two using the Reeds, they killed, they killed
7 Milton, they did this, they did that. You heard
8 Investigator Anderson testify he submitted the exact
9 same warrants saying they killed with malice
10 aforethought and the use of firearm Milton Hunter.
11 They used the exact same wording in each of the
12 arrest warrants that were submitted to the judge.
13 The whole time they've been treating them as one
14 person without stepping back and saying what's
15 really going on here, and that's what I'm asking
16 y'all to do, okay.

17 Also, and Mr. Holt misstated this as well
18 and I don't think it was intentional; but he talked
19 about the gun, said there was gunshot residue on
20 both people on both sides of the hands. Remember
21 when the lady from SLED, Ms. Stoner, testified?
22 That proved, that shows what I've been telling y'all
23 the whole time. If you're in the middle, if you're
24 standing, if Johnathan has got a gun in his right
25 hand 'cause there's gunshot residue on the inside

1 and residue that is consistent with gunshot, with
2 gunshot primer on the back, that means he fired with
3 his right hand, okay. Johnathan is standing to his
4 right, his left side is exposed. And she testified
5 that gunshot, that residue, that it was associated I
6 believe and the (inaudible) thing in evidence with
7 gunshot primer was found just on the back of his
8 left hand which means that he was standing here, the
9 cloud came out, and some got on the left, the back
10 side of his left hand, all right, which would
11 probably show that if he had his hands in his
12 pockets with a gun, his hand was on the outside at
13 some time somewhere relative near or very close
14 proximation of that cloud, okay. It's just that
15 just on the back of his left-hand which shows what
16 I've been saying the whole time that he was present
17 and he was standing next to his brother when it
18 happened, and that's all it shows as to Johnathan.

19 Photographs of the scene of this pipe
20 right here, this was meant to refute the claim of
21 Joshua that they were not there, okay. I don't
22 know, I can't tell you, I got no idea, I'm not a
23 mechanic and I can't even fix my own car. I got no
24 idea how this thing came off of the truck, but
25 somehow it did and somehow it happened to be at the

1 time the truck was parked, okay. This was offered
2 just to refute Joshua's claim that they weren't
3 there. That has nothing to do with that store.
4 That has nothing do with Johnathan, the photo
5 lineup. They knew them. They were there. They
6 know -- they knew, okay. That was what Joshua
7 claimed as well. Anything after the three witnesses
8 against Joshua, anything after the three fact
9 witnesses against Johnathan indeed a filler trying
10 to make him look bad. It has nothing do with
11 whether or not he committed the crime or didn't
12 commit for which he's accused. Make no mistake
13 about that.

14 There is too many factors in this case to
15 find Johnathan Reed guilty of murder and that's
16 because he is not guilty of murder and he's not
17 guilty of possession of a weapon in commission of a
18 violent crime, all right. Now everybody, Mr. Holt
19 and Mr. Jones talked about reasonable doubt but you
20 really don't -- and I thought about this -- you
21 really don't understand reasonable doubt unless you
22 understand that there are more than one burden of
23 proof in American jurisprudence, right. Beyond a
24 reasonable doubt is the highest burden. First of
25 all, and I'm gonna show you, and it's relevant

1 because the lowest — imagine to me 5'9" is, the
2 floor is 0, there's absolutely no evidence
3 whatsoever, and the top of my head is absolutely
4 positive, okay. What would be at my ankles would be
5 what's called the burden of proof; it's known as a
6 reasonable suspicion. That's a reasonable,
7 articulable suspicion that somebody has done,
8 there's the criminal activity. That's the standard
9 that the police have to go by to frisk somebody down
10 for weapons, all right. That's a very, very low
11 standard. That's all of the evidence or all the
12 proof they have to have to press the button.

13 Secondly, higher than that, the next
14 burden is what's called probable cause, right. Now
15 with my little diagram of my body, that comes up to
16 about the knees, all right. Probable cause is what
17 you have to have in order to have somebody under
18 arrest. It's what you to have to get a warrant to
19 search somebody's house. It's what you have to have
20 to search somebody's car. That there's some reason
21 that would suggest that a crime is being committed
22 and something that would suggest that somebody is in
23 the commission of a crime has to commit a crime,
24 right. The third burden is called by preponderance
25 of the evidence which just means more likely than

1 not. That — and the diagram you see before you,
2 that would come up to my waist. Anything at all
3 more likely than not, you know more than half away,
4 is that's standard used in civil court to get money
5 from somebody whose done a, you know, a civil tort
6 against you. If you sue somebody, the burden of
7 proof you got is by a preponderance of the evidence.
8 That's to get somebody's money.

9 The fourth is the burden of what's called
10 by clear and convincing evidence, all right. That's
11 much more than preponderance of the evidence but not
12 as much as reasonable doubt. That would probably
13 come up to about here, okay. That's the standard
14 they use in family court to take your kids from you
15 for abusing the court, to take the kids away from
16 you. That's the standard they have to meet there,
17 okay. And the final standard and the most important
18 and the one that's afflicted here, will be beyond a
19 reasonable doubt, beyond any doubt for which you can
20 give a reason. Not an imaginary, a fanciful doubt,
21 the doubt that would cause a reasonable person to
22 hesitate to act.

23 Wait, this doesn't seem a preplanned
24 murder that somebody would have helped somebody
25 with. Nobody ever said they saw a gun until it was

1 time for the trial. Wait, didn't help anybody. All
2 that we can tell is that he was just there. You may
3 not — and I have no idea. You may not like
4 Johnathan Reed, okay, not a big deal. And you may
5 not approve or whatever you think, whatever that the
6 evidence has shown that he did do like lieing to the
7 police, you may not like that and that's okay too.
8 But I'm not gonna sit here and tell you that my
9 client, this young man right here is a pillar of
10 society, okay. He's just a regular person. But
11 what I am gonna tell you is that the State has not
12 met their burden of proof beyond a reasonable doubt
13 that Johnathan Reed is guilty of murder and guilty
14 of possession of a weapon during the commission of a
15 violent crime because he's not guilty. They haven't
16 met that burden 'cause that young man did not commit
17 those crimes.

18 If Johnathan had his way I wouldn't be up
19 here to concede, telling that Joshua shot Milton and
20 telling y'all what you already know, the fact you
21 know, they were there and that Joshua shot Milton
22 and that Johnathan just ran when the gunshot rang
23 out like any regular person would. My job is to
24 protect him from an unlawful conviction. He doesn't
25 call that shot; I do. That's my decision. I've

1 been charged with his defense for a long time now.
2 When I sit down which I'm about to do, I have no
3 more control over it. And I have to give whatever
4 control that I have of that defense to y'all, and
5 now y'all have the power. This is probably the most
6 power you're ever gonna have unless one of y'all get
7 a (inaudible) in some kind of phone calls. What I'm
8 asking you to do is use that power wisely and
9 exercise it justly, do the right thing. Find
10 Johnathan Reed not guilty 'cause that's the right
11 thing to do; that's what the law says. Send him
12 home with his mother and his family and son. It's
13 the right thing to do. It may not be the easiest
14 thing, but it's the right thing to do. Thank you.

15 THE COURT: All right, ladies and
16 gentlemen you've been in the courtroom now for about
17 an hour and-and-a-half, an hour 40 minutes. I think
18 it's appropriate before I instruct you on the law of
19 this case that I give you a short recess. I am going
20 to do that at this time. I'm gonna ask you to go to
21 your jury room. Please do not discuss the case
22 among yourselves. You still have not heard the
23 instructions on the law by me. Just relax a few
24 minutes and we'll bring you back in ten minutes and
25 I'll give you the instruction on the law and then

1 you will be allowed to deliberate your verdict. Now
2 you may go with the bailiff.

3 (WHEREUPON, the jury was removed from the
4 courtroom.)

5 THE COURT: All right, we'll be in recess
6 for about ten minutes.

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

9 THE COURT: All right. The defendants are
10 in the courtroom with their attorneys. The State is
11 present and represented by Mr. Holt. Counsel, I
12 think the court reporter or I know the court
13 reporter told me all the exhibits were in order.
14 However, as I mentioned earlier, I will let the
15 weapon that was introduced into evidence go with the
16 jury but I'm not going to let the bullets. We can
17 keep the bullets here in the courtroom, okay.
18 Anything before we bring the jury in, Mr. Holt?

19 MR. HOLT: No, sir.

20 THE COURT: Mr. Jones?

21 MR. JONES: No, sir.

22 THE COURT: Mr. Swilley?

23 MR. SWILLEY: There is not.

24 THE COURT: All right, bring the jury in
25 please.

1 (WHEREUPON, the jury was returned to the
2 courtroom, and the following
3 proceedings commenced in open court.)

4 THE COURT: All right. Thank you, ladies
5 and gentlemen. If you will now give me your
6 attention. You have listened very patiently and
7 followed very patiently and listened very
8 attentively to the presentation of the evidence in
9 this case and also to the able arguments made by the
10 Solicitor Mr. Holt on behalf of the State and
11 Mr. Jones on behalf of the Defendant Joshua Reed and
12 Mr. Swilley on behalf of the Defendant Johnathan
13 Reed and I thank you for that.

14 It now becomes the duty of the trial judge
15 under the constitution of this state to charge and,
16 instruct you on the law applicable to this case, and
17 it is your duty as jurors to step and apply the law
18 as the Court will now state it to you. And as
19 jurors it is your exclusive duty to decide all of
20 the issues of fact in this case and for that
21 purpose, to determine the affect, the value, the
22 truth and the weight to be given to any of the
23 evidence. Both the State and the Defendant have a
24 right to expect that you will conscientiously
25 consider and evaluate the evidence and apply the law

1 of the case thereto to the end that both the State
2 of South Carolina and the Defendant will receive and
3 obtain a fair and impartial trial.

4 Now when I use the words defendant or
5 defendants in these instructions I refer, of course,
6 to Mr. Joshua Reed and to Mr. Johnathan Reed. The
7 State by the bills of indictment in these cases
8 charge the defendants, charge each of these
9 defendants with the law, with the offenses known in
10 the law as murder, and with the offenses known to
11 the law as possession of a weapon during the
12 commitment of a violent crime. Each defendant is
13 charged with murder; and I'll summarize the
14 indictment that Johnathan Tyrone Reed or Joshua
15 Alexander Reed did in Darlington County on or about
16 February the 15th of 2012 willfully, feloniously,
17 and intentionally kill the victim Milton Hunter with
18 malice aforethought either expressed or implied by
19 shooting the defendant and that defendant did die as
20 a proximate result of these wounds on or about
21 February 15th, 2012, and thus, each defendant is
22 charged with the offense of murder. Also, each
23 defendant is charged on that day with possessing a
24 firearm or visibly displaying what appeared to be a
25 firearm during the commission or attempted

1 commission of a violent crime, and they're broth
2 charged with a separate offense of possession of
3 weapon during the commission of a violent crime.

4 To these charges and to these indictments
5 both defendants have entered a plea of not guilty.
6 This plea of not guilty by the Defendants places the
7 burden of proof on the State to prove by evidence
8 the guilt of the defendants beyond a reasonable
9 doubt before you, the jury, can find them guilty.
10 The defendants, both of the Reeds, are presumed in
11 the law innocent of the charges contained in the
12 indictment. It is a cardinal and fundamental rule
13 of the law of evidence that a defendant irrespective
14 of the enormity of the charges against him, will
15 always be presumed innocent of the crime for which
16 he is indicted unless and until the guilt of the
17 defendant has been proven by evidence which
18 satisfies you, the jury, of his guilt beyond a
19 reasonable doubt.

20 The presumption of innocence is not a mere
21 legal theory; it is not just a legal phrase. The
22 presumption of innocence is a constitutional right
23 to which every accused is entitled. Our supreme
24 court has declared that presumption of innocence is
25 like a robe of righteousness placed about the

1 shoulders of a defendant, and it remains with him,
2 assigns to him that class, the innocent until that
3 presumptive robe of righteousness has been stripped
4 from his person by evidence satisfying you, the
5 jury, of his guilt beyond a reasonable doubt. The
6 presumption of innocence accompanies each defendant
7 from the time of his arraignment and appearance in
8 this court and continues with the defendant until
9 you retire to the jury room to deliberate your
10 verdict.

11 The presumption of innocence remains in
12 effect to the benefit of the defendant and in
13 existence to the benefit of the defendant until you,
14 the jury, reach the conclusion that the State has
15 proven the guilt of a defendant or both defendants
16 beyond a reasonable doubt.

17 Now the State is not required to prove
18 guilt of the defendant beyond all doubt or beyond
19 every doubt but beyond a reasonable doubt. What is
20 a reasonable doubt? It is not an imaginary or
21 fanciful doubt or a weak doubt; it is a substantial
22 doubt. It is a doubt which the words imply, a doubt
23 for which you can give or assign a reason based on
24 the testimony and evidence in this case. A
25 reasonable doubt is not any sort of doubt. You and

1 I know from everyday life experiences that you may
2 have a sort of a doubt about any matter that arises
3 no matter how trivial it may be or how serious it
4 may be. A reasonable doubt is a doubt which makes
5 an honest, sincere, conscientious juror in search of
6 the truth hesitate to act. Proof beyond a
7 reasonable doubt is proof which leaves you firmly
8 convinced of the defendant's guilty. If you have a
9 doubt for which you can give or assign a reason as
10 to the guilt of either defendant, then he is
11 entitled to a verdict of not guilty. Reasonable
12 doubt may arise from evidence which is in the case
13 or from the lack of evidence in the case. You, the
14 jury, must make the determination of whether or not
15 reasonable doubt exists as to the guilt of either of
16 the defendants. The very fact, however, that the
17 jury engages in a full and free discussion on the
18 issue of guilt or nonguilt in the case with the
19 normal conversational ebb and flow on these issues
20 does not automatically mean that reasonable doubt
21 existed in this case or in any other case.

22 I charge you that each defendant is
23 entitled to every reasonable doubt arising from the
24 whole case. If upon any issue of fact essential to
25 a conviction and verdict of guilty you have a

1 reasonable doubt as to how that issue should be
2 resolved it would be your duty to resolve that issue
3 in favor of the defendant. A defendant, ladies and
4 gentlemen, is not required to prove his innocence
5 but the State is required by law to prove every
6 essential element of the offense charged against the
7 defendant by evidence which satisfies you, the jury,
8 of the guilt of that defendant beyond a reasonable
9 doubt before you can convict that defendant and find
10 him guilty. If then upon the whole case you have a
11 reasonable doubt as to the guilt or innocence of a
12 defendant, he is entitled to that reasonable doubt
13 and would be entitled to an acquittal and a verdict
14 of not guilty. But on the other hand, if upon the
15 whole case you find that the State has proven by
16 evidence which satisfies you, the jury, of the guilt
17 of either of the defendants beyond a reasonable
18 doubt, then in such circumstances it would equally
19 be your duty to convict the defendant and find him
20 guilty.

21 Now I instruct you that the indictments in
22 this case which I hold in my hand are not evidence
23 and cannot be considered by the jury as evidence in
24 this case. The indictments are simply the formal
25 written instruments which serve as the charges

1 brought against these defendants and they serve as
2 the formal documenters by which this matter is
3 brought to trial. During this trial each of us, you
4 and I, have certain duties to perform. As the trial
5 judge it is my responsibility to preside over the
6 trial of this case, and I also have the duty to rule
7 upon or pass upon the admissibility of evidence
8 offered during the progress of the trial. You are
9 to consider only the competent evidence before you;
10 that is, the evidence that was admitted into the
11 record. And you are to disregard and disabuse from
12 your mind any testimony ordered stricken from the
13 record of this case during the progress of the trial
14 if there be any. And you are to consider only the
15 testimony which has been presented from the witness
16 stand together with any exhibits that you've been
17 admitted into the record of this case and any
18 stipulations of counsel made into the record.

19 I have the additional duty to charge you
20 the applicable law in this case. As a presiding
21 judge I am the sole judge of the law in this case,
22 and it is your duty to accept and apply the law as I
23 now state it to you. If you have a preconceived
24 idea as to what the law is or what the law ought to
25 be and it does not agree with what I tell you the

1 law is, you are obligated under your oath to abandon
2 this preconception on your part because you are
3 sworn to accept the law precisely as I state it to
4 you.

5 In every case tried in this court before a
6 jury the jury becomes the sole and exclusive judge
7 of the facts. You, the jury, are the judge of the
8 facts in this case. The Court is the judge of the
9 law. The constitution of this state has declared
10 that the trial judge shall not intimate, state,
11 comment upon, or make any statement to a trial jury
12 about the facts in the case. Since you are the sole
13 judge of the facts you're not to infer from anything
14 that I have said during the progress of this trial
15 in ruling upon the admissibility of evidence or
16 otherwise, or anything that I say to you now during
17 the course of these instructions to you that I have
18 any opinion about the facts of this case; I do not.
19 The law does not permit me to have an opinion about
20 the facts of this case. That is a matter solely for
21 you, the jury, to determine. It is your duty then,
22 as I have stated, to determine the affect, the
23 value, the weight, and the truth of the evidence
24 presented during the course of this trial.
25 Necessarily then, you must assess the credibility of

1 the witnesses who have testified in this case.
2 Credibility is simply a legalistic term which means
3 believability. It becomes your duty then to analyze
4 and evaluate the evidence and to determine that
5 evidence which convinces you of its truth. I charge
6 you that in determining the question of credibility
7 or believability of the witnesses, you may believe
8 one witness as against several witnesses or several
9 witnesses as against one witness. You may believe a
10 part of the testimony of another witness and reject
11 the remaining part of the testimony of the same one
12 witness. You may believe the testimony of a witness
13 in its entirety or you may reject the testimony of a
14 witness in its entirety. You may consider whether
15 any witness has exhibited any interest, any bias, or
16 any prejudice in the case. You may consider the
17 demeanor of a witness, that is, the appearance of a
18 witness from the witness stand. And you may
19 consider the opportunity for knowledge concerning
20 those things about which a witness testified. These
21 considerations you do not exercise arbitrarily, but
22 if in your good judgment there is sound reason in
23 the record for so doing.

24 Because your objective, ladies and
25 gentlemen, is to find the truth whether it comes

1 from the one or more witnesses; and in doing so, in
2 exercising your mental processes and in determining
3 which you consider to be true, the law simply
4 requires that you exercise your good judgment, your
5 common sense, your sense of logic and reason, and
6 your experiences in life. You then apply these
7 attributes of ability to the evidence and determine
8 what you consider to be the truthful evidence. And
9 to these true state of facts as determined by you,
10 the jury, you take and apply the law as the Court
11 will now give it to you and, thus, arrive at a
12 verdict in this case.

13 Now the defendants in this case are
14 charged with the offense, first of all, with the
15 offense of murder. First of all, I will define that
16 offense for you. Murder is defined as the willful,
17 felonious killing of a human being by a human being
18 with malice aforethought, that malice being either
19 expressed or implied. Section 16-3-10 of the Code
20 of Laws of South Carolina provides murder is the
21 killing of any person with malice aforethought
22 either expressed or implied. The State must prove
23 beyond a reasonable doubt that the defendant killed
24 another person with malice aforethought. The
25 presence of malice is a required element of murder.

1 Malice is defined as being hatred or ill will.
2 Malice in its legal sense does not necessarily
3 import illegal -- excuse me, does not necessarily
4 import ill will toward the individual injured but
5 signifies, rather, a general malignant recklessness
6 of the lives and safety of others or a condition of
7 the mind which shows a heart regardless of social
8 duty and fatally bent on mischief. Malice is the
9 wrongful intent to injure another person. It
10 indicates a wicked or depraved spirit intent on
11 doing wrong. It is a legal term implying wickedness
12 and excluding a just cause or excuse. It is the
13 doing of a wrongful act intentionally and without
14 just cause or excuse. The term malice indicates a
15 form, purpose, and design to do a wrong act under
16 the circumstances that exclude any legal right to do
17 it. Malice may be either expressed or implied. The
18 words expressed or implied add nothing to the
19 meaning of the word malice. They do not imply
20 different kinds of malice, but merely the manner
21 which the only kind known to the law may be shown to
22 exist; that is, either by positive evidence or by
23 inference. Expressed malice is when there is
24 deliberate intention to unlawfully take the life of
25 another. Implied malice is when circumstances

1 demonstrate a wanton or reckless disregard for human
2 life or a reasonably prudent man would have known
3 that according to common experience there was a
4 plain and strong likelihood that death would follow
5 the contemplated act.

6 The law says that if one intentionally
7 killed another with a deadly weapon the implication
8 of malice may arise. If facts are proven beyond a
9 reasonable doubt sufficient to raise an inference of
10 malice to your satisfaction, this inference would be
11 simply an evidentiary fact to be taken into
12 consideration by you, the jury, along with other
13 evidence in this case and you may give it such
14 weight as you determine it should receive. A deadly
15 weapon is any article, instrument, or substance
16 which is likely to cause death or great bodily harm.
17 Whether an instrument or object had been used as a
18 deadly weapon depends upon the facts and
19 circumstances of each case. Although malice must be
20 aforethought there is no requirement that it must
21 exist with any appreciable length of time before the
22 commission of the act. It may be conceived at the
23 very moment the act occurs. There must be a
24 combination of evil intent and of the act producing
25 the result.

1 Now the other charge in this case is the
2 possession of a weapon during the commission of a
3 violent crime. Section 16-23-490 of the Code of
4 Laws provides that if a person in possession of a
5 firearm or visibly displays what appears to be a
6 firearm during the commission of a violent crime and
7 is convicted of committing or attempting to commit a
8 violent crime meaning he is guilty of the offense of
9 possession of a weapon during the commission of a
10 violent crime. A firearm is defined as any machine
11 gun, automatic rifle, revolver, pistol, or any
12 weapon which will or designed to, or may readily be
13 converted to expel a projectile. For you to find
14 the defendant guilty of a sep- or a defendant guilty
15 of a separate offense of possession of a firearm
16 during commission of a violent crime you must first
17 find the defendant guilty of either committing a
18 violent crime or attempting to commit a violent
19 crime. In this case the crime of murder is the
20 applicable crime; and if you find the defendant
21 guilty of murder, you must then determine whether
22 the State has proven beyond a reasonable doubt that
23 a defendant was in possession of a firearm or
24 visibly displaying what appeared to be a firearm
25 during the commission of a violent crime.

1 Possession means more than simply having an object
2 in one's possession. Conviction of possession
3 provides proof of possession either actual or
4 constructive coupled with knowledge of the firearm's
5 presence. Possession can be shown by either actual
6 or constructive possession.

7 Now ladies and gentlemen, there are
8 generally two types of evidence which are presented
9 during the trial, direct evidence and circumstantial
10 evidence. Direct evidence directly proves existence
11 of a fact that does not require a deduction.
12 Circumstantial evidence is proof of a chain of facts
13 and circumstances indicating the existence of a
14 fact. Crimes may be proven by circumstantial
15 evidence. The law makes no distinction between the
16 weight or value to be given to either direct or
17 circumstantial evidence. However, to the extent
18 that the State relies on circumstantial evidence,
19 all of the circumstance must be consistent with each
20 other and when taken together point conclusively to
21 the guilt of the accused beyond a reasonable doubt.
22 If these circumstances merely portray the
23 defendant's behavior as suspicious, the proof has
24 failed. The State has the burden of proving the
25 defendant guilty beyond a reasonable doubt and this

1 burden rests with the State regardless of whether
2 the State relies on direct evidence, circumstantial
3 evidence, or some combination of the two.

4 Now there have been witnesses who have
5 testified in this case who have been considered
6 expert witnesses. Although lay witnesses are
7 limited to testifying about facts with their own
8 knowledge and are not allowed to give opinions,
9 certain witnesses who by their training, education,
10 or experience are considered experts in a particular
11 field may give their opinions in that field based
12 upon the facts of the matter and their conclusions.
13 These opinions constitute evidence to be considered
14 by you in connection with all the other testimony in
15 evidence in this case. You may consider the
16 expert's opinion just as you do all other evidence
17 in this case. It is for you, the jury, to determine
18 what weight or to give to — you, the jury, to give
19 it such weight as you in your experience and
20 discretion deem appropriate. You must weigh such
21 evidence and accept or reject it in the same manner
22 as you treat all other evidence in this case. The
23 testimony of experts is to aid and assist you as
24 jurors, not to dominate or control you in decisions
25 or questions of fact. Their opinions and deductions

1 from the evidence before you and their judgment and
2 opinions do not preclude yours. You're required to
3 decide disputed questions as to comparison and
4 consideration of all the issues in this case.

5 Now ladies and gentlemen, an issue in the
6 case is the identification of the defendant or
7 defendants as the perpetrator or perpetrators of the
8 crime charged. The State of South Carolina has the
9 burden of proving identity beyond a reasonable
10 doubt. Identification testimony is an expression of
11 belief or impression by a witness. You may consider
12 the opportunity a witness had to observe the alleged
13 offender at the time of the offense and to
14 thereafter make an identification. It is for you,
15 the jury, to determine the accuracy of the
16 identification of a defendant. You must consider
17 the credibility of each identification witness in
18 the same way as you would any other witness. You
19 can consider his or her truthfulness as well as the
20 capacity, opportunity, and circumstances of the
21 observation of the matters about which he or she
22 testified.

23 Also, ladies and gentlemen, as you know
24 there are multiple defendants in this case. There
25 are two defendants in this case, and each is charged

1 with two offenses. Whatever verdict you find it
2 does not have to be the same as to both defendants.
3 You are to take each defendant, consider the
4 evidence as to him, and write your verdict in
5 accordance and in conformity with the evidence in
6 this case and the instructions that I have given to
7 you and will hereafter give to you. Where more than
8 one person is charged with a crime, if the evidence
9 warrants it you may convict one and acquit the other
10 or you may acquit both or you may convict both. It
11 will depend on your view of the testimony and
12 evidence which you alone are to pass upon.

13 Now ladies and gentlemen, I want to
14 instruct you on the doctrine of accomplice liability
15 or sometimes referred to as the hand of one is the
16 hand of all. Under the hand of one the hand of all
17 theory, one who joins with another to accomplice an
18 illegal purpose is liable criminally for everything
19 done by his confederate incidental to the execution
20 of the common design and purpose. A principal in a
21 crime is one who either actually commits a crime or
22 is present aiding, abetting, or assisting in the
23 commission of the crime. When two or more persons
24 aid, abet, and encourage each other in the
25 commission of a crime all being present, each is

1 guilty as a principal. Prior knowledge that a crime
2 is going to be considered without more, is not
3 sufficient to make a person guilty of the crime.
4 The mere knowledge that another person is going to
5 commit a crime, even if the defendant is present
6 when the crime is committed, is not sufficient to
7 convict the defendant as a principal. Guilt as a
8 principal is shown by actual or constructive
9 presence at the scene as a result of prior
10 arrangement. The State must prove beyond a
11 reasonable doubt by competent evidence the theory of
12 the hand of one is the hand of all. A principal in
13 a crime is one who either in person perpetrates a
14 crime or who gave presence, aids, abets, and assists
15 in the commission of that crime. When a person does
16 an act in the presence of and with the assistance of
17 another, the act is done by one — is done by both,
18 excuse me, where two or more persons acting with a
19 common design or purpose and a common intent are
20 present at the commission of the crime. It matters
21 not by whose immediate agency the crime is committed
22 because all would be guilty, the hand of one is the
23 hand of all.

24 Present means to be sufficiently near to
25 aid and abet and assist in the commission of a

1 crime. However, mere presence at the scene is not
2 sufficient to convict one as a principal on the
3 theory of aiding and abetting. A defendant's
4 presence where a crime is being committed or mere
5 association with a person who commits a crime does
6 not make a defendant an accomplice or an aider or
7 abettor of the person committing the crime. Intent
8 is also a necessary element. There must have been a
9 common design or intent to commit a crime, and the
10 crime must have been considered pursuant thereto
11 with the person aiding and abetting by some overt
12 act. Intent may be shown by acts and conduct of the
13 defendant and other circumstances from which you may
14 naturally and reasonably infer intent. If two or
15 more combine together to commit an unlawful act and
16 in the execution of the criminal act a homicide is
17 committed by one of the actors as a probable and
18 natural consequence of the acts done in pursuance of
19 the common design, all present participating in the
20 unlawful undertaken are as guilty as the one who
21 committed the fatal act. The law is that if a crime
22 might want by to or more persons who are acting
23 together in the commission of an offense the act of
24 one is the act of both, and it — or all if there
25 are more than two. If two or more people acting

1 together or substantially together, acting together,
2 assist each other in the commission of a offense the
3 law says under those circumstances the act of one is
4 the act of all, the hand of one is the hand of all.

5 Now ladies and gentlemen, I want to tell
6 you now and I want to emphasize to you now that the
7 fact that the defendants in this case have not
8 testified is not anything that you should consider
9 in any way whatsoever. This is their constitutional
10 right. It is not a circumstances which you can — a
11 circumstance which you can take into consideration
12 or even allow to enter your discussions in your jury
13 room. Under the constitution of this State and the
14 United States Constitution it is a defendant's
15 constitutional right not to testify. The burden of
16 proof is on the State of South Carolina to establish
17 the guilt of the defendant or a defendant by
18 competent evidence beyond a reasonable doubt. The
19 fact that a defendant did not take the witness stand
20 and testify in his own behalf does not create any
21 inference against him. The jury must not permit
22 that fact to weigh in the slightest degree against a
23 defendant; and nor should this fact even be
24 discussed in your jury room. Now ladies and
25 gentlemen, I have about finished all my instructions

1 to you. I will tell you that it has been said and
2 it is truthful that you are not partisans or
3 advocates for the State of South Carolina or either
4 of these defendants. You do not serve on the jury
5 to reward your friends or punish your enemies.
6 Obviously such a perverted system of justice would
7 be intolerable. You have been selected by the State
8 and both of these defendants as fair and impartial
9 jurors. It is your duty then by your joint
10 deliberations to determine the truth in this case
11 giving to each defendant the benefit of each and
12 every reasonable doubt on each issue and then to the
13 facts you determine to be true, you take and apply
14 the law which the Court has given to you and thus
15 arrive at a verdict which does speak the truth.
16 Because the word verdict, ladies and gentlemen,
17 comes from the Latin word veredicto meaning to speak
18 the truth or truth saying. And when you have
19 accomplished these responsibilities you will have
20 satisfied your oath as jurors and you will have
21 discharged your duty to this Court.

22 Now I want to instruct you on your forms
23 of verdict in this case. If the State has failed
24 prove the guilt of a defendant beyond a reasonable
25 doubt your verdict would be two words, not guilty.

1 If the State has proven the guilt of a defendant
2 beyond a reasonable doubt your verdict would be one,
3 word guilty. The verdict that you render in this
4 case must be the verdict of each and every juror.
5 It must be your unanimous verdict. All twelve of
6 you must agree on the verdict that you authorize the
7 foreman to write.

8 Now Mr. Foreman, I have prepared some
9 verdict forms in this case for your use, and I will
10 tell you that the order in which I have put the
11 possible verdicts in this case has absolutely no
12 significance whatsoever. You should not infer the
13 sequence in which I have written the possible
14 verdicts on this case as having — that I have any
15 opinion as to what your verdict should be; I do not.
16 Obviously in putting something down on paper I had
17 to put something first and put something second, but
18 that is a matter that is totally up to you and you
19 should not infer from the order in which I have
20 written the verdict forms on these case, these
21 cases, that I have any opinion; I do not.

22 Now across the top up here we have the
23 State of South Carolina, County of Darlington, and
24 the number of the case and there's a verdict form
25 for each defendant in this case. This is the one

1 for Mr. Joshua Alexander Reed and this is the one
2 for Mr. Johnathan Tyrone Reed. And of course you
3 will consider both defendants separately and arrive
4 at a decision on each one separately. But on each
5 verdict form the language is as such, is as follows:
6 We, the jury, by unanimous agreement find the
7 defendant Joshua Alexander Reed on the charge of
8 murder, guilty or not guilty. If you find the
9 defendant not guilty do not consider the other
10 indictments, sign the form, and notify the bailiff
11 and you sign your name here. If you find the
12 defendant guilty, consider the indictment for
13 possession of a weapon during the commission of a
14 violent crime. On this charge, we, the jury, by
15 unanimous consent find the defendant Joshua
16 Alexander Reed guilty or not guilty. Then you will
17 sign your name, date it, notify us and we will
18 return you to the courtroom.

19 Same verdict form applies to Mr. Johnathan
20 Tyrone Reed. Again, the formalities across the top:
21 We, the jury, by unanimous agreement find the
22 defendant Johnathan Tyrone Reed on the charge of
23 murder, guilty or not guilty. If you find him not
24 guilty, do not consider the other indictments, sign
25 the form, and notify the bailiff. If you find the

1 defendant guilty, consider the indictment for
2 possession of a weapon during the commission of a
3 violent crime. On this charge, we, the jury, by
4 unanimous consent find the defendant Johnathan
5 Tyrone Reed guilty or not guilty. Sign your name
6 and date it, and we will return you to the
7 courtroom.

8 Now I'm gonna send you to your jury room.
9 I'm gonna ask that you not to begin your
10 deliberations just yet. There are certain matters
11 of law which I now need to take up with the
12 attorneys in this case. If it is not necessary for
13 me to bring you back into the courtroom for
14 additional instructions the bailiff will bring you
15 the exhibits in this case and will bring you the
16 verdict forms and tell you to begin your
17 deliberations. There are a couple of things I want
18 to tell you about the exhibits. First of all, some
19 of the exhibits of course are video disks. If you
20 should want to see any of the video disks while
21 you're there in the jury room we'll make
22 arrangements for you to do that. You don't have the
23 equipment there in the jury room. Just let us know
24 if you want to see the video disks and they can be
25 played for you. We'll make arrangements to play

1 them because they are in evidence. Also, one of the
2 matters that is in evidence along with a weapon, a
3 pistol, were some bullets. I will not send — the
4 bullets will not go to the jury room with you. They
5 will stay here in the courtroom. They will not be
6 taken into the jury room with you. So with that I'm
7 going to ask that you go to your jury room. Do not
8 begin your deliberations just yet as I have to take
9 up these matters of law, and I'm gonna ask the
10 alternate to stay put for me please. And everybody
11 else may go to the jury room. Thank you.

12 (WHEREUPON, the jury was removed from the
13 courtroom and the following
14 proceedings commenced in open court.)

15 THE COURT: Mr. Holt, any additions or
16 exceptions to the instructions of the jury?

17 MR. HOLT: There are none from the State.

18 THE COURT: All right. Mr. Jones, I know
19 there's an exception on behalf of the defendant
20 Johnathan on the inference of malice and that
21 exception is noted. Anything in addition to that?

22 MR. JONES: No, Your Honor.

23 THE COURT: Same thing with you, Mr.
24 Swilley. I know that the defense has made a — on
25 behalf of Mr. Johnathan Reed, take an exception to

1 the charge of the inference of malice and murder
2 charge. Other than that is anything else?

3 MR. SWILLEY: Yes, same objection, Your
4 Honor, as we moved on the record.

5 THE COURT: All right. Madam Forelady,
6 the law does not allow me to have — I mean, Madam
7 Alternate, the law does not allow me to have but
8 twelve jurors. You have heard all the evidence in
9 the case but you're not going to participate in the
10 decision. The purpose, of course, in drawing an
11 alternate is in the event that we have something
12 comes up we have to excuse one of the jurors. This
13 did happen in this case. It just happened but you
14 did not have to be the one that was selected to
15 serve in place of the excused juror. So you've
16 heard all evidence but you're not going to
17 participate in the decision. And I would tell you
18 that once you have been excused there is nothing
19 illegal about your talking to anybody about your
20 service on this case. There's nothing illegal about
21 anybody talking to the you about your service. It
22 is a practice of which I strongly disapprove and I
23 strongly discourage but it's not illegal. You have
24 the right to talk with anyone. You also have the
25 right to not to talk with anyone. And if you decide

1 you don't want to talk with anybody about it and
2 they continue to harass you or bother you, you let
3 the court personnel know and we will deal with them.
4 I would ask that you not talk with anybody about
5 this matter until after this jury has reached a
6 decision which will be probably sometime later on
7 this evening. If you will not talk with anybody
8 about until then.

9 But I am going to excuse you and I do
10 thank you for your service on this case. I do
11 appreciate your being here. We could not operate
12 court without good citizens not willing to come
13 forward and serve as jurors when they're requested
14 to do so. Even though you didn't have much choice
15 about being here I do appreciate your being here. I
16 do appreciate your service and you can be excused
17 from any further service in this matter. Thank you.

18 (Alternate was excused.)

19 THE COURT: Mr. Bailiff, if you will get
20 the verdict forms and the exhibits. Mr. Clerk, if
21 you will get the verdict form and the exhibits and
22 tell the jury they may begin their deliberations.
23 Tell them we are bringing lunch in and it will be
24 here in about half hour, 45 minutes.

25 THE CLERK OF COURT: If y'all will come

1 look at the exhibits.

2 (Attorneys review exhibits.)

3 THE COURT: Thank you. We'll be at ease
4 until we hear from the jury.

5 (Jury began deliberations at 12:15 p.m. and court
6 was in recess.)

7 (WHEREUPON, the jury was returned to the
8 courtroom at approximately 12:24 p.m., and
9 the following proceedings commenced in
10 open court.)

11 THE COURT: All right, thank you, Mr.
12 Foreman. Ladies and gentlemen of the jury, I have
13 been advised, Mr. Foreman, that the jury wishes to
14 see the video of the cameras from the stores; is
15 that correct?

16 THE FOREMAN: Yes, sir.

17 THE COURT: Okay, if you will play that
18 video. We thought the easiest way to do that would
19 be bring you back in here and let you see the video
20 right here.

21 (Video played for the jury.)

22 THE COURT: All right. Is that the end of
23 it?

24 MR. HOLT: Yes, sir.

25 THE COURT: All right. Mr. Foreman and

1 ladies and gentlemen of the jury, you need to see it
2 again? Is that good enough? You want to see it
3 again? You okay? We'll send you back to your jury
4 room. Let me tell you, we are willing to order
5 lunch if you would like to have lunch it will take
6 us about 30 to 45 minutes to get it here. We want
7 you to feel like you can have as much time as you
8 need on this case to deliberate. If you think
9 you're gonna, might be able resolve it in the next
10 30 to 45 minute we won't order lunch. But if you
11 think you're gonna need more time than that, then we
12 will order lunch. I'm gonna ask you go back to your
13 jury room, kind of take an informal poll and let me
14 know if you would like to order lunch.

15 (WHEREUPON, the jury was removed from the
16 courtroom and the following
17 proceedings commenced in open court.)

18 THE COURT: Any objection to the manner in
19 which the matter was handled concerning the jury's
20 desire to view the video on behalf of the State,
21 Mr. Holt?

22 MR. HOLT: No, sir.

23 THE COURT: Mr. Jones?

24 MR. JONES: No, sir.

25 MR. SWILLEY: There is not.

1 THE COURT: We'll be at ease till we hear
2 from the jury. We'll either hear one way or the
3 other from them in a few minutes, I guess, on
4 whether they saw what they needed to see or they'll
5 want to order lunch. We'll be at ease until we hear
6 from them. Stay in touch, counsel, don't get out of
7 sight.

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

10 THE COURT: All right. Back on the record
11 with regard to the matter of the State versus Reed,
12 both defendants are in the courtroom and represented
13 by their counsel. The State is also present
14 represented by Assistant Solicitor Holt. I've been
15 advised the jury wishes to view the video of
16 Johnathan Reed. And have you got that set up, Mr.
17 Holt?

18 MR. HOLT: Yes, sir.

19 THE COURT: Okay. And we'll go ahead and
20 do that. Since those are videos I'll go ahead and
21 play those like I did the other ones. Normally I do
22 think that the jury needs to give us a note if they
23 need additional instructions; but I've been advised
24 that they wish for us to, wish the Court to
25 re-charge them on the hand of one is hand of all or

1 accomplice liability. Do you waive any right to
2 require a note from the jury in that connection,
3 Mr. Holt?

4 MR. HOLT: I do.

5 THE COURT: You, Mr. Jones?

6 MR. JONES: Yes, sir.

7 THE COURT: Mr. Swilley?

8 MR. SWILLEY: I just — I have a question
9 just the hand of one is the hand of all or mere
10 presence theory, what —

11 THE COURT: They're going to get it all.

12 MR. SMILEY: Okay.

13 THE COURT: It's all together. My
14 accomplice liability is the same one I gave a minute
15 ago about mere presence and mere association, the
16 same thing. I'll give them exactly the same thing I
17 gave earlier.

18 MR. SWILLEY: I waive the note.

19 THE COURT: Okay. All right, bring the
20 jury.

21 (WHEREUPON, the jury was returned to the
22 courtroom at approximately 1:24 p.m., and
23 the following proceedings commenced in
24 open court.)

25 THE COURT: All right. Mr. Foreman, and

1 ladies and gentlemen, thank you for your diligence
2 in your duties in this matter, and I've been advised
3 that you wish to now review the video tape of the
4 police interview of Mr. Johnathan Reed; is that
5 correct?

6 THE FOREMAN: Yes, sir.

7 THE COURT: All right. And then I've also
8 been advised that you wish for me to re-charge on
9 accomplice liability, hand of one hand of all; is
10 that correct?

11 THE FOREMAN: That's correct.

12 THE COURT: I would ask you to do this in
13 the future, if you do have something you wish for
14 me to — to get a message to me about what you need
15 is if you would write a note because I need to make
16 that part of the Court's record in the future. So
17 if there is something else after you go back that
18 you need, please write a note and give it to the
19 bailiff, and then he will bring it to me. With that
20 we're going to go ahead as requested, and we're
21 going to play the video, the police interview of Mr.
22 Johnathan Reed, and then we will — then I will
23 re-instruct you on the law of accomplice liability.

24 All right, you may play the video.

25 (Pause.)

1 MR. HOLT: I believe I have to go get
2 another computer, Your Honor.

3 THE COURT: What we'll do, let me go ahead
4 and instruct you on the law of accomplice liability.
5 And then while he's getting this equipment set up,
6 and then we'll either let you go to the jury room,
7 bring you back, we can play it as soon as we get it.
8 So I'm gonna go ahead now and give you those
9 instructions that you requested. Under the hand of
10 one is the hand of all theory, one who joins another
11 to accomplish an illegal purpose is liable
12 criminally for everything done by his confederate
13 incidental to the execution of the common design and
14 purpose. A principal in a crime is one who either
15 actually commits the crime or who is present aiding,
16 abetting, or assisting in the commission of the
17 crime. When two or more persons aid, abet, or
18 encourage each other in the commission of a crime
19 all being present, each is guilty as a principal.
20 Prior knowledge that a crime is going to be consi—
21 committed without more, is not sufficient to make a
22 person guilty of the crime. The mere knowledge that
23 another person is going to commit a crime, even if
24 the defendant is present when the crime is committed
25 is not sufficient to convict a defendant as a

1 principal. Guilt as a principal is shown by actual
2 or constructive presence at the scene as a result of
3 a prior arrangement. The State must prove beyond a
4 reasonable doubt by competent evidence the theory of
5 the hand of one is the hand of all. A principal in
6 a crime is one who either in person perpetrates the
7 crime or who being present aids, abets, and assists
8 in the commission of the crime. When a person does
9 an act in the presence of and with the assistance of
10 another, the act is done by both. When two or more
11 persons acting with common design or common intent
12 are present at the commission of a crime, it matters
13 not by whose immediate agency the crime is committed
14 because all would be guilty. The hand of one is the
15 hand of all.

16 Present means to be sufficiently near to
17 aid and abet and assist in the commission of a
18 crime. However, mere presence at the scene is not
19 sufficient to convict one as a principal on the
20 theory of aiding and abetting. A defendant's
21 presence where a crime is being committed or mere
22 association with a person who commits a crime does
23 not make a defendant an accomplice or an aider or
24 abettor of the person committing the crime. Intent
25 is also a necessary element where there must have

1 been a common design or intent to commit a crime,
2 and the crime might have been committed pursuant
3 thereto with the person aiding and abetting by some
4 overt act. Intent may be shown by acts and conduct
5 of the defendant and other circumstances from which
6 you may naturally and reasonably infer intent.

7 If two or more persons combine together to
8 commit an unlawful act and in the execution of the
9 criminal act a homicide is committed by one of the
10 actors as a probable and natural consequence of the
11 acts done in pursuance of the common design, all
12 present participating in the unlawful undertaking
13 are as guilty as the one who committed the fatal
14 act. The law is that if a crime is committed by two
15 or more person who are acting together in the
16 commission of an offense the act of one is the act
17 of both. If two or more persons are together or
18 substantially together acting together, assisting
19 each other in the commission of the offense, the law
20 says under those circumstances the act of one is the
21 act of all, the hand of one is the hand of all.
22 That's about all I can tell you about it. I think
23 that is the law on that subject.

24 Now are you ready to go, Mr. Holt?

25 MR. HOLT: Yes, sir.

1 THE COURT: Y'all, if you'd go to your
2 jury room. Go ahead and continue your
3 deliberations. As soon as we can get this set up
4 we'll bring you back in and play this video.

5 MR. HOLT: Judge, I think it might be less
6 than 30 seconds before it's set up.

7 THE COURT: Oh, okay, all right. It will
8 be just a minute.

9 (Pause.)

10 (Video of Johnathan Reed's interview was played for
11 the jury.)

12 THE COURT: All right. Mr. Foreman,
13 ladies and gentlemen of the jury, that does conclude
14 the playing of the video that you requested, and I
15 have instructed you the best I can with regard to
16 the accomplice liability. If you need any other
17 instructions on the law or anything just give me a
18 note and I'll try to answer it. You may go to your
19 jury room and resume your deliberations.

20 (WHEREUPON, the jury was removed from the
21 courtroom at 2:08 p.m., and the following
22 proceedings commenced in open court.)

23 THE COURT: Any objections or exceptions
24 to the method of handling jury request as far as
25 video and the additional instructions, Mr. Holt?

1 MR. HOLT: There is none, Your Honor.

2 THE COURT: Mr. Jones?

3 MR. JONES: No, sir.

4 THE COURT: Mr. Swilley?

5 MR. SWILLEY: No, Your Honor.

6 THE COURT: All right, we'll be at ease
7 until we hear from the jury.

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

10 THE COURT: The State is present
11 represented by Mr. Holt. The defendant Johnathan
12 Reed is present with his counsel, Ms. Wooten and Mr.
13 Jones. The defendant Johnathan Reed is present with
14 his counsel, Mr. Mat Swilley. Counsel, I understand
15 that the jury panel has reached a verdict. Is there
16 anything before we bring the jury in on behalf of
17 the State, Mr. Holt?

18 MR. HOLT: Not from the State, Your Honor.

19 THE COURT: On behalf of Defense,
20 Mr. Jones?

21 MR. JONES: Nothing.

22 MR. SWILLEY: No, Your Honor.

23 THE COURT: All right, bring the jury in
24 please.

25 (WHEREUPON, the jury was returned to the

1 courtroom at approximately 3:04 p.m., and
2 the following proceedings commenced in
3 open court.)

4 THE COURT: Mr. Foreman, I've been advised
5 that you have reached a verdict; is that right?

6 THE FOREMAN: Yes.

7 THE COURT: All right. Would you hand it
8 up to the clerk please.

9 (Verdict tendered to the Court.)

10 THE COURT: All right. From the
11 standpoint of the form, the verdict appears to be
12 correct. Mr. Jones, Ms. Wooten, and Mr. Swilley,
13 would y'all have your clients stand please.

14 And Mr. Clerk, you may publish the
15 verdict.

16 THE CLERK OF COURT: Yes, sir, Your Honor.
17 This is the State of South Carolina versus Joshua
18 Alexander Reed, case number 2013-GS-16-0262 and 263.
19 We, the jury, by unanimous agreement find the
20 defendant Joshua Alexander Reed on the charge of
21 murder, guilty. We find the defendant guilty.
22 Considering the indictment for possession of a
23 weapon during the commission of a violent crime on
24 this charge, we, the jury, by unanimous find the
25 defendant Joshua Alexander Reed guilty. Signed

1 foreperson David Dixon, October 24th, 2013. If this
2 is your verdict collectively if you would please
3 raise your right hand for me.

4 (Jurors raised their hand.)

5 THE CLERK OF COURT: For the record all
6 twelve jurors have raised their right hand.

7 THE COURT: All right.

8 THE CLERK OF COURT: Your Honor, this is
9 case number 2013-GS-16-0264 and 265, the State of
10 South Carolina versus Johnathan Tyrone Reed: We,
11 the jury, by unanimous agreement find the defendant
12 Johnathan Tyrone Reed on the charge of murder, not
13 guilty. If you find the defendant not guilty do not
14 consider the other indictment. Sign this form,
15 notify the bailiff. Signed by the foreperson David
16 Dixon, October 24th, 2013. If this is collectively
17 your verdict would you please raise your right hand.

18 (All jurors raised their hand.)

19 THE CLERK OF COURT: Okay, all twelve
20 jurors have raised their right hand.

21 THE COURT: All right. You may be seated.
22 Mr. Jones, anything the jury is excused?

23 MR. JONES: Yes, sir we'd like to poll the
24 jury.

25 THE COURT: You may poll the jury please.

1 THE CLERK OF COURT: Ladies and gentlemen
2 of the jury, Mr. Foreman, when I call your name
3 you'll be asked to stand where you are and reply to
4 two questions. I'll ask, was it your verdict
5 reached in the jury room and is it your verdict now.
6 We'll start with the foreperson Mr. David Dixon.

7 Was it your verdict then?

8 JUROR DIXON: Yes, sir.

9 THE CLERK OF COURT: Is it your verdict
10 now?

11 JUROR DIXON: Yes, sir.

12 THE CLERK OF COURT: Steven Williams, was
13 it your verdict then?

14 JUROR WILLIAMS: Yes, sir.

15 THE CLERK OF COURT: Is it your verdict
16 now?

17 JUROR WILLIAMS: Yes, sir.

18 THE CLERK OF COURT: Jeremy Widener, was
19 it your verdict then?

20 JUROR WIDENER: Yes, sir.

21 THE CLERK OF COURT: Is it your verdict
22 now?

23 JUROR WIDENER: Yes, sir.

24 THE CLERK OF COURT: Jamie Streett, was it
25 your verdict then?

1 JUROR STREETT: Yes, sir.

2 THE CLERK OF COURT: Is it your verdict
3 now?

4 JUROR STREETT: Yes, sir.

5 THE CLERK OF COURT: Danielle Brown, was
6 it your verdict then?

7 JUROR BROWN: Yes, sir.

8 THE CLERK OF COURT: Is it your verdict
9 now?

10 JUROR BROWN: Yes, sir.

11 THE CLERK OF COURT: John Early, was it
12 your verdict then?

13 JUROR EARLY: Yes, sir.

14 THE CLERK OF COURT: Is it your verdict
15 now?

16 JUROR EARLY: Yes, sir.

17 THE CLERK OF COURT: Benjamin Jackson, was
18 it your verdict then?

19 JUROR BENJAMIN: Yes, sir.

20 THE CLERK OF COURT: Is it your verdict
21 now?

22 JUROR BENJAMIN: Yes, sir.

23 THE CLERK OF COURT: Chantel James, was it
24 your verdict then?

25 JUROR JAMES: Yes.

1 THE CLERK OF COURT: Is it your verdict
2 now?

3 JUROR JAMES: Yes.

4 THE CLERK OF COURT: Ebony Jett, was it
5 your verdict then?

6 JUROR JETT: Yes, sir.

7 THE CLERK OF COURT: Is it your verdict
8 now?

9 JUROR JETT: Yes, sir.

10 THE CLERK OF COURT: Travis Ritenour, was
11 it your verdict then?

12 JUROR RITENOUR: Yes, sir.

13 THE CLERK OF COURT: Is it your verdict
14 now?

15 JUROR RITENOUR: Yes, sir.

16 THE CLERK OF COURT: Joshua Sanderson, was
17 it your verdict then?

18 JUROR SANDERSON: Yes, sir.

19 THE CLERK OF COURT: Is it your verdict
20 now?

21 JUROR SANDERSON: Yes, sir.

22 THE CLERK OF COURT: William Sims, was it
23 your verdict then?

24 JUROR SIMS: Yes.

25 THE CLERK OF COURT: Is it your verdict

1 now?

2 JUROR SIMS: Yes.

3 THE CLERK OF COURT: Let the record
4 reflect that will be all twelve. If your name was
5 not called if you will please stand for me.

6 (There was no response.)

7 THE COURT: All right, thank you. All
8 right, ladies and gentlemen of the jury, this will
9 conclude your service in connection with this.
10 There are several things I want to tell you. First
11 of all, in my view the jury's role in the fact
12 finding process is so important that the trial judge
13 should not comment on the verdict of the jury even
14 after a jury has reached a verdict. And I make it a
15 practice never to comment on the verdict of the jury
16 because I think it is the jury's prerogative to find
17 the facts and the trial judge should not comment on
18 the verdict of the jury and I always make it a
19 practice not to do so. I will tell you there was
20 evidence in the record by which you could have
21 reached the decision that you did.

22 I will also tell you that in a few minutes
23 I'm going to excuse you from any further service on
24 this case; and when I do, there is nothing illegal
25 about your talking with anybody about your service.

1 There is nothing illegal about anybody talking to
2 you about your service on this case. It is a
3 practice of which I strongly disapprove and strongly
4 discourage, but it is not illegal. You have the
5 right to talk with anyone, but you also have the
6 right not to talk with anyone. And if anybody
7 should want to talk with you about this matter and
8 you don't want to discuss it with them, you let the
9 court personnel know and we'll deal with them but
10 it's your option. It's up to you as to whether you
11 want to talk to anybody about it or not.

12 Now there's one other thing that we're
13 going to do in connection with this matter, and that
14 is the sentencing phase, and we're going to go into
15 that right now just as soon as I have excused you.
16 And I know sometimes jurors are anxious to know what
17 the ultimate outcome of the case is. And I will
18 give you an opportunity, if you would like to
19 stay — you don't have to, but if you would like to
20 stay, once I excuse you you can go out this way.
21 Mr. Suggs will give you your checks for your service
22 and you can come in the back of the courtroom and
23 have a seat back there as we go into sentencing
24 phase. I will tell you that before anyone else will
25 be released from the courtroom you will be given an

1 opportunity to get on the elevators to get out of
2 the building before anyone else is released from the
3 courtroom if you do want to come back in and come to
4 the sentencing phase. But that will be up to you.
5 You don't have to. You can go on and leave now or
6 you can leave or you can come in the sentencing
7 phase. I'm going to ask the bailiffs to clear the
8 last two or three rows back there so you can sit
9 right by the back door, and you can stay if you
10 would like to.

11 You're free to go, and if you would like
12 to come around and have — you can go out this way
13 and Mr. Suggs will take care of your checks. But if
14 you would like to have a seat in the back of the
15 courtroom while we go through the sentencing phase,
16 please feel free to go. I will allow you to leave
17 the courtroom before anyone else is excused. Thank
18 you. Have a pleasant day.

19 (WHEREUPON, the jury was removed from the
20 courtroom and the following
21 proceedings commenced in open court.)

22 THE COURT: All right, Mr. Jones, motions
23 on behalf of defendant Joshua Reed.

24 MR. JONES: We renew our motion for
25 directed verdict, Your Honor, on motion for new

1 trial on the same grounds.

2 THE COURT: All right. I will
3 respectfully deny that motion. I understand the
4 motion is one for directed verdict or, not directed
5 verdict, notwithstanding the verdict or judgment in
6 arrested verdict. But I believe that there were
7 facts and issues that the jury could determine and
8 that they did very conscientiously look at this
9 matter and determined it based on what their view of
10 the facts was. And they found one defendant guilty
11 of the charge and the other defendant not guilty.
12 So they very clearly looked at the evidence closely
13 and so I will respectfully deny the motion.

14 Now before we go into sentencing phase,
15 Mr. Holt, is there anything, any pending charges
16 against Mr. Johnathan Reed other than this charge,
17 or is he -- can he be discharged from custody?

18 MR. HOLT: Judge, he's got pending charges
19 on a separate matter I believe.

20 THE COURT: Okay, he got a bond on those,
21 Mr. Swilley?

22 MR. SWILLEY: Your Honor, at this time
23 he's been denied bond on those other charges. I'd
24 like to move for bond, but I understand the
25 Solicitor's Office probably hadn't contacted the

1 victims to come before the court.

2 THE COURT: What's the charge?

3 MR. HOLT: Armed robbery with home
4 invasion.

5 THE COURT: All right. That doesn't
6 require to come before circuit court. Y'all can
7 schedule that before the ---

8 MR. SWILLEY: I believe it's a burglary
9 first charge.

10 THE COURT: Burglary first charge?

11 MR. HOLT: Yes, sir.

12 THE COURT: Well, I still think you're
13 gonna have to notify the victims before the bond can
14 be taken care of. All right, as far as this case is
15 concerned though, Mr. Swilley, the defendant is
16 discharged from any further responsibility in
17 connection with the indictments number
18 2013-GS-16-264 and 625, and law enforcement, may
19 return him to custody to answer to the other
20 charges.

21 MR. SWILLEY: Thank you, Your Honor.

22 THE COURT: Sentencing sheet, Mr. Holt?

23 MR. HOLT: Does attorney for defendant
24 need to sign?

25 THE COURT: The attorney needs to; the

1 defendant doesn't. All right, come around please,
2 Mr. Jones.

3 Mr. Holt, I'll be glad to hear from you,
4 and if there are any members of the victim's family
5 who would like to speak I'll be glad to hear from
6 them as well. All right. Mr. Holt, I'll be glad to
7 hear from you, first of all, with regard, is there
8 any prior record?

9 MR. HOLT: There is not, Your Honor.

10 THE COURT: Okay. All right, and I'll be
11 glad to hear from you or any member of the victim's
12 family that would like to address the Court.

13 MR. HOLT: Yes, sir, I'm going to turn it
14 over in just a minute. I just want to remind Your
15 Honor you saw through — saw all the facts as they
16 were presented. This was a crime in which the
17 victim was not defended at all. He was at a picnic
18 table enjoying lunch, and he was murdered in broad
19 daylight. But I know that one member of his family
20 has been elected to speak for the entirety.

21 THE COURT: Give the reporter your name,
22 I'll be glad to hear from you.

23 THE VICTIM: Wanda Hunter McCoy (ph).

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

25 THE VICTIM: (Inaudible.)

1. THE COURT: Okay.

2 THE VICTIM: I don't have a date for when
3 he wrote it. "How I want to be remembered and why.
4 When I have passed away I want to be remembered for
5 three things. I want to be remembered for my
6 courage, the compassion I have for my family, and my
7 outstanding drive for success. These are the three
8 most important things that I would love to be
9 remembered by. The first thing I would like to come
10 to people's mind when they think of me is my
11 courage. It has been a major factor in my life.
12 With it I have face off with some of my, some of my
13 life's biggest obstacles and with it I have overcome
14 many of them. Courage is actually what kept me
15 striving to excel and to better myself in all
16 aspects of life.

17 Secondly, my compassion for my family, the
18 compassion I have for my family keeps me on track
19 because making them proud of me is one of the most
20 important things to me. I put my family first in
21 everything, everything I do. Actually, most things
22 in my life evolves around my family. They are my
23 backbone. Third, I would also have to say my drive
24 for success. Success is everything to me. I feel
25 success is one of the best experiences in life so my

1 drive for success is extremely strong. I always
2 strive to be the best in everything no matter what
3 it may be. All those things are three most
4 important things I would want people to remember me
5 by and why. From the stand of courage to my
6 compassion for my family and my drive for success,
7 these things mean everything to me. So after
8 reading this essay I hope these main three things
9 mean as much to you as they do to me." These are
10 the last words that I'll ever be able to read from
11 my son.

12 THE COURT: Thank you, ma'am.

13 Anything else, Mr. Holt?

14 MR. HOLT: No.

15 THE COURT: All right. Mr. Jones?

16 MR. JONES: Just a couple of things, Your
17 Honor. I believe that you have information
18 concerning Mr. Reed's date of birth. He turned 22,
19 I believe, in the detention center. He's been
20 confined since February 15th, 2012. I don't know if
21 you noticed, but he had — his mother has been here
22 I think every day. He had a number of other members
23 of his family that were present also. He has no
24 pending record. He's got — excuse me, no criminal
25 record. He does, like his brother, have a couple of

1 pending charges; but he's never been convicted of
2 any crimes up until this one. And I understand the
3 severity of the crime and the loss that's been
4 experienced by the Hunter family. We'd ask that you
5 consider a sentence of the minimum of 30 years.

6 THE COURT: All right, thank you, sir.

7 Mr. Jones, I'll be glad to hear from
8 Mr. Reed if there's anything he'd like to say, but I
9 would remind you as I've done before, I recall
10 this — of course anything in sentencing phase might
11 be used at some later time and might not want to say
12 anything. If he does not, I will not hold that
13 against him.

14 MR. JONES: And I asked him and he does
15 not wish to speak.

16 THE COURT: Those of you who have been
17 before me or been in court over which I was
18 presiding in the last 17 years have probably heard
19 me say this. When I got this job over 17 years ago
20 the — my colleagues told me one of the most
21 difficult things that we would have to do would be
22 criminal sentencing. Nothing has changed in the
23 last 17 years that would change my mind about that.
24 It is the most difficult thing that you have to do.
25 We judges have no crystal ball. We cannot predict

1 the future or see what the future may hold. All we
2 can do is ask make a decision based upon the
3 evidence that is before us and our experience.
4 Sometimes the sentence does not satisfy,
5 sometimes — most of the time it doesn't satisfy
6 everyone. Sometimes it doesn't satisfy anyone. We
7 can only impose a sentence that we believe is
8 appropriate under the facts and circumstances of the
9 case and based upon our experience in this job. I
10 do think it is one of the most difficult things that
11 I've had to do, and it's something that I'm never
12 comfortable with and I never do get comfortable
13 with.

14 But having said that, I want to comment
15 that I realize this is a young man here, and he has
16 no criminal record but the facts in this case are
17 egregious. This is not a situation of an
18 altercation in a nightclub where an argument ensues
19 and someone pulls out a street gun and someone is
20 killed. That's one of my pet peeves is street guns.
21 If they were not out there people wouldn't get
22 killed in those situations, but that's not even the
23 situation here. Neither is this a drug deal gone
24 bad. Here the defendant sought out the victim, an
25 unarmed man in a public park in broad daylight and

1 shot him multiple times. It is really a execution.

2 Under these circumstances I do not think
3 that anything less than the maximum is appropriate.
4 Therefore, the sentence of the Court is the
5 defendant is committed to the State Department of
6 Corrections for a determinate term of life in
7 prison.

8 All right, the jury may be excused. Let
9 me know when the jury has cleared the elevators,
10 then I'll proceed with the spectators.

11 Five years concurrent on the possession of
12 a weapon.

13

14 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

15

16

17

18

19

20

21

22

23

24

25

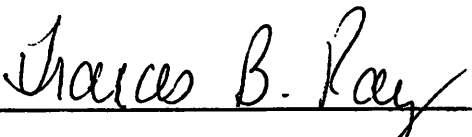
C E R T I F I C A T E O F R E P O R T E R

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 for Margaret Sullivan; 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 16th day of May, 2014.


FRANCES BAKIS-RAY, RPR

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 13 2014

Appeal from Darlington County
Howard P. King, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOSHUA A. REED,

APPELLANT

APPELLATE CASE NO. 2013-002318

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION	10
PETITION TO BE RELIEVED AS COUNSEL	11

TABLE OF AUTHORITIES

Cases

<u>Neil v. Biggers</u> , 409 U.S. 188 (1972)	8
<u>Manson v. Braithwaite</u> , 432 U.S. 98, 114, 97 S.Ct. 2243 (1977)	8
<u>State v. Moore</u> , 343 S.C. 282, 540 S.E.2d 445 (2000)	8
<u>State v. Patterson</u> , 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999).....	8
<u>State v. Traylor</u> , 360 S.C. 74, 82, 600 S.E.2d 523	8, 9

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to suppress the identifications of appellant because the lineup photographs used, which had a significantly lighter background for appellant, suggested appellant as the suspect to the eyewitnesses?

STATEMENT OF THE CASE

On January 21, 2013, a Darlington County grand jury indicted appellant Joshua Reed ("Reed") for murder and a related weapons charge. R. 695 - 698. Appellant was indicted along with his brother, Johnathan Reed. R. 1. On October 21, 2013, appellant was tried before the Honorable Howard P. King and a jury. R. 1. John W. Holt, IV and Patti M. Parker represented the State. R. 1. Julie Wooten and J. Richard Jones represented appellant. R. 1. Matthew S. Swilley represented appellant's brother. R. 1. The jury convicted appellant and acquitted his brother. R. 678, l. 16 - 679, l. 20. Judge King sentenced appellant to life imprisonment. R. 693, ll. 2 - 7. This appeal follows.

ARGUMENT

The trial court erred in refusing to suppress the identifications of appellant because the lineup photographs used, which had a significantly lighter background for appellant, suggested appellant as the suspect to the eyewitnesses.

On February 15, 2012, at approximately 4:00 PM, Milton Hunter ("Hunter") was shot in Pride Park in Hartsville. R. 320, l. 17 – 322, l. 20. R. 204, l. 23 – 205, l. 1. R. 208, ll. 12 – 14. Prior to trial, the court held a lengthy Neil v. Biggers, 409 U.S. 188 (1972) hearing. Six witnesses testified at the hearing. Three of the witnesses claimed to see the shooting and claimed they could identify appellant as the shooter. The other three witnesses were police officers who participated in the lineup procedure.

The first witness was Asia Gregg ("Gregg"). Hunter was her brother. R. 56, ll. 21 – 23. On the day of the shooting, Gregg, Hunter, and Gregg's boyfriend, Johnny Lee Washington ("Washington") were eating in the park. R. 57, l. 5 – 58, l. 14. Gregg claimed that Hunter saw appellant and his brother drive by in a blue truck. R. 58, ll. 1 – 5. Gregg said the brothers got out of their car and approached them in the park. R. 61, ll. 11 – 21. The brothers greeted Hunter. R. 61, ll. 17 – 24. At the hearing, Gregg testified that from the time the brothers entered the park until the time they left was approximately 30 to 35 minutes. R. 64, ll. 13 – 15. This was despite the exchange of only a few sentences. R. 68, ll. 7 – 25. Gregg claimed that everyone just stood there staring at each other for the remaining 30 to 35 minutes. R. 69, ll. 1 – 15. Gregg changed her testimony at trial and claimed that the time period was only 10 minutes. R. 221, l. 4 – 225, l. 1.

Pretrial, Gregg claimed that after Reed asked Hunter if he had talked to his big brother, her brother replied that everything was “squash” which meant that the matter was “done, dealt with, nothing more to deal with it.” R. 62, l. 20 – 63, l. 4. Gregg said, “five seconds after that Joshua took – it was a silver revolver out of his pocket and just started shooting.” R. 63, ll. 5 – 8. She also claimed that appellant’s brother had a gun in his pocket. R. 63, ll. 5 – 20.

Gregg claimed she first told the police that a man named “Juby” shot her brother. R. 65, l. 21 – 66, l. 18. She also claimed that she knew that Juby’s last name was Reed. R. 65, l. 21 – 66, l. 12. Gregg stated she knew appellant from school where they were acquaintances. R. 70, l. 24 – 71, l. 20. She admitted that the first name she gave the police was not Reed, but “Rail”. R. 72, ll. 16 – 22.

The police showed Gregg a photo lineup that evening. R. 66, l. 13 – 67, l. 9. She claimed that she was “a hundred percent” certain of her identification of appellant in the lineup. R. 66, l. 24 – 67, l. 14. On cross-examination, Gregg admitted that all of the lineup pictures had dark backgrounds except for appellant’s codefendant. R. 84, l. 22 – 87, l. 12.

Anthony Wingate (“Wingate”) was in the park drinking “a little bit of liquor” when he began socializing with Gregg, Washington, and Hunter. R. 88, l. 19 – 90, l. 10. Wingate claimed he witnessed the shooting and that appellant was the shooter. R. 92, ll. 9 – 23. Wingate admitted that he did not know the defendants’ names. R. 93, ll. 1 – 2. He was also shown a lineup. R. 93, l. 20 – 94, l. 15.

Washington also identified appellant as the shooter. R. 183, ll. 22 – 23. When asked if he knew the defendants before the shooting, he replied, “I’m saying I know them

but I ain't had known them like that." R. 183, l. 24 – 104, l. 1. He was also shown a photo lineup. R. 107, l. 19 – 108, l. 8.

Police Officer Brian Rudick ("Rudick") created the lineups that were used. R. 114, ll. 1 – 7. He initially used a software program to attempt to create a lineup R. 116, l. 14 – 117, l. 5. Rudick testified that when he accessed the defendants' pictures, the pictures "were significantly old" from when the defendants were in their teens and he "did not feel they were representative of what they look like currently." R. 116, l. 25 – 117, l. 5. Instead of using the software, the police took the defendants' photographs "in front of a neutral wall of the detective division and imported those photographs into the system." R. 117, ll. 6 – 22.

Officer Rudick agreed that the backgrounds for the defendants were different than the backgrounds for the other lineup choices. R. 123, ll. 2 – 11. He explained the difference resulted from his office taking the photographs of the defendant's versus other locations having taken the pictures of the other subjects. R. 123, ll. 12 – 19. The second officer to testify at the hearing also agreed that there were differences in the backgrounds between the defendants and the other subjects. R. 137, l. 23 – 138, l. 5.

Appellant argued that the identifications made by the State's witnesses should be suppressed because the photographs of the defendants had "significantly different backgrounds than the other pictures" that were presented. R. 146, l. 21 – 147, l. 3. Appellant argued this rendered the lineups unduly suggestive. R. 147, ll. 2 – 4. Appellant also argued that inconsistencies within Gregg's testimony showed that she did not "have the degree of knowledge of the defendants that she claimed." R. 147, l. 9 – 148, l. 4. Appellant argued that Wingate had been drinking. R. 148, ll. 4 – 13. Washington's testimony that he

knew the defendants was equivocal. R. 149, ll. 6 – 10. The trial judge denied the defendant's motion to suppress the identifications. R. 154, l. 4 – 158, l. 12.

Unnecessarily suggestive identification procedures that create irreparable mistaken identifications violate due process. Biggers, 409 U.S. at 196. “[T]he primary evil to be avoided is a very substantial likelihood of irreparable misidentification.” Id. at 198 (internal quotations omitted). “Suggestive confrontations are disapproved because they increase the likelihood of misidentification, and unnecessarily suggestive ones are condemned for the further reason that the increased chance of misidentification is gratuitous.” Id.

The two-prong inquiry used to determine the admissibility of an out-of-court identification is as follows: (1) whether the identification process was unduly suggestive; and if so, (2) whether the out-of-court identification was so nevertheless so reliable that no substantial likelihood of misidentification existed. See State v. Moore, 343 S.C. 282, 287, 540 S.E.2d 445, 447 (2000).

Several factors should be considered when evaluating the totality of the circumstances to determine the likelihood of misidentification, including the following: (1) the witness's opportunity to view the perpetrator at the time of the offense; (2) the witness's degree of attention; (3) the accuracy of the witness's prior description of the perpetrator; (4) the level of certainty demonstrated by the witness at the confrontation; and (5) the length of time between the incident and confrontation. See Manson v. Braithwaite, 432 U.S. 98, 114, 97 S.Ct. 2243, 2253 (1977); State v. Traylor, 360 S.C. 74, 82, 600 S.E.2d 523, 527. “Only after a determination as to the reliability of a witness' identification has been made by the trial court may the witness testify before the jury.” Moore, 343 S.C. at 289, 540 S.E.2d at 449 (citing State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999)). “An in-court

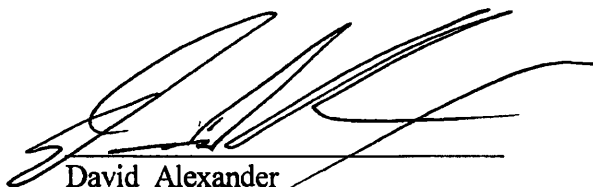
identification of an accused is inadmissible if a suggestive out-of-court identification procedure created a very substantial likelihood of irreparable misidentification.” Traylor, 360 S.C. at 81, 600 S.E.2d at 526.

These lineups were unduly suggestive. (Court’s Ex. 1-2). The lighter background made appellant’s photograph stand out from the other photographs. The police agreed that the backgrounds were different. R. 123, ll. 2 – 11. R. 137, l. 23 – 138, l. 5. This led the witnesses to choose appellant in the lineup. The suggestiveness of the lineup was compounded by the police showing the witnesses another lineup with a highlighted background showing appellant’s brother. The one thing in common between the two lineups were the backgrounds and the witnesses knew they were looking for two brothers. Under these circumstances, the identifications were irreparably tainted by the suggestive photographs and the court erred in not suppressing the witnesses’ in-court identifications of appellant.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and the case remanded for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
Howard P. King, Circuit Court Judge

RECEIVED

NOV 13 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOSHUA A. REED,

APPELLANT

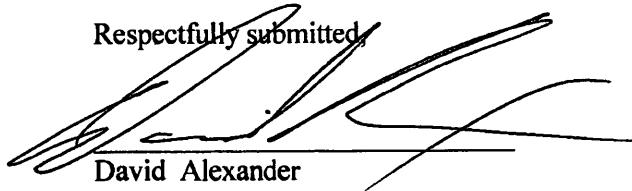
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joshua A. Reed states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Howard P. King, which was held on October 24, 2013, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Joshua A. Reed.

Respectfully submitted,


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 13th day of November, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 13 2014

SC Court of Appeals

Appeal from Darlington County
Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSHUA A. REED,

APPELLANT

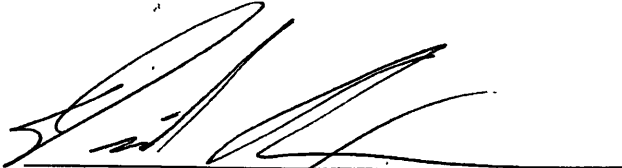
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial transcript;
- (3) State's Ex. 1-2; (to be transported)

I certify that this designation contains no matter which is irrelevant to this appeal.

November 13th, 2014



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

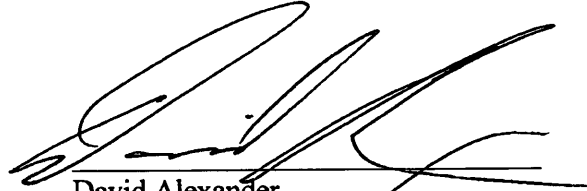
RECEIVED

NOV 13 2014

CERTIFICATE OF COUNSEL

SC Court of Appeals

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

November 13th, 2014

David Alexander
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

NOV 13 2014

SC Court of Appeals

Appeal from Darlington County
Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

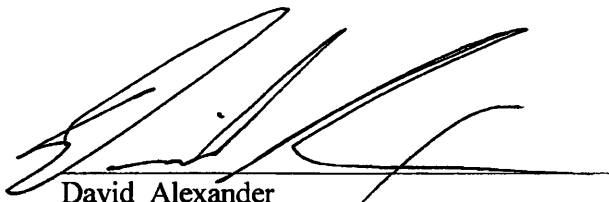
V.

JOSHUA A. REED,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Joshua A. Reed, #357568 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 13th day of November, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 13th day of November, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023.

RECEIVED

JAN 09 2015

SC Court of Appeals

DEAR MRS JENNY This is mr sashon
 plead yes my issues our The Time
 frame from the crime scene in the video
 tapes they our a hour apart from the crime
 scene so theres no way I could have done
 it then they say that they found gun
 powder thats not possible gun powder
 can come from anything then my father
 first lawyer told my mother they did
 not found no gun powder I've been
 in the county jail for 2 years they say
 that they did not found no gun powder
 I've ask them many of times that
 when it was time for me to go to
 trial then all of a sudden they found
 gun powder then theres the 3
 witness they all have different
 stories one say I had on this then
 the other say I had on that then
 theres all of them but thats our
 a few of my issues Thank you
 have a nice day, oh yeah my

Lawyer Never told me About the
 Plea They Offer me ~~ASK~~ him many
 of Times About A Plea But He told
 me They Did not Offer me one until
 it was for me to go to Trial Then
 out of Ivo where when it was time
 for me to go to Trial He say They
 Offer me one By Then it was too late.
 If I Did want to Take one it was too
 late.

RECEIVED

JAN 09 2015

RECEIVED

RECEIVED

JAN 09 2015

SC Court of Appeals

**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.

Joshua Alexander Reed, Appellant.

Appellate Case No. 2013-002318

Appeal From Darlington County
Howard P. King, Circuit Court Judge

Unpublished Opinion No. 2015-UP-484
Submitted September 1, 2015 – Filed October 14, 2015

APPEAL DISMISSED

Appellate Defender David Alexander, of Columbia; and
Joshua Alexander Reed, pro se, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Donald J. Zelenka,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, GEATHERS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

November 13, 2015

The Honorable Scott B. Suggs
1 Public Sq Rm B4
Darlington SC 29532-3213

REMITTITUR

Re: The State v. Joshua A. Reed
Lower Court Case No. 2013GS1600262, 2013GS1600263
Appellate Case No. 2013-002318

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 is enclosed.

The following exhibits filed in this case are being returned to you:

State's Exhibits #1 and #2 - Photo Line-Up

Please sign and return the enclosed copy of this letter acknowledging receipt of these items.

Receipt Acknowledgment

Name: _____ Date: _____

Very truly yours,


CLERK

Enclosure

cc: Joshua Alexander Reed, 357568
Alan McCrory Wilson, Esquire
David Alexander, Esquire
Donald J. Zelenka, Esquire

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF DARLINGTON)JOSHUA A. REED, 357568
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

16 CP 160767

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence (General Sessions) DARLINGTON SESS. GENERAL
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 16-23-0490 POSSESSION OF WEAPON, etc. 5 YEARS
 - (b) 16-02-0010-0020 MURDER, LIFE TERM
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) OCTOBER 24, 2013
 - (b) _____

TRUE CERTIFIED COPY,

Scott B. Suggs Revised 3/2003
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty XXX
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed: SEE
- i. SC COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED CONVICTIONS
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. OCTOBER 14, 2015
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. UN PUBLISHED OPINION, SEE ATTACHED ORDER OF DISMISS.
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: SEE ATTACHMENT ADDENDUM 1

- (a) _____
- (b) _____
- (c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10): **SEE ATTACHED ADDENDUM 1.**

- (a) _____
- (b) _____
- (c) _____

12. Prior to this application have you filed with respect to this conviction: **N/A**

- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: **N/A**

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed: **N/A**
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof: **N/A**
 - i. _____
 - ii. _____
 - iii. _____

- iv. _____
- (d) the date of each such disposition: N/A
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition: N/A
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
NO

15. If you answered "yes" to (14) identify: N/A

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised: N/A
 - i. _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) ISSUES MUST BE RAISED IN THE PROPER FORMATS AND ,
- (b) MUST FOLLOW THE PROPER EXHAUSTION DOCTRINES, AND
- (c) _____

17. Were you represented by an attorney at any time during the course of:

POST CONVICTION RELIEF ADDENDUM 1

10. APPLICANT WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL GUARANTEED BY THE SIXTH AND FOURTEENTH AMEND. TO THE UNITED STATES CONST. AND BY ARTICLE I, §§ 3 AND 14 OF THE S.C. CONST., DURING CASE: GUILTY PLEA, etc.

SUPPORTING FACTS ISSUES

11. COUNSEL'S PERFORMANCE DURING THE CASE WAS BOTH UNREASONABLE AND PREJUDICIAL. ACCORDINGLY TO STRICKLAND V. WASHINGTON, 466 U.S. 668 (1984). COUNSEL'S ACTS AND OMISSION INCLUDE, BUT ARE NOT LIMITED TO THE FOLLOWING:
1. PLEA COUNSEL FAILED TO ADVISE APPLICANT ABOUT A PLEA FOR 30 YEARS UNTIL THE DAY OF THE PLEA TRIAL;
 2. COUNSEL FAILED TO PLACE THE LEGAL TRAP PROCESS AGAINST THE CRIME VIDEO FROM THE SCENE OF THE ALLEGED CRIME INCIDENT, etc.
 3. FAILED TO FULLY EXAMINE THE STATE'S EYEWITNESSES AND DISCLOSE THEIR CRIMINAL BACK GROUND DATA, NCIC REPORTS, etc. NO ACCOUNTS TO SHOW INVESTIGATIVE DUTIES TO THE CASE AS REQUIRED, etc.
 4. COUNSEL FAILED TO HAVE STATE EYEWITNESS ID FOR THE PURPOSES OF WITNESSES GIVING REPORTS TO THE POLICE AND INVESTIGATORS BUT IN THE TRUTH FINDING PROCESS THE POTENTIAL STATE EYEWITNESS WAS PLACED UNDER ARREST FOR THE NAME OF ASIA GREGG, etc.
 5. COUNSEL FAILED TO COMPEL THE STATE TO PROVIDE THE FORENSIC REPORTS OF THE SEROLOGY SECT. SHOWING THE FINDING OF THE GUN POWDER RESIDUE ON THE APPLICANT THAT WAS PERFORMED ON HIM, THE COUNSEL WAS PARTICIPATING IN THE HIDING INFORMATION ACTS THROUGH COORDINATION BY THE STATE, THE COUNSEL DID NOT PROVIDE THE FINDING OF THE SEROLOGY REPORT UNTIL 20 MONTHS AS SAID THAT'S WHEN THE SLED SENT THEM BACK TO THE STATE, etc., AS THIS ISSUE IS COMPILED WITH A BRADY VIOLATION CLAIM THAT IT BEING THE CASE COUNSEL INDULGED IN VIOLATING THE APPLICANT'S CONSTITUTIONAL RIGHTS TO HAVE THE STATE'S FILES DISCLOSED TO HIM IN A REASONABLE TIME FRAME TO HAVE THE FILES INSPECTED FOR HIMSELF, AND DISCUSSED WITH THE COUNSEL.

- (a) your arraignment and plea? XXXX
- (b) your trial, if any? _____
- (c) your sentencing? _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? XXXX
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. JULIE WOOTEN, Esq. AND RICHARD JONES, Esq.
 - ii. DAVID ALEXANDER, Esq.
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. PLEA-WOOTEN AND JONES
 - ii. APPEAL-ALEXANDER,
 - iii. _____

19. State clearly the relief you seek in filing this application:
OVERTURN CONVICTION AND REMAND FOR DISMISSAL OF CHARGES, etc.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
)
 County of LEE)

VERIFICATION

JOSHUA REED,
 I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this _____
 day of _____, 2_____.

JOSHUA REED
990 WISACKY HWY.
BISHOPVILLE, S.C. 29010

Notary Public (L.S.)

My Commission Expires: _____

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

JOSHUA REED,

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, 2_____.

**JOSHUA REED
LEE CORR. INST.
990 WISACKY HWY.
BISHOPVILLE, S.C
29010**

Notary Public

My Commission Expires: _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	
Joshua A. Reed,	)	Case No.: 2016-CP-16-0767
S.C.D.C. No. 357568,	)	
	)	
Applicant,	)	
	)	RETURN AND
v.	)	PARTIAL MOTION TO DISMISS
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the application for post-conviction relief filed by Joshua A. Reed (Applicant) on November 3, 2016, Respondent would show this Court:

I.

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted at the January 2013 term of the Darlington County Grand Jury for murder (2013-GS-16-00262), and possession of a weapon during the commission of a violent crime (2013-GS-16-00263).

On February 15, 2012, at approximately 4:00 PM, Applicant confronted Milton Hunter in Pride Park in Hartsville, South Carolina, and there fired five rounds from a silver revolver at Mr. Hunter, striking him three times. Tr. 206-08, 322-24, 538-39. Mr. Hunter perished from laceration of the brain due to a gunshot wound to the head. Tr. 539, ll. 5-8.

Julie Wooten, Esq., and J. Richard Jones, Esq., represented Applicant. John W. Holt, IV, and Patti M. Parker, of the Fourth Circuit Solicitor's Office, prosecuted the case. Applicant proceeded to trial before the Honorable Howard P. King and a jury on October 21, 2013. The

jury found Applicant guilty as indicted on October 24, 2013. Judge King sentenced Applicant to imprisonment for the duration of his natural life.¹

Applicant filed a timely notice of appeal and a direct appeal was perfected by David Alexander, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion and granted Mr. Alexander's motion to be relieved. State v. Reed, Op. No. 2015-UP-484 (S.C. Ct. App. filed October 14, 2015). The Remittitur was issued on November 13, 2015.

II.

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons (full capitalization omitted):

1. "[Applicant] was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amend. to the United States Const. and by Article I, §§ 3 and 14 of the S.C. Const., During Case: Guilty Plea, etc."
 - a. "Plea counsel failed to advise applicant about a plea for 30 years until the day of the plea trial;"
 - b. "Counsel failed to place the legal tiny process against the crime video from the scene of the alleged crime incident, etc."
 - c. "Failed to fully examine the State's eyewitnesses and disclose their criminal back ground data, NCIC reports, etc. No accounts to show investigative duties to the case as required, etc."
 - d. "Counsel failed to have state eyewitness ID for the purposes of witnesses giving reports to the police and investigators but in the truth finding process the potential state eyewitness was placed under arrest for the name of Asia Gregg, etc."
 - e. "Counsel failed to compel the State to provide the forensic reports of the serology sect. showing the finding of the gun powder residue on the Applicant that was performed on him, the counsel was participating in the hiding information acts through coordination by the State, the counsel did not provide the finding of the serology report until 20 months as said that's when the SLED sent them back to the State, etc[.]

¹ It appears that Judge King also sentenced Applicant to a concurrent term of five years for the weapons charge. A sentence for possession of a weapon during the commission of a violent crime, however, is subsumed by a sentence of life incarceration or death. S.C. Code Ann. § 16-23-490(A).

2. Prosecutorial misconduct, in that:

- a. "As this issue [referring to 1.e above] is compiled with a Brady violation claim that it being the case counsel indulged in violating the Applicant's constitutional rights to have the State's files disclosed to him in a reasonable time frame to have the files inspected for himself, and discussed with the counsel."

Applicant requests relief as follows:

- "Overturn conviction and remand for dismissal of charges, etc." (caps omitted)

Attached to and incorporated herein are the records of the Darlington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript (as provided in the Record on Appeal), Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

III.

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at

625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant's allegation of prosecutorial misconduct is without merit as a matter of law and should be summarily dismissed. "The Brady disclosure rule requires the prosecution to provide to the defendant any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment." Hyman v. State, 397 S.C. 35, 45, 723 S.E.2d 375, 380 (2012) (quoting Porter v. State, 368 S.C. 378, 384, 629 S.E.2d 353, 356 (2006)). "Tantamount to any Brady claim is the withholding of evidence." Id., 397 S.C. at 46, 723 S.E.2d at 381. The State is not obliged to disclose materials to a defendant *personally*, but satisfies its obligations under Brady by disclosure to defense counsel. Id., see also Rule 4.2, SCRPC ("In representing a client, a lawyer shall not communicate about the subject of the representation with

a person the lawyer knows to be represented by another lawyer in the matter unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”). Applicant’s Brady allegation is, in sum, that the State failed to meet its obligations by failing to disclose all materials to him *personally*, which is not the State’s duty, but would rather itself constitute a violation of the Rules of Professional Conduct. Accordingly, Applicant’s allegation of prosecutorial misconduct is without merit as a matter of law and should be summarily dismissed.

V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. refiled October 4, 2017) (Shearouse Adv.Sh. No. 38 at 12). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be

sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VI.

Respondent denies each allegation not expressly admitted, qualified, or explained.

VII.

WHEREFORE, Respondent respectfully requests that this Court grant its partial motion to dismiss as set forth in Section VI, above, and thereafter convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

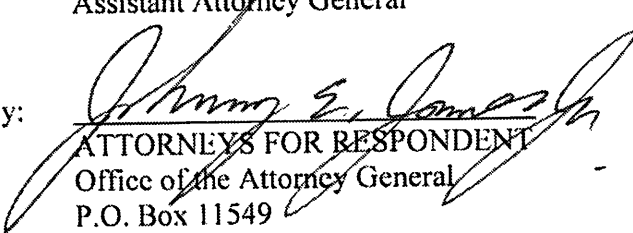
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

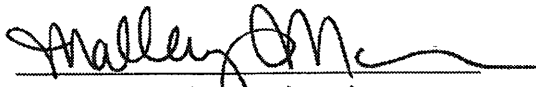
11 Dec., 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DARLINGTON	)	
	)	
	)	2016-CP-16-0767
JOSHUA A. REED, #357568,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Lance S. Boozer, Esquire
Boozer Law Firm, LLC
1400 Laurel Street, Suite 4A
Columbia, SC 29201

DATED this 11th day of December, 2017.


Mallory Morris, Legal Assistant
For Respondent

THE BOOZER LAW FIRM, LLC

Lance S. Boozer, Esq.*

*Also admitted in Florida

1400 Laurel Street, Suite 4A
Columbia, SC 29201Telephone: 803-608-5543
Fax: 803-926-3463Email: lsb@boozerlawfirm.com
Website: www.boozerlawfirm.com

December 14, 2017

The Honorable Scott B. Suggs
Clerk of Court
1 Public Square
Darlington, SC 29532**RE: Joshua Reed, #357568, v. State of South Carolina
2016-CP-16-767**

Dear Honorable Clerk:

I represent Mr. Reed in the above-referenced action. Please clock and file the enclosed document considered an amendment to his prior PCR application and return a clocked copy to me in the envelope provided.

Should you have any questions or concerns, please do not hesitate to contact me. I appreciate your assistance in this matter.

Yours very truly,



Lance S. Boozer

cc: Johnny E. James, Jr., AAG
Joshua Reed, #357568

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	C/A NO: 2016-CP-16-767
	)	
Joshua Reed, #357568,	)	
	)	
Applicant,	)	
	)	FIRST AMENDMENT TO PRIOR
v.	)	APPLICATION FOR PCR
	)	
State of South Carolina,	)	
	)	
<u>Respondent.</u>	)	

The Applicant, through appointed counsel below, makes the following additional claim and amendment to his prior application for post-conviction relief:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (i) Counsel was ineffective for failing to request that Applicant's case be severed from his co-defendant's case.
 - (ii) Counsel was ineffective for failing to object, strike, request severance and/or mistrial and otherwise act based on the prejudicial statements made by co-defendant's counsel during trial.

Applicant requests that his conviction and sentence be vacated and seeks a new trial on the original charges.

THE BOOZER LAW FIRM, LLC


 Lance S. Boozer
 Attorney for Applicant
 1400 Laurel Street, Suite 4A
 Columbia, SC 29201
 Phone: (803) 608-5543
 Fax: (803) 926-3463

Columbia, South Carolina
 December 14, 2017

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

Joshua Reed, #357568,

Applicant,

v.

State of South Carolina,

Respondent.

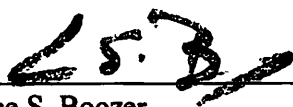
)
)
)
)
)
)
)
)
)
)
)
)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A NO: 2016-CP-16-767

PROOF OF SERVICE

I, the undersigned of the Boozer Law Firm, LLC, Attorney for Applicant, do hereby certify that I served the foregoing First Amendment to Prior Application for PCR upon the persons below-listed by placing a copy, postage prepaid, in the United States Mail, this 14th day of December, 2017, addressed as follows:

Johnny E. James, Jr.
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211



Lance S. Boozer

State of South Carolina)
 County of Darlington)

In Circuit Court of the
 Fourth Judicial Circuit
 2016-CP-16-0767

JOSHUA A. REED,
 Plaintiff,

vs.

THE STATE,
 Defendant.

)
)
)
)
) Transcript of Record
)
)
)
)
)
)

Dillon, South Carolina
 January 16, 2018

B E F O R E:

The Honorable Roger E. Henderson

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

Mr. Lance Boozer, Esquire
 Attorney for Plaintiff

Mr. Johnny E. James, Jr., Esquire
 Attorney for Defendant

Lisa Carter
 Circuit Court Reporter

I N D E X

WITNESSESPAGE

Julie Rochester:

Direct Examination by Mr. Boozer 8

Cross Examination by Mr. James 18

Rick Jones:

Direct Examination by Mr. Boozer 20

Cross Examination by Mr. James 28

Redirect Examination by Mr. Boozer 35

John Holt:

Direct Examination by Mr. James 37

I N D E X

NO.DESCRIPTIONEV.

(No exhibits were Introduced during this hearing)

1 THE COURT: Yes, sir, Mr. James.

2 MR. JAMES: If it may please, the Court? My name
3 is Johnny Ellis James, Jr. and I have the honor and
4 privilege to represent the State of South Carolina as
5 responded by all the post conviction relief action before
6 the court today and tomorrow.

7 I would call to the Court's attention the matter of
8 Joshua A. Reed versus the State of South Carolina. That is
9 docket number 2016-CP-16-00767. Mr. Reid is present here
10 in the courtroom today. He is represented by Mr. Lance S.
11 Boozer. Also with the State here today and support on this
12 application is Ms. Kelly Oppenheimer.

13 Your Honor, Mr. Reed was indicted January, 2013 term
14 of the Darlington County grand jury for murder and for
15 possession of a weapon during the commission of a violent
16 crime. Ms. Julie Rochester and Mr. Rick Jones represented
17 Mr. Reed on those charges. Mr. John Holt and Mrs. Patti
18 Parker of the Fourth Circuit Solicitor's Office prosecuted
19 that case. Mr. Reed proceeded to trial before the
20 Honorable Howard P. King and a jury on October 21, 2013 and
21 the jury found Mr. Reed guilty as indicted on October 24,
22 2013. Judge King then sentenced the applicant to
23 imprisonment for the duration of his natural life.

24 An appeal was timely filed and perfected by Mr. David
25 Alexander who filed an Anders brief and that Anders brief

1 was granted and dismissed on October 14, 2015.

2 Your Honor, there is a pending partial motion to
3 dismiss on behalf of the State in this case. Your Honor,
4 the State would respectfully request that this Court
5 summarily dismiss the allegation of prosecutorial
6 misconduct in the matter. The allegation indicates as to
7 this issue is compiled with a Brady violation claimed that
8 it being the case counsel indulge in violating the
9 applicant's constitutional rights, to have the State's
10 filed disclosed to him in a reasonable time frame to have
11 the files inspected for himself and discussed with counsel.
12 Your Honor, the State's interpretation of that allegation
13 is that the State committed a Brady violation for not
14 failing to deliver those items in question to Mr. Reed
15 personally. And, Your Honor, the State is under no
16 obligation to disclose all the materials to the applicant
17 personally. It's sufficient to disclose them to his
18 attorney. So respectfully, Your Honor, the State would
19 request that, that allegation be summarily dismissed.

20 THE COURT: Any response, Mr. Boozer?

21 MR. BOOZER: Thank you, Your Honor. If it pleases,
22 the Court? Judge, in response to that I don't believe that
23 and that's not really the issue I'm going to be focusing on
24 anyway in this case. However, in response to that, I don't
25 believe as, Your Honor, has before you a copy of the

1 application and that's the way in which it's addressed. I
2 think Mr. James said they interpreted as being the claim of
3 prosecutorial misconduct. It's actually alleged under
4 ineffective assistance of counsel and counsel failing to
5 fully make that examination. I don't believe he intended
6 that to be a claim of prosecutorial misconduct and we're
7 not going to be addressing it as such it being a PCR
8 hearing.

9 THE COURT: All right. If you're going to address
10 it as some other issues other than prosecutorial misconduct
11 I'll go ahead and just deal with it in the hearing and all
12 other matters as well.

13 MR. BOOZER: Thank you, Your Honor.

14 THE COURT: Okay.

15 MR. JAMES: Thank you, Your Honor. Otherwise, I'll
16 give the floor to Mr. Boozer.

17 THE COURT: Mr. Boozer?

18 MR. BOOZER: Thank you, Your Honor. If it pleases,
19 the Court? Judge, if I may just take a few moments and
20 give just sort of a brief framing of what I content will be
21 one of the main issues in this case.

22 Judge, my client was convicted at trial where he was
23 tried jointly with his co-defendant which was also his
24 brother who is now deceased, Johnathan Reed. Basically,
25 judge, the allegations are that there was a murder at a

J. Rochester- Direct Examination by Mr. Boozer

7

1 park and it was committed by my client, Josh, I'll call him
2 Josh for the purposes of this hearing, by Josh. He was
3 represented by Mr. Rick Jones and Ms. Julie Rochester. His
4 co-defendant was represented by Mr. Matt Swilley.

5 Judge, this is a very unique case and it's one, I've
6 been doing these quite a long time and it's an issue I've
7 not seen before. Certainly, Your Honor, is familiar with a
8 Bruton issue in which a co-defendant if he were to give a
9 statement against his co-defendant certainly couldn't be
10 tried together because the lawyer would not be able to call
11 that co-defendant to the stand and challenge that
12 statement. So that certainly would be a Bruton issue.

13 Judge, as Your Honor, is going to see in this case,
14 essentially, my client's co-defendant, his lawyer Matt
15 Swilley, essentially became the co-defendant. Essentially,
16 became the witness in the case. As, Your Honor, will from
17 the transcript as I point it out in examination, he
18 essentially says, "my client didn't want to give a
19 statement. The only reason he's here and charged today is
20 he wouldn't give a statement against his brother. His
21 brother is the one that did this. He murdered this
22 person." And, essentially, his lawyers are then left, not
23 only to defending against the State, they're defending
24 against their co-defendant's lawyer who they cannot
25 examine. So, essentially, the whole case revolves around

1 their failing to act in to either sever the case and
2 failing to object at trial or in failing to request a
3 mistrial during the trial. And I'll list all that
4 testimony with the former lawyers, judge.

5 THE COURT: Okay.

6 MR. BOOZER: Thank you. And with that said, judge,
7 we'll go ahead and call Ms. Julie Rochester to the stand.

8 THE COURT: All right.

9 THE CLERK: Do you solemnly swear or affirm the
10 testimony you're about to give the Court is the truth, the
11 whole truth, and nothing but the truth so help you God?

12 MS. ROCHESTER: Yes.

13 THE CLERK: Have a seat in the witness box and
14 state your full name for the Court please, ma'am.

15 MS. ROCHESTER: Julie Rochester.

16 JULIE ROCHESTER, first being
17 duly sworn, testified as follows:

18 **Direct Examination by Mr. Boozer:**

19 Q. Ms. Rochester, how are you?

20 A. Very well. How are you?

21 Q. It's Ms. Rochester, is that correct?

22 A. Yes, sir.

23 Q. Okay. Ms. Rochester, did you represent Joshua Reed in
24 the case that's related to why we're here today?

25 A. I assisted Mr. Jones in the trial of the case, yes.

1 Q. Okay. During the trial of the case, who sat first
2 chair in the case?

3 A. Mr. Jones.

4 Q. Did you have occasion or were you involved in, I
5 guess, meetings with Mr. Reed prior to the actual trial or
6 did you just come in and sit second?

7 A. No, I met with him before trial. When Mr. Jones and I
8 were sure that it was going forward, he asked if I would
9 like to assist him at trial and I said, of course. So I
10 went with him to the jail to visit with Mr. Reed before
11 trial.

12 Q. Essentially, if you could, just summarize sort of the
13 State's characterization or allegations of the case?

14 A. The State alleged that Mr. Joshua Reed, your client
15 Josh, our client, was a shooter in the park, Pride Park, I
16 believe in Hartsville. It was broad daylight. There was
17 the victim, his sister, his sister's boyfriend and another
18 witness there alleged that Joshua, excuse me, Johnathan who
19 is Joshua's brother was driving the two of them to the
20 store near their house which is also where the park is
21 located, the park is on the way to the store. When they
22 were driving by they saw the victim, Milton Campbell
23 Hunter, in the park and Josh and Mr. Hunter had, had
24 previous bad blood between them. Mr. Hunter actually shot
25 Josh Reed previously. And when the brother saw the victim

1 in the park, they went to the convenience store first and
2 on their way back they went to the park and the State
3 alleges that Josh Reed approached Milton Campbell Hunter
4 and shot him.

5 Q. Okay. And you indicated that his brother, I think,
6 was his co-defendant, Johnathan?

7 A. The State alleged at the time and went to trial with
8 the theory that they were in a conspiracy together and they
9 committed the murder together and then they fled together.

10 Q. Who represented his brother at trial?

11 A. Matt Swilley.

12 Q. And they were, in fact, tried together?

13 A. Yes.

14 Q. All right. Now, going into the trial what was sort of
15 the strategy in the case?

16 A. Our strategy was going to be to deny that it was Josh
17 who shot the victim. There was convenience store video,
18 the two brothers went into the convenience store right
19 before the shooting. There was a clock on the video and
20 our defense, one of our defenses, was they could not have
21 committed the crime because the time on the video was so
22 close to the 911 call that it could not have been the
23 brothers that did it.

24 Q. Okay. Now, I'll just kind of cut to it, Your Honor,
25 do you have a copy of the record on appeal?

1 THE COURT: I do.

2 MR. BOOZER: Okay. And I'll be, hopefully, using
3 the record on appeal numbers which I do think match up with
4 the trial transcript. Julie, if I may call you Julie for a
5 moment, do you -- do you have a fresh memory of the trial?

6 A. I read over the trial transcript after I received it.

7 Q. Okay. Now, specifically looking at the transcript and
8 I'm looking, specifically, on page 199 and this is actually
9 the co-defendants opening -- you don't have a copy?

10 A. No, sir. Sorry.

11 Q. Okay. I'll go ahead and read this out ---

12 A. Please.

13 Q. --- for everyone. On 199, and this is Jonathan's
14 lawyer speaking with an opening statement. What he says
15 is, "the reason that Johnathan is on trial right now, I'm
16 going to tell y'all, the reason why he's in that chair
17 because he's not going to sit in that chair and bear with
18 us, but I think that's supposed to mean bear witness,
19 against his brother. He didn't do that from the beginning
20 and he didn't do -- he didn't exactly will do that now
21 that's why he's charged with the crime." So, basically,
22 the whole defense appears to be for Mr. Swilley and his
23 client is that Josh did this. The only reason that
24 Johnathan is even involved in this today is because he
25 wouldn't give a statement, is that correct?

1 A. Yes.

2 Q. Okay. Over on page 298 this is an examination, a
3 cross examination by Mr. Swilley of an officer beginning on
4 line 10, excuse me, not of an officer but of an eyewitness
5 who was actually there and Mr. Swilley is examining that
6 eyewitness and says, "And at that time you saw Joshua Reed
7 shoot Milton, Johnathan Reed wasn't doing anything, right?"
8 And the answer, "He was standing -- he was standing, see he
9 was standing opposite of Johnny Lee." "Right. And, did I
10 hear you say before he looked shocked meaning Johnny when
11 all this was going on?" " Yeah, I would say that.

12 Question: "Like, I mean, he look of bewilderment on his
13 face?" Answer: "He looked as puzzled just like I looked
14 puzzled." Question: "And at any time you saw Johnny,
15 Johnathan didn't have a gun, did he?" "Not from my
16 knowledge, I don't know." And you flip over to 299, line
17 10, and again the examination continues, "At the time when
18 you said that the shooting stopped, you said did I hear
19 correctly, Joshua grabbed Johnathan and pulled Johnathan
20 out of there?" "Yeah, he was standing there. They were
21 over there, back to the picnic table. He grabbed by the
22 hoodie." And then it goes on to line 19, "So it's fair,
23 it's true to say that based upon your observation,
24 Johnathan Reed had nothing to do with the shooting other
25 than the fact that he was just in the park, is that true?"

1 "Yes." And then again going over to page 300, he elicit
2 the answer from the witness, "From my observation he ain't
3 had anything to do with it. He would've never been there."
4 The last thing I want to -- one of the final thing I want
5 to turn to your attention to is page 624, where, basically,
6 Mr. Swilley is summarizing one of the eyewitnesses
7 testimony, basically, indicates, "She saw Josh shoot the
8 victim." Did y'all know that, that was going to be -- did
9 y'all know that was how it was going to play out, that Mr.
10 Swilley was going to come in and say the only reason his
11 client was there is because he would have given a statement
12 against Johnathan ---

13 A. We did not ---

14 Q. --- excuse me, against Josh, y'all did not know that?

15 A. We did not know ahead of time, no.

16 Q. When you say you didn't know ahead of time, did you
17 start thinking that, that might be the case before the
18 trial or right before the trial?

19 A. During -- right before pretrial motions, yes.

20 Q. What happened?

21 A. It was the first day of trial, it was pretrial
22 motions. In Darlington on the defense side there's two
23 long tables which are generally pulled together if you have
24 multiple co-defendants and as soon as Mr. Swilley came in
25 with his client, the first thing he did he didn't speak to

1 us at all. You know, we would greet him, "Good morning,
2 how are you?" He went over and took the table and
3 physically separated his table from ours because he wanted
4 to create actual distance between his client and ours. I
5 found it very strange and I wasn't really sure what was
6 gonna happen after that but I had an idea that there might
7 be an adverse defense.

8 Q. And let me direct your attention to page 638 of the
9 transcript and again this is Mr. Swilley's closing and this
10 is the beginning on line 18 of page 638 where Mr. Swilley
11 in his argument says, "If Johnathan had his way I wouldn't
12 be up here to concede telling that Joshua shot Milton and
13 telling y'all what you all ready know. The fact you know
14 they were there and that Joshua was shot Milton and that
15 Johnathan just ran when the gunshot rang out like any
16 regular person would. My job is to protect him from the
17 unlawful conviction. He doesn't call that shot; I do.
18 That's my decision." So, essentially, would you agree with
19 me that during the trial although the co-defendant
20 Johnathan never testified, never gave a statement that Mr.
21 Swilley, essentially, stepped into his shoes to tell the
22 jury what he thought that, that they needed to hear?

23 A. From the first statement out of his mouth at opening
24 until the last statement out of his mouth at closing, yes.

25 Q. And you certainly, neither you nor Mr. Jones

J. Rochester- Direct Examination by Mr. Boozer

15

1 certainly, wouldn't have any opportunity to cross examine
2 Mr. Swilley?

3 A. No.

4 Q. And at the end of the trial, what happens to Josh's
5 co-defendant, Johnathan Reed, does he get convicted?

6 A. He was found not guilty.

7 Q. Okay. So as you indicated the table being separated
8 and then y'all seen where this was sort of going, you would
9 agree with me that neither you nor Mr. Jones made any sort
10 of motion for severance or motion for mistrial or objection
11 because of those statements by Mr. Swilley?

12 A. Correct and we should've.

13 Q. You should've. Why should've you?

14 A. At that point, we should've been aware that there was
15 going to be an adverse defense. We should have at least
16 ask for the case to be tried separately knowing that the
17 co-defendant's attorney was going to try and convict our
18 client as much as the State.

19 Q. Do you think that Mr. Swilley's statements and y'all's
20 failure to make any sort of motion to sever from this trial
21 or objection, do you think that ended up prejudicing Josh -
22 --

23 A. No question.

24 Q. --- in the trial?

25 A. No question.

1 Q. Okay.

2 A. Absolutely.

3 Q. Would you agree with me that, essentially, not only
4 you guys defending against the State but now y'all been put
5 in a position where you were defending against the co-
6 defendant?

7 MR. JAMES: Objection. Leading.

8 THE COURT: All right. Rephrase the question.

9 MR. BOOZER: Certainly, judge.

10 Q. Ms. Rochester, did you believe that you were having to
11 defend against more than one entity?

12 A. Yes.

13 Q. Who would that be?

14 A. I believe that we were facing a two-fronted battle
15 where not only were we fighting against the very talented
16 Mr. Holt for the State, we were also fighting against a
17 private attorney, Mr. Swilley.

18 Q. Okay. In your view based on Mr. Swilley's actions,
19 was there any way that your client was going to not be
20 convicted at that point?

21 A. I got the feeling of dread as soon as he began his
22 opening argument. So to answer your question, I didn't
23 think there was any chance he would walk away from that
24 because you had a credible, charming, convincing attorney
25 who's also on the defense side parroting what the State is

1 saying.

2 Q. Just to turn to some other issues that my client has
3 raised in his original application, do you recall there
4 ever being a plea offer for thirty (30) years?

5 A. I do not have any independent recollection of a plea
6 offer in this case because my notes and Mr. Jones' notes
7 are in the defender data system in the Fourth Circuit to
8 which I do not have access. However, that being said, I
9 had many cases with Mr. Holt and I haven't had a one so far
10 that didn't come with an offer of thirty (30) years usually
11 around trial.

12 Q. Did you have an opportunity to either investigate
13 independently the State's eyewitnesses or try to get into
14 the criminal background at all before the trial?

15 A. No. As a defense attorney I am not entitled to access
16 NCIC. We rely on the State to give us the rap sheets which
17 they do when we actually go to trial.

18 Q. Did y'all have any issue of getting any reports from
19 the prosecution?

20 A. I recall that one of the sled reports was later coming
21 to us apart from the bulk of the discovery but it still was
22 provided to us before trial.

23 Q. And so it was timely -- it may have been late but you
24 were able to review everything?

25 A. Yes, before trial.

1 Q. Okay.

2 MR. BOOZER: I beg the Court's indulgence, Your
3 Honor.

4 THE COURT: Yes, sir.

5 MR. BOOZER: Ms. Rochester, thank you. That's all
6 the questions I have for you.

7 **Cross Examination by Mr. James:**

8 Q. Ms. Rochester, prior to opening statements, did you
9 have any reason to believe that the co-defendant's defense
10 would be adverse to your client?

11 A. Yes.

12 Q. Prior to opening statement?

13 A. Yes.

14 Q. And what indication was that?

15 A. Pretrial. As I described earlier, on day one the day
16 before the trial actually started with opening statements
17 Mr. Swilley's reaction to us not interacting with us
18 personally, separating himself from us, that was my first
19 indication.

20 Q. Did you express any concern to co-counsel regarding
21 that?

22 A. Yes, I did.

23 Q. Why didn't you file a motion to sever or otherwise
24 take action?

25 A. I was the second chair. Mr. Jones was the boss with

R. Jones- Direct Examination by Mr. Boozer

19

1 much more experience than I. I think we were both kind of
2 surprised that Mr. Swilley's reaction.

3 Q. So you referred to the experience of the first chair
4 counsel?

5 A. I did.

6 Q. You indicated that you had no independent recollection
7 of any plea offer to your client but that Mr. Holt always
8 gives an offer of thirty (30) years in murder cases?

9 A. Yes.

10 Q. All right. And if you had received that offer, would
11 you have communicated it to your client?

12 A. Yes.

13 Q. But you don't have an independent recollection of
14 doing so?

15 A. Correct.

16 Q. And despite the NCIC report out the outset of the
17 trial, you still had time to review those arguments?

18 A. Yes.

19 Q. And utilize them for impeachment purposes?

20 A. Yes.

21 MR. JAMES: I have no further questions of this
22 witness, Your Honor.

23 THE COURT: Anything else, Mr. Boozer?

24 MR. BOOZER: Nothing further, judge.

25 THE COURT: All right. You may step down, Ms.

1 Rochester.

2 MS. ROCHESTER: Thank you.

3 MR. BOOZER: Your Honor, we would call Mr. Rick
4 Jones to the stand.

5 THE CLERK: Do you solemnly swear or affirm the
6 testimony about to give the Court is the truth, the whole
7 truth, and nothing but the truth so help you God?

8 MR. JONES: I do.

9 THE CLERK: Be seated and state your full name for
10 the court please, sir.

11 MR. JONES: My name is Rick Jones.

12 RICK JONES, first being
13 duly sworn, testified as follows:

14 **Direct Examination by Mr. Boozer:**

15 Q. Mr. Jones, how are you doing today?

16 A. Fine. Thank you.

17 Q. Mr. Jones, did you represent Josh in the case that is
18 the subject of this PCR hearing?

19 A. I did.

20 Q. All right. How long did you represent Joshua prior to
21 trial?

22 A. I think I was appointed to him right after, as soon as
23 the process of appointment worked its way -- I'm sorry, I
24 think I was his only counsel, I believe.

25 Q. Okay. And you have been in the courtroom for Ms.

R. Jones- Direct Examination by Mr. Boozer

21

1 Rochester's testimony?

2 A. I was.

3 Q. Okay. I won't go back through everything ---

4 A. Sure.

5 Q. --- but, essentially, as far as the version of the
6 facts as presented by the State that she described, would
7 you agree that, that was what the State was alleging?

8 A. Yes. I think -- what I would say, though, is that,
9 that the biggest problem we had was not Johnathan, the
10 biggest problem we had was three eyewitnesses in the middle
11 of the day.

12 Q. Okay. Let's talk about some of the problems ---

13 A. Okay.

14 Q. --- y'all had with Johnathan.

15 A. Certainly.

16 Q. Do you have a decent recollection of the file or did
17 you review the trial transcript prior to today?

18 A. I have.

19 Q. Okay. Now, Johnathan who you mentioned earlier, that
20 of course, was Josh's co-defendant?

21 A. Yes.

22 Q. All right. And he was represented by Mr. Matt
23 Swilley?

24 A. Yes.

25 Q. Prior to the trial, did you have any discussions with

1 Mr. Swilley?

2 A. Very basic discussions. We did not in-depth discuss
3 each other's trial strategies.

4 Q. Okay. So y'all didn't discuss what he was going to
5 present and what y'all were going to try and present?

6 A. We did not.

7 Q. All right. Now, looking back at the trial transcript
8 and again back at 198 of the transcript in the opening
9 statement by Mr. Swilley where he indicates at line 10 on
10 199, actually, "The reason that Johnathan is on trial right
11 now I'm going to tell y'all the reason why he is in that
12 chair is because he's not going to sit in that chair and
13 bear witness against his brother. He didn't do that from
14 the beginning. He didn't exactly, will do that now.
15 That's what he's charged with the crime." Did y'all sort
16 of see that how the defense was starting to unfold for
17 Johnathan?

18 A. Yes.

19 Q. Okay. Did you have occasion to, I guess, start
20 foreseeing or see how the defense would unfold prior to
21 trial either at pretrial or anything like that?

22 A. And I did not pick up on the separation of the tables
23 and did not put as much stock in it as Ms. Rochester did,
24 but I've been in that situation to with co-defendants and
25 it's a very cramped space and so, yeah, you do want to put

R. Jones- Direct Examination by Mr. Boozer

23

1 some distance between each of the defendants.

2 Q. All right. Let's look over at page 628, and,
3 specifically, beginning with line 8 on 628, this is during
4 Mr. Swilley's closing. He indicates, "And that's the way I
5 feel and that's the way Johnny Lee feels" -- well, let me
6 back up. Go back to the top of this. Now, this is Mr.
7 Swilley talking, he saying, "Now, I do have a brother-in-
8 law, you know, and if somebody killed my brother-in-law in
9 front of my face it's unimaginable. If somebody killed the
10 father of my nephew in front of my face I would despise the
11 person and anybody else associated with him and that
12 wouldn't be right. And that's the way I feel and that's
13 the way Johnny Lee feels. He admitted that there was
14 nothing else going on except for Johnathan being there but
15 his point was when he said, when I asked you a question
16 would that question likely have been, Why was he there? Why
17 was he there? He was there because he didn't know that was
18 going to happen. That's the reason why he was there. I
19 can't say that, you know, during the testimony because I'm
20 not a witness. That's the only reasonable explanation."
21 Did you feel that Mr. Swilley was essentially becoming a
22 witness because his client did not want to present any
23 testimony or make any sort of statement?

24 A. Perhaps.

25 Q. Okay. And you would agree with me that Mr. Swilley in

1 his arguments and his examination of witnesses that he
2 affirmatively either says and/or gets witnesses to say that
3 Josh Reed killed this person?

4 A. I think he reaffirmed what the witnesses were already
5 saying, but, yes, he emphasized it in his cross
6 examination. In other words, he didn't elicit the
7 testimony initially. It was already on the table and he
8 was basically, again, separating his client from my client.

9 Q. Okay. Are you familiar, I'm sure you are, are you
10 familiar with what is a Bruton issue?

11 A. Certainly.

12 Q. What, in your mind, is a Bruton issue?

13 A. Basically, using a statement of another against your
14 client without having the person testify.

15 Q. Why -- why is that an issue?

16 A. You don't get to cross examine the witness.

17 Q. Okay. Aren't y'all -- weren't y'all sort of
18 presenting with that exact same problem but through Matt
19 Swilley?

20 A. Generally, yes.

21 Q. Okay. So you couldn't cross examine Mr. Swilley about
22 any of this, could you?

23 A. Not at all.

24 Q. And, in fact, during the trial one of the
25 eyewitnesses, did she not have some conflicting testimony

R. Jones- Direct Examination by Mr. Boozer

25

1 where initially she's not putting a gun in Johnathan's hand
2 but then all of a sudden she is, then, putting a gun in
3 Jonathan's hand and it kinda gets a little conflicting
4 there?

5 A. I don't remember her putting a gun in his hand until
6 the trial.

7 Q. Okay. Exactly.

8 A. Yes.

9 Q. Going through the trial and looking at this because
10 you have, as you've indicated this was a similar, this is
11 similar to having a Bruton issue, would you agree with me?

12 A. Yes.

13 Q. Okay. Did you make any sort of motion to sever the
14 cases?

15 A. Did not. Did not think that it was appropriate at the
16 time and I'll tell you why. Mr. Swilley was Jonathan's
17 second attorney. Johnathan actually had his first attorney
18 relieved because my understanding was that he suggested
19 just that, that Johnathan testify against his brother and
20 Johnathan said I'm not going to do that. So he had him
21 relieved.

22 Q. Okay. So that -- but now, Mr. Swilley is still doing
23 exactly what Johnathan didn't want to happen, is that
24 right?

25 A. He's indicating that, that's what he wants to do until

1 he did it at the end I wasn't sure that was going to
2 happen.

3 Q. All right. And to that point on page 638 at line 18,
4 Mr. Swilley is arguing to the jury, "If Johnathan had his
5 way I wouldn't be up here to concede. Telling that Joshua
6 shot Milton and telling y'all what you already know. The
7 fact you know they were there and that Joshua shot Milton
8 and that Johnathan just ran when the gunshot rang. My job
9 is to protect him from the unlawful conviction. He doesn't
10 call that shot. That's my decision." And that's similar
11 to what you felt is the reason Johnathan relieved his first
12 lawyer?

13 A. Yes.

14 Q. Okay. Did you make any sort of objection during the
15 trial to Mr. Swilley's arguments or did you make any sort
16 of motion for mistrial?

17 A. I did not. And the reason I did not is that in my
18 opinion he was arguing facts that were already in evidence
19 from the other witnesses. He was framing it, obviously, in
20 the best light for his client but he was not providing new
21 information through his argument.

22 Q. Well ---

23 A. He was emphasizing facts that were already in
24 evidence.

25 Q. Well, it's not a fact that's in evidence that

R. Jones- Cross Examination by Mr. James

27

1 Johnathan doesn't want to get up to testify ---

2 A. Correct.

3 Q. --- and doesn't want to squeal on his brother?

4 A. Absolutely.

5 Q. Okay. So that's not ---

6 A. Correct.

7 Q. --- in evidence?

8 A. Correct.

9 Q. So that would've been a proper objection to have made,
10 right?

11 A. Perhaps.

12 Q. At trial, you maybe should be making a motion for
13 mistrial because of that?

14 A. I'm not sure it would rise to that occasion but,
15 perhaps.

16 Q. Okay. Do you agree with me that you were sort of
17 combative to two folks, basically, the State and Mr.
18 Swilley?

19 A. It really wasn't much of a fight until the final
20 statement of Mr. Swilley during closing.

21 Q. When you say final statement which one are you
22 referring?

23 A. What you just emphasized.

24 Q. Okay.

25 MR. BOOZER: I beg the Court's indulgence, Your

1 Honor.

2 THE COURT: All right.

3 Q. Mr. Jones, do you recall there being any discussion of
4 a plea or a plea offer that was made by the State?

5 A. I reviewed what I had and I'll have to agree with Ms.
6 Rochester on that one. I don't really remember Mr. Holt
7 giving us an offer but a lot of times he would give you the
8 thirty (30) years right as you were going into trial. I
9 don't even remember that happening, but it might have.

10 Q. Okay.

11 MR. BOOZER: That's all, Mr. Jones.

12 THE COURT: Mr. James?

13 **Cross Examination by Mr. James:**

14 Q. Mr. Jones, not to get your hopes up after the brief
15 cross examination of Ms. Rochester, but I'm going to spend
16 a little bit more time with you on the stand.

17 A. Absolutely.

18 Q. How long have you been practicing law, Mr. Jones?

19 A. Longer than you are old, I think, probably ---

20 Q. Almost certainly.

21 A. Yes. Since 1976, November, 1976. Forty-two years,
22 close. Forty-one and half.

23 Q. Well, I'm twenty-nine so that is longer than I am old.
24 How much of that is criminal?

25 A. I've done criminal the whole time. Not exclusively.

1 I've done a whole lot of other things also.

2 Q. Do you recall about how many times you met with Mr.
3 Reed during the course of your representation?

4 A. I can't put a number on it. We were at the jail. I
5 was at the jail. Ms. Rochester came with me. I remember
6 showing him the video statements at the detention center.
7 A number of times.

8 Q. Several or multiple?

9 A. Yes.

10 Q. Did Mr. Reed give you any leads to pursue in the
11 course of investigating this case?

12 A. He did not.

13 Q. Did he give any witnesses to interview?

14 A. He did not.

15 Q. Did you conduct any additional investigation into the
16 facts either personally or through an investigator?

17 A. I don't remember if our investigator was still
18 employed at that time, but usually even if we had an
19 independent investigator, I generally did most of what was
20 done anyway. I visited the site. I talked to the people
21 that were going to testify. That type of thing.

22 Q. So you spoke to the eyewitnesses?

23 A. You know, I don't remember talking to Mr. Gregg or Mr.
24 Wright, Johnny. I don't recall his name. I do not
25 remember talking to them prior to the trial. I had

1 statements that I reviewed.

2 Q. Did you review those statements?

3 A. Yes.

4 Q. And you reviewed them with your client?

5 A. Yes. If I, it seems to me like the day that we played
6 those statements I, initially started it but I think Ms.
7 Rochester sat with him most of the time while I visited
8 some other folks while the statements were playing.

9 Q. The co-defendant, Johnathan Reed, give any statements?

10 A. He did.

11 Q. Do you recall what the contents of that statement was?

12 A. Basically, there was a lot of cussing and he said he
13 didn't do anything and wasn't talking.

14 Q. So with that statement in mind, did you have any
15 indication prior to trial that Johnathan Reed's defense was
16 going to be adverse to your own client?

17 A. Not from him. Obviously, from the other witnesses who
18 were putting the gun in Mr. Josh Reed's hand.

19 Q. Did you get the background, criminal background of the
20 state's witnesses for any impeachable defenses?

21 A. We get them as they go to testify, yes.

22 Q. Did you have time to review those?

23 A. Sufficient. Yes.

24 Q. Did you file a Rule 5 Brady motions?

25 A. Yes.

R. Jones- Cross Examination by Mr. James

31

1 Q. And did the State provide the materials in response to
2 your request?

3 A. Yes.

4 Q. Did you get any serology report ---

5 A. Yes.

6 Q. --- as part of any of those materials?

7 A. Yes.

8 Q. Did you have time to review that before trial?

9 A. Had time to review everything that was needed that was
10 going to be presented, yes.

11 Q. And did you go over them with your client?

12 A. As far as I remember, yes. He knew -- he knew what we
13 know.

14 Q. What was your overall defense strategy going into
15 trial?

16 A. You know, I thought a lot about that since I got the
17 subpoena to come today and we had three eyewitnesses that
18 basically said that two Reed's drove back and forth a
19 couple of three times and then finally stopped, walked
20 across the park, came up, exchanged hello's, and then Mr.
21 Joshua Reed shot Mr. Hunter. We had gunshot residue on
22 both of them as I recall. And we had a tailpipe from the
23 truck that was delivering the two young men to the park
24 that had fallen off the truck when it was parked next to
25 the park. My defense, unfortunately, is probably close to

1 what Mr. Holt always used to say that it was the job of the
2 defense attorney to muddy the waters. I was trying to
3 muddy the waters best I could because we didn't have a lot
4 to work with.

5 Q. Did you explain this strategy to your client ahead of
6 trial?

7 A. He knew -- he knew we didn't have much to work with.
8 We had discussions, yes.

9 Q. Did you ever attempt to speak with Matthew Swilley
10 prior to trial about what his strategy would be?

11 A. Just generally. Not whether he was going to throw
12 Josh under the bus, no, that never came up. It was,
13 basically, we were talking about having a trial with two
14 brothers who were charged with the same crime and I had the
15 shooter.

16 Q. And not to get into anything that he may have actually
17 told you, but from your general conversation you walked
18 away with no belief that their case would adverse your
19 client?

20 A. I won't say adverse because all of the testimony put
21 both of the young men in the park at the time of the murder
22 was committed. All of the testimony put the gun in my
23 client's hand. I did not expect Mr. Swilley to say what he
24 did in his closing argument as, I guess, as explicitly as
25 he said.

1 Q. What was your reaction to Mr. Swilley's closing
2 argument?

3 A. I really don't recall. I mean, I was dismayed but I
4 can't say I was completely shocked. I think -- I think the
5 evidence was fairly overwhelming and what he was doing was
6 probably if I would have been his, Johnathan's attorney, I
7 would have tried to do the same thing. I don't think I
8 would've done it in the style that he did by going to trial
9 and doing exactly what he did.

10 Q. This is a facially silly question in light of the fact
11 you been practicing criminal law since 1976, but is this
12 the first criminal trial that you have appeared in that
13 involves multiple defendants being tried together?

14 A. No.

15 Q. Have you, in previous trials, submitted motions to
16 sever a case?

17 A. I have.

18 Q. What do you typically look for in making the decision
19 to make a motion to sever?

20 A. It's the extent of the prejudice that my client might
21 suffer as a result of having all of the defendants tried at
22 the same time.

23 Q. Prior to trial in this case, was it your belief that
24 the level of prejudiced to your client did not get to that
25 level in this particular case that can be tried together?

1 A. Again, I didn't know it was going to happen. But I
2 think the fact that Johnathan, Johnathan through his
3 attorney did what he did I was not aware that was happening
4 until the final arguments. And to explain that a little
5 bit, we had a situation where as Ms. Rochester said we had
6 a clock in a convenience store in town that I think gave
7 four and a half to five minutes time for the two young men
8 to leave the store, to go to the park, talk to the people,
9 commit the crime, get in the car and leave before 911 was
10 called. I tried to raise reasonable doubt with that. I
11 tried to raise reasonable doubt with that plus the fact
12 that the eyewitnesses, nobody jumped up at the time that
13 the law enforcement people arrived and said, oh, the two
14 Reed brothers just came and shot Milton Hunter. They
15 basically said two black males came in a green truck and
16 left in a green truck. So I tried to add the fact that
17 they did not immediately identified the Reed brothers as
18 the people who did it when, at least, two of them should
19 have, should have known that they were not just two black
20 males, they were two black males who they happen to have
21 knowledge of. With that fact, the time fact, um, that was
22 my attempt to raise reasonable doubt when we had three
23 eyewitnesses and gunshot residue that all said they were in
24 the park when the crime was committed.

25 MR. JAMES: I beg a moment of indulgence, Your

R. Jones- Redirect Examination by Mr. Boozer

35

1 Honor.

2 THE COURT: Yes, sir.

3 MR. JAMES: No further questions, Your Honor.

4 THE COURT: Mr. Boozer?

5 MR. BOOZER: Thank you, Your Honor.

6 **Redirect Examination by Mr. Boozer:**

7 Q. Mr. Jones?

8 A. Yes, sir.

9 Q. Since 1976 when you've been practicing law?

10 A. Yes, sir.

11 Q. Have you ever had this particular scenario arise in a
12 case?

13 A. No.

14 Q. Okay. So you'd certainly say this is pretty unique?

15 A. Absolutely.

16 Q. All right. You had indicated that, sort of, just a
17 moment ago that the defenses were, you were trying to look
18 at the video and say the amount of time that had passed it
19 was impossible for these guys to be the ones that did this?

20 A. Yes.

21 Q. Okay. And your other defense was trying to attack, I
22 guess, the credibility of the witnesses, why didn't you
23 want to jump up and say, hey, it's these two guys when the
24 cops went out there?

25 A. Yes.

1 Q. Okay. But are those defenses not absolutely out the
2 window when you have an officer of the court getting up and
3 telling the jury everything these witnesses are saying is
4 true. This guy's brother shot these people and my client
5 doesn't want to get up here and say anything. Aren't those
6 defenses going at that point?

7 A. They certainly were not bolstered.

8 Q. Okay.

9 MR. BOOZER: Thank you. That's all the questions I
10 have.

11 Q. Well -- sorry. One last one before I -- had you known
12 that's how that trial was going to go, would you have made
13 an attempt or a motion to sever or at least in effort to
14 reserve the record for appellate review make any sort of
15 motion for a mistrial, make any sort of motion to sever or
16 an objection, had you known?

17 A. I think probably, yes.

18 Q. Okay.

19 MR. BOOZER: Thank you, Mr. Jones.

20 THE COURT: Mr. James?

21 MR. JAMES: No further questions, Your Honor.

22 THE COURT: You can step down, Mr. Jones. Thank
23 you.

24 MR. BOOZER: The Court's indulgence, Your Honor.

25 THE COURT: Yes, sir.

J. Holt- Direct Examination by Mr. James

37

1 MR. BOOZER: Thank you, Your Honor. That's all the
2 witnesses on behalf of the applicant.

3 THE COURT: All right, sir. Mr. James?

4 MR. JAMES: The State has one witness briefly, Your
5 Honor. The State calls Mr. John Holt.

6 THE CLERK: Do you solemnly swear to tell the court
7 the truth, the whole truth, and nothing but the truth so
8 help you God?

9 MR. HOLT: Yes, ma'am, I swear.

10 THE CLERK: Have a seat and state your full name
11 for the Court please.

12 MR. HOLT: My name is John Woodrow Holt, IV.

13 JOHN HOLT, first being
14 duly sworn, testified as follows:

15 **Direct Examination by Mr. James:**

16 Q. Good morning, Mr. Holt.

17 A. Good morning.

18 Q. For whom do you work?

19 A. Currently right now I work for the Twelfth Judicial
20 Circuit.

21 Q. Did you previously worked for the Fourth Judicial
22 Circuit ---

23 A. I did.

24 Q. --- Solicitor's Office?

25 A. I did for a number of years.

1 Q. Were you the solicitor on this case?

2 A. I was.

3 Q. Did you make any plea offers in this case?

4 A. I think if I can remember correctly and I'm not one
5 hundred percent sure that this case dragged on for a
6 significant length of time. I was aggravated that the
7 judge essentially gave them another continuance when he
8 gave another lawyer to Josh's brother. I did not seek out
9 the public defender and offer them anything. Now, you
10 know, that's because I'm not going to go begging them for a
11 plea deal once I've tracked down my three witnesses who,
12 you know, I remember little bit more hearing the testimony
13 earlier, did not want to be there in any way. I'm not
14 going to extend a gracious hand in a plea deal when I've
15 had to do all the work.

16 Q. Did you receive motions pursuant to the Rule 5 and
17 Brady from defense counsel?

18 A. Yeah.

19 Q. All right. And did you disclose everything to which
20 they were entitled?

21 A. Since my first trial, I have had a policy to where if
22 it's in my file you can look at it. I encourage every
23 defense attorney I've ever gone against to come my office
24 to look through my file. I encourage every paralegal or
25 secretary that's ever worked for me to send everything.

J. Holt- Direct Examination by Mr. James

39

1 Q. So you have an open file policy?

2 A. Yeah.

3 Q. And did you get reports back from sled regarding
4 gunshot residue you and serology?

5 A. Yeah, I did. Here's the thing, when it comes to sled
6 gunshot residue comes from the department called Trace. If
7 you didn't send them another GSR kit today it would be six
8 and half years before they finish what they have. You get
9 one or two things from Trace, you get to call up there and
10 be ugly to somebody and get it in two months in which case
11 it is always late and it's always the last thing to come in
12 or you send them a blank subpoena and they pick and choose
13 somebody to testify about how the GSR kit wouldn't be
14 probative. Particularly in this case it wouldn't be
15 probative of much.

16 Q. But to be clear you didn't hold anything back?

17 A. No. I'm trying to be clear as I can on that.

18 Q. All right.

19 MR. JAMES: I have no further questions, Your
20 Honor.

21 THE COURT: Mr. Boozer?

22 MR. BOOZER: No questions, judge.

23 THE COURT: Okay. You may step down. Thank you,
24 Mr. Holt.

25 MR. HOLT: Thanks, judge.

1 MR. JAMES: Your Honor, may this witness be -- yes,
2 may this witness be excused?

3 THE COURT: Any objection?

4 MR. BOOZER: No objection.

5 THE COURT: You may be excused, Mr. Holt.

6 MR. HOLT: Y'all have a nice day.

7 THE COURT: Okay. Have a good day.

8 MR. JAMES: The State has no further witnesses,
9 Your Honor.

10 THE COURT: Anything else, Mr. Boozer?

11 MR. BOOZER: No further witnesses. Does, Your
12 Honor, prefer to have argument or....

13 THE COURT: If you wish to make an argument for the
14 record, I'll certainly entertain it but is not necessary.

15 MR. BOOZER: Judge, just briefly. And because this
16 case is so unique, I think somewhat the lawyers, and I say
17 the lawyers, his former attorney may have been somewhat
18 blind sided by Mr. Swilley's actions at trial. Ms.
19 Rochester did feel that she had some sort of inkling that,
20 that was coming. As Mr. Jones testified he's been
21 practicing since 1976, he has not has a case that has been
22 similar to this and he admitted that when statements were
23 made by Mr. Swilley that, essentially, the defense that he
24 had in trying to raise the timing issue that this couldn't
25 have possibly been them and trying to attack the

1 credibility of the witnesses with, why. did y'all jump up
2 when the cops comes out and say this who did it, that
3 essentially those are out the window, essentially. I don't
4 want to put words in his mouth but I think that's kind of
5 the just of it. I think where you've got a defense lawyer
6 when we're trying a case with the co-defendant, he
7 essentially, may a Bruton issue by making these statements.
8 He, essentially, became his client and he's making these
9 statements that he knows he's not get out of his client,
10 he's making those to the jury.

11 Judge, I think in this case with Mr. Swilley's
12 comments and the position that he took there was no way
13 that my client had any sort of defense in this case.
14 You've got the solicitor's office, of course, working
15 against my client but throw that in with the people sitting
16 right next to him that there's no way he could've won that
17 case. These cases should have been tried separately. At
18 the first hint that, that was gonna happen and even during
19 the trial when they did see, oh, gosh this is how Mr.
20 Swilley is going to defend his client, there should've
21 immediately been a motion to sever, an objection and,
22 ultimately, probably a motion for mistrial so that Mr. Reed
23 could've had a fair shot at his case. Without it, he had a
24 fair shot with Mr. Swilley working his. So, judge, that
25 would be the argument. It's a Bruton issue but it's not a

1 Bruton issue. We'd ask this Court to grant the application
2 based on that.

3 THE COURT: Thank you, Mr. Boozer. Mr. James?

4 MR. JAMES: Your Honor, I will be brief in arguing
5 and, specifically on the outset to an extent, I would agree
6 with opposing counsel that the applicant had, essentially,
7 no defense but it's not because of any failure on the part
8 of counsel or any scheming plan by counsel for his co-
9 defendant. It's because three witnesses in broad daylight
10 saw him shoot a man in a very short range.

11 Your Honor, as to the severance issue I would
12 specifically direct the Court's attention to the case of
13 Hughes v. State. If I may approach?

14 THE COURT: Yes, sir.

15 MR. JAMES: I have a copy of this case to hand up
16 to you. And for the record the citation for that case is
17 Hughes v. State, 346 S.C. 554, 552 S.E.2^d 351. I would
18 direct the Court's attention to page 3 of the printout that
19 I've handed up. It is the second column and is marked by
20 head notes 5 through 10 and down in the bolded section and,
21 Your Honor, I did not add that bold that was included in
22 the printout, "a severance should be granted only when
23 there is a serious risk that a joint trial would compromise
24 a specific trial right for co-defendant or prevent the jury
25 from making a reliable judgment about a co-defendant's

1 guilt." Your Honor, the fact that these cases were tried
2 together did not compromise any specific trial right of the
3 defendant. He had -- his co-defendant did not testify
4 against him and there wasn't an adverse statement to be put
5 against him at trial. The fact that his co-defendant's
6 attorney argued precipitously against Joshua Reed is of no
7 consequences to the fact that he was not entitled to a
8 severance to begin with.

9 Your Honor defendant's counsel, Mr. Jones, made it
10 very clear on the record that he did not see this coming,
11 that he had nothing to prompt him to see this coming and
12 this is just one of those classic examples of looking back
13 in retrospect would you have done things differently then
14 you know knowing what you know now. Absolutely counsel
15 would've done things differently but we don't do with the
16 PCR looking back in retrospect. We deal with PCR looking
17 at the facts as they existed at the time of court counsel
18 and accordingly Mr. Reed is entitled to no relief. And so
19 I would respectfully ask this Court to deny his application
20 for post-conviction relief.

21 THE COURT: All right. Thank you, Mr. James. All
22 right, gentlemen, this is rather an interesting case. I'm
23 going to have to take this matter under advisement so I can
24 review the cases that have been handed up and I can go
25 through the transcript myself.

1 MR. BOOZER: Thank you, Your Honor.

2 THE COURT: Thank you, gentlemen.

3 MR. JAMES: Thank you, Your Honor.

4 (CONCLUSION OF THE HEARING ON JANUARY 16, 2018)

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATE

I, the undersigned Lisa S. Carter, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Dillon County, South Carolina, on the 16th day of January, 2018.

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

s/ Lisa S. Carter

Lisa S. Carter.
Circuit Court Reporter

June 27, 2018

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

**Joshua A. Reed,
S.C.D.C. No. 357568,**

Applicant,

y.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Case No.: 2016-CP-16-00767

ORDER OF DISMISSAL

FILED
2018 MAR 21 AM 10:20
SCOTT B. SUEGS
CLERK OF COURT/TAO.D.
DARLINGTON COUNTY, S.C.

This matter comes before the Court by way of an application for post-conviction relief filed by Joshua A. Reed ("Applicant") on November 3, 2016. Respondent made its return on or about December 11, 2017. The Court convened an evidentiary hearing into the matter on Tuesday, January 16, 2018, at the Dillon County Courthouse in Dillon, South Carolina. Applicant was present at the hearing and represented by Lance S. Boozer, Esq. Johnny Ellis James Jr., of the South Carolina Attorney General's Office, represented Respondent.

Applicant's trial counsels, J. Richard Jones, Esq. ("Jones") and Julie Rochester, Esq. ("Rochester") (collectively "Counsels"), and the prosecuting solicitor John W. Holt, IV, Esq. ("Holt") testified at the evidentiary hearing. The Court had before it Applicant's records from the South Carolina Department of Corrections, a copy of the original trial transcript, the records of the Darlington County Clerk of Court regarding the subject convictions, Applicant's direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Darlington County Clerk of Court. Applicant was indicted at the January

Jan

2013 term of the Darlington County Grand Jury for murder (2013-GS-16-00262), and possession of a weapon during the commission of a violent crime (2013-GS-16-00263). J. Richard Jones, Esq., and Julie Rochester, Esq. represented Applicant. John W. Holt, IV, of the Fourth Circuit Solicitor's Office, prosecuted the case. On October 21, 2013, Applicant proceeded to trial before the Honorable Howard P. King and a jury. The jury found Applicant guilty as indicted on October 24, 2013. Judge King sentenced Applicant to imprisonment for the duration of his natural life.

Applicant filed a timely notice of appeal and a direct appeal was perfected by David Alexander, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Reed, Op. No. 2015-UP-484 (S.C. Ct. App. filed October 14, 2015). The Remittitur was issued on November 13, 2015.

Present Application

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. "[Applicant] was denied the right to effective assistance of counsel guaranteed by the Sixth and Fourteenth Amend. to the United States Const. and by Article I, §§ 3 and 14 of the S.C. Const., During Case: Guilty Plea, etc."
 - a. "Plea counsel failed to advise applicant about a plea for 30 years until the day of the plea trial;"
 - b. "Counsel failed to place the legal tiny process against the crime video from the scene of the alleged crime incident, etc."
 - c. "Failed to fully examine the State's eyewitnesses and disclose their criminal back ground data, NCIC reports, etc. No accounts to show investigative duties to the case as required, etc."
 - d. "Counsel failed to have state eyewitness ID for the purposes of witnesses giving reports to the police and investigators but in the truth finding process the potential state eyewitness was placed under arrest for the name of Asia Gregg, etc."

- e. "Counsel failed to compel the State to provide the forensic reports of the serology sect. showing the finding of the gun powder residue on the Applicant that was performed on him, the counsel was participating in the hiding information acts through coordination by the State, the counsel did not provide the finding of the serology report until 20 months as said that's when the SLED sent them back to the State, etc[.]"
- 2. Prosecutorial misconduct, in that:
 - a. "As this issue [referring to 1.e above] is compiled with a Brady violation claim that it being the case counsel indulged in violating the Applicant's constitutional rights to have the State's files disclosed to him in a reasonable time frame to have the files inspected for himself, and discussed with the counsel."

Applicant, by and through counsel, amended the following additional allegations by filing on December 18, 2017:

- 3. Ineffective assistance of counsel, in that:
 - a. "Counsel was ineffective for failing to request that Applicant's case be severed from his co-defendant's case."
 - b. "Counsel was ineffective for failing to object, strike, request severance and/or mistrial and otherwise act based on the prejudicial statements made by co-defendant's counsel during trial."

At the evidentiary hearing, Applicant clarified that the original allegation of a Brady violation would not be pursued as a ground of prosecutorial misconduct, but as part of a broader allegation that Counsels failed to fully investigate the case against Applicant.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, he or she must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Butler at 442, 334 S.E.2d 441 (quoting Strickland v. Washington, 466 U.S. 668, 686 (1984)). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Id.

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Butler at 442, 334 S.E.2d 441 (quoting Strickland at 690). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989). "Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689; Edwards v. State, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011). "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this

prong, attorney performance is measured by its "reasonableness under professional norms." Cherry at 117, 386 S.E.2d at 625 (citing Strickland at 688). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry at 117-18, 386 S.E.2d at 625 (citing Strickland at 694).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. Strickland at 696. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. at 696-97.

1. Failure to Communicate Plea Offer

Applicant alleges Counsels were ineffective for failing to communicate to him an offer to plead guilty to murder in exchange for a sentence of 30 years. "As a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused." Bell v. State, 410 S.C. 436, 441, 765 S.E.2d 4, 6 (Ct. App. 2014); see also Davie v. State, 381 S.C. 601, 609, 675 S.E.2d 416, 419 (2009).

At the evidentiary hearing, Rochester testified she had no specific recollection of a plea offer, but noted that Holt always extends a plea offer of 30 years to murder. Jones also testified he had no recollection of a plea offer. Holt testified he did not extend any plea offer.

The Court finds Counsels did not fail to communicate any plea offer. Neither attorney could recall any such plea offer and Holt affirmatively denied any such offer ever existed. No

written offer was introduced. Therefore, the only evidence before this Court is that no such plea offer was made. Accordingly, the Court finds no deficiency on the part of Counsels, nor prejudice therefrom, and Applicant's request for relief by way of this allegation is **DENIED**.

2. Failure to Investigate

Applicant alleges Counsels were ineffective in failing to fully investigate the backgrounds of the eyewitnesses against him and the forensic reports in his case. In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

At trial, three eyewitnesses testified against Applicant: Asia Gregg, Johnny Lee Washington, and Anthony Wingate. (Tr. 203-50; 252-74; 275-303). Each testified Applicant approached their group at Pride Park and, after some time, produced a handgun, shot the victim multiple times, and fled the scene. (Tr. 207-09; 254-57; 283-87). Additionally, law enforcement tested both Applicant and the co-defendant for gunshot residue: GSR was found on the back and palm of Applicant's right hand, as well as on the back of co-defendant's left hand. (Tr. 472-73). The victim was not tested for GSR. (Tr. 472, ll. 2-12).

At the evidentiary hearing, Rochester testified the overarching strategy at trial was to argue that Applicant did not shoot the victim, and that the time of the 911 call did not reasonably line up with the time-stamps on a nearby convenience store video that recorded Applicant and the co-defendant. Rochester testified the public defender's office has no independent access to the National Crime Information Center (NCIC) database, and that the State provided NCIC reports at the start of trial. Rochester noted that some materials from the State Law Enforcement Division (SLED) were late in coming, but were nonetheless provided and that she had adequate time to review them in preparation for trial.

Jones set forth an overarching strategy to muddy the waters. Jones recalled that he did not have much to work with and that he told Applicant as much. Jones described the evidence against Applicant as "overwhelming." Jones testified that he received and reviewed the statements given by the witnesses and the co-defendant, and displayed the video statements to Applicant. Jones recalled visiting the crime scene and talking to the witnesses, but could not recall specifically talking to Asia Gregg. Jones testified he typically receives NCIC reports from the State before they testify. Jones indicated he received and had time to review all of SLED's reports before trial, and that he went over them with Applicant.

Holt testified that the State provided all materials in response to motions by the defense pursuant to Rule 5 and Brady. Holt conceded that SLED's GSR report was much delayed and is always the last material the State receives.

The Court finds no deficiency on the part of Counsels, nor any prejudice therefrom. The testimony of both Counsels reflects a thorough investigation of Applicant's case and review of materials provided in discovery. Both Counsels reported having adequate time to review the GSR report provided by SLED. Additionally, Applicant did not indicate what, if any, additional

defenses could have been advanced had Counsels conducted a more thorough investigation. As such, Applicant cannot meet his burden, and his request for relief by way of this allegation is **DENIED**.

3. Failure to Motion for Severance, Mistrial After Co-Defendant's Closing Argument

Applicant alleges Counsels were ineffective for failing to seek severance of his trial from that of his co-defendant, and were similarly ineffective after the highly adverse closing argument made by the co-defendant's counsel, Matt Swilley, Esq. ("Swilley"). Applicant argues that Swilley's closing argument, in effect, placed him into the shoes of his own client, who refused to testify, thereby inhibiting Applicant's confrontation rights in a manner similar to the problem in Bruton v. U.S., 391 U.S. 123 (1968). Applicant protests that Counsels' failure to seek a trial separate from his co-defendant effectively left him with no possible defense.

"Criminal defendants who are jointly tried for murder are not entitled to separate trials as a matter of right." State v. Dennis, 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999) (citations omitted). "A defendant who alleges he was improperly tried jointly must show prejudice before this Court will reverse his conviction." Id. "The general rule allowing joint trials applies with equal force when a defendant's severance motion is based upon the likelihood he and a codefendant will present mutually antagonistic defenses, i.e., accuse one another of committing the crime." Id. "A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent the jury from making a reliable judgment about a co-defendant's guilt." Hughes v. State, 346 S.C. 554, 559, 552 S.E.2d 315, 317 (2001).

As for a motion for a mistrial, "[a] mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a

mistrial." State v. Wilson, 389 S.C. 579, 585, 698 S.E.2d 862, 865 (Ct. App. 2010).

"Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." Id.

At trial, Swilley's opening statement laid blame on Applicant, denied Johnathan's culpability, and indicated he would not testify against his brother, Applicant:

Somehow between [Applicant] and Milton Hunter some bad blood comes up and between a conversation *shots get fired by [Applicant]*. Milton Hunter dies. And my client, Johnathan Reed, does exactly what any reasonable person would do at that moment, he takes off. He removes himself from the situation. Nobody wants to be in the middle of a gun fight. Jonathan never had a gun. He never participated in anything illegal in Pride Park. He never insisted telling – never assisted in any crime that took place; he didn't commit a crime. The reason that Johnathan is on trial right now; I'm gonna tell y'all, the reason why he's in that chair, because he's not gonna sit in that chair, and bear with us, against his brother. He didn't do that from the beginning, and he's didn't [sic] exactly will [sic] do that now. That's why he's charged [with] a crime.

(Tr. 199, ll. 6-16) (emphasis added). Swilley again indicated Applicant shot the victim during cross-examination of Wingate:

[SWILLEY:] And at the time you saw [Applicant] shoot Milton[,] Jonathan Reed wasn't doing anything, right?

[WINGATE:] He was standing, he was standing – see, he was standing opposite side of Johnny Lee.

Q: Right. And did I hear you say before that he looked shooked when all this was going on?

A: Yeah, I honestly say that.

Q: Like, I mean, he had a look of bewilderment on his face?

A: He looked as puzzled just like I looked puzzled.

Q: Right. And at the time you saw Johnny, Johnathan didn't have a gun, did he?

A: Not from my knowledge I don't know.

Q: I mean, you didn't see a gun in his hand, did you?

A: No.

Q: Didn't see a gun hanging out of his clothes did you?

A: No. I think he had his hands in his, like in his coat, in the hoodie.

Q: You didn't see the imprint of a gun in his coat, did you?

A: Naw.

Q: Is that a no?

A: No, no.

(Tr. 298-99) (emphasis added). Late in his closing argument, Swilley again pivoted from focusing on co-defendant's lack of guilt to Applicant's culpability, against his client's wishes:

If Jonathan had his way I wouldn't be up here to concede, *telling that [Applicant] shot Milton* and telling y'all what you already know, the fact you know, they were there and that Joshua shot Milton and that Jonathan just ran when the gunshot rang out like any regular person would. My job is to protect him from an unlawful conviction. He doesn't call that shot; I do. That's my decision.

(Tr. 638, ll. 18-25) (emphasis added). Counsels did not object in any of the above instances.

At the evidentiary hearing, Rochester testified she began to suspect Swilley during pre-trial motions, at which time he separated the tables on the defenses' side of the courtroom. Rochester indicated she was previously unaware that co-defendant's defense strategy would be adverse and that the separation of the tables was her first indication that the co-defendant's defense would be adverse. Rochester testified she should have motioned for a separate trial as soon as it became obvious Swilley was adverse to her client, but that she deferred to the judgment of Jones, who was the more experienced attorney. Rochester agreed with Applicant's proposition that Swilley's closing argument stepped into his client's shoes in a way that

foreclosed cross-examination. Rochester recalled a sense of dread during Swilley's opening statement, and described it as one that parroted the State's own opening.

Jones testified Applicant's biggest problem going into trial was not the co-defendant, but that the State's case was built on the testimony of three eyewitnesses to an event that occurred in the middle of the day. Jones reported having basic conversations with Swilley, but that there was no in-depth discussion of trial strategy. Jones agreed he saw the first hint of how the co-defendant's defense would unfold during Swilley's opening statement, but did not know Swilley would throw Applicant under the bus until it occurred in closing argument. Jones did not put much stock in the separation of tables as symbolic of anything, and noted that the space was cramped with the tables together. Jones emphasized the eyewitnesses did not affirmatively put the gun in Applicant's hand until trial, and that Swilley was the co-defendant's second attorney, as the first had resigned upon Johnathan's refusal to testify against Applicant. At the time trial started, Jones did not believe severance was appropriate. As to a potential objection during closing arguments or a motion for a mistrial, Jones noted that Swilley primarily argued facts already in evidence and simply framed them in a light most beneficial to his client. Confronted with Swilley's argument that Johnathan did not wish for Swilley to impugn Applicant, Jones opined that it did not rise to the level of a mistrial. Jones did not believe the trial played out in the form of a "two-front fight" until Swilley's closing argument. Jones agreed that Applicant's defense was, to say the least, not bolstered by Swilley's closing.

The Court finds no deficiency on the part of Counsels, nor prejudice therefrom. As to Counsels' failure to motion for a severance prior to trial, this Court finds they had no way of knowing that Swilley's closing argument would be irreconcilably adverse until it was made. Though Rochester testified to a "feeling" that Johnathan Reed was becoming adverse to

Applicant, it was nothing more than ominous speculation, and no real indication was made prior to trial that the co-defendant would be adverse. To the contrary, Jones had a reasonable basis to conclude otherwise based on the resignation of Johnathan's first attorney due to Johnathan's refusal to testify against his brother. Furthermore, though Applicant tries to bend Bruton to fit to the facts of the present case, the Court finds no specific right of Applicant's was compromised by the joint trial. That Applicant could not "cross-examine" Swilley's closing argument simply does not fit within Bruton, and amounts to no more than a protestation that the co-defendant's defense was adverse, which is not adequate grounds for severance under Dennis.

As to Counsel's failure to object or otherwise motion for a mistrial due to Swilley's closing argument, the Court agrees with Jones' analysis that Swilley primarily argued facts in evidence. Swilley's off-hand remarks that he was arguing contrary to his own client's wishes did comprise an unusual comment on his own client's silence, and offered an explanation not in otherwise in evidence. However, the comment was of no real consequence, and did not serve to impugn or inculcate Applicant, but only explained why Johnathan did not testify. As Jones' noted, the evidence against Applicant was overwhelming, in the form of three eyewitnesses and a positive test for GSR on Applicant. The weight and merit of that evidence was in no way disturbed by Swilley's arguing contrary to his client's wishes and admitting as much on the record. If anything, but for Johnathan's acquittal, it may have provided an argument for post-conviction relief against Swilley. Accordingly, Applicant's request for relief by way of these allegations is **DENIED**.



III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 14th day of March, 2018.


 ROGER E. HENDERSON
 Presiding Judge
 Fourth Judicial Circuit

Chesterfield, South Carolina

2018 MAR 21 AM 10:20
 SCOTT B. SUGGS
 CLERK OF COURT/R.O.
 DARLINGTON COUNTY, S.C.

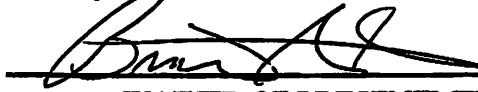
FILED

WITNESSES

Terrance Anderson

Hartsville Police Department

Law Enforcement Case #: 201202185

 495

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

Defendant

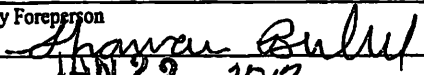
ARREST WARRANT NUMBER
J089211

ARRESTED ON: 2012-02-17

ACTION OF GRAND JURY

True Bill

Grand Jury Foreperson


Date **JAN 22 2013**

VERDICT

Petit Jury Foreperson

Date

DOCKET NUMBER:
2013-GS-16-0262

The State of South Carolina

County of Darlington

COURT OF GENERAL SESSIONS

Term:
January 2013

THE STATE

vs.

Joshua Alexander Reed

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

CDR Code: 0116

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

INDICTMENT FOR

Murder / Murder

§16-03-0010; 16-03-0020

At a Court of General Sessions, convened on January 21, 2013, the Grand Jurors of Darlington County present upon their oath:

MURDER

CDR: 0116 16-03-0010,0020

That Joshua Alexander Reed did in Darlington County, on or about February 15, 2012, along with co-defendant, willfully, feloniously, and intentionally kill the victim, Milton Hunter, with malice aforethought, either express or implied, by means of shooting the victim, and the victim did die as a proximate result thereof on or about February 15, 2012 in Darlington County, in violation of Section 16-03-0010, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

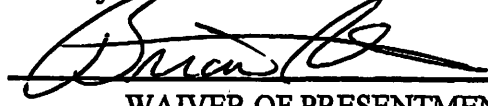

WILLIAM B. ROGERS, JR.
SOLICITOR

WITNESSES

Terrance Anderson

Hartsville Police Department

Law Enforcement Case #: 201202185



495

WAIVER OF PRESENTMENT

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

 Defendant

I hereby appear in my own proper person and
plead guilty to the within indictment or to:

 Defendant

ARREST WARRANT NUMBER
J089212

ARRESTED ON: 2012-02-17

ACTION OF GRAND JURY

True Bill

 Grand Jury Foreperson

 Date **JAN 22 2013**

VERDICT

 Petit Jury Foreperson

 Date

DOCKET NUMBER:
2013-GS-16-0263
The State of South Carolina
County of Darlington

COURT OF GENERAL SESSIONS
Term:
January 2013

THE STATE
vs.
Joshua Alexander Reed

INDICTMENT FOR
Weapons / Poss. weapon during violent crime
§16-23-0490
CDR Code: 0549

William B. Rogers, Jr., Solicitor

STATE OF SOUTH CAROLINA

INDICTMENT FOR

COUNTY OF DARLINGTON

Weapons / Poss. weapon during violent crime

§16-23-0490

At a Court of General Sessions, convened on January 21, 2013, the Grand Jurors of Darlington County present upon their oath:

POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME

CDR: 0549 16-23-0490

That Joshua Alexander Reed did in Darlington County, on or about February 15, 2012, along with co-defendant, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, to wit: Murder, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided:

in such case made and provided.

William B. Bryant

WILLIAM B. ROGERS, JR.
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Darlington
 STATE VS.
Joshua Alexander Reed

INDICTMENT/CASE#: 2013-GS-16-0262
 A/W#: J089211
 Date of Offense: 2/15/2012
 S.C. Code § : 16-03-0010; 16-03-0020
 CDR Code #: 0116

AKA: _____

Race: Black Sex: M Age: 23

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010; 16-03-0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST [Signature] 77495 [Signature] 3192
Holt, John SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of Life In Prison days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____, plus costs and assessments as applicable*, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5%) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(I) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$

3% to County (if paid in installments) \$

TOTAL 133.90Clerk of Court/ Deputy Clerk Janna ConnerCourt Reporter: Marjorie Sullivan

SCCA/217 (03/2011)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge [Signature]Judge Code: 2107Sentence Date: 10/24/13

798

STATE OF SOUTH CAROLINA

COUNTY OF Darlington
STATE VS.AKA: Joshua Alexander ReedRace: Black Sex: M Age: 23

Address: _____

City, State, Zip: _____

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Possession of weapon during violent crime, if not also sentenced to life without parole or deathin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature] 17495 [Signature] 3192

Holt, John

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____, plus costs and assessments as applicable, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-16-0262
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$1581.40

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013-GS-16-0263A/W#: J089212Date of Offense: 2/15/2012S.C. Code § : 16-23-0490CDR Code #: 0549

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature] 17495 [Signature] 3192

Holt, John

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____, plus costs and assessments as applicable, the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-16-0262
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$1581.40

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge [Signature]Judge Code: 2107Sentence Date: 10/24/13Clerk of Court/ Deputy Clerk [Signature]Court Reporter: Margaret Sullivan

SCCA217 (03/2011)